MIGRATION AND HUMAN RIGHTS
A GLOBAL ISSUE IN THE CONTEMPORARY WORLD

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Introduction

Migration as a phenomenon has always existed. While the absolute number of migrants has risen in the past decades to reach some 200 million, they continue to make up around three per cent of the world population. Notwithstanding, migration has become intrinsically linked to globalization and its effects. Foreign-born workers represent 10 per cent or more of work forces in many Western European countries, 15 per cent in North America, and even higher proportions in Africa and the Middle East. Indeed, migration has become a key feature of meeting economic, labour market and productivity challenges in a globalized economy. It serves as an instrument to adjust the skills, age and sectoral composition of national and regional labour markets. Moreover, due to economic, demographic and technological changes, migration is central to the future economic survival of many people.[1]

Migration affects every region of the world, and many countries are now simultaneously countries of origin, destination and transit. Large numbers of migrants today move between developing countries, and around 40 percent of the total global migrant population have moved to a neighbouring country within their region of origin.[2]

Migration poses a number of challenges. It is often the result of lack of decent work, human rights violations and poverty in countries of origin. Migrant workers still largely perform dirty, dangerous and degrading jobs to sustain sectors of economic activity that are no longer attractive for local work populations. These include agriculture and food processing, construction, cleaning and maintenance, hotel and restaurant backroom services, labour- intensive assembly and manufacturing, the sex industry, and domestic labour. In addition, there is a higher need for highly educated and skilled labour, which has led to a significant "brain drain" in countries of origin.[3]

1. Major Categories Relating to Migration[4]

Below, some of the major categories relating to migration are discussed:

1. Economic Migrants

An economic migrant generally refers to a person who leaves his/her home country to work in some other country. Migrants belonging to all occupational or professional categories who primarily earn their livelihood by contributing in some economic activity are economic migrants and include all high-skilled, semi-skilled, and low-skilled people. Their entry into the destination country is facilitated by visa

extending them legal right to stay there up to a certain period of time. There are specific statues/laws laid down by nation-states to regulate the entry, working conditions, wages/remuneration, integration, etc., for foreign country nationals in their territories. Majority of economic migrants choose legal channels but there are large number of economic migrants too who seek entry through illegal channels and therefore have to bear the wrath of the state for they are not allowed to engage in any economic activity.

Economic incentives are the prime determinants for people to migrate from one country to the other. Generally, people tend to improve their economic prospects by migrating; sometimes they are forced to migrate due to extreme poverty or unemployment as is the case in many countries of South Asia. Economic migrants flock in the places where employment opportunities are abundant and flee from those places where economic opportunities are shrinking. Silicon Valley in the US, for example, has become a hub for IT professionals in the late 20th century for it provided immense opportunities to the people. It has attracted professionals and knowledge workers from all around the world. Economic migrants are not always pushed by the opportunity-deficient home economies; many times they are pulled by the receiving countries to avert the negative impact of labour or skill shortages arising due to reasons such as demographic imbalance or massive expansion of economic activities. They contribute employment generation and economic prosperity of the host societies; however, their contribution in the domestic economy is sometimes undermined by receiving countries due to political hype or some other reasons.

Majority of migrants in the world today are economic migrants. On an average, labour migration accounts for about 25 percent to 30 percent of permanent migration. All the waves of e) migration from India have been triggered by the economic opportunities emerged in various parts of the world during different historical periods. According to the Ministry of Overseas Indian Affairs "there are about five million overseas Indian workers all over the world. More than 90 percent of these workers are in the Gulf countries and Southeast Asia". Majority of these migrants, particularly who go to the Gulf countries, are temporary unskilled or semi-skilled workers; and most of them too come back to India after the expiry of their contract.

2. Family Migrants

Family reunification is one of the most important categories of permanent immigration that accounts for almost 45 to 60 percent of total flows. Economic migrants, who primarily move in order to better their employment and earning prospects, do keep in mind their long term interests too. They also want their family members (spouse, parents, siblings, etc.) to accompany them or to join them later, depending upon the laws of the destination country about family reunification. Migration, therefore, induces further migration. Receiving countries vary in terms of allowing different categories of migrants to bring their family members. Some countries are quite liberal while others are not. Each receiving country has devised its own mechanism for evaluating immigrants in accordance with its requirements and

attitude towards migrants on the one hand and performance of the immigrants and their intentions to stay in the host country on the other.

Family migration has important bearings for host country as well as for the home country. While it is presumed that family migration helps in better integration of the migrants in the host society as it provides emotional support to the primary migrants to adapt to the new society there are also evidences that it may affect the integration adversely if immigrants form old different clusters and kept on following their original norms and traditions. Further, it may also induce other family members to engage in economic activities in the host society creating ripple effects on the local labour markets. Family migration also decreases the flow of remittances to the countries of origin because migrants have to spend more in the host country and save less. This can be seen from changes in the pattern of remittances India receives every year from developed countries and Gulf countries. Indian migrants in the Gulf, who are less skilled and earn less than their counterparts in the developed countries, send a significant proportion of their earnings to their family members left behind.

3. Political Migrants

A political migrant is a person who leaves his/her home country and tend to migrate to another country not because of an apparent economic motive but because of the fear of persecution in the homeland. Frequent occurrences of political, ethnic, religious and regional turbulences in some parts of the world, coupled with natural environmental disasters, have led to the affected people to leave their homes and seek asylum elsewhere. History is replete with the instances of people fleeing their homeland and seeking refuge elsewhere in the times of political turmoil. 20th century, perhaps, has witnessed unprecedented human sufferings because of the warring nation-states on the one hand and quest for political identity among various groups of people formed on geographical, religious, ethnic or ideological basis. People were forced to flee their homes and had to stay in refugee camps for many years. Estimates show that in 2000 there were 17 million refugees in the world constituting 9.7 percent of all international migrants up from 4.5 million or 5.5 percent in 1970.

India has witnessed one of the most severe crises arising out of political instability during the time of partition. Millions of people became refugees overnight in their own homeland. They were brutally forced to flee to the other sides of the newly drawn border. Their properties were ransacked and their belongings were looted by the miscreant mobs of religious fundamentalists. In 1971 again when Bangladesh became independent from Pakistan, millions of refugees fled to India, causing financial hardship and political instability therein. Violent movements in India continued throughout the later decades of the 20th century and afterwards forcing many people to seek shelter elsewhere. In 2003, for example, India ranked among the top ten countries with 13,553 claims lodged for asylum in developed countries.

There is a great need for improving refugee protection and assistance in the regions of origin. The nation-states and other international regulators should now

realise that patchy efforts are unlikely to prevent the movements of refugees and asylum seekers. Rather, a comprehensive regularization policy need to be devised taking into account the factors that generate human sufferings and force the people to flee and not just monetary compensation. The principle enunciated in the 'Agenda for Protection' established by the Office of the United Nations High Commissioner for Refugees (UNHCR), is that the institution of asylum should not be undermined by the efforts of states to stem irregular migration. As specified in Article 31 of the 1951 UN Refugee Convention, refugees must not be penalized on account of their illegal entry or presence in a country, "provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence". Law enforcement officers, including police, of any nation-state are expected to respect the UNHCR conventions in letter and spirit.

4. Students

Cross-border mobility of students for higher education has undergone remarkable increase during the last four decades. There has been a trend of internationalization of higher education in many countries. The number of international university rose from about 238,000 in 1960s to 2.5 million in 2004. Majority of international students come from developing countries such as China, Korea and India, and prefer to go to the developed countries such as the US, the UK, Germany, France, Australia and Japan. Students from India also have been heading offshore to pursue higher studies or to do research, particularly to the developed countries of the West. For example, over 150,000 tertiary level students leave India to study overseas every year. The U.S. has emerged as the most favoured destination among Indian students. However, the mobility of Indian students today is not limited to the traditional destinations of US or UK; rather increasing number of Indian students have been moving to other countries like Australia, Germany, France, Canada, New Zealand and Singapore.

5. Illegal Migrants

Illegal migration is increasingly taking centre stage in most migration debates. Many countries across the world, developed as well as developing, are facing large influx of illegal migrants. Most often, they come from the neighbouring countries. For example, Bangladesh and Nepal, countries that share physical borders with India, are prominent source of illegal migrants to India. Illegal migration causes several kinds of problems in the local community and sometimes may bring far reaching impact on the socio-demographic profile of the receiving region/state. They also affect employment opportunities for locals in the region, by taking up jobs, sometimes even at wage rates much below the prevalent wages. Illegal migrants can broadly be put in the following categories:

- o Legal (skilled/semi-skilled/low-skilled) migrants who lost their legal status due to overstay in the destination country.
- o Illegal migrants (skilled/ semi-skilled/low-skilled) infiltrated voluntarily.

o Forced illegal migrants brought through hazardous routes such as trafficking.

Illegal migrants belonging to these categories differ in terms of their socio-economic profile, education, employment and inclination. Therefore, migration law should take into account certain issues such as: who are the illegal migrants and where they have come from; what are their motives; what are the areas of their operation; when did they arrive and who helped them reach the destination; how do/can they affect the interests of the local population? But whatever may be the causes and nature of illegal migration, migration policy should aim at minimising/ curbing illegal migration in all forms.

Nation-states employ various mechanisms to deal with illegal migration. Deportation of illegal migrants to their own countries is one such method. Deportation, which might appear quite the simplest, however, is difficult to implement. For example India has been following the policy of deportation since long but it has not brought enthusiastic results. Pre emigration orientation focussing on introducing the prospective emigrants to the socio cultural ethos and the legal system of the host countries as well as the validity of their own stay could be worked upon. Since a large part of illegal migration takes place through infiltration to the states that share physical borders, surveillance and rigorous immigration check on the border is necessary. 'A border surveillance system which can be entrusted with keeping the record of all migrants, with online satellite contacts with the destination countries can be worked upon.

In the last few decades bilateral agreements between the affected countries have emerged as more broadly acceptable tool to manage the flow of people, including illegal migration, across borders. UK and France, for example, who are amongst the countries with high numbers of illegal migrants, have signed several bilateral re-admission agreements. Further, UK and France are also encouraging illegal immigrants to return home voluntarily by offering them lump-sums and benefits to restart their livelihood. In 2006, Britain returned 6,000 illegal immigrants. However, this policy may also result in increasing the flow of illegal immigration in order to get good money and then come back.

2. Key Areas of Concern in the Migration Cycle[5]
Following aspects can be considered as the key areas of concern in the migration cycle:

1. Job Search/ Education Search
It is a fact that majority of people who intend to move overseas do so for better employment prospects and therefore gather information regarding the job opportunities in the labour markets of their preferred destination countries from various sources, e.g., newspapers and employment news, online advertisements, companies' bulletins, personal contact of the people in the host country, and from recruitment agents. Likewise, students who intend to study abroad look for

information related to the courses on offer suitable for their career aspirations, scholarships, duration of the courses, fee structures, etc. Their search generally depends on the advertisements in the newspapers, web sites, contacts with the people in the concerned areas of academic interest, and now the frequently held education fairs. However, no systematic mechanism has been put in place for collecting, compiling and disseminating information about overseas job opportunities and educational avenues in India so far. Given the massive outflow of people from India in search of employment and for education as well systematic information related to different aspects of migration decision is imperative. This enunciates the need to develop an index for major destination countries based on certain variables such as access to labour market, prospects for family reunion, education, transportation, residential rights, political participation, political stability, migration governance, social security, climate and others.

2. Recruitment

Migrants are employed either directly by the employer or through some outsourcing agency or an agent. In India there are a large number of agents. As on 31st December 2007 there were 1835 recruiting agents in the country (MOIA, 2008). The task of these recruiting agents is to facilitate the process of emigration, particularly in case of low-skilled and semi-skilled people, and help them coordinate with their overseas employers. However, there are frequent reports of cheating by these agents.

3. Passport

A passport is a document that recognises the individual as a citizen of the country granting it. It is a right of every individual in India to obtain a passport within prescribed timeframe after the payment of certain fee. Under the Passport Act 1967, three kinds of passports may be issued: (i) ordinary passport - to the citizens of India, (ii) official passport - to the specified government officials of different categories, and (iii) diplomatic passport - to the officials of the Indian Foreign Services and some other specifically entitled for the same. Mainly three kinds of documents are required for getting the passport (i) age related (ii) residential address related, and (iii) Educational certificates.

4. Visa

A visa is an endorsement on the passport. It allows the holder to enter in the territory of the issuing country. However, unlike the passport, getting a visa is not the right of every individual. In order to get the visa for entering into a country one has to undergo the processes as specified by the government of that country. Depending upon the country's requirements and the terms of cooperation between nations there are different requirements and processes for getting visa for different countries. Visas are generally of three types: (i) immigrant or permanent resident visa, issued to the persons who intend to immigrate or settle permanently in destination/receiving country; (ii) non-immigrant or temporary visa, issued for a temporary period after which the holder of the visa will have to leave the country, visitor's visa, tourist visa, student visa, business, visa, work visa; and (iii) transit visa, required when somebody

passes through a foreign country which comes in the way to reach another foreign country as the destination. For getting transit visa, to and fro tickets are necessary to be produced along with the destination country visa.

There are also cases where unscrupulous elements get involved in corruption and visa fraud. Instructions regarding the issuance of visa therefore need to be spelt out very clearly mentioning every minute detail about the documents required, mode and amount of fee to be paid for each type of visa, method and duration of delivery, etc. Coordination with foreign missions and consulates might help save the emigrants from being exploited at the hands of touts.

5. Travel and Foreign Exchange

Travel involves several decisions such as the air route, the cost of travel, check-in, arrangements of foreign exchange, etc. Due to the lack of specified and categorical mechanism of providing information on such issues many people have to bank upon the services of middlemen and agents involved in this industry, even the credibility of whom is not known. This increases the probability of people being trapped into some fraud or misappropriation. There is a need to develop some mechanism of collecting up-to-date information about various aspects of travel and foreign exchange and then disseminate them among the people who are planning to travel abroad.

6. Settlement

Settlement in the host country involves many decisions starting from the choice of locality for accommodation, proximity from the site of employment, means of transportation, living conditions in the surroundings, and most importantly the cost of living. Also, one has to think about the medical facilities and security, especially in the countries where people are showing an increasing distrust and hatred towards the immigrants. The situation even becomes worst when somebody from the immigrants belonging to a particular community or country is found involved in some stray incidents of law-breaking and anti-social activities. This sometimes erupts in a hate campaign against all the immigrants belonging to that particular community or country. Many a times this can lead to souring of ties between the countries and examples of this sort are abounding. There isa need for government intervention assuring people about their safety and security.

7. Integration

The issue of integration is one of the most widely debated one in migration literature. The term usually refers to the involvement of migrants in the social, economic, political and cultural life of the destination country. It is related to the adaptability of the migrants in their new home, that is, how and in what way migrants adapt themselves in the social and community life in the destination country maintaining their own socio-cultural artefacts. The integration of the migrants in the host country depends on several factors such as the socio political conditions at the destination, diasporic presence of the people from their own country, prospects of getting permanent residential rights in the destination country, inevitability of return,

and various other push-pull factors. Due to diverse socio-cultural or religious practices sometimes even a clash of values occurs between the migrants and the host communities that may lead to tension in the society causing ripple effects on the state policy as well. Social cohesion provides migrants and citizens alike with an opportunity to contribute to the host country, and is therefore, an important determinant of economic success. In order to maintain the cohesiveness in the host country and to reap the benefits of migration, integration is most desired.

8. Return and Re-integration

In the age of globalisation where communication has become so instant and travelling to far off places/countries easier and cheaper than ever before not only the nation-states but the migrants themselves too sometimes favour frequent return between home and the host countries. Many migrants, especially the economic ones today prefer better opportunities irrespective of the place where they are offered to, provided that their safety and security concerns are taken care of. Moreover, emergence of job opportunities in various sectors at home particularly due to economic liberalization many high-skilled Indians who went abroad in search of better educational and professional opportunities are returning home. Source countries like India, which once viewed the migration of their educated individuals as brain drain for they had an inclination for permanent settlement in the destination countries, are no more worried about the current scale of migration, including those of highly skilled individuals, for they are witnessing now that a large number of people tend to return home after having some foreign exposure. Their return is being seen as beneficial for the source country, as return migrants come back with improved levels of knowledge and technical skills, i.e., human capital.

3. Migration and Human Rights

Migrants whose rights are protected are able to live in dignity and security and, in turn, are better able to contribute to society both economically and socially than those who are exploited, marginalised and excluded. While all migrants can be vulnerable to human rights violations, those who are in an irregular situation can be particularly vulnerable to discrimination, exclusion, exploitation and abuse at all stages of the migration process. In 2010, the Global Migration Group (GMG) expressed its deep concern about the situation of this particularly vulnerable group of migrants, noting that the irregular situation in which international migrants may find themselves should not deprive them either of their humanity or of their human rights.[6]

Human rights norms and standards can be powerful programmatic and methodological tools for action. Accordingly, core international human rights instruments constitute a framework of action as well as a set of guidelines for migration policy-makers. There are a number of good practice examples in different regions of the world as to how national and local governments can fulfill their obligations under human rights law, such as decriminalizing irregular migration, or ensuring that the functions of public service providers such as nurses or teachers are kept strictly separate from those of the immigration authorities.[7]

The Universal Declaration of Human Rights begins with a recognition of the "inherent dignity and of the equal and inalienable rights of all members of the human family." Human rights law thus provides that in general, all persons, without discrimination, must have access to all fundamental human rights with narrow limitations related to political rights and freedom of movement. States are further obliged to ensure that any differential treatment, between citizens and non-citizens or among different groups of non-citizens, is undertaken in a non-discriminatory manner, that is, for a legitimate objective, and that the course of action taken to achieve this objective is proportionate and reasonable. A human rights approach to migration places the migrant at the centre of migration policies and management, and pays particular attention to the situation of marginalised and disadvantaged groups of migrants. Such an approach will also ensure that migrants are included in relevant national action plans and strategies, such as plans on the provision of public housing or national strategies to combat racism and xenophobia.[8]

The UN Convention on Migrant Workers' Rights is the most comprehensive international treaty in the field of migration and human rights. Adopted in 1990 and entered into force in 2003, it sets a standard in terms of access to human rights for migrants. However, it suffers from a marked indifference: only forty states have ratified it and no major immigration country has done so. This highlights how migrants remain forgotten in terms of access to rights. Even though their labour is essential in the world economy, the non-economic aspect of migration – and especially migrants' rights – remain a neglected dimension of globalisation.[9]

If we will look minutely at the Universal Declaration of Human Rights, then also we can see that the declaration also is giving much emphasis for the protection and upliftment of the status of human beings as we have already discussed and the migrants are also included when it is talking about the human beings. Apart from this declaration other two important covenants of human rights i.e. International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are also advocating for the protection of human rights for all the sections of the people.

Specifically, if we are trying to look into the Indian scenario then we can notice that since independence in India many people from Bangladesh, Nepal, Bhutan and other neighbouring countries are coming from many years and now they have settled here and they are performing some acts or they are engaging in some degrading jobs. Now one question arises naturally that by taking their various jobs and services we people or our people are now a days not willing to or hesitant to take up those works by thinking that these all are degrading jobs; but we must understand one thing that if those people would not have been here in our country then who would have done those works for us? Therefore, upto the time they are here in our country we must try to protect their human rights as it is desired by the various international treaties, covenants and conventions.

4. Conclusion

This paper has tried to cover a wide range of issues concerning the subject of international migration in India today. It presumes that migration decision-making and processes are overarching fields which requires a well structured policy framework taking care of the concerns of both countries, i.e., the host country and the country of origin. Migration affects and gets affected too by a large number of issues and developments taking place in the larger socio-political context and can not be governed or managed by unilateral laws. In order to create a win-win situation for all the stakeholders, viz., the destination country and the host society, the country of origin, the local community and the migrants, developing a national migration regime necessitates working in tandem with other participating nation-states as well as the related international organizations through bilateral and multilateral dialogues. Various concerned departments such as education, labour, home, and foreign affairs need to work out a comprehensive long-term plan to reap the advantages of India's large quantum of unnurtured or under-nurtured human resources.[10]

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