"Status of Refugees under International Law"

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DISSERTATION

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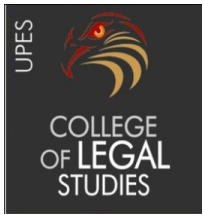
This dissertation is submitted in partial fulfillment of the degree of

B.A. LL.B. (Hons.)



College of Legal Studies

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DECLARATION

I declare that the dissertation entitled *"Status of Refugees under International Law"* is the outcome of my own work conducted under the supervision of Ms. Shikha Dimri, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

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CERTIFICATE

This is to certify that the research work entitled *"Status of Refugees under International Law"* is the work done by Harshit Tiwari under my guidance and supervision for the partial fulfillment of the requirement of Int. B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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ABSTRACT

Access to safe and lawful employment is a fundamental human right. It applies to all persons, including refugees and asylum seekers, and with good reason. When permitted to engage in safe and lawful work, an individual may fulfill his or her basic survival needs and contribute to the needs of the family, community and the country in which they reside. The realization of the right is the means through which the individual may achieve a range of other civil, political, economic, social and cultural rights, fulfilling the human desire to feel useful, valued and productive. As the South African Supreme Court of Appeal observed in 2004[1]:

> "The freedom to engage in productive work – even where that is not required in order to survive – is indeed a part of human dignity... for mankind is pre-eminently a social species with an instinct for meaningful association. Self-esteem and the sense of self-worth – the fulfillment of what it is to be human – is most often bound up with being accepted as socially useful."

Labor and employment rights are enshrined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (referred to collectively as the 1951 Refugee Convention),[2]which have been ratified by 147 countries. The 1951 Convention sets explicit obligations for host countries to permit asylum seekers and refugees to engage in both wage-earning and self-employment. The right to work has been recognized to be so essential to the realization of other rights that "without the right to work, all other rights are meaningless."[3]In practice, however, efforts to implement work rights have been limited, and many of the world's refugees, both recognized and unrecognized, are effectively barred from accessing safe and lawful employment for

[1] *Minister of Home Affairs v. Watchenuka* (2004) 1 All SA 21, per Jugent JA, para. 27.

[2] 1951 Convention Relating to the Status of Refugees, 189 U.N.T.S. 137

[3] Statement of Mr. Henkin of the United States, UN Doc. E/AC.32/SR.37, Aug. 16, 1950, at 12

at least a generation.

On average, each of the world's 16 million refugees will spend 20 years in exile.[4] Traditionally, refugee response actors have intervened primarily through the provision of humanitarian aid. While humanitarian aid has an essential role to play in protecting the physical security of refugees,

It alone is not enough. A comprehensive response must extend beyond short-term needs if it is to enable refugees to rebuild their lives and achieve self-sufficiency during displacement. Such a response will require that all actors within the refugee response community have meaningful discussions about opportunities for collaboration and strategies for holding governments accountable to international obligations to respect, protect and fulfill refugee work rights.

In the aftermath of World War II, the United Nations General Assembly created the Office of the United Nations High Commissioner for Refugees (UNHCR).UNHCR is mandated to protect and find durable solutions for refugees. Its activities are based on a framework of international law and standards that includes the 1948 Universal Declaration of Human Rights and the four Geneva Conventions (1949) on international humanitarian law, as well as an array of international and regional treaties and declarations, both binding and nonbinding, that specifically address the needs of refugees.

[4] UNHCR Statistical Yearbook 2012 accessible at < http://www.unhcr.org/52a7213b9.html>

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I must acknowledge my indebtedness to the authors of various books and research articles which I have quoted without their permission. Last but not the least, I am heartedly thankful to the library and other resources which were provided by the university.

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Harshit Tiwari

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ABBREVIATIONS

&	-	And
§/S/s.	-	Section or Sections
¶ / ¶¶	-	Paragraph or Paragraphs\
CSM	-	Conseil Supérieur de la Magistrature
FC	-	Federal Court
Govt	-	Government
HC	-	High Court
MOP	-	Memorandum of Procedure
N/A	-	Not Applicable
SC	-	Supreme Court
v./vs.	-	Versus
Vol.	-	Volume

RESEARCH METHODOLOGY

Statement of Problem

It is the responsibility of States to protect their citizens. When governments are unwilling or unable to protect their citizens, individuals may suffer such serious violations of their rights that they are forced to leave their homes, and often even their families, to seek safety in another country. Since, by definition, the governments of their home countries no longer protect the basic rights of refugees, the international community then steps in to ensure that those basic rights are respected.

However, states are now increasingly challenging the logic of simply assimilating refugees to their own citizens. Questions are now raised about whether refugees should be allowed to enjoy freedom of movement, to work, to access public welfare programs, or to be reunited with family members. Doubts have been expressed about the propriety of exempting refugees from visa and other immigration rules, and even about whether there is really a duty to admit refugees at all.

Statement of Objective & Scope

This dissertation reviews states' action in the field by reference to the relevant legal standards and Best practices developed by the UNHCR, focusing on the specific problems of climate refugees and access to international protection, evaluating the inconsistencies between the internal and external dimension of asylum policy. Some recommendations for the European Parliament are formulated at the end, including on action in relation to readmission agreements, Frontex engagement rules in maritime operations, Regional Protection Programmes, and resettlement.

This dissertation examines 30% of the global refugee population (nearly 5 million refugees in 15 countries) and the struggles they face when attempting to access safe and lawful employment. In doing so, it highlights the many barriers to refugee employment and the opportunities for the refugee-serving community to intervene to expand access to work rights. The dissertation provides a breakdown of the legal framework supporting refugees' right to work, as well as useful economic arguments

that may be advanced to encourage policy makers to realize work rights in policy and practice.

Identified Issues (Research Questions)

1. Reluctance of states to accept the responsibility of protection.
2. Increasing number of mechanisms denying jurisdiction.
3. Lack of mechanism to enable recognition of the extraterritorial applicability of the rights of refugees and migrants.
4. Emergence of new categories of displaced persons.
5. Lack of clarity on the status of the 'right to work' for asylum seekers who are awaiting determination of their refugee status.

Hypothesis

Immigration and rights of refugees, though not a new phenomenon, has become a highlighted issue in light of recent turmoil in the Europe and Eastern countries. With large masses of people taking refuge in other countries in pursuit of protection of their lives, one of the major concern which arises is their legal status.

Mere entry into a foreign state might essentially just isolate them from the immediate problem of threat to life but lack of proper legal structure to identify the status of their rights on the foreign land also poses a concern about their basic rights.

This dissertation is based on proposition that existing international instruments though seem promising are not efficient on ground level and also that lack of uniformity in the approach of various countries towards the handling of refugees shall be '*tackled*'.

Methodology

The technique of research is simply doctrinal in nature which involve the study of existing statutory provisions and case laws as well as analytical methodology is opted to carry out research relying mainly on primary as well as secondary data which includes statutes, enactments, cases, rules, journals, articles, commentaries, textbooks, reference books, internet sources, e-books, committee and law commission reports. Citation method used is Bluebook 19th Edition.

Such methodology is taken on, as there are already ample literatures and research works available on the particular topic that could make it easier in bringing the present status of immigrants and will help in forming opinion about it. Further, the research methodology is fruitful because the main idea of this dissertation is to analyze the existing legal framework both national and international and check out whether they are efficient or not and to analyze the consequences of the problem therein.

For the above mentioned purpose, the Researcher will analyze the existing legislative provisions, decided judgment, scholarly articles and comments on various areas connected with the issue. The researcher has collected materials from various sources available at the UPES Library and UPES online e-resources database.

Literature Review

1. **Saurabh Bhattacharjee,** ***Situating The Right To Work In International Human Rights Law: An Agenda For The Protection Of Refugees And Asylum-Seekers,*** **6(1) NUJS L. Rev. 42 (2013)**

   In this paper, Author examine the status of the right to work under international law and its applicability to refugees and asylum seekers. The paper begins with a scrutiny of the Geneva Convention relating to the Status of Refugees, 1951 (' Refugee Convention') and argues that this instrument is relatively unqualified in its recognition of the right for refugees. Nonetheless, it lacks clarity on the status of the right to work for asylum-seekers who await determination of their refugee status. In order to elucidate this ambiguity over the applicability of the right to work for asylum-seekers, author examine the relevant international human rights law norms on this issue. International human rights law and international refugee law "form part of the same legal schema and tradition" and the former has become central to the evolution of refugee rights. Indeed, as Hathaway has noted, "Maturation of human rights over the last fifty years has filled some of the vacuum in international refugee law." Therefore, author draw upon this linkage and assert that international

human rights law recognizes a robust conception of the right to work that can be unquestionably extended to asylum-seekers as well. Relying upon the comments and observations of international human rights bodies, author further critique the traditional objections against the enforceability of the right to work and indeed, other socio- economic rights and argue that states do have an obligation to not discriminate against asylum-seekers and refugees on the basis of the right to work.

2. **Ms. Kate Jastram and Ms. Marilyn Achiron,** ***REFUGEE PROTECTION: A Guide to International Refugee Law*** **available at <*www.ipu.org/pdf/publications/*refugee_*en.pdf*>**

This handbook deals with changing nature of armed conflict and patterns of displacement and serious apprehensions about "uncontrolled" migration in this era of globalization which are increasingly part of the environment in which refugee protection has to be realised. Trafficking and smuggling of people, abuse of asylum procedures and difficulties in dealing with unsuccessful asylum-seekers are additional compounding factors. Asylum countries in many parts of the world are concerned about the lack of resolution of certain long-standing refugee problems, urban refugee issues and irregular migration, a perceived imbalance in burden- and responsibility-sharing, and increasing costs of hosting refugees and asylum-seekers.

3. **Arun Sagar and Farrah Ahmed,** ***The Model Law For Refugees: An Important Step Forward?,*** **17 SBR 74 (2005)**

This article does an over all legal analysis of all the legislations available in India dealing with the status of refugees. It puts to test, these local legislations by comparing them with the international standards established by various conventions and protocols whether signed by India or by borrowing the jurisprudence of the instruments, dealing with the subject matter, to which India is not a signatory.

4. **Guy S. Goodwin-Gill, *Article 31 Of The 1951 Convention Relating To The Status Of Refugees: Non-Penalization, Detention, And Protection*, accessible at <http://www.unhcr.org/419c778d4.html>**

   This paper was commissioned by UNHCR as a background paper for an expert roundtable discussion on Art. 31 of the 1951 Convention Relating to the Status of Refugees organized as part of the Global Consultations on International Protection in the context of the fiftieth anniversary of the 1951 Convention. The paper is based upon the discussions held at the expert roundtable in Geneva, Switzerland, on 8–9 Nov. 2001.

5. **Summary Conclusions: the principle of non-refoulement, *Expert Roundtable organized by the United Nations High Commissioner for Refugees and the Lauterpacht Research Centre for International Law, University of Cambridge, UK, 9–10 July 2001,* accessible at <http://www.unhcr.org/419c76592.html>**

   This summary dealt with the status of Non-refoulment under customary International Law. It recognizes refugee law as a dynamic law due to its subjective tendency to evolve depending upon the policy shift relating to external affairs of the state and its relation with other countries.

1. INTRODUCTION

Migration is a concept which, alongside normal populace development, constitutes the major contributing variable to a state's demographic advancement: during 1990-95 developed nations witnessed that 45% of its overall growth in population can be credited to this phenomenon.[5] It is likewise a worldwide marvel which frequently evokes some more than just warm contentions based on numbers of displaced people which are typically significantly more tinged by feeling or propagandist exertions than any generous learning. There is a particular peril that the individuals who support migration might minimize issues and/or numbers, while those utilizing hostile to movement contentions will intensify or exaggerate numbers or issues.

Though migration happens everywhere around the world but majorly it is focused in the developing countries. But interestingly just approximately 10% from the 'third world' displacement enter the 'rich nations' of the north. “Still, usually straightforward terms are utilized as a definition, contention, or clear investigation: ‘we’ - read: the rich nations - are ‘being plagued’ with ‘monetary refugees’ whose 'tsunamis' must be 'checked'.”[6]

These movements are as old as humankind: Taking into thought that somewhere around 1600 and 1850, about 65 million Europeans moved to destinations on all main-lands; they also could be called “economic migrants” but there is no stigma sticking to that unlike the present day. It has dependably been a sane strategy for taking care of issues. The Europe during its very famous industrial revolution and regime of expanded hygienic norms discovered its populace blasting and in addition its own working populace progressively unemployed.

[5] “UN Secretary General: Concise report on world population monitoring, 1997: international migration and development. Report of the Secretary General to the UN's Economic and Social Council, Commission on Population and Development, Thirtieth Session, 24-28 Feb. 1997,Doc. E/CN/.9/1997!2, 24 Dec. 1996;
Also at gopher://gopher.undp.org:70/00/ungophers/popin/unpopcorn/30thsess/official/consis2e 17 March 1999”, Section IIB, at para 20

[6] “Cf. Table 9 in Hania Zlotnik: 'International Migration 1965-1990: An Overview', in: Population and Development Review, 24(3), 1998, pp. 429-468, at pp. 450-451”

Sending out parts of its populace along these lines was for some European nations an exceptionally welcome security valve that took into account letting off the joined weight. Resettlement from Europe proceeded with well into this century and into post-war times (1945-60), where somewhere in the range of 7 million left.[7] In aggregate, this leaves the European migration in parity with the world unmistakably in the red. Yet regardless of everything, to European self-importance that what "we" benefited for around 250 years which should be adequate, if not by any means brave, while this choice is with "us" as the host nations to discredited it as 'financial refugeeism'.

Displacement is never just migration: wars and common wars have made this century the century of the refugee; the late clashes in "Africa (Rwanda, Zaire,[8] Angola, or Liberia) or in South Eastern Europe (FYU: Bosnia, Kosova) and the CIS (Caucasus: Georgia, Chechnya)" are just the absolute most advertised. The number of "Internally Displaced People" (IDPs) is on the ascent because of constantly rising quantities of clashes between ethnic groups. While there might universally have been some, roughly assessed, 125 million or transborder migrants, in 1993, around 1,000 million transients, eight times the same number of, were interior migrants excluding the aforementioned clashes.

"In early March 1999, a new UN report on the refugees caused by the Kosovo conflict pointed out that of the 400,000 IDPs, half remained in Kosovo, and only some 90,000 ethnic Albanians from Kosovo had sought asylum in North-Western Europe." [9] By the end of the month, the circumstance had changed drastically, and by mid-1999 more than 750,000 Kosovo-Albanian evacuees had fled to neighboring Macedonia,

[7] "Piet C. Emmer: 'Migration und Expansion: Die europäische koloniale Vergangenheit und die interkontinentale Völkerwanderung', in: Walter Kalin Rupert Moser (Eds.): Migrationen aus der Dritten Welt. Ursachen Wirkungen – Handlungsmöglichkeiten, Berne etc.: Haupt, 3rd, updated and expanded edition, 1993", pp. 31-40.

[8] "The former Zaire is now called the Democratic Republic of the Congo, headed by L. Kabila; the name Zaire is retained for this article without in any way wanting to express a preference for any of the former regimes in Zaire"

[9] "Note that most of the figures are problematic in that statistical evidence may be missing and estimates are used instead, especially with regard to refugee numbers. Also in terms of 'ordinary' forms of migration, problems assessing the numbers of migrants exist, in that statistics may be partial or context-dependent. For a most comprehensive overview of the problems, but also of the available figures, cf. Hania Zlotnik: 'International Migration 1965-1990: An Overview', in: Population and Development Review, 24(3), 1998, pp. 429-468."

Montenegro, and Albania - the poorest state in Europe lodging the majority of refugees.

A few several thousands have been carried out of the territory into Western European states, yet most of the displaced people stay in the locale. Different issues that might prompt relocation are destitution, hunger and the worldwide populace build; they have been connected to a huge ascent in provincial urban movement and ensuing ascent in urban populace and ghetto residences in the developing world - in spite of the fact that not each one in this world would preferably live in the nation than in a swarmed city: for some individuals in the developing world the city speaks to trust, a probability for survival which the non-urban areas obviously does not.

An expansion in ecological debasement natural yet progressively serious natural debacles (e.g., the tropical storm "Mitch" in Central America in 1998) likewise will goad movement: as of now in the mid 1990s, around 35% of the whole land mass was undermined by desertification.[10]

No one in this way leaves home without great reasons.[11] Neither is relocation brought on by one single, utilitaristic thought: improving the living conditions of migrants on the back of the host society. Numerous vagrants entering Western Europe are expected to have such desire, the main supporting "confirmation" being their being obviously distinctive looks. Yet such a shortsighted position is all the more hazardous as it is exceptionally infectious, in spite of the fact that it doesn't generally clarify something besides how substitutes can be made.

Since the main endeavor by Ravenstein in 1885, the scholarly group built up various methodologies attempting to ponder the marvel all the more genuinely. One such pioneer of post World War era was William Petersen.[12] Financial and lawful

[10] "Stiftung Entwicklung und Frieden (Ed.): Globale Trends 93/94. Daten zur Weltentwicklung, Frankfurt: Fischer, 1993, p. 122; p. 14"

[11] "Cf. Rob Breen: The most difficult choice [Afghanistan: The Unending Crisis], in: Refugees, (J08), URL: www.unhcr.ch/pubs/rm108/rmI0807.htm. 31 Jan 1998"

[12] "William Petersen: 'A General Typology of Migration', in: American Sociological Review, 23(3), 958, pp. 256-266; this work was reprinted in Robin Cohen (Ed.): Theories of Migration, Cheltenham I Brookfield, Vt.: Edward Elgar, 1996, pp. 3-D, which is generally recommended."

methodologies will have an alternate perspective to authentic, polito-logical or sociological methodologies, each pushing diverse parts of movement. Different methodologies would take a geological, procedural or causal take at movement. More can be learned if and when an interdisciplinary methodology is taken; this methodology has put on expanding weight in the scholarly world. In spite of the fact that a global wonder, connected to and impacted by an excess of other common or man-made elements, the field of worldwide relations all things considered overlooked matters transitory. A portion of the previously stated methodologies and terms are examined before proffering a system for examination which sets out a four-stage system with which relocation could be fragmented in stages, and from start to ending.

It is not that just the reasons for relocation or the entries are analyzed, instead both the phenomenon are analysed. Any one stage is set in the setting of the other three stages. The model depends on the thought that relocation irrespective of its shape or form takes after a dynamic procedure which for explanatory reason might be partitioned into four stages,: a beginning stage; a movement stage, i.e. the genuine voyaging stage; a landing stage; lastly, a so journal stage. Despite the fact that this looks to some extent like a procedural examination, this structure incorporates and consolidates a few of the beforehand said causal, legitimate and politological approaches in the investigation.

Prior to the procedure of relocation begins, be that as it may, we discover a somewhat extended choice making process which generally does not hold up under the scarcest likeness to a straightforward 'if x then y' choice. Regardless of the possibility that the choice is one of life and passing, despite everything it is unrealistic to say this instantly tips the parity: why might it be, then, that even in battle regions, in the same group, of similarly solid individuals, some remain while others go?

As Petersen noted, now and then the fundamental issue about relocation is not why individuals move out, but instead why not.[13] Duress is seen in an unexpected way, furthermore responded upon in an unexpected way, contingent upon the different circumstances a potential vagrant might confront. Likewise in "typical" times, a few

[13] Ibid

individuals still waver when others have effectively cleared out. Relocation can be, and has been, a discerning arrangement, yet this does not settle on the choice making handle any less demanding. In this manner, the procedure of movement additionally incorporates the dyadic relationship in the middle of stayers and leavers.

In Europe whose populace is for the most part occupant since their old forebearers quit being travelers as is normally done, vagrants for quite a while have been viewed as something exceptional, and an inhabitant 'profoundly established' populace was the standard. By outcome, the way to deal with tolerating a transient into the group is likewise distinctive.

What the host populace had overlook, particularly with respect to non-Western vagrants, is that in choosing to move there is something that might need to be abandoned (thusly we have additionally return relocation). This "something" might be difficult to leave, much harder for the arriving vagrant than for an upwardly versatile plane setting Westerner: a specific patch of area, a position of house, family, companions - home.

The privilege to work has possessed a focal spot in the human rights talk. It is progressively being recognized as inseparably connected with human pride,[14] life,[15] personality[16] and security[17] among a large group of other central rights.[18] The right

[14] "Minister of Home Affairs and Others v. Watchenuka and Another, No. 10/2003, South Africa: Supreme Court of Appeal, 28 November, 2003 (The South African Court of Appeal emphasized on the relationship between right to work and human dignity **in** this case)."

[15] "Richard T. De George, Right to Work: Law and Ideology, 19 VAL. U. L. REV. 15, 17 (1984)."

[16] "Guy Mundlak, The Right to Work: Linking Human Rights and Employment Policy, 146 INT'L LAB. REVIEW 189 (2007)";

"Guy Mundlak, The Right To Work, The Value Of Work In Social Rights: Exploring Theory And Practice 341 (Daphna Barak-Erez And Aeyal Gross Ed., 2007)."

[17] "Tekle v. Secretary of State for the Home Department, 2008 EWHC 3064" (Decision highlighting the relation of the freedom to work with privacy of individual).

[18] *See* "The Michigan Guidelines on the Right to Work, 31 MICH. J. INT'L L. 293 (2009)

(*Work is interrelated, interdependent with, and indivisible from the rights to life, equality, the highest attainable standard of physical and mental health, an adequate standard of living, the right to social security and/or social assistance, freedom of movement, freedom of association, and the rights to privacy and family life, among others*)."

itself finds direct specify in significant global human rights settlements. The Universal Declaration of Human Rights ('UDHR') 1948[19] remembered it as one of the all around material human rights.[20]Later, this privilege was changed into a compulsory standard through Article 6(1) of the "International Covenant on Economic, Social and Cultural Rights ('ICESCR')",[21] which commands each State Party to perceive everybody's/everybody's entitlement to work.[22] However, a greater part of the world populace keeps on making due without significant vocation. The International Labor Organization ('ILO') assesses that around 210 million persons are right now unemployed over the world.[23] This emergency of work is further highlighted among Refugees[24] and haven or asylum seekers,[25] who are frequently efficiently denied access to the work business sector and open doors for independent work.[26] Barriers to

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[19] "Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 (December 12, 1948)"

[20] Id., "Art. 23(1): *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment*."

[21] "International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (December 16, 1966)."

[22] Id., "Art. 6 (1): *The State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right*."

[23] "International Labour Office, Global Employment Trends for Youth, August 2010, available at http://www.ilo.org/public/libdoc/ilo/P/09316/09316(2010-August).pdf" (Last visited on January 21, 2016).

[24] Definition under Art. 1(A)(2) of the "Geneva Convention relating to the Status of Refugees 1951" as a person who: "*Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it."*

[25] "Asylum-seekers on the other hand refer to persons awaiting the determination of their status. If they are found to have fled persecution and satisfy the ingredients mentioned in Article 1(A) (2) of the Geneva Convention relating to the Status of Refugees 1951, they are declared to be refugees and are accorded the legal protection and the rights that refugee status entails."

[26] "Penelope Mathew, Fifth Colloquium on Challenges in International Refugee Law: The Michigan Guidelines on the Right to Work Explanatory Note, 31 MICH. J. INT'L L. 289, 290 (2009); See generally U.S. Committee for Refugees and Immigrants, World Refugee Survey: 2008", *available at* "http://www.refugees.org/resources/refugee-warehousing/archived-world-refugee-surveys/2008-worldrefugee-survey.html" (Last visited on December 17, 2016)
("For a detailed survey on the status of work for asylum-seekers and refugees in 60 countries);

"BobanaUgarkovic, A Comparative Study of Social and Economic Rights of Asylum-Seekers and Refugees in the United States and the United Kingdom, 32 GA. J. INT'L & COMP. L. 539 (2004)".

one side to work are auxiliary and financial as well as stretch out to legitimate preclusion. For instance, most outcast groups and haven seekers are not formally permitted to work in India.[27] While these limitations have not kept outcasts and shelter seekers from finding monetary open doors in the casual segment, such livelihood stays undetectable and illicit.[28] This kind of transfer of business into unlawfulness, through either express disallowance or the nonappearance of a characterized status, stretches out to different nations in South Asia as well.[29] Such refusal of the privilege to work can have especially genuine results for these helpless groups as it emphasizes the injury of constrained relocation and imperils their exceptionally subsistence.[30]

Moreover, it is appropriate to note that occupation is not just essential for subsistence of displaced people and shelter seekers additionally for their feeling of nobility,[31] protection[32] and self-esteem.[33] Further, as Alice Edwards notes, "It furnishes them

[27] "Sarbani Sen, Paradoxes of the International Regime of Care in Refugees And The State: Practices Of Asylum And Care In India 1947- 2000 410 (Ranabir Samaddar ed., 2003)";

"The Other Media, Battling To Survive: A Study Of Burmese Asylum Seekers And Refugees In Delhi 51 (2010)";

"South Asia Human Rights Documentation Centre, Refugee Protection in India, October 1997", available at http://www.hrdc.net/sahrdc/resources/refugee_protection.htm" (Last visited on January 14, 2016).

[28] Ibid

[29] "Tapan K. Bose, Protection Of Refugees In South Asia: Need For A Legal Framework In SAFHR PAPER SERIES - 6 (2000)";

"Angela Li Rosi, Esther Kiragu & Tim Morris, States Of Denial: A Review Of UNHCR's Response To The Protracted Situation Of Stateless Rohingya Refugees In Bangladesh In UNHCR Population Development And Evaluation Service 22-23 (2011)".

[30] "The Michigan Guidelines on the Right to Work, 31 MICH. J. INT'L L. 293 (2009)

(*Work is interrelated, interdependent with, and indivisible from the rights to life, equality, the highest attainable standard of physical and mental health, an adequate standard of living, the right to social security and/or social assistance, freedom of movement, freedom of association, and the rights to privacy and family life, among others*)."

[31] "Minister of Home Affairs and Others v. Watchenuka and Another, No. 10/2003, South Africa: Supreme Court of Appeal, 28 November, 2003".

[32] "Tekle v. Secretary of State for the Home Department, 2008 EWHC 3064"

[33] "Alice Edwards, Human Rights, Refugees and the Right to Enjoy Asylum, 17 Int'l J. Refugee L. 293, 324 (2005)".

with a chance to take an interest in and add to their host group, while enhancing dialect and different aptitudes" and diminishes dependence on social help.[34] In sharp complexity, refusal of the privilege to work pushes outcasts and haven seekers into exploitative illicit livelihood plans where they remain perpetually defenseless against misuse and imprisonment[35] or are presented to dangers of carrying and human trafficking. In light of such appalling ramifications of its foreswearing, accessibility of the privilege to work is of vital significance for displaced people and haven seekers.

An examination of "Status of Refugees, 1951 (' Refugee Convention')" and contention that this instrument is moderately unfit in its acknowledgment of a good fit for displaced people. Regardless, it needs clarity on the status of the privilege to work for shelter seekers who anticipate determination of their outcast status. Keeping in mind the end goal to explain this uncertainty over the materialness of the privilege to work for haven seekers, I analyze the applicable universal human rights law standards on this issue. Universal human rights law and worldwide outcast law "*shape part of the same lawful diagram and custom*" and the previous has gotten to be fundamental to the development of evacuee rights.[36]

Indeed, as Hathaway has noted, "Development of human rights in the course of the most recent fifty years has filled a percentage of the vacuum in universal displaced person law."[37] Therefore, I draw upon this linkage and declare that worldwide human rights law perceives a powerful origination of the privilege to work that can be obviously stretched out to shelter seekers also. Depending upon the remarks and perceptions of global human rights bodies, I encourage evaluate the customary protests against the enforceability of the privilege to work and surely, other financial rights and contend that states do have a commitment to not victimize shelter seekers and outcasts on the premise of the privilege to work. The dependence on global

[34] Ibid

[35] "Ninette Kelley, International Refugee Protection Challenges and Opportunities, 19 INT'L J. REFUGEE L. 401, 433 (2007)."

[36] *See* "Edwards", supra note 29.

[37] "James C. Hathaway, The Rights Of Refugees 284 (2005)";

See Also "Manfred Nowak, Introduction To The International Human Rights Regime 39-40 (2002)".

human rights standards for articulating the privilege to work for displaced people and shelter seekers has extraordinary hugeness for India and other South Asian nations which have not yet marked and agreed to the Refugee Convention.[38] This inability to sign the Refugee Convention alongside a custom of impromptu strategies representing displaced people, has added to a legitimate vacuum for outcasts and shelter seekers in the district.[39] However, the all inclusiveness of the universal human rights law standards implies that setting the privilege to work for displaced people and refuge seekers inside of this structure would cast a certain commitment on all countries including these South Asian states. It would likewise empower displaced person rights backers to skirt the combative open deliberation on increase to the Refugee Convention by the South Asian states.[40] Even as right to work has procured developing regulating acknowledgment, its accurate nature and degree has turned out to be significantly questionable; with states debating whether it can be conceptualized as a privilege to business, as flexibility to work or as rights at work.[41] The privilege to vocation imagines a kind of assurance of an occupation and undoubtedly, the Soviet Bloc States had contended amid the drafting of the Universal Declaration of Human Rights ('UDHR') that there ought to be an insurance of work.[42] As contradicted to this, opportunity to work imagines a simply pessimistic right which just limits the state from meddling with a man's flexibility to work.[43]

Proponents of this methodology contend that the procurements of the privilege to work in universal instruments don't articulate any positive insurance of work however just a flexibility to pick up a living by work openly picked or acknowledged. [44]

[38] "B. S. Chimni, Status of Refugees in India: Strategic Ambiguity In Refugees And The State: Practices Of Asylum And Care **In India**, 1947-2000 443 (Ranabir Samaddar Ed., 2003) (For An Analysis Of **India's** Stance On Signing The **Refugee** Convention)".

[39] "Saurabh Bhattacharjee, India Needs a Refugee Law, 43 (9) EPW 71-75 (March 1, 2008)";

[40] "Chimni," supra note 34 "(B.S. Chimni is of the opinion that the Refugee Convention is Eurocentric and does not recognise the protection needs of refugees and forced migrants in Asia)".

[41] "Jose Luis Rey-Perez, The Right to Work Reassessed: How We Can Understand and Make Effective the Right to Work, 2 RUTGERS J. L. & URB. POL'Y 217, 218 (2005)";

[42] "M.C.R. Craven, The International Covenant On Economic, Social And Cultural Rights: A Perspective On Its Development 195 (1998)".

[43] Ibid note 37

[44] Ibid note 26

Different from these two thoughts, rights at work (likewise alluded to as work rights), try to set up just and reasonable states of work. A few authors have stated that the rights at work or work rights are optional to one side to work to the degree that they get to be appropriate just where a relationship of occupation as of now exists. [45]

[45] Ibid note 37

2. THEORIES OF MIGRATION

Although written records or materials relating to transnational migration has grown rapidly but there is lack of significant literature on the theories of migration; probably due to ever-growing kinds of migration. It has been often argued that multifaceted nature of migration makes it often very difficult to explain it in a single theory. However, people have taken liberty to even claim that migration as phenomenon which fall short of ample theoretical/ literary scrutiny.

Theorisation of migration has been very restricted and strict during the early phases of time; however present day attempts have a more practical and realistic attributes. Due to paucity of space and scope of this dissertation focus will be kept on theories developed to elaborate the migration from poor to richer countries only. This may seem bit not-so-relevant, especially, due to the current refugee crisis around the Europe which is majorly due to socio-political reasons. But such restriction s are being adhered to only in context of theories and just to ensure the flow of this dissertation.

2.1. "Neoclassical Economics and push n' pull theory"

In any kind of discussion about the various theories relating to migration, 'laws of migration' by Ravensteins[46] commands a mention. There have been diversed recorded opinions upon the history of legal status of migration. In his works[47], Samers has defined them as someone whose economical status or condition can be easily determined. He goes further to call migration, as a phenomenon, 'dreadfully antiquated'. According to him, theories of migration are not any legal norms; instead these are more of generalisations made in a very scientific manner. These generalisations, according to Samers, are derived from the calculations made by Ravenstein based on the data he collected from various censuses. However, those

[46] "Ravenstein, E.G. (1885). The Laws of Migration – I, *Journal of the Statistical Society*, 48(2): 167-227";

"Ravenstein, E.G. (1889). The Laws of Migration – II, *Journal of the Statistical Society*, 52(2): 214-301".

[47] "Samers, M. (2010). Migration. London: Routledge."

calculations mainly dealt with transnational migrations instead of transnational migrations.

Those generalisations are as follows:

> "1. Such movements are often made for very short distances; but those who choose to go over long distances, mainly went towards industrial centers of the country.
>
> 2. Majority of such movement is towards, above mentioned industrial centers of country from the rural agriculture oriented local economies.
>
> 3. Townships grow more due to such settling of migrants and less because of gradual or casual causes.
>
> 4. Extent of migrations is directly proportional to the industrial growth and availability of an established transport mechanism.
>
> 5. There exist a counter stream to all migrations.
>
> 6. In case of local or short distance displacement/movement, females are in majority, however in transnational migration men constitute the bigger portion.
>
> 7. Most prominent reasons of migration have an economic nature."

Ravenstein was a professional cartographer. The empirical generalisation presented by him, were more popular between the British geographers who worked alongside him in British War Office.

Also, these generalisations have incorporated in them 'individual rational-choice theory' which is based on factors like the existing difference of industrial and

economic development between townships and rural areas.

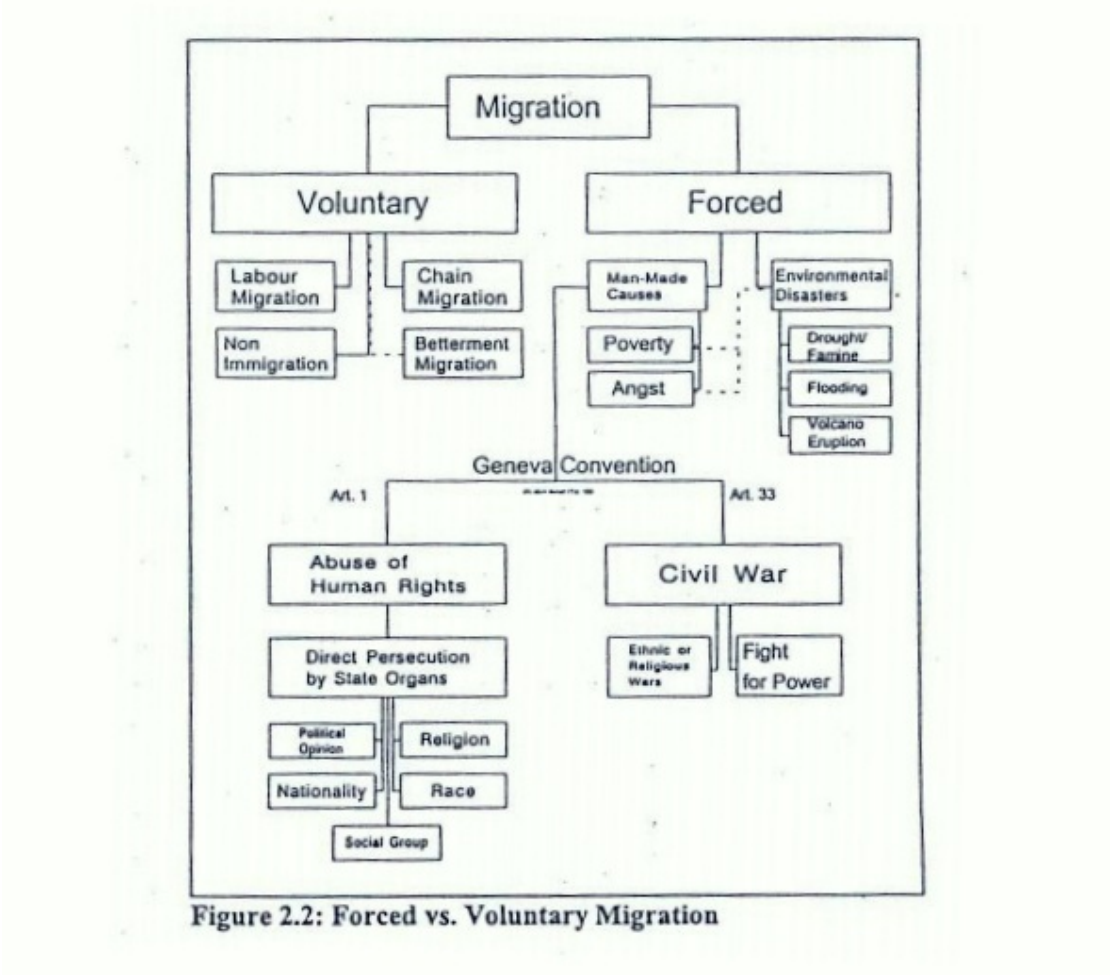

Figure 2.2: Forced vs. Voluntary Migration

The push-pull framework describes migration as a phenomenon which is motivated by combination of factors which push the migrants from origin and pull them towards the destination. The former set of factors which move the migrants from their place of origin or, simply put, 'push factors' include poverty, non-availability of work, lack of resources like land, a very high population density etc. On the other hand factors like availability of Job, better social status, higher income, political rights etc fall within the ambit of 'pull factors'.

In another version of this framework few intervening factors also have been considered. These factors are mainly those which need to be neutralised before people could migrate. For example, feasibility of such journey, cultural differences, variation in language also act as a prominent intervening barrier, even the long physical distances or barriers of political nature. This version also incorporates '

personal factors' to which different people respond very uniquely depending upon their persona, economic health or even age. This can be understood with an example of a young unmarried adult who will be more concerned about job prospects in the destination country/region instead of the education system. However, an adult with family and children would consider education system as a prominent decisive factor.

Push	Type	Pull
Joblessness, bad working conditions / bad pay	Labour migration	New work / job, better conditions / pay
Family ties, separation	Chain migration	Family reunification
Study and research, special qualifications abroad, job-related foreign assignment	Non-immigration	Special conditions for study and research, research area
Sinking living standards / poverty, general situation of poor countries	'Economic migration'	Social stability / affluence, example of rich countries

Table 2.1: Voluntary Migration: Push and Pull Factors

Push	Type	Pull
Political persecution	Political refugee (GC)	Freedom / survival
Religious / ethnic conflicts, persecution, xenophobia, human rights violations	(Political / civil war) Refugees (GC and *de facto*)	Safety and freedom from persecution, human rights abuse, or generally from violent conflicts
War, mortal danger	(Civil) War refugees (*de facto* refugees)	Safe Haven: survival
Heavy environmental damage, drought, hunger, health risks	Environmental refugees, refugees from famine	Safe Haven: security of nourishments and / or health
Endangered basic needs / poverty	'betterment migrants' / 'economic refugees'	Social stability / securing survival

Table 2.2: Forced Migration: Push and Pull Factors

Until sixth decade of 20th Century, phenomenon of Migration was mainly controlled by this push-pull model. This model indicates the utility maximation, coherent pick and labour dynamics principles along with the "*neoclassical economics paradigm*". On macro-scale migration leads to crinkled spatial distribution of work force *vis-a-vis* to remaining components of production and capital-assets. However at micro-scale, various decisions which people make after evaluating the effects of such movement instead of staying back supported by various kind of knowledge available

in this regard.

2.2. "Migration, Transitions and development"

This theory is has a great disparity from the above discussed theory which is primarily based on individual-rational-choices. Wilbur Zelinsky[48] has propagated this theory on a very grand measure. It connects the various alterations of the demeanor in which displacements occur with the various levels of modernisation. The main principle which underlay this model is that, "*there are definite patterned regularities in the growth of personal mobility through space-time during recent history, and these regularities comprise an essential component of the modernization process*". These patterns were declared through five-step mechanism which relied mainly upon the history of Europe and the cognitive content accrued therein:

> "1. Pre-modern traditional society: very limited migration, only local movements related, e.g., to marriage or to marketing agricultural produce.
>
> 2. Early transitional society: mass rural-urban migration; emigration to attractive foreign destinations for settlement and colonisation.
>
> 3. Late transitional society: slackening of both rural-urban migration and emigration; growth in various kinds of circulation, e.g. commuting.
>
> 4. Advanced society: rural-urban replaced by inter-urban migration, mass immigration of low-skilled workers from less developed countries; international circulation of high-skilled migrants and professionals; intense internal circulation, both economic and pleasure related.

[48] "Zelinsky, W. (1971). The Hypothesis of the Mobility Transition, *Geographical Review*, 61(2): 219-249."

5. Future super advanced society: better communication and delivery systems may lead to a decline in some forms of human circulation; internal migration is inter- or intra-urban; continued immigration of low-skilled labour from less developed countries; possibility of strict controls over immigration."

However Zelinsky took this model of his as a "provisional and heuristic device"; but various scholars[49] took it up and found it adequate for various situations. As a subject matter it was Utopian. It created a hypothesis relating to the existing debate of migrations and its dependency on factors of development. It also encapsulated different migration and displacements into one model and anticipated the relevance of precocious communication engineering as an alternative to mobilisation. But one loophole in this model was its restrictive application to advanced countries only. Later on, Zelinsky accepted this shortfall and is accredited the ditching of modernisation theory. He went further to reaffirm the theory of dependency whereby he approves that when it comes to not so developed countries, patterns pertaining to displacement of people can be attributed to the various policies laid by the government along with the decisions made by relatively very large corporations of developed nations.

2.3. "Historical-Structural models"

This theory is not individualistic in nature. It is a generic phrase which covers various models which are motivated by the Capitalist approach as propagated by Karl Marx along with structured development of economy of the world. These models iterate that factors resulting to transnational migration fall within macro-level causal agents and emphasize upon "the inherently exploitative and disequilbrating nature of the economic power shaping the global capitalism"[50] There are three

[49] "Skeldon, R. (1977). The Evolution of Migration Patterns during Urbanization in Peru, Geographical Review", 67(4): 394-411.

[50] "Morawska, E. (2012). Historical-Structural Models of International Migration, in Martiniello, M. and Rath, J. (eds.) An Introduction to International Migration Studies. Amsterdam: Amsterdam University Press", 55-75.

models which effectively deal with the historical-structural generalisation of factors resulting transnational displacement of people, which are as follows:

- ✓ *"Dual and Segmented labour markets"*
- ✓ *"Dependency Theory"*
- ✓ *"World Systems Theory"*

In this book[51] author has put forward an argument that it is the set of 'pull factors' which is primary force which drive the transnational displacement of people and not the 'push factors'. The demand for labour which is not only supple but also economical constitutes the paramount force which is in turn connected to "dual labour market" available in industrially formulated nations. This market primarily has job-security and decent wages for the labourers of native origin. Secondarily, there is also a market for unskilled or less skilled labour and, therefore, less wages along with almost no job-security and not so pleasant working conditions constitute it. These jobs are taken up by migrated labourer as local labourers avoid such jobs. Quite interestingly, it is availability of migrant labourers which serves as the base of avoidance of such jobs by the local labourers. This, subsequently, leads to a further decline in the wage level by the employers along with the quality of work-environment. Migrants have no or very less bargaining chips available to them and thus they are forced to work in such dilapidating working corners.

"*The insistence of both Piore and Sassen on the demand-driven nature of immigration into industrial and post-industrial societies, and that such immigration is intrinsic to their continued growth and development, links directly to the dependency school, an interpretation of migration which is diametrically opposed both to the neoclassical paradigm and to the modernisation school which underpins the mobility transition model of Zelinsky*[52]" However the model of neoclassical

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[51] "Piore, M.J. (1979). Birds of Passage: Migrant Labour and Industrial Societies. New York: Cambridge University Press."

[52] "Dependency theory was influential especially in Latin America in the late 1960s and 1970s, linked to André Gunder Frank's notion of the 'development of underdevelopment' (see Frank 1969, 1978). Nowadays its most influential exponent, in terms of theorising the ongoing dynamics of Latin American, especially Mexican, migration is Raúl Delgado Wise: *see* Castles and Delgado Wise

generalisation consider displacement as self- adapting which ultimately reaches a stage of equilibrium whereby there is no further displacement of people due to equal wage- level. But the dependency generalisation made under the neo-marxism approach comes forward with the argument that migration is capable of instigating itself till perpetuity and regenerating differences through additive feat[53].

Dependency theory has distinctly attributed transnational displacement to distribution of labour around the world instead disparity in development across the borders. It further attaches the migration with anthropoligical inclusion of 'not-so-developed' nations into rising powerful economies in a subordinate fashion.[54]

Yet another model under the historical-structural generalisation is that of "World system theory" which was developed in the background of dependency theory and did a holistic yet refined analysis of development of capitalism 16th Century onwards.[55] This "new international division of labour" or NIDL[56] brought out the displacement and labour as elements of "world system theory" which originally only concerned itself with trade and money. Several authors have applied the idea of historically persistent world marketplace for work force to emphasise upon the inexorable attitude of need of capitalism for such immigrants who can be easy victim of exploitation.

A common overview of this model (historical-structural) underlines a very basic flaw. This flaw is that, they consider these immigrants as, "little more than passive pawns in the play of great powers and world processes presided over by the logic of

(2008)"

[53] "Myrdal, G. (1957). Rich Lands and Poor. New York: Harper and Row"; "Petras, E. (1981). The Global Labour Market in the Modern World Economy, in Kritz, M.M., Keely, C.B. and Tomasi, S.M. (eds.) Global Trends in Migration: Theory and Research on International Population Movements. New York: Center of Migration Studies", 44-63.

[54] "Morawska" Ibid 5.

[55] "Wallerstein, I. (1974). The Modern World-System: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century. New York: Academic Press.; Wallerstein, I. (1979). The Capitalist World Economy. Cambridge: Cambridge University Press."

[56] "Froebel, F., Heinrichs, J. and Kreye, O. (1980). The New International Division of Labour. Cambridge: Cambridge University Press."

capital accumulation"[57] In addition to that there are few more weaknesses which can be found in this appraoch. Primarily, there is faulty presumption under this model regarding flow of displacement, which according to this model is regulated or effected by lines of capital penetration. However this is not true for kinds of migrations. This displacement of people is affected by several factors like geographies of identified prospective opportunity which arise in various parts of world. Apart from this flaw, there is another loophole in this model relating to denial of agency of people undergoing this displacement. While there is certainly a high degree of exploitation which migrants face but still there are prominent number of migrants who have not only succeeded in their field but have also prospered beyond measure which is evident by various ethinic business model in northern parts of American continent. In addition these flaws there is a third flaw which surprisingly has escaped the notice of these authors. Under this category of theories there is prominent overlooking of role of state players in affecting the patterns of displacement. However this last loophole has been effectively dealt with in the latest addition to the historical-structural models on macro-level. This, political economy, model pools in the labour-demand theory along with the political mechanism which affects the transnational displacement of people. This new approach analyses and includes the policies relating to immigration of various nations which are at receiving end and its role in prominently affecting the number and pattern of flow of transnational displacement.

There is another version of this model presented by *Ewa Morawaska*[58] which goes by the name of "*Hegemonic Stability*". This version advocates the role of political as well as military strength of dominant nations as a base of world economy. It allows the hegemonic receiver nation to control the world trade and displacement of people.

2.4. "Systems and Networks"

[57] "Arango, J. (2004). Theories of International Migration. In D. Joly (ed.), International Migration and the New Millennium. Aldershot: Ashgate, 15-36".

[58]" Morawska, E. (2007). International Migration: Its Various Mechanisms and Different Theories that Try to Explain it. Malmö: Malmö" University, Willy Brandt Series of "Working Papers in International Migration and Ethnic Relations" 1/07.

Multiple focuses on cognition, connection and process under this approach has made Systems, a widely appreciated one.. It is regarded as scientific approach as it allows the conceiving of displacement in a fashion beyond "linear, unidirectional, push-pull movement to an emphasis on migration as circular, multi-causal and interdependent, with the effects of change in one part of the system being traceable through the rest of the system"[59]

A seminal paper[60] on approach based on the systems model towards the displacement of people in between the rural-urban areas in West Africa elucidated a model with five constituting elements:

> *"1. The environmental setting: economic conditions, government policy, social and community values, and the availability of transport and communications.*
>
> *2. The migrant: the energy travelling through the system.*
>
> *3. Control a subsystem, which determine, for instance, who goes and who stays.*
>
> *4. Adjustment mechanisms reacting to the departure and arrival of migrants, both in the village and in the urban context.*
>
> *5. Feedback loops, such as return visits, which calibrate the system either to continue and expand (positive feedback) or to diminish and close down (negative feedback)."*

[59] :"Faist, T. (1997a). The Crucial Meso-Level. In T. Hammar, G. Brochmann, K. Tamas & T. Faist (eds.), International Migration, Immobility and Development. Multidisciplinary Perspectives." Oxford: Berg, 187-218.

[60] "Mabogunje, A. (1970). Systems Approach to a Theory of Rural-Urban Migration, Geographical Analysis, 2(1): 1-18."

Various author(s)[61] have contested the relevancy of this model in context of international displacement. It has been argued that this model is capable of combining different approaches in this regard with range of study or analysis. But despite that it has been restricted to only evocative highlighting of the local or national systems[62]. And in addition to that researchers have faced the problems in collecting the data and operating any of these systems approach up to the extent required by *Mabogunje*[63]. But this criticism of systems network has been answered by *Joaquín Arango*[64]*:*

> *"The importance of networks for migration can hardly be overstated… [they] rank amongst the most important explanatory factors for migration."*

2.5. "The New Economics of Labour Migration"

Joining family choice making with neoclassical conventionality, the alleged 'new financial aspects' of relocation has had a noteworthy effect on the theorisation of movement since the 1980s. It has been propagated by Oded Stark[65]. There are two primary imaginative parts of the "New Economics of Labor Migration" (NELM). The clench hand is to perceive that relocation choices (who goes, where to go, for to

[61] Kritz, M., Lim, L.L. and Zlotnik, H. (eds.) (1992). International Migration Systems: A Global Approach. Oxford: Clarendon Press.

[62] "Like, 'apartheid migration system', 'Gulf migration system' etc, *see,* Boyle, P., Halfacree, K. and Robinson, V. (1998). *Exploring Contemporary Migration.* London: Longman.: 77-79)."

[63] "Various critics of the systems approach have also pointed to its mechanistic, positivist nature and to its neglect of the personal and humanistic angles."

[64] "Arango, J. (2004). Theories of International Migration. In D. Joly (ed.), *International Migration and the New Millennium*. Aldershot: Ashgate", 15-36.

[65] "Stark, O. (1991). *The Migration of Labor*. Cambridge, Mass.: Basil Blackwell";

"Lucas, R.E.B. and Stark, O. (1985). Motivations to Remit: Evidence from Botswana, *Journal of Political Economy*, 93(5): 901-918";

"Stark, O. and Bloom, D.E. (1985). The New Economics of Labour Migration, *American Economic Review,* 75(2): 173-178";

"Taylor, J.E. (1999). The New Economics of Labour Migration and the Role of Remittances in the Migration Process, *International Migration*, 37(1): 63-88".

what extent, to do what and so on.) are not singular choices but rather joint choices taken inside of the ambit of the family unit, and for various individuals from the family.

At times the size of the choice making unit moves further into the meso size of more distant families and more extensive communal gatherings[66]. The second is that sound decision choice making is about compensation and wage boost as well as about salary diversifiation and hazard avoidance. Hazard decrease is especially suitable in poor sending nations where 'market disappointments' (for occurrence, crop disappointment because of dry spell or sea tempest, or sudden unemployment) can't be repaid by investment funds, protection or credit (since none of these are accessible).

Taking these two points of view together, it can be seen that families and family units are in a suitable position to control dangers to their monetary prosperity by enhancing their pay acquiring and job assets into a "portfolio" of various exercises, spreading their work assets over space and time. Distinctive relatives can in this way be apportioned to various assignments: one or more on the ranch, another maybe occupied with inside relocation, and others in worldwide movement. One of the key benefis of global relocation to a compensation work destination is that a portion of the salary earned can be sent back as settlements. This money related return can be utilized to support against different exercises falling flat, to take care of the fundamental expenses of regular life (nourishment, dress, kids' training and so forth.), or to put resources into some new venture, for example, a house, area or little business. It is intriguing to see the diverse return movement results of the neoclassical versus the new financial matters models.

Neoclassically-surrounded relocation does not anticipate return, which can just happen by individuals who have misjudged the parity of expenses and benefis in movement: consequently returns are developments of 'disappointment'. In NELM hypothesis, then again, returnees are considered 'victors'. These are individuals who

[66] "Massey, D. S., Arango, J., Hugo, G., Kouaouci, A., Pellegrino, A., & Taylor, J. E. (1998). *Worlds in Motion. Understanding International Migration at the End of the Millennium*. Oxford: Clarendon Press".

have accomplished their "objective" in relocating and after that arrive home with their aggregated reserve funds, maybe to be utilized as a venture 'retirement fund'[67].

NELM is not without its faultfinders[68]. It is restricted to the supply side of work movement, and appears to be best when connected to poor, provincial settings in spots, for example, Botswana and Mexico (to quote two exemplary areas where research has been done on it). It expects, also, that intra-family unit connections are concordant, prompting consistent aggregate choice making. As such, the family or family unit is dealt with as a black box without recognizing the pressures or conflicts that are contained in that –, for example, patriarchal practices or competition between kins for instance – which may prompt "mutilated" choice making. At long last, it doesn't have any significant bearing to the regular circumstance where the whole family unit moves.

[67] "Cassarino, J.P. (2004). Theorising Return Migration: The Conceptual Approach to Return Migration Revisited, *International Journal on Multicultural Societies*, 6(2): 253-279".

[68] "Arango, J. (2004). Theories of International Migration. In D. Joly (ed.), *International Migration and the New Millennium*. Aldershot: Ashgate", 15-36.

3. PRINCIPLES GOVERNING THE PROTECTION OF IMMIGRANT'S RIGHTS

Various norms and principles which are related to the protection of rights of refugees share the origin with international law itself. Treaties, conventions, customs which are prevalent on international front or any principle which is generally found to be present in several of legal systems established around the globe are, considered to be the source of these principles, which are discussed in the following sub-parts of this dissertation.

3.1. "Non-refoulement"

The principle of non-refoulement is a universally recognized principle which forbids the state to force the immigrants to return or leave for the territory where there would be threat to his rights, freedom or life. This threat can be based on any reason like, being from a particular ethnicity, caste, nationality, religion or even having a particular political alignment.

This definition is a very basic one and only summarises the concept at the best. The concept attains more relevancies under various other instruments and contexts which are discussed hereinafter.

3.1.1. "Convention Relating to the Status of Refugees" (1951)

Out of the various contexts in which this concept gains relevancy one of the principal context is - treaty. The most widely accepted expression of this principle of non-refoulement is found under this instrument[69] of 1951 which states as follows:

> **ARTICLE XXXIII:**
>
> *"1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his*

[69] No. 2545, 189 UNTS 137

race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

Apart from the refugee convention, the principle has appeared in different forms under series of other instruments like:

3.1.2. "Asian-African Refugee Principles[70]" (1966)

ARTICLE III (3):

"No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory."

[70] "Report of the Eighth Session of the Asian-African Legal Consultative Committee held in Bangkok from 8 to 17 August 1966, p.335. Article III(1) of the as yet unadopted Draft Consolidated Text of these principles revised at a meeting held in New Delhi on 26-27 February 2001" provides as follows:

"No one seeking asylum in accordance with these Principles shall be subjected to measures such as rejection at the frontier, return or expulsion which would result in his life or freedom being threatened on account of his race, religion, nationality, ethnic origin, membership of a particular social group or political opinion.
The provision as outlined above may not however be claimed by a person when there are reasonable grounds to believe the person's presence is a danger to the national security and public order of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

3.1.3. *"Declaration on Territorial Asylum*[71]*"* (1967)

ARTICLE III:

"1. No person referred to in article 1, paragraph 1 [seeking asylum from persecution], shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution

.

2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State."

3.1.4. *"OAU Refugee Convention*[72]*"* (1969)

ARTICLE II (3):

"No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2 [concerning persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion or who is compelled to leave his country of origin or place of habitual residence in order to seek

[71] "A/RES/2132 (XXII) of 14 December 1967"

[72] "OAU Convention Governing Specific Aspects of Refugee Problems in Africa, 1969, 1001 UNTS 3"

refuge from external aggression, occupation, foreign domination or events seriously disturbing public order]."

3.1.5. *"American Convention on Human Rights*[73]*"* (1969)

ARTICLE XX (8):

"In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions."

3.1.6. "Cartagena Declaration[74]*"* (1984)

SECTION III (5):

"the importance and meaning of the principle of non-refoulement (including the prohibition of rejection at the frontier) as a cornerstone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of jus cogens"

3.2. "Asylum"

In the background of mass displacement of people due to the World War II, General Assembly (UN) unanimously adopted the *"Universal Declaration of Human Rights*[75]*"* (UDHR). Article 14 of this instrument which also served as foundation of subsequently adopted convention of 1951 related to Refugees states:

[73] "American Convention on Human Rights 'Pact of San José, Costa Rica', 1969, 9 ILM 673".

[74] Published by the UNHCR, including the "Conclusions of the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama".

[75] UNGA Res. 217A (III), 10 Dec. 1948.

Article XIV

"(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

The right mentioned in the first paragraph of this article has its origin in the principle of "*right to sanctuary*" from the imperial Rome[76]. It is worthy to be mentioned that the initial drafts of this right which were articulated as "a correlative obligation to grant asylum" were not taken up[77]. And thus later to avoid undermining the principle of state sovereignty, *"[t]he right to grant asylum remains a right of the State.*"[78]

After series of failure in coming up with a binding treaty, a final outcome was reached in the form of "*Declaration of Territorial Asylum*"[79] in the year 1967. This instrument declares that decisions to grant an asylum come under purview of "*exercise of [State] sovereignty[80]"*.

However, it also affirms the curtailment of this right through **Article 3(1)** which states:

"*No person [entitled to invoke Article 14 of the UDHR]*

[76] "Cf. R.K. Goldman and S.M. Martin, 'International Legal Standards Relating to the Rights of Aliens and Refugees and United States Immigration Law', (1983) 5(3) HRQ302"

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"The lack of inclusion of a 'right to asylum' in the ICCPR has meant however that, in the absence of any monitoring bodies in relation to refugee law, the Human Rights Committee ('HRC') has been prevented from considering what may amount to 'fair procedure' for refugees", *see* "VMRB v. Canada, HRC Communication No. 236/1987, 18 July 1998". *See also*, "M. Alexander", above n. 17.

[77] "R. Plender and N. Mole, 'Beyond the Geneva Convention: constructing a de facto right of asylum from international human rights instruments', in F. Nicholson and P. Twomey (eds.), Refugee Rights and Realities: Evolving International Concepts and Regimes, (Cambridge University Press, 1999) 81, at 81. Cf. OAS Convention, which provides in Art. 22(9)to the right 'to seek and be granted asylum in a foreign country', and Art. 12.3 of the African Charter, above n.29, which states: 'Every individual shall have the right when persecuted to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions."

[78] "C. Harvey, 'Taking Human Rights Seriously in the Asylum Context? A Perspective on the Development of Law and Policy', in F. Nicholson and P. Twomey (eds.), Current Issues in UK Asylum Law and Policy, (Ashgate, Dartmouth, 1998) 213, at 221."

[79] "UNGA Res. 2312 (XXIX), 14 Dec. 1967". *See also*, "Report of the UN Conference on Territorial Asylum, UN doc. A/CONF.78/12, 21 Apr. 1977."

[80] Art. 1(1), "1967 Declaration on Territorial Asylum", *ibid*.

shall be subjected to such measures as rejection at the frontier or, if he [or she] has already entered the territory in which he [or she] seeks asylum, expulsion or compulsory return to any State where he [or she] may be subjected to persecution."[81]

While "States . . . retain, and jealously guard, the right to admit or to exclude aliens from their territory',[82] 'the notions [of] entry and presence are not the ''very essence'' of state sovereignty".[83]

The institution of asylum has often been considered from the stand that the sovereignty of refugee-origin state is not violated by the act of receiving of those refugees by the host states. However, the converse that is, questioning the right of host state to admit refugees is an implied interference. Therefore, from this point of view when a state serves as host than it is a, *"lawful exercise of territorial sovereignty, not to be regarded by any State as an unfriendly act".*[84]

The right to look for shelter was strengthened by the incorporation of condition for denial/restriction on *refoulement* in the 1951 Convention[85], including "non rejection at the border".[86] This restriction has been buttressed by IHRL, specifically Article 3 of the "1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment ('CAT')".[87] It is currently generally concurred that the

[81] Art. 3(1), "1967 Declaration on Territorial Asylum", above n. 26.

[82] "O. Andrysek, Gaps in International Protection and the Potential for Redress through Individual Complaints Procedures, 9 IJRL 392, at 395, (1997)."

[83] "L. Henkin, An Agenda for the Next Century: The Myth and Mantra of State Sovereignty, (1994) Virginia J. Int'l L. 115, at 116"

[84] "G. Goodwin-Gill, 'Editorial: Who to Protect, How . . . , and the Future?' 9 IJRL 1 (1997)."

[85] Art. 33.

[86] "EXCOM Conclusion No. 22(XXXII), 1981, Part IIA, para. 2". *See, also*, Art. 3(1), "1967 Declaration on Territorial Asylum"

[87] "HRC General Comment No. 20 (1992), para. 9, UN doc. HRI/GEN/1/Rev.6, 12 May 2003";

"CAT General Comment No. 1 (1996), UN doc. HRI/GEN/1/Rev. 6, 12 May 2003".

See, also, Art. 3, Art. II(3), "OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1001 UNTS 45 (adopted on 10 Sept. 1969 and entered into force on 20 June 1974)";

privilege against refoulement shapes some portion of standard global law.[88] Likewise, Articles 1 and 33 read together place an obligation on States to concede, at any rate, access to haven strategies with the end goal of evacuee status determination. Access to haven strategies is likewise disputably a suggested directly under the 1951 Convention (albeit such methodology are not important to accord evacuee security), and is an acknowledged portion of State practice.

It has been attested that without proper haven techniques, commitments of non-refoulement, including dismissal at the borders, could be infringed.[89] The privilege to look for shelter is helped by Article 13(2) of the UDHR, as reconfirmed in Article 12(2) of the ICCPR, which gives that "*Everybody has the privilege to leave any nation, including his own . . .*". The privilege to leave any nation and the privilege to look for haven are two sides of the same coin in the evacuee connection. Despite the fact that Article 13(2) of the UDHR does not say a privilege "to enter any country", it would make a hogwash of the 1951 Convention if this was not expected, in any event for the reasons of evacuee status determination, particularly where an individual has achieved a nation's region, for example, its regional oceans or a holding up zone in a universal airport.[90]

Furthermore, Article 32 of the 1951 Convention counteracts ejection of a perceived displaced person "save money on grounds of national security or public order".

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[88] "Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol", para. 4;

See also, "UNHCR, *Summary Conclusions on Non-Refoulement*, Global Consultations on International Protection, Lisbon Expert Roundtable 3–4 May 2001", organised by the "UNHCR and the Carnegie Endowment for International Peace, Washington D.C. During the drafting of the Declaration of States parties, one of the only dissenting countries to recognising non-refoulement as part of custom was the US".

See also, "E. Lauterpacht and D. Bethlehem, *The scope and content of the principle of non-refoulement: Opinion*, in E. Feller, V. Tu¨ rk and F. Nicholson (eds.), Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (Cambridge University Press, 2003), at 87–177".

[89] "C. D. de Jong, and A. Edwards, 'Tampering with Refugee Protection: The Case of Australia', 15 IJRL 192, at 197, (2003)"

[90] *See*, "Amuur v. France, in which the European Court of Human Rights stated that it was irrelevant that France referred to its airport holding area as an 'international zone' and that the applicants had not yet entered French territory according to French law; Art. 5 of the ECHR was still applicable."

Article 13 of the ICCPR additionally alludes to removal of outsiders, despite the fact that it "regulates only the procedure and not the substantive grounds for expulsion".[91] Specifically, it furnishes outsiders with full chance to seek cures against ejection, which might just be suspended for "compelling reasons of national security"[92]

3.3. "Non-Discrimination"

The right against any kind of discrimination is said to be "*one of the most significant requirements of the protection provided by the rule of law."*[93] However despite such accreditations to this right, it has not been enforced when it comes to complementary protection. This principle has its core elucidation in **Article XXVI** of "*International Covenant on Civil and Political Rights*"[94] (ICCPR) which states :

> *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, .colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

Either of the concepts (equality and non-discrimination) is inherently complex. Consequently they have been subject of research for several authors and academicians. There has been considerable amount of debate regarding their relation with each other. Some writers have perceived them to be flip side of same coin. However there has been again a considerable amount of reservation on this idea. There are writers who believe that these two completely distinct principles. They

[91] "HRC General Comment No. 15 on 'The Position of Aliens under the Covenant', UN doc. CCPR/C/21/Rev.1, 19 May 1989", para. 10.

[92] "B. Gorlick, 'Human rights and refugees: enhancing protection through international human rights law', New Issues in Refugee Research: Working Paper No. 30 (UNHCR, Oct. 2000)", at 4.

[93] "A *v*. Secretary of State for the Home Department [2004] QB 335, 347 [7] (Lord Woolf CJ)."

[94] "Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)"

argue that flip side (opposite) of equality will be inequality. And inequality cannot be equated with discrimination. Though to determine whether discrimination has been done, the 'basis' will be equal or unequal treatment only.[95] But that won't suffice as mere unequal treatment cannot be called discrimination. *Vierdag* states that "*discrimination occurs when the equality or inequality of treatment results from a 'wrong' judgment as to the relevance or irrelevance of the various human attributes that are taken into account*."[96] According to him discrimination occurs when things, people or situations are wrongly equated or wrongly treated unequally.

Thus it will not be wrong to say that *"not every differential allocation is discriminatory".*[97] At several occasions it is considered completely justified for a nation state to take recourse to some or other kind of discriminatory measures. In many situations the very functioning of state machinery relies upon such measures.[98]

This leads us to discuss upon what exactly is needed more to transform a differential treatment into a discriminatory one. In the words of *McCrudden* the issue is *"Inequality may be used as one index by which the presence of discrimination is assessed, but is an act to be regarded as discriminatory simply when minority group*

[95] "E W Vierdag, The Concept of Discrimination in International Law: With Special Reference to Human Rights (Martinus Nijhoff, 1973) 44"

[96] S*ee* "James C Hathaway, The Rights of Refugees under International Law (Cambridge University Press, 2005). Hathaway notes that '[i]n contrast to the progress achieved by courts in conceiving a shared understanding of the Convention refugee definition, there has been only minimal judicial engagement with the meaning of the various rights which follow from recognition of Convention refugee status': at 2. Hathaway attributes this 'analytical gap' to the 'tradition of most developed states simply to admit refugees, formally or in practice, as long-term or permanent residents' which 'has led de facto to respect for most Convention rights': at 2-3. In recent years this has changed. Hathaway goes on to state that '[i]n recent years ... governments throughout the industrialized world have begun to question the logic of routinely assimilating refugees, and have therefore sought to limit their access to a variety of rights': at 3 (citations omitted). A similar transgression, and corresponding need for research, can be attributed to complementary protection status. In the past, many developed states have simply afforded the recipient of complementary protection, albeit often in an ad hoc manner, the same status as refugees. This approach has recently started to shift, the primary example being the approach adopted by the Council of the European Union in Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted [2004] OJ L 304/12 ('EU Qualification Directive'). The Directive will be considered in some detail in Parts III and V"

[97] Ibid.

[98] "For example: taxation. In some circumstances, as the above discussion illustrates, differential treatment will be necessary to prevent substantive inequality."

members are disproportionately adversely affected?''[99] The answer to this issue is, straight, No. Therefore, *''the concern is to draw a line between invidious (discriminatory) and socially acceptable (nondiscriminatory) distinctions.''*[100]

It can therefore be concluded adequately in the words of *Vierdag*:

> *"It follows from our objectives that we must try to develop 'discrimination' as a separate independent legal concept. To call all possible instances of unequal treatment ... indiscriminately 'discrimination' would deprive that word of its very raison d'être. If in the law a separate legal term is employed, then this term should denote something separate, that is, something with specific legal consequences."*[101]

Pretty much as it is critical to bear the cost of the rule of segregation its own legitimate personality, it is similarly vital to see how, as an unmistakable idea, it interfaces with the standard of fairness. This can be clarified as hereinafter. The idea of formal fairness, with its attention on reliable treatment, might shape the premise of a case for "direct discrimination" (that is, "formal inequality might lead to direct discrimination"). Direct segregation leads to concerns regarding differential treatment (for instance, where an individual has been dealt with less positively due to his or her race). Conversely, the idea of fairness of results, with its emphasis on substantive result, might frame the premise of a case for "indirect discrimination" (that is, substantive imbalance might sum to circuitous discrimination).

Backhanded discrimination creates concerns of differential effect or result (for instance, a business' criteria for professional success that impediments a specific

[99] "Christopher McCrudden, 'Equality and Non-Discrimination' in David Feldman (ed), English Public Law (Oxford University Press, 2nd ed, 2009) 499".

[100] Ibid n 35.

[101] "E W Vierdag, The Concept of Discrimination in International Law: With Special Reference to Human Rights (Martinus Nijhoff, 1973) 44.Vierdag also states that: What we are trying to find is precisely the specific element through which we can distinguish discrimination from the countless 'technical,' 'reasonable' inequalities in the law. It is obvious that neither in municipal law systems, nor in international law and practice instances of such 'good' unequal treatment are called discrimination ..."

minority).[102] As the above exchange delineates, key to any meaning of the guideline of non-segregation is the recognizable proof of the extra indicia required for formal imbalance or substantive inequality to sum to discrimination. Vierdag temporarily characterized separation/discrimination as "wrongly equivalent, or wrongly unequal treatment."[103] But then, how does one distinguish the exact wrong that changes disparity into segregation or discrimination?

In detailing his own definition, Vierdag depends upon the definition gave by Kipp. That definition starts as takes after: *" Discrimination can ... be defined as: unequal treatment of equal objects or equal situations"*.[104] What is of more noteworthy criticalness is Kipp's extra stipulation: "*We can speak of discrimination ... if there exists no meaningful connection between the inequality of the treatment and those aspects on which it is based"*[105] The reference to "meaningful connections" requires that an adequate reason be given with a specific end goal to go astray from the at first sight prerequisite of uniformity. It requires that disparity be 'legitimately supported, by connected, influential and worthy criteria.'[106]

This extra stipulation discovers expression in the larger part of territorial and global human rights instruments that contain a provision related to non-discrimination. This incorporates Art. 26 of the ICCPR, which has been deciphered in a way that takes into consideration separation in treatment, "if the criteria for such differentiation are

[102] "The concept of 'equality of opportunity' proves more difficult, and a full consideration of the embryonic notion of what is now commonly referred to as 'institutional discrimination' is beyond the scope of this paper. Author acknowledges the significant weight of literature that explores the progressive development not only of the conception of equality, but also of the concept of discrimination. McCrudden, for example, has discussed the move away from 'an essentially negative (*thou shalt not discriminate*) to an essentially positive (*thou shalt promote equality*) legal approach': Christopher McCrudden, 'Introduction' in Christopher McCrudden (ed), *Anti-Discrimination Law* (Dartmouth Publishing, 2 nd ed, 2004) xi n 93, xv.

McCrudden notes that much of the literature on anti-discrimination law since 1990 has focused on the need for anti-discrimination law to be seen as taking on this positive role."

[103] "E W Vierdag, *The Concept of Discrimination in International Law: With Special Reference to Human Rights* (Martinus Nijhoff, 1973) 44"

[104] "Heinrich Kipp, 'Das Verbot der Diskriminierung im Modernen Friedensvölkerrecht' (1961-62) 9 *Archiv des Völkerrechts* 137, 140-1"

[105] Ibid

[106] "Christopher McCrudden, 'Equality and Non-Discrimination' in David Feldman (ed), *English Public Law* (Oxford University Press, 2 nd ed, 2009) 499"

reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant" [107]

3.4. "Family Unity"

Although Article XIV (1) of "*Universal Declaration of Human Rights*"[108] gives right to asylum to an individual, he cannot be considered a completely indistinct entity from his or her family. Cultures and Traditions, both modern as well as ancient, have taken family as a central unit of society. This has been duly considered by even those who drafted the convention of 1951 relating to the status of refugees. The fear of persecution of the family of people who have taken refuge in foreign country has acted as premise to the regime of protection under this convention. Conference has made a recommendation to the signatory states to not only *"take the necessary measures for the protection of the refugee's family",* but also to declare that *"the unity of the family . . .is an essential right of the refugee"*[109]. Importance of the principle of family unity has been repeatedly emphasised upon by the member states of executive committee of UNHCR.

Enforcement of this principle requires the state to avoid pursuance of policies which are capable of disrupting the family's intactness while taking suitable action to reunite the already dispersed families. And this has to be done while ensuring that the people are not made to return to the country which they have left due to the danger which they faced there.

Apart from humanitarian ground there is an economical side of it too. Family as a unit has tendency of mutual support and assistance. This tendency of family unity brings down the cost incurred by such protection programmes. A similar observation has been made in 2001 at an international conference on resettlement:

[107] "*General Comment No 18*, UN Doc HRI/GEN/1/Rev.7, [13]"

[108] Ibid n 22.

[109] "Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 1951, UN doc. A/CONF.2/108/Rev.1, 26 Nov. 1952, Recommendation B."

"A flexible and expansive approach to family reunification therefore not only benefits refugees and their communities, but also resettlement [and other host] countries by enhancing integration prospects and lowering social costs in the long term."[110]

Over the time, most of the nation states have included the right to family life as part of the fundamental rights for whose protection they have taken up an obligation. Their commitment to find a sustainable solution for the adversities of displaced people is practically unachievable so far their families are scattered.

Given current worries of governments about relocation control, it is maybe not amazing that usage of the privilege to family solidarity is full of obstructions. The significance of keeping up or restoring the solidarity of the evacuee family is surely known and acknowledged by most nations of refuge, for philanthropic and additionally commonsense reasons, however the activities of States are here and there at odds with accepted responsibilities.

Unique condition of refugees notwithstanding, family solidarity – especially when it

[110] "UNHCR, 'Background Note: Family Reunification in the Context of Resettlement and Integration', Annual Tripartite Consultations on Resettlement between UNHCR, resettlement countries, and non-governmental organizations (NGOs), Geneva, 20 –21 June 2001, para. 1(e)."

requires activity as family reunification – is usually seen through the viewpoint of movement, which numerous nations are attempting to control or decrease. Throughout the previous two decades or somewhere in the vicinity, the lion's share of lawful workers to the part nations of the Organization for Economic Cooperation and Development (OECD) have moved under family get-together provisions.[111]

Attempts to control and thin the surge of family relocation have driven numerous nations into more prohibitive elucidations of their commitments to secure the evacuee crew. States are concerned both with the multiplier impact of "chain migration" of actual relatives, and with misrepresentation. Worries about misrepresentation are coordinated at vagrants also, yet are especially set apart in the displaced person connection, since exiles regularly need archives bearing witness to the veracity of their cases of a family relationship.

The test for States is to adjust their movement worries with their compassionate commitments in a way more suited to securing families (and rights) and less inclined to intensify the issue of unapproved landings that they are attempting to address.

It is basic learning, for instance, that on account of the absence of legitimate intentions to enter numerous nations of haven, numerous spouses (it is for the most part, in spite of the fact that not generally, the spouse) will leave their wives and kids at home or in a nation of first refuge keeping in mind the end goal to endeavor the trip alone.[112] If they are ceased in a nation of travel, they are frequently not able to come back to the nation of first shelter. The families concerned are normally left in frantic straits. Notwithstanding the likelihood of reunification in the nation of travel or first refuge, where the level of insurance managed may not be adequate, the main lawful method for reunification then gets to be resettlement, a long and costly

[111] "Organization for Economic Cooperation and Development, Continuous Reporting System on Migration (SOPEMI), *Trends in International Migration* (Annual Report, OECD, Paris, 2001), pp. 20 – 1 and passim."

[112] "Cost is a related factor, which goes up with the distance, difficulty, and illegality of the journey. Asylum seekers advised one UNHCR office, for example, that the going rate to be trafficked from the Russian Federation to Central or Western Europe was US$3,000 –5,000 per person. E-mail from UNHCR field office to authors, 6 Aug. 2001."

process, which is troublesome for the isolated relatives and asset serious for UNHCR, non-legislative associations (or, NGOs), and the influenced governments.[113]

It additionally twists the resettlement process by coordinating assets far from other assurance worries keeping in mind the end goal to take care of family reunification issues that States have, to some degree, brought upon themselves. The sexual orientation ramifications of this basic situation are that, since it is basically ladies and kids who are abandoned in the nation of inception or travel, they are at more serious danger from a security viewpoint. This is not just in light of their apprehension of mistreatment in the nation of starting point additionally on the grounds that they are then without the backing of male relatives. To aggravate matters, they can't work towards a solid arrangement, since they can't start family reunification methods and can accordingly play, best case scenario just a detached part in the methodology, unless they too open themselves to the perils of secret travel.[114]

Reunification, notwithstanding when fruitful, regularly takes any longer than refugees expect on account of the length of refuge techniques for the chief candidate and resettlement/reunification/movement systems for the family from that point. The progression of time alone is harming to the family, and higher expenses to States, subsequent to the probability of social issues and even family breakdown is higher with longer times of division and this might bring about expanded expenses for States in welfare and other bolster administrations. At times, spouses inevitably 'disappear' or quit exchanging money back to their families, both of which causes an expansion in the quantities of stranded relatives requiring budgetary and social help.

In different cases, following maybe a couple years living as a single parent in

[113] "The numbers involved are not small, e.g. there are at present approximately 1,500 family members in Indonesia awaiting resettlement in order to be reunited with other family members."

[114] *See* "Refugee Council of Australia, 'Discussion Paper on Family Unity and Family Reunification', Aug. 2001, available on http://www.refugeecouncil.org.au/position082001.htm, section 7."

See also, "G. Sadoway, 'Canada's Treatment of Separated Refugee Children', 3 *European Journal of Migration and Law*, 2001, pp. 348 –50".

troublesome conditions without the way to bolster her family sufficiently, a lady might choose to come back to the nation of root, regardless of the possibility that it is not safe. Her danger in returning might be uplifted in customary groups by suspicions about her stay abroad without her husband,and she might confront abuse or even passing for her apparent improper conduct.

Long holding up periods likewise build the danger of relatives getting to be targets of traffickers. In an alternate and very basic situation, a kid might arrive alone in a nation of refuge. These convincing cases can be greatly intricate. In a few occasions, edgy folks have sent kids to another country for their own particular assurance, for instance, to maintain a strategic distance from constrained enrollment by furnished groups. In other cases, the folks are seeking after a superior life for their kid, or for themselves, and have not inexorably acted in the youngster's best advantage by sending him or only her. A few youngsters are getting away from their families in circumstances that might well qualify them for displaced person status, for example in cases of getting them married against their will. Sometimes, the kid was at that point isolated from his or her family in the nation of starting point or a nation of travel.

4. INTERNATIONAL REFUGEE PROTECTION REGIME – EVOLUTION POST 1951

When United Nations High Commissioner started its working on 1st of January in the Year 1951 it had only a staff of 33 people and a very limited budget of $30,000. Five decades later, there has been impressive expansion with around twenty two million people strong work force and an annual budget of around $ 1 billion. In addition to that it has spread itself in over 120 countries. Let us elucidate upon decade by decade evolution trend of this body which is, in fact, very much synonymous to the international refugee protection regime.

4.1. "The 1950s: Development"

The very first refugee problem which UNHCR had to face was the one presented by around one million individual who were escaping the communism, in Europe, after escaping Nazism. The work of UNHCR was mainly to ensure the compliance of standards laid down in the 1951 convention. This convention of 1951 was not only the first but is the only binding instrument in this regard. It will also be justified to accuse this instrument to be of limited intent. It does not address the problem of immigration itself rather it simply restricts itself in clarifying the status of refugees.

Although the origin of this convention can be found in the core principles governing the Human rights but at the end of the day it presents the legal framework in fashion which tackles the issue more as a responsibility of state instead of right of individual. Out of the several 'very firsts' one of the most principal contributions made by this convention of 1951 was to put forward a universally accepted definition of refugee.

This convention has put forward a very comprehensive list of baseline principles which have over the decades acted as foundation of the refugee protection regime. Few of these principles are:

- ✓ *"refugees should not be returned to face persecution or the threat of persecution–the principle of non-refoulement;*

- ✓ *protection must be extended to all refugees without discrimination; the problem of refugees is social and humanitarian in nature, and therefore should not become a cause of tension between states;*

- ✓ *since the grant of asylum may place unduly heavy burdens on certain countries, a satisfactory solution to the problems of refugees can only be achieved through international cooperation;*

- ✓ *persons escaping persecution cannot be expected to leave their country and enter another country in a regular manner, and accordingly should not be penalized for having entered into, or for being illegally in, the country where they seek asylum; given the very serious consequences the expulsion of refugees may have, such a measure should only be adopted in exceptional circumstances directly impacting national security or public order;*

- ✓ *co-operation of states with the UNHCR."*

4.2. "The 1960-70s: Expansion"

On the off chance that the 1951 Convention was the benchmark, it likewise contained, to some degree, just the very rudimentary. This turned out to be clear in the years that came later. UNHCR's security reached well past Europe into nations, especially in the Africa mainland, encountering the agonizing procedure of decolonialization. The oppression based way to deal with identification of the beneficiaries and their rights in the 1951 Convention was not really accommodating

here. The mass quantities of displaced individuals and the clashes which accelerated their removal guaranteed a developing befuddle.

The General Assembly felt it important to develop UNHCR's command to ensure and help gatherings of displaced people falling outside purview of the 1951 Convention. Subsequently UNHCR had started the procedure that would lead in the end to the 1967 Protocol.

At the same time, territorial instruments were a work in progress that, as a result, upgraded the 1951 Convention definition by extending it to incorporate a more extensive class of persons. These instruments were fundamentally based upon the 1969 OAU Convention on the Specific Aspects of Refugee Problems in Africa (OAU Convention). While consolidating the current 1951 Convention outcast definition, the OAU Convention included a section indicating that the term "refugee" might likewise apply to each individual who, due to outside animosity, occupation, outside control, or occasions genuinely exasperating open request in either part or the entire of his nation of birthplace or nationality, is constrained to leave his place of routine living arrangement with a specific end goal to look for asylum in somewhere else outside his nation of birthplace or nationality. At the end of the day, the thought of "displaced person" was expanded past casualties of generalised strife and roughness.

The OAU Convention was likewise a huge development from the 1951 convention in its acknowledgment of the security ramifications of exodus streams, in its more particular spotlight on arrangements—especially on willful repatriation, as opposed to the incorporation inclination of the 1951 Tradition—and through its advancement of a weight sharing way to deal with evacuee help and insurance.

The 1970s were indeed 10 years of repatriation. A large number of evacuees returned home to nations like Angola, Mozambique, or Bangladesh. This period additionally turned out to be an critical one as far as cultivating the ideas of global solidarity and weight partaking in the troublesome quest for arrangements. One of the more critical turning points in such manner was the International Meeting on Refugees and

Displaced Persons in Southeast Asia, at Geneva in 1979. It came during a period when the world following the predicament of Vietnamese escaping their nation in unstable water crafts, going up against the hazards of the ocean and privateers just to be pushed back as they achieved the shores of neighboring nations.

A three-fold understanding rose up out of the Conference: ASEAN nations guaranteed to give brief shelter; Vietnam attempted to advance organized flights set up of unlawful exists; and third nations consented to quicken the rate of resettlement. Vital trouble sharing plans in this way were placed set up to guarantee the proceeding with salvage adrift of the Vietnamese "watercraft individuals." The Far reaching Plan of Action (CPA) for Indo-Chinese displaced people was the main endeavor to ensnare all concerned parties–countries of haven, of source, and of resettlement–as well as the contributor group in a planned, arrangements situated arrangement of game plans for the sharing of obligations regarding the displaced person populace.

4.3. "The 1980-90s: Restrictions"

In the 1980s and '90s, significant changes were made in the setting in which worldwide migration protection was to be accomplished. These progressions not just put essential ideas into inquiry, they additionally affected permanently on both political will and that of nearby host states to keep on offering shelter on the liberal terms, as done in the past. The quantity of evacuees rose exponentially—no more as a result of expansionism however because of the precarious ascent in inter-ethnic clashes in the recently autonomous states. The contentions were fuelled by the race of becoming superpower and further deterioration of issues in the developing nations occurred due to various socio-economic problems. Human rights violations and non-adherence to the other related laws were no more by-results of war, yet regularly a cognizant goal of military technique, so that even low levels of struggle created a lopsidedly high level of torment and huge relocation among regular folks. An adequate example would be that, 2.5 million individuals were uprooted or fled to Iran from Northern Iraq in 1991; in previous Yugoslavia the quantity of exiles, uprooted and others helped by UNHCR, surpassed four million; and the Great Lakes

emergency of 1994 constrained three million individuals to escape their nations. With the possibilities of enduring political answers for refugee producing clashes almost impossible, UNHCR had little choice other than to set out on delayed guide programs for a great many displaced people in already stuffed camps. Furthermore, the displaced person populace relentlessly expanded from a couple of million in the mid-1970s to somewhere in the range of ten million by the late 1980s. In 1995 the quantity of persons requiring help soared to around a 2,50,00,000 (twenty five million).

Host nations turned out to be progressively agonized over getting substantial quantities of refugee migrants without a probability of a near future repatriation. Substantial scale migrant streams were progressively seen as a risk to political, monetary, and social steadiness, and in generally host nations, were beginning to incite threatening vibe, viciousness, physical assault, and the assault of displaced people.

Governments turned to shutting down gates on broders or pushing migrants back to face risks or even deaths. Guinea shut its fringes to the Sierra Leonean migrant, a hefty portion of whom were ladies and youngsters who had appendages excised by blade wielding rebel powers, showing a graphically loathsome case.

The "intentionality" part of arrangements, definitely, accepted entirely a relative spot. Displaced people came back to nations rising out of long, drawn-out war, where peace was delicate, framework powerless, the human rights circumstance not yet settled, and the fundamental necessities of life in questionable supply. The element accelerating return was from time to time tough change in the host nation, making their arrival the less evil.

At times, fast surges were trailed by a similarly sudden and huge scale return of individuals to their nation, from which they were constrained to leave again within a brief period.

In the present relatively developed world, with complex *haven* frameworks and a long convention of dynamic political backing for displaced person protection, the

changes were no less huge. Especially over late years, there has been a noteworthy reshaping of refuge arrangements, incited by a mutual worry in the industrialized nations about overburdening the structures they have set up to handle claims, increasing expenses of different sorts connected with running their frameworks, issues coming from challenges in applying displaced person related ideas to blended gatherings of arrivals, by a critical abuse of the frameworks.

Trafficking or human smuggling has been an aggravating element. Progressively, refuge seekers have settled on what has turned into an essential alternative; being smuggled to asylum. This alternative, be that as it may, conveys a sticker price. Haven seekers who depended on traffickers genuinely traded off their case according to numerous states, creating, thus, a kind of twofold guiltiness—not just have the native population spurned national border, but they have associated with criminal trafficking groups to do so–to the point where the case for haven gets to be spoiled and measures which confine basic benefits, which they have in this manner, been seen as more than justified.

There has been a moderate however consistent development in procedures, laws, and ideas whose similarity with the predominant protection system is perpetually questionable. A few states have returned to an excessively prohibitive utilization of the 1951 Convention and its 1967 Convention, combined with the erection of an imposing scope of hindrances to forestall legitimate and physical access to domains. This has been joined by the development of a dazing bunch of option assurance administrations of more constrained length of time and which ensure lesser rights when contrasted with those of the 1951 Convention.

Increased confinement, decreased welfare advantages, and extreme diminishing of independence conceivable outcomes, combined with limited crew gathering rights, all have been manifestation of this pattern.

5. THE REFUGEE CONVENTIONS: FINDING THE STATUS OF FREEDOM OF WORK

Article 17 (1) of the Refugee Convention obliges evacuees to be given what might as well be called a 'most favourable nation' treatment as for livelihood.[115] Critically be that as it may, this privilege is restricted just to evacuees 'legitimately staying' in the host nation. In perspective of the unequivocal solution of this procurement, there is practically no question on these rights being pertinent to perceived displaced people.[116]

The augmentation of these rights to haven seekers, however, has been blurred by differences. An exact elucidation might ostensibly propose that Article 17 alludes just displaced people and in this manner refuge seekers, before their displaced person status determination, cannot directly claim rights under this procurement.

As migrant status determination has been held to be simply explanatory and not constitutive of any status,[117] the term "refugee" might be interchangeably used with asylum-seekers too.

Regardless of the fact that this case were to be acknowledged at face value, researchers have fought on regardless of whether the capability, 'legitimately staying'

[115] *See* "Refugee Convention", Art. 17 (1): "Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment."

[116] "James C. Hathaway & john a. Dent, refugee rights: report on a comparative survey 25, 31 (1995)"

[117] *See* "UN High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, January 1992, ¶ 28, available at http://www.unhcr.org/refworld/ docid/3ae6b3314.html," (Last visited on January 31, 2016): "A person is a refugee within the meaning of the 1951 Convention as soon as he fulfills the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee."

would serve to bar haven seekers from the extent of the procurement. John A. Gouge, for example, states that the term alludes just to "established" refugees who have been conceded asylum and not to asylum seekers. Similarly, Goodwin-Gill battles that migrants 'legitimately staying' signifies "something more than simple legal presence" and would be predicated after something more enduring, for example, perpetual home status, acknowledgment as an refugee, issue of a travel record, [or] award of reentry visa.[118] Such a test additionally would reject haven seekers most of the time.[119] These perspectives point towards a developing agreement that all haven seekers don't fall under the ambit of the expression 'legitimately staying' and can't appreciate the privilege to work.

Indeed, even those researchers who fight that 'legitimately staying' grasps that haven seekers do acknowledge that the term has just constrained application. For example, James Hathaway contends that 'legally staying' implies authoritatively sanctioned, continuous vicinity in a state party regardless of whether there has been a formal announcement of displaced person status.[120] Thus, he presumes that refuge seekers might benefit of the privilege to work if their vicinity is authoritatively sanctioned. Be that as it may, he recognizes that in nations that take after a formal refugee status determination handle, a refuge seeker anticipating status determination is just 'legitimately present' and not 'legally staying' as she would not have secured an official approval.[121]

Grahl-Madsen additionally contends that 'legally staying' can stretch out to certain, yet not all shelter seekers. He proposes that legal stay can be inferred from a formally endured stay past the last date that an individual is permitted to stay in a nation without securing a habitation license.[122] He asserts that any remain as such to three months or a more drawn out period past the last date past which stay without a

[118] "G. Goodwin-Gill And Jane Mcadam, The Refugee In International Law 526 (2007)"

[119] "Alice Edwards, Human Rights, Refugees and the Right to Enjoy Asylum, 17 INT'L J. REFUGEE L. 293, 324 (2005)."

[120] "James C. Hathaway, The Rights Of Refugees 284 (2005); See Also Manfred Nowak, Introduction To The International Human Rights Regime 39-40 (2002)."

[121] Ibid

[122] "Atle Grahl-Madsen, Status Of Refugees In International Law 374 (1966)"

visa is allowed would constitute 'legitimate stay.[123] The suggestion thereof is that the collection of the rights which emerge out of 'legal stay' is separate from the award of refugee status and accordingly, the privilege to work can be accessible to even shelter seekers. Be that as it may, as apparent from Grahl-Madsen's plan, the privilege would be liable to stringent fleeting limits.[124] Further, we should likewise value that this perspective was advanced in the connection of the quick result of World War II where refugees were regularly legally staying in a nation without having secured displaced person Status.[125] Therefore, the significance of this contention in the present setting is in fact faulty.

In light of these cutoff points on Article 17 (1), scholars have tried to extend and utilize the obligation of non-refoulement, the foundation of global exile law, as a premise for the privilege to work of refuge seekers.[126] The quintessence of this obligation is that no state might oust or give back a haven seeker or displaced person to any nation where he or she is prone to face risk to life or flexibility by virtue of race, religion, nationality, participation of a specific social bunch or political conclusion. It has been contended that the rule of non-refoulement is comprehensively worded in Article 33 (1) of the Refugee Convention in so far as the procurement precludes removal "in any manner whatsoever".[127] Thus, it has been contended that productive or backhanded refoulement emerging out of come back to the nation that is constrained by financial impulse[128] would likewise be secured by

[123] Ibid

[124] *See* "Edwards", supra note 48 "(This time-frame based demarcation has however been criticised herein as arbitrary and artificial and having no support in the text of the Refugee Convention)."

[125] "The definition of refugee was established only after the Refugee Convention came into force in 1951"

[126] "Edwards", supra note 48.

[127] See Refugee Convention, Art. 33(1): *"No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."*

[128] "Edwards", supra note 48. "(It is argued that the absence of right to work and other socio-economic rights and the consequent deprivation may force refugees and asylum seekers to return to their home country where they might be persecuted)".

restriction on refoulement.[129]

In perspective of the way that absence of freedom work has potential to urge refuge seekers to give back, any lawful forbiddance on work for shelter seekers would sum to helpful refoulement.

It is further contended that, notwithstanding Article 33, shelter seekers can likewise depend upon Article 31 of the Refugee Convention to squeeze out a case for right to work. This procurement requires that *"contracting States shall not impose penalties on refugees coming directly from a country of persecution, on account of their illegal entry or presence"*.[130] It has been stated that the expression "penalties" in Article 31 has a more extensive significance; that the procurement has at its base the idea of non-penalisation for illicit entry or even presence.[131] The foreswearing of financial rights, including the privilege to work, to refuge seekers by virtue of their unapproved passage into the host nation would ostensibly be a type of punishment and would along these lines be in negation of Article 31(1).[132] Therefore, refuge seekers can claim the advantage of Article 31 in asserting financial rights like the

[129] "Edwards", supra note 48. *See also* "Ryszard Cholewinski, Economic and Social Rights of Asylum-Seekers in Europe, 14 GEO. IMMIGR. L. J 713-714 (1999-2000)". "However, there could be a huge question over this point of view in light of its rejection by the English Court of Appeal in R v. Secretary of State for Social Security, ex parte Joint Council for the Welfare of Immigrants and ex parte B, (1996) 4 All ER 385 at 402b. Yet, the fact that it is only a decision of the Court of Appeal weakens its persuasive value for other foreign courts. The decision of the United States Supreme Court in Sale v. Haitian Ctrs. Council, 509 U.S. 155 (1993) may also act as a hurdle to the acceptance of the idea of constructive refoulement. In this case, it was held that the phrase 'expel or return' have a *legal meaning narrower than its common meaning* and speaks only to *a defensive act of resistance or exclusion at the border.* This judgment though has been subjected to very harsh criticism by several writers." *See* "HATHAWAY, supra note 25, 336-337; GILL & MCADAM, supra note 40, 247-250"; "Anna William Shavers, The Invisible Others and Immigrant Rights: A Commentary, 45 HOUS. L. REV. 99 (2008)"; "Joy M. Purcell, A Right to Leave But Nowhere to Go: Reconciling an Emigrant's Right to Leave with the Sovereign's Right to Exclude, 39 U. MIAMI INTER-AM. L. REV. 177 (2007)"; "Mariano Florentio Cuellar, The Limits of the Limits of Idealism: Rethinking American Refugee Policy in an Insecure World, 1 HARV. L &POL'Y REV. 401 (2007)"

[130] See Refugee Convention, Art. 31(1): *"The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".*

[131] "G. Goodwin-Gill, Article 31 of the 1951 Convention relating to the Status of Refugees: Non-Penalization, Detention and Protection In Refugee Protection In International Law: Unhcr's Global Consultations On International Protection 189 (E. Feller, V. Turk And F. Nicholson Eds., 2003)".

[132] "Cholewinski", supra note 48. "This line of reasoning is substantiated by the ruling of the English High Court of Justice in R v. Uxbridge Magistrates Court, ex parte Adimi, (1999) EWHC Admin 765 where it has been held that: *Article 31 extends not merely to those ultimately accorded refugee status but also to those claiming asylum in good faith (presumptive refugees)*".

privilege to work and the right to standardized savings.

Be that as it may, the utility of Articles 31 and 33, in articulating a provision applicable for the most part related to right to work, is limited since they can be conjured just in situations where shelter seekers (or exiles) are denied the privilege particularly for their unapproved entry or presence. In the event that the host state for the most part denies business for all refuge seekers until the determination of their status and paying little mind to the lawfulness of their entrance into or vicinity in the domain, Article 31 and 33 seemingly would not give any alleviation.

Along these lines, it is apparent that while there are plentiful certifications for protection of the privilege to work for evacuees in the Refugee Convention, questions hold on over the accessibility of similar assurance to haven seekers before the gift of the outcast status. As a matter of fact, there are some potential roads accessible to haven seekers to claim the privilege to work. However, they are significant just in restricted cases and don't give the premise to an all inclusive case to right to work for all refuge seekers. Rather than the Refugee Convention, the universalist introduction of global human rights law, particularly the ICESCR gives a firmer premise for the privilege to work for refuge seekers.[133] Since Article 5 of the Refugee Convention expresses that the rights and advantages allowed to exiles under whatever other instrument are not to be weakened, I present that displaced people and, shelter seekers can gain protection under these universal human rights standards.

[133] Edwards, supra note 48, 325

6. INTERNATIONAL HUMAN RIGHTS LAW: FINDING THE STATUS OF RIGHT TO WORK

One of the primary universal law instruments to insinuate a state obligation to give livelihood was the United Nations ('Charter').[134] Article 55 of the Charter proclaims that the United Nations should advance, inter alia, higher standard for everyday comforts, full business, and states of financial and social advancement and improvement.[135]

Furthermore, Article 56 of the Charter requires Member-States to take 'joint and separate action' for the accomplishment of the reasons verbalized in Article 55.[136]In any case, the inquiry in respect to whether Article 56 verbalizes a 'lawful right to work' stays unsettled. Firstly, it conceives 'full employment' as a state obligation rather than an individual human right. Para 2 of the Article surely obliges states to advance and secure human rights however the Charter does not give any meaning of human rights.[137] Moreover, there is critical dissension over the substantive substance of the term 'full employment'. It has been contended that the term 'full employment' in like manner utilization in the control of financial aspects does not allude to finish end of unemployment however just to a level of unemployment seen as important to keep inflation under control.[138] Even however numerous researchers have rejected this technocratic understanding and asserted that the expression signifies "*elimination of all but the most temporary frictional and seasonal unemployment*",[139]

[134] "United Nations Charter, 1 U.N.T.S. XVI (October 24, 1945)".

[135] Ibid., Art. 55: *"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a. higher standards of living, full employment and conditions of economic and social progress and development".*

[136] Ibid Art. 6: *"All Members pledge themselves to take joint and separate action **in** co-operation with the Organization for the achievement of the purposes set forth **in** Article 55".*

[137] Madsen, supra note 51.

[138] "Philip Harvey, Liberal Strategies for Combating Joblessness in the Twentieth Century, 33 Journal of Economic Issues 497, 499-500 (1999)".

For a more detailed analysis of 'full employment', *see* "William Beveridge, Full Employment In A Free Society (1945) And Jm Keynes, The General Theory Of Employment, Interest And Money (1935)".

[139] *See* "Phillip Harvey, Human Rights and Economic Policy Discourse: Taking Social and Economic Rights Seriously, 33 COLUM. HUM. RTS. L. REV. 374-375 (2002)";

this perplexity genuinely undermines the regulating utility of Article 55.

6.1. "UDHR And The Right To Work"

The privilege to work transformed from an unimportant state worth to an individual human right with Article 23 of the UDHR.[140] This provision ensures the privilege to work, as well as commits states to give the privilege of remuneration while unemployed.[141] It should likewise be noticed that the drafters proposed the "*protection against unemployment*"[142] to be not simply constrained to pay to casualties of unemployment additionally to incorporate measures securing individuals against the event of automatic unemployment.[143]

Truly, the UDHR is just a delicate law instrument and at the season of its proclamation, it was not by and large seen as forcing lawfully tying commitments on individual governments. In any case it has, alongside the U.N. Sanction, as of now specified, expected the status of a standard of standard worldwide law and is in this way regarded as required.[144]

6.2. "ICESCR"

As is understood, the hortatory standards verbalized in the UDHR were interpreted into tying commitments through the coming into power of the "International Covenant on Civil and Political Rights" (ICCPR)[145] and the ICESCR.[146] We have as

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[140] "Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 (December 12, 1948)"

[141] "Aleah Borghard, Free Trade, Economic Rights, and Displaced Workers: It Works If You Work It, 32 BROOK. J. INT'L L. 161, 185 (2006)".

[142] "Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 (December 12, 1948)", Art. 23.

[143] "Johannes Morsink, The Universal Declaration Of Human Rights: Origins, Drafting, And Intent 157-68 (1999)" cited in Harvey, supra note 56.

[144] "Louis Henkin Et Al, Human Rights 322 (1999)"; *See also* "Paul Sieghart, The Lawful Rights Of Mankind: An Introduction To The Legal Code Of Human Rights 65 (1985)"

[145] "International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (December 16, 1966)."

of now seen that Article 6 of the ICESCR perceives the right to work of each individual.[147] Critically, the Covenant additionally secures rights at work including the right to favourable work condition, reasonable wages also, equal compensation for work of equivalent worth, protected and sound work, rest and relaxation conditions.[148]

Be that as it may, the privilege to work under Articles 6 and 7, similar to every single other right ensured by the ICESCR, requires as it were 'dynamic acknowledgment' as opposed to full and quick execution.[149] Moreover, Article 2(1) of the Covenant limits the execution of such rights by requiring part countries to embrace steps just *" to the maximum of its available resources*". These capabilities have definitely prompted numerous inquiries regarding the genuine enforceability of these rights. Aside from the International Bill of Rights, the privilege to work has additionally discovered acknowledgment in a few noteworthy local human rights settlements spreading over mainlands also.[150] The primary concern, however, is limited to the procurements of ICESCR and the ICCPR and it doesn't raid into an exhaustive examination of the previously stated procurements of these local human rights bargains.

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[146] "International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (December 16, 1966)"

[147] "International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (December 16, 1966)", Art. 6.

[148] "International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (December 16, 1966)", Art. 7.

[149] "International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (December 16, 1966)", Art. 22.

[150] "For example, Art. 14 & Art. 15 of the American Declaration of the Rights and Duties of Man, approved by the Organization of American States, 1948 recognize the right to work and the right to leisure time. This right has found further acknowledgment **in** Art. 6 of the Additional Protocol to the American Convention on Human Rights **in** the Area of Economic, Social and Cultural Rights. **In** addition, the European Council approved the European Social Charter **in** 1961 which stated that *everyone shall have the opportunity to earn his living **in** an occupation freely entered upon*. This principle was further reiterated **in** the Revised European Social Charter, 1996. Importantly, Art. 15 of the Charter of Fundamental Rights of the European Union also acknowledges that everyone has the right to engage **in** work and to pursue a freely chosen or accepted occupation. Another regional human rights instrument which recognizes the right to work is the African Charter on Human and Peoples' Rights vide Art. 15."

7. INTERNATIONAL HUMAN RIGHTS LAW: FINDING THE STATUS OF AVAILIBILITY OF THE RIGHT TO WORK FOR ASYLUM SEEKERS

The past segment mapped the advancement of the privilege to act as a universal human rights standard. This segment might contend that on the premise of the rule of non-segregation, the said right likewise stretches out to refugee and asylum seekers.

As implied before, global human rights standards try to perceive widespread privileges and as a pundit takes note of, "The procurements concerning individual rights' assurances, with a couple of special cases, grasp all individuals".[151] The privilege to work is no special case to this and is additionally all around relevant.[152]

For instance, Article 6 (1) of the ICESCR gives that the state-parties might perceive the right of everybody to work.[153] Thus, these rights, at any rate literarily, plainly grasp both natives and non-residents including refugee and asylum seekers.

Further, the operation of Article 6(1) would essentially be intervened through the non-separation guideline given under Article 2(2) of the Convention.[154] Admittedly nationality is not one of the unequivocally listed grounds of segregation that has been precluded under the Convention.[155] However, the precluded grounds are unmistakably open-ended by uprightness of the residuary statement 'other status' in Article 2(2) and would incorporate nationality inside of their clearing ambit This perspective is reflected in the act of the Committee on Economic Social and Social

[151] "Nsongurua J. Udombana, Social Rights Are Human Rights: Actualizing the Rights to Work and Social Security **in** Africa, 39 CORNELL INT'L L. J. 181, 196 (2006)".

[152] Ibid

[153] "International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (December 16, 1966)", Art. 9.

[154] "International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (December 16, 1966)", Art. 2(2): *"The state parties shall respect the rights provided **in** the Convention without any discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".*

[155] *See* "Richard Lillich, Human Rights Of Aliens In Contemporary International Law 47 (1981)" *referred to in* CRAVEN, supra note 49 ("Richard B. Lillich thus concludes that the ICESCR does not contain a general norm of non-discrimination against aliens").

Rights ('CESC') which demonstrates that victimization non-nationals is a matter of worry under Article 2(2). For instance, in its closing perceptions with respect to Belgium's underlying report under ICESCR, the Board asked the Government "*to fully ensure that persons belonging to ethnic minorities, refugees and asylum seekers are fully protected from any acts or laws which in any way result in discriminatory treatment within the housing sector"* so that the commitments under Article 2(2) could be met.[156] Later in one of its Reports, the CESC additionally remarked on the impacts of Venezuela's inability to issue individual documentation to displaced people what's more, haven seekers and its impact on their rights to work, wellbeing, and instruction.[157]

The CESC noticed that such disappointment was in break of Venezuela's dedication under ICESCR. While the substantive substance of the privilege explained in these perceptions were distinctive, they positively demonstrate that separation on the ground of nationality is restricted under the Convention.

The significance of the non-separation standard in the setting of work has additionally been accentuated by the General Comment 18 on the Right to Work.[158] Critically, the CESC has noticed that the *"labour market must be open to everyone under the jurisdiction of the State's parties".*[159] More particularly, the standard of non-segregation has been conjured in the exceptional setting of refuge seekers with a specific end goal to accord them the assurance of the privilege to social security. The CESC saw in its General Comment No. 19 that the nondiscrimination standard under Article 2(2) plagues the privilege to social security and the Covenant, *"prohibits any discrimination....which has the intention or effect of nullifying or impairing the equal*

[156] "United Nations Economic and Social Council Resolutions, [U.N. ESCOR], Concluding Observations of the Committee on Economic, Social and Cultural Rights: Belgium, ¶ 14, U.N. Doc. E/C.12/1994/7 (1994)".

[157] "United Nations Committee on Economic, Social and Cultural Rights [CESCR], Report on the Twenty-fifth, Twenty-sixth and Twenty-seventh Sessions (23 April-11 May, 2001, 13-31 August, 2001, 12-30 November, 2001), E/2002/22;E/C.12/2001/17 (June 6, 2002)" *referred in* Edwards, supra note 48.

[158] "United Nations Committee on Economic, Social and Cultural Rights [CESCR], General Comment No. 18: The Right to Work, E/C.12/GC/18 (February 6, 2006)", available at http://www.unhcr.org/refworld/docid/4415453b4.html (Last visited on February 23, 2016)

[159] Ibid., ¶ 12(b)(i)

enjoyment or exercise of the right to social security.[160] Thus, it underscored the obligation of the states to give extraordinary regard for gatherings and people that customarily confront troubles in the activity of this privilege including haven seekers and displaced people.[161]

The CESC further announced that the Covenant contains no express jurisdictional constraints[162] and pronounced that exiles, stateless persons and shelter seekers might appreciate parallel treatment in access to non-contributory social security schemes identified with access to health insurance and family support up to a level predictable with global benchmarks.[163]

The privilege to work of displaced people and haven seekers apparently additionally has some standardizing support in the elucidation of the non-discrimination provision of the ICCPR. The Human Rights Committee ('HRC') in *Gueye v. France*,[164] declined to acknowledge nationality as a substantial ground for qualification and refuted a law that prohibited non-national officers from annuity advantages. The HRC held that separation on the premise of nationality falls under the extent of 'other status' and is along these lines disallowed by Article 26 of the ICCPR.[165]

This rule is further bolstered by the General Comment No. 15 on the Position of the

[160] "United Nations Committee on Economic, Social and Cultural Rights [CESCR], General Comment No. 19: The Right to Social Security, ¶ 30, E/C.12/GC/19 (February 4, 2008)", available at http://www.unhcr.org/refworld/docid/47b17b5b39c.html (Last visited on February 23, 2016).

[161] Ibid., ¶ 31 ("The Committee observed : ....*States parties should give special attention to those individuals and groups who traditionally face difficulties in exercising this right, in particular women, the unemployed....home workers, minority groups, refugees, asylum seekers, internally displaced persons, returnees, non-nationals, prisoners and detainees*")

[162] Ibid., ¶ 36

[163] Ibid., ¶ 38

[164] "Ibrahima Gueye v. France, Communication No. 196/1985, ¶ 9.4, U.N. Doc. CCPR/ C/35/D/196/1985 (1989)."

[165] *See* "International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (December 16, 1966)", Art. 26: *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.* ***In*** *this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

Aliens under the Covenant,[166] in which the HRC affirmed that,

> *"Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant".* [167]

It has likewise been recommended that the idea of substantive uniformity, as enveloped by Article 26 of the ICCPR, can be connected to combat segregation in usage of financial and social rights too.[168] The HRC in its General Comment No. 18 on Non-Discrimination attested that Article 26 explained a self-governing right and the commitment of non-segregation there under was not restricted to simply the rights indicated in the Convention.[169]

In any case, as Hathaway has noted with concern, the HRC has been slanted to acknowledge separation on the premise of non-citizenship as hypothetically sensible. The HRC has additionally been hesitant to address biased sway as an issue of concern and confined itself to facial segregation.[170] Hathaway trusts that these patterns alongside the HRC's ability to accord to expresses an extremely wide edge of gratefulness, seriously abridges the utility of Article 26 for exiles and refuge seekers.

[166] "United Nations General Assembly [U.N. GAOR], Human Rights Commission, General Comment 15/27 on the Position of Aliens under the Covenant, 117, U.N. Doc. A/41/40 (1986)."

[167] Ibid, ¶ 2

[168] "Manfred Nowak, U.N. Covenant On Civil And Political Rights: Ccpr Commentary 630 (2005); Cholewinski," Supra Note 14.

[169] "United Nations General Assembly [U.N. GAOR], Human Rights Commission, General Comment 18/37 on Non-discrimination, ¶ 12, U.N. Doc. A/45/40 (1990).

The Article, according to the Committee, *prohibits discrimination in law or in fact in any field regulated and protected by public authorities*. Prior to the General Comment No. 18, the HRC had already stated in many of its opinions on individual communications that Article 26 also extends non-discrimination protection to socio-economic rights including those of non-nationals." *See* "Broeks v. Netherlands, Communication No. 172/1984, ¶ 12.4, U.N. Doc. CCPR/C/OP/2 (April 9, 1987) and Guye v. France Communication, ¶ 9.4, No. 196/1985 (April 3, 1989)"

[170] *See* "Hilary Charlesworth, Concepts of Equality in International Law in LITIGATING RIGHTS 139 (Huscroft and Rishworth ed., 2002)"

7.1. "Dynamic Realization And Negotiating The Hurdles To The Right To Work"

In the past segment, Article 6 of the ICESCR read along with the principle of non-discrimination sets out a conceivable case for perceiving the privilege to work for haven seekers.

In any case, the way that the privilege requires just "*progressive acknowledgement"* and is liable to "*maximum available resources*",[171] has brought up issues about its genuine teeth. Indeed, state practices uncovers that the privileges of non-nationals to take up livelihood are restricted and qualifications are drawn in the middle of nationals and non-nationals so as to shield the livelihood and financial welfare of the host country in many nations.

Be that as it may, as Alice Edwards contends, the allowable limitations must be perused prohibitively and they can't prompt a complete refusal of the privilege to work to haven seekers.[172] The CESC has focused on that the guideline of "*progressive acknowledgement"*, *"should not be interpreted as depriving the obligations under ICESCR of all meaningful content"*.[173] It likewise noted in the same report that this guideline, *"imposes an obligation to move as expeditiously and effectively as possible"* and any intentionally retrogressive measures must be subjected to, *"the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources*"[174]

[171] *See* "International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (December 16, 1966)," Art. 2(1)

[172] Edwards, supra note 48.

[173] "United Nations Committee on Economic, Social & Cultural Rights [CESCR], General Comment No. 3: The Nature of States Parties Obligations, Art. 2, ¶ 1, U.N. Doc. E/1991/23 (December 14, 1990)", available at: "http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument" (Last visited December 23, 2015)

[174] Ibid.

Basically, it pronounced that, "*a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party*."[175] Thus, it is unmistakably clear that the *progressive acknowledgement"* guideline can't trump over the commitment of the states to secure the core of a right. We should remember in such manner that while these remarks are not legally binding,[176] they regardless constitute definitive elucidations of procurements of the ICESCR.[177]

Essentially with the end goal of this investigation, the standard of non-separation is among the base center commitments which have prompt impact. Thus, the standard of *progressive acknowledgement* must be fundamentally conjoined with the obligation of non-discrimination. Thus, I contend that states are bound by the standard of non-discrimination in all the progressive steps they take to guarantee the privilege to work and consequently, can't especially avoid refuge seekers.

It should likewise be emphasized that countries can't utilize their absence of accessible assets as a reason for neglecting to embrace measures to regard, secure, and satisfy the rights. The CESC declared in the previously stated General Remark 3 that:

> *"In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."*

In spite of the fact that the standards of least center commitment and non-separation have extended the extent of Article 6, it could be contended that its appropriateness to shelter seekers in creating nations is qualified by the special case agreed in Article

[175] Ibid, ¶ 10

[176] "Laurence R. Helfer & Ann-Marie Slaughter, Toward a Theory of Effective Supranational Adjudication, 107 YALE L. J. 273, 352 (1997)".

[177] NOWAK, supra note 97.

2(3) of the Covenant. This exception expresses that developing nations have the opportunity to decide the degree of appropriateness of the financial rights ensured in the Covenant to non-nationals.[178]

One should however underline that the opportunity under Article 2(3) is not boundless and rather, is shackled by its dialect and drafting plan.[179] According to Alice Edwards, the very consideration of the words, 'human rights and the national economy' restrict the ambit of the Article.[180] Thus, Article 2(3) can be conjured to ensure a confinement on a privilege of a non-national just when such limitation can be supported in light of a legitimate concern for the 'national economy'. She further contends this procurement must be interpreted in light of its recorded origin.[181]

[178] "International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (December 16, 1966)", Art. 2 (3): "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized **in** the present Covenant to non-nationals".

[179] Edwards, supra note 48.

[180] Ibid.

[181] Ibid. "Art. 31 of the Vienna Convention on the Law of Treaties requires contextual interpretation of a treaty provision when the ordinary meaning is ambiguous. Further, Art. 32(2) states that preparatory work or the circumstances of conclusion of a treaty could be used when the interpretation under Art. 31 provides a meaning that is ambiguous or manifestly absurd or unreasonable. It could be argued that allowing states to limit the economic rights to non-nationals under Art. 2(3) may be unreasonable and also undermine the objectives and purpose of the Convention. Therefore, this Article should be

This procurement was the outcome of the misgivings of recently autonomous post-pilgrim nations which expected that the rights allowed in ICESCR could be utilized by predominant financial gatherings of non-nationals to square new redistributive financial strategies.[182] Therefore, Article 2(3) must be interpreted narrowly and just in promotion of its unique objectives and any qualification between a native and an outsider in appreciation of an essential monetary right which undermines the human poise of the discriminated individual or which is not advocated in light of a legitimate concern for the national economy, can't be bolstered.

Nonetheless, Craven indicates that the aforementioned contention might be hard to manage because of opposing general routine of states.[183] Therefore, he contends that the ambit of Article 2(3) must be comprehended in light of Article 4, which gives a firmer premise to compel the capacity of states to confine the rights to work and social security for shelter seekers and other non-nationals.[184]

This procurement allows just such constraints that are decided by law, are good with the way of the rights being referred to and are "exclusively with the end goal of advancing the general welfare in a majority rule society".[185] Though this procurement does not go about as a prohibition against any unequal treatment against any non-nationals, it requires additional normal defenses for any confinement that might be forced.

It is contended that the onus of legitimizing a sweeping disavowal of the privilege to work to refuge seekers would be exceptionally troublesome. This weight would be especially troublesome given that the ESC Committee has insisted in this connection that Article 4 *"is primarily intended to be protective of the rights of individuals*

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interpreted **in** light of its historical background".

[182] Edwards, supra note 48.

[183] Ibid

[184] Ibid

[185] *See* "International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (December 16, 1966), Art. 4."

rather than permissive of the imposition of limitations by the State ".[186] Therefore, one can construe that the space for forcing limitations on the privilege to work is extremely constrained by the need of justification under Article 4.

7.2. "Characterizing The Limits On The Freedom To Work"

As talked about in the past segment, the capabilities set by the regulation of *progressive realisation* under Article 2(1) and the uncommon exemption in Article 2(3) on the privilege to work are extremely limited.

It surely can't be recommended that states must treat residents and evacuees and shelter seekers alike with the end goal of livelihood, particularly in the connection of developing nations of South Asia with incessant high rates of unemployment.

In any case such limitations on the ambit of the privilege to work for shelter seekers and displaced people would be admissible in the event that they depend on sensible and target criteria, seek after a genuine point, and are entirely proportionate to that point.[187] Thus, it is interested in contend that specific types of limitations on the privilege to work for refuge seekers might in fact be reasonable, in the event that they fulfill the previously stated criteria.

What's more, such limitations can't seemingly reach out to a complete disavowal of work for an extended timeframe, for any drawn out disavowal of the privilege to work would disintegrate the center and the quintessence of the right itself and would likewise encroach the self-governance parts of human nobility. It is a settled rule of global human rights law that any proportionate limitation on a 'human right' can't

[186] "United Nations Committee on Economic, Social and Cultural Rights [CESCR], General Comment No. 13 on Education, ¶ 42, UN doc. E/C.12/1999/10 (1999)", available at: "<http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ae1a0b126d068e868025683c003c8b3b?Opendocument" (Last visited on December 24, 2015) referred in Edwards, supra note 48.

[187] The decision in "Zwaan-de Vries v. Netherlands, Communication No. 182/1984, U.N. Doc. CCPR/C/29/D/182/1984 (1987) provides helpful guidance (though the decision was in the context of ICCPR) on the tests for permissible discrimination."

obliterate the crucial substance of the right itself. [188]

In this connection, Alice Edwards likewise contends that any qualification between a native and an outsider in appreciation of an essential economic right which undermines the fundamental rights and human respect is not reasonable and can't be permitted under the capabilities in Articles 2(1) and 2(3).[189] If this is for sure the case, there can't be any confinement on the privilege to work of refuge seekers or other non-nationals given the inseparable association between the privilege to work and human nobility.

It is pertinent here to note that in its General Comment No. 18, the CESC has confirmed that "*[t]he right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity* ".[190] The General Comment additionally highlighted the double part of the privilege to work with respect to insurance of survival and human pride.[191] This decoupling of "survival" and "dignity" suggests that the Covenant rises above the subsisting idea of dignity.[192] It perceives self-determination and independence of people as an essential segment of human pride [193] and that the privilege to work is a necessary method for securing this aspect of nobility. [194]

[188] "General Comment No. 3", supra note 108; *See also* "Katharine Young, The Minimum Core of Economic and Social Rights: A Concept **in** Search of Content, 33 YALE J. INT'L L. 113, 119 (2008)"

[189] Edwards, supra note 48, 325

[190] "General Comment No. 18, supra note 83, ¶ 1".

[191] Ibid.

[192] "The subsistence notion of human dignity means that dignity imposes an obligation on the state to provide at least minimal subsistence to every individual. For a detailed discussion of this point and how various municipal courts have interpreted human dignity to imply an obligation to provide subsistence", *See* "Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights", 19 EUR. J. INT'L L. 655, 700-706 (2008).

[193] "Under this notion, dignity entails the assurance of the possibility for individual choice and the conditions for 'each individual's self-fulfilment', autonomy, or self-realization." *See* "A. Clapham, Human Rights Obligations Of Non-State Actors 536-538 (2006)"; "Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, 19 EUR. J. INT'L L 655, 689-690 (2008)".

[194] "The practical significance of this distinction is that even social security and assistance by the host states as an alternative to right to work will not be adequate protection of human dignity as such protection fails to effectuate the autonomy conception of dignity. While social security and assistance schemes may ensure the subsistence of asylum-seekers, the failure to respect individual fulfillment and autonomy means that the dignity of asylum-seekers is nevertheless compromised."

In addition, as per the order of Article 4, any confinement on the privilege to work of refuge seekers must be good with the way of the privilege being referred to and should exclusively *"promote the general welfare in a democratic society*".[195] Further, as CESC has insisted, any elucidation of this procurement must be more defensive of the privileges of people than of the imperatives forced by the state. In perspective of these remarks by the CESC, a human rights neighborly approach would require that states must bear the onus of demonstrating the presence of a honest to goodness reason and its nexus with the limitation on the privilege to work.[196]

While there has been gigantic political antagonistic vibe to workers, displaced people and haven seekers on the presumption that movement is impeding to the neighborhood economy, the monetary argument against migration is more challenged. Late studies have uncovered the dangers of movement are frequently misrepresented and that in specific cases, livelihood of migrants and refuge seekers might to be sure valuable for the financial system.[197]

For instance, the "Human Development Report, 2005" arranged by the "State Government of Arunachal Pradesh", one of the frontiers states of India, recognized

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[195] *See* "International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (December 16, 1966)", Art. 4.

[196] *See* Decisions of "European Roma Rights Centre v. Italy, Merits, Complaint No. 27/2004 (December 7, 2005)" and "European Roma Rights Centre v. Greece, Complaint No. 15/2003 (April 4, 2003)". *See also* "Aaron Xavier Fellmeth, State Regulation of Sexuality in International Human Rights Law and Theory, 50 WM. & MARY L. REV. 797, 892 (2008)"

[197] See Eve Lester, Work, the Right to Work and Durable Solutions: A Study on the Sierra Leonean Refugees in Gambia, 17 (2) INT'L J. REFUGEE L. 331 (2005) ("Eve Lester demonstrates how refugees from Sierra Leone have contributed to the growth of the Gambian economy); Gordon H. Hanson, The Economic Logic of Illegal Immigration, The Bernard and Irene Schwartz Series on American Competitiveness, Council on Foreign Relations, April, 2007, available at http:// www.cfr.org/content/publications/attachments/ImmigrationCSR26.pdf (Last visited on January 21, 2016); See United Nations Human Rights Committee [HRC], Consideration of Reports Submitted by States arties under Article 40 of the Covenant : International Covenant on Civil and Political Rights : 4th periodic report : Argentina, CCPR/C/ARG/4 (March 13, 2008), available at http://www.unhcr.org/refworld/docid/4885cf870.html (Last visited on January 21, 2016) (The Government of Argentina acknowledged to the Human Rights Committee **in** its 4th Periodic Report submitted under Art. 40 of the ICCPR that restrictive immigration policies have not achieved their objectives and have instead resulted in many indirect costs").

the part of illicit settlers from Bangladesh in the dramatic development of agribusiness in the State.[198]

On the other hand, foreswearing of the privilege to work to refugees might force a channel on the host nation by making a class of individuals perpetually reliant on the state and a criminalized underclass.[199]

Such advantages of occupation for transients can for sure be setting particular and may not as a matter of course prompt a universal tenet. Be that as it may, these illustrations destroy the just about from the earlier suspicion that confinements on the privilege to work for migrants are innately useful for the host nation and propose that the burden must be on the states forcing any confinement on the privilege to work (in view of the accessibility of standardized savings) of exiles and shelter seekers to demonstrate that they are without a doubt entirely important and in proportion for the reason of advancing the "general welfare of the general public" and henceforth, allowable as per the ICESCR.

[198] "Government of Arunachal Pradesh: Dept. Of Planning, Arunachal Pradesh Human Development Report 2005", available at < http://data.undp.org.in/shdr/ap/report.pdf > (Last visited on January 21, 2016)).

[199] "George Tapionos, Irregular Migration: Economic and Political Issues in OECD: COMBATING THE ILLEGAL EMPLOYMENT OF FOREIGN WORKERS 24, 34, 36 (2000)"

8. RECOMMENDATIONS

It is the obligation of each character in the refugee reaction field, and in addition advancement and private actors, to bolster and advance the self-governance, independence and work privileges of migrants.

"Without this exchange, the legal right to work is unlikely to manifest, and it will be difficult to shift entrenched patterns of exclusion and discrimination"[200].

The accompanying activities would bring government hones in accordance with legitimate commitments, diminishing lawful, procedural and commonsense boundaries to work rights.

"Government Obligations to Respect, Protect and Fulfill Work Rights"

• Governments ought to regard, secure and satisfy displaced person work rights in principle and practice.

• Domestic framework ought to accord legitimate status, decided through a reasonable procedure, furthermore, an express legitimate right to work, as accommodated under global law. Such a structure must be bolstered by a privilege to opportunity of development and access legitimate guide and courts for the infringement of work rights.

• A legitimate right to work under local law must be available. Over the top expenses, extreme delays and bureaucratic hindrances ought to be dispensed with for displaced people looking for approval to work.

• Governments ought to find a way to guarantee that businesses empower meet access to the workforce for outcasts. Local laws ought to be matched with projects that are

[200] *Global Refugee Work Rights Report*, 2014 by Asylum Access jand the Refugee Work Rights Coalition.

intended to give professional trainings and financial assistance for evacuees.

"Commitments of the Refugee Response Community"

• Instead of acting freely, UN organizations, NGOs, pioneers from the displaced person group, and other actors (at the neighborhood, national or global levels) ought to make vital and imaginative organizations to guarantee that work rights are acknowledged in strategy and practice. In doing as such, these actors ought to team up to create national vocation plans that will define the different obligations of performing artists for undertaking the taking after exercises:

◦"**Policy Advocacy"**: Promoters ought to facilitate to encourage authoritative change to guarantee that local laws and strategies revere outcasts' entitlement to work as put forward in universal and local human rights law. Where the lawful insurance of exiles' work rights exists locally, supporters ought to screen and assess state recognition of work securities and backer for administrative change, if required.

◦ **"Legal Assistance":** Security officers ought to give displaced person customers data and help with respect to legitimate ways for getting authorization to work and enlisting organizations, and also data related to occupation rights. Lawful guide should be offered to refugees susceptible to misuse in the workforce or other work infringement. Key prosecution might play an integral part to individualized lawful representation; associations giving individual lawful help should coordinate with specific gatherings (e.g. scholastics, law fims offering *pro bono* help, and so on.) to bring cases that will build up positive lawful points of reference for work rights.

◦ **"Technical Assistance"**: Displaced person administration assistants should give professional and dialect trainings to refugee customers, and also data along with help vital for getting to services of monetary nature.

◦ "**Refugee Leadership and Participation":** Evacuees should be incorporated into work rights backing at all levels. Representatives of the

evacuee group ought to be offered access to the data and devices that will allow them to know and affirm their livelihood rights, and also the backing of different on-screen characters to reinforce exile cooperation in that support.

◦ **"Labor Market Assessments and Further Research":** Development, economic and scholastic organizations ought to attempt further research to assess the issues and opportunities involving exile cooperation in the work economy. Work market evaluations might help government by:

(i) setting up gauge information for current work market support among displaced people;

(ii) examining ability crevices at present existing between underemployed subgroups inside of the displaced person populace (e.g. demographic fragment, nation of source, business sector territory, and so on.) and the vocation needs of present and developing industry part;

(iii) recognizing non legitimate imperatives that, in mix with lawful imperatives, restrain more extensive work market cooperation of evacuees; and

(iv) distinguishing sub-bunches inside of the evacuee populace where approach improvements can have the best effect.

◦ **"Educating Policy Administrators"**: Actors should give governments and policy makers with the fundamental backing to comprehend their worldwide commitments to regard, secure and satisfy work rights of refugees.

9. CONCLUSION

> *"...[R]estricting the rights of refugees and delaying the attainment of durable solutions for years causes frustration and tension among refugees and in the host community. In such situations refugees, in particular women and children, become more vulnerable to various forms of exploitation such as traffiking and forced recruitment, and may develop a long-term dependency on humanitarian assistance. Often, the result is the marginalization and isolation of refugees, which can lead to an increase in irregular movements and even to security and stability problems for the host State, as well as for other States in the region."*
>
> ---UNHCR, "Local Integration and Self-Reliance"[201]

This dissertation has endeavored to demonstrate that while there are boulevards for the privilege to work of refugees under the Refugee Convention, there are critical confinements and inquiries drifting over shelter seekers' entitlement to work. Conversely, worldwide human rights law secures a Universalist origination of rights and accordingly stretches out to both displaced people and shelter seekers. Both UDHR and the ICESCR stipend the privilege to work to everybody and don't prohibit non-nationals from their domain. Additionally, this privilege is intervened by the standard of non-separation as enunciated in Article 2(2) of the ICESCR and Article 26 of the ICCPR.

The statute and philosophy of the HRC and the CESCR, show that the non-discrimination guideline denies oppression of non-nationals and therefore, migrants and refuge seekers can assert the assurance of the privilege to work under the ICESCR. It is presented that arranging the privilege to work under the purview of the ICESCR and related universal human rights law instruments can open up new lawful outskirts for security of migrants and haven seekers, particularly in nations that have not sanctioned the Refugee Convention.

It would empower migrants/displaced and haven seekers in India and other South Asian nations to affirm a lawfully enforceable flexibility to work and question the presently enforced administrations which acts as cover for refusal of this essential

[201] U.N. Doc. EC/55/SC/CRP.15, June 2, 2005, at para. 6.

right. In the meantime, it is known that states can keep on forcing limitations on the privilege to work for refuge seekers. In any case, the utility of avowing displaced people's and refuge seekers' flexibility to work lies in the way that it would put an exceptionally strict weight on the condition of demonstrating a honest commitment for protection of their rights. The presence of a legitimate reason in limiting the privilege to work can't be expected under a human rights' methodology and the onus must lie on states to demonstrate that each limitation depends on sensible and target criteria and is entirely proportionate to the purpose.

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