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The Issue of Illegal Immigration and Laws in Relation and Critical Analysis of Indian Problem

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ABSTRACT

The present article deals is a critical analysis of the problem of illegal immigrants, their causes and solutions (legal) and critically analysing the Indian condition. illegal immigration has become a global issue Migration is not a new phenomenon. It is, however, more than ever before, a global phenomenon that is closely related to a number of other globalization processes in both its causes and its effects. One out of every 35 persons in the world is a migrant, or almost 3 percent of the global population. People tend to take illegal measures to cross territories because of the difficulty in acquisition of permits. Smuggling and human trafficking, are one of the most common means of illegal immigration. The rise in the illegal immigrants is due to the factors including interstate violence. Unstable governments, bad economic conditions etc. the major waves of immigration is seen in the su-saharan Africa, countries in the Horn of Africa region, Latin American countries, Afghanistan and countries in the southern Asia namely Indonesia.

Keywords: Immigration, Illegal.

I. INTRODUCTION

Illegal immigration is something which cannot be ignored in the present times. It is one of the most pressing issue which is needed to be addressed. Politicians use this issue as their leading propaganda to win support. Immigration is something which is happening from time immemorial. People tend to leave their homes to find better and safe surroundings be it the Aryans who travelled across the globe in search for better lands and later got settled in Indian Peninsula or the Europeans who travelled to Americas in search of farmable lands i.e it is a proven fact that immigration of people is inevitable.

But one of the most pressing issue is that in the contemporary world because of the boundaries established by different countries the immigration has become very difficult and people tend

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to take alternate means which are primarily illegal to migrate from one place to another in search for peace. In the present contemporary world there are majorly three major waves of illegal immigration happening. The first wave is from the Latin America specifically countries like Honduras, Ecuador, Mexico and Columbia to United States Of America and Canada. The people there immigrate to run from the violence happening in their own countries.

The second wave which shall be discussed in this paper is of the illegal immigration of the people from the Mediterranean i.e countries like Syria, Libya, Iraq, Iran and Horn of African Countries like Somalia, Ghana to European countries like England, Germany, France, Netherlands, Sweden, Norway, Switzerland etc. for safety of their life and security from the ongoing religious and oil wars in the middle eastern countries. And the third wave discussed is of immigration in south Asia that is Pakistan, Afghanistan, Indian immigrants running to Europe and America and Rohingya, Bangladeshi immigrants coming to India.

In the Paper the complete historical background of the immigration waves is discussed along with critical analysis of the various laws prevalent in various recipients countries is evaluated as to which laws are in accordance with the humanitarian principles and which are against it and what are the problems received by the immigrants upon reaching the desired countries is observed also what is the public opinion and view of the recipient country is observed so as to make an overall generic understanding of this prevalent issue of illegal immigration. Keeping in mind the laws and principles of the different countries all around the world. A proper sound logical reasoning shall be constructed with legal connotations for India so as to deal with the problem of illegal immigration and draw a proper law for the same.

(A) Statement of Problem

The present problems deals with the issue of illegal immigration on global scale dealing with the causes and solutions of the problems taken by various states. For simplicity two waves of illegal immigration is analysed. The first dealing with the Latin American countries including Columbia, Mexico, Nicargua, El Salvador and the second dealing with the African continent including countries like Iraq, Afghanistan, Somalia etc. In the Article the root cause of the problem is analysed along with the legal aid available on a global scale. In the end the condition of India is critically analysed with respect to the influx of immigrants and some solutions had been tried to be formulated keeping in mind the history and current global stand on the said issue.

(B) Research Methodology

In the present article the doctrinal based research methodology and critical analysis is used to propose the research solution. Various journals, articles, newsletters and statues related to the

issue of “illegal immigration and laws in relation” have been referred and taken assistance of to come up with the content of this article various laws and steps taken by different state is analysed in a comparative study.

II. THE LATIN AMERICAN WAVE

Migration is not a new phenomenon. It is, however, more than ever before, a global phenomenon that is closely related to a number of other globalization processes in both its causes and its effects³ Migration from Central America to the U.S and Canada is something which is not a new phenomena. However the factors for such migration has varied through time. The Northern Triangle Of central America (“NTCA”) which is composed of countries like the El-Salvador,Guatemala and Honduras is considered to be one of the most dangerous places on the earth which in turn causes unprecedented levels of migration. People are fleeing for their life according to the 2014 UNHCR report Mexico, Belize, Costa Rica, Nicaragua and Panama have had a 432% increase in the asylum application.

The longstanding power struggle between Spain and England, which carried over to the Americas, is also relevant for understanding Latin American immigration to the United States. The longstanding force battle among Spain and England, which extended to the Americas, is additionally pertinent for understanding Latin American movement to the United States. Although most Spanish states had accomplished freedom by the center of the nineteenth century, the recently autonomous republics were frail politically and militarily, and helpless against outside hostility. Given its nearness, Mexico demonstrated an obvious objective for the colonialist desires of United States. Under the conditions of the Treaty of Guadalupe Hidalgo that finished the U.S.- Mexican War (1846-1848) joined with the Gadsden Purchase, the United States gained practically 50% of Mexico's property. The centrality of the addition for contemporary movement from Mexico can't be exaggerated. Not exclusively were social binds impenetrable to the recently drawn political limit, however monetary ties additionally were extended as Mexican specialists were enlisted to fulfill endless and brief work deficiencies during the nineteenth and twentieth century—an uneven trade that was encouraged by the upkeep of a permeable fringe. The Bracero Program, a visitor specialist program in power somewhere in the range of 1942 and 1964, is a piercing case of U.S. cultivators' reliance on Mexican work encouraged both by lawful agreements joined with developing dependence on unapproved work.

Also One of the major reasons for migration was political instability in these countries. Taking

³ Fiona B. Adamson, *Crossing Borders: International Migration and National Security*, 31 *International Security* 165-199 (2006).

in reference of Columbia. A country rich in resources was in turmoil due to political instability that ravaged it for many decades because of the political tussle between the politicians and drug lords. Because of which the country's security was always at risk. Bombings, kidnappings, killing rose in the period of 1960s and so did the migration. People started to fear their safety due to the increase in cartel violence and abductions, so they started to immigrate out of the major cities to towns and villages. Political instability has a direct connection with economic instability, and cause of one leads to the effect of another. Due to the political instability in these regions the economy of the country declined which led to the loss of livelihoods and decline in the living condition of the people which is one of the major factor in the initiation of immigration of people to different countries.

Civil wars and political instability triggered the formidable influx of immigrants from El Salvador and Guatemala to the United States. Prolonged civil conflicts often leads to mass immigration. Thousands of immigrants from these countries ran to the U.S in search of better living conditions but the Guatemala immigrants were not just running from the civil conflicts rather there was a prevalent system of opportunities. That is it was neither political nor economical reasons but the youths travelled to their U.S relatives in search of job and better opportunities and hence is a form of voluntary migration differing from forced migration. While the immigration influx from Dominica Republic increased after the assassination of dictator Trujillo's in 1961.

The growth of undocumented immigration since 1960 is not only a distinctive feature of the current wave of mass migration, but also a direct consequence of selective enforcement of U.S. immigration laws. Factors that have filled the development of illegal immigration from Latin America, starting with the sudden end of the Bracero program in 1964, after a 22-year time frame during which U.S. producers got reliant on flexible Mexican labour. Somehow the 1965 Amendments developed an unlawful movement framework as a matter in course of light of the fact that the unbalanced spotlight on family visas gave quick work to work needs; on the grounds that the Texas Proviso secured managers who tenaciously procured undocumented laborers until IRCA forced bosses consent ; and in light of the fact that the top on family visas (aside from close relatives of U.S. residents) created long hang tight records for nations with long movement conventions. Moreover, the combination of independent hemispheric roofs into a solitary overall aggregate in 1978 drastically abridged the quantity of visas accessible to Mexico, the biggest single sending country. As happened when the Bracero program finished, unapproved section gave an elective pathway to the United States, one enormously encouraged by the presence of solid informal communities that were sustained over many years of

moderately unlimited relocation.⁴

Amendments to the Immigration and Nationality Act of USA was one of the most historic event as after that the flow of the immigrants increased in the country majority comprising of the Asians. But after the 1965 amendments their was a increase in the number of immigrants from the western hemisphere as the amendment removed the qualitative restraint and amended only a provision with 120,000 entries from the Western Hemisphere.⁵ But the public had a negative mindset for immigration from the Latin America during 1970s,1980s 1990s. There were heavy uses of arousal words in the magazines against the immigration like in the beginning the flow of immigrants were termed in the name of “rising tide” or a “tidal wave” that was poised to “inundate” the culture of United States.⁶ but with time usage of more negative or harsh word became prominent like “invasion” or “outgunned” attacked etc.⁷ which clearly depicts that the people in the country were not in favour of immigration from the south. Not surprisingly, the rise of the Latino threat narrative and the concomitant increase in conservatism were associated over time with the passage of increasingly restrictionist immigration legislation and the implementation of ever more stringent enforcement policies which is why there had been a list of 15 immigrant restrictive bills passed between 1965-2010. The persistent, growing accumulation of antiimmigrant legislation and compliance activities resulted in a massive rise in border apprehensions after the late 1970s, when migrants' underlying flow had actually declined. More restrictive regulations and more rigorous compliance operations create more apprehensions for any amount of undocumented entry attempts, which politicians and bureaucrats can then use to inflame public opinion, contributing to more conservatism and political demands for even stricter laws and enforcement operations which forms a complete cycle. In short framing of the illegal immigration as a threat to nation and formation of stricter laws and operations is what the US is doing.

III. THE AFRICAN WAVES

Migration from Africa and middle eastern countries is not something of a new phenomenon. Even as early as 12th century there were migration of the bonded labours from Africa to the Americas. But ever since the civil war broke out in Syria in 2011 refugee migration problem has become a global issue as till now more than 6 million people have migrated from the

⁴ Tienda, M & Sanchez, S, *Latin American Immigration to the United States*, 142(3) *Daedalus* 48–64 (2013).

⁵ Massey, D & Pren, K.A, *Unintended consequences of US immigration policy: explaining the post-1965 surge from Latin America*, 38(1), *Population and development review* 1-29 (2012).

⁶ *Brown Tide Rising: Metaphors of Latinos in Contemporary American Public Discourse*, Austin: University of Texas Press (2002).

⁷ Nevins Joseph, *Operation Gatekeeper: The Rise of the “Illegal Alien” and the Remaking of the US–Mexico Boundary*, New York: Routledge (2001)..

countries of Syria, Libya and Iraq. Syrians are leaving their homes because the life there has become unbearable because of the violence, shattered infrastructure and danger to the lives of the children. Most of the migrants from Syria are migrating to nearby countries of Jordan, Iraq (in Kurdish controlled areas), Turkey, Lebanon, Egypt. Etc whereas in Europe the uniformity is rare. Some countries like Hungary and Sweden have a liberal migrant policies seeking 1700 applications per year while other countries like the Germany, U.K, France have a more stringent migrant policies accepting as low as 60-100 applications per year.

Tens of thousands of refugees and migrants from the Sahel and the Horn of Africa continue to make the long and dangerous sea journey from Libya to Italy. The fact that Libya is used as a springboard means that there is also a risk of infiltration by extremists.⁸ Yet in determining the reasons for migration from such conflicted countries are quite clear. In Syria the civil war began with peaceful protests by the youth as the protests spread the government reacted by violent crackdowns which led to revolt and formation of militant groups fighting against the Government, and slowly started capturing states and territories and formed terrorist organisations. Which led to the massive loss in the lives of the civilians and other people all around the world. Whereas the cause of migration from Somalia (a country at the horn of Africa) is that the country has experienced excessive amounts of political instability during the past decades and especially since the collapse of the regime in 1991.⁹ Also due to the insurgents groups al-Shabaab, which has been associated with Al-Qaeda, has been furthering the destabilization of peace and governmental rule since it gained significant power in 2009. because of such factors 73% of the population lives below the poverty line and most of the youth is unemployed living in deprived living conditions.¹⁰ Hence to overcome all these issues tens of thousands of people illegally migrate from Somalia through dangerous voyage from Mediterranean sea to Italy.

Afghanistan is also one of the country that has witnessed a massive outflow of people in the recent times. Almost reaching four decades of war, successive conflicts both external and internal have made the country fragile and prone to insecurity and displacement. Due to weak government unable to impose law, inhospitable climates, heavy dependence on subsistence agriculture, millions of Afghans have left their homes in search of better place but the fact is that the prospect of success for the Afghans in relation to getting access in other countries

⁸ The migration crisis and the Horn of Africa: the Khartoum process, CONFRONTATION, <http://onfrontations.org/admin/the-migration-crisis-and-the-horn-of-africa-the-khartoum-process/> (last visited Nov 17, 2019).

⁹ Katrin Marchand et al., *Irregular Migration from and in the East and Horn of Africa*, Melissa Siegel Maastricht Graduate School of Governance (2016).

¹⁰ *ibid*

through a legal manner is very grim. The countries all around the world denies giving any asylum to the migrants from Afghanistan because of the terrorist history of the country hence the people are only left with illegal improper means to migrate to another country like smuggling or trafficking.¹¹

Smuggled migrants, may be deceived or maltreated by their smuggler even when they themselves contacted them and consented. Migrant smuggling can even be considered as a response to humanitarian needs. Article 31 of the Geneva Convention explicitly recognizes that asylum seekers may be required by 'illegal' means to enter a safe country. Indeed, people today need to adopt more and more 'illegal' strategies to be able to make a formal asylum claim¹²

To date, governing irregular migration has received little attention at global level, which is why irregular migration does not have an international framework. Consequently, irregular migration is primarily discussed at national or regional level. While irregular migration was initially mainly linked to security concerns, concerns about human rights are gradually gaining importance. However The 1975 ILO Convention on Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers covers some aspects of irregular labour migration, including information exchanges between states, measures against irregular movement and employment, and prosecution of traffickers and smugglers. Only 23 countries, though, have signed the convention.. Also to check the illegal irregular flow of migrants from the region of Somalia, South Sudan and other countries belonging to the horn of Africa a process namely the Khartoum process as a form of inter-regionalism.¹³ formed as a joint cooperation between the European Union (EU) and the African Union (AU) aimed at tackling human trafficking and trafficking in and from the HoA to Europe. It is a high-level, inter-continental political process aimed at harmonizing existing components of the AU and the EU in these areas.

One of the main issues facing irregular migration, smuggling and trafficking in all countries in the region seems to be the lack of institutional resources and capacity. Although international organizations work with national players to address these issues, high staff turnover rates are a major concern, This results in the loss of capacity that training and similar initiatives have built up. Therefore, a major challenge is to understand how to implement capacity building more e

¹¹ Matthew Willner Reid, *Afghanistan: Displacement Challenges in a Country on the Move*, Migration Policy Institute, (2017).

¹² Ilse van Liempt, *Gendered borders: The case of 'illegal' migration from Iraq, the Horn of Africa and the former Soviet Union to the Netherlands*, Amsterdam University Press. (2008).

¹³ 5 Van Langenhov e (2011) defines inter-regionalism as “processes and structures of interaction between two or more actors that do not belong to the same region and that are states, regional organizations or NGOs that claim or are seen to speak for a region” (p.93).

ffectively and sustainably.

IV. CONCLUSION

In the concluding paras India's problem of illegal immigration is discussed and analysed in light of the facts and global legal scenario regarding the cause and solutions for the problem of influx of illegal immigration. In a diversified country like India, it is impossible to subject its citizens under a uniform distinction based on the outer physical appearance or based on country of origin. India comprises of people from all ethnic backgrounds varied from Portuguese to Bangladesh being such a diverse country the acceptability of the people is also strong. India is a country who always strives for peace and tranquillity it has abided by the U.N laws governing international relations. But it has been observed that there is a high inflow of immigrants from the Bangladesh, these immigrants find easy cheap accessible jobs here as labour, domestic helpers, rickshaw pullers while the data on illegal immigrants is scarce and the Bangladeshi government on the other hand provides no legal support. hence the liability of managing the illegal immigrants rests on the shoulders of Indian Government. Leaving a country for economic reasons, as in most of India's Bangladeshis, does not qualify as a refugee under this definition given under Foreigners Act 1946 which is the governing law in india.. It is therefore necessary to treat this category of people differently. That is one reason why Bangladesh's issue of illegal immigrants needs national legislation on refugees to be introduced and enforced.¹⁴

India on the other hand has No laws or regulations on the status of asylum seekers and refugees made by India. Actually, such persons were regulated by the 1946 General Foreigners Act. Recognized refugees in India do not have the right to free movement in most cases and do not have the right to work. Indian law requires that each person entering the country have adequate documentation denoting In permission without which he is at the risk of deportation. The Indian government recognizes and directly supports only specific groups of refugees such as the Tibetans and Sri Lankan Tamils. Certain refugees, such as those from Afghanistan, Iraq, and Somalia, must seek a "determination of refugee status" from UNHCR directly. They must go to the UNHCR office in New Delhi for this purpose, where the UNHCR assesses whether they fall within the definition.

In the recent past India had to tackle with the Rohingya refugee crisis. For which India officially denied their entry which had a huge cry in the world nevertheless In practicality There were no hardened barriers and influx of Rohingya was constant. which is a clear indication that it is high time that a country like India should come up with proper legal framework to tackle influx

¹⁴ DANIEL NAUJOKS, *EMIGRATION, IMMIGRATION, AND DIASPORA RELATIONS IN INDIA*, MIGRATION POLICY INSTITUTE (2009).

of immigrants through illegal means and should be signatory to the 1951 Refugee Convention and its 1967 Protocol also by passing the Asylum Bill, 2015 proposed by Shashi Tharoor in the Lok Sabha

Also in 1994, UNHCR created a five-member Eminent Persons Group (EPG) headed by P to assist South Asian countries in establishing domestic refugee laws. N. Bhagwati, India's former chief justice, including Justice Dorab Patel of Pakistan; Kamal Hossain of Bangladesh, a lawyer and Rishikesh Shah of Nepal, a human rights activist; and Bradman Weerakoon.¹⁵

The EPG proposed model laws on refugees in 1997 and subsequently came out at its meeting in Islamabad on January 24, 2004 with the South Asia Declaration on Refugees, which also incorporated the model laws on refugees. This model together with the Asylum Bill, 2015 could form the basis for enacting a proper legislature for monitoring the problem of illegal immigrations. India as a country should lead other SAARC countries to come up with a model to define and constrict illegal immigration in the South Asia.

¹⁵ Sanjeev Tripathi, *Illegal Immigration From Bangladesh to India: Toward a Comprehensive Solution*, Carnegie India (2016).

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