Laws And Flaws Of Refugee Legislation- A Critical Analysis

Ankita Roy*

2nd year

BBA, LLB

KIIT School Of Law

KIIT University

Bikashita Choudhury**

2nd year

Bsc. LLB

KIIT School Of Law

KIIT University
ABSTRACT

In recent years the international history has been wrought with heinous incidents of people fleeing their mother land because of the apathetic situation and barbaric behaviour meted out to them. The reason for such unfortunate incidents increased manifold with the growth and development of the human civilization as the Government of the countries fought tooth and nail to achieve supremacy on the globe. This article throws light to the spur in the tradition of migration and it finally being labelled as illegal. It also draws a fine line of distinction between migrants, refugee, foreigners, asylum seekers. It chalks out comparison between the various African countries(Uganda, Sudan) having a specific law for the refugee with those of South Asian countries(India, China) that are neither party to any treaty, convention or pact. This article gives a brief description of the history of the world as well as India that led to this vexed tradition of free flow of refugee, immigrants and the likewise. It stresses on the need of India for having the refugee legislation but also at the same time it highlights the drawbacks of having such a legislation.

Keywords: Refugee, Immigrants, Foreigners, Convention, Uganda, China, India, Legislation, Asylum, League of Nations, UDHR, UNHCR, Human Rights
INTRODUCTION

Ever since the dawn of civilization the world has been plagued by various jeopardising situations that have threatened to upset its peaceful setup. Problem of refugee has affected several countries round the world and perhaps India is one of the worst affected of all. It has its origin in the ancient history of India which states that the concept had arisen straight from the era when Zoroastrianism had just started spreading its roots in the world. Even other developing countries like China is also facing similar problems. Not only that many developed countries like Germany, Ireland and UK have not been left out of its drastic impacts. The parasitic growth of this dilemma has resulted in a lot of hue and cry throughout the world and has spread to such an extent that it made one of the famous Argentine-Chilean novelist Ariel Dorfman to exclaim "we live in the age of the refugee, the age of the exile."

The entire world is crippled with problems relating to the refugee, let's have a view towards the international history.

INTERNATIONAL HISTORY

Prior to the 19th century, movement from one country to other did not require passports and visas. Although there had been numerous waves relating to refugee throughout the history, there was no refugee problem until the emergence of fixed and closed frontier evolved in the late 19th century. The reasons noticed for refugee movements in the history are either for religious or racial discrimination or political motivation or territorial partition.¹

Politically motivated refugee movements in frequent and modern times have occurred intermittently since the development of Government powerful enough to oppress non-conformist minorities.

¹ The New Encyclopedia Britannica, vol. 9, Micropedia, Ready reference. Ed. 15th, pg 998
Several major refugee movements have been caused by territorial partition (India-Bangladesh, India-Pakistan etc), for example, after the defeat of Germany in World War II, the Potsdam Conference of 1945 that authorized the transfer of German minorities from a number of European countries. The disintegration of vast European colonial empire also brought back thousands of British subjects from all parts of Africa as well as Asia.  

International measures for refugee started in the 1920s. In 1921 Fridtjof Nansen was appointed by League of Nations as High Commissioner for refugee and devised a so called Nansen passport also known as League of Nations passport i.e. a travel document that gave right to move across boundaries freely. Various other refugee assistant organization have also established like the inter governmental committee for refugee, United Nations Relief and Rehabilitation Centre, United Nations High Commissioner for refugee.

International legal protection of refugee centres on a person meeting the criteria for refugee status as laid down in the 1951 Refugee Convention. Under Article 1(A)2, the term “refugee” shall apply to any 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.”

Thus, according to this provision, refugees are defined by three basic characteristics:

---

2 Id pg 998  
3 Fridtjof Nansen was a Norwegian explorer, scientist, diplomat, humanitarian and Nobel Peace Prize laureate  
4 The New Encyclopedia Britannica, vol. 9, Micropedia, Ready reference. Ed. 15th, pg 998
they are outside their country of origin or outside the country of their former habitual residence;

- they are unable or unwilling to avail themselves of the protection of that country owing to a well-founded fear of being persecuted; and

- the persecution meted out to them is based on at least one of five grounds: race, religion, nationality, membership of a particular social group, or political opinion.⁵

Asylum in international law is the protection granted by a state to a foreign citizen against his own state. The person for whom asylum is established has no legal right to demand it, while the sheltering state which has legal right to grant asylum is under no obligation to give it. Asylum is thus a right of the state and not of the individual. The right of asylum falls into three basic categories: territorial, extra territorial and neutral. ⁶

Territorial asylum is granted to people within the territories of the state and is an exception to the practice of extradition. It is primarily for the protection of persons accused of offences as treason, desertion, sedition and espionage. Extra territorial asylum is granted in legations, consulates, and warships and merchant vessels in foreign territory. This form of asylum is mostly granted in the form of diplomatic asylum. Neutral asylum is used by a state, neutral in time of war, which is considered to have the right to offer asylum within its territory to troops of belligerent states, provided the troops submit to internment for the duration of war.⁷

THE LEAGUE OF NATIONS:

⁵ Rule of law in armed conflict project http://www.geneva-academy.ch/RULAC/international_refugee_law.php (last visited on 29.01.2014 at 9:22 hrs)
The first world institution that came to the aid of refugee was the League of Nations Office of High Commissioner for Refugee, established in 1921.

The Covenant of the League of Nations did not include any specific provision for international aid and protection for refugee. Most of the works initiated by the League of Nations are on behalf of appeals made by the countries in plight.

More difficult was to make its political influences to be felt in case where there were great powers involved. One of the examples is when Poland refused to abide by the League's decision in the Vilnius dispute, and the League was forced to stand by powerlessly in the face of the French occupation of the Ruhr (1923) and Italy's occupation of Kérkira (1923).

Article 11 of the League's Covenant stated:

"Any war or threat of war is a matter of concern to the whole League and the League shall take action that may safeguard peace."

Therefore, any conflict between nations, which ended in war and the victory of one state over another, had to be viewed as a failure by the League. Its failures were due as much to the indifference of the great powers, which preferred to reserve important matters for their own decision as to weaknesses of organization.

Indian history

The concept of migration perhaps first started during those time in Indian history when lore of its greatness and beauty had spread far and wide and people had come seeking all the riches and luxuries. Here lies the sparkle that led to the concept of refugee and it took a massive turn about during the period of Second World War and more notably, during the time

---

8. The League Of Nations and the Refugee Problem Louise W. Holborn


10. League of Nations Failures
http://www.historylearningsite.co.uk/league_nations_failures.htm (last visited on 25.01.14 at 1:52 hrs)

of Partition and the year of 1971 when refugees in hordes scarpered to India. The UN High Commissioner of UNHCR Antonio Guterres's statement: "India’s refugee policy is an example for the rest of the world to follow" comes more as a satire than a thump on the back.\textsuperscript{12} India is also not a party to the Refugee Convention nor is it to its Protocol of the year 1976, yet it caters to thousands of refugees from around its neighbouring countries. The absence of specific refugee legislation in India has led the government to adopt an \textit{ad hoc} approach to different refugee influxes. The status of refugee in India is governed mainly by political and administrative decisions rather than any codified model of conduct. Central to the assessment is India’s lack of legal obligation to provide refugee protections or services. This is largely a consequence of India’s abstention from the 1951 Convention relating to the Status of Refugee and the subsequent Protocol to such Convention in the year 1967, which, in addition to defining a refugee according to international law, outlines certain rights and services to host states must afford them. With the exceptions of the customary international practice of non-refoulement and the obligation to provide asylum as outlined in Article 14 of the Universal Declaration of Human Rights (UDHR), India does not have international, regional, or national obligations to refugee populations on its soil (Feller 2006). Despite this, and its refusal to accede to the 1951 Convention, India argues its current refugee policy is in accordance with international norms. However, India has no comprehensive central legislation and no regional agreement on the matter exists.

Post-Independence India, just as was the ancient India, becomes the home of refugees belonging to all religions and sects. As well as those from neighbouring countries, India has received refugees from distant countries like Afghanistan, Ethiopia, Iran, Iraq, Liberia, Myanmar, Somalia and Sudan. The Independence and Partition of India were authored

\textsuperscript{12}India’s refugee policy is an example for the rest of the world to follow, “The Hindu”, 4Jan, 2013 www.thehindu.com/opinion/interview/indias-refugee-policy-is-an-example-for-the-rest-of-the-world-to-follow/article4269430.ece(last visited on 29.01.2014 at 6:05 hrs)
together, resulting in an unprecedented population movement between India and Pakistan, accompanied by wanton violence and uncivilized cruelty of the severest order.  

The international community has a responsibility to intervene when a State is either unwilling or unable to protect its citizens from an 'avoidable catastrophe'.

If the international community intervenes, it may or may not be able to mitigate such abuses. But even when it does, intervention sometimes means taking sides in intra-state conflicts.

India has regarded 1951 Convention and the 1967 Protocol as only a partial regime for refugee protection drafted in the euro-centric context. It does not address adequately situations faced by developing world, as it is designed primarily to deal with individual cases and not with situation of mass influx. It also does not deal adequately with situations of mixed flow. In India's view, the Convention does not provide for a proper balance between the rights and obligations of receiving and source states. The concept of international burden sharing has not been developed adequately in the Convention.

The legal status of refugee in India is governed mainly by the Foreigners Act, 1946 and the Citizenship Act, 1955. These Acts do not distinguish refugee fleeing persecution from other foreigners; they apply to all non-citizens equally. It is a common failure to fathom the distinction between refugee — those forced to flee their countries and unable to return out of fear of persecution — and migrants, who leave in the hope of a better life.

Under the Foreigners Act it is a criminal offence to be without valid travel or residence documents. The provisions giving the aforementioned legislation render refugee liable to deportation and detention without any fault of their.

**Benefits and ill effects:**

15 North Korean Refugee and International Refugee Law. Elim Chan and Andreas Schloenhardt p. 241
In the post independence period, with the urbanization, development and the consequent need for urban planning, new forms arose. For example, the millions of refugee from Pakistan led to the establishment of many model towns on the edges of existing cities (eg. chakmas in Arunachal Pradesh). With an escalating growth in the infiltration of refugees the subsequent influx of job seekers together with the natural growth of already settled population gave rise to many planned residential areas typically called colonies usually consisting of four or five storey apartment blocks, a small shopping centre, school, play grounds and other recreational space. For poorer immigrants, residence in these urban colonies was not an option. Those who could afford to move into slum flats, often sharing space with other immigrants from their native village, while others had no recourse but to find shelter in 'bastis', clusters of anywhere from a few many hundred of makeshift dwellings which are commonly found along the edges of railroad yard and parks, outside the wall of factories and along the bank of rivers and wherever else urban authorities might tolerate their presence. The effect of immigration or emigration centring around India has been negligible throughout the modern history. Within India however migration from relatively impoverished region to areas especially cities offering promise of economic betterment has been largely responsible for the differential growth rates from one state to another. The rates of migration to Indian cities severely tax their capacity to cope with the new comer's need for housing, safe drinking water and sanitary facilities not to mention amenities. \(^{18}\)

The whole of south Asia is devoid of any standard and norms on dimensions of refugee reception, determination and protection. The fact that a quarter of world refugee find themselves in a non standardized, if not non-hostile refugee regime, is a situation that does not well augur for either the mandate of UNHCR or for any civilized society. \(^{19}\)

The GOI does not have a legislative or administrative frame work to conduct refugee status determination formally. Therefore different legal and administrative procedures apply to the

\(^{18}\) Britannica micropedia knowledge in depth vol. 21 15th ed. pg17  
three different groups of refugee in India. Firstly, there are asylum seekers who enter India from neighbouring countries as part of mixed population flows. They generally remain in the border-states where the local population often tolerates them because of their ethnic and religious similarities. However the "chins" from Mizoram and Manipur have approached the UNHCR in Delhi when they were unable to cope with the situation in these states. Those who were eligible were granted refugee status in UNHCR mandate. Under the policy and administrative procedures of the GOI there are two distinct nationality groups recognised on prima facie basis by the Government of India; the Tibetans and the Sri Lankans. They are assisted directly by the Government of India and reside in camps or in settlements with full access to local facilities. The UNHCR exercises its mandate to conduct refugee status determination for those foreigners who approach their office. With regard to asylum seekers, no discrimination is made with regard to procedures for different nationalities. As long as the asylum seeker is able to enter into India whether legally or illegally and are able to access their office in Delhi or in Chennai his/her application will be dealt with -even if a personal interview is not possible. The UNHCR has no access to border areas and therefore they have no chance to monitor the potential asylum seekers in those region.20

Merits of having a legislation:

- **NO OVERPOPULATION:** once legislation has been drafted, the government will be able to keep a tab on the number of people leaving and entering our country. It will be able to regulate the accommodation as is suitable for India.

- **NO THREAT TO SOCIAL AND ECONOMIC AS WELL POLITICAL SECURITY:** if India possess an official and legitimate list of people to be accommodated who has undergone a strict scrutiny, there are reduced chances of threats to India's administrative setup.

- **HANDLE A CRISIS SITUATION:** If India follows the lead of other European countries in formulating a policy for illegitimate 'over stayers', immigrants and others, it can play a role in case of crisis situations in other countries (mass killing in Sudan, Sri Lankan attack on

---

20 Refugee and the State: Practices of Asylum and Care in India, 1947-2000
( Ranabir Samaddar)(2002)
Tamils). UNHCR will also be able to help India to attain a respectable ground in dealing with emergencies amongst the south Asian countries.

- **FOREIGN FUNDS TO HELP THE VICTIMS:** once a law is made, India can also officially claim for any kind of foreign funds that are always in offer by various International bodies that are actively involved in refugee resettlement programmes.

- **NO DIFFERENTIAL TREATMENT:** the various claims that lay piling up in courts will also be abated to an extent. As the refugee seeks protection in various states, they are dealt with contempt and disgust. Once they attain a citizenship, they will be relieved of their plight and the Government will also get rid of itself the tag name of being partial to refugee of some specific countries.

- **REMOVAL OF SOCIAL STIGMAS:** once granted a legal status, these people can claim for a respectable living. Many people among them are quite capable to fend for themselves and do not need to live under the favour from the Government. So once they are able to apply for jobs, they will be released from their apathetic conditions.

  ➢ child labour
  ➢ prostitution
  ➢ drug addiction
  ➢ smuggling
  ➢ terrorism

One of the most important fact is that providing of laws for such category of people will bring about an end to many frauds and other anti socials who have actively involved themselves in business of duping those innocent people by promising to provide them with fake identity proofs and other documents. Those who are able to shell out huge sum of money are at times able to get themselves proofs and the unfortunate ones are thwarted by these brokers.
Demerit of having a legislation:

- **Obligation to meet:** once the law is formed there arises a liability on part of the Government to meet the standards that they have promised. At the same time there remains an obligation to meet the international standards that have been laid down in various conventions. Once a law is formed India is bound to come under the scanner of the League of Nations as well.

- **subject to initial support from the Government:** once the people from other countries are granted asylum, the Government has to extend their support to these people and becomes liable for their upkeep to some extent. India is itself a developing country with a whooping population to be added to its list of woes amongst others. So the parenting of such a huge responsibility is another headache for the Government.

- **Special laws for them:** once the law is made, special provisions in various other legislation has to be added. They are to be provided with special opportunities so that they can be mainstreamed. Since they are a minority group in our society their needs have to be specially catered to.

- **increased accountability on part of the Government:** as the law gets implemented the Government has to look after its completion. There is an increased responsibility on part of the executive, the judiciary and the legislature to fulfil their roles in the successful implementation of a law.

There are other examples too where the Indian government has been unable to deport aliens working against Indian National interests because they are refugee. It is not that the Indian government is tied down by any Supervening international covenant or custom. Rather it is the lack of political will or the deliberate abstention from exercising it, to take hard decisions. The apex court, has taken it upon itself to make the crunching decisions. In *Mohammed Sadiq v. Government of India*\(^{21}\), the Supreme Court ordered deportation of refugee since they had engaged in anti-national activities. Such anomalies are not only against the interests

\(^{21}\) Civil Rule Writ No.405/98
of India’s national interests, but are a tarnish to India’s global image as a tolerant and
democratic nation.

**Global perspective:**

**china:**

There are three distinct groups of persons of concern to UNHCR in China. The first consists
of asylum-seekers and refugee. The People’s Republic of China became a State party to the
a State party to either the 1954 Convention Relating to the Status of Stateless Persons or the
1961 Convention on the Reduction of Statelessness. UNHCR conducts refugee status
determination under its mandate for individual asylum seekers as a temporary measure until
the Government creates its own State structures.

UNHCR’s refugee status determination decisions are communicated to the Chinese
authorities. Once recognized by UNHCR, the Government only permits refugee to remain in
China temporarily, while a durable solution (excluding local integration) is being sought by
UNHCR. On 30 July 2012, the Standing Committee of China’s National People’s Congress
adopted a new Administration Law on Entry and Exit. For the first time, it added provisions
regarding the treatment of refugee to domestic law (Art. 46). The new rules will enter into
force in July 2013, and it is expected and hoped that they will subsequently result in the
adoption of a comprehensive national refugee regulations, including provisions relating to
refugee children. Although refugee have no legal status in China and as such do not enjoy
any legal entitlement to be granted access to public services, on humanitarian grounds the
Government recently adopted a policy decision to grant refugee children access to Chinese
public education institutions on the same conditions as Chinese pupils. Despite possession of
UNHCR certificates confirming their registration and status with the Office, urban asylum-

---

22 FEASIBILITY OF HAVING A NATIONAL REFUGEE LEGISLATION (Mr. Karn Gupta, Ankur
Gupta)
seekers and refugee continue to face risks of arrest and detention in China for violation of immigration offences if they enter the country unlawfully or overstay their visas. Without valid work permits or license to do business, they cannot obtain legal employment or establish businesses.\textsuperscript{23}

**UGANDA**

"In the six years after the overthrow of the Amin regime, large numbers of refugee fled from the West Nile province of Uganda to the relative safety of Southern Sudan and Haut-Zaïre. In October 1980, members of the former Uganda Army entered West Nile and forced the UNLA to retreat south of Arua, the provincial capital. In 1981 the UNLA mounted a series of offensives against the rebel guerrillas of the Uganda National Rescue Front (UNRF) and Idi Amin's Uganda Army. All three forces inflicted enormous suffering on the innocent civilian population, and by August 1981 the number of Ugandan refugee in Southern Sudan and Haut-Zaïre had swollen to 80,000 and 100,000 respectively. In the following months thousands more people left their homes to seek safety in the Sudanese border area, and by March 1982 a major movement across the frontier was under way. By August, the refugee population in Southern Sudan had risen to 130,000. At the end of 1982, the UNLA launched a major operation to push the UNRF out of West Nile. Again, the civilian population was the principal victim of the UNLA's indiscriminate use of violence."\textsuperscript{24}

Control of Alien Refugee Act 1960 and The Uganda Citizenship and Immigration Control Act, 1999 are some of the legislation regulating refugee in the country during the past. Recently In 2006, Uganda adopted refugee legislation that was regarded as a model for Africa, recognizing the right of the country's more than 140,000 refugee to work, move around the country and live in the community, rather than in special camps. The legislation

\textsuperscript{23} Submission by the United Nations High Commissioner for Refugee For the Office of the High Commissioner for Human Rights’ Compilation Report - Universal Periodic Review: People’s Republic of China
\textsuperscript{24} JEFFC RISP, UGANDAN REFUGEE IN SUDAN AND ZAIRE: THE PROBLEM OF REPATRIATION
clearly enumerates the rights of refugee, as well as their obligations in Uganda. It defines who is a refugee and it is gender sensitive. The law outlines the process to be used in determining refugee status. It also sets forth how a refugee situation can cease, once durable solutions have been found.\(^{25}\)

The legislation clearly enumerates the rights of refugee, as well as their obligations in Uganda. The law outlines the process to be used in determining refugee status. It also sets forth how a refugee situation can cease, once durable solutions have been found. The freedoms enshrined in the law include the right to work, freedom of movement and the right to live in settlements rather than in refugee camps.

Currently in 2012, again due to devastations in the newly emerged country south Sudan, a bunch of refugee have came down and settled in Uganda if one walks around the Dzaipi transit centre in northern Uganda, one can find children running about everywhere, elderly women sitting against trees, tents full of pregnant women, young mothers and newborns. What one may not see in numbers are men. The vast majority of the nearly 50,000 people who have fled fighting in South Sudan to become refugee in neighbouring Uganda comprises of women and children. UNHCR and its partners, including the government of Uganda, are trying to move South Sudanese refugee from the Dzaipi transit centre to settlements where they can receive better protection. The UN refugee agency is giving the new refugee in northern Uganda shelter, food, water, healthcare and basic protection with support from various NGOs and UN partners. The steps taken by the Uganda government to tackle such gauche situation is quite appreciable and this has been possible only due a pre existing legislation on this subject.

**ROAD BLOCKS IN FORMATION OF A LEGISLATION**

\(^{25}\) http://www.unhcr.org/4a3f9e076.html
Minority politics is an important factor that can be used to explain the reluctance of India’s lawmakers to move towards resolving the issue. It is a fact that illegal immigrants have been used by vote-seeking parties to secure a majority in the central and the state legislatures. Security considerations rank high on India’s list of priorities, given its geopolitical influence in the region and its vulnerability to cross-border infiltration due to the porous nature of its borders. Taking this factor into account, anti-refugee law legislators argue that the proposed law would encourage more refugee to enter India, with promises of increased legitimacy, more rights and government services, which will increase the threat of social, economic and political insecurity.

Mahendra P Lama in his report ‘Managing Refugee in South Asia’ provides a three-dimensional model to explain the risk to national security through refugee movements that present different threats due to:

1. Strategic-level security, when Refugee are armed and when the Government loses control over the refugee.
2. Structural-level security is threatened by increasing demands on and conflict over scarce resources.
3. Regime-level security is threatened when refugee enter the domestic political process and create pressures on the government.

Another interesting aspect that has to be taken into consideration is the status of some people residing in the border areas of India-Bangladesh. According to some reports there are some

---

26 Arjun Nair, National Refugee Law for India: Benefits and Roadblocks, Institute of Peace and Conflict Studies (IPCS),(2007)
27 Arjun Nair, National Refugee Law for India: Benefits and Roadblocks, Institute of Peace and Conflict Studies (IPCS),(2007)

28 Mahendra P. Lama was the pro-vice chancellor of IGNOU and the founding vice chancellor of Sikkim University in India
houses that are demarcated right through the middle("56 problematic Chitmahal")\(^30\). So they will have to be either grouped into some special category or have to be subjected to any other alternative solution.

People of Nepal and Bhutan are permitted to travel, reside and work freely in the country based on bilateral agreements.\(^31\) India must have to come to terms with those treaties and other pacts before launching on to make any law regarding refugee.

Since the drafting of the constitution of India synchronised with the flow of the refugee from Pakistan, the constitution of India has some express provisions for immigrants especially from Pakistan(Art 5,6,7), this might further complicate situation while formulating laws.

More over it has to be kept in mind that India has internal problems of her own like all other nations and since it is a developing country it is yet unable to overcome all its insecurities. In this state once it starts receiving the refugee it is bound to face even more reconstruction problem, chronic unemployment, economic crisis, depreciated currencies and political unrest. India itself is a huge nation with a population of over 1.5 million. If India is to fend for more mouths not only in terms of food but clothing and shelter as well, it becomes a herculean task to comprehend.

In the case of NHRC v state of Arunachal Pradesh:

The main question of moot raised by the respondent is

"under the Constitution, the state of Arunachal Pradesh enjoys a special status and, bearing in mind its ethnicity....The settlement of 'Chakmas' in large numbers in the State would disturb its ethnic balance and destroy its culture and identity. The special provisions made in the Constitution would be set at naught if the State's tribal population is allowed to be invaded by people from outside. The tribal, therefore, consider 'Chakmas' as a potential threat

---

\(^30\)The **Indo-Bangladesh enclaves**, also known as **chitmahals**. In international law, an **enclave** is any portion of a state that is entirely surrounded by the territory of another state.

\(^31\)Mrs Deepa Gopalan Wadhwa, Joint Secretary, Ministry of External Affairs, Government of India, in opening address to the workshop on 'Strengthening Refugee Protection in Migratory Movements', organized by AALCC and UNHCR in New Delhi in 2003.
to their tradition and culture and are, therefore, keen that the latter do not entrench themselves in the State. Besides, the financial resources of the State without Central assistance, which is ordinarily not forthcoming, would throw a heavy burden on the State which it would find well high impossible to bear. In the circumstances, contends, it is unfair and unconstitutional to throw the burden of such a large number of 'Chakmas' on the State." 32

Conclusion:

Refugee are a uniquely vulnerable part to any section of developing society. They lack resources and so are perceived as an unwelcome burden on the country of asylum, the host community and donor Governments. They lack organizations and so their opinions, wishes and aspirations are easily ignored. They lack influence and so become pawns in the domestic and external politics of their own country and the country to which they have fled. 33

As already established, there are various countries having a partial approach and some even stricter regulations on these matter. It remains to be seen as to how India will approach towards sorting out this problem. Obviously India will prefer those countries that are already able to adopt the Indian system and culture and can mingle with us. This might result in strain of relationship with other countries.

Moreover the status of diplomat as assigned in IPC comes under a question if such a legislation is enacted, so may be the IPC has to undergo amendments.

The longer people stay in a society, the stronger their moral claims become, and after a while they pass a threshold that entitles them to virtually the same legal status as citizens and eventually easy access to citizenship itself. 34

32 AIR 1996 SC 1234
34 Joseph H. Carens, Who Should Get in? The Ethics of Immigration Admissions Ethics & International Affairs, Volume 17, Issue 1, pgs. 95–110, March 2003
Another problem lies with the constitution of our country. The constitution does not expressly provide any terms and conditions to be followed in case there is an individual who is not a citizen of India. The moot question that now stands as the biggest obstacle is how will any legislation be enacted, how will it come into force? Even if the centre makes any law regarding refugee, there has to be directions to be followed by the states that are to be followed. Now the states might question the legitimacy of the law as the state does not expressly own any rights on this topic.

There are chances that if any legislation is formulated for this category of people and some form of rights are granted to them, situations might arise when there is a conflict of rights with other permanent citizen or with state. That will leave us in a precarious situation given the special status of this section of people.

"While every refugee's story is different and their anguish personal, they all share a common thread of uncommon courage: the courage not only to survive, but to persevere and rebuild their shattered lives." For every one must remember the great words of Richard w. Adams when the hapless in plight cried out.

"When the storms of life surround me,
And the world seems dark and cold,
When the rain beats down upon me,
And the lightning stabs my soul,
I cry out to my Saviour,
Lord, help me, lest I die!"

Let India be the saviour and the silver lining for those unsettled by the storm of life, rages of war and scars of terrorism.

---

35 Quoted by Antonio Guterres