

## ASYLUM AND REFUGEE PROTECTION IN INDIA

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### WHO IS CLASSIFIED AS A REFUGEE?

According to Article 1 of 1951 Convention Relating to the Status of Refugees, “ A refugee is person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>1</sup>

The above-given definition given in the 1951 convention was earlier constrained only to persons fleeing the Europe before 1951. Later the 1967 Protocol removed these limitations and gave the Convention universal coverage.<sup>2</sup>

Parties the 1951 convention and the 1967 protocol are 148 (not including Gulf nations and India).<sup>3</sup>

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<sup>1</sup>*Convention relating to status of refugees*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, (Apr. 15, 2017), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

<sup>2</sup>*Convention and protocol relating to status of refugees* ,UNITED NATION HIGH COMMISSION FOR REFUGEES, (Apr. 15, 2017), <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>

<sup>3</sup>*States parties to the 1951 convention relating to the status of refugees and the 1967 protocol*, United Nation high commissioner for refugees, (Apr. 10, 2017), <http://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>

## **WHO IS AN IDP AND HOW HE IS DIFFERENT FROM REFUGEE?**

An internally displaced person (IDP) is a person who has been forced to flee his or her home country for the same reasons as a refugee, but remains in his or her own country and has not crossed an international border. Unlike refugees, IDPs are not protected by international law or eligible to receive many types of aid that refugees may be entitled to. As the nature of war has changed in the last few decades, with more and more internal conflicts replacing war among countries, the number of IDPs has increased tremendously.<sup>4</sup>

## **WHO IS AN ASYLUM SEEKER?**

When people flee their own country and seek sanctuary in another country, they apply for asylum – the right to be recognized as a refugee and receive legal protection and material assistance. An asylum seeker must demonstrate that his or her fear of persecution in his or her home country is well-founded.<sup>5</sup> Common law states that there must be a reasonable degree of fear that the applicant would be persecuted in their home country and the danger faced by them must be real and substantive.

## **THE STATUS OF REFUGEES AND THEIR NEED FOR ASYLUM**

Refugees always try to find better conditions for themselves by trying to flee their homeland and find solace in another. The status of refugee has gone tremendous shift in the past two centuries due to war, change in ruling, oppression, etc. because of the mass exodus going on, we are now

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<sup>4</sup>*What is a refugee*, UNITED NATION HIGH COMMISSIONER ON REFUGEES,(Apr.10,2017), <http://www.unrefugees.org/what-is-a-refugee/>

<sup>5</sup> *Id.*

witnessing the highest levels of displacement on record according to United Nations.

Around 65.3 million people around the world have been forced out of their home. Among them are nearly 21.3 million refugees, half of whom are under the age of 18.

There are also 10 million stateless people who have been denied a nationality and access to basic rights such as education, healthcare, employment and freedom of movement and nearly 34,000 people are forcibly displaced every day as a result of conflict or persecution.<sup>6</sup>

### **RIGHTS OF REFUGEES AND ASYLUM SEEKERS**

The United Declaration on Human Rights (UDHR) has encompassed that countries worldwide should hear the plight of the refugees and grant them asylum. It can be ascertained from the following:

Article 14 - Universal Declaration of Human Rights:

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations<sup>7</sup>.

There is no explicit prerogative for the refugees to be “granted” with asylum, they have a right to seek asylum but not to be granted according to international law and international conventions. Even if an individual fulfils

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<sup>6</sup>*Figures at a Glance*, UNITED NATION HIGH COMMISSIONER ON REFUGEES, (Apr. 10, 2017) <http://www.unhcr.org/figures-at-a-glance.html>

<sup>7</sup>*Universal Declaration of Human Rights*, UNITED NATIONS, (Apr. 1, 2017), <http://www.un.org/en/universal-declaration-human-rights/>

the criteria of the Geneva convention<sup>8</sup> of being termed as a refugee it does not give that individual the entitlement of seeking asylum in a country as it is under state discretion whether to accord it or not. Each state thus makes its own rules and regulations on how to govern this issue. The United Nations High Commissioner for Refugees (UNHCR) has the duty to supervise its application, but has no authority to provide mandatory interpretations. The task of interpreting the Convention has thus fallen to domestic law-makers and courts.<sup>9</sup>

Due to the harsh circumstances these refugees enter a state unlawfully for protection and better life. Article 31 of the 1951 convention says ‘Refugees unlawfully in the country of refuge should not be punished for their illegal entry if they come directly from the territory where their life and freedom was threatened and if they report themselves immediately to the authorities, showing good reason for their illegal entry’ (Article 31).<sup>10</sup>

A new principle is also being seen in article 33 of the convention<sup>11</sup> which is the principle of non-refoulement. This means that if an individual is fleeing persecution then the contracting state shall not return (refouler) the refugee to the place where his life or freedom would be threatened. The Office of the United Nations High Commissioner for Refugees even opines that the principle of non-refoulement satisfies the requirement of being international customary law as given in article 38 of the statute of international court of justice as it is based on a consistent practice combined with a recognition on

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<sup>8</sup>*The 1951 Refugee Convention*, UNITED NATION HIGH COMMISSIONER ON REFUGEES, (Apr. 10, 2017) <http://www.unhcr.org/1951-refugee-convention.html>

<sup>9</sup>Ionel Zamfir, *Refugee status under international law*, EUROPEAN PARLIAMENTARY SERVICE BLOG, (Mar. 22, 2017) <https://epthinktank.eu/2015/10/27/refugee-status-under-international-law/>

<sup>10</sup> *Id.*

<sup>11</sup>*Convention relating to the status of refugees*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, (Apr. 15, 2017), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

the part of States that the principle has a normative character.<sup>12</sup>

## **WHY IS INDIA NOT A SIGNATORY TO THE UNITED NATIONS REFUGEE CONVENTION OF 1951?**

India is a host to a large population of refugees and it has welcomed some one of the biggest refugee populations in South Asia. Considering that India does not have any Formal legislation with regard to asylum seekers and refugees an imperative question arises as to why India is not a signatory to the UN convention and protocol prescribed on the above topics?

### **DEFINITION OF THE TERM “REFUGEE”**

India found the definition of refugee to be a narrow one; the concern was raised by India in the 54<sup>th</sup> session of the executive committee meeting of the United Nations High Commissioner for Refugees (UNHCR) in 2003 stating that the definition had failed to recognize the fundamental factors which give rise to the refugee movements. The Indian representative further stated that “most of the refugee movements are directly related to the widespread poverty and deprivation around the globe”. Therefore, there are various groups of people around the globe to whom the convention does not apply.<sup>13</sup> Also, another argument is that the definition of the term refugee confines itself to the violation of civil and political rights of refugees, but the definition does not extend to economic, social and cultural rights. The definition does not allow protection for the protection of those individuals

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<sup>12</sup>*The principle of non-refoulement as a norm for customary international law*, United nation high commissioner on refugees, (Apr. 15, 2017), <http://www.refworld.org/docid/437b6db64.html>

<sup>13</sup>Akansha Seth, *In Defence of the Indian Reservations to the Refugee Convention: Playing the Devil's Advocate?*, (July 29, 2003), <http://refugeewatchonline.blogspot.in/2013/07/in-defence-of-indian-reservations-to.html>

and groups of individuals fleeing situations of generalized violence or internal warfare.

#### **SECURITY REASONS**

South Asia's and India's borders are highly porous, causing a mass migration of people. India being a relatively stable country in the subcontinent witnesses a large influx of refugees. But lacks the political, administrative and the military capacity and infrastructure to enforce rules and regulations with regard to the entrance and sustenance of these populations in the country.

Considering the above-mentioned reasons, there could be two possible outcomes -

1. It can result in a strain on the resources and infrastructure of a country like India, which is a developing country and is not well equipped to deal with sudden spikes in population.
2. The demographic balance can be upset by such mass movement of refugees.

#### **INDIA ALREADY DOES ITS DUTY**

Though India is not a signatory to the United Nations Refugee Convention of 1951 or the Protocol of 1967, it currently fulfils its moral obligations willingly. Two UNHCR Offices are present in New Delhi and Chennai to look into matters of refugees. India is home to a diverse group of refugees, ranging from Bhutanese from Nepal to the Buddhist of Chittagong Hill Tracts of Bangladesh; Muslims Rohingyas from Myanmar and various

other small populations of Sudan, Somalia and other Sub-Saharan African countries. India does not even take money from (UNHCR) to financially assist the refugees. Therefore, India is already doing its duty with aiding the refugees.<sup>14</sup>

#### **IMPRACTICALITY OF THE CONVENTION FOR DEVELOPING COUNTRIES LIKE INDIA**

The 1951 Refugee Convention gives various rights to refugees which are entirely impractical for third world countries like India. India is not a developed nation and it is a developing nation, therefore India can barely meet the needs and requirements of its own citizens. Being aware that this will put a lot of additional burden on the resources and infrastructure of India which it will not be able to handle the convention and protocol and convention have not been ratified because after doing so India would be obliged to host refugees India has an ever growing population and the government of India first has an obligation to meet the basic needs and requirements of its citizens.<sup>15</sup>

#### **TERRORISM**

Many countries around the world have very restrictive migration policies for refugees; this has been the result of the threat to security which has resulted from terrorist activities and terrorist attacks which have taken place across the globe. In the prevailing politicking around migration, it has been seen as a trend of anti-terror measures are being linked to the management of cross-

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<sup>14</sup>Dipankar De Sarkar, *Why India won't sign Refugee Treaty*, (September 11, 2015), <http://www.livemint.com/Opinion/bePZQScFIqIwEWv9Tqt4QO/Why-India-wont-sign-Refugee-Treaty.html>

<sup>15</sup>*Refugee Review: Re-Conceptualizing & Forced Migration in the 21<sup>st</sup> Century*, ESPMI NETWORK, (May 28, 2015), <https://refugeereview2.wordpress.com/2015/05/28/understanding-Indias-refusal-to-accede-to-the-1951-refugee-convention-context-and-critique/>

border flows. This trend is based on the perception that various terrorist groups and terrorists take advantage of refugee flows to carry out acts of terrorism, and another perception is that the refugees are somehow more prone to radicalization than others.<sup>16</sup> Migration policies which are very restrictive aim at building fences, engaging in pushback operations, criminalize irregular migration and abandon international legal commitment. The Paris attacks in 2016 are a glaring example of the threat of terrorism, which lies from such cross-border movements of refugees.

### OVERVIEW OF CURRENT REFUGEE STATUS IN INDIA

Asylum policies in India have been generous with regard to refugees. India persists in receiving refugees in spite of a dearth of any refugee-specific legislation to protect the interest of refugee regime in the country. India has been host to approximately 435,900 refugees and asylum seekers according to the World Refugee Survey 2007 conducted by the United States Committee for Refugees and Immigrants (USCRI)<sup>17</sup> as supported by the figures from United Nations High Commissioner for Refugees. Various migratory populations from the Indian subcontinent that have fled their countries of origin due to internal or external conflict, fear of persecution or human rights transgressions have found safe shelter and humanitarian protection in India. There continues an unhindered inflow of refugees in India despite a lacuna in its legal system that has failed to evolve a coherent and uniform law governing its refugee population despite multiple reports<sup>18</sup>

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<sup>16</sup>*Refugees and terrorism: "No evidence of risk" – New report by UN expert on counter-terrorism*, (October 21, 2016), United Nations Human Rights Office Of The High Commission, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20734>

<sup>17</sup>*World Refugee Survey 2007*, [http://www.refugees.org/WRS\\_Archives/2007/48-69](http://www.refugees.org/WRS_Archives/2007/48-69).

<sup>18</sup> Rajeev Dhavan, *On the Model Law for Refugees: A Response to the National Human Rights Commission (NHRC)*, NHRC ANNUAL REPORTS 1997- 1998, 1999-2000 (New Delhi: PILSARC, 2003).

by National Human Rights Commission (NHRC) encouraging the promulgation of a national legal framework.

The term “refugee” has nowhere been delineated in the current law; consequently, the term foreigner is used to address refugees, placing them under the same head as immigrants and tourists alike. The absence of specific refugee legislation in India has driven the government to adopt ad hoc policies leading to differential treatment of diverse refugee influxes. India not being a signatory to the Geneva Convention<sup>19</sup> determines the status of varying refugee groups based on political, administrative and judicial decisions rather than being regulated by a model code of conduct. The grounds are usually political consideration and national origin of refugee fluctuating from case to case. In the year 1998, it was estimated that only 18,500 out of more than 300,000 refugees in the country receive UNHCR protection.<sup>20</sup> Yet certain policies of these international treaties have been incorporated into the municipal law and acquired the status of customary international law as in the case of Sri Lankan Tamil Refugees whereby an official refugee determination process has been followed in compliance with the principle of non-refoulement. India has acceded to the Human Rights Conventions and Treaties of the United Nations which makes it obligatory for it to protect the human rights of refugees under Article 51(c) and Article 253<sup>21</sup> and also follow the principle of non-refoulement despite not ratifying the 1951 Convention and the 1967 Protocol.

Being a member of the Executive Committee of the United Nations High Commissioner for Refugees puts a moral, if not a legal obligation upon India to build a constructive partnership with UNHCR. The UNHCR also

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<sup>19</sup> *The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol* <http://www.unhcr.org/home/PUBL/3b5e90ea0.pdf>.

<sup>20</sup> H K Thames, *India's Failure to Adequately Protect Refugees*, WASHINGTON COLLEGE OF LAW 2000 (July 20, 2007), <http://www.wcl.american.edu/hrbrief/v7i1/india.htm>.

<sup>21</sup> INDIA CONST. art. 253, art. 51, cl. C.

aids the government in relation with verification about the background and general circumstances in the individual's country of origin. The UNHCR based in New Delhi accords a full range of benefits to some refugee groups including legal residence as well as employment while others are illegalized and denied access to basic social resources, also making them liable to deportation and detention. Refugee groups receiving protection from UNHCR have access to services provided by its implementing partners: the YMCA, Don Bosco and the Socio-Legal Centre such as education, accommodation, psychological support, vocational training, legal aid and sensitization programmes.

In the case of Tibetan refugees fleeing from Tibet after the Chinese incursion in 1951 due to an oppression of human rights by Chinese government despite pleas from Dalai Lama and his government who had to ultimately flee their country due to security threat followed by an exodus of Tibetan people have received refuge in India. Registration certificates have been issued to about 150,000 of them till now subject to renewal. However, same legal status has not been afforded to all as was done in the case of the first wave of Tibetan refugees. This group has been the recipient of more rights than most refugee groups in India and is the only one to receive travel permits.<sup>22</sup>

In contrast, the Afghan community has not yet been recognized as refugees by the Indian government. They are protected under the UNHCR mandate and are given valid residence permits which afford them some degree of legal protection, thus, permitting them to stay in the country even without valid passports. Obtaining residence permits is becoming tougher for the newer refugee arrivals of this community. Subsistence allowance received by the freshly recognized Afghan refugees is as meagre as Rs. 2,225 for the

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<sup>22</sup>*Report of Refugee Populations in India*, HUMAN RIGHTS LAW NETWORK (Nov. 2007) [http:// www.hrln.org/admin/issue/subpdf/Refugee\\_populations\\_in\\_India.pdf](http://www.hrln.org/admin/issue/subpdf/Refugee_populations_in_India.pdf)

principal applicant and Rs. 750 for each dependent for the first six months.

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## CURRENT LAWS GOVERNING REFUGEES IN INDIA

The lacuna of Indian laws does not mention the term Refugee. There is a clear ambiguity on the Rights and Duties held by a foreigner in India. Due to the absence of Municipal Laws; customary and international laws gain importance and premise. Refugees seeking Asylum in India are protected under the Indian Constitution besides the binding nature of India Precedent upon them. Article 21 of the constitution guaranteeing 'Right to life and Personal liberty' is available to foreigners<sup>24</sup> amongst other fundamental right such as protection against arrest and detention; freedom to profess and propagate and practice any religion.<sup>25</sup>

As enshrined under the Fundamental duties of our nation we shall "foster respect for international law and treaty obligations in the dealings of organised peoples with one another",<sup>26</sup> this read along with A253 of the constitution outset the doctrine of harmonious construction of international and domestic law.

Currently the Foreigner Regional Registration Offices (FRRO), Bureau of Immigration India, deal with refugees that too on an Ad- Hoc basis creating a de facto refugee regime in India. Numerous legislations govern the entry and status of refugees in India, most of which are found to be redundant and draconian in nature. Immigration laws form the basis of these laws and no specific legislations have been incorporated with regard to refugees.

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<sup>23</sup> *Id.*

<sup>24</sup> Louis De Raedt and Ors. v. Union of India, 1991 3 SCC 554.

<sup>25</sup> Article 22; Article 25, Constitution of India, 1949.

<sup>26</sup> INDIA CONST. art. 51(c).

The Registration of Foreigners act, 1939 defines foreigner as ‘a person who is not a citizen of India’<sup>27</sup> such persons are granted registration under this act. The Foreigners Act, 1946 deals with entry, exit and stay<sup>28</sup> with certain exceptions to foreigners. Penalties are also prescribed in case of contravention of any provisions.<sup>29</sup>

The National human rights commission also plays an important role in deciphering the rights of such refugees and can *Suo Moto* investigate any human rights contravention. The NHRC has made ample recommendations with respect to formulation of a codified law on the subject.

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

Since the dawn of civilisation, India has had a long history of sheltering refugees. The total number of Migrants who have received protection in India has been one of the highest in the world, refugees from countries like Myanmar, Iraq, Afghanistan and others fleeing from war, violence and severe persecution come to India seeking refugee status. With the increase in conflicts all over the world regarding asylum seekers, the arrivals of refugees are likely to further increase.

India has always been most welcoming and generous while dealing with refugees, however, India has failed to come up with a coherent and uniform law addressing the issue of asylum. India is not a signatory to the 1951 UN Convention<sup>30</sup> or the 1967 Protocols<sup>31</sup> and the term “refugee” has not been defined under any Indian Domestic Law till date and Refugees are given the same treatment as foreigners.

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<sup>27</sup> Registration of Foreigners Act, 1939 S. 2(a).

<sup>28</sup> Indian Foreigners Act, 1946 S. 3.

<sup>29</sup> Indian Foreigners Act, 1946 S.14.

<sup>30</sup> UNHCR, 1951 Refugee Convention.

<sup>31</sup> UNHCR, 1967 protocols.

It is true that the Indian government has no current policy or any concrete legislation to deal with issues regarding refugees; however, a traditional policy which is based on a combination of *ad hoc* executive policies and judicial pronouncements is followed to deal with matters pertaining to refugees. In the absence of a specific law The Government of India relies on various enactments such as The Foreigners Act, 1946, Registration of Foreigners Act, 1939, The Passport (Entry of India) Act, 1920, The Passport Act, 1967, The Registration of Foreigners Act, 1939, The Foreigners Act, 1946, and The Foreigners Order, 1948 to govern the entry, stay, and exit of all refugees. However, these legislations treat refugees as foreigners and fail to take into account their special status on humanitarian grounds or under international law. The current enactments that are being followed are not well equipped to support the country's current need to deal with asylum seekers and migration movements. Another important aspect with regard to the process of deciding who qualifies as a refugee is also vague and unclear.

As stated earlier that India has not signed the 1951 United Nations Refugee Convention on the Status of Refugees or its 1967 Protocol that stipulates the rights and services host states must provide refugees, and given the current flow of refugees with an expected increase in the coming years, this is a moment for India, to re-examine their current response and preparedness to deal with refugees and situations of mass movements.

### **THE ASYLUM BILL 2015**

In the Year 2015, Shashi Tharoor, an Indian politician and a former diplomat currently serving as a Member of Parliament from Thiruvananthapuram, Kerala since 2009, stepped in and introduced the Asylum Bill 2015<sup>32</sup>, with the objectives of:

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<sup>32</sup>The Asylum Bill 2015.

- Formally defining a refugee, set eligibility standards for seeking asylum, rights, entitlements and obligations.
- To bring a global recognition to India for its enduring commitment to refugee protection
- To end the system of ambiguity and arbitrariness that, often results in injustice to a highly vulnerable population.
- To enable the Government to manage refugees with more accountability and order, and to provide a balance between humanitarian concerns and security interests of the State.

India has been a generous host to several persecuted communities and it has provided for such cases with an open heart, it can be safely said India has been doing more than the countries who are signatories to the UN Refugee convention of 1951. This proposed bill if passed will finally recognize India's standing and regular commitment to humanitarian and democratic values.

If the Asylum bill of 2015, is passed it will not only have an Impact on the Refugee protection, it will give the Indian Government a firm structure for asylum management which will ensure that the State authorities and structures are prepared to respond to any future refugee crisis at India's doorstep.

While the Asylum Bill of 2015 is welcome as it has a clear vision to give India a uniform structure to deal with refugees and asylum seekers, it has several drawbacks that must be dealt with as it took India almost 70 years to come up with a bill addressing such a fragile matter affecting a number of people, efforts shall be made to ensure that the bill is complete in itself. Future asylum law should be based on four principles which Tharoor's bill

should be measured against. The principles are<sup>33</sup>: (i) Asylum is of a dynamic nature and requires different categories of protection (ii) Mixed migration needs flexible mechanisms; (iii) Mass influxes must be given more attention than individualised procedures. (iv). The goals of the legislation are asylum management and refugee governance. While the bill is still in motion the need of the hour is to make it completely defect proof leaving behind any loopholes.

### CONSTITUTIONAL PROTECTION

Foreigners are entitled to an extent, some degree of the constitutional protection while residing in India. These include Protection of equality (Article 14), Right to life and liberty (Article 21), Right to protection from arbitrary arrest (Article 22), Right to protection in respect of conviction of offences (Article 20), Freedom of religion (Article 25), Right to approach the Supreme Court (Article 32). In India, refugees are considered under the ambit of the term ‘alien’. Which finds mention in the constitution of India (Article 22, Para 3 and entry 17, list 1, schedule 7)

The Supreme court in its Judgement *National Human Rights Commission v State of Arunachal Pradesh*<sup>34</sup> intervened with a liberal interpretation of the law to suggest that the fundamental right to equality under article 14 and the right to life and personal liberty under article 21 extends to all foreigners, including refugees.

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<sup>33</sup>Bhairav Acharya, *A step in the right direction*, THE WIRE, Oct. 31, 2016.

<sup>34</sup>1996 AIR 1234; 1996 SCC (1) 742.

## ROLE OF UNITED NATIONS HIGH COMMISSION FOR REFUGEE (UNHCR)

The Hon'ble court of Guwahati in a number landmark Judgements has permitted refugees to approach the UNHCR, for determination of their refugee status and has given due recognition to UNHRC. In the matter of *Gurunathan And Ors V Govt Of India*<sup>35</sup> and *A.C Mohd. Siddique V.S Govt Of India*<sup>36</sup> the high court of Madras expressed its unwillingness to let any Sri Lankan refugee to be forced to return to Sri Lanka against their own will. The Madras High Court In the case of *P.Nedumaran V.S Union If India*<sup>37</sup> was pleased to hold that " Since the UNHCR was involved in ascertaining the voluntariness of the refugee's return to Sri Lanka, hence being a world agency, it is not for the court to consider whether the consent is voluntary or not and the court acknowledged the competence and impartiality of the representatives of the UNHCR."

## CONCLUSION

Around 65.3 million of individuals have been forced away from the home and displaced, the need of the hour is to provide them with a safe haven so as to protect another refugee crisis from occurring considering these individual are mostly from war-torn areas such as Syria, Afghanistan, etc. and are in dire need of international protection. Even though international organizations such as UN, its subsidiary organisations, human rights and other refugee rights organisations have understood the gravity of the problem and devised instruments, conventions, protocols such the Geneva convention, the optional protocol, Cartagena declaration etc. so as to comprehensively define who are refugees, their need for asylum and how to

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<sup>35</sup>W.P No. 6708 and 7916 of 1992.

<sup>36</sup>1998 (47) DRJ (DB) P.74.

<sup>37</sup>Pending NHRC of India Dated Aug. 13, 1997.

help them through various rights there is no proper formulation of law and a uniform system with regard to this problem.

India, as stated earlier through its concerns about its geopolitical situation, economy, border, population, etc., has refused to concisely define these individuals who come to its ambit for protection but has considered their plight and given them protection on an ad-hoc basis. But the need of the hour is to recognise the fallacies which have been going on and to make a road-map for these "refugees", as initiated by Mr. Shashi Tharoor. Although the misapprehension has changed, the state of urgency has not arisen to do something to change the existing structure and bring a comprehensive legislature for the refugees, who are both living in the country and those who are banging on the doors of India for protection. As India is emerging as a global super house having a rising economy, sound political system, etc. the influx of individuals won't decrease but would grow only. So the only way forward is to bring in a new structure which decapitates the ad-hoc system and brings forth the demands of the international organisations, the refugees and the citizens of India. This system should include the definite meaning of refugee, asylum, etc. at par with what is understood internationally along with the rights to be granted to them including the right to equality, freedom of movement and the freedom to live without fear which is so urgently needed.