

Refugee & Humanitarian Law
(B.Com.LL.B. X Sem.)

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Refugee

Definition:

While a refugee may be commonly defined as a person who flees socioeconomic and political insecurity, the term “refugee” is more specific and narrow in definition in international law. Article 1(A)(2) of the 1951 United Nations Convention Relating to the Status of Refugees defines a refugee 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.” Various criteria, when fulfilled, result in the claimant’s recognition as a refugee. Many of these criteria have been internationally acknowledged and form the basis for determining refugee status. The 1951 Convention is clear in its definition of who constitutes a refugee.

The various terms used in the Convention have been broadly interpreted and are briefly discussed below:

Well-Founded Fear of Being Persecuted:

An asylum-seeker has to demonstrate that she has fled her country owing to a well-founded fear of being persecuted. The applicant must therefore furnish sound reasons for fearing individual persecution. It may be assumed that a person’s fear is well-founded if she has already been a victim of persecution on one of the grounds enumerated in the 1951 Convention. The word “fear” refers not only to persons who have actually been persecuted, but also to those who wish to avoid a situation entailing the risk of persecution. The fear must be well-founded; the first criteria for determining what is “well-founded” is a subjective element relating to the perceptions, emotions and experiences of the refugee claimant, and the second is an objective element, which may be assessed from the general situation in the country of origin.

Though the emphasis of the 1951 Convention is on individualised persecution, there is no universal definition of “persecution”. Serious human rights violations are indicative of

persecution. Discrimination of a serious nature on grounds of race, nationality, religion, and membership of a particular social group can also amount to persecution; discrimination, however, is not sufficient on its own to constitute persecution. Bonafide prosecution in the country of origin is generally not considered as persecution except when the punishment for a prosecutable offence is excessive and against international human rights standards. Under the 1951 Convention, a person must demonstrate a well-founded fear of persecution for one or more of the following reasons:

Race

Religion

Nationality

Membership of a particular social group

Political opinion

Race:

Discrimination on the basis of race, ethnicity, caste, colour, or creed is widespread, and this oft en results in strife of such severity that those targeted are compelled to flee persecution. The example of South African blacks fleeing the apartheid regime in their country of origin is oft en cited as a classic case of flight from persecution on the ground of race. Another example is that of the Ugandan citizens who fled persecution from the regime of Idi Amin in 1972 and sought refuge in India. Similarly, thousands of Sri Lankan Tamil refugees in India have fled persecution based on their ethnic background.

Religion:

Religious persecution can assume various forms: prohibiting a person from worshipping in private or public, forbidding membership of a religious community, even adopting discriminatory measures against certain people because of their religious beliefs. The Bahais fled Iran as a result of the discrimination they faced in their country of origin due to their religion. More recently, two Pakistani Sikhs were executed by the Taliban because they refused to convert to Islam. Following the attack, a reported sixty Sikh families (and likely many more) sett led in Amritsar, Punjab, seeking asylum.

Nationality:

Nationality is also used as a justification for persecution. Nationality is interpreted, in a broad sense, to include the origins and membership of particular ethnic, religious, cultural and linguistic groups. There is a degree of overlap between the various grounds of persecution, and factors often cumulatively contribute to a well-founded fear of persecution. For instance, in the 1980s Iraq passed a decree stating that the Faili Kurds were no longer to be considered Iraqi citizens – under the false distinction that they were Iranian nationals. Without the right to citizenship, many such persons fled (and indeed, many were forcibly removed) from Iraq and sought refuge in neighbouring countries.

References:

1. Refugees and the law, Socio Legal information Centre, Human Rights Law Network.