Report of the Consultation on ‘Refugee and the Law’

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In collaboration with
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Day one of the two-day consultation focused on five political scenarios of states in the region and the situation of refugees from these states within India. The second day’s discussion addressed International and Domestic law protecting and affecting refugees.

Objective
As India lacks legislation explicitly pertaining to refugees, this consultation was organized in an effort to engage in a constructive dialogue with civil society, international agencies, and policy makers in order to help inform the development of the Model National Law on Refugees. In addition to developing concrete recommendations with various experts and refugee groups on the issue of national legislation, promoting the need and importance of incorporating refugee rights into initiatives addressing specific human rights issues, such as women’s rights, the right to food, to adequate housing, to education, to nationality, etc., was sought.

Methodology
1. To have presentations given by civil society organizations that work with various refugee populations in India, and specifically in New Delhi, to gain a better understanding of the logistical problems and differential difficulties various refugee groups face in day to day living and in accessing resources.

2. Hearing from experts on domestic and international law to illuminate the mechanisms that offer protection to refugees as well as laws, or the lack of them, that hinder their ability to function in Indian society.

3. To engage in effective dialogue in order to highlight areas of concern and to address any gaps or insufficiencies in the provisions of the Modern National Law on Refugees.

Background to the situation of refugees in India
India has played host to a large number of refugees since the 1950s. This is mostly due to its geographical positioning, with six states (China, Bhutan, Nepal, Pakistan, Bangladesh, and Myanmar) bordering the country, in conjunction with the political situations of its neighbors. Logically, the majority of refugee influx comes from bordering countries, though India has
accepted refugees from other non-bordering states such as Afghanistan, Iraq, Iran, Sudan, Uganda, and Somalia. In addition to its location, India is an attractive destination to asylum seekers for its multi-ethnic society, for being the largest liberal democracy in the world\(^1\), and for its well-known record among both international organizations and the world community of its benevolence towards refugee populations.

Despite its hospitality, no legislation explicitly pertaining to or protecting refugees exists in India, nor is India a signatory to the 1951 Geneva Convention or the 1967 Protocol. The Government of India (GoI) is concerned with border security, knowing that its porous border encourages flight to the subcontinent. It is this relative ease of entry coupled with a legal obligation to provide for refugees that causes the fear of mass migration and the abuse of the treaty’s provisions among the government, and as experts and practitioners widely believe is why the GoI is still reluctant to become a party to the Convention.

The lack of refugee legislation allows for the GoI’s ad hoc approach, which is governed by political and administrative decisions rather than a codified model of conduct towards accommodating refugees. This ad hocism has led to the differential treatment of various refugee groups, which ranges from granting provisions such as legal residence, the ability to be gainfully employed, and the access to social resources, to a complete lack of acknowledgement.

In addition to the inconsistent treatment of refugees, these vulnerable groups often find difficulties in remaining in the country once they have been permitted to enter. The Foreigner’s Regional Registration Office (FRRO) has been known to refuse, though not as a matter of standard practice, the issue and/or renewal of residential permits due to the inability of the applicant to provide a valid passport or other identification documentation\(^2\). Without mechanisms for the official recognition of refugee status, these individuals and groups are subject to laws governing foreigners, such as the Passport Act of 1920\(^3\), which do not account for the special circumstances refugees find themselves in when entering the country.

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\(^1\) Ragini Trakroo et al. \textit{Refugees and the Law}. HRLN, pg 57.

\(^2\) Ibid. pg. 57.

\(^3\) The Passport Act of 1920 requires a non-citizen, upon entering the country, to produce a valid passport.
Applying the term foreigner to all non-citizens without differentiation as to various types, gives those awarded authority tremendous room to discriminate against and arbitrarily act upon individual refugees and refugee groups, particularly under the Foreigner’s Act of 1946. This legislation allows those who have been granted authority to restrict the movement of, detain, imprison, deny opportunities of association to, and deport those they find to be illegally residing in India. The Act provides the authorities, usually the police, the power to determine the manner of punishment or detention that those deemed in violation of the Act will receive as well as explicitly enables them to exercise any other power or force, in addition to those provided in the Act, they consider necessary (Section 11; subsection 1). All of this is provided with the express assurance of impunity for those actors enforcing this legislation (Section 15). As in the Passport Act of 1920, the Foreigners Act of 1946 legally endorses *refoulement*, leaving refugees in a precarious position with their futures dependant on the current political atmosphere.

Not all refugees in India are reliant on the protection of the GoI. Though not formally recognized by the government, due to the absence of a Country Agreement, UNHCR presently assists around 12,000 refugees in New Delhi and Chennai. Of those refugees under UNHCR’s mandate, the majority are Afghan (90%), then Myanmarese (8%), with the remaining 2% from Iran, Sudan, Somalia, and Iraq. Though Sri Lankan Tamils are not under mandate, UNHCR is assisting in the process of repatriation, ensuring the voluntariness of all returning nationals. Some 3,000 Tamils repatriated in 2004, and this trend is expected to continue. Considerably fewer Afghans, 78 with UNHCR’s assistance, decided to return to Afghanistan in the same year. In addition to directly assisting and protecting mandated refugee populations in India, UNHCR continues to engage in and encourage dialogue with the GoI on the need for national refugee legislation, to sensitize border security police, and to hold trainings and workshops.

The largest refugee populations in India do not fall under UNHCR’s mandate, but are nonetheless considered refugees by the government. UNHCR estimates that the GoI assists approximately 181,000 refugees throughout India, though this number is most likely low given the decades of India’s reception to refugees and the difficulties in acquiring accurate statistical information in the absence of any official and coordinated national/international

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4 UNHCR 2006 Country Operations Plan for India
verification mechanism. Tibetans and Sri Lankans comprise the largest populations, over a lakh and more than 50,000 respectively, and along with refugees during the Partition of India, they have been accommodated and assisted generously in terms of access to education, healthcare, employment, residence, and even citizenship. Also the East Pakistani refugees (almost 100,000) and the Chakmas from Bangladesh (51,000 in 1994) were incorporated into the local population, with the majority of the latter group granted citizenship. Perhaps the group with the greatest handicap, in terms of being recognized as refugees, is the Bhutanese, who are not seen as refugees. However, because there is an agreement between India and Bhutan providing for an open border between the two states, Bhutanese foreigners enjoy rights similar to citizens that most refugees do not.

It is clear that it is not India’s unwillingness to welcome refugees into her borders, or the refusal to assist and accommodate these displaced populations. It is the lack of uniform, non-discriminatory, and consistent treatment of all groups granted asylum that becomes problematic. The draft Model National Law on Refugees was submitted at the 1997 SAARC Law Regional Seminar and was adopted as a proposed Model Law. The continued efforts of human rights practitioners to draft a comprehensive national law for the protection of refugees and to have this piece of legislation adopted by the Central Government is a positive direction towards codifying the governments treatment of refugees.
Introduction

*Colin Gonsalves, Senior Advocate and Executive Director for Socio-Legal Information Center (SLIC)*

In his introduction Mr. Gonsalves highlights the current attitudes towards refugees in India, briefly discusses a few specific refugee groups, and touches upon refugees in a greater social context, drawing comparisons between Indian emigrants and incoming refugees.

India’s consistent refusal to sign the Convention, he explains, is for economic reasons. How is it possible for India to aid refugees, providing food and housing, when there is already such a great need for subsistence aid from the government to its citizens? The resources simply are not there. Though economic constraints are surely a legitimate concern for the GoI, Mr. Gonsalves highlights the more pervasive political reasons that govern the acceptance or refusal of refugee influx, for even poor countries can take care of refugees by providing education and employment. Furthermore, it is to the benefit, he argues, of the state to accept these diverse populations. Not only do they contribute to the cultural wealth of the society, they aid in the social wellbeing of the society by lending their creativity and productivity to the host state.

Despite the lack of legislation and the increasingly hardening attitude of the judiciary and GoI, many refugees stay in India. Many judges, particularly in Kolkata have been hostile towards refugees, ordering for their deportation, and as there is no mechanism protecting them from this they once again face the persecution they were fleeing from. Training programs for judges have been implemented, however, there still seems to be a substantial lack in their understanding of the reality of a refugee’s persecution across the border.

Two refugee groups in India were specifically referred to in order to illuminate the attitudes and the discrimination refugees face in the place they seek refuge. Regarding Bangladeshi refugees, it was said in the Supreme Court that these migrants and their coming to India is like an enemy invasion. Mr. Gonsalves points to the trickle down effect sentiments such as these have on the judiciary, which influences their treatment of refugee cases. The same sentiments can be seen in the official perception towards Nepalese refugees. Though human rights activists in India have given support to the Nepalese’s fight against the king, the GoI is still very close to the Nepalese leadership, and as long as this relationship continues the situation will not become better for the people. Nepalese activists in India are
branded as terrorists. For the most part the middle class are left alone while the poor are being persecuted. Many are caught in Bihal and with an extradition treaty between India and Nepal, are easily deported where they face torture and further persecution.

The question Mr. Gonsalves poses to the assembled group is how can Indians deny to others what they are asking for themselves? There are similarities between those who have emigrated from India and those who are coming into India to seek asylum. The reasons for their respective departures may vary, or they may be for the same manifestations that culminated in different ways, but their wish is the same. Many Indians are trying to go to Europe or the United States, mainly for economic reasons. Often refugees flee because of the economic byproducts of persecution. Both are looking for the ability to improve their economic situations, not for greed but for necessity. Often, Indians enter these Western countries illegally, just as refugees enter India, but regardless of their legal status within a foreign state, they are demanding their basic human rights to be provided by that country. So again, how can the state not apply the same standards that its people are demanding elsewhere?

The introduction ended with a brief comment on HRLN’s perspective on working for refugee rights. The recognition that all aspects of human rights are interrelated and so cannot be compartmentalized, is for the most part universal. Refugee rights are no different. Whether addressing women’s rights, HIV, or any other human right, refugee rights should be incorporated and refugee populations should be worked with and consulted.

**Burma**

*Ms. Thin Thin Aung, Executive Director of Mizzima*

Ms. Aung began her discussion on the political scenario in Burma by giving a historical account from the point that the State Peace and Democracy Council (SPDC) took over. Before it was governed by military dictatorship, Burma was a democratic country with elected leadership. The regime’s rise to absolute power began in 1988 when the SPDC forcefully acted against peaceful student demonstrations. Two years later the National League for Democracy (NLD) won the state elections by a landslide. However, the SPDC ignored the electoral outcome and arrested all of the NLD leaders, thus successfully impeding the possibility for a change in power to occur and further securing their control of Burma.

The now established military regime announced its plans to draft a new constitution for Burma under the Roadmap to Democracy. The roadmap not only called for a new constitution, it was meant to ensure that elections would be held for the formation of new governments. But instead of incorporating a diverse panel of delegates to the Convention for the drafting of the new constitution, nearly all of those involved were appointed by the SPDC. No progress was made on the drafting process, and by the mid 1990s no constitution was drafted, the leaders of the NLD still remained under house arrest, and violent measures were being employed to quell democracy activists.

The oppression of opposition groups resulted in people being placed under house arrest and kept as political prisoners. This oppression was not limited solely to groups who were organizing around the growing pro-democracy movement, but extended to elected members of parliament and to anybody who was a vocal adversary of the SPDC or was perceived as a threat to its consolidation and maintenance of power. In its continuing fight to silence the opposition, the SPDC has subjected the Burmese, minority or not, to forced labour, especially in areas where militarization has heightened. Moreover, the regime has committed egregious human rights violations against the Burmese by means of killing, torture, the systematic use of rape, and forced evictions. By 1994 in the eastern region alone there were at least 650,000 internally displaced persons (IDP). In total there are well over 1 million IDPs in Burma.

Various armed opposition groups have challenged the SPDC. The regime has entered into ceasefire agreements with 17 ethnic groups, while the Shan State Army continues to fight. Instead of creating any measure of peace, the cease-fires have served to increase militarization. Because no political agreements addressing the reform of the governing power have emerged, new groups have formed and taken up arms. The regime continues to respond with militarized oppression and human rights violations, and the rebel groups continue in their fight, creating a standoff that seems to be never-ending. In 2006, Burma was scheduled to assume the Chair position of the Association of South East Asian Nations (ASEAN). With great pressure from the international community and ASEAN, Burma officially announced its withdrawal from the Chairmanship of the Association, citing its need to fully commit to the democratization process currently underway in the state. It is hoped by the international community that this new pressure on Burma will incite actions of reform in
the conduct of the SPDC, though because of the regime’s demonstrated regard for the appraisals by the international community, many doubts remain.

The United Nations has attempted to promote political and economic changes in Burma, but without success. No matter the number of resolutions adopted by various UN bodies to incite the military regime to reform, the SPDC remains obstinate and no change occurs. For example, the ILO adopted a resolution to compel the military regime to comply with its obligations, but instead of reform the SPDC disregarded the international community by threatening to withdraw from the ILO altogether. The UN has also tried, to no avail, to facilitate tribal dialogues in order to aid national reconciliation. The regime and many pro-democracy organizations, such as the NLD, simply refuse to cooperate. The United States continued its efforts to bring the situation in Burma on the international agenda by tabling the call to put Burma on the Security Council’s agenda in November; on 2 December 2005, all fifteen members agreed to begin studying the situation in Burma\(^5\). Another National Convention assembled on 5 December 2005 in Burma. The hope is that a new constitution will be drafted, as was promised over a decade ago, but many remain skeptical that this latest attempt to produce a document of reform will result in anything.

\begin{quote}
Ms. Joyce Zahau, Coordinator of the Women League of Chinland

Ms. Zahau briefly expanded on the previous history of Burma before continuing on to her discussion about the Burmese situation in India. In 1948 Burma gained independence from Great Britain. The governing force shifted from democracy to a military junta following the 1962 coup d’etat, and it was not until the 1990s that the junta transformed itself into the current ruling regime, the SPDC.
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\(^5\) Democratic Voice of Burma. December 6, 2005
The increased militarization under the SPDC and its affects continue to cause flight from Burma, especially in the western region. Once in the neighboring host state, many refugees experience the same environment of militarization, most namely in Thailand and India. Many have been unwillingly repatriated and are again forced to flee, this time bound for New Delhi. Though many Myanmarese refugees remain close to the India/Burma border, others head for the capital because of UNHCR’s presence.

UNHCR in Delhi protects and assists around 1,500 to 1,600 Burmese refugees, the majority of which are from Chin state. The organization provided individuals with a stipend, which was increased after 1994, for both the principal and dependent refugees. In 2002 UNHCR began its plan of phasing out stipends for Burmese refugees. To date, Ms. Zahau estimates that 80% of aid has been phased out and in the next 12 months, all compensation will terminate. The logic behind the termination is to avoid creating a dependence on aid. The problem, according to Ms. Zahau, is that these refugees must now compete with Indian citizens, which makes sustaining an adequate standard of living almost impossible.

Though granted residential permits to reside in India, joining the workforce proves to be a difficult task. Most refugees are from rural areas in Burma and do not have the education that those from the city do. They do not know English, nor do they have the skills to allow them to compete with Indian citizens to secure jobs. As a result they are absorbed into the informal sector, where the vulnerability of and exposure to exploitation is greater, or they remain jobless and steeped in poverty. Acquiring competitive skills is not always feasible for some, as many cannot even call on the assistance and relief of UNHCR due to the distance one must travel to access these resources. So while a subsidy is provided for education, it does not reach all mandated refugees.

Formally, access to education is ensured for every child protected by the UNHCR mandate; however, children are not able to access the resources that will propel their community forward and ensure a more stable future. Educational institutions require a birth certificate and papers for registration and fees. Ms. Aung relates that for some, this is not always possible and so presents a barrier to education. Once children enter the classroom, they still face difficulties and obstacles. Refugee children are often subjected to humiliation in the classroom. For example, if a child does not bring the school fees, she must stand on the desk all day or is forced to leave and only return when she has the fees. This can have
tremendous psychological affects on young children. The older a child gets the greater the dropout rate is, with the highest rate among 17 and 18 year olds. In total, about 70% of children drop out, impacting the future of the community’s ability to survive and thrive.

Daily life is a struggle for many Burmese refugees in New Delhi. Most live among human refuse in the slums, where they are forced to cohabitate with the dogs and pigs that clean their rubbish. Accommodation is shared with many. A room, for example, may house five to ten people. Potable water is not readily available and their diet is very poor. Often only one meal per day of rice and boiled vegetables is eaten. As a result, malnutrition and kidney and liver diseases have increased.

Women bear the largest burden among the refugee population, as they comprise over half of the population. Some women are widows or are the head of large families, at an average of 8 to 10 persons per family. They must work as well as take care of the family, imposing a double burden upon them. Women are regularly harassed and assaulted at work, and since many work in the informal sector, they are generally grossly underpaid for the long hours they must work. The economic exploitation of refugee women effects an increased potential for danger in securing other basic necessities, such as food. Because they receive little pay, many people get free vegetables from the night market when it closes, or rummage through the rubbish at the night’s end. Not only are refugees singled out and humiliated by vendors, they must be out late and unaccompanied to get the food, putting them, working or no, at greater risk of harassment and assault.

Burmese activists in India have tried to garner political support for their cause with little success. India is unwilling to back the Burmese activists politically, as it is solely dealing with the controlling junta. Indian relations with China have influenced its political alliance with the regime rather than with the people. Since the pro democracy activists cannot use political pressure to incite reform of the government, they must settle with creating awareness and continuing to seek support for their movement, the democracy movement, in Burma. As awareness grows and the movement gains a momentum, it is hoped that the GoI will be forced to take political actions against the regime. As it is now, the Burmese continue to struggle for survival both as refugees and in their home country.
Afghanistan

Mr. Monahar Singh, President of the Khalsa Diwan Society

Khalsa Diwan is an organization whose main objective is to secure the interests of Sikhs in Afghanistan. It was formed in 1929 and constructed Gurudwara to establish schools and provide Afghans with a moral society. Khalsa Diwan played an important role in assisting Afghan refugees as problems worsened in their country.

Overwhelming hardship and turmoil in Afghanistan began in 1978 with the communist invasion. Until this point people had their own businesses and residential houses. 1978 to 1992 was the worst phase in Afghan history, and as the cruelties of the rulers heightened, many Sikhs and Hindus fled to India. Uncertainty as to the future surrounded Afghani refugees’ lives. The future of their home country was impossible to foretell and their future within India seemed stagnant. Khalsa Diwan convened a meeting in 1996 to assist in bettering the situation of refugees in India and elsewhere. They made arrangements for the admission of boys and girls into schools and provided for their tuition. Other organizations, such as YMCA, SLIC, and VHAD, have shared the burden of assisting refugees in India, and with their help management courses, computer courses, teacher training courses, and stitching training have been arranged to help alleviate the economic strain in refugee situations.

The greatest problem now for refugees in India is securing citizenship. About 400 applications have been submitted by SLIC, but two years on all of the refugees are still waiting for the process to be successfully completed. Even those who are not refugees and have applied for citizenship privately are still waiting for their applications to go through. Without citizenship, refugees face problems of movement, employment, and education, which contribute to the continuing lack of certainty and ability to move towards a more stable future.

In the absence of visas, the governmental authorities have assured Afghani refugees that they will not be harassed in any way; however, this proves to not be the case and acquiring visas becomes an exercise fraught with obstacles. Because of the difficulty in getting a job in India, mostly due to language problems, most Afghans go back to Afghanistan to search for work. The Indian embassy provides three-month tourist visas, without the possibility of extension, for people going to Afghanistan in search of work. Traveling incurs a great cost to the refugee and often three months is not sufficient to...
recuperate their losses to be able to afford the journey back. Because of this, many refugees overstay their three-month allowance. Furthermore, obtaining a visa is not guaranteed, even though the authorities give this assurance.

For Afghans coming to India to be with their family, a three-month visa is given without extension. If they approach the FRRO to get a new visa, they are threatened to leave within three days or they will be deported or given a jail sentence. A 75-year-old woman and her daughter went to get their visa. They were subsequently sent to the home ministry, who gave them a letter to take to the FRRO. When this was handed over, the old woman and her daughter were taken into police custody. A month later they were released on bail and were given a three-month visa. This is a common occurrence for refugees in India, despite their protection from UNHCR and their admittance into India.

Mr. Mohammed Naem, Representative of Ethnic Afghans

Mr. Naem presents the past political situations in Afghanistan that necessitated its citizens to become refugees. He makes it clear that he is only speaking about the atrocities rather than the political compulsions of what occurred in Afghanistan during this dark period in its history. As mentioned previously, Afghanistan was cast into turmoil when the Communist party under Noor Mohammed Taraqqi seized power. Diktats were issued on a daily basis, the most important being Diktat 8. Under this rule the regime was empowered to seize the property of any person and distribute it among others. The regime came to power with the slogan of providing food, clothing and shelter, but with this Diktat ended up starving the masses and rendering them homeless. A particularly loathsome Diktat to the people, he relays, was number seven, which pertained to religious ceremonies and marriages and allowed for the fiancé of any one person to be appropriated by another if he so chose. The people responded to this by mass protest, but the power of the Diktats remained.

Each successive regime imposed additional Diktats, which plunged Afghanistan and its people further into chaos. The next regime to take power was that of Hafizullah Amin who came with the slogan of providing peace, justice and security to all Afghans. Instead he vowed that no literate person would be left alive in the state and imposed this edict upon those belonging to all castes and religions. After Amin’s rule, Babrak Karmal took power of
Afghanistan. He was deported but when he returned, he did so with 120,000 troops from the Russian military. Afghanistan was effectively placed under the control of the Russian army. With the slogan of the nation as the mother of all citizens and the duty of its citizens is to protect Afghanistan’s national integrity, he displaced even more people by taking their land and depriving them of their earnings. People were forced to flee their homes and live in caves. The outrage that had started among the population in 1978 came to a head when this foreign power seized the country. Civil war ensued and masses of people sought refuge in Pakistan and India as their schools were burnt and their students killed.

Life in the camps proved to be a small improvement in the lives of these new refugees. There were no schools or medical facilities within the camps and politics increasingly crept into the camps. Citing religious affinity, the Mujahadeen appealed to the refugees to join their fight. Many joined feeling they had no choice, but life under the Mujahadeen in Afghanistan was no better than with its predecessors. There were still no schools and grave human rights violations continued. The Mujahadeen would chop off the ears and tongues of people and pack 10 to 20 people in a container to extort money from them. At this time, in 1992, another wave of refugees left Afghanistan.

In India there are roughly 10 million refugees, though officially, UNHCR reflects that there are only 10,000 to 20,000 in the state. Even in this more protected situation, refugees are not given adequate resources. Afghanis largely remain illiterate for the lack of money and education. They are unaware of the intricacies and the happenings in the world. The ill and disabled are discriminated against and are not given treatment because of the costly nature of treating serious medical conditions. Though refugees have been provided a safe haven as such, there is still much to be desired in their treatment, and so Mr. Naem relays that they still remain people who wander to another country in search of life and food and a future that was displaced by the events in their home country.
Pakistan

*Mr. Hindu Singh Sodha, President of Pakistan Visthapith Sangh*

Mr. Sodha focuses his discussion on Pakistani Hindu refugees in Rajasthan and Gujarat and their effort to locally integrate and obtain Indian Citizenship. Since 1965 India has received a more or less steady flow of refugees from Pakistan, with influxes occurring when Indo-Pak relations dip, in war, and in times of heightened religious fundamentalism. The majority of refugees come from the Sindh province in Southern Pakistan, where most of the country’s 3 million Hindus are concentrated. Mr. Sodha briefly explains the situation of Hindu persecution and their patterns of flight from Pakistan.

Aside from times of war, Hindu Pakistanis sought refuge as insecurity and discriminatory laws and policies grew along with right-wing Islamist groups in the country. Religious persecution fluctuated with domestic political shifts as well as the current relationship between India and Pakistan, which is capable of further inflaming anti-Hindu/anti-Muslim sentiments causing migration. This is clearly seen in the incidence of the Babri Masjid. Pakistanis destroyed the Masjid in 1992, causing a backlash against Muslims in India. This violence incited the Pakistani authorities to then attack Hindu temples in Sindh and southern Punjab, causing around 17,000 Hindus to flee. Adding to this sense of fear and uncertainty are instances of abductions and forced conversions to Islam, primarily of Hindu girls, as well as kidnappings of Hindu businessmen. These incidents have woven a backdrop of religious intolerance towards Hindus that manifests itself at any time and describes the environment in which Hindus in Pakistan live. The situation is always ripe for escalation when events, such as the destruction of the Masjid, incite heightened violence of or intolerance toward the mainly Dalit Hindu population of Eastern Pakistan, provoking mass migration to India.

Though from the same population, the Sindh Hindus have received differential treatment from the GoI depending on when they sought refuge. The 1965 war between India and Pakistan brought with it the first major wave of Hindu migration from Pakistan since partition, and in 1971 another war between the neighbours caused some 90,000 people to migrate to western Rajasthan and Gujarat. At this time no border fence existed to keep migrants out, and so crossing the border and settling in these two states was relatively easy. The Indian government took a liberal attitude and was welcoming. In fact 21 refugee camps were established by the GoI and ran for eight years. At their closing, the inhabitants were
either repatriated under a treaty between Pakistan and India, or for those who did not wish to return, were granted Indian citizenship with a rehabilitation package consisting of land allotment. Those migrants who came post-1971, however, have received a very different sort of welcome in addition to greater complications in getting to and settling in India.

Unlike the pre-1971 refugees, those who have come in the last 35 years face impediments in crossing the Indo-Pak border, acquiring visas, moving within India’s borders, and securing citizenship. With the introduction of a border fence between India and Pakistan, migration was forced to become legal, meaning a valid passport and visa is required to enter India. Instead of being able to cross the border directly at Rajasthan or Gujarat, refugees now have to travel to the only open point in Punjab after securing a visa at the Indian embassy in Islamabad. Because of security risks to the state, the Indian authorities have been reluctant to give Pakistanis visas, especially to the border districts of Rajasthan and Gujarat where most of their relatives live. Though seeking visas for these states specifically, many refugees are instead given travel visas for Delhi, Hisar, or Haridwar, though most of them ignore this and illegally travel and stay with their families in Gujarat and Rajasthan.

Illegally residing in India, in addition to being unrecognized as refugees, denies many in this post-1971 group the resources afforded their relatives by the Indian government, which considerably affects their chances to successfully subsist. By having to conceal their identity, illegal residents in these two states have a narrower selection of job opportunities, as the absence of papers requires them to work in the informal sector. They earn their livings as low-paid or bonded labourers for rich peasants and feudal lords, or they work in stone quarries. Without any legal status they are denied their identity and any protection from exploitation and harassment from security personnel. Even those more recent refugees who have been granted citizenship, are looked upon as an ousted group rather than refugees, and did not receive rehabilitation assistance. As citizens, many still do not have access to the benefits and government assistance schemes granted to Indian citizens. They lack such things as Below Poverty Line (BPL) cards identifying their economic situation and ration cards to aid them in achieving a minimum standard of living. However, aside from the difficulties many refugees experience in getting citizenship or accessing the benefits of being a citizen, there have been great advancements.
Early 2005 marked a great achievement for illegal migrants in Gujarat and Rajasthan. The GoI sanctioned the District Magistrates of these two states to grant citizenship to Pakistani refugees for a period of one year, which was extended in 2005 and is scheduled to end in 2006. Some 13,000 refugees who had by that point resided in India for five years, as required by the government, received Indian citizenship. For the 4,000 or so refugees who were not awarded citizenship, new difficulties continue to emerge as the government changes its guidelines and requirements for application.

Mr. Sodha’s organization, Pak Visthapit Sangh, works to get these 4,000 refugees citizenship by staging demonstrations, holding public meetings, and engaging in discussions with bureaucrats to reduce requirements for and obstructions to obtaining citizenship. When those who had not resided in India for five years were denied citizenship, Pak Visthapit lobbied for a reduction in the time requirement one must fulfill in order to become qualified. Instead, the government increased the required continuous residence from five to seven years, making the reality of citizenship impossible for many. Application fees, which were seen as steep in the first place, have been raised. Mr. Sodha conveys that for one family, around five to seven people, it costs a minimum of 30,000 to 50,000 rupees (650-1,050 USD) to apply. This is too exorbitant for most families, as they are primarily landless laborers.

Due to their incompatibility, the government’s requirements for citizenship and the context in which many refugees find themselves in India, serve to establish certain impossibilities of achieving citizen status. By the time refugees have been settled in India for seven years, the sanctioning of citizenship will be well over. Moreover, there is no way to address the continuing flows, all be them significantly reduced in number, of Sindh and Southern Punjab refugees. Few families who possess the requirements for application can actually afford to apply, leaving too many unable to obtain citizenship and trapped in a poor economic state. Mr. Sodha expressed that the temporary delegation of power to the District Magistrates has been more a money making venture for the government than a concerted effort in aiding the population.

To bring about an immediate and long-term solution, Pak Visthapit Sangh has been calling for amendments to the requirements regulating citizenship. Instead of small windows of opportunity to obtain citizenship, as with the temporary power of the District Magistrate, the government should grant all local District Magistrates the permanent power to award
citizenship. Not only would this account for those not meeting residential requirements or new arrivals, it will allow for those not residing in Rajasthan and Gujarat but elsewhere in India to seek legal status. The second major shift that must occur, is to reduce the application fees. The government has recently categorized refugees with a list of fees varying accordingly. This has made it very difficult for Pakistani refugees to apply within the last year, irrespective of their time of stay in India. Mr. Sodha proposed forming a Review Committee to make recommendations to the central government, and to place the responsibility of raising issues relating to refugees and citizenship on the government.
Tibet

Mr. Tenzin Choeying, National Coordinator of Student of a Free Tibet in India

To begin the discussion of Tibet, Mr. Choeying gave an introduction to the history of the Chinese presence in Tibet and the actions that drove many Tibetans to seek refuge abroad. A year after the People’s Republic of China (PRC) was formed, it invaded the Tibetan frontier in six places simultaneously. It is this point that marked the beginning of the Chinese occupation and the Tibetans struggle to reclaim independence.

The invasion of Tibet came in 1950 when the PRC began professing the need for it to liberate all Chinese territories. To avoid more military action, the Tibetan authorities entered into negotiations with the PRC to resolve the border dispute. The culmination of these undertakings resulted in a signed agreement (the Seventeen Point Agreement) that technically cannot be considered binding, as the Tibetan signatories did not have the authority to conclude such agreements. However, the Tibetan government did not deny the treaty and as China gained more control, the opportunity to engage in negotiation with China vanished. Up until this time, Tibet was considered a de facto state; now they were occupied and absorbed by China, who claimed control over Tibet’s foreign dealings and who until this day maintains a high military presence within its borders.

China was to be afforded control and direct authority over the Tibetan region, while Tibetans were to keep their government, political independence, and religious freedom. Upholding the terms of the agreement, however, proved to be short-lived, with China strictly controlling the region and violating human rights. The state does not tolerate any activity or expression that may pose a challenge to the PRC or is considered a means to political dissent, thus tight controls on religious practices and places of worship have been evoked. Tibetans fought against these repressions in a 1959 uprising against the occupation. Around 87,000 Tibetans were killed, arrested, deported, or sent to labor camps. Many sought refuge in India. As the PRC continued to rule, a space for Tibetan culture, government, and autonomy disappeared, and more campaigns were employed by China to facilitate cultural and political cohesion amongst the newly liberated regions.

The Cultural Revolution lasted for a decade and was meant to strengthen, to the detriment of the people, the development of Mao Zedong’s socialist system. Ethnic minorities, such as the Tibetans, were hit especially hard, as their material culture, education,
and personal freedoms were being destroyed. In an effort to enforce the centrality of the majority Han ethnic group, dissidents and intellectuals, the ‘counter-revolutionaries’, were persecuted; many were sent to labor camps where they were worked to death. Others were executed or exiled. Over 2,000 monasteries in Tibet were destroyed in this period and for a time the education system came to a virtual halt, coming very close to producing a generation of citizen inadequately educated.

In 2001, China’s proposal to build a railway from Golmund, 1,100 km to the Northwest, to Lhasa, created a great amount of protest from Tibetans in exile. China says that the line will provide an economic lifeline to the Tibetan plateau, while Tibetans see this as another means to solidify control over the region and its natural resources. Mr. Choeying expressed that this will not only displace some, but will marginalize Tibetans in their land even more than they are by providing greater accessibility to new settlers. With greater numbers of Chinese settling in Tibet, Tibetans suffer discrimination based on language, with Chinese being the preferred tongue. Whereas economically Tibet has advanced, culturally and in terms of personal freedoms and liberties it has regressed.

China’s ‘liberation’ of Tibet is justified and proven by illuminating the economic indicators, showing an increase in industrial type development. For the Tibetans, this development has come at the price of an influx of Chinese settlers. Today there are ten Chinese to every one Tibetan. This impacts greatly on their culture, livelihood, and autonomy. To date in its conflict with China almost 1.5 million Tibetans have been slain and at least 6,000 religious buildings have been destroyed. Instances of torture, arbitrary arrest and detention continue for expressing political or religious beliefs. It is this continued oppression that brings about the constant trickle of refugees into India.

Ms. Youdon Aukatsang, Executive member of Tibetan Women’s Association

Ms. Aukatsang explains the three different types of Tibetan refugees in India as well as illuminates their experiences with the GoI and as a population within India. She classifies Tibetan refugees by their time of arrival into India, as the two primary periods of influx often correlate with the difficulties they face respectively.
The first wave of Tibetans entered India in the aftermath of the 1959 uprising against the Chinese occupation of Tibet. This first wave of refugees freely entered Nepal in transit to India and received a hospitable and accommodating welcome by the Indian government. It was only a year later, in 1960, that the Tibetan Government in Exile (TGIE) was established in Dharamsala.

The second wave of Tibetan refugees was exposed to the fluctuating acceptance from the Nepalese government but also to a more organized situation once they arrived in India. The difficulty was in making it through Nepal and into India. A series of mass demonstrations in Lhasa from 1987 to 1992 resulted in a steady influx of refugees into India that continues today, though of a lesser number (2500-3000 people/year). Refugees still pour out of Tibet to escape from the violation of their most basic human rights. The only entry point for all of the recent arrivals to India is Nepal. If those fleeing make it through the extremely arduous and dangerous route through the Himalayas, they face the possibility of deportation from the Nepalese authorities. The negotiation of a Gentleman’s Agreement between Nepal and UNHCR has helped stabilize the differential treatment of Tibetan refugees, but does not provide full proof protection to the refugee.

The Agreement calls for acceptance of all Tibetans who make it across the border without being caught by the border authorities. If caught they will not be allowed to enter Nepal. If they are picked up once inside the state’s borders then they are to be taken to the Reception Center run by the UNHCR, which coordinates and plans the refugees’ journey through Nepal and into India. For the most part this has proven to be very effective, but there is evidence that the process is breaking down due to pressure from the Chinese government. In 2003, 18 Tibetan refugees were deported and a number remain in detention in Nepal. It is China’s pressure and power that renders Nepal unwilling to officially recognize refugees and place them in camps. Nepal has become very sensitive to the issue regarding Tibet and to what China has to lose by having its human rights abuses exposed and acknowledged by its neighbors. However, by upholding, at the least for the most part, the Gentleman’s Agreement, Nepal is aiding the Tibetan plight by allowing a safe transit of refugees through Nepal and into India.

The third type of Tibetan refugee in India is comprised of second and third generation refugees born in exile. Refugees born in India are entitled to Indian citizenship. For the most
part this is obtained without much problem, however, the procedure is not automatic and some refugees born in India have been refused citizenship. It is this group, along with the recent arrivals, who find the most difficulty in finding work. Job absorption is not as high as it was in the earlier periods of the refugee settlements. The highly educated as well as the less educated encounter the same problem of employment and so are finding emigration to the West more appealing. This could adversely affect the settlement communities and the prosperity of the Tibetan refugee population as a whole, though at the moment this is not seen to be the case.

Tibetan refugees in India enjoy perhaps the most liberties of all refugee populations in India. They are protected by the government under the principle of non-refoulement, even though their situation continues to be dealt with in an ad hoc manner. The government has gone further and issued Residence Certificates (RC) as a proof of residence to use for obtaining employment as well as a Certificate of Identity (IC) allowing refugees to travel abroad. Refugees find themselves in a favourable position compared with other groups because of the benevolence of the Indian government in granting the Dalai Lama political asylum, and tacitly accepting his governance over Tibetan settlements and in matters of Tibetan concern. It is the TGIE who represents and acts on behalf of Tibetan refugees in negotiating their future with the GOI and NGOs, and who provides powerful backing to refugees with its legitimated leadership.

The presence and acceptance of the Tibetan Government in Exile by the Indian government has enabled a more systematic approach towards accommodating incoming refugees to develop. Upon arrival in Dharamsala settlement assignment are distributed by the TGIE. They are assigned to a location based on age, interest, and need. Young children are sent to schools, young adults (age 18-30) go to a transit school for five years, and monks and nuns head to monasteries and nunneries. Space is limited, however, and many refugees cannot be slotted into one of the aforementioned categories. For those who do not find a space they will most likely look for work in a settlement.

The settlements developed from tented camps to agricultural and agro-industrial communities, making them self-sufficient economies. Handicrafts play a large part, in addition to the income from agricultural endeavors, in supporting the community. Increasingly over the years, sweater selling in the winter months has been vital in
supplementing the communities’ initial economic activities, to the point that a seasonal economic pattern has emerged. Though many refugees have the opportunity and the papers to find work legally, there is an increasing amount of unemployment among skilled, semi-skilled, and unskilled workers. More than 450 Tibetans obtain university degrees every year, yet most of these young professionals are lacking the opportunities to apply their newfound skills. Since the early nineties, the absence of economic opportunity has created a trend in-migrating to the US, Canada, and Europe. Unfortunately, this means that many Tibetans take loans to pay human smugglers to get them to their destination. Conversely, the remittances from Tibetan economic migrants have proven to positively impact the material progress of the Tibetan settlements in India.

In addition to the practical assistance of the TGIE, the Tibetan population has been comparatively successful because of its ability to preserve its cultural identity in exile. The TGIE has been vital in ensuring this. Each settlement is like a cultural enclave. Part of this is due to its economic self-sufficiency; it gives the TGIE the space, resources, and independence to educate Tibetan children in their culture. Education was a high priority from the outset of creating the settlements. In these schools Tibetan language, culture, history and religion are emphasized in addition to a more traditional Western education. Children are indoctrinated into their own culture not only within the community but in schooling as well, making for a strong cultural identity that persists outside of the state and from generation to generation.

Factors other than education served to preserve the cultural identity of Tibetan refugees. Simply living in an ethnic enclave strengthens cultural cohesiveness as well as identity, while the economic activities of the enclave provides another thread of continuity from their livelihood at home to their livelihood abroad. Handicraft production is a material manifestation and affirmation of culture, and instead of a complete disruption in economic activity, the continuity provides for an easier transition for the refugee and greater feelings of settlement. Perhaps one of the most important structures for preserving Tibetan cultural identity while in exile is the maintenance of their leadership, who is not only their political leader but their spiritual leader as well. In a more practical way, the existence of the TGIE has created settlement structures that are favourable for perpetuating Tibetan culture.
Bhutan

Dr. Khem Adhikari, Bhutanese Welfare Association

Dr. Adhikari spoke about what he describes as the ethnic cleansing of southern Bhutanese in the mid 1980s as well as the situation of Bhutanese refugees in India. In the late 1980s over 100,000 ethnic Nepalese sought refuge in Nepal and 15,000 went to India, though not always of their volition.

Hindu Nepalese started arriving in Bhutan in significant numbers in the mid-1900s and by the 1980s accounted for a quarter of the population. It is at this time that the Bhutanese authorities started to fear a threat to Bhutanese ethnic identity from the augmenting ethnic Nepalese population and the political agitation amongst them. The government needed to control the population, and began to restrict immigration from Nepal. Discriminatory measures were employed to restrict ethnic Nepalese from government service job, obtaining promotions, and obtaining passports, whereas prior to 1988 all ethnic groups were afforded the opportunity to attain at least a moderate amount of economic prosperity.

1988 ushered in an intensified effort by the authorities to reduce the number of people who could pose a threat to national cohesion and integration. Driglam Nam Zha was the campaign introduced to revive traditional Bhutanese culture. National dress was to be worn for official occasions as well as at school, and teaching Nepali as a second language in schools was prohibited. Hindu Nepalese saw this as an attempt to suppress their culture, however, it was a piece of legislation in the mid 1980s that would ultimately affect their community’s existence in Bhutan.

The Citizenship Act of 1985 established exactly who could and could not be considered a citizen of Bhutan. Many naturalized citizens suddenly lost their status and could only reclaim it if they were able to prove their residence for 15 years prior to the Act. For the great many who could not produce any documents of proof, illegal residence became their new plight. The Act also allows for any naturalized citizen to be stripped of her/his status if they have shown by act or speech to be disloyal to the King, country, or people of Bhutan. This provision, human rights groups say, has been frequently used to revoke citizenship from Hindu Nepalese who have not engaged in disloyal actions. Expulsion of the newly deemed illegal immigrants from the state began in 1988.
The ethnic Nepalese in Bhutan protested the deportation and discriminatory actions taken against them, and as a result the military presence in the south increased. After several raids and bombings, the Bhutanese authority ordered the closure of local Nepalese schools, clinics, and development programs. Many ethnic Nepalese were forcefully evicted, taken to the Indian border states of Assam and West Bengal, and were forced to cross under the threat of being shot. The two Indian states did not accept the expelled Bhutanese and they were forced to push on. Most went through Nepal to go back to India at a different entry point, while some stayed in UNHCR refugee camps in Nepal. For those whose destination was India, obtaining recognition as a refugee has remained an almost impossible task.

Two treaties, one between India and Nepal and the other between India and Bhutan, provide for an open border between the neighboring states. The Indo-Bhutan Treaty of 1949 allows for Bhutanese citizens to move freely across the Indian border without requiring special paperwork and vice versa. Both groups enjoy equal treatment and privileges with the citizens of the respective state. The right to lifetime residence, study, and work are guaranteed even in the absence of identity papers. For this reason the Indian government has not acknowledged them as refugees, nor extended any sort of assistance. The Bhutanese refugees feel that this is a disservice to their situation, as they bear special needs and, though they are treated as equals, still find difficulties in securing driving and business licenses, travel documents, cooking gas, and school and university admission.

While most Bhutanese refugees feel the Indian Government unjustly ignores them, the GoI is not changing their policy towards this group, as they are afforded even more rights than recognized refugees. Because Bhutanese refugees are not recognized as such, they are not registered with the government and are not eligible to receive the amenities and assistance afforded to refugees. The disadvantage appears when consideration is given to the way in which refugees leave their country with little or none of their possessions and with no prior planning. However, because they have the rights of an Indian citizen, the government finds it impossible to register them as refugees, and there are certain advantages to migrating under the protection of the Treaty. If the Bhutanese claimed refugee status their rights would be significantly restricted; they would have to produce identification documents, as all foreigners do, and they would be forced to continually renew their Residence Certificates, with the possibility of being denied. Moreover, the ability to work in the formal sector would
not be assured. So while there are disadvantages to not being distinguished from citizens, there are many advantageous privileges those seeking refuge are provided.

One major problem arises for the Bhutanese in India, which refugee status could alleviate. By not being recognized as Bhutanese and as refugees, the ability to repatriate, which many wish to do, is a distant, if at all possible, reality. Bilateral negotiations between the leaders of Nepal and Bhutan have resulted in a Refugee Verification process identifying those who can be repatriated unquestionably, those who need to apply for citizenship once back in Bhutan, and those who are not eligible at all. This process cannot be applied in the Indian case because of the lack of documentation and registration. Mr. Adhikari explains that to return to Bhutan the Bhutanese government requires proof that the person originated from there; however, many people did not flee with documentation and for those who did, their documents were apprehended at the border, sufficiently rendering them without an official identity. Without documentation the Bhutanese are considered Indian. Mr. Adhikari suggests that as the government does not want its former citizens to return, they would most likely be willing to pay the money to resettle the refugees in India and Nepal. Whether this is the case or not, there is still a clear problem of allowing Bhutanese citizens to return to their country.
HIV-AIDS perspective in India

Mr. Francisco Demelo, Chairperson of Love Life Society

Mr. Demelo addresses healthcare, psychological, and discrimination issues people living with HIV-AIDS in India face. These problems exist for Indian citizens but are equally applicable to refugees living with the virus, who face compounded discriminations.

In India, the Healthcare system is not adequately equipped or incredibly willing to deal with positive people. For many, it is very difficult to receive care and treatment. Sometimes doctors simply refuse to treat their positive patients and they will be passed on from doctor to doctor by referral. Operations are postponed, and access to the drugs for treatment is limited. The growing problem of HIV-AIDS among the Indian population continues, as there are an inadequate number of healthcare professionals administering tests. At the moment there is a six-month queue for HIV-AIDS testing. This area is only one in which positive people are discriminated against.

There is a great stigma attached to carrying the HIV virus or having AIDS. Legally, homosexuals are discriminated against by Act 377, which makes sodomy illegal, and thus turns homosexual males into criminals. They are looked upon as immoral people both legally and within the population. If they are homosexual and have aids, it is their homosexuality that is immoral, and if they are heterosexual it is their promiscuity and straying from cultural norms of abstinence that is faulted. The stigma and discrimination can affect a positive persons life chances just as the illness itself can. The families of positive people are often discriminated against, and many children have been denied schooling because they either are positive or their relative is positive.

Healthcare neglect, the physical aspects of the disease, and societal discrimination have a profound psychological affect on those with HIV-AIDS. The psychological aspects of the illness are not addressed in the healthcare system, and so people are either forced to deal with it alone or, hopefully, in a group such as the Love Life Society. The Love Life Society provides a safe space for positive people to find support and acceptance, to be able to be themselves rather than an HIV-AIDS patient. Many positive people will not talk openly about themselves for fear of discrimination, resulting in frequent depression. Support groups and educational organizations promoting knowledge about the virus and providing a safe
place for sharing are vital to this community who is largely ignored and marginalized in Indian society.
Lack of refugee regime in India and role of UNHCR in refugee protection

Dr. Carol Batchelor, Chief of Mission, a.i., UNHCR

Dr. Batchelor highlights the issues surrounding refugee legislation in India and discusses the unique role of UNHCR within this non-signatory state. India has not signed any treaties or conventions, or developed domestic legislation relating specifically to refugees out of its fear of incurring extraordinary burdens and complications on the state.

Concerns preventing the adoption of refugee legislation

It is commonly thought that if a state is a party to the 1951 Geneva Convention or otherwise legally provides for the asylum of refugees, it will experience an unprecedented influx of migrants not in the need of special protection. The worry is that a mass of people will misuse refugee law to enter the country, which could not only raise economic concerns but issues of nationality as well. The legal framework for refugees, however, is very specific and helps to define who is a refugee and who is an economic migrant. Regardless of the existence or lack of refugee legislation, the Universal Declaration of Human Rights outlines the same human rights that apply to refugees. These indivisible rights, then, cannot be ignored in the absence of legislation.

Debate and concern for national security have recently increased in import, bearing weight upon the receptivity of the GoI to create refugee legislation or become a party to existing legal frameworks. Governmental concern for border security relates to ensuring the ability to stymie the illegal entrance of migrants and to combat organized crime, such as trafficking in human beings or drugs. Certain migrants are considered less desirable to have in India for reasons of state security; the GoI fears that if it is held accountable for accepting refugees, unwanted migrants will have another means to enter the country. However, India and other states have either built into their legal system or agreed with the Universal Declaration for Human Rights to allow for asylum within their borders, without regarding the provision in conflict with state security or migration issues. The fears resulting from being legally liable for providing asylum and assistance to refugees stems from conflicting ideas of what seeking asylum is and from the absence of a clear distinction between who can and cannot seek asylum under the protection of the law.

Similarities and distinctions between refugees and economic migrants
Refugees and migrants are two categories of people who are frequently confused for each other or whose demarcation is blurred to the point that there is little recognition of the difference between the two. It is somewhat understandable among the general population as there are many similarities between refugees and migrants. Both crossed international borders, are mobile, are trying to better their situation, and may stay for a short or long period of time. It could be that both fled involuntarily; however, though the reasons for leaving may appear to be the same (the inability to work, provide food, support dependents, etc.) the cause for leaving is different, which is the one characteristic that always distinguishes a refugee from a migrant.

Migrant populations, though possibly facing economic difficulties, have not been singled out for persecution. Their hardships are those that perhaps the vast majority of the population experience and are reflected throughout the state. Refugees face hardship but it stems from persecution or singling out for reasons of ethnicity, religion, or other characteristics distinguishing the group from the rest of the population. The demographics of migrant patterns show a large proportion of young men entering the country, sometimes seasonally. Refugee patterns on the other hand are most often comprised of women and children; about 80% of refugees population are comprised of this section of society, as often times the men have either been killed or have stayed behind to fight.

The need for special legislation

Because refugees and foreigners share many attributes, the necessity of having legal frameworks specifically for refugees is questioned by many states, India included. A special framework is needed for the benefit of not only refugees but the state as well. States, whether signatories or not, are obliged to allow refugees access to enter their territory and admittance into their territory. At this point there should be a screening mechanism to identify who is a refugee. Likewise refugees are obligated to present themselves to the authorities once they have entered the country.

A framework would enable both parties to fulfill their obligations to each other and reduce incidences of illegal entrance and residence. Established screening mechanisms would enable the state to readily discern migrants from refugees, allowing the authorities to begin their search for durable solutions. It can prevent unwanted migrants and refugee populations from residing in the country and protect refugees from being deported or refused.
at the border. Furthermore, having some body for refugees to report their presence to while knowing their fate will not lie in deportation, will reduce the number of refugees who enter illegally, knowing no other option. National protection, such as in disaster situations, is available for migrants but is not for refugees. A special framework will extend the protections afforded migrants to refugees, thus ensuring the protection of their human rights. Despite fears of what refugee legislation can bring to a state, it is a necessary mechanism for identifying refugees and for protecting the state from illegal influxes, which is a great concern.

**Benefits of working within international and national refugee frameworks**
National and International legislative frameworks bring with it the obvious benefits of assistance and protection of refugees, but they also provide for the state to share its burden, for finding durable solutions, for the increased assistance of UNHCR, and for applying multilateral approaches in all aspects of accommodating refugees.

India’s geographical location influences the large amount of refugees it receives at any given time and each year. By being a party to international frameworks, a state has access to international collaboration and burden sharing. Though lacking legislation, India accepts refugees tacitly, incurring a burden upon the state with limited help from UNHCR. If India signed the 1951 Convention and 1967 Protocol the burden from the refugees it already receives would be somewhat alleviated and the state would be able to include all refugee groups without ad hocism. In the absence of applying international frameworks, India has less chance of successfully calling upon other states and the international community for assistance in deploying multilateral solutions.

A durable solution is the outcome hoped for in all refugee situations; however, without international collaboration securing solutions become much more difficult. Where refugees are not officially recognized, as in India, it is nearly impossible to secure a durable solution without a framework to work within. The burden of refugee influx in India is present, and by not creating national frameworks identifying refugees and subscribing to international treaties, India cannot relieve a portion of its burden. Assistance in locally integrating, repatriating, or resettling refugees, aids the state in reaching long lasting solutions to its refugee problems and more refugees will be able to start again with their lives, rather than remaining in a static situation.
UNHCR is a resource that, though they work in a limited capacity in India, cannot be fully utilized in the absence of a treaty agreement. The UN organization assists a limited number of refugee groups present in India; their unique mandate is confined to accommodating those in New Delhi and Chennai, leaving a great number of refugees who may be protected by the mandate but live outside the two cities without assistance. UNHCR has taken over the task of identifying refugees under its mandate and finding durable solutions to their situation. Furthermore, UNHCR is continually involved in dialogue with the government, pushing for refugee legislation and recommending frameworks. By signing the Convention and Protocol, India will increase its access to UNHCR’s mechanisms of assistance, especially in the area of developing a national framework to guide the processes reaching towards solutions for refugees.

The 1951 Convention in question

The creation of the 1951 Geneva Convention relating to the Status of Refugees was the UN response to the great number of European refugees World War II left in its wake. The Convention would provide a framework for generations of refugees to come, but in its drafting it limited assistance to this specific refugee population. It is the 1967 Protocol that has expanded the scope of the Convention to include refugees from any part of the world wherever they may be found. Despite the augmented application of the framework many state authorities and civil society practitioners felt that it was outdated and no longer applicable to current societal conditions.

A series of consultations involving academics and all those involved in refugee issues was held to evaluate the relevance of the Convention in today’s societies. There was a general consensus that the framework was valid but could not be applied perfectly in every situation in which it was used. It was held that the purpose of the Convention is to provide a broader framework for states to work within rather than bestow a detailed outline for specific cases.

The problem, then, is not in the instrument but in the interpretation. The convention provides a common language to identify refugees, but there is nothing holding states back from going further in developing their approach to accommodate the specificities of refugee situations within their territory, thus UNHCR advocates a Convention plus approach. The
convention provides the framework, but the state develops the details to accommodate social change. This is especially important as new issues rise in importance, such as women’s rights, which was given little significance after World War II but is a growing priority today. At the conclusion of the consultations, signatory states reaffirmed their commitment to the convention and its continued importance in dealing with refugee issues.

UNHCR’s work in India
As previously stated, UNHCR works exceptionally in India under the office of UNDP. India is a member of EXCOM⁶ and because of this UNHCR has been granted a limited mandate. UNHCR identifies those refugees under its mandate either on an individual basis or prima faci. Once refugees are identified, the organization takes up advocacy for the refugee(s), trying to find durable solutions and ensure the principle of non-refoulement. In its advocacy, UNHCR promotes a harmonized approach to create a common response to all types of refugee flows as opposed to the ad hoc nature of the GoI’s approach. UNHCR does not take the place of government action but plays an observatory, participatory, and supervisory role within the state.

Conclusion
India is a country hospitable to refugees; however, its ad hoc approach translates into unequal treatment among refugee groups. Developing national legislation and becoming a party to international frameworks will ease the burden India carries in receiving refugee influxes without international support, except for the limited role in which UNHCR functions. Without identification processes aid cannot be secured and refugees are at risk of refoulement under legislation governing foreigners. Refugees will continue to be present, as the state cannot legally deport them if they face persecution. In this regard it would benefit rather than impair the state to adopt a law for matters pertaining to refugees.

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⁶ EXCOM is the Executive Committee of the UNHCR, which meets annually in Geneva to review the work and policies of the agency.
Private International Law with specific reference to personal law of refugees

Professor Lakshmi Jambholkar, Indian Society of International Law

Professor Jambholkar presented the complications and constraints relating to the often-overlooked legal aspects of a refugee’s personal life. Refugees are situated between contexts; they are neither here nor there, which often makes the application of personal law problematic. This is further exacerbated in India where there is no guideline for dealing with refugees.

Refugees are required to live by the laws of the domicile or country of residence; however, the first step of defining a refugee’s domicile can become an activity filled with ambiguities. Domicile can only be defined as a legal concept or idea and it can only be identified in terms of its competence, competence being the physical fact of residence and the intention to make the residence a permanent home. How, then, can this be applied in the context of a refugee? They have a residence but are not allowed to live there. They are living somewhere else, the host state, but it is not necessarily their domicile. The exception to this is in cases of resettlement. Even in this exception the domicile of origin is never destroyed, as they have been forced from the place that is still considered their domicile, though they may never plan to return.

Refugees do not have the same intentions or options of choice as others who choose a different domicile than their original, which creates further complications in establishing a new domicile. Professor Jambholkar notes that it is at the point when one is without a domicile that the domicile of origin becomes reinvigorated; that even though seeking a new domicile, they both identify and are identified with the domicile of origin. Part of this is because other determining factors, such as religion, must be considered. This is where applying personal laws becomes complicated, as the question of which personal laws the refugee should abide by come into question. Refugees face additional difficulties to other foreigners seeking a new domicile, as they are not classified as citizens and are not foreigners either, even if classified by the state as such. Establishing domicile is perhaps the most difficult task for refugees, as they must show through documentation that they have abandoned their previous domicile, which is a largely impossible task due to the nature of their situation. Documentation becomes a great hurdle in enjoying the provisions of personal
law in the host state. The examples of marriage, divorce, and adoption, are highlighted by Professor Jambholkar to illustrate the difficulties refugees find in utilizing personal law in India.

Many refugees residing in India enter into relationships of marriage with Indian citizens. For those who have sufficient documentation there is no problem posed, as the Special Marriage Act, 1954, provides for secular marriages and a special form of marriage in certain cases. Article four specifies that the Act applies to any two persons, which would include refugees. However, any person wishing to be married in India must produce documentation of marital status in order to get a marriage certificate. For those who do not even have basic documents this is impossible, and the ability to marry is non-existent.

The personal laws governing divorce of non-citizens has not been consistent within the state and with internationally accepted norms. It can easily be said that divorce procedures should be those of the domicile, but as previously discussed, for refugees, establishing domicile is often ambiguous. Which law, then, must refugees adhere to in the case of divorce? In the 1990s the Supreme Court of India deviated from international norm of divorcing under the law in which the marriage occurred. It was ruled that the Court should apply the Indian law of divorce. Professor Jambholkar suggests that divorce procedures should return to the international norm of applying the law in which the marriage took place.

The fallout of the issues of marriage and divorce is the custody of the child. In India if the child is very young, particularly applying to females, the child should be in the care of the mother. However, children of a certain age are able to decide whom they feel more comfortable living with, and in some custody cases it has been the child who decides his residence. Regardless of who is awarded custody of the child, it is a temporary order. It can always be revisited when a change in the situation is thought to have occurred.

The matter of adoption is quite clearly governed by the law of the domicile, though other complications emerge in the event that refugees should wish to adopt. Laws on adoption have a limited application, which comes down to the matter of status. Adopters must be legally recognized as residents, prohibiting many refugees in India from considering this option. Inter-country adoption is even more difficult. Adopters must be legally recognized by their home country as well as the country of adoption as legal guardians before
taking the child out of the state. Though the impediments are obvious, it has not been noted that many refugees seek to adopt children, especially given the circumstance they are faced with as refugees; however, if adoption was desired it is clear that as refugees with the uncertainty of domicile this right would be denied, and the personal law would not extend to consider this group.

**International Refugee Law**

*Professor Manoj Kumar Sinha, Indian Society of International Law*

Professor Sinha discusses various legal instruments, both regional and international, for the protection of refugees. Refugee jurisprudence has not been solely developed on the Convention but is linked with other important human rights instruments such as the Convention on the Rights of the Child and the Convention for the Elimination of all forms of Discrimination against Women. It is commonly thought that refugee law started with the 1951 Convention, but one can trace international concern for refugees back to the early 1920s when the first High Commissioner was appointed to the UN predecessor, the League of Nations. Two important frameworks emerged before the drafting of the Convention explicitly calling for the protection of and assistance to refugees.

The International Refugee Organization (IRO) was established when the UN replaced the League of Nations. Its Constitution, drafted in 1946, calls for the provision and protection of refugees. The IRO’s mandate was to protect existing refugee groups and those that emerged in the aftermath of World War II. Initially, the main objective was repatriation but in the political escalation of the Cold War the aim tilted towards resettlement. In 1951, the IRO was replaced by the UNHCR, whose role of international protection had been firmly established by the IRO.

One year before the 1951 Geneva Convention relating to the Status of Refugees was drafted, the European Convention on Human Rights was adopted under the auspices of the Council of Europe. All Council of Europe member states are a party to the Convention. Importantly, the Convention established a European court of Human Rights, where any individual can take a case to the court and attain decisions that are legally binding. Similarly state parties can take case against another state party, though this rarely occurs.
The 1951 Convention provided an international framework for guiding states in their approach to dealing with refugee populations. Though it has been of great benefit, providing an invaluable tool for states to utilize, it has not been completely successful in ensuring refugee protection. The Convention was born out of the need to provide for refugees after World War II; it dealt with refugees from the point of its inception on but not those who were already relegated to this status. Many states, even those that were part of the drafting process encountered difficulties in implementing the doctrine. Following the situation in the former Yugoslavia, it was proposed to provide temporary asylum to refugees in order to alleviate some of the obstacles of implementation.

Securing states’ support of the doctrine and ensuring their compliance are two goals which have not been fully realized, presenting hindrances to the universal enjoyment of the provisions of the Convention. One deterrent to signing the Convention and Protocol, which has been explained elsewhere in the report, is the fear of mass influx and economic strain. Another reluctance to sign is the principal of non-refoulement. It puts states in a difficult position, and if they are already responsible for refugees in the absence of being a signatory to the Convention, the added responsibilities and restrictions of action under the Convention are an unattractive burden.

Even for those states that are a party to the Convention, compliance with its provisions is not guaranteed. Professor Sinha notes that the United States of America regularly disrespects the principal of non-refoulement. The contradiction in the Convention is that it calls for states that are already taking care of refugees to sign the Convention and the states that have signed are often times not respecting the principles found within.

Though states, such as India, are not signatories to the Convention, there are regional instruments in place to facilitate a more consistent and uniform treatment of refugees. For Asia, the most important is the Bangkok Principles. The Principles are declaratory and non-binding, but they aim at inspiring Member States to enact national legislation for the treatment of refugees as a guide to dealing with refugee situations. The text of the Bangkok Principles highlights a refugee’s rights and protections as well as the states, and outlines the minimum standards of treatment due to refugees. The benefit for India to heed the call of the Bangkok Principles is that refugee legislation will facilitate and simplify the judiciary process, where judges will not have to look elsewhere to make decisions. A refugee’s future
will not be left to the perhaps uninformed decisions of a judge, and there will be the recourse and backing of law.

**Overview of refugee scenario in South Asia**

*Professor Mahendra P. Lama, Jawaharlal Nehru University*

Globalization and border issues are two scenarios that are fast emerging in South Asia and bear substantial importance in the debate and discussion of refugees and migrants. Globalization is critical to the discourse of migration. It is clear that the distribution of gains is not even and just within societies. Coupled with strong undercurrents of conflict, displacement and voluntary migration occur with increased frequency. With an unbalanced distribution of economic growth and development gains people will be attracted to certain areas, known as growth zones. Many people residing in India’s bordering states gravitate towards India, as it is one of the growth zones in the region.

India uniquely shares a border with almost all of the South Asian countries, and for this reason it sees globalizing forces encroaching upon its borders in an intensified manner. The idea of borderless space for trade and economic purposes exists but as non-traditional security threats have emerged, states are calling for borders to be closed down. These threats could be problems related to terrorism, arms, or political and social crimes. South Asia, however, has no comprehensive border policy. With a security centered view in South Asia, borders are defined by the police or those enforcing the border; however, Professor Lama highlights the need to regard borders as more than geographical demarcations enforced by security forces. It is important to shift from this narrow view of the border and realize that there are other elements, such as culture, which characterizes a border.

The Peace and Friendship Treaty has enabled an open border, both geographically and culturally, between Nepal and India. Denizens from both sides are able to cross the border without a visa and do as they like in the other country. With the Maoist uprising people were displaced and came to India under stressed conditions. They left for purposes other than migration but are treated as if they had simply chosen to migrate. With increasing influxes India has started closing down the border between Nepal and India and has done the same
with Bangladesh. The closing of borders is occurring with greater frequency in all parts of the region, resulting in a well-harmonized approach in denying refugees. If a refugee is denied in one state she/he will most likely be denied in another within the regional bloc. The denial of this global responsibility for matters of the border directly affects the treatment of refugees in the absence of a framework.

Without a policy on borders, it is difficult to develop a national framework to deal with migration and refugees. At the moment these two groups, migrants and refugees, are regarded in terms of the border, which is purely regarded from a security perspective. Consequently, the approach to dealing with the border, and migrants and refugees, is very narrow. The debate on refugees should not be contained to how many will enter, but extend to how they will be treated as refugees, examining elements of selectivity in providing protection.

Politicians are not sensitized to refugee issues, and without understanding the situations and special circumstances characterizing refugees, the creation of national refugee legislation is not possible. Looking at Parliamentary debates it is clear to see that there is a complete misconception of what a migrant is and what a refugee is. They are lumped into the same category, especially since there are some cases, as in Nepal and Bhutan, where there are both migrants entering India as well as those seeking asylum. There is no differentiation.

According to Professor Lama, bringing about a legislative framework requires people from all parts of society to be sensitized to refugees and the issues surrounding their presence in India; this includes NGOs, policy makers, civil society, and the media. The media plays perhaps the most important role. Sensitizing the media can bring about a great shift in civil society’s understanding of the difference between refugees and migrants as well as influence public opinion about refugees residing in India. As things are, one will never see sections exclusively related to migrants and refugees in print media. When refugees or migrants are in the media, it is the incident, not the issue that is relayed.

Protracted refugee situations, such as the Afghans in Pakistan, the Bhutanese in Nepal, and the Sri Lankan Tamils and Tibetans in India, that have yet to be resolved, have ultimately created inimical situations for the refugees, the host country, and international humanitarian agencies. In the absence of a framework to apply to refugee situations,
frustrations from all sides have erupted, humanitarian action has declined, and the political force to accommodate refugees has eroded. An example of this is the situation of Afghanistan. The Mujahadeen used refugees in the Pakistan-based camps by recruiting them, while the Taliban used the Mujahadeen for their political purposes. In the end, the Taliban turned around and denied refugees the right to return to their country.

If refugees do return, they often encounter difficult situations and seek to discourage other refugees from doing the same. This was the case in Afghanistan under the Taliban in the 1990s. Many returnees are still denied their basic human rights, and so to survive many have no other choice but to pledge some sort of allegiance to a group or movement. This necessity sees many returnees joining militant groups, which can perpetuate the conflict that they had originally fled, as can be seen in the case of Sri Lanka. The Tamil Tigers have partial control over humanitarian aid and only distributes the goods to certain families. In addition to this, they deny certain families fishing rights. With little control over their basic survival, as it is directly tied to the military movement, it is easy to understand the temptation to join a specific group for survival if not for politics.

Recruitment of this sort plagues refugees even before their repatriation, in the camps where they are supposedly protected. There is a general perception that refugee camps are comparatively luxurious to the living conditions of the rest of the population. In reality, however, the camps are most often lacking and incur psychological and physical stresses. For many, by not affiliating themselves with a political faction they will not receive rations. Forced militarization of people in the camps occurs with more frequency than is thought. Martial feminism has been used in Sri Lankan camps to mobilize women soldiers in the Tamil army.

**Trafficking in women and children and refugee protection**

*Dr. B. Srinivas, Asian-African Legal Consultative Organization*

After 9/11 increased attempts to control the flow of immigrants were undertaken with the idea of keeping criminals and organized crime out of the state. Trafficking in humans is a large problem in South Asia. Both traffickers and people smugglers help people to cross the border, while exploiting them for monetary gain. The difference for traffickers is that they are still in control of the person after the border is crossed. There are two protocols dealing
with the criminal act of illegal movement into India. One deals with trafficking in women and children, and the other relates to the smuggling of migrants. These protocols put a primary emphasis on crime prevention and containment and are criticized for their lesser provisioning for victim protection.

Under the protocol, India deals with trafficking in humans preemptively by stopping people from entering the country before the situation of trafficking occurs. To do this, the GoI has created legislation making the carrier responsible for any persons entering the country without documentation. The threat of having their licenses revoked is hoped to be enough to ensure the carriers’ vigilance in transporting only those eligible to enter and to deter their engagement in trafficking in humans.

This domestic legislation is criticized in that it restricts the access of refugees to the host country. Though a refugee is supposed to have access to enter a state, without proper documentation, they will be denied entrance and appropriate actions will be taken against the carrier. These measures only facilitate a cycle of trafficking. If a refugee is going to be refused asylum before even crossing the border, they may be forced to seek traffickers to get them inside the country. To combat the perpetuation of the cycle, determination of who can and cannot enter the state upon arrival should be the responsibility of immigration officers, who are trained, rather than carriers. This would not only give refugees the access they are guaranteed but continue the efforts to keep trafficked persons from entering the country.

Role of Child Welfare Committees and refugee children

Dr. Bharti Sharma, Chairperson of the Child Welfare Committee, New Delhi

The Juvenile Justice Act of 2000 identifies and provides for the protection of two groups of children, those who come into conflict with the law and those not in conflict with the law but who require special attention and protection. This latter group is not constituted solely of orphans. They may be lost, the parents may be abusive or do not want the child, or they may be mentally ill. The child could be HIV infected or affected or is being raised in a home not conducive to his/her healthy development. Children in conflict with the law deal with the Juvenile Justice Board, and those who are not refer to the Child Welfare Committee. All states in India are obligated to implement this Act on the ground, though there are differential levels of implementation nationally.
The Child Welfare Committee works with all sorts of children not in conflict with the law. Many of these children are domestic workers who are not from Delhi, but have come seeking work. Others are those from other countries who have been trafficked to the capital. The GoI is in the process of passing legislation calling for the registration of all workers. In the meantime the Committee uses the Convention on the Rights of the Child, which India is a party to, in order to ensure the protection of trafficked children, giving them the right to return or not if they so choose. Children belonging to refugee families can also present themselves, or be presented to the Committee, though this does not frequently occur.

Before the Child Welfare Committee can take action on the child’s behalf, they must first be presented to the Committee. In most cases this is done by the police, social workers, or NGOs. Children are able to present themselves; however, as Dr. Sharma notes, most children in India are still not empowered to present themselves. Once the child is before the Committee, it is their role to assess the situation. In a child friendly atmosphere, they try to obtain as much information as possible before taking a decision on where the child is to go, whether to various institutions, back home, or elsewhere. Institutionalization is not the goal of the Committee, but many times it is used as a place to put the child until the situation they are coming from improves. The Committee places the utmost importance on child participation throughout the entirety of the process. However, it is just as important to examine both sides of each case and so the Committee will take into consideration the side of the other party.

The IMDT Act repeal judgment and possible effect on refugees

Mr. Prashant Bhushan, Advocate Supreme Court of India.

The Illegal Migrant Determination by Tribunal (IMDT) Act came into force in 1983, calling for the return of illegal migrants from Bangladesh residing in the states of Assam and West Bengal. The Act came on the heels of the Foreigners Act of 1946, which excluded the state of Assam; however, the IMDT Act has been less than successful in stemming the flow of illegal Bangladeshi migrants. Instead, it has created many problems for Indian citizens, particularly the poor.
Immigration from Bangladesh has long been a problem, manifesting itself in the sharp rise in population in both Assam and West Bengal. It is mostly the middle class and Hindus who have been pushing for the return of all Bangladeshi migrants. The IMDT and Foreigners Act have affected mostly legal immigrants from Bangladesh and the poor of India. These two acts gives those deemed an authority the ability identify anybody as a foreigner and subsequently force them to leave the country.

Instead of reducing the number of illegal migrants in Assam and West Bengal, the two Acts have been successful in deporting those ‘undesirables’ of society. Many Bengali Muslims, whether legal or not, have been targeted and deported as well as many of the poor living in slums. Because the burden of proof is on the accused and many residents do not have proper documentation, they are subject to the will of the authority. An informal informer network has been erected within the slums for the purpose of extortion and arbitrary deportation. If the accused is not able to pay the extortion money, they will be taken to another location for holding until there are enough people collected to fill a boat to be taken to the border. Once at the border they are divested of identification and money and are made to run across the border at gunpoint, while running the risk of being shot by Bangladeshi forces as well.

Under the IMDT Act, any disputes on a person’s identity will be taken before a tribunal. First the person in question must go before the Screening Committee. It is the tribunal that will decide whether the person will remain or return. The failure of this whole process is that it ultimately discriminates against a class in India, while those who have entered India illegally without documentation or visas continue to reside in great numbers in Assam and West Bengal.

In response to the complete arbitrariness and ineffectiveness of the Act, a writ petition was filed to repeal the Act. The Supreme Court found the Act to be unconstitutional and ruled that it was actually acting as an impediment in ousting illegal migrants and causing external aggression, in the form of migration. Furthermore, because the burden of proof lay with the accused, they found it impossible to provide what types of documents could be considered acceptable proof. This judgment had a positive affect on those poor Bengali Muslims residing in India but did not affect the situation of refugees.
Mr. Bhushan suggests that India should have a similar treaty with Bangladesh as it has with Nepal. Given the large amount of Bangladeshi migration for economic and religious purposes and the cultural and linguistic similarities between the two states, it would behoove the GoI to allow for the free flow of people across the border.

**Experience sharing on working with migrants**

*Ms. Bharti Chaturvedi, Director of Chintan*

Ms. Chaturvedi works with Chintan, an organization working with Bangladeshi migrants. The group seeks the fair treatment of Bangladeshis in India. There is increasing antipathy against all migrants in India, but Bangladeshis face a slew of negative stereotypes, which creates a, perhaps, more severe backlash against them. These negative perceptions are not restricted solely to Bangladeshis, but extend to all Muslims from eastern India as well as the poor, as they are associated with Bangladeshis, whether or not this is the case. Bangladesh is seen as a new area for terrorist violence, which is mostly carried out by illegal migrants. Because of this, all Bangladeshis are branded with the misdeeds of some.

Quite a few negative stereotypes plague this particular group residing in India. It is commonly thought that Bangladeshis steal and commit other crimes without fear because they can easily escape back home to avoid being caught. They are a group of people considered unsuitable for reform who are antipathetic to strengthening India. The association of Bangladeshis with the poor allows the middle class to apply the belief of a subtle link between dirt, middle class values, and the undesirability of the poor to migrant populations.

The belief in this linkage manifests itself in the measures taken against the poor or migrant populations, which are intended to hinder their ability to survive in India. Unlike in wealthier areas, the poor are made to prove that they own their land. They may not have documentation or land deeds and so are vulnerable to having their land, and thus their livelihood, confiscated by the authorities. The discrimination carries over into the informal informer networks explained in the previous presentation. Whether of Bangladeshi origin or another, the ample room provided for extortion and the dislike of Bangladeshis is used to manipulate all migrant populations.
In order to alleviate some of the affects of discrimination against migrant populations, a treaty similar to that with Nepal is necessary. Furthermore, the processes of raid, arrest, and detention should strictly follow the Supreme Court’s guidelines, and should not be subject to the whim and authority of the police and informers. These guidelines of appropriate behavior in dealing with migrants should be arbitrated and ensured by a judicial tribunal. Furthermore, to protect the right to remain for Indian citizens, regardless of their origin, all state documents should be accepted as proof of citizenship, which would account for the differential ways in which a person enters and becomes a citizen in India. For those who are found to be illegally residing in India, deportation must follow international law.

Outcomes and Recommendations
The consultation ended with a discussion on the need for a law in India as well as linking the recommendations and highlighted issues from the presentations with creating a more informed law.

The outcomes are as follows:

- It is important for India to sign the 1951 Convention and 1967 Protocol in order to give the state access to the assistance it needs to accommodate refugees in a consistent manner. By signing the Convention, India will be able to partake in a Country Agreement with UNHCR, who can provide technical assistance in the state’s drafting of a national law pertaining to the treatment of refugees.

- An official body, such as a judicial tribunal, must undertake the determination of refugee status. At the present, legislation such as the Foreigners Act of 1946 not only discriminates against refugee populations but negatively impacts poor Indian citizens. Authority must not lie with informers and the police, and safeguards must be put in place to ensure the just treatment of all persons whose legal status is in question.

- Universal access to assistance must be realized among all refugee populations. Some refugee groups are protected by UNHCR’s mandate, and still problems in accessing this assistance remain. The provisioning of schooling, healthcare facilities, work permits allowing for gainful employment, and the access to these provisions must become routine for the survival of refugee populations within India.

- Documentation issues must be resolved with the authorities, and provisions ensuring the rights of refugees in the absence of proper documentation must be in place. This
extends to ensuring a refugee’s rights in personal law, and the ability to apply for citizenship.

- Sensitization of the judiciary and the media on the differences between refugees and economic migrants is essential in providing for the special circumstances a refugee finds him/herself in. Sensitization of civil society is also imperative in eliminating negative and false stereotypes about both groups.

- Refugees must have the recourse of rehabilitation services and the law.

- Border issues, which exacerbate refugee situations, whether it prohibits them from entering India or whether their ability for free movement denies them refugee status, must be addressed and assessed alongside the issues of refugees in India. The treatment of this group is directly related to the treatment of borders.

- In pushing for the fair treatment of refugees and the constructing of a national law, refugee rights should be incorporated in debates and discourses on all aspects of human rights. Furthermore, consultation with refugees and organizations working with refugees should be embraced in order to create a more informed and representative legislation.