

PROTECTION OF REFUGEES IN INDIA: MECHANISMS AND STRATEGIES OF INDIA WITH ITS NEIGHBOURS AND CHALLENGES AHEAD

*Sanyukta Moitra*¹

I. Introduction

Denial of the basic rights to the Refugees remains one of the most dangerous forms of discrimination all across the planet. There has been large scale migration of refugees fleeing international and domestic conflict and the number is on a rise. The primary factors that have caused greater migrations and refugee problem include wars of liberation, (international or civil strife), ideological, political, ethnic, religious and economic discrimination or persecution; economic stagnation, depression and general poverty; famine and climatic factors.² These factors have contributed to a steady rise in the number of refugees across the globe. In India too, the situations have not changed post independence as we continue to give shelter to a good number of refugee population from the neighbouring countries who have come to our door including the Tibetans fleeing from the Chinese persecution, the refugees from Pakistan and East Pakistan (now Bangladesh) and thereafter, the Afghans, the Burmese and the Tamils from Sri Lanka and others, despite our economic constraints. To extend humanitarian assistance to the refugees all across the nations, institutional arrangements through UNHCR (United Nations High Commissioner for Refugees) and other organisations, have been made possible by the adoption of the Refugee Convention 1951 and its Protocol 1967 on the status of the Refugees. India is neither a signatory to the 1951 Refugee Convention nor to its 1967 Protocol on the Status of Refugees and have no specific national legislation governing the refugees in India. In the absence of a legal mechanism, the Refugees in India are governed by the archaic Foreigners Act, 1946 and the Registration of Foreigners Act, 1939 from the pre independence period with no bearing with the present day scenario. The Passport Entry into India Act, 1920 and the Passport Act, 1967, governing the entry and departure of persons, are also made applicable to the refugees making it all the more difficult for them. Besides, all the general laws such

¹ Assistant Professor, Department of Law, University of North Bengal, Dist-Darjeeling, West Bengal

² Muhammad Ayub, "United Nations and the Refugee Problem" available at www.qurtuba.edu.pk/thedialogue/the%20Dialogue/1-3/5-UN%20&%20refugee visited on 25.07.15 at 6 : 30 pm

as the Criminal Procedure Code, The Indian Penal Code, the Evidence Act etc. are also made applicable to them. India has been home to refugees from many of its neighbouring countries but lack of transparency in the policies of administration in granting asylum, facilities, grants etc., and discriminatory treatment towards certain refugees or refugee groups in similar circumstances without spelling out reasons are very common.

As a result, there are certain category of population who are often subjected to gross discrimination and disparity as their rights and privileges are not uniformly conferred on them. Moreover, the political and administrative decision regarding the identification of their legal status is done on an ad hoc basis by the government agencies that lacks transparency. Under these circumstances, the fact remains that why are the refugees hailing from the different neighbouring countries not given equal treatment? Why is there no uniformity in the laws applicable to them? The present paper makes an attempt to highlight these aspects and analyse the position and legal status of these refugees in India and suggests measures to ensure parity and better protection to them.

II. International Perspective

According to the Convention Relating to the Status of Refugee, 1951 a refugee is defined as :

*“a person 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, 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”.*³

The concern for the refugees goes back to 1921 when the Council of the League of Nations appointed the first High Commissioner for Refugees, Fridj of Nansen to extend humanitarian assistance to Russian Refugees who fled the Soviet Union due to civil strife. Later this protection was extended to cover Armenian Refugees, Assyrian, Assyro-Chaldean and Turkish Refugees. After the death of Nansen in 1930, the Assembly of the League of Nations abolished the High Commissioner’s post and the task of the protection to refugees was entrusted to the Nansen International Office for Refugees. The problem of refugees assumed unproportionate dimensions

³ Statute of the Refugee Convention 1951, Chapter 1, Article 1(2)

after Hitler's accession to power in 1933 resulting in the dislocation of the civilian population. After the beginning of the Second World War, the first international agency concerned with the problems of refugees and displaced persons, the United Nations Relief and Rehabilitation Administration (UNRRA) was established on November, 9, 1943 to provide relief, maintenance, rehabilitation and repatriation of the United Nations nationals who had been displaced as a result of war. Thereafter, a temporary organisation, The International Refugee Organisation (IRO), was established which took over the functions and activities of the UNRRA and functioned till August 20, 1948. IRO had resettled, repatriated and assisted more than a million displaced persons and refugees. Further, on December 14, 1950, the General Assembly adopted the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR) as a key institution of the United Nations to provide international protection to the refugees and to seek permanent solutions to their problems by facilitating their voluntary repatriation or their assimilation within new national communities. Subsequently, on July, 1951 The Convention Relating to the Status of Refugees, was adopted by the United Nations Conference of Plenipotentiaries held in Geneva and on 31 January 1967 and Protocol Relating to the Status of Refugees was adopted by the General Assembly, which came into force on 4 October, 1967. The Convention today regulates the legal status of Refugees and gives recognition of a uniform legal status for the existing group of "United Nations Protected Persons". It lays down three types of assistance for the refugees which include providing humanitarian assistance to the refugees, to facilitate their return to their home country or to resettle them in other countries in case they cannot be settled in the country of first asylum. Other specialised agencies of the UN like FAO, UNESCO, WHO, ILO, UNIDO, WFP, the UN development Program and the UN Disaster Relief Organisation have also been working as partners with UNHCR to deal with the problems of refugees and their permanent settlement.⁴

Today, refugee law as an important branch of international human rights law and international humanitarian law ensures protection of Refugees and guarantees certain basic rights to them which primarily include right to seek asylum⁵, right to remain or preventive protection⁶, right to protection against refoulement⁷, right to life and personal liberty, right to return, right

⁴ Supra note 2

⁵ Asylum means shelter and active protection extended to a political refugee from another state by a state which admits him on his request.

⁶ The right to remain is inherent in Art.9 of the UDHR, which provides that no one shall be subjected to arbitrary exile.

⁷ Art. 33(1) of 1951, Convention Relating to the Status of Refugees, Non-refoulement refers to the obligation of the states not to refoule or return, a

to equality and non- discrimination, freedom to practice and profess religion of their choice, right to residence, right to nationality, etc.

III. Legal Mechanism for the protection of Refugees in India

In India, refugees are placed under three broad categories. Category I refugees receive full protection from the Indian government such as the Tamil refugees from Sri Lanka; Category II refugees are those who are granted refugee status by the UNHCR and are protected under the principle of *non-refoulement*, for example, the Burmese and the Afghan refugees; and Category III refugees who are neither recognised by the Indian government nor the UNHCR but have entered India and assimilated into the local community are the Chin refugees from Burma living in the state of Mizoram and some others not recognised at all. (SAHRDC: 1997).⁸ Absence of a uniform policy to these three categories of Refugees has been an area of serious concern in India and remains a challenge.

Although India is neither a party to the Refugee Convention of 1951 nor its Protocol, it has been generous towards receiving refugees despite being over populated with poverty and unemployment. India has signed the International Conventions on Civil and Political Rights 1966 (especially Article 13), the Universal Declaration of Human Rights, 1948, the Covenant on Economic and Social Rights, 1966, and the Conventions on Racism (1965) Torture (1984), Children (1989), Women (1979) and others ensuring the rights of refugees to due process and *non-refoulement* that prevents a country from expelling refugees to countries where their life and liberty are under serious threat. Some of these conventions have been adopted in the Indian Constitution and form part of protected fundamental rights enforceable in the court of law. Under Article 51 of the Constitution, the state has a duty to respect the international treaties and conventions to the extent of inconsistencies with constitutional principles.

The Constitution also explicitly provides various Fundamental Rights to its citizens and non citizens. The Refugees falling in the category of non citizens also enjoy certain rights guaranteed by the Constitution. The right to equal protection of law and absence of any arbitrary discrimination⁹, the right to protection against *ex-post facto* criminal law, double jeopardy

refugee 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.”

⁸ This kind of categorisation of Refugees and Asylum seekers in India has been suggested by South Asian Human Rights Documentation Centre, New Delhi

⁹ Article 14 The Constitution of India

and self incrimination in respect of conviction for offences,¹⁰ right to life and liberty,¹¹ right to protection against arbitrary arrest and detention,¹² protection from exploitation such as trafficking and forced labour,¹³ right to practice profess and propagate one's religion freedom from taxation for promotion of any particular religion¹⁴ are guaranteed by the Constitution.

Also worth mentioning is the Part II of the Constitution that is dedicated to Citizenship that determines who are Indian citizens at the commencement of the Constitution¹⁵, their continuance as Indian citizens¹⁶ and empowers the Parliament to frame laws for the acquisition, determination and termination of citizenship after the commencement of the Constitution¹⁷. To give effect to this provision, the Parliament has enacted the Citizenship Act in 1955 laying down the eligibilities of a non-citizen for becoming a citizen of India. It is to be noted that the Act fails to address the refugees as a distinct class. Also Sec 6 of the Act and its third Schedule lays down the qualifications for naturalisation of a person as a citizen on the satisfaction of the Central government. However there is no mention whether a refugee would fall under this category or not. In 1985, a special provision, Section 6A was inserted in the Citizenship Act, 1955 for registering the refugees who were settled in Assam and permitted entry of foreigners into Assam till March 25, 1971. The Parliament also enacted the Illegal Migrants (Determination by Tribunal), Act, 1983 empowering the Central government to establish tribunals for the detection of illegal migrants entering into Assam, which was repealed in 2005.

Entry 17, List- 1, Schedule 7 of the Indian Constitution read with Article 246 gives the Parliament the sole jurisdiction over the subject of citizenship, naturalisation and aliens. Henceforth, a number of legislations were enacted by the Parliament that gave effect to its constitutional obligation. The Foreigners Act, 1946, enacted by the erstwhile British regime to regulate the entry and presence of foreigners in India has gone through several amendments have been made applicable to the refugees as well. The Act does not provide any special protection to the refugees but grants the government arbitrary powers of deportation of such persons. Through this Act the Central government is empowered to make order for prohibiting, regulating and restricting entry of foreigners into India, their departure there from and presence/ continued presence. There are a number

¹⁰ Article 20 The Constitution of India

¹¹ Article 21 The Constitution of India

¹² Article 22 The Constitution of India

¹³ Article 23 The Constitution of India

¹⁴ Article 25 & 27 The Constitution of India

¹⁵ Article 5 to 9 The Constitution of India

¹⁶ Article 10 The Constitution of India

¹⁷ Article 11 The Constitution of India

of orders in force that restrict the movement, activity and residence of foreigners; and, require their proof of identity and regular appearance before the police. The Act invariably gives wide powers to the executive to refuse entry if the foreigner do not fulfil the entry conditions and may resort to instant deportation. This is often in contravention with the non-refoulement which is practiced by members who are signatory to international documents and may seriously affect the rights of a genuine refugee. Under the Registration Act of 1939, the asylum seekers are registered once they enter our country but this Act is applicable to any and all the foreigners who enter our country and is not specifically meant for the refugees. The Passport Act of 1967 also regulates the entry of all the non-citizens or migrants who cross the borders of India. As per the Act, all those people who enter our country without a legally valid visa or passport can be detained.

India became a member of the Executive Committee of the High Commissioner's Programme (EXCOM) in 1995. The EXCOM is the organisation of the UN, which approves and supervises the material assistance programme of UNHCR. India accepted the principle of *non-refoulement* as envisaged in Bangkok Principles, 1966, which were formulated for the guidance of member states in respect of matters concerning the status and treatment of refugees. These principles also contain provisions relating to repatriation, right to compensation, granting asylum and the minimum standard of treatment in the state of asylum.¹⁸ UNHCR, has also played a key role in cooperating with the governments of these countries by conducting registration and Refugee Status Determination (RSD) and facilitates the resettlement of vulnerable groups.¹⁹ The National Human Rights Commission (NHRC) established under the Protection of Human Rights Act of 1993 has been also playing an active role in protecting human rights of refugees by making investigations *suo motu* through specific interventions.

India so far has taken a humanitarian approach to the refugee problem and absence of a specific legislation has not come in the way of satisfactorily dealing with the problem. Yet it seems that the steps taken by the executive and the judiciary cannot fill the vacuum of a specific legislation on these matters in order to crease out the ambiguities that surface very often. India has been granting asylum to several refugees, and has been acting as the country of 'first asylum' that is, the first safe country where refugees can seek and obtain effective protection outside their home country and has been providing basic assistance to these refugees taking

¹⁸ T. Ananthachari, "Refugees in India: Legal Framework, Law Enforcement and Security" available at www.worlddili.org/int/journals/ISISYBIHRL/2001/7.html visited on 16.07.2015 at 5pm

¹⁹ Supra note 19

refugee in India. Thereafter, most of the refugee groups in India apply to be sent to a 'resettlement country' (like the US, Canada, Australia etc.) which allows refugees to become naturalized citizens and give them access to civil, political, economic, social and cultural rights similar to those enjoyed by nationals.²⁰ However the process is cumbersome and many a times these attempts fail resulting in the accommodation of these refugees in India. Therefore it is pertinent to have a closer look at the migration of refugees from its neighbouring countries.

IV. Migration of Refugees from the Neighbouring Countries to India

Since 1947, 30-40 million people have crossed the borders of South Asian states in search of refuge and almost every country has produced and/or received refugees.²¹ India has been home to number of refugees hailing from the neighbouring countries and has adopted various approaches to deal with the different refugee populations providing protection, assistance and durable solutions to them. However there is disparity in the treatment of refugees belonging from different states meted as much of it depends on the bilateral relations with the nations they belong to. Therefore, a closer look at the advent and existing status of refugees is necessary.

IV.I Refugees from Tibet

Tibetan refugees came to India the late 1950s and early 1960s as asylum seekers owing to a conflict that took place between the Chinese troops and the Tibetans. The Chinese army had marched into Tibet to colonise the region which was formally recognised as an independent country under a Peace Convention signed by Britain China and Tibet headed by Dalai Lama and make it an integral part of China. In March 1959 a rebellion began with the support of a good number of Tibetan Buddhist which resulted in a direct armed conflict and violence among the Chinese military and a huge number of Tibetan populations. The Tibetan revolt were crushed by well armed Chinese People's Liberation army, making about 85,000 refugees fleeing to India, Bhutan and Sikkim which was then an independent state.²² About eighty percent of the total population entered into India. Dalai Lama and his followers were accorded refugee status by the Indian government soon. The Ministry of External Affairs of India arranged

²⁰ ARA Legal Initiative available at [www.aralegal.in /refugees-in-india](http://www.aralegal.in/refugees-in-india) visited on 24.07.15 at 3pm

²¹ Chowdhury R Abrar, "Legal Protection of Refugees in South Asia" available at [www.fmreview.org/FMR_pdfs/FMR_10 /fmr10.8.pdf](http://www.fmreview.org/FMR_pdfs/FMR_10/fmr10.8.pdf) visited on 28.07.15 at 6pm

²² Manik Ckackraborty, Human Rights and Refugees-Problems, Laws and Practices, (Deep and Deep Publications, New Delhi, 1988, pg-144

temporary accommodation and other humanitarian assistance and issued valid registration certificates to them. They were rehabilitated and provided with travel permits and residence permits, which enable them to seek formal employment in India and are given more rights than most other refugees in India. Indians and Tibetans generally co-exist peacefully but there have been isolated due to anti-Tibetan violence. So far, there have been no cases where any specific groups within the Tibetan Community have been targeted.²³

IV.II Refugees from Sri Lanka

Sri Lankan refugees were given refuge in India in the 1980's due to a long conflict between the Sri Lankan army and the Liberation Tigers of Tamil Eelam (LTTE) who were fighting for independence for the minority Tamil population. The Tamilians since then have been fleeing their home country to India in order to escape torture, rape and disappearances perpetrated by the security forces. These refugees remain largely in Tamil Nadu and in refugee camps scattered across the state. The legal status of Sri Lankan refugees in India is officially governed by the Foreigner's Act 1946 and India's Citizenship Act 1955 which defines all non-citizens who enter without visas to be illegal migrants, with no exception for refugees or asylum seekers. Sri Lankans who are considered to be a threat to national security are deemed to be militants and detained in 'special camps' in Chenglepet or Velloreand. Nonetheless, in general the Government of India recognizes Sri Lankans fleeing violence at home to be refugees and accordingly grants them protection.²⁴ In 1992 at the initiation of UNHCR, the repatriation process was highly encouraged. After the end of the civil war in 2009, there have been efforts to integrate the Tamils in the local population by the Sri Lankan government but the refugees in Tamil Nadu continue to enjoy safe asylum in India.

IV.III Refugees from Pakistan

Pakistan and India had a long history of inter communal tension between the Hindus and Muslims communities since the creation of the two states. The Indo-Pak wars of 1965 and 1971 resulted in growing insecurity amongst Hindus, particularly with the rise of right-wing Islamist groups in the country caused more Hindus to leave for India. The Islamisation of the country under the dictatorship of Zia ul-Haq made life for religious minorities in Pakistan difficult in the late 1970s and 1980s. After the

²³ Human Rights Law network, Report of Refugee Population in India. Nov 2007, available at www.hrnl.org/admin/issues/subpdf/refugee-population-in-india.pdf visited on 16.07.15 at 4pm

²⁴ *ibid*

destruction of the Babri Masjid in Ayodhya in 1992, the backlash against the Hindu population caused many more to flee to India. Roughly 115,000 people displaced from Pakistan have arrived in India since 1965 and most have settled in Rajasthan or Gujarat.²⁵ The Indian government does not recognize this group to be refugees and as a result, they are unable to acquire residence permits and find it difficult to gain employment. The Indian Constitution and the Indian Citizenship Act 1955, however, make specific provision for those who were born or whose parents were born in undivided India to apply for Indian citizenship. The Citizenship Amendment Rules 2004 specifically provide for Pakistanis to apply for citizenship in Gujarat and Rajasthan. The conditions for citizenship are that the individual must have been continuously resident in India for five years, rather than for 12 years as is the case with other foreigners applying for citizenship, and intend to settle permanently in India. As a result of this legislation, which dramatically sped up the application process, the Indian government awarded 13,000 Hindu Pakistanis Indian citizenship between 2005 and 2006. Once Pakistani refugees have attained citizenship they are afforded the same rights as Indian citizens. The amendment of the Citizenship Act in 2005, however, has drastically increased the fee structure for citizenship application. For the poorest Pakistanis these fees are prohibitive, leaving them permanently disenfranchised.²⁶

IV.IV Refugees from Bangladesh

The refugees of Bangladesh entered into India after a civil war that took place in 1971 between East Pakistan (now Bangladesh) and the central government of Pakistan over the issues of regional autonomy and military rule. Following a period of intense unsuccessful negotiations, a military crackdown began on East Pakistan. Consequently, the people of East Pakistan, the Bengalis proclaimed independent Bangladesh on April 10, 1971 with the aid of Indian military force. Meanwhile, mass killings took place in Pakistan leading to a flow of refugees of 60,000 a day.²⁷ All kinds of humanitarian assistance were given by India to these refugees despite of her economic constraints.²⁸ After the new independent State of Bangladesh was created, the voluntary repatriation was facilitated with the cooperation of the newly formed Bangladesh government and the task was completed by March-April 1972. Although most of the refugees returned, a million or so, mostly Hindus, stayed back creating fresh problems in the Indian States adjacent to Bangladesh that is in West Bengal, Tripura, Assam and

²⁵ *ibid*

²⁶ *Supra* note 5

²⁷ Rathin Bandyopadhyay, *Human Rights of the Non-Citizen Law and Reality*, Deep & Deep Publications Pvt. Ltd, New Delhi, pg-194

²⁸ *ibid*

Meghalaya. Moreover, since after the independence, Bangladesh again turned into a refugee producing country by producing huge number of Chakma refugees from Chittagong Hill area. A huge number of illegal migrants mainly Hindus are reported regularly. Government of India has sought assistance of UNHCR by allowing it to set up a standing Inter Agency Consultation Unit of Geneva for the purpose of mobilizing and securing international support and contributions and maintaining close relationship with Government of India.

IV.V Refugees from Bhutan

In response to the ethnic conflict between the ruling Drupkas of Bhutan and the ethnic Bhutanese of Nepali origin started in 1990, around 15000 Bhutanese refugees of ethnic Nepali origin took shelter at Siliguri and Jalpaiguri of West Bengal and Kokhrajhar districts of Assam.²⁹ Under the 1949 Indo–Bhutan Friendship Treaty, India has permitted these citizens of to move freely across the Indian border without any identity papers making a reciprocal arrangement. As a result, the UNHCR does not carry out status determination for them and also the Government of India does not recognise them as refugees.³⁰

IV.VI Refugees from (Burma) Myanmar

The Burmese government in the year 1988 forced the refugees comprising of pro-democratic activists of Burma and the Chin refugees, a tribal chunk of Burma who were opposing military dictatorship and pressing for autonomy in their Chin district of Burma. and the Chin refugees, to cross the Indian border. The conflict was due to the increased militarization under the State Peace and Development Council (SPDC) through which the government perpetrated a wide range of human rights abuses such as, torture, disappearances, forced labour, rape and extra-judicial killings. Most of these Burmese entered India from the northeast and very few asylum seekers who travelled to Delhi are recognized as refugees by the UNHCR. The UNHCR in Delhi assists about 2,000 Burmese refugees, the majority of whom are from Chin state. In addition to the Burmese who are recognised refugees by the UNHCR, there are also a large number of Burmese asylum seekers living in India. The majority live in Mizoram in northeast India; they belong to the same ethnic group and find integration easier. Employment opportunities are also better there. Unlike some other refugee groups, Burmese refugees are granted residence permits to stay in India.

²⁹ South Asia Human Rights Documentation Centre. Country Report of the Refugee situation in India,pg-4

³⁰ Supra note 9

IV.VII Refugees from Afghanistan

Afghans began to migrate to other states as result of a fierce resistance to the Soviet who attacked Afghanistan in 1979 by the United States-backed Mujahaedeen. After the Soviet withdrew from Afghanistan, a civil war between the Talibans and the Najibullah regime which lasted for four years forced the Afghans to flee their country. There are over 9,000 recognised Afghan refugees in India and 90 percent of them belong to the Hindu or Sikh faiths; religious minorities in Afghanistan who could not openly practice their religions in their home country for fear of persecution³¹. Most of the Afghan Sikh and Hindu refugees in India sought asylum after 1992, with the fall of the Najibullah regime. Following the events of 11 September 2001, the United States and the United Kingdom, along with other NATO (North Atlantic Treaty Organization) supporters, launched a military attack on Afghanistan. The Taliban withdrew to the Afghan-Pakistani border where they continue their protracted campaign against the new Afghan government. India does not officially recognize the Afghan community to be refugees instead, they are recognised and protected under the UNHCR mandate³². The Indian government has issued most Afghan refugees with valid residence permits affording them a degree of legal protection, which allows them to stay in the country despite not having valid passports. Attaining residence permits has been more difficult for the newer arrivals that arrived in India between 2004 and 2007. The UNHCR also runs various assistance programmes through its implementing partners for the benefit of Afghan refugees.

Since the Indian legal framework has no uniform law to deal with these huge refugee population, it has not made any progress towards evolving one either, until then, it chooses to treat incoming refugees based on their national origin and political considerations, questioning the uniformity of rights and privileges granted to refugee communities.³³ This has resulted in grave violation of human rights and principles of natural justice for the refugees. Lack of transparency in the policies of administration in granting asylum, facilities, grants etc. to certain refugees or refugee groups without spelling out reasons for granting benefits to them and not to other refugees in the similar circumstances are quite often and these have never been questioned.³⁴

³¹ Supra note 5

³² ibid

³³ Arjun Nair, National Refugee Law for India: Benefits and Roadblocks available at www.ipcs.org visited on 18.06.15 at 1pm

³⁴ K.U. Anithakumary, "India Citizenship Law: Some unsettled Issues" CULR vol XXVIII, March-Dec 2004, No.123 & 4

V. Role of Judiciary

The Indian judiciary has played an instrumental role in ensuring protection to these refugees by recognizing refugees and refugee law to a certain extent and has introduced refugee law into our legal system through the back door, as it were, since the front door has been shut by the executive.³⁵ The High Courts and the Supreme Court in their several judgements have ensured protection to the refugees by creatively interpreting Article 21 of the Constitution that guarantees right to life and liberty to all persons irrespective of their status.

In the case of *State of Arunachal Pradesh V, Khudiram Chakma*³⁶ the Apex Court held that Article 21 of the Constitution of India, which guarantees the fundamental right to life and personal liberty of Indian citizens is extended to all including non-citizens.

In another landmark judgement, in *National Human Rights Commission V. State of Arunachal Pradesh*³⁷ the Supreme Court safeguarded the fundamental constitutional rights of the Chakma refugees who had taken refuge in large number from erstwhile East Pakistan (now Bangladesh) in parts of Assam and Tripura. However, the respective governments of Assam and Tripura expressed their inability to rehabilitate them; therefore, some of them were moved to the state of Arunachal Pradesh and were settled there. Consequently, the All Arunachal Pradesh Students Union (AAPSU) launched an agitation to expel them out of the state and threatened to resort to violence against them in response to which the National Human Rights Commission approached the Supreme Court. In its decision, the Apex Court directed the state of Arunachal Pradesh to take all measures necessary for ensuring the life and personal liberty of Chakmas as a constitutional obligation.

Also the right to equality for the non-citizen under Article 14 of our Constitution has been reaffirmed by our High Courts and the Supreme Court in several judgments. Although the judiciary has tried to ensure the protection of Refugees by giving a wider interpretation to Article 14 and 21, in the absence of national legislation concerning refugees, their problems such as right to juridical status, right to form association, right to employment, right to welfare measures like rationing, housing, education, labour legislation, freedom of movement, issue of identity papers and travel documents cannot be solved.³⁸

³⁵ Markandey Katju, "India's perception of Refugee Law, AIR Journal 2002 Journal Section at pg 14

³⁶ AIR 1994 SC 1461

³⁷ (1996) 1 SCC 742

³⁸ Dr. U Chandra, "Human Rights", Allahabad Law Agency Publications, 2010, pg-436

VI. Problems in India - Challenges Ahead

Since India has not yet ratified or acceded to the 1951 Refugee Convention or its 1967 Protocol which is the *magna carta* of Refugee law, her legal obligation to protect these refugees is traced mainly in customary international law³⁹. The compliance of these laws have not been possible owing to economic incapacities of the state. However, discriminate and inequitable policy and lack of clear standards for the treatment of Refugee groups is violating the international norms that ensure their protection. The rampant arbitrariness and ad hocism that has characterized the refugee treatment in India is expressed in the greatly restrained movements of refugees, mandated medical examinations, restricted opportunities to earn a livelihood, owing to lack of identity or status documents, including birth certificates of refugees who had fled persecution and most dangerously the incessantly hanging 'Sword of Damocles', over a refugee's stay in the form of forcible refoulement from India.⁴⁰ In such a situation, the Refugees in India are governed by the archaic Foreigners Act, 1946 and the Registration of Foreigners Act, 1939 from the pre independence period with no bearing with the present day scenario. The Passport Entry into India Act, 1920 and the Passport Act, 1967, governing the entry and departure of persons, are also made applicable to the refugees making it all the more difficult for them.

As stated earlier, there is no law specifically governing the refugees and no uniformity in the protection given to the them, rampant arbitrariness continue and has resulted in greatly restrained rights available to them The refugee policy of India is basically dealt on *ad-hoc* and case to case basis at the political and administrative levels resulting in grave violation of human rights. The decision as whether to treat a person or a group of persons as refugees or not is taken on the merits and circumstances of the cases coming before it. Many a times a policy of bilateralism is followed in dealing with the persons seeking to be refugees. Lack of transparency in the policies of administration in granting asylum, facilities, grants etc., to certain refugees or refugee groups without spelling out reasons for granting benefits to them and to other refugees in the similar circumstances are quite often and these have never been questioned.⁴¹

The World Refugee Survey 2007, which rates refugee protection in countries on four categories of rights -- physical protection, freedom from

³⁹ Supra note 9

⁴⁰ Ipshita Sengupta, "UNHCR's role in refugee protection in India," <http://infochangeindia.org/agenda/migration-a-displacement/unhcrs-role-in-refugee-protection-in-india.html> visited on 06/09/16 at 4pm

⁴¹ K.U. Anithakumary, "Indian Citizen shiplaw: Some unsettled Issues", C.U.L.R., 2004, vol. XXXVIII, March-Dec 2004, pg-99

illegal detention, freedom of movement and the right to earn a livelihood -- has rated India 'D' in three categories, signifying 'a level of treatment marginally above the rest' and 'C' with regard to freedom from illegal detention, signifying that refugees have reasonable access to the Indian judiciary (SAHRDC, July 11, 2007).⁴²

Human Rights activists like South Asian Forum for Human Rights, Amnesty International and South Asian Human Rights Documentation Centre allege that on paper although India claims to follow the principle of *non-refoulement* including non rejection at frontier, treatment of refugees at par with all aliens in India, policy of non-discrimination, religious freedom, free access to court, permission for work and freedom of housing, but practically there are huge evidence of forced push back, discrimination, restriction on work and restriction or limitation on freedom of housing. Moreover many refugees are forced to stay only in camps in the hope that they will either return to their home country or obtain asylum on permanent basis.⁴³

VII. Conclusion

It is submitted that although India has been granting asylum to a number of refugees over the years yet there seems to be a presence of gross discrimination in the treatment of the refugees hailing from different countries. Absence of uniform policy legislation has greatly influenced enjoyment of basic rights of the refugees in India. In order to avoid the victimization of the refugees, there is an urgent need for making a new legislation governing and regulating the issues regarding refugees. The legislation should expressly contain provisions for the naturalisation of refugees subject to restriction and conditions, which protect the security and sovereignty of the country. Another alternative would be to make necessary amendments in the Foreigners Act, 1946 by adding a special category for "Refugees" and the procedure for their determination, certification, *non-refoulement* rights and other basic rights explicitly added in the legislation. Section 6 and the Third Schedule of the Citizenship Act may also be amended giving special status to the refugees other than the Chakma refugees fixing a specific time for their naturalization.

A constructive legal framework is an immediate requirement to fulfil the international commitments to ensure their security. The ad hoc mechanism prevalent in India to govern the refugees is insufficient to

⁴² Ipshita Sengupta UNHCR's role in refugee protection in India available at <http://infochangeindia.org/agenda/migration-a-displacement/unhcrs-role-in-refugee-protection-in-india.html> visited on 06.07.15 at 5 :45 pm

⁴³ Supra note 2, pg- 102

comprehend the refugee problem in India. The executive discretion and political intervention that result in different administrative measures applied for different refugee groups in India should be curtailed immediately. Also, India should reform its refugee policies and immediately accede to the Refugee Convention or its Protocol to deal with these problems. Taking into consideration the incapacities of India to guarantee the basic rights to its citizens, arrangements should be made to return the refugees to their home country complying with the principle of *non-refoulement*. The government should maintain a uniform policy of registering and providing documentation to the asylum seekers and refugees.

There is also a need to change public attitudes and prejudices that underpin discrimination against refugees in India. States have a moral obligation than the legal obligation that calls for a far more generous, compassionate and responsible response towards the refugees. The local government should be involved to reach out to them and their situations. The media can play an important role in bringing public attention of the sufferings of the refugees.