

Women Refugees and Their Unrecognised Plights in International Refugee Law Regime: A Critical Analysis

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*“We cannot effectively protect refugee women if we are not ready to combat
gender discrimination globally”*

..... IDLO Director General Irene Khan³

Abstract

Despite being a considerable figure among the worldwide recorded refugees, women refugees appear to be the most neglected and unrecognized groups. The ‘refugee’ definition enumerated in the 1951 Refugee Convention does not explicitly recognise ‘gender’ as a basis for conferring of refugee status. Consequently, ‘persecution’ on the ground of one’s gender is still considered ineligible for refugee status determination. The Regional Refugee Conventions, even though expansive and wide-ranging in nature, also do not seem to be gender conscious. While all refugees face violence during the course of their flights and as a result of their exile, refugee women are additionally susceptible to gender-based violence in addition to the general trauma and torment. Rape, sexual atrocities, female genital surgery, domestic violence, forced impregnation, forced abortion, forced sterilization, unjustified demand of sexual favours and many more have become the intrinsic part of their lives. That apart, discrimination and disparity surround them in every aspect of their life as refugee. It is true that international community and Refugee Status Determination authority (RSD authority) have started adopting some lenient approach towards women victim of persecution. But

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³ Barbara Prammer Symposium on ‘WOMEN, REFUGEES, SOLIDARITY’ addressed by Irene Khan, Director-General, International Development Law Organization, January 18, 2016, Vienna, Austria, (last visited on July 31, 2021), <https://www.idlo.int/news/speeches-and-advocacy/women-refugees-solidarity>.

instead of recognising their rights regime, sympathy and leniency have very little role to play and would not serve the fruitful purpose in the long run. Time has come to introduce gender centric asylum jurisprudence by specifically recognising gender based violence within the ambit of 'persecution'. Thus, it has become the need of the hour that in addition to the enumerated five grounds of persecution, the ground of 'sex' should be explicitly and specifically included in the definition of 1951 Refugee Convention. Beside this, the area of education of women refugees and girl child, the health needs of refugee women, their financial dependence and associated exploitation in the employment sector cause burning sensation that require special emphasis. Through this research paper, attention is also drawn to specify the need for their inclusion in the overall design, implementation of global refugee policy, the national legislation and policy frameworks in this regard and other allied issues.

Keywords: - *Asylum, persecution, honour crime, forced displacement, male chauvinism*

I. Introduction

In today's contemporary world, people are on the move owing to myriad reasons such as armed conflict, internal strife, ethnic cleansing, state repression, human rights violation, mere poverty or hunger and many others leading to persecution.⁴ According to the recent data of UNHCR⁵, at the end of 2020 there are total 82.4 million forcibly displaced people worldwide. Among them, 26.4 million are recognized as refugees and 4.1 million people are recorded as asylum seekers.⁶ What is more stunning and astonishing is that among these data of worldwide recorded refugees, almost half of them are women.⁷ Thus, women and girls constitute half of the world's refugees today. It was reported that despite this, just 4% of project initiatives in UN inter-agency appeals in

⁴V. Suryanarayan, *Refugee Dilemma: Sri Lankan Refugees in Tamil Nadu* 14 (Prabhat Prakashan, New Delhi, 1st edn., 2019).

⁵UNHCR, "Refugee Data Finder", <https://www.unhcr.org/refugee-statistics/> (last visited on July 22, 2021).

⁶ *Ibid.*

⁷UNHCR 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).

2014 were directed towards women and girls, and only 0.4% of total financing to fragile nations went to women's groups or ministries from 2012 to 2013.⁸ However, programmes meant to protect and help refugees and migrants frequently overlook and ignore the needs, interests, and concerns of women refugees. History is a witness to the fact that women members of the society are easy prey of victims in almost each and every global crisis despite their important, crucial and caring role in sustaining and nourishing their communities. Now so far as refugees are concerned, it is often said that women refugees constitute a 'doubly-disadvantaged' and 'doubly-vulnerable' category of persons due to their tender and weaker position in case of exploitation and their traumatic refugee status. It is rightly said that "while refugees in general may be exposed to violence associated with exile, refugee women are particularly vulnerable to gender based violence".⁹ The basic fact which goes to the root is that women experience and encounter conflict and displacement differently than males and have their own unique needs. For male and female members, the experience and trauma of forced displacement and relocation has varied ramifications. Despite the fact that female and male members of this group usually face the human rights violation of the same connotation, this human rights infraction often take distinct and diverse forms for male and female victims according to their gender roles.¹⁰

Under the above backdrop, the present authors venture to explore the domain of women refugees in international refugee law regime, recognition of rights of women as refugees in the international arena, role of UNHCR in the recognition and protection of women refugees and their vulnerability and plights in various spheres of their traumatic life. Further, the authors also attempt to suggest several measures to uplift their status so that they can play their due role in concerned policy making and implementation.

⁸UN Women, "Women Refugees and Migrants", <https://www.unwomen.org/en/news/in-focus/women-refugees-and-migrants> (last visited on July 22, 2021).

⁹Snehal Fadnavis, *Women Refugees in India: Problems & Perspectives* 12 (Dattsons Publications, Nagpur, 1st edn., 2007).

¹⁰ALIVA MOHANTY, *WOMEN REFUGEES OF INDIA: RISKS AND CHALLENGES*, 23 (Kunal Books, New Delhi, 2018).

II. Women Refugees and International Refugee Law Regime

In ordinary usage, the term ‘refugee’ denotes ‘someone in flight’ in order to escape some unbearable or unendurable conditions or personal circumstances. ‘*Black’s Law Dictionary*’ has defined the term ‘refugee’ as “*a person who flees or is expelled from a country, especially because of persecution, and seeks haven in another country*”.¹¹ The ‘*Encyclopaedia of social sciences*’ defines a ‘refugee’ as “*an involuntary migrant, a victim of politics, war or national catastrophe*”.¹² In short, it depicts that person “*who is forced to flee his or her home for any reason for which the individual is not responsible, be it persecution, public disorder, civil war, famine, earthquake or environmental degradation*”.¹³ Thus in general and ordinary usage, the term ‘refugee’ is gender neutral and have no bearing on one’s gender.

Now so far as international legal instruments are concerned, the main and prominent international instruments pertaining to refugees emerge in the form of “Convention Relating to the Status of Refugees” of 1951¹⁴ and the “Protocol Relating to the Status of Refugees” of 1967¹⁵. Apart from that, one can find several regional international instruments pertaining to refugees for their protection and recognition in the international arena. However, till date the 1951 Refugee Convention along with 1967 Protocol form the bedrock of international refugee law domain and is construed as the cornerstone of international refugee law regime. The 1951 Convention defines the term ‘refugee’¹⁶ and thereby sets-out the criteria for determining the refugee status of

¹¹ Bryan A. Garner (ed.), IX *Black’s Law Dictionary*, (Thomson Reuters, U.S.A, 2009).

¹² Dr. N. SUBRAMANYA, HUMAN RIGHTS AND REFUGEES, 1 (APH Publishing Corporation, New Delhi, 2011).

¹³*Supra* note 8 at 6.

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

¹⁵ 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.

¹⁶Article 1A (2) of the Convention Relating to the Status of Refugees, 1951.

an asylum claimant, enumerates their rights and the corresponding obligations of contracting receiving states.¹⁷

Subsequently, through 1967 Refugee Protocol the temporal and geographical limitation and barrier of the 1951 Convention got removed and the said 1951 Convention was given a universal coverage and application and the terms “as a result of events occurring before 1st January, 1951” was removed from the Convention definition of refugee.

Now if we try to analyse the definition of the 1951 Refugee Convention, then certain characteristics emerge therefrom: -

- a) the person must have a well-founded fear of persecution; and
- b) such persecution must arise on account of one’s race, religion, nationality, membership of a particular social group or political opinion; and
- c) such person must be outside the country of his origin or in case of stateless persons that person must be outside the country of his former habitual residence; and
- d) such person must be unable or unwilling to avail himself of the protection of that country or habitual residence owing to such fear of persecution¹⁸

Thus, it is evident from the 1951 Refugee Convention that the ground of ‘gender’ is not featured in the enumerated reasons of ‘persecution’ and consequently persecution on the ground of one’s gender is considered ineligible for refugee status determination or conferring refugee status upon the

¹⁷According 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”.

¹⁸V. 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).

prospective applicant.¹⁹ It is said that at the time of the passage of Refugee Convention or during its drafting, women's rights were not fully recognised and it was improperly appreciated. Later it came under serious attack from the feminist groups across the world community that the drafters of the Refugee Convention turn a deaf ear to this whole issue. It is true that international instruments pertaining to refugees does not make any distinction between male and female refugees. Even a women victim of persecution is considered fit and eligible to get refugee status if she is able exhibit or establish her fear of being persecuted on the five enumerated grounds of 1951 Convention before the concerned RSD authority. Thus asylum claim of a female applicant have no bearing with her gender.²⁰ As has already been mentioned that feminists have criticised the 1951 Geneva Convention for failing to include gender as a crucial factor in refugee assessment. A number of subsequent instruments also make it evident that the drafters or plenipotentiaries solely had male victims in their mind. In reality, decades of refugee-related treaty regime have kept their focus only on male counterparts.

According to one U.N Report of 1980, "*women constitute half of the world population, perform nearly two-third of the world's work, receive one tenth of the world's income and own less than one hundredth percent of world's property*"²¹. It was realized that women are subject to discrimination in almost every walks of life.²² 'Amnesty International' aptly expressed this scenario by

¹⁹ 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).

²⁰ B.S. CHIMNI (ED.), *INTERNATIONAL REFUGEE LAW: A READER* 42 (Sage Publications, New Delhi, 2000).

²¹ Dr. Sachi Chakrabarty, "Women's Right to Property in India: An Appraisal with special reference to Matrimonial Property" 1 Cal LT 20 (2013).

²² 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:

observing that “women are faceless masses filling backgrounds on the canvas of terror and hardship. Whatever legislation or political effort, gender discrimination and violence in the form of battering, physical, sexual or psychological is an international reality”²³. Although Universal Declaration of Human Rights of 1948 had guaranteed universal human rights to all including women without any sort of discrimination and inequality. Article 2 of the UDHR, 1948²⁴ in clear and explicit tone had recognized this and prohibited any sort of distinction in respect of the enjoyment of rights and freedoms guaranteed under this Declaration. A perusal of the above-mentioned Article of the UDHR would reveal that sex is one of the prohibited ground. But this declaration although of great importance has actually failed to gain ground for women members of the society probably on account of its non-binding and declaratory character. Gradually feminists across the world emphasized on separating women’s rights from universal human rights.²⁵ Gradually a specific need was realized that women should be singled out as a category or group of people who require particular focus and protection. It is a harsh reality that while refugees in general face prejudice and unbearable or insurmountable torment, women refugees in particular used to bear the additional burden of countless sexual atrocities, deprivation and inequality owing to their gender over extended periods of time from crossing the borders to taking shelter in refugee camps and even in case of repatriation or re-integration process.

After 1951 Convention and its connected 1967 Protocol, the regional refugee law instruments also committed the same omission while expanding the definition of the term ‘refugee’. It is true that the subsequent regional

<https://www.amnesty.org/download/Documents/SEC0100112013ENGLISH.PDF> (last visited on July 31, 2021).

²³Amnesty 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).

²⁴ 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”.

²⁵Avinash 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).

instruments pertaining to refugees have in fact expanded the definition of the term ‘refugee’ by going beyond the subjective criteria of ‘well-founded fear of persecution’ and thereby put more emphasis on objective standards in the country of origin.

The OAU Convention Governing Specific Aspects of Refugee Problems in Africa of 1969²⁶, while accepting the basic 1951 Refugee Convention under the first part, has also expanded scope of the term ‘refugee’ under the second part to those persons who²⁷:

*“owing to external aggression, occupation, foreign domination 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 in order to seek refuge in another place outside his country of origin or nationality”.*²⁸

Similarly, the OAS Cartagena Declaration of 1984²⁹ has re-iterated the same mistake by not recognizing their concerns. Here, the author is not venturing into the disputed question of fact that whether it was deliberate or unintentional. The Cartagena Declaration, recognizing several new facets and contours of refugee status determination, has also widened the scope of the term ‘refugee’ as *“persons who have fled their country because their lives, safety or freedom*

²⁶The 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.

²⁷While 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 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).

²⁸Article I (2) of OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969.

²⁹The Cartagena Declaration was adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama on 22nd November, 1984.

*have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”.*³⁰

Thus, in view of the above, it becomes evident that the international refugee law regime failed miserably to explicitly recognise the category of women as refugees and was unsuccessful in incorporating their trauma and plights and addressing or safeguarding their concerns.

III. Recognition of Rights of Women as ‘Refugees’

The United Nations did not initiate the debate about the necessity for special protection of women refugees until 1985. The year 1985 is marked as a remarkable phenomenal year towards the international protection of women refugees. In that year, an international seminar pertaining to women refugees was organized in Soesterberg. The primary issue involved in this seminar was the deliberation and discussion of sexual atrocities against women refugees and the adoption of pro-asylum policies for their protection and recognition. Several delegates from various European countries and global refugee protection forums attended and participated in the said seminar to explore and scrutinize viable solution for this vulnerable group. Among the several recommendations, one of the prominent recommendation is that governments should recognise persecution based on sex as a criteria of persecution based on ‘membership of a particular social group’.³¹

As per the crux of the seminar, women refugees may be subject to certain categorization which though not mutually exhaustive are merely illustrative. For better appraisal, some of the categorization are reproduced as follows³²: -

³⁰ *Ibid.*

³¹Persecution 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.

³²Avinash 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).

- a) *“women who fear persecution on the same Convention grounds, and in similar circumstances, as men. That is, the risk factor is not their sexual status, per se, but rather their particular identity (i.e. racial, national or social) or what they believe in, or are perceived to believe in (i.e. religion or political opinion).*
- b) *Women who fear persecution solely for reasons pertaining to kinship, i.e. because of the status, activities or views of their spouses, parents, and siblings, or other family members.*
- c) *Women who fear persecution resulting from certain circumstances of severe discrimination on grounds of gender or acts of violence either by public authorities or at the hands of private citizens from whose actions the state is unwilling or unable to adequately protect the concerned persons.*
- d) *Women who fear persecution as the consequence of failing to conform to, or for transgressing, certain gender-discriminating religious or customary laws and practices in their country of origin”³³.*

Since then, a significant corpus of jurisprudence has emerged on the subject, and several governments and international communities have shown their interest in adopting this thought into their protection regime. Another noticeable event of this phase is that apart from the general international human rights law regime, a specific and focused women centric human rights regime gradually emerged in the international arena during this phase. Here the best example would be the adoption of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979.³⁴ In 1993, the Vienna Conference on Human Rights also recognised women’s rights within the ambit of human rights with the adoption of the slogan that women’s rights are human rights.³⁵ The Convention on the Elimination of Discrimination Against Women (CEDAW) is sometimes referred to as an international women's bill of rights. It consists of a Preamble and 30 Articles that describe what constitutes gender

³³*ibid.*

³⁴Convention 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).

³⁵SNEHAL FADNAVIS, WOMEN REFUGEES IN INDIA: PROBLEMS & PERSPECTIVES, 94 (Dattsons Publications, Nagpur, 1st edn., 2007).

discrimination and establishes a national action plan to eradicate it.³⁶ Through this Convention, a global standard has been sought to be established for promoting gender equality and thereby eradicating all sorts of gender disparity and discrimination across the globe. This Convention was specific in addressing the grievances of trafficking in women, woman exploitation by the heinous acts of prostitution and other harm that is unique to women. In short, it sought to promote and proliferate the women's rights and give them the positive direction and vibes in all spheres of their neglected life. To keep track of its implementation, a Committee on the Elimination of Discrimination against Women has also been set up.

Recently the said Committee in its General recommendation no. 32 has emphasized on the "*gender-related dimensions of refugee status, asylum, nationality and statelessness of women*".³⁷ In the said general recommendations, the Committee has inter-alia emphasized on the following naked reality when it recognised that, "*Gender-related forms of persecution are forms of persecution that are directed against a woman because she is a woman or that affect women disproportionately.....*"³⁸

³⁶UN Women, "Convention on the Elimination of All Forms of Discrimination against Women", <https://www.un.org/womenwatch/daw/cedaw/> (last visited on July 24, 2021).

³⁷UN 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> (last visited on July 24, 2021).

³⁸Para 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> (last visited on July 24, 2021).

The observation of the said Committee in para 13 appears to be most cogent and relevant. The Committee opined that “..... under article 1A (2) of the 1951 Convention relating to the Status of Refugees the reasons for persecution must be linked to one of the five grounds listed therein: race, religion, nationality, membership of a particular social group or political opinion. Gender-related persecution is absent from the text.”³⁹

In 2015, “Statement of the Committee on the Elimination of Discrimination against Women (CEDAW) on the refugee crises and the protection of women and girls”⁴⁰ again re-iterated and re-endorsed this stand when it focused on gender sensitive approach in the asylum process and other allied issues.⁴¹

³⁹Para 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> (last visited on July 24, 2021).

⁴⁰Statement 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 20 November 2015 during its 62nd session. https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CE_DAW_STA_7845_E.pdf (last visited on July 24, 2021).

⁴¹Statement 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”.

That apart, in 1993, the proclamation of “Declaration on the Elimination of Violence against Women”⁴² also inter-alia recognised ‘refugee women’ as a special group that are susceptible to violence and states have been called upon to address these issues for the elimination and eradication of violence against women. In nature, this Declaration is complementary and supplementary to the CEDAW of 1979.⁴³

IV. Women Refugee and Role of UNHCR

After recognising their trauma and plights in the international refugee domain, the role of United Nations High Commissioner for Refugees (UNHCR) has been phenomenal and worth mentioning for this particular sub-group. Although in the initial phase of its tenure, the role of UNHCR has not been so instrumental and vocal, but particularly from 1985, this organization have started recognising their claims and addressing their grievances and further started to mainstream refugee women in the overall planning and implementation projects pertaining to refugees. It is to be mentioned here that, from 1985 to 1989, the Executive Committee of the UNHCR adopted four specific conclusions raising and addressing their grievances and further suggesting suitable measures for uplifting their status. Then in 1990, the said Executive Committee framed “*UNHCR Policy on Refugee Women*”⁴⁴ which had created a remarkable sensation in the international refugee law domain. This Policy accepts this basic fact that men and women are affected differently when they become refugees. The Policy recognised that the role of women refugees should be uplifted above the status of mere beneficiaries who passively receive shelter, food and other material aids in the refugee relief and rehabilitation programmes. Thus this Policy endorses the view that women

⁴²Declaration 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> (last visited on July 24, 2021).

⁴³Amnesty International, “The Human Rights of Women in the United Nations: Developments 1993 – 1994”, <https://www.amnesty.org/download/Documents/180000/ior510011995en.pdf> (last visited on July 24, 2021).

⁴⁴UN 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> (last visited on July 25, 2021).

refugees who have fled persecution must be included in the policy design and implementation of several initiatives in the overall refugee centric plans and programmes. Therefore, the integration and assimilation of women refugees in all phases of refugee programme planning and implementation was realized as the need of the hour. In other words, they should not be put merely at the mercy of their male counterparts.

In the broad spectrum, mainstreaming of refugee women appears to be the main goal of a UNHCR programme or project. Its aim and objective is reflected from the following points: -

- a) *achieve greater involvement of refugee women both as participants and beneficiaries in the social and economic activities of the project;*
- b) *increase their status and participation in the community/society;*
- c) *provide a catalyst through which they can have access to better employment, education, services and opportunities in their society;*
- d) *take into account the particular social relationship between the refugee women and their families.*⁴⁵

Thereafter, in 1991, the UNHCR again came up with “*UNHCR Guidelines on the Protection of Refugee Women*”.⁴⁶ In fact, this Guideline can be characterized as most extensive and comprehensive one by UNHCR in addressing their concerns and mainstreaming their role and interests. At the very introduction of the said Guideline, the UNHCR had again re-iterated this naked truth when it re-affirmed that in addition to some basic needs that all refugees have “*refugee women and girls have special protection needs that reflect their gender: they need, for example, protection against manipulation, sexual and physical abuse and exploitation, and protection against sexual discrimination in the delivery of goods and services*”.⁴⁷

These Guidelines reinforce the demand for incorporating refugee women's resources and needs into all parts of programming in order to provide equal protection and assistance. It examines and scrutinizes the legal and physical

⁴⁵ *Id.* at 7.

⁴⁶UN High Commissioner for Refugees (UNHCR), “Guidelines on the Protection of Refugee Women”, July 1991, : <https://www.refworld.org/docid/3ae6b3310.html> (last visited on July 25, 2021).

⁴⁷ *Ibid.*

protection requirements of female refugees, after taking note of those spheres that demand special attention and reaction, as well as measures that should be implemented. A prudent perusal of the above-mentioned guideline would reveal that this Guideline was more vocal about refugee women's reproductive health, their education, their role in camp management, food distribution and other gender centric violence.

According to '*Women's Commission for Refugee Women and Children*'⁴⁸, through this Guideline, the concept of 'enhanced protection approach' and 'successful assistance efforts' have been put in place for a smooth and flexible working of this domain. The notable examples are reproduced below: -

- i) *"improved capacities for gender-sensitive refugee status determinations;*
- ii) *more vigorous use of national laws for enforcing protection and human rights; and*
- iii) *improved registration mechanisms that allow each individual to obtain his or her own card".*⁴⁹

Successful assistance efforts include within its ambit

- a) *"increased enrollment of girls in schools;*
- b) *measures to organize refugee women and include them in camp management;*
- c) *direct involvement of women in food distribution;*
- d) *incentives to employ more female staff in health and education programs;*
- e) *wider availability of reproductive health services;*
- f) *safe houses and counseling services for victims of trauma or violence".*⁵⁰

⁴⁸ 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> (last visited on July 25, 2021).

⁴⁹*d.* at 2.

Another notable attempt by UNHCR in this area is the formulation of certain guidelines to prevent sexual violence against refugees. In 1995, the UNHCR came up with another formidable weapon in its armory in the form of “*Sexual Violence Against Refugees: Guidelines on Prevention and Response*”⁵¹ to combat this phenomenal global menace. This guideline is significant in the sense that certain harm or injury is ‘either unique to women or befalls women more commonly than men’⁵² and such kind of harm requires particular focus of the RSD authority while determining or assessing their claims. It recognizes the basic fact that the subject of sexual assault and atrocities against women refugees is a worldwide issue. It is a violation of their basic and inherent human rights, causing dread in the lives of victims who are already traumatised by their forced displacement and relocation. The above- mentioned UNHCR Guideline give an overview of when and how sexual violence can occur in the setting of refugees, as well as the physical, psychological, and social consequences for individuals who are exposed to such additional trauma.⁵³ The UNHCR also admits the fact that many occurrences of such nature are kept under the dark for a variety of reasons, including humiliation, social stigma attached to it, and fear of retaliation, according to the research. They stress the need of understanding and awareness at legal level, leadership advice, skill development, and educational rights for women refugees.

V. Women Refugee and Their Plights

Women refugees used to cross borders after being traumatized by various forms of violence in their home country and some of the harms are directly related to their gender and this continue at every level and phases of their refugee status

⁵⁰*Supra* note 46 at 2.

⁵¹UN 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> (last visited on July 26, 2021).

⁵²B.S. CHIMNI (ED.), INTERNATIONAL REFUGEE LAW: A READER, 42 (Sage Publications, New Delhi, 2000).

⁵³UN 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> (last visited on July 26, 2021).

tenure. Because of their oppression and vulnerability on the basis of their gender, women victims feel habituated to bear the brunt of these systematic attacks both in the country of origin as well as in the country of asylum.⁵⁴ Some common forms of violence in this area manifest itself in the form of ‘rape’, ‘sexual atrocities’, ‘female genital surgery’, ‘domestic violence’, ‘forced impregnation’, ‘forced abortion’, ‘forced sterilization’, ‘demand of sexual favours’ and many more⁵⁵. We all know that rape and other forms of sexual violence constitutes an attack upon the personal liberty, inherent privacy, basic dignity and the bodily integrity of a woman. Initially, rape was considered a ‘privatised affair’ under refugee law domain, and as such, it was not considered deserving of refugee status, although it was later protected by different international instruments. However, after the growth and evolution of gender asylum jurisprudence, a remarkable shift has been noted in this area. Scholars concerning this field are of the considered view that the concept of ‘persecution’ in the 1951 Refugee Convention is required to be given a broad connotation beyond the set established standard and the RSD authority should recognize the gender centric violence and harm while assessing their claims and determining various forms of persecution.⁵⁶ Scholars are also of the opinion that the term ‘membership of a particular social group’ in the said 1951 Convention should be construed in such manner so that women victims who have been targeted for persecution owing to their gender and other related causes can claim the characteristics of a social group and qualify under the present enumerated grounds of persecution.⁵⁷

⁵⁴According 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).

⁵⁵According 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).

⁵⁶MANISH CHATURVEDI, *HUMAN RIGHTS OF REFUGEES: ISSUES & CONCERNS IN THE GLOBALISATION ERA* 39 (Swastik Publications, Delhi, 2011).

⁵⁷Scholars 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

Now so far as their traumatic experience and exploitation are concerned, the following paragraphs will testify this: -

It was reported that women may be forced to barter sexual favours for food and other material help by men who oversee the implementation of refugee aid and assistance programmes in refugee camps and rehabilitation centre. Women may also be subjected to sexual assault by other male refugees in their journey. Apart from that, the local people, military combatants, police and security personnel in the hosting nation have all been accused of abusing their positions. It has also been witnessed that often in the unorganized labour sector in the developing country, these women refugees are the easy prey of their employers or the local managers or contractors and these incidents mainly go unreported because of their illegal entry and consequent fear of deportation.

That apart, forceful female genital surgery (FGS) is another instance of violation of their bodily integrity where, without anesthesia, portions of the female genital organs are removed or two sides of the vulva are sewn together. In the contemporary era, the practice of FGS is considered as a form of torture, inhuman and degrading treatment and a naked violation of one's human dignity. In some countries, FGS has been recognised as persecutory in nature and women who fled from their home countries owing to such fear is considered eligible for refugee status.

In addition to that, domestic violence continues to affect women because male believe that if women members of their family don't obey, they may even beat them up at any time. Arguments between spouses, congested accommodation leaving no space for privacy, a lack of funds, unemployment, and drunkenness are the most common causes of family violence. It is often seen that refugee males are more likely to turn to such kind of violence as a result of their perceived loss of purpose and erosion and degradation of conventional roles, which are central to their masculine identity.⁵⁸ This form of violence seems to

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).

⁵⁸ALIVA MOHANTY, WOMEN REFUGEES OF INDIA: RISKS AND CHALLENGES 26 (Kunal Books, New Delhi, 2018).

be more prominent in male dominated patriarchal society.⁵⁹ Now there is a widespread demand from various refugee law scholars across the globe that the term 'persecution' should be construed in the light of domestic or family violence.⁶⁰

Further, health, education and employment needs of refugee women are another area that requires considerable focus. Apart from maternal health issue, they face significant number of psychological, physical and social challenges such as poor health, anxiety, depression, stress-related psychosomatic illnesses, dementia and post-traumatic stress disorders. Beside this, the concern of their malnourished children's ailments and diseases severely affect the mental health of refugee mother. Thus, physical and mental trauma, sexually transmitted diseases, unwanted pregnancies have become their routine affair. To address this, special emphasis needs to be given on their maternal health services, education on family planning, awareness about sexually transmitted diseases and special rehabilitation programme on disabled and elderly refugee women.⁶¹ That apart, in educational sector, the primary education still seems to be a dream for refugee children specially for refugee girls. At such a tender age, they have to face various barriers and restraints in the form of family responsibilities which eventually causes their poor attendance and simultaneous drop-outs from schools. It has been found that girls constitute a small and negligible portion among the total pupils attending UNHCR aided primary and secondary educational institutions. UNHCR has suggested some measures so that refugee girls can easily attend their schools without any barriers.⁶² For the purpose of better understanding, such measures are reproduced below: -

⁵⁹Sheena Kumari, "Burmese Refugee Women in India: Victims and Agents of Empowerment" 4 *Peace Prints* 1 (2012), <http://www.wiscomp.org/peaceprints.htm> (last visited on July 26, 2021).

⁶⁰Avinash 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).

⁶¹U.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> (last visited on July 26, 2021).

⁶²UNHCR, "Her Turn: It's time to make refugee girls' education a priority", <https://www.unhcr.org/herturn/> (last visited on July 26, 2021).

- i) *“schools must make space for girls;*
- ii) *no girl should miss school because the journey to school is too far or too dangerous;*
- iii) *schools must be adapted to girls’ needs;*
- iv) *there can be no room for gender based bullying, harassment and violence in schools;*
- v) *refugee families need incentives and encouragement to keep girls in school;*
- vi) *refugee pupils need more female teachers;*
- vii) *with some extra help, girls can catch up and power on”.*⁶³

In addition to all these, economic dependence of women refugees constitutes another sphere that requires particular focus for their proliferation. In general, in most patriarchal society women are found to be financially dependent upon their male counterparts and women work culture is considerably poor in poor male centric or male dominated countries. Vulnerability of refugee women add more trauma to this. As has already been mentioned that refugee women labour sometimes because of their illiteracy, ignorance and illegality are susceptible to easy bargaining of their employers and their contractors. They mostly find contractual jobs in unorganised sectors at much less wages than the other co-workers who are legal citizens. To make ends meet, many refugee women and their children used to work as maid servants and domestic helps in the homes of affluent and upper-class residents cum citizens in the hosting country.⁶⁴ With this, they are often subjected to sexual atrocities by their employers and other local working staff. The naked and bitter truth is that sometimes they have to bear with the undue sexual advancements of their employers as well as their contractors in order to earn bread for their families. That apart, in the matter of allocation and distribution of lands for rehabilitation process, sometimes hosting governments also seem to be biased as it always does not maintain parity. It should be kept in mind that economic empowerment of women refugees typically entails food, nutrition, clothing and schooling for their children. While most illiterate and uneducated male refugees used to spend a

⁶³*ibid.*

⁶⁴ALIVA MOHANTY, WOMEN REFUGEES OF INDIA: RISKS AND CHALLENGES, 26 (Kunal Books, New Delhi, 2018).

considerable portion of their earnings on alcohol or other intoxicating substances and thus leaving no cash for their family.

Lastly, women refugees are often separated from their husbands or partners while in exile. Probably because of the death of their husbands or forced joining of their husbands in armed forces or owing to willful abandonment of them by their husbands, they have to bear the entire burden of caring for their household responsibilities. They are required to perform duties typically performed by male family members, putting their physical and mental well-being in jeopardy and subjecting them to a higher degree of persecution. Another shocking fact is that when durable solutions⁶⁵ for refugees come for consideration, refugee women are sometimes overlooked. Many times, just the family's male head of household is questioned about his wish to return home, and the spouse is presumed to follow the family's male head of household. This is nothing but the reflection of 'male chauvinism'.

VI. Concluding Observations and Recommendations

In conclusion, what seems to be more tragic and pathetic is that "*female refugees may find that in fleeing from persecution and violence, (from their country of origin) they have actually increased their exposure to the threat of sexual abuse*".⁶⁶ In this respect, the authors firmly believe that the concerning issue pertaining to refugee women cannot be changed overnight. But we should not keep our eyes closed to this pressing issue. It is true that UNHCR in its later phase of tenure has been particularly vocal and instrumental in recognising their plights and proliferating their status. Various guidelines have been issued by this institution from time to time to recognise their claims and assist them in attaining refugee status to lead at least a basic dignified life in refugee camps. It is also true that international community have also started changing their approach in the matter of women refugees which has, in fact, helped to facilitate greater protection for this vulnerable group. Sceptics also do not claim falsity of the fact that international community and RSD authority have started

⁶⁵In International Refugee Law Regime, three durable solutions for refugees are recognised. They are voluntary repatriation, resettlement and local integration.

⁶⁶SNEHAL FADNAVIS, WOMEN REFUGEES IN INDIA: PROBLEMS & PERSPECTIVES, 13 (Dattsons Publications, Nagpur, 1st edn., 2007).

adopting some lenient approach towards women victim of persecution. But instead of recognising their rights regime, sympathy and leniency have very little role to play and would not serve the fruitful purpose in the long run. The fact is that the source from which everyone derives its strength in this area is still not gender conscious. In view of this, time has come to introduce and recognise the gender centric violence within the ambit of persecution. The authors firmly believe that in addition to the enumerated five grounds of persecution, the ground of 'sex' should be explicitly and specifically included in the 'refugee' definition of 1951 Refugee Convention. The authors also endorse the view that a special grievance redressal committee consisting of women experts should be set up under the aegis of UNHCR in order to assist them from the stage of refugee status determination to every gender centric violence in their refugee tenure.

Beside this, education of women refugees and girl child should be strictly ensured at all levels. It must be kept in mind that their illiteracy, ignorance, lack of awareness about their rights have an important role in suppressing their claims and repressing their grievances. So the absenteeism amongst refugee girls in schools and higher drop-out rates of those girls from schools should be strictly checked and monitored. Thus, unless and until they have been endowed with basic educational awareness, their upliftment will remain a distant dream.

That apart, the health needs of refugee women and girls should be duly emphasized. The lack of access to public healthcare facilities is a serious source of worry, particularly for the women refugees who require routine health monitoring owing to their physical set-up. While refugees have access to public healthcare facilities, hospitals and health centers in almost all developing countries are mostly overburdened with less female medical practitioners. Consequently, this subgroup is unable to get necessary medical care even in basic health care requirements. Beside this, the less number of female medical practitioners in government hospitals and healthcare facilities is a matter which requires considerable focus, as it has been seen that they feel shy and hesitation surrounds them in sharing their physical problems to a male doctor probably owing to their illiteracy and backwardness.

The authors further believe that their financial dependence and associated exploitation in the employment sector is another area of worry. It has been perceived that a considerable source of worry is the scarcity of sustainable

financial help for this vulnerable group from the government and other concerned agencies and stakeholders. So, the hosting government and other concerned agencies particularly UNHCR should come up with some financial schemes or other social beneficial initiatives or low interest rate loan facilities for helping them to set up and flourish entrepreneurship activities and self-employment skills. What should specifically be checked is the issue of their low work participation rate, disbursement of much less wages as compared to other male co-workers and associated sexual exploitation in the employment sector.

Women refugees should also be specifically included in the overall design and implementation of global refugee policy and the national legislations and policy frameworks in this regard. Their representation and stand at all stages of policy framing would make their voices and concerns more clear and firm before the international refugee community. However, the role of men in the process of policy framing cannot be totally ignored. Because it is the men who have to adopt a decisive stand against this menace and torment so that world community can make progress in reality.

Last but not the least, the authors reasonably believe that hosting nations, UNHCR and other concerned stakeholders should specifically emphasize upon their literacy programmes, vocational training, micro-credit projects and should adopt gender balanced approach while providing special employment opportunities for refugees. It should always be kept in mind that this sub-group is a 'doubly-disadvantaged' and 'doubly-vulnerable' category of persons due to their tender and weaker position in case of exploitation and their traumatic refugee status. Thus over-emphasis and considerable attention in this area seems not to be unwarranted.