

MIGRATION AND ITS UNKNOWN ALLY: THE HUMAN RIGHTS

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I. INTRODUCTION

Examination of migration *vis-a-vis* Human Rights has been a largely neglected area of Indian jurisprudence. The reasons could be manifold viz. low awareness of rights/human rights, constitution of India and the national statutes not directly counting Migration as something affecting human rights, migration itself being a neglected issue and lack of research on Migration and its effect on human rights.

It is important to note that Migration comes in several hues and for the purposes of this Article, the word 'Migration' must be deemed to include them all.¹ This uniqueness associated with the issue of Migration owes its origin to many factors- local, national and international; social and religious; and racial and discriminatory. The word 'Migrant' must be construed to have such a wide ambit that it imports refugees as well as displaced. Thus, the issue of Migration and Human Rights needs a multi-disciplinary and multi-sectoral approach and a permanent solution is possible only when it is dissected with that much precision.

India has the largest diaspora in the world.² Indians were transported to the foreign lands as indentured labour by the British. The present day migration is largely voluntary. There is a rapid increase of migrants in Asia, with intra-regional migration dominating worldwide. There are 258 million international migrants living abroad worldwide.³

The first large scale instance of Migration in modern India was witnessed in the period leading to independence. Informally, these persons were called refugees,⁴ which was inherently flawed because the independent India was their homeland and not an entirely foreign land. So, the approach towards tackling the Migrants' cause has always been lackadaisical and casual. Thereasons are varied like ignorance, insecurity about one's own resource, sometimes even xenophobia and sociopolitical and diplomatic reason. Quintessentially, the issue of Migration, in its various forms, has never garbed attention of the lawmakers and practically ignored by the policymakers. The nature and cause of migration in the inter-state as well as intra-state case are varied. This article is primarily concerned with violation of Human Right as a by-product of Migration. Nonetheless, all related phenomena have also been discussed at appropriate places.

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¹ Types of Migration have been discussed in subsequent pages.

² International Migration Report 2017: Highlights, available at <http://www.un.org/development/desa/publicatons/international-migration-report-2017.html> (last visited on April 25, 2019).

³ *Ibid.*

⁴ The office of the United Nations High Commissioner for Refugees (UNHCR) defines refugees as 'someone who has fled his or her country and cannot return because of a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Refugees may also flee their countries due to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order'. This definition is available at: http://www.unhcr.org.in/index.php?option=com_content&view=Article&id=22&Itemid=141 (last visited on April 25, 2019).

II. DEFINITION AND TYPES

Migration, in the present context, may be defined as movement of large numbers of people from one place to another. It is the simplest and hence the best definition. The causes and effects of Migration are manifold. These causes and effects will be relevant twice for this article viz. for the purpose of deciding types of Migration and also for analyzing the human rights violation of the migrants. It is the act of moving from one place to another - within a country or across borders and usually refers to migration on a larger scale.

Migration may be on an individual level, or in a group or even in a form of exodus. 'Exodus' implies migration on the largest scale. Individual migrate, usually, because of some private inducement or incentive. It is like moving by a spouse after marriage. Group migration is usually a result of the action or inaction of state i.e. people from a region migrate to another region for want of government's action or because of government's promotion to that effect.

A. Types

There are various kinds of migration viz. Rural-Urban migration, Seasonal migration, Long and short term migration, Forced or involuntary migration, Impelled migration and Return migration. Most of the terms are self-explanatory. From the viewpoint of Human Rights, it is noticeable that migration mostly contains an element of compulsion. This goes against the ethos of Human Rights.

To start with, there are 'Regular' and 'Irregular' migration. In India, those who go abroad using the services of agents registered with the Indian government or its official online e-Migrate recruitment channel are 'regular' migrants while those going abroad through unregistered sub-agents are 'irregular' migrants. Migrants right activist would argue that there is a big difference between the official e-Migrate number and the number of actual migrants.⁵

In case of Rural-Urban migration, there is push as well as pull factor. Lack of employment, poverty, absence of health and educational infrastructure are push factors while a better living standard of life in urban areas, in general, is the pull factor. Here, push factors are compelling factors which forces individuals to act against their free wills. These actions are not result of an ambition for a better and comfortable life. These actions are act of desperation which an individual or a group of individual take for meeting their need of the basic amenities in life like food, potable water, elementary education and medical treatment etc.

Seasonal migration is little different in this regard in the sense that the pull factor outweighs the push factor. Certain examples of seasonal migration are movement of students for higher education to bigger cities and transfer of individual to another city on promotion etc. This kind of migration is by and large voluntary and does not involve element of direct or indirect compulsion. Other kinds of migration can also be explained accordingly.

The displacement of people from their natural habitation also causes Migration. Such kind of migration includes displacement for the purposes of industrial development.

⁵ Rejimon K., "India needs to look beyond the debate on regular and irregular migrants", *available at*: <https://thewire.in/labour/india-needs-to-look-beyond-the-debate-on-regular-and-irregular-migrants> (last visited on April 25, 2019).

Various kind of Migration can be placed on a continuum from full and free consent to no consent. If there is a free and full consent, it is certainly not a violation of right. If there is no consent or not a valid consent, it is certainly a violation of human rights.

If anthropogenic greenhouse gas emissions are not drastically curtailed within the next two to three decades, sea-level rise will displace tens of millions of people worldwide – and potentially many more – in the latter decades of the current century and the early decades of the next. Displacements are already taking place in small communities situated in erosion-prone, low-lying coastal locations. Governments will need to invest heavily in protective infrastructure for high-population-density settlements and to develop strategies for organized relocations of people from high-risk locations that will need to be abandoned. Experience suggests that the costs will be beyond the means of many less-developed and middle-income countries, and that the socioeconomic well-being of those who must relocate will be heavily compromised. An anticipatory “migration with dignity” strategy proposed by the government of Kiribati may be one way to avert worst-case displacement scenarios.⁶This shows the variety in types and causes of migration including even climate change, civil war and poverty etc.

B. Migration, Emigration and Immigration

Migration has already been discussed. Emigration is leaving one's country for settling in another. Immigration may typically be defined as arriving at another country i.e. a country other than the country of one's origin with an intention of living there permanently. It involves movement of an individual or a family to move to a new country from their country of origin.

Thus, technically, while migration involves movement across an international border or within a country, immigration and emigration involves States and the international law or treaties comes into play.

However, the main issue is that of recognition of migration as an act violating fundamental rights, at least in some cases. This acknowledgement is missing entirely from the national jurisprudence. In the international arena, there is some acceptance of this fact, however some actual emphasis is still desired.

C. State and Migration

Migration is primarily a social issue, directly related to the quality of governance, which has its implication for legal jurisprudence. State thus comes into picture. It has to establish a social order which optimizes Migration as per its need and it also has to provide a legal framework regulating Migration. Migration is not necessarily an evil. State needs mobility of her citizen across its length and breadth and in tune with the requirement of the national interest.

Thus, the policy of the State plays a pivotal role leading to migration or an absence of it. It could be long term policy or the short term policy or even the economic policy pursued

⁶ R. McLeman, “Migration and displacement risks due to mean sea level”, *available at*: <https://thebulletin.org/2018/may/migration-and-displacement-risks-due-mean-sea-level-rise> (last visited on April 25, 2019) .

by the State. Suppose, the tax levied by a State in its different region is different. People will automatically move to the region where the tax is lesser provided all other conditions are constant. Similarly, if a State is misgoverned or less efficiently governed, people tend to flee for neighbouring state with a proven track record because they will be having better living standard there.

Have we ever heard of an American migrant or an Israeli migrant? We know the London and Paris streets being flooded by the Asian immigrants. Similarly, in the national perspective, we have seen a continuous flow of migrants from eastern India to Northern and Western India. It implies that there is violation of some rights of the citizenry of these regions which they are entitled to by virtue of being human. People usually do not leave their place of residence for long if there are not any compelling factors. Leaving for tourism is voluntary nevertheless leaving because of fear to life or absence of basic amenities of life like water, food, employment is compulsory. It is violation of the right to live and settle in a particular place conferred on citizens by the respective state governments and international provisions.

III. MIGRATION, UNO, UNHCR AND COUNTRIES

By definition, an international migrant is a person who is living in a country other than his or her country of birth.⁷

Department of Economic and Social Affairs, United Nations Organization (UNO), *inter alia*, deals with the issue of Migrants. Besides, there is a United Nations High Commissioner for Refugees which exclusively deals with the cases of refugees. At the cost of repetition, it is stated that there is a difference between migrants and refugees. The status of Refugees is an exaggerated form of migration. That is why there is a special body under the supervision of UNO to deal with Refugees. A refugee has a right to safe asylum, and not to be forcibly returned to a country where his/her life or freedom may be at risk. All asylum seekers and refugees have access to: the national legal system, the government healthcare system and Government schools for children's education.⁸

This is not the case with Migration. A sense of urgency on the part of International agencies is missing in case of Migration. It is usually left to the Country or group of countries to deal with a migrant issue even if it involves substantial violation of their human rights. Difficulties faced by the Syrian Migrants is the most recent and apt example of this. A distinct variety of migration is witnessed in Hong Kong where after the 1997 handing over of Hong Kong to China, people from the mainland has been dominating either through their physical presence or through their policies. So, there can be myriad varieties of migration. The study of migrants and their rights can be a discipline in itself. This would also be helpful in policy formulation and judicial intervention in case of migrants. It would allow a clinical precision in dissection of the various layers relating to migrants' problems. Since the 1994 International Conference on Population and Development (ICPD), the issue of international migration and its relation to development has risen steadily on the agenda of the international community.

⁷Available at: http://www.unhcr.org.in/index.php?option=com_content&view=Article&id=22&Itemid=141 (last visited on April 25, 2019).

⁸International Migration Report 2015: Highlights, available at: http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf (last visited on April 25, 2019).

The 2030 Agenda for Sustainable Development not only includes several migration-related targets, but also encourages countries to disaggregate targets by, inter alia, migratory status.⁹

A. Migration to Europe and Syria

Nearly two thirds of all international migrants live in Asia (80 million) or Europe (78 million). Northern America hosted the third largest number of international migrants (58 million), followed by Africa (25 million), Latin America and the Caribbean (10 million) and Oceania (8 million).¹⁰

It would be better if the cases of Migration in the relatively developed world like Europe and Asia is discussed because it would mean that instances of violation of Human rights in the lesser developed part of world like third world countries of African continent is more grim.

European countries always had a soft boundary. Their countries are distinctly marked on the basis of the languages spoken. The intermingling of citizenry is commonplace. After the formation of European Union, it became more prominent because whole of the European Union is treated like a country for certain practical reasons.

The migration within European Union has more of a positive effect and leads to development in cultural and social arena. Even then it is regulated by European immigration policy. European immigration policy is organized around two main themes. The first theme concerns the area of free movement. According to Article 77 of the Treaty on the Functioning of the European Union (TFEU), the Union is competent to adopt rules relating to the absence of internal border controls, the management of external borders and short stay visa policy.

There are differences among the members. If Germany and France are liberal, a sizeable section of their own society is raising xenophobic concerns. UK, though liberal, is largely known for "managed migration" which shows her own need for immigrants in the first place and not only an altruistic vision of the State or society *per se*. From a country's perspective, every country has the first duty towards their citizen and without endangering their life, property and progress, the *bone fide* immigrants may be welcomed. Protecting citizen's interest is as much important as protecting interest of the individual who becomes uninvited guest for reasons beyond his control.

The second theme concerns common immigration policy. Article 79 TFEU defines the areas in which the EU can act. The EU may adopt rules relating to the conditions of entry and residence, the definition of the rights of third country nationals residing legally, illegal immigration and unauthorised residence, and combating human trafficking.¹¹

⁹*Supra* note 6.

¹⁰International Migration Report published by DESA, UNO: Highlights, *available at*: <http://www.un.org/development/desa/publicatons/international-migration-report-2017.html>(last visited on April 25, 2019).

¹¹TFEU, art. 79, *available at*:<http://europeanmigrationlaw.eu/en/immigration> (last visited on April 25, 2019).

In 2017, of the 258 million international migrants worldwide, 106 million were born in Asia. Europe was the region of birth of the second largest number of migrants (61 million), followed by Latin America and the Caribbean (38 million) and Africa (36 million).¹²

The migration from non-European countries to Europe is a real intractable area of discourse. The Syrian refugees fleeing from scornful ISIS were initially not received in Europe. Then one fine day, a shocking picture of a baby boy Aylan Al-Kurdi lying face down near Turkey coast was splashed on all newspaper and social media and that awakened the conscience of the European Union leaders. They opened their doors to Syrian refugees. Issues relating to migrants have to be dealt with in an innovative way. Some migrants may cause law and order issue. There are ways to tackle it. Young migrants should be made aware of the local culture by the NGOs and governments. Integration in the mainstream of the country may exponentially raise the contribution of migrants in the economy of the host country. It is like the force of water, which can be used constructively, if regulated or it is always open to bring devastation.

In 2015, Germany was the main European Union (EU) country of destination for migrants and refugees. A news briefing from IOM's Global Migration Data Analysis Centre in Berlin presents the main data on arrivals of migrants, refugees, and asylum-seekers during 2015. During 2015, one million registered their intention to seek asylum in Germany. The data shows that since April 2015, the majority of first-time asylum applicants were from Syria. The relatively little known fact is about the profile of the people who registered an intention to apply for asylum in Germany. This is because Germany's EASY data collection system only collects data on the country of origin of the applicant and the receiving German "Land" or federal state, and not the socioeconomic profile of the person. In Germany, a quota system is used to distribute refugees and asylum-seekers among German states. This system allocates a specific percentage of asylum applicants, based on tax receipts and population numbers, to each state. Asylum applicants in Germany are required to stay in a reception facility when they first arrive for up to six months (This was previously three months).¹³ France and all other neighbouring countries are opposing the German policy of welcoming refugees.

IV. MIGRATION, INDIA AND HUMAN RIGHTS

It cannot be forgotten that Mahatma Gandhi, the Father of Nation, was a migrant himself for a good part of his life. In the national context i.e. in case of internal migrants, India does not have any specific law regulating or prescribing for migration. It is very much in consonance with the Constitutional scheme as India has been treated as an Unit and people have been given a right to move and settle across India.¹⁴ If there is or was any law, it dealt primarily with migration of labour from one region to another.¹⁵ It is primarily an issue of policy administered by the government of the day. The problems arising out of the internal migration are mainly resolved through policy intervention.¹⁶

¹²*Ibid.*

¹³*Available at:* <https://www.iom.int/news/migration-asylum-and-refugees-germany-understanding-data> (last visited on April 25, 2019).

¹⁴ Article 19 of the Constitution of India, 1950, provides these fundamental rights. However, some exceptions exist. These are also delineated in the Article itself.

¹⁵ Interstate Migrant Workmen Act, 1979.

¹⁶ The Mahatma Gandhi National Rural Employment Guarantee Act, 2005, Integrated Skill Development Scheme for the Textiles and Apparel Sector, Udaan Scheme for youth of Jammu and Kashmir, Seekho aur

A. The Case of Kashmiri Pandits

The plight of Kashmiri Pandits speaks volume about the status of migrants in India and the violation of their fundamental rights. Indeed, the case of Kashmiri Pandits amply demonstrates the absence of any effective redressal mechanism for the victims of forced migrants. This force may arise out of political compulsion as is the case with Kashmiri Pandits or it may have its roots in economic duress as is the case with migration of labour from Bihar.

Recent bout of migration of Kashmiri Pandits started in the late 1980s. Aided by external forces, Kashmiri Pandits were persecuted in every possible ways. They were beaten up, murdered, their women raped, their property was destroyed, their movement was restricted. Majority of them fled the valley to safeguard their person, wealth and esteem. They are not adequately covered by any kind of specific legislation providing employment, social security, rehabilitation or protection of their wealth left behind in the valley of Kashmir.

Any Citizen of India has a right to move freely throughout the territory of India,¹⁷ to reside and settle in any part of the territory of India.¹⁸ Article 370 of the Constitution of India limits the scope of these freedoms in case of Jammu and Kashmir.¹⁹ However this does not forbid a domicile of Jammu and Kashmir to prosper and grow in the land of their forefathers.

Kashmiri pandits are residing in tents and several makeshift arrangements in Jammu, outside cities, outside Jammu and Kashmir and some have even managed to find a strong foothold on their own on foreign lands. Majority of them are still perishing day in and day out. The Government keeps taking several measures to alleviate the pain but that is too little and too late.²⁰

The exodus of Kashmiri Pandits has a unique cause and that is the external invisible hand in their plight. So, the case has an international dimension to it which does not find a remedy under any rule, regulation, convention or treaty. Till the external aid to the trouble-mongers does not cease, the rehabilitation of Kashmiri Pandits is practically insurmountable.

B. The Bangladesh Refugees/Migrants

India shares a porous border with Bangladesh. Besides the large scale migration of people from the then East Pakistan,²¹ the infiltration continues till date. A better living standard and employment opportunity seems the determinative factors. While the immigrants benefit, the citizens of India suffer. Resources are scarce and the illegal migrants do not show

Kamao (Learn and earn) scheme for Minorities are a few of such initiatives which directly or indirectly minimize the disproportionate internal migration.

¹⁷ The Constitution of India, 1950, art. 19(1)(d).

¹⁸ *Id.*, art. 19(1)(e).

¹⁹ Article 370 provides some temporary provisions with respect to the state of Jammu and Kashmir.

²⁰ The Jammu and Kashmir Division of the Ministry of Home Affairs provides the details of various steps like package for return and rehabilitation for Kashmiri Migrants, construction of Two-Room tenements for Kashmiri Migrants directed towards bringing back the Kashmiri Pandits back to Valley but the social and political conducive environment are still elusive and hence the piecemeal approach has largely failed.

²¹ After the Liberation War of 1971, Bangladesh came into existence and was recognised by India and the world as such.

up in the government records thereby stretching the pressure on the resources up to the point where both parties suffer. It violates the rights of Indian Citizens as their growth is hampered and at the same time the Bangladeshi migrants also lives a live devoid of all basic amenities.

Bangladeshi migrates to Europe, America and several other countries. However, India is the most convenient host country, especially for the poor Bangladeshis who cannot even arrange for transportation expenses to Europe etc. Such migrants seeking blue-collar jobs have several nuances relating to their arrival and employment in the host countries and sometimes intractable.

C. Nepal and Madhesis

Nepal and India share a unique relationship. Still, there is an outrage and sense of alienation amongst the Madhesis. They are not Migrants from India *per se*. They have their roots in India which is not at par with being migrant. Madhesi leaders accuse the Nepalese governments of treating them as outsiders because of their Indian origin. More than 40 percent of Madhesis still do not have citizenship or voting rights.²² There is an urgent need to reconcile the differences of various sections of society as it is adversely affecting the constitution-making process.²³

D. The Positive Aspect of Migration and the Facilitating Enactments

Nepal ranks fourth in the world in terms of the contribution of remittances to GDP, according to a report launched by Ministry of Labour, Employment and Social Security, with support from IOM, the UN Migration Agency, the International Labour Organisation (ILO) and The Asia Foundation.²⁴ The citizens of Nepal and Bhutan and to some extent citizens of Sri Lanka have also been migrants in India. Their migration to India, in general, has not posed any danger to the people on the mainland. In fact, to the contrary, the government has made some overt facilitation for them. Nepali citizens do not need a visa for visiting India and *vice versa*. They come and work here for infinite period. There is some tacit understanding between the two states for free movement of their citizens when they are convinced that it would result in a win-win situation for both.

Sajid Javid, a son of Pakistani immigrants, has been appointed as Home Secretary replacing Amber Rudd who had to resign following his criticism over the treatment of migrants from former British Colonies.²⁵ These kind of events shows the constructive benefit of immigration provided the State is capable of exploiting it positively rather than panicking.

Matters of immigration and emigration are bound by various enactments and government orders. India is not party to the 1951 Refugee Convention or its 1967 Protocol

²²Available at: <http://www.irinnews.org/report/70027/nepal-background-of-the-terai-s-madhese-people> (last visited on April 25, 2019).

²³UN Political Chief has encouraged the dialogue among leaders to overcome differences on constitution. Available at: <http://www.un.org/apps/news/story.asp?NewsID=52970#>. Vpz BYdxhniU (last visited on April 25, 2019).

²⁴“Labour Migration for Employment- A Status Report for Nepal: 2015/16-2016/17”, available at: http://nepal.iom.int/jupgrade/images/stories/CoM/LabourMigration_for_Employment-A_%20StatusReport_for_Nepal_201516201617_Eng.PDF (last visited on April 25, 2019).

²⁵Stephen Castle, “Sajid Javid is named U.K. Home Secretary, replacing Amber Rudd”, *The New York Times*, April 29, 2018, available at: <https://www.nytimes.com/2018/04/29/world/europe/amber-rudd-resigns-windrush.html> (last visited on April 25, 2019).

and does not have a national refugee protection framework. However, it continues to grant asylum to a large number of refugees from neighbouring states and respects UNHCR's mandate for other nationals, mainly from Afghanistan and Myanmar. This shows India's positivity towards the issue.

E. Migration and National Human Rights Commission (NHRC)

The Human Rights is a vast world. Constitution of India provides for fundamental rights in part III (Article 12 to Article 35). Part IV (Article 36 to Article 51) of the Constitution also provides for certain rights which a State must confer provided it is capable and having resources for the same. All these fall under the purview of NHRC. Sadly there is an absolute lack of some consistent and genuine efforts.

In case of Migration, there is a possibility that either of the two or both parts of rights are violated. Suppose, a person is forced to migrate, it would certainly violate right to equality. In addition, it may also consequentially violate the right to freedom of speech and expression, the right to freedom of religion and so on. If rights from part IV are considered, it is obvious that a number of rights from part IV viz. provision for just and humane conditions of work or the right to have a social order for the promotion of welfare of the people are violated.

Migration is not amongst the human rights issues taken up by the NHRC, though it has an issue i.e. 'problems faced by denotified and nomadic tribes' as a programme/issue pursued by it. It is insufficient and just a fraction of what should have been pursued by it.

The Commission, since its inception in 1993, has evolved in several aspects. However, its scope and mandate has largely remained chained. NHRC has monitored the implementation of its recommendation for the rehabilitation of marginalized and destitute women residing in Vrindavan. On the other hand, the relief and rehabilitation of the people displaced because of the raising of the height of Narmada Dam or the acquisition made for Special Economic Zone or for various other public purposes has remained untouched. Even if NHRC has taken up serious issues like denotified and nomadic tribes, the implementation aspect has not been impressive. NHRC is said to be a white tiger having which is unable to lead the matter to some meaningful conclusion.

V. VICTIMS OF MIGRATION

We all rise together and suffer together. However, the devil is in the detail. Around 50 percent of the migrant population is female.²⁶ More vulnerable is the category of migrant children which has been symbolised by the death of Aylan Kurdi. As it is alleged, when Kashmiri pandits were forced to leave Kashmir, the slogans shouted to instil a sense of fear amongst them was that Kashmir would be without male Pandit but with female Pandits.

In spite of the many benefits of migration, migrants themselves remain among the most vulnerable members of society. They are often the first to lose their job in the event of an economic downturn, often working for less pay, for longer hours, and in worse conditions

²⁶As per International Migration Report 2017 published by DESA, UNO, the share of female migrants fell from 49 per cent in 2000 to 48 per cent in 2017. Female migrants outnumber male migrants in Europe, Northern America, Oceania and Latin America and the Caribbean while in Africa and Asia, particularly Western Asia, migrants are predominantly men. For the link, see *supra* note 2.

than national workers. While for many migration is an empowering experience, others endure human rights violations, abuse and discrimination. Migrants, particularly women and children, are too often victims of human trafficking and the heinous forms of exploitation that human trafficking entails. Further, in many parts of the world, migration remains one of the few options for people, particularly young people, to find decent work, and escape poverty, persecution and violence.²⁷

Ostensibly, Migration and Human Rights have not been closely examined or looked into seriously, especially at the national level. The awareness regarding rights has always been low in India and if there is any, it is about fundamental rights clearly enumerated in part III of the Constitution of India. The consequential rights arising out of these rights like right to food and right to clean air etc.²⁸ are yet to take shape and concretize. Rights of a Migrant fall in this category. There is an uncertainty attached with the rights of Migrants. It is all encompassing yet void. Ideally, a Migrant should be seated next to the citizen. Sadly, the harsh fact is that Migrants nowhere feature in the scheme of things of the State.

Nationally, there is an urgent need of enacting a statute covering at least major aspect of migration like prohibition of forced migration, illegal trafficking of minors and women etc. Kashmiri pandits and victims of illegal trafficking can be rehabilitated and resettled under these laws. If there are any loopholes in the immoral traffic Act, another amendment may be carried out to rule out any deficiency in this regard.²⁹ Minor aspects of migration like poverty, unemployment, lawlessness etc. may be dealt with by bylaws, policy formulation. Migration due to marriage and white-collar jobs are normal and need not to be covered by such initiatives. Rather, they are beneficial providing interaction between different sections of people.

Mission statement of the Migration Policy Institute (MPI) states that:

“The international migration system now includes almost every country in the world. Many of them are relatively new to large-scale migration and have not developed the institutions, laws, and policies needed to manage migration flows optimally. Economic, humanitarian, social, and political priorities often dictate contradictory policy directions or conflict with international obligations. MPI uses the extensive expertise of its directors and staff to assist governments and civil-society organizations to develop solutions to these migration problems. MPI’s work addresses the following questions:

How to organize an immigration agency within governmental structures?

How to address a migration/refugee emergency?

How to balance domestic security with immigration demands?

How to redirect immigration policy to reflect changing economic or demographic realities?

How to protect human rights (including the right to seek asylum) while implementing border controls and other programs to regulate entry?

²⁷*Supra* note 8.

²⁸The Supreme Court of India in a series of cases popularly known as *M.C. Mehta v. UOI* line of cases took several environment ameliorating decisions and laid down several landmark guidelines and regulations. As a consequent thereof, the apex court is being viewed as saviour of environment related issues in India. Similarly right to food in India is not a fundamental right and a public campaign for it is still in a nascent stage.

²⁹An amendment to The Suppression of Immoral Traffic in Women and Girls Act, 1956, was proposed in 2006.

How to manage the impact of immigration on disadvantaged sectors of domestic society?

How to enforce domestic labour, immigration, and anti-trafficking laws without increasing the vulnerability of immigrants?”³⁰

All this said and done, the Syria crisis and the consequent migrations have exposed the policy of Europe towards the migrants. It took an Aylan Al-Kurdi³¹ to awaken the conscience of European leaders to the huge catastrophe of Syrian refugees. Lesser sense of urgency and importance is attached to the status of Migrants. They have their own ghettos. They live in down-town colonies and lead a socially and culturally isolated life. What can be more offending to the human rights than this? The 2005 urban riots of France have demonstrated the pain of migrants. However, the conditions have not ameliorated till date.³² Even the people living in France for two generations have a sense of alienation.³³ They have not been accepted in the mainstream. It must be clearly acknowledged that Migration is a continuing phenomenon and to a large extent the simplest and innocuous form of Migration is good for the world as it is mutually beneficial.³⁴ The forced or illegal migrations are the real challenges and usually unwelcome.³⁵ However, in the latter cases, people do not choose to migrate rather they are forced by the circumstance to migrate. So, instead of treating them as an offender or violator of some rules/provisions, their predicament must be appreciated. Even in those circumstances they must not be deprived of the rights they have by virtue of being human i.e. right to human dignity and well- being.³⁶

Between 1990 and 2017, the number of international migrants worldwide rose by over 105 million, or by 69 percent. Most of this increase occurred from 2005 to 2017, when some 5.6 million migrants were added annually.³⁷ Women comprise slightly less than half of all international migrants. The share of female migrants fell from 49 per cent in 2000 to 48.4% in 2017. Female migrants outnumber males in all regions except Africa and Asia; in some countries of Asia, male migrants outnumber females by about three to one.³⁸ The type of Migration is also sometimes gender specific. For example, in India, post-marriage migration is mostly migration of the bride/female while education related migration largely involves males.

Be it war or human trafficking or civil strife, the worst victim of migration is women and child. Their health suffers, sometimes irreparably. Education and upbringing of children suffer. Trauma and mental scar are something which never leaves them for their life and do

³⁰Mission statement of MPI is available at: <http://www.migrationpolicy.org/about/mission> (last visited on April 25, 2019).

³¹Aylan Al-Kurdi, a baby boy, was amongst hundreds of Syrian refugees drowned while fleeing from the clutches of ISIS. Aylan's shocking picture of a lying face- down near Turkey coast finally made an impact on the European Union leaders and Germany and U.K. opened their borders for these refugees.

³²Angelique Chrisafis, “ ‘Nothing's Changed’: 10 years after French riots, banlieues remain in crisis”, *The Guardian*, October 22, 2015, available at: <http://www.theguardian.com/world/2015/oct/22/nothings-changed-10-years-after-french-riots-banlieues-remain-in-crisis> (last visited on April 25, 2019).

³³*Ibid.*

³⁴The Mission statement of International Organization for Migration (IOM) states *inter alia* that it acts to encourage social and economic development through migration. The Mission statement is available at: <http://www.iom.int/mission> (last visited on April 25, 2019).

³⁵The Mission statement of International Organization for Migration (IOM) states *inter alia* that it acts to advance understanding of Migration issues. *Ibid.*

³⁶*Ibid.*

³⁷*Supra* note 2.

³⁸*Ibid.*

not allow them to grow as a normal cheerful human being. The old age and physically disabled are other categories which suffer and sometimes abandoned to live on their own, in the most hostile circumstances.

“Migrants are vulnerable whatever the reason they embark on their journey towards a better life, and it is our duty to support them,” said Francesco Rocca, President of the International Federation of Red Cross and Red Crescent Societies (IFRC).

VI. AWARENESS AND SENSITISATION

‘Migration’ should cause positive ripples. The resistance to Migrants stems out of the apprehension that the inhabitants would be deprived of their resources and employment opportunities by the Migrants. This is, however, not the real picture. Knowledge of legal instruments protecting the rights of migrants is low and hence the violation of their right.

The International Migration Report 2017 shows that international migration makes an important contribution to population growth in many parts of the world and even reverses population decline in some countries or areas. Between 2000 and 2015, migration contributed 42% of the population growth in Northern America and 31% in Oceania. In Europe, the size of the total population would have declined during the period 2000-2015 in the absence of migration.³⁹

There are some very interesting statistics regarding Migration, revealing significant trends. The International Migration Report 2017 states that 3.4% of the world’s inhabitants today are international migrants. This reflects a modest increase from a value of 2.8% in 2000. By contrast, the number of migrants as a fraction of the population residing in high-income countries rose from 9.6% in 2000 to 14% in 2017.⁴⁰ So, the motive behind migration is to lead a quality life which impliedly involves preservation and continuous addition of all human rights.

There is a yearning for a better living standard. Individuals have a right to evolve and there is a right to movement and trade as world is now a small village. Migration is mainly a search for ‘opportunities’.

In 2017, high-income countries hosted 64%, or nearly 165 million, of the total number of international migrants worldwide. Moreover, most of the growth in the global population of international migrants has been caused by movements toward high-income countries, which host 64 million of the 85 million migrants added since 2000.⁴¹ So, the quest is for growth of individual which could not be achieved at their place of origin. The relation between the Migrants and their host is a symbiotic one. Migrants need better places for their growth and their hosts need them to ‘fill in the gap’ in their otherwise complete world. Cheap workforce is often cited as a major benefit which accrues to the host country or region.

For example, in Bangladesh, external and internal migration is alleviating poverty for those who stay behind in two distinct ways. External migration, particularly short-term, promotes economic development through remittance flows, while internal migration, especially rural to urban, encourages economic self-sufficiency for farmers who remain at

³⁹*Supra* note 2.

⁴⁰*Ibid.*

⁴¹*Ibid.*

home by raising agricultural wages. Thus, reducing poverty through migration in Bangladesh is not just the purview of those who temporarily immigrate to another country. Similarly to international migrants, internal migrants who leave the countryside for the city are contributing to wage growth in their home villages.⁴²

International remittances however also have indirect effects on the migrant's native economy. Even non-migrant households in areas of extensive migration tend to see increased local demand from the inflow of remittances. External remittances, therefore, create an opportunity for workers in the form of employment and rising wages.⁴³

International remittances still remain a crucial factor in lifting poor households out of poverty in the developing world. However, even if levels of remittance flows recovers soon—as is expected by the World Bank—having another approach to reducing poverty through migration would serve as a fillip to Bangladesh and other developing countries if future downturns in remittances occur.⁴⁴

Nevertheless, the bias remains. At least 1,000 highly skilled migrants seeking indefinite leave to remain (ILR) in the UK are wrongly facing deportation under a section of the Immigration Act designed in part to tackle terrorists and individuals judged to be a threat to national security. The highly skilled workers – including teachers, doctors, lawyers, engineers and IT professionals – are being refused ILR after being accused of lying in their applications either for making minor and legal amendments to their tax records, or having discrepancies in declared income. Saleem Dadabhoy, a scion of one of the wealthiest families in Pakistan, is facing deportation under section 322(5) despite three different appeal courts having scrutinised his accounts and finding no evidence of any irregularities, and a court of appeal judge having ruled that he is trustworthy and credible. His deportation would directly lead to the loss of 20 jobs, all held by British citizens, and the closure of a British company worth £1.5m.⁴⁵

Similarly, the acknowledgement of violation of human rights of Migrants is very rare. Only some impartial agencies bring the issue to the forefront with such urgency as is required. For example, the international humanitarian organisation, Doctors without borders (Medecins Sans Frontiers or MSF) says it is concerned about the fate of hundreds of migrants and refugees, including women and children being held in a dangerously overcrowded detention centre in Libya.⁴⁶

Head of MSF's emergencies desk, Karline Kleijer said “the situation is critical”. The group says these people are kept in inhuman conditions without adequate food or water.⁴⁷

⁴²Nathan Ghelli, “Reducing Poverty Through Migration in Bangladesh”, *Borgen Magazine*, May 06, 2018, available at: <http://www.borgenmagazine.com/reducing-poverty-through-migration-bangladesh/> (last visited on April 25, 2019).

⁴³*Ibid.*

⁴⁴*Ibid.*

⁴⁵Amelia Hill, “At least 1000 highly skilled migrants wrongly face deportation, experts reveal”, *The Guardian*, May 06, 2018, available at: <https://www.theguardian.com/uk-news/2018/may/06/at-least-1000-highly-skilled-migrants-wrongly-face-deportation-experts-reveal> (last visited on April 25, 2019).

⁴⁶Ignatius Annor, “Overcrowded migrant centre in Libya is ‘inhumane’-MSF”, *Africanews*, May 06, 2018, available at: <http://www.africanews.com/2018/05/06/overcrowded-migrant-centre-in-libya-is-inhumane-msf/> (last visited on April 25, 2019).

⁴⁷*Ibid.*

On May 1, 2018, the United Nations Refugee Agency (UNHCR) airlifted 88 people in need of international protection out of Zuwara, Libya. They were taken to a detention centre in Tripoli with a view to identifying the most vulnerable cases for potential evacuation abroad.⁴⁸ The group is strongly urging all international agencies in Libya, representatives from countries of origin and the Libyan authorities to do everything they can to find a solution for these people over the next few days.

Given the nature and type of migration, the first impediment is the identification and acknowledgement of the problems associated with the migrants. The case of Rohingya refugees is a case in hand. Rohingya refugees are fleeing Myanmar's Rakhine state and relocating in neighboring countries. An estimated 693,000 Rohingya have fled mass violence and persecution since 25 August 2017 and crossed the border into Bangladesh. It's a huge effort, which sadly won't suffice," said Francesco Segoni, Emergency Coordinator for Doctors Without Borders/Médecins Sans Frontières (MSF). "There just isn't enough land available, the camp is too crowded." "Where relocation is already happening, sanitation and hygiene conditions are below the minimum standards. When the rain comes, not only do we anticipate flooding and landslides, but also an exponential increase in the risk of an outbreak. Latrines will go underwater, contamination seems inevitable. We are bracing for the worst."⁴⁹

Estimates are that around 200,000 people are at risk and 15% of the camp could be flooded, according to the UNHCR. While some 680 acres more are planned to be provided by the government at an unknown point in the future, that still remains well below what would be needed: 10 acres is estimated to hold 10,000 people, according to the UNHCR. There remains an urgent need to provide water for the new and existing refugees, especially in newly designated expansion areas. The provision of clean drinking water is an absolute priority in the camp: it's as much a life-saving activity as our medical work, says Segoni. We are racing against time to reach out to new areas and keep up with the ever-evolving context.⁵⁰

The Libyan authorities have transferred some people to other detention centres in an attempt to reduce the extreme overcrowding and the International Organisation for Migration has initiated a process of "voluntary humanitarian return" for some detainees. However, hundreds of people remain trapped inside the detention centre in Zuwara with no solution in sight.⁵¹ So, several aspects of Migration is unknown to a substantial section of the society including the lawmakers, partly because one kind of migration and its paraphernalia is different from another kind. Migration is a very complex issue since it is multi-sectoral and also because it is encumbered by the prevailing culture of the migrant as well as the host country.

VII. MIGRATION LAW

International Migration Law (IML), which is the international legal framework governing migration, is not covered by any one legal instrument or norm. Instead, IML is an

⁴⁸*Ibid.*

⁴⁹ "Bangladesh: An ever expanding Rohingya refugee camp Kutupalong-Balukhali", *Medecins Sans Frontiers*, May 07, 2018, available at: <https://www.msfindia.in/bangladesh-ever-expanding-rohingya-refugee-camp-kutupalong-balukhali>(last visited on April 25, 2019).

⁵⁰*Ibid.*

⁵¹*Supra* note 46.

umbrella term covering a variety of principles and rules that together regulate the international obligations of States with regard to migrants. Such broad range of principles and rules belong to numerous branches of international law such as human rights law, humanitarian law, labour law, refugee law, consular law and maritime law.⁵²

In India, the Constitution of India, the Citizenship Act, 1955, the Foreigners Act, 1946 and the Foreigners Tribunal Order, 1964 comprises a comprehensive statutory regime dealing with both substantive and procedural questions of citizenship and migration. Then, there is the Emigration Act, 1983. As per the this, Emigration Check Required (ECR) categories of Indian passport-holders require “emigration clearance” from the office of Protector of Emigrants (POE) for going to 18 countries, including the United Arab Emirates, Saudi Arabia, Qatar, Oman, Kuwait, Bahrain, Malaysia, Libya, Jordan, Yemen, Sudan, Afghanistan, Indonesia, Syria, Lebanon and Thailand.⁵³

From Human Rights perspective, majority of migrants are usually not aware of these laws or treaties etc. Safe, orderly and regular migration need to be emphasized upon. However, the irregular migrants also have human rights. So, the solution is to support countries rescuing, receiving and hosting large numbers of refugees and migrants; integrate migrants – addressing their needs and capacities as well as those of receiving communities – in humanitarian and development assistance frameworks and planning; combat xenophobia, racism and discrimination towards all migrants; develop, through a state-led process, non-binding principles and voluntary guidelines on the treatment of migrants in vulnerable situations; present a framework for comprehensive international cooperation on migrants and human mobility; and strengthen global governance of migration, including by bringing IOM into the UN family and through the development of a global compact for safe, orderly and regular migration.⁵⁴

VIII. CONCLUSION

Still, even in January 2016, Syrian nationals were dying off the coast of Greece and Turkey in an attempt to flee Syria. Forty-four people drowned after three refugee boats sank on 22.01.2016 off Greece. There were 20 children among dead. The Greek coastguard said they had rescued 74 people after two boats ran into trouble off the Greek Aegean islands of Farmakonisi and Kalolimnos in the early hours.⁵⁵ It is high time that the migrants be recognised and accepted as one of the most vulnerable section of society across the globe. If governments alone cannot bear with the economic burden created by the influx of migrants, corporate sector may be asked to join in rehabilitation and settlement of migrants. It may be made a Corporate Social Responsibility to rehabilitate Migrants/refugees.

The 2030 Agenda for Sustainable Development recognises the positive contribution of migrants for inclusive growth and sustainable development. It further recognises that international migration is a multi-dimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses. International cooperation is critical to ensure safe, orderly and regular migration

⁵²Information is available at: <https://www.iom.int/migration-law>(last visited on April 25, 2019).

⁵³*Supra* note 5.

⁵⁴Information is available at: <https://www.iom.int/global-compact-migration> (last visited on April 25, 2019).

⁵⁵Published as news report in *The Tribune*, January 22, 2016. The news item is available at web link <http://tribune.com.pk/story/1032290/at-least-21-migrants-dead-as-boats-sink-off-greece/> (last visited on April 25, 2019).

involving full respect for human rights and the humane treatment of migrants and refugees.⁵⁶ It is imperative that emergent situations be seen with a sense of urgency and required policy and fiscal measures may be taken globally.

IOM, UNHCR and some 65 other organizations yesterday appealed in Geneva to donors for USD 550 million to support the ongoing humanitarian response. With global forced displacement at a record high of some 60 million people and increasingly impacting countries of the Global North, 2015 saw over a million refugees and migrants arriving in Europe by boat.⁵⁷ Around 850,000 of these crossed from Turkey to Greece, with most continuing through the Balkans and towards Austria, Germany, Sweden and other western European countries. The appeal aims at funding humanitarian operations in 2016 across the affected countries, with approximately half of the funds allocated for Greece.

At the same time, there is a need to publicise the benefits of migration. Remittances from developed countries to developing countries are an established phenomenon. In developing countries, remittances have a role in reducing poverty.⁵⁸ H1B visas may or may not be given. That is the prerogative of U.S.A. as it does not involve any violation of human rights. However, where the very survival or basic amenities or the question of evolving into a better human being is concerned, that requires a detailed contemplation and compassionate law-making.

The Human Rights paradigm keeps evolving with time. The political and civil rights were followed by economic and social rights at the international level. The Universal Declaration of Human Rights was devoid of any legal obligation and hence the necessity of some legally binding convention was felt.

The non-acceptance of people living in France for more than two generations speaks volume about the issue of Migration dealt with legally or even socially or politically. This borders on the verge of chauvinism and racism. Otherwise how could one accept the rejection of migrants/refugees who have been living for two or more generations on a land earning their bread and butter, which is their birthplace as well as the workplace.

World has become a global village. People need to mingle and exchange their goods and services. Developing and developed world need to bridge their vast gap.⁵⁹ Same applies to the migration within a country. Migration should be taken as a positive development of the modern world and its benefits should be optimally utilised while minimizing its side effects through treaty and convention in case of immigration/emigration and through policy intervention in case of regional migration in a country.

Migration is indispensable. It cannot be called a necessary evil also because it involves more gains than losses provided it is regulated with an element of humanity and a sense of the compelling need of migration of different types and hues. A combined effort of

⁵⁶*Supra* note 2.

⁵⁷The news item is available on the website of IOM at the web link: <http://www.iom.int/news/iom-unhcr-partners-seek-usd-550-million-europes-refugees-and-migrants> (last visited on April 25, 2019).

⁵⁸The UNCTAD Report, *available at*: https://unctad.org/en/docs/ditctncd20108_en.pdf (last visited on April 25, 2019).

⁵⁹It is one of the Millennium Development Goals also. The related text is *available at*: https://www.wto.org/english/thewto_e/coher_e/mdg_e/development_e.htm (last visited on April 25, 2019).

nations, international organizations/institutes and migrants' rights activists will settle the dust causing the violation of human rights irrespective of their age, gender and race.