

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver face are also visible. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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CONCEPTUALISING REFUGEE RIGHTS IN A MODERN INDIAN SOCIETY: A DELIBERATIVE ANALYSIS OF THE CONCERNING EVENTS SINCE 1947

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I. INTRODUCTION

India, the largest democracy in the world, aggrandizes of complying with the terms under the principle of non-refoulement and catering to the fundamental rights of the refugees under the expansive umbrella of Article 21 of the Indian Constitution.¹ Nevertheless, India is not a signatory to the 1951 Refugee Convention² or its 1967 Protocol³ and does not possess a national refugee protection legal framework. Yet, it continues to accord asylum to numerous refugees advancing from neighboring States and honors UNHCR's mandate for other nationals inhabiting the South East Asia. India has endorsed an ad hoc administrative policy to grant protection to refugees since the year 1947. This tenders problems of human right abuses of refugees, inadequacy of basic amenities and inequity between the refugees themselves.

For quite a while now, India's disquietudes about security have had a confining effect on the asylum space in the country. Mixed migration flows have further convoluted the recognition and protection of refugees. Moreover, UNHCR has indubitably altered and increased its registration enterprises and activities, to provide the much-needed backing to the Government. In the absence of a national legal and administrative framework, UNHCR, based in New Delhi, conducts refugee status determination (RSD) for asylum-seekers from non-neighboring countries and Myanmar.

Therefore, the author of this Research Paper aims to examine the role of the Indian Constitution, NHRC and UNHCR in safeguarding the rights of the refugees and suggests several measures to improve upon it by changing the approach of enacting a definite and precise legislation or drafting and concocting a regional treaty analogous to the OAU Convention in

¹ India Const. art. 21.

² UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Accessed on 3 December 2020.

³ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267.

Africa. The author also aims to bring to light the recent incidents and actions taken by the Indian government correlating to the refugees residing in Indian mainland.

II. PRINCIPLE OF NON REFOULEMENT

According to the non-refoulement principle entailed under Article 33 of the 1951 Refugee Convention⁴, no country shall deport, expel or forcefully return the refugee back to his original territory against his will or if there is a reasonable threat to his life, liberty and freedom.

To safeguard the fundamental human rights of any refugee, States have established the principle of non-refoulement. This principle determines its existence and legitimacy from the twin concepts of 'international community' and 'common humanity'. Article 7 of the ICCPR⁵ which restrains torture and gruesome, inhuman or grotesque treatment stresses an obligation on state parties not to bare individuals to the danger of torture or evil, inhuman or degenerate behavior or punishment upon return 'to another country by way of their extradition, expulsion or refoulement'.

Throughout history, innumerable persons have left, or have been compelled to leave, their countries of birth. Umpteen cases showcase that on their journey to reach an asylum for safety and a better economic future, these persons encounter acute adversity. The primary concern upon arrival in a given country is whether or not they will be allowed to stay.

Under the jurisdiction of international law, States have a right to control the stay of foreigners in their territory and may deport them back to their country of origin. This immunity is, however, not absolute and may only be exercised with due coordination with other principles of international law.

The European Court of Human Rights has upheld, the accord of a state to extradite, deport or expel a person may give rise to an issue under Article 3 (European Convention of Human Rights)⁶, further immerse the responsibility of that state under the Convention, where substantial grounds have been reflected to conclude that a particular person, if extradited, risks being subjected to torture or to barbaric or vicious treatment or punishment in the requesting country. In such circumstances, it is the liability of the state which surrenders persons to the certain miscreants of vile behavior or ill treatment, and not of the receiving state. The principle of *non-refoulement* is well established under the conventional and customary international law.

⁴ Ibid. at 2, art. 33.

⁵ UN General Assembly, *International Covenant on Civil and Political Rights*, art. 7, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

⁶ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

However, some governments still adopt illegitimate restrictive actions to prohibit the entry of refugees into their territories.⁷

III. REASONS GIVEN BY INDIA FOR NON RATIFICATION OF THE REFUGEE CONVENTION OF 1951

India has signed neither the 1951 United Nations Refugee Convention nor its 1967 Protocol⁸, which currently has 140 signatories, an overwhelming majority of the world's 190-odd nations. *Firstly*, it is paramount to take into account that India has consistently hosted refugees quite willingly and has allowed the UNHCR⁹ to have an official presence in New Delhi and Chennai; thus India assumes there is no dire necessity to ratify the Convention.

Secondly, India has endorsed a dubious approach towards the political or non-humanitarian role of UNHCR, owing to the uncooperative and radical stance exhibited by the UNHCR during the Bangladesh crisis of 1971¹⁰.

Thirdly, the rights that are stated within the Convention for refugees are insuperable for Third World countries like India, which can barely make ends meet for its own citizens. India could always utilize or invoke the reservation clause to accede to the Convention, but doing so would not impede criticism from the Indian NGO community and the UNHCR.

Moreover, the generic lack of comprehension of refugee law in Indian Executive branch further convolutes the matter; the discretionary powers that would be bestowed with the Indian state were it to ratify the Convention have not been thoroughly scrutinized.¹¹

IV. CONSTITUTIONAL PROTECTION AND INSTANCES OF JUDICIAL RECOURSES TAKEN TO SAFEGUARD FUNDAMENTAL RIGHTS OF THE REFUGEES

The constitution of India guarantees certain fundamental rights, which are applicable to non-citizen i.e. the rights to equality, the rights life and personal liberty and the freedom to practice

⁷ Omar Chaudhary, "Turning Back: An Assessment of Non-Refoulement under Indian Law." *Economic and Political Weekly*, vol. 39, no. 29, 2004, pp. 3257–3264. *JSTOR*, www.jstor.org/stable/4415288.

⁸ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267.

⁹ (2001) United Nations High Commissioner for Refugees UNHCR .

¹⁰ Ranjan A. *Bangladesh Liberation War of 1971: Narratives, Impacts and the Actors*, *India Quarterly*. 2016;72(2):132-145. doi:10.1177/0974928416637921.

¹¹ Sreya Sen, *Understanding India's Refusal to accede to the 1951 Refugee Convention: Context and Critique*, A publication of The ESPMI Network. <https://refugeereview2.wordpress.com/opinion-pieces/understanding-indias-refusal-to-accede-to-the-1951-refugee-convention-context-and-critique-by-sreya-sen/>.

and propagate their own religion. The Indian Supreme Court has held it as a principle that refugees or asylum seekers cannot be discriminated against due to their non-citizen status.

In *NHRC v. State of Arunachal Pradesh*¹², the Hon'ble Supreme Court held that the State is bound to protect the life liberty of every human being and observed that the rights of refugees under the Constitution of India were affirmed by Article 21, which also included the rights to non-refoulement.

In India, the judiciary has played a vital role in safeguarding the rights of the refugees. Court orders have filled legislative gaps and lapses and in numerous instances have administered a humanitarian recourse to the refugees' problem. In India, Courts have allowed refugees and intervening NGOs to file cases before them.

In the cases of *Mr. Louis De Raedt & Ors vs Union Of India And Ors*¹³, the Apex Court held that Art. 21 of the Constitution of India, which protects the life and personal liberty of Indian citizens are extended to all, including aliens and foreigners.

The Supreme Court of the *National Human Rights Commission v. State of Arunachal Pradesh*¹⁴ case prohibited forcible expulsion of Chakma Refugees from the state. The Court directed the state government to ensure that the life personal liberty of each and every Chakma living in the state to be safeguarded. The court also decided that the Chakma shall not be dislodged from their home except in accordance with the law and application for their Citizenship to be processed posthaste.

In *Zothansangpui v. State of Manipur*¹⁵, Guahati High Court ruled that refugees have the right to not be deported if their life was in exorbitant danger. In *Nuang Maung Mye Nyant v. Govt. of India*¹⁶ and *Shar Aung v. Govt. Of India*¹⁷, the courts held that even those refugees against whom cases were pending for illegal entry, should be furnished with exit permits to facilitate them to depart from the country for third country resettlement.

In the matter of *Gurunathan and others vs. Government of India*¹⁸ and *A.C. Mohd. Siddique vs. Government of India and others*¹⁹, the High Court of Madras deliberated upon the unwillingness to let any Sri Lankan refugees to be contrived to return to Sri Lanka again under coercion. The Bombay High Court in *Syed Ata Mohammadi vs. Union of India*²⁰, directed

¹² NHRC v. State of Arunachal Pradesh, 1996 SCC 742.

¹³ Mr. Louis De Raedt & Ors vs Union Of India And Ors, 1991 AIR 1886.

¹⁴ National Human Rights Commission v. State of Arunachal Pradesh, 1996 AIR 1234.

¹⁵ Zothansangpui v. State of Manipur, C.R No.981 of 1989.

¹⁶ Nuang Maung Mye Nyant v. Govt. of India, CWP No. 5120/94.

¹⁷ Shar Aung v. Govt. Of India, GI.WP NO.110 of 1998.

¹⁸ Gurunathan and others vs. Government of India, W. P. Nos. 6708 and 7916 of 1992.

¹⁹ A.C.Mohd.Siddique vs. Government of India and others, 1998(47)DRJ(DB) p.74.

²⁰ Syed Ata Mohammadi vs. State, (1998). 47 DRJ (India).

that “there is no question of deporting the Iranian refugee to Iran, since he has been recognized as a refugee by the UNHCR.” The Hon’ble Court also allowed the refugee to travel to whichever country he desired peacefully.

The power of the government to expel an alien is absolute and supreme. Art. 21 guarantees the right to life for non -citizens. The International Covenants and Treaties which coincide with the fundamental rights can be imposed. The principle of non-refoulement is incorporated in theory until it is not in dispute with national security. Under Art 51(c)²¹ and 253²² of the Indian Constitution, international law and treaty obligation are to be valued, as long as they are in harmony with the domestic laws.²³

The Supreme Court of India in *Hans Muller of Nuremburg v. Superintendent, Presidency*²⁴ gave “absolute and unfettered” authority to the Government to evict the aliens. In the judgment of *Ktaer Abbas Habib Al Qutaifi v. Union of India*²⁵ the High Court of Gujarat held that the principle of non-refoulement averts elimination of an evicted person where the life and freedom of a person is based on his race, religion, nationality, or political enrollment. The application of the Rule of non Refoulement therefore ensures life and freedom of a person irrespective of his nationality.

V. LEGISLATIONS GOVERNING REFUGEES IN INDIA

India has been the home for several refugees. For these refugees, numerous legislative measures were passed and issued under seventh schedule of the Indian constitution.

The following Acts were passed once the Constitution of India was formulated to ensure protection and treatment of refugees in India - Immigrants (expulsion from Assam) Act, 1950,²⁶ Evacuee Interest (separation) Act, 1951²⁷, Displaced Persons (debts adjustment) Act, 1951²⁸, Influx from Pakistan (control) Repelling Act, 1952,²⁹ Displaced Persons (compensation & rehabilitation) Act, 1954,³⁰ etc. In India refugees are studied under the umbrella term ‘alien’ as defined in the Constitution of India (Article 22, Para 3 and Entry 17, List I, Schedule 7), in

²¹ India Const. art. 51(c).

²² India Const. art. 253.

²³ Vishaka & Ors vs State Of Rajasthan & Ors, (1997) 6 SCC 241.

²⁴ Hans Muller of Nuremburg v. Superintendent, Presidency, 1955 SCR (1)1284.

²⁵ Ktaer Abbas Habib Al Qutaifi v. Union of India, 1999 CriLJ 919.

²⁶ Immigrants (expulsion from Assam) Act, 1950, Act no. 10 of 1950.

²⁷ The Evacuee Interest (Separation) Act, 1951. Act no. 64 of 1951.

²⁸ Displaced Persons (debts adjustment) Act, 1951, Act No. 70 of 1951.

²⁹ *Influx from Pakistan (Control) Act*, 1949, Act no. 23 of 1949.

³⁰ Displaced Persons (compensation & rehabilitation) Act, 1954, Act no. 44 of 1954.

Section 83 of the Indian Civil Procedure Code³¹, and in Section 3(2)(b) of the Indian Citizenship Act, 1955³², as well as various other statutes.

Presently, there's no prime legislation that governs 'refugees' directly. The Registration of Foreigners Act, 1939³³, the Foreigners Act, 1946³⁴, and the Foreigners Order, 1948 are the major legislative Acts that deal with the treatment of foreigners in India. Article 2 of the Registration of Foreigners Act, 1939 defines a foreigner as "*a person who is not a citizen of India.*"

It is evidently noticeable that though India grants the refugees certain rights and privileges, these are only systematically available to select groups and communities and not to the whole populace. Hence, the application of laws related to refugees, unequivocally lacks the principle of equality and fairness.

VI. BRIEF ANALYSIS ON THE ROLE OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) IN INDIA.

The United Nations High Commissioner for Refugees (UNHCR) is a pioneer body functioning for the protection of refugees globally. In India, It works towards achieving protection and providing shelter to the refugees, supports the local Non Governmental Organizations to provide help to the Sri Lankan and Tibetan Refugees, strengthens efforts to prevent statelessness and believes in strategically solving disputes through local integration, voluntary repatriation and resettlement. It has also worked effectively towards achieving strengthened partnership with the Government of India.

Recent operational activities of UNHCR include:³⁵ to introduce the public to the mechanisms of the institution, to establish the implementation of human rights, to enable the masses to comprehend the responsibility and functions of the Commission, to impart knowledge about the contribution of the Commission in safeguarding and promoting the human rights of the refugees and the Asylum seekers in India. There are also divisions of UNHCR and they consistently work in close consultation and coordination with each other.³⁶

³¹ Code Civ. Proc. § 83.

³² § 3(2)(b), Indian Citizenship Act, 1955, Act no. 57 (1955).

³³ The Registration of Foreigners Act, 1939, Act no.16 of 1939.

³⁴ The Foreigners Act, 1946, Act no. 31 of 1946.

³⁵ Executive Committee of the High Commissioner's Programme, Update on budgets and funding (2019, 2020-2021), Standing Committee 77th meeting, 20 February 2020, <https://www.unhcr.org/5e6a3c497.pdf>.

³⁶ Gagandeep Dhaliwal, Dr. Ashwani Kumar, Role of national human right commission and the constitution of India, International Journal of Law, <http://www.lawjournals.org/download/301/4-2-91-868.pdf>.

VII. ROLE OF NHRC IN INDIA AND A STUDY OF RECENT INCIDENTS THAT HELPED SHAPE THE ACTIVISM OF THE COMMISSION

The National Human Rights Commission of India was established on 12th October 1993. The statute under which it is established is the protection of Human Rights Act (PHRA), 1993 which was amended by the Protection of Human rights (Amendment) Act, 2006. This Commission is in conformity with the Paris principles which are endorsed by the General Assembly of the United Nations Regulations 48/134³⁷. Presently, there are 18 working Human Rights State Commissions in India.

There have been a lot of important cases which have been taken up by the NHRC and formulated a positive jurisprudence to prohibit violations of human rights in India.

1. Gujarat Riots –

The national Human Rights Commission had taken up suo moto cognizance through media reports regarding digging of a grave in Lunavada village of Panchmahal district of Gujarat. The Commission took active participation in the matter of communal violence being reported in Gujarat during February- March 2002. An astounding number of people belonging to a minority Muslim community were killed and their property was turned to ruins. The state government and its police did not take proper measures to safeguard the victims of the Muslim minority community. Hence the NHRC, commenced a suo moto inquiry and give instructions to the state government to report the measures carried out to restore peace in the state of Gujarat. Moreover the NHRC also took it upon itself to approach the Supreme Court of India on behalf of the victims of the Gujarat riots.³⁸

2. Punjab mass cremations –

National Human Rights Commission provided compensation of rupees 1.75 lakh each to the next of kin of 1051 victims of the Punjab mass Cremation case. The Commission had discovered that the buried remains of the persons that were cremated by the state authorities were not in accordance to the rules on Cremation of unidentified bodies. Commission of such an act by the state authorities, corresponded to do a gross

³⁷ Principles relating to the Status of National Institutions (The Paris Principles) Adopted by General Assembly resolution 48/134 of 20 December 1993.

³⁸ Protection of Human Rights, The People's University, https://nhrc.nic.in/sites/default/files/Unit_2.pdf, Assessed on 20 November, 2020.

contravention of human rights and dignity of the dead. The case was referred to NHRC by the Supreme Court of India.³⁹

3. *Starvation deaths in Odisha* –

In Koraput Bolangie and Kalahandi districts of Odisha, there were reports on people dying due to starvation and NHRC took cognizance of the same. The Commission sent a team to inquire about the conditions and also appointed a special rapporteur to coordinate the relief and rehabilitation activities.

4. *Encounter deaths in Andhra Pradesh* -

The NHRC received a formal complaint from the Andhra Pradesh civil liberties committee (APCLC) regarding encounter deaths, wherein, the police were killing people on a mere suspicion of being members of the People's War Group. The Andhra Pradesh Civil Liberties deliberated that the police were involved in extra-judicial killings that amounted to unjustified and unprovoked murders whereas the police insisted that the armed militants were resisting arrests therefore the police had no choice but to shoot them. This resulted in NHRC formulating guidelines in 1997 for the first time in India which laid down a detailed procedure regarding encountered deaths.⁴⁰

5. *Deaths due to silicosis* –

Numerous deaths of tribals were reported in media Pradesh who worked as laborers in the quartz crushing factories of Godhra in Gujarat due to silicosis. As per the report of 2007 the tribals were exposed to silica dust without proper protection being provided at their workplace. It was deemed unfair that the workers did not have any documentary proof to process their compensation claims. The Commission took keen interest and dispatched a team from the Investigation Division for a spot inquiry.⁴¹

VIII. DELIBERATIVE CONCEPTION OF REFUGE SEEKING EVENTS SINCE THE YEAR 1947

Since the year of Independence of India from the British Raj, India has evolved politically and administratively, carrying the influx of refugees on her shoulders and inherently trying to cater to them.

1. *Tibetan Refugees* :

³⁹ Ibid.

⁴⁰ Andhra Pradesh Civil Liberties v. State Of A.P., 2008 CriLJ 402.

⁴¹ Amulya Nidhi and Ashish Gupta, Silicosis Victims and the Importance of the Supreme Court Judgment, The Wire <https://thewire.in/rights/silicosis-victims-and-the-importance-of-the-supreme-court-judgment>.

The year of 1962, during the Sino-Indian War, Tibetan refugees settled across northern and north-eastern Indian states, and the seat of the Dalai Lama, the spiritual and the political leader of the Tibetan community, was set up in Dharamshala, Himachal Pradesh since they were perceived as peaceful groups.

2. *Bangladesh Refugees:*

In the year 1971, during the Bangladesh War of 1971, millions of refugees migrated from the country to India, as they were making an exit from the conflict between the Pakistani army and Bangladeshi forces. This led to a drastic increase in population in states bordering Bangladesh. More than 10 million Bangladeshi refugees escaped in 1971 and took shelter in India. Indian politicians still make use of the incident in order to get support from the masses since the Bangladeshi refugees are still looked at as a security threat to the local Indians.⁴²

3. *Sri Lankan Refugees:*

Due to the Black July Riots of 1983, and the bloody Sri Lankan civil war of Sri Lanka, More than 1.34 lakh Sri Lankan Tamils crossed the Palk Strait to India between 1983 and 1987 during the first in flow. It took over three phases for Sri Lankan refugees to enter India. It is said that such a shift of refugees and India keeping them in Refugee Camps certainly strained relations between India and Sri Lanka.⁴³

4. *The Afghan refugees :*

A number of Afghans resorted to taking refuge in India after the Soviet invasion of Afghanistan in 1979. These refugees are mostly concentrated in Delhi, and have established homes for themselves. According to the UN High Commissioner for Refugees (UNHCR), though not large groups but certain number of the Hindu and Sikh Afghans who came to India after absconding fighting in their home country in the early 1990s, have been granted citizenship over the past decade.⁴⁴

5. *The Rohingya refugees :*

40,000 Rohingya Muslims escaped Myanmar to take shelter in India. The office of the UNHCR has issued identity cards to about 16,500 Rohingya in India to prevent

⁴² The State of The World's Refugees 2000, Chapter3, Rupture in South India, <https://www.unhcr.org/3ebf9bab0.pdf>

⁴³ Akshay Nath, The ignored plight of Sri Lankan refugees in Tamil Nadu, India Today, <https://www.indiatoday.in/india/story/sri-lankan-refugees-tamil-nadu-plight-camps-war-13168-2016-06-09>.

⁴⁴ Nayana Bose, Afghan refugees in India become Indian, at last, The UN Refugee Agency, India, <https://www.unhcr.org/news/latest/2006/3/441190254/afghan-refugees-india-become-indian.html>.

arbitrary arrests, deportation or detention.⁴⁵ Nevertheless, India has categorized the Rohingya as 'illegal' immigrants, and has coincided with the Burmese government. The Indian government has deliberated that the principle of non-refoulement, to forcing refugees to return to their country of origin, does not apply to India since it is not a signatory to the 1951 refugees' convention. The Indian government has petitioned to Myanmar to take back the Rohingya refugees. Nonetheless, the primary argument is that the Burmese do not acknowledge the Rohingyas as their own and consider them to be immigrants who were imported from Bangladesh during the British Raj.

6. *The Chakma and Hejong refugees:*

Many from the Chakma and Hajong communities those who resided in Chittagong hill tracts, but now located in Bangladesh—have been living as refugees in India for over five decades, mostly in the North-East and West Bengal. According to the 2011 Indian census, 47,471 Chakmas live in Arunachal Pradesh alone.⁴⁶ In 2015, the Supreme Court of India had issued a direction to the central government to grant citizenship to both Chakma and Hajong refugees. In September 2016, the government of India decided to provide citizenship to these groups, despite constant opposition from many groups in Arunachal Pradesh.

7. *Bru Tribal Incident, 2020 :*

In 1997, the Bru Militants had allegedly murdered guard of a Mizo forest at the Dampa Tiger Reserve in Mizoram's Mamit district, which had led to a violent backlash against the community, resulting in several thousand people fleeing to neighbouring Tripura. The displaced Brus took refuge in Kanchanpur. After certain such incidents over the years, they are currently spread across seven refugee camps in the Jampui Hills, which separate Tripura from Mizoram and Bangladesh. In January 2020, the Centre signed a "four-corner agreement" to resolve the crisis in Tripura and announced that over 33,000 Bru migrants, would be settled in the state. A package of Rs 600 crore was announced for this.⁴⁷

⁴⁵ Krishna N. Das, Sanjeev Miglani, India says to deport all Rohingya regardless of U.N. registration, Thomson Reuters, <https://www.reuters.com/article/us-myanmar-rohingya-india-idUSKCN1AU0UC>.

⁴⁶ The Hindu Net Desk, Who are Chakmas?, The Hindu on 14, September, 2017, <https://www.thehindu.com/news/national/who-are-chakmas/article19682129.ece>.

⁴⁷ Telangana Today, All about Bru-Reang refugee agreement, 10th June, 2020, <https://telanganatoday.com/all-about-bru-reang-refugee-agreement>.

IX. RECOMMENDATIONS REGARDING THE CURRENT REFUGEE POLICY IN INDIA

The significant responsibility of States is to respect and ensure the human rights of everyone on its territory and subject to their jurisdiction. Refugees tend to seek comfort and shelter in a foreign country and it is the responsibility of the legislature to formulate and apply the laws in a certain way that is devoid of discrimination on any basis. The following are a few recommendations explored by the author after deeply studying and materializing the current state of affairs.

1. It is imperative to exercise uniformity in the application of refugee law in India. The present ad hoc arrangements of attending to refugees guided by administrative, political and economic calculations should not be the policy since India caters to numerous refugee groups every passing year.
2. Suryanarayana in his book, has stated "*the absence of a well-defined national refugee law has created a number of anomalous situations.*"⁴⁸ An enactment of Refugee legislations should be passed that will facilitate the establishment of a framework that will determine the refugee status based on the universally accepted standards of Refugee status determination, protection and treatment.
3. India's Citizenship Amendment Act 2019 (CAA)⁴⁹ was suffused with calculated violation of judicial precedent, constitutional norms and international law by only including Hindu, Buddhist, Sikh, Jain, Christian, and Parsi refugees from the three Muslim-majority countries of South Asia. India needs a domestic solidified framework of sustainable refugee policies that does not discriminate on the basis of religion, caste, gender etc.
4. Minority politics is also a prime factor that can help to deliberate upon the reluctance of India's lawmakers to make domestic sustainable laws w.r.t refugees. Illegal immigrants have been used by vote-seeking- opportunistic political parties to win central and state elections and secure their seats in the Parliament. The opportunists try to bank votes by regularizing their stay in the local parts of India.⁵⁰ Political motives must not be sought to jeopardize refugee stays in India.

⁴⁸ V Suryanarayan, "Humanitarian Concerns and Security Needs: Sri Lankan Refugees in Tamil Nadu," in Chari et al, n. 9, pp. 55-56.

⁴⁹ India's Citizenship Amendment Act 2019, Act no. 71 of 2019.

⁵⁰ Sumbul Rizvi, "Managing Refugees: Role of the UNHCR in South Asia," in Chari et al, *ibid.*, pp. 195-196.

5. In addition to formulating a domestic law, India must consider accepting international assistance and give an open hand to UNHCR and other NGOs to monitor refugee groups that will further assist in management of mass refugee groups.
6. In case of a dispute between two countries, certain clauses must be inserted in bilateral agreements regarding the treatment and role of refugees to curb any conflict. Without such protocols, the treatment of refugees remains ambiguous at the hands of the Government. In 1991 'favoured' communities like the Tibetan refugees suffered ill-treatment when Chinese Premier Li Peng visited New Delhi. Their activists and leaders were arrested and most Tibetan Communities were put under surveillance.⁵¹ This serves as an illustration of the defects of ad hoc administration regarding refugees in India.
7. With perpetually enlarging influx of refugees entering India, a large section of them may not be repatriated in future. A uniform legal framework will allow the government to entertain masses of refugees in an orderly and fair manner with more accountability.
8. The National Human Rights Commission (NHRC) has submitted reports⁵² to initiate amendments to the outdated Foreigners Act (1946), currently referred to by the authorities with regard to refugees and asylum seekers. The most significant lacuna in this Act is that it does not include the term 'refugee'. Under Indian Law, the term 'foreigner' is used as an umbrella term to cover aliens temporarily or permanently residing in the country.

X. CONCLUSION

It is evident from the forgoing conceptualized study of the concerned matter that India continues to take a humanitarian view of the problem of refugees and has not yet formulated a legislation that particularly deals with refugees, hence causing instability and threat to the right to security of the refugees. It is vital to note that a person is secure when his or her life is not threatened, therefore for a refugee; the right to security insinuates the physical, psychological, financial and social security.

India is not a signatory to the 1951 Convention⁵³ relating to the status of refugees or the 1967 Protocol. However, we cannot ignore that India that India is a signatory to various other international and regional treaties and conventions relating to universal human rights and

⁵¹ H K Thames, "India's Failure to Adequately Protect Refugees," Washington College of Law 2000, <http://www.wcl.american.edu/hrbrief/v7i1/india.htm>.

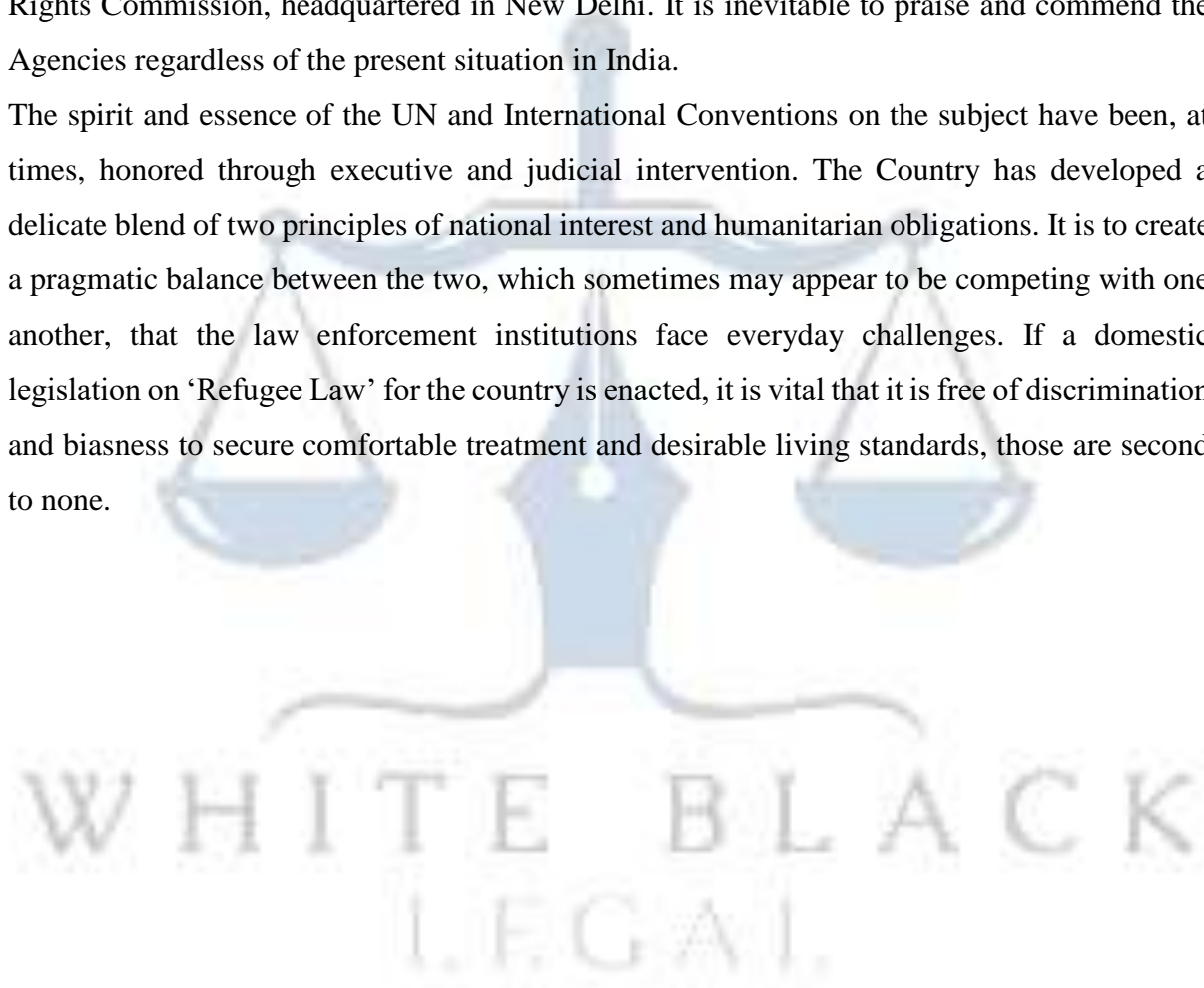
⁵² Rajeev Dhavan, "On the Model Law for Refugees: A Response to the National Human Rights Commission (NHRC)," NHRC Annual Reports 1997- 1998, 1999-2000 (New Delhi: PILSARC, 2003).

⁵³ Ibid at 2.

refugees such as the UN Deceleration on Territorial Asylum (1967),⁵⁴ the Universal Declaration of Human Rights,⁵⁵ and the International Convention on Civil and Political Rights (ICCPR).⁵⁶

India has provided shelter and had received millions of refugees since the year 1947. The Institutions responsible for registering and dealing with recognized refugees by the Central Government are the United Nations High Commissioner of Refugees and National Human Rights Commission, headquartered in New Delhi. It is inevitable to praise and commend the Agencies regardless of the present situation in India.

The spirit and essence of the UN and International Conventions on the subject have been, at times, honored through executive and judicial intervention. The Country has developed a delicate blend of two principles of national interest and humanitarian obligations. It is to create a pragmatic balance between the two, which sometimes may appear to be competing with one another, that the law enforcement institutions face everyday challenges. If a domestic legislation on 'Refugee Law' for the country is enacted, it is vital that it is free of discrimination and biasness to secure comfortable treatment and desirable living standards, those are second to none.



⁵⁴ UN General Assembly, *Declaration on Territorial Asylum*, 14 December 1967, A/RES/2312(XXII).

⁵⁵ The United Nations, *Universal Declaration of Human Rights*, 1948.

⁵⁶ T Ananthachari, "Towards a National Refugee Law for India," in P R Chari, Mallika Joseph, and Suba Chandran (eds.), *Missing Boundaries: Refugees, Migrants, Stateless and Internally Displaced Persons in South Asia* (New Delhi: Manohar, 2003), pp. 99-107.