



GLOBAL MIGRATION AND REFUGEE PROTECTION: LEGAL CHALLENGES AND JUSTICE CONCERNS

Gunjan Madaan* Kumar Rahul*

ABSTRACT

Global migration and refugee protection are serious issues in the twenty-first century, influenced by conflict, climate change, poverty, political persecution, and globalisation. Global migration and refugee protection are distinguished by sharp legal issues and justice concerns that stretch international accords and expose vulnerable populations to exploitation and rights violations. While international legal frameworks like the 1951 Refugee Convention and its 1967 Protocol provide fundamental protections, their execution is inconsistent and frequently insufficient in the face of developing crises. States are progressively adopting restrictive migration policies, securitisation measures, and border outsourcing, which frequently undermine the values of non-refoulement and human dignity. This paper critically addresses the legal issues surrounding refugee protection, such as restricted asylum rules, deterrence methods, and the erosion of rejection norms. It investigates how national security concerns and popular opinion have altered migration policy, often at the expense of human rights and justice. Studying the Common European Asylum System (CEAS) and related policy initiatives for border surveillance and migrant management reveals two controversial issues: Access to asylum and responsibilities for refugee protection. The UNHCR and others believe that it is the obligation of the state to care for asylum seekers and determine their claims. Justice problems arise as refugees and migrants are subjected to lengthy imprisonment, discrimination, statelessness, and denial of socioeconomic rights, thereby increasing their vulnerability. Special attention was given to vulnerable groups- women, children, stateless persons- whose protection needs are often sidelined. Addressing such challenges necessitates the harmonisation of legal norms, more regional and international cooperation, and the establishment of inclusive policies that balance state sovereignty with human rights

*LLM, FIRST YEAR, IILM UNIVERSITY, GREATER NOIDA.

*LAW GRADUATE.

obligations. The need for a rights-based, justice-oriented approach to migration governance is more critical than ever, ensuring that displaced people are not considered only as security risks but as individuals with rights who need protection and dignity.

Keywords: Global Migration, Human Rights, Sovereignty, Refugee Protection, Legal Challenges.

INTRODUCTION

Global migration has emerged as one of the most important legal and humanitarian challenges of the twenty-first century. Armed conflicts, political repression, economic collapse, climate change, and persecution have driven millions of migrants across borders in search of safety and a living. Refugees and migrants may confront legal uncertainty, discrimination, and a lack of proper protection under national and international laws. As global mobility grows, authorities seek to reconcile national security, border control, and human rights commitments, raising serious legal difficulties.

According to recent international research, the world is experiencing unprecedented levels of human movement, with millions crossing borders seeking safety, dignity, and better socioeconomic opportunities. Refugees and asylum seekers remain the most vulnerable, fleeing persecution, armed conflict, and societal prejudice. Migration has historically contributed to cultural diversity, economic progress, and global interconnectedness, but it also poses serious legal, humanitarian, and justice challenges that challenge the international community.

The contemporary refugee protection system, based on the 1951 Refugee Convention and its 1967 Protocol, was established in the aftermath of World War II to defend fundamental rights and provide a legal foundation for asylum. However, current migration patterns frequently extend the scope of these tools. New types of expulsion, including climate-induced migration, gender-based persecution, and forced relocation by non-state actors, highlight the inadequacies of existing legal frameworks.

This article focuses on international law issues related to refugees. The goal is to understand both the international legal framework for refugee protection and how states apply it in their own jurisdiction. The 'contestations' and 'faultlines' highlight the limitations of international law in handling the refugee situation. Justice concerns arise not only from legal disparities, but also from unequal burden-sharing between wealthy and developing countries. While low- and

middle-income nations receive most refugees, wealthier countries sometimes prioritise national security and local politics over humanitarian concerns. This leads to fragmented asylum systems, lengthy refugee status determination procedures, and insufficient access to essential rights, including healthcare, education, work, and legal counsel.

KEY LEGAL FRAMEWORKS GOVERNING MIGRATION AND REFUGEE PROTECTION

The legal frameworks for migration and refugee protection are made up of separate but complementary bodies of international law: International Refugee Law, International Migration Law, International Human Rights Law, and International Labour Law. These frameworks provide state rights and obligations, as well as individual protections.

International Legal Instruments:

1951 Refugee Convention: The 1951 Refugee Convention defines a refugee and describes their rights and the legal responsibilities of member nations, including the critical concept of non-refoulement, which prohibits returning a refugee to a dangerous situation. It also protects refugees' rights, such as non-discrimination, the right to work, access to education and courts, and the provision of identity and travel documents.

Definition of Refugee: According to the convention, a refugee is outside of their country of origin and is unable or unwilling to return due to a well-founded fear of persecution based on their ethnicity, religion, nationality, social group membership, or political convictions.

Principle of Non-Refoulement: This is the convention's fundamental principle, which prohibits governments from returning a refugee to a country where their life or freedom is threatened.

Rights of Refugees:

- i) No discrimination based on race, religion, or place of origin.
- ii) Right to work, housing, and government aid.
- iii) Access to primary education and the courts.
- iv) Freedom to travel around the nation.
- v) Issue of identification and travel documents.

Responsibilities of States:

- i) Granting the rights specified in the convention.
- ii) Ensure that refugees are not prosecuted for unlawfully entering their home country.
- iii) Refugees must follow the laws of the country that provides them with asylum.

Limitations: The original convention had a geographical and time limitation, applying only to events that occurred before January 1, 1951. The 1967 Protocol abolished this.

Exclusions: This Convention also states that those who have committed specific crimes, such as war crimes, are ineligible for refugee status.

1967 Protocol Related to the status of Refugees: The 1967 Protocol is an international agreement that abolished the 1951 Refugee Convention's limits, making the definition of a refugee applicable to all refugees, regardless of the timing or location of the events that caused them to flee. It defines a refugee as any individual who, due to a well-founded fear of being persecuted for grounds of race, religion, nationality, membership in a particular social group, or political opinion, is outside their country of origin and unable or unwilling to avail themselves of its protection.

Definition: The protocol applies the 1951 Convention's definition of a refugee to all situations, not simply those involving events before January 1, 1951, or those taking place in Europe.

Non-Refoulement: It supports the principle of non-refoulement, which protects refugees from being forced to return to countries where they will face persecution.

Rights: It grants refugees the same rights as host-country nationals, including civil, political, economic, social, and cultural rights.

Dispute Resolution: Disputes between state parties over the interpretation or execution of the protocol can be brought before the International Court of Justice.

International Human Rights Framework:

Universal Declaration of Human Rights (UDHR), 1948: The Universal Declaration of Human Rights (UDHR) is a founding document issued by the United Nations in 1948 that defines 30 fundamental rights and liberties inherent in all human beings, regardless of race, country, or other status. It protects civil, political, economic, social, and cultural rights such as

life, liberty, freedom of expression, social security, and education. The UN General Assembly adopted this statement in 1948, declaring that all humans are born free and equal in dignity and rights. It has 30 articles that describe fundamental rights and freedoms. These can be broadly classified as:

- i) **Civil and political rights** include the right to life, liberty, and security; freedom from slavery and torture; the right to a fair trial; and the freedom to express one's opinion and religion.
- ii) **Economic, social, and cultural rights** include the right to social security, labour, rest, and leisure; the right to a decent standard of living, health care, and education; and the right to participate in cultural activities.
- iii) These rights are applicable universally, i.e. apply to everyone, everywhere, without any distinction of any kind. Everyone, everywhere, has equal rights.
- iv) The Universal Declaration of Human Rights is not legally binding by itself because it is not a treaty.
- v) Despite its non-binding nature, it has served as a foundation for international human rights law, influencing more than 80 international agreements, treaties, and various national legislation.
- vi) It is regarded as the foundation of international human rights law and the most translated text in the world.

International Covenant on Civil and Political Rights (ICCPR), 1966: The International Covenant on Civil and Political Rights (ICCPR) is a United Nations treaty that requires member states to protect individuals' civil and political rights, including the right to life, freedom of speech, religion, and assembly, as well as the right to due process and a fair trial. Adopted in 1966, it came into effect in 1976 and has been ratified by 113 nations. Torture protection, the right to liberty and security, and gender equality are all fundamental rights.

Core Principles and Rights

- **Right to self-determination:** All peoples have the freedom to choose their political status and pursue economic, social, and cultural development.
- **Protection from harm:** Ensures the right to life and freedom from torture, inhumane, or degrading treatment.

- **Liberty and security:** Protects the right to liberty while prohibiting arbitrary arrest or detention.
- **Fair treatment:** Provides for a fair trial, legal redress for infractions, and freedom from debt-related imprisonment.
- **Equality:** States must ensure that men and women enjoy the same civil and political rights.
- **Minority rights:** Protects the rights of those in religious, ethnic, or linguistic minorities to enjoy their culture, practice their faith, and speak their native language.

State Obligations:

- States must ensure that people can seek legal redress for infringement of their rights.
- They must protect these rights from infringement by others, including enterprises and individuals, rather than simply the state.
- Even in the private sector, states must ensure that workers are paid fairly and equally for their efforts.

International Covenant on Economic, Social and Cultural Rights, 1966- The International Covenant on Economic, Social, and Cultural Rights (ICESCR) is a 1966 United Nations convention that requires member nations to gradually implement economic, social, and cultural rights. It is part of the International Bill of Human Rights and commits parties to working for rights such as the right to work, decent living standards, health, education, and cultural engagement.

Purpose- To guarantee the protection and progressive realisation of economic, social, and cultural rights for persons and communities.

Core Rights- It recognises and obligates states to work towards rights such as:

- i) Right to work (fair working conditions, freedom to select work, and right to organise trade unions).
- ii) Right to a decent quality of living (freedom from hunger and suitable shelter).
- iii) Right to health (the greatest possible standard).
- iv) Right to education.
- v) Right to Social Security.

- vi) Obligation of States-** States must use all their available resources to ensure that these rights are fully realised. They must also ensure that men and women have equal access to these rights.

Regional Legal Frameworks:

European Union Framework: The European Union's Common European Asylum System (CEAS) is a legal framework that harmonises asylum laws, processes, and standards among member states to promote fair and compassionate treatment of persons seeking international protection. It provides a single set of norms and processes to be followed uniformly, with the purpose of reducing discrepancies between member states and creating shared responsibility for processing asylum cases.

Core Objectives:

- i) Harmonisation-** Integrating asylum legislation, procedures, and standards throughout all EU member states, providing fair treatment regardless of where an application is filed.
- ii) Fairness and Humane Treatment-** To ensure that asylum seekers are treated with dignity and that their applications are processed, in accordance with international law.
- iii) Uniformity-** To ensure that persons given protection have a consistent status and rights throughout the EU.

Key Components:

- i) Legal framework:** The CEAS is a comprehensive legal and policy framework that contains a set of shared rules and standards.
- ii) Binding Legislation:** The Asylum Procedures Directive, Reception Conditions Directive, and Qualification Directive are examples of binding legislation that member states must comply with.
- iii) Practical cooperation:** It includes measures for improving practical cooperation among national asylum authorities, which are funded by the European Union Agency for Asylum (EUAA).

United Nations Framework:

United Nations High Commissioner for Refugees- The United Nations High Commissioner for Refugees, or UNHCR, is the UN Refugee Agency. It aims to protect refugees, forcibly displaced populations, and stateless people by saving lives, defending their rights, and assisting them to achieve a brighter future through alternatives including voluntary repatriation, local integration, or resettlement. Its headquarters is in Geneva, Switzerland.

Protection: It provides protection for persons who have fled their homes due to conflict, persecution, or war.

Assistance: It provides life-saving relief, protects fundamental human rights, and contributes to the development of solutions for displaced persons.

Statelessness: It works to guarantee that stateless people receive nationality.

Solutions: It facilitates voluntary repatriation, local integration, or relocation to a third nation.

Key Principles-

- **Non-Refoulement-** Non-refoulement is a fundamental principle of international law that bans nations from returning individuals to countries where they are at risk of persecution, torture, or other serious human rights violations. This protection is absolute and applies to all individuals, regardless of their immigration status, yet it is most usually linked with refugees.
- **Non-Discrimination-** Non-discrimination is the principle of treating all people equally and avoiding unfair or discriminatory treatment based on factors such as race, gender, religion, age, disability, or national origin. It is a fundamental human right that attempts to guarantee everyone has an equal chance of receiving opportunities and fully contributing to society, regardless of who they are.
- **Right to Asylum-** The right to asylum is the right to seek and receive protection from persecution in another country, as recognised by international law, including Article 14 of the Universal Declaration of Human Rights. While everyone has the right to seek asylum, a government's obligation to grant it is an issue of national sovereignty, which varies by country. An asylum seeker is someone who has fled their home country and

waits for a decision on their claim, whereas a refugee has been formally recognised as having a legitimate fear of persecution.

LEGAL CHALLENGES IN REFUGEE PROTECTION-

Law and Policy on Refugees in India: India is not a party to the 1951 Refugee Convention or its 1967 Additional Protocol. India has a clear legal framework for dealing with refugees. There are no internal laws, nor has the Government of India ('GoI') created a policy to manage the status of refugees on its territory. Despite being an original member of the United Nations, India did not sign the Convention since it was unable to obtain full recognition for millions of people who fled from Pakistan during the partition. Second, the idea of refugee as focused on individual identity and concern is not consistent with the Indian concept of recognising group or communal migration across boundaries. The Convention does not address mixed migration, which includes both voluntary and involuntary movements. There is no formal definition of refugee in India; there are several laws that govern the conditions of migrants. For example, the Passport Act of 1967, the Foreigners Act of 1946, and the Foreigners Order of 1948. In the absence of a national legislation on refugees, it can be argued that the issue of giving refugee status does not exist.

Rohingya Situation: National security concerns in the presence of migrants on domestic soil are not new. Starting in the early 2000s, movements along these lines emerged in several nations around the world. In India, questions have been raised about the alleged involvement of Afghan refugees in terrorist operations, as well as security worries over refugees arriving from Sri Lanka during the conflict. On such occasions, the Government of India has responded by acknowledging the possibility of security breaches and recommending security measures to prevent similar incidents from occurring again. According to government declarations, India does not have systematic repatriation, instead opting for voluntary return and rehabilitating refugees in the community, with the objective of repatriation at a later period. With regards to the deportation of illegal immigration, it appears that the government has long considered "establishment of Immigration Tribunals, the establishment of Special Courts, development of a distinct immigration Cadre, increasing the penalty of jail for violating the terms of the Foreigners Act from the existing maximum of five years to eight years, etc.

Restrictive Border Control and Securitisation: Strict border control and securitisation create serious legal obstacles for refugee protection. States are increasingly prioritising national

security, resulting in deterrence strategies such as pushbacks, surveillance, offshore processing, and stringent visa regimes. These methods frequently contradict fundamental principles of international refugee law, particularly non-refoulement and the right to seek asylum. Securitisation presents refugees as possible dangers rather than rights holders, allowing for extraordinary actions that skip due process.

Criminalisation of Illegal Entry: The illegality of irregular entry raises significant legal issues in refugee protection. Many jurisdictions penalise refugees for crossing borders without authority, despite Article 31 of the 1951 Refugee Convention, which prohibits penalties for irregular entry when individuals seek asylum as soon as possible. Criminalisation creates fear, discourages asylum applications, and leads to detention, punishment, and stigmatisation.

Non-Refoulement Violations: Violations of non-refoulement constitute a significant legal obstacle in refugee protection. Despite its importance as a fundamental and binding value, many states engage in acts that may return persons to persecution, torture, or conflict. Pushbacks at borders, insufficient asylum screening, faster deportations, and the transfer of asylum seekers to dangerous third countries all undercut this protection.

Arbitrary and Prolonged Detention: Arbitrary and protracted detention constitute a significant legal barrier to refugee protection. Many states detain asylum applicants for irregular entry, identification verification, or security checks, frequently with no legal justification or time restriction. Such detention contradicts international principles established under the Refugee Convention and human rights law, which require necessity, proportionality, and alternatives to detention.

Trafficking, Smuggling and Exploitation: Restrictive migration policies frequently put refugees in the hands of smugglers and traffickers. Refugees in transit endure exploitation, forced labour, sexual violence, and extortion. Many jurisdictions fail to appropriately distinguish between trafficking victims, smuggled migrants, and refugees, resulting in legal ambiguity that undermines their rights. The lack of coordinated legislation and protective procedures results in varied reactions and insufficient safeguards for victims of exploitation.

Inadequate Burden Sharing and Responsibility- Sharing: Low- and middle-income countries pay a disproportionate share of the burden for refugee protection. Wealthier countries frequently reduce resettlement quotas, externalise boundaries, or use minimalist interpretations of commitments. This imbalance undermines the principle of international collaboration and

has an impact on the quality of refugee protection. Unequal responsibility-sharing contributes to camp overpopulation, resource shortages, and tensions between host communities and refugees.

JUSTICE CONCERNS IN GLOBAL REFUGEE PROTECTION-

Justice concerns in global refugee protection arise from the disparity between the standards imposed by international refugee law and state practice. While mechanisms like the 1951 Refugee Convention, its 1967 Protocol, and many human rights agreements aim to provide fairness, dignity, and equality for displaced people, their practical implementation frequently falls short.

Inequality and Discrimination in Access to Asylum: Unequal access to asylum processes raises serious justice concerns. Refugees from various locations, backgrounds, faiths, and countries frequently face diverse treatment. Wealthier or strategically relevant refugees may receive more political backing, while those fleeing crises in the Global South encounter opposition and lengthy procedures.

Procedural Injustices in Asylum Determination: Many justice concerns arise from asylum proceedings themselves:

- Long processing times might put applications in prison for months or years.
- Limited legal counsel, particularly in detention centres or remote processing facilities.
- Low-quality rulings are the result of inadequate training or politicisation of asylum authorities.
- Faster proceedings jeopardise fairness and limit opportunities to offer evidence.

Criminalisation and Scrutinisation of Refugees: A growing number of authorities regard refugees as security threats rather than rights holders. Securitisation leads to:

- Criminalisation of irregular entry;
- Greater surveillance and police.
- Suspicion-based detention.
- Popular narratives link refugees to crime and terrorism.

Violations of Non-refoulement: The principle of non-refoulement, which is a foundation of refugee law, is regularly violated by:

- Resistance at sea or land borders
- Outsourcing of asylum obligations.
- Informal deportations.
- Rejection of admission or asylum registration.
- The usage of dangerous "third-country" arrangements.

Gender, Age, and Vulnerability- Based Injustices: Women, children, LGBTQ+ refugees, people with disabilities, and survivors of torture are especially vulnerable and frequently receive inadequate protection. Gender-based violence at borders, the absence of child-sensitive procedures, and the failure to acknowledge persecution based on gender or sexual orientation raise serious justice concerns.

Exploitation, Trafficking and Lack of Safe Pathways: In the lack of safe and legal pathways, such as humanitarian permits or extended resettlement, refugees are forced to embark on dangerous journeys. This makes them vulnerable to exploitation by smugglers, trafficking networks, extortion, sexual violence, and forced labour. When states prioritise deterrence over protection, refugees incur the cost, resulting in significant justice gaps.

CONCLUSION

Access to justice is essential for upholding human rights, particularly those of migrants. Additionally, it promotes social justice by reducing punishment and promoting the rule of law and unity. As with all human rights, the right to access justice has an unbreakable connection to the respect, preservation, and achievement of other rights. Access to justice is crucial for safeguarding and ensuring other rights.

Migrants have the right to access justice, regardless of their legal status, as recognised by international and regional legal instruments and regional court jurisprudence to protect their interests. Everyone's human rights should be protected without discrimination, but also considering individual vulnerabilities and gender perspectives. The Global Compact for Safe, Orderly, and Regular Migration is a non-binding international instrument that serves as a policy roadmap based on international law and human rights. It includes specific measures to uphold and implement State duties related to the realisation of these rights to ensure migrants' access to justice. The Compact emphasises the importance of ensuring access to justice for all migrants, regardless of their status. States may need to implement "firewalls" if needed.

The Global Compact cites access to justice as a right that can help states achieve the Sustainable Development Goals by addressing the negative causes that lead individuals to leave their home country origin". Nevertheless, there are still obstacles that leave migrants stripped of their rights, stranded in precarious situations, vulnerable to exploitation, and excluded from the judicial system without access to resources and redress. Moreover, severe measures adopted by States during the COVID-19 pandemic, including strict entry requirements and restrictions on mobility, have accentuated and exacerbated situations of vulnerability, making it even more difficult for victims to exercise and enjoy their rights, including their right to access to justice.

The Global Compact for Safe, Orderly, and Regular Migration provides practical guidance to overcome obstacles and implement international law norms, national legislation, policies, and procedures immediately into practice.