

INTERNATIONAL LAW ON THE STATUS OF REFUGEES & STATELESS PERSONS IN SOUTH ASIA: AN INTRODUCTION WITH JUDICIAL, STATISTICS REFERENCES

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INTRODUCTION

Asia is the largest refugee-hosting continent of the world. South Asia hosts the fourth largest number of refugee population of the world. It hosts refugees from within and outside the region. The refugee producing States in the region are Afghanistan, Bhutan, Sri Lanka and Maldives. The refugee hosting States are India, Pakistan, Nepal and Bangladesh.

As per UNHCR report as on January 2014, Afghanistan hosted 16,863 refugees and produced 2, 556,556 refugees in the region. Bhutan produced 31,734 refugees and asylum seekers. Sri Lanka hosts 145 refugees and 1,607 asylum seekers, and it has generated 123,088 refugees and 16,158 asylum seekers. Maldives has produced 31 refugees and 25 asylum seekers. India hosts 192,070 refugees from Tibet, Sri Lanka, Myanmar and other countries like Africa and Arab states. Pakistan hosts 1,616,507 refugees and 5,386 asylum seekers from Afghanistan and some refugees from Iraq, Somalia, Iran and other countries and it sends 48,867 refugees and 46,517 asylum seekers from its land. Nepal hosts 46,305 refugees and 236 asylum seekers from Tibet and Bhutan. Bangladesh hosts 231,145 refugees but as per government estimates the population to be between 300,000 and 500,000.

Except Afghanistan, South Asian states are not party to the UN Convention Relating to the Status of Refugees, 1951 (hereinafter referred to as 1951 Convention). They also do not have any regional mechanism. But broadly speaking they follow the international customary norm of non-refoulement (or non-return). These states are also following their constitutional

mandates as applicable to aliens in their countries. But they do not have any specific national legislation on the legal status of refugees. All refugee movements are dealt with by individual governments on adhoc basis with shifting policies and standards of treatment with regard to different groups of refugees. Refugees in South Asia are treated like any other foreigner and thereby subject to the control provisions of the foreigners laws and related legislation governing passports and entry, stay, and exit of foreigners. Refugees who are not extended assistance directly by the government of the host South Asian state usually approach UNHCR office in order to seek international protection and assistance, UNHCR has a presence in South Asian states. To this end UNHCR, under its mandate, conducts eligibility determination interviews and issues refugee certificates to those who qualify as refugees. Although UNHCR certificates are not formally recognized by some of the South Asian states, in practice the authorities have taken cognizance of UNHCR's role and extended stay is usually granted to UNHCR recognised refugees. India, Bangladesh, and Pakistan are members of the Executive Committee of UNHCR. The lack of legislation often leads to different treatment of refugee groups. Therefore, it is their responsibility to protect refugee rights in the region. It is time to either adopt domestic legislation or a regional mechanism for the protection of refugees. A regional approach would allow South Asia to address its specific concerns on refugee issues, help improve cooperation and solidarity among countries, improve prospects for solution and help define a clear and useful role for UNHCR.

There are also a large number of stateless persons in South Asia. The UN Convention relating to the Status of Stateless Persons, 1954 (hereinafter referred to as 1954 Convention) defines a "stateless person" as persons who are not considered as a national by any State under the operation of its law. The 1954 Convention and the UN Convention on the Reduction of Statelessness, 1961 (hereinafter referred to as 1961 Convention) are key legal instruments for the protection of stateless people around the world. In the case of South Asia three categories of stateless people are present in the region. They are Biharis in Bangladesh, Chakma refugees in India, Tibet and Bhutanis in Nepal.

The stateless group in Bangladesh is commonly known as Biharis or Stranded Pakistanis. The most important identification of this group of people is that they speak Urdu. In 1947, during the partition of Indian subcontinent nearly one million Urdu speaking non Bengali Muslim minorities from different parts of Bihar, Madhya Pradesh, Uttar Pradesh, Rajasthan and West

Bengal migrated to then East Pakistan, which is now Bangladesh. The stateless situation in Nepal is a little complex as there is more than one group of people without legal identity. As per Forum for women and development estimates there are around 4.3 million stateless people in Nepal. The Chakma refugees in Arunachal Pradesh, a state in northeast India, have been fighting for citizenship for over six decades. However citizenship will reduce the number of stateless persons in South Asian region. Recently on 22 September 2014 Myanmar government gives citizenship to 209 Rohingya Muslims in this region.

INTERNATIONAL LAW ON REFUGEES & STATELESSNESS

International refugee law is an outgrowth of general principles of international law, human rights and humanitarian law. The general principles of international law lay down the norms of sovereign equality of states as well as territorial supremacy over the subjects within their territories as well as respect for human rights. International human rights law obliges states to protect the fundamental rights of all human beings, particularly the right to life and liberty, without discrimination on the grounds of race, religion, language, political opinion or nationality. Like conventional obligations, international standards on the protection of refugees have universal respectability and acceptance and are applicable in all refugee situations. The states are obliged to protect and accord a minimum standard of treatment to refugees.

(a) Definition of the term Refugees

Defining the term 'Refugee' is the first requirement for its prosecution. Several international and regional legal instruments define the term refugees, However, the definition contained in the 1951 Convention is the most widely accepted definition¹ as it is retained and expanded in the Statutes of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereafter the OAU Convention), and in the Cartagena Declaration on Refugees, 1984 (hereafter the Cartagena Declaration). Article 1 (2) of the 1951 Convention definition of the term refugee is considered as the universally accepted term.

¹ The 1951 Convention refugee definition is of singular importance because it has been subscribed to by more than one hundred nations in the only refugee accords of global scope. Many nations have also chosen to import this standard into their domestic immigration legislation as the basis upon which asylum and other protection decisions are made. (Hathaway 1991: 5)

Article 1(a) (2) of the 1951 Convention reads:

“Refugee as a person who owing to

- (a) well-founded fear of being persecuted for reasons of
 - (i) race,
 - (ii) religion,
 - (iii) nationality,
 - (iv) membership of a particular social group or political opinion,
- (b) 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
- (c) who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or,
- (d) Owing to such fear, is unwilling to return to it”.

Article 1 (2) of the OAU Convention expands and includes reasons such as,

The term ‘refugee’ shall also apply to every person who, owing to

- (i) External aggression
- (ii) Occupation
- (iii) Foreign domination or
- (iv) Events seriously disturbing public order in either part or the whole of his country of origin or nationality,

Is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

Section III.3 of the Cartagena Declaration 1984 which provides that the term ‘refugee’ shall also apply to Central America area as the reasons like

Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety of freedom have been threatened by

- (i) Generalized violence
- (ii) Internal conflicts
- (iii) Foreign aggression
- (iv) Massive violation of human rights or
- (v) Other circumstances which have seriously disturbed public order

The Asian African Legal Consultative Committee (hereafter AALCC) defines the term ‘refugee’ as same as the 1951 Convention. At the same it takes criteria from OAU Convention, the Cartagena Declaration and additionally includes reasons like: color, ethnic origin, gender and also external aggression, foreign domination and events seriously disturbing public order. So it offers a broad definition of the term refugees. “At the regional level though, unlike the OAU Convention, the Cartagena Declaration is not a formally binding legal instrument, its broader definition has gradually become the established norm throughout Central America.”² However the above said legal instruments uniformly mention four key features for fulfilling the refugee definitions, first, the person must be outside the country of the region. Second, that person must have a well-founded fear. Third, that there must be a well-founded fear of being persecuted for reasons like race, religion etc. Fourth, that person’s home country is unwilling to protect his/her life or freedom.

(b) Principle of Non Refoulement

“The term *non-refoulement* or no return, it derives from the French *refouler*, which means to drive back or to repel, as of an enemy who fails to breach one’s defense”³ The principle of non-refoulement states, broadly, that no refugee should be returned to any country where he or she is likely to face persecution or danger to life or freedom. Article 33 (1) of the 1951 Convention states that: No 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”. It is considered as the heart of the 1951 Convention and it also considered as a principle norm of customary International law. It is now also incorporated into international human rights law.

² Arboleda Eduardo (1991), Refugee Definition in Africa and Latin America: The lessons of Pragmatism, *International Journal of Refugee Law*, 3(2): 186-205.

³ Goodwin-Gill. Guy S (1985), *The Refugee in International Law*, New York: Oxford University Press, p. 69.

Article (3) of the Convention against Torture 1984 (CAT) states that no persons can be sent back to a country where there is reasonable fear of torture.

In 1951 Convention Article 33 (2) is exception for Article 33 (1). It states that provision may not apply to 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 judgment of a particularly serious crime, constitutes a danger to the community of that country. The evidence relating to the meaning and scope of *non-refoulement* in its Conventional sense also amply supports the conclusion that today the principle forms part of general international law. At the same time CAT convention has no exclusion clause, it's strengthen the Non Refoulment principle respectively.

(c) The Concept of Asylum Seekers and Refugee Status

Asylum seeker is a person who is seeking refugee status. It is national legislation that has the task of status determination or United Nations High Commissioner for Refugees (UNHCR) has the authority to do Refugee Status Determination (RSD). When the process is over, the authorities grant refugee status. Only then that person becomes a refugee. There have to be provision for appeal from the first determination.

RSD means establishment of well-founded fear. The UNHCR determines it through the subjective and objective tests. In objective test the asylum seeker has to produce documentation like newspapers, testimonials from eminent person or some written documents in support of the claim of well-founded fear. In subjective test the interviewer determines whether the person is speaking the truth or not. The state of human rights in the relevant country is also considered in the RSD processes. The UNHCR hand book suggests both subjective and objective test should be applied.

Article 14 (1) Universal Declaration of Human rights clearly states that 'every person has the right to seek and to enjoy in other countries asylum from persecution'. But it doesn't say every person has right to be granted asylum. Whether to grant asylum or not is a right that rests with sovereign states. They make the final determination. Moore, in 1908, noted that the right to

grant asylum 'is to be exercised by the government in the light of its own interests, and of its obligations as a representative of social order'.⁴

Article 1 (f) of the 1951 Convention contains the exclusion clauses. Under it three categories of persons will not be granted refugee status. These persons are excluded from the benefits of refugee status. These are any person who has committed crime against peace, war crime or crime against humanity as defined in the International humanitarian law. A second group of persons excluded from the definition are any person who has committed serious non-political crime like murder, rape etc., and prior to seeking refugee status. Third is general category a person who has been had guilty of acts contrary to the purposes and principles of the U.N Charter like aggressive war etc. These exclusion clauses need to be interpreted very restrictively, because if a broad interpretation of this exclusion clause is made, it may end up denying protection to some person who deserves refugee status. It may lead to the deportation of the person back to the countries where his person's life or freedom is in danger.

(d) Salient Features of the 1951 Convention

(1) Rights of Refugees

The 1951 Convention grants a number of rights to the refugees. These are civil and political rights as well as social, cultural and economic rights. These rights are spelt out in the Convention. For example the right of employment⁵, right of welfare⁶ like rationing, housing, education etc. And right to freedom of movement, access to court, and right to intellectual property and right of association⁷, are also mentioned as a rights of refugees. Under the Convention there is a reservation clause contained in Article - 42.⁸ At the same time there are some rights to which no reservation is permissible. These rights include Article - 1 Definition

⁴ Moore (1908) Digest ii. p. 757.

⁵ Chapter III titled "Gainful Employment", Articles 17-19 of the 1951 Convention, UN General Assembly Resolution 429(v) of 14 December 1950. Available at www.un.org.

⁶ Chapter IV titled "Welfare", Article 20-24 of the 1951 Convention, UN General Assembly Resolution 429(v) of 14 December 1950. Available at www.un.org.

⁷ Chapter II titled "Juridical Status", Article 12-14 of the 1951 Convention, UN General Assembly Resolution 429(v) of 14 December 1950. Available at www.un.org.

⁸ Article 42(1) titled "Reservation", reads, "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. And Article 42 (2) reads, "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." UN General Assembly Resolution 429(v) of 14 December 1950. Available at www.un.org.

of the term refugees. Article - 3⁹ right of non-discrimination, its include race, religion or country of origin. Article - 4 Religion¹⁰, Article - 16 (1)¹¹, and Article - 33 non refoulement.

(2) Safe guard measures

First, article 9 of the 1951 Convention¹² states that detention can be done but only on exceptional situations where either the person is committing a fraud like presenting or submitting fraudulent papers, or there is a threat to the national security of that country etc.

Second, article 31 of the 1951 Convention speaks about refugees present unlawfully in the country of refuge. According to this article if a person enters a country without proper papers or documents and claims to be a refugee he will not punish or penalize the person for not carrying proper papers. For example, if a person is without passport, visa or is smuggled in to a country, he may have violated that country's laws at the same time he is seeking refugee status, but the state shall not impose any penalties. A condition for the applicability of this article is that the person's life or freedom is in danger in his home country.

Third safeguard clauses deal with expulsion, refugee can be expelled only if that person is a threat to the national security or public order and only after the due process of law. Article 32 (1) reads states shall not expel a refugee lawfully in their territory save on grounds of national security or public order. These are the procedural safeguards which are in the 1951 Convention in order to ensure that a person life or freedom is in danger.

⁹ Article 3 of the 1951 Convention reads, "The States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin". UN General Assembly Resolution 429(v) of 14 December 1950. Available at www.un.org.

¹⁰ Article 4 of the 1951 Convention reads, "The States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children". UN General Assembly Resolution 429(v) of 14 December 1950. Available at www.un.org.

¹¹ Article 16 (1) of the 1951 Convention reads, "A refugee shall have free access to the court of law on the territory of all contracting states". UN General Assembly Resolution 429(v) of 14 December 1950. Available at www.un.org.

¹² Article 9 of the 1951 Convention reads, "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 person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security". UN General Assembly Resolution 429(v) of 14 December 1950. Available at www.un.org.

(3) Duties of Refugee and Cessation clause

According to article 2 of the 1951 Convention speaks about the duty or obligations of refugees. The refugee has the duty to obey the laws of the host country. 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.

The cessation clause is contained in the article 1 (c) of the 1951 Convention. The idea of the clause is to specify the situation in which he ceases to exist have refugee status. Thus the refugee status is not a permanent status. That status gets over once the conditions under which the refugee status was granted transformed. It should be applied restrictively. It should not lead to the violation of the principle of non refoulement. Article 1 (c) states six conditions for cessation of refugee status. One that person has voluntarily re-availed himself of the protection of the country of his nationality. Second having lost his nationality, he has voluntarily re-acquired it. Third he has acquired a new nationality, and enjoys the protection of the country of his new nationality. Fourth he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution. Fifth 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. Sixth 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.

(4) The Principle of Burden Sharing and Burden Shifting

The principle of burden sharing requires states to cooperate in dealing with the global refugee problem. It is not merely a moral but a legal principle. It is arguably a principle of customary international law.¹³ The Preamble to the 1951 Convention it states that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem cannot be achieved without international cooperation. At the regional level article 2 (4) of the OAU Convention states that where a member state finds difficulty in continuing to grant asylum to refugees, such member state may appeal directly to other member states to, in the spirit of African solidarity and international cooperation, take appropriate measures to lighten

¹³ Chimni B.S (2000), The Principle of Burden-Sharing, unpublished paper, *International refugee Law A Reader*, New Delhi: Sage Publications. p. 146.

the burden of the member State granting asylum. The preambular paragraphs of the Cartagena Declaration mentions about burden sharing like requesting immediate assistance from the international community for Central American refugees, to be provided either directly, or through bilateral or multilateral agreements, or through UNHCR and other organizations and agencies. The report of the AALCC also speaks about burden sharing. The conclusion could be drawn that the principle of international solidarity in dealing with the refugee situations and the concept of burden sharing in that context appear by now to be firmly established in the practice of States.

However, the legal principle of burden sharing simply speaks about financial assistance for the poor world who is hosting most of the world refugees. There must however be burden sharing even at the level of asylum. This principle is strengthened by the developing countries through the refugee law instruments in their own regional level. But unfortunately, the developed states are practicing burden.

(5) Durable Solutions

Basically there are three traditional durable solutions to the refugee problem. According to Goodwin-Gill, 'a durable solution entails a process of integration into society; it will be successful and lasting only if it allows the refugee to attain a degree of self-sufficiency, to participate in the social and economic life of the community and to retain what might be described, too summarily, as a degree of personal identity and integrity.'¹⁴ The solutions are first local integration, it means that where the refugee group has to remain in another country for the long period of time individual or group it integrates with the local people or host community. It is accepted by the host states for example, Chakma refugees are applying for citizenships in India that leads to local integration.

Second, resettlement in the third country it means where a country that accepted refugees gives them temporary asylum but then are resettled in another country. For example, Afghan refugees come to India and get some residence status in India. They apply to the UNHCR for resettlement to another country and are resettled in third countries. The third solution is voluntary repatriation it is the most significant solution or preferred solution. It means that people simply go back to their country when the situation becomes normal. Local integration

¹⁴ Goodwin-Gill Guy (1990), 'Refugee or Asylum: International law and search for solutions to the refugee problem', in H. Adelman and C.M. Lanphier, eds, *Refugee or Asylum: A choice for Canada*, Toronto: York Lanes Press. p. 27-43.

and resettlement in third country is a subsidiary solution but voluntarily repatriation is the principal solution

STATELESS PERSONS AND INTERNATIONAL LAW

The Term Stateless Persons defined in article 1 of the 1954 Convention relating to the Status of Stateless Persons, statelessness means a ‘person who is not considered as a national by any State under the operation of its law’¹⁵. This clear definition is stated in the 1954 Convention and presumed in the 1961 Convention on the Reduction of Statelessness¹⁶. It is the only internationally accepted term in practice. However, this definition is very crucial and not in the broader sense. It’s simply states those don’t have nationality they are Stateless. And it was criticized by scholars in various writings for example according to Carol A. Batchlor in his article mentioned:

A problem arises, however, in that the definition itself precludes full realization of an effective nationality because it is a technical, legal definition which can address only technical, legal problems. Quality and attributes of citizenship are not included, even implicitly, in the definition. Human rights principles relating to citizenship are not delineated, despite the inspiration of the Conventions themselves by article 15 of the Universal Declaration of Human Rights. The definition is not one of quality, simply one of fact.¹⁷

However, the Stateless Conventions concentrated in only legal terms it’s obviously enough to practice. But according to author it’s not clear about the citizenship of the person.

SOUTH ASIA AND THE 1951 CONVENTION

If we compare South position to the 1951 Convention on the issue of refugees, South Asian states are practicing important customary international law principles like non refoulement at

¹⁵ 360 UNTS 117; text in UNHCR, *Collection of International Instruments relating to Refugees*, (1979), 59.

¹⁶ 989 UNTS 175; text in UNHCR, *Collection of International Instruments relating to Refugees*, (1979), 82.

¹⁷ CAROL A. BATCHELOR, *Stateless Persons: Some Gaps in International Protection*. International Journal of Refugee Law Vol. 7 No. 2 Oxford University Press 1995, Page. 232.

the policy level. South Asia welcomes refugees from Asian and African continents and provides good treatment to them. On the issue of refugees South Asia's record is good. The asylums seekers are granting refugee status by the South Asian governments or it cooperates with the UNHCR for granting refugee status. The rights and duties of refugees are also respected by South Asian governments 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 South Asian governments restrictively. Illegal entry refugees are not penalized by the governments. Over all South Asia is implementing the norms mentioned in the 1951 Convention.

However, except Afghanistan South Asia 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 South Asia is not in a position to full fill even for its own citizens. Fourth South Asia is providing protection to refugees. So there is no need to become party. Fifth if South Asia 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 South Asia is arguing that most of the countries in Asia are not party to this Convention. Only five Asian countries are party to the Convention. This is called Asian exceptionalism. Seventh, is South Asia'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 South Asia ratifies the Convention. There must be assurance that global burden sharing at the level of finance and asylum will take place.

CONCLUSION

International refugee law contains the definition of the term refugee, the extent of protection a state should give to refugees, and the obligation of states to find durable solution to their

problems. The developments since 1950 provide two categories of refugees who are entitled to the protection of the international community, (a) refugees whose civil and political rights have been violated, and (b) humanitarian refugees. When the 1951 Convention was adopted, the plight of victims of persecution between two world wars 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, nationality, membership of a particular group or opinion. At that time the consideration of refugee problems were restricted to the European continent only. It was soon realized that persecution is a universal phenomenon and the persecuted people needs 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.

Besides having problems with regard to the protection of refugees, the developing country in Asia, Africa and Latin America 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 in 1969. They are generally termed as humanitarian refugees.

Regarding the problems of man-made disasters, the countries in Asia expressed their *Opinio Juris* for the protection of these refugees at the forum of AALCC which adopted the Bangkok Principles in 1966 and in 1970 acknowledged the extended definition of the term refugees and extended the benefit of Articles IV and V of the Bangkok Principles 1966 to those who fall in that definition. Countries in Latin America have also resolved to apply the international standards to protect the refugees who fled their countries owing to gross violation of human rights.

The Supreme Courts of Indian Subcontinent 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. Similarly the Supreme Court in *Malavika Karlekar v. Union of India* and the Guwhati High Court in *Bogyi v. Union of India* went to the extent of staying the deportation orders as well as allow them to seek refugee status from UNHCR. In *Nedumaran and Dr. S. Ramadoss v. Union of India*, the Madras high court stayed the involuntary repatriation and laid special emphasis on UNHCR's role as an impartial third party in verifying the voluntary repatriation. In *Digvijay Mote v. Government of India*, the High Court of Karnataka extended humanitarian assistance to about 150 refugee children of Sri Lankan origin. These developments indicate a positive approach to the problems of refugees. In *State of Arunachal Pradesh v. Khudiram Chakma*, the court held that the aliens are entitled to certain minimum rights necessary to the enjoyment of ordinary private life. In *Louis Raedt v. Union of India*, the court held that some of the fundamental rights are available to foreigners as well. The courts have stayed deportation orders in many cases pending refugee status and/or citizenship applications. 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 evolve a humane and compassionate approach to redress individual problems; however, 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.

The Judiciary Systems in the South Asian Region only platform for refugees to protect their rights in Indian Subcontinent. Above discussed cases are the examples in this issue. Judiciary consistently guiding the Indian government to enact national legislation for refugees in so many cases particularly in *Chandra Kumar V State*. Most of the cases in India supporting refugees right except some cases like *Luis De Raedt v. Union of India* this case using against refugees. In contemporary situation apart from political issues cultural practice forcing some community people to seek asylum in aliens land reflection of *Naz Foundation* case. However, the first human rights forum written in Kalinga now Orissa by the king Asoka and now it's updated in UN Declarations of Human Rights it says "All humans are one family and All Man My

Children”. Targeting a particular group and miss campaigning against the people is the recent trend in India.¹⁸ But, refugees are hardworking community to restart their life what they lost in their past, it makes them unique and intellectual in international community for example, “Jesus, Muhammad, Dalai Lama, Albert Einstein, Karl Marx, Lenin, Sigmund Freud, Jackie Chan, MIA, etc. In India, refugee Prime Minister I.K. Kujral, former Deputy Prime Minister L.K. Advani”¹⁹ etc the lists are so long. However, international community fully understands that producing refugee is a worst thing for human civilization that’s why Rome catholic pope washed refugees foots²⁰ to clean the sin of this world. And also accepting refugee’s shows rich civilization of the community, word like:

“YAATHUM OOREY YAAVARUM KEELIR”²¹

¹⁸ “We should not be misled by the Sangh Parivar’s misdirected campaigns against Bangladeshi and other Muslims seeking their expulsion from India”. Rajeev Dhavan (2008) *India’s refugee law and policy*.

¹⁹ Jesus family fled from Israel because of king herod. Muhammad fled from Mecca to Medina in 577. Dalai Lama fled from Tibet to India when China invaded. Albert Einstein E=MC2 gravity theory scientist German - Jewish refugee he was also stateless for 5 years at the end of 19th century. Karl Marx author of Das Capital, political theorist and German refugee. Lenin Soviet leader and a refugee who fled to Switzerland. Sigmund Freud Austrian Jew, author of interpretation of dreams and founded psychoanalysis he fled from Nazism in Austria. Jackie Chan martial arts actor fled to U.S from Hong Kong after being threatened with death by the Triads. MIA Arulpragasam famous Grammy award pop singer in U.K. part of a Tamil Sri Lankan refugee family., I.K.Kujral former Indian prime minister introduced 5 important diplomatic theory fled from Pakistan to Indian in partition time. L.K. Advani born in Karachi Studied in Lahore worked as a teacher in Pakistan and he lost everything in the partition time and he fled to India and become a deputy Prime minister of India because of his hard work

²⁰ Pope John Paul washed 12 Refugees Foots including Hindu Refugee from Pakistan in Vatican City of Rome. Available at: <https://www.americamagazine.org/content/dispatches/pope-francis-washes-feet-refugees-different-religions-and-countries>

²¹ It means “To us all towns are one, all men our kin,” written by Tamil Poetry Kaniyan Poonkundranar in 1000 BC, form Mangalam Patti Village Sivaganga District Tamil Nadu India and now it’s quoted in United Nations.

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III – Annexure

While refugees in South Asian countries nowhere constitute a cohesive social group (with the possible exception of some groups from Afghanistan in western Pakistan), they are so numerous at the present time (1991) that an outline of their demography is appropriate in this volume. Three South Asian countries hold a total of about 4,085,800 refugees today, of whom only 293,000 are native to the region. Most do not live in formal refugee camps, but many do benefit, if only a little, from funds that have been funneled to them from Western nations and food provided by the United Nations High Commissioner for Refugees.

The countries of origin of refugees, estimates of their Current numbers in each host country, and the main reason for their flight to that country are listed in the following table.

Host Country	Origin	Number	Reason for Flight
India	Sri Lanka	228,000	civil war between Sinhalese and secessionist <u>Tamils</u>
India	Tibet (China)	100,000	repression of <u>Tibetan culture</u> and religion by occupying Chinese forces
India	Bangladesh	65,000	mainly <u>Biharis</u>
India	Afghanistan	11,100	anticommunist freedom fighters (Mujaheddin)
India	Myanmar (Burma)	800	opponents of the military dictatorship
India	Elsewhere	900	
<u>Nepal</u>	Tibet (China)	14,000	repression of Tibetan culture and religion by occupying Chinese forces
Pakistan	Afghanistan	3,666,000	anticommunist freedom fighters (Mujaheddin)
Pakistan	Iran	1,100	opponents of the <u>fundamentalist</u> Islamic government
Pakistan	Iraq	1,700	opponents of the Ba'ath government

To put these figures into perspective, we might add that although South Asia contains 23 percent of the world's population, it currently holds less than 10 percent of the world's refugees. Africa remains the region of biggest refugee movements across national boundaries at this time.

