POLICY BRIEF

STATE'S PLENARY POWERS AND INDIA'S "REFUGEE LAW"

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INTRODUCTION

Inherent in the exercise of powers of sovereign states are what are termed as "plenary" powers, those in respect of which judicial review is kept at a minimum and the plenary powers considered extensive, by way of reading in exceptionality. One such area of exercise of plenary powers is in respect of foreigners and aliens, a subject matter over which a sovereign state is considered to have exceptional legislative and executive powers.

In India, because there is no legal category of "refugee", all refugees and asylum seekers are first foreigners and therefore subject to and regulated by the Foreigners Act, 1946, Foreigners Order, 1948 and the Registration of Foreigners's Act, 1939.

Be that as it may, aided by the judiciary, the *claim* for refuge has been recognised as a fundamental right under Article 21 of the Constitution, which has included the right to approach UNHCR for making that very claim, being recognised as a refugee and the right not to be deported.

But while the Courts are now - thanks to decades of claim making by and on behalf of asylum seekers and foreigners - are in a position to protect foreigners from persecution and threats of persecution and thus develop refugee law, "national security" considerations remain impossible to cross. **On grounds of national security, Courts often join the State/Central government's cause by rejecting the claim to remain in India.**

This policy brief seeks to explore, by way of case law analysis, the stated rationale, scope and extent of the unbridled powers of the Indian state on matters involving foreigners.

- ➔ What are the contours of the prerogative or plenary powers of the State in the Indian legal tradition?
- ➔ Where do we trace the origins of the plenary powers? In what manner and in what category of the "foreigners" has the plenary power had an impact and how have these powers or set of rules that determine the State's ability to decide the fate of the foreigner, played out?
- ➔ This brief intends to demonstrate through discussion of some cases[1] that there seems little rationale in the manner in which immigrants and foreigners are treated in law; the application of law is anything but equal.

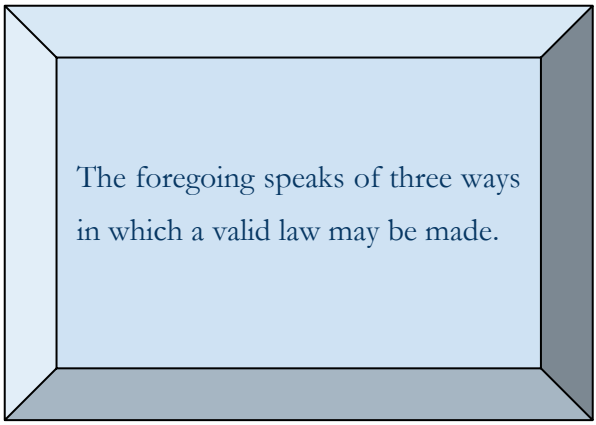
THE CONSTITUTIONAL SCHEME GOVERNING FOREIGNERS

- ★ **Articles 245 and 246 read with Entries 17 to 19 and 97,** List I of the Seventh Schedule of the Constitution give the powers and authority to the central government/i.e., the legislature to frame laws

with respect to matters that broadly fall under the subjects, foreigners, aliens and immigration.

★ **Articles 245 and 246 speak of distribution of legislative power of** the Parliament and the State Legislatures. Read together, these two Articles empower the Parliament to make laws with respect to matters enumerated in List I in the Seventh Schedule, the Union List of the Constitution. **Further, under Articles 73(1)(a) and (b), the executive power of the Union extends to "all matters with respect to which Parliament has power to make laws" and to "the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.**"

★ The executive power is co-extensive with the legislative competence of the Union. **The Supreme Court of India, in the case of *Ram Jawaya v State of Punjab*[2] interpreted Articles 73 and 162[3] and held that these provisions do not define "executive function" nor does it define what activities would legitimately come within its scope. Article 73 implies that the power of the central government extends to matters upon which the Parliament is competent to legislate.** They are not confined to matters over which legislation has been passed already. The Indian Constitution does not strictly follow the doctrine of separation of powers; it can exercise the powers of subordinate legislation when such powers are delegated to it by the legislature. It can also exercise judicial functions in a limited way but not go against the provision of the Constitution or any other law.[4]



1. **In the form of a Bill passed by the Parliament.**
2. **In the form of a delegated/subordinate legislation under an existing and valid statute.**
3. **Through the exercise of executive functions under Article 73.**

- It is under this Constitutional scheme that an indeterminate[5] body of parliamentary legislation, delegated legislation and judge made law constitute "refugee law".
- **R**efugee status determination, the principle of non refoulement and access to basic rights to education, among others, has been recognized as being an integral part of Articles 14 and 21, the right to equality and life, respectively.

Other provisions under Part III and IV of the Constitution directly protect refugees, including the right to religion (Article 25), rights in respect of arrest, detention and criminal prosecution (Articles 20 and 22) and the right to legal and constitutional remedies (Article 32 and Article 39-A).

Be that as it may, these "laws" are constantly in flux, and given to frequent changes with no certainty as to its application. The constant transformation of the legal landscape is in turn, in India, directly related to the *perceived* national security concerns. These concerns are seemingly obvious in some instances and in some others, open to speculation. The obvious ones that are part of the accepted folklore are the relationship between countries in the South Asian continent, the import of terrorism from across borders and religious identities of immigrants.

How then do plenary powers permeate decision making?

Do and if yes, when do courts take a backseat, as it were, in adjudicating claims and relief sought by immigrants? Can we notice any pattern in how plenary powers are not only upheld by the Court, but also exercised in full force by the Union government in matters before them?

The following is an account of decisions of the High Courts and Supreme Court in India, across a diverse category of petitioners.

PLENARY POWERS

A rich body of work on the origin, contents and application of plenary powers exists in the American legal context.[6] What is now considered a legal principle routinely applied to among others, immigration and "Indian law", the plenary powers doctrine is said to have originated in the case of *Chae Chan Ping v United States*[7] wherein the Supreme Court of the United States established that national security decisions should be made by the legislative and executive branches, not the judiciary.[8]

INVOCATION OF THE PLENARY POWERS DOCTRINE IN FOREIGNERS CASES IN INDIA

The cases[9] discussed in this section have a high precedential value in the Indian context.

- No statutory mechanism is available to invoke rights available to foreigners as refugees, these decisions of the High Court and the Supreme Court, both under the Foreigners Act, 1946 as well as others over the last four decades, have been and continue to provide the backbone, as it were, to claims in *law*, and not only on the basis of humanitarian or equity considerations.
- This brief urges the reader to see what the Court does when it is faced with questions and reliefs sought for by foreigners under the Constitution and Part III as *foreigners* and as *refugees*.
- **It is being suggested that the "plenary powers" of the State that the judges invoke in these cases are assumed rather than explained.**

The reader is also called upon to see the manner in which the court shows deference to the claims and assertions of the state - in either situations, i.e., in allowing petitioners' rights as refugees or disallowing their claims, on the grounds, among others, of national security. It is argued that the deference of the Courts is near total[10] - that chooses not to ask questions that would otherwise seem to be obvious. The study of the plenary powers in cases involving foreigners allows scrutiny of the now settled position in law that all persons have the fundamental rights to Articles 14 and 21 of the Constitution.

- ★What does it mean, on the one hand, to decide on the grounds of (at times, unexplained and unreasoned) plenary powers and yet, argue that certain fundamental rights are available to non-citizens?
- ★If the latter provisions of the Constitution are to be the line that cannot be crossed without a decision being called arbitrary and unconstitutional, are the decisions (of the Executive as well as the Judiciary) in reality compatible?

One of the earliest decisions of the Supreme Court recognising the plenary power of the state to expel a foreigner was the case of *Hans Muller of Nuremberg v Superintendent, Presidency Jail, Calcutta and ors.*[11]

- In this case, the Petitioner, a West German subject, was arrested by the Calcutta police in September 1954 and placed under preventive detention under Section 3(1) of the Preventive Detention Act, 1950 on the grounds that he is a foreigner within the meaning of the Foreigners Act, 1946 with a view to expel him from India.

- The writ petition before the Supreme Court was a second round of litigation by the Petitioner, Hans Muller, being aggrieved by the dismissal of his petition by the High Court of Calcutta. Before the High court, the Petitioner had filed a habeas corpus petition on the grounds that he had been illegally held in detention and no orders for his expulsion had been made.
- The Federal Republic of Germany had written to the Bengal government stating that the Petitioner was required for offences in Germany and that they would apply for his extradition. The Petitioner argued that his detention was invalid since Section 3(1)(b), Preventive Detention Act, 1950 was ultra vires the constitution on three grounds; that it contravenes Articles 14, 21 and 22; that Section 3(1)(b), Preventive Detention Act, 1950 is not a law of preventive detention within the meaning of Article 22(3) and therefore it contravenes Article 22(1) and 22(2); and the order was made in bad faith. The Supreme Court dismissed the petition.

On the rights of foreigners in India and whether there is any law in India vesting the executive government with the power to expel a foreigner as opposed to extraditing him, the SC held one, that the right to move freely throughout the territory of India and reside and settle in any part of India is not available to a foreigner.

- All that is guaranteed to them is protection to life and liberty in accordance with the laws of the land.
- Second, it held that the Foreigners Act, 1946 confers the power to expel foreigners from India and vests the Central

government with absolute and unfettered discretion and as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains.[12]

In the case of *Louis De Raedt and ors v Union of India*[13], the Petitioner(s)[14] challenged (central government) order(s) dated July 1987 where their prayer for further extension of the period of their stay was rejected and they were asked to leave India by a certain date, on the grounds that they were arbitrary.

Louis De Raedt's arguments before the court were twofold. He argued that by virtue of Article 5(c) of the Constitution. He became an Indian citizen on 26.11.1949 and therefore he cannot be expelled on the assumption that he is a foreigner. Alternatively, it was argued that the power to expel an alien is to be exercised in accordance with the principle of natural justice and the foreigner is entitled to be heard before he is expelled.

The Court did not accept the Petitioner's case.

On the question of Article 5(c), the Court held that "…the facts stated by the Petitioner himself do not leave any room for doubt that he did not have his domicile here."[15]

The Court concluded that the Petitioner's domicile was not in India because "there was no indication whatsoever in the …application that he intended to stay in this country on a permanent basis. The period

for which the extension was asked for was one year only indicating that by 1980, he had not decided to reside here permanently."[16]

It further held that "residence alone, unaccompanied by this state of mind [i.e., the proof that he formed the intention of making his permanent home in the country of residence and of continuing to reside there permanently], is insufficient.[17]

- **In para 11, the Court made a further observation.** It concluded that the petitioners preferred to stay in India on the strength of their passports, without taking appropriate steps to become permanent residents. They sought permission from time to time to stay for specific periods and "none of the applications filed by the petitioners in these connections *even remotely suggests* that they had formed any intention of permanently residing here."
- **In para 12, this conclusion is reiterated with the Court stating,** "…they have chosen to remain here on foreign passports with permission of Indian authorities to stay, on the basis of the said passports."

Rebutting the argument that foreigners enjoy fundamental rights under the Constitution, the Court held that the fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in India, under Article 19(1)(e).

Reliance was placed on *Hans Muller of Nuremberg v. Superintendent, Presidency Jail, Calcutta*[18], which held the -

GOIs power to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion.

As far as India is concerned, "…the executive government has an unrestricted right to expel a foreigner."[19] On the argument that a foreigner has the right to be heard, the Court concluded that there is no hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case.[20] (Para 13, p.562)

Cases involving refugees have not only invoked these two decisions noted above but in certain instances, have gone beyond the restrictive views that the two decisions highlight.

- The case of Chakma refugees is one example of the charitable stance of the judiciary, where questions of nationality security are not paramount.
- **The Chakmas are an ethnic tribe found in the states of India, Bangladesh and Myanmar.** They fled the Chittagong Hill Tracts in the 1960s to settle in India under a 1964 Indian government policy of granting refugee *and* citizenship. Over the last few decades, Chakma refugees either as individual petitioners or through their collective efforts have approached the Courts for directions against eviction as well as grant of citizenship.
- In the *State of Arunachal Pradesh v Khudiram Chakma*[21], the correctness of the decision of the Guahati High Court was in question. The High

Court[22] concluded that the order of the state government asking the Appellants (Khudiram Chakma and 56 other families) to shift out of Joypur was valid and that the Appellants had no right to seek a permanent place of abode (in that area).[23] This order and judgment of the Gauhati High Court was challenged before the Supreme Court.

To be able to appreciate the various observations and conclusions of the Supreme Court, brief facts are noted.

- The Appellant, Khudiram Chakma and 56 other families migrated to India in March 1964 from then East Pakistan and were given refuge in the Government camp at Lego, Diburgarh, Assam.
- Later, the appellants reportedly shifted to a camp in Miao in Arunachal Pradesh in 1966. In 1966, the Arunachal Pradesh government drew up the Chakma Resettlement Scheme wherein lands in Gautampupr and Maitripur were allocated for the Appellants.
- Instead of staying in these villages, the Appellants transferred themselves to private land after negotiations with the local raja through an unregistered deed in 1972. In 1973, the Appellant, Khudiram Chakma was reportedly appointed Gaon-Bura of village Joypur.
- It is alleged by the Appellants that due to the prosperity of the lands, the villagers of the nearby villages raised disputes, including that the lands cannot be utilised as a refugee settlement. Reports were also received that the Chakmas were committing criminal and illegal activities.
- The High Court, in this backdrop concluded that the petitioners had no right to seek a permanent place of abode (in Joypur) and the authorities were right in requiring/directing them to shift out.

- The High Court also found complaints against the Chakmas, including theft, procuring of arms and ammunition etc.
- Lastly, the High Court directed that the Appellants be given compensation in the event of their eviction.
- Before the High Court, the Appellants had contended that they were citizens of India in accordance with Section 6-A of the Citizenship Act, 1955 and that the order of the state government directing them to shift was illegal and arbitrary. They further argued that their fundamental rights had been infringed.

The Supreme Court, in this background, was required to consider the correctness of the decision of the High Court.

- It agreed with the High Court on most counts, that the donation of the Raja to the Appellants in setting up their residence in Joypur was invalid, that they could not claim citizenship under Section 6A of the Citizenship Act, 1955 given that conditions required under Section 6A were not satisfied and the order to shift was passed after giving them several opportunities to make their representations before the authorities.[24]
- The Supreme Court disagreed[25] with the High Court's decision to compensate the Appellants in the event of eviction, on the grounds that the Appellant's possession of the lands in the first place were contrary to the Bengal Eastern Frontier Regulation, 1873 and Clause 9(3) of the Foreigners Order, 1948. On the face of it, the Supreme Court's decision appears to be sound. However, in the light of its own observations and consideration of the facts and arguments of both

parties, the decision raises a number of concerns in how the Supreme Court decided this case.

- **We must remind ourselves that the Chakmas settled in India on the strength of them being declared as refugees by the state, and the resettlement scheme drawn up was in pursuance to such recognition as refugees.**[26]
- **Under international refugee law**[27]**refugees are subject to the law of the land just as any other citizen would be.**[28]
- In this case, the Supreme Court observes that the Chakma families were sought to be shifted by the state government because of their illegal occupation of protected area, procurement of arms and ammunitions, indulging in criminal activities and associating with anti-social elements and for being "…a source of constant trouble to the other tribes."[29]
- No observation is made in respect of these allegations of criminal and illegal activities except to make it a ground to uphold the government order of eviction. Unlike refugees belonging to other communities, Chakma refugees did not face deportation on account of these allegations. The Supreme Court also concluded that the Appellants were given avenues for representation before the authorities[30] and yet afforded a "post decisional hearing" to them on the submission made by the counsel for the state.[31]

Contrast this with the decision of *Louis De Raedt v Union of India*[32] where the Supreme Court concluded that there cannot be a hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case. The

difference in treatment by the Courts, and not only the Union/Central government is telling of how plenary powers - i.e., extensive powers that are not supported by statutory power (unwittingly) seep into decisions involving foreigners.

The case of *State of Arunachal Pradesh v Khudiram Chakma* elucidates, I argue that "national security" is more a function of what the Indian State believes than actual concerns of security.

Different in treatment and yet not very dissimilar to the cases discussed above, are the claims of **Burmese refugees in India, not including the Rohingyas, who are treated as a class of its own.**

Picture clicked by Sucharita Sengupta of Camp Refugees.

The accepted policy in case of the Burmese includes the right to approach UNHCR for asylum, the right not to be deported until refugee claims are considered by the UN refugee agency and the right of the Burmese to claim asylum in India.[33] Some of the later decisions have not been uniform.

- In the case of Lal Tlan Lawm v UOI and anr[34],the petitioner's wife approached the High Court of Delhi under a habeas corpus petition seeking his production from illegal confinement. The relief sought was that the Petitioner's husband should not be deported as they are recognised refugees with valid Long Term Visas issued by the Ministry of Home Affairs.
- The husband's arrest and detention (at the time of the petition) followed proceedings under the Narcotic Drugs and Psychotropic Substances Act, 1985 Act.
- The Petitioner's husband completed his sentence and was produced before FRRO who placed him in the Detention Centre. The MHA decided to deport the Petitioner's husband.
- The High Court's decision is worth examining closely. It held that guidelines for deportation were not followed by the government, which is to complete the process of deportation within six months and therefore held that this amounted to infringement of his rights under Article 21 of the Constitution.
- The High Court also observed that the freedom of movement of the Petitioner's husband cannot be restricted owing to the MHA's delay.
- It ordered temporary release of the detenu stating that collection of biometric data, compliance with surety requirements, and monthly police reporting adequate safeguard are sufficient conditions for his release until his deportation. Contrast the case of Lal Tlan Lawm v UOI with the one involving Chakma refugees in the case of *State of Arunachal Pradesh v Khudiram Chakma* where the Appellants were reported to be involved in illegal activities. Contract these cases with the case of State v Chandra Kumar & Ors[35], a decision of the Magistrate's Court which despite conviction, ordered release of the

Sri Lankan Tamil refugee.[36] The Magistrate's decision was based on international refugee law, which it discussed at length.[37]

CONCLUSION

- ➢ This brief intended to appreciate the scope, contours and boundaries of "plenary powers" in the Indian context with a specific reference to the manner in which asylum seekers and refugees are regulated. In addition to the execution orders passed routinely in regulating the presence of refugees in India, Courts have also, needless to say, played a very significant role in developing the "refugee law" framework.
- ➢ Thus, the case law analysis that this paper has focused on, is to further appreciate and understand how Courts have considered plenary powers, and whether and to what extent the breadth of plenary powers have been identified and defined by them. In the decisions rendered by Courts in India, the framework of plenary powers is at best, sketchy, in that there is an assumption that the State's plenary powers are meant to be respected.
- ➢ Taking this work forward would have to consider the constitutional law basis for what plenary powers has meant in the Indian context.

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[1] Needless to say, the cases discussed in this essay are not exhaustive of the subject. As a work in progress, this essay seeks to present the argument, even if partial. The cases selected for this essay are representative of the differing stance of the courts. It is hoped that even if not exhaustive, this representative sample of cases provides sufficient basis for continued engagement with this line of reasoning.

[2] AIR 1955 SC 549.

[3] Extent of executive power of the State.

[4] Supra note 93, para 7 at p. 554 and para 12 at p. 556.

[5] See also, Rajeev Dhavan, Refugee Law and Policy in India, PILSARC, 2004 for a composite account of refugee policy, the legal framework and its evolution. Two decades on, this account of India's refugee policy provides a historical and legal account that remains relevant. Other references include: Ragini Trakroo Zutshi (Ed), Refugees and the Law, HRLN, 2007.

[6] See, for instance, Susan Bibles Coutin, Justin Richland and Veronique Fortis, Routine Exceptionality: The Plenary Power Doctrine, Immigrants and the Indigenous Under U.S. Law, 4 UC Irvine Law Review, 97 (2014), retrieved from https://escholarship.org/uc/item/0r54h3mn (last accessed 26.10.2024); Sarah H. Cleveland, The Plenary Power Background of Curtiss-Wright, 70 U. Colo.L. Rev 1127 (1999), available at https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=4521&context=faculty_scholarship (last accessed 26.10.2024); Robert J. Reinstein, The Limits of Executive Power, American University Law Review 59, no. 2 (December 2009): 259-337, available at https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1005&context=aulr (last accessed 26.10.2024); Fawwaz Malki Shoukfeh, Where the Law is Silent: Plenary Power & the "National Security", Harvard Political Review, Constitution, available at https://harvardpolitics.com/national-security-constitution/ (last accessed 26.10.2024); Eric K. Yamamoto & Rachel Oyama, Masquerading Behind a Facade of National Security, The Yale Law Journal Forum, January 30, 2019, available at https://www.yalelawjournal.org/pdf/YamamotoOyama_q51woru1.pdf (last accessed 26.10.2024); Natsu Taylor Saito, The Enduring Effect of the Chinese Exclusion Cases: The Plenary Power Justification for On-Going Abuses of Human Rights, 2003, Asian American Law Journal, available at https://doi.org/10.15779/Z384K4H (last accessed 26.10.2024);Aziz Rana, Constitutionalism and the Foundations of the Security State, 103 California Law Review (2015), available at https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2549&context=facpub (last accessed 26.10.2024).

[7] 130 U.S 581 (1889), also called the Chinese Exclusion Case. In the case of *Chae Chan Ping v United States,* the question involved challenge to the law that denied entry to all Chinese workers who otherwise were allowed to migrate to the United States following the Burlingame Treaty of 1868 between the United States and China.

[8] See also, Fawwaz Malki Shoukfeh, Where the Law is Silent: Plenary Power & the "National Security", Harvard Political Review, Constitution, available at https://harvardpolitics.com/national-security-constitution/ (last accessed 26.10.2024).

[9] This paper does not exhaust all cases decided in respect of foreigners in India, but are only a sample. However, the intention is to discuss cases that do speak of and examine the doctrine of plenary powers both explicitly or unwittingly. Several academics and lawyers have analysed the import of precedents, the nature of refugee law and the various subjects that it covers. See for instance, Ranabir Samaddar (Ed), Refugees and the State: Practices of Asylum

and Care, 1997-2000, Sage Publications, 2003 and Shuvro Prosun Sarkar, Refugee Law in India, The Road from Ambiguity to Protection, Palgrave Macmillan, 2017.

[10] Ofcourse, recent orders of some trial courts and High Court such as *Dipak Gharti v Noorul Amin, SC NO. 25/2022* filed in Badarpur GPRS, Dima Hasao, Haflong, Assam, order dated 20.03.2023, *State v Mohammad Sadiq and anr, SC No. 123/2022,* Mekhliganj, Cooch Behar, Assam, dated 01.03.2023, *State of West Bengal v Sayed Noor and ors, GR Case No. 2060/2017,* order dated 19.07.2022, JMFC, Bangaon, North 24 Parganas (all orders on file with the author), are indeed an exception. However, the overarching legal framework does not allow for such decisions to set precedents. Further orders of the trial courts need not be accepting as supporting a claim and can be ignored. Even in these trial court decisions, the authorities such as the FRRO do not always defer to the decisions, leaving the petitioner or the accused in no better condition than when she approached the courts.

[11] AIR 1955 SC 367.

[12] ibid, paras 33 and 34.

[13] (1991) 3 SCC 554

[14] Ibid. Three writ petitions under Article 32 of the Constitution of India are filed by three individuals, including Louis De Raedt, a Belgian, B.E.Getter, an American and S.J. Getter, B.E. Getter's wife, also an American national. The text of the case suggests that the three petitioners were Christian missionaries working in India on a valid visa. Louis De Raedt, for instance, who came to India on a British visa in 1937, had worked as a missionary in an Adivasi area in Bihar and lived in India since 1937, i.e., for about 50 years at the time of presentation of the petition (in 1987). His case was that he had been staying in India continuously since 1937 excepting on two occasions when he went to Belgium for short periods in 1966 and 1973.

[15] ibid., p. 558 at para 5. The Petitioner's plea before the authorities that he was working in India for a long period of time, i.e., more than 50 years at the time the matter was heard in Court and that he was more Indian than Belgian was not accepted as a sufficient proof of domicile.

[16] ibid. p. 559 at para 6.

[17] ibid. p. 560 at para 10. Reference was made to the case of Central Bank of India v Ram Narain, AIR 1955 SC 36 which held that if a person leaves the country of his origin with undoubted intention of never returning to it again, nevertheless his domicile of origin adheres to him until he actually settles with the requisite intention in some other country.

[18] AIR 1955 SC 367.

[19] Louis De Raedt and ors v Union of India, (1991) 3 SCC 554, at p. 562, para 13.

[20] ibid.

[21] 1994 Supp (1) SCC 615.

[22] Civil Rule No. 166/1984.

[23] ibid. page 621 at para 26.

[24] Ibid. See pp 629-630 at paras 68 to 72.

[25] Ibid. See p. 631, paras 76 to 79.

[26] See, for instance, Minutes of the First Meeting of the Joint High Powered Committee constituted vide government of India's Order No. 13/2/2010-NE.II dated 10/08/2010 for resolution of Chakma and Hajong Refugee issue of Arunachal Pradesh, on 9th January, 2012, Banquet Hall, Itanagar.

https://www.mha.gov.in/sites/default/files/57_RTI_NE_JPS_280714.PDF (last accessed 16.11.2024)

[27] Article 2, UN Convention on the Status of Refugees, 1951.

[28] In a number of decisions, the High Courts have accepted the Central Government's arguments that refugees violating the law should be deported**.** See for instance, Lal Tlan Lawm v UOI and anr, WP (Crl.) No. 1327/2015, order dated 06.08.2015, Delhi High Court, disposed**.**

[29] State of Arunachal Pradesh v Khudiram Chakma, 1994 Supp (1) SCC 615 at p. 630, para 71.

[30] Ibid. See pp 629-630 at paras 68 to 72.

[31] ibid. See page 632, para 80.

[32] (1991) 3 SCC 554 at para 13.

[33] These include the now well known and often quoted judgments and orders: Zothansangpuii v State of Manipur, Civil Rule No. 981 of 1989, Imphal Bench, Gauhati High Court, decided on 20.09.1989, Bogyi v Union of India, Civil Rule No. 1847/89, Gauhati High Court, decided on 17.11.1989, U. Myat Kyaw & anr v State of Manipur and anr, Civil Rule No. 516/1991, Imphal Bench, Gauhati High court, decided on 26.11.1991, Dr. Malavika Karlekar V. Union of India, W.P. (Criminal) No. 583/1992, Supreme Court of India, decided on 25/9/1992.

[34] WP (Crl.) No. 1327/2015, order dated 06.08.2015, Delhi High Court, disposed.

[35] FIR No. 78/10, Magistrate's Court, Dwarka Courts, Delhi, order on sentence dt. 20.09.2011.

[36] In *State v Chandra Kumar,* the Accused Chandra Kumar was arrested while attempting to travel out of India on fake documents. He pleaded guilty and was convicted. The state argued that an order on sentence should include an order of deportation.

[37] ibid. The Court held that the convict has established that he has a well founded fear of persecution if deported. The principle of non refoulement is part of customary international law and binds India, irrespective of whether it has signed the 1951 Refugee Convention in as much as it is a party to other conventions that contain the principle of non-refoulement. Given the political situation in Sri Lanka, the Court asked how it can become a party to the persecution of an individual? In conclusion, the Court held that the convict shall not be deported but directed him to report back to the Sri Lankan refugee camp, at Thiruvallur district, Tamil Nadu. (Paras 36, 74, 91 and 95)