

# Refugees and the State

Practices of Asylum and  
Care in India, 1947–2000

Editor

Ranabir Samaddar



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edited by  
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# contents

Foreword	7
Acknowledgements	19
Introduction	21
Power and Care: Building the New Indian State <i>Ranabir Samaddar</i>	
1 Aliens in a Colonial World <i>Paula Banerjee</i>	69
2 State Response to the Refugee Crisis: Relief and Rehabilitation in the East <i>Samir Kumar Das</i>	106
3 Birth of Social Security Commitments: What Happened in the West <i>Ritu Menon</i>	152
4 The Returnees and the Refugees : Migration from Burma <i>Subir Bhaumik</i>	182
5 The Genocide of 1971 and the Refugee Influx in the East <i>K C. Saha</i>	211
6 Uprooted Twice: Refugees from the Chittagong Hill Tracts <i>Sabyasachi Basu Ray Chaudhury</i>	249
7 Gainers of a Stalemate: The Tibetans in India <i>Rajesh Kharat</i>	281

## contents

8	Sheltering Civilians and Warriors: Entanglements in the South <i>V. Suryanarayan</i>	321
9	Refugee Women and Children: Need for Protection and Care <i>Asha Hans</i>	355
10	Paradoxes of the International Regime of Care: The Role of the UNHCR in India <i>Sarbani Sen</i>	396
11	Status of Refugees in India: Strategic Ambiguity <i>B.S. Chimni</i>	443
	Bibliography	472
	About the Editor and Contributors	483
	Index	486

## foreword

**the book project** This book on 'Practices of Asylum and Care in India' is unique in its conceptual origins, diversity of contributors, and in its purpose. It is a product of a project which arose from a discussion between the former External Affairs Minister of India, Jaswant Singh, and the former UN High Commissioner for Refugees (UNHCR), Sadako Ogata, in May 2000 in New Delhi during the latter's official visit to India. In that meeting, the High Commissioner paid tribute to India's generous humanitarian tradition of receiving and protecting refugees. She mentioned to the Minister three new books on refugees which she was to launch later that day: Prof. B.S. Chimni's, *A Reader on Refugee Law*, Prof. V. Suryanarayan's *Sri Lankan Tamil Refugees in India*, and the Calcutta Research Group's *The Refugee Experience in West Bengal*. The Office of the UNHCR in New Delhi had supported the preparatory work and printing of these three books.

The Minister commended the initiative on the three books, and suggested that a similar initiative be undertaken to produce a comprehensive book on refugees in India with a perspective that would reflect on refugee asylum as an integral part of Indian culture and civilisation. The Minister pointed out that it would be a useful endeavour to piece together a relatively unknown aspect of Indian history, not only as an academic exercise, but more specifically to enable readers of the book in India and the rest of the world to understand India's contribution in the area of protection and assistance to refugees.

India has many distinguished scholars and reputed research institutes in various academic fields. Some are known to the UNHCR and have worked with the Office in the areas of refugees and related studies. It was from this network that the coordinating institution was identified. The main consideration in the selection of the coordinating institution was demonstrated academic competence, active interest in refugee matters, and diversity of professional contacts from which the participants in the book project were to be enlisted. On those credentials, the Calcutta Research Group (CRG), among many others, was selected as the focal institution for coordinating the project. The CRG, under the able leadership of Dr Ranabir Samaddar, proceeded to identify researchers to prepare the different chapters. Most of the authors of the chapters in this book are well-known scholars in India and abroad, have previously worked and written on the subject of refugees, or have been associated with refugee-related issues, while some of them work for well-known institutions and organisations in India.

The research work and writing was done in a relatively short period of just over a year. It was rigorous and demanding work on the part of those involved as it was an undertaking over and above their regular work and other commitments. A common attribute, which is shared by the writers of the different chapters, is their distinguished scholarship and evident commitment to the refugee cause. It should be noted that refugee studies, especially refugee law, is a relatively new area of academic pursuit in India. A little over a decade ago, books and articles on refugees were few, but recently, there has been a burgeoning of interest in refugee studies, and research and publications on refugees in India and South Asia as a whole.

The trend is gaining momentum and can partly be explained by the widening academic and public awareness about human rights and humanitarian issues. There is also a growing realisation at policy and strategic levels of the relevance of refugees to domestic and international politics in many regions of the world. In India, refugee studies are now offered as subject options in several leading academic institutions in law, social sciences and strategic faculties. In some universities, refugee law is offered together



with human rights law and humanitarian law. There is also an increasing number of researchers who are working on refugee issues, migration, and related demographic issues as an aspect of globalisation. The contributions to this volume attest to this widening interest.

In this book, scholars reconstruct and analyse the periodic presence of refugees in Indian society, and the interaction of the refugees with ordinary people and the rulers/ authorities who received them. There are references in the book to the arrival and treatment of refugees in pre-colonial India, which illustrate the origins and continuing tradition of hospitality to refugees in Indian culture. Other refugee episodes may not be readily available as part of recorded history, but can be traced and interpreted from the accumulated oral traditions and mythologies of the ancient civilisations of India. Archaeological discoveries and reconstructions have proved to be a rich and valuable source of understanding the cultures and values of past societies. Future research in this area may shed more understanding of the past in the area of hospitality to refugees.

Most of the data used by the writers of the different chapters is from primary and secondary sources. However, the interpretation and presentation of the data in each chapter should be attributed to the respective writers. Evidently, there was not enough time and resources to undertake extensive research, but each chapter provides a framework and scope for further research on the different topics. The book as a whole is a major academic contribution; it provides for the first time, in one volume, a compilation of writings on refugees in India at different historical periods in different regions in India. It is an effort by Indian researchers and writers who in their personal experiences may have witnessed or are familiar with some of the refugee situations which they have written about.

**salient trends in some case studies** From historical times, the definition of a refugee has not changed; what has been varying from one situation to another are the factors which cause refugee situations and the manner in which refugees are received and treated. In traditional Indian society, a refugee was a fleeing

stranger in need of sanctuary, someone who was received and treated as a guest. Some refugees were integrated in the receiving society while others may have chosen to return to their homes after a period of time. There are examples of refugees who were not only well treated as guests, but also given patronage from host rulers and offered opportunities to contribute to the betterment of the host communities. In that way; over a period, some refugees were able to rise to positions of power and influence in their new-found homes.

The chapter 'Aliens in the Colonial World' is a link between the past and the present. It provides an evolving analysis of the 'refugee' as an outsider or alien arriving in another society to seek sanctuary. It focuses on the colonial period showing how the colonial administrative machinery enacted legislations and put in place legal jurisdictions for exercising effective hold over ruled territory and subject populations by controlling the entry and exit of foreigners. There was no specific categorisation or treatment of refugees among the foreigners. The law provided unambiguous clarity between a subject and an alien although sometimes the same law was used to exclude freedom fighters based outside the territory from entering the ruled territory from another country. The chapter further shows how the administrative and legal provisions during the colonial period, were part of the state formation process which has had enduring influences in the statutes of post-colonial states in South Asia. The writer acknowledges, however, that in the post-colonial period moral and humanitarian considerations have been evoked in different situations to distinguish the foreigner as a refugee and to provide protection and assistance to the refugees.

The following chapters on the post-Independence period use asylum and refugee concepts, which are derived from notions of government and governance of nation states in the contemporary international system. The underlying definition is that of a refugee as a person who is compelled to flee from one state to another to seek the protection of the government of the receiving State. The usage of the term 'refugee' in this book goes beyond the concept of individual persecution as the cause of refugee flight used in the 1951 Refugee Convention to include flight from

widespread violent conflicts, breakdown of law and order, systematic violations of human rights, and threats to the lives of individuals and people. The definition is not official, but has received wide acceptance and is implicit in the Constitution of India and its democratic and human-rights principles.

The partition of the subcontinent at the very dawn of the independence of India was a defining moment for the future direction and psyche of the new nation. The vicious communal violence and refugee crisis which ensued resulted in wide-scale destruction of life and property and traumatised millions of people. The number of people directly affected and uprooted during Partition was about 7 million. It was a 'one-way exodus' as the refugees did not have the option of returning to the areas they were compelled to flee from; they required immediate protection as well as a permanent solution in India. It should also be noted that as refugees were arriving in India, the communal violence had led to a reverse movement of people from India to Pakistan thus adding to the complexity in handling the refugee situation in the subcontinent.

The refugees had to start a new life as part of the newly independent state of India, and the Government had to respond to an extraordinary situation at a time when it hardly had any resources and experience in dealing with humanitarian emergencies involving such large numbers of people. This kind of refugee situation is very different from the other refugee situations covered in this book in which voluntary repatriation to the land of origin remains one of the possible solutions. The discussion in the chapters on the Partition refugees raises crucial questions on the whole issue of refugee rights where people and territory have been partitioned elsewhere in the world.

From the challenging experience during and after the Partition crisis, India has built an emergency response capacity which has been applied in different emergency situations caused by natural disasters as well as refugee influxes. The chapter on Partition refugees provides a detailed discussion on emergency assistance in the country, settlement programmes and development of refugee-impacted areas. The chapters on relief and rehabilitation of refugees in the country's east and west give a comparative insight

into the enormity of the problem faced by the Central and State governments following Partition. The planning and implementation of reconstruction programmes in the areas where the refugees were settled, and the constraints faced, are analysed in detail in the chapters. What has not been adequately highlighted in these chapters is the success in integrating refugees into the mainstream life of the nation as reflected in the opportunities given to the refugees which enabled some of them to excel in different activities. Some persons with a refugee background have distinguished themselves and contributed significantly to the nation in various spheres such as politics, business, professions, and culture.

Within a little over a decade of settling Partition refugees, India faced the first regional influx of refugees from Tibet in 1959. They came with their spiritual leader the Dalai Lama for political and religious reasons as China intensified its presence and influence in Tibet. Unlike the Partition refugees, the Tibetans were culturally and historically different from the people of the Indian sub-continent. They came to India seeking asylum with the hope of returning to Tibet when conditions would have changed to permit repatriation. The Tibetan refugees are still in India after more than 40 years. They now number about 1,20,000, and are among the oldest refugee populations in exile in the world. During this period, the Tibetans have retained and advanced their cultural identity thus enriching the cultural mosaic of Indian society. Tibetan settlements in the various parts of the country co-exist with the local communities, and the dynamics of the interaction are discussed in the chapters; they provide valuable common observations on the relationships which may develop between refugees and host communities.

India received the Tibetan refugees primarily on humanitarian grounds, but their continued stay in India has invariably been influenced by the relations between India and China over the decades. The chapter on the Tibetan refugees discusses the significance of the Sino-Indian conflict of 1962 for the refugee issue; but it is equally significant to observe how, from the very beginning, India strived to depoliticise the Tibetan refugees issue from the geopolitics of the region. A notable characteristic of the

Tibetan refugees in India is their resourcefulness. In a relatively short period they were able to make the best of India's generous assistance and become self-reliant. India provided land for settlements, education opportunities, and other social services. The Tibetan refugees in India are among one of the success stories in capacitating refugees to enable them to contribute to the economic and social development of asylum countries.

The arrival of 10million refugees to India from the former East Pakistan in 1971 is rated as the largest refugee flow of the 20th century. It happened within the short period of a few months exerting heavy pressure which over stretched the resources of the Government and the hosting communities, particularly in the neighbouring states of West Bengal, Tripura, Assam, and Meghalaya where the refugees first arrived. The Government of India issued special postage stamps and the proceeds were channelled to meet some of the costs of hosting the refugees. There was some assistance from international organisations such as Red Cross, Oxfam, and Care, but it represented only a small fraction of the needed resources given the magnitude of the caseload. The UNHCR made a total contribution of \$120 million which was channelled and implemented by the Government. Most of the refugees returned on their own to the newly formed state of Bangladesh shortly after the war between India and Pakistan. It should be noted that the Partition refugees and the refugees from East Pakistan together represented the largest refugee influxes and caseloads in modern times, and which India had to host within a barely 20-year interval.

In both cases, international assistance was negligible, and the international community was perceived by India then and thereafter as being indifferent. This fact has often evoked unpleasant memories and led to a cautious attitude towards international humanitarian assistance on the part of India. During Partition, there was no international refugee regime-which was established only in 1951 the Refugee Convention, and initially was only applicable in Europe. India did not sign the Convention even after its geographical limitation was removed by the 1967 Protocol to the Convention. However the spirit of the Convention is to protect all refugees anywhere, irrespective of their country of origin or

destination. The mass influx of refugees was one of the precipitating factors which led to the war between India and Pakistan, at a time of heightened political tensions in the region and Cold War rivalry in the world from which India was non-aligned. This refugee situation is an example where humanitarian concerns were mixed with national security concerns. The massive influx was becoming a destabilising factor in India's demography and resources at a time of heightened tension in the subcontinent.

The movement of people from Bangladesh across to India along the long porous common border has continued regularly, not as an influx and for different reasons. Sometimes people crossing the border to India are still referred to as refugees in the media and in popular usage when actually those people are economic migrants crossing over in search of better economic and social opportunities. This is a common trend from other countries neighbouring India due to India's relatively large and more developed economy. There may be, however, cases where some people in need of asylum from neighbouring countries are mixed with economic migrants. The phenomenon of 'mixed flows' needs therefore to be understood and addressed according to the causes for the movements. Equally, the relationship between political and economic compulsions for people's movements across international borders need to be critically analysed to bring out the complex dynamics of cross-border migrations in order to preserve the institution of asylum in dealing with the problem of illegal migrations in the region.

The three case studies cited here highlight the evolution of some trends in what have been India's pragmatic responses to the different refugee situations. This foreword is not meant to be a review of the book, but an illustration of some of the major aspects of that policy. Other refugee caseloads covered in this book have also received different responses at various intervals by the Government and people of India, but shows some of the elements which evolved in the first-quarter century of independent India. For example, the Chakma refugees of the 1980s eventually returned home; on the other hand, for the Sri Lankan Tamil and Afghan refugees who have been in India for nearly 20 years, it is only now that there are some possibilities for them to voluntarily return to their respective countries of origin.

The Afghans, refugees from Myanmar, and other nationalities, including some African refugees who came to India as students but cannot go to their countries now, numbering about 13,000 reside mainly in New Delhi. They are the only refugees recognised under the mandate of UNHCR, while nearly 2,00,000 refugees still in India are directly under the Government of India. The involvement of UNHCR with the urban refugees is a departure from the practice of India's bilateral handling of refugee groups from the immediate countries of the region. The role of the Government remains crucial as it provides the ultimate protection for the refugees in its territory by providing them with residential permits and ensuring their security while in the country. The UNHCR is therefore able to exercise its mandate with the humanitarian space and support provided by the Government.

The chapters in this book analyse the treatment of refugees in general. There is no significant refugee influx to India since Independence, which has been left out in this study. To the extent possible, the authors have been reasonably objective; pointing out the positive aspects as well as shortcomings in the practices. The overall picture presented in the book is on how best India has responded to refugee situations under different prevailing circumstances in keeping with its traditions. What emerges from the analyses of the experiences is that refugee situations in India, like anywhere else in the world, have been a recurring phenomenon.

Although every refugee group is different from another in causes, magnitude, and characteristics, the common denominator about refugees is that they are a vulnerable group of foreigners forced to flee to another country who are in need of protection by another government. The response to refugee situations is, and has been, first and foremost on moral and humanitarian grounds. However, refugee situations cannot be totally isolated from bilateral and multilateral relations among states, especially when the presence of refugees directly or indirectly affects national and public-security issues. On the resources side, protection and assistance to refugees entails unforeseen additional expenditure for the hosting state from the onset of a refugee situation and throughout their stay, depending on the duration of the refugee situation and the extent to which refugees are enabled to engage in gainful

activities. India has by and large dealt with refugee situations bilaterally and has often singularly met the cost of keeping refugees on its territory. At the same time, India has adhered to and expounded the universal moral values and principles of protecting refugees, especially the principle of non-refoulement and its corollary principle of voluntariness when refugees wish to return to their countries of origin.

**partnerships** In the chapter on the 'Role of the United Nations High Commissioner for Refugees in India', the history of the presence of the UNHCR in India is traced, along with its relations with the Government and its involvement with some groups of refugees. It should be noted that relations with the Government have been informal from the very beginning. Nonetheless, despite the limitations of informal relations between institutions, a partnership has developed over the years between the governance and UNHCR. The partnership has been strengthened since 1995 by India's full membership in the executive committee of the High Commissioners Programme, which meets once a year with three standing committee meetings of its members in the course of the year. The executive committee is a multilateral forum which offers an opportunity for its member states to share ideas and issues on international responsibility and solidarity with regard to refugees. While India remains a non-state party to the 1951 Refugee Convention and its 1967 Protocol, its membership in the executive committee has proved to be a valuable partnership with the UNHCR in articulating global policies on refugees.

A useful dialogue has also been initiated on the possibility of formalising the UNHCRs' presence in India after 20 years of uninterrupted presence in the country and of working with the Government. Furthermore, a discussion has started with the authorities on the possibilities of enacting a law on refugees in India. A public debate on the subject has also been going on for sometime under the auspices of the eminent persons group led by Justice Bhagwati, the former Chief Justice of India, on this subject. The group has drafted a model national law in the context of South Asia and it is coordinating national initiative to promote



awareness and encourage discussion on the merits of a legislation on refugees.

In the year 2000, the Government of India invited the then High Commissioner for Refugees, Sadako Ogata, to make the first ever official visit to India by a High Commissioner for Refugees. A similar invitation was extended in 2002 to the next High Commissioner, Ruud Lubbers. The visits were milestones in strengthening relations between the Government of India and the UNHCR. They offered an opportunity to further discuss issues of common concern on refugees in India, the region, and the rest of the world. As pointed out earlier, it was on the occasion of the visit of Sadako Ogata that the idea of embarking on this book project was initiated by the former External Affairs Minister.

With the approval of the authorities, the UNHCR has engaged in various promotional and advocacy activities in various parts of the refugee law and public awareness on refugee issues. In partnership with the National Law School in Bangalore, the UNHCR has established a Chair in Refugee Law, and it is supporting refugee studies programmes in other universities such as Jadavpur and Jawaharlal Nehru. In the democratic environment and tradition of India, with a vibrant civil society, the UNHCR has been able to work and collaborate with non-governmental organisations, academic institutions, legal fraternities, the media, human-rights groups, and civic leaders of various social organisations on how to enhance the assistance to protect and assist refugees in India. During the visit of Ruud Lubbers in May 2002, an initiative was launched with the Confederation of Indian Industries to extend India's corporate social responsibility to refugees in India and also when they return to their respective countries of origin. The UNHCR has also involved the various refugees groups under its mandate in social and economic activities to encourage interaction with Indians in the communities in which they live. The self-reliance programme for refugees under the UNHCR mandate is designed to benefit not only urban refugees, but also the local population in some localities of New Delhi.

I take this opportunity to pay my sincere tribute to all the individuals, groups, and institutions with whom we work. I encourage them to strengthen this partnership with the UNHCR. It was

**augustine mahiga**

a most rewarding and inspiring experience for me to work with the various interlocutors during my four years tenure as the UNHCR Chief of Mission in India from August 1998 to July 2002. I extend my special gratitude and thanks to all the dedicated staff of the CRG and to the contributors to this book. Last but not least I thank the staff and my colleagues in the Office of the Chief of Mission in New Delhi for their support and commitment to the refugee cause.

New Delhi

Augustine Mahiga

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**ranabir samaddar**

to mention that this volume is a direct successor to the volume *Refugees in West Bengal-Institutional Practices and Contested Identities* (2000) edited by Professor Bose. To Sage Publications, and to Tejeshwar Singh and Omita Goyal in particular, our indebtedness remains; they did not give us any reason to feel apprehensive when we imposed on them an impossible publication schedule. Our thanks go likewise to Debjani M. Dutta and Ankush Saikia for their help and ungrudging cooperation in making the manuscript ready for publication. Finally, as members of a collective enterprise who met thrice to discuss our ideas and arguments, not the least facts, and encouraged each other in completing the work, we remain mutually indebted as colleagues in this venture.

The pleasure of having worked with Paula Banerjee and Samir Kumar Das, who jointly bore the responsibility of keeping this venture going with enthusiasm, will remain with me in this age of being dissatisfied with existing accounts and ideas.

Kolkata

Ranabir Samaddar

## **introduction**

### **power and care:**

### **building the new indian state**

**Ranabir Samaddar**

There is a case for lavish distribution, then, if it is either necessary or beneficial. However, in these very matters the role of intermediate course is best. Lucius Phillipus, the son of Quintus, a man of great talent and extremely notable, was accustomed to boast that without financing any public events he had achieved all the most highly regarded distinctions ... It is fitting, moreover, both to be bountiful in giving and also to avoid harshness in making demands and in all transactions ... in issues concerning neighbours and boundaries-being fair, affable, often yielding much of what is rightfully one's own, certainly shunning litigation as far as possible, and perhaps a little further than that. For it is not only liberal, sometimes it may even prove fruitful, occasionally to concede a little of one's right. One must take account of one's personal wealth (for it is criminal to allow that to slip away) but in such away that there is no suspicion of meanness and avarice. For to be able to act with liberality, and yet not rob oneself of one's patrimony, is without doubt the greatest fruit that money can bear. Again, hospitality was rightly praised by Theophrastus. For it is most seemly (or so it seems to me) for the homes of distinguished men to be open to distinguished guests. Furthermore, it reflects splendidly on the republic that foreigners do not in our city go short of that kind of liberality. For those who wish to possess great power honourably, it is also extremely beneficial to wield

influence and command gratitude among foreign peoples through the guests one has entertained. Theophrastus indeed wrote that in Athens Cimon was hospitable even to Laciads, the members of his own ward; for he established the following practice, instructing his stewards accordingly, that everything should be offered to any Laciad who called at his country home.

-Cicero, *On Duties*, Book II: 59 and 64, pp. 86-89 (in M.T. Griffin and E.M. Atkin, eds., Cambridge University Press, 1991).

**practices and policies** Nobody can possibly fail to recognise the importance of the refugee as the subject in an analysis of the policies of refugee care and protection. This importance, it is said, is great-in a tone that is grave inproportion as the analysis is less capable of analysing policy in terms of contingency and experience. It is assumed that the subject will be revealed in course of analysing the policy. It may be so, but the question is, how precise will the analysis have to be in order for the claim to be correct that the subject has received due recognition? How precise can our policy study be in a study of policy, as distinct from a study of the subject of the policy? Even before we have begun, we are caught in the dilemma of capturing policy as the experience of the subject.

Eleven narratives by eleven authors on eleven histories-how can one frame them in a policy account? The task is not merely daunting, it is self-killing, for once the issue of asylum, protection, and resettlement practices of a State is seen not in terms of a policy, but accounts of flows and practices, and developing morals and contingencies, policy can be found out at best in an epigraphic mirror-as part of an epic. Possibly in an age busy with policy studies, this is the best way to situate the matter. A policy account is one where policy merges with its opposite, *the event and the chronicle*, to an extent where it becomes a fragment; in other words, strategy becomes a contingent tale-a part of the collective experience of how a State builds up through contentious events, politics, and history. The story of caring and exercising power in order to take care and to limit care, is an instance of a policy study where policy can find its own history only in the histories of caring, hospitality, nation-making; building up an

appropriate political ethic, and the balancing of all these by the State with its own reason of existence; that is maintaining its own self, *the State-and* therefore an instance where policy study can only dissolve itself in the larger account of post-coloniality. General readers, officials, those who were victims in the past, UN personnel, humanitarian agencies and their functionaries, and the human-rights community, I feel, will be either appreciative or disappointed at this effort, depending on the way they choose to see this complex account. I seek an apology beforehand from the disappointed ones.

This of course begs three serious questions. One, how do you undertake a policy study? Of course, by studying policy declarations, but what more is there to it? By studying institutions, studying personalities and their memoirs, or noting down vital clues in official dossiers? Or, is it by reaching the frontier where policy melts into contingency? Two, can there be a policy for hospitality, a policy to be kind? Does caring actually begin when the policy of self-care ends? Can we begin caring for others when we are caring for our means and ends? In other words, when we go beyond our means to help-is it then, and primarily then, that care and hospitality begin? Three, how are we to look at the form of the power of a State to rule and to care, which though connected as they are with each other, appear as separate and distinct activities, but actually build on each other? From which arises the broader question for the speculative minded, from where does the capacity to care grow?

In terms of a policy on refugee protection by the State and a study of such policy, these three questions would mean attending to the: (a) definition of the term 'refugee' and its scope; (b) the concept of 'non-refoulement' and its scope; and (c) the administrative-judicial machinery to determine the status of a shelter-seeker as a refugee and once determined, the quantum of assistance the shelter-seeker needs.<sup>1</sup> It also means trying to understand where the refugee features in such policy formulation. We shall see, as the essays in this volume bring out, ease of physical accessibility, cultural and economic networks, and political support of the host government and communities are among the significant elements<sup>2</sup> that make the refugee a critical component in the

determination of a policy on refugees-these are elements that impel care but also add to the power of the State to decide towards whom to extend or deny hospitality.

This book is an attempt to address these complexities not in an orderly and separate manner, but going back and forth, addressing them sometimes distinctly, sometimes concurrently, and from various directions; at times running parallel, at times in different trajectories, by presenting eleven experiences of finding out how some of us became citizens, some could not, some remained familiar as strangers, some became very near yet always the unfamiliar ones-and, some whose fate was to remain the dreaded alien throughout their existence here-and that is how they left their mark on our polity. The State's care of our bodies and souls and its power over the same is written in these accounts-as if the function of care and power could to be scripted only through events, experiences, and contingencies; in other words, in materiality. In the dust of ethical, administrative, and political accounts, we have responses to the three inquiries mentioned earlier.

**care and its limits** To care is to stretch the limits of the possible. We have in the account of how the State governs always a double imperative-a contradictory logic of power and care that runs through these eleven experiences. The heritage of rule is thus always a paradoxical injunction. As the readers will go through the detailed narratives of how refugees were saved, cared for, and rehabilitated; how many were left out, refused, and neglected in the same period; how hospitality always went on with calculation, best described now in that well-known phrase in the literature of refugee studies, 'calculated kindness',<sup>3</sup> they will find in this volume suggestions for a many-sided interrogation of the logical structure behind what we call the political ethic and duty of hospitality. Refugee studies in this country had been waiting for such an interrogation of the contradictory nature of rule that lies behind for instance what Subir Bhaumik in his essay on the 'Burma Connection' calls the 'full circle', and the ambivalence, laid bare so clinically by B.S. Chimni in his commentary on 'strategic ambiguity'. Neither the security explanation, nor the kindness



explanation, nor even the international law and international regime explanation, will be adequate in making us understand the mysteries behind one of the most-observed and least comprehended political conduct of our times, namely the asylum and refugee care policy of a post-colonial State.

We are of course provided in a pronounced way by the narrators in this volume of refugee care in post-partition India as one of the keys to the mystery, namely that *nationalism and democracy* provide the key to the enigmatic conduct of the Indian State in providing hospitality to shelter-seekers. In fact, the report on caring and hospitality drawn in the background of 1971 explicitly states,

The reign of terror ... led to the flight of 10 million refugees ... India had opened its frontiers extending several thousand kilometres, from West Bengal to Tripura, to the fleeing refugees. The number of the refugees would have been much more ... Several thousand refugees could not reach India and died on the way from hunger and exhaustion. Thousands of refugees who reached India would have died, but for the immediate relief, assistance, and medical care provided to them. There had been the death of hundreds of refugees in hospitals, which showed the plight of the refugees was really miserable ... But for the open door policy of admission of the Government of India (Go!) and the care of the refugees in its true humanitarian traditions, the number of deaths would have been in the hundred thousands and would have been one of the worst tragedies of modern times ... The response of the local population .. was overwhelming despite the heavy influx of refugees. The Bengali populace in West Bengal, Tripura and other states had a positive empathy for the refugees since East Pakistan was once part of Bengal before the British had partitioned the state into East and West Bengal. In addition, the media had highlighted the crisis as a national one. The local population had the apprehension that the refugees might not go back. The GoI had initially thought that some solution would be found and the refugees would return within two to three months. The GoI had been initially referring to the refugees as evacuees hoping that

repatriation would soon be possible. The local population had to face many difficulties due to the shortage of commodities, price rises, unhygienic conditions, health hazards, closing down of educational institutions, etc. Normal administrative work as well as development projects were affected as the Administration had to divert manpower and resources for the care of the refugees. There was no communal disturbance in the camps even though in many areas Hindus were a majority and some of them had been victim of local communal elements in East Pakistan. The Administration worked as a team to face the crisis ... It was thought that many of the refugees, particularly the Hindus, would not return to Bangladesh. But almost the entire refugee population was repatriated. A small number may have stayed back, but their number was not significant compared to the estimated 10 million refugees.<sup>4</sup>

Similarly, in another chronicle we hear of national calamity, only by tackling which the nation could redeem itself. The chronicler of refugee care in post-partition Bengal writes in drawing the curtains on what has been a 50-year-long saga, 'The history of relief and rehabilitation in the East is one of gradual emplacement within a national body of those who were the victims of one of the world's worst population displacements. The travails and trauma that accompanied their emplacement are only reflective of our fledgling nationhood.'<sup>5</sup> The chronicler on the West writes in similar vein, 'It was the characterisation of the refugee as a *critical component of nation-building* (author's italics) that marked a significant shift in conceptualisation and, consequently, in policy formulation. Linking resettlement with development, and rehabilitation with reconstruction, was a uniquely progressive and far-sighted response to a problem of crushing proportions; in this scheme of things refugees became a valuable human resource rather than, only, an onerous liability.'<sup>6</sup> Thus, 'all embracing response', 'national effort', and 'the desire to stretch the means of caring beyond the means'-these are the metaphors of a scenario invoked again and again. Even when one takes into reckoning the views from below, most famously expressed by Joya Chatterjee, who shows that it was not all that a happy hour of nationalism,

but a battle between the two contending notions of right and charity,<sup>7</sup> there is a fundamental agreement between all sections of the actors in that contentious scenario, namely, *we/they are part of the nation, the nation must accept us/them*. It is this dual context of nationalism and democracy, brought out by the chroniclers, in which we find not only a re-emphasizing of the role of 'partition-refugees' as elements of nation-building, but also a reinforcement of the State's duty to care and the imperative on its part to mobilise all powers at its command to that end—indeed to justify its status as the repository of power the State has to re-articulate its obligation to care. Probably most important in this context is the fact that these essays collectively bring out a scenario of the polity harbouring two visions of rights—a vision of rights that emerged from the concept of nationhood and citizenship, and the vision that emerged from the affected population's daily negotiations with governmental authority over every tiny bit of subsistence-means and the consequential expansion of the moral universe of claims. One resulted in an expansion of citizenship, and the other resulted in expansion of social security beyond strictly legal confines, that, as I intend to show, ultimately got accepted by the judicial authority and the juridical discourse. The birth of social security was made possible by detailed governmental policies and techniques for sheltering the refugee population, the expanding universe of nation, and the daily contest between the State that appeared as the government and the refugee population that became another segment of the population being governed.

Yet, this is not all; there is more to the structural contradiction that comes out in this volume. Several authors show in different ways that this is an issue that goes beyond being hospitable and showing charity. We are rightly reminded of the tradition of charity, and there is also the allusion to an Indian ethic,<sup>8</sup> and yet, as the legal commentators in this volume point out, refugees need a regime of rights for their protection and not a regime of charity, and the country has to make that transition from a regime of charity to one of rights. And yet, the contingencies scripted in our post-Independence history and laid bare in these essays call for sober thinking on the paradoxes inherent in that expectation following

such a transition from kindness to rights. The paradoxes flow from the regime of rights itself. A policy of justice and our awareness of the newer frontiers of justice demand that we remain conscious about these paradoxes inherent in a regime of rights.

A regime of rights, as often found, calls for its effectiveness centralisation of power; power to be concentrated at one point to make rights effective, and rarely at multiple points. Several accounts in this volume, as elsewhere, tell us how hospitality was provided by local communities to whom the shelter-seekers were neighbours from *near abroad*, also when hospitality was denied by the host communities-communities, which were *near abroad* to the immigrants. The effectiveness of a rights regime, informal or formal, will depend much on this response, often depending on prevailing sentiments of tolerance, democracy, and nationalism. One of the challenges to cosmopolitanism is to make such sentiments relevant for the host communities in response to guests from near abroad-for cosmopolitanism depends on how you behave with your neighbours, and not to whom you had never seen. It also implies that the language of rights also faces the challenge of empowering the local/ host communities in extending shelter and hospitality. In Europe and elsewhere we today have the call to create 'cities of refuge' that invoke the tradition of several past centuries. That tradition has been present in the East also-all the more therefore the need to re-emphasise the need to empower the host communities, and not so much a single institution called the State or one of its organs, to decide issues in providing shelter, relief, and hospitality. The vigilance that human-rights institutions and public platforms have shown, for instance, in case of the Sri Lankan refugees in Tamil Nadu, proves the point that the politics of democracy and justice sits at the heart of the issue of hospitality. The chronicler of refugee women, and who else could be, is not, therefore, straying far off when she reminds us of Foucault's words in stressing the point that the situation calls for wide-ranging imaginative changes in order to infuse justice in a rights-regime concerning the refugees, namely,

We have to transform the field of social institutions into a vast experimental field, in such a way as to decide which taps need

turning, which bolts need to be loosened here or there, to get the desired change; bearing in mind that a whole institutional complex, at present very fragile, will probably have to undergo a restructuring from top to bottom.<sup>9</sup>

The call for a democratisation of the rights regime from top to bottom—the international, the nation-state and the local power structure—will therefore inevitably arise in any discussion on the history of hospitality in India in the past 50 years. For, after all, the politics of hospitality is a constant negotiation between the unconditional and the conditional, the absolute and the relative, the cosmopolitan and the particular—between the 'unconditional purity' or the 'infinite responsibility' that humanity's own ethics constantly evokes by creating its own history, also the history of the quotidian—the legal, political, and the social. Can we reconcile these? It seems that this will remain an eternal task, as much for countries and societies that have signed the 1951 UN Convention on Refugees and those that have not, or as much for countries that have national refugee laws and those that do not.

In the issues posed to us by questions of policy, it seems to me that the call is to look to the moments of unconditionality and infinite responsibility even when we are situated in pragmatic and political actions. Today's Europe shows that societies which have acceded to the 1951 Convention have not been necessarily kind to aliens and strangers in general, and are not therefore necessarily kind to refugees. I shall therefore maintain my judgement made in *The Marginal Nation* (1999), namely that in conditions of massive and mixed flows, a refugee policy that ignores the structure of population flows will not ultimately do justice to the refugee. The call arising from these studies is to look therefore into incipient forms of justice.

**conditional law, unconditional morality** How will the cosmopolitics of cities, localities, and spaces of refuge shape up? We cannot have a definite answer now. But judging from the essays in this volume reflecting on politico-juridical issues, the tension between the duty of care and the right to get care will have to be given far more recognition than what is given at present in

refugee studies, and in particular in the world of law. Indeed, what the law sometimes fails to recognise is immanent in the nature of political authority whose power builds up only by a constant negotiation of the calls that it faces originating from the demand that the authority has to *care* for the subjects, and by engaging with the pressing urgencies emanating from unprecedented tragedies and injunctions, and summoning and overwhelming every level of society. With massive crimes, the decline of the human-rights protection mechanisms, the predominance of the exclusion clause in the Convention to the exclusion of other provisions, the merciless killings of refugees as in the Jenin camp in the West Bank, the victims are now innumerable. Stranded minorities are everywhere, and Hannah Arendt had reminded us long back, with the increase of statelessness, the rights of man (and woman) also vanish. In this situation, care and hospitality is not anymore a private matter of a prince, or a family, household, village, or a group. It has become the public domain. The challenge is how to keep morality inherent in the private or the personal in the public arena today.

What renders the task of reinscribing public politics with these virtues is the situation after the September 11 attacks, where humanitarian reasons are leading to interventions further leading to humanitarian disasters; immigration controls are becoming severe around the world, and the complex history of shelter and asylum is becoming unbearable for the political classes to an extent where the latter are seeking an end of that history altogether by ending the culture of hospitality.

A contemporary report brings out this double-edged situation. In the context of various restrictions now being imposed on Muslim immigrants in the United States, a correspondent in *The Guardian* wrote on 5 March 2002,

The racial profiling (of suspect immigrant), which has become the unacknowledged focus of America's new security policy is in danger of provoking the very clash of cultures its authors appear to perceive.

Yesterday's *Guardian* told the story of Adeel Akhtar, a British-Asian man who flew to the United States for an acting audition.

When his plane arrived at JFK airport in New York, he and his female friend were handcuffed. He was taken to a room and questioned for several hours. The officials asked him whether he had friends in the Middle East, or knew anyone who approved of the attacks on September 11. His story will be familiar to hundreds of people of Asian or Middle Eastern origin. I have just obtained a copy of a letter sent last week by a 50-year-old British-Asian woman (who doesn't want to be named) to the US immigration service. At the end of January, she flew to JFK to visit her sister, who is suffering from cancer. At the airport, immigration officials found that on a previous visit she had overstayed her visa. She explained that she had been helping her sister, who was very ill, and had applied for an extension. When the officers told her she would have to return to Britain, she accepted their decision but asked to speak to the British consul. They refused her request, but told her she could ring the Pakistani consulate if she wished. She explained that she was British, not Pakistani, as her passport showed. The guards then started to interrogate her. How many languages did she speak? How long had she lived in Britain? They smashed the locks on her suitcases and took her fingerprints. Then she was handcuffed and chained and marched through the departure lounge. 'I felt like the guards were parading me in front of the passengers like their prize catch. Why was I put in handcuffs? I am a 50-year-old housewife from the suburbs of London. What threat did I pose to the safety of the other passengers?'

Last week, a correspondent for the *Times* found 30 men and a woman camped in a squalid hotel in Mogadishu in Somalia. They were all African-Americans of Somali origin, who had arrived in the US as babies or children. Most were professionals with secure jobs and stable lives. In January, just after the release of *Black Hawk Down* (the film about the failed US military mission in Somalia), they were rounded up. They were beaten, threatened with injections and refused phone calls and access to lawyers. Then, a fortnight ago, with no charges made or reasons given, they were summarily deported to Somalia. Now, without passports, papers or money, in an alien and

frightening country, they are wondering whether they will ever see their homes again. All these people are victims of a new kind of racial profiling which the US government applies but denies. The US attorney general has called for some 5,000 men of Arab origin to be questioned by federal investigators. Since September 11, more than 1,000 people who were born in the Middle East have been detained indefinitely for 'immigration infractions'. The Council on American-Islamic Relations has recorded hundreds of recent instances of alleged official discrimination in the US. Muslim women have been strip-searched at airports, men have been dragged out of bed at gunpoint in the middle of the night ...

At the same time this policy establishes splendid opportunities for terrorists with white skins, as they become, to the eyes of officials, all but invisible. This is the morass into which Tony Blair is stepping. 'These are not people like us,' he said of the Iraqi leadership on Sunday. 'They are not people who abide by the normal rules of human behaviour.' Some would argue that this quality establishes their kinship with British ministers. But to persuade us that we should go to war with Iraq, Blair must first make its leaders appear as remote from ourselves as possible. The attack on Iraq, when it comes, could in a sense be the beginning of a third world war. It may, as hints dropped by the US Defence Secretary, Donald Rumsfeld, suggest, turn out to be the first phase of a war involving many nations. It may also become a war against the third world, and its diaspora in the nations of the first.

Yet, guests, as the Tibetan refugees in India have shown, can be creative and productive; they can add to the wealth and colour of life, in as much as refugees as guests can become murderers as the Taliban experience suggests. Therefore beyond law remains ethic, though one can reasonably inquire, as Derrida does in a recent lecture, whether one can 'cultivate an ethic of hospitality? Hospitality is culture itself and not simply one ethic among others'.<sup>10</sup> Granting the suggestion of the impossibility in this task, the issue still remains-and what Derrida himself could not ignore-as to what is the Great Law of Hospitality? The law that will



combine the absolute virtue with the conditional, the ethic with plural and restrictive laws of asylum, shelter, and sanctuaries, supervision with visitation, stay with creativity, and finally protection with reconciliation? These are no doubt obscure questions, but I believe it is time that we draw certain references from the Indian experience narrated in these 11 essays. For, once we have drawn these broad references, we shall be in a better position to understand the paradoxes of hospitality, and shall be therefore more sensitive to the limits of law and the confines of legal practices, and thus appreciative of the imperative to push the frontier of the ethics of care. We shall acquire a greater capacity to transform and improve the law within the available historical space to approximate the moral law of an unconditional hospitality by expanding the conditional law of a right to hospitality. To return, then, to the broad references, these are the following:

- The first refugees to arrive in independent India were not aliens who had to be given shelter; they were part of the nation.
- The first practices of refugee care and administration built up through not so much law as practices—the practices of care, rehabilitation, and social security.
- Institutions became the concrete results of these practices and the few laws, resulting in a durable tradition of hospitality that the State cannot fully endorse and embrace, nor can reject.
- 'Partition refugees' thus left a deep mark on the subsequent pattern in which the State combines care with power; this is the mark of ambiguity.
- The contest between the notions of charity and rights that began as soon as refugees first started pouring in has influenced the subsequent discourse of 'hospitality', a term that is supposed to overcome the contradiction. The current discourse of human rights on refugee protection in India takes off from this old contest between the two notions.
- The foundations of the legal discourse on the aliens as developed in the colonial time provided the beginnings of strategic ambiguity in this respect. Who becomes alien, when,

declared by whom-became a deeply circumstantial matter, never to be finally defined by law.

- Alienhood thereby became the other part of a democratic State, which had needed and created at the same time the citizens as its political foundation. Thus India got citizens who through several succeeding years chose to opt out of citizenship and move to other countries as aliens, or the country found it faced with aliens who had opted for India and now wanted her citizenship. Similarly, some communities became part-citizens, part-aliens, and some who had been all through citizens became in changed circumstances the 'stranded minorities'. In all these metamorphoses, the foundations laid by colonial law and practices held ground.
- Because offering shelter and protection became deeply circumstantial, including the issue of near-permanent residence much beyond temporary visitation, local communities developed their response of charity and fatigue, benign care and illfeeling and animosity-a response that characterised the conduct of the State also. Local response and responsibility have turned out to be as important if not more in influencing the fate of the refugees, also the language in which the task of protecting the rights of the refugees goes on.
- Keeping the shelter-seekers in ghetto, proscribing their movement, creating ever new penal colonies, thus underwriting the nature of charity that the State has been providing to shelter-seekers, become in time a feature of the asylum and care practices of the State, though with some exceptions. What began in the Andaman Islands and Dandakaranya, continues-protecting and penalising have become inter-linked responsibilities. The policy of having prison-like refugee camps bears as in many other cases in this context such practices in the West, for example, in Sungatte in France, where non-documented would-be refugees, actually non-identities, are detained and from where the detainees try to escape to Great Britain.
- Refugee flows into India in time became massive and mixed (it had been indeed often massive, and now became mixed),

and to a large extent, the foundational history of care in the early years of independent India saved many shelter-seekers, who formed part of the mixed and massive flows. Now, the two discourses have become linked,--the issue of illegal immigrants and that of refugees. One influences; predicates, and prejudices the other.

- Finally, what the Convention of 1951 is powerless about is that the State-system finally decides the relation between visitation and residence. Thus, refugees who thought on arrival in India in 1947 that they would go back, did not, and were in all seriousness never told by the State to go back; similarly, the Tibetan refugees have not been told to go back, or been repatriated; on the other hand, hundreds and thousands of refugees from East Pakistan went back as soon as the 1971 war was over. Part of the Chakma refugees flowing into this country in successive phases stayed back, part went back, and part had to be induced to go back. In some cases, the State allowed refugees to come in, and then inexplicably shut the door on them. Without a deliberate effort, the behaviour of the State in this respect has been exactly according to the spirit of the Cold War that largely influenced the drafting of the 1951 Convention regarding visitation and residence. The enigma, if there is any, is therefore not so much in India's non-accession to the Convention but on the way it defines and configures its responsibility. *Responsibility* is other great history, which runs parallel to that of rights and care, still largely unwritten, but this history has no doubt has defined the relation between care and power.

These inferences indicate features of the social economy of care and hospitality exhibited by communities, gentry, and the state. They show the circumstances when the State has felt the need for policy initiatives to encourage citizens to give alms and show hospitality to the outsiders seeking refuge, at times insisting on compliance by the subject population of its directives, and at times setting up massive arrangements and campaigns for general hospitality. They also show the circumstances when the State has felt no more than the need to leave it to the local population and

local governments. Yet as a result of the episodic general campaigns launched by the State for hospitality and care, organisations spring up, which, taking the mandate seriously, want to carry on with the work—their hospitality then becomes a point of disturbance for the State policy of withdrawing from a general campaign for hospitality. Notwithstanding the dramatic forms of generosity of the State, therefore, it is an overall picture of graded care, a fundamentally weak welfare system, a hierarchy of priorities of the State in offering help, shelter, and care, and a differentiated notion of charity in public welfare provision for the strangers. To be true, possibly there was never an undifferentiated notion of charity, though at times the rich and the poor were equally moved to take the work of care and charity seriously. As we know, to remove the uncertainties in responding to the needs for care, countries gradually move into a legal obligation regarding the principle of compulsory welfare for the shelter-seeker. The price to be paid for, it seems to me, is in the form of accepting discretion of the legal authority to define the terms of entitlement. Public welfare provisions have become thus in this case, as in every other field, a matter of 'calculation, discrimination, and discretion'.<sup>11</sup>

**sentiments, system, doctrine** Is there anything more to the question of the unpredictability of the relation between care and power? It will be worth devoting some more attention to that half-moral half-legal universe. It can begin with the question: in what way is the issue of sheltering the alien linked with the preponderant moral issue of our time, namely that of reconciliation and forgiveness?

Return, apart from the legal resolution of the issue of 'fear',<sup>12</sup> is linked to the issue of reconciliation. Again, we can look into the studies presented in this volume from a fresh light. What lay behind the return of the Chakmas and other refugees from the Chittagong Hill Tracts (CHT) and say, the non-return of the Tibetan refugees to Tibet? I know, we shall say, the refugees willed in one case, and did not will 'return' in another. That is what is known as voluntary repatriation. And this is the ground (as opposed to forcible return) on which the human rights discourse has gathered so much strength. But evidently the matter does not

stop there. What causes the will? In case of the CHT refugees, a settlement (on the merits of which we are not making any comment here) or a political accommodation; possibly this will be the case in relation to the Sri Lankan Tamil refugees also. It shows how the politics of *near abroad* is so closely connected with the politics of care. Yet, strangely, neither the international human rights discourse on refugee protection nor the concerned institutions admitted that return is linked to settlement, and does not reflect fundamentally on the quality of protection available back home, or a restoration of political dignity. There is nothing fundamental to argue that the human rights situation is worse in, say, China than Bangladesh or Burma to discourage return. Situated as we are in this politics of *near abroad* in which refugee care discourse seems to be irretrievably caught, and on which the human rights community has not said much, how are we to converse with the moral world?

Do refugees forgive the violence that had been unleashed on them once upon a time? Are they allowed to forgive? This is a singular case, where the truth of violence is daily heaped on them; not to bring reconciliation but to prevent it by subjecting the victim to more anguish and hatred. Thus, the exclusion clause relating to violence committed by a refugee-seeker (Articles 1d and 1f of the 1951 Convention), today used wantonly by States not only to deny refuge, but to determine the political character of the international refugee-system, has turned out to be a handy weapon to block reconciliation. And in an essential sense, it has gone against trust building, because 'demanding guarantee' is at the end a legal notion, while trust is an ethical-legal concept, and responsibility can be at best reinforced by guarantee while it originates from trust. The way in which Afghan refugees in Pakistan were integrated with the politics of vengeance, or in some cases 'partition refugees' have been integrated elsewhere with such politics, is surely a reminder that what we are confronted with in this world of contrived innocence is not care but power, or care caught in power, or to put it even more exactly, power that builds up only through synoptic care. That care cannot just be altruism. What then is this graded world of care? Or, what is this act that prevents forgetting and forgiving, or creates a new geopolitics of

selective forgiveness and forgetfulness? What is this act of sheltering that does not allow the unforgivable to be forgiven, and prevents reconciliation? What is this standard of justice that cannot explain the discriminate standards of justice in the light of forgiving and reconciliation?

Even knowing these are dangerous and murky waters, I want to delve in. After all, as these experiences testify, care, kindness, and hospitality are ethical issues beyond the assured horizon of law. Yet the paradox is that while the call for building up in this country and the region a stable legal regime of refugee protection and care draws its legitimacy from the task of upholding the humanitarian virtues of care, kindness, and justice for the wronged and the victim, the institutional practices of protection build up on the legal compulsion of determining the need and the quantum to care, to be kind, and to be hospitable. *Generosity* is a notion that cannot be defined by law. Thus when the system of international protection was in its very early stage of being built up, during the discussions leading to the final adoption in 1946 of the constitution of the International Refugee Organisation and the debates on international obligation for resettlement/repatriation, there was one key word *missing-generosity*. The two sides of the forthcoming Cold War argued as to if it should be repatriation or resettlement, oblivious of the fact that on both counts, the States needed to be generous. This was one of the early examples of systemic hierarchy, which is still present internationally and in this region.<sup>13</sup>

In order to understand the problematic we must distinguish between what are *sentiments, systems, and legal doctrines*.

Care, kindness and hospitality-the most acceptable route through which people desire minimal justice for the wronged, deprived, and the victim-are the first of all emotions. They belong to what can be called collectively a highly developed emotion, 'a thick feeling'-a *feeling without an object*. Such sentiment carries the message of a good life, an 'informed emotion' within the sphere of lived life; to be more precise, an emotion 'invested in organisation of social life', and which 'is a state arising out of present conditions as much as out of the past itself'.<sup>14</sup> Thus it may be that irrespective of the identity of the shelter-seeker, by and

large some people may be inclined to offer shelter. Again such sentiment does not carry a doctrine, but a notion of happiness and a moral satisfaction in being altruistic. The way the common people of West Bengal and Tripura offered shelter to the refugees of East Pakistan was an indication that such sentiment resides in one's morality as exercised in judgement. It indicates a feeling that is not negative, meaning that the host not only does not want to do ill to the neighbour, but shelters the neighbour in distress also. In this evocation of kinship, there is respect for the limits of the self that in fact is trying to transcend them. Such sentiments can be at times remarkably a political emotion, but mostly a moral emotion, and sometimes without being noticed a mix of both.<sup>15</sup> Thus care for refugees from Nazi Germany, from East Pakistan, from South Africa under apartheid, have been a mix of both; care for refugees from Bolshevik Russia or Communist Cuba a case of political emotion (I am leaving aside again the issue of political choice); care for people fleeing from hunger a moral emotion. One need not look for three distinct categories; they are mixed in the real world.

But sentiments, powerful as they may be, are not enough as governing tools. The same ethic that forms the emotions becomes the material (this is what is called by the strange term *applied ethics*) for government, in this case the political technology of administering population flow. Therefore, we have the next set of issues around who deserves entry into the neighbourhood, who is eligible for kindness, and who will be kind and share the burden of hospitality. Diffused sentiments suffer deficit in order to become elements of a humanitarian system. We have here the classic problem of Dostoyevsky: *we love humanity, but hate human beings*. The system that builds up on convention, protocol, office, role of special rapporteurs, budget, grants, relief-rehabilitation-resettlement allocation, inspection, determination, enclosure, and repatriation, is one of love for humanity and often of hatred of human beings. The introductory essay in this volume shows how issues of care, entry of people from other countries, and protection of strangers suddenly became a political matter to be guided, ruled, monitored, and controlled. Similarly, 16 years ago, David Kennedy like a sleuth had brought out the foundational

history of the international system of political care, and the historically contingent nature of the idea of asylum as a solution—contrasting the current notion with notions of asylum before AD 1700 in Europe. He showed how while hospitality and protection accorded by princes and other authorities were quite prevalent, this was without a coherent doctrinal notion of asylum.<sup>16</sup>

The international notion of refugee protection came hand in hand with the notion of status. To be beyond legal status is to be nothing ... the need for a legal status simply did not arise in a world which neither placed the sovereign at its centre nor distinguished law from politics and morality.<sup>17</sup> The regularised system of international protection came in the wake of the development of a unified notion of unilateral sovereign capacity (of States and an international authority) to grant asylum. The positivist development of law resulted in making care and protection dependent on a set of jurisdictional boundaries instead of a set of notions about justice. The further consequence has been in form of a colossal loss of history and memory of a vast variety of experiences of care, protection, and responsibility that included those of public care, disorganised care, community care, and one of the more significant histories, that of the shelter offered by the entire socialist world from the 1920s to the 1980s to persecuted populations of many countries, simply because all these went on outside the system. Faith in an infinite legal process rather than attending to institutional actions has resulted in this loss, also a loss of that vision which sees the penumbra of human rights law developing into valid rights. Yet, we can get glimpses of such history of the vast experiences of care and responsibility in these essays whose focus is not on the history of care from below, but practices of the State.

How are we to explain this paradox, where law results in a loss of 'rights' instead of their validation? To study that deficit, it is clear by now that analysing the process whereby a system supersedes or overwhelms emotions is not enough. The doctrine of state care and relief draws its strength from other sources besides the emotions we have referred to, such as notions of sovereignty, test, harmonisation, and law. Not only knowledge produces power, and legal knowledge legal power; its availability disciplines emotions



and thick feelings on which humanity thrives. Thus policies of ethnicity-management, control of violence, immigration rules, law, humanitarian intervention, mass policing, safe zoning, asylum, cordoning, repatriation, resettlement, exile status, and various strategies of conflict management, form the core of what we know as refugee care in this country as elsewhere. Also, what is notable and important in this context is that refugee law is implemented in a manner that differs significantly from international human-rights law. There is no international tribunal to adjudicate claims that the rights of the refugees granted by the Convention of 1951 have been violated. Refugees and asylum seekers must depend on national authorities in the state of refuge for protection; while in their condition of protection-less-ness owing to their loss of direct protection of their sovereign there is only the United Nations High Commissioner for Refugees (UNHCR) as the international agency to provide help and assistance and draw the attention of the international community and the relevant national authority to a refugee crisis.<sup>18</sup> This kind of system that is based on the obligation to respect certain rights but has no enforceability regarding the right, results only in more policing, more zone cordoning. System in such case needs doctrine. *Doctrine, system, and emotion*-this is the order that has helped the political technology of rule. All the more hence, that the order needs to be inspected. By order we mean two kinds-the order of doctrine, system, and emotion; and the order that is produced from this, the order of the wronged.

People displaced by agencies/ other people are, *prima facie*, wronged. How shall we judge the moral obligation of the State towards the wronged, the actual and potential victims? We have here not only the relevance of the ethic of care, kindness, and hospitality, but an added ethic, that of *responsibility*. Responsibility has two implications and conveys two senses-responsibility of the State and of the international community; also the responsibility of the host and that of the expelling state.<sup>19</sup> Cosmopolitan ethic or the ethic based on morality of States-both admit the task of respecting and promoting human virtues, and ensuring that these virtues suffer the least damage in the process of its transformation from human virtues into a doctrine of

humanitarianism and humanitarian politics. Ethically then the issues are-what is morally owed to the victims of displacement? How do we place and apportion responsibility for man-made disasters, say from a developmental process (a dam, a highway, a famine, a flood)? What is the politics of reparation in these cases? And what will be the norm of responsibility in the more complex cases of indirect displacement and repeated displacements? What will be the method? How shall we settle for what is known as *minimal justice*? These questions of ethics stare before those who have hitherto thought that issues of care, kindness, and hospitality are matters of system and a humanitarian doctrine. While there is substantial agreement about preferred values, systems cause deficits in agreements, and doctrines render them absolute elements of a strategy.

In short, the graded order I speak of above tells us a few things of relevance to the Indian context. The norm of *non-refoulement* (of refuge), thought to be the most fundamental to the system of international hospitality and protection across a broad class of States and situations, has to be seen now in the broader perspective of the emergence of new developments. Refugees today form part of a wider phenomenon of mass flight, mass movement, and massive displacement, so that individual determination of the status of the shelter-seeker that comes as the shadow of the principle of no forcible return overwhelms the principle. Also, the movement of the displaced is so mixed that, while no State today claims a more absolute right to return a refugee to persecution and peril, there is a greater freedom of action made available to the State by this new phenomenon with the result that the terminology of refugee protection has become almost an anachronism with the rise of new words such as displaced persons, illegal immigrants, economic migrants, aliens, stowaways, interdiction, safe third-country, visa requirements, carrier sanctions, and finally internally guaranteed security-zones. Hospitality is no wonder today subject to rules, procedures, regimes, systems, and doctrines. Seen from any angle, the *humanitarian* task has become most *political* today. We are now seeing the last act in an opera on the death of emotions.<sup>20</sup>

To put the matter even more briefly, the order I suggest in the above lines is the way in which power builds on care, which is to

say, care always becomes in the strategic run an ingredient of power.

**equivocal relation and the system of justice** How has the justice system responded to this deeply equivocal relation? How has juridical reasoning shaped up in such a context?

In a court decision, five Burmese nationals detained for entering India without any valid documents and charged under relevant provisions of the Foreigners' Act of 1946 (henceforth the FA) were granted bail by the Guwahati High Court to enable them to approach the UNHCR at New Delhi for refugee status, which was subsequently granted to them, and the case was then withdrawn by the prosecution (*unreported*, State v. Khy-Htoon and four others, FIR No. 18 [3] 89, CJM, Manipur, 1994).<sup>21</sup> Similarly, in another case involving two Burmese nationals convicted for violation of the FA, the High Court ordered that the petitioners be released on an interim bail for two months to enable them to approach the UNHCR for granting of refugee status to them (*unreported*, State of Manipur v. U Myat Kyaw and Nayzin, Civil Rule No. 516 of 1991, High Court of Guwahati, 1991). The Guwahati High Court had previously granted bail in 1989 to another Burmese national, Shar Aung A.K. Aung Thant Mint, also to enable him to approach the UNHCR in New Delhi. In another case, an Iraqi national detained for using a forged passport was authorised to stay on in India, and the Court ruled that with valid certification from the UNHCR with him, he could not be convicted for the offence and took a lenient view considering that he was a refugee and sentenced him to pay just a fine (*unreported*, State v. Muhammad Riza Ali, FIR No. 414/93, CMM New Delhi, 1995). Similarly a Sudanese lady who had come to India escaping further torture in Sudan where she had been gang-raped for converting from Islam to Christianity had been granted refugee status by the UNHCR; also, her application to resettle in Canada had been accepted. In this case too, though she had been charged under relevant provisions of FA, the Court gave a light punishment—a small fine and imprisonment of 10 days which was already undergone by her (*unreported*, State v. Eva Massur Ahmed, FIR No. 278/95, MM, New Delhi 1995). In a case concerning an

Afghan national, the Court similarly observed that with certification of refugee status he could not be detained simply for not producing the valid residence permit instantly on demand; he was to be given 24 hours. But, ironically by another trial court decision, a foreign national who had similar certification and valid residence stay and had not been able to produce a valid document at time of his arrest was sentenced to six weeks of rigorous punishment (*unreported*, State v. Montasir M. Gubara, CC No. 427IPI1994, ACJM, Mumbai, 1996).

In another case concerning a Burmese national who had fled to India and had been detained under the FA and had not been able to approach the UNHCR, the Court ordered conviction and rigorous imprisonment for six months and deportation back to Burma. In response to the convict's appeal, the Court further said that, even after the completion of the sentence it was not within the Court's jurisdiction to hand over the convicted to the UNHCR (*unreported*, State v. Benjamin Zang Nang, GR case no.1253 (1994), ACJM, Sealdah, West Bengal, 1996). Another case of deportation ordered by the Court happened when the Court sentenced an Afghan national to imprisonment for the period he had spent in jail after he had been arrested by the Border Security Force for entering the country without any valid documents, notwithstanding his plea that he had entered the country to save his life, and then ordered his deportation back to Afghanistan (*unreported*, State v. Akhtar Muhammad, AF/ 6433, CJM, Amritsar, Punjab, 1997).

Could the refugees have freedom of movement? A Sri Lankan who had been granted refugee status and was staying in Chennai was arrested in Delhi for being unable to produce any valid travel documents, and detained under the relevant provisions of the FA. The Court observed that refugee status did not entitle a person to move about freely, held him guilty, and sentenced him to six months rigorous imprisonment (*unreported*, State v. Hudson Vilvaraj, FIR No. 583/97, MM, Delhi, 1998). This decision was in conformity with the Supreme Court judgement in State of Arunachal Pradesh v. Khudiram Chakma (1994, Suppl. 1SSC 615), where Chief Justice M.N. Venkatachaliah and Justice S. Mohan held that Chakmas were not citizens of India, they as foreigners

enjoyed life and liberty only to the extent that Article 21 allowed, and that this right was not extendable to Article 19.<sup>22</sup> And, what about refugees who forged passports or travel documents to take shelter in the country? Almost uniformly, the trial courts held that such acts constituted an offence under the FA, sentenced somewhat lightly, and wherever the government had pleaded a foreigner's stay a threat to security, had ordered expulsion / deportation, or had said that further stay depended on government permission (e.g., *unreported*, State v. Muhammad Yashin, FIR No. 289/97, SMM, Delhi, 1997).

There is also a strange case, a case of perfect ambiguity. A woman, arrested on the ground that she was a Burmese national and had violated the FA, produced before the Court a birth certificate, residence certificate, employment certificate and a copy of the electoral roll which had her name on it as a voter. The Court ordered her freed on the grounds of evidence, but observed in view of her inability to speak the Mizo language-though she had claimed to be a permanent resident of Mizoram-as to how she could be so, and felt that it was strange that she had an original birth certificate and had been allotted a permanent residence certificate in Mizoram, particularly when the issue of foreigners was a burning issue in the state (*unreported*, State v. Sungenel, GR No. 979/96, ADC/Judicial Officer, Aizwal, Mizoram, 1996).

By and large, trial court decisions, thus, seem to have relied upon no standard practice or law of asylum. There have been variations. When Courts have imposed fines, in some cases the 'refugee-offenders' have been able to pay with help from charitable organisations or NGOs. If the refugees had been fortunate to get UNHCR protection, they had been let free. In some cases, though not always, Courts have allowed the persons to approach the UNHCR. But in other cases, the reasons of the State in form of the FA seem to have held sway over juridical reasoning. In several cases, High Court decisions seem to confirm the stand taken by trial courts, particularly with regard to appeals by Burmese nationals under detention and jail custody not to deport them, and allow them to approach UNHCR for protection.<sup>23</sup> In one case, the Manipur Government withdrew prosecution against a Burmese national for violating the FA when the case came to the High Court,

as meanwhile the UNHCR had granted refugee status to him and Norway was willing to resettle him; the accused was then permitted to leave the country (*unreported*, Union of India v. Maung Maung Kyo Myunt, Civil Rule No. 5120/94, High Court of Delhi, 1994). In a similar situation relating to an Iranian national, the Mumbai High Court ordered (1994) that with UNHCR certification available with the petitioner, he could not be deported and was free to travel to any country he desired. But in several other cases, deportation was ordered, or was stayed for a limited period to enable the concerned person to approach the UNHCR, failing which deportation was to follow. As usual, the police have not respected certification by the UNHCR with consistency; the Government too has not easily given exit permits. The courts too have remained silent about refugee camps often becoming places of detention.

Thus, in sum, it can be said that in municipal juridical reasoning till date, the burden of protecting an asylum seeker lies with the UNHCR;<sup>24</sup> that in such reasoning, meanwhile, as much possible under circumstances, leniency should be shown by the State to the offenders who have violated the FA; that it is recognised that not only persecution of a particular person, but a general atmosphere of violence and insecurity can also be a ground for asking for shelter; but if the State claims that the security of the State is in jeopardy, then expulsion or deportation has to be the norm. Granting asylum was not in such reasoning the responsibility of the State, and the duty of hospitality could not be legally enforceable.

Indeed, the Gujarat High Court summarised the position in this way (*unreported*, Kfaer Abbas Habib Al Qutaifi and Taer Ali Mansoon, Civil Rule No. 3433 of 1998) in the context of India being a non-signatory to the 1951 Convention:

First, the relevant international treaties and convention are not binding, but there is an obligation on the Government to respect them.

Second, Article 21 of the Constitution is enjoyed by also a non-citizen on Indian soil, it implies the principle of *non-refoulement*; but this does not confer on the non-citizen any right to reside and resettle, nor does it mean that if the stay of a non-national is contrary to national security, he or she can stay.

Third, in case where the international covenants and treaties reinforce the fundamental rights in India, as facets of those rights they can be enforced.

Fourth, the power of the Government to expel a foreigner is absolute.

Fifth, the work of the UNHCR in certifying refugees is humanitarian, so the Government has an obligation to ensure that refugees receive international protection until their problems are solved.

Finally, in view of Article 51 that directs the State to respect international legal principles, the Courts will apply those principles in domestic law in a harmonious manner, provided such obligations are not inconsistent with domestic law.

The Supreme Court has also concurred with the judicial practice of assigning the burden of protection on the UNHCR, and has ruled that the issue of 'reasonable procedure' in asking a non-national to leave the country arises only when there is UNHCR certification of the said non-national as refugee, and not otherwise. The Court has not laid down any standard norm in sheltering or certifying a refugee. Thus there is an unwritten division of labour: the UNHCR has exercised its mandate mainly with regard to 12,000 Afghan refugees and 1,000 refugees of other nationalities; in some other cases, it has been allowed to carry out relief and settlement work; in other cases, the Government has decided and decides the fate of the shelter seeker. Thus in case of some 1,00,000 Tibetan refugees, and some 65,000 Sri Lankan refugees, the UNHCR does not have a direct role. The mandate refugees assisted by the UNHCR are the Afghans and the Burmese, and a small number of Iranians, Sudanese, Iraqis, and others. The government issues through the Foreigners Regional Registration Office (FRRO) renewable residential permits to mandate refugees on the basis of certificates issued by the UNHCR. Yet cases before the Courts continue involving refugees undergoing legal process for illegal entry.

In this clumsy division of labour, three things stand out as odd posers. No answer to seek, as there seems none to answer.

First, the juridical reasoning does not question even in the light of Article 51 this division of labour. It refuses to see the plain fact

that the FA or the Passport Act or other relevant acts are not enough to judge a refugee situation. The Court has nothing to say on 'refugee-situation'. What indeed is refugee-situation? Briefly, the refugee is a victim of a radical discontinuity with the legal past of the State whose citizens he or she was—a legal past that is unable to protect him/ her at present. The refugee has thus a spatial problem of finding place and both physical and legal protection. In this sense the UNHCR becomes a government during the 'temporal rift' until a specific place is found 'wherein there is a direct relationship between the place where the refugee resides and the government responsible for the place and territory'. Stay in a refugee camp is a state of suspended animation. It just indicates a temporary protection place till some government comes up to take responsibility. The Court by not fully acknowledging the logic of the refugee situation (it does partly, which is why the permission to approach the UNHCR is given) makes refugee-ness a permanent situation. It keeps the matter humanitarian in consonance with the logic of care and hospitality, while this is a matter where the issue is directly political; i.e., the humanitarian is political.

Let me explain. When we say that refugees are victims of abuse, we imply that the human rights conditions have broken down, and the normal legal framework that guarantees protection is not functioning. How can one demand of such situations compliance with legal avenues and remedies while not proposing basic legal revision? Similarly, humanitarian law aims to establish a legal framework within a basically illegal situation. In both these cases, we have what we may call in the words of Daniel Warner, a 'second order legality'.<sup>25</sup> In other words, these are analogous situations where normal rules have broken down, and legality is being imposed in the second order—a situation, which juridical reasoning by its very nature fails to see, because its mandate is to look through primary glasses. Indeed, the Chief Justice of India, J.S. Verma, had admitted as much when he said in a speech in 1997,

The 1951 Convention ... has to be given legal sanction by enacting domestic laws, which can be enforced in national courts. While doing so, as I said earlier, the problems faced by receiving countries and their reservations ... have to be given serious



thought, so that the legal framework is more readily acceptable, because mere enactment of a law is not enough. Enactment of a law, which is more readily acceptable, is more efficacious. *The existing position, therefore, is that it is only to the extent the national courts can-in the absence of specific provisions in domestic laws-provide relief, that it has been possible to do it.*

The premise on which it has been done is that the basic human rights are supposed to be implied in every civilised legal system. And, therefore, unless there is an inconsistent provision in the domestic laws, basic human rights have been read into the provisions of the constitution and other enacted laws. Therefore, it is the result of judicial creativity most often that certain basic rights, even of the refugees, have been taken care of through the medium of the courts. In India ... I should point out that Article 14 ... Article 21 ... and Article 25 ... the courts have held, are available not to citizens alone, but to non-citizens as well, and by that view, also to the refugees.

Now, by expanding the meaning and content of these fundamental rights and, at times, by treating certain Directive Principles of State Policy as complimentary, the content of these fundamental rights has been considerably enlarged. It is in this manner, for the problem created by the lack of any legal framework or domestic laws providing expressly for these situations, the Courts have been able to grant relief ... Now, this is only the result of creativity adopted by the courts. But this certainly can't be treated to be a very satisfactory solution ...

But there are in other areas, which are not governed by these rights, for example, cases where there is an order of deportation. Now, in those cases also, the courts have stepped in. But most often they are ad hoc orders. And, an ad hoc order does not advance the law. It does not form a part of the law, and it certainly does not make the area clear ...

We always tend to talk always of their (refugees') rights-but ... there are certain obligations, because of the problems refugee movement creates for receiving countries. If we remember what we have read as one of the axioms of jurisprudence-that every right has a corresponding obligation-I think there

should be no difficulty in reconciling conflicting interests of the refugees and those of the receiving country.<sup>26</sup>

The call for a legal framework is a call in exasperation in such a situation. Justice Verma thinks that a framework can reconcile rights of the refugees and security of the State, and meanwhile the Courts have filled up the emptiness created by the absence of such a framework by 'creativity' and 'activism', and all they need now is a compendium of defined guidelines. Yet, it must give rise to doubts as to the question; has a legal framework of a certain right been able to stop very fundamental abuses which become in due course part of the framework? Indeed, it may be argued on a study of the State practices that these show that by allowing 'creativity' the State has been retain the rights while keeping the security of the country intact. That there is something more fundamental at stake here beyond the need for a legal framework seems to have been lost in juridical thinking.

Second, this division of labour actually strengthens a more basic divide—that between the humanitarian and the political. Juridical reasoning relating to protection of the refugees has been mainly humanitarian, and not rights based, that is to say political. Thus the same Supreme Court that in the case involving *Khudiram Chaa v. State of Arunachal Pradesh* (1994, Supplementary, 1sec615) had refused to acknowledge the rights of the Chakmas to citizenship or to settlement rights in Arunachal Pradesh, held in (National Human Rights Commission) *NHRC v. State of Arunachal Pradesh* (1996 [1] Supreme 295: [1996] 1 SCC 742)—in the background of Chakma refugees settled in Arunachal Pradesh and now being threatened by the All Arunachal Pradesh Students Union to leave the state—that such threats amounted to threats to the life and liberty of the Chakmas and that such threats would have to be dealt by the State in accordance with law. It further held that while the application for citizenship was pending, no refugee could be evicted or removed from occupation on the ground that he or she was not a citizen of India until the competent authority had decided the matter (p. 302, paragraph 21.5). In this humanitarian logic, the Court could invoke the judgement of 1994 (p. 299, paragraph 16) that had also said

that foreigners were entitled to the protection of Article 21 of the Constitution. Led by this humanitarian logic the Court thus while denying any basic right of a threatened foreigner to get asylum (which would have predicated on the FA and the Citizenship Act) affirms the need to protect the life of an alien who has illegally entered India. The Supreme Court thus went as far as holding that 'international law and international conventions and covenants may be read into national laws, if the provisions of the same elucidate and go to effectuate the fundamental rights guaranteed by the Indian Constitution' (p. 316, paragraph 11-JT 1997 [2] SC 311: (1997) 3 SCC 433). In this it relied on *Minister for Immigration and Ethnic Affairs v. Teoh* (1995), 69 Australian L.J. 423. In the same humanitarian spirit, the Supreme Court held (*Dr. Malavika Karlekar v. Union of India*, Crl. WO No. 583 of 1992) in the context of a situation where 21 persons were to be deported from the Andaman Islands to Burma, that if refugee status claimed by the petitioners was pending determination and a prima facie case had been made out for the grant of refugee status and that those individuals posed no danger or threat to the security of the country, they might not be deported till the question of their status could be determined. In all these cases, the insistent refusal of juridical reasoning to comment on the possibilities of the obligation on the part of the State to grant asylum that would predicate on the FA or other relevant acts, at the same time the readiness of the same reasoning to concede that there could be humanitarian grounds on which hospitality could be provided by the State temporarily or with UNHCR certification more durably, is part of the politics of the political/ humanitarian divide.<sup>27</sup>

After all it is the same realist thinking that produces mass slaughter, that produces by consensus the 'humanitarian space', and also, as Daniel Warner reminds us in this context, the practice of 'killing people on six days to go to Church on the seventh day'. In this realist structure, dominated by reasons of state, realist considerations produce the expansion of the humanitarian space in the interest of realism itself. Thus, on 'humanitarian grounds', you can allow an alien to stay, but on 'political grounds' if the State decides to end its hospitality, the alien is then at its mercy, and he or she cannot proceed even to the place of choice.<sup>28</sup>

In this realist pact, reinforced by the 'morality of states', the humanitarian principle enjoys a charmed life. This indeed was my argument in *The Marginal Nation* that in a situation of mixed and forced mass flows, and an ambivalent legal regime, what we countenance is not a 'refugee' who is a legal entity or concept with rights and boundaries, but an 'alien' who can be there as the shadow, but who must not become part of the self in its own *right*. Thus, strange in legal sense, but perfectly understandable in the common sense of hospitality, the Courts decided to allow the game of sheltering as was going on to continue without well-worked out norms, *that is the norm of the right to get shelter*, because the Courts were not dispensing justice, but kindness. Though we are told that, 'justice, but not mercy, is a matter of judgement'.<sup>29</sup> But this was not the case here, because the subject in question was not a legal person asking for judgement, but one who evidently was beyond the permissible and impermissible of the *Acts-the alien*.

This division of labour strengthens another aspect, which relates to the divide between refugee protection laws and other laws and mechanisms for protection of human rights. Agencies dealing with refugee rights mostly deal with asylum, protection, settlement, or resettlement. But we know that the human rights of refugees touch a very broad spectrum that is most often left unaddressed by protection agencies, including host communities or the State. The spectrum includes issues of right to return, equality and various aspects of non-discrimination, fair trial and process of law, right to family and private life, economic and social rights, particularly of the child, prohibition of torture, right to participate in political process, freedom of movement, rights of women, right to nationality, right to shelter and housing, right to health care—the entire range that has some charter-based mechanisms, but is more marked by the absence of any international protection. In such a situation, refugee protection is bound to be narrow, and when it comes down to the question of defining who is a refugee and when and how to protect a refugee, the national mechanism gets narrower.<sup>30</sup>

The absence or the withering of this entire range of rights symbolises itself not so much through the concept and person of the refugee, but by the concept and person of the alien. That this is a

fundamental question of the politics of our time is borne by the fact that the alien question is everywhere-irrespective of the fact whether the country in question is a signatory of the Convention of 1951 or not. We are therefore in a situation which is producing legal deficit on an incessant basis. First, countries such as India have regrettably not signed the Convention. While the ground of inadequacy of the Convention is often advanced as the reason for non-accession, that situation by itself is creating inadequacy of legal standards internally, within the country, where the judiciary takes note of the evolving and evolved international norms and yet cannot be clear about the situation, and cannot persuade the government of the day to sign to international standards. While this is the internal impact, on a global scale the Convention by not evolving adequately concedes the ground of inadequacy, gives a handle to countries unwilling to sign to treat the Convention regime as weak, and thus creates its legitimacy deficit. Finally; from a more substantive viewpoint, the non-dialogic process of care management harms the mandate so much so that to the sceptics it appears that in an age of massive and mixed flows of unwanted peoples round the world, and in an age of evolving demands for showing more human rights concerns for victims of forced migration, a harmonisation of laws and instruments is almost impossible to achieve, and protection and care will remain of a minimal nature for ages to come.

This phenomenon of the reproduction of legal deficit is worth examining. Many of the articles in this volume start with the fact that India is a non-signatory to the Convention and regret it. Yet, after taking note of that, the articles go on to explore the world of refuge and care, which is not simply a matter of signature. Signature is important; but in order to know the self of the signatory is it really always the case? Or, can it be that signatures lie all around, even when the signatory has not formally signed? What then is this world of ambiguity beyond international law and convention where there is no way to prove that the signatory countries have a better record of providing hospitality than the non-signatory countries? How are to we understand the paradox within law, the paradox between ethics and law, and the paradox between a situation that is primarily legal and therefore calls for legal accession,

and a situation where beyond the formal requirement of signature lies the half-moral half-political world of care and protection to which we must pay our attention? The silences in juridical reasoning on these paradoxes tell us of the world that defies the neat distinction of the humanitarian /political or legal/moral.

Third, even granting the generalised ambiguity in the juridical practices of care, and the paradoxes in these practices, an irony stands out. Possibly it will not be preposterous to make a few remarks on that. It has to do with juridical reasoning, but more with the politics of care itself, also the politics of refugee rights.

You can get shelter, but you must not abuse.<sup>31</sup> What is abuse of shelter? Pursuing politics, by airing political views-particularly when they are considered inimical to the interests of the host country. But what do the refugees do? They do precisely what is not expected of them. Thus, refugees from Sri Lanka carried on political work, and the government disliked that intensely. Refugees coming over from East Pakistan after 1947, though not barred legally (for they were absorbed as citizens up to a period of time) from doing politics, were expected by the host communities not to indulge in 'politics' and abuse hospitality, but they went on in a big way in pursuing politics.<sup>32</sup> Similarly, refugees from West Pakistan resettled in Delhi engaged in politics.<sup>33</sup> So have the refugees from Burma. So have the escapees from Tibet. Except in case of the refugees from Tibet, and for a while with regard to refugees from Burma, the government has not approved of the idea that refugees should indulge in politics, that they should resume their political selves.<sup>34</sup> For politics they were driven out, and now they must forget that past. The situation is similar with regard to the internally displaced, also in this context. While some are killed, the rest are driven out for doing politics (that is 'minority politics'), as in the recent riots in Gujarat, and the minimum demand of the State and the governing classes on them is that the displaced people as victims will be given shelter; but they must remain passive, they must not plan to strike back, that is to say, 'must not do politics'. It is interesting that the Court mentions Article 21 relating to refugee rights, and not Article 19. Indeed, the Supreme Court in *Louis De Raelt v. Union of India* (3 SCC 554:WP [Civil] No. 1410 of 1987, 1991) clearly held that Article 19 (1C) was applicable to

citizens only, and the power to expel foreigners was absolute and unlimited and that there was no provision in the Constitution fettering the discretion (p. 562, paragraph 13). Does not the refugee have, then, any political right? Does it mean then that not only in political reason, but in juridical reason also, the refugee lives only by accepting political death, and at times, civic death? The Court remains of course silent on that.<sup>35</sup>

Almost 50 years ago, Hannah Arendt had written,

The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world, which makes opinion significant and actions effective. Something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to the community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on what he does or does not do. This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion. Privilege in some case, injustices in most, blessings and doom are meted out to them according to accident and without any relation whatsoever to what they do, did, or may do.<sup>36</sup>

Arendt spoke of the 'right to have right'. In the never-to-end attempts to preserve the delicate balance of hospitality and security that marks the politics of care, juridical reason as we see cannot as yet venture into that mad field.

**aliens and the question of origin** Refugees lack the right to have the rights. But what about those who thought they were not refugees, those who claimed nationality or at least 'Indian-ness', and with regard to whom the nation itself was at a loss to determine as to whether they were nationals or aliens? Were they subjects? Were they citizens? Or foreigners, or aliens, or were

they that half-creature straddling this universe of Indian nationalism-the foreigner of Indian origin?

The politics of affinity and care has been nowhere as evident as in this case. The imperial nation, the nation of post-colonial existence, and the nation of the nationalists-the nation in all its incarnations had to deal with the task of defining the subjects of its care; and that is how it all began.

This volume therefore begins with an essay on 'Aliens in a Colonial World'.<sup>37</sup> In that essay we not only find the colonial principle of difference working out as the genealogical basis of the Passports Act, Foreigners Act, and the Citizenship Act, but also the suggestion that a nation building up on such imperial practice could not adopt a homogenising principle, or the same strategy for all groups in terms of conferring citizenship, contrary to the apparent idea or the impression that the State wanted to create. Imperial state practices passing on to the post-colonial nation as a legitimate treasure created the imperial nation also, which meant that matters of emigration and immigration were issues of acute political significance to the State engaged in defining the subjects of its care. Thus, the lines dividing the subjects according to priority in terms of care that the State would confer on them also divided the region into nation and *near abroad*, into citizens and non-citizens, into Indians of Indian origin and non-Indians of Indian origin, indeed in several parts. Those lines have been replicated already within the country, dividing how many times, how many entities, and in how many forms in terms of care, historians will find out someday. Visible and invisible frontiers have been created. The feature of these *nouvelles frontieres* is that they are being produced internally also; they are not merely vertical lines separating two spaces, but concentric circles continuously dividing and then locating these to rejoin them in the universe of the nation. Law, citizenship, rights, obligation, and morality-all are caught in this universe of concentric circles.

Thus the State has to decide on a perennial basis as to who is an Indian in order to decide who is an outsider. Are the Tamils of 'Indian origin' Indians? Similarly, are the Fijians of 'Indian origin', or the Burmese, or the East or South Africans of 'Indian origin' Indians? Will the Indian state have any responsibility towards them if they seek shelter, as they do from time to time?<sup>38</sup> In such cases



will it be, particularly if they had been taken abroad as indentured labour once upon a time, now accepted as the return of the prodigal son? Will the State accept emigration as the ghost that comes to visit immigration—the flows that play on nationhood? Like the first essay in this volume, the essays on the refugee flow from Burma, and flows from the East and the West after Partition, bring out the anxiety of the post-colonial State to build as quickly as possible a unitary relation between place and identity so that the State could govern the country properly. To establish such identity in the interest of governance, the State not only sought to immobilise territory by fixing the borders and delimiting the boundaries everywhere inside and outside (a process that naturally took sometime), but also to project onto this foundational space a people—a nation—who must equally be immobilised; by the forces of governmentality, most notably the Acts that I speak of, and the census. Yet, the inherent contradiction in these two objectives—delimiting the cartographic space and delimiting the national space—was apparent from the beginning. The massive and mixed flows of forced migration from the beginning of Independence were reminders of the incommensurability of the two tasks. The other strategy was therefore to lean back on the colonial principle of making difference the technique of governing. If imperial territorial policy depended on boundary-making exercises and the creation of buffer zones and zones of exclusion between British Indian Territory and others, imperial citizenship policy depended on creating grades of Indians. Spread out in different places across the globe such as the Fiji islands, the Malayan peninsula, East Africa or the West Indies, besides the areas of *near abroad*, the Indian diaspora constituted by indentured labour, traders, and quasi-colonial settlers was, by 1947, a new question mark to the citizenship policy of the post-colonial state. While the new Indian Government did not want the return of these people to India with their claim to rights of citizenship, it could not completely close the question also that sprang from the nationalising actions elsewhere in the world. Therefore while trying to establish coherence between a geopolitical imaginary and the national diaspora, the independent Indian state had to work its way forward through pragmatics, now falling back on imperial

administrative resources, now devising new strategies. Difference and identity-both had their place in the scheme of things.<sup>39</sup>

Between 1950 and 1975, the Indian government signed treaties of peace and friendship with Bhutan, Sikkim, Nepal, Burma, Sri Lanka, Bangladesh, and an odd pact with Pakistan on minorities. These treaties bore assurances of friendship on behalf of an independent and anti-colonial State; they were also tokens of an imperial nation that intended to continue relations of suzerainty with its neighbours. These agreements based on and reproducing the geopolitical imaginary of an imperial nation engaged with issues of both territory and population (the agreement on Tamil plantation labour is an instance). Territory was fixed; so also was the attempt to fix the population. Like combating famine, combating population instability was a task of great magnitude (though the victims of famine were usually treated with less care than were the victims of forced displacement). Population flux was a national calamity. People of Indian origin now settled overseas, were to give up what we might now call a 'right of return', just as partition refugees once nationalised by being allowed to acquire citizenship were to give up the 'right to return'.<sup>40</sup> Population flows in the understanding of the modern State had queered the pitch in the latter's effort to establish a singular and unitary relation between place and identity, believed to be the hallmark of the modern State's existence. But, as I showed in *The Marginal Nation*, the effort to discount the existence of people within the country whose identities bear only a faint resemblance to the professed national identity of the State has proved impossible. While control of territory becomes occasionally successful, control of the national space being constantly invaded by history and migration has become an excruciating challenge. It is in this background that we find the appearance of ambiguity as a strategy. Law, politics, ethics, jurisprudence, the idea of vulnerability, and security-all are reshaped by the new cult of ambiguity practiced by a modern state. What one chronicler calls the 'paternalism of the Indian State' (the *mai-bap sarkar*) proves an enduring feature, because it sits well with the needs of ambiguity mentioned above.

So overriding was the imperative to draw the boundaries of care and put the stamp of the State on these, that like the departing power, the new State also did not concern itself with the responsibility of the international community. What appears today as semantic confusion in the language of the government then-indiscriminate use of terms like displaced persons, refugees, migrants-was not all that confusing in terms of the State's objectives and priorities. In this post-Foucault world, where studying State has been made out as less important, we have to go back to studying the State in order to understand institutions and institutional practices of care and power, and how territory and people have predicated these practices.

In this emerging model of the caring of the shelter-seeker by the State, sheltering and penalising (as earlier mentioned) went hand in hand. The colonial State's practice of creating penal colonies, a 'punishment society' and a 'convict society',<sup>41</sup> influenced the successor State's methods of keeping the uninvited guests in (sometimes guarded) 'refugee camps'. Here again the same dual logic of difference and identity worked. Thus, while many refugees were allowed or could melt into the great countryside called India, and as we know sometimes the motto of the State had been to create 'the Indian', many others were herded in camps and settlements. It is thus important to notice the graded responses of the successive governments, the variety of ways in which the geopolitical imaginary has worked in terms of stabilising the population and its identity-the accounts of refugees from Burma and Tibet bring out that point. The birth of social security in independent India did not take place in a void, arguably inhabited by an ideal of care; it was disciplined by paternalism, but more significantly by suspending or withdrawing the rights of refugees and various other segments of population through Acts and Ordinances. This is how penal response and caring response went together. They went hand in hand to the extent of disaggregating vulnerability of an already vulnerable population in need of care.<sup>42</sup> Of course, the limits of care delimited the notion of vulnerability, as the essay on the women-refugees shows.<sup>43</sup> Yet, there could not be a more effective way of bridging the governmental discourse and the refugee discourse in the daily life of ruling the people, increasing in the process the institutional capacity of the State to

cope with massive flows. It is important to remember that the founding years of the post-colonial State were significant in laying down the basic rules of care and security, because in those years the State learnt how to combine the art of stabilising territory and that of population, how to grade them, locate the practices of care in the broader intellectual and political evolution of social security, and combine politics and care.<sup>44</sup>

The working of geopolitics was the daily commentary on the discourse of the moral superiority of the ethic of care, for it showed that in an age when the nation had appeared as a problem for the State, such an ethic could at times mean caring for itself only. The imperial discovery of India came, contrary to what historians think, not in the colonial age, but in the age of freedom when India had to be determined in terms of the configuration of the beneficiaries of care.

This situation therefore takes us back to the question introduced at the beginning of this essay, namely, can there be a policy for hospitality, a policy to be kind? Does caring actually begin when the policy of self-care ends? Can we begin caring for others when we are caring for our means and ends? In other words, when we go beyond our means to help—is it then, and primarily then, that care and hospitality begin? The pertinence and the impossibility of the question suggest for us, of course, the need for a dialogic approach to the issue of care and hospitality. New rules can be built only on such dialogic awareness that will tell us of the need for continuous conversation within the country and internationally; among shelter-seekers, shelter-givers, and the institutions of care and justice, including public and community bodies. This, to be sure, will not take away the tension from the question I have pointed out, but will certainly provide us with a way with which we can manage our way through the contentious politics of care,<sup>45</sup> and negotiate the paradoxes inherent in a humanitarian task recast in the form of what James Hathaway called a decade ago, 'reconceiving refugee law as human rights protection'.<sup>46</sup>

**a game** In presenting this volume to interested researchers, academics, practitioners, human rights defenders, and policy makers in the form of eleven experiences with cross-cutting themes, accounts, issues, and lessons, we are aware of three things.

First, the 56-year-old-history of post-colonial India is a strange story of massive population flows whose origins belong to years, decades, and sometimes centuries before, and whose marks are deep on the politics of care in this country. What seems to be beyond doubt is that no historian will ever be able to write the tales of post-coloniality in this region without stringing these tales on the thread of population flows. But this story, since its end lies still in the unknown future, is yet to be written properly. Second, we are aware that people hitherto interested in issues of refugees have been interested without almost knowing that these experiences have the interesting peculiarity of throwing up governing principles *de nova* of an ungovernable question-namely caring. The paradoxical pertinence of such a situation, in other words, the pertinence of the paradox, is in the last resort away of looking at an issue of ethics as a game being played out among various positions. For, this ethical issue can be put to test only by becoming a player in that game. Third, the relation between care and power is not a simple causal one, namely, that by caring you amass power. The relation is complex. The arrangement of care is not simply flowing from the sovereign legal authority at the top. The world of care is as multiple, heterogeneous, and segmented as the world of power. In as much as power resides as if in folios, its heterogeneity builds up and draws on the heterogeneity of the act of caring. The more multiple is this universe, the more complex is the game. Not surprisingly, therefore as these essays show, the world of care remains segmented.

Thus, a game-a game of protection, hospitality, security, morals, nation-making, citizenship-conferring; a game of states, human rights, rights of citizens, and of statecraft-in short, *a game of care and power*. And yet, even though it is a game played out sometimes ruthlessly, relentlessly objectifying humans as recipients of rule-bound hospitality and/ or as creatures assured of certain rights under a legal regime, where seemingly there is no scope left for justice and dignity, might we not remember the words of Pierre Bourdieu, from whom we have learnt so much about the games played in form of our stations in life,

Thus a State, which ... has most direct interest in this representation, presents, in the highest degree, the appearances of

an 'Apparatus', in fact masks a field of struggles in which the holder of 'absolute power' must engage at least enough to maintain and exploit the divisions and so mobilize for his own benefit the energy generated by the balance of tensions. The principle of the perpetual movement which stirs the field does not lie in some motionless prime mover—here, the Sun King—but in the struggle itself, which is produced by the constitutive structures of the field and tends to reproduce its structures and hierarchies. It is in the actions and reactions of the agents: they have no choice but to struggle to maintain or improve their position, that is to conserve or increase the specific capital which is only generated in this field; and so they help to bring to bear on all the others the constraints, often experienced as unbearable, which arise from the competition (unless of course, they exclude themselves from the game, in a heroic renunciation, which, from the point of view of the *illusio*, is social death and therefore an unthinkable option). In short, no one can benefit from the game, not even those who dominate it, without taking part in the game and being taken by the game. Hence there would be no game without players' (visceral, corporeal) commitment to the game, without the interest taken in the game as such which is the source of different, even opposite, interests of the various players, the wills and ambitions which drive them and which, being produced by the game, depend on the positions they occupy within it.<sup>47</sup>

Which is to say, the game of care produces power; and power cannot flow unless it is in the form of a game where care is paid to rules, tensions, and their balances.

## notes and references

1. It is interesting to note that in his address to the Roundtable Workshop on Refugees in the SAARC Region, the President of SAARCLAW (India Chapter), A.M. Singhvi, while admitting that these questions of state obligations need to be viewed in the context of human rights, did not feel necessary to feature the refugee as a determining agent in the matter. The debate on the need for a national refugee law in India and the

work on a model law has often been conducted from a courtroom angle, and not from the perspective of massive and mixed flows-though it must be admitted that such debate represents a clear advance from the earlier state of affairs in policy matters. On the address, see, 'Report on Roundtable Workshop on Refugees in the SAARC Region-National Legislation on Refugees', SAARCIAW and UNHCR, New Delhi, 30 April 1999, pp. 13-18.

2. Justice P.N. Bhagwati, a former Chief Justice, listed three factors In arguing for a rationale for a national law on refugees in India, *ibid*, p. 21.

3. I refer here to the title of Gil Loescher and John Scanlan, *Calculated Kindness-Refugees and America's Half-Open Door, 1945-Present*. New York: Free Press, 1986.

4. K.C. Saha's essay in this volume, pp. 238-39.

5. Samir Kumar Das' essay in this volume.

6. Ritu Menon's essay in this volume.

7. Joya Chatterjee, 'Rights or Charity? Government and Refugees-The Debate over Relief and Rehabilitation in West Bengal, 1947-1950', in Suvir Kaul (ed.), *Partitions of Memory*. Delhi: Permanent Black, 2001.

8. Asha Hans' and V. Suryanarayan's essays in this volume.

9. Asha Hans' essay in this volume.

10. Jacques Derrida, *On Cosmopolitanism and Forgiveness*, trans. Mark Dooley and Michael Hughes. London: Routledge, 2001, p. 16.

11. Steve Hindle, 'Dearth, Fasting and Alms-the Campaign for General Hospitality in Late Elizabethan England', *Past and Present*, 172, August 2001, pp. 44-86.

12. On the dilemmas inherent in the legal resolution of the issue of 'fear', I have written elsewhere, 'Power, Fear, Ethics', *Refugee Watch*, 14, 2001.

13. See in this connection, John George Stoessinger, *The Refugee and the World Community*. Minneapolis: The University of Minnesota Press, 1963, pp. 61-66, cited in B.S. Chimni (ed.), *International Refugee Law-A Reader*. New Delhi: Sage Publications, 2000, pp. 337-40.

14. Tim Strangleman speaks of these in his study of the railway industry, 'The Nostalgia of Organizations and Organization of Nostalgia- Past and Present in the Contemporary Railway Industry', *Sociology*, 33(4), November 1999, pp. 725-46.

15. Related to this, see Victoria Kahn, 'The Duty to Love-Passion and Objectivity in Early Modern Political Theory', *Representations*, 68, Fall, 1999, pp; 84-107.

16. David Kennedy, 'International Refugee Protection', *Human Rights Quarterly*, 8(1), pp. 42-43.

17. *Ibid*.

18. On this, see Joan M. Fitzpatrick, *Human Rights Protection for Refugees, Asylum-Seekers, and Internally Displaced Persons-A Guide to International Mechanisms and Procedures*. New York: Transnational Publishers, 2002, pp. 3-4.

19. Chaloka Beyani, 'State Responsibility for the Prevention and Resolution of Forced Population Displacements in International Law', *International Journal of Refugee Law*, Special Issue, 1995, pp. 131-37, reprinted in *IRL-A Reader*, pp. 296-300. The principle of responsibility leads to that of burden sharing.

20. The *New York Times* on 26 May 2001 carried two news items on the death of 14 illegal Mexican immigrants in the Arizona desert in the United States ('Rights Groups Urge Change in Border Policy' by James Sterngold, and 'In Mexico, Grim Resolve after Death' by Tim Weiner, p. All), and spoke of thousands of deaths on the border over the years. Both news items, while typically refraining to comment on the dynamics of immigration control policy of the country the immigrants wanted to enter, reflected on the predicaments of a humanitarian policy of hospitality in such situations. Should the humanitarian policy in such situations be to provide more job quotas 'so that they don't have to live in shadows' (Weiner), should migrants be provided 'survival kits (that include rehydration salts and food' (Weiner), or, should there be a humanitarian vigil in the desert (Sterngold), less strict border control policy than the 'Operation Gatekeeper' (Sterngold), or petitions to the Inter-American Commission on Human Rights or some other international human-rights tribunal against US border control policy and practices (Sterngold)? I am again indebted to Paul Joseph for these two reports (see note 18).

On the new literature on values of trust, care, and hospitality in refugee studies, see E. Valentine Daniel and John Ch. Knudsen (eds.), *Mistrusting Refugees*, California: University of California Press, 1995; in a review essay on the book, Pradip Bose writes, 'In fact the whole structure of the humanitarian regime is fraught with competition, suspicion, and mistrust ... Probably that is why the aid authorities are so averse to what would appear to be the most efficient method of distributing aid, namely the community itself. It might as well be the case that the western notion of 'trust' is capable of only producing mistrust in the end.' -Pradip Kumar Bose, 'Trust and the Refugee Experience', *Refugee Watch*, 7, June 1999, p. 34. It is also significant to note in this connection how Jacques Derrida connects hospitality, responsibility, and a renovation of the concept of friendship in a discussion on his book *The Politics of Friendship* with students of the University of Sussex, 1 December 1997, <http://www.sussex.ac.uk/Units/frenchthought/derrida.htm>.





21. I am grateful to Sumbul Rizvi for drawing my attention to this case and subsequent court judgements cited here; some of the cases are cited also in 'Report on Judicial Symposium on Refugee Protection', UNHCR, International Association of Refugee Law Judges, and the Supreme Court Bar Association, New Delhi, 13-14 November 1999.
22. Though, in the same judgement, the Court held that what was 'good in terms of natural justice washence good in law' also (p. 630, paragraphs 71 and 72), and referred to the right to enjoy asylum in international law (paragraphs 77 and 80).
23. Three examples, all *unreported*, are: *Zothansangpuii v. The State of Manipur*, Civil Rule No. 981 of 1989, the High Court of Guwahati, 1989; *Bogyi v. Union of India*, Civil Rule No. 1847/89, the High Court of Guwahati, 1989; *UMyat Kyaw and Nayzin v. State of Manipur*, Civil Rule 516 of 1991, Imphal Bench of Guwahati High Court.
24. This includes obviously the burden of resettlement, and the conditionality that the detained foreigner would not be able to move out to any place of choice without certification and assumption of responsibility by the UNHCR. For instance, *Sayed Ata Mohammadi v. Union of India*, A.D. Cri. No. 48 of 1994, Mumbai High Court, and *Majid Ahmad v. Union of India*, Crl. WP No. 60 of 1997, Delhi High Court.
25. I am drawing here on the insights of Daniel Warner, 'Refugees, UNHCR and Human Rights-Current Dilemmas of Conflicting Mandates', *Refugee*, 17 (6), December 1998, pp. 12-15.
26. Inaugural address by Justice J.S. Verma in 'Seminar Report on Refugees in the SAARC Region-Building a Legal Framework', SAARCLAW and UNHCR, New Delhi, 2-3 May 1997, pp. 15-16.
27. On this see, Daniel Warner, 'The Politics of the Political/Humanitarian Divide', *International Review of Red Cross*, 31 (333), March 1999, pp. 109-16.
28. Consider thus the following two situations. In *Digvijay Mote v. Union of India* (Writ Appeal 354 of 1994), the Karnataka High Court issued notice in response to the PIL for enforcing the rights of 150 children of Sri Lankan refugees, and the Government agreed to provide basic amenities such as food on humanitarian grounds, without prejudice to the rights and contentions of both parties. Similarly, in *K Abbas Habib al Quatafi v. Union of India* (CA 3433 of 1998) before the Ahmedabad High Court, the petitioner had refugee status conferred by the UNHCR and petitioned that he should not be deported but delivered to the UNHCR. The High Court delved into the role of the UNHCR and international humanitarian laws and institutions, and the principle of *non-refoulment*, and ordered (1998) in favour of the petitioner. The verdict was further significant, as in referring to the principle of *non-refoulment* and the

general humanitarian law as part of international law, the Court was referring to Article 51 (C) of the Indian Constitution, while maintaining at the same time that the power of the Government to expel a foreigner was absolute. It also said, 'It is expected from the UNHCR to take more active interest to solve the problems of the refugees' (paragraph 20, p. 19). But, in, *Gurunathan and Seven Others v. Union of India* (WP Nos. 6708 and 7916 of 1992), the Madras High Court had to deal with a writ petition contending that Sri Lankan refugees were being repatriated against their will and were being coerced to sign letters of consent. The Court held (1994) that when there was an international legal organisation to ascertain the voluntary nature of consent, it was not for the Court to decide whether the consent was voluntary or not. It was beyond the Court's purview to ascertain if the Sri Lankan Government was acting in accordance with UNHCR norms regarding rehabilitation of the refugees. The Court was satisfied that the Government was acting as per international norms and that the refugees were being repatriated only as per their own voluntary consent, and dismissed the petition.

29. Hannah Arendt, *Banality and Conscience-The Eichmann Trial and Its Implications* (1963), reprinted in Peter Baehr (ed.), *The Portable Hannah Arendt*. New York: Penguin Books, 2000, p. 386.

30. On the relation between refugee rights law and other human-rights protection laws and mechanisms, see, *Human Rights Protection for Refugees, Asylum-Seekers, and Internally Displaced Persons-A Guide to International Mechanisms and Procedures*, Chapter 2, particularly pp. 45-108.

31. The Supreme Court has generally granted for very limited periods stay of deportation of arrested non-nationals detained for violation of FA. See for instance the judgement in Writ Petition (CrI) No. 125 and 126 of 1986 (*The Maiwand Trust of Afghan Freedoms v. State of Punjab and Others*, 1986); but such temporary relief and reprieve will not imply freedom of movement or speech.

32. On the politics of the refugees, see Abhijit Dasgupta, 'The Politics of Agitation and Confession: Displaced Bengalis in West Bengal', in Sanjay K. Ray (ed.), *Refugees and Human Rights: Social and Political Dynamics of Refugee Problem in Eastern and Northeastern India*. Jaipur: Rawat, 2001.

33. On this, see Christophe Jaffrelot, 'The Hindu Nationalist Movement in Delhi: From "Locals" to Refugees-and Towards Peripheral Groups', in V Dupont, E. Tarlo and D. Vidal (eds.), *Delhi- Urban Space and Human Destinies*. Delhi: Manohar, 2000.

34. On a detailed analysis of how India and China have looked at the issue of Tibetan refugees and how this issue remains till date integral to India's Tibet policy, see, John W Garver, *Protracted Contest-Sino-Indian*

*Rivalry in the Twentieth Century*. New Delhi: Oxford University Press, 2001, Chapter 2, pp. 32-78.

35. These paradoxes come out in almost all studies on the legal situation of refugee protection in India. See for instance, 'Seminar Report on Refugees in the SAARC Region-Building a Legal Framework', SAARCLAW and UNHCR, New Delhi, 2-3 May 1997; 'Report on Roundtable Workshop on Refugees in the SAARC Region-National Legislation on Refugees', SAARCLAW and UNHCR, New Delhi, 30 April 1999; and 'Report on Judicial Symposium on Refugee Protection', UNHCR, International Association of Refugee Law Judges, and the Supreme Court Bar Association, New Delhi, 13-14 November 1999.

I am not discussing here the need for national legislation on refugee protection or the proposed model law discussed by jurists, as this has been discussed at length in this volume by B.S. Chimni and Sarbani Sen.

36. 'The Perplexities of the Rights of Man', in Hannah Arendt, *The Origins of Totalitarianism*. New York: Harcourt Brace, 1951, reprinted in *The Portable Hannah Arendt*, p. 37; Arendt also refers to outlawry and excommunication, a situation where the escapee lives on, but in 'civil death'. See, *ibid*, n. 8.

37. Paula Banerjee's essay in this volume.

38. This problem was apparent when the Government dealt in different ways the Hindu/Sikh refugees and the Muslim refugees from Afghanistan.

39. I am grateful to Itty Abraham for allowing me access to his essay, 'War and Territory' (unpublished), from which I have gained insights relating to the discussed issue.

40. The loss of the right to return of the Partition refugees is a related problem, but it will need a separate study.

41. I borrow the terms from the work of Satadru Sen on the Andaman prison, *Disciplining Punishment-Colonialism and Convict Society in the Andaman Islands*. New Delhi: Oxford University Press, 2000.

42. Thus, in *Digvijay Mote v. Government of India*, earlier mentioned in note 19, a public interest petition was moved before the Karnataka High Court (W.A. No. 354/1994, Karnataka High Court) where the High Court twice intervened to instruct Karnataka State to continue to assist a school meant for Sri Lankan refugee children who were either orphans or whose single parent was living in a camp in Tamil Nadu. Similarly in *Khy Htoon v. State of Manipur*, mentioned earlier, the High Court took into account the fact that there were children among the eight Burmese whom the Government wanted to deport. In another instance, the Supreme Court (*Lalit Mohan Mullick v. Collector of 24-Parganas* (1986, 2 SSC 138)) defined rehabilitation of refugee children as an important public interest.

Like wise in *NHRC v. State of Arunachal Pradesh*, mentioned earlier, the Supreme Court intervened to protect the rights of the children who had been born in Arunachal Pradesh to the Chakma refugees.

43. And thus notwithstanding the humanitarian verdicts briefly mentioned in n. 28, the judiciary never specifically referred to the international obligations of the Indian Government under Article 22 of the Convention on the Rights of the Child, or other articles relating to non-discrimination of children. The Indian Government reported in 1997 to the UN that more than 75,000 children born in India to Sri Lankan refugees had not been registered.

44. The post-Independence Indian situation reminds us of today's South African situation (characterised by definite immigration policy) where attempts to construct a non-racial national identity have accompanied exclusion and denial of rights to many non-citizens, and are marked by an ever-widening gap between juridical attempts (by altering laws) to reconstruct South Africa and the dominant perception of what it means to be South African. See, Janet E. Reilly, 'Nation Building and the Construction of Identity-Xenophobia in South Africa', *Refuge*, 19(6), August 2001, pp. 4-11.

45. See on the dialogic imperatives, B.S. Chimni, 'Reforming the International Refugee Regime-A Dialogic Model', *Journal of Refugee Studies*, 14(2), 2001, pp. 151-68. Such needs are being increasingly recognised, and it is also being noted that the law by itself will be singularly insufficient in instituting such practices of dialogue. For such recognition, see for instance Elizabeth Ferris, 'Building Hospitable Communities', *Refuge*, 20(1), November 2001, pp. 13-19. Another instance of such recognition has been the International Conference on the Reception and Integration of Resettled Refugees, held in April 2001 in Sweden, where there was an attempt to forge dialogic principles based on trust. For a detailed report on it by Deborah Hafner DeWinter, see *Refuge*, 20(1), pp. 3-12.

46. James Hathaway, 'Reconceiving Refugee Law as Human Rights Protection', *Journal of Refugee Studies*, 4(3), 1991, pp. 113-31.

47. Pierre Bourdieu, *Pascalian Meditations*, trans. Richard Nice. Cambridge: Polity Press, 2000, p. 153.

# 1 aliens in a colonial world

**Paula Banerjee**

Any student of South Asian history knows that traditionally this history is divided into three periods: the ancient, the medieval, and the modern. The ancient period began with the arrival of the Aryans, continued through the migration of the Scythians, Parthians, Bactrians, and many others, and moved into the medieval with the Arab invasion of Sind and the consequent arrival of the 'slaves' from Ghazni and Ghor. The modern period found its markers in the arrival of the Europeans. This in itself is a testimony to the population flows that characterise the region. This is also a testimony to the disciplining of Indian history at a time when large-scale population movements were considered as markers of history. In this chapter the endeavour is to discuss population flows and the subsequent acculturation of groups-who were markedly different from the native population- into this part of the world in pre-colonial times. That pattern changed with the British administration that tried to harness population movement in the colonial period by branding groups on whom their control was tenuous as aliens or foreigners. The notion of insiders was predicated on the notion of outsiders, which was built on the notion of difference. From this was born the category of aliens/foreigners who were different from the subjects. This division of insiders and outsiders could be maintained so long as population movement could be harnessed. Hence a plethora of acts began appearing on immigration and emigration. If foreigners were the

*others*, then refugees were the markers of that *otherness* inside. Attitude towards refugees was evolved on this notion of difference/ alien/ *other*. Thus even today asylum seekers are often convicted under the jurisdiction of the Foreigners Act. Therefore, to understand practices towards refugees, it is essential to explore how notions of foreign and alien evolved and merged into the project of state building. This chapter is an endeavour in that direction.

**how to know who is different?** One of the first notions of difference evolved from the African presence in the Deccan. Yet this sense of difference from the native community could not be equated with the notion of 'foreigner'. From the 6th century the Arabs were the masters of the Indian Ocean. They brought African slaves from Ethiopia and Somalia. Ethiopia was linked to Arabia by religion and trade. The Arabs also brought many Ethiopians slaves to India. These Ethiopian slaves were called Habshis. They were particularly popular in India for their ability to throw the javelin. Rich merchants extensively employed them as soldiers. By the early 14th century, Ibn Batuta reported on the presence of the Habshis in India during his visit from 1333 to 1342.<sup>1</sup> However, even before that, Malik Kafur, the Hazardinari, and African slave of Allauddin Khilji, rose to prominence. He conquered large parts of the Deccan for his master. Out of the area consolidated by Kafur grew the Bahamani kingdom. In the Bahamani kingdom there was the strong presence of a group called *Gharibu'd-diyar* or Afaqis, meaning 'cosmopolitans'. These Afaqis were formed of Arabs, Persians, Turks, and others who were recent immigrants. Interestingly enough, the Africans who were either slaves (ghulams) or warriors (Janhju) were not part of the Afaqis, although the fact that they were different was borne out by the name given to their offspring with Indian spouses- *Muwallads*. But the Habshis with their children formed part of the Dakhni group, who were the old comers. Although visibly different from the Habshis, they were, according to one commentator, 'never seem to have been considered as foreigners throughout the history of the Deccan.'<sup>2</sup>

In the latter part of the Bahamani period the political atmosphere was vitiated by the quarrels between the Dakhnis and the

Africans on the one hand, and the newcomers on the other. The Africans became a political force and there was no taboo against their rise to high offices and to the ranks of nobility. Even the Afaqis, who could either be called the cosmopolitan or the foreign element, assumed increasing influence in politics. In fact, as one commentator stresses, the whole system of political hegemony of the Deccan relied on the infusion of fresh blood from mainly Najaf, Karbala, and Medina from the north and of Persians from Sistan, Khurasan, and Gilan.<sup>3</sup> A Habshi leader who rose to prominence at this time was Dastur Dinar. His chequered career portrays the tensions that existed between the Dakhnis, Africans, and the Afaqis. A few years later another Habshi slave sought to preserve the independence of the Deccan from the continuous encroachments of the Mughal rulers. Malik Ambar, who was a slave from Ethiopia, became the spearhead of a movement that sought to keep the Mughals away from Deccan. Under him the Nizam Shahi dynasty got a fresh lease of life.<sup>4</sup>

Africans rose to prominence in all of the Deccan. They were visible in the kingdoms of Bijapur, Berar, and Khandesh. The Siddis of Janjira and Karnataka were largely Africans. They played a vital role in the Portuguese economy in India. Soon after Alfonso de Albuquerque wrested Goa from Adil Shah of Bijapur in 1510, the Portuguese started bringing slaves from Mozambique to India. Portuguese, Hindus, and Muslims who cared to buy them employed these slaves. According to John Huyghen Van Linschoten, several kings and rulers in India bought these slaves, 'because they are the strongest in all east countries', and did 'their filthiest and hardest labour'.<sup>5</sup> Unlike the African warriors of Deccan the slaves in Goa did not enjoy an easy life. They were, in the words of travellers such as Linschoten and Bernier, often underfed and had to put up with a lot of cruelty. Hardly any of them rose to prominence and they remained segregated from the native community until their emancipation in the 19th century. But such a state of affairs was not exceptional under Portuguese rule. The Portuguese persecuted both Hindus and Muslims with equal fervour. Political power remained largely concentrated with the Portuguese themselves and there was a conscious discrimination faced by *others*. M.N. Pearson calls the Portuguese military-political-



religious presence in 16th century India as 'exploitative, racist, distasteful'.<sup>6</sup> The Portuguese domination of parts of western India was a rule with a difference. The Portuguese efforts to uphold their superiority vis-a-vis the 'native' population and their massacre of non-Christians made their rule different from those prior to their arrival. However, the Portuguese Empire in India was too minuscule to have a significant effect on the 'native' population.

Portuguese colonial rule in Western India had tremendous ramifications for people who were considered different. The Portuguese were one of the first groups who considered themselves different from all those they ruled. However, it would be incorrect to ascribe to them the credit or discredit of importation of ideas for clear demarcation of borders on which were predicated notions of insiders/ outsiders. They did mark certain groups as aliens or foreigner, but could not attribute to them certain disabilities based on their territorial location. Actually the Portuguese Empire was not a modern empire with demarcated borders. Although the Portuguese wanted to centralise their rule, they never quite succeeded. Yet they were probably one of the first groups in India to claim superiority based on their difference from the people that they ruled.

It is true that various laws discriminated against the non-Christians; these were designed to encourage conversion to Christianity. By denying non-Christians the right to practice their religion freely, by denying them political rights, and by imposing certain limitations on their economic activities it was hoped that conversion would seem more desirable to these people.<sup>7</sup> However, there was no effort to control the right of access of these people whom they considered foreigners. In fact there is evidence that efforts were made to appropriate and assimilate the rich among them. For example, there is evidence that during the 1640s the municipal council of Goa wrote to the King of Portugal 'suggesting that he pass decrees that no brahmin or kshatriya or member of any other caste who is rich or has property might marry his daughter to anyone except to a Portuguese born in Portugal'.<sup>8</sup> It was thought that the Portuguese population would benefit from the dowry that these women would bring in, and of course they would be converted to Christianity as well, thus swelling the ranks of the true

believers. Thus the Portuguese did not mark the ruled as permanent outsiders.

However it would be incorrect to say that the Portuguese did not have territorial notions of sovereignty. Their system of *cartaza* (passes) is based on a notion of territoriality. Before the arrival of the Portuguese, trade in the Indian Ocean area was brisk and all regions were interconnected. 'It was a self-contained system and we come across no treaties between the kings or merchants regarding trading as far as this region was concerned. None of these communities possessed armed shipping. The seas were common and open to all until the advent of the Portuguese.'<sup>9</sup> The Portuguese and their pass system demarcated their authority over certain areas. Those who traded in those areas had to remit a certain amount of money. Yet there were many that evaded the *cartazas*. The Portuguese could not completely override the banias or brahmins who traded in these areas, and had to continue their rule in collaboration with these groups.<sup>10</sup> Thus the Portuguese were unable to impose concepts of insider / outsider on the non-Portuguese who lived in these areas to any great extent. This becomes clear if one looks into the situation of Parsis in western India. It was not the Portuguese but the British administration that triggered the Parsi self-identification of difference. It was in the 19th century that the Parsis began to voice the idea of difference from the Hindu and Muslim communities.

The Khorasanis or the Parsis left their homeland in Iran as a result of religious persecution by the Arabs somewhere in the middle of the 9th century, when they 'traversed the seas and landed on the ever-hospitable shores of India'.<sup>11</sup> The Parsis came and settled in Sanjan in Gujarat. Perhaps one of the first reference to Parsis within Gujarat is that of a French monk of the Dominican order who passed through Gujarat around 1322. He called them pagan; a term that does not denote any sense of superiority of the Parsis but merely of difference when compared to the other natives.<sup>12</sup> In Akbar's court there is mention of the presence of a Parsi priest of Navsari named Dastur Meherji Rana. His primary role was to serve as the mediator to the Parsi community. According to one observer 'while the Meherji family held positions of prestige, the offices they held were generally secondary posts'.<sup>13</sup>

In the pre-colonial times the Parsis were not associated with any exceptional commercial achievements.

It was only in the colonial period that the Parsis became noted for their entrepreneurial skills. Yet European travellers in the 16th and 17th centuries do not speak of Parsis engaged in commerce. After 1700, there was a tremendous increase in the number of Parsis who involved themselves in commercial pursuits. According to one scholar, this 'increase took place in Gujarat, in the context of declining Mughal political authority and increasing East India Company economic and political power'.<sup>14</sup> Initially the Parsis served the Portuguese and then the British. However, it was by attaching themselves to the Company that the Parsis got the knowledge of markets and supplies. It was through their association with the Company and its administration that the Parsis acquired their special status whereby they defined themselves not as minority but as foreign. Their foreignness was equated with being like the Europeans. Their self-defined difference assumed two diverse trajectories. Some differences were good and others bad. Thus if difference meant equating the term with the existence of the foreign, then some foreigners were good and others bad. Some Parsis aspired to be good foreigners but that division came later. In the 17th and early 18th centuries their relation with the British was not so unproblematic as can be gleaned from the chequered career of one Rustum Manock and his family. At that time their identification with the Europeans was yet unformed and nebulous.

Some years before 1662, when Charles II acquired Bombay as dowry from his Portuguese queen, Parsis had migrated to Portuguese Bombay. There many Parsis began working as clerks for the Portuguese. By this time Parsis had 'become assimilated in the larger community'.<sup>15</sup> By 1685 Rustum Manock became broker to the Portuguese. Rustum also issued *cartazas* that non-Europeans required for shipping in the Indian Ocean. Rustum served the Portuguese so well that the viceroy Conde De Villa Verde gave him a letter of commendation. He joined the New English East India Company in 1700. One reason why Rustum decided to serve a new master was that English seapower had broken the Portuguese naval domination of the Indian Ocean. For many years Rustum

served the Company well, but his sons got embroiled in a conflict with the company when they lost their job as the broker. Rustum's son Nowrosji had to go to London to get a favourable settlement. He presented his family's case before the Court of Directors, thereby not only saving the family from financial ruin but also helping them to establish new alliances in London. The Manock family was reinstated as the Company's broker, but factional struggles within the Company led to their downfall.<sup>16</sup> At a time when the Company was consolidating itself they used the services of the Parsis but never treated them as their own lot. Even the Parsis did not equate themselves with the Europeans until the 19th century. That the Parsis could have their own legal practice was granted only by an Act passed in 1837.

The Parsis continued their economic exploits under the British. Their commercial success was legendary. Until the middle of the 19th century the Parsis considered themselves as 'natives'. Around the 1850s a renowned Parsi leader 'Jamshetji Jeejeebhoy had still called himself a native of India. Around the turn of the century, however, protests against this term increased. This attitude is very much represented by the newspaper *The Parsi*, which was published since 1905.<sup>17</sup> The majority of the community kept itself aloof from the 'backward' Indian society and some even began to consider themselves as belonging to a 'purely white race'.<sup>18</sup> This was the cause of much consternation among Parsi Congress leaders such as Pheroze Shah Mehta and Dadabhai Naoroji. In his Presidential address before the Indian National Congress in 1890 Mehta had said:

In speaking of myself as a native of this country, I am not unaware that, incredible as it may seem, Parsis have been both called, and invited and allured to call themselves foreigners. If 12 centuries, however, entitle Anglos and Saxons, and Normans and Danes, to call themselves natives of England, if a lesser period entitles Indian Mohammedans to call themselves natives of India, surely we are born children of the soil, in which our lot has been cast for a period of over 13 centuries, and where ever since the advent of the British power, we have lived and worked, with our Hindu and Mohammedan neighbours, for common aims, common aspirations and common interest.<sup>19</sup>

**paula banerjee**

In 1906 Manchershah Barjorji Godrej, a brother of Adershah and Phirozshah Godrej, the founders of the Godrej group of companies, addressed this dichotomy in a letter to *Indian Sociologist* where he asked: 'Is the Parsi an Indian or Foreigner?' He wrote that the Parsis:

both mentally and morally ... has acquired the virtues and vices of those in whose midst he has been born and bred. His habits, manners and customs, his language, character and ways of thinking, his superstitions and even the very blood in his veins, for how many Parsis are children of intermarriages with Hindus!—clearly point out that the Parsi has done his best to identify with the native land. No doubt his present European environment has not a little modified his intellect and character, and it is likely that in course of time the ever pliable Parsi might resemble the European more than the Indian, but still his European education cannot change the fact that by *birth* and *residence* he is an Indian.<sup>20</sup>

Godrej clearly attributed the Parsi's growing sense of difference from the 'native' community to their proximity to the Europeans.

Not just the Parsis themselves, but even the representatives of the British Raj in the 19th and early 20th centuries began to highlight this foreignness of the Parsis. According to one C.A. Kincaid:

There are two questions, I think, which sooner or later occur inevitably to any Englishman who serves in the Bombay Presidency. (i) How is it that an eastern community like Parsis came to show such an extraordinary aptitude for cricket and other Western athletic sports? (ii) How is it that although for 1,200 years resident in Guzerat, they have, while forgetting Zend, never acquired a proper knowledge of Guzerati? The readiest answer that will occur to the first question is that the Parsis were originally a nation of soldiers before they became traders. But although it would be idle to deny the bold and martial spirit that carried the Persian from Babylon to Athens, and from the Oxus to the Don, yet other communities as originally warlike as the Persians, have not taken to English games. Moreover, this

answer is no reply whatever to the second question. The object of this article will be to establish that the solution of both problems is to be found in the Hellenisation of Persia before the Arab invasion.<sup>21</sup>

There was thus a conscious effort to highlight the difference of the Parsis from other Indian subjects. Also, there was an effort to equate this difference with foreignness and with being similar to the Europeans. If we look into some of the Acts passed by the Indian administration it becomes apparent how the idea of difference/foreignness came to dominate British administrative thinking in India from the latter half of the 19th century. However, this difference was of two kinds, the good and bad. The passage of new Foreigners Acts was to harness the movements of the 'bad' foreigner and to keep them away from the other subjects. By controlling the access of the foreigners the British Empire encouraged the growth of the sense of insiders/outsideers on which both displacement and asylum of people is based in the present time.

### **the colonial response to the world of differences and disorder**

According to Chris Bayly, one of the modes by which the British administration tried to acquire political stability was through the control of mobility of itinerant groups. 'Nomads and wanderers were seen as disorderly elements-carriers of roguery and dissidence. This stereotype was often applied to travelling groups as harmless as ironsmiths and potters who linked up areas of production and consumption. It is not difficult to see how attitudes like this derived from experience of the great increase in social control which had taken place in contemporary England.'<sup>22</sup> By the beginning of the 19th century then the British began in earnest to try to harness the mobility of such groups as the Banjaras, Mewatis, and Rohillas.

It was also the time of the spread of the Wahabi movement. The spread of the Wahabi cult, though of little threat to English rule, was attributed to 'wandering adventurers'.<sup>23</sup> The foreign department files of the same period are rife with tales of mobile marauding groups.<sup>24</sup> Thus mobility, or the ability to harness mobility of disorderly or alien groups, became part of Britain's state building

mission in India. Difference became the ground on which was posited the idea of aliens or foreigners whose movements needed to be harnessed. The first Foreigners Act passed in 1864 is testimony to such an effort.

In the mid-19th century John Russel had 'instanced immigration as a matter which of necessity must remain subject to imperial control'.<sup>25</sup> The delegation of powers to the Governor General through the Foreigners Act was an effort in that direction. Such an effort was not the first of its kind. The Act XXXIII of 1857 contained in it many similar provisions, which were reinforced by the Act I of 1862. Yet a new Foreigners Act became necessary because the previous acts were not being vigorously enforced. As it was mentioned during the introduction of the new Foreigners Bill that the previous acts were becoming defunct as the 'Magistrates do not enforce its provisions and the police have been instructed not to molest persons travelling without a license'.<sup>26</sup> Thus so that movement of foreigners could be monitored this Act became necessary. The Act clearly stated that 'Whereas it is expedient to make provisions to enable the Government to prevent the subjects of Foreign States from residing or sojourning in British India, or from passing through or travelling therein, without the consent of the Government.'<sup>27</sup> The Act was meant to harness the movement of certain groups of foreigners. The Governor General in Council and any Local Government was empowered by this Act to remove any foreigner by issuing a written order. Article 4 of the Act made it possible for the issuing authority to enforce the foreigner into taking a route of their choice. Among the foreigners who were wanted in the territory could be given a permit or a license. In case any foreigner violated this Act then he was to be apprehended, detained, and kept in safe custody upon such terms and conditions as is deemed by the authorities to be 'sufficient for the peace and security of British India, and the allies of Her Majesty, and of neighbouring Princes and States'.<sup>28</sup>

That the Act was meant to harness mobility of certain groups of foreigners is made apparent by the clause that any license given to foreigners had to specify the routes they could take and the areas they could visit. If a foreigner violated it he could be apprehended without a warrant by an officer exercising powers of the

Magistrate, or by any European Commissioned Officer. Here the racial dimension of the Act also becomes clear. The other important clause of this Act is Article 20, where it is stated that:

It shall be lawful for the Commissioner of Police, or for the Magistrate of the district ... to enter any vessel in any port or place within British India in which all the provisions of this Act may for the time being, be in force, in order to ascertain whether any foreigner bound to report his arrival under the said Section 6 of this Act is on board of such vessel, and it shall be lawful for such Commissioner of Police, Magistrate or other officer as aforesaid to adopt such means as may be reasonably necessary for that purpose, and the master or Commander of such vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate, or other as aforesaid, deliver to him a list in writing of the passengers on board, specifying the ports or places of their disembarkation, or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel, or touching those who may have disembarked in any part of British India shall be put to him by the Commissioner of Police, Magistrate or any other officer as aforesaid.<sup>29</sup>

The Act not only highlighted that foreigners, or certain groups of foreigners, were disorderly, but also called for their constant surveillance. The Act also made it possible for the administration to exempt any 'class of persons, either wholly, or partially, or temporarily, or otherwise, from all or any of the provisions of this Act'.<sup>30</sup> This emphasised the fact that there could be positive discrimination for some groups of foreigners and certainly there was not meant to be equality before law. The importance of this Act is borne out by the fact that initially it was in force in those areas of British India outside of Scheduled Districts. However, in 1898 Burma was brought under this Act and the next year the Santhal Parganas were included within its purview.

In the next decade after the passing of the Foreigners Act of 1864 there were no Europeans who were charged or deported



under this Act. Most of the deportations made under this Act were of people living in neighbouring areas. For example in 1867 one C.H. Grace, Deputy Commissioner of Nimar, reported to Major H. Mackenzie, Commissioner of the Narmada division, that 'about the beginning of the present month a gang of persons calling themselves natives of Cashmere arrived at Khundwa from Hurda. They are all Mussalmans, however, and their appearance is more that of Baloochees, or some other frontier tribe than of Cashmeres. They possessed a rahadari purwannah'. He went on to say that they were alleged to have created trouble at Borgaon. He requested Mackenzie to issue a warrant for their deportation, not only because they were alleged to have committed crimes, but also because they had 'no tangible means of livelihood'.<sup>31</sup> This group was eventually deported although none of their crimes were proved. In another case the Officiating Secretary to the Government of Bengal wrote to the Secretary of the Chief Commissioner of Central Provinces. He said, 'a band of persons in number about 40, believed to belong to Cabul, Herat or Khorasan, who have been for some time past wandering about British territories without any ostensible object'.<sup>32</sup> Issuing a warrant for the deportation J.T. Wheeler wrote that although the band did not in anyway seem formidable he still wished to issue a final order of deportation.<sup>33</sup> Actually the Foreigners Act was an instrument by which the British government was legitimising their political power of making a choice, of allowing access to certain groups and restricting it from others. By marking some as outsiders/foreigners the state was legitimising its right to exclude.

One of the reasons given for marking outsiders and deporting them was that they did not possess adequate means of livelihood. It would be interesting to note that around the same time the members of the Legislative Assembly were vociferously supporting the emigration of Indians to foreign lands in search of jobs. One H. Sumner Maine had argued that if a labourer wished to emigrate then 'no Government on earth had the right to prevent him'. But he was aware of the problems posed by the intent of such Indian labourers. He said:

We, who are thousands of miles from our home, should proceed to deny to the Natives of India the right to go where they

pleased to procure better remuneration for their labor would be a conduct which the world at large would regard, to put it gently as the most extraordinary of English eccentricities. But on the other hand nobody would really wish that the Natives of India should emigrate in large numbers, though he might not feel himself at liberty to refuse them the liberty of emigrating.<sup>34</sup>

Sumner Maine's argument brought the crux of the problem to the forefront. How could a State justify its right to control access when that State was created on the basis of an individual's right to be mobile? However the modern State was also a territorial State; so it was essential for such a State to appropriate the right to access. As Maine's dilemma portrays, such control to access was more and more based on race, but the modality of legitimising it had yet to be perfected.

Also by deporting people without 'tangible means of livelihood' the British government was stressing how unwanted such people were for the State. In the present day it is these people who join the ranks of the displaced and refugees the most. British vagrancy laws had attacked such people. The British transported the same attitude to their colonies. But a roving labour force was a fact of life in this region. Such people were also held in suspicion. The emigration laws were meant to take care of such people who could be transported to colonies where there were demands for cheap labour.

At this juncture it seems essential to focus our attention to another Act passed by the British Parliament. It was in 1870 when Germany had humiliated France and emerged as the leading power of continental Europe. The British Parliament passed an amendment to the existing Extradition Act. In it was stated that the following restrictions would be observed in respect of fugitive criminals:

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of political character or if he prove to the satisfaction of the police Magistrate or the Court before whom he is brought on habeas

corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try to punish him for an offence of a political character.<sup>35</sup>

Thus in the international scenario the exceptionality of a political prisoner was getting recognised. However, in a colony the State could not invoke such a policy, as then it would challenge the State's supreme control over the territory and the individuals that resides within. That the political prisoner was a different category was perhaps accepted by the State in the 20th century. But the British State could not introduce the idea of asylum to political fugitives within their colonies. With the Portuguese they signed extradition treaties knowing well how coercive the Portuguese State was. The State jealously guarded its prerogative of decision about foreigners and in the colonies they did not dilute this prerogative by introducing ideas of political fugitives. The State would create markers of difference and whether a *difference* would be accepted or rejected was also a State's prerogative. Thus by the decision to appropriate the power to decide on who will be a political prisoner, the State reinforced its rights to control who would be inside and who would remain outside.

In the British project of State formation in India the importance of territoriality was borne out by another act, and that was the Territorial Waters Jurisdiction Act of 1878. In this Act the British State tried to demarcate the seas surrounding India. It endeavoured to regulate the extent to which British jurisdiction could be exercised in the seas. The Act stated that, 'an offence committed by a person, whether he is or is not subject of Her Majesty, on the open sea within the territorial waters of Her Majesty's dominions, is an offence within the jurisdiction of the admiral'.<sup>36</sup> With the growing importance of territoriality the question of who will have access to this territory became a question of increasing concern to the British Empire.

Another indicator of the growing importance of territoriality is the growth of the census which began to be calculated regularly from the 1870s. The Census was used as a tool for assessing the movement of population. In 1881 Bengal showed the presence of 35,46,918 people who reported that they were born outside the

region.<sup>37</sup> There was an effort to figure out how many languages were spoken in each region. There was also an effort to find out the birthplaces of people who reported as having being born outside the region.<sup>38</sup> This data would later be used to mark foreigners present in any area. Such information began to be considered essential for governance. However, even those who reported to have been born outside the region or spoke a different language than what was usually spoken could not be branded a foreigner as yet. Such concepts were still hazy and foreigners could only be stopped while they were entering the region. To develop a regime of control over foreigners already in the region other Acts had to be passed. This was a 20th century development.

**defining indians and aliens** By the beginning of the 20th century the British Empire had established its right to control accesses into its territories by officially endorsing the principle that the Dominions had the right to restrict or prohibit the entry of Indian immigrants. In most other British colonies Indians were the marked outsiders. In the early 1950s the Australian colonies began restricting the entry of Asians. Neville Chamberlain had urged the Australian colonies not to use words that could hurt the feelings of any of Her Majesty's subjects. At the same time he sympathised with their determination to protect their communities against an influx of people, 'alien in civilisation, alien in religion, alien in customs, whose influx moreover, would seriously interfere with the legitimate rights of the existing labour population'.<sup>39</sup> Australia and New Zealand found in the education test the means of satisfying their own communities and the British Government. Canada restricted Indian immigration by a different method. By empowering the Governor General to exclude any class of immigrants that he found unsuitable for the Canadian climate and by insisting on a continuous voyage from the country of emigration they successfully stopped Indians. The legislation in the colony of Natal was also directed primarily against Indians.

The British government offered no opposition to such restrictive practices on the basis of race. In 1911 Lord Crewe dismissed the argument, 'that every subject of the King whoever he may be or wherever he may live has a natural right to travel or settle in

any part of the Empire. His Majesty's Government fully accepts the principle that each Dominion must be allowed to decide for itself what elements it desires to accept in its population'.<sup>40</sup> Thus, it was becoming common practice for States to control the entrance of 'aliens' into their territories. It was in this atmosphere that the First World War erupted.

According to one observer, before 1914 there was hardly any distinction between a subject and an alien in the British Empire. But the First World War changed this situation drastically. Britain passed the British Nationality and the Status of Aliens Act of 1914. This Act attached a number of disabilities on the so-called aliens in times of war, including restrictions on their free movement.<sup>41</sup> According to this Act, an alien had no right at common law or by statute to be admitted into the United Kingdom. Aliens became a category about whom there was much uncertainty and suspicion. The policy of free movement that facilitated the growth of the British Empire in the first place became a matter of suspicion and state control. The other category whose relation with the State became tenuous as a result of this Act were women. The British Nationality and the Status of Aliens Act of 1914 said that rights of nationality could be transferred only through the male line. Women were considered as subjects or aliens primarily through their association with men. Thus the case of *Fasbender v. Attorney General* in 1922 showed that a female British subject could contract a marriage in good faith during war and lose her British nationality.<sup>42</sup> Thus women were neither full subjects nor foreigners. Even when they were subjects they could lose their nationality through marriage to an alien. That such attitudes would be inherited by the postcolonial state among other things is portrayed by the Abducted Persons (Recovery and Restoration) Act of 1949.

Two other Acts of the same genre followed this Act. They were the Aliens Restriction Acts of 1914 and 1919. The names of these Acts portray that a State's primary relation with an alien is one of restriction. Within these notions, particularly in the other British colonies, was imbued a racial dimension. Thus State control on the movement of those aliens who were considered racially inferior began to be legitimised. But there was hardly any evidence of State control of movement of European people as long as they

were not belligerents. No wonder then the Parsis who had hitherto regarded themselves as Indians aspired to be of the 'white race'. In such a situation the Passport Act was enacted in 1920.

The Government of India Act of 1919 confined the subject of aliens to central legislative and executive control. The next year the Passport Act gave the power to the Central Government to make rules requiring that anyone entering India should possess a passport. It gave the State the power to prohibit entry of any person who did not have in his possession a passport issued to him by the prescribed authorities. The Act also made it possible for any police officer above the rank of sub-inspector to make arrests without even a warrant on the basis of this Act. The Act empowered the government to remove any persons from India 'who, in contravention of any rule made under Section 3 prohibiting entry into the Provinces without passport, has entered therein, and thereupon any officer of the Government shall have all reasonable powers necessary to enforce such direction'.<sup>43</sup> The Passport Act brought to fruition the process started by the Foreigners Act of 1864.<sup>44</sup> It made the State's control over foreigners even more stringent and also paved the way for controlling the mobility of the subjects as passports were meant to be identification for travel. And when a passport was desired from foreigners, it followed that subject's of the State who wished to travel outside of one's realm needed a passport. Thus it became mandatory that only those who had their governments attestations regarding their identities were to be considered suitable for entry. Thus, those who did not have their own government's endorsement could be treated on an ad hoc basis. This created the ground for States discretion regarding treatment of refugees.

The Passport Act of 1920 was predicated on certain other developments. It was at around the same time that the British colonial government embarked on a massive project of marking its borders. The Durand line-demarcated in 1893, and separating present-day Afghanistan from Pakistan-and the MacMahon line between India and China were constituted within 10 years of one another. Such markings became possible because of the development of cartography in the 18th century. The demarcation of borders was predicated on the State's policy to control those borders.

The proof of a demarcated border was in the State's ability to regulate those borders. The Passport Act was a manifestation of such control on which rested the notion of a modern territorial and centralised state. And how could control be exercised but by identifying certain groups as outsiders and controlling their access?

Subsequent to the Passport Act came the Emigration Act of 1922. This Emigration Act codified the State's authority to permit emigration of both skilled and unskilled labour to territories that the State considered suitable. The Act also specified the ports through which such emigration could take place. It made it unlawful and a punitive offence for labour to emigrate without the permission of the State. In the *Legislative Assembly debates* prior to the passage of the bill, N. M. Joshi, who was the nominated member for labour interest raised the question that a State should not appropriate on itself the right to stop labour from emigrating. In his support Bhai Man Singh argued that a State has the right to stop emigration only under extraordinary circumstances. But from the Government B. N. Sharma, the revenue member replied that 'it is perfectly competent for any State to fix for itself the condition under which emigrants may proceed to other countries; it might prohibit emigration altogether: there is no such thing as a right of emigration to every individual or a natural right to emigrate from his own State'.<sup>45</sup> Therefore, the Indian colonial State had come a long way from the time when Sumner Maine had argued that the colonial State could not appropriate the right to stop emigration when they themselves have travelled far and wide from their country to establish their colonies. Another interesting provision of the Act was that the Central Government was authorised to make rules if it so desired 'prohibiting emigration of skilled workers in any country'.<sup>46</sup>

The argument behind the passage of this Act was the unfair treatment meted out to Indians in countries such as Kenya, South Africa, and some other regions. Yet nothing concrete was done to stop this unfair treatment. In New Zealand in the early 1900s there was an effort to create ghettos for Asians and force them to live in those. This effort was not fruitful at that time. In South Africa the same principle was legally endorsed. The Agent of the Government of India in South Africa reported that, 'on the main question

of Indian occupation and residence then, the Municipal witnesses demanded either absolute segregation or a modified segregation in an area within the town. In either case, they asked for definite powers to compel Asiatics to take up their residence in whatever areas might be set aside for them'.<sup>47</sup> The question of discriminatory treatment meted out to Indians was a recurrent theme in the Legislative Assembly debates of the 1920s and 1930s. The Indians claimed that they had the right to speak about and redress the wrongs facing 'two millions of Indians all over the world. India cannot therefore sit quiet under those disabilities:;. We have been repeatedly reminded of the Great Empire of which we are component partners'.<sup>48</sup> Indian representatives made claims for equality of treatment in these colonies as they were parts of the Empire. Thus in a debate on the motion of 'Equality of Status for Indians in Africa,' H.S. Gour while replying to R.A. Spence (when the latter said the Government of India could not legislate claiming uplands of Kenya for Indians) said that 'he tells us that India is the home of himself and me, but Kenya is his home but not mine'.<sup>49</sup> Thus Indian members in the Government made their claims on the basis of their being part of the British Empire, but their protests were of no avail.

The story of racial discrimination faced by Indians is now often repeated. Here it will suffice to say that such discrimination also became a ground for the Indian State to consolidate its control of movement of both foreigners and subjects. The Emigration Act was followed by Act III of 1924. This was the Immigration into India Act. In the debate that followed H.S. Gour asked the Government to 'enact laws which shall have the effect of subjecting British citizens domiciled in any other British country to the same conditions in visiting India as those imposed on Indians desiring to visit such a country'. He further said that at the Imperial Conference it was decided that 'the right of Indians to citizenship in the British possessions and colonies should be recognised and this right originated from the recognition of India as partner in the British Commonwealth,' yet little was done to help the Indian situation in other British colonies.<sup>50</sup> Thus the Act was introduced on the basis of the principle of reciprocity. Most members of the Opposition supported the principle of reciprocity and called for



the support of the Government, as this principle was legitimised by the Imperial Conference. When finally passed, the Act called for 'The Governor General in Council for making rules for the purpose of securing that persons, not being of Indian origin, domiciled in any British possessions, shall have no greater rights and privileges, as regards entry into and residence in British India, than are accorded by the law and administration of such possessions to persons of Indian domicile.' Although this Act may have appeased Indian sentiments and could have been taken as a corrective to wrongs done in other British colonies, the Governor General never made any rules on the basis of this Act.

All through the 1930s Indians living in India claimed the right to speak for the Indians living in other British colonies in the Legislative Assembly debates. It became part of the nationalist project. It was considered that Indians who emigrated as labourers had the right of return. They were considered as victims of the colonial project and so their right to return was never questioned. In a Legislative Assembly debate in 1923 it was argued that 'it is the duty of the Governor General in Council to make rules to provide for accommodation for the transport of emigrants, for the reception and the despatch to their homes of return emigrants and generally the security, well-being and protection of emigrants on their return to India'.<sup>51</sup> Thus it was considered natural for emigrants to wish to return to their homes in India. That Indians in India claimed to speak for all Indians and that birth, not residence, denoted an Indian was made apparent in a debate on Ceylon in 1930. In that debate Hriday Nath Kunzru argued that 'public opinion and this House and the Government of India have all together insisted on India being consulted fully and freely before any decision was arrived at affecting the position of Indians in that colony'.<sup>52</sup> This followed the Ceylon Government's declaration that to become a citizen a person had not only to be in residence in Ceylon for the past five years, but had also to sign a declaration that apart from the Ceylon Government no other government had any claims on him. The Indians reacted very angrily to this and passed a motion that the Assembly 'recommends to the Governor General in Council that the proposals of the Government of Ceylon which have been accepted by the Colonial Office, in so far

as they make possession of a certificate of permanent settlement and renunciation of protection of the Government of India by Indian emigrants a condition of eligibility to vote should be put into effect and that immediate steps should be taken to secure the adoption of the original recommendation of the Donoughmore Commission making five years residence the basis of franchise'.<sup>53</sup> Thus Indians were staking claims on not just all those who lived in India, be they foreigners or citizens, but also on those who were born Indian, no matter where they lived. At that juncture it was possible to do so, as all or most Indians were part of the former /present British Empire. But things were bound to change when Indians no longer remained part of that Empire. Thus, although nationalists were claiming independence from the Empire yet they were retaining their claims on Indians living in other colonies on the basis of their membership of the Empire that they were doing their best to overthrow. However, they were yet to define who an Indian was apart from the criteria of birth. Did that automatically mean that all those who were not born in India were foreigners? This was a question that was yet to be answered.

**acts of the empire** The next round of Acts concerning foreigners or aliens appeared during the Second World War. It was here that the post-colonial Government inherited the British attitude to territoriality and made it a principle of its own policies of governance. As one commentator states, 'all Commonwealth countries have consciously pursued a policy of administration of justice almost identical to the system inherited from British'.<sup>54</sup> The Indian Government also followed the same legal regime that the British had built to keep out the unwanted. But there were some caveats and this perhaps enabled the rise of a peculiar regime of power and care in post-colonial India.

The Registration of Foreigners Act came in vogue in 1939. As the name suggests, it called for the registration of all foreigners coming to India. The Census Report of 1931 noted that there were some 5,72,000 persons living in India who had stated that they were born outside of His Majesty's Dominions. However, there was no information as to their nationality. The only law, which provided for the registration of foreigners as a different category

was contained in Sections 6 through 9 of the Foreigners Act of 1864. Those provisions, however, were intended for use in emergency only, and apart from this even if they were brought into force, they would have applied only to foreigners arriving, and not to those already resident in British India.<sup>55</sup> By this time in the majority of other countries both within and outside the British Commonwealth foreign visitors and residents were required to report their movements. Excluding or restricting foreigners was an accepted mode of border control by now. Lord Atkinson had in a Canadian appeal to the Privy Council stated even before the First World War that:

One of the rights possessed by the supreme power in every State is the right to refuse to permit an alien to enter that State, to annex what conditions it pleases to the permission to enter it, and to expel or deport from the State, at pleasure, even a friendly alien, especially if it considers his presence in the State opposed to its peace, order, and good government, or to its social or material interest.<sup>56</sup>

After the War this principle was commonly accepted. Even Indian representatives to the Imperial Conferences in 1918, 1921, and 1923 accepted this principle of exclusion of aliens.<sup>57</sup>

The Registration of Foreigners Bill evoked intense debate in the Legislative Assembly. Sir Reginald Maxwell introduced the bill on 8 March 1939. While introducing the bill Maxwell commented, 'it is evident that the presence of foreigners in this country and the extent of foreign immigration are matters which are attracting an increasing amount of attention'.<sup>58</sup> In trying to justify this Act the Home Member stated that in India there were no means of ascertaining where the foreigners were, how many of them had arrived in India and how many had subsequently left and among those who were present in India, how were they occupied? He said such information was important in peacetime and absolutely essential in times of war. He also said such a war might soon be imminent. However, more than these justifications what provoked the Indian members, particularly the Opposition, was the definition of the term 'foreigner' given by the Home Member. The

Government defined foreigners as all those who were not British subjects or members of the colonies. He also hastened to say that he was not in favour of registering members of neighbouring countries such as Nepalese and Afghanis as 'they are technically foreigners but they come from countries contiguous to India with which India has, for generations, enjoyed close and friendly intercourse and they are not likely to become our enemies at any future time'.<sup>59</sup>

Many Opposition leaders were fearful that just as the Foreigners Act of 1864 was used against freedom fighters from the princely states during the civil disobedience movements of the 1920s and 1930s this Act would also be used for similar purposes. For example N.V. Gadgil stated that 'during the days of the non-cooperation movement in 1921 and 1922, and also from the year 1930 to 1935, hundreds of people who came from Indian India to participate in the Civil Disobedience Movement were deported under the provisions of the Foreigners Act'.<sup>60</sup> Therefore, many members vociferously opposed the inclusion of princely states into the spectrum of this Act. The Home Member ultimately clarified that he did not wish to include members of other Indian states within the jurisdiction of this Act. Ultimately subjects of other Indian states were kept out of this Act. By now the British government had a different enemy. They needed the support of Indians to fight that enemy, hence this concession about subjects of other Indian States.

A livelier debate ensued over the question of whether members of other British dominions could be regarded as foreigners. The Opposition members, particularly the Congress members, held that this bill should retaliate against the wrongs perpetrated by racist countries such as South Africa against Indian immigrants. They questioned, 'What do we want in this Bill? We want to indicate the way in which we should retaliate against them in the same manner as they have been doing to us'.<sup>61</sup> Thus they wanted countries such as South Africa, British Guyana and Kenya to be included within this bill. Some Indians such as Bhai Parma Nand felt that such actions on the part of the Indian Government could provoke these countries into taking harsher steps against Indian immigrants in their own lands. However, many others felt that such

fear psychosis had stopped Indians from legislating against such racist countries for far too long. In the end Reginald Maxwell pointed out that even if subjects of British Dominions were brought within the jurisdiction of the Act, the Government of India would use its prerogative to exempt them from the need to register. To him it was clearly a war measure against belligerent European countries. He was not too interested in Indian sentiments. Maxwell insisted that the Act was merely to gather information about foreigners and not to exert any control on them.<sup>62</sup> He also stated that if the members wanted retaliatory measures against racist countries they could invoke the Immigration Act of 1924, knowing fully well that there were no rules framed on the basis of that Act, and that without rules the Act was defunct. Maxwell also hastened to point out that there were a far greater number of Indians in these countries than there were 'colonials' in India. Much to the consternation of Indian members he completely overlooked Britain's own interest in emigrating Indian labour to these colonies.

Ultimately the Opposition won a small victory of sorts.<sup>63</sup> The Registration of Foreigners Act of 8 April 1939 stated that all British subjects who were not domiciled in either the United Kingdom or India were to be considered foreigners. Any foreigner moving from one place to another in India had to seek the permission of the Government. When he arrived at any new destination he had to register with the prescribed authorities within a stipulated time. He had to mention his departure dates. And at all times he had to carry proof of his identity. The term of imprisonment for contravening this Act was increased from two months to a year. Even subjects who did not report the presence of foreigners in their keeping, particularly hotel keepers or commanders of ships, were liable to fined.<sup>64</sup> Thus, the State was empowered at all times to continue its surveillance of foreigners. This Act was signed during peacetime. It was not an emergency measure. It was obvious then that once the Second World War was declared in September 1939, new and more stringent laws would follow.

By 1939 the term 'refugees' had already appeared in legislative discourse. There were questions in the Assembly about their status. In an answer to a question raised by a Manu Subedar the Home

Member tried to clarify the government's position about Jewish refugees from Germany. The point that the Indian members raised was that did the refugees fall within the Passport Act of 1920? The Home Member replied that there were destitute people who did not have passports as passports were issued on the basis of nationality and not on the basis of race. Their case was referred to the Government by Consular authorities. If they were accepted then they entered the country. They were however 'given no relief in any form'. But refugees were allowed to enter India if they were not considered 'undesirable' and if a resident of India could produce evidence that they would not have to be provided for by the state exchequer. They were to be allowed to live in India for five years, with the understanding that if by the end of that time they remained jobless then they would have to be repatriated to the United Kingdom.<sup>65</sup> By 1939 it was accepted that refugees would not be required to possess a passport, but that they still fell within the purview of the Registration of Foreigners Act. However, the Imperial Government made it clear that although the refugees were foreigners, their entrance into India depended solely on the discretion of the Government. Also, refugees were not to be treated as a group but on a case-by-case basis. Yet neither the Act of 1939 nor any previous act established a regime of control over either refugees or foreigners; merely a framework of surveillance at all times. The idea of controlling foreigners came later during the same year.

The Defence of India Act and the Defence of India Rules followed soon after the declaration of the Second World War. The Registration of Foreigners Act called for surveillance of foreigners, but this Act went much beyond that. It called for a complete control of movements of foreigners. Rules made on the basis of this Act imposed restrictions on the movement of not just foreigners but also subjects. Severe restrictions were imposed on any person entering India. For foreigners it was also not permitted to leave India without the written permission of the Government. It was said that for the efficient prosecution of the War any person could be detained. If the authorities so desired they could procure photographs, thumb impressions, and specimens of handwriting of any person living in British India. The same Act made

even more stringent rules for foreigners. The State was empowered to stop completely the entrance of foreigners into India. Once in India all their movements were kept under surveillance. A foreigner could not just be detained but even confined to prescribed areas. The term of imprisonment for contravening these orders was increased to five years. The authorised persons for interrogating foreigners had the complete authority to accept or reject the reasons furnished by foreigners for coming into British India.<sup>66</sup> It is interesting to note how these rules, which were made by a colonial government for emergency purposes, began to be appropriated by a post-colonial State for legitimising its conscious efforts to keep out certain groups of people.

At the end of the war a new Foreigners Act was passed. However, before that Act was passed, enthusiastic debates followed in the Indian Legislative Assembly over the repatriation of 'Burma Indian Refugees'. These were people who had come to India as a result of the war and were now desirous to go back. The Government of India was keen to send back any or all who showed willingness to go back. However, there were no cases of forced repatriation. In fact R.N. Banerjee, who was the Secretary, Commonwealth Relations Department, was repeatedly questioned as to why people who wanted to return were held back. He replied that the civic situation in Burma did not warrant such repatriation.<sup>67</sup> What Banerjee's comments emphasised was that it was the responsibility of receiving states to ensure the safety and security of repatriating refugees. This principle was based on an ethics of care on which the Indian Government stood. But such ethics of care was predicated on a power regime, which was portrayed by the Government's appropriation of power over any questions of repatriation. Such power was never delegated nor diluted through legislation.

The new Foreigners Act portrayed that the Government of India considered its hold over refugees as sacrosanct. It also portrayed that the nationalists appropriated the discourses of the colonialists when it suited their purpose. Thus what was at one time a colonialist project became a nationalist project when the nationalists were preparing themselves for the project of State formation. Sardar Vallabhbhai Patel introduced the bill as the Home

Member on 13 November 1946. He wanted a more comprehensive measure so that greater power over foreigners could be given to the Government. The Home Department had taken up such a Bill when the war intervened. Thus an Ordinance was passed giving similar powers to the Government. But since the period of the ordinance was over, he wanted some permanent measures to be enacted. He said that the Government had found the 1939 Act inadequate, and told the House that before 'this Act was passed, you will remember that there was only one Act and the old one, known as the Foreigners Act of 1864. That Act instead of dealing with foreigners, probably was used or abused for treating Indians as foreigners in India. Therefore the definition was revised in 1940 and the revised definition has been incorporated in this Bill'.<sup>68</sup> The present Act was considered necessary on two accounts. Greater obligations on masters of ships and hotel keepers were to be imposed so that they informed the Government at all times about the movement of foreigners. Also, the Government was to be given the power to determine the nationality of a foreigner, notwithstanding what the foreigner said to the contrary.

Although Sardar Patel insisted that this was not a wartime measure, his actions proved that the new State wanted to legitimise actions taken in wartime by the colonial leaders as peacetime measures, thereby giving greater power to the State over the lives and movements of foreigners. The Bill passed without any amendments. Such stringent control over foreigners was considered natural by the post-colonial state. There were some questions raised regarding the status of people from other British Dominions such as South Africa. The problem was that there was no comprehensive definition of an Indian citizen but as a subject of the British Empire as per the Act of 1914. Therefore notwithstanding South African discriminations of Indians, they were not discriminated upon by this Act. However, questions were raised as to whether tribals could be considered as Indian subjects or as foreigners.<sup>69</sup> Ultimately inhabitants of tribes living within the so-called geographical perimeter of India were recognised as Indians. However, most tribes remained in the periphery of the democratic project of India and their status became problematic. Further, the Government was urged to take strong measures to repatriate



Europeans domiciled in India or even European refugees in India. Manu Subedar's opinion about the disorderliness of refugees and their potential to create law and order problems was a precursor of things to come.

The debate over the Foreigners Act portrayed how a post-colonial State defined its own positioning. The Members' comments revealed that often their inclusion depended on their ability to exclude others. One member voiced this clearly when he argued that under the British, India 'was an open country. It had an open door; anybody could come here and do what he liked ... and even if it was deleterious for the life of our own people we had no power or say in it, but that will not be the case in future'.<sup>70</sup> Often this inclusion/ exclusion was based on an ideal type. Anyone visibly different was suspect. Thus the debate centred on Europeans and tribals.

The Foreigners Act of 1946 not only repeated most of the provisions of the previous Acts but also added a few. Some of the provisions in the Defence of India Act were included in this Act even in peacetime. A foreigner was required to reside in prescribed areas and accept all 'restrictions on his movement'. He could be asked to submit himself to medical tests. He could be prohibited from associating with any groups of people that the State decided. Even in peacetime he could be detained and confined. If a foreigner was so detained the State could control others' access to him. Also, if a foreigner was ordered to remove himself, the cost for such removal was to be borne by him. The State also appropriated power over areas frequented by foreigners. Impunity for anyone reporting or convicting foreigners was also given by the Act. Article 15 of the Act stated: 'No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.'<sup>71</sup> This Act did not end but merely began a series of other Acts for controlling access to India. Specific Acts disallowing foreigners to settle in certain parts of India soon followed it.<sup>72</sup>

The Foreigners Act of 1946 was however not foolproof. The only persons who could be externed under the provisions of the Foreigners Act 1946 were persons who were foreigners as defined in the Act. Therefore, it was possible for a person not to be a citizen

and yet not to be a foreigner within the meaning of this Act.<sup>73</sup> Such a qualification had consequences for other groups who entered. As for the Foreigners Act, it portrayed that the onus of proof lay on the individual concerned. The first Foreigners Act had declared that if a person was brought within the jurisdiction of this Act, then the onus of proving that he was not a foreigner lay on him. But the recent Act made even that onus of proof more difficult because it empowered the Government to decide on the nationality of a foreigner notwithstanding what the foreigner himself said.

The evolution of the Foreigners Act showed how an Act passed by the imperial government could be appropriated by the nationalist leaders of the post-colonial state in order to legitimise their policies of control. Till 1946 refugees were largely 'destitute' aliens who could be repatriated if the need arose, although they seldom were. In a Legislative Assembly debate in March 1946 the Government reported the presence of some 12,000 European refugees in India over whom the Government spent Rs 3,82,491.12 during the duration of the war.<sup>74</sup> The Government also reported the presence of Asian refugees such as the Afghans. In the Legislative Assembly debates Government representatives were often questioned regarding the whereabouts of these refugees that they warded off. Other than one or two odd demands, neither the Government nor the Opposition called for forcible repatriation of these refugees. Until 1946 there were hardly any forcible repatriations of refugees. However, the experience of Partition was destined to change this scenario.

**foreigners, refugees, and the aliens** This chapter is an effort to portray how a colonial Government seized on the notion of difference to include some and exclude others from the process of State formation. It was through a conscious effort to exclude certain groups that the British Government created the category of foreigners and aliens. By marking foreigners as outsiders they made it possible for the Government to control the movement of these foreigners at a time when control over access was considered necessary for governance. Once the Act was in the statute books they utilised this to control all sorts of protests. The Act

of 1864 was primarily created to control protestors such as those in the Wahabi movement and the movement of 1857. In the next round this Act was invoked to expel subjects of princely states from British India when they were found to be involved in the non-cooperation and civil disobedience movements. Thus people of Indian origin became foreigners in their own land. When the British Government was embroiled in another contest in Europe, they tried to increase their control over other Europeans in India through the Registration of Foreigners Act. At that time they conceded that the subjects of princely states were no longer considered as foreigners. Initially when the concept of refugees came into legal parlance they were considered as destitute foreigners. Although in 1870 Britain had in its mainland conceded that political fugitives were a separate category, in the colonies they never did so. Thus when people appeared as refugees in British India the only concern was whether they would be dependent on Government money. If these refugees portrayed that they had an independent source of income, or that they were to be supported by other individuals within the country, then they were often given permission to enter.

When the post-colonial State began to define itself it adopted the Foreigners Act to suit its own purpose. For such a State the power to exclude portrayed its ability to include and create the category of insiders/ subjects. Therefore, the Foreigners Act came long before the Citizenship Act. Yet what happened to those who were born as Indians but lived elsewhere? Were they to be considered foreigners or did they have the right to return? These were questions whose answers remained ambiguous. In a Legislative Assembly debate on the status of Indians in Africa the question of the return of these Indians were no longer addressed. In fact the question that arose was how best to support their claims of citizenship in the land of their residence. Thus these countries were considered their land of adoption. In an Assembly debate in 1944 N.B. Khare, the leader of the Opposition, said about the Peggung legislation in South Africa: 'the latest attempt at racial segregation of Indians is but one of the many discriminatory measures which have been forged by the Union Government to keep fresh perpetually the brand of racial inferiority on our own nationals in

the country of their adoption'.<sup>75</sup> Although he had sympathy for these Indians, he considered South Africa as their rightful place. Thus birth gave way to adoption. Unlike nationalists .during the colonial period, the leaders of the post-colonial State formation project no longer looked forward to the return of the emigrants who were slowly becoming foreigners.

The category of refugees emerged from within the category of foreigners. By making foreigners the *other* of subjects the State paved the way for making refugees also the *other* of subjects. The understanding was that these refugees could be guided by the For-eigners Act since they were also aliens.<sup>76</sup> But the post-colonial state claimed its superiority from the Imperial states through its ethics of care. Since refugees were considered more powerless and vulnerable than foreigners, there were some sensitivities about repatriating them en masse. The Government through its treatment of Burmese and Afghan refugees portrayed that it had accepted the responsibility of first examining as to whether suitable conditions existed for the asylum seekers to return before repatriating them. Yet the Government never gave up-either through precedence or through legislation-its power to control the fate of refugees. Thus there is a constant tension in Government policies towards asylum seekers between its ethics of care and its demonstration of power. As yet it has not been resolved whether these asylum seekers are to be addressed on the basis of Indian ethics of care or are they to be subjected to the State's strong arm of power. What was resolved was that each case was to be treated on an ad hoc basis and the Government retained the right to decide how best a group of refugees was to be treated. The fate of European refugees in 1946 portrayed that the Government was prepared to deal with each case on an ad hoc basis. Since the refugees were neither subjects nor foreigners they became aberrations. Their fate was totally dependent on the will of the Government. They lived under the constant threat that they could be expelled at the will of the State.

That the post-colonial state had inherited the shibboleth of power as the basis of governance from the Imperial states is portrayed by their attitude towards refugees and women. In both cases while the legal position remained unclear, the State fastidiously

maintained its right to control both these groups. Womens-rights movements forced the State to clarify its position regarding women, but for the refugees there were no such pressure groups. Thus the State is yet to make a legal refugee regime. This is not to say that the treatment of refugees by the Indian State is totally unjust. Certainly this is not the case. In fact the State's claim to moral superiority over Imperial states was based on its ability to make ethical choices. Thus often the Indian State, or for that matter other South Asian states, have meted out humane treatment to asylum-seeking groups. However, this was not predicated upon any notion of individual or even human rights. It was in fact built upon the notion of charity. This attitude of State supremacy over refugees evolved from the State's attitude towards foreigners. In the 19th century the State legitimised its control over foreigners. Post-colonial states inherited these attitudes and guarded them jealously. Thus even now asylum is a matter of charity and not of right.

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20. Letter of Manchershah B. Godrej to *Indian Sociologist* dated 20 January 1906, and quoted in Nawaz B. Mody (ed.), *The Parsis in Western India: 1818 to 1920*. Allied Publishers Limited, Mumbai, 1998, p. 87.
21. C.A. Kincaid, *The Outlaws of Kathiawar and Other Stories*. The Times Press, Bombay, 1905, pp. 111-12.
22. C.A. Bayly, *Rulers, Townsmen and Bazaars: North Indian Society in the Age of British Expansion, 1770-1870*. Cambridge University Press, Cambridge/London/ New York, 1983, p. 219.
23. Torrens wrote about a Wahabi leader named Khan-I-Alum Khan that he 'is a Wahabee, and it would appear that, excited by the wild and extravagant ideas professed by other persons of the same sect in Southern India, has been ill-advised enough to trust the bearer of this missive, a wandering adventurer, with it under the impression that it would be taken to Ibrahim Pasha, a son of Mahomed Pasha of Egypt'. Letter of H. Torrens, Dy. Secy. to the GOI with the Governor General, dated 22 April 1839, Foreign Department Files, Miscellaneous, Vol. 331, p. 98, National Archives India (hereafter NAI).
24. These reports typically are framed like this:

Some disturbances has occurred on the borders of the Colapore Country, and in the neighbourhood of the Goa frontier towards

paula banerjee

Sowntwaree, owing to the attacks of bands of depredators whom scarcity and some ill-grounded idea of the defenceless state of our Bombay Possessions, seems to have excited to actions. A formidable party of these marauders who are ascertained to have assembled in the Colapore Country received on the 23rd of March a severe check in an attack upon the Treasury of our Mamlutdar at Malwan.

Foreign Department Files, Miscellaneous, Vol. 331, p. 62.

25. W.K. Hancock, *Survey of British Commonwealth Affairs, Vol. I, Problems of Nationality, 1918-1936*. OUP, London/ New York/Toronto, 1937, p. 172.

26. *Abstract of the Proceedings of the Council of the Governor General in India, Assembled for the Purpose of Making Laws and Regulations 1863, Vol. I*. Published by the authority of the Governor General, Calcutta, 1864, p. 113.

27. *Act No. III of 1864*, Superintendent Government Printing, India, Calcutta, 1864.

28. Ibid.

29. Article 20, *Act No. III of 1864*, Superintendent Government Printing, India, Calcutta, 1864.

30. Article 25, *Act No. III of 1864*, Superintendent Government Printing, India, Calcutta, 1864.

31. Letter from C.H. Grace to Major H. Mackenzie, dated 10 May 1867, no. 882, Home Department Files, Public Branch, January 1870, No. 195, NAI.

32. Letter from Officiating Secretary to Government of Bengal to The Secretary to the Chief Commissioner, Central Provinces, dated 27 June 1868, No. 3179, Home Department Files, Public Branch, January 1870, NAI.

33. J.T. Wheeler, Assistant Secretary to the Government of India, Foreign Department, Order dated 15 June 1869, No. 197, Home Department Files, Public Branch, January 1870, NAI.

34. *Abstract of the Proceedings of the Council of the Governor General in India, Assembled for the Purpose of Making Laws and Regulations 1864, Vol. I*. Published by the authority of the Governor General, Calcutta, 1865, p. 3.

35. The Extradition Act 1870, in *A Collection of Statutes Relating to India, Vol. I*. Manager of Publications, Delhi, 1935, pp. 240-41.

36. The Territorial Waters Jurisdiction Act, 1878, in *A Collection of Statutes Relating to India, Vol. I*. Manager of Publications, Delhi, 1935, p. 330.

37. 'Movement of Population', in *The Indian Empire Census of 1881, Statistics of Population, Vol. II*. Superintendent of Government Printing India, Calcutta, 1883, pp. 5-8.

111. For example, it was reported that 2,120 people living in India, a vast majority of whom lived near Bombay, spoke African languages: it was also reported that about 40,258 Portuguese-born people were living in Bombay, and 834 Afghan-born people were living in Bengal: *The Indian Empire Census of 1881, Statistics of Population, Vol. II*. Superintendent of Government Printing India, Calcutta, 1883.

11. W.K. Hancock, *Survey of British Commonwealth Affairs, Vol. I, Problems of Nationality, 1918-1936*. OUP, London/ New York/Toronto, 1937, p. 172.

10. Quoted in W.K. Hancock, *Survey of British Commonwealth Affairs, Vol. I, Problems of Nationality, 1918-1936*. OUP, London/ New York/Toronto, 1937, p. 174.

11. C.B.E. Lord McNair, and A.D. Watts, *The Legal Effects of War*. Cambridge University Press, Cambridge, 1966.

12. Lord Atkinson quoted in Lord McNair and A.D. Watts, *The Legal Effects of War*. Cambridge University Press, Cambridge, 1966, p. 66.

13. The Indian Passport Act, 1920, in *The Indian Code*, Government of India, Ministry of Law. Published by the Manager of Publications, Delhi, 1955, pp. 1-2.

14. For the evolving trajectories of this Act refer to Maneka Gandhi v. State.

15. *Legislative Assembly Debates*, Official Report 1922, Vol. IV. Superintendent Government Printing, Delhi, 1922, p. 2187.

16. Indian Emigration Act, 1922, in *The Indian Code*, Government of India, Ministry of Law. Published by the Manager of Publications, Delhi, 1955, p. 13.

17. Annual Report of the Agent of the Government of India in South Africa for the Year Ending 31 December 1930, Manager of Publications, Delhi, 1931, p. 6.

18. Sir Deva Prasad Sarvadhikary, 'Resolution Re: Claims of Indians in Kenya', *Legislative Assembly Debates*, 21 July 1923, Vol. III. Superintendent Government Printing, Simla, 1923, p. 4824.

19. *Legislative Assembly Debates*, Official Report 1922, Vol. II. Superintendent Government Printing, Delhi, 1922, p. 2332.

20. 'The Immigration into India Bill', *Legislative Assembly Debates*, 27 July 1923, Vol. III, Superintendent Government Printing, Simla, 1923, p. 509.

21. *Legislative Assembly Debates*, Official Report 1922, Vol. IV. Superintendent Government Printing, Delhi, 1922, pp. 2190-91.

22. *Legislative Assembly Debates*, Official Report 1930, Vol. I. Superintendent Government Printing, Delhi, 1922, p. 592.

23. *Legislative Assembly Debates*, Official Report 1930, Vol. I. Superintendent Government Printing, Delhi, 1922, p. 618.

54. Frank Gruffith Dawson and Ivan L. Hend, *International, National Tribunal and the Rights of Alien*. Syracuse University Press, Syracuse, 1971, p. 69.
55. S.C. Consul, *The Law of Foreigners, Citizenship and Passport*. Law Book Co., Allahabad, 1962, p. 131.
56. Lord Atkinson quoted in Lord McNair and A.D. Watts, *The Legal Effects of War*. Cambridge University Press, Cambridge, 1966, p. 72.
57. See W.K. Hancock, *Survey of British Commonwealth Affairs, Vol. I, Problems of Nationality, 1918-1936*. OUP, London/ New York/Toronto, 1937, pp. 174-226.
58. Registration of Foreigners Bill, *Legislative Assembly Debates, 9 March 1939, Vol. 2*. Manager of Publications, Delhi, 1939, p. 1836.
59. *Ibid.*, p. 1838.
60. *Legislative Assembly Debates, 30 March 1939, Vol. 4*. Manager of Publications, Delhi, 1939, p. 3053.
61. S. Satyamurti, *Legislative Assembly Debates, 30 March 1939, Vol. 4*. Manager of Publications, Delhi, 1939, p. 3081.
62. Sir Reginald Maxwell, *Legislative Assembly Debates, 30 March 1939, Vol. 4*. Manager of Publications, Delhi, 1939, pp. 3068, 3137-43.
63. *Legislative Assembly Debates, 30 March 1939, Vol. 4*. Manager of Publications, Delhi, 1939, p. 3149. The motion to exempt only British subjects who were domiciled in United Kingdom from the jurisdiction of this Act was accepted by a vote of 63 to 42.
64. The Registration of Foreigners Act, 1939, Act No. 16, in *The Indian Code, Part V, Government of India, Ministry of Law*. Published by the Manager of Publications, Delhi, 1955, pp. 3-5.
65. Starred Question 240, *Legislative Assembly Debates, 1939, Vol. I*. Manager of Publications, Delhi, 1939, p. 581.
66. The Defence of India Rules 1939 (being Rules made under the Defence of India Act 1939, Reprinted as amended upto and including 30 September 1940). Published by the Manager of Publications, Delhi, 1940, pp. 41-49.
67. 'Burma Indian Refugees', *Legislative Assembly Debates, 14 February 1946, Vol. II*. Manager of Publications, Delhi, 1946, pp. 983-94.
68. 'Foreigners Bill', *Legislative Assembly Debates, 13 November 1946, Vol. VIII*. Manager of Publications, Delhi, 1946, p. 970.
69. *Ibid.*, pp. 970-77.
70. Manu Subedar, 'Foreigners Bill', *Legislative Assembly Debates, 13 November 1946, Vol. VIII*. Manager of Publications, Delhi, 1946, p. 973.
71. The Foreigners Act, 1946, Act No. 31, in *The Indian Code, Part V, Government of India, Ministry of Law*. Published by the Manager of Publications, Delhi, 1955, pp. 7-18.

Within a few years there were some new rules of access. In 1950 an Act was passed to provide for the expulsion of immigrants from Assam. The person whose residence was outside of India was forbidden to come and settle in Assam. The Central Government was empowered to give directions in regard to his or their removal from India or Assam as it considered necessary or expedient'. Such legislation did not stop with the 1950s. Soon there were special requirements for even citizens' access to certain parts of India. The Immigrants (Expulsion From Assam) Act in 1951, *The Indian Code, Part V, Government of India, Ministry of Law*. Published by the Manager of Publications, Delhi, 1955, pp. 23-24.

*Union of India v. Hasan Ali Mohd. Husain Shariff*, AIR 1954, Bombay 100.

'Removal of European Refugees from India', *Legislative Assembly Debates, 13 March 1946, Vol. IV*. Manager of Publications, Delhi, 1946, p. 111.

'J. Legislative Assembly Debates, Official Report 1944, Vol. IV'. Manager of Publications, Delhi, 1944, p. 273.

Even today asylum seekers are often tried under the Foreigners Act in India. After Rajiv Gandhi's assassination in 1991, many Sri Lankan refugees were rounded up, charged, and convicted under the Foreigners Act.



## 2 state response to the refugee crisis: relief and rehabilitation in the east

Samir Kumar Das

This chapter proposes to assess the Government's responses to the refugee crisis<sup>1</sup> in the East during 1946-58. Unless otherwise stated, the term 'Government' will be used here to refer to the Government that came to power in East Bengal after the first General Election of 1952, based for the first time in India's political history on the principle of universal adult franchise. Although in our Union political power tilts heavily in favour of the Central Government, 'relief and rehabilitation' has been included as a 'State Subject' in the Constitution and is considered to be the primary-but certainly not the exclusive-responsibility of a constituent state. By Government's responses, we will primarily refer to all those policies, decisions, programmes and legal practices that the Government undertook, implemented, or sought to implement during the period under review by way of extending relief and rehabilitation to the refugees from the then East Bengal/East Pakistan. Governments in plural in this chapter will refer to both the Government of India as well as that of West Bengal.

The Annual Report of the Department of Rehabilitation, Government of India defines the term 'displaced' in the following words:

A displaced person is one who had entered India (who left or who was compelled to leave his home in East Pakistan on or after 15 October 1947) on account of civil disturbances or fear

state response to the refugee crisis

of such disturbances or on account of setting up of the two dominions of India and Pakistan.<sup>2</sup>

It is interesting to note that the term 'displaced' is used in government circles in order to refer to those who have been forced to leave East Pakistan only after India became independent and the two dominions of India and Pakistan were formed. Although India became independent on 15 August 1947, the extended period of two months was given to the people for settling themselves in the country of their choice. Since India was not an alien land for them before the date mentioned above, those who had migrated before it were described as 'migrants' rather than 'the displaced' in official circles. The displaced in order to avail themselves of the relief and rehabilitation benefits extended to them by the Government were required to register themselves on or before 31 January 1949. Although the Government's use of the term 'refugee' has not been very consistent, there is reason to believe that it served the term primarily to describe those amongst the displaced who also got themselves registered and could eventually become the beneficiaries of the Government's relief and rehabilitation measures. Obviously the number of refugees defined in this manner does not coincide with either that of the migrants or that of the displaced. Since these terms are not mutually exclusive, the Government sometimes used them freely without making any distinction between them. As India was/is not a signatory to the 1951 Convention, the Governments' use of the term 'refugee' was sometimes very casual and free from the legal niceties and obligations that are associated with it. They are partly to be blamed for the confusion they had created by simultaneously using all these terms. Often, as Abhijit Dasgupta informs us, the Governments at all levels took advantage of the confusions and defined and redefined them in ways that suited their convenience.<sup>3</sup> Notwithstanding these occasional confusions and verbiage, the Governments seemed to have stuck by and large to the broad classification of the East Pakistan returnees into the overlapping categories of migrants, displaced and refugees.

Besides, the fear of imminent Partition and riots in different districts also accounted for massive population outflows from

many other parts (especially from Noakhali and Tippera) of East Bengal even before India actually became independent and the subcontinent was carved up. We accept 1958 as the cut-off year primarily for two reasons. One, the year 1957 marks the completion of the tenure of the first popularly elected Government at the Centre as well as in West Bengal. It gives us a good opportunity of taking stock of their performance during their first five years in office. Two, the year 1958 also marks the end of an era in the sense that from then onwards, the Government by its own admission, sought to bring its policies, decisions, and programmes undertaken earlier to a logical conclusion. In early 1957, Prafulla Chandra Sen, the then Rehabilitation Minister of West Bengal, pointed out that though the Government's tenure was about to end, rehabilitation work might take a little longer to 'wind up'. The Government in other words started thinking in terms of actually 'winding up' the work. Thus it decided to shut off all relief and transit camps existing in West Bengal by 31 March 1958 and refused to recognise any immigrant as 'displaced' or a refugee in need of relief and rehabilitation beyond that date. As we will see, the rate of migration as well as the number of migrants in gross terms went down substantially after 1956. It was not until 1964, when a fresh spate of communal violence rocked many parts of the subcontinent and another round of population exodus took place from the then East Pakistan, that the Government was forced to reopen the camps and reactivate its rehabilitation machinery with newer responsibilities. Again, it will be wrong to think that it had no relation to Partition. Much of post-Partition communal violence on either side of the international border has its roots in Partition and the subsequent reorganisation of borders. Thus, the official discourse did not seem to have taken any notice of those who had come to West Bengal between 1 April 1958 and 31 December 1963. In the words of Prafulla K. Chakrabarti, widely regarded as an authority on the subject: 'The Government simply forgot them. They were not eligible for any rehabilitation assistance.'<sup>4</sup> It is only apparent that the Government refused to treat them as persons displaced by Partition; Neither of the Governments was prepared to accept that much of communal violence in post-Partition India/Pakistan was only a sequel to Partition and

the post-Partition movement of population. It seems that both these Governments took a very limited view of Partition and its fallout on the demography of the subcontinent. Since the year 1958 marks the end of an era in more than one sense, we have thought it proper to confine our analysis to the period spanning from 1946 to 1958.

**the government discourse** In the prevailing literature on the subject under review, one notices a distinct tendency to depreciate the role of the Governments with the effect that they secure only a passing mention. This is exemplified by one of the unusually sharp comments of Prof. Prafulla K. Chakrabarti, whose book is still regarded as the point of departure for any understanding of the subject. His review, according to him, shows that, 'the Government (of West Bengal) work in this field was one of non-performance.'<sup>5</sup> This has two implications. On the one hand, persistent 'non-performance' by the Government had pushed the refugees to a point where they were left with no alternative whatsoever but to raise their voice and wage what Anil Singha calls, 'the epic battle of Kurukshetra' in order to attain their 'just and legitimate' demands.<sup>6</sup> This to my mind laid for the first time in post-Partition West Bengal the foundations of a vibrant civil society ('refugee power' as Chakrabarti calls it) beyond the State's sphere of influence.<sup>7</sup> Nilanjana Chatterjee in one of her papers focuses on the dynamic interplay between 'the official discourse' and the 'refugee counter-discourse'. The counter-discourse according to her, 'assigns centrality to the displaced themselves in reconstructing their lives, and may even hold the government responsible for exacerbating the refugee problem'.<sup>8</sup> Thus an opposition is envisaged between these two discourses. Joya Chatterjee seems to echo the same point in one of her recent writings on the refugees of eastern India. On the one hand, the refugees during 1947-50 maintained that they had a *right* to relief and rehabilitation, for they thought it to be both legitimate and due and the Government that had acquiesced to Partition owed a responsibility of facing its consequences. On the other hand, the Government thought that since the refugees came by fits and starts, they had the option of not coming over to India and by extending

relief and rehabilitation to them it was doing a great *charity*. As she points out: '... it could argue that it helped refugees not because of any binding obligation but voluntarily, out of the goodness of its heart'.<sup>9</sup> What Joya Chatterjee calls 'charity' was driven more by a sense of providing immediate relief and succour to the people in distress till such time when they would feel safe to return to East Pakistan than by the heinous intent of treating them as 'second class citizens'. If it were a governmental discourse of charity, it was also born out of this realisation. No nation-state agrees to treat the demands of the refugees as rights until it recognises them as part of its larger national body and citizenship is what makes them eligible for the rights guaranteed by it. Loyalty to the nation is the price that the states extract for providing the rights that they guarantee in exchange.<sup>10</sup> We argue that the Government took time to realise that they were here to stay and as we will see later, it was not until the early 1950s that the Government took note of the fact that they needed to be incorporated into the national body. Once they became part of the national body, they became not only entitled to rights, but also subject to the conditions and obligations that accompany the process.

On the other hand, Chakrabarti's observation implies that the government if left to itself would not have taken any initiative unless pressed by the refugees and their organisations. Whatever it did was in fact the result of a great and successful battle waged by the refugees in order to get their grievances ventilated. More often than not, people's self-help initiatives played a great role in providing long-term rehabilitation to the people in distress. Indubaran Ganguly in his reminiscences on the refugee colonies of Calcutta, for instance, considers this battle and 'their attempts at self-rehabilitation' as a 'shining, constructive example of our own national life'.<sup>11</sup> Chatterjee too, argues that 'the refugees responded to the inadequate relief and rehabilitation resources with enterprise and flexibility'.<sup>12</sup>

Prafulla Chakrabarti's observation takes a static view of governance. According to him, successive players reinforce the rules of the game with the effect that the crisis occurs precisely at a point where political affairs can no longer be managed from within the same rules. Such a view hardly looks upon the Government as

a 'responsive' agency consisting of an elite who 'as rational actors choose their options in a manner that maximises benefits and minimises costs of transactions'.<sup>13</sup> It fails in explaining how the Government while responding to the refugee crisis experimented with its own rules of the game and various alternative courses of action. We should also keep in mind that while being responsive, the Government is not absolutely free to do whatever it thinks to be rational and therefore necessary. Government's rationality and freedom of action as we see them are bound by the 'logic of the state'.<sup>14</sup> It is the logic of the state that admits of a given range of courses of action and any government can afford to be responsive only in the relative sense of choosing from amongst them. For one thing, the absolute view does not take into account the enormity of problems that a newly born Government with virtually no experience of a human disaster of such magnitude was called upon to grapple with. Interestingly, while responding to the problems, the Government was experimenting as it were, with its own self, that is to say, with numerous tools and modalities of administration. There seemed to be an abiding concern on the part of the ruling elite for making the administration 'honest and efficient'. For instance, it was felt that the practice of preparing the budget on a yearly basis had proven to be both dated and inadequate. As Renuka Roy, Minister for Rehabilitation of the Government had pointed out: '... just as deficit financing today has to be adopted to the needs of a welfare state, it is coming to light that the annual budgeting system is the outmoded system and will be replaced'.<sup>15</sup> The Opposition leaders were no less concerned about the problem of finding an appropriate mechanism for coping with the refugees. In 1957 for instance, some of them had made a strong plea for establishing 'a non-governmental advisory body' to 'monitor and instruct the activities of the Government'.<sup>16</sup> The instance of another important administrative experiment may also be cited in this connection. The Government decided to allow refugees themselves to act as contractors under the Construction Board and undertake development work in the refugee colonies. The Governor of West Bengal in his annual address to the Legislative Assembly in 1957 regarded it as 'a success' and the refugees in the process earned as much as Rs 1 million at a time when it was by no means a modest amount.<sup>17</sup>

For another reason, the Government was not absolutely free to respond to the problems in the way it liked. At a time when its ideological commitment to state and nation building was nearly unwavering, it was compelled to operate within the parameters set forth by these imperatives. As Jawaharlal Nehru in his historic message to the nation on 15 August 1947 declared:

We have also our brothers and sisters who have been cut off from us by political boundaries and who unhappily cannot share at present in the freedom that has come. They are all of us and will remain of us whatever may happen and we shall be sharing their good and ill fortunes alike.

Although initially the Governments were under the impression that the refugees in the East were likely to go back once security and safety had been provided to them by the Pakistani government, they ultimately came to the realisation that these refugees were to be accommodated within the framework of our nationhood. Thus the question of rehabilitation was considered to be inseparable from our nation building enterprise. The question of restitution of evacuee property to the Muslims of West Bengal, once they came back from East Pakistan after the signing of the Nehru-Liaquat Pact of 1950, was officially considered to be central to the question of preserving the secular character of our body politic. Prafulla Chandra Sen, the then Rehabilitation Minister of the Government for instance, maintained: 'It is a matter of great pride that most of the Muslim brothers who went away from West Bengal during the turmoil of 1950 have come back from East Pakistan.'<sup>18</sup> Similarly, as we will see, the question of rehabilitating the refugees outside West Bengal was inseparably connected with the question of its nation-building enterprise. The refugees were viewed by the State as the catalysts of land colonisation and development in far-off, mainly tribal-inhabited areas with little knowledge of settled wet-rice cultivation. The Government thought that they could act as the harbingers of social and economic transformation in the tribal areas and would thus facilitate the incorporation of the segregated tribal communities into the national body.

Building the pan-Indian nation was also closely related to the question of a homeland of the Bengali nationality, or for that matter, those of other linguistic nationalities. Being a composite and multi-ethnic country, India was called upon to provide space for their positioning and enactment within the framework of her fledgling nationhood. If the Bengali-speaking refugees were dispersed all over India, it was feared this would disrupt the process of nationalistic consolidation of the Bengalis. In course of deciding whether 'excess' refugees should be sent outside West Bengal or not, the Government was required to balance the imperative of Bengali 'little nationalism' with that of pan-Indian 'great nationalism'. Advocates on both sides were equally strong and the Government, to say the least, resembled a divided house. On the one hand, there were those who believed that the returnees from East Pakistan being Bengalis had had a legitimate right to be settled on a permanent basis in West Bengal. Such Opposition members as Sudhir Chandra Ray Chaudhuri, Bankim Mukherjee and Hemanta Kumar Basu in fact discovered a heinous design of dismembering the Bengali community in the Central Government's policy of deporting the so-called 'excess' refugees to other parts of India. Mukherjee compared the politically fragmented Bengalis to the 'the wandering Jews' before the birth of Israel.<sup>19</sup> According to them, territorial consolidation was a prerequisite for the formation of Bengalis into one well-orchestrated community. Ray Chaudhuri pleaded for what may be called an expansionist policy according to which 'excess' Bengalis should fan out to areas contiguous to West Bengal and the Government join the Opposition in making the demand for including them in West Bengal, should the existing space be inadequate to accommodate them.<sup>20</sup> For others however, de-territorialisation was the greatest challenge that the Bengalis were required to withstand in order to keep them together as a community. The over-protectiveness and unwillingness of the Bengalis to move out from West Bengal have been, according to Bijoylal Chatterjee, another member of the Legislative Assembly, responsible for their current plight. Even Prafulla Chandra Sen, the then Rehabilitation Minister agreed that their exposure to others would make them learn how to overcome the challenges.<sup>21</sup> The decision of sending out the Bengalis was also supported on the ground that it was through them that

'civilisation could be established' in other parts of the country.<sup>22</sup> For the first group of advocates, the question was: whether the interests of Bengali 'little nationalism' could be better served by way of keeping the refugees inside West Bengal or outside it. Advocates on either side accused the ruling elite at the Centre of partitioning the country without simultaneously taking the responsibility for its consequences.<sup>23</sup> While refugee influx was a 'national' problem created by the ruling elite, it conveniently passed the buck to the state Government. In short, all these illustrations show that the problem was more complex than what the existing literature on the subject would have us believe.

This work draws mainly from four more or less distinguishable sources of data:

- (a) Official publications, especially of the Ministry of Refugee Relief and Rehabilitation, the Government of West Bengal as well as the Department of Rehabilitation, Government of India and of course Lok Sabha and West Bengal Legislative Assembly (WELA) debates. Survey reports of the Indian Statistical Institute, Calcutta prepared at the behest of the Government are immensely helpful in understanding the refugee scenario and particularly, the impact of Government decisions, policies, programmes or other measures on the refugees.
- (b) Memoirs, biographies and autobiographies of those who have been responsible for providing relief and rehabilitation to the refugees. Hiranmoy Bandyopadhyay's *Udbastu*<sup>24</sup> written in Bengali, Saroj Chakrabarti's *With Dr B.C. Roy and other Chief Ministers*<sup>25</sup> and Saibal Gupta's *Dandakaranya*<sup>26</sup> are some of the excellent pioneering works in this regard.
- (c) Critical assessments of the Governments' performance, made mostly in the form of reports or memoranda by non-governmental organisations, including United Central Refugee Council (UCRC) as well as individuals, scholars, opinion leaders; in some cases, political parties etc. may also be indirectly helpful.
- (d) The reports of the newspapers-both English and vernacular-serve as an important source of data for re-examining the refugee policies of the Governments.

Before beginning, it may be necessary to mention some of the major limitations of this work. One, it is true that the Government's responses during the period under review were not of uniform type. Our analysis-albeit sensitive to their changing nature-concentrates only on the final phase since 1954, when the Government seemed to have felt the need for making planned and decisive interventions in order to address the problem of refugees. It was only after 1954 that the Government began to realise that the refugees who had arrived were unlikely to go back in spite of the Nehru-Liaquat Pact that was signed between India and Pakistan in 1950. As a corollary to it, the Government slowly felt the necessity of accepting them as an inalienable part of the Indian nation. Two, it would be wrong to think that the entire gamut of refugee studies is exhausted by a study of Government initiatives and responses to them. This is particularly true in respect of the refugees in West Bengal because the Government's responses could cover only one-fourth of the refugees who came to the state.<sup>27</sup> Relief and rehabilitation were basically restricted to those who got themselves registered and took shelter in relief and transit camps. As Hiranmoy Bandyopadhyay puts it: 'The crisis of refugees in some sense was limited to them.'<sup>28</sup> Three, we also find problems with data dished out by Government sources. Sometimes, Relief and Rehabilitation Ministry data do not correspond with those acquired through decennial census operations. As Abhijit Dasgupta notes, discrepancies in this respect are most prominent for the period from 1953 to 1956 when the in-migration is believed to have been the highest. Moreover, gross figures of Government outlay do not take into account the changing price index over the years. Since 1961 is customarily regarded as the next base year after 1951, I have chosen to ignore the finer variations that might have crept in between 1951 and 1958. We also find difficulties in comparing individual data with those of households. The Governments did not seem to have followed any consistent policy in this regard. Moreover, since much of the Governments' spending during this period was implicit in the sense of being tied up with other apparently non-refugee heads, it is very difficult to isolate them and obtain any accurate figure. Wherever we have found the data comparable we have tried to break them into their percentage variations.

**the political milieu** De-colonisation in the subcontinent was associated with the tragedy of Partition. Never before in Indian history was the change in political boundaries so crucial in shaping and determining people's everyday lives that they felt the necessity of moving out in numbers in order to be on the right side of them. Thus the movement of population necessarily accompanied Partition. Being a Hindu in Pakistan does not convey the same meaning as being one in India. Hence, Partition and post-Partition reorganisation of political boundaries contributed to what I have elsewhere described as 'natural selection' of the people living within them.<sup>29</sup> It is also important to know that the changes in political boundaries in pre-Partition India occurred by and large along a culturally contiguous space and the pre-modern states did not seem to face the obligation of homogenising its people into a nation *distinct* from others. The cultural and political boundaries in pre-modern times are seen to cut across each other. The modern state's exclusive claim to the so-called 'national' culture is what accounts for the difference between the changes of political boundaries in pre- and modern India. As a result, when the Radcliffe Line was drawn in the East in order to separate East Pakistan in neat and precise terms from India on 12 August 1947, the people were called upon as it were to resettle themselves in keeping with its implicit requirements. The drawing of the line as Joya Chatterjee tells us was 'messy' and can hardly be likened to the commonly used imagery of a 'surgical operation'. But once it was drawn, people had no other option but to accept it as 'a new way of life' and adjust to the new reality.<sup>30</sup> The creation of Pakistan by all accounts contributed to a newfound stridency in the attitude and behaviour of the Muslims in the East, who being poor and predominantly of peasant origins were so far timid and gave themselves to the hegemony of their Hindu *zamindars* (landlords). The birth of Pakistan as a separate and sovereign state invested them with a sense of identity that was about to threaten the old power structure hitherto governing their social inter-relationships. The 'Hindu refugees' memory of an idyllic past in which the Hindus and Muslims harmoniously lived together thus involved an erasure of the essentially asymmetrical power relations between them.<sup>31</sup>

The Nehru-Liaquat Pact was signed precisely to guarantee the security and safety of the minorities in their respective countries so much so that they did not feel compelled to migrate. While 'the pact was implemented by India alone',<sup>32</sup> Pakistan failed in dispelling apprehensions from the minds of the substantial number of minority Hindus living in East Pakistan. As we will see, most of the evacuees who left India before the Pact was signed felt encouraged to come back and reclaim their property. The Governments of both India and West Bengal were initially under the impression that the refugees would go back to East Pakistan once the Government there was able to ensure their safety and security. However virtually none of the Hindus migrating to West Bengal made their way back to their deserted homes.

We have already said that there was a time lag between preparing for Partition and preparing to face the consequences of Partition. In a sense this was unavoidable. For the 'nationalist' elite could hardly make preparations for dealing with these consequences in an alien framework of Government over which it had little control, and as soon as they came to power they were evidently overtaken by the consequences. It should also be remembered in this connection that it was a Government that did not come to power with any ready blueprint for future action. Almost all the official projections about population influx proved to be inaccurate and the Government was taken aback at every step. A 'dynamic model of governance' takes account of the response time that an agency takes while dealing with a crisis.

It is clear that the Government was slow in responding to the crisis. It seemed to have expected, as we have already pointed out, that once the dust storm of Partition and post-Partition communal riots had settled, the displaced people in the East would feel safe to return to their respective homelands. This approach led the Government initially to adopt an extremely temporary and ad hoc approach to the whole question of refugees. At a meeting held in the Writers' Building on 2 March 1950, Mohanlal Saksena, the then Rehabilitation Minister of the Government of India, instructed the representatives of Tripura, Assam, Bihar, Orissa and West Bengal to restrict government work to relief (*trankarya*) rather than to rehabilitation (*punarbashan*) for two reasons. First, since a great percentage of people came to West Bengal having

left behind their land, they were likely to return to East Pakistan. So the Governments should do nothing that would help in developing any permanent stake on their part in the land of their refuge. Second, since the crisis had occurred suddenly, no one knew its exact dimension and 'the Government could not take any responsibility'.<sup>33</sup> Saksena was in favour of establishing the relief camps in border areas to facilitate their quick return to East Pakistan. He is also believed to have made a case for keeping surveillance on the refugees so that they did not melt into the local populace. As a sequel to it, the Nehru-Liaquat Pact was signed in 1950. Thus according to an official report, about 32,000 Muslims who had left West Bengal before 31 March 1951 came back to West Bengal and reclaimed the land already occupied by the refugees. Of them, 27,000 were from Nadia. While Muslim evacuees came back, there was hardly any out-migration of Hindus from West Bengal. This was in stark contrast to the situation in Western Punjab where the out-migration was greater than the in-migration, and this obviously made the problem in the East somewhat easier for the authorities to grapple with.

It was only in the early 1950s that the Government recognised the necessity of making planned responses to the refugee crisis. The State Statistical Bureau of West Bengal conducted its survey—the first of its kind in the region—only in 1950-51. The main aim of the survey was to take stock of the refugee situation in West Bengal. A fact-finding committee, comprising K.P. Mathrani, Joint Secretary to the Government of India, Ministry of Rehabilitation, N.K. Ray Chaudhury, Additional Secretary, Refugee Relief and Rehabilitation, Government of West Bengal, and S.B. Sen of the Indian Statistical Institute, Calcutta, was appointed 'to make a survey and assessment of the conditions in relief camps and rehabilitation colonies, in particular of housing and gainful employment provided for and vocational and technical training given to the displaced persons in West Bengal and the result of various other rehabilitation measures undertaken by the government'.<sup>34</sup> The committee submitted its report to a high-power committee of Ministries composed of those of Finance and Rehabilitation, Government of India, and the Chief Minister, West Bengal, in June 1953. This report may be considered as the nucleus of all subsequent governmental responses to the refugee crisis in West

Bengal. The report was the first of its kind to have announced that keeping the refugees on doles and assistance and providing them with relief could not be a long-term solution to the problem. In the same vein, it expressed the necessity of rehabilitating them on a permanent and viable basis. The committee of Ministers was particularly alarmed at the inordinately longer duration of stay in relief and transit camps:

We consider it harmful to allow persons to continue in relief and transit camps for such a long period with consequent demoralisation and the creation of vested interests. It has to be borne in mind that the longer these persons stay in camps, the greater their resistance to dispersal.<sup>35</sup>

This led the committee to formulate, for the first time, a comprehensive policy of rehabilitation of refugees. As the report further points out:

With a view to avoid forced idleness which is demoralising, it has been laid down as a matter of policy that the inmates should be dispersed to colony camps or the sites of rehabilitation centres or to worksite camps which may be either in the nature of irrigation and other works undertaken by the West Bengal Government or test works specially started for the purpose.<sup>36</sup>

Before we proceed, it may be interesting to note some of the factors that led the Government to realise, albeit slowly, the necessity of making policy responses to the refugee crisis under review here. One, as the dust storm of post-Partition population movements somewhat settled, the Government found time to sit back and shift attention to the question of rehabilitating the refugees already accommodated in the relief camps.<sup>37</sup> Two, by the early 1950s, it also became clear that those who had come to West Bengal were unlikely to return to their homeland. The debate in the Legislative Assembly consequently shifted from the question of extending relief to the larger problem of recognising and rehabilitating them as regular Indian citizens. Three, the refugee crisis was slowly posing a threat to the law-and-order situation in West Bengal. There were reports of confrontation not only between the

locals and the immigrants but also between the police forces and the refugees. The Government thought that these confrontations unless appropriately tackled could soon make the matter slip out of its hands. Four, the first popularly elected Government took over in 1952 and the popular mandate provided the political elite with an opportunity of dealing squarely with the problem and undertaking policies on a long-term basis. Hence, it may not be an exaggeration to argue that the Government responses became more articulate and organised only in the early 1950s.

**the magnitude of the crisis** Since the total number of refugees were never evenly spread over the period under review, the Government appeared to have been taken by surprise at every point. Although the official estimate of the total numbers was kept at a staggering 25, 17,504 in December 1952, the increase in subsequent years was unimaginable. Following is a month-wise break-up of the volume of influx:

Table 2.1: Month-wise Break-up of Refugee Influx into West Bengal

Month	1953	1954	1955	1956
January	5,248	4,077	15,674	17,011
February	5,961	5,710	22,848	42,360
March	7,507	5,821	26,503	15,167
April	6,900	6,002	15,070	18,039
May	6,032	6,656	18,190	34,657
June	4,798	6,354	21,146	24,734
July	5,026	6,208	22,957	27,442
August	4,147	8,127	13,813	
September	3,223	10,644	9,371	
October	4,379	10,352	13,757	
November	3,212	11,073	11,535	
December	4,214	22,776	18,709	
Total	60,647	1,03,800	2,09,573	1,79,410

Source: *Relief and Rehabilitation of Displaced Persons in West Bengal* (Calcutta: Home [Pub.] Dept., Govt. of West Bengal, 1956), p. 17.

That the distribution of refugees over the years was not evenly spread is evident from the fact that the number of refugees that arrived in November 1953 was 3,212, while the highest number recorded in a single month according to this estimate was in February 1956 (42,360). The range of fluctuation (in this instance more than 13 times) was too wide to even plan for any contingency measures by the Government. The projections made by the Government by its own admission went awry:

The estimate that we had made in the early stages regarding the migrants that they were likely to come actually proved wrong; the actual number far exceeded the estimate. In 1955-56 we thought 1.71 lakh (171 thousand) families would need rehabilitation assistance. Actually the total number needing such rehabilitation was 1.92 lakh (192 thousand) families. In the year 1956-57 we estimated a migration of 21 thousand families but actually 41 thousand families came.<sup>38</sup>

While West Bengal was the largest recipient of refugees for reasons of her physical and cultural proximity to East Pakistan, not all districts of the state were equally affected by the problem. Over 73 per cent of the refugees came to West Bengal (Table 2.2). The concentration of refugees was so high in West Bengal that they constituted at one time nearly one-tenth of the total population. Further, their concentration was the largest in the three districts of then undivided 24-Parganas, Calcutta and Nadia. These three districts together accounted for about two-thirds of the displaced persons. The Government's attempts at getting them distributed in other parts of West Bengal or sending them to other parts of India did not cut much ice. Even the Governor of West Bengal noted on 8 February 1955 that from March 1954, the Government was faced with yet another problem of heavy desertion of refugees from Bihar and Orissa.<sup>39</sup>

As the Government sought to put a stop to nearly unlimited immigration from across the borders by way of introducing the passport-system in 1952, travel documents were forged in order to enter into West Bengal. In his address to the Assembly, the Governor mentioned this point with considerable concern: 'To add to our difficulty, it was recently found that about 25,000 persons



Table 2.2: State-wise Break-up of Refugees

<i>State-wise Break-up of Refugees</i>	<i>in Thousands</i>
West Bengal	316
Assam	487
Tripura	374
Bihar	67
Uttar Pradesh	16
Orissa	12
Manipur	02
Madhya Pradesh	01
Andamans	04
Total	1,279

Source: *Relief and Rehabilitation of Displaced Persons in West Bengal: Statement issued by the Govt. of West Bengal, 11 December 1957*, p. 1.

had false migration certificates'.<sup>40</sup> The Government was also aware of the attempts made by 'Pakistani citizens' at illegally sneaking into Indian territory without valid documents. According to the then Rehabilitation Minister, in the year 1955 alone 2,509 'Pakistani Muslims' crossed over from East Pakistan to West Bengal without any passport or visa. In the first couple of months, 316 such persons entered into West Bengal.<sup>41</sup> We will do well to keep in mind that such illegal immigration from what is now known as Bangladesh continues unabated till this day.

The problem of refugees from East Pakistan differed in somewhat significant respects from that of those who came from West Pakistan. First, the numbers who left for West Punjab were much more than those who came to East Punjab. Of the 49 lakh of refugees from West Pakistan, only 24 lakh settled themselves in East Punjab while 40 lakh left for Pakistan. But in West Bengal 30.9 lakh came in the eastern zone by 1956 and 2,58,117 Muslim evacuees who had migrated to East Pakistan came back by 1952. This only added to the magnitude of the problem. Second, a substantial amount of evacuee property in the form of land and houses was

available for rehabilitation of refugees from West Pakistan. On the other hand 'every refugee here' as a government statement put it, 'is an additional number to the existing population and has to be fitted into the state with an over-burdened economy, where the density of population has already been the highest in India among the states.

**relief and rehabilitation in west bengal** Government responses by its own classificatory scheme were threefold: relief, rehabilitation and general measures. The term 'relief' was taken to mean its endeavours at: (a) enumerating and classifying the refugees in terms of their social and economic background, (b) keeping them on doles and assistance for everyday survival, and (c) most importantly, preparing them for rehabilitation. Accordingly, it tried to accommodate them in different types of camps: Relief and Transit Camps, Permanent Liability Camps and Colony Camps. The Government's original idea of sending the refugees straight to the centres of rehabilitation had to be abandoned midway on two counts: first, as the volume of immigration during the period was far from being evenly spread, the Government was always taken by surprise. The rate of rehabilitation was bound to lag behind that of influx. Second, since many of them were supposed to be sent to other parts of the country, instant arrangements could not be made for their travel. Hence, relief and transit camps were established not only to provide immediate succour to them, but also to keep public facilities (especially Sealdah railway station) clear from the swelling crowd.

In order to counteract the demoralising effect of prolonged stay in the camps the Government introduced a system of keeping able-bodied men engaged in working places meant for ultimate rehabilitation of the camp people, where they helped in the development of the area. For instance, in the Bagjola worksite camps refugees took part in the excavation of the irrigation canal to drain out water from the area. Where sites of rehabilitation could not be found, the refugees were kept engaged in Government projects as well as Central Government projects, such as the Damodar Valley Corporation (DVC) and Morland projects.<sup>42</sup> A survey conducted

in 1956 for instance gives us some idea about how these camps were operating:

Table 2.3: Worksite Camps

<i>Nature of Work</i>	<i>Mileage</i>	<i>Man-days</i>	<i>Earthwork (cft)</i>	<i>Wage Earned</i>
Roa construction	84	52,22,569	3,01,93,641	5,92,083
Canal construction	16	90,46,811	2,52,69,398	4,99,708
Embankment work	03	39,021	27,41,895	55,434
Development work		1,78,775	85,61,184	2,23,767
Total		1,44,87,176	6,67,66,118	13,70,992

Source: *Relief and Rehabilitation of Displaced Persons in West Bengal* (Calcutta: Home [Pub.] Dept., Govt. of West Bengal, 1956), p. 18.

Permanent liability camps were camps where people otherwise considered to be 'unfit' for rehabilitation were accommodated. They consisted of the old and infirm, the invalid and families that were not headed by able-bodied male members. The population in these camps on 30 November 1952 was stated to be about 34,000, including the population of orphanages. It rose to 50,424 by July 1956.<sup>43</sup> The Committee of Ministers noted with concern that there were hardly any arrangements for 'the training of trainable adults' in these camps. As a result, training facilities were introduced in the Rupasreepally, Dhubulia, and Titagarh women's camps.

Besides, there were also colony camps set up by the Government to provide developed sites for housing of the displaced. A Development Committee was constituted for conducting a survey of all Government-sponsored urban land and non-agricultural rural refugee colonies with a view to the provision of roads, water and electric supply, drainage etc. Development work was undertaken in 30 such colonies and 4 townships of Taherpur, Gayeshpur, Habra and Khosbasmohalla. According to the report on the *Relief and Rehabilitation of Displaced Persons in West Bengal*, in 1953 the number of camp admissions of displaced persons was 10,474, in 1954 the number was 46,904 (a 347.81 per cent increase), in

1955 the number was 1,09,834 (increase of 134.16 per cent) and in 1956, till July, it was 71,263 (an increase of 35.11 per cent).<sup>44</sup>

The tables noted below point to certain peculiarities. First, while Table 2.4 gives us figures concerning camp admissions, it does not correspondingly provide us with figures of dispersal to rehabilitation centres. However, it is interesting to note that the annual rate of camp admissions was always greater than that of influx during the 1953-55 period. Although in gross terms there was bound to remain a huge deficit, it shows an elementary earnestness on the Government's part to respond to the problem. Second, not all camps were of equal size in terms of population. Even if Nadia recorded the largest number of camp admissions, the number of camps there was seven times less than the number in 24-Parganas. Third, it is also apparent that the districts of north Bengal (West Dinajpur and Cooch Behar) were relatively unaffected by the refugee influx. There was not even a single camp in the district of Darjeeling. It seems that the flow of refugees was by and large towards the districts of south Bengal-Calcutta and those surrounding it.

Table 2.4: Number of Camps, and Population

<i>District</i>	<i>No. of Camps</i>	<i>Population</i>	<i>Per Camp Average</i>
Nadia	8	62,068	7,758.80
24-Parganas	55	54,059	982.89
Burdwan	31	51,802	1,671.03
Hooghly	15	25,421	1,694.73
Howrah	6	9,844	1,640.66
Bankura	7	15,373	2,196.14
Birbhum	17	27,188	1,599.29
Murshidabad	10	16,282	1,628.20
Midnapore	9	13,962	1,551.33
W. Dinajpur	1	1,297	1,297
Cooch Behar	1	1,528	1,528
Calcutta	1	6,185	6,185
Total	161	2,85,009	

Source: *Ibid.*, p. 18.

The Government's policies of rehabilitation were focussed primarily on those who had taken shelter in the relief camps. These policies aimed at making them earn their livelihood on their own without having to depend on the Government any longer. Basically the Government's policies of rehabilitation were two-fold—rural and urban, depending on the occupational background of those for whom they were meant. Rural policies were further subdivided into two: on the one hand, agriculturists required not only homestead land, but also cultivable land large enough to sustain them and their families. On the other hand, non-agriculturists required homestead land and loans of various types in order to settle themselves. There were four different schemes for the rehabilitation of agriculturists amongst the displaced in the rural areas: Type scheme, Union Board scheme, *Barujibi* scheme and Horticulturists scheme. Under the ordinary Type scheme, displaced persons were given land acquired by the Government or they purchased land themselves and got loans according to prescribed scales. Displaced persons settled on the land secured by private negotiations had to purchase it on their own. They were however entitled to rehabilitation assistance in the form of loans and grants subject to an overall ceiling of Rs 1,900 per family. This amount included Rs 500 for house-building, Rs 600 for agricultural activities, maintenance loans for six months (in 1954 this period was raised to nine months at the end of the harvest, whichever was earlier), and wherever necessary reclamation and reclamation loans at Rs 100 and Rs 50 per acre respectively. Cash dole for a period of one month was also included in the ceiling. The average holding of land in the government-sponsored schemes was about 2 acres per family and that in respect of private settlements was roughly 3.5 acres.

Under the Union Board scheme, the idea was to rehabilitate displaced persons in small batches in different *mouzas* through the help and active cooperation of Board Presidents and the teachers of local schools, who had been paid a token honorarium for the purpose. But as figures on desertions indicate (see, Table 2.5), the scheme did not yield satisfactory results. The scale of the *Barujibi* (betel leaf cultivation) scheme was generally the same as in the case of agriculturists, but the area of land was restricted to 2 bighas for cultivation and 8 kathas for homestead land per

household. Though the percentage of desertions under the Horticultural scheme was not unusually high, the scheme as a whole did not produce expected results. Most of the families enrolled under this scheme were non-agriculturists—mainly drawn from the middle class, who did not have any experience at being engaged in any form of agricultural activity. In many cases, the soil was not suitable and irrigation facilities were lacking. The distance of the agriculturists from such marketing centres as Calcutta was one of the main reasons why these schemes were not as effective as they were expected to be.

The following table points to some of the crucial aspects of the Government's policy of rehabilitation. First, the percentage of desertions was the highest in the case of the Union Board schemes (55.3 per cent) although the total expenditure under this scheme was even more than the Government sponsored Type scheme. The lack of success may be attributed to such factors as difficulties in socially mixing with the local people within an otherwise enclosed village society, the adverse attitude of the rural elite whose cooperation was essential for them to live in an alien atmosphere and

Table 2.5: Rehabilitation of Agricultural Families in Rural Areas under Different Schemes

<i>Scheme</i>	<i>No. of Families Sent</i>	<i>Total Expenditure</i>	<i>Average Family Expenditure</i>	<i>No. of Families Deserted</i>	<i>Percentage Desertions</i>
Govt. sponsored	5,442	64,18,839	1,180	1,063	19.5
Private	68,041	2,22,00,490	326	2,924	4.3
Total	73,483	2,86,19,329	1,506	3,987	5.4
Union Board schemes	9,773	69,90,680	713	5,401	55.3

Source: *Report of the Committee of Ministers for the Rehabilitation of Displaced Persons in West Bengal* (Calcutta: Manager, GoIPress, 1954), p. 9.

in some cases, their inexperience in being associated with agricultural activities. The relatively low rate of desertions in the Private and *Barujibi* schemes is not difficult to explain. In both cases, the prospective beneficiaries were given the freedom to choose their own plots of land and *Barujibis* were sent to places which had a tradition of growing betel leaf plants. Second, the relative inefficiency of the Government sponsored Type scheme seems to be incompatible with the highest recorded per capita expenditure incurred by the government under this scheme. It shows that expectations in spite of being high were belied.

For the rehabilitation of rural non-agriculturists, there were three schemes, i.e., Type scheme, Union Board scheme and a variant of the Union Board scheme. Under the Type scheme for rural non-agriculturists, displaced persons were either given homestead plots by the Government or loans for the purchase of household plots themselves. The ceiling of loans and grants under this scheme was Rs 1,775 per family. This included Rs 500 as a house-building loan, Rs 500 as a small-trade loan and maintenance loans for a period of one month and also cash doles for a period of one month. In addition, in the case of persons purchasing land by private negotiations, loans at the rate of Rs 75 per homestead plot were advanced. The scale of assistance under the other two schemes was generally similar. But the variant of the Union Board scheme was aimed at settling non-agriculturists on large blocks of wasteland on payment of *salami* (non-refundable lump sum money), and was evolved in view of the delays in the acquisition of land. The difference between Government sponsored colonies and the variant of Union Board colonies was that in the case of the latter, the families were settled as tenants under private landlords with their active cooperation and not on the land acquired by the Government.

According to a report, the rehabilitation of non-agricultural families in rural areas under different schemes was as follows: under Government sponsored schemes the number of families sent was 6,166, the total expenditure was Rs 43,62,913, and the average expenditure per family was Rs 708. Under private schemes, the corresponding figures were 89,044 and Rs 2,82,31,657, the

average per family expenditure being Rs 317.<sup>45</sup> The number of families deserted under the two categories were 1,175 (19.1 per cent) and 8,204 (9.4 per cent) respectively. Under the Union Board schemes the corresponding figures were 2,526, Rs 22,25,829, and Rs 848. Under the variant of the Union Board schemes the corresponding figures were 4,080, Rs 43,89,507 and Rs 1,076.<sup>46</sup>

The relatively high level of desertions in the government sponsored schemes as evident from the above statistics is self-explanatory. On the other hand, the extraordinarily high level of desertions in the case of the variant of Union Board schemes indicates refugees' greater willingness to live on self-owned plots of land. They did not want to live like tenants.

In urban areas many displaced families got themselves settled on their own and received rehabilitation assistance of different types such as house-building loans, trade loans or professional loans. They, as Hiranmoy Bandyopadhyay informs us, were generally well-settled and did not present any problem.<sup>47</sup> In addition, several urban Government-sponsored colonies were established to which non-agriculturist families living in camps were sent. By the end of 1957, there were 83 such colonies with 21,000 families. While many of these families formed adjuncts to the existing large towns, there were some colonies located in rural areas but were to be reclassified as towns on account of a very large concentration of non-agriculturists in them. Taherpur and Gayeshpur were two such colonies with a population of 15,000 and 10,000 respectively.

There were various loan schemes (in the forms of business loans, professional loans, cooperative loans, etc.) for refugees living in the urban areas. According to an official estimate, about 17,500 families were given trade and business loans up to September 1952, and the total amount so disbursed was about Rs 91.34 lakh. The proportion of untraced loanees was comparatively small (only 3.8 per cent). The high rate of loan repayment shows that the refugees were of course very sincere in their efforts at taking advantage of the schemes offered by the Government and thus becoming self-reliant. By 1956, loans had been advanced through the Refugee Businessman's Rehabilitation

Board to 2, 180 cases and through the Rehabilitation Finance Administration to 340 cases for setting up cottage industries. Besides, the Government had undertaken the establishment of medium-sized industries with a capital potential of Rs 5 crore (500 million) and refugee employment potential of nearly 11,000 at different centres of refugee concentration in the state. The principle of helping the industries was that 50 per cent of the capital requirement would be furnished by the private industrialists concerned, and that the remainder would be advanced by the Government as a loan on condition that the requisite number of displaced persons would be provided with employment. The Government's projection of finding employment for the displaced through medium-sized industries was 30,000 during the Second Plan Period. With a view to infusing the displaced persons with a spirit of self-reliance, the Government had adopted an active programme of encouraging cooperative enterprise among the refugees for starting cottage and small-scale industries and also for running business enterprises of their own on a cooperative basis. Up to June 1956, Rs 24.28 lakh was sanctioned to 59 cooperative societies formed by displaced persons.

Several important features are evident from the above estimate. First, Government assistance in terms of money was highest in the case of agricultural schemes. While the average amount of assistance per weaving cooperative was Rs 38,545.45, it was only Rs 2,50,947.33 in case of the agricultural cooperatives. It is interesting to note that most of the weaving cooperatives were concentrated in Nadia—a district that was (and still is) famous for its weaving tradition. Second, there is reason to believe that the cooperatives functioned well primarily in the agricultural and artisanal sectors. Their role in the urban sector—especially in the sector of self-employed professions—was extremely limited in many cases. Government figures however do not enable us to conclusively reflect on the functioning of cooperatives in different sectors.

The Government also took an active role in marketing the products of the refugee cooperatives. For this purpose, a Refugee Handicrafts Sales Emporium was set up in 1954, and during the

first two years of its existence, was successful in marketing products worth about Rs 35,000, earning a profit of nearly Rs 6,000 by 31 March 1956. In view of its success, the Government also decided to establish branch sales depots in different centres and most importantly, in areas of refugee concentration where most of the cottage industries were located.

In addition, professional loans to lawyers, medical practitioners and *kavirajs* (doctors following the Ayurvedic system of medicine) were given and 1,047 such families received benefits at a cost of Rs 8.36 lakh (1954 estimate). These loans were intended for books, equipment etc. and also included a provision for maintenance for six months at Rs 100 per month to enable them to tide over the initial difficulties in rehabilitating themselves. As the report observes: '... the progress of rehabilitation in the case of this category of displaced persons was, on the whole, more satisfactory than in the case of other non-agriculturists'. This was of course due to the fact that they were generally better qualified and had settled in large towns. We may end this discussion by way of referring to the number of those who benefited by various urban loan schemes. Government estimates concerning the amount of loans actually granted do not tell us anything unless we compare them with the number of claimants.

Coming to the general measures, the Government emphasised the issues of health and education of the refugees. They are called 'general' because they cut across the known boundary line between relief and rehabilitation. The Government's responses in matters of education were three-fold: the establishment of new schools, colleges and technical institutes, and the enhancement of students' intake in the already existing ones, provision of stipends to the refugee students on merit-cum-means basis and finally, the provision of vocational and job-oriented training to them by way of reserving seats for them. The following table provides an overview of the advancement of primary education amongst the refugee children. These figures exclude about 51,642 students who were studying in 163 camp primary schools run by the Government.

Table 2.6: Primary Education of Refugee Children

Year	Students Started	Students Helped	Expenses
1949-50	340	25,842	3,80,024
1950-51	776	89,096	17,21,233
1951-52	1,019	1,31,510	30,85,961
1952-53	1,019	1,32,111	34,43,672
1953-54	1,134	1,62,275	39,22,986
1954-55	1,134	1,77,155	39,15,216
1955-56	1,227	1,83,682	47,11,804
Total	6,649	9,01,671	2,11,80,896

Source: *Relief and Rehabilitation of Displaced Persons in West Bengal* (Calcutta: Home [Pub.] Dept., Govt. of West Bengal, August 1956), p. 26.

In respect of secondary education, needy students studying in classes V to X were given stipends to cover the cost of purchase of books and school fees. In addition to these stipends, the Ministry of Rehabilitation had sanctioned the opening of new secondary schools in different colonies and the expansion of accommodation in some of the existing secondary schools to take in more displaced students. About 238 middle and high schools were helped with grants of Rs 3.35 lakh up to the year 1951-52. Stipends were given for pursuing education in arts, science or medical, engineering, and professional institutes to promising displaced students whose parents or guardians were not in a position to bear the burden of such education. The Government of India also sanctioned loans and grants to the state Government for expanding existing colleges, and opening new colleges to provide for displaced students. A notable example of this was a loan of Rs 80 lakh sanctioned for the scheme of dispersal of college students from Calcutta. As a result 12 new intermediate colleges were opened and, in addition, 20 existing colleges and nine existing technical institutes started receiving financial assistance by the end of 1954. It was originally intended that at least 75 per cent of the students in these institutes should be displaced persons but

in actual practice, they constituted not more than 55 per cent. Table 2.7 gives us a summary of expenditures incurred on different types of education up to December 1952:

Table 2.7: Government Assistance to Education of Refugees

Level	Assistance to Students (in thousand Rs)		Assistance to Institutes (in thousand Rs)		Total
	Grants	Loans	Grants	Loans	
Primary	420		7,543		7,963
Secondary	4,575		2,674	334	7,583
College	1,930	11.52	189	8,542	10,672.52
Technical	415				415
Total	7,340	11.52	10,406	8,876	26,633.52

Source: *Report of the Committee of Ministers for the Rehabilitation of Displaced Persons in West Bengal* (Calcutta: Manager, GoI Press, 1954), p. 14.

It is obvious that assistance to students at the primary and secondary levels was provided on a grants-only basis. This implies the Government's commitment to free primary and secondary education to those who were in need of it. Although much hope was pinned on technical institutes for their potential of providing quick employment, the Government does not seem to have made much headway in this regard.

Technical and vocational training was imparted through the agency of the Directorate General of Resettlement and Employment, and through the Government. Arrangements were also made to impart training of a 'superior type' to 328 and 216 displaced persons per year in the college of Engineering and Technology, Jadavpur, and the College of Aeronautical Engineering, Dum Dum, respectively. Besides, there was also a provision for an apprenticeship training scheme, both through the agency of the Directorate General and through the Government.

The available sources point out that up to September 1952, 3,645 displaced persons received training under various schemes

at a cost of about Rs 18 lakh. The number of persons reported employed was 1,352, i.e., about 38 per cent of the persons trained. But these figures do not give us a complete idea of placement, as trainees did not always report about their employment.

Refugee health was obviously one of the most serious concerns of the government. The problem was compounded by the fact that their average mortality rate was higher than that of the national average. Tuberculosis was the most commonly found disease-at a time when there was hardly any cure for it. Table 2.8 traces the spread of this disease-albeit in gross terms:

Table 2.8: Spread of Tuberculosis between 1948-54

Year	No. of Patients Affected (in thousands)
1948	1.4
1949	1.4
1950	1.4
1951	1.4
1952	2.1
1953	2.4
1954	2.4

Source: *WBIA*, Vol. XV, No. 2, 1957, p. 31.

The Government's responses in matters of refugee health were by and large tardy. Tables 2.9 and 2.10 draw our attention to the application-admission ratio of tuberculosis patients:

Table 2.9: Admission into Government Maintained 150 Free Beds at K.S. Roy T.B. Hospital, Jadavpur

Year	No. of Applicants	No. of Admissions	Percentage
1953	486	144	29.62
1954	580	96	16.55
1955 (up to Aug.)	357	97	27.17

Source: *WBIA*, Vol. XIV; No. 1, 1956, pp. 234-35.

Table 2.10: Admission into Kanchrapara T.B. Hospital

Year	No. of Applicants	No. of Admissions	Percentage
1953	1,142	279	24.43
1954	902	370	41.01
1955 (up to Aug.)	625	1	00.16

Source: *WBIA*, *ibid.*

It seems that at no point of time could more than 29.62 per cent of the patients be accommodated in the government-run hospitals. These were inexpensive but utterly inadequate and very poorly equipped for dealing with tuberculosis and the outbreak of epidemics and diseases like dysentery, cholera, and pox etc. The fatality rate in the case of tuberculosis ranged between 8.53 per cent to 17.42 per cent during 1948-54.

In conclusion, we may refer to some of the broad strands of the Government's responses to the refugee crisis in West Bengal. First, they were primarily aimed at maintaining some kind of a continuity between the pre-displacement milieu of the refugees and their post-rehabilitation condition.

It is in this context that the Government's interest in gathering data relating to the social and economic background of the refugees becomes relevant. First, sometimes the concern for preserving the continuity was so obsessive that it produced some uncharitable stereotypes and rigidity in the Government's responses. Second, although many of the Government's responses before 1954 were of an ad hoc nature, their objective since that year was to integrate the refugees into the overall framework of planning and development. Rehabilitation became a part of the Government's development discourse. Third, there is reason to believe that the Government was conscious of the need to take into account the quality of rehabilitation offered to the refugees, though, of course, its ideas about the quality were still very unclear. The Government's responses during the period under review were predominantly-if not exclusively-economic in the sense that no separate attempts were made at defusing social tensions and

integrating them into the mainstream of society without producing friction. Sometimes, in the absence of any social policy, differences between the *bangals* and the *ghotis* turned into clearly visible battle-lines. As Kanti Pakrashi observes: 'Net result was that economic rehabilitation of the displaced persons constituted the be-all-and-end-all of contemporary measures taken in official circles.'<sup>48</sup>

The economism underlying the Government's policies, decisions, and programmes was blind to such concerns as ecology and gender. At that time these were certainly not on the public agenda either. In fact the Government at one point of time was accused of being lukewarm towards the refugees for refusing to develop the wastelands in the fringes of Calcutta and settle the refugees there, instead of sending them to such far-off areas as the Andaman and Nicobar Islands and Dandakaranya.

It seems that the Government did not have any ready-made solution to a crisis that was unprecedented in human history. However, it also represented a great learning experience for the Government.

**rehabilitation outside west bengal** As the refugees kept pouring in and land became increasingly scarce in a state like West Bengal, the Government propounded what subsequently was mocked as a theory of saturation, according to which it was no longer in a position to receive and rehabilitate any fresh batches of immigrants. The saturation theory made a veiled and at times not so veiled advocacy for equitable sharing of the burden by the states of the Indian Union. The argument was that since Partition was what the nationalist leadership had acceded to—maybe with great reluctance—it could not simply wash its hands off and refuse to accept the consequences. The Government maintained that the refugees were not its sole responsibility, but rather a burden which ought to be shared among the federal Government and those of the neighbouring states. A conference of the Rehabilitation Ministers was convened at the instance of the Government in 1956, in which it was officially decided that only those who were willing to move outside of West Bengal for resettlement would thenceforth be provided with Government help and assistance.

However, there were not many states in the Indian Union willing to host the Bengali-speaking refugees. Assam was the first to overtly express its reluctance. The states of Bihar and Orissa were willing to an extent. There was also a proposal for rehabilitating the refugees in such far-off places as Hyderabad and Mysore. A high-level committee was constituted at the conference that submitted its report on the rehabilitation of refugees outside West Bengal in the following year. Its recommendations were accepted, and a National Development Council was established as per its recommendations.

The committee's decision of sending the refugees to an area called Dandakaranya consisting of the districts of Koraput and Kalahandi in Orissa and the district of Bastar in Madhya Pradesh was soon accompanied by the institution of the Dandakaranya Development Authority (DDA) that was given the overall charge of developing the area. By 31 December 1959, a total of 830 families comprising 3,550 persons reached Dandakaranya from different relief camps of West Bengal and Bihar.<sup>49</sup> Within the Dandakaranya area, four resettlement zones were earmarked at Umerkote, Malkangiri, Paralkote, and Bastar. While 40 to 60 households were herded together in each village, each zone in turn was composed of tens of such villages separated from each other by a few miles on an otherwise inaccessible, infertile, and rocky terrain. The refugees—mostly belonging to lower castes such as Namasudras and Poudra-Kshatriyas with an agricultural background—were sent to Raipur by special trains from where they were taken to the Mana transit camp.

According to a report, more than 95 per cent of the refugees settling in Dandakaranya were of a low-caste background. Each household was given roughly 6.5 acres of land for cultivation and 0.5 acre for homestead. Each was also granted loans of Rs 1,700 for house building, Rs 1,115 for purchase of livestock and implements, and Rs 150 for digging a well, which they were supposed to repay. According to one estimate, by 1965 about 2,70,000 acres of forest were cleared and rendered cultivable, 75,000 refugee households were settled in over 184 villages. In the next eight years, about 9,000 households came to settle in Dandakaranya.<sup>50</sup> Land being barren and infertile and the yield being unexpectedly low,



the households found it difficult to eke out a living from the land that they were vested with. According to a conservative estimate, a refugee household was in need of nearly 24 quintals of crops for its subsistence. But if one standard year's (1963-64) average production is taken into consideration, we see that only 26 out of 205 households in the Pharasgan zone and 1,130 out of 2,223 in P.aralkote got above 16quintals; i,193 out of 2,834 received above 14 quintals in Umerkote and 352 out of 1,023 received above 12 quintals.<sup>51</sup> By 1964, four industrial centres controlled directly by the Department of Industries, Government of India, had been established in Daridakaranya. These were the centres established in Boregaon, Jagdalpur, Ambaguda, and Govindapally. Even the largest one that was established in Boregaon made losses right from the beginning and the employment generating potential of each of these centres, as Ghosh informs us, was extremely limited. Employment openings in trade and services were also very limited. The three main forms of trade and services that developed in the region were: grocery and carpentry, cooperative manufacturing units and transport. Many of these units were meant to cater to the demands of DDA officials, who being transferable government employees could not provide any viable demand base for them. The local people being poor and cash-strafed could not afford to purchase the goods and services produced in these trading units. Besides, many of the cooperative units were centered on one or maybe a few persons and could not survive their death. Corruption of the DDA officials responsible for providing loans to these units was also a factor that led to the disintegration of these units over time.

Several factors were responsible for the failure of the Dandakaranya experiment. First, the settlers-mostly immigrants from the fertile Indo-Gangetic delta-were completely unaccustomed to the terrain and found it difficult to make the land cultivable and eke out a living from out of it. The land was inappropriate for any form of settled agriculture. The original inhabitants-mainly of tribal background-practised primitive forms of cultivation (such as slash-and-burn agriculture). In fact it is believed to be the policy of the Government of India to bring the refugees to these regions and thereby expose the original inhabitants to

settled cultivation. Ghoh for one argues that the Government of India's policy in this regard was one of developing the region by colonising the land and bringing it under settled cultivation rather than rehabilitation. He actually questions whether the Government of India was ever interested in making Dandakaranya a project of rehabilitation.<sup>52</sup> Second, the physical distance of the region from West Bengal was so great and communication facilities so poor and expensive, that it was impossible on part of the settlers to be in constant touch with the Bengalis. To make matters worse, each village was separated from the next by a few kilometers over rocky terrain often covered by jungles and infested with wild animals. It made inter-village communication difficult if not impossible. Third, because of the terrain, there was also an acute scarcity of drinking water. Irrigation facilities were also poor and inadequate. Poor medical facilities explained high mortality rates amongst them. Fourth, the settlers seemed to have been driven by a belief that because they were of low caste origin they were called upon to undergo this gruelling ordeal. Thus, a sense of caste discrimination only added to their mental agony. As they were cultivators in the erstwhile East Bengal, they could not easily migrate to India because of their deep attachment to their land. They were in fact the last to arrive and hence, were regarded as the surplus for whom West Bengal did not have any further space. Besides, one of their leaders, Jogen Mandal, was in sympathy with the demand for Pakistan. His sympathy with the demand was born out of the lower castes' complete erosion of confidence in the high-caste political leadership of the Indian National Congress. But as things came to a sorry pass and communal violence was directed against the remaining lower caste Hindus of East Pakistan, Mandal became a dejected man and decided to leave East Pakistan.

This sparked off a mass exodus among his followers, mainly the Namasudras. Their experience in Dandakaranya only added to their sense of misery. Manoranjan Byapari, a Namasudra leader with the experience of having spent some years in Dandakaranya, and who subsequently fled it, recounts his horrid memories and shows how caste played a crucial factor in matters of rehabilitation of the refugees outside West Bengal. He recounts an incident in which he was asked to clean the utensils of some of his fellow

caste-men who were invited by an upper caste doctor for dinner. Cleaning the utensils of the lower caste invitees by the upper castes is unthinkable in a caste-ridden society. He attributes the plan to resettle the lower-caste refugees to a godforsaken land to the machinations of the upper caste leadership of West Bengal.<sup>53</sup> Fifth, as the planners of the Dandakaranya project were guided by the stereotype that the settlers were agriculturists and their 'imagination did not go beyond agriculture'; hardly were any opportunities for alternative means of livelihood explored and provided to them. The industries being capital-intensive could not absorb most of the people for whom experimentation with agriculture proved to be futile. Finally, in many cases, settlers' relation with the indigenous population was, as Tan and Kudaisya put it, 'adversarial'.<sup>54</sup> In a study of 17 villages Ajaizuddin Ahmed reported the incidence of substantial land alienation and depopulation of tribal villages with about 30 per cent decline in tribal population. Examples of skirmishes between the tribals and the settlers were by no means rare.

All these factors combined together to spark off mass desertions of settlers from Dandakaranya to West Bengal. Desertion was never new in the region. It was first officially noticed between October and December 1965 when about 1,400 refugees of whom 163 were living in camps fled Dandakaranya. In the second quarter of 1966, 2,170 villagers made their journey to West Bengal. By 1973, the number of deserters stood at 16,211. Between January and March in 1978, 10,000 more families deserted their villages.<sup>55</sup>

Similarly, the Government of India also decided, albeit at the instance of its counterpart in West Bengal, to resettle a part of the 'excess' refugees to the vast and hitherto uninhabited land of Andaman and Nicobar Islands. According to one estimate, a batch of 3,421 persons was resettled in the Islands by the end of 1954.<sup>56</sup> The process continued unabated till 1964. Each household was offered five acres of cultivable land and another five acres for homestead and gardening. Financial assistance in the form of loans was given to them for meeting the cost of passage from the mainland, building their homes, purchasing livestock and agricultural implements, and also for their maintenance, till they were

in a position to reap their first harvest. There were allegations of irregularities in land allotment as well as release of loans. The same caste factor according to Basu Ray Chaudhury played an important role in 'influencing the rehabilitation programme of the Government of India'.<sup>57</sup> Most of the settlers were of low caste origin and driven by an acute sense of deprivation by the upper castes. The refugees were intended to serve as catalysts of settled agricultural cultivation. They were asked to clear the jungles and make land cultivable. In a region where there was hardly any indigenous labour, and agriculture had to depend primarily on indentured labour recruited through the Catholic Missionary Society, the East Pakistani returnees were looked upon as a cheap and inexpensive source of agricultural labour. Colonisation of land was perhaps the key motivating factor in resettling the refugees to the Andaman and Nicobar Islands.

It appears that the settlement of refugees outside West Bengal was meant to serve many purposes. First, it was expected to ease the pressure on the already high population, limited land and resources of West Bengal. While the term 'excess' was freely used in official circles, especially in West Bengal, to designate the latecomers—mostly of low caste origin—one finds little evidence to substantiate the allegation that the Government was being guided by overt caste considerations. The reason why the latecomers happened to belong to such peasant castes as the Namasudras and the Pundra-Kshatriyas is not far to seek. Since their attachment to land was strong, and they had virtually no alternative means of livelihood to fall back on, they were by all accounts the last to migrate to India. Second, everywhere in official circles they were looked upon as agriculturists. The Governments might not have been guided by caste considerations, but there is reason to believe that they were being driven by a peasant stereotype of the refugees. This led the Governments to not only use them as the spearheads of land colonisation in areas where land had hitherto remained uncultivable and fallow, but also to rule out the possibilities of exploring alternative means of livelihood, whether in industry or in trade and services. The experience of Dandakaranya aptly hears this out. Once agriculture failed, the people had no alternative but to look forward to excepting returning to West Bengal.

Rehabilitation of the refugees was integrally related to the larger issue of development. Third, the official discourse, especially of the Government of India, did not seem to accept the argument that since the refugees were Bengalis they were to be settled either in West Bengal or in a Bengali-speaking area, preferably contiguous to West Bengal. At a time when the Government of India refused to recognise language as the principle of reorganising the states of the Union on the ground that it would contribute to linguistic parochialism and ethnic chauvinism, it was obvious that the official discourse would have done that.

The much-touted JVP Committee published its report in which it pleaded against the reorganisation of states on the basis of language demands. The cultural miscegenation of the refugees with the locals predominantly of tribal origin was considered to be a bulwark against any resurgence of tribal separatism. It was to serve as a means of incorporating them into the framework of Indian nationhood. Both of the experiments-at Dandakaranya and at the Andamans-failed, though for different reasons. While settled land cultivation was an impossible proposition in the unaccustomed topography of Dandakaranya and cut into the tribal habitat, it was responsible for the frequent occurrence of conflicts between the local tribal people and the refugees. The Andaman experiment failed because the arrival of the refugees, instead of facilitating their cultural exchanges with the local tribal people, pushed them further inside their habitat. Since they did not share a common social space, occasions for such cultural exchanges between them were, to say the least, rare. As a result, no widespread friction was reported between them. The nation-building enterprise through refugee resettlement in the Andaman and Nicobar Islands depended almost unwittingly more on segregation of their social space than on cultural miscegenation. I propose to look upon the experiments as the obvious hiccups in the state's attempts at building the nation by way of colonising land, incorporating the people living there into the framework of Indian nationhood, and facilitating their exposure to the people of the plains.

Rehabilitation of the refugees was only a part of the nation-building project. As the Government of India sought to accomplish

this objective, by way of introducing a settled form of cultivation and exposing the tribals to the people from the plains, it was definitely governed by the mainland-ist bias.

**the regime Of legal practices** Insofar as the Government provided or sought to provide relief and rehabilitation to the refugees primarily through administrative rules and regulations, there was no attempt on its part at evolving a separate legal regime in order to tackle an otherwise unprecedented problem. The Government's response in this regard is not altogether inexplicable. Since initially it treated the refugee exodus as a temporary problem that would subside once law and order was restored in East Pakistan and the minorities felt safe, neither of the Governments correspondingly felt the necessity of bringing a separate legal regime into existence in order to tackle the problem. But as it gradually realised that the refugees were there to stay and would gradually melt into the vast body of the citizenry, it seemed to have thought that the existing body of laws was adequate to address their problems qua citizens. The Government tried to enact a few laws which would basically help the refugees in getting entitled to some of the basic rights and freedoms that were essential for their rehabilitation. Obviously on many occasions the enjoyment of these rights and freedoms was not altogether compatible with those of the locals. Thus to cite an example, their forcible settlement (*jabardakhal*) on privately owned but unoccupied lands, particularly in south Calcutta, encroached on the landowner's fundamental right to property enshrined in and guaranteed by the Constitution of India.<sup>58</sup> While fulfilling this aim the Government was called upon to do a difficult balancing act—an act through which it could reconcile the apparently conflicting interests of two rivalling groups of its own citizens—the locals and the newcomers. Land was the most important, and perhaps the only, issue that brought in a new schism between the locals and the refugees. In some cases, this took the form of violent conflicts between the locals—mainly the owners of the landed estates and their musclemen—on the one hand and the refugees on the other. Anil Singha has written extensively on the history of the establishment of the Bijoygarh colony in south Calcutta. The colony

was established forcibly on unoccupied land under the ownership of the landlord of the Regent estate. This led to a violent conflict between the early settlers and the musclemen of the estate.<sup>59</sup> Sometimes, ownership of land was one issue that brought the people of one refugee colony into conflict with those of the neighbouring one. Indubaran Ganguly, himself a refugee leader, has given an autobiographical account of how the residents of Bijoygarh came over to grab the land of the adjoining Deshabandhu colony and how the local clubs, comprising mainly of young men, put up an organised resistance against the attempt. Ganguly in his book recounts many cases of corruption in the allotment of forcibly acquired land by the refugee leaders.<sup>60</sup> The laws were therefore meant for minimising the hitch between them by serving as viable instruments of conflict resolution and facilitating the process of the refugees' gradual integration into the larger body of Indian citizens.

The West Bengal Land Development and Planning Act 1948 was passed to provide for the acquisition and development of land through notification for 'public purposes' which included 'the settlement of migrants into the state on account of circumstances beyond their control'. The Act empowers the Collector to examine the objections to all such notifications and submit his recommendations to the Government in the form of a report. If the Government was satisfied that the land in the notified area was needed for the settlement of migrants, it could then make a declaration in the Official Gazette to that effect. Only after making the declaration could the Government acquire the land as per the provisions of the Land Acquisition Act 1891. While determining the compensation to be awarded for acquired land, the market value referred to in clause 1 of section 23 of the Land Acquisition Act would be deemed to be the market value of the land on the date of notification. The market value thus determined could under no circumstances exceed that of the land as on 31 December 1946. The West Bengal Act XVI of 1951 precisely aimed at mitigating the conflict between the landowners and the migrants. According to the provisions of the Act, if a person continuously remains in unauthorised occupation of land or premises for three months, no criminal proceedings can be drawn against him. Only civil suits are entertainable in such cases and the paraphernalia of such suits

are such that the expenses of litigation might exceed the actual value of land. The Act was a guarantee against forcible eviction of the settlers by the private landowners, and was widely interpreted as a trigger point on the part of the Government that sought to reconcile the right to property enjoyed by the landowners with the necessity of accommodating the requirements of the settlers. It further made a distinction between 'high price' lands and 'low price' lands and provided that the settlers could secure 'low price' lands by arriving at an agreement with the owners of the land. Section 5 of the Act authorises the Government to secure the land offered by the landowners for sale. Since neither the settlers nor the Government had the resources necessary for buying the 'high price' land, the settlers under the said Act had no other option but to vacate the land occupied by them. Thousands of settlers occupying such land faced the threat of being turned out into the streets. The Act was appropriately amended to 'provide for the rehabilitation of the displaced persons'. It is true that the Amendment gave the owners the opportunity of 'securing the eviction of persons in unauthorised occupation of land' through a legally established process. It also made an important exception by declaring that no order for eviction or compensation would be executed against a displaced person, who on 31 December 1950 was in unauthorised occupation, 'until the Government provided for alternative land'. Such land would have to be situated in an area from where, according to the Government, the displaced person would conveniently carry on the occupation as he might have been engaged in for earning his livelihood at the time of issuing the order. The Act also made provisions for land purchase loans and house-building loans on stipulated terms and conditions and of an amount considered suitable by the Government.

Since land in West Bengal was scarce and population density already the highest in the country, the Government was faced with an almost insoluble problem of finding land—whether homestead or cultivable—for the permanent settlement of the refugees. The Wastelands (Requisitioning and Utilisation) Act 1952 gave the Collector the authority to issue a notification in the Official Gazette requiring all interested persons to show cause as to why such land should not be requisitioned for 'public purpose'. He could do it either on his own or on the basis of an application submitted

to him by any person. While the petitioners had the right to be heard, and get their cases inquired into by the Collector, the latter had the authority to pass an order requisitioning the land and specifying the time within which the land should be delivered to him. The Collector upon receiving the land could hand it over either to the Government or to any person for public purpose upon such terms and conditions and subject to payment of such periodic sums, as he thought fit. If the person failed in complying with these obligations, the Collector could ask him to hand back possession within a date specified by him. Possession of any wasteland could be taken only after the interested persons had been compensated for so long as their interests subsisted and in no case till the release of the land for requisition.

We have already said that the number of people migrating from West Bengal to East Pakistan was not only small but insignificant. Many of these evacuees actually returned to West Bengal as post-Partition communal violence lost intensity with the passage of time. As a result, the properties left by the evacuees became a bone of contention between the refugees who had occupied them and the evacuees who returned and tried to reclaim them. The West Bengal Evacuee Property Act 1951 was intended to protect the properties of those persons 'ordinarily resident in West Bengal who on account of communal disturbances or the fear of such disturbances leaves, or after the 15th August of 1947 left West Bengal, for any place in Pakistan'. If the Collector was satisfied that 'such property was lying unoccupied, uncultivated or not cared for or had come to be wrongfully used or occupied by any person', he could issue orders for preserving and protecting such property and do such acts and incur such expenses as may be necessary or incidental for such a purpose. He could also 'cause to be removed, by force if necessary, any person who was wrongfully using or occupying such property'. In this case, the Collector was under the obligation of letting the Evacuee Management Committee instituted by the Government know whether the concerned evacuee had made any declaration to him of his intention of not returning to West Bengal. In case the evacuee returned to West Bengal before 31 March 1951 and made an application for reclamation of his property, the Collector, after making a summary inquiry, could order for the cancellation of his earlier order and

cause possession of the property to be delivered to the evacuee. If he found this impossible, he would refer it to the Government, which then would seek the advice of the State Minorities Commission. If property could not be restored to the evacuee, the Government would take steps for adequately rehabilitating the aggrieved evacuee. It is true that the provisions of the Act only endowed the Government with additional responsibilities of restoring to the evacuees the properties they had left behind. But the Government thought it to be worth its while to undertake and carry them out on the ground that this was a tribute to the secular character of Indian nationhood. Preserving its secular character made it imperative that the evacuees, being minorities, should not be given the impression that they were unwelcome to this country. Unlike the country they had migrated to, India did not discriminate against her minorities. As if to prove this point, the political elite's concern for minorities at this time was nearly obsessive. In sum, we see these legal measures as steps that the Government felt necessary to take in order to regularise the refugees as citizens, and dispelling in the process the obstacles and hurdles that emanated from the conflicts of interests between the locals and refugees.

The history of relief and rehabilitation in the East is one of gradual emplacement within a national body of those who were the victims of one of the world's worst population displacements. The travails and trauma that accompanied their emplacement are only reflective of our fledgling nationhood.

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## notes and references

1. The immigrants were never conferred with the status of refugees and consequently, both the Central and the State Governments were free from the obligation of providing legal guarantees or undertaking obligations

under the Universal Declaration of Human Rights (1948) or the Convention relating to the Status of Refugees (1951). Such terms as, 'refugees', 'migrants' and 'the displaced' have been used interchangeably basically for purposes of convenience without any fixed and invariable meanings attached to them.

2. *Annual Report of the Department of Rehabilitation, 1965-66*, New Delhi: Department of Rehabilitation, Government of India, 1967, p. 107.

3. Abhijit Dasgupta, 'The Politics of Agitation and Confession: Displaced Bengalis in West Bengal' in Sanjay K. Ray (ed.), *Refugees and Human Rights: Social and Political Dynamics of Refugee Problem in Eastern and Northeastern India*. Jaipur: Rawat, 2001, pp. 98-100.

4. Prafulla K. Chakrabarti, *The Marginal Men: The Refugees and the Left Political syndrome in West Bengal*. Rahara: Lumierre Books, 1990, p. 235.

5. *Ibid.*, p. xxiv

6. Anil Singha, *Paschimbanger Udbastu Upanibesh* (Bengali), [Refugee Colonies of West Bengal]. Calcutta: Book Club, 1995, pp. 1-3.

7. For an elaboration of this point, see Samir Kumar Das, 1998. '*Deshbhager Itihas*' (Bengali) [The History of Partition] in *Bitarkika* (Calcutta), 1(1), January. My contention, however, sparked off a debate. See, *Bitarkika* (Calcutta), 2(1), July 1999, pp. 284-93.

8. Nilanjana Chatterjee, 'The East Bengal Refugees: A Lesson in Survival' in Sukanta Chaudhuri (ed.), *Calcutta: The Living City*. Calcutta: OUP, 1990, p. 70.

9. Joya Chatterjee, 'Rights or Charity: Government and Refugees: The Debate over Relief and Rehabilitation in West Bengal, 1947-1950' (mimeo.).

10. While such rights as the right to life guaranteed by Article 21 of the Constitution of India are available to non-citizens including refugees, the Indian state, like any other nation-state in the world, reserves certain rights (e.g., right to elect and be elected) exclusively for its citizens. Given the present order of nation-states, the states are not expected to do away this critical distinction. That is why one must understand that struggling for these rights on behalf of the refugees is not the same as getting them recognised by the modern nation-states. Such struggles have the important function of making the State soften the rigidity of distinction and redefine their interrelations. I am particularly thankful to Augustine Mahiga, Chief of Mission, UNHCR, New Delhi, for having raised this question while commenting on the paper during the review workshop. Rights recognised by the States within the framework of nationhood definitely have their limits.

11. Indubaran Ganguly, *Colony smriti* (Bengali) [The reminiscences of Colony]. Calcutta: Ganguly, 1997, Preface.

12. Nilanjana Chatterjee, op. cit., p. 74. Dipankar Sinha's paper is illustrative of these self-help initiatives. See Dipankar Sinha, 'Foundation of a Refugee Market: A Study in Self Help Initiative', in Pradip Kumar Bose (ed.), *Refugees in West Bengal: Institutional Practices and Contested Identities*. Calcutta: Calcutta Research Group, pp. 80-97.

13. See, Subrata Kumar Mitra and Dietmar Rothermund (eds.), *Legitimacy and Conflict in South Asia*, New Delhi: Manohar, 1997, p. 36.

14. I am thankful to Prof. Apurba Kumar Mukhopadhyay of Burdwan University for having brought this to my notice while offering his comments on an earlier draft of this paper.

15. *Assembly Proceedings, Official Report: West Bengal Legislative Assembly* (hereafter *VVBLA*), Ninth Session (Budget) 1954, Vol. IX, No. 1, Alipore: Superintendent, West Bengal Government Press, 1954, p. 845.

16. *VVBLA*, Seventeenth Session, Vol. XVII, No. 2, 1957, p. 155.

17. *WBLA*, Sixteenth Session, Vol. XVI, 1957, p. 5.

18. *WBLA*, Vol. XVII, No. 2, 1957, p. 152. Mrs. Renuka Roy, his predecessor has observed: 'We are not imitators of Pakistan, we are not a religious state, we are a secular state and the Hindus and Muslims have to be treated equally here'. See, *WBLA*, Vol IX, No. 1, 1954, p. 1284.

19. *WBLA*, Vol. XVIII, No. 2, 1957, p. 385.

20. *WBLA*, Vol. XV, No. 2, 1957, p. 218.

21. *WBLA*, Vol. XVII, No. 2, 1957, p. 155.

22. See, Prafulla Chandra Sen, *ibid.*, p. 154.

23. *VVBLA*, Vol. XVIII, No. 2, 1957, p. 403.

24. Hiranmoy Bandyopadhyay, *Udbastu* (Bengali), [Refugee], Calcutta: Sahitya Samsad, 1970.

25. Saroj Chakrabarti, *With Dr. B.C. Roy and other Chief Ministers*. Calcutta: Rajat Chakrabarti, 1980.

26. Saibal Kumar Gupta, *Dandakaranya: A Survey of Rehabilitation*, Saibal Kumar Gupta Papers, ed. Alok Kumar Ghosh. Calcutta, 1999 Bibhasa.

27. Prafulla K. Chakrabarti, op. cit., p. 234.

28. Bandyopadhyay, op. cit., p. 31.

29. Samir Kumar Das, 'War, Population Movement and the Formation of States System in South Asia', in Ranabir Samaddar (ed.), *South Asian Peace Studies I*. New Delhi: Sage, 2002.

30. Joya Chatterjee, 'The Fashioning of a Frontier: The Radcliffe Line and Bengal's Border Landscape, 1947-52', in *Modern Asian Studies*, 33(1), February, 1999, pp. 183-242.

31. See Dipesh Chakrabarty, 'Remembered Villages: Representations of Hindu-Bengali Memories in the Aftermath of Partition' in *Economic and*

*Political Weekly*, 10 August 1996, pp. 2143-51. Also, a special issue of *From the Margins* on 'History-Memory-Nostalgia' contains essays on many such erasures and absences of Partition memories. See, *From the Margins*, Calcutta, February 2001.

32. Chatterjee, op. cit., p. 73.

33. Ibid., pp. 59-60.

34. State Statistical Bureau, Government of West Bengal. *Rehabilitation of Refugees: A Statistical Survey 1955*. Calcutta: W. B. Statistical Bureau, 1955, p. 1.

35. *Report of the Committee of Ministers for the Rehabilitation of Displaced Persons in West Bengal*. Calcutta: Manager of Publications, Government of India, 1954, p. 3.

36. Ibid., p. 4.

37. Bandyopadhyay, op. cit., p. 298.

38. *Relief and Rehabilitation of Displaced Persons in West Bengal: Statement issued by Government of West Bengal*, 11 December 1957, p. 4.

39. WBLA, 'Eleventh Session, 1955, p. 6.

40. *WELA*, Vol. XVI, 1957, p. 5.

41. *WELA*, Vol. XV, No. 2, 1957, p. 253.

42. *Relief and Rehabilitation of Displaced Persons in West Bengal*. Calcutta: Home (Pub.) Dept., Government of West Bengal, August 1956, p. 2.

43. Ibid., p. 2.

44. *Report on the Relief and Rehabilitation in West Bengal*. Calcutta: Home (Pub.) Dept., Govt. of West Bengal, 1956, p. 17.

45. Ibid., p. 11.

46. *Relief and Rehabilitation of Displaced Persons in West Bengal*. Calcutta: Manager, Home (Pub.) Dept., Government of West Bengal, 1956, p. 11.

47. Bandyopadhyay, op. cit., p. 48.

48. Kanti B. Pakrashi, 1971. *The Uprooted: A Sociological Study of the Refugees of West Bengal, India*. Calcutta, Home (Pub.) Dept., Govt. of West Bengal, August 1948, p. 127.

49. *Annual Report of the Department of Rehabilitation 1951*. New Delhi: Dept. of Rehabilitation, Govt. of India, 1961, p. 67.

50. Calculated from the private papers of Saibal Kumar Gupta, who for long was the Chairman of the DDA, by Alok Kumar Ghosh. See, Alok Kumar Ghosh, 'Bengali Refugees in Dandakaranya: A Tragedy of Rehabilitation', in Pradip Kumar Bose (ed.), op. cit., p. 110.

51. Alok Kumar Ghosh, op. cit., 112.

52. Ibid., See also, Alok Kumar Ghosh (ed.), *Dandakaranya: A Survey of Rehabilitation*, Saibal Kumar Gupta Papers, op. cit., Introduction.

53. Manoranjan Byapari, 'Abhisahpta Ateet' (Bengali), [The Cursed Past] in Sandip Bandyopadhyay, *Deshbhag: Smriti Aar Satta* [Partition: Memory and Existence]. Calcutta: Progressive, 1999, pp. 44-47.

54. Tai Yong Tam and Gyanesh Kudaisya, *The Aftermath of Partition in South Asia*, Routledge Studies in Modern History of Asia. London: Routledge, 2000, p. 156.

55. Figures are compiled from Alok Kumar Ghosh, op. cit., p. 117.

56. *Lok Sabha Debates*, 30 August 1954. New Delhi: Government of India Press, 1954.

57. Sabyasachi Basu Ray Chaudhury, 'Exiled to the Andamans: The Refugees from East Pakistan', in Pradip Kumar Bose (ed.), op. cit., p. 137.

58. The right has been subsequently removed from the Constitution. Now it is only a statutory right.

59. Anil Singha, op. cit.

60. Indubaran Ganguly, op. cit.

### 3 birth of social security commitments: what happened in the west

Ritu Menon

Sir, we may have to be grateful to the refugees for having drawn our attention to the urgency of the problem of planning for the development of this country, and perhaps future generations will acknowledge their gratitude to the so-called refugees for having furnished the manpower which is necessary for the purpose of developing the resources of the country as a whole.<sup>1</sup>

K.C. Neogy,  
*Minister for Relief and Rehabilitation, Col*

Government attaches the greatest importance to speedy, effective and proper rehabilitation of the large numbers of people who have been displaced in northern India. So far, a very great deal of our attention has been absorbed first, in evacuation and second, in giving relief. But obviously that is not good enough. In fact, the whole process of relief, unless it is accompanied by certain constructive and creative aspects of it, is likely to have unfortunate psychological and financial results. The proposal now-which the Government is considering and in fact it has come to a decision-is to appoint a Rehabilitation and Development Board. Of course, many Boards and Commissions are appointed and they may just produce Reports. The idea behind this Board is that it should be not only a planning body but an executive body, that it should have large powers, that, in fact, it should be able to work much more speedily than

birth of social security commitments

the average Government Department works. Governmental machinery sometimes-indeed very often-is rather slow; all manner of sanctions are necessary; all manner of references have to be made to various Departments and hence there is delay. Meanwhile, we have to deal with a human problem affecting millions of people, so that this Rehabilitation and Planning Board will survey, plan and execute and implement the plans in so far as it can.

... You will notice that we call it the 'Rehabilitation and Development Board', meaning thereby that we are combining the two functions or rather, looking at the two problems-rehabilitation and development-together.<sup>2</sup>

Jawaharlal Nehru,  
*Prime Minister of India*

One word, more than any other, comes to mind when describing the nature of the refugee problem that confronted the new state of India during Partition: Massive. 'Insurmountable' might well have been another, given the nature, scale, and extent of displacement and resettlement but, as we shall see, it stopped short of that largely because of a Herculean effort made by the Indian Government-and sundry non-governmental organisations-to meet the challenge.

#### **a nation made, a people displaced**

the problem Approximately 14 million people crossed over from one country to the other in the brief period following India's division into India and Pakistan. Generally acknowledged as the largest mass migration in recorded history, it was also remarkable for being nearly equal on both sides of the border-roughly seven million people each; Hindu, Sikh, and Muslim, in Punjab and Bengal. Burning towns and villages, blood-soaked trains, the dead and dying in huge foot convoys, 40,000-50,000 strong, with desperation and fear as constant companions. Then, at the end of 1949 and the beginning of 1950, when it seemed as if the river of refugees had finally shrunk into a trickle, a fresh wave of forced migrations of Hindus from East Pakistan and Muslims from West Bengal swelled the numbers once again. No account, however



graphic, can ever fully capture the horror and violence of the time and it was this memory, this experience, as much as the wrenching physical dislocation that needed 'rehabilitation' or recuperation. As one Minister for Relief and Rehabilitation, A.P. Jain, put it,

I consider (rehabilitation) to be a psychological question, and a person who feels that he is living well, that he can educate his children, that he is a citizen of India like any other person, well, I treat him as rehabilitated. Unfortunately, no psychologist has yet been able to develop some kind of scale by which he can measure psychological rehabilitation.<sup>3</sup>

The job of providing not just physical and economic security, but legal, social, and psychological security as well, to a severely traumatised migrant population is daunting at any time; for a newly-independent nation and a fledgling government grappling with all manner of bureaucratic, financial and administrative dislocation, it was formidable. Within a few weeks of independence sprawling camps had been set up to receive thousands of refugees and provide them with interim relief. Many of these camps were set up by private organisations, among them the International Red Cross and Unicef; and emergency relief was provided by the Hindu Mahasabha, the RSS, and the INA; various ashrams, *deras*, and *serais* across Punjab and Rajasthan; the All India Women's Conference, the YWCA, and DAV College; St. John's Ambulance, the Ramakrishna Mission, the Marwari Relief Society, the National Council of Women, even Lady Mountbatten's United Council for Relief and Welfare. Those fortunate enough to have relatives on the Indian side of the border avoided the camps altogether, indeed eschewed government relief and dependence on it and 'self-settled' themselves using, to use Nilanjana Chatterjee's neat phrase-'a couple of poles erected to support a piece of rough canvas; a makeshift wooden shack against the crumbling walls of Delhi's ancient battlements; a bit of earth converted into a home'.<sup>4</sup> Nevertheless, by March 1948 the official statistics released by the Ministry of Relief & Rehabilitation presented a staggering reality. Approximately 9,08,000 refugees were housed in camps in the Provinces and states, and they were still flowing in. In the first few

months after Partition, between 1947-48, when the Government of India had to provide the refugees with virtually everything, about one million people received a daily relief allowance. In the period 1947-50, a total of Rs 32,20,00,000 was spent on maintenance in refugee camps alone.<sup>5</sup> At the end of March 1948, the inhabitants of the camps had received 12,50,000 quilts, 1,70,419 blankets, 1,05,000 sweaters, 2,00,000 bundies, 4,64,184 shirts, 3,20,637 shorts, and 12,59,101 yards of material.<sup>6</sup> Meanwhile floods in East Punjab in September 1947 made communication difficult; disruption of communication of another kind, at the inter-dominion level between India and Pakistan, marked the negotiations on practically every issue from evacuee property, division of assets, validation of claims, recovery of abducted women, compensation, permits and passports-even the matter of the recovery and transfer of buried treasure in either country!

An ad hoc response to such a situation would clearly be not only inadequate but undesirable. As independent India's first major administrative challenge, it would test its capacity to cope with disaster, formulate policy with regard to migrants and refugees, prove itself as a humane, welfare-oriented government, organise relief on a massive scale, and at the same time, engage in rebuilding the nation's economic, social and political life.

How was this to be accomplished? I will attempt a brief summary and analysis of the Government's relief and rehabilitation programme, with special reference to Punjab, in order to highlight its responses and practices with regard to Partition refugees. I should clarify here that this is primarily an account of the Government's handling of refugee relief and rehabilitation, rather than a narrative of displacement.

the response In 1947 there were few models that India could emulate. Although the post-war or post-conflict refugee was not an entirely unknown phenomenon, the magnitude of the Indian case certainly was. I would like to suggest that the figure of the Partition refugee gradually acquired considerable symbolic value as a gauge of a civilised government's commitment to nation-building, *of which the refugee was a crucial component*. (Recall Prime Minister Nehru's and the honourable K.C. Neogy's

comments quoted at the beginning of this paper.) Speaker after speaker in the Constituent Assembly, debating the Rehabilitation Finance Bill, called attention to this dimension. Mohan Lal Saksena, Minister of State for Relief & Rehabilitation, declared that any money spent on the rehabilitation of refugees would ultimately be an investment in the nation. 'However much we may dislike to have more men in our villages, towns and provinces,' he said, 'and so long as they are not absorbed in the economy of the town or city, they will be a burden on us; but once they are absorbed, they will become an asset.'<sup>7</sup> Earlier, in 1948, K.C. Neogy reminded the Assembly that the problem of rehabilitating 'so-called' refugees could only be solved *as part of the general development* of the country;<sup>8</sup> and K. Santhanam, Member, while discussing the matter of loans to refugees went so far as to say that a bank should not be a 'mere bank, not a mere financing organisation, but a *development organisation*'.<sup>9</sup> Thus, the active participation of the refugee in the nation-building activity of the country and his recruitment in, and contribution to, its economic life had been the distinct features of government policy and practice. As such, they necessitated a carefully moderated response to the problem, combining urgent short-term remedies with desirable long-term outcomes; which in turn entailed a complex and coordinated effort involving several agencies, ministries, organisations and institutions, as well as relations with Pakistan, always a delicate and complicated matter.

One reason why the Indian state demonstrated an (relatively) enlightened attitude towards the Partition refugee is because he was never really considered an alien. He was the native returning home; the embattled, beleaguered, and violently dealt with son of the soil in need of protection and succour. The 1947 refugees, thus, met 'with neither hostility, nor coldness, nor reserve. They were welcomed as co-religionists, as compatriots re-entering the fold ... integrated at once ... Their integration was, moreover, a *right to which they were entitled* by laws introduced during or after Partition,'<sup>10</sup> even though, as B.S. Chimni has noted, India has never been party to the 1951 Convention on Refugees or the 1967 Protocol.

Rehabilitation, then, proceeded both simultaneously and sequentially, and at many levels: between India and Pakistan at

the level of negotiation; between the Centre and the Provinces; between the various ministries and agencies responsible for formulating and implementing policy; between these agencies and social workers; and between the Government and voluntary agencies.<sup>11</sup> It is almost impossible, today, to imagine the enormity of an undertaking which encompassed everything from setting up new townships for refugees, to ensuring the repatriation of all manner of movable property including postal parcels, cash certificates, securities and insurance policies-and to do so for more than seven million people.

The third notable feature of the rehabilitation operation lay in the distinctions made by the Government between different categories of refugees and the consequent policy modifications in dealing with them. These distinctions were further refined within categories (as between agriculturists and colonists, for example; widowed, abducted, or destituted women; orphaned or unclaimed children, and so on), and provisions and programmes adjusted accordingly. This is not to claim that all government policies and their implementation worked wonderfully well and with promptness, or even to the refugees' satisfaction;<sup>12</sup> it means merely that these policies, based on some idea about their specific needs and circumstances, anticipated and allowed a certain amount of flexibility. The attempt to relocate whole communities of migrants *collectively*, for instance, is an example of recognising the importance of familiar networks to displaced peoples in the process of recovery and resettlement, even though, as Asha Hans has pointed out, this often worked to the disfavour of women (see her chapter in this volume). (A refusal to acknowledge this with regard to abducted and recovered women, on the other hand, was an example of the opposite.) So too the immediate provision of minimum agricultural implements and animals, in addition to land, to farmers to enable them to begin farming again.

Detailed schemes were thus drawn up for urban and rural refugees; agriculturists and non-agriculturists; traders and artisans; skilled and unskilled labour; professionals, servicemen, businessmen and entrepreneurs; students; men, women, and children; and those who were so bereft that they were (unfortunately) classified as 'permanent liabilities' of the Government, to be looked after

till they died. The one significant exception to this were the Dalits, who were cared for almost exclusively by the India Harijan Sevak Sangh (Pan Indian Association of Harijans) headquartered in Delhi, with regional offices in Jullunder, Ahmedabad, Calcutta, Ganganagar (Haryana), Alwar, and Rajkot.<sup>13</sup>

Finally, there was a recognition by all parties concerned that concerted and coordinated efforts by a variety of organisations and agencies-government, international, humanitarian, welfare, non-government / civil, and political-were necessary in order to deal with the situation, and that the strategy had to be multipronged in order to achieve a measure of physical, economic, legal, and social security.

the means A series of treaties, ordinances, agreements, resolutions, bills, and acts were passed during the period 1947-50 covering various aspects of refugee and evacuee transfer and resettlement. Many of these were inter-dominion (between India and Pakistan), others were national, but with reciprocal legislation in either country. For convenience's sake, let me divide the areas as internal and inter-dominion; I will take up the latter first, but mention that of the many signed only those major agreements pertaining to transfer of refugee/evacuee property, the recovery of abducted persons, and the registration of refugees are dealt with here. Many more agreements regarding the accession of the princely states, the assets and liabilities of the two new states, the division of personnel, the sharing of river waters, the transfer of resources, etc., are not within the purview of this chapter.

A number of inter-dominion conferences held between December 1947 and June 1949 took up the issue of evacuee property, with both Governments declaring that the illegal requisition of property would not be recognised, and that action would be taken by them to safeguard and restore any such property to its lawful owners. The Government of West Punjab (Pakistan) appointed a Custodian of Evacuee Property in September 1947, followed a few days later by a similar appointment by the Government of East Punjab (India). In India's case, the provisions of this Ordinance extended to Delhi, and were later introduced in the United Provinces, the Central Provinces, and some princely states. Bengal was dealt with in a separate agreement, signed in Calcutta in 1948,

and in this case it was agreed that the Evacuee Property Act would *not* apply to Assam, Tripura, Manipur or Cooch-Bihar.

Although the precedents for these acts and ordinances were the Custodian of Enemy Property and the War Damage Commissions of Europe, both India and Pakistan encountered several objections to, and obstacles in, the management of evacuee property from each other, leading in India to the consolidation of various ordinances in this regard into a uniform Bill, promulgated in the form of an Act in June 1949. Disagreements concerning the definition of evacuees; the time-frame for determining who could be considered one; the jurisdiction of the ordinances and acts (did they cover Kashmir and other disputed areas, for instance?); what could be included under the term 'moveable' property, how to deal with claims and disputes; etc., continued to plague both countries till as late as 1950. At the bare minimum, however, the Evacuee Property Organisation in both countries worked on the basis of: (a) statements of losses filed by refugees themselves, whose bona fides had generally to be accepted because they were no longer in possession of legal documents; and (b) land registers and title deeds, which the two Governments exchanged 'on a vast scale.'<sup>14</sup>

With regard to abducted persons, the two Governments arrived at an agreement in November 1948 that set out the terms for recovery in each dominion. This was followed, in India, by the promulgation of the Abducted Persons (Recovery and Restoration) Act of 1949, which was renewed every year till 1956, when it was allowed to lapse. The Recovery Programme, too, was marked by contentious disagreement and accusations on both sides, illustrating exactly how difficult and problematic such an exercise can be.<sup>15</sup>

Nationally, a number of bills were introduced in Parliament to cover practically every aspect of refugee rehabilitation and resettlement. The Evacuee Property Act in 1947; the Finance Administration Bill, dealing with loans to small businesses and urban refugees, was introduced in February 1948; the Displaced Persons (Institution of Suits Bill) in August 1948; the Resettlement of Displaced Persons (Land Acquisition) Bill in September 1948; the Influx from Pakistan (Control) Bill in April 1949; the Administration of Evacuee Property Bill and Displaced Persons (Claims) Act in August 1950; the Interim Compensation Scheme in 1953; and

finally, the Displaced Persons (Compensation and Rehabilitation Act) in 1954. (See Appendices for full texts of selected bills.) Detailed and extensive debates marked the introduction and passage of all these bills and ordinances, and a critical examination of them would require a whole new chapter. Suffice it here to say that even where consensus was not forthcoming (as on the question of the internally displaced—were they to be considered refugees? Or on the guarantees and terms of loans to urban refugees; or the fundamental rights of abducted women, for example; and repeatedly on claims and compensation) the issue was discussed threadbare, even if it took several weeks. Amendments were proposed, objections were raised, special status claims put forward—like the one in the following instance by Pandit Thakur Das Bhargava, Member from Punjab.

When I see Mr Neogy ... I find him busy day and night in the service of refugees, facing every difficulty. When he goes out on tours he instructs officers to serve the refugees to the best of their capacities. Again when I look to other Honourable Ministers of the Cabinet and find them sympathising with refugees—devoting all their time and energy to bring good to them—solving intricate matters calmly and patiently, I cannot help remarking that they are worthy of all praise. The Punjab Government have proposed a sum of Rupees two-and-a-half crore to be spent on building houses and this House has allotted to the Industrial and Financial Corporation for Rehabilitation a sum of Rupees 10 crore, and the Government have spent about three crore on their clothing and a further 15 lakh is being spent on their food, and further about 40 lakh of people have been brought from West Punjab in a comparatively short time and the Government are providing them with all possible facilities. I cannot help thanking them for all that they are doing.

Notwithstanding his fulsome praise, however, he couldn't help bemoaning the fact that government efforts fell woefully short of expectations.

When I find so much sympathy being shown to refugees and so much money being spent on them I am really surprised to

see the present condition of refugees and the treatment meted out to them; I seriously begin to doubt whether all the sympathy of the Government and their efforts will be in vain. Is it that no result comes out of the efforts of the Government or that there is something wrong with the working of the Government? This is all very strange. Sir, these people who are now called refugees are in fact the price of freedom. The whole country has found freedom but the Punjabis have suffered badly.<sup>16</sup>

It was true, he continued, that the East Punjab Government had proposed to spend Rs 2.5 crore on housing for the refugees, but the money belonged to the Government of India, and nobody knew when the houses would be built. 'Per-ple look towards the sky, the clouds are there, but they do not rain. I beg to say that this is a very bad state of affairs.'

His eloquent plea for Punjabi refugees compelled K.C. Neogy to valiantly defend the Government and clarify that the execution of such a monumental rehabilitation programme was bound to leave a fair number of people dissatisfied. Despite its many shortcomings, however (and elsewhere we have critically examined these in detail, especially with regard to the recovery of abducted women)<sup>17</sup>, the facts and figures are revealing, as evident from the statistics presented in Appendix I. Here, I propose to discuss two major projects, the land settlement scheme of Punjab and the rehabilitation of 'unattached women' as examples of a generally satisfactory mode of compensation and rehabilitation for refugees.

**the implementation** Rehabilitation schemes were roughly divided into those undertaken directly by the Central Government and those carried out at the initiative of Provincial Governments. The rehabilitation of agriculturists from West Punjab was thus the responsibility of the Punjab Government—and hence, in a way, Pandit Thakur Das Bhargava's criticism, quoted earlier, should really have been directed at it. But let us consider what it did manage to accomplish. Sardar Tarlok Singh, the architect of much of the resettlement in Punjab, tells it best:

Every district in East Punjab and PEPSU (Patiala and East Punjab States Union), which sent out colonists to West Punjab

has received them back. The bulk of the population of the Rawalpindi Division has been settled in Ambala and Ludhiana districts and in the adjoining areas of PEPSU. Most of the people from Gujranwala and Sheikhpura, which once formed a single district in joint Punjab, are settled in Kamal and in PEPSU. The greater part of the population of Jhang is in Rohtak district, of Multan in Hissar and Kamal, of Dera Ghazi Khan in Gurgaon, and of Muzaffargarh in Rohtak and Hissar. The bulk of the non-colonists of Lyallpur are settled in Jullundur and Kamal and of Lahore and Montgomery in Ferozepore district.<sup>18</sup>

It is generally agreed that the lands left behind in West Punjab were far more extensive, fertile and productive than those available to farmers in East Punjab. For a long time, the resources of undivided Punjab had been devoted to irrigating and developing the land in the western districts—the famous canal colonies which benefitted from the extensive irrigation schemes of the British—so that in lieu of the 43,06,558 acres of irrigated land abandoned by farmers, only 13,25,853 acres of similar land were now available to them. The proportion of perennial irrigation available was even less—4,33,829 acres in East Punjab and PEPSU, as against 25,55,844 acres in West Punjab<sup>19</sup>; i.e., roughly a quarter of what was left behind. Meanwhile, the Government had assessed claims received from 6,17,401 displaced landholders from Pakistan, of whom as many as 6,06,879 were from West Punjab—how was a fair and reasonable compensation going to be possible?

In many ways, the story of rural resettlement in Punjab is a story of transforming a low-yielding, not very productive area into a surplus state which many have called the granary of India; as such, it is worth recounting how this transformation was effected through the intelligent and practical conversion of a crisis into an opportunity for dynamic development. Several factors played a part in accomplishing this: the urgency of the problem and the need for speedy resettlement; the dedication and commitment of large numbers of people; the resourcefulness and honest endeavour of the refugees themselves; a flexible, but nonetheless carefully calibrated, process of land allotment; and, most importantly, the recognition that resettlement was as much about *restoring a way of life* as it was about claims and compensations.

The first step was to resettle the refugees as a *group*; either as they had been originally, or as they now wished to be. Accordingly, land was also allotted in groups to owners as well as to tenants. This rough and ready initial scheme was designed to ensure quick distribution and to enable cultivators to pool their resources in order to sow the rabi crop and obtain a first harvest. Within two months of their arrival in 1947, a total of two million acres had been occupied. For the rest, 8,000 revenue officials worked intensively for 15 months at a central camp, living and working under canvas tents, in order to achieve their goal in five phases: immediate settlement, consolidation of property allotments, permanent settlement, restoration of the rural economy, and reconstruction and development.<sup>20</sup> Of these, perhaps the most critical was the conversion of temporary allotments into permanent ones, which required not only the creation of the necessary administrative machinery, but also agreement between India and Pakistan on the acquisition of evacuee property. This agreement was reached only in October 1954, through the Displaced Persons (Compensation and Rehabilitation) Act which empowered the Central Government of India to acquire evacuee property for the rehabilitation of displaced persons. It also entailed drawing up a fairly elaborate scheme of allocation and dispersal of refugees from relief camps, and organising financial assistance, including loans for purchasing food, seeds, bullocks, fodder, and implements.<sup>21</sup>

The fact that irrigated, cultivable land in West Punjab exceeded by far that which was available for allocation in East Punjab, made for the adoption of the famous 'standard acre' measure by which to decide the amount of land to be allotted against claims that were made. By this measure, the comparative value of land was assessed on the basis of criteria such as amount of land, revenue assessed per acre, value of gross produce, net profit, sale value, lease value, and average yield.

In the final reckoning, the refugees received 24,48,830 standard acres in quasi-permanent settlement, in lieu of 39,35,131 standard acres left behind by them in West Punjab. As far as could be managed, no one was to receive land markedly superior or inferior to that abandoned by them, and so a system of grading land into four or five grades was devised.

However, resettlement on land is not a single act, rather a series of interdependent acts intended to make for social cohesion and strength. And so, village-wise allotment was preferred as far as possible; close relatives were treated as a single group and could receive allotments accordingly; widows were permitted, under certain conditions, to take land with their parents, in-laws or others, as convenient; those who had abandoned suburban land near towns were allotted suburban land near similar towns in East Punjab and PEPSU; and about 50 villages were earmarked for the settlement of defence and ex-defence personal. Finally, about 20,000 acres of land were allotted in the form of co-operative garden colonies, the area allotted being reckoned against the land due to each person. The next step was to arrange all those who were to receive land in each village in a certain order. This was done alphabetically by province, district, and village of origin, care being taken to group communities and relations so that their fields could be close to each others'. The order of the names could not be altered, upset or departed from in the demarcation of fields, nor could the order in which they were taken up for allotment. The final allotment was a complete document, containing details of the land and the rights surrendered by the allottee in different villages in Pakistan; the value set by the rehabilitation authorities against each item; the area to be allotted; the village in which it was located; the rights held by or against him by other displaced persons; the area, class of land and rights pertaining to each field; and the area, in ordinary acres, of different classes of land allotted to him.<sup>22</sup>

Through this system, by 1951, a total of 467,000 families had received land in East Punjab, and 1,10,000 in PEPSU. In addition, an amount of Rs 1,25,00,000 for Punjab and Rs 31,00,000 in PEPSU was also expended for resettling rural refugees.<sup>23</sup>

**the state as parens patriae** Let us now turn to another group of refugees: widows, for whom the strategy for rehabilitation was noteworthy; and it is for this reason that I discuss it in some detail.<sup>24</sup>

**the problem** The scale and incidence of widowhood in 1947-48 was so immense that it resulted in the Indian Government

setting up what was to be its first major welfare activity as an independent state: the rehabilitation of what it called 'unattached' women. Never before in the country's experience had a Government, either feudal or colonial, been called upon to shoulder social and economic responsibility for a circumstance as problematic as widowhood: ritually inauspicious, socially stigmatised, and traditionally shunned. It is true that the colonial state had been compelled by social reformers to address the issue of widow remarriage and child widows, and so intervene in social and cultural practice; but that exercise was qualitatively different from what the Indian state was called upon to do in the aftermath of Partition.

When the first onrush of destitute women and children poured into the country from West Punjab there was no single agency that could cope with the urgency of the situation. The Indian government sought the help of several service organisations like the Kasturba National Memorial Trust, the All India Save the Children Committee, the Trust for Sindhi Women and Children, the Jainendra Gurukul, Arya Pradeshak Pratinidhi Sabha, Nari Seva Sangh and Akhil Bharat Nari Shiksha Parishad, among others. The All India Women's Conference, at its 20th session held in Madras in December 1947, adopted a resolution in which it declared that:

Apart from giving immediate relief in the form of shelter, food, clothing, and medical care, it was the duty of every member to work for: (a) the mental reconditioning of refugee women to enable them to become useful members in the new society in which they found themselves; (b) the provision of employment in the shape of industrial co-operatives for destitute women; (c) the education of young children, and to provide training for women in nursing, midwifery, teaching, and other professions; (d) the prevention of any further destruction of life by safeguarding the lives of unborn children and young mothers, and instituting homes for expectant women and unwanted children; and (e) the prevention through social contact and propaganda of the spirit of retaliation being fostered in the minds of the victims of communal hatred, particularly the young.<sup>25</sup>

In September 1947 the Government appointed a small advisory committee of women social workers attached to the Ministry of Rehabilitation to direct the programme-this was the Women's Section.<sup>26</sup> Rameshwari Nehru, who had been looking after the evacuation of women and children from West Punjab during the worst disturbances, took over as Honorary Director of the Women's Section in November 1947, responsible for the 'care, maintenance and rehabilitation of uprooted women and children from Pakistan'. In the initial stages the purview of the Women's Section extended to the whole country, but it found its time and energies taken up primarily by displaced women in Delhi. Accordingly, at a conference of provincial chief ministers held in Delhi in July 1948 it was decided that where the number of displaced or destitute women was sufficiently large, separate women's sections should be set up to deal specifically with their rehabilitation.

In a note dated December 1949 Rameshwari Nehru stated that the number of 'unattached' women looked after by the Government in October 1948 was 45,374.<sup>27</sup> Although not all of these women were widows, a very large percentage was; indeed, it was the very size of this category that persuaded the Government to set up a special section within the Ministry of Rehabilitation to administer to their needs. In a sense, the Women's Section of 1947 can be seen as a forerunner of the many government agencies that now exist for the welfare of women and children, for the disabled, for disaster victims, and for the destitute. At that time, though, it had another important dimension as part of the Government's programme of resettlement: the rehabilitation of widows, apart from being an immediate and urgent necessity in the wake of widespread violence and the loss of homes and livelihoods, was a crucial factor in the State's perception of itself as benign and paternalistic. Stephen Keller, who did extensive field-work among Punjab's refugees in the 1970s, has observed that:

In Punjab and other areas of north India, Government has always been characterised as *mai-bap*. As such, it is duty-bound to provide a rich, warm, nurturant relationship (the *mai* part) as well as paternal protection from the dangers of life (the *bap* part). In times of national disaster, particularly, the more maternal aspect is emphasised.<sup>28</sup>

national disaster It was obviously such an event that galvanised the Government into responding; but having said that, it is worth examining both the conceptual dimension of the project of rehabilitating widows and its implementation, to arrive at some understanding of how, through Government intervention, the status of Partition widows underwent some change. The first significant difference was that the widows of 1947 became the responsibility of the State. In acknowledging this and stepping in to mediate-and indeed, direct-their reabsorption into the social and economic life of the country, the State had, simultaneously, to perform two functions: that of custodian, and guardian, in the absence of actual kinsmen, and of an apparently benign and neutral agency which could not be seen to subscribe to or reinforce traditional biases against widows. The disruption caused by Partition meant that, in the absence of family and social constraints, ritual and customary sanctions against widows were temporarily suspended; and even though the State stepped in as guardian and pater familias, so to speak, the nature and scale of rehabilitation compelled it to facilitate their reassimilation into the country's economic and social mainstream as expeditiously as possible.

the response Since the widows of 1947 were, ironically, widowed by history-or, as the Government put it, 'victims of a struggle that might well be regarded as a war'-it was proposed that they be classified as war widows and treated as such. This particular definition of widows enabled the Government to deal with the crisis as a national emergency and, more importantly, to look upon the widows not as individual women inviting social ostracism, but as a community of hapless survivors to be accorded the same status as other refugees; with some important distinctions, however. In addition to being classified as 'war widows' they were further classified as: (a) those whose husbands and sons and other bread-winners were killed during the riots; and (b) those who, though 'unattached', had relatives alive who were unable to maintain them because they had lost their jobs and possessions. These two categories were to be treated differently: the responsibility for the first had to be shouldered by the Government for the *rest of their lives*, while that for the second could extend either until the time

they became self-supporting or till their relatives were able to maintain them. Further, those in the first category who were not willing to lead the regulated (read restricted) life of the rehabilitation homes were to be given allowances sufficient to maintain themselves because, it was thought, there would be very few of them.<sup>29</sup> The chief difference between the rehabilitation of men and that of women was that the Government undertook life-long responsibility for aged and infirm women, and for unattached women and children, till they were able to maintain themselves.

In a report on the work done by the Women's Section from 1947-49 Rameshwari Nehru noted that:

At the very outset the Section realised that rehabilitation is an intricate process and can be achieved only if adequate attention is paid to the psychological, educational, and emotional needs of the women. It is of utmost importance to make them self-reliant and self-supporting, and restore their sense of dignity and worth.<sup>30</sup>

The way to do this, in its view, was to treat them to a course of occupational therapy, to pay attention not only to their physical needs, but also to their 'intellectual and vocational development'.

The first endeavour of the Women's Section therefore, was to free the widows from economic dependence. It was hoped that, in the long-term, specially planned women's settlements would develop, embracing not only the refugees of Partition, but other categories of destitute women as well. State and central governments were therefore requested to make available suitable land, open and extensive, near large cities for this 'new experiment': it was a matter of some conviction that, with proper facilities, the women (note that the official documents do not refer to them as 'widows') could be prepared for dairy farming and agriculture and for those 'advanced industries which require meticulous training and skill in execution'. Underlying this conviction, or experiment, was the hope that they would be absorbed into the economic reconstruction of the country. Renuka Ray, Member from West Bengal, made the point in the Legislative Assembly (March 1948), thus:

I want to note some specific points with regard to the rehabilitation of women. I do not think that the establishment of homes where some little occupation is given, is enough. In this country there is a very great dearth of women who come forward to be trained in different fields of nation building ... This great tragedy has left thousands of women homeless and alone ... The opportunity should be taken to train them to become useful and purposeful citizens. Tinkering with the problem by doing a little here and there will not be sufficient. What is required is a properly planned scheme of vocational training on a long-term basis.<sup>31</sup>

Women with some educational qualifications were offered training in 'useful professions' like nursing, midwifery, teaching, stenography, accounts, and office management. Those with very little or no literacy could take up the usual embroidery, tailoring, minor handicrafts and so on, although it was well understood that the scope for economic independence through these was quite limited, for the market was already glutted with fancy leather-work and luxury articles. The excess of produce opened the way to exploitation of women's labour and they were paid ridiculously low wages for their work. But the women's own inclination had also to be considered and, as the Report notes, 'despite our best efforts, it was not possible to enlist women's interest in any other work'.

Women who were able-bodied and willing to do physical labour were to be settled in what were called 'agro-industrial' settlements. It was proposed that the settlements be built up on a few acres of land outside towns and cities, and women be trained in vegetable and daily farming, oil pressing, and so on. A beginning was made by giving 60 acres of land in Kilokheri, near Delhi, to the Kasturba Seva Mandir. In all the work of training and engaging women in vocational skills, the Women's Section worked with a range of training centres, academic institutions, and voluntary and social work organisations, including the Tata Institute of Social Sciences, the Vocational Centres of the Ministry of Labour in Bombay and Delhi, the Kasturba Gandhi Memorial Trust and Lady Hardinge Medical College in Delhi. An Employment Bureau was set up in coordination with the Employment Exchange



of the Labour Ministry for placing women once they were trained. Till March 1949, the Report noted, 500 women had secured employment through the Employment Bureau.

Without wishing to belabour the point or to put too fine a construction on stated intent, I would like to suggest that it was just such an approach that, in fact, enabled a large number of widows to be drawn into some form of economically productive activity. Despite the many shortcomings in the actual workings of the rehabilitation programme, especially after the mid-1950s,<sup>32</sup> the formal recognition of the fact that 'the care and maintenance of destitute women is a task in social reconstruction' was critical.

**the authoritarian state** The experience of the two groups of refugees discussed earlier should not lead us to conclude that the state was uniformly benign and benevolent towards them. Contrary to Stephen Keller's thesis that in times of natural disaster the more maternal aspect of Government is emphasised, we note in fact that the paternalistic and patriarchal mode is actually more in evidence; that, as Ranabir Samaddar has so eloquently argued, power and care are closely intertwined, so much so that the 'care' dimension might even be taken to signify the State's 'caring for itself'.

A very cursory examination of three ordinances and acts passed by the Indian Government in the course of rehabilitation work is illustrative of this duality. It is not my purpose here to present a detailed discussion of their legal merits; rather, to indicate that in the exercise of providing protection, nurturance and compensation, the Government actually *withheld or abrogated certain fundamental rights of citizens*, and that the language of the acts and ordinances reiterated the penal culture of bounded refugee camps or settlements. The three acts and ordinances I propose to discuss are Ordinance No. XXIV of 1947-an Ordinance to provide for the registration of refugees in Delhi; the Displaced Persons (Claims) Act of 1950-an Act to provide for the registration and verification of claims of displaced persons in respect of immovable property in Pakistan; and the Abducted Persons (Recovery and Restoration) Act of 1949-an Act to provide, in pursuance of

an agreement with Pakistan, for the recovery and restoration of abducted persons.

The ordinance for the registration of refugees is short and to the point, setting out its definitions, clauses, and interpretation, as well as penalty. Clause No. 4, pertaining to registration, is relevant to our discussion. It says:

*Registration of refugees:* (1) Every refugee for the time being in the Province of Delhi shall, within fifteen days from the commencement of this Ordinance or within seven days from the date of his arrival in the Province, whichever is later, register himself at the registration centre of the camp in which he is being accommodated, or if he is being accommodated elsewhere than in a camp for which a registration centre has been established, at the registration centre of the area in which he is being accommodated:

Provided that a refugee who is the head of a family shall be responsible for the registration of all members of his family for the time being with him:

Provided further that, where a refugee is a female, a minor, a lunatic, an idiot or a person incapable by reason of some physical infirmity of attending at the registration centre, the person who is for the time being in charge of such a refugee shall be responsible for his registration.

(2) A person registering under sub-section (1) shall, to the best of his ability, correctly fill up, or cause so to be filled up, the form set out in the First Schedule.

This is followed by Clause No. 6, which says:

If any person refuses, or without lawful excuse (the burden of proving which shall lie upon him) neglects, fully to comply with the requirements of section 4, he shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.<sup>33</sup>

The harshness of the penalty is remarkable when we consider that the majority of those who would register were most likely illiterate;

or even if not illiterate, still quite likely to make understandable mistakes and not 'fully comply with the requirements of section 4'. The trauma of dislocation, confusion, anxiety and uncertainty about their circumstances are enough reason to falter or to miss the seven-day deadline; to penalise refugees with, first, the burden of having to provide 'a lawful excuse', and second, to be liable to imprisonment for failing to do so, was unreasonably excessive—why should simple errors, requiring sympathetic treatment, have been criminalised in this way? Surely even cases of persons falsely registering themselves as refugees could have been dealt with, without resorting to imprisonment.

But the penalty clause recurs in the Displaced Persons Claims Act as well, and in this case the refugee had no recourse to appeal should the Commission of Claims decide otherwise. Moreover, the powers vested in, and the immunity granted to, any officer of the Government acting with regard to claims was extraordinary. The penalty with regard to submitting false information or submitting claims to more than one Registering Officer was imprisonment upto three years, or a fine, or both; and the punishment for abetment was the same. The Claims Officer and Chief Claims Commissioner, on the other hand, were protected under Clause nos. 10 and 11, which provided that:

(10) No Civil Court shall have jurisdiction in respect of any matter which the Chief Claims Commissioner or the Claims Officer is empowered by or under this Act, to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(11) *Protection of action taken in good faith:* No suit, prosecution or other legal proceeding shall lie against the Central Government or any person appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made there under.<sup>34</sup>

The Chief Claims Commissioner was also empowered to delegate all or any of his powers under the Act to any Claims Commissioner

or Joint or Chief Claims Commissioners if he so decided. The Central Government, in turn, reserved the right to determine the form and manner in which claims could be submitted, the levy of fee in respect of claims submitted, the manner in which claims could be registered, and the manner in which inquiries could be held by any or all of the Claims Officers, Commissioners or their deputies. The most critical provision of this Act, however, was that no appeal against decisions could be entertained unless cleared by the Chief Claims Commissioner.

Members of the Legislative Assembly, while debating this Act, pleaded for an amendment that would enable appeals, 'on certain specific grounds', to be allowed 'as a matter of right', but they were turned down. Mohan Lal Saksena, Minister of State for Rehabilitation, clarified that appeals could also be entertained through application by the aggrieved person, but he said, 'We do not want to give the right to appeal *as a matter of course* ... because if we do so then in each and every case there will be an appeal.' The amendment was rejected.<sup>35</sup>

The Abducted Persons Act, while not carrying a penalty clause, was otherwise draconian enough, and actually went one step further—it suspended the right to residence of women citizens of India, as well as their right to choose where and with whom they wished to live. It also occasioned an extended debate in the Assembly during which more than 70 amendments were proposed by 20 Members. Every clause, sub-clause, and section was discussed threadbare, and serious objections were raised on everything from the preamble to the operative clauses of the Act. The main objections related to the definition of abductors and the time-frame that the Bill referred to (1 March 1947 and 1 January 1949); the virtually unlimited powers given to the police with complete immunity from inquiry or action and no accountability at all; the denial of any rights or legal recourse to the recovered women; the question of children; the constitution of the tribunal set up to deal with disputed cases; camp conditions and confinement; forcible return of unwilling women; unlimited duration for the Bill to remain in force; and the unequal and disadvantageous terms of the agreement for India vis-a-vis Pakistan.

At least three Members referred to the gravity of the measures proposed and pointed out that they violated the fundamental rights guaranteed by a Constitution that would come into effect the very next month (January 1950). They warned that the Supreme Court could not countenance the denial of the writ of habeas corpus, and that it was the right of every Indian citizen-which these women were-to choose to remain in India; by law and by right they could not be deported without their consent. Jaspat Roy Kapoor, objecting to the powers vested in the Tribunal said:

What do we find in this Bill? We find that after release (these women) will have absolutely no say in the matter of the place where they are to live, in the matter of the companions with whom they are to live, and in the matter of the custody of their children ... I ask, in such cases, shall we be conferring liberty and freedom on her if we deny her these rights?<sup>36</sup>

As he was at pains to point out, unless children were included in the legislation there would be no chance of returning the women at all. And M<sup><1</sup>-hvir Tyagi reminded the House that:

These women are citizens of India ... they were born in India itself ... they have not yet gone to Pakistan ... In taking them to Pakistan without their consent, even if the agency be the police or the sanction be the proposed Tribunal, shall we not contravene the fundamental rights sanctioned by the Constitution? ... The fact that their husbands have gone to Pakistan does not deprive the adult wife of her rights of citizenship. They have their own choice to make.<sup>37</sup>

The amendments moved by members sought to mitigate many of the gross irregularities they pointed out, and to qualify or modify certain other procedural aspects that were set out. But despite their strenuous efforts the Honourable Minister declined to incorporate a single amendment or modification proposed (bar one, limiting the duration of the Bill to December 1951); it was passed,

unchanged, on 19 December and notified in the *Official Gazette* on 28 December 1949.

We could say that the responsibility of being both *mai* and *baap* with regard to Partition refugees displayed all the classic characteristics of single parenthood-when to be authoritarian, when to nurture-on the one hand, and on the other a profound disjunction between the ethics of caring and the exercise of power, as well as the contradiction inherent in the charity versus rights positions. As the experience of West Bengal has shown, the counter-discourse of Partition refugees there was a discourse of rights, claims, and demands, made against the Government's discourse of charity-dispensing favours rather than giving refugees what was due to them as a right. However, realising their claims as a matter of right would have required a legal regime and legislation that recognised the civil rights of citizens, including the right to shelter, livelihood, security and residence. Contrarily, what we see is that the acts and ordinances passed by the Government in order to deal with refugee rehabilitation and resettlement held their rights in suspension, in the interest of providing succour protection and compensation, while simultaneously enhancing its own powers to regulate, police, and penalise in the process.

## conclusion

Sir, what is meant by permanent rehabilitation? Permanent rehabilitation means creation of employment-because it ultimately comes to that; creation of employment for millions of people at a time when production is admittedly at a dangerously low ebb, and when the volume of trade and commerce in the country is shrinking ...

... Sir, permanent rehabilitation can be achieved satisfactorily only as a feature of the general development of the country as a whole ... It is simply impossible to think in terms of rehabilitating them without at the same time proceeding with measures which would lead to the development of the resources of the country as a whole.<sup>38</sup>

K.C.Neogy

Refugees sometimes indulge in self-pity. They are victims of misfortune not of their own making. Therefore the Government must provide for them. But the gospel of Nilokheri is the gospel of self-help, not of dependence on Government or any other outside agency, not 'the Government will show us', but rather, 'we will show them'. The administrator and his colleagues believe in the possibilities of a cooperative commonwealth for all India. Here in Nilokheri they are showing a way, blazing a trail.<sup>39</sup>

Horace Alexander

The Ministry for Relief and Rehabilitation of Partition refugees was finally disbanded as late as 1984, but records for unsettled claims are still active; and 11 permanent liability homes across the country are still being maintained by the Government. Forty or 50 years is a long time for any rehabilitation activity to continue, but then this was no ordinary migration; nor were the millions who crossed over the new borders conventional refugees.

There has been some debate on whether those displaced by Partition can be legitimately called 'refugees' since they were naturalised and granted the rights of citizenship almost immediately by India and Pakistan. Nevertheless, they had unquestionably fled violence and persecution as a consequence of religious disturbances and rioting in both countries. Technically, they had indeed sought refuge and protection, leaving behind an unsafe place for a safe haven.<sup>40</sup> They had lost land and livelihood, were homeless, and desperately in need of rehabilitation. In one very important aspect, however, they were not like the usual refugees—they were never considered to be outsiders, unwanted and unwelcome. On the contrary, their speedy, appropriate and necessary absorption into the social and economic life of the country became almost an article of faith for all those involved in relief work—the Government, legislators, social workers, administrators, voluntary agencies, political parties, *ashrams*, and *dharamsalas*—and, for the Indian state, a sacred duty, a responsibility that had to be shouldered and discharged in its role as *patria* and guardian of its citizens.

It was the characterisation of the refugee as a *critical component of nation building* that marked a significant shift in

conceptualisation and, consequently, in policy formulation. Linking resettlement with development, and rehabilitation with reconstruction, was a uniquely progressive and far-sighted response to a problem of crushing proportions; in this scheme of things refugees became a valuable human resource rather than only an onerous liability. A graduated, multi-pronged strategy, open to modification, was adopted with the realisation, I would argue, that rehabilitation linked to overall development was a long-term process requiring the active involvement of a wide range of agencies and social actors. It also meant that policies and programmes would have to adjust to specific needs rather than have refugees adjust, without exception, to bureaucratic guidelines and procedural norms. We have seen how such a response made for a radical departure from convention with regard to widows and destitute women, with the State assuming total and permanent responsibility for this group of refugees, and, by so doing, liberating them from social stigma and economic dependency. But benign paternalism could also result in yet another experience of harrowing and traumatic dislocation, as it did with women who had been abducted and recovered; in this case, the Government was resolutely opposed to any modification at all, with tragic consequences.

And it could assume a punitive aspect, particularly if it anticipated a questioning of its authority or feared the outbreak of disorder as a result of dissatisfaction. It is significant that, subsequently, state and government policy in India with regard to refugees—and even the internally displaced—has been accompanied by remarkably little legislation, preferring what other contributors to this volume have called 'strategic ambiguity'. The Partition experience was distinctly different in this respect, for not only did the State legislate—albeit largely for its own protection—it also generally eschewed ambiguity in favour of articulated policy, at least in the case of Punjab, and with regard to women, whatever the outcome.

[Thanks are due, first of all, to Ranabir Samaddar, for inviting me to write this chapter, for his insights, and to him, Paula Bannerjee, Samir Das and the Calcutta Research Group for the extremely interesting

ritu menon

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## appendix a

### STATISTICS AT A GLANCE

(To the end of January 1951, unless otherwise stated)

#### MIGRATION

Number of persons who migrated  
(net) to India from Pakistan is 80,85,000

Comprised of

DPS from West Pakistan 50,00,000

From East Pakistan, up to December 1949 12,58,000

From East Pakistan, from 1 January 1950 to  
29 February 1951 18,27,000

#### RURAL RESETTLEMENT

Under the quasi-permanent land allotment scheme  
in Punjab and PEPSU, evacuee land (24,33,000  
standard acres) has been allotted to claimants  
numbering 5,77,000

West Pakistan rural families settled in areas  
other than the Punjab and PEPSU 46,000

Displaced agriculturist families from East  
Pakistan reported to have resettled in eastern regions 1,81,000

In West Bengal in addition, the number of rural  
non-agriculturist families allotted homestead plots 89,000

Amount of rural loans paid to displaced  
agriculturists, artisans, etc. Rs 9,00,00,000

#### HOUSING

In the housing and township schemes:

Houses /tenements completed 67,000

#### birth of social security commitments

Houses/ tenements under construction 26,000

Developed plots for private construction 50,000

For West Pakistan displaced persons 26,000

For East Pakistan displaced persons 24,000

#### SHOPS

Businessmen and industrialists helped by  
allotment of business premises, shops, etc. 61,000

#### *Includes*

Allotment of evacuee shops 34,000

New shops 27,000

#### URBAN LOANS

The Urban Small Loans Scheme provides for loans of amounts  
less than Rs 5,000 in the case of individuals, there being no such  
restriction in the case of groups and cooperative societies.

West Pakistan displaced persons sanctioned such loans 1,46,000

Loans sanctioned to West Pakistan DPS Rs 9,06,00,000

Paid to DPS from both East and West Pakistan Rs 9,73,00,000

Rehabilitation Finance Administration provides capital for in-  
dustrialists and business men whose requirements are between  
Rs 5,000 and Rs 1,00,000.

Persons to whom RFA sanctioned loan 5,396

Amount sanctioned Rs 5,27,00,000

Amount paid Rs 2,07,00,000

#### EMPLOYMENT

Persons to whom employment has been secured by  
Employment Exchanges 1,60,000

Displaced Government servants employed in  
Central Government services 15,000

Government servants absorbed in  
State Government Departments 17,000

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TECHNICAL AND VOCATIONAL TRAINING

Imparted to	41,000
Number under training	14,000

HOMES

Homes, Infirmaries, former Camps, etc., provide shelter, food, education and training to aged and infirm men and unattached women and children numbering 76,000

EXPENDITURE

Government's expenditure on displaced persons  
 During 1947-48, 1948-49, and 1949-50 Rs 68,96,00,000

**Source:** Horace Alexander, *New Citizens of India*. (Oxford: Oxford University Press, 1951.)

notes and references

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10. Jacques Vernant, op. cit., p. 740.
11. See Horace Alexander, *New Citizens of India*. Oxford: Oxford University Press, 1951, for an extended discussion on this aspect. Also Ritu Menon and Kamla Bhasin, *Borders & Boundaries: Women in India's Partition*. Delhi: Kali for Women, 1998.
12. A detailed discussion of this is to be found in Menon and Bhasin, *Borders & Boundaries*, op. cit., pp. 65-203.

13. Vernant, op. cit., p. 753.
14. Ibid., p. 739.
15. See Menon & Bhasin, op. cit., for details.
16. Constituent Assembly Debates, Vol. III, 12 March 1948, p. 2006.
17. See Menon & Bhasin, op. cit., for details.
18. Tarlok Singh, *Towards an Integrated Society: Reflections on Planning, Social Policy and Rural Institutions*. Delhi: Orient Longman, p. 225.
19. Ibid., p. 221.
20. Ibid., p. 217.
21. Ibid., p. 218.
22. Ibid., p. 230.
23. Vernant, op. cit., p. 751.
24. This section draws heavily on Menon and Bhasin, *Borders & Boundaries*, op. cit.
25. Report of the All India Women's Conference. Delhi: Nehru Memorial Museum and Library, December 1947.
26. Rameshwari Nehru Papers. Delhi: Nehru Memorial Museum and Library. All details in this section are from the Rameshwari Nehru papers.
27. Rameshwari Nehru papers, op. cit.
28. Stephen Keller, *Uprooting and Social Change*. Delhi: Manohar Book Service, 1975, p. 47.
29. Rameshwari Nehru papers, op. cit.
30. Ibid.
31. Constituent Assembly (Legislative) Debates, Vol. III, No. 5, March 1948.
32. See especially *Sadda Hak, Ethey Rakh*: A Report of Refugee Women Workers of Delhi. Delhi: People's Union for Democratic Rights, April 1989; and Latha Anantaraman, 'In Dependence', *The India Magazine*, August-September, 1996.
33. Ordinance No. XXV of 1947. *Gazette of India Extraordinary*. Delhi: National Archives of India, 11 October 1947.
34. The Displaced Persons (Claims) Act, 1950. Delhi: National Archives of India, 1950.
35. Constituent Assembly Debates, 20 April 1950.
36. Constituent Assembly of India Debates, 15 December 1949, pp. 634-44.
37. Ibid.
38. Constituent Assembly Debates, Vol. III, 12 March 1948, p. 2022.
39. Horace Alexander, op. cit., p. 38.
40. See Horace Alexander, op. cit., and Jacques Vernant, op. cit., for a discussion on this aspect.

## 4 the returnees and the refugees:

### migration from burma

Subir Bhaumik

**introduction** India has accommodated thousands of refugees from neighbouring countries ever since it became free. Millions came in from both wings of Pakistan immediately after Partition, to be followed by the Tibetans, then hundreds of thousands from Bangladesh during that country's liberation war, and then the Tamil refugees from Sri Lanka, accounting for a steady flow of displaced peoples from the countries in India's neighbourhood. Though the number of refugees from Burma (now Myanmar) and Afghanistan are relatively fewer, their fate continues to attract attention because the countries of their origin have remained in the global focus. The long military rule in Burma and the failure to instill democracy has remained a matter of international concern.

Till the Second World War, the population flow from India to Burma was largely one-way traffic. The British conquest of Burma witnessed a steady migration of Indians into that country in search of jobs and business opportunities. The migration continued unabated until the outbreak of the Second World War, when thousands of Indian settlers fled from Burma. Some returned to Burma after the War, only to flee again within a few years.

The out-migration of Indian settlers from Burma continued throughout the 1950s and picked up after the 1962 military coup. Burma's new military rulers nationalised almost every sphere of economic activity. That affected the Indians, as many of them were

traders. They were left with no option but to leave for India or some other free trade location like Singapore. But during this period there was hardly any out-migration of Burmans into India though some tribesmen like the Chins, who live on the India-Burma border, continued to come to India, looking for work. And a few Burmese political families-like that of former Prime Minister U Nu-took refuge in India after the 1962 coup. Many of them later migrated to South-east Asia or to the West. Only after the pro-democracy uprising and the coup in 1988 did a few thousand Burmese students and political activists escape into India. Many of them have stayed on. Meanwhile, many tribesmen from the Chin Hills, the Arakans, and the Kachin state have also taken refuge in India, many for economic reasons, but quite a number to escape persecution in their own country for political activity. How many of them migrated to India for economic reasons and how many to escape persecution is not something that is easy to establish.

A study of the wartime influx from Burma is beyond the scope of this study. This chapter will profile several phases of forced movement of people from Burma into India, and through this exercise, examine: (a) the pattern of refugee influx from Burma to India after the two countries became free from colonial rule, (b) the linkages between India's Burma policy, its security policy and practices, and its attitude towards refugees from that country, (c) the type of protection and care extended to the refugees and exploring whether there were difference in attitudes at the federal and provincial levels, and (d) the refugee-migrant debate regarding some refugee groups such as the Chins from Burma.

This chapter will first deal with the refugees of Indian origin, who came to India after Burma's independence. It will then deal with the influx/ migration of Burmese nationals, either of the dominant Burman nationality or of other smaller nationalities like the Chins and the Arakanese, who have come to India primarily since the mid-1980s after the Burmese military crackdown on both the pro-democracy movement and the struggle of the nationalities to attain self-rule or independence. The difference between the two influx patterns should not escape our notice. For the Indians who came back from Burma, the return was seen as a kind

of a homecoming, though not always a very happy one. They were seen as 'returnees' rather than as refugees. But the Burmans and other nationalities like the Chins and Arakanese are clearly seen in the host country as refugees who will have to ultimately go back.

However, it is hard to understand the phases and changes in India's policy towards the people fleeing from Burma through more than five decades, unless we keep in mind the uncertainties in India's refugee policy in the background of a whole range of human-rights instruments that have sprung up from the basic foundation provided by the International Bill of Human Rights. The non-derogable rights enshrined in Article 6 of the International Covenant of Civil and Political Rights (ICCPR) also are applicable to the refugees. 'The juridical basis of the international obligation to protect refugees, namely, *non-refoulement* including non-rejection at the frontier, non-return, non-expulsion or non-extradition can be traced to international conventions and customary laws. *Non-refoulement* is the magna carta of any refugee law.'<sup>1</sup> But we know that in spite of protecting refugees on several occasions, India, like other South Asian countries, has steadfastly refused to sign the 1951 Refugee Convention or the 1967 Protocol. *Non-refoulement*, which as a principle even binds non-signatories, has been however accepted by the Indian Government to handle certain refugee issues and it has gradually secured status in customary law.

The Indian Constitution has put the entire issue of entry and regulation of aliens under the Union List, giving full powers concerning refugees to the federal government. This is because the refugee problem has been seen primarily as a foreign policy or security issue—and since foreign policy is a federal subject, the Indian states have been left with no powers with regard to refugees coming in from a foreign country. As India has not signed the 1951 Refugee Convention, its legal obligations to protect refugees rest entirely on judicial practices and customary law. The Constitution merely provides for Article 51(C), which states: 'The State shall endeavour to foster respect for international law and treaty obligations in the dealing of organised peoples with one another.' But since this section comes under the Directive Principles of State Policy, it is not an enforceable provision. In 1949, when

the question of establishing an international regime for refugee protection was being discussed in the Third Committee of the UN General Assembly, the Indian delegation said that the already existing International Organisation for Refugees should be maintained and that attention should be focused on drafting a Convention to ensure legal protection for refugees. India made it clear that it would have voted for the creation of a High Commissioner's office, if it could be convinced of the need to set up an elaborate international organisation whose sole responsibility would be to provide legal protection for refugees.<sup>2</sup> But when the 1951 Refugee Convention was adopted, India did not sign it.

Much later, India's erstwhile Foreign Minister Baliram Bhagat talked of 'some difficulties that we faced while considering ratification of the 1951 Refugee Convention'.<sup>3</sup> But Bhagat did not elaborate. Although India accepted the principle of *non-refoulement* as including non-rejection of refugees at the frontier under the 'Bangkok Principles 1966', it has not consistently observed this principle while dealing with refugees. In fact, since refugees in most cases suddenly flee their homes for fear of attacks, they are not expected to carry travel documents like normal travellers. But Indian authorities have often insisted that refugees furnish travel documents, and the provisions of the 1946 Foreigners Act have been applied to them. This Act states in unequivocal terms that no foreigner can enter India without authorisation of an appropriate authority having jurisdiction over entry points. It also says that a foreigner desirous of entering India must have a valid passport. However, when Afghan, Iranian, and Burmese refugees, against whom the Indian Government had initiated deportation proceedings under Sections 3 and 14 of the 1946 Foreigners Act for illegal entry into India, have moved Indian courts, they have often got favourable verdicts and the courts have accepted their plea that they should not be deported as they faced threats to life and liberty on returning to their countries. In many such cases deportation proceedings have been stayed.<sup>4</sup> . . .

Since India is a signatory to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, it is obligatory for India to accord equal



treatment of citizens and non-citizens, wherever possible. The country cannot overlook its commitment to maintain a minimum standard of treatment for refugees. The Indian judiciary and the civil society, particularly human rights organisations, of the country have displayed an impressive understanding on the situation involving the refugees. Policies on the refugees have been results of both humanitarian and state considerations, and the evolution of the policy towards the refugees from Burma carries traces of such mix and overlap. Also, at times, domestic political considerations have influenced India's response to refugee situations. Thus in some cases, there has been an 'open door' policy in welcoming the victims of conflict situations, more so when the Government has supported movements within their countries of origin against various regimes, whereas in cases like that of the Lhotsampas (Nepali-speaking refugees) against the Royal Government of Bhutan, the Government has stopped the movement of refugees towards or within Indian territory.

Depending on the kind of treatment refugees receive in this country, three categories of situations seem to have emerged over the years: (1) refugees who receive full protection from the Indian Government as per national standards, (2) refugees who do not get protection from the Indian Government but whose presence in Indian territory is acknowledged by the UNHCR and who are essentially protected by the principle of *non-refoulement*, and (3) refugees who entered India and then slowly assimilated themselves with the local communities, with their presence being neither acknowledged by the Indian Government nor the UNHCR. However, besides these three, there is one more situation involving at times very small number of refugees, who silently receive shelter in the country, and whose presence is not acknowledged because of diplomatic and security considerations; for instance, the situation of a few hundred Kachins living in India since 1991, and thought to be having links with the Kachin Independence Organisation (KIO). It has been the same condition with some of the erstwhile leaders of the movement in the Chittagong Hill Tracts, and some of the political activists fleeing Bangladesh after October 2001 and allowed to stay in India, but without formal grant

of asylum. This is a situation of 'uneasy asylum' and remaining as 'unrecognised guests'.

It is against this background of what one contributor of this volume has termed as the policy of 'strategic ambiguity' that we have to trace the fate of the fleeing population from Burma through more than half-a-century. We begin with what happened to the Indians settlers in Burma who decided to return 'home'.

**indian settlers return 'home'** Indian migration to Burma picked up appreciably after the British conquest of Burma. By 1852, the Chettiyars of Tamil Nadu had started their banking business in the country. By 1871, more than 1.3 lakh Indians had poured into Burma. The annual report on the administration of Burma for the year 1884-85 said:

A large number of natives of India were permanently settled in the seaports and large villages and they have driven the more apathetic Burman out of the more profitable fields of employment. The money-lending business of the country is in the hands of the Chettiyars; the retail price goods is chiefly in the hands of the Suratis, natives of India, and the Chinamen. The natives of India have also driven the Burmese out of the field where hard manual labour is required; the coolies employed by the Public Works Department are almost exclusively Indians, the gharry-drivers (coachmen) everywhere were chiefly Madrasis, coolies on the wharves and at the railway stations are also natives of India. Natives of India are also settling down in permanent rice cultivation.<sup>5</sup>

The influx of Indians picked up sharply with the increase in the number of rice mills throughout Burma, since the Burmans were not keen on working in the rice mills. In 1928 alone, 3,24,000 Indians entered the country (see Tables 4.1 and 4.2). During the 40-year-period from 1891 to 1931, Burma's overall population rose by 81 per cent, while the population of Indians in Burma grew by 143 per cent.

Table 4.1: Growth of Indian Population in Burma

Year	Burma's Total Population	Indians in Burma	Percentage of Indians to Total Population
1891	8,098,014	420,830	5.1
1901	10,490,624	564,263	5.4
1911	12,115,217	743,288	6.1
1921	13,212,192	887,077	6.7
1931	14,667,146	1,017,825	6.9

Source: J. Baxter, *Report on Indian Immigration*, Rangoon, 1941.

Table 4.2: Burmese and Indians in Rangoon

Year	Rangoon's Total Population	Indians in Rangoon	Percentage of Indians to Total Population
1891	180,324	87,487	49.5
1901	248,060	119,290	48.1
1911	243,316	165,495	56.5
1921	341,962	187,975	55.0
1931	400,415	212,692	52.9

Source: B.R. Pearn, *Indians in Burma*, London, 1946.

From the above tables it is clear that Indians formed the largest single group in Rangoon within 50 years of the British conquest of Burma. By the 1930s, they had also begun to spread out to other parts of Burma. Indians in 1931 contributed 55.5 per cent of the taxes collected by the Rangoon Municipal Corporation. In 1938-39, out of the total of 15,67,315 inland and foreign telegrams sent in and out of Burma, Indians accounted for 6,70,959.<sup>6</sup>

But the predominance of Indians, particularly in trade and the professions, and also in the constabulary, evoked bitterness amongst the Burmese. In 1930, anti-Indian riots broke out in Rangoon and continued for four days. Several deaths were reported during the riots and the law and order situation in the

city, for the first time after the British established their control, broke down completely. Soon after the riots, Burmese convicts attacked their Indian officers in the Rangoon Central Jail. The Indian Military police shot down many of the convicts to suppress the revolt. After these incidents, the relations between the Indians and the Burmese began to deteriorate. By the mid-1930s, the rate of Indian immigration into Burma had begun to fall.

The Second World War led to the flight of thousands of Indian settlers from Burma. Close to half-a-million Indians fled Burma during the War of whom at least 10,000 perished en route during the forced marches across the treacherous border.<sup>7</sup> Those Indians who remained behind welcomed Subhas Chandra Bose and his Indian National Army (INA) but the Burmese responded rather coldly to the INA's activities. After the War, Burma tried to control the flow of Indians into Burma. Between May 1945, when the War ended, and April 1947, just before India gained Independence, the Government of India had sponsored only about 3,000 Indian migrants. Of those Indians who fled to India during the War, only one-fourth of them came back.<sup>8</sup>

In June 1947, the Government of Burma passed an Emergency Act. According to this Act, all persons entering Burma had to possess a valid visa and passport or a permit issued by the Controller of Immigration. India protested against it, describing it as 'harsh and unilateral.' Then under the London Agreement of 1947, a Burmese national was defined as a British subject or subject of an Indian state who was born in Burma and who had resided there for a total period of not less than eight out of the 10 years immediately preceding either 1 January 1942 or 1 January 1947. India again protested against this agreement because it was bound to affect the Indian settlers in Burma. Then, after Burma became free, the country's new Constitution and the Union of Burma Citizenship (Election) Act of 1948 made a clear distinction between indigenous peoples and aliens for grant of citizenship. Indians who acquired Burmese citizenship were required to renounce their Indian citizenship.

The Land Nationalisation Act of 1948 prohibited possession of more than 50 acres of land for non-cultivators. This, and some other legislations like the Tenancy Act, hit the Chettiyar community

very hard as they had accumulated huge land holdings-the total area they controlled before the War was estimated at three million acres valued at between Rs 60 to 80 crore-through usury in rural Burma. The compensation for acquisition of surplus land was meagre- 12 times the annual land revenue for the first hundred acres, 11 times the annual land revenue for the second hundred acres, and progressively downwards. Prime Minister U Nu made it clear that 'when we pay compensation, we have no occasion to consider the justice of such compensation.'<sup>9</sup>

The feeling of insecurity amongst the Indian settlers began to grow. In 1949-50, the number of Indian settlers returning was 21,198, and the rate began to pick up as time progressed. The Indian settlers were caught in a bind-if they applied and did not get Burmese citizenship, they would be nobody in Burma. By then, they would have also lost the chance to secure Indian citizenship. The process of granting of Burmese citizenship was tortuously slow. Between 1949 and 1961, only 28,683 out of the 1,50,000 applications for Burmese citizenship by settlers of Indian origin had been granted. The Indians were 'thoroughly disliked' in independent Burma and the delay in grant of citizenship to long-time settlers of Indian origin, despite Prime Minister U Nu's promise to 'treat all Burmese nationals as equals', was seen as a deliberate move to force them to leave.<sup>10</sup> The Burmese resented the economic stranglehold of the Indians, particularly the Chettiars, on their economy. As successive Burmese governments adopted tougher compensation policies and land legislation to favour Burmese sharecroppers, the Indian business lobby, particularly the Chettiyar Associations, called for Indian intervention. A Dutch author said: 'Burmese relations with India are still marred by the memories of the economic grip in which Indians held Burma a short while ago.'<sup>11</sup>

When General Ne Win came to power through a military coup in 1962, he introduced the 'Burmese Way to Socialism'. The Revolutionary Council of Burma, headed by him, announced 'national private enterprises, which contribute to the national productive forces, will be allowed with fair and reasonable restrictions.' But the Council was quick to add: 'nationalisation is the principle of a socialist economy. We will allow the present trade and industry to

operate, but they will eventually be nationalised.'<sup>12</sup> The Ne Win regime quickly followed up on this announcement by nationalising the banking industry in February 1963. Indian banks were covered by this decision, and the Indian share of business in the banking industry began to decline. In early 1964, the Ne Win government nationalised all shops. If the nationalisation of the banking sector had hit rich Indians like the Chettiars, the nationalisation of shops hit the small Indian trader. The spokesman of the Burma Displaced Persons Association claimed that 12,000 Indian business concerns with assets of Rs 15 crore were affected by nationalisation of shops.<sup>13</sup> Most of these traders were stranded in Burma for paucity of funds. And those who were able to find funds to pay for their journey to India were not allowed to take anything along with them. This was part of the programme of the ethnic push out of non-Burmans (*Khadawhme*) pursued by the military regime.

The military government also nationalised the export-import trade, rice and tobacco industries, newspapers, and other businesses dominated by Indians. Later, it decreed that only Burmese citizens were eligible to hold licenses for an increasing number of businesses that were left outside the purview of nationalisation. A huge number of Indians lost their means of livelihood. By April 1964, 80,000 out of the total of half-a-million Indians left in Burma had registered for repatriation, and more and more of them kept making their way to India. By July 1966, about 1,54,000 Indians had left Burma. Throughout the 1970s and until the mid-1980s, Indian out-migration from Burma continued. An Indian author estimates that while half-a-million Indian settlers left Burma during and after the War, another 2,00,000 of them were compelled to leave Burma during the 1950s and 1960s.<sup>14</sup> Most of them reached India in a penniless condition. According to Indian Government assessments, another 40,000 Indian settlers left Burma in the 1980s, particularly after the pro-democracy uprising and the brutal coup that crushed it. This assessment suggests there could be just about 2,50,000 Indian settlers left in Burma now, and even their numbers are constantly dwindling.<sup>15</sup>

### **burma bazar, moreh and beyond**

The Indian settlers who returned from Burma mainly went to three destinations: (a)

subir bhaumik

the Indian provinces (now states) their ancestors hailed from; (b) the North-east Indian states, particularly to Moreh in Manipur, which has borders with Burma; and (c) other countries in Asia and the British Commonwealth.

More than 90 per cent of those who came back from Burma were of Tamil origin-most of them returned to Tamil Nadu. They were temporarily accommodated in the transit camps located at Mandapam in Ramanathapuram district and Kottaputtu in Tiruchirapalli district, where they were provided with rehabilitation assistance under various schemes of plantation, agriculture, housing, and for setting up businesses. Most of the Tamils who went to Tamil Nadu went to three cities-Madras (now Chennai), Trichy, and Madurai, with a small percentage settling down in the coastal districts. The Chettiyars, who had already received some compensation for their landed assets in Burma in the 1950s (though they continued to pressurise the Indian Government to intervene to get them a better deal), had moved their assets to Tamil Nadu, or even Malaysia and Singapore. They did not require rehabilitation grants from the Government. They went into trade and slowly established themselves. The richest among them had already put money into accounts in Singapore or India-or even bought properties before finally migrating. At least 10 to 12 thousand of these Tamils-and some Punjabis, Telugus, and Bengalis as well-migrated to Singapore, Malaysia and Thailand.

The Tamil Nadu Government officially rehabilitated 1,44,445 refugees from Burma till March 2001.<sup>16</sup> They were provided with land grants (that varied depending on which city or rural area they were settled in) and house-building loans that varied between 20,000 to 40,000 rupees (depending on the size of the family). The West Bengal Government resettled 15,216 refugees who had come back from Burma. They were mostly provided land in Barasat, near Calcutta, where a massive 'Burma Colony' has emerged. This area houses a Burmese Buddhist temple where monks continue to be drawn mostly from the Arakans. In Madras, most of the returnees were settled in north Madras-and it is around that area that the Burma Bazar started to grow. Today it is one of the biggest trade zones in Madras-and perhaps the only openly functioning contraband market in South India. Hundreds of traders here deal in

contraband, though they take care to maintain a facade of legitimate trade.

Most of these returnees have some family members or close relatives left behind in Burma. That has allowed many of them to develop a two-way contraband trade that has been mixed with some legal trade as well. Most of the successful traders in Burma Bazar have relatives in Burma and other countries of South-east Asia, from where many of their illegal imports are sourced. Now with the import regime becoming much more relaxed, these traders are able to develop their businesses. Many returnees have gone into plantation agriculture with crops like rubber, and some have even set up small industries. The Indian Government has routed Rs 3.7 crore between 1958-75 to the Governments of Tamil Nadu, West Bengal, and Andhra Pradesh to resettle the returnees (as the refugees began to call) from Burma. A meagre sum of Rs 15,60,000 was also given to the Government of Mampur to resettle 6 000 families who came and settled down in Moreh, a town opposite the Burmese border to Wn. of Tamu, and now duly believed to be holding contraband traffic worth the equivalent of millions of dollars. In this, and many other ways, the Indian Government provided rehabilitation for the settler refugees who came back from Burma.

But while the returnees who went back to the provinces of their forefathers slowly lost touch with Burma, the Tamils and other Indian settlers who returned from Burma and settled down in Moreh retained close connections with Burma. Moreh is 109 kilometres from Imphal, Manipur's capital, and is located in the state's hill district of Chandel. Naga and Kuki tribes rather than the plains-dwelling Manipuris form the bulk of population of Chandel district. But after the fierce Naga-Kuki feuds of the early 1990s, the Kukis took control of Moreh and forced the Nagas out. The Nagas dominate many parts of the highway that connects Moreh with Imphal-but today there are hardly any Nagas in Moreh. The Tamils who have settled down in Moreh have faced extortion from the Kuki militants belonging to the Kuki National Army (KNA). In 1995, the Kukis kidnapped a Tamil businessman from Moreh and held him in the nearby village of Chang Vangphei. When the Tamils refused to pay up, the trader was killed. That sparked off fierce

riots between the Kukis and the Tamils. Four Tamils and six Kukis were killed in three days of fighting before paramilitary forces took control of Moreh town. The Kukis found the Tamils to be tough customers, in the possession of quite an array of arms that they displayed during a march through Moreh during the riots. Some Tamil youths even threatened to blow up Kuki villages with help from abroad. After a period of time, the two communities settled for peace. The KNA cut down on extortion and the Tamil Sangam, the only Tamil organisation in Moreh, with about 3,000 members, built up schools in the Kuki villages. .

The president of the Tamil Sangam, N. Kumar, told this writer during a recent visit that trade around Moreh is beginning to dwindle and that many Tamils are migrating elsewhere-to Tamil Nadu or outside India. He said the Tamil Sangam, which was registered in 1986, had lost nearly 500 members in the past three years.<sup>17</sup> The Burmese have set up a huge market at Namphalong, just across the Tamu checkpoint inside Burmese territory. Indians are allowed to go and shop there without any hindrance-no travel documents are required, as this writer found out.<sup>18</sup> Kumar says the Namphalong market has been the ruin of the retail contraband trade in Moreh. Since the goods are cheaper in Namphalong, just a short walk across the checkpoint that separates Tamu from Moreh, no one makes purchases in Moreh anymore. That, said Kumar, was putting the local traders, mostly Tamil returnees from Burma, out of business.

But Customs officials in Moreh told this writer that the Tamils still controlled the wholesale contraband trade into Manipur.<sup>19</sup> Much of the contraband is of cheap Chinese origin-and what is lacking in trade margins is more than made up by the huge volumes involved. The contraband traffic in Moreh and Tamu, with cheap Indian goods like bicycles going into Burma and cheap Chinese goods coming into India, is said to be worth several millions of rupees a day-though accurate estimation is difficult. The official trade between India and Burma through Moreh, a designated point, 'has suffered because of unresolved issues like the currency to be used for trade. The wide gap between the official and unofficial rate of the Burmese kyat has contributed to the impasse. Narcotics Control Bureau officials say that heroin and

amphetamines are also being smuggled across Moreh and other parts of Manipur's borders with Burma. Though Kukis control much of the drug trade, the Tamils from Burma now settled in Moreh are also involved. Seizures indicate a growth in the drug trade, not the least because some medium size Burmese drug cartels are believed to have shifted business to the country's western border under pressure from the big cartels that run the trade in eastern Burma.

Besides the Tamils, the others who settled in Moreh are Bengalis, Telugus, Punjabis, Biharis, and Nepalis- all of whose ancestors came from across the subcontinent and who now find themselves in this border town in the middle of two warring tribes with their rebel armies trying to take control of the lucrative contraband trade route. With their troublesome experience in Burma, these settlers not surprisingly are conscious of their 'Indian identity'. Though most of the nearly 50,000 Nepali-speakers forced out of Burma have settled all over North-east India and in the Himalayan belt spanning southern Nepal and Sikkim, there are still a few hundred left in Tamu and Moreh. This writer met scores of Nepali-speaking women in Tamu's Namphalong market; they spoke fluent Nepali and some Hindi. The Tamils in Moreh speak a useful smattering of Hindi and their mother tongues.

The returnee community is a 'mini-India', a microcosm in the middle of two fiercely warring communities, with the Burmese military junta across the border looking at the returnees with suspicion over their alleged support to Burmese pro-democracy activists who had fled the country after the brutal military coup in 1988. Contraband trade continues, as in many other situations elsewhere in the world, with support from sections of the government across the border. Moreh resembles some coastal town in southern Florida with its huge Cuban emigre population-a town of drug dealers, dubious frontier-traders, and spies involved in sleaze, espionage, and smuggling. A curious cosmopolitan identity has emerged in Moreh through shared experience and the necessities of trade. The Tamils dominate the trade, both legitimate and contraband. With just the land they got and some money for house building at the time they came in, these 'returnees' have turned Moreh into the most lucrative trading

point on the India-Burma border within two decades. They have made the most of their contacts in Burma and their knowledge of that country. But as the retail trade has dropped after the opening of the Namphalong market, the 'returnees' have started leaving. N. Kumar says almost half the settlers of Indian origin who came to Moreh from Burma have left for destinations in other parts of India or for even as far as Singapore. No accurate estimates of the second migration from Moreh to elsewhere is available.

The settlers of Indian origin, numbering between half and three-quarters of a million, came to India from Burma at a time when the country was still rehabilitating the refugees of Partition—particularly in the East. The Government had taken the influx in its stride and had made reasonable allocations for their rehabilitation. The resettlement was seen as a fallout of decolonisation—the settlers of Indian origin who came back from Burma were seen more as *returnees* rather than as *refugees*, and they expectedly assimilated themselves into communities (with the exception of those in Moreh) from where their ancestors had hailed. Despite the initial problems, the issue of the Burma 'returnees' is now a settled question. Only if there is an ethnic conflagration in Moreh, like that in 1995, could there be some problems with the future of the second generation of 'returnees'. Those who went off to Singapore or Malaysia have done well for themselves.

**the pro-democracy movement and the influx** In 1987, Burma erupted against the misrule of the military regime. For almost a year, students and political dissidents appeared to be on top of the most powerful mass movement in contemporary Burmese history. Aung Sang Suu Kyi, daughter of Burma's greatest independence hero Marshal Aung Sang, found herself leading the pro-democracy movement while visiting her ailing mother in Rangoon. The attempts by the military regime to foist one puppet regime after another failed to satisfy the people's desire for democracy. The movement gathered unusual momentum towards the middle of 1988. The *Tatmadaw* (Burmese Army) leadership panicked and decided to take the movement head on. In August-September of 1988, the *Tatmadaw* perpetrated a series of massacres in Burma's cities to crush the pro-democracy uprising. As hundreds of students and political activists were killed or arrested,

the remaining fled the military dragnet. For the first time, hundreds of students from the Burman heartland of the country fled to the remote hill regions along the country's borders controlled by ethnic rebel armies like the Karen National Union (KNU). Several thousands escaped into Thailand and India, as these were the two countries which were closest to the major cities of Burma and were seen as safe havens.

As early as August 1988, India had expressed sympathy with the pro-democracy movement in Burma. A spokesman of the Indian External Affairs ministry spoke of the 'undaunted resolve of the Burmese people to achieve democracy', and said India 'will support the historic struggle.'<sup>20</sup> After the bloody military crackdown that started on 18th September 1988, India became the only neighbour of Burma to adopt a clear-cut refugee policy.<sup>21</sup> As scores of Burmese students and pro-democracy activists started pouring into India's frontier North-eastern states, P.V. Narasimha Rao, India's External Affairs Minister (later Prime Minister) told a parliamentary panel on 25th October 1988 that 'strict instructions have been issued not to turn back any genuine Burmese refugee seeking shelter in India.'<sup>22</sup> India's support for the pro-democracy movement was prompted both by her declared policy to support democratic movements in neighbouring countries and also by her angst at the Burmese military regime for forging close ties with China. In fact India was later accused of supporting Aung Sang Suu Kyi's National League for Democracy (NLD) and even funding the government-in-exile called the National Coalition Government of the Union of Burma (NCGUB), formed by some NLD politicians after the military regime refused to honour the May 1990 election results that gave the NLD a landslide victory.<sup>23</sup>

The first batch of Burmese students and pro-democracy activists arrived at Moreh on 2 October 1988. They were mostly from the townships of Kalemmyo and Tamu, but there were some from Mandalay as well. This group of about 50 persons was led by Aung Kyaw, who headed the All Burma Students Democratic Front (ABSDF) in western Burma, and by one of Burma's leading artists Sitr Nyein Aye. They stayed with friends, mostly from the 'returnee' families, in Moreh until 18 October. A second batch of another 100 Burmese arrived on 19 October. They were led by the chief advisor of the *Red Gamda*, an organisation of Buddhist monks

which had strongly supported the pro-democracy movement and had incurred the wrath of the *Tatmadaw*. Aung Kyaw remembers, 'at Moreh, we got conflicting reports. The BBC radio broadcasts said India had decided to accept us without any reservations. But the local Manipuri papers said the State government was unwilling to shelter us. We heard that the local police wanted us to go back to Burma. But within two days, we got a clear message. Indian officials came to us at Moreh and told us to go to Leikun, not far from the border, where a camp was being established for the Burmese refugees. When I turned up there, my serial number was 48. Which means 47 other refugees from Burma had already registered there before me.'<sup>24</sup>

The Leikun camp in Manipur's Chandel district was opened by the State government on 20 October 1988. Its strength rose to 250 within a month as more and more students and pro-democracy activists fled Burma to take shelter in neighbouring countries. In October 1991, another camp for the Burmese refugees was set up at Champham in the state of Mizoram. It housed 70 student activists initially, and its strength rose to 156 within a year. But the refugees allege that the attitude of the local police was far from sympathetic—though many local political parties such as the Communist Party of India (CPI) and the Manipur Peoples Party (MPP) and then supporters were sympathetic towards the cause of democracy in Burma. The refugees were confined to the camps, even tents, and their tin and bamboo huts often gave way during the rains. During the winter of 1988-89, the refugees faced an acute shortage of blankets. Table 4.3 shows the standard ration that was provided to a Burmese refugee—though very often the corrupt camp authorities would pilfer these supplies.

Most refugees found the rations grossly inadequate and wanted to supplement their income by doing some work locally. But they found the camp authorities strict in restricting them to the camps. Within a few months, they were in a state of semi-starvation. Sanitation was practically non-existent, and many of the refugees were struck with acute dysentery by the summer of 1989. One incident that occurred in March 1989 illustrates the uneasy relationship that existed between the Burmese refugees and the Manipur government officials who were running the Leikun camp.

Table 4.3: Rations Given to Burmese Refugees at Leikun and Champhai (per head per day)

Rice	450 grams
<i>Dal</i> (Lentils)	50 grams
Potato	150 grams
Cooking oil	40 grams
Sugar	30 grams
Salt	20 grams
Ginger	5 grams
Tea leaves	2.5 grams
Chilly	2.5 grams
Curry powder	2.5 grams
Onions	1.25 grams
Kerosene oil	60 litres per 50 persons per month
Pocket allowance	Rs 5 per head per day for adults / Rs 2 per head per day for minors

Source: Leikun Camp authorities interviewed by the author.

On 24 March 1989, two Burmese student refugees visited Imphal without informing the Leikun camp authorities. The Manipur police arrested them in Imphal and brought them back to the Chandel police station. Both were beaten up on suspicion of being drug peddlers. When news of this reached the Leikun camp, the other students started shouting slogans against the police. A huge demonstration was held just outside the camp on 25 March 1989. Forty-three students shifted to Moreh and they were given full support by the local people who were against the brutal military repression inside Burma. But the Manipur police cracked down on the Burmese students and arrested 40 of them. Then, without the Union government being informed, they were pushed back through New Samatal village into Burma. Some of them were reportedly caught by the Burmese Army and the border police in Tamu and Kalemyo, and executed on charges of robbery, and the rest melted into Burma; some even made their way to the border with Thailand.<sup>26</sup>

A few of them returned to Moreh with Dr Mahn Myint Noe, a Karen human-rights activist. They got in touch with those holed up in the Leikun camp. In mid-1989, most of the Burmese students started escaping from Leikun and Champhai. Many settled down in Imphal, and some went to Delhi. Some later went back to Burma when the military junta relented and announced the elections. Aung Mye Thaw remembers that in August 1989 a Home Ministry official arrived at Leikun and questioned the inmates about the camp conditions. After that meeting, in which the inmates complained furiously about the paucity of food, blankets, and health services, the camp conditions improved.<sup>27</sup> After this meeting, the students began their political activities from some makeshift offices in Imphal and New Delhi. From the end of 1989 the Burmese refugees started applying for refugee status to the UNHCR. The pushback of March 1989 had unnerved them. When asked why they started applying to the UNHCR, some of the refugees told this writer that recognition by the UNHCR would ensure non-expulsion, and the financial assistance they got out of the UNHCR, though meagre, would enable them to sustain themselves, at least in a group. The Indian Government's assistance, routed through the Manipur and the Mizoram authorities was inadequate.<sup>28</sup>

In 1989, the first Burmese was given refugee status by the UNHCR in India. Thereafter the UNHCR's Delhi office has provided refugee status to hundreds of Burmese who have fled their country. Some of them are pro-democracy activists and belong to the minority Burman community, but most of them hail from the border regions like the Chin Hills and the Arakans. The Chins account for almost 90 per cent of the Burmese nationals accorded refugee status by the UNHCR in Delhi. Though not permitted to operate Burmese refugee camps in India, the UNHCR keeps itself informed on the influx from Burma.

The UNHCR has, however, reservations about many of the Burmese seeking refugee status in India, as many of them are believed to be economic migrants unable to provide 'sufficient evidence of their political activity that could lead to persecution'. Table 4.4 will indicate year-wise the number of Burmese who arrived in India and the number of them who have received refugee status from the UNHCR.

Table 4.4: Burmese Refugees in India

Year	Burmese Refugees Entering India (as per Government of India records)	Burmese Granted UNHCR Refugee Status in India
1988	904	Nil
1989	1,103	1
1990	613	16
1991	217	27
1992	514	73
1993	426	68
1994	313	103
1995	293	74
1996	313	157
1997	372	122
1998	389	153
1999	149	149
2000	323	172
2001	295	130

Source: UNHCR and Ministry of Home Affairs.

Table 4.4 clearly indicates that only a small percentage of Burmese refugees who have come to India have got UNHCR recognition. Initially, the UNHCR was hopeful that many of the Burmese who came to India would go back. In 1990, when the junta allowed elections, which the NLD won, there was an expectation that the Army would honour the election verdict and allow the NLD to take the reins of power. Had that happened, most of the Burmese refugees in India would have gone back. But after 1990 that hope disappeared. The junta, now called the State Peace and Development Council (SPDC), is still reluctant to honour the verdict of the 1990 elections or even hold fresh elections, though recently, in May 2002, they released Aung Sang Suu Kyi from confinement. And though there is now more freedom for conducting political activities, the level of change is not enough to inspire



sufficient confidence amongst the Burmese refugees in India to go back.

The Indian Government continues to run the Leikun refugee camp, though the one at Champhai has been closed down. But most of the Burmese pro-democracy activists have now shifted to Delhi, particularly after receiving UNHCR recognition, because they need to stay in Delhi in order to receive UNHCR assistance. Some are staying in Imphal, Moreh, and Churachandpur. On 12 February 2000, the Manipur Home Secretary issued an order asking the state police to monitor the presence of the Burmese nationals in the state. The order said it had been decided that, 'action be taken not to allow any Myanmar refugee to stay in any location other than at the camp established by the Government at Leikun.'<sup>29</sup> This order listed the Burmese pro-democracy activists staying in Imphal, Moreh, and Churachandpur-numbering 16 in all. Now the number is down to 12, as this writer found during a recent trip to Manipur. There are hardly 20 refugees at the Leikun camp. The Manipur government, particularly the state bureaucracy, has displayed a degree of unease towards the Burmese pro-democracy activists, particularly after they started holding regular rallies with support from local political groups like the MPP and the CPI.

But after 1997, the scenario began to change markedly; whatever little degree of support and freedom there was from the Government's side decreased noticeably. Until 1997, these activists would observe Burma Independence Day (4 January), Union Day (12 February), Resistance Day (27 March), and Uprising Day (8 August 1988). They would hold demonstrations and rallies at Moreh under the very nose of the Burmese border police. On 8 August 1998, while observing the 10th anniversary of the Uprising, a huge rally was held at Moreh. Several senior Manipuri politicians, like the MPP leader O. Joy Singh, and a number of CPI leaders attended the rally. But the Chandel district administration, under orders from above, enforced prohibitory orders and confined the rally to a small area in Moreh. About 200 Manipuri youth activists who had joined an equal number of Burmese activists were prevented from staging a march in the town. Next year, on the same day, the Chandel district administration imposed a

curfew to foil the rally and seven Burmese youth leaders were arrested for violating the curfew. Refugee leaders say that the Burmese authorities put heavy pressure on their Indian counterparts to prevent rallies and demonstrations so close to the border.<sup>30</sup> And the Indians had good reasons to oblige-the Burmese had started concerted operations by then against anti-Indian rebel groups based in Sagaing Division of Burma. And, even before that, in 1995, Indian security forces had received support from Burma for conducting operations against insurgent groups from North-east India. In the later half of the 1990s, India initiated a policy of systematically engaging with the Burmese military rulers. The two sides signed an understanding on security collaboration along their 1,640 kilometre-long land border, and some coordinated operations started taking place.

This policy change in the late 1990s from the 'total support to the pro-democracy movement' in the late 1980s resulted from three considerations of the Indian Government: (a) it had to take note of growing Chinese influence in Burma, and wanted to counter it; (b) the security forces considered it necessary to secure full cooperation from the *Tatmadaw* in tackling trans-border insurgencies in that region; and (c) the Government became interested in developing trade and road communications with Burma to be able to use it as a bridge across to markets in South-east Asia. These new foreign policy priorities have rendered the Government much less enthusiastic or sympathetic towards the shelter-seekers from across the border. The comparatively lenient policy of the earlier years is now much less in evidence, one instance of the change being the re-opening of the case against Sae Myint, a Burmese refugee who as a teenage boy had hijacked a Rangoon-bound Thai Airways plane to Calcutta in November 1990. The case had been all but forgotten, though it was never dropped, despite efforts by one of India's leading human rights crusaders Nandita Haksar.<sup>31</sup> Many other Burmese pro-democracy activists complain of similar harassment. Many escapees from Burma, including some army deserters who had fled the country complaining of harsh working conditions and the difficulty they faced in 'observing brutal orders' such as securing forced labour from villagers in the Chin Hills, were pushed back. Some deserters were

reportedly sentenced to death; others were convicted for life. The grim tragedy has been that an overwhelming number of these deserters were teenagers, and themselves possible victims of forced conscription.<sup>32</sup> The change in Indian attitude has been also reflected in the arrest of the leaders and activists of the National Unity Party of Arakans (NUPA) and Karen National Union (KNU) who had been staying in India, and with many of whom the Indian Government had related in the past to tackle insurgency in the North-east. The Central Bureau of Investigation and the Calcutta High Court are already seized of the matter, and the detained Burmese face a serious predicament—if they are repatriated to Burma, they may possibly face death. Human rights activists have moved the Calcutta High Court, which has jurisdiction over the Andaman Islands from where they were arrested, to prevent a possible repatriation, and an appeal has been made to the UNHCR to declare these rebels as 'prisoners of conscience,' so that they can be moved to a safe third country.<sup>33</sup> About 200 of the Burmese refugees in India are sympathetic to the NUPA; they mostly stay with friends and relatives in Mizoram and Tripura, and a few of them have received refugee-status certificates from the UNHCR. Most however spend their days in danger of being hounded out and pushed back. The intense pressure from both sides has weakened the political resistance of the Arakanese, and many have surrendered to the Burmese military junta.<sup>34</sup> Incidents like these even in their barest outlines show not only the intrinsic link between a country's asylum policy and its foreign policy priorities, but the starkness of the moral question; namely, does a country ever care for denizens of other countries without caring for itself?

### **the chin dilemma: economic migrants or refugees?**

From 1990, the Burmese military regime rapidly extended its control over Burma's south-western region in the Chin State and the Sagaing Division. This expansion programme resulted in the establishment of over 20 new battalions of soldiers throughout this remote and mountainous area. The principal outcome of the increased military presence has been the growing persecution and impoverishment of the local people. Along with its expanded

military facilities, the regime also imposed a programme of infrastructure projects throughout the north-west, ostensibly to facilitate development. The work has been and is still being done almost exclusively by villagers who are forced to work at gunpoint.<sup>35</sup>

A large percentage of the population in this area consists of the Chin tribesmen who, according to varying estimates, number between 1.5 to 2.5 million.<sup>36</sup> The Chins had converted to Christianity in the 19th and early 20th centuries influenced by western missionaries. The *Images Asia* report alleges that the 'Burmese Army is now actively restricting and punishing those persons wishing to practise Christianity, while rewarding those converting to Buddhism'.<sup>37</sup> The Chin leaders did not immediately revolt against the Burmese central authority unlike the Karens or the Shans, though they only grudgingly accepted the division of their people into three administrative regions. The historian Martin Smith says: 'The Chins who were politically quiescent, ethnically divided, and acknowledged their dependence on ministerial Burma, ended up without even a state; instead they were formed into a special division with few of the political privileges of the Kachins and the Shans'.<sup>38</sup> Only under the 1974 Constitution was a new state for the Chins created. Although some resistance movements were active in the Chin areas in the 1950s and the 1960s, they were quickly crushed. On the other hand, large numbers of Chins continued to join the Burmese Army. But after the pro-democracy uprising, in which a large number of Chin youths participated, the Burmese Army moved into the Chin state in a big way. The formation of the Chin National Front (CNF) and its armed wing, the Chin National Army (CNA), was a turning point. Large numbers of Chin youth joined the CNF and the movement intensified.

In 1988, there was only a single Burmese Army battalion in the Chin state. Now there are 10. Consequently, human-rights abuses against the civilian population have increased dramatically. There is a de facto curfew in many parts of the Chin state and freedom of movement is severely restricted. Forced labour, rapes, extrajudicial killings, fines, and rampant arrests are reported from all over the Chin populated areas of south-west Burma. These areas

are also Burma's least developed regions and poverty is acute and rampant. Over the years, therefore, thousands of Chins have migrated into India's Mizoram state. Since 1988, there has been a dramatic increase in the number of Chins crossing into India-but it is difficult to say how many were crossing over to look for economic opportunities, and how many were fleeing political persecution. Estimates about the number of Chins in Mizoram vary between 40,000 and 70,000. Hre Mang, a Chin refugee and the author of a report on Chin refugees, says that most of the post-1988 Chin fugitives have fled for fear of persecution, but the Mizoram Government says most of them are 'economic migrants' who should be pushed back. In any case this remains at best an unclear classification, at worst dubious.

In Mizoram, the local Mizos initially welcomed the Chins as they saw themselves as ethnic cousins of the Chins. That is how thousands of Chins could find shelter and livelihood in Mizoram, to the extent that domestic servants in Mizoram's bigger towns, and handloom weavers, were almost wholly Chins. After 1988, this support syndrome continued. The CNF guerrillas operated out of eastern Mizoram. But by 1994, sympathy was beginning to run out. The state administration and the Indian Home Ministry began to view the Chins as suspect in view of reports that the CNF was cooperating with the rebel groups in North-east India and was actually helping them in carrying weapons and supplies from Bangladesh and Burma. Also, the Mizoram Government managed to convince the Indian Home Ministry that the Chins in Mizoram were not refugees who had taken shelter to avoid persecution, but that they had migrated illegally in search of gainful employment. Taking refuge in legal definition of refugees, the Home Ministry maintained that, 'a distinction needs to be maintained between political refugees and economic migrants.'<sup>39</sup> In September 1994, Lian Uk, a member-elect of the Burmese Parliament from the Chin State, alerted the UNHCR and concerned NGOs about the forcible repatriation of Chin refugees from Mizoram.<sup>40</sup>

Figures of these expulsions have varied in thousands. Not only have CNF militants been pushed back, the Chin civilians are also often on the run, uprooted from settled locations. Mizo political and student groups have unleashed 'Quit Mizoram' campaigns

against the Chins. India's growing cooperation with the *Tatmadaw* has also resulted in joint operations that have in turn resulted in Chins being identified and pushed back into Burma. Many Chin students and political activists have fled to Delhi and approached UNHCR.

This writer conducted an on-the-spot survey along the Mizoram-Burma border in February-March 2002. After questioning at least 200 Chins through interpreters, it was possible to identify the following: (a) a definite correlation between economic hardship caused by Burmese Army activities and the flight of a large number of Chins; (b) that many Chins have fled to avoid political and religious persecution; and, (c) they find themselves sandwiched between Burmese and Indian security forces who were targeting the CNF and treating all Chins as potential suspects. Most of the Chins questioned by this writer said they had fled because they wanted to avoid forced labour and heavy fines/penalties imposed by the Army on villages for allegedly sheltering CNF insurgents. It was clearly beyond the means of most of the Chin villagers to pay such fines/penalties-and the forced labour imposed by the *Tatmadaw* resulted in the Chins being unable to cultivate their own land. It seems that the Burmese troops have been particularly harsh on the Chin villagers, possibly because the CNF has not accepted ceasefire proposals by the military regime. There were also a number of rape victims among those interviewed.

Complaints of religious persecution were also rampant. The investigation confirmed the reports of *Images Asia* and *Other Media* about the situation in the Chin areas of Burma. In view of the large scale persecution-political, economic, and religious-perpetrated by the Burmese Army against the Chin civilian population, it can be said that many of the Chins have been forced to flee their homeland not to look for 'better economic opportunities', as has been projected by the Mizoram and the Indian Governments, but to ensure survival and minimum livelihood. There is a strong case for treating them as refugees, as defined by the 1951 Convention.

Here is a strange situation-while not signing the 1951 Convention, India now takes recourse to the Convention definition of

a refugee to deny the Chins the right of consideration as refugees. Also, when the MNF (Mizo National Front) rebels used to take shelter in the Chin Hills with the Indian Army moving against them, the Chin migrants were not suspect to the Mizo political class. Now, with the MNF being a legitimate political party after the agreement of 1986, the Mizo attitude towards the Chins has become hostile. In this situation, possibly the UNHCR would have to impress upon the Indian Government to allow its officials to undertake an independent survey in Mizoram to assess for itself as to how many of the Chins are 'economic migrants' and how many have come into India escaping political and religious persecution. There is reason to believe that this is not a case of two clearly separate categories, but one of overlap of the two in a situation marked by direct violence, threat of violence, fear, and economic insecurity, particularly in the wake of forced labour in Burma driving the Chins to penury and flight. Economic pressure is, if not always, at least sometimes, a prelude-and complimentary-to political persecution.

The Burma connection is like a closed circle now-when the first refugees arrived in the aftermath of war, the Government was not sure if they were refugees. That confusion has returned in the wake of all kinds of political considerations. The debate is on again among administrators, humanitarian agencies, and security specialists, namely; does the latest phase of forced movement of people from across the Eastern Hills constitute an arrival of refugees?

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## 5 the genocide of 1971 and the refugee influx in the east

K.C. Saha

**genesis of the crisis** On 25 March 1969 Ayub Khan resigned and handed over the Government to General Yahya Khan who imposed martial law for the second time in Pakistan. After assuming power, Yahya Khan declared that he would hand over the reins of Government to the elected representatives of the people, and to achieve this end, he announced general elections. The elections to the National Assembly were to be held on 5 October 1970, but they were postponed to December 1970 due to a cyclone hitting East Pakistan. After the elections, the two largest parties that emerged victorious were the Awami League in East Pakistan and the Pakistan Peoples Party in West Pakistan. They secured 160 and 81 seats respectively out of a total of 300 National Assembly seats.<sup>1</sup>

On 13 February 1971, Yahya Khan announced that the National Assembly would meet in Dhaka on 3 March 1971. On 1 March 1971 the Government postponed the session with no fresh dates announced. On 6 March 1971 Yahya Khan announced in a radio broadcast that the National Assembly would meet on 25 March 1971. Mujibur Rehman, the leader of the Awami League, declared the fundamental demand for provincial autonomy non-negotiable, pressed for withdrawal of martial law before convening the National Assembly, and transfer of power to the elected representatives of the people forthwith, through a Presidential proclamation. On 25 March the President, who had gone to East

Pakistan for negotiations, flew back to West Pakistan and ordered army action in East Pakistan. Yahya Khan in his broadcast of 26 March 1971 outlawed the Awami League, banned political activities throughout Pakistan, and called Mujib and his partymen enemies of Pakistan. The Pakistan Army started committing serious atrocities on the civilian population of East Pakistan.

'After two days of deaths and destruction as many as 1,00,000 people were feared killed.'<sup>2</sup> The Parliament of India adopted a resolution and expressed their solidarity with the freedom fighters of Bangladesh.'<sup>3</sup> The marauding forces of Yahya Khan let loose on Bangladesh had left Dhaka University in a state of devastation. The Rajshahi University also shared the same fate at the hand of the West Pakistani forces.'<sup>4</sup>

**flow of refugees** As a result of the atrocities committed by the Pakistani military forces, refugees started pouring into the bordering Indian states of West Bengal, Tripura, Assam, and Meghalaya towards the end of March 1971. The Ministry of Home Affairs issued instructions to all border state governments to screen the refugees properly and register them under Section 3 of the Foreigners Act 1946. The refugees were to be given residence permits for a period of three months initially. It was also conveyed that the refugees should be given relief assistance and that the cost of such assistance would be met by the Central Government. 'No relief assistance from the Government was admissible to those who were staying with relatives and friends. The State Governments were authorised to construct temporary shelters at a cost not exceeding Rs 5 per square foot. The floor area allowed to each family was 100 square feet.'<sup>5</sup>

In a meeting with Opposition leaders in early May, the Indian Prime Minister Indira Gandhi declared that '15 lakh people from Bangladesh had come to India to protect themselves from the atrocities of Pakistani forces.'<sup>6</sup> In the second week of May 1971 he visited the refugee camps at Bongaon, Petrapole, and Itkhola in West Bengal, and said:

It was a huge problem and India was finding it difficult to deal with. Though there were shortages of commodities, in the

circumstances the Government had done good work. Many were still without shelter. Nothing much had come so far from other countries though assistance was expected from abroad. Evacuees would have to leave as soon as that would be possible. The international bodies might create conditions for the evacuees to go back to their homeland. The Union Government was considering proposals for dispersal of evacuees from the border areas. Arrangements for giving shelter to the evacuees in other parts of the country were being considered.'<sup>7</sup>

Indira Gandhi, while addressing two meetings at the refugee camps in the Haldibari Girls High School and Dewanganj in Jalpaiguri district of West Bengal, said that 'Pakistan was deliberately reducing the population of East Bengal by expelling the people who had voted for Mujibur Rahman in the last election.'<sup>8</sup> The Defense Minister Jagjivan Ram along with the Central Relief Minister R.K. Khadiolkar visited the refugee camps in West Bengal and Assam in the third week of May 1971. The Assam Chief Minister Mahendra Mohan Chaudhury discussed with the Defense Minister the question of overall security on the Assam-East Pakistan border in the light of a Pakistani build-up in the Karimganj sector. 'Between 6 May and 19 May, 1971, the UNHCR Mission visited numerous refugee camps in West Bengal, Tripura, Assam, and Meghalaya, the Indian states most affected by the refugee influx, and held discussions with high level Indian officials, UN agencies and non-governmental organisations. In a cable to the UNHCR, the Mission declared itself depressed by the reign of terror, which was obvious on the faces of the people they met, who were often stunned and expressionless. The team saw many men, women, and children wounded by bullets. Arson, rape, and dispersal were the common topic of discussion. Words failed to describe the human plight that the team had seen.'<sup>9</sup>

East Pakistan had a population of 75 million in 1971. About 10 million of them came to India as refugees. In order to understand the magnitude, gravity, and complexities of the refugee influx, it may be worthwhile to examine the situation state-wise, with some of the districts in particular.

West Bengal. There were widespread protests in West Bengal by different socio-cultural organisations over the killings of innocent civilians in East Pakistan. The influx of refugees was mostly in the border districts of Nadia, 24-Parganas, Murshidabad, Malda, West Dinajpur, Jalpaiguri, and Cooch Behar. The situation in the first week of June indicated that the influx of refugees had been in such numbers that the administration was finding it difficult to cope with the situation. Out of 40 lakh refugees in West Bengal, about 19 lakh could somehow get shelter - five lakh in temporary shelters in schools and rest in the open. The monsoon rains had also started. After registration, the refugees got rations for four days. How were they going to survive the other days? Where would firewood be arranged from? Where would necessities be procured from, even if the money were to be made available? After two to three weeks when schools reopened after the summer vacations where would the refugees go? If they were not shifted, the studies of many students in these districts would be affected.<sup>10</sup>

L.V. Satharishi the then sub-divisional officer at Basirhat under 24-Parganas in an interview with the writer stated that 'about 3.5 lakh refugees stayed in Basirhat, and about three lakh refugees transited through Basirhat and moved to Barasat, Calcutta, and other areas. Most of the refugees from the urban areas preferred to move towards Calcutta, whereas others from the rural areas settled down in the Basirhat area. The refugees were from the adjoining district of Khulna in Bangladesh and some refugees came from the Kusthia district and other areas. The majority of the refugees were Hindus, though about 25 to 30 per cent of the refugees were Muslims. In total about 21 camps were established. Initially the refugees had settled down wherever they could find vacant space. In the process some of the refugees settled down in private land in the villages. The administration had to intervene in such cases and compensation was paid to the landowners. Later the refugees could be shifted to the government-run camps.'<sup>11</sup>

He further stated that for the construction of camps, locally available bamboo was used, and for the purpose of roofing, tarpaulm, polythene, and plastic sheets procured from the Central Relief Office, Calcutta, were made available. Some of the larger camps with a refugee population exceeding 20,000 were

established at Hasnabad, Bhaduria, and Swaroop Nagar. In the initial months the conditions in the camps were chaotic and early rains caused further difficulties for refugees. But from the beginning of September 1971 the camps were systematised. Initially the local officers of different departments were deputed to run the camps, but later when the services of retired army officers were made available from the Central Relief Office, Calcutta, these officers were withdrawn and the retired army officers were deputed in charge of the camps. The topmost priority was given to the supply of food. In the initial period the services of the NGO's were utilised for the distribution of relief material, but later, in order to have better accountability, only government agencies or government designated agencies were associated in the distribution of relief material. Special care had to be taken for expectant mothers, mothers who had just delivered babies, old men and women, and children. Some of the old men and women were carried by their relatives on their backs. Ensuring security in camps, particularly for women, was the second-highest priority since the possibility of their being abused by unsocial elements of the local populace always existed. There were cases of cholera, small pox, and diarrhoea, but the same could be controlled. There was no hostility from the local population as the press had adequately highlighted the crisis as a national one, and they were enthused and extended all help. UNICEF, Care, Oxfam, and the Red Cross extended help to the refugees. The Marwari relief society, the Bharat Sevashram and other local NGO's also extended help to the refugees. Mother Teresa established a camp hospital with the help of Oxfam, which was later converted into a permanent hospital and dedicated to the local population.<sup>12</sup>

The refugees moved from place to place seeking proper shelter. 'Calcutta to Taki, Taki to Hasnabad, Hasnabad to Basirhat, Basirhat to Barasat, Barasat to Dumdum, Dumdum to Salt Lake - the refugees were moving from one camp to another and getting refused. The Marwari relief society in Basirhat was running 10 relief camps in which there were over 2.8 lakh refugees. On the request of the State Government they had to shoulder the responsibility at another 38,000 refugees.'<sup>13</sup> The Government was providing rations, but nobody was providing firewood. 'Cholera was

spreading in epidemic form. The camps were established in 24-Parganas, Nadia, Murshidabad, and no foresight had been shown in selection of camps. It was thought to be a temporary affair for a few days.<sup>14</sup>

Bangladesh became an independent nation on 17 December 1971. The refugees started repatriating of their own will on foot, rickshaws, and bicycles. The majority of the refugees were getting impatient to leave the camps and reach their own villages and towns. They were afraid that any delay might affect their right of possession over their movable and immovable property left behind in Bangladesh. However, the number of trucks available was not sufficient to meet their demands. In order to cope with the situation trucks and buses were hired from all over and pressed into service. The end of January 1972 was fixed as the deadline for the repatriation of the refugees. About 20 per cent of the refugees stayed back after the deadline. They were persuaded to repatriate, and later they did repatriate. But a special camp had to be run for the orphans and widows who were abandoned. Many of them were repatriated after their families were traced with the help of the Bangladesh authorities. Some of the orphans were adopted by Indian families. All cooperation had been extended to the Bangladesh authorities in the adjoining districts to establish normalcy and proper resettlement of the repatriating refugees. It was the team work of the officers, complete delegation of power to the local authorities, and material support from the Central Relief Office that saw such a crisis being handled successfully despite the fact that one-third of the administrators' time had to be spent on the innumerable VIPs who visited the refugee camps almost everyday. The neighbouring sub-division of Bongaon under the 24-Parganas district had hosted about five lakh refugees from the adjoining district of Jessore and Kushtia. In West Bengal the district of 24-Parganas had hosted the maximum number of refugees-over 15 lakh.

J.V.R. Prasad Rao, the then additional district magistrate of Nadia, in an interview with the writer stated that 'the district of Nadia had a population of about 20 lakh and the influx of refugees had been about 12 lakh. The most important aspect of this influx was that the majority of the refugees came within a period

of 10 to 15 days. Thus the influx was very sudden and intense. In the initial stages the majority of the refugees were Hindus, but later the refugees included both Hindus and Muslims. Most of the refugees came from the neighbouring district of Kushtia. Some refugees also came from Faridpur. The refugees came through the entry points of Darshana Gede, Chapra, and Karimpur. Most of the refugees came on foot, and refugees in the hundreds died on their way due to exhaustion. Many refugees were suffering from acute diarrhoea and other health problems and had to be admitted to the district hospital; about 800 refugees died there.'

Due to the sudden influx of refugees into the district no arrangement could be made initially. Refugees stayed in the open fields. Bharat Sevashram, a social organisation, did very good work in caring for the refugees. They served cooked food to the refugees for a number of days. But later when the number of refugees increased considerably, dry rations were distributed to the refugees. The administration procured hogla grass from the neighbouring district of Howrah for the construction of shelters. Some of the large camps with more than 50,000 refugees were established in Kalyani, the Bahadurpur forest area north of Krishnanagar, the district headquarters, and at Chapra on the Karimpur road. A special camp had to be established for about 500 unattached women who had been sexually abused by Pakistani troops.

Once the camps were established the situation improved considerably, but unhygienic conditions prevailed. The Indian Red Cross had done excellent work in providing assistance to the refugees. The other international NGOs, Oxfam, Caritas, and Care also rendered considerable assistance to the refugees. The police had to open fire in a camp in Bahadurpur area where some disgruntled elements created problems over the distribution of relief materials, but luckily nobody died in that incident. The district administration had to coordinate the movement of the army.

When Bangladesh became independent, the refugees volunteered to return immediately, and the district administrations requisitioned all trucks available and sent the refugees to Bangladesh in hundreds of trucks. All the camps were closed in about 15 days time. It was a crisis that could be faced because all government employees and the common people rallied behind the



administration to do their best.<sup>15</sup> S.S. Chattopadhyay, the then additional district magistrate of Murshidabad, in an interview with the writer stated that '5 to 6 lakh refugees came into the district. The refugees mostly entered through Jalangi, Lalgola, and Raninagar. They were mostly from the adjoining districts of Rajshahi and Kushthia. The river Padma separates the district of Murshidabad in West Bengal from Rajshahi and Kushtia in Bangladesh. The refugees could cross the river in the summer months in small boats. About a lakh refugees also came to the district from Calcutta by train. These refugees could not be accommodated in camps in Calcutta and the other areas of 24-Parganas and were sent to Murshidabad in special trains. Some refugee camps with more than 20,000 refugees were set up at Banjetia and Lalbagh areas. Among the refugees were the deputy commissioner of Jessore, and the sub-divisional officer of Natore, of Bangladesh. They were accommodated in the government guesthouses. There had been about a thousand deaths, mostly of children, in the camps. Immediately after the independence of Bangladesh the refugees just melted away and repatriated of their own will.'<sup>16</sup>

P.K. Banerji, the then additional deputy commissioner of Cooch Behar, in an interview with the writer stated, 'against the total population of 7 lakh in Cooch Behar district, the total influx of the refugees was about 7.5 lakh. Most of the refugees were Muslims; there were some tribals also. The refugees mostly came from Rangpur district of Bangladesh. The refugees entered the district through Gitaldaha, Sitalkuchi, Haldibari, Mekhliganj, and Sitai areas. The influx of a large number of refugees posed a serious burden for the administration, considering the remoteness of the district. Most of the relief assistance to the refugees had been provided by the district administration. The Lutheran World Service had a center in the district that provided some assistance in the initial phases. Most of the refugees stayed in camps. A few large camps had been established in the interior of the district and the refugees were moved from the border areas. Transport was arranged for the repatriation of the refugees, and once all the refugees had repatriated the camps were closed.'<sup>17</sup>

**tripura** 'In 1971 the total population of Tripura was 15.56 lakh. The number of refugees from East Pakistan was 13.42 lakh. The

number of refugees further increased and created a deep impact upon the public life and economy of Tripura.'<sup>18</sup> Due to influx of refugees the population almost doubled in the towns of Agartala, Dharmanagar, Udaipur, Belonia, and Kailasahar. In the border areas, despite hundreds of camps being set up, the pressure on towns increased considerably. Thousands of refugees were entering Tripura through Sankhu, Dharmatala, Belonia, Agartala, Kailasahar, Kasha, and Sonamura. The Chief Minister of Tripura on 25 April 1971 said, 'about 60,000 refugees have been registered. Of them 40,000 were staying with relatives. Most of the refugees had come from Camilla, Chittagong, Srihatta, and Noakhali districts of Bangladesh. Everyday thousands were entering Tripura through the border.'<sup>19</sup>

In the first week of April camps were not established. The refugees were accommodated in schools and colleges as these were closed. Most sections of society dedicated themselves in organising relief. Some collected money, others clothes, others looked after the places where the refugees were staying. The Chief Minister called a meeting of the Cabinet in the first week of April to tackle the refugee situation, and requested the Central Government for help and also asked them to treat the influx of the refugees as a national crisis.<sup>20</sup> By 17 April 1971, 19 camps were established to accommodate the refugees.<sup>21</sup> By July 1971, 57 lakh refugees had entered India, most of whom were in West Bengal, then Tripura, followed by Assam and Meghalaya. In all, 36 camps were established and 6,92,154 refugees stayed in the camps, whereas the remaining refugees made their own arrangements or stayed with relatives. Refugees who were sent out of the state numbered 25,440, and Rs 7.2 crore had been spent on refugee relief. The estimated expenditure was assessed at Rs 45 crore, and 350 doctors and health workers had been engaged by the State Government. For organising relief, the shortage of vehicles and bad conditions of roads posed hurdles. The inexperience of the relief workers, excessive pressure, communication problems, and reluctance of refugees to shift from one area to another created problems.<sup>22</sup>

'In November the inmates in refugee camps in Tripura numbered 8,80,316, of whom 5,27,100 stayed with relatives and friends.

Thus against the total population of 15,56,822, the number of refugees stood at 14,07,416.<sup>23</sup> As usual there was a shortage of food-stuff and other consumer goods due to the pressure of refugees. There was also an increase in the prices of general items. 'Curfew used to be imposed in Agartala at night.'<sup>24</sup>

**ass** .The influx of refugees into Assam had been mostly in the districts of Cachar and Dhubri. It was decided to accommodate the refugees in schools as no other place was readily available. The number of refugees were swelling and they could not have been left out in the open as the rains had already started. No tents were available in the district. Each school was designated as a camp. The supply of food grains, edible oil, salt, and fuel etc., was arranged. Most schools had water supply facilities and rudimentary sanitation. Where required wells were bored and sanitation provided.

Karimganj was overflowing with refugees, and the new arrivals had to be brought to Silchar. The students of the district were kept on a forced holiday and examinations could not be held. It was most undesirable to keep the schools occupied indefinitely. Plans were made to build camps with substantial capacity. Fortunately bamboo, a construction material, was available in plenty, and it was decided to use it to build planned colonies, selecting suitable sites near water sources. Within a month, the process of shifting the refugees from the schools started. The Government was particular that the refugees be kept segregated and not be allowed to mix with the local population. They were to return to their homeland at the earliest opportunity, and the possibility of their taking shelter on a permanent basis among relatives had to be avoided.

Though there was a fair sprinkling of Muslims who had come away, the majority of the refugees were Hindus, as they had been targeted special treatment. The Hindu leaders were not prepared to believe that the refugees would go back, and some did not want them to go back. The Muslim leaders on the other hand were not sympathetic towards the refugees and their presence in the district was viewed with distaste. The Union Minister for Industries, Moinul Haq Chaudhury, who was from Silchar district itself, came visiting the camps quite frequently, and so did the

the genocide of 1971 and the refugee influx in the east

Chief Minister Mahendra Mohan Choudhury. The Union Minister of State for Relief and Rehabilitation visited the refugee camps. The Assam Governor, B.K. Nehru, and the Cabinet Secretary T. Swaminathan also came, as well as Prime Minister Indira Gandhi who came to Silchar district twice.<sup>25</sup> 'More than 7,000 refugees from the Chittagong Hill Tracts crossed over to the Mizo Hills district of Assam.'<sup>26</sup> Due to the atrocities, destruction of temples and houses, 20,000 Buddhist Chakmas had taken shelter in the Arakan region of Myanmar, and 15,000 in the Mizo Hills.<sup>27</sup>

M.P. Bezbaruah, deputy commissioner of Goalpara district of Assam, in an interview with the writer stated that, 'about 1.5 lakh refugees came to the district. All the refugees were from the neighbouring district of Rangpur and entered through the Mankacher area. Mankacher had a population of about 10,000. In the initial phases about 5,000 refugees, and later about 10,000, came every-

5,000

day, which created heavy congestion in the border areas. It was decided to shift the refugees to the interior of the district. Initially the refugees were settled in schools, but later after the camps were constructed the refugees were shifted out of the schools. The biggest camp with 50,000 refugees was set up at Chapor. The Dhubri town had a population of about 30,000. The camp at Chapor was almost like setting up a new township. The other big camps with about 15,000 refugees had been set up at Lakhipur and Goalpara'.<sup>2a</sup>

'Dhubri town had a sizeable Bengali population. The local population was therefore sympathetic to the refugees in the initial phases. Some of the important leaders of the Awami League like Maulana Bhasani and others were originally from Dhubri, and there was greater involvement of the local people. But later when a few of the refugees continued to stay on and they started impinging on the supplies of essential commodities, resentment grew among the local population. There was a general price rise of all commodities. The local population held demonstrations on several occasions to express their resentment. Many times food supplies had not been received on time as a result of which a lot of problems had to be faced in the camps. Some allegations of the misuse of relief supplies had also been received, but they were not found to be true. The problem of sanitation was acute in the camps. There had been the deaths of about 500 refugees-mostly

children-in the camps. The condition of the refugees was so bad that they would not report a death fearing that their rations would be proportionately reduced. They would even collect sarees and dhotis from dead persons and sell these to earn a little money.

For the repatriation of the refugees a meeting was held with the deputy commissioner of Rangpur in Bangladesh. The trains took the refugees some distance; from there they went by trucks and buses. The complete record of the repatriating refugees was maintained, and a list was handed over to the deputy commissioner of Rangpur in Bangladesh. All the refugees had been repatriated. Despite the fact that the magnitude of the problem was enormous, everything went of rather smoothly.<sup>129</sup>

Meghalaya Prior to 1972, when Meghalaya became a full-fledged state, it was functioning as an autonomous region. In Meghalaya, the influx of refugees had taken place mainly in the districts of Shillong and Tura.

The then deputy commissioner of Shillong, J.K. Bagchi, in an interview with the author stated, 'initially in the month of March and beginning April 1971 the influx of refugees from East Pakistan was about 5,000 refugees everyday. At the end of May 1971 it reached a peak of 25,000 refugees per day. The total influx of refugees in the district of Shillong was more than the local population. As against the total population of about five lakh, the total number of refugees was about 5.6 lakh. The refugees came mostly from Sylhet district of Bangladesh. Initially there was resentment among the local Khasi population as they feared that the refugees would never go back. It was difficult to get land to establish camps as in Meghalaya all land belonged to the villages. After several meetings with village committees the local population agreed to extend all help to the refugees. It was difficult to arrange relief assistance locally due to remoteness of the district. For procuring tarpaulin for the refugee camps senior officers had to be deputed outside the State. Allegations were leveled that there had been irregularities in the purchase. Enquiries were conducted, but no irregularity was found'.

He further added that the largest concentration of two lakh refugees was in the refugee camps in the Balat area. At both the Dawki

and Cherra areas there were more than one lakh refugees. In all there were about 18 camps in the Shillong district. Cholera broke out in the camps resulting in about 20 deaths, mostly of children. The cholera vaccine had to be procured from Calcutta. There had been serious incidents of rioting in camps in which police had to resort to firing to control the situation, resulting in four deaths. Several times rumours like the sale of ornaments at very cheap prices in the refugee camps created problems for the administration. The refugee groups often sent complaints regarding relief distribution to the Ministry of Rehabilitation and also to the office of the Prime Minister. A Parliamentary committee under the chairmanship of the Deputy Minister of Rehabilitation visited Shillong and met with the Chief Minister Captain Williamson Sangma. The committee initially expressed its dissatisfaction over relief distribution, but when it visited the areas and got a first hand account of the efforts made by the State Government despite limited resources and difficulties of logistics due to the hilly terrain, it greatly appreciated those efforts. But there was serious water problems in the camps as the natural water-sources in the hills started drying up by the month of October. The Balat area which had the maximum concentration of refugees was only 150 kilometres from Shillong, but because of the crowding of refugees on the roadsides it used to take more than five hours to reach. It became difficult for the administration to reach certain camps and food packets had to be airdropped. The district administration had to devote considerable time and resources because of frequent VIP visits to oversee the conditions of camps and distribution of relief. The district authorities had to coordinate the movement of the army. The refugees started leaving for Bangladesh by January 1972. The district administration arranged for transport and facilitated the return of the refugees.<sup>130</sup>

K.K. Sinha, the then deputy commissioner of Tura, said, 'about six lakh refugees had entered the Garo Hills district. Camps were set up at 16 to 17 places. The large camps were set up at Rogra, Mahadeo, Baghmara, Menang, Shibbari, Dalu, Ampati, Phulbari, and Tikrikila. Hindus were in preponderance, but Muslims and Christians had also taken refuge in substantive numbers. By and large the local population extended cooperation. To start with,

housing, feeding, and security, and later health care, clothing, sanitation, and supply of drinking water were major problems, aggravated by a chronic shortage of staff and transportation of the required supplies to the camps through roads which came under regular fire from the enemy side. After Bangladesh became independent, the refugees had marched back on foot on their return journeys; camp articles including construction materials, clothing, and foodstuff were transported and handed over to the authorities in Bangladesh. Hardly any refugee stayed back in the Garo Hills; according to our records repatriation was almost 100 per cent.<sup>31</sup>

### **the role of the government of india**

the admission of refugees Regarding the admission of the refugees, the Government of India followed an open door policy. The border States of West Bengal, Tripura, Assam, and Meghalaya had been instructed to admit the refugees. It was made clear that the entire expenditure on refugee relief would be met by the Central Government. The Rehabilitation Secretary stated that 'beginning from the end of March, within a couple of months the total influx of refugees had gone up to nearly four million, and by the beginning of October it was nine million already, without any signs of them returning to East Pakistan at all. The average inflow still continued to be between 30,000 and 50,000 persons, and if this rate continued at this scale India might well have not less than 12 million refugees by the end of this year.'<sup>32</sup> In all, 9.89 million refugees entered India from 15 March 1971 to 15 December 1971. Annexure I present the distribution of Refugees State wise. Though the influx of refugees was heavy till the month of June, the influx continued in the subsequent months also. Annexure II gives the month-wise trend of influx of refugees.

To a question in Parliament as to what action the Government proposed to take when the number of Bangladeshi refugees that could be given shelter exceeded the capacity of the States, the Government replied that 'on humanitarian policy it would not be possible for the Government to refuse entry of the refugees from Bangladesh. The Government was conscious of the fact that providing food, shelter, and other basic facilities would impose a serious strain on our resources.'<sup>33</sup>

dispersal of refugees In order to ease the pressure of refugees from the border areas, it was decided that a proportion of the refugees should be dispersed to other States, and for this purpose centrally-run camps would be set up in those States. As a result of these decisions, 19 Central camps had started functioning in the bordering as well as other States, and 5,69,361 refugees were dispersed to these camps.

The reported refusal of some of the States to accommodate the refugees was debated in Parliament when the matter was raised through a Call Attention Motion. The Government in reply stated, 'the Government of India wanted to accommodate these refugees as near the border as possible so that they were in a position to return as soon as normal conditions were created. It was further stated that because of a heavy rush of refugees there had been serious congestion in the border States of West Bengal and Tripura. Some members opined that the congestion could not be relieved by removing the refugees from the border to the interior of the same State; moreover the total number of refugees who were to be dispersed would be a small number in comparison to the total of 5 to 5.5 million of refugees. Members also stated that the State's formal permission might not be necessary but some consultation would be necessary so that they make necessary arrangements. It was also stated that there had been disquieting reports that many refugees did not want to go to other States. On the question whether the Government thought that the remedy was only in some coercive measure as reported in the press that the refugees had been told that if they refused to go their rations would be stopped or the Government would resort to some form of propaganda campaign in the camps to persuade these people to go. It was clarified by the Government in Parliament that the congestion was confined to particular places near the border and the places where the camps were proposed to be located were far off from the border where the pressure of population was not much. The Government also clarified that it wanted to remove as many as 2.5 million refugees to camps.

Regarding transport facilities, it was stated that the Government had received large transport planes for carrying the material needed for the refugees and while returning they would be bringing refugees to the various camps. It had also been decided

to run non-stop trains to the camps. Refugees coming from one village wanted that they should be put in one place, and the Government decided to respect such sentiments and categorically stated that no coercion would be used.<sup>134</sup>

administrative arrangements 'For organising the gigantic program of providing relief to such a phenomenal number of refugees the Government of India had to establish a Special Branch Secretariat in Calcutta under a senior officer. This Secretariat was intended to be the executive outpost of the Central Rehabilitation Department and had been given necessary financial and other requisite powers for undertaking and executing on-the-spot decisions with regard to relief measures, setting up of camps, providing food and other supplies, including medical supplies, and for organising coordination with different State Governments as well as other voluntary agencies concerned. Also, at Delhi, a department had been established with a central coordination committee for providing liaison, advice, and assistance in implementation of the Government's policies as well as of international agencies.<sup>135</sup> The State Governments had also set up coordination committees and mobilised all its resources and manpower in the State headquarters as well as the districts.

assistance provided to refugees With a view to ensure regular supply of essential commodities to the refugees in the camps and curbing the trend in rise of prices, arrangements were made to supply rice, wheat, pulses, edible oil, sugar, salt, and match boxes through the Food Corporation of India (FCI). The FCI opened new depots at Dhubri, Karimganj, Shillong, Kokrajhar, Tura, and Goalpara in Assam. The Government of Tripura also made available to the FCI depots of the State Government at Dharmanagar, Udaipur, and Agartala for stocking essential items. Due to floods in the eastern States during August and September 1971, there was serious dislocations in rail and road traffic with the result that supply of essential food stocks to north Bengal, Assam, Meghalaya, and Tripura got seriously disrupted.

Supplies of essential items like medicines and foodgrains were, however, maintained by airlifting an adequate quantity of buffer stock for three months of foodgrains and other essential food items

in Tripura, Assam, Meghalaya, and north Bengal. The Government stated in Parliament, 'there were no negotiations with any country for import of foodgrains to meet the requirements of refugees. Offers of foodgrains had, however, been received from the USSR, USA, Japan and certain international organisations like the WPP and UNHCR. According to an estimate prepared, feeding 6 million refugees for a period of 6 months required 5,80,000 tonnes of rice. The total number of refugees exceeded 7 million and the influx continued unabated. These refugees were supplied from the existing stocks available in the country which was to be recouped from food aid.<sup>136</sup> 'The monetary ceiling fixed for supply of food stuff, etc., to refugees was Re 1 per head per day for adults, 60 paise for every child between the age of one to eight years, and 20 paise for every child below the age of one year. Within this monetary ceiling, the scale of rations was as follows:

<i>Item</i>	<i>Adults</i> (in grams)	<i>Children</i>
Rice	300	150
Wheat/Atta	100	50
Pulses	100	50
Edible Oil	25	12
Sugar	25	15

For refugee children under the age of a year, milk powder and baby food were issued out of donations made by international voluntary organisations. After computing the cost of the rationed articles, the balance amount of the prescribed monetary ceiling was disbursed in cash, which was not to exceed 33 paise and 20 paise per head per day in respect of adults and children respectively for the purchase of vegetables, salt, spices, fuel, hair oil, and washing soap. The scale of monetary ceiling for clothing was also decided; Rs14 for adults and Rs10 for children respectively. Supply of woollen and cotton blankets to the refugees staying in camps at the rate of 1 blanket per adult subject to a maximum of 3 blankets per family was arranged. Utensils and mats were also supplied to refugees in deserving cases.<sup>137</sup>

medical relief and health care Instructions were issued to the Central Government medical store depots at Calcutta and Guwahati to store adequate quantities of critical items like anti-cholera vaccines, rehydration fluids, bleaching powder, anti-malaria drugs, antibiotics etc. To facilitate supply four sub-medical store depots were set up at Agartala, Karimganj, Tura, and Dhubri. To meet the shortage of doctors and paramedical personnel, 500 medical and paramedical staff were sent from the Central Medical Service, Railway Medical Service as also from some of the States, public sector undertakings, and voluntary organisations. Two regular epidemiological units were set up to help investigate epidemics.

The Rehabilitation Secretary stated, 'The State Governments were allowed to employ medical and paramedical personnel from among the refugees on daily wages. In all, about 800 doctors, 2, 100 paramedical staff and 72 medical students were engaged in refugee medical-relief programmes. There were 700 medical units functioning in the camps. Fifty referral hospitals (existing and new) served the refugees. Nearly 4,000 additional beds were established in the hospitals. A 100-bedded mobile hospital was functioning at Bashirhat in West Bengal. All available WHO/ UNICEF vehicles meant for normal health program work were diverted for refugee relief work. Mass inoculation-programs were undertaken with the help of jet guns within a radius of 5 miles of the camps and in towns with a population of 20,000 and above.'<sup>38</sup>

Labour cases were admitted to hospitals attached to camps or to the nearest hospitals available. Expectant mothers were provided with milk through voluntary agencies like the Indian Red Cross Society. Milk and baby food were given to infants. Adequate medical and public-health facilities had also been organised from the very beginning. Therefore it was possible to cope with an outbreak of cholera in the summer months when the infection had been brought in by the refugees in large numbers, and it had threatened to spread all over the countryside too. Up to 20 September 1971, 46,752 cases of cholera were reported, and from them 5,834 persons died in the hospitals, health centers, and camps. In this effort too India greatly appreciated the help of international agencies who rendered all possible assistance

urgently. The Government of India had also been specially concerned over the incidence of malnutrition among children in the camps. In this context the Government of India approved of a scheme called 'Operation Life Line' which looked after over 2 million children and cost about Rs 3 crore (US\$ 4.1 million). Both preventive and clinical requirements of the situation had been fully kept in view while devising the program. For all medical and paramedical requirements, India had a good response from within the country itself, and also from technical personnel. That was why India had to gratefully decline some generous offers from outside agencies in this regard.'<sup>39</sup>

The Government stated in Parliament, 'As supply of milk powder and baby food from foreign agencies were forthcoming to meet the demand, no special appeal to countries rich in milk production was considered necessary.'<sup>40</sup> The Government of Meghalaya had reported, 'up to 30 June 1971, 1,205 refugees had left voluntarily from refugee camps in the Balat area for Bangladesh due to a scare caused by gastroenteritis. No instance of persons leaving on account of hostile attitude of the people had come to the notice of the Government.'<sup>41</sup>

water supply 'A norm of one tubewell per 200 persons was prescribed. About 43 deep tubewells were sunk and about 21,000 latrines were constructed. For drilling deep tubewells with a large diameter 48 drilling rigs of different categories were arranged. In addition, water tankers were arranged for the distribution of water.'<sup>42</sup>

education As the refugees were staying in India for a temporary period and were to return to Bangladesh eventually, it was not considered necessary to provide any elaborate schooling for them. However, educational lectures were organised for boys and girls in the camps through social workers and the National Social Service (NSS) on payment of a daily honorarium of Re 1 per teacher. The refugees in the camps were encouraged to undertake social-welfare activities such as distribution of rations, construction of shelters, and looking after sanitation and general cleanliness of camp premises. The women were also encouraged

to keep themselves profitably engaged in sewing, handicrafts, and bidi-making. With a view to providing recreational entertainments for refugees in the camps community radio sets were provided. Arrangements were also made to provide facilities for games like football.

Women's homes and orphanages were set up for single women and orphans so that they could live in a congenial atmosphere. These homes were run by social organisations, and here single women were given training in sewing, cutting, doll making, first-aid, nursing, handicrafts etc.

the financial implications of assistance 'A sum of Rs 80 million was advanced to the FCI in April 1971 for purchasing adequate quantities of foodgrains and other essential commodities and for stocking them in their godowns in the border areas. Originally a provision of Rs 600 million was made in the budget estimates for 1971-72 towards relief of refugees. An appraisal of the Fourth Five-Year-Plan was undertaken which took note of the emerging social and economic situation including the influx of the evacuees from East Pakistan. It was decided while making a reappraisal of the Fourth Five-Year-Plan that if some additional amount were required, it would be taken into account. As the influx continued and the expenditure on relief of refugees increased, a total supplementary grant of Rs 3,000 million was obtained in two installments. While preparing the original estimates and demands for supplementary grant, the expected foreign aid-estimated at Rs 1,100 million-was taken into account.'<sup>43</sup>

The Government imposed a new tax to meet the refugee situation. 'The total receipt from refugee levies imposed by the Central and State Governments were estimated at Rs 75 million whereas the total expenditure was of the order of Rs 3,060 million. The rest of the expenditure was financed from relief assistance received from abroad and normal budgetary resources.'<sup>44</sup> 'The refugees from Bangladesh were not allowed to work, or pursue any trade or profession, pending their return to Bangladesh.'<sup>45</sup>

A special meeting of the Aid India Consortium was held in Paris on 26 October 1971 under the chairmanship of the representatives of the World Bank. The Consortium recognised the need for

special assistance to India to offset the burden of refugee relief. Members emphasised that assistance for refugee relief should be in addition to normal developmental assistance. The delegates urged the UNHCR as the focal point of the UN to continue its efforts to seek contribution from the international community to cover the total cost of relief. The World Bank estimated the total requirement at US\$ 700 million (Rs 5,250 million) till the financial year ending 31 March 1972.<sup>46</sup>

The Prime Minister of India also personally addressed letters to foreign Governments for aid. The role of the UNHCR immobilising relief assistance was deeply appreciated by the Government of India. The Rehabilitation Secretary of the Government of India had stated, 'India was deeply appreciative of efforts made so far by several governments, combined UN agencies, and other voluntary organisations for providing relief assistance to the refugees. At this moment according to the latest figures, total amount committed was approximately US\$ 154 million. This however was not adequate compared to the needs, which amounted to US\$ 558 million. Even out of this committed amount of US\$ 154 million, India so far actually received about Rs 25 crores or US\$ 34.7 million.'<sup>47</sup> 'Offers of assistance from various international agencies up to the end of March 1972 amounted to about Rs 1,983.7 million.'<sup>48</sup> Annexure III gives the details of assistance received from foreign countries.

management and distribution of relief material The distribution of relief material posed a number of problems. 'Members of Parliament raised the issue of reports in newspapers that certain countries or agencies were offering some material which the Government said that the Government did not require, or in respect of which the Government told them not to send. The members quoted the example of the Government of Australia, which offered to send some medical teams but the Government of India declined the offer saying that the Government had enough doctors. Members also raised the issue of the consignment of codfish sent by the Norwegian Red Cross Society which was lying at an airport and not lifted, and they were told not to send any more consignments of fish since it was an unsuitable commodity.'

Members also questioned in Parliament the basic issue of whether the Government of India had any clear conception about the specific things that they wanted for relief purposes.<sup>149</sup>

There were reports of corruption and malpractices regarding handling of refugee assistance in refugee camps in West Bengal, Tripura, Meghalaya, and Assam. The Government had replied in Parliament, 'complaints regarding malpractices had been received. In respect of allegations relating to State camps, which were administered by the State Governments, the complaints were generally referred to the State Rehabilitation Authority for enquiry and necessary remedial action. In respect of Central camps, necessary departmental enquiries were undertaken by Central Government agencies like the director general of refugees or by the CBI. As a result of such enquiries, either departmental action was taken or cases were referred to the police wherever such action was warranted.'<sup>50</sup> 'Certain press reports alleging that some relief goods meant for the refugees received from the Indian Red Cross and Oxfam had found their way into the market was denied, though enquiries about alleged leakages were made.'<sup>51</sup>

visit of camps by foreign dignitaries The Government had invited parliamentarians, diplomatic representatives, and other eminent persons from the world over to visit the refugee camps in order to gain first-hand knowledge about the ground realities. 'Parliamentarians from USA, UK, Canada, West Germany, Ireland, and Australia, besides ambassadors and other officials of diplomatic missions located in New Delhi had visited the camps on invitation of the Government of India.'<sup>52</sup> It was stated by the Government in Parliament, 'the Indian Embassies in the Arab countries had been kept informed about the constant refugee influx from East Pakistan and other relevant facts for giving adequate publicity.'<sup>53</sup>

repatriation assistance 'Immediately after the surrender of the Pakistani forces and the creation of the Republic of Bangladesh, the refugees started going back to their country. From 1 January 1972 an organised program for the return of refugees was finalised. The returning refugees were allowed 2 weeks ration. The

State Governments were authorised to exercise their discretion in allowing one week's ration in kind and the cash equivalent of one week's ration. Further, journey money was also provided at the rate of Rs 2 for a distance of 10 miles from the border, Rs 5 for a distance of 10 to 30 miles, and Rs 10 for a distance of beyond 30 miles. Camp refugees to whom clothing and blankets had been distributed were permitted to take along those items with them. The returning refugees from the camps were also paid a cash grant at Rs 30 per adult and Rs 15 per child on reaching their destination in Bangladesh by the concerned authorities. The total cost of this was estimated at Rs 185.8 million and this amount was to be made available to the Bangladesh Government as a grant. The UN focal point agreed to the transfer of relief material which remained unutilised and which was routed by them to the Government of Bangladesh for providing relief assistance to the returning refugees in that country. At the time of return the refugees were required to surrender their ration cards and registration cards, and they were then issued with a certificate (refugee return cards) in the prescribed form. The Government of India estimated the total cost of food, transport etc., in respect of the refugees' return to Bangladesh at Rs 1,200 million.'<sup>54</sup>

'On 6 January 1972, the UNHCR Director of Operations cabled UNHCR Headquarters in Geneva to report that one million refugees had already left India. Prodigious and coordinated efforts were made on both sides of the border. Special trains were leaving every day and more were planned for the coming weeks. By the end of January some six million refugees had returned home. A UNHCR Report stated that visitors to the camp areas during the same period marveled at the unending stream of people on the trek, walking, riding bicycles and rickshaws, and hitching on trucks with the single purpose of reaching as soon as possible their native places in Bangladesh. In January a daily average of 2,10,000 persons crossed the border. By the end of February 1972 over nine million refugees had gone back to Bangladesh. By the end of May 1972, contribution for the repatriation operation, pledged to UNHCR as a result of an appeal that January amounted to US\$ 14.2 million, of which US\$ 6.3 million was transferred to the Bangladesh Government to finance relief and rehabilitation



projects for the returnees. The UNHCR endorsed an agreement between the Indian Red Cross and the Bangladesh Red Cross, under which the equipment and supplies of the nutritional centers operating in India would be transferred to the Bangladesh Red Cross. The latter in turn would be able to carry out preventive health programs among the returned refugees. The UNHCR also agreed to the Indian proposal of transferring 800 trucks, 300 jeeps, and 136 ambulances to Bangladesh, which India had received from the UNHCR.<sup>155</sup>

### **the role of the unhcr**

the un focal point and its activities The UNHCR stated in the Executive Committee meeting that 'the Government of India faced with a sudden influx of East Pakistanis into its territory requested the Secretary General on 23 April 1971 to make available the necessary assistance from the UN in order to alleviate the suffering of the mass of refugees and to ease the burden on the Indian economy which their presence inevitably carried in its wake. This request was brought to the notice of all the Heads of UN Agencies and Programs at a meeting of the administrative committee presided over by U Thant. It was clear during this meeting that a problem of this magnitude required a concerted and coordinated effort of all members of the UN System. After consultations with all executive heads, the Secretary General decided on 29 April 1971 that the UNHCR should act as the focal point for the coordination of assistance from the UN. A team of three senior staff members headed by the deputy high commissioner was sent to India to investigate and assess the situation.

An analysis of the situation and of the views of the two governments principally concerned, India and Pakistan, made it clear from the very beginning that the UN action was to concentrate upon two things: urgent relief measures in India, and whenever possible, promotion of the refugees' voluntary repatriation, which was generally agreed to be the only lasting solution to the problem. Consequently, on 19 May 1971 the Secretary General launched an appeal for assistance to East Pakistani refugees. As for the actual mechanism of the focal point, a standing inter-agency consultation unit was set up in Geneva. Its task was to

mobilise and secure international support and coordination, to arrange for the procurement of supplies in a coordinated manner and to deliver the supplies to India, and to maintain a close liaison with the Government of India. Parallel to this consultation unit the Government of India had set up in Delhi a coordinating committee where all operational ministries of the Central Government as well as the UN Agencies directly interested was represented. The new UN role was not operational; subscribing to the express wish of Government of India the operational responsibility was left to the authorities. The focal point did not have any operational staff in the field.<sup>156</sup>

assistance provided by the unhcr The UNHCR again stated, 'On 26 June 1971 the Government of India indicated that the requirement would be US\$ 400 million for six million refugees for six months. Subsequently, on 1 October 1971, it was received from the Government of India a calculation estimating that UN\$ 558 million would be required in expenditure to care for eight million refugees for six months. More recently, a special meeting of the consortium of Governments and institutions interested in India's economic development was held in Paris on 26 October 1971 under Chairmanship of the World Bank. According to the announcement issued, the meeting discussed the impact on the economy of the recent large and continuing influx of refugees from East Pakistan and assessed the cost of relief at US\$ 700 million in the financial year ending March 1972.

The direct costs of refugee relief were governed by three considerations; first, the number of refugees involved; second, the length of time over which relief was to be provided; and third, the norms of assistance. As regards the first and the second of these factors, the UNHCR had been kept continuously informed by the Government of India. As of 12 November 1971, the Indian authorities indicated that the number of refugees was 97,44,404. The Government of Pakistan had informed the Secretary General on 2 September 1971 that it estimated the number of persons displaced from East Pakistan to be 20,02,623. As regards the norms themselves they were modest indeed. They had been worked out in close consultation with the focal point and the staff of other UN

agencies. The average relief expenditure amounted at present to Rs 2.44 per capita per day (or less than US\$ 0.37).

Till 16 November 1971, the focal point had received pledges totalling US\$ 161.4 million. Of this amount US\$ 89.2 was pledged in cash and US\$ 72.2 million in kind. Nearly 1,42,000 million tons of rice had been pledged and 62,671 tons delivered; over 2,200 vehicles had been ordered of which over two-thirds had been delivered; polythene sheeting, which provided roofing for over three million refugees, had come in from abroad; about three million blankets had so far been located and were being transported after a worldwide search; in one of the longest humanitarian airlifts ever, over 700 tons of medicines and medical supplies were flown to India; and provision was being made to combat malnutrition in its early stages.

The staff members of UNICEF, WFP, and WHO had undertaken missions to the refugee areas. UNICEF also had an office in Calcutta and liaison offices in the States of West Bengal, Assam, Meghalaya, and Tripura. The focal point would be able, with the help of the Government of India, to give a satisfactory account of the use of their contributions to the donors.<sup>157</sup>

the voluntary repatriation of refugees The UNHCR stated, 'As for the overall assessment of the situation, these relief measures now being provided in India would never be a solution in itself. As was already recognised, it was the expressed wish of both the Government of India and the Government of Pakistan that these refugees be repatriated. In refugee situations, voluntary repatriation of refugees had traditionally served as the best solution. It was with this in mind contacts had been established with the Government of Pakistan at a very early stage. The Government extended full cooperation and agreed to the stationing of a UNHCR representative in East Pakistan who started working and had a small team of field assistants. The Government of Pakistan had set up reception centers to receive refugees and facilitate their return to their homesteads, and these were visited regularly by the UNHCR. The High Commissioner himself had the occasion to visit both India and Pakistan in order to make a personal assessment on the spot and to consult with the two Governments

regarding the situation which was causing so much concern, not only to both countries, but also to the international community as a whole.<sup>158</sup>

The UNHCR further added that 'this cruel and gigantic problem could be resolved by repatriation of the refugees; the question was, how could this best be achieved, particularly since it was the expressed wish of both the Governments principally concerned that the refugees be repatriated. The Government of Pakistan had informed the UNHCR that so far 2,00,000 refugees, of whom 30 per cent belonged to the minority community, had returned to East Pakistan; some 64,000 through the reception centers, and rest of their own.<sup>159</sup>

K.S. Kahlon the Rehabilitation Secretary of the Government of India stated that 'the ultimate real remedy for these million of refugees was in finding permanent solution for enabling them to go back to their homes in conditions of security, peace, and political satisfaction.<sup>160</sup> Samar Sen, India's permanent representative in the UN, stated, 'Voluntary repatriation was the only lasting solution to the problem. This was not only the best, but also an imperative, solution. And that it must come soon. The international community as a whole was responsible for caring for the refugees; if today India was looking after millions of Pakistani refugees, she was doing so as a trustee on behalf of the international community and strictly for the shortest time possible. The conditions that would persuade them to return home must be created without further delay. India could not accept their indefinite presence in India. India agreed with the High Commissioner that the relief operation should not become yet another permanent political and economic burden on the international community. The crux of the matter was that international and Government efforts in East Pakistan were increasingly hampered by the lack of substantial progress towards a political reconciliation. The basic cause of this unprecedented move was to be found in the massive, systematic, and continued violation of the most fundamental human rights, including the right to life itself. It amounted to genocidal punishment to 75 million people. Yet another argument was that India was preventing the return of refugees, as if India could afford, under any circumstances, to feed or look after nearly ten million

refugees for any length of time. It was also noteworthy that Pakistan's figure of 2,00,000 refugees having returned remained unchanged for the last three months. And then the figure was nicely divided and rounded up to 1,40,000 Muslims and 60,000 Hindus. To discuss the mechanics of repatriation before creating the basic conditions for making repatriation possible and practicable, was an unrealistic and ineffective. A climate of confidence could be created in East Pakistan only through reconciliation with the already elected and accepted leaders of the people of East Bengal.<sup>61</sup>

### **an evaluation of the influx of refugees**

hundreds of thousands of lives saved The reign of terror unleashed and the large-scale arson, rape, and killings resorted to by the Pakistani forces led to the flight of 10 million people out of a 75 million population. India had opened its frontiers that extended several thousand kilometers from West Bengal to Tripura to the fleeing refugees. The number of refugees would have been much more but for the fact that the people in the interior districts away from the border areas could not leave due to the fear of the Pakistani forces all around. Several thousand refugees could not reach India and died on the way from hunger and exhaustion. There had been the death of hundreds of refugees in hospitals, which showed that the plight of the refugees was really miserable. The number of deaths would have been much more, but for the timely assistance and medical help given to the refugees. The atrocities committed on women by the Pakistani forces were phenomenal. In one refugee camp alone in Nadia district of West Bengal there were around 5,000 women who had been raped.

The Government of India made it clear that though the influx of refugees was posing a tremendous burden for India, the entry of refugees would not be stopped. But for the open-door policy of admission of the Government of India and the care of refugees to its true humanitarian traditions, the number of deaths would have been in the several hundred thousands and would have been one of the worst tragedies of modern times.

overwhelming response The response of the local population had been overwhelming despite the heavy influx of refugees. The

Bengali population in West Bengal, Tripura, and other states had a positive empathy for the refugees since East Pakistan was once part of Bengal before the British had partitioned it into East and West Bengal. In addition the media had highlighted the crisis as a national issue. The local population were apprehensive that the refugees may not go back. The uncertainty regarding their period of stay was in the mind of the people. The Government of India had initially thought that some solution would be found and the refugees would return within two to three months. The Government of India initially had been referring to the refugees as evacuees hoping that repatriation would soon be possible.

The local people had to face many difficulties due to the shortage of commodities, general price rises, unhygienic conditions, health hazards, closing down of educational institutions etc. Normal administration as well as development projects had been badly affected as the administration had to divert manpower and resources for the care of the refugees. There was no communal disturbance in the camps, though in many areas the Hindus were in majority and some of whom had been victim of local communal elements in East Pakistan.

The entire administration worked as a team to face the crisis. Even in such a massive relief operation, they had to keep in mind the question of accountability. Proper records had to be maintained regarding the amount of relief material distributed. In addition, the administration had to carry out its routine responsibilities and also the decennial census operation, which commenced in 1971. The administration also had to coordinate matters with the Army when the war broke out. It was thought that many refugees, particularly the Hindus, might not return to Bangladesh. But almost the entire refugee population went back. A small number may have stayed behind, but their number would not be significant when compared to the 10 million refugees who had initially come in.

unhcr and the government of india The UNHCR was involved from the very beginning of the crisis. The Government of India requested the Secretary General for international aid on 23 April 1971. The Secretary General decided that the UNHCR should act as the UN focal point. The focal point worked in close liaison with

the Government of India. The Government of India appraised the focal point on a regular basis regarding the influx of refugees.

The focal point was very effective in mobilising international support and resources for the refugees. It was because of the shelter material made available by the focal point that 3 million refugees could be provided with shelter. The supply of 700 tons of critical medicines helped greatly in meeting health requirements. In addition, a substantial number of vehicles were made available which helped in providing relief to the refugees. The focal point left operational matters to the Indian authorities and supplemented in the efforts of the Government of India by mobilising resources with regard to the priorities indicated by the Government of India. As a result there was no conflict at any stage and relief assistance proceeded smoothly. The role of the focal point in mobilisation of the resources was deeply appreciated by the Government of India.

the controversy over repatriation From the outset of the crisis, the Government had made it clear that India would do its utmost to assist the refugees but that the refugees could not remain in the country on a permanent basis. The Rehabilitation Secretary of the Government of India had emphasised the need for finding a permanent solution for enabling refugees to go back in conditions of security, peace, and political satisfaction. India's permanent representative in the UN had also emphasised the need for creating basic conditions of repatriation with political reconciliation, without which talking about repatriation was unrealistic.

The UNHCR talked about repatriation in June 1971 when in subsequent months more than 3 million refugees came to India due to continued atrocities by the Pakistani forces. This gave the impression that the High Commissioner was trying to help Pakistan by talking about repatriation when the situation was far from normal, so that Pakistan could control the situation in East Pakistan. The Indian Government was particularly critical of the High Commissioner Sadruddin Aga Khan for making a visit to the subcontinent in June at the invitation of President Yahya Khan of Pakistan, who allowed the High Commissioner to travel extensively in East Pakistan. The Indian Government viewed the visit as an

endorsement of Pakistani efforts to persuade the refugees to return. It also considered the visit to be premature, given the need for finding a political settlement before the refugees could return safely.<sup>62</sup> India felt that the UNHCR had failed to maintain its non-political role. Thus, despite the best of relationships with the UNHCR from the very beginning of the crisis, things suddenly became strained. This unfortunate development was further compounded because of the fact that Sadruddin Aga Khan happened to be from Pakistan. It must however be appreciated that the mandate of the UNHCR is always to seek a permanent solution by way of voluntary repatriation, in particular in situations of mass influx of refugees.

burden sharing In order to ensure proper relief-distribution and assistance to the refugees, a suitable administrative structure was set up. The Government decided the uniform scale for relief assistance, mobilised resources from all sectors including public-sector undertakings, and involving the international community and the local NGOs. The Government of India estimated the expenditure for 8 million refugees for six months at US\$ 558 million. The total requirement for about 10 million refugees for 10 months worked out to about US\$ 1,100 million. The foreign assistance made available was US\$ 234 million, which worked out to about 21 per cent. The Government of India expected the international community to refund a major part of the expenses it had incurred in looking after the refugees. However a visiting UNHCR mission had to stress that it would be unrealistic for the UN to bear full responsibility for the financial burden given the voluntary nature of contributions to the UN budget.<sup>63</sup> The total expenditure on refugee relief was estimated to be about Rs 2,000 crore. The Government of India had to bear most of the burden; this affected developmental projects, and the Fourth Five-Year-Plan had to be reappraised.

The refugees could settle down in temporary camps in the border areas and later moved to other organised camps. The Government of India had wanted the refugees to stay close to the border to facilitate their early repatriation, but as their stay got prolonged, the refugees were moved to other areas. Many refugees stayed with their relatives and friends. The Government

mobilised all its resources in providing assistance to the refugees. The level of assistance was however only at the subsistence level. India as a matter of policy does not accept assistance from other countries and agencies. The involvement of the UNHCR was considered necessary for mobilisation of international assistance and also in informing the international community of the efforts made by the Government of India in handling the crisis. Failure in resolving the political crisis in the then East Pakistan had created an unprecedented flow of refugees and had posed a threat to India's security. India had voiced her extreme concern at the violations of human rights in East Pakistan. And now with the crisis reaching its apex, India had to provide asylum to millions of refugees in accordance with its humanitarian policy. This was a rare occasion when a country's political policies and humanitarian policies had converged.

### annexure I

Distribution of Refugees in Various States

<i>State</i>	<i>No. of Camps</i>	<i>No. of Refugees in Camps</i>	<i>No. of Refugees on their Own</i>	<i>Total</i>
West Bengal	492	48,49,786	23,86,130	72,35,916
Tripura	276	8,34,098	5,47,151	13,81,249
Meghalaya	17	5,91,520	76,466	6,67,986
Assam	28	2,55,642	91,913	3,47,555
Bihar	8	36,732		36,732
Madhya Pradesh	3	2,19,218		2,19,218
Uttar Pradesh	1	10,619		10,169
Total	825	67,97,615	31,01,660	98,98,825

Source: Bangladesh War of Independence Documents, op. cit., p. 81.

### annexure II

Trends of Influx

<i>Month (for the year 1971)</i>	<i>Daily Average (in thousands)</i>	<i>Monthly Average (in thousands)</i>
April (10th to 30th)	57	1,221
May	102	3,158
June	68	2,056
July	26	797
August	34	1,055
September	27	804
October	14	425
November	8	217
Backlog		16
Total		9,899

Source: Bangladesh War of Independence Documents, op. cit., p. 82.

### annexure III

I. The assistance received from Foreign Governments was as follows:

Through UN focal point	US\$ 192,935,136
Direct to the Government of India	US\$ 41,778,283
Total	US\$ 234,713,419

Source: *Bangladesh War of Independence document*, op. cit., p. 82.

II. The details of assistance offered by various countries and international organisations as relief for refugees from East Pakistan as on 7 June 1971 were as follows:

UNA agencies

1. Milk Powder (6,250 million tons)
2. Butter Oil (850 million tons)

3. Pulses, Beans (200 million tons)
4. Soya bean Oil (1500 million tons)  
(Total Value: \$3,097,ZBO)

## UNICEF

1. \$ 1,00,000 for drugs and supplementary diet
2. \$ 1,00,000 for air-lifting of WFP stocks from Calcutta to Agartala and Guwahati, and for purchase and air-lifting of hospital tents and for pipes for drinking water supplies.
3. \$ 1,00,000 for 40 vehicles, 20 being placed at the disposal of the Indian Red Cross Society and 20 with the Ministry of Health, West Bengal Government.

## UNHCR

\$ 5,00,000 cash.

*Foreign Governments*

## USSR

1. 50,000 tons of rice.
2. 100 million doses of small pox vaccine.

## US Aid

\$ 25,00,000.

The fund to be utilised for feeding programmes being run by US Aid through US voluntary agencies like CARE, CRS, CWS and Lutheran World Relief.

## UK

Tarpaulins and milk powder worth US\$ 2.4 million.

## Canada

In response to the Secretary General's appeal, the Government of Canada pledged US\$ 2 million for food stuff and medical supplies. Cash to be provided through UN and private agencies.

## Australia

\$ 5,00,000.

## East Germany

Commodities worth Rs 20 lakh.

**the genocide of 1971 and the refugee influx in the east**

## West Germany

DM 1 million. The manner of its utilisation was finalised in discussion with the UNHCR.

*Voluntary Agencies*

## Norwegian Refugee Council

Rs 3 lakh. The Central Relief Committee of India was offered this sum for purchases of clothing for refugees.

## Indian Red Cross Society

\$ 70,000 and a large quantity of goods in time.

## Contribution announced by National Societies to The Indian Red Cross Society

Milk powder, baby food, medicines, clothing, and multivitamin tablets worth Rs 29,26,590 and also a cash contribution Rs 17,36,418

## Voluntary Agencies of Denmark

1. Dry Fish
2. Tarpaulin
3. Medicines (3 million tons).
4. Plastic sheeting (9,000 square metres).

**Source:** Lok Sabha Debate, 10 June 1971; p. 60; LT 370/71

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16. S.S. Chattopadhyay, an IAS officer of the 1966 batch of the West Bengal cadre, was then posted as the Additional District Magistrate, in the Murshidabad district of West Bengal.
17. P.K. Banerji, an IAS officer of the 1966 batch of the West Bengal cadre, was then posted as the Additional Deputy Commissioner in the Cooch Behar district of West Bengal. He was awarded the Padma Shri award for his meritorious service in handling the influx of refugees in 1971.
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20. Ibid., p. 53.
21. Ibid., p. 57.
22. Ibid., p. 59.
23. Ibid., p. 59.
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25. K. Sreedhar Rao, an IAS officer of 1964 batch of the Assam-Meghalaya cadre, now retired, was then posted as the Deputy Commissioner of Cachar, Assam. *Whither Governance: Reflections of an Assam Civilian*: South Asian Foundation, New Delhi, 2002, pp. 100-102.
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27. 'Buddhists in danger in E. Bengal', *Ananda Bazar Patrika*, Calcutta, 22 July 1971, *Bangladesh War of Independence Documents*, op. cit., p. 864.
28. M.P. Bezbaruah, an IAS officer of the 1964 batch of the Assam-Meghalaya cadre, was then posted as the Deputy Commissioner of Goalpara, Assam.
29. Ibid.
30. J.K. Bagchi, an IAS officer of the 1963 batch of the Assam-Meghalaya cadre, now retired, was then posted as the Deputy Commissioner of Shillong in Meghalaya. He was awarded the Padma Shri for his meritorious service in handling the influx of refugees in 1971.
31. K.K. Sinha, an IAS officer of the 1963 batch of the Assam-Meghalaya cadre, now retired, was then posted as the Deputy Commissioner of Tura in Meghalaya (then a part of Assam). He was awarded Padma Shri for his meritorious service in handling the influx of refugees in 1971.
32. Statement by K.S. Kahlon, Rehabilitation Secretary, Government of India, *Bangladesh War of Independence Documents*, op. cit., p. 94.
33. Lok Sabha Debates, 21 July 1971, pp. 56-57.
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35. Statement by K.S. Kahlon, Rehabilitation Secretary, Government of India, before the Executive Committee of the UNHCR, held in Geneva on 5 October 1971, *Bangladesh War of Independence Documents*, op. cit., p. 92.
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37. Annual Report of the Ministry of Labour and Rehabilitation, Government of India, 1971-72, pp. 10-12.
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39. Statement by K.S. Kahlon, Rehabilitation Secretary, Government of India, *Bangladesh War of Independence Documents*, op. cit., p. 93.
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41. Lok Sabha Debates, 3 July 1971, pp. 110-11.
42. Annual Report of the Ministry of Labour and Rehabilitation, Government of India, 1971-72, pp. 5-7.
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54. Annual Report 1971-72, op. cit., pp. 19-21.
55. *The State of World Refugees*, pp. 70-71.
56. Statement of Prince Sadruddin Agha Khan, the UN High Commissioner for Refugees at the meeting of the UNHCR Executive Committee held in Geneva on 4 October 1971, *Bangladesh War of Independence Documents*, op. cit., pp. 88-91.
57. Statement of the Prince Sadruddin Agha Khan, the UN High Commissioner for Refugees, at the meeting of the Third Committee of the UN General Assembly, 18 November 1971, *Bangladesh War of Independence Documents*, op. cit., p. 98.
58. Statement of Prince Sadruddin Agha Khan, the UN High Commissioner for Refugees, at the meeting of the UNHCR Executive Committee held in Geneva on 4 October 1971, *Bangladesh War of Independence Documents*, op. cit., p. 91.
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  1. Statement by the Indian delegate, Samar Sen, on UNHCR's Report to the Third Committee of the UN General Assembly on 18 November 1971, *Bangladesh War of Independence Documents*, op. cit., pp. 102-5.
62. Ibid., p. 67.
63. Ibid., p. 65.

## 6 uprooted twice: refugees from the chittagong hill tracts

Sabyasachi Basu Ray Chaudhury

The people of the Chittagong Hill Tracts (CHT) were uprooted from their traditional homeland on two separate occasions—in the 1960s, when the Government of the then undivided Pakistan decided to construct the Kaptai dam on the Karnaphuli river in the CHT, and again in the 1980s, when in the wake of the movement for self-determination in the CHT the policy of successive military regimes of the newly independent state of Bangladesh was to directly and indirectly encourage people from the plains to settle in the hill areas. In both cases, many people were internally displaced and many more crossed over to the neighbouring parts of India seeking refuge. In this chapter, we shall primarily concentrate on those people from the CHT who on different occasions took shelter in India.

But before going into the CHT refugee problem and the Government of India's response to it, we shall first try to have a look at the socio-economic and demographic profiles of the CHT and then attempt to understand how these profiles were linked to the strategies of development and politics of the region. This will enable us to see when and how the CHT turned into a refugee-generating region and in that context analyse the policies of the Government of India vis-a-vis these incoming refugees.

**the land and the people** The CHT is situated in the south-east part of Bangladesh. This hilly region is strategically important



for Bangladesh as it shares international boundaries with the Indian states of Tripura to the north and Mizoram to the east, and Chin and Rakhain states of Myanmar (formerly Burma) to the south-east and south. To its west lies Chittagong district of Bangladesh. The name 'Chittagong Hill Tracts' was coined after the British colonial rulers annexed the region in 1860. Prior to the British annexation, this region was known as *Jum Bungoo* or *Kapas Mahal* in the Mughal and British revenue records. During the colonial days, this region was part of the revenue administration of the Chittagong Collectorate, and therefore came to be known as the Chittagong Hill Tracts.<sup>1</sup>

The CHT covers an area of 14,200 square kilometres, including river and reserve forest areas. The CHT has three hill districts of Bangladesh, namely, Rangamati, Bandarban, and Khagrachhari. The entire area is divided into four valleys formed by the rivers Feni, Karnaphuli, Matamuri, Sangu and their tributaries. The CHT is home to the following groups of indigenous people: Bawm, Chak, Chakma, Khumi, Khyang, Lushai, Marma, Mro, Pankho, Tanchangya, and Tripura. Among them, the Chakmas and Marmas are numerically the largest groups. These indigenous groups are collectively referred to as Jumma, as they engage in slash-and-burn cultivation (locally known as jum). Although in earlier times the term Jumma had derogatory connotations, it is now a source of a collective indigenous identity. According to the 1991 census, the total population of the CHT was 9,74,445, of which 5,01,144 or about 51 per cent were 'tribal'. There are allegations that the CHT refugees taking shelter in Tripura in India during this Census were not considered for enumeration. The hill people of the CHT have also indicated to the writer that their total number is much higher than what the Census shows.

The hill people differ from the majority Bengali population of the plains in race, religion, and language. They are of Mongoloid, Tibeto-Burman, and Mon-Khmer origin, and have similarities with their neighbours in North-east India, Myanmar, and Thailand in appearance and culture. They are predominantly Buddhists (like the Chakmas, Marmas, Mros, and Tanchangyas), though some of them are Hindus (Tripuras) as well as Christians (Lushais, Pankhos, and Bawms). Buddhism started to influence

the life and times of the hill people when in the 14th century Sawngma (Chakma) Raja Marekyaja migrated from the neighbouring Arakan hills into the Chittagong? bel to estahsh his rle and dynasty there. But whatever be their religious fihs, the hll peo<sub>2</sub>ple also stick to their traditional indigenous rehghous pactices.

They have their own languages in oral form, if not m wntten form. The languages used by the Chakmas and Tanchangyas have close links with Bengali and Assamese respectively. The languages used by most of the other indigenous groups belong to the Tibeto-Burman family.<sup>3</sup>

**colonial history** During the British colonial times, th ill people did not take kindly to the demands for taxes by the Bnt lsh, who had to make at least three major offensives to subdue these people until an agreement was etracted from the. Later on, however relations with the colomsers became cordial to the extent tha; the Chakmas under Rani Kalindi sided with the British during the Great Mutiny of 1857.

In 1860, the British virtually divided the entire hill tracts into three sub-divisions under the control of three tribes. Act No. XXII of 1860 declared the CHT a district within Bengal and a superintendent was appointed for this district under the Commissioner of Chittagong. When the process of annexation of the Ct:IT was formalised, there were three Rajas—the Chakma Raja, the Bohmong Raja, and the Mong Raja. These traditional rulers continued to exercise their authority within their jurisdiction affecting all matters directly related to the indigenous people, and paid annual revenue to the British administration in India.

When the British took over the administration of the region in 1860, their main objective was to establish their overall suervisory authority over the area, but their administrators contmued with the overall policy of non-interference. In 1884, the CHT was divided into three administrative circles—Chakma, Bohmong, and Mong—that more or less coincided with the territorial boundaries of the three local rulers.<sup>4</sup> However, these three rulers were still recognised as autonomous entities. Local administrtive matters were still left to the indigenous people. Trade was pnncl-ally'in the hands of the Chittagong Bengalis ...' (who comprised

sabyasachi basu ray chaudhury

about 2 per cent of the total population of the area).<sup>5</sup> But these people from the plains were not granted titles or allowed to settle there.

Subsequently, the British rulers enacted a set of rules in 1892 which were later developed into a more elaborate set of rules under Regulation 1 of 1900. These were known as the 1900 Regulations or the CHT Manual, and provided some safeguards relating to the autonomous status of the region. They included judicial, administrative, and legal measures in addition to certain procedural mechanisms. This Manual recognised the CHT as a homeland for the indigenous peoples of the CHT. In fact, perhaps in return for the loyalty shown towards them, the British introduced a regulation in 1900 banning the settlement of outsiders in the CHT and prohibiting the transfer of land there to non-indigenous people. Up to 1930, the entry and residence of non-indigenous people in the CHT was strictly prohibited. Rule 52 of the original Regulations stated that: '(a) Save as hereinafter provided, no person other than a Chakma, Mogh or a member of any hill tribe indigenous to the Chittagong Hill Tracts, the Lushai Hills, the Arakan Hill Tracts, or the State of Tripura may enter or reside within the Chittagong Hill Tracts unless he is in possession of a permit granted by the Deputy Commissioner at his discretion.' This entry permit could be granted only on fulfilling the criteria enumerated in the Regulations. The validity of permit was generally for 12 months, although this could be extended.

Rule 52 was later repealed in 1930, and a permit was no longer required for entering the CHT. Henceforth the Hill Tracts were placed under the direct supervision of the Governor-General-in-Council, whose powers were from time to time delegated to the Governor of the Province. The Government of India Act 1935 designated the CRT as a Totally Excluded Area (also known as a Wholly Excluded Area) along with other frontier states inhabited by the indigenous peoples and took it out of Bengal's control. The area was thus recognised as an indigenous area until 1964, when its special status as a separate area was finally abolished and it was brought within the purview of the legislature of Pakistan.

**Unclean partition and after** The first political blow to the hill people of the CHT came when their territory was attached to

East Pakistan. The following decades saw the implementation of successive measures that fuelled discontent. It started with the crackdown on anti-Pakistan demonstrations in 1947. Like most other inhabitants of the Indian subcontinent, the hill people of the CRT also had to pay a heavy price for decolonisation. The subcontinent was divided into two parts—India and Pakistan. Thus, the two-nation theory adopted by the Muslim League was granted formal status. But in reality, Partition led to an unprecedented mass exodus of people across the newly created India-Pakistan border. While the Hindus from Pakistan rushed to India, a large number of Muslims fled from India to Pakistan. The people in the CRT could not also escape the effects of Partition.

On 15 August 1947, the Indian tricolour was hoisted at Rangamati, the chief town in the CRT. The Chakma leaders had believed during the tortuous negotiations leading up to Partition that, given the religious composition of the largely Buddhist CRT, their district would be made a part of India. Leaders like Sneh Kumar Chakma, Lalit Mohan Chakma, S.R. Khisha and Rabindralal Chakma quite clearly expressed this view.<sup>6</sup> In fact, a delegation led by Kamini Mohan Dewan went to Delhi to show their allegiance to India.<sup>7</sup> But the Boundary Commission, chaired by Sir Cyril Radcliffe, placed the CHT within East Pakistan and made a special announcement four days after India and Pakistan gained independence.

The reason for this decision was purportedly to provide a hinterland to the port at Chittagong including the Karnaphuli river, which was of vital commercial and strategic interest to this port. Some people say that this was actually done to make up for denying the award of some Sikh-compact areas to Pakistan.<sup>8</sup> The hill people of the CHT could not accept this. To them, the decision to annex the CRT to Pakistan, a state formed and organised on the basis of the need for a homeland for Indian Muslims, was a travesty of justice. But the Pakistan Army quickly stifled their protests, and most of those who led them, like the late Sneh Kumar Chakma, fled to India. On 18 August, Pakistani troops marched into Rangamati, pulled down the Indian flag, and put up in its place the star and crescent of Pakistan.

This was just the beginning of the travails of the hill people as successive regimes of Pakistan and later Bangladesh followed a consistent policy of marginalising them within the polity of the nation. These regimes supported the influx of Bengali-speaking Muslim migrants from the plains into the CHT, which had been sparsely populated in comparison to the rest of the country. As a result of these aggressive settlement policies, the CHT now has a population of about 9,00,000 that is almost evenly divided between the Muslim settlers and the indigenous Buddhists.

Thus, an uneven partition of the Indian subcontinent by the retreating colonial masters and the post-colonial initiatives of nation-building and development soon turned the hill people of the CHT into a community that would henceforth be forced to live in the form of a diaspora. Therefore at the turn of the 21st century, their own homeland, the CHT, has been overrun by Bengali Muslim settlers from the overpopulated Bangladeshi mainland, and scattered groups of hill people survive under trying circumstances as refugees in Tripura, Mizoram, and Arunachal Pradesh.<sup>9</sup>

**excluded from (for?) development** The first Constitution of Pakistan, which was adopted in 1956, still recognised the CHT as an Excluded Area. This status was subsequently upheld by the Constitution of 1962. The CHT was referred to as a Tribal Area, whereby any amendment to the administration of such areas required Presidential approval. But in 1964 the National Assembly of Pakistan amended the list of Tribal Areas, and the CHT was removed from this list. The CHT no longer had the official recognition of being designated as a separate homeland for the indigenous peoples-as an Excluded Area and a Tribal Area-as it previously had been so. Therefore, it became open to settlement by people from outside the area. This enabled non-indigenous people to enter and acquire land in the CHT. Nevertheless, as the CHT Manual still existed, the people from the plains did not indiscriminately populate the area.

Against this backdrop came the construction of the Kaptai Hydroelectric Power Project over the Karnaphuli River, one of the first mega-projects in South Asia to be funded by USAID. The

project in no time inundated the green patches of agricultural land of the CHT in 1964, and hundreds of thousands of people, mainly Chakmas, were displaced from their traditional homeland. These displaced people were forced to fend for themselves when the erstwhile government of East Pakistan failed to pay them any compensation. Many of them remained internally displaced in and around the CHT, while about 40,000 of them crossed over to India for succour and shelter with the intention of settling in Tripura where other people of similar origin had been residing for a long time.

'They came in a hopeless, pathetic condition, just with the clothes that they wore,' recalls one senior Mizoram official who was part of the Assam Government team that received the incoming hill people. Since a large number of refugees had taken shelter in Assam, the State Government had expressed its inability to rehabilitate all of them and requested assistance in this regard from certain other States. The Government of Tripura also did not encourage these displaced persons to settle in that state despite requests from the Chakma leaders. At one point, the Indian authorities toyed with the idea of moving these hill people en masse to the Andaman and Nicobar Islands; later they devised a scheme to accommodate these refugees in the desolate land of the North-East Frontier Agency (NEFA), now known as Arunachal Pradesh.<sup>10</sup>

Bounded by Tibet in the north, Assam and Nagaland in the south and east, and Bhutan in the west, the Indian state of Arunachal Pradesh covers an area of 83,743 square kilometres and is the largest of the seven states of North-east India. This hilly area of the sub-Himalayan tracts, made into a Union Territory through administrative reorganisation after Independence, was given full statehood in 1987.

**resettled to be unsettled** The population of Arunachal Pradesh (8,58,392 according to the 1991 census) is made up of more than 80 tribes and sub-tribes of Indo-Mongoloid origin. All of these groups have their distinctive social and cultural identities; they speak different languages and dialects of the Tibeto-Burman family, and follow different beliefs and customs.

Incidentally, Arunachal Pradesh has enjoyed a 'Special Protected Area' status since the pre-Independence period under the

provisions of the Bengal Eastern Frontier Regulation of 1873. The state administration points to a series of legislative measures taken by the Centre to uphold both the essentially tribal character as well as the rights of the indigenous people in Arunachal Pradesh, by the Centre and earlier the British administrators, some of these being the Bengal Eastern Frontier Regulation of 1873, the Assam Frontier Tract Regulation of 1880, the Assam Forest Regulation of 1891, and the Chin Hills Regulation of 1876. These regulations, say State Government sources, prohibit non-locals and non-residents from acquiring any interest in land or in land produce prohibit 'outsiders' from acquiring forest land, and empower the state government to extirpate any person violating these prohibitions; that is, if his or her presence is considered by the state authorities to be harmful to local interest. Arunachal Pradesh became a full-fledged Indian state under the State of Arunachal Pradesh Act 1986. The Inner Line Permit (ILP) system was introduced to ensure that the entry of 'outsiders' into the state was restricted.

The contention of the Arunachal Pradesh authorities is simply that since the provisions of these regulations and legislations forbid unrestricted entry, settlement, and acquisition of property by non-natives, the decision to settle the Chakmas and Hajongs was wrong. At best, as explained by former Chief Minister Gegong Apang and the All Arunachal Pradesh Students' Union (AAPSU) leaders, the settlement of these refugees should be seen as a temporary measure with a definite time frame, purely as a humanitarian gesture from the people and administration. The State as a whole should not be made to pay for this magnanimous gesture, and there should be appeals to other States to share the burden of helping these refugees. Otherwise, all existing legal and administrative guidelines relating to the protection of the ethnic identity of the indigenous people would be rendered meaningless. The long-term consequence of such injustice to the indigenous people of Arunachal Pradesh inhabiting a remote State bordering China can be grave indeed. Interestingly, following an order issued by the Governor-General in 1876, even British subjects were prohibited from going beyond the Inner Line without a pass under the hand and seal of an authorised political officer.

In any case, the refugees from the CHT moved on foot in batches up to Pechartal from their original camp of Manughat in Tripura. From Pechartal the refugees were moved to Dharmanagar by hired lorries and from there they travelled by train and reached Ledo in upper Assam. Initially only about 57 Chakma and Hajong families were given shelter in government camps at Ledo in 1964. Thereafter they were settled in Abhaypur block of Diyun circle of the erstwhile Tirap district (now a division of Changlang district) of Arunachal Pradesh purely on 'temporary and humanitarian grounds' by the then NEFA administration, which was directly under the control of the Central Government. This idea of temporary settlement of the refugees in this region was basically a result of an understanding in 1964 between the then Governor of Assam Vishnu Sahay and the then Chief Minister of Assam B.P. Chaliha. Sahay felt that the continuing presence of the Chakmas in the Mizo district might lead to Mizo-Chakma conflicts, and so he suggested to Chaliha that they be settled temporarily in Tirap division of NEFA which was thinly populated at that time. Sahay in his D.O. letter no. 71/64, dated 10 April 1964, to Chaliha wrote: 'It occurs to me that we may get trouble between the Mizos and the Chakmas in the Mizo district. These Chakmas would be quite suitable people to go into the Tirap division of the NEFA where there is easily found vacant land in the area about which you and

I have spoken.' Shortly afterwards, the refugees from the CHT were directed toward different parts of NEFA, as we have already indicated. At present the Chakma and Hajong refugees in Arunachal Pradesh are settled in Chowkham in Lohit district; Miao, Bordumsa, and Diyun in Changlang district; and Balijan and Kokila in Papum Pare district.<sup>11</sup> Perhaps the policy of settling the Chakmas in the NEFA originated in an idea of erecting a human wall in view of the potential Chinese threat following the Sino-Indian war of 1962, because those seeking support from the Indian State could be expected to provide security in the scantily populated NEFA region. If necessity, a section of these people could also be utilised in the future by the Indian Army and other intelligence agencies for controlling insurgency in the area.

Be that as it may, the fact remains that in consultation with the erstwhile NEFA administration, about 4,012 Chakma families were

settled there. They were also allotted some land in consultation with the local people. The Government of India had also sanctioned rehabilitation assistance to the amount of Rs 4,200 per family. The present population of Chakmas in Arunachal Pradesh is estimated to be around 65,000. Arunachal Pradesh Government records indicate that between 1964 and 1969, a total of 2,748 Chakma and Hajong families comprising some 14,888 persons were sent to the NEFA. Initially these refugees were settled in 10,799 acres of land in the three districts. The district-wise refugee population in 1969 was as follows:

Table 6.1:Chakma-Hajong Refugee Settlements in NEFA in 1969 (district-wise)

Area	Number of Families Settled	Number of Persons Settled
Lohit district	214 (Chakma)	1,192
Subansiri district	238 (Chakma)	1,133
Tirap division of Changlang district	2,146 (Chakma) 150 (Hajong)	11,813
Total	2,748	14,888

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Source: Sabyasachi Basu Ray Chaudhury and Ashis K. Biswas, 'A Diaspora is Made: the Jummas in the Northeast India', in Subir Bhaumik, Meghna Guhathakurta, and Sabyasachi Basu Ray Chaudhury (eds.), *Living on the Edge: Essays on the Chittagong Hill Tracts*, Kathmandu: South Asia Forum for Human Rights, 1997.

By 1979, these figures rose to 3,919 families consisting of 21,494 persons. At present, the number of evacuees from the CHT has gone up further to around 65,000, whereas the total population of the state, according to the 1991 Census, is 8,58,392. The White Paper published by the Government of Arunachal Pradesh notes with alarm, 'A small population of refugees has registered a phenomenal growth of over 400 per cent in three decades.' Moreover, land is not exactly at a premium in under-populated Arunachal Pradesh. At the same time, the indigenous population of just over

8lakh is also quite small, and this makes any appreciable increase in any segment of the population a noticeable cause for concern.

However, under the Indira-Mujib Agreement of 1972, it was decided that India and not Bangladesh would be responsible for all migrants who entered India before 25 March 1971, and therefore, the Chakma and Hajong refugees who came to India from the erstwhile East Pakistan (now Bangladesh) before 25 March 1971 would be considered for the grant of Indian citizenship. In fact, about 2,500 Hajongs from Mymensingh district of East Pakistan soon followed the Chakmas. But they remain stateless even after the later amendment of the Indian Citizenship Act in 1985, and since their resettlement, the Chakmas and Hajongs have been illegally denied Indian citizenship and systematically deprived of other fundamental rights.

According to the Peoples' Rights Organisation, the Chakmas have been suffering forcible eviction and arson since the early 1970s. Reports of Chakma houses being burnt or demolished at the behest of the State Government also appeared in the press and in the reports of other NGOs. Vijaypur, a refugee village in the district of Changlang, was reportedly reduced to rubble on three occasions-in 1989, 1994, and 1995.

It was in August 1994 that the situation in Arunachal Pradesh underwent a drastic transformation following the ultimatum issued by the AAPSU which aimed at evicting the Chakmas and Hajongs from Arunachal Pradesh. With the active support of the state administration, the AAPSU, particularly its Changlang District Committee and the Refugee Deportation Council, fixed levies on different commercial establishments and village households in order to raise funds for expelling the 'foreigners'. The question of the deportation of the Chakmas and Hajongs-the Buddhist and Hindu refugees from the erstwhile East Pakistan-from Arunachal Pradesh soon occupied centre stage in the state's politics. The 'Refugee Go Back' movement originally launched by the AAPSU, which consistently held the view that the refugees were 'foreigners' and that Arunachal Pradesh could not be turned into a 'dumping ground', gained momentum: in the wake of the 'People's Referendum Rally' held on 20 September 1995 at Naharlagun in Itanagar, the State capital. It was at this rally that the AAPSU

an the leaders of all political parties in the State, including the ruling Congress (I) under Gegong Apang, the Chief Minister of the State since 1979, set 31 December as the deadline for the Centre to effect the refugees from the State. Also, the leaders of all existing political parties present at the rally vowed to resign from the primary membership of their respective parties and form a 'Common Organisation of Indigenous People' if their demands were not met by the Central Government before the expiry of the deadline.

In 1980 the State Government banned the employment of Chakmas and Hajongs. It stopped issuing trade licenses to members of either community. Furthermore, all trade licenses issued to the Chakmas in the late 1960s were seized in 1994. Their employment options were thus effectively sealed off, and the Chakmas and Hajongs found themselves locked into a vicious cycle of poverty. The situation was exacerbated by the AAPSU-organised economic blockades of the Chakma and Hajong refugee camps. The State Government then started steadily dismantling basic social-infrastructure in the Chakma and Hajong settlements, rendering these people even more vulnerable. All persons legally resident in India are entitled to ration cards if their income falls below a specified amount. In October 1991, the State Government discontinued issuance of ration cards to the Chakmas and Hajongs, most of whom lived in extreme poverty. In September 1994 the State Government began closing and burning down schools in these areas, effectively denying the Chakmas and Hajongs their right to education. Schools built by the Chakmas using local community resources were closed down or destroyed. Health facilities in the Chakma and Hajong areas were all but non-existent.

Almost all political parties of the State had unanimously resolved at least twice in the Arunachal Pradesh State Assembly to ask the Central Government to move these refugees elsewhere. Government of Arunachal Pradesh sources strongly maintained that the local people had long before reacted to the presence of the Chakmas in their midst, arguing that the Chakmas did not come from a neighbouring district or province of India, and that they also belonged to a different language, custom, and religion, without any local roots whatsoever.

On 9 September 1994, the People's Union for Civil Liberties (PUCL), Delhi brought the issue of the Chakma refugees in Arunachal Pradesh to the attention of the National Human Rights Commission (NHRC), which issued letters to the Chief Secretary, Arunachal Pradesh and the Home Secretary, Government of India, making enquiries in this regard. On 30 September 1994, the Chief Secretary of Arunachal Pradesh faxed a reply stating that the situation was totally under control, and that adequate police protection had been given to the Chakmas. The petition contained a press report carried in *The Telegraph* dated 26 August 1994 stating that the AAPSU had issued 'quit notices' to all alleged foreigners, including the Chakmas, to leave the State by 30 September 1995. The AAPSU had threatened to use force if its demand was not acceded to. The matter was treated as a formal complaint by the NHRC. On 22 November 1994, the Ministry of Home Affairs sent a note to the NHRC reaffirming its intention of granting citizenship to the Chakmas. It also pointed out that Central Reserve Forces had been deployed in response to the threat of the AAPSU and that the State Administration had been directed to ensure the security of the Chakmas and Hajongs.

The Government of Arunachal Pradesh contended before the Supreme Court of India that allegations of violation of human rights of the Chakma refugees were incorrect and that it had taken *bonafide* and sincere steps towards providing the Chakmas with basic amenities and, to the best of its ability, protected their lives and properties. It further contended that the issue of granting citizenship to the Chakmas was conclusively determined by the decision of the Supreme Court itself in the State of Arunachal Pradesh vs. Khudiram Chakma case in 1994. It therefore argued that since the Chakmas were foreigners, they were not entitled to the protection of fundamental rights except Article 21 (which deals with the Right to Life) of the Indian Constitution. This being so, it pointed out that the State authorities could at any time ask the Chakmas to move to some other place, and had the right to ask the Chakmas to quit the State, if they so desired. The State Government sources pointed out that the first hostile reactions to the Chakmas were voiced in an official D.O. letter dated 17 July 1964 written by P.N. Luthra, an Assam Government functionary, to

sabyasachi basu ray chaudhury

U. Chakma, Political Officer, Pasighat (in Arunachal Pradesh), in which he pulled up the latter for his alleged over-enthusiasm in trying to settle the Chakma refugees without government approval. Perhaps the presence of Chakma in the capacity of a Political Officer at that time was a boon for the beleaguered Chakma people who had not received much help or encouragement from any other quarter. Chakma had noted, 'Too much importance and indulgence should not be given to "tribal reactions" and so-called tribal policies which encourage pampering and spoiling of tribals.' Since Chakma was put in charge of the settlement of the Chakma refugees, it was argued later that the interests of the local people could not be safeguarded.

Finally, on 9 January 1996, the Division Bench of the Supreme Court of India comprising Chief Justice A.H. Ahmadi and Justice Suhas Chandra Sen, while hearing the petition of the NHRC in the National Human Rights Commission vs. State of Arunachal Pradesh case, observed that the State Government ought to protect the life and liberty of the refugees living in the region instead of being a party to the horrendous practice of ethnic cleansing. The apex court of the country also directed the Government of Arunachal Pradesh to deploy paramilitary and police forces to stop forcible eviction of the Chakmas and Hajongs.

The Court's decision was meant to preclude the attempted en masse expulsion of the refugees by the State Government of Arunachal Pradesh and the AAPSU. The Court's decision included three mandates: (i) an end to illegal evictions of Chakmas and Hajongs from their homes; (ii) the protection-by the paramilitary means if necessary-of the Chakmas and Hajongs from threats by citizens groups; and (iii) the termination of any substantive role for local administrators in deciding the citizenship status of the Chakmas and Hajongs. But despite the apparent legal force of the Supreme Court's ruling, few concrete steps were taken to implement its directives. The Arunachal Pradesh State officials clearly acted in violation of the Indian Citizenship Act of 1955, as the Act is unequivocal regarding the citizenship status of Chakma and Hajong people born after their family's migration and before a specified date. The 1996 Supreme Court decision itself was predicated on this understanding of the legislation. Furthermore, the Union Ministry of Home Affairs affirmed, before both the

NHRC and the Rajya Sabha Committee on Petitions, that those Chakmas and Hajongs who had been born after their family's migration, and before 1 July 1987, were citizens of India by birth. Yet in spite of such explicit statements and the Supreme Court's ruling, the Ministry of Home Affairs has till now failed to take concrete actions to uphold such rights in practice. According to the widely circulated White Paper of the Arunachal Pradesh Government, since this ruling the people of the State started harbouring suspicions against the Central Government.<sup>12</sup>

However, it can be argued that even if this was true, there was hardly any evidence to indicate that the local people of the State had risen as a whole against the settlement of the Chakmas or carried out any protest or agitation like the State was to witness in 1994. Thus, when the politicians in Arunachal Pradesh became united against the refugees regardless of their party affiliations, they tried to argue that back in the 1960s when the refugees were being settled there, there was no elected political leadership in charge of the State administration that could legitimately claim to represent or speak on behalf of the state. The local administration in Arunachal Pradesh attempted to give a different explanation as to why anti-Chakma sentiments did not rise till 1994. In this context, the White Paper said:

The Central Government made its intentions clear in January 1993 to grant citizenship rights to these refugees without any mention of their removal or deportation. The indigenous tribal people and the State Government were under the impression that the refugees were settled temporarily and they would be eventually shifted some other places outside Arunachal Pradesh. But this did not happen.

However, the fact remains that whatever else the Union Government could be accused of, it had never given any impression at any level that these refugees would be eventually shifted out of Arunachal Pradesh. In reply to a question in Parliament by Lacta Umbrey, the Union Home Minister of State M.M. Jacob had declared on 23 September 1992 that a central team visiting Arunachal Pradesh in 1982 had suggested that the refugees be given

citizenship so as to introduce in them a demand for responsible social behaviour. Earlier Umbrey had said in Parliament that,

I would like to ask the position and before that I would like to register my protest regarding recognition of Chakmas as citizens of this country. You are quite aware of the fact that Arunachal is a restricted area. Even Indian citizens in order to go to Arunachal require permission from the local authorities. These Chakmas ethnically are like us. They are generally Buddhists and are settled in a place where Buddhist Arunachalis are staying. So it is very difficult to distinguish them from the Arunachalis. Moreover, they are the ones who are creating problems. There are serious law and order problems created day by day in those localities where these Chakmas are settled. You are quite aware of the fact that Arunachal is one of the peaceful states in the country. Still, by recognising Chakma refugees as the citizens of the country, the Government will not be doing justice; rather, it will be inviting problems.<sup>13</sup>

But on 7 January 1993, Jacob, in a communication to the Chief Minister of Arunachal Pradesh, stated that, 'the issue (of the refugees) as far as the Central Government is concerned is closed and we see no merit in reopening it. The Central Government is strongly of the opinion that citizenship should be granted to these refugees who are eligible under the Citizenship Act, 1955.' He urged the State government to grant citizenship to the Chakmas and Hajongs so that they could enjoy all rights that followed the decision. Similarly, P.M. Sayeed, who succeeded Jacob in the Union Home Ministry, in a reply to a question by N. Yonjgam, MP said that the Chakmas and Hajongs were being considered for citizenship.

But during this period, in the face of the AAPSU movement, the state administration virtually remained a silent spectator as the situation worsened for the refugees. In fact, far from trying to restrain AAPSU leaders like Takam Sanjoy and Domin Loya (who had even questioned the propriety of the accession of Arunachal Pradesh to India) the Government joined hands quite enthusiastically with the anti-refugee movement. First, in the three districts

where the refugees were settled, the State administration systematically dismissed all Chakma employees. Then it started closing down schools where Chakmas used to send their children. During the social and economic boycott that followed, these refugees were beaten up or looted; women were heckled or molested in the marketplace and elsewhere. The spokesman for the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRCAP) alleged that raids were often carried out in the presence of officials, and that houses and hutments were regularly burnt in the districts where they lived. Crops were destroyed in areas where the Chakmas had started plantations. The AAPSU organised a series of meetings in several districts of the State where inflammatory speeches were made against the Chakmas, and offensive posters abusing the refugees were displayed prominently. Several senior State ministers participated in these meetings. The AAPSU, in a bid to make common cause with other chauvinistic organisations of North-east India, teamed up with some students' organisations of Assam, Meghalaya, and Mizoram to begin a 'detect and deport foreigners' programme.

The Supreme Court further directed the Arunachal Pradesh Government to deal with in accordance with the law the quit notices and ultimatums issued to the refugees by AAPSU and any other group, which were tantamount to threats to the life and liberty of each and every Chakma. The Court also gave directions to the State Government with regard to issues relating to citizenship. The State of Arunachal Pradesh moved an application for modification of this judgement.

The then Chief Minister of Arunachal Pradesh, Gegong Apang, whose numerous writings and communications to the Centre in 1996 on the issue of citizenship for the Chakmas were allegedly ignored, took the ultimate step in the last quarter of 1994 of withdrawing all official facilities for the Chakmas following a rally in Delhi organised by the refugees where his effigy was reportedly burnt. The Chakmas themselves, receiving no help from either the political leadership of the State, said the action of the Chief Minister meant very little as they were hardly enjoying any facilities. One development that happened after Apang's announcement was that official doctors stopped attending to ailing



Chakmas in Arunachal Pradesh. Both in 1994 and 1995, severe outbreaks of malignant malaria reportedly caused the death of at least 200 Chakmas, most of whom died without getting any medical attention. This was in addition to the cutting off of food supplies and other minimum necessities for the refugees. In 1994 a malaria epidemic swept through the Chakma camps at Dharmapur and Vijaypur. During this time, the AAPSU imposed an economic blockade of the Chakma refugee camps, preventing the delivery of medical supplies and rations. The epidemic reportedly claimed the lives of 144 people.

In Lohit district, primary schools were closed and Chakma students were denied access to all the secondary schools in the area. The Chakma students studying at the Chowkham Government Higher Secondary School and the Namsai Government Higher Secondary School were arbitrarily expelled from these institutions. In Changlang district (formerly known as Tirap), more violent means were employed in order to deprive the Chakmas and Hajongs of their right to education. The Diyun Secondary School, a school constructed by the Chakmas themselves, was set ablaze in November 1994. There was no government initiative to rebuild these schools. On 29 September 1994, the Chakma students attending the Miao Higher Secondary School were forcibly assembled and physically abused, according to the CCRCAP. A student subsequently died due to the torture. Despite repeated government appeals to the people to drive out the refugees, the strong support given to the beleaguered Chakmas and Hajongs by other Buddhist communities such as the Khamtis and the Singphos perhaps stopped many refugees from fleeing. By and large, press coverage, national as well as international, was sympathetic to the Chakma cause. Human rights bodies like Amnesty International and the NHRC in India too have tried to highlight their problems.

The Chakmas have thus hung on by the skin of their teeth in their bare, almost primitive, settlements in the three districts of Arunachal Pradesh against all odds, including a hostile administration and hostile political parties. That they have been able to stay on since 1994 is a tribute to an alert press, concerned human rights activists, the NHRC and, of course, the Indian judiciary.

Naturally the deadlock induced frustration in men like Gegong Apang and AAPSU leaders like Takum Sanjoy and Domin Loya. These leaders were busy issuing threats of political blackmail against the Central Government, pointing out that in case the Centre did not move the Chakmas from Arunachal Pradesh, they would be forced to go for closer ties with China, which never regarded the accession of the state to India as legitimate. Apart from organising rallies and demonstrations, press conferences and other propaganda measures, the student leaders have en masse returned to the State Governor their university degrees in protest against the Centre's inaction. Against this backdrop, on 4 May 1998, 27 Chakmas submitted citizenship applications to the Deputy Commissioner of Changlang district. He refused to accept them. Perforce, the Chakmas and Hajongs had to submit applications directly to the Union Home Ministry once again. More than two years later, the Chakmas and Hajongs were yet to be granted citizenship.

A few months back, the Union Government submitted before the Supreme Court that the state of Arunachal Pradesh was not complying with the directions of the apex court to accord protection to Chakma refugees and to repel any attempt by organised local groups to forcibly evict or drive them out of the State. Attorney General Soli Sorabjee made a brief submission before a three-judge bench comprising Chief Justice Madan Mohan Punchhi and Justices K.T. Thomas and D.P. Wadhwa during the hearing of a public interest petition by the Arunachal Pradesh Indigenous Tribals Rights (Protection) Organisation (APITRO).<sup>14</sup> The petition had said the granting of citizenship to the Chakmas in Arunachal Pradesh would open the floodgates for illegal migrants and foreign nationals for Indian citizenship and the Central Government for political reasons could make the State powerless. The petition claimed that the Union Government had negotiated with a neighbouring country in order to buy peace on its border by giving a large group of refugees citizenship, and in the process sacrificed the human and legal rights of the protected indigenous communities of the State. The petition further stated that the judgement violated the powers of the State under the 7th Schedule, List 2 of the Constitution and the Court could not pass orders by way of

the writ of mandamus ignoring the executive and legislature of Arunachal Pradesh.<sup>15</sup>

. On 12 January 1999, the CCRCAP, a representative organisation of the Chakmas and Hajongs, urged the Home Minister L.K. Advani to intervene immediately and direct the Election Commission of India to include in the electoral rolls those Chakmas and Hajongs of Arunachal Pradesh who were citizens by birth. The CCRCAP requested that the Chakmas and Hajongs in Arunachal Pradesh be issued Voter Identity Cards at the time of their enrolment. The organisation also requested that the process be completed within a certain period of time and supervised by an officer from New Delhi in order to forestall any delaying tactics by the State Government officials. On 11 February 1999, the Election Commission of India ordered a special revision of electoral rolls across India including Arunachal Pradesh. When a CCRCAP delegation met with officials of the Election Commission of India however, the officials claimed that they had received no specific instructions from the Ministry of Home Affairs to enrol members of the two groups. The Election Commission officials also said they could not act on the basis of statements made by the Ministry of Home Affairs to the NHRC, in which the Ministry had recognised the citizenship of Chakmas and Hajongs under the Citizenship Act. In May 1999, when the Chakmas and Hajongs approached the Electoral Registration Office in Arunachal Pradesh to submit their claims and objections to their exclusion, the local officials refused to accept their petitions.

It is interesting to note that, as a member of the Opposition, the current Minister of Home Affairs L.K. Advani, had been exceptionally critical of government ineffectiveness in granting citizenship and related rights and privileges to the Chakmas and Hajongs. He had raised the issue in Parliament on several occasions. During his own tenure as Minister of Home Affairs, the Union Government has however failed to make the Arunachal Pradesh Government comply with Constitutionally binding judicial orders and directives from the Ministry of Home Affairs. Under the circumstances, the Chakmas and Hajongs have faced institutionalised discrimination, first under the administration of Chief Minister Gegong Apang, whose rule ended in 1998, and now

under the rule of his successor, Mukut Mithi. After coming to power in 1980, we may recall, Apang had banned the Chakmas and Hajongs from holding government jobs. In fact in the 1990s, as his hold on power was increasingly threatened, Apang had made use of the Chakma issue to stir public hostility and scuttle criticism by the Opposition. Through several administrative orders, the Apang administration removed ration cards and trade licenses granted to the Chakmas and Hajongs, withdrew their school facilities and hospitals, and allowed the members of the AAPSU to operate against them with impunity. The administration also mobilised political parties to demand expulsion of the Chakmas and Hajongs from the State. In the face of the State Government's consistent flouting of NHRC directives, the NHRC had approached the Supreme Court of India on 2 November 1995 in order to protect the lives and liberty of the Chakmas and Hajongs.

However, despite the Court judgement, the Chakmas and Hajongs have remained subject to intimidation, harassment, torture, and other forms of abuse. They have been prevented from selling their produce in the market, and members of the CCRCAP have been beaten up and implicated in criminal cases. In a vindictive move, the State Government officials have sought to uproot the Chakmas from one locality by claiming it was forest area. The Deputy Commissioners, in direct defiance of an explicit Supreme Court order, have continued to refuse citizenship applications from the Chakmas. Instead, the State Government has offered some Chakmas and Hajongs financial inducements to settle outside Arunachal Pradesh. Therefore we see the change of leadership in Itanagar has not changed the attitude of the State Government of Arunachal Pradesh towards the Chakmas and Hajongs. The present administration under the leadership of the Chief Minister Mukut Mithi continues to pursue his predecessor's policy of exclusion. In May 1999, the Chief Minister once again called for the removal of the 65,000 Chakma and Hajong refugees from Arunachal Pradesh. The State Government of Arunachal Pradesh continues to sit on citizenship applications forwarded by the Union Government of India, and the Central Government has made no move to include the Chakmas and Hajongs in the electoral rolls.

Being in such a defenceless position has made the Chakmas and Hajongs in Arunachal Pradesh permanent victims of xenophobia. Had the Chakmas and Hajongs been granted Indian citizenship 30 years ago as promised, they would have been by now integrated into the social fabric of the State of Arunachal Pradesh and, released from the obligation to remain in allotment areas, would not have been vulnerable to blockades, state-sponsored attacks, and mass evictions. Instead, their statelessness continues. It shows that in order to enjoy rights, one must be able to claim rights and must be able to have them enforced.

**another time, another ordeal** During the 1971 war for Bangladesh's independence, people in the CHT in general had not been very active in supporting the Bengalis. According to one leading expert, the hill people in fact viewed the Bengali freedom struggle as essentially a conflict between the Bengalis and West Pakistanis. Moreover, the Chakma *Raja* Tridib Ray showed his allegiance to Pakistan during the war. In no time, this created suspicion among the Bengali-speaking majority about the intention of the hill people after the creation of Bangladesh. Moreover, the CHT was a major training and hideout base for the Mizos, a section of whom had supported the Pakistani forces during the independence struggle in Bangladesh. Over and above that, a few members of the defeated Pakistani Army and *razakars* found sanctuary in the CHT. Therefore, immediately after independence, the Mukti Bahini went on a rampage in the CHT in the name of hunting out the Pakistani soldiers and their aides.<sup>16</sup>

Subsequently, the 1972 Constitution of Bangladesh did not include any provision recognising the distinct identity of the indigenous people living in the CHT. The new state of Bangladesh was based on the idea of Bengali nationalism, and it did not leave any scope for cultural or political autonomy for the hill people of the CHT. So, as known to any historian of contemporary Bangladesh, when Manabendra Narayan Larma, who had been elected to the Parliament from the CHT, called on Sheikh Mujibur Rahman with a delegation seeking to place Chakma concerns on the new nation's political agenda, he was utterly disappointed.<sup>17</sup>

As it became clear to the political leadership of the indigenous people of the CHT that Sheikh Mujibur Rahman and the new establishment he represented was in no mood to listen to them, Larma set up the Parbotyo Chattogram Jana Sanghata Samiti (PCJSS) as a political group, and later, its armed wing, the Shanti Bahini (SB). Incidentally, the Indian security forces used to support the CHT fighters and provided them with training, mostly in Tripura. As a result, the SB carried out a series of attacks on Bangladeshi forces and on civilian targets as well. On the other hand, the counter-insurgency operations by the Bangladeshi Army in the CHT against the SB led to a large-scale exodus of refugees into neighbouring Tripura, which was already in a troubled state.

Moreover, in a country with scarce arable land, the Bangladesh Government started a policy of settling plains people in the fertile parts of the Chittagong Hill Tracts. Since 1978, the Indian Government started providing temporary shelter for people from the CHT in the neighbouring Indian states of Mizoram and Tripura. In fact, gradual militarisation and Islamisation for the second time forced the hill people to move from their traditional homeland in the CHT, and many of them crossed over to India for shelter. Finally, following a series of massacres by Bangladesh security forces in 1986, nearly 70,000 Jumma refugees sought shelter in six camps established by the Indian Government in Tripura.<sup>18</sup> About 50,000 of them sought refuge in Tripura in May and June of 1986 after Bangladesh Security Forces attacked hundreds of villages inhabited by the hill people in Matiranga, Lakshmichhari, Panchhari, Khagrachhari, and Dighinala Upazillas. During the attacks, several hundred hill people were killed and many more died due to starvation, sickness, and bullet-wounds in the forests in which they took shelter. Most of the victims were old men, women, and children. The hill people fleeing to India were chased and murdered. The massacres in Baghaichari in August 1988 and in Longadu in May 1989 sent another 20,000 refugees into Tripura. But the massacres did not stop there; there were to be more-well known are the Logang massacre in 1992 and Naniarchar massacre in 1993.

Just like what happened three decades earlier, the people of the CHT were on the move again, many again to the kin land of Tripura in India.

**life as refugees** The incoming refugees from the CHT were sheltered in the Amarpur and Sabroom sub-divisions of south Tripura. The Indian Government, in spite of being hesitant about granting proper refugee status to them, set up six refugee camps in Takumbari, Pancharampara, Karbook, Lebachhara, Shilachhari, and Kathalchhari. Though the Government of India and the Government of Tripura were to claim that by setting up relief camps they had temporarily rehabilitated the CHT refugees, facts revealed that concerns about health, education, preventive health-care, and timely supply of medicine for the-refugees were non-existent. Despite much talked-about health-education campaigns, the Government agencies paid scant attention to the prevention of communicable diseases like diarrhoea, cholera, and malaria. The immunization programme did not take off, as the Government felt that such initiatives could result in misperception amongst the refugees who might have 'other' notions about health and medication. And, despite the contrary claims of the Government, abject poverty and helplessness prevailed among the refugees in the makeshift camps of Tripura.

The Indian Government decided to resolve the refugee problem through negotiations with the Government of Bangladesh. P.V. Narasimha Rao, the Indian Prime Minister, signed a pact with Bangladeshi Premier Begum Khaleda Zia in May 1992 and it was decided that henceforth the two governments would try to work out a meaningful dialogue to give a boost to the CHT refugee-repatriation procedure. But, all such hopes on the part of New Delhi and Dhaka came to a naught in the wake of the experience of the CHT refugees at the end of a second phase of repatriation ending on 5 August 1994. Around 5,000 refugees returned home that year, but the repatriation programme was stalled after refugee leaders alleged that Bangladesh was not fulfilling its promises. As the demands placed on behalf of the Jumma Refugees' Welfare Association (JRWA) remained unfulfilled, the entire idea of repatriation floundered. Under those circumstances, the refugees continued to live in conditions of squalor in the relief camps in Tripura.

As the relations between India and Bangladesh started to gradually improve, and as the geopolitical and geo-economic

importance of North-east India became clearer to the Government of India, its attitude towards the refugees also began to change. Humanitarianism gave way to strategic calculations. As a result, the Government of India tried to pressurise these people to go back to their homeland in the CHT. Undoubtedly the presence of refugees had put additional pressure on the Indian exchequer. When the plan for 'voluntary repatriation' failed, the next stage that was to come was arm-twisting. Who cared that it was inhuman to try to forcibly repatriate these refugees back to a hostile situation in their home country?

Table 6.2 would indicate that as it was, the Indian administration was quite often indifferent to the needs of the refugees. Even the dilapidated makeshift camps were hardly renovated. Although many huts in the Kathalchhari camp were destroyed in a devastating fire, these were not reconstructed. Under those circumstances, when India and Bangladesh struck a deal about the repatriation of the refugees from Tripura, the pressure automatically mounted on those refugees and supply of food and other basic necessities turned into weapons and the supply became rather infrequent. The living conditions in the camps became untenable and refugees were virtually denied of food. Ration supplies to the refugees became infrequent since mid-1992. Although education is a basic right for all, schools set up and run by the refugees were not given affiliation, and refugee boys and girls were not allowed to appear for the school leaving examination conducted by the Government of Tripura. In November 1995, the sub-divisional officer (SDO) of Amarpur warned that if the refugees indulged in unauthorised movements, then the names of the concerned refugees would be deleted from the official list and assistance to them would be stopped. The leaders of the refugee camps were also not allowed to go out of the camps without prior permission of the SDO, whose office was at least 35 kilometres away from the camps and communication between the two places was not worth mentioning.

**the journey back home** After the Awami League Government led by the late Mujibur Rahman's daughter Sheikh Hasina Wajed came to power in Dhaka in 1997, the fate of the hill people

Table 6.2: Suspension of Commodities supplied to Refugees through Ration Shops

<i>Serial No.</i>	<i>Items</i>	<i>Period of Suspension</i>
1.	Rice	1-13 April 1996
2.	Cash dole of 20 paise per head per day	April 1993-May 1994 and September 1994-March 1995
3.	Masur dal	16 December 1992-August 1993 and October 1993-May 1994
4.	Mustard oil	February-May 1993, July-August 1993, October 1993-May 1994, October-December 1994, December 1995-March 1996
5.	Dry fish	April 1993-May 1994, September 1994-March 1995
6.	Dry chilly	March 1993-May 1994, September 1994-March 1995
7.	Coconut oil	February 1992, January-August 1993, October 1993-May 1994, September-December 1994, December 1995-March 1996
8.	Firewood	April-May 1992, February-November 1993, April 1994, January-February 1995, April 1995, October 1995-February 1996
9.	Salt	April 1995-March 1996
10.	Milk powder	September 1991-March 1996
11.	Death allowance	7 December 1992-13 April 1996

Source: Data collected by the author during his visits to the refugee camps in south Tripura in 1996 and 1997.

started to change slowly but steadily. A high-powered delegation of the National Committee on the CHT led by Abul Hasnat Abdullah visited the refugee camps between 27 February and 2 March of 1997, and again during 6 to 9 March 1997. The delegation also came to India to persuade the 50,000 odd refugees to return to the CHT, and promised them several incentives for their rehabilitation back home. Accordingly, an agreement was reached between the leaders of the refugees and the representatives of the Government of Bangladesh to facilitate the process of repatriation. But when the Central Executive Committee of the JRWA met at the Takumbari camp on 8 March 1997, the refugees expressed concern over the fact that the UNHCR and the International Committee for Red Cross (ICRC) were not there to oversee the repatriation process, a demand made by the JRWA earlier. But after some initial hesitation, the refugees started to go back from 28 March 1997. Under an agreement signed in Tripura between the CHT refugees and a Bangladesh negotiating team from Dhaka on 9 March 1997, the refugees agreed to return home. This agreement offered an amnesty for those facing criminal charges, safety assurances, job guarantees, and financial help to build houses and restore land.

In that batch, altogether 6,708 refugees trekked back to their homeland in the CHT. But soon it became clear that the Bangladesh Government was unable to rehabilitate more than half of the 1,247 tribal families that had gone back. As the Government of Bangladesh was hesitant to tackle the land question, the resettlement scheme could not succeed.<sup>19</sup> The repatriation process did not proceed further as the PCJSS and the Government of Bangladesh were yet to reach an agreement on the fundamental issue of peace and the situation in the CHT was yet to improve. It may be recalled that the CHT was by now home to tens of thousands of Muslim settlers from the plains, and many of them had meanwhile occupied land belonging to the indigenous people, often with the support of the civilian and military administration of the country.<sup>20</sup>

Nevertheless, the CHT problem underwent a sea change after the signing of the peace accord on 2 December 1997 between the Government of Bangladesh and PCJSS. Following the agreement, the armed members of the PCJSS surrendered their arms and

returned to normal life. Although the CHT refugees began repatriating from India (where the administration had not welcomed them) even before the 1997 peace accord, as we have indicated earlier, the signing of the accord paved the way for the repatriation of the entire refugee population numbering about 60,000 people.

The accord promised the hill people restitution of their land, greater participation in government, and a reduction in the Bangladesh military presence in the CHT. Although the Government has amended existing laws to provide for the implementation of the peace accord, the accord is now facing a number of difficulties that require urgent and continued attention. Concern over the slow pace of implementation of the accord by the Government has been raised by the international community, by human rights groups in and outside Bangladesh, and by the tribal people of the Chittagong Hill Tracts, threatening at times to derail the peace process altogether. The Government did not fully honour those promises. It should be noted that although the PCJSS's demands partially changed over time, these demands had revolved around three fundamental issues: (i) autonomy for the CHT, (ii) withdrawal of the Bangladeshi settlers from the CHT, and (iii) demilitarisation of the area. When finally the peace agreement was signed, the Government in fact refused to consider these basic demands of the hill people, and appeared to be interested in granting only a regional council, an advisory body which would not have any effective decision-making powers.<sup>21</sup> Moreover there was also a provision for electoral representation of the settlers from the plains, which meant virtual legalisation of their presence in the CHT.

**building trust-a distant dream?** Trust on both sides is the key to the success of any treaty. In this case, the onus of building the trust is more on the Bangladesh Government, given the recent historical background of the CHT. It may be impossible for the hill people to trust and repose confidence in the Bangladesh Government without the withdrawal of the Muslim settlers of the plains from the CHT. So far, only a few returnee families have been able to get back their land. The Government has reportedly done little to help them do so. The Bangladesh authorities even forcibly

evicted 12 returnee families from a school building where they had been living since returning from India. According to local sources, the police injured several women and children while evicting them.<sup>22</sup> Moreover, the Government did not reduce its military presence in the CHT, did not drop pending criminal charges against the former SB members, or move toward devolving some powers to local groups, as it had promised. The security forces have continued to harass the ethnic minorities and support Muslim settlers who are unwilling to give up the land they had taken from the hill people. According to a report by the South Asia Human Rights Documentation Centre, the Bangladesh police killed two Jummas and injured dozens more when they fired at demonstrators in Khagrachari in such a situation. Dissatisfaction with the Government's failure to comply fully with the terms of the peace accord has also led to the formation of an opposition group among the hill people, dissent within the indigenous communities, fratricidal skirmishes between some radicalised indigenous youth and former SB leaders. Many argue that the accord has failed to reflect the genuine hopes and aspirations of the peoples of the CHT and has failed to fulfil the main demands of the hill people; namely, Constitutional recognition to the national ethnic minorities of the CHT with guarantee for autonomy, restoration of traditional land-rights, demilitarisation of the area, and withdrawal and resettlement of the Bengali settlers. The land question, the principal reason for the repeated exodus of the people of the CHT, continues to remain unresolved. Thus majority of the returnees have not got their land back (about 40 per cent are said to have received land on return), settlers have remained there as before, and even the internally-displaced persons have not been fully rehabilitated. Although a separate Ministry for CHT Affairs has been established, the Advisory Committee through which the Regional Council could have more say in decisions made by the Government has not been constituted. After the signing of the peace accord, the Government formed a task force to address the rehabilitation needs of the displaced. So far, the task force has not been able to act on behalf of the returnee refugees. The delay in the implementation of the provisions of the peace accord thus creates serious doubts about the future of the CHT.

The case of the CHT refugees in India indicates a few things. First, it is clear that the Government of India has hardly any consistent policy on refugees. New Delhi has so far treated refugees on a case-by-case basis. Therefore different groups of refugees arriving from different parts of South Asia have received different kinds of treatment and hospitality from the Indian administration. As India has received the largest number of refugees since her decolonisation, this appears to be rather disturbing. In the absence of a clear-cut policy of the Indian Government on refugees, the people seeking shelter may find themselves as strategic pawns in the geopolitical and geo-economic games of India and the concerned refugee-generating neighbour.<sup>23</sup>

India and Bangladesh, who are not parties to the 1951 Geneva Convention or the 1967 Protocol, could easily evade the supervision of the UNHCR or ICRC. In the absence of any legal binding, the entire policy formulation depended largely on persuasion. The participation of the relevant international agencies in refugee care, rehabilitation, and repatriation, under such circumstances, relied on the good wishes of the Government of India. In the background of poverty, a resource crunch, the absence of a well worked out consistent policy, and rising xenophobia in many parts of the country, humanitarian considerations can easily take a backseat allowing local and national political compulsions to rule the day.

If the refugees of the 1980s and 1990s could at least go back voluntarily, or with some inducements, or with disguised and undisguised coercion from the host state (probably it was a mix of all three), the condition of the CHT refugees in Arunachal Pradesh remains worse. A stay in India for about four decades, a bilateral agreement, and the revised Citizenship Act of the country have not been enough to secure for them safety of life and livelihood. The interventions of the NHRC, the Supreme Court, and different NGOs could not rescue them from their 'state of statelessness'. Political calculations of local elites, coalition politics, strategic choices in security policies, and rising xenophobia have marginalised humanitarian considerations. The absence of a well-defined refugee protection regime in South Asia continues to make shelter-seeking people as vulnerable as ever.

## notes and references

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17. For details, see Sabyasachi Basu Ray Chaudhury, 'The Politics of "Inclusion" and "Exclusion": The Victims in the Chittagong Hill Tracts, Bangladesh', an unpublished paper presented at the International Conference on *Rethinking Boundaries: Geopolitics, Identities and Sustainability* organised by the Centre for the Study of Geopolitics, Panjab University, Chandigarh in February 2000.

18. For details, see *Life is Not Ours: Land arid Human Rights in the Chittagong Hill Tracts, Bangladesh*, Report of the CHT Commission, the Netherlands, 1991, and its *Update 2*, 1994.

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20. According to the 1991 census, the total population of the CHT is 9,74,465. Of them 5,01,145 (i.e., 51 per cent) are hill people and the rest 4,73,300 (i.e., 49 per cent) are from the plains. About 60,000 CHT refugees who were in Tripura in India during 1986-98 were not included in this census. In other words, there was a sharp increase of the number of the Bangladeshis since the late 1970s due to the government-sponsored migration programme, while the number of indigenous population did not increase to that extent as their persecution continued.

21. The Council shall be formed with 22 members including the Chairman. One-third of the members shall be elected from among the tribals. The Council shall determine its procedure of functioning. Composition of the Council shall be as follows: Chairman-1, Members tribal (men)-12, Members tribal (women)-2, Members non-tribal (men)-6, Members non-tribal (women)-1. Among the tribal men members, 5 persons shall be elected from among the Chakma tribe, 3 persons from the Marma tribe, 2 persons from the Tripura tribe, 1 person from the Murung and Tanchongya tribes and 1 person from the Lusai, Bawm, Pankho, Khumi, Chak, and Khiyang tribes. Among the non-tribal men members, 2 persons shall be elected from each district. Among the tribal women members, 1 woman shall be elected from the Chakma tribe and 1 woman from other tribes. Three seats shall be reserved for women in the Council. One-third shall be non-tribals.

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## 7 gainers of a stalemate:

### the tibetans in india

Rajesh Kharat

**background** In 1949, when the Communists came to power in China, Radio Peking announced that the task of the People's Liberation Army (PLA) for 1950 was to liberate Taiwan, Hainan, and Tibet. On 7 October 1950, 40,000 Chinese troops entered eastern Tibet's provincial capital Chamdo (a strategically important entrance to Tibet from the Chinese side) from eight different directions and routed the small Tibetan army of around 4,000 soldiers.<sup>1</sup> On 23 May 1951, two representatives of the Dalai Lama signed an Agreement of the Central People's Government at China and the Local Government of Tibet, or, as it is commonly known, the 17-Point Agreement. The Agreement promised:

the maintenance of the status quo in the Tibetan regional government structure as well as in the internal position and authority of the Dalai Lama but called on the Lhasa Government to actively assist the People's Liberation Army to enter, and consolidate the national defense, while permitting 'autonomy under the unified leadership of the Central People's Government'. Tibetan troops were to be reorganised into the People's Liberation Army, and all foreign affairs to be handled by Peking.<sup>2</sup>

After the Agreement of 1951, Tibet witnessed many unfortunate developments (social-economic-political) during the period from



1951 to 1954. China followed various policies and ways to weaken the Dalai Lama's temporal as well as religious position and change Tibet's socio-economic and political system existing at that time.<sup>3</sup>

On 15 September 1952 India had officially announced that the Indian diplomatic mission in Lhasa had become a Consulate General, while the Trade Agencies (in Gartok, Gyantse, and Yatung) were to come under the jurisdiction of the Consulate, thereby recognising that Tibet was a part of the People's Republic of China (PRC).<sup>4</sup> Thus, India agreed to the changed status of Tibet from an independent nation to an autonomous state of China, but did not accept Chinese sovereignty over Tibet till it had signed the Panchsheel Agreement with China on 27 April 1954. According to this Agreement, the Government of India (GoI) formally recognised Tibet as a region of China. Once the GoI had discontinued its special relationship and rights with Tibet, the Chinese introduced land reforms there. Farms, cattle, and sheep owned by the lamaseries and monasteries were pooled into farm co-operatives. Matters were aggravated by the introduction of Chinese paper money and by Chinese borrowings from Tibetan stocks of gold and silver.<sup>5</sup> Attacks on the position of the Dalai Lama, and on religious doctrines and religious establishments such as monasteries led to feelings of resentment among the Tibetans, while the atmosphere was made even worse by economic difficulties.<sup>6</sup> As a result, a revolt broke out in Tibet in the winter of 1955-56. The guerrilla units organised by the Khampa tribesmen attacked the Chinese positions with extreme savagery. The Chinese Government decided to stamp out the rebellion by any means whatsoever, and eventually crushed the revolt with great bloodshed by January 1956. In November 1956, when the Dalai Lama along with some officials visited Delhi, a group of self-exiled Tibetans prevented the Dalai Lama's return to Tibet. Moreover he himself foresaw what would happen in Tibet within a few years, so he informed Jawaharlal Nehru that he had no desire to return to his homeland, asking for either political asylum in India or assistance in acquiring similar status in any other Buddhist nation.<sup>7</sup> He was however persuaded by Nehru to return to Tibet. In the meantime, the Chinese imprisoned and persecuted the Tibetan clergy and destroyed

several temples and monasteries; many others were killed, and many more imprisoned.<sup>8</sup> According to George N. Patterson, the Chinese authorities had by then decided to remove the Dalai Lama from Tibet. The Dalai Lama wrote in 1959:

A rumour spread at once throughout the city that the Chinese had made a plan to kidnap me. During the evening and night of the 9th of March, excitement grew, and by the morning most of the people moved to Lhasa and decided spontaneously to prevent my visit to the Chinese camp at any cost.<sup>9</sup>

On 10 March, a crowd gathered around Norbulingka, the Dalai Lama's palace, and did not allow him to come out; instead, three ministers were sent on his behalf to the PLA camps. On 17 March 1959, at 4 p.m. in the evening the Dalai Lama claims to have heard two mortar shells fired from the direction of the Chinese PLA military camp, which led him to make a decision to leave Tibet.<sup>10</sup> By 10 p.m. that night, dressed as a simple monk, he left his palace, and along with 13,000 of his followers escaped from Lhasa to seek political asylum in India. On 31 March 1959 the Dalai Lama arrived at Chuthangmo, an Indian checkpost on the eastern border of India, and from there he reached Tezpur in the North-eastern state of Assam.

**post-1959 period: asylum in india** After the Dalai Lama's flight on 17 March 1959, the first report of an uprising was broadcast by *Voice of America* on 22 March 1959.<sup>11</sup> Though chronicles of those events speak of the Americans being involved in the rebellion movement led by the Khampas by supplying them with aid and weapons, particularly through the Kusmintang Government, they were neither associated in any way with the flight of the Dalai Lama, nor were aware of it.<sup>12</sup> The Indian press (*The Times of India* dated 22 March 1959) reported that the news of 'the fighting in Lhasa has been received with great concern in New Delhi and further information is likely to be sought from the Government by the Members of Parliament.'<sup>13</sup> Prime Minister Nehru was extremely cautious while commenting on this issue in the Indian Parliament. He described the situation in Tibet as

'a clash of wills'. In his speech in the Lok Sabha on 23 March 1959-for the first time after the flight of the Dalai Lama-he said:

This is a difficult and delicate situation and we should avoid doing anything which will worsen it. We have no intention of interfering in the internal affairs of China with whom we have friendly relations.<sup>14</sup>

This view was based on the Five Principles ( *Panchsheel*) Agreement signed on 29 April 1954. Nehru at the same time responded positively to the request for asylum and granted political shelter to the Dalai Lama. In support of his decision he said in Parliament:

... there is a long tradition of cultural and religious ties between India and Tibet region of China. In this region lie many places of pilgrimages, which are considered holy by both Hindus and Buddhists and large numbers of our people visit them every year. The Dalai Lama who we had the honour and pleasure of receiving in our country in 1956-57, is held in high veneration by our people and we hope he is safe. We earnestly trust that the present troubles will be resolved peacefully.<sup>15</sup>

After the Dalai Lama arrived in India a few Tibetans who had been settled in India in Kalimpong for several decades, approached Nehru and submitted a four-point memorandum requesting that:

(i) The GoI should seek some form of guarantee from China for the personal safety of the Dalai Lama; (ii) refugees should be allowed to enter India freely; (iii) India should send a mercy mission with medical supplies; and (iv) India should sponsor the Tibetan case at the United Nations.<sup>16</sup>

In response, Nehru made it clear that India was not in a position to intervene and in fact would not like to take any steps which might aggravate the situation in Tibet.<sup>17</sup> Many Opposition parties in India such as the Jan Sangh and the Hindu Mahasabha

organised demonstrations in major cities, while the Praja Socialist Party declared 29 March as Tibet Day. Some of the members from his own Congress Party criticised Nehru's policy on Tibet. But Nehru was firm, as one can make out from his answer to Naushir Bharucha and Mohammed Imman in Parliament on 30 March 1959.<sup>18</sup> Nehru's policy on Tibet as mentioned earlier was to grant political asylum to the Dalai Lama, but not to interfere in the Tibetan region of China. In view of the nature of world politics at that time, and the implications of the Cold War upon Asia, this policy of non-interference in Tibetan affairs was a well-calculated act of diplomacy.

Although the Dalai Lama along with his followers crossed the border into India on 31 March 1959, Nehru made an official announcement in the Lok Sabha only on 3 April 1959. In the meantime, he had personally met the Dalai Lama on 1 April 1959 at Tezpur and confirmed his safe asylum in India. This shows that Nehru had taken care and precaution on the issue, as he was aware of its sensitivity.<sup>19</sup> It is interesting to note that according to western scholars and a few Tibetan scholars, the Tibetans' connection with America became useful in seeking political asylum in India.<sup>20</sup> Athar and Lhotse, two members of the CIA-trained Tibetan resistance, sent a radio message to Washington asking for political asylum in India for the Dalai Lama.<sup>21</sup> John Greany, a senior CIA official and Tibet specialist, put through an emergency call to Washington, and within four hours the CIA's New Delhi representative sent a wire back to Washington saying that the Indian Prime Minister Jawaharlal Nehru had agreed to grant asylum to the Dalai Lama and his followers.<sup>22</sup>

Due to the political asylum given to the Dalai Lama, the Chinese Government accused India of being involved in Tibetan politics. These allegations were sharply refuted by the Prime Minister, who said that,

India's sympathy was based on sentiments and humanitarian reasons. Also on certain feelings of kinship with the Tibetan people, derived from long-established religious and cultural contacts. It was an instinctive reaction.<sup>23</sup>

On the issue of the Chinese criticism of Kalimpong as a centre for Tibetan rebels, he added that the allegation were not justified.<sup>24</sup> Moreover, while responding to queries from various members of Parliament he categorically stated in the Lok Sabha on 27 April 1959:

Our broad policy was governed by three factors; (i) the preservation of the security and integrity of India; (ii) our desire to maintain friendly relations with China; and (iii) our deep sympathy for the people of Tibet. That policy we shall continue to follow, because we think that a correct policy, not only for the present but even more so for the future.<sup>25</sup>

To complicate the situation, most of the leaders from almost all parties reacted sharply against China, and asked the Government of India to extend a helping hand towards Tibet. To mention a few, specifically U.N. Dhebar for instance, said, 'One can say to the Tibetans who have been the victims of this unhappy episode that they have our deepest sympathies in their hour of trial.'<sup>26</sup> Ashok Mehta, a Member of Parliament, was of the opinion that

The Dalai Lama must be allowed to function in India as the leader, spokesman, and symbol of the Tibetan people's struggle for independence. Defining India's interest in Tibet, Mr Mehta said that the people of Tibetan culture and origin lived on the Indian side of the Himalayas. They are profoundly and deeply disturbed over developments in Tibet, he said, adding that India's interest in the freedom of Tibet was therefore deeper than that in the freedom of colonial peoples in other parts of the world. He added that for India, Tibet was not only a question of moral obligation and cultural and religious ties, but also that India's national security was involved. He was even of the opinion that the Dalai Lama should be given complete freedom of action while in India.<sup>27</sup>

Sucheta Kripalani observed, 'the Tibetan issue was a question of human rights. The people of India could never reconcile themselves to the suppression of human rights,'<sup>28</sup> and this was

perhaps the first time that the issue of Tibetan refugees had been discussed from the point of view of violation of human rights.

At this juncture, it is important to quote what Nehru said in the Rajya Sabha on 4 May 1959:

We should allow these refugees to earn their own living and give them freedom to do many things. Broadly speaking, of course, we intend that. We are not going to keep them as prisoners in camps ... to some extent we are responsible when these people are coming in. We cannot let them loose on India

... We have exercised our undoubted right to give asylum. I have said that the Dalai Lama is perfectly a free agent to go where he likes in India or to go back to Tibet.<sup>29</sup>

As a result, the GoI allowed another large batch of Tibetan refugees, mainly women and children, into Bomdilla in Arunachal Pradesh on 20 May 1959. Responding to this help offered by the GoI and its people, at his first press conference in India on 20 June 1959 at Mussoorie, the Dalai Lama said, 'I and my people owe a great debt of gratitude for all that you have done to assist us in our struggle for survival and freedom.'<sup>30</sup>

### **rehabilitation in india**

**initial** steps Once the refugees were in asylum in India they were in dire need of some immediate relief. At first the Dalai Lama wanted all his people to be settled together in large concentrations close to the Tibetan frontier,<sup>31</sup> but for obvious security reasons the Indian Government refused to comply. Instead, to accommodate and help the Tibetan refugees, particularly those who were coming through NEFA and Bhutan, the Gal with the assistance of the State Governments of Assam and West Bengal set up various transit camps at Missamari in Assam and at Buxa in Cooch-Bihar of West Bengal, where the welfare of the refugees was looked after by an Indian officer until such time as the refugees could be moved to more permanent resettlement areas in different parts of India.

In the camps they were given free rations, clothing, and cooking utensils, plus medical facilities. Despite this assistance, many

Tibetan refugees died in the camps due to the sudden change of climate and their arduous journey across the Himalayas. For instance, by 1969, 200 monks had contracted tuberculosis, 80 of whom died. The 900 monks who were still surviving by 1969-70 were finally moved south to settlements at Bylakuppe and Mundgod in Karnataka. To overcome this critical situation in the 1960s, the Dalai Lama approached the GoI's Ministry of External Affairs-which had been assigned the work pertaining to the relief and rehabilitation of Tibetan refugees-with a request to resettle his people in cooler places where they might be temporarily employed.<sup>32</sup> Responding immediately, the GoI agreed to send these refugees to places like Himachal Pradesh, Jammu and Kashmir, Kalimpong, Darjeeling, Arunachal Pradesh, Sikkim, Dehradun, and Mussoorie, all hilly areas where most of them were engaged as road labourers. It was the first attempt by the GoI to provide a means for economic independence to the refugees. It had established 95 road construction camps along the northern borderlands in India. These were areas in which the Tibetans were uniquely qualified to labour because of their physique. Despite massive aid from the Indian Government and outside sources, these road-building camps did not however provide a sufficient source of livelihood for the Tibetan refugees, as road-building work was irregular. Approximately 18,000 to 21,000 Tibetans were employed in road building, at an average wage of US\$ 0.30 a day.<sup>33</sup> Conditions were so bad that Tibetan refugee officials admitted in 1964 that these workers were worse off than they would have been if they had remained under the Chinese in Tibet.<sup>34</sup> The worst fate was those of the children separated from their families as due to irregular work the road labourers had to move from place to place. The GoI had taken the decision to keep away around 5,000 children from their parents and sent them to live in permanent refugee camps. Three thousand others were permitted to stay with their parents in the road camps, but only on the condition that those under 15 would not be allowed to work.<sup>35</sup> Nevertheless, as is so often the case, a few extra pennies were always required, and there were frequent reports of children under the age of 15 engaged in hazardous work.<sup>36</sup>

In view of this practical difficulty, the Dalai Lama made another request to Nehru for rehabilitation of the Tibetans in some other

parts of India. Thus to rehabilitate these refugees, the GI had to follow a strategy of creating a series of permanent agricultural settlements throughout India as agriculture seemed to be the most suitable occupation for them to follow in exile, particularly as almost all of them were unfamiliar with modern industrial technology. The Government also thought that such agricultural settlements would help India's food needs by bringing unused land under cultivation. So Nehru wrote to the Chief Ministers of State Governments asking them if there was land available in their territories for resettlement of the Tibetan refugees. He received a positive reply from Karnataka (then Mysore).<sup>37</sup> As a result, an area of over 3,000 acres of land, for an initial group of 3,000 refugees, situated at Bylakuppe was leased for 99 years to the Tibetan refugees by Nijalingappa, the then Chief Minister of Mysore. Thus, the first group of Tibetan refugees was sent in December 1960 from the various transit camps located in Himachal Pradesh, Arunachal Pradesh, Kalimpong, and Sikkim to Mysore and adjacent areas of Karnataka, known as Mundgod in Belgaum division. The GoI adopted the same method to rehabilitate many other refugees elsewhere, particularly at Chandragiri in Orissa, Manipet in Madhya Pradesh, and Dehradun and Mussoorie (now in Uttarakhand) in Uttar Pradesh.

The Tibetan refugees were rehabilitated in the settlement camps mainly in three sectors: agriculture, agro-based industries, and carpet weaving and handicrafts. This will be discussed in detail in the following paragraphs.

**agriculture** In India there are a total 17 such agricultural settlements, out of which in Karnataka alone there are six such settlements housing over 2,00,000 people. Regarding the rest of the settlements, three are in Arunachal Pradesh (Tezu, Miao, and Bomdila), two in Ladakh and one each in Orissa (Chandgiri), Madhya Pradesh (Manipet), Maharashtra (Bhandara), Uttar Pradesh (Herbertpur), Sikkim (Rawangla), and West Bengal (Darjeeling). The first of the rehabilitation agriculture settlements, Mundakuppe, was located in the then state of Mysore, on forest-land which had in the past sustained agriculture. The GoI also provided accommodation along with basic infrastructure

necessary for daily survival. Facilities were provided to these refugees to enable them to supplement their income by establishing poultry farms, piggeries, and dairies.<sup>38</sup> This was the most advanced settlement, largely because it received much technical assistance from abroad and from official organisations in India. This aid included the establishment of a dairy farm by the National Christian Council of India, the sending of agricultural experts and trucks by Switzerland, founding of a carpet weaving centre and setting up of a work centre for the elderly by the AECTR (American Emergency Committee for Tibetan Refugees).<sup>39</sup> Today the settlement has over 20,000 to 25,000 houses, and some Tibetan families are so well off that young, impoverished Indian boys are actually taken in by them. In return for room and board these boys do a variety of household tasks such as hauling drinking water from wells or manual work in the farms in the absence of the Tibetan refugees. Presently, most of the refugees move out to trade in various cities, relying on the local people's efforts in agriculture during the off season.<sup>40</sup>

The first five years brought so much prosperity that bicycles, horses, and gambling began to proliferate, while Tibetans were increasingly able to hire landless Indians for labour needed in their fields. Around 80 per cent of the Tibetan refugees in south India live on agricultural income, and overall 50 per cent of the refugees belong to the agricultural settlements, most of which are located in south and central India, namely, Karnataka, Maharashtra, and Madhya Pradesh.<sup>41</sup> These refugees were given on an average one acre of land each by the Gol. Moreover they received agricultural equipment like bullocks, tractors, agricultural implements, seeds, fertilisers, and other tools. The Tibetans worked very hard to convert the virgin and barren land into cultivable land. Each agricultural settlement now has a co-operative society to help the settlers market their goods outside the refugee enclaves. In these settlements the crops mainly grown are maize, wheat, paddy, potatoes and also cash crops like ragi, soya beans, mustard, and barley.

In contrast, the settlement at Manipet in Madhya Pradesh is in poor condition. Established in 1963 through a Gol grant of

Rs 21,32,200, it had as many as 5,000 inhabitants at one time.<sup>42</sup> The resettlement policy in the North-east in Arunachal Pradesh also was frustrating due to the harshness of the climate, the poverty of soil, and the inaccessibility of the chosen locations. The 2,000 settlers at Changlang found that their efforts to establish themselves were frustrated due to the absence of sufficient capital for the provision of machinery, fertilisers and seeds, so these remote settlements have proved a failure.<sup>43</sup> The major differences between the settlement at Manipet and that at Bylakuppe were the land conditions, and the degree of outside technical-assistance. The camp at Manipet is located in a dense forest, with constant danger from tigers, snakes, and adverse weather conditions—all of which have taken a heavy toll of lives. Help for the community came largely in the form of funds from the AECTR. A hospital was built in 1964, only to be suddenly and mysteriously closed down three years later. The YMCA also sent a volunteer teacher. However, by 1978 there were only 1,100 inhabitants left at Manipet; and they were living without electricity, industry, or irrigation. Morale was very low, and there was little to show for 15 years of hard labour.<sup>44</sup> The situation in Karnataka at Bylakuppe (in Bylakuppe there are three agriculture settlements over-crowded with around 1,00,000 refugees) may be envied by Tibetans living in other agricultural settlements such as those at Kollegal, Mundgod, and Hunsur.<sup>45</sup> In these settlements it was found that after 40 years the water and electricity facilities were not very satisfactory, and there were no approach roads to the settlements.<sup>46</sup> The available education was so poor that the rich families sent their children to schools in Bangalore, while those who were unable to afford such an expense kept them at home rather than send them to the Tibetan schools. There was also the problem of a shortage of land. Way back in the 1960s, each refugee received 1 acre of land. However, population increased due to both immigration and births, so that the average plot of land is now approximately half-an-acre per person.<sup>47</sup> Thus it is very difficult to sustain life in the settlements with a fixed size, continuous increase of members of the family, and scarcity of water and electricity. The greater difficulty is with self-funding. How many years can people survive only on

agriculture with low yields and minimum resources? Thus even after 40 years of technological and financial assistance the settlements could not create even the most rudimentary social welfare schemes for the needy.

In these settlements, an official appointed by the Dalai Lama known as the representative runs the day-to-day administration. This representative is in many respects considered to be the chief of the settlement. Upon studying the administrative structure, one can see that the present system put an end to the traditional Tibetan serf-lord relationship.

**agro-based industry** The scarcity of land for agriculture, particularly in northern India, and the lack of aptitude for agriculture among the young Tibetans led the GoI and representatives of the Dalai Lama to accommodate the rest of Tibetan refugees in other sectors such as agro-based industries.<sup>48</sup> Thus, the GoI started eight industrial projects for them; to co-ordinate these projects, the Tibetan Industrial Rehabilitation Society was set up in 1965. The basic aim of this Society was to implement employment-oriented programmes such as setting up woollen mills and tea estates which could provide employment as well as rehabilitation to Tibetan refugees. Moreover, the society had a programme for rehabilitating refugees in industries such as limestone quarries, hydrated lime plants, and fibreglass factories in Himachal Pradesh and Uttar Pradesh. Unfortunately, some of these industries failed, largely due to the lack of technical knowledge, poor management, and limited funding.<sup>49</sup> The Society now places emphasis on agricultural development despite the difficulties of the terrain, and to the profitable encouragement of handicrafts such as hand-woven carpets, shoulder bags, and costume jewellery for which ready markets are available and accessible.<sup>50</sup> The Himalayan Marketing Association in Delhi is now established to facilitate this cottage industry as a useful additional source of income for the Tibetan families. Over the years the situation has changed considerably; the refugees have adapted to being an industrial and business-management community.<sup>51</sup>

**carpet weaving and handicrafts** As a part of the rehabilitation programmes, along with agriculture and agro-based industries

the third sector was carpet weaving and handicrafts, in which a maximum number of Tibetan refugees were rehabilitated; these two activities have proved the most successful enterprise in comparison with the other two sectors. Carpet weaving is a centuries-old tradition of the Tibetans; many settlements therefore concentrate on the production of carpets and handicrafts, and many have prospered economically. Handicrafts and carpet-weaving centres have been set up at Bylakuppe, Chandragiri, Manipet, Dalhousie, Darjeeling, and Kalimpong, where more than 5,000 Tibetan refugees are now being rehabilitated. It is important to note that since the Tibetan carpets are very attractive and of high quality, they are mostly exported to foreign-especially European-countries. This not only helps the Tibetans to earn extra income, it also earns a significant amount of foreign exchange for India. At present in this sector more than 10 per cent of the workforce is involved, and this is particularly true of women and children. The significance of this industry for the Tibetans is that it keeps traditional Tibetan crafts alive and creates an awareness in the rest of the world about Tibet and its people. Tibetans are also trained in weaving textiles and producing clothes, wood-carving, painting, and metalwork. In some places, Tibetans sell other traditional Tibetan articles such as ethnic woollens, religious icons, etc. To preserve this rich Tibetan cultural heritage and to look after the handicraft products and emporiums at various places throughout the world, the Department of Home of the Tibetan Government in Exile has set up Tibet House in New Delhi.<sup>52</sup>

**indo-tibetan border police force** As part of its rehabilitation strategies, the GoI set up the Indo-Tibetan Border Police Force (ITBP) on 24 October 1962 for the protection of India's frontiers along the Indo-Tibetan border covering 2,115 kilometres from the Karakoram Pass to the Lipulekh Pass and the tri-junction of India, Nepal and China. Incredible though it may sound, only four battalions were sanctioned to begin with, in order to fill up the security vacuum that was prevalent at that time on the Indo-Tibetan border.<sup>53</sup> Most of these recruits were from the ranks of the Tibetan refugees. It was a planned strategy to rehabilitate the

refugees and use them for a security purpose too, the logic behind this being that these refugees were familiar with the Himalayan region and had had the experience of fighting the Chinese Army when they were in Tibet. Apart from this, the forward posts on the Indian border are at altitudes ranging from 9,000 to 18,000 feet. Most of the forward posts remain cut off by the surface route after snows during the winter months. The border posts are exposed to the fury and violence of nature such as blizzards, avalanches, and landslides. In these circumstances, only the ITBP protects the Indian frontier against any possible Chinese threat to India's integrity and sovereignty. Later, in view of the additional responsibilities and the task being redefined in 1976, the Force was restructured in 1978. The ITBP was initially raised under the CRPF (Central Reserve Police Force) Act; however, in 1992 Parliament enacted the ITBP Act and relevant rules were framed in 1994.<sup>54</sup> Though at the beginning the ITBP jawans were mainly from the Tibetan community, recently the Government has begun recruiting non-Tibetans into the Force. The main task of the ITBP is to keep vigil on the northern borders, detection and prevention of border violations, and promotion of a sense of security among the border populace. Surprisingly, China has had no objection to this, though this could have easily been one of the issues for the Chinese to have complained against India, on the grounds that the latter was using Tibetan refugees against the former.

**role of the unhcr and international agencies** Apart from the treasury of His Holiness the Dalai Lama, the bulk of the refugee-assistance funds came from the Central and State Governments of India, which provided land, food rations, medical assistance, and general relief assistance. The total amount spent on the refugees will probably never be known, although we know that India spent the maximum amount on the Tibetan refugees. By the end of 1965, US\$ 2,625,000 had been spent on the agricultural settlements; Rs 7.5 lakh (roughly US\$ 110,000) was spent solely on the Bylakuppe settlement in south India at a time when its population was only 3,000.<sup>55</sup>

After the Indian Government, the major sources of funds were the Western nations through both governmental and private

channels. In the early years (1959-62) organisations such as CARE, the International Red Cross, the YMCA, Catholic Relief, Church World Service, the International Rescue Committee, and Save the Children Fund participated.<sup>56</sup> In addition, the Swiss and American Governments, and later on the UNHCR (United Nations High Commissioner for Refugees) during 1964-73, also contributed to refugee assistance. During the first decade of exile, the Tibetan refugees received US\$ 5,300,000 in direct aid from the American Government. One estimate of the total amount provided ran to more than US\$ 20,000,000; this would average to over US\$ 400 received for every man, woman, and child.<sup>57</sup>

In the process of building self-sustaining and viable settlements, the contributions of foreign voluntary agencies have thus been of enormous help. According to an American researcher, John S. Conway,

Beginning in 1966 with the provision of US\$ 3,500,000 from the funds of the European Refugee Campaign, large-scale rehabilitation projects have been organised and financed mainly from European and North American sources. The Board of Trustees for the Common Project of the European Refugee Campaign established as its Indian Partner the Mysore Resettlement and Development Agency (MYRDA) which has been responsible for the creation of four major settlements in Karnataka ...<sup>58</sup>

More private funds were collected through various friendship societies such as the Tibetan Friendship Groups—first formed in the United States, and then in France, Switzerland, England, Norway, South Africa, Australia, and New Zealand—and the Indo-Tibet Friendship Society. These groups raised and donated funds, and encouraged the financial adoption of individual refugees by their members. In the United States, the AECTR was formed in March 1959 under the leadership of journalist Lowell Thomas and Supreme Court Justice William O. Douglas. This agency was to remain in existence only a few months, in order to help the Tibetans get settled in exile.<sup>59</sup>



The UNHCR has been instrumental in helping the refugees secure safe passage from Nepal to India. Particularly in recent times, after the escape of the Karmapa Lama from Tibet, the refugees are facing problems in Nepal, such as arrest, non-cooperation at the Tibet-Nepal border, and forceful repatriation to Tibet.<sup>60</sup> These problems were handled by the UNHCR on humanitarian grounds. Moreover, the UNHCR operates a medical unit as a temporary shelter and works at the process of identification to facilitate refugees.<sup>61</sup> The UNHCR provided assistance to the Tibetans in India from 1964, even though it did not formally establish a presence in India till 1969. In 1975 the UNHCR was constrained to pull out of India so as to strengthen its presence in Africa. UNHCR began operations in India again in 1981, this time under the umbrella of the UNDP with a specific mandate to protect individual Afghan asylum seekers. Tibetan refugees did not fall under its mandate. By the mid-1980s other agencies such as UNICEF and UNDP also stopped assisting Tibetan refugees as the need for external assistance for them was reduced.<sup>62</sup>

Nevertheless, as the issue of Tibetan refugees is now highly internationalised, there are many international governmental as well as non-governmental agencies which monitor the situation and help with aid and assistance. Recently, countries such as Japan and Israel have involved themselves in the rehabilitation of Tibetan refugees in India. Also, due to the attraction of Buddhism and the spiritual nature of the institution and the person of the Dalai Lama, many individuals visit Dharamshala and render their services to those who are in need.

### present situation

fresh arrivals in india As reported in a book by T. Palkashappa, after examining a group of refugees to determine their motives for having left Tibet, and having questioned 869 families in 1974-75, it was found that the Tibetans listed their reasons in the following order of descending importance.

1. Anxiety over not being allowed to practice Buddhism;
2. Rumours of atrocities committed by the Han Chinese;

3. Rumours of Tibetans being prevented from marrying Tibetans;
4. Rumours of Tibetans being compelled to marry Han Chinese;
5. The departure of the Dalai Lama; and
6. Incessant political meetings, insecurity over the future, and the educating of children to watch and report the behaviour of their parents.<sup>63</sup>

The second exodus began in the early 1980s due to the fact that apart from persecution, the destruction of monasteries compelled many young Tibetan monks to come to India for religious education, education in Tibetan scriptures and cultural ethics. Also, the comparatively liberal atmosphere in India was an attraction, besides the fact that securing asylum in India was relatively certain. Between 1986 and 1996, nearly 25,000 people took refuge in India officially, approximately 44 per cent of them being monks and nuns.<sup>64</sup> In the year 1999, around 2,200 Tibetan refugees arrived in India.<sup>65</sup>

According to the UNHCR in Nepal, it assisted 1,381 Tibetans who fled through Nepal to India in 2001.<sup>66</sup> Although all of them were allowed entry, most of the refugees have not been granted legal residence. These unregistered refugees join the scattered camps anywhere in India depending upon whom they know in the area. In this way, the refugee population might actually be the double the official figure. However, the former Secretary of the Home Ministry of the Tibetan Government-in-Exile, Wangyal, says his Ministry genuinely scrutinises fresh arrivals to determine who are and who are not refugees, and only then does it admit them to the Tibetan Reception Centre. According to him, there are four types of refugees who seek asylum in India. These are:

1. Those who leave Tibet due to persecution.
2. Monks and nuns to take religious education about Buddhism in India.
3. Pilgrims who come to get the blessings of the Dalai Lama and intend to return after that.

4. Youngsters who come to India for the purpose of moral education as they do not get such opportunities in China. In this case, parents of these children are instrumental in sending them out of fear that their future in China may be bleak.<sup>67</sup>

For fresh arrivals, the Central Tibetan Administration has four sub-programmes:

1. Reception-facilities development programme
2. Treatment of torture victims programme
3. School programme for new refugees
4. Monastic support programme<sup>68</sup>

After formal processing and an audience with the Dalai Lama, these refugees are sent to the Emergency Relief Centre. From there they are shifted to temporary shelters. The next stage is to move them to the transit camps. After a few months in these camps, the refugees are sent to the closest settlements according to their interests—in either agriculture or handicrafts—where they are educated and trained in these specific fields for their self-sufficiency and daily livelihood.<sup>69</sup> But the problem is that such facilities are no longer available for newcomers as these settlements are overcrowded and suffer from many problems. Naturally the younger generation of arrivals from Tibet are reluctant to enter these settlements and prefer to live in isolated scattered camps. However, the elderly refugees do not face this problem since they have lived and worked in these settlements from childhood. Moreover, the presence of so many refugees, young and old, has put a severe strain on the fragile economy and infrastructure of the settlements and facilities such as housing, sanitation, health clinics, and schools. As mentioned in the book *Life in Exile* (1992), over 11,000 of the total number of Tibetans who arrived in India between 1959 and 1979 have never been provided with housing and the means of earning a living.<sup>70</sup>

The Dalai Lama suggested that the elderly who were unable to work in difficult conditions should be allowed to devote the rest of their lives to religion and prayer. The Department of Home of the Tibetan Administration runs homes for elderly men and

women, and the Central Tibetan Relief Committee (CTRC) runs a project to find sponsors for needy and old people.<sup>71</sup> In this way more than 12,000 elderly refugees are living, mostly at McLeodganj near Dharamshala, as their spiritual leader lives there and the monastery is close by.

socio-economic adaptation Survival of the fittest—this Darwinian principle in its true sense is applicable to the Tibetan refugees who are spread all over India and who make up more than 80 per cent of the total Tibetan community in exile. From Kashmir to deep in south Karnataka and Tamil Nadu, one can find Tibetans selling woollen clothes and sweaters on streets. However, the amalgamation process of Tibetans in the various scattered camps is much easier than that of the Tibetans in settlement camps. The obvious reason is since they are not in settlements and need work, they come out to the streets and involve themselves in any work that is available. Such work requires the ability to communicate in local languages that they pick up for their survival. Hence, many Tibetans speak local languages such as Tamil, Kannada, and Marathi in the southern and western parts of India. To cite another example, the Tibetan community settled in Sikkim and Darjeeling and the Kalimpong hills has been acculturated to such an extent that the local Nepalese and Lepchas are accommodative towards them and do not view them as refugees. Many inter-marriages have taken place in this area, and it has now become a home away from home for the Tibetans.

It is often said that rehabilitation of second-generation refugees is more difficult than that of the first generation. Due to the high literacy-rate among the Tibetans, unemployment among young Tibetans is acute at 20 per cent in the 16-25 age group.<sup>72</sup> As a result, a large number of educated youth leave the settlements in search of work outside. Many young and able-bodied Tibetans have left the settlements and are living in unhygienic and crowded scattered camps, having sometimes abandoned even their children and old members of their families. One can now see Tibetans living in widely scattered places such as Darjeeling, Kalimpong, Delhi, and Mumbai, where employment is available

in form of seasonal street-trading, manual labour, and petty shop-keeping. The urge for economic survival has led to children dropping out of school and engaging themselves in petty work on the streets.

While discussing the socio-economic adaptation of Tibetan refugees in India, the work of Dawa Norbu, a Tibetan refugee himself, and currently teaching at Jawaharlal Nehru University, New Delhi, is noteworthy. This reputed scholar on Tibet, in two important articles, namely, 'Tibetan Refugees in South Asia: A Case of Peaceful Adjustment'<sup>73</sup> and 'Refugees from Tibet: Structural Causes of Successful Settlements'<sup>74</sup> has highlighted the situation faced by the Tibetans after their arrival in India. According to him, there are crucial political reasons and structural causes for the successful settlements. They include the following:

- (i) Interest in and involvement with refugee problems by the highest echelons of the host government;
- (ii) Systematic co-ordination among various aid donors and relief agencies; and
- (iii) The skilled use of the internal social organisation of the refugees to implement relief work and long-term programmes.<sup>75</sup>

He has also discussed the tension between the refugees and the host population, especially the elite of Indian society, as well as the security implications of the presence of refugees in India and South Asia. In another article he has given credit for the successful settlement to the Indian leadership and sometimes to the political decisions of the Govt.<sup>76</sup> He has also admired the Tibetan Government-in-Exile and various NGOs that are active in supporting the Tibetan cause. Apart from this, he repeatedly mentions the spirit of self-governance among Tibetan refugees.

relations with host population Although Tibetan refugees have been living in relative isolation from the local people with a view to preserving their distinct religion and culture, there are places (in West Bengal and Sikkim) where there is interaction. In these areas, relations with the local population have been harmonious and reciprocal. However, in the recent past there has

been a gradual decline in this regard, particularly in Arunachal Pradesh, where relations between the local population and Tibetans have deteriorated due to communal violence, and burning and looting of Tibetan homes.

In some areas due to prosperity in business, funding, and regular grants from foreign agencies, the economic status of Tibetans has improved to the point of becoming higher than that of the local villagers. This economic disparity leads occasionally to friction and conflict. The situation is sensitive in Himachal Pradesh, as the maximum number of Tibetans live there in both settlements and scattered camps. For instance, in 1997-98, there were continuous conflicts between the Tibetans and the local Indian communities, particularly in the Gaddi and Gujjar districts of Himachal Pradesh. These conflicts were mainly due to the scarce opportunities of livelihood such as driving taxis and shop-keeping. Sometimes the local population has attacked the refugees in mobs and ransacked their property. In retaliation, Tibetans too have used violent methods and even killed individuals thought to be responsible for such acts of vandalism. Rivalry among gangs of youths break out into violent physical clashes, which on many occasions end up in murder. In 1999 in Manali two murders took place due to a conflict between the local population and the Tibetans. The reason behind the conflict is still unknown.<sup>77</sup> However, according to local sources, the reason may have been the fact that Tibetans were buying large tracts of land through *benami* transactions (that is, land purchased by the Tibetans in the name of local citizens), something which irked the local population.<sup>78</sup>

It has also been observed that in Himachal Pradesh, where Tibetan refugee settlements exist, local people harbour feelings of social isolation within their own territory due to the presence of foreigners. Even the Dalai Lama accepted this fact and has said in *The Times of India* (New Delhi) dated 4 July 1999, 'Of course, there is some occasional fighting and even killings.' That is why the Dalai Lama has many times announced that he would like to shift his headquarters from Dharamshala to Karnataka, or anywhere else in India. In addition, issues like the campaign against the Chinese authorities from Indian soil and the accompanying

clamour for independence has led to an overall change in India's attitude towards Tibetan refugees. The perception is that most protest marches by Tibetans generally begin in a peaceful manner, but then they become violent. This issue has been discussed in the Lok Sabha as well as the Rajya Sabha. In December 1999, during the winter session of Indian Parliament, Swaraj Kaushal raised the issue to the Minister for External Affairs Jaswant Singh. In his reply, Singh said:

The Government's consistent policy in regard to Tibet is that it is an autonomous region of China. India has close historical and cultural ties with Tibet. The presence of Tibetans in India is to be seen in this context. The Government does not permit Tibetans to engage in political activities. Activities that disrupt law and order are dealt with in accordance with our legal provisions.<sup>79</sup>

legal status Since India has not signed the two major legal instruments on refugees, the 1951 Convention and the 1967 Protocol, the Tibetan refugees therefore come under the normal laws of India. But the Tibetan refugees were granted asylum by the Government of India, and the principle of non-refoulement has been strictly adhered to.<sup>80</sup> Nevertheless, Tibetan refugees born in India are entitled to Indian citizenship according to Section 3 of the Indian Citizenship Act of 1955. But Tibetan refugees according to the guidelines of the Dalai Lama's Government (DLG) generally avoid Indian Citizenship. In such cases, the Gal issues a certificate of identity, known as the RC (Residential Certificate) for purposes of identification, permission to work, and domestic travel rights, and Indian Identity Certificates (similar to an Indian Passport) which enable them to travel abroad.

However, the post-1980s period, with an increasing number of Tibetan refugees coming into India, resulted in an extra burden on India. So the Gal decided not to grant either legal status or financial assistance for the rehabilitation of the refugees. One important reason is that by that time the UNHCR had also withdrawn financial support to the Tibetan refugees. Moreover, Prime Minister Rajiv Gandhi's visit to China in 1988 (the first visit to

that country by any Indian Prime Minister after Nehru) improved Sino-Indian relations, and the resultant Confidence-Building-Measures (CBMs) agreement was signed between the two countries in 1993 at New Delhi. However, there was no accompanying improvement in understanding between the two sides on the issue of the Tibetan refugees. In one of the meetings, the Chinese Vice-Foreign Minister Tang Jiaxuan raised the issue of Tibetan refugees and objected to a Tibetan Parliament-in-Exile headed by the Dalai Lama. In response, the senior diplomat J.N. Dixit said: 'The Dalai Lama is an honoured guest of India, but New Delhi officially prohibits pro-democracy Tibetan exiles from political activity.'<sup>81</sup> The Indian Prime Minister P.V. Narasimha Rao also promised that India would not allow any anti-Chinese activity on Indian soil.<sup>82</sup>

the karmapa lama's escape However, over a period of time, it seems that after the Karmapa Lama's escape from Tibet, the Gal is sincerely following its promises and strictly implementing policies on movement of Tibetan refugees and fresh arrivals into India. The flight of the 17th Karmapa Lama raised some doubts in India. So, in the three months from March to May 2000, the Karmapa issue was discussed seven times in the Lok Sabha and the Rajya Sabha.<sup>83</sup> In this regard, while answering unstarred question no. 2013 in the Lok Sabha on 8 March 2000, the Minister of External Affairs Jaswant Singh said:

The official Chinese position on Lama Ugyen Thinley Dorji's arrival in India is that Lama Ugyen Thinley Dorji had gone abroad to 'get the musical instruments' of the Buddhist rituals and the 'black hat' used by previous Karmapas. His Holiness the Dalai Lama has publicly stated that Lama Ugyen Thinley Dorji would like to stay in India and study. Representations have been received from his supporters regarding his continued stay in India. Representations have also been received against his continued stay in India. The matter requires careful consideration taking into account all relevant factors.<sup>84</sup>

Finally, after a gap of almost two years, the Gol granted the Karmapa Lama the status of refugee. However, since his escape

the Indian Government has adopted strict measures regarding fresh arrivals. The sudden change in the nature of India's policy towards Tibetan refugees must be seen against its relations with China as well as possible pressures from the local population in the vicinity of the settlements and scattered camps, especially in Himachal Pradesh and Arunachal Pradesh.

issue of citizenship In principle, the DLG discourages Tibetan refugees from taking up Indian citizenship due to various reasons. First, if the refugees who were born and brought up in the settlement camps, and are now in the majority, surrender their status as refugees, it would be a big blow to the freedom struggle of the Tibetans. This generation is basically the second generation and is not much bothered about the Dalai Lama and the freedom struggle as they are involved in the mainstream of Indian social and economic life. Second, after taking up citizenship, if these refugees naturalise themselves in Indian society, there is a fear of loss of their Tibetan cultural identity and traditions, for which the Dalai Lama has been making strenuous efforts in order to maintain a separate identity. Third, loss of refugee status might affect foreign funding, and development aid and assistance from donors, individual as well as institutional. The Tibetan Government cannot afford this, as the maximum amount of money needed for the settlement camps comes from foreign assistance. Fourth, there is also a fear of diminishing sympathy for the Tibetan freedom struggle.

Although, the Tibetan Government-in-Exile is strongly opposed to the idea of the refugees accepting Indian citizenship, one can find many Tibetan refugees availing it. These are mostly from the second-generation of refugees, born and brought up in India and who have not seen Tibet, and do not have a sense of belonging to Tibet. There are some refugees who take up Indian citizenship to avail the facilities of passports and visas to go abroad. These refugees, according to an interview with one of the officials in Dharamshala, are genuine refugees who migrate to foreign countries, either to study further or to seek foreign aid and assistance to help the settlement camps, or to campaign for

the freedom struggle of Independent Tibet and thus create awareness among foreigners. But such refugees are very few in number. This could be one of the tactics followed by the Tibetan Government-in-Exile to mobilise resources for its survival as well as for its cause. Moreover, the DLG does not impose any punishment or fine, or have any strict rules, to discourage refugees from taking up Indian citizenship. One also observes after a survey of these settlements that at times a refugee after taking up Indian citizenship can avail facilities that Indian citizen can enjoy. Thus, a rich Tibetan can buy real estate, and live a life of comfort, while continuing to help the Tibetan cause. There are dedicated Tibetans also, who still have hopes of returning back, and live on as refugees denying themselves Indian citizenship at any cost. These are mostly from the first generation and they try to protect Tibetan traditions and cultural identity as much as they can.

There were rumours in the late 1980s that certain sections of Indian society (especially local villagers and intellectuals in Himachal Pradesh) were demanding compulsory citizenship for the Tibetans as they were enjoying the benefits of both kinds of status-Indian as well as foreign. It is also important to note, in this context, that the Government of India has followed a flexible policy on the issue of citizenship to Tibetans unlike the Royal Government of Bhutan, where more than 4,000 Tibetan refugees were repatriated forcefully for not accepting Bhutanese citizenship in the mid-1970s.<sup>85</sup>

**reconstruction of tibet in exile** As part of the policy of sustaining Tibetan culture while in exile, the Dalai Lama formed some organisations with the help of some prominent Indian leaders and sympathisers of the Tibetan cause. The main question was how to reconstruct Tibet as a nation, without territory or sovereignty, but based on nationalism, separate identity, and culture, even while living as refugees in a third country. This task was assigned to the Central Tibetan Relief Committee (CTRC), originally known as the Central Relief Committee (CRC), the Tibetan Government -in-Exile, and various religious and cultural institutions. These institutions are doing their work sincerely till this day.

role of the central tibetan relief committee in rehabilitation. The CTRC, originally known as the CRC, was started in 1959 by some prominent Indians with J.B. Kriplani as its chairperson to co-ordinate relief assistance provided by the Government of India and representatives of the Dalai Lama for rehabilitation of the Tibetan refugees.<sup>86</sup> The main objective of the CTRC was to help the poor, needy, backward, and under-privileged within the Tibetan community in exile. It has been consistently instrumental in obtaining assistance from foreign aid agencies, not only in the agricultural sector, but also in the form of food, medicines, cutlery, and sometimes cash. It has also planned handicraft projects aimed at generating employment for the under-privileged sections of the community, unsettled refugees, and school drop-outs.<sup>87</sup> At the same time, it is trying to diversify and encourage the production of more varied crafts, tailoring, knitting, embroidery, and wood-carving in its attempts to organise training programmes to increase employment prospects.<sup>88</sup> In this way, the CTRC plays a significant role in rehabilitation and welfare of the Tibetan refugees in exile all over South Asia.<sup>89</sup>

For instance, the field of Tibetan herbal medicine is a vital and inherent aspect of Tibetan society. The CTRC has significantly contributed to this field. The Tibetan Medical and Astro Institute, located in lower McLeodganj in Dharamshala, is an autonomous body often visited by many foreigners for cures and to further medical research in the field of herbal medicine. The Tibetan Medical Institute has 36 branch clinics in various parts of India and Nepal to promote Tibetan medical care among Tibetans and the local population. Tibetan medicine is famous the world over for the treatment of certain diseases. It has its origin in Tibetan tradition, and is now maintained by the younger generation.

Education is another field in which Tibetans are known for their conscientiousness. To quote His Holiness the Dalai Lama:

Our goal for now and the future should be to keep abreast of other people of the world in all aspects of educational progress and development. Therefore after coming to India as refugees, our primary initiative has been the education of our children,

the future seeds of Tibet who will carry out our national task, be it political or spiritual.<sup>90</sup>

Education has been the top priority on the rehabilitation agenda; therefore almost each and every settlement of Tibetan refugees has education facilities for Tibetan children. The Department of Education, since its inception in 1960, has been the apex body responsible for providing support for the educational and welfare needs of nearly 28,000 students in 71 schools spread over India.<sup>91</sup> Comprising both residential and day schools, these institutions range from the pre-primary to the senior secondary level. These schools emphasise the integration of Tibetan language, values, and culture into the school curriculum and extra-curricular activities. Approximately, 92 per cent of all Tibetan children in exile between the age of six and 17 go to school and 84 per cent attend school.<sup>92</sup> The first school for Tibetan children was established at Mussoorie in March 1960. Eventually the Indian Minister of Education formed the Central Tibetan Schools Administration (CTSA), and by the year 2000 this body was operating 30 residential schools monitored by the Central Government as well as the education departments of the respective State Governments.<sup>93</sup> In addition to this, there is a total of 45 schools which are directly run by the Department of Education of the Tibetan Government-in-Exile. Despite this, not all Tibetan children attend school.<sup>94</sup>

There are some schools in the agricultural settlements, even residential schools, but poor economic conditions do not allow most children here to continue their education. According to an interview with some of the literacy officers in the Department of Education, however, most of the curriculum in the Tibetans schools is not up to the mark as these schools are unable to compete with other local schools or colleges to develop a student's ability and future vision. Moreover, economic opportunities like street marketing, which give instant income, impel them to leave school and earn money. However one positive impact of this trend is that many young Tibetans are not dependent on the mercy of either Tibetan funds or the GoI's financial assistance. Nevertheless, at this juncture it is important to quote T. Samphel,

The introduction of Tibetans to modern education is important not only in the context of the continuing expansion of the mental horizon of the Tibetans in the outside world but also in the context of the larger process of the evolution of Tibetan society. The new education and the innate spirit of independence of the Tibetans are increasingly making the new generation of Tibetans aware of what is unique and special in their culture and what is important in the development of the modern world ... If the Tibetan people hold fast to this orientation, no amount of modernisation will, in the long run, be in conflict with their nature and purpose.<sup>95</sup>

**preservation of tibetan identity and culture** The majority of Tibetan refugees who entered India in 1959 were nomads, monks, farmers, and petty traders. According to one report published by the Department of Information and International Relations (DIIR) during the 1991 election, the distribution of the Tibetan population at that time in India was as follows: 70 per cent of the refugees were from U-Tsang (Central Tibet), 25 per cent were from Kham (East Tibet), and only 5 per cent were from Amdo (north-east Tibet).<sup>96</sup> The refugees according to that report spoke only their own dialects varying from region to region and had no inter-connection. Very few Tibetan families could understand either English or Hindi, and they were mainly from the aristocratic families or monks. As they were familiar with exclusively traditional political-hierarchy and authority as well as involved in religion-bound culture and economic activities, the Tibetan refugees found it very difficult in the initial period to communicate and adjust to the existing socio-political system in India. Hence from the very beginning, the policies of the GoI were not intended to discourage or destroy Tibetan cultural institutions and traditions. Working along with the DLG and various foreign aid groups, the GoI launched a programme of rehabilitation within a framework compatible with the maintenance of Tibetan culture.<sup>97</sup> Thus the Dalai Lama, on the occasion of the opening a school for Tibetan children, said,

The children have been a special anxiety for me; there are over 5,000 of them under the age of 16. It is even harder for children

than adults to be uprooted and taken suddenly to an entirely different environment, and many of them died, in the early days, from a change of food and climate. We had to do something drastic to preserve their health; and their education was also a matter of great importance. So, in the next generation, the five thousand children in India would become important, a nucleus to preserve the heritage of peaceful religion, tradition, and culture.<sup>98</sup>

Modern education is now considered to be the most effective weapon to defend and preserve the religious and cultural heritage of Tibetans in exile, something that in old Tibet was thought to be the undermining force of Tibet's society and culture. The elite of religious figures, artists, writers, performers, academicians, and musicians among the Tibetans are at the forefront of the promotion and protection of the distinct culture and traditions of Tibetans. For instance, at Dharamshala, in upper McLeodganj as well as in Lower McLeodganj, the buildings of the Tibetan Parliament in exile and the Library of Tibetan Works and Archives are marked with detailed paintings of Tibetan art and architectural features. A separate institution, known as the Norbulingka Institute for Tibetan Culture at Sidhpura in Dharamshala, has been set up to train young Tibetans in different fields of their traditional culture. This is a replica of the Norbulingka Institute in Lhasa that was destroyed by the Chinese. Another institute, the Tibetan Institute of Performing Arts in upper McLeodganj also looks after the Tibetan performing arts. There are more such institutions, mainly in Himachal Pradesh, Darjeeling, Kalimpong, and Karnataka, which seek to protect the culture of the Tibetans. Moreover, a separate department of religion and culture has been established, which seeks to protect, preserve, and promote Tibet's spiritual and cultural heritage.

Girija Saklani,<sup>99</sup> an Indian sociologist, did an exhaustive field study and research on Tibetan refugees living in Dharamshala, Delhi, and Dehradun. Her findings are similar to those of other researchers from India and abroad. Melvyn Goldstein, the American anthropologist who came to Bylakuppe in January 1966 to do field work, conducted a detailed study on Tibetan refugees,

particularly those settled in south India.<sup>100</sup> The work concentrated on the rehabilitation aspect of the refugees and discussed the cultural component of the rehabilitated Tibetan society. His argument was that Tibetan culture was largely protected by the Gal while rehabilitating the refugees.

**tibetan government-in-exile** Soon after his arrival in India, the Dalai Lama successfully negotiated the establishment of the Tibetan Government-in-Exile with the Indian authorities, and within a month, on 29 April 1959, the Tibetan Government-in-Exile was formed in Mussoorie, and named as the Central Tibetan Administration (CTA) of His Holiness the Dalai Lama, basically as a continuation of the Government of Independent Tibet.<sup>101</sup> In May 1960, the exiled Government was moved to McLeodganj at Dharamshala in Himachal Pradesh. The CTA has been reorganised as the Tibetans' sole and legitimate government and has set itself the twin task of rehabilitating Tibetan refugees and restoring the freedom of Tibet.<sup>102</sup> On 2 September 1960, the Tibetan Parliament-in-Exile came into existence, and was later on renamed as the National Assembly of Tibetan People's Deputies. Moreover, this arrangement proved to be of utmost importance for Tibetans in exile to monitor and handle their cultural and political affairs through the CTA, which works as an organisational link between the Indian Government, Western-aid organisations, and the exiled Tibetan community spread all over the world. This does not mean that the Gal and the State Governments had no objection to giving the DLG de facto internal administrative control over the refugees living in the camps or outside the camps.<sup>103</sup> The Gal does not accord any formal legal or political status to the Government-in-Exile due to political reasons, particularly after the Sino-India war of 1962.<sup>104</sup> Similarly, the GoI also refused to resettle all Tibetans in a single area in north India as the DLG had suggested.<sup>105</sup> The important point here is that despite all these considerations and compulsions, the Gal took a fundamental decision, which was to rehabilitate the refugees.

On 10 March 1963, the Dalai Lama promulgated the Tibetan Constitution. It was an attempt to integrate modern Western

concepts of parliamentary democracy with the feudal traditions of Tibet.<sup>106</sup> It is a strange mix at best. It begins with a classic understatement:

Whereas it has become increasingly evident that the system of government which has hitherto prevailed in Tibet has not proved sufficiently responsive to the present needs and future development of the people and proceeds to guarantee equality before the law, due process of law, right to legal counsel, freedom of speech, assembly, travel, association and residence ...<sup>107</sup>

The actual work on the Constitution was started in 1960 under the Information and Publicity Office and it was drafted with the help of an Indian lawyer. By 1961 the main outlines of the Constitution had been written, bearing very strongly the imprint of the Dalai Lama's ideas in this regard. This draft outline was sent to Tibetans in India and in other countries in a sort of referendum, and the response was an overwhelming support for the idea of such a Constitution.<sup>108</sup>

In this constitution, it was decided to experiment with Tibetan traditions, and merge them with ideas of modern democracy in preparation for a future Tibet. Hence one can find certain changes. Some of them are:

Instead of hereditary rights, as in the old Tibetan Theocracy, merit and education were the main criteria for the selection of Tibetan youth as the officials of the administration. The administration is headed by a cabinet of appointed ministers dealing with the old and new concerns of the Tibetan people; an assembly of elected representatives of the exiled community standing for the three major regions of Tibet (CU-Tsang, Amdo, and Kham) and the five religious orders; a working committee for detained policies; and for the settlements, local self-government, each linked conceptually to its antecedents in the homeland.<sup>109</sup>

The Tibetan Government-in-Exile has various departments; in particular, Home, Information and International Relations, Education, Finance, Religious and Cultural Affairs, and Planning and



Agriculture. The Department of Home is responsible for the rehabilitation and welfare of all Tibetan refugees in India, Nepal, and Bhutan. It administers the Tibetan settlement camps, handicraft centres, and road-construction camps; it is also responsible for co-ordinating the various settlement camps in India and abroad. Moreover it also maintains contact with a variety of Indian and foreign aid-agencies. <sup>no</sup> The Department of Education is charged with the responsibility of working out a system that would combine the best of modern education with that of traditional culture, so that children educated under this system would retain their traditional values and at the same time possess a modern, cosmopolitan outlook upon life. <sup>m</sup> The Department of Religious and Cultural Affairs supervises the running of a number of monasteries and the education of young monks. This Department maintains close contact with other Tibetan Buddhist centres all over the world and is a member of a number of international Buddhist committees. It also maintains two Buddhist institutions of Higher Tibetan Studies situated at Sarnath and Dharamshala. <sup>112</sup> The purpose of these two institutes is to produce highly educated Tibetan monks who are at the same time conversant with the dominant intellectual trends of the contemporary world. <sup>113</sup> The Department of Finance was established for the purpose of creating sufficient financial means for the Tibetan administration to be self-supporting. <sup>u</sup> The function of the DIIR is to keep the outside world informed of the situation within Tibet as well as the activities of the Tibetans in exile. It provides information to those who are interested in Tibetan affairs, issues press statements on important matters requiring the reactions of the administration, and publishes periodicals and books in Tibetan and English. <sup>115</sup>

According to Dawa Norbu:

As far as refugees from Tibet are concerned, the Dalai Lama's complex organisation in Dharamshala has performed three vital tasks of represent and act on behalf of the refugees in negotiation with the Government of India and the NGOs concerning relief, rehabilitation and settlement of Tibetan refugees in India and to a lesser extent in Nepal and Bhutan. At the same

time it organised scattered refugees into several settlements and established its direct control over them. <sup>116</sup>

However, the Tibetan Government-in-Exile does not have any 'legal' or 'constitutional' status with respect to Indian law, and consequently is not allowed to use coercive force to compel acquiescence with their policies. Hence, its continued operation as a 'government' depends completely on the voluntary compliance of the refugees, which, in turn, depends, on the refugees' perceived self-interests and on their trust in the legitimacy of the DLG. <sup>117</sup> It is quite possible that by enacting the Constitution and establishing a Tibetan Government-in-Exile, the Dalai Lama wanted to maintain and retain his position as the head of temporal and spiritual power of the Tibetans. Second, as political head, he retained access to other nations for aid and assistance. Third, once other countries recognise the Tibetan Government-in-Exile, it can then re-energise the struggle for an independent Tibet.

However, on the domestic front, realising the opposition and resentment among the young generation, as well as among certain sections of the Tibetan refugees, about the traditional way of Tibetan life in the 21st century, the Dalai Lama in 1991 announced further measures by which the strength of the National Assembly was increased to 46 members. <sup>118</sup> The Assembly was empowered to elect the Tibetan *Kashag* or Council of Ministers, which was made answerable to it. <sup>119</sup> On 29 July 2001, Tibetans across the world voted directly for the first time to choose their chief *Kalon* or Head of the Government-in-Exile, who was meant to be only second to the Dalai Lama in popularity and reverence. <sup>120</sup> Professor Samdhang Rinpoche, former Director of the Central Institute of Higher Tibetan Studies at Sarnath, was elected as the Head of the Tibetan Cabinet and first Prime Minister of the Tibetan Government-in-Exile. <sup>121</sup> It is said that this is an exercise to not only ensure people's participation in political affairs, but also to make the political representatives more accountable to the people.

**conclusion** One can observe that since the beginning of the 1950s the Government of India's policy towards Tibet and

Tibetan refugees has been determined not only by the historical and cultural ties between India and Tibet, but also by sympathy, tolerance, peaceful co-existence, and more prominently, by humanitarian reasons. However India did not alter the legacy of British policy towards Tibet due to various reasons, including India's own domestic compulsions and commitments to the principles of the United Nations, such as non-interference and non-intervention.

The post-Nehru period witnessed the same policy as that of the earlier governments towards the Tibetan refugees, despite the Sino-India war of 1962. India toed an increasingly sympathetic line towards the refugees and decided to not reopen diplomatic relations with China, which had been abandoned after the Sino-India war. However, the death of Mao Tse-tung and the admission of Communist China into the United Nations Security Council as a permanent member paved the way for India to reopen diplomatic relations with China. At the same time, on the domestic front, there was little change in the policy towards Tibetan refugees as the UNHCR had withdrawn financial support to the Tibetans, and also by that time the Tibetans had been already rehabilitated almost all over India in various sectors and had become by and large self-supportive.

In the mid-1980s India became wary of the refugee inflow as it realised that there were too many Tibetans coming into India, and that India had become a safe haven for those who did not wish to live in Tibet for various reasons, including political discrimination and persecution. This led to a heavy burden on the Indian Government, as well as on the settlements and scattered camps. By this time, the children of the migrated and exiled Tibetans had emerged as a second generation of Tibetan refugees; those who had not seen Tibet and had started thinking of India as their home. Tibetans were also losing sympathy of the local communities, and discord and hatred appeared in many places in the relations between local communities and the refugees, the major grievances of the local population arising from the relatively better economic condition of the refugees. There are other factors responsible for the discord, namely, competition in business posed by the entry of Tibetans, low literacy-rate

of the local Indian population, their lack of information, and their almost sole dependence on the tertiary sector for occupation. All these have added up to the fear that the Tibetans will not go back and will settle here permanently, and one day demand a separate homeland for themselves, outnumbering the locals. Tibetans say they pose no threat, they are not fighting for any political rights, they do not apply for any government jobs, and they do not even compete with Indians in the service sector. On the other hand, due to Tibetan settlements, the headquarters of the Tibetan Government-in-Exile, and the Palace of His Holiness the Dalai Lama, the once barren and undeveloped area of Dharamshala is now a prosperous town. A large market is available for traders, there is a continuous flow of pilgrims, and tourists and visitors provide business for travel and tour operators.

All this however leaves one question unanswered. How many Tibetans would be willing to return to their mountain homeland with its uncertain prospects is now, and will remain, a matter for speculation.

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## 8 sheltering civilians and warriors: entanglements in the south

V. Suryanarayan

*I have lost the village home where  
The sparrow will build its nest  
The cadjan leaves will sing with the wind -  
The sun will enter the shoeflower  
We crossed the seas dreaming of wealth  
And a house  
With a beach in front  
And a garden along the red soil pathway  
Alas, we have lost our identities  
In the wilderness of the refugee land<sup>1</sup>*

Selvam (Sri Lankan Tamil expatriate poet)

*My son is in Jaffna  
Wife in Colombo  
Father in the Wann  
Mother, old and sick in Tamil Nadu,  
Relatives in Frankfurt  
A sister in France  
And !,  
Like a camel that has strayed in Alaska  
Am stuck in Oslo  
Are our families  
Cotton pillows  
To be*

*Torn and scattered by the  
Monkeyfate?*<sup>2</sup>

V.J.S. Jayapalan (Sri Lankan Tamil expatriate poet)

**introduction** A small country with a population of less than 19 million, Sri Lanka is one of the world's principal sources of refugees and displaced persons. In an Issue Paper published in October 1991, the United States Committee for Refugees rightly characterised Sri Lanka as an 'Island of Refugees'.<sup>3</sup> Nearly half of the two million strong Sri Lankan Tamil population has been 'internally displaced'. In addition, because of the policies pursued by the Liberation Tigers of Tamil Eelam (LTTE) when they were in de facto control of the Jaffna peninsula, thousands of Muslims and Sinhalese have become homeless and have taken shelter in 'welfare centres'.

Sri Lankans becoming displaced in their own country is not a new phenomenon. There had been several occasions in post-Independent Sri Lanka-1958, 1977, and 1981-when thousands of Tamils had to leave the Sinhalese populated areas and move to the safety of the Tamil majority areas in the north and the south. The unprecedented riots of July 1983 in Colombo were undoubtedly a turning point as far as the refugee phenomenon is concerned. Life was paralysed in Colombo and the southern parts of the island. Patricia Hyndman of LAWASIA has pointed out that 'Members of the police and the armed forces stood by and allowed attacks to be made on the Tamil people. Even worse, in some cases, they had actively participated in the attacks. There had been a pattern to the violence ... Gangs were transported from outside the districts. They had electoral lists with them from which Tamil houses, shops, and addresses were identified.'<sup>4</sup>

The communal riots and the resultant trauma were the major factors behind the refugee phenomenon. What caused bitterness and anguish within the country and outside it was the fact that J.R. Jayewardene, the then, President of Sri Lanka, did not rise to the occasion and discharge his duties as a non-sectarian Head of State. When the holocaust took place-a 'dark night of the collective soul'<sup>5</sup> as Jonathan Spencer rightly described it-Jayewardene not only failed to express any sympathy for the

victims, he also failed to condemn the lumpen sections of the Sinhalese population which ran amok in the Tamil areas of Colombo. As Paul Sieghart, the distinguished jurist, remarked, 'The President did not see fit to utter one single word of sympathy for the victims of violence and the destruction, which he only lamented. If his concern were to re-establish communal harmony in the island, whose national unity he was so anxious to preserve by law, that was a misjudgement of monumental proportions ...'<sup>6</sup>

Within Colombo alone, nearly 1,00,000 Tamils making up nearly half the Tamil population of the city, were displaced. There were hardly any Tamil families that escaped death, destruction, and displacement. A Tamil woman, who was a victim of the repeated cycles of violence, exclaimed, 'To be a Tamil is to live in fear'.<sup>7</sup> R.R. Sivalingam, an Indian Tamil political activist, expressed the agony and anguish of the Tamil people in these words, 'The Tamils in Sri Lanka are in anguish. We are searching ourselves. Is it a crime to be a Tamil in this country? Our convictions have all been shattered to smithereens in a matter of few hours. Oh! How long will it take for us to feel as brothers and sons of the soil.'<sup>8</sup>

The ethnic polarisation, which slowly built up after 1956 when Colombo introduced the 'Sinhala Only' Act, increased in intensity after the ethnic riots in July 1983. Even progressive Tamils belonging to radical trade unions and leftist parties were made to feel that 'regardless of their political ideology, they were identified as Tamils and not as Sri Lankans'.<sup>9</sup> The prolonged conflict since 1983, with occasional ceasefire periods in between, has resulted in internal displacement as well as the movement of Sri Lankan Tamil refugees to India and other parts of the world. Because of the geographical contiguity and shared ethnic affinities, the Indian State of Tamil Nadu was from the very beginning a safe haven for the Sri Lankan Tamil refugees. Historically, the narrow and shallow Palk Strait, which divides India from Sri Lanka, had never been a barrier; it was rather more like a bridge which united the two countries. In fact, Tamil Nadu and the northern part of Sri Lanka are like Siamese twins; what afflicts one will affect the other.

In this perspective, we have to remember also that tolerance and goodwill had made India a haven for immigrants and shelter-

seekers from early times. It is also worth mentioning that St. Thomas brought Christianity to the Kerala coast in the first century AD, long before the Vatican was Christianised. According to local Christian oral history, St. Thomas came to Kodungallur in 52 AD and founded seven churches along the Kerala coast. The Syrian Christians successfully assimilated with the local people; they were Christian in faith only, but in all else they assimilated with the environment in which they lived. They had a rightful place in society and shared common interests and took pride with the rest of the citizens of Kerala that they were all 'Malayalis', speaking the same Malayalam language, wearing the same clothes, and following the same customs. The Jews fleeing Roman persecution also found refuge in Kodungallur in Kerala in 68 AD and from there they moved to different parts of the country. There was a flourishing Jewish community in Cochin, until the Jews, after the Second World War, migrated to Israel. The Jews in Kerala lived, as one commentator has noted, 'in the palpable absence of anti-Semitism, a cancer unknown in India' and, what is more, the Jewish identity emerged 'in an environment, which for the most part was hospitable, affectionate, and nurturing'.<sup>10</sup> It may be relevant to highlight the spirit of fraternity and equality which Guru Nanak, the founder of Sikhism, inculcated among his followers. Guru Nanak followed the principle of not giving an appointment to anybody who came to see him unless the visitor had first partaken of food in the community kitchen (*langar*), where Muslims, Hindus, Brahmins, and Shudras all sat together; this was a fine way of inculcating humility, equality, and fraternity, and driving home the lesson that we are all children of the Eternal Master. In another Indian tradition, a stranger who comes as guest is referred to as *Athithi*, and the host is expected to treat him as God, next only to mother, father, and preceptor. In the *Yudha Kanda* of the *Valmiki Ramayana*, when Vibishana approached Rama for asylum, Rama told Sugriva, 'O Sugriva, Chief of the Monkeys, please bring him here. I have granted him fearlessness, whether he is Vibhishana or even Ravana'.<sup>11</sup> *Periyapuranam*, the Tamil classic, mentions the story of the Chola King Meyyaporul Nayanar, who was not only a temporal King but also a 'realised soul'. One of his enemies wanted to kill him and came disguised

as a devotee of Shiva. He greeted the King with folded hands that concealed a knife. When the king responded in the same way, his enemy stabbed him and killed him. The King's aide, Dattan, wanted to catch the culprit, but the dying King dissuaded him. Saying that the killer was a devotee of Shiva and should be treated as God himself, the King implored in soft tones, 'Just ensure that this devotee of our Lord goes back safe to his place, unmolested by anyone'. In other words, the King saw divinity in every human being, particularly in a guest.<sup>12</sup>

The *Thirukkural*, which has influenced and continues to influence the lives of the people of Tamil Nadu for several centuries, specifically mentions how those who come in search of food and succour should be treated. A few quotations from the *Thirukkural* are given below:

1. All the household articles that one possesses at home are only for the sake of pleasing and making the guests happy.
2. Even if it is the nectar of the Gods, it should not be eaten alone by the householder, but should be shared with the guests.
3. The life of the householder will not be spoiled by poverty, nor his health will go to waste, if he receives and feasts his guests.
4. Lakshmi, the Goddess of Wealth, will live in the home of a person who treats his guests with a smiling face.
5. A person who waits on his guests at home and looks forward to unexpected guests is a guest to the Gods.
6. The quality of the hospitality cannot be measured. It depends upon the worth of the feast that is given.
7. Just as the *Anchikam* flower fades when it is smelt, so also the guest is displeased when the host has an expression of displeasure on his face.<sup>13</sup>

*Shilappadikaram*, the great Tamil classic written by Ilango Adigal, describes in vivid detail how a person entrusted to another's care should be treated. Kuvundi tells Madari how Kannaki should be taken care of: 'When the merchants of this city discover who is the father-in-law of this girl, they will invite her and her husband



into their well-guarded homes, considering it a privilege. Until we can bring her to these wealthy mansions, keep Kannaki under your protection. Give her a good cool bath and put black collyrium on her long, reddened eyes. Rearrange her hair with fresh flowers. Dress her in a well-washed garment, as is proper for people of her rank. Be her servant, for she is of high birth, but be also her mother and guardian. Take care of her.'<sup>14</sup>

In view of geographical contiguity, ethnic relations, and the long tradition of hospitality, it was riot surprising that Tamil Nadu was generous in dealing with the Sri Lankan Tamils—a record that could be the envy of many developing countries. After a suicide squad of the LTTE assassinated Rajiv Gandhi in 1991, not even one Sri Lankan Tamil refugee was harmed. This was in striking contrast to what happened to the Sikh community in New Delhi, who were Indian citizens, in the horrendous days following the assassination of Indira Gandhi.

**india's sri lanka policy** The flow of Sri Lankan Tamil refugees into Tamil Nadu is closely intertwined with the violence unleashed in Sri Lanka against the civilian population. It is not roses all the way in Tamil Nadu, but at least there are no midnight knocks, the army does not take away the children on suspicion, and the women are not subjected to any indignities. At the same time, the twists and turns in India's Sri Lanka policy have also had their inevitable impact on the refugees. It should be pointed out that the Sri Lankan Tamils are highly politicised and the refugees were the 'warm waters in which the militant fishes thrived'. When New Delhi after July 1983 adopted the stance of mediatory-militant supportive policy, which was contradictory, the number of Sri Lankan Tamil refugees pouring into Tamil Nadu increased by leaps and bounds; what is more, Tamil Nadu became the sanctuary and safe haven from which the violent Eelam struggle derived its sustenance. The competitive nature of politics in Tamil Nadu, with the two Dravidian parties vying with one another in championing the Tamil cause, acted as a further impetus to the Tamil struggle. As time went on, the LTTE emerged as a close-knit, disciplined, and ruthless organisation due to a variety of reasons. The Tigers had 12 units in Tamil Nadu to fuel

their war machine. These were: (1) Procurement of explosives-Dharmapuri; (2) Arms and ammunition manufacturing-Coimbatore; (3) Manufacturing of explosives-Salem; (4) Military uniforms-Erode; (5) Coastal area from where supplies were sent to Jaffna-Vedaranyam; (6) Transit area-Madurai; (7) Landing area for supplies from abroad-Nagapatinam; (8) Communication centre-Thanjavur; (9) Area where refugees arrived and militants were recruited-Rameshwaram; (10) Trade in silver, gold, and narcotics-Tuticorin; (11) Liaison with political parties-Chennai; and (12) Treatment of wounded guerrillas-Trichy.<sup>15</sup> What was tragicomic about the situation was that New Delhi was trying to conceal the presence of the militant camps in India. As time went on, the militants became a law unto themselves, and gun-toting militants became a feature of the local scene. Narayan Swamy has described the situation in this way 'All Tamil groups had their own camps, which were virtually prohibited zones for outsiders. One could do anything in these secluded fortresses, no question asked. Even when someone was tortured to death, the screams would reach nowhere. If the victim died, he would be simply buried there in the barren vicinity'.<sup>16</sup>

The Indian Peace Keeping Force (IPKF) operations in Sri Lanka during 1987-89 represented a radical departure from India's earlier Sri Lanka policy. The unexpected turn of events in the island after the India-Sri Lanka Accord was signed in July 1987 brought the Indian Army into conflict with the Tamil Tigers. The IPKF was able to restore normalcy in the Jaffna peninsula, but it was accomplished at a heavy cost of men and materials. The Wanni jungles, however, became a scene of guerrilla warfare between the Indian Army and the fanatical Tamil guerillas. The IPKF operations also brought two hitherto antagonistic forces, LTTE supremo Prabhakaran and President Premadasa, together. Colombo provided considerable arms and money to the LTTE, which enabled it to emerge as a strong force. The change of Government in New Delhi hastened the process of return of Indian military forces from Sri Lanka. The honeymoon between Prabhakaran and Premadasa was short-lived and the Second Eelam War commenced in June 1990. As far as the refugees were concerned, the IPKF period witnessed the return of a number of refugees from Tamil Nadu to

Sri Lanka. It must be also be highlighted that not even a single Tamil refugee came to India when the IPKF was present in the north and the east of the island.

The assassination of the Indian Prime Minister Rajiv Gandhi by a suicide squad of the LITE swung the pendulum to the other extreme. The people of Tamil Nadu and political parties alike are yet to recover from the trauma. A report of the Jesuit Research Service, which visited Tamil Nadu in March 1994, accurately mirrored the feelings of the people. To quote the Report, 'Many of the locals, including the church people, now view their Tamil brothers and sisters no longer as refugees, but as militants and terrorists'.<sup>17</sup> Presumably spurred by security considerations, the Government of Tamil Nadu persuaded the Central Government to ban the LTTE. The ban continues to this day. What is more, Jayalalitha, the then Chief Minister, demanded immediate action so that all Sri Lankan Tamils could be sent back. 'I appeal, rather demand, that the Centre should take immediate action so that all Sri Lankan Tamils are sent back ... It should take place immediately'.<sup>18</sup> The Government imposed restrictions on the facilities for higher education available to Sri Lankan Tamil students and also started repatriating the refugees. The controversy relating to repatriation will be discussed in a subsequent section.

During the last few years, the Tigers have been engaged in a desperate attempt to come out of their growing international isolation. India, the United States, Canada, and the United Kingdom have all banned the LTTE or designated it as a 'terrorist' organisation. The European Union and Australia are likely to follow soon. The repeated killings of innocent civilians, the liquidation of moderate Tamil political leaders, the attacks on other communities in the Jaffna peninsula, the attack on the *Dalada Maligawa* (The Temple of the Sacred Tooth), the assassination of Neelan Tiruchelvam, the attack on the Katunayake Air Base and the Bandaranaike International Airport, and the recruitment of young boys and girls as cannon fodder in the pursuit of military objectives have created a sense of revulsion among large sections of intelligentsia in different parts of the world.

At a press conference held by the Tigers on 10 April 2002, another attempt was made by Prabhakaran and his aide Balasingham to present the 'soft image' of the Tigers. In response

to a pointed question, Prabhakaran characterised Rajiv Gandhi's assassination as a 'tragic incident'. This implied neither an admission nor a denial of the LTTE role in the assassination. The Tigers were appealing for a policy of letting bygones be bygones. Balasingham repeatedly underlined the important role of India in the resolution of the ethnic conflict: 'Without India, this problem will not find a permanent settlement. India is the regional superpower and we need India's backing and support ... We do not want to have any unfriendly relationship with India because we have suffered a lot as a consequence of contradictions between India and the LTTE. So we want to renew our friendship and engage in a positive relationship with India'. He added, 'As a race of people, we are Tamils and we have our roots in India. India is our fatherland. We have respect and love for India and its people. So, whatever happened in the past, we are not going to entertain unpleasant memories'.<sup>19</sup>

Prabhakaran and Balasingham underestimated the extent of alienation caused by the assassination of Rajiv Gandhi. They also overestimated the influence of pro-LTTE forces in Tamil Nadu. The All India Anna Dravida Munnetra Kazhagam (AIADMK) Government led by Jayalalitha and the Indian National Congress (INC) have made their position very clear. They do not want the Government of India to have any links with the LTTE. They do not want New Delhi to provide medical facilities to Balasingham on 'humanitarian grounds'. On the contrary, they demand that New Delhi should press the demand for the extradition of Prabhakaran to India to face capital criminal-charges in the Rajiv Gandhi assassination case and charges in other cases as well.

The refugees are the creation of a particular political process and to expect them to be apolitical is asking for the impossible. After the Rajiv Gandhi assassination, the refugees are very guarded in their statements, but a discerning observer can easily find out their sympathy and admiration for the Tigers. After the capture by the Tigers from the Sri Lankan Army of the strategically important Elephant Pass gateway to Jaffna town in April 2000, NDTV; a private Indian television channel, visited the refugee camps located near Chennai. They recorded jubilant scenes there, with refugee children dancing and singing in chorus.

**flow of refugees** Refugees, as Sadako Ogata, the former UNHCR rightly put it, 'tend to evoke images of sprawling camps housing large numbers of distressed and impoverished people who have had to escape from their own country at short notice and with nothing but the clothes on their back'.<sup>20</sup> This picture reflects the reality for a majority of Sri Lankan Tamil refugees who live in 111 camps spread across the state of Tamil Nadu. Geographical contiguity, easy availability of boats, and ethnic affinities made Tamil Nadu a natural choice when large sections of Sri Lankan Tamils were forced to leave their country. New Delhi and

Chennai alike recognised the need to provide asylum and admitted them with understanding and sympathy. Unlike many European countries, there were no time-consuming bureaucratic procedures; nor were there any restrictions on the movement of the refugees.

The Sri Lankan Tamil refugees came to Tamil Nadu in three waves. The first exodus of refugees began on 24 July 1983, soon after the commencement of the riots in Sri Lanka, and continued till 29 July 1987, when the India-Sri Lanka Accord was signed. During this period, 1,34,053 Sri Lankan Tamils arrived in India. Following the India-Sri Lanka Accord of 1987, refugees began to return to Sri Lanka. Between 24 December 1987 and 31 August 1989, 25,585 refugees and non-camp Sri Lankan nationals returned to Sri Lanka by chartered ships.<sup>21</sup> The remaining Tamils either returned to Sri Lanka without Government assistance or continued to stay in Tamil Nadu either with their relatives or by their own means.<sup>22</sup> According to Sri Lanka watchers, the period witnessed large-scale movement of Sri Lankan Tamils, on their own, to different parts of Europe and Canada. The Second Eelam War between Colombo and the Tigers commenced in June 1990 and resulted in the second wave of the refugees. After 25 August 1989, 1,22,000 Sri Lankan Tamils came to Tamil Nadu. Of these, 1,15,680 were destitutes and were accommodated in refugee camps.<sup>23</sup> The repatriation of refugees commenced on 20 January 1992. According to the UNHCR, 54, 188 refugees were voluntarily repatriated to Sri Lanka by chartered ships and flights from 20 January 1992 to 20 March 1995.<sup>24</sup> The Third Eelam War commenced in April 1995 and once again the refugees started coming

into Tamil Nadu.<sup>25</sup> By 12 April 2002, 22,356 refugees had come in. They comprised 7,715 families, consisting of 9,720 adult males, 8,110 adult females, 2,283 male children, and 2,236 female children.<sup>26</sup>

The flow of refugees was a consequence of the Sri Lankan Army's operations in the LTTE-controlled areas. Most refugees took the Talaimannar-Rameshwaram route, while a few came in via the Nacheguda-Rameshwaram route. The refugees trekked long distances, assembled in Talaimannar, paid huge amounts to boat operators, and reached Rameshwaram.<sup>27</sup> The sufferings of the Tamil refugees became evident when a boat capsized in the Palk Straits and 165 Sri Lankan Tamils were drowned in February 1997. This was the second such incident; in October 1996, another tragedy took place near Mannar Island in which 14 lives were lost.<sup>28</sup>

The flow of refugees into Tamil Nadu has now slowed down to a trickle. The following statistics are self-evident. The number of refugees who came to Tamil Nadu in September 2001 were 26; in October 2001-78; in November 2001-11; in December 2001-6; in January 2002-25; in February 2002-4; in March 2002-6 and up to 12 April 2002-nil.<sup>29</sup> It should be highlighted that most Sri Lankan Tamils who wanted to leave the island and who had the financial means have left for greener pastures in Europe, the United States, and Canada. Equally important, the Sri Lankan Navy controls the outer islands in the Tamil areas and it is extremely difficult for the boat operators to bring the Sri Lankan Tamils over to India. What is more, the Indian Navy and the Coast Guard have stepped up their vigil in the Palk Strait. According to a Sri Lankan Tamil journalist, a few mechanised boats from Tamil Nadu smuggle in scarce commodities and, on some occasions, bring back refugees with them for a good fee. They drop anchor at Nachiguda, Vallaipadu, and other safe spots between Pooneryn and Mannar.<sup>30</sup> It is the Sri Lankan fishermen who ferry most of the refugees to India. The Government of Tamil Nadu has impounded a few boats owned by Sri Lankan fishermen that were used to transport the refugees. This preventive measure has failed to deter the organised gangs of operators; in fact, every journey usually allows them to make more money than the cost of their boat. In 1997-98, the transport fee became exorbitant and ranged from

Rs 15,000 to 30,000 depending upon the need of the refugees and the size of the boat. The boat operators also exploit the shallowness of the Palk Strait. They drop the refugees in the sea (very near the coast) and ask them to wade through the water and report at the Mandapam refugee camp.

**four categories** The Sri Lankan Tamils in Tamil Nadu can be divided into four categories: (i) Refugees in the camps, (ii) Recognised refugees outside the camps, (iii) Sri Lankan nationals, and (iv) Tamil militants detained in Special Camps. It is essential to keep in mind the differences among the four categories and also their legal status, though the Government, political leaders, and NGOs use the term 'refugee' interchangeably. It creates semantic confusion, and sometimes administrative and legal bottlenecks also. For example, in an interview to the *City Express*, Chandrahasan, the founder of the Organisation for Eelam Refugee Rehabilitation (OfERR), clubs the four categories together and refer to all of them collectively as refugees.<sup>31</sup>

refugees At the end of January 2002, there were 63,941 refugees (belonging to 16,955 families) accommodated in 111 camps spread throughout Tamil Nadu. This aspect is covered in detail in a later section.

recognised refugees outside camps Some Sri Lankan Tamils came by boat to Rameshwaram and informed the officials of the Rehabilitation Department there that they did not want to stay in the refugee camps as they could fend for themselves economically. They were asked to register themselves at a police station nearest to their place of residence and also get a refugee certificate from the District Collector's office. These refugees are not eligible for financial doles from the Government of Tamil Nadu, nor subsidised rations. These people are categorised as non-camp refugees. However, they can avail of the educational facilities earmarked for refugees, especially admission to professional colleges and institutions of higher learning. According to officials of the Rehabilitation Department, non-camp refugees in the State number about 20,184.

sri lankan nationals These belong to the well-to-do sections of Sri Lankan society. Their exact number is not known. However, after the writer's discussions with a cross section of Sri Lankan nationals living in Tamil Nadu, he feels their number should be around 80,000. During the last decade, approximately 25,000 of them entered India with valid travel documents issued by the Indian High Commission in Colombo. Some of them continue to stay in India even after the expiry of their visas. A few others make use of India as a transit point for migrating to other countries. According to informed travel agents, they pose as Indian nationals, proceed to Kathmandu in Nepal (Indian nationals do not require travel documents to go to Nepal), and from there go to Bangkok, Singapore, or Hong Kong (Sri Lankan passport-holders are issued visas on entry in Bangkok, Singapore, and Hong Kong airports), and from there onto various Western countries. According to Central Government sources, Sri Lankan nationals outside the refugee camps have become a law unto themselves. Some own houses and business firms, without any clearance from the Reserve Bank of India. Others have obtained ration cards, which only Indian citizens are entitled to. What is more, some have got their names included in the records as Indian nationals during the census enumeration. Another point, which has so far not attracted the attention of the authorities, deserves mention. According to the Sri Lankan Citizenship Act, Sri Lankan nationals who have children outside the island have to apply for Sri Lankan citizenship for their children by registering with the nearest Sri Lankan Embassy/ Consulate / High Commission. According to the Sri Lankan Deputy High Commission in Chennai, the number of applications received from Sri Lankan nationals for citizenship for their children by registration are very few. As far as Indian citizenship rules are concerned, originally Section 3 of the Citizenship Act of 1955 fully followed the principle of *jus soli*, and all children born in India, irrespective of the nationality of their parents, became citizens of India by birth. The only exceptions were children whose fathers claimed diplomatic immunity or whose fathers were enemy aliens and whose births took place in territory occupied by the enemy. Thus the children born in India of illegal immigrants from East Pakistan

also became Indian citizens. Hence, Section 3 was amended as a consequence of the Assam Accord by the Citizenship Amendment Act 1986 (Central Act 51 of 1986) with effect from 1 July 1987. Thereafter, a child born in India after 1 July 1987 would acquire Indian citizenship by birth only if one of its parents was a citizen of India at the time of its birth. Thus the legal position is that children born to Sri Lankan parents cannot claim Indian citizenship by birth. But in actual practice, if a birth certificate is obtained, the child can claim Indian citizenship since the nationality of the parents is not mentioned in the birth certificate. The Government of India should immediately take up this matter with the Sri Lankan Government and ensure that the children born to Sri Lankan nationals in India are compelled to apply for Sri Lankan citizenship.

Sri Lankan nationals and refugees identified as militants Sri Lankan nationals and refugees who are suspected of having militant leanings or have criminal cases registered against them are accommodated in Special Camps. In 1992, 1,629 militants were stationed in five Special Camps in Vellore, Pudukkottai, Salem, Chengalpattu, and Chennai. Militants against whom there were no specific charges were permitted to leave the country. At present, there are 128 Sri Lankans in three Special Camps: Vellore-22 males; Chengalpattu-72 males, 14 females, and 6 children; and Melur-13 males and 1 female. According to a Peoples Union of Civil Liberties (PUCL) team, which visited the Special Camp in Vellore in July 1999, security arrangements in Special Camps are 'unprecedented and surpass the security arrangements in any of the central prisons in the State'. Though the inmates are not 'technically and legally prisoners, their plight is even worse than those prisoners who are convicted and sentenced to specific terms of imprisonment'.<sup>32</sup> Following complaints from the detainees, the representatives of the National Human Rights Commission (NHRC) visited the Melur camp and interviewed the detainees. Their main grievance was that they were being detained without any indication being given about their future or their release. They also complained about insufficient allowances, excessive restrictions on their movement even within the

compound and lack of facilities for visitors to meet them. Following the recommendations of the NHRC, the Government of Tamil Nadu has increased the food allowance for the inmates of the Special Camps to Rs 35 per adult per day and Rs 20 per child per day.

Despite the strict vigil, militants still continue to carry on with their activities in Tamil Nadu. Speaking in the Legislative Assembly, Chief Minister Jayalalitha cited the example of Chandran alias Kiili, a Sea Tiger who was apprehended on 15 June 2001 and is currently detained in the Vellore Special Camp.<sup>33</sup> A number of Sri Lankan Tamils continue to be detained in the State for smuggling of narcotics, use of illegal travel documents, and various other crimes under the Indian Penal Code.

**life in the refugee camps** While analysing the living conditions of the Sri Lankan Tamil refugees, it is necessary to highlight the fact that they have come from a poor country to another poor country. The Government provides free housing, free medical care, and free education. Clothing, materials required for simple living, and utensils are also provided free. Rice priced at 57 paise per kilo and sugar and kerosene at subsidised rates from the public distribution system are also made available to the refugees. The cash dole amounts to Rs 200 for one member and Rs 144 for each additional member, and Rs 90 per child below 12 years for the first child and Rs 45 for each additional child, given every fortnight.<sup>34</sup> The Government of Tamil Nadu has permitted the refugees to take up work outside the camps, a gesture that was not extended to the Chakma refugees from Bangladesh. This facility enables the refugees to keep themselves meaningfully engaged and also to supplement their incomes. The refugees in camps near Erode work in hosiery industries, those in Gumidipundi have taken up manual work in the construction industry, and many women work as housemaids. The refugees are included among the weaker sections and they are entitled to free supply of saris and dhotis during the Pongal festival. From the academic year 1996-97, the Dravida Munnetra Kazhagam (DMK) Government removed the restrictions on higher education for the refugees imposed by the earlier AIADMK Government.

In some cases, the family income is supplemented by remittances from relatives abroad. What is more, the refugees are permitted to go back to Sri Lanka for family reunions and other family occasions. They are also permitted to leave the country in case they want to migrate abroad.

These facts are highlighted not to deny the refugees their due; in fact it is the writer's contention that living conditions in the camps could be easily improved if the lower rungs of bureaucracy become more sensitive to the aspirations and feelings of the refugees—but to set the record straight in the context of misguided criticisms levelled by certain human rights organisations. The local people, for example, pay Rs 3.50 per kilo for rice from the public distribution system. According to the 'Tamil Nadu Social Development Report 2000', only 15.6 per cent of the households in Tamil Nadu enjoy all the three basic needs of electricity, drinking water, and sanitation. What is more, 32.48 per cent of the rural population and 39.77 per cent of the urban population live below the poverty line. According to the Planning Commission, the poverty level is Rs 264 per capita per month in urban areas and Rs 229 per capita per month in rural areas. The literacy rate in Tamil Nadu is 62.66 per cent—73.75 per cent for males and 51.33 per cent for females.<sup>35</sup> The US Committee for Refugees, in its 1991 Report, has noted that, 'India has accorded a welcome to the Tamil asylum seekers that is as generous as any refugee group in Asia'.<sup>36</sup> The expenditure per year on the refugees works out to Rs 25 crores. The expenditure is initially incurred by the Government of Tamil Nadu, and subsequently reimbursed by the Government of India.

**controversy over repatriation** In discussing the controversy over repatriation, we should keep in mind the basic principle underlying India's policy towards refugees. The principle is to view the problem strictly, in a bilateral perspective. The refugees should return to their homeland once the situation improved there. Asylum in India does not mean that it is the first step towards citizenship and integration as it is in the case of countries like Canada. Dealing specifically with the Tibetan refugees, Jawaharlal Nehru declared that India's policy on the subject was

governed by three factors: (i) India's desire to maintain friendly relations with People's Republic of China; (ii) India's deep sympathy for the people of Tibet; and (iii) Protection of the security and territorial integrity of India.<sup>37</sup> On some occasions, this has created problems for New Delhi; granting of asylum to the Dalai Lama was criticised by China as interference in the internal affairs of that country. The same accusation was repeated when India gave asylum to the Karmapa Lama a few years ago. However, these principles are sound, and the same govern India's overall policy towards Sri Lanka.

Mention has already been made that the Government of Tamil Nadu began to pressurise the Central Government to repatriate the Sri Lankan Tamil refugees after the assassination of Rajiv Gandhi. The AIADMK was an ally of the INC at that time and Prime Minister Narasimha Rao could not easily turn down the request from the Tamil Nadu Government. The repatriation commenced in January 1992. There was immediately an outburst of criticism from human rights organisations within India and abroad that India was pressurising the refugees to leave; that the repatriation was 'involuntary'; and that since peace had not returned to Sri Lanka, the repatriates would not be safe back in the island. The NGOs working among the refugees in India and human rights organisations like Asia Watch alleged that the hapless refugees were being 'forced' to leave and their signatures had been obtained in option forms (unfortunately the forms were printed in English), the contents of which they did not know.<sup>38</sup> According to Asia Watch, the repatriates faced 'direct and indirect coercion to return home, including arbitrary arrest, withdrawal of stipends and food rations'. Further, no international agency was permitted to visit the refugee camps to monitor whether the system was 'voluntary'. The refugees also had 'no reliable means' of ascertaining the actual conditions back in their villages in Sri Lanka.<sup>39</sup>

Professor Asha Hans visited the refugee camps in Tamil Nadu during this period and interviewed a large number of refugees. According to Asha Hans, 'The excellent Indian record of providing refuge to numerous neighbours has been blemished by the push factors used in repatriating the Sri Lankan refugees.'<sup>40</sup> The villain, according to Asha Hans, was the Government of the State

of Tamil Nadu. The option forms circulated among the refugees, which was in the Tamil language, did not contain any provisions as to whether the refugees wished to return or not. The Government drew up unrealistic schedules, giving the refugees three to five days to leave for the transit camps. Ration cards were withdrawn and educational facilities were curtailed, security within and outside the camps tightened, and many refugees could not go out for work. When the refugees complained, according to Asha Hans, 'some of them were beaten up in the process'. As a security measure, the Government of Tamil Nadu embarked upon a thorough reorganisation of the refugee camps, and the refugees were relocated in camps depending upon the area from which they came in Sri Lanka. These criticisms were valid, especially the accusation that the refugees were being repatriated to Sri Lanka at a time when the security situation there was uncertain.<sup>41</sup> In fact, when the Third Eelam War commenced in April 1995, many refugees who were repatriated to Sri Lanka returned to Tamil Nadu as refugees. In the course of the author's visits to camps of the internally displaced persons in Vavuniya and Trincomalee in Sri Lanka in 2001, he came across many refugee families who were stranded in these welfare centres. These repatriates from Tamil Nadu were unable to return home because their villages were in the war zone between the Sri Lankan Army and the Tamil Tigers. In other words, the repatriation only meant shifting from one refugee camp to another refugee camp.

Following international concern about the repatriation process and the continuing insecurity in Sri Lanka, the programme of repatriation was temporarily suspended. Negotiations soon started between New Delhi and the UNHCR, and in July 1992 an agreement was reached which allowed the latter a token presence in Chennai, with access to refugees at the point of departure in the transit centres, but not in the camps themselves. The decision to permit the UNHCR to operate in Chennai and monitor the repatriation facilities led to an overall improvement in the situation.

The international context was also congenial. The end of the Cold War witnessed the return of some 2.4 million refugees worldwide to their homes. To quote an UNHCR Report, 'The ideal

environment for the return of the refugees is one in which the causes of the flight have been definitely and permanently removed—for example, the end of the civil war or a change of government which brings an end to violence and persecution. The ideal is rarely achieved, instead refugees return to places where political disputes will simmer and occasionally boil over, where fragile ceasefires break down, are repaired, and then break down again, when agreements are broken and trust is removed. The great majority of returnees in the early 1990s have been going back to a situation of this kind—for example, in Angola, in Mozambique, Cambodia, Sri Lanka, and Afghanistan.<sup>42</sup>

The UNHCR officials, as stated earlier, are not permitted to visit refugee camps; however, any refugee can contact the UNHCR if he / she wants to do so. According to the UNHCR, they conducted interviews with 70 per cent of the refugees to verify the 'voluntary nature' of their return; they were convinced that the refugees were not subjected to any 'covert coercion'. Only 19 families, comprising 68 persons, complained that they were being repatriated 'under duress'. They were permitted to return to refugee camps following the UNHCR's initiative.<sup>43</sup> The UNHCR presence in Tamil Nadu also facilitated better co-ordination between India and Sri Lanka. The UNHCR has been operating in Sri Lanka since 1987, and co-ordination between the two units, coupled with the co-operation of the bureaucracy on both sides, contributed to the overall success of the repatriation process. The UNHCR has been assisting refugees separated from their families by arranging for their reunion. As and when the office of the UNHCR receives any complaint/ suggestion concerning the refugee camps, it immediately brings the matter to the notice of the Tamil Nadu Government and attempts to speed up the administrative machinery. According to UNHCR sources, their office in Chennai has received 700 applications till date from the refugees for returning to Sri Lanka. Most of them relate to family reunions. With the settlement of a ceasefire between the LTTE and the Sri Lankan Government, and with prospects of negotiation getting bright, it is an opportune moment for the Government of India to initiate the process of voluntary repatriation of the Sri Lankan Tamil refugees. According to media

## v. suryanarayan

reports, the Department of Rehabilitation has asked Sri Lankan refugees staying in various camps in Tamil Nadu who are desirous of getting back to their country to file their applications.<sup>44</sup>

The presence of the UNHCR in Chennai, though with a limited mandate, has enhanced the credibility of New Delhi in international forums. The Madras High Court in the case of P. Nedumaran and S. Ramdoss v. The Union of India and The State of Tamil Nadu stated, 'In so far as the consent of the refugees is concerned, when there is a world agency to ascertain whether the consent is voluntary or not, it is not for the Court to consider whether the consent is voluntary or not. Nothing has been suggested against the competence or impartiality of the UNHCR in ascertaining the willingness of the refugees to go back.'<sup>45</sup>

The repatriates were understandably uncertain about their future in Sri Lanka. This was amply demonstrated when the first batch of refugees left by the *M .V. Akbar* from Chennai to Trincomalee on 20 January 1992. The LTTE condemned the repatriation as an 'inhuman act', and hours before the ship reached Trincomalee, an LTTE ambush killed 20 Sri Lankan soldiers at Kuchchavali. The LTTE also blasted a part of the Air Force Base in China Bay in Trincomalee harbour, killing eight soldiers.<sup>46</sup> According to senior Government officials, who accompanied the repatriates, the panic-stricken Tamils immediately demanded that they should be taken back to Chennai. They refused to their food rations and declared that they would not disembark in Trincomalee. The officials did not want to abort the maiden voyage; they assured the repatriates that no one would be compelled to get down in Trincomalee; those who wanted to return to Chennai would be taken back. When the ship finally reached Trincomalee, the repatriates found their friends and relatives waiting to receive them; all of them then disembarked without any protest.

**between fear and hope**

*I am leaving*  
*I'm leaving now*  
*Before loneliness*  
*Suffocates me*  
*I am leaving.*

*Before I leave*  
*I want to say thanks ...*  
*I am grateful*  
*For all the beautiful eyes who*  
*Saw a (hu)man in me and not an alien*

Ravinder Gidda<sup>47</sup>

The experiences of refugees are traumatic illustrations of social change. They are uprooted from one social setting and thrown into another. In that process they undergo untold sufferings and irreparable tragedies. To the concerned governments, they are only disposable statistics; but at least social scientists should focus on the human angle. As Pamela A. Devoe puts it, the refugee communities are 'often still in crisis, in trauma, due to their experiences in their homeland. Many spend years in refugee camps; where births, marriages, and deaths take place within the confines of this unnatural setting. Trauma continues in the initial stages of settling into a host country and adjusting to its often markedly different culture'.<sup>48</sup> Most refugees experience a void in their lives. Rajan Philipps, a Sri Lankan Tamil refugee, who has become a Canadian citizen, explains: 'They are victims of a painful rupture between their immediate past and immigrant present. The gap between their natal memories and their uprooted existence, not to mention the leap, for most of them from tropical sunshine into freezing winter, is almost unbearably unbridgeable'.<sup>49</sup>

Sri Lankan Tamils arrived in India at different times. Sometimes as a mass exodus; sometimes as a trickle, as it is now. When the massive inflow started in July 1983, makeshift camps sprang up in different parts of Tamil Nadu. As Asia Watch highlighted: 'Abandoned schools, poultry farms, cremation grounds, warehouses, even open-air toilets, have been used to house the refugees. Many refugees, living along the coast, are housed in emergency cyclone shelters'.<sup>50</sup>

Why do refugees come to India? Obviously it is not the hope of a greatly improved standard of living. What must be underlined is the fact the refugees are certain that their lives will not be in danger in Tamil Nadu. There are no midnight knocks on the



door, and what is more, their wives and daughters can move around freely without fear of physical molestation. Sikha Bose, while narrating the travails of the Chakma refugees, highlights a universal phenomenon: 'Fences and border patrols will not succeed in preventing the march of the people away from a place of insecurity to a place of relative security. As demonstrated by the Chakmas, unless their security is guaranteed, people will come and go, back and forth across the borderline, violating every rule of international and internal laws.'<sup>51</sup>

In addition to the feeling of insecurity, two other important factors merit attention. When this author established a rapport with the refugee families, some of them confided that they were not direct victims of military reprisals. They were afraid that the armed forces would soon attack their area and they would become victims of war. What is more, some of them were apprehensive that the Tigers would persuade/pressurise their children to join the 'baby brigade'. Also, they knew that Tamil Nadu provided good facilities for education. Their children could study in Tamil Nadu without any interruptions. Those refugees who can afford the expenses send their children to private English-medium schools. The politics of language was one of the important factors that exacerbated the ethnic conflict. However, the Sri Lankan Tamils in India have become conscious of the fact that a knowledge of the English language is a passport to the outside world. An analysis of the refugee statistics indicate that children of the school/college going age constitute a major percentage of the refugee population.

One creditable achievement of the Sri Lankan Tamils in Tamil Nadu, in all categories put together, are the strides they have made in the field of education. The educational concessions given by the Government of Tamil Nadu is open to all sections of the Sri Lankan Tamils and not to the refugees alone. Every boy and girl of school-going age attends school. Few children give up education due to economic reasons. But, at the same time, the drop-out rate is far less than among the local Tamils. Sri Lankan Tamil children do not stop at the school level; they go for higher education. According to informed sources, as of 1999-2000, 450 students (221 male and 229 female) were studying in institutions of

higher learning. The break up was as follows: (i) Arts, Science, and Commerce Colleges-327 (122 male, 205 female); (ii) Medical Colleges-12 (6 male, 6 female); (iii) Agriculture-13 (9 male, 4 female); (iv) BE-18 (13 male, 5 female); (v) Diploma -58 (49 male, 9 female); (vi) ITI-22 (22 male, female nil); (vii) Professional-123 (99 male, 24 female), and a grand total of 450 (221 male, 229 female). The statistics show that girls outnumber boys in the Arts, Science, and Commerce Colleges. In Medical Colleges, there are an equal number of boys and girls. The Government of Tamil Nadu has allotted a specific number of seats to Sri Lankan Tamils in various educational institutions. One of the admirable achievements of the OFERR is that it counsels, encourages, and motivates Sri Lankan Tamil families to give the highest priority to their childrens education. The Sri Lankan Tamils have realised that education is the only means towards upward social and economic mobility.

**plight of indian tamils** One of the lesser-known aspects of the refugee situation in Tamil Nadu is the tragic plight of the Tamils of recent Indian origin, or Indian Tamils. According to a survey undertaken by the Madras Christian College, Indian Tamils constituted a sizeable section of the refugee population.<sup>52</sup> According to unofficial estimates, 30 per cent of the refugees are Indian Tamils.

The Indian Tamils are descendants of the Tamil labourers who were taken from India to Ceylon in the 19th and early 20th centuries to provide much-needed labour for the tea plantations. Their major problem was the question of 'statelessness', which was finally resolved amicably due to the sustained struggle the community waged under the leadership of Thondaman. The 'coolie lanes' in the tea plantations, located in the heartland of the Sinhalese, are a reminder of the continuing exploitation of these people by all sections of the Sri Lankan population. Though they do not subscribe to the concept of Tamil Eelam, they became innocent victims whenever communal clashes took place.

After the unprecedented riots of 1977, a few Sri Lankan Tamil leaders turned their attention to the Indian Tamils and tried to build bridges between the two communities. However, the

attempts made by the Tamil Refugee Rehabilitation Organisation (TRRO) and the Gandhiyam (a voluntary organisation started by Dr Rajasundaram) became counter-productive. Since 1977, these two organisations provided various forms of assistance to victims of communal violence in the plantation areas and encouraged them to migrate to the districts of Vavuniya and Kilinochi to start a new experiment in integrated living with the Sri Lankan Tamils. Exact figures are not available, but it is very likely that nearly 20,000 to 25,000 Indian Tamils moved to these areas over a period of six years. But Gandhiyam soon became a cover for Tamil militants. In the military reprisals that followed, many Indian Tamils became innocent victims. This experience affected their perceptions; in the worst scenario, given a chance, most of them would prefer India to the north of Sri Lanka, for the simple reason that they would not like to be sandwiched between the Sri Lankan Army and the LTTE.

In June 1996, and again in October 2001, this writer visited a few UNHCR assisted camps in Vavuniya. More than 50 per cent of the inmates in these welfare centres were people of Indian origin. They were in a state of *trishanku*; they did not know where to go—not to the LTTE controlled areas, where they had neither land nor employment; nor to the up country (the island's north) which they had left many years ago. There was no hope, only exhaustion, in their eyes. They were, to use Frantz Fanon's phrase, the 'wretched of the earth'.<sup>53</sup> The haunting lines of the German documentary film, *Banished from Paradise*, came to the author's mind: 'There is no paradise for the pariahs.'<sup>54</sup>

The Indian Tamils in the refugee camps in Tamil Nadu have been granted refugee status. But a question mark: still remains over their legal status. Some have taken Indian citizenship under the Sirimavo-Shastri Pact, but have lost their passports; some were stateless when they came to India and could not avail of the provisions of the Citizenship for Stateless Persons Act introduced by the Premadasa regime; and a few daring ones have declared themselves as Sri Lankan Tamils. The callousness of the authorities can be gauged from the fact that some up-country Tamils, who had become Indian citizens, were also rounded up as Sri Lankan Tamil militants in the days following Rajiv Gandhi's

assassination. In many parts of Tamil Nadu, these unfortunate people are referred to as Sri Lankan Tamils, a label never given to them in Sri Lanka even after several decades of residence in that island. Given below is an incident that underscores the trauma of Indian Tamil life in the refugee camps.

Mariya Selvam, an up-country Tamil, migrated to Vavuniya with his wife, three daughters, and one son after the 1977 communal riots. After 1983, the family moved to India as refugees. They were living in the Minnur refugee camp in the north Arcot district of Tamil Nadu. Susivani, one of the daughters of Mariya Selvam, was admitted in Vadacherry School. She was a bright student and was popular among her teachers and classmates. She passed her higher secondary exams in 1995 and was eager to study further. But she could not afford to. Mariya Selvam tried to persuade Susivani to take up employment as a housemaid in West Asia. Susivani was initially reluctant, but finally veered round when her father told her that she could save some money, return to India, and join a college for higher studies. Susivani got repatriated to Colombo and from there went to one of the Gulf countries as a housemaid. Like many others in that profession there, she was most probably sexually abused. Unable to bear the shame and humiliation, she scaled the walls of her employer's house and rushed to the Indian Embassy with a request that she be flown back to India. The officials of the Indian Embassy expressed helplessness because she was a Sri Lankan citizen. She approached the Sri Lankan Embassy and, after considerable difficulties, was flown back to Colombo. From Colombo, she returned to Vavuniya; there misfortune continued to dog her, and finally Susivani committed suicide.

### **tamil refugees and the need for a national refugee law**

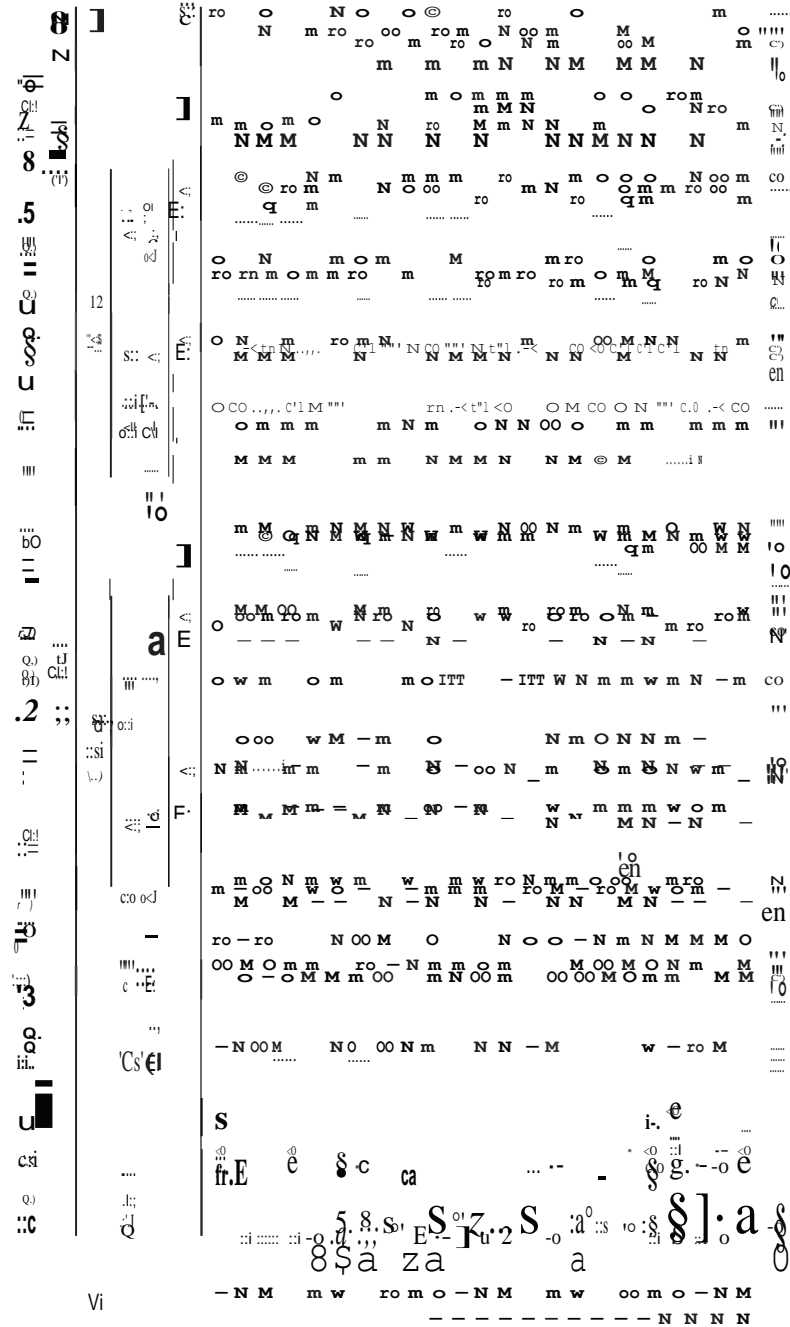
South Asian countries are signatories to major international and human rights covenants. Three countries—India, Pakistan, and Bangladesh—are also members of the Executive Committee of the UNHCR. Important political leaders of these countries like M.A. Jinnah, Liaquat Ali Khan, Zia ul-Haq, Pervez Musharraf, I.K. Gujral, and L.K. Advani were all immigrants in the countries that became their own. Despite the, none of the South Asian countries is signatory to the Refugee Convention of 1951, nor have

they ratified the 1967 Protocol. South Asian countries have also not enacted any separate refugee legislation. As a result, the problems confronting the refugees are dealt with on an ad hoc basis. There is, however, one silver lining in the overall situation. The UNHCR in India has taken the initiative to sensitise the intelligentsia and the legal community about the problems of refugees in South Asian countries. A number of seminars and workshops have been organised in collaboration with universities and organisations such as the SAARCIW and the Indian Centre for Humanitarian Law and Research (ICHLR). Informal consultations have taken place, and a Model Law on the Refugees has been drafted by an Indian group of concerned eminent persons under the Chairmanship of Justice P.N. Bhagwati, the former Chief Justice of India. It must also be pointed out that in March 1979 New Delhi acceded to two 1966 Covenants on Civil and Political Rights, and on Economic, Social, and Cultural Rights. India has also acceded to the Convention on the Rights of the Child on 11 December 1992. Though these Covenants have not been enacted into law, and do not therefore have the force of law in the country, this does not 'relieve India of its international obligations under the Covenants ... The Courts may take them into account in appropriate cases while interpreting the statute law'.<sup>55</sup> At the same time, India has an excellent record in terms of respecting the core principle of international law, namely, the principle of *non-refoulement*. The Indian Courts have also stayed the deportation of individuals when an application for the determination of the refugee status is pending with the UNHCR. In some instances, leave has been sought and granted by courts to detenus to travel to New Delhi, where the office of the UNHCR is located, to seek determination of refugee status.<sup>56</sup>

Besides the humanitarian concern, security concerns also justify the need for a national refugee law—a requirement that the situation in Tamil Nadu, with reference to the presence of a large number of Sri Lankan Tamil refugees, clearly illustrates. Such a law will remove a number of present anomalies. In any case, we know of a section of Sri Lankan Tamil refugees engaged in violent activities in the past. The assassination of Padmanabha and other leading Eelam People's Revolutionary Liberation Front (EPRLF)

personnel in June 1990, the assassination of Rajiv Gandhi in May 1991, the escape of Kiruban, a top LTTE leader, while being taken to Pudukkottai in April 1993, the escape of Charles Nawaz, a witness in the Rajiv Gandhi case in May 1993 from the Saidapet Special Camp, and the daring escape of LTTE cadres from the Tipu Mahal Special Camp in Vellore in August 1995—the list of such incidents is long. Among the persons accused of assassinating Rajiv Gandhi, half-a-dozen—Robert Payas, Jayakumar, Shanti (Jayakumar's wife), Vijayan, Selva Lakshmi (Vijayan's wife), and Bhaskaran (Vijayan's father-in-law)—were registered as refugees. It is in this background of violence that there is a strongly felt need for a well-defined national law to cope with the anomalous situations. Three illustrations pertaining to Sri Lankan Tamils are given below.

Among the 26 accused in the Rajiv Gandhi assassination case, as stated earlier, six were registered as refugees. Judge Navaneetham awarded capital punishment to all the 26 accused.<sup>57</sup> The Supreme Court confirmed the death sentence for four, and awarded life imprisonment for three. The rest were convicted for lesser offences under the Arms Act, the Explosive Substance Act, the Foreigners Act, the Passport Act, etc. As they had already undergone imprisonment for these offences, the Supreme Court set them free.<sup>58</sup> While the acquitted Indian nationals were set free, the acquitted Sri Lankan Tamils are still placed in Special Camps. The Government of India can easily expel/ deport them, but what is missing is the lack of political will. The second illustration refers to the *Ahat* case. The ship *Ahat* was registered in Singapore and was flying a Honduras flag. It was allegedly carrying weapons and ammunition to the LTTE in Jaffna, when the Indian Navy and the Coast Guard intercepted it. After an exchange of fire, the ship was set ablaze and some Sri Lankan Tamils, including the LTTE leader Kittu, committed suicide. Judge Lakshmana Reddy acquitted all the accused in the case and ordered the Commissioner of Police to hand them over to the State of Honduras.<sup>59</sup> The Special Investigation Team (SIT) and the Central Bureau of Investigation (CBI) went on appeal to the Supreme Court, which found the accused guilty on some charges and sentenced them to a total period of imprisonment of three years.<sup>60</sup> Here again, the accused completed the term of imprisonment, and were set



free after that. The State of Honduras did not want to take in the Tamils, and the Tamils did not have Honduras passports. The Tamils also did not want to go back to Sri Lanka. One among them went to the Middle East. The rest are in 'safe custody' in Visakhapatnam. The third instance is of Bhaskaran, a LTTE guerrilla, who was detained in the Saidapet Special Camp after Rajiv Gandhi's

assassination. No charge was pressed against him, and Bhaskaran appealed to the authorities for permission to go abroad. The immigration authorities left Bhaskaran at the Meenambakkam airport. A few weeks later, Bhaskaran was said to have appeared in Phnom Penh, negotiating the purchase of surface-to-air missiles for the LTTE. What is more, he even boasted to journalists about how he had hoodwinked the authorities in Tamil Nadu.<sup>61</sup>

These incidents reinforce the need for the enactment of a na-

tional legislation on the refugees, which will combine the humanitarian needs of the refugees with the security interests of the State.

The continued presence of Sri Lankan refugees in Tamil Nadu is a grim reminder that ethnic conflicts have long-term consequences. Most people belonging to the productive age-between 18 and 40-have left Sri Lanka as refugees. The waste of youth-

will it not further the marginalising of the Sri Lankan Tamil community? Also, as and when peace returns and rehabilitation work commences, who will provide the manpower for development?

Equally tragic is the brutalisation of the community, and the de-

velopment of a cult that glorifies killing and being killed. Many more have withdrawn into the shell of silence. As Martin Luther King put it: 'We shall have to repent in this generation, not so

much for the evil deeds of the people, but for the appalling silence of the good people.'<sup>62</sup>

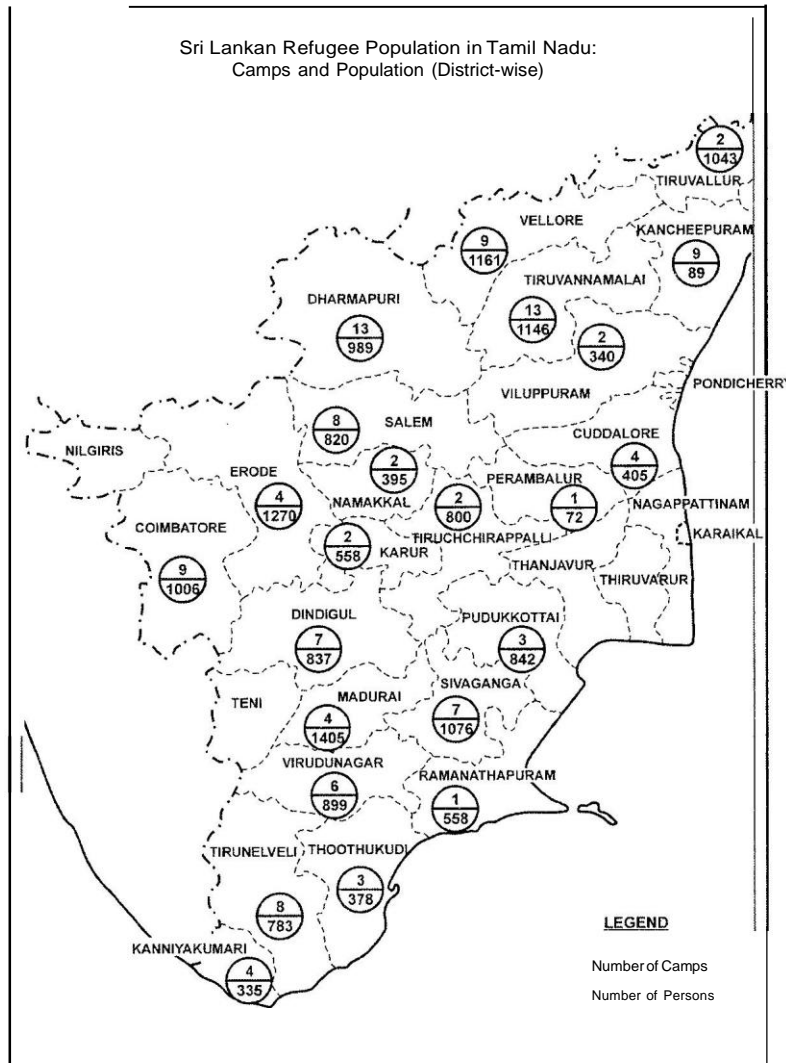
Meanwhile, those who are eager to see an end to the conflict in Sri Lanka can draw comfort from the fact that the ceasefire, formalised in February 2002 is continuing without hiccups. Sri Lanka can ill afford to embark upon another bout of savage warfare. Let not posterity judge that another chance for enduring

peace was missed by both sides. As Maya Angelou, the African-American poet, wrote a few years ago, 'History, despite its wrenching pain, cannot be un-lived; but, if faced with courage, need not

be lived again.'<sup>63</sup>

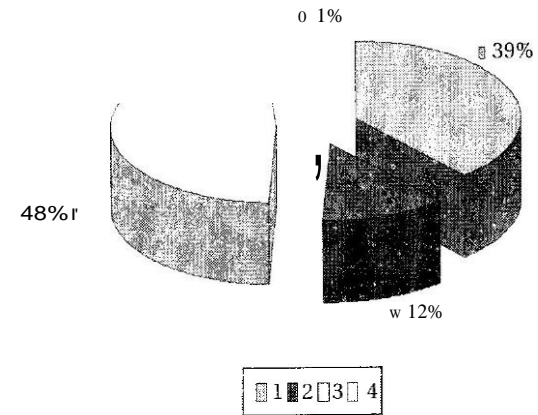
[In writing this essay, I have drawn upon my earlier writings on this subject, and my thanks go the publishers and editors of them.]

Map 8.1: Sri Lankan Refugee Population in Tamil Nadu



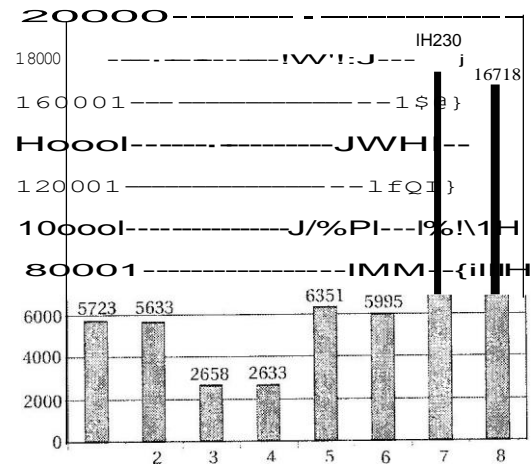
Sri Lankan Tamils in Tamil Nadu

1. Refugees in camps
2. Recognised refugees outside camps
3. Sri Lankan nationals
4. Militants in special camps



Break-up of Refugee Camp Population

1. Male below 8 years
2. Female below 8 years
3. Male-9-11 years
4. Female-9-11 years
5. Male-12-17 years
6. Female-12-17 years
7. Male above 18 years
8. Female above 18 years



v. suryanarayan .

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## 9 refugee women and children: need for protection and care

Asha Hans

**introduction** Women and children have always been objects of concern in refugee movements. It is generally known that women and children form a large part of populations on the move. The question that always confronts researchers and policy planners is the numbers that are on the move. This is a difficult question to answer, especially in developing countries, where sometimes millions are on the move. In India therefore, sex-segregated data is available only for some groups. For instance in the case of the Sri Lankan refugees, of the 64,086 persons (in 2002) in the camps, 45,597 are women and children, i.e., approximately 72 per cent. Of this population, children below 11 years equal the number of women (16,472:16,892), but adolescents in camps are fewer, numbering 12,213.<sup>1</sup> There is unfortunately no information available on unaccompanied minors.

The reason for trying to decipher numbers is mainly for planning what kind of protection is required. The woman-child dyad has more specific needs than the general group of refugees. This is especially as gender dimensions of ethnic nationalism are a dominant form of social change worldwide, and the people who seek refuge are affected by these highly politicised forms of identity formation. Refugee women, as is well known, face gender specific violence and have gender specific needs; as women they are targeted for sexual violence because of the nation or community they represent. Children, as we generally observe worldwide,

suffer as they grow up in a violent environment of land mines and recruitment into armies. While patriarchal norms have not prepared women for an independent life, especially as the heads of households in an unknown environment, generations of children in refuge go without the common necessities of childhood.

Governments have either not been sensitive to the special needs of this group, or find it difficult to meet the requirements as the numbers of refugee women and children is not known. This situation becomes further problematic with regard to India, as it has neither signed the 1951 Refugee Convention nor has a refugee policy.<sup>2</sup> It therefore has no specific policy provision for women and children refugees. Constitutional Provisions, International Conventions, Special Acts, and legal cases fill in this lacuna. It must be mentioned that in the Indian context very little legal input is available in a gendered sense, though some provisions on children are available. Some administrative mechanisms to deal with women's needs have been set up when necessary, and some action has been taken to provide protection to women who have faced violence. This chapter will therefore concentrate on those Government orders, mechanisms, and their implementation. It will not present societal and NGO responses, except in linkage to the above.

### **partition and displaced women and children from west pakistan**

India's independence in 1947 caused the largest migration of people ever. At this point of time this writer will not go into the issue of its being a refugee movement or not. It is sufficient to agree that the mass movement created a situation where women and children suffered due to specific gendered problems and the State was forced to respond to these issues. Randhawa writing on the mass exchange of population between the two partitioned parts of India says that few showed pity for age or sex, and many aged or infirm persons who could not walk were deserted by their relations and left to die on the roadside. Even mothers threw their newborn babies in the bushes and left them to die. Despite these gruesome illustrations, he does go on to say that the 'Government of India and Punjab proved equal to the occasion.'<sup>3</sup> If we go by this blanket assumption that the

Government did achieve the impossible, and not debate on this contentious issue, we recognise the fact that this was no mean task. By the end of November 1947, the total camp population had shot up to 7,20,000.<sup>4</sup> If we take these numbers to be comprised of 40 to 50 per cent women and another 20 to 30 per cent children the Government had to look after more than 5,00,000 women and children. A large number were those who were not accustomed to, or in the case of children and the elderly, not capable of, managing their lives. The gigantic task of setting up camps for this large population, which swelled to about 12 million, was not possible, and many drifted into various parts of India. Camps also had to be supplied with water, sanitation, electricity, medical care, and educational facilities. Though this was not an easy process for a newly independent nation struggling with the problem of governance, it was, as it turned out, easier than other issues.

Among those issues were the contentious problems of nationalism, ethnicity, and social norms, which complicated the lives of the refugees. A major social problem was linked to women. Honour killings, abductions, and sexual abuse became so dominant that the State was compelled to take notice. The women who were killed or raped during migration from Pakistan have been well documented.<sup>5</sup> The Abducted Persons Recovery and Restoration Act of 1949 (Act No. LXV of 1949) was an agreement between India and Pakistan on the recovery of women and children and their detention in camps till they could be handed over to their relatives. Menon and Bhasin quoting from Kamla Patel cite 20,728 women who were located from those abducted between 1947-55. The stories of these women are no different from those of latter-day Bosnia or Kosovo. Thousands of women were raped and others killed by their own kin during the Indian migration in order that they would not fall into the hands of the other community. Thousands of widows also survived the holocaust. The State initiatives in this regard were numerous as its national honour was at stake.<sup>6</sup>

In 1947, the Women's Section of the Ministry of Rehabilitation was established to meet not only the economic needs but also the psychological, educational, and emotional needs of women.



The Central Relief Committee headed by Sucheta Kriplani, the National Recovery Operation headed by Mridula Sarabhai the Kasturba National Memorial Trust, The All India Women's Conference, and others assisted the Ministry of Rehabilitation to resettle large numbers of abducted women and widows and other female-headed households. The Government could only partially cope with the situation, and many related issues were not even considered to be of importance. But it was this band of women, that took up the challenge of working for women and children displaced by Partition, who assisted the Government in trying to create gender-sensitive policies. The Women's Section under the leadership of Mridula Sarabhai and Rameshwari Nehru played a key role in rehabilitation of the women, specifically in the western sector. Women's sections were also set up in different States of India. Special programmes for women included food shelter vocational training and work. These basic needs programmes were supplemented by the provision of financial assistance and

social integration, including the arrangement of marriages. Productive enterprises were run, financial aid was granted, and assistance in finding employment and marriages arranged wherever possible. The aim was to assist women so that they could cope on their own. Mahila Ashrams (Women's Homes) were set up for abducted women and widows. In West Bengal, Bihar, Assam, and Tripura assistance was extended to women.<sup>7</sup> Special hostels were set up for women and children who were without support. For disabled women money was provided if they could not stay in these hostels.

One of the policies of the Government, the Interim Compensation Scheme sanctioned on 5 November 1953, was to provide compensation for property left behind in the newly-born Pakistan.<sup>8</sup> This policy was significant because it was gender sensitive and provided assistance for the vulnerable categories of displaced persons in need of immediate assistance, and smaller claimants who required a proportionately larger measure of relief. The five priority categories of claimants identified were: (a) widows, (b) wid and infirm persons in receipt of maintenance allowance, (c) inmates of women's homes and infirmaries, (d) unattached women and children, aged and infirm persons in receipt of gratuitous relief outside homes (including recipients of doles), (e)

other widows with claims in their own names and women in general, living in government-built townships, colonies and residents of mud huts in the Punjab. Widows and minor children were given the option of compensation in cash if they did not want land.<sup>9</sup>

Widows were also provided with maintenance when they were named heirs.<sup>10</sup> These steps overwhelmingly in favour of women as a policy initiative proved insufficient as it was constrained by societal response. Randhawa for instance, in reviewing the settlement policies, draws attention to the village-wise settlement, where villagers apprehended that the honour of their womenfolk would not be safe in villages with mixed populations. There was no dearth of examples where husbands and wives, fathers and sons, and brothers were allotted land in different villages, sometimes in different districts, dividing families and therefore making the women more vulnerable to sexual and other violence.<sup>11</sup> Employment was not easy and women took to sex work in

many places. The attitude of the refugee community towards such women has been viewed as one of tolerance, in as much as general opinion was not mobilised to excommunicate them or to force them to leave the camps under pressure.<sup>12</sup> I would suggest that this is a 'politics of needs interpretation', which does not consider the deep impact on the women themselves. In the context of children affected by Partition, Butalia concludes that 50,000 alone were children of abducted women. Then there were abducted, lost, and abandoned children. Children were also tortured; some were burnt alive by mothers to escape the holocaust. Children were kidnapped for purposes of religious conversion, trafficking, and slavery.<sup>13</sup> Ashrams and homes were set up for security, shelter, and sometimes education of these children. The Central Advisory Board worked with the Kasturba Gandhi National Trust on this issue. Sharda Bhawan in Allahabad provided security to many unwanted children of abducted mothers. For these children nationality became a contested issue linked not only with their date of birth, but also their parent's place of residence, which itself became a contest between the two States and society.

Schools were set up by the State, which provided free primary education. For higher education, fellowships were provided. A

National Discipline Scheme set up under the guidance of J.K. Bhonsle, a former General in the Indian National Army of Subhas Chandra Bose, was lauded by many as it was meant to provide spiritual and physical guidance and also inculcate inflexible discipline.<sup>14</sup> However, the imposition of strict discipline must have proved very difficult for many of the children, particularly in the context of child rights of which we are increasingly aware today.

### **partition and displaced women and children from east pakistan**

In 1946, even before Independence, as Partition became inevitable, riots broke out in Calcutta and the adjoining territories including what was then called East Pakistan (later Bangladesh). The large-scale displacement of population from 1946 to 1971 came in three waves (Besides the regular trickle which continues till date). The first was from 1946 to 1958, the second from 1958 to 1963, and the third was from 1964 to 1971. The Noakhali-Tipperah communal riots initially started large-scale migration in the East. About a million people crossed over from East Pakistan into West Bengal.<sup>15</sup> The post-1947 camps were closed in 1950 except for two camps at Nabanagore and Chandmari, which were for the heads of family who were old, widowed mothers, and the disabled. By the end of 1949, at least 7,500 women who were considered unfit for rehabilitation became permanent liabilities of the State.<sup>16</sup> As the number of these women swelled, Permanent Liability Camps, as they came to be known, increased. The situation in these camps was so appalling that they were called 'pigsties and kennels'. In 1953, a Homes Reorganisation Committee was set up under the Chairpersonship of Mrs A.J. Mathai to review the policy and working of the Camps, Homes, and Infirmaries. A Ministers Conference was held a year later in 1954 followed by an Eastern Zone Rehabilitation Ministers Conference. The new policy divided the displaced in these camps into several categories. The first of these decisions was to send women to religious places in Orissa and Uttar Pradesh.<sup>17</sup>

In Mana, a Permanent Liability Camp in Madhya Pradesh, up to 1964 about 798 families arrived whose members were only women and children; no adult males were with them. The camps were inhabitable and Sucheta Kriplani, who visited the camps,

remarked that it seemed as if 'People sent to Mana have been sent to die'. As Mana was a transit camp, the displaced were sent to various places for permanent rehabilitation. The State taking on the patriarchal mantle with a spiritual conscience sent single old men and women to religious places such as Benares where the Ministry had set up a home. The story of the Benares widows as social outcasts is well known in India so it does not seem necessary to provide in detail the effects of this refuge on women. Mention can be made of Sucheta Kriplani's visit to these widows in the Unattached Old Women's Home where she says she shuddered at their condition. The Municipality, she commented, would not have even allowed dogs to stay in such conditions:

The walls are broken; stones are falling from the roof. The Government gives money for utensils but due to corruption, they are given only small vessels in which rice cannot be cooked. So, they cook in mud vessels. They are paid Rs 22 or Rs 23 from which money is deducted for staff and there is no facility for health services.<sup>18</sup>

Widows sent to the other camps were not in a much better condition. Amarprosad Chakraborty speaking in the Rajya Sabha spoke of the widows of Mana who came in 1964. About 68 families headed by widows were taken to Kamal in Haryana and housed in some dilapidated houses which were declared to be unfit for human living. He alleged, two decades later, that, 'They were living there since 1968 and the houses have fallen down exposing the children to sun and rain ... but nothing was done for their rehabilitation and earlier aid reduced.' His statement highlighted that though the Government did initiate policies which were significantly favourable towards widows, in reality they continued to suffer in refuge. Chakraborty even alleges that the situation in the renowned Kasturba Nari Niketan in Delhi was the same as in Mana.<sup>19</sup>

It is true the Government had opened its doors to the displaced, but this move was not without its aberrations. Methods that reflected minimalist Western standards were tried out in India after the 1950 influx from Bangladesh (East Pakistan). The only

difference was that these controls, unlike in the West, were not here to stay and were removed during the next large influx. In 1951, for instance, passports were required as a check to migration.<sup>20</sup> In case of later refugees from Bangladesh the Government took different measures. First, it was by dispersing them to Andhra Pradesh, Assam, Bihar, Madhya Pradesh, Madras, Mysore, Orissa, Uttar Pradesh, Gujarat, and NEPA, areas not ethnically similar, therefore the pull-factor lacking. Second, the Government issued Migration Certificates in 1956 from a list drawn up of people who would get priority in entry. This priority list included orphans, single women and widows with no means of livelihood, wives, members of divided families and women wanting to marry in India. Third, in 1957 a decision to stop rations to persons entering India after 1958 was taken. Fourth, in 1965 the Government decided that persons from Bangladesh without valid documents would not be allowed into the country.<sup>21</sup> These steps were pro-women and children as they allowed entry for some women and children under the special category. The policy in fact must have had a negative impact on a large number of women and children. Restrictions on their entry without family support and then dispersal to unknown territory must have affected them adversely, as they would have had no social-support networks and would have been targets of abuse.

In spite of these controls, the human touch in policy continued simultaneously with marginalised women and children being designated as priority. Employment opportunities for youth and women were initiated. Co-operatives such as Uday Villa set up by Abala Basu, specially provided single women with economic rehabilitation. Unfortunately, the Villa became a prison as women were rarely allowed out and no one was permitted to meet them.<sup>22</sup> In Dandakaranya where the largest settlement for displaced people from East Pakistan was established, education and health became a priority. The problem was the vast deforestation (30,092 square miles of land) that took place bringing great hardship to the tribal women of the region who subsisted on forest produce. The displacement problems initiated in 1958 continued till date as the tribal people and displaced people fight over depleting lands. Recently, killings took place in Raigarh and

Nabarangpur in Orissa during clashes between the local tribal population and displaced settlers from East Pakistan. These are remnants of the problems left over by the Dandakaranya project.<sup>23</sup>

Refugee and displaced women, especially single women, go through a process of empowerment, as they have to fend for themselves. This they do in a very difficult environment, with hardly any support from anyone. In West Bengal, Jasodhara Bagchi writes, the women received support from the Left parties, who encouraged the uprooted to participate in rallies, processions, and violent demonstrations. They also joined the wage-earning labour force. Most important to this study is that, as per Bagchi's findings, the uprooted women of East Pakistan inspired the women of West Bengal to seek new, living forms of identity assertion.<sup>24</sup> The refugee women contributed to the betterment of the local women, and should not therefore be seen as a burden to society.

**refugees from bangladesh** After Partition, the next largest group seeking protection in India was in 1971 when a huge number of persons crossed the border from the former East Pakistan, now Bangladesh. The immensity of the problem can be gauged from the fact that on 4 April 1971 there were 1,19,556 refugees, which increased to 34,35,243 on 21 May 1971.<sup>25</sup> Refugees spread from West Bengal to Tripura, Assam, and Meghalaya. As during Partition, many of the refugees in 1971 were orphaned children and 'unattached girls', notes Bandyopadhyay.<sup>26</sup> The large number of women and children who required special attention were too many for the state's coping mechanism in existence. As large-scale atrocities were carried out against women, special camps for abused women were set up. Homes and orphanages were established for destitute women and orphan children.

The conditions in the refugee camps were appalling. Infants were the worst sufferers, and the infant mortality rate (IMR) was excessively high. A major reason for neo-natal deaths was malnutrition.<sup>27</sup> Senator Edward Kennedy, who visited the camps, writes of children swollen with edema due to protein malnutrition, and affected with avitaminosis A, including dry conjunctivae, clouded corneas, and loss of lenses. The crude

mortality rate, he reported, had little reality because of the presence of cemeteries full of freshly dug graves for children and the problem of disposal of bodies.<sup>28</sup> Parliamentarian Ila Pal Choudhury who visited the Hasnabad and Bashirhat camps reported 15 to 20 children dying every day in those camps alone. With such large numbers it is not surprising therefore that the State machinery could be insensitive. Ila Pal Choudhury relates an incident of border officials forcing a woman whose child's name was not in her passport to leave him behind.<sup>29</sup> This was only one of many such abuses to confront the millions of women and children who trekked into India. These problems were however balanced by innovative measures which contributed towards an effective refugee policy for India. Operation Life Line was launched to reduce the IMR. As large numbers came, the need for fuel impelled the refugees to cut down trees. The result was massive deforestation.<sup>30</sup> The Government took a decision to issue kerosene to the refugees at a subsidised rate. It was an important item for the refugee women who would otherwise have had to walk long distances to collect fuel from the forests.

During the earlier migration in 1947, the Women's Section was prominent in rehabilitation. This was however not the case in 1971. The six administrative divisions set up by the Government did not include any such special section to address women's issues.<sup>31</sup> The question of children's education also did not receive significant Government response in 1971, as the refugees were soon to return back. However, though a policy was lacking, education itself was not neglected. The Calcutta University Group who came out of East Pakistan and constituted about 3,800 of an estimated 10,000 refugees assisted in providing education in the camps.<sup>32</sup> Eighteen orphanages were set up by voluntary organisations where boys and girls received residential education and training in handicrafts. Additionally, according to Holborn, 'homes and vocational training centres were established for unattached women, and social education centres were opened in various camps where refugees were taught health measures to prevent the spread of diseases and children were given elementary education'.<sup>33</sup> All these actions were undertaken very difficult

circumstances. This large refugee operation ended as repatriation started soon after the formation of the new state of Bangladesh. Despite this, no one knows how many refugees melted into the countryside. The monsoons, large numbers of people, a distant Central Government with money, and a State Government without enough machinery, made the life of refugees difficult and agonising.

### **chakma refugees and status of women and children**

The Chakmas, a group from the Chittagong Hill Tracts (CHT) of Bangladesh, came into India in two distinct streams. The first came with the start of the construction of the Kaptai Dam on the Karnaphuli river in the CHT in 1964, and the second after 1979 when violence broke out in the CHT. The Chakma refugee camps, unlike the Tibetan and Sri Lankan refugee camps, were in very bad shape. In a visit to the camps in December 1995, this writer was shocked to notice poverty on a scale not found even in the worst urban slums in India.<sup>34</sup> Lack of water and sanitation facilities added to the problem of the refugees who lived in sheds. The worst affected were the women and children. A dole of 20 paise per day was considered as enough to meet their daily needs. Most women cooked the worst quality of rice available and fed it to their children with salt and tubers collected from the forest. Inability to cook during the heavy monsoons, as there were no proper kitchens, compounded the nutrition problems.

Lack of toilets and firewood compelled the women to leave the camps, resulting in sexual violence against them. There was violence in the camps, and open trafficking of refugee women. In Arunachal Pradesh, says Dilip Kumar Ray, a well-known worker in the camps, the situation was inhuman. Health, hygiene, and sanitation in the camps was so poor that mortality rates, especially of women and children, were very high.<sup>35</sup> A report by the South Asia Human Rights Documentation Centre in 1994 for instance described the conditions as being abysmal.<sup>36</sup> The NHRC reported that children were one of the major sufferers in the camps due to the neglect of their education and health.<sup>37</sup>

The requirement of the Chakmas was primarily school education. Unlike the Sri Lankans, they were not demanding professional, or higher education, or culturally relevant education like

the Tibetans. Free education was not made available to the Chakmas, nor were children allowed to sit for high school examinations. Refugees were allowed to run schools, but children were not allowed to sit for local exams or to access quality education, as they were too poor to do so.<sup>38</sup> The situation deteriorated whenever the move for repatriation took place, as the repatriation process of the Chakmas was neither voluntary nor humane.<sup>39</sup> Many Chakma women left their homes because they were facing torture and sexual violence. Women between the age of 13 and 60, while on the move to India, were raped by Bangladesh Army troops and Bengali Muslims.<sup>40</sup> In Arunachal Pradesh, where the Chakma women sought refuge, they were subject to molestation by elements of the local population and schools were closed down so that they would leave.<sup>41</sup> Forced repatriation of such women and children who already faced fear, chronic illness, and decline in their standards of living was appalling. In 1996, in an agreement reached between the Governments of India and Bangladesh, the refugees were pledged that they would be given cash, food, shelter, and loans upon their return. The process was initiated a number of times, but lack of faith in both the Governments compelled the refugees to stay on in India, till they were forcefully removed.

**tibetan refugee women and children** The Tibetan refugee were the first recognised stream of international refugees in India after Independence. As per the latest census available (1998), the growth rate of the Tibetan refugees is 1.2 per cent per annum. There are 1,22,078 Tibetan refugees in India, of which 43,708 are women and 23,122 children (0 to 14 age group).<sup>42</sup> As per Government of India records (which do not provide sex-segregated data), their numbers are lower at 1,08,414, of which the Government resettled 68,639 refugees.<sup>43</sup>

As the Tibetans poured into India in 1959, the process of rehabilitation was started. The Government soon worked out a method by which refugees could be resettled. In the context of women, the Tibetan women's refugee sector was initially disregarded by the Government and refugees alike. In spite of this, Tibetan women have created new identities for themselves in

refuge. No longer do polyandry or polygamy exist in the new social order, and there is a new gender equality and increase in women's participation in economic activities.<sup>44</sup> Saklani had earlier mentioned that there was an increase in the status of women and literacy, but this equality did not extend to politics and religion.<sup>45</sup> This has slightly changed. In terms of institutionalisation, in 1963 the Tibetan Women's Co-operative Association was established. In 1984 the Tibet-based Tibetan Women's Association in India (TWA) was reestablished, and spread rapidly.<sup>46</sup> The Association has expanded to encompass 40 countries with a membership of more than 10,000 women. The major reason for its establishment is to draw the attention of the world community to gendered human-rights abuses in Tibet. It has put forward its views at the Human Rights Meetings in Vienna, the Beijing Conference, and the Cairo Conference so that voices of women in exile are heard.<sup>47</sup> The main object of the TWA has been political, relating to the attainment of Tibet's independence and promoting of religion and culture. In spite of its political agenda, it has in exile given priority to the Tibetan women's social-welfare needs and their empowerment.<sup>48</sup> Women still flee from Tibet because of forced birth control policies, state encouraged prostitution and harassment of nuns.<sup>49</sup> The torture and sexual abuse of nuns has been a matter of deep concern.<sup>50</sup> Many escape to India to continue their religious studies (TCHRD, 2001: 52).<sup>51</sup> A well-known case often mentioned in Dharamshala is of the nun Ani Pachen. In the late 1980s when Tibet saw a resurgence of political protest, Ani Pachen was actively involved in demonstrations in Lhasa. Fearing rearrest by the authorities, she was compelled to flee to India in 1988. She settled in Dharamshala and became a well-known figure associated with the Tibetan cause.

While women remain on the periphery of Tibetan policies, in contrast children have always taken centre stage in Tibetan rehabilitation strategies. Children, especially orphans, became a matter of serious concern from the year of their entry into India in 1959. In 1963, the Tibetan Homes Foundation was founded to provide some kind of a home life to Tibetan children who were orphans or who were otherwise deprived of a normal home life. The Government of India subsidised the living expenses.

In the context of education, it was recognised by the Tibetans from the beginning that change was required in the pattern of education. In Tibet, the monasteries had provided education, but with the institution of the monasteries in disarray, education facilities had to be arranged on a different level. Education would now have to provide Tibetan cultural values as well as modern scientific education available in their host country, i.e., India. The slow movement of refugees from the road camp which had no facilities to the settlements compounded the problem of education. In spite of the various problems facing the refugees, a school was established in Mussoorie in 1960, and another a year later in Darjeeling and then Simla. In 1961, the Dalai Lama conveyed his anxiety regarding the education of the Tibetan children to Jawaharlal Nehru. The Government took heed of this and the Ministry of Education set up an autonomous body to establish and administer schools for Tibetan refugee children. The Tibetan Schools Society, with the Union Minister of Education K.L. Shrimali as Chairman, a number of senior officials representing the Government of India (GoI) and some Tibetans, was established. The Indian Government agreed to bear the total expenditure of these institutions. This was stopped from 1975 onwards, when it was felt that since the second generation of children had entered the schools, their parents should pay the charges.<sup>52</sup> A major hurdle in schooling has been the domicile certificate required by schools, which new refugees do not possess.<sup>53</sup>

In spite of this problem, the education sector has been looked after well, and has been able to cope with the yearly arrival of child refugees. Each year children continue to come from Tibet to India to seek education due to discriminatory Chinese practices.<sup>54</sup> In the year 2000, for instance, 507 women, and 900 children below the age of 18 escaped from Tibet.<sup>55</sup> The young refugees in India have gained from the educational facilities. This has prepared them to face the challenges of refuge. Simultaneously, it has also been observed that in exile the youth have deviated from the traditional Tibetan modes of countering the occupation of their country by a non-violent approach. A study done during the 1980s documented this change and noted the emergence of a powerfully assertive youth culture.<sup>56</sup> A decade later,

there was a trend towards a violent culture. In the 1980s, young Tibetans started to speak of using violence to attain Political goals. The deviation from the Dalai Lama's path of conflict-resolution through peaceful non-violent measures was mainly the consequence of youth frustration. Few opportunities in settlements, less land, and fewer jobs to go around for the educated created resentment towards the leadership (interviews with members of the Tibetan Youth Congress in Dharamshala in May 1990). Today there seems to be a reduction in this movement, and the youth seem to be more concerned with education and employment problems.

**sri lankan refugees** The present Sri Lankan camp-refugee figures have already been mentioned. These figures are not static and have changed over the years, sometimes because of decisions made by the refugees themselves and sometimes because of the host State's decisions. In 1992, 52 per cent of the Sri Lankan refugees were women.<sup>57</sup> In 1997, the figure had shrunk, and it was found that there were 21,606 females to 23,927 males.<sup>58</sup> In 2002, as mentioned earlier, there were 64,086 persons, of whom 45,597 (approximately 71 per cent) were women and children.<sup>59</sup> GoI data shows that there are 65,000 refugees in 116 camps in India.<sup>60</sup> It has been suggested that the female numbers declined because when repatriation to Sri Lanka began after 1991, women opted to go back first. The men feared that if they went, they would be recruited to fight, so the women were to assess the ground situation before the men returned. Also, as a push factor, Government officials divided families for repatriation believing that if in the first group some members of a family were repatriated, then the others would follow of their own accord; and thus the stipulation that repatriation would have to be voluntary would be adhered to. Here also the women opted to go first.<sup>61</sup> As war broke out in Jaffna, the repatriation was stopped, leaving divided families in both countries.

Though many Sri Lankans refugees live in camps, a considerable number live outside them. Most lower-caste Sri Lankan women in the camps take up outside jobs. There is enough work available for them as maidservants, construction workers, and

in the local markets. Besides work as daily wage labourers, there is also work in the agricultural and industrial sectors. Apart from the lower castes, the women who head households are also compelled to work, as they do not find the cash doles sufficient. Most middle-class educated Sri Lankan refugee men in camps do not allow their wives to work outside the camps. Apart from other problems most women also have to tolerate their alcoholic husbands. Teenage pregnancy is also a serious problem, but the Government does not run any special programmes to address this. Forcing of women into sexual relations by camp or Q branch officials though, is the exception rather than the rule.<sup>62</sup> In Madurai when this writer visited the refugee camps in June 1998, there was information that women were going in for sex work to cope with their financial hardship.

The Government provides Rs 200 a month to the heads of households, and Rs 144 per additional member. For children it is only Rs 90 per child below 12 and Rs 45 per additional child. Rice is heavily subsidised at 57 paise per kilogram, and an adult is entitled to 400 grams per day. Sometimes the quality of rice is so bad that it is inedible, and so rice often has to be bought from the open market. Kerosene is not always available, therefore in case of single women who do not have work, their needs cannot be met. Widowed women have the added burden of children. They do not enjoy any special benefits from the Government. These women have no special certificates or cards given to them, though they are marked as the head of the family in the regular cards. The Government has no special provisions for single women and widows. The amount allocated for children who require nutritious food is paltry.

One of the reasons for the escalation of the ethnic conflict in Sri Lanka was the difficulty faced by Tamil children in gaining access to quality education. Education therefore became a powerful pull factor for Sri Lankans who came seeking refuge in India. Children were provided free education up to the eight grade in Government schools, and were admitted to schools without transfer certificates, an otherwise mandatory requirement. Permission was provided to the refugees to run their own schools in the camps. Students were permitted to join local schools run by

private agencies such as the Jesuits who are well known for providing quality education in India. In 1984, the Tamil Nadu Government reserved seats for Sri Lankan refugee students in institutes of higher education. There were 20 seats in medicine, 40 seats in engineering, 40 seats in polytechnics, and 10 seats in agricultural universities. In other universities and colleges 6 per cent seats were reserved for this group.<sup>63</sup> As institutes of higher learning are not sufficient for the local population, any quota cutting into their allocation would have eventually raised resentment. This was prevented by providing seats to the Sri Lankan Tamils over and above the prevailing quota. Besides, not many refugees from the camps go in for higher education. Higher education, despite scholarships, is expensive, which is something the camp refugees cannot afford. Most refugees who availed of these facilities were from outside the camps. Some scholarships for needy students were available through the Tamil Nadu Chief Minister's Fund and the Madras Christian College. Repatriation moves greatly affected children's education. In the Sri Lankan camps, all facilities including children's education were withdrawn. The quota in higher education was cut. Jesuit refugees after Rajiv Gandhi's assassination complained that they were threatened with withdrawal of FCRA and other State facilities if they continued to let children study in their schools. Later, on the basis of demands made by refugee NGOs and criticisms by Asia Watch and the United States Committee for Refugees (USCR), educational facilities were restored in 1996, but the quota for higher education was not.<sup>64</sup> Some legal provisions enable refugee children to gain access to justice, although the judiciary does not always work with a broad overview. For example in the context of a public interest litigation (PIL) filed for the protection of 150 refugee children in Bangalore facing starvation, the judgement, though favourable, did not mention the Convention on Rights of the Child (CRC) to which India had acceded in 1992.<sup>65</sup>

The well-known Sri Lankan NGO OfERR has tried to fill in the lacuna in services left by the Government, especially where women and children are concerned. Their psychological counselling, education, and self-help groups for women help them to save money and bring the condition of refugee women

and children at par with the local population. But the camps where OfERR, the Jesuit Refugee Services (ORS), and other NGOs do not operate have little support. There are a few camps run by the Government that has all kinds of support and services. The Keelputhupatti camp is about 15 kilometres from Pondicherry, and houses about 1,500 refugees who came in 1990. This camp seems self-sufficient with the Government providing all basic amenities. Provision for education consists of one local Tamil medium school and two private English medium schools in the vicinity. There are two *balwadis* (day care centres) for little children, and a tuition centre for school-going children that employs youth from the camp to run it. Health systems cope only with minor diseases, while oral cancer, for instance, goes unattended. These refugees also have a primary health centre that is about 3 kilometres away from the camp, while the nearest Government hospital is in Pondicherry. Nutritious snacks for both pregnant women and children below three years of age are provided. The OfERR and JRS work in the camps, as do the Cluny Sisters of Pondicherry, Catholic nuns who work among the refugees. A major problem in this camp is alcoholism. Many psychosomatic illnesses ranging from asthma to ulcers are also found in the camp. Social problems are more than just physical in nature. In the camp there are many instances of men squandering money and having extra-marital affairs when their wives go abroad to work. In such camps, the physical aspect is well looked after, but the psychological aspect is neglected.<sup>66</sup> All camps are not similar. Some facilities, especially those that use cyclone shelters, have inmates living in sub-human conditions. These houses without walls have no privacy, and health services are poor at the most. There is no water or sanitation available, and the same holds for kitchens.

Refugees do not live in isolation from the politics of their group or that of the host-state. In the context of women and children, though they hardly have any role to play in decisions about war, they suffer its consequences. Most Sri Lankan Tamil women in refuge have been placed in a difficult situation because there is suspicion about whether they support militancy. It has been observed that as Sri Lankan Tamil militant activities increased before

the assassination of Rajiv Gandhi, refugees in some cases were forced to join the local anti-militant groups. In one such case in Tirunelveli, for instance, the refugee women joined the local people in protesting against the militant groups.<sup>67</sup> On the other side, besides the female suicide bomber who killed Rajiv Gandhi, there was Shanti, the wife of Jayakumar, and Selva Lakshmi, the wife of Vijayan, both of whom were involved in the conspiracy.<sup>68</sup> As they were refugees, it affected all camp refugees. The Government's response was extreme; women under suspicion of having links to militancy were kept with their children in high-risk special 'camps' or prisons. Father Amal Raj of the JRS who works with the Sri Lankan refugees writes that in 1990, of the 1,700 refugees picked up by the Tamil Nadu Government, 72 were children below the age of 12. They were incarcerated in a maximum-security prison in Vellore till 1995 and appeals to the UNHCR failed to yield any response.<sup>69</sup> The shadow cast by Rajiv Gandhi's assassination affected Sri Lankan refugees extensively and prevailed for a long time. Nearly 10 years later in 1999, JRS reported:

Inadequate rations, constant camp surveillance, chronic diseases, alcoholic drift, alarming rise in the birth rate, increased teenage pregnancy—the small but significant rise in suicides indicates a community walking through a confusing tunnel of stress and strain.<sup>70</sup>

**afghan refugees and the unhcr** Afghanistan and India shared borders till 1947, therefore historically migration between the two countries always existed. Earlier records show large numbers of Afghans leaving their homes to find refuge in India. This movement of peoples has had a gendered composition. In the first phase, there was a dominantly male migration, which has been chronicled in detail.<sup>71</sup> In the second phase of refugee movement after 1947, we notice that the refugee component has changed and women outnumber men.

In 1947, when the new nation of Pakistan was created by partitioning India, Afghanistan's borders were no longer contiguous with India. Since that divide, most Afghan refugees cross the border into Pakistan or Iran. Some who have travelled to Pakistan



request refuge in India. There is also a returnee population of Indians who have been settled in Afghanistan for centuries and return in times of conflict. The total population seeking refuge in India is about 40,000.<sup>72</sup> Among these, a small proportion is looked after by the UNHCR, while the others of Indian origin melt into the local milieu. As per latest figures of the UNHCR, there are 12,760 Afghan refugees, of whom 9,417 are women and children, which amounts to 74 per cent being women and children. Of these, 4 per cent are children below the age of five years.<sup>73</sup>

The Afghan refugee women who are resident in India today say that they live in an unstable world where refuge is provided, but where they find themselves cut off from their moorings. Their families are scattered all over the world and they remain in transit while the world decides on a permanent home for them.<sup>74</sup> The trauma of this dislocation in their lives has created deep psychological impact and stress disorders.<sup>75</sup> Women in interviews complained of men being involved with other women, of desertions by husbands. Some said that though married, they live like single women with the burden of looking after the children. Many are not used to the freedom they find in India, while others are not equipped to handle the market place. The search for new identities by women in refuge sometimes takes them beyond the boundaries set in their own country and society, while others succumb to societal pressures. Those who have been able to move beyond these boundaries have found jobs and new lives, while the others live lives of distress and tension.

The UNHCR today finds itself in a difficult position with little funding and little independence. Despite pressures from above as well as from host countries, the UNHCR has at the field level tried to cope through innovative programmes and diplomatic ingenuity. The issues that confront the UNHCR at the local level are many, but their resources are few and power limited. The refugees see the UNHCR as a legitimate provider and protector in their moment of crises. These two dimensions create a conflict situation in refuge. An example can be found in a UNHCR decision in 1996, when the UNHCR under a new policy governing urban refugees replaced the subsistence allowance—except for those with a particular need for it, such as some female heads of

households, the disabled, the elderly, and newly arrived exiles—with a lump-sum payment. The UNHCR itself has admitted that this change has affected refugee women as they have few marketable skills and are prevented or discouraged from working outside their homes. With limited skills, it has not been easy for these women to be independent. Unlike in Afghanistan, in India some of the younger women have protested against male attempts to stop them from working.<sup>76</sup> These women have broken barriers set up by their society, but many others have been unable to do so, and are therefore forced to opt for extreme steps such as prostitution, or have even taken their own lives. While women go out and work, men find none, and are frustrated and resent their situation where they cannot have control over their lives. This results in increased domestic violence.

As per refugee accounts, women were prone to committing suicide due to shame, financial problems, and loneliness. Though the facts of suicide could not be corroborated from other sources, the refugee women were firm that these stories were true and should be told. The UNHCR provides counselling, but it is unable to reach all women as many do not understand the benefits of counselling and prefer not to go in for these sessions. Many of the refugees during interviews said they were not at all sure of their rights vis-a-vis the UNHCR. Women seemed puzzled by many UNHCR policies, and misunderstood the UNHCR's power, ability, and scope of functions. They perceived the UNHCR as an all-powerful organisation with the ability to meet all their demands, not realising that UNHCR had limited power, which it uses to the best of its ability. There was also misperception and little understanding about why applications for resettlement in third countries were rejected by the UNHCR. A woman complained that she had submitted 15 applications to the UNHCR informing them about her depressed situation. Misunderstanding the asylum policies of entry, she complained that people who bribed officials or were rich could get refuge, while the poor were always disregarded by the world. She failed to understand that the UNHCR's role is limited in the world of asylum where laws are used to keep refugees out rather than to assist them in reaching safety.

Access to education for the children has not been easy. There are two types of schools in Delhi. One are the schools where English is the medium of instruction, and usually where at the time of admission a large sum of money has to be paid, which most refugees cannot afford. The second are the Government schools, which charge very low amounts, but where the medium of instruction is Hindi. There are also of course madrasas or Islamic schools, where the medium of teaching is Urdu. Sending their children to these two latter categories of schools, feel the refugees, is like keeping them illiterate, because on leaving India their education would be of no particular use. This leaves the refugees with the choice of English schools, where the charges are high, and where education may be substandard. Refugees save lives, but leaves children and communities divested of power in many ways.<sup>77</sup>

Taking an overall view, there are certain issues which need attention. While India has given the Afghans refuge since 1978-79 and allowed them to stay, their wait has been in many cases traumatic. The GoI needs to review its policy towards them, especially with regard to work, education, and protection from the police and from fear of imprisonment. There has to be safety and stability in refugee lives. The international community has not co-operated, and third-country resettlement for the Afghans from India has been limited. Many of these refugees have stayed in India for more than a decade. Refugee women, not being considered an economic asset, are the last to be considered for asylum unless a country has a specific policy to that effect. Women also do not want to seek asylum alone as they usually come from extended families. This is reflected in the case of Canada, which has a gender sensitive policy yet has seen fewer women refugees who seek asylum. As per the Canadian Council for Refugees (CCR) data, the principal women applicants and dependants were 44 per cent in 1996, 42 per cent in 1997, and 44.5 per cent in 1998.<sup>78</sup> Of these women as principal applicants were only 30.8 per cent in 1996, 28.3 per cent in 1997 and 31.5 per cent in 1998.<sup>79</sup>

**Other groups seeking refuge** There is very little information in a gendered context on other groups seeking refuge in India. Most are highlighted when either passport officials detain

a woman or there is abuse of some sort. Unlike other refugees in India, a small number of Somalis, Iraqis, and Iranians are under the care of the UNHCR. Their stay is supposed to be temporary until the UNHCR can locate a third country for them. As this is difficult to achieve most refugees stay on. The Courts have allowed many women to stay on considering the danger to their lives if deported. The UNHCR also supports some refugees from Myanmar. Of the total of 52,000 refugees, only 876 are under UNHCR protection. Of these, 319 are women and 557 men.<sup>80</sup> Among these are students who have been coming to India. They live in low-income housing areas which they change frequently due to economic problems. Among the non-urban refugees who are not looked after by the UNHCR, most live in North-east India. Among those seeking education, many cannot study in local schools as their stay is illegal and they do not possess the required certificates for admission or the schools are expensive.<sup>81</sup> The Burmese Women's Association working out of New Delhi has a limited reach among women who are dispersed all over the North-east.

The Bhutanese refugees on the other hand have a legal problem of not being recognised by the Indian Government as such, but treated under the bilateral Bhutan-India Treaty of 1949 that gives them free access to Indian territory. In 1990, when Bhutan asked people of Nepalese origin who entered the country after 1958 to leave, they formed the Appeal Movement Co-ordination Council (AMCC) in 1995 and started peace marches from the India-Nepal border to the India-Bhutan border. Evicted from Bhutan a number of times beginning 1990, many of them while crossing from Bhutan to Nepal and back as stateless people have had to stay for some time in India. These marches are important to this chapter as women were in the forefront of the actions taken by the AMCC to attain their rights. Women who were then waiting in Siliguri, Jalpaiguri, and Baharampur led these peace marches.<sup>82</sup>

**disempowerment and empowerment** Most refugee-receiving states and states in conflict zones have still to recognise the importance of the issue of women refugees and their

rights. Concern for women and children go much beyond what the international community sees as important. Women's problems for instance raise conceptual issues regarding the status of women, of universality and diversity, vulnerability and empowerment, of role changes in insurgencies and wars. A refugee woman is a product of a system over which she has no control. In her journey from her home to exile and back she undergoes various transformations, most of which are related to the violence that permeates her life. The existing refugee regime rarely provides her protection from gender based and gender-specific persecution.

Refuge is only a temporary solution to the plight of refugees who forgo the right of citizenship for safety in another country. Their habitats as political spaces eschew refugee rights as universalistic. These are spaces of both economic dependency and activity, and meeting points of national and international refugee protocols. They are also spaces of *otherness*, where conflicts between rights and exigencies are worked out. These engagements bring into play powers which are hierarchical, political, economic, and social in nature. Segregation in camps on the basis of class/ caste is known to exist. Refugee work is highly gendered, being shaped by culture, division of labour, and kinship. These layers are superimposed on the political status of refugees in India's strategic calculations.

The layout and dwellings of the camps are important to women's lives in refuge, but in India, hardly any attention has been paid to building refugee camps for women's needs. In refuge, the work of women increases as men do less and less work; therefore simultaneous demands on women refugees necessitate time-space coordination, which can be difficult. Camp layouts may make a great difference to the workload of women; for example, keeping toilets at one end of a camp and wells at the other end may increase women's work. For women bringing home water for drinking, and other purposes, this means walking long distances. Women also have problems in their everyday lives, like having to rise before dawn due to lack of proper sanitation facilities. Some Sri Lankan women refugees in the camps confessed that they consumed less water because of lack of toilets, which leads to health-related problems for them. They have to cook in

small non-ventilated kitchens in the smoke and heat. Camps are supposed to be islands of protection, but they can become places where women and children face sexual and physical violence. There is sustained domestic violence to cope with. Here, sexual coercion, torture, and rape are also relatively common occurrences.<sup>83</sup> Desecration of women's honour to demoralise the enemy has always been an important wartime strategy. Women who have left their homes due to violence face this situation in their place of refuge. This violence is both within the camps and the households. Those leaving the camps in search of firewood and water—predominantly women and girls—as seen in the case of the Chakma refugees, are vulnerable to local attacks. What is the State's provision for women who are victims of rape? In order for prosecution, incidents of rape must be reported to the police, and a physical examination conducted by a physician to verify clinically that rape has occurred is required. The system thus publicises rape and becomes transfer points of power where the women find themselves as losers in the transfer. State violence is most evident in an *awar* /civil war situation. Nations use violent acts of segregation, physical and mental torture, police brutality, and economic coercion for self-preservation and unity. This violence in many cases spills into neighbouring host countries that provide refuge, and the refugee producing state might react against the refugee. Sri Lankan women and children refugees have been interred in special camps in Vellore for instance, which are prison-like and examples of State reaction to refugee violence.

The writer's argument in this overview has been that gender considerations have never been an important component of India's policy on refugees. The inability to frame and develop plans for refugee relief and rehabilitation with the majority refugee population—for whom the plans are intended—in mind has consequences for the quality of life of the refugee woman. To create a system of refugee protection where considerations of equity get as much importance as those of security, national and international policies need to be synchronised. Complex issues of finances, trained personnel, and national security dictate the policies of governments everywhere, and India is no exception. There is therefore no consistency in the Indian refugee policy. In

the context of women, where special provisions were made during Partition, the extent to which this issue was given attention was never to be repeated. The reason for the special provisions was simple. These women were recognised as Indians and protecting their honour was seen as a responsibility of the State. But the everyday experiences and struggles of refugee women are often invisible to the gaze of the State. They remain the objects rather than the subjects-of humanitarian planning.

While refuge can be disempowering for all, in the case of women it has been found to be both disempowering and empowering. In the Indian context, at the same time when the refugee women and providers were being thrown out of homes and families, they were also coming out of their homes in larger and larger numbers to take up the new challenges. Among the Tibetans, literacy among women went up, as did employment opportunities. Among the Sri Lankan refugees, one has to just visit a camp to witness the difference between the active women's groups and the men idling, gossiping, and becoming victims of alcoholism. Among the Chakrnas the same situation is noticed. The Afghan women fought against patriarchal norms and elders so that they could be trained and seek employment. All these women learned to go out in public, fetch rations, firewood, and water, look after children and put in phenomenal amounts of work. The illiterates have faced camp and other officials and fought for their rights, and their self-esteem in refuge has gone up. As Bagchi writes about East Pakistani refugees, they not only met adverse situations with determination, but their efforts also brought about change among the women of West Bengal. The same situation can be seen in some Sri Lankan camps. Ironically, however, this empowerment by itself can sometimes have a disempowering affect, as women forced into new areas are expected to carry on those activities designated as 'men's work', while patriarchal bonds remain strong and Women's status remain unchanged. In this context, the refugee support system needs to take into account these changes in refuge and develop a policy that provides both rights and protection.

The problem of refugee children is connected to the rate of children in war. Of the 22.3 million refugees cared for by the

UNHCR, an estimated 10 million are children under the age of 18. Children in 87 countries live among 60 million land mines. About 10,000 children become victims of mines each year. Currently, more than 3,00,000 boys and girls are serving as child soldiers around the world. Many of them are less than 10-years-old. Girl soldiers are frequently forced into different forms of sexual slavery. Children, whether accompanied by parents or on their own, account for as many as half of all asylum seekers in the industrialised world. In 1996, Canada became the first country with a refugee determination system to issue specific guidelines on children seeking asylum. The large numbers of children creates no empathy among international donors. Between 1994 and 1999, the UN requested US\$ 13.5 billion in emergency relief funding, much of it for children, but received less than US\$ 9 billion.<sup>84</sup>

While women and men join war as consenting adults, in the case of children it cannot be considered voluntary, and the trauma and torture they undergo is imposed. Children, as Levine argues, suffer from flagrant violation of their rights to life, health, education, an adequate standard of living, and protection from abuse, exploitation, neglect, oppression, discrimination, and recruitment into the military.<sup>85</sup> Children face threats from insurgents who try to recruit them. Child soldiers escaping to refugee camps are therefore always threatened by violence.<sup>86</sup> Leaving home has a profound physical, emotional, and psychological impact on children. It affects their mental and physical development. Flora MacDonald, a human-rights activist, speaking after the Bosnian crisis suggested that children presented particular challenges, especially as many had fought as child soldiers, and that for these children reconstruction meant rebuilding their fractured lives which required the services of psychological professionals on a scale that had never been mobilised.<sup>87</sup> For the children of refugees, lack of access to health, food, and schooling is universal. Born in refuge where there are no health services, and to mothers who are themselves undernourished, the health of these children remains an issue of concern. This is especially so when the mother has been raped and faces psychological trauma. Young girls have also been known to be victims of sexually transmitted diseases and HIV because of rape. Many girls take up prostitution.<sup>88</sup> In

India it has been observed that among the Chakmas this was widely prevalent, and in a much lesser way among the Sri Lankans.

Children and women, we have seen, face different problems. The worst affected among refugee children are infants because they are highly susceptible to numerous life-threatening diseases like water-borne diseases and also malnutrition. Older children have to take on the role of adults and go through the trauma of hiding from people who try to recruit them into armies. Many unaccompanied minors in Sri Lanka, for instance, did not stay in camps but remained hidden. They were often starving and had no assistance or education. Most children are caught between two cultures, of India and of their homeland, and their problems of adjustment continue even after they go back. There are also high levels of psychiatric problems among children who have been separated from their families. Refugee children in India used to receive special attention earlier, as seen during Partition and with the Tibetans. The response of the State was also positive, as it was in the Sri Lankan case. This was reflected in Indian policy; which stated:

We feel strongly that any work of relief and rehabilitation, if it has to have any meaning, must necessarily concentrate on the needs and future of the younger generation of refugees. No matter what the political future of the refugees, it is essential that the younger generation should be provided with education and skills, which will enable them to follow useful vocations wherever they may settle when they are older.<sup>89</sup>

When the Tibetans and the Sri Lankans sought refuge, education was provided, sometimes readily. In case of the Chakmas, where the locals did not want the refugees to be there, education of children suffered even though India was committed under the CRC to provide them with education. Since children entering the country can also face problems of detention for non-possession of valid documents, it has been suggested that separate residential permits be given to children.<sup>90</sup>

**the refugee support system** The Government, which has had distinctively divergent responses towards different

refugee groups, cannot meet all the needs of refugees, and therefore NGOs, social activists, and citizens groups play an important part in the delivery of services.

ngos and social activists With regard to women and children, the roles of certain people and organisations have been exemplary. During Partition, Mridula Sarabhai, Kamla Patel, Rameshwari Nehru, Susheela Nayar, and Anis Kidwai, among others, took up the challenge of working for displaced women and children. The Kripalini Committee was set up even before the world created an ICVA. A number of agencies and personalities were involved in the settlement of the Tibetans in the initial stages, including many foreigners. The famous author Pearl S. Buck, the Foreign Secretary of British India Sir Olaf Carne who came as a representative of OXFAM, the daughter of Lord Curzon Lady Alexander Metcalfe, who served as Chairperson of the Save the Children Fund, and Freida Bedi all came together to work for the Tibetans cause. In 1971, Moitree Devi worked for the cause of orphaned children.<sup>91</sup> The Jesuit Refugee Service and OfERR are two organisations that have been working for Sri Lankan refugees in general with a focus on women and children.<sup>92</sup> Foreigners and refugees have in general not been barred from providing relief assistance. But an aberration has crept in in recent times when pressure has been applied on some NGOs, like for instance in the Sri Lankan case (1991) where NGOs were prohibited from working in the camps.<sup>93</sup>

international policy developments and conventions India initiated a gendered policy much before international organisations or other countries did so. In international refugee policy, women's issues started to be paid attention to only in the 1980s. In 1984, the Ministry of Social Affairs of Netherlands in a study on sexual violence against women created a landmark by studying gender-specific violence.<sup>94</sup> It considered that prosecution based on sexual violence, non-confirmation to cultural traditions, and conditions of war made women vulnerable. This they found to be related to the loss of protection of men and families, especially when religious or political groups threatened women in an

attempt to reinforce their superiority. This new direction of thinking had an affect on UN policies. In 1985, the Executive Committee (EXCOM) of the UNHCR for the first time took notice of the fact that women asylum seekers who 'face harsh or inhuman treatment due to their having transgressed the social modes of the society in which they live may be considered as a "particular social group" within the meaning of Article 1A(2) of the 1951 United Nations Refugee Convention'.<sup>95</sup> Women were finally part of the UNHCR agenda much after India recognised their importance, but India's policy had by then turned erratic and non-uniform, ranging from neglect to outright harassment.

India is not a signatory to the 1951 Convention, which itself is andro-centric, or gender-insensitive, but India's membership to the EXCOM of the UNHCR makes it a participant of the international refugee regime. It therefore is committed to the support and protection of refugees. Unlike the Convention, the Executive Committee has furthered the rights of refugee women and children by recognising that as women face threats to physical security and sexual exploitation, protection given to them must be specifically mentioned and implemented.<sup>96</sup> Following this decision, the UNHCR gave shape to a specific policy on women refugees.<sup>97</sup> Providing a broad framework to women's issues, the Executive Committee decided that the protection of women refugees must be guided not only by relevant international instruments relating to the status of refugees, but also by applicable human-rights instruments such as CEDAW and the Nairobi Forward-Looking Strategies on the Advancement of Women.<sup>98</sup> Protection guidelines stressing on gender-based persecution were produced by the UNHCR in 1991.<sup>99</sup> In 1994, the UN appointed a Special Rapporteur on Violence against Women. Together with the Rapporteur, the UN Human Rights Commission monitors the compliance of States in cases relating to violence against women. Indians do have access to these bodies when the Government does not fulfil its humanitarian policy towards refugees. India as a member of the international community has to implement the conventions and policies it has agreed to.

Besides, the specific gender policies of the UN, reflected in its membership of UN and EXCOM (UNHCR), and its accession to both the 1966 International Covenant on Civil and Political Rights

and the International Covenant on Economic, Social and Cultural Rights, make it fundamental to its commitments under these Covenants to protect the rights of all women and children within its territory. In the context of women's rights, including those of refugees, they should be considered under the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), of which India is a signatory. India was also a participant at Beijing and Beijing +5, both of which made the fulfilment of refugee women's rights if not mandatory, at least critical, to India's pledge to protect women on its territory.

The child as an issue of concern came on the international agenda in 1924, when the League of Nations declared that children had rights. The refugee regime took little notice of this decision, and the 1951 Convention paid no special attention to children seeking refuge. The issue of refugee children gained importance only after 1989 when the UN Convention on the Rights of the Child (CRC) was formulated. Article 22 was specifically about protection and assistance. As party to the CRC, India (acceded on 11 December 1992) agreed to give refuge to children. Article 22 states:

State Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international humanitarian instruments to which the said States are Parties.

The UNHCR in 1994 brought out the Guidelines on the Care of Refugee Children, which recognised the needs of children before, during, and after refuge. This was strengthened in 1996 by the Graca Machel Report, which was presented to the UN General Assembly as the Impact of Armed Conflict on Children. It documented the plight of refugees and displaced children who had

been separated from their families, physically abused, exploited and abducted by military groups, and who were perishing from hunger and disease.<sup>100</sup> The Assembly while incorporating a number of recommendations specially appointed a Permanent Special Representative of the Security General on Children and Armed Conflict. As a response to this study, the UNHCR's Executive Committee also defined new programmes for children and adolescents for all phases of UNHCR operations, and included issues of reunification, sex-education, health services, and reintegration.<sup>101</sup> On 25 May 2000, two Optional Protocols to the CRC were adopted. These relate to the Involvement of Children in Armed Conflict, and the Sale of Children, Child Prostitution, and Child Pornography.

Yet, we must remember that Indian support to all these international conventions does not place a gender-conscious and pro-child refugee policy in place, as there still remains a wide gap between international conventions and their implementation. There is no refugee-specific law in India. What makes it more difficult is the patriarchal prerogative, where society and religion define the position of women, and state intervention is considered as difficult. An attempt by several human rights organisations with the support of the UNHCR in India to create a refugee model law failed. The model law was also andro-centric as the 1951 Convention is, and the model law paid no attention to the specific needs of women and children.<sup>102</sup>

### **conclusion: requirement for a gender-conscious and pro-child policy**

I have tried to analyse India's gender and child policies in the background of the policies on refugee protection constructed within a framework of 'Indian humanism'. It has been noticed that India's policy towards refugees on its territory has veered from being extraordinarily humane to the outright abuse of human rights. In a future context, what is needed is a law that will protect rights of all refugees in an even manner. After analysing the needs of the two streams of women and children, one can argue that their rights have not been fulfilled, and that it is time for the Government to bring forth a gender-conscious and

pro-child policy which will treat refugees equally, so that they do not remain nowhere people in a nowhere place.

The better treatment of the Partition refugees owed much to the political consensus that action had to be taken to protect and rehabilitate the shelter-seekers. In the Sri Lankan case, the Tamil Nadu Government provided the push for the build-up of the consensus. But in situations where this consensus does not emerge or breaks down, the refugees, especially women and children (as we saw in the cases of the Chakma refugees and the post-1990 Sri Lankan refugees) suffer. This is when a definite policy on refugees becomes critically important; it becomes a source of some protection for the refugees. This is not to deny that full protection can be ensured by political will and social acceptance. We have to remember in this context that a specific response located in a specific national, institutional, and legal framework aiming to assist a group of victims in specific ways cannot go far. A gender policy also, by the same token, remains subject to the limits of a framework. The possibilities of expanding the frontiers of justice are unlimited, while the context always remains bound by some limits. Spaces to negotiate both the meanings and modes of humanitarian intervention can be opened up without losing sight of the constraints of time and location.

We must remember therefore that while we search for specific solutions as part of specific policy, and consider the development of a refugee law that may, *qua* law, apply equally to all, the outcome of such measures will remain uneven, and the task of deepening the notion of justice will always remain as the next immediate task. Perhaps it will not be wrong to recall Michael Foucault's words:

We have to transform the field of social institutions into a vast experimental field, in such a way as to decide which taps need turning, which bolts need to be loosened here or there, to get the desired change; bearing in mind that a whole institutional complex, at present very fragile, will probably have to undergo a restructuring from top to bottom.

## notes and references

1. A fewer number of adolescents can be contributed (as per the author's camp visits in Tamil Nadu during 1990-95) to a fear of being recruited by insurgents, as well as employment needs. Statistics taken from OfERR, 2002.

2. All laws in India for aliens are applicable to refugees (Except the special legislation, the Foreigners from Uganda Order 1972 which was applicable to returnees from Uganda). India's obligations to refugees, which confirm to the economic and social standards set by the international community, are found under Article 51(c) of the Directive Principles of State Policy. The provisions of this part of the Constitution (Part IV) are not enforceable. In the case of refugee protection, the Constitution of India guarantees certain fundamental rights, which are applicable to all non-citizens. Article 21 guarantees right to life and personal liberty. Justice Ahemadi in the NHRC v. State of Arunachal Pradesh, speaking for the Court in the case of refugees, said that the State is bound to protect the life and liberty of every human being ([1996] SEC 742). Rights of refugees under the Constitution are governed by Article 21, which also includes the right to non-refoulement. In Khy Htoon and 7 others v. State of Manipur, the Guwahati-Imphal Bench ruled that refugees have fundamental rights under Articles 10, 21 and 22 of the Indian Constitution. Justice V.R. Krishna Iyer considers Article 14, which provides equal protection of the laws as applicable to all persons, and not merely citizens (Iyer, 1997: 314). India's refugee policy is further governed by certain administrative acts. The standards of treatment, which favoured the refugees, flowed from the ethos that persons displaced from their homes needed both protection and economic sustenance. The administrative experiences of the Ministry/Department of Rehabilitation and the laws adjudicated at the time of Partition later contributed toward a refugee policy for India. Despite these existing general laws, there is an increasing consciousness that there should be a specific refugee law in India.

3. M.S. Randhawa, *Out of the Ashes: An Account of the Rehabilitation of Refugees from West Pakistan in Rural Areas of East Punjab*. Bombay: C.N. Raman, 1954, p. 28.

4. Ibid., p. 30.

5. Chaman Lal Pandit (n.d), 'Report of Chaman Lal Pandit: Fact Finding Officer'. New Delhi reproduced in Kirpal Singh, *Select Documents in Partition of Punjab*, Delhi, 1991; Urvashi Butalia, *The Other Side of Violence: Voices from the Partition of India*. New Delhi: Penguin Books,

1998; Ritu Menon and Kamla Bhasin, *Borders and Boundaries: Women in India's Partition*. New Delhi: Kali for Women, 1998.

6. Menon and Bhasin, 1998, pp. 264-67.

7. U. Bhaskar Rao, *The Story of Rehabilitation*, Department of Rehabilitation, Ministry of Labour, Employment and Rehabilitation, Government of India, Delhi, 1967, p. 79.

8. Butalia provides a figure of 75,000- 1,00,000 women as being abducted, Butalia, 1998, p. 249.

9. *Commentaries on the Displaced Persons, Compensation and Rehabilitation Act. No. 44 of 1954*, p. 389.

10. Ibid., p. 379.

11. Randhawa, 1954, pp. 110-11.

12. R.N. Saxena, *Refugees: A Study in Changing Attitudes*. Bombay: Asia Publishing House, 1961, pp. 40-43.

13. Butalia, 1998, pp. 249-65.

14. Rao, *The Story of Rehabilitation*, Department of Rehabilitation, Ministry of Labour, Employment and Rehabilitation, Government of India, Delhi, 1967, pp. 77-78.

15. International Labour Review, 1948 quoted in Pakrasi, Kanti. B. *The Uprooted: A Sociological Study of the Refugees of West Bengal, India*. Calcutta: Editions India, 1971, p. 23.

16. Prafulla K. Chakrabarti, *The Marginal Men: The Refugees and the Left Political Syndrome in West Bengal*. Kalyani: Lumiere Books, 1990, pp. 280-82.

17. Ibid., p. 283.

18. Sucheta Kriplani, *India Parliamentary Debates*, Lok Sabha, 30 July 1970, cols. 311-36.

19. Amorprasad Chakraborty, *India, Rajya Sabha Debates*, 14 August 1984, cols. 174-75.

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## 10 paradoxes of the international regime of care: the role of the unhcr in india

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This chapter is about the role of the UNHCR in the protection of refugees in India. But given the legal vacuum and the situation of ambiguity in which the State performs the task of refugee protection in this country, readers may also treat this chapter as a chronicle of the paradoxes of the international regime of care in a country-specific situation—a situation marked by contradictory features such as the absence of a specific refugee-protection law, a long tradition of care and hospitality, pronounced court judgements, massive and mixed flows of forced migration, and the country's non-accession to the International Convention on the Protection of Refugees

**historical background** The architects of the Charter of the United Nations in 1945 called upon State signatories to the Charter to '... save succeeding generations from the scourge of war', and asked the UN to help achieve 'international co-operation in solving international problems of an economic, social, cultural, or humanitarian character' and to promote and encourage 'respect for human rights and fundamental freedoms for all without distinction'. Consequently, one of the first items on the UN agenda was the fate of refugees and displaced and stateless persons. In 1950, the UN General Assembly approved the Statute of the Office of the UNHCR which established the Office as a subsidiary organ of the General Assembly, and which entrusted the

High Commissioner with the functions of providing international protection for refugees as well as seeking permanent solutions to their problems.

Since that time, the Office of the UNHCR has remained a strictly humanitarian and non-political organisation, which in co-operation with Governments provides protection for, and endeavours to find solutions to the problems of, refugees throughout the world. Key to the UNHCR's protection activities is the 1951 Convention relating to the Status of Refugees, a milestone in international refugee law. The Convention defines the term 'refugee' and establishes in law the cardinal principle of *non-refoulement*, according to which no person may be returned against his or her will to a country or territory where he or she may be exposed to persecution. It also sets standards for the treatment of refugees, including their legal status, employment, and welfare.

According to its Statute, the UNHCR can assist any person who is a refugee within the criteria set out in its Statute. The criteria includes flight from the country of origin due to a well-founded fear of persecution for reasons of race, religion, nationality, or membership of a particular social group or political opinion, resulting in an inability to return to the country of origin. While this definition, with its emphasis on individual persecution, still forms the core of the UNHCR mandate, additional criteria have progressively been introduced over the years to accommodate the changing nature and needs of refugee flows. The UNHCR exercises its protection mandate at one level by encouraging States to accede to either of the two main instruments for refugee protection—either the 1951 Convention or the 1967 Protocol, which obligates them to establish refugee-status determination procedures and to adhere to certain minimum standards of treatment of refugees on their territory. At another level, field officers deliver protection by conducting refugee-status determination interviews, intervening directly with host Governments and local authorities in instances such as where *refoulement* is threatened, documents are seized, refugees in detention are beaten or treated poorly, and so forth.

Since it gained independence, India has hosted some of the largest refugee movements in history, including the massive flows

between India and Pakistan in 1947 during Partition as well as giving asylum to approximately 10 million refugees from the former East Pakistan in the early 1970s. As India occupies a geo-strategic location in South Asia, it bears the brunt of cross-border population movements from neighbouring countries and beyond. The mixed population movements may include asylum seekers and refugees. The Government of India (GoI) has directly assisted groups such as the Tibetans, Sri Lankans, and the Chakmas from Bangladesh, while refusing assistance to groups such as the Afghans, Burmese, Sudanese, and others.

In 1959, when the Tibetans began arriving in India, the GoI sought international assistance for them. India had not signed the 1951 Convention or the 1967 Protocol and did not formally recognise the presence of the UNHCR on its territory. There is till date no domestic law or procedure governing the protection of refugees in India. Furthermore, there is no binding regional agreement concerning refugees in South Asia as there is in Africa, or a detailed and accepted declaration as in Central America. Refugees are simply viewed as foreigners rather than as a class of persons deserving particular treatment on account of their status. Refugees, like other foreigners, are consequently subject to the control provisions of the Foreigners Act of 1946, the Registration of Foreigners Act of 1939, the Passports Act of 1967, and related domestic laws concerning passports, entry, stay, and exit from Indian territory. Despite the de facto protection offered by the GoI, the absence of a legislatively based refugee-protection regime renders the status of refugee populations in India somewhat precarious in that it is based on the tolerance and goodwill of the Government in power rather than on the law. The Indian Government's position in relation to refugees is reflected in the fact that different refugee groups have been granted different rights and privileges, and also different legal status, accorded under domestic laws and regulations. However, although UNHCR Refugee Certificates are legally recognised by the Government, in practice the Ministry of Home Affairs, the Foreigners Regional Registration Office, and the local police authorities have taken cognisance of them and 'extended stay' has, to date, normally been granted to UNHCR-recognised refugees. For refugees with

no other identification papers, refugee certificates are sometimes the only measure of protection against arrest and deportation.

There has existed an uneasy relationship between the UNHCR and the GoI. India abstained from voting on the General Assembly Resolution 319(IV) of 1949 establishing the Office, and publicly took the view that since it was not directly involved with an essentially European refugee problem at the time it did not wish to get involved with the issue. This Indian position regarding the UNHCR held during the 1950s despite several missions to New Delhi by the latter. The GoI continued to maintain that the UNHCR was a 'Cold-War instrument', and that an association with the Office would effect India's neutrality.<sup>1</sup>

When the Tibetan refugees began arriving in India in 1959, the authorities refused to internationalise the problem, because the continued tensions with China meant that the GoI preferred not to have an official representative of the UNHCR based in the country. In fact, the Indian Government abstained from voting on Resolutions adopted by the UN General Assembly in 1959 and in 1961 concerning the treatment of Tibetans by the Chinese authorities. However, following a disastrous border war with China in 1962, the Indian Government gradually sought international assistance for Tibetan refugees. In 1963, the High Commissioner Schnyder visited India, and during his visit the Government expressed interest in UNHCR assistance for the Tibetan refugees. The UNHCR began providing assistance to Tibetans in India from 1964 onwards through the League of Red Cross Societies. However, during his visits to India in 1964, the Director of Operations T. Jamieson was informed that while the Indian Government welcomed UNHCR assistance, it was not willing to agree to the establishment of an UNHCR office in New Delhi. UNHCR continued to provide limited assistance to the Tibetan refugees, and from 1966 was associated with the 'Common Project for Tibetan Refugees of the European Refugee Campaign.'

Following intense negotiations with the GoI during the years 1966 to 1968, and the intervention of the Foreign Secretary Rajeshwar Dayal, the UNHCR was eventually permitted to establish a branch office in New Delhi in 1969 to co-ordinate a more substantial programme of assistance to Tibetan refugees. No

branch office agreement was signed, but the office was treated as an independent entity. In April 1971, when India faced a massive inflow of refugees from the erstwhile East Pakistan, India called upon the UN for assistance. It was motivated to do so both because of the magnitude of the problem as well as, in this case, the need and desire to internationalise the issue. Despite initial protests from Pakistan, on 29 April 1971 the UN Secretary General designated the UNHCR as the focal point to co-ordinate assistance from all organisations and programmes. In 1971, the High Commissioner Sadruddin Aga Khan was requested by the Secretary General to undertake the role of 'focal point for the assistance to several million refugees from East Pakistan'. The UNHCR channelled more than US\$ 120 million to these refugees. The bulk of the assistance was, however, disbursed through the GoI, and a major UNHCR presence in India was not required.

To the extent that the relief programme was seen merely as a palliative and repatriation the only solution, the activities of the High Commissioner and the means by which implementation of his programmes occurred threaded constantly through and around the political framework of the problem. Pakistan was seeking an UN presence on its eastern border with India so that it could control the situation inside East Pakistan by claiming the protective safeguards of domestic jurisdiction under the UN Charter. As a part of this general strategy, Pakistan attempted to make use of the proposal of the Secretary General that voluntary repatriation of the refugees be promoted under the auspices of the UNHCR.<sup>2</sup> India refused to accept this approach. When in November 1971 the High Commissioner made a second journey to India and Pakistan, the issue of voluntary repatriation came up again. It was inextricably tied to the military and political situation on the ground. India felt that the UNHCR was not confining itself to playing just a non-political and humanitarian role, but was transgressing its traditional boundaries.<sup>3</sup>

Following the admission of China to the United Nations in 1973, and strong criticism of UNHCR assistance to Tibetan refugees by the Chinese, the policy of the Office regarding the Tibetans was reviewed. In June 1975, assistance to Tibetans in India and Nepal was discontinued. The Executive Assistant to the High

Commissioner wrote to the Indian Foreign Minister that the decolonisation of Portuguese colonies in Africa required an increased UNHCR presence in that continent, and as a result the UNHCR was closing its office in New Delhi and redeploying staff in Africa. This was seen by the Indian authorities as a politically motivated move, and it affected the GoI's relations with the UNHCR for a long time.

During 1980-81, an increasing number of Afghan and Iranian refugees arrived in India. A UNHCR unit was established under the United Nations Development Programme office in New Delhi through staff on mission.<sup>4</sup> The formal agreement of the Indian authorities was not sought. The GoI accepted this arrangement, but the UNHCR was not allowed to involve local implementing partners. However, the UNHCR enjoys considerable autonomy in its programmes. It has been possible to intervene with the Government on behalf of the refugees when necessary, and the UNHCR is now accepted as a de facto mandated UN refugee agency. The UNHCR has also been permitted to collaborate with local NGO partners but the formal status of the Office remains unchanged. By this time, India had also found a place for itself in the Executive Committee of the UNHCR. Its initiative to become a member of the Executive Committee was motivated by several factors. First, there was the more positive experience with the UNHCR in recent years. Second, there was also the fact that Pakistan had become a member of the Executive Committee since 1988 and there was a possibility of it using that body to agitate against India's national interests. Finally, India had begun seeking permanent membership to the UN Security Council. It could hardly hope to see its urging taken seriously if it did not secure a significant position in an important UN body such as the UNHCR.

**the political and legal context** As has been already mentioned, India is not a party to the 1951 Refugee Convention or the 1967 Protocol, and there is no domestic law or specific national policy governing the protection of refugees in India. Under municipal laws, refugees being considered as foreigners are governed by the provisions of the Foreigners Act of 1946, the Registration of Foreigners Act of 1939, the Passport (Entry into

India) Act of 1920, the Passport Act of 1967, and the Extradition Act of 1962. These Statutes make no distinction between the refugees and other foreigners. Using the wide discretionary powers derived from Section 3 of the Foreigners Act of 1946, the Ministry of Home Affairs may issue Residential Permits to any foreigner, and it is on this basis that large numbers of UNHCR-recognised mandate refugees have been able to secure stay facilities which are issued to mandate refugees on the basis of an informal recognition of the UNHCR-issued refugee certificates.

In 2000, the Immigration (Carriers' Liability) Act was enacted. The objective of the Act was to make carriers liable in respect of passengers brought by them into India in contravention of the provisions of the Passport (Entry into India) Act of 1920, and the rules made thereunder and the matters connected therewith. This new legislation imposes penalties on carriers who may bring in irregular travellers including stowaways and deported refugees.

There is no national legislation regarding refugees, though the Ministry of Home Affairs has initiated the process of drafting a national refugee law. The model national law finalised by the Eminent Persons Group is being circulated to various ministries and institutions for comments before the actual drafting takes place within the Ministry. India has acceded to a number of international human-rights treaties whose provisions indirectly promote the rights of refugees.<sup>5</sup> These international human-rights instruments are not enforceable by courts of law unless specific provisions are incorporated into existing municipal laws or given effect through separate legislation. As such, India's accession to international conventions has not always been followed by the incorporation of the provisions of international conventions into Indian law. In the absence of domestic laws, the judiciary cannot ensure that the executive branch of the government fulfils its treaty obligations. Nevertheless, the Courts have sought to empower themselves to refer to international law and principles. First, where there is no municipal law giving effect to international obligations, the Courts may in their discretion apply the principle of international law, treaty, or convention, so long as it does not contravene existing municipal law. In *Maganbhai Ishwarlal Patel v. the Union of India*<sup>6</sup> the Court held that making

of a domestic law is necessary when international treaty or agreement operates to restrict the rights of citizens or others or modifies the laws of the State. If the rights of the citizens or others, which are justiciable, are not affected, then no legislative measure is required. Justice Shah in that case held that the common misconception was that Article 253, which empowers the Indian Parliament to make laws for implementing any treaty, agreement, or convention, necessarily implied that unless such a statute was enacted, the treaty, agreement, or convention was incapable of being enforced. Justice Shah rejected this argument saying that it proceeded upon a misreading of Article 253. While it conferred a certain power on Parliament, it did not seek to circumscribe the extent of the power conferred by Article 73. He said, 'Our Constitution makes no provision making legislation as a condition of entering into an international treaty either in times of war or peace. The Executive is qua the State competent to represent the State in all matters international and may by an agreement, convention or treaties incur obligations which in international law are binding upon the State.' In the *Gramophone Company of India Limited v. Birendra Pandey*,<sup>7</sup> Justice Chinnappa Reddy also said,

There can be no question that Nations must march with the international community and the municipal law must respect rules of international law just as Nations respect international conventions. The Comity of Nations requires that rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with Acts of Parliament.

Moreover, the Supreme Court has held in various decisions that Courts in India can read the provisions of international conventions and norms into municipal law, even if the same have not been ratified by India.<sup>8</sup> The only restriction is that such provisions have to be consistent with municipal laws. Thus, although India is not a signatory of the 1951 Convention or the 1967 Protocol, the right to seek asylum or the principle of *non-refoulement* could be incorporated into Article 21, since there is yet no existing

national law on refugees. If there is reasonable apprehension, or a well-grounded fear of persecution, or a clear and present danger, foreigners would be entitled to protection under Article 21.<sup>9</sup> Article 51(C) in Part IV of the Constitution provides that the State shall endeavour to foster respect for international law and treaty obligations. While Indian courts are not empowered to interfere with the legislation-making process, they do adopt principles of interpretation that promote the object of Article 51(C). Thus, when interpreting domestic laws governing the movement of foreigners in India, *strictu sensu*, nothing prevents the courts from 'reading in' international human-rights and refugee-protection laws and principles or interpreting the Foreigners' Act and related legislation in a way which promotes refugee-protection principles. In this way, a number of Indian court decisions have tried to provide humane solutions to the problem. These decisions have mainly dealt with issues relating to the right to seek asylum, *non-refoulement*, and voluntary repatriation. The decisions do not discuss international refugee-law principles. They have principally relied on applicable 'rights' provisions in the Indian Constitution, including Articles 14 and 21. In certain instances, the courts have considered the provisions of international covenants, and applied those which are not inconsistent with municipal laws in order to cover 'gaps' in domestic legislation.

In the absence of a formal legal framework governing the treatment of refugees, India manages the influx of migrants and asylum seekers through ad hoc administrative decisions rather than through specific legislative enactments. For the GoI, the ad hoc approach to refugee issues is politically more convenient in the context of the bilateral relations that India has with the country of origin of the refugees. India has concluded that unwanted migrations, including those of refugees, are a matter of bilateral and not multilateral relations, and international agreements could constrict her freedom of action. For instance, the South Asian Association for Regional Cooperation (SAARC) has chosen not to address the issue of population movements since it might disrupt the organisation. Also, cross-border population movements in South Asia are regarded as issues that affect internal security,

political stability, and international relations, and not simply the structure and composition of the labour market, or the provision of service to newcomers.<sup>10</sup> Refugee flows could change the linguistic or religious composition of a receiving area within the country. Furthermore, for Indian authorities, India already has a humanitarian policy towards, and has hosted, refugees-even predating the Convention. Besides, the rights incorporated in the 1951 Convention are seen as being unrealistic for developing countries. While India can invoke the reservation clause of the Convention, the perception is that this will not provide sufficient protection against criticism from the international community.

The Indian Government deals directly with certain refugee groups, like for example, the Tibetans, and the Tamils from Sri Lanka, through internal policies and administrative rules which recognise these groups as refugees on a *prima-facie* basis. With regard to other asylum seekers, the Ministry of Home Affairs, the FRRO, and local police authorities have de facto recognised UNHCR-issued refugee certificates, though such certificates are not binding under Indian law. They have extended the stay of certain groups of mandate refugees (like the Afghans and Burmese) through extending their residential permits as temporary residents. The Indian Government's policy and practice in this respect may vary from one refugee group to another.

**policy regarding admission and readmission** Asylum seekers and refugees enter India as foreigners, and undocumented entrants or those with invalid documents are dealt with under the Foreigners Act of 1946. If arrested, they are charged for illegal entry without documents, an offence which carries a maximum sentence of seven years. The same rule applies to those seeking readmission to India. In general, no readmission is permitted unless the individual concerned holds a valid visa for entry or re-entry. Since India has a long and porous border, asylum seekers who travel overland among mixed-population flows across borders are generally tolerated by the local population in the border States as generally the local population is of the same ethnicity. Disembarkation for stowaways at seaports remains difficult. While the UNHCR has been given access to board vessels



and interview stowaways, the Government does not allow stowaways to disembark.

As a matter of administrative policy, the Indian Government provides protection and assistance to certain refugee groups that it has officially recognised. Apart from security screening, no formal status-determination procedures exist for these groups of refugees and there is *prima facie* recognition. Asylum policies have been generous as far as these groups are concerned. They are accorded legal stay indefinitely through executive discretion exercised under the Foreigners' Act. Other refugee groups, such as the Afghans and the Burmese, remain as foreigners and on the basis of UNHCR refugee certificates are issued temporary residence-permits under the Foreigners' Act pending durable solutions. Other nationalities can only sustain their legal residence in the country based on their passports and valid visas. Their position in the country is tenuous, and most of them reside as illegal foreigners pending durable solutions. Unless they have a good reason for staying in the country, such as pursuing education or marriage to an Indian national, they are expected to leave the country, whether or not they are recognised by the UNHCR as mandate refugees.

protection against *non-refoulement*, expulsion, deportation, and extradition Since there is an absence of a formal legal-protection regime for refugees, the principle of *non-refoulement* as a legal principle of refugee protection is not applied by the Indian courts. However, the courts and the Indian Government have regarded refugees as individuals who have fled individual persecution, and who therefore should not be returned to their place of origin. The judiciary has in some cases applied the principle by reference to Article 21 of the Indian Constitution. On being so advised by government counsel, under instruction from the authorities, the courts, while appreciating the predicament of refugees in the event of *refoulement*, also felt compelled to consider administrative concerns regarding issues of national security and there is a growing pressure to find durable solutions in third countries for certain refugee groups threatened with possible *refoulement*.

Refugees stand in danger of *refoulement* or deportation by Indian authorities when they are arrested or detained. Most arrests occur when the refugee is attempting to leave the country illegally or is arrested for having no legal residence permit or for committing a common crime. Those who are arrested for illegal stay may be detained illegally under administrative orders without charges. In such cases the UNHCR seeks to intervene for their release through court proceedings instituted by the implementing partner PILSARC, or lawyers it identifies if the case is outside Delhi, through demarche with the authorities or if the threat of deportation or *refoulement* is great, through pursuing resettlement. For those who are arrested for other crimes, the cases usually come to the courts, where the UNHCR tries to ensure that the due process is followed and that there is no deportation once the sentence is served. Depending on the charge, the PILSARC lawyers may argue for a light sentence. If there is a serious threat of deportation / *refoulement* upon completion of the sentence, then resettlement is pursued.

Refugees who do not have residential permits are also issued administrative deportation orders, called 'Leave India' notices. It is not in all cases that a deportation notice is issued. Normally, 'Leave India' notices are issued when a refugee is arrested and considered a threat to national security or believed to have engaged in especially offensive criminal activities. Though the authorities do not usually implement such notices, some are detained under such notices and risk deportation. The UNHCR through its implementing partner PILSARC intervenes through the judiciary, or directly through demarches made to the immigration authorities or the Ministry of Home Affairs (Foreigners Division) and resettlement is taken up if needed.

In regard to potential asylum seekers at border points, it is difficult for the UNHCR to assess the number who may have been expelled since it has no regular access to these areas and thus has to rely on information from NGOs and other sources. When the UNHCR receives information of any threats of deportations of potential individual asylum seekers or of large number of foreigners from neighbouring countries known to produce refugees, it usually seeks to verify the information, and if it is corroborated

that those to be deported are potential asylum seekers, the matter is either taken up directly with the authorities; if the information is unconfirmed, or if the status or identity of those being deported is not clear, the matter is referred to the NHRC. Stowaways are a problematic category, since even when the UNHCR is permitted to board the vessel to determine refugee status, no stowaway is allowed to disembark.

determination of refugee status Procedures and criteria for refugee-status determination vary among the various categories of refugees. Refugees recognised by the Indian Government, that is the Tibetans and the Sri Lankans, are assisted and recognised under administrative procedures. Newly arriving Sri Lankans were screened for security reasons, and accommodated in camps. The UNHCR has its own procedures for refugee-status determination. Porous borders and the existence of bilateral treaty arrangements means that those who enter India as part of mixed population flows remain relatively free in the country, residing among the local population with whom there may be ethnic or religious links and are generally tolerated by the local community and authorities.

standard of treatment of refugees Under local laws, there are no specific restrictions on freedom of movement for foreigners staying lawfully in the country. Restrictions are imposed only in the respect of certain areas where there is a lack of security. Nonetheless, if refugees are without residence permits, their stay in India is illegal and therefore they are subject to the risk of arrest or detention. Detention pending deportation is allowed under the Foreigners Act of 1946. This provides for a summary procedure under which a foreigner can be detained without the person concerned being charged with any criminal offence. Deportation orders are generally issued only when the person is seen as a threat to India's security or is suspected of having committed some serious crime. The summary procedure is used to avoid having to undergo a long criminal trial. However, certain safeguards exist against arbitrary detention, though not under the Foreigners Act. The detained persons have to appear before a

court of law within 24 hours and thereafter may be remanded to judicial custody. Wrongful detention can also be challenged by applying for a writ of habeas corpus.

In so far as some refugees live in camps and others reside in places of their own choice, there is a difference of treatment. In case of the Sri Lankans, in view of security considerations, suspected militants linked to the LTTE, and related military groups continue to remain under detention in three special camps in Tamil Nadu, and are given no freedom of movement.

travel and other personal documents, and issues of personal security Mandate refugees who continue to possess valid national passports can travel out of India on their national passports. For those without valid passports, UNHCR-issued refugee certificates are the sole means of identification, and those who depart for resettlement leave on Red Cross travel documents. Repatriating refugees travel on their national passports or one-way travel documents obtained from their embassies in Delhi. Birth, death, and marriage certificates can be registered by refugees in India, and education certificates can be obtained by them after completion of their education programmes.

The standard of treatment of refugees varies according to their nationality. Government-recognised refugees enjoy a greater level of protection and freedom than the UNHCR recognised refugees do. For example, the former category are provided documents which give them residency rights, but mandate refugees, in addition to refugee certificates issued by the UNHCR, still need to obtain residential permits, without which they can be arrested as illegal immigrants under the Foreigners Act. Due to non-renewal of residence permits, freedom of movement of refugees is affected. Refugees fear detention or deportation and are unable to pursue economic activities. However, the Ministry of Home Affairs has since September 2001 decided to recommence issuing residential permits to Afghans refugees, thus sending a strong signal that the Government did not consider Afghans in general as a threat to national security.

right to shelter and basic human needs As far as government-recognised refugees are concerned, Sri Lankan refugees are

housed by the Tamil Nadu authorities in camps spread all over the State. They have access to local schools, hospitals, and the job market. The Tibetans are housed in settlements and have full access to local facilities. Mandate refugees on the other hand face difficulties in living in urban areas. Among other things, there is a Government order that requires local landlords to report on the renting of premises to foreigners, particularly those from Afghanistan and other neighbouring countries, which results in a great deal of reluctance on the part of the landlords to rent out their premises to refugees, especially as many of these refugees do not have residential permits.

**civil and political rights** The Indian Constitution does not differentiate between citizens and non-citizens with regard to the basic rights of equality before the law, the right to life and personal liberty and freedom from arbitrary detention, and the right to gain access to courts. Indian courts have broadly construed the right to life to include those elements which contribute to a life of dignity. Freedom to practice one's religion is fully guaranteed. However, as non-citizens, refugees are not accorded certain political rights such as the right to vote. Refugees have the right to participate in demonstrations and have invoked this right on various occasions. Apart from the courts, refugees also have the right to resort to the National Human Rights Commission (NHRC) established under the Human Rights Act of 1993.

**economic, social and cultural rights** No restrictions are placed on the refugees' practice of their social and cultural norms. However, refugees as foreigners and temporary residents do not have the right to be employed in the formal sector or to engage in formal business activities. Nevertheless, there is no official obstruction to refugees finding economic opportunities in the informal sector. However when the Government for a certain period stopped issuing residential permits, a large number of refugees were unable to work in the informal sector for fear of arrest. The Sri Lankan and Tibetan refugees, by contrast, have access to jobs or go in for self-employment. The concerned State Governments provide material and financial assistance to the Sri Lankan Tamils

and Tibetans. Refugees have by and large had access to basic education facilities. But with government-run schools being generally ill equipped and with Hindi as the medium of instruction, refugees prefer to send their children to private schools. The Government of Tamil Nadu provides for primary education for Sri Lankan refugees. It has also provided quotas for higher education, including professional education, to make them more secure about finding employment.

statelessness and issues relating to nationality India has seen groups of various nationalities from neighbouring countries filtering into her territory from across porous borders. Since the requirements to register citizens of India for national identity cards are fairly recent, large numbers of these groups remain in India without detection and work informally. These constitute potentially stateless groups in the event their own countries do not recognise them as their own nationals.<sup>11</sup> For example, the 40,000 odd Buddhist Chakmas from Bangladesh who are now in the states of Arunachal Pradesh and Tripura can be considered to be in a situation of statelessness. They are constantly under threats of eviction from the local population. Complaints by the Chakmas of threats of *refoulement* and of other human-rights violations led to investigations by the NHRC. The case was brought by it before the Supreme Court, which in 1996 directed the State Government to protect the rights of the Chakmas. Differences arose between the Central and State Governments when the Centre reaffirmed its commitment to provide Indian citizenship by naturalisation to the Chakmas based on State Government assessment and applications. The State Government was however not inclined to do so. The Supreme Court then directed that the Chakmas would not be evicted without due process of law.

In order to apply for Indian citizenship, it is necessary to have entered India legally and thereafter to have resided legally on the basis of a valid residential permit. In the case of stateless persons, residential permits may not be issued due to the absence of a valid national passport, hence the inability of such persons to even apply for Indian citizenship. The Citizenship Act of 1955

does not contain any explicit provisions dealing with the grant of citizenship to stateless children. The Act recognises the principle of *jus sanguine*, so that those born on Indian territory can acquire Indian citizenship by virtue of their place of birth if one of their parents is an Indian citizen.

**the mandate of the unhcr in india** The protection function of the UNHCR in India is mainly based on its mandate under its Statute. Protection activities range from conducting status-determination interviews and issuing recognised refugees with certificates to interacting with the Government in protection matters and monitoring conditions of asylum. It also includes seeking durable solutions for refugees, securing clearance from the Government for their departure, and promoting refugee-protection principles and related training with various agencies, academic and research institutions, and governmental bodies.

determination of refugee status The GoI does not have a legislative or administrative framework to conduct refugee-status determination formally. Therefore, different legal and administrative procedures apply to the three different groups of refugees in India. First, there are refugees and 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 office in Delhi when they were unable to cope with the situation in these states. Those who were eligible were granted refugee status under the UNHCR mandate. Second, under the Government of India policy and administrative procedures, there are two distinct nationality groups recognised on a *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. Third, the UNHCR exercises its mandate to conduct refugee-status determination for those foreigners in India who approach its office.

In regard to asylum seekers approaching the UNHCR, no discrimination is made among asylum seekers of different nationalities regarding procedures. As long as the asylum seeker is able to enter India, whether legally or illegally, and is able to approach the UNHCR offices in New Delhi or Chennai, his or her application will be dealt with—even if a personal interview is not possible—so long as there is easy communication between the individual applicant and the UNHCR. Where the UNHCR comes to know of asylum seekers in jail, it makes a visit there to deal with the claim. The UNHCR has no access to border areas, and it is therefore not possible for it to monitor potential asylum seekers in that region.

Every asylum applicant is provided with an information brochure which gives the procedures to be followed, and an interpreter is provided to help complete the registration form as well as to assist during interviews. Interviews take place through legal officers. Those rejected are allowed to appeal, and then another legal officer interviews them. The criteria applied are the mandate criteria as determined by directives from the UNHCR Headquarters. Individuals recognised as mandate refugees are issued refugee certificates renewable on a yearly basis. Rejected applicants are left to their own means. Special procedures, which take into consideration any gender-based persecution, are in place for women claimants. Procedures are also in place to ensure that women can state their own claims independent of their husbands' in case the latter's claims are rejected. Procedures for unaccompanied minors ensure that their guardians are interviewed and that their best interests are the decisive factor in considering their cases. Procedures to undertake refugee-determination status as regards stowaways warrant authorisation by the Indian Government and of the boarding vessels.

Asylum applicants approaching the UNHCR for refugee-status determination are registered and a temporary number assigned to them. Those who request 'under consideration' certificates are given such certificates pending finalisation of their cases. The legal officer who conducts the interview takes decisions or gives recommendations for the decision on the first instance. Where necessary, this is done in consultation with other

colleagues in the legal unit. In the event that the information gathered in the first interview is found to be insufficient for a decision on whether to grant refugee status, the asylum seeker is called for a reinterview to obtain details or clarify issues. Every rejected case is notified in writing of the decision, but is not provided with specific reasons for the rejection. The applicant can submit a written appeal, usually within 30 days after the notice of the first rejection application. Where there is an appeal, another legal officer deals with it. The asylum seekers are requested to highlight those elements which they feel render them eligible for refugee status and are asked to indicate any new elements. Those refugees who are rejected on appeal are advised individually and in writing of this rejection, including broad reasons for the decision, and informed that the UNHCR will not be able to assist them. While the criteria applied is the mandate criteria, its application varies according to guidelines from the Headquarters and in the context of the situation in the country of origin concerned. In regard to the Afghans for instance, a relatively liberal interpretation was followed given the prevailing situation in Afghanistan.

In order to enhance consistency in decision making, the legal staff of the UNHCR meets regularly under the guidance of the Deputy Chief of Missions to discuss the refugee criteria, new sources of country of origin information, and other developments of relevance. In addition to these informal discussions, statistics on recognition rates are periodically reviewed in order to watch for trends in decision-making taken at the level of the Office of the Chief of Missions. Regular exchange of information concerning conditions in the countries of origin or to check on the credibility of individual cases are undertaken in order to verify certain factual aspects of the claims. In cases involving application of exclusion clauses or the cancellation of refugee status, advice is sought from UNHCR Headquarters. The UNHCR Legal Unit maintains a regular exchange of information concerning protection guidelines and criteria developed at Headquarters and field levels in order to keep abreast of current developments, guidelines, and policies.

Most refugees hold valid national passports at the time they enter India, particularly if they have entered through airports. However, their passports would have expired during their subsequent stay in India. For those without valid national passports, or without any national passports, the refugee certificates are an important source of identification. Except for the Afghans and the Burmese, mandate refugees of other nationalities are not issued residential permits by the authorities. Thus they do not have any other form of identity or documents unless they are in possession of their national passports. Since September 2002, however, the Government has recommenced issuing residential permits to Afghan refugees.

consequences of recognition and non-recognition For recognised refugees, the UNHCR has also prepared the 'Information Paper for Recognised Refugees' in several languages; this provides additional information on assistance and protection which can be provided by the UNHCR in India. A comprehensive briefing is provided to the refugees where individuals are allowed to pose queries and seek responses from the UNHCR staff. UNHCR social workers also make assessments of the newly recognised refugees' vulnerabilities, skills, and ability to integrate, and referrals are then made to implementing partners to seek redress. Once a refugee has been recognised by the UNHCR, the individual is issued a refugee certificate which is valid for one year. Thereafter, the refugee has to report to the UNHCR every year for renewal of the certificate. The process of 'file renewal' is outsourced to an implementing partner, the Socio- Legal Information Centre (SLIC). Under this process, the SLIC interviews the refugees and then recommends whether the respective file should be renewed, and updates basic information regarding families. The legal officers at the UNHCR approve the recommendations, and the refugee certificates are renewed accordingly. The file renewal process also enables the refugees to be counselled by the SLIC on their various problems and referrals made to other implementing partners.

Refugees registered with the UNHCR live primarily in Delhi, although they are free to choose where to live. Mandate refugees

who continue to possess valid national passports can travel out of the country on their national passports. The Government of India issues residential permits only to those with valid national passports and therefore some refugees are unable to secure residential permits which leads to their movements being restricted. UNHCR-issued refugee certificates serve as the only means of identification in these instances. Those who depart on resettlement leave on ICRC travel documents facilitated by the UNHCR. Repatriating refugees travel on their national passports or one-way travel documents obtained from their embassies in Delhi. The standard of treatment of refugees varies according to their nationality, a fact which also determines whether they are recognised by the Government or by the UNHCR. Government-recognised refugees enjoy a greater level of protection and freedom than the UNHCR recognised mandate refugees do. For example, refugees who are recognised by the Government are provided documents which give them residency rights, but the mandate refugees, in addition to the refugee certificates issued by the UNHCR, still need to obtain residential permits without which they are treated as illegal immigrants under the Foreigners Act. Due to non-renewal of residential permits, the freedom of movement of refugees is restricted. Refugees fear detention, deportation, and police harassment, and are unable to pursue their economic activities. However, with repeated interventions by the UNHCR, the authorities have responded by showing restraint and giving assurances that refugees would not be deported. It was a positive development when the Ministry of Home Affairs decided to recommence issuing residential permits to the Afghan refugees.

In exercising its protection mandate, the UNHCR does not discriminate against any group of refugees. There is a perception that the UNHCR discriminates against Afghan refugees of Hindu and Sikh faiths, as well as the Burmese refugees, by not actively taking up their cases for resettlement abroad. The UNHCR maintains the position that in finding durable solutions the situation of each nationality group and each individual refugee is assessed against UNHCR resettlement criteria and eligibility considered on that basis. If appropriate durable solutions are not feasible, the option of resettlement is taken up.

While the Sri Lankan refugees are housed in State Government camps and have access to local schools, hospitals, and the job market, and Tibetans are housed in settlements and have full access to local facilities, the mandate refugees assisted by the UNHCR experienced difficulties in living in urban areas. They have to compete with local urban dwellers for access to accommodation; in view of their financial situation, most refugees generally share their accommodation or live in rooms rented from local landlords. A Government order requiring landlords to report while renting premises out to foreigners remains in force, resulting in a great deal of reluctance among landlords to rent out premises to refugees, especially since many refugees do not have residential permits. The Young Men's Christian Association (YMCA), the UNHCRs' implementing partner, assist those facing serious accommodation problems. The YMCA has also been entrusted with the task of assessing individual needs for the purpose of payment of a subsistence allowance, as well as payment for educational assistance. Subsistence allowances are given only to vulnerable individuals as per the assessments of the implementing partners.

The implementing partner of the UNHCR, the PILSARC, assists refugees in gaining access to courts and the NHRC in case of violation of their human rights and such rights under the Indian Constitution such as the right to equality, the right to life and personal liberty, and the right to move courts. The NHRC, established under the Human Rights Act of 1993, has the authority under Section 12 of the Act to inquire into any complaint relating to a violation of human rights or abetment of such violation, and to inquire into any negligence in the prevention of any such violation by a public servant and visit, under intimation to the State Government, any institution where people are kept in detention in order to study the living conditions and make recommendations thereon.

The Sri Lankan Tamil refugees and Tibetan refugees have access to jobs or go in for self-employment. The concerned State Governments provide material and financial assistance to them. Other refugees are considered as foreigners and temporary residents, and therefore do not have any economic right to be employed in the formal sector or to engage in formal business

activities. Nevertheless, refugees are not officially obstructed from finding opportunities in the informal sector. In order to help refugees avail work opportunities in the informal sector, there are plans to provide help towards self-reliance in the informal sector. The expertise of the International Labour Organisation (ILO) is used to ensure the technical integrity and sustainability of the plan. At the same time, while acknowledging that the refugees would continue to have access only to the informal sector, promoting refugee access to work will become an important component of outreach and promotional work for the UNHCR.

The UNHCR, through its implementing partner the Voluntary Health Association of Delhi (VHAD), ensures primary health-care services to the refugees and facilitates access to government-owned medical facilities, which impose nominal charges. The VHAD reimburses the medical expenses of refugees according to criteria. Refugees by and large have had the same access to basic-education facilities as Indians. But government-run schools are illequipped and thus refugees prefer to send their children to private schools, where English is the medium of instruction. The UNHCR, through its implementing partner the Young Women's Christian Association (YWCA), reimburses educational expenses for basic elementary education.

**durable solutions** Durable solutions vary from one nationality group to another depending on the overall protection situation of each group and in expected changes in the countries of origin concerned. For example for the Afghan caseload, repatriation has not been an option, and the lack of residence permits coupled with a negative protection environment, which made local integration difficult, resettlement has become the only viable option. In contrast, Afghans of Sikh and Hindu descent are not promoted for resettlement, as local integration is considered a real possibility. For the Burmese refugees, an applicable durable solution remains uncertain. Given their relatively stable protection environment in India, resettlement has not been promoted. Along with the Afghans of Sikh and Hindu descent, the Burmese have been encouraged towards self-reliance.

For other nationality groups, resettlement has been considered the most appropriate durable solution given the lack of residence permits, lack of long-term local integration, and of significant changes in the countries of origin concerned. For those refugees issued with 'Leave India' notices, or those in detention centres because of unauthorised overstays in India, there has been an urgent need for resettlement. In some cases the Indian authorities have condoned the overstay or released the refugees from detention, provided that the UNHCR has undertaken to find a resettlement solution within a reasonable time. The UNHCR therefore continues to identify resettlement needs for the Sudanese, Somalis, Iranians, and Iraqis on protection grounds and because of their inability to integrate locally.

The UNHCR in New Delhi liaises closely with the missions of key resettlement countries. In addition to having separate meetings with the missions, a new effort has been initiated by UNHCR Delhi to hold regular co-ordination meetings with the missions of these countries. These meetings prove effective in sensitising the staff of these missions to the resettlement needs of the caseload assisted by the UNHCR. The UNHCR claims that these meetings also prove useful in addressing common concerns, harmonising the procedures involved in processing cases, including 'parallel processing', and in facing the increasing challenges of 'shopping' for resettlement.

Moreover, with the increasing need to have a more transparent and accountable system for case identification, and to ensure that the resettlement criteria was being applied objectively, a resettlement panel was established at the UNHCR in June 2001.<sup>12</sup> The panel reviewed individual case files, mainly of Afghan refugees. The panel also identified cases without local integration prospects. Cases 'screened in' by the panel constitute a 'pool' of cases for resettlement submissions. The leader of the resettlement team, in consultation with the Deputy Chief of Missions, decide the appropriate country to which cases should be submitted for resettlement based on socio-economic factors and possibility for effective protection, and make submissions to the resettlement countries.

The UNHCR continues to have some concerns in its resettlement activities. For instance, the application of the criteria 'lack of long-term local integration prospects' remains a challenge. While some indicators have been developed, the assessment of social and economic factors has to be undertaken along with the concerned implementing partners. The resettlement criteria applied and promoted by the UNHCR remains at odds with the criteria set by some countries and priorities can also be different. Some resettlement countries continue to place emphasis on the refugee status/claim, rather than focussing on resettlement needs. Given the protracted caseload, especially of Afghan refugees, some resettlement countries perceive that there is no resettlement need given the prolonged stay in the country. The conditions and quality of asylum given the absence of a formal refugee protection regime is not taken into consideration, and the length of stay seems to be the only deciding factor. Its role in finding a durable solution through resettlement or repatriation can be strengthened by facilitating travel arrangements like securing and paying for air tickets, obtaining exit clearances from different departments of the Government of India, and paying exit fees for some nationalities that are not exempted by the Government of India.

There is no legal obstruction to pursuing naturalisation as an option for individual refugees who are eligible under existing nationality laws and who wish to become Indian citizens. Naturalisation as a durable solution has recently been given greater focus by the UNHCR, targeting those who have suitable profiles. The Citizenship Act of 1955 and the Citizenship Rules of 1956 regulate the granting of Indian citizenship by naturalisation. The Third Schedule to the Citizenship Act of 1955 prescribes the qualifications for acquiring citizenship. As part of its efforts to counsel eligible mandate refugees and to assist those among them interested in becoming naturalised Indian citizens, the UNHCR engages a private counsel with expertise in naturalisation cases. The counsel provides assistance in filling up the requisite forms, obtaining the required verifications, newspaper advertisements, and language certificates etc., and submit them to the relevant government departments. The focus of this naturalisation are

largely the Afghans of Indian origin, who have been in India for over 10 years, and a smaller group of mandate refugees with Indian spouses resident in India for over five years.

As naturalisation is a bureaucratic procedure with the application having to pass through various departments of the Gol, and the final decision being an executive one with a wide discretion in the Ministry of Home Affairs, the time period for these applications normally takes up to two years. The procedure usually involves submitting an application to the local district magistrate, and then following it up at the level of the State Government. The State Government then makes a recommendation to the Ministry of Home Affairs, which is at the level of the Central Government. Although refugees undertake to follow up the procedure themselves, they are often unable to obtain access to the concerned government departments. Hence the naturalisation counsel is nominated to follow up with the government departments on the status of the applications filed by the mandate refugees. The most significant impediment in the naturalisation process is the requirement that the person be legally resident in India for a minimum stipulated period of time. In the recent past, the non-issuance of residence permits has proved to be a major stumbling block by excluding refugees who would otherwise be eligible after 10 years of stay from applying for naturalisation. As residence permits are currently being issued to mandate Afghan refugees, more cases should become eligible for naturalisation.

For voluntary repatriation requests, the procedure adopted by the UNHCR begins with the refugee being given a thorough explanation about the current situation in his or her country of origin. Additional information is sometimes obtained from the Headquarters or UNHCR offices in the country of origin. The Durable Solutions Assistant conducts a detailed interview to find out the exact date and the reasons for seeking repatriation, and ensures that the refugee is well informed and voluntarily chooses to return. Once it is established that the refugee has made the choice with full information, and is of sound mind and age, then the individual is required to sign a voluntary-repatriation declaration form consenting to return. Where there is any doubt of the decision being voluntary, the case is referred to a legal officer.



The final destination of the refugee is recorded and the repatriation itinerary is noted. Information about the repatriation is conveyed to the UNHCR office in the refugee's country of origin. With regard to nationalities where clearances are needed from the country of origin, such as Somalia, these are secured prior to making arrangements for travel. Whenever necessary, UNHCR offices are advised to receive refugees on arrival. The UNHCR in India shares information with the UNHCR offices in the repatriating country, and grants repatriation packages to refugees at the time of departure to assist in the rehabilitation of such refugee groups in that country.

no supervisory responsibility Since India is not a signatory to the 1951 Convention or the 1967 Protocol, there is no formal supervisory responsibility incurred by the UNHCR. It exercises its mandate in India purely under its Statute. However, there is no formal agreement between the Government of India and the UNHCR. Nonetheless, given India's traditional role in granting protection to certain categories of refugees, and in the light of India's membership of the Executive Committee, the UNHCR is able to operate *de facto*, and has sound working relations with its concerned government counterparts. In Chennai, there has been continuing interaction with key State Government officials on various issues.

Even though the UNHCR is unable to 'supervise' the role of the Government of India in refugee protection, it nevertheless keeps itself abreast of developments and intervenes as it sees appropriate in order to uphold international principles of refugee protection. The UNHCR takes up issues with the Indian Government regarding individual protection cases of detention and deportation, in particular those involving possible *refoulement*, and matters relating to renewal of residential permits including issues relating to the conditions of asylum; it also promotes dialogue with the Government of India and civil society with regard to adherence to the basic standards of refugee protection and enactment of domestic refugee-protection legislation. This task requires diplomatic manoeuvres, establishing and maintaining links with support groups in Indian civil society, and invocation

of the Indian judiciary and concerned human rights organisations.

### **unhcr's refugee caseload in india**

refugees assisted by the government of india

tibetans: India hosts more than 1,00,000 Tibetan refugees who are settled throughout the country. They are assisted by the Indian Government and issued identity and travel documents. Around 2,400 Tibetans continue to arrive in India via Nepal every year. In Nepal, UNHCR assistance during transit is provided through the Tibetan Welfare Office.

sri lankans: India hosts around 66,000 Sri Lankan refugees who are located in 133 camps in Tamil Nadu. An estimated 40,000 Sri Lankans live outside the camps. Arrivals from Sri Lanka continue, but the Government has not sought any international assistance. The UNHCR does not have access to the refugee camps. Under a July 1992 agreement with the Indian Government, the UNHCR was asked to assist the Government in ascertaining the voluntary nature of repatriation of Sri Lankans to their country. In response to the request, the UNHCR opened an office in Chennai in August 1992. Between 1992 and 1995, out of a total of 54,199 refugees, a total of 31,062 refugees returned to Sri Lanka with the assistance of the Indian Government, after the UNHCR had verified the voluntary character of the repatriation. The repatriation operation was suspended in September 1995 due to the escalation of the conflict in northern Sri Lanka, which triggered a reverse flow of refugees into India in search of safety and security. From 1996 onwards there have been new arrivals.

The UNHCR has been receiving a number of requests from refugees in Government-assisted camps seeking voluntary repatriation assistance, either for personal or for family reasons. A number have returned with UNHCR support (79 from 1996 till October 2001 as per briefing material on UNHCR operations in India). After the government-assisted repatriation ended in 1995, the UNHCR received a communique from the Government of Tamil Nadu which suggested that voluntary repatriation interviews would be conducted in the presence of government officials, and those found to be eligible for voluntary-repatriation

assistance from the UNHCR would be assisted to return in groups of 10 or more persons, and further, split families were not to be assisted for voluntary repatriation as the Government felt that some returnees might be inclined to come back to India and seek readmission in those camps where their families were residing. In 2001, the UNHCR again received requests for voluntary repatriation and these cases were taken up with the Indian Government by the UNHCR. It was an important achievement when UNHCR India collaborated with UNHCR Colombo to complete a draft of a situational approach paper for the voluntary repatriation of small groups. But until March 2002, clearance from the Central and State Government was pending prior to beginning the process of ascertaining the voluntary nature of the proposed repatriation.

The Indian Government has not given the UNHCR access to the refugee camps. However, the UNHCR informally monitors the protection concerns of the camp refugees and takes up issues of *refoulement* with the Government, especially with regard to non-camp refugees. UNHCR Chennai also receives requests from individuals to assist them to obtain inter-camp transfers in order to be with their family members. Such cases are referred to the authorities. There are also requests from Sri Lankan refugees in camps to assist in family reunification abroad, which is dealt with by the UNHCR on a case-by-case basis. Collecting data from Sri Lankan camp refugees and installing a database has been initiated through partnership with the NGO Proteg, and is the first attempt to create a comprehensive database on the Sri Lankan refugee camps.

There are certain categories of Sri Lankan nationals who are interned in three special camps. They can be broadly divided into three categories—the hardcore members of the Liberation Tigers of Tamil Eelam (LTTE), the sympathisers or suspected LTTE cadres, and those who had been acquitted in the Rajiv Gandhi assassination case. Most of the inmates have been kept in confinement in the special camps for a protracted period of time, ostensibly under charges of infringing immigration laws. The UNHCR is concerned about their physical and legal situation, and is committed to finding durable solutions to the problem of

the special-camp inmates, but has no access to them. The Chennai office is involved in encouraging and assisting advocacy groups for the release of the inmates, exploring the possibility of litigation through interested NGOs and human rights lawyers and sending complaints from the inmates to the NHRC. Thus, despite the UNHCR having no access to refugee camps, it does not preclude the Chennai office from taking a well-considered proactive role through its contacts with NGOs, human-rights advocacy groups, and the media to be aware of refugee-protection issues that arise, intervene when appropriate with the authorities regarding requests from refugees about their local problems, and facilitate resettlement for camp refugees who have the possibility of, and have been accepted for, family reunification in third countries.

the chakmas and the burmese: The UNHCR has no access to the Chakmas of the Chittagong Hill Tracts of Bangladesh who entered India in two groups, once in the late 1960s, and then in the early 1980s. Many pro-democracy student activists also fled to India from Burma (now Myanmar) after the 1988 student uprising, as also some Burmese of Chin ethnicity due to political and religious persecution. These activists were granted temporary *ad hoc* refuge in refugee camps set up by the Government of India in Mizoram and Manipur. Due to poor conditions in these camps, and fear of deportation, many of the Burmese refugees moved to New Delhi and sought refugee status from the UNHCR.

unhcr-assisted refugees India's refugee caseload comprises of a majority of Afghans of Indian origin. It also includes ethnic Afghans, Burmese, Iranians, Somalis, Sudanese, and some others. Unlike the Tibetans and Sri Lankans, these categories are not considered as refugees by the Indian authorities. Instead, they are simply treated as foreign nationals temporarily residing in India. Almost 70 per cent of the Afghan caseload is of Indian origin. Due to the strong religious and cultural links between this group and Indian society, efforts have been made from the beginning to find a durable solution for this group in India. The UNHCR is pursuing the possibility of securing Indian citizenship for them, but the process was complicated and further exacerbated by the non-renewal of legal-stay permits over the past three

years. According to the Indian Government, no special status was given to them due to their Indian origin. The ethnic Afghans comprise those who have claimed refugee status based on political persecution or because of their ethnic backgrounds.

The Indian Government requires all Afghans, including UNHCR-recognised refugees, to obtain valid national passports in order to renew their residential permits. Holding valid national passports is particularly difficult for refugees, and many refugee families cannot afford to pay passport issuance or renewal fees since they are not legally permitted to work while in India. The UNHCR cannot afford to provide assistance for passport renewals, as funds are not available. Income generating schemes established through self-sufficiency grants issued by the UNHCR in the mid-1990s collapsed largely due to the lack of residential permits, which has resulted in an inability of refugees to work in the informal sector. At the same time, the UNHCR cannot provide wide-spread financial support as budgetary constraints result in limitations on subsistence allowances and education grants. Afghan refugees without valid residential permits have been faced with detention or deportation. Thus the presence of 'undocumented' Afghan nationals in Indian territory, despite their status as mandate refugees, has been perceived as a national security issue, though till date no mandate Afghan refugee has been reported to be involved in mercenary/terrorist activities. The Indian Government has assured the UNHCR that there will not be random deportation of Afghans without the due process being followed. There have been occasions when the Foreigners Registration Office has favourably considered releasing detained refugees and temporarily condoning their overstay after the issuance of a 'Leave India' notice, provided the UNHCR gives the assurances that the refugees will be resettled out of India within a specific period.

After the UNHCR entered into a dialogue with the Indian Government on the issue of refusal to renew the residential permits of the Afghans due to expired passports, the Government since September 2001 has announced that it would immediately reissue residential permits to all Afghan refugees who produce a valid or expired travel document to the local foreigners registration

office. All those without travel documents would be referred to a committee to be established for the purpose of determining the credentials of the refugees, and also to make security checks to address national security concerns.

non-afghan refugees The UNHCR has been repeatedly informed by the Ministry of External Affairs and Home Affairs that all non-Afghans can remain in the country only if they have good reasons to do so, namely, pursuing an educational programme in a recognised university or being married to an Indian national. Otherwise, they are expected to leave the country regardless of whether they are recognised by the UNHCR as mandate refugees or not. Sudanese, Somali, and Ethiopian refugees who have completed their studies are not normally granted further extensions of their student visas, and in some cases may be issued a 'Leave India' notice. The Iranian caseload has also not been able to extend their residential permits or obtain new ones and are faced with 'Leave India' notices. Somali refugees have been unable to renew their residential permits despite holding valid passports, and many are faced with 'Leave India' notices and with detention.

The Sudanese caseload comprises those who have fled persecution due to political involvement, their Christian faith, or their ethnic origin. A second Sudanese group comprises those with a 'sur place' claim. The Iranian caseload also consists mainly of individuals who have faced persecution because of some form of political involvement or religious affiliation. The Somalis came to India for educational purposes and then applied for refugee status on the basis of an inability to return home. Some of the Iraqi caseload came as stowaways, and the most expeditious arrangement taken to disembark these refugees was to provide an undertaking to the Indian authorities that they would be eventually resettled by the UNHCR.

Given the situation faced by these caseloads in their countries of origin, repatriation for them is often not an option. The UNHCRs' first response in such cases is to write to the concerned authorities requesting that the refugee be permitted to remain in India on humanitarian grounds pending improvement of the situation in their country of origin. In a few cases, the Indian

Government has condoned the overstay, provided the UNHCR undertakes to find a third-country resettlement solution, an approach that the UNHCR has been increasingly obliged to take. The issue of refugees sometimes tends to get confused with the issue of economic migration into India, which makes the refugees more vulnerable as far as public opinion is concerned.

**unhcr and human rights** Although India is not a signatory of the 1951 Convention, seeking enforcement of international human-rights standards, which India has accepted, can facilitate the UNHCRs' work. Though the UNHCRs' core functions involve protecting human rights, not everyone is accustomed to thinking of the Office as a 'human rights' organisation. The UNHCR cannot enforce human rights standards because its office is not part of the enforcement mechanism for such standards. Under the Statute of the Office, the UNHCRs' mandate has been described as a humanitarian one, meaning that actions in favour of refugees should be non-partisan and non-political with the sole concern being the safety and welfare of the refugees. This understanding of refugee protection as humanitarian work allows countries of asylum to respond to the needs of refugees without passing judgement on the country of origin, which is often a neighbouring state, while the acceptance of the UNHCR as a humanitarian agency helps to ensure support for its work.

But placing greater reliance on human rights standards as a basis of the UNHCRs' work does not jeopardise the humanitarian character of its activities, since international human-rights law is itself non-political and non-partisan. International human-rights law treats all countries equally by imposing the same standards and obligations on each state regardless of the ideology of any particular government and many provisions of international human-rights law have been universally accepted and specifically undertaken by States, and advocating their implementation is not 'political' but simply asking governments to live up to their obligations. It is true that the debate on human rights can become controversial. Different governments or organisations opposed to particular governments may use the language of human rights to advance particular policies, which may or may not, in

fact, be supported by reference to human rights law. Also, governments may be inclined to use human-rights law selectively, either criticising the human-rights records of rival governments while remaining silent regarding friendly governments, or by emphasising only certain aspects of their own human rights records. The UNHCR has not allowed different governments or political groupings from insisting on its responsibility to provide international protection to refugees. It does mean that the UNHCR must ensure its work is non-partisan by being consistent in the rights it defends and by defending those rights in all circumstances, regardless of the politics of the refugee or the country concerned.

International human-rights law is also more complex than international refugee law, because of the multiplicity of sources and standards compared to the few refugee-law instruments whose provisions are relatively straightforward. But there do exist certain core standards which have been universally accepted. Many of them have been elaborated in binding legal instruments to which a majority of States are parties. These standards can reinforce and supplement existing refugee law. Therefore, even if States like India are not a party to the 1951 Convention, principles of protection of refugee rights can still apply since a number of international human-rights standards are universally applicable as customary principles of international law, and because non-signatories of the 1951 Convention may still be parties to human-rights treaties which include provisions of benefit to the refugees. Many of the international treaties which protect human rights, including rights benefiting refugees, establish supervisory mechanisms which can issue authoritative opinions on the content and scope of particular rights guaranteed in the treaty or even receive and decide upon complaints submitted by individuals alleging a violation of the treaty.

For example, the most basic right for refugees is the right not to be subject to *refoulement*, which is set out in Article 33 of the 1951 Convention. It is generally accepted that the prohibition on *refoulement* is part of customary international law. The right to seek asylum is found in the Universal Declaration of Human Rights, Article 14. Moreover, three international human-rights

instruments include an explicit prohibition of *refoulement* if a person is at risk of suffering the human rights violation that the instruments seek to prevent—Article 3 of the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment, Article 8 of the UN Declaration on the protection of all persons from enforced disappearance, and Principle 5 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions. There are also implicit prohibitions of *refoulement* in provisions such as Article 7 of the International Covenant on Civil and Political Rights.

The UNHCR has to be aware of human rights standards that may not be protected under the Statute, but may be under other international or regional instruments. To give two examples, the Right to Peaceful Assembly is not protected under the 1951 Convention, but is under international and regional human-rights instruments such as Article 20 of the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights, and Article 11 of the European Convention for the Protection of Human Rights. Similarly, there is no provision in the 1951 Convention relating to freedom of opinion and expression. But this Right is included under Article 19 of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, subject to certain restrictions and limitations in their application under regional instruments, Article 19(3) of the Covenant, and reservations that may be entered by certain European States when ratifying the Covenant.

There have been no incidents in India that have led to large refugee outflows. Continued armed conflict in Jammu and Kashmir has created displacement of the civilian population in the area. The states of Assam, Manipur, Mizoram, Arunachal Pradesh, and Tripura have seen armed conflict between government forces and militant groups. Ethnic tensions and violations of human rights of minority groups by the dominant communities have also led to displacement of populations. The Government of India has not encouraged the UNHCRs' involvement in these areas. The

UNHCR thereby lacks access to these areas, and is not involved in the issues of internally displaced peoples. However, the UNHCR regularly co-operates with human-rights NGOs in order to provide and obtain relevant information for its protection activities. The Indian democratic tradition and the presence of an independent judiciary to enforce the rule of law means that recourse to judicial intervention to safeguard individuals' human rights is possible. India is also a party to a number of international human-rights treaties which require that the Government submit periodic reports to UN treaty bodies for examination. The UNHCR has raised refugee protection concerns through the UNHCR Headquarters before these treaty bodies, and most recently did so in respect of India's initial report to the Committee on the Rights of the Child.

The NHRC and the State Human Rights Commissions are other statutory bodies dealing with human rights issues. They were established under the Protection of the Human Rights Act of 1993. Though these bodies may not be sufficiently autonomous, they have played a significant role as arbiters where infringement of human rights has occurred. The UNHCR cooperates with these bodies by sharing information concerning the protection of refugees and asylum seekers in India. The UNHCR does so on a confidential basis and not as a complainant. The NHRC has contacted the UNHCR with regard to a number of cases where the refugees/asylum seekers had written to the Commission.

**promotional activities** As discussed above, while the Government of India's relations with the UNHCR has evolved positively in recent years, the Office still has no formal status, and its mandate is only partially recognised by the Government of India. It is in this context that in 1995 the UNHCR started undertaking a concerted programme of promotional activities as a means of building supportive constituencies. These activities are also known as enhancement of the refugee-supportive regime or capacity building. These activities focus on creating greater awareness of the UNHCRs' mandate role, elements of refugeehood, and the meaning of international protection, as well as disseminating knowledge of the existing multilateral refugee-

protection regime. The UNHCR organises and sponsors seminars for university teachers; workshops for legal practitioners, government officials, and NGO counterparts; lectures by eminent authorities; as well as public awareness and information activities. The UNHCR has provided much-needed institutional support, particularly in terms of documentation, to universities and organisations, which have undertaken activities complementary to refugee protection. The UNHCR also encourages and supports research and internship programmes for Indian and overseas students.

Promotion and dissemination activities in India are targeted at achieving certain key objectives. They include enactment of a national refugee legislation, advancement of the cause of refugees with the government authorities, creation of supportive constituencies in key segments of civil society (eminent persons, lawyers, academicians, politicians, security and law enforcement agencies, the judiciary and national institutions), contribution to the progressive research and dissemination of refugee-protection principles in India which might result in either a regional declaration or a convention on refugees, expansion and strengthening of partnerships with national institutions, NGOs, and other stakeholders, and enabling the UNHCR to work positively in India and assist the Government in developing appropriate policies and laws. The UNHCR engages in certain strategies to achieve its promotional activities. For instance, it seeks to engage policy and public discussion groups/forums as well as key interlocutors to sustain the refugee debate within the public sphere through continuous speaking and lecturing on refugees and refugee-related issues, where the need to uphold international protection principles, balance these principles with other national priorities, and the need for a refugee law is emphasised. It seeks to meet regularly with parliamentarians, politicians, those influencing policy-making, and with key government interlocutors to advocate on pertinent refugee protection issues. It also seeks to strengthen the training, teaching, and sensitisation of national institutions, NGOs, and law enforcement and security agencies through the provision of training sessions, dissemination of materials, dialogue, and encouragement of research and discussions.

The UNHCRs' efforts to enact a national refugee law and advance the cause of refugees through public and government advocacy, eminent persons, and through regional and global forums have been pursued at a number of levels. At the international level, the on-going global consultations being conducted within the framework of the Executive Committee process have included participation from renowned Indian academicians and practitioners. Such organisations as the Regional Consultation on Refugees and Migratory Movements in South Asia (the 'EPG Process'), the Asian-African Legal Consultative Committee (AALCC), and the Asia Pacific Consultations on Refugees and Displaced Persons (APC) have created and enacted broader standards and model principles. NGOs, universities, and various other constituencies at the regional and national levels have also had a role in helping to promote the sustainability and impact of these efforts. India has been deeply involved in the process of drafting the Bangkok Principles on Refugee Protection and its revision through the Asian-African Legal Consultative Organisation (AALCO). The UNHCR has also been co-operating with the AALCO on the revision of the Bangkok Principles and finalisation of the revised draft. Despite many reservations by Governments, the draft was finally adopted at the 40th session of the AALCO with reservations appearing in an endnote. The Bangkok Principles provide another possible tool for the UNHCR to promote a consistent refugee-law regime in the South Asian region. The EPG (Eminent Persons' Group) has agreed to initiate discussions for the adoption of a Regional Declaration for refugees in South Asia. Activities generated by these regional organisations, including initiatives undertaken by the SAARCLAW, an informal group of lawyers and judges from the SAARC countries, have also served to provide direction to promotional efforts at the national level.

The UNHCR in Geneva has collaborated with the Inter-Parliamentary Union (IPU) to launch a handbook for parliamentarians called a 'Guide to International Refugee Law'. Currently, UNHCR India is working closely with the IPU under Dr Najma Heptullah to sensitise Indian Parliamentarians on refugee protection issues. The Handbook is thus being translated into Hindi for further

dissemination. An interactive session was held in April 2002 to promote refugee-protection principles among Parliamentarians. A significant achievement was the finalisation of the model national law on refugee protection by the EPG. Efforts for the development of a model national law for refugee protection made by the Regional Consultations on Refugees and Migratory Movements in South Asia since 1995 culminated in the year 2000 when the Model law was presented to the Indian Law Commission, as well as to the Indian Minister of Law and Justice in May 2000. As a follow-up action, the Chief of Mission of the UNHCR presented a note on the benefits of having a national refugee law. The Law Minister affirmed that he would support the process. The Model law was also presented to interlocutors in the Ministry of Home Affairs as well as the Ministry of External Affairs. The Ministry of Home Affairs has circulated the EPG Model Law to other ministries and national institutions for comments. This was confirmed when the implementing partner PILSARC was requested officially to comment on the Model law. Recently, in April 2002, the UNHCR in consultation with Indian EPG members organised an interactive session with Parliamentarians chaired by Dr Najma Heptullah, in order to sensitise them to the need for a national legislation on refugees.

The primary focus of the UNHCRs' capacity-building strategy has clearly been to enhance the national legal and judicial knowledge base on refugee law and to create an informed community of actors who may be relied upon to raise the level of debate in law or policy-making. The capacity building approach has two strategies-competence building focusing on individuals, and institution building and support focusing on professional, academic, and other organisations and institutions.

Competence building has been achieved through lectures, seminars, and training sessions, which include participation of recognised national and international experts in these programmes to build up a pool of eminent interlocutors competent in refugee protection. Institution building and support has taken shape primarily through the strengthening of library and documentation facilities, but also through more intensive cultivation and training of key actors. The UNHCR also seeks to contribute

to the progressive development and dissemination of refugee protection principles.<sup>13</sup> To create supportive constituencies and sensitise the general public, senior staff members of the UNHCR, including the Chief of Mission, have engaged in a number of public lectures and other presentations at various academic institutions and policy advocacy forums. The UNHCR has tried to advance the teaching of refugee law in undergraduate law courses as a necessary component of international human-rights law in India. Similarly, the teaching of refugee rights has been introduced as part of post-graduate human rights courses and defence studies courses in Indian universities.<sup>14</sup> The UNHCR established a Chair on Refugee Law at the National Law School in Bangalore in 1995. An annual South Asian training programme on international humanitarian law and refugee law has been held since 1999 at the National Law School in Bangalore in collaboration with the UNHCR and the International Committee of the Red Cross. Expansion of Indian interns at UNHCR New Delhi, fellowships for research in refugee studies at Indian universities, academic exchanges, and sending qualified academics for overseas courses on refugee studies in Canada and the United Kingdom are other forms of trying to build Indian expertise and institutional networking on refugee studies.

Until now the UNHCRs' Office has been able to maintain a high level of training and promotional activities by using leverage through seeking tactical partnerships with like-minded organisations and individuals such as the Regional Delegation of the International Committee of the Red Cross and the Indian Society for International Law (ISIL), and implementing partners such as SLIC and PILSARC for handling legal matters, thereby covering issues at reduced costs. Only by linking these activities to a small number of overall and explicit objectives has the UNHCR been able to make progress. Innovative approaches, the appropriate use of new technology, producing training videos and publishing-training manuals and text books, are all 'products' now being developed by the UNHCR.

**the paradoxes** The UNHCR operations in India are conducted under the mandate granted by its Statute, and though

drafts of a memorandum of understanding and a draft Branch Office agreement have been shared with the Indian Government, along with a note on the implications of grant of formal status, the UNHCR still provides only de facto protection to its mandate refugees on Indian territory and relies on the tolerance and goodwill of the Indian Government. The UNHCR mandate is only partially recognised by the Government, and mandate refugees have no formal recognition and are subject to the same municipal laws as foreigners. The lack of a formal status weakens its role in advocacy and intervention for refugee rights. On the other hand, the Indian Government proceeds on the assumption that India has a strong humanitarian tradition for hosting refugees, which was present even before the drafting of the Convention. Moreover, with an independent judiciary for enforcing the rule of law, and the country being signatory to a number of human rights instruments, a number of human rights principles can be read into working of Indian laws.

The UNHCR has been able to build on this jurisprudential foundation to carry out its mandate and to establish a working relationship with the Government. The July 1992 agreement by which the Indian Government asked the UNHCR to assist it in ascertaining the voluntary nature of repatriation of Sri Lankan refugees constituted to some extent a de facto recognition of the UNHCRs' presence in India for refugee protection.<sup>15</sup> While the UNHCR-issued refugee certificates are not legally binding under Indian law, in practice, the Ministry of Home Affairs, the FRRO, and local police authorities have de facto recognised an individual's refugee status.<sup>16</sup> The UNHCRs' main counterpart in the Government is the United Nations Division of the Ministry of External Affairs, while contacts have also been developed with the Ministry of Home Affairs, in particular the Foreigners' Division, as well as with the Ministry of Law. The UNHCR uses the courts through its implementing partner PILSARC to intervene for release of detained refugees or to secure due process. However, it seeks to minimise resorting to a confrontationist judicial process and primarily seeks to secure protection through a dialogue with the Government. It has also co-operated with the NHRC and State Human Rights Commissions in respect of sharing information

concerning the protection of refugees and asylum seekers in India. The NHRC also contacted the UNHCR on a number of cases where the refugees/ asylum seekers had written to the Commission. The UNHCR has tried also to strengthen its institutional framework and to carry out its mandate effectively by building up a network of partnerships, especially in the field of socio-legal activities. New partnerships are also sought in order to provide refugees with job-oriented vocational training, self-reliance, and entrepreneurial training in accordance with UNHCR standards. The implementation strategy seeks to increase participation of these bodies in all sectors of activity and reduce the UNHCRs' direct implementation in a calibrated manner, while taking into account the efficiency, effectiveness, and actual capacity of these bodies.

Indeed, this state of affairs shows that the Indian Government can play a more prominent role so that refugees can access such socio-economic rights as the right to education, health, and housing. Thus creating a special quota for refugee children in schools, putting in an exception clause to the Government order that requires landlords to report on leases to foreigners, or financial assistance in the form of health or education allowances could reduce the burden on the UNHCRs' resources and facilities. A more systematic and consistent policy towards refugee protection could occur if India became a signatory to the 1951 Convention or adopted a national legislation on refugee protection. While the Indian Government believes that even in the absence of a specific legislation on refugees, and in spite of the country being a non-signatory to the principal convention on refugees, adequate protection is being provided to refugees, the fact is that because of non-differentiation of refugees from other aliens there are gaps in their protection and differential treatment occurs. While Tibetan and Sri Lankan refugees are afforded generous protection, the same standards are not applied to UNHCR mandated Afghan refugees. The Government of India differentiates between refugees fleeing from countries immediately neighbouring India, and refugees fleeing from non-neighbouring countries. In the case of the former, the Indian Government has traditionally viewed the refugee population as part of its regional strategic interest



and foreign policy, and consequently deals with these refugees on a differentiated, ad hoc, and bilateral basis. In the case of the latter, the Government does not officially recognise the group as refugees and the UNHCR plays a role in ensuring their protection. There are inconsistencies of treatment by the Government even amongst those refugee groups that it recognises and provides with some measure of protection, such as the Tibetans and the Sri Lankan Tamils, the Chakmas from the Chittagong Hill Tracts, or the Myanmarese refugees.

Even a national refugee law would allow a more consistent policy towards different groups of refugees. Such a law would enable the Government of India to establish proper procedures in the exercise of its sovereignty and to determine which groups of foreigners may be in need of international protection. The refugee-status determination mechanism could therefore enable the authorities, to a certain extent, to address issues of national security through monitoring those who seek asylum and establishing their background and antecedents as well as their activities in their own countries prior to seeking asylum. Such a law would systematise standards of refugee protection and establish accountability of Government authorities. The legislation could thus seek to balance the security and sovereignty concerns of the Indian Government and the need for a systematic refugee protection regime.

If the Indian Government granted full formal status to the UNHCR, such recognition would enhance and consolidate humanitarian co-operation between the Indian Government and like-minded positions within the Executive Committee of the UNHCR. The Government of India could also be more fully involved with the UNHCR in developing public awareness and general support for refugees. Formal involvement of the Indian Government in the refugee discourse at the national level could also contribute to the Government's policy-making process in related matters such as migration, border management and control, and treatment of foreigners in the country. The Indian Government could also consult formally with the UNHCR in the event a legislative process is initiated to enact a national law on refugees.

Granting formal status to the UNHCR would not interfere with the sovereign right and decision of the Government of India to safeguard its reservations to the 1951 Convention and the 1967 Protocol. It could, on the other hand, further the concept of international burden sharing and responsibility.

A national legislation on refugee protection could help India when adopting a proper definition for refugees, both to extend the definition to include the mass refugee flows experienced by developing countries, and to differentiate, as the Government wants, between refugees and economic migrants. The international definition of a refugee is of a person who, due to a 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 to return.<sup>17</sup> It does not include migration for reasons of economic hardship. A systematic refugee-status determination mechanism could enable the Government to address issues of national security through monitoring those who seek asylum, establishing their background and antecedents as well as their activities in their own countries prior to seeking asylum. In view of the scale and variety of movements in the subcontinent, however, it may be necessary to move beyond the nation state and promote regional co-operation in various areas in the subcontinent. This would lead to a standardised framework, without major national differences of approach to a refugee protection regime which could lead to uneven refugee flows.

Yet, the irony is that these possibilities are not difficult to imagine. But the fact that there remains a wide gap between the actual state of affairs and the possibilities, the international norms and the state of affairs in the country, the differential treatment towards various groups of refugees, and the mix-up of humanitarian, human rights, and security considerations, show that international humanitarian thinking does not operate in a void. The paradoxes of the existing humanitarian order in India are a reminder of a much bigger syndrome.

## notes and references

1. In 1953 and 1954, Amir Ali, the UNHCR Representative for the Far East, visited New Delhi and had meetings with senior officials in the Ministry of External Affairs on the question of the Government of India's attitude towards the UNHCR. He was informed in writing by the Joint Secretary in charge of United Nations Affairs that the question had been reviewed and that the Government had concluded that no change in its position towards the UNHCR was called for. In a meeting between Amir Ali and the Foreign Secretary R.K. Nehru, the Foreign Secretary was more explicit on the Government's perception of the UNHCR. He stated, 'You help refugees from the so-called non-free world into the free world. We do not recognise such a distinction.' Amir Ali reported to Headquarters that the Government of India saw the UNHCR as a 'Cold War' tool and believed that an association with the Office would affect its neutrality.

2. C.S.R. Murthy, 'India's diplomacy in the United Nations', quoted in B.S. Chimni (ed.), *International Refugee Law: A Reader*. Sage Publications: New Delhi, 2000, p. 535.

3. B.S. Chimni, *International Refugee Law*, p. 535.

4. Formal cooperation between the UNHCR and UNDP began in 1981 with an exchange of letters, followed by an MoU in 1987, and other cooperative agreements. The UNDP has the responsibility of representing the High Commissioner in those countries in which the UNHCR has no office in order to assist and protect individual refugees.

5. In April 1979, India acceded to the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights. In December 1992, India acceded to the 1989 Convention on the Rights of the Child, and the 1965 Convention on the Elimination of all Forms of Racial Discrimination was ratified in 1969. India also ratified the 1979 Convention on the Elimination of all forms of Discrimination against Women in 1993. Finally, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was signed on 14 October 1997, but has not yet been ratified.

6. A.L.R 1969, SC 783.

7. A.L.R 1984, SC 677.

8. *Visakha v. State of Rajasthan*, 1997 SC (6) 241; *Vineet Narain v. Union of India*, 1998 SCC (1) 226; *Apparel Export Promotion Council v. A.K. Chopra*, 1999 SCC (1) 759; *Githa Hariharan v. Reserve Bank of India*, 1999 SC (2) 228.

9. For example, see *National Human Rights Commission v. State of Arunachal Pradesh*, 1996 SCC (1) 742. See also Colin Gonsalves, 'The somewhat automatic integration of International Refugee Conventions in Indian law,' in *Bulletin on IHL and Refugee Law* (July-December 1998), p. 247.

10. Myron Weiner, 'Rejected peoples and unwanted migrants in South Asia,' *Economic and Political Weekly*, Vol. 28, No. 34, 21 August 1993, pp. 1737-46, quoted in Chimni, *International Refugee Law*, p. 529.

11. In Assam, the Illegal Migrants Determination Tribunal Act is applicable, which establishes a Tribunal to determine the nationality of individuals arrested without documents in the state. Individuals are given an opportunity to prove Indian nationality, otherwise they might be deported.

12. The Deputy Chief of Missions chaired the Panel, which also included members of the resettlement team and community services.

13. For example, the *Reader on Refugee Law*, a publication supported by the UNHCR, was widely disseminated within India in 2001. The UNHCR in collaboration with SLIC has also taken out a 'Handbook for Lawyers' in 2002, for circulation to legal practitioners. With the assistance of the Department of International Protection Headquarters, the UNHCR and the regional delegation of ICRC in India have collaborated with the prestigious Indian Society of International Law (ISIL) to launch an *Annual Year Book on Refugee Law and International Human Rights Law* from 2000.

14. Through the Chair in Refugee Law, which was established at the National Law School of India at Bangalore, a number of regional courses and initiatives on refugee law training have also been undertaken. The South Asian Training Session on Humanitarian and Refugee Law is an annual affair co-organised by the ICRC, assisted through the funding as well as provision of resource persons from the Department of International Protection. UNHCR has been collaborating closely with the ISIL to conduct a post-graduate diploma course since 1999 on Human Rights and Refugee Law, in which the UNHCR also participates. The Association of Indian Universities (AIU) has decided to adopt a model syllabus which requires all 450 plus accredited law faculties in India to incorporate a course on international human rights and humanitarian and refugee law through UNHCR's efforts in lobbying and co-ordinating with legal experts, key educational institutions, academic governing bodies and the ICRC. UNHCR is regularly invited to organise training courses for Indian security officials on refugee protection issues.

UNHCR has hired a consultant to assist in approaching law enforcement and security training institutions and planning courses.

15. However, the UNHCR's role was partial, since it could only arrive at determinations of voluntariness outside the camps and in the presence of officials.

16. But the Indian Government does not recognise the refugee certificates issued to other nationalities such as Iranians, Iraqis, Somalis, etc.

17. Article 1(A)2 of the 1951 Convention.

## 11 status of refugees in india: strategic ambiguity

B.S. Chimni

**i ntroduction** At present, India is not a party to the 1951 UN Convention on the Status of Refugees (hereafter the 1951 Convention), or the 1967 Protocol relating to the Status of Refugees (hereafter the 1967 Protocol).<sup>1</sup> Nor has it enacted a national law on refugees. Instead, India has chosen to deal with refugees at political and administrative levels. It has therefore only ad hoc mechanisms in place to deal with their status and problems. The legal status of refugees is therefore, to begin with, no different from those of ordinary aliens whose presence is regulated essentially by the Foreigners Act of 1946. The absence of a special legal regime on the status of refugees does not however mean that no protection and assistance is offered to refugees. But its absence has certainly meant that arbitrary executive action and/or acts of discrimination are not easily remedied (albeit the Courts have been sympathetic to the existential concerns of refugees). The absence of a national law on the status of refugees has also meant that refugees are dependent on the benevolence of the State rather than on a regime of rights to reconstruct their lives in dignity. Even the UNHCR has been granted a limited mandate of protection that is confined to 'urban refugees' from outside the South Asian region. These are today mainly refugees from Afghanistan.

In this background, the present chapter sets itself the following objectives: first, to explore and consider the validity of the reasons

that India has advanced to not accede to the 1951 Convention or the 1967 Protocol. Second, to describe and examine the legal status of refugees in India. Third, the paper briefly considers the role that the National Human Rights Commission (NHRC) has played in securing the rights of refugees. Fourth, to delineate the 'mandate' of the UNHCR in India and evaluate its role in terms of providing assistance and protection to refugees. Finally, the chapter enumerates the reasons why India should pass a national legislation on the status of refugees. In sum, this chapter looks at the current status of refugees in India, and contends that the protection of refugees calls for the passage of a national legislation. Such legislation, it is stressed, need not compromise in any way the national security interests of the country.

### india and the 1951 convention

reasons for not acceding to the 1951 convention The Government of India (GoI) has nowhere seriously outlined the reasons for its refusal to accede to the 1951 Convention. These can however be gleaned from statements made by officials over the years in various seminars and conferences on the subject of refugees. A few reasons are most often advanced for India not becoming a party to the 1951 Convention. First, reference is made to the Eurocentric definition of 'refugee' contained in the 1951 Convention. It is pointed out that the definition is confined to the violation of civil and political rights, and does not extend to social, economic, and cultural rights. Further, the definition also excludes protection to individuals or groups fleeing internal wars or situations of generalised violence. Second it is noted that the rights regime contained in the 1951 Convention is too burdensome for third world countries like India to implement as it can barely meet the needs of its own citizens. Third, it is said that once India becomes a party to the 1951 Convention it would allow, vide Article 35, intrusive supervision by the UNHCR of the national refugee regime. The organisation would have to be permitted, among other things, access to refugee camps and detention centres.<sup>2</sup> It is alleged that this is a problem, in as much as the UNHCR is an agency which acts on the behest of Western donor countries. Fourth, apprehension is expressed that international NGOs could, citing India's membership of the 1951 Convention, embarrass the

Government front of the international community through negative reports which do not take into account the problems faced by a poor country in addressing the concerns of refugees. Fifth, it is pointed out that the 1951 Convention does not allow an effective protection of India's national security interests. Terrorists and other criminal elements could abuse its provisions to get refuge in the country. India's porous borders only accentuate this problem as the nature of the borders makes it difficult for the State to administer any formal refugee regime. Sixth, it is argued that India's record in giving assistance and protection to refugees is satisfactory and therefore there is no particular reason for it to accede to the 1951 Convention.

reasons for no acceding do not withstand close scrutiny These arguments, however, do not stand up to closer scrutiny.

First, a State that becomes party to the Convention is not prevented from including a broader definition of 'refugee' in the implementing national legislation. Albeit, there may be some merit in the argument that the Convention definition should be broadened before India becomes a party to it. Also, it can be argued that the definition of 'persecution' relating to the definition of a 'refugee' needs to be expanded to include war and violence in order to enable persons who are fleeing armed conflict and violence. On the other hand, it could be contended that the argument for expanding the definition of refugee would receive more attention once India acceded to the 1951 Convention.

Second, it is not true that India has to implement in totality the rights regime contained in the 1951 Convention. The Convention permits reservations to be made to the rights regime that it establishes, and several third world countries have made such reservations. Article 42(1) of the Convention provides that 'at the time of signature, ratification or accession, any State may make reservations to Articles of the Convention other than Articles 1, 3, 4, 16(1), 33, 36-46 inclusive'. This means that reservations are not permitted only to the principle of non-discrimination (Article 3), right to religion (Article 4), the right to access to courts (Article 16, para 1), and the principle of *non-refoulement* (Article 33). The protection in these respects is in any case (as we shall see later) offered by the

Constitution of India. With respect to all other rights embodied in the 1951 Convention reservations can be entered into. To put it in a different way, India's concerns relating to the right to employment, housing, and public relief can certainly be met through entering the appropriate reservations.

Third, while India does have genuine concerns about its national security interests, the 1951 Convention contains provisions that go some way in protecting them. Thus, for example, even the principle of *non-refoulement*, which is at the heart of the 1951 Convention and a cardinal principle of international refugee law, is not an absolute principle. Article 33, which contains the principle of *non-refoulement*, states:

The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

The security interests of member States are also safeguarded by what are called exclusion clauses (Article 1F) which *inter alia* deny the protection of the Convention to a person who 'has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee'.<sup>3</sup> Article 9 of the Convention also allows certain other provisional measures 'in time of war or other grave and exceptional circumstances', 'which it considers to be essential to national security'.<sup>4</sup> Further, every refugee, vide Article 2 of the Convention, is required to respect all the laws of the host State. Finally, in the present context, reference may be made to the UN Security Council resolution 1373 (adopted after September 11), which calls upon all member States to 'ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organisers or facilitators of terrorist acts, and that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists'.

Fourth, the 1951 Convention facilitates and legitimises the distinction between a 'refugee' and other categories of migrants. Thus,

the argument that India has porous borders can be turned around, for the Convention facilitates the identification and removal of persons who do not qualify as a 'refugee' under the 1951 Convention. Of course the passage of an immigration law would go further in clarifying matters with regard to the status and rights of all categories of migrants, legal or illegal.<sup>5</sup>

Fifth, the fear of being embarrassed by the UNHCR or international NGOs does not behove a country which prides itself, and rightly too, on its democratic traditions. In the past, the fear was partly a result of the Cold War that propelled Western-dominated agencies, both governmental and non-governmental, to be particularly critical of perceived allies of the former Soviet Union. While motivated criticisms cannot still be ruled out, greater policy transparency and access to refugees will make false propaganda difficult to sustain.

Sixth, while it is correct to say that India has a good track record in offering protection to refugees, it is not an unblemished one. There are reports of border push-backs, arbitrary deportations, and whimsical actions by the executive arm of the Government. It is also important in this respect to make a distinction between a regime of charity and a regime of rights. In a modern system of governance, only the latter allows refugees to live and reconstruct their lives in dignity.<sup>6</sup>

India should however still not accede to the 1951 convention. Despite the fact that most of the objections of the Government are not valid, it has been the writer's argument for quite sometime that India *should not accede* to the 1951 Convention at a time when the North is violating it in both letter and spirit. Instead, along with the other countries of South Asia (none of which are parties to the 1951 Convention), India should argue that their accession is conditional on the Western States rolling back the non-entree (no entry) regime they have established over the past two decades. The non-entree regime is constituted by a range of legal and administrative measures that include visa restrictions, carrier sanctions, interdictions, third safe-county rule, restrictive interpretations of the definition of 'refugee', withdrawal of social welfare benefits to asylum seekers, and widespread practices of

detention. The dismantling of the non-entree regime would also be in keeping with the principle of burden-sharing, which has arguably evolved as a principle of customary international law and requires that the responsibility of providing asylum be shared by all States.<sup>7</sup> At present, this is far from true, as third world countries, some of which are the poorest ones, host the predominant majority of refugees.

But while India should not become party to the 1951 Convention, there is no justification for the absence of a national law on the status of refugees. However, before recounting the reasons why India should have a national refugee law on its statute books, it is perhaps appropriate to first consider the present status of refugees in India.

**legal status of refugees in india** The legal status of refugees in India can be examined with reference to constraints imposed by international legal obligations, in particular the obligation to observe the principle of *non-refoulement*, and the Constitution and laws of the country.

the principle of *non-refoulement* Broadly speaking, the principle of *non-refoulement* prescribes that 'no refugee should be returned to any country where he or she is likely to face persecution or torture'.<sup>8</sup>

While India is not a party to the 1951 Convention, it is still obliged to observe the principle of *non-refoulement* as this is a part of customary international law.<sup>9</sup> In other words, it is binding on all States, irrespective of whether a State is or is not a party to the 1951 Convention or the 1967 Protocol. The obligation to observe the customary international-law principle of *non-refoulement* is strengthened by the fact that India is a signatory to the 1984 Convention against Torture (CAT), albeit it is yet to ratify it. The CAT articulates a wider legal basis for respecting the principle of *non-refoulement*. Article 3 of the CAT states:

1. No State Party shall expel, return ('refouler'), or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant, or mass violations of human rights.

Of course, it is a well-established rule in India that the Courts cannot enforce principles of customary international law if they are in conflict with Statutes.<sup>10</sup> Indian Courts have accepted and applied the doctrine of incorporation according to which customary international law rules are to be considered a part of the law of the land and enforced as such, provided that they are not inconsistent with Acts of Parliament.<sup>11</sup> In *Gramophone Co. of India v. Birendra Bahadur Pandey*, the Supreme Court observed:

The Comity of Nations requires that Rules of international law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. But when they do run into such conflict, the sovereignty and the integrity of the Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament. Comity of Nations or no, Municipal Law must prevail in case of conflict.<sup>12</sup>

This formulation compels a consideration of the laws that are applicable to aliens residing in the territory of India.

foreigners act applicable to aliens and refugees alike The word 'alien' is nowhere defined, though it appears in the Constitution of India (Article 22, Paragraph 3, and Entry 17, List I, Schedule 7), in Section 83 of the Indian Civil Procedure Code, and in Section 3(2)(b) of the Indian Citizenship Act of 1955, as well as in some other Statutes. Besides the Constitution of India, the following enactments

have relevance to the regulation of the entry and rights of aliens in India: the Foreigners Act of 1946, under which the Central Government is empowered to regulate the entry of aliens into India, their presence and departure there from; it defines a 'foreigner' as 'a person who is not a citizen of India'. The Registration Act of 1939, deals with the registration of foreigners entering, being present in, and departing from India. Besides these two principal enactments, there is the Passport (Entry into India) Act of 1920, and the Passport Act of 1967, dealing with the powers of the Government to impose conditions for issuing passports for entry into India, and the issue of passports and travel documents to regulate departure from India of its citizens and non-citizens to whom these are issued. For example, Tibetan refugees are issued travel documents to go abroad and return to India.

**rights of aliens** What rights do foreigners or aliens possess within the territory of India? The Supreme Court of India has taken the view that even a foreigner possesses rights, but it is confined to the right of life and liberty contained in Article 21 of the Indian Constitution. It states that 'no person can be deprived of his life or liberty except by process established by law'. In *NHRC v. State of Arunachal Pradesh and Union of India* (1996), discussed at length later, the Supreme Court observed:

We are a country governed by the Rule of Law. Our Constitution confers certain rights to every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law.

On the other hand, a foreigner does not have the right to move freely throughout and to reside and stay in any part of the territory of India as conferred under Articles 19(1)(d) and (e). Such a right is available only to citizens, and therefore not to refugees. The Supreme Court has also held that the Government's right to deport a foreigner is absolute:

The power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the

Constitution fettering this discretion ... the executive Government has unrestricted right to expel a foreigner.<sup>13</sup>

In so holding the Supreme Court repeated verbatim the judgement of the Supreme Court in *Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta*, where the Supreme Court had observed:

The Foreigners Act confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains ... [It] gives an unfettered right to the Union Government to expel.<sup>14</sup>

While till 1978, Article 21 of the Indian Constitution was construed narrowly as a mere guarantee against executive action unsupported by law, it is now clear that it imposes a limitation upon law-making as well. In *Mithun v. State of Panjab*, the Supreme Court itself, after citing certain decisions of the Court,<sup>15</sup> observed:

These decisions have expanded the scope of Article 21 in a significant way and it is now too late in the day to contend that it is for the legislature to prescribe the procedures and for the Court to follow it, that it is for the legislature to provide the punishment and for the courts to impose it ... the last word on the question of justice does not rest with the legislature. It is for the courts to decide whether the procedure prescribed by a law for depriving a person of his life or liberty is fair, just, and reasonable.<sup>16</sup>

In other words, while in 1955 the Court merely had to consider whether the decision to deport complied with the procedure laid down in the 1946 Foreigners Act, it had now to consider whether the same was fair, just, and reasonable. It should therefore have proceeded to test the validity of the Foreigners Act under Article 21. In the process, it would have had to inter alia consider whether any procedure that disregarded the principle of *non-refoulement* could be deemed as 'fair, just, and reasonable'. For the principle of harmonious interpretation requires that a Statute, in the absence of an

explicit provision to the contrary, be given an interpretation which does not lead to the violation of international obligations. In *Apparel Export Promotion Council v. AK. Chopra*, the Supreme Court observed:

This Court has in numerous cases emphasised that while discussing Constitutional requirements, courts and counsel must never forget the core principle embodied in the International Conventions and Instruments and so far as possible give effect to the principles contained in those international instruments. The Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law.<sup>17</sup>

That there is no explicit provision to the contrary is evident from the recent decision of the Gujarat High Court in *Ktaer Abbas Al Qutafi v. Union of India* (1998). In the judgement the single judge held that the principle of *non-refoulement* was 'encompassed in Article 21 of the Constitution, so long as the presence of refugees is not prejudicial to the law and order and security of India'. The judgement referred in this regard to Article 51 of the Constitution, which calls upon the State to 'foster respect for international law and treaty obligations in the dealing of organised people with one another'.

The principle of voluntary repatriation The view of the Gujarat High Court was similar in spirit to the affirmation of the Madras (now Chennai) High Court in an unreported decision (*P. Nedumaran and Dr S. Ramadoss v. The Union of India and the State of Tamil Nadu*, 1992). In this case the Madras High Court considered the question whether Sri Lankan Tamil refugees were being forcibly repatriated by the Indian Government or, to put it differently, being *refouled*. The significance of the decision—even though it was confined to considering a specific factual situation—lies in its stress on the voluntary character of repatriation.

Although the Court did not consider the question of the unfettered and unlimited right to deport under the 1946 Foreigners Act, it was only because of the plea of the Government that refugees were

not being repatriated against their will. Furthermore, the UNHCR had been formally allowed by the Government of India to ascertain the voluntary nature of the repatriation of Sri Lankan Tamil refugees at the point of departure. This made it extremely awkward for the Government to place reliance on the absolute and unfettered right to deport. To put it differently, both the Government and the Court in effect accepted that certain standards had to be met before refugees could be repatriated to their country of origin. Above all, where repatriation was undertaken, it had to meet the test of the voluntary nature of the act. Consequently, it would not be wrong to conclude that the Madras High Court accepted the principle of voluntary repatriation as the basic standard that had to be met with respect to refugees, despite the overall right of the State to deport.

deportation, the 1966 covenant and *audi alteram partem* India became party to the International Covenant on Civil and Political Rights (ICCPR), 1966 in 1979, though it is yet to pass domestic legislation in order to implement its obligations under the two instruments. The ICCPR codifies the rights of both citizens and aliens: Article 2(1) calls upon State Parties to ensure the rights of the Covenant to 'all individuals within its territory and subject to its jurisdiction'. It may be noted however that India has entered a reservation to Article 13 of ICCPR, which deals with the procedure to be observed before an alien can be expelled. Article 13 reads:

An alien lawfully in the territory of a State party to the present Covenant may be expelled from there only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

India's reservation is as follows:

With respect to Article 13 of the International Covenants on Civil and Political Rights, the Government of the Republic of India reserves its right to apply its law relating to foreigners.<sup>18</sup>



What is the meaning of this reservation today? It would appear that this reservation is today redundant to the extent that the *audi alteram partem* (to hear the other side) rule has been viewed by the Indian Supreme Court as an integral part of the guarantee that Article 21 of the Indian Constitution offers to citizens and aliens alike.

In *Louis De Raedt v. Union of India* (in which the Government's absolute and unfettered right to deport was upheld), the Supreme Court affirmed the individual's right to be heard. Albeit, it noted that 'so far as the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case ...'<sup>19</sup> In *Mohammed Sediq v. Union of India and others* the Delhi High Court made further observations with respect to the manner in which the rule of *audi alteram partem* has to be observed.<sup>20</sup> It first noted that the Supreme Court in *Maneka Gandhi v. Union of India* had enlarged the ambit of Article 21.<sup>21</sup> According to the Court:

The principle of reasonableness was held to be an essential element of equality emphasising that the procedure contemplated by Article 21 must answer to the test of reasonableness, in order to be in conformity with Article 14.<sup>22</sup>

Therefore, in its view, in case the procedure followed to deport was arbitrary, as was claimed in this case by an Afghan refugee, it would be in violation of Article 21. It was necessary, among other things that 'a reasonable opportunity of being heard' should be given to the person asked to leave the country.<sup>23</sup> But, following the Supreme Court, it went on to note that 'the rule of *audi alteram partem* is not cast in a rigid mould'.<sup>24</sup> In other words, it held that 'what opportunity may be regarded as reasonable would necessarily depend upon the practical necessities of the situation'.<sup>25</sup> It observed:

Where a person has no claim or right to stay in India, requirement of law will be deemed to have been met if the person is shown to have been apprised orally about the nature of the complaint and his explanation is sought orally and duly considered before forming an opinion that his activities are undesirable and prejudicial to the security of the State. In such like situation it is

not expected to afford a full-fledged hearing or to state in the notice the particulars or the nature of the activities or the information available on the record at the relevant time. There is no requirement of law that such a person, in such like circumstances be supplied with copies of the sensitive documents or the information. However, such information or documents must be shown to be available on the record at the relevant time. Disclosure of such information otherwise would be prejudicial to the security of the State and might otherwise frustrate the very purpose of inquiry. Only the competent authority has to form an opinion and has to satisfy itself, on the basis of the material about the undesirability of the activities and that such activities are prejudicial to the security of the State.<sup>26</sup>

refugees and courts: general In concluding this section on the legal status of aliens, including refugees, it is worth noting that the Courts in India have responded positively to the fate of the asylum seekers. They have stopped deportations and tried to delineate a regime of rights for them.<sup>27</sup> The Courts, when approached by the UNHCR, have mostly come to the rescue of asylum seekers and refugees. However, many cases of detention have not been brought to the notice of the UNHCR in the absence of a law defining the status of refugees.

**role of the national human rights commission (nhrc)** The NHRC was established through The Protection of Human Rights Act of 1993. The NHRC can inquire into a complaint of human rights violation either 'suo moto or on a petition presented to it by a victim or any person on his behalf'.<sup>28</sup> The NHRC (Procedure) Regulations provides the NHRC with 'its own team of investigation' and allows it 'in any given case (to) appoint an appropriate number of outsiders to be associated with the investigation either as investigators or Observers'. There have been several occasions when the NHRC has interceded on behalf of refugee groups within the country. Two may be mentioned.

chakma refugees in arunachal pradesh In 1995, the NHRC filed a public interest litigation on behalf of 65,000 Chakma refugees settled in Arunachal Pradesh (AP) in India since 1965 and successfully

sought the intervention of the Supreme Court of India in order to safeguard their life and freedom. The facts of the case as summarised by the Supreme Court were as follows:

A large number of Chakmas from erstwhile East Pakistan (now Bangladesh) were displaced by the Kaptai Hydel Power Project in 1964. They had taken shelter in Assam and Tripura. Most of them were settled in these States and became Indian citizens in due course of time. Since a large number of refugees had taken shelter in Assam, the State Government had expressed its inability to rehabilitate all of them and requested assistance in this regard from certain other States. Thereafter, in consultation with the erstwhile NEFA (North-East Frontier Agency, now Arunachal Pradesh) administration, about 4,012 Chakmas were settled in parts of NEFA. They were also allotted some land in consultation with local tribals. The Government of India had also sanctioned rehabilitation assistance of Rs 4,200 per family. The present population of Chakmas in Arunachal Pradesh is estimated to be around 65,000 ... In recent years, relations between the citizens of Arunachal Pradesh and the Chakmas have deteriorated, and the latter have complained that they are being subjected to repressive measures with a view to forcibly expelling them from the State.

On 29 October 1995, the NHRC recorded a prima facie conclusion that officials of the State Government of AP were acting in co-ordination with the AU Arunachal Pradesh Students Union (AAPSU), which was leading an agitation against the Chakmas, with a view to expelling the Chakmas from the State of AP. The NHRC stated that since it 'had doubts as to whether its own efforts would be sufficient to sustain the Chakmas in their own habitat, it had decided to approach this Court to seek appropriate relief'. On 2 November 1995, the Supreme Court issued an interim order directing the State of AP 'to ensure that the Chakmas situated in its territory are not ousted by any coercive action, not in accordance with law'.

The Court in its judgement noted that 'the Chakmas have been residing in Arunachal Pradesh for more than three decades, having developed close social, religious, and economic ties. To uproot them

at this stage would be both impracticable and inhuman'. It also noted that the Union Government had also agreed to grant citizenship to them, although this process was being obstructed. Its observations thereafter bring out the crucial role that the NHRC played:

We are unable to accept the contention of the first respondent (i.e., the State of AP) that no threat exists to the life and liberty of the Chakmas guaranteed by Article 21 of the Constitution, and that it has taken adequate steps to ensure the protection of the Chakmas. After handling the present matter for more than a year, the NHRC recorded a prima facie finding that the service of quit notices and their admitted enforcement appeared to be supported by the officers of the first respondent. The NHRC further held that the first respondent had, on the one hand, delayed the disposal of the matter by not furnishing the required response and had, on the other hand, sought to enforce the eviction of the Chakmas through its agencies. It is to be noted that, at no time, has the first respondent sought to condemn the activities of the AAPSU ... It was reported that the AAPSU had started enforcing economic blockades on the refugee camps, which adversely affected the supply of rations, medical and essential facilities, etc., to the Chakmas. Of course the State Government has denied the allegation, but the independent inquiry of the NHRC shows otherwise.

It then went on to conclude:

It is, therefore, clear that there exists a clear and present danger to the lives and personal liberty of the Chakmas. In *Louis De Raedt v. Union of India* (1991, 3 SCC 554) ... this court held that foreigners are entitled to the protection of Article 21 of the Constitution ... We are a country governed by the Rule of Law. Our Constitution confers certain rights to every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons, e.g., the

AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health, and wellbeing of Chakmas residing in the State without being inhibited by local politics. Besides, by refusing to forward their applications, the Chakmas are denied rights, Constitutional and statutory, to be considered for being registered as citizens of India.

chakma refugees intripura In another instance, on receiving a complaint, the NHRC sent a team to ascertain the situation of Chakma refugees in Tripura. The report it submitted inter alia noted 'the shortage of water, inadequacy of accommodation, and woefully inadequate medical facilities in the camps. The report also pointed out that the scale of ration was meagre and its supply was often suspended. During the visit, the team found that many of the tube wells were out of order and that the inmates of the camps were bringing water from far-off places. The camps were also unclean and bore signs of neglect. The report noted that refugee children suffered from malnutrition, water-borne diseases, and malaria, while there was no visible effort to improve their living conditions. It also outlined various other problems faced by the refugees' (NHRC, 1997).

Besides the intervention in the case of the two groups of Chakma refugees, the NHRC has also concerned itself with the fate of Sri Lankan Tamil refugees and their condition in the camps. The NHRC is also presently studying a model national legislation on refugees drafted by an Eminent Persons Group headed by Justice P.N. Bhagwati. It has also asked the opinion of experts in the field.

**unhcr office in india and the refugees** The UNHCR has a tenuous legal status in India. It operates under the umbrella of

the United Nations Development Programme (UNDP). On the other hand, it entered into a MoU with the Government of India in July 1992 to open an office in Chennai to verify the voluntary nature of the repatriations of Sri Lankan Tamil refugees.

The absence of formal accreditation of UNHCR imposes many constraints on its working in the country. Thus, the UNHCR cannot easily get other UN agencies to support and lobby for refugee rights or collaborate with the UNHCR in meeting the basic needs of food, shelter, schooling for children, health care, etc., for mandate refugees'.<sup>29</sup> The UNHCR is also denied access to refugee camps (including in Chennai), making it difficult for it to verify conditions and take up the matter of their welfare with the concerned authorities. Ever since India became a member of the Executive Committee of the UNHCR in 1995, relations between the UNHCR and the Government of India have improved. Albeit, the Government continues to be extremely sensitive to any attempt by the UNHCR to sharply assert the rights of refugees or to call for the passage of national legislation or accession to the 1951 Convention. To an extent this is understandable, for the matter is clearly within the sovereign discretion of the State. But given the fact that what is being 'lobbied' for is a humanitarian regime, whose core principles India is committed to respecting, the sharp reactions are often difficult to comprehend. Perhaps the extent of what may be termed *the globalisation of human rights obligations* has yet to be realised in government circles.

What is the 'mandate' of the UNHCR in India? The UNHCR has essentially been permitted by the Government to be concerned with the status and welfare of refugees coming from outside the South Asian region. Afghan refugees constitute a predominant majority of those whom the UNHCR has recognised as refugees. The number of Afghan refugees recognised and registered with the UNHCR in New Delhi has fluctuated over the years. The numbers peaked in 1993 when nearly 26,000 Afghan refugees were recognised and registered. Today, the number is around 15,000. The UNHCR admits that over the past two decades, Afghan asylum seekers have been freely admitted to India and allowed to remain in the country once recognised as refugees by UNHCR. But in many other respects, it adds, the situation of Afghans in India has been problematic:

Afghan refugees have suffered from a precarious legal status and have not been accorded the formal right to work or establish businesses in India. Neither have the Indian authorities encouraged the Afghans to integrate or become naturalised citizens, although a significant proportion of them (currently around 65 per cent) are Hindus and Sikhs with historical links to the country where they have sought asylum.

Interestingly, an UNHCR evaluation reports also notes the problematic role of the organisation in the provision of assistance and protection to Afghan refugees.

Throughout the 1980s, the refugees received a monthly subsistence allowance from the UNHCR. But from 1992 onwards ... the majority of Afghans had their subsistence allowances terminated. In place of the allowance, many received a one-time lump sum grant ... This initiative was based upon the belief that ... they had the capacity to become self-reliant. It was also intended to curtail the spiralling cost of the UNHCRs' New Delhi programme ... While this new approach attained a number of its short-term objectives, events in India during the past two or three years have raised some important questions with regard to its sustainability.

According to the NGO South Asia Human Rights Documentation Centre (SAHRDAC), 'the wholesale cancellation of ... allowances' by the UNHCR was 'conducted in an arbitrary and insensitive fashion, and impoverished thousands of Afghan refugee families, adversely affecting their standard of living and driving many of them into debt'.<sup>30</sup> In sum, the UNHCR itself needs to reconsider its policies towards the grant of assistance to refugees and more generally its protection strategy.

**the need for a national law on refugees** But more urgent from the perspective of refugee protection is the need for a national law on the status of refugees, as most refugees in the country fall outside the 'mandate' of the UNHCR. Earlier in this essay, the argument has been made that India should not ratify the 1951

Convention. But this did not, at the same time, relieve it of its responsibilities to establish a humane and rights-based regime for dealing with asylum seekers and refugees. However, a number of arguments have been advanced against the adoption of a national legislation. Before spelling out the arguments in favour of passing a national law on the status of refugees, let us see what these objections are.

**factors that explain the absence of national legislation** The following factors may be said to explain the absence of a national legislation on the status of refugees.

First, the Government feels that in lieu of the fact that it is willing to host refugees and grant some sort of status to refugees within the country, there is no need for passing national legislation on the subject. It also points to the fact that for refugees coming from outside the South Asian region, it respects the grant of refugee status by UNHCR.

Second, the Government is apprehensive about passing a national legislation as it is not clear about the consequences of doing so. It is particularly concerned about porous borders and the fact that the national legislation could be used by terrorists and criminal elements to legally stay on in this country.

Third, a law on refugees is not a priority in view of the range of crucial problems that the Parliament has to address in a vast and poor country such as India.

Fourth, there is the cynical fact that the passage of national legislation will allow the Courts to intervene regularly to protect the interests of refugees, thereby depriving the State of a foreign-policy tool. At present, while the Courts have been helpful, their role is limited by the absence of a national law that explicitly gives them jurisdiction in the matter.

Fifth, there is the absence of knowledge about the legal points involved. Therefore, many of the apprehensions concerning accession to the 1951 Convention also play themselves out with respect to the passage of national legislation.

Sixth, there is the worry about the financial costs involved in hosting refugees, and the feeling that a national legislation would tie up the hands of the Government while dealing with them.

reasons in favour of passing a legislation

(a) A rights-based and not a charity-based approach: The fact that India deals with refugees in an ad hoc manner means there is the absence of a rights-based regime. The rights of asylum seekers and refugees are not spelt out anywhere. While it is true that the same rights are available to them as to aliens in general, the laws dealing with aliens do not take cognisance of the existential realities confronting a refugee. The Courts have been helpful in this regard, but this is not enough. As Justice Varma, the former Chief Justice of the Supreme Court, has pointed out, the helpful attitude of the Indian Courts does not occlude the need for establishing a firm legal framework for the protection of refugees. In his view, 'the attempt to fill the void by judicial creativity can only be a temporary phase. Legislation alone will provide a permanent solution'.<sup>31</sup> Thus, for example, even when some form of refugee status is granted, there is no guarantee that the resident visas will be reissued by the Foreigners Regional Registration Office (FRRO),<sup>32</sup> or, that refugees will have access to minimal assistance and other rights. In short, it is overlooked that 'the refugee is the representative of the non-representable, and he or she has no state or law, no nation or party to put forward his or her claims'.<sup>33</sup> In the circumstances, the language of the law alone offers the refugee some protection. The financial costs that are involved are not substantial, seen from a national perspective. An annual expenditure of around Rs25 to 50 crore is hardly an immense sum for a country like India.

(b) To facilitate distinction between migrants and refugees: One of India's concerns is the arrival of illegal migrants from neighbouring countries. A national law dealing with the status of refugees will allow the Government to clearly distinguish between an illegal migrant and a refugee. To put it differently, it will facilitate the identification of illegal migrants posing as refugees.

(c) To explicitly provide for security concerns: India could also explicitly include provisions which protect its security concerns in the national law. These could go beyond the provisions of the 1951 Convention.

(d) To avoid diplomatic problems: A law on the status of refugees will help India avoid certain diplomatic problems and difficulties. Thus, for example, when India gave refuge to the

Karmapa Lama in the year 2000, it was alleged that it amounted to interference in the internal affairs of China. In the presence of a law obliging the Government to give asylum this argument would cut little ice. Indeed, the law could include the provision from the 1969 OAU Convention on the Status of Refugees which states in Article II(2): 'The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.'

(e) To prevent *refoulement*. The absence of refugee specific legislation has meant that arbitrary action goes unnoticed. For example, border and coast guards turn back asylum seekers, as they are unaware of the principle of *non-refoulement*. As one former Director General of the Border Security Force has noted: 'If caught while entering illegally, the authorities may return the refugee across the border, sometimes even without ascertaining the relevant grounds of persecution in the country of origin, though this is not in strict conformity with the internationally acknowledged principle of *non-refoulement*'.<sup>34</sup> Having an appropriate law would enable India to abide by its international obligation of *non-refoulement*.

(f) To prevent unlawful detention of asylum seekers: The presence of a law would also clarify to the border and immigration officials, as also to national law-enforcement agencies, that (undocumented) asylum seekers need to be treated differently from migrants. Otherwise, it may mean a long period of unavoidable detention of the asylum seekers. Indeed, asylum seekers have also faced long periods of detention, as their legal status has not been clear.<sup>36</sup> First, a national legislation would explicitly provide that the fact that an asylum seeker enters the territory of India without proper travel documents would not entail penalties on account of illegal entry or presence.<sup>37</sup> Second, it would incorporate the widespread consensus that detention should be viewed as an exceptional measure. In 1986, the Executive Committee of the UNHCR adopted Conclusion No. 44, which clarifies the situations in which detention may be deemed appropriate: detention may be resorted to only on grounds prescribed by law to verify identity, to determine the elements on which the claim to refugee status or asylum is based, to deal with cases where refugees or asylum seekers have destroyed

their travel and/ or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum, or to protect national security or public order. It may be added that international human-rights law goes much further in offering protection against arbitrary arrest and detention. Under human rights law, as Goodwin-Gill has pointed out, 'arbitrary embraces not only what is illegal, but also what is unjust'.<sup>38</sup> In the case of mass influx of refugees, a key question is whether keeping refugees in closed or restricted camp conditions amounts to detention. While much would appear to depend upon the circumstances of the particular case, and the nature of the restrictions which have been imposed on the freedom of movement of refugees, the keeping of refugees in camps should in general be avoided, other than for reasons of national security.<sup>39</sup>

(g) To provide for uniform treatment between refugee groups: The absence of a national legislation offering guidance in the matter of treatment of refugees has meant discrimination in the treatment of different refugee groups present in the country. Thus, the Tibetan refugees have received much better treatment than, say, the Chakma or Sri Lankan Tamil refugees. The dismal treatment of the (now repatriated) Chakma refugees, we have seen, was confirmed by the NHRC in May 1996 when it sent an investigation team to Tripura to report on the conditions in the camps. The national law could include in this regard a simple provision that prohibits discrimination between refugees on the grounds of race, nationality, or membership of a particular social group or political opinion. This is only in keeping with Article 14 of the Constitution of India.

(h) To address the special problems of refugee women and children: There is often complete insensitivity on part of the authorities towards the special concerns of refugee women and children. The UNHCR has in this regard issued guidelines which focus on how to best protect and assist refugee women. These provisions need to be integrated into the official refugee policy, and in an appropriate form, in the proposed national law dealing with the status and rights of refugees. There exist few surveys of the problem of child refugees in the country. Refugee children are confronted with a range of dis-

tinct problems, especially in relation to the registration of their birth, the security of their person, and education. India is a party to the 1989 Convention on the Rights of the Child (*CRC*), which contains a special provision on the refugee child (Article 22). Yet there is little done at the level of implementation with particular reference to the refugee child. There are a number of measures which need to be taken in order to deal with the special problems of children. It should be, for instance, mandatory to register the birth of refugee children and provide the parents with legally validated birth certificates. It is also crucial to remove threats to the security of person of the child, and to guarantee to children the right to education, adequate food, and the highest attainable standard of health.

(z) To make provision for cessation of refugee status: The law could provide for the circumstances under which refugee status comes to an end. The 1951 Convention include what are called cessation clauses, identifying the situations in which a person ceases to be a refugee. In such cases, protection could be withdrawn from the person. In the absence of a national law on the subject, there is no guideline as to when refugee status comes to an end. With the result that protection is often offered when it is not required. The national law could also include, as the 1969 OAU Convention on the Status of Refugees does, a provision with regard to the solution of voluntary repatriation. It would facilitate the return of refugees to their country of origin. In some cases, such a national legislation would facilitate the process of naturalisation where that is left as the only and durable human solution, to enable the refugees to fully participate in local society and contribute to the community, and not become stateless people.

(j) To spell out duties of refugees: The duties of refugees towards the host country can be clearly spelt out. The principal duty is to respect the laws of the host country and not to use its territory to carry out any criminal or subversive activities.

(k) To achieve consistency with its EXCOM membership and to strengthen its role in the EXCOM: The passage of a national law on refugees will also show that India takes its membership of the EXCOM of the UNHCR seriously, and wants to strengthen its

role there. To remain a member of the EXCOM without either acceding to the 1951 Convention or passing a national legislation shows an opportunistic attitude towards UN institutions that does the image of the country little good in the international community.

(/) To strengthen claims for seeking permanent membership to the UN Security Council: While issues relating to refugees may not be important in India, they rank along with disarmament and trade concerns so far as the Western countries are concerned. These powerful countries would expect that India, which has legitimate aspirations to being a permanent member of the UN Security Council, does have on its Statutes legislation which embodies minimum human rights standards regarding the treatment of nationals and alien groups.

**conclusions** From time immemorial, the maturity of a people and a State are reflected, among other things, in how they treat aliens, in particular aliens in distress. It is no different today. Of course, in modern times the obligations of a State towards aliens in distress, as with citizens, have come to be expressed in the language of rights. The use of the language of rights allows those given asylum to rebuild their shattered lives in legal security and dignity. For in modern societies, a void in the legal system is not filled by an ethics of care and responsibility. Instead, the absence of law is seen as a signal to the omnipresent State agencies that a particular class of persons exists only at the mercy of the State. One can grant, in this respect, that the State has to be alert relating to the legitimate concerns about national security. But these can be adequately taken care of by a carefully drafted national law so that asylum and shelter is not abused. The State has also to justify, understandably so in a poor country, the financial costs that are incurred in hosting refugees at a time when many of its own citizens are deprived of the basic necessities of life. But any objective view would confirm that the resources expended on refugees in this country are meagre; a visit to any refugee camp would confirm this view.

In sum, it has to be understood that the call for humane treatment of refugees does not mean that the special existential or

security concerns of the Indian people have to be ignored. The case for a humane and rights-based treatment of refugees will sit well with a democratic and responsible order. A rights-based approach means that these concerns are given weight within a framework that recognises *the distinctive essence of humanitarian problems* and gives legal recognition to the fact that every person, alien or national, is of equal moral worth, and worthy of treatment that does not violate his or her dignity.

### notes and references

1. There are 140 States which are today members of the 1951 Convention or the 1967 Protocol.
2. Article 35 entitled 'Co-operation of the national authorities with the United Nations' states: (1) The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention. (2) In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
  - (a) the condition of refugees,
  - (b) the implementation of this Convention, and
  - (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.
3. Article 1F of the 1951 Convention states: The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
  - (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
  - (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.
4. Article 9 entitled 'provisional measures' reads:

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisional measures which it considers to be essential to national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

5. See in this regard, 'Outside the bounds of citizenship: the status of aliens, illegal migrants and refugees in India' (forthcoming).

6. I return to this point in the context of arguments in favour of passing a national law on the status of refugees.

7. On the principle of burden sharing see B.S. Chimni, *International Refugee Law: A Reader*. Sage Publications: New Delhi, 2000, pp. 146-52.

8. Guy Goodwin-Gill, *The Refugee in International Law*. Clarendon Press: Oxford, 1997, second edition, p. 117.

9. *Ibid.*, p. 167. For a principle or norm to become a part of customary international law two elements must be present: the material element showing a uniformity and consistency of practice, and the psychological element that a particular practice is required to have by the prevailing international law. That is to say, there has to be a sense of obeying a legal obligation, as against mere courtesy or acting on moral grounds. See Ian Brownlie, *Principles of Public International Law*. Clarendon Press: Oxford, 1990, fourth edition, pp. 5ff.

10. P. Chandrasekhar Rao, *The Indian Constitution and International Law*. Taxman: Delhi, 1993, p. 179.

11. Brownlie, *op. cit.*, p. 43.

12. A.L.R. 1984, S.C. 667, p. 671. For a contrary opinion see Rao, *op. cit.* According to him, 'since the (Indian) Constitution and other laws do not stipulate (as in some countries) that international law is *per se* part of the law of the land, there is no valid reason as to why customary international law should be deemed to be part of Indian law or be placed on a favoured footing than conventional international law', p. 185. I prefer Professor Brownlie's view that 'when a municipal court applies a rule of international law because it is appropriate, it is pointless to ask if the rule applied has been "transformed", except in so far as "transformation" describes a special process required by a particular municipal system before certain organs are permitted, or are willing, to apply rules of international law', Brownlie, *op. cit.*, p. 57.

13. *Louis de Raedt v. Union of India*, A.L.R. 1991, SC 1886, p. 1890. For interested readers I reproduce below paragraph (1) of Section 3 of the 1946 Foreigners Act which defines the overall powers of the Central Government:

Power to make orders: (1) The Central Government may by order make provisions either generally or with respect to all foreigners, or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India, or their departure therefrom or their presence or continued presence therein.

14. A.L.R. 1955, SC 367, pp. 374-75.

15. *Maneka Gandhi v. Union of India*, 1978, 2 SCR 621; *Sunil Batra v. Delhi Administration*, 1979, 1 SCR 392; and *Bachan Singh v. State of Punjab*, 1980, 2 SCC 684. On the interpretation of Article 21, see in general V.N. Shukla, *Constitution of India*, ninth edn. Eastern Book Company: Lucknow, 1994, pp. 164-79.

16. 1983, 2 SCR 690, pp. 698-99.

17. 1999 (1) *Scale* (vol. 1, no. 3), 18-24 January, para 27.

18. For the text of India's Declaration of Accession, see *Indian Journal of International Law*, vol. 20, 1980, pp. 118-19.

19. A.L.R. 1991, SC 1886, p. 1890.

20. 1998 (47) DRJ (DB), p. 74.

21. A.L.R. 1978, SC 597.

22. 1998 (47) DRJ (DB), p. 77.

23. *Ibid.*, p. 77.

24. *Ibid.*

25. *Ibid.*, p. 79.

26. *Ibid.*

27. Supreme Court of India, *Malavika Karlekar v. Union of India*, Writ Petition (Criminal) No. 583, 25.9.92. This case concerned Burmese refugees. The brief decision of the Supreme Court stated:

It is submitted by counsel that 21 persons ... are likely to be deported from Andaman Islands to Burma tomorrow. We are informed that their applications for refugee status are pending determination. The authorities may check whether these statements are true and that the refugee status claimed by them is pending determination and a prima facie case is made out for the grant of refugee status and further that these individuals pose no danger or threat to the security of the country, they may not be deported till question of their status can be determined. See also the following unreported cases: *Shri Khy-Htoon and Others v. The State of Manipur*, Guwahati High Court, Civil Rule No. 515 of 1990, Order dated 11 September 1990; *Bogyi v. Union of India*, Guwahati High Court, Civil Rule No. 1847/89, Order dated 17 November 1989; and *Zothansangpui v. The State of Manipur*, Guwahati High Court, Civil Rule No. 981 of 1989, Order dated 20 September 1989. In the first case eight Burmese refugees



under detention in Manipur Central Jail, Imphal, invoked the writ jurisdiction of the court praying that the state of Manipur be directed to produce the petitioners before the Office of the UNHCR to enable them to seek refugee status. The Guwahati High Court directed that they be released on interim bail for a period of three months on furnishing personal bonds of Rs 5,000 (about US\$ 200) in order that they could go to Delhi to seek refugee status. The same decision was given in the second case where the Gauhati High Court added that 'if he is successful in obtaining necessary permission to qualify as a refugee, he shall be released forthwith and need not serve out the sentence, if any'. In the final case the petitioner Zothansangpui had already served out an 195-day sentence for illegal entry. She was allowed to travel to Delhi and seek asylum after she completed her sentence.

28. Section 12(a), NHRC Act, 1993.

29. Naoko Obi and Jeff Crisp, 'Evaluation of UNHCRs' Policy on Refugees in Urban Areas: A Case Study Review of New Delhi', UNHCR, Geneva, November 2000.

30. *Abandoned and Betrayed: Afghan Refugees Under UNHCR Protection in New Delhi*, SAHRDAC, New Delhi, November 1999, p. 10.

31. J.S.Verma, Inaugural address delivered at the Conference of Refugees in the SAARC Region: 'Building a Legal Framework', 2 May 1997, in Chimni, op. cit., pp. 491-93 and p. 493.

32.T. Ananthachari, 'Refugees in India: Legal Framework, Law Enforcement and Security', *SIL Yearbook of International Humanitarian and Refugee Law*, Vol. I, 2001, pp. 118-44.

33. Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century*. Hart Publishing: Oxford, 2000, p. 143.

34. Ananthachari, op. cit., p. 132.

35. See in this regard Ibid.

36. Ibid, pp. 139ff.

37. See Article 31 of the 1951 Convention entitled 'Refugees unlawfully in the Country of Refuge'. It reads: (1) The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

(2) The Contracting States shall not apply to the movements of such refugee restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting

States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

38. Goodwin-Gill, op. cit., p. 248.

39. See generally Jeff Crisp and Karen Jacobsen, 'Refugee camps reconsidered', *Forced Migration Review*, No. 3, 1998, pp. 27-30; Richard Black 'Putting refugees in camps', *Forced Migration Review*, No. 2, 1998, pp. 4-7; and 'Refugee camps not really reconsidered: A Reply to Crisp and Jacobsen', *Forced Migration Review*, No. 3, 1998, p. 31.

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## index

- Abducted Persons (Recovery and Restoration) Act of 1949, 84, 159, 171, 173, 357
- Abdullah, Abdul Hasnat, 275
- Act III of 1924, 87
- Act XXII of 1860, 251
- Act XXXIII of 1857, 78
- Act of 1914, 95
- Adigal, Ilango, 325
- Administration of Evacuee Property Bill, 159
- Advani, L.K., 268, 345
- Afghan refugees, 37, 99
- Afghanistan, women and children refugees from, 373-76
- Agricultural refugee families, rehabilitation in rural areas, 127-28
- Ahat* case, 347
- Ahmadi, A.H., 262
- Ahmed, Ajaizuddin, 140
- Aid India Consortium, Paris, 231
- Akhil Bharat Nari Shiksha Parishad, 165
- Albuquerque, Alfonso de, 71
- Alexander, Horace, 176
- Aliens,
  - acts of empire and, 89-97
  - colonial response, 76-83
  - foreigners, refugees and, 97-100
  - in colonial world, 69-100
  - Indians and, 83-89
  - notions of, 70-76
  - refugees and, 449-50
  - rights of, 450-52
  - world of differences and disorder and, 76-83
- Aliens Restriction Acts of 1914 and 1919, 84
- All Arunachal Pradesh Students Union (AAPSU), 50, 256, 259-62, 264-67, 269, 456-58
- All Burma Students Democratic Front (ABSDF), 197, 335, 337
- All India Anna Dravida Munnetra Kazhagam (AIADMK), 329
- All India Save the Children Committee, 165
- All India Women's Conference, 154, 165, 358
- Ambar, Malik, 71
- American Emergency Committee for Tibetan Refugees (AECTR), 290-91, 295
- Amnesty International, 266
- Angelou, Maya, 349
- Ani Pachen, 367
- Apang, Gegong, 256, 259, 265, 268-69
- Apparel Export Promotion Council v. A.K. Chopra, 452
- Appeal Movement Co-ordination Council (AMCC), 377
- Arendt, Hannah, 30, 55
- Arunachal Pradesh
  - Chakma refugees, in, 455-58
  - Chakmas and Hajongs refugees in, 255-70
- Arunachal Pradesh Indigenous Tribals Rights (Protection) Organisation (APITROJ), 267
- Arya Pradeshak Pratinidhi Sabha, 165
- Asia Pacific Consultations Refugees and Displaced Persons, 433
- Asia Watch, 337, 341, 371
- Asia n-African Legal Consultative Committee, 433
- Asian-African Legal Consultative Organisation (AALCO), 433
- Assam, refugees from East Pakistan in, 220-22
- Assam Accord, 334
- Assam Forest Regulation of 1891, 256
- Assam Frontier Tract Regulation of 1880, 256
- Asylum seekers,
  - UNHCR and, 412-14
  - unlawful detention of, 463
- Atkinson, 90
- Audi alteram partem* rule, 453-54
- Aung Kyaw, 197-98, 200
- Aung Sang, 196
- Aung Sang Suu Kyi, 196-97, 202
- Awami League, 211-12, 221, 275
- Bagchi, J.K., 222
- Bagchi, Jasodhara, 363, 380
- Baghaichari massacre (1988), 271
- Balasingham, 328-29
- Bandyopadhyay, Hiranmoy, 114-15, 129
- Bandyopadhyay, Sandip, 363
- Banerjee, Paula, 69
- Banerjee, R.N., 94
- Banerji, P.K., 218
- Bangkok Principles 1966, 185
- Bangladesh Security Forces, 271
- Banished from Paradise*, 344
- Banjara, 77
- Barujibi* scheme, 126
- Basu, Abala, 362
- Basu, Hemanta Kumar, 113
- Bayly, Chris, 77
- Bedi, Frieda, 383
- Bengal Eastern Frontier Regulation of 1873, 256
- Bengali little nationalism, 113-14
- Bernier, 71
- Ill'zharuah, M.I', 221
- Illtagal, Ilalirali, I.Wi
- Ilhagwali, I.N., I.Hi, I., I.I
- Bharat Sevashram, 215, 217
- Bhargava, Thakur Das, 160-61
- Bharucha, Naushir, 285
- Bhasani, Maulana, 221
- Bhasin, Kamla, 357
- Bhaskaran, 349
- Bhaumik, Subir, 24, 182
- Bhonsle, J.K., 360
- Bhutan, refugees from, 377
- Bhutan-India Treaty of 1949, 377
- Black Hawk Down*, 31
- Blair, Tony, 32
- Bose, Sikha, 342
- Bose, Subhas Chandra, 360
- Boundary Commission, 253
- Bourdieu, Pierre, 61
- British Nationality and the Status of Aliens Act of 1914, 84
- Buck, Pearl S., 383
- Burma,
  - Chin dilemma, 204-8
  - Indian population in, 187-88
  - Indian settlers out immigration from, 187-91
  - pro-democracy movement in and influx from, 196-204
- Burma bazaar, 191-92
- Burma Displaced Persons Association, 191
- Burma Indian refugees, 94
- Burmese refugees,
  - camps, 198-200
  - in India, 201
  - UNHCR recognition, 200-201
- Burmese Women's Association, 377
- Butalia, Urvashi, 359
- Byapari; Manoranjan, 139
- CARE, 215, 217, 295
- CEDAW, 384-85
- CRPF Act, 294
- Canadian Council for Refugees (CCR), 376
- Caritas, 217
- Carne, Olaf, 383
- Cartaza* system, 73

- Catholic Missionary Society, 141  
 Catholic Relief, 295  
 Central Relief Committee, 305  
 Central Reserve Police Force, 294  
 Central Tibetan Relief Committee (CTRC), 298, 305-6  
 Central Tibetan Schools Administration (CTSA), 307  
 Chakma, Lalit Mohan, 253  
 Chakma, Rabindralal, 253  
 Chakma, Sneha Kumar, 253  
 Chakma, U., 261  
 Chakma-Hajong refugees settlements, in NEFA, 258  
 Chakma refugees, 35-36, 50, 455-58, 464  
   in Arunachal Pradesh, 455-58  
   in Tripura, 458  
   women and children among, 365-66  
 Chakrabarti, Prafulla K., 108-10  
 Chakrabarti, Saroj, 114  
 Chakraborty, Amarprosad, 361  
 Chaliha, B.P., 257  
 Chamberlain, Neville, 83  
 Champhai Burmese refugees camp, 198-202  
 Chandrasana, 332  
 Chatterjee, Bijoyal, 113  
 Chatterjee, Joya, 26, 109-10, 115  
 Chatterjee, Nilanjana, 109, 154  
 Chattopadhyay, S.S., 218  
 Chaudhury, Mahendra Mohan, 213, 221  
 Chaudhury, Moinul Haq, 220  
 Chimni, B.S., 24, 156, 443  
 Chin Hills Regulation of 1876, 256  
 Chin National Army (CAN), 207  
 Chin National Front (CNF), 205-7  
 Chin refugee, 204-8  
 Chittagong Hill Tracts (CHT), as excluded area, 254-55  
   colonial history, 251-52  
   land and people, 249-51  
   partition and after, 252-54  
   refugees influx from, building trust among, 276-78  
   life of, 272-74  
   repatriation process, 275-76  
   resettled to be unsettled, 255-72  
   state government and local people policy of exclusion, 256-70  
   women and children refugees from, 365-66  
 Church World Service, 295  
 Cities of refugee, 28  
 Citizenship Act of 1955, 51, 56, 98, 412, 420  
 Citizenship Amendment Act 1986, 334  
 Citizenship for stateless Persons Act, 344  
*CityExpress*, 332  
 Civil Disobedience Movement, 91  
 Colony Camps, 123  
 Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRCAP), 265-66, 268-69  
 Committee on the Rights of the Child, 431  
 Common Organisation of Indigenous People, 260  
 Communist Party of India (CPI), 198, 202  
 Constitution of India, 7th Schedule, 267  
   Article 14, 49, 404, 430, 464  
   Article 19, 45, 54-55  
   Article 21, 45-46, 49, 51, 54, 261, 404, 406, 450-52, 454, 457  
   Article 22, 449, 465  
   Article 25, 49  
   Article 33, 429  
   Article 51, 47-48, 184, 404, 452  
   Article 73, 403  
   Article 253, 403  
 Convention against Torture (CAT), 448  
 Convention on Refugees (1951), *see*, UN Convention on the Status of Refugees (1957)  
 Convention on Rights of the Child (CRC), 371, 382, 385, 465  
 Convict society, 59  
 Conway, John S., 295  
 Council on American-Islamic Relations, 32  
 Curzon, 383  
 Custodian of Enemy Property, 159  
 DAV College, 154  
 Dalai Lama, 281-315  
   asylum in India, 283-87, 337, 368-69  
 Damodar Valley Corporation (DVC), 123  
 Dandakaranya Development Authority (DDAJ), 137-38  
 Dandakaranya rehabilitation experiment, failure of, 137-42  
 Das, Samir Kumar, 106  
 Dasgupta, Abhijit, 107, 115  
 Dayal, Rajeshwar, 399  
 Defence of India Act, 93, 96  
 Defence of India Rules, 93  
 Derrida, Jacques, 32  
 Devoe, Pamela A., 341  
 Dewan, Kamini Mohan, 253  
 Dhebar, U.N., 286  
 Differences and disorder world, acts of Empire and, 89-97  
   colonial response to, 76-83  
   foreigners, refugees and aliens in, 97-100  
   Indian and aliens in, 83-89  
   notion of, 70-76  
 Directly Principles of State Policy, 49  
 Displaced person, definition of, 106-7  
 Displaced Persons (Claims) Act 1950, 159, 170-73  
 Displaced Persons (Compensation and Rehabilitation) Act 1954, 160, 163  
 Displaced Persons (Institution of Suits) Bill, 159  
 Dixit, J.N., 303  
 Donoughmore Commission, 89  
 Dorji, Lama Ugyen Thinley, 303  
 Dostoyevsky, 39  
 Douglas, William O., 295  
 Dravida Munnetra Kazhagam (DMK), 335  
 Durand Line, 85  
 EPRLF, 346  
 East Pakistan, genesis of crisis, 211-12  
   genocide of 1971 and influx of refugees, 211-42  
   refugees flow from, 212-24  
   evaluation of influx of, 238-42  
   government of India role in, 224-34  
   in Assam, 220-22  
   in Meghalaya, 222-24  
   in Tripura, 218-20  
   in West Bengal, 214-18  
   repatriation of, 216-17  
   UNHCR role, 234-38  
   women and children refugees from, 360-63  
 Emergency Act, Burma, 189  
 Emigration Act of 1922, 86-87  
 European convention for the Protection of Human Rights and Fundamental Freedoms, 430  
 European refugee, 96-97, 99  
 European Refugee Campaign, 295  
 Evacuee Management Committee, 146  
 Evacuee Property Act 1947, 159  
 Evacuee Property Organisation, 159  
 Executive Committee of UNHCR [EXCOM (UNHCR)], 384-86, 459, 463, 465-66  
 Extradition Act of 1962, 81, 402  
 Fanon, Frantz, 344  
 Fasbender v. Attorney General, 84  
 Finance Administration Bill, 159  
 Food Corporation of India (FCI), 226, 230  
 Foreigners, Parsis as, 73-77  
   refugees and aliens, 97-100

- Foreigners Act 1864, 76, 78-79, 85, 90-91, 95-96, 98  
 Foreigners Act of 1946, 43-45, 48, 51, 56, 96-97, 185, 212, 398, 402, 405, 406, 409, 416, 443, 450-51  
 Foreigners Regional Registration Office (FRRO), 47, 387, 462  
 Foucault, Michael, 387  
  
 Gadgil, N.V., 91  
 Gandhi, Indira, 212-13, 221, 326  
 Gandhi, Rajiv, 302, 326, 328-29, 337, 344, 346-47, 371, 373  
 Gandhian, 344  
 Ganguly, Indubaran, IIO, 114  
 Generosity, 38  
 Geneva Convention (1951), 278, 302  
 Genocide of 1971 in Pakistan, and influx of refugees in east 211-42  
*Gharibu'd-diyar* (Afaqis), 70-71  
 Ghosh, Alok Kumar, 138-39  
 Godrej, Adershir, 76  
 Godrej, Manchershah Barjorji, 76  
 Godrej, Phirozshah, 76  
 Goldstein, Melvyn, 309  
 Goodwin-Gill, Guy, 464  
 Gour, H.S., 87  
 Government of India Act of 1919, 85  
 Government of India Act of 1935, 252  
 Graca Machel Report, 385  
 Grace, C.H., 80  
 Gramophone Co. of India v. Birandra Bahadur Pandey, 449  
 Greamy, John, 285  
 Great Mutiny of 1857, 251  
*Guardian, The*, 30  
 Gujral, I.K., 345  
  
 Habshis, 70-71  
 Haksar, Nandita, 203  
 Hans, Asha, 157, 337, 355  
 Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta, 451  
 Hathaway, James, 60  
 Heptullah, Najma, 434  
  
 Himalayan Marketing Association, Delhi, 292  
 Hindu Mahasabha, 154, 284  
 Holborn, Louise W., 364  
 Homes Reorganisation Committee, 360  
 Horticulturists scheme, 126  
 Hre Mang, 206  
 Human Rights Act of 1993, 410, 417, 431  
 Human rights and UNHCR, 428-31  
 Humanitarian doctrine 42  
 Hyndman, Patrica, 322  
  
 INA, 154  
 ITBP Act, 294  
 Ibn Batuta, 70  
*Images Asia*, 205, 207  
 Imman, Mohammed, 285  
 Immigration Act of 1924, 92  
 Immigration (Carriers' Liability) Act of 2000, 402  
 Immigration into India Act, 87  
 India Harijan Sevak Sangh (Pan Indian Association of Harijans), 158  
 India-Srilanka Accord, 330  
 Indian Citizenship Act 1955, 259, 262, 264, 268, 302, 333, 449  
 Indian Law Commission, 434  
 Indian National Congress, 75  
 Indian Peace Keeping Force (IPKF), 327-28  
 Indian settlers in Burma, out-migration of, 182-83, 187-96  
 Indian Society for International Law (ISIL), 435  
*Indian Sociologist*, 76  
 Indian Statistical Institute, Calcutta, 114  
 Indian Tamils, among Sri Lankan refugees, 343-45  
 Indians, aliens and, 83-89  
     discriminatory treatment to, 86-87, 95  
     status in Africa, 98-99

- Indira-Mujib Agreement of 1972, 258  
 Indo-Tibet Friendship Society, 295  
 Indo-Tibetan Border Police CITBPJ force, 293-94  
 Industrial and Financial Corporation for Rehabilitation, 160  
 Influx from Pakistan (Control) Bill, 159  
 Inner Line Permit (ILP) system, 256  
 Interim Compensation Scheme, 1953, 159, 358  
 International Bill of Human Rights, 184  
 International Committee for Red Cross (ICRC), 275, 278  
 International Covenant on Civil and Political Rights (ICCPR), 1966, 184-85, 430, 453  
 International Covenant on Economic, Social and Cultural Rights, 185  
 International Labour Organisation (ILO), 418  
 International Organisation for Refugees, 185  
 International Red Cross, 154, 295  
 International Refugee Organisation, 38  
 International Rescue Committee, 295  
  
 Jacob, M.M., 263-64  
 Jagjivan Ram, 213  
 Jain, A.P., 154  
 Jainendra Gurukul, 165  
 Jamieson, T., 399  
 Jan Sangh, 284  
 Jayalalitha, 328-29, 335  
 Jayapalan, V. L.S., 322  
 Jayewardene, J.R., 322  
 Jeejeebhoy, Jamsheji, 75  
 Jesuit Refugee Service, 328, 372-73, 383  
 Jewish refugees, 93  
 Jinnah, M.A., 345  
 Joshi, N.M., 86  
 Jumma Refugees' Welfare Association (JRWA), 272, 275  
  
 Kachin Independence Organisation (KIO), 186  
 Kafur, Malik, 70  
 Kahlon, K.S., 237  
 Kalindi, Rani, 251  
 Kapoor, Jaspat Roy, 174  
 Karen National Union (KNU), 197, 204  
 Karmapa Lama, escape from Tibet, 303, 337, 463  
 Kasturba Gandhi Memorial Trust, 358  
 Kasturba Nari Niketan, Delhi, 361  
 Kasturba National Memorial Trust, 165, 170  
 Kasturba Seva Mandir, 169  
 Kaushal, Swaraj, 302  
 Keller, Stephen, 166, 170  
 Kennedy, David, 40  
 Kennedy, Edward, 363  
 Khadilkar, R.K., 213  
 Khan, Ayub, 211  
 Khan, Liaquat Ali, 345  
 Khan, Sadruddin Aga, 241, 400  
 Khan, Yahya, 211-12, 241  
 Khare, B.N., 98  
 Khilji, Allauddin, 70  
 Khisha, S.R., 253  
 Kidwai, Anis, 383  
 Kincaid, C.A., 76  
 King, Martin Luther, 349  
 Kiruban, 347  
 Kriplani, J.B., 306  
 Kriplani, Sucheta, 286, 358, 361  
 Ktacr Abbas Al Qutafi v. Union of India, 452  
 Kuki National Army (KNA), 11:J--94  
 Kumar, N., 194, 196  
 Kunzru, Hriday Nath, 88  
  
 LAWASIA, 322  
 Lady Mountbatten's United Council for Relief and Welfare, 154  
 Land Acquisition Act 1891, 144  
 Land Nationalisation Act of 1948, 189  
 Larma, Manabendra Narayan, 270-71  
*Legislative Assembly debates*, 86

- Leikun Camp for Burmese refugees in Manipur, 198-202  
 Levine, Iain, 381  
 Lian Uk, 206  
 Liberation Tigers of Tamil Elam (LTTE), 322, 326-29, 331, 344, 347, 349, 424  
*Life in Exile*, 298  
 Linschoten, John Huyghen Van, 71  
 Logang massacre (1992), 271  
 London Agreement of 1947, 189  
 Longadu massacre (1989), 271  
*Louis De Raedt v. Union of India*, 54, 454, 457  
 Loya, Domin, 264, 267  
 Lutheran World Service, 218  
 Luthra, P.N., 261
- MacDonald, Flora, 381  
 Mackenzie, H., 80  
 MacMahon Line, 85  
 Mahila Ashrams (Women's Homes), 358  
 Mahn Myint Noe, 200  
 Maine, H. Sumner, 80-81, 86  
 Maneka Gandhi v. Union of India, 454  
 Manipur Peoples Party (MPP), 198, 202  
 Manock, Nowrosji, 75  
 Manock, Rustum, 74-75  
 Mao Tse-tung, 314  
 Marginal nation, 52, 58  
*Margin/ Nation, The*, 29  
 Marwari Relief Society, 154, 215  
 Mathai, A.J., 360  
 Mathrani, K.P., 118  
 Maxwell, Reginald, 90, 92  
 Meghalaya, refugees from East Pakistan in, 222-24  
 Mehta, Ashok, 286  
 Mehta, Pherozeshah, 75  
 Menon, Ritu, 357  
 Metcalfe, Alexander, 383  
 Mewatis, 77  
 Migratory Movements in South Asia, 433-34  
*Minister for Immigration and Ethnic Affairs v. Teoh*, 51
- Ministry of Refugee Relief and Rehabilitation, Government of West Bengal, 114  
 Mithi, Mukut, 269  
 Mithun v. State of Punjab, 451  
 Mizo National Front (MNF), 208  
 Mohammed Sediq v. Union of India, 454  
 Mohan, S., 44  
 Moitree Devi, 383  
 Moreb, Indian returnees from Burma settled in, 193-96  
 Mukherjee, Bankim, 113  
 Mukti Bahini, 270  
 Musharaff, Pervez, 345  
 Muslim immigrants, restrictions imposed on, 30  
 Muslim League, 253  
 Mysore Resettlement and Development Agency (MYRDAJ), 295
- NHRC v. State of Arunachal Pradesh and Union of India, 50, 450  
 Naniarchar massacre (1993), 271  
 Naoroji, Dadabhai, 75  
 Narasimha Rao, P.V., 197, 272, 303, 337  
 Narayan Swamy, 327  
 Nari Seva Sangh, 165  
 National Christian Council of India, 290  
 National Coalition Government of the Union of Burma (NCGUB), 197  
 National Council of Women, 154  
 National Development Council, 137  
 National Discipline Scheme, 360  
 National Human Rights Commission (NHRC), 261-62, 266, 268-69, 365, 444, 457  
 National Human Rights Commission v. State of Arunachal Pradesh, 262  
 National law on refugees, need for, 460-66  
 National League for Democracy (NLDJ), 197, 201  
 National Recovery Operation, 358  
 National refugee law, need for, 345-52

- National Social Service (NSSJ), 230
- National Unity Party of Arakans (NUPA), 204  
 Nationalism and democracy, 25, 27  
 Navaneetham, 347  
 Nawaz, Charles, 347  
 Nayar, Susheela, 383  
 Ne Win, 190  
 Near abroad, 56-57  
 Nehru, B.K., 221  
 Nehru, Jawaharlal, 112, 153, 155, 282-87, 289, 303, 336, 368  
 Nehru, Rameshwari, 166, 168, 358, 383  
 Nehru-Liaquat Pact of 1950, 112, 115, 117-18  
 Neogy, K.C., 152, 155-56, 161, 176  
 Nijalingappa, 289  
 Nizam Shahi dynasty, 71  
 Non-agricultural refugee families, rehabilitation of, 128-29  
*Non-refoulement*, principle of, 184-86, 302, 346, 397, 404, 406-8, 411, 422, 424, 429-30, 445-46, 448-49, 451-52, 463  
 Norbu, Dawa, 300, 312  
 North-East Frontier Agency (NEFA), 255  
 Nu, U., 183, 190
- OAU Convention on the Status of Refugees, 463, 465  
 OXFAM, 215, 217, 232, 383  
 Ogata, Sadako, 330  
 Operation Life Line scheme, 229, 364  
 Ordinance No. XXIV of 1947, 170  
 Organisation for Eelam Refugee Rehabilitation (OfERR), 332, 371-72, 383  
*Other Media*, 207
- P. Nedumaran and Dr S. Ramadoss v. The Union of India and the State of Tamil Nadu, 452  
 PILSARC, 407, 417, 434-36  
 PROTEC i, 424  
 l'ad ma nahha, :Mli  
 Pakistan P1-oph.'s l'arly, 21 1
- Pakrashi, Kanti, 136  
 Palchoudhuri, Ila, 364  
 Palkashappa, T., 296  
 Panchsheel Agreement, 282, 284  
 Parbotyo Chattogram Jana Sanghata Samiti (PCJSS), 271  
 Parma Nand, Bhai, 91  
*Parsi, The*, 75  
 Parsi Congress, 75  
 Parsis, foreignness of, 73-77  
 Partition refugees, *see*, Refugees  
 Pass (Entry into India) Act of 1920, 450  
 Passport Act 1920, 85-86, 93  
 Passport Act of 1967, 56, 398, 402, 450  
 Passport (Entry into India) Act of 1920, 402  
 Patel, Kamla, 357, 383  
 Patel, Vallabhbhai, 94-95  
 Pearn, B.R., 188  
 Pearson, M.N., 71  
 Penal c.:olonies, 59  
 Peoples' Liberation Army (PLA), 281, 283  
 Peoples' Referendum Rally at Naharlagun (1995), 259  
 Peoples' Rights Organisation, 259  
 Peoples' Union for Civil Liberties (PUCL), 260, 334  
*Periyapuranam*, 324  
 Permanent Liability Camps, 123, 360  
 Permanent settlement, certificate of, 89  
 17-Point Agreement between China and Tibet, 281  
 Portuguese, 71-75, 82  
 Prabhakaran, 327-29  
 Praja Socialist Party, 284  
 Prasad Rao, J.V.R., 216  
 Premadasa, 327  
 Professional refugee, rehabilitation of, 131  
 Punchhi, Madan Mohan, 267  
 Punishment society, 59  
 Punjab refugee, authoritarian state and, 170-75  
 problem of, 153-55

- rehabilitation and relief to,  
 government programme, 155-58  
 implementation of scheme for, 161-64  
 means and resources, 158-61  
 rural resettlement, 162-64  
 widows refugees rehabilitation, 164-70
- RSS, 154  
 Radcliffe, Cyril, 253  
 Rahman, Sheikh Mujibur, 270-71, 275  
 Rajiv Gandhi assassination case, 347, 424  
 Ramakrishna Mission, 154  
 Rana, Dastur Meherji, 73-74  
 Randhawa, M.S., 356, 359  
 Rangoon, Burmese and Indians in, 188  
 Ray Chaudhuri, N.K., 118  
 Ray Chaudhuri, Sudhir Chandra, 113  
 Ray Chaudhury, Basu, 141  
 Ray, Dilip, 365  
 Ray, Renuka, 169  
 Ray, Tridib, 270  
 Recovery Programme, 159  
 Red Cross Society, 215, 217, 228, 232  
*Red Garuda*, 198  
 Redcliffe line, 116  
 Reddy, Lakshmana, 347  
 Refugee Businessman's Rehabilitation Board, 130  
 Refugee camps, life in, 335-38  
 Refugee Deportation Council, 259  
 Refugee Handicrafts Sales Emporium, 131  
 Refugee support system, 382-86  
 Refugees,  
 acts of empire and, 89-97  
 aliens, 55-60, 449-52  
 question of origin, 55-60  
 as other of subjects, 99  
 authoritarian state and, 170-75  
 camps, 198-99  
 camps and population, 125  
 care and its limits, 24-29  
 categories of, 157-58  
 Chakma refugees, 455-58  
 colonial response to, 76-83  
 concept of, 98  
 conditional law, 29-36  
 courts and, 455  
 crisis, 106-47  
 critical component of nation building, 26  
 definition of, 444, 447  
 deportation, 453-55  
 doctrine, 36-43  
 economic migrants or, 204-8  
 education facilities to, 131-34  
 equivocal relations, 43-55  
 foreignness and aliens, 97-100  
 from Burma (Myanmar), 182-208  
 from Chittagong Hill Tracts, 249-78  
 from East Pakistan influx to India, 106-47, 211-42  
 administrative arrangements, 226  
 admission of, 224-25  
 assistance provided to, 226-28  
 assistance under UNHCR, 235-36, 244  
 burden sharing, 241-42  
 dispersal of, 225-26, 242  
 education, 229-30  
 evaluation of, 238-42  
 financial implication of assistance, 230-31  
 foreign dignitaries visit to camps of, 232  
 Government of India role in, 224-34, 240  
 in Assam, 220-22  
 in Meghalaya, 222-24  
 in Tripura, 218-20  
 in West Bengal, 214-18  
 management and distribution of relief material, 231-32  
 medical relief and healthcare, 228-29  
 repatriation assistance, 216-17, 233-34, 240-41

- relief and rehabilitation in,  
 east, 106-47  
 west, 152-80  
 rural resettlement, 162-64  
 sentiments, 36-43  
 social economy of care and hospitality, 33-35  
 social security commitments, 152-80  
 state response to, 106-47  
 state-wise break-up, 121-22  
 status in India, 443-67  
 system, 36-43  
 system of justice and, 43-55  
 Tibetans, 281-315  
 unconditional law, 29-36  
 UNHCR office in India and, 459-60  
 UNHCR role, 234-38, 240, 396-439, 455-58  
 voluntary repatriation of, 452-53  
 widows rehabilitation, 164-70  
 women and children among, 355-87
- Regional Consultation on Refugees, 433-34  
 Registration Act of 1939, 450  
 Registration of Foreigners Act of 1939, 89, 92-93, 98, 398, 402  
 Rehabilitation and Development Board, 152  
 Rehabilitation Finance Administration, 130  
 Rehabilitation Finance Bill, 156  
 Rehman, Mujibur, 211-13  
 Relief and Transit Camps, 123  
 Resettlement of Displaced Persons (Land Acquisition) Bill, 159  
 Returnees from Burma, settlement in Moreh, 193-96  
 Revolutionary Council of Burma, 190  
 Richardson, H.E., 283  
 Rinpoche, Samdhang, 313  
 Rohillas, 77  
 Roy, Renuka, 111  
 Rumsfeld, Donald, 32
- response of local population, 239  
 UN focal point and activities, 234-35  
 UNHCR role, 234-38, 240  
 voluntary repatriation of, 236-38  
 water supply to, 229  
 from Sri Lanka, 322-51  
 from Tibet, 281-315  
 from West Pakistan, 152-80  
 from within foreigners, 99  
 government discourse on, 109-14  
 Government of India policy towards, 155-58, 224-34, 240, 278  
 government's relief and rehabilitation programme, 155-58  
 health related issues, 134-36  
 implementation of rehabilitation schemes, 161-64  
 international policy developments and conventions on, 383-86  
 international protection to, 40  
 laws facilitating process of rehabilitation, 143-47  
 legal status of in India, 448-55  
 magnitude of crisis, 120-23  
 means and resources for relief and rehabilitation of, 158-61  
 nation building and rehabilitation of, 112-13, 142-43  
 need for national law on, 460-66  
 need for protection and care, 355-87  
 of Indian origin influx from Burma 182-208  
 political milieu, 116-20  
 power and care, 21--02  
 practices and policies for care and protection of, 22-24  
 private organisations in relief work for, 154  
 problem, 153-55, 165  
 registration of, 171

- Rural non-agriculturists refugee, rehabilitation of, 128-29  
 Russel, John, 78
- SAARCLAW, 433  
 Saha, K.C., 211  
 Sahay, Vishnu, 257  
 Saklani, Girija, 309, 367  
 Saksena, Mohan Lal, 117-18, 156, 173  
 Samaddar, Ranabir, 21  
 Samphel, T., 307  
 Sangma, Williamson, 223  
 Sanjoy, Takam, 264, 267  
 Santhanam, K., 156  
 Saptharishi, L.V., 214  
 Sarabhai, Mridula, 358, 383  
 Save the Children Fund, 295, 383  
 Sayeed, P.M., 264  
 Selvam, 321  
 Sen, Prafulla Chandra, 108, 112-13  
 Sen, S.B., 118  
 Sen, Samar, 237  
 Sen, Sarbani, 396  
 Sen, Suhas Chandra, 262  
 Shah, Adil, 71  
 Shanti Bahini (SB), 271, 277  
 Sharma, B.N., 86  
*Shilappadikaram*, 325  
 Shrimali, K.L., 368  
 Sieghart, Paul, 323  
 Sim Nyein Aye, 197  
 Singh, Bhai Man, 86  
 Singh, Jaswant, 302-3  
 Singh, O. Joy, 202  
 Singh, Tarlok, 161  
 Singha, Anil, 109, 143  
 Sinha, K.K., 223  
 'Sinhala Only' Act, 323  
 Sino-India war of 1962, 314  
 Sirimavo-Shastri Pact, 344  
 Sivalingam, R.R., 323  
 Slaves, 69-70  
 Smith, Martin, 205  
 Social security, 27  
 Soe Myint, 203  
 Sorabjee, Soli, 267
- South Asian Association for Regional Cooperation (SAARC), 404  
 Spence, R.A., 87  
 Spencer, Jonathan, 322  
 Sri Lanka,  
   India's policy towards, 326-32  
 Sri Lankan Citizenship Act, 333  
 Sri Lankan Tamil refugees, 37  
   categories of, 332-35  
   fear and hope amongst, 340-43  
   flow of, 230-32  
   identified as militants, 334-35  
   in camps, 332, 348, 352  
   in Tamil Nadu, 28  
   India's Sri Lanka policy and, 326-32  
   Indian Tamils, 343-45  
   life in refugee camps, 335-36  
   national refugee law need and, 345-52  
   recognised refugees outside camps, 332  
   repatriation, 336-40  
   sheltering of, 321-51  
   Sri Lankan nationals, 333-34  
   women and children among, 369-73  
 St. John's Ambulance, 154  
 State Minorities Commission, 147  
 State of Arunachal Pradesh v. Khudiram Chakma case, 44, 50, 261  
 State of Arunachal Pradesh Act 1986, 256  
 State of Manipur v. U Myat Kyaw and Nayzin, 43  
 State Peace and Development Council (SPDC), 201  
 State v. Akhtar Muhammad, 44  
 State v. Benjamin Zang Nang, 44  
 State v. Eva Massur Ahmed, 43  
 State v. Hudson Vilvaraj, 44  
 State v. Khy-Htoon and four others, 43  
 State v. Montasir M. Gubara, 44  
 State v. Muhammad Riza Ali, 43  
 State v. Muhammad Yashin, 45

- State v. Sungeel, 45  
 Subedar, Manu, 92, 96  
 Suryanarayan, V., 321  
 Swaminathan, T., 221
- Tamil Refugee Rehabilitation Organisation (TRROJ), 344  
 Tamil Sangam, 194  
 Tata Institute of Social Sciences, 170  
*Tatmadaw* (Burmese Army), 196, 198, 203, 207  
*Telegraph, The*, 261  
 Tenancy Act, 189  
 Teresa, Mothe, 215  
 Territorial Waters Jurisdiction Act of 1878, 82  
 Thant, U., 234  
*Thirukkural*, 325  
 Thomas, K.T., 267  
 Thomas, Lowell, 295  
 Tibetan Friendship Groups, 295  
 Tibetan Government-in-Exile, 304-5, 307, 310-13  
 Tibetan Homes Foundation, 367  
 Tibetan Industrial Rehabilitation Society, 292  
 Tibetan Women's Co-operative Association, 367  
 Tibetan Youth Congress, 369  
 Tibetans refugees in India, 32, 35-36  
   citizenship issue, 304-5  
   Dalai Lama's asylum in India, 283-87  
   historical background, 281-83  
   Karmapa Lama's escape from Tibet, 303-4  
   legal status, 302-3  
   present position of, 296-305  
   reasons for leaving Tibet, 296-97  
   reconstruction of Tibet in exile, 305-10  
   rehabilitation of, 287-94  
     f:TRC role in, 306-8  
     in agriculture sector, 289-92  
     in agro-based industries, 292  
   in carpet weaving and handicrafts, 292-93  
   initial steps, 287-89  
   ITBP force, 293-94  
   UNHCR and international agencies role in, 294-96  
   relations with host population, 300-302  
   socio-economic adaptation, 299-300  
   Tibetan Government-in-Exile, 310-13  
   Tibetan identity and culture preservation by, 308-10  
   women and children among, 366-69
- Times*, 31  
*Times of India, The*, 283  
 Tiruchelvam, Neelan, 328  
 Tripura,  
   Chakma refugees in, 458  
   refugees from East Pakistan in, 218-20
- Trust for Sindhi Women and Children, 165  
 Two-nation theory, 253  
 Tyagi, Mahavir, 174
- U N Convention on the Status of Refugees (1951), 29, 184-85, 345, 384, 397-98, 401, 403, 405, 422, 429-30, 437, 439, 443-48, 459, 461-62, 465-66  
 UNHCR (United Nations High Commissioner for Refugees), 154, 186, 200-202, 204, 206-8, 213, 215, 227, 231, 233-38, 240, 275, 278, 294-97, 302, 314, 330, 334-35, 338-40, 344-46, 373-77, 381, 384-86, 443-44, 447, 453, 455-61, 463  
   civil and political rights, 410  
   conditions of recognition and admission, 415-18  
   definition of refugee status, 401, 411-11  
   durable solutions, 411-11

- economic social and cultural rights, 4iU-11  
 history, 396-401  
 human rights and, 428-31  
 issue of travel and other personal documents and personal security, 409  
 no supervisory responsibility, 422-23  
 office in India, 459-60  
 paradoxes, 436-39  
 policy regarding admission and readmission, 405-12  
 political and legal context, 401-5  
 promotional activities, 431-35  
 protection against non-refoulement, expulsion, deportation and extradition, 406-8  
 refugees assisted by Indian Government,  
   · Chakmas and Burmese, 425  
   non-Afghan refugees, 427-28  
   Sri Lankans, 422-25  
   Tibetans, 422  
   UNHCR assisted refugees, 425-27  
 refugees case in India, 423-28  
 right to shelter and basic human needs, 409  
 role in India, 234-38, 240, 396-439, 455  
 standard of treatment of refugees, 408-9  
 statelessness and issues relating to nationality, 411-12  
 USAID, 254  
*Udbastu*, 114  
 tJmbrey, Lacta, 263  
 Unattached Old Women's Home, 361  
 Union Board Scheme, 126-29  
 Vnion of Buia Citi:z:nsnip (Election) - Act of 1948, 189  
 Union of India y:Maung Maung Kyo Mym:lt, 46  
 United Nations Development Programme (UNDP), 296, 459  
 United Nations High Commissioner for Refugees CUNHCR), *see*, UNHCR (United Nations High Commissioner for Refugees)  
 United States Committee for Refugees CUSCR), 322, 336, 371  
 Universal Declaration of Human Rights, 430  
*Valmiki Ramayana*, 324  
 Venkatachaiah, M.N. 44  
 Verde, Conde De Villa, 74  
 Verma, J.S., 48, 50  
*Voice of America*, 283  
 Voluntary Health Association of Delhi (VHAD), 418  
 Voluntary repatriation, 452-53  
 WFP, 227, 236  
 WHO, 228, 236  
 Wadhwa, D.P., 267  
 Wahabi movement, 77  
 Wajed, Sheikh Hasina, 275  
 Wangyal, 297  
 War Damage Commission of Europe, 159  
 Warner, Daniel, 48, 51  
 Wastelands (Requisition and Utilisation) Act 1952, 145  
 West Bengal,  
   refugees from East Pakistan in, 214-18  
 West Bengal Act XVI of 1951, 144-45  
 West Bengal Evacuee Property Act 1951, 146  
 West Bengal Land Development and Planning Act 1948, 144  
 West Bengal Legislative Assembly (WBLA) debates, 114  
 West Bengal refugee crisis,  
   educational facilities to, 131-34  
   government assistance to education of refugees, 133-34  
   government discourse, 109-14  
   government policy of rehabilitation, 123-36

- health issues, 134-36  
 laws facilitating process of rehabilitation, 143-47  
 magnitude of crisis, 120-23  
 monthwise break-up of refugee influx into, 120  
 political milieu, 116-20  
 primary education of refugee children, 132  
 regime of legal practices, 143-47  
 rehabilitation outside West Bengal, 136-43  
 relief and rehabilitation, 123-47  
 response to, 106-47  
 tuberculosis spread among, 134--35  
 West Pakistan,  
   women and children refugees from, 363-65  
 Wheeler, J.T., 80  
 Widow refugees,  
   as national disaster, 167  
   classified as war widows, 167  
   Government response to, 167-70  
   problem, 165-67  
   rehabilitation strategy for, 164-70  
   Women's section under Ministry of Rehabilitation for, 166-68  
*With Dr B. C. Roy and other Chief Ministers*, 114  
 Women and children refugees,  
   Chakma refugees, 365-66  
   disempowerment and empowerment, 377-82  
   from Afghanistan, 373-76  
   from Bangladesh, 363-65  
   from Bhutan, 377  
   from CHT, 365-66  
   from East Pakistan, 360-63  
   from Sri Lanka, 369-73  
   from Tibet, 366-69  
   from West Pakistan, 356  
   gender-conscious and pro-child policy need for, 386-87  
   partition and, 356-60  
   problems faced, 377-82  
   protection and care of, 355-87  
   support system for, 382-86  
   UNHCR and, 373-76  
 Worksite Camps, 124  
 World Bank, 231  
 World of differences and disorder,  
   colonial response to, 83-89  
 YMCA, 295, 417  
 YWCA, 154, 418  
 Yonjgam, N., 264  
 Zia, Khaleda, 272  
 Zia ul-Haq, 345





Ever since it attained independence in 1947 India has played host to numerous communities fleeing persecution and violence. The partition of the subcontinent in 1947 saw one of the largest forced dislocation of people witnessed till then, and created refugees numbering in the millions. Since then, India has hosted and protected diverse refugee communities including those from Tibet, Burma (now Myanmar), Sri Lanka, Afghanistan and Bangladesh (erstwhile East Pakistan). Despite this, there has been a dearth of studies that examine how asylum and refugee care have been practised in India.

This volume analyses India's reasonably good record of providing protection and hospitality to refugees, while pointing out the contradictions in the relation between these positive aspects and the manner in which state power has been exercised in post-colonial India. In examining the varied encounters between the state and refugees, the contributors demonstrate that India's story of providing care is simultaneously one of limiting care. It reveals the power of the state to decide whom to extend hospitality to and whom to deny it to. Thus, the issue of affording asylum becomes one of exercising power on the part of India's political establishment.

Providing protection and humanitarian assistance to those seeking refuge, argue the contributors, should not be a question of dispensing kindness. What is required in place of a regime of charity is a regime of rights. They emphasise the need to empower the host communities, and not so much the state, to decide issues of providing shelter, relief and hospitality.

This volume is the first of its kind in that it binds in a single chronicle writings on refugees in India at different time periods and in different regions of the country. It is also unique in bringing together contributors from a variety of disciplines: law, administrative sciences, history, politics and feminist studies. Combining analytical rigour and detailed narrative, the volume will become a valuable resource for students and scholars in the fields of refugee studies, refugee law, political science and sociology while being of equal interest to NGOs, humanitarian agencies and policy-makers.

**Ranabir Samaddar** is Director of the Peace Studies Programme at the South Asia Forum for Human Rights, Kathmandu, and is a founding member of the Mahanirban Calcutta Research Group.

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