

## **PROTECTION OF REFUGEES IN INDIA**

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### **INTRODUCTION**

At present India is not a party to the 1951 UN convention on the Status of Refugees or the 1967 Protocol relating to the Status of Refugees. Nor has it enacted a national law on refugees. Instead India has chosen to deal with refugees at political and administrative levels. It has therefore only ad hoc mechanisms in place to deal with the status and problems. The absence of a special legal regime on the status of refugee does not however mean that no protection and assistance is offered to the refugees. But its absence has certainly meant that arbitrary executive action and acts of discrimination are not easily remedied. It has also meant that refugees are dependent on the benevolence of the State rather than on the regime of rights to reconstruct their lives in dignity. Even the UNHRC has been granted a limited mandate of protection that is confined to refugees from outside the South Asian region. These are today mainly refugees from Afghanistan.<sup>1</sup>The most significant thing which deserves to be taken note of is that, there has not been a single occasion of any refugee originating from the Indian soil except the trans-boundary movement of the people during the partition of the country in 1947. On the other hand, it has invariably been a receiving country and in the process, enlarging its multi-cultural and multi-ethnic fabric. In comparison to other South Asian Countries, India is providing shelter to the highest number of refugees coming from neighboring states. India has the problem of chakma refugees from Bangladesh, Tamil refugees from Sri Lanka, Tibetan refugees, Bhutanese

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<sup>1</sup> B.S.CHIMNI, '*Status of refugees in India: strategic ambiguity*', (Sage Publication,2003)

refugees, Arakanese refugees from Myanmar.<sup>2</sup> According to the World refugee survey, 2006, the number of refugees and asylum seekers living in India is 515,500.<sup>3</sup>

The South Asian sub-continent has often witnessed situations where refugees from one or the other neighboring countries have crossed over to India. Considering the sensitivities of national and regional politics in the sub-continent, the problem of refugee crossing over to India cannot be totally disassociated from the overall security issues relevant locally. At the end of 1999, India had well over 2, 51,400 refugees, who do not include those from countries like Afghanistan, Iran, Iraq, Somalia, Sudan and Uganda.

### **INDIA AND THE 1951 CONVENTION**

Why did India not sign the 1951 Convention?

India, as a non-aligned state, was always skeptical about the 1951 Convention. Although the geographical and temporal restrictions were lifted by the Protocol, the impression in South Asia, real or imaginary, is that the 1951 convention is Euro-centric and not capable of delivering in the unique regional situation.

Giving the reasons for not ratifying the CSR, the government maintains:

India has regarded 1951 Convention and the 1967 Protocol as only a partial regime for refugee protection drafted in the euro centric context. It does not address adequately situations faced by developing world, as it is designed primarily to deal with individual cases and not with situation of mass influx. It also does not deal adequately with situations of mixed flow. In India's view, the Convention does not provide for a proper balance between the rights and obligations of receiving and source states. The concept of international burden sharing has not been developed adequately in the Convention. The idea of minimum responsibility for states not to create refugee outflows and of cooperating with other states in the resolution of refugee problem should be developed.

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<sup>2</sup> Sinha, Manoj Kumar "protection of refugees through Human Rights Instruments: Indian Perspective" in Om Prakash Mishra(ed.) *Forced Migration in the South Asian Region: Displacement , human Rights and Conflict Resolutions* (Manak Publishers, New Delhi, 2004),p. 358.

<sup>3</sup> Saxena ,Prabodh, "Creating legal space for refugees in India: the milestones crossword and roadmap for the future" *International Journal of refugee law*,(2007),p.329.

The credibility of the institution of asylum, which has been steadily whittled down by the developed countries, must be restored.<sup>4</sup>

Other than this, there is a self-congratulatory belief that India has been generous and responsive, without the 1951 Convention, on a crisis-to-crisis basis. However deep inside, the planners are worried about the expected financial burdens that accompany the 1951 Convention obligations when it cannot cater to the socio-economic needs of its own millions. Added to this is the security concern, heightened after 9/11. Another unstated reason may be a lack of willingness to accept the UNHCR mandate. It is said that once India becomes party to the 1951 Convention it would allow, with regard to Article 35, intrusive supervision by the UNHCR of the national refugee regime. The organization would have to be permitted, among other things, access to refugee camps. It is alleged that this is a problem as UNHCR is an agency on the behest of Western donor countries.

It is also pointed out that the 1951 Convention does not allow an effect protection of India's national security interests. Terrorists and other criminal elements could abuse its provisions to get refuge in the country. In a Consultation organized by the South Asia Forum for Human Rights (SAFHR), bureaucratic reticence, ignorance among policy measures and overriding national security concerns were identified as three major national hindrances for the accession to international instruments in South Asia.<sup>5</sup>

### **ACCORDING 'REFUGEE STATUS'**

Even though India has been the home for a large number and variety of refugees throughout the past, India has dealt with the issues of 'refugees' on a bilateral basis. India, has been observing a 'refugee regime' which generally conforms to the international instruments on the subject without, however, giving a formal shape to the practices adopted by it in the form of a separate statute. Refugees are no doubt 'foreigners'. Even though there may be a case to distinguish them from the rest of the 'foreigners', the current position in India is that they are dealt with under the existing Indian laws, both general and special, which are otherwise applicable to all foreigners.

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<sup>4</sup> Rajya sabha, started Question in August 2000, monsoon session.

<sup>5</sup> Supra n.3, pp. 330-331

This is because there is no separate law to deal with ‘refugees’. For the same reason, cases for refugee ‘status’ are considered on a case-to -case basis. UNHCR often plays a complementary role to the efforts of the Government, particularly in regard to verification about the individual’s background and the general circumstances prevailing in the country of origin. That agency also plays an important role in the resettlement of refugees etc. <sup>6</sup>

It may be stated that a refugee<sup>7</sup> is defined as one who is outside the country of nationality (or even country of habitual residence) due to one of the five grounds, namely, a well-founded fear of persecution on the basis of religion, race, nationality or membership of a political or social group.

One of the principal elements to satisfy a claim to refugee status is that the claimant must be ‘genuinely at risk’. Various legal “tests” have developed which concern the standard of proof that is required to satisfy what constitutes being genuinely at risk or having a genuine well founded fear of persecution. Some of these tests have been articulated by courts in a number of countries<sup>8</sup>. In the case of *INS vs. Cardoza Fouseca*<sup>9</sup> interpretation of the “well founded fear” standard would indicate that “so long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is not enough that persecution is a reasonable possibility...” The above standard was considered in *R vs Secretary for the Home Department*<sup>10</sup>. The judgment suggested that the ‘test’ should consider whether there is an evidence of a “real & substantial danger of persecution”. Therefore, what can be gleaned is a rather liberal standard which requires that if, “...there is an objective evidence to show that there is a reasonable possibility or chance of relevant prosecution in the claimant’s state of origin”, the claim should be adjudged well founded.

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<sup>6</sup> ANANTHACHARI.T, “*Refugees In India: Legal Framework, Law Enforcement And Security*” ISIL Year Book of International Humanitarian and Refugee Law, 2001

<sup>7</sup> See Article 1(A) (2) of the 1951 Convention on Refugees.

<sup>8</sup> Mary Crock, “Apart from US or to Part of US? Immigrant’s Rights, Public Opinion and the Rule of Law”, *International Journal of Refugee Law*, vol.10 (1998), pp.49-76.

<sup>9</sup> 467 US Supreme Court Case, 407 (1987).

<sup>10</sup> (1988), 1 All ER 193 (H.L)

In the case of India, 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. The Government of India (GOI) may be often seen as following a policy of bilateralism in dealing with persons seeking to be refugees. For example, Afghan refugees of Indian origin and others, who entered India through Pakistan without any travel documents, were allowed entry through the Indo-Pakistan border till 1993. Most of the refugees had entered India through the Attari border near Amritsar in Punjab. Subsequent to 1993, the Government altered its policy of permitting Afghan refugees freely into India.

In the case of a large number of them (many of them were Afghan Sikhs and Afghan Hindus) who had to flee from Afghanistan under circumstances which fulfilled one or more of the grounds specified earlier for being treated as a 'refugee', the GOI did not officially treat them as refugees. However, the UNHCR with the consent of the GOI recognized them as refugees under its mandate and is rendering assistance to them. In such cases, even though the local Government is kept in the picture, the UNHCR becomes responsible to look after them as well as 'administer' them and also to ensure that such refugees do not in any way violate the code of conduct governing them.

In the case of Sri Lankan Tamil refugees crossing the sea to enter the southern Indian State of Tamil Nadu, The Government of India followed a specific refugee policy regarding Sri Lankan refugees and permitted them entry despite the fact that the refugees did not have travel documents.<sup>11</sup>

#### THE PRINCIPLE OF NON- REFOULEMENT

The Government of India have followed a fairly liberal policy of granting refuge to various groups of refugees though some groups have been recognized and some other groups have not been, often keeping in view the security concerns of the nation. However, the emerging trend of past refugee experiences bear testimony to the fact that entry into India for most refugee groups

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<sup>11</sup> ANANTHACHARI.T, "*Refugees In India: Legal Framework, Law Enforcement And Security*" ISIL Year Book of International Humanitarian and Refugee Law, 2001

is in keeping with international principles of protection and *non-refoulement*<sup>12</sup>. *Non-refoulement* prescribes that ‘no refugee should be returned to any country where he is likely to face persecution or torture’. India observes this principle as this is a part of customary international law. Indian courts have accepted and applied the doctrine of incorporation according to which customary international law rules are to be considered a part of the law of the land and enforced as such, provided that they are not inconsistent with Acts of Parliament.<sup>13</sup>

#### THE PRINCIPLE OF VOLUNTARY REPATRIATION

The Madras H.C. in (P.Nedumaran & Dr. S. Ramadoss v. UOI, 1992), considered the question whether Sri Lankan Tamil refugees were being forcibly repatriated by the Indian government. The significance of the decision lies in its stress on the voluntary character of repatriation. The Madras high court accepted this principle of voluntary repatriation as the basic standard that has to be met with respect to refugees, despite the overall right of the state to deport.

#### FREEDOMS

Generally, refugees are allowed freedom concerning their movement, practice of religion and residence. In case of refugees whose entry into India is either legal or is subsequently legalized, there is limited interference by the administration regarding these basic freedoms. However, those refugees who enter India illegally or overstay beyond permissible limits, have strict restrictions imposed upon them in accordance with the statutes governing refugees in India i.e., The Foreigners Act, 1946, Foreigners Order, Passport Act etc.<sup>14</sup>

#### INDIA’S INTERNATIONAL COMMITMENTS

India does not have on its statute book a specific and separate law to govern refugees. In the absence of such a specific law, all existing Indian laws like The Criminal Procedure Code, The Indian Penal Code, and The Evidence Act etc. apply to the refugees as well. Even though India is not a signatory to the 1951 Convention on refugees and also the 1967 Protocol, India is a signatory to a number of United Nations and World Conventions on Human Rights, refugee

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<sup>12</sup> Article 33 of 1951 Convention.

<sup>13</sup> Supra n.4

<sup>14</sup> B.S.CHIMNI, ‘*Status of refugees in India: strategic ambiguity*’, in Ranabbir samadar(ed.), ‘*Refugee and the state practice of asylum & case in India 1947-2000*, (Sage Publication, New Delhi,2003.)

issues and related matters. India's obligations in regard to refugees arise out of the latter. India became a member of the Executive Committee of the High Commissioner's Programme (EXCOM) in 1995. The EXCOM is the organization of the UN, which approves and supervises the material assistance programme of UNHCR. Membership of the EXCOM indicates particular interest and greater commitment to refugee matters. India voted affirmatively to adopt the Universal Declaration of Human Rights which affirms rights for all persons, citizens and non-citizens alike. India voted affirmatively to adopt the UN Declaration of Territorial Asylum in 1967. India ratified the International Covenant on Civil and Political Rights (ICCPR)<sup>15</sup> as well as the International Convention on Economic, Social and Cultural Rights (ICESCR)<sup>16</sup> in 1976. India ratified the UN Convention on the Rights of the Child in 1989<sup>17</sup>. India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>18</sup> in 1974 under which Article 1 imposes legally binding obligation. India accepted the principle of *non-refoulement* as envisaged in the 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.<sup>19</sup>

In order to get a clear understanding of the rights which devolve on the refugees on account of India's international commitments mentioned above and their relevance to law enforcement, it is pertinent to enumerate some of the more important rights accruing to refugees under the above mentioned Conventions. Article 13 of the Universal Declaration of Human Rights guarantees 'Right to Freedom of Movement', Article 14 'Right to Seek and Enjoy Asylum' and Article 15 the 'Right to Nationality.' Article 12 of the ICCPR deals with 'Freedom to leave any country including the person's own' and Article 13 'Prohibition of expulsion of aliens except by due process of law'. Under Article 2 A of the UN Convention on the Rights of the Child, the State

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<sup>15</sup> 10 April 1979.

<sup>16</sup> 10 April 1979.

<sup>17</sup> 11 December 1992.

<sup>18</sup> 9 July 1993.

<sup>19</sup> Saxena, Prabodh, "Creating legal space for refugees in India: the milestones crossword and roadmap for the future" International Journal of refugee law, (2007), pp.331-332

must ensure the rights of “each child within its jurisdiction without discrimination of any kind”; Article 3 lays down that “In all actions concerning children the best interest of the child shall be a primary consideration”.<sup>20</sup>

## **REFUGEES AND THE INDIAN LEGAL FRAMEWORK**

Refugees encounter the Indian legal system on two counts. There are laws which regulate their entry into and stay in India along with a host of related issues. Once they are within the Indian Territory, they are then liable to be subjected to the provisions of the Indian penal laws for various commissions and omissions under a variety of circumstances, whether it is as a complainant or as an accused. These are various constitutional and legal provisions with which refugees may be concerned under varying circumstances<sup>21</sup>

### **Constitutional Provisions**

There are a few Articles of the Indian Constitution which are equally applicable to refugees on the Indian soil in the same way as they are applicable to the Indian Citizens<sup>22</sup>.

The Constitution of India clearly lays down the bases on which foreign policy should be framed and respected. Article 51<sup>23</sup> of the Constitution highlights this principle.

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<sup>20</sup> *Ibid*, p. 332.

<sup>21</sup> *List I (Union List)* Entry 14 - confers on the Parliament exclusive power to make laws with respect to “entering into treaties and agreements with foreign countries and implementing treaties, agreements and conventions with foreign countries.

17. Speaks about citizenship, naturalisation and aliens Entry;

Entry 18. Speaks about Extradition;

Entry 19. Speaks about Admission into and Emigration & Expulsion from, India; passport and visas.

List III (Concurrent List) Entry 27 - speaks about Relief and Rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India & Pakistan.

Part II - Citizenship Articles 5 to 11: These Articles provide for Rights of Citizenship of migrants from Pakistan; Rights of Citizenship of migrants to Pakistan; Rights of citizenship of certain persons of Indian origin residing outside India; voluntary acquisition of other citizenship and Parliamentary rights to regulate citizenship

<sup>22</sup> Articles, 14,20 and 21 of the Indian Constitution.

<sup>23</sup> Article 51- the state shall endeavor to:

- (a) Promote international peace and security;
- (b) Maintain honorable and just relations between nations;
- (c) Foster respect for the international law & treaty obligations in the dealings of organized peoples with one another; and
- (d) Encourage settlement of international disputes by arbitration.



Article 51(c) of the Indian Constitution makes it obligatory for the government of India to observe to International Law ,while Article 253<sup>24</sup> confirms its obligation.

The Supreme Court of India has consistently held that the Fundamental Right enshrined under Article 21 of the Indian Constitution regarding the Right to life and personal liberty, applies to all irrespective of the fact whether they are citizens of India or aliens. The various High Courts in India have liberally adopted the rules of natural justice to refugee issues, along with recognition of the United Nations High Commissioner for Refugees (UNHCR) as playing an important role in the protection of refugees. The Hon'ble High Court of Guwahati has in various judgments, recognized the refugee issue and permitted refugees to approach the UNHCR for determination of their refugee status, while staying the deportation orders issued by the district court or the administration.

In the matter of *Gurunathan and others vs. Government of India*<sup>25</sup>, the High Court of Madras expressed its unwillingness to let any Sri Lankan refugees to be forced to return to Sri Lanka against their will. The Bombay High Court in the matter of *Syed Ata Mohammadi vs. Union of India*<sup>26</sup>, was pleased to direct that “there is no question of deporting the Iranian refugee to Iran, since he has been recognised as a refugee by the UNHCR.” The Hon'ble Court further permitted the refugee to travel to whichever country he desired. Such an order is in line with the internationally accepted principles of ‘*non-refoulement*’ of refugees to their country of origin.

The Supreme Court of India has in a number of cases stayed deportation of refugees such as *Maiwand's Trust of Afghan Human Freedom vs. State of Punjab*<sup>27</sup>; and, *N.D.Pancholi vs. State of Punjab & Others*<sup>28</sup>. In the matter of *Malavika Karlekar vs. Union of India*<sup>29</sup>, the Supreme Court

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<sup>24</sup> Article 253-Notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

<sup>25</sup> WP No.S 6708 and 7916 of 1992

<sup>26</sup> *Syed Ata Mohammadi vs. State*, Criminal writ petition no.7504/1994 at the Bombay High Court

<sup>27</sup> CrI. WP No.125 & 126 of 1986.

<sup>28</sup> *N.D. Pancholi vs. State of Punjab & Others* [WP (civil) No. 1294 of 1987, *unreported*].

directed stay of deportation of the Andaman Island Burmese refugees, since “their claim for refugee status was pending determination and a *prima facie* case is made out for grant of refugee status.” The Supreme Court judgement in the Chakma refugee case clearly declared that no one shall be deprived of his or her life or liberty without the due process of law. Earlier judgements of the Supreme Court in *Luis De Raedt vs. Union of India*<sup>30</sup> and also *State of Arunachal Pradesh vs. Khudiram Chakma*<sup>31</sup>, had also stressed the same point.

In another progressive pronouncement, S.C. upheld the decision of the Calcutta H.C., directing the railway board to pay Rs. 10 lakh to a rape victim, a Bangladeshi National.<sup>32</sup>

### **ROLE OF NATIONAL HUMAN RIGHTS COMMISSION (NHRC)**

The NHRC was established through The Protection of Human Rights Act of 1993. The NHRC can inquire into a complaint of human rights violation either ‘suo moto or on a petition presented by a victim or any person on his behalf. There have been several occasions when the NHRC has interceded on behalf of refugee groups within the country. Two may be mentioned.

#### **CHAKMA REFUGEES IN ARUNACHAL PRADESH**

In 1995, the NHRC filed public interest litigation on behalf of 65,000 Chakma refugees settled in Arunachal Pradesh in India since 1965 and successfully sought the investigation of the Supreme Court of India in order to safeguard their life and freedom. The facts of the case as summarized by the Supreme Court were as follows:

A large number of Chakmas from East Pakistan (now Bangladesh) were displaced by the Kaptai hydel Power project in 1964. They had taken shelter in Assam and Tripura. Most of them were settled in these States and became Indian citizens in due course of time. Since a large number of refugees had taken shelter in Assam, the State Government had expressed its inability to rehabilitate all of them and requested assistance in this regard from certain other states. These

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<sup>29</sup> CrI. WP No.243 of 1988.

<sup>30</sup> (1991) 3SCC 544.

<sup>31</sup> 1994 Supp. (1) SCC 615.

<sup>32</sup> Chairman railway board v. Chandrima das AIR 2000 SC 988

refugees were allotted some land in consultation with the local tribal. The Government of India had also sanctioned rehabilitation assistance of Rs 4,200 per person. The present population of the Chakma refugees in Arunachal Pradesh is estimated to be around 65,000. In recent years, the relations between the citizen of Arunachal Pradesh and the Chakma refugees have deteriorated, and the latter have complained that they are being subjected to repressive measures with a view to forcibly expelling them from the State.

On 29 October 1995, the NHRC recorded a prima facie conclusion that officials of the State Government of AP were acting in co-ordination with the All Arunachal Pradesh Students Union (AAPSU), which were leading an agitation against the Chakmas, with a view to expelling the Chakmas from the State of AP. The NHRC stated that since it had doubts as to whether its own habitat would be sufficient to sustain the Chakmas in their own habitat, it had decided to approach this court to seek appropriate relief. The Supreme Court issued an interim order directing the State of AP ‘to ensure that the Chakmas situated in its territory are not ousted by any coercive action, not in accordance with law.’ The court in its judgment noted that ‘the Chakmas have been residing in AP for more than three decades, having developed close social, religious, and economic ties. To uproot them at this stage would be both impracticable and inhuman. It further held that foreigners are entitled to the protection of Article 21 of the Constitution of India.’<sup>33</sup>

#### CHAKMA REFUGEES IN TRIPURA

In another instance on receiving a complaint, the NHRC sent a team to ascertain the situation of Chakma refugees in Tripura. The report it submitted inter alia noted the shortage of water, inadequacy of accommodation, medical facilities in the camps. It also pointed out that the scale of ration was meager and its supply was often suspended.

#### UNHRC OFFICE IN INDIA AND THE REFUGEES

The UNHRC has a tenuous legal status in India; it operates under the umbrella of the United Nations Development Programme (UNDP). The absence of the formal accreditation of UNHCR imposes many constraints on its working in the country. Thus, the UNHRC cannot easily get

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<sup>33</sup> Louis De Raedt v, UOI(1991,3SCC554)

other UN agencies to support and lobby for refugee rights or collaborate with the UNHCR in meeting the basic needs of food, shelter, and schooling for children, health care, etc., for mandate refugees.<sup>34</sup> Ever since India became a member of Executive Committee of the UNHCR in 1995, relations between the UNHCR and the Government of India have improved. Although, the Government continues to be extremely sensitive to any attempt by the UNHCR to sharply assert the rights of the refugees or to call for the passage of national legislation or accession to 1951 Convention. To an extent this is understandable, for the matter is clearly within the sovereign discretion of the state.

What is the mandate of UNHCR in India? The UNHCR has essentially been permitted by the Government to be concerned with the status and welfare of refugees coming from outside the South Asian Region. Afghan refugees constitute a predominant majority of those whom the UNHCR has recognized as refugees. The UNHCR admits that over the past two decades, Afghan asylum seekers have been freely admitted to India and allowed to remain in the country once recognized as refugees by the UNHCR.

### **THE NEED FOR A NATIONAL LAW ON REFUGEES**

First of all we shall deal with the factors that may be said to explain the absence of national legislation on the status of refugees. These are as follows:<sup>35</sup>

1. India feels that in lieu of the fact that it is willing to host refugees and grant some sort of status to refugees within the country, there is no need for passing national legislation on the subject. It also points to the fact that for refugees outside the South Asian region, it respects the grant of refugee status by UNHCR.
2. The government is apprehensive about passing a national legislation as it is not clear about the consequence of doing so. It is particularly concerned about the fact that the national legislation could be used by terrorist and criminal elements to legally stay on in this country.
3. A law on refugee is not a priority in view of the rage of crucial problems that the Parliament has to address in a vast and poor country like India. The financial costs involved in

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<sup>34</sup> Naoko Obi & Jeff Crisp, 'evaluation of UNHCRs' policy on refugees in urban areas: A case study review of New Delhi', UNHCR, Geneva, November 2000

<sup>35</sup> B.S.CHIMNI, '*Status of refugees in India: strategic ambiguity*', (Sage Publication,2003)

hosting refugees, and the feeling that a national legislation would tie up the hands of the government while dealing with it.

4. The passage of the national legislation would allow the courts to intervene regularly to protect the interest of the refugees, thereby depriving the State of a foreign policy tool.<sup>36</sup>

### **REASONS IN FAVOUR OF PASSING A NATIONAL LEGISLATION<sup>37</sup>**

1. It will facilitate the identification of illegal migrants posing as refugees.

2. India could explicitly include provisions which protect its security concerns in the national law. These could go beyond the 1951 Convention.

3. There would be a right –based approach towards refugees and not charity- based.

4. A law on the status of refugees will help India to avoid certain diplomatic problems and difficulties. For e.g. when India gave refuge to Karmapa Lama in 2000, it was alleged that it amounted to interference in the internal affairs of China. In the presence of a law obliging the Government to give asylum this argument would cut little ice.

5. The absence of refugee law has meant that arbitrary actions go unnoticed. For e.g. border and coast guards turn back asylum seekers, as they are unaware of the principle of *non-refoulement*. Having an appropriate law would enable India to abide by its international obligation of *non-refoulement*.

6. To provide for uniform treatment between refugee groups, without any kind of discrimination. For e.g. the Tibetan refugees have received much better treatment than, the Chakma or Sri Lankan Tamil refugees. This is only in keeping with Article 14 of the Constitution of India.

7. To make provisions for cessation of refugee status, this means the situation when a person ceases to be a refugee. In the absence of a national law on the subject, there is no guideline as to when a refugee status comes to an end.

8. To spell out duties of refugees: the duties of refugees towards the host country can be clearly spelt out. The principal duty is to respect the laws of the host country and not to use its territory to carry out any criminal or subversive activities.

<sup>36</sup> Harun ul Rashid, '*Refugee Law*', 2000, Yakub press

<sup>37</sup> B.S.CHIMNI, '*Status of refugees in India: strategic ambiguity*', in Ranabir samadar(ed.), '*Refugee and the state practice of asylum & case in India 1947-2000*, (Sage Publication, New Delhi, 2003.)

## CONCLUSION

It can be easily seen from the foregoing paragraphs that India notwithstanding its own security concerns, particularly in the last couple of decades, and pressure of population and the attendant economic factors, continues to take a humanitarian view of the problem of refugees. Even though the country has not enacted a special law to govern 'refugees', it has not proved to be a serious handicap in coping satisfactorily with the enormous refugee problems besetting the country. The spirit and contents of the UN and International Conventions on the subject have been, by and large, honored through executive as well as judicial intervention. By this means, the country has evolved a practical balance between human and humanitarian obligations on the one hand and security and national interest on the other. It is in balancing these interests, which may sometimes appear to be competing with each other, that the security and law enforcement agencies face day-to-day challenges. If and when a separate 'Refugee Law' for the country is enacted, it is important that this aspect is given due consideration. It is important that security and enforcement officials do not overlook both the legal as well as the underlying human angles inherent in the 'refugee' situation, especially the latter.<sup>38</sup>

In sum, it has to be understood that the call for human treatment for refugees does not mean that the special existential or security concerns of the Indian People have to be ignored. The case for humane and right-based treatment of refugees will sit well with a democratic and responsible order. A right-based approach means that these concerns are given weight within a framework that recognizes the distinctive essence of humanitarian problems and gives legal recognition to the fact that every person, alien or national, is of equal moral worth, and worthy of treatment that does not violate his or her dignity.

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<sup>38</sup> Harun ul Rashid, '*Refugee Law*', 2000, Yakub press