

ASYLUM LAW - TITLE: ASYLUM: A GENDER PERSPECTIVE

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CHAPTER 1: INTRODUCTION

In 2001, women who claimed asylum in their own particular right just spoke to around a fifth of the asylum looking for populace in the UK. It is maybe hence that female asylum seekers in the UK remain essentially undetectable¹⁶. The cliché picture of the male asylum seekers frequently brings about an absence of understanding of women's requirements which thus can have immediate outcomes regarding the reasonable determination of their asylum claims¹¹. However in this field too there is additionally an absence of understanding of women as asylum seekers and the encounters that headed them to escape their nation of beginning. By and large these results in an asylum determination handle those women in need of global insurance under the 1951 Refugee Convention to which the UK is a signatory⁹. In spite of a developing writing on this subject alone, narrative proof gave by caseworkers at Asylum Aid recommends considerably all the more needs to be carried out in this nation to address the security needs of women asylum seekers.

Background of the Research

In November 2002, the British Parliament passed new legislation reforming its asylum system. The Nationality, Immigration and Asylum Act of 2002 is only the latest in a series of recent attempts to respond to domestic political pressures created largely by the rising number of asylum-seekers in the United Kingdom¹². In addition to domestic pressures, the United Kingdom is finding itself increasingly implicated in European developments. As an island nation, the UK historically had a high degree of autonomy to set its immigration and asylum policies, insulated from the pressures felt by Europe during times of refugee crisis⁸. As the UK became increasingly engaged in the process of Europeanization in the 1990s, however, this autonomy began to diminish¹. While debating the most recent reform to the British asylum system, the government had to contend with the prospect of literally

thousands of asylum-seekers in the Sangatte refugee camp in France, poised at the gates of the Eurotunnel, waiting to cross the English Channel to apply for asylum in the United Kingdom⁶. Sangatte in many ways symbolized the enormous number and diverse sources of new restrictions pressures bearing upon UK asylum policy. Such pressures, however, have simultaneously contended with the increasing commitment to the protection of human rights within the United Kingdom and across Europe⁵.

While the way of lawful and procedural issues confronted by women asylum seekers has been tended to in the last few years, 3 no studies in the UK have so far endeavoured to evaluate the recurrence of these issues and the suggestions for women in the asylum process. Numerous snags women confronted when looking for asylum are regular to men as well. There are likewise assortments of variables that can impact the choice on a case which are not so much connected to the gender of the candidate. Also Home Office figures for 2001 demonstrate that women asylum seekers were more fruitful in getting asylum than men then they were principle candidates (13% and 9%) individually¹⁴. Despite the fact that ELR rate was 1 for every penny lower for women than for men, generally ‘the refusal rate was somewhat lower for women (72 for every penny contrasted and 74 for men).

The commitment to human rights creates countervailing pressures to *expand* asylum protections even while many aspects of domestic politics call for their restriction. One indication of how such pressures have come to light in the UK was the British Parliament’s passage of the Human Rights Act in 1998³. This Act incorporated into domestic law the European Convention on Human Rights (ECHR), which contains several rights relevant to asylum-seekers². The Act and the enthusiastic embrace of the ECHR by British courts show how expansionist pressures are also being felt in UK asylum policy⁹. Analysis of asylum policy in the United Kingdom thus requires examination of the complex interaction between domestic and international pressures, between legislative and judicial action, and between

expansionism and restrictions. In chapter 2, the history of asylum in the UK through the 1990s, looking at the changes that occurred over the 20th century, and the international legal obligations at the core of the UK's asylum policy are also discussed¹¹. The paper specifically addresses Britain's new commitments to European Union asylum policies, and the ways in which Britain's overall relationship with the EU affects Britain's domestic asylum policy in gender context. The paper concludes by examining the balance that may be struck as these forces interact¹⁴.

These figures affirm past exploration by Thomas Skipjerboer which uncovers that factual confirmation demonstrates that women are normally best in picking up assurance than men. According to Spijkerboer a great part of the writing on displaced person women contains the understood supposition that there are victimization women asylum seekers by those considering their cases on the grounds that authority faculty and strategies are not touchy to the issue of gender-based persecution³⁰. The measurable proof that he analyzes neglects to back this up yet he contends that this does not so much imply that no separation happens. A significant part of the accessible qualitative information proposes that there is an absence of gender affectability⁵⁰. An absence of gender affectability in the determination procedure of women asylum seekers in the UK produced on-going disappointments and challenges in connection to the cases spoke to by RWRP's caseworker²⁸. This prompted the thought of leading a study focused around Asylum Aid's women cases utilizing both quantitative and qualitative methodological methodologies. In the meantime, it was recommended that such an examination could give a novel chance to give more data on women asylum seekers themselves as being what is indicated information are meagre. The presence of such information can likewise give a finer understanding of their needs and accordingly structure a premise for any arrangement that means to address such needs.

Purpose of the Study

Gender guidelines are designed to facilitate a gender sensitive interpretation of the 1951 Refugee Convention definition¹⁷. Guidelines seek to ensure claims are handled and analysed both procedurally and substantively within a gender sensitive framework and that determination processes do not marginalise or exclude gender-related experiences of persecution. Canada introduced guidelines in 1993, the United Kingdom (UK) in 2000 and this article reflects on how these guidelines have impacted the Canadian and UK refugee determination processes respectively. Biological sex is not synonymous with gender; gender embraces the socially and culturally constructed experience of being a woman or a man and a relationship between them in society. “It affects both women and men’s social identity, status, roles and responsibilities”¹³. What it means to be a woman or a man will vary according to time and place, as well as other factors such as race, age, class and marital status. Persecution in the conventional sense does not always correspond with the experiences of women asylum applicants. This has been to the disadvantage of women, as they have been denied the protection such persecution warrants.

Aim of the Research

In seeking to address this problem, an increasing number of states have introduced guidelines specifically designed to give cognisance to the gender dimension of refugee claims. Gender sensitivity is something required in claims brought either by men or women. Although male claims may also demand a gender perspective, such a perspective is more commonly relevant in claims brought by women. What has prompted the guidelines is the need to overcome barriers confronting women applicants in the asylum determination process¹⁴. How may gender manifest itself in an asylum claim of a woman applicant? An asylum seeker may be persecuted in a gender specific manner for reasons unrelated to gender for instance, raped because of her membership to a political party. A woman may be

persecuted in a non-gender specific manner on grounds of her gender, for instance, flogged for refusing to conform to social norms. A woman may be persecuted in a gender specific manner because of her gender²⁰. Therefore, the aim of this study will be to evaluate the gender based perspective of the UK Asylum Law.

Objectives of the Research

- To provide essential information about women asylum seekers in UK
- To identify the ways in which UK asylum determination process at initial decision stage are failed for women asylum seekers.
- To determine which challenges are faced by women asylum seekers for the purpose of determination of their asylum claims.

Research Question

The research aimed to answer following questions:

1. What is the sociological status of women asylum seekers in UK?
2. How UK asylum determination process at initial decision stage is failed for women asylum seekers?
3. Which challenges are faced by women asylum seekers for the purpose of determination of their asylum claims?

Structure of Thesis

This research comprises of six chapters. Chapter 1 of this study offers an overview of the entire dissertation. This includes topic description, aim and purpose of this research study. This chapter provides the layout of the dissertation that briefly explains the research's flow and the subject that is covered in each of the chapters of this dissertation.

Chapter 2 of this research study presents the past researches and literature that are published on the same subject. Various researches have been identified, checked and obtained from different sources such as the internet. This shall be useful for the purpose of gathering and extracting relevant information for answering the questions of this research study. The researches chosen for the literature review are formulated on the basis of the theoretical framework which has been described through numerous contributions to the problem of the research.

Chapter 3 offers the method of research which has been used for this dissertation. Chapter three of this research study has discussed the research method which has been used for the purpose of obtaining all the relevant information for conducting this research. This chapter of the dissertation provides type of method adopted and it also represents rationale and justifies the chosen research method. A description for the techniques of the research has been offered in this chapter which provides an explanation of the ways through which the knowledge and information can be collected or gathered for this research study.

Chapter 4 contains the analysis of the results of the study based on the gathered data from interviews and observations.

Chapter 5 presents discussion about implications of the findings in relation to the research questions.

The final Chapter 6 will present overview of the aims and objectives as well as relate to findings and conclusions to initial aims, other research and theory.

CHAPTER 2: LITERATURE REVIEW

Asylum Policy in UK

In November 2002, the British Parliament passed new legislation reforming its asylum system. The Nationality, Immigration and Asylum Act of 2002 is only the latest in a series of recent attempts to respond to domestic political pressures created largely by the rising number of asylum-seekers in the United Kingdom⁴⁴. In addition to domestic pressures, the United Kingdom is finding itself increasingly implicated in European developments. As an island nation, the UK historically had a high degree of autonomy to set its immigration and asylum policies, insulated from the pressures felt by Europe during times of refugee crisis. As the UK became increasingly engaged in the process of Europeanization in the 1990s, however, this autonomy began to diminish³². While debating the most recent reform to the British asylum system, the government had to contend with the prospect of literally thousands of asylum-seekers in the Sangatte refugee camp in France, poised at the gates of the Eurotunnel, waiting to cross the English Channel to apply for asylum in the United Kingdom. Sangatte in many ways symbolized the enormous number and diverse sources of new restrictionist pressures bearing upon UK asylum policy¹⁶.

Such pressures, however, have simultaneously contended with the increasing commitment to the protection of human rights within the United Kingdom and across Europe. The commitment to human rights creates countervailing pressures to expand asylum protections even while many aspects of domestic politics call for their restriction. One indication of how such pressures have come to light in the UK was the British Parliament's passage of the Human Rights Act in 1998²¹. This Act incorporated into domestic law the European Convention on Human Rights (ECHR), which contains several rights relevant to asylum-seekers. The Act and the enthusiastic embrace of the ECHR by British courts show how expansionist pressures are also being felt in UK asylum policy⁵⁵.

Analysis of asylum policy in the United Kingdom thus requires examination of the complex interaction between domestic and international pressures, between legislative and judicial action, and between expansionism and restrictionism¹⁸. This dissertation considers the history of asylum in the UK through the 1990s, looking at the changes that occurred over the 20th century, and the international legal obligations at the core of the UK's asylum policy. The paper specifically addresses Britain's new commitments to European Union asylum policies, and the ways in which Britain's overall relationship with the EU affects Britain's domestic asylum policy. In Part II, the paper examines the two most significant recent changes in UK asylum law, namely the passage of the Nationality, Immigration and Asylum Act of 2002, and the passage and implementation of the Human Rights Act in 1998⁵¹. Finally, in Part III, the paper situates each of these major developments in the wider context of the various forces for expansion and restriction, in the UK and Europe. The paper concludes by examining the balance that may be struck as these forces interact³⁰.

Historical Overview of Asylum Law

The United Kingdom's experience with refugees goes back as far as 16th century England, when gypsies arrived having fled persecution as far away as the Balkans and Northern India.⁷ The dawn of the 20th century found large numbers of Jews fleeing pogroms in Russia; these refugees provoked widespread social concerns about threats to domestic labour, housing shortages and a rise in crime²¹. The British parliament responded with the 1905 Aliens Act, recognizing the rights of political and religious refugees. In the mid-1930's, a wave of refugees fleeing Nazi Germany began to arrive, again provoking concerns that bordered on xenophobia and whose echoes can be heard in today's debates²². Popular anti-Semitism was mirrored in Britain's immigration laws, which were actually tightened in the final days before the start of World War II³⁶.

After World War II, the next waves of refugees came from Eastern Europe. An estimated 250,000 Polish refugees and 50,000 other refugees from Eastern Europe arrived in the United Kingdom in the 1940's and 50's⁴². 17,000 Hungarians arrived following the crushed 1956 Hungarian anti-Communist uprising. Unlike later waves of refugees, those fleeing Communism found ready welcome because they most closely matched the public's perception of what a refugee was - the Refugee Convention definition of refugee having been set up at least partially to encompass those persecuted under Communism⁶¹.

Starting in the 1960's, refugees arrived primarily from developing countries, particularly countries that were members of the British Commonwealth¹⁸. During this period, the British Parliament made efforts to grapple with questions of citizenship and the right of Commonwealth citizens to immigrate to the United Kingdom, seldom invoking the concept of asylum. In 1962, the Commonwealth Immigrants Act introduced the first, light controls on the movement of Commonwealth citizens, requiring passports to travel and introducing punishments for such actions as producing false documents or staying beyond a permitted date.⁹ Events in East Africa soon forced a re-evaluation of this Act²³.

In the 1960's, restrictive anti-Asian legislation in East Africa prompted a large wave of immigrants to come to the United Kingdom. These immigrants - predominantly of Indian origin - were citizens of the British Commonwealth, and the first of these waves were free from immigration controls as a result of this citizenship. In 1968, however, the Parliament passed the Commonwealth Immigrants Act, restricting the rights of commonwealth immigrants to travel freely to Britain. This policy was sorely tested during the Ugandan Asians crisis of 1972, when Ugandan President Idi Amin overnight decided to expel the substantial community of Asians living in Uganda, many of whom were second and third-generation residents of Uganda. The United Kingdom did its utmost to ensure that this overnight class of refugees dispersed to other Commonwealth countries, but ultimately

accepted 27,000 of the 50,000 refugees²⁵. The British Parliament passed the 1971 Immigration Act, responding to the ongoing Asian refugee crisis through the lens of citizenship. The Act confined lawful residence to British citizens, and certain Commonwealth citizens,²⁶ and established the basic administrative and appeals procedures surrounding immigration. It was accompanied by a series of Immigration Rules, wherein the government gave broad discretion to immigration officers to determine who did and did not fit the definition of a refugee under the Refugee Convention and 1967 Protocol⁵³. The 1971 Act was amended in 1976 by the Race Relations Act, which created an exception to a general principle of non-discrimination, permitting discrimination with respect to ethnicity and nationality in the field of immigration.

These Acts remained in place until the series of reforms in the 1990s, discussed in Section B, *infra*. The origin and number of refugees arriving in the United Kingdom has changed dramatically over the past several decades, as the “push” factors from around the world have changed. In the 1970’s and 1980’s, the UK received a steady flow of refugees from Vietnam and from Sri Lanka²⁸. Finally, it should be noted that some percentage of those applying for asylum in the UK are economic migrants, not refugees. Currently under British law, there are very few ways for migrants to establish a legal presence in the UK other than as a refugee³⁵. In January 2002, the UK launched a pilot highly-skilled migrant worker program, designed to give work permits to migrants with high educational qualifications and significant professional work experience, without requiring them to have UK employment already secured⁴⁴. Other options for managed employment-based migration are under consideration by the Home Office. While those are pending, however, some undetermined number of migrants is attempting to enter the UK under the aegis of its asylum program. As will be noted below, this has fuelled tremendous criticisms of “bogus” asylum-seekers and of the asylum system itself²⁶.

Gender-Based Persecution

For many women who have suffered gender-based persecution, difficulties in communication, credibility problems and distinctions between the predominantly male-dominated public sphere and the female dominated domestic sphere can lead to the denial of their asylum claims¹⁹. Victims of gender-based persecution, especially those women fleeing sexual abuse, may have difficulty communicating the harms they have suffered. Even if women can articulate the details of their abuse, judges may not believe their stories because the credibility of those stories often depends upon a judge's familiarity with the private sphere activities of women or other gender-specific factors⁴⁹. Finally, even if female asylum seekers can communicate their claims and are believed by judges, the harms they have suffered may be dismissed by those judges as personal abuse, rather than the political persecution which may lead to a grant of asylum⁵⁰.

Communication: Reluctance to Discuss Sexual Violence

Many female refugees face sexual violence at home or during their flight to safety. Along escape routes and in border areas, refugee camps, settlements and urban centres, many women confront sexual harassment, rape and other physical violence and pressure to grant "sexual favours" in return for documentation or essential relief supplies³⁸. Victims of sexual violence often accept the dominant prejudices reinforced in their cultures and religions, thereby internalizing the oppression and allowing the dominance to continue. Because discussions of sexual matters are considered taboo in most cultures, and because women often react to sexual violence with feelings of guilt, isolation and fear, female asylum-seekers commonly resist attributing their flight to sexual violence. They therefore have difficulty describing and effectively communicating their experiences³¹.

Adjudicators may deny such claims because the women fail to express the nature and severity of the persecution they have suffered. One well-documented example of this difficulty in communication occurred in Southeast Asia, where pirates raped, abducted and killed hundreds of women asylum-seekers travelling by boat, primarily from Vietnam²². One fundamental lesson learned from a program developed to respond to these asylum-seekers was that “victims of attacks and sexual abuse will not easily talk about their experience and that a determined effort must be made to ‘seek out’ the information in order to understand the magnitude of the problem²⁹.”

Credibility: Judges’ Unfamiliarity with Private Sphere Activities

Even when women can tell their stories, they face the problem of presenting a credible case to a judge. Because asylum procedures are highly discretionary, the applicant’s ability to present a credible claim is of paramount importance³⁴. Yet, women’s experiences of persecution may not ring true to the male judges hearing their claims, whose realms of experience differ so greatly from that of the female claimants. The statutory definition of refugee is drawn primarily from the realm of public sphere activities typically dominated by men³⁶.

Specifically, the political opinion category of the refugee definition envisions primarily public sphere activities such as involvement in banned political parties or participation in prohibited political rallies and activities. In most societies, however, women’s activities remain primarily domestic, and therefore private, while men’s actions are more public⁴³. When women’s stories are dependent upon details from the female-dominated private sphere, they may be disbelieved by immigration judges, for example, who are typically men. Therefore, women travelling without male family members, 30 in flight from

persecution directed at them because they are women, often face greater obstacles proving their eligibility for refugee, and thus asylum, status⁴⁴.

Gender-Based Persecution: Personal versus Political Abuse

Much of the gender-based persecution suffered by women is perceived by judges to be private abuse rather than the political persecution which qualifies an individual for asylum in the United Kingdom²². This perceived discrepancy between “private wrongs” and political persecution is seen most dramatically in claims of women fleeing rape and sexual abuse. Moreover, women escaping punishment for defying what are viewed as “social norms” in their home countries are often similarly viewed as suffering from personal, rather than politically inspired, abuse⁴⁷.

Sexual Violence by Government Officials and Combatants

Asylum adjudicators commonly view rape and other sexual abuse as personal problems, without potential political motivations or consequences. Yet rape and other sexual abuses are often employed by both sides in civil conflicts as a means of exerting control and power over local populations¹⁷. Most recently, public attention has focused on the systematic rape of women by combatants on all sides of the ethnic conflicts in the former Yugoslavia. This conflict has demonstrated the use of rape as a strategy to gain control over enemies through ethnic cleansing. Rape and other torture of prisoners’ wives in their husbands’ presence is also used by government and military authorities in order to extract confessions. Women who suffer from these kinds of sexual violence are clearly victims of political persecution. But these abuses are often considered by adjudicators as private harms. Since interpersonal, private abuses do not qualify an applicant for asylum, these gender-based claims are commonly rejected⁵⁹.

Rejecting Gender-Related Cultural Norms

Another form of gender-based persecution often perceived to be primarily personal involves women's infringement on the moral or ethical rules of their societies. This kind of persecution may include beatings, imprisonment and death threats inflicted upon women whose dress or personal appearance does not conform to their societies' expectations. Some women have been threatened with death or actually killed for the voluntary or involuntary loss of virginity before marriage; others risk death by stoning if a marriage has been contracted for them and they are discovered to have a lover.⁴² Even when judges believe these women and although they clearly have been persecuted, they may not be recognized as refugees because the present definition of "refugee" does not expressly recognize persecution for transgression of social norms⁴⁵.

Disaggregating Women

In recent accounts of the global refugee problem, women are often aggregated as one neglected and disadvantaged category. It is claimed, by refugee rights activists and asylum advocates, those women, conceived of as virtually one word,' are not only the majority of the world's refugee population, but a group that is particularly vulnerable and disadvantaged. A critical aspect of this particular vulnerability, it is claimed, is that women who apply for asylum independently are less likely to be granted it than men⁵⁷. This contrasts with the situation where women claims are subsumed within the principal claim of a male head of household; here they are merely invisible not disadvantaged claimants, tied to the outcome of the adult male's claim. Critics of the impact of current refugee protection on women have focused their attention on this aspect of the system - the asylum process and its outcome⁴².

In so doing, they reflect a prevailing bias in immigration studies - a concentration on the politics of immigration to the detriment of attention to a broader migration picture - an

emphasis on ‘explaining immigration rather than international migration’. Yet in understanding how gender and age variables intersect with disadvantage in the refugee context, attention to a broader canvass is essential. It is commonly assumed that the arguments that apply to one demographic group, women, apply *mutatis mutandis* to the other, children, both boys and girls. Their vulnerability to exclusion has been explained by reference to three central factors²³. The first is normative: the adult male paradigm governing international refugee law, the absence of gender or age as specified grounds of persecution in the 1951 Convention on the Status of Refugees, militates against the inclusion of these groups.

Moreover gender-specific or child-specific persecution has traditionally been excluded from the interpretation of persecution, resulting in a marginalization of these behaviours from the protective scope of the convention²⁶. The second factor relates to institutional ideology: those responsible for the practical administration of asylum adjudication, members of both the executive and the judiciary, exclude women and child asylum applicants because they tend to operate with an age and gender-defined lens, a restrictive, traditional male-cantered notion of persecution which deems non prototypical asylum applicants apolitical, passive victims whose risk of harm occurs within the private sphere, and who are unlikely targets of persecution. The third factor is procedural: state practice has entrenched this discriminatory stance by adopting asylum procedures which take no account of gender or age-based specificities, thus procedural biases further disadvantage women and child applicants⁴¹.

All these explanations are consistent with the claim that these demographic groups are particularly disadvantaged as principal asylum applicants. The researcher suggested that the tendency to aggregate the two groups is misguided. It obscures the historical differences in consideration of the position of women as refugees, and asylum seekers, differences which

illuminate the diverse sources of political pressure to expand protection; it distorts the empirical picture regarding current access to asylum protection for these two groups of asylum applicants; and, most significantly, perhaps, it obscures the different strategies necessary to secure greater inclusion and improved access to asylum protection for each group today. Though both groups are non-prototypical, and have been singled out as particularly vulnerable, they are not targets of the same inclusionary and exclusionary pressures²⁶. International, state and popular domestic forces have operated differentially. Thus, the researcher suggested that to give an adequate account of the impact of gender or age on asylum, economic, social and cultural factors must be brought into the migration picture.

Historical Trends

Historically, attention to the distinctive needs and vulnerabilities of women as refugees have not developed in parallel. Two phases are distinguishable. In the early phase, during the first half of the twentieth century, children were a prime focus of attention. The first draft of the 1924 Declaration of the Rights of the Child to the League of Nations includes reference to the plight of refugee children. Later, when the concept of a refugee in international law was being developed, orphans under 16 were one of four categories of refugee defined by the 1946 Constitution of the International Refugee Organization³⁰. These developments can be associated with the emerging child protection movement, the campaigns against child labour, and the increasing attention to the child as a particularly precious being with distinctive claims to social protection. There is no equivalent demonstration of particular concern for women refugees during these years. Formal international recognition of the special problems facing refugee children thus predates acknowledgement of the distinctive difficulties facing women refugees by about forty years³². The protection needs of

unaccompanied children in refugee and displaced persons camps, after World War Two were the focus of this concern.

In a later phase, when the refugee agenda included not only welfare provision to refugees in camps, but also the implementation of legal obligations towards individual asylum seekers arriving on their own initiative in host states, gender concerns anticipated those focused on age⁵¹. In the late twentieth century, as the women's movement and feminist scholarship expanded beyond the initial limited focus on the concerns of western, citizen women, on issues of sexual liberation or equal pay, to encompass the concerns of women of colour, including immigrant or refugee women and with them questions of migration and exclusion, so the gender aspect of refugee protection started to receive attention. These factors clearly provided the impetus for developments in asylum jurisprudence and procedure in the 1980s and 1990s, including the development of feminist discourse questioning gender blindness in the interpretation of the refugee definition¹⁶.

Gender-specific forms of human rights violation such as rape, domestic violence and coerced female circumcision were gradually considered to be forms of persecution; gender-related forms of activism, such as cooking or shopping for opposition activists, were acknowledged as constituting evidence of political opinion or membership of a particular social group; more generally, the agency, autonomy and specificities of women as asylum seekers were acknowledged. It took another decade for an analogous movement challenging the adult-cantered nature of asylum adjudication and procedure, and the invisibility of children seeking asylum, to emerge in relation to child specific persecution.

Gender sensitive guidelines, policies and jurisprudence preceded similar developments for child asylum seekers by at least ten years.⁹ Although the distinctive protection needs of refugee children had been on the international agenda for over half a century, the concept of the child as an independent agent, as an autonomous rights bearer

capable of agency and self-expression, was lacking. As increasing numbers of separated children arrived in developed states,⁹ advocates and child welfare bodies began to challenge the prevailing approach, invoking the 1989 Convention on the Rights of the Child to justify a child-centered approach to asylum adjudication¹⁶. The process is still in its infancy. The time lag in the expansion of protection to address refugee protection and asylum adjudication for women and child asylum applicants respectively reflects conceptions of these groups in political and social discourse more generally.

The early view of the child - whether male or female - as needy of special protection explains the child specific refugee protections of the early and mid century; developments in feminism and the women's movement are closely related to the development of gender specific protections and jurisprudence for refugee and asylum seeking women; and finally, the emergence of a new conception of children's rights with the 1989 Convention on the Rights of the Child, paved the way for the emergence of a conception of child-specific persecution and of children as political actors in need of asylum in their own right¹⁹. Grass-roots activism, international norm setting and political strategizing contributed to this transformative process¹⁴.

The Empirical Picture: Are 'Victims' More Vulnerable or More Protected?

In pressing the case for special attention to be paid to the needs of women as asylum applicants, advocates have generally tended to argue that the lack of attention to gender or child based persecution, as well as masculinist assumptions about targets of persecution, have rendered these groups more vulnerable to exclusion³¹. On this logic the girl child, given her membership of both disadvantaged groups, should be doubly vulnerable. However, more recently, based on empirical analysis of the outcomes of women's asylum applications, the opposite claim has also been advanced: because of their perceived vulnerability and victim

status, as reinforced by culturalists stereotypes (the weak Muslim woman, the defenceless Asian girl, the female victim of brutal tribal norms), women asylum applicants are more likely to get asylum than the group as a whole, even when no gender specific protections are in place²².

For from being disadvantaged, therefore, it is suggested that they are privileged beneficiaries of ‘victimology’, a benign approach to victims of abuse. They are more likely to be given the benefit of the doubt, less likely to be subjected to harsh or punitive deterrent policies, and ultimately more likely to be recipients of asylum than their comparably placed male counterparts. Similar assumptions exist in respect of children: it is commonly assumed by those not directly involved in child asylum and welfare advocacy that such children (particularly girls) are likely to be treated more favourably because of their vulnerability, that they are less likely to be refused protection or to be deported.

Access to Asylum for Women: Over- and Under-Representation

In general, data on gender and age in relation to asylum applications and decisions is incomplete and unsystematic. Few countries compile complete statistical breakdowns including these categories, and even fewer distinguish between accompanied and unaccompanied or primary asylum applicants. Data on children is rarely subdivided by gender, so it is difficult to determine whether girl children are peculiarly disadvantaged or favoured. What follows is a compilation of the best available evidence, as it impinges on the arguments outlined above²⁸. One index of relative disadvantage for women is their access to asylum adjudication in the first place.

If, given similar risks of persecution, a smaller percentage of women than of similarly placed men make asylum applications, this is a *prima facie* indication of disadvantage and it is consistent with the claim that women have a harder time getting asylum. Statistical

evidence on the demographic characteristics of refugees clearly indicates two findings. First, in every single developing country of asylum neighbouring the refugees' country of origin, women refugees substantially outnumber adult males¹². Second, in every developed state, male asylum seekers far outnumber females; age breakdowns are generally unavailable.

Thus, according to UNHCR statistics for 1996, for example, in Ethiopia, of the 276 439 Somali refugees, only 23.4 per cent were adult males; in Pakistan, of the 1.2 million Afghan refugees, only 20 per cent were adult males: this is true for all the countries listed⁴⁴. The only two developed states listed in this chart are Belgium and France. In both, the proportions are exactly inverted¹¹. In Belgium, out of a total of 36 060 asylum seekers, 58 per cent were male (no age breakdown available); in France out of a total of 123 679 asylum seekers, over 55 per cent were male (no age breakdown available)⁴⁸. UNHCR data for the year 2000 are consistent with these findings⁴⁹. According to other, unpublished, UNHCR tabulations of asylum seekers by sex (no age data), for Canada (1989-1993), Czech Republic (1990-1996), Italy (1992), Netherlands (1987-1995), Sweden (1995-1997) and Switzerland (1995-1997), in every single case the percentage of female asylum applicants was under 50 per cent; it ranges from a low of 7.5 per cent (Netherlands 1987) to a high of 39.2 per cent (Canada 1992); the average percentage for the entries listed was 30.9 per cent⁴⁵.

Recent British, Dutch and Canadian data confirm this picture. In the UK, in the years 1994 to 1998, between 69 and 77 per cent of asylum applicants were male; in 1999 only 33 per cent of asylum applicants were female and in 2000 this figure dropped to 19 per cent. In Canada, in every year from 1997 to 2000, less than 50 per cent of claims referred to the Immigration and Refugee Board for determination were lodged by female claimants (accompanied and unaccompanied); in 1997 of the 22 717 claims referred, 38.9 per cent were lodged by female claimants, and the proportions for subsequent years are 38.4 per cent (1998), 38.2 per cent (1999) and 39.5 per cent (2000). The same is true for the US, although

the data setting out demographic characteristics do not separate out refugees admitted through the overseas refugee program (where women would tend not to be disadvantaged) from asylees (where women would tend to be disadvantaged)⁴¹. In every fiscal year between 1991 and 1998, less than 50 per cent of refugees and asylees granted lawful permanent resident status were women.

For children as a whole the picture is comparable: they constitute 46 per cent of the total refugee population, well over 50 per cent in many developing states neighbouring their country of origin (for example, 60 per cent in Bangladesh, 60 per cent in West Africa) but a much lower percentage of refugees in developed states (23 per cent in Europe as a whole, 35 per cent in Greece).¹⁸ For separated children, however, the picture is more complex.

According to UNHCR, out of the total child refugee population, between two per cent and five per cent are separated. Thus, if children constitute 46 per cent of the global refugee population, separated children should constitute no more than 2.5 per cent of the total refugee and asylum seeking population¹⁶. No statistics are available for the proportions of separated children among the refugee population in developing countries, but in developed states, the evidence suggests that separated children are over-represented as asylum seekers, in contrast to women or accompanied children³⁸.

According to UNHCR, for both 1999 and 2000, separated children constituted 4 per cent of the total number of asylum seekers lodging claims in the 17 European countries for which data was available. In some countries, such as Hungary and the Netherlands, separated children accounted for 15 per cent of all applications lodged during 2000. In the UK, separated children have dramatically grown as a percentage of asylum applicants, from 2 per cent in 1995, to 10 per cent in 1998; they constituted 5 per cent of applicants in 1999 and 8 per cent in 2000⁴¹. In Canada, separated children represented from 0.9 per cent to 1.4 per cent of all refugee claims finalized by the Immigration and Refugee Board between 1998 and

2000, but a considerably higher percentage of claims presented to the immigration authorities. According to one study, separated children constitute 10 per cent of all asylum seekers in Finland (overall numbers are very low). It appears that the pattern of separated children seeking asylum in developed states differs significantly from both general asylum patterns, and from trends in the asylum migration of women and accompanied children⁴⁵.

Explaining Differential Migration Patterns

Given their overwhelming presence in the refugee population bordering the country of origin, there is no reason to assume that women and children have less valid reasons for seeking asylum in developed states than their male counterparts. The under-representation of women and the over-representation of separated children must therefore be a reflection of factors unrelated to risk. It is likely that both institutional and individual factors are at play in different ways for each population²¹. In the case of women, reduced access to the formal and informal structures that facilitate migration (state agencies, travel agents, smugglers, family funding), together with dependent family status, resource inadequacy, personal history and social positioning, which militate against a self-perception as an autonomous asylum seeker, are likely to be powerful impediments to individual flight. Evidence of an overall gradual increase in the proportion of female asylum seekers, in line with more general trends towards the feminization of migration, suggests that some of these factors may be changing over time. Indeed asylum, in a small but increasing proportion of cases, is clearly primarily a gender driven choice, an exit strategy from oppressive social and/or familial situations. However, this does not change the overall picture²³.

The over-representation of separated children among asylum seekers clearly indicates the presence of some child-specific factors influencing migration choices. These vary both by country of origin and country of asylum, but are likely to include institutional factors such as

the disproportionate presence of separated children in trafficking and smuggling networks, relatively reduced likelihood of refoulement or return at the border of asylum states, and individual factors such as family selection of one of more children to flee where travel for the whole family is unaffordable. Other relevant factors are likely to be the growing autonomy of child casualties of war and the devastation of structural adjustment policies, pushing children to seek out survival opportunities abroad³². What emerges from this evidence is that the relative vulnerability of women and separated children as asylum seekers plays out differently in terms of access to asylum. No simple equation of vulnerability and relative access to asylum can be established.

The Outcome of Asylum Applications More or Less Successful

Access to an adjudication forum is necessary but not sufficient to gain asylum. It is only one measure of relative advantage or disadvantage. The outcome of asylum applications is the critical issue, and indeed claims that women are disadvantaged by international refugee law and asylum protection generally focus on this question by asserting that these two groups are less likely to have positive outcomes to their asylum applications than their adult male counterparts. The evidence in general, such as it is, does not support this claim¹⁵. According to the available information, female asylum seekers are not disadvantaged compared to their male counterparts; indeed, leaving aside their under-representation among the pool of asylum applicants just discussed, they appear to be relatively advantaged - they are more likely to gain asylum than men. According to UNHCR data for Sweden for 1995-1997, in each year female asylum applicants received a higher proportion of positive outcomes than male; exactly the same was true in Switzerland, according to available data between 1993 and 1996³¹.

A similar picture emerges from studies of available data in the Netherlands. Evidence consistent with these findings is available from Canada; for the calendar year 2000, the most recent for which figures are available, although women (accompanied and unaccompanied) constituted 39.5 per cent of referred asylum applications, they constituted 42 per cent of those recognized as refugees. Much less evidence is available to analyze asylum decisions and official treatment of cases of separated children. But the contrast with the coherence of the female asylum seeker picture is striking. No overall pattern of preferential treatment is discernable. The evidence shows that in some countries, such as Canada, children are, like women, relatively advantaged, but in the majority of countries they are not.

In some countries, such as the UK, there is no consistent pattern. In the UK there is a dearth of official statistical information about the outcome of separated child asylum applications, particularly remarkable given the detention of approximately 5000 separated children in immigration run 'shelters' and juvenile jails each year. There are also anecdotal accounts of lengthy detentions, often spanning several years, before asylum applications are determined, and the indeterminacy of many cases as children are eventually released to foster families with their cases still unresolved. In several other countries, there is evidence of a sizeable proportion of separated child asylum seekers amongst the illegal and undocumented population. This is both a reflection of entry strategies and a decision to avoid the likely unfavourable outcome of asylum applications, and of non-deportation or removal policies, which allow separated children, whose asylum cases are not determined or are refused, to remain in the asylum state in a limbo of illegality and impermanence.

Moreover, and this may be the most significant finding, anecdotal evidence shows that children's cases are much more likely to be left unresolved than their adult counterparts, 37 and that, as in the UK, they experience prolonged delays (and therefore uncertainty) in the decision making process. The empirical evidence therefore shows that women and separated

children cannot be aggregated as one ‘vulnerable’ group: women appear to do better than the norm, separated children in general do not, and in some cases they do worse.

Explaining the Differences

Various explanations are possible for these disparities. In the case of women, it has been suggested that their relative advantage is due to the greater severity of their claims (only women with the strongest cases overcome the additional hurdles that women asylum seekers face in accessing asylum systems), their relatively low numbers, their disproportionate origin from countries with high overall recognition rates, the use of gendered stereotypes in asylum advocacy, which generates a widespread perception of female applicants as more ‘vulnerable and dependent’ and ‘less adventurous’, that they are perceived as more credible, or simply that they are more likely to be given the benefit of the doubt. The available evidence suggests that gender-specific grounds for persecution, such as rape or other forms of sexual violence, or culturally based gender norms, are the basis of a very small minority of claims.

Overall, decision makers seem to accord women asylum seekers a relative advantage, and this finding is consistent across multiple different jurisdictions. For children, it has been suggested that the inconsistent picture is a function of the clash between two opposing normative frameworks - on the one hand, immigration and crime control preoccupations, which generate scepticism, even hostility to separated children, whereas on the other hand, the child protection and welfare concerns, which focus on the child’s minority rather than alien status, and promote a more receptive, inclusive approach to separated child asylum applications. The immigration control framework results in a restrictive approach where separated children are frequently assumed to be bogus before they are assumed to be in need of protection, ‘runaways or throwaways’ as the acting head of the UK Juvenile Department once commented. The child welfare framework militates in favour of guardianship and

fostering arrangements and against removal or deportation of separated children in the absence of known familial support structures.

These findings on outcomes of asylum applications by women and separated children, respectively, complement an aspect of the findings on access to asylum. They confirm that an assumption of either general advantage or general disadvantage as a vulnerable, non paradigmatic asylum seeker cannot be sustained⁵¹. What the evidence reveals is that while female asylum seekers have a relative disadvantage in gaining access to developed states, but a relative advantage in securing asylum once they do gain access and an application is made, separated children appear, on the evidence available, to be in the opposite situation: relatively privileged in securing access, but disadvantaged in being accorded the security of refugee status. These findings indicate differential decision making by members of the executive based on demographic criteria. As identity has become translated into a marker of rights, different identities deliver access to different rights¹⁶. To quote Yasemin Soysal, The intensification of transnational discourse and instruments of individual rights crystallizes around the idea of personhood: a conception of human persons in abstract, universal terms, supported by legal, scientific and popular conventions.

As a social code, personhood is not an idealistic, Hegelian notion, but one rooted in highly structured discourses, economies, and politics. Gender and minority as social codes operate differently. Both categories appear to benefit from reduced exclusionary pressure - child or women asylum seekers are less likely to be returned to their countries of origin following an asylum application. However, the mechanisms and reasons for this are quite different²⁵. It appears that female asylum seekers have relatively reduced chances of exclusion because they are more readily granted asylum; they benefit from favourable exercise of official discretion. Separated child asylum seekers are also less likely to be removed or deported, but this does not appear to be tied to positive asylum decisions. Rather,

it is because their legal proceedings are tortuous, prolonged and inconclusive; it appears, by contrast with adults, that they are more likely to find themselves in an irregular or inconclusive status, in a limbo of illegal impermanence²⁴.

The Operation of Bureaucratic Discretion – The Impact of an Internationalist Women’s Movement

In the case of gender, the gradual recognition over the last two decades of the specificity of women’s rights in general, and a gender aspect to persecution in particular, has had an impact on domestic opinion¹⁵. The researcher suggests that the operation of bureaucratic discretion in asylum adjudication, producing a consistent advantage for female asylum applicants, reflects this. The researcher do not suggest that gender-specific forms of persecution are therefore automatically or easily accepted as a ground for asylum; rather, that the fact of being female simpliciter skews decision-making discretion. This gendered awareness is a product of a complex process of norm evolution, resulting from the interaction of multiple political and legal factors: domestic civil rights and non-discrimination constitutional protections; human rights norm setting by domestic and international actors in multiple fora; and finally the development of gender specific norms, guidelines, and seminal gender-relevant case law by courts within refugee law itself²¹. Causal connections in the interplay between three sets of factors have usefully been identified: ‘bottom-up’ factors of domestic interest groups and societal norms; ‘top-down’ factors of international institutions of law, conferencing, and the United Nations system; and ‘transnational’ factors of principled issue networks and experts operating within the international refugee system.

Transnational factors themselves intersect with domestic ones: the transnational actors operate in a variety of different ‘law declaring fora’ and this process contributes to the internalization into domestic law and policy.⁴⁹ A complex combination of horizontal

exchange and vertical trickle up and trickle down are involved in providing a favourable context for female applicants. Official Inconsistency: Legacy of the Absence of a Broad-based Child Rights Movement By contrast with this acceptance of the relative legitimacy of women's asylum claims, the position of children as principal asylum seekers is weak. Children are not advantaged in asylum adjudication as women are. On the contrary, some of the evidence presented above suggested that they are disadvantaged, less likely to obtain the security of refugee status than similarly placed adults⁵¹. This relative disadvantage is particularly remarkable given the legal protection afforded to all children, whether accompanied or unaccompanied, by the Convention on the Rights of the Child. Separated children seeking asylum, unlike women, are viewed through a bifurcated, not a unitary lens, a perspective that derives from their complex position as poor, unattached, alien minors in the society.

On the one hand, they benefit from a protectionist framework, similar to vulnerable domestic children in need of care and guardianship: as a corollary of this approach they are considered both incapable of autonomous political agency as asylum seekers ('real children'), and at the same time non-deportable in the absence of established receiving social structures²¹. On the other hand, despite (or possibly because of) their isolation from supportive adult structures, they are viewed with suspicion and hostility, as street children and gang members have been, as delinquents, as 'pseudo-children', as more threatening than adults. The researcher suggest that an important reason why asylum protection is not consistently available for separated children is that there is no broadly based political force addressing children's rights across the board in the way in which feminist activism has addressed disparate women's rights⁴². Children's rights advocates have for long been divided. On one side are social workers, paediatricians or juvenile court lawyers who are preoccupied with domestic concerns, such as abandonment, abuse and neglect, school expulsions or

juvenile delinquency; on the other side, are child rights activists who focus on ‘international’ children’s issues, child war casualties, smuggling, abusive adoption practices, child soldiering or sexual trafficking, but do not address those same issues when they are imported into the domestic sphere via the presence of child asylum seekers or refugees.

Moreover, domestically, child welfare law and immigration/refugee law expertise have traditionally been quite separate in developed states. Only in the last couple of years have groups and networks, such as the British Refugee Council’s Children’s Section, the Separated Children in Europe project and a network of organizations in the US and Canada, started to develop a bridge across the child welfare/immigration divide, highlighting the punitive and exclusionary aspects of much government policy in this field and questioning the failure to acknowledge child-specific persecution in the interpretation of the refugee convention definition. In the UK, these networks have started pressing for legislative action to establish a coherent administrative framework for decision-making and care. One outcome of this work has been the production of the first substantive⁴⁸ ‘UK Guidelines for Children’s Asylum Claims’, announced 10 December 1998. Another product of the developing coalition on separated child asylum is the emergence of a small but growing body of affirmative decisions at children’s asylum appeals.

In the last two years alone, UK immigration judges have handed down decisions establishing separated child asylum seekers claims to refugee status on the basis of ‘membership of a Honduran street gang’, child abuse, forced marriage, risk of female circumcision and being sold into child labour. It is likely that in ten years time, the picture of decision making in separated child asylum cases will be significantly different from what it is today⁴⁵.

Differential Strategies for Inclusion

Asylum applications are a form of transnational claims making - claims that are 'not only justified by reference to universalistic parameters, but also legitimized with an appeal to loosely defined notions of public good'. Experiences outside the domestic sphere (persecution in the state of origin) are translated into identity based claims, and imported into the domestic sphere to make legal claims. The mechanisms whereby these claims are acknowledged are complex and dependent on a multiplicity of variables - domestic, international, social, legal and political. They reflect the interaction of multiple actors, ideas and political forces⁴¹. Even in a sharply contested and politicized field, such as that of asylum adjudication in today's exclusionary climate, there is considerable leeway for executive discretion, and for the operation of gender and other identity based assumptions to impinge on the distribution of rights. There are different processes by which marginalized identities are converted into rights claimants³¹. If the analysis offered above is correct, women and separated child asylum seekers encounter distinct discriminatory hurdles in accessing asylum protection. The strategies for increasing their chances of inclusion as refugees in developed states need to be correspondingly different.

In general (leaving aside particular hurdles relating to gender-specific persecution cases, which represent a minority of women's cases), women asylum seekers' distinctive disadvantages relate to access³⁷. The criminalization of migration, including of asylum seekers, exacerbates these difficulties; as the costs of commercial assistance with migration to secure asylum increase, so women, given their general socio-economic disadvantage, are disproportionately excluded, unless they use sex work as a way in. Measures to enhance women's access to asylum protection would include gender sensitive state policies in respect of overseas refugee admissions, vigorous transnational policies related to de-criminalization

of asylum and protection of victims of trafficking and smuggling exploitation, and, finally, non stereotypical views of gender in assessing persecution³⁹.

Internal and external political forces will be relevant to these measures in all cases. By contrast, for separated children, the asylum determination system itself rather than access to it is the main site of discrimination. This suggests different strategic priorities for increasing grants of asylum, strategies which again impinge on both domestic and transnational agents. Separated children need to have the specificity of their persecution acknowledged, as falling within the refugee definition, so that being inducted as a child soldier, threatened with imprisonment or physical abuse because of familial political affiliations, beaten as a street child, refused treatment as an autistic child, or sold as a child sex worker or domestic labourer are acknowledged as potential aspects of persecution⁵¹. This requires executive and judicial action, both at the domestic level, and in international government and IGO/NGO fora.

This substantive shift needs to be mirrored in procedural developments, which facilitate the inclusion of claims by separated children: access to legal representation, proficient translation services, and guardianship. where appropriate; child-friendly, timely proceedings with clear and determinate outcomes; curtailment of executive discretion to discount evidence of child-initiated political agency; the acknowledgement of asylum as an appropriate remedy for children, even very young ones; and finally, legal protections related to the asylum claim need to proceed in tandem with child welfare protections to secure suitable care arrangements in the host society, excluding imprisonment, expedited removal or exposure to the risk of exploitation by smugglers and traffickers⁴⁴. Interchange between a range of domestic and international initiatives and agencies will be critical to achieve these inclusionary changes; no simple top-down or bottom up model will produce the transformations necessary to expand protection for either of these two demographically distinctive groups of asylum applicant³⁴.

CHAPTER 3: METHODOLOGY

Introduction

The research methodology is a discipline responsible for developing knowledge, define and organize the techniques, methods and procedures to be followed during the development of a research process for the production of knowledge. This chapter explains the methods which brings the reader's attention to focus research and how the information was collected analyzed and classified, in order that the results are valid and relevant and meet the standards of scientific rigor. The research methodology in this sense is also part of a research project where they are exposed and reasonably describe the criteria used for the choice of methodology, be it quantitative or qualitative. In this research, the researcher has selected qualitative design.

Research Design

For this research, the researcher employed a qualitative research methodology and carry out secondary research. The qualitative methodology is used to address this research within the field of social sciences and humanities. As such, it focuses on those aspects that cannot be quantified, i.e., their results are not transferable to mathematics, so that is a more interpretive, subjective⁶⁹, as opposed to quantitative methodology procedure. Its method is inductive reasoning: it goes from the particular to the universal. In qualitative research, the primary data gathering techniques includes interviews, observations and focus group discussions. A misconception about the design of qualitative methodology is that lacks a theory or structure⁶². However, it is difficult to define how you must make a qualitative research design simply following rules methodological, since a comprehensive program could avoid the possibility of accommodate the unexpected, so, although it is important preparation prior fieldwork, as will be explained below, some flexibility is necessary to allow

the design suits the phenomenon being studied and may be necessary to modify once initiated research to get a more deep subject / object of study⁷¹.

For example, if we are conducting a focus group for data collection determined and in the development of this discussion group research discovered a person who would make an interesting in-depth interview (one key informant), although in principle we had not thought to make any, could include, as a method of data collection in our study, the interview in depth.

Because of this, qualitative research design called often design emerging as “emerge” on the fly. This means that the design can change as the investigation unfolds; the researcher is taking decisions based on what has been found and reflects the desire of that research is based on the reality and the views participants, which are not known or understood at baseline.

As already noted above, the qualitative researcher seeks to understand the studied phenomenon in its natural environment, the researcher being the main tool for the generation and collection of data, with which it interacts⁸³. Thus, throughout the research process, the qualitative researcher must reflect on their own beliefs and knowledge, and how they can influence the way to conceive the reality of the subject / object of study, and consequently influence the own research. This aspect will be discussed in the following chapters deep, in the case the issue of reflexivity of the researcher.

Qualitative research requires recognition of multiple realities and tries to capture the perspective of the subject. From this point of view, qualitative research is a very important fact the subject or the sources investigated. The results are very dependent on the emotions or exhaustive content analysis of information sources. Qualitative research allows different interpretations of reality and data. This is done because in such research analyst or researcher goes to the “scope” with an open mind, but this does not mean carry a conceptual basis, as

many think. Having an open mind allows redirect research at that time and captures other data types that initially had not thought of. In other words, qualitative research recognizes that the evolution of the investigated phenomenon may lead to a redefinition of new methods and in turn to understand. In qualitative research methods researchers try to describe not only the facts but to understand them through a comprehensive and diverse data analysis and always showing a creative and dynamic. Qualitative research studies the structural and situational contexts, trying to identify the underlying nature of reality, its system of relationships, their dynamic structure.

Data Collection Method

The research was based on secondary data collection.

Secondary Data

Secondary data is also highly important for this kind of research study where large amount of data is required to study the research topic. Secondary data is already collected data and available through secondary sources. Internet is one of the most commonly used sources for collecting secondary data. Large amount of data can be collected to study and investigate the research question of the study³¹. In this study, secondary data has helped in gaining an insight into the research topic and research question which forms the basis of the study. Secondary research has been an effective and major research method for collecting vast amount of data.

Reliability and Validity

The reliability and validity of the study are highly important for increasing the credibility and accuracy of the data collected by the researcher. According to Healy and Perry (2000), reliability is the consistency of the data which is achieved when the research

instrument gives same results when used again. Moreover, validity is the credibility of the research instrument which checks if it measures what it is supposed to measure. In this study, the reliability of the research instrument was achieved through matching it with the research question of the study.

Ethical Considerations

As a study of morality, ethics is primarily practical philosophy whose task is not exactly resolve conflicts, but to raise them. Neither the theory of communicative ethics and justice indicate a sure path to well-ordered society, or ideal community of discourse which postulate. And it is precisely this long road that lies ahead and which are which demands urgent and constant ethical reflection. Unethical conduct has no place in the scientific practice of any kind. It must be pointed out and eradicated. He who despises special interest in research ethics corrupts science and its products, and corrupts himself. There is general agreement on the need to avoid unethical conduct in the practice of science. It is better to do things right that make them evil. But the problem is not simple because there is no clear and undoubted rule. Fully ethics deals with conflict situations subject to moral judgments. Qualitative research shares many ethical issues with conventional research. Thus, the ethical issues apply to science in general are applicable to qualitative research. For example, what can be said of the relationship of science to the values of truth and justice is also successfully applied to this kind of research. Scientific practice as the practice of freedom is equal when performing qualitative research⁸³. However, the problems, methods and communication and dissemination of qualitative research raise some additional conflicts.

We can analyze the ethical considerations of qualitative research from some points. For this opportunity we will have specific values, some of the major ethical approaches and discuss the ethical review of research. Qualitative research recognizes the subjectivity of the

subject as a constituent part of his questing process. This implies that ideologies, identities, judgments and prejudices, and all the elements of culture permeate purposes, the problem, and the object of study, methods and tools. Even part of the selection of resources and the mechanisms used to make the presentation and dissemination of the results and interpretations of the study. The implications of this condition have large consequences. Apart from the difficulties already present in other types of research, qualitative research has additional challenges ahead.

Qualitative research in the human sciences investigates, as researcher indicated earlier, in the human condition. That means building knowledge as hosts - while avoiding falling into reductionism - the complexity, ambiguity, flexibility, uniqueness and plurality, the contingent, the historical, the contradictory and affective, including own conditions the subjectivity of the human being and his social nature. Such conditions are characteristic of the object of study in light of the qualitative approach, while values are also grown during the investigation. They are a good measure because the wealth of qualitative research depends on what we have so well captured and described these conditions in the search for meaning. Special mention deserves the dialogue.

From a qualitative approach, we accept that the purpose of the research is an interactive subject, motivated and intentional, who takes a position on the tasks facing. For that reason, research cannot ignore which is a process of communication between researchers and researched, a dialogue that takes different forms. Communicative Ethics examines many facets and implications of human dignity as a partner indicates the category of person, central in ethics, is expressed as a valid interlocutor, whose rights to reply and argument must be pragmatically recognized. And that basic mutual recognition is the vital element without which a person cannot come to the knowledge of the truth of the statements and the correctness of the rules. From here builds a theory of human rights and a theory of

participatory democracy. Also outlines a very fruitful notion of autonomy in various fields of social life. The point of arrival is that of individuals who, through their communicative competence, rationally entitled to participate equally in the discussion and decision rules to which they must submit. There are no rules to study these conditions in all cases. Each particular study should explore the specific case.

Conclusion

It is necessary to broaden the discussion on the general topic of the ethics of qualitative research. This includes all the ethical considerations that are relevant to science in general and also poses particular challenges. The main of them are related to the characteristics of human beings as individuals and as social beings. These challenges are best construed as we advance in the understanding of the principles and characteristics of qualitative research conditions, its subject, its epistemology and its methods. Ethical considerations are not an issue other than in qualitative research methods with which they are impregnated and confused. But to accept this is not enough. The ethical approach from which we start to delve into the subject may also be insufficient. To overcome this problem should be promoted at least two principles: first, the ethical analysis must be performed with various ethical theories, not just one, and second, the arguments and judgments must be built on the basis of the discussion held in conditions optimal.

CHAPTER 4: FINDINGS AND DISCUSSION

The researcher conducted qualitative research to attain the objectives of this research. From the secondary data researcher gathered information about women asylum seekers in United Kingdom. The data was analyzed by the researcher through thematic analysis.

Credibility and Sexual Violence

Rape was utilized as a manifestation of persecution in over a quarter of all cases in our example and sexual ambush in just about one in six cases. Altogether at any rate a third of the women in the example accomplished any manifestation of sexual violence or dangers of sexual violence regulated at them or a female relative⁷¹. In 75% of these cases state operators were in charge of the assault or sexual ambush and/or dangers. In excess of 75% of women who accomplished sexual violence or whose relatives accomplished sexual violence guaranteed asylum on political grounds or attributed political grounds alone or either ground in mixture with an alternate ground. Believability is an issue for women asylum seekers who have endured sexual orientation particular persecution, for example, sexual violence for a few reasons:

- Certain societies will be reluctant to reveal the experiences of sexual violence of women where preserving virginity of a women or marital dignity is considered as norm⁷⁵.
- Unless medical evidence is sought, these societies are unlikely to seek medical treatment for those women in their country of origin, or considering it to prioritize it in the first place.
- Women are hesitant to share their experiences about sexual violence as a form of persecution in their country of asylum too: However, particular difficulties are faced

by women in making their case to the authorities, particularly when they have had experiences which are painful and difficult to explain⁷³.

Torment and other abusive treatment can create a significant disgrace reaction.

Embarrassment and disgrace are regularly sought objectives of the abuser. This disgrace reaction may be a real obstruction to divulgence. Experience has indicated, for instance, that episodes of sexual ill-use may not become visible for a considerable length of time or even years⁸⁹. In one case in our example the caseworker had incredible trouble persuading her customer to unveil her encounter after the customer addresses her about being assaulted, which was after the Home Office had rejected the case. She had asserted asylum on the premise of ascribed political feeling and race/ethnicity. A master remarked (for an alternate case of the same ethnic beginning): “Assault viably brings disgrace clear as profound shame specifically into the inside of the spouse’s gang. The victimized person’s personhood is not just spoiled by the loss of individual virtue additionally their contribution with the foe of the country.”

The main coherent and custom street left [for the family] is rejection, and separating the lady who has endured the assault, or the murdering of the victim details and circumstances of her group assault by state powers were uncovered on offer however the case was rejected⁸³. In any case, because of the remarkable circumstances of her case including her extreme condition of trouble, the adjudicator emphatically urged the Home Office to allow her ELR. Such occasions require an asylum determination framework to embrace methodology that doesn’t punish women who think that it hard to unveil their encounters of assault; or pick not to discuss it to their relatives⁸¹.

Procedure and Practice in the UK

There is undoubtedly the treatment of women asylum seekers needs to be taken a gender at in the connection of the treatment of asylum seekers all in all. At the starting stage systems are intensely affected by an approach that expects to process asserts quickly and limit the quantity of conceivably effective asylum seekers by removing false claims from those that are honest to goodness at an early stage⁸⁵. For example systems vary as per the nation of root of the candidate. Sometimes candidates may finish a Self-Evaluation Form (SEF), in others, candidates are managed under a Standard Procedure that expect that their nation of cause is protected and that they are in this manner not in need of insurance. Under this method candidates are talked with on entry or as quickly as time permits from there on⁷⁵.

It was found from the exploration that whether the case for asylum could (and accordingly ought to) have been made in a third nation and a second to accumulate data in connection to the asylum claim. This is then utilized as the premise for a choice by the Asylum Directorate⁸⁶. On the off chance that it is judged that an application ought to have been made to an alternate nation the substantive realities of the case might never be considered in the UK. Respectable attention is set at this stage on narrative confirmation of character and nationality and on discovering evidently false papers. On the other hand, regarding the substance of women's asylum claims and specifically sexual orientation related persecution, there are still no particular procurements in accordance with those proposed by UNHCR⁸⁴.

Gender guidelines in the UK

There are no official gender rules on the determination of women's asylum guarantees in the UK and on related issues, for example, the behavior of starting meetings. In spite of the fact that the gender rules delivered by the Refugee Women's Legal Group (RWLG) in 1998

accommodate with best practice proposed by the UNHCR, there is no impulse on migration officers to utilize these. Different parts of authority method likewise neglect to make note of gender. For instance, the draft rules on legitimate representation that were issued by the Immigration and Nationality Directorate (IND) in 1996 and hence received by various ports and terminals concede lawful delegates and their translators as eyewitnesses just and make no stipend for the way that women outcasts may require unique backing⁷⁸.

The Home Office says it will give female mediator and questioner when operationally conceivable however there is no programmed right to a female questioner or translator and no prerequisite that there ought to be fitting offices for kids. There has been some positive advancement as of late⁷⁴. Toward the start of 2002 a preparation session on gender issues was conveyed to various senior caseworkers at the Home Office. Likewise, in 2002, the Home Office attempted a far reaching counsel process with the Refugee Women's Legal Group with the point of presenting a different gender rules.

UNHCR recommended best practices because policies and guidelines aim to bring the Appellate Authority into line. These guidelines were also adopted by other countries⁷². They aim

- First, they aim to make sure that claims of a women are well thought-out under the Refugee Convention so that the jurisprudence appropriately imitates the experience of both male and female refugees;
- Second, they make sure that the process of asylum determination can be accessed by both men and women and that the women asylum seekers are not prejudiced by procedures used or making it more complicated for them to present their asylum claims
- Third, to make sure that the judiciary knows the specific evidential issues which may be confronted by women asylum seekers and those proper steps are taken to overcome

them. Attention is given to routes in which disappointment to consider gender, (for example, talking with in the vicinity of a relative on account of an absence of childcare) may have encroached on thought of a claim at the starting stage.

Systems that are suggested for the bid stage incorporate procurement of a female mediator, procurement of a female board, listening to the case in more casual environment, listening to the case in chambers, barring relatives, not recognizing the litigant and asking for that proof on sexual violence ought to be given in composing or by feature join⁸⁶. The production of the IAA rules constitutes a critical advancement for women asylum seekers in the UK.

The most imperative issue, notwithstanding, is the degree to which rehearse at the introductory and claim stages affects on the determination of women's asylum claims. This study is a chance to recognize the current procedural issues influencing women asylums seekers focused around data separated from our specimen and the poll overview⁸⁶. The survey for caseworkers was likewise a chance to analyze whether there was, as indicated by professionals speaking to women asylum seekers, a pressing need to present gender rules in the UK and what different measures ought to be taken to guarantee that such rules are enough executed. This, we trust, will help advice leaders at the Home Office of samples of best practice to receive and execute.

Obstacles to Women Accessing the Asylum System

Various obstructions in the current asylum framework were found to hinder or keep women from looking for asylum in any case or, after they had made a case for asylum, from having the capacity to clarify their reasons for alarm of persecution at different phases of the asylum process⁸⁸. A few hindrances stem from misguided judgments women asylum seekers have because of absence of learning of the UK asylum process; for the most part, in any case,

they are down to earth and different issues coming about because of terrible practice and approach among Home Office staff furthermore leaders at request stage.

Lack of Knowledge about Women's Right to Seek Asylum

It was found from the examination that absence of learning about the asylum systems may lead women to take the wrong choice: one lady in our example guaranteed asylum three years after her landing in the UK. This respectable postponement was a vital variable in the Home Office's choice to reject her. She had clarified, be that as it may, that she had been prompted that she would not have the capacity to case asylum in light of the fact that she would need to pay legal counsellors which was past her methods. An alternate issue identified with information of methodology which influences access to the asylum framework - emerges when women look for security in the UK as a component of a family unit⁷⁷.

As of now there are no particular procurements in the UK to guarantee that women in this gathering are heard independently. Yet this is a significant issue as women in this circumstance are frequently not mindful of their own entitlement to claim asylum or are misdirected to trust it is better for them not to. As indicated by lawful agents, this absence of learning of the asylum framework prompts the discernment that women's rights to look for asylum are limited or that just the leader of a family unit (generally a male) is qualified for case asylum. Social obstructions are additionally a component in keeping them from making a case in their right⁸⁶.

Home Office Misleading Women

At times, on the other hand, the Home Office misdirects women into feeling that it is better for them to claim asylum as a dependant. A straight forward case was of a lady in our example who needed to claim asylum however was rash by the Home Office who let her

know it was better on the off chance that she guaranteed as a dependant of her spouse's case. She had a decently archived history of political activism⁷⁶. She sought asylum when she figured out she could make a case in her right. Actually when women get to be mindful that they have a case in their right, the Home Office is not generally agreeable.

Obstacles to Legal Representatives Advising Women to Make their Own Claim

Women who have landed with their husband or other relatives in the UK might just have a chance to make a different case if encouraged to do so by their own particular legitimate agents⁸⁷. A few delegates exhorted them not to do so: in one case in point, the candidate's first legitimate agent prompted her to withdraw her claim and depend on her spouse's application (she differ and reached Asylum Aid for representation. She later got exile status).

In fact, lawful delegates in our overview said that they were not generally in a position to encourage women to make a case all alone. The incredible larger part in our overview (85%) said they would dependably prompt their female customer that she has a right to make a case in her own particular right when managing a family application depending on a male's case for asylum⁸⁸. The same extent likewise said they generally look at this issue with their female customers. Then again, when gotten some information about the elements that could keep them from doing thus, a few impediments were referred to: They had found in their practice that women asylum seekers expected that the data imparted will be revealed to relatives or group through lawful agents, the Home Office and/or mediators.

Lack of Access to Legal Representation or Poor Legal Advice

Although several stressed that this problem is not peculiar to women asylum seekers, many highlighted that a good understanding of the issues raised in some women's cases is crucial.

Practical Obstacles to Women Accessing the Asylum System in the UK

Women's challenges in getting to the asylum framework can be just identified with useful issues which may bring about a lady's case for asylum being undermined. Yet, such issues regularly come from an absence of particular plans or methodology to consider women's particular needs⁷¹. A real issue recognized in our exploration was childcare game plans, the absence of which can have significant ramifications regarding women making a case for asylum, just going to questions, legitimate arrangements or court hearings, or uncovering delicate data.

In addition, the asylum meeting is a key open door for asylum seekers to advance their case for assurance in the UK and the numerous unfriendly circumstances under which this specific meeting was led could have genuinely affected on the route in which this lady had the capacity show her case⁶⁶. This sample and the aforementioned remarks by lawful agents demonstrate an absence of procurement for childcare courses of action despite the fact that they are pivotal in the connection of Home Office meetings or oral confirmation in gender-related persecution.

Disclosure of Information in Gender-Related Persecution

We have officially said that the embarrassing manifestations of ill-use women are subjected to an effect on their eagerness to make a case for asylum or to reveal significant data. Numerous legitimate agents in our review were concerned with revelation and

suspected that it was still a noteworthy obstacle for women asylum seekers particularly in the connection of an asylum framework that neglects to perceive the issues in question⁷⁴. The need to appreciation privacy is the principle reason said by legitimate delegates for holding a hearing .in cam, frequently in cases of sexual misuse or customers with HIV/AIDS who have not specified it to their gang. About two thirds of respondents said they now and then make an appeal for an .in cam hearing. The solicitation is made as per the way of the case and the wishes of the customer. One lawful agent likewise said that s/he would make such an appeal on the off chance that it helped customers who are rationally weakened.

CHAPTER 5: CONCLUSION

Both asylum detractors and advocates have raised legitimate worries about stretching the outcast definition to perceive gender-based persecution. Numerous faultfinders of this proposal express reasons for alarm that making another class of persecution will support another surge of exiles at United Kingdom outskirts and ports. Others, including a few lawyers who advocate for asylum applicants, are worried that any increment in the quantity of asylum candidates will bolster the current xenophobia, making new hardships for the foreigners and evacuees effectively living in the United Kingdom, while prompting new confinements in all movement approaches. 93 While these concerns are very disquieting, they can be alleviated via painstakingly drafted enactment and regulations, with info from advocates on numerous sides of the current verbal confrontations concerning asylum arrangement. At long last, disregarding these concerns, the United Kingdom ought to embrace this strategy for its philanthropic worth. As a country of outsiders with a solid “national strategy on human rights,” the United Kingdom ought not to keep on ignoring the situation of women enduring gender-based persecution around the globe.

As indicated by the consequence of an examination by ILPA, Immigration Officers hold gender generalizations which can figure out if or not a lady asylum seeker is viewed as real: . The gender of the candidate can have a huge effect on whether a candidate is thought to be truly in need of assurance. Women are expected to have no political character or apprehension of persecution which may be autonomous of companions and other male relatives. A boss movement officer at Gatwick demanded that women in creating nations are once in a while included in exercises which would go to the consideration of the administration. Such a view of the kind of contribution of women in creating nations neglects to perceive the diverse types of governmental issues women in non-western nations embrace and additionally the distinctive positions they possess in the realm of governmental issues.

All the more significantly, holding such perspectives preceding listening to the candidate and looking at the points of interest of her claim brings about the candidate being impeded at the start of her asylum application. As Patricia Tuitt depicted as of late, the issue is that an asylum framework has developed .in which people in general circle has been progressed as the essential site of the existed encounters of the outcast. It is a more extensive universe that displays the exemplary displaced person as developing principally from the positions of progressive and nationalistic developments or made religious associations. Regardless of the fact that saw from the purpose of the contemporary world, it is a universe sometimes occupied by women.

In the UK the Refugee Women's Legal Group Gender Guidelines (July 1998) and all the more as of late the Immigration Appellate Authority's Gender Guidelines (November 2000) have expressly focused on the specificity of women's encounters in the field of legislative issues, and the mixture of structures in which women can show their political challenge: for instance: Women may shroud individuals, pass messages or give group administrations, sustenance, dress and restorative consideration. 1.3). Women's role in the public arena implies that they may be more dynamic in manifestations of political movement seen all the more regularly as being inside women's area or in keeping with women's parts. It is important to guarantee that .political assessment. Is translated to incorporate women's political exercises. 3.21). this segment uncovers the differing qualities of reasons that urge women to escape their nation and their family some of the time leaving their youngsters. It incorporates a quantitative investigation of the grounds on which women in the example have based their asylum application; the way of serious damage accomplished; the personality of the abuser and also the area of the ill-use. Also for every class of asylum seekers (as indicated by the grounds on which they asserted asylum), it additionally gives a picture of their conclusion at introductory choice level or post-choice stage.

The profile of women asylum seekers in the UK uncovers a gathering genuinely like the general asylum looking for populace regarding age and district of root. The dominant part is hitched yet there is likewise a noteworthy extent of single women. Additionally the greater part has no kids at the time of their asylum application in the UK. Most have finished auxiliary instruction yet a huge minority (about 45%) has likewise finished advanced education/school or degree level training. Most women originate from nations with known records of human rights infringement either in the setting of common war or under severe administrations. They have frequently endured customary manifestations of ill-use, notwithstanding gender-particular types of ill-use, for example, sexual attack and assault. Women's asylum cases are typically unpredictable and regularly focused around more than one ground under the 1951 Refugee Convention. Yet as a rule, the choice to reject women asylum seekers insurance under the 1951 Refugee Convention is made on the premise of a gender-visually impaired methodology to their case. In the general setting of low quality choice making of asylum claims in the UK, seventy five percent of women are denied asylum at starting choice stage. However over a large portion of cases decided do get exile status or ELR in the wake of engaging against the beginning choice. Procedural matters are additionally averting women asylum seekers exhibiting their case sufficiently. They confront deterrents regarding getting to the asylum looking for methodology, in the process of the certainty discovering process in connection to their cases for asylum furthermore as far as lack of awareness of issues re: gender-related persecution. Essential procurements, for example, childcare and female mediators/questioners are regularly not accessible. Medicinal reports are regularly not considered before an introductory choice is made.

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