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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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INTERPRETING THE REASONABLENESS IN APPLYING INTERNAL FLIGHT ALTERNATIVE IN INTERNATIONAL REFUGEE LAW

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ABSTRACT

The core principle of non-refoulement is mentioned in Article 33 of The 1951 Refugee Convention. But on a regular basis, leading legal frameworks like UK and Canada structurally violates this principle and forces refugees to return on grounds of Internal Flight Alternative. It is a concept developed by the west that refugees can be returned if they can be safely relocated in some other part of their country. For instance, Nigerian women who flee domestic violence are routinely told by Refugee Appeal Division of the Immigration and Refugee Board of Canada (IRB) that they can find safe haven by relocating themselves to Abuja or Lagos. While on pen and paper it sounds easy but its implications in reality are harsh. The reasonableness in applying this concept is questioned. This legal research is aimed at interpreting this reasonableness according to different countries. In this research, Doctrinal and Comparative Methodology is used. This research will analyse different jurisprudence and reflect on the problems faced by these refugees.

Keywords: Internal Flight Alternative (IFA), The 1951 Refugee Convention, Non-Refoulement, Reasonableness, unduly harsh

INTRODUCTION

The 1951 Convention on Status of Refugees, also known as the International Refugee Convention established The International Refugee Laws. It protects the basic rights of refugees worldwide who flee from their own country due to war, persecution, genocide or any form of violence. One of the core principle which protects refugees is non refoulement. It is a customary international law which

means the principle of non refoulement is applicable to all countries irrespective of the fact whether they are signatories of International Refugee Convention or not.¹ No country can coercively return asylum seekers. But it is interesting to know how this customary law is structurally violated by leading countries. The legal framework of these countries have produced a concept justifying their basis of returning asylum seekers.

It is called the Internal Flight Alternative, IFA.² It is a concept which elucidates that an asylum seeker may be denied refugee status on grounds that the person at risk of persecution in one part of their country can be safely relocated in some other part of their country.³ This concept is extensively used by Canada, United Kingdom, European Union Member States and also by USA, Germany, Australia to revoke refugee status. If thought critically it is in contradiction to the core principle of non-refoulement as expressed in International Refugee Laws.

The asylum seekers in these countries, who are already suffering from fear and trauma are refused shelter. They are told to return in the very same country from where they escaped. They are denied their rights very structurally, they approach the authorities, the legal system but the act of return is justified by them on grounds of safe relocation. How is it logically safe to return an asylum seeker if they are fleeing from a civil war? And they are told that the war is not taking place in other of the country so they are ought to rehabilitate themselves there. The fear remains in their minds. No one can guarantee that the violence in one part of the country will not reach the other part of the same country.

Sighting this problem of refugees who lack home and shelter during disaster, violence, political instability, genocide etc. the legal research project aims at interpret the “reasonableness” behind

¹ UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, (31 January 1994) para 1 <<https://www.refworld.org/jurisprudence/amicus/unhcr/1994/en/20625>> accessed 12 October 2025

² The concept of the ‘internal flight alternative’ (IFA) is also referred to as the ‘internal protection alternative’ (IPA) or the ‘internal relocation alternative’(IRA). It is referred to as the ‘internal flight alternative’ (IFA) in this article.

³ James C. Hathaway and Michelle Foster, *Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination [Global Consultations on International Protection/Second Track]*, -, UN High Commissioner for Refugees (UNHCR), (1 August 2001) <<https://www.refworld.org/policy/strategy/unhcr/2001/en/18860> > accessed 12 October 2025

applying IFA by countries and leading legal frameworks. We will structurally understand the concept and examine different cases to find the judicial decisions that shaped IFA. It has to be discussed under a legal framework to scrutinize the reasonability test/safety test as used by different countries in applying IFA and study the societal impact such as the undue hardships it brings in the life of refugees. This research work uses Doctrinal and Comparative Methodology.

CONCEPTUAL UNDERSTANDING OF IFA

To understand the origin of IFA let us first refer to the definition of “Refugee” in Article 1A (2) of the 1951 Refugee Convention. A ‘refugee’ as a person who:

“Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”⁴

It is very evident that there is nowhere in the articles of the convention mentioned about the concept of IFA. It was only during the 1970s Dutch and German Cases from where the IFA concept originated. These cases involved religious minorities in Turkey (who were not persecuted in urban areas), as well as claimants from Sri Lanka, Lebanon, and Ethiopia.⁵ In 1979, shortly after the first Dutch and German cases emerged, the United Nations High Commissioner for Refugees (UNHCR) produced its Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Handbook), which included the following statement in paragraph 91:

“The fear of being persecuted need not always extend to the whole territory of the refugee’s country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he

⁴ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 1A(2).

⁵ Pia Zambelli, Internal Flight Anarchy: Points of Divergence from UNHCR Guidelines in Canadian Decision Making, *International Journal of Refugee Law*, Volume 36, Issue 3, October 2024, Pages 248–250 <<https://doi.org/10.1093/ijrl/eeae032>> accessed 12 October 2025

could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so.”⁶

Some have located the concept of IFA in the “well founded fear of being persecuted” clause of the definition. While fear is a subjective emotion, for purposes of refugee status determination, it must be well-founded; that is, it must have an objective basis. One aspect of the well-founded fear element which has given rise to particular problems in recent years is that of determining when a person ought reasonably to move to another part of the country and live safely there, rather than exercising his or her right to seek asylum from persecution outside his or her own country. In some jurisdictions this notion of IFA has been used, incorrectly, to deny refugee status to persons who are in fact entitled to it. This occurs particularly when the concept is used as a bar to access to asylum procedures for whole groups of individuals. The analysis is rather one which must be applied on a case-by-case basis, taking into account all the individual circumstances of the case.⁷

There is high possibility that an individual who is “safely relocated” back to their own country will again face systematic discrimination and undue hardship. Therefore the safety parameter and the reasonableness has to be determined on a case to case basis considering the subjectivity instead of using it as a stand alone principle in revoking refugee rights. Perhaps in response, in 1999 UNHCR provided further clarification and reservations in relation to the IFA concept:

“The internal relocation notion, which advocates staying within the borders of one’s own country and trying to find safety there, rather than leaving and seeking asylum abroad, rests on understandings which are basically at odds with those underlying the fundamental refugee protection principles. For this reason, UNHCR cannot agree that internal relocation amounts to a ‘principle’ of refugee law; it is rather, in UNHCR’s view, a factor or possibility to be analysed in the course of status determination in some individual cases. Caution has to be exercised where this

⁶ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (1st edn, September 1979) (Handbook) para 91 (emphasis in original). < <https://www.unhcr.org/in/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967> > accessed 12 October 2025

⁷UNHCR, *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001, para 11,12 < <https://www.refworld.org/policy/legalguidance/unhcr/2001/en/29198> > accessed date 12 October 2025

notion is involved, not least because of its potential incompatibility with the right to seek and enjoy asylum from persecution.”⁸

CASE LAWS

Januzi v. Secretary of State for the Home Department & Ors, 2006⁹

The cases of Januzi, Hamid, Gaafar, and Mohammed v. the Secretary of State for the Home Department, which were heard together by the UK House of Lords

Facts:

our foreign nationals ("the Appellants") sought refugee status in the United Kingdom. Each had endured, or was likely to endure, ethnically-based persecution in his home region:

- Appellant 1 - an ethnic Albanian from Kosovo who fled Serb persecution in Mitrovica and claimed he could not safely or humanely relocate to Pristina because of fragile mental health.
- Appellant 2 - a member of the Zaghawa tribe from Darfur who lost close relatives in Janjaweed attacks and feared renewed persecution if returned anywhere in Sudan.
- Appellant 3- a black African from Darfur whose village was twice attacked; he feared discrimination and violence if obliged to live in Khartoum.
- Appellant 4- a Zaghawa tribesman who alleged links to the Sudanese Liberation Army and feared persecution both in Darfur and Khartoum.

The Secretary of State denied refugee status in every case, relying on IFA (Pristina for Appellant 1; Khartoum for the others).

Legal Question:

When assessing whether internal relocation is "reasonable" or would be "unduly harsh" must decision-makers compare the civil, political and socio-economic rights available in the proposed place of relocation with the rights protected by major international human-rights instruments?

⁸ UNHCR, 'UNHCR Position Paper on Relocating Internally as a Reasonable Alternative to Seeking Asylum (The So-Called "Internal Flight Alternative" or "Relocation Principle")' (9 February 1999) <<https://www.refworld.org/docid/3ae6b336c.html>> accessed 12 October 2025.

⁹ Januzi v Secretary of State for the Home Department & Ors [2006] UKHL 5

Judgement:

The appeal for appellant 1 was dismissed but allowed for other 3 appellants. The House of Lords reasoned that the assessment of internal relocation for asylum seekers should be based on the conditions within their own country, rather than a comparison to international human rights standards.

LANDMARK JUDGEMENTS

Thirunavukkarasu v. Canada 1994¹⁰

Facts:

The appellant Thirunavukkarasu was a Tamil origin Sri Lankan who faced threats from Liberation Tigers of Tamil Eelam (LTTE) a militant group operating in his home town, i.e. in the northern part of Sri Lanka. He claimed Refugee status in Canada. The Convention Refugee Determination Division (CRDD) denied his claim providing the reason that he can safely relocate to the capital Colombo. This forced Thirunavukkarasu to appeal the Federal Court.

Legal Question:

The application of IFA cannot be only theoretical, can a person facing persecution reasonably relocate in that same country?

Judgement:

The Federal Court of Appeal overturned the case and gave ruling in favour of the appellant. The court recognized that application of IFA is not only theoretical but it has to be realistic and consider the circumstances. The court arrived at the decision that it would be unduly harsh to return a claimant to another part of the country if it exposes him/her to undue hardship. This judgement established the Internal Flight Alternative test.

¹⁰ Thirunavukkarasu v. Canada (Minister of Employment and Immigration) [1994] 1 FC 589 (CA)

Karanakaran v. Secretary of State for the Home Department, 2000¹¹

Facts:

The appellant, Mr. Karanakaran, was a Tamil from Sri Lanka who sought asylum in the United Kingdom. He claimed a well-founded fear of persecution based on his ethnicity and past experiences during the civil war in his home country.

The Secretary of State refused his application, and a subsequent appeal to a Special Refugee Adjudicator was also dismissed. The lower courts and the Secretary of State had approached the evidence by looking at individual facts and deciding whether they were "true" or "false" on a balance of probabilities. If a specific fact couldn't be proven to that standard, it was often excluded from the final assessment of risk.

Legal Question:

When determining if an applicant has a "well-founded fear of persecution," should the decision-maker apply the civil standard of proof (the balance of probabilities) to individual historical facts?

Judgment:

The Court of Appeal allowed the appeal, clarifying that the rigid "balance of probabilities" standard is inappropriate for asylum cases. The court held that decision-makers must consider the evidence as a whole. Even if a specific past event cannot be proven for certain, if there is a possibility it happened, it should still be weighed in the overall assessment of future risk.

RECENT CASE

ASJ (Somalia) v Secretary of State for the Home Department, 2025¹²

Facts:

The appellant, ASJ, a Somali national, fled his home area in 2014 due to fears of Al-Shabaab and eventually reached the UK after his asylum claim was rejected in Sweden. The Home Office refused his asylum claim, arguing he could safely relocate to Mogadishu. Both the First-tier and

¹¹ Karanakaran v Secretary for the Home Department [2000] IATRF 99/0759/C

¹² ASJ (Somalia) v Secretary of State for the Home Department [2025] EWCA Civ 282

Upper Tribunals dismissed ASJ's appeals, with the Upper Tribunal concluding that relocation would not be unduly harsh.

Legal Question:

The central legal question for the Court of Appeal was the appropriate standard for evaluating the reasonableness of internal relocation. While ASJ's team argued for giving the appellant the benefit of the doubt regarding his claim of no support network, the Secretary of State maintained that it required a holistic judgment of all circumstances.

Judgement:

The Court of Appeal dismissed ASJ's appeal. The court emphasized that the assessment of internal relocation should be a broad, evaluative, and holistic process, considering all relevant factors. The court found that the Upper Tribunal was justified in drawing inferences, such as the likelihood of undisclosed family or clan links in Europe who could provide financial support in Mogadishu, based on ASJ's journeys to the UK. The court also considered country guidance cases that highlighted the existence of Somali family and clan networks between the diaspora and those in Mogadishu.

REASONABLENESS TEST

Usually, the tribunals deny on giving the claimants refugee status by establishing the fact that their problem is local and that they can simply avoid it by relocating themselves to some other part of the same country. But they overlook the social, economic and political conditions which forces them to flee. The higher courts had in such cases (*Thirunavukkarasu v. Canada*¹³, *Karanakaran v Secretary for the Home Department*¹⁴) made it clear that application of provisions of IFA must be made only after thoroughly assessing the asylum seeker's ability and willingness or the socio-political situation of the country is stable enough that they can safely relocate themselves without facing any undue hardship. Therefore, the reasonableness test for IFA or simply the IFA test must

¹³ *Thirunavukkarasu* [n 10]

¹⁴ *Karanakaran* [n 11]

consider that it won't be unduly harsh after their return, the claimant has the mental, physical and economic ability to rehabilitate themselves once again.

IMPACT ON REFUGEES

Refugees already suffer from trauma and pain, when they are denied their status and forced to return their rights are structurally violated, moreover if returned they remain internally displaced which anyway doesn't improve their well being. They are more harassed with the burden of proof while fighting to get refugee status. It takes more pain for them to establish their fear again and again before the court. The impact is directly inflicted on their mental health.

CONCLUSION

The research findings reveal that there is a need to limit the usage of IFA in denying the refugee rights. The provision of IFA is being used by those countries who receive a lot of refugees (e.g. Canada, UK). The principle of non-refoulement must be adhered to as an international customary. From the view of State, if accommodating too many refugees is a problem then instead of deporting them states can use other mechanisms such as integration schemes (e.g. as practiced in Ireland) to help them diffuse in the society and live a normal life, in this way states can deal with huge influx of refugees instead of denying them of their rights and the refugees also overcome their trauma and lead a better life and not feel hostile. India also receives refugees from its neighbouring countries whenever they undergo civil war, India had historically provided these refugees asylums but it had caused a lot of problems in controlling population, so India can also think of applying refugee integration programs to help the integrate into the society.

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