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RIGHTS OF MIGRANT AND REFUGEES

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ABSTRACT-

This research explores the rights of refugees and migrants within the framework of international law, focusing on the protection mechanisms established under treaties such as the **1951 Refugee Convention**, the **Universal Declaration of Human Rights**, and the **Global Compact on Refugees and Migration**. The study examines the challenges faced by refugees and migrants, including discrimination, limited access to basic services, and restrictive immigration policies. Through an analysis of reports from the **United Nations**, **UNHCR**, and the **International Organization for Migration (IOM)**, along with insights from scholarly texts, this research highlights the disparity between international obligations and national practices. Emphasis is placed on the need for enhanced international cooperation, stronger legal frameworks, and the political will to ensure that refugees and migrants can access their fundamental human rights. The findings underscore the urgent need for a balance between national security concerns and humanitarian obligations to protect the dignity and rights of displaced individuals.

KEYWORDS – Refugee Rights, Migrant Rights, International Law, 1951 Refugee Convention, UNHCR, Global Compact on Refugees, International Migration, Humanitarian Law, Non-Discrimination, Asylum Policies.

METHODOLOGY –

The methodology for this research combines a qualitative approach, utilizing online databases, international reports, and scholarly books to comprehensively explore the rights of refugees and migrants. The steps are outlined below:

1. **Online Research and Website Analysis**
2. **UNHCR (United Nations High Commissioner for Refugees) Website:** This site will provide authoritative data, reports, and policy documents related to refugee rights, including country-specific assessments and the latest updates on refugee crises.

3. **UN Reports:** Various reports by the United Nations, including those from the Human Rights Council, the UNHCR, and the Office of the High Commissioner for Human Rights (OHCHR), will provide detailed insights into the treatment and rights of refugees and migrants globally.
4. **Books and Scholarly Journals: Books on International Refugee Law:** Texts like "The Rights of Refugees under International Law" by James C. Hathaway will be used to gain a theoretical understanding of the obligations that states have under international law.

WHO ARE MIGRANTS & REFUGES?

Millions of people worldwide depart their homes in search of a brighter future for their families. There are migrants amongst them. Some people are displaced. A refugee is a person who has been forced to leave their home country owing to threats of violence, legal action, or disagreements. They have a claim to national protection. Sending them back home would endanger their lives and freedom, thus it is not an option. Asylum seekers are those who seek international protection from danger in their home country. It is vital to note that not everyone who applies for asylum abroad is given by default refugee status.

A Migrant, on the other hand, is someone who chooses to relocate alone; many return to their original place after a few years. Some relocate in search of better work, while others seek higher education. These people are not forced to leave their homes or country. These people are allowed to live abroad after willingly leaving their own country. Better education or economic prosperity could be their motivators.

Human rights are critical because they serve as the foundation for human existence. They are now firmly entrenched by several human rights treaties and the Universal Declaration of Human Rights, following a long period of struggle. These documents guarantee civil, political, economic, social, and cultural rights to all individuals, whether they are refugees, immigrants, or naturalized citizens.

Many people have been forced to escape their homes as a result of the recent COVID-19 pandemic outbreak due to a lack of food, jobs, shelter, and other essentials. The COVID-19 pandemic has not been identified as a reason for internal population displacement. The majority of migrant workers have been forced to leave their jobs as a result of the pandemic, and

returning home is becoming increasingly impossible. The national government must act rapidly to protect migrants and refugees in this tough situation by establishing food, shelter camps, testing facilities, and social separation measures in between.

GUIDE TO UNDERSTAND THE ISSUE –

Persecution must be based on one of the five reasons listed in Article 1A (2) of the Refugee Convention: race, religion, nationality, membership in a certain social group, or political opinion. Any other basis for persecution will not be considered. When the term “race” is used, it refers to both social groups based on shared ancestry and ethnic groups. Religion can relate to a variety of notions, including identification with a group that usually shares similar rituals or beliefs. An individual’s citizenship is a component of their nationality. Persecution based on nationality can also include the subjection of ethnic, linguistic, and cultural groupings within a population.

People who belong to a given social group have similar social status, habits, or backgrounds. Persecution for any of the other four reasons frequently falls into this category. It has been used on the families of landowners, corporate owners, gay persons, and retired military members. Political opinions include criticisms of government policies and procedures, as well as beliefs that the ruling class does not embrace. It contains beliefs that are attributed to particular individuals. People who withhold their political opinions until they have fled their home countries and can demonstrate that they are in fear of persecution may be given refugee status.

INTERNATIONAL LAWS LINKS –

International law defines and protects precisely what is described. These are persons who fled their home countries in quest of safety after being subjected to persecution, conflict, violence, significant human rights violations, or other situations that severely disrupt public order. They consequently require “international protection” from another country because their own country of origin is neither capable nor willing to offer it. They are exercising a fundamental, unalienable human right: the ability to request for and be given sanctuary. According to international refugee law, even if someone has not yet acquired official recognition from the UNHCR or a state, they are still considered refugees and should be treated as such as soon as they meet these criteria.

States have specific obligations to refugees under international law, such as

1. Allowing refugees to enter their country and apply for asylum.
2. Not punishing refugees who enter countries unlawfully in pursuit of asylum (without permission or proper papers). Asylum seekers are not breaching the law.
3. Ensuring that refugees' fundamental human rights are respected, preserved, and realized.
4. Ensuring that refugees are not deported or returned (also known as "refouled") to dangerous areas where their lives or freedom are threatened.

The term "migrant" has been used to characterize persons who cross borders for reasons other than being directly threatened with persecution, major harm, or death, such as seeking a job, an education, or reuniting with family members. However, it is not defined in this manner in international law.

There could be more complicated factors involved, such as escaping poverty, malnutrition, or natural disaster-related challenges. Even if they do not match the definition of a refugee, Travellers may require support, assistance, and rights protection while travelling. However, international human rights law would protect them, and depending on the circumstances, they may also be entitled to protection from being deported to their country of origin.

While states are not compelled under international law to provide refuge, they do have the authority to do so. Countries may give "temporary protection" in the case of an unanticipated large-scale migration that would overwhelm their standard asylum processes. People in these conditions can be quickly accepted into secure nations, but there is no guarantee that they will be awarded permanent asylum. Thus, under certain circumstances, "temporary protection" benefits both governments and asylum seekers. However, it is intended to augment, not replace, the Refugee Convention's larger safeguards.

Organizations dedicated to protecting and aiding refugees usually push for three "durable solutions" to their plight:

1. Voluntary repatriation: when a refugee's life or freedom is no longer in danger, they can return home;
2. Local integration: host governments allow refugees to settle in their home country; and
3. Resettlement in a third country: the initial asylum-seeking country rejects local integration, making repatriation risky.

RIGHTS OF REFUGEES AND MIGRANT UNDER INTERNATIONAL LAWS

Every living being is protected by the protections outlined in the Universal Declaration of Human Rights from the moment they are born until they die. People on the territory of other countries, particularly refugees and migrants, are protected by these principles and other international conventions. The following are some of the key rights that refugees and migrants can exercise:

1. The right to be protected against cruel or agonizing treatment-

Nothing in the Universal Declaration of Human Rights expressly prohibits “torture” or “cruel, inhuman, or degrading treatment or punishment” for anyone. This shows that safeguarding refugees and migrants from cruel treatment is vital to achieving the Convention’s goals.

2. Freedom of Expression and Opinion-

Article 2 of the Universal Declaration of Human Rights states that no one is entitled to less freedom of expression than another because of their race, colour, gender, national or social origin, place of birth, or any other characteristic. It is critical to note that this right prohibits any sort of discrimination based on a country’s political, legal, or international position.

3. Freedom of religion, conscience, and thought-

Article 18 of the Universal Declaration of Human Rights states that everyone has the right to freedom of thought, conscience, and religion, which includes the opportunity to alter one’s faith or belief and express it via acts of worship, teaching, and other activities. Nobody, even migrants and refugees, is obliged to change their religion.

4. Absence of Reference-

According to Article 33(1) of the 1951 Convention on the Status of Refugees, states are prohibited from refoulement, or returning a refugee to a place where their life or freedom would be jeopardized because of their race, religion, nationality, membership in a specific social group, or political beliefs. Everyone recognizes that this is a fundamental human right. Human rights treaties such as Article 3 of the Convention against Torture (1987) and Article 22(8) of the American Convention on Human Rights (1969) explicitly state this.

5. Asylum seekers’ rights-

Article 14 of the Universal Declaration of Human Rights states that everyone has the right to request and receive protection from persecution in other countries. It further stipulates that this privilege cannot be exercised in cases involving non-political offences.

6. **Family rights** –

According to Article 16 of the Universal Declaration of Human Rights, the family is the natural and vital social unit that has the right to be protected from the state and society. It also declares that everyone is free to marry and start a family. According to Article 23, every working person has the right to adequate compensation that ensures a dignified existence for themselves and their family and, if necessary, is supplemented by various forms of social support.

7. **Free from discrimination** –

Article 7 of the Universal Declaration of Human Rights states that "all are equal before the law and are entitled to equal legal protection without discrimination." This suggests that everyone is treated equally under the law and that discrimination against any individual is never acceptable. Discrimination against refugees and migrants in this context refers to issues of fundamental requirements such as food, safety, the right to be free from exploitation, and housing, rather than opportunities available only to citizens.

8. **Rights and duties of nations in terms of detentions-**

Migrants and refugees are entitled to certain rights under international law. Every state must defend and protect these rights. The State is responsible for ensuring that the rights granted to every individual on their property and under their authority are exercised or are only symbolic. The International Organization for Migration (IOM) outlines various rights guaranteed to both migrants and refugees when incarcerated.

KEY ASSISTANCE AGENCIES

1. **High Commissioner for Refugees at the United Nations-**

It was Established in 1951, the United Nations High Commissioner for Refugees (UNHCR) was designed to provide worldwide refugee protection. Ensuring that everyone can exercise their right to apply for asylum, find a safe haven in another state, and freely return home is the organization's main goal. Encouraging states to develop equitable and adaptable procedures to advance just and efficient refugee law is one of the agency's top priorities. When UNHCR was first founded, the nation that had granted

asylum was thought to be in charge of providing the material necessities for refugees, such as food and shelter.

2. The International Organization of Migration (IOM) –

It supports the return of rejected asylum applicants and refugees referred by the UNHCR.

3. Red Cross International Committee-

The International Committee of the Red Cross (ICRC) is a non-profit humanitarian organization that acts as an unbiased third party to assist and protect conflict victims. It accomplishes this by facilitating family messaging exchanges and providing medical care to casualties. The International Committee of the Red Cross provides security and assistance to displaced individuals as members of the civilian population. This involves protecting civilians, visiting captives, providing medical treatment, and food aid, and reuniting families that have been separated by conflict. The ICRC's broad mandate does not include the protection and relief of internally displaced people. However, it has only sometimes assisted numerous types of internally displaced persons over the years. Given its experience in humanitarian aid and emergency situations, the ICRC is regarded to be well-equipped to provide this type of help. At the request of the appropriate nation, the UN Secretary-General or the General Assembly has requested that these activities take place.

4. U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)

To alleviate the horrific consequences of the 1948 Palestinian War, the UNRWA operates as a UN subsidiary and is solely dedicated to the welfare and voluntary return of Palestinian refugees.

5. Organisation for Economic Co-operation and Development (OECD) –

The 37 member countries of the OECD, a global economic organization, form part of an international framework. OECD was founded in 1948 and was previously known as the Organization for European Economic Cooperation. Its various objectives include combining politics and economics, tracking emigrant groups, and emigration economics.

6. International Covenant on Civil and Political Rights-

Articles 2–13 of the 1966 According to Article 2 of the fundamental international treaty on civil and political rights, governments must defend the rights of all people who are on their territory and subject to their authority. Additionally, the Covenant prohibits forced removal and guarantees freedom of movement.

7. Convention on the Rights of the Child (1989) (article 22) –

According to Article 22 of this agreement, States Parties must take the necessary efforts to ensure that a child who is requesting for or has been given refugee status receives adequate protection and humanitarian aid to exercise their rights. States Parties must work together to protect and support such a child, as well as find the parents or other family members of any refugee child in order to reunite them with their family. If the child's parents or other family members cannot be traced, they will be treated in the same manner as any other child who has been removed from their home environment.

CONFLATION –

The term “migrant” is increasingly used to refer to both migrants and refugees in public discourse, the media, and statistical reporting. This is concerning. Not only is this misperception false, but it may hurt persons in need of international protection. Misrepresenting migrants, refugees, or asylum seekers as “illegal,” “unauthorized,” or “undocumented” arrivals.

1. Misrepresents their individual legal standing. This hinders their capacity to get some legal protections, such as the right to travel across borders in pursuit of and receive sanctuary.
2. Reduces State accountability by downplaying the specific tasks States have to protect their citizens' right to seek asylum universally and regardless of how they came.
3. Endangers their lives and well-being by failing to recognize them in mixed movements and failing to give adequate protection, exposing them to more harm.
4. Ignores their personal experience and the risks and dangers they have faced as a result of persecution, war, and warfare.
5. Encourages support for policies that oppose asylum and refugees, such as denial of access to land and asylum, barriers on land and at sea, abuse and violence at borders, refoulement (returning people to dangerous situations), and attempts to divert or “export” asylum-seekers elsewhere (externalization).

ANALYSIS OF CASE LAW

Immigration and Naturalization Service v. Cardoza-Fonseca, 480 U.S. 421; 107 S. Ct. 1207; 94 L. Ed. 2d 434; 55 U.S.L.W. 4313, 9 March 1987 (US Supreme Court)

To show a “well-founded fear of persecution”, an alien need not prove that it is more likely than not he or she will be persecuted in his or her home country.

R v. Secretary of State for the Home Department, Ex parte Sivakumaran and Conjoined Appeals (UN High Commissioner for Refugees Intervening) [1988] AC 958, 16 December 1987 (UK House of Lords)

The requirement that an applicant for refugee status had to have a “well-founded” fear of persecution if he was returned to his own country meant that there had to be demonstrated a reasonable degree of likelihood that he would be so persecuted, and in deciding whether the applicant had made out his claim that his fear of persecution was well-founded the Secretary of State could take into account facts and circumstances known to him or established to his satisfaction but possibly unknown to the applicant in order to determine whether the applicant’s fear was objectively justified.

- UNHCR’s Intervention: *R v. Secretary of State for the Home Department, ex parte Saravamuthu Sivakumaran, Skandarajah Vaithialingam, Nadarahaj Vilavarajah, Navaratnasingham Vathahan, Vinasithamby Rasalingan, Kandiah Navaratnam, The Case for the Intervener, 1987*

Canada (Attorney General) v. Ward [1993] 2 S.C.R. 689, 30 June 1993 (Supreme Court of Canada)

The test as to whether a state is unable to protect a national is bipartite: (1) the claimant must subjectively fear persecution; and (2) this fear must be well-founded in an objective sense. The claimant need not literally approach the state unless it is objectively unreasonable for him or her not to have sought the protection of the home authorities. The Immigration and Refugee Board, if the claimant’s fear has been established, is entitled to presume that persecution will be likely and that the fear is well-founded if there is an absence of state protection. The presumption goes to the heart of the inquiry, which is whether there is a likelihood of persecution. The persecution must be real – the presumption cannot be built on fictional events – but the well-foundedness of the fears can be established through the use of such a presumption. The claimant must provide clear and convincing confirmation of a state’s inability to protect absent an admission by the national state of its inability to protect that national. Except in situations of complete breakdown of the state apparatus, it should be assumed that the state is capable of protecting a claimant. This presumption, while it increases the burden on the claimant, does not render illusory Canada’s provision of a haven for refugees. It reinforces the

underlying rationale of international protection as A, surrogate, coming into play where no alternative remains to the claimant.

Suresh v. Canada (Minister of Citizenship and Immigration) [2002] 1 S.C.R. 3, 2002 SCC 1, 11 January 2002 (Supreme Court of Canada)

“In exceptional circumstances, deportation to face torture might be justified, either As a consequence of the balancing process mandated by s. 7 of the [Canadian Charter of Rights and Freedoms] or under s. 1. (A violation of s. 7 will be saved by s. 1 “only in case arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics and the like”. In so far as Canada is unable to deport a person where there are substantial grounds to believe he or she would be tortured on return, this is not because Article 3 of the CAT directly constrains the actions of the Canadian government, but because the fundamental justice balance under s. 7 of the Charter generally precludes deportation to torture when applied on a case-by-case basis. We may predict that it will rarely be struck in favour of expulsion where there is a serious risk of torture. However, as the matter is one of balance, precise prediction is elusive. The ambit of an exceptional discretion to deport to torture, if any must await future cases.” [para. 78].

R v. Uxbridge Magistrates Court and Another, Ex parte Adimi [1999] EWHC 765 (Admin), [2001] Q.B. 667, 29 July 1999 (England and Wales High Court, Administrative Court)

The purpose of Article 31 of the 1951 Convention was to provide immunity for genuine refugees whose quest for asylum reasonably involved a breach of the law. Where the illegal entry or use of false documents or delay could be attributed to a bona fide desire to seek asylum then that conduct should be covered by Article 31. Article 31 not only extended to those claiming asylum who were ultimately granted refugee status but also to those claiming in good faith. To enjoy the protection of Article 31 a refugee must have come directly from the country of his persecution, presented himself to the authorities without delay and have shown good cause for his illegal entry or presence. A short stop en route to an intended sanctuary could not forfeit the protection of Article 31.

CONCLUSION -

While much has been done to raise awareness, there is no reason to be complacent in this difficult and unprecedented time. Most displacements that have occurred in recent decades could have been avoided if the parties had followed international humanitarian laws. Those forced to flee would suffer less if the parties had respected the displaced.

The rights of refugees and migrants form a fundamental part of international human rights law. These rights, rooted in principles of equality, dignity, and non-discrimination, are enshrined in various legal instruments like the 1951 Refugee Convention, the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR). Despite international frameworks designed to protect them, refugees and migrants often face significant barriers such as xenophobia, restrictive immigration policies, and limited access to basic services.

The global refugee crisis has heightened the need for cooperation and burden-sharing between countries. The Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM) are steps in that direction, promoting better protection, integration, and support mechanisms for refugees and migrants. However, enforcement remains a challenge, and many countries continue to neglect their international obligations. A balance between national security and humanitarian assistance is critical in ensuring that the fundamental rights of refugees and migrants are protected.

In conclusion, while international law recognizes a broad range of rights for refugees and migrants, the practical realization of these rights depends heavily on the political will and resources of individual states. International cooperation, the strengthening of legal frameworks, and awareness are essential for ensuring that refugees and migrants enjoy their basic human rights, without discrimination or exclusion.

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