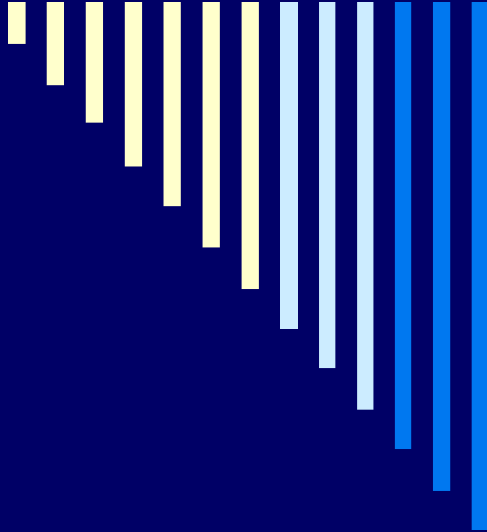


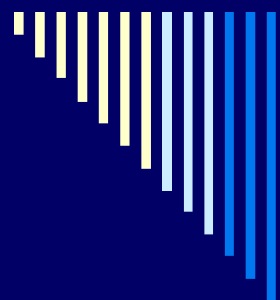
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# Protection of Refugees in India

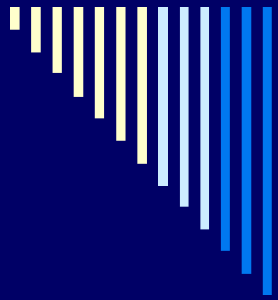
By  
Dr. P.K. Pandey

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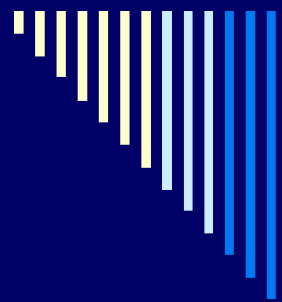


# Introduction

- Protection/ promotion of every individual's rights/ interests is within jurisdiction of respective State
- States take care its citizens for their all-round development
- Exceptionally, there may be circumstances in which the survival is not possible (life/safety is in danger) in country of origin
- They may approach the other country for asylum
- Refugee problem is a global problem.
- Large scale population movements pose to regional security, stability and prosperity

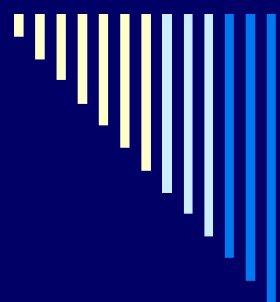


- Sovereign competence of States are very important
- To exercise *prima facie* exclusive jurisdiction over its territory
- To decide who among non-citizens may be-
  - allowed to enter and remain
  - refused admission in State
  - compelled to leave the State



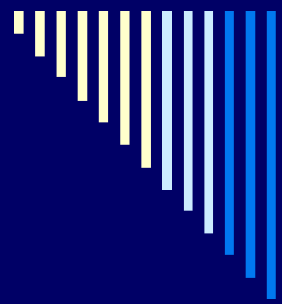
# Refugee

- Definition of refugee-Article 1 of 1951 Convention
  - Above definition was geography and time based
  - Protocol 1967 removed above limitations
  - A person who has been forced to flee his/her country because of fear of persecution for reasons of **race, religion, nationality, political opinion** or **membership in a particular social group**.
  - Regional instruments-
    - OAU Refugee Convention, 1969 (Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa)
    - Cartagena Declaration on Refugees, 1984
-



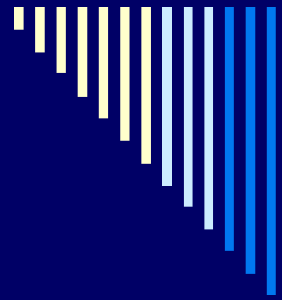
# Internally Displaced Person

- IDP is someone who has been forced to flee his home but never cross an international border.
- Displaced by internal conflict and natural disasters
- Seek safety anywhere they can find in nearby towns, schools, settlements, internal camps, even forests and fields.
- Not protected by international law as they are legally under the protection of their own government



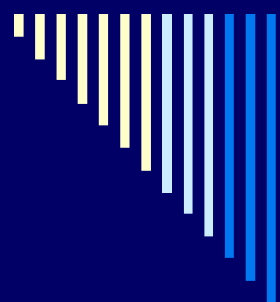
# Migrant

- Someone who chooses to move, not because of a direct threat to life or freedom, but in order to find work, for education, family reunion, or other personal reasons.
- Enjoy the protection of their own governments even when abroad and can return home.
- Illegal migrants who migrate to a country in violation of the immigration laws



# Refugee Determination

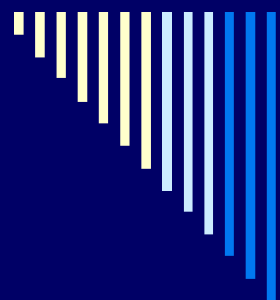
- Asylum seeker has applied for refugee status and has not yet received a final decision on his or her claim-
  - To be recognized as a refugee
  - Receive legal protection
  - Receive material assistance
- Fear of persecution is well-founded
- Recognition of refugee status is declaratory as it confirms that the person is a refugee.



# Refugee Status

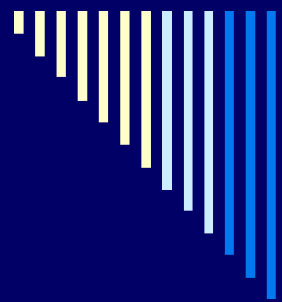
- UNHCR's **Global Trends At-a-Glance**  
<https://www.unrefugees.org/refugee-facts/statistics/>
- By the end of 2020, 82.4 million individuals were forcibly displaced worldwide as a result of persecution, conflict, violence or human rights violations.
  - 26.4 million refugees in the world;
  - 48.0 million internally displaced people; and
  - 4.1 million asylum-seekers





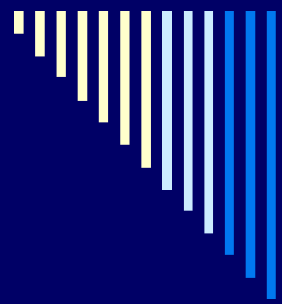
# Principle of Non-refoulement

- ❑ No state shall return a refugee in any manner to a country where his or her life or freedom may be in danger
- ❑ A refugee should not be returned to a country where they face serious threats to their life or freedom.
- ❑ Applies to any form of removal or transfer of persons, regardless of their status
- ❑ Its application protects life and liberty of a human being irrespective of his nationality.



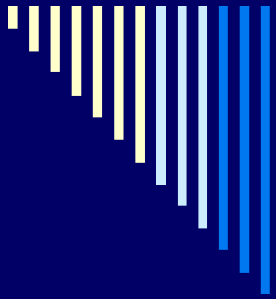
# International Instruments on Refugee Protection

- **League of Nations**- appointment of a High Commissioner for Refugees in 1921
  - UN's first institutional response-**International Refugee Organization (IRO)**, a specialized agency- founded on 20 April 1946- termination in January 1952
  - Assisted refugees and displaced persons in Europe and Asia who-
    - either could not return to their countries of origin
    - or were unwilling to return for political reasons
  - UDHR, 1948: right to seek and to enjoy in other countries asylum from persecution
-



# United Nations High Commissioner for Refugees

- Successor of International Refugee Organization
- UN General Assembly *vide* Resolution 428 (V) of 14 December 1950 adopted *Statute of the Office of the United Nations High Commissioner for Refugees* was adopted <https://www.unhcr.org/4d944e589.pdf>
- UNHCR-UN Refugee Agency-temporary agency, permanent basis in 2003, renewed mandate 'until the refugee problem is solved'
- Created in 1950, during the aftermath of the Second World War
- To aid and protect refugees, forcibly displaced communities, and stateless people
- Non-political character, humanitarian and social cause
- Follow policy directives given him by the General Assembly or the Economic and Social Council



UNHCR's first task in 1951 was to help an estimated 1 million mainly European civilians, including these refugees in a camp in Germany, still uprooted in the aftermath of World War-II.

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# UNHCR Services in camps



## Shelter

In the immediate aftermath of an emergency, thousands of shelters are required within days. UNHCR delivers tents and plastic tarps to protect refugees from the elements and help restore their personal security, dignity and privacy.



## Emergency Relief Items

Refugee families often flee with just a few belongings. As soon as they arrive at a camp, UNHCR provides them with essential supplies, such as blankets, sleeping mats, mosquito nets, clothing and personal care kits.



## Water and Sanitation

UNHCR strives to ensure refugees in camps have access to safe water, sanitation kits -such as soap, jerry cans, water purification tablets and buckets - and waste management systems to meet their basic needs.



## Food

In camps, UNHCR delivers nutrient-rich food and kitchen items to protect the health and well-being of refugees and prevent acute malnutrition. This is especially important among vulnerable populations, such as children, pregnant women and the elderly.



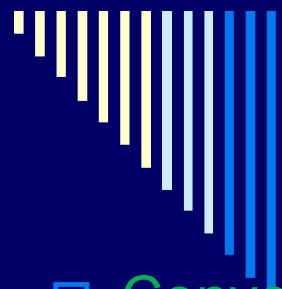
## Healthcare and Counseling

UNHCR works with local authorities to ensure refugees have access to essential healthcare services, such as basic medical care, immunization programs, psychological support as well as prevention and control of communicable diseases and epidemics.



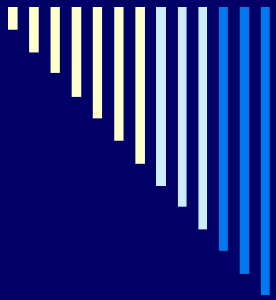
## Registration and Legal Aid

UNHCR's registration is key to ensure that refugees (i) have access to basic assistance and documentation, (ii) are protected against refoulment (forced return), and (iii) are kept together or reunited with their family members.



# 1951 Convention & 1967 Protocol

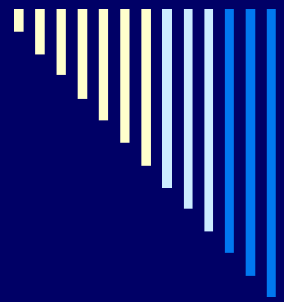
- **Convention Relating to the Status of Refugees** (1951 Refugee Convention or the Geneva Convention)
  - Conference in Geneva in July 1951-entered into force in 1954
  - A United Nations multilateral treaty
  - Sets out-
    - rights of individuals who are granted asylum
    - responsibilities of nations that grant asylum
  - Protocol Relating to the Status of Refugees, 1967- independent instrument
  - Both treaties are central to the international refugee protection system
  - Convention-46 Articles, Protocol-11 Articles
-



- ❑ No refugee in search of asylum is penalized, expelled, or refouled.
- ❑ Every refugee enjoys the full complement of rights and benefits to which he or she is entitled as a refugee
- ❑ Human rights of every refugee are guaranteed
- ❑ World Refugee Day- 20<sup>th</sup> June- started from 2001
- ❑ World Refugee Day 2021 theme- **Power of Inclusion**

### **Drawbacks:**

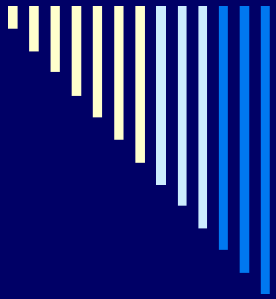
- ❑ Convention/ Protocol- legally binding to contracting parties
- ❑ No formal mechanism for individuals to file complaints
- ❑ India is not a party of Convention or Protocol



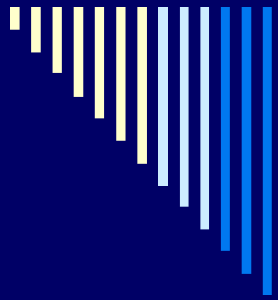
# Refugee Protection Indian Laws and Practices

- India's ancient cultural **heritage-Vasudhaiva Kutumbakam** where everyone is respected like family members
- Dharma Yudha (humanitarian regulation of warfare) is in the very blood of Indian history
- Detained under the provisions of the Foreigners Act, 1946
- Foreigners Act, 1946 gives power to expel foreigners from India and such power is absolute and unfettered
- India is not a signatory of 1951 Convention and 1967 Protocol.

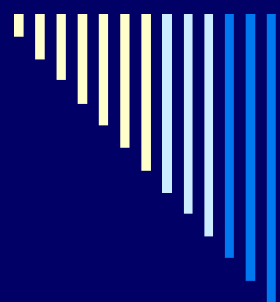




- But India has always extended its cooperation to international community based on humanitarian grounds
- India opened boundary for *Tibetians, Sri Lankans Chakmas, Afgans and others*

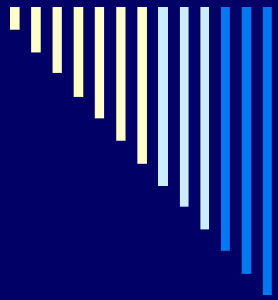


- *Central Bank of India v. Ram Narain*, AIR 1955 SC 36-  
The power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in India fettering this discretion.
- *Louis Deraedt v. Union of India*, AIR 1991 SC 1886-  
Fundamental rights of the foreigners is confined to Article 21 for life and liberty and does not include right to reside and settle in this country as mentioned in Article 19(1)(e) which is applicable only to the citizens of this country.

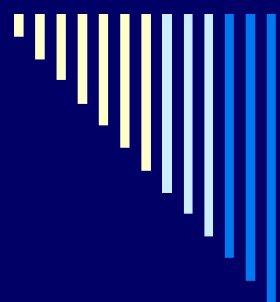


*National Human Rights Commission v.  
State of Arunachal Pradesh*, AIR 1996 SC  
1234

- NHRC in a PIL under Article 32 sought to enforce rights under Article 21 of about 65,000 Chakmas.
- Chakmas-from Bangladesh (East Pakistan)
- They had taken shelter in Tripura and Assam.
- Court held that State Government was under constitutional and statutory obligation to protect the threatened groups.
- Court directed the State of Arunachal Pradesh to protect the life and liberty of Chakma refugees.

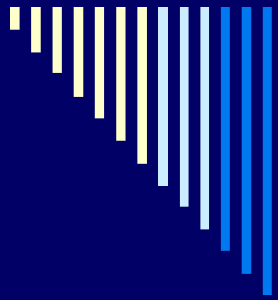


- Gujarat High Court in *Ktaer Abbas Habib Al Qutaifi v. Union of India*, 1999 CriLJ 919
  - Petitioners of Iraq origin requested court to order not to deport Iraq instead they may be handed over to UNHCR
  - The principle of 'non-refoulment' is encompassed in Article 21 of the Constitution of India and the protection is available, so long as the presence of the refugee is not prejudicial to the national security.



*Dongh Lian Kham v. Union of India*, on 21  
December, 2015 Delhi High Court

- Dongh Lian Kham and Zel Khan Mang (Myanmar origin) not to deport them or their family members to their country of origin
- Foreign Regional Registration Officer was directed to hear the petitioners and explore a third country option for their deportation



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THANK YOU

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