CHAPTER- III
HUMAN RIGHTS AND REFUGEES

This chapter is an attempt to define and describe the rights of refugees and obligations to the host country. The problem of refugees has undergone a tremendous change with the adoption of the 1951 convention relating to the status of refugees. Present study is an attempt to analyze the various rights and their implementation.

The premise of current international law is that these rights are inherent in the human person. They are not given to people by the state and the state cannot deprive people of their rights. Some natural, inherent and inalienable rights embedded into the concept of human rights always existed along with the existence of man on the earth. They include rights pertaining to security of the persons including the right not to be deprived of life or liberty without due process of law; the right not to be tortured or subjected to cruel, inhuman, or degrading threaten or punishment; and the right not to be held in slavery or servitude. They are non-derogable rights.1

Fundamentals freedom and Human Rights allow us to develop fully and use our human qualities our intelligence our talent and our conscience. It also help to satisfy our spiritual and other needs. Human Rights have gradually evolved over the years and are based on mankind's increasing demands for a life in which the inherent dignity and worth of earth human being will receive respect.

All asylum seekers and refugees are entitled to all the rights and fundamental freedom that are spelled out in international human rights instrument the protection of the refugees must therefore be seen in the broader context of the protection of Human rights.

Human Rights are freedoms, which are granted equally to all persons without distinction. In a sense, human rights can be considered universally recognized standard of behavior. The violation of these standards by state, or
other agents may give rise to situations, which lead to the creation of refugees. Refugees, by definition are victims of Human Rights violations.2

Viewing the refugee problem in the context of Human Rights is clearly relevant. It is a human problem. It is the duty of the civilized country to the people who migrate from one region to another, as refugees can not be deprived of certain basic rights. Only through a Global commitment to Human Right and refugee protection principles can the growing global problem of forced displacement of people, be addressed with the scale of Human Right violations that force people into exile continuing unabated the number of those displaced is likely to remain high in coming year.3

The human rights organization appeal to those countries that have not acted to this cornerstone of international refugee protection to do so without delay or reservation. With the increasing number of people needing international protection, all state should renew their commitments of the 1951 United Nations refugee convention in its 50th Anniversary of the convention.4

Viewing the refugee problem in the context of human rights is clearly relevant. In fact the origin of the international system of refugee protection, as codified in international refugee law, grew out of concern for the plight of refugee fleeing the troubles of post-war Europe. Regrettably, protecting and assisting victims of human rights violations which result in forced displacement is as relevant today as it was some fifty year ago represent a distinct group of individuals who are without the protection of a national state. The International system of refugee law was adopted in order to replace the protection, which is normally provided by and is the responsibility of national government for their citizens.

International Refugee Law

A number of international instruments establish and define basic standards for the treatment of refugees. The most important and the convention relating to the status of the refugees 1951, with is sometimes referred as "the Bible of the Refugee Rights", and its protocol 1967 (which widened its geographic scope), provide an international Bill of Rights, an International

Refugee Law, it sets the minimum standards of treatment of refugees, including the basic rights to which they are entitled. The refugee convention lists the principal rights, which the contracting states undertake to grant to refugees, subject to the exceptions related to each countries particular requirement. Grouped under a number of headings in the 1951 Refugee Convention, viz., General Provisions, Judicial status, Gainful employment, Welfare and administrative measures. These rights constitute the most comprehensive list yet drawn up in favour of the refugees and such standards of treatment of refugee are now widely accepted by the majority of the states. As of 1 April, 1992 111 states were party to the 1951 convention and/or the 1967 protocol and the states those are not parties, to these instrument should also serve guidelines by 1951 convention and 1967 protocol (containing details) on the minimum standards of the treatment of refugees in their states.

As India, is neither a party to 1951 refugee convention, nor it has a specific legislation on Refugee Law, it has however, handled the issue at the political and administrative level well, the fundamental rights of India partake. The character of the civil and political rights of the Universal Declaration and the 1951 Refugee Convention.

The 1951 convention relating to the status refugees has three main functions: to provide a general definition of the term "refugees' contrasted with

the early definition related to specific events to provide a charter of rights which ratifying states undertake to accord to refugees and to make provision for implementation.

In order to secure the legal status of refugees in the country of asylum, the 1951 convention contains comprehensive provisions regarding refugee's rights. Except where more favorable right are explicitly provided for in the convention refugees are accorded as a minimum standard the same rights as granted to aliens generally. Beyond this, a refugee is to be granted specific rights not normally enjoyed by ordinary aliens, owing to the fact that she or the lacks the protection of his/her state of nationality. Furthermore, the provisions of the 1951 convention apply to all refugees without discrimination as to race, religion or country of origin (Article 3).

The view that a refugee is a person whose social world has been disturbed can contribute to our understanding in at least two ways. First, it offers a meaningful classification of refugees on a continuum that runs from total destruction of the refugee's social world to its persistence even as he or she moves at one extreme there are refugees whose social world almost collapsed in flight who lost relatives and livelihood such were the survivors of the Nazi concentration camps, who had no one left in the world and no home to return to. There are those refugees whose social world became more circumscribed as a result of flight, but were able to maintain some links or established new ones like the Afghan and Ethiopian refugees.

Secondly, the concept enables us to follow the movement of refugees and to chart the transformation of their social worlds where a social world is constructed around a person, all the person's movements and all the changes in his or her conditions can be attended to the various stages of the person's career, from the destruction of his or her social world, through the camp life, to
the growth of a diversified social network, can be encompassed in the framework of a study.\textsuperscript{7}

The 1951 convention details the civic and socio-economic rights of the refugees, which ought to be respected. In addition, there are regional and universal human rights instruments which read in conjunction with the refugee specific rights regime, set in a wide ranging if perhaps not fully adequate in integrated measure of respect for the basic dignity of the refugees.\textsuperscript{8}

Human Rights are freedoms, which are granted equally to all persons without distinction.\textsuperscript{9} In a sense, human rights can be considered universally recognized standard of behavior. The violation of these standards by state, or other agents, may rise to situations, which lead to the creation of refugees. Refugees, by definition, are victims of Human Rights violations.

As all asylum seeker and refugees are entitled to all the rights and fundamental freedom that are expelled out in international Human Rights instruments. The protection of the refugees must therefore be seen in the border context of the protection of Human Rights.

The concept of human rights is not new, nevertheless, throughout the history of civilization, man had to struggle hard in different parts of the world to have recognition to the doctrine of unalienable rights that are universally applicable. With the changing of time the concept of Human Rights has also undergone a process of transformation. Moreover, the conceptual evolution of Human Rights has been slow and gradual. Infact, till the end of Nineteenth century, there have been little progress in conceptual growth further, in the first half of the twenty century, humanity encountered new challenge. During both the World War, there had been total annihilations of existing jurisprudence, and genocide became the rule of the later had shaken the conscience of mankind

\begin{itemize}
\item \textsuperscript{7} Emanuel Marx the Social word of refugees: conceptual framework; Journal of refugees strategy, vol. 3, 1990, pp.190, 196-98.
\end{itemize}
and increased international concern in Human Rights. It was increasingly recognized that effective Human rights protection was an essential condition of everlasting peace and prosperity.

In other word peace and progress was considered not possible in a world where gross violations of Human Rights took place. It was specifically contemplated that steps would be taken to facilitate solution of other humanitarian problem, which obviously included restoration and recognition of human dignity, based upon a set of inalienable rights.

**The origin of International Human Rights Law**

A universal idea of developing a system of law, which protected the human right violation of individual, is also not new. Many states and communities have been established on the basis that individual members have certain inherent right, which must be respected by those governing. The idea may be based on religious, political, moral or social grounds, and it is mistake to assume that it owes its origin to any one particular doctrine of theory of government, rather Human Rights are best understood as a common and unifying expression of all people's deepest aspiration to live freely and securely in a just and peaceful world and as a natural response to the violence repression, acute, poverty and insecurity that plague the world we live in

**Human Rights and U. N. Charter**

With the commitment of universal ideas that these rights should be protected at an international level by a international human rights law the United Nations Charter came into existence. It is relatively recent, taking shape with the establishment of the United Nations (UN) itself.

The 1945 United Nations Charter proclaims in its preamble the "promotion and encouraging respect for Human Rights and for fundamental
freedom for all without distinction as to race, sex, language or religion". It reaffirmed its faith in fundamental Human Rights in the dignity and worth of human persons, in the right of men women and of nations large and small and member states of the United Nations pledge themselves to take action in cooperation with the United Nations to achieve this purpose that respect of Human Rights was such an integral part of the establishment of the United Nations was not an accident. The apparent powerlessness of the league of nations, the United Nation's predecessor, to prevent conflict or the repression directed against minorities in the prelude to the 2nd World War coupled with the unparalleled activities committed during the war itself led many believe that the protection of individuals against the exercise of arbitrary power would be essential to the success of a world organization whose primary task was the maintenance of international peace and security.

**Universal Declaration of Human Rights 1948**

The task of setting out in the rights and freedoms proclaimed in the charter began as soon as the United Nations was created. In 1948 the universal declaration of Human rights was proclaimed through a resolution passed by the General Assembly.

The Universal Declaration was established "as a common standard of achievements for all peoples and all nations" it set out in 30 articles the human rights and fundamental freedoms which the United Nation's member states must respect and whose universal recognition and observance they are to secure.

The Universal Declaration is not a treaty. As resolution of the General Assembly it is not open to United Nations member states to sign it or to agree to become legally bound to its provisions would be further elaborated in treaties which would create binding legal obligations for states party to them. However, the fact that the universal declaration is not a treaty does not

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diminish its importance. Its purpose was to provide an authoritative understanding of the Human Rights guaranteed in the United Nations charter;

It is the most well known United Nations catalogue of Human Rights and it includes civil and political as well as economic, social and cultural rights and its importance has been consistently reaffirmed in resolution of the General Assembly and many national constitutions make reference to it or incorporate its provisions.

**International System of Human Rights**

International refugee laws mainly comprises international instruments that define basic standard for the treatment of refugees, like humanitarian law is in fact a branch of human rights law.  

Refugees today face many problems. As prolonged or arbitrary detention; lack of due process; cruel inhuman or degrading treatment, xenophobia- the 1951 convention and 1967 protocol are silent on such issues, but it is the only international treaty which provides protection against refoulment (Art 33 of 1951 convention) whereas international human rights law includes provisions that might be applicable. As a matter of fact, international refugee instruments were never meant to address all the human rights of refugees.

International human rights law can supplement existing refugee law as it constitutes the broad framework within which refugee law provisions should be seen. Similarly, other rights provided by refugee law, such as non-discrimination, are found in international human rights instruments. Although over 125 states are party to the 1951 convention, or 1967 protocol, there are still many states which host large number of refugees and which have not acceded to either instrument. When states is not a party to the refugee law treaties it is difficult to secure a legal basis for the protection of refugees in that country. However, a number of international human rights standards are

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universally applicable, as they have attained the status of customary International Law. Further, some states that are not party to refugee law treaties are party to Human Rights treaties which include provisions of benefit to refugees.

Apart from UN charter, the universal declaration of human rights of 1948, and the convention relating to the status of refugees 1951, a number of other international human rights standards and instruments, which are applicable to refugee protection have been developed and adopted by member states of the United Nations. These include; The International Convention on Civil and Political Rights 1966, the international convention on economic, social and cultural rights 1966. Both collectively known as: The international bill of human rights 1966, the convention relating to the status of stateless persons 1954. The convention on the elimination of Racial Discrimination 1965; and the convention on the elimination of discrimination against women 1979; more recently: The convention against torture and other cruel, inhuman or degrading treatment of punishment 1984; and the convention on the rights of the child 1989. Regional Protection mechanism-OAU Convention, Cartagena Declaration, Bangkok Declaration, European Convention of Human Rights.

In addition to the central foundation status of the universal declaration of Human Rights, more than 189 states have ratified or adhered to at least one (or in majority of cases more) of these international Human Rights treaties, thus establishing binding legal obligations of a continuing nature.  

The creation by states, in the aftermath of the II^nd World War of two separate organizations do deal with Human Rights and refugees respectively, does not mean that these issues are not interrelated. The work of the United Nations in the field of Human Rights and that of the High Commissioner for Refugees is inextricably linked in the sense that both entities share a common

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purpose, which is safeguarding of Human dignity. The Human Rights programmes of United Nations deal with the rights of individuals in the territory of states. The refugee organizations were established in order to reassure minimum rights to persons after they leave their country of origin.\textsuperscript{13}

In addition many universally recognized Human Rights are directly applicable to refugees. These include the right to life, protection from torture and ill treatment. The right to a nationality, the right to freedom of movement, the right to leave any country including one's own and to return to one's country and the rights not to be forcibly returned.

In its 54\textsuperscript{th} year, the Universal Declaration of Human Rights, which lays down in its Article14, everyone has the right to seek and to enjoy in other countries asylum from persecution" a right which goes to the root of the refugee problem the topic of refugee rights gains an added importance in view of the united nations general assembly declaration on the "human rights of individuals who are non -nationals of the country in which they live" adopted on 13\textsuperscript{th} December 1985, as refugee are certainly non nationals in the country where they have taken refuge.\textsuperscript{14}

For a refugee to avail himself of right and protection granted to refugees, a determination of the refugee status is necessary. For the jurist, a man's status as a refugee is determined first and foremost by the factors which led to his condition, expatriation and the breaking of the ties that bound him to the state of his nationality. The legal basis for the determination of a refugee in that instrument so any person is a refugee within the frame work of a given instrument if he meets the criteria of the refugees definitions in that instrument whether he is formally recognized as a refugee or not. Again, the competent authority for determining refugee status will depend on the instruments under which the process of determination is conducted.

\textsuperscript{13} Human Right and refugees, Human right fact sheet 6, pp.11-13.
\textsuperscript{14} J. N. Saxena, "Refugee Rights, Bulletin on International Humanitarian Law, vol.3 No.2.
The Rights of refugees

With regards to certain right in 1951 convention and human rights instruments which contains comprehensive provisions regarding refugees rights except where more favorable rights are explicitly provided in the convention, refugees are accorded as a minimum standard the same rights as are granted to aliens generally without any discrimination as to race, religion or country of origin.

Human Rights and rule of non discrimination

A basic concept underlying international human rights law is the prohibition of discrimination. Non discrimination meant that, as a general rule, the right and freedoms recognized by international human rights law apply to everyone and state may not make distinction for example, on the basis of race-between different individuals in protecting these rights.

As we have seen, the United Nations charter proclaims that a fundamental purpose of the United Nations is "promoting and encouraging respect for human rights and for fundamental freedom for all without distinctions as the race, sex, language or religion" The prohibition of discrimination is of crucial importance to refugees. As foreigners in another country, refugee are particularly vulnerable to discrimination: The national law in the country of asylum might make insufficient provisions for refugees, or it may not be clear whether the benefits of the laws apply to refugees, The refugees might have a different religion or be of a different ethnic group, than most of the population in the asylum country, and consequently their presence might be resented or they might be viewed with suspicion, and Refugee after, lack proper identification and official documents and therefore might encounter problems with authorities.
However, even though refugees are foreigners in the asylum country, in general under international human rights law they enjoy the same fundamental rights and freedom as nationals.

The 1951 convention provides that the contracting states shall apply the provisions of this convention to refugees without discrimination as to race, religion or country of origin. Convention in general provides that nothing in this convention shall be deemed to impair any rights and benefits granted by a contracting state to refugees apart from this convention and provides that where it does not contain more favourable provision, a contracting state shall accord to refugee the same treatment as is accorded to aliens generally.

The 1951 convention provides that the contracting states shall apply the provisions of this convention to refugees without discrimination as to race, religion, or country of origin. This means that states parties to the 1951 convention must ensure that the right protected by the convention are enjoyed by all refugees regardless of their nationality, ethnic, or racial origin for example, freedom of religion (in Art. 4 or the right of access to courts (Art 16) must apply to all refugees.

Art. 3 is a specific expression of the General rule of non-discrimination in human rights law-human rights instruments usually provide that the rights they recognize must be respected without discrimination on the basis of race, colour, sex, language, religion political or other opinion, nation or social origin, property, birth or other status. This list is taken from the universal declaration of Human rights, the international convention on civil and political rights and the international covenant on economic, social and cultural rights (in each case, Art. 2).

Because refugees are not citizens of the host country, it is inevitable that they will not enjoy all of the same rights granted to citizens under national laws for example, usually only citizens are entitled to vote and to hold public office.

15. The convention relating to the status of the refugees 1951 Article 3.
16. The convention relating to the status of the refugees 1951 Article 5.
17. The convention relating to the status of the refugees 1951 Article 7.
In fact, legitimate distinctions between citizens and non-citizens have been specifically recognized by the convention on the elimination of all forms of racial discrimination. Article (2) of the convention continues: This convention shall not apply to distinction, exclusions, restrictions or preferences made by a state party to this convention between citizens and non-citizens.

More than 135 states are parties to the convention on the elimination of all forms of racial discrimination. Article 1(2) of the convention on the elimination of all forms of racial discrimination cited above reflects the reluctance of state to undertake obligations which imply equality of treatment between citizen and non-citizen; and is one of the reasons why some people believe that international human rights laws allows states to discriminate against non-citizens (including refugees) with regard to the enjoyment of basic human rights. While it is true that some rights are only enjoyed by citizens, other rights in international and regional human rights instruments are granted to everyone within the jurisdiction of the state, including non-citizens and refugees.

With regard to any given right, e.g., the right to vote, discrimination solely on the basis of race may be prohibited while discrimination on the basis of citizenship may be allowed. In other words, Article 1(2) of the convention on the elimination of all form of racial discrimination permits only some distinctions to be made on the basis of citizenship. If non-citizens are discriminated against because of their race, colour, or ethnic origin, then such discrimination would be prohibited. The following sections set out the situations and specific rights when refugees (as non-citizens) are protected against discrimination on the basis of race.

The 1951 convention itself is also quite specific with regard to: which rights refugees are entitle to an equal footing with citizens and which rights refugees enjoys only to same extent as other non-citizens.

18. The convention on the elimination of all forms of racial discrimination Article 1(1).
The 1951 convention provides equality of treatment with citizens, this is reinforced by international Human Rights instruments. These rights are as follows.

1. **Freedom of Religion**

   The 1951 convention guarantees to refugees equality of treatment with nationals as regards freedom of religion.

   Article 4 of the 1951 convention provides that

   "The contracting states shall accords to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regard the religious education of their children"

   The guarantees of freedom of religion also has been guaranteed in many international\(^\text{19}\) and regional Human Right instruments.\(^\text{20}\) They are clearly meant to ensure the greatest possible protection of religious freedom.

   The 1951 convention, international regional human rights law generally "included in freedom of religion" protected the following: freedom to hold (or not to hold) a religion or belief; freedom to adopt a religion; and freedom, alone or with others, to manifest one's religion or belief through observance, worship, practice and teaching.

   **Limitations on freedom of religion**

   The 1951 convention guarantees only equality of treatment with citizens if nationals law restricted religious freedom for citizens then the 1951 convention would not prohibit similar restrictions on refugees. However, national law itself should be in line with a state's international obligations.

   Furthermore, the 1969 Vienna convention on the law of treaties, Art 30 supports the argument that when successive treaties relate to the same subject

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19. The universal declaration of human rights Article 18; The International covenant on civil and political rights, Article 18; The convention on the rights of the child Article 14; The declaration on the elimination of all form of discrimination Article 1.
matter, the earlier treaty (the 1951 convention) applies only to the extent that its provisions are compatible with those of the later treaty (any of the human rights treaties cited are later than the convention.

The only limitations permitted on the freedom to manifest a religion or belief are set out in Article 18 (3) of the international covenant on civil and political rights. Furthermore, the limitations set out, is applied only to the freedom to manifest a religion or belief. They may not be applied to the freedom to hold or to adopt a religion or belief.\textsuperscript{21}

Article 18 of the international covenant on civil and political rights is non derogable, meaning, states may not place any restrictions on the rights to freedom of religion on account of a public emergency.

Unlike other rights (such as freedom of expression) there is no limitation on grounds of national security. Refugees may have a different religion than the majority of the population in their host country, and might therefore be particularly vulnerable to measures which affect their religious freedom. The Human Rights committee has pointed out that where there is a state religion, or a religion to which most people in the country belong, this should not impair the religious freedoms of minority groups.

In addition limitations on the grounds of protecting "public morals" might be onerous for refugees if they belong to a minority religion.

2. \textbf{Intellectual Property Right}

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as in accorded to nationals of that country. In the territory of any other contracting state, he shall

\textsuperscript{20.} African charter on Human and people's rights Article 8; American convention on human rights Article 12; American Declaration of the rights and duties of men Article III; European convention on human rights Article 9.

be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.\textsuperscript{22}

Beside 1951 convention many other international human rights instruments protect this right\textsuperscript{23}

3. \textbf{The right of Access to the Courts}

A refugee shall have free access to the courts of law on territory of all contracting states and enjoy the same treatment as a national in matters pertaining to access to the court, including legal assistance and exemption from cautio judicatum solui.\textsuperscript{24}

This right also has been guaranteed in international human rights law.\textsuperscript{25}

4. \textbf{The Rights to Elementary Education}

Keeping in view that children have at least a basic education, refugee law as well as human rights law makes a distinction favoring elementary education. The 1951 convention therefore guarantees to refugees equality of treatment with nationals as regards elementary education.

1951 convention article-22 provides:

(1) The contracting states shall accord to refugees the same treatments as accorded to nationals with respect to elementary education.

(2) The contracting states shall accord to refugees treatments as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degree the remission of fees and charges and the award of scholarship.

\textsuperscript{22} The convention relating to the status of refugees 1951 Article 14.
\textsuperscript{23} The universal declaration of human rights 27 (2); The international covenant on economic social and cultural rights Article 15 (1-C).
\textsuperscript{24} The convention relating to the status of the refugees Article 16.
\textsuperscript{25} The Universal Declaration of Human Rights, Article 10; International covenant on civil and political right, Article 14; Convention on the rights of the child Article 40.
The 1951 convention guarantees equality of treatment with nationals only with respect to elementary not to higher education. However, some of the human rights instrument are against discrimination and others support the argument that asylum-seekers and refugees should not be discriminated against in any type of education.\(^\text{26}\)

Furthermore, the 1969 Vienna convention on the law of treaties, Article 30, can be used to argue that when successive treaties relate to the same subject matter, the earlier treaty (the 1951 convention) applies only to the extent that its provisions are compatible with those of the later treaty (any of the human rights treaties cited the later than convention.

**Limitations**

However, right to education is one of the group of economic, social and cultural rights. Unlike civil and political rights, such as the rights to freedom of religion, which can be implemented by a state immediately the implementation of economic, social, and cultural rights may require resources that not all states have.

State may therefore implement such rights "progressively", but must make the effort to do so. Under the international covenant on economic, social and cultural right, Art.2, states committee themselves to progressive achievement of the rights in the covenant, individually and through international assistance and cooperation, to the maximum of their available resources. Under the same article, states also committee themselves to guaranteeing the rights in the covenant without discrimination of any kind. This means that states should be constantly improving their provisions of the rights to primary education, and has noted the need to provide such education to asylum-seekers and refugees.\(^\text{27}\)

\(^{26}\) The Universal Declaration on Human Rights, Article 26; international covenant on economic, social and cultural rights Article 13; convention on the rights of the child Article 28; African charter on Human and People's rights Article 17(1); African charter on the rights and the welfare of the child Article 11; American Declaration of the rights and duties of men, Article 12; European convention for protection of Human rights and fundamental freedoms protocol 1 Article II

\(^{27}\) Human Rights and refugee protection, Training Model, UNHCR Part-II, June 1996, pp.61-63.
All rights in the convention on the rights of the child apply to all children within the jurisdiction of the state party. The committee on the rights of the child, in reviewing state reports under the convention, has emphasized the importance of the rights to primary education, and has noted the need to provide which education to asylum seekers and refugees.

**Education about Human Rights**

The UNESCO world plan of action on education for human rights and democracy was adopted in Montreal in 1993, it emphasizes education for human rights and democracy in specific context, and includes refugees and internally displaced persons as one category of persons in a different situation whose rights are endangered and who need appropriate information and education.

Many International Human Rights law\(^{28}\) and regional human rights law\(^{29}\) also provides certain guidance on the content of the education which people should receive with a particular emphasis on education about Human Rights.

This is important for refugees, not only to know their rights in a country of asylum, but also to help build the foundation for a durable solution by providing them with the information to protect their own rights and to respect the rights of others when they return to their home country. It should also be noted that the General Assembly proclaimed a United Nations Decade for Human Rights Education beginning in Jan 1995.

5. **The Right to Public Relief**

The contracting state shall accord to refugees lawfully staying in their

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\(^{28}\) The Universal Declaration of Human Rights, Article 26; convention on the rights of the child Article 29; International covenant on economic, social and cultural rights, Article 13; International covenant on civil and political rights, Article 18; UNESCO convention against discrimination in education, Article 5; Convention on the elimination of all forms of discrimination against women, Article 10.

\(^{29}\) African Charter on the rights and welfare of the child, Article 11; American convention on Human Rights, Article 12; American declaration of the rights and duties of men, Article 12; European convention for the protection of Human Rights and fundamental freedoms protocol 1, Article 2.
territory the same treatment with respect to public relief and assistance as is accorded to their nationals.\(^\text{30}\)

The convention provisions on public assistance and social security help refugees as a temporary measure until they are not able to adopt the society sufficiently, and are not able to secure an employment, or are prohibited from doing so, in order to sustain themselves, for their well being and to meet their basic needs they remain dependant on public assistance. This right is also guaranteed in international human rights law\(^\text{31}\)

6. **Rights associated with employment, labour legislation, and social security**

The member state shall accord to refugees, lawfully staying in their territory the same treatment as is accorded to nationals in respect of the labour legislation and social security matters which includes: remuneration including family allowances, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining\(^\text{32}\), social security of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, and other contingencies etc., and also the right to compensation for the death of a refugee resulting from employment injury or from occupational disease. All these rights shall not be affected by the fact that the residence of the beneficiary is outside the territory of contracting state. These rights also have been guaranteed in international human rights law\(^\text{33}\)

However, with regard to the following rights, the 1951 convention provides only equality of treatment with other non citizen with respect to certain rights. international human right instruments are more favourable to

\(^{30}\) The convention relating to the status of Refugees, Article 23
\(^{31}\) The universal declaration of Human Rights, Article 25; International covenant on economic, social and cultural rights, Article 9.
\(^{32}\) The convention relating to the status of Refugees, Article 24
\(^{33}\) International covenant on economic, social and cultural right, Article 9; convention on the rights of the child, Article 26.
refugees by providing protection against discrimination between citizens and non-citizens (including refugees) as follows.

**Movable and immovable property rights**

The contracting state shall accord to a refugee treatment as favorable as possible and, in any event, not less favorable to them that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.\(^\text{34}\)

**The right of Association**

As regards non-political and non-profit making associations and trade unions the contracting state shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country, in the same circumstances.\(^\text{35}\) Right of association has been granted by human rights law.\(^\text{36}\)

**The Right to Work**

The right to work, one of the most fundamental economic rights, is crucial for refugees. Refugees need to be in a position to support themselves and their families especially if there is no prospect that conditions in their home country are likely to change in the near future so that it might be safe for them to return voluntarily. While national or international assistance programmes might provide interim relief, in the long run continued reliance on such aid can be demoralizing. Forbidding refugees to work places them in a situation of enforced idleness which can only exacerbate, their feelings of distress at not

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35. Convention relating to the status of refugees 1951, Article 15.
36. The Universal Declaration of Human Rights, Article 20; International covenant on civil and political rights, Article 22; International covenant on economic, social and cultural rights, Article 8; convention on the rights of the child, Article 15.
being able to return home, and may contribute to resent mention the part of the host population

In recognition of the importance of this right, the 1951 convention devoted its three articles to ensuring refugees right to work. These articles provide that refugees right to work. Whether in wage earning employment, self employed; or practicing a liberal profession is limited to ensure equality of treatment with other non nationals.37

**Limitations**

Under the 1951 convention, restrictions on the working right of non-nationals may also be applied to refugees. There are two important exceptions to this:

The first concept with regard to wage earning employment, is that any restrictions placed on non nationals shall not be imposed on refugees if: They have completed three years residence in the country; or of they are married to a nationals of the country; or if; They have a child (son) who is a national of the country.

The second exception, for those refugees who want to be self-employed or to practices a liberal profession is that, states undertake to accord treatment as favourable as possible. This imposes a positive obligation on states to make every effort to lift restrictions on the right of refugee to start their own business, or to practices a profession.

So 1951 convention relating to the status of refugee law guarantees only that refugees have the same rights as other non-nationals concerning employment, state can prevent refugees from working if other non-nationals are not allowed to work.

However, many international Human Right law38 and many regional

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38. The Universal Declaration of Human Rights, Article 23; International covenant on economic, social and cultural rights, Article 6 (1); convention on the elimination of all forms of discrimination against women, Article 11.
Human Right law\textsuperscript{39} contain a number of provisions on the right to work which are relevant to asylum-seekers and refugees and apply equally to nationals and non-nationals.

\textbf{Other Restrictions}

Some states argued that right to work should include a provision allowing for state parties to restrict the economic rights of non-nationals, and such provisions would be in line with state practices since most states did not grant unrestricted working rights to non-nationals. However this argument was not accepted; rather, the only specific restriction on the economic rights of non-nationals which was allowed was intended to end the domination of certain groups of non-nationals established during periods of colonization. As developing countries, with due regard to human rights and their national economy may determine to what extent they would guarantee the economic rights, recognized under the present covenant to non-nationals. Therefore, any restriction of the right to work of non-nationals must be determined by law—meaning imposed pursuant to a general law which sets out clear rules compatible with the nature of these rights, meaning not applied so as to jeopardize the very existence of the right;

Solely for the purpose of promoting the general welfare—meaning necessary for the purpose of furthering the well-being of the population as a whole. Any restrictions placed on refugees' right to work would have to be justified under this limitation clause. For example a state may limit refugees' right to work in an effort to discourage the arrival of asylum-seekers in its territory, in the belief that such a policy will make asylum-seekers choose another country, while such a policy may be in accordance with law, it may not meet the test of being necessary to promote the general welfare.

However, in times of high unemployment, a state might reasonably argue, that it is necessary to restrict the working rights of non-nationals,

\textsuperscript{39} African charter on human and people's right, Article 15; American declaration of the rights and duties of men, Article XIV; European social charter (Appendix).
including refugees because it is obliged to ensure employment opportunities for its own nationals, arguing that this is a means of promoting the general welfare.

**The Right to Housing**

As regards housing, the contracting states, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugee lawfully staying in their territory treatment as favourable as possible and, in any event, not favourable than that accorded to aliens generally in the same circumstances. Other international human rights law also provide right to housing.

**Freedom of Movement**

Freedom of movement in a refugee, context has traditionally been understood mainly to concern the right freely to move within the country of Asylum, and to choose one's place of residence. However, issues pertaining to freedom of movement are present in all phases of the refugee movement from the forced uprooting through flight, asylum and eventually return. Article 26 of the 1951 convention states that:

"Each contracting state shall accord to refugees, lawfully in its territory the right to choose their place of residence and to move freely within the territory, subject to any regulations applicable to aliens generally in the same circumstances." Article 31 of the convention also support this right of freedom of movement.

**Restrictions on this Right**

The freedom of movement (Article 26) is subject to regulations

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40. The convention relating to the status of refugees 1951, Article 21.
41. The universal declaration of Human Rights, Article 25 and international covenant on economic, social and cultural rights, Article 11.
43. The convention relating to the status of refugees 1951, Article 21.
applicable to aliens generally in the same circumstances. The adhoc committee that prepared the refugee convention had in mind restrictions on access by aliens generally to frontier zones, strategic zones, areas of natural catastrophe, area of rebellion, of civil war and of large-scale police operations. This rights also has been guaranteed in international Human Rights and regional human right law freedom of movement under international and regional human rights law includes the following situations:

**Right to move within the borders of a state and to choose one's place of residence**

The simplest form of freedom of movement is the ability to move within the borders of a state freely. Any restriction provided by law is to be understood strictly i.e. there should be a national law to restrict the provisions. Limitations based on national security would normally refer to situation where a danger threatens the whole nation, but public order is somewhat wider in application, as it not only concerns order, but also public safety and prevention of crime. Furthermore, many states have also made reservations upon ratification of the covenants. It is useful, therefore, to keep track of such declarations and encourage states to withdraw such reservations. The Right to leave and remain in one's country, including the right to return voluntarily.

The international community has provided protection for the right of everyone to leave any country, including his or her own, and to return to his country. The first instrument to recognize this right was the Universal Declaration of Human Rights, which provides that:

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45. Universal Declaration of Human Rights, Article 13; International covenant on civil and political rights, Article 12; convention on the elimination of all forms of racial discrimination, Article 5; convention on the elimination of all forms of discrimination against women, Article 15 (4)
46. European convention for the protection of Human Rights and fundamental freedoms protocol No.4, Article 2; American convention on Human Rights, Article 22; African charter on human and people's right, Article 12.
47. The Universal Declaration of Human Rights, Article 13 (1); The international covenant on civil and political rights, Article 12(1) (2) (3).
Everyone has the right to leave any country, including his own and to return to his country (Art. 13 (2))

This idea was codified in the convention on the elimination of all forms of racial discrimination, and in the international covenant on civil and political rights. It is interesting to note that the right not to be arbitrarily deprived of the right to enter his/her country in Article 12(1) of the international covenant on civil and political Rights is ensured de facto without limitations, although freedom of movement is not a non-derogable right. Because nationals according to Article 12(4) always have the right to enter their territory they are always "legally" within their territory. This means that Article 12(1) really is applicable only to aliens.

The Right Not to be expelled without a decision in accordance with the law

With regard to Article 13 of the international convention on civil and political rights, which states that expulsion may take place only with a decision in accordance with law. The Human Rights committee stated in its comment on the position of aliens under the covenant that the purpose of this Article "is clearly to prevent arbitrary expulsions" it is also said that article 13 regulates only the procedure and not the substantive grounds for expulsion.

In contrast to the regional instruments, the international covenant on civil and political rights contains neither an express prohibition of the state expelling its own nationals, nor an absolute prohibition of collective expulsion of aliens. The following provisions, however, can be found in the regional human rights instruments.

The European convention for the protection of Human Rights and fundamental freedoms states that "collective expulsion of aliens is

48. The convention on the elimination of all forms of racial discrimination, Article 12(2).
49. International covenant on civil and political right, Article 12(4).
50. The African charter on human rights and people's rights, Article 12(5); The American convention of Human Rights, Article 22(9) and Article 22(5).
prohibited." In practice, this means that states must conduct individual examinations of asylum claims, it does not prohibit the expulsion of a group of individuals, provided the expulsion orders are based on individual determination each weighed on its own merits. The mere fact that expulsion orders are identical does not mean the cases have not been individually examined.

There are a number of other rights not mentioned in 1951 convention that apply equally to citizens and non citizens which are also guaranteed to both citizen and non citizen under international Human Rights laws.

1. **Right to Peaceful Assembly**

   There is no provision in 1951 convention regarding freedom of Assembly, but this right is protected under international and regional human rights instruments.

   International and regional human rights law generally protect the right to meet and gather with others in a peaceful assembly. The right to peaceful assembly is related to the rights regarding freedom of expression and freedom of religion. It is primarily intended to cover public assembly, which one author has described as "an intentional temporary gathering of several persons for a specific purpose."

   The right only protects "peaceful" assembly. There exists no international jurisprudence setting out parameters determining what constitutes a "peaceful" Assembly if the purpose of assembling is to incite others to riot and violence, it can hardly be considered "peaceful", even if the assembly itself does not resort to violence. Obviously, where the purpose of assembly is

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52. Universal Declaration of Human Rights, Article 20; international covenant on civil and political rights, Article 21; convention on the rights of the child, Article 15.

53. African charter on Human and peoples right, Article 11; American convention on Human rights, Article 15; American declaration of the rights and duties of men, Article XXI; European convention for the protection of human rights, Article 11.
for the participants to engage in rioting, violence or looting, it is not protected under human rights instruments.

**Limitations on peaceful assembly**

Under international human rights law, the right of peaceful assembly may only be subject to such restrictions, which are considered necessary in a democratic society. This means that the limitations may be imposed only in accordance with certain principles that are fundamental to democratic life, in particular the principle that people have a right to gather and express political views if these are critical of government.54

Limitations are permitted if they are, in the interest of national security, e.g., law prohibiting or regulating demonstrations on a military base. In the interest of public safety, e.g., refusal to allow a deliberately provocative march which is likely to lead violence. In the interest of public order, e.g., laws requiring demonstrators to notify the police before hand or to apply for a permit to hold the demonstration. To protect public health or morals, e.g., laws prohibiting demonstrations at sacred or religious sites or to protect the rights and freedom of others, e.g., prohibiting marches, which are overtly racist.

Under the European convention on Human Rights, restrictions (not prohibitions) may be placed on political activity by aliens. However, if the state concerned is also a party to the international covenant on civil and political rights which does not allow for such restrictions the more generous international provision prevails. A few European states made reservations when ratifying the covenant on precisely this point, making it necessary to check the precise extent of the international obligations undertaken by the state in which you are working.

2. **Freedom of Opinion and Expression**

There is no provision in the 1951 convention relating to freedom of opinion and expression. The OAU convention governing the specific aspects of Refugee problems in Africa contains the following previsions in Article III (2):

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Signatory states undertake to prohibit refugees residing in their respective territories from attacking any state member of the OAU, by any activity likely to cause tension between member states, and in particular by the use of arms, through the press, or by radio.\textsuperscript{55}

Other provisions are found in international\textsuperscript{56} and regional human rights instruments.\textsuperscript{57} International and regional Human Rights law generally protect the following: Freedom to hold opinions without interference; and Freedom to express opinions, including freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, orally, in writing or through any other medium.

The right is expressed in broad terms and was meant to be as expansive as possible covering all kinds of opinions and expressions, however critical or unacceptable they might be. Freedom of speech and expression as set out in international instruments may be subject to restrictions, which are necessary to ensure respect for the rights and freedoms of others. It may therefore be permissible to limit freedom of speech to protect people from racist propaganda.

\textbf{Limitations on freedom of opinion and expression}

The freedom to hold opinions is not subject to limitations. The freedom to express opinions is subject to limitations in regional instruments and in Article 19(3) of the international covenant on civil and political rights. In other words, the limitations affect only freedom of expression and not private freedom of opinion.

Limitations may be imposed only on the ground of: Respect for rights or reputation of others, e.g., laws on deformation, slander or racial discrimination,

\textsuperscript{56}. Universal Declaration of Human Rights, Article 19; international covenant on civil and political rights, Article 19; convention on the rights of the child Article 13.
\textsuperscript{57}. African charter on human and people’s right, Article 9; American convention on human right, Article 13; American declaration of the right and duties of men Article 14; European convention for the protection of human rights and fundamental freedom, Article 10.
Protection of national security, e.g., laws protecting military secrets, protection of public order (order public), e.g., laws which require licensing of newspapers on broadcasters, or limit the free expression of police officials, or restrict reporting on judicial proceedings, or prohibit incitement to violence or criminal acts; Protection of public health, e.g., laws restricting tobacco advertisements; Protection of public morals, e.g., laws restricting pornographic publications.

It is recalled that under the OAU convention governing specific aspects of refugee problems in Africa (Art. III (2), states undertake to prohibit refugees from using the press or radio to attack an OAU members state, if the state concerned is also a party to the Africa charter on Human and People's Rights or the international covenant on civil and political rights, the more generous standards under these instruments would take precedence.

As was the case with freedom of assembly, discussed above in this section, the European convention on Human Rights permits restrictions (not prohibitions) to be placed on political activity by aliens. However, if the state concerned is also party to the international covenant on civil and political rights, the more generous international provision prevails. A few European states made reservation when ratifying the covenant on precisely this point, so it is necessary to check the precise extent by the international obligations undertaken by the state in which you are working.

3. **Right to family life**

   The only provision in the 1951 convention specifically dealing with the situation of the family to a refugee is in Art 12(2):"Rights previously acquired by a refugee and depended on personnel states, more particularly rights attaching to marriage shall be respected by a contracting state."

   Although the 1951 convention does not specifically address the principles of family unity and protection of the family, the final Act of the United Nations conference of plenipotentiaries on the status of refugees and
stateless persons that adopted the text of (what was to become) the 1951 convention recommended in chapter IV Part 3 that:

"Government to take the necessary measures for the protection of the refugee's family especially with a view to; Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admissions to a particular country. The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption."

Protection of the family includes: Civil and political rights; Economic, social and cultural rights; The principle of non-discrimination against women; and the principle of the best interest of the child. The right to family life is affirmed by several international human rights law instruments,* and regional human rights instruments.60

(a) **Protection of the family is about civil and political rights, including the family's unity or reunification**

The Human Rights committee in its General comment specified the scope of protection against unlawful interference with one's privacy, family or home guaranteed in Art. 17 of the international covenant on civil and political rights. It commented that such protection is not only from the state, but that the state is also responsible to protect the family against interference by private entities. It should also be noted that the term "unlawful" means that no act interfering with family life may take place unless it is based upon law. An act which is provided for by law still be "arbitrary", and any interference should be reasonable in the particular circumstances.

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59. Universal Declaration of Human Rights, Article 12 and Article 16; International covenant on civil and political rights, Article 17 and Article 23; International covenant on economic, social and cultural right, Article 10 and Article 11(1); convention on the rights of the child, Article 7, Article 8, Article 9, Article 10(1), Article 16, Article 19, Article 20 and Article 21.
60. African charter on human and people's right, Article 18; American convention on human rights, Article 11.
The same committee also had an opportunity to comment on the provision in Article 23 of International covenant on civil and political rights that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the state" with respect to both article 17 and 23, the Human Rights committee has stated that the word "family" requires abroad interpretation in the sense of respective cultural understandings of various state parties.

The right to family life guaranteed by Article 8 of the European convention for the protection of Human Rights and fundamental freedoms has given rise to some interesting jurisprudence with regard to family unity and reunification.

(b) Protection of the family also includes economic, social and cultural rights

The international covenant on economic, social and cultural rights stipulates in its article 10 and 11, that the family should receive the widest possible protection and assistance and that steps should be taken to improve living conditions for the family.

(c) Protection of the family includes the principle of non-discrimination against women

The convention on the elimination of discrimination against women stipulates in article 16(1) that state parties should take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

(d) The family includes the principle Protection of the best interest of the child

A number of the provisions of the convention on the Rights of the child deal with the child's relationship to his or her family, and have particular

relevance for refugee families they relate to; Registration of birth and nationality (Art. 7); Preservation of identity, including family and nationality (Art. 8); Separation from parents (Art. 9); Family reunification (Art. 10 (1); No arbitrary interference with the family (Art. 16); Protection from abuse and neglect (Art. 19); Protection of the child without a family (Art. 20); Adoption (Art. 21).

The committee on the Rights of the child in reviewing state reports under the convention on the Rights of the child has paid particular attention to preserving family unity in asylum procedures. In its concluding observation on the report of one state, the committee expressed its concern that the police had not received instructions to delay the expulsion of some members of a family in order to ensure that the whole family remained together and to avoid under strain on the children.

4. **Right to life, liberty and security of the persons**

Through Rights to life, liberty and security of the persons are not mentioned in the 1951 convention that apply equally to citizens and non-citizens, and other human rights instrument\(^2\) protect this right, equally to citizens and non-citizens.

5. **Racial Discrimination**

Since refugees are in a different country than their own, usually speaking a different language and after belonging to a different racial or ethnic group than the population of the host country they are particularly vulnerable to suffering from racial or other discrimination. This discrimination may be a direct or indirect result of government laws, policies, or actions, or it may arise from the actions of private individuals or groups, e.g., racist propaganda or racist violence.

\(^2\) Universal declaration of human rights, Article 3; international covenant on civil and political rights, Article 6 and 9; convention on the rights of the child, Article 6 and 7.
The definition of "racial discrimination" in the convention on the elimination of all forms of racial discrimination, is intended to cover acts of discrimination based on motivations of a racial nature. Since there is much debate as to the term "race", it should be understood in a broad sense and this is why the term "colour", "ethnic origin" and "descent" were added. Also, these acts must have the "purpose" or "effect" of affecting the enjoyment of basic human rights. This means that even if a law or policy is not intended to discriminate on the basis of race, it might still be objectionable if it has this effect. 63

However, another provision of the convention on the elimination of all forms of racial discrimination reflects the reluctance of states to undertake obligations which imply equality of treatment between citizens and non-citizens, and is one of the reasons why some people believe that international Human Rights law allows states, to discriminate against non-citizens (including refugees) with regard to the employment of basic Human Rights.

While it is true that some rights are only enjoyed by citizens, other rights in international and regional human rights instruments are granted to everyone within the jurisdiction of the state, including non-citizens and refugees, with regard to any given rights, e.g., the right to vote, discrimination solely on the basis of race may be prohibited while discrimination on the basis of citizenship may be allowed. In other words, Article 1(2) of the convention on the elimination of all forms of racial discrimination permits only some distinctions to be made the basis of citizenship. If non-citizens were discrimination against because of their race, colour, or ethnic origin, then such discrimination would be prohibited.

Article 3 of the 1951 convention provides that; "The contracting states shall apply the provisions of this convention to refugees without discrimination as to race, religion, or country of origin." This means that states parties to the 1951 convention must ensure that the rights protected by the convention are

63. The convention on the elimination of all forms of racial discrimination. Article 1(1).
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enjoyed by all refugees regardless of their nationality, ethnic or racial origin for example, freedom of religion (in Article 4) or the right of access to courts (Article 16) must apply to all refugees.

Article 3 is a specific expression of the general rule of non-discrimination or prohibition against discrimination in Human Rights law, international human rights instruments and usually regional instruments provide that the rights they recognize must be respected without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

6. **Protection against Xenophobia and Racist violence**

As stranger in a foreign country, refugee will often feel insecure and threatened, such feelings will increase if they regularly confront intolerance and prejudice, in situations where refugees face racist propaganda and violence, fear for their security become acute.

The 1951 convention does not provide protection for refugees against xenophobia and racist violence. However, humorous provisions in international Human Rights instruments, in particular the convention for the elimination of all forms of racial discriminations do offer certain forms of protection which benefit refugees.

The convention for all form the elimination of all forms of racial discrimination state parties undertake: (Art. 2) provides that state parties undertake; To engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institution, national and local shall act in conforming with this obligation not to sponsor, depend or support racial discrimination by

64. See The universal declaration of Human Rights; International covenant on civil and political rights; The international covenant on economic and cultural rights and the convention on the rights of the child (in each case Article 2).
65. African charter on Human and People's right, Article 2; American convention on Human Rights, Article 1; American Declaration on the rights and duties of men, Article II; American charter on the right and welfare of the child, Article III; European convention for the protection of human rights and fundamental freedoms, Article 4.
any person or organization to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization and to encourage, where appropriate, interrogations multiracial organizations and movements and other means of eliminating barriers between races and to discourage anything which tends to strengthen racial division. These provisions apply to both public and private groups and organizations, and place concrete obligations on state parties to take action against discrimination.\(^6\)

In addition, under article 4(a) of the elimination of all forms of discrimination provides, that the states parties are required to make illegal: The dissemination of ideas based upon racial superiority or hatred; incitement to racial discrimination; Acts of violence against any race or group of persons of another colour or ethnic origin; Incitement to such acts of violence; and Provision of any assistance, including financial assistance, to racist activities and again (Art. 41b); Under article 4(b) State parties required to make illegal any organizations and propaganda which promote and incite racial discrimination, as well as participation in such organizations or propaganda.

Therefore, states parties to the convention for the elimination of all forms of racial discrimination are required to take several steps to suppress racism and to make illegal and punish racist violence racist organizations and racist propaganda.

Such steps should benefit refugees when: They are threatened with or expressed to violence on account of their race on ethnic origin; or Private or public groups organizations are established which publish or use racist propaganda directed against refugees.

**Restrictions on racist speech versus freedom of expression**

Freedom of speech and expression may be subject to restrictions that are necessary to ensure respect for the rights and freedoms of others. It may

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\(^6\) Human rights and refugee protection. Training Model, UNHCR, Part-II, June, 1996, pp.138-139.
therefore be permissible to limit freedom of speech to protect people from racist propaganda and violence.

The committees for the elimination of racial discrimination, set up to implement the convention for the elimination of all forms of racial discrimination, has specifically concluded with regard to this issue that:

"In the opinion of the committee, the prohibition of the dissemination of all ideas based upon racial superiority or hatred in compatible with the right to freedom of opinion and expression".

7. **Right Related to Detention**

Neither the 1951 convention nor the protocol include the provisions dealing explicitly with the detention of refugees and asylum-seekers. However, the convention provides that the contracting states shall not impose penalties on account of their illegal entry or presence, inter or are present in their territory without authorization.

The provision has been interpreted by U.N.H.C.R. to mean that: in general, the detention of refugees should be avoided; and in any case, refugees should not be detained simply on account of their illegal entry or presence in a state.

Executive committee conclusion 44 on detention of refugees and asylum-seekers established further rules and set out the legitimate reasons for detaining refugees. It says that, if detention is deemed necessary, it may only be resorted to on grounds prescribed by law: to verify identity to determine the elements on which the asylum claim is based; to deal with cases where refugees have destroyed their documents or used fraudulent documents or to protect national security and public order.

In order, conclusion 44, also provides that: Detention of refugees should be subject to judicial or administrations review; Refugees should not be detained with common criminals; and Detained refugees should be provided with such facilities as are necessary for the effective exercise of their rights. Additional guidelines have been issued by the U.N. refugee agency on the treatment of refugees in detention centers.

67. The convention relating to the status of the refugees 1951, Article 31 (1) & (2)
with the opportunity to contact the U.N.H.C.R. or non-governmental organizations working with refugees.\textsuperscript{68}

There are several ways in which international and regional human rights standards can be of assistance in ensuring that the basic principles established by 1951 convention and the executive committee regarding refugees' detention are met, as follows:

\textbf{Standard to ensure that detention in subject to judicial control}

There are two aspects to the judicial control of detention, the first is, those detained must have the opportunity to challenge the lawfulness of their detention before a court and if it is unlawful, to be released. The right to petition a court, to seek release from detention (often called Habeas Corpus or amparo) is a fundamental right common to many legal systems and is guaranteed in a number of international and regional human rights instruments.\textsuperscript{69}

The second aspect is that the detention order itself must be under the control of a judicial authority. It is not sufficient that detained person, including refugees and asylum-seekers, have the right to challenge the detention in court. In addition to this right which is exercised at the initiative of the detainee, the detention itself must automatically be subject to judicial control, the judicial control must continue throughout the detention with respect to all measures affecting the rights of the detainee and such an authority must keep the detention under review, if crucial importance to refugees and asylum-seekers who are often detained simply by order of immigration or border officials upon arrival in the country. Regardless of the basis for the detention order under national law, international standards require recourse to a judicial or other authority.

\textsuperscript{68} Human Rights and Refugee Protection, Training Model, UNHCR, Para II, June 1996, pp. 39-49
\textsuperscript{69} International covenant on civil and political right. Article 9 and the convention on the rights of the child, Article 37.
Standard to ensure that detained refugees can communicate with U.N.H.C.R.

Under Human Rights standards, detainees have the right to assistance of legal counsel. However, in addition to the right to counsel, detained refugees and asylum-seekers have an explicit right to communicate with U.N.H.C.R. At as minimum, this right should ensure that refugees can write or to telephone a U.N.H.C.R. office. The obligation to inform a refugee of this right should require that the address and telephone number of the U.N.H.C.R. office be readily available in place where refugees are detained "communicate" might also include a right to be visited by U.N.H.C.R., especially where U.N.H.C.R. itself, determines that this is the only effective means of exercising its function of international protection.

The same right for refugees to communicate with U.N.H.C.R. and that detained refugee and asylum seeking children must have access to appropriate assistance, has been protected by a number of Human Rights instruments.70

Standards to ensure that refugees are detained only for legitimate reasons

Judicial control of detention and access to U.N.H.C.R. as discussed above, are of fundamental importance to detained refugees and asylum-seekers. They should help to ensure that police and immigration officials who have the power to detain do not abuse that power and that people in need of protection are identified and not subject to refoulment.

However, even if U.N.H.C.R can communicate freely with detained refugees and asylum-seekers, and their rights regarding judicial control are respected, cases may be arise where national law permits detention for reasons which U.N.H.C.R. does not consider legitimate for example, national law may allow for the detention of refugees due to their illegal entry and a court might permit the continuance of the detention despite Art. 31 of the 1951 convention or

70. The United Nations standard, minimum rules for the treatment of prisoners e. Article 38 (2); The convention on the rights of the child, Article 37 (d).
executive committee conclusion 44. In such circumstances, it may be possible to argue that under international human rights standards the detention is "arbitrary".

Article (14) of the Universal Declaration on Human Rights, guarantees the right to seek and enjoy in other countries asylum from persecution, if detention in the asylum country results from exercising this right such detention might be arbitrary.

**Standards to ensure that refugees are not detained with common criminals:**

There is no explicit protection in international human rights instruments regarding the need to separate detained refugees and asylum-seekers convicted criminals.

However, in situations where detained refugees and asylum-seekers have not been convicted of any offence they should benefit from the rule persons who are not convicted shall be detained separately from convicted persons. This rule set out in many Human Rights instruments even if detained refugees and asylum-seekers have been convicted of violating immigration laws, rule 8 of the United Nations standard minimum rules for the treatment of prisoners also provides that:

"Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence."

**Standards to ensure that condition of detention do not amount to cruel, inhuman, or degrading treatment**

The otherwise lawful detention of refugees and asylum-seekers may violate international human rights standards in situations where the conditions of detention amount to cruel, inhuman or degrading treatment or punishment,

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71. International covenant on civil and political rights, Article 10 (2-a); The American convention on Human rights, Article 5(4) and The United Nations Standard, minimum rules for the treatment of prisoners, Rule 8(c)
which is prohibited by a large number of international human rights instruments. 72

Conditions of detention of refugees and asylum-seekers "cruel, inhuman or degrading" there is no precise definition of ill treatment in international human rights instruments depending on the particular case any or all of the following may amount to ill treatment: Solitary confinement; Prolonged detention without charge; Incommunicado (or grade avve) detention; Denying contact with family or friends; Other circumstances such as overcrowding inadequate food, inadequate medical attention, lack of hygiene or lack of opportunity to exercise.

Detailed rules regarding the conditions of detention and treatment of detainees and prisoners are set out in the U. N. standard minimum rules for the treatment of prisoners. These rules cover such issues as accommodation, personal hygiene, clothing and bedding, food, exercise and sport, medical services, discipline and punishment, contact with the outside world, religious practice, education, etc. Treatment which violates these rules may depending on the particular case, amount to ill treatment-especially in cases where several of the standard minimum rules are not being respected.

8. **Right to fair hearing**

The 1951 convention does not provide any specific guidance as to the procedures to be applied by states when undertaken refugee status determination. U.N.H.C.R., Hand-Book on procedures and criteria for determining refugee status (para 189) make reference to executive committee conclusion 8, indicating the basic requirements which procedures should satisfy, including the requirement that competent officials who deal with matters pertaining to immigration and border control should have clear instructions for dealing with asylum-seekers, respect the principles of non

72. The convention against torture, Article 16; The International covenant on civil and political right, Article 7; The convention on the rights of the child, Article 37.
refoulment and should refer them to a higher authority with particular competence for determining refugee status.

Asylum seekers should receive guidance as to the procedures to be followed. Asylum requests should be examined by or single central authority; asylum-seekers should be given the necessary facilities including the services of a competent interpreter, for submitting their case, and be informed and given an opportunity to contact U.N.H.C.R., those whose cases are rejected should be allowed reasonable time to appeal for reconsideration of the decision; and asylum-seekers should be permitted to remain in the country while their cases are being considered.

The executive committee adopted in 1983 conclusion No.30 on manifestly unfounded claims which underlines the need for appropriate procedural guarantees in refugee, status determination by stressing the importance of observing basic safeguards also when dealing claims that may appear to be manifestly unfounded.  

The executive committee recommended that: the applicant be given a complete personal interview, whenever possible by an official of the authority competent to determine refugee status; an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or removal from the territory.

As this conclusion deals with a particular category of claims, those presumed to be without any foundation, it must follow that higher standard of procedural guarantees must apply to ordinary applications for asylum.

International human rights law does not deal directly with standards for asylum procedures but the standard for procedures dealing with the expulsion of non-nationals.  

There are several provisions in regional instruments that deal with the right to fair procedures primarily in connection with criminal but

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74. The international covenant on civil and political rights, Article 13.
also in expulsion procedures, the latter being of particular relevance to asylum seekers and refugees.  

**Rights to Refugee women**

As a matter of international law, refugee women are entitled to the same kind of protection as all other refugees. The provisions of the 1951 convention apply to "any persons" who comes within the refugee definition besides 1951 convention and its 1967 protocol, there are many other Human Rights law which provides, the general rule of non-discrimination that everyone in a country is entitled to the same rights.

As we have seen, the U. N. charter proclaims that a fundamental purpose of the United Nations is "Promoting and encouraging respect for human rights and for fundamental freedom for all without discrimination as to race, sex, language, or religion."

In addition to the general rule of non-discrimination set out in many the instruments constituting the International bills of Human Rights and regional Human Right instruments. There is a specific instrument addressing the situation of women; the convention on the elimination of all forms of discrimination against women, to which over 130 states are parties. This convention establishes 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 or prostitution of women; Nationality (Art.9), Education (Art.10), employment (Art.11); Health care (Art.12) particular problems of rural women (Art. 14)- equality before law (Art.15) and all matters relating to marriage and family relations (Art.16) of particular importance is

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75. The European convention for the protection of Human Rights and fundamental freedom, Article 6 and Article 13.
76. Universal Declaration of Human Rights, Article 2; international covenant on civil and political rights, Article 2(1) and Article 3; International covenant on economic, social and cultural right, Article 2(2) and Article 3; and the convention on the rights of child, Article 2(1).
77. African charter on human and people's rights, Article 2 and Article 18(3); American convention on Human Rights, Article 1(1); American Declaration of the rights and duties of men, Article II; European convention for the protection of Human Rights and fundamental freedoms, Article 14.
recognition that the goal of equality of opportunity and treatment may require positive measures in favor of women.

**Violence against Women**

Concern for the human rights of women at the international level has in recent years moved beyond the focus on non-discrimination to include the issue of violence against women, reflecting the importance of this concern to the international community, the general assembly adopted in December 1993 a declaration on the elimination of violence against women (A/RES/48/104).

In the preamble of that declaration, the general assembly is "Concerned that some groups of women such as refugee women are especially vulnerable to violence." The declaration contains a list of what shall be understood to encompass violence against women (Art. 2), and underlines (Art.3) that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It follows from Article 4 (1) that states should "adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence."

The commission on Human Rights has also acted on this issue, establishing a special reporter on violence against women in March 1994. It also recommend measures, ways and means to eliminate violence against women.

However, in practice, asylum seeking and refugee women often face a number of disadvantages in obtaining protection, including: the absence of gender as a ground of persecution in the refugee definition; unwillingness to recognize women as a particular social group; unequal access procedures; failure of status determining officials to take into account that women are often persecuted and experience their persecution differently from men; greater responsibility for care of children and older family members; and increased risk of being subjected to sexual violence both in the country of origin and the country of asylum.
In addition to international Human Rights law, regional human rights law and the national law of the country of Asylum governs the protection of women. Signatories to the 1951 convention or the 1967 protocol agree to cooperate with U.N.H.C.R. in the exercise of its functions, and in particular its duty of supervising the applications of the provisions of the convention and 1967 protocol and provide guidance to those, states are not parties to all these instruments.

In response, the office has taken a number of initiatives in recent years to assist staff in protecting the rights of refugee women, including: establishing the positions of senior co-ordinator for refugee women and legal advisor (refugee women and children), issuing guidelines on the protection of refugee women (July 1991) and U.N.H.C.R. policy on refugee women 1990; issuing guidelines on prevention and response with regard to sexual violence against refugees (1995); training staff in people oriented planning, designed to promote, gender awareness in providing assistance and protection; issuing a training module on interviewing applications for refugee status which includes a chapter on interviewing women; submitting to the executive committee the note on certain aspects of sexual violence against refugee women (A/AC.46/822), which resulted in executive committee conclusions number 73 (XLIV)-1993 on refugee protection and sexual violence; as well as raising the issue at previous meeting of the executive committee leading to the adoption of conclusions number 39/1985 (Refugee women and international protection), 54/1988 (Refugees women) 60/1989 (Refugee women) and 64 (Refugee women and international protection).

Right to Refugee Children

It is widely acknowledge that refugee children requires special care and assistance because of their vulnerability, their dependence on adults, and their developmental needs.

The 19561 convention does not specifically refer to children, who are protected by its provisions in the same manner as adults and make no special
provision for the status of refugee children. However, some of the rights guaranteed in the 1951 convention are particularly important to children, such as the right to public elementary education (Art.22). In addition, the degree of respect for other rights in the 1951 convention, inter alia, housing, public relief and social security may for humanitarian reasons have a stronger impact on children than upon others in the refugee community.

The main international human rights instrument on the right of refugee children is the 1989 convention on the right of the child which has been ratified by over 185 states within only a six-year period. This has been the fastest response by the international community to any human rights treaty. The convention on the Rights of child is an important protection tool for two reasons.

First- all of the rights set forth in the convention on the rights of the child apply to all children- defined as those below the age of eighteen years- within a state party, including children who are refugees, asylum-seekers, rejected asylum-seekers on undocumented. The convention on the rights of the child is extremely comprehensive, and includes most of the substantive rights found in the international covenant on civil political rights and the international covenant on economic, social and cultural rights, as well as other rights.

Some of the rights which are particular importance to children of concern to the office are: the right to be protected from discrimination (Art.2), the right to have his or her best interests taken into account in all actions which concern him or her (Art.3); the right to survival and development (Art.6); the right to have his or her birth registered, along with the right to acquire a nationality (Art.7); the right of children and their parents to leave any country and to enter their own for purpose of family reunification (Art 10); the right to participate in judicial and administrative proceedings affecting the child (Art. 12); the right to special protection and assistance for children who are seeking refugee status or who are considered refugees (Art. 22) rights; the right to protection and care for children who are affected by armed conflict (Art. 38);
Second- the convention on the rights of the child has a specific provision dealing with children who are refugees or asylum seekers.\textsuperscript{78}

Approximately half of the world's refugees are children action by the office of the United Nations high commissioner for refugees U.N.H.C.R. to protect and care for these children is central to the fulfillment of its mandate:\textsuperscript{79} to ensure protection and health development of refugee children; to achieve durable solution which are appropriate to the immediate and long term development needs for refugee children. In recent years, the office has undertaken a number of initiatives designed to assist staff in protecting the rights of refugee children, including: establishing the provisions of senior co-ordinator for refugee children and legal adviser (refugee women and children); issuing the U.N.H.C.R. policy on children (1993) and guidelines on protection and care of refugee children 1994; chapter 2 of the guidelines on protection and care of refugee children offers an overview of the rights of the child as instruments to protect refugee children and is referred to for further information. About granting for asylum and determination of refugee claim status; submitting the issue of protecting and assisting refugee children to the executive committee, which led to the adoption of specific conclusions number 47/1987 (Refugee children) and Number 59/1989 (Refugee children) as well as inclusion of specific references to the protection of refugee children in several other conclusions.

Right to Asylum and Non-Refoulment

Asylum- concept of asylum has developed from the Greek principle of "Asylon", which means "free from seizure".

Early 20\textsuperscript{th} century, the right to grant asylum was based on sovereign prerogative, and states had exclusive control over individuals in its territory. In the asylum case, the international court of justice ruled on the issue of Asylum

\textsuperscript{78} Human Rights and refugee protection, Training Model, UNHCR, Part-II, June, 1996, pp.25-29.
and sovereignty and concluded that the refugee outside the territory of the state where the offence was committed, and a decision to grant him asylum, in the way derogates from the sovereignty of that state.

Contemporary considerations of sovereign discretion weighted on the modern day expression on asylum in the 1948 universal declaration of Human Rights (U.D.H.R.) Art. 14 (1) U.D.H.R. illustrated that "everyone has the right to seek and to enjoy in other countries asylum from persecution.

Interestingly, the United Nations Commission on Human Rights, in their draft declaration on Human Rights, had included the right to be granted asylum as such. It was the third committee of the United Nations General Assembly that had amended it, in order to remove any implied obligation on any state to admit a refugee. Since states of post-second world war did not want to assume a legal obligation, they limited the asylum cause as the right to seek asylum."

**The Right of Asylum vis-à-vis the right to asylum**

The debate on sovereign discretion and the protection of refugees, led to the distinguishing of the right of asylum, i.e., the right to grant asylum, from the right to asylum, i.e. the right to be granted asylum.

Sovereign authority had prevailed during the drafting history, and led to the dominance of the statistic conceptualization of right of asylum. While some international legal scholars of the positivist tradition have argued that states are generally under no obligation to grant asylum in international law, a persuasive naturalist view upholds the rights to asylum. The naturalist motions of sovereign co-operation and the interdependence of law and morality have been taking into consideration a more liberal view of soft, informal, non-consensual sources of law, such as the universal protection of basic human rights of refugees.

Though the debate relating to the right of asylum and the right to asylum exists in parallel, both schools of thought accept asylum as a primary international legal obligation of protection. Therefore, the importance of this
debate is the consensus that a right to asylum would be a desirable addition to the international protection of refugees.

Apart from the 1967 protocol widening the refugee definition in the 1951/67 convention, and Art. II of the 1969 organization for American Unity OAU convention no other universal mechanism has strengthened the right to asylum. The soft law that is applicable in South Asia is Art III of the principles adopted by states under the auspices of the Asian African legal consultative committee (A.A.L.C.C.). However, Art III reaffirms the sovereign right to grant of refugee asylum, while it fortifies the sovereign arguments, it must be mentioned that Art. II of the 1969 OAU convention goes further in urging member states...to receive refugees.80

Asylum is a grant of entry and stay premised on a peaceful and humanitarian manner, and not to be regarded as unfriendly act. States is granting asylum act in fulfillment of their humanitarian duties.

**Non Refoulment**

Instead of right of asylum, state have accepted the obligation of non-refoulment. The term non-refoulment is derived from the French term refouler; means to drive back or to repel, as of enemy who fails to breach one's defences, and refoulment originally covered recondition of individuals who had entered illegally or a refusal of admission to those without valid papers. Thus the modern usage of the term non-refoulment, or non-return, provides the most kind form of protection for a refugee, and assures despite to an asylum-seekers with a well founded fear of persecution in the country of origin.

The principle of non-refoulment has been enshrined in Art. 33 of the 1951/67 convention, it states: no contracting state shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of the territories where his life or freedom would be threatened on account of his race, religion,

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nationality, membership of a particular social group or political opinion. Drafters of the 1951 refugee convention regarded non-refoulment on non-return as a core principle.

They were guided by the consideration that the return of a refugee to the country from where he has fled would be tantamount to delivering him into the hands of his persecutors and therefore no reservation to Art. 33 of the 1951/67 convention. The exceptions and non-applicability is during emergency or in times of military conflict. The principle of non-refoulment is conditioned simply upon satisfying the well-founded fear criterion, where the entitlement to protection is based on the legal relationship of Art 1 and Art 33 (1) of the 1951/67 convention.

U.N.H.C.R. protection staff will be familiar with this provisions and with the debates concerning its scope and content. In brief protection against refoulment is available to: refugee recognized under 1951 convention; asylum seekers whose claims have not yet been considered; persons who have fled their countries and one entitled to protection under the OAU convention or the Cartagena Declaration, or who are otherwise in need of international protection; it is generally accepted that protection against refoulment also applied to persons arriving at the border even in situations of a large scale influx of refugees. Though, the 1951 convention was drafted with the individual asylum seekers in mind, not a situation of mass influx of asylum seekers;\(^81\) the OAU convention Article II (3) specifically includes a provisions prohibiting "rejection at the frontier" a similar provisions in included in Article 3 of the United Nations declaration on territorial asylum adopted by general assembly in 1967 resolution (2312 XXII). The executive committee of the U.N.H.C.R. conclusion adopted in 1981 No. 6, 22, 30, have also reaffirmed this principal of insisting on the provision of temporary refugee, if not on durable basis, through the act of admission to large scale influx;\(^82\)

\(^81\) See, the convention relating to the status of refugees, Article 33(2).
\(^82\) Human rights and refugee protection, Training Model, UNHCR, Part-II, p.152
Temporary refugee for humanitarian refugees has similarly been claimed as customary rule of international law by Prof. Perlus and Hartinam.  

The intimate link between the 2 provisions (Article-1 and Art 33 of the 1951 convention) has led to the universal recognition of the principle, and hence refoulment would always be exceptional and restricted.

Non-refoulment has progressively become a rule of jus-congens, and it must then influence the standard of treatment owed to refugees under international law even by non-signatories to the refugee conventions. It is generally accepted that the prohibition on refoulment is part of customary international law.

Non-Refoulment as customary in Law

It is general and persistent practice of the states which is followed by them as sense of legal obligation; significance of non-refoulment as a norm of customary international law.

It also bends the states that are not parties to the convention; failure on the part on states to enact national laws does not stop from giving effect this principle as 'customary international law' as long is it does not contravene municipal laws; even non-parties acceptance of a norms customary character signifies that the subject covered by the norm, at least in principle, is governed by the norm, at least in principle, is governed by international law and is thus outside the domestic jurisdiction of states. So a consensus that a particular subject has an international character facilitates the acceptance of international human rights as standard behaviour; invocation of norms as both conventional and customary at least the rhetorical strength to the moral claim for its observance.

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There are a number of international instruments and regional instrument reflecting non-refoulment.

Refugee Rights in Asia

Principle concerning treatment of refugees as adopted by the Asian African Legal consultative committee at its eight session Bangkok and Addendun, provide rights to refugees as follows:

Asylum to a refugees (Article III) "A state have the sovereign right to grant an refuse asylum in its territory to a refugee"; Right to return (Article IV). A refugee shall have the right to return if he is chosen to the state of which he is national or to the country of his nationality and in this event it shall be the duty of such state or country to receive him"; Right to compensate (Article V) refugee shall have the right to receive compensation from the state or the country which he left or to which he was unable to return; Minimum standard of treatment (Article VI) A state shall accord to refugee treatment in no way less favourable than that generally accorded to aliens in similar circumstances, a refugee shall not denied any right on the ground that he does not fulfill requirement which by their nature or refugee is incapable or fulfilling, a refugee shall not be denied by rights on the ground that there is no reciprocity in regard to the grant of such rights between the receiving state and the country of nationality of the refugee.

Model legislation on the status and treatment of refugee

A recent attempt in the direction of laying down refugee rights came in the form of a model legislation on the status and of refugees, submitted to the

85. Universal declaration of Human Rights, Article 14 ; U.N. convention against torture and other cruel in human or degrading treatment or punishment, Article 3; U.N. declaration on all persons from enforced disappearance, Article 8; U.N. Principle on the effective preventive and investigation extra legal arbitrary and summary execution (Principle 5); U.N. declaration on territorial asylum unanimously adopted by the General Assembly in 1967, Article 3(1); International convent on civil and political right, Article 7.
86. OAU convention governing the specific aspects of refugee problem in Africa of 1969, Article II(3); American Human Rights convention adopted in Nov, 1969, Article 22(8); Principles concerning the treatment of refugees adopted by the Asian, African consultative committee at its eight session in Bangkok in 1966, Article III(3).
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thirty fourth session by the AALCC Secretariat in 1995. Model legislation on the status and treatment of refugees have two options A and B for the rights of refugees,

Option A as stated, the right or refugee stipulated by the international convention to which the state is a party and that customarily recognized by states will be respected and guaranteed as for practicable as possible.

Option B stated, every refugee, till the time he stays within the country, shall have the rights, to a fair and due treatment, without discrimination as to race, religion, sex or political; opinion, or country of origin; to receive same treatment as it accorded to aliens in matters relating to movable and immovable property, education, right to transfer assets, right to engage in agriculture, industry, commerce etc., have the same rights as nationals of this country with respect to protecting their religion and the religious education of their children; to have free access to court of law including legal assistance.

Refugee Rights in South Asia:

Model national law provides standards of treatment of refugees in south Asia as right and duties of refugees (para-14) (a) every refugee so long as he or she remains within his country, shall have right to- fair and due treatment, without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion: receive the same treatment as is generally accorded to aliens under the constitution or any other laws and privileges as may be granted by the central or state governments; receive sympathetic consideration by the country of asylum with a view to ensuring basic human entitlements; be given special consideration to their protection and material well being in the case of refugee women and children; choose his or her place of residence and move freely with in the territory of the country of asylum, subject to any regulation applicable to aliens generally in the same circumstances; be issued identity documents; be issued

travel documents for the purpose of travel out side and back to territory of the
country of asylum unless compelling reasons of national security or public
order otherwise require; and be given the right to access to education, health
and other related services, (b) every refugee shall be bound by the laws and
regulations of the country of Asylum.

Rights of refugee in India

India represents the main center of refugee movement and has hosted
millions of refugees over the past fifty years and is still facing acute refugee
problem. India is neither a party to the 1951 convention nor it has a specific
legislation on refugee law. It has however handled the issue at the political and
administrative well.  

Like the rest of the south Asian states, India has no domestic refugee
law of procedure. The refugees are treated like other aliens. The word aliens is
no where defined but it appears in the constitution of India, civil procedure, the
citizenship act of 1955 and some other acts. The rights of aliens as regards
entry into India are nearly non existence and the states handled the issue at the
administrative level. Refugee problem are handled on the basis of
administrative policies which through ad-hoc in nature and there has been no
uniform treatment of refugees.

The constituent of India guarantees certain fundamentals right, some of
which are equally available to all persons, whether citizens or aliens, e.g., the
rights to equality before law, the right not to be deprived of life or
person liberty except according to procedure established by law, the protection
against arrest and detention in certain cases, and the right to practice and
propagate religion, subject to these rights, the parliament has the exclusive
power to make laws with respect to aliens and related matters.

The fundamental rights of India partake the charter of the civil and
political rights of the universal declaration and the 1951 refugee convention.

Refugees are handled like other aliens by the foreigner's Act, 1946; the registration of foreigner's act, 1939; the passport (entry into India act, 1920; the passport act, 1967; the extradition act, 1963; and the citizenship act 1954, and the subject to domestic laws, governing the entry and stay of foreigners.

Among the international Human Rights treaties, India is a party to the two international covenants as well as the international convention on the elimination of all forms of racial discrimination, the convention on the rights of the child, and the convention on the elimination of all forms of discrimination against women; India has also ratified the convention on the political rights of women, the convention on the suppression and punishment of the crime of apartheid, the convention on the non-applicability of statutory limitation to war crimes and crimes against humanity, and the convention on the prevention and punishment of the crime of Genocide, most recently, India acceded to the 1984 convention against torture. Regional non-governmental organization or agencies such as SAARC laws have also taken interest in the subject in cooperation with U.N.H.C.R.

These convention are binding on India in international law, but nation national law as they not been incorporated in national legislation and so refugees can hardly plead for their rights under the in spite of all these national and international legislation the rights of refugees, regarding the question as observed before the entry are nearly non-existence and only administrative regulations play any part. However, the policy of government permitting entry, into had stay thereafter and provide them with h rights as may be necessary for their stay in India has been quite liberal, of course, dependent on the economic condition of the country.

90. Brian Gorlick Legal Officer, Sumbul Rizvi Khan, Associate Legal Officer, U.N.H.C.R., New Delhi, Bulletin on International Humanitarian Law and Refugee Law [vol. 2, No.2(A)]=