



1951 REFUGEE CONVENTION: DEFINITION CRISIS OF THE TERM 'REFUGEE'

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ABSTRACT

“Defining refugees may appear an unworthy exercise in legalism and semantics, obstructing a prompt response to the needs of people in distress”²

The concept of migration and refugee has evolved as per the need of the times. From the times of Simpson, in 1938 refugee as one who sought refuge in a territory other than that in which he was formerly resident as a result of political events which rendered his continued residence in his former territory impossible of intolerable³ it has come down to recognising race, religion, nationality, members of a particular social group other than political opinion for seeking ‘Refugee’.. Yet, the convention falls short and sometimes is the cause of discrimination, with reference to considering any individual or a group of people under the ambit of Refugees. The fact that ‘persecution’ is not legally defined has presented a problem for some and been of legal significance to others⁴. The 1951 Convention, primarily with reference to the preamble, provisions and interpretation speaks about it being executed in a non-discriminatory manner. But it’s effect and execution has been in conformity with the ‘adult male’ standards⁵. This paper is a doctrinal study of the Article 1 of the Refugee Convention meeting with a definition crisis of the term “Refugee”

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² Guy S. Goodwin-Gill, *The Refugee in International Law*, 2nd Edition.

³ Simpson, J.H, *Refugees – A preliminary report of a Survey* (1938)

⁴ *Refugee Protection in International Law*, UNHCR’s Global Consultations on International Protection, Edited by Erika Feller, Volker Turk and Frances Nicholson.

⁵ Alice Edwards, *Age and Gender Dimension in International Refugee Law*

INTRODUCTION

The significant instrument pertaining about the Refugee Regime is The Convention Relation to the status of Refugees, 1951 (hereafter mentioned as “the 1951 Convention”). But, much before this instrument has been formulated, complimented by the statute of office of the United Nations High Commissioner for Refugees 1950, the refugee regime finds its source from 1907 Hague Convention with respecting the rights and duties of neutral powers and persons in case of war on land.⁶This Hague Convention speaks in length about non refolement with reference to the persons in case of war on land. Non refolement is the one of the primary feature of the protection of refugees, which, could be traced back to regional instruments like ‘Arrangements with Regard to the Issue of Identity Certificates to Russian and Armenian Refugees’, supplementing and amending the arrangements with regard to the issue of certificates of identity to Russian Refugees⁷. Similar structure was followed in case of refugees coming from Germany, codified by ‘Provisional Arrangements Concerning the Status of Refugees Coming from Germany, 1938’.

In the Bermuda Conference in 1943 expanded mandate, that was discussed in Evian in 1938 as have been discussed above, and included *‘all persons, wherever they maybe, who, as a result of events in Europe, have had to leave, or may have to leave, their country of residence because of the danger in their lives or liberties on account of their race, religion, or political benefits⁸’*

Another important organisation was formed in 1943 which is United Nations Relief and Rehabilitation Administration whose primary function was providing assistance to civilian nationals of the allied nations and to displace persons in liberated countries, and with the repatriation and return of prisoners of war. It was not authorised to resettle the displaced or to deal with or find solutions for refugees, considered as those who, ‘for any reason, definitely cannot return to their homes, or have no homes to return to, or no longer enjoy the protection of the Governments.’⁹

Furthermore, Charter of the International Military Tribunal, in agreement for the prosecution

⁶ *Supra* Note 4

⁷ *ibid*

⁸ *Supra* Note 1

⁹ *Supra* Note 1

and Punishment of the Major War Criminals of the European Axis, or as known as London Agreement, 1945 spoke at length about non refolument before the United Nations came into existence.

In Constitution of International Refugee Organisation, ‘Refugee’ included victims of Nazi, Fascist or Quisling regimes, certain persons of Jewish origin, or foreigners or stateless persons who had been victims of persecution, or those who had been referred as refugees before world war – II. Further the organisation had the power to assist the displaced persons¹⁰.

After the formation of the United Nations, a close nexus of the International Refugee regime and the International Human Rights regime can be seen. Universal Declaration of the Human Rights, 1948 which is considered as the foundation of the recognition of International Human Rights, have addressed in Article 14, about everyone having the right to seek and enjoy in other countries asylum from persecution. Similarly, the 1951 Convention in it’s preamble considers the affirmed principles of the universal declaration of human rights, which speaks about fundamental rights and freedoms without discrimination. There is close nexus between the two regimes, which is complimentary to one another.

Hence, we can see, the International Refugee Regime cannot be studied in isolation, and is interdependent largely on other regimes, namely International Human rights and the International Humanitarian Law. Adding to this arguments, there are various international human rights instruments who speak about various facets of International Refugee Law. Convention on Rights of Children, 1989 (here in after referred as 1989 Convention) which is the chief international convention addressing various issues of children, have touched upon children who are refugee, in Article 22, which says that “State Parties shall take appropriate measures to ensure that child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present convention and in other international human rights or humanitarian instruments to which the states are parties”.

¹⁰ *ibid*

This Article, highlights primarily on attainment of the rights mentioned in the 1989 convention, even by the child who is seeking for refugees. This Article can be read with Article 2 of the same convention, which speaks about the non-discrimination clause, of each child being in the jurisdiction of any state, is not to be discriminated of any kind, irrespective of his or parent's nationality. Again, this Article, encompasses the children who could be coming from different origin, race, nationality, but, does not give any exclusive right to receive refugee status, without any discrimination. These two above mentioned Articles, are rights run parallel to that the International Refugee instruments, addressing the specific people, such as children, from the scope of human rights. We need to consider that, the vulnerable groups like Children, women, etc. are the most affected group of people, during any gross human rights infringing event.

Therefore, it is imperative to address the issue of women, with reference to Refugee Regime. Article 1 of Convention on the Elimination of all forms of Discrimination against Women, describing “ Discrimination against women” includes all those distinction, restrictions, made on basis of sex, which can “nullify the recognition, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field¹¹” . If this article is read in consonance with the 1951 Convention, definition clause of Refugee, we can interpret that even though gender is not one of the clause to receive refugee status, yet, it cannot be the reason for denying refugee status as well. To elaborate further, Women cannot be denied refugee status, as that shall come under purview of discrimination against women, by nullifying a recognition of fundamental civil and political rights, just on basis of sex.

There are three more conventions, which are significant instruments of International Human Rights, but they speak about Non Refoulment, which forms the fulcrum of the International Refugee Law. These conventions are International Covenant on Civil and Political Rights (ICCPR) International Covenant on Economic Social and Cultural Rights (ICESCR) and the Convention against Torture (CAT)

Refugee, a specific class of migration of people, inherited from the time of evolution of humans, yet, in the most formal and legal sense, the refugee crisis occurred mostly in the 20th

¹¹ Basic International Legal Documents on Refugees, UNHCR, Sixth Edition, December 2005

Century. This crisis, changed the global map during the time of decolonisation. Even though, it's the municipal law, in conformity with the 1951 convention, runs the refugees, yet, refugees all across the borders became an international issue. And, mostly the gross refugee eruptions occurred much after 1951. This is where, the regional conventions and bodies have been instrumental and influential to combat the poorly drafted 1951 convention, which was mostly criticised for being Euro Centric and having definitional crisis.

OAU Convention Governing the specific Aspects of Refugee Problems in Africa, adopted in 1969, during the period of decolonisation in Africa. This is a regional instrument, covering states of African Unity, broadens the scope of 'Refugee'. Article 1, Paragraph 1 defines refugee just as it has been put down in Article 1 of the 1951 Convention, but Paragraph 2 adds that 'refugee' shall also *apply to every person who, 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.*¹² This Article is not followed with any definition of 'external aggression', "disturbing public order", leaving the interpretation on the states to decipher. But, it primarily is quite about internal aggression or disturbances, and have mentioned of external aggression and foreign domination. On analysing this Article, we can understand, it comes from the scope of the states being colonised for ages, and can result into refugees, which have not been mentioned or addressed in the 1951 Convention.

The concept of Refugee was treated as that of a group of people, effected by any mass exodus. There was paucity or no mention of any criteria, what is to be referred to consider the group as that of a refugee. That, is the synonymous to recognising any such person who is forcefully displaced, for any such reasons, is a refugee¹³. Primarily, the individual screening also becomes impractical where there is mass influx of people¹⁴. The first time, the term Refugee was defined was in the Arrangement Relating to the Issue of identity Certificates to Russian and Armenian Refugees¹⁵. It had elaborated, on Russian as: "*Any person of Russian origin*

¹² Supra Note 1

¹³ B. Sen, Protection of Refugees: Bangkok Principles and After, Journal of the Indian Law Institute , APRIL-JUNE 1992, Vol. 34, No. 2 (APRILJUNE 1992), pp. 187-217

¹⁴ Andreas Zimmermann, The 1951 Convention Relating to the status of Refugees and it's 1967 protocols: A Commentary

<<https://opil.ouplaw.com/view/10.1093/actrade/9780199542512.001.0001/actrade-9780199542512>>

¹⁵ Certificates to Russian and Armenian Refugees Supplementing and Amending the Previous Arrangements

*(e) who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Soviet Republics and who has not acquired another nationality*¹⁶. And, further it defined Armenian as “*Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired another nationality*”¹⁷ This is a special Document, which only deals with few Refugees from specific nationality. It was later extended to Refugees of several other nationalities¹⁸. Even though it is limited to specific nationalities, it has helped to develop the present day definition of “Refugee” by including the principle of “Not enjoying Protection of government” as a criteria for any person to seek refuge. This is the landmark, from where the conditions started being put, to determine any individual as a “Refugee”. By virtue of this definition, there is no scope for protection of the Statelessness people.

THE TERM “REFUGEES” IN THE 1951 CONVENTION ON REFUGEES

The basic foundation of the definition of “Refugees” lies in the term “Well-founded fear”. As discussed in the previous section, the term “Refugee” has undergone morphosis with the need of the time. But, the definitions prior to 1951 was largely based on the background of the people, to recognise them as “Refugees” rather than analysing the situation in which such background could be the hindrance. Scholar Andrew Zimmerman, stated that “term 'refugee' was exclusively limited to origins, for which the scope of the term was restricted to certain groups of people only”¹⁹.

Term “Refugees” in the 1951 Convention on Refugees.

The concept of “Well-founded fear” was not very well founded in the course of development of the Regime. It was the IRO Constitution that had mentioned the “reasonable grounds of persecution”²⁰ for the first time, which later was the inspiration for this provision of the 1951

Dated July 5th 1922, and May 31st 1924 (1926 Arrangement) of 12 May 1926

¹⁶ *ibid*

¹⁷ *Supra* Note 6

¹⁸ The Arrangement Concerning the Extension to Other Categories of Refugees OF Certain measures taken in favour of Russian and Armenian Refugees of 30 June 1928

¹⁹ Andreas Zimmermann, The 1951 Convention Relating to the status of Refugees and it's 1967 protocols: A Commentary

<<https://opil.ouplaw.com/view/10.1093/actrade/9780199542512.001.0001/actrade-9780199542512>>

²⁰ IRO Constitution of 15 December 1946

Refugee Convention, along with the representative of the United Kingdom introducing the notion for inclusion of “Well Founded Fear”. Having a historical background, yet development of this term was largely interpreted by the executive. From the Eligibility Officer of the era of IRO²¹ to today’s government and their agencies taking the responsibility of drawing the criteria to meet the term “Well-founded fear”.

The literal interpretation of the term “Well Founded fear” in French would mean being afraid of²², and the English translation²³ of it means: “The emotion of pain or uncasiness caused by the sense of impending danger, or by the prospect of some possible evil”. Therefore, in both the interpretations, the edifice of fear remains constant, and necessary. The magnitude of this fear is the crux of the provision. So as to say, the fear is so high, that it seeks for granting International protection. Interestingly, this regime doesn’t hold account of the states where the refugee crisis has been created or have any provisions for the states to forbid or reduce or take any actions that can create refugees. Rather, the refugee protection convention deals entirely and holds other states responsible.

Since, there is no definition or specificity provided by the provision, it leaves entirely on the interpretation by the states, on their convenience .One of such example is the conflict of timeline of “Persecution” to be referred as well founded in nature. The subjective and the Objective approach are the two methods by which the states adjudge whether the fear of persecution “well founded” or not²⁴. In saying so, the Subjective Approach is based from the perspective of the individual, and concerned with the plight of such person only. Whereas, the Objective approach tries to give equal weigh to both, the individual plight as well, the circumstance of the state, or the nation of the person and draw the nexus between the reasons of the individual plight with that of the circumstance of the state.

Till the 1951 Refugee Convention, the term “Refugee” was built around the Subjective approach, and it was only based on the background, origin or causes of the plight of the individual. But, with introduction of the “Well founded” the concept is not the same. As, have been mentioned by the Ad Hoc Committee of Statelessness and Related Problems persons,

²¹ IRO, Manual of Eligibility, cited in Cox, Brooklyn JIL 10 (1984), pp. 333

²² Hathway, MJIL 26 (2005), pp. 505

²³ Oxford Dictionary (<https://www.oxfordlearnersdictionaries.com/definition/english/well-founded>)

²⁴ statement of Robinson (Israel), Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/SR.18 (1950), pp. 4-5

as: “*a person has either been actually a victim of persecution or can show good reason why he fears persecution*”²⁵ This statement is a reflection of the Objective approach, giving relevance to the circumstance of the state or the situation in which the person was in.

Apart from the perspective of judgement for recognising a person as a “Refugee”, there is void of certainty with regard to the timeline of persecution, to be referred as “well founded²⁶”. Addressing the above mentioned statement of the Ad Hoc Committee of Statelessness and Related Problems persons²⁷, the person who is a victim of persecution, is analysed basis of his past experience representing the Subjective approach, whereas there is importance given the Objective approach as well, to judge the future risk of persecution. It can be then stated that “Well-founded fear of persecution” includes people who are the victim of past, as well as people who can show the reasonable grounds, as to why there is a risk or fear of persecution²⁸.

With reference to the debate about Subjective and the Objective approach, there is no constant practise followed throughout the world, even for those states who are the contracting state parties to this Convention. This is a state of concern, as some people by the benefit of positive approach and determination is easily recognise or provided the Refugee Status. On the other hand, the people who are victim of persecution or there lies reasonable grounds for the fear of persecution, is in a disadvantageous situation²⁹ by not being provided the refugee status on the ground of lacking enough evidence. The matter of evidence is largely dependent on which approach is applied. Therefore, two people of similar condition could meet with two different destiny regarding being granted the refugee status, due to the non-uniform pattern of analysing the refugee applications.

Taking this argument of the approach further, in some cases, countries have chosen not to abide to any one approach but follow the combination of both the approach, which is Subjective and Objective Approach. Such combined approaches create a situation of

²⁵ Andreas Zimmermann, *The 1951 Convention Relating to the status of Refugees and it's 1967 protocols: A Commentary*

<<https://opil.ouplaw.com/view/10.1093/actrade/9780199542512.001.0001/actrade-9780199542512>>

²⁶ Ad Hoc Committee on Statelessness and Related Problemis, Report, UN Docs. E/1618 and E/AC.32/5 (1950), p. 39

²⁷ statement of Henkin (US), Ad Hoc Committee.on Statelessness and Related Problems, UN Doc. E/AC.32/SR.18 (1950), p. 5

²⁸ *ibid*

²⁹ Hathway, MJIL 26 (2005), pp. 505

juxtapose, where the approaches become indispensable of one another³⁰. Not being able to differentiate from one another, the Objective approach is reduced to objective evidence, leaving the majority of the attention of the Subjective Approach. UNHCR had taken the proactive step in conforming to such combined approach as the interpretation of “Well Founded Fear³¹”

The most difficult part in such combined approach is to weigh the aspects differently. The EU Qualification Directive addresses “persecution” from the perspective of Subjective approach in order to understand the sphere of ‘violation of human rights³²’. It can therefore be said that, the states have taken up approach based on the convenience, due the ambiguity regarding the approach of interpretation of the term, and the approach directly impacts on the people being the granted the refugee status.

Term “Persecution” in the 1951 Convention on Refugees.

The concept of ‘persecution’ has undergone changes with the development of this regime. Largely, persecution refers to the systematic human rights violation³³. In consideration of such broad outline of the word, its significant to state, that it only considers the general human characteristics. Human Rights, as much as the capacity to address as violation of the same, is dependent from human to human. That is to say, the tenacity, cultural and economical difference and other factors play a major role, for the similar experience to have different reaction, in form of identifying whether its human rights violation or not. That brings back the debate of Subjective and Objective approach of analyse the human rights violation of the individual.

The broad definition of Persecution, that is systematic human rights violation, is not insufficient only on the grounds lack of the specificity of the rights, but it lacks reflection of the duration to be considered as systematic violation. The issue of “duration” has a major role to play to differentiate one act in isolation as compared to the acts which have continued over

³⁰ Cameron, ILRJ 20 (2008), pp 567-585

³¹ UNHCR, Handbook on Procedures, paras. 37-50

³² Andreas Zimmermann, The 1951 Convention Relating to the status of Refugees and it’s 1967 protocols: A Commentary<<https://opil.ouplaw.com/view/10.1093/actrade/9780199542512.001.0001/actrade-9780199542512>>

³³ UNHCR, Handbook on Procedures, para 82

a long period of time. The question in this regard, also follows, whether both the act of violation, of which is for a short duration, and one continued over a broad period of time, stand in the same pedestal for being granted the refugee status?

To answer, any act insolation or a single commission of human rights violation, is not persecution per se. An exception to such general notion, is Torture³⁴. But, that is not a general or universal criteria of the time duration being referred to, during analysing the applications for the Refugee Status. But, the importance of duration is not with regard to identifying, whether it was significant enough³⁵. But, it should act as an objective evidence, during analysing the applications. With regard to those acts which have continued over a period of time, and cannot be limited to one single experience, is in itself an objective evidence. It is to show the persecution, inform of infringement of rights have taken place, but there is also nexus between such act and the well-founded fear in the future. To elaborate on this circumstance, case analysis of a landmark case³⁶ is extremely significant. In the case of this is a case of 1987, when most parts of south Turkey was under Emergency Rule. The petitioner, who is a Turkish national³⁷ and a 17 year old girl had complained that she has been subjected to ill treatment and have been raped, by an official, while she was detained for interrogation. There was procedure of investigation conducted including medical examination. The petitioner had contended that the act of the state not being able to safeguard her rights as well defending such personnel, has infringed her rights under Article 3,6,13,25 of the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment. Where, the European court of Human Rights held it's only violative of Article 3 and 13 of the Convention. This case in significant to understand the ambit of the convention as well as the parallel development of International Human Rights, where such acts of rape amounts to torture as per the Conventions.

Now, that the duration and the nexus between the act and the fear is drawn. The question about "Human Rights" is to be interpreted in the perspective of it being referred as currency for analysing 'persecution'. Human Rights doesn't have a strait jacket definition, and further not an exhaustive one as well. It depends on the people to perceive it. Several International Human Rights instruments have been drawn and have addressed several lacunas of the

³⁴ Supra Note 1

³⁵ Grahl Madsen, Status, vol. I,p.192

³⁶ Supra Note 1

³⁷ ibid

societal practises, and there are rights for education, to religion, to maintaining ones culture.

In order to under the scope of rights, one has to be dependent on the International Human Rights instruments, like International Covenant on Civil and Political Rights, 1966 (Hereafter referred as ICCPR). ICCPR makes crucial differentiation amongst the rights, under two categories: (1) Derogable and (2) Non-Derogable. This states that, some rights are superior to others, for which there cannot be any restriction, infringement. We can extend such contention and state that, these Non Derogable rights, being imperishable, are to be referred to, for granting Refugee status.

i. Right to Life and Right to Livelihood.

Right to life is one of the broadest right³⁸ that is a cumulative of all the rights that make life of person worth living. Such rights just don't limit to right to integrity, livelihood, etc. but is extended against arbitrary arrest, torture, inhuman treatment, etc³⁹ Any arbitrary action, which is not with due process is precisely denying a person of his freedom, liberty and justice. These are the basic rights, on whose foundation other rights develop. Without the basic right to life, that is the acknowledgement of life and it's worth, other rights are void.

ii. Right to Religion

Religion, is an interpersonal relationship with one's soul and human kind with divinity, which cannot be defined or limited to any set of practise of belief. The Right to Religion, Freedom to conscience, expression etc⁴⁰, is duly recognised by all the landmark International Human Rights Law instruments. In can be drawn a parallel nexus between, one's existence that is freedom to live and the freedom to live with dignity and personality

iii. Right to Privacy

The concept of Privacy when it was introduced by ICCPR, it referred to the private lives of people, in home⁴¹, in the protection and safeguard of the family. But, Privacy, in the age of data and virtual communication is not one dimensional. It is multidimensional, and is in consonance with right to movement. Any arbitrary interference in one's privacy is

³⁸ Article 6, ICCPR

³⁹ Article 7, ICCPR

⁴⁰ Article 9, ICCPR

⁴¹Article 17, ICCPR

synonymous to intrusion in someone's basic freedom to live. One of such specific mention is the freedom to practise different sexual orientation. Refugees status has been granted to such people who were persecuted in their own state, for choosing to practise sexual orientation, which was declared immoral.

iv. Right to Due Process

Right to life is meaningless without being accompanied by Due Process⁴². To add, no one's right can be violated without the reasonable grounds suggesting to do so, that is Due process being maintained. Public hearing, speedy trial, etc are a few mechanism that have developed in the International Law, to ensure due process.

v. Socio-Economic Rights

It is certain important to say that, social and economic phenomenon are interlinked with one another, where they have become indispensable of each other⁴³. But, in this regime, specially in the 1951 Convention, violation of economic rights have not been given the scope of "persecution". Poverty, which is a product of systematic class struggle conducted over a period of time, with division in social strata and further the marginalisation, at one end cannot seek protection, for being economic refugees. On the other hand, it is also a by-product of the societal phenomenon like marginalisation, which can refer to it as social refugees.

On the same line of contention, the people seeking for better avenues of economics, cannot be referred as refugees, as looking for better opportunities doesn't show there are any lack of opportunities further right to livelihood is being violated. But, someone who seeking for refugee status, on the ground that he is unable to survive in his country, for having any opportunities, or the objective approach suggests that the state has failed to maintain economic rights, then on such ground, people should be granted Refugee Status. As have been mentioned above, economic rights, as much as they are significant, protection from violation of such rights should also be ensured.

vi. Right to Education

⁴² Pellonpaa, In Changing Nature, pp.139

⁴³ Hathway, Status, p. 119

Education, has emerged as a significant right over the period of time. But, in some states the policy of education is limited to certain class. Groups like women, or those belonging to the underprivileged section are at times denied the right to education⁴⁴. In such circumstance, what needs to be considered whether violation of the rights of individual to education, can be considered as persecution. Courts have given positive decree with respect to children not being allowed to be educated, or women who are restricted to education, as ‘Refugees’

Agents of Persecution

Act of private individual or a group infringing someone’s right may tantamount to ‘persecution’. But, to judge such actions, the scope of the state is further more significant⁴⁵. The action can either be committed by the State actors, or the Non State Actors. For the former case, the influence of the state decision is direct. In saying so, the functions of the state actors in their official capacity can be deciphered and the state’s role is directly linked with the actions of its agents. Whereas, actions of the Non State actors have a difficult stance. With regard to the second category of commission, the role played by the state in the stage of redressal plays a crucial role. In saying so, whether the State does interfere and cease violation of human rights of an individual, or the state decides to encourage the actions of private individual If the state decides the tolerate the continuous commission of gross violation of human rights of an individual by a non-state actor, the state also becomes a party to such commission for it’s failure to protect it’s citizen.

In saying so, not every act of act of delay of justice adds to failure on part of the state. But, if any primary organ of the state denies to take an actions to provide any redressal, it counts as active participation of the state as well. To understand this situation, one of the landmark case is *Olimpia Lazo Majan v. Immigration & Naturalization Service*⁴⁶. This case was decided by the United States Court of Appeal, by the Ninth Circuit, about a widower seeking for political asylum in United States of America, after being raped, sexually and physically being abused by Salvadoran military personnel over a period of time. This case plays a significant role to understand the expansion of the terms ‘political opinion’, where it is not used in a constricted way, but, it was recorded that “*male chauvinism is itself a political opinion and, male*

⁴⁴ Foster. Refugee,p.103

⁴⁵ Hathaway, Status, p.129

⁴⁶ 813 F.2d 1432,9 June 1987

domination, particularly when exercised by any police officer or member of the military, however low of rank, constitutes political persecution". Though, in this case, due to lack of evidence to support that the alleged violence committed by the Salvadoran personnel was motivated by the Government, the petitioner was not provided asylum. The basic concern was, a violence or crime by a single individual motivated or authorised by the Government or those in power, it cannot be referred as fear of persecution or persecution, to seek asylum

The way the agent of persecution have a significant role to play, the kind and the number of victims also influence on the approach of analysing the grant. In saying so, Asian countries like India has mentioned the 1951 Refugee Convention to be lacking the provisions for group Refugees⁴⁷, which is the kind of refugee crisis seen in such countries. In brings to an important discussion on the Group of victims of persecution. There a large number of people, whose life or rights is at stake, for them being member of such group. There need not be any common agenda of such group. But people, who can be classified under one group, under any set of conditions, as is persecuted based on it, can referred as Group persecution. And, mass influx of such group of victims does put a massive burden on the state, to which it seeks refuge from. In the state of emergency, when lives of several people is at stake, and on account of the group being identified, there individual analysis and determination is prolonging the protection. Similar views have been taken by UNHCR⁴⁸ as well US court⁴⁹ in certain cases. But, the refugee crisis in US is very different from the Refugee crisis in Africa. Similarly, Refugee crisis in Europe is different than in Asia. Therefore, this practise is not uniform all throughout. On such contention, India has failed to provide the uniform reception and determination of Refugee status to Refugees coming Tibet⁵⁰, at different times.

Race

The definition of "Refugee" mentions of five grounds of persecution, which are: (i) Race (ii) Religion (iii) Nationality (iv) Member of a social group (v) Political Opinion

In brief it can be said that, due to lack of any prescribed interpretation and absence of uniform pattern of practise, States have utilised such lacuna to their benefit. Deliberation about the

⁴⁷ Santhy S. Pillai, 'Legal Conditions of Refugees in India' (2010) <<http://borispaul.wordpress.com/2010/09/11/legal-conditions-of-refugees-in-india/>> accessed 17 April 2020

⁴⁸ UN handbook on procedures, para 44

⁴⁹ *Kotzav*. Immigration and Naturalisation Service, 31 F.3d 849 (US),852

⁵⁰ Tsoltim N. Shakapba, 'The Issue of Autonomy of Tibet' in Rajiv Mehrotra (ed), *Voices in Exile* (1st edn, Rupa Publications India Private Limited 2013) 47.

group, that is race, religion, nationality etc is required as much as the risk or fear is established. Going by the literal interpretation of the definition, it makes it a clear that “Fear of persecution” is compulsory to be shown, as much as the cause of the persecution is to be shown.

In saying so Race is a concept that has developed from the times, it was referred only for the Jews, who were victimised from the Nazi ill treatment during the Second World War⁵¹. Scholars suggest that, such term was introduced to provide protection to the Jews Community. But, the term has been used in various complex societal interrelationship and phenomenon like Racial Cleansing, Racial Superiority and Racial isolation. But such categorization is majorly based on the physiological characteristics of individual, rooted to the concept of the Biological classification⁵². Where people based on colour⁵³, body type is brought under a group. Like the most contemporary outburst in the name of “Black Lives Matter⁵⁴” is a form of protest for the racial discrimination.

Racial Discrimination is a long term form of persecution, as it is denying the basic right of “Equality” for the discrimination on the basis of skin colour. This has been reaffirmed by the London Charter⁵⁵, as well as the UNHCR Guidelines⁵⁶. They refer to the underlining condition of ‘ethnicity’ as the ground to distinguish between ‘Race’ and other groups. However, the domestic courts tend to interpret “Race” is a skewed pattern, by not differencing amongst other groups of people⁵⁷.

Religion

The second condition, which has been laid down by the 1951 Convention is “Religion”. There is no straight jacket definition of Religion. The largely accepted motion is that, Religion is a set of practise, faith and beliefs. The founding feature is the nexus between humanity and the

⁵¹ Grahl-Madson, Status, vol. 1, p.217,

⁵² Sejdic and Finci v. Bosnia and Herzegovina, 22nd December 2009, p. 43,

⁵³ Oxford Advanced Learner’s Dictionary

⁵⁴ Black Lives Matter protest disrupted by racist abuse, BBC NEWS, 9 June 2020
<<https://www.bbc.com/news/uk-england-beds-bucks-herts-52979267>>

⁵⁵ 1945 Charter of International Military Tribunal
<https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf>

⁵⁶ UNHCR, Handbook on Procedures,

⁵⁷ Santiago Peedro-Mateo v. Immigration Naturalization Services, 224 Ed.1147 (US) p.5

divinity, in the most practical as well as spiritual space.⁵⁸ Religion is the most widely interpreted on personal and individual level. And, religion is not restricted to one set of believes or rules, even if a group of individual recognise themselves under such religion. The idea of worship is interlinked and rooted to the recognition of relation with the soul, faith, obedience, etc. But, it is not limited to belief of existence of any super natural power, it could be about certain practises that have taken the stage of worship, belief and such be referred as “Religion”. As we can deduce, religion is a personal decision and a right of an individual, as stated by Universal Declaration of Human Rights⁵⁹, International Covenant on Civil and Political Rights⁶⁰, and other landmark instruments. Ironically, the infringement of this right to religion is largely done so by private parties or non-state actors, as compared to state endorsed agents. One of such reason is, direct conflict of belief or following the contemporary practises.

In elaborating, the contemporary practises have been referred by the UNHCR's interpretative Guidelines concerning religion-based claims⁶¹, as those practise which are followed as way of life. Such way of life, includes atheistic, theistic, etc. These practises don't conform to the traditional pattern of religion⁶². The forefront conflict of conviction, existence of divinity or identity becomes reason for persecution. But what is the perimeter of such practises, and what is the pattern of determining people following such unconventional practises. In some cases, there is symbolic representation, or sometime there is some pattern of lifestyle followed by them. But, such practises having its basic agenda of not conforming to any conventional pattern or practises, is difficult to draw the lines of definition, to elaborate on the scope of whether such individual fall under the ambit of persecuted due to religion. It was observed in the case of Verwaltungsgericht München⁶³, where the German Court had mentioned “*basic subsistence of the religion' (religiöses Existenzminimum)* does not establish refugee status under the 1951 Convention⁶⁴. It was later reversed by the Qualification Directives in another

⁵⁸ Goodwin-Gill, Refugees, p.71

⁵⁹ Universal Declaration of Human Rights, 1948

⁶⁰ International Covenant on Civil and Political Rights, 1966

⁶¹ Andreas Zimmermann, The 1951 Convention Relating to the status of Refugees and it's 1967 protocols: A Commentary

<<https://opil.ouplaw.com/view/10.1093/actrade/9780199542512.001.0001/actrade-9780199542512>>

⁶² UNHCR, HCR/GIP/04/06 (2004), p. 3

⁶³ Verwaltungsgericht München (Administrative Court of Munich, Germany),

M9 K06.51034, 22 January 2007

⁶⁴ Bundesverfassungsgericht (Federal Constitutional Court, Germany), 2 BvR 478, 962/86, 1 July 1987

case.⁶⁵

The concern with determining Refugees following unconventional practises, or Religion as way of life, is not as people who don't conform to other societal practises. Those following certain age long set of belief or practises are not antagonist of those who are not following. Even, if on the blank slate they may look like opposite of one another. They are not by the practise. They both are extremely personal decision and has individual consent, greater than the influence of a group. In saying so, Right to religion as much as encompasses the traditional believes are as analogous to those not living by those set of believes. Therefore, both the set of people should fall under the category of 'Religion' even if they both are distinctly different to one another.

Membership of a Particular Social Group

Membership to a group, is not in particular restricted to any one kind of societal group of people. This category leaves the ambit of individual quite broad and is a net⁶⁶ for any individual who could be the victim to any societal pressure leading to his rights being violated. Inclusion of this category suggest that there is a consensus to increase the periphery of the definition of the "Refugees" in this 1951 Convention. And, further to meet with the future development in form of crisis that have erupted after 1951, such category which leaves a wide range of people to be brought under it. It is not an alternative option but a cumulative set, which provides scope of inclusion.

To understand the importance of "Social Group", the two significant interpretation is necessary. One is 'Social' and the other 'Group'. A single individual victim of any societal consequences, or a large group of people being victimised, or small fraction of people being violated of their basic rights⁶⁷, don't fall under the same pedestal during determination, in practise. By virtue of the term 'social group', it can be perceived that is against the societal norms and patterns, hence, the major fraction of this society would cannot be part of this "Members of social Group". By default, the group of people will small in number. On the other hand, that doesn't erase the scope of large group of people, inspite of being mammoth

⁶⁵ Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court of Baden-Württemberg. Germany), A 10 S70/06, 20 November 2007

⁶⁶ Foighel, *Nordisk Tidskrift for International Ret* 48 (1979), pp. 217, 222.

⁶⁷ *Morato v. Minister for Immigration, Local Government and Ethnic Affairs* (1992) 39 FCR 401, (1992) 111 ALR 417 (Australia).

in number being subjected to any victimisation. The size of the group doesn't signify the link⁶⁸ whether the group of individual can fall under "Social Group"

The next deliberation that is required "what falls as societal". On general interpretation, any such actions, commission of act which are concerned with the social phenomenon are under this group. To elaborate further, any social phenomenon that creates discrimination, isolation, disparity or any kind of victimisation of any or a group of individual, is to referred as "Societal". But, the 1951 Refugee Convention has not made an attempt to elaborate, the distinction between this category of refugees and the refugees under Race or Religion. All of the three are closely interlinked, and any religious practise that influences the social norms, and on violation of rights of any certain individual on such grounds create a condition of knot, where the root cause being religion, the further concern is "Societal" in nature⁶⁹. Where does one draw a line of demarcation between these categories.

To extend the above mentioned contention, the division of "Class, caste, creed" are product of inter relationship between society norms followed over ages, influence of the economic structure and the characteristics of the different societies. In such scenario, the economic refugees who are victims of the lack of livelihood don't fall under this category directly. Which states that the societal class, caste are the only group that can fall under this category.

In saying so, the Domestic Court have recognised "Societal Class" as "Refugees" under the 1951 Refugee Convention. The next question that arises, as to what is "Societal Class"⁷⁰ and how could it be differentiated from the economic class, for the sake of reducing the Definition crisis of the 1951 Convention.

The social Class would largely incorporate the group of people, who are denied the fundamental human rights and dignity and led to survive on the surface, with no societal due recognition. For the sake of protection, these group of people could be referred as "Societal Groups". But, societal phenomenon like Poverty that is the inter relationship between the

⁶⁸ Löhrt, Kinderspezifische Auslegung, p. 136; Marx, ZAR 25 (2005), pp. 177, 181; UNHCR, HCR/GIP/02/02 (2002), para. 18.

⁶⁹ Andreas Zimmermann, The 1951 Convention Relating to the status of Refugees and it's 1967 protocols: A Commentary
<<https://opil.ouplaw.com/view/10.1093/actrade/9780199542512.001.0001/actrade-9780199542512>>

⁷⁰ *ibid*

Economic structure, that is the class division that have continued for ages, combined by ostracise by the societal pressure, cannot be referred as “Economic Refugees” or “Societal Refugees” in isolation. But, some court have recognised Poverty under this category⁷¹. This places a conflicting position, where some courts have recognised a phenomenon as under this category, some courts have not stated any clear interpretation about the same.

Political Opinion

Political Opinion is a very vast class, where both the terms ‘political’ and ‘opinion’ in itself acts as a category of people. It is linked with the “Government”, “State”, etc.⁷² With regard to ‘Political’ it necessarily isn’t restricted to only political rights that are guaranteed by the Universal Declaration of Human Rights⁷³, International Covenant on Civil and Political Rights⁷⁴. However, it further encompasses the right of voice, opinion, views and expression, which is also guaranteed by the two above mentioned International instruments. But the latter category isn’t necessarily only about political ideologies or policies. Views, opinion on social policies or phenomenon. Leading to persecution or fear of it clearly doesn’t come to this category. It can be deduced from the terminology “Political Opinion” that holds those people, who are persecuted or are in the fear of persecution due to voicing opinion or views that are about political system or political in nature.

But, ‘political opinion’ doesn’t count only those who are member of any political party, or are party to any political affiliation. The idea of ‘political’ cannot be limited by only referring to political parties⁷⁵, as the political parties are mere representation of any set of Political ideologies. The view of Justice, Liberty is an underlying concept in this category. To elaborate on this, political opinion, need not necessarily be of any conventional set of theories⁷⁶. But concepts like ‘liberty’ or ‘justice’ which are the propounder of ‘freedom’ are as much political opinion, on its own. This argument is similar to that of those following religion, by a set of belief and practise whereas, another set of people doesn’t conform to any belief or practise as the idea of ‘Religion’.

⁷¹ *Sinora v. Canada (Minister of Employment and Immigration)* (1993)FCJ 725

⁷² Oxford Advanced Learners Dictionary

⁷³ Universal Declaration of Human Rights, 1948

⁷⁴ International Covenant on Civil and Political Rights, 1966

⁷⁵ Hathway, Status ,p. 153

⁷⁶ UNHCR, Handbook on Procedures, paras. 80

A. **Children:** There is no attempt made in drawing compartment of sections or classes of people who are majorly referred as the vulnerable group of people, in the normal circumstance in the society. Children, is one such category who are dependent on any legal guardian for their survival. In context of Refugee Protection, there is no specific provision to deal with children who are without any guardian or parents. The 1951 Refugee Conventions falls short on this lacuna. The Convention on Child Rights 1989⁷⁷ states that children on their own can also seek for refugee status as an individual claims. In circumstances, where a person is granted refugee status, his immediate dependent that is his children are may or may not be provided the same. The 1951 Convention remains silent on such condition, as well. This crisis becomes a conflict, when read with Article 22 of the same Convention⁷⁸, which speaks about ‘Public Education’. Clearly, there is no provision or mention of the children being determined as refugees, by virtue of their guardians or parents recognised so, but there has been attempt made to ensure basic rights of the children, such as education.

The second concern is that, the Children may form a class of people, who are victims of the circumstance, but the definition of the “Refugees” is insufficient to consider the kind of persecution, that are only child specific⁷⁹. The standard of persecution also cannot be same for an adult and that of a child, to be provided protection under this regime. By virtue of age and vulnerability, they cannot be treated as equals with all adults. Basic tenants of the protection is to ensure, protection is provided as per the needs of the people, and not cover as general blanket.

B. **Gender:** Gender though includes two kinds of people, but in the course of victimisation it necessarily put the men on back-foot. To elaborate, in question of protection of refugees, from the perspective of gender, it refers to protection of the vulnerable group that is the women. That is the conventional idea and have been widely discussed. By virtue of gender, only the women have benefitted under the category of ‘Gender⁸⁰’ precisely stating that the men don’t face any gender based persecutions. That brings to the lacuna of this Convention, which doesn’t address the

⁷⁷ Article 22 of the Convention on Child Rights

⁷⁸ The Convention relating to the status of Refugees, 1951

⁷⁹ INS, Guidelines for Children's Asylum Claimis, p. 19, available at <<http://www.uscis.gov/USCIS/>>

⁸⁰ Binder, Verfolgung, pp. 348-349.

gender based persecutions, which cannot be either put in the category of ‘social group’ or ‘political opinion’. Persecution due to gender, is not necessarily a political opinion, unless it’s a state endorsed policy to which the group of people has voiced an opinion, leading to fear of persecution.

Due to lack of provisions in this 1951 Refugee Convention, the other International Human Rights and International Criminal Law instruments have to be resorted to for determination of refugee status, of gender based persecutions.

Gender based persecutions are interchangeably used as women based persecutions⁸¹. In the normal circumstances, the women are marginalised, by virtue of the socially and culturally constructed edifices of the society. The mores and the foundation of the society keeps the women on the disadvantageous position. Such condition makes the women a vulnerable group of people. In order to understand, there has to be a differentiation made between “women being persecuted, and persecution done because they are women”. This differentiation is necessary, as both are not same. And, a woman being persecuted is similar to any person of any gender, age, class being persecute. Whereas, a woman being persecuted because she is a woman, is one of such example of gender based persecutions. In the cases of *Islam (A.P.) v. Secretary of State for the Home Department Regina v. Immigration Appeal Tribunal and Another Ex Parte Shah (A.P.)*⁸² which were heard as co joined appeal by the house of Lords, were the question was about asylum to two Pakistani women on the grounds of ‘Membership of a particular social group’. The facts of the case, states that these women were subjected to domestic violence and were forced to leave their house, by their husband. They feared that, they would be subjected to false allegations of adultery and sexual immorality. The parties contended that, due to the social and moral constraints of the country, if women are found with such charges, guilty or not, they are subjected to stone peddling and violence to death. They further feared any such criminal proceedings against them under such charges. The court in this case explained about who could qualify for refugee status, which is who refuse to conform to the discriminatory laws and thus become a member of any particular social group, which

⁸¹ UNHCR, HCR/GIP/02/02 (2002), para. 3

⁸² Conjoined Appeals decided on 25th March 1999

is the criteria for such status. In this case, the discrimination and violence that the women are subjected to are deep embedded in the society they belong to, they have not up sprung one night. Further, as per the court, they would be persecuted as individuals not as women specially, which the petitioners couldn't establish.

But, the pertaining question is, what constitutes as Women based persecutions? Any form of moral, physical violation of rights of a woman for her gender can referred under this category. To elaborate, rape, sexual abuse, domestic violence, which are necessarily inflicted only on women, and is caused due to the gender are standard of "women based persecution". There is no exhaustive list of form of persecution that women faces, which ranges from mutilation⁸³, to forced marriage⁸⁴, restricting to certain practises including dress code⁸⁵.

But, Gender based persecution cannot be limited⁸⁶ to "Women based persecution" in this contemporary age of law and policies. Several countries like India, have their legislation safeguarding the rights of the women over men. One of such staking observation is "Rape" is one of such act which can only be inflicted on women, similar provision for 'domestic violence' and so on. The vulnerability of women has not ceased to exist, and the domestic laws, in conformity with Convention on the Elimination of all forms of Discrimination against Women ensure protection of women, as much as possible. But, that shouldn't curb on protection of another gender on the idea of general equality. There are men, who face the wrath of sexual harassment, rape and even domestic violence, but is unable to seek for redressal for any of such action against a man, is not recognised by law. In these cases, it can stated that such persecution, induced by a non-state actor, by not being judicially redressed, is state endorsed persecution indirectly.

C. **Sexual Orientation** The literal expression of Sexual Orientation refers to "*person's capacity for profound emotional, affection and sexual attraction to, and intimate and*

⁸³ Binder, Verfolgung, Pp. 365 et seq., 390

⁸⁴ *ibid*

⁸⁵ *ibid*

⁸⁶ UNHCR, HCR/GIP/02/02 (2002), para. 3. Cf. also Bindér, Verfolgung, p. 346.

*sexual relations with, individuals of a different gender*⁸⁷”. Just like the other vulnerable groups, “Sexual Orientation” is not mentioned in the Convention, nor is any special provision introduced for ensuring the protection of the same. Primarily the group of “Sexual Orientation” is about Gender identity and Gender fluidity, where various kinds of people having different sexual preferences can be brought under, including the four prominent class, Lesbian, Gay, Bisexual and Transgender persons (LGBT+)⁸⁸. The transgender community is one that deals with Gender based community like women, as because there founding crisis is not about sexual orientation. But, the form of persecution faced by them is not similar to the Gender based but rather based on sexual orientation.

In spite of being one of the many vulnerable groups, the LGBT+ group of people are subjected to double sword. On one hand, the community has to undergo social marginalisation, persecution because of their orientation and on the other hand, some nations still don't recognise the other sexual orientations. The concern of Social as well political persecution becomes the concern for such group of people, which makes them very unique from other classes.

Sexual Orientation, is a psychological pattern, yet the persecution is interlinked with social, political, civil⁸⁹ and sometime even religious. Some religions don't recognise every sexual orientation, and any one not observing it is made to either pay the penalty or are persecute by various methods. In such situation, it is difficult to decipher whether such persecution has taken place due to the person not conforming to religious practise, or because he has chosen to express his sexual orientation. The concern has another layer of social pressure, which at times is interlinked with the political decisions. So to say. In countries governed by Constitutional Morality⁹⁰ would be able to recognise the people with difference under the ambit of equality. However, there are several countries, which are run by populous morality in which any such practise not in conformity with the set societal norms is either penalised or is persecuted. In

⁸⁷ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2007, Preamble, available at <http://www.yogyakartapriaciples.org/principles_en.htm>.

⁸⁸ *ibid*

⁸⁹ UNHCR, HCR/GIP/02/01 (2002). para. 16;

⁹⁰ LON L. FULLER, THE MORALITY OF LAW (1964)

such circumstances, it is first necessary to find the root cause of the persecution.

This conflict was explained in *Halmenschlager v. Holder, Attorney General*⁹¹ which is a significant case, in understanding the scope of “fear of Persecution” and “Homosexual being a referred as the member of a social group”. Furthermore, this case highlights the disparity in the two countries, USA and Brazil, providing judicial resolution, to the homosexuals. The court in this case had ordered that ‘*Persecution on account of membership in a particular social group*’ is “directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic and that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences. In the case of *Karouni v. Gonzales*⁹², it was formally adopted the position that homosexuals do constitute a particular social group

CONCLUSION

The very foundation of the regime, is determining the individuals who are in dire need of International Protection. In saying so, the interpretation of each word which cumulatively make the definition of “Refugees” needs to be read harmoniously with the object and the purpose of this Convention. It has been observed that, the different countries have adopted different approaches to interpret the term “Refugees”. During the determination of Refugee status, various individuals have faced the wrath of discrimination. Discrimination is a broad and general term to express the plight that the individuals are made to undergo. The interpretation has undergone changes, and development. The 1951 drafting has not ceased to what was referred as “refugees” then. Various kinds of persecutions have come under the ambit, along with perimeter of the five criteria’s put across that is “Race, Religion, Nationality, Members of Social Group, and Political Opinion” has increased with time. But, there is no universal trend followed. Different parts of the world have interpreted the terms differently. On such foundation, the concept of Universal Refugee Law has deviated, and the idea of International solidarity for the protection of the Refugees have has ceased to happen. In saying so, inspite of the Regime being International in nature, the application of it is domestic. It doesn’t punish, penalise or prohibit the country where the Refugee Crisis was

⁹¹ , No. 08-9514, United States Court of Appeals for the Tenth Circuit, 31 July 2009

⁹² 399 F.3d 1163, 1171 (9th Cir. 2005)

created. Rather, it puts a responsibility in the standard of compulsion by virtue of Article 33(1) of the Refugee Convention, on the other contracting states, to protection those in fear of persecution.

Hence, it is suggesting International protection, in the scope of domestic determination and protection. This is why the Regime is deviating, as because the domestic courts are interpreting the term to its own convenience. Lack of specific guidelines, or drawing the perimeters around the term, has led to such definition crisis. Adding to this list, there is no body or organisation deployed with the responsibility of foreseeing the interpretation or act as an independent body.

On another account, it has also been beneficial, for the flexible structure as it has stood against the test of time. The major Refugee crisis have happened after 1951, along with mammoth decolonisation and displacement of the people. Yet, the Refugee Convention is the only guiding force universally, for this Regime. This is because of its flexible, non-exhaustive drafting. Various groups of people, who have faced the wrath of societal or political violation, amounting to persecution, could be brought under the term “Refugees” by extending the five criteria mentioned in the Convention. But, this interpretation that have extended the protection, is precisely dependent on the Domestic Courts. There is no single, universal body to look after the application and execution of the Convention. The scope of UNHCR is not sufficient for ensuring the interpretation of the definition of Refugees is maintained universally.

There is a need of a Quasi-Judicial body to look after the interpretation, application and execution of the provisions of the Convention. The Article 33(2) acts an exception clause to the founding object of this Convention. There is need of a body to look into the reasonability of refouling any individual, inspite of having valid evidence of such individual having fear of persecution. This will ensure, that the verdict of the domestic courts don't become the final body of interpretation of the provisions of this Convention. This will reduce the scope of deviation or structural changes in the application, as per the states domestic policy and principles. This, on a long run will be able to reduce the deep rooted discrimination that has been going on.

However, in an attempt to make the structural application of the Convention, by ensuring the

interpretation of the provisions are applied universally, the regional crisis will be ignored. Every region have similar historical, cultural, ethnic similarity for which the kind of crisis or issues that arise can be resolved as a regional system of redressal. The initial draft of the 1951 Refugee Convention, was largely established to meet the crisis of Europe, and had come with the timeline and a geographical limitation. This precisely shows the influence of certain regions or states, in the drafting of any universal instrument. Therefore, there is also a need of Regional instruments, whose intervention will not shift the application of the universal notion of the provisions. But, it shall supplement the universal interpretation. So to say, there are various kinds of persecutions which are very region specific and may not be acknowledged on the universal platform. Yet, there is a significant need of International Protection, for which the Regional Instruments can act as the guard.
