

# **LEGAL STATUS OF REFUGEE IN INDIA: A STUDY OF ROHINGYAS**

Dissertation submitted to the Central University of Punjab

For the award of

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In

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**BY**

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## **Declaration**

I declare that the dissertation entitled “LEGAL STATUS OF REFUGEE IN INDIA: A STUDY OF ROHINGYAS“ has been prepared by me under the guidance of Dr.Puneet Pathak, Assistant Professor, Department of Law, School of Legal Studies and Governance, Central University of Punjab. No part of this dissertation has formed the basis for the award of any degree or fellowship previously.

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## **Certificate**

I certify that Vikrant Menanwal has prepared his dissertation entitled " LEGAL STATUS OF REFUGEE IN INDIA: A STUDY OF ROHINGYAS ", for the award of LL.M., degree of the Central University of Punjab, under my guidance. HE has carried out this work at the Centre for law, School of Legal Studies and Governance, Central University of Punjab.

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## **ABSTRACT**

### **“LEGAL STATUS OF REFUGEE IN INDIA: A STUDY OF ROHINGYAS.”**

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During the last century, the world is witnessed the large number of displacement of human race. Still the world witnessing the highest level of displacement around the world. According to UNHCR annual figure, 2017 early 20 people are displaced every minute as a result of conflict or persecution. It figured 65.6 million people worldwide have forcibly displaced from their homeland. Since independence, India has been the favorite destination for refugee in South Asian region due to its historical, geographical, political, economic and other reasons. According to UN Rohingya refugees are considered to be stateless minority community and possibly the most persecuted around the world. Recently, the issue has been highlighted in international and national media regarding Indian response to deal with the issue of Rohingyas. The present work highlighted the Indian trend toward handling refugee in the absence

of any specific legislation and non- signatory of international instruments regarding to refugee. In the light of above- mentioned government position, it specifically focuses on government trend to tackle the problem of Rohingyas.

Vikrant Menanwal

Dr. Puneet Pathak

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## LIST OF ABBREVIATION

Sr. no.	Full form	Abbreviation
1	United nation high commissioner for refugee	<b>UNHCR</b>
2	National human right commission	<b>NHRC</b>
3	United nation	<b>UN</b>
4	South Asian	<b>SAARC</b>
5	Young Men's Christian Association	<b>YMCA</b>
6	All Arunachal Pradesh Students' Union	<b>AAPSU</b>
7	Socio-Legal Centre	<b>SLC</b>
8	Refugee Status Determination	<b>RSD</b>
9	Convention on the Elimination of all Forms of Discrimination against Women	<b>CEDAW</b>
10	Convention on the Rights of the Child	<b>CRC</b>
11	Association of Southeast Asian Nations	<b>ASEAN</b>
12	International Covenant on Civil and Political Rights	<b>ICCPR</b>
13	Office of the United Nations High Commissioner for Human Rights, department of the United Nations	<b>OHCHR</b>
14	International Convention on Economic Social And Cultural Rights	<b>ICESCR</b>
15	Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment	<b>CAT</b>
16	Convention on the Rights of the Child	<b>CRC</b>
17	Asian inter-governmental commission on human rights	<b>AICHR</b>
18	Asian Commission on the Promotion and Promotion of the Rights of Women and Children	<b>ACWC</b>
19	First Information Report	<b>FIR</b>

## Chapter: 1

### Introduction

#### Framework of study

#### Background of study

The movement of people has not an early phenomenon, but with the firmness of their people, their permanent and known residence emerged with the birth of regional nation-state, slowly religious, racial or ideological character and identity.<sup>1</sup> The problem of refugee is as old as the rise of the nation-state. Ordinarily, a refugee is referred to those persons who have been forced to leave their state of a permanent resident due to reason beyond their control. Though in the context of international law the term refugee has specific legal meaning.<sup>2</sup> The refugee problem is a serious international issue in which there are many complex problems to contribute to various social and political, economic and religious reasons. Since ancient times, many people have moved from their native country to another country due to many reasons. Sometimes it is voluntary, and not a second time. In the case of voluntary movement, it has been described as a migration. This means that the person is not forced to move from the country of origin or nationality, but instead takes it to another country to improve the quality of life of his choice. Besides, migrants enjoy the security of their state. There is a situation where a person does not possess the protection of the state and is forced to move from the country of origin or nationality due to the perceived danger or insecurity of his life. In such compulsive circumstances, one person takes shelter in another state and becomes a refugee.<sup>3</sup>

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<sup>1</sup> Lok Raj Baral and S.D. Muni, *Refugees, South Asia and Security* 335 (New Delhi Konark Publishers .2008).

<sup>2</sup> Sahr dac, *Human Right and Humanitarian Law* 166 (Oxford University Press, New Delhi, 1<sup>st</sup>, 2008).

<sup>3</sup> Sidharta Sethi, *Rights of Refugees: A Critical Study of International and Indian Level* (2012) Department of Law Himachal Pradesh University Shimla 2012, available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/128045/12/07\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/128045/12/07_chapter%201.pdf) (Visited On 24/11/2017).

The figures of refugees generated in the late half of the fifteenth century and late in the seventeenth century in Europe.<sup>4</sup> This process of the refugee generation was continued as the conflict between inter- state conflict, and the tensions and stability of regional boundaries of ethnic, religious and ideologically defined states declined in the struggle for state formation. In the presently days of the nineteenth and twentieth century, the inter-continental migration from the ancient World to the Newly World was included approximately 50 million people, many fleeing from persecution in Europe.<sup>5</sup>

After The fall of Ottoman Empire in 1918, many people forced to leave the countries of their origin. In 1919-20 around 1 million people fled from Russia, and under the 1923 agreement between Greece and Turkey, 3,20,000 Armenian and 2 million Turks and Greeks were transferred to a favorable area. After World War Ist (1914-18), the League of Nations, which was formed in 1919 with a series of refugee problems, when the League of Nations existed that refugee issue, should be seen as a worldwide issue, which should be handled internationally. The League of Nations nominated various high commissioners and agents to manage the particular refugee group, for example, Russia, Armenian and German, but none of these actions have been made in the long term. Similarly, after World War 2<sup>nd</sup>, different bodies were established to manage European, Palestinian and Korean refugees. Until 1950, the international community has developed establishments, frameworks, and laws to regulate the refugee issue globally. The crucial moment came with the founding of the United Nations High Commissioner for Refugees (UNHCR) in 1950-51 and the adoption of the United Nations Convention on the Status of Refugees. Together they

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<sup>4</sup> R.C. Sharma, India s refugee regime and resettlement policy a case study of Chakmas in Arunachal Pradesh (2014) (Jawahar Lal Nehru University Delhi) availableat: [http://shodhganga.inflibnet.ac.in/bitstream/10603/128045/12/07\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/128045/12/07_chapter%201.pdf) (Visited on 25/11/2017).

<sup>5</sup> Gil Loescher, Refugee Movements and International Security p no.9, (Adelphi Paper 268 IISS London, 1992), available at: [https://books.google.co.in/books?id=ELmQXSCJtNoC&pg=PA258&lpg=PA258&dq=Gil+Loescher,+Refugee+Movements+ad+International+Security,+Adelphi+Paper+268+IISS+Lond on ,+ 1992,& source=bl&ots=4GKj1sW eH3&sig visited on\( 25/11/2017\).](https://books.google.co.in/books?id=ELmQXSCJtNoC&pg=PA258&lpg=PA258&dq=Gil+Loescher,+Refugee+Movements+ad+International+Security,+Adelphi+Paper+268+IISS+Lond on ,+ 1992,& source=bl&ots=4GKj1sW eH3&sig visited on( 25/11/2017).)

were surprised, given the need for refugees and a formal structure to take measures to protect refugees under international law.<sup>6</sup>

UNHCR's Annual Figures, 2017 show that 65.6 million people worldwide have forcibly displaced from their homeland of which more than half are less than 18 years of age, there are also 10 lakh people, who are deprived of nationality. In the whole world nearly 20 people are displaced every minute.<sup>7</sup> After Independence India become one of the largest refugee population countries in the world. According to the fact, India serves to the diverse group of refugees, example:– Tibetan, Srilankan, Syrians, Afghans, Palestinians, Persians, Ethiopians, and Christians, etc.<sup>8</sup> According to the World Refugee Report, India facilitated around 400,000 refugees alongside at least 200,000 refugees and somewhere in the range of 237,000 internally moved people.<sup>9</sup> Recently the Rohingya and Syrian refugee emergencies have demonstrated that even in the present period of globalization, the problem of refugee is getting sever due to ongoing conflict they harvest the world. The Rohingya Muslims are the most persecuted community in the whole world, according to the United Nations. Rohingya refugees are considered to be stateless minority communities because they are not recognized by the government of Myanmar and possibly the most persecuted around the world. International media called them boat people because they were left in the sea by human smugglers. They form of an ethnic minority in the Rakhine region of Myanmar, and they are fleeing the threat of sectarian violence from Myanmar government (which has disowned them as Bangladeshis) and military. They could even face death if repatriated.<sup>10</sup> Rohingya living in the South East Asian countries for ages, Myanmar imagines them as people who relocated to their home for the during the Colonial rule. Consequently, it has not granted Rohingyas full citizenship. On

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<sup>6</sup> UNHRC, "The State of the World's Refugees: Fifty Years of Humanitarian Action", (Oxford University Press, New York, 2000). available at: <http://www.unhcr.org/afr/publication/sN/sowr/4a4c754a9/state-worlds-refugees-2000-fifty-years, humanitarianaction.html>, (Visited on 25/11/2017).

<sup>7</sup> NHRC the UN Refugee Agency available at: [http://data2.unhcr.org/en/situations#\\_ga=2.225115678.541966760.1511785373-129935238.1511785373](http://data2.unhcr.org/en/situations#_ga=2.225115678.541966760.1511785373-129935238.1511785373) (Visited on 27/11/2017).

<sup>8</sup> Komal Rastogi, What Is The Legal Status Of Refugees In India, April 20,2016(Visited on 29/04/2018).

<sup>9</sup> Protection of Refugees in India: A Critical Analysis,-3 IJARIE- 4 (2017).

<sup>10</sup> Amoolya Rajappa, Dose India need Refugee law, available at: <https://yourstor y.com/2017/06 /india-need-refugee-law/> (Visited on 19/11/2017).

behalf of the 1982 Burmese citizenship law, a Rohingya (or any ethnic minority) is include for citizenship only if he/she gives evidence that his/her predecessors have settled in the territory of Manyamar before 1823.<sup>11</sup> Else, they are assumed as "resident foreigners" or as "associate citizens" (regardless of whether one of the guardians is a Myanmar citizen). Since Rohingya are not citizens, they are not permitted to be part of civil services. Their activates are also restricted within the Rakhine state.<sup>12</sup>

Rohingyas went into northeast India through several ways. They avoided to reside close to Myanmar's boundaries. Rohingyas disperse over a huge space over various states. Those people have their living sites or camps in Assam, West Bengal, Uttar Pradesh, Delhi, Jammu and Kashmir, Andhra Pradesh and Kerala. Minister of State Home Affairs conveyed to Parliament in August 2017 that there were approximately 40,000 Rohingya Muslims living all around in the country. As per the Government of India, Rohingya's population has increased four times in India over the before two years. In 2015, Rohingya's population was assessed to have been 10,500. The maximum number of Rohingya Muslims is informed to be in Jammu. As per the Jammu and Kashmir government, there are about 5,700 Rohingya Muslims residing in and around Jammu. However, the central government maintains that there could be around 10,000-11,000 Rohingyas in Jammu<sup>13</sup> Some Rohingya got refugee status by UNHCR, and others are residing in India without any authority. Recently the issue of their deportation raised after introducing Indian Citizenship Amendment Bill, 2016.

## **Research Problem**

India has the pores border as it share 3323 km border with Pakistan, 3380 km border with China, 1643 with Myanmar, 30 km with Srilanka, 1236km with Nepal, and 699 km with Bhutan. India has the better living condition compare with neighbor countries due to which people of neighboring nations are attracting towards India. Due to this

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<sup>11</sup> Available at: <https://theconversation.com/the-history-of-the-persecution-of-myanmars-rohingya-84040> (Visited on. 18/09/ 2017).

<sup>12</sup> RagipSylo, Rohingya Muslims: World's most persecuted minority, Daily Sabha Asia Pacific,availableat:<https://www.dailysabah.com/asia/2017/09/11/rohingya-muslims-worlds-most-persecuted-minority> (Visited on 18/09/ 2017).

<sup>13</sup> Prbhas k duta, How Rohingyas reached India, India Today, (7 /09/,2016).

mass cross-border migration is going on over Indian Territory in the name of refugees and asylum seeker. But India has been the place of refugees since independence from its neighboring countries. Though India is a signatory of various international human right instruments, yet it is not a signatory of 1951 convention relating to refugee. In the absence of such international obligation and specific domestic laws, the problem of refugees has been tackle on administrative bases. It chooses to maintain its regulatory arrangement of dealing with temporarily or permanent settled refugee's communities. There is no specific mechanism of control and settlement for the refugees coming to the territory of India. In the absence of clear policies of law, some asylum seeker refused to the status of refugee, and some got the status of refugee and enjoying privileges and rights as Indian. The refugee problem is not the only humanitarian problem, but it also attracted the political, geographical and other concerns. The question of Rohingyas is the recent phenomena in the Asian region. The research work is to look into the problem of Rohingyas in context of the above mentioned-government position and trend to tackle the problem, of refugees in India.

### **Objective of Study**

1. To study the recognition of refugee protection under International instruments relating to Refugee.
2. To analyze the international obligations on India for protecting the rights of refugees in the absence of its signatory to 1951 Refugee Convention.
3. To examine the legislative/ administrative and judicial measures to tackle the problem of refugee in general and specifically the issue of Rohingya community and its refugee status in India.
4. To make a suitable suggestion for refugee policy in India and specifically in regard to Rohingya people.

### **Research Question**

1. What is the legal and Institutional measure to determine the status of refugee?
2. What protection is available to refugees under international refugee instruments and other international human right instrument?

3. What legislative/administrative and judicial measures taken by India to tackle the problem of refugees?
4. What is the legal status of Rohingyas in India?
5. What is the policy of India government in dealing the problem of Rohingyas in absence of non- signatory of fundamental refugee instrument?

### **Significance of the Study**

The present study is significant because the problem of Rohingyas is burning issue in South Asian region and particularly in reference to India where Rohingya are residing without having refugee status. The research is on the point need domestic refugee law at present because of the fact India is not signatory of 1951 convention on refugee, and the problem of refugees in the past has been tackling by administrative arrangement on the temporary basis. The finding and suggestion of the study may be helpful for policymaker and law executer.

### **Limitation of Study**

The researcher has to work under considerable constraints. The present study may give some concrete suggestion for future but due to lack of time research is limited to study legal position of refugee in india in refrence to problem of Rohingyas in India. No comparative study has been done in regard to tackling the issue of rohingyas. Study only focuses on response of india on the issue of Rohingya.

### **Structure of Study**

The present study is divided into five chapters. The First Chapter split into two parts in which the first part provides the framework of the study and the second part described the project of the research. The first part starts with the general background of the work which provides the basic theme of the research area. Research problem and objective, research question, structure of study, limitation of the study. The second part of the chapter provides the details of each of sections in brief to understand the project of the study.

The second chapter gives the review of literature of the present research work. In which the relevant material has discussed. A good amount of literature is available on the issue of refugee problem globally Scholars discussed the refugee problem from legal political, social and another perspective, in reference to India's policy in dealing with the refugee problem. Some scholar discussed the issue from the legal perspective as India is in need of comprehensive refugee policy as India is not a signatory of the refugee convention and its protocol. Very few studies are available in regard to Rohingyas refugees.

The third chapter analyses the material and methods of the present research work. To achieve the virus object of the study, the researcher has mainly relied on the doctrinal method of research. It further describes the source of primary and secondary source of data.

The Fourth Chapter relates to the detailed discussion of the study. It first describes the definition of a refugee under international refugee law. It further focuses on the protection available to refugee under international refugee instruments and other international human right instruments. The chapter also analyzes the problem of refugee since independence from time to time and its response in handling this problem through its international obligation, legislative, administrative measures at domestic laws. It further discusses the contribution of the judiciary in regard to the protection of refugee in absence of specific legislation. Role of NHRC, UNHCR is also discussed in this chapter. It further focuses on the Rohingyas problem and their presence in various states in India, their legal status in India in dealing this issue of Rohingyas.

The last chapter is the conclusion of the work which encompasses all the important issue discussed in the previous chapter to reach concrete suggestions in regard to mitigate the problem of Rohingyas residing in India, their refugee status their rights and their refugee status, their rights and their deportation from India.

## Chapter: 2

### Review of Literature

The idea 'refugee' can be understood from a sociological, political, or legal perspective. In a broad sense, a refugee is a person who leaves his home and takes shelter somewhere else due to natural disasters or human-made conditions, fear of persecution, especially harassment, war or other circumstances, So far existing literature is concerned a large number of books and articles, in various research journals, periodicals, weeklies, and newspapers have been published from time to time. There is a greater emphasis on the plight of refugees in the wake of the partition of India in 1947. Nevertheless, some Indian and western scholars have attempted to address the problems associated with undocumented trans-border migration and their conflict potential in a communally polarized Indian socio-cultural, socio-religious and socio-political structures. For the conveniences of the review of the literature, it is divided into three part. The first part relates to the literature on the global perspective of refugee. The second part reviews the literature on India perspective of refugee. The third part relates to the premise of literature on Rohingya crisis

#### A. Litratione on Global Perspective of Refugee

Justin McCarthy (1995) discussed the history of refugee and what the causes behind the refugee issue and how the refugee population increase in the world in the 19<sup>th</sup> and 20<sup>th</sup> century. He further highlighted the history of the expansion of the Russian Empire and creation of new nations in the Balkans. According to the author death and exile tells the story from the position of the Turks and other Muslims who suffered death and exile as a result of imperialism, nationalism, and ethnic conflict. It radically changed our view of the history of the peoples of the Middle East and the Balkans. It represents a new framework for understanding conflicts.<sup>1</sup>

Massimo Livi Bacci, (2012) provided an intimate overview of the history of migration, which provides the momentum of the people of Asia and Europe outside of Africa.

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<sup>1</sup> Justin McCarthy, *Death and Exile: The Ethnic Cleansing of Ottoman Muslims, 1821-1922*, 18 (Darwin Press, 1995).

The discovery of the successes and failures of the migratory groups is different from the flow of migration between Europe and the rest of the world in the 19th and 20th centuries. Further, he also highlighted the population exchange in 1923 between Greece and Turkey involved about two million people (around 1.5 million Anatolian Greeks and 500,000 Muslims in Greece) most of whom were forcibly repatriated and denaturalized from homelands<sup>2</sup>

Bemma Donkoh (2000) tried to trace out the politics of refugee protective cover as it evolved in the pattern of States and international organizations in a period of growing ideological differences. The question addressed is whether the politics of protection at any specific moment are humanitarian or whether they serve mainly other purposes, in which the refugee is merely instrumental. It is unrealistic to imagine that the trouble of refugees can ever be entirely non-political. What the history of the 1920–55 periods confirms is the continued vitality of egoism as a motivating factor in the answer of States to refugee's flows. The international refugee regime that turns out in the late 1940s and early 1950s characterized refugees through the legislative issues of denunciation in a persecution-oriented definition that keeps on restricting and confusing, at the level of the global task as well as in national asylum procedures. In this context, the study concludes that the art for UNHCR is not to allow solutions or assistance to have priority over protection. If it cannot provide protection, it will be judged a failure and accountable, and not merely excused because it tried hard in difficult political circumstances.<sup>3</sup>

Ivor C. Jackson (1999) discussed the historical perspective of the refugee law and in detail with the International development. In the exercise of the League of Nations he described the concept of refugee applied to group situations before the Second World

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<sup>2</sup> Massimo Livi Bacci, "A Short History of Migration" November 2012, available at :<https://www.wiley.com/en-us/A+Short+History+of+Migration-p-9780745661872>(Visited on 26/01/2018).

<sup>3</sup> Bemma Donkoh, "A Half-Century of International Refugee Protection: Who's Responsible What's Ahead Berkeley" *Journal of International Law* Volume 18 available at: <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?Referer=https://www.google.co.in/&httpsredir=1&article=1193&context=bjil> (Visited on, 27/01/2018).

War. Part II of the book begins with the adoption of the UNHCR and the United Nations Refugee Convention of 1951.<sup>4</sup>

V.T. Patil and P.R. Trivedi (2013) He tried to see the problems of the refugees from the scenario of human rights. The author noted that the issue of forced displacement considered serious dimensions that included suffer, pain for millions of people around the world. And, therefore, coordinated and integrated efforts and measures at the international level are required, such as human work and emergency assistance. Apart from this, he pointed out that there are only half-hearted solutions with some realistic chance of keeping the promise or guarantee granted by government organizations only in a significant operational way to reduce human organizations.<sup>5</sup>

Jastram and Achiron (2001) the general principles of international refugee law and how they were implemented were discussed. The author mentioned that protecting refugees' means is to maintain solidarity with the most threatened people in the world.<sup>6</sup>

Chimni (2000) introduced several aspects of international refugee law. Further author examined the definition of a refugee under the concept of international refugee law and IDPS. He discussed the work of the United Nations High Commission for refugees and provided humanitarian assistance to refugees around the world. With many examples of case studies, including a Postscript in Kosovo, his work is a definite source of laws, practices and refugee issues.<sup>7</sup>

B.C. Nirmal, (2016) looked into the problems of refugees from human rights perspectives. In view of author refugee problems have assumed severe proportions involving pain, suffering, and misery to millions of people around the world. The massive human tragedy is the result of war, pestilence, famine, and other human-

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<sup>4</sup> Ivor C. Jackson, "The Refugee Concept in Group Situations, 13(Martinus Nijhoff Publishers, The Netherlands, USA, 1999).

<sup>5</sup> V.T. Patil and P.R. Trivedi, "Refugee and Human Rights, 13 (Author Press, Delhi, 2013).

<sup>6</sup> Jastram and Achiron, "Refugee Protection: A Guide to International Refugee Law,(Published by the Inter Parliamentary Union with the United Nations High Commissioner for Refugees, 2001).

<sup>7</sup> Chimni, "All aspects of international refugee law, 51 (Published by Indian Sociological Society 2012).

made and natural calamities. All this calls for concerted and coordinated action at the international level in the form of humanitarian work and emergency relief like food, clothing, and shelter.<sup>8</sup>

Moretti Sebastien, (2016) examined the major refugee protection challenges that confront at the beginning of the 21<sup>st</sup> century on both sides of the development. The author further addressed why many of these problems have developed and examines some of the emerging opportunities, which, if realized in good faith, could provide more robust protection for refugees, while responding to the sovereignty, security and economic concerns of States.<sup>9</sup>

Nicole Triola (2014) described the inability of present refugee regime to cope with refugee flows, proposing as a partial solution an international, rather than a territorial, paradigm of duty. She explained that the international refugee regime contains a gap between the rights it promises and the responsibility it assigns to make those rights reality. This is principally challenging since many receiving states are not able or not willing to defend refugees and accomplish refugee flows within their territory. Under a territorial and regional paradigm of state duty, this leaves massive problems for which no state tolerates the responsibility.<sup>10</sup>

Frances Nicholson and Patrick Twomey (1999) The rights of refugees and asylum seekers and the practice of the state generally assess the rights of the different reality. In addition, the author examined a part of the refugee definition developed and its basic calculation components. It is also related to the refugee rule, in particular, the role of the main actors in the refugee discourse, the UNHCR office, the state of the nation and the EU embryonic territorial refuge norm.<sup>11</sup>

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<sup>8</sup> B.C. Nirmal, "Refugees and human right" international journal 2016. available at: [www.worldlii.org/int/journals/ISILYBIHRL/20016.rtf](http://www.worldlii.org/int/journals/ISILYBIHRL/20016.rtf) (Visited on 2/08/2018).

<sup>9</sup> Moretti Sebastien, "New issue in Refugee" Research Paper ISSN 1020-7473 UNHRC 2016 available at: <http://www.unhcr.org/5823489e7.pdf> (Visited on,02/02/2018).

<sup>10</sup> Nicole Triola, "The International Refugee Regime: A Failing System" Ramapo journal of law & society available at: <https://www.ramapo.edu/law-journal/thesis/international-refuge-regime-failing-system> (Visited on,25/01/2018).

<sup>11</sup> Frances Nicholson and Patrick Twomey, "Refugees Rights and Realities: Evolving *International Concepts and Regimes*" (Cambridge University Press, UK, 1999).

James C. Hathawa (2005) *The United Nations 1951 Refugees* presented the first comprehensive analysis of the human rights of refugees established by the refugee convention. On that time, when states are encouraging citizens to adopt only refugees, questions arise that refugees can develop opportunities, work, use the public welfare system or form in partnership with the family. It should be given. The ownership of the visa and other immigration policies have been expressed in doubt, and if there is any obligation to accept the refugees. Hathaway linked the UN Refugee Convention to the fundamental law of international human rights law and applied his analysis to the most challenging security challenges in the world. This promotion is a fundamental resource for judges and legislators.<sup>12</sup>

James C. Hathaway (1997) he stressed that violence and other human rights violations continue to threaten the migration of concerned people seeking safety. Because the political and economic reasons motivated a fair opening for the arrival of the refugees. Mainly far, now there is no guarantee that any state is ready to receive these involuntary migrants. Governments from both North and South withdraw from international border responsibility so they can provide security for refugees arriving at their borders. The challenge is to resolve the protection of refugees in a way that is capable of solving the legitimate concerns of modern states, but does not sacrifice the important rights of vulnerable people to seek asylum.<sup>13</sup>

Guy S. Goodwin-Gill (2007) *Focusing on three basic issues, namely the definition of refugees, a refuge for refugees and the protection of refugees*, describes the basis and structure of international refugee law. The writers cover internally displaced persons, preventive security, access to refugees, refugees and tutors of ministry staff and refugee children and women. A detailed examination of the role of UNHCR; Also included in the study.<sup>14</sup>

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<sup>12</sup> James C. Hathaway's , "The Rights of Refugees Under International Law, (Cambridge University Press, UK, 2005)

<sup>13</sup> James C. Hathaway, "*Reconceiving International Refugee Law* " (Martinus Nijhoff Publishers, The Netherlands, 1997) available at. Brill reconceiving international refugee\_law\_-2013-07-06.pdf (Visited on. 2/02/2018).

<sup>14</sup> Guy S. Goodwin-Gill, "*The Refugee in International Law*" (Clarendon Paperbacks Press, New York, 2007).

Bharat B. Das (2005) started with the historical notion of the refugee problem in the world. The modern concept of protection to refugees under humanitarian consideration dates back to 1920s when League of Nations in 1921 appointed a High Commissioner for Russian Refugees. It is mentioned in the article that the 1951 United Nations Refugee Convention was the culmination of significant development in the definition of the international body providing basic minimum legal standards for the treatment of refugees. The author also analyzed the issues like Refoulement, Crisis of identity, Asylum, and protection of fundamental human rights and Repatriation and resettlement of refugee. The role of UNHCR in the security of refugees and the refugee policy adopted in India has also been discussed by the author. He further highlighted the role of the judiciary in the protection refugee in absence of a clear-cut policy of the government of India on the refugee problem.<sup>15</sup>

## **B. Literature on Indian Perspective of Refugee**

Silvia de Gaetano, (2015) recognized various factors exacerbating the Refugee movements in South Asia and highlighted the lack of regional approach to solving the refugee crisis. In fact, the SAARC does not allow for discussion of bilateral issues, so there is little hope for solving inter-state problems through this channel. Unlike India, which is primarily a receiver of refugees, Bangladesh is both a refugee generator and host. While India has time and again expressed its unhappiness with the influx of Bangladeshis in search of food security, meanwhile, impoverished Bangladesh grapples with the problem of refugees from Burma, mainly the Muslim Rohingyas. Bangladesh cannot hope for an early solution.<sup>16</sup>

Shefali Sood (2017) concerned with the refugee issues in a limited context of the South Asian region. It examined the problems of South Asian refugees within the framework of international responsibility, solidarity, and humanity. The author described the dimensions of refugee problem which became so enlarged and sophisticated during the interwar period for that attempts were made through the

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<sup>15</sup> Bharat B. Das, "*Refugee's Problem: Humanitarian Approach*" (ISIL Yearbook of International Humanitarian and Refugee Law, Vol. V, 2005)

<sup>16</sup> Silvia de Gaetano, "*How to Solve Southeast Asia's Refugee Crisis*" 2015.

setting up of international organizations to deal with the millions of refugees resulted due to the 1st World War and the breakup of multinational empires. The lack of an adequate legal regime to ensure the rights of refugees, who as aliens are often among the most vulnerable member of society, is an ongoing problem highlighted by the author.<sup>17</sup>

V. Suryanarayan (2017) explained the reasons for not ratifying the Refugee Convention of 1951 or the Protocol of 1967 by India. The probable reasons for not sign the Refugee Convention or refugee Protocol, the lack of any regional approach or national legislation to point out the problem. This article concluded by emphasizing that through a comparative assessment of both the Northern and Southern perspectives concerning the protection of refugees, each can benefit from the experiences of the other, improve and build a scheme to care for the millions of refugees as well as others of concern in the new millennium.<sup>18</sup>

Narayan Sharma (2015) presented a case for the creation of a legal framework by the states of South Asia for the protection and rehabilitation of refugees and migrants. He explained the reality of South Asia as millions of "illegal aliens" are present in most countries of the region. Their illegal status has made them vulnerable to the manipulation and machinations of unscrupulous and corrupt elements in societies. Opportunist sections of certain political parties in the region have tried to use these "illegal" people as captive "vote banks" by trying to "regularize" their stay. These developments present a threat to the social and political stability of the region. In view of the author severely undermines the fundamental principles of democracy, transparency, the rule of law and respect for human rights. The absence of a legal framework not only harms refugees and asylum seekers but it also adversely affects the society of the host country.<sup>19</sup>

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<sup>17</sup> Shefali Sood, "*Discourse and Responsibility: Climate Change Refugees in South Asia*" Thesis submitted to the Faculty of the College of Literature, Science and the Arts at the University of Michigan in partial (2017).

<sup>18</sup> V.Surya Naryan,"Need for National Refugee Law availbel at: WWW. WORLDLII. ORG/INT /JOURNAL/ISILYBIHRL /2001/15.RTF.(Visited on, 02/02/2018).

<sup>19</sup> Narayan Sharma, "Refugee Situation in South Asia: Need of A Regional Mechanism 2015 available at:[http://www.mcrg.ac.in/WC\\_2015/Reading/D\\_Regional\\_Mechanism.pdf](http://www.mcrg.ac.in/WC_2015/Reading/D_Regional_Mechanism.pdf)

Partha S. Ghosh (2016) mentioned the necessity of regional cooperation to solve the refugee problem in the South Asian region. He explained that Large section of the people in South Asia has an inferior socioeconomic standard. Most often human lead reasons like religious persecution, cultural discrimination, human rights violation, social discrimination etc. resulted in a generation of refugees in the region.<sup>20</sup>

Efrat Arbel, Cathrine Dauvergne, and Jenni Millbankthe,(2014) focused on the foundations and frameworks of international refugee law, it analyses in some detail the domestic legal structure available to bring refugee within its ambit. In view of the author the attention of the legal community is also drawn towards the compelling need for national legislation on refugees. Setting standards for granting asylum and protection requirements would go a long way in bridging the gap between administrative attitudes and ad hoc policy decisions.<sup>21</sup>

Ranabir Samaddar (2003) by analyzing the contradictions in the relationships between these positive aspects and the way in which state power was used in colonial India, the excellent records appropriate for India to provide security and hospitality to refugees were analyzed. When investigating several meetings between the state and the refugees, the collaborators show that India's history of providing care is one of the only ones that limits attention. He revealed the power of the state to decide who to extend hospitality to and whom to deny. Therefore, the issue of handing over the refuge becomes one of the skills used in the part of the political establishment of India. This work provided chronic writings on different time periods and refugees in various areas of the country.<sup>22</sup>

Ragini Trakroo, Aparna Bhat and Samhita Nandi (2012) mainly focused on the foundation and frame work on refugees in the absence, international obligation for refugees in India, and author focused on the basis framework of international refugee

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<sup>20</sup> (Visited on, 2/02/2018).  
Partha S. Ghosh, "Migrant. Refugees *and the Stateless in South Asia*" 978 (publisher sage Delhi 2016).

<sup>21</sup> Efrat Arbel, Cathrine Dauvergne, and Jenni Millbank , "*Gender in Refugee Law*" (published third avenue newyork 2014).

<sup>22</sup> Ranabir Samaddar, "Refugee, and the State: Practices of Asylum and Care in India 1947-2000" 10 (SAGE Publications, Kolkata, 2003).

law, to protect the rights of refugees. The authors have also tried to understand the gender dimension of the refugee problem. Refugee women can be particularly vulnerable to violations of protected rights. In addition, their security problems often include sensitive issues such as sexual assault, which they may be reluctant to divulge. Together with women, children are not only becoming victims of the refugee population, but also specific targets. The writer emphasized the establishment of norms to provide asylum, to protect their legitimate rights and to guarantee the fulfillment of the duties by the state.<sup>23</sup>

Binod Khadria, Perveen Kumar, Shantanu Sarkar (2010) discussed that Indian subcontinent has long been the site of significant population flows for centuries, and the region witnessed some of the largest and most complex movements of refugees in contemporary history. The study traced the history of refugee policy-making and its motivations on the Indian subcontinent since 1947, examining in detail the significant instances of forced displacement of the territory of states in the region. The present study discussed the changing nature of the relationship between South Asian countries and the UNHCR. The volume explored why the states of South Asia construct a particular understanding of refugee and how they communicate this understanding in their policy behavior, with the analyses of the impact of refugee presence on bilateral relations. Oberoi argues that refugee's policy in South Asia is often tempered by the exigencies of nation-building, development issues, and political unrest, which may at times even explain South Asia's minimal devotion to the norms of the international refugee regime.<sup>24</sup>

Dhavan (2004) described that refugee law and policy issues are part of an unfinished public agenda. In view of the author for; last five years, the NHRC has been requesting the Government to offer refugee protection. India needs to review its ambivalent refugee policy, evolve a regional approach and enact rules or legislation

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<sup>23</sup> Ragini Trakroo, Aparna Bhat and Samhita Nandi, "*Refugees and the Law*" 17 (Combat Law Publishers Pvt. Ltd., Mumbai 2012).

<sup>24</sup> Binod Khadria, Perveen Kumar, Shantanu Sarkar, "International Migration Policy: Issues and Perspectives for India" research paper International Migration and Diaspora Studies Project, Zakir Husain Centre for Educational Studies School of Social Sciences, Jawaharlal Nehru University, New Delhi available at: [http://lib.jnu.ac.in/sites/default/files/pdf/imdsp/IMDS\\_Dec\\_2008\\_WP\\_1.pdf](http://lib.jnu.ac.in/sites/default/files/pdf/imdsp/IMDS_Dec_2008_WP_1.pdf) (Visited on, 1/02/2018).

to protect persecuted refugees. As a refugee-prone area, South Asia expects India to take the lead to formulate regional approach responsible with the state's needs and the capacity to absorb refugees under conditions of global equity.<sup>25</sup> Nair (2007) discussed the refugees in India from several nations and their general conditions. The difficulties in the formation of 16 law and its benefits are addressed. This paper intended to ascertain whether uniform national legislation would be beneficial to the interest of refugee.<sup>26</sup>

Bhattacharjee (2008) establishes that Indian law and practice provides distorted and incomplete protection to refugees. Indian law even fails to recognize refugees as a distinct category of persons and treats them at par with all other foreigners. The absence of a national law on the status of refugees has also meant that refugees depend on the benevolence of the state rather than on a rights regime to reconstruct their lives with dignity.<sup>27</sup>

Jai S. Singh (2009) described the responsibilities of the international community in protecting the rights of refugees. He highlighted that India has refrained from adapting to international instruments of refugee protection. The author also discussed the fundamental principles of the 1951 convention and the 1967 protocol, together with some other international conferences that are important for the protection and assistance of refugees at a global and regional level. The author also suggested that it might be possible to reorient the reform movement towards the alignment of refugee law with international human rights law. He also expanded the opinion of the Supreme Court of India regarding the security and assistance of refugees in India.<sup>28</sup>

U.C.Jha (2003) elaborately discussed on the specific right of refugees right to work. The author argued that granting a refugee right to work carries with it many benefits, both for the asylum seeker and the host country. Since giving refugee access to the

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<sup>25</sup> Dhawan, Rajeev, "Refugee Law and the policy in India, (UNHCR and PILSAARC: New Delhi, 2004).

<sup>26</sup> Nair, Arjun, "National Refugee Law for India: Benefits and Roadblocks, (Rajat Publication New Delhi, 2007).

<sup>27</sup> Bhattacharjee, Saurabh, "India Needs a Refugee Law" *Economic & Political Weekly* (15 may 2008).

<sup>28</sup> Jai S. Singh, "Refugee Law, and Policy in India: *Efforts of Indian Courts*" (ISIL Year Book of International Humanitarian Law, Vol.IX, 2009)

labor market can result in his/her eventual integration into the host society, the state should consider it as being in its interest. The author has also discussed the refugee's right to work in India in context of Pakistani, Tibetan, and other refugees along with specific roadblocks and problems in granting this power to the refugees.<sup>29</sup>

Anil Shrivastav (2008) described the obligations on India in the absence of its party to 1951 Convention on the Status of Refugees. In this regard he mentioned some case laws highlighting the role of Indian judiciary in protecting the rights of refugees. The author emphasized the need for the domestic legislation on refugee. He stated while India has a human rights law regime, an active NHRC and an innovative, creative and activist judiciary of it needs to harmonize and streamline into legislation its long tradition and experience in accommodating the inflow of refugees, its faith in the principles of non-refoulement and its commitment to uphold the principles of international human rights.<sup>30</sup>

N. Subramanya (2013) described the refugee problem as a serious international issue with diverse and complex socio-political, economic and religious reasons contributing to it. He presented an overview of the various international, regional instruments which have direct or indirect applicability for the refugees. The author emphasized on the problem of refugees in India and the role of Indian judiciary in protecting their rights.<sup>31</sup>

Sumbul Rizvi (2004) discussed briefly origin of 1951 Convention and 1967 Protocol related to refugees. He viewed that international human rights law constitutes the broad framework within which refugee law provisions should be seen. Human rights law complements and sometimes supplements existing refugee law and refugees enjoy two moderately covering set of rights: those agreed to them as people and

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<sup>29</sup> U.C.Jha, "Refugees' Right to Work: An Indian Perspective" (ISIL Year Book of International Humanitarian Law, Vol.III, 2003).

<sup>30</sup> Anil Shrivastav, "Need For Domestic Refugee Law, (Halsbury's Law, December 2013).

<sup>31</sup> N. Subramanya, "Refugees and Human Rights" (Journal of the Institute of Human Rights, Vol.VI, No.1, June 2008).

ensured under international human rights as point of reference and others because of particular reasons identifying with their status as refugees.<sup>32</sup>

Sumita Das Majumder (2005) identified how Tibetan, Sri Lankan, Afghan, Iranian, Burmese and Chakma refugees have come to India. What were the factors that forced them to leave their homeland and to take shelter in India has been highlighted in his work the author discussed the attitude of the Indian Government in dealing with all these refugees. India always has a soft corner towards Tibetan and Sri Lankan refugees. Since generally the refugee's influx in India is mostly from its neighboring countries, so the relations between these countries with India play a vital role towards the treatment of the refugees. The author also highlighted that in India, the judiciary has played a significant role in protecting refugee's rights. Courts order filled the legislative gaps and in many cases provided a humanitarian solution to the refugee's problem. In India, courts have allowed refugees and intervening NGOs to file suits before them. Indian courts constitutional protection of life and liberty to refugees.<sup>33</sup>

V. Suryanarayan and V.Sudarsen (2000) documented the history of Sri Lankan refugees in the state of Tamil Nadu, in southern India. What ideas about the daily life of refugees and the official approach of refugees? This is a historical background on the socio-ethnic character of SriLankan society, examines the causes of displacement and demands a political agreement for a conflict that has weakened the economic, political and social development of the nation.<sup>34</sup>

Sumitadas Mazumdar (2005) India's long historical tradition of hosting refugees from all over the world was highlighted. He point out that the executive department of the state does not recognize refugees law or refugees in India, the judicial branch of our state recognizes it to a certain extent, which is clear in the decisions of the Supreme Court and the High Courts in India where the refugees have received security under article 21 of the Constitution of India. He focused mainly on the basic point that

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<sup>32</sup> Sumbul Rizvi, "*International Dimensions of Refugee Law*" (ISIL Yearbook of International Humanitarian and Refugee Law, Vol. IV, 2004).

<sup>33</sup> Sumita Das Majumder, "Refugee Management in India: Policy Introspection" (ISIL Yearbook of International Humanitarian and Refugee Law, Vol.V, 2005).

<sup>34</sup> V. Suryanarayan and V.Sudarsen, "Between Fear and Hope: Sri Lankan Refugees in Tamil Nadu,(T.R.Publications Pvt.Ltd., Chennai, 2000).

although India not part of the 1951 refugee convention, the Indian judiciary is doing everything possible to safeguard the rights of the refugees.<sup>35</sup>

B.C.Nirmal (2001) explained the fundamental human rights of refugees, including the right to protection against reevaluation, housing, the right to equality and non-discrimination, the right to life and personal security, turning to the right and to the right. The author saw that refugees have the right to human rights and fundamental freedoms mentioned in human rights and in treaties, contracts and advertisements. From this perspective, it has been seen that the prohibited practices accepted by nations as opposed to asylum seekers are legally unjust, morally incorrect and strategically unfavorable. The international community in its thoughts, and certainly must proceed to constructively address human rights identification with refugees and that should have to undergo targeted approach.<sup>36</sup>

Shuvro Prosun Sarker, (2017) he dealt with the historical perspective of the flow of refugees in independent India. The author briefly highlighted the international structure of refugee protection, that is, the invention of 1951, the Convention on the Status of Refugees, the OAU Convention, the Cartagena Declaration and the AALCC. Apart from this, he stressed the need for a national law in India and focused on the legal framework in India, where refugees are treated with refugees.<sup>37</sup>

John Messi SJ, (2015) highlighted the reasons why India not sign the 1951 convention on the protection of refugees. The author saw that India had to prepare a law to protect the rights of refugees, since even a regional conference could not solve this problem skillfully. The author emphasizes that the application of the model law has been applied in the SAARC region for refugees<sup>38</sup>

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<sup>35</sup> Sumita Das Majumder, "Refugee Management in India: Policy Introspection" (ISIL Yearbook of International Humanitarian and Refugee Law, Vol. V, 2005)

<sup>36</sup> B.C.Nirmal, "Refugees and Human Rights" (ISIL Yearbook of International Humanitarian and Refugee Law, Vol. I, 2001).

<sup>37</sup> Shuvro Prosun Sarker, "Proposal for a Refugee Legislation in India"(SSRN Protection of refugee in India: Quest for National Refugee Law, Paper No.11 2017).

<sup>38</sup> John Messi SJ, "*Legal Right of Refugees in India*" (Indian social institute new Delhi 2015).

K.C. Saha (2012) he argued that there is a big experience of rehabilitation and assimilation of people from different countries of India. India has always protected people who have come to their region to protect refugees from Tibet, Bangladesh and Sri Lanka. The author of Afghanistan or Bhutan mentioned that the Indian government discriminated on the issue of helping certain sectors of refugees, while others did not receive the same treatment. It is from the country of origin that some refugees receive special assistance. Therefore, the writer suggested that efforts should be made to achieve transparency and equality in the refugee support policy.<sup>39</sup>

Rajeev Divide (2016) he urged India to review its ambitious refugee law policy, develop a regional approach and establish rules or laws to protect the persecuted. If India takes the lead in this regard, it will send a message to other countries in the SAARC region, despite having an area prone to refugees, no one from the countries of South Asia is making laws regarding refugees. The author emphasized the need to enforce the model law of SAARC on the refugee because, in the absence of the law, the government deals with refugees under the category of foreigners.<sup>40</sup>

Smrithi Talwar (2012) discussed the legal framework for the protection of refugees in India. This article highlighted the boundaries of Indian courts as non-signatories in the absence of a specific law for refugees at the 1951 convention related to refugee status in India and in the absence of any specific law for refugees in India. The authors also raised the issue of discrimination between the various refugee groups by the Indian government, which is a cause of discontent among the refugees in India.<sup>41</sup>

Rasheed Talib (2014) he described the historical concept of refugees and how establishment of 1951 convention that defines refugees. The author touched on the IDPS issue that became refugees within his own land, but his case was not included anywhere in the 1951 convention.<sup>42</sup>

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<sup>39</sup> K.C. Saha, "Refugee Assistance and India's Policy" (Bulletin on IHL & Refugee Law, Vol.4, No.1, 2012).

<sup>40</sup> Rajeev Divide, "*India's Refugee Law and Policy*" The Hindu, 15 march 2016).

<sup>41</sup> Smrithi Talwar, "Building a Regional Consensus on Asylum- The Indian Perspective" (Bulletin on IHL & Refugee Law, Vol.1, No.2, 2014).

<sup>42</sup> Rasheed Talib, "*Refugees and Human Rights*"(Bulletin on IHL & Refugee Law, Vol.2,

Nirmala Chandrahasan (2015) the author has focused on the primary security available to refugees, which is the principle of non-reflection that is the established principle of international law. The role of UNHCR in south Asian countries is also governed by the respective governments because these states are not party to refugee conferences. That is why the author suggested that legal norms be adopted to protect the rights of South Asian nations to human rights, further author says that good number of refugee flows in this area, the South Asian states have entered the 1951 convention because there is no international obligation in this way.<sup>43</sup>

V. S. Mani (2013) highlighted the need for domestic legislation in India that can efficiently deal with the issue of refugees.<sup>44</sup>

T.N Giri (2014) focused on the problem of refugee. According to him the initial attitude of the Indian Government was one of benevolence and welcome. Refugees were received as kin and accommodated in camps around the southern Indian state. They were all registered and given IDs if they lived in tents, and details such as home address, identity, etc. were collected. Classified as camp, non-camp, and militant refugees, the Sri Lankan Tamils were housed and accommodated accordingly, with the highest security being reserved for those seen as militant. Under the Constitution of India, the refugees enjoy some protections as foreigners on Indian soil including the right to life, dignity, religion and so on. In view of author order of the various court and government policies also place great emphasis on the necessity of the repatriation process being voluntary<sup>45</sup> Manoj Kumar Sinha's (2014) contain some of the most important, as well as basic, documents in the field of International Human Rights and Refugee Laws.<sup>46</sup>

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No.1, 2012).

<sup>43</sup> `Nirmala Chandrahasan, "Changing Perspectives on Refugee Protection in South Asia" (Bulletin on IHL & Refugee Law, Vol.2, No.1, 2015).

<sup>44</sup> V. S. Mani, "Indian Society of International Law" (ISIL Year book of International Humanitarian and Refugee Law, VOL. XII-XIII 2012-13).

<sup>45</sup> The problem of Tamil Refugees in India, available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/28322/10/10\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/28322/10/10_chapter%204.pdf) (Visited on 19/09/2017).

<sup>46</sup> Manoj Kumar Sinha, "Handbook of Legal Instrument on International Human Rights and Refugees Law," (Pub. Lexis Nexis, New Delhi, Ed. 2014).

Sanjay K. Roy's (2014) argued that refugee problem emerged out to be one of the more significant issues before the international community. India has also experienced it on a large scale. Factors such as the rise of religious nationalism, ethnicization of politics, state terrorism, and anarchic majoritarianism and above all state's refusal to conform to norms set by the international refugee regime rendered the refugees stateless and subjects for inhuman treatment. On the other hand, historical forces like religious, linguistic or ethnic nationalism and regional economic disparity continue to generate refugees in the eastern and north-eastern regions of India. With the competitive state, in the country of origin and adoption, refugees have problems finding ways and means for a healthy life, and whenever possible, they try to establish an organized movement for their human rights. They are there. Bengali refugees, Tibetan refugees, Bhutanese refugees, Chakma concentration on their work on refugees and Arakanion refugees from major and historical eastern refugee groups of India in northeastern states, social and political histories. The authors discovered the origin of each of these groups of refugees and the areas of violation of human rights in their treatment. The author also reviewed the shifting, ad hoc and confusing stands of the state machinery in India in the treatment of various refugee streams. The inadequacies of the international regime for the protection of the refugees in India have also been examined.<sup>47</sup>

Arjun Nair (2007) Discuss several factors that block the method of preparation of legislation related to refugees in India. He highlighted the benefits of being a refugee law in India. It is seen that the law has become our requirement for refugees because the administrative authorities in India discriminate between the different classes of refugees that are against the humanistic perspective.<sup>48</sup>

Narayan Sharma (2008) identified the causes of refugee flows in the South Asian region. He indicated that the absence of a specific mechanism to deal with refugees across the region is largely in conflict with the refugee problem. The author agreed with the ideas of BN. Chimney that the development of national legislation in the

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<sup>47</sup> Roy, "Sanjay K, Refugees, and human rights, (Rawat Pub., New Delhi, Ed. 2014 ).

<sup>48</sup> Arjun Nair, "*National Refugee Law for India*".2007availabel at: <https://www.files.ethz.ch/isn/129030/RP11-ArjunNair.pdf> (Visited on 28/11/2017).

current South Asian countries is a regional mechanism that can handle the problem of refugees efficiently.<sup>49</sup>

Veerabhodran Vijayakumar (2000) discussed the legal framework for refugee protection in India. He highlighted the aspect of India being a non-signatory to 1951 Convention Relating to the Status of Refugees and also the limitations of Indian courts in enforcing rights of refugees in the absence of any refugee-specific legislation in India. The author also raised the issue of discrimination made by Government of India among various groups of refugees which is a cause of great dissatisfaction among refugees in India.<sup>50</sup>

V.Vijayakumar (2008) discussed that India has hosted some refugees from Tibet, Sri Lanka, Burma, Afghanistan, and Bhutan and also from other countries in Africa and West Asia. India which is not the party of any international refugee instrument is the party of the various international human right instrument which poses obligation on India to protect human right. The author mentioned the Chakma case in which the Gauhati High Court attempted to balance between the states right to relocate the refugees as well as providing compensation and necessities to the refugees. Apart from these reported decisions, he also highlighted some unreported cases through which the Supreme Court, as well as the High Courts in India, has taken appropriate measures in the protection of the refugees and their rights.<sup>51</sup>

Patha S Ghosh (2016) defined refugee as internationally unprotected persons in the sense that they do not enjoy the benefits of diplomatic protection as the State persecutes them. The refugee law is designed to remedy precisely the problem of lack of foreign protection because of persecution. Thus, the lack of diplomatic security is an essential condition for the status of refugees. Stateless persons and refugees

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<sup>49</sup> Narayan Sharma, "Refugee Situation in South Asia: Need of a Regional Mechanism" (Kathmandu Law Review, Vol.1, No.1, 2008) available at: [http://www.mcrj.ac.in/WC\\_2015/Reading/D\\_Regional\\_Mechanism.pdf](http://www.mcrj.ac.in/WC_2015/Reading/D_Regional_Mechanism.pdf) (Visited on 29/11/2017).

<sup>50</sup> Veerabhodran Vijayakumar, "A Critical Analysis of Refugee Protection in South Asia" Vol. 19, No2 (January 2001) available at: [http://www.mcrj.ac.in/WC\\_2015/Reading/D\\_Refugee\\_Protection.pdf](http://www.mcrj.ac.in/WC_2015/Reading/D_Refugee_Protection.pdf) (Visited on 29/11/2017).

<sup>51</sup> V.Vijayakumar, "Judicial Responses to Refugee Protection in India" (International Journal of Refugee Law, Vol.12, No.2, 2000) available at: [https://watermark.silverchair.com/120235.pdf?token=AQECAH\\_i208BE49Ooann9kkhW\\_Ercy7Dm3Z\\_9Cf3qfKAc485ysgAAAclwggG-BgkqhkiG9w0BBwagggGvMIIBqwIBADC](https://watermark.silverchair.com/120235.pdf?token=AQECAH_i208BE49Ooann9kkhW_Ercy7Dm3Z_9Cf3qfKAc485ysgAAAclwggG-BgkqhkiG9w0BBwagggGvMIIBqwIBADC) (Visited on 29/11/2017).

are unprotected persons. Stateless persons are de jure unprotected persons as they lack diplomatic protection because they lack a nationality and nationality is a condition for exercising diplomatic protection. The refugees are de facto unprotected persons as the refugees require diplomatic protection because of persecution by the state.

Sidharth Kaushik & Stuti Bhatnagar (2014) analyzed that India needs the codification of refugee law and also analyzed the violation of refugee rights in the absence of specific refugee law in India and pointed out the discriminatory policy of India to tackle refugee. In the absence of a defined statutory framework for refugees, India has opted to deal with the refugee problems on political equations rather than humanitarian and legal obligations. Indian laws applicable in the context of refugees do not outline any such differentiation between refugees and other classes of foreigners. The current legal status of refugees in India is regulated by the Foreigners Act, 1946 that governs the entry, stay and exit of non-nationals as a homogenous category. It is a common failure that obscures the distinguishing line between refugees and foreigner.<sup>52</sup>

### **C. Literature on Rohingya Refugee**

The issue of Rohingya refugees in Bangladesh was analyzed by Al Imran and Mian (2014). In their study author, discussed the issue of refugees in detail and point out the problems of Rohingya. He also highlighted the role of the constitutional provision, the judiciary and state policy on asylum seekers or refugees. He advocated strict national laws to address the flow of refugees.<sup>53</sup>

Abdelkader' (2014) in his research researcher focused on the Rohingya Muslim crisis. Historically, he investigated the Rohingya Muslim experience through Humanistic lenses. They also analyzed the misuse of human rights against the Rohingyas and contemporary development. Some of the most important human rights

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<sup>52</sup> Sidharth Kaushik & Stuti Bhatnagar, "Need For Codification of Refugee Laws in India" international journal volume 2 2014 available at: [http://www.ijra.in/uploads/417233673049306fullpaper\\_Sidharth %20Kaushik% 20&% 20 Stuti% 20 Bhatnagar.pdf](http://www.ijra.in/uploads/417233673049306fullpaper_Sidharth%20Kaushik%20&%20Stuti%20Bhatnagar.pdf) (Visited on 30/01/2018).

<sup>53</sup> Al Imran and Mian, "Policy Towards Rohingyas Refugee: A Comparative Analyses of Bangladesh, Malaysiya, and Thailand" (Journal of the Asiatic Society of Bangladesh (Hum.), Vol. 61(1), 2016).

concerns investigated during the study are Burmese, deprived of citizenship, limited religious freedom, forced displacement and the fatal use of force.<sup>54</sup>

Parniniet (2013) Investigate the Rohingya refugee crisis and the relationship between Bangladesh and Myanmar. The researcher spoke about the Rohingya Muslims against human rights violations, taking refuge in Bangladesh and demonstrating Rohingya and Bangladesh-Myanmar relations. The researchers also defended the need for a two-way discussion and negotiation that could encourage the process of democratization in Myanmar.

Southwick (2015) raised the voice of the Muslim minority for a long time and highlighted the violation of human rights and discrimination against Rohingya Muslims. The researcher argued why the possibility of genocide was raised against this minority group and pointed out the general weakness in dealing with the crisis. This article emphasizes that the international community is legally bound to work for the protection of Rohingya rights.<sup>55</sup>

Crossman (2014) analyzed the violation of human rights against the Rohingya minority by the Rakhine Buddhist population supported by the Central Government of Myanmar. The researcher examined the ethnic massacre of Rohingya Muslims, from 2000 to 2014, government strategies that focus on Rohingyas and political, financial and sociocultural Buddhism made them stateless. They doubted the failure of the international community, for example, under the responsibility of protecting the theory to avoid the exploitation of the United States, the EU and the Muslims Asian Rohingya. He also recommended a peace building plan to end the crisis and emphasized peace among the

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<sup>54</sup> Engy Abdelkader, "The Rohingya Muslims in Myanmar: Past, Present, and Future (SSR N 2013).

<sup>55</sup> Southwick, "Elements of pathos and media framing as scientific discourse: A newspaper perspective on Rohingya crisis, (International Journal of Advanced and Applied Sciences, 3(10) 2016).

Buddhist population and its various ethnic and religious minorities.<sup>56</sup> Jahan (2014) He organized a social analysis of the rights of Rohingya refugees and discovered the national crisis facing the Rohingya Muslim community. The researchers rely on the responses of 100 refugees selected from campsites in Bangladesh. It was concluded that refugees and Rohingya children in particular were denied rights, in the camps, it is important to live like health and education for human health.<sup>57</sup> According to Leona Elisabeth Wirtz (2013), Myanmar failed to provide a legitimate reason for the Rohingya to be loyal to the nation, the Rohingya cannot take part in the formation of the nation and are deprived of their basic human rights. The consequences of nation-building in Myanmar has given the Rohingya a stateless status which makes it hard for them to the benefit of their basic human rights and apply for any form of citizenship, whether for Myanmar, Bangladesh or a third country. The flawed characteristics of a Myanmar as a nation are further reflected through it being assigned. Thus it remains unclear whether or when Myanmar will be able to attain nationhood.<sup>58</sup> Linde Lamboo (2017) explains in his study with a definite increase in the number of people on the move, migration and its management have become central in the global debate. In view of the author, there are ongoing discussions on how to categorize these people on the movement. Such categorizations influence the way migration policies, and interventions are shaped (inter)nationally.<sup>59</sup>

Shreya Upadhyay (2017) highlighted India's response to Rohingya problem as it threatened to deport the 40,000 Rohingyas living within its borders, citing national security concerns. The threat of deportation was cruel at best and hurt India's

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<sup>56</sup> Linda Crossman, "Myanmar's Rohingya Refugee the Search for Human security, Thesis submitted to the Faculty of The School of Continuing Studies Georgetown University Washington, D.C. September 29, 2014, available at: [\\_12771.pdf?sequence=1](#) (Visited on 1/02/2018).

<sup>57</sup> Jahan, "Nationality crisis and Rights of Rohingya Refugee Bangladesh" available at: <http://repository.library.du.ac.bd/xmlui/bitstream/handle/123456789/386/Israt%20Jahan.pdf?sequence=1> (Visited on 31/01/2018).

<sup>58</sup> Leona Elisabeth Wirtz, "Nation-Building in Myanmar - the Exclusion of a Minority Group," (Unpublished Master Thesis, Aalborg University).available at: [http://projekter.aau.dk/projekter/files/77944770/Master\\_Thesis\\_DIR\\_Leona\\_Wirtz.pdf](http://projekter.aau.dk/projekter/files/77944770/Master_Thesis_DIR_Leona_Wirtz.pdf)(Visited on 18 September 2017).

<sup>59</sup> Linde Lamboo, "Seeking Solutions: Stateless Rohingya and strategies at the interface of scheduled interventions A case study of Rohingya refugees in Aceh and Kuala Lumpur" (Unpublished master Thesis, Washington University) .available at: <http://edepot.wur.nl/406243>(Visited on 18 September 2017).

international image at the worst. Even putting aside international refoulement law, no other country will promptly acknowledge the Rohingya, rendering a deportation policy redundant. In perspective of the author, India has no alternative to give them a chance to stay.<sup>60</sup>

Sarker (2013) analyzed the part of Indian higher judiciary with concern to refugee protection. He identified the role of Indian judiciary in interpreting the international human right law to extend the protection to a refugee in India. He further discussed the ad-hoc policy of the India government in handling the issue of refugee and the role of UNHC and NGOs in India<sup>61</sup>

Meenakshi Ganguly (2017) she argued that India must comply with its international legal obligations and that the Rohingyas - mainly a Muslim minority in Western Burma - should be protected from the mismanagement organized by the Burmese authorities and the state security forces, and not forcibly returns any Rohingya to Burma without fair evaluation claims of refugee.<sup>62</sup>

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<sup>60</sup> Shreya Upadhyay, "The Future of India's Do-Nothing Policy Toward the Rohingya" *The diplomate asia pacific*, (December 07, 2017),

<sup>61</sup> Shuvro Prosun Sarker, "Protection of Refugees in India: Quest for National Refugee Law" RLI Working Paper No. 11 (2013).

<sup>62</sup> Meenakshi Ganguly, "India: Don't Forcibly Return Rohingya Refugees, 2017 available at: <https://www.hrw.org/news/2017/08/17/india-dont-forcibly-return-rohingya-refugees>, (Visited on 12/02/2018).

## **Chapter: 3**

### **Research Methodology**

In pursuing the present research work, the researcher has adopted the doctrinal method of research. As the title of the study mainly focused on the Rohingyas.' This issue is the burning topic on the humanitarian law in the current scenario. Descriptive and analytical method of study applied during the present research work. The present work described the legal status of refugee in India and problem of Rohingyas. It also described the role of judiciary in the protection of refugee in India.

The analytical method of research is helpful in developing a critical approach in finding out facts and analysis it from different perspective. This method has been used to analysis the provisions of refugee protection at national and International level. Secondary sources was used during the study for the collection of data. It was not possible to rely on a single approach or method. Both deductive and inductive methods of research have been used for this study. Keeping in mind the nature of our research problem, both primary and secondary sources used for the research purpose.

In the study, the help of various sources like the verdicts and observations of courts as found in law reports, statutes, committee reports and parliamentary debates etc., have been taken. Besides this, all other formal and informal modes have been used to extract information from different quarters of society. The relevant information necessary for its completion has also been gathered from sources available in periodicals, articles in law journals, law reviews, newspapers, proceedings of the seminars, conferences, and online resources etc.

## Chapter: 4

### Detailed Discussion

#### Definition of Refugee

The word "refugee" sometimes applies to those who could fit in the definition on the basis of the convention of 1951, it was applied retrospectively, for example, in France, in 1685 Protestantism After the conviction of Fontainebleau, thousands of Hugue not escaped from England, the Netherlands, Switzerland, South Africa, Germany, and Prussia. In the 19th and 20th centuries, repeated waves of suppressing Eastern Europe, in large-scale Jewish emigration (during the 1881-1920 period, more than 2 million Russian Jews traveled), in the 19th-century Muslim people were going from Europe to Turkey.<sup>1</sup>The Balkan Wars of 1912-1913 made the 800,000 people the reason to leave their homes.<sup>2</sup> In the early days of World War, different groups of people were officially recognize refugees.

Development in refugee law is closely related to two world wars. After the First World War, the league of Nation commissioned the Norwegian explorer and humanist Fritz de Nansen to help the Russian refugees and other prisoners of the nations, together with the help of the Russian refugees, after the revolution. He was named high commissioner of the league for Russian refugees in 1921, and won the Nobel Peace Prize in 1922; The League established the Nansen International Office for refugees immediately after his death in 1930. With these steps, there were many intergovernmental agreements in the 1920s, after which the Convention on the International Status of Refugees was held in 1933. Eviction and large-scale harassment, before and after the Second World War World, have shaped the forms of international refugee law to this day. In 1938, several states (Belgium, Great Britain and Ireland, India, Denmark and Iceland, Spain, France, Norway and the Netherlands) agreed on the conference on the

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<sup>1</sup> Justin McCarthy, *Death and Exile: The Ethnic Cleansing of Ottoman Muslims, 1821-1922*, (Darwin Press, 1995).

<sup>2</sup> Erik-Jan Zürcher , *Greek and Turkish refugees and deportees 1912-1924*,

status of refugees from Germany. During World War II, the emerging United Nations established two agencies that work with the relief of European refugees: the United Nations Relief and Rehabilitation Administration (1943) and the International Refugee Organization (1947), the joint organization. National High Commissioner for the first refugees (established in 1950).<sup>3</sup>

A person is a refugee or a migrant when he or she meet the criteria contained in the clarification of the 1951 conference. Likewise, a person may be eligible for international security if they meet the criteria of "Security Assistant". Refugees express the procedures and criteria to determine the position that, in the sense of the 1951 convention, a person is a refugee when he meets the criteria contained in the definition. UNHCR has added the ability to give international protection to migrated people who are under the definition of an extended refugee under UNHCR's mandate since they are outside their country of source or routine life and unable or unwilling to return there owing to serious and indiscriminate threats to life, physical integrity or flexibility coming about because of the events which are seriously disturbing public order. So, to see if a person meets the criteria contained in the definition of refugee status or not, the states parties have defined for the 1951 convention that the form of "refugee positioning process" or "asylum procedure" is known in. An asylum procedure will verify whether the person's harassment claim occurs within the meaning of the 1951 convention or not. Therefore, a refuge seeker is a person who says that he is a refugee, however, his claim has not yet been evaluated. In countries with individual methods, a refuge seeker is a person whose claim has not yet been resolved by the country in which he filed it. No refugee seeker will be accepted as a refugee, but most of the refugees are mainly seekers of refuge.

The term refugee is old in human form; it got from the Latin word 'Furay' which implies feeling for safety. A refugee (a foreigner) who find himself or herself due to the harassment of violation of human right, or the disasters, natural or human-

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<sup>3</sup> Available at:<https://ralphjanik.wordpress.com/2017/11/04/a-very-short-history-of-international-refugee-law/> (Visited on 23/03/2018).

made, outside of the original or habitual residence of their country. A refugee can be a man and a woman or a child, according to that race, religion, nationality, fear of harassment for belonging to a particular social group, living in their home and in their country.<sup>4</sup>

The term refugee is misunderstood with the term like a foreigner, illegal migrant, migrant, a stateless person, alien, asylum seeker, and immigration. A refugee is a person who must be 'outside' his or her country of origin and has crossed an international border. An illegal immigrant is a person who goes from one country to another for economic reform, usually without a legal document. However, the person who crosses international borders to avoid war or harassment is mechanically safe as a refugee under international law, and the lack of documentation does not support this divesting status.<sup>5</sup> No international instrument defines 'asylum.' Article 14 of Universal Declaration of Human Rights.<sup>6</sup> Simply says that 'everyone has the right to seek and to enjoy in other countries asylum from persecution.' Article 1 of UN Declaration on Territorial Asylum<sup>7</sup> notes that. 'All other States shall respect asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke but it is for 'the State granting asylum to evaluate the grounds for the grant of asylum.'<sup>8</sup> Different countries use numerous terms for "aliens" including an illegal immigrant, illegal alien or undocumented alien is one who is living on a non-temporary premise in a country where she/he has no lawful right to live. It is a non-citizen who has entered a country through irregular movement, for instance, entered illegally, or a migrant who entered a country legitimately however who has fallen "out of status," or a relative of one. A legal alien is a non-citizen who is legitimately allowed to stay in a country. This is a vast category which includes tourists,

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<sup>4</sup> T. N. Giri, "*Right of Refugee concerning Right to Education*" (ed. 2000).

<sup>5</sup> Goodwin-Gill, G. S. "Introduction to the 1967 United Nations Declaration on Territorial Asylum" UN Audio-Visual Library of International Law Historical Archives (2012) available at: <http://www.un.org/law/avl/> (Visited on 04/12/2017).

<sup>6</sup> UDHR 1948

<sup>7</sup> 1967 UN Declaration on Territorial Asylum

<sup>8</sup> Guy S. Goodwin-Gill. "*The International Law of Refugee Protection*" June 2014. available at: <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001/oxfordhb-9780199652433-e-021> (Visited on (04/12/2017)).

guest workers, lawful permanent residents and student visa resident aliens. A nonresident alien is a non-citizen who is visiting a country, for example as a tourist, on business, entertainers, sportspeople or in the state to receive medical treatment. A resident alien is a non-citizen who has permanent resident status in a nation. An enemy alien is a non-citizen who is a citizen of an enemy country. Under national laws, a stateless person is one who does not have the legitimate bond of nationality with any State. Article 1 of Convention relating to the Status of Stateless Persons.<sup>9</sup> Indicates that a person not considered a national (or citizen) automatically under the laws of any State, is stateless.<sup>10</sup> Migrant is someone who leaves his or her country of origin purely for financial and economic reasons. Economic migrants choose to move to find a better life, and they do not flee because of persecution. Therefore they do not fall within the criteria for refugee status and are not entitled to receive international protection. The main aim of migration is achieving citizenship or nationality in another nation. In India, the law with respect to citizenship or nationality is mainly administrated by the provisions of the Constitution.<sup>11</sup>

Article 1 of the 1951 Refugee Convention set out the conditions for granting the status of the refugee under the Convention, for the exclusion of individuals from such protection, as well as for the cessation of refugee status. Article 1 (A) reads: For the purpose of the present convention, the term refugee shall apply to any person who:<sup>12</sup>

“Has been considered a refugee under the Measures of 12 May, 1926 and 30 June, 1928 or under the Convention of 28 October, 1933 and 10 February, 1938, the Protocol of 14 September, 1939 or the Constitution of the International Refugee Organization; resolutions of non-eligibility taken by the International

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<sup>9</sup> 1954 convention relating to status of stateless person.

<sup>10</sup> Article 1 of the 1954 Convention relating to the Status of Stateless Persons available at: [http://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](http://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf) (Visited on. 04/12/2017).

<sup>11</sup> Tulika Chkrbrdhy.”Immigration Laws in India available at: <http://www.legalservicesindia.com/article/article/immigration-laws-in-India-259-1.html> (Visited on 05/12/2017).

<sup>12</sup> Article 1(A, B) 1951 Convention relating to status of refugee.

Refugee Organization during the time span of its activities shall not prevent the status of refugee being accorded to person who fulfils the condition of paragraph 2 of this section;

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality membership of a specific social group or political opinion is outside the nation of his nationality and is unwilling to benefit himself from the protection of that nation; or who, not having a nationality and being outside the nation of his previous residence because of such events, unable or, due to such fear is unwilling to come back to it.

The 1951 convention definition contains five elements to be the establishment in the determination of refugee status. A refugee is a person who:

1. Outside the country.
2. Is a well-established fear of persecution.
3. In fact, there is a danger of persecution in the country of origin, which is not willing to provide security.
4. The persecution is due to race, religion, nationality, membership of a particular social group or political opinion of the person.
5. Is a valid claim and security is required.<sup>13</sup>

The 1967 Protocol broadens the applicability of the 1951 Convention. The 1967 Protocol removes the geographical and time limits that were part of the 1951 Convention.<sup>14</sup> These limitations at first limited the Convention to people who moved toward becoming refugees because of events happening in Europe before 1 January 1951. A person is a refugee or evacuee when he or she satisfies the criteria contained in the meaning of the 1951 Convention. Likewise, a person may also deserve international protection when he or she meets all

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<sup>13</sup> UNHCR. Hand Book and Guideline on Procedure and Criteria for Determining Refugee Status December 2011 available at: <http://www.unhcr.org/3d58e13b4.pdf> (Visited on 22/11/2017).

<sup>14</sup> 1967 protocol relating to refugee.

requirements for "subsidiary protection". Procedures and Criteria for Determining Refugee Status express that a man is a refugee inside the significance of the 1951 Convention when he satisfies the criteria contained in the definition. Likewise, UNHCR has the proficiency to provide international security to refugees who fall within the extended refugee definition under UNHCR's instructions since they are outside their country and incapable or unwilling to return there origin country due to serious and indiscriminate threats to life, physical integrity or flexibility coming from generalized violence or events disturbing public order. Keeping in mind the main goal to see whether a person satisfies the criteria or not contained in the definition for refugee status, the States parties to the 1951 Convention have defined what is known as "refugee status determination procedures" or "asylum procedures". An asylum procedure will confirm whether the individual's claim of fear of persecution falls inside the definition of the 1951 Convention. Therefore, an asylum seeker is a person who says he/she is a refugee, however, whose claim has not yet been definitely evaluated. In nations with individualized techniques, an asylum seeker is an individual whose claim has not yet been finally decided by the nation in which he/she has submitted it. Not every asylum-seeker will ultimately be recognized as a refugee, but most refugees are asylum-seekers primarily.

As of 2011, in addition to the 1951 definition, the UNHCR (United Nations High Commission for Refugees) it perceives people as refugees:

Who are outside their country of nationality or ongoing life and unable to return there inferable to serious and indiscriminate threats to life, physical integrity or flexibility coming from generalized violence or events seriously disturbing public order.<sup>15</sup>

The extended definition adopted under Organization of African Unity (OAU) Refugee convention is as follows: "The term refugee shall also apply to every person who owing to external aggression, occupation, foreign domination or

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<sup>15</sup> UNHRC, "Refugee Convention 1951", available at: <http://www.unhcr.org/1951-refugee-convention.html> (Visited on 27/11/2017).

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 original residence in order to pursue refuge in another place outside his nation of origin or nationality”<sup>16</sup>

Article 1 of the Bangkok Principles describes a refugee as: "A person who leaves the state of which he is a national or the country of his nationality, because of persecution or fear of persecution for reasons of nationality, ethnic origin, gender, race, color, religion, political opinion or membership of a particular social group, or if he has no nationality, the state or country of which he is a habitual resident or being outside of such a state or country, is unable or unwilling to return to it or to reward himself of its protection and also to every person, Due to external violent behavior, business, inadequate supremacy or incidents, anywhere or in public or publicly disruptive due to his nationality or nationality, he must be forced to leave his country of origin or nationality.”<sup>17</sup>

### **Refugee Protection under the International Law:**

The main source of international law for refugees is the Constitution of the Office of the United Nations High Commissioner for Refugees, 1950. This statute operates in the guidance of a United Nations General Assembly. The task of the High Commissioner will be totally non-political, will be humanistic and social and, in terms of rule, refugee groups and categories will be related. Under the leadership of the UN, the General Assembly of the United Nations has adopted an international instrument related to refugees, which includes The 1951UN Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, Convention relating to the Status of Stateless Persons (1954), Convention on the Reduction of statelessness (1961) Guiding Principles on Internal Displacement (1998) and United Nations resolutions and Executive Committee Conclusions. The main regional instruments are the 2001 Bangkok

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<sup>16</sup> Article 1(2) of the OAU Convention, 1969.

<sup>17</sup> R. T. Zutsi, JayshreeSatpute, et.al. (eds.), Refugees and the Law, 34 (Human Rights Law Network, New Delhi, 2011).

Principles, the 1969 OAU Convention, and the 1984 Cartagena Declaration. The class of safe people is exile, order, statutory and convention refugees, and, in addition, stateless persons.<sup>18</sup>

Refugees are to privilege, the rights mention in the 1951 Geneva Convention. The central principle in the convention determines the rights that should be accorded to a refugee as mention in article 7, "Except that there are more favorable provisions in this conference, according to the treatment of foreigners according to a state contract for refugees. "In addition to this, there are many other rights here, which are mentioned here:

1. The reason for not returning to your rescue situation is if your defense can not be assured
2. In some cases, the right to be given is handled as a citizen of the state, in which refugee is granted;
3. If they apply for asylum, they cannot be penalized for illegally entering a country.

All refugees have the same human rights as any other person. In addition, due to the state of the refugees' faces, specific human rights are enforced. Human rights are particularly relevant for refugees.<sup>19</sup>

1. Right to life, freedom and protection of the person;
2. The right to be subjected to torture or to cruel, inhuman or degrading treatment or punishment;
3. Right to freedom of movement and residence within the limits of each state;
4. Right to freedom of thought, discretion and religion;
5. Right to freedom of opinion and expression;

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<sup>18</sup> Manoj Kumar Sinha, "Handbook of Legal Instruments on International Human Rights and Refugee Laws" 824(Lexis Nexis ed. 2014).

<sup>19</sup> A guide to rights and entitlements to services and welfare for refugees, asylum seekers and migrant workers available at:<http://www.northlanarkshire.gov.uk /CHttpHandler.As hx?id =4227& p=0> (Visited on19/11/2017).

6. The right to an adequate standard of living for the health and well-being of the person and their family, including food, clothing, shelter, medical care and essential social services;
7. Education rights
8. Freedom from discrimination.
9. Respect for the unity of the family.

### **Status of Refugees in India:**

India is a host country for refugees and many refugees from different countries live in India and have come to India from time to time. More than 2 Lakh refugees and asylum are currently living in India. India is receiving refugees from its independence in 1947. Its doors were opened to Tibetans, Sri Lankans, Chakmas, Afghans and ten lakh in 1971. The Government of India has seen the refugee problem from a broader perspective than its ancient cultural heritage. Recalling the Indian motto and humanitarian emphasis, Buddha to Gandhi, Justice VR, Krishna Iyer has given a message in these words:

“The Indian perception is informed by a profound regard for personhood and a deep sentiment to prevent suffering. Ancient India’s cultural vision has recognized this veneration for the individual”.<sup>20</sup> More than 2 Lakh refugees and asylum are currently living in India. India does not have static data in relation to the refugee population. Any government agency does not have data how many number of refugees in our country, and how many refugee resettled in his own country. In India generally refugee are treated on two basis first through UNHCR and second on the basis of administrative direction by the government of India.

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<sup>20</sup> Bharat B. Das, “A Refugee Problem – Humanitarian Approach”, Vol.V, ISIL Yearbook of International Humanitarian and Refugee Law, 207-208 (2005).

**Table No. 01**

**Refugee data country wise who came to India under UNHCR**

<b>Refugee Category</b>	<b>UNHCR(Number of Refugee)</b>
Afghanistan	13381
Myanmar	18914
Somalia	672
Other	1483
Assisted by the government of India	-
Tibetan	110095
Srilankan as of 31 may 2015	64689
Total	209234

**Source:** Office of the UN High Commissioner for Refugee. New Delhi India

**Table No. 02**

**Refugee data country wise who came to India (2014)**

<b>Name of the Country</b>	<b>Number of Refugee in India</b>
Afghanistan	3469
Bangladesh	103817
Myanmar	12434
Pakistan	8799
Sri Lanka	102467
Tibet	58155
Other	253
Total	289394

**Source:** Ministry of Home Affairs Government of India available at: <https://mha.gov.in/MHA1/Par2017/pdfs/par2016-pdfs/ls010316/894.Pdf>(Visited on 25 /0 4 / 2018).

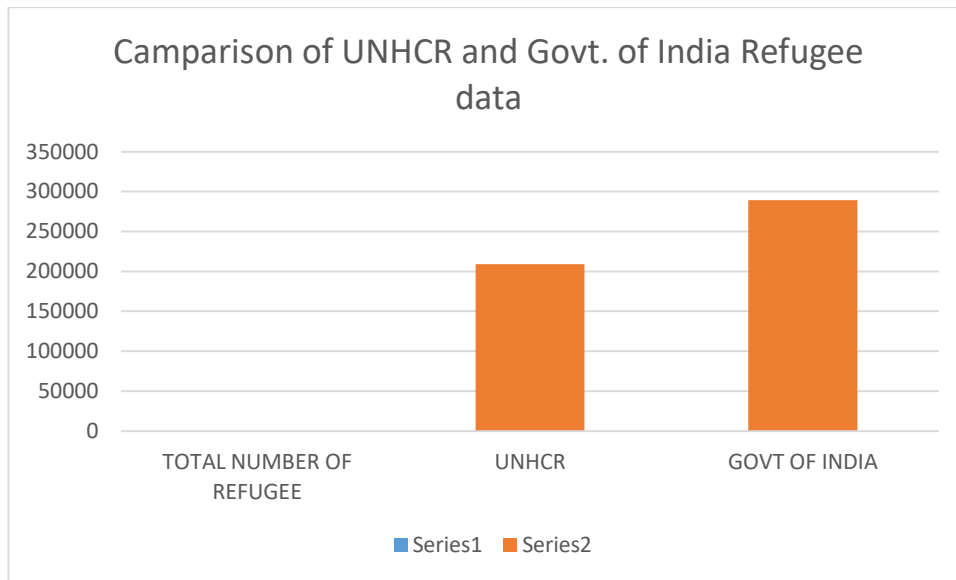


**Table No. 03**

**Caparison of UNHCR Refugee data and Government of India refugee data**

Total Number of Refugee	
UNHCR	Government of India
209234	289398

**Figure No. 02**



Source: Ministry of Home Affairs Government of India and UN High commissioner Refugee New Delhi.

Figure No. 02 shows that in India refugee population data is not authentic because UNHCR data and government of India refugee data distinguish each other and both have big difference refugee data.

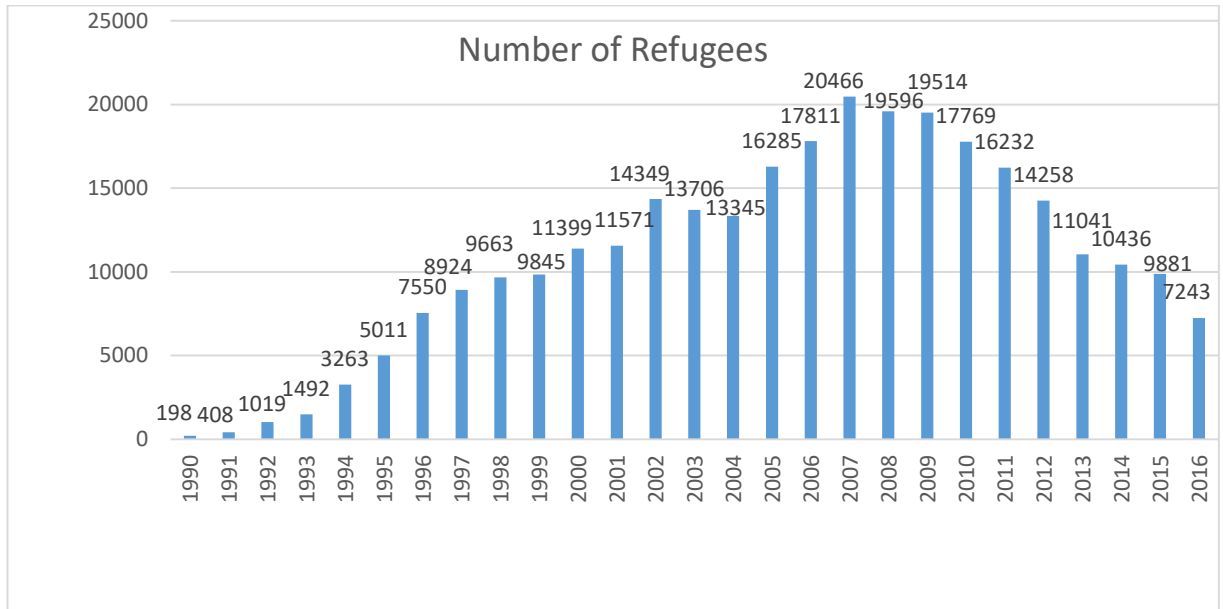
**Table No. 04**

**State wise data of Refugee settled in different- different state in India data collected from the ministry of home affair Indian government.**

<b>State</b>	<b>No. of Refugees</b>
Union territories	10234
Andhra Pradesh	358
Assam	13
Bihar	97
Chhattisgarh	62890
Gujarat	22
Haryana	1118
Jammu & Kashmir	10538
Jharkhand	14
Karnataka	34348
Kerala	12
Maharashtra	47663
Odisha	1877
Punjab	102
Rajasthan	3060
Sikkim	2148
Tamil Nadu	102478
Telangana	210
Uttar Pradesh	423
Uttarakhand	11768
West Bengal	21
Total	289394

**Figure No. 03**

**Refugee Data Year Wise who came to India from 1990 to 2016**



**Source:** UNHCR yearbook

Figure number 3 data collected from the UNHCR this data shows that how many refugees come to in India year by year from 1990 to 2016 this figure shows that refugee population increase from 1990 to 2007 and after that new arrival refugee population is reduced.

The legal status of refugees in India is mainly governed by the Forigners Act of 1946 and the Citizenship Act of 1955. These acts do not distinguish between refugees fleeing persecution from other immigrations; they apply equally to all non-citizens. According to the Act, it is a criminal offense without valid travel or residence documents. These provisions render liable to deportation and detainees in custody. The United Nations High Commissioner for Refugees (UNHCR) is located in New Delhi. Once recognized, Afghan, Burmese, Palestinian and Somali refugees receive protection from UNHCR. The largest refugee population in India is not under UNHCR's mandate, but refugees are still considered by the government.<sup>21</sup> Currently, there are more than 150,000

<sup>21</sup> Dr. Vivek Kumar, An study of refugee in india: The legal prespective, international jurnal of law iisn: 2455-2194. Volume 3, issue 5, September 2017.

Tibetans and 90,000 Sri Lankans who have fled due to violence and persecution and have refugee in India. These groups receive assistance and assistance to achieve education, health, employment and residence in different grades.

### Tibetan Refugee

Tibetans who arrived in India in the late 1950s and early 1960s received exile or refugee status from the government of India. The 150000 Tibetan refugees with the Dalai Lama is have migrated to India in the last 50 years. After the failed Tibetan revolt of 1959, it passed with its underlying maintenance. Nearly 80,000 displaced Tibetans gave them a line. Jawaharlal Nehru agreed to provide the Tibetan refugees with all the help to establish themselves in India until their last retreat. Today there are 120,000 Tibetan refugees in India. The Tibetan diaspora keeps the government in exile in Himachal Pradesh, which coordinates the political activities for the Tibetans in India. These Tibetans have issued registration certificates, which must be renewed once or twice a year. Tibetans who were conceived in India are more qualified to obtain the certificate of registration at the age of 18 years. Despite the fact that the Indian government allows Tibetans to enter the nation, it has not kept them in a separate legal position from the main flow of Tibetans. Even so, some Tibetans who reached the second wave were able to obtain their registration certificate that they had been born in India. Tibetans receive a large number of rights compared to most other refugee groups in India. They are granted a residence permit, in which they have the capacity to empower them to seek employment. They are the only groups of refugees who obtain travel permits from the Indian government

### Sri Lankan Refugee

There are more than 100,000 Tamils from Sri Lanka in India, most of them migrated during the development of terrorism in Sri Lanka. Most SriLankan are settled just in the southern regions of Tamil Nadu ( in Chennai, Tiruchirapalli and coiminator), Karnataka ( in Bangalore) and significant Tamil population of Sri Lanka in Kerala. The legal status of Sri Lankan refugees in India formally

represent by the Foreigners Act 1946, Indian Citizenship Act 1955 which characterize all non- nations who enter without visas to be unlawful transients or illegal immigrants, with no exception of refugees or asylum seekers. Sri Lanka, who is considered a threat to national security, are considered terrorists and detained in Chengalpet or "special camps in Vellore." However, in general, the Indian government recognizes Sri Lankan people fleeing domestic violence for refugees and, as a result, provides protection.<sup>22</sup>

### Bangladesh Refugee

At the time of the Bangladesh Liberation War, the border between Bangladesh and India was opened to allow Bengalis to escape the destruction of Pakistan SSG units to give them safe homes in India. The state governments of India, for example, West Bengal, Assam, Meghalaya and Tripura create refugee camps along the border. When the murderers rose up in Bangladesh, in 1971, regional conflicts in Bangladesh, in the northeastern states, 10 million refugees participated in the difficulties and instability of money in Bangladesh.

### Bhutanese Refugees

Since 1949, Bhutanese citizens can move freely around the outskirts of India. An open border between India and Nepal and India and Bhutan has been adjusted through a treaty between separate states, a similar action between India and Bhutan gives its citizens the same treatment and the same benefits. Without the need for identity documents, the right of residence, study and work is guaranteed. Therefore, the Indian government has not recognized the Nepalese Bhutani ethnic group, which was forced to flee in search of the refugees, nor has it been given any assistance. UNHCR does not ensure the situation for Bhutani. Most likely, this is due to the friendship between the two countries.

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<sup>22</sup> Asha Hans , "*Sri Lankan Tamil Refugees in India*" Vol. 13, No. 3 (2013).

## Pakistani Refugees

Around 115,000 people emigrated from Pakistan have arrived in India since 1965 and most of them have settled in Rajasthan or Gujarat. The government of India does not consider this gathering as refugees and, as a result, cannot obtain a residence permit and, therefore, cannot obtain a job. However, for the Indian Constitution and the Indian Citizenship Act of 1955 to Indian citizenship, special arrangements are made for those born in undivided India or whose parents were born in India. The Citizenship Amendment Rule of 2004 specifically provides for Pakistanis to apply for citizenship in Gujarat and Rajasthan. The conditions of citizenship is that the person must remain in India for five consecutive years instead of 12 years, as is the case of other foreigners who apply for citizens, and there is hope to settle in India at all times. Due to this law, which accelerated the application process, the government of India granted 13,000 Indian Pakistani Hindu citizens during 2005 and 2006. When the Pakistani refugees obtained citizenship, they had the same rights as Indian citizens. However, in 2005, the modification of the Citizenship Law extended the fee structure originally for the application for citizenship. For the poorest Pakistanis, these charges are prohibited, of which they are permanently deprived.<sup>23</sup>

## Burmese Refugees

Most of Burmese enter India from the Northeast and those seeking asylum for very few refugees going to Delhi are recognized as refugee by UNHCR. In Delhi, the UNHCR supports some 2,000 Burmese refugees, most of whom come from the state of China. The organization provides the most vulnerable people with a smaller monthly stipend, which is often not enough to cover basic needs. There are also a large number of Burmese refugee searchers living in India, where Burma is identified as refugees from UNHCR. The majority of them; because they belong to the same ethnic group and find an easy integration,

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<sup>23</sup> Haimanti Roy, *Partitioned Lives: Migrants, Refugees, Citizens in India and Pakistan, 1947-65*, (History Faculty Publications 2012)

living in Mizoram in northeastern India. Employment opportunities are also better.<sup>24</sup>

### Somali Refugees in India

The Somalis are the largest African community in India, with around 400 people, although less than 200 are officially registered. The Somalis, who arrive in Delhi, apply for refugee status under the mandate of UNHCR. Somali refugees do not have the residence permit of the Indian government, which prevents them from working. It has been estimated that 80-90% of the Somali community in India lives in Hyderabad. In most of the community there are young adults and incompatible youth who share small houses and there is no way to survive. The implementing partners of UNHCR in Delhi, YMCA and Don Bosco help refugees to reach housing and education, there are no equal opportunities or assistance in these cases in Hyderabad. Refugees in Hyderabad often feel sad, alone and unsupported. However, some refugees reported that the situation of living in Hyderabad is easy due to the low cost of food and shelter. The Somalis also have a friendly welcoming experience among the more or less Muslim population of Hyderabad.<sup>25</sup>

### Palestinian Refugees

The most recent refugee groups arriving in India 160 palestinians who are currently seeking refugee status. (UNHCR) is accepted as refugees some Palestinians in Delhi and applications under the remaining migrants. Unlike Burmese Afghans and refugees, these refugees must be issued residency permits by the Indian government. Agents fleeing with Palestinians from Iraq under the oppression of the threat had to pay the money in large quantities to enter India. The majority of Palestinian refugees live in New Delhi. The Palestinian refugees in India face serious difficulties. They are willing to work and support themselves, but find their jobs due to language and residency

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<sup>24</sup> Ibid

<sup>25</sup> Ibid

problems it is not difficult to maintain the permits. In the case of housing and accommodation, their living conditions are very poor. Since rent is often much more because the refugees live in very poor conditions. The education of school-age refugees in New Delhi is a serious concern. Most Palestinian children are not in school because they feel difficult to learn English while English high school (private school) are prohibitively expensive. The language barrier makes it difficult for Palestinian children to socialize.

### Afghan Refugees in India

From 1979 to 1989, more than 60,000 Afghan refugees arrived in India during the years of the Soviet-Afghan war. The Indian government does not officially recognize them as refugees, but UNHCR India has given permission to run a program for them. The government of India has assigned to the majority of Afghan refugees a certificate of legal residence. It provides them with legal protection, which allows them to stay in the country, even if they do not have a valid passport. Between 2004 and 2007 it has been more difficult to obtain a residence permit for new arrivals to India.<sup>26</sup>

### **India obligation under International law:**

Failing to become India's party of the 1951 refugee convention and its 1967 protocol, it appears that it has no international obligation to protect refugees and their rights. But this conclusion will be fully conveyed to that India does not have an international commitment because it has not signed the only refugee conference in 1951. The issue of refugees and human rights is closely linked. Human rights jurisprudence increased with the establishment of the Charter of the United Nations in 1945. India has also signed several international instruments dealing with the human rights of refugees. India's long tradition of providing humanitarian aid to refugees is governed by international obligations. India is part of many international human rights instruments, namely: the

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<sup>26</sup> Human right law network Report of Refugee Populations in India November 2007 available at: [Http://www.hrln.org/admin/issue/subpdf/Refugee\\_populations\\_in\\_India.pdf](http://www.hrln.org/admin/issue/subpdf/Refugee_populations_in_India.pdf) (Visited on 12/02/2018)

Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

### Universal Declaration of Human Rights

The UDHR provides the rights of all human beings in which refugees are included, but there are specific articles in the announcements that address refugee problems. Article 13, 14 and 15. Article 13 states that "Everyone has the right to freedom of movement and residence within the limits of each State,<sup>27</sup> and everyone has the right to leave any country, including their own country."<sup>28</sup> Article 14 states that "every person has the right to have privileges and privileges in the refuge of other countries in the face of Percicution"<sup>29</sup>. But unlike non-political crimes or against the objectives and principles of the United Nations, the same cannot be said in the case of prosecution that arises in the real way.<sup>30</sup> Articles 15 (1) and (2) deal with the right to nationality with the right to change their nationality and arbitrarily deprive them of their nationality. There is also a unique interrelation between the UDHR and the refugee Convention. Approximately sixty-eight percent of the world's refugees live in states that have signed or confirmed the ICSEER and the ICCPR.<sup>31</sup>

### Civil and Political Rights (ICCPR) International Covenant

The international Covenant on civil and political rights is a multilateral treaty. Article 12 (2) of the International Covenant on Civil and Political Rights states

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<sup>27</sup> Article 13 (1) of UDHR

<sup>28</sup> Article 13 (2) of UDHR

<sup>29</sup> Article 14 (1) of UDHR

<sup>30</sup> Article 12 (2) of UDHR

<sup>31</sup> Adrienne Anderson, "On Dignity and whether the Universal Declaration of Human Rights remains a place of refugee after 60 years", American University International Law Review, available at: <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1009&context=auilr> / (Visited on 11/02/2018).

that "everyone may leave from any country, including his country." And nobody will be disillusioned indiscriminately for the right to enter their own country.<sup>32</sup> There is an important provision in Article 13 that restricts the power of the state, because it is a diaspora with the regional boundaries of the state and its migration, there is a valid nature, if the state authorities want to expel them from their country, then they can only do this within the standards of the law. This means that the aliens cannot be arbitrarily eliminated. In accordance with the laws of the country, one must follow the procedure. Apart from this, it establishes that foreigners who are included in the refugees can present reasons for the expulsion of the nation and to know their case and before the necessary authority or before any person that should resolve such cases. It has been assigned to, In other words, Article 13 of the ICCPR, according to Article 33 of the 1951 Convention, has been described as the principle of inadequacy. In short, a refugee can be expelled after an appropriate legal process. India's confirmation of the ICCPR has placed the country as a responsibility for the treatment of citizens and non-citizens, whenever possible, although India has made an ICCPR reservation, reserves the right to enforce its law on foreigners.<sup>33</sup>

#### International Covenant on Economic Social and Cultural Rights (ICESCR)

International Covenant on Economic, Social and Cultural Rights, Universal Declaration of the International Law together with the ICCPR and its left International human Rights bills, which is the pillar for the protection of human rights within the United Nations. In accordance with article 2 (3) of the ICESCR. Developing countries with respect to human rights and their national economy can determine that they guarantee non-citizens the current economic rights in the current covenant. Apart from this, the states parties have tried to guarantee that the rights expressed in this contract are used in the form of caste, color, gender, language, religion, political or other opinion, national or social source. It

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<sup>32</sup> Article 12 (4) of ICCPR, 1966.

<sup>33</sup> Available at: [http://shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10603/172260/11/11\\_chapter\\_3.pdf.pdf](http://shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10603/172260/11/11_chapter_3.pdf.pdf) (Visited on, 10/02/2018).

will also be done without type of isolation, birth of property or second position.<sup>34</sup> This clear deduction means that the responsibility of the agreement on the states parties is that the developing countries will establish limits to grant economic rights to the non-citizens in which the refugees will be included, but in accordance with their national economy. This means that the economic rights of refugees are well protected from this provision of the ICESCR.

### Convention on the Rights of the Child (CRC)

For the purposes of the current convention, a child means that "every human being below the age of 18 year unless, under the law applicable to the child, a majority is attained earlier."<sup>35</sup> The specific provision relating to refugee status has been extensively discussed in article 22 of the Convention on the Rights of the Child. Establishes that "states parties shall take appropriate measures to ensure that a child who applies for refugee status or who is considered a refugee in accordance with applicable international or national laws and procedures, whether unpleasant or their parents, along with any other person in the current convention and other international human rights or in the enjoyment of applicable rights applied in humanistic security instruments and receive humanitarian aid, which they said State parties."<sup>36</sup> In addition, it establishes that "to that end, adequate cooperation, cooperation and other competent intergovernmental organizations or non-governmental organizations in any effort made by the United Nations to protect and help those children with the UN" And to find the parents or other members of the family of any refugee child, the knowledge necessary for integration with their family. In cases where parents or other family members cannot be found, for any reason currently indicated at the convention, the child is temporarily or permanently or temporarily deprived."<sup>37</sup> In order to protect the rights of children of refugees in India protect from sexual harassment, torture, kidnapping, child labor and smuggling, against all kinds of

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<sup>34</sup> Article 2 (2) of ICESCR, 1966.

<sup>35</sup> Article 1 of CRC, 1989.

<sup>36</sup> Article 22(1) of CRC, 1989.

<sup>37</sup> Article 22(2) of CRC, 1989

misuse. At the same time, the current convention have a duty and India bound to take care of the children who have separated from their parents and, if they are in the same situation, provide protection to them as any other child.

#### Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

India ratified this convention on July 9, 1993 and is committed to safeguarding the rights of women, including refugee women. The convention is important because many rights have been granted women, such as condemning discrimination against women and ensuring the improvement<sup>38</sup> and complete progress of women so that they can guarantee fundamental freedoms based on activity, happiness and balance. From the human rights. With men, obtain the act and take all appropriate measures so that all kinds of movement can be repressed in women and abuse of prostitution so that women have the same rights as men to obtain, change or enlist their national rights.<sup>39</sup> So that equality of rights with men can be guaranteed. In the field of education.<sup>40</sup> And employment,<sup>41</sup> Another important provision is Article 15 of the current convention, which states that "States Parties shall grant equal rights in relation to laws related to the movement of men and women to persons and the freedom to choose their residence and residence." Similarly, Article 16 states that "States Parties shall take all appropriate measures to eliminate discrimination against men and women in all matters related to marriage and family relations, and in particular on the basis of equality of men and independently of the same rights To be sure of choosing between the husband and the wife and only to enter the marriage with his free and total consent ". After analyzing the above provisions, it can be concluded that these rights for refugee women are almost important because they are more sensitive. In the absence of the Indian Party at the 1951 conference, which protects the rights of refugees, in particular, the responsibility

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<sup>38</sup> Article 2 of CEDAW, 1979.

<sup>39</sup> Article 9 of CEDAW, 1979.

<sup>40</sup> Article 10 of CEDAW, 1979.

<sup>41</sup> Article 11 of CEDAW, 1979.

to protect the rights of refugee women arises under CDAW. As a member state of the Association of Southeast Asian Nations (ASEAN), 2012 the Asian Declaration of Human Rights, a non-binding document that reflects the unanimity of human rights in this area, is relevant to India. The Asian Intergovernmental Commission on Human Rights (AICHR) and the active members of the ASEAN Commission on the promotion and preservation of the rights of women and children of India (ACWC).

### **Legislative and Administrative Measure:**

In the Constitution of India, refugees have many rights in the form of articles 14, 21 and 25 of the Constitution of India, guaranteeing equality, the right to life and individual liberty of freedom and religion, respectively, for all. These provisions have also been implemented for refugees not only for citizens. Even in Article 51 (C), it is essential for the guiding principles of state policy that the State strive to promote respect for international law and the obligations derived from treaties.<sup>42</sup>

Without 1951 convention on refugees in India or 1967 protocols, to the extent that refugees are protected by the provisions of the Constitution. There is no special law to deal with refugees in India. And the rights of the refugees are being installed in the protected through Article 21 of the Constitution of India and the administrative level. In India, refugee, about their legal status and rights is not a national act. They are treated as a deportation. Without clear rules, these lines come together under the domain of exile or refugee administrative system, which are all foreigners in India. In addition, the refugee policy of India is governed by some administrative regulations. Foreigners Act, 1946, Foreigners in India and foreign orders entered in 1948, controlling the position to control the appearance and departure. India refuge, to deal with other laws in the temporary position that refer to the provisions of the foreigner Act here, 1946 and other laws under which refugees deal in India, which is not used anywhere words of refugees.

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<sup>42</sup> M.P. Jain. "Indian Constitutional Law ( Lexis Nexis ed. 2014).

Passport Act, 1920: Passport Law, 1920 Article 3 The central government has the power that can make those rules enter India. Under passport Act (1967) the passport rules (1980) have been prepared by the central government, which governs with schedule II mentioned in Rule 4 will be issued a passport by a Passport Authority, but the Asylum and refugees eligibility to obtain visas are not defined anywhere. Under the rules 4 of Schedule II , it has only been mentioned that the passport authority is not represented. India can issue a certificate of identity as a stateless resident in India, that abroad, or whose national state was in doubt. Therefore this provision, it is possible to estimate may have the right to receive refugees, asylum seekers, stateless persons and immigration certificates without control to identify the passport authorities in India. In India, there is no specific law for refugees; this is important because if refugees can be held responsible for entering the country without a valid passport.<sup>43</sup>

Foreign Registration Act, 1939 is one of those mandatory laws that govern the treatment of all foreigners in India. In article 2 of the Register of Foreign Act, a foreign person is "a person who is not a citizen of India".<sup>44</sup>

Under Sec. 3 of this Act the Central Government is empowered to make rules; For requiring any outsider entering or being available in India to report his quality to a prescribed authority.<sup>45</sup> For requiring any foreigner moving from one place to another place in India to report on arrival at such other site, his presence to a prescribed authority.<sup>46</sup> For requiring any person who is about to leave India to report the date of his intended departure and such other specifications as may be prescribed to such authority.<sup>47</sup>

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<sup>43</sup> Rating Bandyopadhyay, Human Rights of the Non-Citizen: Law and Reality, 283-284 (Deep & Deep Publications Pvt. Ltd., New Delhi, 2007).

<sup>44</sup> H. Knox Thames, "India's Failure to Adequately Protect Refugees," available at:<http://www.wcl.american.edu/> (Visited on 29/11/2017).

<sup>45</sup> Sec. 3 (a) of the Registration of Foreigners Act, 1939.

<sup>46</sup> Sec. 3 (b) of the Registration of Foreigners Act, 1939.

<sup>47</sup> Sec. 3 (c) of the Registration of Foreigners Act, 1939.

For requiring any foreigner entering, being present in or departing from India to produce on demand by a prescribed authority such as proof of identity as may be specified.<sup>48</sup>

Under Section 2 of the Registration of Foreigners Act, the term foreigner is defined as "a person who is not a citizen of India", which can refer to aliens of any kind including immigrants, refugees, and tourists. The Foreigners Act of 1946 and the foreigners' order of 1948 also uses this definition of a foreigner. The Government of India has the power to limit movement within India, limit employment opportunities and cooperate and control the opportunity to associate and right to return refugees to the country. If a person does not have a valid passport, then the government has the power to enter or deny it. Governments can trust refugees on the border, the current laws of India do not refer directly to refugees. The current situation is that they are resolved according to existing Indian laws, both general and special, which apply to all other foreigners. In the absence of a legal procedure, the treatment of asylum seekers in India has always been a political decision, the direct result of the country's relations with the origin of the refugees the government of a country administratively handles administrative cases, the government can order that any even non-citizens of India "will not enter India or at any time and in the manner and such port or place in such circumstances and such The port or place within this subject will not enter India they can be recommended to identify such conditions at the entrance. " In 2003, the Law of Reform of Indian Citizenship refers to all non-natives who without any foreign migrants enter the visa, which does not allow exiles or asylum seekers. Within the political and useful residential and related considerations.

Indian practice in relation to refugee protection India's practice is to deal with refugees in three main ways.<sup>49</sup> (A) Is widely used in refugee camps in a state of

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<sup>48</sup> Sec. 3 (d) of the Registration of Foreigners Act, 1939.

<sup>49</sup> In Indian Legal Regime and Role of Judiciary, available at: [http://shodhganga.inflibnet.ac.in/bitstream/1603/128419/15/12\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/1603/128419/15/12_chapter%204.pdf)(Visited on 23/04/208).

flux and provided temporary protection by the government, sometimes including a certain degree of socio-economic security. (B) South Asian countries or sensitive relationship of the government with which asylum seekers to another country, applies to the political asylum government, which is usually given without a determination of refugee status comprehensive subject to political demands; (C) receiving and accommodating the massive influx of refugees from Tibet and Sri Lanka into special camps in various fields in the field of health to citizens of other countries from the office of the UN High Commissioner for Refugees (UNHCR) to determine refugee status in India It's gone. , Education and employment, the right, policy and practice of refugee protection in India, "refugee claimants after the mass flow has personally entered India was granted asylum after the mechanism.<sup>50</sup> Initial selection process this process continues in Tibetan and Sri Lanka, which entered the country in small numbers and UNHCR law and DW government according to the terms of the refugee Convention. States must meet certain criteria before being registered The Government of India is in talks with a lot of problems bureaucratic machinery administration with extensive experience refugees the strategy of two inflicted to deal with the refugee problem in India: (A) Home Ministry deals with construction and refugee rehabilitation and settlement policies. (b) Responsibility for bilateral talks of the Ministry of Foreign Affairs. On the other hand, the National Human Rights Commission, the Minorities Commission, and the State Human Rights Commission, etc. Entrusted to the nation at the national level to guarantee comprehensive human rights, fundamental freedoms and equal opportunities for all.<sup>51</sup>

#### Refugee and Asylum seeker Bill 2006 and 2015

Refugee and Asylum (Protection) Bill, 2006: An attempt was made to make refugees a fundamental concern of the law. Former President of the Supreme Court of India, PN Bhagwati had drafted the refugee's sample law, on the basis

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<sup>50</sup> Ibid 49.

<sup>51</sup> Ibid 50.

of which the bill for the protection of refugees and asylum was prepared in 2006. But the bill was never presented in Parliament.<sup>52</sup> This bill contained 34 articles divided among eight chapters. The proposal begins with a preamble that is quite elaborate and highlighted how India has treated refugees in a responsible and humane manner. It also says that India has accepted several international human rights instruments and recognizes the rights of refugees so that they can lead a life of prestige. Article 2.<sup>53</sup> of the bill include many definitions such as asylum, asylum seeker, commissioner, country of origin, refugee, UNHCR, etc. article 3 Refugees refer to the applicable principles for protection, such as that real refugees have the right to take refuge in India, to protect refugees is human work and must be done without any political point of view, a system must be adopted suitable. During the determination of applications for refuge, refuge, social, economic and legal protection, refugees should be provided as the weakest communities, the principle of non-refoulement should be observed and be sustainable as refugees or refugee rehabilitation. The solution should be done as soon as possible recently in 2015 Congres MP. Sasi tharur advocate in Rajyasabha that India government introduce a specific law for refugee and produce Asylum Bill 2015 in Rajayasabha as a private member but this bill is not passed. This bill has totally 46 articles and divided into 10 chapters.<sup>54</sup>

### **Judicial Response on Refugee Protection:**

Here court has to maintain a balance between protection of refugees and interest of state because the country is known for the hospitality of people but the security of the state is also important. Judiciary while dealing with a case of refuge to keep in mind connection between the interest of the state and challenging opportunity to protect the refugee.<sup>55</sup>

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<sup>52</sup> "Some Refugees are More Equal," The Telegraph, available at: <http://www.Telegraphindia.com/> (Visited on 28/11/2017).

<sup>53</sup> Art. 2 Refugee and Asylum seeker Bill 2006.

<sup>54</sup> The asylum bill 2015. Bill No. 334 of 2015.

<sup>55</sup> Geoffrey Care, "The Judiciary, the State and the Refugee: The Evolution of Judicial Protection in Asylum- A U.K. Perspective", Vol. 28, Issue 5, Fordham International Law Journal, 1427 (2004).

Indian courts do not have the power to enact the provisions of the international human rights instruments unless these provisions are incorporated into municipal law by legislation.<sup>56</sup> This process of incorporation in the Indian context has been largely ignored with respect to the international treaties. Parliament is under no obligation to enact laws to give effect to a treaty and, in the absence of such laws, the judiciary is not competent to enforce the treaty obligations by the Executive. Thus, every state has the duty to carry out in a good manner its obligations arising out of international law and they cannot offer acts or omissions on the part of their legislative or executive organs as an excuse for failure to fulfill the international obligations. In the event of failure of a state to bring its municipal law in line with its international obligations, International Law does not render such conflicting municipal law null and void. Various court decisions have – in the absence of a concrete legislative structure – tried to provide humane solutions to the problems of refugees, primarily with regard to the principles on non-refoulement, right to seek asylum, and voluntary repatriation. The courts have, however, arrived at their decisions without entering into a discussion of international refugee law. It may be noted that courts can take the treaty provisions mentioned earlier into account in certain circumstances.<sup>57</sup> Article 37<sup>58</sup> of the Indian Constitution provides that the Directive Principles of State Policy in Part IV are fundamental to the governance of the country and that it shall be the duty of the State to apply these principles in making laws. Likewise, Article 51 (c)<sup>59</sup> in Part IV of the Constitution of India provides that the State will endeavor to promote respect for international law and the obligations derived from treaties. Thus, while Indian courts are not free to direct the making of legislation, they do adopt principles of interpretation that promote rather than hinder the aspirations in Part IV of the Constitution. Adopt principles of interpretation that promote rather than hinder the aspirations in Part

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<sup>56</sup> Nafees Ahmad, "The Constitution-Based Approach of Indian Judiciary to The Refugee Rights and Global Standards of the UN Convention, Vol. 8, No. 1 (2017) pp. 30-55. (Published by: King's College London).

<sup>57</sup> Ibid.

<sup>58</sup> Indian constitution art 37.

<sup>59</sup> Indian constitution art.51(c).

IV of the Constitution. Justice Markandey Katju with respect to the status of refugees observed that:

“The Indian judiciary has been playing an activist and creative role in recent years with human rights. This is evident from the fact that the judiciary has given a creative interpretation to Article 21 of the Indian Constitution wherein the word "life" is interpreted to mean not merely an animal existence but rather dignified life ensuring the basic safeguards. The Indian judicial system has recognized refugees and refugee law by indicating most aspects of international refugee laws into the legal system through the back door by a creative and wide interpretation of Article 21 to include within its ambit citizens as well as non-citizens in its various judgments and had taken the lead by resorting to judicial activism and stopped the refoulement of the refugees through its policy adopted in some cases.”<sup>60</sup>

In *Louis De Raedt vs. Union of India*<sup>61</sup>, it was argued that petitioner has been staying in India continually since 1937 except two occasions, when he was in Belgium for a short period in 1966 and 1973. This provision has been argued that the Constitution of India in article 5 (c) The petitioner converted November 26 1949 citizenship of this country in November and therefore cannot be expelled on the assumption that he is a foreigner. Referring to the Foreign Relations Law, it was requested that the power cannot be used in section 3 (2) (c), since the rules of the Law must be prepared so far. On the other hand, it is argued that the power to expel a foreigner is given must be used in accordance with the principles of natural justice and is entitled to a hearing before an expelled foreigner. For all these reasons, it is affirmed that on December 8, 1987, the repeal order must be arbitrarily canceled and the authorities must be ordered to allow the petitioners to stay. In this case, the Supreme Court has said that: "the fundamental rights of foreigners the article to life and liberty is limited to 21 and in article 19 (1) is not included in the country as specified in (e) and

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<sup>60</sup> Nipun Gupta, "Refugee Status in India: An Analysis", Vol. I, Issue I, The A38 Journal of International Law, available at: <http://www.athirtyeight.com/> (Visited on, 12/02/2018).

<sup>61</sup> *Louis De Raedt vs. Union of India* AIR 1981 SC 1886.

move to the right, which is only on the basis of relevance for the citizens of this country. Hans Muller entered case like this, the Supreme Court ruled that the power of the government to expel foreigners in India. The position and unlimited and legal in this aspect that had brought no provisions regarding discrimination in the Constitution. It is not the same in all nations, the extent to which the law is working in India, the executive government. There is an unrestricted right to expel aliens, there can be strict control over how the person in question should have the opportunity to enter his case.

Khudiram Chakma vs. State of Arunachal Pradesh,<sup>62</sup> Supreme Court reiterated the opinion taken in the case of Louis de Raedt: "Article 21 is available to aliens in India." The Supreme Court has also referred to the universal declaration of human rights in terms of refugees in the present Issue and said that luck The most important requirement is the place of refuge, whose most fundamental right is to be protected Article 14 of the Universal Declaration of Human Rights Speaking about the right to enjoy a asylum, it must be interpreted in the light of instruments and should be considered of some significance, this implies that, although the asylum seeker has no right to be granted admission to be granted, it should not be returned to that country from which it came."

National Human Rights Commission vs. State of Arunachal Pradesh, <sup>63</sup> In accordance with Article 32 of the Constitution, National Human Rights Commission has presented a case of public interest litigation, which wants to enforce the rights enshrined in Article 21 of the Constitution of approximately 65,000 chakma/ hazongtribles. It is alleged that these chakmas, mainly staled in the state of Arunachal Pradesh, are being persecuted by the citizen sections of the previous statement. The court said that "we are a country governed by law." Our Constitution gives citizens the rights over each person and some other rights. Everyone has the right to equality according to the legal vision of the law and equality of laws. In addition to these lines, any person indicated by law

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<sup>62</sup> KhudiramChakma vs. State of Arunachal Pradesh 1994 Sup (1) SCC 615.

<sup>63</sup> National Human Rights Commission vs. State of Arunachal Pradesh, (1996) SCC 295.

established by law, from his life or personal freedom, the feeling cannot be done. In this way, the State will guarantee that, without a doubt, the life and liberty of each person, whether as resident or common and cannot allow any individual or group of persons.

Kater Abbas Habib Al Qutaifi vs. Union of India & Others,<sup>64</sup> The case of the request for special permission under article 226 of the Indian Constitution was named after aged 16 and 17, respectively, Mr. Qatar Abbas Habib Al Qutifi and Tari al Mansouri were arrested as refugee of Iraq in the joint integration center, Bhuj District in Kutch, Gujarat state. They want the court to give instructions to release them from custody and they may not be deported to Iraq, but may deliver them to the UN High Commissioner for Refugees following the well-known "no-refoulement" principle.

After court arguments, the court held: "There is no such law in India that involves a special procurement to enforce the state's obligation to authorize or implement international treaties and conventions, including the enforcement of international humanitarian law. The Constitution of India guarantees some basic fundamental rights in addition to its natives and non-citizens. The preamble of the Constitution, which declares the universal general purpose, for which many provisions of the Constitution have been promulgated to guarantee the dignity of a person, which is also a necessary objective of international humanitarian law. Article 21 of the Constitution of India guarantees the privilege of life and personal freedom. According to the strategy established by law, a person cannot be deprived of the right to life and freedom. "The court further held that the non-refoulement rule requires that no state should return any refugee to any country in any way in which their life or liberty may be in danger." This rule is also intended for refugees. Described in article 33 (1) of the United Nations Convention on the status of refugee that this regulation boycott in which his life or opportunity is based on his race, religion, nationality or special social status.

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<sup>64</sup> Kater Abbas Habib Al Qutaifi vs. Union of India & Others, 1999 Gujrat High Court Cr.L.J. 919.

Base of nomination or political nomination, its application guarantees the life and liberty of a person independent of his nationality, has been included in article 21 of the Constitution, because the presence of the refugee is the legality and protection of India. All the Member States of the United Nations, including our nation, have global settlements related to humanitarian law and in relation to the upon, in fact, Article 51 (C) of the Constitution has the obligation in the state to try to promote respect for international law and treaty obligations In the dealing of organized people with another<sup>65</sup> The court gave certain guidance for the implementation of the humanitarian law which are as follows:

The International Convention and the Treaties are not enforceable by the government, nor they give any cause of the action, the government has an obligation to respect them. The power of government is to eliminate a foreigner. In article 21 of the Constitution of India, non-citizens are guaranteed the right to life in Indian Territory, but there is no right to live and settle in India.

The Constitution and the International Treaty that affect the fundamental rights guaranteed in our Constitution, the courts can rely on the aspects of those fundamental rights and can be implemented.

The principle of non-reinforcement is contained in Article 21 of the Constitution of India and promotion is available, unless the presence of a refugee is not a prejudice towards national security.

Taking into account the guidelines established in Article 51 (C) and Article 253, international law and treaty obligations must be respected. Courts can apply these principles to national laws, provided that such principles are not incompatible with national legislation. When the construction of national legislation is not possible, courts can influence international conventions and treaties through harmonious construction.<sup>66</sup>

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<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

Bogi vs. Union of India,<sup>67</sup> A petitioner who was convicted prisoner, approached him by the court to give permission to Delhi because he wanted to have political asylum from the United Nations High Commissioner for Refugees, New Delhi. The petitioner believes that when his custody expires they will be deported to Burma, where there is a threat to his life. Therefore, the petitioner prays to the court to give them the opportunity to allow them to seek political asylum. The court instructed that "The respondents will have the right to be released to the petitioner to provide security for the satisfaction of Magistrate Imphal." The petitioner will be released for the period of two months. The petitioners come to Delhi to take the necessary measures for the duration of two months, immediately Delhi official access to charge petitioner, the state police Parliament will inform the station, New Delhi. If he shelter Arthy is so successful in obtaining the necessary permits to qualify, will be released and will not be necessary to fulfill the sentence Parliament Street police charge by the court to the fact that the Dialogue station in New Delhi will be within the previous period, not to get refugee status, will surrender before a judge learned Imphal sentence a remnant The court it also gave the state government the freedom to approach this court to amend it in this order."

In case of Dig vijay Mote vs. Government of India and another,<sup>68</sup> a public interest litigation filed to protect the rights of the 150 Sri Lankan Tamil children living in residential schools in Karnataka claimed, which is located in Jakkur near Bangalore. These Tamil children came for study in elementary education courses in English and Tamil. Before they were living in refugee camps with their parents in Tamil Nadu and Orissa. These children have come to this place to continue their studies. Also, the appellant filed with the court to be provisionally resolved in this regard at this stage should continue because these children suffered from hunger and because they enrolled in a residential school where lack of funding, including that there are all possibilities Some of they can

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<sup>67</sup> Bogi vs. Union of India, Civil Rule No.1847 of 1989. Guwhati high court.

<sup>68</sup> Digvijay Mote vs. Government of India and Another, high court Karnataka Writ Appeal No. 354 of 1994.

die of hunger. After hearing this serious situation judicial respondents issued notice to the Government of India and Government of Karnataka. The second defendant on humanitarian grounds to receive a notice that the second respondent has agreed to provide certain basic requirements, such as these children's food, tea and so on. The court is also informed that. The social welfare department will see that an advertising agreement will be organized to provide food in the same line provided in government shelters and ashrams at the residential school, which will include twice a day tea, breakfast in the morning, noon. Lunch and dinner it has been clarified that these arrangements will be made on the basis of announcements. The court highly appreciated this good indication of the state government. The court clarified that "the strategy for giving the main requirements is essentially based on humanitarian reasons and is created voluntarily by the state government, there are no biases regarding the rights and questions of both parties and it is subject to new demands. You can go to a single court after hearing both parties in the request for the order, which is said at the stage of admission to the court. An angry, this course of action will continue for a while. The court made it clear that it should not be understood to report any opinion on the benefits of the self-defense petition. "The appeal has been disposed under the instructions issued by the court.

Malavika Karlekar vs. Union of India,<sup>69</sup> in this case court is informed that the Andaman Islands to Burma was twenty people can be deported, but pending refugee status is still determined. The court said that in accordance with international standards the authorities have been directed to verify that the above explanations are valid and that they were in place to find that the statement said it was legitimate and went away by its determination of refugee status The first case for the granting of refugee status is pending and developed and there is no more risk is that they protect the country in case they do not reflect the risk, it cannot be removed unless it cannot prove its status. In any case, the same court made it clear that if there is another ground in which any or

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<sup>69</sup> MalavikaKarlekar vs. Union of India,W.P. (Cr.) 583 Supreme Court, 25 September 1992

all of the people in this order are deport, it does not affect this, so it will not affect any of the circumstances. If the refugee status has been rejected from some part of the images or not? Therefore, the lawsuit is resolved by the court. Similarly Gurinder Singh and others vs. Union of India.<sup>70</sup> The court issue ordered that the petitioners will not deported till it pass further orders.

Gurunathan and Others vs. Government of India and Others,<sup>71</sup> The petition for persecution under Article 226 of the Constitution of India was submitted to issue a commandment of mandamus and custodian. It was said before the court that it is suspected that the petitioners, that is, the refugees from Sri Lanka, will be forced to go to their original places of origin. But the court said that the Government of India will pledge that the aforementioned refugees will not be forced to go against their will and no participation will be made. Since the government has already committed in this regard, the court did not issue any other order.

Maiwand's Trust of Afghan Human Freedom Petitioners vs. State of Punjab and others,<sup>72</sup> courts ordered after the hearing that the prisoners would not be deported until the notice was pending. In the ND Pancholi versus the state of Punjab, the Supreme Court said that in case of a pending notice, Iranian citizens will not be deport to India.

Zothan sanguii vs. the State of Manipur and another,<sup>73</sup> petitioner, who was a Burmese citizen, came to India because the position of his country was not peaceful. Since his arrival in the country did not conform to the legal process, he was also found guilty under the terms of rule 6 (1) for the period of 180 days and fifteen days under the Foreigner Act and the rules established in the Passport Act. Since the sentence was about to expire on October 4, 1989, there was a request from the petitioner that it should not be returned to Burma, where his life

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<sup>70</sup> Gurinder Singh and Others vs. Union of India.Cr.W.P. No.871suprem court of india1994.

<sup>71</sup> Gurunathan and Others vs. The Government of India and Others W.P. No. 6708 & 7916 Supreme Court of India 1992.

<sup>72</sup> Maiwand's Trust of Afghan Human Freedom Petitioners vs. State of Punjab and others , W.P. (Cr.) No. 125 & 126 of 1986.

<sup>73</sup> Zothansanguii vs. State of Manipur and another, Civil Rule No. 981 of 1989.

is in danger. They asked the court to give them an opportunity so that they can go to Delhi to take refuge in India or in any other country of their choice. After hearing the disputes, the court said that the petitioner has some sympathy in light of the current circumstances. The court ordered that the petitioner cannot be deport to Burma, where there is a danger to his life and he can be given the opportunity to meet the desired officials where he can present his case. If you want to stay in India for a period of one month, then you will prepare the necessary security before the Chief Judge Imphal and if this is found later, you can extend the period of stay in India.<sup>74</sup>

State vs. Chandra Kumar and Others,<sup>75</sup> To Sri Lanka Tamil refugees who lived in the 1990 refugee camp in India, who was leaving Italy for a better life in Italy, when they are trapped by immigration officials for not having valid travel documents. Thus deceiving them, impersonation and the flow of foreigners to act with crimes of fraud were accused under section 14 of the Foreigner Act. Blame the lawyer said that the guilty parties need legal documents to stay in the country and also their refugee certificate. On the other hand, he argued that expulsion can be requested only when there is a threat of national security of the person. But in the current situation, the culprit is traveling in the production and only forged the passport is not a threat to the national interest, it is an act that not atrocious and murder, rape, robbery, etc., cannot be the same as soon as the foot is. They can be summarized from the following arguments:

There is a well-established fear of manipulation when a convict was deport to Sri Lanka. India is bound by traditional international law and, therefore, the rule of non- refoulement denies the elimination of the guilty in this case because they have a lot of apprehension of abuse.

Article 21 of the Indian Constitution of India, which protects the life and personal liberty of all citizens and non-citizens, applies in the current case and, in accordance with article 21, the life of the convicted refugee must be protected.

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<sup>74</sup> Available at: <http://www.refworld.org> (Visited on, 11/02/2018).

<sup>75</sup> State vs. Chandra Kumar and Others, high court Delhi Decided on September 20, 2011.

If there is no threat or danger to any person in relation to the security of the country, then he should not be deported.

On the basis of humanistic principles, several superior courts have been asked to be deported. Our country should march with the international community and municipal laws should respect the rules of international law as nations respect international conventions. The country committees require that the principles of the universal law can be adequate even in the civil administration without due administrative approval.

Article 51 (A) of the Constitution of India provides that the State shall endeavor to promote respect for international law and the obligations of treaties when dealing with each other with organized persons.

To influence and understand the key rights guaranteed by our constitution, the endeavor of a convention may depend on the characteristics of those essential rights by the courts and can be implemented in that way.

An international convention consistent with fundamental rights and goodwill should be included in those purchases to expand on that substance.

To avoid conclusions, the accused should be given the opportunity to contact UNHCR, Delhi. "After hearing this argument, the court demands generosity in this case, no sanctions will be imposed and their sentence has already been adjusted with imprisonment, the court also ordered their deportation in Sri Lanka, they will not be taken nor instructed to take them back to the refugee camp.

The Indian judiciary has always duly recognized human rights jurisprudence. The courts know that hospitality is in our veins and from the beginning, India has shown compassion towards all. India has a long history of helping others in the period of crisis. The courts are well known because no person is a refugee by choice, but there are circumstances that force a person to flee their homeland and take refuge in other countries. Taking all these facts into account, the

judiciary has played an active and commendable role in terms of protecting the rights of refugees. The courts have welcomed the fact that international law is part of national legislation in this matter, since India has not signed the Refugee Conference of 1951. The judiciary is the last resort for a person. When a person comes to court, it is a general assumption that the executive or the legislature has not fulfilled its duty. And when a refugee knocks on the door of the judicial temple, the judges know very well that a refugee in India considers himself a foreigner and there is no specific law for them and, therefore, there are victims, the refugees illegally. It is considered as the culprit of entering India. The judges tried to broaden the horizon of human rights jurisprudence so that maximum relief could be provided to the refugees, but the limitations always remain there. The judiciary cannot be separated from Foreigner Act and is obliged to punish a refugee without valid documents. The role of the judiciary is limited in the absence of the refugee law in India. Apart from this, each refugee cannot reach the feet of the judicial power and, therefore, administrative authorities can exploit it.

A series of decisions of the Supreme Court and the High courts of Gujarat, Punjab, Guwahati and Tamil Nadu reinforced the need for a humanitarian procedure for the Chakma, Sri Lanka and other refugees. Some decisions clearly identify the value of UNHCR and invite it to be included in the issue of refugees in India. Unfortunately, this jurisprudence in favor of refugees is uncomfortable with the general law related to foreigners, which grants government subsidies close to the arbitrary powers of deportation. After the 175th Report of the Law Commission of 2000, the law was made strict to face the harsh conditions despite the harsh conditions for the treatment of illegal immigrants, which could be due to their migration. India is enraged and infuriated in dealing with UNHCR, a policy statement at UNHCR meetings in Geneva and refuses to join the conference or change its law to provide reliable legal rights to refugees in India.<sup>76</sup>

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<sup>76</sup> Rajiv Dhavan, "India's Refugee Law and Policy", available at: <http://www.hrdis.in/> (Visited

## **Institutional Mechanism:**

### **Role of NHRC**

One of the best ways to understand the progress of a country is to study the security of the human rights of that culture or society. In India, since the establishment of the National Human Rights Commission (NHRC) in 1993, it is making an energetic effort to prevent the violation of human rights violations in any part of the country.<sup>77</sup> The motto of the National Human Rights Commission (NHRC) is "Sarve Bhavantu Sukinaha". For all, happiness and health must be achieved through a rule based on law, where respect for human beings and their dignity is fundamental. The Constitution of India provides a basic infrastructure for this rule based on law. The constitutional framework is considered by many laws and institutional mechanisms that work to honor, preserve and promote human rights. In addition to this internal structure, the international convention in which India is a party forms the basis for the protection of human rights.<sup>78</sup> NHRC is playing an important role in the protection of human rights.<sup>79</sup> The Commission has submitted a written request under Article 32 of the Indian Constitution.<sup>80</sup> As a public interest petition before the Supreme Court of India. The Commission has submitted this petition primarily for the application of the fundamental rights of almost 65,000 refugees from Chakma / Hazgottriam under Article 21 of the Constitution. After this argument, the court ordered the government of Arunachal Pradesh to guarantee the life and freedom of every chakma that lives within the state. The importance of this judgment lies in eliminating doubts about the applicability of the fundamental rights of refugees. This decision is the rule according to which Article 21 of the

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on,13/02/2018).

<sup>77</sup> Kamlesh Kumar, "Defending the Defenders: An Analysis of Violence Against Human Rights Defenders in India", Vol.3 (12), International Journal of Sociology and Anthropology, 460 (2011), available at: [http:// www.academicjournals.org/](http://www.academicjournals.org/) (Visited on, 15/02/2018).

<sup>78</sup> Report of National Human Rights Commission of India, 13 Asia Pacific Forum Meeting, Malaysia, 2 (28-31 July, 2008).

<sup>79</sup> P.P. Rao, "Role of Judiciary in Providing Refugee Protection", Report on Judicial Symposium on Refugee Protection, 114 (13-14 Nov.1999, New Delhi).

<sup>80</sup> Chakmas refugee case

Indian Constitution deserves to enjoy the security of the rights of foreigners and the right to freedom. The temporary intervention of the Commission has saved the lives of thousands of innocent people from AAPSU.<sup>81</sup> In another case taken by NHRC in the state of Tripura, many refugees from Juma. In the camp, a research team was sent to visit refugee camps of informants about insufficient housing, health facilities and food. The commission raised the problem and with their intervention, the situation of the camp improved enormously. The NHRC also intervened in many cases of Tamil refugees from Sri Lanka who were detained in special camps in Tamil Nadu on suspicion of LTTE militants. Many of them were granted refugee status and refugee permits were issued and many were released.<sup>82</sup>

The NHRC imposed received nine complaints,<sup>83</sup> burning houses, rape, kidnapping, destruction of movable property, remove from lists electoral names of Rangon and accused by the alleged Rengon death in refugee camps in Tripura and Assam. Due to starvation, Notices were issued to the Minister of the home affair, the Government of India and the Chief Secretary of Mizoram, Tripura and Assam. After considering the reports received by the Commission, they meet aided by October 11 - 12, 1999 in Agartala in Mizoram, Tripura and Assam and the chief secretary of the Minister of the Union and the Registrar by the representatives of the petitioners general and SSP, special correspondent Calling a meeting, Chaman Lal, who submitted a report after visiting the refugee camps it should start from the states that the repatriation of refugees I November 1 999 decisions and must be completed by March 31, 2000. However, another complaint was registered by the NHRC. Nandita Haskr, human rights lawyer, illegal detention and for the threat of expulsion from Burma thirty industrial prisoners held in sainik vishram ghar at Port Blair. He also took

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<sup>81</sup> MarghoobAlam, "Role of National Human Rights Commission of India in Protection and Promotion of Human Rights", Vol. I, Issue VIII , International Journal of Multifaceted and Multilingual Studies, 7-8 (2015)

<sup>82</sup> S.N. Bhargava, "Relationship between National Human Rights Institutions and the Judiciary in Protecting Refugees", Report on Judicial Symposium on Refugee Protection, 93 (13-14 Nov.1999, New Delhi)

<sup>83</sup> Case No. 222/10/97-98, Case No. 534/22/97-98, Case No. 795/22/97-98, Case No. 249/10/97-98, Case No.79/10/99-2000

the appropriate measures and issued provisional orders that the NHRC has taken this case because a tremendous alternation cannot be made. The above examples illustrate that the refugees NHRC the rights of a very powerful security, has been playing an effective role and leads, so that the NGOs and effectively advocate for the NHRC and pursue these cases immediately.<sup>84</sup>

### **Role of UNHCR**

UNHCR does not have any agreement with the Government of India, but is under the agreement of the United Nations Development Program (UNDP). UNHCR was allowed to work in India in 1969 to provide vocational training to refugees from Tibet for the first time, and later played a limited role in controlling the repatriation of Tamils in Sri Lanka. While India joined the UNHCR Executive Committee (EXCOM) in 1995, it was not ratified the 1951 refugee convention, nor it's the 1967 Protocol.<sup>85</sup> Despite policy commitments, UNHCR has a very limited mandate in India and the total number of refugees is authorized to work with only a small population. UNHCR cannot reach the border areas of Mizoram and Manipur and was granted access to camps in the south, which hosted refugees from Sri Lanka in early 2013. Work in the UNHCR area in Delhi is also restricted and refugees they have not been included in Tibet, Bangladesh, Bhutan or Nepal. The main groups UNHCR works with in New Delhi are fewer than a small number of refugees from Burma, Afghanistan, Somalia and other countries in Africa and the Middle East.<sup>86</sup> Many category of refugees receive a small monthly allowance and all have access to the services provided by UNHCR implementing partners in Delhi: YMCA, Don Bosco and the Legal Social Center (SLC). YMCA helps refugees find housing and gives them access to education for children and young adults in government schools through the provision of educational allowances. Don Bosco offers psychological support

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<sup>84</sup> Ibid

<sup>85</sup> Linda Bartolowei, "Surviving in the City: Refugees from Burma in New Delhi" in Koichi Kozumi and G. Hoffstaedter, *Urban Refugees: Challenges in Protection, Services and Policy*, 143 (Routledge Publishers, 2015).

<sup>86</sup> "Home Ministry's Refugee Bill Worries Security Agencies", available at: [http:// news.Reify .com/](http://news.Reify.com/) (Visited on 7/02/ 2018).

and professional preparation, for example, English classes and computer courses. It finances additional professional courses, for example, preparation of beauticians and lesson management. The support of these organizations is important, which provides support to the refugee community. In addition to these aspects, SLIC provides legal assistance, legal training and awareness programs that renews UNHCR archives and provides naturalization assistance for eligible refugees. Despite the help provided by these organizations, most of the refugees in India face such incredible hardships both financially and socially.

UNHCR's work in India is in New Delhi and there is an office in Chennai. In New Delhi, UNHCR organizes the assessment of refugee status (RSD) for those seeking asylum in non-neighboring countries, except Myanmar. The UNHCR office in Chennai supports the voluntary retribution of Sri Lankan refugees in the center of their country. In relation to the evaluation of refugee status in India. There is no official system in the administration of India whereby the evaluation of refugee status is possible. The Indian government uses its discretion in this way and displaces the general population of two states, such as the Tibetans and the people of Sri Lanka. The method for deciding the position of refugees is guided by UNHCR in India. The lack of this situation is that UNHCR has a limited area where they must work alone and, therefore, access is very limited. The government of India does not establish any individual status, but in some cases of refugees this task has been assigned to UNHCR. Beyond the formalities of the law, the Government of India allows UNHCR to take a resolution on refugees in some sections of those cases that UNHCR informally recognizes and on what basis residence permits are issued. To the extent that the government recognizes the certificate, the refugee remains in India with the authenticity of the UNHCR and the residence permit of the Government of India. But that authentication does not guarantee the freedom of exile, which remains an unknown reserve in the government. Refugees certified by UNHCR have no guarantee of security. Even residence permits are issued selectively to the Afghan refugees and refugees from Myanmar who were previously registered. A lot of real practice is unknown. The reason for this is that, in addition to a more

explicit system, most of the exercises are handled confidentially on the basis of official records and notation that are not publicly available for investigation.<sup>87</sup>

Where UNHCR determines, it adheres to the basic guidelines declared by UNHCR. Such guidelines are also implicit in those states that are not signatories of the UNHCR office along with the 1951 Convention or 1967 protocol. There is no doubt that non-signatory states are technically not linked to these basic requirements guidelines, which, however, they represent the universal approach. The Indian practice represents a hybrid situation in which India is not a signatory to the 1951 Conference and Protocol, but is on the Executive Committee and allows UNHCR to establish the post in specially appointed sections. Therefore, the determination of refugee status in UNHCR in Delhi is essentially based on its mandate, convention and basic needs of universal application of the Working Committee under the principle and the executive committee. If the standards implemented by the government of India are separated from the standards after UNHCR in Delhi, then it will be inconsistent, it will not be able to request refugee forms of non-compliance with the provisions related to equality and payment in different standards of determination of the refugee status Indian constitution process.<sup>88</sup> The basic requirements or recommendations of the Executive Committee, which the basic guarantee to the refugee, are the following:

There should be clear instructions to address immigration issues / border officials. They must act in accordance with the principle of non-refoulement.

The applicant must obtain the necessary guidance on the procedures to be followed.

There should be a central authority with the responsibility to investigate applications for refugee status and make decisions.

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<sup>87</sup> Rajeev Dhavan, "Refugee Law and Policy in India," 82-83 (PILSARC, New Delhi, 2004).  
<sup>88</sup> UNHCR annotated comments on the EC Council Directive 2004/83/EC of 29 April, 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or stateless Persons as Refugees or as Persons who otherwise need International Protection and the Content of the Protection Granted.

The applicant should be provided with the possibility of having a competent interpreter to contact the representatives of UNHCR and to contact the applicants.

If it is recognized, the applicant must be informed and released with the certified refugee status document.

If the applicant is not recognized as a refugee, then he should be given time to appeal.

The applicant must be able to remain in the country in which he applies for asylum, while the decision to determine refugee status is pending.<sup>89</sup>

But in India, all these basic requirements cannot be fulfilled. The government of India does not have a system to establish the application for refugee status. There is no guarantee that a person will not be deported while the informal asylum application is considered. There is no appeal system. However, for people of limited class, UNHCR makes a determination. In the UNHCR system, the right to appeal is allowed within 30 days of the decision to deny recognition. UNHCR is not very strict regarding the deadline and it is known that it maintains appeals beyond the thirty-day limit. Appeals requests are reviewed by a legal officer and in cases where there is a clear lack of well-established fear of harassment. The appellants are interviewed by a legal official, who gave the decision of rejection.

A review of the appeal decision is also acceptable, but in very limited circumstances.<sup>90</sup> Although the full story and actual practice is followed, it is not fully understood, the process of determination by UNHCR has not completely escaped the controversy. On the one hand, there is a common consensus that UNHCR's determination is generally fair. In fact, it has been said that, in some controversial cases, UNHCR has stopped political pressure to make correct

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<sup>89</sup> Ibid

<sup>90</sup> James C Hathaway, "Why Refugee Law Still Matters," vol.8, Melbourne Journal of International Law, 98 (2007).

human decisions, in which it was considered that there was a well-established fear of religious and other oppression. On the other hand, the dissatisfaction with the different communities has been more than evident that the UNHCR processes are defiant, terror and inappropriate.<sup>91</sup>

## **Rohingya Refugees:**

### **Status of Rohingyas in Global Perspective**

Rohingyas are a minority Muslim in Myanmar in the center of the humanitarian catastrophe. But the Myanmar government use the term "Rohingya" the government calls them the Bengali, foreigners. More than 500,000 Rohingyas have recently fled after the government's crackdown and those who have been "textbook examples of ethnic cleansing by the United Nations" Human Rights Official many of them ended shelter in temporary camps in Bangladesh, told stories of murders, rape and genocide.<sup>92</sup> The Rohingya are stateless people who are also known as Arakanese and practice Islam. There are an estimated 2 million in the world Rohingya Muslims around the world, most of whom reside in Myanmar. Myanmar is home to the largest Rohingya population in the world, with as many as 1.3 million Rohingya Muslims who were residing in the country before the 2016 crisis. Bangladesh has the second most population of the Rohingya individuals in the world. The aggregate number of Rohingya in the nation evaluated to be as high as 0.5 million people, Indonesia is another Muslim-lion's share nation in Southeast Asia. Indonesia has 11,941 enrolled Rohingya Muslim exiles living in the nation. At first, the Indonesian government, who like Malaysia isn't a signatory to the United Nations' Refugee Convention, had declined to get Rohingya refugees escaping from Myanmar however later offered to give the displaced people briefly asylum in the nation. Rohingya refugees in Indonesia rely on the support they receive from international

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<sup>91</sup> Ibid

<sup>92</sup> Amna Mhdin, A brief history of the word "Rohingya" at the heart of a humanitarian crisis 02 October 2017 available at: <https://qz.com/1092313/a-brief-history-of-the-word-Rohingya-at-the-heart-of-a-humanitarian-crisis/> (Visited on, 02/03/2018).

organizations such as the International Organization for Migration and the United Nations High Commission<sup>93</sup>

**Table No 05**

**Countries where Rohingyas found**

<b>Rank</b>	<b>Country name</b>	<b>Population Rohingya</b>
1	Myanmar	1.0 to 1.3 million
2	Bangladesh	500000
3	Pakistan	200000
4	Thailand	100000
5	Malaysia	40070
6	India	40000
7	USA	12000+
8	Indonesia	11941
9	Nepal	200

**Source:** <https://www.worldatlas.com/articles/the-countries-with-the-highest-population-of-Rohingya-people.html>

Table No 5 shows that Rohingya are not entered in India intently they entered India when all door is close for Rohingya in this region and Rohingya are levee another country more than number compare to India.

Myanmar military and Buddhist militants blazed and razed their homes across villages; burnt alive, tortured, and killed a number of men, women, and children; and gang-raped women; flouting all international human rights codes. A flash

<sup>93</sup> World atlas, available at: Amna Mhdin, A brief history of the word “Rohingya” at the heart of a humanitarian crisis 02 October 2017 (Visited on 29/01/2018).

report by United Nations' OHCHR published in February 2017 gives the following statistics, based on interviews with Rohingya Muslims fleeing from Myanmar.<sup>94</sup>

UN's Office of Human Rights has declared that the crisis in the South East Asian country 'could tantamount to crimes against humanity'.<sup>95</sup> The international community has labeled Rohingya as "the most persecuted minority in the world." The United Nations, as well as many human rights groups such as Amnesty International and Human Rights Watch, have consistently rejected Rohingya treatment in Myanmar and neighboring countries. The United Nations has said that it is "very likely" that the army has abused the serious human rights in Rakhine, which may be the sum of war crimes, and the allegations made by the government can be denied. The United Nations head of human rights, Zid bin Rad al-Hussein, urged Myanmar to end its "cruel security campaign" against the Rohingyas in Rakhine and called it "an example of an ethnic cleansing textbook". UN officials said they fully supported the findings of the advisory commission under the leadership of Kofi Annan, and urged the government to implement its recommendations. In November 2017, Pope Francis visited Myanmar and, when he did not explicitly use the word "Rohingya," he said that acceptance and respect for all ethnic groups in the country is essential. Prime Minister Sheikh Hasina visited the Rohingya refugee camp in September and called on the United Nations and the international community to pressure the Myanmar government to allow him to return hundreds of thousands of Rohingya refugees. A. on human rights in Myanmar Special envoy says that the army's violent campaign against the Rohingya Muslims "Seal of genocide."<sup>96</sup> In a statement after a meeting of a closed door, September 2017 15 members of the Security Council to take immediate measures to end the violence in Rakhine, front position, restore law and order, ensure the safety of citizens From "The

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<sup>94</sup> Report of OHCHR mission to Bangladesh Interviews with Rohingyas fleeing from Myanmar since 9 October 2016 <http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf> visited on 03/03/2018

<sup>95</sup> News paper The Indian Express, 07 September 2017

<sup>96</sup> USA Today feb 2018 available at: <https://www.usatoday.com/story/news/world/2018/02/01/u-n-official-rohingya-crisis-has-hallmarks-genocide/1085763001/>

British Ambassador Matthew Rycroft UN said the Security Council press release gave the first statement on the situation." UN Secretary General Antonio Guterres urged to suspend military operations against the Rohingya people of Myanmar's government. The UN said that crisis was destabilizing the area, Guterres said that the human condition was "destructive" and wrong it was called on all countries to provide the necessary support. He called for the recognition of the termination of military action to the Myanmar authorities, to end the violence, restore the rule of law and the right to return of all those who leave the country s.<sup>97</sup> In 2012, President Obama visited Myanmar—becoming the first sitting U.S. president to do so. During his visit, he gave a historic speech at Rangoon University raising human rights concerns, including abuses against Rohingya Muslims. In his remarks, President Obama called for national reconciliation, access to citizenship, and humanitarian aid to and voluntary return for those displaced to facilitate a lasting peace.<sup>98</sup>

### **Causes of the problem of Rohingya Refugees**

Religious and ethnic contrasts have been broadly viewed as the main source of the persecution. However, it is ending up progressively difficult to trust that there are no different components affecting everything. Particularly given that Myanmar is home to 135 authority perceived ethnic gatherings (the Rohingya were expelled from this rundown in 1982) political and monetary interests as contributing elements to constrained dislodging in Myanmar, not simply of the Rohingya individuals but rather of different minorities, for example, the Kachin, the Shan, the Karen, the Chin, and the Mon. The land has frequently been obtained for "advancement" ventures, including army installation developments, characteristic asset misuse, and extraction, huge farming tasks, framework, and tourism. For instance, in Kachin express, the military appropriated in excess of 500 sections of land of villagerss' territory to help broad gold mining.

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<sup>97</sup> Rohingya crisis: UN Security Council condemns excessive violence in Myanmar news available at: <http://www.dw.com/en/rohingya-crisis-un-security-council-condemns-excessive-violence-in-myanmar/a-40495836>

<sup>98</sup> Engy Abledkar, *The Rohingya Muslims in Myanmar: Past, Present, and Future* Vol. 15, X

Development has forcibly displaced thousands of people - both internally and across borders with Bangladesh, India, and Thailand - or compelled them to set out by sea to Indonesia, Malaysia, and Australia. In Myanmar, the groups that fall victim to land grabbing have often started in an extremely vulnerable state and are left even worse off. The treatment of the Rohingya in Rakhine State is the highest profile example of broader expulsion that is inflicted on minorities.<sup>99</sup> There is given a short list of crimes that were occurring on Rohingya. These are the root causes of the Rohingyas problems. Denial of citizenship ,Limited on travel and movement , Limited and controlled by education, Limited and controlled on work permits, To labor forcibly, To Acquisitions land, Forcibly eviction, To demolish homesteads, offices, schools, and Masjid, To tease for being Muslim, Ethnic discriminatory act, Controlled marriage, To prevent breeding and to force abortion, To collect tax forcibly and imposed tax willfully ,To registration forcibly birth and death information of family members including cattle, Unlawfully killing after arrest, To insult Rohingya women and old people, To Rape as a technic of war, Confiscation of immigration and citizenship cards, To destroy historical places and sign of Muslim to the identification of Arakan.<sup>100</sup>

Since August 2017, in excess of 615,000 locals of Arakan – the Rohingya Muslims and Hindus – have been compelled to leave their country to settle in Bangladesh as a refugee. They have left everything that was critical to them and even relatives – as their properties were looted before being burned with living relatives inside. The culprits have carried out unimaginable violations against humankind that have been depicted by the UN Secretary-General as the around 75,000, as indicated by the International Rescue Committee. The Union of Burma turned into an artificial state, carrying on like a broken family, where Buddhist and Barma chauvinism ruled incomparable. After independence, the Rohingyas – racially and religiously not quite the same as others - were barred

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<sup>99</sup> Religion is not the only reason Rohingyas are being forced out of Myanmar, Available at:[http://the conversation.com/religion-is-not-the-only-reason-rohingyas-are-being-force D-out-of-myanmar-83726](http://theconversation.com/religion-is-not-the-only-reason-rohingyas-are-being-force-d-out-of-myanmar-83726)(Visited on 22/01/2018).

<sup>100</sup> Myanmar Rohingya problem: Numbness of the world conscience, Available at: [http s://j amaat-e-islami.org/en/pdf/96\\_rohinga\\_problem.pdf](http://jamaat-e-islami.org/en/pdf/96_rohinga_problem.pdf) (Visited on 21/01/2018).

and expelled from the Military, Police and common administrations and their leaders were placed under arrest while the ordinary Muslims faced daily persecution, discrimination, and abuse. The continuous persecution prompted Rohingya rebellion against the Burmese military in the early 1950s. Some of the major armed operations against the Rohingya people, arranged by the Burmese government since 1948 until mid-2012, are specified underneath:

Military Operation (5th Burma Regiment) –November 1948

Burma Territorial Force (BTF) – Operation 1949-50

Military Operation (2nd Emergency Chin regiment) – March 1951-52

Mayu Operation – October 1952-53

Mone-thone Operation – October 1954

Combined Immigration and Army Operation – January 1955

Union Military Police (UMP) Operation – 1955-58

Captain HtinKyaw Operation –” 1959

ShweKyi Operation – October 1966

KyiGan Operation – October-December 1966

Ngazinka Operation – 1967-69

Myat Mon Operation – February 1969-71

Major Aung than Operation –” 1973

Sabe Operation February – 1974-78

Naga-Min (King Dragon) Operation – February 1978-79 (resulting in exodus of some 300,000 Rohingyas to Bangladesh)

ShweHintha Operation – August 1978-80

Galone Operation – 1979

PyiThaya Operation – July 1991-92 (resulting in exodus of some 268,000 Rohingyas to Bangladesh)

Na-Sa-Ka Operation – 1992 - 2012

Kofi Annan and other world dignitaries have appealed to SuuKyi to change the discriminatory Citizenship law thus allowing the Rohingya to be integrated fairly within Myanmar.<sup>101</sup> Kofi Annan said “I strongly urge all communities and groups to reject violence against Rohingya. After years of insecurity and instability, it should be clear that violence is not the solution to the challenges facing Rakhine state,”<sup>102</sup>

**Table No. 06**

**Human right violation of Rohingya**

<b>Sr. No.</b>	<b>Human Right violence against Rohingya</b>
1	65% Mass killings
2	43% Rape (up to 52% in women age of 18 years)
3	31% Sexual violence
4	56% Disappearances
5	64% Beating Cases
6	64% Burning or destruction of property
7	40% Looting/ theft of property

Majority of the rape victims were raped by more than one soldier, generally three to four and even up to eight soldiers. So this report shows that Rohingya totally harassed by Myanmar after that they have left Myanmar and goes to

<sup>101</sup> Habib Siddiqui, Concerns, Causes and Countermeasures to the Rohingya Problem ,22 November 2017, available at: <https://www.Islamicity.org/13689/concernscauses-and-countermeasures-to-the-rohingya-problem/> (Visited on 27/04/2018)

<sup>102</sup> available at: <http://www.dw.com/en/kofi-annan-report-warns-of-rakhine-radicalization-amid-deadly-rohingya-attacks/a-40240683> (Visited on, 27/04/2018)

neighbor countries but in the south Asian region countries not support Rohingyas properly.

### **Status of Rohingya in India**

As Rohingyas speak Bengali, they headed in large number towards Bangladesh. Many had their ancestral roots in that country. Initially, Bangladesh authorities were lenient but with rising number of emigrants from Myanmar, Dhaka chose, in August 2012 itself, to stop all humanitarian assistance to Rohingya Muslims leaving them helpless. The boat people headed towards Thailand. But, Thailand had kept an eye on the developments of Myanmar and put its navy on guard. Thailand's navy gave the boat people food and medicines but did not allow them land on its territories.<sup>103</sup>

The Rohingyas turned towards Malaysia thinking that a Muslim majority country would give them shelter. But, Malaysia adopted the same policy as Thailand. Malaysian navy spurned all the moves by the boat people to set feet on its land. For few weeks, Rohingyas managed to enter Indonesia, another Muslim majority country. Trapped in boats in hundreds, Rohingyas were rescued by Indonesian fishermen. By the time, the Indonesian government declared that Rohingyas were not welcome in their country, thousands of them had already taken shelter there. But, Indonesian government warned its fishermen against rescuing and bringing Rohingyas into Indonesia. Till then, Rohingyas were not entering India in large numbers. When all the doors were shut on them, they turned towards India. By 2013, Bangladesh had closed all the entry points for Rohingyas into its territory. They looked for entry points along India-Myanmar border and India-Myanmar-Bangladesh tri-junction.<sup>104</sup>

Rohingya entered the northeast of India through several routes. They avoided living near the borders of Myanmar. Rohingya spread to a large area in different

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<sup>103</sup> The boat people crisis in South-east Asia, MAY 25, 2015, 8:00 AM available at: <https://www.straitstimes.com/asia/se-asia/the-boat-people-crisis-in-south-east-asia> (Visited on. 28/04/2018)

<sup>104</sup> Ibid

states. Assam, West Bengal, Uttar Pradesh, Delhi, Haryana, Jammu and Kashmir, Andhra Pradesh and Kerala have their camps.<sup>105</sup> In India problem of rohingya arise presenting the Citizenship (Amendment) bill of 2016 to make illegal migrants, Buddhists, Sikhs, Parsis Jains, and Christians Afghanistan, Bangladesh or 'qualified illegal migrants to the citizens of Pakistan' The expatriate Muslims were clear by their absence. As most Rohingya are Muslims, they cause great harm to this error.<sup>106</sup> Under section 6<sup>107</sup> of the Act, One of the requirements of citizenship by naturalization is that applicants must remain in India for the last 12 months and for the past 14 years. Bill rests in these 11 years of need for six years for the six religions and people of three countries. And Bill makes illegal immigrants eligible for citizenship based on religion. It may violate article 14 of the Constitution, which guarantees the right to equality. Provides different resources to illegal immigrants based on their religion. India is a secular state. On the basis of religion, concessions of citizenship go against the established principle of secularism in India. This bill goes against the Assam Bill, according to the Assam Agreement in 1985, illegal immigrants who entered Bangladesh from Assam after March 25, 1971 came to know and should be deported. However, the new bill contradicts the terms of the agreement. The proposed law violates India's long-standing refugee policy. Although India does not have a codified refugee policy.<sup>108</sup>

Definition of illegal migrants under the 1955 Citizenship Bill the 1955 Act defines an illegal immigrant as a foreigner who enters India without a valid passport or travel documents or stays beyond the time allowed.<sup>109</sup> Citizenship Act, 1955 prevented the acquisition of Indian citizenship for illegal immigrants' citizens. Bill the Law states that the following minority groups will not be treated as illegal immigrants: Afghanistan, Sikhs, Buddhists, Jains, Zoroastrian and Christian

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<sup>105</sup> Prabhas K Dutta, How Rohingyas reached India and why government is not ready to let them stay 7 September 2017, India today.

<sup>106</sup> Afreen Hashmi, Do Rohingya Refugees in India have Constitutional Rights?, available at <http://ohrh.law.ox.ac.uk/do-rohingya-refugees-in-india-have-constitutionarights/> (Visited On 21/03/2018).

<sup>107</sup> Sec 6 citizenship Act 2016.

<sup>108</sup> Supra 99.

<sup>109</sup> Citizen ship Act 1955.

Afghanistan, Bangladesh and Pakistan. However, to achieve this benefit, that foreigners act by the state government, 1946 Passport (must be exempt from Entry in India) Act, 1920.<sup>110</sup>

The Minister of State home affair, Kiren Rijju, informed the Parliament that around 40,000 Rohingya Muslims lived illegally in the country. According to the Center's estimates, the population of Rohingya has quadrupled in India in the last two years. In 2015, its population was 10,500. The maximum concentrations of Rohingya Muslims have been recorded in Jammu. According to the government of Jammu and Kashmir, there are approximately 5,700 Rohingya Muslims living near and around Jammu. However, the central government says there may be approximately 10,000-11,000 Rohingya in Jammu.<sup>111</sup>

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<sup>110</sup> Citizenship amendment bill 2016

<sup>111</sup> Prabhash K Dutta, How Rohingyas reached India and why government is not ready to let them stay, India Today 7, September 2017.

**Table No. 07**

**Rohingya Population in India State Wise**

<b>State</b>	<b>Rohingya Population in families</b>
Jammu and Kashmir	6684
Andhra Pradesh	1755
Haryana	677
Delhi	760
UP	111
West Bengal including Siliguri	351
Punjab	50
Rajasthan	162
Maharashtra	12
Andaman and Nicobar	03
Total	10565

**Source:**<https://www.google.co.in/search?q=rohingya+population+in+indian+map&tbm=isch&tbo=u&source=univ&sa=X&ved=0ahUKEwiGwmHqtfAaAhUM07wKHcveDXgQsAQIQw&biw=1280&bih=645#imgrc=Zdoe7g8rm9TuyM>:

A resident of Jaipur, Surya Pratap Singh Rajwat, through the application, under Right to Information (RTI) and asked the police department about the number of Rohingya refugees in their criminal record. Jaipur Police (North) was added in response to 12 December of 2017 there were Rohingya refugees their area, while the Jaipur Police (West) of December 21, 2017 to give any information, referencing their response, September 21, 2017 RTI Ministry / State Department, Government of India, Rajwat sought number of refugees and immigrants in the Rohingya country; Number of Rohingya refugees and immigrants in India: state wise; Rohingya refugees India and the number of immigrants - District and refugee policy. November 21, 2017, the Ministry said that "the entry of illegal immigrants is hidden and secret and therefore no data

on the number of Rohingya refugees is not available. However, according to an estimate, the number could be around 40,000 state data and the district concerned are not available. There is no national legislation on refugee in country. Foreigner nationals claim to be refugee are dea as per guidelines issued by MHA. Rajwat requested information from the Department of the Director General of Elections and Information Technology and Communications about the identification of voters and the Rohingya refugee base card in Jaipur On November 24, 2017, An answer as of December 4, 2017, Director G General of Elections said that the list of voters was not created on the basis of religion / caste / class or refugees, therefore, it is not possible to provide information in this regard. Similarly, Jaipur figures released by the Rohingya refugee card in the city, north of January 3, 2018, and said that the Special officer (UID) communication Department that no one in India that 182 days is or cards may be based prior to registration with the unique Identification Authority and the Department not maintains such information.<sup>112</sup>

### **India response to Rohingya**

The Myanmar government refuses to grant the Rohingya citizenship, and as a result, the vast majority of the group's members have no legal documentation, effectively making them stateless. Myanmar's 1948 citizenship law was already exclusionary, and the military junta, which seized power in 1962, introduced a law twenty years later stripping the Rohingya of access to full citizenship. Until recently, the Rohingya had been able to register as temporary residents with identification cards, known as white cards, that the junta began issuing too many Muslims, both Rohingya and non-Rohingya, in the 1990s. The white cards conferred limited rights but were not recognized as proof of citizenship. Still, Lewa says that they did provide some recognition of temporary stay for the Rohingya in Myanmar. In 2014 the government held the UN-backed national census, its first in thirty years. The Muslim minority group was initially permitted to identify as

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<sup>112</sup> Hindustan Times, Jaipur, Mar 06, 2018 21:59 IST.

Rohingya, but after Buddhist nationalists threatened to boycott the census, the government decided the Rohingya could only register if they identified as Bengali instead. Rakhine State is Myanmar's least developed state, with a poverty rate of 78 percent. Similarly, under pressure from Buddhist nationalists protesting the Rohingya's right to vote in a 2015 constitutional referendum, then-President Thein Sein canceled the temporary identity cards in February 2015, effectively revoking their newly gained right to vote. (White card holders were allowed to vote in Myanmar's 2008 constitutional referendum and 2010 general elections.) In the 2015 elections, which were widely touted by international monitors as free and fair, no parliamentary candidate was of the Muslim faith. "Country-wide anti-Muslim sentiment makes it politically difficult for the government to take steps seen as supportive of Muslim rights," writes the International Crisis Group.<sup>113</sup> The global refugee crisis is an ongoing concern, with the United Nations High Commissioner for Refugees (UNHCR) reporting a sharp increase in forcibly displaced populations from 59.5 million in 2014 to 65.3 million in 2015. Accessing basic rights such as healthcare, employment, education and freedom of movement is often impossible for stateless people. Lack, denial or loss of nationality underlies the exclusion of affected individuals from membership in the community, to the point of instigating discrimination and oppression in certain cases. There are approximately 10 million stateless people and approximately 1.5 million people who are refugees in addition to being stateless. Rohingya in Myanmar is one of the most persecuted minorities in the world. The majority are not considered to be citizens of the Myanmar Government and live in a condition of statelessness. Rohingya are a Muslim ethnic minority situated primarily in Myanmar's western Rakhine State and are estimated at 1 million people. They have been fleeing Myanmar in large numbers, often to nearby developing countries—particularly Bangladesh, Malaysia, and Thailand—to avoid conflict and persecution. Correspondingly, the refugee crisis in

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<sup>113</sup> Eleanor Albert, The Rohingyas crisis, Available at: <https://www.cfr.org/backgrounder/rohingya-crisis>, 5 January, 2018 (Visited on).

Bangladesh has reached critical levels, with the number of unregistered Rohingya refugees estimated to range from 200,000 to 500,000 people<sup>114</sup>. In many ways, the Rohingya represent “the last man” of international society that Gandhi talked about. They are the most persecuted minority in the world. They are Muslims, who belong to the Sunni sect, who are mainly scattered in the Rakhine state of Myanmar. Persecuted by the Myanmar army and forced to serve as slave labor, they have been systematically tortured by the Buddhist majority.<sup>115</sup>The Minister of State for the Home has said clearly that the government is looking for ways to illegally ban 40,000 Rohingyas who live illegally in the country. The government is concerned about the alleged infiltration of terrorist organizations among displaced people living in various camps. However, UNHCR and Amnesty International asked India to reconsider its decision that the Rohingya are the most persecuted ethnic groups in the world. In dealing with the Rohingya problem, India should adopt a human approach. Refusing to bend under international pressure on the Rohingya crisis, India made it clear that it will not compromise the country's security concerns. However, the government decided to extend support to Bangladesh in supplying all the facilities to the fugitives, who are being moved to the camps. India also said to Myanmar terminates the harassment of Rohingyas. Although India has the largest number of refugees in all of South Asia and seven decades ago, during the partition of the country, which faces one of the largest refugee crises in the world, New Delhi does not have specific laws for refugees.

The constitution of India defines only who the citizen of India is. Subsequent laws also do not deal with refugees. In legal terms, people living in India can be defined as citizens or foreigners under the foreigner Act of 1946. India not signatory refugee Convention 1951 and 1967 protocols - both in relation to the Statute of Refugees, currently Rohingya crisis broke out, according to the

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<sup>114</sup> AbulHasnat Milton, Mijanur Rahman, Statelessness: Rohingya Refugees in Bangladesh, International Journal of Environmental Research and Public Health, page no 2(2017). available at: <file:///C:/Users/acer/Downloads/ijerp-14-00942-v2.Pdf>(Visited on 24/04/2018).

<sup>115</sup> Shiv Viswanathan, There is Rohingyas in all of us, The Hindu, 6 September, 2017. available at: <http://www.thehindu.com/opinion/lead/there-is-a-Rohingya-in-all-of-us/article19626127.ece>(Visited on. 24/04/2018).

UNHCR, there were 2,07,861 people worried in India, of which 2,01,281 refugees and 6,480 were asylum seekers. "It is estimated that there are approximately 16,000 refugees Rohingya certified by UNHCR in India. The government estimates that the number of Rohingya refugees residing in India is more than 40,000 with a maximum concentration around Jammu.

Supreme Court is due to rule on Rohingya faces deportation from the Government of India. It is argued that under the established principles of international refugee law, human rights norms and rights Rohingya on humanitarian law in India, not to return to Myanmar. They should also benefit from India's long doctrine of welcoming refugees.<sup>116</sup> On September 8, 2017, India rejected the "Bali Declaration" of the World Parliamentary Forum in the context of Rohingya and human rights. In particular, there is no national law on refugees from India, despite the fact that India is not a signatory to the 1951 refugee conference and alternative protocols. In the absence of the will of the legal definition of refugees in India, in the case of Assam Mahasangh, the Supreme Court referred to India as "illegal immigrants" in the form of "aggression against the state". It is not surprising that the government plans to deport some 40,000 Rohingyas who live in India based on "security." The courts and the Indian government discussed the Rohingyas and other refugees. Given the lack of national laws and international refugee laws, India will not have to give any relief to Rohingya officially. Consequently, they live in poverty in the huts of the Muslim majority areas of Delhi, Telangana, Jammu and West Bengal. However, in 2016, UNHCR said that India has always respected the principle of non-reflection: not sending refugees to a place where they face danger. Rohingyas have been severely persecuted in Myanmar over the past four decades. The situation has worsened in the last five years. Myanmar has created a so-called "exclusion zone" or "area separation zone" between Taungpyometra and Maungdaw. These are virtually internal fields. Thousands

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<sup>116</sup> If India Wants to Remain, Secular, the New Citizenship Bill Isn't the Way to Go, available at:<https://the.wire.in/67272/citizenship-amendment-bill-2016/>(Visited on, 26/04/2018).

of Rohingyas have gone to Bangladesh. Bangladesh also treats them as unwanted immigrants, however, in recent years they have housed around 500,000 Rohingyas. Like India, the Prime Minister of Bangladesh, Sheikh Hasina, has denied that there are more rohinga entrants. In any case, for that, Rohingya is a problem in the management of Myanmar and the United Nations. The economic situation of Rohingya is serious in the fields of Bangladesh. In search of better means of subsistence, they undertake a risky trip by sea to Thailand, Malaysia and Indonesia, as well as Southeast Asian countries such as Australia. Many Rohingyas have been smuggled into various countries to work as bonded laborers through Thailand. Many of them died on the high seas and Thailand died while crossing the border with Malaysia. In 2017, countries with a Muslim majority in Asia talk about Rohini's situation. While the Malaysian Prime Minister spoke out against the treatment of Rohingya, the Maldives broke off trade relations in protest of Myanmar. In India, Rohingyas have to face two problems: as refugees, they want asylum and, as economic immigrants, they want a formal permit to work in a host country.<sup>117</sup> The Union Ministry of Home affairs responded to the security challenge on August 8, 2017. It gave rights to states and identified and eliminated illegal aliens. To be fair, India is not a signatory to any international refugee conference. The NHRC did not like it, since "there is no doubt that the refugees are foreign citizens but they are human and fear being manipulated after having returned them to their country, this was already a matter of time before Rohingya - Mohammed Salimullah and Mohammed Shakir filed a petition on this issue before the Supreme Court, this is a simple matter In article 14 of our Constitution, No person should deny equality to anyone or should not have the same protection of the laws in the territory of the India ". Article 21 states that he is "deprived of his life or personal liberty" in accordance with the procedure established by law. Prevent you from allowing it. "What is the need to obtain a basic shelter in India abroad? Article 51 (C), Principles of the State Policy Directive, encourages the State to promote

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<sup>117</sup> Swagto Sarkar and parbhakr Singh, *India's role in Rohingya resolution*, available at: <https://www.the Statesma.Com/opinion/indias-role-rohingya-resolution 1502494 7 1 0 .html>(Visited on, 27/O4/2018).

respect for international law. Deportation is definitely against a widely recognized theory of non-reinforcement (that is, if your life is independent, then expel or return a refugee because of your race, religion, nationality, social group or political opinion). Threatened.) India has approved or signed a series of conventions that confirm the "principle of no reflection." Seen as a legal problem, everything is quite simple. The Delhi High Court organized in Dong Lin Khan v/s Union of India that the principle of non-reinforcement is part of the guarantee despite nationality under article 21 of the Constitution of India.<sup>118</sup>

NDTV recently conducted a detailed survey and found that the allegations were baseless. According to the report, in response to a question asked in the budget session of the state legislature in January Chief Mehbooba Mufti said he "is not involved in events related to Rohingya terrorism in Jammu and Kashmir." No example radicalization of these foreigners it has been reported so far, Seventeen first information report against Rohingya for various crimes related to illegal border crossing, (FIR) that was to enter. Has been found in NDTV Rohingya survey covers only 14 FIR. "We have a case of a case of first report information: eight cases of lack of visas, two cases of rape, cow slaughter to track each or next information of 14 FIR, injuries and sell goods in a case the market black and a robbery of railway property. "In crimes that the police also confirmed that in Jammu are guilty," socio-economic other groups of the situation. "Chief lawyer Colin Gonsalves, who represents Jammu Rohingya in the Supreme Court, has also said that there was not a single case of terrorism."<sup>119</sup>

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<sup>118</sup> Why India cant afford Rohingya refugees, Business today, 9 November,2017 available at:[http://www.Business today.in/opinion/ fineprint/rohingya -refugee- crisis- india-bengal- rakhine-my anmar-bangladesh-jammu-settlement /story/263586.html](http://www.Business%20today.in/opinion/fineprint/rohingya-refugee-crisis-india-bengal-rakhine-my-anmar-bangladesh-jammu-settlement/story/263586.html)(Visitee on 03/04/2018).

<sup>119</sup> Bela Bhatia,India is complicit in the Rohingya suffering. availabelat:[https://www.a ljazeera. Co m/indepth/opinio/india-complicit-rohingya-suffering-171006070126544.html](https://www.aljazeera.com/indepth/opinio/india-complicit-rohingya-suffering-171006070126544.html) (Visitedon,13/03/2018)

## Case study

Rohingya refugee crises is evidence of violation of human right. Many story are painful of Rohingya and the Rohingyas refugee's life presently between the frying pan and the fire.<sup>120</sup>

Rnjuma begum she is live in Rakhine state she raped by Burmes solder on his two sister is raped and her son and husband is murdered by Burmes army on her eyes and 50 year old his mother is raped by army in Manyamar and they were betting by the army and after that her home is burn and they were left Manyamar through river route and take shelter for some time in Bangladesh after that she sheltered in India in Chennai camp and facilitate by UNHCR she say if we will deport from India we will die because we do not have any option.<sup>121</sup>

Kohinoor, a stateless Rohingya Muslim refugee stated his plight in these words "We were chased out of Burma. We were chased out of Bangladesh. Now we are here in India, the people here tell us that India is not our country. So where will we go? We don't have any land of our own. Our children don't go to the government schools as they refuse us admission. When we go to the hospital, they don't admit people from our community." Abdul Sukur another Rohingya refugee stated "Our home is Myanmar but they pursued us out. Here also we don't belong. People abuse us for living on the streets and say we are making the spot filthy. We need to move constantly. We need permanent land in India where we can settle and have proper identity documents which we can show."<sup>122</sup> These personal experiences by refugees depict how refugees have to suffer in India. The challenges faced by them show the ground realities of their living here in India. The story of Abu Alam, a Rohingya Muslim Refugee is another painful depiction of the conditions of refugees. He has to flee from his

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<sup>120</sup> available at: <http://www.asianage.com/delhi/refugee-s-life-always-between-frying-pan-and-fire-078> (Visited on 06/05/2018)

<sup>121</sup> available at: <https://www.aljazeera.com/indepth/features/2017/09/rohingya-refugees-share-stories-sexual-violence-170929095909926.html>. (Visited on. 12/05/2018).

<sup>122</sup> "Myanmar's Rohingya Stuck in Refugee Limbo in India", available at: (Visited on, 01/05/2018).

country in 2010 due to atrocities by radical Buddhist groups in Myanmar. Since he entered India illegally without having a passport he was detained by authorities along with two other refugees named Mohammad Salim and Mohammad Farooq. The Session Court in Jammu in 2011 sentenced the trio to two years imprisonment since they have entered illegally therefore they were charged under section 3 of the Passport Act, 1920 and also under section 14-A of the Foreigners Act, 1946. The court ordered that they were sent to District Jail, Kathua in which they have already been for one year because no one came forward to offer bail, the amount of which was Rs. 20,000 each. After they completed their sentence in November 2012, the Ministry of Home Affairs ordered for their deportation. But the problems for these refugees did not end here as they could not be deported because they were stateless as Myanmar Government has refused to recognize Rohingya Refugees as the nationals of their country. Ministry of Home Affairs did not get any response from the Myanmar embassy in New Delhi regarding these three refugees, reason being they were de jure stateless persons. And as per the Foreigners Act, a person is held in detention until he is deported to his own country.

And because of this paradoxical situation when no state is ready to accept them they were detained for a further period of 15 months and 18 days in Kathua Jail.<sup>123</sup>

But on March 2014, Abu Alanis uncle filed a writ of habeas corpus in the High Court of Jammu and prayed that it was the constitutional obligation of the state to release them as they have completed their sentence. Due to this writ the J & K Home Department formalized their detention five months later by an order under the Public Safety Act (PSA), 1978. Under this Act, any person including a foreigner can be detained for the period of two years. When their detention under the PSA ended in 2015 the authorities were ready to send them to New Delhi from where they would be deported to Myanmar. Due to the repeated

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<sup>123</sup> Meher Ali, An Uncertain Refugee: The Fate of the Rohingyas in India”, The Wire, Nov. 15, 2015, available at: (Visited on, 02/05/2018).

requests of their relatives and interference by UNHCR, the Ministry of Home Affairs stopped their deportation but the saddens part is that they continued to remain in detention and no order of release was made. The High Court in this case stated that the three would be released once they will get refugee cards.<sup>124</sup>

On March 7 2018. A Bangladesh cabinet minister has accused Manyamar of obstructing efforts to repatriate 750 thousand Rohingya refugees saying it was unlikely the displaced Muslims would ever return to their homeland. Finance minister AMA Muhith said the repatriation deal signed between Manyamar and Bangladesh in November would likely fail despite his government's official stance that the refugees must eventually go back," I do not believe the Rohingya can be sent back," Muhith said on the occasion of British charity mitting "you can speculate that every few will return to Burma. The first reason is that Burma will only take a few and secondly is that the refugees will never return if they fear persecution," he added using another name for Myanmar Bangladesh insists the repatriation process will go ahead," submitting of 8000 refugees expected to return to Rakhine. But the plan has courted a controversy.

On April 9 2018. Indian government announced aid for Rohingya camp in Bangladesh in the observation of "Operation Insaniyat" and send basic need things for Rohingya like as food and medicine and other things Bangladesh home minister said in a newspaper interview that we want India to pressurize to Manyamar to take these people back as early possible. We want support from same voices in other countries also so that Myanmar is bound to take them back. On April 15 the first family of Rohingya repatriated in Manyamar.

May 23 2018. News was published that around 100 Hindu villagers were killed in Myanmar's Rakhine. It took place on the same day when the Rohingya insurgents staged coordinated deadly raids on the police post that tipped the State into crises. Where 70,000 Rohingya Muslims were forced to move out the country.

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<sup>124</sup> Ibid.

## **Chapter: 5**

### **Conclusion / Suggestions**

India continues to host a large number of refugees not only from neighboring countries, but also from other parts of the world due to its geographic location, democratic government and tolerant religious society. India has always taken a contradictory approach to the protection of refugees. Therefore, when the acceptance of any legal obligation is rejected first, then take refuge in the persecuted communities, responsible for alleviating the application of national laws (such as the Law on Foreign Relations and Passports).

India is neither sign the 1951 Refugee convention nor its protocol 1967, although it is a member of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) since 1996, it does not officially recognize the work of the United Nations agency in its territory. India's reluctance to sign the convention stems from its position that it is Eurocentric adequate in accordance with refugee movements after the Second World War and has not responded well to large-scale migration. Another reason for not signing the UN Convention on the Protection of Refugees is that the signing ceremony forced the politically volatile neighbors to accept the influx of refugees. Billions of people in India with at least six hundred million people are living below poverty line, therefore, our own people live as refugees who have limited access to basic needs. Signature Convention means taking responsibility for providing employment, food, housing, medical care, education, etc. to the refugees.

Although India is not a signatory to the refugee treaty, it is party to the number of international human rights instruments, and its provisions apply equally to refugees. India is one of the signatories of the UDHR 1948, which confirms equal rights for all people, citizens and non-citizens. India voted positively in 1967 to adopt the regional asylum declaration of the United Nations, and in 1966, the Civil and Political Rights (ICCPR) of 1966, as well as Economic, Social and Cultural Rights (ICESCR) 1966 also ratified the international

contract on international contract. India also ratified the United Nations Convention on the Rights of the Child in 1989, and in 1979 the Convention on the Elimination of all Forms of Discrimination against Women (CEDOW). These treaties impose a positive duty on India to protect refugees up to that are afraid to manipulate the hands of the government.

Apart from this, India accepted the principle of non-refoulement considered in Bangkok-Principles, 1966, which was prepared for the guidance of the Member States in relation to matters related to refugees and treatment. These principles include the provisions relating to repatriation, the right to compensation, housing and the minimum level of treatment in the shelter condition.

The Parliament of India has not promulgated any specific law on the refugee. The absence of a specific law on the rights of security, rights and refugees has regulated a large number of refugees in denial of basic security. This rejection goes against the basis of the commitment of the human rights of India under international law and its constitution. The absence of a particular legal regime on the refugee situation does not mean that refugee security and assistance is not provided. The judiciary and its affiliates, such as the NHRC, have tried to answer the question of refugees with an innovative judicial interpretation to establish many procedural rights and, in many cases, the forced hostage has been stopped. However, such interventions are limited to specific cases and judicial declarations have not been implemented in a broad spectrum. This is due to the absence of a certain refugee. In the absence of a specific law, the problem of refugees is being handled by executive action, this absence definitely means that acts of discrimination and arbitrary executive action are not easy to deal with. This means that the decision to treat a group of people or groups as refugees is covered in political thought. The absence of a national law on refugee status also means that refugees depend on the generosity of the state and not on the right to rebuild their lives with dignity. Therefore, the refugees are at the mercy of the state executive machinery and the State has no support against the systematic violation of its legal obligations.

The inequality and discrimination faced by Rohingya in India have a fundamental effect on the enjoyment of all other human rights. According to Prabha Dutta (2017), until now governments have faced refugee questions several time and dealt them differently due to absence of any statute. The Tibetan refugees received a certificate of registration and an identity certificate. The Tamil of Sri Lanka, who fled to escape the turbulence of the country's forces, when the island nation fought against the LTTE revolt, was classified as "refugees from the countryside" and "refugees who do not belong to the camp." Minority refugees: Buddhists, Jains, Palestinians and Christians from Hindus, Sikhs, Afghans, Bangladeshis and Pakistanis could stay in India on long-term visas.

Rohingya are stateless people in Myanmar. It has increased to take refuge in nearby countries, such as Bangladesh, Thailand, Malaysia and, recently, in Indonesia.

Due to the lack of adequate shelters and security structures of statelessness in India, Rohingya is considered an irregular migrant, for whom there is no access to the necessary protection of human rights. The lack of identification and protection of Rohingyas weaknesses as refugees and stateless persons has a discriminatory effect on them and the enjoyment of their human rights. In the form of fear of police harassment, arrest, custody and deportation, violation of freedom, turmoil and freedom of work for most Rohingya is a daily concern. With the difficulties in registering the birth of Rohingya children, and with limited access to medical care, public schools, and there is also a great concern among the Rohingya community that their children will have no future. In response to India's reaction to the violation of human rights violations committed by Rohingya, the inhuman and degrading conditions of some people include informal exile in the hands of long custody and smuggling and human trafficking.

With inequality and discrimination, Rohingya without a state and its consequent lack of legal status in the country is a basic problem that impacts on their conservation and enjoyment of their human rights. While Rohingya

without a state is the result of discrimination in Myanmar, the consequent lack of legal status in India is huge, because there is no security framework for stateless persons in the country. Apart from this, Rohingya's statelessness harms other irregular migrants. Other irregular migrants benefit from policies aimed at strengthening their rights, such as the right to work through the process of verification of nationality, but Rohingya does not. Without suspended individuals and election, Rohingyas have been detained for immigration reasons, they can endure excessively long detention. As stateless people, many long-lived Rohingya have no choice but to live in India, and therefore, while "economic migrants may be vulnerable they have temporary nationality" and the difficulties faced by the Rohingya. The people who are making a living are forever. Apart from this, Rohingya children born in India remain stateless because they do not have access to Indian nationality. India has an obligation, under the Convention on the Rights of the Child, to protect persons who are illegally deprived of their identity and citizenship.

With respect to the relocation of Rohingya, the principle of non-refoulement is part of a traditional international law. In this regard, the relevant views of the Suhrith Parthasarathy judiciary (2017) at least two higher courts of India are bound to follow clearly the country that the theory says. Keter Abbas Habib al Kutifi vs. Union of India (1998) and the risk of Dong Lian vs. Union (2015), Gujarat and Delhi higher courts in Gujarat and Delhi higher courts in their decisions covers respectively guarantees did not improve in article 21 It is. Constitution The Higher Court of Gujarat wrote: "[application of principle]", in spite of its nationality, protects the life and freedom of man. This is not prejudice Article 21 will include, unless the law a presence of refugees and the order and security of India."

In the light of above discussion, following suggestion may be helpful to mitigate the problem of refugee in India in general and the problem of Rohingya in specific:

### **Suggestions:**

1. The need for a refugee law is immediate. Equal treatment of refugees is necessary as long as India continues to accept asylum seekers in its porous borders. The National Human Rights Commission believes that it is necessary for India to fully develop a national policy and possibly a federal law in accordance with the United Nations Convention of 1951 and the 1967 Protocol.
2. UNHCR will have access to the Rohingyas along with all refugees and will be allowed to determine refugee status and fulfill their protection mandate. What is important is that the documents provided by UNHCR to refugees and asylum seekers should be recognized as legitimate security documents by the authority of the state government.
3. Current two-tier structures that accommodate refugees in border camps, but people living outside should not be replaced by a comprehensive, non-discriminatory, refugee protection policy that is applicable in all parts of the country.
4. Indian refugees and immigration policy should differentiate between refugee claimants, irregular migrants and stateless persons, and according to their special needs in each group, respond to the broad framework of immigration control. Apart from this, India should consider the rights of all refugees and those seeking asylum.
5. There should be a sustainable solution for Rohingya and all the refugees in India. Rohingya, repatriation is not a suspicious option of the theory of non-reflection. Apart from this, practically, there are minimal opportunities for rehabilitation. While the international community should accept more refugees from India for rehabilitation, India should work towards a more flexible solution for Rohingya.
6. Convention on Refugees of 1951 and the 1967 Refugee Protocol, Convention on the Status of Stateless Persons 1954. And convention on the reduction of statelessness 1961. This will be an excellent step to improve the security of refugees and stateless persons in the country,

including Rohingya. These conventions require states parties to protect the rights of stateless persons and refugees and reduce statelessness. They also provide a valid basis for UNHCR to use its protection mandate. Initiating the national law and the policy mechanism for the admission and implementation of these treaties would be an important success in terms of security. The membership will also benefit India as this treaty promotes the "sharing of responsibilities" between the states, which can help India handle the burden of the refugee population.

7. The freedom of Rohingya is an uncertain state and has an important influence on the right to safeguard the person. The custody of Stateless Rohingya is discriminatory and arbitrary if it takes into account their vulnerabilities, without breaking the difficulties in the appropriate period, or violating the principle of non-reflection. As a result, it is recommended that India's immigration prevention policy be reviewed and presented in accordance with international law.
8. Since the Rohingya problem is a regional one that is related to some countries. In the area, greater cooperation with neighboring countries should be encouraged and, collectively, they want to address this issue. This regional approach should be based on human rights and the human principles of equality, non-discrimination and security.

## Bibliography

### Books

1. Baral Lok Raj and Muni S.D., "Refugees, South Asia and Security p. no335 (New Delhi Konark Publisher Ed.2008).
2. Sahr dac, Human Right and Humanitarian Law 166 (Oxford University Press, New Delhi, 1<sup>st</sup> ed., 2008).
3. Gil Loescher, Refugee Movements and International Security p no.9, (Adelphi Paper 268 IISS London, 1992),
4. Carthy Justin Mc, Death and Exile: The Ethnic Cleansing of Ottoman Muslims, 1821-1922, (Darwin Press, 1995).
5. Jackson Ivor C, the Refugee Concept in Group Situations 13(Martinus Nijhoff Publishers, The Netherlands, USA, 1999).
6. Patil V.T. and Trivedi P.R., Refugee and Human Rights 13 (Author Press, Delhi, 2013).
7. Jastram and Achiron, Refugee Protection: A Guide to International Refugee Law (Published by the Inter Parliamentary Union with the United Nations High Commissioner for Refugees, 2001).
8. Chimni, All aspects of international refugee law. 51 (Published by Indian Sociological Society 2012).
9. Nicholson Frances and Twomey Patrick, Refugees Rights and Realities: Evolving International Concepts and Regimes (Cambridge University Press, UK, 1999).
10. Hathaway James C., The Rights of Refugees Under International Law, (Cambridge University Press, UK, 2005)
11. Gill Guy S. Goodwin, The Refugee in International Law (Clarendon Paperbacks Press, New York, 2007).
12. Bharat B. Das, Refugee's Problem: Humanitarian Approach (ISIL Yearbook of International Humanitarian and Refugee Law, Vol. V, 2005).
13. Arbel Efrat, Dauvergne Cathrine, and Millbank Jenni the, Gender in Refugee Law (published third avenue new York 2014).

14. Samaddar Ranabir, *Refugee, and the State: Practices of Asylum and Care in India 1947-2000* 10 (SAGE Publications, Kolkata, 2003).
15. Trakroo Ragini, Bhat Aparna and Nandi Samhita, *Refugees and the Law* 17 (Combat Law Publishers Pvt. Ltd., Mumbai 2012).
16. Dhawan, Rajeev, *Refugee Law and the policy in India*, (UNHCR and PILSAARC: New Delhi, 2004).
17. Nair, Arjun, *National Refugee Law for India: Benefits and Roadblocks*, (Rajat Publication New Delhi, 2007).
18. Singh, Jai S., *Refugee Law, and Policy in India: Efforts of Indian Courts* (ISIL Year Book of International Humanitarian Law, Vol. IX, 2009).
19. Jha U.C., *Refugees' Right to Work: An Indian Perspective* (ISIL Year Book of International Humanitarian Law, Vol. III, 2003).
20. Rizvi Sumbul, *International Dimensions of Refugee Law* (ISIL Yearbook of International Humanitarian and Refugee Law, Vol. IV, 2004).
21. Majumder Sumita Das, *Refugee Management in India: Policy Introspection* (ISIL Yearbook of International Humanitarian and Refugee Law, Vol. V, 2005).
22. Suryanarayan V. and Sudarsen V., *Between Fear and Hope: Sri Lankan Refugees in Tamil Nadu* (T.R. Publications Pvt. Ltd., Chennai, 2000).
23. Majumder Sumita Das, *article Refugee Management in India: Policy Introspection* (ISIL Yearbook of International Humanitarian and Refugee Law, Vol. V, 2005).
24. Sinha Manoj Kumar, *"Handbook of Legal Instrument on International Human Rights and Refugees Law,"* (Pub. Lexis Nexis, New Delhi, Ed. 2014).
25. ROY, Sanjay K, *Refugees, and human rights*. Rawat Pub., (New Delhi, Ed.2014 NHRC).
26. Carthy Justin Mc., *Death and Exile: The Ethnic Cleansing of Ottoman Muslims, 1821-1922*, (Darwin Press, 1995).
27. Erik-Jan Zürcher , *Greek and Turkish refugees and deportees 1912-1924*,(oxford publication ed. 2004).
28. Giri T. N., *Right of Refugee concerning Right to Education* (ed. 2000).

29. Goodwin-Gill, G. S. Introduction to the 1967 United Nations Declaration on Territorial Asylum UN Audio-Visual Library of International Law Historical Archives. (2012)
30. Zutsi R. T., Satpute Jayshree, Refugees and the Law, (Human Rights Law Network, New Delhi, 2011)
31. Sinha Manoj Kumar, Handbook of Legal Instruments on International Human Rights and Refugee Laws (Lexis Nexis ed. 2014).
32. Das Bharat B., "A Refugee Problem – Humanitarian Approach", Vol. V, ISIL Yearbook of International Humanitarian and Refugee Law, (2005).
33. Roy Haimanti, Partitioned Lives: Migrants, Refugees, Citizens in India and Pakistan, 1947-65, History Faculty Publications ed. 2012
34. Jain M.P., "Indian Constitutional Law (Lexis Nexis ed. 2014).
35. Rating Bandyopadhyay, Human Rights of the Non-Citizen: Law and Reality, (Deep & Deep Publications Pvt. Ltd., New Delhi, 2007).
36. Bartolowei Linda, "Surviving in the City: Refugees from Burma in New Delhi" in Koichi Kozumi and G. Hoffstaedter, Urban Refugees: Challenges in Protection, Services and Policy, (Routledge Publishers, 2015).
37. Partha S. Ghosh, "Migrant. Refugees and the Stateless in South Asia," (publisher sage Delhi ed.2016).

### **Article/ Journal**

1. UNHRC, "The State of the World's Refugees: Fifty Years of Humanitarian Action", (Oxford University Press, New York, 2000).
2. Rastogi Komal, "What Is The Legal Status Of Refugees In India, April 20, 2016
3. IJARIE-ISSN (O)-2395-4396, "Protection of Refugees in India: A Critical Analysis," Vol-3 Issue-4 2017.
4. Dose Amoolya, India need Refugee law, available at: <https://yourstory.com/2017/06/india-need-refugee-law/> (Visited on 20/ 03/2018).
5. Bacci Massimo Livi, "A Short History of Migration," November 2012, available at: <https://www.wiley.com/en-us/A+Short+History+of+Migration-p+9780745661872>(visited on 25/01/2018).

6. Donkoh Bemba, "A Half-Century of International Refugee Protection: Who's Responsible," *Journal of International Law* Volume 18 Available at: <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.co.in/&httpsredir=1&article=1193&context=bjil> (Visited on, 27/01/2018).
7. Nirmal B.C., "Refugees and human right," *international journal* 2016.
8. Sebastien Moretti, "New issue in Refugee," ISSN 1020-7473 UNHRC (2016).
9. Triola Nicole, "The International Refugee Regime: A Failing System Rampo," Available at: <https://www.ramapo.edu/law/Journal/thesis/international-refugee-regime-failing-system> (Visited on, 25/01/2018).
10. Hathaway James C., "Reconceiving International Refugee Law," (Martinus Nijhoff Publishers, The Netherlands. 1997) Available at: [file:///C:/Users/abc/Downloads/brillreconceiving\\_international\\_refugee\\_law\\_-\\_2013-07-06.pdf](file:///C:/Users/abc/Downloads/brillreconceiving_international_refugee_law_-_2013-07-06.pdf) (Visited on, 2/02/2018).
11. Silvia de Gaetano, "How to Solve Southeast Asia's Refugee Crisis," (2015).
12. Naraya V. Surya, "Need for National Refugee law (2015).
13. Sharma Narayan, "Refugee Situation in South Asia: Need of a Regional Mechanism," (2015) Available at: [http://www.mcrg.ac.in/WC\\_2015/Reading/D\\_Regional\\_Mechanism.pdf](http://www.mcrg.ac.in/WC_2015/Reading/D_Regional_Mechanism.pdf) (Visited on, 2/02/2018).
14. Khadria Binod, Kumar Perveen, Sarkar Shantanu, "International Migration Policy: Issues and Perspectives for India," research paper International Migration and Diaspora Studies Project, Zakir Husain Centre for Educational Studies School of Social Sciences, Jawaharlal Nehru University, New Delhi Available at: [http://lib.jnu.ac.in/sites/default/files/pdf/imdsp/IMDS\\_Dec\\_2008\\_WP\\_1.pdf](http://lib.jnu.ac.in/sites/default/files/pdf/imdsp/IMDS_Dec_2008_WP_1.pdf) visited on, (1/02/2018).
15. Shrivastav Anil, "Need for Domestic Refugee Law," (Halsbury's Law, December 2013).
16. Subramanya N., "Refugees and Human Rights (Journal of the Institute of Human Rights," Vol. VI, No. 1, (June 2008).
17. Nirmal B.C., "Refugees and Human Rights," (ISIL Yearbook of International Humanitarian and Refugee Law, Vol. I, 2001).

18. Sarker Shuvro Prosun, "Proposal for a Refugee Legislation in India," (SSRN Protection of refugee in India: Quest for National Refugee Law, Paper No.112017) (2014).
19. SJ John Messi, "Legal Right of Refugees in India," (Indian social institute ten new Delhi 2015).
20. Saha K.C., "Refugee Assistance and India's Policy," (Bulletin on IHL & Refugee Law, Vol.4, No.1, 2012).
21. Talwar Smrithi, "Building a Regional Consensus on Asylum- The Indian Perspective," (Bulletin on IHL & Refugee Law, Vol.1, No.2, 2014).
22. Talib Rasheed, "Refugees and Human Rights," (Bulletin on IHL & Refugee Law, Vol.2, No.1, 2012).
23. Chandrahasan Nirmala, "Changing Perspectives on Refugee Protection in South Asia," (Bulletin on IHL & Refugee Law, Vol.2, No.1, 2015).
24. Mani V. S., "Indian Society of International Law," Vol. XII-XIII (ISIL year book of international humanitarian and refugee law, 2012-13).
25. Nair Arjun, "National Refugee Law for India," 2007 Available at: <https://www.files.ethz.ch/isn/129030/RP11-ArjunNair.pdf> (Visited on 28/11/2017).
26. Sharma Narayan, "Refugee Situation in South Asia: Need of a Regional Mechanism," (Kathmandu Law Review, Vol.1, No.1, 2008) Available at: <http://www.mcrg.ac.in/WC2015/Reading/DRegionalMechanism.pdf> (Visited on 29/11/2017).
27. Veerabhadran Vijakumar, "A Critical Analysis of Refugee Protection in South Asia," (Vol.19, No. 2 January 2001) Available at: [http://www.mcrg.ac.in/WC\\_2015/Reading/D\\_Refugee\\_Protection.pdf](http://www.mcrg.ac.in/WC_2015/Reading/D_Refugee_Protection.pdf) (Visited on 29/11/2017).
28. Kumar V. Vijaya, "Judicial Responses to Refugee Protection in India," (International Journal of Refugee Law, Vol.12, No.2, 2000) Available at: [https://watermark.silverchair.com/120235.pdf?token=AQECAHi208BE49Ooann9kkhW\\_Ercy7Dm3ZL\\_9Cf3qfKAc485ysgAAAclwggGBgkqhkiG9w0BBwagggGvMIIBqw](https://watermark.silverchair.com/120235.pdf?token=AQECAHi208BE49Ooann9kkhW_Ercy7Dm3ZL_9Cf3qfKAc485ysgAAAclwggGBgkqhkiG9w0BBwagggGvMIIBqw) – IBADC (Visited on 29/11/2017).

29. Kaushik Sidharth & Bhatnagar Stuti, international journal volume 2 Need for Codification of Refugee Laws in India 2014 Available at: [http://www.ijra.in/uploads/41723.3673049306fullpaper\\_Sidharth%20Kaushik %20%20Stuti%20Bhatnagar.pdf](http://www.ijra.in/uploads/41723.3673049306fullpaper_Sidharth%20Kaushik%20%20Stuti%20Bhatnagar.pdf) (Visited on 30/01/2018).
30. Mian Al Imran and, "Policy Towards Rohingya Refugee: A Comparative analyses of Bangladesh, Malaysia, and Thailand," (Journal of the Asiatic Society of Bangladesh (Hum.), Vol. 61(1), 2016).
31. Engy Abdelkader, "The Rohingya Muslims in Myanmar: Past, Present, and Future," (SSRN article 2013).
32. Paryani Sayda, "The Rohingya Refugee Crisis and Bangladesh-Myanmar Relations," (sage international journal volume 22 2013).
33. Southwick, "Elements of pathos and media framing as scientific discourse: A newspaper perspective on Rohingya crisis," International Journal of Advanced and Applied Sciences, 3 (10) 2016,
34. Jahan, "Nationality crisis and Rights of Rohingya Refugee Bangladesh," Available at: <http://repository.library.du.ac.bd/xmlui/bitstream/handle/123456789/386/lsrat%20Jahan.pdf?sequence=1> (Visited on 31/01/2018),
35. Sarker Shuvro Prosun, "Protection of Refugees in India: Quest for National Refugee Law," (RLI Working Paper No. 11 2013).
36. UNHCR, "Protection Training Manual for European Border and Entry Officials," Available at: <http://www.unhcr.org/4d944c319.pdf> (Visited on 19/01/2018).
37. Tulika Chkrbrdhy."Immigration Laws in India (2016).
38. UNHCR,"Hand Book and Guideline on Procedure and Criteria for Determining Refugee Status," (December 2011).
39. Kumar Ashok,"A guide to rights and entitlements to services and welfare for refugees, asylum seekers and migrant workers," (2014).
40. Kumar Dr. Vivek, "A study of refugee's in India: The legal perspective," International Journal of Law ISSN: 2455-2194. Volume 3; Issue (5; September 2017).
41. Anne-Sophie Bentz j, "Being a Tibetan Refugee in India,"(2012).
42. Hans Asha, "Sri Lankan Tamil Refugees in India," Vol. 13, (2015).

43. Human right law network Report of Refugee Populations in India November 2007 Available at: [Http://www.hrln.Org/admin/issue/subpdf/Refugee populations India.pdf](http://www.hrln.Org/admin/issue/subpdf/Refugee%20populations%20India.pdf) (Visited on 12/02/2018).
44. Care Geoffrey, "The Judiciary, the State and the Refugee: The Evolution of Judicial Protection in Asylum- A U.K. Perspective", Vol. 28, Issue 5, Fordham International Law Journal, 1427 (2004).
45. Ahmad Nafees, "The Constitution-Based Approach of Indian Judiciary to The Refugee Rights and Global Standards of the UN Convention," Vol. 8, No. 1 (2017). (Published by: King's College London).
46. Gupta Nipun, "Refugee Status in India: An Analysis", Vol. I, Issue I, The A38 Journal of International Law (2014).
47. Kumar Kamlesh, "Defending the Defenders: An Analysis of Violence Against Human Rights Defenders in India", Vol.3 (12), International Journal of Sociology and Anthropology, 460 (2011), Available at: <http://www.academicjournals.org/> (Visited on 27/03/2018)
48. Report of National Human Rights Commission of India, Asia Pacific Forum Meeting, Malaysia, 2 (28-31 July, 2008).
49. Rao P.P., "Role of Judiciary in Providing Refugee Protection Report on Judicial Symposium on Refugee Protection," 114 (New Delhi Nov.1999).
50. Alam Marghoob, "Role of National Human Rights Commission of India in Protection and Promotion of Human Rights", Vol. I, Issue VIII , International Journal of Multifaceted and Multilingual Studies, (2015)
51. Bhargava S.N., "Relationship between National Human Rights Institutions and the Judiciary in Protecting Refugees", Report on Judicial Symposium on Refugee Protection, 93 (New Delhi Nov.1999,).
52. Dhavan Rajeev, "Refugee Law and Policy in India," (PILSARC, New Delhi, 2004).
53. Hathaway James C, "Why Refugee Law Still Matters", Vol.8, Melbourne Journal of International Law, 98 (2007).
54. Mhdin Amna, "A brief history of the word "Rohingya" at the heart of a humanitarian crisis," (2017).

55. Report of OHCHR mission to Bangladesh Interviews with Rohingyas fleeing from Myanmar since 9 October 2016 <http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf> (Visited on 03/03/2018).
56. Hashmi Afreen, "Do Rohingya Refugees in India have Constitutional Rights?," Available at: <http://ohrh.law.ox.ac.uk/don-rohingya-refugees-in-india-have-constitutional-rights/> (Visited on 21/03/2018).
57. Milton Abul Hasnat, Mijanur Rahman, "Statelessness: Rohingya Refugees in Bangladesh," International Journal of Environmental Research and Public Health, (2017).
58. Engy Abledkar, The Rohingyas Muslims in Myanmar: Past, Present, and Future Vol. 15, X (2017).
59. Ali Meher, "An Uncertain Refugee: The Fate of the Rohingyas in India," The Wire, (2015).

## Thesis

1. Sharma R.C., "India's refugee regime and resettlement policy a case study of Chakmas in Arunachal Pradesh," (2014) (Jawahar Lal Nehru University Delhi) Available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/128045/12/07\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/128045/12/07_chapter%201.pdf) (Visited on 25/11/2017).
2. Sethi Sidharta, "Rights of Refugees: A Critical Study of International and Indian Law," (2012) Department of Law Himachal Pradesh University Shimla 2012 Available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/128045/12/07\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/128045/12/07_chapter%201.pdf) (Visited on 24/11/2017).
3. Sood Shefali, "Discourse and Responsibility: Climate Change Refugees in South Asia," Thesis submitted to the Faculty of the College of Literature, Science and the Arts at the University of Michigan in partial (2017).
4. Linda Crossman, Myanmar's Rohingya Refugee the search for Human Security," Thesis submitted to the Faculty of The School of Continuing Studies Georgetown University Washington, D.C. September 29, 2014, available at <https://repository.library.georgetown.edu/bitstream/handle/10822/712446>

/Crossman\_ Geor getown \_0076M\_12771. pdf?sequence =1 (Visited on 1/02/2018).

5. Wirtz Leona Elisabeth, "Nation-Building in Myanmar - the Exclusion of a Minority Group," Master Thesis, Aalborg University. Available at: [http://projekter.aau.dk/projekter/files/77944770/Master\\_Thesis\\_DIR\\_Leona\\_Wirtz.pdf](http://projekter.aau.dk/projekter/files/77944770/Master_Thesis_DIR_Leona_Wirtz.pdf) (Visited on (18/09/ 2017)).
6. Lamboo Linde, "Seeking Solutions: Stateless Rohingya and strategies at the interface of scheduled interventions A case study of Rohingya refugees in Aceh and Kuala Lumpur," master Thesis, Washington University. Available at: <http://edepot.wur.nl/406243> Visited on (18 /09/ 2017).

### **Online Resource**

1. [http://data2.unhcr.org/en/situations#\\_ga=2.225115678.541966760.1511785373-129935238.1511785373](http://data2.unhcr.org/en/situations#_ga=2.225115678.541966760.1511785373-129935238.1511785373) visited on (27/11/2017).
2. [http://shodhganga.inflibnet.ac.in/bitstream/10603/28322/10/10\\_chapter % 2 04. pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/28322/10/10_chapter%204.pdf) (visited on 19 September 2017).
3. <https://ralphjanik.wordpress.com/2017/11/04/a-very-short-history-of-international-refugee-law/>
4. UNHCR Protection Training Manual for European Border and Entry Officials, Available At: <http://www.unhcr.org/4d944c319.pdf> (Visited on 19 January 2018).
5. <https://ralphjanik.wordpress.com/2017/11/04/a-very-short-history-of-international-refugee-law/>
6. [http://shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10603/172260/1/11\\_chapter\\_3.pdf](http://shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10603/172260/1/11_chapter_3.pdf) visited on, 10/02/2018
7. <https://www.worldatlas.com/articles/the-countries-with-the-highest-population-of-rohingya-people.html>
8. <http://www.dw.com/en/kofi-annan-report-warns-of-rakhine-radicalization-amid-deadly-rohingya-attacks/a-40240683>

### **News paper**

1. Daily Sabha Asia Pacific, Rohingya Muslims: World's most persecuted minority Available at: <https://www.dailysabah.com/asia/2017/09/11/rohingya-muslims-worlds-most-persecuted-minority> (Visited on 18/09/2017).
2. Duta Prbhas k., "How Rohingyas reached India," India Today, 7 September, 2016.
3. Bhattacharjee, Saurabh, "India Needs a Refugee Law," Economic & Political Weekly (2008).
4. Upadhyay Shreya, "The Future of India's Do-Nothing Policy Toward the Rohingya," The diplomate asia pecific (December 07, 2017).
5. Ganguly Meenakshi," South Asia Director,India: Don't Forcibly Return Rohingya Refugees," 2017 Availabel at: <https://www.hrw.org/news/2017/08/17/india-dont-forcibly-return-rohingya-refugees> (Visitedon 12/02/2018).
6. Singh Kanishka, "Here is how various refugee communities have fared in India," ,Indian Express September 14, 2017
7. Dutta Prabhas K, How Rohingyas reached India and why government is not ready to let them stay (India Today 7 September 2017).
8. Viswanathan Shiv, "There is Rohingyas in all of us," The Hindu,(6 September,2017).
9. Sarkar Swagto and Singh Parbhakr, "India's role in Rohingya resolution," Available At: <https://www.TheStatesma.Com/opinion/indias-role-rohingya-resolution-1502494710.html> (Visited on, 25/04/2018).
10. Why India can't afford Rohingya refugees, Business today, 9 November, 2017 Available At:<http://www.Business today.in/opinion/fineprint/rohingya-refugee-crisis-india-bengal-rakhine-myanmar-bangladesh-jammu-settlement/story/263586.html>(Visited on 21/04/2018).
11. USA Today Feb. 2018 available at:<https://www.usatoday.com/story/news/world/2018/02/01/u-n-official-rohingya-crisis-has-hallmarks-genocide/105763001/>
12. Hindustan Times,
13. Divide Rajeev, "India's Refugee Law and Policy," (The Hindu, 2016).

## **International and National Instrument**

1. UDHR 1948
2. 1967 un declaration on territorial asylum
3. 1954 convention relating to status of stateless person
4. 1951 Convention relating to status of refugee
5. Refugee Protocol 1967
6. OAU Convention, 1969.
7. ICESCR, 1966
8. CRC, 1989.
9. CEDAW, 1979.
10. Registration of Foreigners Act, 1939.
11. Refugee and Asylum seeker Bill 2006
12. The asylum bill 2015. Bill No. 334 of 2015
13. Citizenship act 1955
14. Citizenship amendment Bill 2016