



HUMAN TRAFFICKING AND REFUGEES PROTECTION

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Refugee:

According to the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol, a refugee is defined as "a person outside of his or her country of nationality who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion¹. The largest refugee populations in the world are Afghanistan, Iraq, Somalia, Democratic Republic of Congo and Myanmar. Due to continuous conflicts in their home countries, they are forcefully displaced and they flee to countries like Pakistan, Iran, Syria, Germany and Jordan, which are home to the world's largest refugee populations.

According to The United Nations High Commissioner for Refugees (UNHCR) calculation there are more than 15 million refugees across the world today. Its official and authoritative command is to remove stress and provide relief from discomfort. It also aims at aiding them with legal and operational guidance and

security up to the time when reasonable answer is given to their needs combining with durable solutions. The three durable solutions for refugees are voluntary repatriation, local integration and third country resettlement. According to voluntary repatriation refugees have a choice to go back to their own country with full security and self dignity. Local integration takes place when the country which provides asylum gives them the opportunity of permanent residency and to have an equal footing with nationals of the country. And third country resettlement is put forth only to a minor population of refugees and are recruited to the third country who are ready to accept them on eternal basis.

Human trafficking - definition and insight:

Human trafficking in refugees is a phenomenon which has its roots back to the ancient history...Now this issue has been recognized as an international issue and in the year 2000, the United Nations Trafficking Protocol enacted a widely accepted international definition:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the

¹ The 1951 Convention Relating to the Status of Refugees See also the 1967 Protocol, removing

geographic and temporal restrictions from the Convention. 147 states are party to one or both instruments.



purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs².

The business of human trafficking has been increasing tremendously and has become a grievous crime. Trafficking around the world has rediscovered how profitable it is to buy and sell people. The process which takes place has been described in overall three stages³. The procedure starts where victim is brought by making use of drugs, abduction, kidnapping, inducement, romance, alluring, blandishment or deception. They transfer, exchange and trade the victims across international borders to the brothel owners in the form of smuggling, accompanying them with services or to the managers of the sex establishments and exploiting the victim by taking advantage of his or her labour services or body organs by outraging their modesty.

Refugees- more prone and exposed to trafficking circuits:

Refugees are more prone and exposed to human trafficking than national citizens and there are no. of reasons, one of the prominent reason is that the refugees are easily traumatized and influenced as they have no national identity or ID proof, no

legal documents, they have already flee their own country and are living without any legal identity thus these human trafficking circuits targets such vulnerable group more easily, due to fear, lack of knowledge, education and awareness they are more directly exposed to such danger.

There is no proper track record or government of refugees coming from different countries and as there is no record it is easy for traffickers to target such people as in the end no one is going to come looking for them and even if authorities are looking for the victims it becomes difficult for them because of no proper record or facts about victims.

Life of women and children as refugees:

Victims of human trafficking may be men, women or children and sometimes they are even transferred to international borders. Among them women and children make up more than 50% of world refugees. Men become combatants or are killed in conflict circumstances and women and children are left behind and the only option left for them is to flee. UNHCR has considered children as 'people of concern' and those children who departed from their parents or guardians are considered to be the most vulnerable and highly prone to risk.

² 3 Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Crime, 2000 117 countries are signatories.

³ Siddhartha Kara, Sex Trafficking: Inside the Business of Modern Slavery. New York: Columbia University Press, 2009.



Rights of forcibly displaced women are at stake as they have no protection from their husbands, fathers or other male family members and ultimately they have to face high economic barriers resulting in severe economic hardship, discrimination in many forms, resulting in sexual harassment and rape in refugee camps which made them sex slaves and domestic workers. There were restrictions imposed on them to not to have access to public health services like reproductive health care and many more negative causes. In recent years they identified displaced women as 'women at risk' and need highly exceptional protection to face challenges⁴. As they have no legal representation and protection they have become the most vulnerable sex traffickers.

Gender discrimination, sexual violence, coercion – a social problem:

In or to all locations under discussion and throughout the world, women are the worst sufferer of gender discrimination. Gender discrimination makes the situation worse for refugee women to get security and survival challenges. Involvement of women in political and social scenario is highly problematic as a refugee. Being a refugee whether men or women they have to interface elevated level of sexual harassment and coercion in all the phases of refugee experience. One of most highly widespread problem is rape in all conflict situations as there is lack of law implementation and

exemption or freedom from punishment. But it has its own advantage as it has been used one of the central weapons of war in current scenario. Women and children are the worst survivors and power is exerted against their will to interchange sexual services for them to be alive and is blackmailed for basic necessities, food, and security, cross border portability or their crucial needs. The only way to survive for refugee women and their families is prostitution as there is no alternative means available for their existence.

Economic endurance, the strive for survival

Refugees have to strive for their economic survival. Refugee's camps are maintained by UNHCR and are provided with food, shelter, sanitation. Medical care and other basic necessities at least to have a stable life. Sometimes refugees to earn their living or livelihood indulge themselves in some activities like cultivation or searching for food through refused useful material but their survival becomes difficult as there is always an opposition from local resident population creating a barrier for refugees to endure in insecure and ambiguous economic circumstances for indulging themselves in additional economic activity.

Taking urban refugees into consideration the scenario is slightly different as they have better approach to work opportunities but sometimes these golden opportunities make them to indulge

⁴ See, among others, the excellent report of the Women's Refugee Commission, "Abuse Without End: Burmese

Refugee Women and Children at Risk of Trafficking" 2006



themselves in unauthorized or illegal acts resulting in an unauthorized status and which pushes them to have criminal contact with criminal actors.

Family separation, the segregation from the social world:

One of the deepest emotional pain refugees have to face is family separation. Family members are scattered or lost for an infinite time because of harsh force without their consent from their homes or they have to move out in order to avoid the dangerous situation.

In a place of transient refuge, they are not in the same environment that existed in the country of their origin and therefore they are not helped by the similar community structure or social networks. No community support and a heavy loss of emotion has interrupted their social systems and social network resulting in deficient physical security, less economic support, and even no emotional and mental support which in all makes them the most vulnerable and aggrieved party of human trafficking.

It is often seen that the men are mostly maltreated for forced labour whereas the women are forced mostly into sexually exploitative situations. Women fall prey to sexual trafficking more often for many reasons, as they search out for work they are easily influenced and are promised jobs as waitresses, nannies, servants but are transferred to various wealthier countries as sex slave or for sexual purposes.

Once these refugees victims are transferred from one place to another there are various mental problems they

have to go through, they find themselves helpless, vulnerable, and traumatized and are forced into unwanted fearful situations. The trafficker’s circuits are so strong that even if they try to run away from such exploitative situations, the traffickers use an assortment of methods to manipulate and have power and control over their victims, including:

- Dishonesty and deception, influencing and promising offers of employment and work opportunities abroad resulting in forced prostitution, or declaration indicating that such victims will be castigate and punished by national law enforcement or immigration establishments if they found out about the victims presence in the country.
- The use of aggressive and violent behavior or the threat of violence against the victim or victim’s family member as well as captivity or segregation and isolation,
- Bringing into play the role of debt bondage or oppression for example asking for the charge of victim transportation, the food and shelter providing costs, and over priced interest on money allegedly owed to traffic circuits
- Creating the fear or insightful of religious and cultural beliefs, including relatable taboo, black magic, witchcraft and voodoo magic.
- Due to the fear of no legal documents and no identity proof and no one else to raise voice in their support they all are directly exposed to such circuits.

Balance between national interest and refugee’s interest:



Talking in terms of countries there has to be a balance of interest between national interest and refugee's interest, taking into consideration India:

Though India is not a signatory to 1951 convention and 1967 protocol but is a part of United Nation High Commissioner for Refugees (UNHCR) and National Human Rights Commission (NHRC) and has undertaken responsibility, the refugees are given the Indian Constitutional rights under Article 21 and are dealt with existing Indian laws both general and specific. India already having such large population and with advent of refugees there lies a conflict of interest and thus having the need to look forward for state obligation towards refugees: balance between Human Rights and National Interest. As mentioned earlier due to such large population in India and with coming up of refugees our very own Indian citizens are living with limited access to basic necessities, thus signing convention creates an obligation to provide employment, food, housing, medical, education to refugees but even without signing up such conventions India's record of giving shelters has been good but not enough as the human trafficking circuits target refugees in a vast level thus hampering and creating fear in the mind of refugees. These refugees seek asylum and shelter in India and are here for help yet they have to go through various unseen and horrific experiences

Despite the fact that Indian government has established well manageable and experienced bureaucratic machinery familiar with problems of refugee's

administration, the three branched strategy of Home Ministry, Ministry of External Affairs and state governments are well maintained ensuring overall human rights, fundamental freedom and equal opportunity to all, there needs to be more and definite for the refugees, the legal framework needs to be more effective and efficient. Policies must be so effective that they must take control over human trafficking network and help in stopping these trafficking circuits.

In order to maintain balance between national interest and refugees India is lacking in proper policies, maintenance, judicial reforms and laws and nation is supreme and national interest cannot be compromised thus maintaining such policies which are parallel and supportive. While the security and safeguarding interests of India remains paramount, taking care of refugees in India should be a moral duty for the state, thus there is efficient and effective need to come out with laws supporting and safeguarding both national interests as well as refugee's interests.

An upheaval – the mental pain and turmoil

Human trafficking is a complex phenomenon because the aggrieved party is traumatized by both physical and psychological harm by number of tactics like beatings, starving them by not providing them with food, gang rape and many more. Physical injuries include breaking of bones, burns, and mental trauma. Even many victims have to go through gynecological health issues by harmful sexual and commercial acts.



They have to undergo hardship making them the victim of sexually transmitted diseases, miscarriages, illegal abortions etc. Trauma can cause a disastrous effect on human life resulting in lack of self productivity. They indulge themselves in very risky situations unknowingly and have sudden anger and anxiety issues and this is all because of psychological damage they have faced. As they have mental trauma their chances of securing employment becomes less and ultimately they have to go through severe economic hardship. In case of children or young generation they try to recreate an event of sexual harassment of which once they were victim. Later they become the strong business holders of human trafficking and refugees become the victim of such stressful acts.

Rethinking legal framework for refugees, what needs to be done right:

Alternative legal framework:

There need to be a system which will protect the refugee human permanently if not, then temporarily to the best possibility through the issuance of temporary visas which will guarantee the victim from risk of trafficking and protect refugees fundamental rights. . Article 7 of the Trafficking Protocol states that each State Party “shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.”⁵

The weakness here lies solely upon the state because it’s the state protocols and provisions which govern the issuance of temporary visas so the state must act in all its effectiveness and efficiency and should follow strict guidelines stating all legal necessities so that these refugees are given visas as promised and are taken care after words, this helps in giving proper identities to refugees thus making it harder for human traffickers to make a move over refugees.

Reparation

Despite the fact whether a victim seeks protection in the form of asylum, an impermanent visa, or is repatriated, she should have admittance to methods of compensation for the harm she has suffered as a consequence of her trafficking. The right of an individual to a remedy for infringement of international human rights law can be found in several international human rights instruments: the Universal Declaration of Human Rights, Article 8; the International Covenant on Civil and Political Rights, Article 2; the International Convention on the Elimination of All Forms of Racial Discrimination, Article 6; and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 14. The UN General Assembly has described victims of crime for the purpose of reparation as: “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or

⁵ 152 Trafficking Protocol, supra note 10, art. 7.



substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.”⁶

There needs to be strict and definite administration for compensation and reimbursement of refugees for all the problems they have gone through and the wild and fearful scenario they have faced over the past time, this is one important and essential point to be taken into consideration in order to bring refugee as a human and back to their life. This will give them incentive to be in their own and move on in life further as a human.

There needs to be an active enactment of various social groups, proper records of no. of refugees coming or entering the state, proper enrollment of refugees, no. of male, female, children entering the state, in which part of the state are they seeking asylum in, whether or not they have registered their identities to a particular state authorization or not, this may take time and seem hectic but for the good of all refugees these regulations needs to be strictly followed over and over again and everywhere.

Specific laws especially for protection of refugees and protecting their human and fundamental rights by guarantying and making them aware of their rights should be enforced. Their need to proper asylum centre’s as well as medical and trauma centre’s, educational institutions, police departments and stations specially for the enquiries and details for lost refugees and whatever help they need in the time of adversities, job opportunities, employment and incentives must be provided.

As refugees have to face tremendous level of problems because of lack of legal status like they cannot be identified and are not being registered and this problem is mostly familiar among urban refugees. Even if their identity is recognized and they are given all international protection whether they are signatory to 1951 refugee convention they will be given full security from refulgent but still they won’t have any authority to work. Particularly in the European context, there has been a significant critique by human rights observers and activists of the way in which anti-trafficking efforts have been shaped by some policy-makers as a question of stronger migration controls⁷. Education programs for refugees have been set up to inform them

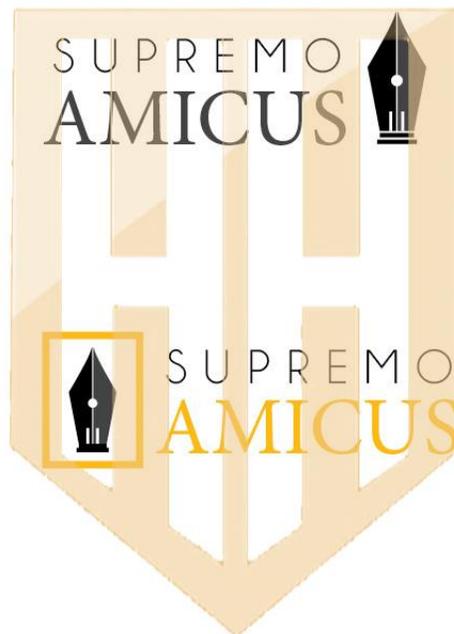
⁶ 6 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, 96th Plenary Meeting, UN Doc. A/RES/40/34 (1985), para. 1.

⁷See for example, James C. Hathaway, “The Human Rights Quagmire of ‘Human Trafficking,’” *Virginia Journal of International Law* Vol 49:1 2008 5, Mary A. Young, “The Smuggling and Trafficking of Refugees and Asylum-

Seekers: Is the International Community Neglecting the Duty to Protect the persecuted in the Pursuit of Combating Transnational Organized Crime?” *Suffolk Transnational Law Review* Winter 2003 and John Morrison and Beth Crosland, “The Trafficking and Smuggling of Refugees: The End Game in European Asylum Policy?,” *Policy Research Unit UNHCR* 2000



of the risks of trafficking and how they can be reduced, should be particularly targeted to those at greatest risk⁸.



⁸ For example, Jet Damazo, “Raising People’s Awareness of Human Trafficking Risks in Projects Improving

Connectivity,” Poverty Matters Newsletter Issue 5 October 2007