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International Law on Migration - An Overview

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ABSTRACT

Migration is a process that arises from the inherent desire of a human being to develop and prosper. Many people address it as a result of social economic conditions but it also has a psychological portion that is need for better life. History of mankind makes it clear that migration was a driving force of our development. So it is definitely a positive process, Even though some people make it negative by spreading ideas of class superiority or supremacy. Most of the developed nations achieved development by support of migrants. Every country has the responsibility to safeguard people in their territory but problems arise when they start prioritising one with other. So to face this issue international bodies came forward and put up certain rules. The issue of migration is more complex with people who came for a shelter other than the above mentioned reasons. People who ran away from violence are facing humiliation in the other country as well. The question of humanity is loud and clear here. Our world which is broken into fragments called countries running the race to become first does not encourage these migrants so international law also limits rights by drawing some boundaries. Several agreements are made to ensure basic human rights. These agreements prove to be unsuccessful in providing a sense of belongingness to them. There are also laws dealing with migration at regional and national levels. Sometimes these laws do contradict each other. None of them seems to conclude their problems in full sense. Situations like global pandemics and economic letdowns challenge the security of job. Most of the migrants are emotionally attached to their home that also needs to be considered. Laws on migration need to be more progressive.

Keywords: migration, rights, international law, ILO convention, UN convention, security.

I. INTRODUCTION

An estimated 258 million people, around 3 percent of the population of the world, live outside their country of birth, many of whom are compelled to migrate³. Although many migrants are forced to leave their countries of origin every year, a growing number of migrants are forced to leave their homes for several reasons, including poverty, lack of access

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to healthcare, education, water, housing, and the consequences of environmental degradation and climate change, and some may leave their home on the fear of prosecution and conflict. Those persons who are forced to leave their country on the fear of persecution is known as refugees, on the other hand those people who voluntarily flee from their country mainly for economic motives are called migrants. In some cases, the terms are used interchangeably and refugees are referred to as international migrants.

The International Organisation for Migration (IOM) states that the term ‘migrant’ reflects the common understanding of a person who moves away from his or her habitual place of residence, whether in a country or across the international border, temporarily or permanently, and for a variety of reasons. The world contains several well-defined legal categories of people, such as migrant workers, persons whose different types of movement are legally defined, such as smuggled migrants, and others whose movement is specifically defined under international law, such as international students⁴.

International Law recognizes everybody’s right to leave any country including their own country and to return to their own country. It does not, however, establish a right of entry to another country but instead helps the states to determine the conditions for admitting non-nationals like migrants. The mechanism for controlling migration is provided by a vast array of international conventions, regional treaties, bilateral agreements, and national laws. In some cases, states are forbidden from returning anyone to countries where they face torture or serious violations of human rights or prosecution laid down in the Geneva Convention for Refugees of 1951 and the Protocol of 1967⁵. Although human rights and international labour standards are theoretically applicable to all migrants, in practice the extension and enforceability of human rights and labour security to all citizens, including migrants, may depend on the specific international instruments the country has ratified in the national context⁶.

II. WHAT IS MIGRATION?

Migration, in simple words, can be defined as the permanent change of residence of a person or a community from one place to another. This excludes activities that are transient like commuting and tourism. Migration can be grouped into several categories. Firstly, there is internal (national) and international migration. There is internal migration when people migrate within their own country and when people move from one country to another it is

⁴ *Glossary on Migration*, IOM (2019), iom.int/glossary-migration-2019.

⁵ Convention and protocol relating to the status of Refugee, UNHCR, unhcr.org.

⁶ *Migration and International Human Rights Law*, International Commission of Jurists (2014).

called international or foreign migration. Secondly, there may be voluntary or forced migration. Voluntary migrations are those migrations that are undertaken for getting better economic opportunities or accommodation and on the other hand forced migration typically includes people who were expelled or forcefully transported as slaves or prisoners by the governments during war or other political upheavals. In between these two categories there are some people voluntarily migrating as refugees fleeing war, famine, or natural disasters⁷.

Human migrations have helped in transforming the whole aspects of land and continents and the racial, ethnic, and linguistic composition of their populations. For example, the map of Europe has been redrawn as a result of many large early migrants, the Germanic peoples, the slaves, and the Turks. The Great Atlantic Migration from Europe to North America is known as the largest migration in history⁸. Throughout the 20th century, the main trend of internal migration was moving from rural to urban areas. As a consequence, urban growth in much of the world particularly in developing countries has been rapid.

III. HUMAN RIGHTS AND MIGRATION

While for many people migration is seen as a positive and inspiring experience, it is not the same in every case. Migration governance based on human rights has been missing at the global, regional, and national levels, leading to the violations of the right of migrants to cross, at international borders, and to the countries where they migrate to. Migrants are mostly seen as marginalized groups and the human rights violation which they are facing are often invisible or unheard on the international human rights agenda⁹. The human rights of a migrant are usually categorized according to the group he/she belongs to. There are two categories of migrants: on the one hand there are migrants who migrate voluntarily mainly to gain economic benefits and on the other hand there are people who are forced to flee due to violence in their country.

Migration and human rights converge at a variety of stages. Although the right to leave one's country without permission is recognized by international law, there is no reciprocal right to enter another country without permission. That is, if a migrant has entered or remained illegally in another state, a state doesn't need to defend his or her rights which are defined under international law. This dynamic interrelationship between migration and human rights

⁷ *Human Migration*, The Editors of Encyclopaedia Britannica, (May 19,2020).

⁸ P. Martin, *Migration*, Global Crisis, Global Solutions.443-447 (2004).

⁹ Steafine Grant, *Migrant's Human Rights: From the Margins to the Mainstream*, Migration Policy Institute (Mar.1,2005), migrationpolicy.org.

are multidimensional and are present in the migratory process at all stages¹⁰. Some migrants who are skilled workers move to the formal sectors and take up professional jobs. They may be having relatively few human rights issues than the unskilled workers, who are working in informal sectors.

The vulnerability of a migrant once outside of his or her home country is the result of many factors. Being outsiders to a culture, migrants may be unfamiliar with the language, customs, and practices, and therefore they will be less likely to learn and claim their rights than others. In some countries migrant workers are not covered by any national laws, due to which they may be prone to face many discriminations. In most cases, migrants are more likely to operate in sectors where labour requirements do not or may not apply. Racism and xenophobia are the two major problems which are faced by migrants especially in many European countries¹¹. Migrants will be the suspects at times of political tension. In the context of “war on terror” several governments have inadvertently promoted xenophobia towards migrants and refugees.

IV. INTERNATIONAL LAW ON MIGRATION

Over the past decades, international migration has risen, and it is one of the major problems which the world is facing in the current scenario, but there is no comprehensive law on international migration. Instead, there are many international agreements, including those of worker’s rights, and international labour laws which are a collection of minimum legal guidelines formulated at international conventions to guide national legislations, policies, and practices¹². International agreements include conventions and declarations even though the latter are not enforceable unless they embody customary international law.

On the one side, the Universal Declaration of Human Rights, 1948 and the Declaration of Fundamental Principles and Rights at Work of the ILO in 1998 are not legally enforceable treaties, they reflect on generally accepted values and rights found in the legally binding instruments of international humanitarian law and international labour law, many of which are known as customary international law. On the other side, the International Convention on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC) human

¹⁰ Graziano Battistella, *Migration and human rights: the uneasy but essential relationship* 47-69 (2010).

¹¹ Ryszard Cholewinski, Paul de Guchenerire & Antonie Pecoud, *Migration and human Rights. The united nations Convention on Migrant Worker’s Rights*, International Journal of Refugee Law, 677-682 (2010).

¹² Sabrina Axster, *International Law on the rights and protection of migrants*, Ariellekandel(Aug. 16, 2017).

rights treaties, and international Labour standards are binding on the countries that have ratified them¹³. There are seven branches of international law which serve as the instruments for providing the basis for national migration laws, policies and practices like international human rights law, international labour law/standards, international refugee law, international criminal law, international consular law, international humanitarian law and international maritime law. Apart from that, in the year 2004, the International Migration Laws were formed to compile and promote accessibility of migration-related statutory provisions at the international, national, and regional levels¹⁴. Each of these instruments serves as the instruments for protecting the rights of the migrants.

(A) ILO CONVENTIONS

Some countries have ratified ILO sponsored conventions for protecting the right of migrants. Some of the major ILO conventions are Convention concerning Migration for Employment, Convention concerning Forced or Compulsory Labour, the Convention concerning Abolition of Forced Labour, the Equal Remuneration Convention, and the Discrimination Convention. All these conventions have provided the framework for recognizing the rights of the migrants.

(B) UN CONVENTION ON THE RIGHTS OF ALL MIGRANT WORKERS

The UN Convention on Migrant Workers (MWC) draws upon the treaties of the International Labour Organization and the key human rights instruments. The basic aim of this convention is to ensure equal opportunities for migrant workers and their family members who are in a legal or irregular situation¹⁵. The rights provided by the convention are applicable for both men and women but many women work in irregular sectors and therefore they are abused and exploited. To avoid that situation there are several provisions in the convention that focuses on giving rights to all migrants especially to those workers in irregular sectors. Apart from that, there are several articles focusing on the social and economic status of the migrants. However, it is disappointing that there are only a few states that have ratified the convention¹⁶.

Only 27 countries have ratified the Convention on Migrant Workers, with no major recipient country among them. Various reasons are put forth by the states for not ratifying the

¹³ *Migration, human rights, and governance*, International Labour Organization.

¹⁴ *International Migration Law*, IOM.

¹⁵ Linda S. Bosniak, *State Sovereignty, Human Rights and the New U. N. Migrant Workers Convention*, American Society for International Law, (1992).

¹⁶ State parties are Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Kyrgyzstan.

convention. Some states believe that the fundamental rights outlined in the Migrants Rights Convention are already present in other human rights instruments. Other states say that the rights entitled in the Migrants Rights Convention are not necessary for pursuing their national interest¹⁷.

V. REGIONAL INSTRUMENTS

Regional instruments also play a crucial role in granting the migrants their workers' rights. The European Convention on the status of Migrant Workers specifically focuses on migrants in legal job circumstances. This was ratified by some states in Europe. The European Convention on Human Rights (ECHR) and the European Social Charter (ESC) are the other instruments which aim in protecting the workers' rights. The ECHR focuses on the political and civil rights whereas the ESC focuses on the economic, social, and cultural rights of the migrants. The ESC guarantees to all nationals and foreigners who are either residing or working in the country to all rights set out in the charter without any sort of discrimination.

The Inter-American Commission on Human Rights (IACHR) tracks the profile of the human rights of migrants through its own Special Rapporteur on migrant workers and families. Pursuant to the American Convention on Human Rights, the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights were established. The American Convention on Human Rights provides for the right to fair treatment, the right to receive and be given asylum, the right to equal justice, and the right to judicial protection that applies to non-nationals.

VI. NATIONAL LAWS AND PROCEDURES

The national laws and procedures either provide support or they act as a barrier to exercise the rights of the migrants. There are different laws and procedures to protect the migrants in each state. However, there are a number of ways in which the migrants can exercise their rights in other nations. These include 'know your rights' and having access to a language training program that is the migrants should be aware of their rights so that they can assert their rights¹⁸.

To protect migrant workers the monitoring of recruitment agencies and employers is essential. This is especially the case when migrant workers are engaged in domestic labour or

¹⁷ The UN International Convention on the Protection of All Migrant Workers and Members of their Families of 1991, Global Commission on International Migration, (Jan., 2005).

¹⁸ *Migrant Workers: Report of the Special Rapporteur on Migrant Workers*, U.N. ESCOR, (2004).

other practices that keep them out of public view¹⁹. Moreover, legal representation should be given to the workers so that when abuses occur they can fight for their rights. In order to give legal support, the non-governmental organizations and agencies play crucial roles. Consular protection also plays a significant role in ensuring that there are no unsafe conditions for migrant workers.

VII. CONCLUSION

The main issue created by migration is that of security. First, it deals with humiliation faced by migrants and their rights. It also includes the fear of security raised by countries on irregular migration. While framing a law both these security fears must be considered. The law should never express favouritism on one side. Primarily the root causes of this issue should be found. At some circumstances migration becomes necessary. Such conditions should be avoided by pressing on development oriented laws and achieving sustainable development. Migrants, refugees and ethnic groups often come across the same level of problems. A multi-scale scheme initiated by international bodies can bring these together to ensure basic rights are protected. Victimization of migrants would come to an end only through a strong legal framework. Migrants should feel security and belongingness in other country. So countries should be asked and forced to initiate plans that would empower migrants. Challenges faced by migrants are multi dimensional. It has political, legal, social and psychological sides. A multi oriented methodology is required to address this. Administrative machinery should be freed from prejudices and misconceptions. By attaining self respect migrants would feel empowered and it increases morale of them to the economy they are contributing into. If the ideology of mutual respect arises between citizens social harmony can be achieved easily. So a three level action plan which is wide and extensive can only find a cure to it. First idea of mutual respect at regional level, Second a strong prejudice free administrative network and finally a global scheme to address resource inequalities in the globe. If we achieve such a deal we can definitely turn migration into a positive process.

¹⁹ Ibid.