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**THE LEGAL STATUS OF ILLEGAL IMMIGRANTS UNDER
INTERNATIONAL LAW**- Pritee Dey¹**ABSTRACT**

Major refugee catastrophes including the United States Refugee crisis, European Migration crisis and the refugee crisis in India can be seen to have arisen from one root cause which is denial of citizenship, status to such people seeking refugee from their own country. With increasing security concerns of countries such as Germany, India and United States the only solution is to deny refugee status to these migrants, these results in illegal immigration of such migrants causing harsh, unavoidable consequences such as increase in crime rate decrease in quality of basic needs and shelter needs. Statistics show that with number of increasing displaced people applying for immigration has caused massive increase in population further causing decrease in basic needs. The global governance on migration can be done in two ways which are formal institutional ways through United Nations and International Organizations and informal way were Non Governmental Organizations and Inter Regional Organizations take initiative. A free independent initiative include the Berne Initiative launched by the government of Sweden, Global Commission on International Migration and various policies and covenants set up by various International Organizations and treaties signed by countries. Such crisis needs immediate attention to avoid refugees living in despicable conditions. One such example can be seen from the Rohingyas who are a minority in Myanmar and several Palestinians who stay in abandoned lands belonging to no country. Having being denied citizenship one of the popular ways of

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meeting ends include prostitution which takes us to a broader problem of prostitution and trafficking.

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INTRODUCTION

1.1 Background

Although conventionally it is not wrong to think that illegal migrants do not have a legal status, surprisingly they are governed by and fall under the ambit of various areas such as the human rights, protection from war and asylum, right to contribute to economy and labor market and these are attained by signing various conventions, and advocating the rights of such undocumented immigrants through forums such as the European journalism centre, Australian press council, U.K press council etc. in fact, there have been various campaigns such as "Drop the I-Word" in the united states of America to help advocate their rights. Although countries sign various treaties and conventions, they are not obligated to follow them, nor are they reprimanded or sanctioned for such actions, an example to cite is the recent happening in India where it refused to take in the Rohingya refugees during the crisis. There are many reasons one would illegally migrate to a country including escaping war, poverty, job opportunities, need to access advanced medical facilities. When found, these migrants are usually sent back to their original country but most are incarcerated and treated worse than criminals with torture and deprived rights. This paper shall include all the aspects including existing as well as proposed provisions governing/ should govern such undocumented immigrants.

1.2. Literature Review

The author in his article *Illegal Immigrants, Health Care, and Social Responsibility*² talks about the fact that should illegal migrants get medical facilities and health care facilities and other social benefits. The author talks about how in today's world illegal immigrants or illegal migrants are found in major parts of some countries and if there is any social or ethical responsibility of the government to provide them with medical or health facilities. The article reflects how there is a constant conflict between the Nationalists who are against giving any rights to the illegal migrants and the Humanists who believe that no one should be deprived of their basic human rights. The author discusses on the fact that there are millions of illegal immigrants from 100 different countries who migrate to wherever they find work, the undocumented illegal migrants become a part of illegal activities and how illegal women migrants are used as sex workers and are being exploited. The article talks about how some countries refuse to provide any medical and health care facilities to the illegal migrants because of the fact that they violated the laws of the country by illegally entering that country.

The author in his article *Illegal Bangladeshi Migrants In Mumbai*³ talks about how illegal migration is not a problem that the world is witnessing now issues relating to illegal migration can be traced back to history, how thousands of people fled and sought asylum in other countries for survival. The author talks about how increasing number of Bangladeshi migrants have affected India i.e., change of demography in north-east India, influence of Bangladeshi migrants on the fate of certain political parties and also threat to the security of India as some migrants are suspected to be Pakistani ISI agents. The article discusses how socio-economic factors and crisis

² James Dwyer 'Illegal Immigrants, Health Care, and Social Responsibility' (2004) The Hastings Center Report 34(1) <https://www.jstor.org/stable/3528249> last accessed 24.08.2019

³ Vanita Banjan 'Illegal Bangladeshi Migrants In Mumbai' (2009) The Indian Journal of Political Science 70(4) <https://www.jstor.org/stable/42744016> last accessed 24.08.2019

situations in Bangladesh forces its citizens to seek asylum in India, most Bangladeshis flee to India in search of livelihood as one-third of Bangladesh's population is unemployed. It further discusses about the fact how states like West Bengal, Assam, Mumbai, Tripura illegally take in Bangladeshi migrants for cheap labor.

The author in his article *White Public Opinion toward Undocumented Immigrants: Threat and Interpersonal Environment*⁴ studies the opinion and behavior of the white population with respect to illegal migration citing statistics including data from bureau of labor and statistics from the year of 1996 to 2004. The author discussed the difference of immigration levels between the World War 1 and the World War 2 concluding that whites grew more accepting in the coming decades than they previously ever were. Later, in the late 19th century, the government decided to provide amnesty and shelter to illegal immigrants however, there followed strong legal restrictions and public criticism citing threat and interpersonal interactions. Although the whites were relatively powerful socially and politically, the fear of threat included loss of valuable and limited resources and labor market competition. The author conducted an empirical research and studies statistical data to conclude that with passing years, larger proportions of whites desired stronger government action against undocumented immigrants.

The author in his article *Trafficking in Migrants: Illegal Migration and Organized Crime in Australia and the Asia Pacific Region*⁵ the smuggling or trafficking of migrants i.e. the criminal offence of transporting migrants across international borders. The articles talks about laws relating to trafficking of illegal migrants for cheap labor, prostitution and other illegal activities in the light of domestic laws, regional laws and International laws. The article stresses on the migration trafficking condition of certain countries like Australia, Hong Kong, Singapore,

⁴ Justin Allen Berg 'White Public Opinion toward Undocumented Immigrants: Threat and Interpersonal Environment' (2009) Sociological Perspectives 52(1) <https://www.jstor.org/stable/10.1525/sop.2009.52.1.39> last accessed 24.08.2019

⁵ Andreas Schloenhardt 'Trafficking in Migrants: Illegal Migration and Organized Crime in Australia and the Asia Pacific Region' (2001) International Journal of the Sociology of law 29(4) <https://doi.org/10.1006/ijsl.2001.0155> last accessed 24.08.2019

Malaysia, and Thailand. It further discusses about international and national ways to fight such migration issues.

1.3. Hypothesis

As supported by statistics, the undocumented immigrants are more a financial threat than a security threat since in most nations the ratio of citizen population is much more compared to immigrants and illegal to be particular. The issue of such immigration allows people to be racist and controversial laws have also been passed permitting the state to racially profile a person who is unfair causing a path for real crimes and suppressing workers' rights and wages. This menace of illegal immigration can be reduced with proper reformation in domestic and international law but more importantly proper implementation of such laws considering the human rights aspects.

1.4. Research Question

Should the developed and developing nations agree on similar immigration policies? Considering the recent happenings with regard to treatment of illegal migrants by the developed countries, should the nations not abiding such policies be sanctioned and reprimanded by concerned authorities? Moreover, should the government consider on giving a legal status to the undocumented immigrants.

1.5. Scope

The research paper is limited to understanding the status and existing legal provisions of illegal immigrant in developed and developing countries. The current provision in international law does not suggest a legal status to illegal migrants entering a country through undocumented methods.

1.6. Objective

According to the immigrant and migrant rights mentioned in the international justice resource centre and other important international bodies advocating immigrant rights, they have rights such as right to life, right to equality and non-discrimination on basis of race or religion,

protection against labor exploitation, protection against torture and inhumane behaviour etc... the main aim of this paper is to analyze the largest immigrant crisis and existing legal provisions to answer questions such as legal status given to illegal migrants and minimum basic security which could be provided.

1.7. Research Methodology

The research methodology adopted is doctrinal form of research methodology hence focusing predominantly on case laws and statutes and articles about status and laws related illegal immigrants in the purview of international law with special attention to a few recent happenings.



Illegal immigrants meaning and causes

The international justice resource centre differentiates between a migrant worker⁶, non-document worker, refugee, smuggled person and a trafficked person. An illegal immigrant or an undocumented immigrant can be defined as a person who has left his or her country and migrated to another country due to various reasons without required documentation as suggested by the law in force in the country. A similar definition of illegal immigration includes residence in a country by violations and no legal right to live⁷. Although the domestic laws of the immigrating country allows punishment and deportation, the principle of non-refoulement stated in the refugee convention of 1951⁸ allows seeking of asylum and protects the immigrants against derogation of basic fundamental rights. Although an undocumented person is not the citizen of the immigrating country, he cannot be deprived of life and liberty as it is the basic fundamental right granted to every human being and not specifically to citizens. There are several reasons and factors that contribute to illegal immigration such as war and asylum, poverty, job opportunities, deprivation of citizenship and many more. The recent refugee crisis of Rohingya who are a community from Myanmar where the Burmese government deprived them of their citizenship turning them into stateless people.⁹ This forced the Rohingya community to seek refugee and upon being refused, entered various countries including Bangladesh and India without required

⁶ UNITED NATION HUMAN RIGHTS OFFICE OF THE COMMISSIONER, 'Migration And Human Rights IMPROVING HUMAN RIGHTS-BASED GOVERNANCE OF INTERNATIONAL MIGRATION' <https://www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvingHR_Report.pdf> accessed 21 September 2019.

⁷ Taylor, Mark "The Drivers of Immigration in Contemporary Society: Unequal Distribution of Resources and Opportunities"(2007). *Human Ecology*. **35** (6): 775–776. Accessed 21 September 2019

⁸ Refugee convention 1951

⁹ Ullah A, 'Rohingya Crisis In Myanmar: Seeking Justice For The "Stateless"' [2016] *Journal of contemporary criminal justice* <<https://journals.sagepub.com/doi/abs/10.1177/1043986216660811>> accessed 21 September 2019.

documentation.¹⁰ Poverty is one of the largest reasons causing people to illegally enter countries to seek menial job opportunities and sustain families. The largest and one of the first undocumented immigration in the United States of America was witnessed during the currency crisis in the neighboring country of Mexico in the year 1994 which put a lot of Mexicans in debt forcing them to migrate to sustain themselves. There are various dangerous consequences due to illegal immigration such as increase in crime rate including sexual crimes and human trafficking, low quality of standards of living and decrease in the economy.

Status of illegal immigrants

The sovereignty of a state permits it to regulate the presence of people entering into the country. However, since this empowers the state to be biased towards people the power given is not absolute. The international law places some restrictions in protecting the basic rights of such immigrants or refugees. One of the first restrictions placed was against state parties to expel people not belonging to the country.¹¹ One such principle which allows residence of illegal immigrants or refugees without fear of persecution is the principle of non-refoulement which has been defined in various legislatures and statutes. For instance, article 33 of the refugee convention discusses non-refoulement nonetheless also states a few exceptions such as dangers to security of the country and convictions in cases of serious crimes.¹² Although international laws and various treaties signed are supposed to protect the refugees and immigrants, very fewer statutes come to the rescue of illegal immigrants. For instance, The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 allows the United States of America to impose severe penalties to undocumented and illegal immigrants who have entered the country in case they commit crime or stay in the country undocumented longer than the prescribed period of time. These penalties not only allow them to be reprimanded and imprisoned but also deport them.¹³ Since the

¹⁰ Yhome k, 'Examining India's Stance On The Rohingya Crisis' (2018) 247 Orf Issue Brief <http://cgsdu.org/wp-content/uploads/2019/03/ORF_IssueBrief_247_Rohingya_FinalForUpload.pdf> accessed 21 September 2019.

¹¹ Refugee convention 1951, article 33

¹² Supra note 10

¹³ 'Illegal Immigration Reform And Immigration Responsibility Act' (*Legal Information Institute*) <https://www.law.cornell.edu/wex/illegal_immigration_reform_and_immigration_responsibility_act> accessed 21 September 2019.

largest numbers of undocumented or unauthorised immigrants are in the United States of America, it is important to assess a few laws and the legal status of such immigrants. The most practiced form of punishment is deporting back the immigrant to the country they belong from. However, a few immigrants who come to escape despicable living conditions and poverty usually become the citizens by marrying a citizen of United States, enlisting and serving the United States army, seeking asylum and temporary protection status. The undocumented immigrants under the customary international law and domestic laws of most countries are considered to be a threat and deported back. In the case of India, illegal immigrants are excluded from acquisition of citizenship through birth, naturalization or registration. The entry and exit of any person in the Indian subcontinent are regulated by the Passport Act 1920¹⁴, the Foreigners Act 1946¹⁵, and the Registration of Foreigners Act 1939¹⁶ and primarily regulated by article 5 to 11 of the Indian constitution.¹⁷

Immigration System and Repercussions of Illegal Immigrants: Comparative Analysis between USA and India

UNITED STATES OF AMERICA

The United States of America experienced a huge immigration crisis during the first decade of the twenty-first century. During the year, 2006 more than half of the Americans were of the opinion that immigration is a big national problem and more than forty-eight percent of Americans believed that illegal immigrants cause a threat to the tradition values and customs of America as they are foreign influences. Among all immigrants present in United States fifty percent of them belong from Mexico and then from El Salvador. The present problem of immigration crisis roots from the American policy towards Mexico where in order to create a healthy relationship with North American markets the borders are rendered open for free movement of goods, capital, trade, services, raw materials but the borders are not open for the

¹⁴ Passport (Entry into India) Act, No. 34 of 1920

¹⁵ Foreigners Act, No. 31 of 1946

¹⁶ Registration of Foreigners Act, No. 16 of 1939

¹⁷ Constitution of India, 1950

free movement of workers.¹⁸ The immigration of Mexicans into USA both legally and illegally has become an important and contemporary issue in the policy discussions of USA; the factors which lead to huge migration of Mexicans to the United States of America include sociological factors, economical factors, historical and cultural factors and principles of democracy. There are two sides of Mexican immigration, one side is of the opinion that immigration must be stopped or reduced as it poses a threat to the ethnic, cultural and political values of United States of America and the other side is of the opinion that the legal or illegal immigrants from Mexico come with very little skill and knowledge and take away the jobs of America and pose a threat to the educational and welfare systems. While certain scholar are of the perspective that illegal immigrants who work as labors are the reason for economic inequality in USA.¹⁹ Immigration in America results in growth of population and economic development which can be a reason for better work ethics and motivation, a group of scholars support the Amnesty rules which suggest that suggests that about ten-twelve million immigrants should be allowed to stay in the country and others who are mostly illegal immigrants must be deported back. Studies reflect that annually two-three millions of illegal migrants enter America and mostly stay in the states of California, New York, Texas, and New Jersey. The US Government is of the opinion that illegal migrants create a heavy burden on the economy of the country. The Department of Justice gave a report that nearly four billion dollars are spent on health care, social care and education services on the illegal migrants.²⁰ Illegal immigration in America gives right to social ills, different kinds

¹⁸ Massey D, 'Understanding America's Immigration "Crisis"' (2007) 151 American Philosophical Society <<https://www.jstor.org/stable/4599074>> accessed 21 September 2019.

¹⁹ Light M and Togunde D, 'THE MEXICAN IMMIGRATION DEBATE: ASSIMILATION AND PUBLIC POLICY' (2008) 34 International Review of Modern Sociology <<https://www.jstor.org/stable/41421682>> accessed 21 September 2019.

²⁰ Tessier K, 'Immigration And The Crisis In Federalism: A Comparison Of The United States And Canada' (1995) 3 Indiana Journal of Global Legal Studies <<https://www.jstor.org/stable/20644616>> accessed 21 September 2019.

of crimes and reduces human capital skills and also many migrants belong to the prison population of US.²¹

The illegal immigrants in America exploit the job opportunities of American inhabitants and are the root cause of many crimes like terrorism and human trafficking. The increase in number of immigrants affects the economy of the country. Illegal immigrants are one of the reasons for increase in drug related crimes and drug gangs in US. The Trump Government wants to eliminate illegal migrants, refugees and asylum seekers and any undocumented person found near the borders will be criminally charged.

INDIA

Immigration in India has rose tremendously more than the population growth rate in India itself, there are two specific reasons behind it one being Indian who were residing abroad are coming back to India as economic prospective have improved and the other being the entry of legal and illegal immigrants into the country. India receives a large number of documented and undocumented immigrants from the Persian Gulf, US, Nepal, Bangladesh and Myanmar. Immigrants from Nepal legally and illegally enter India and the immigration of Nepalese people in India has risen tremendously, there are basically two reasons for Nepalese people to come o India one being cross-border immigration to for the purpose of marriage around the areas of Bihar and Uttar Pradesh and the other is illegal immigration into the country for cheap labor, work and to earn easy money which gives birth to various types of crimes more specifically human trailing and prostitution. Bangladeshis immigrate to India illegally as social, political and economic conditions of Bangladesh are disturbed so they illegally enter in search of easy money and jobs, the presence of Bangladeshi immigrants in India creates a threat to the country as certain political parties give them citizenship status in order to secure their votes.

²¹ MacDONALD J and SAMPSON R, 'The World In A City: Immigration And America's Changing Social Fabric' (2012) 641 The Annals of the American Academy of Political and Social Science <<https://www.jstor.org/stable/23218820>> accessed 21 September 2019.

The Indian laws define an "illegal migrant" in Section 2(1) (b) of the Acquisition of Indian Citizenship (IC) Act as a foreigner who entered India:

1. without a valid passport or other prescribed travel documents;
2. With a valid passport or other prescribed documents but remains in India beyond the permitted period of time. Admission, deportation, stays and control of movement of foreigners in India is governed by:

- Passport (Entry into India) Act, 1920/ Rules 1950. • Registration of Foreigners act, 1939/ Rules.²²

An officer in charge of Turbe police station of Mumbai stated that there are a lot of illegal Bangladeshi immigrants in the country who work as maids and labors but it is very difficult to identify them as they look like Indians and speak Bengali. The illegal immigrants from Bangladesh are also a threat to India as Bangladesh is a terror hub and the terrorist there are being funded by Pakistan's Inter-Services Intelligence.

Illegal immigration has a lot of consequences like clashes between citizens and immigrants, political instability and instability in the economy of the country, rise of militancy and terrorism leading to a threat to national security of the country and human trafficking and prostitution.

Conclusion

The statutes which govern migrants and refugees are very different from the statutes which protect and prevent undocumented or illegal immigrants. The reason being illegal immigrants not only contribute to threat in national security and affect the economy of the country combined with increased crime rates but also deteriorate the quality of living standards and pollute the persistent culture and traditions. The sovereignty of the state allows creation of statutes which can discipline the undocumented immigrants which is right considering the threat they pose. However, this is happening at the cost of derogation of basic human rights which are against

²² Ibid (2)

various statutes including the universal declaration of human rights. The methods used by the United States immigration and customs enforcement in dealing with undocumented immigrants in the recent times is seen to be one of the gravest violations of human rights. Although it is true that such statutes end up causing unintentional racial profiling and hatred for specific group of people but everything is said to be fair when done in the threat of national security. The international law as well as the domestic law can introduce various amicable statutes such as relaxation for requisites to enter a developed country for the sake of economy, effective border security laws and in case infringed must be punished but with a fair chance of trial applying the principles of Audi Alteram partum. Finally, there is supposed to be a comprehensive legal institution at an international level to establish the legislations and govern the menace of undocumented migration.

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