



EXILED LIVES: THE FORGOTTEN RIGHTS OF SRILANKAN REFUGEES



Dr. A. Suganthini

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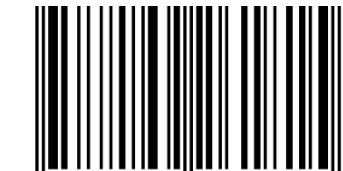
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PREFACE

This book is an attempt to examine and explain the rights of Sri Lankan refugees in India. It discusses the 1951 Refugee Convention and the 1967 Protocol, while also highlighting the constitutional remedies available to refugees under Indian law.

A comparative study has been undertaken, analysing the situation of Sri Lankan refugees alongside other refugee groups within India. Further, comparisons have been made with the status and treatment of refugees in Sweden, Indonesia, and Pakistan with that of India, providing a broader global perspective.

The book also examines landmark case laws relating to refugees in India and critically analyzes the Citizenship Amendment Act, 2019, which was enacted without addressing the concerns of Sri Lankan refugees. Special focus has been given to the plight of Sri Lankan refugees in Tamil Nadu, shedding light on the challenges they face.

I will be grateful to welcome any suggestions which the readers may deem necessary to improve this book.

It is my pleasure and duty to acknowledge my gratitude to my Guide and Teacher, Dr.S.Ambika Kumari, Professor and Dean, School of Law, VISTAS who has always been a source of encouragement to do this study. I am thankful to all who had helped me to bring out this book

Dr. A. Suganthini

List of Abbreviations

UNHCR	- United Nations High Commissioner for Refugees
ICRC	- International Committee of Red Cross
UNO	- United Nations Organisations
UDHR	- Universal Declaration of Human Rights
ICCPR	- International Convention on Civil and Political Rights
CEDAW	- Convention on the Elimination of Discrimination against Women
ICESCR	- International Convention on Economic, Social and Cultural Rights
IPC	- Indian Penal Code
NGOs	- Non Governmental Organisations
NHRC	- National Human Rights Commission
LTTE	- Liberation Tigers of Tamil Ealam
RAW	- Research and Analysis Wing
IPKF	- Indian Peace Keeping Force
MoU	- Memorandum of Understanding
IGCR	- Intergovernmental Committee on Refugees
UNRRA	- United Nations Relief and Rehabilitation and Administration
SC/S	- Scheduled Castes/Scheduled Tribes
PUCL	- People's Union for Civil Liberties
AI	- Amnesty International
HC	- High Court
SC	- Supreme Court
SHRC	- State Human Rights Commission
IRO	- International Refugee Organisation
UNG	- United Nations General Assembly
ECOSOC	- Economic and Social Council
UK	- United Kingdom
AALCC	- Asian-African Legal Consultative Committee
NEFA	- North East Frontier Agency

AAPSU	- All Arunachal Pradesh Students' Union
SEK	- Sweden Krona
EU	- European Union
SMA	- Sweden Migration Agency
RTE	- Right to Education
ACC	- Afghan Citizen Card
PoR	- Proof of Registration
DRIVE	- Documentation Verification and Information Verification
SSAR	- Solutions Strategy for Afghan Refugees
GDP	- Gross Domestic Product
FATA	- Federally Administered Tribal Area
WHO	- World Health Organisation
CRLC	- Cisarua Refugee Learning Centre
CAA	- Citizenship Amendment Act
LTV	- Long-Term Visa
NRC	- National Register of Citizens
EXCOM	- Executive Committee of the High Commissioner's Programme
CAT	- Convention against Torture
USCRI	- United States Committee for Refugees and Immigrants

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Chapter 1

Introduction

1.1 Introduction:

Refugees are those people who leave their States in which they have permanent residences to escape persecution. Any person who fears being persecuted for reasons of their race, religion, nationality, belonging to a particular social group are forced to leave his country and live outside it and is unable to return to his nation. Such persons are deemed to be refugees who have a threat to their life and liberty.

The General Assembly of the United Nation Organization on December 3, 1949, adopted Resolution 319(iv) to establish the United Nations High Commissioner for Refugees to protect the Refugee rights which came into enforcement on January 1,1951. The Universal Declaration on Human Rights in its Article 14 states the Right to seek and to enjoy asylum in other countries asylum from escaping persecution.

One of the most devastating tragedies of in recent years is the refugee crisis. It is the result of First World War, which is one of the worst wars in history, and the Second World War, contemporary autocratic governments, and the awakening of the country to individuals, as well as of the twentieth-century closed frontier. The Refugees issue in recent years has been set it apart from earlier refugee flows in terms of its breadth, diversity of causes, intricacy, and difficulty. Contemporary refugee movements, starting in Europe and moving elsewhere expanding globally, have resulted in the emergence of a new kind of homeless individuals. and others who are less well-off, who endure life-threatening circumstances, extreme poverty, and deprivation that undermines the worth of people. They have seriously impacted social and political and economic issues for the nations experiencing temporary reception issues, which have shown to be too demanding on the administrative and financial resources from both national governments and private organisations. In addition, even though the refugee issue was initially perceived as a formerly a transient and localised phenomenon, it is today recognised as all-encompassing, ongoing, and recurrent. In reaction to this challenge, the global community has created a global collaboration framework that involves a three-way cooperation between international, private, and national governments organisations. No longer constrained by rigid rules of what amount to a "refugee," it is ready to address the issue from every angle, including political, social, financial, and charitable. The term "refugee" does not have a singular definition that can be used for everything. When used in reference to humanitarian goals, the

term's meaning is different from the one utilised in international accords, given the human elements associated with refugee problems are different from the query of whether someone is a refugee in any circumstance. Nonetheless, the following traits are shared by all refugees: they are uprooted, they have no national protection nor status, and they are homeless. The refugee is an uninvited immigrant who has been affected by politics, conflict, or natural disasters. All refugees are inherently migrants, but not all migrants are fugitive. A migrant is someone who relocates, mainly for economic reasons, to relocate, either inside or outside of his own nation.

The United Nations Refugee Convention of 1951 marked the end of a significant historical shift in the understanding of the minimal requirements for guidelines for the handling of refugees when travelling abroad. It's been progressively come to terms with "that the refugee has a special status that sets him apart from the common foreigner since he is not covered by diplomatic immunity from any nation. We might state in general terms that a refugee is taking protection, safety, particularly abroad, from a natural calamity, conflict, or persecution. Alternatively, those who are sent out from their own nation and became refugees are compelled to flee to a new location to protect their lives.

As far as India is concerned India is not party to any of the Refugee Convention 1951 and Refugee Protocol 1967. But India is a party to the Universal Declaration of Human Rights. India has no legislation regarding refugees though there are many refugees from all countries who flee to India to seek protection like Tibet, Bangladesh, Sri Lankan, Burma, and Afghanistan. Hence there is no legal provision and legal status for these refugees.

Due to its geographic position, democratic governance, religious tolerance, and kindness, India has always hosted many refugees from adjacent nations and other regions. India is not a party to the Refugee Convention, 1951 although it has signed other human rights conventions that provides refugee protection. The conventions include the UN Declaration on Territorial Asylum 1967, Universal Declaration of Human Rights, 1948 (Art.14), International Convention on Civil and Political Rights (ICCPR Art.13), Convention on the Elimination of Discrimination against Women (CEDAW), ICESCR, and CAT. These conventions require India to safeguard refugees who fear government persecution.

Refugees also need Human rights protection in the country of their asylum. Refugee human rights cannot be excluded from any treaty, convention, or statute. Refugee and human rights laws complement each other by protecting the life, dignity, and liberty of all people, including non-citizens. Article 21 of the Constitution of India protects human rights. India's human rights priorities affect its refugees' quality of life because we haven't signed the Convention. The Principle of Non Refoulement bans forced return under refugee and laws relating to human rights.

Introduction

A strong human rights framework in the host nation influences refugee crisis solutions, how effectively refugees are treated, and what rights they receive.

Humanitarian law addresses wars and refugee law addresses refugees. Due to civilian deaths and property devastation during armed wars, refugee law protects the vulnerable¹. Since the parent government no longer protects them, these individuals escape in fear or persecution. So IHL and refugee legislation operate together.

The Principle of Non Refoulement states that no government shall deport, expel, or forcefully send a refugee to his home country unless there is a legitimate danger to his life, liberty, or freedom. This term is subject to “national security and public order” standards. It is customary international law, and no state has opposed the concept of non-refoulement, according to facts and state practice⁶. Several Indian case laws state this norm. In *Ktaer Abbas Habib Al Qutaifi vs Union of India*², the Gujarat High Court held that the principle of non-refoulement under Article 21 of the Constitution of India and refused to deport the two Iraqi nationals since they fear for their life and liberty.

In *Malvika Karlekar vs Union of India*³, the Supreme Court restrained order on Burmese refugee deportation. The principle of non-refoulement principle is pre-emptory and do not require treaty or convention ratification. When the refugee refuses to return to the parent country due to “threat to life”, this concept applies. However, the government often grants erroneous orders for deportation for illogical and trivial grounds, notwithstanding the threat. detain a refugee or return him to death and torture in his homeland. These cases warrant impeachment and individual criminal culpability.

Although there is a customary international rule and of paramount importance, western countries often violate the non-refoulement principle and get away with it. Diplomatic links between the host countries and originating countries, economic dependence, and International stress cause refugees to be forced back. Finally, this concept is moral rather than legal, therefore proper "enforcement" and "implementation" are needed.

India has accepted many International human rights conventions that require humanitarian protection for refugees. In *Visakha vs State of Rajasthan*⁴, the court

¹ Part IV of Geneva Convention, 1949 protects people during combat. Common Article 3 is jus cogens, meaning civilians must always be safeguarded.

² 1999CriLJ919, paragraph 3.

³ SupremeCourtCase1992, Crl.WPNo.243of1992.

⁴ 1997(6) SCC241, paras.14-24.

upheld harmonious construction of International law and domestic law when it is consistent with fundamental rights. Customary International Law, which is binding on all states including India, and specific laws enforcing it include the “right to seek asylum from persecution”. Refugees get temporary government protection. The Constitution guarantees citizens certain rights. Foremost provision is the right to file writs to enforce basic rights, mainly through PILs to protect refugee rights. The Constitution guarantees rights under Articles 14, 21, 22, 25-28, 32, and 226. Equal protection under law, which guarantees fair and reasonable treatment for all refugees, is the most vital. However, appropriate categorization and logical distinctions between citizens and refugees apply. Refugees have the right to life and dignity⁵, not drudgery or animal existence. Legal due process should apply to their instances. Louis De Raedt vs Union of India⁶ ruled that non-citizens enjoy the right to life, liberty and dignity. After life, there is the right against arrest and detention. The Guwahati High Court granted temporary bail to jailed Burmese refugees without local sureties. The courts have liberally interpreted detention cases so the “United Nations High Commissioner for Refugees” can assess refugee status⁷. Another Majid Ahmed Abdul Majid Mohd case. The Court ruled in JadAl-Hak vs Union of India⁸ that refugees need food and medical assistance to survive. The refugees have right to establish educational institutions and peaceful assemblies and to practise and preach their faith with reasonable constraints that apply to everyone, including aliens⁹.

In most refugee instances, the Court has mitigated sentence or ordered release on compassionate grounds. There is sufficient data to establish that despite legal help, refugees persist to languish in bars. Refugees have constitutional safeguards, but they are rarely used. There are enough reasons to assume the opposite happens because in many situations.

These refugees are arrested and jailed without legal representation for a lengthy time, breaching their rights. The Constitution guarantees equal protection of laws; however, refugees of different nationalities are discriminated against. Tibetan refugees enjoy the Right to residency, while Chakmas and Sri Lankans are confined in camps and have free movement only inside them. Refugees cannot work or have work permits, hence their Constitutional rights cannot be realised. They can only work in the informal sector or as casual labour, which reduces their status to hard worker of the state who have no means of livelihood. Case laws and Constitutional provisions give the impression that refugees are protected, but the

⁵ Article 21 of the Constitution of India

⁶ AIR1981SC1886, para12.

⁷ MrBoghyv. Union of India (CivilRuleNo1847of1989).

⁸ DelhiHighCourt1997, CriminalWritPetitionNo60.

⁹ SeeArticle25-28oftheIndianConstitution.

situation is vague and exists only for records because the practices are arbitrary. Disparity and conflict arise between citizens and refugees. For instance, Tibetan refugees have been granted land across the country to build their own villages, have access to school and colleges, protect and profess their religion and culture, while many Indians live in miserable poverty without shelter, clothing, or food. While the court continues to decide cases favouring refugee protection, the situation is not improving because they are not being applied unanimously.

Several domestic laws address refugees. India does not distinguish between “foreigner” and “refugee”. The Laws are Passport Act, 1920, Passport (India Entry) Act, 1967 Passport Act, Foreigner Registration Act, 1939, 1946 Foreigners Act, 1948 Foreigners Order.

The Passport Act, 1920 and 1967 make no difference between real refugees and economic migrants, tourists, and others students. Without a passport, refugees face arrest and unlawful deportation¹⁰. Refugees¹¹ may flee in trouble and not have time to acquire a passport, therefore they should not be punished. Distance and infrastructure may prevent passport office access in most nations. Refugees entering the Territory of India may receive passports and Identity cards provided public interest is met¹². So far, only the Tibetan refugees have legal passports. Their “privileged treatment” is because to their political and spiritual leader Dalai Lama is in India and their parliament being in India. Some analysts say it undermines India's sovereignty. The explanation may be because refugees are not granted identity cards or freedom of travel to preserve national interests. Because they have no identity, refugees have problems opening bank accounts, getting ration cards, or renting housing. The Constitution of India does not guarantee the Right to freedom of movement, but the Government of India can provide it based on case-by-case consideration with acceptable constraints. This breaches equity since all refugees in India should be equally treated.

The Union Government can regulate aliens under Registration of Foreigners Act, 1939. This rule should not apply to refugees since their government has already mistreated them and these technicalities add to their suffering. No safeguards limit the Central government's arbitrary harassment of genuine refugees. A major criticism of the Foreigners Act, 1946 is that the authorities have “unlimited power to arrest and detain any foreigner on mere suspicion of non-compliance”. Although the court endeavoured to limit this jurisdiction by requiring genuine contravention

¹⁰ Bimal N Patel, “India and International Law”, Martinus Nijhoff Publishers, 2005, Section 30 of the Passport Act 1920 and Indian Passport Rules 1950 rule 6A.

¹¹ See Article 31 of the Refugee Convention.

¹² See 1967 Passport Act Section 20.

of provisions¹³. Unfortunately, more refugees are being arrested frivolously and held for extended periods. Finally, Foreigners Order, 1948 allows the State Government to “grant or refuse a foreigner entry into India on grounds such as invalid passport, unsound mind, public safety, etc.”. If the Foreigners Act is not followed the civil authority can deny permission. This restriction is unfair and arbitrary since refugees have distinct needs and need humane treatment under human rights law. Typically, refugees are imprisoned in transit locations before entering India. The transit areas are mostly airports, seacoasts, or lands specifically assigned for this purpose and treated as "International Zones" where Domestic Law of the Country does not apply. Since the refugee has not entered India officially, he can only request for administrative remedies. Bureaucrats and custom authorities lack legal understanding and competence, putting refugees at risk of deportation and persecution. This violates non-refoulement. The Indian Penal Code does not distinguish citizens, refugees, or foreigners. Forgery, deceit, and document fabrication may charge the refugees¹⁴. The concerned authorities often ignore refugees' convincing justifications for not having legitimate documentation. The IPC should not be applied to refugees. United Nations High Commissioner for Refugees protects displaced individuals comprehensively. Since 1995, India has benefited from being a United Nations High Commissioner for Refugees executive member.

Their mission begins when refugees enter India. Such a person can register with United Nations High Commissioner for Refugees for refugee status. Refugees are interviewed by a legal professional to gather information. Due to the refugee's past and mental condition, interview contradictions should be addressed carefully¹⁵. Many times, linguistic problems prevent complete data collection. This doesn't justify the United Nations High Commissioner for Refugees denying refugee status. The key factor determining status is persecution or life threat. United Nations High Commissioner for Refugees protects refugees from illegal arrest and imprisonment and rescues them if arrested. However, only refugees from outside South Asia are mandated, leaving “other” refugees vulnerable to prejudice and abuse.

The United Nations High Commissioner for Refugees gives several comforts that the Indian government seldom does. The United Nations High Commissioner for Refugees office verifies their status and identification, so they may get a passport, travel papers, ration cards, and bank accounts. Free legal help is offered by United Nations High Commissioner for Refugees legal professionals to recognised

¹³ KallanKhanv.State1961(1) Cr. LJ584, para13.

¹⁴ SeeSection416,420,463,464ofIPC,1860.

¹⁵ R. J.S. Ragini Trakroo Zutshi, Jayashree Satpute, Md. Saood Tahir, "Refugees and the Law", 2nd ed., HRLN, 2011, pp. 183.

refugees. The organisation has established relationships with other NGOs to help the poor and needy worldwide, including India. The sick refugees get free medical care in government hospitals, with a focus on women and children¹⁶. The United Nations High Commissioner for Refugees army of volunteers and interns provides vocational training to make refugees self-sufficient, elementary education, and counselling with the help of other NGOs with competence in these sectors. Most of the study focuses on finding long-term remedies to host nation abuse of refugees. United Nations High Commissioner for Refugees and the Central government should work with collaboration. However, United Nations High Commissioner for Refugees mission is restricted, and it needs the country's help and involvement to succeed. United Nations High Commissioner for Refugees relies on NGOs to report refugee emergencies. This poses challenges because most Indian NGOs don't know the precise number of migrants and have limited manpower, resources, and technology. Since India gives protection to many refugees mostly from Asia it is not possible to find out the movements of refugees in India. In India, executive state policies are laid down to control refugee protection in helping out the United Nations High Commissioner for Refugees. Thus, only some of the non-South Asian refugees receive United Nations High Commissioner for Refugees registration and protection and not all refugees receive this equally. This is considered as biased and there is no interference of any higher official to control the same. Since India is not a party to the Refugee Convention, the functioning of the United Nations High Commissioner for Refugees is on the Central Government. United Nations High Commissioner for Refugees receives most of the funds from international organisations and NGOs. Due to this they may lack funds to protect the refugees. Afghan refugees were unfairly denied food assistance by the United Nations High Commissioner for Refugees in 1992, burdening many families¹⁷. Thus, the government should empower United Nations High Commissioner for Refugees to record the identities of all refugees entering India. This will reduce fake papers and refugee arrests. India has National Human Rights Commission, State Human Rights Commission and Human Rights Courts under the Protection of Human Rights Act, 1993. According to this Statute, they can *suo moto* investigate any petition, intervene in judicial procedures to protect parties from human rights abuse, analyse treaties, and write reports¹⁸. The organisation has protected refugees since its founding.

The NHRC advised the Union Government in 1994 and the Government of Tamil Nadu to treat Sri Lankan camp refugees immediately. How much medical help migrants received is disputed since much of it is on paper. The NHRC filed a PIL

¹⁶ Ibid.

¹⁷ Ranabir Samaddar, *Refugees and the State. Practices of Asylum and care in India 1947-2000*, SAGE Publications, UK, 2003. BS Chimni, "Indian Refugee Status," pp. 460.

¹⁸ See Article 12 and 13 of Protection of Human Rights Act, 1993.

in 1995 for "Chakma" refugees who had fled Bangladesh in the year 1965 and were living in Arunachal Pradesh. The NHRC determined that the Government was acting in accordance with the All-Arunachal Pradesh Students Union and threatening Chakmas.

The Supreme Court held that the liberal interpretation of law to argue that refugees are "class apart" from aliens and protected by Article 21 of the Constitution of India against eviction from their homes. The Court stressed that the state must secure the life and personal liberty of all people to uphold the concept of non-refoulement¹⁹. This decision also addresses local agitation.

India has had several refugee-local confrontations. Residents claim refugees have more facilities than foreigners. After assassination of the then Prime Minister Rajiv Gandhi, India turned enemy to Sri Lankan refugees with improved access to medical care, food, water, education, financial aid, and protection. They were persecuted despite protection. The government also forced repatriations, breaching non-refoulement.

In 2000, NHRC suggested a model refugee law under Justice PN Bhagwati, however it has yet to be implemented. It also advocated amending the antiquated Foreigners Act, 1946, which denies refugees rights under the Geneva Convention 1949, Refugee Convention, and 1967 Protocol. Refugee and Asylum Protection Bill, 2009 is all we got. The model legislation precisely specified refugees' rights, obligations, and state protection. Thus, India is paradoxical—it refuses to sign the Refugee Convention yet does not adopt its own legislation. In addition to it, India continues to accept significant numbers of refugees throughout the world.

This research work is to find out the status of Sri Lankan refugees in Tamil Nadu and to make an analysis of the legal provisions which protect them. Further this study is narrowed down to research about the basic rights like education, employment and health of the Sri Lankan refugees in Tamil Nadu. Survey says that there are about 59,000 Sri Lankan Tamil refugees in 100 plus refugee camps in Tamil Nadu and nearly 30,000 outside the camps.

An organization for Eelam refugees' rehabilitation formed many camps for these Sri Lankan refugees. There are nearly around 107 government run camps across Tamil Nadu. Moreover, the recent Citizenship Amendment Act does not apply to Sri Lankan refugee, and this research aims in finding out the reasons for it. Further this study is narrowed down to Chennai district where the refugees who enter through Rameswaram are given refugee identity cards and sent to various camps

¹⁹ National Human Rights Commission vs Arunachal Pradesh, Supreme Court of India, 1996 SCC 1234.

in Tamil Nadu. The camp in Chennai district exists from 1983 when the civil war started in Sri Lanka and most of the refugees who were asylum seekers live in Chennai district.

1.2 Objectives:

1. To critically examine the Impact of the Citizenship Amendment Act on Sri Lankan Refugees in Tamil Nadu, India, by identifying and analysing specific challenges to their legal rights, socio-economic well-being, and overall integration.
2. To conduct a comprehensive comparative analysis of legal frameworks and living conditions between Sri Lankan Refugees in Tamil Nadu, India, and those in Sweden, Pakistan and Indonesia, and other refugee communities, aiming to identify factors that contribute to differential outcomes in terms of basic rights and integration opportunities.
3. To empirically assess the extent to which the Legal Status of Sri Lankan Refugees in Tamil Nadu, India, influences their access to essential services such as education, healthcare, and employment, thus highlighting the causal relationship between legal provisions and socio- economic inclusion.
4. To provide insights and recommendations based on the findings of the study, aiming to inform policy discussions and advocate for improvements in the legal provisions and support mechanisms for Sri Lankan refugees in Tamil Nadu, India, as well as other refugee populations facing similar challenges.

Chapter 2

International Legal Safeguard and National Safeguard Governing Refugee Rights in India

The History of Sri Lankan refugees in India and international convention on refugees and protocols that were entered into by the nations is explained in this chapter. The reason for these conventions and protocols is to protect the refugees who are not able to return to their country for various reasons. By these conventions the refugees get more rights under the law of the land like education, work, healthcare, and various other benefits. This chapter further analyses on the reasons as to why India is not a signatory to the international conventions and protocols and the current situation of Refugees in India

The need for refugee convention is that the States are responsible for protecting the fundamental human rights of their citizens. When they are unable or unwilling to do so because of certain political reasons or based on discrimination, the individuals suffer such serious violations of their human rights that they have to leave their homes, their families and their communities to find protection in another country. When the refugees are not protected by their own governments, then the international community steps in to ensure they are safe and protected. That was the main reason for entering into the conventions and protocols.

Refugees are forced to flee because of a threat of persecution and because they lack protection in their own country.

2.1 History of Srilankan Refugees in India:

In the southwestern region of Asia lies Sri Lanka. This Island has a diversified population in terms of politics, economics, cultures, and religions. Sri Lanka's Island has undergone more historical development. The Pallavas, Cheras, and Cholas²⁰ were among the southern nations that impacted it after it had been ruled by the Maurya and Gupta Indian empires.

Ceylon was the earlier name for Sri Lanka. The total area of Sri Lanka is 65,612 sq. km. The island is the 25th largest in the globe.

²⁰ K.M. De sila, A History of Sri Lanka, Penguin 1995-page no.1

Tamil speakers make up 18% of the population, while 74% of people speak Sinhala. There are two Tamil subgroups. One of them are Tamils who are born in Sri Lanka. The other subgroup is called as "Indian Tamils" whose descendants were Indian farm workers during the colonial time of British. The Tamil people either belong to Hindu or Muslim religion, whereas the Sinhala people are following the Buddhists religion. There are also Christians who are both Tamil and Sinhala²¹ who live in Sri Lanka.

There are various causes for the Sri Lankan people to seek protection in India. The History of Sri Lankan Refugees and India longs for more than three to four decades. In the late nineteenth and early twentieth centuries many Tamils from Sri Lanka travelled to various parts of India. This is for the purpose of education and employment.

After Independence of Sri Lanka on February 4th, 1948, the Citizenship issue arose. The Parliament implemented the Ceylon Citizenship Act which had imposed discrimination on the Tamil people of South Indian Origin. This became the main reason for many Sri Lankan Tamilians to be denied Citizenship in their country.

The decision to expel and return a huge number of Tamils to India was made by an agreement between the then Prime Minister of Sri Lanka, Bandarnaike and the then Indian Prime Minister, Lal Bahadur Shastri of India in 1964. Many Tamils were expelled to India, where they settled mostly in the States of Tamil Nadu, Kerala, and Karnataka²².

The conditions of Tamils deteriorated when Sri Lanka's Civil War broke out in 1987, forcing many to flee their homeland and seek asylum in India and other nations. Three distinct shelters in Tamil Nadu are used to house the Sri Lankan refugees. The initial group of migrants who sought sanctuary in primarily rural camps. The second type of refugees consists of those who reside with their relatives in a tent and are not provided with any aid by the Indian government. The involvement of the Refugees in subversive activities in Sri Lanka and status as security threats, the third category of refugees was relocated to specific camps. There are extremely few members of the first category of refugees who receive aid from the Indian government. Nearly 50,000 refugees fall into the second category; these people reside outside of camps and have sought asylum in cities. The government continually keeps an eye on the third type of people, who are housed in special camps that were started in 1991. Immediately after the outbreak of Civil War, the Sri Lankan Refugees began to enter India, and India had to permit their entry into its borders because it was in an emergency. This was one of the primary justifications for the establishment of

²¹ Democratic Politics II, NCERT, page no. 2&3

²² Ethnic Conflict of Sri Lanka – Timeline – From independence to 1999

camps and special camps in Tamil Nadu for Sri Lankan refugees. Tamilians who had fled to Sri Lanka spoke Tamil fluently. There are 132 camps housing around 80,000 refugees across Tamil Nadu, Orissa, and other regions of the nation. All the Refugee camps are registered, and they receive aid from the Indian Government in the form of money, housing, healthcare benefits, clothing, necessities, etc.

2.2 Outbreak of Civil War in Srilanka:

Sri Lanka gained independence in 1948. By virtue of their majority, the leaders of the Sinhala community attempted to control the government. To ensure Sinhala dominance, the democratically elected government took several actions. Tamil was ignored when an Act was established in 1956 designating Sinhala as the sole official tongue. The governments adopted preferential hiring practises that favour Sinhala candidates for government jobs and academic positions. A new constitution established that Buddhism must be protected and promoted by the state. Following one another, each of these government actions progressively heightened the Sri Lankan Tamils' sense of estrangement. They believed that the government's policies and the constitution denied them the right to equal political representation, treated them unfairly when applying for jobs and other chances, and disregarded their interests. The relationship between the Tamil and Sinhala communities thus became heated over time. The Tamils of Sri Lanka started organisations and campaigns for the recognition of Tamil as an official language, for regional independence, and for equitable access to education and employment. However, their persistent requests for greater autonomy for the Tamil-populated provinces were turned down. By the 1980s, many political organisations were established. They called for the formation of an Independent Tamil Eelam in Sri Lanka. Especially in the north and east. Disbelief between the two groups, arose lot of conflict which broke out into Civil War in 1983.

The plan of the LTTE was mainly based on assassination. The Army operated by establishing a number of checkpoints. In May 1981, the burning of the Jaffna Library was a heart-breaking incident. It was done by the Sri Lankan Security Forces and the State sponsored mobs. This was in the presence of two Sinhalese Cabinet Members which resulted in the total destruction of the library. More than 90,000 books were destroyed. This included palm leaf scrolls of immense historical value. This is one of the examples of ethnic persecution made against the Tamil people. They realized that the government could not protect them or their cultural heritage. This provoked them to demand for a separate State. The attack on library was considered as a Genocide act by the Sri Lankan Government. This incident also made the Tamil people to flee out of their country has refugees to India and other countries fearing their life is in danger. Further Tamils who were arrested for revolt were harassed by the prisoners in jail. They kidnapped young women and raped them in groups. Following that, the Government started to execute more massacres against the Tamil people. The LTTE and other militant Tamil Organisations had

mostly united by this point. However, several Tamil Organisations eventually became paramilitaries for the Sri Lankan Government. They entered mainstream politics and only a few Tamil-oriented political parties persisted. All of which made the demand by the LTTE for an Independent State. Many peace talks were held between the LTTE and Other Organisations with the Sri Lankan Government. But all talks failed.

2.3 India Intervention (1987 – 1990):

India promoted the freedom of Tamils of Sri Lanka. The Central and State Government of India extended their support to the Sri Lankan Army. They also supported the LTTE in various ways. The Indian Government by its Intelligence Service Research and Analysis Wing gave its support to six Sri Lankan Tamil militant organisations. They are the LTTE, Tamil Eelam Liberation Organisation, People's Liberation Organisation of Tamil Eelam, Eelam Revolutionary Organisation of Students, Eelam People's Revolutionary Liberation Front, and Tamil Eelam Liberation Army. The Indian government wants to keep the Tamil independence movement split so that it could impose its direct influence over it by sending armed organisations.

In the end of nineteenth century India got involved more in the conflict. Jaffna was blocked by Sri Lankan Soldiers on June 5, 1987. The Indian Air Force delivered food there and extended its support. India directly supported the LTTE by providing them with tonnes of food and medication into LTTE regions. When the Sri Lankan government was on the urge to defeat the terrorist's movement. Again, on July 29, 1987 the Sri Lankan President Jayewardene and the Indian Prime Minister Rajiv Gandhi signed a Peace Convention named as the Indo-Sri Lanka Peace Convention following compromises. Based on this agreement, the Sri Lankan Government agreed to certain demand of the Tamil. This included the separation of power among the territories and to recognise Tamil as the official language by way of Amendment to the Sri Lankan Constitution. India decided to send the Indian Peace Keeping Force to bring about peace in the northern region and eastern region of Sri Lanka. It said that it would stop supporting Tamil rebels.

By the Indo-Lanka Treaty the Sri Lankan Government was able to send its forces to the South to put an end to the protests. Subsequently to control most of the Northern Regions of the nation. The LTTE refused to remove its rebels. But the other Tamil militants were ready remove their arms and for peace talks. Sri Lankan Government wants the Indian Peace Keeping Force agreement to be successful. So the Government dismissed the LTTE and put an end to their battle. This made several allegations against the Indian Peace Keeping Force like engaging in unlawful activity and violation of human rights. Tamils and even the Sinhalese objected to IPKF's which insisted that the Sri Lankan Government should ask India to leave the country. To evict the Indian Peace Keeping Force from Sri Lanka both the Tamil

National Army and the Ranasinghe Premadasa party ordered the Sri Lankan Army to secretly support by delivering arms and weapons to the LTTE. Prime Minister Rajiv Gandhi said that the Indian Peace Keeping Force should remain in Sri Lanka though there will be certain losses. But after he lost in the Indian parliamentary elections in December 1989, the new Prime Minister V.P. Singh issued an order for the Indian Peace Keeping Force to leave Sri Lanka and they did so on March 24, 1990. Many Indian soldiers and Sri Lankans died during the IPKF's 32-month deployment in Sri Lanka. This is the reason which led to the Sri Lankan refugees to apply for refugee status in India and other countries. In 1991, Mr. Rajiv Gandhi was assassinated by a suicide bomber and it was said that the LTTE leader Prabhakaran was responsible since he opposed to the IPKF. After this incident India kept silent and watched the conflict in Sri Lanka from a distance.

Attack by the LTTE on all category of people began at the same time. The LTTE took control over several locations after India left and withdrew the Indian Peace Keeping Force from Sri Lanka. At last, both the LTTE and the Government came forward to cease-fire agreement. LTTE targeted mostly the Muslims and they were forced to leave their country asking protection in other countries. In May 1993, Ranasinghe Premadasa was assassinated which was considered as a great victory for the LTTE. This resulted in the attack by the army and resulted in loss of many lives.

When the new government assumed power in the leadership of Chandrika Kumaratunga, she initiated peace compromise but it failed. Many attacks were carried out by the Sri Lankan government against the Tamils after this. The Government of Sri Lanka conquered Jaffna and closed the other areas of the Sri Lankan Island. This was another major reason for many people to leave Jaffna including many soldiers, rebels, civilians and refugees. Few of them were Internally Displaced Persons and returned to Jaffna after few years when the situation calmed down. This was the main reason for refugees to go out of their country to avoid war and loss of life.

According to report of Human rights, more than million Sri Lankans were internally displaced, living in camps, homeless, and fighting to live. In the meantime, Norway came to have talks with both the Sri Lankan Army and LTTE to resolve the issue by arbitration. At first the peace talks went well but later the Government imposed its control of parts of northern region and attacked the LTTE. There was international pressure for the LTTE to come to peace talks and to settle the dispute.

Norway as a mediator kept on observing the situation and the talks that were held between the Government and the LTTE. Some demands were made and the LTTE decided to give up their demand for a separate state which was an important one in the history of Civil War. During the peace talks the government started to impose taxes, smuggling weapons were done and ammunition, many soldiers were hired and involved in killing many Tamils. LTTE established its place at the Trincomalee

Harbour and the eastern province of Sri Lanka. In 2003 the talks ended because LTTE was not satisfied with the Government since they continued to attack the Tamils and violated human rights. The LTTE decided to have its own peace application and asked for an Interim Self-Governing Authority (ISGA). The ISGA was under the control of the LTTE in the north and east of Sri Lanka. The Government was provoked by this and they started to attack from all sides including their political party. Prime Minister declared emergency and banned all the three agencies including the Interior and Mass Media agencies. This Government lost in the upcoming election and Mr. Mahinda Rajapakse became the Prime Minister of Sri Lanka.

There was an increased attacks and many people died and the conflict between the Sea Tigers and the Sri Lankan navy increased. They started targeting the common people. The LTTE also starting attacking the people and kept bomb in public places like buses and trains. The violence increased and the LTTE was called as terrorist organisation by the European Union. The non-stop violence between the Sri Lankan Army and the Tamil insurgents demanded the need for an international enquiry by the Human rights Council which was addressed by the United Nations experts. The massacre of hundreds of Sri Lankan civilians caught in the crossfire of clashes between the army and separatist Tamil rebels over the weekend outraged UN Secretary-General Ban Ki-moon. He expressed grave worry about the continuous deployment of heavy weapons in the war zone, but he also emphasised that "thousands of people remain trapped in the area due to the LTTE's reckless disregard for the safety of civilians."

The UN Security Council strongly condemn the Liberation Tigers of Tamil Eelam (LTTE) for its acts of terrorism over a number of years, and for its continued use of civilians as human shields and acknowledged the legitimate right of Government of Sri Lanka to fight against terrorism.

After 3 decades of war, on May 2009 the Sri Lankan government declared that the war has ended by the killing of the LTTE leader, Prabhakaran. However, the Tamil People all over the world held protested against the Sri Lankan Government and the war in general. The Sri Lankan Government celebrated its victory and assured that the Internally Displaced Person in Sri Lanka would be relocated in the country according to their will but no mention about the refugees who fled to various nations.

In the meantime, the United Nations Human Rights Commission drafted a Resolution on "Promoting reconciliation, accountability and human rights in Sri Lanka" and requested its United Nations High Commissioner for Refugees to conduct a detailed investigation into alleged serious violations and human rights abuses that have taken place during the Civil War. Subsequently, the Human Rights Commissioner directed the setting up of Office of the High Commissioner for Human Rights Investigation in Sri Lanka.

The Sri Lankan State was accused of committing War Crimes, refused to cooperate with the inquiry. The State rejected entry visas for the investigating U.N.

officials. Later the Sri Lankan Government banned all foreigners from visiting the former War Zone altogether.

Allegations of war crimes have been made against the rebel Liberation Tigers of Tamil Eelam and the Sri Lankan Military with much attention given to the final stage of the Civil War in 2009. The alleged War Crimes include attacks on civilians and civilian properties by both sides, executions of combatants and prisoners on both sides, enforced disappearances by the Sri Lankan Military and paramilitary groups backed by them. There were acute shortages of food, medicine, and clean water for civilians trapped in the War Zone. Attacks were done against children and civilian including suicide bombings and attacks on Civilian Aircraft by the Tamil Tigers.

Genocide has been alleged against the Sri Lankan Army and the LTTE and the investigation is still pending. Jaffna and many parts of Sri Lanka where Tamil people live is still under the control of the Sri Lankan Army.

Even after the end of Civil War the claim of Tamil minorities were not considered. Steps have been taken by India to build houses in Jaffna for minority Tamilians in Sri Lanka by the Memorandum of Understanding which was signed earlier. These houses aim to support the resettlement and rehabilitation of Internally Displaced Persons of Sri Lanka. However, the Refugees are still reluctant to come back to Sri Lanka fearing their life would be in danger. Further they are not given Citizenship in Sri Lanka, and they continue to live as Stateless people.

India is the country which has major refugees from Sri Lanka not only being neighbouring country but also that Tamil people live in Tamil Nadu with a hope to get citizenship rights in India, they have fled to India to get asylum.

The above is the timeline of incidents that occurred in Sri Lanka from the day on which Sri Lanka got independence, announcement of the Ceylon Citizenship act, discrimination of the Tamils in Sri Lanka, the outbreak of Civil War, the consequences of the War, peace talks and the end of civil war has been chronologically given. The aftereffect of the War is also time lined till date.

2.4 Refugee Protection Under League of Nations and United Nations Organisation:

The International refugee law started during the period of League of Nations after the Russian revolution, 1917 and the first world war. Majority of people from Russia, Armenian, Assyrian, and other European people moved from their country

to other neighbouring countries fearing persecution²³. There were no travel documents, and many states did not give asylum to these refugees. Therefore, in the year 1921, the League of Nations appointed Nansen as the High commissioner for Russian Refugees. The council proposed that the League of Nations and the ICRC should address the issue of refugees. Later in the year 1922, a conference was conducted by the Nansen council in Geneva for the issuance of International Travel Documents to the refugees. The League of Nations defined the term refugee stating that to qualify for refugee status, the applicant must be outside the state territory and without the protection of their state of origin. Those persons who were displaced were denied *de jure* protection by their state of origin received refugee protection²⁴. The Procedure relating to the Issue of Identity certificates to Russian and Armenian Refugees, 1926 extended to Turkish, Assyrian, Assyro-Chaldean and assimilated refugees. This helped the legal status of Russian and Armenian Refugees. In 1933, Convention relating to the International Status of Refugees was organized for the protection of refugees and this served as the first step for the 1951 Refugee Convention. The Intergovernmental Committee on Refugees (IGCR) was another instrument which was adopted by a resolution in 1938 and came into force during the period of League of Nations. The German nationality was denied for the Nazis and jews and their systematic suppression forced many Jews to flee out of Germany. This led to the International Community to develop a Convention regarding the Status of Refugees, 1938 coming from Germany. It extended to refugees who were deprived of nationality both in law and in fact.

An International Conference on Refugees at Evian in 1938 was called by President Franklin Roosevelt outside the formal framework of the League of Nations. Protection of refugees was extended to would-be refugees inside the country of potential departure. A rational body of refugee protection principles and regulating standard did not arise until the establishment of the United Nations Organisation.

2.4.1 Refugee Protection Under United Nations:

After the Second World War there were massive displacement of millions of Europeans. At first the international community treated the refugee crisis as an emergency and followed the previous practice of adopting temporary measures. In this regard, the UN Relief and Rehabilitation and Administration (UNRRA) was established in 1944 to provide refugee protection. This organisation helped many refugees to return to their state of origin by repatriation.

²³ P. Nygh, “Refugees”, Encyclopaedia of Public International Law, 1985, 454

²⁴ G.S. Goodwin-Gill, *The Refugee on International Law*, 2nd edition, Clarendon Press, 1996

The next important move for the refugee protection taken by the UNO was the establishment of International Refugee Organisation (IRO) in the year 1946. It was a temporary specialised agency of the UN. IRO was assigned with the legal and political protection of persons who were its concern. In some respects, assumed the role of a supranational agency²⁵. IRO also continued the work of the UNRRA. After resettling over 10,00,000 refugees all over the world, the IRO was terminated in 1952. It was superseded by the United Nations Office of the High Commissioner for Refugees.

2.4.2 United Nations High Commissioner for Refugees:

The Human Rights Commission expressed its view to the United Nations Organisation to protect the Refugees. Further the United Nations General Assembly adopted the Universal Declaration of Human Rights which recognised that everyone is equal and have the right to nationality and no one can be deprived of it²⁶.

Based on the above Resolutions and the view of the Human Rights Commission, the Economic and Social Council requested the United Nations Secretary General in consultation with other commissions and specialised agencies for protection of the existing status of Stateless persons and to study the National Legislation and international agreements for stateless and refugees. Based on the above recommendations and the earlier conventions and IRO functions, the ECOSOC appointed an Ad Hoc Committee on Refugees and Stateless persons on 8th August 1949 to deliberate the desirability of preparing a consolidated and revised Convention Relating to the International Status of Refugees and Stateless persons²⁷. After submission and revision of the Draft Convention, the United Nations General Assembly decided to convene a conference in Geneva to complete the drafting and to sign the Convention Relating to the Status of Refugees on 14th December 1950. Further regarding the protection of Refugees, the UN General Assembly decided to establish the Office of High Commissioner for Refugees and the same was adopted on 14th December 1950.

2.5 1951 Refugee Convention:

This was the first convention which was entered into in the year 1951 and it is called the 1951 Convention on the status of Refugees and its 1967 protocol are the important landmark in the history of refugee law. Based on Article 14 of the Universal Declaration of Human Rights, 1948 which recognized the right of person

²⁵ Global Governance: A Review of Multilateralism and International Organizations 345-360.

²⁶ Art.15, UDHR, 1948

²⁷ ECOSOC Res.248(IX) B, “Study of Statelessness”, 8-8-1949.

to seek asylum from persecution in other countries, the United Nations Convention on the Status of Refugees was adopted in 1951²⁸. The Convention entered into force on 22 April 1954, and only one amendment was made in the form of a 1967 Protocol, which removed the geographic and temporal limits of the 1951 Convention.

The reasons behind the convention were that after the Second World War the person fled from one country to another especially within Europe. Hence it was necessary to bring the convention for refugees and for progressive development of International Human rights law. A refugee, according to the Convention, is a person who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.²⁹

Around 149 countries were parties to the 1951 Convention who have signed and ratified the conventions. There are 46 Articles in the convention.³⁰ The Convention were to be applied to those who seek asylum without any discrimination on Religion, Race, nationality or political groups. And as development took place in human rights the convention also insisted that it should be applied without any discrimination on sex, age, disability, etc.

The Convention also insisted that the refugees should not be penalized for illegal entry except on any specific circumstance. It means they are free from immigration rules. The convention was more protective to the refugees because it contains various safeguards against the expulsion of the refugees. It provides that no one shall expel a refugee against his or her will i.e. non refoulement, in any manner whatsoever, to a territory where he or she fears threats to life or freedom. Further the convention lays down the basic standards for the treatment of refugees, without bias to States granting more beneficial treatment. Such rights include access to the courts, primary education, work, and the provision for documentation, including a refugee travel document in passport. However, the convention does not apply to persons who have committed war crimes or serious political crimes and seek asylum in another country³¹. Furthermore, the Convention also does not apply to those refugees who get benefit from the protection or assistance of a United Nations agency other than United Nations High Commissioner for Refugees.

²⁸ United Nations General Assembly resolution 429(V) of 14 December 1950,

²⁹ For the purpose of the present Convention the term “Refugee” shall apply to any person who: “Has been considered a refugee under the arrangements of 12 May 1926 and 30 June 1928 or under the convention of 28 October 1933 and 10 February 1938 the protocol of 14 September 1939 or the constitution of the international refugee organization”.

³⁰ Convention and Protocol relating to the status of refugees, 1951

³¹ Article I Section F of 1951 Refugee Convention.

The convention gives certain basic rights to the refugees like the right to be protected from expulsion. Further more rights are also granted to the refugees like the right not to be expelled, except under certain, strictly defined conditions (Article 32); The right not to be punished for illegal entry into the territory of a contracting State (Article 31); The right to work (Articles 17 to 19); The right to housing (Article 21); The right to education (Article 22); The right to public relief and assistance (Article 23); The right to freedom of religion (Article 4); The right to access the courts (Article 16); The right to freedom of movement within the territory (Article 26); and The right to be issued identity and travel documents (Articles 27 and 28).³² Refugees are required to abide by the laws and regulations of their country of asylum and accept measures taken for the maintenance of public order.

Article 31 acts as a safeguard for the refugees as it prevents the contracting states from imposing any punishments on the outcasts on the virtue of the refugees unlawful entry who are specifically coming from an area where their life and freedom was debilitated. Article 33 of the Convention Relating to the Status of Refugees says about the procurement of non-refoulement where the contracting states cannot remove or send back the refugees to the country of origin where their life or freedom is in danger. The expulsion of the refugees can be done only on the grounds of national security or public order.

Protecting refugees is responsibility of the states where they seek asylum. This can be done in their own way by appointing central authorities or individual assessment, etc. United Nations High Commissioner for Refugees has been assigned to assist the states in this regard and to establish such procedures³³.

In the case of FER17 vs Minister for Immigration³⁴, Citizenship and Multicultural affairs, the petitioner was Tamil Sri Lankan whose parents are from Sri Lanka but he was born in India and never been to Sri Lanka. He had applied for Asylum to the Immigration Assessment Authority in Australia (IAA) and the IAA concluded that he was entitled to apply to have Sri Lankan citizenship and hence his protection claim was accepted as Sri Lankan National. On appeal the primary judge held that his nationality cannot be confirmed unless he is registered as a Sri Lankan citizen. On Second appeal the Full Court of the Federal Court of Australia held that nationality refers to a status actually and presently held by a person. The court declined to make findings on the same. United Nations High Commissioner for Refugees is authorised by the United Nations General Assembly to seek International protection and permanent solutions for refugees. It also has the obligation to supervise the implementation of the 1951 Convention by States Parties.

³² The 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

³³ <https://www.unhcr.org/1951-refugee-convention.html>

³⁴ FCAFC 106, 24 JUNE 2019

States Parties are required to cooperate with United Nations High Commissioner for Refugees and provide relevant information and statistical data. United Nations High Commissioner for Refugees role is to help the States to protect the refugees, to promote accession and implementation of refugee conventions and laws. It is the duty of the United Nations High Commissioner for Refugees to ensure that refugees are treated in accordance with internationally recognized legal standards and to grant asylum and not forcefully send the refugees outside the country. The United Nations High Commissioner for Refugees administers the funds for assistance to Refugees which it receives from both public and private sources³⁵. Hence the state must cooperate with the United Nations High Commissioner for Refugees in all aspects of the protection of Refugees.

When a State assents to the 1951 Convention:

1. It demonstrates its commitment to treating refugees in conformity with internationally recognised legal and humanitarian norms³⁶.
2. it provides a safe hand for refugees³⁷; and
3. it helps to avoid inter-state conflict over refugee issues. Asylum is a peaceful, humanitarian, and lawful act, not a hostile gesture, and should be perceived as such by the refugee's home nation³⁸.
4. it shows that it is willing to share responsibilities for refugee protection³⁹.
5. It aids "United Nations High Commissioner for Refugees" in mobilising worldwide support for refugee protection⁴⁰.

2.6 1967 Protocol to the Refugee Convention:

The protocol is an International Treaty and has been read along with the 1951 Convention. The 1967 Protocol removed the Refugee Convention's progressive and geographical restrictions so that the Convention is applied universally⁴¹. Article 1 of the Protocol says that countries that ratify it agree to abide by the Refugee Convention as well – even if they are not a party to it. This implies that the protocol is obliged to treat the refugees with principles of legal and human rights. The protocol applies to all states that have accepted, signed and adopted the Convention.

³⁵ Article 10, "United Nations High Commissioner for Refugees" Statute, 1950

³⁶ 1951 Refugee Convention

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

⁴¹ "The 1967 Protocol", Andrew & Renata Kaldor Centre for International Refugee Law.

The protocol was signed by the countries on January 31st, 1967, and came into enforcement on 4th October 1967 and was ratified by around 146 countries. There are 11 Articles in the Protocol. The articles discusses the general provisions and permission to refugees and countries for settlement of disputes, cooperation among the states, etc⁴².

The State parties have the duty to collect information and statistical data on refugees who have migrated from their country seeking asylum in the countries which are party to the Protocol. The State should provide details on how the refugees are treated, implementation of the protocols and what are the laws and regulations that has been passed relating to the refugees in their Municipal Law. The State parties submits the report regularly to the “United Nations High Commissioner for Refugees”.

Article 2 of the Protocol provides that the state must co-operate with the United Nations High Commissioner for Refugees in providing the statistical data like the conditions of refugees, implementation of the present Protocol, Laws and Regulations relating to Refugees, etc⁴³.

Article 3 of the Protocol provides that the state parties should convey to the Secretary General of the United Nations Organisation on the rules and regulations that have been adopted in the application of the Protocol⁴⁴.

Article 4 says that any dispute arising out of the Protocol the State Parties should try to settle the disputes and in case settlement could not be arrived at then they can approach the International Court of Justice⁴⁵.

Article 5 of the Protocol states that the present Protocol shall be open for accession i.e., addition on behalf of all States Parties to the Convention and of any other State Member of the United Nations Organisation or members of any of the specialized agencies or to which an invitation to agree may have been addressed by the General Assembly of the United Nations Organisation. Accession shall be modified by the deposit of an instrument of accession with the United Nations Secretary General.

⁴² <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees>

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

Article 6 of the protocol deals with the federal clause. Article 7 is about Reservations and Declarations. Article 8 refers to how the State Parties Entry into Protocol and Article 9 on Denunciation by the State Parties.

Article 10 is about the Notification rendered by the Secretary General of the UNO from time to time and Article 11 states that a copy of the protocol shall be deposited in the archives of the Secretariat of the UNO.

In the case of Chalal vs UK (1996)⁴⁶, Karmajit Singh Chalal, a Sikh from India entered UK as an illegal migrant in the year 1971. After some time, his wife also joined him. His two children were born in UK. In 1974, he applied to the UK government to legalise his stay and grant indefinite leave to remain under the terms of Amnesty for illegal entrants which was granted. Later Chalal became a leading Sikh militant in United Kingdom. He was arrested in the year 1985 on suspicion of involvement in a conspiracy to assassinate the then Indian Prime Minister, Mr. Rajiv Gandhi during his visit to United Kingdom. Hence in the year 1987, Chalal was sentenced to imprisonment. In 1990, the Home Secretary thought that Chalal was a threat to National Security of United Kingdom, and he must be deported back to India. But Chalal defended that he will undergo torture if he was deported back to India. The court after considering the facts and circumstances of the case, it was held that Chalal was at risk of ill treatment in Punjab region of India and his deportation to India is violative of Article 32 and 33 of the Refugee Convention, 1951.

In Ahmed vs Austria⁴⁷, the applicant, a Somalia nation arrived at Austria in the year 1990 because of Civil war in Somalia. He applied for asylum, and he was granted refugee status as per the Refugee convention, 1951. But in the year 1993 he was sentenced to imprisonment for two and half years for attempt to robbery and was served with expulsion order. He was compelled to forfeit his refugee status and the expulsion order was declared as lawful by the Austria Government. The applicant approached the court and contended that he will face inhuman treatment in Somalia if expelled. The court held that by granting the applicant refugee status it is clear he would be subjected to persecution in Somalia. Further the Court held that the Civil War has not ended in Somalia and hence expelling the applicant amounts to violation of Article 32 and 33 of the Refugee Convention, 1951.

2.7 Refugee Protection Under Regional Instruments:

There are various regional organisations which have been developed and broadened the scope of the definition of Refugees and their protection.

⁴⁶ 23 EHRR 413

⁴⁷ ECHR Application No. 25964/94, 17 December 1996

2.7.1 Bangkok Principles. 1966:

In 1964, the Asian-African Legal Consultative Committee (AALCC) was formed to consider the question of Status and treatment of refugees. AALCC is an intergovernmental body which emerged as an outcome of the historic Asian and African conference held in Bandung in 1955. It is an Advisory body to the member government on legal matters. The Office of the UN High Commissioner for refugees also participated in many of the session of AALCC. In its eighth session in Bangkok, final report of the Status and treatment of refugees was submitted and adopted. The committee clarified regarding the functions and its advisory character. Further, it gave clear definition of refugee and formulated the principles regarding the right of asylum, rights and obligations of refugees and their treatment in the state of asylum. The committee gave freedom to the member states to decide on whether to enter into multilateral treaties or bilateral agreements and to formulate the principles in the municipal laws of the country.

The definition of Refugee under the Bangkok Principles is broad when compared to the 1951 Refugee Convention. The definition includes person fleeing persecution for reasons of colour, ethnic origin, and gender in addition to the five traditional grounds of the 1951 Refugee Convention. It also includes persons fleeing “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of their country of origin”⁴⁸.

The Bangkok principles consists of 11 Articles. The Articles discusses on the right to seek and enjoy asylum, non-refoulement of refugees, minimum treatment of refugees, not to expel or deport refugees except under security reasons and evidence proves the same, the refugee has the right to get back to his country, Voluntary Repatriation. Further the principles give solutions for refugee crisis also says that the State has to pay compensation where he is unable to return to his/her country. The Rights and Obligations of the Member States and the refugees are also stated in the Bangkok principles. In terms of Bangkok Principles, a person who was outside of the state of which he is a national or the country of his nationality, or if he has no nationality, the State if which is a habitual resident, at the time of the events mentioned above and is unable due to well-founded fear thereof to return or to avail himself of its protection shall be considered a refugee⁴⁹. Further, the lawful dependents of a Refugee shall be deemed to be Refugees.

⁴⁸ Merrill Smith, “Bangkok Principles on the Status and Treatment of Refugees”, 2011

⁴⁹ AALCO, Bangkok Principles on the Status and Treatment of Refugees (“Bangkok Principles”), 31.12.1966.

2.7.2 OAU Convention,1969:

After Africa got independence, many states of Africa faced challenges of the nation development along with the necessity to protect, assist the refugees and displaced persons of wars and struggle against the apartheid in South Africa. Hence to resolve the issue faced by the huge population, the Organisation of African Unity (OAU) was enacted in 1969, to govern the Specific Aspects of Refugee Problems in Africa which came into force in 1974. It is a regional legal instrument governing Refugee problems in Africa.

The OAU Convention expanded the refugee definition giving improvement to the definition that was laid down in 1951 Refugee Convention. Refugee definition of OAU Convention applies to every person who owing to external aggression, occupation, foreign domination and events seriously disturbing public order in either part or whole of his country of origin or Nationality. He is compelled to leave his place of habitual residence in order to seek refuge or asylum in another place outside his country of origin or Nationality⁵⁰.

There are 15 Articles in OAU convention. The major significant advantages of the OAU Convention are,

- Discrimination against refugees is prohibited on the additional grounds of members of social group, nationality, or political opinion.
- Prohibiting the Refugees and Asylum Seekers from engaging in revolutionary activities against the member states.
- Co-operation among the member states and peaceful and humanitarian law in granting asylum to the individuals who come under the definition of refugee under OAU convention.
- Refoulement is limited to refugees committing serious crimes and is not absolutely prohibited.
- The principle of voluntary repatriation was codified and the fundamental change in circumstance and human rights in the country of origin was also considered while returning the refugee to their country of origin.

2.7.3 Cartagena Declaration, 1984:

A regional instrument which was adopted by Latin American countries for the protection of refugees was the Cartagena Declaration. It was adopted in 1984 and was signed and ratified by 10 Latin American countries. The declaration was adopted and incorporated in the national laws of the 10 Latin American countries

⁵⁰ Art.I(2) of OAU Convention governing the Specific Aspects of Refugee Problems in Africa,1969

and state practices of those countries. Cartagena declaration also gave an extended definition for Refugees. Refugees are persons who have escaped their country because their lives, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order⁵¹. This definition provides for protection of refugees from all kinds of situational or group-based dangers. The definition given by the Cartagena declaration is much broader than the previous definition of 1951 refugee convention and the OAU Convention. It contains two requirements, namely,

1. that there exists a danger to life, liberty, or security.
2. That the threat is the result of one of the five factors:
 - a) Foreign aggression
 - b) Generalised violence
 - c) Massive violation of Human rights
 - d) International conflicts
 - e) Serious disturbances of public order

The 1984 Cartagena Declaration, therefore, successfully prevented the introduction of a parallel legal status in Central America by bringing those forced migrants who did not fall under the 1951 Refugee Convention within the purview of a broader definition that accorded them the same rights and duties enjoyed by Convention refugees⁵². It is not considered as a convention or treaty and is not binding on the OAS States. It has been used as a model for legislation at the national level. The definition under the Cartagena declaration has inspired the domestic refugee legislation and practice of most of the Latin American countries. While some countries have directly imported the definition of the Cartagena declaration others have used it in a different wording⁵³.

2.8 India's Stand on the Above Convention and The Constitutional Provisions Available to Refugees:

As far as India is concerned India is not a party to the 1951 Convention on the Status of Refugees and the 1967 Protocol. However, India is a country which have huge population of refugees. After independence, hosted refugees from diverse countries like Nepal, China, Iran Iraq, Sri Lanka, Burma, Bangladesh, etc.⁵⁴ During the partition of India, people who crossed over the newly formed boundaries between

⁵¹ Conclusion III (3), Cartagena Declaration on Refugees

⁵² J.H. Fischel de Andrade, “The 1984 Cartagena Declaration: A Critical Review of Some Aspects of its Emergence and Relevance”, 2019

⁵³Ibid

⁵⁴ Puneet Pathak, International Humanitarian and Refugee Law, EBC, first edition, 2021

India and Pakistan did not lose their nationalities they were still forced to live as refugees across north India refugee camps served as homes for those who had been displaced due to partition. These refugees automatically became citizens of the newly independent India. The newly formed government faced an unprecedented challenge with the rehabilitation of the partition refugees and that was elevated due to the 1948 war with Pakistan⁵⁵.

The next significant movement of refugees to India occurred almost a decade after partition in 1959 when Dalai Lama, the spiritual as well as the political leader of the Tibetan community fled Tibet and entered India seeking political asylum along with more than 1,00,000 followers. Dalai Lama established his place in Dharamshala and settle there along with the Tibetan refugees. The Tibetan refugees continued to live in harmony with the local Indian groups and as a community⁵⁶.

The next major refugee crisis occurred in 1971 during Bangladesh war of independence when millions of refugees migrated from Bangladesh to India. Most of the Bangladesh refugees settled in the northeastern states such as Assam, Tripura, and Manipur. The local communities and tribal groups in these states have alleged that refugees from Bangladesh and the illegal migrants have led to a change in the social demography of their area, thereby making the locals a minority in their own land⁵⁷.

The next major Refugee crisis occurred when the Civil War broke out in Sri Lanka and around 1,000,000 refugees from Sri Lanka seek asylum in India and settle down in the State of Tamil Nadu⁵⁸.

Though India has not signed and ratified the Convention, India gives asylum to all refugees who seek protection. India has no national refugee protection framework but gives certain policies and privileges to them. In the absence of national legislation, there is no legal basis or defined procedure for the determination of refugee status in India. Therefore, the Refugees are treated as foreigners under the Municipal Laws and are governed by the relevant provisions of the Foreigners Act,1939.

⁵⁵ Barney White Spunner, *Partition: The Story of Indian Independence and the creation of Pakistan in 1947*, Simon & Schuster UK Ltd. London 2017,290

⁵⁶ B.P. Routray, “Tibetan Refugees in India: Religious identity and the forces of modernity”, 2007, 26(2) Refugee Survey Quarterly 79-90.

⁵⁷ P. Das, *Illegal Migration from Bangladesh: Deportation, Border Fences and Work permit*, Institute for Defence Studies and Analyses, New Delhi, 2016

⁵⁸ M.Velamati,” Srilankan Tamil Migration and Settlement Time for Reconsideration”, 2009, 65(3), India Quarterly 271-294

Articles 14, 20, 21, 21A, 22 to 28, Articles 32 and 226 of the Indian Constitution guarantees protection to both citizens and non-citizens except some of the rights like self-employment or access to work is not permissible. Such practices help the refugees too.

The justification that India is not being a party to the Convention is that once it signs the convention it becomes legally bounded. It should accept and acknowledge the refugee obligations of the convention and should adhere to the Principle of non refoulement. Further, if India ratifies the Convention there will be increase in migrant workers and they will try to misuse the convention and avail the Status of Refugees to get better opportunities illegally. India being the Second largest populated country it would become bounded to allow many groups of Refugees from neighbouring countries if the Convention is signed. India fears threat to the National Security of the country by ratifying the Convention. Even though India is not a party to the Refugee Convention, it continues to provide relief to refugees despite it being a non-signatory country⁵⁹.

India is bound by the principle of non refoulement which is the principle of Customary International Law by having acquired the Status of *jus cogens*⁶⁰. According to the principle of non refoulement⁶¹ no country shall deport, expel, or forcefully send the refugee back to his state of origin where there is a threat to their life and liberty. This principle in all stated under the Human Rights Law.

In *Ktaer Abbas Habib Al Qutaifi vs Union of India*⁶², the Gujarat High Court upheld the principle of non refoulement under the broad umbrella of Article 21 of the Constitution of India. It decided not to deport the two Iraqi Nationals to their original country as long as they had fear for their life and liberty. Instead, they were handed over to the United Nations High Commissioner for Refugees in India.

Non-refoulement principle is a peremptory norm and is not dependent on ratification of any treaty or convention for its application⁶³.

Although India is not a party to the 1951 Refugee Convention, it ratified a number of International Human Rights Instruments like the United Nations Declaration on

⁵⁹ SAHRDC. Abandoned and Betrayed: Afghan Refugees under “United Nations High Commissioner for Refugees” Protection in New Delhi (SAHRDC 1999) 461

⁶⁰ Guy S. Goodwin-Gill, “The Refugee in International Law”, 2nd Edition, Clarendon Press, Oxford 1996, 167.

⁶¹ Article 33, 1951 Refugee Convention

⁶² 1998 SCC OnlineGuj 304: 1999 Cri LJ 919, para.3

⁶³ Puneet Pathak, International Humanitarian and Refugee Law, EBC, first edition , 2021, page 263

Territorial Asylum, 1967 providing Asylum to all who seek protection in India, The Universal declaration of Human Rights, 1948 where Article 14 states that everyone has the right to seek and to enjoy in other countries asylum from persecution, International Covenant on Civil and Political Rights, 1966 where Article 13 recognises the right of everyone to education. State recognised refugees enjoy all of the human rights recognised under these international treaties⁶⁴.

India is also signatory to the 1989 Convention on the Rights of the Child which provides for protection and humanitarian assistance to refugee children. This is provided under Article 22 of the Convention on the Rights of child. The International Convention on the Elimination of Discrimination against Women, 1979 also contains provisions relevant to the protection of State recognised Refugee

Women⁶⁵. Further the Convention against Torture and other Cruel Inhuman and Degrading Treatment Punishment, 1984 to which India is a party yet to ratify contains the principle of non refoulement under Article 3⁶⁶. India is also party to the Principle on the Status and Treatment of Refugees also known as the Bangkok principle, adopted by intergovernmental agreement by the Asian African Legal Consultative Committee in 1966 which states that “save in the national or public interest, the state shall not expel a refugee” and further that refugee shall not be deported or returned to a State or Country where his life and liberty would be threatened for reasons of race, colour, religion, political opinion or membership of particular social group”⁶⁷.

As already stated, India is not a party to the Refugee Convention and Protocol. Hence there is no legal binding on India for the determination of Refugee Status. However, these Refugees can be treated as Foreigners and certain acts like the Foreigners Act, 1939; Passport Act, 1920; the Passports Act, 1967 and the Extradition Act, 1962 are applicable to the refugees.

2.9 Constitutional Provisions Available to Refugees:

India has not specific legal framework for the protection of Refugees but guarantees certain Fundamental Rights under Part III of the Constitution of India. They are:

- Article 14 – Legal equality and Equal protection under the law.
- Article 20 – Protection for conviction for offences.
- Article 21 – Right to Protection of Life and Liberty

⁶⁴ Ibid

⁶⁵ United Nations, Treaty Series, Vol.1249, page 13

⁶⁶ United Nations, Treaty Series, Vol. 1465, Page 85

⁶⁷ Article VIII, Expulsion and Deportation

- Article 21(A) – Right to primary education
- Article 22 – Protection against arrest and imprisonment in certain circumstances
- Article 23 – Prohibition of human trafficking and forced labour.
- Article 24 – Prohibition of child labour in factories.
- Article 25 – Freedom of conscience and free profession, practice, and propagation of religion.
- Article 26 – Freedom to manage religious affairs.
- Article 27- Freedom from payment of taxes for promotion of any religion.
- Article 28 – Freedom from religious instruction or worship in certain educational institutions⁶⁸.
- Article 32 - The Right to move Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed⁶⁹.
- Article 226 - Power of High Courts to issue certain writs – “Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the Rights conferred by Part III and for any other purpose”⁷⁰.

Article 51(c) requires “the state shall endeavour to foster respect for international law and treaty obligations. Even though, India is not a party to the 1951 Refugee Convention and 1967 Protocol the rights of the refugees are protected by the provisions made in the constitution”⁷¹.

The Supreme Court of India and various High Courts have embraced the Principles of Natural Justice to Refugee issues. It is being the acknowledgement of United Nations High Commissioner for Refugees as assuming significant part in the assurance of Refugees⁷². In Maganbhai Ishwala Patel vs. Union of India⁷³, it was held that “Making of law is vital when an arrangement or understanding. It works to limit the privileges of the nationals or others or alters the law of the state. On the off chance that the privileges of the nationals or others which are reasonable are not

⁶⁸ Narender Kumar,” Constitutional Law of India”, Allahabad Law Agency, 2018,10th edition, page 469

⁶⁹ Narender Kumar,” Constitutional Law of India”, Allahabad Law Agency, 2018,10th edition, page 509

⁷⁰ Narender Kumar,” Constitutional Law of India”, Allahabad Law Agency, 2018,10th edition, page 825

⁷¹ Ibid

⁷² T. Ananthachari, “Refugees in India: Legal Framework, Law enforcement and Security”, Vol I, “ISIL Yearbook of International Humanitarian and Refugee Law”,2001

⁷³ AIR1969SC789

influenced, no authoritative measure is expected to offer impact to the agreement or treaty." Justice Shah relied on Article 253 of the Indian Constitution which gives "power to the parliament that it could make any law either for whole nation or for any part of India to enforce any convention, treaty or agreement done with any of the foreign states". The basic misunderstanding is that Article 253 which enables Parliament to make law for executing any treaty or agreement essentially answers that unless such a statute was enacted the treaty or agreement was bare for being implemented." Justice Shah dismissed this argument stating that "it continued upon a misinterpreting of Article 253. The choice of the court is in this way such that if an international instrument adds to the privileges of the natives, it is enforceable specifically however if it limits the current privileges of citizens, it requires for its implementation, the enactment of a statute"⁷⁴.

If India does not sign the Refugee Convention, the Rights of Refugees will be predicated on India's assertion that it upholds the Universal Declaration of Human Rights. "Everyone has the right to seek and to enjoy in other countries asylum from persecution," according to Article 14 (1) of the Universal Declaration of Human Rights. Comparably, the Rights of Refugees are expressly covered by Articles 13 and 22 of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child respectively. The Foreigners Act, 1946 and the Citizenship Act, 1955 both ignore the refugee problem. Because they are individuals covered by the doctrine of necessity, refugees can be distinguished from other people who either enter the nation unlawfully or live there illegally. In the case of National Human Rights Commission vs State of Arunachal Pradesh⁷⁵, where the Court ruled that "Foreigners would be entitled to the protection of Article 21 of the Constitution and the state government would be required to act impartially and carry out its legal obligations to safeguard the life, health, and well-being of foreigners, there is a legitimate fear of persecution or an obvious and present danger".

The Supreme Court in Khudiram Chakma vs State of Arunachal Pradesh⁷⁶ approved and referred to the UDHR. Article 14 of the UDHR protects the Right to enjoy asylum. It states that even while an asylum seeker is not entitled to enter the foreign country, the state that has granted him asylum and should follow the principles of non-refoulement. Further, the article embodies the legal need of regional declarations and instruments and moral authority.

Though India has not ratified either the 1951 Convention on the Status of Refugees or its 1967 Protocol, it is an undisputable fact that the Indian judiciary has adopted

⁷⁴ "The Somewhat Automatic Integration of International Refugee Conventions in Indian Law"

⁷⁵ 1996 (1) SCC 742

⁷⁶ 1994 (1) SCC 615

the principles of International Law pertaining to Refugees through Article 21 of the Constitution of India. This Article implements the provisions of many human rights Conventions such as the ICCPR, ICESCR, CEDAW, CRC and others. It pertains to refugees, as India has agreed to them. Moreover, the term "refugees" has never been used in any of the provisions of the Foreigners Act, 1946 or other Acts that deal with Refugees in India. As there is no Specific Legislation pertaining to Refugees in India, the Rights of Refugees are protected by the incorporation of International Convention provisions. Article 3 of The Passport Act, 1920 grants the Central Government the authority to establish regulations mandating that individuals entering India must possess a valid passport. If the passport is missing, the Central Government may also prohibit entry into India or any portion thereof. Section 3(2)(b) of the Passport Act specifies the authorities responsible for issuing or renewing passports and the requirements that must be met. "If any contravention is made or any order issued under the authority is not complied with then it shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty thousand rupees or with both," as stated clearly in Section 3(3) of the act. This act is essential since refugees may be held liable if they enter India without a proper valid passport, even though there is no Special Legislation protecting them in that country. Article 31 of 1951 Refugee Convention specifies that contracting states cannot punish the refugees for their illegal status, but in real the refugees suffer a lot by the authorities in the border of the country if they don't possess a valid passport. The Refugees cannot get visa immediately and they have to flee their country to save their lives. India has made a constant effort to adhere to the provisions of 1951 Refugee Convention mainly because it maintains the principle of non-refoulement. In the Passport Act, 1967, the Central Government made Rules in 1980, which allowed to issue different Types of Passports. It excluded the Refugees and Asylum seekers from getting passports except when they have the Certificate of Identity to Foreign Nationals in India. The illegal migrants, stateless people, refugees, and asylum seekers are eligible to obtain an Identity Certificate from the Indian Passport Authority by this provision. The Registration of Foreigners Act states that "no Indian Law specifically mentions Refugees, even though the Indian Government claims that its arrangements adhere to International standards". Only that the passport authority may issue a Certificate of Identity to Foreign Nationals whose country is not represented in India, Stateless Individuals living in India, or those whose National Status is uncertain in Part II of the Schedule II under this Rule. It can be deduced from this clause that individuals who are undocumented immigrants, stateless people, refugees, and asylum seekers may be eligible to obtain an Identity Certificate from the Indian Passport Authority. The 1939 Registration of Foreigners Act No Indian law specifically mentions refugees, even though the Indian government claims that its arrangements adhere to international standards.

Since these enactments do not make any distinction between genuine refugees and other categories of aliens, refugees run a risk of arrest by the immigration authorities and of their prosecution if they enter India without a valid passport/travel document.

When a refugee is detained by customs, immigration, or police authorities for commission of any of the offences under the earlier mentioned enactments, he is generally handed over to the police and a First Information Report is lodged against him. According to the provisions of these statutes the refugee may face forced deportation at the established seaports, airports, or the entry points at the international border, if he is detected without valid travel documents. He may also be detained and interrogated pending decision by the administrative authorities regarding his plea for refugee/asylum. A refugee also faces the prospects of prosecution for violation of the Registration of Foreigners Act, 1939 and Rules made there under and if he is found guilty of any offence under this Act, he may be punished with imprisonment which may extend to one year or with a fine up to one thousand rupees or with both. However, in many cases the courts have taken a lenient view in the matter of punishment for their illegal entry or illegal activities in India and, by releasing detainees pending determination of refugee status, staying deportation, and giving them an opportunity to approach the United Nations High Commissioner of Refugees.

Absence of Specific Legislation in India to address the issue of Refugees is great drawback to the Refugees. India is not a party to the Refugee Convention and its Protocol which is the important Legal documents pertaining to Refugee Protection. Further the Foreigners Act, 1946 fails to address the problems faced by Refugees. It gives uncontrolled power to the Central government to expel any Foreign Citizen.

In Gnanaprakasam vs Government of Tamil Nadu⁷⁷, the petitioner came down to India from Sri Lanka seeking asylum. He contended that he lives in India for 25 years and his children were studying in State Government school, but their application of Engineering was rejected on the ground that the children are not Indian citizens. Hence the petitioner approached the High court by way of Public Interest Litigation asking for driving licences, education, bank accounts, movable and immovable properties stating that Article 21 of the Indian Constitution is not executed. The defence of the State Government is that all their basic needs are satisfied and they can have bank accounts in self-help groups inside the camp.

Further the contention of the Government of India is that India is not a party to the 1951 Refugee Convention and 1967 Protocol and hence is not bound to provide immovable properties, driving licence, etc. The Court after considering the facts and circumstances of the case held that the assistance provided to the Sri Lankan Refugees by the Government is in view of Article 21 of the Constitution of India and hence the Writ Petition was dismissed.

⁷⁷ AIR 2015 MADRAS 65

Inspite not being a party to the Refugee Convention, India has many records on the issue of Refugee Protection. India has a ethical tradition for accepting foreign people and culture. Further, the Constitution of India also respects the Right to Life, Liberty and dignity of human beings.

The Supreme Court in National Human Rights Commission vs State of Arunachal Pradesh (1996)⁷⁸ held that “while all rights are available to citizens, persons including foreign citizens are entitled to the right to equality and the right to life, among others.” In this case the petitioner filed a Public Interest Litigation to enforce Article 21 of the Indian Constitution for about 65,000 Chakma tribals in the State of Arunachal Pradesh. In 1964, due to a Power Project the Chakmas were forced to leave Bangladesh. So, they sought protection in various parts of Tripura and Assam in India. After their continuous stay in these States of India, most of them finally applied and obtained Indian Citizenship. Since many Refugees had taken up their residence in Assam, the State Government could not give domicile and protection to all and had asked for the help of several other States in and around this area to accommodate the Chakmas. With the cooperation of the NEFA administration (Northeast Frontier Agency, which is now called as Arunachal Pradesh) many refugees were resettled. The family of these people were given Rs.4200/- per month as remuneration. To grant Citizenship to the Chakmas was periodically considered by the Central Government. The Minister of State for Home Affairs on multiple occasions had stated the necessity for the same. Chakma groups have informed the petitioner that they have applied for Citizenship under Section 5(1)(a) of the Citizenship Act, 1955 but they have not received a response from their local Deputy Commissioners. The Arunachal Pradesh peoples and the Chakmas was always on a bad relations and it got worse as cold war. The Chakmas say that they are being exposed to cruel methods by the people as well as the Government with the intention to forcibly expel them from the of State of Arunachal Pradesh. Coming to know about the situation and on receiving complaint on September 9, 1994 by the People's Union for Civil Liberties, Delhi. the National Human Rights Commission wrote a letter to the Chief Secretary of Arunachal Pradesh and the Home Secretary of the Government of India, asking them to investigate the regarding any human rights violation. The Arunachal Pradesh Chief Secretary replied stating that the situation was under control and that the Chakmas are given police protection. The Committee for Citizenship Rights of the Chakmas also lodged a complaint about the harassment faced by the Chakmas with the National Human Rights Commission on October 15, 1994. The National Human Rights Commission after considering the complaints took the case seriously and, on October 28, 1994 sent letters to the State Government and Central Government to submit their reports on the issue raised by the complainants.

⁷⁸ 1996 AIR 1234

In a letter to the Petitioner dated November 22, 1994, the Ministry of Home Affairs stated that it has planned to award Citizenship to the Chakmas. Further it was mentioned that the State executive has given instructions to provide security and safety of the Chakmas and in case of any threat the Central Reserve Forces will take action. The National Human Rights Commission instructed the Government to consider its measures for safeguarding and protecting the Chakmas in the State of Arunachal Pradesh. The National Human Rights Commission approached the Court to get the necessary reliefs as it believed the State Government of Arunachal Pradesh was prolonging the issue and that it was uncertain whether its efforts would be enough to support the Chakmas in their natural environment. On November 2, 1995, the Court issued an Interim Order directing that “the State Government to ensure that the Chakmas situated in its territory are not ousted by any coercive action, not in accordance with law. The court held that the Union of India should provide additional force to protect the lives and liberty of the Chakmas, and the State of Arunachal Pradesh should guarantee that every Chakma living within the State will have their personal liberty and life protected, and any attempt to forcibly evict or drive them out of the State by organized groups, such as the AAPSU, will be prevented. Further, the Chakmas shall not be forced to leave their homes and shall not be denied domestic life. The State Government of Arunachal Pradesh should handle the AAPSU's and any other group's ultimatums and quit notices that constitute threats to the life and liberty of every Chakma in accordance with the law. The Chakma's application for registration as citizens of India under Section 5 of the Act shall be entered in the register kept for that purpose and forwarded by the Collector or the Deputy Collector who receives them under the applicable rule, with or without inquiry, to the Central Government for its consideration in accordance with the law. Even returned applications will be called back or new ones will be processed and sent to the Central government for consideration. while the application of any individual Chakma is pending consideration, the State government shall not evict or remove the concerned person from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf”.

Further, Article 21 of the Constitution of India incorporates the Right of non-refoulement. Non refoulement is the Principle under International Law. It states that “a person fleeing persecution from his own country should not be forced to return to his own country”⁷⁹.

In the recent past, many people from neighbouring countries tend to illegally immigrate to India. This is in search of better economic opportunities in India. When

⁷⁹ [https://www.drishtiias.com/daily-updates/daily-news-analysis/legislation-for-refugees#:~:text=The%20discussion%20noted%20that%2C%20though,to%20Life\)%20of%20the%20Constitution.](https://www.drishtiias.com/daily-updates/daily-news-analysis/legislation-for-refugees#:~:text=The%20discussion%20noted%20that%2C%20though,to%20Life)%20of%20the%20Constitution.)

Laws are framed there is a fear that it could be abused by Anti-nationals and Terrorists. It would cause a financial burden on the Country. Absence of Legislation has given option to India to declare the Refugees as illegal migrants.

This in the case of Rohingya who are Stateless, Indo-Aryan ethnic group. They reside in Rakhine State, Myanmar. Despite the United Nations High Commissioner for Refugees Certificate of Identity, the government decided to deal with them as intruders under the Foreigners Act.⁸⁰

There is a need for a law on Refugees in India because India has constant inflow of refugees in huge number every year. Hence there is a need for a long-term solution for India. It should change from its generous approach to a Rights-based approach by enacting a National Refugee Law. This Law will help to improve the status of the Refugees and it will guarantee them the Rights they have under International Law. This can be done after considering the security of India and ensuring that there is no unlawful detention or deportation carried out in the name of National Security concerns. The large number of the Refugee population in India come from Sri Lanka, Tibet, Myanmar, and Afghanistan and so on. As per the Passports Act, 1967 once the Refugee arrives in India, they may get valid Passports and Identity Cards only when the criteria of public interest is fulfilled⁸¹. Under this Act, only Tibetan refugees are recognized by the Government of India. They are provided protection and assistance directly through specific policies. Rules formulated for them by the Government.

India needs a clear Refugee law and judicial interference. To implement international treaty obligations, they are to be incorporated through legislative enactment through a legislative enactment before they formed part of the municipal law. However, Article 253 of the Indian constitution empowers the Indian parliament to make legislation implementing the provisions of an international treaty. The Indian judiciary has relied on rights contained in the international instruments in several decisions even in the absence of their legislative incorporation.

⁸⁰ Puneet Pathak, International Humanitarian and Refugee Law, EBC, first edition, 2021, page 260

⁸¹ Section 20 of Passports Act 1967.

Chapter 3

Comparative Study of Srilankan Refugees with Other Refugees in India

India has many refugees from different countries. The reason for inflow of refugees in India was due to Civil war, India Pakistan Partition, Bangladesh war, Economic crisis, etc. After independence of India, many refugees started to come to India. Firstly, the human dimension of partition which saw the displacement of millions of people has not received sufficient attention from the historians who have confined themselves to an analysis of its cause⁸².

Secondly the ordinary consciousness, the story of partition refugees has come to be separated from that of refugees flows to free India. Recalling and relieving the traumatic passage of partition refugees helps empathize with the problems of refugee population present in India today, who unlike the partition refugees have lost not only their homes but have also been uprooted from their nationhood and culture. Refugees from East Bengal coped with their life situation in the city of Calcutta and the State of West Bengal. Refugees from Tibet, Afghanistan, Sri Lanka also sought asylum in India as refugees.

Newly Independent India not only provided prompt relief to partition refugees and other refugees but also successfully rehabilitated them⁸³. Many laws were passed to deal with all refugee problems.

3.1 Post Independence Refugees:

As already stated, India is not a party to 1951 Refugee Convention. There is no legislation also for refugees in India. However, India has many refugees and protects refugees who seek asylum. In *Louis de Raedt vs Union of India*⁸⁴, The Petitioners, foreign nationals engaged in Christian missionary work have been staying in India continuously for a long time since pre-independence period. They continued to stay based on residential permits renewed from time to time.

⁸² Subaltern studies VIII,” Essays in Honour of Ranajit Guha”, Oxford University Press, New Delhi, 1994, Pg.188

⁸³ R. N. Saxena, “Refugees – A study in changing attitudes”, Asia Publishing House, Bombay, 1961

⁸⁴ (1991) 3 SCC 554

In 1985 an order was passed asking them to leave the country and they made representations to the authorities, followed by further representations in 1986 for naturalisation further extension of stay. However, by order dated 8.7.1987 their request was rejected and they were asked to leave the country by 31st July, 1987. The petitioners challenged the said order in the writ petitions filed before this Court. It was contended by the petitioners that since they were staying in this country for a period of more than five years immediately preceding the commencement of the Constitution, they should be held to have duly acquired Indian citizenship on the basis of Article 5(e) of the Constitution of India; that their continuous stay in India has established their case of domicile in India which cannot be rejected merely because they were holding foreign passports; that proceedings against them have been initiated under section 9 of the Foreigners Act enabling them to defend their case; that they were denied hearing; and that in no event the Superintendent of Police who had signed the deportation order was authorised to do so. The Supreme court held that the government had an absolute right to deport aliens under the Foreigners Act, 1946. Early the Indian courts were rarely approached to determine the obligations of the state with respect to refugees or to pronounce on their rights and duties. Recently courts have been dealing with refugee problems. The Supreme Court Former Chief Justice, J.S. Verma says that this does not obstruct the need for establishing a firm legal framework for the protection, rehabilitation, and repatriation of refugees in India and other countries of South Asia. By his view, the Legislation will provide permanent solution.

3.2 Categories of Legal Status Available to Refugees in India:

Part II of the Indian Constitution states that who are persons qualified as Indian Citizens on the date of the Constitution coming into force from January 26, 1950. According to Article 5, Citizens include everyone who:

“At the time, had his or her domicile in India and had either been born in India or had a parent born in India”; or

“Ordinarily resided in India in the five years immediately preceding the Constitution's entry into force”.

The Constitution does not define the term Citizenship or any process for acquiring Citizenship after its enactment. Rather Article 11 of the Constitution of India gave the Parliament power to regulate Citizenship and Naturalization. Parliament exercised this power immediately after the Constitution came into force, by enacting the Citizenship Act of 1955, which was amended by the Citizenship Amendment Acts of 1986, 2003 and 2019, specifies how a person may acquire and lose Indian Citizenship subsequent to the effective date of the Constitution of India.

Section 3 of Citizenship Act⁸⁵ as amended, governs citizenship by birth. It provides that every person born in India: between January 26, 1950, and July 1, 1987; or

on or after July 1, 1987, but before the enactment of the Citizenship Act of 2003, if one of that person's parents is a citizen of India at the time of his or her birth; or

on or after the enactment of the Citizenship Act of 2003, if both parents are citizens of India, or if one parent is a citizen of India and the other is not an illegal migrant, shall be a citizen of India by birth.

Section 4 was amended and “it governs citizenship by descent. It provides that every person born outside of India: between January 26, 1950, and December 10, 1992, if their father is an Indian citizen at the time of their birth”, or

“on or after December 10, 1992, if either parent is a citizen of India at the time of their birth, shall be a citizen of India. But if the person's parent is a citizen of India by descent only, then that person is not entitled to citizenship unless his or her birth had been registered at an Indian consulate or unless either parent had been in government service at the time of the birth”.

The Citizenship (Amendment) Act of 2003 provides that after its enactment, “a person cannot acquire citizenship by descent unless the birth is registered at an Indian consulate within one year of its occurrence or within one year from the effective date of the Citizenship Amendment Act, whichever is later, or with the federal government's permission.

Section 5 of the Citizenship Act, as amended, provides for citizenship by registration, which is available to; persons of Indian origin, persons married to citizens of India, minor children of citizens, adult citizens of India, and persons registered as overseas citizens of India for five years who have resided in India for the previous two years”.

Section 6, as amended, provides for citizenship by naturalization. “The qualifications for naturalization are set forth in Schedule III of the Citizenship Act. They require that the applicant; not be an illegal migrant, who is stated as a foreigner who has entered India without valid travel documents or has remained beyond the permitted time”. “denounce the citizenship of any other country; reside in India for the preceding twelve months; have resided in India for nine of the twelve years preceding that twelve-month period; have good character; speak one language listed in Schedule 8 of the Constitution; and intend to reside in India”.

⁸⁵ https://indiancitizenshiponline.nic.in/UserGuide/Citizenship_Act_1955_16042019.pdf

The Citizenship Rules of 1956 was amended in 1998. It established further requirements applicable to the registration and naturalization process. “Applicants must attach affidavit. It should have testified by two Indian citizens on the character of the applicant. Has to submit certificates attesting to the applicant's language proficiency and take an oath of adherence to India”

3.3 Refugees from Tibet:

During 1950, China occupied Tibet to liberate Tibet from its economic backwardness of feudal and religious traditions, the effects were devastating. Tibetans were dispatched to labour camps, monks, and nuns were executed or imprisoned, thousands of monasteries and temples were destroyed, and communist propaganda was forced upon the Tibetan people. Many people fled over Himalayas to seek asylum in India. Dalai Lama, Spiritual leader was granted asylum in India and allowed to form a Government in Exile after fleeing in 1959. From 1959 to 1960. Above 80,000 Tibetans came down to India following Dalai Lama through the Himalayas. From then the flow of Refugees to India were more from Tibet for various reasons like trade, culture, etc.

During the 1950s Planned Economic period, the "freedom fighters" were the first group of individuals to obtain land and homes through the Property Acquisition Act. Tibetans with this kind of right are entitled for the Resettlement and Rehabilitation Policy. Between the 1960s and the late 1970s they were given land and a house by the sub-tribes of Tibetans⁸⁶. The Tibetans are divided into three Sub- groups. The first group are refugees who came and sought protection in India. They came to India along with the 14th Dalai Lama.

The second sub group consists of Tibetans who were born to Tibetans who lived in India. About three generations of them have resided in India and was working in Indian society since their rehabilitation and resettlement. After 2018 the number of refugees from Tibet reduced and most of the Tibetan population was born in India. But since they are considered as stateless legally by birth, they vary from other members of the Tibetan migrants in North America, Europe, and East Asia. This group speaks several Indian languages, is well acquainted with Indian food, culture, customs, and social mores, having grown up in Tibetan camps in various states. They are less vulnerable as compared to the other group of Tibetans who moved to India as an adult, for it is easy for them to join or merge in the Indian society – they usually have a complete set of ID documents, valid certificates, and the family support system around them.

⁸⁶ Monpa, Tamang, Qiang, Sherpa and Lhoba peoples

Khampas, or sometimes referred to as ‘Gyagar3 Khampas’, are the third sub- group that refers to the pre-1959 Tibetan immigrants. They were Horse riders and they lived as a community in Arunachal Pradesh even when the other parties of the State were much developed.

In the 1980s, Dalai Lama started his world trip which helped the Tibetan people living in exile in India for obtaining funds, incomes and attention. Religious institutions helped for education facilities, nutrition programs, and humanitarian aid and also basic health requirements for the Tibetans were taken care. Dalai Lama became a well-known religious leader in the world. International resettlement programs and awareness was made for thousands of Tibetans to move from India to various other countries like Switzerland, the US, Canada, and Australia.

The main Tibetan organisation that was established in India was the Central Tibetan Administration which has its head office in Dharamsala in India. And the first Tibetan non-governmental human rights organisation to be established in exile in India was the Tibetan centre for human rights and democracy. This organization enquires and submits reports relating to human rights and the issues faced by Tibetan minorities throughout China.

In 1961 the New Delhi Central Tibetan School Administration was established. The main aim of this organization is to manage and assist schools in India. To give education to Tibetan children in India and also to preserve and promote the Tibetan culture and heritage. While India is not a party to 1951 refugee convention and no legislation for Refugees, the Tibetan Refugees in India are considered as Foreigners under domestic law irrespective of their stay in India. But there are few Tibetan Refugees who have acquired Citizenship in India. At the same time India has also sent back Tibetans for violation of legal obligations of non-refoulement. Tibetan refugees are considered as Foreigners. However, they are restricted to travel freely, to own property in their name, to be qualified for government job, etc.

When Tibetans arrived in India, they were issued three documents. They are the Registration Certificate, Identity certificate and Special Entry Certificates. All these documents must be renewed from time to time.

1. Registration Certificate:

Registration Certificate is issued to the Tibetans who are considered as Foreigners in India. It must be renewed. The Registration Certificate is not a legal right which is given to the holder of the certificate in India. A valid registration certificate removes the barrier of illegal stay in India. i.e. to live in Tibetan settlement and to travel to any place in India. The Tibetans can travel to any countries with this document which is like a passport.

Registration certificate also helps the Tibetans to apply for Bank Loans, Ration cards, Driving Licence in certain States but few States do not provide these services. Only in Maharashtra and Uttarakhand, Tibetans are eligible for ration cards and driving licence but in States like Meghalaya and Sikkim does not provide them ration cards and driving licence. The restriction is more for States which are in the borders of China and Pakistan, they cannot get any cards or even the registration certificate. The registration certificate is issued to only to Tibetans who were born in India and also who have attained the age of 16 years. The Birth Certificate is mandatory for the Tibetan to get the Registration Certificate. If they do not have birth certificate, then 10th marksheets can be considered as proof of the age. As already stated, registration certificate needs to be renewed every time based on the place and date of issue. Application as to be made by the Tibetans to get the Registration Certificate. If they commit any offence, they are liable to be arrested by the police and be forced to leave the country or imposed fine even if they have Registration Certificate since it has no legal binding.

2. Identity Certificate:

Tibetans with registration certificate are eligible to get travel document called the Identity Certificate which allows them to travel Internationally. It is considered as equal to Indian passport but only few countries accept this Identity Certificate as travel document. To get this certificate, the Tibetans should approach the spiritual leader, Dalai Lama with required documents. Once the Identity Certificate is applied and the process is complete, it is sent to the passport office of the Ministry of External Affairs in New Delhi and then it is forwarded to the authorities in the applicant's state of residence. After verifying his place of residence, the Ministry of External Affairs issues Identity Certificate. This Identity Certificate is valid for 10 years and must be renewed regularly. But this Identity Certificate is required for Tibetans only in case of International travel to certain Countries only.

3. Special Entry Certificate:

Special Entry Permits represent a joint proposal of the Indian government and the Central Tibetan Administration. It began in the year 2003. It regulates the Tibetans entering India from Nepal. Tibetans obtain Special Entry Permits in Nepal before they enter India, from the Tibetan Reception Centre in Kathmandu. SEPs ensure Tibetans safe travel from Nepal to India. It ensures that they remain in India for a specified period of time after arrival. For acquiring Special Entry Permits a Tibetan refugee arrives at the Nepal Refugee Reception Centre. The Tibetan government requests the Indian Embassy in Nepal for the Special Entry Permits on behalf of the refugee. Before a refugee is given a Special Entry Permit, the Indian embassy makes background check and identify documents of the refugee provided by the Nepal Reception Centre to make sure the information given are correct.

The different categories of SEPs in 2003 created four Special Entry Permits designations “Refugee, Pilgrimage, Education, and Other, all of which had different inferences for how long the holder would be able to stay in India”.

India has always treated Tibetans born in India during this period as the second generation of Tibetans. They were born to parents who arrived in the years following the Lhasa Uprising. They are foreigners subject to the Foreigners Act and not citizens.

The lack of ability of the Tibetans to get citizenship has not changed in spite of the number of High Court decisions holding that Tibetans born between those years are entitled to citizenship⁸⁷

The High Court of Delhi, issued a decision in Namgyal Dolkar vs Ministry of External Affairs⁸⁸ on December 22, 2010. The petitioner was born in Himachal Pradesh on 13th April 1986. Both her parents were Tibetan Refugees. In the year 2005 she applied for Passport and the Regional Passport Officer; Delhi rejected her application on the ground that her parents are Tibetan refugees. Hence passport cannot be issued to her. She approached the High court of Delhi by way of Writ petition submitting all her Identity cards and the rejected copy of the Regional Passport Office. The Court held that Ms. Dolkar was a Citizen of India under the Constitution of India, which clearly provides that “individuals born in India between January 26, 1950 and July 1, 1987 are citizens of India”. The Court held that “Tibetans born in India during the prescribed dates, despite of their parentage, enjoy birth right citizenship equal to that guaranteed by the Fourteenth Amendment to the U.S. Constitution”.

The High Court directed the Government of India to pay Ms. Dolkar 5000 rupees within one month from the Date of Order but it took five months for the payment to be made. Further it took several more months for Ms. Dolkar to actually get her passport.

In the order of the Court it is observed that, “as of July 1, 1987, Parliament deliberately cut off birth right citizenship, but the relevant amendment to the Citizenship Act did not and, as a matter of Indian constitutional law, could not apply retrospectively to deprive those born in India before that date and after the Constitution's adoption on January 26, 1950, of Indian citizenship”

⁸⁷ Namgyal Dolkar vs Ministry of External Affairs, W.P.12179/2009, High Court of Delhi, December 22, 2010

⁸⁸ ibid

The Court held that “the policy decision of the MHA (the Ministry of Home Affairs) not to grant citizenship by naturalisation under Section 6(1) of the Citizenship Amendment Act is not relevant in the instant case. Having been born in India after 26th January 1950 and before 1st July 1987, the Petitioner is undoubtedly an Indian citizen by birth in terms of Section 3(1)(a) of the Act”

The Karnataka High Court did the same when it granted citizenship to Tenzin Choephag Ling Rinpoche. He was born in Dharamsala in 1985. He was initially denied a passport by the Regional Passport Office after consulting with the Ministry of Home Affairs. The Ministry said that Tibetans are not eligible for citizenship as per the provisions of Section 3 of the Citizenship Act. Though they were born in India between 1950 and 1987 they are not eligible for Citizenship.

In August 2013, in Tenzin Choephag Ling Rinpoche vs Union of India, the Karnataka High Court ruled in accordance with the Dolkar case, “holding that anyone born in India between the January 26, 1950 and July 1, 1987 are citizens as per the Citizenship Act”⁸⁹.

The Delhi High Court in two different case decided by directing the Government of India to issue passports to Tibetans who were born by way of birth right citizenship⁹⁰. The Government Officials regularly refused to grant passports to Tibetans who were born within the said years until the court directs to grant Citizenship. In Namgyal Dolkar, the plaintiff contended that she often receives calls from Tibetans all over India who were born between 1950 and 1987 and they have not got passports till date. Their application for passport was always denied even if they have proper documents.

The case was brought by Lobsang Wangyal⁹¹ the Petitioner born in India in 1970 and thus is eligible for Birth Right Citizenship under the Citizenship Act. Inspite of this fact his application for a passport was denied only because he is of Tibetan descent. Thus, though there are decisions from the Delhi and Karnataka High Court, the reality is that Tibetans seeking Birth Right Citizenship has not changed. Tibetans born between the said years are still continuously denied passports and it appears that the only way to enforce the provisions of the Citizenship Act is to go before the Court.

⁸⁹ Tenzin Choephag Ling Rinpoche vs Union of India, 15437/2013, High Court of Karnataka, August 7,2013.

⁹⁰ “Phuntsok Topden vs Union of India”, W.P.(C) 1890/2013 and “Tenzin Jigme vs Union of India”, W.P.(C) 6137/2014

⁹¹ <https://indiankanoon.org/doc/90529177/>

3.3.1 Procedure for Application of Citizenship:

Section 3 and 6 of the Citizenship Act of 1955 seems to offer at least few of the population of Tibetans in India access to Citizenship. But it has been proved impossible for these Tibetans to acquire passports to prove their status as Citizens. They are considered as Foreigners in India. For the many Tibetans who do not come under Section 3, Section 6 would help them in getting Citizenship on the ground of Lawful naturalization.

3.3.2 Birth Right Citizenship:

Section 3 says “every person born in India between January 26, 1950 (the date on which India's Constitution entered into force), and July 1, 1987 (one of the dates on which India's Parliament amended the Citizenship Act), is an Indian citizen”.

3.3.3 Naturalization:

Citizenship by Naturalization as amendment by the Citizenship Act suggests that “Tibetans who have resided in India for ten years should be eligible for citizenship under Section 6 of the Act”. But Section 6 requires that “the applicant not be from a country that denies Citizenship to Indians”. This criterion is not clear as most Tibetans in India. They are more correctly described as Stateless persons.

Hence, Citizenship by Naturalization has not been an option to the Tibetans. The U.S. Department of Citizenship and Immigration Services, United Nations High Commissioner for Refugees, and the Immigration and Refugee Board of Canada confirm that Tibetans cannot become Citizens in India though they are eligible under Section 6 of the Citizenship Amendment Act.

3.3.4 Need for Citizenship:

The Need for Citizenship for Tibetans in India is necessary, as it would affect many people who live in their area for their lives. Some Constitutional Rights like the Right to Freedom of Speech and Association imposed only for citizens. Hence India states that it cannot violate the Constitutional rights. But the children of Tibetans are granted Citizenship as per “Section 3 of the Citizenship Act” as they were born in India Tibetans cannot participate in elections without citizenship and also cannot hold Indian government jobs and obtain other privileges without the approval from the Reserve Bank of India, which is very difficult to approach and obtain the approval. They don't get admissions in Higher Secondary Schools and colleges and cannot work in private companies.

In some State the Tibetans carry out small businesses using the Registration Certificates. They are not eligible to get any kind of licence for carrying out business.

3.3.5 Foreigner's Act, 1946:

The Foreigners Act defines “Foreigners in the negative, that is, as all persons other than citizens of India. It also authorizes the central government to 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”⁹².

The Foreigners Act allows “the government to prohibit, regulate, and restrict foreigners' entry into India or their departure from India, to limit their freedom of movement, to require them to reside in a particular place, furnish proof of identity, and report to designated authorities at prescribed intervals, to submit to photographing and fingerprinting at designated times by designated authorities, as well as to medical examinations and to prohibit them from association with persons of a designated description, from engaging in designated activities, and from using or possessing designated articles”.

The Foreigners Amendment Act prescribes the penalties for violating the Foreigners Act. Section 14A provides that any foreigner who enters or stays in India without valid documentation is subject to imprisonment for a term of two to eight years and to a fine of between 10,000 and 50,000 rupees. The Registration of Foreigners Act defines foreigners in the same way as the Foreigners Act, and authorizes the national government to promulgate regulations governing foreigners' activities. For example, the Act empowers the government to require foreigners to: Report their presence to prescribed authorities at designated intervals⁹³;

Report their movements within India and internationally; and Provide proof of identity to authorities and hotel managers.

Tibetans in India are foreigners within the meaning of the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939. As foreigners, Tibetans generally cannot become citizen; travel freely, either within India or internationally; own property in their own name; hold government or other public jobs; or qualify for resident rates at most government- funded schools.

⁹² The Foreigner's Act, No. 31 of 1946 Sec 3(1); India Code (1993)

⁹³ The Registration of Foreigners Act, 1939 Sec 3(1)(a).

3.4 Chakma and Hajong Refugees:

Chakmas and Hajongs were originally residents of the Chittagong Hill Tracts of erstwhile East Pakistan, who had to flee when their land was submerged by the Kaptai dam project in the 1960s. The Chakmas, who are Buddhist, and Hajongs, who are Hindus, also faced religious persecution in Bangladesh. Chakmas and Hajongs entered India through the then Lushai Hills district of Assam and Mizoram. In this area the Chakmas are the largest ethnic group and are almost half of the region's population. In Assam these Chakma refugees are given scheduled tribe status.

Hajong refugees are the largest ethnic group in Meghalaya. Hajongs are mainly rice farmers and have the status of a Scheduled Tribe in India (Assam and Meghalaya). Some of the Chakmas refugees are continuing to live in assam and Meghalaya. And majority of Chakmas and Hajong are move to the Northeast Frontier Agency (NEFA), which is now Arunachal Pradesh by the Indian Government. The state governments provide basic amenities to these refugees. Chakma and Hajongs are not considered as refugees and are not living in refugee camp. They live in villages and get all government facilities like ration card, licence, agricultural assistance, etc. They are also eligible to get government jobs. The Supreme court of India in 2015 had directed the Central Government to give citizenship to both Chakmas and Hajong refugees⁹⁴.

Even though the Chakmas were displaced to Arunachal Pradesh in the year 1964, the Indian Government remained silent about their Citizenship Rights for almost thirty years. Only in 1992, the Government of India accepted to give Citizenship to the Chakmas of Arunachal Pradesh. This had an impact on the State's party politics. On the other hand, the Union Government and the State Government of Arunachal Pradesh were against the decision to grant citizenship to the Chakmas. The Government of Arunachal Pradesh did not accept the grant of citizenship to Chakmas.

The Union Government's objective was to give Indian citizenship consideration to refugees who arrived in India before March 25, 1971. But the Arunachal Pradesh Legislative Assembly again passed a Resolution on September 9, 1994. It called for the refugees to be deported from the State. The Chakmas have developed the original forest land into good agricultural fields has also become a source of jealousy. The local tribes also alleged that the Chakmas have been indulging in criminal activities and contributed to the baring of forests and destroying wildlife. It is being estimated that the present population in Arunachal Pradesh is around 65,000⁹⁵. In 1972 there

⁹⁴ K. Debnath and K. Debnath, "Chakma Refugees in Arunachal Pradesh: Their Inclusion and Setback" Refugee crisis and Third world economies, Emerald Publishing Limited, 2020

⁹⁵ Ibid

was an agreement between the Prime Ministers of India and Prime Minister of Bangladesh that those persons who came to India after 25 March 1971 would be given Citizenship. They have to apply to the Central Government through the Collector of the concerned District through the State Government. The Ministry of Home Affairs of the Central Government had advised the State Government of Arunachal Pradesh to accept the protection of life and liberty of all residents including the Chakma and Hajong refugees. The affected persons had filed a complaint with the National Human Rights Commission regularly. The Chakmas had filed cases of harassment and threats and sought some kind of relief from the National Human Rights Commission. The allegations were that they are not given ration cards, licenses, denial of medical, educational and employment facilities. The National Human Rights Commission had filed a writ petition before the Supreme Court of India on November 1995⁹⁶. The State Government was silent with regard to the withdrawal of ration cards and trade licences and denial of employment opportunities. The main contention of the State Government is that it had spent money on providing health, water supply, education, and social welfare facilities to the Chakmas. Health centres and schools were also established and governed by the State Government. The Supreme Court passed order on January 9, 1996 disposing the matter with the directions that “the State Government of Arunachal Pradesh shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected and that, except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein. The Supreme Court further directed that the applications made for registration of the Chakmas as citizens of India shall be forwarded to the Central Government by the Collector of the concerned District for its consideration and in accordance with the law, which was heard and dismissed by the Supreme Court on August 5, 1996. But the State Government of Arunachal Pradesh has not yet submitted any petitions to the Central Government. Hence to resolve the issue, the Central Government had established a High-Level Group with representatives from the State and Central governments which was headed by the Union Home Minister. On January 5, 1996, the Group was established with an official Sub-Committee, consisting of high-ranking officials from the Central and State Governments, to gather complete information and to give proper recommended solution for the issue. On February 16, 1996, the Ministry of Home Affairs asked the state government regarding the official level Sub-Committee visit at their leisure. Following the Supreme Court's denial of the Review Petition, the Chief Secretary of Arunachal Pradesh accepted to permit the official level Sub-Committee to visit the state and a plan is being created in accordance with it”.

⁹⁶ NHRC vs State of Arunachal Pradesh, 1996 SCC (1) 742

The Committee visited Itanagar and got ideas from the State Government of Arunachal Pradesh, members of the Chakmas, and ethnic people. The Arunachal Pradesh government had made the following suggestions:

1. The Chakmas of Arunachal Pradesh can be sent to other parts of the State.
2. One must be an ethnic person to buy land in the State of Arunachal Pradesh.
3. In the Miao Sub-division Diyun Circle of the Changlang District, the Chowkham Circle of the Lohit District, and the Kokila Circle of the Papumpare District, there are around ten schools which are opened both for the Chakma and non-Chakma students. They can run those schools.
4. The people of Arunachal Pradesh have accepted and live with the Chakmas for more than 30 years.
5. The issue for giving residence to the Chakmas and Hajong refugees in Arunachal Pradesh emerged in 1964 itself. During that period the State of Arunachal Pradesh was not having a proper form of Government. The decision to resettle the Chakmas in Arunachal Pradesh was decided without considering or getting the views of the people in Arunachal Pradesh.
6. The Central Government was violated the customary laws and traditions that were followed by the Tribal people of Arunachal Pradesh by allowing the Chakmas and Hajongs to settle in their locality.
7. The tribal people of Arunachal Pradesh believe that the Chakmas and Hajong refugees are a major threat to their own survival, as well as to the peace and their customs and traditions.
8. The Arunachal Pradesh tribal people and the Chakma refugees are not the same and they don't share anything commonly.
9. Indian Constitution as granted special Arunachal Pradesh is granted special status under the Indian Constitution.
10. The Hajong and Chakma refugees are from a District in Bangladesh.
11. The most peaceful State in the nation's northeast is Arunachal Pradesh, the newest Member of the Union of India. Delhi is home to the Chakmas. They have formed an association in Delhi and approached the Minister for help. Further they get assistance from the National Human Rights Commission.
12. If this situation continues, the tribal people of Arunachal Pradesh will become the minority and Chakmas the majority.

The Supreme Court in "National Human Right Commission vs State of Arunachal Pradesh and the case of Union of India are also connected to the Centre's position on granting citizenship rights to the Chakmas of Arunachal Pradesh. "There is no doubt that Chakmas who migrated from Bangladesh in 1964 first settled down in the State of Assam and then relocated to areas which now fall within the State of Arunachal Pradesh". The Judgment which was ordered on January 9, 1996, stated that "they have lived there for the past 25 years or more with their family in the State. After getting married, their children also had kids of their own. Consequently, a sizable portion of them were born within the State. A person can be registered as

an Indian citizen if they meet the qualifications outlined in Section 5 of the Citizenship Act. Part II of the Rules outlines the process that must be followed to process such requests.

These Rules provide that an application for registration must be submitted to the Collector whose jurisdiction the applicant resides in, in the appropriate form and with proper affirmation. Every application made under Section 5 (1) (a) of the Act is supposed to be forwarded by the Collector to the Central Government in accordance with Rule 9. All that needs to be done is for the Collector to accept the application and send it on to the Central Government. To allow the Central Government to determine if the request is merit-based, the Deputy Collector or Collector who receives the application should be instructed to transmit it to that body". The Supreme Court has further said that an individual cannot be deprived of their life or personal liberty. Therefore, whether a person is a Citizen or not, the State has the duty to defend their Right to Life and Liberty. The State has a duty to fulfil its Constitutional Rights and Legal Duties. The State Government should act independently and fulfil its legal duties to protect the Chakmas life and health without interference from local politics.

As a result, the Supreme Court issued the following directions:

1. "The State of Arunachal Pradesh shall agree that every Chakma living in the State shall protect their life and personal liberty and that any attempt by organized groups to force to send them out of the State shall be refused".
2. "The Chakmas are entitled to normal life and secured life in their houses and cannot be forced to leave them unless it is legally required".
3. "The State of Arunachal Pradesh shall consider the quit notices and demands given by the AAPSU and any other group that amount to threats against the life and freedom of any Chakma as per law".
4. "The application received from the Chakma to register as an Indian citizen will be sent by the Collector to the Central Government for consideration in compliance with the law who will receive it and consider the applicable Rules, either with or without an inquiry".

Rajya Sabha Committee on Petitions' recommendations were important factor in the Central Government decision to award Citizenship to the Chakmas. In a nutshell, the Committee's primary recommendations are that "The Committee has observed that the Chakmas have called for the restoration of their ration cards, payment to the victims of atrocities, citizenship, an end to their harassment, the lifting of the employment ban, admission to schools, access to trade and business facilities, medical care, and trade facilities". The Committee has also taken note of the argument made by non-Chakma representatives and the State Government of Arunachal Pradesh, according to which the existence of Chakmas in the state poses a threat to their culture, customs, and peace, and they ought to be expelled.

The Committee concluded that “Arunachal Pradesh is the only state in the Northeast with three international borders—with China, Bhutan, and Myanmar—which makes it strategically significant.

The state has also been comparatively peaceful and free of insurgencies. This conclusion was reached after carefully weighing all available information and the entire matter. The Committee sincerely hopes that a fair solution to the issues is reached and that justice is served to everyone”.

Therefore, the Committee suggests that “Indian citizenship can be extended to the Chakmas of Arunachal Pradesh who arrived before March 25, 1971. The Committee further suggests that Chakmas who were born in India must be given the opportunity to apply for Indian citizenship. The Committee further suggests that the Central Government and State Government jointly should discuss and decide as to what would happen to the Chakmas who arrived in the State after March 25, 1971. The Committees further recommend that the Central Government ahould consider incorporating necessary provisions in the Rules or the Act, if it is necessary and that would allow it to directly receive, consider, and decide on the citizenship application in the case of Chakmas, in place of all previous applications for citizenship that have been either rejected or withheld by Deputy Commissioners, the State Deputy Commissioner, or the State Government, continuing to stop the forwarding of such applications to the Central Government. The Committee further suggests that when giving citizenship to the Chakmas, their status should be considered as that of Scheduled Tribe. The Committee requested the Central and State Governments to make efforts to guarantee that the Chakmas are safe, secure, honor, and live with dignity while they remain in Arunachal Pradesh, pending the resolution of their dispute”.

It is clear from the above study that the Chakmas and Hajong refugees though are considered as a threat to the local tribes of the State of Arunachal Pradesh, they are provided with the basic rights of education, employment, and Health. Ration cards are also given to Chakma and Hajong Refugees. The dispute between the Centre and the State regarding Chakma refugees is the only reason for delay in giving citizenship rights to them otherwise they are getting all rights just like the Indian Citizen.

3.5 Rohingya Refugees in India:

The Rohingya are an ethnic Muslim minority who practice variation of Sunni Islam. There are an estimated 3.5 million Rohingya dispersed worldwide. Before August 2017, the majority of the estimated one million Rohingya in Myanmar resided in Rakhine State, where they accounted for nearly one third of the population. They differ from Myanmar’s dominant Buddhist groups ethnically, linguistically, and religiously. The Rohingya came to British India during their colonial rule. Since

independence in 1948, successive governments in Burma, renamed Myanmar in 1989, have countered the Rohingya's historical claims and denied the group recognition. The Rohingya are considered illegal immigrants from Bangladesh, even though many trace their roots in Myanmar back centuries.

The Myanmar government refuses to grant the Rohingya citizenship, and as a result most of the group's members have no legal documentation, effectively making them stateless. Myanmar's 1948 citizenship law was already exempted Rohingya and the military junta, which seized power in 1962, introduced another law twenty years later that deprived the Rohingya of access to full citizenship. Until recently, the Rohingya had been able to register as temporary residents with identification cards, known as white cards, which the junta began issuing to many Muslims, both Rohingya and non-Rohingya, in the 1990s. The white cards conferred limited rights but were not recognized as proof of citizenship.

As already stated, India is not a party to the Refugee Convention, 1951 and does not recognise the Refugee Cards issued by the United Nations High Commissioner for Refugees. This implies that Rohingyas within India do not particularly have a right to seek ration, jobs, housing, education etc. As a result, most Rohingyas are believed to be involved in jobs like rag-picking, untrained and unorganised jobs.

In the case of Mohammed Salimullah and another vs Union of India and others⁹⁷, both the petitioners are Rohingyas from Myanmar and live in refugee camps. They came to India in December 2011 when the ethnic war broke out. It was stated that similar persons like that of the petitioners are residence in New Delhi, Haryana and various other places in India. In the year 2017 the Ministry of Home Affairs of the Government of India issued a letter to the Chief Secretaries of all the State Governments and the Union Territoriee. It advised them to inform all the Law enforcement and Intelligence Agencies for taking immediate steps in deportation processes. This circular has been challenged by the petitioners before the Court by way of Writ Petition. According to the petitioners, many Rohingya refugees were detained in a sub jail in Jammu. They faced deportation back to Myanmar. The contention of the petitioners is “ (i) that the principle of nonrefoulement is also part of the Right guaranteed under Article 21 of the Constitution of India, (ii) that the rights guaranteed under Articles 14 and 21 are available even to non-citizens; and (iii) that though India is not a signatory to the United Nations Convention on the Status of Refugees 1951, it is a party to the Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights, 1966 and the Convention on the Rights of the Child 1992 and that therefore non-refoulement is a binding obligation”. The petitioners also contend that India is a party to the Protection of All Persons against Enforced Disappearances and

⁹⁷ I.A.NO.38048/2021 In Writ Petition (Civil) No.793 OF 2017

Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment.

The recent Judgment of International Court of Justice in The Gambia vs. Myanmar⁹⁸ dated 23.01.2020 held that “even the International Court has taken note of the genocide of Rohingyas in Myanmar. That the lives of these refugees are in danger if they are deported back to their Country. According to the petitioners, Rohingyas were persecuted in Myanmar when an elected Government was in power. The elected Government has been overthrown by a military army now. Therefore, the danger is more. The Union of India contended “(i) that a similar application challenging the deportation of Rohingyas from the State of Assam was dismissed by the Court (ii) that persons for whose protection against deportation, the present application has been filed. They are foreigners within the meaning of Section 2(a) of the Foreigners Act, 1946 (iii) that India is not a party either to the United Nations Convention on the Status of Refugees 1951 or to the Protocol of the year 1967 (iv) that the principle of non-refoulement is applicable only to “contracting States” (v) that since India has open land borders with many countries, there is a continuous threat of influx of illegal immigrants (vi) that such influx has posed serious national security ramifications (vii) that there is organized and well-orchestrated influx of illegal immigrants through various agents and touts for monetary considerations; (viii) that Section 3 of the Foreigners Act empowers the Central Government to issue orders for prohibiting, regulating or restricting the entries of foreigners into India or their departure therefrom; (ix) that though the rights guaranteed under Articles 14 and 21 may be available to 4 non- citizens, the fundamental right to reside and settle in this country guaranteed under Article 19(1)(e) is available only to the citizens; (x) that the right of the Government to expel a foreigner is unlimited and absolute; and (xi) that intelligence agencies have raised serious concerns about the threat to the internal security of the country”. It is also contended on behalf of the Union of India that the decision of the International Court of Justice has no relevance to the present case. It follows the procedure of notifying the Government of the country of origin of the Foreigners. It order their deportation only when confirmed by the Government of the country of origin whether the person is a Citizens or National of that country. Whether he is entitled to come back to the Country of Origin? After considering the above facts and circumstances, the court held that “there is no denial of the fact that India is not a party to the Refugee Convention. Therefore, objections raised as to whether Article 51(c) of the Constitution can be taken unless India is a party to or ratified a convention. But there is no doubt that the National Courts can draw inspiration from International Conventions or Treaties, so long as they are not in conflict with the municipal law.

⁹⁸ <https://iimm.un.org/icj-the-gambia-v-myanmar/#:~:text=The%20Gambia%20brought%20the%20case,the%20Genocide%20Convention%20in%201995>

It is true that the Rights guaranteed under Articles 14 and 21 are available to all persons who may or may not be citizens. But the right not to be deported, is ancillary or concomitant to the right to reside or settle in any part of the territory of India guaranteed under Article 19(1)(e)". The Union of India made two serious allegations stating that "(i) the threat to internal security of the country and (ii) the agents and touts providing a safe passage into India for illegal immigrants. Moreover, the court had already dismissed the application filed for similar relief, in respect of those detained in Assam. Therefore, it is not possible to grant the interim relief prayed for". However, it is clear that the Rohingyas in Jammu who are the applicants in this case shall not be deported unless the procedure is followed. Hence the Court disposed of the Interlocutory Application accordingly.

Though India is not a party to the 1951 Refugee Convention and 1967 Refugee Protocol, India has signed several other treaties which requires States to ensure access to basic human rights and human dignity for all and provide basic protection to people seeking asylum in India. In the Universal Declaration of Human Rights 1948, grants persons a right to seek asylum in other countries if they face the threat of persecution in their homeland. Similarly, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of the Child provides affirmative rights to ensure dignity, respect for life and liberty and conducive environment for children to grow. India is a signatory to all three Conventions which create binding legal obligations through Article 51(c) of the Constitution of India which directs the State to "foster respect for international law and treaty obligations in the dealings of organized peoples with one another".

Indian courts in various decisions have explained Fundamental Rights incorporated in Part III of the Constitution, according to the forms of International Law. In the case of People's Union for Civil Liberties v. Union of India⁹⁹, Supreme Court of India had held that the provisions of the International Covenant on Civil and Political Rights are directly enforceable in India and can be used in effectuating the provisions of the Constitution. In another case of Vishaka v. State of Rajasthan¹⁰⁰, Supreme Court of India incorporated the entire CEDAW in Indian Law. Further, in the case of Vellore Citizens Welfare Forum v. Union of India¹⁰¹, Customary International Law was held to be automatically incorporated in the domestic law in the absence of any contrary provision. Nevertheless, the approach of the Indian government in providing protection and assistance to Rohingyas fall short of its international obligation and responsibility to protect. It is contended that the neglect

⁹⁹ AIR 1997 SC 568

¹⁰⁰ (1997) 6 SCC 241

¹⁰¹ 1996 5 SCR 241

of Rohingya refugees is primarily on grounds of religion and in-line with Indian state's growing discrimination and persecution of its own Muslim minorities.

Other governments in Southeast Asia generally lack established legal frameworks to protect refugees' rights, and the ten members of the Association of Southeast Asian Nations (ASEAN) have not coordinated a response to the developing crisis. Indonesia, Malaysia, Myanmar, and Thailand—all ASEAN members—have yet to ratify the UN refugee convention or its protocol. ASEAN itself has been mostly silent on the difficulty faced by the Rohingya and on the growing numbers of asylum seekers in member countries, largely because of its members' commitment to the principle of non-intervention.

3.6 Afghanistan, Pakistan, And Bangladesh Refugees in India

3.6.1 Afghan Refugees

The Afghans came to India as temporary resident at the beginning of the Soviet war in 1979. Some of them returned to Afghanistan in 2001 when Karzai administration was formed¹⁰². According to the "United Nations High Commissioner for Refugees", India has currently 15,806 Afghan refugees¹⁰³ within the borders of India which includes Hindus, Sikhs, Muslims, and Christians. Most of the Afghans use India as a temporary place of residence until they get jobs and settle in Europe and North American countries. They reside mostly in the capital Delhi, specifically in the neighbourhoods of Lajpat Nagar, Bhogal and Malviya Nagar. Now by the Citizenship Amendment Act, 2019 Afghan refugees who are minority in Afghanistan especially Hindus, and Sikhs are given citizenship in India who came before 31.12.2014 and had continuously stayed for 6 years in India. Afghan refugees get all benefits as that of citizens and citizenship is given to refugees who stay for a period as mentioned in the Act. Emergency Visa to India is also granted to the Afghan passport holders.

3.6.2 Pakistan Refugees in India

After partition of India and Pakistan, there were large-scale population transfers between the two newly established countries. Approximately 14.5 million people crossed the borders between India and Pakistan. According to a census it was found that after partition, 7.226 million Muslims migrated from India to Pakistan and 7.249 million Hindus and Sikhs moved from Pakistan to India.

¹⁰² BBC News. 3 September 2013.

¹⁰³ "United Nations High Commissioner for Refugees" March – April 2021

In Pakistan, there is legal and constitutional discrimination against non- Muslims. As a result, many Hindus and Sikhs from Pakistan have sought refuge in India in the twenty-first century. Nearly 400 Hindu refugee settlements in Indian cities are home to Pakistani refugees. Hindu, Sikh, Buddhist, Jain, Parsi, and Christian religious minorities from Pakistan who have experienced religious persecution can now apply for Indian citizenship under the Citizenship Amendment Act of 2019 (passed on December 11, 2019), provided they arrived in India before December 31, 2014. Before they for citizenship, refugees from these groups who arrived after the said period must live in India for at least five years.

3.6.3 Bangladesh Refugees in India

Those who went to East Bengal when the region was divided as part of India and Pakistan in the year 1947 were called as East Bengali refugees. Bengali Hindus made up most of these immigrants and refugees¹⁰⁴. Around millions of Bangladesh refugees fled from their country during the War for Independence against Pakistan. They sought asylum in areas of India like West Bengal and the Northeast region particularly Tripura and Assam. At the time of Independence of India, Bengal was divided into East Bengal and West Bengal. East Bengal later was separated and now it is called as Bangladesh.

As soon as the refugees arrived in the nation, they were registered. Certificates of temporary residence were granted. At first, there were no suitable housing options. But in a matter of months, the government built 19 central camps and 825 camps spread throughout 7 states, some of which could house up to 50,000 people. To make sure there is never a food shortage, the government works very hard. The FCI godowns were set up with buffer stock. There was women's security, recreational space, hygienic conditions, medical care, etc. in the camps. Given the nation's unemployment issue, employment of any kind was severely prohibited. However, they were working for themselves by producing bidis, stitching, and other crafts to counteract the terrible impacts of inactivity in the camps, particularly for the youth. Most of the population was housed by the West Bengal government thanks to the locals' kind treatment and sympathy for the Bengali community in East Pakistan. They and the refugees also had a common ethnic link.

The Bangladesh refugees get all basic rights in India. They are given jobs; education and their health is being maintained by arranging many medical camps and proper medical care is provided to them. Bangladesh refugees also are eligible to get citizenship under the Citizenship Amendment Act, 2019. For religious

¹⁰⁴ US State Department, "Foreign Relations of the United States, 1969–1976", Volume XI, South Asia Crisis, 1971", Page 165

minorities from Pakistan, Bangladesh, and Afghanistan who have experienced religious persecution, the Citizenship Amendment Act of 2019 (passed on December 11, 2019) provides a pathway to Indian citizenship (provided they arrived in India before December 31, 2014)¹⁰⁵. Before obtaining Indian citizenship, refugees from these categories who arrived after the cutoff must live in India for at least five years.

The above graph states about the Refugees and Asylum seekers in India as per the United Nations High Commissioner for Refugees survey in 2020. It shows that Tibetan refugees and Sri Lankan refugees are more when compared to other refugees.

3.7 Comparison of Srilankan Refugees with Other Refugees in India

By the above stated facts, few refugees in India like Tibetans and chakmas have been given certain rights like education, licence, free to move, ration, etc. Some Tibetan refugees and chakmas refugees were granted citizenship. They are also given job opportunities apart from basic education and higher education. Their health issues are also dealt with immediately.

The refugees from Pakistan, Afghanistan, Bangladesh get more facilities compared to the Sri Lankan refugees in India. They get proper education, job, and health care. The minorities from Pakistan, Afghanistan, Bangladesh who are refugees in India are also eligible for citizenship.

However, Sri Lankan refugees who are in India for three decades are not given any basic rights compared to other refugees in India. They don't get proper higher education, no freedom of movement, no job opportunities and they have very little health care.

In the case of Premavathy @ Rajathi vs State of Tamil Nadu¹⁰⁶, the petitioner and few others who were Sri Lankan refugees filed Writ of Habeous Corpus asking them to free from Special camps. The Special camps they lived in was a Sub jail previously in the Chengalpattu district. These refugees were not allowed to go out of the camp and very rarely they were allowed to visit their relatives. Even to buy basic need of food and to go to hospitals they were not allowed out of the camp. Hence, they filed the writ petition stating that their right to privacy has been violated as per Article 21 of the Indian constitution and the government has imposed preventive detention on them. They further contended that there is human rights violation on them ill-treating them in the special camps. Further Article 9 and 12

¹⁰⁵ <https://pib.gov.in/newsite/PrintRelease.aspx?relid=195783>

¹⁰⁶ Laws (MAD) 2003-11-14

of the International Convention on Civil and Political rights and Article 13 of the Universal Declaration of Human Rights are violated. The contention of the government is that they are people who have forged documents and certain criminal cases are pending on them and that is the reason they are kept in special camps to protect the security of the country. Further the government defended that all facilities are provided in the camp and there is no violation of their basic and human rights. The court disposed of the writ petition with the finding that the refugees against whom criminal cases are pending should be expedite and disposed of. Further the court held that application should be considered with humanitarian approach, they should be given full and free medical facilities, should lead a family life, etc. Refugee children should be given proper education inside the camp, the inmates should be encouraged to take up indoor and outdoor games, library facilities need to be provide, yoga and meditation camps can be conducted inside the camp were few more that were added to the judgement.

In Yogeswari vs State of Tamil Nadu¹⁰⁷, the petitioner came from Sri Lanka to India along with her son because of the Civil War in Sri Lanka. They are Refugees who came by way of a proper passport. They got themselves registered Refugees in the camp and complied with all the necessary requirements. After few days police arrested the son of Yogeswari. So, she went and lodged a complaint in the nearby police station. Meanwhile criminal case was registered against her son. Case was for Counterfeit of coins in India filed by the Q branch police. Coming to know about the same, Yogeswari applied for bail stating that her son was innocent. After rejection of bail first, bail was granted by Principal Sessions Judge, Tiruchirappalli. Condition was laid to provide proper security. She was not able to provide security within the prescribed period. Her son was still in jail. The Police decided to send him to the special camp for the Sri Lankan refugees. So, the petitioner filed this Writ petition of Habeous corpus before the High Court of Madras to release her son. The Court by its order held that Yogeswari's son should not be sent to the Special camp as it is illegal and unconstitutional and hence directed to release him and to pay the security amount to fulfil the bail order passed by the Thiruchirapalli Principal Sessions Judge.

¹⁰⁷ HCP No.1367/2023 dated 27.09.2023

Chapter 4

Comparative Study of Refugees in India and Sweden, India and Indonesia and Pakistan

India is not a party to Refugee convention, 1951 and Refugee Protocol, 1967. Apart from India certain other countries like Bangladesh, Pakistan, Sri Lanka, Malaysia and Indonesia are also not signatory to Refugee convention.

In this chapter the researcher makes a comparative study on refugee status in India and Sweden who is a signatory to refugee convention. Also compares with the refugee status in Pakistan and Indonesia who are not signatories to the refugee convention and protocol.

4.1 Refugee Status in Sweden:

Sweden is a signatory to both Refugee Convention 1951 and 1967 Protocol. Sweden being the party to the Convention provides basic rights and status to its refugees. Sweden gives protection to Migrants and Refugees from various countries. They are Syria, Iraq, Somalia, Iran, Poland, etc. In early Seventeenth century Germans migrated to Sweden to give training for the people in trade and mining. After completion of their work, they returned to Belgium.

During 1945, the people to migrated to Sweden were less than two percent¹⁰⁸. But after 1950 there was an increase in the migrants who came to Sweden.

Initially, Sweden took in political refugees from Hungary. The former Czechoslovakia after their Countries were invaded by the Soviet Union. There was again increase of migrants in Sweden after 2010 and some of the reasons for the migration are as follows:

1. Labourers.
2. Family reunification.
3. Immigrating under the European Union rules of free movement.
4. Students.
5. Refugees.

¹⁰⁸ Ibid

4.2 Rights of Refugees in Sweden:

Sweden is signatory of the Refugee Convention, 1951 and 1967 Refugee Protocol. Hence Sweden grants residence permits to persons who are refugees. In accordance with the UN Convention Relating to the Status of Refugees, Swedish legislation and European Union regulations, a person is considered as refugee when they have well-founded reasons to fear persecution due to race, nationality, religious or political beliefs, gender, sexual orientation, or affiliation to a particular social group. The authorities of that country are unable or unwilling to offer protection against persecution from individuals or groups.

A person who is assessed as a refugee will be granted a refugee status declaration, which is an internationally recognized status, based on the UN Refugee Convention as well as EU regulations. Persons with a refugee status declaration are normally given a residence permit for three years by the Sweden Government.

There are persons who are in need of secondary protection is one who

- is at risk of being sentenced to death.
- is at risk of being subjected to corporal punishment, torture or other inhumane or degrading treatment or punishment, or
- as a civilian, is at serious risk of injury due to armed conflict.

A person who is assessed as in need of subsidiary protection will be granted a subsidiary protection status declaration, which is founded on EU regulations.

Persons with a subsidiary protection status declaration are normally given a residence permit for 13 months by Sweden government. However, if a person has committed war crimes, crimes against humanity or other serious crimes, or if he posed a threat to the country's safety, asylum will not be granted by Sweden. Even then Sweden gives a residence permit for a limited period if he is unable to return to his country of origin on the grounds that he would be at risk of being killed or persecuted there.

Under Sweden law if a person seek asylum, he has to disclose to the Migration Agency as to how much money or other resources he has. If he doesn't have any own resources, he will get daily allowance from the government for his daily expenses.

If the financial situation of that person changes, for example if he gets a job, he must immediately inform the Migration Agency. If he does not disclose the same, it amounts to criminal offence. Even change of residence should be informed to the Migration Agency since it may affect the daily allowance paid to him. Daily allowance varies from person to person depending on whether he lives in the

Swedish Migration Agency's accommodations where food is included or in an accommodation where food is not included. The daily allowances is paid by way of Sweden Krona (SEK). Allowance is paid from around SEK 12 per day to around 71 SEK per day. This daily allowance is given for the purpose of clothes, health care and medicines, dental care, other consumer goods, etc.

The refugee will lose his right to financial support once he is granted residence permit. If the refugee is living in accommodations provided by the Swedish Migration Agency, he will lose the financial support when you are received by a municipality. If you are living in your own accommodation the right to financial support stops one month after you have been granted a residence permit.

The right to financial support gets terminated if the person gets deported or when the time limit for leaving the country voluntarily has expired. Financial support also ends if the person leaves the country for any other purpose like voluntary repatriation.

Further the Swedish Migration agency provides special grant to persons who apply for the state on the ground that he is in strong need of something not covered by the daily allowance or not able to maintain his family. If you are stateless or have a refugee status declaration, you must have been resident in Sweden for at least four years to be granted citizenship.

A refugee status declaration is issued to anyone who has been granted a residence permit as a refugee pursuant to Chapter 4, Section 1 of the Aliens Act or equivalent paragraphs in the old Aliens Act. It is not enough for you to have been selected in the scope of the refugee quota.

Requirements for citizenship under Aliens Act

To be able to become a Swedish citizen, you must

- have reached the age of 18
- be able to verify your identity
- have met the requirements for habitual residence, which means that you must have lived in Sweden a certain amount of time
- have lived an orderly life in Sweden
- have a permanent residence permit (a temporary residence permit does not apply), **or** have the right of residence or a residence card (for those who are EU citizens or a close relative of an EU citizen)

Chapter 5 of the Aliens act says Residence permits Persons who are entitled to a residence permit as being in need of protection. Section 1 of the Chapter states

Refugees and persons otherwise in need of protection who are in Sweden are entitled to a residence permit¹⁰⁹.

4.3 Comparison with India:

4.3.1 Importance of Addressing Refugee Issues in Sweden and India:

Over the past few decades, Sweden has made exceptional contributions to international refugee protection. These contributions have included a strong system for accepting and processing asylum applications, a long-standing dedication to resettlement of refugees, and extensive integration initiatives. Sweden has raised voice in the EU for refugees in Europe to receive the protection they deserve, there should be a stronger sense of solidarity, a sharing of responsibilities, and fair EU asylum laws and procedures that comply with international norms. Sweden has pushed for the protection and empowerment of displaced women and girls around the world, elevating the protection of those who are forcibly displaced to the top of the international political agenda. Like numerous other European governments, the Swedish government has implemented a number of stringent measures concerning asylum and family reunification in recent years. After being enacted as a temporary law in 2016, a number of the restrictions were later included in the Swedish Aliens Act in 2021. “United Nations High Commissioner for Refugees” had hoped Sweden would not have felt the need to permanently incorporate some of the measures intended as temporary into Swedish asylum policy, given the notable decline in the number of asylum-seekers since the adoption of the temporary law. While the “United Nations High Commissioner for Refugees” is happy that some of the restrictions were lifted when the Aliens Act was amended, the organisation is still concerned about the new restrictions because they offer fewer standards and protections than the strong legal framework that Sweden has created and implemented over many years¹¹⁰.

By the recent war in Ukraine left many people refugees and Sweden acted quickly and protectively. Following the EU Temporary Protection Directive's (TPD) enactment, Sweden immediately increased its receiving capacity and began

¹⁰⁹https://www.government.se/contentassets/784b3d7be3a54a0185f284bbb2683055/aliens-act-2005_716.pdf

¹¹⁰ “United Nations High Commissioner for Refugees”, “Observations on the proposed legislative amendments to the Swedish Aliens Act – Report by the Cross-party Committee of Inquiry on Migration” (“En långsiktigt hållbar migrationspolitik Betänkande av Kommittén om den framtida svenska migrationspolitiken”), 7 December 2020 (“United Nations High Commissioner for Refugees”, Observations to the Report by the Cross-party Committee)

controlling a sizable volume of applications for temporary protection¹¹¹. Despite the vast positive response by Sweden, “United Nations High Commissioner for Refugees” is worried that those who flee from Ukraine may not be granted the same rights as other refugees in Sweden. People fleeing from Ukraine are entitled only “healthcare that cannot wait” and receive a very limited fund on daily basis as that of the asylum-seekers, which is significantly less than the support given to recognised refugees, according to the “United Nations High Commissioner for Refugees”. Therefore, Sweden should guarantee the asylum seeker of temporary protection the same level of social assistance and healthcare as other refugees in Sweden. The Right of Asylum Seekers to have their applications treated individually in a fair and efficient asylum procedure is always guaranteed by Sweden and excellent asylum treatment is given. An idea for good practice in the Nordic region and beyond is the Swedish Migration Agency dedication to developing the capacity and standard of the asylum and reception processes on a continuous basis. “United Nations High Commissioner for Refugees” is pleased that SMA is continuing to invest and improve the fairness and effectiveness of the asylum procedures. Examples of these efforts include quality initiatives and a system that directs asylum applications into separate tracks in accordance with United Nations High Commissioner for Refugees recommendations. In Sweden, asylum-seeking children and children who have been awarded temporary protection have the right to education.

Sweden still has a sizable population of stateless people, most of whom are migrants, refugees, asylum seekers, and people of “unknown nationality.” The “United Nations High Commissioner for Refugees” is grateful that the Swedish government has taken the first steps to address the issues in preventing and reducing statelessness in Sweden.

The 1954 Convention Relating to the Status of Stateless Persons has two reservations, which Sweden has withdrawn. The “United Nations High Commissioner for Refugees” especially welcomes this development. “United Nations High Commissioner for Refugees” recommends Sweden define a stateless person in accordance with the 1954 Convention so that Sweden can fully implement its obligations under international treaties pertaining to statelessness. Additionally, the “United Nations High Commissioner for Refugees” urges the creation of a comprehensive process for determining statelessness, which should include the issuance of statelessness-specific residence permits for those who are stateless and

¹¹¹ 3 EU, Council of the European Union, Council Directive 20 01/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof, 7 August 2001 (EU TPD)

who currently lack a country to return to and whose residence permits do not adequately meet their protection needs. Children born stateless acquires citizenship after a period of time and there are certain succession made by the Government Inquiry on Nationality to give stateless children immediate citizenship.

India did not ratify the 1951 Refugee Conference or the 1967 Protocol on the Re却putation of Refugees. There is no set protocol for treating refugees in India because the country lacks legislation pertaining to their status. Nonetheless, refugee law has become intricately linked to the larger question of human rights and humanitarian law, as well as other fields of international law like State responsibility and peacekeeping.

Currently, Tibet, Sri Lanka, Afghanistan, Myanmar, and, to a lesser extent, Somalia and Palestine are among the countries from which India accepts refugees. National security, the legal system, and a humanitarian mentality can all be used to address the refugee crisis.

The refugee crisis poses several challenges for India's internal security. This includes, Social repercussions of welcoming refugees - The presence of refugees may cause an identity crisis for indigenous people. For example, there's a risk that refugees from Bangladesh will replace the indigenous population in Assam and Arunachal.

It becomes difficult to find them and send them back to their home country after a few years. For example, the Rohingya refugees came through the Northeast. But later, they spread to all 50 states. Now, India does not have enough money to satisfy all of its basic needs. Lowers domestic pay rates and drives natives away Illegal immigrants and refugees labour in settlement areas for pitiful wages because they too need food and shelter. These refugees run the risk of becoming employees or financial supporters of terrorist organisations because their governments have not welcomed them.

India treats all foreigners equally under the Foreigners Act of 1946, regardless of whether they are legitimate immigrants, refugees, or asylees, or whether they have overstayed their visas:

1. Section 3 gives the Central government the power to locate, apprehend, and deport unauthorised foreign nationals.
2. Section 5 of the Passport (Entry into India) Act, 1920 permits the removal of an unlawful foreigner by force under Article 258(1) of the Indian Constitution.
3. It is mandatory by law for all foreign nationals entering India on a long- term visa (more than 180 days) to register with a registration officer within 14 days of their arrival, except for Indian citizens residing overseas. The Registration of Foreigners Act of 1939 is followed in this.

4.3.2 Education of Refugees in Sweden and India:

Refugee children have complete access to the Swedish educational system and are typically incorporated into mainstream classrooms. Although they are not under compulsion to attend School by Law, children between the age of six and sixteen do have the option to go to School. For children who have absconded with their parents and are still in Sweden but have an expulsion order against them, the right to attend school has also been affirmed by law.

Before being allowed to register themselves in vocational education, children between the age of 16 and 18 often need to take a preparation course to advance their proficiency in Swedish and other basic topics. However, after completing this preparatory phase, they are theoretically free to enrol in a vocational course. If a child enrolled in a three-year course when they were 16 or 17 and they are still in Sweden two years later without a visa, they will be allowed to complete it. But those who arrive in Sweden after the age of eighteen are not eligible for secondary education. Having said that, nothing officially stops municipalities from offering secondary education if they are competent to accept more pupils.

If there are more than five students in the region who speak the same language, children also have the right to regularly attend classes in their home tongue¹¹². That is why mobile mother tongue educators are hired. After several legislative adjustments, applicants may now be able to obtain a residence permit that will allow them to finish their education. Numerous circumstances could influence an individual's eligibility for a residence visa to pursue higher secondary education. For those who are seeking asylum and those who want to extend their temporary residency status, the regulations are different. The regulations also differ based on the individual's status as an unaccompanied minor, if they are enrolled in an induction program or a national program, and in certain situations, the date of the initial asylum application submission, the length of the initial asylum application processing period, and whether the asylum seeker was deemed an adult or a minor at the time of the first instance decision. The length of the course and whether it's an induction or national program are two factors that affect how long the residence permit lasts. A 13-month or 4-year residence permit may be issued. In addition, the applicant is eligible to receive a residency visa, which will be good for six months after the course ends. The modification does not only apply to unaccompanied minors; young people traveling to Sweden with their family may now use their higher secondary school coursework as justification for a residence visa. People who are over 18 but under 25 are also covered. Critics have pointed out that very few persons meet all the requirements to be awarded a residence visa on this basis. A new law was established on July 1, 2018, making it simpler to obtain a residency

¹¹² The 2011 School Regulation (Skolförordningen 2011:185), Chapter 5, Paragraph 7.

permit to complete secondary education. Reapplications for residency were permitted for those who fulfilled the requirements of the new rules¹¹³. 7,303 people had received residency permits under this rule as of August 2019.

In India the education rights of refugee children are based on the human rights principles of equality and non-discrimination, international law guarantees migrants the access to education, regardless of their immigration status or legal status. All migrants are covered under the principal treaties that protect the right to education. Treaties that are unique to migrants also contain clauses pertaining to the right to education. Only the states that have agreed to this international legal framework are bound by it. Migrants face both practical and legal barriers when attempting to exercise their Right to Education at the national level.

Article 21A of the Constitution of India to provide free and compulsory education of all children in the age group of 6 to 14 years as a Fundamental Right was carried out in the 86th Amendment. The Right of Children to Free and Compulsory Education Act, 2009, represents the significant Legislation envisaged under Article 21A, “means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards”.

On April 1, 2010, the Right to Education Act and Article 21A went into force. The terms "free and compulsory" are included in the title of the Right to Education Act. "Free education" means that "no child shall be required to pay any fees, charges, or expenses that would prohibit them from pursuing and completing their elementary education, except for a child who has been admitted by their parents to a school that is not supported by the relevant Government". "Compulsory education" places a duty on the Government and local authorities to guarantee that all children in the age group of 6–14 be admitted, attend, and complete their elementary education.

In accordance with the Right to Education Act, the

1. Children have the right to free and compulsory education in nearby schools until they have completed their elementary education.
2. It makes it clear that "compulsory education" refers to the duty of the relevant government to guarantee that every child in the age group of six to fourteen receives free elementary education and mandatory entrance, attendance and completion of primary school. "Free" indicates that "no child will be required to pay any fees, charges, or expenses that would keep them from pursuing and finishing their basic education".

¹¹³ Section 16 f, Law on temporary limitations to the possibility of being granted a residence permit in Sweden.

3. It makes provisions for a non-admitted child to be admitted to an age-appropriate class.
4. It lays down the role that local governments, parents, and other relevant parties have in providing free and compulsory education, the division of financial and other responsibilities between the federal and state governments.
5. It establishes the guidelines and expectations for Pupil Teacher Ratios (PTRs), school working days, teacher working hours, and facilities and infrastructure. By guaranteeing that each school maintains the designated student- teacher ratio—rather than using it as an average for the State, District, or Block—it allows for the logical deployment of teachers and prevents an imbalance in teacher postings between urban and rural areas. It also forbids the use of teachers for non- educational purposes, except for the decennial census, local government elections, state legislative and parliament elections, and disaster assistance.
6. It lays down the procedures for appointing suitably qualified educators, or educators who meet the necessary entrance and academic requirements. It forbids: (a) child abuse and physical punishment; (b) child admittance screening processes; (c) capitation fees; (d) teacher private tuition; and (e) unrecognized school operations.
7. It calls for the creation of curricula that are consistent with the principles found in the Constitution and that guarantee a child's complete development by utilizing a child-friendly and child-centered learning approach to build on the child's knowledge, potential, and talent while also releasing them from trauma, fear, and anxiety.

This Article is applicable to all irrespective of whether they are citizens or non-citizens. Hence, the refugee children are also given primary education till the age of 14. However, their admission in Government schools and private schools take huge process since they are refugees and few are stateless.

In case of higher education, refugees in India face it difficult to get admission in colleges. There are only few private institutions who give admission to higher education for refugees. Refugees cannot choose professional courses for higher education because no admission or reservation is given to them both in government colleges and private colleges.

Hence, when compared to education of India with Sweden, Sweden gives primary education and skilled courses to refugee children and those who are willing to do higher education they can do so if the municipality of that region permits. But in India primary education is given to refugee children till the age of fourteen as stated in Article 21A of the Constitution of India. But as far as higher education is concerned it is a myth for the refugees in India.

4.3.3 Employment of Refugees in Sweden and India:

A person who had been given asylum in Sweden and acquired refugee status, subsidiary protection or residence permit have the right to live and work in Sweden on equal ground as Swedish citizens. These persons would receive a residence permit card from the Swedish Migration Agency. Sweden refugees are permitted to work both in private sector as well as public sector.

Sweden provides more rights to refugees just like the citizens in Sweden. All basic rights of education, higher education, freedom of movement, job opportunities, etc are provided to the refugees and migrants in Sweden. Whereas in India there is lot of restrictions for refugees. They are not allowed to move freely. In India refugees have the Right to Live and their lives are protected as per Article 21 of the Constitution of India. In case of education, compulsory education as stated in Article 21A of the Constitution of India is provided but for Higher Education the Government of India does not provide any assistance and is difficult for the refugee children to pursue higher studies in India. Job opportunities are also not provided to the refugees and if at all they are given jobs they don't get as per the qualifications and 90% of the refugees works as coolies, painters, servant maid. Few refugees who studied in India acquired jobs in private sector with minimum wages. No refugees are allowed to work in public sector unlike other citizens in India even if they possess proper Identity card.

4.3.4 Health Care of Refugees in Sweden and India:

Public Health and medical care in Sweden are managed by the country's councils or regions. Any person who comes to Sweden as migrant the Sweden Government immediately gives emergency healthcare to them. The health care is provided free of cost. Concentration of Health and Vaccination is more on Children and Women when compared to the men. Most of the Refugees who come to Sweden would have faced any kind of persecution like violence and mental torture. Instance of sexual harassment and physical injuries are also there. It was necessary for them to be given immediate treatment when they come to Sweden as Refugee.

The Refugees who come from other countries have both physical and mental health problem. They are not taken care by their Country of Origin and deprived of basic health. Financially they are weak and there is no certainty as to when they can get back to their home Country. Continuous health care is always given by the Sweden Government for the Migrants and Refugees who enter the Country. Special care is also given to differently abled persons. Vaccinations are given to all Refugees inside and outside the camp to prevent spread of communicable diseases. It is clear from the above study that the Refugees are given proper Medical and Health care in Sweden.

In India, refugees are not given proper health treatment immediately on their entry into the country. Due to lack of Identity card and legal status for refugees they struggle to get primary health care. In Refugee camps, health camps are conducted occasionally. During Covid 19 pandemic vaccinations was given to all the refugees in the camps. The ICRC had also taken care of public health of refugees and refugee children. But after pandemic the ICRC had not visited the camps of refugees and hence refugees are facing issues in going to hospital and to give vaccinations to their children. Public health centres are not established for refugees. They must go to nearby government hospitals or private hospitals. For maternity no benefits are provided for women. They can either go to Government hospitals or private hospitals at their own cost. As far as health of refugees is concerned Sweden provides more rights than India.

4.3.5 Citizenship Rights of Refugees in Sweden and India:

Sweden grants citizenship to refugees who stay in their country for a period of more than five years. Whereas in India Refugees are not given citizenship though the citizenship act states that refugees who are living in India for more than 11 years are entitled to citizenship. This was amended by the citizenship amendment act, 2019 which states that refugees from Afghanistan, Pakistan and Bangladesh can get citizenship if they reside continuously in India for a period of 6 years. The citizenship amendment act does not state anything about other refugees from countries like Tibet, Srilanka, Burma though they are the refugees who are living in India for more than 3 decades. The debate conducted on the Citizenship amendment act, 2019 in the Parliament listed that since India is not a signatory to the refugee convention, 1951 and 1967 protocol it is not bound to grant citizenship to the refugees. Further it was discussed that the refugees from Afghanistan, Pakistan and Bangladesh are minority Hindus who face religious persecution whereas it is not the case with other refugees in India. When questioned on the Srilankan refugees who are ethnic persecution it was answered that the Civil war ended, and they can voluntarily repatriate to their country any time. This debate was criticized even by the "United Nations High Commissioner for Refugees" and cannot be accepted because Srilankan refugees are in India for more than 35 years. Further the citizenship act, 1955 also states that refugees who reside in India for more than 11 years can be granted citizenship which is applicable to all refugees in India. Other fact is that the child born in India for a refugee is also not given citizenship as per Section of the Citizenship act, 1955 and they are also treated as refugees only.

When compared with the refugees in Sweden, the refugees in India are not provided with basic rights. Sweden gives refugee status to the immigrants who seek asylum in their country. India also gives refugee status to migrants but not to all aliens and there is lots of restrictions in getting the refugee status.

4.4 Importance of Addressing Refugee Issues in Pakistan and India:

Pakistan takes refugees mostly from Afghanistan who fled due to economic and political reasons. Many of those refugees returned home over the years, but millions remain, and new refugees have arrived since the Taliban took over Afghanistan in August 2021. As of January 2022, there were approximately 3 million Afghans living in Pakistan, around 1.4 million of them are Proof of Registration (PoR) cardholders, approximately 840 000 hold an Afghan Citizen Card (ACC), and an estimated 775 000 are undocumented. While PoR and ACC cardholders are offered limited protection, mainly from refoulement, undocumented Afghans are exposed to arrest, detention and deportation¹¹⁴.

Pakistan is not a party to the 1951 Convention relating to the Status of Refugees and 1967 Protocol and has also not enacted any national legislation for the protection of refugees nor established procedures to determine the refugee status of persons who are seeking international protection within its territory. Such persons are therefore treated as per the provisions of the Foreigners Act, 1946.

In the absence of legislation for refugees, “United Nations High Commissioner for Refugees” conducts refugee status determination under its mandate (Statute of the Office of the United Nations High Commissioner for Refugees adopted by the General Assembly Resolution 428 (V) of 14 December 1950) and on behalf of the Government of Pakistan in accordance with the 1993 Cooperation Agreement between the Government of Pakistan and “United Nations High Commissioner for Refugees”. Pakistan generally accepts the decisions of the “United Nations High Commissioner for Refugees” in granting refugee status and allows asylum-seekers as well as recognized refugees to remain in Pakistan pending identification of a permanent solution. In February 2007, the Government of Pakistan issued Proof of Registration (PoR) cards to Afghan refugees living in Pakistan, which provide temporary legal stay in Pakistan, freedom of movement and exemption from the application of the Foreigners Act, 1946. The Documentation Verification and Information Verification (DRIVE) exercise is recently in Pakistan which is led by the Government of Pakistan and supported by “United Nations High Commissioner for Refugees”. All PoR card holders verified through this exercise will receive new smart PoR cards with a 2-year validity.

¹¹⁴ <https://euaa.europa.eu/news-events/euaa-publishes-report-afghan-refugees-pakistan#:~:text=As%20of%20January%202022%2C%20there,estimated%20775%20000%20,are%20undocumented>

In July 2013 the Government of Pakistan agreed a new National Policy on Afghan Refugees, drafted as the Solutions Strategy for Afghan Refugees (SSAR), which emphasizes on voluntary repatriation in safety and dignity, sustainable reintegration inside Afghanistan, and assistance to refugees.

Based on this many Afghan refugees left to their country. Even then there are still many Afghan refugees in Pakistan fearing that their life is in danger in Afghanistan.

There are refugee camps in Pakistan for Afghan refugees and most of the refugees live freely out of the camps and move freely within Pakistan. The National Refugee policy has helped many refugees to get education, proper health care, livelihood, providing good environment and sanitation. Technical training centres were established for refugees.

Refugee rights are strengthened under the national legal/policy framework. Refugees have access to asylum procedures which uphold procedural standards. Protection interventions are implemented to ensure the prevention of refoulement and access to justice is ensured for refugees and asylum-seekers. Refugees in Pakistan have access to registration and identity documentation. Women and child refugees and asylum seekers are safe from violence, exploitation, harmful practices, and other forms of rights violations. Children are protected from violence, abuse, exploitation, and discrimination. Gender Based violence are reduced and all survivors have adequate and timely access to quality services to effectively address root causes of Gender Based violence.

Refugees (of all age, gender, and diversity groups) can exercise their freedoms and rights and make use of access to public services leading to greater levels of gender equality and self-reliance. The “United Nations High Commissioner for Refugees” works for the refugees to have access to health care facilities and services leading to improvements in their health status.

Resettlement is used as protection tool to ensure the most vulnerable can achieve solutions and corresponding opportunities are expanded. Refugees are allowed to decide whether to return to their country of origin or to continue to live in Pakistan. Pakistan also provides job opportunities to the refugees who have valid registration and identity documents.

On August 19, 2018, the then Prime Minister of Pakistan proposed to give Pakistan Citizenship to Afghanistan refugees children who were born and raised in Pakistan. This group of refugees are reluctant to go back to Afghanistan where security

conditions have deteriorated due to the deadlocked war between U.S.- backed Afghan security forces and the Taliban rebellion¹¹⁵.

There are case laws to prove that the refugees in Pakistan are given citizenship. One such case is that of Gul Mohammed and others in the year 2023 where the High Court of Pakistan ordered to grant citizenship to four refugee men who married Pakistani women¹¹⁶. From the above study Pakistan though not a signatory to the 1951 Refugee convention and its Protocol, 1967, gives more rights to the refugees who are asylum seeker in Pakistan, especially the Afghan refugees who are in huge population.

4.4.1 Education of Refugees in Pakistan and India:

Before 2010, in Pakistan Twenty-five million children do not attend school, making it the second-highest number of out-of-school children in the world¹¹⁷.

Pakistan is the only country in Southern Asia to spend the least amount of its GDP on education, at under 2%¹¹⁸. The government schools offer poor quality education. Extremists and militants regularly assault Pakistan's schools, teachers, and students. Political unrest between Pakistan and Afghanistan also has a significant impact on the government's resolve to continue creating long-term educational plans and roadmaps for Afghan refugees.

The state of Pakistan was required to provide free and compulsory education for all girls and boys between the ages of five and sixteen as part of an amendment made to the constitution in 2010. The clause effectively legalized the practices already in place in the educational system, which allowed foreigners to have free and unrestricted access to education, without making any distinctions between citizens and non-citizens. In practice, both undocumented and registered Afghan refugees were able to enrol in government schools if they can present a legitimate birth certificate¹¹⁹. Additionally, the 2010 amendment transferred legislative and executive authority over education to the provinces. Following the ratification of the constitutional amendment, several provincial assemblies and the National Assembly have passed laws pertaining to the right to education. "Every child, regardless of sex, nationality or race, shall have a fundamental right to free and compulsory education in a neighbourhood school," according to a 2012 bill passed by the

¹¹⁵ Pakistan's Prime Minister Imran Khan speaks to the nation in his first televised address in Islamabad, Pakistan, Aug. 19, 2018.

¹¹⁶ <https://www.rferl.org/a/pakistan-citizenship-afghanistan-refugees/32495680.html>

¹¹⁷ "United Nations High Commissioner for Refugees" 2016a, p. 45

¹¹⁸ ICG 2014, p. 1; Jenner 2015

¹¹⁹ Zetter and Ruaudel 2016, p. 77; Margesson 2007, p. 6; Hasan 2018

National Assembly for Islamabad¹²⁰. Afghan refugees in Pakistan have incredibly poor literacy and skill levels before the amendment, which worsened their socioeconomic vulnerability both there and when they return. But after amendment the Afghan refugees get free and compulsory education. The studies show that Afghan refugee families in Pakistan have taken a very gendered and practical cost-benefit analysis approach to education. Most families are merely unable to afford to place a higher priority on education than on generating short-term revenue. Furthermore, a UNICEF child protection specialist noted that the parents who are not educated do not recognise the long-term benefits of schooling.

Now after the interference of the “United Nations High Commissioner for Refugees”, encouraging patterns, pointing to a rising understanding among parents and young people of the potential benefits of education. Afghan refugees have lots of educational options, making the offer of education rather considerable. Apart from the government, religious institutions and the private sector have played an important role in Pakistan's education system¹²¹. The “United Nations High Commissioner for Refugees” and other international development partners render educational services to Afghan refugees residing in almost fifty-two refugee communities. Approximately 57,000 refugee children in these villages currently get primary and some secondary education from “United Nations High Commissioner for Refugees”¹²². Most of these schools only offer education only up to the eighth grade. There are many Afghans private schools outside of the refugee communities that are officially recognized by the Afghan Ministry of Education via the Afghan consulates or embassy in Islamabad¹²³.

Those Afghan Refugees who have money send their children to private schools. Those Refugees who don't have money send their children to coolie works or shops to earn their daily bread. There is school which provide education and free food for Refugee children. These children get primary education. Some children who can pay money get to private colleges and get Higher Education and jobs in Pakistan. The Government does not accommodate all children for Higher Education. The Afghan Refugees get trained in various skills and get jobs as per their skill.

Some of the Militants groups were against the education for girl children. But the Pakistan Government was willing to give basic and primary education to the Afghan Refugee children. Geopolitical factors also had an impact on the education of Afghan refugees in Pakistan. Many Afghan schools prepared young men for jihad by basing their curriculum on radical or conservative views of Islam. A

¹²⁰ National Assembly Secretariat 2012, p. 1329

¹²¹ Waters and LeBlanc 2005, p. 140

¹²² “United Nations High Commissioner for Refugees” 2018a

¹²³ “United Nations High Commissioner for Refugees” 2017d, p. 10

contemporary reassessment of gender norms and the teaching of productive skills have little place in this environment. A significant segment of Afghan refugees made their home in isolated refugee settlements where humanitarian organizations had to develop public services, leaving them additionally reliant on the ebbs and flows of foreign aid funding. In contrast, most Afghan refugees in Pakistan resided in urban regions and attended government schools.

In India, the education system is the same when compared to Pakistan. India also provides primary free education to children below 14 years. Unlike Pakistan India gives basic education to girl child and there is no discrimination of gender. Basic education is provided in English and in regional languages. If the refugees request, they get skilled education with the help and assistance of the “United Nations High Commissioner for Refugees”. Private school charges more for refugee children even for providing primary education. As far as higher education is concerned both India and Pakistan refuses to provide higher education on the ground that both the countries are not signatories of the 1951 Refugee convention.

4.4.2 Employment of Refugees in Pakistan and India:

Refugees in Pakistan have faced challenges in getting formal employment in Pakistan due to legal restrictions, language barriers and lack of recognition of educational qualifications acquired from their home country. However, Pakistan government along with the “United Nations High Commissioner for Refugees” have taken steps in this issue and there are several refugees who have got employment based on their education and qualifications thus recognising them. The main reason for lack of employment for refugees is because of their legal status. The Government of Pakistan and several non- governmental organisations have taken efforts to address this issue. A number of initiatives and awareness programs have been implemented to assist the economic rights of refugees in Pakistan. The government has taken measures to conduct vocational training programs, skill development initiatives, and projects aimed at creating employment opportunities and have been introduced to enhance the employability of refugees. The private sector often absorbs a significant portion of refugee labour. It is important to consider the recent changes in policies and developments since there is a change in the situation for refugees in Pakistan, including their employment opportunities. Furthermore, the job status for refugees may be obstructed by the response of the international community, changes to governmental regulations, and changes in the socioeconomic environment.

Refugees in India also have legal barriers in getting employment as per their qualifications. To get employment they should possess proper Identity cards like Aadhar card, election Identity card which will not be issued by the Government of India on the note that they have not refugee laws. They can get jobs only in private companies, contract works, household works, etc. India restricts freedom of

movement to refugees as it considers them as a threat to the internal peace of the country. Hence their work is restricted only to nearby places and companies.

4.4.3 Health Care of Refugees in Pakistan and India:

The health care of refugees was initially difficult when huge number of refugees sought asylum in Pakistan. It posed challenges like disease prevention, childcare and maternity care. But now Pakistan has taken efforts to care children and in vaccinating them. Further special care is taken for pregnant woman in camps as well as refugee woman who live outside the camps. Proper sanitation is provided for children and women. Nutritious food is provided to the refugees in Pakistan. Psychological support is also given to refugees who face mental illness due to displacement. This includes primary healthcare, reproductive health services, and vaccinations. Efforts are made to integrate refugees into national healthcare system. Vaccination camps are held regularly to prevent spread of any kind of diseases. Training is given to health workers to help the refugee community and to assist them in case of emergency. The World Health Organisation (WHO) also intervenes to protect and provide health care to refugees in Pakistan.

In India health care of refugees is taken care of by the ICRC who provide nutritious food to the refugees especially refugee children and women. Refugee children are vaccinated by arranging health camps in the refugee camps. Pregnant women are taken care by health workers. But recently after the pandemic situation of Covid 19, the ICRC had stopped to visit the camps and the nutritious food that was provided to the children in refugee camps was also slowly stopped for no reason.

The Government had no taken steps to find out the reason for this and resolve the issue. Now the children in camp are facing malnutrition. Initially vaccination camps were also conducted in the refugee camps but that was also reduced after pandemic and children are taken to the nearby health centres or private hospitals to get vaccinated. Maternity relief which was provided earlier also stopped and the pregnant woman need to go to nearby government hospital for check-ups and scanning. However, vaccination for covid 19 was provided to all refugees in India without any discrimination.

4.5 Comparison with India:

India is also not a signatory to the 1951 convention and 1967 protocol just like Pakistan. The refugee rights in India is limited when compared to Pakistan. India provides Refugee Identity Card just like in Pakistan. India also allows asylum seekers and refugees to continue to live in India. In India there is no special legislations or provisions for refugees. Whereas in Pakistan there is National Policy for Afghan refugees. Refugees in Pakistan have freedom of movement whereas in India they are restricted only in the areas of the camp. As far as education is

concerned India provides education to refugee children till the age of 14 as per constitutional provisions. But when it comes to higher education India does not provide any system or training to the refugees. On the other hand, Pakistan provides primary education and higher education to the refugee children.

Considering the rights of refugees India lacks in protection of refugee children and women whether it be health, education, livelihood, education, etc. and India justifies it stating that India is not a State Party to 1951 refugee convention and its protocol. But in Pakistan refugees are more safe and less discrimination even though Pakistan is also not a state party to the refugee convention. India also follows non refoulement just like Pakistan and allows the refugees to go back to their country if they are willing to but with lots of formalities which takes even years for them to get back to their country.

When it comes to Citizenship there are instances of refugees in Pakistan who have obtained citizenship by court order and also the then Prime Minister Imran Khan had passed order to provide Citizenship to Afghanistan refugees children who were born and raised in Pakistan. Whereas in India except few refugees no one have been granted citizenship. Further India gives only refugee status to children born and brought up in India even after decades of their parents living in India. From the above comparison Pakistan provides more rights to the refugees than in India though both the countries are not state parties to the 1951 refugee convention and its protocol.

4.6 Refugee Rights in Indonesia:

Indonesia is a country which accept refugees from all countries. There are asylum seekers from more than 50 countries who seek protection in Indonesia. Around 50% of the refugees are from Afghanistan as per the “United Nations High Commissioner for Refugees”¹²⁴. Indonesia like India and Pakistan is also not a signatory to the 1951 Refugee Convention and 1967 Protocol.

Refugees and asylum seekers in Indonesia live in urban settings in several cities in Indonesia including Jakarta, greater Jakarta area, Aceh, Medan, Pekanbaru, etc. Nearly 27% of the persons of concern are children, while 73% are adults (25% women and 75% men) as per the “United Nations High Commissioner for Refugees”. “United Nations High Commissioner for Refugees” Indonesia works closely with government counterparts, partners, other UN agencies, NGOs, and civil society supporters to protect refugees and asylum seekers and identify solutions for them. Children are provided primary education. Indonesia also follows non

¹²⁴ <https://www.unhcr.org/id/en/unhcr-in-indonesia#:~:text=At%20the%20end%20of%20December,the%20population%20are%20Afghan%20refugees>.

refoulement of refugees but insists that refugees could not live in Indonesia for long and have to resettle in other countries. Again, resettlement becomes difficult for the refugees since they are trapped in uncertainty because of education and job. As far as job the refugees don't get jobs as per the qualifications. The refugees work as labours and get very meagre amount as daily wages. Refugees in Indonesia are not permitted to work and receive no social benefits from the Government of Indonesia.

The Government of Indonesia allows them to stay here while they have current registration documents from the Office of the United Nations High Commissioner for Refugees ("United Nations High Commissioner for Refugees"). There are chance of refugees being exploited by the immigrant officers if they are placed in regular jobs. "United Nations High Commissioner for Refugees" undertakes a process of verification of identity for the purpose of registration and issuance of individual documentation. Just like other countries Indonesia also issues Identity cards to the refugees. The "United Nations High Commissioner for Refugees" with the Indonesian government are trying to sort out the issues faced by the refugees in Indonesia. There are no laws governing the rights of refugees. Indonesia does not provide citizenship to the refugees because the refugees have the option of Voluntary repatriation and resettlement.

4.6.1 Education of Refugees in Indonesia and India:

In 2022 there were modifications made in the Indonesian Ministry of Education, Culture, Research, and Technology released Circular in 2019 that permits refugees and asylum seekers to register in the country's government and private education system at any level, from primary to secondary. Possession of a current "United Nations High Commissioner for Refugees" document and expertise in Indonesian are the requirements for enrolment in local schools. "United Nations High Commissioner for Refugees" may offer training programs covering the Indonesian language and fundamental skills like reading, writing, and counting and in addition to extra assistance.

Indonesia offers formal elementary and secondary education to children in the age group of 5 years to 18 years. Refugee children will be placed in a grade level or grade based on the outcome of their proficiency exam after finishing the preliminary course. Children of refugees who could not do school in Indonesia or in their home country and who want to pursue their education are given the opportunity to learn. The Centre of Community Learning Based Activity, often referred to as Pusat Kegiatan Belajar Masyarakat (PKBM) or Sanggar Belajar Masyarakat (SBM), is the place where they get education. Refugee children should complete a proper evaluation and prepare the course before being registered.

A refugee based school education revolution was established and managed the first school in Indonesia by refugees, the Cisarua Refugee Learning Centre (CRLC).

In 2014 the refugees themselves opened a school for their kids after coming to know that education is a human right. Women both from the refugee and certain NGOs offered to teach because they were afraid to threat to their "refugee status." The school was a great success and they got funds of \$200 contribution, a small room, and a few books.

Forty children were enrolled in classes within a week, and further forty children were ready to enrol. There was not developed community around the school. The school was the one which helped in developing the area.

To promote the school many advertisements and video were released and the outsiders started to donate books, assist with teacher training and curriculum development, and pay for the rent of the building. The school now as over 100 students, 15 volunteer supervisors and teachers, and a sizable location in just three months.

The CRLC helps more than 200 students age group of 5 to 65 to get educated and is fully administered by volunteer refugees. Based on this atleast ten other refugee based schools adopted this method of education and there nearly 1800 refugees who get education in Indonesia.

Children under the age of eighteen receive primary and basic high school education from CRLC, and elderly men and women receive basic literacy instruction. It serves as the centre for the refugee community and provides a place for refugees to entertain, exchange information, provide reasonable financial help, identify refugees who may be mentally ill or in danger, and plan sports and other events.

Children can enjoy their childhood and have friends, learn English, math, science, sports, art, drama, and other subjects in a safer environment at school. All classes are handled by the refugees, who also run the school's administration, training, etc.

School is a place for all refugee to meet and connect with other refugees and also with the people there. The school always invites guests from all over the world, including Australia and Indonesia, each year. The refugees take the opportunity to meet the guest and to explain about their origins. For "United Nations High Commissioner for Refugees" Indonesia, CRLC gives the contact information sharing and conference about refugee needs.

However, the students do not receive normal educational credit because the institution has not yet been officially registered with Indonesian government. Many Indonesian government officials and members of parliament have visited the school, and they extended their support for its objectives. Many refugees get debt and some are pushed to live in poverty and a few students are imprisoned as they are homeless.

CRLC increases social ties of trust, mutual support, resilience, trustworthy information, and a larger support system. Further to reach their developmental milestones, the children are protected from the harmful consequences of extended travel. Education at CRLC is like that of any typical elementary school worldwide. They follow an Australian method of teaching and speak English well and have a deep awareness of local customs.

Many teachers and professors are enrolled in universities. As the “United Nations High Commissioner for Refugees”, NGOs, and media outlets increasingly get to the refugees for their opinion, CRLC gives them the chance to speak for themselves. In India, there is no special schools for refugees. The refugees get primary education from government schools or private schools. They have set up only Anganwadi schools in the refugee camps for children below 5 years. The teachers working in Anganwadi are mostly women refugees inside the camp. They teach basic regional language and English. When compared to Indonesia, India does not provide higher education. Not much assistance from other countries for refugee children education. They don't get opportunity to talk about them in the International forum or to any visitors to the camp. No higher officials visit the camp and hence they are not able to tell their grievance to any one regarding their education. Many private schools collect huge fees for these refugee children stating them as foreigners and only few of the refugees can afford for the same while others put their children in government school or leave them uneducated. Only the “United Nations High Commissioner for Refugees” and the ICRC come to the assistance of the refugee children's education. They create awareness on the need for education and help children get into schools nearby to get compulsory and free education. Higher studies is a myth to these refugees in India except for those who are outside the refugee camp and who came by way of their country visa. But they are also levied high fees for their further studies considering them as NRI.

4.6.2 Employment of Refugees in Indonesia and India:

Refugees in Indonesia usually face legal issues to work there and get work permit. It is mandatory for the refugees to register with the “United Nations High Commissioner for Refugees” who enter Indonesia but they cannot get work permit based on this. The Refugees don't know the language of the country. It is difficult to get job in Indonesia because of this. There are restrictions to apply for job in the Government sector of Indonesia. It is difficult for the Refugees to get in to it. Like the other countries who are not party to the Refugee Convention, Indonesia also do not give job as per the qualification.

In India the refugees are not entitled to work permit and get jobs. The Refugees face lots of issue to get work permit. Hence, they are forced to do jobs like painting and contract works. Since India is a country of diversity, it is difficult for the refugees to get job as per their qualifications. They do whatever job they get. Some are placed

in private sectors who recognise Refugees. Refugee children who do higher education by management and payment seat here in India can get placed in private companies for a nominal pay.

However, the “United Nations High Commissioner for Refugees” need to take steps to cooperate with the Indian Government in providing job opportunities to the refugees in India.

4.6.3 Healthcare of Refugees in Indonesia and India:

Due to legal and administrative barriers, the formal health care of refugees is restricted in Indonesia. The Refugees who come to Indonesia may have mental stress because of the situation in their home country. Due to fear of loss of their lives due to War or any other oppression against them. Indonesia gives proper Health care to Refugees who arrive in their Country. Children and Women health care is taken care of properly. Vaccinations are given on time to the Refugees. They provide mobile hospitals to give emergency treatment and assistance. There are Humanitarian agencies which help the Government of Indonesia in providing health care and vaccinations to the Refugees.

India has taken certain measures to protect the health care of refugees in camps. They are provided with vaccinations and healthy food. Good health care is given in case of emergency. But India lacks health assistance at the time of entry by the Refugees into the Country. They get the medical assistance only after they are registered as Refugees in the Country. The Government of India and the State Government conduct awareness program in the Refugee camp. Awareness is created to prevent from the attack of deadly diseases.

After pandemic the situation has changed. The health camps and awareness have reduced by the Government for no reasons. Before the pandemic, the International Committee of Red Cross came to the assistance of the Refugees in camp. They functioned along with the United Nations High Commissioner for Refugees. But situation changed after pandemic. The Committee has stopped from giving assistance to the Refugees.

4.7 Comparison of Indonesia with India:

Indonesia and India both are not party to the 1951 Refugee Convention and its Protocol. Both India and Indonesia give Identity Cards to the Refugees. Freedom of movement is given to Refugees in Indonesia whereas the Freedom of movement is restricted to the Refugees in India. Primary education is given to Refugee children both in India and Indonesia but higher education is denied. The countries follow the principle of non-refoulement though both are not party to any Refugee Convention.

India and Indonesia restrict job in the Government sector to the Refugees. They are however allowed to work in private sector if they get job. Both the Countries do not have any separate Law for Refugees in their Country. Citizenship is not granted to the Refugees in India and Indonesia. Not even to the Refugee children who are born in their country. Indonesia is now taking steps to protect the rights of refugees and along with the help of “United Nations High Commissioner for Refugees” trying to sort of the refugee problems.

This chapter has compared the refugee rights of India with that of Sweden, Pakistan and Indonesia. The comparison shows that Sweden has more refugee rights and laws than other countries since it is party to the refugee convention, 1951. Pakistan also provides more rights to refugee and treats the refugee with humanity than India though Pakistan is also not a party to the refugee convention just like India. India and Indonesia stand.

Chapter 5

Citizenship Amendment Act and Issues Faced by The Srilankan Refugees

Citizenship is a privilege which gives a person a special relation to a country. A citizen is entitled to enjoy more rights than a non-citizen as they can also participate in the process of decision making in the administration of a country. For refugees, citizenship is a necessity as their situation becomes like a stateless person. They abandon their homes and move to other countries in search of peace and safe shelter for their children and family. In such conditions, being out of their countries, where they suffered persecution, they do not get protection of their country of origin and not being citizen of the country of asylum, their situation becomes like stateless persons. In India, refugees from countries like Afghanistan, Pakistan, Bangladesh, Sri Lanka, Tibet, Iraq, etc. live a vulnerable life. In India, citizenship is regulated by the Citizenship Act, 1955. Recently, Citizenship (Amendment), Act, 2019, was implemented which provided provisions to give citizenship to refugees living in India from countries of Afghanistan, Pakistan, and Bangladesh.

Citizenship is the foundation on which the entitlements of the citizens of a nation state are based. It is the foundation on which citizens demand their rights and accept their responsibilities. It is this judicial status that enables individuals to gain access to and acquire the right to demand necessities such as universal education, shelter, a social security system, and the right to employment and a secure livelihood. Refugee status is therefore an inadequate judicial base for an individual to access the benefits of a nation state. It's just a nominal and temporal existence within the state's economic and territory. The constitutional rights of freedom of movement are reserved only for citizens. Refugees are separated by the state and propagated through various means as those who are alien and thereby their presence is deemed to be temporary.

5.1 Citizenship in India:

Constitution of India gives provisions for citizenship under Article 5-11, but it only determines citizenship of people at the time of enactment of the Constitution. For determination of citizenship in future, Article 11 empowers Parliament to frame law on citizenship. Based on this, the Parliament enacted the Citizenship Act in the year 1955. This law gave Citizenship of India in the following four ways:

By birth
By descent

By registration
By naturalization.

Citizenship by birth:

“Any person born in India on or after 26 January 1950, but prior to the commencement of the 1986 Act on 1 July 1987, is a citizen of India by birth. A person born in India on or after 1 July 1987 but before 3 December 2004 is a citizen of India if one of parents was a citizen of India at the time of the birth Those born in India on or after 3 December 2004are considered citizens of India only if both of their parents are citizens of India or if one parent is a citizen of India and the other is not an illegal migrant at the time of their birth. In September2013, Bombay High Court gave a judgment that a birth certificate, passport or even an Aadhaar card alone may not be enough to prove Indian citizenship, unless the parents are Indian citizens”.

Citizenship by Descent:

“Persons born outside India on or after 26 January 1950 but before 10 December 1992 are citizens of India by descent if their father was a citizen of India at the time of their birth. Persons born outside India on or after 10 December 1992 are considered citizens of India if either of their parents is a citizen of India at the time of their birth. From 3 December2004 onwards, persons born outside of India shall not be considered citizens of India unless their birth is registered at an Indian diplomatic mission within one year of the date of birth”.

Citizenship by registration:

“The Central Government on an application, register as a Citizen of India under section 5 of the Citizenship Act 1955 any person (not being an illegal migrant) if he belongs to any of the following categories”:

“a person of Indian origin who is ordinarily resident in India for seven years before making application under Section 5(1)(a) (throughout the period of twelve months”,

“immediately before making application and for six years in the aggregate in the eight years preceding the 12 months”,

“a person of Indian origin who is ordinarily resident in any country or place outside undivided India”,

“a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration”,

“minor children of persons who are citizens of India”,

“a person of full age and capacity whose parents are registered as citizens of India”,

“a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration”,

“a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration”.

Citizenship by Naturalization:

“Citizenship of India by naturalization can be acquired by a foreigner who is ordinarily resident in India for 12 years (throughout the period of 12 months immediately preceding the date of application and for 11 years in the aggregate of 14 years preceding the 12 months) and other qualifications as specified in Section 6 (1) of the CitizenAct,1955”.

Under these methods, Refugees can also become Citizens of India by registration and naturalization. The Convention Relating to Status of Refugees, 1951, recognizes the Right to citizenship of Refugees under Article34 but India not being party to Convention says that it is not bound to give citizenship and if not gives citizenship to refugees only on humanitarian grounds.

Section 5 of Citizenship Act, 1955 states Citizenship by Registration which specifies conditions to be fulfilled by a person who is not an illegal migrant to become citizen of India. Section 6 of the Act states about Citizenship by naturalization declares that if a person fulfils the qualifications specified under Schedule III may become citizen of India. By Citizenship Amendment Act, 2019, amendments have been introduced under Schedule III.

Amendment in the definition of illegal migrant Section 2(1)(b) of the Citizenship Act, 1955, define illegal migrant. It says that, “a foreigner who enters in India without a valid passport or travel document or without any proper document or authority as prescribed by law or who enters in India with a valid passport or travel document or other document or authority as prescribed by law but remain in country beyond the permitted time period. ”

the Citizenship Amendment Act, 2019, added following provision. It says- “Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or

before the 31 December 2014 and who has been exempted by Central Government under some provisions of Passport (Entry into India) act, 1920, or Foreigners Act, 1946, shall not be treated as illegal migrant. “

This means the persons of these communities from Afghanistan, Bangladesh and Pakistan can file application. They can apply for Indian Citizenship under the provisions of Section 5 and Section 6 of the Citizenship Act, 1955.

Citizenship Amendment Act, 2019, amended Schedule III and added clause (d) in it. It states that person from the six communities and who belong to the given three countries are required to reside or give services to Government of India in aggregate for a period of “not less than 5 years” which was earlier eleven years. It means that the persons from Hindu, Jain, Sikh, Parsi, Buddhist or Christian community from Afghanistan, Pakistan or Bangladesh, who came to India on or before 31 December 2014 will have to reside or work under the service of Government of India or partly reside or work in the service of Government of India for a period of five years immediately preceding the period of twelve months from the date of filing of application. This has reduced the time from 12 years to 6 years.

The Citizenship Amendment Act, 2019, further added, 6B, which provides that if certificate of citizenship is issued to person under section 5 or section 6 by the government and if any such proceedings related to illegal entry are pending against such person, such proceedings shall be terminated. It further provides if any such proceedings are pending against any person it will not affect the proceedings for issue of certificate of citizenship. So, by these amendments the provisions have been liberalized to some extent to grant citizenship to refugees.

Sec. 2(1)(b) as amended by Citizenship Amendment Act, 2019, specifies that persons who belong to Hindu, Jain, Parsi, Sikh, Christian and Buddhist communities shall not be called as illegal migrant. It is said that it is violation of right to equality given under Article 14 of the Constitution. Hence a refugee must be treated as equal to another refugee.

This bill act on this as these minority communities of neighbouring countries suffer religious persecution in their countries which creates a relationship with the object of citizenship. The Citizenship Amendment Act, 2019, has reduced the period from 12 years to 6 years to apply for citizenship by naturalization, who belong to the selected six communities from selected three countries who came to India on or before 31 December 2014. This relaxation in time is not given to other people and they must live and work for 12 years as per Schedule III. This was opposed by many people. On this, the Ministry of Home Affairs contended that this has been done as sometimes such people are unable to prove documents of birth of their parents to support their claim, this provision will reduce their difficulties.

However, the time could have been reduced for all those who are not included in this keeping all the provisions of document verification and procedure of security check same for all the refugees in India. Assam and Northeastern states oppose this amendment in the citizenship act. The Sri Lankan refugees are living in India for more than 30 years fulfilling the criteria of living here for 12 years.

5.2 The Citizenship (Amendment) Act,2019:

Refugees in India are dealt with ad hoc administrative decisions in the absence of specific legal mechanisms. The Government of India admitted in parliament that “there is no national law on refugees at present. Only standard operating procedures are issued by the Ministry of Home Affairs to deal with foreign nationals in India, who claimed to be refugees”¹²⁵

The Ministry of Home affairs while answering on the protection of refugees stated that there is no national law on refugees at present. However, the government has circulated a Standard operating procedure w.e.f. 29.12.2011 for dealing with foreign nationals who claim to be refugees. The claims made by such foreign nationals are examined carefully and if found justified, a Long-Term Visa (LTV) is granted which is renewable. One of the factors to be seen for grant of LTV is the general perceived condition in the home country of the people belonging to the community of the foreigner making the claim¹²⁶.

The Citizenship (Amendment) act of 2019 started a nationwide debate about illegal migrants and the claim to an Indian identity.

To provide Indian citizenship to minority communities fleeing the persecution from neighbouring countries, the Citizenship (Amendment) act 2019, updates the existing Citizenship act, 1955. It seeks to offer citizenship to Hindus, Parsis, Buddhists, Sikhs, Jains Christians from Bangladesh, Pakistan and Afghanistan. The clear intention behind bringing it is to grant citizenship to Hindus fleeing persecution in Muslim majority countries neighbouring India.

The amendment applies to those who were “forced or compelled to seek shelter in India due to persecution on the ground of religion”. It protects such people from proceedings of illegal migration. The Amendment reduces the requirement of naturalization from 11 years to 5 years as an important condition for applicants belonging to these six religions from three neighbouring countries. The fixed date

¹²⁵ Lok Sabha Unstarred question No.2623 to be answered on the 2nd august,2016/shravana II,1938 (SAKA) Protection of Refugees, 2623. Question by Dr.Shashi Tharoor, answer by Minister of State in the Ministry of Home Afairs (Shri Kiren Rijiju)

¹²⁶ ibid

for citizenship is 31 December 2014 before which the applicant should have entered India. The act provides that on acquiring citizenship such persons shall be considered to be citizens of India from date of their entering India, and all legal proceedings against them in respect of their illegal migration or citizenship will be closed¹²⁷.

However, it is criticised that the amendment violates the basic principles and secular values of the constitution of India since it proposes to only certain religion and citizenship together. Many protests were conducted all over the country on the enactment of Citizenship Amendment Act, 2019. The Citizenship Amendment Act has also affected the National Register of Citizens which was signed by India to address the issue of illegal migrants from Bangladesh. In India, there has been a lot of discussion and debate in the parliament but it was answered that these refugees have not entered into India due to ethnic persecution but because of discrimination of religion in their home country. There is still disagreement over the legal and social ramifications of the CAA, and its effect on the heterogeneous nature of Indian society is a persistent source of worry.

Despite not being a signatory to the 1951 refugee convention and its protocol, India has maintained policies that granted at least formally - security to individuals fleeing persecution. The Indian government had introduced a system of giving long term visas to certain migrants, which help them obtain Indian citizenship as well as, and thousands had already done so before the enactment of CAA. The recent amendment in the citizenship act has been criticised by the Office of the High Commissioner of human rights as it discriminates based on religion. It further undermines the commitment to equality before the law enshrined under Article 14 of the Constitution of India and international obligations under various human rights instruments to which India is a state party¹²⁸.

The 1950 Indian Constitution, which did not discriminate based on religion, guaranteed citizenship to all citizens of the nation at the time it was enacted. The Citizenship Act, approved by the Indian government in 1955, granted citizenship to everyone born in India, subject to minor restrictions. The Act also offered two ways for non-Indians to become citizens of India. After residing in India for seven years, individuals from "undivided India" were offered a method of registration. Those who had lived in India for 12 years were offered the option to get naturalised. The Citizenship Act was changed because of political changes in the 1980s, notably

¹²⁷ Ibid

¹²⁸ "Citizenship Amendment Act may leave Muslims stateless, says UN Secretary General Antonio Guterres", the Hindu, 19-2-2020: Suhashini Haider, "UN rights body to move Supreme court on Citizenship Amendment Act", the Hindu, 3-3-2020: Anam Ajmal, "UN human rights body condemns Citizenship Amendment Act", The Times of India, 14-12-2019.

those connected to the violent Assam movement against Bangladeshi immigrants. All Bangladeshi migrants who came before 1971 were granted citizenship under the terms of the 1985 Assam Accord, which Rajiv Gandhi's administration signed. Additionally, the government consented to track down and deport all later arrivals of migrants after removing their identities from the voter records.

Additional changes to the Citizenship Act were made in 1992, 2003, 2005, and 2015. The Citizenship (Amendment) Act, 2003 was approved by the government in December 2003, making significant changes to the Citizenship Act. via introducing the concept of "illegal immigrants" into the Act, it rendered their offspring likewise unable to petition for citizenship (via registration or naturalisation). Citizens of foreign nations who entered India without proper travel credentials or who overstayed the time allowed by those passports were considered illegal immigrants. They may be sent in jail or deported.

The Government of India was required to establish and maintain a National Register of Citizens under the 2003 amendment. All the parties said that refugees from minority populations in Bangladesh and other nations had experienced persecution and called for a lenient approach to awarding them citizenship during the parliamentary discussion on the amendment.

Both the 1951 UN Refugee Convention and the 1967 Protocol are not signed by India. It does not have a national refugee strategy. All refugees fall under the category of "illegal migrants". While the then Prime Minister, Mr. Jawaharlal Nehru established India's customary view that refugees must return to their native countries once things are back to normal, the country has been eager to accept refugees. Over 456,000 refugees are supported by India, according to the US Committee for Refugees and Immigrants, with the "United Nations High Commissioner for Refugees" hosting roughly 200,000 refugees from "non-neighbouring" nations.

Refugees in India are dealt with ad hoc administrative decisions in the absence of specific legal mechanisms.

5.3 Sri Lankan Refugees Citizenship Rights in India:

Around 1,20,000 Sri Lankan Tamil refugees in India and they live in Refugee camps situated in Tamil Nadu. Refugees from Sri Lanka fled to India due to several factors since 1983, and many have been in India for over 30 years. Sri Lankan Tamils belong to Tamil speaking population, and there is a historical relation between India and Sri Lanka. India started its assistance and political involvement in their neighbouring Island in 1971, when the Prime Minister Indira Gandhi sent the Indian armed forces to help Colombo in controlling the JVP Janatha Vimukthi Peramuna) led insurgency. In 1987 during Rajiv Gandhi's Government, the Indian Peace Keeping Force was sent into the Tamil areas of the Island and an occupation

ensured, lasting three years and causing huge destruction to the Tamils. India was involved throughout the Island ethnic conflict. After the Civil War ended in May 2009, New Delhi has considerably increased its multifaceted investments in the Island. This involvement should be as a legitimate base to demand from the Central Government, a obligation to facilitate a more human and self-determinist existence, through Law enshrined rights, for the thousands Sri Lankan Tamil refugees in India.

As they speak the regional language Tamil and since many of these refugees hold basic Educational qualifications, the major obstacle they face are the Government policies that prevent them from getting employment and contribution to the welfare of society.

Sri Lankan Tamil refugees are considered to be a banned community. Their inability to work legally systematically confines them to exist as an exploited and unorganized labour force. This limits money gaining which in turn restricts the Educational pursuit of many Refugees children and youngsters and they are forced to do daily wage work. Those who do not have family members in India are duty bound to look after their family members in Sri Lanka which is additional burden to them. Further, the Military Occupation in their homeland generates an atmosphere that is unstable for the individual and the community to get back there. Their life in India is more stressed and annoyed. They are often left with no choice but to stay back and face the oppressive conditions in the camps, since they can neither return to Sri Lanka nor leave India.

According to the Foreigners Act 1946, anyone not an Indian citizen is considered a foreigner, and the foreigner must carry Indian government-issued documentation. Without such documents, the individual is subject to the provisions of section 14 of the Foreigners Act, dealing with punishment, which can extend to five years and a fine. The Act also allows the government to detain and deport foreign nationals staying illegally in India.

The Tamils from Sri Lanka who arrived in India after 1983 due to the outbreak of civil war was classified as “illegal migrants” under the Citizenship Amendment Act, 2003. This made the Sri Lankan refugees Stateless and all legal pathways to citizenship was blocked. The constitutional courts on certain cases as discussed on the issue relating to Statelessness.

In the case of Committee for C.R. of C.A.P. and Others. vs State of Arunachal Pradesh¹²⁹, the petitioners were Chakma and Hajong refugees and filed Writ under Article 32 of the Constitution of India seeking direction against the Union of India to grant citizenship to Chakma and Hajong tribes who settled in the State of

¹²⁹ 2016 (15) SCC 540

Arunachal Pradesh. The contention of the government is that Chakma and Hajong refugees' application were received and returned to the State of Arunachal Pradesh for certain errors and corrections. Hence, the court allowed the Writ petition and directed the Government of India and the State of Arunachal Pradesh to finalise the conferment of citizenship rights to eligible Chakmas and Hajongs and to comply with the directions of the court in protection of their life and liberty as guaranteed in Article 21 of the Indian Constitution and not to discriminate them.

The above case and few other cases have decided on granting citizenship to refugees who are stateless. The same is the case of the Sri Lankan refugees and hence they are also entitled to Citizenship in India and provisions as to be made to include genuine refugees within the purview of the term "Foreigner". Further the situation of Stateless is De Jure and recognised as International customary law and hence India has an obligation to provide remedy to stateless refugees.

The government has argued that since India has not signed the 1951 Refugee Convention, "United Nations High Commissioner for Refugees" identity cards are not legal documents. Yet, India has asserted at several "United Nations High Commissioner for Refugees" executive committee meetings that refugees are protected by the Constitution. India does not provide essential identity documents, such as Aadhaar, the national identity number to the refugees, but collects biometric data from refugees to aid surveillance and possible deportation.

Sri Lankan refugees do not fear deportation, given the support they have in Tamil Nadu, but they worry about the future of their children, who grow up as stateless persons. Such children do not have the rights of citizens, which includes everything from constitutional protections to property rights. Unlike some countries, India does not confer automatic citizenship to children born here. The children who are born in India are not given citizenship by birth as stated in Section 5 of the Citizenship act, 1955.

The Sri Lankan refugees face great challenges because they do not get access to higher education, employment, medical treatment, etc. since they are not given citizenship status. Moreover, in adhering to its own claim of treating all refugees on equal position without discrimination, the Government of India ought to have extended the same privilege to the Sri Lankan refugees living in India for a long period of time. Many of the Sri Lankan refugees are of Hindu origin and only a minority is from Christianity and Islam. It is still a great question as to why the Government of India has not considered Sri Lankan refugees for granting of citizenship though they live in India for more than 3 decades. The children of refugees who are born in India are also not granted Nationality or citizenship.

In nations like the United States of America, they have enacted the Immigration and Nationality Technical Corrections Act in the year 1994 to retrospectively grant

citizenship to all children who were born to alien father and citizen mother. Even in Brazil, Citizenship is granted to children under jus sanguinis meaning that the child's citizenship is decided by that of his or her parents and the same of amendment in their constitution in the year 2017 with retrospective effect. But in India, even if the father or mother is a citizen of India and the spouse is a refugee then also the children born out of the wedlock are considered as refugee. Though the Citizenship act provides that if either of the parents are Indian and the Child is born in India can acquire the citizenship of India, it is not the case of refugees or stateless persons.

Section 6(1) of the Citizenship Act, 1955 also provides that Citizenship can be acquired by a person who lives continuously for 12 years in India. Srilankan refugees are people who live here for three decades but they are not considered eligible for citizenship. Eighty percent of these refugees came to India only through the help of the Indian Peace Keeping Force and hence they should be considered as genuine refugee and should be entitled to citizenship. The children born in India are also not considered for citizenship by birth.

Like other countries India should also bring certain legislation to eliminate statelessness and include Indian origin tamils for citizenship retrospectively. India is a country which has largest flow of refugees from all over the world including Tibetan refugees, Bangladesh refugees, Sri Lankan refugees, Pakistan refugees and few more. Though India is not a signatory to the Refugee convention 1951, India can decide on granting citizenship to refugees based on the national interest of the country and also not affecting the security of the country.

In Abirami vs State of Tamil Nadu¹³⁰, Justice G. R. Swaminathan, Madurai Bench of the Madras High court observed that the principles of Citizenship Amendment Act (CAA) 2019 could be applied to the Sri Lankan Hindu Tamils. Abirami the petitioner was born in December 1993 in Trichy and her parents were not illegal immigrants. Her parents had come to India during the ethnic conflict in the year 1983 and her father had extended his visa till June 2022.

The petitioner stated that she and her mother had registered as non-camp Sri Lankan refugees with the local police and said that she was not able to get Indian citizenship and an Indian passport even though she had PAN and Aadhaar card.

¹³⁰ <https://news.abplive.com/tamil-nadu/citizenship-amendment-act-applicable-to-sri-lankan-hindu-tamils-madras-hc-1558722>

The Ministry of Home Affairs, Government of India had clarified that the guidelines of the Standard Operating Procedure issued by the Centre would take care of the migrants from Sri Lanka and Myanmar.

While referring to the recent amendment made in the Citizenship Act, the judge said that Though Sri Lankan refugees does not fall within the said amendment, the same principle is equally applicable to them and can be considered.

Though India has neither ratified the Refugee Convention (1951) nor its 1967 Additional Protocol, nevertheless, it has extended constitutional protection to refugees without any religious discrimination. India became a member of the Executive Committee of the High Commissioner's Programme (EXCOM) in 1995 which supervises the material assistance programme of United Nations High Commissioner for Refugee ("United Nations High Commissioner for Refugees"). Membership of the EXCOM indicates greater commitment to refugee law. Apart from this, India voted affirmatively to adopt the UN Declaration of Territorial Asylum in 1967 and accepted the principle of non-refoulement as envisaged in the

Bangkok Principles 1966, and acknowledged as *jus cogens* which is binding on all nation-states irrespective of the fact whether state has signed the refugee convention or not. Being a signatory to ICCPR, ICESCR, CEDAW and most significantly the Convention against Torture (CAT) 1984, India is under an obligation to provide asylum to a person who has any fear of persecution irrespective of religion of the person. The present form of CAA also strikes on International Convention on the Elimination of All Forms of Racial Discrimination.

The Government of India preferred option for Sri Lankan refugees is voluntary repatriation of refugees to Sri Lanka, with United Nations High Commissioner for Refugees ("United Nations High Commissioner for Refugees") assistance. Though the war ended more than a decade ago, voluntary repatriation is taking place slowly. According to the Document Note issued by the government of Tamil Nadu, between 2014 and May 2018, only 4,277 refugees have got repatriated to Sri Lanka¹³¹. From the empirical study the refugees willing to return to Sri Lanka have means of livelihood or have been assured good jobs on their return to the island. Most of the refugees in the camps are landless labourers, and without job opportunities they feel that there is no means of livelihood and safety if they return to Sri Lanka. Further on application for voluntary repatriation, there is a delay in considering their applications and is pending for approval by the government and the "United Nations High Commissioner for Refugees" for years. If voluntary repatriation is to be

¹³¹ Suryanarayan. 11 Mar 2022, Resolve Sri Lankan refugee dilemma from: The Routledge Handbook of Refugees in India Routledge

expedited, the main responsibility is with Sri Lanka. It is submitted that the government of India should make an in-depth study of various problems associated with the economic development of Tamil areas, which were devastated by prolonged ethnic conflict. The government can bring out manpower requirements for economic transformation and provide necessary training for these jobs in the refugee camps in Tamil Nadu, and when they return to Sri Lanka they can be successfully absorbed, and they would become productive citizens of the country.

If the Sri Lankan refugees are to be granted Indian citizenship under naturalization, the government of India should be persuaded to act immediately. The refugees should not be treated as illegal migrants. They must be given the same consideration as the refugees from Pakistan, Bangladesh, and Afghanistan who were not treated as 'illegal migrants', but as asylum seekers. The Sri Lankan refugees came to India in search of security. They were victims of ethnic violence. After coming to India, they have attained upward mobility by educationally advancing themselves. The Sri Lankan refugees in India now, wanted to permanently settle down in Sri Lanka and wanted to acquire Sri Lankan citizenship. But without ascertaining their wishes, they were oppressed by the Sri Lankan government thus forcing them to seek asylum in India.

In recent years the children of the refugees who were born in India got basic education, and most of them have inter-married with local people and do not want to go back to Sri Lanka. Further the recent economic crisis in Sri Lanka have forced many people to again come back to refugee camps in Tamil Nadu. The country is heavily import-dependent, and with foreign exchange reserves crashing, there have been acute shortages of food items, fuel, and other essentials, etc. Hence the Government of India can consider the Citizenship rights to the Sri Lankan refugees who are living in India for decades and who are not illegal migrants.

Chapter 6

Conclusion

6.1 Conclusion:

Sri Lankan refugees are people who fled to India and various parts of the world fearing persecution. The civil war which extended to nearly 26 years from 1983 led to many losses of life and property. The refugees who came to India live here for decades and many of them were rescued by the Indian Peace Keeping Force (IPKF) in the year 1987. Only few of them entered India as illegal migrants. The Sri Lankan refugees faced prosecution on linguistic basis, and they are stateless people since they are not even given citizenship by the Sri Lankan government. India takes the stand that India is not a party to the 1951 refugee convention and its protocol 1967. Hence it is not bound to provide any legal status to the Sri Lankan refugees. India gives protection to refugees only on humanitarian grounds.

It is crucial for the modern world to address the historical, social, and political production of refugees. Refugees' fundamental rights are being abused daily in many different parts of the world. There isn't a single conceptual paradigm that can explain how different types of traumatic experiences affect the lives of refugees. Only studies delving into the actual experiences of refugees can yield such knowledge. The study on the migration hardships of Sri Lankan Tamil refugees serves as a call to action for academics to raise awareness of important issues influenced by pre- and post-migration experiences, such as the trauma of civil war, complex migration policies, and varied settlement challenges. It is heartening to see that many refugees manage to survive and reconstruct their lives following terrible events, even in the face of protracted pain and psychological anguish.

All refugees' voices need to be heard for us to comprehend their situations better and offer settlement assistance services that will help them deal with their stress. India has a rich historical legacy of accepting refugees from all over the world. We have always welcomed refugees with open arms and accorded them a position of honour and respect in our community throughout our five millennia of history. For instance, many of them from various religions and countries are given asylum. Examples are Christians, Americans, Palestinians, Ethiopians, Persians, Syrians, and Afghans. Due to budgetary difficulties, the Indian government has chosen not to ratify both the 1951 United Nations Refugee Convention and the 1967 Protocol. The number of refugees is growing daily because of inhumane and genocide acts. The issue of refugees doesn't seem to be going away anytime soon.

Conclusion

To safeguard refugees, there isn't a unified legal structure, though. India continues to welcome a wide range of refugee groups while without any formal legislation or comprehensive policies pertaining to refugees. Thus, it was agreed that the issue of refugees had international implications and necessitates global cooperation. Given that India is a developing nation with little resources, it is hoped that the international community will recognize India's challenges in this regard. In recent years, the Indian judiciary has taken an active and creative role, introducing refugee law into our legal framework through backdoors while the executive closed the front doors. The judiciary is independent and does not report to the government, though it does recognize refugees and refugee law to a certain extent.

There is an obvious connection between human rights and refugees in that it is only via flagrant violations of human rights that refugees can securely return home. Since refugees are fleeing from one state to another, the issues surrounding them are therefore of an international nature due to the involvement of two or more governments. Consequently, solving their issue will require international cooperation. India is a nation under legal governance. Our Constitution grants some rights on every human being and certain other rights on citizens. Everyone has the right to equal protection under the law and equality before it. Similarly, no one may be deprived of their life or their freedom unless a legally prescribed process is followed.

Therefore, whether a person is a citizen or a refugee, the state has an obligation to defend their life and freedom. The government has the responsibility to defend the treatment group from attacks of this nature; otherwise, it would not be fulfilling its legal and constitutional duties. Threateners would therefore be subject to legal action. Therefore, to protect various facets of refugees' daily lives, state governments must act impartially and uphold their legal obligations. These include the right to work and be free from discrimination; the right to education and employment on wages and salaries; the right to public assistance; the right to social security; and the right to visit courts since they are unable to use their own national passport; Right to health and well-being; Right to life, including business (agricultural, artistic, and cottage industries); right to travel across a territory at will and to select their residence; the prohibition of imposing taxes of any kind that are greater than those that are or could be imposed on their citizens in comparable circumstances; the freedom to refrain from penalizing migrants who have entered their country illegally and without permission; right to refuse to accept a refugee who is on their territory legitimately or for reasons relating to public order or national security; The right to self-help and marriage; the right to own both immovable and moveable property; the ability to establish a non-profit, non-political association; the freedom to seek asylum and the right to go back to their own nation. Thus, the Protection of Human Rights Act of 1993 established the National Human Rights Commission (NHRC), which can actively participate in defending the human rights of refugees.

The Commission is authorized to investigate cases on its own initiative or to safeguard those who have violated their human rights. Currently, it is estimated that 1,80,000 refugees reside in India. Comprehensive legislation is desperately needed to address the refugee crisis, and it must be passed while taking the rulings of the Supreme Court and international agreements into consideration.

India does not have any laws that specifically require the state to uphold or carry out international treaties and conventions, especially humanitarian law implementation that deals with the fundamentals of international humanitarian law. In addition, an international declaration for the welfare and protection of refugees must be complied with by states to ensure that standards of minimum behaviour of states with refugees are not condemned and that their protection, relief, and welfare are restored on humanitarian grounds. The UNCHR is responsible for creating or discovering long-term solutions or relief to refugees and for ensuring that they should not be transferred to a country where they fear they may be tortured. To help asylum seekers access the legal system and realize their fundamental human rights, it is necessary to defend their rights as refugees and improve their circumstances in India. India still offers asylum and direct aid to some 200,000 refugees from surrounding countries. The government's decision to grant long-term visas to individuals seeking asylum and refugee status in 2012 was a positive move.

6.2 Role of Judiciary:

The Indian judiciary serves as the leading guardian that upholds the rule of law, as demonstrated by the National Human Rights Commission Vs State of Arunachal Pradesh¹³² case that was heard by the Supreme Court and involved Chakma refugees from Bangladesh. The Supreme Court ruled that the State of Arunachal Pradesh was required by the Constitution to protect and safeguard the health, life, and well-being of Chakmas.

As a result, the courts ordered the state to take the necessary steps to ensure the personal freedoms and lives of Chakmas. It was observed that a significant number of Chakma migrants had reached Assam, Tripura, and Arunachal Pradesh after crossing the Bangladeshi border. The Supreme Court ruled that Chakma refugees who fled persecution in Bangladesh during the time when Pakistani power prevailed over Bangladesh could not be returned to that country because they risk being killed and losing their right to life under Article 21.

India is expected to uphold international treaties and conventions on humanitarian law, and the state was instructed to safeguard every Chakma and thwart any attempt

¹³² 1996 SCC (1) 742

Conclusion

to expel them from the territory. In *Shishuwala Pal Vs Union of India*¹³³, due to their extended stay in India and claims to be related to some Indian citizens, the petitioner in this case—who was undoubtedly a refugee—claimed to be an Indian citizen after entering the country from East Pakistan (now Bangladesh) in 1971. The petitioners did not specify the actions they had taken to become citizens of India. It was decided that merely being here illegally for a long time did not grant citizenship rights. The petitioners were permitted to travel as refugees to India.

The Supreme Court in *Rev Mons Sebastiao Francisco Xavier dos Remedios Monterio vs State of Goa*¹³⁴ examined the Geneva Convention Act, 1960 and noted its effectiveness as a result of which the Act does not provide a specific remedy in itself, it does provide indirect protection. Rev. Father Monterio was granted Indian identity and citizenship by the Indian government, while he continued to hold Portuguese nationality. Having Portuguese nationality, he was only allowed to enter India with a permit. He was therefore appropriately charged under the law applicable to him since no complaint was made about the trials as such the appeal was dismissed.

In *State of Arunachal Pradesh vs Khudiram*¹³⁵ it was stated that Chakmas were not entitled to all of the Fundamental Rights enshrined in Part III of the Constitution of India since they are considered foreigners under the Citizenship Act, 1955. The right to enjoy asylum must be interpreted in the context of the entire instrument. It suggests that even though a person seeking refuge does not have the right to be admitted to a foreign nation, the state that granted him asylum is required to keep him in the country afterward. The Supreme Court in *Louis De Raedt vs Union of India*¹³⁶, held that every person Right to Life and personal liberty is protected by Article 21 of the Constitution of India. As a result, immigrants residing in Indian Territory cannot have their rights violated unless a legally prescribed process is followed. In conclusion, the issue of refugees in India today is a global one. A string of successful humanitarian crises has brought attention to the suffering of the victims, the fear of forced return, and their near starvation. The victims are now facing an almost miserable scenario and are barely surviving. The International Bill of Human Rights served as the basis for a surplus of regional and specialized human rights documents. Therefore, every Indian citizen is obligated by Article 51 A to uphold harmony among all Indians, to foster humanism, to have compassion for all living things, and to abstain from violence. Therefore, the Indian nation places a high value on humanitarian law and consideration for refugees' position. Protection from legal, socioeconomic, medical, psychological, educational, and occupational

¹³³ MISC. PETN. 246 Of 1984. Decided On: 10/31/1988. Act Referred: CITIZENSHIP ACT: S.10, S.9

¹³⁴ 1970 AIR 329

¹³⁵ 1994 AIR 1461

¹³⁶ 1991 AIR 1886

risks is therefore urgently needed. To provide comprehensive solutions for refugees in the future, “United Nations High Commissioner for Refugees” should collaborate with the host government, UN country teams, and civil society.

In conclusion, the international community must pay attention to the complex issue of Sri Lankan refugees' situation. Their journey is characterized by tenacity and drive, as they escape conflict and persecution and navigate the difficulties of integration and resettlement. It's critical to acknowledge the need for ongoing support as we consider their experiences, both in the form of humanitarian help and long-term solutions for sustainable integration. Through cultivating compassion, comprehension, and cooperation, we can endeavour to create a future in which each person, irrespective of their origins, can live in security and honour. Remembering the persistence and strength of Sri Lankan refugees is important.

The predicament of refugees from Sri Lanka serves as a sobering reminder of the human cost of war and persecution. Their tales of determination, tenacity, and hope in the face of immeasurable tragedy serve as a powerful reminder of the value of empathy and unity on a worldwide basis. As we end our analysis of their challenges and victories, it is critical to acknowledge the continued need for activism and assistance to guarantee the preservation of their rights and dignity. It is the duty of the government to make a society where everyone, regardless of background, has the chance to rebuild their lives and contribute to a better future for themselves and their communities if we band together and address the underlying causes of displacement.

The journey of the refugees from Sri Lanka is proof of the human spirit's resiliency in the face of hardship. They were forced to leave their homes because of violence and persecution, but they have showed incredible bravery and tenacity in starting over in foreign countries. But even if they are secure, they still must deal with trauma, discrimination, and integration difficulties. On considering their experiences, it must remember that the government and people have a moral duty to give the refugees the chances, safety, and support they require to flourish. Through standing up for their rights, encouraging inclusive policies, and advancing communication and comprehension, it can endeavour to establish a future in which nobody is compelled to escape their homes in pursuit of safety and dignity.

The Second chapter analyses the various International Conventions for the Refugees, Protocols and Human Right Protection for the Refugees. It covers the 1951 Convention on the Status of Refugees and its 1967 Protocol, Universal Declaration of Human Rights, 1948. The reasons behind the convention were that after the Second World War the person flee from one country to another especially within Europe. Hence it was necessary to bring the convention for refugees and for progressive development of International Human rights law.

Conclusion

A Refugee, according to the Convention, is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Around 149 countries were parties to the 1951 Convention who have signed and ratified the conventions. There are 46 Articles in the convention. The Convention were to be applied to those who seek asylum without any discrimination on Religion, Race, nationality, or political groups. Further the chapter analysed as why India is not a party to the Refugee Convention and its protocol. The formation of the United Nations High Commissioner for Refugee, its establishment, and powers. The obligations of the “United Nations High Commissioner for Refugees” to supervise the implementation of the 1951 Convention by States Parties. It also functions in countries which have not been party to the Convention aiming to protect and help the refugees. The chapter further study on the Constitutional Provision in India which is applicable to refugees. Various refugees and the increase in population of refugees from various countries like Bangladesh, Tibet, Burma, Sri Lanka, etc. The principle of non-refoulement under International Customary Law is bound for India which is also discussed. Case laws pertaining to principle on non-refoulement. International Convention on the Elimination of Discrimination Against Women, 1979 and Convention on the Rights of the Child, 1989 provides protection and humanitarian assistance to the Refugee children and women. The Foreigners Act, 1946 is also examined to find the position of Refugees in India.

The Third chapter analyses the comparison between Sri Lankan Refugees and other Refugees in India who reside in various parts of India and each state takes care of these refugees. First and foremost, the Status of Refugees after the Independence of India has been examined. The pre independence and post independent position of refugees in India, and the legal status available to Refugees in India. The legal status of Tibetan refugees is examined as to their protection in India, their citizenship status, and basic rights. Similarly, the Chakma, Hajong, Rohingya Refugees status and basic rights are analysed and compared with that of Sri Lankan Refugees to find out the difference and discrimination faced by the Sri Lankan Refugees in India.

Fourth chapter compares the Refugees in India with that of Refugees in Sweden, Pakistan, and Indonesia. The reason of comparison is to find out how the refugees are treated in countries which have signed and ratified the Refugee Convention and Protocol like Sweden who is a party to the said convention and protocol. Further comparison is also made with countries which have not signed and ratified the convention and protocol just like India and the treatment of the refugees in those countries. The comparative study with Sweden discusses on the refugees who seek asylum in Sweden. Comparing the basic rights of refugees, the laws that were laid by Sweden government to protect the refugees, the citizenship status of refugees who live in Sweden for more than four years and the financial assistance that is provided to the refugees in Sweden. The Sweden government provides primary and secondary education to refugees.

It also gives higher education to the refugees. Employment both in the public sector and private sector are given for refugees based on their qualification. The chapter also compares with the health care of refugees in Sweden and in India, where it is made clear by the study that the health care of refugees in Sweden are far better when compared with the health care of refugees in India. The comparative study with Pakistan examines the Afghan refugees who are the highest refugee population in Pakistan. Pakistan provides legal status and basic rights to those refugees though Pakistan is also not a party to the refugee convention. Pakistan protects the refugees mainly the Afghan refugees and gives primary education just like in India. Some of the refugees are given employment in private and public sector based on their qualification and depending upon their refugee status in Pakistan. The health care of refugees in Pakistan is better when compared to India because Pakistan has collaborated with the “United Nations High Commissioner for Refugees” in protection of the refugees and their health rights. The Pakistan government is also taking steps to grant citizenship to those refugees. The comparison of India with Indonesia shows that both the countries are in almost equal in providing legal status to refugees and to grant citizenship. When compared with education, employment, and health care, both India and Indonesia are almost the same. Both the countries given primary education to the refugees but does not provide higher education. When it comes to employment both the countries are not providing jobs based on their qualifications. Health care of refugees is the same in both the countries. Indonesia is however working with “United Nations High Commissioner for Refugees” to give protection and Rights to the Refugees in their country which India lacks.

The Fifth chapter analyses the Citizenship Act, 1955 and the amendments carried out in the said Act. It also examines the latest amendment which was made by Citizenship Amendment Act, 2019 and its impact on refugees. The Citizenship Amendment Act gives legal status to refugees from Pakistan, Afghanistan and Bangladesh where Hindu minorities face religious persecution. Whereas the Sri Lankan refugees are not considered for citizenship though they are also minorities in Sri Lanka who face linguistic persecution. The criticism of the “United Nations High Commissioner for Refugees” and the debate taken up in the Parliament on the Citizenship Amendment Act are analysed. Further the difficulties faced by the Sri Lankan refugees in Tamil Nadu who are not even aware of their basic rights and about the Citizenship Amendment Act. The chapter also analyses certain case laws to show that Sri Lankan refugees can be granted citizenship and also how they can be added in the Citizenship Act just like the other refugees from the neighbouring countries.

This Chapter concludes by stating that the Sri Lankan refugees are not illegal migrants, and their legal status should be protected. They should be given both primary education and higher education to the Sri Lankan refugees. Employment can be provided to refugees based on their qualifications both in the private sector

and public sector. As far as health is concerned the Sri Lankan refugees need more health care and awareness regarding various diseases. Regular health camps must be conducted in the Refugee camps and establish free Public Health centres for the refugees. The Government must talk to the ICRC and ask them to come back to India to assist and help the Sri Lankan Refugees in different camps in Tamil Nadu and other States. By the empirical study conducted it is clear that some of the Sri Lankan Refugees are willing to get back to their Country by Voluntary Repatriation and the refugees fear to go back to Sri Lanka fearing that their life is in danger. Such refugees are demanding for citizenship in India and some of them have applied for the same. Recent development of Sri Lankan refugees is that the Government of Tamil Nadu has requested the Central government to consider the Sri Lankan refugees for citizenship.

Further the state government has increased the monthly payment to refugees and provides ration and other provisions to them. Recently, the Sri Lankan government had accepted to take back 200 refugees to Sri Lankan by issuing them Sri Lankan passport through their Embassy. Though there is a positive move for Sri Lankan refugees, both the central and the state government should work together along with the “United Nations High Commissioner for Refugees” in protecting the refugees and either help them to get back to their country or to get Indian citizenship considering them as Genuine refugees.

6.3 Suggestions:

1. The Sri Lankan refugees should ask for their legal status since they are not illegal migrants.
2. Awareness program as to be conducted both by the state government and the NGOs regarding their right to voluntary repatriation and right to citizenship.
3. Those who are willing to go back to their country should be sent at the earliest by completing the required formalities both by the “United Nations High Commissioner for Refugees” and the government.
4. A separate committee must be constituted by the “United Nations High Commissioner for Refugees” along with the Human rights commission to monitor as to whether the refugees get basic needs and treated properly.
5. Proper shelter and facilities should be provided to the refugees in the camp.
6. Awareness should also be creating regarding primary education to the children till the age of 14 years as per constitution.
7. Develop certain policy for the settlement of Refugees in India.
8. Steps must be taken to provide higher education to refugee children.
9. Refugees should be given jobs for their qualification.
10. The refugees can be given employment in private sectors and ensure their right to work and earn a livelihood.

11. Health issues of refugees should be taken care. Public health centres must be established for refugees and special health camps as to be conducted for vaccinations and maternity reliefs.
12. The Government and the “United Nations High Commissioner for Refugees” need to find out the reasons for the ICRC for not visiting the refugee camps after the pandemic and sort out the issues.
13. Mid-day meals must be provided to the refugee children who are doing their primary education.
14. Women refugees should be assisted at the time of pregnancy and give free medical assistance during maternity.
15. Reservations can be given to Refugee Children for higher education as who were born in India and studied in India.
16. Provide free legal aid for the Refugees in the camp.
17. Those refugees who live in India for more than 30 years and who have acquired the Indian Domicile and willing to stay in India can be considered for Indian Citizenship.
18. Citizenship and Nationality can be offered to those Refugees who were born in India.

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Appendix

Annexure I:

Convention Relating to the Status of Refugees, 1951

Convention relating to the Status of Refugees Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950 Entry into force: 22 April 1954, in accordance with article 43 Preamble The High Contracting Parties , Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination, Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms, Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement, Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation, Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States, Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner, Have agreed as follows : Chapter I GENERAL PROVISIONS Article 1. - Definition of the term "refugee" A. For the purposes of the present Convention, the term "refugee" shall apply to any person who: (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section; 2 (2) As a result of events occurring before 1 January 1951 and 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. In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on wellfounded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe or elsewhere before 1 January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention. (2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations. C. This Convention shall cease to apply to any person falling under the terms of section A if: (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or (2) Having lost his nationality, he has voluntarily reacquired it; or (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or (5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality; (6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence. D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention. 3 E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country. F. The provisions of this Convention shall not apply to any person with

respect to whom there are serious reasons for considering that: (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) He has been guilty of acts contrary to the purposes and principles of the United Nations. Article 2. - General obligations Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order. Article 3. - Non- discrimination The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin. Article 4. - Religion The Contracting States shall accord to refugees within their territory's treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children. Article 5. - Rights granted apart from this Convention Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention. Article 6. - The term "in the same circumstances" For the purposes of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling. Article 7. - Exemption from reciprocity 1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally. 2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States. 3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State. 4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to 4 paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3. 5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide. Article 8. - Exemption from exceptional measures with regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees. Article 9. - Provisional measures Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and

exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security. Article 10. - Continuity of residence 1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory. 2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required. Article 11. - Refugee seamen In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country. Chapter II JURIDICAL STATUS Article 12. - Personal status 1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence. 2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee. Article 13. - Movable and immovable property 5 The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property. Article 14. - Artistic rights and industrial property In respect of the protection of industrial property, such as inventions, designs or models, trademarks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence. Article 15. - Right of association As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances. Article 16. - Access to courts 1. A refugee shall have free access to the courts of law on the territory of all Contracting States. 2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance

and exemption from cautio judicatum solvi. 3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence. Chapter III GAINFUL EMPLOYMENT Article 17. - Wage-earning employment 1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment. 2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions: (a) He has completed three years' residence in the country; (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse; (c) He has one or more children possessing the nationality of the country of residence. 3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes. Article 18. - Self-employment The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies. Article 19. - Liberal professions 1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. 2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible. Chapter IV WELFARE Article 20. - Rationing Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals. Article 21. - Housing As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. Article 22. - Public education 1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. 2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and,

in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships. Article 23. - Public relief The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals. Article 24. - Labour legislation and social security 1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters; 7 (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on homework, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining; (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations: (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition; (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension. 2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State. 3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question. 4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States. Chapter V ADMINISTRATIVE MEASURES Article 25. - Administrative assistance 1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority. 2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities. 3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary. 4. Subject to such exceptional treatment as may be granted to indigent

persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

1. The provisions of this article shall be without prejudice to articles 27 and 28. 8 Article 26. - Freedom of movement Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances. Article 27. - Identity papers The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document. Article 28. - Travel documents 1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence. 2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article. Article 29. - Fiscal charges 1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations. 2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers. Article 30. - Transfer of assets 1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement. 2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted. Article 31. - Refugees unlawfully in the country of refuge 1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. 2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country. Article 32. - Expulsion 9 1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. 2. The expulsion of such a refugee shall be only in pursuance of a decision reached in

accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority. Article 3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary. Article 33. - Prohibition of expulsion or return ("refoulement") Article 33. - Prohibition of expulsion or return ("refoulement") 1. No Contracting State shall expel or return ("refouler") 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. 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country. Article 34. - Naturalization The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings. Chapter VI EXECUTORY AND TRANSITORY PROVISIONS Article 35. - Co-operation of the national authorities with the United Nations 1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention. 2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning: (a) The condition of refugees, (b) The implementation of this Convention, and (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees. Article 36. - Information on national legislation 10 The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention. Article 37. - Relation to previous conventions Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946. Chapter VII FINAL CLAUSES Article 38. - Settlement of disputes Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute. Article 39. - Signature, ratification and accession 1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General

Appendix

of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations. 3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be affected by the deposit of an instrument of accession with the Secretary-General of the United Nations. Article 40. - Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned. 2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later. 3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories. Article 41. - Federal clause In the case of a Federal or non-unitary State, the following provisions shall apply: 11 (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States; (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment; (c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action. Article 42. - Reservations 1. At the time of signature, ratification or accession, any State may make

reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive. 2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations. Article 43. - Entry into force 1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession. Article 44. - Denunciation 1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations. 2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations. 3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General. Article 45. - Revision 1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations. 2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request. Article 46. - Notifications by the Secretary-General of the United Nations The Secretary-General of the United Nations shall inform all Members of the United Nations and nonmember States referred to in article 39: 12 (a) Of declarations and notifications in accordance with section B of article 1; (b) Of signatures, ratifications and accessions in accordance with article 39; (c) Of declarations and notifications in accordance with article 40; (d) Of reservations and withdrawals in accordance with article 42; (e) Of the date on which this Convention will come into force in accordance with article 43; (f) Of denunciations and notifications in accordance with article 44; (g) Of requests for revision in accordance with article 45. In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments. Done at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

Annexure II

Protocol Relating to the Status of Refugees, 1967:

The Protocol was taken note of with approval by the Economic and Social Council in resolution 1186 (XLI) of 18 November 1966 and was taken note of by the General Assembly in resolution 2198 (XXI) of 16 December 1966. In the same resolution the General Assembly requested the Secretary-General to transmit the text of the Protocol to the States mentioned in article V thereof, with a view to enabling them to accede to the Protocol.

Entry into force 4 October 1967, in accordance with article VIII

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

Article 1 - General provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words "As a result of events occurring before 1 January 1951 and..." and the words "...as a result of such events", in article 1 A (2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article I B (I) (a) of the Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol.

Article 2 - Co-operation of the national authorities with the United Nations

- a) The condition of refugees;
- b) The implementation of the present Protocol;
- c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 3 - Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article 4 - Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 5 – Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 6 - Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;
- b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation

to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

- c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article 7 - Reservations and declarations

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.
2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.
3. Any State making a reservation in accordance with paragraph I of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.
4. Declarations made under article 40, paragraphs I and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *muratis mutandis* to the present Protocol.

Article 8 - Entry into Protocol

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.
2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article 9 – Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article 10 - Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article 11. Deposit in the archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article 5 above.

Annexure III

THE CITIZENSHIP (AMENDMENT) BILL, 2019

A BILL further to amend the Citizenship Act, 1955. BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:— 1. (1) This Act may be called the Citizenship (Amendment) Act, 2019. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Short title and commencement. Bill No. 370 of 2019 AS INTRODUCED IN LOK SABHA 5 2 2. In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in section 2, in sub-section (1), in clause (b), the following proviso shall be inserted, namely:— "Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;". 3. After section 6A of the principal Act, the following section shall be inserted, namely:— '6B. (1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub- section (1) of section 2. (2) Subject to fulfilment of the conditions specified in section 5 or the qualifications for naturalisation under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalisation under sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India. (3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him: Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section: Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application. (4) Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873.'. 4. In section 7D of the principal Act,— (i) after clause (d), the following clause shall be inserted, namely:— "(da) the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or provisions of any other law for time being in force as may be specified by the Central

Government in the notification published in the Official Gazette; or". (ii) after clause (f), the following proviso shall be inserted, namely:— "Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard.". 5. In section 18 of the principal Act, in sub-section (2), after clause (ee), the following clause shall be inserted, namely:— "(eei) the conditions, restrictions and manner for granting certificate of registration or certificate of naturalisation under sub-section (1) of section 6B;". Amendment of section 2. Reg. 5 of 1873. 34 of 1920. 31 of 1946. Insertion of new section 6B. Special provisions as to citizenship of person covered by proviso to clause (b) of sub-section (1) of section 2. Amendment of section 7D. Amendment of section 18. 57 of 1955. 5 10 15 20 25 30 35 40 45 50 3 6. In the Third Schedule to the principal Act, in clause (d), the following proviso shall be inserted, namely:— 'Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven years".

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