RIGHTS AND REALITIES OF REFUGEE WOMEN

A Critical Analysis on the Rights of Refugee Women in Nepal

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Refugees are the persons whose fundamental rights have been violated. Within refugee community, rights of refugee women have been much more violated. Refugees’ problem has existed since long time. Now this problem is flourishing in multifaceted and multidimensional approach in the world. It is more effective if it is not view only from social, ethno-cultural, educational, political disagreement and legal perspective and put forth sight towards gender, age or economic perspective too. United Nations specialized agent called UNHCR and other agents like- UNICEF, WHO, WFP and so on are working as its partners for settling down the refugees’ problem since long time. Special convention for women has also been developed named- CEDAW. But this convention is not for the special attention of refugee women only. However, instead of reducing problem it is increasing day by day. The cause behind it can be that all types of rights of refugee women have not been addressed in the refugee laws and CEDAW. This is why, the researcher is dedicated to prepare the paper in order to find out the lacunae whether that is in theoretical part or in practice for protecting and ensuring the rights of refugee women.
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<td>AALCC</td>
<td>Asian- African legal Consultative Committee</td>
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<td>AALCO</td>
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<td>CAT</td>
<td>Convention Against Torture</td>
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<td>CEDAW</td>
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<td>CMC</td>
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<td>ECOSOC</td>
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<td>ExCom</td>
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<td>ICCPR</td>
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<td>OAU</td>
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<td>Refugee Co-ordination Unit</td>
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<td>SAARC</td>
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1.1 General Background

‘Human Rights’ are the minimum requirements necessary for a person to live a full human life. These rights are inherent, indivisible, inalienable and indispensable. Human rights do not depend on the pity of others or upon the place or position into which one was born. The founding document regarding the human rights, the United Nations Declaration of Human Rights (UDHR) 1948 article 1 clearly states that, ‘All human beings are born free and equal in dignity’. With the pace of time, other human rights instruments were drafted such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Nonetheless, many people are still deprived of their basic inherent rights and some of these flee as a result. People may leave their homeland in order to avoid persecution for reasons of race, religion and so on, to avoid massive violation of human rights in internal conflicts or foreign aggression or other such circumstances. Then, generally, they are called refugees.

Refugees are a vulnerable group in society. Within that vulnerable group, refugee women are particularly vulnerable. Gender based discrimination is an acute problem which is seen in the refugee camps. Policy – makers and scholars focus on the refugee problem in wholesale manner. Less attention has been given to the specific rights of refugee women although their rights are severely violated by the state, the host population or refugee men. This can be easily observed in the refugee camps of Nepal. The registration system, ration card distribution, number of refugee girls’ enrollment in educational institutions, accessibility to health centers are easily visible factors which are prevailing in the refugee camps till date.

Convention on the Elimination of All Forms of Discrimination Against Women (hereafter, CEDAW) was created for the effective protection of women against any act of discrimination. However, it also could not cover the rights of refugee women.
In this context, the researcher will analyze the rights granted by the 1951 Convention and CEDAW to the refugee women. This thesis will show the constraints for the protection and promotion of the rights of refugee women.

1.2 Objective of the Study
The general objective of this study is to make an analysis of the rights of refugee women in accordance with the international refugee laws such as the Convention Relating to the Status of Refugees, 1951 (hereafter, the Refugee Convention) and compare with Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1981. In addition to this, the study will centralize on the following objectives too:

- To give a brief account of the concept of refugee, and in particular refugee women as well as international refugee laws.
- To analyze the various rights of refugee women in accordance with International Refugee Laws and CEDAW.
- The condition of refugee women reside in Nepal will focus for illustrating the analysis of rights.
- To suggest some necessary measures to fill the gaps between policies and programmes and their effective implementation to overcome the refugee women’s problem.

1.3 Limitation of the study
As the study needs to be completed within the given time frame by Faculty of Law, University of Oslo, it will mainly concentrate on the conceptual knowledge of refugees, refugee women. At the same time, the study will make an analytical study regarding the rights of refugee women. As there is not any corner of the world where the problem of refugee women have no existence so, it might not be possible to overview the provision and practices for the protection and promotion of the rights of refugee women of all the countries of the world at once. By acknowledging the rights of refugee women, the researcher will mainly concentrate with rights granted by the Refugees Convention, 1951 and compare with special law in context to women ie. CEDAW. In the necessary condition, the researcher will take case study to the refugee women in Nepal. The condition of refugee women in Nepal seems more pathetic and several national and international publications are
highlighting their livelihood situation. Thus the paper writer is encouraged to study about them. Though, there is not any specific Nepalese law to govern the refugees in Nepal. So, the study will conduct by observing the provision and practices which are in existence since the arrival of first group of 60 Bhutanese asylum seekers at the end of 1990. Due to the coverage of large area by refugees, the researcher will not able to collect the primary data from those camps. Thus, the researcher will depend on the availability of secondary sources to collect the data regarding the rights of refugee women.

1.4 Methodology and Sources
The method of this study shall be a normative approach. If the researcher feels necessary to follow descriptive method, then that will be applied. Informal interviews, discussions, consultations will be based on. Legal sources shall be relied on for example, conventions, protocols, resolutions, general comments case law, judicial decision and declarations. Secondary literature including books, journals, seminar papers, published materials, journals, electronic sources, UNHCR’s research reports will be used.

1.5 Organization of the Study
Basically, this research paper will be divided into following five chapters:

1) In the first chapter, the subject is introduced. The objective, limitation of the study, methodology and sources are presented.
2) The second chapter will deal with the conceptual framework of refugees and refugee women.
3) The third chapter will concentrate with the legal framework of the international refugee protection system with respect to refugee women in particular.
4) In the forth chapter an attempt will be made to analyze and interpret the existing legal framework regarding the rights of refugee women.
5) Finally, the fifth chapter will deal with summary of findings and offer suggestions.
Chapter – II
Conceptual Framework on Understanding of Refugees and Refugee Women

2.1 Historical background on emergence of refugee people
The concept of refugees is not new. Refugees have existed throughout all times. It is not a modern phenomenon, unlike the international refugee regime (rights). Therefore, the paper is talking about refugees in modern times. The end of World War I which resulted in the replacement of the Czarist rule to a communist rule by Bolshevik revolution in Russia in 1917 deprived many Russians of their homes. As these people did not see even a single ray of solution coming towards their life for their settlement, they started moving towards the different states of Europe, Latin America and the bordering provinces of China. It was the initiating point of the problem but was unable to draw the international elites to find out the solution for this. With the passage of time, it became much more problematic which became much severe with the aftermath of independence granted in the Indian subcontinent by creating the two sates of India and Pakistan in 1947. At that time, it was of utmost necessity to find out any sort of solution of the displaced people. This was mainly put as a major question by Prof. Fridtjof Nansen who was appointed as the first High Commissioner for Refugees by the League of Nations in 1920. He introduced the Nansen passport for the identification of refugees which could provide the protection and promotion of refugees. Subsequently other bodies such as the UN Relief and Rehabilitation Administration (UNRRA, 1943-47) and the International Refugee Organization (IRO 1947-52) were created.

In 1948 war in Palestine between the Arabs and Israelis resulted in the movement of a million of Jews from the Arab countries towards Israel. Some of them were also found to be sheltering in neighboring Arab countries. A separate International Agency for the welfare of Arab refugees was established in December, 1949 as United Nations Relief and works Agency for Palestine Refugees (UNRWA).

In 1950, UNHCR was established under the Statute of the Office of the United Nations High Commissioner for Refugees and at the July 1951 Conference of Plenipotentiaries, the
UN Refugee Convention was adopted. Throughout the 1950s, UNHCR focused on refugees in Europe.

In 1967, the geographical and temporal limits of the 1951 UN Refugee Convention were removed by a new Protocol which made it universally applicable. In 1969, the organization of African Unity adopted a regional refugee convention of its own.\(^1\)

For the first time, refugees had refuge in Nepal in 1959 and then in 1990. In 1959, there was an influx of Tibetan refugees while in 1990 Bhutanese refugees in a massive number.\(^2\) Apart from this the refugees fleeing the Bangladesh war of independence in 1971 and civil wars in Afghanistan and Iraq also led to the entrance of refugees in Nepal.\(^3\)

The most prone ones after the outbreak of wars, several political conflicts and other sorts of disputes as well who were deprived from the attainment of the basic needs to lead even a normal life were termed as refugees.

Now, this issue has been moving in and around the minds of every respective international agency for reducing and promulgating the convention and protocol relating to the status of refugee. In addition to the problem itself, they have been ill treated either by the violence or the policy made by the government itself.

People’s need and demands also mould with the sort of changes they are going through during their life span. So, their necessities have also gone through the changes which appeal for the new approaches to find a destiny to its problem.

The predominant factor in the movements of refugees around the Horn of Africa and the Sudan, the former Soviet Union and Balkan, Middle East and parts of Asian countries is the flight. Next to it is the grip of the authoritarian regimes and the destructive effects of civil war. It is followed by the internal conflicts. The widespread deprivation has also been an additional factor for the peaceful life. The increasing number and trend of the activities of the people has created an emergence towards the immediate protection of them.

\(^1\) UNHCR, Manual, 2003, p.11-12


\(^3\) INSEC, Human Rights Year Book, 1992.
Violation of the human rights and day to day armed conflicts have urged the concerned people to protect the rights of refugee particularly women and children more than ever before. Asylum should also be preserved. It reveals that the subsequent methods of protection are not sufficient with the co-existing limits and nature of the refugee problem. They are to be provided with the approaches of newer vision that could exactly recognize the etiology of the problem and find the solution to its kind. This could lead them to lead a humanitarian life full of happiness and peace.

2.2 Definition of Refugee

It is the obligation of every nation to protect their citizens. When the situations are not favorable, then people start to move different nations so that they can ensure their basic human rights and fundamental freedom. In this condition, not only the homeland but also host country is equally responsible for refugee’s protection.

In ordinary usage, it has a broader, looser meaning signifying someone in flight, who seeks to escape conditions or personal circumstances found to be intolerable. The reasons for flight may be many; flight from oppression, from a threat to life or liberty, flight from prosecution, flight from deprivation, flight from war of civil strife, flight from natural disasters, earthquake, flood, drought, famine. Implicit in the ordinary meaning of the word ‘refugee’ lies on assumption that the person concerned is worthy of being and ought to be assisted, and, if necessary, protected from the causes and consequences of flight. We commonly refer to persons who have been forced to flee to another region of their country as refugees. We normally assume that a person who is prepared to abandon her home, her family, her security is a refugee, without inquiring into the accuracy of the concerns which cause her to flee. Legal formulations of refugee status are a product of recent western history. Prior to this century there was little concern about the precise definition of a refugee, since most of those who chose not to move to the “New World” were readily received by rulers in Europe and elsewhere. The world community felt the necessity of precise law related to refugee to regulate and reduce the overall showing migrant problems. The most prominent migrants were the flight of more than one million Russians between 1917 and 1922 and the exodus during the early 1920s of hundreds of thousand of

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Armenians from Turkey in order to avoid persecution and massacre by the government of that country.\(^6\)

According to Black’s Law Dictionary, Sixth Edition,

“A person who flees or is expelled from a country especially because of persecution and seeks to have in another country.”

According to Oxford’s Law Dictionary, Fourth Edition,

“A person escaped especially to foreign country from religious or political persecution, war etc.”

According to the Convention Relating to the Status of Refugee, 1951, Article 1A(2); the term ‘refugee’ shall apply to any person 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.

From this definition, it is observed that a refugee is someone who;

- Has a well-founded fear of persecution because of his/her
  - Race,
  - Religion,
  - Nationality,
  - Membership in a particular social group, or
  - Political opinion;
- Is outside his/her country of origin; and
- Is unable or unwilling to avail him/her of the protection of that country, or to return there, for fear of persecution.

The Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa\(^7\), a regional treaty adopted in 1969, added to the 5 grounds (race, religion, nationality, membership of a particular social group or political opinion) contained in the definition found in the 1951 Convention, a more objectively based

\(^6\) Ibid, p.2
consideration. It included in its refugee definition any person compelled to leave his or her country 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.

Cartagena Declaration on Refugees, 1984: Through the Cartagena Declaration on Refugees, 1984, the colloquium of Latin American governments, in view of the experience gained from the massive flows of refugees in the Central American area considered it necessary to enlarge the concept of a ‘refugee’. Bearing in mind the situation prevailing in the region and the precedent of the OAU Convention, the refugee definition, in addition to containing elements of the 1951 Convention and 1967 Protocol, includes

Persons who have fled their country because their lives, safety or freedom have been threatened by:

- Generalized violence,
- Foreign aggression,
- Internal conflicts,
- Massive violation of human rights, or
- Other circumstances which have seriously disturbed public order.

Asian –African Legal Consultative Organization (AALCO): The refugee definition provided by the Asian- African Legal Consultative Organization (AALCO), provides, a definition on the lines of the OAU Convention. The final text of the revised AALCO 1966 Bangkok Principles on Status and Treatment of Refugees was adopted in June 2001 at AALCO’s 40th Session in New Delhi. It defines the term refugee as a person who, owing to a well-founded fear of persecution for reasons of:

- Race,
- Colour,
- Religion,
- Nationality,
- Ethnic origin,

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8 Supra Note 1.p. 25
9 Ibid,p.26
• Gender,
• Political opinion, or Membership of a particular social group,
Leaves the State of which he is a national or habitual resident, or being outside such a State, is unable or unwilling to return to it. The term also applies to a person compelled to leave his or her place of habitual residence in order to seek refugee in another place outside his or her country of origin or nationality, 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.

In this manner the word ‘refugee’ has come not as a terminology but a concept. This is growing gradually by acknowledging the complex nature of the development in the domain of human world. Besides the above mentioned definitions, several other laws in universal and regional level are made for ensuring the rights and granting humanitarian assistance for refugees at universal level in international human rights standard.

2.3 Refugee Women
Approximately, eighty percent of refugees are women and children, each recognized vulnerable groups in themselves.10 Refugee women have many of the same needs as refugee men whether that is related to the human dignity or to the protection against forced return or so on. However, refugee women have some more different and additional needs in comparison to the refugee men.

The 1951 Convention and its 1967 protocol are not only the instruments which ensure refugee women’s rights but also to other relevant international instruments such as the Universal Declaration of Human Rights,1948, Four Geneva Conventions,1949 and the two additional Protocols of 1977, 1966 Human Rights Covenants, CEDAW,1979, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,1949, the Convention on Consent to Marriage, Minimum Age for Marriage and

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Registration of marriages, the Convention on the Nationality of Married Women. Declaration on the Elimination of Violence against Women, 1993. Even if the individual state is not a party either of these instruments, then such state provides framework of international human rights standards for carrying out protection to refugee women.

In any corner of the world where refugees are settled down, then there the refugee women are deprived from the number of rights. In the camp area, they are not only exploited from the cause of sex only, the patriarchal ruling culture, the practice of nurturing children by mother only, the provisions of individual state for marriage registration, ration cards distribution system make refugee women more dependent towards the male society.

In addition to the general body of human rights laws, the CEDAW and its optional Protocol establish standards for states in a number of areas that are important to refugee women, including:

- Suppression of all forms of traffic in women and exploitation of prostitution.
- Nationality
- Education
- Employment
- Health care
- Particular problem of rural women
- Equality before the law
- All matters pertaining to marriage and family relationships.

Other relevant international standards include the UN General Assembly Declaration on the Elimination of Violence against Women which recognizes refugee women as one of the groups especially vulnerable to violence and calls upon states to adopt measures directed towards the elimination of violence against women.\(^{11}\)

No doubt, several efforts have endorsed for the protection of refugee women; still they are facing dangers stemming from poor camp design: communal housing that provides no privacy to women; location of basic services at unsafe distances from where they are housed. They have unequal access to food, other items, health care, educational and skills training and income generating activities.

The 2003 Guidelines outline key risk factors for gender based violence in refugee situations, such as the collapse of social and family support structures; location in a high crime area, poor design of services and discriminatory social structures in the camp; predominantly male camp leadership, unavailability of food, fuel and income generation opportunities; lack of police protection and security patrols; lack of UNHCR and NGO presence in the camp; lack of individual registration and identity cards, and hostility of the local population. These factors, in combination with individual vulnerabilities, armed conflict, discriminatory cultural practices, and weak and gender-biased legal systems set the stage for gender-based violence. 

2.4 Gender in the Refugee Definition

Gender refers to the relationship between women and men based on socially or culturally constructed and defined identities, status, roles, and responsibilities that are assigned to one sex or another, while sex is a biological determination.

There has been significant progress in relation to the recognition of gender-related claims to refugee status over the last decade. In 1985, the Executive Committee of The High Commissioner’s Program first referred to the fact that ‘women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a “particular social group” within the meaning of Article 1A (2)’, although it was left to States’ discretion ‘in the exercise of their sovereignty ’whether or not to do so’. In 1990, there was the first mention of providing skilled female interviewers in refugee status determination procedures as well as ensuring access by women asylum seekers to such procedures, ‘even when accompanied by male family members’. UNHCR’s 1991 ‘Guidelines on the Protection of Refugee Women’ created the impetus for subsequent resolutions, advising that ‘special efforts may be needed to resolve problems faced specifically by refugee women’, and urging that refugee status determination officials be given training regarding the claims of women asylum seekers.  

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12 Sexual and Gender-based Violence, UNHCR, 2000, p. 22
14 Executive Committee, Conclusion No. 39 (XXXVI), 1985, on refugee women and international protection, para. k.
15 Executive Committee, Conclusion No. 64 (XLI), 1990, on refugee women and international protection, para. a(iii).
17 Ibid., para. 75.
Consequently, in 1993, there was encouragement to States to develop ‘appropriate guidelines on women asylum-seekers, in recognition of the fact that women refugees often experience persecution differently from refugee men’\textsuperscript{18}. In October 1995, and again in 1996, 1997, and 1999\textsuperscript{19}, the Executive Committee went further and call[ed] upon the High Commissioner to support and promote efforts by States towards the development and implementation of criteria and guidelines on responses to persecution specifically aimed at women… accordance with the principle that women’s rights are human rights, these guidelines should recognize as refugees women whose claim to refugee status is based upon well-founded fear of persecution for reasons enumerated in the 1951 Convention and 1967 Protocol, including persecution through sexual violence or gender-related persecution\textsuperscript{20}.

The first step to achieving a non-discriminatory application of refugee law is to ensure that age- and gender-sensitive and -inclusive asylum procedures are in place. The importance of equal access to asylum procedures cannot be overstated. This includes the implementation of a myriad of simple measures in order to foster an open and receptive environment. The second step is to adopt age and gender sensitive interpretations of international refugee law. This includes a full understanding of the differential impact of law and its interpretation on women vis-à-vis men, on children vis-à-vis adults, and on the elderly vis-à-vis able-bodied adults. It further requires an understanding of the double impact of age and gender dimensions on some claims, particularly those of young girls. This necessarily entails a clear understanding of the differences between sex and gender.

### 2.5 Age and Gender in Asylum Procedures

The age and gender sensitive implementation of asylum procedures should not only address questions of access to the determination procedure. It ought to provide separate interviews for female asylum seekers, as well as an ‘open and reassuring environment’ so as to establish trust between the interviewer and the claimant and to ‘help the full disclosure of sometimes sensitive and personal information’\textsuperscript{21}. The often male-oriented nature of questioning can mean that women who have been involved in indirect political activity or to whom political opinion has been attributed do not always disclose their full story. As

\textsuperscript{18} Executive Committee, Conclusion No. 73 (XLIV), 1993.

\textsuperscript{19} Executive Committee, Conclusions No. 79 (XLVII), 1996, para. o; No. 81 (XLVIII), 1997, para. t; and No. 87 (L), 1999, para. n, respectively.

\textsuperscript{20} Executive Committee, Conclusion No. 77 (XLVI), 1995, para. g.

\textsuperscript{21} UNHCR, ‘Guidelines on Gender-Related Persecution’, above n. 4, para. 36 (iv).
UNHCR’s ‘Guidelines on Gender-Related Persecution’ have noted, ‘female claimants may also fail to relate questions about “torture” to the types of harm which they fear (such as rape, sexual abuse, female genital mutilation, “honour killings”, forced marriage, etc.)’\(^{22}\). These are among the range of procedural safeguards that need to be put in place to ensure that all claimants have equal access to a determination procedure. Failing to provide all adult members of a family with separate interviews can later place the refugee family in a precarious situation. Provision of separate interviews can affect not only initial inclusion decisions but also subsequent decisions on cessation of refugee status due to fundamental change in the country of origin. For example, a husband establishes that he was actively involved in political activities and risked persecution in his country of origin. As a result, he is granted refugee status. After a declaration of general cessation has been made on the basis of ceased circumstances under Article 1C(5), he may have no right to remain in the country of asylum. His wife in contrast who was sexually assaulted and persecuted on the basis of her ethnicity never applied for asylum. Had she applied for asylum initially, she might have been able to establish ‘compelling reasons’ arising out of past persecution in order to be exempted from the application of general cessation\(^{23}\). The fact that her claim was not detected at the time and can now not be invoked successfully in its own right in relation to cessation shows a fundamental error in the asylum system. Where such errors occur, the appropriate solution would be to allow a full hearing of the asylum application of the individual who was initially not heard, although this is not ideal. The victim may no longer be able to establish that she is at risk of future persecution, even though she may have compelling reasons arising out of past persecution to avoid cessation of status had it been so granted in the first place. Therefore, any subsequent hearings ought to take into account her status at the time of flight in order to give effect to the intention of international refugee law and to compensate for the serious administrative error.

Similarly, the claims of children and the elderly necessitate special care and attention. There is an extra burden on States to take all appropriate measures to ensure that a child seeking asylum receives appropriate protection and humanitarian assistance\(^{24}\). This would include at a minimum:

\(^{22}\) Ibid., para. 36 (vii).
\(^{23}\) Mehmet Brahimi v. Immigration Appeal Tribunal and Secretary of State for the Home Department, High Court of Justice (Queen’s Bench Division), Case No. CO/2238/2001.
Unaccompanied and separated children seeking asylum should not be refused access to the territory. Due to their vulnerability, applications by children for refugee status should be given priority and every effort should be made to reach a decision promptly and fairly. Appeals should be processed fairly and expeditiously. Unaccompanied asylum-seeking children should be represented by an adult familiar with the child’s background and have access to legal representation. Interviews should be conducted by specially qualified and trained personnel.

As UNHCR has noted:

Particular regard should be given to circumstances such as the child’s stage of development, his/her possibly limited knowledge of conditions in the country of origin, and their significance to the legal concept of refugee status, as well as his/her special vulnerability. Children may manifest their fears in ways different from adults. The manner in which a child’s rights may be violated may be different from those of adults. In particular, the claims of children have suffered from: skepticism about the reliability of child testimony, deference to local traditions implemented by non-state actors and considered oppressive by the asylum seeker, [and] narrow construal of the ‘membership of a particular social group’ to exclude broad demographic characteristics such as age. Instead, an awareness of cultural differences in children’s behaviour is sometimes critical to an accurate assessment of the case. Children from different backgrounds interact differently with persons in positions of authority. For instance, in some cultures it is normal for children not to look adults in the eye, but in other cultures this can be interpreted as lying. Older persons may be acutely traumatized by the refugee flight experience, especially where they are without family members, or where they have never been outside their country of origin. They may not be able to articulate their claims due to a lack of education, disorientation, or memory loss. As with other asylum seekers, they should be given advice in a manner and language they understand.

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26 Ibid., Part 8
27 Ibid., para. 8.6.
28 Ibid., para. 8.7.
29 Bhabha and Young, above n. 20, p. 98.
30 Directorate of Immigration, Finland, ‘Guidelines for Interviewing (Separated) Minors’, above n. 68.
2.6 Refugee Status Determination Procedure:

Refugee status determination is done to identify refugees from amongst the asylum seekers by applying certain criteria. For it specific regulation of identification procedures is not provided in the 1951 Convention. In article 9 of the Convention only mentions determinations, i.e., not specifically regulated. Therefore, contracting states are left to establish their own procedures based on what suits their needs and on what is within their administrative and constitutional provisions.

The 1951 Convention and the 1967 Protocol establish identical procedures, the Executive Committee of the High Commissioner’s Programme, at its twenty-eighth session in October 1977, recommended that procedures should satisfy certain basic requirements. These basic requirements, which reflect the special situation of the applicant for refugee status, to which reference has been made above, and which would ensure that the applicant is provided with certain essential guarantees, are the following:

The competent official (e.g., immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. She or he should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.

The applicant should receive the necessary guidance as to the procedure to be followed. There should be a clearly identified authority—wherever possible a single central authority—with responsibility for examining requests for refugee status and taking a decision in the first instance.

The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his or her case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.

If the applicant is recognized as a refugee, she or he should be informed accordingly and issued with documentation certifying his or her refugee status.

If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.

The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted
to remain in the country while an appeal to a higher administrative authority or to the courts is pending.\textsuperscript{31}

The Executive Committee also expressed the hope that all States parties to the 1951 Convention and the 1967 Protocol that had not yet done so would take appropriate steps to establish such procedures in the near future and give favorable consideration to UNHCR participation in such procedures in appropriate form\textsuperscript{32}.

Similarly, 1951 Convention determines the status of refugee as based on:

Well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion,

Who is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection that country,

Who not having a nationality and being outside the country of his former habitual residence as result of such events, is unable or owing to such fear is unwilling to return to it.

Determination of refugee status is a process, which takes place in two stages. Firstly, it is necessary to ascertain the relevant facts of the case. Secondly, the definitions in the 1951 Convention and the 1967 Protocol have to be applied to the facts thus ascertained.

The provisions of the 1951 Convention defining who is a refugee consist of three parts, which have been termed respectively “inclusion”, “cessation” and “exclusion” clauses.

The inclusion clauses define the criteria that a person must satisfy in order to be a refugee. They form the positive basis upon which the determination of refugee status is made. The so-called cessation and exclusion clauses have a negative significance; the former indicate the conditions under which a refugee ceases to be a refugee and the latter enumerate the circumstances in which a person is excluded from the application of the 1951 Convention although meeting the positive criteria of the inclusion clauses.

Principles and Methods of Establishing Facts\textsuperscript{33}:

Facts are to be furnished by the applicant.

There should be an examiner to assess the validity of evidence provided and the creditability of the claim.


\textsuperscript{33} Supra Note. 1.
The burden of proof lies with the applicant in principle. 
But the duty to ascertain and evaluate relevant facts is shared between the applicant and the examiner. 
The examiner is to carry out research for necessary evidence to support the applicant’s claim. 
Allowances must be made for possible lack of evidence. 
Allowances must also be made for the possibility of the applicant being in fear of authority and him/her not being able to speak freely. 
The onus is on the examiner to create a favorable environment for Refugee Status Determination. 
Confidentiality of the applicant’s claim must be stressed upon. 
It must be recognized that isolated incidents quoted by the claimant may be misleading. 
The cumulative effect of the applicant’s experience must be taken into account. 
The examiner must apply the criteria in a spirit of justice and understanding. 
Where there is no ‘proof’ to support the applicant’s account, but where the account remains credible and the facts broadly fit within the available country of origin information, the applicant should be given the benefit of doubt.

2.6.1 Determination of Refugee Status by States:
The 1951 Convention defines refugees and provides for certain standards of treatment to be accorded to refugees. It says nothing about procedures for determining refugee status, and leaves to states the choice of means as to implementation at the national level. Given the nature of the definition, the assessment of claims to refugee status thus involves a complex of subjective and objective factors, while the context of such assessment - interpretation of an international instrument with fundamentally humanitarian objectives – implies certain ground rules.

The legal consequences which flow from the formal definition of refugee status are necessarily predicted upon determination by some other authority that the individual or group in question satisfies the relevant criteria. The authorities that determine the status are either the host states or the UNHCR. Host states that are a party to the 1951 Convention

34 Supra Note 2 .p.34  
36 Ibid. p.32
and the 1967 Protocol determine refugee status under those instruments and such refugees are called *Convention Refugees*. UNHCR, in turn has the mandate to determine refugee status under the Statute of the Office of the United Nations High Commissioner for Refugees and any relevant General Assembly Resolutions and are called *Mandate Refugees*. The legal consequences in the case of the convention refugees flow from the 1951 Convention and the refugees enjoy the plethora of rights therein provided. The 1951 Convention perceives of a refugee in an individualized sense. This would mean that the refugee status would need to be determined by a case by case basis with the case-wise examination of every individual asylum seeker. With the changed pattern of refugee flows witnessed in the more recent years, mainly characterized by mass influx situations, group determination is being practiced. Like the Bhutanese Refugee situation took place in large exodus and therefore an individual assessment procedure was practically not viable. Refugee status was therefore accorded by group determination, mainly with a family-wise assessment. Individual determination was done in the case of individual claimants. Both the government of Nepal and the UNHCR jointly assessed the claims of the asylum seekers approaching the Indo-Nepal border seeking International Protection. Since Nepal is not a party to the 1951 Convention, they are Mandated Refugees although the status was jointly determined by the Nepal government and the UNHCR and hence the Convention rights do not pertain to the Bhutanese Refugees. The mandate of the UNHCR under the Statute does not provide parallel rights as the 1951 Convention. It is for this reason that the determination of legal status of the Bhutanese refugees need to be derived from the various other municipal laws that may pertain to the refugees and International Law Instruments that Nepal May be a party to.

### 2.6.2 Determination of Refugee Status by UNHCR:

According to the UNHCR’s Statute, the High Commissioner is called upon-*inter alia-* to provide international protection, under the auspices of the United Nations to refugees falling within the competence of his office. The Statute contains definitions of those persons to whom the High Commissioner’s competence extends to:

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37 Ibid
38 Ibid
39 UNHCR’S Statute Chapter 6 (A)
• Persons considered refugees under the arrangement of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization.

• Any person who as a result of events occurring before 1 January 1951 and owing to well founded fear of persecution is unable/unwilling to avail protection of the country of his nationality or of his former habitual residence.

• Any other person, who owing to well founded fear of persecution is unable/unwilling to avail protection of the country of his nationality or of his former habitual residence.

Which are very close to though not identical with, the definition contained in the 1951 Convention.

By virtue of these definitions the High Commissioner is competent for refugees irrespective of any dateline or geographic limitations.

Thus, a person who meets the criteria of the UNHCR Statute qualifies for the protection of the United Nations provided by the High Commissioner, regardless of whether or not he is in a country that is a party to the 1951 Convention or the 1967 Protocol or whether or not he has been recognized by his host country as a refugee under either of these instruments. Such refugees are usually referred to as “Mandate refugees”, being within the High Commissioner's mandate.

2.6.3 Criteria for Determination of Refugee Status Women

There is no special provision in the 1951 Convention regarding the refugee status of women and persons under age (Minor/Child). The same definition of a refugee applies to all individuals, regardless of their age or sex.

However, women are distinguished from men in every society by sex and gender. In certain societies women may face gender-related persecution which may compel or force them to leave their country of origin or place of habitual residence to avoid persecution. Being vulnerable, they may be under constant threat while crossing the border, at the border, in the

40 Supra Note 31. Para. 35 &36.
41 Ibid Para. 108 & 110
42 Ibid Para. 16
refugee camps or any place of settlement. The issue of refugee women can be viewed from two perspectives:

**Women facing gender-related persecution in their own country or place of habitual residence.**

“Gender –related persecution” is a commonly used term in international refugee law. It does not have any legal meaning per se but denotes quite a varied set of possible claims in which gender is a relevant consideration in the determination of refugee status. For example, such claims have typically encompassed

- Acts of sexual violence,
- Coerced family planning,
- Female genital mutilation,
- Punishment for transgression of social mores, and
- Homosexuality.

Persecution is not necessarily or only caused by the victim’s sex as the ultimate factor, but by the perpetrator’s ideology, dictating that people deviating from their attributed gender role shall be persecuted. For example, women who fear persecution because they transgress social mores in general are not persecuted because they are women; they are persecuted because they refuse to be “proper” women.

**Sexual Violence as a means of Persecution:**

The 1993 Executive Committee recognized that women often experience persecution differently from men, and that sexual violence has indeed been a cause of refugee movements. International Human rights Principles support the characterization of sexual violence against women as violation of human rights. Even if the violence does not emanate directly from the State authorities, rape and other forms of sexual violence can be recognized as a form of persecution.

**Women facing threat in the country of asylum.**

In any refugee population, approximately 80 percent are women and children which include female children. Stripped of the protection of their homes, their government and often their family structure, females are often particularly vulnerable. They face the rigours of long journeys into exile, official harassment or indifference and frequent sexual abuse even after reaching an apparent place of safety.

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43 Supra Note 32, p.78
45 Supra Note 31, Para. 65.
46 Supra Note 32, p.79
CHAPTER-III
THE LEGAL FRAMEWORK OF THE INTERNATIONAL REFUGEE PROTECTION SYSTEM AND CEDAW

3.1 International Instruments Relating to Refugees’ Rights:

Refugee rights are human rights, so, all the international human rights declarations, conventions, treaties, practices relating to the rights of refugees. These facts have been clearly justified by the UDHR, 1948\textsuperscript{47}.

The concept of ‘Refugee Rights’ has not emerged only after the declaration of United Nations. This is widely concerned after the World War I which compelled 1.5 million people to achieve refugee status and displaced people scattered in a number of countries. The establishment of League of Nations in 1919 put its immense effort as a humanitarian assistance for the refugees. Even after the replacement of League of Nations by the United Nations, it also does not stop the task of caring for the refugees as a matter of international concern. The United Nations also established a new body, the International Refugee Organization (IRO), which was replaced by the office of the High Commissioner (UNHCR) for Refugees in 1951.

Gradually, for the protection and enhancement of refugee status, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol come into existence as the cornerstones of refugee rights which are able to address the minimum standards which refugee should enjoy and which are accepted in most parts of the world.

Apart from these two and the International Bill of Rights, other various international instruments relating to refugees are:

1. Agreement relating to Refugee seamen
2. Protocol relating to Agreement relating to Refugee seamen
3. United Nations Declaration on Territorial Asylum, 1967

\textsuperscript{47} Universal Declaration of Human Rights, 1948, Art. 1 and Art. 14(1).

Other important regional conventions and agreements include:

1. OAU Convention governing the Specific Aspects of Refugees Problems in Africa
2. Cartagena Declaration on Refugees
3. Principles concerning Treatment of Refugees as adopted by the Asian-African Legal Consultative Committee

However, this chapter does not discuss all the instruments that have been mentioned above. It mainly focuses on International Laws: Convention and Protocol Relating to the Status of Refugees and CEDAW. However, it briefly discussed to regional laws and standards relating to the status of refugees women.

3.1.1 Convention Relating to the Status of Refugees, 1951:

The United Nations Convention Relating to the Status of Refugees was adopted on 28 July 1951. Following the deposit of the sixth instrument of ratification it entered into force on 22 April 1954. The Convention consists of a preamble and 46 articles.

The Convention consolidates previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees yet attempted on the international level. It lays down basic minimum standards for the treatment of refugees, without prejudice to the granting by States of more favorable treatment. The Convention is to be applied without discrimination as to race, religion or country of origin, and contains various safeguards against the expulsion of refugees. It also makes provision for their documentation, including a refugee travel document in passport form. Certain provisions of the Convention are considered fundamental that States Parties could not make reservation. These include the provisions relating to the definition of the term “refugee”, and the so-

48 Introductory Note by the office of the UNHCR. P. 5 - 6.
called principle of *non-refoulement*, against his or her will, in any manner whatsoever, to a territory where s/he fears persecution.

The Convention does not apply to those refugees who are the concern of United Nations agencies other than UNHCR, such as refugees from Palestine who receive protection or assistance from the United Nations Relief and Work Agency for Palestine Refugees in the Near East (UNRWA), nor to those refugees who have a status equivalent to nationals in their country of refuge.

While earlier international instruments only applied to specific groups of refugees, the definition of the term “refugee” contained in Article 1 of the 1951 Convention is couched in general terms. But the scope of the Convention is limited to persons who became refugees as result of events occurring before 1 January 1951.

The main provisions of the 1951 Convention can be grouped into four parts:

1. the provisions giving the basic definition of who is a refugee, who has ceased to be a refugee and who is excluded from refugee status;
2. The Rights and Obligations of Refugees;
3. Obligations of States parties to the 1951 Convention

It is the principal responsibility of States to provide international protection to refugees. As a general principle of international law, every treaty in force is binding upon the parties to it, and must be performed in good faith. By adhering to the 1951 Convention, States commit themselves, vis-à-vis each other and the international community, to afford refugees on their territories such rights as stipulated by these instruments.

The Convention itself is the constitution for the protection of people refugees. It tries to cover all the basic needs of refugees. It does not only portray the rights of refugees, but also, realizes the obligations of refugees and States Parties to the Convention. The Contracting States shall apply the provision of non-discrimination to race, religion or country of origin. Noting to the Convention of juridical status of refugee, it respects his or her dignity. In the

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50 Convention Relating to the Status of Refugees, 1951, Art. 1, 1(C), (D), (E) and (F).
52 Convention Relating to the Status of Refugees, 1951, Art. 2.
54 Convention Relating to the Status of Refugees, 1951, Chapter III, Art. 12, 13, 14, 15 and 16.
same way, gainful employment\textsuperscript{55}, welfare\textsuperscript{56} provisions are highly appreciable. These provisions reflect the fulfillment of basic needs of a human being to survive with dignified life. The Convention contains provision to the Contracting State in order to accord to refugees the same treatment as is accorded to aliens generally\textsuperscript{57}. This provision also applies the jurisprudence of non-discrimination in between the categories of people within a state. Nonetheless, the Convention has not left the provisions of administrative assistance, freedom of movement, travel documents, identity papers, and transfer of assets\textsuperscript{58} which are essential for the recognition of human rights.

The above mentioned rights and obligations are equally applicable to refugee women. Still, refugee women are much vulnerable group within the refugee society. Thus, they require more effective protecting and promoting measures. The Convention portrays the rights of women’s work in the provision of labour legislation and social security\textsuperscript{59}.

However, the Convention is not left behind from the criticism. There are some genuine lacunae in the Convention which is necessary to be discussed. The category of people that the Convention seeks to protect is rather narrow for instance. It does not specifically mention those whose fear is founded on gender or sex based discrimination and persecution. Such a category can instead be inferred from the use of the phrase ‘membership of a particular social group\textsuperscript{60}…’ Given the growing number of refugees especially women who leave their countries on grounds of gender based persecution and discrimination, the Convention should make specific mention of gender based discrimination and persecution. Similarly, the language used in the Convention is not following the gender sensitive approach. In every provision of the Convention is applying the masculine form. For instance; the first provision of the Convention article 1A (2), “……. is unwilling to avail himself of the protection of the country;……”. It is presenting that the Convention is discriminating on recognizing the feminine language. Beside women’s work\textsuperscript{61} clause, none of the provision has particularly indicated to the empowerment of refugee women.

\textsuperscript{55} Convention Relating to the Status of Refugees, 1951, Chapter III Art. 17, 18 and 19.
\textsuperscript{56}Convention Relating to the Status of Refugees, 1951, Chapter IV Art. 20, 21, 22, 23 and 24.
\textsuperscript{57}Convention Relating to the Status of Refugees, 1951, Art. 7(1).
\textsuperscript{58} Convention Relating to the Status of Refugees, 1951, Art. 25, 26, 27, 28 and 30.
\textsuperscript{59} Convention Relating to the Status of Refugees, 1951, Art. 24(a).
\textsuperscript{60} Convention Relating to the Status of Refugees, 1951, Art. 1A(2).
\textsuperscript{61} Convention Relating to the Status of Refugees, 1951, Art. 24(a).
Overall, the paper writer can brief the convention as an incomplete because of not consolidating the rights and realities of refugee women. It is bitter truth that refugee women possess distinct livelihood beyond the refugee society. Thus, it is an obligation of every actor of the society to protect those groups of that require specific attention. Among those groups of people, refugee women are one of the vital groups. Noting to this, the Convention Relating to the Status of Refugee should incorporate those realities of refugee women being based on the jurisprudence of equity based approach.

3.1.2 Protocol Relating to the Status of Refugees, 1967

With the passage of time and the emergence of new refugee situations, the need was increasingly felt to make the provisions of the Convention applicable to such new refugees. As a result, a Protocol relating to the status of Refugees was prepared and submitted to the United Nations General Assembly in 1966. In Resolution 2198 (XXI) of 16 December 1966, the Assembly took note of the Protocol and requested the Secretary-General to submit the text thereof to States, to enable them to accede. The authentic text of the Protocol was signed by the President of the General Assembly and the Secretary-General in New York on 31 January 1967, and transmitted to Governments. It entered into force on 4 October 1967, upon the deposit of the sixth instrument of accession.

By accession to the Protocol, States undertake to apply the substantive provisions of the 1951 Convention to all refugees covered by the definition of the latter, but without limitation of date. Although related to the Convention in this way, the Protocol is an independent instrument, accession to which is not limited to States parties to the Convention. The important provision of the 1967 Protocol Relating to the Status of Refugees is article 1 which has removed the geographical and temporal limitations in the definition of ‘refugee’ in the 1951 Convention, thus making it broader encompassing people all over the world who are fleeing persecution for similar reasons at any point of time.

Besides, these rights in the Convention and Protocol, other rights are clearly mentioned in the CEDAW which are for all the general women. The rights mentioned in the CEDAW

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62 Supra Note 1, P.6
63 See on , Convention on the Elimination of All Forms of Discrimination against Women, 1979
also advocate for the refugee women. Because they are also the international human rights instruments for the protection and humanitarian assistance.

The Convention and the Protocol are the principal international instruments established for the protection of refugees and their basic character has been widely recognized internationally. The General Assembly has frequently called upon States to become parties to these instruments. Accession has also been recommended by various regional organizations, such as the Council of Europe, the Organization of African Unity, and the Organization of American States.

3.1.3 The ExCom Resolution

UNHCR’s Executive Committee (ExCom) was created by ECOSOC in 1958, following a request from the UN General Assembly and consists of member states. Its main task as to approve the High Commissioner’s assistance, programs, advise the High Commissioner in the Exercise of his/her statutory functions, notable international protection, and scrutinize all financial and administrative aspects of the agency. Members of ExCom are elected by ECOSOC. ExCom meets annually for one week in October in Geneva; Standing Committee meetings are held up to five times per year. The annual Conclusions adopted by Excom form part of the framework of the international refugee protection regime. They are based on the principles of the Refugee Convention and are drafted and adopted by consensus in response to particular protection issues. Executive Committee Conclusions represent the agreement of more than 50 countries that have great interest in and experience with refugee protection. These and other countries often refer to ExCom Conclusions when developing their own laws and policies.\(^{64}\)

Regarding the Refugee Status Women, ExCom has made some pertinent Conclusions i.e. Executive Committee, Conclusion No. 64(XLI), 1990, on Refugee Women and International Protection; as repeated in part in Executive Committee, Conclusion No. 39(XXXVI), 1985, on Refugee Women and International Protection; Executive Committee,\(^{64}\)

\(^{64}\) Supra Note 1. P. 16.
Conclusion No. 54(XXXIX), 1988 on Refugee Women; as repeated on part Executive Conclusion No. 60(XL), 1989, on Refugee Women; Executive Conclusion No. 105(LVII), 2006, on Conclusion on Women and Girl at Risk.

3.2 Regional Laws

The 1951 Convention and 1967 Protocol can not address all the features and issues related to the refugee status due to vary limitations of nature of humanitarian crisis, geography and other concerned subject matters.

Therefore, “The Executive Committee encourages states and UNHCR to continue to promote, where relevant, regional initiatives for refugee protection and durable solutions, and to ensure that regional standards which are developed conform fully with universally recognized protection standards and respond to particular regional circumstances and protection need.” UNHCR Executive Committee Conclusion No. 81(K), 1997 had come as a new sight for taking initiation at regional level.

Before and after this conclusion, several regional laws and standards have been made which are discussed below.

3.2.1 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969:

The conflicts that accompanied the end of the colonial era in Africa led to a succession of large-scale refugee movements. These population displacements prompted the drafting and adoption of not only the 1967 Refugee Protocol but also the OAU Convention Governing the Specific Aspects of Refugees Problems in Africa in 10 September 1969 which came into force having 41 contracting parties.\[^{65}\] The Heads of State and Government assembled in the city of Addis Ababa, from 6-10 September 1969. The assembly concluded the Convention noting with concern on constantly increasing numbers of refugees in Africa. Desirous of finding ways and means of alleviating their misery and suffering as well as providing them

\[^{65}\] Ibid. P.13
with a better life and future, In the mean time, the assembly recognized the need for and essentially humanitarian approach towards solving the problems of refugees. Asserting that the 1951 Refugee Convention is “the basic and universal instruments relating to the status of refugees”, the OAU Convention is, to date, the only legally binding regional refugee treaty.\(^66\)

The OAU Convention follows the refugee definition found in the 1951 Convention, but includes a more objectively based consideration: any person compelled to leave his/her country because of “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality.”

This means that persons fleeing civil disturbances, widespread violence and war are entitled to claim the status of refugee in States that are parties to this Convention, regardless of whether they have a well-founded fear of persecution.

This Convention has a wider for definition of refugee. It prohibits subversive activities, provided provision on non-discriminatory treatment, voluntary repatriation, travel document, cooperation with UNHCR, and settlement of dispute that are broader in comparison to the 1951 Convention.

**3.2.2 Cartagena Declaration on Refugees, 1984**

The Cartagena Declaration is a Declaration made by Latin American States who are organized under the Organization of American States (OAS). The States convened in Cartagena, Colombia from 19-22 November 1984 to discuss the international protection of refugees in the region. This gathering adopted what became known as the Cartagena Declaration.\(^67\)

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\(^66\) Ibid  
\(^67\) Supra Note 1. P.13
3.2.3 Asia AALCC Principles

Principles concerning Treatment of Refugee as adopted by the Asian-African Legal consultative committee at its eight session in Bangkok in 1966, defines ‘refugee’ as a person who owing to persecution of well-founded fear of persecution for reason of race, colour, religion, political belief or membership of a particular social group, (a) leaves the state of which he is a national or the country of his nationality, or if he has not nationality the state or country of which he is a habitual resident or (b) being outside such state or country is unable or unwilling to return to it or to avail him of its protection.

These are two exceptions:

1) A person having more than one nationality shall not be a refugee if he is in a position to avail himself of the protection of any state or country of which he is a national.

2) A person who prior to his admission into the country of refugee, has committed a crime against place, aware crime, or a crime against humanity or a serious non-political crime or has committed acts contrary to the purpose and principles of the United Nations shall not be a refugee.

A person who was outside of the state of which he is a national or the country of his nationality or if he has no nationality the state or the country of which he is a habitual resident, at the time of the events which caused him to have a well-founded fear of above mentioned persecution and is unable or unwilling to return to it or to avail himself of its protection shall be considered a refugee. The dependents of a refugee shall also be deemed to be refugees.

3.3 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

In addition to the general rule of non – discrimination set out in the instruments constituting the International Bill of Human Rights, there is another specific instrument addressing particularly women. It is the Convention on the Elimination of All Forms of Discrimination

against Women (CEDAW) which was adopted in 1979 and came in existence since 1981. This Convention can be regarded as an international bill of rights for women which comprises of a preamble and 30 articles. The Convention defines discrimination against women as “…any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.\textsuperscript{69}

Countries that have ratified or acceded to the convention gave the acceptance in order to halt the discrimination against women by making legislation or temporary measures which includes-

- Eliminating the discriminatory laws by incorporating the principle of equality between men and women in legal system.
- Protection of women against discrimination by establishing the tribunals and other public institutions.
- Active participation of people, organization to eliminate the discrimination against women.

The particular importance of the Convention is that the recognition of equality of opportunity and treatment may require positive measures in favour of women. Article 4(1) of the Convention provides that “adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention (…)”.\textsuperscript{70}

The Convention is comprehensive encompassing human rights standard regarding the empowerment of women generally. It also establishes standards for States Parties in number of areas that are important to refugee women too. The Convention establishes standards to States Parties for taking all appropriate measures in order to suppress of all forms of traffic in women and exploitation of prostitution of women. This is an important measure for the welfare of refugee women too. It can help to control the violence against refugee women. In the same way, the Convention grants women equal rights with men to acquire, change or retain their nationality. It also ensures in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the

\textsuperscript{69}Convention on the Elimination of All Forms of Discrimination against Women, 1979, Art. 1.
\textsuperscript{70}Convention on the Elimination of All Forms of Discrimination against Women, 1979, Art. 6.
nationality of the wife, render her stateless or force upon her the nationality of the husband. This provision develops the jurisprudence of right to self-determination for women which shall be equally applicable to the status of refugee women. The Convention is not left behind from recognizing education as a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits. The right to education was firstly articulated in the Universal Declaration of Human Rights, 1948 and then the International Covenant on Economic, Social and Cultural Rights, 1966. The 1960 UNESCO Convention against Discrimination in Education also defines education in Article 1(2) as: "all types and levels of education, (including) access to education, the standard and quality of education, and the conditions under which it is given." In the same way, the broader meaning of education has been recognized in Article 1(a) of UNESCO's 1974 Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms. The article states that education implies:"the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge." By acknowledging the spirit of these instruments, CEDAW too encompasses the right to education. The Convention addresses States Parties to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women. It highlights the importance of education which is not only important for women in general, but also refugee women reside in camps. In addition, the Convention recognizes the right to work as an inalienable right of all human beings. It also addresses to the States Parties to take all appropriate measures for women to the right to same employment opportunities, free choice of profession, equal remuneration, social security, protection of health and safety in working conditions, including the safeguarding of the function of reproduction. These measures are essential for the continuation of profession and economic growth of women. The Convention Relating to the Status of Refugees, 1951 also specifically

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74 International Covenant on Economic, Social and Cultural Rights, 1966, Art. 14
75 Convention on the Elimination of All Forms of Discrimination against Women, 1979, Art. 11.
76 Convention on the Elimination of All Forms of Discrimination against Women, 1979, Art. 11(a).
recognizes labour legislation and social security of women’s work\textsuperscript{78}. The provision of these two Conventions draws the importance of the necessity of effective measures for the proper working to refugee women. The other utmost important right of human being is the right to health which is also considered as an inclusive right. It is a fundamental part of our human rights and of our understanding of a life in dignity\textsuperscript{79}. Regardless of our age, gender, socio-economic or ethnic background, we consider our health to be our most basic and essential asset\textsuperscript{80}. The right to the enjoyment of the highest attainable standard of physical and mental health, to give it its full name, is not new. Internationally, it was first articulated in the 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. The preamble further states that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition. The Universal Declaration of Human Rights also mentioned health as part of the right to an adequate standard of living\textsuperscript{81}. The right to health was again recognized as a human right in the International Covenant of Economic Social and Cultural Rights (ICESCR), 1966\textsuperscript{82}. It is noteworthy that the CEDAW has also recognized the health care services of women\textsuperscript{83}. It directs States Parties to ensure appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation\textsuperscript{84}. Moreover, CEDAW has established the jurisprudential notion of equality before the law\textsuperscript{85}. In context to this, the Convention establishes equal rights in all matters relating to marriage and family relations too\textsuperscript{86}. The CEDAW supplements the universal human rights treaties by reinforcing their general provisions, but also includes additional rights portrayed specially for women. It is described as ‘a critical milestone in legal protection generally’\textsuperscript{87} which is unique as the only binding human rights treaty protecting the full range of rights for women encompassed by the UDHR.

\textsuperscript{78} Convention Relating to the Status of Refugees 1951, Art. 24.1(a).
\textsuperscript{79} \url{http://www.ohchr.org/Documents/Publications/Factsheet31.pdf}, visited on dated 21.08.2010
\textsuperscript{80} Ibid
\textsuperscript{81} Universal Declaration of Human Rights, 1948, Art.25.
\textsuperscript{82} International Covenant of Economic Social and Cultural Rights, 1966, Art.12.
\textsuperscript{83} Convention on the Elimination of All Forms of Discrimination against Women, 1979, Art. 12.
\textsuperscript{84} Convention on the Elimination of All Forms of Discrimination against Women, 1979, Art. 12(2).
\textsuperscript{85} Convention on the Elimination of All Forms of Discrimination against Women, 1979, article 15.
\textsuperscript{86} Convention on the Elimination of All Forms of Discrimination against Women, 1979, article 16.
No doubt, the Convention sets human rights standards regarding the protection and promotion of women generally. However, it has certain shortcomings which are analyzed in chapter four.

States Parties are bounded legally to submit national reports to the CEDAW Committee within one year of entry into force and every four years thereafter. The Committee also considers ‘shadow reports’ that NGOs submit for consideration in parallel with the state reports.

The Optional Protocol to the Convention was adopted by the General Assembly in October 1999. The Optional Protocol empowers individuals and groups to submit a formal complaint to the United Nation when their countries violate CEDAW. This enables the United Nations to demand information and explanations from the State Parties in questions. The complaint concerns only the action of a State or State officials carrying out their public duties, and does not concern to the private individuals or institutions. This procedure only applies to States that have ratified the Optional Protocol.

3.4 National Laws and Standards in the Nepalese Context

Nepal, a landlocked and least developed country is in between two great and powerful countries of the Asian Continent – India and China. Nepal covers an area of 1,47,181 sq.km. Nepal has its own identity, of her sovereignty and territorial integrity with her diverse ethnicity, indigenous and cultural heritage, maintaining non aligned foreign policy since the late 1700s.

Nepal has not signed to the 1951 Convention concerning the status of refugees and its 1967 protocol. But the Nepal government accommodated a large number of refugees from Bhutan, Tibet, Somalia and Iraq as well. For the Bhutanese Refugees of Nepali origin, the Nepal government had shown a sympathetic and considerate attitude for a long time. Although Nepal does not have any specific provision to safeguard refugees, 84,394 Bhutanese Refugees are now living in Nepal. Initially, when the first batch of Bhutanese refugees came to Nepal in the 1990s, the government accommodated them in transit camps. Over the years, when the transit camps became overcrowded additional land was

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88 Convention on the Elimination of All Forms of Discrimination against Women, 1979, Art. 11(b, c, d, e and f).
89 Supra note 2, p. 23.
Currently, Bhutanese refugees reside in eight camps located at Jhapa and Morang districts of eastern part of Nepal.

<table>
<thead>
<tr>
<th>No.</th>
<th>Camp’s Name</th>
<th>Family Number</th>
<th>House/Resident Number</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Male</td>
</tr>
<tr>
<td>1</td>
<td>Beldangi-1</td>
<td>2263</td>
<td>3086</td>
<td>7402</td>
</tr>
<tr>
<td>2</td>
<td>Beldangi-2</td>
<td>2914</td>
<td>3916</td>
<td>8742</td>
</tr>
<tr>
<td>3</td>
<td>Beldangi-2 extended</td>
<td>1408</td>
<td>1973</td>
<td>5023</td>
</tr>
<tr>
<td>4</td>
<td>Goldhap</td>
<td>1075</td>
<td>1517</td>
<td>3191</td>
</tr>
<tr>
<td>5</td>
<td>Khudanabari</td>
<td>1985</td>
<td>2218</td>
<td>5947</td>
</tr>
<tr>
<td>6</td>
<td>Sanischare</td>
<td>2298</td>
<td>3352</td>
<td>8363</td>
</tr>
<tr>
<td>7</td>
<td>Timae</td>
<td>1161</td>
<td>1727</td>
<td>4205</td>
</tr>
<tr>
<td>8</td>
<td>Out Camp Register</td>
<td>34</td>
<td>0</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>13138</strong></td>
<td><strong>17789</strong></td>
<td><strong>42922</strong></td>
</tr>
</tbody>
</table>


The chart shows that nearly 85 thousand Bhutanese refugees are settled nearly in 18 thousand huts constructed at 8 camps. Of them 50.85 percent are males and 49.1 percent females.

The presence of females in the camps seems near to the quantitative figure of male refugees. In such scenario, about 100 females have been raped by Bhutanese army men and some of them have given birth to children. The prostitution initiated by refugee women has now turned into child prostitution at Birtamod. Girl students in classes 8 to 10 are being forced to involve themselves into this profession through allurement, threat or deceit. Most of them, brought up in hills and mountain, have not developed resisting capacity against Malaria and other diseases prevalent in the Terai region. Thus, they have to suffer from various diseases owing to change in physical condition. Above all, malnutrition and lack of sanitation at the camps are of serious concern for all. The number of persons skilled in sewing, weaving, manufacturing clay pots and other domestic professions is marginal. To be specific, only 2

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per cent of the total refugees can take skilled professions. In addition, Nepal’s system of refugee registration discriminates against women by distributing rations through male heads of household. This policy denies women equal and independent access to food, shelter and supplies, and imposes particular hardship on women trying to escape abusive marriages. Either these women must stay in violent relationships, leave their relationships (and thus relinquish their full share of aid packages), or marry another man, in which case they lose legal custody of their children.

Although Nepal is not a signatory state of the Conventions relating to the refugees status, however, Nepal has signed a number of international instruments relating to the human rights and some of these provisions are also embodied in the Interim Constitution of Nepal, 2007 too. It seems that Nepal government has not made any distinction between citizens and aliens in regard to certain basic rights. In context to Nepal, refugees are also treated as aliens under the Nepal’s laws. Thus refugees equally enjoy the following rights along with Nepali citizens. These are:

- **Right to freedom** (Article 12 (2) guarantees that, “No person shall be deprived of his/her personal liberty saves in accordance with law.”
- **Right to equality** (Article 13(1) guarantees that, “...... No person shall be denied the equal protection of the laws.”
- **Education and Cultural Right** (Article 17)
- **Right of Women** (Article 20)
- **Right to Religion** (Article 23)
- **Right to Criminal Justice** (Article 24)
- **Right against preventive detention** (Article 25)
- **Right to privacy** (Article 28)
- **Right against Exploitation** (Article 29)
- **Right to Constitutional Remedy** (Article 32)

Although there is no specific provision in the constitution relating to asylum, or any specific legislation on the subject, the general international human rights instruments and domestic

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legislation applicable to foreigners applies to refugees as well\textsuperscript{94}. For instance the Immigration Act 1991 is silent about the deportation of refugees. However the act, in Section 14(2), retains the power of expulsion of aliens on the grounds of national interest. Notably, however, in providing protection to Bhutanese refugees, the Nepal government did not deport the 16 Bhutanese whom UNHCR rejected as refugees\textsuperscript{95}.

In addition, the Extradition Act of 1991 Section 12(1) establishes the recognition of not to be exiled the political criminals. This provision empowers the government of Nepal to permit foreigners, including refugees, to stay in Nepal until such time as determined by the government.

On the one hand, the Nepal Citizenship Act of 1964, Section 3 provides an opportunity to the refugees as they are regarded as aliens to be admitted as civilian. But none of the case has been registered in accordance with this provision so far. On the other hand, the Immigration Act establishes the right to exile for foreigners who reside by taking vested interest over Nepal.

We can conclude that the legislation indirectly helps Nepal to render legal protection to the refugees and maintain flexibility in its approach as well as support whenever refugees require it. But the living condition of refugee women is not satisfactory.

\textsuperscript{94}Bose K Tapan; Protection of Refugees in South Asia: Need for Legal Framework, SAFHR Series - 6, Kathmandu, 2000.

\textsuperscript{95}UNHCR - Nepal: Country Operation UNHCR Mid-Year Report; Population Data Unit, DS/ UNHCR (Geneva), 2001.
CHAPTER - IV

Analyzing gaps in international refugee laws and enforcing institutions regarding the protection and promotion of the rights of refugee women

The refugee problem is as long as the human civilization. Some people flee from one place to another in search of good job, good education, having good facilities or so on. Others flee from their homeland for their lives, safety or getting freedom from internal conflicts, foreign aggression, massive violation of human rights or other circumstances which have seriously disturbed the public order with the pace of time. The dynamic nature of society makes the human life much more sophisticated and complex. Some of these activities are having in the human society in tangible and most of them are in intangible way.

The refugee problem has been recognized from the establishment of the League of Nations in 1919. Since, then, refugee problem has given attention and several conventions and protocols have been made. The UDHR, the International Bill of Rights, and other international human rights instruments have also come into existence.

Distinctly, Convention Relating to the Status of Refugee, 1951 and its Protocol, 1967 have come to advocate for refugees in the international arena. Very soon, by the replacement of IRO, UNHCR come in 1951 as a specialized agent for refugee. These three – Conventions, Protocol and UNHCR come into existence to protect refugees of every corner of the human world.

Thus, in order to overcome the problem, regional levels of laws have also been made. Like-OAU Convention Governing the Specific Aspects of Refugees Problems in Africa- 1969, Cartagena Declaration on Refugees – 1984 and Asia AALCC. Special Conventions for women have also been developed like- CEDAW. However, the main focus of these Conventions is not for refugee women only. Still, the problem seems to be as it is instead of reducing. Several others United Nations specialized agency like- WFP, WHO, OHCHR,
UNICEF, UNDP and others like – ICRC, IFRC are working as a helping hand or partnership with UNHCR. Though having such preference for reducing the problem, it is expanding in amoeba shape and felt tough to pull out the refugees from such inhumane world. The main cause behind this, this researcher has analyzed from the study that:

- The vast majority of states in Asia are neither party to 1951 Refugee Convention nor do they have national refugee legislation. Asian states do not have regional organization in Asia on the pattern of OAU Convention. Its absence is realizing at Asia in the multi-lateral talks.
- Despite having Regional Convention on Refugees, there is not any specific provision relating to refugee women.
- The rights mention in the 1951 Convention relating to the Status of Refugee is general (i.e. mention in Chapter 3). It is not succeed to give attention especially for refugee women.
- The Convention does not expressly mention for the right to security. It simply states in the preamble that human beings shall enjoy fundamental rights and freedoms without discrimination. Because of not defining security even for refugees as whole, it makes impossible to establish what safety of refugee women entails.
- The Convention is silent concerning the status determination of refugees. Therefore, the state can exercise its discretion in the grant of refugee status. From which women and girls without having proper documentation are suffered from exploitation.

**Status of Refugee Women in International Perspective:**
The provision of the 1951 Convention applies to “any person” who comes within the refugee definition. It reflects as a subject matter of international law, refugee women are entitled to the same kind of protection as other refugee.

However, in practical life, refugee women often face a number of challenges and disadvantages in due of obtaining international protection, including:

- The absence of gender as a ground of persecution in the refugee definition;
- Seems unwillingness to recognize women as a particular social group⁹⁶;

Unequal access to procedures like – ration card distribution, birth registration and so on which are existing in the camps of Nepal.

- Failure of status determination by officials to take into account that women are often persecuted and have their persecution experience different from men.
- Greater responsibility for care of children, older family members and other household works which keep women beyond the window outer world;
- Increased risk of being subjected to sexual violence both in the country of origin and the country of asylum.

Besides the special international laws (i.e. 1951 Convention and 1967 Protocol) and regional laws (OAU Convention, Cartagena Declaration and Asia AALCC) for refugees which have discussed in detail in third chapter, there are other relevant provisions in international human rights law. The major relevant provisions from the research found out; Universal Declaration of Human Rights, Article 2, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as (...) sex (...)

International Covenant on Civil and Political Rights; “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such (...) sex (...).” (Article 2(1))

“The States Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”. (Article 3)

International Covenant on Economic, Social and Cultural Rights; “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to (...) sex (...).” (Article 2(2))

“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”. (Article 3)

Convention on the Rights of the Child, Article 2 (1); “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s legal guardian’s (...) sex (...).”
African Charter on Human and Peoples’ Rights; “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as (…) sex (…)”. (Article 2)

“The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and convention”. (Article 18(3))

American Convention on Human Rights, Article 1(1); “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of (…) sex (…)”.

American Declaration of the Rights and Duties of Man, Article II; “All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to (…) sex (…)”.

The rights of women in the American system are also laid down in three additional instruments:

- 1948 Inter – American Convention on the Granting of Civil Rights to Women
- 1948 Inter – American Convention on the Granting of Political Rights
- 1933 OAS Convention on the Nationality of Women

European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14; “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex (…)”.

The above mentioned non discriminatory articles on the ground of sex strongly protect the women. States Parties are obliged to follow the human rights law. It also ensures the rights of women in general and somehow to the refugee women too. From the comparison of these human rights law, we can understand that human rights instruments are more concerned to the discrimination on the ground of sex than to the 1951 Convention Relating to the Status of Refugees. The 1951 Convention is silent on the sex or gender based persecution so that the Executive Committee worked on it. Above all, CEDAW is the special instrument which directly concerned to the rights of women in general. It is ensured that the States Parties are obliged to make necessary legislation in order to protect and promote the rights of women reside in a particular nation. There is no doubt that the Convention establishes standards for states in a number of areas that are important for the enhancement of the

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97 Supra Note, 20.
conditions of women. Women are regarded as the social subset group of the human world. After the promulgation of the convention, it establishes the jurisprudence of equality in between men and women.

Everyone knows that refugee women are among the most vulnerable groups. So, it is necessary to address their rights efficiently in the Convention. No doubt, the Convention establishes certain standards for states in a number of areas that are important to refugee women too which are already discussed in the chapter three.

The Convention has its own shortcomings but does set human-rights standards regarding the protection of women. However, it is not very efficient to the protection of refugee women particularly. Refugee women are a specific group which requires the special instrumental mechanism to overcome the problem. There are certain lacunae in the Convention. It includes;

- Article 10(a) of the Convention is wonderful for the empowerment of women in general. It is succeed to categorize the women reside in rural and urban areas. On that basis the necessary infrastructure could make for the enhancement of the status of women. Here is the great lacunae of the Convention that it is missing to address the special status i.e. refugee women reside in the camps. The Convention should cover the status of refugee women who are residing beyond the world of rural and urban areas.

- Similarly, in the article 14 of the Convention indicates only for the great role of rural women but not the refugee women.

- In the same way, article 14(2) also missing the contribution of refugee women in the development activities. In order to have sustainable development it is needed to realize that development must be from every corner of the human world.

- If the CEDAW has given the special measures for refugee women too within 30 articles, like other rural and urban women, the States Parties will be obliged to acknowledge the condition of them too. Because it can be marked from the state report of Nepal. As Nepal lacks information in the report about refugee women in camps in Nepal98. It reflects that States Parties are only concern to the citizen of their country only.

In conclusion, though, all the individual States may not be parties to all of these instruments, they do provide a framework of international human rights standards for carrying out protection and assistance activities based on principles of equity related to refugee women.

CHAPTER – V

5.1 Findings:
Following are the reasons for not achieving a full and durable solution of the problem of refugee women observed during the analytical study of the rights of refugee women;

- The Convention Relating to the Status of Refugees-1951 covered only those persons who became refugees because of events before 1951. Since then, new refugee situations have arisen, which do not fulfill within the scope of the 1951 convention.
- The definition of refugees contained in the 1951 Convention Relating to the Status of Refugees omits the Category of sex as a ground upon which refugee status may be determined.
- Apart from the Convention Relating to the Status of Refugees-1951 and the 1967 Protocol, there are various international instruments relating to refugees. Like- UDHR, International Bill of Rights, CEDAW and so on which are directly concerned with the rights of refugee women.
- The vast majority of States in Asia are neither party to 1951 Refugee Convention nor do they have national refugee legislation. There is also no regional organization in Asia on the pattern of OAU Convention.
- The interests of refugee women have not been sufficiently represented at international fora so that until recently, refugee issues have tended to be separated from human rights in legal systems and debates.
- Though refugee women have been recognized as the vulnerable groups within the refugee community. But they do not have any special protection like- special health services, employment opportunities, skill oriented training and so on in addition to the general needs of a refugee.
- Birth Registration and Marriage Registration do not seem as the inherent right of refugee women due to the conflict with the National Laws of the host country.
- Due to the fact that the matter is not specifically regulated by the 1951 Convention, procedures adopted by States parties to the 1951 Convention and to the 1967
Protocol vary considerably. In a number of countries, refugee status is determined under formal procedures specifically established for this purpose. In other countries, the question of refugee status is considered within the framework of general procedures for the admission of aliens. In yet other countries, refugee status is determined under informal arrangements or *ad hoc* for specific purposes, such as the issuance of travel documents.

- Too often refugee women face dangers stemming from poor camp design: communal housing that provides no privacy to women; location of basic services at unsafe distances from where they are housed. They have unequal access to food because of ration card system, other items, health care, education and skills training and income-generating activities due to lack of effective laws or mechanism basically related refugee women.

- The international refugee laws basically made for refugees only and the other international laws relating to human rights do not have any scientific and specific difference, care and attention to the vulnerable groups (i.e. refugee women). Most of the rights like right to public elementary education, access to court and health services, registration laws (birth and marriage) are in the general manner. So that proper attentive mechanism for solution could not be developed.

- The special international laws for women – CEDAW which is for women in general have tried to address but could not highlighted refugee women as a vulnerable group. The Lacunae of CEDAW has already discussed in forth chapter.

- The Executive Committee has made some pertinent conclusions about refugee women, which is positive for other countries when developing national laws and policies.

- There are several UN specialized agencies working for refugees too. Among them UNHCR is the one which is working for refugees only. From its establishment, it has gradually widened its responsibilities for the ad hoc and durable solution. However, its working pattern is based on customary practices so it could not achieve success as the efforts endorsed.

- The theoretical and practical gap which exists between the protection of refugees on the one hand, and the assertion of human rights on the other, is clearly reflected in
the approach to women’s rights, which has tended to ignore the question of the rights of refugee women99.

5.2 Conclusion:
Refugees are persons whose basic human rights have been violated. Among them, refugee women have been most deprived of their basic rights. Human rights are not solely the rights of citizens or national. Refugees, too, are entitled to the protections offered by human rights law, including those in the area of economic, social and cultural rights. In any refugee population, approximately 80% are women and children which include female children. Stripped of the protection of their homes, their government and often their family structure, females are often particularly vulnerable. They face the rigours of long journeys into exile, official harassment or indifference and frequent sexual abuse even after reaching an apparent place of safety. Refugee women and girls have special protection needs in addition to the general needs of a refugee. The national laws and policies in the country of asylum and the existing international legal texts govern the protection of women refugees. The national laws and policies determine legal status an individual receives, where she will live, and assistance she receives. Refugee women are not backward only in decision making body or decision implementing body. Due to the patriarchal governing structure of the most part of the world, wherever those people move their attitude has not been changed with the realization of reality. So, refugee women are brutally suffering from physical assault, sexual violence and so on. It is true that international refugee laws have been enacted. In the meantime, CEDAW is also there for the protection of women. But CEDAW is for women in general. So that, refugee women require special laws as per their livelihood structure. Those laws need to incorporate the provision of marriage registration, birth registration, safety of divorced and widow either in the homeland or in the host country. Similarly, UNHCR also needs to revise or amend in its statute ensuring rights of refugee women. Its working pattern is based on customary practices so that its working mechanism needs to develop or make advance as per the requirement of the time for humanitarian assistance to those deprived refugee women.

Thus, all the concerned agencies, states and UNHCR must put efforts to settle down it. Then, definitely durable solution comes out because refugee status is achieved status, not an ascribed one. It is compelled to possess refugee status by the human society so that its solution also find out from the human society itself.

5.3 Suggestions:

After an overview of the international refugee laws and CEDAW regarding the status of refugee women, the researcher, hereby would like to suggest for ensuring strategies that should be targeted at the following areas: economic empowered education, effective laws should be made, proper and effective manipulation of legal channels, advocacy and awareness raising programme should be launched.

Along with this, the following points may further be a helping hand for ensuring the rights of refugee women:

✔ To protect refugee women, a right-based framework needs to be developed which is solidly premised on mainstreaming of gender equality.

✔ For the welfare of refugee women, Conventions like-CEDAW has developed. But this Convention is for women generally. As refugee women are the vulnerable group within the vulnerable community, they require special laws than the general one.

✔ Thus, CEDAW should be revised, extended as necessary to improve the situation of refugee women too.

✔ Provisions like birth registration, marriage registration, system of ration card distribution for divorced, widow ladies need to make clear, scientific and easily accessible too.

✔ The UNHCR is the main agent for the humanitarian assistance of refugee so that this organization needs to take initiation as per the time demand for negotiation in between the conflicting parties for settling down the problems of refugee women.

Besides these, following are the specific suggestions:

❖ It should be noted that an applicant for refugee status is normally in a particularly vulnerable situation. She finds herself in an alien environment and may experience serious difficulties, technical and psychological, in submitting her case to the authorities of a foreign country, often in a language not her own. Her application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant’s particular difficulties and needs.

❖ Articles like 10(a), 14 of the CEDAW needs to acknowledge the interest of refugee women which is clearly discussed in the forth chapter.

❖ The Refugee Convention definition must be interpreted in a gender - sensitive way.
Physical design and location of camps should undergo necessary changes to promote greater physical security to women.

All types of distribution should be given equal access.

Registration process and proper documentation made for the refugee women should be assisted in ensuring their eligibility.

The refugee women should also be included in the decisions affecting security.

Identifying the protection needs of the refugee women (victims of physical violence and sexual abuse) should be clearly dealt along with the counseling and medical assistance.

An application for refugee status, even if the husband’s claim for refugee status is rejected the wife’s claim should be separately looked into.

State, UNHCR and partners to set in place, measures to ensure that refugee women participate equitably in decision making in all areas of refugee life, as well as in the implementation of such decisions.
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