

August 2022

Where Kindness Is Calculated: Refugee Regimes in South Asia

Shuvro Prosun Sarker

Law School, Indian Institute of Technology, Kharagpur, shuvro@rgsoipl.iitkgp.ac.in

Shreyasi Bhattacharya

KIIT School of Law, India, shreyasib.bhattacharya@gmail.com

Follow this and additional works at: <https://scholarhub.ui.ac.id/ijil>



Part of the [Immigration Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Sarker, Shuvro Prosun and Bhattacharya, Shreyasi (2022) "Where Kindness Is Calculated: Refugee Regimes in South Asia," *Indonesian Journal of International Law*. Vol. 19: No. 3, Article 4.
Available at: <https://scholarhub.ui.ac.id/ijil/vol19/iss3/4>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in Indonesian Journal of International Law by an authorized editor of UI Scholars Hub.

WHERE IS KINDNESS CALCULATED? REFUGEE REGIMES IN SOUTH ASIA

Shuvro Prosun Sarker* & Shreyashi Bhattacharya**

* Indian Institute of Technology Kharagpur, India & ** KIIT School of Law, India
Correspondence: shuvro@rgsoipl.iitkgp.ac.in

Abstract

South Asia, as part of the SAARC treaty, comprising nations such as Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, is not a part of any common system of governance in protecting refugees. These nations have developed their preference for protection through practices coupled with a mysterious unwillingness to accept international obligations and responsibilities while selecting certain refugee groups to welcome. Therefore, the article starts with the proposition that this kind of preferential protection practice is largely refers to a regime of calculated kindness for labelling refugee status and protection to ambiguity. It investigates how the major refugee groups have been received in these countries and try to unearth the existence of a common pattern in the State practices. Furthermore, it establishes that 'kindness' is calculated based on ad-hoc refugee protection measures based on religion, language and culture. Proceeding from this proposition, it emphasizes the need for a uniform refugee protection regime common or unique to all countries in South Asia for regulating refugee movements.

Keywords: *asylum, refugee, protection, South Asia, calculated kindness*

Received : 2 March 2022 | Revised : 27 June 2022 | Accepted : 25 July 2022

1. INTRODUCTION

South Asia comprises the member states of the South Asian Association for Regional Cooperation (SAARC)¹, and it is not part of any common system of governance in protecting refugees. Afghanistan is the only SAARC member state that is a signatory to the 1951 Refugee Convention or 1967 Protocol, despite bearing witness to some of the biggest forced cross-border migrations of civilian populations. All the South Asian countries that are non-state parties to the 1951 Refugee Convention or 1967 Protocol, have developed their protection mechanisms. A commonality of all these protection mechanisms is an unwillingness to accept international obligations and responsibilities

¹ SAARC was established in 1985 consisting of 7 member states namely Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. Afghanistan was included in SAARC in 2005 during the 13th Summit in Dhaka.

while deciding which refugee groups require protection.² The national governments in these countries have been largely reluctant to participate in any deliberative exercise that advocates for greater uniformity in their respective regimes and resort to protecting refugee groups on a discretionary basis.³ As a result, these states have often resorted to preferential treatment when protecting refugee groups.⁴ The existence of such framework refers to a regime of “calculated kindness” that governs refugee status and shrouds the protection mechanism in ambiguity. The term “calculated kindness” illustrates how the state or the people welcome the admission of certain refugee groups and how they are not the selective approach of state governments while accepting refugee groups.⁵ The level of kindness observed is minimal when refugee groups and residents are indulged in a conflict. For instance, Bangladesh’s Cox Bazaar has been a frequent breeding ground for sporadic clashes between Rohingya refugees and the local population.⁶

Considering these propositions, this paper will investigate the legal, constitutional and international human rights obligations of the various States of the South Asian region. This section will examine the refugee protection framework under international law. The next sections will focus on the treatment of refugees in South Asian countries. For such purposes, the refugee migration movements, existing legal framework and subsequent treatment have been studied for the countries witnessing maximum migration and hosting refugee groups in India, Bangladesh and Pakistan. The next section examines the refugee regimes in other South Asian countries. In the conclusion, the chapter portrays the parallels in the policy adopted and how it essentially shows a regime

² Ravi Nair, “Refugee Protection in South Asia,” *Journal of International Affairs* 51 (1997): 203. See also Wei Meng Lim-Kabaa, “Migratory Movement and Refugee Protection in South Asia,” *ISIL Yearbook of International Humanitarian and Refugee Law* 2 (2002): 58.

³ Pia Oberoi, “Regional Initiatives on Refugee Protection in South Asia,” *International Journal of Refugee Law* 11 (1999): 193.

⁴ *Ibid*

⁵ For other illustrations of the concept of ‘calculated kindness’ see the discussion on America’s record of providing asylum to refugees from communist countries, see Loescher, Gil, and John A Scanlan. *Calculated Kindness: Refugees and America’s Half-Open Door, 1945 to the Present*. (New York: The Free Press 1986), 209. For a discussion on strategic ambiguity, see B. S Chimni, “Status of Refugees in India: Strategic Ambiguity,” in *Refugees and the State: Practices of Asylum and Care in India, 1947–2000*, Ranabir Samadder ed. (New Delhi: Sage Publications, 2003): 443.

⁶ A. Ansar and Abu Faisal Md. Khaled, “From Solidarity To Resistance: Host Communities’ Evolving Response To The Rohingya Refugees In Bangladesh,” *Int J Humanitarian Action* 6, no. 16 (2021), doi: <https://doi.org/10.1186/s41018-021-00104-9>.

of calculated kindness. The paper relies upon doctrinal sources, and the methodology adopted is both descriptive and analytical.

Viewed from an international perspective, the problem of refugee protection has traditionally been perceived as a tension between the principle of sovereignty and human rights protection since refugee protection involves the movement of people between borders.⁷ Hence modern protection instruments have been perceived to be state-centric rather than encompassing the rights of refugees.⁸

The principal instruments comprise the Convention Relating to the Status of Refugees 1951 and the Protocol Relating to Status of Refugees 1967. The international community faced the first major refugee crisis after the Russian revolution in 1917 when 1.5 million Kulaks from Russia, the Assyrians, Armenians and other European groups moved across borders to escape persecution in their state of origin.⁹ They did not possess travel documents and consequently could not move from the states which received the first to third states. In 1921, another development in this field took place when the League of Nations appointed F. Nansen as the High Commissioner for Russian Refugees. He was instrumental in formulating the Arrangement Concerning the Issue of Certificates of Identity to Russian Refugees in 1922 for issuing international travel documents to these groups.¹⁰ The international community's approach to tackling these early refugee crises was to adopt an ad-hoc group-based protection mechanism to address specific refugee situations.¹¹ However, the adoption of the Convention Regarding Status of Refugees from Germany by the League of Nations in 1938 reflected a change. Since then, refugees have been viewed more as individuals than groups denied protection.¹² It also signified the beginning of the standardized protection framework, culminating in the Refugee Convention of 1951 and the Protocol.

⁷ See Guy S. Goodwin-Gill, "The International Law of Refugee Protection." *The Oxford Handbook of Refugee and Forced Migration Studies*, Elena Fiddian-Qasbiyeh, Gil Loescher, Katy Long, and Nando Sigona, eds. (Oxford: Oxford University Press, 2014). doi: 10.1093/oxfordhb/9780199652433.

⁸ *Ibid.*

⁹ Peter Nygh, "The Future of the UN 1951 Refugee Convention," *Australian International Law Journal* 1 (2000): 5.

¹⁰ "League of Nations Refugees Mixed Archival Group (Nansen Fonds)" UN Archives Geneva, accessed 20 June 2022, <https://archives.ungeneva.org/refugees-mixed-archival-group-nansen-fonds>.

¹¹ M. Rafiqul Islam, and Jahid Hossain Bhuiyan, *An Introduction to International Refugee Law*, (The Netherlands: Brill Nijhoff, 2013), 16.

¹² *Ibid.*

After the Second World War, the International Refugee Organisation, i.e. IRO, was established, which helped resettle thousands of refugees through government workers, migration, and employment schemes.¹³ In 1951, the IRO was replaced by a new body, I.e. the United Nations High Commissioner for Refugees, which was instituted to carry on the same mandate. In 2003, the IRO was made a permanent body by the General Assembly.¹⁴

The principle instrument of protection is the Refugee Convention of 1951 and its 1967 Protocol. The 1951 Convention defined refugees as well as established the principle of non-refoulment. Due to differences between UNHCR's mandate and the reluctance of states to accommodate a large number of refugees, the definition became applicable to those who fled due to specified events occurring before January 1 1951¹⁵ and this was rectified in 1967 Protocol.

The 1951 Convention defined refugee instead of ingraining "refugee status" in the particular dislocations of post-war Europe, required that for people to be classified as "refugees", they should be, "outside the country of nationality, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion."¹⁶ In line with the 1967 Protocol, which does not provide any time or geographical benefits, state parties also accept the specific obligation of non-refoulment. The non-refoulment principle states that refugees should not be returned to their countries of origin or other countries except on their accord. The rule finds an essential place in customary international law. Apart from non-refoulment, the Convention also lays down other obligations such as freedom from a penalty on illegal entry, freedom from expulsion, assisting refugees such as administrative assistance, identity papers, travel documents, facilitating the naturalization process and others.

The 1951 Convention remains the principal instrument on refugee protection in international law, and other instruments have also supplemented the international refugee law regime. These instruments

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <https://www.refworld.org/docid/3b00f0715c.html>.

have been global and local. The 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the Cartagena Declaration on Refugees of 1969, the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, and the 1994 Arab Convention on Regulating Status of Refugees in the Arab Countries are some of the instruments supplementing refugee protection regime in addition to the 1951 Convention and 1967 Protocol.

The Refugee Convention grants refugee status, allowing people to be on state territory. Once on the state territory, the people require a range of other rights to survive. At such juncture, these instruments swoon in to supplement the Refugee Convention.¹⁷ Article 5 of the Refugee Convention bestows upon refugees the entitlement to rights beyond the Refugee Convention. A State ratifying the other international human rights instruments acceded to providing rights for everyone in the territory without discrimination. After landing on the territory, a refugee qualifies for other rights for civil, political, economic, social and cultural rights beyond the Convention, especially in the ICESR. Article 5 provides refugees equal access to benefits under other treaties for a majority of the Refugee Convention rights, especially on socio-economic rights described in further detail in the ICESR. In the background of the international framework, South Asian countries have been unable to adopt a comprehensive legal framework for refugee protection for numerous reasons.

II. THE INDIAN SUB-CONTINENT AND REFUGEE PROTECTION

The partition of British India into two different countries, namely India and Pakistan, based on the controversial two nation theory, resulted in millions of people crossing the border for safety and security.¹⁸ The creation of the two states was premised upon religious

¹⁷ Tom Clark & Francois Crepeau, "Mainstreaming Refugee Rights - The 1951 Refugee Convention and International Human Rights Law", *Netherlands Quarterly of Human Rights* 17 (1999): 389.

¹⁸ The controversial two-Nation theory proposed by Mr. Mohammed Ali Jinnah is the basis for the creation of Pakistan. It stated that two separate nations should be created for Muslims and Hindus respectively. Therefore Muslims should have a separate country in the Muslim majority areas of British India, where they can spend their lives according to the teachings of Islam. See Shuvro Prosun Sarker, "Bangladeshi Un-

considerations, the idea of the religious divide encountered a massive blow in 1971, when Bangladesh got its independence from Pakistan after the long-drawn war of independence based on the ideology of cultural/linguistic nationalism. Between 1945 and 1971, there were massive movements of people from India to Pakistan. The newly formed states embraced a holistic mode in reception and providing facilities to these uprooted populations.¹⁹ However, the approach to protection began to vary regarding reception conditions, procedures, rights granted, and qualifications at passing the time. The following sections examine several country-specific situations. These sections will analyze the treatment of refugee groups which form cultural, religious, linguistic or some other form of the minority in South-Asian countries. Focus has been given to refugee groups which have garnered major attention, such as Tibetan, Tamil, Chakma, Afghans in India, Rohingya refugees in India, Afghans in Pakistan, and Rohingya and Bihari Muslims in Bangladesh.²⁰

A. LEGAL CONDITION OF REFUGEES IN INDIA: OVERVIEW OF THE LEGAL & ADMINISTRATIVE FRAMEWORK

India has not ratified the convention or has any statutory framework for protecting refugees. Interestingly, one of the reasons the government has given for not ratifying these international instruments is because India views the Convention and Protocol as an incomplete regime that does not consider the conditions of refugee flows in developing countries. They also fail to consider issues of mixed flows.²¹ The Minister of Home Affairs elucidated this rationale in 2006 when the government refused to act upon the National Human Rights Commission's²² recommendations to frame a domestic law.²³ A summary of the Indian

documented Migrants (Refugees) in India: A Humanitarian Problem, Requiring A Humanitarian Solution," *Journal of Immigration, Asylum and Nationality Law* 26 (2014): 174.

¹⁹ K. B. Pakrasi, *The Uprooted: A Sociological Study of the Refugees of West Bengal, India* (Calcutta: Editions Indian 1971).

²⁰ For a greater discussion, see Ranabir Samadder ed. *Refugees and the State: Practices of Asylum and Care in India, 1947–2000* (New Delhi: Sage Publications, 2003).

²¹ Lok Sabha, Un-starred Question No. 3693, Answered on 13.12.2000

²² The National Human Rights Commission is the statutory central body established with the mandate to protect and promote human rights. It was constituted under the Protection of Human Rights Ordinance 1993 and later given the status of a statutory body by Protection of Human Rights Act 1993.

²³ Lok Sabha, Un-starred Question No. 277, Answered on 21.02.2006. The information was obtained in response to a question placed before the Indian government in Lok Sabha, the Lower House of the Indian Parliament. India's stance on this issue has been explored through questions placed before the government

government's justifications for refusal to accede to the international framework provided is as follows:

- i. The Convention and Protocol are contrived to deal with cases individually and not with mass influx situations.
- ii. Failure to adequately address situations faced by the developing countries.
- iii. Mixed flows have not been sufficiently addressed as refugees may be economic migrants in several cases.
- iv. Lack of balance between rights and the obligations of the receiving State and the State of origin.
- v. Absence of the concept of international burden-sharing
- vi. The minimum responsibility of States not to create refugee flows has not been addressed.
- vii. Cooperation with other States to resolve refugee-related problems has not been addressed.²⁴

India's practices regarding granting asylum and treatment of people granted asylum are broadly dealt with under the Registration of Foreigners Act, 1939, Foreigners Act 1946 and the Indian Passport (Entry Into India) Act 1920, alongside their framed rules and orders. The Foreigners Act 1946 does not attempt to classify people as per their purpose of entering India and hence classifies tourists, migrants, fugitives and refugees under a single category.²⁵ First, it is essential to distinguish between refugees and other migrants as they hold separate place in international law. Since refugees flee their country due to some form of persecution, special forms of protection are required.²⁶ Section 3(1) of the Foreigners Order, 1948²⁷ enables authorities to grant or refuse permission to a foreigner to enter India. This action sets out a general provision that no foreigner should enter India without the authority's permission having jurisdiction over such entry points.²⁸ Foreigners who do not meet specific requirements, such as having a current passport or visa, may have their admission denied by civil authorities.²⁹ Furthermore, authorities may hold the foreigner when he or she rejects entry permission, and ³⁰ such failure may also attract

at numerous parts of this article.

²⁸ Saurabh Bhattacharjee, 'India Needs a Refugee Law' *Economic and Political Weekly* 43 no.9 (2008): 73.

²⁹ Sub para 2 of para 3 of Foreigners Order 1948

³⁰ Section 3(b) of Foreigners Order 1948

prosecution and lead to deportation. Supreme Court judgments have declared the deportation process free from due process.³¹ The power of mid-size police officers to deport a foreigner without providing a reason has also been affirmed under this Act.³²

In 2002, the government faced the question of enacting a law on refugees. In Rajya, Sabha noted that there was no major difficulty in dealing with the refugees as existing laws were adequate to deal with them. However, the Minister of Law, Justice and Company Affairs of the Government of India informed the *Lok Sabha* that the government considered a separate law to deal with refugees.³³ The government had started to consult various stakeholders concerned for this purpose. In 2005 in the *Lok Sabha*, the Ministry of Home Affairs affirmed that the government had received a proposal for framing a domestic law for the refugees on which various governmental agencies' opinions were being collated.³⁴ In 2006, it was mentioned that a draft model law titled Refugee and Asylum Seekers Protection Act, 2000 had been prepared by Justice P.N. Bhagwati and the government had initiated the process of taking a final stand on the matter.³⁵

This law was being framed as a part of a common initiative cutting across South Asia. At the third South Asian Informal Regional Consultation on Refugee Migratory Movements, an initiative organized by regionally based NGOs working in the human rights sector³⁶, a working group was established to frame a Model national refugee protection law.³⁷ The law framed in pursuance was adopted at the fourth session of the Regional Consultation held in Dhaka in 1997³⁸. In India, an "Eminent Persons Group" was constituted under the Chairmanship of Justice PN Bhagwati, a retired Chief Justice of the Supreme Court of India. The Indian version of the model law framed a wider definition of refugees than under the Refugee Convention.³⁹ Recognizing the

³¹ Hans Muller v. Supt., Presidency Jail, AIR 1955 SC 367

³² State v. Ashfaq Ahmad, 1960 SCC OnLine All 93

³³ Lok Sabha, Un-starred Question No. 5631, Answered on 02.05.2002

³⁴ Lok Sabha, Un-starred Question No. 3952, Answered on 20.12.2005

³⁵ Lok Sabha, Starred Question No. 224, Answered on 08.08.2006

³⁶ Oberoi, "Regional Initiatives on Refugee Protection in South Asia", 193.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Arun Sagar and Farrah Ahmed, "The Model Law for Refugees: An Important Step Forward?" *Students Bar Review* 17 (2005): 76.

need for “*an appropriate legal framework to process matters relating to forced migration in respect of the determination of refugee status, protection from refoulement and treatment during stay*”⁴⁰, the Act sought to establish the office of the “Commissioner of Refugees”⁴¹, primarily responsible for the refugee status determination of asylum seekers. The model act also provided for a “Refugee Committee”⁴² to act as the appellate body to the Commissioner of Refugees. Besides making it obligatory for the state to adhere to the fundamental principles of international refugee protection like non-refoulement, the model act also contained separate provisions dealing with situations of mass influx and refugees living unlawfully in the country.⁴³ However, despite the aforesaid exercise, no further efforts were undertaken by the national government to implement the same.

In 2010, the government inquired about the plan to enact legislation protecting refugees.⁴⁴ In response, the government mentioned that a proposal for enacting a law to provide for an effective system to protect refugees and asylum seekers before and after the grant of asylum and matters connected was under consideration. In 2016, three Bills intending to create a domestic legal framework for asylum were introduced by members of the Parliament, consisting Shashi Tharoor, Feroz Gandhi & Rabindra Kumar Jena.⁴⁵ However, all these Bills have been pending, and no action has been taken.⁴⁶ The government remained silent and referred to Standard Operating Procedures when faced with questions on a domestic legal framework.⁴⁷

India deals with refugee management through administrative schemes without any specific law. Normally, Standard Operating Procedures (SOPs) are issued by the Home Ministry to deal with

⁴⁰ For reference, See the Model National Law on Refugees < <http://www.worldlii.org/int/journals/ISILY-BIHRL/2001/19.html>>

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Lok Sabha, Un-starred Question No. 3943, Answered on 20.04.2010

⁴⁵ These Bills were respectively: 1. The Asylum Bill, 2015, [334 of 2015, Lok Sabha] 2. The National Asylum Bill, 2015, [342 of 2015, Lok Sabha], The Protection of Refugees and Asylum Seekers Bill, 2015, [290 of 2015, Lok Sabha] respectively.

⁴⁶ The status of these Bills are available on the following links :<<https://prsindia.org/mptrack/16-lok-sabha/shashitharoor>><<https://prsindia.org/mptrack/16-lok-sabha/ferozevarungandhi>><<https://prsindia.org/mptrack/16-lok-sabha/rabindrakumarjena>>

⁴⁷ Lok Sabha Un-Starred Question no.739 Answered on:15.07.2014.

persons claiming to be refugees.⁴⁸ In 2014, while answering a question on the government's consideration of enacting a law for the refugees in India, the government did not directly respond to the question, it referred to a standard operating procedure issued in 2011 to deal with foreign nationals.⁴⁹ A Standard Operating Procedure issued in 2011 has been present to deal with asylum seekers and refugees and has been revised in 2019.⁵⁰

As is evident from the discussion, India has tackled the situation concerning refugee influx through administrative measures but the effectiveness of such measures remains doubtful. Without a refugee-specific legislative framework, bias and discriminatory treatment of refugees remains possible.⁵¹ The administrative policies under the Act relating to aliens "are the very skeleton and leave very wide discretion to the executive".⁵² Owing to such widespread governmental plenary power, bias can creep in, thereby disturbing the basic tenet of the rule of law. There is no doubt that the "skeleton legislation with a wide delegation of rule-making power as well as conferment of very discretion on the administrative authorities is a violation of the rule of law and can be challenged on the grounds of unconstitutional delegation of legislative functions and the violation of the right to equality".⁵³ As a result, refugees fleeing persecution are placed under the same rules and regulations as any other foreigners entering India for any other purpose. No legislative framework has been developed for identifying and determining status or outlining protection measures.⁵⁴ The discretionary treatment of the refugees can be gauged from the discussions in the next sections.

The United Nations High Commissioner for Refugees (UNHCR) has remained a prominent agency in India to cooperate and coordinate claims of refugee status determination and protective measures. UNHCR's functions include deciding on asylum claims from

⁴⁸ *Ibid.*

⁴⁹ Rajya Sabha, Un-starred Question No. 2999, Answered on 06.08.2014.

⁵⁰ *Ibid.*

⁵¹ Oberoi, "Regional Initiatives on Refugee Protection in South Asia," 193.

⁵² M. P. Singh, 'Positions of Aliens in India', Legal Position of Aliens in National and International Law, (paper presented at the Heidelberg Colloquium, Heidelberg, Germany, August 28-30, 1985) 12

⁵³ J. N. Saxena, "Proposal for a Refugee Legislation in India," 2, no. 2 A, *Bulletin on IHL & Refugee Law* (1997): 391

⁵⁴ Oberoi "Regional Initiatives on Refugee Protection in South Asia," 193.

Afghanistan, Myanmar and other neighbouring countries' nationals.⁵⁵ However, such refugees are still regulated by the Foreigners Act 1946 and other relevant domestic laws. Other groups such as Tibetans, Tamil, Chakma, Pakistani and Bangladeshi Hindus are the direct concern of the Government of India, and UNHCR has very little to do in the entire process except assist in case of repatriation. Besides that, it assists other groups like Rohingya refugees, who the Indian government has not recognized.⁵⁶ This makes the proposition clearer that calculated moves based on ambiguous strategies seem more humanitarian in a large-scale group situation where protection is on religious faith. The next sections shall deal with the treatment of specific refugee groups in India to test the proposition of adopting discriminatory attitude regarding the treatment of refugee groups.

1. Refugees in India: The Case of Tibetan, Tamil, Chakma, and Pakistani and Bangladeshi Hindus

After India gained its formal independence, it witnessed periodic influxes of many refugee groups. Leaving aside the partition-induced influx in the wake of the creation of India and Pakistan, India faced an influx of refugees from Tibet in 1959.⁵⁷ These refugees arrived with spiritual leader, the Dalai Lama, for religious and political reasons in the wake of the Chinese interference in Tibet.⁵⁸ This first group has been in India for almost 60 years, and between 1964 and 1968, many Chakma refugees migrated to the country due to ethnic disturbances in the Chittagong Hill Tracts area in south-eastern Bangladesh, bordering Myanmar and India. There was also a further movement of refugees from Bangladesh in 1986 from the Chittagong Hill Tracts in Tripura, located in North-east India when the Government of Tripura arranged rehabilitation packages for these people.⁵⁹ Mass refugee groups were admitted to India in the backdrop of the Liberation War of Bangladesh,

⁵⁵ Apart from the Tibetans, Sri Lankans, Chakmas and Bangladeshi and Pakistani Hindus, as per UNHCR Refugee Statistics 2021, there are 3639 other refugees and asylum seekers from other countries. See UNHCR Factsheet on India 31st July 2021. <<https://reporting.unhcr.org/sites/default/files/India%20factsheet%20July%202021.pdf>>

⁵⁶ "Refoulement, Rohingya and a Refugee Policy for India", The Wire, accessed 19 May 2022, <https://thewire.in/government/refoulement-rohingya-and-a-refugee-policy-for-india>.

⁵⁷ Eileen Kaufman, "Shelter from the Storm: An Analysis of U.S. Refugee Law as Applied to Tibetans Formerly Residing in India," *Georgetown Immigration Law Journal* 23 (2009): 530.

⁵⁸ Javeed Ahmed, "Tibetan Diaspora in India: Longing and Belonging," *The Tibet Journal* 37 (2012): 36.

⁵⁹ Malabika Das Gupta, "Refugee Influx," *Economic & Political Weekly* 2 (1986): 1665.

with the official estimates of 10 million.⁶⁰ Tamil refugees started coming to India in the late 1970s, and many have been repatriated since the 1990s.⁶¹ Currently, minority population of Bangladesh often cross the international border to India to save themselves from religious persecution.⁶²

The Government of India has taken several measures to regularize the entry, stay and citizenship process for a significant section of these persecuted minorities.⁶³ The Chakma refugees were initially provided shelter in the government camps and later shifted to other states under resettlement schemes. Official efforts were also underway for the voluntary repatriation of these refugee groups back to Bangladesh.⁶⁴ India has also been welcoming Tamil refugees,⁶⁵ and with the assistance of UNHCR, through collaborative efforts with the Sri Lankan government, arranged for the voluntary repatriation of these refugee groups.⁶⁶ However, there had been allegations that there was some pressure from the Indian government forcing these refugees to return to their home countries. Due to the low chance of repatriation, Tibetan refugees have been provided facilities to settle in the country in communities, resettlement in certain sectors like animal husbandry, horticulture, training in the sale of traditional handicrafts, and establishment of small industries to be operated.⁶⁷ India's attitude towards other refugee groups has been less kind, although they have been accommodated within the society. Refugees from East Pakistan in 1971 were housed in camps and provided benefits of a relief programme centred around space, shelter,

⁶⁰ "The State of the World's Refugees, 2000: Fifty Years of Humanitarian Action" United Nations High Commissioner for Refugees, January 1, 2000 at 68 <<https://www.unhcr.org/3ebf9bab0.pdf>>

⁶¹ See further Velamati Manohari, "Sri Lankan Tamil Migration and Settlement: Time for Reconsideration," *India Quarterly* 65, no. 3 (2009): 271.

⁶² For a greater discussion see Shuvro Prosun Sarker, *Refugee Law in India: The Road from Ambiguity to Protection* (Palgrave Macmillan, 2017).

⁶³ See Natasha Raheja, "Neither Here nor There: Pakistani Hindu Refugee Claims at the Interface of the International and South Asian Refugee Regimes," *Journal of Refugee Studies* 31 (2018): 334. See also Shuvro Prosun Sarker, "Bangladeshi Undocumented Migrants (Refugees) in India: A Humanitarian Problem, Requiring A Humanitarian Solution," *Journal of Immigration, Asylum and Nationality Law, Immigration Law Practitioners Association, United Kingdom*, 26 (2014). See also "How Humanitarian Is This?," *The Statesman* (blog), October 7, 2015, <https://archive.thestatesman.com/supplements/how-humanitarian-is-this-95507.html>. For the press release by the Ministry of Home Affairs, Govt. of India on the Citizenship Amendment Bill, 2019, see <https://mha.gov.in/sites/default/files/PRESSRELEASE_08012019.pdf>

⁶⁴ B.S. Chimni, The Legal Condition of Refugees in India, *Journal of Refugee Studies* 7(1994): 383.

⁶⁵ *Ibid*

⁶⁶ *Ibid*

⁶⁷ *Ibid* at 389

medical assistance, and food. However, they were formally denied economic opportunities and, according to some views, hardly had any rights. In the long run, they further integrated with the several States of India and have been residing there.⁶⁸

2. The Case of Rohingya Refugees in India

From the discussions, India's actions toward previous refugee groups and asylum seekers, were coloured with kindness, in a sense, that India had acknowledged and had taken minimal relief assistance for most refugee groups. However, India's regime of 'calculated kindness' becomes clearer regarding the Rohingya refugees.

The migration of Rohingyas into India started in 2012, and as of 2018, the Rohingya population in India stands at 40,000.⁶⁹ The Government has always highlighted the threats that Rohingyas pose to the country's internal security. The statements given in the press from various government sources have clearly reflected this stance⁷⁰. The government's stance became clear in its submitted affidavit before the Supreme Court of India.⁷¹ This contrasts with the reception received by the earlier groups of refugees like the Tibetans, who were welcomed into the country. It is pertinent to mention that concerns of internal security surrounding refugee groups in this country are not new. The same has been raised in the past about the Tamil and Afghan refugees in the past. However, the government's approach had been to acknowledge the same and provide for restrictions to prevent any further occurrence⁷². The government's stance to deport Rohingya refugees has recently received approval from the Supreme Court of India in *Mohd. Salimullah vs. Union of India*.⁷³ The court allowed the deportation of several Rohingya refugees from Jammu upon adherence to due procedure. The next sections will highlight the refugee protection mechanisms in other

⁶⁸ *Ibid*

⁶⁹ For reference, see the Affidavit submitted by the Government of India in *Mohd. Salimullah v. Union of India*, Writ Petition (Civil) No. 793 of 2017 (SC) (Pending), at para 26 <[https://barandbench.com/wp-content/uploads/2017/09/170917_FinalSalimullahaffidavit to befiled-watermark.pdf](https://barandbench.com/wp-content/uploads/2017/09/170917_FinalSalimullahaffidavit%20to%20be%20filed-watermark.pdf)>.

⁷⁰ "Rohingya Refugees Are a Threat to National Security, Says Centre's Draft of Affidavit to SC," Scroll.in, accessed June 20, 2022, <https://scroll.in/latest/850648/rohingya-refugees-are-a-threat-to-national-security-centre-tells-supreme-court>.

⁷¹ *Mohd. Salimullah v. Union of India*, para 26

⁷² Dabiru Sridhar Patnaik and Nizamuddin Ahmed Siddiqui, "Problems of Refugee Protection in International Law: An Assessment through the Rohingya Refugee Crisis in India," *Socio Legal Review* 1 (2018): 8.

⁷³ *Mohammad Salimullah v. Union of India* 2021 SCC OnLine SC 296.

South Asian countries, focusing on Pakistan and Bangladesh.

B. LEGAL SITUATION OF REFUGEES IN PAKISTAN AND BANGLADESH: THE CASE OF AFGHAN AND ROHINGYA REFUGEES RESPECTIVELY

1. Legal & Administrative Framework for Protection of Refugees in Pakistan:

Pakistan is not a signatory to the Refugee Convention 1951 and lacks domestic legislation to tackle the refugee issues. The country hosts the third largest number of refugees in the world, with Afghan forming the bulk of the population in the country⁷⁴. Without a specific legal framework, the refugees and asylum-seekers are treated in accordance with the Foreigner's Act, 1946. The UNHCR carried out refugee status determination in the country in pursuance of an agreement between the Pakistani government and the UNHCR in 1993⁷⁵. The refugees receive PoR cards (Proof of Registration) that allow them limited access to social services. However, there is no scope for being able to access formal education, formal jobs or buy property⁷⁶.

2. The Case of Afghan Refugees

Apart from those persons who entered Pakistan during the partition of British India and the liberation of Bangladesh, major refugee movements started coming from Afghanistan in 1978 as a result of the invasion by the USSR in Afghanistan. By the end of 1985, there were about three million refugees in Pakistan.⁷⁷ The country was not a signatory to the Refugee Convention or Protocol and had not accepted any international obligation to protect refugees. However, it did allow large numbers of Afghan refugees to enter and remain in their territory. This is akin to the Indian practice in the case of Tibetans, Tamils, Hindus

⁷⁴ "With US Withdrawal, Rights of Afghan Refugees in Pakistan Hang in the Balance," Center for Global Development | Ideas to Action, accessed June 20, 2022, <https://www.cgdev.org/blog/us-withdrawal-rights-afghan-refugees-pakistan-hang-balance>.

⁷⁵ UNHCR Pakistan (19th June, 2022) <https://www.unhcr.org/pk/protection/asylum-system-in-pakistan>

⁷⁶ "With US Withdrawal, Rights of Afghan Refugees in Pakistan Hang in the Balance," Center for Global Development | Ideas to Action, accessed June 20, 2022, <https://www.cgdev.org/blog/us-withdrawal-rights-afghan-refugees-pakistan-hang-balance>.

⁷⁷ Ijaz Hussain, "Pakistan's International Law Practice on Afghan Refugees", *Pakistan Horizon* 38(1985): 85

and Afghan minorities, as highlighted in the previous section. Despite being a non-signatory to the Refugee Convention, the Afghan refugees in Pakistan, enjoyed a host of rights provided under the Convention, such as personal status, acquiring property, employment, primary education, freedom of movement⁷⁸. The government of Pakistan “repeatedly justified its action in providing shelter and refuge on its territory and in maintaining and supporting them mainly on the basis of religion and humanitarian grounds.”⁷⁹ This can roughly be regarded as the first wave of a mass influx of Afghan refugees in Pakistan, which was characterized by the heavy inflow of refugees and asylum seekers into the country and the subsequent monumental repatriation efforts under the aegis of the UNHCR, which saw more than four million Afghan refugees being repatriated.

Without having any specific legal framework, the admission of Afghan refugees and their reception conditions were initially taken care of by the provincial governments of Pakistan. The large-scale influx that followed the USSR’s invasion prompted the federal government to bring refugee protection, reception conditions and repatriation to the Ministry of States and Frontier Regions⁸⁰. A Chief Commissioner for Afghan Refugees was a bureaucrat “mandated to coordinate with federal and provincial governments, liaise with UN agencies and humanitarian organizations, engage in policy planning for Afghan refugees, give administrative support, and access provisions for Afghan refugees in Pakistan.”⁸¹ The working of the Office of the Chief Commissioner is discharged by several specific thematic units and other sub-offices throughout Pakistan. These administrative actions came as a move to tackle the crisis without having a proper law of protection and international obligation, decentralization of the refugee-related administration to the grass-root level requires to be applauded. The agreement of cooperation allowed UNHCR to conduct RSD and carry out works related to international protection and humanitarian assistance.

⁷⁸ For details, see Pierre Centlivres & Micheline Centlivres-Demont, “The Afghan Refugee in Pakistan: An Ambiguous Identity,” *Journal of Refugee Studies* 1, no. 2 (1988): 141.

⁷⁹

⁸⁰ Hasan-Askari Rizvi, “Afghan Refugees in Pakistan: Influx, Humanitarian Assistance & Implications,” *Pakistan Horizon* 37, no.1 (1984): 45-46.

⁸¹

The recent wave of a mass influx of Afghan refugees started in 2021 with the Taliban's capture of power in Afghanistan. However, the Pakistani government has implemented strict border control regimes to prevent refugees from crossing to Pakistan.⁸²

The number of Afghan refugees in Pakistan, as of 2017, even after the repatriation of the four million refugees stood at 1.4 million, with around 0.6 million unregistered Afghan refugees.⁸³ Even though concrete data on the number of refugees and asylum seekers in Pakistan in the wake of the Taliban capture of Afghanistan in 2021 is not available, the UNHCR in August of 2021 had predicted that 500,000 refugees were expected to leave the country in the worst case scenario. Pakistan has been reluctant to accept any new Afghan groups⁸⁴, and the number of Afghan asylum seekers and refugees is expected to spiral.

This trend of enthusiasm in protecting the Afghan refugee population decreased. In contrast, the new generations received a less favourable situation regarding essential reception conditions and legalization of status.⁸⁵ The government refused to recognize Afghans entering Pakistan after 1995 as "legal refugees."⁸⁶ The government was required to allow refugees to go to urban areas in 1997 due to the discontinuation of food assistance in the camps.⁸⁷ In November 2000, the country's borders were officially closed for Afghan refugees. Cross-border migration continued, and the new groups entering Pakistan were treated as "economic migrants", depriving them of the rights the earlier groups had been enjoying.⁸⁸ This led to these new groups of migrants being subjected to the provisions of the Pakistan Foreigners Act, 1946 and the Foreigner's Order, 1951.⁸⁹ People without valid visa were treated as an "illegal migrant". This led to a stark increase in arrests,

⁸² "Afghanistan: Refugees and Displaced People in 2021" House of Commons Library, Research Briefing, accessed 16 December 2021, <https://researchbriefings.files.parliament.uk/documents/CBP-9296/CBP-9296.pdf>.

⁸³ *Ibid*

⁸⁴ *Ibid*

⁸⁵ See Peter Marsden, "Afghans in Pakistan: Why Rations Decline", *Journal of Refugee Studies* 5(1992): 289. See also "The Afghan Refugees in Pakistan", MEI-FRS, accessed 30 June, 2011) Online <https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_1647.pdf>

⁸⁶

⁸⁷ Umar Rashid, "UNHCR in Pakistan: Analyzing the Global Governance Regime - Repatriation of Afghan Refugees from Pakistan", *LUMS Law Journal* 6(2019): 35.

⁸⁸

⁸⁹ *Ibid*.

detentions and harassment of Afghans.⁹⁰ Pakistan wanted to put more emphasis on durable solutions, and in doing that, a census and a new registration process began in 2006, pursuing an MoU (Memorandum of Understanding) signed between the UNHCR and the Government of Pakistan.⁹¹ Many Afghans were repatriated to Afghanistan under the aegis of the UNHCR.

The treatment of Afghan refugees in Pakistan, as panned out over almost three decades, reflects the willingness on the part of the Government to afford protection to the groups owing to the cultural and religious sameness-induced sympathy. This, coupled with an ad-hoc domestic framework for refugee protection and diplomatic motives, has put the treatment of Afghan refugees in Pakistan akin to that of Tibetans, Tamils, Chakmas, Hajongs and Bangladesh and Pakistani Hindus in India studied in the previous section.

3. Legal & Administrative Framework for Refugee Protection in Bangladesh

Bangladesh, like its neighbour India, is not a signatory to the Refugee Convention 1951. It has no domestic legislation addressing the refugees' concerns.⁹² However, the Constitution of Bangladesh, under Article 25, incorporates a provision similar to Article 51 of the Indian Constitution, where the country shall base its international relations on the premise of respect for principles of international law. Even though this article is part of the Fundamental Principles of State Policy, which are not justiciable, other provisions in the Constitution create some obligations for the state to give effect to principles like *non-refoulment*. Article 145A mandates laying a treaty before the parliament for discussion, and there is no constitutional need for ratification of a treaty. Courts have opined that being a common law country which follows the dualist model, the treaties need to be transformed into domestic legislations before they can be effectuated.⁹³ As regards customary international law, the Constitution is silent. Case law on the subject indicates that in case of a conflict between obligations under national and international law,

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² Bianca Karim & Tirza the Unissen, "Bangladesh", in *International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion*, Dinah Shelton, ed. (Oxford University Press, 2011), 98.

⁹³ *Muhammad Ershad v Bangladesh* 21 BLD (AD) (2001) 69.

the obligations under national law prevail.⁹⁴ In the absence of specific legislations relating to ‘customary international law’, there exists no conflict between domestic and international law when it comes to giving effect to the principle of *non-refoulement*. A similar view was expressed by the Supreme Court in *Refugee and Migratory Movements Research Unit (RMMRU) vs. Government of Bangladesh*.⁹⁵ The court held that the entirety of the Refugee Convention, 1951 was a ‘customary international law’, and was enforceable within the domestic sphere.

4. The Case of Rohingya Refugees in Bangladesh

Almost the entirety of the refugee population in Bangladesh are Rohingyas.⁹⁶ The country has witnessed a protracted situation of inflow and efforts to facilitate their repatriation in Myanmar with the aid of the UNHCR. There have been several occasions during the British rule in India when the Rohingya people came to Cox’s Bazar from Burma (present-day Myanmar), which is still in continuity.⁹⁷ In independent Bangladesh, the Rohingya refugees started coming from Myanmar in early 1978. The first major wave of Rohingya refugees in 1978 amounted to more than 200,000 people.⁹⁸ The then Government of Bangladesh protested against the “inhuman eviction of Burmese Muslim nationals”, pointed out as an outcome of “repressive measures resulting in the forcible expulsion of their nationals belonging to ethnic and religious minorities”.⁹⁹ Since 1978 there have been several major waves of Rohingya refugees to Bangladesh in 1991-1992, 2012, 2015, 2016 and 2017-2018.

The initial wave was directly housed in the UNHCR-managed refugee camps.¹⁰⁰ The period between 1991-1992 saw the movement

⁹⁴ M Sanjeeb Hossain, “Bangladesh’s Judicial Encounter with 1951 Refugee Convention”, *FM Review* 67(2021): 60.

⁹⁵ Writ petition no. 10504 of 2016, Bangladesh: Supreme Court, 31 May 2017 www.refworld.org/cases,BAN_SC,5d7f623e4.html

⁹⁶ “Country Fiche: Bangladesh” ASIL, accessed 1 October 2020, https://www.asileproject.eu/wp-content/uploads/2021/03/Country-Fiche_Bangladesh_Final_Pub.pdf.

⁹⁷ For a greater discussion see R Abrar Chowdhury, “Issues and Constraints in the Repatriation/ Rehabilitation of the Rohingya and Chakma Refugees and the Biharis”, Paper presented to the *Conference of Scholars and other Professionals Working on Refugees and the Displaced Persons in South Asia*, Rajendrapur, Dhaka, Bangladesh, February 9-11, 1998 (on file with the author)

⁹⁸ J.P. Anand, “Refugees from Burma”, *Economic and Political Weekly* 13, no.27 (1978); 1100.

⁹⁹ *Ibid*

¹⁰⁰ Mostafa Mahmud Naser & Tanzim Afroz, “Protection of Refugees in Bangladesh: Towards a Comprehensive Legal Regime”, (2007) 18(1) *Dhaka University Law Journal* 18, no.1 (2007):112.

of another group of Rohingya refugees into Bangladesh. They were accommodated in refugee camps and received “refugee status”. The third wave who started arriving in and around 1995, has received less favourable treatment than their predecessors. They did not receive “refugee status” and were treated as “economic migrants”.¹⁰¹ The most recent wave of Rohingya influx in Bangladesh started in 2017, with over 700,000 refugees arriving in the country in the face of the Burmese army’s large-scale “clearance operation” in the Rohingya-dominated Rakhine state of Myanmar.¹⁰² Bangladesh was reluctant to allow such a high number of into the country. However, international scrutiny and domestic pressure upon the Sheikh Hasina government quickly led to the government changing its stance.¹⁰³ The cultural and religious affinity of the Rohingyas with the bulk of the population of Bangladesh meant that both the ruling Awami League and the opposition Bangladesh Nationalist Party (BNP) were on the same page on the need to afford protection and create a favourable condition of repatriation in Myanmar.¹⁰⁴ Reference can be made to the Prime Minister’s speech at the United Nations General Assembly, where she called for the international community to stand behind the Rohingyas and hold Myanmar accountable for the violence upon Rohingyas.¹⁰⁵ Bangladesh negotiated a “bilateral arrangement” towards their repatriation.¹⁰⁶ This has not been implemented¹⁰⁷, particularly because of the recent upheaval in Myanmar that has led to the arrest of President Aung Sang Suu-Kyi at the hands of the military junta.¹⁰⁸ The treatment of the Rohingyas, or at least the recent wave, differs starkly from their situation in India, where the Supreme Court recently allowed the deportation of refugees, as highlighted in the previous section.

¹⁰¹ *Ibid*

¹⁰² Mayesha Alam, “Enduring Entanglement: The Multi-Sectoral Impact of the Rohingya Crisis on Neighboring Bangladesh”, *Georgetown Journal of International Affairs*, 19(2018): 20.

¹⁰³ *Ibid* at 21

¹⁰⁴ *Ibid*

¹⁰⁵ “Bangladesh urges greater international action on Rohingya status” UN Affairs, accessed on 26 Sept 2020 <https://news.un.org/en/story/2020/09/1073882>.

¹⁰⁶ “Myanmar signs pact with Bangladesh over Rohingya repatriation”, *The Guardian*, accessed 23 Nov 2021, <https://www.theguardian.com/world/2017/nov/23/myanmar-signs-pact-with-bangladesh-over-rohingya-repatriation>.

¹⁰⁷ Alam, “Enduring Entanglement: The Multi-Sectoral,” 22.

¹⁰⁸ “Myanmar court sentences Aung San Suu Kyi to four more years in prison” *France 24*, accessed 10 January 2022, <https://www.france24.com/en/asia-pacific/20220110-myanmar-court-sentences-ousted-leader-aung-suu-kyi-to-four-years-in-jail>.

5. The Case of Bihari Muslims in Bangladesh

It is also important to look at the situation of the Bihari Muslim community as they lack any effective connection of nationality with Bangladesh.¹⁰⁹ These people migrated primarily from Bihar and Uttar Pradesh during the partition of British India and started residing in East Pakistan (present-day Bangladesh), and the language spoken in this community is Urdu. Even though this migrated population's religion is Islam, the culture and language significantly impacted their life and liberty in the newly formed state of Bangladesh. After the independence in 1971, some 163,000 left for Pakistan, but around 300,000 remained.¹¹⁰ Even though they are not included within the definition of refugees as provided under the Refugee Convention, a brief look into their overall situation is useful. They have been living in refugee camps without proper education, nutrition, drainage, sanitation and access to adequate healthcare facilities.¹¹¹ Furthermore, they lack proper citizenship, despite specific directions from the Supreme Court to include their names in the electoral roles and provide them with national identity cards.¹¹²

The main reason behind the evident difference in approach of the Bangladeshi administration towards the two refugee groups is the cultural similarity of the Bangladeshi majority with the Bengali-speaking Rohingyas and the cultural difference of the Urdu-speaking Biharis with the majority of the populace¹¹³. Despite the similarity between the two groups in their religious identity, they spoke different languages. The backdrop formed upon linguistic nationalist line played a significant role in the systematic legitimization of violence perpetrated upon the Biharis.¹¹⁴

¹⁰⁹ Sumit Sen, "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asian- Part 2," *International Journal of Refugee Law* 12 (2000): 44.

¹¹⁰ See Kamrul Hasan Arif, "The Status of the Bihari Community in Bangladesh under Domestic and International Law", *International Journal on Minority and Group Rights* 25, no.4 (2018): 664.

¹¹¹ Iqthyer Uddin Md Zahed, 'A Theoretical Analysis of Stranded Biharis in Bangladesh: Seeking for nationality since four decades', *International Journal of Advanced Research* 1 (2013): 429.

¹¹² See generally Z. Haider, 'Biharis in Bangladesh and Their Restricted Access to Citizenship Rights', *South Asia Research* 38, no.3 (2018): 25. See also *Abid Khan and others v. Government of Bangladesh and others*, Writ Petition No. 3831 of 2001, Bangladesh: Supreme Court, 5 March 2003, <https://www.refworld.org/cases,BAN_SC,4a54bbcf0.html> See also *Md. Sadaqat Khan (Fakku) and Others v. Chief Election Commissioner, Bangladesh Election Commission*, Writ Petition No. 10129 of 2007, Bangladesh: Supreme Court, 18 May 2008, <https://www.refworld.org/cases,BAN_SC,4a7c0c352.html>

¹¹³ Kamrul Hasan Arif, "The Status of the Bihari Community in Bangladesh under Domestic and International Law", 664

¹¹⁴ Sumit Sen, "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asian- Part 2", 44

The discussions in the previous two sections intend to explore the factors that may shape the protection policy of the host governments. There may be several factors in how States approach refugee protection and assistance, including the costs and benefits of international assistance, relations with the country of origin, the reaction of the local population, security considerations, etc.¹¹⁵ In terms of the practice of the states of the Indian subcontinent, the most influential factor which triggers kindness for refugees in the first instance is religious affinity. It is evident from the discussions that the first decision to accept the large scale without hesitation occurred only when there is religious affinity in the first place, and another consideration comes at a later stage. It is also vital to examine South Asian nations that were not part of the Indian subcontinent but were refugee-receiving or -producing nations.

III. REFUGEES REGIMES IN OTHER SOUTH ASIAN COUNTRIES

Apart from the three states of former British India, Afghanistan, Sri Lanka, Maldives, Nepal, and Bhutan also form a part of South Asia. The inclusion of Afghanistan in the SAARC in 2005 should not be confused with its geographical position in Central Asia. However, the contribution towards refugee protection may not be assessable due to the transitory system of governance, particularly after their affair at democratic governance ended with the recent return of the Taliban to power.

In the region, Sri Lanka is not perceived as a popular host under the number of ‘persons of concern’ listed in UNHCR population statistics. It does not have refugee-specific legislation, and the Immigrants and Emigrants Act 1948 governs refugee groups in Sri Lanka. Under this Act, irregular immigrants, including refugees, may be subject to arrest, detention or deportation.¹¹⁶ Most asylum seekers belong to Afghanistan, Pakistan and Myanmar, which is merely about 100 applications per year. UNHCR, under an agreement is responsible for processing asylum

¹¹⁵ See generally Karen Jacobsen, “Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes”, *The International Migration Review*, 30, no.3 (1996): 655

¹¹⁶ Sri Lanka, *Immigrants and Emigrants*, Act No. 20 of 1948 [Sri Lanka], <http://www.hrcsl.lk/PFF/Library_Domestic_Laws/Legislations_related%20to_Migrants_Workers/1948%20No%2020%20Immigrants%20and%20emigrants.p>.

claims, but the government has conferred no status to those qualified as refugees.¹¹⁷ However, this relatively small refugee population in Sri Lanka is not always safe, and there have been questions of forced deportation and attacks.¹¹⁸ The disenfranchisement of Tamils after the independence started the wave of systematic persecution that resulted in a large number taking refuge in India.¹¹⁹ Disenfranchisement and several other discriminatory policies towards the Tamils led the LTTE (Liberation of Tamil Tigers Eelam), a militant organization based in north-eastern Sri Lanka, to start the war against the Sri Lankan Government for a separate Tamil Homeland. Camps were built for Tamil Internally Displaced Persons (IDP)s who left war zone and were kept under strict surveillance. Currently, UNHCR is responsible for protecting around 40,000 IDPs through its protection programs. There has been a vocal demand from the international community and the local human rights actors to operationalize the National Policy on Durable Solutions for Conflict-Affected Displacement and to give effect to the recommendations of the Statelessness report.¹²⁰

The Maldives is not a signatory to the 1951 Refugee Convention or the 1967 Protocol and does not have any national legal regime for refugees. It hosts a large number of “irregular migrants” who have mostly arrived from India or Bangladesh to enter the construction or service sectors.¹²¹ These groups are often left vulnerable to identity and travel document confiscation, debt bondage, and non-payment of wages with human trafficking.¹²² The status of these “irregular migrants” in terms of “asylum-seekers” or “refugees” remain unclear in the complete absence

¹¹⁷ “Sri Lanka Fact Sheet 2018” UNHCR, accessed June 20, 2022, <https://www.unhcr.org/protection/operations/561681326/sri-lanka-fact-sheet.html>.

¹¹⁸ “Sri Lanka: Refugees Threatened, Attacked,” Human Rights Watch (blog), accessed April 29, 2022, <https://www.hrw.org/news/2019/04/29/sri-lanka-refugees-threatened-attacked>. “Sri Lanka Violates Refugee Law by Deporting Pakistanis: UNHCR,” Reuters, accessed August 12, 2021, <https://www.reuters.com/article/us-sri-lanka-refugees-un-idUSKBN0GC1JO20140812>.

¹¹⁹ See Joke Schrijvers, “Fighters, Victims and Survivors: Constructions of Ethnicity, Gender and Refugee-ness among Tamils in Sri Lanka,” 12 *Journal of Refugee Studies* 12(1999): 310.

¹²⁰ Sri Lanka: Immigrants and Emigrants Act No. 20 of 1948 [Sri Lanka], 1 November 1949. The National Policy on Durable Solutions for Conflict Affected Displacement (National Policy), is a policy document adopted by the Cabinet of Ministers on 16th August 2016. It provides for address durable solution needs for IDPs and refugee returnees, as per international standards. See National Policy on Durable Solutions for Conflict Affected Displacement [Sri Lanka], adopted on 16 August 2016, < <http://resettlementmin.gov.lk/site/images/stories/pdf/final%20policy.pdf>>.

¹²¹ “UNHCR Submission for the Universal Periodic Review – Maldives – UPR 36th Session (2019),” Refworld, accessed 20 June 2022, <https://www.refworld.org/docid/5e17493b2.html>.

¹²² *Ibid*

of any refugee or asylum-specific legal or executive framework.

Even though UNHCR receives asylum claims, it does not have any direct relationship with the government of Maldives.¹²³ As a result, it does not have any estimates on the number of asylum-seekers in the country or their current status.¹²⁴ UNHCR for the Maldives operates remotely from the New Delhi office in India and has been trying to open up a dialogue with the authorities about a protection mechanism. This is also quite a problematic situation as per the UNHCR statement:

“UNHCR is not physically present in the Maldives and operates remotely from New Delhi. Recently, UNHCR New Delhi was contacted on two occasions by family members of asylum-seekers detained in the Maldives for illegal entry/exit. The government was approached, requesting access to conduct refugee status determination. It continues to be reluctant to allow asylum-seekers and refugees to remain in the Maldives without a refugee protection regime. Hence, asylum-seekers are detained in immigration detention centres until UNHCR finds a durable solution.”

Additionally, UNHCR is not aware of the exact number of asylum-seekers in the Maldives countries, as there is no established information sharing platform. Therefore, a comprehensive and nationally owned response mechanism can be built.

To develop conducive asylum systems in the Maldives which allows for a collaborative and comprehensive response, including capacity development, UNHCR has initiated preliminary dialogue with the Maldivian authorities. However, the outcome is difficult to predict at this juncture as the concept of a national refugee protection framework is nascent to the Maldivian authorities.¹²⁵

Bhutan, a tiny nation in South Asia, is famous for its gross national happiness approach to sustainable development. It is not a signatory to the 1951 Refugee Convention and the 1967 Protocol does not have any law for refugees. Consequently, little is known about the approach to refugee protection. A search showed only one entry in 1966 that Bhutan received 3,000 refugees from China.¹²⁶ The nation has no data

¹²³ *Ibid*

¹²⁴ *Ibid*

¹²⁵ “UNHCR Submission for the Universal Periodic Review – Maldives – UPR 36th Session (2019),” Refworld, accessed 20 June 2022, <https://www.refworld.org/docid/5e17493b2.html>.

¹²⁶ See “Refugee Population by Country or Territory of Asylum - Bhutan | Data,” accessed 20 June 2022,

on the persons of concern in any year to date.¹²⁷ Nevertheless, Bhutan is known for its strict citizenship law to protect the cultural and religious identity as a Buddhist nation.¹²⁸ It categorized the population under seven different criteria: genuine Bhutanese citizens, returned emigrants, drop-out cases, children of Bhutanese fathers and non-national mothers, non-national fathers married to Bhutanese mothers, and their children, adopted children and Non-nationals. Due to the change in the citizenship laws, Nepali speaking minority Hindu population were uprooted from Bhutan, and around 100,000 refugees took shelter in Nepal.¹²⁹

Another small country in the South Asian region, Nepal, maintains a direct relationship with UNHCR. Without a national-level protection framework or signatory to the Convention and Protocol, it hosts refugees largely from Bhutan and Tibet and very few refugees from other countries. As discussed earlier, due to a sudden change of citizenship law in Bhutan in the 1990s, many Lhotsampas became stateless. After a cut-off date for citizenship was enforced, the Bhutanese authorities conducted a census in the Southern districts where everyone had to prove legal residence through government documents issued on or before 1958.¹³⁰ Failure to produce such government documents labelled Lhotsampas non-nationals. The crossing over of the population from Bhutan to Nepal created high tension between the two countries in the late 1990s. Another significant refugee population in Nepal is the Tibetan refugees who arrived following the Tibetan uprising in 1959. Nepal has some developments in the case of a national protection mechanism. In 2008, the Supreme Court of Nepal directed the government to formulate a law protecting refugees.¹³¹ Following the judgment, the government received a considerable amount of persuasion from civil society, NGOs, and international actors. Finally, it came up with the draft of the law in

<https://data.worldbank.org/indicator/SM.POP.REFG?locations=BT>.

¹²⁷ *Ibid*

¹²⁸ See Matthew F. Ferraro, "Stateless in Shangri-La: Minority Rights, Citizenship, and Belonging in Bhutan", *Stanford Journal of International Law* 48 (2012): 405; Michael Hutt, "Ethnic Nationalism, Refugees and Bhutan", *Journal of Refugee Studies* 9(1996): 397; Tang Lay Lee, "Refugees from Bhutan: Nationality, Statelessness and the Right to Return", *International Journal of Refugee Law* 10(1998): 118.

¹²⁹ The Lhotshampa, an ethnic group originating from Nepal, was expelled from Bhutan in the government's bid to preserve its national identity. For further details see "Bhutan's Dark Secret: The Lhotshampa Expulsion," accessed June 20, 2022, <https://thediplomat.com/2016/09/bhutans-dark-secret-the-lhotshampa-expulsion/>.

¹³⁰ Bernice Carrick, "The Rights of the Nepali Minority in Bhutan", *Asia-Pacific Journal on Human Rights & Law* 9(2018): 13.

¹³¹ Muhammad Rashid v. Government of Nepal, 49 NKP F 765 (2008).

2012, which is still not passed by the parliament.¹³²

IV. CONCLUSION

The article explores the concept of “calculated kindness” when treating various refugee groups in South Asia. It mostly relies upon these countries’ legal regimes to understand their measures’ impact on refugee groups. First, these countries in South Asia lack a culture of refugee-specific legal protection mechanisms. They have not acceded to the Refugee Convention of 1951 or its 1967 Protocol. The reasons include Eurocentric nature of the Conventions, absence of burden-sharing provisions, and non-inclusion of responsibility upon a State party to minimize the creation of refugees. This absence of a broader refugee or asylum-related legal framework has led to these groups being included under the umbrella of “foreigners” in these states. Refugees, being victims, require special measures for protection as opposed to the category of ‘foreigners’, which may include economic and illegal migrants. At the very onset, such indifference towards refugees and asylum seekers limits the level of kindness shown towards the groups.

Therefore, the protection of refugee groups is largely dependent on ad-hoc executive and legal frameworks devised by the State parties on a case-to-case basis. A careful study of the refugee protection in the Indian subcontinent, clearly reveals a number of underlying commonalities that drive home the proposition upon which this article proceeds. The overall treatment of refugees in these countries give out a picture in which there is kindness, but the same is calculated and differential towards the various groups. As discussed earlier, none of these countries has signed the Refugee Convention, and there is no domestic legislation in any of the three big States that directly addresses the concerns of the refugees and asylum seekers. However, they have afforded some protection to a large number of refugees. The Indian situation reflects an interplay of factors like religious affinity and cultural practices to the domestic populace and the ideology of the ruling government. India follows an ad-hoc policy toward refugee protection to provide the government with sufficient flexibility to respond to various crises and deal with the issues on an administrative level. Pakistan’s initial receptivity towards

¹³² Vijay Prasad Jayshawi, “Locating the Position of Nepal in Refugee and Statelessness Governance: An International Law Perspective”, *NJA Law Journal* 11(2017): 251

the Afghan refugees is premised upon the similar identity of the group to the majority of the citizens¹³³ and diplomatic considerations¹³⁴ that urged them to extend a sufficiently warm greeting. The recent reluctance towards the Afghans can be described as a fallout of a protracted influx of a large number of migrants to put considerable pressure upon their limited economical resources. The situation in Bangladesh, a nation carved out of erstwhile Pakistan, mainly based on linguistic nationalism, is a little different from India and Pakistan since culture and language are the predominant factor in their approach toward refugee groups, relegating religion to a secondary place. The situation in other countries such as Bhutan, Sri Lanka, and the Maldives is more ambiguous as there is very little liaison between them and UNHCR to identify their response towards refugees.

It is very difficult to give a general picture of refugee protection in the subcontinent, and the wide diversity that characterizes this region makes the task very difficult. The present work does not promise more than it can perform. Furthermore, it does not delve into the measures that should be undertaken by countries. The effort has only been to highlight when any uniform regional refugee protection system exists in South Asia and how the protection mechanism has fared on the “kindness scale”. The commonalities reflect the existence of a regime that revolves around ad hoc measures for refugee protection, with the treatment of a particular group revolving around the factors like religion, language and culture. Therefore, the “kindness” of refugee protection regimes in South Asia is “calculated” through these factors. The refugee influx and migratory movements in South Asia countries are not expected to cease. Refugee groups are people who have been fleeing persecution in their home countries and require special protection. In light of such circumstances and for the sake of humanitarian concerns, without disregarding these countries’ apprehensions towards the international framework, they should be serious contemplation on the formulation of a legal protection regime. These should consist of adherence to fundamental human rights and values which will relieve them of the stigma of adopting a “calculated kindness” approach towards refugee groups.

¹³³ Pierre Centlivres & Micheline Centlivres-Demont, “The Afghan Refugee in Pakistan: An Ambiguous Identity” 141.

¹³⁴ See Beena Karad, “Migration And Security In South Asia”, *World Affairs: The Journal of International Issues* 20, no.1 (2016): 70.

BIBLIOGRAPHY

Journal Articles

- Ahmed, Javeed. "Tibetan Diaspora in India: Longing and Belonging." *The Tibet Journal* 37 (2012): 33-36.
- Ahmad, Waseem. "The Fate of Durable Solutions in Protracted Refugee Situations: The Odyssey of Afghan Refugees in Pakistan." *Seattle J. Soc. Just.* 15 (2017): 590-610.
- Alam, Mayesha. "Enduring Entanglement: The Multi-Sectoral Impact of the Rohingya Crisis on Neighboring Bangladesh." *Georgetown Journal of International Affairs* 19 (2018).
- Anand, J.P, "Refugees from Burma", *Economic and Political Weekly* 13, no. 27 (1978).
- Ansar A., Md. Khaled Faisal Abu. "From Solidarity To Resistance: Host Communities' Evolving Response To The Rohingya Refugees In Bangladesh". *Int J Humanitarian Action* 6,16 (2021). <https://doi.org/10.1186/s41018-021-00104-9>.
- Arif, Kamrul Hasan. "The Status of the Bihari Community in Bangladesh under Domestic and International Law." *International Journal on Minority and Group Rights* 25, no. 4 (2018): 664.
- Askari Rizvi, Hasan. "Afghan Refugees in Pakistan: Influx, Humanitarian Assistance & Implications." *Pakistan Horizon* 37, no. 1 (1984): 45-46.
- Bhairav, Acharya. "The Future of Asylum in India: Four Principles to Appraise Recent Legislative Proposals" *NUJS L Rev* 9 (2016): 173-228.
- Chimni, B.S. The Legal Condition of Refugees in India, *Journal of Refugee Studies* 7(1994): 378-383.
- Das Gupta, Malabika. "Refugee Influx." *Economic & Political Weekly* 2 (1986): 1665-1668.
- Hossain, Sanjeeb.M, "Bangladesh's Judicial Encounter with 1951 Refugee Convention", *FM Review* 67(2021): 59- 61.
- Hussain, Ijaz, "Pakistan's International Law Practice on Afghan Refugees", *Pakistan Horizon* 38(1985): 83-88.
- Jacobsen, Karen "Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes." *The International Migration Review* 30, no.3 (1996): 655-678.
- Jayshawi, Vijay Prasad, "Locating the Position of Nepal in Refugee and Statelessness Governance: An International Law Perspective", *NJA Law Journal* 11(2017):230-251.
- Karad, Beena, "Migration And Security In South Asia", *World Affairs: The Journal of International Issues* 20, no.1 (2016): 70-83.
- Kaufman, Eileen, "Shelter from the Storm: An Analysis of US Refugee Law as Applied to Tibetans Formerly Residing in India," *Georgetown Immigration Law Journal* 23 (2009):479- 530.
- Manohari, Velamati "Sri Lankan Tamil Migration and Settlement: Time for Reconsideration," *India Quarterly* 65, no. 3 (2009): 270-275.
- Marsden, Peter, "Afgghans in Pakistan: Why Rations Decline", *Journal of Refugee Studies* 5(1992): 289.

- Meng Wei, Lim-Kabaa, "Migratory Movement and Refugee Protection in South Asia", *ISIL Yearbook of International Humanitarian and Refugee Law* 2 (2002): 58.
- Pierre, Centlivres and Centlivres-Demont Michelline, "The Afghan Refugee in Pakistan: An Ambiguous Identity." *Journal of Refugee Studies* 1, no. 2 (1988): 141-152.
- Ravi, Nair. "Refugee Protection in South Asia" *Journal of International Affairs* 51 (1997): 201-220
- Tom, Clark and Crepeau Francois. "Mainstreaming Refugee Rights - The 1951 Refugee Convention and International Human Rights Law." *NETH. Q. HUM. Rts.* 17 (1999) 389-410.
- Naser, Mostafa Mahmud & Afroz, Tanzim. "Protection of Refugees in Bangladesh: Towards a Comprehensive Legal Regime." (2007) 18(1) *Dhaka University Law Journal* 18, no.1 (2007):107-112.
- Natasha, Raheja. "Neither Here nor There: Pakistani Hindu Refugee Claims at the Interface of the International and South Asian Refugee Regimes," *Journal of Refugee Studies* 31 (2018): 334-352.
- Noor, S. "Afghan Refugees After 9/11" (2006) 59(1) *Pakistan Horizon* 59, no. 1 (2006):59-64.
- Nygh, Peter. "The Future of the UN 1951 Refugee Convention," *Australian International Law Journal* 1 (2000): 1-24.
- Pia, Oberoi. "Regional Initiatives on Refugee Protection in South Asia." *International Journal of Refugee Law* 11 (1999): 193-201.
- Patnaik, Dabiru Sridhar and Siddiqui, Nizamuddin Ahmed. "Problems of Refugee Protection in International Law: An Assessment through the Rohingya Refugee Crisis in India," *Socio Legal Review* 1 (2018): 8-29.
- Rashid, Umar. "UNHCR in Pakistan: Analyzing the Global Governance Regime - Repatriation of Afghan Refugees from Pakistan," *LUMS Law Journal* 6 (2019): 31-35.
- Sagar, Arun and Ahmed, Farrah, "The Model Law for Refugees: An Important Step Forward?" *Students Bar Review* 17 (2005): 73-76.
- Saurabh, Bhattacharjee. "India Needs a Refugee Law" *Economic and Political Weekly* 43, no. 9 (2008): 71-75.
- Sarker Shuvro Prosun. "Bangladeshi Undocumented Migrants (Refugees) in India: A Humanitarian Problem, Requiring A Humanitarian Solution," *Journal of Immigration, Asylum and Nationality Law* 26 (2014): 165.
- Schrijvers, Joke. "Fighters, Victims and Survivors: Constructions of Ethnicity, Gender and Refugeeeness among Tamils in Sri Lanka." *Journal of Refugee Studies* 12 (1999): 307-310.
- Sen, Sumit. "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asian- Part 2." *International Journal of Refugee Law* 12 (2000): 41- 44.
- Zahed MD, 'A Theoretical Analysis of Stranded Biharis in Bangladesh: Seeking for nationality since four decades', *International Journal of Advanced Research* 1 (2013): 429-435.

Books & Book Chapters

- Chimni, B. S. “Status of Refugees in India: Strategic Ambiguity” in *Refugees and the State: Practices of Asylum and Care in India, 1947–2000* edited by Ranabir Samadder, 443-471. New Delhi: Sage Publications, 2003.
- Goodwin-Gill, Guy S. “The International Law of Refugee Protection” in *The Oxford Handbook of Refugee and Forced Migration Studies*, edited by Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long, and Nando Sigona. Oxford: Oxford University Press, 2014. doi: 10.1093/oxfordhb/9780199652433.013.0021.
- Islam, Rafiqul M. and Bhuiyan Hossain Jahid. *An Introduction to International Refugee Law*, (The Netherlands: Brill Nijhoff, 2013).
- Karim, Bianca & Unissen Tirza. “Bangladesh”, in *International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion*, edited by Dinah Shelton, 98. Oxford: Oxford University Press, 2011.
- Loescher, Gil and Scanlan A. John. *Calculated Kindness: Refugees and America’s Half-Open Door, 1945 to the Present*. New York: The Free Press, 1986.
- Pakrasi K B. *The Uprooted: A Sociological Study of the Refugees of West Bengal, India*. Calcutta: Editions Indian, 1971.

Legal Documents

i. Legislations

- India. *Lok Sabha*. Law Number 334 of 2015. *The Asylum Bill*. 2015. [Available at <<https://prsindia.org/mptrack/16-lok-sabha/shashitharoor>>].
- India. *The Citizenship Amendment Bill*. 2019. [Available at <https://mha.gov.in/sites/default/files/PRESSRELEASE_08012019.pdf>].
- India. *Foreigners Order 1948*. Order No. 9/9/46-Political (EW). [trans. Ministry of Home Affairs (India), English Translation available at <https://upload.indiacode.nic.in/showfile?actid=AC_CEN_5_23_00048_194631_1523947455673&type=order&filename=The%20Foreigners%20Order%201948.pdf>].
- ISIL. Year Book of International Humanitarian and Refugee Law. [Available at <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/19.html>]
- Sri Lanka. *Immigrants and Emigrants Act*. Law No. 20 of 1948. [Available at http://www.hrsl.lk/PFF/Library_Domestic_Laws/Legislations_related%20to_Migrants_Workers/1948%20No%2020%20Immigrants%20and%20emmigrants.p].

ii. Court Decisions

- Hans Muller v. Supt., Presidency Jail, AIR 1955 SC 367
- Mohd. Salimullah v. Union of India, Writ Petition (Civil) No. 793 of 2017
- Muhammad Ershad v Bangladesh 21 BLD (AD) (2001) 69
- Muhammad Rashid v. Government of Nepal, 49 NKP F 765 (2008)
- Refugee and Migratory Movements Research Unit (RMMRU) v Government of Bangladesh Writ petition no. 10504 of 2016, Bangladesh: Supreme Court, May 31 2017
- State v. Ashfaq Ahmad, 1960 SCC OnLine All 93

Web Sources

- “Bhutan’s Dark Secret: The Lhotshampa Expulsion.” Accessed 20 June 2022. <https://thediplomat.com/2016/09/bhutans-dark-secret-the-lhotshampa-expulsion/>.
- Inter-Parliamentary Union and the United Nations High Commissioner for Refugees. “A Guide to International Refugee Protection and Building State Asylum Systems.” Accessed 22 September 2021. <https://www.unhcr.org/3d4aba564.pdf>.
- UN Archives Geneva. “League of Nations Refugees Mixed Archival Group (Nansen Fonds)” Accessed 20 June 2022. <https://archives.ungeneva.org/refugees-mixed-archival-group-nansen-fonds>.
- United Nations High Commissioner for Refugees. “Refworld | UNHCR Submission for the Universal Periodic Review – Maldives – UPR 36th Session (2019),” Refworld. Accessed 20 June 2022. <https://www.refworld.org/docid/5e17493b2.html>.
- The Wire. “Refolement, Rohingya and a Refugee Policy for India.” Accessed 19 May 2022. <https://thewire.in/government/refoulement-rohingya-and-a-refugee-policy-for-india>.
- World Bank. “Refugee Population by Country or Territory of Asylum - Bhutan | Data.” Accessed 20 June 2022. <https://data.worldbank.org/indicator/SM.POP.REFG?locations=BT>.

Others

- Chowdhury, R Abrar. “Issues and Constraints in the Repatriation/ Rehabilitation of the Rohingya and Chakma Refugees and the Biharis”, paper presented to the *Conference of Scholars and other Professionals Working on Refugees and the Displaced Persons in South Asia*, Rajendrapur, Dhaka, Bangladesh, February 9-11, 1998.
- Saxena, J. N. “Proposal for a Refugee Legislation in India” (1997) 2 (No 2A) Bulletin on IHL & Refugee Law (Indian Centre for Humanitarian Laws and Research, New Delhi).
- Singh, M. P. “Positions of Aliens in India,” Legal Position of Aliens in National and International Law, (paper presented at the Heidelberg Colloquium, Heidelberg, Germany, August 28-30, 1985).