

Vulnerability of Refugee Children to Human Trafficking in the Context of India

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Abstract

India hosts a diverse set of refugee and asylum-seeking communities, but continues to govern refugees through a fragmented, largely ad hoc architecture: it is not party to the 1951 Refugee Convention or the 1967 Protocol, and it lacks a dedicated national refugee law. This paper examines how that legal and administrative gap interacts with socio-economic precarity to heighten the risk of trafficking of refugee children for labour and sexual exploitation. Drawing on doctrinal analysis of international child-rights and anti-trafficking norms, Indian constitutional protections, and key domestic statutes, it maps the pathways through which documentation deficits, barriers to schooling, language exclusion, family separation, and informal labour markets compound vulnerability. It then identifies points where India's existing child-protection and criminal-law frameworks can be leveraged more effectively, while also outlining reforms needed to close protection gaps. The paper concludes with recommendations for a rights-based refugee framework, child-sensitive identification and guardianship procedures, strengthened access to education and legal aid, and improved data collection and coordination between state authorities and humanitarian actors.

Keywords: *Refugee Children, Human Trafficking, Exploitation, legal aid and education.*

I. Introduction

According to the Convention Relating to the Status of Refugees, hereby referred to as the 1951 Refugee Convention, a person is a refugee if:

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owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.²

India, as of January 2020, is home to 210,201 refugees and asylum seekers.³ Among them, children constitute around forty-two percent of the refugee camp population in India.⁴ Refugee children are often preyed upon by traffickers for both labour and sexual exploitation. According to a BBC report, refugee children in Syria and Turkey have been found to be producing clothes for brands like Marks & Spencer and ASOS.⁵ This paper first looks at the situation of refugee children in India, looking specifically at the reason for their vulnerability to human trafficking. It then seeks to discuss the existence and effectiveness of the relevant international law and national legislation surrounding this topic. Lastly, the paper seeks to suggest possible steps to protect children from the menace of trafficking.

While global reporting illustrates how displacement can expose children to exploitative labour chains, this paper keeps its analytical focus on India: how refugee status uncertainty and uneven access to child-protection institutions create conditions in which traffickers and abusive employers can operate with low risk of detection and accountability.

² Convention Relating to the Status of Refugees, 28 July 1951 (entered into force 22 April 1954), Art. 1(2).

³ United Nations High Commissioner for Refugees, *Factsheet: India* (Jan. 31, 2020), <https://reporting.unhcr.org/sites/default/files/UNHCR%20India%20factsheet%20-%20January%202020.pdf>.

⁴ Sasikumar Balasundaram, *Children Matter: Including Camp Children's Perspectives in Refugee Research*, 36 *Pract. Anthropology* 38 (2014).

⁵ Save the Children, *Refugee crisis fuelling child labour worldwide* (16 January 2017), <https://www.savethechildren.in/resource-centre/articles/refugee-crisis-fuelling-child-labour-worldwide>.

Methodology and scope: The article is primarily doctrinal and policy-analytic. It synthesizes treaty standards, soft-law guidance, and Indian constitutional and statutory provisions, and triangulates these with publicly available reports by UN bodies, humanitarian actors, and civil-society organizations. It does not claim to present original fieldwork; instead, it identifies legal and institutional ‘pinch points’ where protection fails and where targeted reforms are likely to have the highest impact.

This paper’s central claim is that refugee children’s vulnerability to trafficking in India is produced not only by poverty and disruption, but also by *legal invisibility*: inconsistent status determination and documentation push families into informal work and smuggling networks, and weaken access to routine child-protection institutions (schools, health systems, district child-protection units, and police safeguards). Accordingly, anti-trafficking responses that treat refugees primarily as ‘illegal migrants’ can unintentionally deepen vulnerability.

II. Situation of Refugee Children in India

Refugee children are especially vulnerable to human trafficking, including forced labour and sexual exploitation. Child labour among refugee and asylum seekers is not an uncommon phenomenon, which the UNHCR has referred to as a “serious protection concern”.⁶ The vulnerability of children to human trafficking is evident from the fact that more than 50% of people trafficked in India in 2016 were below 18 years old.⁷ This can be attributed to a few interconnected socio-economic factors. To begin with, the vulnerability of children in refugee camps is caused by the existence of predators and increase

⁶ United Nations High Commissioner for Refugees, *Global Appeal 2011 Update: India* (2011),

<https://www.unhcr.org/publications/fundraising/4cd96e919/unhcr-global-appeal-2011-update-india.html>.

⁷ Global Slavery Index, *India*, 2018, <https://www.globallslaveryindex.org/2018/findings/country-studies/india/>. The National Crime Records Bureau (NCRB) indicate that there were 8,132 reported cases of human trafficking across India in 2016. In the same year, 15,379 people were trafficked of whom 9,034 victims were below the age of 18. In addition, 23,117 people were rescued from trafficking situations of whom 14,183 people were below the age of 18.

in demand for children.⁸ There have been many cases of missing and lost children being appropriated by agents and pimps for benefits of persons willing to pay for the child. As McLean describes, refugee camps are “seen as a reservoir of the stateless”, which can be utilized as a “great opportunity for exploitation by human traffickers that have easy access to cheap flesh.”⁹ On the other hand, sexual exploitation is also another serious threat to refugee children. Often, young girls are forced into prostitution¹⁰ as a consequence of difficult economic conditions.¹¹ A survey showed that child sexual abuse or exploitation happening in refugee camps are less recognized than those occurring in schools and training centres.¹²

India’s refugee governance is not uniform across groups. Some communities have historically received group-based administrative support (for example, long-settled Tibetan refugees and certain Sri Lankan Tamil populations), while many others are processed through UNHCR registration and remain concentrated in urban settlements or informal camps. This unevenness matters for trafficking risk: where documentation, schooling access, and livelihood support are inconsistent, children are more likely to be pushed into informal labour markets and exploitative intermediaries.

The lack of education is an important factor rendering people vulnerable to trafficking.¹³ Refugee children, in particular, can be denied education.¹⁴ Indeed,

⁸ Nancie Caraway, *Human Rights and Existing Contradictions in Asia-Pacific Human Trafficking Politics and Discourse*, 14 Tul. J. Int’l & Comp. L. (2006).

⁹ Pascale McLean, *Incomplete Citizenship, Statelessness and Human Trafficking: A Preliminary Analysis of the Current Situation in West Bengal, India* 12 (Calcutta Research Grp. 2005).

¹⁰ Bharat B. Das, *A Refugee’s Problem – Humanitarian Approach*, 5 ISIL Y.B. Int’l Humanitarian & Refugee L. (2005).

¹¹ Maya Steinitz, *The Role of International Law in the Struggle Against Sex-Based and Gender-Based Violence Against Refugee Women* 29 (Int’l Rescue Comm. & Reprod. Health for Refugees Consortium Mar. 2001).

¹² Howard Dubowitz, *Child Sexual Abuse and Exploitation—A Global Glimpse*, 66 Child Abuse & Neglect (2017).

¹³ McLean, *supra* note 8, at 8.

“socio-economic factors, linguistic and cultural misunderstandings, as well as bullying and assault all dissuade refugee children from going to school in India.”¹⁵ Although a recent report reveals that around seventy-seven percent of refugee children worldwide were enrolled in primary school, this only holds true before COVID-19 hit.¹⁶ The impact of the pandemic means that many refugee families could no longer afford tuition fees and books as their income sources dry up, resulting in refugee children being in a disadvantaged position to return to their studies.¹⁷ With minimal access to technologies required for remote education, refugee children could be forced to work to help earning a living for their struggling families.¹⁸ More importantly, refugee children, being illiterate and unskilled, are often limited to work in the informal and unorganized sector. As Masud Ali states, this makes them extremely vulnerable to exploitation and trafficking in such circumstances.¹⁹

Thirdly, language differences act as another barrier for refugee children to integrate into the Indian community. As mentioned above, not knowing the majority language can prevent refugee children from getting education in India. Moreover, it has been reported that a lot of young refugees have to work in restaurants or as housekeepers precisely because they do not have sufficient knowledge of the Hindi language, despite being aware of the risk of being

¹⁴ United Nations High Commissioner for Refugees, *2019 Year-End Report: India* (2019),

<https://reporting.unhcr.org/india/>

¹⁵ ReliefWeb, *NGOs and Government Discuss Gaps in the Protection of Young Refugees* (Dec. 28, 2012), <https://reliefweb.int/report/india/ngos-and-government-discuss-gaps-protection-young-refugees>

¹⁶ AFP, *Pandemic Threatens Refugee Children's Limited Schooling*, Times of India, Sept. 3, 2020, <https://timesofindia.indiatimes.com/world/europe/pandemic-threatens-refugee-childrens-limited-schooling-un/articleshow/77904589.cms>

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Masud Ali A.K.M., *Treading Along a Treacherous Trail: Research on Trafficking in Persons in South Asia*, 43 Int'l Migration, (2005).

molested or having their pay withheld.²⁰ This problem is further amplified by their status as refugees. As non-citizens, refugee children do not have the right to work in India, nor are they issued work permits.²¹ This, again, leaves them with the sole option of engaging in unofficial labour.

On the other hand, familial factors constitute another area of concern. The term “separated child” encompasses refugee children who are separated from their parents or legal guardian and whose “accompanying adult may be unable or unsuitable to assume responsibility for” the child’s care.²² Without the usual protection offered by parents or their legal guardians, these refugee children are put at risk by being housed near or with unrelated adults,²³ hence being exposed to abuses like “recruitment, trafficking and sexual exploitation.”²⁴ Another possible outcome of this is that refugee children could face acute trauma and difficulties beyond their years such as increased exposure to violence, poverty, disease and emergencies. These have the effect of disrupting their psychological and physical growth and their support systems, consequently leading to difficulties in adulthood and being susceptible to trafficking.²⁵

On the flip side, refugee children, even if accompanied by their family members, can be vulnerable as well. It should be noted that families in crisis may resort to measures of child labour, since they see that as the only option for safeguarding the child’s future.²⁶ In fact, victims of human trafficking are

²⁰ ReliefWeb, *supra* note 14.

²¹ *Ibid.*

²² Manfred Liebel, *Children’s Rights as Living Rights: Why Human Rights Only Make Sense if They Are Connected to the Lives of Children*, Rev. Asistență Soc., 20 (2012).

²³ Fiona David, Katharine Bryant and Jacqueline Joudo Larsen, *Migrants and Their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour*, International Organisation of Migration, Geneva, 2019, p. 30.

²⁴ Nina M. Birkeland, *Internal Displacement: Global Trends in Conflict-Induced Displacement*, 91 Int’l Rev. RED CROSS, 502 (2009).

²⁵ United Nations High Commissioner for Refugees, *Refugee Children: Guidelines on Protection and Care* (1994), <https://www.unhcr.org/protection/children/3b84c6c67/refugee-children-guidelines-protection-care.html>

²⁶ David et al., *supra* note 22, at 36.

commonly trafficked by their relatives rather than by strangers, who utilize the pre-existing relationship as a resource for exploitation.²⁷ The weary conditions of the refugee camp and extreme poverty also lead the child to believe that a life on the other side is much more secure and will provide the child with basic needs.²⁸

Lastly, the lack of legal framework concerning refugees in India is another aspect to consider, which will be dealt with in the following sections.

Apart from risks of human trafficking, violation of the right to life in the contexts of armed conflicts and displacements is worth noting. Other than Tibetan and Sri Lankan refugees, the refugees and asylum-seekers from Myanmar also constitute a great number of the refugee population in India.²⁹ It is estimated that 40,000 Rohingya currently reside in India.³⁰ As an ethnic Muslim minority in Myanmar where Buddhist is the majority,³¹ the Rohingya people have been made stateless in the 1980s. Since 2012, persistent discrimination escalated into violence and what the United Nations describes as an “ethnic cleansing”, thus many were forced to flee Myanmar. Refugees, specifically children and adolescents, are at risk of serious mental health problems after being exposed to violence and witnessing traumatic events in conflicts.³² Unfortunately, not only is there no access to basic physiologic needs and health care for the Rohingya people, they are also deemed by the Indian government as a “serious threat to national security”, leading the Indian

²⁷ *Ibid.*

²⁸ Caraway, *supra* note 7.

²⁹ United Nations High Commissioner for Refugees, Submission to the Office of the High Commissioner for Human Rights for the Compilation Report: Universal Periodic Review, 3rd Cycle, 27th Session (India) 1 (Aug. 2016).

³⁰ Samaan Lateef, India Pushes Ahead with Rohingya Deportation Amid Myanmar Crackdown, *Deutsche Welle*, Mar. 24, 2021, <https://www.dw.com/en/india-rohingya-myanmar-mizoram/a-56972090>

³¹ Kojima Yu, Rohingya Refugee and Migrant Women Shadowed by Sexual and Gender Based Violence, *Our World*, Nov. 27, 2015, <https://ourworld.unu.edu/en/rohingya-refugee-and-migrant-women-shadowed-by-sexual-and-gender-based-violence>

³² Rochelle L. Frounfelker et al., Living Through War: Mental Health of Children and Youth in Conflict-Affected Areas, 101 *Int'l Rev. RED CROSS*, 483 (2019).

government to deport Rohingya refugees.³³ During times where the Rohingya people face continuous persecution in Myanmar, deportation and repatriation pose a serious threat to their lives and their enjoyment of the right to life.³⁴ With many other countries closing their borders against the Rohingya people, Rohingya populations have no choice but to resort to smuggling networks, which seek to profit from both the “facilitation of movement” and the “abuse and extortion” of migrants and asylum seekers,³⁵ resulting in higher risks of exploitation. Many have also ended up in the slave trade.³⁶

III. International Laws Protecting Refugee Children Against Trafficking in India

A. 1951 Refugee Convention

International Refugee Law and its chief institution, UNHCR, have revolved its practice around the 1951 Convention relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees, which provide for the protection of refugees.³⁷ India, however, has not ratified these instruments.

B. Other Bodies of International Law

India is, however, signatory to a number of United Nations (UN) and other Conventions on human rights, refugee issues and related matters. India’s obligations with regard to refugees arise out of its membership of the Executive Committee of the High Commissioner’s Programme (EXCOM) in 1995. The EXCOM is an organisation of the UN, which approves and supervises the material assistance programme of UNHCR. Membership of the EXCOM indicates particular interest and greater commitment to refugee matters, placing a moral, if not legal, obligation on India to “build a constructive partnership

³³ Ashutosh Pandey, Indian Government Tells Supreme Court Rohingya Pose “Serious Threat”, Deutsche Welle, Sept. 18, 2017, <https://www.dw.com/en/indian-government-tells-supreme-court-rohingya-pose-serious-threat/a-40556147>.

³⁴ Mudasir Amin, Nobody’s Children, Owners of Nothing: Analysing the Indian State’s Policy Response to the Rohingya Refugee Crisis, Pol’y Rep. No. 24 (The Hindu Ctr. for Pol. & Pub. Pol’y May 2018).

³⁵ David et al., *supra* note 22, at 30.

³⁶ Amin, *supra* note 33, at 20.

³⁷ Refugee Convention, *supra* note 1.

with UNHCR” by adhering to the provisions of the 1951 Refugee Convention.³⁸

In addition, India voted affirmatively to adopt the Universal Declaration of Human Rights (UDHR) which affirms rights for all persons, citizens and non-citizens alike and also the UN Declaration on Territorial Asylum. Relevant provisions in the UDHR concerning refugees include Article 13 on the right to freedom of movement, Article 14 on the right to seek and enjoy asylum and Article 15 on the right to nationality.³⁹ India also ratified the International Covenant on Civil and Political Rights (ICCPR) as well as the International Convention on Economic, Social and Cultural Rights (ICESCR) in 1976.

Another important document is the UN Convention on the Rights of the Child (CRC), which is the first internationally binding document concerning children. Article 22 places a responsibility upon States Parties with refugee children to take appropriate measures in accordance with the “applicable international or domestic law” and provide appropriate protection and humanitarian assistance for the enjoyment of international human rights set forth in the Convention.⁴⁰ A closer look on the provisions will be provided below. It is argued that little has been done regarding the implementation of the Convention, particularly with reference to refugee children.⁴¹ Chimni claims that it should be mandatory for the Government of India to register the birth of refugee children and to provide parents with legally validated birth certificates. To further secure the security of refugee children, “the right to education, adequate food, highest attainable standard of health” should be guaranteed.⁴²

³⁸ Vivek Kumar, *A Study of Refugees in India: The Legal Perspective*, 3 Int’l J. L. [first page], 96 (2017).

³⁹ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 13–15, U.N. Doc. A/810 (Dec. 10, 1948).

⁴⁰ See also Universal Declaration of Human Rights, *supra* note 38, arts. 8, 11.

⁴¹ B.S. Chimni, Status of Refugees in India: Strategy Ambiguity, in *Refugees and the State: Practices of Asylum and Care in India, 1947–2000* 465 (Ranabir Samaddar ed., SAGE Publ’ns 2003).

⁴² *Ibid.*

C. Protection from Trafficking in General

The Indian Government, in 2011, ratified the United Nations Convention against Transnational Organised Crime (UNTOC) and the three Protocols which target specific forms of organised crime.⁴³ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, commonly known as the Palermo Protocol, provides an agreed upon definition of trafficking in persons. It aims at addressing trafficking in persons comprehensively through the so-called three P's – Prosecution of perpetrators, Protection of victims and Prevention of trafficking.⁴⁴ Although the Palermo Protocol was incorporated in the Indian laws through the Criminal Law Amendment of 2013, the amendment disregarded many crucial aspects of the Palermo Protocol. The definition of "human trafficking" in the current Indian law does not take into account the situation of forced labour. Also, the preventive measures against trafficking only address trafficking for sexual exploitation. The absence of a system for ensuring safety, recovery and compensation of trafficked victims is problematic as well.⁴⁵

Analytically, it helps to separate trafficking from migrant smuggling and to spell out the child-specific standard. Under the Palermo framework, trafficking involves an act (recruitment/transport/harboursing), for a purpose of exploitation; the 'means' element (force, coercion, deception) is not required where the victim is a child. This matters for refugee contexts because 'consent' is often invoked to normalize child work or early marriage; in law, however, the focus should remain on exploitation and the failure of protection.

On a regional level, the South Asian Association for Regional Cooperation (SAARC) deals with the problem of trafficking. The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution was adopted unanimously by Bangladesh, Bhutan, India, Maldives, Nepal,

⁴³ United Nations Office on Drugs and Crime, *India: Government Ratifies Two UN Conventions Related to Transnational Organised Crime and Corruption* (May 2011), <https://www.unodc.org/southasia/frontpage/2011/may/indian-govt-ratifies-two-un-conventions.html>

⁴⁴ *Ibid.*

⁴⁵ Kiran Bhatti, *A Review of Immoral Traffic Prevention Act, 1986* (Ctr. for Pol'y Res. 2017).

Pakistan and Sri Lanka.⁴⁶ It is relevant for cross border trafficking in South Asia and defined trafficking. However, it is a limited definition which only covers trafficking for commercial sexual exploitation.

D. Protection from Labour Exploitation

Forced labour is one of the common forms of human trafficking. Article 32 of the CRC provides for protection of children from economic exploitation and from performing any work that is likely to be hazardous by imposing a duty on States Parties to implement domestic laws for the protection of the same. However, India made a Declaration about the Article. Though recognizing the prevalence of child labour, the Indian government undertakes to take measures to progressively implement the provisions of Article 32, paragraph 2a, in accordance with its national laws and relevant international instruments to which it is a party.⁴⁷ In other words, the Indian government argues that owing to a lack of resources, the Article cannot be immediately implemented. This declaration has been criticized as being an excuse to divert attention from “the lack of political will”.⁴⁸

The Conventions of the International Labour Organisation concern the elimination of child labour. India has ratified both the Minimum Age Convention 1973 (No 138) and the Worst Forms of Child Labour Convention 1999 (No 182). The former requires State party to set a minimum age under which no one shall be admitted to employment or work in any occupation, except for light work and artistic performances.⁴⁹ The latter calls for the prohibition and elimination of the worst forms of child labour, including slavery, forced labour and trafficking; the use of children in armed conflict; the

⁴⁶ South Asian Association for Regional Cooperation, *Compilation of SAARC Charter/Conventions/Agreements (1985–2016)* (2016), http://saarc-sec.org/download/publications/compilation_of_Charter_conv_20161227112809.pdf

⁴⁷ Campaign Against Child Labour, *An Alternative Report on the Status of Child Labour in India* (NGO Grp. for the Convention on the Rights of the Child 1998), <https://resourcecentre.savethechildren.net/sites/default/files/documents/2182.pdf>

⁴⁸ *Ibid.*

⁴⁹ Minimum Age Convention (No. 138), June 26, 1973, 1015 U.N.T.S. 297 (entered into force June 19, 1976).

use of a child for prostitution, pornography and in illicit activities (such as drug trafficking); and hazardous work.⁵⁰ The Government of India, in fulfilling this obligation, amended the Child Labour (Prohibition and Regulation Act), 1986, which now completely prohibits employment or work of children below fourteen years in any occupation or process and employment of adolescents between age fourteen to eighteen in hazardous occupations and processes.⁵¹

E. Protection from Sexual Violence and Exploitation

Victims of human trafficking, especially children and girls, can also be trafficked for the purpose of sexual exploitation. Article 34 of the CRC provides for protection of children from “all forms of sexual exploitation and sexual abuse”, with Article 19 stipulating that States Parties shall take all appropriate measures to protect the child from all forms of physical or mental violence, including sexual abuse, while in the care of parents or legal guardians. Besides, in 2000, the General Assembly of the UN adopted the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to increase the protection of children from sexual exploitation.⁵² This was ratified by India in 2005. The Optional Protocol calls for States Parties to take appropriate measures to prohibit and prevent the sale of children, child prostitution and child pornography.

As with most other treaties at the UN level, national implementation is monitored through the state reporting mechanism by the respective Committee. In the case of the CRC, the relevant committee is the Committee on the Rights of the Child. An issue identified regarding the instructions of the Committee on the Rights of the Child is that the Committee has instructed reporting States to divide data, that is, to include “higher-level information” in periodic reports,

⁵⁰ Worst Forms of Child Labour Convention (No. 182), June 17, 1999, 2133 U.N.T.S. 161 (entered into force Nov. 19, 2000).

⁵¹ International Labour Organization, *India Ratifies Both Fundamental ILO Conventions on Child Labour* (June 13, 2017), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_557295/lang--en/index.htm

⁵² Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, July 25, 2000, 2171 U.N.T.S. 227 (entered into force Jan. 18, 2002).

while leaving the “statistical indicators” to the statistical annexes.⁵³ This is problematic because only the former is publicly available. Efforts to establish responses to child abuse and exploitation, such as “tracking progress over time through specific indicators” and making state comparisons, can be seriously impeded.⁵⁴ Moreover, effective monitoring can also be hindered by States’ irregular submission of periodic reports. Periodic reports for the CRC are due every five years.⁵⁵ Yet, data from the UN Treaty Body Database demonstrates that India does not submit periodic reports in accordance with this schedule, and the last time it had submitted its report to the Committee was in 2014.⁵⁶ Human rights situations in States Parties cannot be closely monitored when States Parties do not fulfil their reporting obligations.

F. The Right to Education

The importance of education should not be overlooked. Rather than only focusing on “how people are dying in crises”, there is also a need to protect those who are living.⁵⁷ Indeed, education is often seen as an absolute priority for those who are living in emergency contexts. Education is defined and protected in the UDHR as an “inalienable human right” in Article 26. Article 13 of the ICESCR was the first international legal instrument to mandate

⁵³ June Simon *et al.*, *Thirty Years of the Convention on the Rights of the Child: Developments in Child Sexual Abuse and Exploitation*, 110 *Child Abuse & Neglect* [first page], 6 (2020).

⁵⁴ *Ibid.*

⁵⁵ Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties Under Article 44, Paragraph 1(b), of the Convention on the Rights of the Child, U.N. Doc. CRC/C/58/Rev.3, ¶ 1 (Mar. 3, 2015), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/58/REV.3&Lang=en

⁵⁶ Office of the United Nations High Commissioner for Human Rights, *Reporting Status for India*, U.N. Treaty Body Database,

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=IND&Lang=EN

⁵⁷ Allison Anderson *et al.*, *The Right to Education for Children in Emergencies*, 2 *J. Int’l Humanitarian Legal Stud.*, 87 (2011).

compulsory and free primary education to all. This right is subsequently recognized in the CRC in Article 28.

With regards to international law that governs the conduct of war and armed conflicts, Article 24 of the Fourth Geneva Convention, ratified by India in 1950, provides that “The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances.” The Geneva Convention, however, has been criticized as being “limited in nature”, since it only targets and covers a restricted group of children.⁵⁸ For instance, Article 24 applies only to children up to fifteen years old, who are separated from their families as a result of war. The age reference means that the Convention does not provide specific protections to children over fifteen. Apart from this, the needs of those who similarly suffer from problems of maintenance and education, but are still with their parents, are not protected nor addressed by this provision.

G. Restoring Family Contact and Family Reunification

The significance of family reunification lies in the fact that it is often “the only way to ensure respect for their right to family life and family unity.”⁵⁹ The Human Rights Committee has confirmed that Article 23 of the ICCPR “guarantees the protection of family life including the interest in family reunification.”⁶⁰ Article 17 of the ICCPR is also of relevance, which affirms that no one shall be subject to arbitrary or unlawful interference with his or her family. The Committee has reiterated the importance of ensuring the unity or

⁵⁸ Carolyn Hamilton & Tabatha Abu El-Haj, *Armed Conflict: The Protection of Children under International Law*, 5 Int’l J. Child. Rts. [first page], 15 (1997).

⁵⁹ Frances Nicholson, *The “Essential Right” to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, Legal & Prot. Pol’y Rsch. Series (Div. of Int’l Prot., United Nations High Commissioner for Refugees Jan. 2018), 1, <https://www.unhcr.org/5a8c413a7.pdf>

⁶⁰ Benjamin Ngambi & Marie-Louise Nébol v. France, Comm. No. 1179/2003, U.N. Human Rights Comm., ¶¶ 16 July 2004, CCPR/C/81/D/1179/2003, <http://www.refworld.org/docid/4162a5a46.html>

reunification of families in its General Comment No. 19, stating that appropriate measures in cooperation with other states should be adopted to facilitate this process.⁶¹ Article 22 of the CRC makes it clear that States Parties shall provide co-operation in any efforts by intergovernmental organizations or non-governmental organizations to protect and assist refugee children to trace their parents or other family members, in order to obtain information necessary for reunification with his or her family. As a member of the EXCOM, conclusions adopted by the EXCOM also acquire the status of soft law,⁶² which can then impose political pressure on states despite not being strictly legally binding. In particular, Conclusion No. 24 on Family Reunification gives more concrete suggestions on the respective roles of countries of origin and countries of asylum. Countries of origin “should facilitate family reunification by granting exit permission to family members of refugees to enable them to join the refugee abroad”, while host countries should “apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family.”⁶³

H. Principle of Non-Refoulement

The principle of non-refoulement is central to the international refugee law regime. It guarantees that “no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.”⁶⁴ Though India is not a party to the 1951 Refugee Convention or the 1967 Protocol, India is still obliged to observe this principle as it constitutes part of customary international law, which is binding on all

⁶¹ CCPR, Gen. Comment No. 19: Article 23 (The Family)—Protection of the Family, the Right to Marriage, and Equality of the Spouses, ¶ 5, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (27 July 1990), <http://www.refworld.org/docid/45139bd74.html>

⁶² Eric Heinze, Sexual Orientation and International Law: A Study in the Manufacture of Cross-Cultural Sensitivity, 22 MICH. J. INT’L L. 299 (2001).

⁶³ Family Reunification, U.N. Doc. Conclusion No. 24 (XXXII) ¶¶ 4–5 (21 Oct. 1981), <http://www.refworld.org/docid/3ae68c43a4.html>

⁶⁴ Office of the High Commissioner for Human Rights (OHCHR), The Principle of Non-Refoulement under International Human Rights Law, <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

States.⁶⁵ As Chimni argues, the obligation is strengthened by the fact that India is a signatory to the 1984 Convention against Torture.⁶⁶ In particular, Article 3 of the 1984 Convention states that “No State party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”⁶⁷ More importantly, the duty to respect and uphold this right is provided in the Indian Constitution itself, stipulating that “the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another.”⁶⁸

All in all, being signatory to these international conventions mean that India has a positive obligation to “secure to refugees a right to status determination, a due process for such determination and a right against return to the country of origin.”⁶⁹

IV. National Laws Protecting Refugee Children against Trafficking in India

A. Lack of Domestic Legislation

Unfortunately, there exists no specific domestic law in India enacted especially for refugees,⁷⁰ so that the refugees are protected only under the Constitution of India. Perhaps surprisingly, the Indian Government has not even evolved a legislative definition of the term “refugee”.⁷¹ The absence of national

⁶⁵ B. S. Chimni, *supra* note 40, at 448.

⁶⁶ *Ibid.*

⁶⁷ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3(1), Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

⁶⁸ INDIA CONST. art. 51(c) (Nov. 26, 1949) (entered into force Jan. 26, 1950).

⁶⁹ Saurabh Bhattacharjee, India Needs a Refugee Law, 43 Econ. & Pol. Wkly. 72 (2008).

⁷⁰ Amnesty International, World Refugee Day: What You Must Know About Refugees in India (India, June 20, 2020), <https://amnesty.org.in/world-refugee-day-what-you-must-know-about-refugees-in-india/>

⁷¹ Vatsal Raj, Covid-19 and Refugees in India: A Tale of Exclusion and Counter-Exclusion, Border Criminologies Blog (July 23, 2020),

legislation can be attributed to the financial constraints of the Indian government. More importantly, it is put forward that the Indian government is particularly worried about porous borders, which, together with the national legislation, could be utilized by terrorists to legally stay in the country.⁷² As Myron Weiner contends, countries in the South-Asian Region do not possess the necessary political, administrative, or military capacity to enforce strict entry rules safeguarding their national security.⁷³

Without a specific framework or policy for legally identifying refugees, identification and documentation of refugees are done on an ad-hoc basis. This non-uniform and non-transparent process for issuance of documents increases the refugees' vulnerability by obstructing education and employment, since these documents are instrumental in recognising the refugees' rights *viz.* admission into educational institutions, issuance of student visa, issuance of employment visa and so on. The government's limited financial and human resources combined leads to the result that asylum seekers have to wait a long period for over 300 days for them to be interviewed and subsequently receiving a first instance decision.⁷⁴ As put forward by Wilson, the absence of definitive legal protection offered to refugees exacerbates their situations of vulnerability, with trafficking being one of the most serious threats for refugees.⁷⁵ India is known for simultaneously being a source, destination and transit country for forced labour and sex trafficking.⁷⁶ It is not surprising that refugee communities like the Nepali, Rohingya, Sri Lankan Tamil have all been reported to face trafficking risks while navigating the immigration requirements in India.⁷⁷

<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/07/covid-19-and-0>

⁷² B. S. Chimni, *supra* note 40, at 445.

⁷³ *Ibid.*

⁷⁴ UNHCR, *supra* note 2.

⁷⁵ Anne P. Wilson, Trafficking Risks for Refugees, in Proceedings of the Third Annual Interdisciplinary Conference on Human Trafficking 8 (2011).

⁷⁶ U.S. Dep't of State, 2018 Trafficking in Persons Report: India (June 28, 2018), <https://www.refworld.org/topic,50ffbce4c9,50ffbce4114,5b3e0b1ea,0,,,html>

⁷⁷ The Centre for Feminist Foreign Policy, Always on the Move: Trafficking Risks in the Absence of a Refugee Law in India (Nov. 20, 2019),

B. Constitution of India

Furthermore, as no particular domestic law is enacted for refugees, only under the Constitution of India can the rights of refugees be secured. Specifically, Article 14 on equality before the law and access to justice, as well as Article 21 on the right to life and liberty, are arguably the “cardinal sources of judicial solace to those seeking refuge in India.”⁷⁸ The right to equality before the law entails that there shall not be any discrimination of people or classes of people.⁷⁹ On the other hand, protection of life and liberty guaranteed under Article 21 means that “no person can be deprived of his life or personal liberty except according to procedure established by law.”⁸⁰ It is further established that even foreigners are entitled to the protection under Article 21 of the Constitution, as given in *Louis De Raedt & Ors vs Union Of India*.⁸¹ In the case of *NHRC v State of Arunachal Pradesh*, the Supreme Court directed the Government of Arunachal Pradesh to perform the duty of safeguarding the life, health and wellbeing of Chakmas residing in the State.⁸² It has been established that it is the duty of the State to safeguard the rights of its citizens and subsequently even the refugees should fall under the Constitutional ambit of protection. Since *Maneka Gandhi v Union of India*,⁸³ a further limitation is imposed upon the court, who has to consider whether the procedure is “fair, just and reasonable”. Having the status of a non-derogable right, Sarker has gone as

<https://centreforfeministforeignpolicy.org/journal/2019/10/31/always-on-the-move-trafficking-risks-in-the-absence-of-a-refugee-law-in-india>

⁷⁸ Debanjana Paul & Vidushi Mehrotra, Excluding the Excluded: What India’s Refugee ‘Law’ Means for the Rohingyas, LSE Dep’t of Int’l Dev. Blog (Sept. 4, 2020), <https://blogs.lse.ac.uk/internationaldevelopment/2020/09/04/excluding-the-excluded-what-indias-refugee-law-means-for-the-rohingyas/>

⁷⁹ S. Bhattacharjee, *supra* note 68, at 72.

⁸⁰ *Maneka Gandhi v. Union of India*, 1996 AIR 1234 (India).

⁸¹ *Louis De Raedt & Ors. v. Union of India*, 1991 AIR 1886 (India).

⁸² *NHRC v. State of Arunachal Pradesh*, (1996) 1 S.C.C. 742 (India).

⁸³ *Maneka Gandhi v. Union of India*, 1996 AIR 1234 (India).

far as arguing that it is not “incorrect to claim that refugee protection is mandated by Article 21.”⁸⁴

C. Other Relevant Domestic Legislation

The absence of a refugee-specific domestic legislation means that refugees fall under the purview and definition of “alien”.⁸⁵ By the Foreigner Act, 1946, The Registration Act, 1936 and the Passport Act, 1967, the entry, presence and exit of an “alien” are regulated by the Central Government. The Foreigners Act, 1946, in particular, stipulates some restrictions on refugees by defining whom they can meet and the routes only through which they are allowed to enter the country.⁸⁶ All foreigners are viewed from the lens of national security, with no exception made on humanitarian grounds.⁸⁷ The primary issue that arises out of this incomplete definition is that refugees are treated the same way as any other foreign person and would mostly face issues relating to illegal entry and deportation. By placing refugees in the same broad category as immigrants or tourists, the privilege of refugees available under the 1951 Refugee Convention is effectively denied.⁸⁸ In other words, treatment of the refugees is dependent on the benevolence of the State, rather than on a systematic regime of rights.⁸⁹

Domestic law analysis would benefit from foregrounding the post-2013 trafficking provisions in the Indian Penal Code (notably Sections 370 and 370A), alongside the Juvenile Justice (Care and Protection of Children) Act (child in need of care and protection; child welfare committees), the Bonded Labour System (Abolition) Act, the Child and Adolescent Labour (Prohibition and Regulation) Act, and the Right of Children to Free and Compulsory Education Act. Taken together, these instruments can provide a *functional* protection net for refugee children even without a refugee statute, but only if

⁸⁴ Shuvro Prosun Sarker, *Refugee Law in India: The Road from Ambiguity to Protection* xiv (Palgrave Macmillan 2017).

⁸⁵ INDIA CONSTITUTION art. 22, para. 3; List I, Sch. 7 (1950).

⁸⁶ Divya Vishal, *Refugee Law and Policy in India*, Indian Legal Solution (July 22, 2020), <https://indianlegalsolution.com/refugee-law-and-policy-in-india/>

⁸⁷ Amnesty International, *supra* note 45.

⁸⁸ V. Kumar, *supra* note 37, at 96.

⁸⁹ B. S. Chimni, *supra* note 40, at 443.

identification, referral pathways, interpreters, and non-discriminatory access to services are operationalized at the district level.

More recently, the Citizenship (Amendment) Act, 2019 created a fast-track citizenship pathway for certain religious communities from Pakistan, Bangladesh, and Afghanistan. This religion-based design has been widely criticized for producing unequal protection and leaving other groups - including many Muslim asylum seekers such as the Rohingya - outside regularization pathways. Where people are labelled as 'illegal immigrants', they face heightened risks of detention and return, raising acute non-refoulement concerns. In practice, this insecurity can also increase reliance on smugglers and intermediaries, which in turn can heighten trafficking risks for children.

On the bright side, the Protection of Children from Sexual Offences Act of 2012 significantly upscales the protection regime offered to the children in India.⁹⁰ Its significance lies in the fact that it is the first time a specific piece of legislation has been passed to address the issue of sexual violence against children in India.⁹¹ Sexual offences are originally covered under different sections of the Indian Penal Code (IPC). The IPC does not provide for all types of sexual offences against children and, more importantly, does not distinguish between adult and child victims. Contrarily, the 2012 Act defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishments, which are graded as per the gravity of the offence.⁹²

To complement criminalization, implementation-oriented instruments deserve brief treatment. India has operated Anti Human Trafficking Units in many districts, and victim support can also be routed through child-protection institutions (Child Welfare Committees, shelter homes) and compensation mechanisms under criminal procedure. For refugee children, the practical question is whether these pathways are accessible without documentation, with

⁹⁰ ReliefWeb, *supra* note 14.

⁹¹ *Ibid.*

⁹² Protection of Children from Sexual Offences (Amendment) Bill, No. 94, 2019.

language support, and without creating fear of immigration consequences. This implementation gap should be analysed explicitly.

Other domestic legislation that governs human trafficking includes the Immoral Traffic (Prevention) Act (ITPA), 1956. It discusses trafficking in relation to prostitution and not in relation to other purposes of trafficking such as domestic work, child labour, organ harvesting. Section 5 of the Act states that if a person procures, induces or takes a child for the purpose of prostitution then the prison sentence is a minimum of seven years but can be extended to life. To ensure that the people involved in the chain of trafficking are held responsible, the Act has a provision that states that any person involved in the recruiting, transporting, transferring, harbouring, or receiving of persons for the purpose of prostitution is guilty of trafficking. However, anomalies in the law itself such as a lack of consensus on definitions (what constitutes trafficking or exploitation), lack of clarity on the rights of victims, weak punitive measures against perpetrators, and poor enforcement mechanisms impede their justiciability resulting in low conviction rates.⁹³

The new trafficking of persons (Prevention, Protection and Rehabilitation) Bill, 2018 is more problematic. It intends to provide protection, but its competency has been highly debated. Critics have pointed out that it addresses human trafficking from a criminal law point of view, rather than being human rights-based and taking a victim-centred approach. It promotes rescue raids by police, conflates sex work with trafficking for purposes of sexual exploitation, conflates trafficking and smuggling of migrants by adding the aggravated circumstance of “encouraging or abetting any person to migrate illegally into India, or Indians to some other country.” Again, without proper identification and documentation of refugees, this Act may lead to the criminalisation of all irregular migrants, including victims or potential victims of trafficking alike. The Act appears to have failed to take into account that these people, because of a lack of a safe, orderly and regular migration channel, are forced into the hands of smugglers or traffickers. Hence, a satisfactory legal framework must be consistent with relevant human rights standards to ensure victims are identified,

⁹³ K. Bhatt, *supra* note 44.

assisted and referred for appropriate protection services, while guaranteeing effective investigation and prosecution of perpetrators at the same time.⁹⁴

D. Judicial Creativity

The lack of recognition of the refugee status in the Indian constitutional arrangement is largely due to the attitude of the executive branch. Yet, the judiciary in India has been creative with their approach in ensuring protection for refugees, especially children, to a certain extent,⁹⁵ playing a crucial role in bridging the gap between India's international obligations and the domestic legal framework.⁹⁶

A case in point is *Collector of 24 Parganas v Lalith Mohan Mullick*.⁹⁷ The case concerned a notification issued under section 4 of the West Bengal Land Development and Planning Act for rehabilitation of displaced persons. The respondents later found out that the real purpose of the acquisition was different from the one mentioned in the notification, which is actually for the establishment of a hospital for crippled children. Thus, the respondents approached the Land Acquisition Authority, requesting them to cancel the notification. The Supreme Court of India held that "putting up of a hospital for crippled children is a public purpose connected with the rehabilitation of displaced persons." Moreover, by rehabilitation, "what is meant is not to provide shelter alone." Instead, "[t]he real purpose of rehabilitation can be achieved only if those who are sought to be rehabilitated are provided with shelter, food and other necessary amenities of life." Therefore, it concluded that the provision of a hospital for the disabled and the crippled children "squarely comes within the concept of ... 'rehabilitation' and consequently of settlement of refugees."

⁹⁴ OHCHR, India Must Bring Its New Anti-Trafficking Bill in Line with Human Rights Law, Urge UN Experts (July 23, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23392&LangID=E>

⁹⁵ Markandey Katju, India's Perception of Refugee Law, 1 ISIL Yearbook of Int'l Humanitarian & Refugee L. 252 (2001).

⁹⁶ V. Vijayakumar, Protection of Refugee Children in India, 20 Refuge 52 (2002).

⁹⁷ *Collector of 24 Parganas v. Lalith Mohan Mullick*, AIR 1986 622 (Cal.).

In relation to realizing the international obligation undertaken by India, the Supreme Court of India in *Gramophone Company Of India Ltd v Birendra Bahadur Pandey*,⁹⁸ emphasized that “[t]here can be no question that nations must march with the international community and the Municipal law must respect rules of International law even as nations respect international opinion.” Furthermore, “[t]he comity of Nations requires that Rules of International law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament.” Similarly, in *People’s Union of Civil Liberties v Union of India*,⁹⁹ the Supreme Court recognized that “[i]t is almost an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law.”

Regarding measures against child trafficking, the Supreme Court of India, in *Vishal Jeet v. Union of India*, issued directions for all state governments to take appropriate and speedy steps against commercial sexual exploitation.¹⁰⁰ The court advised setting up Advisory Committees with experts to work towards the rehabilitation of rescued girls and take further measures to eradicate child prostitution.¹⁰¹ Besides, a petition was filed in public interest to protect the children, particularly minor girls, against the shrewd pimps and brothel keepers in *Prerna v State of Maharashtra and Others*.¹⁰² The court issued certain specific directions for those children rescued from the brothels.

As much as the Supreme Court has taken up an activist and creative role in this area, it should be noted that judicial interventions have been case specific, nor is this standard widely implemented across the country. Despite Article 21 being a non-derogable right as mentioned above, only those who are able to bring their case before the High Court or the Supreme Court can benefit from the judgements of the higher courts in India.¹⁰³ Besides, each refugee population can be treated differently, depending on the State they seek refuge

⁹⁸ *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, AIR 1984 667 (SC).

⁹⁹ *People’s Union for Civil Liberties v. Union of India*, AIR 1997 SC 568.

¹⁰⁰ *Vishal Jeet v. Union of India*, AIR 1990 SC 1412.

¹⁰¹ *Ibid.*

¹⁰² *Prerna v. State of Maharashtra & Ors.*, 2003 (2) Mah. L.J. 105.

¹⁰³ S. P. Sarker, *supra* note 83.

in, and the “political relationship ... India maintains with the countries of refugee origin.”¹⁰⁴ In other words, without a clearly defined statutory framework and standard, refugees and asylum seekers continue to be subject to inconsistent and arbitrary government policies.¹⁰⁵

V. Steps to Protect Refugee Children from the Menace of Trafficking

A. Passing National Legislation

At the outset, passing a national legislation specific to refugees is of paramount importance. Chimni comprehensively lays out the reasons in favour of passing a domestic legislation. First and foremost, a refugee legislation ensures a right-based, rather than a charity-based approach.¹⁰⁶ As Justice Varma puts it, “attempt to fill the void by judicial creativity can only be a temporary phase”, only legislation can provide a permanent and comprehensive solution. After all, refugees continue to be marginalized, the representative of the non-representable, who has no State or law, and no nation or party to put forward his or her claims. Secondly, a clear distinction and classification between migrants and refugees can be facilitated. This takes into account India’s concern of illegal migrants arriving from neighbouring countries. With a piece of national legislation clearly spelling out the definitions and rights of a refugee, the government can more easily distinguish between a refugee and an illegal migrant or terrorist. Thirdly, the principle of non-refoulement can be duly observed. Arbitrary actions of the government or the prosecution often goes unnoticed without a refugee-specific legislation. The current situation faced by many vulnerable refugees is that, if caught entering illegally, without the requisite documentations, the refugee may be forced to return across the border. A national legislation can provide guidance for officials’ conduct and behaviour when getting in touch with refugees across the border.

An anti-trafficking legislation which deals with the specific problems related to refugee children is required. India needs to enact an anti-trafficking law as the ITPA and the Penal Code are more specific to trafficking for prostitution purposes thus, leaving out trafficking for any other purpose. Trafficking can be

¹⁰⁴ S. Balasundaram, *supra* note 3, p. 38.

¹⁰⁵ *Ibid.*

¹⁰⁶ B. S. Chimni, *supra* note 40, p. 462.

employed on refugee children for the purpose of bonded and cheap labour and smuggling of illicit drugs, which is not currently covered by the scope of Indian anti-trafficking laws. Put simply, anti-trafficking measures must include a refugee protection framework, which envisages to shift the focus from criminalisation and detention of victims, to treating them with compassion and understanding, alongside the establishment of mechanisms to identify traffickers and trafficking channels.¹⁰⁷ On the other hand, domestic legal framework provides no legal provisions for rehabilitation of child victims. The harm done to them must be understood for effective re-integration. The necessary measures are multi-fold. Not only should it include counselling as well as other amenities such as housing, medical assistance and education, job opportunities, shelter and subsistence for the parents should be guaranteed, so that refugee parents are no longer forced to sell off their children to gain transit and security.¹⁰⁸

Operational reforms can begin even before new legislation. At minimum, authorities should establish child-sensitive screening at points of interception (border districts, railway stations, and camp/settlement perimeters), create clear referral pathways to Child Welfare Committees and District Child Protection Units, and ensure access to interpreters. A ‘firewall’ should be maintained between child-protection services and immigration enforcement, so families can report exploitation without fear of detention or deportation. These steps align anti-trafficking practice with a victim-centred approach.

B. Data Collection

Another longer-term approach can be taken to collect data on refugees, as a preliminary step to formulating a refugee-specific law or policy. There is a need to develop a transparent and uniform system for issuance of official documents to refugees. Effective identification of refugee children can avail them of basic necessities. The minimum requirement of a duration of stay for being eligible

¹⁰⁷ The Centre for Feminist Foreign Policy, *supra* note 76.

¹⁰⁸ Katie Arnold, Traffickers Prey on Lost Rohingya Children in Bangladesh Camps, Reuters (Nov. 8, 2017), <https://www.reuters.com/article/us-bangladesh-rohingya-children-traffick/traffickers-prey-on-lost-rohingya-children-in-bangladesh-camps-idUSKBN1D8015>.

for Aadhaar card in India is 182 days.¹⁰⁹ Lack of a robust identity proof makes it difficult for refugee children, upon their arrival, to avail basic things such as education because of linking of these basic necessities to the identity cards.¹¹⁰ Indian government should provide these refugees, within a fixed period of their arrival, an identification card which could be a quasi-Aadhaar, with the help of which the refugees can avail the basic necessities.

Data collection should be designed to be protection-enhancing, not surveillance-heavy. Alongside quasi-identification documents, birth registration, school enrolment data, and child-protection case-management systems can generate early-warning indicators. Critically, data should be disaggregated by age, gender, community, disability, and location, and shared through privacy-respecting protocols between state agencies and humanitarian actors.

C. Putting Children First

There is a need to approach refugee law from a child rights viewpoint. This would entail inculcating the principles of the CRC and approaching a child refugee as a child first, refugee later.¹¹¹ Article 2 of the CRC provides that a State is obliged to protect a child regardless of her nationality and this must be the first principle in granting refugee status or other form of protections to a child. What's more, principles of the right to be heard, best interests of the child, right to life and development and non-discrimination must be inculcated into child refugee determination procedures to ascertain the specific identity of a child and hence to monitor such children to ensure protection. The right to be heard is often not followed under the asylum screening procedures for children. It is not uncommon that refugee children face trauma during their transit and persecution. This is amplified with the fact that host countries such as India

¹⁰⁹ The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits, and Services) Act, 2016, § 2(v).

¹¹⁰ Aman & Roshni Shankar, Identity in Exile, Indian Express (May 18, 2018), <https://indianexpress.com/article/opinion/columns/supreme-court-rohingya-refugees-aadhaar-card-act-uidai-5180821>

¹¹¹ Helen Connolly, Seeing the Relationship Between the UNCRC and the Asylum System Through the Eyes of Unaccompanied Asylum-Seeking Children and Young Peoples, 23 Int'l J. of Children's Rts. (2015).

may lack child sensitive procedures to try their application for refugee status, often intimidating refugee children into giving insufficient evidence and thus missing out on legal refugee protection. Accordingly, given the legislative history of the 1951 Refugee Convention and the CRC, no historical trajectory between refugee laws and child rights can be observed. It follows that way forward must be through bridging this gap in principle and procedure. Furthermore, there is a dire need for an organized method of providing care and prohibition rather than exposing the child to vulnerabilities. This can be achieved through having all nations approach refugees in a more humane manner, rather than considering them as disposable pawns for political conflicts.¹¹² Legal protection must be given to children from their migration to settlement in the host state, irrespective of their nationality or birth.

A child-first approach also implies *guardianship* and best-interests determination for unaccompanied and separated children, including safe accommodation standards, periodic risk assessments, and participation of the child in decisions affecting them. Where refugee status procedures are used, interviews should be age-appropriate and trauma-informed, with trained personnel and legal aid available at the earliest stage.

D. Education

Apart from these, the government should provide specific education regarding the rights of the refugees, the socio-economic conditions, the languages, different cultures, and possible means of employment, in order to help these refugees to permeate into the local society and economy. This education should at least be inclusive of the rights against trafficking, and helping them deal with the discriminative narrative of the local population. These would majorly cut down the prevalence of child trafficking in the country. Rather than simply “implementing” children’s rights, the government must take action to “culturally translate” these rights, allowing them to be “imparted with local ways of reasoning”, “according to local customs as well as legal views and practices.”¹¹³

¹¹² A. P. Wilson, *supra* note 74.

¹¹³ M. Liebel, *supra* note 21, p. 19.

Education interventions should be paired with practical livelihood and protection measures: bridge-language classes, accelerated learning programmes, and community-based awareness on safe migration, recruitment fraud, and reporting channels. Partnerships with local schools and NGOs can reduce bullying and exclusion, which are frequent drivers of dropout and subsequent entry into exploitative work.

VI. Conclusion

The issue of human trafficking does not exist in a vacuum but is closely interlinked to migration and labour. Consequently, legal and policy responses to trafficking are only effective and rights-protective when they are matched by effective and rights-protective labour and migration policies, among others. The child refugee crisis is a humanitarian emergency and demands immediate attention. Whether these children are migrants, refugees or internally displaced persons, they are, after all, children. Hence, there is an urgent need for ratification of the Refugee Convention and its Protocol, the development of a National Model Law on Refugees, and the adaptation of the best international practices as listed above.