

## Voluntary Repatriation as a Durable Solution to Sri Lankan Refugees in India: A Critical Analysis with Legal Perspective

Y Kathirgamathamby

Department of Legal Studies, Faculty of Humanities and Social Sciences,  
Open University of Sri Lanka, Nugegoda, Sri Lanka  
yashoda175@hotmail.com

**Abstract**—Assimilation, voluntary repatriation and third country resettlement are generally accepted as durable solutions for refugees. Among these, voluntary repatriation is considered to be the most welcome. Sri Lankan refugees who went to India have lived in that country for more than three decades. Although they are provided with basic facilities they lack legal status, which denies them certain human rights. India is not a party to the Convention on the Status of Refugees 1951 and also does not have a law to deal with refugees. However, India is obliged to uphold human rights of non-citizens under the human rights treaties for which India is a state party. There had been an outflow and inflow of refugees from time to time before 2009. With the defeat of LTTE in 2009 May, there was a probability of a flux of refugees to Sri Lanka. However, as of October 2014 the total number of returnees was 6840 out of around 110000. There are several reasons for this situation. It is in this context this paper seeks to analyse the causes for this low level of return even after the armed conflict had come to an end. The paper is divided into four parts. First part analyses the protection of Sri Lankan refugees in India. In this part the author has explained the legal and administrative provisions and judicial decisions in relation to refugees and situation of their rights. Second part examines how right to return has been guaranteed under international refugee and human rights law. Third part describes obligation of the country of origin in absorbing refugees and the final part concludes the article with some suggestions.

**Keywords**— Refugees, Durable Solution, Voluntary Repatriation

### INTRODUCTION.

All States are accountable and are internationally responsible to protect their own citizens and to provide them basic human rights. States are bound by the general principle not to create the conditions leading to refugee outflows. <sup>78</sup>When such situations occur it not

<sup>78</sup>

<http://global.oup.com/booksites/content/9780199207633/ch>

only becomes the responsibility of the country of origin but the entire international community as a whole to find amicable solutions for the crisis. <sup>79</sup> The terms of international refugee law places the burden on the country of origin to readmit its nationals when situation returns to normalcy. <sup>80</sup>

The arrival of refugees in Indian, from its neighbour Sri Lanka has occurred many times in the past. Certain events that took place in 1983 in Sri Lanka led to a large influx of SL refugees to India. 134,053 refugees are reported to have come to India during the period between 1983 and 1987. There was a reverse flow in 1987. At this time the total number of refugees who came back to SL was 25,885. <sup>81</sup>Once again in 1989, there was a flight of refugees to India. Between 1989- 1991 alone 122,037 refugees arrived in India. <sup>82</sup>The total Number of refugees in India in 1992 was 210,193. In 1995, UNHCR rendered assistance to 31000 refugees to return to Sri Lanka. The return of refugees continued with the assistance of UNHCR and the number came down to 110,000. <sup>83</sup>

However despite the return of peace in 2009 the number of returnees decreased sharply. <sup>84</sup> The primary inference for this reduction is lack of due care in meeting the expectations of the refugees for resettlement. <sup>85</sup>As of 31<sup>st</sup> December 2014, 68, 152 SL refugees continue to live in camps in India. <sup>86</sup>

<sup>79</sup> Guy.S. Goodwin Gill and Jane McAdam 2007

<sup>80</sup> (ibid.,)

<sup>81</sup> (SAHRD REPORT1996)

<sup>82</sup> (ibid., )

<sup>83</sup> IBID

<sup>84</sup> (UNHCR,2012)

<sup>85</sup> (IRIN Asia 2012)

<sup>86</sup> (isidelhi,2012)

Refugee status imposes restrictions through legal and other measures. Due to their legal status, refugees face problems with regard to civil, political, economic and social rights. Though the war ended in 2009 the returning process remained slow and refugees did not exercise the right to return at an expected level. The objective of this paper is to examine the constraints that prevent return of Sri Lankan refugees and elucidate the reasons behind the lethargic approach towards the practising of this right even after restoration of peace. The paper is based on the following research questions.

#### Research Questions

- To what extent does India's domestic law recognize Rights of refugees in accordance with International obligations under human rights treaties?
- How has the Right to return/voluntary repatriation been recognized under different branches of International Law with specific reference to International Refugee Law?
- To what extent are Sri Lankan refugees in India able to exercise their right to return after 2009?
- What are the steps taken by Sri Lanka to resettle the refugees who return from India?
- What are the main reasons that restrain and inhibit refugees returning from India?

#### METHODOLOGY

This paper adopts an amalgam of investigative and descriptive methods in its approach to the topic. Primary and secondary data have been used. Analysis is structured in the context of the International Refugee law and within the international human rights law framework. UNHCR documents and Executive Committee (ExCom) conclusions on voluntary repatriation have been extensively discussed. Journal Articles, conference proceedings, and books are also used as reference. Indian domestic laws/policies in relation to refugees have been examined. This paper has also made an evaluation of the policy and legal measures taken by Sri Lanka in ensuring the return of Refugees.

#### A. Protection of Refugees in India -Domestic law and Role of Judiciary

India has not ratified the 1951 Convention relating to the status of refugees (CSR) or the 1967 Protocol to the CSR. However, it is important to note that India has undertaken international human rights obligations under different international treaties and conventions. India is also a member of the UNHCR ExCom which approves and supervises material assistance programs of the UNHCR.

India has no specific law that is applicable to refugees whereas other countries like Canada, Australia and the US have specific legislation to deal with refugees. Convention relating to status of REFUGEES 1951 Article 1A(2) defines a refugee as "any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

Section 2 of the 1939 Registration of Foreigners Act defines foreigner as "a person who is not a citizen of India" and The Foreigner's order 1948 under 1946 Act governs the entry of foreigners. The absence of a proper legal definition for a refugee has led to the applicability of the above legislations to define refugees.<sup>87</sup> Registration and movement of refugees are also been governed by these legal provisions. Refugees are segregated into two categories after a primary inquiry; one category consisting of ordinary refugees, and the second consisting those who are suspected to have links with the LTTE. The latter are kept along with refugees who had violated the rules relating to registration under the Foreigners Act 1946.<sup>88</sup>

Indian Constitutional provisions are an important source for refugee law in India. Article 14 of the Indian Constitution guarantees the principle of equality. Article 21 ensures the right to life of everyone including non-citizens.

The judiciary in India had played a major role through case decisions in protecting rights of refugees. Several decisions emphasise that refugees are covered under Article 21 of the Indian constitution. In the case of *State of Arunachal Pradesh vs. Khudiram Chakma*<sup>89</sup>, the SC India emphasized the provision that no one shall be deprived of his or her life or liberty without the due process of law.<sup>90</sup>

---

<sup>87</sup> (Arjun Nair, 2007 ).

<sup>88</sup> (T.Anantachari, 2007)

<sup>89</sup> *State of Arunachal Pradesh v. Khudiram Chakma; Khudiram Chakma v. State of Arunachal Pradesh and Others*, 1994 Sup (1) Supreme Court Cases 615; Civil Appeal Nos. 2182 and 2181 of 1993

<sup>90</sup> (Anatachari, 2007 )

The importance of voluntary repatriation of SL refugees was emphasised in *Gurunathan and others vs. Government of India and others*<sup>91</sup> and in the matter of *A.C.Mohd.Siddique vs. Government of India and others*, In *P.Nedumaran vs. Union Of India*<sup>92</sup> the Madras High Court, permitted UNHCR officials to check on the voluntariness of the refugees in going back to Sri Lanka, and to permit those refugees who did not want to return to continue to stay in the camps.

According to Article 19 of the Indian constitution, which governs the right to movement of refugees, it is said that the right of movement within India is only guaranteed to citizens. Accordingly the movement of refugees both special and ordinary are subject to certain limitations. The right to movement of refugees in special camps is curtailed and all refugees must obtain permission to move from one State to another.<sup>93</sup>

The State of Tamil Nadu issues special “*refugee identification cards*” connoting the civil status of the said refugees. Special welfare schemes are being implemented for Sri Lankan refugee camps and special medical schemes are available for women and child refugees. India has spent 667 crores in providing assistance to such individuals up-to-date.

#### *Rights of Refugees*

##### *Shelter*

CSR 1951 requires states to provide shelter for refugees. According to the International covenant on Economic, Social and cultural rights, and Convention on the rights of the child, India is obliged to provide shelter for refugees. Refugee camps in India are classified into three categories. *The first category* comprises of an individual temporary house measuring 10 X 10 in length and breadth. The second type known as *go down camps*, are huge halls that could accommodate 100 families of four or five members each. *Special Camp* is the third category, which lacks basic facilities such as water and sanitation. In the year 2012 and 2013 a few families have been settled in some houses built by NGOs with the assistance of the government. In 2014 a case was filed in the

---

<sup>91</sup> Gurunathan and Seven Others v. Union of India (WP Nos. 6708 and 7916 of 1992)

<sup>92</sup> P. NEDUMARAN V/S UNION OF INDIA, decided on Monday, June 14, 1993. [ In the High Court of Andhra Pradesh, W. P. 3792 Of 1993

<sup>93</sup> Article 19 in The Constitution Of India 1949

Madurai HC to enhance the facilities for Tamil refugees. However the Court made an order stating that facilities have already been provided.

##### *Right to Education*

Article 22 of the CSR recognizes the right to education. Article 13 and 14 of the ICESCR also recognizes this right. Similar articles could be found in the CRC and UDHR. Article 22 of the CRC requires State parties to provide protection for child refugees. Child refugees receive opportunities for school education in Tamil Nadu and thereafter higher education at national universities. A special residential school has also been established in the State of Karnataka for the SL child refugees. Certain other welfare schemes and scholarships have also been offered to the school going child refugees, to pursue in their higher studies. However after obtaining the necessary qualifications many fail to acquire suitable employment opportunities that match their qualifications.

The Special Educational Reservation in higher education which had been in existence till 2002-2003 has now been withdrawn. Even though education facilities are being provided there is no access to medical and engineering courses. In 2014 a girl who obtained high rankings and was selected for medicine was denied admission to the medical college.<sup>94</sup> A case has been filed in the Madras high court, pending decision.

##### *Right to Employment*

CSR 1951 requires State parties to safeguard the rights of refugees, including the right to employment. In **Chapter III** of CSR which is titled ‘Gainful Employment,’ the contracting States have been urged to provide employment and self-employment opportunities and also allow them to carry on professions on the basis of favorable treatment to be given to foreign nationals. Article 17 refers to wage earning employment, Article 18 to self-employment, and Article 19 refers to the recognition of professional diplomas.

Although India is not obliged under CSR, it must be noted that by acceding to ICESCR in 1979, India has undertaken the obligation to protect the rights enshrined in this convention without any discrimination. This convention imposes on India the duty guarantee the rights of non-citizens with available resources

Right to work has been entrenched in Article 6 of the ICESCR. This right is linked with the “right to minimum wages” and the “right to fair working conditions and

---

<sup>94</sup> (Sunday times 2015 )

decent life". Sri Lankan refugees however do not enjoy these rights. Further they are not permitted to work in the State sector due to their lack of legal status and also due to the unemployment problems faced by the India itself. Refugees therefore work in the informal sector which mostly does not adhere to conditions established under international human rights conventions.

Humanitarian assistance such as the provision of shelter, cooking utensils, and minimum rations on subsidized rates are made available to the refugees. Considering the limitations of these resources, refugees are constrained to work to provide for their own needs. Most of the employment opportunities available are only outside the camps. Invariably they are forced to work for low wages under poor conditions.

Even in the occasion where women are able to find employment in Middle East as domestic aids, they are not able to take these opportunities due to the restrictions on their right of movement.

#### *B -Voluntary Repatriation - UN Refugee Law Regime*

The 1951 CSR and 1967 protocol to the convention are important sources of international refugee law. It is stated that "both instruments reflect a fundamental human value on which global consensus exists and are the first and only instruments at the global level, which specifically regulate the treatment of those who are compelled to leave their homes because of a rupture with their country of origin."<sup>95</sup>

International refugee law prescribes three types of durable solutions in this regard. They are (a) voluntary repatriation (b) local integration and (c) resettlement in third countries. Voluntary Repatriation is the most desirable and durable solution among the three. It was stated that voluntary repatriation means that after reviewing all available information about the conditions in the country of origin, refugees decide to freely return home.<sup>96</sup>

The principle of voluntariness is the cornerstone for the return of refugees. It connotes that the subjective fear had ceased. Refugee status can end once meaningful national protection is re-established.<sup>97</sup>

---

<sup>95</sup> (Volkertu RK & Frances Nicholson, 2002)

<sup>96</sup> (UNHCR 2005)

<sup>97</sup> (J.C. Hatheway, 2005)

Neither the CSR nor the Protocol address the question of voluntary repatriation or require the application of the standard for voluntary repatriation.<sup>98</sup> The gap can be filled by UNCHR conclusions 18 (1980). Accordingly whenever necessary, UNHCR can be involved in establishing the voluntary character of repatriation, cooperate with governments to assist refugees by arranging for guarantees to be provided by the country of origin, advising refugees of such guarantees and providing information regarding conditions prevailing in the country of origin, and monitoring the situation.<sup>99</sup>

According to UNHCR though there are no express provisions in CSR and protocol, several provisions are of relevance to UNHCR's statutory functions in regard to voluntary repatriation.<sup>100</sup> Article 33 of the CSR (non-refoulement) prohibits a State from expelling or returning ("refouler") a refugee in any manner whatsoever to the frontiers of territories where he or she would be exposed to persecution.

The principle of non-refoulement is not subject to reservations or derogations.<sup>101</sup> It provides that no one shall expel or return ("refouler") a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.<sup>102</sup> Right to return is motivated by a desire to return home.<sup>103</sup> As pointed out by Dowty "The right to return, no matter how justified in principle may in execution be impractical where causes of the original refugee flow remain"<sup>104</sup> The UNHCR has affirmed that the principle of non-refoulement constitutes a norm of customary international law and is thus obligatory for all States.<sup>105</sup>

---

<sup>98</sup> (UNHCR handbook).

<sup>99</sup> (ibid.,)

<sup>100</sup> UNHCR 2005

<sup>101</sup> ( Introductory note to Convention on the Status of Refugees 1951 )

<sup>102</sup> (ibid.,)

<sup>103</sup> (Dowty, 2000)

<sup>104</sup>

[http://www.badil.org/phocadownload/Badil\\_docs/bulletins-and-briefs/Brief-No.8.pdf](http://www.badil.org/phocadownload/Badil_docs/bulletins-and-briefs/Brief-No.8.pdf) accessed on 12. 03.2015

<sup>105</sup> (UNHCR 2005)

*Right to Return under International Human rights Law*

Right to return has been established under different branches of International law. Article 13 (2) of the Universal Declaration of Human Rights provides: 'Everyone has the right to leave any country, including his own, and to return to his country.' Article 12 (4) of the International Covenant on Civil and Political Rights, states "No one shall be arbitrarily deprived of the right to enter his own country."

Article 13 is important in the context of refugees since it relates with article 33 of the CSR which establishes the right of *non-refoulement*. The ICCPR applies to non-citizens and has been interpreted as prohibiting return when there is a probability of being subjected to torture. ICCPR and CAT also provide for protection from refoulement, or forced return, in situations where there is a substantial risk of torture.<sup>106</sup> Article 5 (d) (ii), of the Convention on the Elimination of Racial Discrimination also recognizes this right.

Refugees retain the fundamental human right to return to the country of origin regardless of the conditions of repatriation or conditions in their country. However, this right becomes meaningless where conditions exist that impair its free exercise.<sup>107</sup>

Refugees are free to exercise their right to return, however article 3 of the UNCAT states that "no State shall return refugees if there is a risk of torture". In Suresh V Minister of Immigration, Suresh was granted refugee status and his involvement with the LTTE was later discovered. The Canadian judiciary felt that although Sri Lanka is a party to CAT, if Suresh is sent back go to SL, he stands the risk of undergoing torture. Therefore was given the status as a "person in need of protection"<sup>108</sup>. This decision reaffirms the absolute obligation of States not to return ("refouler") a person to a country where he or she is at risk of being subjected to torture or other cruel or inhuman treatment.<sup>109</sup>

---

<sup>106</sup> Ibid.,

<sup>107</sup> (UNHCR handbook, 2005 )

<sup>108</sup> Suresh V Minister of Immigration ([2002] 1 S.C.R. 3, 2002 SCC 1 )

<sup>109</sup> Article 3 of the CAT 1984- Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides that no state shall expel, return ("refouler") or extradite a person to

Even though the rights against torture are not assured under CSR 1951, the *UN committee against torture* has recognized a complementary rule which supplements the prohibition of torture against refugees.<sup>110</sup> The committee in its general comment on Guyana's State report (May 2007) reminded that the government of Guyana should give prior importance to Article 3 of CAT and the committee further said that "the State party should submit in its next periodic report, information regarding implementation of article 3 of the Convention in cases of extradition, expulsion or return (refoulement) of foreigners." It is therefore understood that that states are obliged to implement Article 3 of the UNCAT.

UN resolution 194 greatly stresses on the importance of the international legal principles on the right to return, which are already established in different international human rights instruments. It imposes the states to allow refugees to return to their places of origin without any discrimination.

*C Right to Return - Responsibility of Country of Origin*

CSR 1951 makes it clear that the "refugee status" is temporary and will cease once a refugee resumes or establishes national protection<sup>111</sup>. J.C .Hatheway states that "once the receiving State determines that protection in the country of origin is viable, host country is entitled to withdraw refugee status".<sup>112</sup> According to Hatheway "Even when the circumstances in the country of origin have undergone a fundamental change, individual refugees may continue to have a well-founded fear of persecution or compelling reasons not to return arising out of fear of previous persecution"<sup>113</sup>.

As far as the obligation of the country of origin is concerned, the State has to allow refugees to return without any issues. The state should restore national

---

another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

<sup>110</sup>

<sup>111</sup> Voluntary Repatriation – International Protection, Handbook by UNHCR 1996 , P, 8 available at <http://www.refworld.org/pdfid/3ae6b3510.pdf>

<sup>112</sup> J.C. Hathaway, 1997

<sup>113</sup> Ibid.,

protection, provide repatriating refugees with the necessary travel documents, entry permits, and any other documentation required for the return. The State should generally be responsible for the elimination of the root causes of refugee flows<sup>114</sup>

States are required to ensure the creation of minimum legal conditions through free and fair elections, maintenance of law and order, and supply of basic services. These are necessary elements for successful and permanent repatriation<sup>115</sup>.

Sri Lanka took a few measures to address the issues of IDPs and refugee returnees. The foremost action that was taken in this regard was the establishment of the LLRC in 2010. Having analysed various documents, the LLRC made recommendations with regard to issues in the areas of governance, devolution, human rights, international humanitarian law, socio economic development, and livelihood. <sup>116</sup>

LLRC made specific recommendations with regard to land ownership and resettlement, right to water, right to livelihood, right to education, and right to health<sup>117</sup> of IDPs and refugee returnees. Recommendation 9.108 specifically emphasizes "the need of a formal bilateral consultation process between Sri Lanka and India to enable the displaced persons living in India to take considered decisions with regard to their return to Sri Lanka"<sup>118</sup>. However, so far no MOU has been signed between India and Sri Lanka. Although there was no MOU SL has encouraged voluntary return of Sri Lankan refugees presently in Tamil Nadu through its mission in Chennai. <sup>119</sup> A reintegration grant and a host of other

benefits are also being made available to them upon their return.<sup>120</sup>

After 2009 two general elections have been held in the war affected area and the people from north & east enjoy their rights to participation. Infrastructure facilities including roads, school, and hospitals have been developed.

Further specific measures have been taken to address issues of women-headed households, children and the elderly affected by the war, and disabled persons. Various ministries are the major stakeholders in this regard. National Policy on resettlement is being implemented by the Ministry of Resettlement along with other institutions to provide stable living environment with basic needs for IDPs and returnee refugees. However it must be noted that the intended objective is yet to be fulfilled.

Apart from the above broad category of rights primary importance is given to the rights of IDPs, and to women and children affected in armed conflict. National plan of action on promotion and protection of human rights<sup>121</sup> has a particular section dedicated to resettlement of IDPs and returnee refugees. These articles are yet to be put to action.

As a result of the 30 year conflict, a significant number of land owners lost their lands along with the rights attached to the said lands. Their lands have since been occupied by the army or other persons. LLRC has urged the government to bring an amendment to Prescription ordinance. As per the existing provisions anyone who could prove 10 years continuous, uninterrupted possession will be able to claim ownership. Therefore this is an urgent need for amendment to bring justice to the people who could not enjoy their land rights reasons beyond their control. As per the recommendation The Prescription (Special Provisions) Bill, which seeks to restore the rights of land owners was taken up for its Second Reading in Parliament on Aug. 7, 2014<sup>122</sup>. The bill is yet to pass.

---

<sup>114</sup> Article available at <http://www.un.org/WCAR/1.9e.pdf> accessed on 14.05.2015

<sup>115</sup> Gorman and Kibria 'Repatriation Aid' p, 68

<sup>116</sup> Report of the Lessons Learnt and Reconciliation commission, Sri Lanka, 2011

<sup>117</sup> IDPs awareness on Land Circular No. 2011/4

<sup>118</sup> <http://llrcaction.gov.lk/en/news/628-unhcr-commends-sri-lanka-s-efforts-in-reintegrating-idps.html> accessed on 18.12.2014

<sup>119</sup> Ibid.,

---

<sup>120</sup> [llrcaction.gov.lk/en/news/628-unhcr-commends-sri-lanka-s-efforts-in-reintegrating-idps.html](http://llrcaction.gov.lk/en/news/628-unhcr-commends-sri-lanka-s-efforts-in-reintegrating-idps.html)

<sup>121</sup> Prepared on the request of Universal Periodic Review

<sup>122</sup> According to prevailing laws under the Prescription Ordinance, a person holding uninterrupted, "adverse" possession of property for 10 years is entitled to ownership of that property.

### *Right to return as a Durable Solution*

As discussed in the second part of this paper, voluntary repatriation will be the best solution for SL refugees in India, provided that suitable conditions are created for them to return and find livelihood sources.

Some of the Sri Lankan refugees have had a prolonged stay while others have gone as refugees in recent times. Although India spent large amount on SL refugees, as a developing country it has its limitations. Refugees are therefore expected to go back to their own country when peace is re-established. The refugee situation is always a temporary protection. They will not be able to enjoy rights as the citizens of India. Their legal status will affect the property rights, movement. They are also not in a status to choose their political representatives. Their legal status as Sri Lankan nationals is of no use in this context. Humanitarian assistance will be given to them.

In international law the concept of repatriation has to be on a voluntary basis. In 1987 India tried to send SL refugees forcibly. A Public Interest Litigation was filed in the Madras High Court and the court accepted the principle that repatriation has to be voluntary. Even though VR is considered as the durable solution even after end of conflict in 2009 the number of returnees is at a low level. According to UNHCR, it has helped more than 11,400 Sri Lankan refugees to return voluntarily. At the global level, refugees across the world show greater interest towards irregular migration to countries like Australia, Italy etc., than to return to their country of origin.

As of July 31, 2015, 7128 refugees out of 102,000 from India returned to the island. <sup>123</sup>Not even 10% out of the total number 102,000.

Although they live in India there is no assurance about their future. The following issues have been identified as the reasons that lead to the reluctance to the return of country of origins, and also their desire to leave country of origin immediately after their return.

Majority of the refugees want to stay in India because their lives have been made easy with generous doles and concessions given by successive Governments of Tamil Nadu. They continue to believe that in Sri Lanka there is no safety, lack of livelihood opportunities and also the fear of probable violations of their human rights. A survey by the Tata Institute of Social Sciences (TISS), Mumbai, states that "among the one-lakh-odd Sri Lankan Tamil refugees in India it was found that 67%

want to remain in India. Only 23 per cent of the 520 families surveyed wanted to return to the island nation, while 4% wanted to migrate to a third country where they had relations".

Some refugees have returned to SL with lots of hope. However they are disappointed<sup>124</sup> because of the lack of a comprehensive national policy on land rights. According to the special Rapporteur on IDPs in Sri Lanka<sup>125</sup> large number of refugees still live in very precarious conditions. IDPs and refugees who returned in the last phase of the war and in the previous decades could not find a durable solution. Lack of infrastructure facilities, quality education, livelihood opportunities, and safety issues are major deterrents. The continuation of the Prevention of the Terrorism Act (1978), and the continued heavy presence of military forces in the former conflict zones have acted as a source of discouragement and disincentive.

A survey conducted by the UNHCR on durable solutions for IDPs reveals that "an estimated 57% of the respondents reported of a military presence or a checkpoint less than a mile from their homes and 87% said they had been registered by the military and had been interviewed by the military or the Criminal Investigation Department".<sup>126</sup> It was further found that the involvement of the military in civilian issues has a negative impact on the security climate. This condition is specifically hostile towards women, whose position is made vulnerable by the breakdown of social networks and communities, and the hope to return to their land and rebuild their lives.

---

<sup>124</sup> <http://unhcr.lk/wp-content/uploads/2014/03/HELPING-SRI-LANKAN-REFUGEES-Leaflet.pdf> accessed on 27.09.2014

<sup>125</sup> In accordance with the mandate bestowed on him by Human Rights Council resolution 23/8, and at the invitation of the Government of Sri Lanka, the Special Rapporteur on the human rights of internally displaced persons (hereafter the Special Rapporteur), Chaloka Beyani, conducted an official mission to Sri Lanka from 2 to 6 December 2013.

<sup>126</sup> UNHCR, *A Protection Assessment of Sri Lankan Internally Displaced Persons who have Returned, Relocated or are Locally Integrating: Data and Analysis*, June 2013, pp. 13–14.

---

<sup>123</sup> Report of the (Ministry of Resettlement )

#### X. CONCLUSION AND RECOMMENDATIONS

The above study shows that India is neither a party to CSR 1951 nor does India have any specific law to deal with refugees. Constitution of India however has provisions which serve as a resource for the rights of the refugees. Judicial decisions have reinforced these constitutional provisions.

India has several administrative arrangements to safeguard the rights of refugees, and these have been helpful not only in providing humanitarian assistance but also to extend protection that is normally applicable only to citizens.

International refugee law and human rights law both stipulate that refugees cannot be repatriated without their consent. Voluntariness is the corner stone of repatriation. CSR and CAT require states to repatriate refugees to countries of origin only if their life is not under threat or risk. Indian judiciary has categorically upheld this view.

Even after the war has ended there are several reasons why refugee return is not to an expected level. The reasons for this are to be found in the fact that there are many shortcomings in settlements of IDPs in Sri Lanka. They are not provided with the necessary facilities in resettled areas and continue to have sense of insecurity about their future. In the contrary refugees are able to enjoy certain rights and have a sense of security while in India

Sri Lanka has taken steps such as establishment of LLRC, introduction of national policy on resettlement of IDPS and refugees with basic needs, education, livelihood opportunities and concrete measures on land matters. However the younger generation born and brought up in India is confronted with uncertainties and is in need of greater reassurance.

There are a number of issues that ought to be settled between the authorities in India and in Sri Lanka in order to guarantee suitable environment to the returnees. It is of vital importance that there should be an MOU between SL and India. The MOU should be drafted in such a manner as to make the absorption of refugees gradually in stages.

Unless meaningful steps are taken in implementing the recommendations of the LLRC, along with amicable solutions to the pertaining land problems, livelihood difficulties, and the circumstances to live as dignified citizens, the problem is bound to be complex and difficult.

#### REFERENCES

Arjun Nair, 2007 National Refugee law for India : Benefits & Roadblocks IPCS research Paper Institute of Peace & Conflict Studies New Delhi

Guy S. Goodwin-Gill and Jane McAdam, 2007 "The Refugees in International law Oxford University press 3<sup>rd</sup> ed,

James Hathaway 1997 "The meaning of Repatriation ", International Journal of Refugee Law, Vol.9 NO. PP 551-558

T. Ananthachari ,. Refugees in India: Legal Framework, Law Enforcement and Security

Sri Lankan Tamil Refugees in Tamil Nadu Camps - Voluntary Repatriation or Subtle Refoulement", South Asia Human Rights Documentation Centre, New Delhi,

The Right of state to former Repatriates refugees James Hathaway Michigan law school available at <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1297&context=articles> accessed on 19.11.2014

Voluntary Repatriation – International Protection, Handbook by UNHCR 1996, P, 8 available at <http://www.refworld.org/pdfid/3ae6b3510.pdf>

Convention on the status of refugees  
International Covenant on Civil and Political Rights  
International Covenant on Economic, Social and Cultural Rights  
UN Convention against Torture

UNHCR Handbook on Voluntary Repatriation  
Report of Lessons Learnt and Reconciliation Commission  
National Policy on Resettlement

National plan of action on promotion and protection of Human Rights 2011-2016

[http://www.isidelhi.org.in/hrnews/HR\\_THEMATIC\\_ISSUE\\_S/Refugees/Refugees-2012.pdf](http://www.isidelhi.org.in/hrnews/HR_THEMATIC_ISSUE_S/Refugees/Refugees-2012.pdf)

<http://www.refworld.org/pdfid/4124b6a04.pdf> accessed on 19.11.2014

<http://www.online.sundaytimes.lk/news-online/indian-high-court-dismisses-petition-seeking-better-facilities-lankan-refugee-camps.html>,

<http://www.unhcr.org/4371fa4f2.pdf>



<http://www.unhcr.org/3b66c2aa10.html> accessed  
16.08.2014

[http://www.badil.org/phocadownload/Badil\\_docs/bulletins-and-briefs/Brief-No.8.pdf](http://www.badil.org/phocadownload/Badil_docs/bulletins-and-briefs/Brief-No.8.pdf)

<http://www.globaldetentionproject.org/law/legal-framework/international/treaties-and-protocols.html>

[http://www.badil.org/phocadownload/Badil\\_docs/bulletins-and-briefs/Brief-No.8.pdf](http://www.badil.org/phocadownload/Badil_docs/bulletins-and-briefs/Brief-No.8.pdf) accessed on

<http://lrcaction.gov.lk/en/news/628-unhcr-commends-sri-lanka-s-efforts-in-reintegrating-idps.html> accessed on

<http://lrcaction.gov.lk/en/news/628-unhcr-commends-sri-lanka-s-efforts-in-reintegrating-idps.html> accessed on

Indian and Sri Lankan Newspapers