INTERNATIONAL LAW ON THE STATUS OF REFUGEES IN INDIA: JUDICIAL PERSPECTIVES

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INTRODUCTION

As Swami Vivekananda observed, "I am proud to belong to a Nation which has sheltered the persecuted and the refugees of all religions and all nations of the earth"[1]. India has experienced a periodic influx of refugees mostly from its neighboring countries. Geographical, political, social and economic factors are responsible for this influx. Geographically India's long open border with Pakistan, China-Tibet, Bhutan, Nepal, Bangladesh, Burma and Sri Lanka allows refugees come to India. Politically, dictatorship or undemocratic forms of government formed in the region have forced their citizens to search for refuge. The people in the neighboring countries often share a common social and cultural world with Indian people. This encourages many amongst the persecuted in these neighboring countries to seek asylum in India. At present almost 300,000 refugees are being given shelter in India.[2]

The refugees can be classified as mandate and non-mandate refugees. Mandate refugees are Afghans, Iranian, Sudanese, Somalia, Iraqi, and refugees from Myanmar. They are under the protection of UNHCR. But most of the refugees in India are non-mandate refugees. These are refugee from Tibet, Bangladeshi refugees, Sindhi refugees from Pakistan, Bhutanese refugees, Ugandan refugees and Sri Lankan Tamil refugees. These refugees are under the direct protection of the Indian government. Some refugee groups are deled by both UNHCR and Indian government. For example, Sri Lankan Tamil refugees are recognized as refugee by the Government of India and it takes care of them. Since 1983 Sri Lankan Tamil refugees have

[1] First word of Swami Vivekananda Speech in the World Religious Conference held in Chicago USA. Available at *"The Complete works of Swami Vivekananda*" Vol. 1, P.63. Sakithya Academy Library, New Delhi.

[2] Source: United Nations High Commissioner for Refugees, (UNHCR).

been granted refugee status in and around Tamil Nadu. Many of these refugees are given identity documents and a small amount of financial assistance, along with subsidized food grain. They are generally permitted free movement, although there is mandatory physical attendance a few times a month. The government also provides basic health and education facilities. In case a refugee is considered a threat to national security, the administration can detain the person. There have been such instances despite the issuance of refugee identity documents by the administration. The UNHCR assists Sri Lankan Tamil refugees for repatriation. It interviews those who wish to return and verifies the voluntary nature of their repatriation from India.

India does not have specific legislation that is applicable to refugees in the country. Due to the lack of such a statute, the judicial system is constrained, when dealing with refugees. They have to apply laws that are applicable to foreigners in general, such as the Foreigners Act, 1946. The established principle of the rule of law in India as set under Article 21 of the Constitution is that no person, whether citizen or an alien, shall be deprived of her life or personal liberty except in accordance with a procedure established by law that must be fair. The Supreme Court has gone further and elevated it to the status of one of the basic structures of the Constitution, thus making this precept unamendable.[3]

The Supreme Court has consistently upheld the principle of non-refoulement, though without specifically mentioning it, an important principle in international refugee law. But as the former Chief Justice of India J S Verma has pointed out, "the attempt to fill the void by judicial creativity can only be a temporary phase. Legislation alone will provide permanent solution". It clearly shows that India must have a domestic legal and legislative framework to help guide its response to the refugee issue. Recently, on September 20, 2011 a trial Court in Dwarka, NCT of Delhi pointed out that **"**the need for enacting comprehensive legislation to deal exclusively with the problems of refugees had arisen from time immemorial, and finally, pursuant extensive deliberations on a model national law: The Refugee and Asylum Seekers (protection) Bill, 2006 was drafted. But it is unfortunate that despite its having been drafted after due deliberations and after various rounds of consultations by eminent jurist including the former Chief Justice of India, P.N. Bhagwati, this bill has not seen the light of the day**"**. The judge also mentioned **"**there have been a plethora of instances wherein Indian courts tried to

[3] Indira Gandhi v. Raj Narain, 1975 (SC) AIR 2299.

evolve a humane and compassionate approach to redress individual problems; however, in the absence of a long-term, consistent and uniform solution by the way of enactment of national legislation, their treatment would be subject to, and would depend upon the individual outlook, social inclinations and other idiosyncrasies which would make it difficult for the subordinate courts to follow. Indian needs to live up to its humanitarian goals.**"** It is therefore high time to enact a domestic legislative framework to help guide its response to the refugee issue.

INDIA AND INTERNATIONAL REFUGEE LAW

If we compare Indian position to the 1951 Convention on the issue of refugees, India is practicing important customary international law principles like non refoulement at the policy level. India welcomes refugees from Asian and African continents and provides good treatment to them. On the issue of refugees India's record is good. The asylums seekers are granting refugee status by the Indian government or it cooperates with the UNHCR for granting refugee status. The rights and duties of refugees are also respected by Indian government like free access to the court, providing basic facilities like ration, medicine, education and making camps for refugees. The safeguard measures which are mentioned in the 1951 convention are practiced by Indian government restrictively. Illegal entry refugees are not penalized by the government. Over all India is implementing the norms mentioned in the 1951 Convention.

However India is not ready to become party to this Convention. It gives important eight reasons for it. First, the definition of refugee is a Eurocentric definition it only consents with the violation of civil and political rights it does not mention about violation of economic cultural and social rights. Second is the 1951 Convention was adopted in the time of cold war period after the world war so it is not concerned about the third world countries. For example the partition in 1947 in India did not concern the developed nations. The third reason is the 1951 Convention simply contains too many rights for refugees which as a third world country India is not in a position to fulfill even for its own citizens. Fourth India is providing protection to refugees. So there is no need to become party. Fifth if India became party it would be obliged to the under article 35 of the Convention to cooperate with the office of the UNHCR. The UNHCR is perceived as a western donor organization that may act intrusively. Sixth India is arguing that most of the countries in Asia are not party to this Convention. Only Six Asian

countries are party to the Convention. This is called Asian exceptionalisam. Seventh, is India's presence of porous borders makes it very difficult to regulate the entry and to implement the international Convention. Finally, there is a burden shifting not a burden sharing if India ratifies the Convention. There must be assurance that global burden sharing at the level of finance and asylum will take place. However, India does not want to make any commitments with international instruments on refugees. But it commitments are governed by other instruments.

> "India does not want to be tied down by an international legal obligation that impinges upon its discretion to regulate the entry of foreigners into its territory. This concern must be understood in the context of South Asia's unstable geopolitics, not to mention its volatile ethnicities. Indian and other commentators from developing countries also call attention to the current state of flux in international refugee law."[4]

LEGAL STATUS OF REFUGEES IN INDIA

The Indian subcontinent has been witness to some of the largest forced population flows in contemporary history. Pia Oberoi has made an attempt to examine the problem in the Indian subcontinent[5]. There are no authoritative statistics on the number of people who have fled persecution or violence in their countries of origin to seek safety in India. However, because of India's porous borders and accommodative policies, it is estimated that India hosted approximately 4, 35,900 refugees and asylum seekers according to World Refugee Survey 2007.[6] In addition, "India's documented refugees are allegedly outnumbered by lakhs of unregistered persons who have entered the country from Nepal and Bhutan to escape violence and persecution in their countries. It is estimated that over 20 lakh Nepalese fleeing from civil conflict have entered India undetected over the open border. There are also an unknown but large number of people displaced from Bhutan because of their ethnic-Nepali origins"[7]. "There

[4] Chimni B.S (1999), "From Resettlement to Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems", available at UNHCR.org

[5] Oberoi Pia further states that currently, the Indian subcontinent is host to just over ten percent of the total population of refugees and persons in refugee-like situations, as defined by the UNHCR. (Pia Oberoi 2006, *Exile and Belonging Refugees and State Policy in South Asia*, Oxford University press, P: 1)

[6] "World Refugee Survey 2007," United States Committee for Refugees and Immigrants, Available at: http://www.refugees.org/WRS_Archives/2007/48- 69.

[7] Benoit Florina (2004), "India: A National Refugee Law Would Equalize Protection", *Refugees International,*

are also 17, 380 refugees, 3,710 asylum seekers, registered under UNHCR office and some from the Democratic Republic of Congo, Eritrea, Iran Iraq, Somalia and Sudan"[8].

Indian Laws, Policy and Practice on Refugees

In general there is no law in India for refugees applicable to all groups. But Ragini Trakroo list out some laws related to refugees in India. She further states that.

> "A number of legislative measures dealing with refugees were passed and issued under the seventh schedule of the Constitution of India. Many of them have lost their importance in the current context; they provide a useful legislative precedent. Given below is the legislation that was enacted the partition of India and before the Indian Constitution came in to effect these are East Punjab Evacuees (Administration of property) Act, 1947, UP Land Acquisition (Rehabilitation of Refugees) Act, 1948, East Punjab Refugees (Registration of Land Claims) Act, 1948, Mysore Administration of Evacuee Property (second Emergency)."[9]

"Once the Constitution of India came in to operation, the following acts were passed by Center State authorities. These rules are related to refugees, evacuees and displaced persons these are:"[10]

1. Citizenship Act, 1955 (No.57 of 1955)

2. Extradition Act, 1962 (No. 34 of 1962)

3. Foreigners (Tribunals) Order, 1964

4. Foreigners Act, 1946 (No.31 of 1946)

5. Foreigners from Uganda Order, 1972

Country Operations Plan for India, United Nations High Commissioner for Refugees, Available at: www. UNHCR.org

[8] Ramachandran Smiriti Kak (2012), "UNHCR helps refugees stitch up a livelihood" *The Hindu*, New Delhi, 20 June 2012. p. 8.

[9] Ragini Trakroo (2005), *Refugees and the Law*, Human Rights Law Network, Socio-legal Information Centre , New Delhi, p.67.

[10] List of Legislation compiled by VijayaKumar . V, available at http://www.indiacode.nic.in

6. Foreigners Order, 1948

7. Illegal Migrant (Determination by Tribunals) Act, 1983 (No.39 of 1983)

8. Illegal Migrant (Determination by Tribunals) Rules, 1984

(a) Indian Constitutional Law

In general there is no law in India for refugees applicable to all groups. So Judicial System prevail granting rights for refugees by Indian laws. In the case of Luis de Readt v. Union of India, and Khudiram Chakma v. Union of India, the supreme court of India pointed out The right to life under Article 21 has been given an expansive meaning by the courts[11] to cover the due process of law, i.e., the right not merely to an animal existence but a right to live with human dignity. The Indian Constitution law provides related provisions to refugees they are found in Articles 5 to 11, 14, 20, 21, 22, 25(1), 27, 28(3), 51(c) and 253; List I, entries 14, 18 and 19; and List III, entry 27. These provisions deals with citizenship; naturalization; aliens (excluding enemy aliens); extradition; displaced persons; fundamental rights of all people within the territory of India (including refugees); the rights of persons in criminal proceedings; and the power of parliament to recognize international treaties. Different levels of assistance and facilities. Educational opportunities, camp conditions, employment opportunities, voluntary repatriation-have been extended to special groups of refugees like Tibetans, Chakmas, Sri Lankans, and Afghans.

Article 51 is a directive principles of state policy, states that state shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another. In Vishaka vs State of Rajastan[12] the Supreme Court emphasized that international conventions which are not inconsistent with fundamental rights and harmony with their sprit must be read into these provisions to enlarge their meaning and content thereof so as to promote the constitutional guarantee. In Nilabati case[13] a provision in ICCPR was referred to in support of the view taken that an enforceable right to compensation is not alien to the concept of

[11] Luis de Readt v. Union of India, 1991 (3) SCC 554; Khudiram Chakma v. Union of India, 1994 Supp (1) SCC 614.

[12] Vishaka and Others Vs State of Rajasthan and others (1997 (6) SCC 241).

[13] Nilabati Vs State of Orissa (1993 (2) SCC 746).

guaranteed right as a public law remedy under Article 32, which is distinct from private law remedy in torts. The clearest discussion on the issue is found in, Maganbhai vs. Union of India, "Making of law is necessary when (international treaty or agreement operates to restrict their rights of the citizens or others or modifies the laws of the state. If the rights of the citizens or others which are justifiable are not affected. No legislation measures are needed to give effect to the agreement or treaty."[14] In Gramophone company case the Supreme Court held "there can be no question that nations must march with the international community and the municipal law must respect rules of international law just as nations respect international conventions. The comity of nations requires that the rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do no run into conflicts with acts of parliament."[15] In Apparel Export case the Supreme Court also reiterated the same principle and held that in case involving violations of human rights, the courts must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field."[16] However, the courts positions are clear if an international instruments runs counter to an Indian law, it cannot be relied upon. If the convention does not clash with any Indian statue, then it must be accommodated and absorbed into that latter. In peoples Union for civil liberties case the supreme court held the provisions of the covenant which elucidate and go to effectuate the fundamental rights guaranteed by our constitution can certainly be relied up on by the courts as facets of those fundamental rights and hence enforceable as such, therefore s clear enunciation of the principle that since fundamental rights are capable of an ever expanding definition, international instruments maybe incorporated into fundamental rights and enforced in this manner.

In Chakma case the Supreme Court approvingly referred to the UDHR in the context of the refugee, "Article 14 of the UDHR, which speaks of the right to enjoy asylum, has to be interpreted in the light of the instrument as a whole, and must be taken to mean something. It implies that although an asylum seeker has no right to be granted admissions to a foreign State,

[14] Maganbhai Ishwarlal Patel vs. Union of India (1969 (3) AIR 783).

[15] Gramophone Company of India Limited Vs. Birendra Pandey (1984 (SC) AIR 677).

[16] Apparel Export promotion Council vs. A.K. Chopra (1999) (SC) 756).

equally a state, which has granted him asylum must not later return him to the country whence he came. Moreover, the Article carries considerable moral authority and embodies the legal perquisite of regional declarations and instruments".[17] In Malavila Karlekar vs. Union of India[18] the Supreme Court directed the authorities to check whether refugee status ought to be granted bail and that until the question is pending decision, the petitioner may not be deported. Similar orders, dated 11.09.1990, where passed by the Guwahati high court in Ms. Zonthansangpuii vs. State of Manipur[19]. Similarly various high courts also granted relief to refugees. In exercise of the powers granted under Article 226 of the Constitution, read with Article 21, the Guwahati high court in U. Myat Kayew and other vs. State of Manipur and other[20] allowed the petitioners who had entered India without valid travel documents and who were lodged in Manipur Central jail to be released on interim bail after furnishing personal bonds in order to enable them to approach UNHCR, Delhi, to seek refugee status.

However, India is not party to the 1951 Convention and its 1967 Protocol, the principles of international law relating to refugees must be taken as incorporated directly into Indian Constitutional law via Article 21. This is so particularly in the view of the fact that India has acceded to the 1966 International Covenant on Civil and Political Rights, the 1989 Convention on the rights of the child, and the 1979 Convention on the elimination of all forms of Discrimination against Women. None of the provisions of the Foreigners Act, 1946, the Registration of Foreigners Act, 1939, the Passport Act 1920, or the Passport Act, 1967, deals in any manner with refugee law. There is therefore no current domestic law in conflict with international conventions, treaties, and resolutions relating to refugees. Indian courts have thus achieved via judge-made law what successive governments were unable or unwilling to do. Today international refugee law stands somewhat integrated into Indian law via Article 21 of the Constitution, irrespective of the government's decision whether or not to accede to the 1951 Convention and the 1967 Protocol.

[17] Kudhiram Chakma Vs. State of Arunachal Pradesh (1994 Supp (1) SCC 615).

[18] Unreported Judgment dated, 25. 09. 92, Criminal writ Petition No. 583 of 1992.

[19] Civil Rule No. 1981 of 1989 and No. 515 of 1990.

[20] Civil Rule No: 516of 1991 on 26.11.1991.

(b) Human Rights, IPC and Foreigners Acts

The Protection of Human Rights Act, 1993 establishes National Human Right Commission, State Human Right Commission and Human Right Courts for protecting human rights of the country. The NHRC protecting refugees in human rights relating issues in India in one occasion, The National Human Rights Commission received petition from Chakma refugees residing in the state of Arunachal Pradesh they are threatened by the All Arunachal Pradesh Student Union (AAPSU) to leave the country the issue moved the Supreme Court, indicating "that there was prima facie evidence to support the claim of the refugees. The court after considering the evidence, directed that the Chakmas protected by the state government and that all those eligible and interested in applying for Indian citizenship should be dealt with according to the relevant laws."[21]

The Indian Penal Code (IPC), 1860, applies equally to nationals, refugees and other foreigners. A refugee may be charged under sections 418, 419, 420, 468 and 471 of IPC when, for example, he has attempted to mislead Indian authorities by using fraudulent travel documents. A refugee may travel on a completely counterfeit document; he may use a genuine document where he changes the relevant information; or he may obtain a genuine document by false means. Unfortunately the concerned state authorities often do not consider the compelling factors that may have brought the refugee to India. In many instances the gravity of the circumstances coerces the refugee to obtain a false passport or a forged visa for entry into India. Alternatively his country may not have been willing to provide him with genuine documents or he may not have had the time to obtain them.

However, Refugees are commonly detained for violating the following provisions of IPC: cheating by personating (section 416); cheating and dishonestly including delivery of property (section 420); forgery (section 463); and making and using forged documents (section 464).[22] These offences are interrelated. A refugee may be charged with all of these offences if he has forged a passport, visa or residential permit. Refugees detained for illegal entry into India who also possess travel documents that may be forged, false or fabricated would attract the provisions of the above sections of the Indian Penal Code and may be prosecuted for the same.

[21] National Human Rights Commission v. State of Arunachal Pradesh, 1996 (SC) AIR 1234.

[22] For example, State v. Chandra Kumar (FIR No. 78/2010). NCT Dwaraka Courts New Delhi.

Under the Foreigners Act, all foreigners in India are required to register themselves with Foreigners Regional Registration Office **(**FRRO) in their area of residence. The office registers the name of the foreigner in its records and issue the person a residential permit. The lack of national legislation or specific refugee policy so the authorities followed the ad hoc policy. Some groups of refugees are issued residential permits. Afghan and Burmese refugees are issued permits allowing them to stay in India. However, refugees groups like the Iranians, Iraqis and Sudanese have not granted such documents. However, "there are instances where refugees recognized by the Indian government, and who have been issued valid refugee identity documents, are latter prosecuted for illegal entry or overstay."[23]

(c) Policy, Practice and Authorities on Refugee Issue

The administration dealing with refugees includes the Ministry of Home Affairs, the Ministry of External Affairs and other related departments of the central state governments. Under section 3 of the Foreigners Act, 1946, the administration practiced different policies for various groups of refugees. There is no central agency dealing with refugees in India. It is therefore possible that different administrative bodies deal with the same problem in various ways. However, in routine matters, the centre communicates its policies to the home ministry in the states. At the same time it communicates the same decision to the concerned departments, resulting in delayed decisions, with refugees taken into detention.

In some instances, "the central government may issue clear directives to the states and delegate its power under section 3 of the Foreigners Act 1946 for example, in the case of a Sudanese refugees, the policy regarding Sudanese nationals who had been students in India was expressly recorded by the central government and directives to the state of Maharashtra." [24]

In other instances, the state and central governments are different practice in their policy in the issue of refugees in the concerned state. In NHRC v. State of Arunachal Pradesh (1996 SC AIR 1234), the central government was willing to entertain applications for citizenship from approximately 4, 012 Chakmas who were settled in Arunachal Pradesh. However the state

[23] The NHRC has taken up the cause of a number of Sri Lankan Tamil refugees who have likewise been prosecuted. The government subsequently had them discharged. (Ragini Trakroo 2005)

[24] State v. Lawrence Lora Kamilo, criminal writ petition No. 189 of 1996, Bombay High Court at Nagpur bench.

government refused to forward their applications and in fact stood by as repressive measures were taken against the refugees in an attempt to evict them.

Refugees normally have the freedom to move around the country with the restrictions applicable to any other foreigner. They are also allowed to practice their religion and follow their culture. In the case of refugees whose entry into India is legal or illegal subsequently legalized, there is limited interference by the administration regarding these basic freedoms. Refugees have access to the health and education facilities in India, and no discrimination is practiced against them on the basis of their refugee status. However, refugees enter India illegally or overstay the permitted period have strict restrictions on their movement in accordance with the legislation relating to foreigners, like Foreigners act, 1946, the Foreigners Order, 1948, and the Passport Act, 1967. Provisions of the Foreigners Act apply to all distinction is made in law between asylum seekers and other foreigners.

However, courts sometime accept the special situation of refugees. But sometimes many refugees are deported because they do not have valid travel documents. This act of omission is because of the lack of a refugee statue. Courts at all the time have mostly stayed deportation orders in several cases, pending a decision on refugee status and citizenship application.[25]

."In the case of State v. Mehmud Ghazaleh, the refugee is found of invalid or fake travel documents and violation of law of the Indian country, the border authorities detains the refugee. After initial investigation, the matter referred to the area police for further investigation, detention of the refugee and the registration of a first information report (FIR). The police put the accused refugee in the area prison and produce him in the local district court for trial."[26]

In case a refugee is detected or exiting the country in established seaports and airports without travel documents, he is immediately detained by the immigration or authorized custom officers

[25] N.D. Panchoil v. State of Punjab, criminal writ petition No. 243 of 1988, Supreme court of India; Khy Htoon v. State of Manipur, civil rule No. 515 of 1990, Guwahati High Court.

[26] For example, an Iranian refugee registered with UNHCR, was detained while illegally exiting India for Nepal via the Sonauli border in district Maharajgunji, Gorakhpur, Uttar Pradesh. The refugee was travelling on forged and fabricated travel documents. He was detained by the border authorities who discovered that his travel documents were forged. They handed the refugee over to the area police station at Sonauli for investigation and registration of FIR. He was subsequently interned at the Gorlakhpur District Jail. (State v. Mehmud Ghazaleh, FIR No. 50 of 1993 was filed under section 419, 420, 468 and 471 of the IPC; read with sections 3 and 6 of the Passport Act and section 14 of the Foreigners Act.)

and an investigation is conducted. In case of illegal entry, the immigration authorities immediately deport the refugee to the country where he last came from. This is in violation of the principle of non-refoulment. In the pending deportation the refugee is put in a detention cell in the immigration section of the airport or seaport the basic conditions of living are usually unsatisfactory. He has to buy his own meals also. Suppose if he deported, the cost of the transport ticket is bought by the refugee. For example, Majid Ahmed, Abdul Majid Mohd v. Union of India[27] case. Eva Masar Musa Ahmad case refugees who not comply with the mandatory requirement to obtain and renew residential permits so he was arrested and produced before the local session's court. The court orders them to be detained in the local prison pending trial.[28]

The police normally do not consider any claims of refugee status by the refugee. According to under section 3 of the foreigner Act, 1946, the administrative authorities may leave India notices to those refugees who failed to extend their travel permits or who ordered to deport by the court. In this kind of cases, the refugee forcibly deported if he fails to comply with the notice. However, a writ petition can be filed at the concerned court.[29] Indian courts, generally strictly interpret the legislation on foreigners by refusing to interfere with the powers of the executive. But in the refugees issue the court practice a more humane approach to protect the rights of refugees in India. However, some times this approach is unsystematic and dependent upon the situation. It is an exception to the normal rule.

In 1996, the Supreme Court in National Human Rights Commission v. State of Arunachal Pradesh intervened with a liberal interpretation of the law to suggest that refugees are a class

[27] A Palestinian refugee, travelled to Khathmandu from New Delhi illegally. He was caught and deported from Kathmandu to New Delhi by the authorities in Nepal. He was sent back to Nepal and was once again deported to New Delhi, thus amounting to four trips in two days. All expenses were met from his own resources. He was subsequently detained at the immigration lounge of the International Airport at New Delhi for over 25 days. His food expenses were met from his diminishing personal resources and he also met the cost of his final deportation to Bangladesh. (Majid Ahmed Abdul Majid Mohd v. Union of India, criminal writ petition No. 60 of 1997, Delhi High Court.

[28] A Sudanese refugee registered with UNHCR was arrested by the Kotla Mubarakpur Police in New Delhi because her passport had expired. An FIR under section14 of the Foreigners Act 1946 was filed. She was produced before the court of the concerned metropolitan magistrate who remanded her in judicial custody. (In Re Eva Masar Musa Ahmad FIR No. 278 of 1995, MM, New Delhi.

[29] For example, Two Afghan Sikhs of Indian origins had fled persecution in Afghanistan and were registered as refuges with UNHCR. They were issued leave India notices by the FRRO to leave India within 7 days of receipt of the notice. A criminal writ petition was filed in the Punjab and Haryana High Court at Chandigarh and interim stay of leave India notice was obtained.

apart from foreigners deserving of the protection of Article 21 of the Constitution. The Court held at Para. 20,

> "We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so."[30]

There is no real and specific recognition of the right against non refoulement. But courts have, on rare occasions, accorded to individual refugees the right against forced repatriation.[31] Courts have also provided a certain measure of socio-economic protection in special circumstances.[32] The role of the UNHCR in India has also been given a limited recognition by the judiciary. Courts have stopped deportation proceedings and ordered the release of individual refugees in order to provide them with an opportunity to approach the UNHCR for refugee status determination or to allow resettlement to take place.[33]

INDIAN JUDICIARY IN REFUGEE ISSUE

The Indian legal system for the protection of refugees may be activated in four distinct ways, 1. Humanitarian tradition, 2. International legal obligation, 3. The Constitution of India, 4.

[30] NHRC v. State of Arunachal Pradesh (1996) 1 SCC 742.

[31] P. Nedumaran (unreported) WPs 12298 & 12313/1992, Madras High Court; and, Gurunathan (unreported) WPs 6708 & 79168/1992, Madras High Court.

[32] Digvijay Mote (unreported) WA 354/1994, Karnataka High Court.

[33] Malvika Karlekar (unreported) WP 583/1992, Supreme Court; Bogyi (unreported) WP 1847/1989; Khy Toon (unreported) WP 525/1990, (both Guwahati High Court); Shah Gazai (unreported) WP 499/1996, Punjab & Haryana High Court; Ktaer Abbas Habib Al Qutaifi 1999 Cri LJ 919 (Gujarat High Court) at paras 18 – 20; Lailoma Wafa (unreported) WP 312/1998 (Delhi High Court).

Judicial response. [34] Indian courts, generally strictly interpret the legislation on foreigners by refusing to interfere with the powers of the executive. But in the refugees issue the court practice a more humane approach to protect the rights of refugees in India. However, some times this approach is unsystematic and dependent upon the situation. It is an exception to the normal rule. There is no real and specific recognition of the right against non refoulement. But courts have, on rare occasions, accorded to individual refugees the right against forced repatriation.[35] Courts have also provided a certain measure of socio-economic protection in special circumstances.[36] The role of the UNHCR in India has also been given a limited recognition by the judiciary. Courts have stopped deportation proceedings and ordered the release of individual refugees in order to provide them with an opportunity to approach the UNHCR for refugee status determination or to allow resettlement to take place.[37] However, some of the important cases will detailed to understand the jurisprudence of the Indian courts in the matter on refugee issues.

The High Courts in India have liberally adopted the rules of natural justice to refugee issues, along with recognition of the UNHCR as playing an important role in the protection of refugees. The high court of Gauhati has in various judgments recognized the refugee issue and permitted refugees to approach the UNHCR for determination of their refugee status, while staying the deportation orders issued by the lower court or the administration, in case where the refugee has been arrested for violations of the foreigners Act. For example, in Ms. Zothansangpuli v. The State of Manipur[38], Mr. Bogi v. Union of India,[39] Khy-Htoon and others

[34] Rizvi Sumbul, *Response of the Indian Judicial System to the Refugee Problem*, Bulletin on IHL & Refugee Law Vol.2, No.1.P.71.

[35] P. Nedumaran (unreported) WPs 12298 & 12313/1992, Madras High Court; and, Gurunathan (unreported) WPs
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[36] Digvijay Mote (unreported) WA 354/1994, Karnataka High Court.

[37] Malvika Karlekar (unreported) WP 583/1992, Supreme Court; Bogyi (unreported) WP 1847/1989; Khy Toon (unreported) WP 525/1990, (both Guwahati High Court); Shah Gazai (unreported) WP 499/1996, Punjab & Haryana High Court; Ktaer Abbas Habib Al Qutaifi 1999 Cri LJ 919 (Gujarat High Court) at paras 18 – 20; Lailoma Wafa (unreported) WP 312/1998 (Delhi High Court).

[38] Civil Rule No. 981 of 1989.

[39] Civil Rule No. 1847 of 1989.

v. State of Manipur[40]. In A.C. Mohammed Siddique v. Government of India and others[41] and P.Nedumaran v. Union of India[42], the Tamil Nadu High Court expressed its unwillingness to let any Sri Lankan refugees to be forced to return to their country against their will. In Nedumaran case Sri Lankan refugees prayed for a writ of Mandamus directing the union of India and the state of Tamil Nadu to permit UNHCR officials to verify the voluntariness of the refugees decision to go back to Sri Lanka; as also to permit those refugees who did not want to return continue to stay in the camps in India. In Mr. Syed Ata Mohammadi v. Union of India[43] the Mumbai High Court was pleased to direct that there is no question of deporting the Iranian refugee to Iran, since he has been recognized as a refugee by the UNHCR. The court further permitted the refugee to travel to which ever country he desires. In Ktaer Abbas Habib Al Qutaifi v. Union of India the Gujarat High Court analyzed the plea of the petitioners that they feared persecution in their country of origin found support in a report by UNHCR. And also court pointed out that as per an order issued by the Iraqi government, the auricle of one ear of any person evading military service shall be cutoff. The court further states "Humanitarian Jurisprudence is now an international creed in time of peace and war."

The Supreme Court of India in Maiwands Trust of Afghan Human Freedom Fighters v. State of Punjab[44]and N.D. Pancholi v. State of Punjab and others[45]stayed the deportation of refugees. In the matter of Dr. Malavika Karlekar v. Union of India[46], the Supreme Court stayed the deportation of the Andaman Island Burmese refugees since "their claim for refugee status is pending determination and a prima facie case is made out for grant of refugee status. However, the supreme court consistently proceed that the fundamental rights enshrined in Article 21 of the Constitution regarding the right to life and personal liberties applies to all including aliens particularly refugees too.

[40] Civil Rule No. 515 of 1990.

[41] Writ Petition Nos. 6708 & 7916 of 1992.

[42] WMP Nos. 17372, 17424, 18085 and 18086 of 1992 in Writ Petition Nos. 12298 and 12343 of 1992.

[43] Criminal Writ Petition No 7504 of 1994

[44] Criminal Writ Petition Nos. 125 and 126 of 1986.

[45] Criminal Writ Petition No. 243 of 1988.

[46] Criminal Writ Petition No. 583 of 1992.

In Peoples union for civil liberties v. Union of India[47], the Supreme court considered Article 21, 19 (1) (a) and 19(2), 14, 32 and 51 of the Constitution. And the court citing the Kesavananda Bharathi v. State of Kerala, as "an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law."[48] And also the court pointed out, in view of Article 51 of the directive principles, this court must interpret the language of the Constitution, if not intractable, which is after all a municipal law, in the light of the United Nations Charter and the solemn declaration subscribed to by India. Article 17 of the ICCPR was ratified by India and Article 12 of the UDHR was not contradictory to municipal law, they could be used to interpret Article 21 of the Constitution. In Chairman Railway board others v. Chandrima Das others[49] the Supreme Court, discussed various international instruments, and importantly pointed out who are not citizens of this country and come here for as a tourist, or any other forms of boarding will be entitled to protect their lives accordance with the constitutional provisions. They have full right to live so long as they are here, with human dignity. The state is under an obligation to protect the life of persons who are not citizens as long as citizens of this country. And also the court pointed out life is recognized as a human right in the UDHR 1948; it has to have the same meaning and interpretation as has been placed on this word by the court in its various decisions relating to Article 21, it will be applicable not only to the citizens of this country, but also to a person who may not be a citizen of the country. However, refugee's living rights are clearly guaranteed in these Supreme Court cases.

In the name of over stay or citizenship for refugees, courts ordered different opinion in different cases for example, in Luis De Raedt v. Union of India[50] the Petitioners petitioned the Supreme Court under Article 32 of the Constitution challenging an order dated 8 July 1987, where by their prayer for further extension of the period of their stay in India was rejected.[51] This case

[47] SCC 301, 1997 (1).

[48] AIR 1973 SC 1461.

[49] SCC 465, 2000 (2).

[50] SCC 554, 1991 (3).

[51] Mr. De Raedt argued that since he had been living in the country since 1937, he would qualify as a citizen of India under Article 5 of the Constitution. However, the Court pointed out that Article 5 mandates that the person concerned must have her domicile in the territory of India at the time of commencement of the constitution. The court concluded that while the petitioners may have remained in the country for a long period, there is no indication that they intended to stay in this country on a permanent basis. Therefore the claim of the petitioners was rejected.

must be studied carefully because this argument is often used by state lawyers against refugees. In Hans Muller of Nuremberg v. Superintendent, Presidency Jail Calcutta[52] the Court held that the government has an unrestricted right to expel a foreigner and that in respect of the right to be heard, there is no hard and fast rule regarding the manner in which a deportee has to be given an opportunity to place her case. The petitioners could have produced some relevant documents in support of their claim of acquisition of citizenship, but they failed to do so. This case must also be read carefully since it regularly used against refugees.

In National Human Rights Commission v. The State of Arunachal Pradesh[53] the Supreme Court held that no one should be deprived of her life or liberty without the procedure established by law.[54] The Court found prima facie evidence that the threat existed to the life and liberty of the chakmas, guaranteed by Article 21 of the Constitution. It also acknowledged that they were entitled to apply for citizenship under section 5 of the citizenship Act. The court held that by refusing to forward the citizenship applications of the chakmas to the central government, the duty collector had failed in his duty and had also prevented the central government from performing its duty under the act and its rule rules.

So, the Court directed that the Arunachal Pradesh government must ensure that the life and personal liberty of the Chakmas residing within the state are protected. It also stated that the Chakmas could not be evicted from their homes nor be denied a domestic life and the comforts therein. Furthermore, it held that any Quit India notices should be dealt with by the state in

[52] AIR 1955 SC 367.

[53] AIR 1996 SC 1234.

[54] In this case, a public interest petition under Article 32 of the Constitution was filed by the National Human Rights Commission; seeking the enforcement of Article 21 in respect of 65,000 Chakmas/Hajong tribal's residing in Arunachal Pradesh. These tribes were previously residing in East Pakistan now Bangladesh, where they were displaced by the Kaptai Hydel Power Project in 1964. They took shelter in Assam and Tripura, and many became Indian Citizens in due course. Subsequently, due to the inability of the Assam government to rehabilitate them, the assistance of nearby states was sought and 4,012 chakmas were settled in parts of Arunachal Pradesh then known as North East Frontier Agency. Their population in 1996 was around 65,000. Although the central government sanctioned grants for their rehabilitation, its promise to grant Indian citizenship to the Chakma refugees was not acted upon. In fact the district collector of Arunachal Pradesh failed to forward the citizenship application of the refugees to the central government. Moreover, these chakmas were resented by the local population, who wanted their removal from Arunachal Pradesh. The All Arunachal Pradesh Students Union (AAPSU) issued "Quit India" notices to all alleged foreigners, including the chakmas, to leave the state by 30 September 1995.

accordance with the law. Finally, on the matter of citizenship, the court directed that any application for citizenship by the Chakmas under section 5 shall be dealt with properly; and that while the application of an individual chalma is pending consideration, she should not be evicted.

The Supreme Court distinguished the National Human Rights Commission v. State of Arunachal Pradesh case from that of State of Arunachal Pradesh v. Khudiram Chakma[55]. It held in the latter case, the court was required to consider the claim of citizenship based on the language of section 6-A, and within the narrower context of section 6-A, (2), of the citizenship Act, 1955. In the former case the court stated, the Chakmas are seeking citizenship under section 5(1) (a) of the act, which provides for citizenship by registration, and so the considerations are entirely different. In the Khudiram Chakma case, the court concentrated specifically on section 6-A (2) of the citizenship Act, 1955, section 3 of the foreigners Act, 1946; the Foreigners Order, 1948; as well as Articles 19(1) (d) and (e) of the Constitution.

The impact of section 377 of the IPC is not measurable solely by reference to formal prosecutions resulting in reported decisions. As Delhi high court found in Naz Foundation v. Government of NCT of India[56], the criminalization of same-sex sexual conduct, even where

[55] SCC 615, 1994 (1).

[56] In 2001 the Naz Foundation- a nongovernmental organization working in the field of HIV/AIDS intervention and prevention- filed a writ petition before the Delhi High Court seeking a declaration that section 377, to extent that it penalized sexual acts in private between consenting adults, violated the Indian Constitution, specifically, Articles 14 (equality before law), 15 (non-discrimination), 19 (1) (a)-(d) (freedom of speech, assembly, association and movement) and 21 (right to life and personal liberty). The Naz foundation argued that the law had a discriminatory effect because it was pre dominantly used against homosexual conduct, thereby criminalizing actively practiced more often by homosexual men and women. This was said to jeopardize HIV/AIDS prevention methods by driving homosexual men and other sexual minorities underground. It was further argued that, as private consensual relations protected under Article 21 of the Constitution, section 377 violated Article 14 on two grounds: first, because it was unreasonable and arbitrary to criminalize non procreative sexual relations, and secondly, because the legislative objective of penalizing "unnatural" acts had no rational nexus with the classification between procreative sexual acts.

In 2004, the High Court dismissed the writ petition on the grounds that only purely academic issues had been submitted which could not be examined by the court. It did the same in relation to a subsequent review petition. The Naz foundation challenged both orders and the writ petition was remitted for a fresh decision in 2006.

In its 2009 decision, the High court found in favor of the foundation and accepted its argument that consensual same-sex sexual relations between adults should be decriminalized, holding that such criminalization was in contravention of the Constitutional rights to life and personal liberty, equality before the law and non-discrimination. In reaching its decision, referring to judgment from various jurisdictions including the European Court of Human Rights, the United Kingdom, the republic of Ireland, South Africa and the USA. The courts also

not enforced, serve to entrench stigma and encourage discrimination in different spheres of life, exposing India's LGBTQ community to harassment, blackmail, extortion and discrimination. The Supreme Courts consideration of these issues and the impact of section 377 of IPC on personal autonomy and privacy in general on appeal in Koushal v. Naz Foundation were notoriously cursory, as explored by Judges Sheikh and Narain. However, in this case Article 12 of the UDHR 1948, Article 17 of the ICCPR 1966 and European Convention on Human Rights 1950 were discussed detailed apart from Article 14, 15, 19 and 21 of Constitution of India and Section 375, 376, and 377 of IPC.

The complex interplay between formal criminalization, a lack of reported prosecutions and societal stigma is reflected both in the sharp disparity between Naz Foudation and Koushal's treatment of s 377 and to divers, unpredictable outcomes for LGBTQ Indians applying for asylum in other nations on the basis of feared persecution due to their sexual orientation or gender identity. The UK Government guidance decisions for same sex oriented men and lesbians from India MD and AR and NH are both relatively optimistic with regard to the prospects for same sex oriented men and women to reasonably relocate with India to escape risks of harm in their home areas; these findings depend to a significant degree upon the view that risks of harm predominantly arise from non-state actors rather than deriving in any large measures from state conduct.

But in Australia by contrast LGBTQ Indians have been recognized as refugees. There are 19 published decisions of Australia's Department of Immigration and The Refugee Review Tribunal on AustLII regarding applications for asylum by LGBTQ Indians. All of these

relied upon a number of progressive international legal frame works including the Yogyakarta principles and the 2008 Declaration of principles of Equality produced by the Equal Rights Trust as well as a number of reports and documents demonstrating the discriminatory effect of Section 377. In its reasoning, the High Court stated that Section 377 "grossly violates (homosexual individuals) right to privacy and liberty embodied in Article 21 insofar as it criminalizes consensual acts between adults in private". The court also held that:

> Section 377 criminalizes the acts of sexual minorities, particularly men who have sex with men. It disproportionately affects them solely on the basis of their sexual orientation. The provision runs counter to the constitutional values and the notion of human dignity which is considered to be the cornerstone of our constitution".

The decision was appealed to the Supreme Court and attracted a large number of interveners. Interveners supporting the Appellants included organizations and individuals who have stated that they had an interest in protecting the moral, cultural and religious values of Indian society. Interveners for the respondents are composed of individuals and organizations arguing that Section 377 caused harm to the LGBT community and homosexual men in particular.

decisions related to individuals identifying, or fearing that they will be perceived, as gay, lesbian or bisexual of these, the tribunals affirmed the decisions under review that is, found that the applicants were not owed protection in 8 cases and found that the applicants possessed well-founded fears of persecution on the basis of their sexual orientation or gender identity in 11 cases. In all but one of the affirmed decisions, the tribunals found that the applicants had fabricated their claim to be homosexual or bisexual and to fear harm on that basis; in the one exception from 2001, the RRT accepted that the applicant was a lesbian but found that she could settle in one of several major cities without being subjected to discrimination because of her sexual orientation. Of the 11 remitted decisions, 3 pre date 2009; 7 were decided after Naz Foundation but before Koushal; and one was decided after koushal.

The government does not recognize refugees as a class, but the judiciary does recognize them. "The Indian judiciary has introduced refugee law into the legal system through the back door, as it were, since the executive has shut the front door."[57] In India some Parliamentarians[58] and academicians[59] have stressed the need for the appropriate legislation. Calling for the law, Rajeev Dhawan suggests that, "as refugees have no special due process rights; India's law must match its humanitarian goals."[60]

However, In India most of the personalities and institutions consistently stressed the need for legislation for refugees. But first time in India a remarkable judgment given by the judiciary system, for see the importance and seriousness about the problem of lack of legislation for refugees in India. The New Delhi Metropolitan Magistrate Court-II Dwaraka Arul Varma[61] in his order specified the importance and urgency of the law.[62]

[57] Markandey Katju 'India's Perception of Refugee Law', (2001) ISIL YBIHRL, 14.

[58] Fali S. Nariman and Eduardo Faleiro, Upper Houses, participating in the debate on amendment to the Foreigners Act 1946.

[59] Chimni B.S, 'Status of Refugees in India: strategic ambiguity', in R. Samaddar (ed.), Refugees and the State-Practice of Asylum and Care in India 1947-2000 (Sage Publications, 2003). He holds the view that although the reasons cited by the government are not plausible, the practice of the Western World is reason enough to ignore the 1951 Convention.

[60]Dhawan Rajeev (2003) "The Refugees in India", *The Hindu*, 28 June 2003.

[61] L D. Metropolitan Magistrate (Special Court-2): Dwaraka Courts: New Delhi, FIR No. 78/10, U/s 419, 420, 468, 471, 120B IPC and 14 Foreigners Act. 2012.

The court also discussed the Refugee and Asylum Seekers (Protection) Bill, 2006 and observed that it was a welcome step in this direction. It is unfortunate that despite it been adopted after due deliberations and after various consultations by eminent jurists including the former Chief Justice of India Sh. P.N. Bhagwati, this bill has not seen the light of the day. A perusal of some of the provisions would make it clear that if this bill would have been enacted, it would have gone long way in securing certain rights for the refugees. The preamble to the bill addresses the need for protection of refugees as is explicit from the following lines: "to provide for the establishment of an effective system to protect refugees and, by providing necessary social and economic protection both before and after the date of asylum".

In the final order the court stressed the importance of national law. In Para 91 it states how can a court become a party to the persecution of an individual? The court cannot retrograde itself to the position of a mute spectator. It is high time that this bill (or another one drafted in similar lines) sees the light of the day and becomes a living document by being enacted. By doing so, lives of thousands of refugees in our country can be affected for their betterment, in as much as valuable rights can be conferred. Our commitment to adherence to international law can be fulfilled if we enact this law. The principle of non-refoulment is a basic cornerstone of basic human rights. By handing over a person to a nation where he fears persecution, would make us nothing short of abettors in that persecution. And in Para 92 states this court aware that this ex aequo et bono order seeks to fill the casus omissus left by the legislature, but it derives inspiration from the following famous words of Retd. Hon'ble justice Sh. P.N. Bhagawati spoken at a common wealth conference on "judicial interpretation in constitution law" by which he succinctly defined the role of, and expectations from a judge: "Law making is an inherent and inevitable part of the judicial process. Even where a judge is concerned with the

[62] The fact of this case was the convict Chandra Kumar is a Sri Lankan Tamil refugee who has been staying at a refugee camp in India from the year 1990. He sought to eke out a better life in Italy but while leaving India, he was apprehended by the immigration authorities as he did not possess valid travel documents. Thereafter, he was charged for committing the offences of cheating, impersonation and forgery will reference to section 14 of the Foreigners Act, 1946. He claimed that he was duped by a travel agent. He moved an application for plea bargaining. Pursuant to moving of an application under the benevolent provisions of plea bargaining recently incorporated in the code of criminal procedure, 1973, Chandra Kumar was convicted of the aforesaid offences upon his admission of guilt. Had he been an Indian citizen, he would in all probability have been set free at this stage, having been already incarcerated in judicial custody for a period of almost 6 months. An order on sentence would have been passed forthwith. However, the Additional public prosecutor, on instructions from the State, contended that an order of deportation should form a part of the order on sentence. It is in light of these circumstances that a detailed order was being passed while handing out sentence to the accused.

interpretation of a statute, there is ample scope for him to develop and mould the law. It is he who infuses life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society" In para 82 the court mentions most importantly section 7 of this bill that makes it explicit that a refugee who senses a fear of persecution ought not to be expelled/deported/removed/refouled to the country from where such fear arises.

The court ordered that convict Chandra Kumar shall not be deported and he is directed to report back to the Tahsildar, Sri Lankan refugee camp in Tamil Nadu.

CONCLUSION

International refugee law contains the definition of the term "refugee" and lays down the extent of protection a state should give to refugees and the obligation of states to find durable solution to their problems. When the 1951 Convention was adopted, the plight of victims of persecution between two world wars was still fresh in the minds of the Europeans. The result was the adoption of the term "refugee" characterized by individualized persecution for reasons of race, religion, and nationality, membership of a particular group or opinion. At that time the refugee problems were largely restricted to the European continent only. It was soon realized that persecution is a universal phenomenon and persecuted people need to be protected everywhere. As a result the 1967 Protocol relating to the Status of Refugees was adopted. It removed the temporal and geographical limitations of the definition envisaged under the 1951 Convention. Today there is a near universality of obligation for protection of refugee who flee their countries fearing persecution for reasons of race, religion, nationality, membership of a particular group or political opinion.

The developing countries in Asia, Africa, Arab and Latin America have also started experiencing the forced movement of people across the international frontiers owing to international or internal conflicts, struggle against foreign domination, or events seriously disturbing public order. To resolve the problems of these refugees at regional level, the Organization of the African Unity adopted OAU Convention on the status of refugees in 1969. In Asia the AALCC adopted the Bangkok Principle, 1966. In 1970 acknowledging the broader definition of the term refuges the benefit of Articles IV and V of the Bangkok Principles 1966

was extended to those who fall in that definition. Countries in Latin America have also resolved to apply international standards to protect the refugees who flee their countries owing to gross violation of human rights.

Once in India, legally or illegally, refugees offer face a problem residing in the country. This is because either their travel or stay documents (Indian visa, for instance) have expired, or they are unable to renew them, or they are not able to acquire any documents to begin with. Occasionally, the foreigner's regional registration office has refused to issue or renew residential permits because the refugee did not have valid passports. This should not however exclude them from being treated as refugees under international law. Varying treatment has been accorded to different groups of refugees with respect to their stay in India. The policies that govern different refugee groups are rarely formalized as written rules; they can be inferred from the actions of the government. This may create some ambiguity in the minds of researcher who are accustomed to dealing with codified rules and regulations. It is therefore very important in the subject of refugee law to keep abreast of the latest development in this field.

However, today apart from these political and humanitarian refugees' different kinds of problems arising for reasons of economic problems of liberalization, privatization and globalization (LPG). It affects the people's socio-economic and cultural rights. Peoples leave their habitual resident places to search for better place to survive. Mostly it is happening in developing countries. There are other man-made disasters created by developed nations in poor countries especially through armed intervention in Iraq, Afghanistan, Sudan, Somalia, Syria and Libya. Mostly the poor nation peoples are seeking refugee status in developing countries. They can't easly reach Europe or Western countries. Their laws are very restrictive for these people. In other words, developed nations are functioning like refugee producers, and Third World countries like India are functioning like refugee keepers. The 1951 Convention is the only international legal instrument directly and exhaustively dealing with the rights of refugees. Unfortunately this Convention only speaks about refugees fleeing persecution because of violation of civil and political rights. The gaps in the Convention regime are being filled by the regional instruments. It is the only hope for those in who search for a place for to live in dignity.