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## Migrants, Refugees and Asylum Seekers: Legal Protections and Humanitarian Responses

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*The intricate global landscape of human migration encompasses migrants, refugees, and asylum seekers, each with distinct definitions and challenges. This paper divulges into the intricate global dynamics of migration, focusing on the distinctions between migrants, refugees, and asylum seekers, and the unique challenges they face. It highlights the factors driving migration, such as political instability, natural disasters, economic hardships, and human rights abuses, which often compel individuals to embark on dangerous journeys in search of safety and opportunity. The paper also talks about the legal frameworks, including the 1951 Refugee Convention, the Universal Declaration of Human Rights, and other international instruments that establish protections like non-refoulement, freedom of movement, and family rights. Furthermore, this paper emphasizes the role of humanitarian responses led by organizations such as UNHCR and various NGOs in providing shelter, healthcare, and resettlement services. It discusses durable solutions like voluntary repatriation, local integration, and resettlement as pathways to secure long-term stability for displaced populations. By examining India's approach to refugees, this paper highlights its adherence to humanitarian principles despite being a non-signatory to the 1951 Convention. It reflects on India's practices, such as hosting Tibetan, Sri Lankan, and Rohingya refugees, and policies like the Citizenship (Amendment) Act, 2019. This paper also sheds light on the persistent challenges migrants, refugees, and asylum seekers face, including language barriers, restrictive border controls, and complex bureaucratic processes. It underscores the urgent need for a global collaborative effort to strengthen legal protections and humanitarian assistance, aiming for a world where individuals are not forced to flee their homes due to fear, persecution, or despair.*

**Keywords:** *refugees, migrants, asylum seekers, non-refoulement, voluntary repatriation, local integration, resettlement.*

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## INTRODUCTION

The global landscape of human migration is complex as there exist various categories of individuals seeking opportunities, safety and a better life. Following the rapid increase in global mobility, the terms 'Migrant', 'Refugee' and 'Asylum Seekers' are being frequently used.

'Migrants' are individuals who voluntarily relocate from one country to another for reasons such as economic opportunities, family reunification, education or various other environmental or social circumstances. Such people are generally not provided international protection unless they fulfill specific criteria for being refugees or asylum seekers.

As defined by the 1951 Refugee Convention, 'Refugees' are individuals who flee from their homeland attributable to the terror of persecution based on religion, race, nationality, political opinion or membership in a particular social group.<sup>1</sup> 'Asylum seekers' are defined as individuals seeking international protection whose claim for refugee status is yet to be determined. Once granted, they receive the same protection as refugees. An evident example would be the Dalai Lama, who fled to India from Tibet in 1959 pertaining to the fear of getting killed by the Chinese Government led by Mao-Tse Tung and has been provided asylum in India ever since.

Political instability, natural disasters, economic hardships and conflicts are the most common among the various reasons why people may feel the need to leave their home country to seek refuge elsewhere. Some often embark on dangerous journeys to escape war, oppression or other human rights abuses or life-threatening circumstances in their country of origin. For instance, the migrating Chinese citizens, some seeking better economic opportunities and personal freedom, some fleeing political repressions like the Tiananmen Square crackdown, while others escaping the restrictive policies or seeking better living standards, sometimes have to resort to risky human smuggling operations to enter other countries. Similarly, tens of thousands of

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<sup>1</sup> Refugee Convention 1951, art 1(A)(2)

North Koreans flee to neighbouring China due to the authoritarian North Korean government and dire human rights records; however, they constantly face the risk of being evicted back to their country where they are instantly executed upon such eviction as a punishment for crossing the borders. Due to these reasons, such asylum seekers often embark on perilous journeys involving vicious human trafficking and border crossing networks to reach South Korea or other nations granting refugee status and assistance to them.

## LEGAL FRAMEWORKS AND HUMANITARIAN RESPONSES FOR THE PROTECTION OF MIGRANTS, REFUGEES AND ASYLUM SEEKERS

The 1951 Refugee Convention<sup>2</sup> and its 1967 Protocol<sup>3</sup> laid the major foundation of the international refugee law establishing pivotal principles concerning forced displacement for over 70 years. Apart from these, various international instruments like the Universal Declaration of Human Rights (UDHR)<sup>4</sup>, the United Nations High Commissioner for Refugees (UNHCR)<sup>5</sup>, the International Convention for the Safety of Life at Sea<sup>6</sup>, the Protocol against Smuggling of Migrants by Land, Sea and Air<sup>7</sup>, the International Covenant on Civil and Political Rights (ICCPR)<sup>8</sup> and the Covenant against Torture<sup>9</sup> outline the rights and protections to be granted to the refugees and the migrant populations. The complex interplay of international human rights laws, maritime laws and humanitarian laws ensures the safety, security and dignity of those embarking on precarious expeditions in search of refuge and opportunity by bestowing upon them the following rights:

**Non-Refoulement:** It refers to States that are obligated not to return a refugee to territories where he faces a threat to his life or freedom, based on his race, religion, nationality, membership of a particular social group or political opinion.<sup>10</sup> In the cases of *M.S.S. v Belgium and Greece*<sup>11</sup>

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<sup>2</sup> Convention Relating to the Status of Refugees 1954

<sup>3</sup> Protocol Relating to the Status of Refugees 1967

<sup>4</sup> Universal Declaration of Human Rights 1948

<sup>5</sup> Statute of the Office of the United Nations High Commissioner for Refugees 1950

<sup>6</sup> International Convention for the Safety of Life at Sea 1980

<sup>7</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air 2004

<sup>8</sup> International Covenant on Civil and Political Rights 1976

<sup>9</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987

<sup>10</sup> Convention relating to Status of Refugees 1951, art 33(1)

<sup>11</sup> *M.S.S. v Belgium and Greece* [2011] 30696/09

and *Afghanistan v Secretary of State for Home Department*<sup>12</sup>, the respective Courts held that the right to life and freedom from torture includes the prohibition against refoulement.

**Freedom of Movement:** It refers to the obligation of States to provide refugees with the right to choose their place of residence within the territory and to move freely within the State.<sup>13</sup> Refugees should also receive identity papers and travel documents facilitating their mobility.<sup>14</sup>

**The right to seek asylum** from persecution in other countries is granted to every person, except in cases of prosecutions genuinely arising from non-political crimes.<sup>15</sup>

**Right to Family:** Family is the natural and fundamental group unit of society and is entitled to protection by the State.<sup>16</sup> Thus, where an individual is granted asylum, his or her distant relatives should also receive protection through him or her.<sup>17</sup>

The 1951 Convention grants several other rights to the refugees such as the rights to education, access to justice, employment and other fundamental freedoms. In addition to this, the UDHR grants the right to freedom from torture or inhumane treatment (Article 5)<sup>18</sup>; freedom of opinion and expression (Article 2)<sup>19</sup>; freedom from discrimination (Article 7)<sup>20</sup>; and the right to liberty and security to the refugees<sup>21</sup>.

## HUMANITARIAN RESPONSES

Various governmental as well as non-governmental organizations have played a crucial role in facilitating humanitarian responses towards the plight of migrants, refugees and asylum seekers. For instance, UNHCR leads international efforts to provide essential services of shelter, education and healthcare to refugees and asylum seekers, and to protect and support them. UN

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<sup>12</sup> *Afghanistan v Secretary of State for the Home Department* [2011] EWHC 2937 (Admin.) (U.K.)

<sup>13</sup> Refugee Convention 1951, art 26

<sup>14</sup> Refugee Convention 1951, art 28

<sup>15</sup> Universal Declaration of Human Rights 1948, art 14

<sup>16</sup> Universal Declaration of Human Rights 1948

<sup>17</sup> Immigration Rules 2012, art 339Q(iii)

<sup>18</sup> Universal Declaration of Human Rights 1948, art 5

<sup>19</sup> Universal Declaration of Human Rights 1948, art 2

<sup>20</sup> Universal Declaration of Human Rights 1948, art 7

<sup>21</sup> Universal Declaration of Human Rights 1948, art 3

International Organization for Migration, established in 1951, focuses on well-facilitated humane migration, ensuring and assisting the free movement of the displaced. Various NGOs like Amnesty International, International Rescue Committee and Medecins Sans Frontieres facilitate medical care, legal assistance, resettlement services etc. to the refugees. Host countries and Local Communities also play significant roles in facilitating the successful integration of refugees by providing them legal recognition, access to employment, social services and education, and fostering environments for them to establish a new life.

## **DURABLE SOLUTIONS**

Since there has been a constant flow of refugees, migrants and asylum seekers, some long-term or permanent solution is needed to their problem to secure their rights. These solutions are known as 'Durable Solutions'. Generally, three solutions serve as long-lasting solutions for such people:

**Voluntary Repatriation:** It is the primary durable solution for the refugees, migrants or asylum seekers. It refers to the voluntary return of refugees or asylum seekers to their country of origin, wherever possible. They cannot be sent back to their place of origin if they are unwilling to do so or if they face any fear of being tortured or persecuted in such a State. Repatriation must be voluntarily or willingly done by the refugees or asylum seekers.

### **Certain protections are provided to them during repatriation:**

- They should be able to make free and informed choices about the return and must be furnished with all the accurate information relating to the situation in their country of origin. Repatriation made as a result of furnishing false or inaccurate information to the refugees, migrants or asylum seekers would not be considered to be a voluntary repatriation.
- The refugees or asylum seekers should be returned to their country of origin, subject to the restrictions imposed by the International Human Rights law.

- Family unity should be respected during repatriation; especially where the family members have different nationalities, steps must be taken to enable them to live together as a family.
- The specific needs of the returning refugees, migrants or asylum seekers must be looked after.
- Where certain children who wish to repatriate are unaccompanied or separated, measures must be taken to ensure that their return is in their best interest.

In this way, voluntary repatriation is considered to be the ideal and most preferred long-term solution for the majority of refugees and asylum seekers worldwide and is encouraged by the UNHCR as well. However, it hasn't been explicitly codified yet. The only Convention that explicitly provides for voluntary repatriation as a durable solution is the 1969 Organization of African Unity Refugee Convention. Moreover, the Cartagena Declaration of 1984 in the Latin American region contains basic principles concerning voluntary repatriation. Although the 1951 Convention does not address the question of voluntary repatriation directly, however, it deals with it indirectly as a cessation clause stating that in cases where the refugee is repatriated, his refugee status ceases to exist. The principle of the right to return to one's own country is firmly established under the International Human Rights law and can be derived under Article 13(2) of UDHR<sup>22</sup>, Article 12(4) of ICCPR<sup>23</sup> and Article 5(d)(ii) of International Convention on Elimination of all forms of Racial Discrimination (ICERD)<sup>24</sup>. UNHCR also plays a major role in facilitating voluntary repatriation and assisting refugees or asylum seekers.

**Local Integration:** This means integrating into the community of the country where a person is seeking refuge or asylum. In case repatriation is not an option, then finding a home in the country of asylum and integrating into the local community in such a case, could offer another durable solution. Naturalization, i.e., acquiring the citizenship of the host country is also a way of Local Integration.

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<sup>22</sup> Universal Declaration of Human Rights 1948, art 13(2)

<sup>23</sup> International Covenant on Civil and Political Rights 1966, art 12(4)

<sup>24</sup> International Convention on the Elimination of All Forms of Racial Discrimination 1965, art 5(d)(ii)

**Local integration is a three-dimensional process:**

- Firstly, it is a legal process where the refugee, migrant or asylum seeker, as the case may be, gets a comprehensive range of rights in the Host State so that the Host State progressively extends such rights and entitlements.
- Secondly, it is an economic process of establishing sustainable livelihoods and a standard of living comparable to the Host community.
- Thirdly, it is a social and cultural process of adaptation and acceptance that enables the refugees, migrants or asylum seekers to contribute to the social life of the Host Country and live in such a State without the fear of discrimination.

Through this three-dimensional process, they can adapt to the social fabric of the Host country and the host community also adopts them as a part of it, preventing any discrimination against such refugees, migrants or asylum seekers.

**Resettlement:** In case the Host Country is not having enough resources to sustain the refugees, migrants or asylum seekers, or where they face any threat or fear in the Host Country, while some other country is willing to take them and provide them with civil, political, economic, social and cultural rights, then such refugees, or migrants, or asylum seekers, as the case may be, can be relocated to such other country. This is known as the process of Resettlement. Resettlement is a tool to provide International protection as well as an expression of International solidarity, which is unique as it involves the relocation of refugees, migrants or asylum seekers from the country of asylum to a third country. The Host country, in such cases, must ensure that the rights of the refugee, migrant or asylum seeker who is being relocated are protected in such a country of relocation and he does not face any threat or fear of persecution in such country. Resettlement or relocation is only possible on the fulfillment of this condition.

**INDIAN SCENARIO**

India has neither signed nor ratified the 1951 Refugee Convention or its 1961 protocol, because of the following certain reasons:

- The Convention as well as the definition provided in it is very Eurocentric. It mainly relies on 'fear of persecution' as an essential factor to determine the refugee status of a person, while having no consideration relating to people who are forced to become refugees, migrants or asylum seekers due to other conditions such as natural calamities or economic reasons etc.
- It is individualistic. Each person has to prove the said 'fear of persecution', upon which the refugee status is provided on an individual basis. In a big country like India, with such a huge population, it is difficult to determine the refugee status of each person individually.
- In case India signs the Convention, a lot of economic migrants from the neighbouring countries will hoard into the country claiming to be refugees and India would be obligated to provide them with such status, leading to overpopulation and fueling several other related problems in the country like unemployment, economic instability etc.

However, it was held in the case of *Mohd. Salimullah and Anr v Union of India and Ors*<sup>25</sup>, that even though India is not a signatory to the UN Convention on the Status of Refugees, 1951, there is no doubt that the national courts can draw inspiration from the International Conventions or treaties, so long as they are not in conflict with the Municipal law.

## INDIA AND ITS ROLE VIS-A-VIS NON-REFOULEMENT

The principle of non-refoulement as provided under the International Humanitarian laws as well as the Refugee Convention is well followed by India as well. The principle of non-refoulement states that no person can be repatriated or sent back to the place where he may be subjected to torture or persecution. Article 21<sup>26</sup> also implies the same. Even though India is a non-signatory to the Refugee Convention, it still follows this principle because the principle of non-refoulement has acquired the status of *jus cogens*, i.e., it has become a part of International customary law which is to be followed by all the States, whether signatories or not. Non-

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<sup>25</sup> *Mohd. Salimullah v Union of India* (2021) 19 SCC 191

<sup>26</sup> The Constitution of India 1950, art 21



refoulement is an absolute right of the refugees, migrants and asylum seekers, and it cannot be objected to or compromised under any circumstances.

As established in certain cases like *Ktaer Abbas Habib Al Qutaifi v Union of India*<sup>27</sup>, the principle of non-refoulement has been upheld as a derivative right under Article 21 of the Constitution of India. In this particular case, the Gujarat High Court, while upholding this principle, refused the deportation of Iraqi nationals to their home country as they faced fear for their life and liberty in their country of origin. Hence, they were handed over to UNHCR instead.

India might not be the signatory to the 1951 Convention or the 1967 protocol, but it has still signed several International Human Rights treaties and Conventions that bind the country to a certain extent to provide shelter to the refugees, migrants or asylum seekers seeking refuge in the country. Such laws that are followed by India with respect to the protection of refugees, migrants and asylum seekers include UDHR, ICCPR, UN Declaration on Territorial Asylum, 1967, Convention on Rights of Child, 1989, Convention on Elimination of all Forms of Discrimination Against Women (CEDAW), ICERD, UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), 1984 and many more.

### **CASES WHERE INDIA HAS PROVIDED RELIEF TO THE MIGRANTS, REFUGEES OR ASYLUM SEEKERS**

In the case of *Alakh Alok Srivastava v Union of India*<sup>28</sup>, the Apex Court granted a PIL under Sections 5 and 54 of the Disaster Management Act, 2005, seeking direction to authorities to shift migrant labourers who along with their families were walking hundreds of kilometres from their workplace to their villages/towns due to panic of COVID-19 to government shelter homes and accommodations and provide them with basic amenities like food, water, clothing etc., upon which a Circular was issued by the Ministry of Home Affairs to shift such migrants to relief camps and shelter homes which were set-up for them at various points in each State or Union Territory.

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<sup>27</sup> *Ktaer Abbas Habib Al Qutaifi and Another v Union of India and Others* (1999) CriLJ 919

<sup>28</sup> *Alakh Alok Srivastava v Union of India* (2021) 19 SCC 689

In the case of *Shri Johura Begum v Union of India and Ors*<sup>29</sup>, the petitioner had been convicted under Section 14 of the Foreigners Act<sup>30</sup>, while the petitioner's husband and their seven children were granted asylum-seeker status and were sent to a refugee camp at Jammu. The Hon'ble High Court of Calcutta held that the Union of India should indicate its stand in respect of the petitioner and where the petitioner's family members have been granted asylum by the Union of India, the petitioner may also be accorded the same courtesy after the petitioner's jail term have been served.

It was held in the case of *State (UT of Dadra & Nagar Haveli) v Abhinav Dipakbhai Patel*<sup>31</sup> that a person cannot be deprived of the status of a member of a reserved category candidate merely on the ground that he is a migrant.

In the case of *Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh v State of Arunachal Pradesh*<sup>32</sup>, it was acknowledged by the Hon'ble High Court of Delhi that the life and liberty of Chakma and Hajong refugees residing in India for a very long time should be protected and that they have a right to be granted citizenship.

Hence, India, although not a signatory to the 1951 Refugee Convention or its 1961 protocol, has accounts of hosting vast refugee populations, including Tibetans, Sri Lankans, Rohingya Muslims and Afghan Nationals at the latest. It has well-adhered to the humanitarian principles and rights granted to the refugees through adoptive administrative policies and ad hoc measures, the most recent being the Citizenship (Amendment) Act, 2019 providing Indian citizenship to undocumented migrants from certain religious minorities from Pakistan, Bangladesh and Afghanistan. Although met with heavy criticism, the Act can be vividly seen as a humanitarian gesture to provide shelter to individuals in need and protect vulnerable groups facing religious persecution.

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<sup>29</sup> *Johura Begum v Union of India* (2013) SCC OnLine Cal 2059

<sup>30</sup> Foreigners Act 1946, s 14

<sup>31</sup> *State (UT of Dadra & Nagar Haveli) v Abhinav Dipakbhai Patel* (2019) 6 SCC 434

<sup>32</sup> *Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh v State of Arunachal Pradesh* (2016) 15 SCC 540

## CONCLUSION

Every individual, regardless of his immigration status, has an inherent right to be treated with equality and compassion. The fundamental precept of respecting human rights and maintaining the dignity of refugees and migrants must be endorsed in all migration practices and policies. However, despite these international and domestic regimes, migrants still face notable challenges impeding their ability to obtain refugee status; language barriers, deficient knowledge of asylum procedures and stringent border controls to name a few. Moreover, the arbitrary and sluggish status-determination process and the refugees being unaware of their rights or lacking resources to navigate complex bureaucratic procedures, in several instances, leave the vulnerable populations without the protection they desperately need. By providing robust legal protections and humanitarian assistance, the global community must work together towards a more compassionate and equitable approach to address these complex humanitarian challenges to create a world where no one is forced to flee their homes due to fear of persecution, conflict, or economic despair.