

India, UNHCR and Refugees : An Analytical Study

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[The South Asian states are yet to ratify the Refugee Convention and its protocols. Their recalcitrance has given rise to quite a rich and varied body of literature over the theme. Idealists have advocated ratification of the convention at the earliest while realists have argued the pitfalls of such a position. As an underdeveloped corner of the world the region is host to all kinds of socio-economic problems and many analysts hold that the commitments of the states to their people may be overridden by commitments to 'outsiders' if they ratify any such international convention. The factors of inter-state hostility in the region and external intervention in internal security problems in most of the countries in the region have further complicated the discourse. In essence, the states do not want to shackle themselves with commitment to international convention and pledge outsiders rights which they cannot observe for the citizens. However, these countries have displayed extraordinary hospitality towards refugees, forced migrants and even illegal migrants. And they have allowed UN High Commissioner for Refugees to operate within their territories. The present paper seeks to study how India has approached the whole issue and worked with UNHCR to address the problem of refugees. Editorial Board]

In this study an attempt is made to analyse the multi-dimensional relationship between the United Nations High Commissioner for Refugees (UNHCR) and India. It needs to be mentioned here that India has not yet acceded to the 1951 Convention on Status of Refugees. Nevertheless, UNHCR in its present and earlier forms has operated in India and worked among the refugees in India. In the present study two case studies of Tibetan and Afghan refugees would be undertaken to study this relationship in greater detail. An attempt will also be made to analyse the reasons behind UNHCR's partial involvement in this country. Some of the questions sought to be answered include the following: What could be the factors guiding the Indian approach towards the refugees? Why do refugees choose India as their country of refuge? What are the factors facilitating or inhibiting UNHCR's functioning in India? Why does India still find it difficult to ratify the 1951 convention on the Status of Refugees?

The Issue of Refugees

Though the phenomenon of population displacement is quite old, the forcing of people from their established and known habitat emerged with the birth of a territorial nation-state[1], gradually assuming religious, racial or ideological character and identity. The very process of the emergence of such identity has resulted in discriminatory practices against minorities and those

groups of people who do not share the ideological or religious predilections of the dominant groups. This process of refugee generation continued as the conflicts of state formation spilled over into inter-state conflicts and tensions and stabilisation of territorial boundaries of ethnically, religiously and ideologically defined state.

The scale of refugee movements has expanded dramatically in recent years.[2] According to one estimate, during the nineteenth and early twentieth centuries inter-continental migrations involved some 50 million people, many of whom were fleeing persecution in Europe.[3] In early 1995, there were 27 million refugees and other people of concern to the United Nations High Commissioner for Refugees (UNHCR).[4] This figure included 14.5 million refugees as well as other related groups such as returnees and other displaced people who have not crossed an international border. In 1997, there were still more than 22 million refugees in the world. As a matter of fact, refugees in the legal sense of the term now constitute little more than half this number.[5]

Derived from the Latin 'refugium', the word 'refugee' literally means "shelter, security, or a haven".[6] According to the 1951 Convention Relating to the Status of Refugees, a refugee is one who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[7]

However, the broadened definition of a refugee has now come to include a variety of different groups: internally displaced and war-affected populations, asylum seekers, stateless people and others whose nationality is disputed as well as returnees/refugees and displaced people who have been able to go back to their homes, but who still require some support from the international community.[8] Although numerous private and governmental agencies exist to attend to the needs of refugees on the local, national and international scales, the oldest, most prominent and best funded is UNHCR.

Established in 1950 as a replacement for the United Nations International Relief Organisation (UNIRO, founded in 1946 to aid Europeans after World War II), the UNHCR is the major international body mandated to aid refugees. With the exception of Palestinians (who are administered to by the United Nations Relief and Works Agency for Palestine Refugees in the Near East), all refugees who elect to register for aid fall under UNHCR's jurisdiction.[9] The core functions assigned to UNHCR by its 1950 Statute involve "providing international protection" and "seeking permanent solution to the problem of refugees by assisting governments ... to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities".[10]

UNHCR aims to provide protection and ensure the respect of fundamental rights for all those under its concern. In the case of refugees, the most basic need is protection from refoulement or forcible return to a country in which they have reason to fear persecution or attack. UNHCR also

provides assistance to those persons of concern who cannot meet their own basic needs, and when there are no other resources available.

The types of assistance include emergency help for major influxes; case and maintenance programmes that meet basic needs on a more routine basis; voluntary repatriation; local settlement assistance to promote self-sufficiency and local integration in host countries; and resettlement in third countries for refugees who cannot return to their homes and who face particular protection problems in their country of first asylum.[11]

Refugee problem in India

The refugee problem has existed since the emergence of India as an independent nation-state. The process of nation-building and state-building in the south Asian region has been responsible for producing a vast number of refugees. Besides, war, famine and political oppression have been the other reasons contributing to population displacement[12] .

From a theoretical perspective, there are six broad causal factors responsible for refugee creation namely (i) anti-colonial wars and self-determination movements; (ii) international conflicts; (iii) revolutions, coups and regime changes; (iv) ethnic, communal and religious conflicts; (v) creation and restructuring of state boundaries, and (vi) population transfers[13] . However, Muni and Baral have identified three broad categories of refugee-generating factors in South Asia,[14] which obviously applies to India as well. First, the breakdown of colonial rule and the rationalisation of some of the colonial legacies created refugee flows. The largest of such flows was between India and Pakistan, resulting from the partition of British India. Similar exodus of refugees resulted in the aftermath of independence of Burma and Sri Lanka. Second, factor related to state and nation-building processes, which precipitated not only political, ethnic and religious conflicts but created economic and environmental conditions that forced people to migrate within or outside their respective countries. The first and also the largest refugee flow generated by such factors was in 1971, from the then East Pakistan to India. Similar is the case of Sri Lanka, where the state, through a gradual process beginning in 1956, acquired a Sinhala-Buddhist identity. The simmering ethnic conflict that exploded in July 1983 sent more than 220,000 refugees to India and 75,000 outside the region. Later, Bangladeshi drift towards authoritarian political order and assertive Islamic identity strengthened the flow of Hindus and Buddhist Chakmas to India. A vigorous policy of Bhutanisation in Bhutan has led to massive outflow of the Southern Bhutanese of Nepali origin. Approximately, 25,000 to 30,000 Nepalese of Bhutan have taken refuge in India's West Bengal and Assam. Further, there have been economic migrants from the neighbouring countries to India. Finally, refugee-generating factors in the subcontinent also relate to the developments outside the region. So far, such extra-regional refugees have come from Tibet, Afghanistan and Burma.

Basically, it is India's democratic polity, large size, a soft-secular state system, federal constitutional structure, porous borders and better economic opportunities which account for the flow of refugees to this country.

UNHCR and India

UNHCR began its operations in 1951 on the initiative of the UN General Assembly.[15] However, it first opened its office in India, at New Delhi only in February 1969 to assist about 1,00,000 Tibetan refugees. 3,00,000 US dollars were allocated for health, housing, industrial employment, agriculture and other rehabilitation activities.

In 1970, 2,00,000 US dollars were given mainly for settlement of Tibetans in agriculture. In April 1971 UNHCR was appointed the focal point for all UN assistance to over ten million refugees from East Pakistan. In the largest refugee operation ever, 120 million US dollars were channelled to the Indian Government for, aid and later repatriation to Bangladesh in 1972.

Since March 1981, UNHCR has recognised over 50,000 refugees in India, mainly Afghans. Of them, 9,800 have since been resettled in third countries. Around 3,000 repatriated voluntarily to Afghanistan with UNHCR assistance, joining some 2.5 million compatriots returning from exile in Pakistan and Iran. All returnees benefit from UNHCR's extensive reintegration activities in Afghanistan, including building of shelters and roads, canals and wells. Since 1992, UNHCR started assisting Government of India in the repatriation of Sri Lankan refugees from Tamil Nadu by verifying the voluntary nature of their departure.

Though over 65,000 Sri Lankan refugees living in 133 camps in Tamil Nadu are assisted directly by the Government of India, under an agreement with Government of India in 1992, UNHCR has been assisting in the repatriation of Sri Lankan refugees from Tamil Nadu by verifying the voluntary nature of their departure. UNHCR also helps in the reintegration of returnees from India with small community-based projects in Sri Lanka. Repatriation of Sri Lankan refugees has been temporarily suspended since 1995.

UNHCR has also been involved in training the personnel of the Office of the Tamil Nadu Relief and Rehabilitation Commissioner. Present in northern Sri Lanka since 1988, UNHCR helps in the reintegration of returnees from India with small community-based projects. UNHCR also protects and assists civilians displaced by conflict in northern Sri Lanka in Open Relief centres, thereby reducing the compulsion to flee.[16]

Despite this substantial involvement of UNHCR with refugees in India, India has not yet acceded to the 1951 Convention on the Status of Refugees.[17] Notwithstanding this, India has been substantially cooperating with UNHCR in the administration of refugee situation in the country. She has been more of a refugee receiving than a generating country due to its easily accessible borders, socio-cultural identities, economic opportunities and a democratic and generally soft state.

UNHCR in India: The Structure

Though still not a party to the 1951 Convention Relating to the Status of Refugees, India has allowed UNHCR to operate in India. And since February 1969, UNHCR has been caring for the hordes of refugees coming to India, officially as well as unofficially. UNHCR has been involved with the refugee categories in India: Tibetan, Bangladeshi, Afghan and Sri Lankan.

Since 1995, India has also become a member of 53 member EXCOM of the Office of the UNHCR.[18] Today, UNHCR operates in India through its Office of Chief of Mission at Delhi and also has a sub-office at Chennai, which is basically meant for repatriation of refugees from Sri Lanka. The Chennai office works under a Repatriation Officer.

The office of the UNHCR in India is mainly composed of four units, which include the Legal Unit, the Social Service Unit, the Public information unit, and the Programme Unit.[19]

The Legal Unit

As the name suggests, this unit deals chiefly with the determination of refugee status and promotion of the protocol. All asylum seekers are individually interviewed by Legal Officers at UNHCR. Those found to have genuine fear of persecution, arising out of series human rights violations in their country of origin, are recognised as refugees. They are issued refugee certificates for identification.[20]

The 1951 Convention and its 1967 Protocol are the principal international instruments for the protection of refugees. They have been ratified by 134 countries. India has not ratified the Convention as yet nor does it have any specific domestic laws on refugees. Refugees are dealt with under the Foreigners Act, 1946, which does not distinguish between refugees and other foreigners. In order to raise awareness about these issues, and to build a favourable public opinion, UNHCR has been undertaking a host of promotional activities. These include interactive activities with the academia, including students, researchers and teachers of international law and international relations as well as with NGOs and others. The Unit is led by a Legal Officer aided by two Assistant Legal Officers. As of January 1999, there were about 17,700 refugees registered with UNHCR, Delhi.

The Social Service Unit

Consisting of a Social Service Officer and five social service workers, it mainly looks after various aspects of the needs of refugees such as healthcare, education, employment and settlement. Assistance is provided to the refugees through projects implemented by NGOs. For instance, the Young Men's Christian Association (YMCA) assists refugees with education, vocational training, social counselling and income generation activities. Another NGO, Voluntary Health Association of Delhi (VHAD) provides medical assistance, referral services and medical counselling to refugees.

A legal NGO, Public Interest Legal Service and Research Centre (PILSARC) offers legal counsel to refugees facing legal protection problems in India. The entry, stay and departure of refugees are handled by the foreigners' section of the Ministry of Home Affairs and Foreigners Regional Registration Officers throughout the country.[21] In some cases involving detention and deportation of refugees, UNHCR intervenes directly with the Government of India to secure their release, and seek appropriate solutions.

In some cases UNHCR provides financial assistance to refugees for a limited period of 6-12 months, and to those suffering from disability, chronic illness or other forms of vulnerability.[22]

Programme Unit

This mainly looks after the overall administration of various projects and programmes undertaken by UNHCR for refugee welfare as well as the financial aspects related thereto.

Public Information Unit

Consisting of a sole Public Relations and Information Officer, it undertakes various usual public relations exercises apart from those related to refugee welfare. It also interacts with students, researchers and any other person interested in the informational aspects of the UNHCR.

Located at 14 Jor Bagh, New Delhi, UNHCR in India is led by a Chief of Mission assisted by a Deputy Chief of Mission who is also responsible for programming. The total number of staff at UNHCR, Delhi is 25 including 7 project staff from UNDP and excluding 20 contracted staff. The total budget for its India operation is 1.6 million US dollars which it gets from the UN and many donor countries and institutions.

Since 1981, UNHCR has been associated with about 50,000 refugees of whom over 30,000 have been repatriated. Some of them are also resettled in India and other countries. For this, UNHCR works in association with various embassies in India who take refugees as per the quota of their country. But as far as possible, UNHCR strives for their voluntary repatriation by often arranging their passage.

One of the thrust areas of UNHCR's advocacy efforts in India has therefore been to highlight the absence and the need for laws to protect the rights of refugees. In this endeavor, UNHCR has over the years built an institutional relationship with the judicial community in India. In collaboration with well-known lawyers, UNHCR has held several seminars and workshops on Refugee Law and International law relating to refugees. One of the key partners in this effort has been SAARCLAW, together with whom UNHCR held a major seminar in 1997. UNHCR has also sought the services of PILSARC, an implementing partner, to provide legal assistance to refugees facing protection problems.

The Indian Centre for Humanitarian Laws and Research (ICHLR), another Implementing Partner of the UNHCR in India, has been conducting seminars, workshops and conferences on refugee issues throughout the country. ICHLR, in collaborating with the *Informal Consultations on Refugees and Migratory Movement in South Asia*, has also brought out a draft National Model Law on Refugees for countries in South Asia. To disseminate the draft National Model Law, UNHCR plans to support NGO efforts to translate it into the national languages of various South? Asian countries. UNHCR is also supporting NGO efforts to bring out a handbook on well-known court cases in India relating to refugees. This will serve as a useful reference in future cases relating to refugees.

UNHCR, also collaborates with the National Human Rights Commission (NHRC) of India to strengthen the protection of refugees, who are very often victims of human rights violations.

Stressing on the importance of a legal framework, UNHCR has also endowed a Chair on Refugee Law in the National Law School of India University (NLSIU) in Bangalore, in 1996. Similarly, UNHCR supported the Centre for Refugee Studies, Department of International Law, Jadavpur University, Calcutta, in conducting several short courses for lawyers and law professors. UNHCR also interacts with the Department of Rehabilitation in Chennai. Under an agreement with the Government of India, UNHCR monitors the voluntary repatriation of Tamil refugees returning to Sri Lanka.

One of the main partners in spreading information and awareness of refugees has of course been the media, whether print or electronic. UNHCR has responded to queries from journalists, and has from time to time motivated them to take up refugee issues to a broader audience. Since the subject is one of human interest the press has consistently taken a deep interest in the plight of refugees. For instance, Doordarshan, Calcutta had collaborated with UNHCR in producing a 55 minute programme on Refugees in 1997. The programme featured, among others, eminent former refugees like Mrinal Sen, Sunil Gangopadhyaya and Jogen Choudhury all household names in Bengal.

The Statesman in Calcutta and the West Bengal Federation of United Nations Association have been UNHCR's partners for the last two years in conducting an annual inter-school debate on refugees. Similar debates and essay writing competitions have been organised in Chennai also. Children being future citizens, UNHCR feels it important to foster in them a spirit of tolerance and acceptance of people seeking refuge. After all, refugees do not leave their home willingly, but under threat of persecution and to save their lives and beliefs.

Refugee Situation In India

India's experience of coping with refugee problems goes back to the partition of the subcontinent, when eight million refugees, from the areas which are now Pakistan and Bangladesh, moved into India and were successfully integrated into the population. [23] However, like other South Asian countries, India is not a party to most of the international refugee conventions.[24] According to one scholar, "part of the reason for India not ratifying the 1951 Convention was ideological in nature and related to the politics of the Cold War. Now that these politics were no longer relevant, a case could be made for accession." [25] According to a report, India, in fact, is considering signing the 1951 Convention on Refugees. This is because of growing complexities over the refugee issues in the SAARC (South Asian Association for Regional Cooperation) region and the absence of a national legislation on refugees. "The Government is examining the issue of refugee protection and India's international obligations, including the option of signing the 1951 UN Convention", sources in the Ministry of External Affairs said". [26]

Notwithstanding the fact that India is not a party to the 1951 Convention, she has acceded to certain international Covenants, treaties and such other international instruments, which by

implication are also available to refugees and bind Government of India to respect refugee rights. In April 1979, India acceded to the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights. Article 13 of the ICCPR instrument deals with the expulsion of a person lawfully present in the territory of the state. India has reserved its right under this article to apply its municipal law relating to aliens. In December 1992, India acceded to the 1989 Convention on the Rights of the Child; Article 22 of this Convention deals with refugee children and refugee family reunification. The 1963 Convention on the Elimination of All Forms of Racial Discrimination was ratified by India in 1969, and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women was ratified in 1993.

Applicable non-binding inter-national human rights instruments include the 1948 Universal Declaration on Human Rights whose Article 14(1) states that, "Everyone has the right to seek and to enjoy in other countries asylum from persecution." [27] Also included are: The principle of non-refoulement incorporated in the Asian-African Legal Consultative Committee's 1966 Principles Concerning the Treatment of Refugees (Bangkok Principles) [28], which specifically includes non-rejection at the frontier. More recently, the Declaration and Programme of Action of the 1993 Vienna World Conference on Human Rights included a special section on refugees which reaffirmed the right of every person to seek and enjoy asylum, as well as the right to return to one's own country. [29]

Dr. Rose Verghese, Secretary General, Indian Centre for Humanitarian Laws and Research, New Delhi has noted that while India lacked a formal legal framework for refugee protection, its administrative policies over the years have generally been in line with international refugee law principles. However, as this policy is directed towards refugees from South Asian countries, the problems of asylum seekers from countries outside the immediate region are not addressed in a systematic manner. Even with respect to the former group of asylum seekers, in the absence of legislation, there are some discrepancies and treatment of refugees is affected by domestic or foreign policy considerations. While courts in the country have been humanitarian in their treatment of asylum seekers, they have been hampered by their inability to enforce provisions of international human rights instruments and refugee law norms in the absence of accession to relevant treaties or incorporating national legislation. [30]

Article 37 of the Indian Constitution provides that the Directive Principles of State Policy in Part IV are fundamental to the governance of the Country and that it shall be the duty of the state to apply these principles in making laws. Article 51(c) in Part IV of the Constitution provides that the state shall endeavor to foster respect for international law and treaty obligations. [31] Thus, while Indian courts are not free to direct the making of legislation, they do adopt principles of interpretation that promote rather than hinder the aspirations enshrined in Part IV of the Constitution.

It is also true however that as of now, India has not passed refugee-specific legislation to regulate the entry and status of refugees with the result that India has no general legislation on refugees. They are treated under the law applicable to aliens. [32] The principal Indian laws relevant to refugees are: Foreigners Act, 1946 (Section 3, 3A, 7, 14); Registration of Foreigners

Act, 1939 (Section 3,6); Passport (Entry into India) Act, 1920; Passport Act, 1967 and Extradition Act, 1962.

Though jurisdiction over issues of citizenship, naturalisation and aliens rests with the Union Legislature vide item 17 of the Union List,[33] influxes of refugees have been handled by administrative decisions rather than through legislative requirement. This administrative decision is exercised within the framework of the 1946 Foreigners Act, and refugee policy in the country has essentially evolved from a series of administrative orders passed under the authority of section 3 of the said Acts.[34]

What are the rights available to foreigners or aliens, which by implication are available to refugees in India as well? In its judgment in the case Luis de Readt Vs Union of India as affirmed later in Khudiram Chakma Vs Union of India, the Supreme Court of India has held that article 21 of the Constitution of India, which protects life and personal liberty by stating that they may not be deprived except according to procedure established by law, is applicable to aliens in Indian territory as well.[35]

Indian courts do not have the authority to enforce the provisions of the above mentioned international human rights instruments unless these provisions are incorporated into municipal law by the legislature, and this process of incorporation in the Indian context has been largely ignored with respect to the above treaties. Parliament is under no obligation to enact law to give effect to a treaty, and in the absence of such law, the judiciary is not competent to enforce obedience of the treaty obligations by the Executive. Thus, while India has the duty to carry out in good faith its obligations arising out of international law, the Indian government cannot offer acts or omissions on the part of their legislative or executive organs as an excuse for failure to fulfil the above obligations. In the event of failure of the government to bring its municipal law in line with its international obligations, international law does not render such conflicting municipal law null and void.

Various judicial decisions have, in the absence of a concrete legislative structure, tried to provide solutions to the problems of refugees, primarily with regard to the principles of non-*refoulement*, right to seek asylum and voluntary repatriation. The courts have, however, arrived at their decisions without entering into a discussion of international refugee law. It may be noted, however, that courts cannot take treaty provisions mentioned earlier into account. More recently, the Supreme Court, in National Human Rights Commission Vs Union of India,[36] appears to have gone further in establishing protection to refugees in the face of imminent expulsion from the country. The All Arunachal Pradesh Student Union (AAPSU), a non-governmental body, had issued “quit India” notices to all alleged foreigners including the Chakma refugees living in the state, with the threat of use of force if its demands were not acceded to. Justice A.M. Ahmadi held that as the constitutional rights in Articles 14 and 21 are available even to non-citizens, the state is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the state. The Court recognised that the “quit India” notices amounted to a threat to life and liberty as understood by Article 21, and that Chakmas could not be evicted from their homes except in accordance with law.

The decision is limited to threats of expulsion posed by an activist student union and it does not enter into a discussion of issues pertaining to expulsion notices issued by the central government even if they constitute a violation of Article 21. Nevertheless, protection even against expulsion orders issued by the government has been provided to refugees through a staying of deportation orders. In *Malavika Karlekar Vs Union of India*,^[37] twenty-one Burmese facing deportation from the Andaman Islands filed a writ petition with the Supreme Court pleading a violation of their rights under Article 21. The Court directed that the deportation order was to be stayed to allow the asylum seekers to approach UNHCR for refugee status. In some instances, detainees have been granted leave to travel to New Delhi, where the Office of UNHCR is located, in order to seek determination of refugee status e.g. *Khy-Htoon and others Vs the State of Manipur*, Gauhati High Court, 1990; *Bogyi Vs Union of India*, Gauhati High Court, 1989; and *Zothansangpuli Vs the State of Manipur*, Gauhati High Court, 1989. In *Bogyi Vs Union of India*,^[38] even in the absence of a pending application for refugee status, the Gauhati High Court ordered the temporary release of a Burmese man from detention for a two-month period so that he could apply for refugee status with UNHCR.

The petitions in these cases usually allege violation of Article 21 of the Constitution in the event that the deportation orders are carried out. While the absence of reasons given in passing these interim motions staying the deportation orders results in an unclear legal position with respect to non-refoulement, the implication of the decisions would appear to be that a successful application for refugee status by an asylum seeker preempts refoulement. According to B.S.Chimni, “In the context of refugee rights, it can be argued that Article 21 encompasses the principle of non-refoulement which requires that a state shall not expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”^[39] .

Assistance benefits granted to different groups of refugees in India appear to be determined by the situation of the refugees in relation to the local people e.g. ethnic ties between refugee groups and the local population impacts upon assistance provided and to the relative burden they impose on the states concerned. This is particularly true for subjects like education that fall under the State List in the Indian Constitution. Thus the Chakma refugees in Tripura are worse off economically than are the Sri Lankan refugees in Tamil Nadu.

Administrative discretion is also paramount in the treatment of issues like the regulations of stay in the country of foreign nationals who are recognised as refugees under UNHCR’s mandate. Afghan refugees recognised by the UNHCR in New Delhi have their residential permits regularly extended on the basis of renewal of their refugee certificates while Sudanese refugees with the UNHCR are often issued “Leave India”^[40] notices by the government upon the expiry of their student visas.

The 1993 Protection of Human Rights Act established a recommendatory body called the National Human Rights Commission that has power to inquire into the “violation of human rights or abetment thereof.”^[41] The Commission is not restricted to investigating issues of

concern to citizens only and, in fact, it has visited both the special camps for Sri Lankan refugees in Tamil Nadu and the camps for Chakmas in Tripura to investigate living conditions there. It has also filed a petition in the Supreme Court on the threatened expulsion of Chakmas in Arunachal Pradesh. An issue here is whether a body like the Human Rights Commission may be used to take up cases of discriminatory treatment between refugees, especially in light of the fact that some of the areas in issues like access to primary education, fall clearly within the purview of recognised human right.

An examination of the potential role of the National Human Right Commission is also pertinent in the face of recent judicial decisions establishing standards with respect to non-refoulement and voluntary repatriation. As these judgments may be limited in their scope of application to particular refugee groups in identified areas of the country, a standardization of the norms established may take place through recommendations of the Commission. A denial of non-refoulement and voluntary repatriation standards applicable to other groups of refugees in the country, especially if these are other groups of refugees recognised by the governments is clearly violative of human rights norms.

In this context, it needs to be stressed that repatriation should only be voluntary and be carried out in conditions of absolute safety. In the only case decided on the issue in India, the Madras High Court, in *Pedumaran and Dr. S.Ramadoss Vs Union of India*, has set standards with regard to the repatriation of refugees by emphasising grantee the voluntary character of repatriation.[42] A writ petition was filed seeking interim relief in the form of an injunction to restrain the authorities from repatriating refugees against their will. It was argued by the petitioners that the Indian government was using force by reducing rations, limiting movement of refugees, and stopping the financial assistance that was previously given. The court in finding that Indian government had acted properly and in accordance with international law, laid special emphasis on UNHCR's role as an impartial third party in verifying the voluntary repatriations and on the fact that individual refugees had signed forms in English and Tamil where they had expressed their willingness to return. The state government was, however, ordered to translate the court order in Tamil and to circulate it in refugee camps. The court also ordered that a circular in Tamil be posted in all refugee campus indicating that no refugee would be forcibly repatriated.

The court did not address the issue of whether reduction of rations, limitation of movement of refugees and the stoppage of financial assistance constituted "coercion" so as to render the repatriation involuntary. However, by presuming from the start that repatriations are necessary to be voluntary, and by examining whether the government's actions had sufficiently established "voluntariness", standards governing voluntary repatriations have been set by the court. The moot question is whether these standards are extendable to all other refugees in the country. The Court in this case was asked to pronounce judgment upon a very specific situation where the government already had in place a repatriation policy. In its judgment, the Court merely approved the policy and did not make any observations about the larger refugee context in the country.[43]

Plight of Refugees in India

In 1992, India was host to nearly 4,00,000 refugees from eight countries[44] , but by 31st August, 1996 this figure came down to 2,38,000 refugees comprising 1,08,000 Tibetans, 56,830 Sri Lankans, 53,465 Chakmas from Bangladesh, 18,662 Afghans[45] and 1,043 refugees of other nationalities. Among these, the Tibetans, Sri Lankans and Chakmas, are for all practical purposes, recognised as refugees by the Government of India. Even with regard to these groups, a common administrative procedure is not followed. While the Tibetans and Sri Lankans are issued refugee identity documents (the Tibetans are also issued travel permits), no such document is issued to Chakmas in the camps in Tripura state. Lists of refugees are posted in these camps and they serve the same function as the identity documents of the Tibetans and the Sri Lankans i.e. they serve to identify people eligible for certain assistance benefits.[46] The Indian government, however, considers Afghans and refugees of other nationalities to be foreign nationals temporarily in India and does not officially recognise their refugee status. Therefore, it is upto the UNHCR to recognise them as refugees and assist those in need. With respect to the Sri Lankans, the Indian government has allowed UNHCR a limited role of monitoring the voluntariness of their repatriations.

Conclusion

Thus, we find that India has been a major Third World country of concern in the context of refugee movements. Almost all the refugee generating factors have been active here and have impinged on the refugee situation in the country. The Indian State has shown remarkable capacity and resilience in absorbing and dealing with these refugees and this is perhaps one reason that the refugee situation here does not seem to be alarming. But it remains a fact that over two lakhs of refugees who are still in country, do strain an already overburdened economy, sometime even inviting hostility from the local population. Apart from straining a weak economy, it also has implications for the security of the country. The pressure of hundreds of thousands of refugees has often created conditions for destabilisation and disruption of political, economic and social systems in the country.

The extent and intensity of this threat naturally depends upon the number of refugees and their demands and expectations. We also notice that despite being non-signatory to the international refugee regime, India has hosted some of the largest refugee movements of modern times. However, the GOI has consistently preferred to deal with the refugee issue on a bilateral basis and without international involvement. Early UNHCR involvement in India was limited to assistance provided for Tibetan refugees through the League of Red Cross Societies in the 1960s and assistance to refugees from former East Pakistan (now Bangladesh) in the 1970s. Moreover, the closure of UNHCR's Office in 1973 blocked the opportunity to develop sustained cooperation with the Indian authorities.

On the other hand, refugee groups such as the Afghans, with whom UNHCR in India has dealt directly for over a decade, are not considered to be refugees by the government and of marginal interest to it. In India, UNHCR was, therefore, for many years seen to have a mandate of little relevance to India and dealing with issues of limited relevance to the government.

Since the reestablishment of a UNHCR presence in India in 1981, the government has made a clear distinction, as stated above, between those refugee groups who are considered as refugees by the Indian authorities and assisted by them and to whom UNHCR has not been permitted access nor allowed to play any role, and, those persons who are not considered as refugees by the government and for whom UNHCR is allowed to exercise its mandate. For the first category UNHCR's protection mandate is, however, informally recognised and the OCM is able to intervene with the government to register its concern and to seek a limited role.

In recent years, there has been a significant shift in the level of cooperation between the Indian authorities and UNHCR. The organization's role in the Sri Lankan repatriation has led to a deeper appreciation of the mandate of the OCM and greater interest in its functioning. Indeed, close working relations with the Indian government on UNHCR's verification of the repatriation process has affected cooperation in a wider arena. The GOI's decision to seek membership of the Executive Committee is a reflection of this new concern. Although, UNHCR in India has functioned under the UNDP umbrella since 1981 and has not been permitted to establish an independent presence, it is time the Indian authorities enter into a Branch Office Agreement with UNHCR as soon as possible. It will facilitate better conduct and coordination of the refugee relief work. By being on the Executive Committee of UNHCR, the GOI has already, by implication, conceded the importance and utility of UNHCR.

The Primary objective of the OCM, in India should be to seek a formal accreditation of the Office in India, extend its role, gain access to all refugee groups in the country and secure accession of India to the 1951. Convention and/or 1967 Protocol. In fact, it has been actively soliciting greater Indian participation in refugee affairs and trying to create public interest on refugee issues through a vigorous programme of promotional activities relating to the discrimination of refugee law, encouragement of research and studies on refugee issues and creating awareness of refugee problems with local institutions of higher learning, NGOs and professional bodies.

Complimenting the Indian response to refugees, a study of the US Committee for Refugees observed,

“Despite the curbs on international assistance and monitoring, India has accorded a welcome to asylum-seekers that is as generous as for any refugee groups in Asia. The record is not unblemished, to be sure. There have been instances of pushbacks and coercive measures to promote repatriation, but it has largely been the case that any person who has landed on the shore and asked for refuge, has been granted refuge.”[47]

And it is owing to this generosity that today there are an estimated 240,000 refugees in India,[48] including Tibetans, Sri Lankans, Tamils, Chakmas, Afghans and other categories assisted by UNHCR.

In spite of the fact that India has faced on many occasions in the last fifty years, and is still facing, acute refugee problem, leaving aside the minor influxes, it is neither a party to the 1951 Refugee Convention, and/or 1967 Protocol nor it has a specific legislation on Refugee Law. The government generally meets its humanitarian obligations towards refugees and asylum seekers,

but prefers to do so as a matter of administrative policy rather than as a legal requirement. It has, however, handled this issue at the political and administrative levels well. A virtual consequence is that refugees have to be treated under the law applicable to aliens in India, unless it makes a specific provision as it did in the case of Ugandan refugees of Indian origin when it passed the Foreigners from Uganda Order 1973.[49]

The concept of 'Refugee Law' in the Indian judicial system has evolved over a period of time. Due to lack of a refugee specific statute, the judicial system is constrained to enforce upon refugees, laws which are applicable to foreigners in general, thereby 'consciously or subconsciously ignoring the unique predicament peculiar to refugees'.[50] Continued developments through the courts, government and international fora will all contribute to the process of making additional space for the humanitarian and legal concerns of forced population movements which result in refugee flows.

The general principles of international law relating to refugees must be taken as incorporated directly into the Indian Constitutional Law via Article 21 particularly in view of the fact that India has acceded to the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1989 Convention on the Rights of the Child, and the 1979 Convention of the Elimination of All Forms of Discrimination Against Women. No provision either in the Foreigners's Act 1946, nor the Registration of Foreigners' Act 1939, nor the Passport (Entry into India) Act 1920, nor the Passport Act 1967 deals in any manner with refugee law. But there is also "no domestic law in conflict with international conventions, treaties and resolutions related to refugees".[51]

Also, the domestic Constitution and practices of the Republic of India are clearly embedded in human rights principles. The respected judicial system of this country has also been the high moral legal authority on human rights. The establishment by an Act of Parliament of 1993 of the National Human Rights Commission[52] has further demonstrated India's commitment to uphold the international human rights regime. The Constitution, the Judicial system, the Commissions, the dedicated organisations and individuals in the field of human rights have all contributed in the promotion and strengthening of the human rights regime in India.

In recent years, there has been a rise in regional processes of consultation, many of which have been initiated by UNHCR in partnership with NGOs and eminent personalities. Such initiatives have included annual sessions of the Asian - African Legal Consultative Committee, the Fourth Informal Consultation on Refugee and Migratory Movements in South Asia (also known as the Eminent Persons' Group) and the Third Meeting of the Asia - Pacific consultations. In addition, local NGOs have begun to take the initiative to convene discussion on refugee issues in South Asia lately. This is exemplified in the Regional Consultation or 'Refugees and Forced Migration: Need for National Laws and Regional Cooperation' held in New Delhi in 1998. The consultation, organised by regionally-based human rights NGOs, is an important step on the path towards evolving a regional consensus on standards of refugee protection. Such meetings are a valuable part of the ongoing efforts, both formal as well as informal, to promote attention to refugee issues in South Asia.

It is hoped that with the changed global political scenario today as well as the emergent dynamics of the 21st century, India would make an earnest attempt to recheck its decision and become a party to the Refugee Convention and the Protocol, which will add to its international stature.

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30. *Ibid*, pp. 6-7.
31. *The Constitution of India*, Central Law Publications, Allahabad, 1994, p. 21.
32. The word 'alien' is nowhere defined in Indian Legal corpus. However, it does appear in the Constitution of India (Article 22 para 3 and Entry 17, List I, Schedule 7), in section 83 of the Indian Civil Procedure code, and in section 3(2)(b) of the Indian Citizenship Act, 1955, as well as several other statutes.
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34. Section 3 provides the power to make orders and is drafted very broadly- "The Central Government may by order make provision, either generally or with respect to all foreigners, or with respect to any particular foreigner or any prescribed class or description of foreigner

for prohibiting, regulating, or restricting the entry of foreigners into India or their departure therefore or their pressure.”

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