

# **India and Refugee Issues: A Study of Afghan Refugees**

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**Sikkim University**



In Partial Fulfilment of the Requirement for the

**Degree of Master of Philosophy**

By

**Bhaswati Sarmah**

Department of Political Science

School of Social Sciences

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## **DECLARATION**

I, **Bhaswati Sarmah**, do hereby declare that the subject matter of this dissertation is the record of work done by me, that the content of this dissertation did not form basis of the award of any previous degree to me or to the best of my knowledge to anybody else, and the dissertation has not been submitted by me for any research degree in any other university/institution.

This is submitted in partial fulfilment of the requirements for the degree of **Master of Philosophy** in the Department of Political Science, School of Social Sciences, Sikkim University.

**Bhaswati Sarmah**

**Registration No- 16/M.Phil/PSC/03**

**We recommend that this dissertation be placed before the examiners for evaluation.**

**Prof. Mohammad Yasin**

**Head of the Department**

**Dr. Amit Kumar Gupta**

**Supervisor**

## **CERTIFICATE**

This is to certify that the dissertation entitled “**India and Refugee Issues: A Study of Afghan Refugees**” submitted to Sikkim University in partial fulfilment of the requirements for the degree of Master of Philosophy in Political Science is the result of bonafide research work carried out by **Bhaswati Sarmah** under my guidance and supervision. No part of the dissertation has been submitted for any other degree, diploma, associateship and fellowship.

All the assistance and help received during the course of the investigation have been duly acknowledged by her.

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**“India and Refugee Issues: A Study of Afghan Refugees”**

Submitted by **Bhaswati Sarmah** under the supervision of **Dr. Amit Kumar Gupta** of the Department of Political Science, School of Social Sciences, Sikkim University, Gangtok, India.

Signature of the Candidate

Countersigned by the Supervisor

Dedicated to

Each and every human being who  
are still terrified to be either of  
their homelands...

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## **ABBREVIATIONS**

AALCO- Asian-African Legal Consultative Organization

BAFIA- Bureau for Aliens and Foreign Immigrants' Affairs

BAMF- Federal Office for Migration and Refugees/ Bundesamt für Migration und Flüchtlinge

BMI- Federal Ministry of the Interior of Germany/ Bundesministerium des Innern

BSRP- BOSCO Self Reliance Programme

CEADAW- Convention on the Elimination of All Forms of Discrimination Against Women

CRC- Convention on the Rights of the Child

CRR- Centre for Refugee Research

EPG- Eminent Persons Group

EXCOM- Executive Committee of the High Commissioner's Program

FRRO- Foreigner Regional Registration Office

HRLN- Human Rights Law Network

HRW- Human Rights Watch

ICCPR- International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic, Social and Cultural Rights IOM-  
International Organisation for Refugees

ICRC- International Committee of the Red Cross

IDP- Internally Displaced Persons

IFRC- The International Federation of Red Cross and Red Crescent Societies

IRO- International Refugee Organisation

JRS- Jersuit Research Service

LTV- Long Term Visa

MCD- Municipal Committee of Delhi

NGO- Non-Governmental Organisation

NHRC- National Human Rights Commissioner

OAU- Organisation of African Unity

OCHA- Office for the Coordination of Humanitarian Affairs

OHCHR- United Nations High Commissioner for Human Rights

PDPA- People's Democratic Party of Afghanistan

RSD- Refugee status determination

RCDP- Refugee Community Development Program

SLIC- Socio- Legal Information Centre

SSAR- Solutions Strategy for Afghan Refugees

TTP- Tehreek-e-Taliban

UDHR- Universal Declaration of Human Rights

UNDP- United Nations Development Programme

UNHCR- United Nations High Commissioner for Refugees

UNICEF- United Nations Children's Fund

UNODC- United Nations Office on Drugs and Crime

VHAD- Voluntary Health Association of Delhi

WFP- World Food Programme

WHO- World Health Organisation

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## **PREFACE**

The refugee issues is an age old phenomenon and it is present in all societies since time immemorial. Refugees are the people who fled to other county for the reasons like war, conflict, fear of persecution etc. The refugees have to undergo situations of massive human rights violations and they are unable or unwilling to return to their homeland. India is a favourable destination for the refugees as it is a place where a number of refugees from different countries have been coming. But in Indian legal framework there is no specific law and policy entitled for the refugees. Also India has not signed the United Nations Convention Relating to the Status of Refugees of 1951. The United Nations High Commissioner for Refugees (UNHCR) which is working for the refugees in International level has also limited access to the refugee issues in India. In the absence of any law, the fate of the refugees become uncertain. That is why, in this dissertation the role of the Government of India regarding the refugee issues is discussed with specific reference to the Afghan refugees in India.

The first chapter of the dissertation consists of the introduction of the topic, objectives of the study, reviewed literature of the existing resources, the conceptual framework of refugees, used methodology for the study, research question and scope. This chapter also includes the genesis of Afghan refugees with a short historical background.

The second chapter deals with the conceptual and policy framework of refugees. In this chapter the term refugee is defined and various definitions as provided by various convention both international and regional have been discussed. Additionally, the role of international organisations regarding the refugee issues is discussed in this chapter which covers detailed study of the functions and work of UNHCR. The 1951 UN Refugee Convention and its Protocol along with the Cartagena Declaration of Refugees is also discussed in this chapter.

The third chapter is based on the refugee and refugee policy in Indian context. The chapter includes the refugee scenario of India comprising of various refugee groups and their administration by the Indian Government. The role of UNHCR in India regarding the refugee issues is also included in this chapter. Though India has not signed the UN

Refugee Convention, yet it is a member of a number of international conventions and organisations. These are discussed in the chapter followed by the Constitutional provisions of India and other available laws for the refugees. The refugees are governed in India through certain acts. These acts and their provisions are also a part of this chapter.

The fourth chapter is entirely based on the field survey that was done to understand the state of Afghan refugees in India. Afghans constitute a fair number of the total refugee population residing in India but then also they have been facing problems in the country. The hostile situation and the threats of Taliban in Afghanistan has resulted in the refugee situation in the country and along with other countries a number of Afghans fled to India. The data collected from the survey is analysed and accordingly the findings are included in the chapter.

The final chapter consists of the concluding remarks and recommendations relating to the study. In this chapter a comparative study is done on the status of Afghan refugees in other countries with India.

# **CHAPTER: 1**

## **INTRODUCTION**



## **1.1. Introduction**

The phenomenon of refugee issues is a worldwide phenomenon and it is present all over the world. The refugees are the vulnerable section of the society and the issue of refugees is as old as the nation state itself (Muni, Baral, 1996). Since time immemorial the movement of people from one place to another for various reasons was present. The refugee crisis and its growing tension has its political, economic and social impact all over the world. That is why, there is a growing necessity to study refugee issues so as to find significant solutions to deal with the issues and to minimise its impacts. South Asian region is one of the highest refugee generating nations all over the world. Among other countries India is also one of the favourable places where the influx of refugees can be seen. The present study is done in order to study the refugee issue of India with specific reference to the Afghan refugees residing in the country.

Refugees are regarded as those people who fled to other countries as a result of war or fear of persecution. Persecution means hostility and ill-treatment, especially because of race or political or religious beliefs; oppression. According to Cambridge English Dictionary persecution is unfair or cruel treatment over a long period of time because of race, religion or political beliefs.

India is geographically surrounded by a number of countries that are still in their developing stage. Some of these countries have experienced massive conflicts and violence which have resulted in the issues like migration, illegal immigration, refugees and asylum seekers and so on. India has been a preferable place for refugees over many decades, as it has been witnessing refugee inflows at many times from different regions, especially from its neighbouring countries. India has become a land of many refugee groups. It has opened its doors for the refugee groups like Tibetan Refugees, Sri Lankan Tamil Refugees, Buddhist Chakmas from Bangladesh, Muslim Rohingyas from Myanmar, Afghan Refugees etc.

The issue of refugee and forced migration has become a global issue and it poses a challenge to the international community. Article 14(1) of the Universal Declaration on Human Rights (UDHR)<sup>1</sup> states that, “Everyone has the right to seek and to enjoy in

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<sup>1</sup> UDHR: UDHR is a milestone document in the history of the human rights. The Declaration was adopted by the United Nations General Assembly in Paris on 10 December 1948 by the General Assembly

other countries asylum from persecution”. The United Nations High Commissioner for Refugees (UNHCR) is the apex body that is working for the protection and giving all kinds of rights and security to the refugees at International level. The annual report of UNHCR, Global Trend stated that by the end of 2015, there were 10 million stateless people or people who have no nationality. Along with it there were total 65.3 million forcibly displaced people in the world which estimated 1 out of every 113 people. Of these 65.3 million people, 21.3 million were refugees and 3.2 million were asylum seekers. (UNHCR, 2016).

India is not a signatory to the 1951 United Nations Convention which is also known as the Convention Relating to the Status of Refugees. This Convention defines the term refugee and sets out rights of the asylum seekers and the responsibilities of the nations that grant asylum. But India became member of a number of UN and World Conventions. It became a member of the Executive Committee of the High Commissioner’s Program (EXCOM) in 1995. The EXCOM is an UN organisation which approves and supervises the material assistance program of UNHCR. India voted for the Universal Declaration of Human Rights (UDHR) which upholds human rights for all people. India voted to adopt the UN Declaration of Territorial Asylum in 1967. Apart from these India ratified the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976, UN Convention on the Rights of the Child in 1989, Convention on the Elimination of All Forms of Discrimination Against Women (CEADAW) in 1980, The Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 etc. India also accepted the principle of ‘Non-Refoulement’ as envisaged in the Bangkok Principles, 1966. Non-Refoulement is a principle of customary international law prohibiting the expulsion, deportation, return or extradition of an alien to his state of origin or another state where there is a risk that his life or freedom would be threatened for discriminatory reasons (Sebesta, 2010). But it is to be noted here that the Government of India has proposed to deport the Rohingya refugees,

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resolution 217 A as a common standard of achievements for all peoples and all nations. The Declaration has one preamble and 30 Articles. (United Nations, n.d.).

which are the world's largest stateless population, from India. This act violates the principle of Non-Refoulement. (Dutta, 2017).

There are no specific refugee policies in India that is why the fate of refugees depends upon the ad hoc decisions taken by the Ministry of External Affairs (Singh, 2016) and Ministry of Home Affairs and these offices along with Ministry of Information and Tourism, Commissioner of Rehabilitation Department, and the Public (Rehabilitation) Department are the major government offices that govern and deal with the management of refugees at the centre and state levels. But the final decisions are made with the consent of the Prime Minister of India and the Chief Ministers of the respective states. In India, The Registration of Foreigner's Act 1939, the Foreigner's Act 1946 and the Foreigner's Order 1948 are the primary legal documents that are dealing with the refugees (Nair, 2007). Apart from these acts, the existing laws like the Criminal Procedure Code<sup>2</sup>, the India Penal Code<sup>3</sup> etc. can be applied to the refugees. Article 21 of the Indian Constitution which provides for Right to Life is also equally applicable to the refugees as the Indian citizens.

Though India is not a signatory to the UN Convention but in practice India does apply certain Articles and principles of the 1951 UN Convention. Some of the Articles are Article 7 which implies for 'Exemption from Reciprocity', Article 21 which implies freedom of 'Housing', Article 33 which provides 'Prohibition of Expulsion or Return (Refoulement)', Article 26 'Freedom of Movement' which states that refugees have the right to choose their place of residence and move freely within the territory. India provides Identity Card to the refugee which conforms Article 27 'Identity Papers' of the 1951 UN Convention. Apart from it, other principles of the UN Convention such as 'Non-Discrimination' according to Article 3, freedom of 'Religion' according to Article 4, free 'Access to Court' according to Article 16, 'Public Education' according to Article 22 has been followed by India. (Xavier and Sharma, 2015).

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<sup>2</sup> Criminal Procedure Code: it is an Act to consolidate and amend laws relating to the criminal procedure. This Act has total 37 chapters and 484 sections. (The Code of Criminal Procedure, 1973).

<sup>3</sup> Indian Penal Code: the Indian Penal Code is the criminal code of India. The IPC was drafted in 1860. IPC has total 23 chapters and 511 sections dealing with different crimes. (The Indian Penal Code).

Indian Government has allowed the UNHCR to provide assistance to the refugees staying in India including the Afghan refugees. Apart from UNHCR, various refugee NGOs like BOSCO<sup>4</sup>, Socio-Legal Information Centre (SLIC)<sup>5</sup> in partnership with the UNHCR are working for the refugees. The Voluntary Health Association of Delhi (VHAD)<sup>6</sup> provides health assistance to the refugees with the consent of the UNHCR. The Government of India has allowed the Afghan refugees to avail the 'Long Term Visa' (LTV). This visa allows them to buy property, open bank account, avail PAN cards and Aadhaar cards and they can freely do trade, business and work (Singh, 2016). The UNHCR has been providing smart refugee cards to the refugees including Afghan refugees. These cards include a picture of the holder and a smart chip, which contains encrypted information such as biographical data, address and date of registration with UNHCR. (UNHCR, n.d.).

Shashi Tharoor introduced in the Lok Sabha a Private Members Bill called the Asylum Bill 2015 on December 2015 to establish a legal framework to consolidate India's refugee policy, but this is yet to be taken into consideration (Chowdhury, 2016). The National Human Rights Commission (NHRC)<sup>7</sup> of India has submitted various reports urging for the establishment of refugee laws or to update the laws under the Foreigner's Act, 1946. In this act the word 'Foreigner' is used instead of the word Refugee. But the word 'Foreigner' is not just used for refugees, it also covers immigrants, tourists etc.

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<sup>4</sup> BOSCO: Bosco is part of the Don Bosco Global Network which is spread across 135 countries. BOSCO runs educational institutions, vocational and technical training centres and community empowerment projects, providing various services to young people all over the globe. BOSCO is an implementing partner of UNHCR and has been working in India since 2002. (UNHCR, n.d.).

<sup>5</sup> SLIC: SLIC is a legal implementing partner of UNHCR. It is providing legal assistance to the refugees registered under UNHCR. SLIC is a part of the Human Rights Law Network (HRLN). Since 2001 SLIC has been working as an implementing partner of UNHCR in India. (UNHCR, n.d.).

<sup>6</sup> VHAD: VHAD is a part of Voluntary Health Association of India (VHAI) which is a non-profit, registered society formed in the year 1970. It is a federation of 27 State Voluntary Health Associations. It links more than 4500 health and development institutions across the country. It is one of the largest health and development networks in the world. VHAI attempts to build up a strong health movement in the country for a cost-effective, preventive and rehabilitative health care system. (VHAI, n.d.)

<sup>7</sup> NHRC: NHRC in India is a statutory body. It was established in 1993 according to the provisions of The Protection of Human Rights Act, 1993. Its main function is the protection of human rights of the people. The commission looks into the cases of Human Rights violations of the people. The commission consists of one chairman who has to be a former Chief Justice of Supreme Court and five other members. (Yasin, Upadhyay, 2006).

So it is difficult to figure out a proper definition of refugee in Indian legal framework. (Nair, 2007).

India and Afghanistan shares a strong cultural relationship since time immemorial. Both the countries have now signed agreements for the continuation and development of their robust cultural linkages. In 2011, India signed the strategic partnership agreement with Afghanistan, which is Afghanistan's first bilateral agreement after the Soviet invasion in 1978. But in Indian legal framework there is no such law which is meant to be for its Refugees. According to the UNHCR in 2011, there were 204,600 refugees, asylum seekers in India, of which, 13,200 were from Afghanistan which constitute more than 60% of the refugees in the world (Dutta & Sharma, 2009).

According to UNHCR, in 2016, there were nearly 22.5 million refugees all over the world and over half of them are under the age of 18 years. India was home to 198,665 refugees in 2014 and had 4,718 pending cases of asylum seekers. In 2015, India has 201,381 refugees, of which 27,078 were assisted by the UNHCR. By the end of 2016, there were total 207,070 persons of concern in India consisting of refugees and asylum seekers, of which 14,464 are registered Afghan Refugees.

Continuous wars<sup>8</sup>, intervention<sup>9</sup>, terrorists activities have made the life of the Afghan people miserable. This is the reason that this nation is counted amongst the top refugee generating nations of the world. The Afghan refugees are scattered in the countries like Canada, Germany, UK, Tajikistan, Iran, Pakistan, India etc. (UNHCR, n.d.). This paper is an effort to find out the status of Afghan Refugees in India, their problems and challenges and the role of the Indian Government and UNHCR in providing protection to these refugees.

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<sup>8</sup> Afghanistan has a long history of war. In 1929 it witnessed a civil war, in 1979 with the Soviet Invasion it again trapped in war. In 1990s Afghanistan again fall into another civil war. Apart from these there was an age old ethnic war between main ethnic group Pashtuns and other ethnic groups like Hazaras, Uzbeks, Tazik etc. Again in 18<sup>th</sup> Century there was an inter-ethnic clash among the Pashtuns. There were three Anglo-Afghan wars in 1839-42, 1878-80 and in 1919 respectively. (Barfield, 2010; Ahmed, 2017).

<sup>9</sup> On October 7, 2001 after the September 11 attacks, US President George W Bush launches operation 'Enduring Freedom' in Afghanistan, after the Taliban refuses to hand over al-Qaeda leader Osama bin Laden. After more than 15 years the US intervention in Afghanistan is going on by deploying more troops time to time. (Aljazeera, 2017).

## 1.2. Conceptual Framework

There are no universally accepted definitions of refugee. The existing definitions of refugee are given on the basis of different circumstances. The notion of Refugee is an old phenomena. Refugees are those group of people who are forced to flee from one country to another place because of the situations like war, conflicts, violence, persecution etc.

The United Nations Convention, 1951 defined 'refugee' as persons owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion etc. But this convention only covered those persons who became refugees 'as a result of events occurring before January 1, 1951' (Noorani, 1998).

According to the UN Convention of 1951, as amended by its 1967 Protocol, a refugee is a person who is (UNHCR, n.d.)-

- outside their own country and
- has a well-founded fear of persecution due to his/ her race, religion, nationality, member of a particular social group or political opinion, and is
- unable or unwilling to return.

There are certain legal definitions of refugee. The inter-governmental conference in 1926 defined a Russian refugee as "any person of Russian origin who does not enjoy or no longer enjoys the protection of the Government of the U.S.S.R. and has not acquired another nationality".

A Convention of Geneva of 1938 defined the German refugees as

Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy in law or in fact the protection of the German Government, and state less persons not established therein and who are proved not to enjoy in law or in fact the protection of the German Government. (Simpson, 1938).

Another definition of refugees is found in the report of the Organisation of African Unity 1969 Convention. According to this convention the term 'refugee' shall also

apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. (Lister, 2013).

On June 30, 1928 the first international instrument on refugees was signed in Geneva. This agreement was replaced by the Convention Relating to the International Status of Refugees which was signed on October 28, 1933 at Geneva. According to this Convention

Refugees shall be assured the enjoyment of civil rights, free and ready access to the Courts, security and stability as regards establishment and work, facilities in the exercise of the professions of industry and commerce, and in regard to the movement of persons, admission to schools and universities. (Simpson, 1938).

S.D. Muni and Lok Raj Baral have identified three broad categories of refugee generating factors in South-Asia in general and in India in particular. These factors are first, the breakdown of colonial rule and rationalisation of colonial legacies, secondly, nation and state building process which creates political, ethnic, religious conflicts and economic and environmental conditions for migration, thirdly, flow of refugees in one region from other because of the development in that region.

To become a refugee one has to flee his/ her country owing to a well-founded fear of persecution. The fear not only refers to the persons who have been persecuted but it also include those who wanted to avoid any situation involving the risk of persecution. According to the 1951 UN Refugee Convention one person must validate fear of persecution for one or more reasons among race, religion, nationality, membership of a particular social group and political opinion. (Trakroo, et al. 2005).

Refugees, on the other hand, differ from a migrant and asylum seeker. A refugee is a person who meets certain eligibility criteria under international law. The International Federation of Red Cross and Red Crescent Societies' (IFRC) describes migrants as people who leave or flee their places of habitual residence to go to a new place, across international borders or within their own state, to seek better or safer

prospects. An asylum seeker is a person seeking protection from a country other than his or her own as a refugee but whose claim has not yet been adjudicated. Not every asylum-seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum-seeker.

### **1.3. Genesis of Afghan Refugees**

Historically, Afghanistan has been the link between Central Asia, the Middle East and the Indian sub-continent and therefore it contains different nationalities like Tajik, Uzbek, Kirghiz, Arab, Turkmen, Pashtun, Persian, Hindu, Sikhs etc. (Ritscher, n.d.). It is landlocked amongst the major cultural and geographic regions; the Indian subcontinent to the Southeast, central Asia to the North and the Iranian plateau in the West. In the early times, Afghanistan was part of different empires. The emergence of modern Afghanistan began in the 20<sup>th</sup> century when the territory was trapped in the great power rivalry between British India and Czarist Russia, including two wars<sup>10</sup> with British. The country remained neutral in the first and second World Wars though it had experienced a civil war in 1929<sup>11</sup>. Afghanistan had become a battleground for the Cold War struggle between the United States and the Soviet Union finally resulted in the Soviet invasion in the country in 1979<sup>12</sup>. After ten years the Soviet troops withdraw from Afghanistan, but in the 1990s the Civil War bandit started and the country became a 'Failed State'<sup>13</sup> (Barfield, 2010). The continuous wars and terrorist activities had

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<sup>10</sup> The Anglo-Afghan wars were fought between the British and Afghans. There were three Anglo Afghan wars fought in the year 1839-42, 1878-80 and in 1919 respectively. Great Britain fought these wars from its base in India in order to extent its control over Afghanistan and oppose Russian influence from there. (Barfield, 2010).

<sup>11</sup> Civil War: The Civil War in 1929 in Afghanistan started to drive out King Amanullah Khan from power who reigned Afghanistan from 1919. In the aftermath one Tajik bandit came to power who named himself Amir in Kabul and ruled for nine month. After that the royal elite rallied the Pashtun tribes against him and put a distant cousin Nadir Shah on the throne. (Barfield, 2010).

<sup>12</sup> Afghanistan's failed attempt to implement revolutionary social and economic policies by a communist regime led to the Soviet invasion in the country. Taraki demanded Soviet troops to reinforce his government and to prevent it from collapse. Earlier the Russians opposed it and later on to restore the order of the country Soviet invaded Afghanistan in on December 27, 1979 using provisions of the Soviet-Afghan Treaty of 1978. (Barfield, 2010).

<sup>13</sup> Failed State: failed State is a state whose political or economic system has become so weak that the government is no longer in control. Failed state is unable to protect its national boundaries and can't project authority over its territory. After the Saur Revolution, Soviet Invasion and Civil war Afghanistan became unable to restore its order and gradually became a failed state. (Barma, n.d.).



made it difficult for the people to lead a normal life. These resulted in the movement of people to other countries.

The first event which marked the displacement of Afghans was the starting of Saur Revolution<sup>14</sup> in 1978, when Noor Mohammad Taraki<sup>15</sup> of People's Democratic Party of Afghanistan<sup>16</sup> (PDPA) came to power (Noor, 2006). After that in 1979 during the Soviet invasion, displacement of Afghans took place in large scale. Later in 1988 the Soviet troops withdrew from Afghanistan and left the communist party of Afghanistan to shield itself against the Mujahideen. This was primarily because the Soviet leader Mikhail Gorbachev experienced an increasing drain in Soviet economy. Soon after the withdrawal of Soviet troops from Afghanistan the Afghan civil war<sup>17</sup> started and that war also caused displacement of the Afghans in large number. At that time the displaced Afghans mainly took shelter in the Islamic countries of Pakistan and Iran.

During these tensions in Afghanistan, the main losers were the Hazaras ethnic group. It is to be noted here that during the civil war and in the Taliban rule, the Taliban declared war against the Hazaras. Hazaras are Persian speaking people who lived mainly in Central Afghanistan. They constitute the Shia Muslim and third largest ethnic group in Afghanistan. According to the Hazaras, they are considered as outsiders in their country and they have been persecuted throughout Afghan history. The Shias are considered as minor Muslims in Afghanistan because they constitute only 20% of the whole population. (Hucal, 2016). According to Thomas Barfield, in the late 1900 Pashtun King Amir Abdul Rahman Khan ordered the killing of all Shias in Central Afghanistan which resulted in killing of tens of thousands of Hazaras (Barfield, 2010). The Taliban

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<sup>14</sup> Saur Revolution: the Saur Revolution is a military coup carried out by the leftist officers of the armed forces under the control of the PDPA. The revolution was carried out against rule of Mohammed Daoud Khan who proclaimed Afghanistan as Republic and named him as President instead of King. (Rasanayagam, 2003).

<sup>15</sup> Noor Mohammad Taraki: Mohammad Taraki was an Afghan Politician. He was the President and Prime Minister of Afghanistan from 1978 to 1979. He was born on 15 July, 1917 and assassinated on 14 September 1979. (Britannica, n.d.).

<sup>16</sup> PDPA: People's Democratic Party of Afghanistan was founded on 1965. It was a Marxist party which had its close ties with Soviet Union. Later, the Party was split into two factions People's (Khalq) and Banner (Parcham), but reunified again in 1977. (Barfield, 2010).

<sup>17</sup> Afghan Civil War: The Afghan civil war started after the withdrawal of Soviet troops in 1989 between anti-Communist Muslim guerrillas and the Afghan Communist government.

commander Maulawi Mohammed Hanif in the mid-1990s said that the Hazaras were not Muslims and so they can kill them. At that time many Hazaras fled to Iran while among the remaining, thousands of Hazaras were systematically executed in the city of Mazar-i-Sharif in 1998. (Hucal, 2016).

In February 1995, the Taliban killed the leader of the Hazara backed Hizb-e Wahdat (the Islamic Unity Party of Afghanistan), Abdul Ali Mazari. In August 1998, near about 2000 Hazaras were slaughtered by Taliban when they took the northern city of Mazar-e Sharif. (Sharma, 2007). These developments had made the life of Hazaras miserable in Afghanistan. Because of these, the Hazaras left Afghanistan for better and secured life during the Taliban regime.

Estimates suggest that up to five million Afghans sought refuge abroad from the mid-1980s to the mid-1990s (Bentz, 2013). In 1992, the communist government of Afghanistan fell down and it led to the resignation of communist President Mohammad Najibullah<sup>18</sup>. In that year, Najibullah's family was sent to New Delhi by the Afghan Government. With the deteriorating security situation in Afghanistan, India decided to give refuge to many of its old friends and families including the family of Najibullah (Shukla, 2012). From 1994, Taliban tried to bring down the new government on the issue of corruption. In 1996 the Taliban came to power and in the same year they executed Mohammad Najibullah. With the beginning of Afghan civil war in 1992 and after 1996 when Taliban<sup>19</sup> came to power, Hindus and Sikhs Afghans started leaving Afghanistan for India. The Sikhs were attacked by the Taliban at that time and they felt insecure and that is why they left for India. During that period over 60,000 people were killed and thousands of women were raped in Afghanistan (Ritscher, n.d.). After the 9/11<sup>20</sup> attack in United States, the Afghans left their country in the fear of counter attack

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<sup>18</sup>Mohammad Najibullah: He was the President of Afghanistan from 1987-1992. He was a doctor by Profession, but never practiced that profession. In 1965 he joined Banner (Parcham) faction of PDPA. He was assassinated on 27 September 1996 by the Taliban. (Britannica, n.d.).

<sup>19</sup>Taliban: It was formed in Afghanistan in 1994 to remove the Soviet forces from the country. It is Sunni Islamic militia. Starting from other countries it took over Country's capital Kabul by September 1996. It was one of the factions of Mujahideen. The allies of Taliban are Al-Qaeda, Pakistan etc. Later Taliban changed its name to Islamic Emirates of Afghanistan. (Maroofi, 2002; Sreedhar, et al., 1997).

<sup>20</sup> 9/11- On September 11, 2001, 19 militants of the Islamic extremist group al-Qaeda hijacked four airplanes and carried out suicide attacks in United States. Two planes attacked the World Trade Centre in New York, one plane attacked the Pentagon near the Washington, D.C. and the other plane crashed in a field in Pennsylvania. Near about 3000 people were killed in the attack. (History.com, 2010).

on Taliban by the United States. After that during the US led invasion in Afghanistan in October 2001, a number of Afghans left their country for India (Margesson, 2007). At that time the Afghan refugees came to India except going to its border sharing countries. One primary reason cited for this is because in the year 2000, Pakistan closed its gates for the Afghan refugees for the first time. (Bentz, 2013).

Most of the Afghan Refugees had entered India through the Attari border near Amritsar in Punjab. The Afghans had to cross the Jalalabad city of Afghanistan, then Lahore of Pakistan before reaching India. In the journey they took refuge in Gurudwaras (Sikh temple) (Martin, 2006). Some Afghans came via Iran to India with proper documents and visa. In 2001, there were around 345,000 refugees living in India, of which 12,000 were from Afghanistan (Sethi, 2012). At the end of February 2016, 27508 refugees and 3451 asylum seekers registered with UNHCR India. Out of these, 10241 refugees and 3451 asylum seekers are from Afghanistan. (UNHCR, n.d.). The Afghan refugees in India are concentrated in Malviya Nagar, Jangpura, Bhogal, Lajpat Nagar, Tilak Nagar, Saket and Khirki Extension of New Delhi. They have been staying under the mandate of UNHCR and it is UNHCR India who has been working for the refugees and who is keeping a track on them.

#### **1.4. Statement of the Problem**

India is home to thousands of refugees who have sought refuge from different regions of the world. But it is to be noted here that India has neither signed the 1951 United Nations Refugee Convention nor its 1967 Protocol, which has 140 signatories. It is because it found the convention too Eurocentric (Dhavan, 2004). Also there are no uniform laws and policies in Indian government that deal with the problems of refugees. However, in the absence of such international law, India continues to host a large number of refugees from different regions. Antonio Guterres, UNHCR, says India, which has opened its doors for refugees and asylum seekers has set an example for the other countries to follow.

From an informal interaction with the Afghan refugees over the social media, it could be seen that the Afghan refugees are facing problems in India. This fact has also been substantiated in the available literatures. They are not getting the necessary benefits from the Government. Yet some said that though they have the refugee cards, they are

not getting the refugee facilities. That is why some of them have already left India for other countries. But there are some others also who want to stay back in India and are looking for Indian citizenship and they are still struggling for it.

There are many issues relating to refugees in India, which questions the country's laws and policies on the same. The refugees continue to complain about their rights, benefits they are supposed to get, refugee cards and so on. Some of the refugees claim that they are not getting all the rights that they should get, like education, work permit etc. The refugees also have to wait a long period to get the refugee cards. Even the process of getting the status of Indian citizenship is lengthy. There is lack of much support and help from the Indian authorities. The refugees and the asylum seekers are regulated under the Foreigner's Act 1946 but this Act is also not up to date. This Act and the Foreigner's Order 1948 gives the power to the Government of India to restrict the movement of the foreigners inside India, to limit employment opportunities etc. These are the violations of refugee rights.

This study tries to highlight the issues and problems of the Afghan refugees in India. It attempts to study the origin of the Afghan refugees and the reasons for their influx in India. Along with it, the policies of the Government of India on refugees is also included. Whether those policies are working in favour of the refugees or not? What are the other benefits that the Government of India is claiming to give to the refugees and whether the refugees are getting them or not? The Government of India has welcomed the Afghan Sikhs and the Hindus and the Home Ministry sought the cabinet's approval to grant citizenship to the religious minorities of Afghanistan (Singh, 2016). This step brings a ray of hope to the Afghans. But the question arises as what will happen to the Afghan Muslims who has also been living in India for many years. This dissertation tries to analyse all the above mentioned aspects. In addition it tries to include the possible solutions to address the refugee issues and problems in India.

## **1.5. Review of Literature**

Anne-Sophie Bentz (2013) in her article 'Afghan refugees in Indo-Afghan relations' has discussed about the triangular relationship between the refugee group, the host country and the home country. According to a UNHCR report, most of the Afghans residing in India are basically Hindus and Sikhs. The writer said that after the starting

of Afghan civil war in 1992, when Taliban came to power, most of the Afghan Sikhs and Hindus started to come to India for their security purpose. Afghans come to India in the past ten years for education and health purpose also. But according to the author Afghan refugees do not play a significant role in Indo-Afghan relations. They have occasionally shown a collective potential for mobilization, they were trying to have their living conditions in India improve. It is also because of the involvement of risks in it. Even they are avoided by the Indian authorities in Indo-Afghan relations. In this article the author concerned more on political aspect than other aspects. The basic problems of the Afghan refugees in India has not been included in this article.

Ashish Bose (2004) in the article 'Afghan Refugees in India' have discussed about the history of Afghan refugees in India. The author has thrown light on the Sikh and Hindu refugees that came to India after 1992 when the Sikhs were attacked by the Talibans. But India did not accepted the Afghan Sikhs and Hindus as refugees and no worthwhile shelter or help was given to them by the government of India. According to the writer there is no uniform law to deal with the refugees and the existing policies changes from government to government. Though in this article the author has done a detailed study on the Afghan refugees but he has emphasized more on Afghan Hindus and the Sikhs. The Afghan Muslims has not given much importance though they are a part of the Afghan refugee community in India.

B.S. Chimni (2003) in the chapter Status of Refugees in India: Strategic Ambiguity of the book 'Refugees and the State: Practices of Asylum and Care in India 1947-2000' has discussed about India's policies for its refugees. India has not yet signed the 1951 UN Convention and that is why the refugees of India are not getting the necessary benefits. The entry of those refugees are regulated by the principles of Foreigner's Act of 1946. This act defines refugee as 'a person who is not a citizen of India'. The author said that in India the refugees have to undergo inhumane treatment because of the security concerns of the citizens. But the author said this treatment should be ignored because all the people either citizen or non-citizen have the same human right to live with dignity.

B.S. Chimni's (2000) book 'International Refugee Law: A Reader' is about the basic international refugee laws. It deals with the definitions of refugee and asylum and the laws relating to the refugees. The author has also described the role and function of the

United Nations High Commissioner for Refugees. The main causes of refugee condition are war, fear of persecution, development related condition etc. The author in this book discusses about the solutions to such refugee conditions and also to the internally displaced persons. Lastly, this book discusses about the Indian legal system regarding the refugees. It wants to take into focus the concern about the refugee conditions and so that an effective participation is possible in shaping national and international response to the refugee issue.

In the article 'The Transformation of Afghan Refugee: 1979-2009' Maliha Safri (2011) have discussed about the Afghan refugees from its genesis till 2009. The author describes how the situations like war, intervention has created the refugees from Afghanistan first in Pakistan and Iran and then in other parts of the world. Because of the invasion by Soviet troops, Taliban uprising, Civil war had resulted in the displacement of people of Afghanistan to other parts of the world. This displacement took place from time to time. The author said that most of the Afghans were settled in Pakistan and Iran and their conditions in those countries was discussed in this article. The role of UNHCR in providing protection to the Afghan refugees is also taken into consideration. In this article the author has discussed about the statistics of the Afghan refugees present in Pakistan, Iran and other parts of the world. It has not discussed transformation in other aspects like social, economic, political etc.

Joseph Xavier and Apoorva Sharma (2015) in their paper 'Legal Rights of Refugees in India' has discussed the legal framework of India for refugees. According to the authors, different group of refugees are getting different treatments based on the Indian laws for refugees. The Indian Government doesn't have such refugee policies which can deal with the problems of the refugees. That is why, the refugee groups are facing many problems relating to their rights and other issues. Also the number of refugees as described by the Indian government is different from that of the UNHCR. The authors said that the refugee children are providing free primary education but there can be seen that for many reasons they couldn't attend the school. Even if they so, then the question of higher education arises. The authors pointed out that other facilities like health care and social security are also provided to the refugees, but they are not seen so much benefitted from the facilities.

Linda Bartolomei, Mari Hamidi, Nima Mohamed Mohamud and Kristy Ward (2016) in their article 'Refugee community development in New Delhi' have discussed about the Refugee Community Development Program (RCDP) that is developed by Somalia and Afghan Refugees with the help of UNHCR and NGOs in New Delhi. According to the article RCDP was established by the University of New South Wales' Centre for Refugee Research (CRR), in consultation with the refugee community and with the support of UNHCR. The RCDP has been working for the development of the refugees. They are working for the skill development, eliminating gender-based violence, adult literacy etc. NGO Don-Bosco and UNHCR has been working for the success of RCDP.

Mondira Dutta's (2009) book 'Emerging Afghanistan in the Third Millennium (Ed.)' is entirely based on the history of Afghanistan and discussed about the present situation of the country. The author has incorporated a collection of articles presented in an international conference on "Reconstruction Process in Afghanistan". This book covers a wide range of issues like economy, society, security of Afghanistan. It includes the refugee issue also. Chapter 4 of this book namely 'Displaced Population from Afghanistan: A Case Study of Delhi', deals with the displaced people of Afghanistan in India. Mondira Dutta and Pramod Kumar Sharma have discussed about the displaced people of Afghanistan that are in New Delhi. Civil war and the cases of severe human rights violations have resulted in the displacement of Afghan people. Afghans constitute more than 60% of the refugees in the world. According to the authors, since 1978, the displacement of Afghans started. During the first half of 1981, an estimated 4700 Afghans daily crossed the Pakistan border. It is believed that almost 60,000 Afghans live in India. Of which 16,000 possess UNHCR certificate. But the authors stated that the Afghans are still not getting enough benefits from the Indian government as well as from the UNHCR. Even in social life they are projected as criminals, thieves and captioned 'Talibanization of South-Asia'. The Hindu and Sikh Afghans don't want to go back to Afghanistan but the Muslim Afghans are keen to go back to the country. But the returnees to Afghanistan also finds difficulty in gaining access to land, shelter and basic services. The authors have projected the problems that they are facing and urge for its solution and says that the role of the states like India, Pakistan, Iran, Afghanistan and Central Asian Republic is important in this regard.

Ragini Trakroo, Aparna Bhat, Samhita Nandi (2005) in their book 'Refugee and the Law' looks at the refugee laws in the Indian context. The authors have discussed broadly the concept of refugees and its various aspects like persecution, non-refoulement, human rights etc. Though India is not a member of the UN Refugee Convention but India has ratified a number of International Conventions which are applicable to the refugees also. These conventions and India's international obligations are also discussed by the authors in the book. Refugees in India can be classified into Mandate and Non-Mandate refugees and to regulate both the class the laws are different. The authors have discussed the laws relating to the refugees in India along with the laws provided by the Constitution of India. Apart from the laws the policies of Indian government is also discussed by the authors in the book. The authors said that there is a lack of unified refugee policy in India. Again the rights of refugees in general and rights of refugee groups like women, children in particular has discussed by the authors. At the end the role of the UNHCR and its implementing partners as well as the role of the NGOs regarding refugees has discussed followed by a number of suggestions like voluntary repatriation, resettlement etc. Though the book has covered a large area regarding refugees but what should be the role of the Indian government to deal with the refugee issue and to formulate unified refugee policy has remained not discussed by the authors.

Rajeev Dhavan's (2004) monograph 'Refugee Law and Policy in India' is an outcome of a report of UNHCR named 'Refugee Law and Practice in India'. In this monograph he has broadly discussed about the refugee problem in India and about the various refugee groups that come to India at various points of time. It also deals with India's refugee law and policy, outlines discontent and concerns relating to refugee issue and also draws the possibilities of future. India's relationship with global refugee protection regime including UNHCR and the role of both in addressing the refugee issue is also discussed in this monograph. The original Model Law proposed by the Eminent Persons Group (EPG) suggested for the South-Asian states and the Model Law suggested for India for refugees also included in the annexures of this monograph. The author in this monograph has identified the UNHCR mandated refugee communities in India but it did not include the Afghan refugees which are also an important refugee community residing in India.



S.D. Muni & Lok Raj Baral (1996) in the book 'Refugees and Regional Security in South-Asia' have discussed about the refugee issue and its impacts in South-Asia. The authors said in South-Asia approximately 45 to 50 million people cross-borders annually and this creates a source of conflict in the region. Refugees in South-Asia are the results of racial, linguistic and religious overlapping within the region and political persecution, socio-economic and ecological issues. In the book the authors have recognised various factors of refugee movement. The colonial legacy, nation building process are such factors which have influenced the refugee movement such as Bihari Muslims of Pakistan, Tibetan refugees, Afghan refugees and Burmese refugees. The authors have also tried to understand the question of security because of the refugees between the home countries. There were cases of refugees where they stand against the host country and thus threaten the security of the same.

Thomas Barfield (2010) in his book 'Afghanistan: A Cultural and Political History' has discussed the history of Afghanistan from the beginning and to the emergence of the modern Afghanistan. The picture of conflict ridden Afghanistan has been put out by the author in this book. The wars including the Anglo-Afghan wars, Saur revolution, Soviet invasion, Civil War and finally to the emergence of Taliban followed by the US intervention has been discussed in detail by the author.

Yahya Maroofi (2002) in her chapter 'Refugee Situation in Afghanistan' of K. Warikoo's edited book 'The Afghanistan Crisis: Issues and Perspectives' has talked about the state of refugees in Afghanistan. The political situation of Afghanistan i.e. the rise of Taliban and their rule has led to the emergence of a large number of refugees in Afghanistan. These refugees suffered from persecution, violence of Human Rights in large number. Further the author discussed the causes of migration of the refugees and the refugee situation in Pakistan and Iran where most of the refugees seek refuge. Lastly, the author in the chapter discussed the various programmes undertaken for the repatriation of the Afghan refugees, medical program, capacity building program etc. Here the author only focussed on the Afghan refugees residing in Pakistan and Iran while a large number of them fled to India in the early 90's.

The chapter 'Refugees' in Wordsmiths Compilation (2002) 'Afghanistan: Things Fall Apart' discussed about the Refugee crisis in Afghanistan taking various reports regarding it. The refugee situation of Afghan has been described by the UN committee

for refugees has incorporated in the chapter. The news reports regarding the emergence of the Afghan refugees has also included. The other news and reports regarding the host countries has also included.

The flow of Afghan refugees started only some decades before. The refugees fled due to the troublesome situation in the country and the emergence of the Taliban regime also fuelled the refugee crisis. These Afghan refugees are mainly settled in Pakistan, Iran and Germany etc. But a number of Afghan refugees are also staying in India for more than two decades. However in international level, research on refugees are done in large number, but a very less research work is done on Afghan refugees based in India. Also India is not bound to follow the international laws to regulate the Afghan refugees and there are no such developments has been made in the Indian context till date for the refugees staying in the country. Therefore this research is one attempt to reduce the research gap in this dimension and to find some possible solutions so as to deal with the refugee situation in India.

## **1.6. Scope**

This study covers the refugee policies that India is following and the relevance of those policies. The issue of refugees all over the world is a matter of concern, it develops out of many reasons and circumstances and yet it needs to get attention from the authorities. India is a host of many refugee groups and this study includes the causes of refugee crises in the country. The issue concerning the Afghan Refugees is taken up as a case study for this dissertation. The problems that this group of refugees are facing and the role of the Indian government in solving the problems and providing them the necessary safeguards is included. Along with it the role of the International agencies like the UNHCR in providing help to the Afghan Refugees and the probable solutions that can be made and which are being made to address these problems is also incorporated. The Afghan Refugees settled in New Delhi, particularly in Malviya Nagar, Bhogal, Lajpat Nagar, Batla House and Tilak Nagar are the primary focus of the case study.

## **1.7. Objectives**

The primary objectives of the study are:

- To understand the relevant refugee policies of India.
- To examine the state of the Afghan refugees in India.
- To analyse the role of the Government of India in providing safeguards to the Afghan refugees.
- To explore the role of UNHCR in protecting the rights of Afghan refugees in India.

### **1.8. Research Questions**

The primary research questions are:

- What are the policies that are entitled for the refugees in India?
- What is the state of Afghan refugees in India?
- What are the safeguard mechanisms of India to Afghan refugees?
- What is the role of UNHCR in protecting rights of Afghan refugees in India?

### **1.9. Methodology**

The research is descriptive and analytical research. It is based on both qualitative and quantitative methods of data collection. Qualitative data is collected from the secondary sources like books, journals, publications, articles, newspapers and other existing literatures. Quantitative data that is primary data collected from field work by employing various sampling methods and from the Government reports and proceedings. The sample for the study is collected by using snowball sampling, purposive sampling and observation method. The sample size is 52, which includes 40 refugees and 12 different officials and other persons. The information is gathered by interview schedules. Both structured and unstructured interview schedules are used for the research. The study is also be based on content analysis of various news reports and media broadcastings about the Afghan refugees.

### **1.10. Chapterisation**

This dissertation is divided into five chapters:

Chapter 1: Introduction

The chapter introduces the topic and discusses the statement of the problem, objectives of the study, literature review, and research methodology of the study.

#### Chapter 2: Refugees: Conceptual and Policy Issues

The second chapter is the study of the conceptual framework of refugees. It deals with the international refugee policies that are entitled to the refugees. The chapter also includes the role of UNHCR in India in providing safeguard and protecting the rights of the refugees in general and Afghan refugees in particular.

#### Chapter 3: India's Refugee Policies

This chapter is the study of the existing refugee policies of India and their objectives and principles. In addition, it studies whether these laws are providing necessary safeguards and protection to the refugee groups or not and is there any need of new refugee laws and policies or not.

#### Chapter 4: Afghan Refugees in India: Problems and Challenges

The third chapter is the case study of Afghans as a refugee group in India. The status of Afghan Refugees in India and the problems and challenges that they are facing is incorporated. The outcomes of the field survey and the analysis of that findings is also included in this chapter.

#### Chapter 5: Conclusion

This final chapter covers the summary of the major findings, probable solutions and recommendations to deal with the problem.

**CHAPTER: 2**

**REFUGEES: CONCEPTUAL AND POLICY**

**ISSUES**

## 2.1. Introduction

The phenomena of refugee is an age old phenomena as history has witnessed this issue for a long period of time. The word Refugee is derived from Latin word ‘fugere’, which means to flee for safety (Khobung, 2014). Refugees are those persons who flee to other countries because of war, conflict, fear of persecution etc. To become a refugee one must have to cross an international border and they have the intent to return to their own country after the situation become normal (Huyck, Bouvier, 1983). The refugee issue is an international issue with socio, political, economic, religious reasons contributing to it (Khobung, 2014). Refugees are the persons who are deprived of the protection of their own country and suffered both mentally and psychologically. They are the human being undergoing traumatic experiences (Bhattacharya, 2014). A refugee can be a man, woman, child or anyone who has been forced to leave their homeland. Since time immemorial the movement of people has been there but forcing of people from their habitat places has emerged with the emergence of the nation state (Sethi, 2012). Refugees are those people who cross international border because of conflicts which results in violation of human rights. There are thousands and thousands of refugees all over the globe who cannot meet their own basic needs and suffer both mentally and physically.

The refugee problem dates back to the World War I period. The war brought change in the political and social structure in Europe, which resulted in the breakdown of Russian and Turkish empires. These events created mass exodus of people mainly Russian and Armenians in millions<sup>21</sup>. After that the establishment of the Fascist regime in Italy resulted in the exodus of people including the contemporary scholars. Also the Civil War in Spain against their Republican government led by General Francisco Franco caused refugee issue in the country. The creation of Nazi Germany resulted in the emergence of German refugees. These German refugees were mainly the Jews who fled the country or forced to flee for the fear of holocaust. Again the post-World War II period witnessed refugee flow in millions from the East European countries to the

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<sup>21</sup> During the World War I i.e. in 1914 Russian occupation of East Prussia caused displacement of the Germans in millions. Soon after Germany’s occupation of Belgium and Northern France, Poland and Lithuania and later on into Ukraine and Baltic Provinces caused mass exodus of people. In the meantime, the Armenians were evacuated by the Turkish troops who had lived with the Turkish and Kurdish people for generations. (Gatrell, 2014; Peeling, 2017).

Western countries because the German holocaust and genocide of the Jews, others fled because of the newly installed communist regime. It was the largest population movement in the history of Europe. Apart from this in the 60's the struggle for independence, decolonisation process, nation-building process, formation of new states in Africa formed many refugees. The political instability in Latin America including the struggle for power by the Nazi influenced groups linked with the German immigrants resulted in refugee crisis in the region. (Bhattacharya, 2014; Wasserstein, 2011; Adepoju, 1982).

The UNHCR is an UN agency mandated to provide safeguard and support the refugees. It is also known as UN Refugee Agency which works worldwide for the refugees. It is an international agency which provides international protection to the refugees and works for the solution of the refugee problems. Along with UNHCR works in providing education, skill development program, scholarships etc. to the refugees. (UNHCR, n.d).

## **2.2. Definitions**

It is very difficult to give any specific definition of refugee and also there are no universally accepted definition of it. Refugee has been the subject of treaties and other international agreements. That is why it is impossible to give one single definition which could be used in all circumstances (Khobung, 2014). Yet there are certain definitions regarding refugees given by various institutions, both global and regional.

UNHCR says that a refugee is someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. (UNHCR, n.d.)

The United Nations Convention, 1951 (UN Convention, 1951) defined 'refugee' as a person who

Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is

unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return.

The 1967 Protocol of the Convention says refugees are those persons who are outside their country of origin and are unable or unwilling to avail themselves of the protection of their country or to return to it because of a well-founded fear of being persecuted on the basis of one of the 'protected grounds', namely, race, religion, nationality, political opinion, or membership in a particular social group (Lister, 2013).

The Constitution of International Refugee Organization, 1946 (IRO, 1946) defined refugee as a person who has left, or who is outside of, his country of nationality or of former habitual residence, and who, whether or not he had retained his nationality, belongs to one of the following categories

- Victims of the Nazi or fascist regimes or of regimes which took part on their side in the second world war, or of the quisling or similar regimes which assisted them against the United Nations, whether enjoying international status as refugees or not;
- Spanish Republicans and other victims of the Falangist regime in Spain, whether enjoying international status as refugees or not;
- Persons who were considered refugees before the outbreak of the second world war, for reasons of race, religion, nationality or political opinion.

The Cartagena Declaration on Refugees of 1984 (Cartagena Declaration, 1984) defined refugees as those persons who have fled their country because of the threats to their lives, safety or liberty by violence, foreign aggression, internal conflicts, violations of human rights or other situations which have disturbed the public order.

According to John Hope Simpson

The essential quality of a refugee is that he has sought refuge in a territory other than that in which he was formerly resident as a result of political events which render his continued residence in his former territory impossible or intolerable (Simpson, 1938).



The Bangkok Principles, 1966 regarding Treatment of Refugees adopted by the Asian African Legal Consultative Committee said the term 'refugee' is applied to

A person who, owing to persecution or well-founded fear of persecution for reasons of race, colour, religion, Political belief or membership of a Political Social group

a) leaves the state of which he is a national, or the country of his nationality, the state or country of which he is a habitual resident; or

b) being outside such state or country is unable or unwilling to return to it or to avail himself of its protection. (Bhattacharya, 2014).

The Organisation of African Unity (OAU) 1969 defines refugee as one who is compelled to leave his/her country and to seek refuge in other countries because of external aggression, occupation, foreign domination or situations that are disturbing to the public order (Lister, 2013). This convention gives a two-fold definition of the term refugee. First it delivers the same definition as given by the 1951 convention and then it includes persons who are victims of manmade disasters like international armed conflict or civil war etc. (Khobung, 2014).

Jesuit Refugee Service (JRS), an International Catholic Organisation which works for the refugee comes up with broad definition of refugee. According to JRS, refugee includes the people who are persecuted due to racial, religious, and the membership of social or political group issues; and the victims of armed conflicts, erroneous economic policy, or natural disasters. (Xavier, Sharma, 2015).

From the above definitions it could be stated that refugees are those persons who flee to other countries because of the situations like war, conflict and fear of persecution. They are the people who are forced to leave their homeland. They suffered from massive human rights violations and that is why they don't want to return to their country of origin.

### **2.3. Difference between Refugees, Migrants, Asylum Seekers and Internally Displaced Persons**

Refugees are those persons who have fled or are forced to flee from their own country and cannot return to their homeland due to the fear of persecution, and who have been given the refugee status. The refugees cross the international border to seek refuge in nearby countries and become internationally recognised as refugees. (UNHCR, n.d.; UNHCR, 2014). Refugee popularly known as person who flees because of social, economic and political insecurity. Hence there are certain criteria to be fulfilled by a refugee. Many of these criteria have been accredited internationally and thus become the basis for determining refugee status. One among the others is that the refugees have to owe a well-founded fear of being persecuted. The criteria for determining the 'well-founded' is composed of both subjective and objective elements. Subjective element relates to the perceptions, emotions and experiences of the applicant and where the applicant's statements are evaluated. Objective element evaluated from the general situation in the country of origin. (Trakroo, et al., 2005).

Migrants are those persons who have chosen to leave their own country voluntarily and settled in another country. The International Federation of Red Cross and Red Crescent Societies' (IFRC) describes migrants as people who leave or flee their places of habitual residence to go to a new place, across international borders or within their own state, to seek better or safer prospects.

Again Asylum Seekers are those persons who have fled from their country due to the fear of persecution or other reasons and has applied for protection in other countries but their claims has not yet been processed. All refugees are asylum seekers at the initial stage but once they are registered as refugees, they no longer remain an asylum seeker. National asylum systems, or UNHCR under its mandate decide which applicant qualifies for international protection. Those who are not regarded as refugees and not in need of any other form of international protection, can be sent back to their home countries. (UNHCR, 2014).

Internally Displaced People (IDP) are those persons who remain within their country and they won't cross the International Border. But they often recognised as refugees. UNHCR' mandate doesn't include the IDPs but because of the UNHCR expertise in

displacement, it has been giving assistance to millions of them for many years. Natural disasters also create IDP and UNHCR has been giving assistance in specific cases. For e.g. UNHCR gave assistance to the IDPs of Philippines Typhoon Haiyan disaster in 2013. (UNHCR, 2014).

#### **2.4. Persecution**

To become a refugee there has to be the fear of persecution of that person. Persecution means abuse or unlawful or unfair treatment in severe manner. It involves violation of human rights. It happens when there is severe human rights violations of its citizens and when the respective government is unable or failed to give protection to its citizens. Persecution includes torture, killing, assassination, arbitrary arrest, false imprisonment, violence, sexual abuse and violence, rape, forced prostitution, exploitation etc. Not only men and women but also the children become victims because of persecution which forces them to leave their country and to seek asylum or refuge in other countries.

Merriam Webster dictionary defines the word 'persecute' as to harass or punish in a manner designed to injure, grieve, or afflict; specifically: to cause to suffer because of belief. Again persecution is defined by this dictionary as 'the act or practice of persecuting especially those who differ in origin, religion, or social outlook'.

Apart from persecution there are other factors also which results in refugee issue. War is such a factor. Both civil war and war with other countries results in displacement of people from one country to another. Environmental problems and natural calamities like flood, famine also cause refugee problem. Political instability, ethnic cleansing along with religious persecution is among the major factors contributing to the displacement of people from one country to another.

It is to be noted here that the Governments play major roles with respect to refugees, forced migrants and internally displaced. The governments take back the refugees and permit the internally displaced to return to a normal situation after any settlement or changing of governments. Other governments grant asylum to refugees with the support of international organisations and try to find permanent solutions to refugee problems through repatriation or any other means. (Rogers, 1992).

## 2.5. Role of International Organisations

The international organisations has to play the most important role after the Governments regarding the refugee issues. The United Nations High Commissioner for Refugees (UNHCR) is a United Nations (UN) Agency which works for the refugees. After the end of the World War II, the international community developed its concern regarding the establishment of international regime for the protection of refugees. The League of Nations was replaced by the UN in 1945 and after that UN established the International Refugee Organization (IRO) in 1946. It was a non-permanent body whose purpose was to assist the large-scale resettlement of refugees. When the three year mandate of IRO came to an end, the international community was unwilling to continue financial assistance to the displaced persons. At that time the World War II caused displacement of people in large number. To look into these the United Nations established the United Nations High Commissioner for Refugees in the year 1950. (Kennedy 1986; Sethi 2012). It was created by resolution 428 (V) of the General Assembly of the United Nations and it began its operations from 1<sup>st</sup> January, 1951 (Das, 2009). The same year witnessed the adaptation of the International Convention Relating to the Status of Refugee. Later on, in 1967 a Protocol was added namely ‘1967 Protocol relating to the Status of Refugees’<sup>22</sup>. (Bhattacharya, 2014).

The United Nations High Commissioner for Refugees is called upon to provide international protection and assistance to the refugees under the auspices of the United Nations. The mandate of the UNHCR is humanitarian and non-political with main concern on the protection, safety and welfare of the refugees. It serves as the guardian of 1951 UN Refugee Convention and its 1967 Protocol. (Trakroo, et al. 2005). The UNHCR has two main functions. These are (Das, 2009)

- to provide ‘International protection’ to refugees and
- to seek permanent solutions for the problems of refugees.

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<sup>22</sup> The Protocol relating to the Status of Refugees was adopted in 1967 which came into force on October 4, 1967. This protocol was taken note of with approval by the Economic and Social Council in resolution 1186 (XLI) of 18 November 1966 and was taken note of by the General Assembly in resolution 2198 (XXI) of 16 December 1966. There were total 146 state parties to the protocol. This protocol was adopted in the wake of new refugee situation those were not included in the scope of 1951 UN Refugee Convention. (Protocol Relating to the Status of Refugees, 1967).

The Office of the United Nations High Commissioner for Refugees is headed by the High Commissioner, who is assisted by a Deputy High Commissioner and an Assistant High Commissioner. The High Commissioner is accountable to the Secretary-General for the administration of the Office and reports annually to the General Assembly through the Economic and Social Council. The Deputy High Commissioner and the Assistant High Commissioner assists the High Commissioner in the discharge of his/her responsibilities. In the absence of the High Commissioner the Deputy High Commissioner is responsible to the Office and in the absence of both the Assistant High Commissioner is responsible to the Office. The Deputy High Commissioner and the Assistant High Commissioner is accountable to the High Commissioner. (UN, 1998).

### **2.5.1. Operational Structure of UNHCR**

Along with its work towards the refugees, the UNHCR is mandated by the UN to monitor and protect the stateless persons worldwide. The office of UNHCR is a subsidiary organ of the General Assembly. UNHCR's operational structure consists of-

I. Division of International Protection- This Division consists of the Director's Office, the Standards and Legal Advice Section, the Promotion of Refugee Law Unit, the Protection Training and Support Section and the Resettlement and Special Cases Section. The Division is headed by a Director, accountable to the High Commissioner. The functions of the Division (UN, 1998)-

- a) Development, formulation and promulgation of international protection standards and norms;
- b) Ensuring worldwide consistency of approach to protection issues;
- c) Promotion of refugee law and advocacy;
- d) Providing advice in the formulation of strategic and operations policy;
- e) Providing support for protection activities in operations.

II. The Division of External Relations- This Division is consist of the Director's Office, Campaigns and Goodwill Ambassadors Section, Digital Engagement Section, Strategic Communications Sections, Records and Achieves Section headed by a Director who is accountable to the High Commissioner. The functions of this Division are (UNHCR, 2015)-

- a) Mobilize public, Political, Financial and Operational support for UNHCR's operations all over the world;
- b) Supports the Office's governing bodies and manages strategic relations with various partner agencies both private sector, NGOs and other UN agencies;
- c) Builds effective coordination between refugee and broader humanitarian coordination structures in mixed situations.

III. The Division of Financial and Administrative Management- This Division is consist of the Office of the Controller, Policy and Audit Coordination Unit, Change Management and Field Support Unit and Committee on Contracts Secretary. This Division in headed by a Controller assisted by Deputy Director of Finance and Deputy Director of Budget. The main functions of this Division are (UNHCR, 2015)-

- a) Establishes and maintains framework for UNHCR to make optimal use of the financial resources;
- b) Issues UNHCR's budget proposal to the Executive Committee;
- c) Submits the annual statement of accounts to the UN Board of Auditors;
- d) Maintain and improves financial and management controls of UNHCR.

IV. The Division of Human Resources Management- This Division consists of the Director's Office, the Staff Services Section, the Recruitment and Vacancy Management Section, the Staff Development Section, the Field Staff Safety Section, the Policy and Planning Section, the Post Classification and Documentation Section, the Staff Welfare Unit and the Performance Management Unit. This Division is headed by a Director who is accountable to the High Commissioner through the Deputy High Commissioner. The functions of the Division are (UN, 1998)

- a) Advising and assisting the High Commissioner in the formulation of personnel policies and management practices required to provide UNHCR with the necessary human resources;
- b) Directing the development and implementation of those policies and practices;
- c) Ensuring the application of the Staff Regulations and Rules of the United Nations and other relevant United Nations instructions relating to personnel matters;

- d) Assisting the High Commissioner in the optimum use of UNHCR human resources, inter alia, through the implementation of the UNHCR career management system;
- e) Advising, in consultation with the United Nations Security Coordinator, the High Commissioner on the security of UNHCR staff.

V. The Division of Information Systems and Telecommunications- The Division is consist of Office of CIO and Director, ICT Portfolio Management Office, ICT Policy, Risk and Compliance Office, Vendor Management Unit and Resource Management Unit. The functions of the Division is ensuring cost-effective information and communications solutions to enable and facilitate UNHCR's execution of its mandate. (UNHCR, 2015).

VI. The Division of Emergency, Security and Supply- The Division has Office of the Director, Resource management Unit, Compliance and Risk Management Unit, Emergency Policy and Capacity Building Section, Security Operations Sections, Supply Operational Support Section, Supply Business Support Section, Asset & Fleet Management Section, Infrastructure Management Unit, Procurement of Goods Section, Procurement of Services Section, Field Procurement Support Unit, Quality Control and Product Development Unit. Its functions include protection of people of concern through the optimal delivery of assistance in emergencies and ongoing programmes and effective emergency response management. (UNHCR, 2015).

VII. The Division of Programme Support and Management- The Programme Support and Management Division is consist of the Office of the Director assisted by the Deputy Directors, Programme Analysis and Support Section, Field Information and Coordination Support Section, Public Health Section, Operational Solutions and Transition Section, Shelter and Settlement Section and Cash-Based Interventions Sections. Its manages its agenda covering the main functions of the Division are (UNHCR, 2015)-

- a) Provide knowledge, guidance and tools to design and deliver programmes which demonstrate quality, technical integrity and innovation;
- b) Efforts to strengthen results-based management;
- c) Develops practical guidance and tools across technical areas;

d) Supports flee operations.

The area of operation of UNHCR comprises Europe, the Americas, Africa, Asia and the Pacific, and the Middle East and North Africa.

In providing its protection to the refugees, the UNHCR office seeks to give a refugee choice among three main solutions- 'voluntary repatriation', 'resettlement' through migration to another country or 'integration' in the country of residence. The working projects of UNHCR is voluntarily financed by the respective Governments. (Bhattacharya, 2014).

Voluntary Repatriation is the most preferred solution for the majority of refugees. UNHCR tries to encourage the refugees for this solution depending on the situation of their home country. UNHCR often provides the refugees transportation and a start-up package including cash, farm tools and seeds etc. Those who are unable to return to their homeland, UNHCR tries to integrate them locally. Local integration is a gradual process and it takes time for a refugee to acquire one society's full citizenship. Resettlement in a third country is another solution taken up by the UNHCR to deal with the refugee issues.

In addition to this, UNHCR also provides material relief in major emergencies, either directly or through partner agencies. In its first fifty years, UNHCR has protected and assisted more than 50 million people and its work has earned two Nobel Peace Prizes. UNHCR at the field level work to protect refugees, relocating refugee camps from border areas, reuniting separated families, documenting a refugee's need for resettlement to a second country of asylum, visiting detention centres and giving advice to governments on draft refugee laws, policies and practices. (Jastram, Achiron, n.d.).

The Non-Governmental Organisations (NGO's) are also working for the refugees in cooperation with UNHCR. The importance of NGOs' role in protecting refugees was recognized by the UN General Assembly when it called on the High Commissioner to establish contact with 'private organizations' (now known as NGOs) dealing with refugee questions and to help coordinate the efforts of those organizations (Jastram, Achiron, n.d.). Till date the UNHCR has strategic partnership with more than 900 organisations including NGOs, government organisations and other UN agencies.



UNHCR entrusts 40 percent of the annual expenditure to the partner agencies. (UNHCR, n.d.).

The other UN agencies with which the UNHCR operates includes the World Food Programme (WFP), the UN Children's Fund (UNICEF), the World Health Organisation (WHO), the UN Development Programme (UNDP), the Office for the Coordination of Humanitarian Affairs (OCHA), the UN High Commissioner for Human Rights (OHCHR) and the UN Office on Drugs and Crime (UNODC). (UNHCR, n.d.)

Apart from the UN agencies, there are other organisations with which UNHCR has strong links. These include the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC) and the International Organisation for Migration (IOM). (UNHCR, n.d.).

### **2.5.2. Persons of concern to UNHCR**

'Persons of concern to UNHCR' are all persons whose protection and assistance needs are of interest to UNHCR. They include (Jastram, Achiron, n.d.)-

- Refugees under the Refugee Convention
- Persons fleeing conflict or serious disturbances of the public order (i.e., refugees under the OAU Convention and Cartagena Declaration definitions)
- Returnees (i.e., former refugees)
- Stateless persons
- Internally displaced persons (in some situations).

### **2.5.3. Functions of the United Nations High Commissioner for Refugees**

The Office of the United Nations High Commissioner for Refugees- (UN, 1998)

- a) Provides international protection to refugees and seeks permanent solutions to their problems (General Assembly resolution 428 (V));
- b) Provides assistance to persons repatriating, as well as, if necessary, monitoring their safety and well-being on return (General Assembly resolution 40/118);

- c) Provides humanitarian assistance and protection to persons of concern to the United Nations High Commissioner for Refugees (General Assembly resolution 832 (IX));
- d) Provides, on the basis of specific requests from the Secretary-General or the competent principal organs of the United Nations, and with the consent of the State concerned, humanitarian assistance and protection to internally displaced persons (General Assembly resolution 48/116);
- e) Contributes as a member of the Inter-Agency Standing Committee to the provision, in complex emergencies, of humanitarian assistance coordinated by the United Nations Emergency Relief Coordinator (General Assembly resolution 46/182).

## **2.6. Refugees under International Law**

Under international law, a refugee has the right to safe asylum, should have access to medical care, a refugee child should get education and every adult refugee should get to work as Article 14 (1) of the Universal Declaration of Human Rights (UDHR) says, “Everyone has the right to seek and to enjoy in other countries asylum from persecution”. If the flow of refugee and asylum seeker increases and the concerned government is unable to provide protection and proper assistance to them then the UNHCR extends their assistance to the refugees and asylum seekers to meet their basic needs.

Under International Law all refugees have the same human rights as any other person. In addition, there are specific human rights applicable to the refugees. These include (LIRS, 2014)-

- the right to life, liberty and security of person;
- the right to freedom from torture or cruel or inhumane or degrading treatment or punishment;
- the right to freedom of movement and residence within the borders of each state;
- the right to freedom of thought, conscience and religion;
- the right to freedom of opinion and expression;

- the right to a standard of living adequate for the health and wellbeing of the person and their family, including food, clothing, housing, medical care and necessary social services;
- the right to education;
- freedom from discrimination; and
- respect for the unity of the family.

These rights are included in International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and other UN treaties.

## **2.7. The 1951 United Nations Convention on Refugees and its 1967 Protocol**

The United Nations (UN) has adopted ‘The Convention Relating to the Status of Refugees’ in the year 1951. This convention is the key legal document regarding the refugee issues. Till April, 2015 there were total 145 States parties who have ratified this convention (UNHCR, n.d.). This convention defines refugees and outlines the rights of the displaced and legal obligations of states to protect them. The Convention is a post-World War II instrument to deal with the refugee issues. The definition provided by this Convention is the most widely accepted definition on refugees. But the main limitation of this Convention is that it covers only those persons who became refugees before 1<sup>st</sup> January 1951. (Noorani, 1998). Accordingly in the year 1967 a protocol was added to this convention, namely, ‘Protocol Relating to the Status of Refugees’. This protocol removed all these limitations and gave the Convention a universal coverage. The Convention has seven Chapters and 46 Articles. (UNHCR, n.d.).

Among others the main principles of the UN Convention (UN Refugee Convention, 1951) are ‘Non-Discrimination’, ‘Non-Penalization’ and ‘Non-Refoulement’. Non-Discrimination, according to Article 3 of the Convention implies that the Convention provisions are to be applied without discrimination as to race, religion or country of origin. Also the developments in international human rights law to be applied without discrimination as to sex, age, disability, sexuality, or other prohibited grounds of discrimination. According to the principle of Non-Penalization as Article 31 of the Convention, refugees should not be penalized for their illegal entry or stay. Prohibited penalties might include being charged with immigration or criminal offences relating

to the seeking of asylum, or being arbitrarily detained purely on the basis of seeking asylum. According to Article 33, Non-Refoulement provides that no one shall expel or return ('refouler') a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.

There are some other Articles of the Refugee Convention which are of utmost importance. Article 12 states that the personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence. According to Article 16 a refugee shall have free access to the courts of law on the territory of all Contracting States. Article 22 deals with the Public Education. It reads the Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. According to Article 28 the Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory. Article 32 reads Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. (UN Refugee Convention, 1951).

Article 35 of the Convention deals with cooperation of the national authority with the UN with regard to the refugee issues. It reads as (UN Refugee Convention, 1951)-

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.

On the other hand the 1967 Protocol Relating to the Status of Refugees provides the UN Convention a universal consideration by removing all the limitations of it. The principle limitation of the UN Convention was it included only those people who became refugee before 1<sup>st</sup> January, 1951 and within Europe. The Protocol consist XI Articles in total. (UNHCR, n.d.).

## **2.8. Principle of Non-Refoulement**

The principle of Non-Refoulement is the most essential component of the refugee status and asylum. This is the cornerstone of the International Refuge Law. Non-Refoulement is the practice of not forcing refugees and asylum seekers to return to the country where they are subjected to persecution. Merriam Webster dictionary defines Non-Refoulement as the principle of international law providing a refugee or asylum seeker with the right to freedom from expulsion from a territory in which he or she seeks refuge or from forcible return to a country or territory where he or she faces threats to life or freedom because of race, religion, nationality, membership in a particular social group, or political opinion.

Article 33(1) of 1951 UN Refugee Convention covers the principle of Non-Refoulement. The Article states

No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

It is to be noted here that it is this Article to which no reservations are permitted. The principle of Non-Refoulement applies not only in respect of the country of origin but to any country where a refugee has threat from persecution. Apart from the 1951 UN Convention, the principle of Non-Refoulement has been included in other important documents also.

According to Article II (3) of the Organisation of African Unity Convention 1969

No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or

remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.

Article 22 (8) of the American Human Rights Convention, 1969 states that

In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinions.

Article III (3) of the Principles concerning the Treatment of Refugees adopted by the Asian-African Legal Consultative Committee at its Eighth Session in Bangkok in 1966, states that

No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

## **2.9. The Cartagena Declaration, 1984**

The Cartagena Declaration on Refugees is also one important international document on the refugee issue. This was adopted in 1984 at Cartagena, Colombia. It is a non-binding agreement adopted by the Colloquium on the International Protection of Refugees in Latin America, Mexico and Panama. The Colloquium adopted the certain commitments with regard to the refugees defined in the Contadora Act on Peace and Cooperation, which are based on the UN Refugee Convention of 1951 and its Protocol of 1967.

Some of these commitments are (Cartagena Declaration, 1984)

- a) To carry out constitutional procedures for accession to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.
- b) To establish the internal machinery necessary for the implementation of the provisions of the Convention and Protocol referred to above.

- c) To ensure the establishment of machinery for consultation between the Central American countries and representatives of the Government offices responsible for dealing with the problem of refugees in each State.
- d) To support the work performed by the UNHCR in Central America and to establish direct co-ordination machinery to facilitate the fulfilment of his mandate.
- e) To ensure that any repatriation of refugees is voluntary, and is declared to be so on an individual basis, and is carried out with the co-operation of UNHCR.
- f) To ensure the establishment of tripartite commissions, composed of representatives of the State of origin, of the receiving State and of UNHCR with a view to facilitating the repatriation of refugees.
- g) To reinforce programmes for protection of and assistance to refugees, particularly in the areas of health, education, labour and safety.
- h) To request immediate assistance from the international community for Central American refugees, to be provided either directly, through bilateral or multilateral agreements, or through UNHCR and other organizations and agencies.
- i) To ensure that the Governments of the area make the necessary efforts to eradicate the causes of the refugee problem.
- j) To ensure that, once agreement has been reached on the bases for voluntary and individual repatriation, with full guarantees for the refugees, the receiving countries permit official delegations of the country of origin, accompanied by representatives of UNHCR and the receiving country, to visit the refugee camps.
- k) To ensure that the receiving countries facilitate, in co-ordination with UNHCR, the departure procedure for refugees in instances of voluntary and individual repatriation etc.

The Declaration stress on the sustainable solutions to the refugee issue and construction of peace and safeguarding of human rights. Since the adoption of the Convention i.e. 1984, the member states have endorsed the need to strengthen the international regime for the refugees. Because of that in 1994 The Declaration of San Jose (Cartagena+10) was adopted, in 2004 The Mexico Declaration (Cartagena+20) was adopted and recently in 2014, The Declaration of Brazil (Cartagena+30) adopted adding new dimensions to the international refugee protection regime. (Castillo, 2014).

**CHAPTER: 3**  
**INDIA'S REFUGEE POLICIES**



### 3.1. Introduction

India has been a receiver of refugees not only from its neighbouring countries but from all over the world since the time of its Independence. South Asia is one of the highest refugee generating regions of the world. It alone accounts nearly 10 per cent of the total refugees all over the world (Ananthachari, 2003). In the South Asian region India is one of the highest refugee hosting nations. Also India shares international border with its neighbouring countries which generates refugees in large numbers, like Bangladesh, Pakistan etc. That is why, India became the favourable destination for the refugees of these countries. In India there are total seven categories of migrants and refugees which came at different points of time. They are (Kusulina, 1980)-

- Hindu migrations caused by the Partition<sup>23</sup>,
- Bangladeshi refugees as a result of the civil war in Pakistan<sup>24</sup>,
- Sri Lankan Tamils, Burmese Indian and Bhutanese Nepali refugees due to inter-ethnic strife<sup>25</sup>,
- Nepali, Bangladeshi and Pakistani settlers due to open, or virtually open borders,
- Developmental and environmental refugees from Bangladesh,
- Indian Tamil (Sri Lankan) repatriates as per contractual obligations, and
- Tibetan and Afghan refugees as a result of military intervention by extra-regional powers. (Kusulina, 1980).

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<sup>23</sup> After the Partition of India and Pakistan, the Hindus of Pakistan had to face persecution and they fled from Pakistan and seek refuge in India. But it is to be noted here that, after more than six decades of Partition the refugee problem is still present from Pakistan to India. (Roy, 2012).

<sup>24</sup> Pakistan Civil War also known as the Bengali War of Independence emerged in the year 1971 where East Pakistan rebelled against West Pakistan. The War led to the formation of Bangladesh. India invaded East Pakistan which ensured the independence of Bangladesh. At the time of war, many Bangladeshi migrants came to India to seek refuge. (Singh, 2016).

<sup>25</sup> According to Oxford Dictionary, Inter-ethnic means occurring between or involving people of different ethnicities and Merriam Webster dictionary defines strife as an act of contention, fight or conflict. The Sri Lankan Tamil refugees fled to India because of the Civil War in the country and has been residing in camps for more than two decades (Valatheeswaran, 2011). The Burmese Indian has been facing series of riots but with the Japanese occupation of Burma had resulted in forced expulsion of the Indian community in 1962. The Nepal Government has recognised the Bhutanese as refugees in 1991 and after almost two decades the Nepal government has ordered the Bhutanese refugees to leave the country (Marasini, 2009).

The first instance of refugee influx in India happened at the time of its independence. The decolonisation of India and Pakistan in 1947 created a huge influx of people. It almost created 30 million refugees in and within the region. At that time millions of Hindus and Muslims fled across the borders to save their lives from communal violence, murder, rapes and mass abductions etc. This period also witnessed institutionalise of the office of UNHCR and the adoption of the 1951 Convention Relating to the Status of Refugees. After that the influx of Tibetan refugee in the late 50s was India's first experience of huge refugee influx. Following the flight of Buddhist spiritual leader the Dalai Lama in 1959 to India, thousands of Tibetans fled and sought refuge in Indian land to escape in the fear of Chinese persecution<sup>26</sup>. (Oberoi, 2006).

UNHCR stated that in the beginning of the year 2000, there were 292,000 refugees in India of which 110,000 were from Tibet; 42,000 from Myanmar, 14,500 from Afghanistan; 15,000 from Bhutan and 110,000 from Sri Lanka. After 2012, the Rohingya Muslim refugees from Arakan region of Myanmar fled to India who have been forced to leave their homeland because of the clashes with Rakhine Buddhist population. Till May, 2015 there are 110,095 from Tibet, 64,689 from Sri Lanka which are considered as religious minorities assisted by the Government of India. According to the 2016 June statistics of UNHCR, India has total 210,259 refugees of which 19,924 from Myanmar, 14,464 from Afghanistan, 688 from Somalia and 1739 others. In 2016, out of the 28,000 registered refugees with UNHCR around 16,341 were from Myanmar. That is why it is very important on the part of India to have certain legal framework to deal with the various groups of refugees and their issues. (UNHCR, n.d.).

India doesn't follow any consistent policy for refugees. India was never a part of the United Nations Convention on Refugees i.e. the Convention Relating to the Status of Refugees, 1951 and its 1967 Protocol. India maintained distance from this agency despite UNHCR's effort to make India a part of this Convention (Oberoi, 2006). It was because this convention defined refugees as Europeans who has to be resettled and said that refugees are the persons who fled from 'non-Free world' for the 'Free world'. On December 1950, at the UN's third committee, Vijaylakshmi Pandit objected this definition saying it was Euro-Centric. Again three years later, the foreign secretary R.K.

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<sup>26</sup> The Tibetan Refugees fled to India following the exile of the 14<sup>th</sup> Dalai Lama in 1959. Because of the Chinese invasion of Tibet regarding the territorial dispute between the countries, the people left the country in the fear of Chinese persecution. (Rechard, 2017).

Nehru, told the UNHCR representatives that they do not recognise division of the world on the basis of non-Free world and free world. (Prasad, 2014).

This refugee convention is the universal standard that sets out rights of the refugees and asylum seekers and responsibilities of the host nations. India is not bound to follow this convention as it has not signed and ratified it. This results in the lack in enjoyment of all the rights by the refugees in India that are universally coined for them.

On the basis of the conditions of the refugees in India, three primary categories of refugees can be identified (Kusulina, 1980)-

- Refugees who receive full protection as per standards set by the Government of India. E.g. Sri Lankan Tamil Refugees, Chakmas and Tibetans.
- Refugees whose presence in Indian Territory is acknowledged by the UNHCR and they are protected under the principle of Non-Refoulement by Government of India. E.g. Afghan, Iranian, Somali, Sudanese and Burmese refugees.
- Refugees who entered India and have been assimilated into different communities. Their presence is not acknowledged by the government of India or the UNHCR. This section of refugees includes refugees from Myanmar, ethnic chin refugees from Chin State<sup>27</sup>, Nagas and Rakhine refugees from Arakan State<sup>28</sup> and ethnic Nepalese of Bhutanese nationality.

There is a lack of unified and consistent refugee policy for all the sections of refugees in India. (Trakroo, et al. 2005). The Refugee groups like Tibetan, Tamil etc. are recognised as refugee groups by the Government of India and hence they are availing certain facilities under the mandate of the Indian government. Again the Afghans, Chakmas etc. UNHCR mandated refugee groups in India and they are not recognised as refugee groups by the Government of India. In the absence of such laws and policies

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<sup>27</sup> The Chin State situated in Western Burma which shares border with India. The Chin ethnic people had been abused by Tatmadaw, armed forces of Myanmar and State Peace and Development Council Government. These include extrajudicial killings, arbitrary arrest, detention, torture, forced labour, restriction against movement, extortion and confiscation of property etc. Apart from it, the Chin opposition group, Chin National Front (CNF) and its armed division of the Chin National Army (CNA) extort money and commit other abuses against the Chin people and thus the people left their place.

<sup>28</sup> The Arakan State is situated in the Southern Burma which is now known as Rakhine State. The predominantly Buddhist country, the Myanmar government has been forcing the Rohingya Muslims who are an ethnic muslim minority from the country since 1970 and still the forced displacement of the Rohingya Muslim are present from Burma. (Albert, 2017).

the Indian legal system has been working on the basis of ad hoc policies and laws to regulate the refugee issues. This depends on the decisions taken up by the Ministry of External Affairs (Singh, 2016).

### **3.2. Role of UNHCR in India**

The United Nations High Commissioner for Refugees is an UN initiative to look into the issues of refugees worldwide. But in India, the role of UNHCR is limited. It has its head office situated in the country's capital, New Delhi and a field office at Chennai, Tamil Nadu. It works mainly with the urban refugees residing in Delhi, its operation in other parts of the country is limited. India has not also accepted financial assistance from UNHCR.

In India, UNHCR conducts registration of the refugees and asylum seekers timely to protect the increasing number of people. It carries out a Refugee Status Determination (RSD) procedure, to register as asylum seekers. After that UNHCR conducts an interview with each individual asylum seeker, with an interpreter, if needed. By this process UNHCR decides whether to grant refugee status or not, and gives the individual an opportunity to appeal a decision if the claim is rejected. UNHCR has partnership with a number of organisations and NGO's both local and community based through which it helps and provides assistance to the refugees and asylum seekers.

Among the other works, UNHCR places emphasis on right to primary education of every child. It offers the children to attend primary schools since the government granted them free access. The Right of Children to Free and Compulsory Education Act, 2009 was passed by the Government of India which ensures free and compulsory education to every child between the ages of 6 to 14 years. It also provides access to health care to all people as a basic human right.

There are various NGOs and organisations which works in collaboration with the UNHCR. The Socio-Legal Information Centre (SLIC) provides legal assistance to protect persons under UNHCR's mandate. BOSCO, a part of Don Bosco Global Network, assists the refugees in accessing government hospitals, dispensaries and other medical facilities which are made available by the government of India to refugees and asylum seekers. It also works with the refugee youths. The NGOs give counselling

classes, language classes, vocational training etc. to the refugees. UNHCR also supports income generating activities to help the refugees. 'Koshish', a popular mark of traditional clothing, made by refugee women in India is one of the examples.

Apart from these activities UNHCR also works for the protection of the refugee women. It along with partner organisations and Delhi Police has been organising self-defence training for refugee women. The main motive of the training program is to empower women by equipping them with basic martial arts techniques.

Mr. Dominik Bartsch, Chief of Mission, UNHCR India, has talked about the activities undertaken by UNHCR in India to help refugees. These are (Brar, n.d.)-

- a) Registering and providing documentation to asylum-seekers and refugees.
- b) Seek long-term solutions for refugees, which is the most feasible and desirable option for refugees to return to their home country if the situation has improved. In UNHCR's experience, most refugees eventually want to return to their homes.
- c) Local Integration which means giving a regularized status, conferring citizenship to the refugees.
- d) UNHCR and its partners assist refugees in becoming self-reliant and develop the skills and ability to support themselves and their families.

UNHCR has done a lot in the way of refugee protection in India, though it has to act in limit in India. For its works it also won the Indira Gandhi Prize for Peace, Disarmament and Development in 2015.

### **3.3. India's International Obligations**

Though India has not signed the International Refugee Convention of 1951, it is a member of a number of international conventions and treaties both universal and regional. These conventions have a direct bearing on the refugee rights and protection. In 1995, India became the member of the Executive Committee of the High Commissioner's Program (EXCOM). It is an UN organisation which approves and supervises material assistance program of UNHCR (Nair, 2007). EXCOM is composed of 79 member States, which is entitled to oversee UNHCR's budget and advises the

Commissioner on Refugee protection. To become a member of EXCOM, states must have interest and devotion to the solution of the refugee problem. (Trakroo, et al. 2011)

India is also a member to the International Labour Organisation's Convention No. 118. This Convention provides for social security to refugees and stateless persons in addition to other persons in the territory of the signatory state. (Ibid. 2011). India adopted the Universal Declaration of Human Rights (UDHR). Human Rights are the inalienable rights of all the human being. UDHR ensures these rights for all. The National Human Rights Commission of India is an autonomous institution and it was constituted under the Protection of Human Rights Act, 1993. Article 14(1) of the UDHR states that, 'Everyone has the right to seek and enjoy in other countries asylum from persecution'. (Ainy, 2016).

India also ratified the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 26 of the ICCPR states that, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. (Xavier, Sharma, 2015).

India is also a party to the UN Declaration of Territorial Asylum of 1967. Article 1 of this declaration states that every state has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable, without, through the exercise of this right, giving rise to complaint by any other State. It is to be noted here that Principle of Non-Refoulement was the core of this declaration (Gill, 2012).

Apart from these India also ratified the United Nations Convention on the Rights of the Child in 1989, Convention on the Elimination of All Forms of Discrimination Against Women (CEADAW) in 1980, The Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, etc. (Xavier, Sharma, 2015).

India is also a member of the Asian-African Legal Consultative Organization (AALCO) and as a member of it India is a signatory to the Bangkok Principles on the Status and Treatment of Refugees as adopted on 24 June 2001 at the AALCO's 40th Session in New Delhi. Even if these are non-binding principles, they intend to influence member states to adopt national legislation for the status and treatment of refugees and serve as a model to deal with the refugee problems. (Xavier, Sharma, 2015).

### **3.4. Principle of Non-Refoulement**

In general, Non-Refoulement is the practice of not sending back the refugees to the places where their life or freedom is in danger. The Principle of Non-Refoulement gets its place in many of the international and regional documents. Non-Refoulement is a principle of customary international law prohibiting the expulsion, deportation, return or extradition of an alien to his state of origin or another state where there is a risk that his life or freedom would be threatened for discriminatory reasons (Sebesta, 2010).

The discussion on the principle of Non-Refoulement started in the 1951 UN Refugee Convention. This convention introduces this principle for the first time. Article 33 of the Convention deals with the Principle of Non-Refoulement.

There are other documents which have included the principle apart from the 1951 UN Convention. Article 13 of the International Covenant on Civil and Political Rights (ICCPR) states

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom 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.

But this article not only covers refugees but refers to aliens lawfully within a state. That is why, this article's application is limited to some extent (Rodger, 2001). Article 7 of the ICCPR is also relevant as it protects against torture. The Human Rights Committee has taken this provision into account when dealing with cases of expulsion and extradition. (Sebesta, 2010).

Article 3 (1) of the UN Declaration on Territorial Asylum reads

No person shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

Article 3 (1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that ‘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’.

The Committee on the Rights of the Child has issued authoritative guidance with respect to the principle of Non-Refoulement as it applies to the Convention. The Committee explains in its General Comment 6 as

States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed.

Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 which gives a number of important principles relating to asylum which includes the principle of Non-Refoulement also. According to Article 2(3)

No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.

Article 22(8) of the American Convention on Human Rights addresses Non-Refoulement. The article states that

In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinions.

Article III (3) of the Principles concerning the Treatment of Refugees adopted by the Asian-African Legal Consultative Committee at its Eighth Session in Bangkok in 1966, states that



No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

The principle of Non-Refoulement has become a part of customary international law and that is why it is binding on all countries is applicable to any refugee, asylum seeker or alien who needs some form of shelter from the state under whose control he/she is. (Sebesta, 2010). India though not a party to the 1951 refugee Convention, yet applies the principle of Non-Refoulement in practice. An official in the Indian Ministry of External Affairs has stated that ‘India has a commitment to the policy of Non-Refoulement. This is not merely on the legalistic grounds of persecution. India provides refugees on the broader basis of moral humanitarian principles’ (Oberoi, 2006).

In 1996, UNHCR Executive Committee (ExCom) concluded that, ‘the principle of non-refoulement is not subject to derogation.’ India became a member of ExCom in 1995 and so that during the time this conclusion was discussed and agreed. (Sanderson, 2015).

Apart from the Principle of Non-Refoulement India does apply certain articles of the 1951 Refugee Convention in practice. The articles are (Xavier, Sharma, 2015)-

- Article 3- Non-Discrimination. India follows the principle of non-discrimination against every refugee.
- Article 4- Religion. India provides the refugees the right to freedom of religion.
- Article 7- Exemption from Reciprocity. It means India provides same treatments to the refugees as it accords to aliens generally.
- Article 16- Access to Courts. Refugees can seek the help of court if needed.
- Article 21- Housing. Refugees in India have the freedom of housing. It means refugees do not need to stay in camps.
- Article 22- Public Education. Refugees in India enjoys the right to education.
- Article 26- Freedom of Movement. It means in India refugees have the right to choose their place of residence and can move freely within territory.

- Article 27- Identity Papers. According to this Article India provides the refugees identity cards.

### **3.5. Laws for Refugees in India**

There are a number of legislative measures those deal with refugees were passed and issued under the Seventh Schedule of the Indian Constitution. Many of them are not relevant in the present context. The following legislation was enacted after the Partition of India and before the Constitution of India came into force (Trakroo, et al. 2005)-

- East Punjab Evacuees (Administration of Property) Act, 1947
- UP Land Acquisition (Rehabilitation of Refugees) Act, 1948
- East Punjab Refugees (Registration of Land Claims) Act, 1948
- Mysore Administrative of Evacuee Property (Emergency) Act, 1949
- Mysore Administration of Evacuee Property (Second Emergency) Act, 1949.

After the Constitution of India came into operation, the following acts were passed relating to refugees (Ibid. 2005)-

- Immigrants (Expulsion from Assam) Act, 1950
- Administration of Evacuee Property Act, 1950
- Evacuee Interest (Separation) Act, 1951
- Displaces Persons (Debts Adjustment) Act, 1951
- Influx from Pakistan (Control) Repelling Act, 1952
- Displaced Persons (Claims) Supplementary Act, 1954
- Displaced Persons (Compensation & Rehabilitation) Act, 1954
- Transfer of Evacuee Deposits Act, 1954
- Foreigner's Law (Application and Amendment) Act, 1962
- Goa, Daman and Diu Administration of Evacuee Property Act, 1969
- Refugee Relief Taxes (Abolition) Act, 1973.

### **3.6. Laws Governing Refugees in India**

In India, the refugees and asylum seekers are regulated under the Foreigner's Act, 1946, the Registration of Foreigner's Act, 1939, the Passport (Entry of India) Act, 1920, the Passport Act, 1967, and the Extradition Act, 1962. (Kusulina, 1980). The Foreigner's

Act, 1946 and the Foreigner's Order 1948 gives the power to the Government of India to restrict the movement of the foreigners inside India, to limit the employment opportunities etc. Apart from these Acts the laws under the Criminal Procedure Code, the Indian Penal Code, and the Evidence Act are also applicable to the refugees in India.

Section 3 of the Foreigner's Act, 1946 deals with the 'Power to make orders'. According to this Section the Central Government may make provision for prohibiting, regulating or restricting the entry of foreigners into India or their departure or continued presence in India. Again Section 3A of the Act deals with the 'Power to exempt citizens of Common-wealth countries and other persons from application of Act in certain cases'. The Central Government may declare that of the provisions of this Act shall or shall not apply in relation to- (a) the citizens of any such Commonwealth country as may be so specified; or (b) any other individual foreigner or class or description of foreigner. Section 7 deals with the responsibility of hotel keepers and others to equip particulars of persons and in the case of foreigners. Section 14 deals with 'Penalties'. If any person disobeys the provisions of this Act he/she shall be punished with imprisonment for a term, may extend to five years and shall also be liable to fine. (Foreigner's Act, 1946).

The Registration of Foreigner' Act, 1939 was made to provide for the registration of foreigners in British India. But this Act is still being used by the Government of India to regulate the refugees. According to this Act 'foreigner' means a person who is not a citizen of India. Section 3 of this Act deals with the power of the central government to make rules. The Central Government has the power to make rules regarding the foreigners' entry, their stay and about the reporting of the stay to the concerned authorities. According to Section 5 of the Act, the Supreme Court can punish any person who disobeys or failed to comply with the provisions of the Act by imprisonment or fine or by both. Section 6 of this Act is about the 'power to exempt from application of Act'. The Central Government may declare that any or all provisions of the Act shall not apply or shall apply with modified form and depending on circumstances and on foreigners individually. (The Registration of foreigner's act, 1939).

The other Acts that are used for the regulating the entry of the refugees and other foreigners are The Passport Act of 1920 and 1967. The Passport Act, 1920 is an Act to take power to require passports of persons entering in the Provinces of India. According

to the Section 3 of this Act the Central Government may make rules requiring that persons entering India shall be in tenure of passports. (The Passport Act, 1920).

The Passport Act, 1967 is an Act to provide for the issue of passports and travel documents, to regulate the departure from India of citizens of India and for other persons and for matters incidental to that (The Passport Act, 1967).

The Extradition Act, 1962 is enacted to consolidate and amend the law relating to the extradition of fugitive criminals (The Extradition Act, 1962).

But none of these Acts are solely entitled to the refugees. Even in the Foreigner's Act the word 'Foreigner' is used not regarding to only refugees but with all persons who are not the residents of India which also includes tourists. That is why, there is need of a new law or act to provide jurisdiction to the refugees issues only.

### **3.7. Constitutional Rights of Refugees and Asylum Seekers**

The refugees and the asylum seekers in India enjoys some constitutional rights as the Indian citizen. These rights includes (Bhattacharjee, 2008)-

Right to Equality before Law (Article 14). The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Right to Protection in respect of Conviction of Offences (Article 20). No person shall be convicted of any offence except for violation of law.

Right to Life and Personal Liberty (Article 21). No person shall be deprived of his life or personal liberty except according to due procedure established.

Right to Fair Trial (Article 21). It has been recognised by the Supreme Court as a component of the right to protection of life and liberty. This also entails the right to be produced before a magistrate within 24-hours of arrest. These rights put a refuge and a citizen of India on the same pedestal as far as liberty is concerned.

Right to Protection under Arbitrary Arrest (Article 22). No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for

such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

Freedom of Religion (Article 25). All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate their religion.

Right to approach Supreme Court for enforcement of Fundamental Rights (Article 32). The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights.

### **3.8. New Laws for Refugee Protection in India**

In 1995, a positive effort was made to draft a Model National Law on Refugees in New Delhi. A drafting committee led by Justice P.N. Bhagwati, a former Chief Justice of Supreme Court of India prepared this law under the auspices of the Regional Consultations on Refugees and Migratory Movements in South Asia Initiative. The first draft was presented at the SAARC LAW Regional Seminar in India in 1997 and a revised draft was adopted by regional consultations in Dhaka in 1997. In this Model Law effort was made to define refugees properly. It was revised in the year 2006 as the Refugees and Asylum Seekers (Protection) Bill by the Public Interest Legal Support and Research Centre. (Sethi, 2012; Sanderson, 2015).

The new draft dropped many of the rights included in Article 13 of the original model law in order to accommodate objections from the intelligence and security establishment. The rights those are dropped included the right of a refugee to choose their place of residence and to move freely within the country, the right to adequate housing, healthcare and primary education and the right to freely access employment. But the bill did not attained adequate support of the Indian Cabinet and thus it was not introduced before the parliament. (Sanderson, 2015).

Shashi Tharoor introduced in the Lok Sabha, the Asylum Seekers Bill in the year 2015 as a Private Members Bill to establish a legal framework to consolidate India's refugee policy, but this is yet to be taken into consideration (Chowdhury, 2016). This bill seeks to give India recognition for its long-standing commitment to refugee protection. Dr. Tharoor wrote, this law "will reflect the leading role India has played in sheltering those

fleeing persecution”. The Bill categorises the rights and duties of refugees in India. It proposes the establishment of an autonomous National Commission, which will assess and determine claims for asylum in India. If this Bill passes into law then it will become a milestone in the field of refugees in India. It would be successful in organising and resolving issues of refugees and asylum seekers and would also get protection.

**CHAPTER: 4**

**AFGHAN REFUGEES IN INDIA: PROBLEMS  
AND CHALLENGES**

#### **4.1. Introduction**

This chapter is based on the field study that was conducted in order to gather data on the selected topic. In this study attempts has been made to understand the various problems and challenges faced by the Afghan refugees in India using interview schedules both structured and unstructured. The Afghan Refugees in India are mostly concentrated in the country's capital, New Delhi. Apart from Afghan refugees, other refugee communities like Somali, Syrian, Burmese lives in this region. New Delhi has 11 districts and according to 2011 census report it has a total population of 11,034,555 of which 5,882,117 are male and 5,152,438 are female population.

The fieldwork was started on 21<sup>st</sup> August, 2017 and concluded on 7<sup>th</sup> September, 2017. Data was collected by using variables like age, sex, nationality, religion, mother tongue, education, occupation etc. The study tries to understand the background of the refugees back in Afghanistan and their reasons for their displacement from their country and seek refuge in India. Attempts has also been made to understand whether they received any kind of official support or not while coming to India and through what method they came to India.

The study, along with the survey of the Afghan refugees, undertook several visits and contacts to places and offices in order to collect necessary data. Some of them include-

- The UNHCR, Vasant Vihar, New Delhi.
- Guru Amar Das Gurdwara, Tilak Nagar, New Delhi.
- Institute for Defence Studies and Analysis, New Delhi.
- Jamia Millia Islamia University, New Delhi.
- Jawaharlal Nehru University, New Delhi.
- Human Rights Law Network, New Delhi.
- Nehru Memorial Museum and Library, Teen Murti Bhawan, New Delhi.
- Diplomat Bhaswati Mukherjee, during her lecture on Foreign Policy in Sikkim University, April 19, 2017.

The focus has been made to know from the refugees about the problems and challenges that they are facing in India with regard to their settlement, education, job, security etc. The issues like refugee card, housing has also been analysed. The perception of the



refugees regarding the Indian refugee laws and policies and their implications has also been attempted to include in the study. Along with it, attempts has been made to know the role of the UNHCR in providing facilities and safeguard to the refugees.

There are two groups of Afghan Refugees in India. One is Hindu and Sikh Afghans and other is Muslim Afghans. During the field survey attempt was made to include respondents from both the groups to have a better understanding of the views of the refugees. Both the groups came to India at different periods of time. The Director of Nehru Memorial Museum and Library, one of the resource persons visited during field visit said that when the Taliban came into power in Afghanistan the Afghan Sikhs and the Hindus faced many problems and discrimination because they belonged to religious minority in Afghanistan and it became difficult for them to stay there. Also in Afghanistan the Hindus and the Sikhs are not differentiated as different religion, they are considered as the same. The discrimination against the Hindus and the Sikhs made them flee from the country.

While asked to the respondents particularly to the Sikhs, they said that at that time they came via Pakistan through the Attari Border. There in Pakistan they got 7 days visa and then they came to India. After reaching India they stayed in the camp arranged by the Sikh and Hindus of India. Later on, they arranged some rented houses for themselves and gradually they started their business in India. There is a large group of Hindu and Sikh Afghans and now they have fully settled in India and most of them have now become citizens of India. These people have a different lifestyle which are different from the Indian Hindus and Sikhs. They use Pashtun language among the same community people. They have their own Gurdwaras for worship those are different from the Indian Sikhs. Even they have different styles of wearing the Sikh turban.

It was not only the religious minorities of Afghanistan who left the country, but also the Muslim people left Afghanistan in search of a secured and better life. The Muslims of Afghanistan follow both Shia and Sunni sect. An Assistant Professor of Afghanistan Studies Centre, Jamia Millia Islamia University said that the Shias are considered as minority in Afghanistan and Sunni are major religious group and almost all the Pashtuns are Sunni. During Soviet invasion the Shia fled to Iran where majority people follow Shia, and the Sunnis fled to Pakistan where the majority people follow Sunni sect. The

Hazaras also, who follow Shia sect were not considered as insiders of the country, had left Afghanistan because they faced persecution and discrimination.

The Muslim Afghans came to India in recent times, mostly in the beginning of the 21<sup>st</sup> century. According to the respondents they came to India because of the unrest, continuous terrorist attacks in Afghanistan. These problems have increased insecurity among the people and that is the main reason why the Afghan Muslims also came to India. Another reason for their coming to India is at that time Pakistan and Iran had closed its gates for the Afghan refugees.

For better understanding of the status of Afghan refugees in India and their perceptions both male and female respondents of different age groups were taken into consideration along with Afghan Hindus and Sikhs and Afghan Muslims.

The samples were collected with the help of some students from Afghanistan studying in universities of Delhi and also with the help of some Afghan group leaders and religious leaders. Most of the Afghan Sikh community people get together in their Gurdwaras every day. That is why it became easy to interact with the Afghan Sikh community people both men and women by going to the Gurdwaras. The people were interactive and they were interested in sharing their views.

#### **4.2. Data Collection, Analysis and Interpretation**

The sample size of the field work is of 40 and the respondents comprise of Afghan refugees who are both Sikhs and Muslims. In collecting data the variables like sex, age, education, occupation, mother tongue, nationality etc. were taken into account. According to these variables the data collected from field are being analysed. In the interview schedule both objective and subjective type question were included and accordingly their answers were analysed. There were total eight questions to know the basic profile of the respondents. These questions were-

Name (optional): \_\_\_\_\_

Age (as on date): \_\_\_\_\_ Years \_\_\_\_\_ Months \_\_\_\_\_

Sex: \_\_\_\_\_

Nationality: \_\_\_\_\_

Religion: \_\_\_\_\_

Mother Tongue \_\_\_\_\_

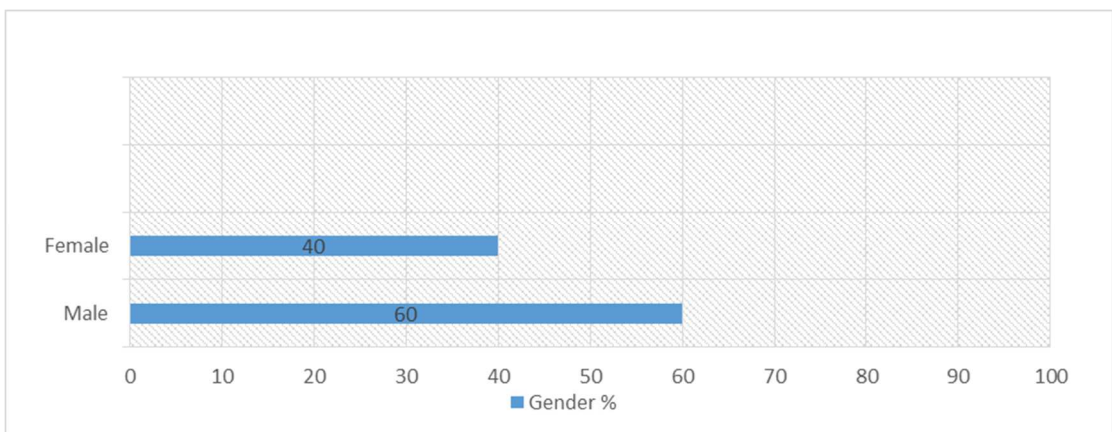
Education: \_\_\_\_\_

Occupation: \_\_\_\_\_

Based on the questions the answers are analysed. The names of the respondents are kept optional and the respondents are from the same nationality.

**Table 4.1: Categorisation of the sample respondents on the basis of GENDER**

Sex	Number	Percentage (%)
Male	24	60%
Female	16	40%
Total	40	100%



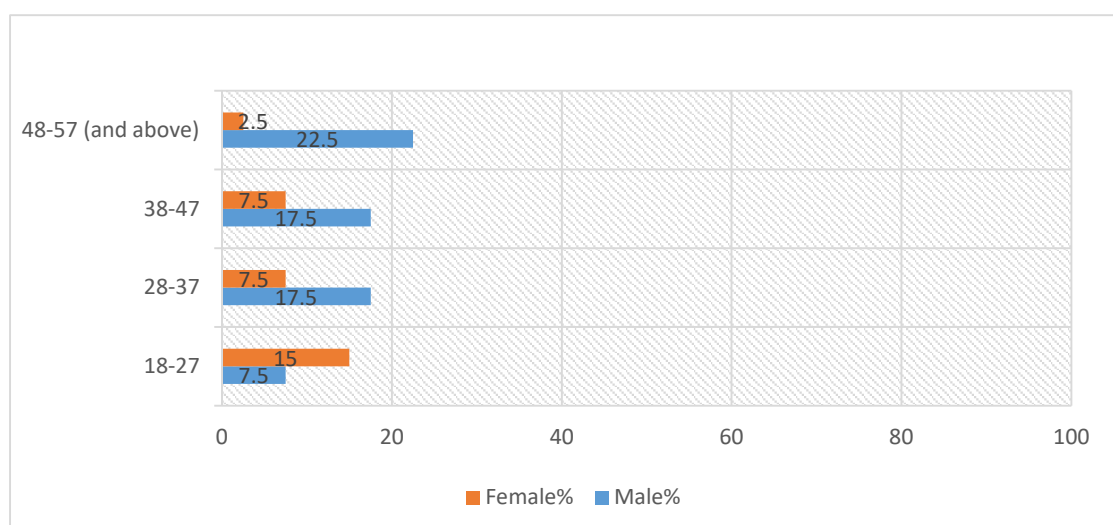
**Fig 4.1: Gender**

Source: Field Survey, 2017

The total sample respondents comprised of 24 (60%) males and 16 (40%) females. The study tried to understand the perception of both the genders about their problems and experiences. The respondents, both male and female, seemed to be interested in sharing their experiences in India and about their past lives back in Afghanistan. Though a number of people refused to give their response. The main reason behind this may be security issue. The people were feeling insecure in giving their response.

**Table 4.2: Categorisation of the Sample Respondents on the basis of AGE**

Age Group	Male	Female	Total	Male %	Female %	Total %
18-27	3	6	9	7.5	15	22.5
28-37	7	3	10	17.5	7.5	25
38-47	7	4	11	17.5	10	27.5
48-57 (and above)	9	1	10	22.5	2.5	25
Total	26	14	40	65	35	100



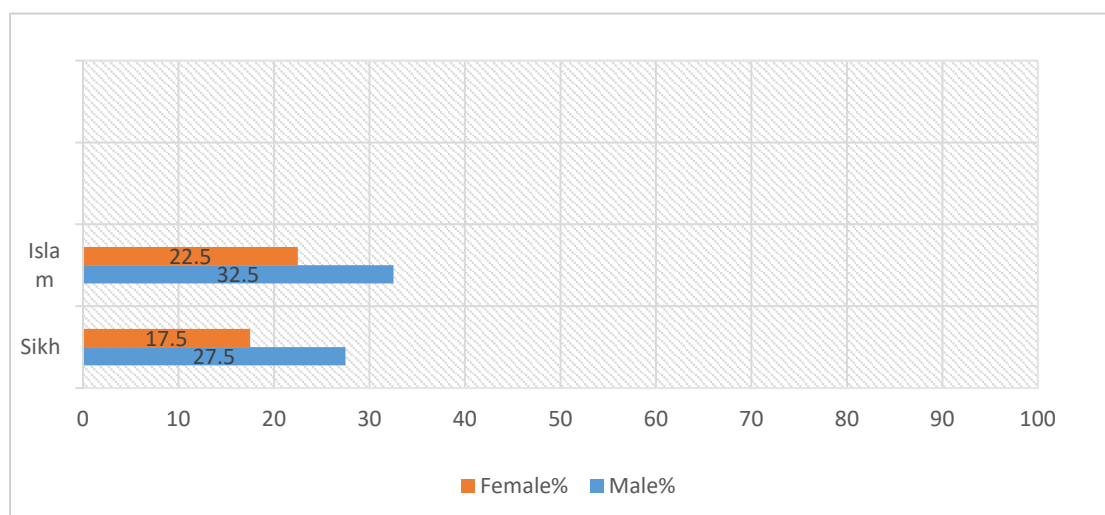
**Fig 4.2: Age**

Source: Field Survey, 2017

The sample respondents belonged to different age groups. The lower limit of age of the respondents were taken the age of 18 years with a class interval of 10 in the table. The age of 57 years and above were taken as the upper limit. The number of respondents of age group between 38-47 years were highest. Total 27.5% of the total sample respondents belonged to this age group including 17.5% male and 10% female.

**Table 4.3: Categorisation of the total sample respondents on the basis of RELIGION**

Religion	Male	Female	Total	Male%	Female%	Total%
Sikh	11	7	18	27.5	17.5	45
Islam	13	9	22	32.5	22.5	55
Total	24	16	40	60	40	100



**Fig 4.3: Religion**

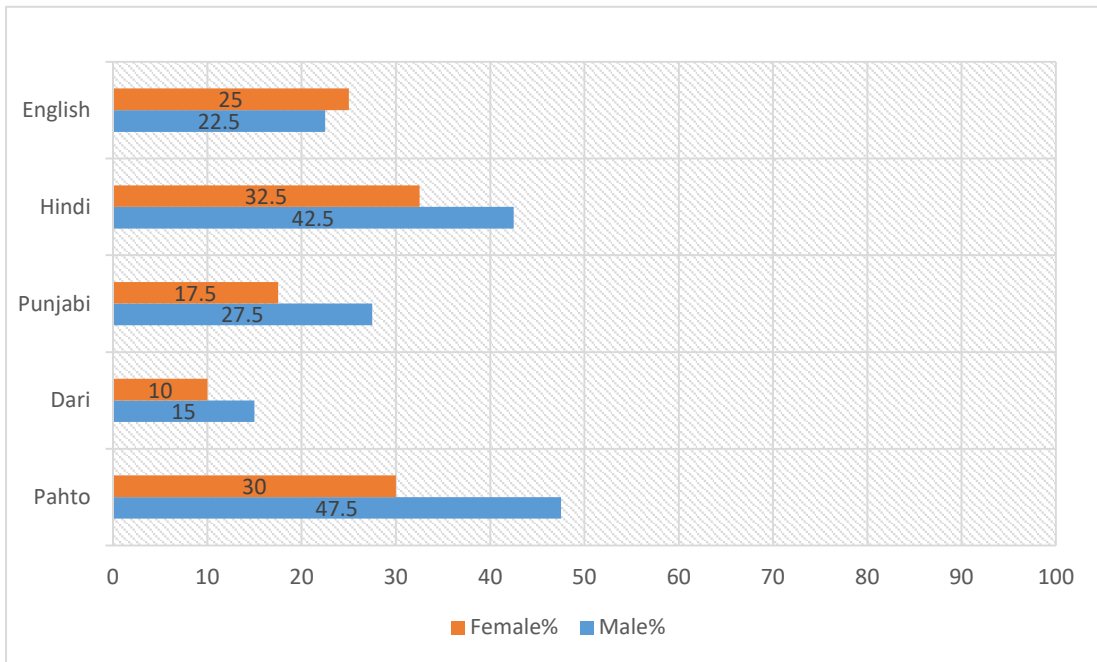
Source: Field Survey, 2017

The total sample respondents belonged to two main religious groups- Sikh and Islam. Of the respondents, total 18 (45%) belonged to Sikh and 22 (55%) belonged to Islam religious groups. A total of 11(27.5%) of the Sikhs were male and 7 (17.5%) were

female. Again of the total Islam respondents 13 (32.5%) were male and 9 (22.5%) were female. To understand the problems and challenges of the Afghan refugees, respondents from both the religious groups i.e. Sikh and Islam were taken into account. These are the main religious groups of the total Afghan refugee population resides in India. Earlier the number of Afghan Sikh refugees was dominant but at present the Muslim Afghans are also coming to India in order to get rid of the hostile situation of Afghanistan and in order to lead a secure life. The survey was unable to locate the Hindu population of the Afghan refugees residing in India. That is why the categorisation is made only on the basis of two religious groups i.e. Sikhs and the Muslims.

**Table 4.4: Categorisation of the total sample respondents on the basis of LANGUAGE**

Language	Male	Female	Total	Male%	Female%	Total%
Pashto	19	12	31	47.5	30	77.5
Dari	6	4	10	15	10	25
Punjabi	11	7	18	27.5	17.5	45
Hindi	17	13	30	42.5	32.5	75
English	9	10	19	22.5	25	47.5



**Fig 4.4: Language**

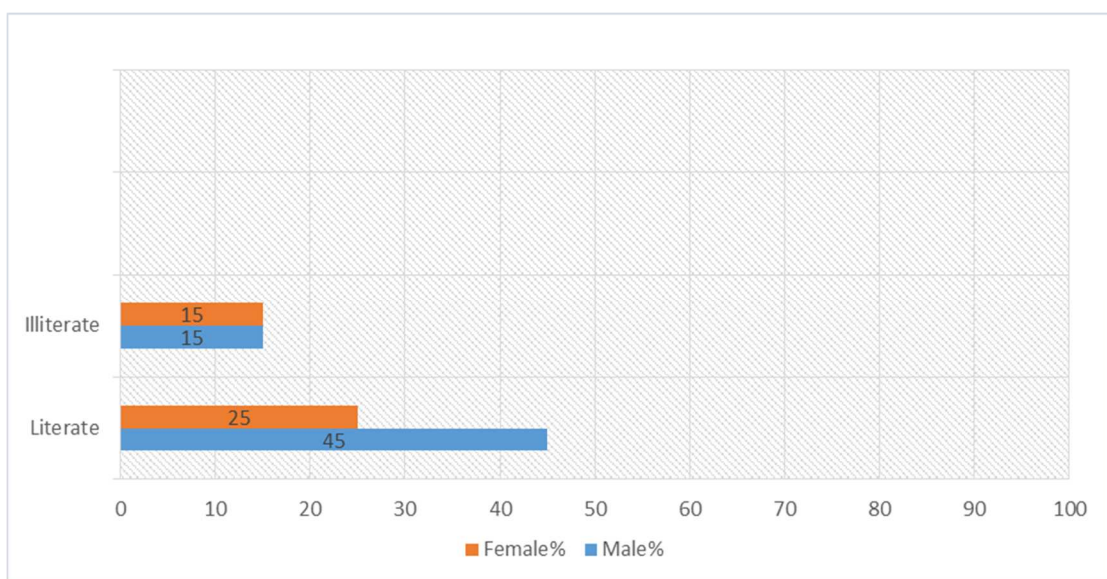
Source: Field Survey, 2017

There are mainly five languages that are being spoken by the sample respondents. These are Pashto, Dari, Punjabi, Hindi and English. A total of 31(77.5%) of the total respondents spoke Pashto which is the most widely spoken language among the Afghan refugees. Of the 31 respondents 19 (47.5%) were male and 12 (30%) were female. The Dari language is also common amongst the Afghan refugees. A total of 10 (25%) respondents spoke Dari language, of which 6 (15%) were male and 4 (10%) were female. Total 18(45%) respondents used to speak Punjabi language, of which 11(27.5%) were male and 7 (17.5%) were female. The Punjabi language is common among the Afghan Sikhs along with Pashto. Similarly, Hindi language is also common among the refugees. The Sikhs and the Muslims both group of refugees widely use Hindi language. Total 30 (75%) of the respondents used Hindi language. Of which 17 (42.5%) were male and 13 (32.5%) were female. It is to be noted here that most of the respondents can speak more than one or two languages and accordingly the total percentage of the respondents varies. There were total 16 Sikh respondents who can speak Pashto, Punjabi and Hindi. Three Sikh students can speak Pashto, Punjabi, Hindi as well as English and the six Muslim students can speak Pashto or Dari, Hindi and English. Others can speak Hindi or English and their mother tongue. Some respondents were not that fluent in Hindi and English but they can communicate with the language.

Language can be a barrier for any group of refugee and also for the host country. But almost all the respondents were much familiar with Hindi language and the rest is trying to grow their command over the same. English language is seemed to be common among the respondents. Particularly the Muslim Afghans were much familiar with English as most of them were business persons and students. Total 19 (47.5%) of the respondents spoke English language of which 9 (22.5%) were male and 10 (25%) were female. Other respondents are learning the language.

**Table 4.5: Categorisation of the total sample respondents on the basis of EDUCATION**

Education	Male	Female	Total	Male %	Female %	Total %
Literate	18	10	28	45	25	70
Illiterate	6	6	12	15	15	30
Total	24	16	40	60	40	100



**Fig 4.5: Education**

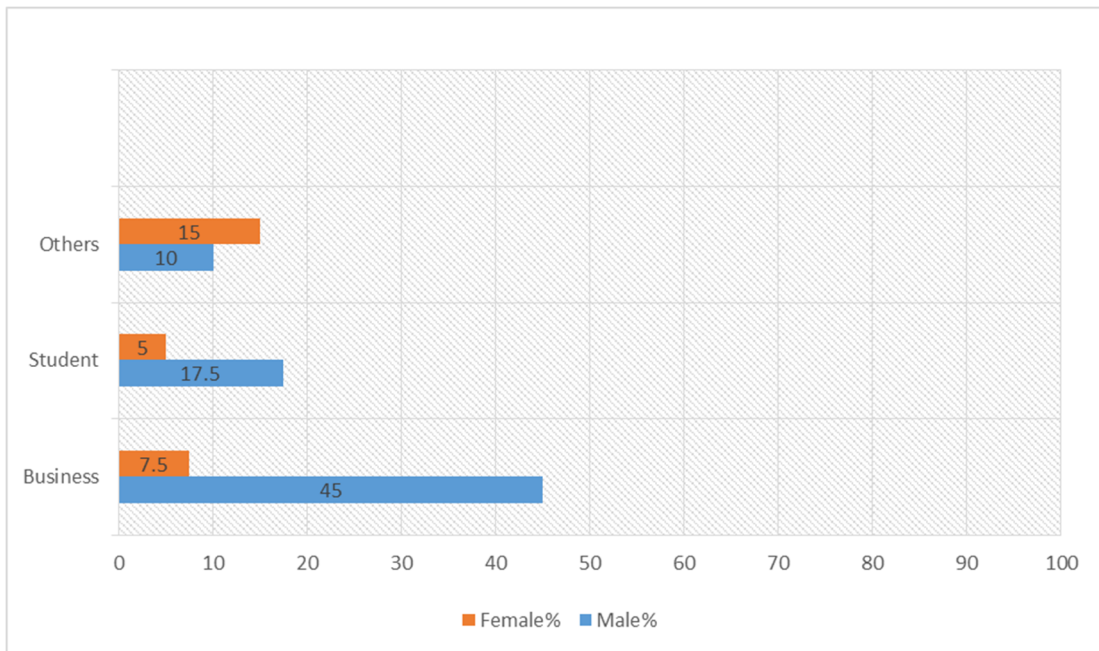
Source: Field Survey, 2017



Of the total respondents 28 (70%) were literate and 12 (30%) were illiterate. A total of 18 (45%) male and 10 (25%) female were literate of the total literate respondents. Of the illiterate respondents 6 (15%) were male and 6 (15%) were female. There were total 9 students among the respondents. They were engaged in different courses including graduation, diploma courses and spoken English course. Some of the respondents were from engineering and defence background from Afghanistan, but in India they were engaged in different businesses.

**Table 4.6: Categorisation of the total sample respondents on the basis of OCCUPATION**

Occupation	Male	Female	Total	Male %	Female %	Total %
Business	18	3	21	45	7.5	52.5
Student	7	2	9	17.5	5	22.5
Others	4	6	10	10	15	25
Total	29	11	40	72.	27.5	100



**Fig 4.6: Occupation**

Source: Field Survey, 2017

Almost 52.5% of the total respondents were engaged in different businesses. Remaining 22.5% were students and 25% includes housewives and were engaged in other works. These businesses include various shops with items like electronics, garments, Afghan food items and restaurants and also exporting of various items like shoes and lather. A number of Afghan Muslim refugees were running Afghani restaurants in Lajpat Nagar area of New Delhi. Some of these restaurants were jointly running by Indian citizen and Afghan refugee. Of the respondents there were some young ladies who were engaged in selling Afghan foods mainly the Afghan bread. Yet some others respondents were working in some shops as shop assistants.

The Sikh Afghan refugees were running various businesses. Some of them were working as helpers in Gurdwaras, those who were not engaged in any other job or business. There were two Sikh families who were refugee here in India but their family business is still in Kabul, Afghanistan and the main male member of the family was running the business in Kabul. Those male members had not applied for any refugee status in India and they used to stay both in Kabul and India. BOSCO, an NGO and SLIC is helping the refugees by conducting various vocational training and skill development programmes for the refugees. As the respondents were not much open

regarding their proper job or business, it became difficult to categorise them properly according to their occupation.

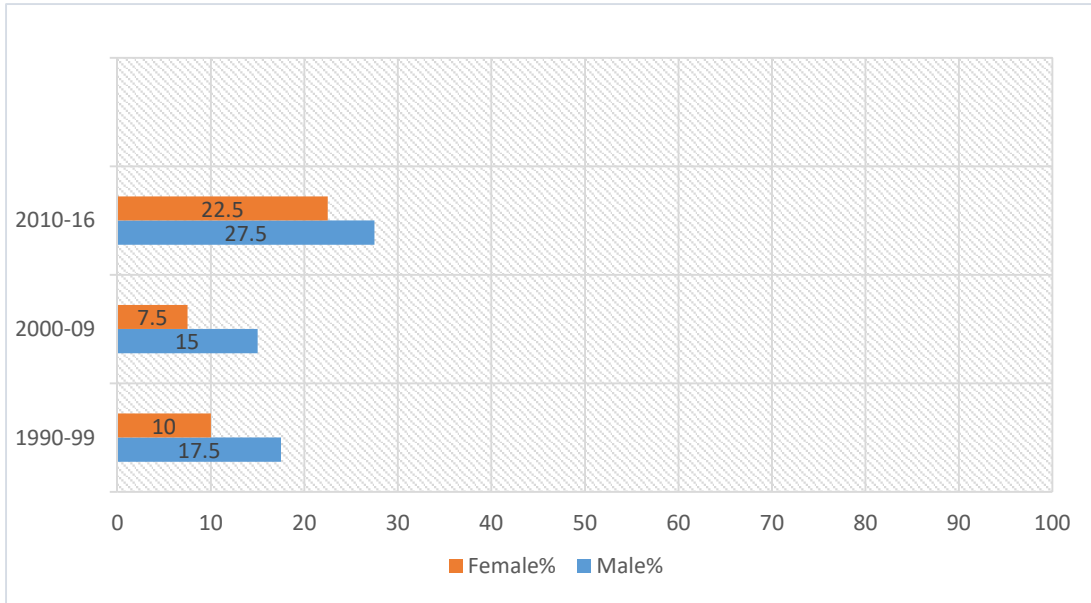
Along with the profile of the respondents, the responses on various questions of the interview schedule that were asked with regard to the topic are analysed here.

The second part of the schedule were consisting of the questions which were made in order to know the status of the Afghan refugees and their viewpoints regarding various issues. These questions include both objective and subjective questions. According to their responses the analysis was made. The objective questions were-

1. Since how long have you been in India?
2. From which part of Afghanistan do you belong?
3. For what reasons did you come to India?
4. Were you forced to come to India?
5. Through what process did you come to India?

**Table 4.7: Categorisation of the total sample respondents on the basis of YEAR OF MIGRATION**

Year	Male	Female	Total	Male%	Female%	Total%
1990-99	7	4	11	17.5	10	27.5
2000-09	6	3	9	15	7.5	22.5
2010-16	11	9	20	27.5	22.5	50
Total	24	16	40	60	40	100



**Fig 4.7: Year of Migration**

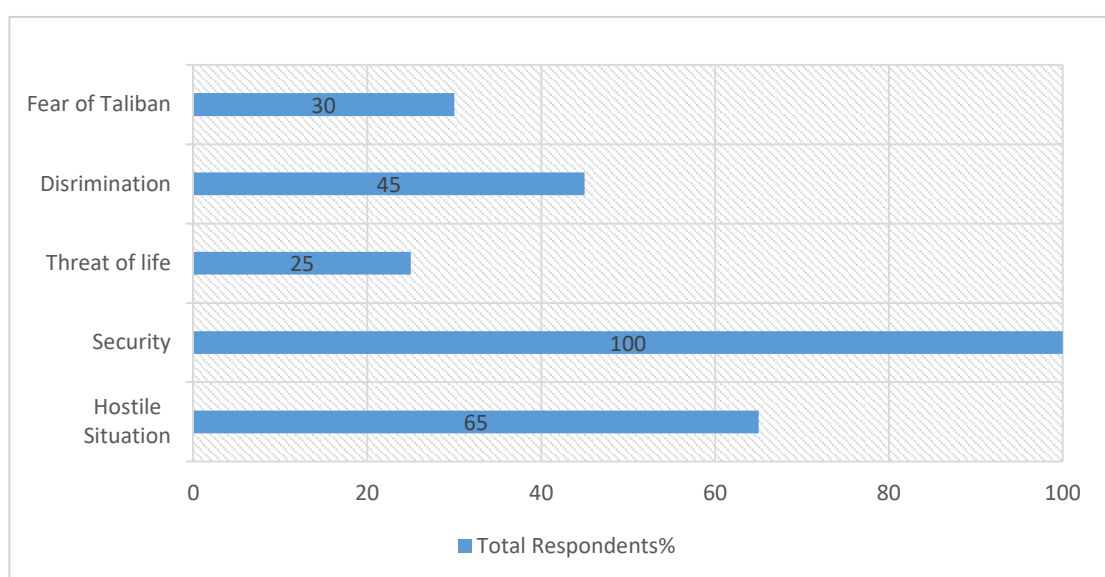
Source: Field Survey, 2017

The Afghan refugees came to India at different periods of time. The period of migration have been arranged with a class interval of 10 years and the starting year was taken as 1990. Because in the beginning of the 1990s the Afghan refugees started to come to India in large number. Most of the Afghan Hindus and Sikhs started to come during that period because the Taliban came into power at that time and they faced discrimination. The Afghan Muslims has been coming to India from the year 2000 because of the continuous unrest in the country. Total 27.5% of the respondents came in the period 1990-99 including 17.5% male and 10% female and 22.5% came in 2000-09 including 15% male and 7.5% female. The respondents came in the recent period 2010-16 were highest because a number of Hindu and Sikh Afghans has now got the citizenship of India and they are no longer counted as refugees. That is why, the respondents were chosen who have not acquired the citizenship of India.

In order to know the status of refugees it was important to know the reasons for their displacement from their homeland. While asked the respondents about the reason for their displacement from Afghanistan, various responses were received. According to that the responses are categorised below.

**Table 4.8: Categorisation of the total sample respondents on the basis of REASON FOR DISPLACEMENT**

Reason	Total Respondents	Total Respondents%
Hostile situation	26	65%
Security	40	100%
Threat of life	10	25%
Discrimination	18	45%
Fear of Taliban	12	30%



**Fig 4.8: Reason for Displacement**

Source: Field Survey, 2017

The study revealed that the refugees came because of the economic breakdown of the country and hostile situation of Afghanistan. Yet all the respondents have specified that they left their country because of security issue. Hostile situation, discrimination and

fear of Taliban was also important among the other issues. Threat of life is also stated as a reason for displacement by 25% of the total respondents.

A 55 year man said that

At the time when war broke out in Afghanistan they had to face many problems in Afghanistan because they belonged to religious minority in Afghanistan (Sikh). They had to stop their businesses and it became very tough to live there. They thought that the situation will go long and that is why they decided to come to India where their community people were present.

A 42 year man said that

The Taliban had killed his brother who had a car business and used to threaten his family. The man was a judge there and the Taliban used to threaten him and his family in various ways. That is why, he left his country along with his and his brother's family. This person's father was also a judge in Afghanistan. But because of that also they were not safe there and had to leave their country and had to leave all their property back there. Where even government officials were not safe how can other people stay in that place? - The man said.

A 22 year girl said that

They left their country because of security issues. There was wars, continuous bomb blasts, suicide bombing, firing, kidnapping which had made the normal life of Afghan people very hard to lead. That was because their family left Afghanistan. Initially their family thought of going to Tajikistan but they have two girls in their family and that is why her family decided to come to India as India is safer for girls than Tajikistan.

A 28 year man said that

He was a civil engineer there and used to work with Americans and Germans. Because of that the Taliban used to threaten him. When he ignored they shoot him in his hand and said next time they will directly shoot his head. They also threatened his family members along with his sisters. That was because he with his family left Afghanistan and seek refuge in India.

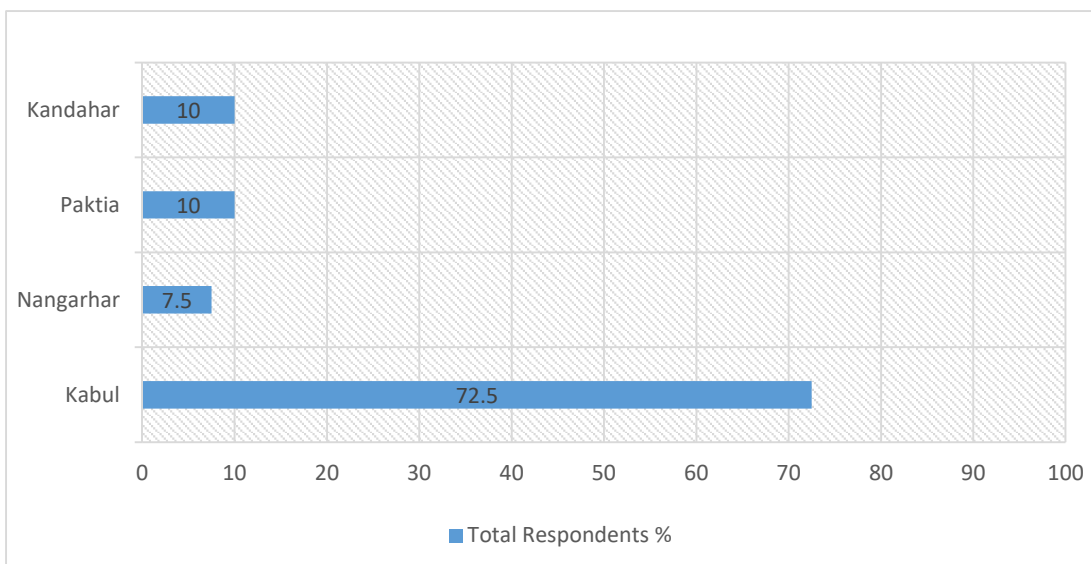
A 42 year man said that

He worked in Special Forces of Afghanistan and worked with the Americans against the Taliban. That was the reason he used to get threatening from Taliban. For the security issue of his and his family he left Afghanistan for India.

It could be seen that no one was safe in Afghanistan whether civilians or the government officials. Also religion didn't matter because it was not only Hindus and Sikhs who left the country. The Muslim population also left and has been leaving their country in the lack of security and threatening of the Taliban. Moreover the women were not safe in their own country.

**Table 4.9: Categorisation of the total sample respondents on the basis of the PLACES OF ORIGIN**

Places of Origin	Total Respondents	Total Respondents %
Kabul	29	72.5
Nangarhar	3	7.5
Paktia	4	10
Kandahar	4	10
Total	40	100



**Fig 4.9: Places of Origin**

Source: Field Survey, 2017

Most of the respondents belonged to Kabul, Afghanistan, only a few belonged to Nangarhar, Kandahar and Paktia province of Afghanistan. A total of 29 (72.5%) respondents belonged to Kabul, 3(7.5%) respondents belonged to Nangarhar, 4 (10%) belonged to Paktia and the rest 4 (10%) belonged to Kandahar province. The refugees were not belonged to only one province but they were from various regions of Afghanistan. It shows that the refugee issue had seized the whole Afghanistan.

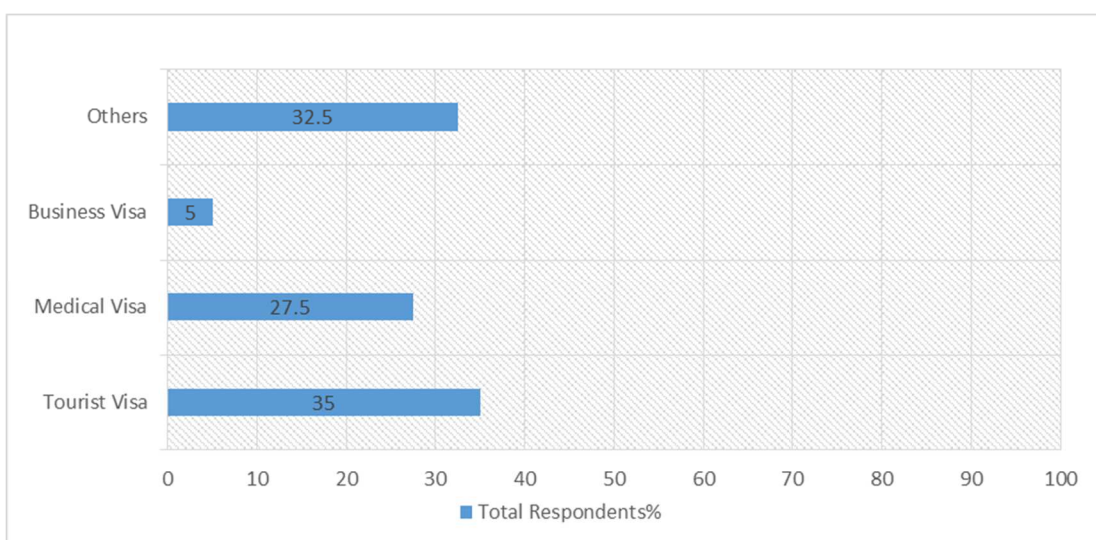
The mode of travel of the Afghan refugees were different from respondent to respondent. Based on the time they came to India their mode of travel were also different. The responses are categorised below according to the respondents.

**Table 4.10: Categorisation of the total sample respondents on the basis of their WAY OF COMING to India**

Way of Coming	Total Respondents	Total Respondents%
Tourist Visa	14	35
Medical Visa	11	27.5



Business Visa	2	5
Others	13	32.5
Total	40	100



**Fig 4.10: Way of Coming**

Source: Field Survey, 2017

The processes of coming to India of the Afghan refugees were different. All the respondents came by different ways. Tourist visas and medical visa is most common among all. A total of 14 (35%) respondents among the total respondents came through tourist visa. Medical visa was used by 11 (27.5%) respondents. The Afghan people used to come to India for medical treatments. The Max Super speciality Hospital situated in Saket, New Delhi is mostly preferable hospital for the Afghan people including refugees. Along with it the business visa was also used by some of the respondents to come to India. Of the total respondents 2 (5%) respondents used the business visa while coming to India. Apart from these the other means were also used by the respondents while coming to India. The Afghan Sikh people came by road via Pakistan by road during the time of civil war in Afghanistan.

To come to India the refugees don't have to do much struggle as to get the visas to India is easy for the Afghans. According to one respondent in Malviya Nagar area of Delhi everyday 5-6 Afghan families are coming and taking the houses on rent. Some of them

have come for medical issues yet some others stay for long time and accordingly apply for the refugee status. So it cannot be estimated as to how many Afghans come in India in search of refugee status.

#### **4.2.1. Afghan Refugees: Problems and Challenges**

The responses of the subjective questions were summarised according to the responses of the respondents. Both the communities came to India at different periods of time and in different circumstances and accordingly their problems were also different from each other.

The Afghan Sikhs came to India in the first half of 90's when Civil war broke out in Afghanistan followed by the emergence of the Taliban regime. According to a respondent, the Afghan government at that time had allowed them to come to India. Some of the people had necessary documents while some others came without proper documents.

While staying in camps they received the medicines from the government and apart from that they had not received any such other facilities. They got the refugee status thereafter and gradually started settling in the rented houses and started their business. According to the respondents, they got necessary support from the government and UNHCR as well.

In 2005, most of the refugees that came in 1992 got the citizenship of India as they had fulfilled the criteria to get the citizenship i.e. to stay in India continuously for 12 years. At that time government gave them an amount of approx. Rs. 20000-25000 for their settlement. The people then settled down permanently with their own residence. The Sikh Afghans in India are mostly settled in Tilak Nagar area of New Delhi. Though they are Sikhs, they are leading a lifestyle different from the Indian Sikhs.

The remaining people who had not received the citizenship of India are still in trying to get it. There are some people who came in the time of 1992-1995 but again they went to some other countries in search of a better life. But after staying there for 7-8 years they again came back to India. That is one of main reasons of not getting the citizenship

till now. Yet these people are now in a great dilemma whether they would get the citizenships or not.

The Muslim Afghans came to India particularly after 2000. After coming to India they had to register their names through UNHCR and gradually had to apply for the refugee status. This process takes a long time as India is not a member of the UN Refugee Convention and so that it doesn't follow the systematic procedure to provide refugee status to persons seeking refuge in India.

As mentioned earlier the interview schedule was composed of both objective and subjective questions, yet the responses of the subjective questions are summarized in accordance with the questions. The questions were asked as-

1. Did you get any official support to come to India?
2. Did you face problems in the settlement process in India?
3. What kind of help is the Indian Government giving you?
4. Are the government officials friendly and cooperative?
5. Do you have a refugee card?
6. Do you face problems with regard to your occupation?
7. Do you face problems with regard to your religion and in celebrating religious and cultural festivals?
8. Do you face problems relating to education for yourself/your child in India?
9. Do you get proper medical assistance?
10. Do you have any community based organization in India?
12. Do you have easy access to the Indian Judicial System?
13. Do you have the right to housing?
14. Do you know what are the NGO's that are working for your development and protection?

15. Are you aware of any of refugee policies that the Government of India has formulated for you?
16. What kind of assistance is the UNHCR providing to you?
17. Do you expect more from UNHCR?
18. Do you feel any kind of insecurity here in India?
19. Any other problems you are facing?
20. Do you want to go back to Afghanistan or not?

### **Issue Regarding Settlement**

While asked the respondents about the problems they face regarding settlement in India, most of the refugees said that after reaching India they had to face some problems regarding their settlement. The Afghan Sikhs when they came stayed in camps arranged by the Indian Sikhs and after that they got rented houses. But afterwards who were coming has been facing a lot of problems as they had to do so many formalities for settlement. According to one respondent, they had to pay more rent for same building than the Indians and even they had to pay for registration for the rented buildings also in the local police station. Also some people refused to give rented house to the refugees. That is why, the refugees has been facing problems regarding their settlement.

### **Issue Regarding Refugee Card**

The Afghan refugees, after coming to India, first registered their names through UNHCR and accordingly their cases had processed by the officials. Before getting the refugee cards they got temporary stay orders renewable after every three months. Without refugee card the people can't apply for any job or they won't get other facilities. The Afghan Sikhs got the refugee status after they came to India without any such trouble but this issue with Afghan Muslims are different from the Sikhs. It takes a long time for the Afghan Muslims to get the refugee cards. In a small talk with an Indian Diplomat, she said that the government gives the refugee status to the Afghan Sikhs without taking much time but with the Afghan Muslims they scrutinises the issue and it takes some time, as it is not possible for India to give refugee status to each and every

person. Depending on the nature of the cases of the refugees UNHCR issues refugee cards. As this process is lengthy, the Afghans particularly the Muslims has been facing problems as they has no other choice except to wait for it.

### **Issue Regarding Occupation**

Occupation has been standing as another challenge in front of the Afghan refugees in India. Yet some of the refugees has settled down with their own business but most of them has not been able to get any occupation. Those who have not received their refugee cards were not able to apply for any job in Delhi. One respondent said that he was from engineering background but he has not received his refugee card and only after getting the card he will be able to apply for any private sector job. By that time he was engaged in some modelling assignments and other leather and shoe business.

One 45 year Afghan Man said that to get a job is difficult for them as they have the refugee tag and no one wants to recruit them. He also added that the women who went for job were sometimes tried to use by the officials. That is why it was not safe for the women to do job everywhere. Thus, occupation has become a main problem for the Afghan refugees.

India itself has a large number of unemployed population and it became difficult for the government to address all the refugees and to avail job for them. Yet, it is necessary on the part of government to address the issue of occupation of the refugees.

### **Issues Regarding Education**

Education of the children of the Afghan refugees is also an important problem for them. As in India there are no schools or institutions for the refugees. According to one respondent the government schools don't allow the refugee children to take admission in their schools and the private schools are so costly and they were unable to pay the fees and for that the children were not going to any school. One respondent said that they need Municipal Committee of Delhi's (MCD) paper to get admission in the government schools.

Another respondent, who was a student of a university in Delhi, said that she had to pay three times more than the Indian students and also they had to pay in US Dollars. So it

became not possible for every refugees. Though some NGOs are providing scholarships to the students but not all students are getting it and they don't provide scholarship for all courses.

### **Issue Regarding Medical Assistance**

Medical assistance of the refugees is also a huge problem. Many people became ill because of the travel and mental stress. Particularly the aged people prone to become ill or unfit. That is why they need proper medical assistance. Yet some of the refugees after reaching India got the medical assistance from the UNHCR but not all of them. One respondent said that he was a patient of high blood pressure, diabetes and anxiety and monthly he had to pay half of his earnings in medicines. For that he was unable to take his students in private schools and not even able to pay the rent of the building monthly.

Another respondent said that her father had some medical issues and they had been getting the medicines from NGO. It is to be noted here that they had been staying in India for almost 9 years and the former respondent has stayed only for 2 years. So, it may take time for the concerned authorities also in availing the facilities for all. But not all of the refugees can wait for the medical assistance and they had to manage on their own. That was because the refugees has been facing problems regarding the medical assistance in India.

### **Issue Regarding Government**

The respondents were not very happy with the role of the Indian government that it was playing in protecting them and providing them necessary facilities. Though India is not a member of the UN Refugee Convention, but in practice India followed some of its principles. Also the Constitution of India provides some rights to the refugees. But the respondents said that they had not received anything from the government. It is to be noted here that Indian Government has not recognised the Afghans as refugees like the Tamils and the Tibetan refugees but has allowed the UNHCR India to operate programmes for them. One of the respondents said that the Indian government is helpful only when the UNHCR request them to help them, otherwise they were not receiving

any such help. That is why, the respondents have always a fear of being deported from India.

Most of the respondents were aware of the Indian laws and policies for the refugees but in practice they have not experienced it. According to the respondents the government is neglecting them and it is only because of UNHCR and its partner agencies that they have been getting minimum facilities that too not all refugees are getting. According to one respondent who was a judge back in Afghanistan, India itself is suffering from huge poverty and it is not possible for India to provide everything to each and every refugee. That is why the respondent said that the India should become a member of UN Refugee Convention so that UNHCR can work here to their fullest. As India is home to a number of refugee groups and it will help all the refugee communities to live without any problem.

### **Issue Regarding the Role of UNHCR**

Though the Indian government has allowed UNHCR to work in India but it has not gain full access everywhere. The UNHCR has been working in providing refugee cards, renewal of these cards, providing education, various skill development trainings to the refugees in collaboration with NGOs and its implementing partners. With the support of UNHCR some of the respondents has now got long term stay visa. Three respondents has been getting 'dafi scholarship' from UNHCR for their college studies. But then also some of the respondents claim that UNHCR have not working that much for all of them. According to one respondent, though UNHCR has funds yet they are not giving it to them for their livelihood. It is to be noted here that India has not accepted the financial assistance from the UNHCR but the refugees are not aware of the fact. Again in the same family not all the child are getting scholarships. Because of these reasons the respondents sometimes were not happy with UNHCR for they couldn't meet their basic needs. The respondents were expecting help from UNHCR regarding education, health facilities and housing.

### **Issue Regarding Security**

The respondents have come to India in search of a secured place and to get rid of the troublesome situation of Afghanistan. India has become a safe haven for them. But

some of the respondents were still worried about their future in India. They still feel insecure because Indian government has not still recognised them as refugees. Apart from that some respondents said that they have girls in their home and that is why sometimes they feel insecurity particularly in Delhi as Delhi is not even safe for Indians while they are refugees.

One of the respondents said that once she was harassed by some Indians and her father was also threatened. She also added that they were not treated well by the local people and that is the reason she never comes out from her home except while going to university. Another respondent said that while going to her class she was harassed by some people and she couldn't even report it in the police. She said they were not safe in Afghanistan and not in India also.

Another respondent said that they were threatened by Taliban in Afghanistan and the man from Taliban who used to threaten them he saw him in Lajpat Nagar area of New Delhi and he somehow managed to escape from there. Later on he requested in UNHCR office for emergency meeting but he got dates after one week. That is why, they felt that they were still not secure in India also.

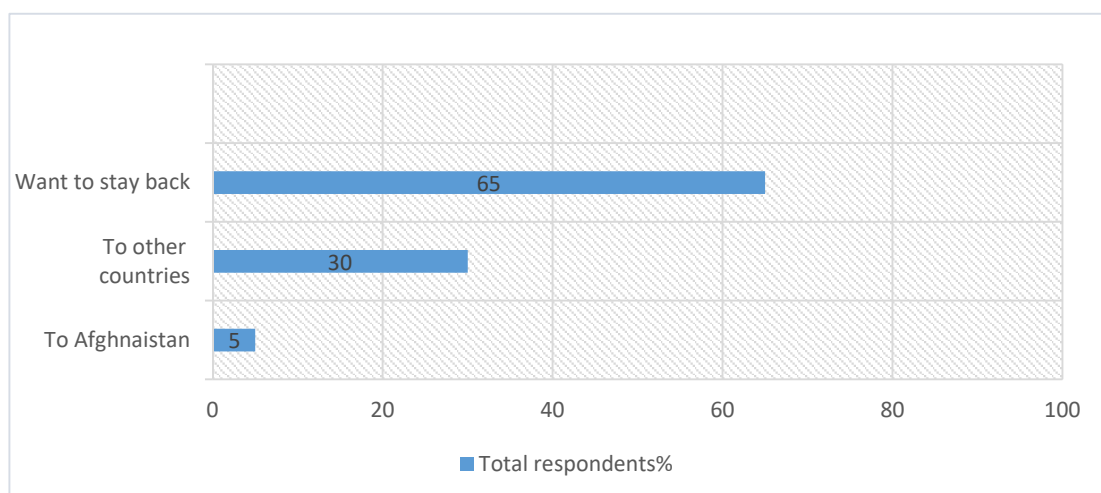
Most of the Afghan Refugees residing in India has been settled in their lives. Most of the Sikh refugees got citizenship and a number of Muslim refugees has now got the refugee cards and opened up their businesses or engaged in some other jobs. But a section of refugees are not happy in India and they are seeking opportunities to go back to their country or to some other places for a better life. Among the total respondents also some were wanted to leave India. The responses of the respondents on their prospects of returning back is categorise here.

**Table 4.11: Categorisation of the total sample respondents on the basis of their Prospects of RETURNING BACK**

	Total Respondents	Total Respondents %
To Afghanistan	2	5%



To other country	12	30%
Want to stay back	26	65%
Total	40	100%



**Fig 4.11: Prospects of Returning Back**

Source: Field Survey, 2017

Of the total respondents only 5% respondents wants to go back to Afghanistan as their home and business they left there in Afghanistan and in India they have nothing. They were in the hope that someday the situation in Afghanistan will come to normal and they can return back to their place. Another 30% of the respondents wants to go to some other counties particularly in European countries as India don't have any specific policy for them and also the UNHCR has no stand in India. They didn't want to go back to Afghanistan as the fear of Taliban was still in their minds. Remaining 65% respondents wants to stay back in India only as some of them have started business here and some were engaged in other jobs. According to them they have found security here and compared to Afghanistan, India is much more secure for them and this include more of the Sikh people.

#### **4.2.2. Role of NGOs and UNHCR Implementing Partners**

The NGOs and other implementing partners of UNHCR has been working for the refugees in India. As India is not a member of the UN Refugee Convention, that is why

there is always a threat for the refugee of being deported to other countries. It is because the NGOs and the implementing partners are working for the refugees for their security. Apart from that the NGOs are providing scholarships to the students, vocational training and skill development workshops to the youths. Also these NGOs with UNHCR has been helping in opening up businesses for the refugees and also to the refugee women. Some of the NGOs and implementing partners that are working in India are Socio-Legal Information Centre (SLIC), BOSCO etc. (UNHCR, n.d).

Apart from the refugees, an interview was also conducted which was based on unstructured schedule with some of the concerned people and officials who are connected with the Afghan refugees with some way or other. These includes an official from Socio-Legal Information Centre (SLIC). According to him-

Socio-Legal Information Centre (SLIC) is legal implementing partner of UNHCR which is a collective of lawyers and social activists dedicated to the use of the legal system to advance human rights. It is a part of Human Rights Law Network (HRLN). This centre is providing legal support to the refugees registered through UNHCR in India including Afghan refugees. As India is not a signatory of the Refugee Convention and for that there is always a threat of deportation for the refugees from India. SLIC looks into these cases. If any refugee is tried to deport forcefully from India, SLIC helps the refugees by taking their matters to the court.

Broadly, SLIC is working on three fields for the refugee. First is Registration; they help in registration of the refugees. Also SLIC renews the refugee cards and for that they conduct interviews of the refugees and checks necessary documents. Second is Legal Aid. As stated earlier SLIC provides any kind of legal aid to the refugees and thirdly, Naturalisation. SLIC also works for naturalisation of the ethnic Afghan refugee. Naturalisation is a process through which a non-citizen of a country may get citizenship or nationality of that country. Apart from these, SLIC conducts certain workshops and training to the refugees in order to help them in earning their livelihood. They helps in recognising who the refugees are, what their rights are and what documents they should have. SLIC has been working as an implementing partner of UNHCR since 2001.

Another person with whom an interview was conducted was an official from BOSCO. Like SLIC, 'BOSCO' is also working for the development of the Afghan refugees. Its

main focus areas are Education, Health and Youth and Livelihood. BOSCO is a part of the Don Bosco Global Network which is spread across 135 countries. BOSCO has been running educational institutions, vocational and technical training centres and community empowerment projects, providing various services to young people around the globe. Since 2002, BOSCO has been an implementing partner of UNHCR. BOSCO Self Reliance Programme (BSRP) supports refugees and asylum seekers in acquiring vocational skills and finding work in the informal sector. BOSCO also helps them through the access to government hospitals and dispensaries, and to obtain generic medicines.

In addition to these, BOSCO also runs 12 youth clubs for refugees, asylum seekers and their Indian friends, in Delhi and surrounding areas. The youth clubs campaigns on the importance of education, nutrition and health and on prevention of sexual and gender based violence.

### **4.3. Essential Findings**

The essential findings of the research are-

- 1) **Non-acceptance of the refugees-** The Afghan refugees, though have been living in India for many decades yet are not accepted by the Indian Government as a refugee group, they are the UNHCR mandated refugee group in India. For that they have been facing challenges in their lives. They are not getting necessary minimum facilities with regard to their refugee card, education, occupation which are the basic necessities of them. They have to arrange their shelter place by themselves. Even if they get refugee cards but they are not given the facilities that they should get. Though in India a number of refugees are staying without any security issue yet the society sometimes becomes harsh for the refugees. The Afghan refugees have to face harassment and discrimination from the Indian people both common people and officials. The students sometimes face abuse and misbehaviour from their fellow students. The girls or women used to face bullying and misconduct from the boys in and around the streets. So the refugees are not accepted either by the government or by a section of the society.

- 2) **Role of the Government-** The government is not able to provide necessary facilities to the Afghan refugees. Though it has not accepted the Afghans as refugee groups, it allows the UNHCR to work for them. The Afghan refugees don't get any help from the government officials, until and unless UNHCR requests them to help Afghan refugees. Yet the officials or other offices don't want to address the refugee issues. There are cases of asking for money by the officials of the Foreigner Regional Registration Office (FRRO) which is the primary agency for registration, movement, stay, departure and recommending the extension for the stay. The refugees also face discrimination in other offices in order to get their work done. The government of India has only allowed them to stay in India and other than that the refugees are not getting anything from the government as is the finding of the study.
- 3) **Role of UNHCR-** UNHCR is working as protector of the refugees in India. They are keeping a track on the refugees with registration and renewal of the registrations. UNHCR is working for voluntary repatriation, resettlement and in getting citizenship through naturalisation of the refugees. As UNHCR has no stand in India for that reason there is always a fear of deportation of the refugees by the government. That is why UNHCR is working with its implementing partners and other NGOs for the protection of the refugees. They are together working in the field of giving refugee card, providing scholarships to deserving students and also conducting various skill development programmes for the refugees. UNHCR is helping the refugees in becoming self-reliant by supporting income generating activities for themselves.

**CHAPTER: 5**  
**CONCLUSION**

## 5.1. Introduction

The issue of refugee is an old phenomenon and has been present all over the world since the time immemorial. Different conditions and different reasons has instigated the people to leave their places and seek refuge in other place. To become refugee one has to cross an international border and to seek refuge in other country and they have the intent to return to their homeland after the situation become normal. Among the other reasons, the fear of persecution is an important reason to consider a person as refugee. India has been a favourable place for refugees since its independence and thus become one of the highest refugee hosting nations in South Asia.

The refugee issues of Afghanistan has been present since the time of its Soviet invasion. The Afghan refugees are scattered all over the world particularly in Iran, Pakistan and European countries like Germany, Canada etc. and some of them choose to come to India. The Afghan people have been leaving their nation to other countries including India for a secured life. In India the Afghans are the UNHCR mandated refugee group.

The political and cultural relations of India with Afghanistan has made it a favourable place for the Afghans to seek refuge. The Afghan people because of the continuous war in the country and unrest from the terrorist activities have left the country in search of secure places. Also there are cases of threatening by Taliban, for which the Afghans left their country. Before coming to India the refugees had no idea what was waiting for them in India. Back home, Taliban used to threaten the minority Afghans of killing, kidnaping etc. One Afghan refugee woman who is now in India stated that the Taliban tried to burn her by using kerosene. Even the Taliban used to insist the family member to get their daughters married with their fighters.

As per the findings of the study for some Afghan refugees India has become a safe place which they were sought for but a number of refugees are still in a dilemma whether to stay in India or not because of the lack of facilities from India. Some refugees are still in hope that someday they will go to some other place other than India and Afghanistan for permanent settlement. A number of Afghan Sikh refugees have now become the citizens of India through the process of naturalisation with the help of Government of India and UNHCR. But those Afghan refugees who are staying in India and are still lacking in the necessary protection and facilities as per the respondents.

This research work is basically planned in order to know the state of Afghan refugee in India. But for a better comparative understanding, the status of Afghan refugees in other countries too has been discussed.

The Afghan refugees are residing in large numbers in the countries like Iran, Pakistan, United States, Australia and European countries like Germany, Canada etc. The Afghan refugees residing in Pakistan and Iran are highest in number compared to other countries. According to UNHCR by 2016 there are 1.32 million Afghan refugees are residing in Pakistan while 951142 Afghans are living in Iran registered under UNHCR (UNHCR, 2017).

## **5.2. Afghan refugees in Pakistan**

Pakistan is the hub of highest Afghan refugees of the world. According to UNHCR, there are 1.32 million registered Afghan refugees in Pakistan with an estimated more than a million undocumented others. During the Soviet Invasion most of the Afghan refugees were hosted by Pakistan. Over last 30 years, about three million Afghan refugees moved to Pakistan and the large number of the registered refugees are concentrated in the areas like Khyber Pakhtunkhwa and Baluchistan province along with the other parts of the country (Jamal, 2016). Like India, Pakistan is also not a party to the 1951 Convention Relating to the Status of the Refugees and its Protocol of 1967. That is why, Pakistan is also not bound to follow the international laws for the refugees.

In 2013, the Government of Pakistan agreed to a new National Policy on Afghan refugees drafted in collaboration with the multi-year Solutions Strategy for Afghan Refugees (SSAR) which focuses on voluntary repatriation in safety and dignity, sustainable reintegration inside Afghanistan and assistance to refugee host communities. (Khan, 2014).

In June, 2016 a clash between the Pakistani and Afghan militaries at Torkham border deteriorate the relationship between these countries which resulted in tightening of the border restrictions from Pakistan side and forcing of the Afghan refugees to return to their home. (Hashim, 2017). According to the figures of the UNHCR and International Organisation for Migration (IOM), in 2016 at least 606,905 registered and undocumented refugees repatriated back to Afghanistan from Pakistan and some of

them was forced to leave the country overnight. Refugees returned to the conflicts with no home or land waiting for them.

In the midst of the deteriorating political relations between Pakistan and Afghanistan, the Pakistan authorities carried out an intensive campaign to make Afghan lives miserable that they would leave the country which included threatening to deport them in the middle of the winter, making their legal status insecure and giving the police supremacy to commit a range of abuses. The Afghan exodus from Pakistan is the world's largest unlawful forced return in the recent years. The shocking fact was that UNHCR by increasing high cash payments to returning refugees and inadequate public call for an end to the forceful practice became complicit to the Pakistan's refugee deportation. (Simpson, 2017).

Pakistan has been accusing the Afghan refugees for many of the terrorist attacks of the country. According to a news report of Pakistan today, February 18, 2017, the Interior Minister Chaudhry Nisar Ali Khan said that the Afghan refugees are used as facilitators in most cases of terrorist attacks pointing to an attack of Lahore and Peshawar. The leaders of the attack of the school in Peshawar on December 16, 2014 by Pakistani Taliban group Tehreek-e-Taliban (TTP) were claimed to be based in Afghanistan. That is why, the Afghan refugees has been forced to leave Pakistan.

According to a Human Rights Watch (HRW) report, the police raided the homes of the Afghan refugees at night, accused them of being or harbouring terrorists threatened to split up families and deport them, arbitrarily detained them for hours or days at a time and subjected them to extortion. After the publication of the HRW report Pakistan issued one statement saying that it has no such policy of coercion against Afghans. (Simpson, 2017).

In February, the Pakistani government extended a deadline for Afghan refugees to leave the country from March 31 to December 31, 2017. The government said that it is formulating a new refugee policy, but there are not much developments in this regard. (Hashim, 2017).



### **5.3. Afghan refugees in Iran**

According to government population figure, by October 2011, Iran had 840,158 registered Afghan refugees. According to Iran's official Bureau for Aliens and Foreign Immigrants' Affairs (BAFIA), nearly 1.4 to 2 million unregistered Afghans had been staying in Iran which made a total of between 2.4 to 3 million Afghans in Iran. By 2016, there were 951,142 registered Afghan refugees residing in Iran. But Iran, unlike India and Pakistan, was not a member of the UN Refugee Convention. Only in 2010 Iran signed and ratified the Convention. Iranian authorities have not provided all Afghan refugees with an opportunity to legally claim asylum. Though Iran became a party to the UN Refugee Convention yet the Afghan refugees stayed in Iran are facing troubles in various ways. The refugees also have to pay bribes to work and there were cases of harassment by the police of the refugees. The people who were born in Iran to Afghan parents also have no documents and that is why they wanted to leave Iran. (Strickland, 2016).

There were cases of the Afghan refugees being attacked by the Iranian authority. In 2010, some Afghan refugees were hanged on charges of drug trafficking. While Iranian government claims six were killed but many of the Afghans believed that near about 50 Afghans were executed by the Iranian. Afghan foreign ministry spokesperson Zahir Faqiri said that between 4000 and 5000 Afghans were in Iranian jails. (Sands, 2010).

Human Rights Watch (HRW) and other watchdog organisations have accused the Iranian Government for maltreatment of Afghans like physical abuse in the hands of the security forces, limited access to job, education etc. The HRW reported that Iran has been recruiting thousands of Afghan refugees to fight in pro-government armed groups in Syria. Many had been forced into fighting, while some other had been deported to Afghanistan as punishment for refusing. Those who agreed were offered residency papers and financial incentives. (Strickland, 2016). The Iranian government is also involved in forced deportation of the Afghan refugees despite the deteriorating condition of Afghanistan.

According to a report of HRW, in 2011 Iranian authorities deported nearly 150,000 Afghans through the Islam Qala border post alone. In 2012, Iran deported 700 Afghans a day in the first 10 months. UN spokesperson said that the reason for the increase

number of the returnee Afghans from Iran in 2011 was economic pressure and the discontinuation of the subsidies on basic goods and services on the Afghan refugees by the Iranian government. According to IOM data Iran deported 174,000 Afghans in the year 2016 and of more than 620,000 undocumented Afghan refugees returned to Afghanistan in the year 2016, most are from Iran (Farivar, 2016).

On April 24, 2012, Afghanistan's Refugee and Repatriation Deputy Minister Samad Hami announced that Iran, Pakistan and Afghanistan were due to sign an assignment on issues relating to the Afghan refugees that would delay the voluntary repatriation of refugees until 2017 (HRW, 2013). But there is no further news of confirmation of that deal.

The Iranian government is also getting financial help for supporting the Afghan refugees from International Organisations. In the mid April, 2016 the European Union announced an additional 16.6 million Euros in aid to Iran to boost the government's capacity for assisting Afghan refugees. But in spite of these, the Afghan refugees in Iran are not enjoying all their rights.

Apart from Pakistan and Iran, the Afghan refugees are living in other countries like Germany, United Kingdom, and UAE etc. Germany is one among the European Countries where the Afghan refugees are staying in large number. The Federal Office for Migration and Refugees (BAMF) said that the number of Afghans in Germany increased at the end of December, 2016 to 252,590 from 51,305 in 2010. According to the Federal Ministry of the Interior of Germany (BMI) which is a cabinet-level ministry, 7368 asylum seeking Afghans arrived by the end of July of 2017. In recent years, every second asylum application was recognised but it was only 44.1% by the end of July, 2017, according to BAMF. But most of the rejected Afghans remain in the country. In 2016, a number of 3300 people returned to their countries due to the voluntary departures. But the number of the deportation of the rejected asylum seekers is very low. In 2016 it was 324 and by the middle of the 2017 the number was 261 only. The two counties decided to cooperate better with deportations only in October 2016. (Leubecher, 2017).

#### 5.4. Afghan Refugees in India

While looking at the situation of the Afghan refugees in other countries, it can be said that the refugees in India are in a better condition as compared to Pakistan and Iran. Though Indian government has not recognised the Afghan refugees as a refugee group yet it has not conducted any forceful deportation of the refugees in conflict ridden Afghanistan. India has allowed the UNHCR to work for the refugees under their mandate.

The Afghan refugees residing in India are culturally and socially stable. They are not barred from celebrating their religious festivals in India except from slaughtering of animals in their campus. The Afghan people are very much specific about their food habit and that is why, most of the refugees in India have opened their restaurants in several places in New Delhi where they live in large numbers. Some Afghan people sell Afghani bread in the roadside stalls which they eat with every food item. These restaurants and the Afghan foods have become very popular among the Indian people also. The other Afghan students studying in different universities and institutions in India and particularly in Delhi come in those restaurants for food. According to an Afghan student studying in one of the top universities of New Delhi said that they used to go to those restaurants for Afghan food once or twice in a week and also because he found Afghan people in the area i.e. Lajpat Nagar mentioning the place as little Kabul.

The Afghan refugee women are being provided skill development program by the UNHCR through its implementing agencies. Some of the women have now started their catering business in Delhi itself. In 2016, UNHCR's website published the story of Zameera, Naadirah, Zeenat and Sania who with the assistance of a partner agency of UNHCR namely ACCESS<sup>29</sup>, a national livelihood promotion organisation established a catering endeavour called 'Ilham: A Source of Inspiration'.

Some Afghan women are engaged in collecting waste plastics for their livelihood and thus they are struggling with their traditional gender role by going out to work. They

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<sup>29</sup> ACCESS: ACCESS is a national livelihoods support organization which works on incubating innovations for sustainable livelihoods of the poor. It was established in March 2006 as a professional new generation agency with support from DFID (Govt. of UK) to contribute and to support poverty reduction in India. ACCESS with UNHCR promoted self-reliance for the refugees living in Delhi on Project Livelihood in March 2015. (ACCESS, n.d).

are facing criticisms from the other community members who comment that they are not good women as they are engaged in shameful jobs. But no matter what these women feel themselves proud as they are feeding their family.

Another initiative was taken by the students of the Kirori Mal College (KMC), Delhi University as 'Project Patradya' engaging five Afghan women. Under this project the Afghan women produce and supply edible bowls, cups and cutlery to cafes and ice-cream parlours as an alternative to the non-biodegradable plastics. These utensils are made from millet and wheat flour and these utensils are gaining popularity in the West also as an environ-friendly option and alternate to the disposable plastic utensils. This project is also gaining international support and this move is also welcomed by the United Nations as its twin roles of addressing India's chronic waste problem and empowering refugee women. The project is now supplying edible tableware to 10 cafes and ice-cream parlours in Delhi as well as taking online orders. (Bhalla, 2017).

It can be seen from the study that though the Afghan refugees in India has been in a better place but they are not getting enough facilities for their livelihood. The refugees have to struggle in their day to day life. The healthcare facilities are not enough for the refugees. All the refugees are not receiving the medical health assistance from the government and the UNHCR as well. Likewise, the education is also not provided to the children even in the primary level schooling. To get admission in government school the refugees have to fulfil certain criteria which is not possible for all of them. Though the UNHCR is giving scholarship to the students doing higher education but all the refugees are not eligible for the scholarships and based on the course the students choose they get scholarships. The refugee students also have to pay more money for admission in colleges or universities than the Indian students.

Also there are cases of bullying or maltreatment of the Afghan refugees by other Indians. The Afghan refugee families which have girls don't feel safe in India as they stay in country's capital Delhi. Many refugees stated that some people tried to use the refugee women in exchange of giving them jobs. The refugees have to face misbehaviours from the landlords also. They have to pay for the registration as tenants in police stations and also have to pay more rents in comparison to the Indians. The rent agreements and other documents are needed in order to apply for long term visas but the landlords refuse to give these and for this reason the refugees are facing many problems.

From the responses it could be seen that the refugees are also discriminated in government offices and the citizen are given more priority than the refugees. They have to struggle more to get their works done and sometimes even they have to give bribes to the officials for their works. The respondents said that the Foreigner Regional Registration Office (FRRO)<sup>30</sup> also asked for money to get their work done.

Recently on a news video published by the Firstpost.com on September 28, 2017 showed the state of Afghan refugees in India. The news was published in accordance with the government's decision to deport the Rohingyas to Myanmar and the growing tension among other groups of refugees residing in India. In that news the refugees had shared their problems which is basically related with the job and education. They were seeking help from the government regarding their education and employment.

A number of the Afghan refugees of India are looking for resettlement in other countries with the help of the UNHCR. These respondents are waiting for their resettlement in other developed countries like Canada for the better refugee laws of those countries. To get visas from Afghanistan to those countries is not that easy like India. That may be the reason for the refugees come to India and gradually they apply for resettlement in other countries. From the survey it can be said that these refugees use India as a resting hub and they go to other countries for permanent settlement.

The main shortcomings of the refugee crisis in India is the non-availability of specific refugee law of India. Though effort are being made to introduce new refugee law for India yet these have to become reality. It is very important on the part of India to introduce a refugee law to regulate all the refugee groups residing in India and not only the Afghans.

## **5.5. Recommendations**

From the findings of the survey we have experienced that in India there is a crisis of the Afghan refugees. The present scene of the Afghan refugees in India proves that the Government of India has to some extent failed or there is lack of interest on the part of Indian government to give proper assistance to the Afghan refugees. Also the UNHCR

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<sup>30</sup> FRRO- Foreigner Regional Registration Office is the primary agency to regulate the registration, stay, departure, movement, extension of the stay of the foreigners including the refugees. (BOI, n.d).

in India has no such stand in these issues which has resulted in such crisis. Therefore an attempt has been made to provide certain recommendations regarding this issue.

The Indian Government should

1. Provide the necessary and basic facilities to the refugees nevertheless on humanitarian ground which may include healthcare facilities for all refugees, basic primary education to the children and possible minimum subsidy to the refugees. Education is the basic necessity of all. That is why, the government can by itself or with international organisations can avail primary education for the refugees in government schools.
2. Ensure that the Afghan refugees should be treated with dignity and without discrimination in all places. The government offices should treat them equally with the Indian citizens.
3. Allow the UNHCR to work freely for the refugees and should assist them wherever needed. The Government of India has allowed the UNHCR to work for the Afghan refugees but they do not have that much stand regarding the refugee issue. That is why, the Government should allow them to work freely and should assist them in best possible ways.
4. Introduce new refugee law for the refugees of India which can give a new impulse to the refugee crisis in the country and through which the refugees can be regulated without much hurdle.
5. Indian Government can, keeping in mind the poverty situation of the country, give a break to the registration of the refugees. The country is still struggling with the poverty situation and it has sometimes become difficult for the government to accommodate the refugees along with all the necessary facilities.

The UNHCR in India is dealing with the urban refugees of India with its head office in Delhi and a field office in Chennai. It does not have full access to every refugee group and to every areas. It is because India is still not a member of the UN Refugee Convention. But UNHCR within its limited work sphere, should provide maximum assistance and help the refugees.

The UNHCR in India should

1. Ensure easy registration and renewal of the registration of the Afghan refugees. The process of registration of the refugees should not take much longer time and the cases of each and every refugee should be taken into consideration.
2. Ensure safe voluntary repatriation and resettlement of the Afghan refugees in accordance with the situation. The refugees should return to their country or other country through resettlement if situation permits and without violating their human rights.
3. Can make new partner agencies or can join hands with other international institutions in order to seek assistance regarding the refugee issue in India.

India should check the documents of the Afghan people while giving them visa and permission to come to India. It is because there were cases of people coming from Afghanistan to other places having connections with Taliban. In a news published in Der Spiegel, a German weekly news magazine published in Humburg, on 22 April, 2017 said that the several thousand Afghan refugees admitted during interview with representatives of the BAMF that they either has connections with some radical Islamist groups of Afghanistan or directly fought for the extremists. One of the respondents said that he was threatened by the Taliban in Afghanistan and that was because he left his country, and the man who was from Taliban was seen by him in Lajpat Nagar, Delhi. Der Spiegel said that the German authorities suspected that some asylum seekers seeking to boost their prospects of receiving asylum in this way as affiliation with the Taliban is punishable in Afghanistan with death penalty. But whatever may be the reason, it may become a threat to the national security. That is why, India and other countries which are providing asylum to the Afghan refugees should check the documents properly before granting them permission to come and stay in their countries.

Apart from the efforts and initiatives by the Government of India and UNHCR the Refugees can be protected and given necessary facilities by a strong civil society. Civil Societies in other parts of the world has been working in giving protection and in giving minimum facilities including education, training etc. to the refugees. Therefore, by forming strong civil societies in India can help the refugees in leading a life with dignity and peace.

## **5.6. Limitations of the Field Study**

The present study was conducted to know the refugee issue and the state of Afghan refugees in India and the data was analysed from the respondents' point of view. All the respondents were cooperative throughout the study. However in conducting the survey many challenges had to be faced. Many respondents refused to response to the questions because of the security issues and most of the respondents were not interested to share their name. The respondents were hesitant to share their socio-economic status and income source. Because of time constraint it was not possible to cover wider areas and respondents and the collected responses were not enough and so that it is hard to draw a distinct conclusion from this study. The Hindu Afghans couldn't be located during the study and that is why only the Sikh and the Muslim Afghans were interacted. Also for the limitation of time, interviewing of government officials and other authorities couldn't be completed. The interview of the officials of the UNHCR also couldn't be held because of the procedure they follow and for limited amount of time in hand. Yet within the limited time every care was taken in collecting data in an unbiased manner and following the research ethics to reach the main goal of the research.



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## **APPENDICES**

## Schedule

# *India And Refugee Issues: A Study of Afghan Refugees*

Bhaswati Sarmah

M.Phil Research Scholar

Dept. of Political Science,

Sikkim University

Gangtok – 737102

The questions of this schedule are set up for the partial fulfilment of the requirement for the Degree of Master of Philosophy under the supervision of *Dr. Amit Kumar Gupta*, Department of Political Science, Sikkim University. The objective of the study is to understand the refugee policies of India and to know the state of Afghan Refugees in the country. The study also seeks to analyse the problems that the Afghan Refugees are facing in India.

**The following information request is OPTIONAL, the returned schedules will be treated with utmost CONFIDENCE and no identities will be included within the final paper.**

Name: \_\_\_\_\_

Age (as on date): \_\_\_\_\_ Years \_\_\_\_\_ Months \_\_\_\_\_

Sex: \_\_\_\_\_

Nationality: \_\_\_\_\_

Religion: \_\_\_\_\_

Mother Tongue: \_\_\_\_\_

Education: \_\_\_\_\_

Occupation: \_\_\_\_\_

Q1. Since how long have you been in India?

.....  
.....

Q2. From which part of Afghanistan do you belong?

.....  
.....

Q3. For what reasons did you come to India?

.....  
.....

Q4. Were you forced to come to India?

- Yes
- No
- Not sure
- No response

- If yes, what are the circumstances? .....

Q5. Did you get any official support to come to India?

- Yes
- No

Not sure

No response

• If yes, what kind of support? .....

Q6. Through what process did you come to India?

.....  
.....

Q7. Did you face problems in the settlement process in India?

Yes

No

Not sure

No response

• If yes, what kind of problem? .....

Q8. What kind of help is the Indian Government giving you?

.....  
.....

Q9. Are the government officials friendly and cooperative?

Yes

No

Not sure

No response

Q10. Do you have a refugee card?

Yes

No

Not sure

No response

• If no, then have you applied for it? .....

Q11. Do you face problems with regard to your occupation?

Yes

No

Not sure

No response

• If yes, what kind of problem? .....

Q12. Do you face problems with regard to your religion and in celebrating religious and cultural festivals?

Yes

No

Not sure

No response

• If yes, what kind of problem .....

Q13. Do you face problems relating to education for yourself/your child in India?

Yes

No

Not sure

No response

• If yes, what kind of problem? .....

Q14. Do you get proper medical assistance?

Yes

No

Not sure

No response

• If yes, what kind of assistance? .....

Q15. Do you have any community based organization in India?

Yes

No

Not sure

No response

• If yes, what are those? .....

.....

Q16. Do you have easy access to the Indian Judicial System?

Yes

- No
- Not sure
- No response

Q17. Do you have the right to housing?

- Yes
- No
- Not sure
- No response

Q18. Do you know what are the NGO's that are working for your development and protection?

- Yes
- No
- Not sure
- No response
- If yes, which are the NGOs and what they are doing for you?  
.....

Q19. Are you aware of any of refugee policies that the Government of India has formulated for you?

- Yes
- No
- Not sure
- No response
- If yes, which are the policies? .....
- .....

Q20. What kind of assistance is the UNHCR providing to you?

.....  
.....

Q21. Do you expect more from UNHCR?

- Yes
- No

- Not sure
- No response
- If yes, explain in details .....

Q22. Do you feel any kind of insecurity here in India?

- Yes
- No
- Not sure
- No response
- If yes, what kind of insecurity? .....
- .....

Q23. Any other problems you are facing?

.....

.....

Q24. Do you want to go back to Afghanistan or not?

- If yes, why.....
- .....
- If no, why .....

Is there anything more you wish to share

.....

.....

Thank you for your valuable support and cooperation!