



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

REFUGEE POLICY IN INDIA IN THE LIGHT OF PROTECTION OF REFUGEE WOMEN

AUTHORED BY: MS. NUPUR KUMARI

Research Scholar

CNLU PATNA

ABSTRACT:

The 21st century has witnessed various forms of migration and new refugee conditions, which are facilitated by globalization. The most common forms of persecution which the refugees have been facing today is persecution on the grounds of gender which includes violence in different forms such as marital rape, domestic violence, sexual and gender based violences, forced abortion and sterilisation. The 1951 Refugee Convention guarantees equal rights to refugee women. The paper focuses upon the issue that the refugee women are currently unable to claim equitable benefits under the Refugee Convention, and the reason behind this could be construed as the procedural and evidential barriers which could prevent women's access to the asylum determination process. Another reason could be misinterpretation of the Refugee Convention, due to which it has often marginalized the experiences of refugee women. The paper aims to discuss the challenges faced by refugee women and asylum seekers in India, and it also focuses on how national, international, and other Human Rights laws could be efficiently utilized to protect the rights of the refugee women in India. The paper also aims to find out the existing gaps in the Refugee Laws and the practical aspect of the UNHCR and the actual practices followed in the states while responding to the needs of the refugee women in India. The paper also explores the applicability of other legal and policy frameworks which could significantly serve as improving measures, especially focusing upon the aspect of the protection of refugee women.¹ The research paper also aims to discuss the significant role of the UNHCR, the international and regional NGOs and the government agencies in protecting the rights of the refugee women. Due to the lack of codification of the refugee law there is a lack of judicial interventions since the term "refugees" has not been effectively and thoroughly defined due to which it becomes extremely difficult to qualify for the status of refugees in the countries like

¹ Gabriela Mesquita Borges, *Journey of Violence: Refugee Women's Experiences Across Three Stages and Places*, 25 INT. MIGRATION & INTEGRATION 673 (2024).

India and this raises a question mark over the protection of the refugees specifically confined to the women refugees thus suppressing them to the inconsistent and arbitrary government policies.

KEYWORDS: *Refugee Women, Human Rights, UNHCR, Asylum Seekers, Rights*

1. INTRODUCTION

“We cannot effectively protect refugee women if we are not ready to combat gender discrimination globally” IDLO Director General Irene Khan.² Individuals are displaced in the modern world for many different reasons, including armed war, civil unrest, ethnic cleansing, governmental tyranny, human rights abuses, poverty, hunger, and several kinds of persecution.³ Based on most recent UNHCR estimates, 82.4 million people worldwide were forcefully displaced by the end of 2020.⁴ Of this group, 4.1 million people are recorded as Asylum seekers and 26.4 million are labelled as refugees.⁵ It is especially remarkable because more than half of the worldwide recorded refugees are women.⁶ As such, at present women and girls account for half of the worldwide refugee count. Although this is the case, reports show that just 0.4% of total help to fragile countries was supplied towards women’s groups or ministries from 2012 to 2013 and scarcely 4% of project proposals in UN inter-agency appeals in 2014 were devoted to women and girls.⁷ Still, programs meant to protect and help migrants and refugees sometimes overlook the needs, interests, and issues raised by female migrants. Though they play crucial and caring roles in maintaining their communities, history shows that women in society often become susceptible victims throughout almost every global crisis. Given their unstable position in cases of exploitation and their traumatic refugee status, some claim that women refugees reflect a “*doubly disadvantaged*” and “*doubly vulnerable*” demographic. Indeed, “*although refugees, in general, may encounter violence related to exile, refugee women are especially*

² Barbara Prammer Symposium on ‘WOMEN, REFUGEES, SOLIDARITY’ addressed by Irene Khan, Director-General, International Development Law Organization, January 18, 2016, Vienna, Austria, <https://www.idlo.int/news/speeches-and-advocacy/women-refugees-solidarity>.

³ V. Suryanarayan, *Refugee Dilemma: Sri Lankan Refugees in Tamil Nadu* 14 (Prabhat Prakashan, New Delhi, 1st edn., 2019).

⁴ UNHCR, “Refugee Data Finder”, <https://www.unhcr.org/refugee-statistics/>.

⁵ *Ibid.*

⁶ UNHCR says, “women represent 51 per cent of populations in refugee camps, worldwide. There are approximately 50 million uprooted people around the world who have sought safety in another country and people displaced within their own country. Between 75 and 80 percent of them are women and children”. Originally taken from: Aliva Mohanty, *Women Refugees of India: Risks and Challenges* 28 (Kunal Books, New Delhi, 2018).

⁷ UN Women, “Women Refugees and Migrants”, <https://www.unwomen.org/en/news/in-focus/women-refugees-and-migrants>.

susceptible to gender-based violence.”⁸ Women have different requirements than males and experience conflict and displacement differently. For men and women, the events and tragedies of forced migration and relocation have different consequences. Though both male and female members of this group usually come across identical violations of human rights, affected by their gender roles, these transgressions usually show out in different and different ways for male and female victims.⁹ Within this framework of international refugee law, the authors seek to investigate the situation of women refugees, acknowledging their rights as refugees on the global scene, the function of UNHCR in their recognition and protection, and the vulnerabilities and hardships they suffer in many spheres of their traumatic events. The authors also suggest some ways to improve their situation so they may carry out their obligations in pertinent policy development and execution.

2. FEMALE REFUGEES WITHIN THE INTERNATIONAL REFUGEE LAW STRUCTURE

The word “*refugee*” is used commonly to describe “*an individual fleeing*” to escape unpleasant conditions or personal circumstances. A “*refugee*” is defined in Black’s Law Dictionary as “*an individual who escapes or is expelled from a nation, particularly due to persecution, and seeks Asylum in another nation.*”¹⁰ The “*Encyclopaedia of Social Sciences*” defines a “*refugee*” as “*an involuntary migrant, a victim of political strife, warfare, or national disaster.*”¹¹ All told, it shows a person “*compelled to abandon their residence due to circumstances outside their control, such as persecution, civil unrest, war, famine, earthquake, or environmental degradation.*”¹² Generally speaking, and in normal use, the term “*refugee*” is gender-neutral and does not relate to one’s gender. The “*Convention Relating to the Status of Refugees*” of 1951 and the “*Protocol Relating to the Status of Refugees*” of 1967 are the main international legal treaties concerning refugees.¹³ Furthermore, existing about the protection and acknowledgement of refugees in the worldwide scene are several regional international

⁸ Snehal Fadnavis, *Women Refugees in India: Problems & Perspectives* 12 (Dattsons Publications, Nagpur, 1st edn., 2007).

⁹ ALIVA MOHANTY, *WOMEN REFUGEES OF INDIA: RISKS AND CHALLENGES*, 23 (Kunal Books, New Delhi, 2018).

¹⁰ Bryan A. Garner (ed.), *IX Black’s Law Dictionary*, (Thomson Reuters, U.S.A, 2009).

¹¹ Dr. N. SUBRAMANYA, *HUMAN RIGHTS AND REFUGEES*, 1 (APH Publishing Corporation, New Delhi, 2011).

¹² *Supra* note 8 at 6.

¹³ Adopted on 28th July 1951 by the United Nations under General Assembly resolution 429 (V) of 14th December, 1950. By Article 43 of this Convention, it entered into force on 22nd April, 1954

mechanisms. Considered as the pillar of the international refugee law system, the 1951 Refugee Convention and the 1967 Protocol provide the basis of international refugee law to now.¹⁴ While enumerating their rights and the related obligations of receiving governments that are members of the agreement¹⁵, the 1951 Convention defines the word “*refugee*,” so setting the criteria for evaluating the refugee status of an asylum seeker.¹⁶ The 1967 Refugee Protocol thus removed the geographical and chronological restrictions of the 1951 Convention, so extending its universal applicability and deleting from the Convention’s definition of a refugee the term “*as a result of events occurring before 1st January, 1951.*”¹⁷

Consequently, it is abundantly evident from the 1951 Refugee Convention that “*gender*” is not included among the listed reasons for “*persecution*,” so deeming persecution based on gender unsuitable for refugee status assessment or application approval.¹⁸ Women’s rights were underappreciated and poorly recognized during the Refugee Convention’s drafting. Later, it came under heavy fire from feminist groups around the world, who claim the creators of the Refugee Convention ignored this whole issue. International tools aimed at refugees do not distinguish between male and female ones. If a female victim of persecution can show her fear of persecution depending on the five listed grounds of the 1951 Convention before the pertinent RSD authority, she is qualified for refugee status. As such, a female petitioner’s asylum claim has nothing to do with her gender.¹⁹ Feminists have attacked the 1951 Geneva Convention for omitting to include gender as a fundamental component in refugee assessment. Later instruments unequivocally show that the drafters or plenipotentiaries only gave male victims top priority. Years of accords on refugees have mostly focused on male equivalents. According to a 1980 U.N. report, “*women comprise half of the global population, undertake nearly two-thirds of the world’s labour, earn one-tenth of the global income, and possess less*

¹⁴ The Protocol Relating to the Status of Refugees was adopted by the U.N. General Assembly on 31st January, 1967 and it entered into force on 4th October, 1967.

¹⁵ Article 1A (2) of the Convention Relating to the Status of Refugees, 1951.

¹⁶ According to the definition of the term ‘refugee’ as contained in 1951 Refugee Convention, a person shall be construed as refugee who “as a result of events occurring before 1 January 1951 and 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

¹⁷ V. Vijayakumar, “Refugees and Human Rights: International and National Experiences” in Chiranjivi J. Nirmal (ed.), *Human Rights in India: Historical, Social and Political Perspectives* 177 (Oxford India Paperbacks, 2002).

¹⁸ It is a basic fact that “the refugee definition does not specifically refer to gender as a basis for conferring of refugee status”. Originally taken from: Snehal Fadnavis, *Women Refugees in India: Problems & Perspectives* 13 (Dattsons Publications, Nagpur, 1st edn., 2007).

¹⁹ B.S. CHIMNI (ED.), *INTERNATIONAL REFUGEE LAW: A READER* 42 (Sage Publications, New Delhi, 2000).

than one-hundredth of the world's property.”²⁰ It was agreed that women experience discrimination almost in all spheres of life. Twenty-two Amnesty International succinctly described this circumstance when remarking that “women are faceless masses populating the backdrop of terror and adversity.”²¹ Regardless of any law or political endeavour, gender discrimination and violence—including physical, psychological, sexual, or psychological abuse—formulate a worldwide reality.²² The 1948 Universal Declaration of Human Rights ensures without discrimination or unfairness universal human rights to all people, including women. Noted in Article 2 of the UDHR, 1948, this and banned any kind of discrimination for the enjoyment of rights and freedoms guaranteed by this Declaration. Looking at the above-mentioned Article of the UDHR, one finds that sex is among the forbidden justifications.²³ Though important, this declaration has not improved the position of women members of the society, maybe because of its non-binding and declarative character. Globally, feminists underlined more and more the difference between women's rights and universal human rights.²⁴ One clear need arose to classify women as a particular group needing focused care and protection. While refugees everywhere face discrimination and extreme suffering, women refugees especially suffer the compounded afflictions of many sexual atrocities, deprivation, and gender-based inequality over extended periods, from border crossings to camps and during repatriation or reintegration processes. Regional refugee law instruments similarly ignored this element in extending the term of “refugee,” following the 1951 Convention and its related 1967 Protocol. By surpassing the subjective criterion of “well-founded fear of persecution” and emphasizing objective norms in the country of origin, the next regional protocols on refugees have indeed expanded the concept of “refugee.”²⁵

²⁰ Dr. Sachi Chakrabarty, “Women's Right to Property in India: An Appraisal with special reference to Matrimonial Property” 1 Cal LT 20 (2013).

²¹ Former UN Secretary General, Kofi Annan was of the view that “Violence against women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace”. Amnesty International, “Women's Rights: Human rights education activities for use in teaching Personal Social and Health Education, Citizenship and English for ages 11 –18”, available at: <https://www.amnesty.org/download/Documents/SEC0100112013ENGLISH.PDF>.

²² Amnesty International Campaign on Women's Human Rights, 8th March, 1995. Originally taken from: Aliva Mohanty, *Women Refugees of India: Risks and Challenges* 36 (Kunal Books, New Delhi, 2018).

²³ Article 2 of the UDHR, 1948 provides that, “everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

²⁴ Avinash Govindjee & Elijah Adewale Taiwo, “The Protection of Women Refugees under the International Refugee Convention” in Rafiqul Islam & Jahid Hossain Bhuiyan (eds.), *An Introduction to International Refugee Law* 379 (Martinus Nijhoff Publishers, 2013).

²⁵ While Article I (1) of OAU Convention incorporates the 1951 Convention definition, paragraph (2) of the said Convention adds an approach more immediately reflecting the social and political realities of contemporary refugee movements. Under this Convention, persons accepted as refugees are those who have been compelled to

While supporting the basic ideas of the 1951 Refugee Convention in its first section, the OAU Convention Governing Specific Aspects of Refugee Problems in Africa of 1969 has broadened the definition of “*refugee*” in its subsequent section to include persons who:²⁶ “*owing to external aggression, occupation, foreign dominance or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence to seek refuge in another place outside his country of origin or nationality.*”²⁷ Likewise, by neglecting their concerns, the OAS Cartagena Declaration of 1984 has replicated the same mistake. The author stays away from tackling the divisive question of whether the deed was deliberate or accidental.²⁸ The Cartagena Declaration has broadened the definition of “*refugee*” to include those who have fled their nation because of threats to their life, safety, or freedom resulting from generalised violence, foreign aggression, internal strife, major human rights abuses, or other events seriously upsetting public order.²⁹ As a result, it is clear that the international refugee law system has paid insufficient attention to women as a unique group of refugees and has neglected their suffering and issues.

3. RESPECT OF WOMEN’S RIGHTS AS “*REFUGEES*”

The United Nations started the conversation on the need for particular protection for female refugees in 1985. 1985 stands out as a major turning point in international women refugee protection. That year Soesterberg hosted an international conference on women refugees. Along with developing pro-asylum laws for their protection and recognition, this conference concentrated mostly on the analysis and discussion of sexual crimes done against women refugees. Attaching the conference to investigate and evaluate workable solutions for this vulnerable group were a multiplicity of representatives from several European countries and worldwide refugee protection forums. Among the other suggestions, one that stands out is that governments should accept persecution based on sex as a criterion for persecution resulting

flee due to external aggression, occupation, foreign domination, or events seriously disturbing public order. Available in: Guy S. Goodwin-Gill, “The International Law of Refugee Protection” in Elena Fiddian-Qasmiyeh, Gil Loescher *et.al.* (eds.), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press, 1st ed., 2014).

²⁶ The OAU Convention was adopted by the Assembly of Heads of State and Government of the Organisation of African Unity on 10th September, 1969 at its sixth ordinary session and it came into force on 20th June, 1974.

²⁷ Article I (2) of OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969.

²⁸ The Cartagena Declaration was adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama on 22nd November, 1984.

²⁹ *Ibid.*

from “*membership in a particular social group*.”³⁰ The substance of the conference suggests that although not mutually exclusive, women refugees could be subjected to particular categories that are only indicative.³¹ Following some categories will help to improve evaluation:

- a) “*Women who apprehend persecution on comparable Convention grounds and under comparable circumstances as men.*” Their particular identity (such as racial, national, or social) or their beliefs—or the impressions of their beliefs—including political or religious views—defines the risk factor instead of their sexual status itself.
- b) Women who catch persecution only because of familial considerations—that is, on account of the status, behaviours, or opinions of their parents, siblings, or other relatives.
- c) Women who report persecution resulting from particular circumstances of significant gender discrimination or acts of violence committed by public authorities or private persons, from whom the state is either unwilling or unable to offer efficient protection.
- d) Women who, in their country of origin, dread persecution resulting from nonconformism or violations of particular gender-discriminatory religion or custom rules and practices.

A lot of legal work on the subject has evolved since then, and other governments and international organizations have shown interest in including this viewpoint into their protective systems.³² A major change occurred during this time when a separate women-centric human rights system developed alongside the more general international human rights legislative framework. The most fitting example is the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ratification.³³ Adopting the motto that women’s rights are human rights, the Vienna Conference on Human Rights recognized in 1993 women’s rights as an essential component of human rights.³⁴ Sometimes the Convention on the Elimination of Discrimination Against Women (CEDAW) is known as an international

³⁰ Persecution owing to one’s ‘membership of a particular social group’ is one of the recognised ground in the Convention Relating to the Status of Refugees, 1951. Thus one becomes eligible for refugee status if he or she is able to exhibit and establish that ground before the Refugee Status Determination (RSD) authority

³¹ Avinash Govindjee & Elijah Adewale Taiwo, “The Protection of Women Refugees under the International Refugee Convention” in Rafiqul Islam & Jahid Hossain Bhuiyan (eds.), *An Introduction to International Refugee Law* 379 (Martinus Nijhoff Publishers, 2013).

³² *Ibid.*

³³ Convention on the Elimination of All Forms of Discrimination against Women was adopted on 18th December, 1979 vide General Assembly Resolution No. 34/180 and it entered into force on 3rd September, 1981 in accordance with its Article 27(1).

³⁴ SNEHAL FADNAVIS, WOMEN REFUGEES IN INDIA: PROBLEMS & PERSPECTIVES, 94 (Dattsons Publications, Nagpur, 1st edn, 2007).

women's bill of rights. It consists of a Preamble and thirty Articles defining the boundaries of gender inequality and creating a national action plan aimed at its elimination.³⁵ This Convention seeks to provide a global benchmark for advancing gender equality and eradicating all kinds of gender imbalance and discrimination anywhere. This Convention particularly addressed the complaints about women's exploitation through the horrible acts of prostitution, their trafficking, and other damages special to women. It sought to forward women's rights by giving them affirmative guidance and encouragement in all spheres of their neglected life. Established to track its application is a Committee on the Elimination of Discrimination against Women.

In General Recommendation No. 32 the Committee has underlined the "*gender-related dimensions of refugee status, asylum, nationality, and statelessness of women*."³⁶ The Committee has underlined in its overall recommendations the following fundamental truth: "*Gender-related forms of persecution are those directed against a woman due to her gender or those disproportionately impact women*."³⁷ The comment of the Committee in paragraph 13 seems strong and relevant. According to the Committee, the five designated categories—race, religion, nationality, membership in a particular social group, or political opinion—must be the basis for persecution according to Article 1A (2) of the 1951 Convention relating to the Status of Refugees. The text does not feature gender-based persecution.³⁸ Emphasizing a gender-sensitive approach in the asylum process and related affairs³⁹, the "*Statement of the Committee*

³⁵ UN Women, "Convention on the Elimination of All Forms of Discrimination against Women", <https://www.un.org/womenwatch/daw/cedaw/>.

³⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW), "General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women", 5 November 2014, CEDAW/C/GC/32, <https://www.refworld.org/docid/54620fb54.html>.

³⁷ Para 15 of General recommendation no. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women by UN Committee on the Elimination of Discrimination Against Women (CEDAW) further provides that, "They may include the threat of female genital mutilation, forced/early marriage, threat of violence and/or so-called "honour crimes", trafficking in women, acid attacks, rape and other forms of sexual assault, serious forms of domestic violence, the imposition of the death penalty or other physical punishments existing in discriminatory justice systems, forced sterilization, political or religious persecution for holding feminist or other views and the persecutory consequences of failing to conform to gender-prescribed social norms and mores or for claiming their rights under the Convention". <https://www.refworld.org/docid/54620fb54.html>.

³⁸ Para 13 of General recommendation no. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women by UN Committee on the Elimination of Discrimination Against Women (CEDAW) also provides that, "The present general recommendation is intended to ensure that States parties apply a gender perspective when interpreting all five grounds, use gender as a factor in recognizing membership of a particular social group for purposes of granting refugee status under the 1951 Convention and further introduce other grounds of persecution, namely sex and/or gender, into national legislation and policies relating to refugees and asylum seekers". <https://www.refworld.org/docid/54620fb54.html>.

³⁹ Statement of the Committee on the Elimination of Discrimination against Women (CEDAW) on the refugee crises and the protection of women and girls was adopted on

on the Elimination of Discrimination against Women (CEDAW) on the refugee crises and the protection of women and girls” reiterated this stance in 2015.⁴⁰ Furthermore, in 1993, the “Declaration on the Elimination of Violence against Women” acknowledged “refugee women” as a unique category vulnerable to violence and urged governments to solve these problems to abolish and eradicate violence against women.⁴¹ This Declaration complements and expands upon the CEDAW of 1979.⁴²

4. WOMEN ASYLUM SEEKERS AND UNHCR’S FUNCTION

In the international refugee scene, the United Nations High Commissioner for Refugees (UNHCR) has been instrumental in helping this particular sub-group overcome trauma and problems. The UNHCR’s first influence and voice were not very strong; nevertheless, starting in 1985, it started to accept their claims, resolve their issues, and include refugee women into the general execution of programs connected to their displacement.⁴³ Notably, from 1985 to 1989, the UNHCR’s Executive Committee issued four separate conclusions expressing their issues and suggesting suitable solutions to improve their situation. The Executive Committee created the “UNHCR Policy on Refugee Women” in 1990, and this had a major influence on international refugee law. This Policy recognizes that different effects of becoming refugees fall on men and women. The Policy recognized that women refugees should be positioned higher than those of regular beneficiaries who silently get food, shelter, and other material support for refugee relief and rehabilitation projects. This Policy supports the integration of women refugees who have escaped persecution in the development and execution of certain activities inside the overall refugee-centric policies and programs. Therefore, it became clear that women refugees should be included and integrated into all phases of refugee program

20 November 2015 during its 62nd session.

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CE_DAW_STA_7845_E.pdf.

⁴⁰ Statement of the Committee on the Elimination of Discrimination against Women (CEDAW) on the refugee crises and the protection of women and girls inter-alia provides that, “the Committee also calls on States parties to fully respect the rights of women and girls during the entire asylum-seeking process and to fully integrate a gender-sensitive approach in the implementation of national legislation on asylum, in particular regarding the special claims for asylum that women and girls may have due to their exposure to discrimination and/or violence in their country of origin and/or during their flight. Finally, the Committee calls on the international community to spare no effort to find durable political solutions to current conflicts, which continue to be the main drivers of displacement for women and girls”.

⁴¹ Declaration on the Elimination of Violence against Women was Proclaimed by the General Assembly Resolution No. 48/104 of 20 December 1993,

<https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx>.

⁴² Amnesty International, “The Human Rights of Women in the United Nations: Developments 1993 – 1994”, <https://www.amnesty.org/download/Documents/180000/ior510011995en.pdf>.

⁴³ UN High Commissioner for Refugees (UNHCR), “UNHCR Policy on Refugee Women, 1990”, available at: <https://www.unhcr.org/protection/women/3ba6186810/unhcr-policy-on-refugee-women-1990.html>.

development and execution. They shouldn't be subjected just to the whims of their male colleagues. The fundamental goal of a UNHCR project or program is to mainstream refugee women. The following define the goals and aims: Consider the particular social dynamics between refugee women and their families. Then, enhance their engagement as both participants and beneficiaries in the social and economic activities of the project;

- a) raise their status and involvement inside the community;
- b) act as a catalyst for better access to employment, education, services, and opportunities.⁴⁴

The UNHCR then published “*UNHCR Guidelines on the Protection of Refugee Women*.” 1991⁴⁵ By UNHCR recognizing their concerns and including their role and interests, this Guideline may be regarded as the most thorough. Beginning the aforementioned Guideline, the UNHCR underlined the indisputable fact that, in addition to basic needs shared by all refugees, “*refugee women and girls possess distinct protection requirements that are gender-specific: they require, for instance, safeguarding against manipulation, sexual and physical abuse and exploitation, as well as protection against sexual discrimination in the provision of goods and services.*”⁴⁶

These Guidelines stress the need of including the needs and resources of refugee women into all spheres of activities to guarantee fair protection and support. It examines the legal and physical protection requirements of female refugees, pointing out areas that call especially for specialized attention and response as well as required implementation strategies. Examining the above-mentioned guideline closely reveals that it stresses refugee women's reproductive health, education, involvement in camp administration, food distribution, and problems of gender-based violence.⁴⁷

According to the ‘Women's Commission for Refugee Women and Children’, this Guideline applies the ideas of “*improved protection approach*” and “*successful aid efforts*” to enable effective and flexible operations in this field. Here are some notable examples: Improved

⁴⁴ *Id.* at 7

⁴⁵ UN High Commissioner for Refugees (UNHCR), “Guidelines on the Protection of Refugee Women”, July 1991, <https://www.refworld.org/docid/3ae6b3310.html>.

⁴⁶ *Ibid.*

⁴⁷ Being established in 1989 under the auspices of the International Rescue Committee, the Women's Commission for Refugee Women and Children aims to improve and proliferate the lives of refugee women, children, and adolescents through a vigorous program of public education and by acting as a technical resource. Women's Commission for Refugee Women and Children, “UNHCR Policy on Refugee Women and Guidelines on Their Protection: An Assessment of Ten Years of Implementation” (New York, 2002), <https://www.refworld.org/pdfid/48aa83220.pdf>.

registration mechanisms allowing every person to obtain their identity card; ii) More strong application of national legislation for the enforcement of protection and human rights; and iii) Enhanced capacities for gender-sensitive refugee status decisions.⁴⁸ Effective assistance projects cover:

- a) improved enrolment of girls in educational institutions;
- b) strategies to organize refugee women and integrate them into camp administration;
- c) direct participation of women in food distribution;
- d) incentives to recruit additional female personnel in health and education sectors;
- e) expanded access to reproductive health services;
- f) safe havens and counselling services for survivors of trauma or violence.⁴⁹

Development of particular policies to prevent sexual violence against refugees is another major effort UNHCR makes in this field. To handle this widespread global problem, the UNHCR unveiled a major weapon in its toolkit in 1995: “*Sexual Violence Against Refugees: Guidelines on Prevention and Response*.” This regulation is especially important since it covers harm or injury that either exclusively affects women or occurs more often among women than men and requires particular consideration from the RSD authority while assessing their claims.⁵⁰ It recognizes the basic fact that crimes against women refugees and sexual assault call for worldwide attention. This violates basic human rights and causes victims already traumatized by their forced relocation and resettlement great anxiety. Along with the physical, psychological, and social effects for those exposed to this additional trauma, the UNHCR Guideline described above offers a summary of the situation and processes by which sexual violence may show itself in refugee environments.⁵¹ Based on the studies, the UNHCR admits that many events of this kind remain hidden for a variety of reasons, including shame, related social stigma, and fear of retribution. They underline the need of understanding and information at the legal level, direction in leadership, skill development, and educational privileges for women refugees.⁵²

⁴⁸ *Id.* at 2.

⁴⁹ *Supra* note 46 at 2.

⁵⁰ UN High Commissioner for Refugees (UNHCR), “Sexual Violence Against Refugees: Guidelines on Prevention and Response” (Geneva, 1995), <https://www.unhcr.org/publications/operations/3b9cc26c4/sexual-violence-against-refugees-guidelines-prevention-response-unhcr.html>.

⁵¹ B.S. CHIMNI (ED.), INTERNATIONAL REFUGEE LAW: A READER, 42 (Sage Publications, New Delhi, 2000).

⁵² UN High Commissioner for Refugees (UNHCR), Foreword note of Special Rapporteur on violence against women, Commission on Human Rights on “Sexual Violence Against Refugees: Guidelines on Prevention and Response” (Geneva, 1995), <https://www.unhcr.org/publications/operations/3b9cc26c4/sexual-violence-against-refugees-guidelines-prevention-response-unhcr.html>.

5. WOMEN REFUGEES: THEIR PROBLEMS

After suffering trauma from different kinds of violence in their home countries, women refugees commonly cross boundaries; many of these damages are related to their gender and follow them all through their refugee status. Female victims grow used to bearing the effects of these systematic attacks both in their country of origin and in the place of asylum as their oppression and vulnerability related to gender shapes their life. Forty-four Common forms of violence in this area are "rape," "sexual atrocities," "female genital mutilation," "domestic abuse," "forced impregnant," "forced abortion," "forced sterilization," "demand for sexual favors," among others. An attack on a woman's liberty, inherent privacy, fundamental dignity, and bodily integrity, rape and other forms of sexual violence represent. Although it was later protected by several international agreements, rape was first considered as a "privatized affair" within the context of refugee law, and consequently it was not judged deserving of refugee status.⁵³ Still, a major change has been noted in this field as gender asylum jurisprudence develops and advances.⁵⁴ Professionals in this field argue that when assessing claims and determining different kinds of persecution, the term "persecution" in the 1951 Refugee Convention should be understood broadly and beyond the set criteria, so acknowledging gender-based violence and harm.⁵⁵ academics argue that the 1951 Convention's definition of "membership of a particular social group" should be understood to let women victims targeted for persecution due to their gender and related circumstances assert their status as a social group and qualify under the designated grounds of persecution."About their horrible experiences and exploitation, the next paragraphs will show proof."⁵⁶

According to reports, women can be forced to trade sexual favours for food and other goods from personnel overseeing the running of refugee camps and rehabilitation centres. During

⁵³ According to Snehal Fadnavis, "the path from country of origin to the country of asylum and again to the arrival at refugee camp is paved with threats of sexual violence and exploitation". Originally taken from: SNEHAL FADNAVIS, WOMEN REFUGEES IN INDIA: PROBLEMS & PERSPECTIVES, 14 (Dattsons Publications, Nagpur, 1st edn., 2007).

⁵⁴ According to Aliva Mohanty, "females are subject to widespread sexual abuse. In Bosnia and Rwanda, rape became a deliberate aim of war.....More than 300,000 youngsters, many of them female refugees, are currently serving as child soldiers around the world". Originally taken from: Aliva Mohanty, *Women Refugees of India: Risks and Challenges* 25 (Kunal Books, New Delhi, 2018).

⁵⁵ MANISH CHATURVEDI, HUMAN RIGHTS OF REFUGEES: ISSUES & CONCERNS IN THE GLOBALISATION ERA 39 (Swastik Publications, Delhi, 2011).

⁵⁶ Scholars connected in this field assert that, "although the refugee definition does not include gender as a ground of persecution for conferring refugee status, the ground 'social group' has been interpreted many times to include certain sub-groups of women who share certain specific characteristics of persecution, giving rise to a greater risk of vulnerability as compared to women in that society in general". Originally taken from: SNEHAL FADNAVIS, WOMEN REFUGEES IN INDIA: PROBLEMS & PERSPECTIVES, 13 (Dattsons Publications, Nagpur, 1st edn., 2007).

their transit, women may also be sexually assaulted by male refugees.⁵⁷ Furthermore, claimed to have misused their authority are residents, military personnel, police, and security guards in the host country.⁵⁸ With such events mostly unreported due to their illegal status and the related fear of deportation, women refugees often become targets for exploitation by employers, local management, or contractors in the uncontrolled labor market of developing nations.⁵⁹ When portions of the female genitalia are removed or the vulva is sutured together without anesthetic, coercive female genital surgery (FGS) also epitomizes a breach of bodily integrity. FGS is considered as a type of torture, cruel and degrading treatment, and a flagrant breach of human dignity in the current era.⁶⁰ Female genital mutilation (FGM) is recognized in many countries as a kind of persecution; women who have fled their own country for such fear are judged qualified for refugee status. Furthermore, domestic violence continues to be a major problem for women since men think they might turn to physical force should female family members refuse their requests. The main causes of domestic violence among couples include conflicts between them, cramped living quarters that compromise privacy, financial restrictions, unemployment, and drunkenness. Because their customary roles—which define their masculine identity—are disappearing and they feel lost in direction, refugee men often turn to violence.⁶¹ In a patriarchal society run under male dominance, this kind of violence seems to be more common.⁶² Professors of refugee law worldwide already strongly want the term "persecution" to be understood in the framework of domestic or family violence. Six hundred Refugee women's health, education, and job needs call for careful consideration. Apart from problems of mother's health, they also face several psychological, physical, and social ones including bad health, anxiety, depression, stress-related psychosomatic diseases, dementia, and post-traumatic stress disorder. Moreover, the mental state of refugee moms is highly influenced by the health issues of their undernourished children. For them, therefore, bodily and psychological damage, sexually transmitted illnesses, and unplanned pregnancies have become

⁵⁷ ALIVA MOHANTY, WOMEN REFUGEES OF INDIA: RISKS AND CHALLENGES 26 (Kunal Books, New Delhi, 2018).

⁵⁸ Sheena Kumari, "Burmese Refugee Women in India: Victims and Agents of Empowerment" 4 *Peace Prints* 1 (2012), <http://www.wiscomp.org/peaceprints.htm>.

⁵⁹ Avinash Govindjee & Elijah Adewale Taiwo, "The Protection of Women Refugees under the International Refugee Convention" in Rafiqul Islam & Jahid Hossain Bhuiyan (eds.), *An Introduction to International Refugee Law* 379 (Martinus Nijhoff Publishers, 2013).

⁶⁰ "U.N. Economic Commission for Africa, "Draft Report of the Expert Group Meeting on Refugee and Displaced Women and Children", Vienna, 2-6 July 1990, <https://hdl.handle.net/10855/19717>.

⁶² UNHCR, "Her Turn: It's time to make refugee girls' education a priority", <https://www.unhcr.org/herturn/>.

⁶¹ *Ibid.*

⁶² ALIVA MOHANTY, WOMEN REFUGEES OF INDIA: RISKS AND CHALLENGES, 26 (Kunal Books, New Delhi, 2018).

ordinary. Prioritizing mother health services, family planning education, understanding of sexually transmitted illnesses, and specific rehabilitation programs for elderly and disabled refugee women will help one to overcome this.⁶¹ Furthermore, in the educational field, for immigrant children, especially for refugee girls, primary school remains an unreachable dream. Early on, family responsibilities cause them various challenges and restrictions that finally result in poor attendance and higher dropout rates from educational institutions. Studies show that among UNHCR-supported primary and secondary schools, girls account for a small and negligible percentage of the total student population. UNHCR has suggested actions to help refugee females to attend classes without hindrance.⁶² These steps are meant to improve understanding.⁶³

Another area that calls particular emphasis for women refugees' advancement is their economic dependence. Generally speaking, women in mostly patriarchal societies show financial reliance on their male counterparts; nevertheless, the work culture for women is much underdeveloped in countries driven by men. The trauma of refugee women makes this more severe. As was already said, illiteracy, ignorance, and lack of legal status make refugee women vulnerable to abuse by their contractors and employers. Mostly, they find contractual work in unregulated industries at much lesser pay than their legally acknowledged competitors. Many refugee women and their children once worked as maids and domestic assistants in the homes of more affluent host country residents to survive.⁶⁴ As so, they often go through sexual horrors carried out by their superiors and other local staff members. The hard truth is that they have to deal with improper sexual advances from contractors and companies helping their family. Regarding the choice and distribution of land for the rehabilitation process, hosting governments might sometimes show prejudice and neglect of fairness. Usually, the economic empowerment of women refugees consists in provisions for food, nutrition, clothing, and education for their children. Many male migrants who lacked education or literacy used a large portion of their money for alcohol or other intoxicants, therefore depriving their families of necessary funds. Over their time in exile, female refugees often find themselves apart from their spouses or lovers. The death of their spouses, their husbands' enlistment into military forces, or deliberate abandonment by their husbands most certainly drive them to bear the

⁶³ In International Refugee Law Regime, three durable solutions for refugees are recognised. They are voluntary repatriation, resettlement and local integration.

⁶⁴ SNEHAL FADNAVIS, WOMEN REFUGEES IN INDIA: PROBLEMS & PERSPECTIVES, 13 (Dattsons Publications, Nagpur, 1st edn., 2007).

whole burden of family tasks. They are under obligation to perform duties often entrusted to male relatives, therefore compromising their mental and physical health and subjecting them more to persecution. Another concerning reality is that sometimes refugee women are overlooked even when lasting solutions for them are under consideration. Often, merely the male head of the house is questioned about his wish to go home with the presumption that his partner would go with him. This is only the expression of male chauvinism.

6. CONCLUSION AND SUGGESTIONS

Finally, it is especially horrible and regrettable that “*female refugees may discover that in escaping persecution and violence from their country of origin, they have inadvertently heightened their vulnerability to sexual abuse.*”⁶⁵ The writers contend that there is no quick solution for the problem of refugee women. We cannot keep blind to this pressing issue. It is true that UNHCR, in its later stage, has been particularly loud and powerful in honoring their hardships and forwarding their viewpoint. This agency has regularly developed policies to honor claims and help people to reach refugee status, therefore allowing them to uphold a fundamental dignity in camps for refugees. The international community has started changing its policies on women refugees, which has improved protection for this sensitive group indeed. Critics do not challenge the fact that RSD officials and the global society have started to treat victims of persecution with more tolerance. But instead of respecting their rights framework, empathy and patience are mainly useless and will not produce long-term positive results. The source from which all get power in this domain remains ignorant of gender issues. As such, it is essential to recognize and include gender-based violence into the framework of persecution. Along with the five listed grounds of persecution, the category of “sex” must formally be included into the definition of “*refugee*” as stated in the 1951 Refugee Convention, the authors claim. Under UNHCR’s auspices, the authors recommend the creation of a specialist grievance redressal committee comprising women experts to assist persons from the refugee status determination phase through all cases of gender-based violence during their refugee experience.

Furthermore, the education of girls and women refugees has to be strictly ensured at all levels. Their demands and the repression of their concerns are much influenced by their illiteracy, ignorance, and lack of knowledge of their rights. The high dropout rates of immigrant girls in

⁶⁵ SNEHAL FADNAVIS, WOMEN REFUGEES IN INDIA: PROBLEMS & PERSPECTIVES, 13 (Dattsons Publications, Nagpur, 1st edn, 2007).

educational institutions and absenteeism among them should be closely examined and watched after. Therefore, their progress will remain an unachievable dream without the attainment of basic educational information. Furthermore, the health needs of refugee women and girls ought to be given suitable emphasis. Particularly for women refugees who need frequent health monitoring because of their physical circumstances, the lack of public healthcare facilities raises serious issues. Although refugees can use public healthcare facilities, hospitals and health centers in almost all developing countries are mostly overburdened and lack female medical practitioners. This minority thus cannot receive necessary medical treatment, even for basic health needs. Furthermore, the low presence of female medical practitioners in government hospitals and healthcare facilities calls for great attention since it has been noted that women often hesitate and show shyness in sharing their physical problems with male doctors, most likely because of illiteracy and socioeconomic disadvantage. The writers argue that another reason for worry is their financial reliance and consequent job abuse. A major cause of worry is the lack of sustainability.

Financial support for this at-risk group from government agencies, other pertinent companies, and stakeholders. To help create and improve entrepreneurial activities and self-employment abilities, the hosting government and pertinent agencies—including UNHCR—should create financial plans or socially useful projects, including low-interest lending facilities. The particular problems to be looked at are their low labor participation rate, far lower pay than male colleagues, and related sexual exploitation in the workplace. Women refugees have to be specifically included into national laws and policy frameworks related to this issue as well as into the whole formulation and implementation of worldwide refugee policy. Their participation and position at every stage of policy development would make their views and concerns more unique and forceful throughout the global refugee population. Still, it is impossible to ignore men's participation in the policy-making process. Men must adopt a strong posture against this evil and torture to enable real development in the world community. Last but not least, the writers argue that while providing gender-balanced specialized work opportunities for refugees, host countries, UNHCR, and other pertinent stakeholders should give literacy programs, vocational training, and micro-credit initiatives top priority. Given their unstable condition regarding exploitation and their traumatic refugee status, this sub-group has to be identified as "*doubly disadvantaged*" and "*doubly vulnerable*". Hence, the great work and attention in this field seems to be warranted.