

Operationalising Human Security in India: Extending Legal and Social Protection to Migrants

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I

The emergence of human security in the last three decades has challenged the traditional conception of security and sought to move the prism of security away from the territorial security of states to survival, livelihood and dignity of people. Human Security came to the fore in international debates with the Human Development Report 1994 of the United National Development Programme (UNDP).¹ This Report highlighted that "[f]or most people today, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event". In grounding security in the lived quotidian reality of people, human security has widened the concept of security beyond 'freedom from fear' to 'freedom of want'.² This is reflected in the Report of the United Nations Commission on Human Security (2003) which observed that "[h]uman security connects different types of freedoms – freedom from want, freedom from fear and freedom to take action on one's own behalf."³ Further, by foregrounding people and human beings as the main referent of security, the human security framework has connected security to the human rights of everyone. In this context, it has been argued that the "new framework of human security causes one to consider the safety and security of individuals irrespective of their attachment to, or status within, a state."⁴ Thus, the concept of human security has opened a new vista for a normative framework of protection for refugees, asylum-seekers and migrants.

The emergence of a human security framework has also occurred in an era of entrenchment of international human rights law and recognition of the indivisibility of rights -civil, political, economic, social and cultural.⁵ Human security can complement international human rights law by providing a

¹ The notion of human security has a longer intellectual lineage with scholars connecting it to European political thought. Emma Rothchild, "What is Security?" *Daedalus* (1995), 53-98. Others have connected it to "narratives of human-centred development associated with the Brandt Commission, and to 1970s' peace studies literature about positive and negative peace." Ryerson Christie and Amitav Acharya, *Human Security Research: Progress, Limitations and New Directions*, Report of a Conference Organised by the Centre for Governance and International Affairs, Department of Politics, University of Bristol, 8-11 February 2008, available at <https://www.bristol.ac.uk/media-library/sites/spais/migrated/documents/christiearcharya1108.pdf>

² Timothy M Shaw, Sandra J MacLean and David R Black (eds), *Introduction: A Decade of Human Security: What Prospects for Global Governance and New Multilateralisms* (Ashgate 2006)

³ Sadako Ogata and Amartya Sen, *Human Security Now*, Report of the UN Commission on Human Security (2003), available at <https://reliefweb.int/sites/reliefweb.int/files/resources/91BAEEDBA50C6907C1256D19006A9353-chs-security-may03.pdf>

⁴ Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge 2009)

⁵ The Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993 (UN Doc. A/CONF.157/23) which affirmed that "all human rights are universal, indivisible and interdependent and interrelated" was adopted only a year before the UNDP's Human Development Report of 1994. On indivisibility of human rights, see Manfred Nowak, 'Indivisibility of Human Rights' in Rhona K.M. Smith and Christien van den Anker, *The Essentials of Human Rights*, London 2005, 178-180

conceptual tool for a more expansive interpretation of these international human rights⁶ and reinforcing the centrality of social economic rights in ensuring security of individuals. At the same time, international human rights law can provide a “more precise, normatively grounded and operational conception of human security.”⁷

The synergy between human security and human rights-based approaches has also permeated into policy and legal discourse in India where rights-based development acquired currency in the development approach taken by India in the first decade of the current millennium. Notably, the United Progressive Alliance government made the conversion of certain developmental goals like food security,⁸ access to primary education⁹ and employment¹⁰, into statutorily guaranteed legal entitlements a central pillar of its development policies.¹¹ While the transformational impact of these measures has been scrutinised, the rights-based approach represented a concerted attempt to ground anti-poverty and developmental policies in the human rights obligations of the state.

This paper explores the connection between human security and international human rights law and reviews the policy and legal instruments used in India in furtherance of the rights-based approach to poverty and development. In particular, the paper pursues the following questions – the relevance of the human security framework for refugees, asylum-seekers and other migrants, the scope for operationalisation of human security for non-nationals and migrants in international human rights law and in rights-based legislation and jurisprudence in India.

The first part of this paper shall trace the emergence of human security in the United Nations System and international development discourse. Thereafter, the paper shall analyse the implications of the human security paradigm for the protection of non-nationals. The third part of the paper shall examine the convergence between human security and international human rights law. From this vantage point, the paper shall map the constitutional and legislative changes in India the extent to which the human security framework has found resonance in the policy framework in India and the scope for protection of migrants therein.

⁶ Dorothy Estrada-Tanck, *Human Security and Human Rights under International Law: The Protections Offered to Persons Confronting Structural Vulnerability* (Hart Publishing 2016), 72-75

⁷ *Ibid.*, Preface.

⁸ The National Food Security Act, 2013 (Act. No. 20 of 2013), available at <https://www.indiacode.nic.in/bitstream/123456789/2113/1/201320.pdf>

⁹ The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), available at https://www.indiacode.nic.in/bitstream/123456789/19014/1/the_right_of_children_to_free_and_compulsory_education_act_2009.pdf

¹⁰ The National Rural Employment Guarantee Act 2005 (Act No. 42 of 2005), later renamed The Mahatma Gandhi National Rural Employment Guarantee Act, available at <https://www.indiacode.nic.in/bitstream/123456789/2014/5/a2005-42.pdf>

¹¹ For more rights-based approach to development in India, see Moshe Hirsch, Ashok Kotwal, Bharat Ramaswami (eds), *A Human Rights Based Approach to Development in India*, (UBC Press 2019); Joel E Oestrich, *Development and Human Rights: Rhetoric and Reality in India* (Oxford 2017); Sengupta, A. (2007). *A Rights-Based Approach to Removing Poverty: Eradicating Poverty as Realizing Human Rights*. Indian Journal of Human Development, 1(1), 55-68. <https://doi.org/10.1177/0973703020070104>

II

Emergence of Human Security

The human security paradigm acquired prominence in the 1990s as a counterweight to the conventional conception of security which primarily focused on protecting states from external threats, territorial security and sovereignty of the state. Even though several scholars have asserted that human security has an intellectual lineage in the European enlightenment¹² and Brandt Commission's formulation on 'non-military concept of security',¹³ the UNDP gave an impetus to the conception through its Human Development Reports.

Human security was mentioned in UNDP Human Development Report 1993.¹⁴ In this report, human security was described as one of the 'five new pillars of a people-centred world order.'¹⁵ This reference to human security was further fleshed out in the next UNDP Human Development Report of 1994, *New Dimensions of Human Security*.¹⁶ This Report observed

"For too long, the concept of security has been shaped by the potential for conflict between states. For too long, security has been equated with the threats to a country's borders. For too long, nations have sought arms to protect their security...Most people instinctively understand what security means. It means safety from the constant threats of hunger, disease, crime and repression. It also means protection from sudden and hurtful disruptions in the pattern of our daily lives-whether in our homes, in our jobs, in our communities or in our environment."¹⁷

The Report also asserted that "[t]o address the growing challenge of human security, a new development paradigm is needed that puts people at the centre of development."¹⁸

The aftermath of the release of the UNDP Report saw the concept of human security find recognition in several other international instruments and attempts towards its institutionalisation. The Copenhagen Declaration on Social Development, released at the World Summit for Social Development in 1995, affirmed that "social development and social justice are indispensable for the achievement and maintenance of peace and security within and among our nations."¹⁹ In 2001, the United Nations Secretary-General, Kofi Annan established the Commission on Human Security (CHS). The CHS was co-chaired by development economist, Amartya Sen, and a former UN High Commissioner for

¹² Emma Rothchild, "What is Security?" *Daedalus* (1995), 53-98. See also Dorothy Estrada-Tanck, *supra* note 6, 22

¹³ Dorothy Estrada-Tanck, *supra* note 6, 22. For more on the intellectual history of human security, see Shahrbanou Tadjbakhsh, *Human Security in International Relations: Blessing or Scourge*, 4 *HUM. SEC. J.*, 9 (2007).

¹⁴ UNDP, *People's Participation*, Human Development Report 1993, available at <https://hdr.undp.org/system/files/documents/hdr1993encompletenostats.pdf>

¹⁵ *Ibid.*, p 2

¹⁶ UNDP, *New Dimensions of Human Security*, Human Development Report 1994, available at <https://hdr.undp.org/system/files/documents/hdr1994encompletenostats.pdf>

¹⁷ *Ibid.*, 3

¹⁸ *Ibid.*, 4

¹⁹ Copenhagen Declaration on Social Development and Programme of Action for the World Summit for Social Development, R 2, 5, 8, 20, U.N. Doc. A/CONF.166/9 (Apr. 19, 1995).

Refugees, Sadako Ogata. The Report of the CHS reiterated the multidimensional nature of the conception of human security when it observed that:

“Human security means protecting fundamental freedoms— freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people’s strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.”²⁰

Thereafter, the human security paradigm also found recognition within the United Nations General Assembly and two different resolutions of the General Assembly have explicitly endorsed the conception. In a Resolution adopted on 16 September 2005, the General Assembly recognised “that all individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential” and committed itself “to discussing and defining the notion of human security in the General Assembly.”²¹ Later in 2012, the General Assembly accepted that “human security is an approach to assist Member States in identifying and addressing widespread and cross-cutting challenges to the survival, livelihood and dignity of their people.”²² It was also emphasised in this resolution that “[h]uman security recognizes the interlinkages between peace, development and human rights, and equally considers civil, political, economic, social and cultural rights.”

In the last two decades, human security has found recognition in decisions of the International Court of Justice as well. In 2013, Judge Bennouna referred to human security in the *Frontier Dispute (Burkina Faso v Nigeria)* case, where he observed:

“the search for peace among States also entails ensuring human security, namely respect for the fundamental human rights of the persons concerned and their protection, including by international justice. The exercise of sovereignty has thus become inseparable from responsibility towards the population. This new approach to sovereignty should certainly be present when the Court rules on the course of boundaries between States”²³

In addition to this judicial endorsement, the paradigm of human security has also found some recognition in treaty law as in the text of the Arms Trade Treaty (ATT), an instrument for regulating trade in conventional weapons by establishing common standards. The ATT, which was adopted by the UN General Assembly on 2 April 2013 and entered into force on 24 December 2014, did not expressly

²⁰ Sadako Ogata and Amartya Sen, *Human Security Now*, Report of the UN Commission on Human Security (2003), 4, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/91BAEEDBA50C6907C1256D19006A9353-chs-security-may03.pdf>

²¹ Resolution adopted by the General Assembly on 16 September 2005, 60/1. 2005 World Summit Outcome, A/RES/60/1, October 24, 2005, available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

²² Resolution adopted by the General Assembly on 10 September 2012, 66/290. Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome, A/RES/66/290, available at <https://www.un.org/humansecurity/wp-content/uploads/2022/06/N1147622.pdf>

²³ *Frontier Dispute (Burkina Faso v Nigeria)* (Judgment) [2013] ICJ Rep 44, 95 (Declaration of Judge Bennouna).

use the term, 'human security'.²⁴ But it relied on the spirit of the concept by acknowledging that "development, peace and security and human rights are interlinked and mutually reinforcing."²⁵

These are examples of the growing support that human security has found within the United Nations system. Questions have indeed been raised about the lack of a precise definition of the concept.²⁶ It has been argued in this regard that "human security is ultimately treated almost interchangeably with human rights, with no distinct character" assigned to it.²⁷ Doubts also remain on its juridical enforceability in international law.²⁸ The scope and nature of the legal obligation arising out of human security remain unclear.²⁹ Sceptics have also asserted that human security may undermine human Rights.³⁰ Additionally, it has been argued that the concept of human security is a tool for extending the legitimacy of the existing neoliberal structures, institutions, and processes and the associated inequities.³¹

Despite these questions, the complementarity of human security with human rights needs to be underscored. With its emphasis on the human person or the people as its locus, human security reinforces the human rights concern around the preservation of human dignity.³² Human security represents a paradigm shift towards a more inclusive understanding of security that went beyond 'freedom from fear'.³³ In other words, as Amartya Sen noted, "[h]uman security can make a significant contribution by identifying the importance of freedom from basic insecurities."³⁴ Human security can build on existing international obligations and precepts and reinforcing the concept of indivisibility of human rights.³⁵ In as much as human security is seen as a tool for agenda setting, human security can

²⁴ Shireen Daft, *Human security and international law: why? how?* in Research Handbook on International Law and Human Security (Gerd Oberleitner ed), 25, 30 (2022)

²⁵ Arms Trade Treaty, opened for signature 3 June 2013, 52 ILM 988 (entered into force 24 December 2014) (ATT), Preamble

²⁶ Roland Paris, *Human Security: Paradigm Shift or Hot Air?*, 26 INT'L SEC. 87, 88 (2001), David Petrasek, *'Human Rights "Lite"?' Thoughts on Human Security*, Disarmament Forum 3 (2004), 59, 59.

²⁷ Shireen Daft, *supra* n 24, 30.

²⁸ Alice Edwards, *Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Borders*, 30 Mich. J. Int'l L. 763 (2009).

²⁹ *Ibid.*

³⁰ Ben Saul, *'The Dangers of the United Nations' "New Security Agenda": "Human Security" in the Asia-Pacific Region'*, Asian Journal of Comparative Law 1(1) (2006), 1; Rhoda E. Howard-Hassmann, *'Human Security: Undermining Human Rights?'* 34 Human Rights Quarterly 88 (2012).

³¹ Busumtwi-Sam, *'Development and Human Security: Whose Security, and from What?'* 57 (2) International Journal 253, 254 (2002).

³² Wolfgang Benedek, *Human rights and human security* in Research Handbook on International Law and Human Security (Gerd Oberleitner ed), 161 (2022)

³³ Timothy M Shaw, Sandra J MacLean and David R Black (eds), *supra* n. 2.

³⁴ Sadako Ogata and Amartya Sen, *supra* n. 20, 9.

³⁵ Shireen Daft, *supra* n 24, 30.

reorientate international law and international relations to foreground human dignity and the needs of individuals as the primary concern of security and development and link them with human rights.³⁶

III

Human Security and Migrants

By foregrounding people and human beings as the main referent of security, human security strengthens the connection between security and human rights of everyone. As a result, the human security framework has special relevance for refugees, migrants and asylum-seekers. In conventional security discourse, refugees and migrants are seen as potential threats to the security of the state.³⁷ However, by positing security, human rights and human development as complementary, the conception of human security allows treating the protection of non-citizens as part of the security imperative. As has been argued by Alice Edwards and Carla Ferstman, the “new framework of human security causes one to consider the safety and security of individuals irrespective of their attachment to, or status within, a state.”³⁸ In an era where international human rights law has recognised the indivisibility of social rights and economic rights³⁹, the human security framework provides a powerful additional conceptual tool for the extension of social rights to non-nationals including refugees, asylum-seekers and migrants.⁴⁰ Indeed, as human rights law has moved towards greater recognition of the rights of migrants, “human security can identify the severity of threats and vulnerabilities across a range of fields and connect actors in seeking the common good.”⁴¹

Human security shifts the lens towards conditions of structural vulnerability and persons with heightened vulnerabilities. By doing this, the human security framework allows us to see asylum-seekers and refugees against the background of their vulnerabilities and recast them as ‘not a security threat, but rather the first victims of insecurity’. Indeed, the scope for strengthening protection for migrant groups through the conception of human security was recognised by the Commission on Human Security itself. One of the chapters of the Report of the Commission on Human Security was specifically addressed at ‘People on the Move’ and it acknowledged that ‘for many people ... migration is vital to protect and attain human security’⁴² In this context, the Commission underscored that human insecurity

³⁶ Alexander Gilder, *International law and human security in a kaleidoscopic world*, 59 *Indian Journal of International Law*, 111-137 (2020)

³⁷ Guy S Goodwin Gill, *Refugees and Security*, 11 *Int’l J. Refugee Law* 1 (1999); Scott D Watson, *Manufacturing Threats: Asylum Seekers as Threats or Refugees*, 3 *J. Int’l L & Int’l Rel.* 95 (2007)

³⁸ Alice Edwards and Carla Ferstman, *supra* n 4, Preface, XX.

³⁹ Manfred Nowak, ‘*Social rights in international law: categorization versus indivisibility*’ in *Research Handbook on International Law and Social Rights* (Christina Binder, Jane A. Hofbauer, Flávia Piovesan, and Amaya Úbeda de Torres eds, Edward Elgar 2020), 2

⁴⁰ Pia Oberoi, ‘*Empowering migrants: human security, human rights and policy*’ in *Human Security and Non-Citizens: Law, Policy and International Affairs* (Alice Edwards and Carla Ferstman eds, Cambridge 2009) 227-270

⁴¹ Alexander Gilder, *Review of Dorothy Estrada-Tanck, Human Security and Human Rights under International Law: The Protections Offered to Persons Confronting Structural Vulnerability*, 22 (3) *Journal of Conflict and Security Law*, 553-556 (2017)

⁴² Sadako Ogata and Amartya Sen, *supra* n. 20, 41.

and social and economic rights privations are “among the major drivers of survival migration.”⁴³ Very pertinently, the Commission highlighted the need to situate the protection of migrants within the political, social and economic aspects of displacement. It observed:

“From a human security perspective, the movement of people should be looked at comprehensively, taking into account the political, civil, security, economic and social dimensions affecting peoples’ decision to move. It cannot be approached solely from the perspectives of the countries of origin, transit or destination. It must also be approached from the perspective of the different stages and motivations for displacement—for many people, migration is the only option.”⁴⁴

In other words, a human security-oriented approach calls for an intersectional analysis to address the structures of exclusion, deprivation and discrimination that cause survival migration as well as extend holistic socio-economic protection of migrants during their movement.⁴⁵

Very critically, the Commission also recognised the connection between protection for different categories of migrants and the need to move beyond separate treatment of refugees, asylum-seekers and internally displaced. The Commission observed

“The migration of people between countries cannot be seen in isolation from the displacement of people within countries, given the permeability of borders and the ease of travel. Because internally displaced persons seldom benefit from the protection of national and local authorities, meeting the protection and essential.”⁴⁶

The Commission also recommended the creation of an international migration framework and acknowledged the connection with human rights. In other words, it linked human security with respect, protection and fulfilment of human rights norms and standards.⁴⁷ From this angle, human security can be seen as an affirmation of the indivisibility of human rights, that integrates economic and social rights and strengthens protection for migrant workers, non-citizens, and other particularly vulnerable groups within international human rights law.⁴⁸

Human security also draws attention to the centrality of socio-economic rights by recognising that security requires protection from deprivation. In this context, the emergence of social and economic rights as interlinked with civil-political rights in international human rights law has become a critical tool for safeguarding the inherent dignity and security of everyone, including migrants.⁴⁹ This is

⁴³ Eve Lester, ‘*Socio-economic rights, human security and survival migrants: Whose rights? Whose security?*’ in *Human Security and Non-Citizens: Law, Policy and International Affairs* (Alice Edwards and Carla Ferstman eds, Cambridge 2009) 314, 315

⁴⁴ Sadako Ogata and Amartya Sen, *supra* n. 20, 45.

⁴⁵ Susana Ferreira, ‘*Human (in)security in transnational migration, refugee situations and internal displacement?*’ in *Research Handbook on International Law and Human Security* (Gerd Oberleitner ed), 272, 277 (2022)

⁴⁶ *Ibid.*, 47.

⁴⁷ Pia Oberoi, *supra* n. 40, 249.

⁴⁸ *Ibid.*

⁴⁹ Eve Lester, *supra* n. 43, 330.

exemplified by the recognition of the socio-economic rights of non-nationals under international human rights law. Even though states are permitted to impose conditions on entry and stay that deny basic rights to individuals within the territory of the state and qualifications may be imposed on the scope of socio-rights to non-nationals, human rights obligations of states extend to non-nationals too.⁵⁰ For example, the Human Rights Committee has stated that “once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant [International Covenant on Civil and Political Rights.]”⁵¹ Similarly, the Committee on Elimination of Racial Discrimination noted in its General Recommendation 30 on Discrimination against Non-Citizens that: “human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights”⁵²

The application of socio-economic rights to non-nationals has been also acknowledged by the Committee on Economic, Social and Cultural Rights (CESCR). For example, the CESCR observed, in its General Comment No. 19, that the non-discrimination principle under Article 2(2) of the International Covenant on Economic, Social and Cultural Rights extends to social security and the Covenant, “prohibits any discrimination...which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security”.⁵³ Further, the Committee called upon states to give special attention to vulnerable groups and individuals including asylum-seekers and refugees.⁵⁴ The CESCR explicitly declared that:

“Refugees, stateless persons and asylum-seekers, and other disadvantaged and marginalized individuals and groups, should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support, consistent with international standards.”⁵⁵

These observations exemplify the principle that universal human rights apply to all human beings, without discrimination, to all non-citizens, including migrants, regardless of their migration status.⁵⁶ Further, the CESCR has recognised that socio-economic rights guaranteed by the ICESCR

⁵⁰ Alice Edwards and Carla Ferstman, *Humanising Non-Citizens: The Convergence of Human Rights and Human Security* in *Human Security and Non-Citizens: Law, Policy and International Affairs* (Alice Edwards and Carla Ferstman eds, Cambridge 2009) 1, 7.

⁵¹ UN Human Rights Committee, CCPR General Comment No. 15: The Position of Aliens Under the Covenant, <https://www.refworld.org/legal/general/hrc/1986/en/38724>

⁵² UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation 30: Discrimination against Non-Citizens, 1 Oct. 2004., para 3, available at <https://www.refworld.org/legal/general/cerd/2004/en/39027>

⁵³ United Nations Committee on Economic, Social and Cultural Rights [CESCR], General Comment No. 19: The Right to Social Security, ¶30, E/C.12/GC/19 (February 4, 2008), available at <http://www.unhcr.org/refworld/docid/47b17b5b39c.html>

⁵⁴ *Id.*, para 31 (The Committee observed “...States parties should give special attention to those individuals and groups who traditionally face difficulties in exercising this right, in particular women, the unemployed...home workers, minority groups, refugees, asylum seekers, internally displaced persons, returnees, non-nationals, prisoners and detainees”).

⁵⁵ United Nations Committee on Economic, Social and Cultural Rights [CESCR], General Comment No. 19: The Right to Social Security, ¶30, E/C.12/GC/19 (February 4, 2008), available at <http://www.unhcr.org/refworld/docid/47b17b5b39c.html>

⁵⁶ A. Edwards, ‘Human rights, refugees and the right to “enjoy” asylum’, *International Journal of Refugee Law*, 17 (2005), 297–330.

carry an obligation to ensure the minimum essential levels of each of the rights.⁵⁷ The minimum core doctrine stipulates the following:

“a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.”⁵⁸

With this standard, a complete denial of economic and social protection to migrants, refugees and asylum seekers without other means of support may not be considered as permissible. Therefore, non-citizens can be said to be entitled to minimum essential protection of their economic and social rights.

The claim to the social rights of refugees and asylum-seekers finds some normative support in the interpretation of the non-discrimination provision of the International Covenant on Civil and Political Rights [ICCPR]. The Human Rights Committee (‘HRC’) in *Gueye v. France*⁵⁹ refused to accept nationality as a valid ground for distinction. The HRC held that distinction on the basis of nationality falls under the scope of ‘other status’ and offends Article 26 of the Covenant. The HRC reiterated the principle in its General Comment No. 15 on the Position of the Aliens under the Covenant,⁶⁰ and stated that, “[a]liens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant”.⁶¹ With the entrenchment of the principle of indivisibility of socio-economic and civil-political rights,⁶² the standard of non-discrimination under the ICCPR would also be relevant for understanding the scope of the right to work under the same principle in ICESCR.⁶³

This section has outlined the connection between socio-economic rights and human security and the relevance of human security for migrants. Juxtaposing the concept of human security against the burgeoning legal principles in international human rights law on socio-economic rights, it is argued that guaranteeing economic, social and cultural rights through a legal framework is essential for ensuring stability and human security for migrants. Consequently, international human rights law casts obligations on states to ensure a minimum level of socio-economic rights for non-nationals, including

⁵⁷ UN, ESCOR, ESC Committee, 5th Session, 1991, General Comment No. 3 on the Nature of States Parties’ Obligations (Art. 2, para. 1), UN Doc. E/1991/23, para. 2.

⁵⁸ *Ibid.*

⁵⁹ *Ibrahim Gueye v. France*, Communication No. 196/1985, 9.4, U.N. Doc. CCPR/ C/35/D/196/1985 (1989).

⁶⁰ United Nations General Assembly [U.N. GAOR], Human Rights Commission, General Comment 15/27 on the Position of Aliens under the Covenant, 117, U.N. Doc. A/41/40 (1986).

⁶¹ *Ibid.*, 2.

⁶² United Nations General Assembly, Indivisibility and Interdependence of Economic, Social, Cultural, Civil and Political Rights: Resolution Adopted by the General Assembly, A/ RES/41/117 (December 4, 1968), available at <http://www.unhcr.org/refworld/docid/3b00effe2c.html>; See also United Nations General Assembly, Vienna Declaration and Programme of Action, 5, A/CONF.157/23 (July 12, 1993), available at <http://www.unhcr.org/refworld/docid/3ae6b39ec.html>; United Nations General Assembly, Human Rights Council: Resolution Adopted by the General Assembly, A/RES/60/251 (April 3, 2006)

⁶³ Manfred Nowak, *Introduction to The International Human Rights Regime* 39-40 (2002).

migrants. The next section shall examine the legislative changes in India toward a rights-based approach to development and the convergence with the human security framework

IV

Social and Protection for Migrants in Indian Labour and Social Security Laws

Even as rates of malnutrition and starvation-related disease and death have remained staggeringly high in India and the attainment of human development indicators alarmingly poor⁶⁴ despite several decades of impressive economic growth, India has embarked on a path of guaranteeing social security and protection through the creation of legal entitlements.

The Constitution of India itself articulated a vision of socio-economic transformation that was predicated on the extension of social protection for individuals. The Preamble to the Indian Constitution sets out political, social, and economic justice as among the key aspirations of the new republic which came into being on January 26, 1950. Indeed, it has been observed that the Indian constitutional project was a transformative one that ‘sought reconstruction of State and society itself.’⁶⁵ This was exemplified by the inclusion of several social rights in Part IV of the Constitution as Directive Principles of State Policy. For example, Article 41 of the Constitution recognised ‘right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.’ Further, Article 47 created a “[d]uty of the State to raise the level of nutrition and the standard of living and to improve public health.” Even though concerns about resource constraints and compromise with more conservative elements of the Constituent Assembly resulted in these provisions being turned into non-justiceable principles, their inclusion in the Constitution signalled that social protection would be fundamental to governance in the country. Indeed, Article 37 of the Constitution states that

“The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”

As a result, the Directive Principles of State Policy profoundly shaped the legislative agenda of the new republic of India. Indeed, many key labour legislations on social security were enacted in the first ten years of India’s independence. ⁶⁶ The Employees’ State Insurance Act, a social security legislation aimed at providing certain benefits to employees in case of sickness, maternity and employment injury was enacted in 1948. Soon thereafter, the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 was passed by the Parliament to provide for retirement security for workers. Within a decade, the Maternity Benefit Act 1961 was passed. Later, in 1970, the Contract Labour (Regulation and Abolition) Act 1970 was enacted to regulate establishments and contractors that hire contract labour. Within a decade in 1979, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act was brought into force to provide a modicum of protection

⁶⁴ See Jean Dreze and Amartya Sen, *An Uncertain Glory: India and Its Contradictions* (Allen Lane 2013), Ashoka Mody, *India is Broken: A People Betrayed, 1947 to Today* (Juggernaut: 2023).

⁶⁵ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (Harper Collins, 2019), p. xxv.

⁶⁶ Shashi Jain, *Basic Social Security in India*, 37 in *Social Security for Excluded Majority: Case Studies of Developing Countries* (Wouter Van Ginniken, 1st ed., 1999).

for inter-state migrant workers. These legislations have been accompanied by other social security legislation that tried to provide a modicum of social protection to workers in India. However, they have either been limited to formal sector establishments or have suffered from significant design flaws.⁶⁷ As a result, they have had a sparse impact on the lives of India's precariat.

In addition to shaping the first wave of labour protection and social security legislation in the first two decades after independence, the Directive Principles have also been used by the judiciary to interpret the scope of fundamental rights, particularly the right to life. Indeed, the Indian judiciary has read basic rights like the right to food, right to health, right to social security and right to livelihood into the fundamental right to life. In *Olga Tellis v Bombay Municipal Corporation*, the Supreme Court held that the right to life includes the right to livelihood. Before that, the Supreme Court had held in *Francis Coralie Mulin v Administrator, Union Territory of Delhi*, that the right to life "cannot be restricted to mere animal existence" and it "includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter."⁶⁸ This was taken one step forward by the Supreme Court in *Chameli Singh v State of Uttar Pradesh*, where it held that the "Right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter." Later, the judiciary also recognised social security as a fundamental right to life under Article 21 of the Constitution in numerous decisions. In *Calcutta Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose*,⁶⁹ the Court asserted that the right to social security was a component of right to life. This was later affirmed in *Regional Director, ESIC v Francis D'Costa*⁷⁰ when the Court held that security against sickness and disablement was a part of the right to life under Article 21 of the Constitution. Social protection, as a part of the fundamental rights, was also reiterated in *Consumer Education Research Centre (CERC) v Union of India*.⁷¹ Consequently, there is no doubt that social security has acquired the status of a fundamental right in India.⁷²

The practical utility of the judicial recognition of these socio-economic rights as fundamental rights was evident in *PUCL v Union of India*⁷³ where the Supreme Court not only reaffirmed that the right to life under Article 21 of the Constitution includes the right to food but also converted existing nutrition-related schemes of the government into enforceable legal entitlements. As has been observed:

"The Supreme Court essentially redefined government schemes as constitutionally protected legal entitlements. The Court not only identified which food schemes constituted legal entitlements under the constitutional right to food, but also outlined in detail how those government schemes were to be implemented...Finally, the order not only established which

⁶⁷ Supriya Routh, *Enhancing Capabilities through Labour Law: Informal Workers in India* (Taylor and Francis 2014).

⁶⁸ AIR 1981 SC 746.

⁶⁹ AIR 1992 SC 573.

⁷⁰ AIR 1995 SC 1811.

⁷¹ AIR 1995 SC 922.

⁷² Kamala Sankaran, *Special Provisions and Access to Socio-Economic Rights: Women and the Indian Constitution*, 23 (2) *South African Journal on Human Rights* 277 (2007), at 161-162.

⁷³ Writ Petition (Civil) No. 196 of 2001.

policies governments were obligated to implement, but also identified whom it would hold accountable in the event of noncompliance.”⁷⁴

Through a series of interim orders in this case, the Supreme Court of India clarified the obligations of various state functionaries at the central, state and local levels that stem from the constitutional right to food. The Court issued specific orders to reform the Public Distribution System (PDS), extend the Mid-Day Meal scheme and strengthen the entitlements under the ‘food for work’ programme, the Sampoorna Gramin Rozgar Yojana (SGRY).

The Court's intervention exemplified the empowering potential of the human rights-based approach to development.⁷⁵ It acted as a bulwark against the neo-liberalism-driven weakening of the public distribution system and provided a ‘floor on India’s capitalism.’⁷⁶ By asserting that the state has an obligation to provide nutritional security and expanding several schemes, the Court's intervention also pushed back against the clamour for gradual withdrawal of the state from the social sphere.⁷⁷

Most importantly, the PUCL case catalysed public mobilisation around several rights-based legislations.⁷⁸ The case became a focal point for wider rights-based public action and advocacy. Indeed, the right-to-food campaign, which steered the petitions in the PUCL case, played a critical role in civil society campaigns around the right to information and the right to work.⁷⁹ Its contribution to the National Campaign for the People's Right to Information culminated in the enactment of the Right to Information Act in 2005.⁸⁰ The Court’s direction on the food for work programme, the SGRY, also sparked greater public attention on the demand for employment guarantee. The right to food campaign championed the cause of a national employment guarantee law and the campaign resulted in the passage of the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA 2005) which guarantees a hundred days of unskilled manual work every year to at least one member of every rural household.⁸¹ Finally, and most directly, many of the directions of the Supreme Court in the PUCL case were converted into statutory entitlements in the form of the National Food Security Act 2013. Another example of rights-based legislation that was enacted during this phase was the Right of Children to Free and Compulsory Education Act passed in 2009.

⁷⁴ Lauren Birchfield and Jessica Corsi, *Between Starvation and Globalization: Realizing the Right to Food in India*, 31 Mich. J. Int’l L. 691 (2010).

⁷⁵ Alyssa Brierley, *PUCL v. Union of India: Political Mobilization and the Right to Food in A Qualified Hope: The Indian Supreme Court and Progressive Social Change* (Rosenberg, Krishnaswamy and Bail eds, Cambridge 2019) 212.

⁷⁶ Lauren Birchfield and Jessica Corsi, *supra* n. 74, 750.

⁷⁷ *Ibid.*

⁷⁸ Jean Dreze, *Democracy and the Right to Food in Human Rights and Development: Towards Mutual Reinforcement* (Philip Alston and Mary Robinson eds, Oxford 2005), 43.

⁷⁹ Lauren Birchfield and Jessica Corsi, *supra* n. 74, 746.

⁸⁰ The Right to Information Act, 2005 (Act No. 22 of 2005), available at <https://www.indiacode.nic.in/bitstream/123456789/2065/5/a2005-22.pdf>

⁸¹ Shareen Hertel, *Hungry for Justice: Social Mobilization on the Right to Food in India*, 46 (1) Development and Change 72 (2015), Reetika Khera, *Democratic Politics and Legal Rights: Employment guarantee and food security in India*, IEG Working Paper No. 327 (2013), available at <https://iegingdia.org/upload/publication/Workpap/wp327.pdf>

These rights-based legislations and case law on judicial recognition of socio-economic rights along with the first generation of labour laws have provided for a legal framework that seeks to provide a modicum of social security and legal protection to workers and vulnerable people. In as much as human security and social security are closely intertwined, both contributing to the overall well-being and safety of individuals and communities and protecting them against life cycle risks, this legal regime constitutes an attempt to operationalise the human security framework. Pertinently, there is ample space for the protection of migrants and displaced persons within this framework.

Article 21 of the Constitution of India which provides for the right to life and has provided the juridical basis for the protection of socio-economic rights as fundamental rights, applies to non-citizens. Article 21 states that no person shall be deprived of their life or personal liberty except according to the procedure established by law. This right is available to all persons, including non-citizens. In several judgments, it has been iterated that Article 21 by its very wording applies to non-citizens. In *State of Arunachal Pradesh vs Khudiram Chakma*,⁸² the Supreme Court held that Article 21 of the Constitution is extended to all, including aliens and the state is bound to protect the life and liberty of every human being. The Gujarat High Court in *Ktaer Abbas Habib Al Qutaifi & Anr. v. Union of India* held that Article 21 of the Constitution of India guarantees the right of life on Indian Soil to a non-citizen, as well. Similarly, the Delhi High Court in *Dongh Lian Kham versus Union of India*⁸³ observed that foreigners have a right to life under Article 21. Arguably, if the right to life is extended to non-citizens under Article 21, then the concomitant elements like the right to food, right to social security, etc. must also extend to non-citizens.

It is noteworthy that the National Food Security Act 2013 does not make a distinction between citizens and non-citizens. Section 3 (1) of the Act states that “every person belonging to priority households, identified under sub-section (1) of section 10 shall be entitled to receive five kilograms of foodgrains per person per month at subsidised prices.” Similarly, Section 4 of the Act states that every pregnant woman and lactating mother shall be entitled to meals, free of charge, during pregnancy and six months after childbirth and to maternity benefit of not less than rupees six thousand. These statutory entitlements have been articulated in a universalist language and there is no explicit exclusion for non-nationals.

The same is evident in the Mahatma Gandhi National Rural Employment Guarantee Act, 2005. Section 3 of that legislation mandates every State Government to make a Scheme, for every household in the rural areas covered under the Scheme and whose adult members volunteer to do unskilled manual work not less than one hundred days of such work in a financial year. In the same vein, Section 3 (2) states that “Every person who has done the work given to him under the Scheme shall be entitled to receive wages at the wage rate for each day of work.” These provisions do not contain any explicit exclusion for non-nationals. This indicates that there is space available for legal protection for migrants and refugees in the extant food security and social security legislations. This argument finds further support in the intervention of the Delhi High Court in the case of access to education for refugee children. In *Gulsher v. Government of NCT of Delhi*,⁸⁴ the Delhi High Court directed the admission of

⁸² 1993 INSC 168

⁸³ WP(CRL) No.1884/2015

⁸⁴ W.P (C) No. 10833/2019

refugee children to state-run government schools on the ground that the Right to Education Act, allows all children (regardless of legal status) to be enrolled in government schools.

Consequently, it can be asserted that there is space for refugees and other migrants within the legal framework for social and labour protection in India. In as much as international human rights law obliges states to guarantee a minimum core of socio-economic rights and Article 21 of the Constitution of India guarantees the right to life for every person, non-citizens can be said to be entitled to minimum essential protection of their economic and social rights. The absence of any explicit exclusion for non-nationals in social protection legislations like the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the National Food Security Act 2013 and the judiciary's extension of the Right to Education to children of refugees signifies that there is space available for a minimum level of protection for refugees and other migrants within India's existing legal framework. There is, however, a need for more forceful articulation and creative interpretation of this position to translate the right to live with dignity into meaningful protection for refugees and asylum-seekers at a time when the Indian Supreme Court has diluted the protection of the fundamental principle of non-refoulement⁸⁵ and engendered an administrative regime that has pushed millions under the spectre of statelessness with its decisions around the National Register of Citizens in Assam.⁸⁶

Conclusion

Over the past thirty years, the concept of human security has redefined traditional notions of security. It has provided an analytical frame for shifting the focus from the territorial security of states to the survival, livelihood, and dignity of individuals. This paper has argued that by placing people at the centre of security concerns, the human security framework links security to the human rights of all individuals. By emphasising on human rights of all persons, the human security framework allows foregrounding the protection needs of migrants, refugees and other vulnerable groups, regardless of their legal status. In other words, by drawing attention to their vulnerabilities, the human security framework, grounded in human rights principles, recasts asylum-seekers and refugees as victims of insecurity rather than as a security threat. It is particularly relevant since the concept of human security highlights the fundamental socio-economic rights of refugees and asylum seekers, recognizing that true security extends far beyond physical protection to encompass freedom from economic deprivation and social marginalization. For refugees and asylum seekers, who often face systemic vulnerabilities, these integrated rights provide a holistic approach to protection—ensuring not just physical safety from persecution, but also access to basic necessities, employment, healthcare, education, and the opportunity to rebuild their lives with fundamental human dignity. India's international human rights law obligations require respect for core minimum protection of basic social and economic rights of refugees, asylum-seekers and other vulnerable groups.

This paper has attempted to map the constitutional and legislative norms, as interpreted through judicial dicta, that provide a legal framework for operationalising human security. Further, as

⁸⁵ Douglas McDonald-Norman, *DEPRIVED OF LIFE: Rohingya asylum seekers and the limits of constitutional protections in India*, 6 (3) Indian Law Review 243 (2022)

⁸⁶ M. Mohsin Alam Bhat, *Twilight Citizenship*, 729 Seminar (May 2020), Available at <https://ssrn.com/abstract=3603707> and Abdul Kalam Azad, M. Mohsin Alam Bhat and Harsh Mander, *Citizenship and the Mass Production of Statelessness in Assam*, India Exclusion Report (2020), Available at <https://ssrn.com/abstract=3718512>

demonstrated through the analysis of Article 21 of the Constitution of India and major social security legislations, the paper has endeavoured to identify the spaces available for the extension of a minimum level of protection for refugees and other migrants within India's existing legal framework. The absence of any explicit exclusion for non-nationals in social protection laws and judicial recognition of the rights of non-nationals under Article 21 does provide for a juridical basis for the legal protection of vulnerable groups.

Yet, legal and social protection for migrants and the vulnerable must move beyond fragmented measures that operate in separate silos. Instead, guaranteeing human security entails recognition of the continuum of risks faced by different categories of migrants across their life cycles and geographies. Indeed, if the Commission on Human Security's exhortation that "the movement of people should be looked at comprehensively, taking into account the political, civil, security, economic and social dimensions affecting peoples' decision to move"⁸⁷ has to be given heed to, then policies, norms and institutions on legal protection for migrants must adopt a continuum approach that ensures comprehensive coverage for different categories of migrants.

⁸⁷ Sadako Ogata and Amartya Sen, *supra* n. 20, 45.