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Access to Justice for Migrants and Refugees

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ABSTRACT

This Research study delves into the intricate landscape of migration and asylum law, focusing on access to justice for refugees and migrants in India. Against the backdrop of India's history of hosting migrants and refugees from neighboring countries, the research navigates legal frameworks, challenges, and international obligations. The literature review highlights the contemporary "perfect storm" of climate change, food insecurity, overpopulation, and terrorism influencing migration patterns. Employing secondary research methods, the paper analyzes legal and bureaucratic barriers in India, immigration policies' impact on justice access, and the effectiveness of international legal frameworks. Case analyses underscore the dichotomy between challenges and judicial efforts to protect the rights of migrants. The paper concludes with recommendations, emphasizing the need for legal aid centers, cultural sensitivity training, language access, outreach programs, NGO collaboration, legal clinics in refugee camps, and policy advocacy. The study underscores the imperative for a dedicated Refugee Law in India and global cooperation to address the evolving complexities of forced migration.

Keywords: *Non- Governmental Organization, Refugee Law, Migration Law, Policy advocacy, United Nations Conventions.*

I. INTRODUCTION

India is a neighboring country to 6 other countries sharing border with Pakistan, china, Nepal, Bhutan, Bangladesh and Myanmar. It has its own history or background on how the refugees and migrants from all over the countries have settled down in the nation. There are various reasons for the same and they could be economic opportunities, political instability, conflict and persecution. The settlements of migrations have culturally contributed to the country but it also has presented its own challenges and issues related to legal status, rights and integration.

In the complex landscape of immigration and asylum law, the issue of access to justice for migrants and refugees holds paramount significance, particularly within the jurisdiction of the Republic of India. As the world witnesses unprecedented migration patterns and an increase in forced displacement, understanding the legal frameworks and challenges surrounding the access to justice for these vulnerable populations becomes imperative.

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By navigating the intricate web of statutes, precedents, and international agreements, this legal inquiry seeks to contribute to the ongoing discourse on fostering an environment that upholds the principles of justice and equity for migrants and refugees in India.

(A) Literature review

The protection of refugees' human rights stands as a significant global challenge. As articulated in Article 1 of the United Nations Convention on the Status of Refugees, refugees are individuals who, due to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion, find themselves outside their country of nationality. {Sinha, Manoj Kumar, 2014}

The convergence of climate change, endemic food insecurity, overpopulation, and terrorism, coupled with advancements in technology facilitating easier communication and movement, creates a "perfect storm." This complex scenario goes beyond the conditions envisaged when the Refugee Convention was established. The interplay of these factors contributes to a significant and intricate flow of migrants, asylum-seekers, and refugees. The challenges posed by this multifaceted context highlight the need for a nuanced and adaptable approach to address the evolving dynamics of displacement.

(B) Research methodology

For these research paper, various sorts of methods were used which are all secondary in nature, like review of various literatures related to Migrants and refugees, they were in the form of article, research papers by scholars and other relevant sources like blogs. There was even some case study done on precedent judgments formed on the basis of Courts conscious. An insight on historical development of the topic was paid attention with the current issue in hand.

(C) Research questions

1. Whether the legal and bureaucratic barriers impact the access to justice for migrants and refugees in India?
2. Whether the immigration policies and enforcement practices impact the ability of migrants and refugees to access justice, particularly in cases of human rights violation?
3. Whether the international legal frameworks and treaties are effective in ensuring fair and equitable access to justice for migrants?

II. ANALYSIS

1. Whether the legal and bureaucratic barriers impact the access to justice for migrants

and refugees in India.

Brief summary of the historical and contemporary conveyance of the migrant settlers in India

Today:-

- One of the significant historical events leading to migration was the partition of British India in 1947, which resulted in the creation of Pakistan. Mass migrations and displacement of populations occurred, with Hindus and Sikhs moving from newly formed Pakistan to India and Muslims moving from India to Pakistan.
- In the late 1950s and early 1960s, a significant influx of Tibetan refugees, including the Dalai Lama, arrived in India following the Chinese occupation of Tibet. India provided asylum to Tibetan refugees, and many settled in various parts of the country.
- Later in the contemporary era, Economic factors and political instability in Bangladesh have led to migration to India, especially in bordering states. Some migrants seek better economic opportunities, while others flee persecution.
- During the civil conflict in Sri Lanka, particularly in the 1980s and 1990s, a significant number of Sri Lankan Tamils sought refuge in India. Many settled in Tamil Nadu, and some continue to live in refugee camps.
- Later on few small groups started to emerge like the Afghans, due to Political instability and conflict in Afghanistan have sought asylum and resettlement in India.
- In recent years, Rohingya Muslims from Myanmar have sought refuge in India due to persecution in their home country. This has led to complex issues related to their legal status and rights.
- India is also a destination for migrants from various countries seeking economic opportunities, education, or refuge. The cosmopolitan nature of cities like Mumbai, Delhi, and Bengaluru reflects the presence of a diverse migrant population.

There are various legal and bureaucratic barriers for the migrants and refugees in India and some of them are Citizenship Amendment Act (CAA), National Register of Citizens (NRC), Foreigners Tribunals, Detention of Foreigners and lastly no proper refugee law in the country. The Citizenship Amendment Act, enacted in 2019, provides a path to citizenship for non-Muslim migrants from neighboring countries (Pakistan, Afghanistan, and Bangladesh) who

entered India before December 31, 2014. This Act discriminates against Muslim migrants and refugees, going against the principles of secularism enshrined in the Indian Constitution. The National register of citizens created other hindrances as it aims to identify and exclude undocumented immigrants, potentially impacting the status of refugees and migrants, especially those who may struggle to provide the required documentation. The conditions in these detention centers where individuals declared as foreigners have been a subject of concern, with reports of overcrowding and inadequate facilities. The detention of individuals, including refugees, without a clear legal framework has raised human rights issues. India does not have a specific legal framework for refugees. The absence of a comprehensive refugee law has led to challenges in providing protection and support for refugees. The legal status and rights of refugees often depend on ad-hoc government policies and are subject to change.

But again it is important to know that, the judiciary has been doing its best to uphold the justice and human rights of the migrants. In the case of National Human Rights Commission (NHRC) vs. State of Arunachal Pradesh (2013), the displacement of Chakma and Hajong refugees in Arunachal Pradesh. The refugees, originally from Bangladesh, faced resistance in being granted citizenship and were living in camps for an extended period. The Supreme Court, in its judgment, emphasized the need for a humane approach towards the refugees. It directed the state government to provide basic amenities to the refugees and expedite the process of their citizenship. The court emphasized the importance of protecting the human rights of refugees and ensuring their dignified living conditions.

2. Whether there are polices and regulations in place for the migrants and refugees to access justice, particularly in cases of human rights violation?

But again it is important to know that, the judiciary has been doing its best to uphold the justice and human rights of the migrants. There are a few precedents where we find the rights of the migrants and refugees in cases of human rights violation. National Human Rights Commission (NHRC) vs. State of Arunachal Pradesh (2013)², is a landmark judgment case where the displacement of Chakma and Hajong refugees in Arunachal Pradesh. The refugees, originally from Bangladesh, faced resistance in being granted citizenship and were living in camps for an extended period. The Supreme Court, in its judgment, emphasized the need for a humane approach towards the refugees. It directed the state government to provide basic amenities to the refugees and expedite the process of their citizenship. The court emphasized the importance of protecting the human rights of refugees and ensuring their dignified living conditions.

² NHRC v. Arunachal Pradesh, AIR 1996 (1) SCC 742.

In the case of *Digbijay Mote v. Union of India*³, a non-governmental organization (NGO) operated a school for Sri Lankan refugees. A Public Interest Litigation (PIL) was initiated due to challenges in maintaining the school. In response, the Ministry of Women and Social Welfare offered financial assistance to support the school.

In *Malvikar Karelkar v. Union of India*⁴, the court ruled that basic amenities such as food and medicines must be provided to refugees who are in detention. This decision underscores the importance of ensuring essential needs for individuals in refugee detention.

3. Whether the international legal frameworks and treaties are effective in ensuring fair and equitable access to justice for migrants?

Various international declarations, conventions, and regional laws are in place to address the rights and protections of refugees and displaced persons. Key among them are the Convention relating to the Status of Refugees (1951) and its Protocol (1967), which define refugee status and outline associated rights. The Convention relating to the Status of Stateless Persons (1954) focuses on the rights of stateless individuals, while the UN Declaration on Territorial Asylum (1948) emphasizes the right to seek asylum.

Additionally, the Universal Declaration of Human Rights (1948) establishes fundamental human rights principles applicable to all individuals, including refugees. The Convention on the Elimination of Discrimination against Women (1979) specifically addresses gender-related aspects of refugee protection, ensuring equal rights for refugee women. The International Covenant on Civil and Political Rights guarantees civil and political rights for all, including refugees.

The effectiveness of international policies in safeguarding the rights and ensuring justice for refugees is a complex and multifaceted issue. While foundational frameworks like the Refugee Convention set crucial standards, their impact is contingent on the commitment of individual states to implementation. Varying political will, resource constraints, and sovereignty concerns can impede the full realization of international obligations. Enforcement mechanisms, both at the global and regional levels, face challenges, limiting their capacity to ensure robust accountability. The evolving dynamics of displacement, marked by climate change, overpopulation, and terrorism, pose new challenges that may not be adequately addressed by existing policies. Humanitarian efforts and the crucial role of non-governmental organizations in immediate assistance and advocacy are essential, but they also grapple with resource

³ *Digbijay Mote v. Union of India*, AIR 1993 (4) SCC 175.

⁴ *Malvika Karelkar v. Union of India*, AIR 1992 SC 583.

limitations and geopolitical complexities. Achieving a truly effective international response requires global solidarity, coordinated efforts, and a willingness to adapt policies to address the contemporary complexities of forced migration.

III. RECOMMENDATIONS

A few changes or focus that can be done to provide better access and justice to the migrants and refugee and mentioned below:-

- Establish and support legal aid centers specifically designed to cater to the needs of migrants and refugees. These centers can provide free or low-cost legal assistance, advice, and representation.
- Provide cultural sensitivity training to legal professionals, judges, and law enforcement officers to enhance their understanding of the unique challenges faced by migrants and refugees.
- Ensure language access by providing interpreters and translators in legal proceedings. Language barriers can be significant obstacles, and addressing them is crucial for effective communication and representation.
- Conduct outreach programs to educate migrants and refugees about their legal rights and available support services. This can include workshops, informational sessions, and the distribution of educational materials.
- Collaborate with non-governmental organizations (NGOs) that specialize in migrant and refugee rights. These partnerships can enhance the reach and effectiveness of legal support services.
- Establish legal clinics within refugee camps to provide on-site legal assistance. This can address the challenges faced by those living in camps who may have limited access to legal resources.
- Engage in policy advocacy to influence legal frameworks that impact migrants and refugees. Work towards the development and implementation of inclusive and protective policies.

IV. CONCLUSION

I would conclude by stating that even though, across the globe, there are numerous conventions and legal frameworks governing refugees, challenges persist for individuals seeking refuge. The absence of a dedicated Refugee Law in a sizable nation like India suggests a commonality

among countries grappling with similar issues. Collaborative efforts between UNHCR and NHRC could significantly advance the field of Refugee Law. India, lacking a specific law for refugees, should consider establishing one to address potential future challenges arising from various factors. Active NGO involvement is crucial whenever UNHCR undertakes initiatives related to refugees. While constitutional articles provide some protection, the necessity for a comprehensive and uniform law, ensuring equal rights for all refugees, is evident. India maintains a humanitarian approach to refugee issues, emphasizing the importance of considering security concerns that prevent its endorsement of the 1951 Convention. It is essential to prevent the misuse of refugee laws by those seeking opportunities while ensuring the fair treatment of genuine cases. Several legal judgments in India support refugees, reflecting the nation's positive efforts, but there remains a need for further actions and enhancements in this regard.

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