THE LEGAL PROHIBITION AGAINST TRAFFICKING OF WOMEN WITH SPECIAL REFERENCE TO REFUGEE LAW

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ABSTRACT

Globally, human trafficking—particularly the trafficking of women—remains a terrible reality. It has grown to be a significant area of concern and a thriving cross-border trade. Every year, somewhere between 700,000 and 4 million people are trafficked worldwide. The most of those trafficked are women who are coerced into prostitution, servitude, work, and several other forms of exploitation. Because they are a vulnerable group, refugees are particularly prone to human trafficking. They are frequently seen as commercial items that may be purchased and traded internationally much like things. Particularly, sex traffickers find it simple to prey on female refugees. It is critical in the current situation to take immediate action to stop this unlawful trade, which violates human rights. Various shortcomings have exacerbated this issue and ultimately allowed the organized crime group to thrive in the trafficking trade, despite the United Nations and the states that have ratified the various laws, conventions, and protocols enforcing these measures. The aim of this research paper is to discuss the State's obligation and legal protection given to the refugee women against trafficking with special reference to Refugee Law.

Keywords: women, refugee, trafficking

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I. INTRODUCTION

According to a recent report from the United Nations Office on Drugs and Crime (UNODC), minors make up one third of human trafficking victims, although women and girls account for the vast majority of instances, or 71%.¹ The ILO evaluations that traffickers make \$150 billion annually, of which \$99 billion is made only from sex trading.²

It is evident that there is a connection between cross-border trafficking and the movement of refugees. Due to their vulnerability, refugees are particularly susceptible to human trafficking. It is these individuals that are afraid and not in their comfort zone. They can be purchased and traded internationally like things since they are frequently seen as business objects. Particularly, traffickers target women refugees as easy targets. The UN Office on Drugs and Crime reports that 24.5 million of the 68.5 million persons who were by force displaced globally in 2017 were refugees,³ and that 50% of these refugees are women. These figures come from the United Nations High Commission for Refugees report.

These women refugees deal with a number of difficulties on a daily basis, the most prevalent ones being sexual harassment, discrimination, and human trafficking. In the current situation, it is crucial to take fast action to stop this unlawful activity, which violates human rights. Despite the numerous laws, conventions, and protocols that the UN and the states that have ratified have enforced, there have been a number of shortcomings that have exacerbated this issue and ultimately allowed the organized crime group to thrive in the trafficking trade. This research paper's goal is to examine the State's duty to protect refugee women from human trafficking and the legal safeguards that are in place for them, with particular reference to Refugee Law.

¹ Report: Majority of trafficking victims are women and girls; one-third children,

https://www.un.org/sustainabledevelopment/blog/2016/12/report-majority-of-trafficking-victims-are-women-and-girls-one-third-children/

² Causes and Effects of Human Trafficking, https://theexodusroad.com/causes-effects-of-human-

trafficking/#:~:text=Effects%20of%20human%20trafficking%20on%20the%20trafficker(s)&text=2%20Traffickers%20generate%20%24150%20billion,is%20generated%20through%20labor%20trafficking.

³ UN reports 68.5 million people displaced worldwide in 2017, https://www.pbs.org/newshour/world/un-reports-68-5-million-people-displaced-worldwide-in-2017

A. IMPORTANCE OF ADDRESSING TRAFFICKING IN WOMEN

Dealing with the problem of women trafficking is extremely important in the context of refugee law. Due to their forced relocation, refugees are already in precarious situations and are more likely to be exploited; this is especially true for women who are more likely to become victims of human trafficking. The need to stop human trafficking is in line with the core human rights values included in refugee law. These values protect people from grave abuses and guarantee their safety, security, and general well-being. Refugee law recognizes women's agency within the refugee setting and demonstrates its commitment to gender equality and women's empowerment by prohibiting the exploitation of women through trafficking. Furthermore, because trafficking is transnational, international collaboration is required. This is important because refugee law emphasizes that governments have a shared obligation to protect refugees. Taking action against trafficking becomes essential to preventing repeated relocation, protecting mental health, and upholding international obligations specified in agreements like as the Palermo Protocol. To put it simply, combating women trafficking within the framework of refugee law is essential to protecting the rights of the most marginalized members of displaced populations and advancing the development of a system of refugee protection that is more equitable and compassionate.

B. SCOPE OF THE RESEARCH

"The Legal Prohibition against Trafficking of Women with Special Reference to Refugee Law" is a research topic that includes a thorough investigation of several angles. The present study explores the complex interactions between global and domestic legal systems that tackle female trafficking, with a particular emphasis on the particular obstacles and vulnerabilities encountered by women who are refugees. The study intends to assess the ability of current legal provisions to deter and prosecute incidents of trafficking within refugee populations by closely examining their efficacy. It also looks at the consequences for human rights, taking into account how international human rights norms—like the freedom from slavery—intersect with refugee law when it comes to fighting human trafficking. In addition, this study examines the gender-specific factors that make refugee women more vulnerable and evaluates how well laws currently address gender-based violence and exploitation. In order to ensure that the legal prohibition against trafficking in women is effectively applied within the field of refugee law, the research aims to provide a comprehensive understanding of the multifaceted challenges and potential solutions by examining prevention and intervention strategies, access to justice, and international cooperation. The study's ultimate goal is to provide insightful information that will strengthen the safeguards against human trafficking for refugee women and help shape legislative changes.

II. INTERNATIONAL LEGAL FRAMEWORK

Human trafficking has gained international attention, with the majority of its victims being women and children. But since it has been demonstrated that there is a connection between human trafficking and refugee women, it was necessary to safeguard these women, and every effort has been made to uphold their human rights.

A. UNITED NATIONS PALERMO PROTOCOL

The "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children," officially known as the UN Palermo Protocol, is an important international tool for addressing and eliminating human trafficking. The UN Convention against Transnational Organized Crime also referred to as the "Palermo Convention" or "UNTOC," is supplemented by this 2000-adopted protocol. The Palermo Protocol provides a comprehensive agenda for international cooperation and establishes a common understanding of the actions required to prevent and fight trafficking in persons.⁴

1. Definition of Trafficking in Persons

Article 3 clearly defines what establishes trafficking in persons under UN Palermo Protocol. According to Article 3 of the Palermo Protocol, trafficking involves three elements: (a) the act, including recruitment, transportation, transfer, harboring, or receipt of persons; (b) the means, involving force, coercion, fraud, deception, abuse of power or vulnerability, or the giving or receiving of payments or benefits; (c) the purpose, which is exploitation, encompassing

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons.

prostitution, sexual exploitation, forced labor, slavery, servitude, or organ removal.⁵

2. Obligation of State Parties

The Palermo Protocol mandates State Parties to combat human trafficking through key obligations:⁶

- a. **Prevention**: States must implement measures like public awareness campaigns and education programs to reduce vulnerability.
- b. Criminalization and Punishment: Enact and enforce laws criminalizing all trafficking forms, ensuring prosecution and proportional penalties for traffickers.
- c. **Protection of Victims**: Establish comprehensive systems for victim protection, ensuring physical, psychological, and social recovery, and providing necessary medical and legal support.
- d. **Cooperation and Coordination**: Encourage national and international cooperation, including information sharing and mutual legal assistance, to enhance anti-trafficking efforts.
- e. **Non-punishment of Victims**: State Parties should refrain from penalizing victims forced into unlawful activities due to trafficking, recognizing their vulnerability.
- f. **Extraterritorial Jurisdiction**: States can establish jurisdiction for offenses committed abroad with a national or significant link, allowing cross-border prosecution.
- g. **Measures against Traffickers**: Oblige States to dismantle trafficking networks through identification, investigation, and prosecution of individuals and entities involved in trafficking.

⁵ Article 3

⁶ Article 9

B. RELEVANT TREATIES AND CONVENTIONS

1. Universal Declaration of Human Rights:

UDHR was proclaimed by the UN General Assembly on 10th Dec. 1948. This document has become a milestone in the history of Human Rights. The Declaration affirms, "All human being are born free and equal in dignity and rights".⁷ It offers an extensive range of fundamental rights that are open to all people without distinction based on factors such as caste, colour, or religion. Thus, everyone has the right to apply for and be granted protection from persecution in other nations, as stated in Article 14(1) of the UDHR. It should be highlighted that people, including women, escape their own nations to avoid being persecuted while there is a war or other strife. Thus, this article grants women the freedom to apply for refuge in other nations and states that, as members of the international community, their basic rights to life and liberty should not be infringed upon.

2. The UN Convention Relating to The Status of Refugee 1951 and Its 1967 Protocol

The United Nation Convention Relating to the Status of Refugee was adopted on 29th July 1951. It is the foundation of refugee law ratified by 145 state parties. In order to broaden the scope of the Convention, a Protocol relating to the status of refugees was determined in 1967. Thus, the legal status of the refugees has been well-defined in the above two treaties. They also defined the rights and duties of refugees including women. These treaties made the provisions for the various aspects of refugee everyday lives, including the right to social security, right to work, right to education, and prohibition of expulsion of return. The above-mentioned rights and obligation are equally applicable to refugee women.

3. The International Covenant on Civil and Political Rights and The International Covenant on Economic Social and Cultural Rights

The UN General Assembly enacted the multilateral treaties ICCPR and ICESCR on December 16, 1966. The state is obligated by the ICCPR to defend everyone's civil and political rights, including

⁷ Dr. U. Chandra, Human Rights, Allahabad Law Agency Publication, Allahabad.

those of refugees. It covers the freedom from torture and other cruel, inhuman, or degrading treatment, of which refugee women are frequently victims. In addition, it offers protection against deportation as well as the fundamental human rights of life, liberty, and security for women who are refugees. ICESCR, on the other hand, guarantees the right to a minimum standard of life, which includes accommodation, food, and clothes; the right to proper maintenance of one's physical and mental health, which is inadequate in refugee camps; and the right to education, which is essential to improving the condition of refugee girls.

4. United Nation High Commissioner for Refugee:

The General Assembly founded UNHCR on December 3, 1949, with the goal of protecting and aiding stateless individuals, refugees, internally displaced people, and internees. Under the High Commissioner's mandate, UNHCR offers refugees international protection. Additionally, it makes it easier for them to voluntarily return home and integrate into their new communities in order to find a long-term solution to the refugee crisis. By upholding the non-refoulement principle, UNHCR also seeks to ensure the protection of the refugees. Additionally, it guaranteed the refugees' entitlement to standard treatment and fundamental human rights.

In 1991, the United Nations High Commissioner for Refugees (UNHCR) prepared Guidelines on the Protection of Refugee Women to assist its staff and its implementing associates in identifying the precise protection issues, problems, and risks that face refugee women. This approaches cover old protection concerns, like determining refugee status and providing physical security, and they suggest ways to improve the protection of women who have experienced rights violations.

a) The Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response, available by UNHCR in May 2003, offers an outline for creating prevention and response policies, despite the fact that refugee women are extremely vulnerable to sexual and other forms of exploitation.

In 2006, the UNHCR released recommendations for the worldwide protection of sufferers of human trading. The guidelines have been made available to governments, attorneys, judges, decision-makers, and UNHCR workers in order to ascertain the refugee status of individuals who have been trafficked.

b) UNHCR Five Commitments to Refugee Women:

UNHCR has committed five key commitments that will advance the rights of refugee women and to protect them against the sexual gender-based violence, these are:

- a) Develop country-level tactics to combat sexual and domestic violence against refugee women.
- b) Register and provide documentation to refugee women individually for security, freedom of movement, and access to services, with equal participation of men and women.
- c) Enforce gender balance, with 50% women, in all committees representing refugees to UNHCR across urban, rural, and camp settings.
- d) Ensure active involvement of refugee women in the administration of food and non-food item distribution, giving them direct control.
- e) Standardize the facility of sanitary materials for all women and girls in UNHCR assistance programs.

5. The Convention on The Elimination of All Forms of Discrimination against Women

The Women's Bill of Rights Convention was endorsed by the General Assembly on December 18, 1979. The parties to this agreement are required to uphold, defend, and fulfill women's human rights. Provisions established under this convention place men and women on an equal footing. The state parties to this convention are required to safeguard women from discriminatory acts. Therefore, Article 6 obliges the state parties to enact the necessary legislation as well as other suitable measures to combat all types of women trafficking and exploitation for the purpose of prostitution.

Statement of the Committee on the Elimination of Discrimination against Women (CEDAW) on the refugee crisis and the protection of women and girls. On November 20, 2015, during its 62nd session, it was adopted. The Committee urges the state parties to uphold their obligations to respect, defend, and uphold the rights of women and girls who are refugees throughout the cycle

of displacement. The Committee reminds the state parties of their need to protect the rights of women seeking asylum, refugees, or stateless people with regard to food, health, education, and other necessities, as well as to provide them with a respectable standard of living in camps or other locations where they are being hosted.

In order to safeguard those in need of international protection during the cycle of displacement and to guarantee that they are shielded from grave risks to their lives, such as exploitation by smugglers, the Committee calls for international cooperation. This is especially important for women and girls who may be exposed to other serious risks, such as sexual and gender-based violence.

III. REFUGEE LAW AND VULNERABILITY

A. Overview of Refugee Protection

When someone is compelled to leave their home country because of persecution, conflict, or human rights violations, they are naturally vulnerable. This vulnerability is recognized and addressed by refugee legislation. The relationship between vulnerability and refugee law is complex and involves a number of important factors:

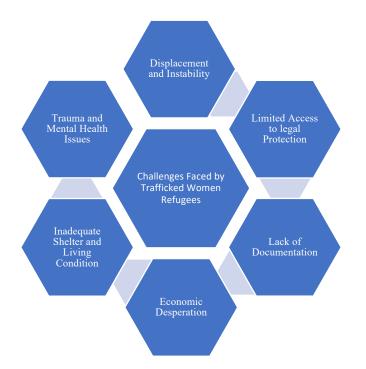
- a) **Forced Displacement**: The protection of individuals forced to leave their nations because of legitimate fears of persecution is the cornerstone of refugee law. People who are forcibly relocated are more susceptible to a variety of problems, such as the possibility of being exploited or trafficked, among other types of maltreatment.
- b) Protection from Return ("Non-refoulement"): The fundamental tenet of refugee law is non-refoulement, which forbids returning refugees to a nation where they would face persecution or dangers to their safety. This safeguard acknowledges that refugees could suffer harm if they are returned to their home countries.
- c) Access to Asylum Procedures: People who want to apply for asylum are guaranteed a fair and efficient asylum process by refugee legislation. During these procedures, vulnerable

groups such as women, children, and individuals with particular needs are provided with sufficient legal assistance and representation.

- d) Special Protection for Vulnerable Groups: Refugee law recognises the unique vulnerabilities of various groups, including women who are at risk, unaccompanied youngsters, and those with special medical or psychological requirements. Particular safeguards are frequently put in place to address the particular difficulties that these groups experience.
- e) **Humanitarian Assistance**: In order to alleviate the vulnerabilities of refugees, emergency assistance is recognised as necessary under refugee law. In order to support their wellbeing and resilience in the face of difficult circumstances, this includes providing them with access to food, shelter, healthcare, and education.
- f) Integration and Durable Solutions: The goal of long-term solutions, such as voluntary repatriation, local integration, or resettlement, is emphasised by refugee law. By offering stable housing and chances for self-sufficiency, these solutions seek to lessen the long-term vulnerability of refugees.
- g) **International Cooperation**: Through refugee legislation, the international community is urged to work together to solve the risks faced by refugees. This entails delegating tasks, offering monetary and practical assistance, and encouraging a group reaction to the worldwide refugee problem.
- h) Social and Economic Rights: The goal of refugee legislation is to lessen vulnerability and increase resilience by recognising the social and economic rights of refugees. The freedom of travel, employment, and education are all included in this.

B. Challenges Faced by Trafficked Women Refugees

Refugee women face specific challenges that increase their vulnerability to trafficking. The intersection of displacement, conflict, and migration amplifies existing risk factors. Here are some key factors that contribute to the increased vulnerability of refugee women to trafficking:



1. Displacement and Instability

The terms "displaced" and "instability" refer to the forcible displacement of people, which results in uncertainty and unpredictability. Women who are refugees—often uprooted by violence, persecution, or natural disasters—face increased vulnerability because they lack stability and resources. They lose stable housing and social networks, which has a significant influence on their life. When social systems break down, they become vulnerable to exploitation due to displacement. Displaced women choose to less safe methods as a result of their limited access to necessities like food and medical care, which raises their risk of exploitation. Their lives are chaotic, which makes them more vulnerable and highlights the critical need for specialized assistance.

2. Limited Access to Legal Protection

Due to cross-border movement and foreign legal systems, refugee women frequently have limited access to legal counsel and struggle to seek remedies. Language limitations, a lack of legal understanding, and navigating the legal systems of the host nations are obstacles. Access to justice may be hindered if the judicial systems of the host nations are unable to sufficiently accommodate the unique needs of refugee women. These problems are made worse by a lack of resources, overburdened judicial systems, and gaps in safeguards. The lack of information available to

refugee women, language barriers, and inadequate legal support services further contribute to their ignorance of their rights and legal options.

3. Lack of Documentation

When it comes to forced displacement, "lack of documentation" presents significant obstacles to obtaining rights, services, and legal protection. The disorganized character of relocation makes it difficult to obtain formal documents proving one's identity, such as passports or confirmation of refugee status. This deficiency increases vulnerability by impeding access to essential services like work, healthcare, and education. It increases the likelihood of exploitation, especially human trafficking, since traffickers take advantage of the lack of legitimate documentation. Eligibility for asylum and determination of refugee status are impacted by the absence of recognized documentation, which makes gaining legal protections more difficult. It also makes it difficult to demonstrate family ties, which affects reunion procedures and might even result in family dissolution. The lack of documentation poses practical challenges for the provision of humanitarian supplies, impeding relief operations and exacerbating the suffering endured by refugees.

4. Economic Desperation

Refugee women who have been displaced are economically disadvantaged, which leaves them open to being taken advantage of by human traffickers. Economic desperation combined with difficulties acquiring formal employment makes people more vulnerable to human trafficking. Traffickers adopt deceptive methods, including fictitious claims of job or money assistance in exchange for unfair terms. Legal barriers, such restrictions on work permits, make it difficult for refugee women to obtain gainful employment, which gives human traffickers the chance to take advantage of their vulnerable circumstances.

5. Inadequate Shelter and Living Conditions

Inadequate and overcrowded refugee housing creates an atmosphere that is ideal for human trafficking and other forms of exploitation. Traffickers can operate freely since there is no oversight, and they can readily prey on weak people, particularly women. Living in substandard

conditions makes one more vulnerable to coercion and manipulation. People become more vulnerable when they lack access to basic needs, which makes them more susceptible to deceptive claims by traffickers. Victims of substandard living circumstances may also be subjected to maltreatment by traffickers acting as providers. Women who are placed in subpar shelters are more vulnerable to trafficking and other forms of gender-based abuse. Children who are not accompanied and are housed in inadequate shelters are more susceptible to several types of abuse. Insufficient oversight and defense prevent victims from reporting abuse, obtaining legal protection, and asking for assistance when living in insecure circumstances.

6. Trauma and Mental Health Issues

For refugee women, displacement frequently leads to trauma and mental health problems, leaving them open to exploitation by human traffickers who take advantage of their anguish. Traffickers pretend to be helpful, preying on the vulnerabilities of their victims and making fictitious assurances of protection. Drug misuse and other coping mechanisms are used as manipulation tactics. Vulnerability rises in the face of social isolation and stigma, since traffickers provide approval. The difficulties faced by displaced people are exacerbated by their limited access to mental health care. Psychological coercion is used by traffickers, who purposefully target those who already have mental health issues in order to exert more control. Trauma survivors are especially vulnerable to human trafficking because they have trouble making decisions.

In addition to this significant factor, other factors include family separation, language barriers, targeting while in transit, limited educational opportunities, and, last but not least, discrimination and xenophobia. These factors increase the vulnerability of refugee women to human trafficking. A comprehensive strategy is needed to address the vulnerability of refugee women to human trafficking. This strategy should include increased legal protection, trauma-informed support services, economic empowerment programmes, and community awareness campaigns in both host communities and refugee camps.

IV. NATIONAL LEGAL APPROACH

Since ancient times, India has been a haven for refugees. Since India was divided into two nations in 1947, there have been times of widespread migration and forced relocation throughout South

Asia. Approximately 9.5 million refugees were temporarily housed in India. Furthermore, the nation welcomed thousands of refugees from Sri Lanka's anti-Tamil violence in 1983. More recently, India has extended protection to refugees from Afghanistan and Myanmar who are Rohingya. Approximately 48,000 of the approximately 212,000 refugees and asylum seekers who were sponsored in India in September 2022 were registered with the UNHCR.⁸

Consequently, this will also cause a spike in women being trafficked. The issues pertaining to refugees are handled on an as-needed basis even though India is not a party to either the Refugee Convention or its protocol. The Foreigners Act 1967, the Passport Act 1920, and the Passport Act 1967 apply to refugees in India because they are considered foreigners. In addition, they are governed by a number of the sections of the Indian Constitution, just like non-citizens are, including Article 14 (right to equality), Article 21 (right to life and personal liberty), and Article 25 (right to practice and propagate one's own religion). These Articles do not fully address the challenges faced by refugees; appropriate national legislation is necessary. Thus, refugee women in India were not afforded any particular legal protections with regard to human trafficking. They struggle on a daily basis and feel unsafe, even in their own home.

V. CONCLUSION

The research paper concludes by highlighting the serious problem of human trafficking in light of the refugee crisis, with a focus on the trafficking of women. It is imperative to address the vulnerabilities presented by refugee women, who are disproportionately targeted by traffickers, given the widespread occurrence of this horrific crime, which affects millions of people worldwide. The combination of migration and cross-border trafficking highlights the necessity for an all-encompassing legal structure to safeguard this susceptible population.

Refugee law is vital to protecting women who are refugees since it emphasizes vulnerability, nonrefoulement, and the rights of displaced people. The study does, however, draw attention to the difficulties faced by women who have been trafficked as refugees, such as their lack of documents, limited legal protection, destitution, poor living conditions, and mental health problems.

⁸ UNHCR India, Supporting Refugees in India. What We Achieved in 2021, New Delhi (2022), <u>available at</u>, <u>https://reporting.unhcr.org/document/1834</u>

Finally, the legislative ban on the trafficking of women under the framework of refugee legislation is an essential requirement that necessitates coordinated actions to safeguard the welfare and rights of those who are most in need. The convergence of human trafficking and refugee status emphasizes the necessity of an extensive and specialized legal framework that takes into account the unique difficulties that refugee women encounter. A committed effort can open the door to a future in which refugee women are more powerful, well-protected, and given the respect and rights they are due. To guarantee that legal prohibitions against trafficking are effective and sensitive to the particular difficulties faced by women in the framework of refugee law, governments, international organizations, and civil society must continue to collaborate.

VI. SUGGESTIONS

• Integrated Legal Approaches

In order to specifically address the special vulnerabilities of displaced women to human trafficking, efforts should be focused on the creation and implementation of integrated legal provisions within refugee law. This covers provisions that take into account the features of exploitation that are specific to gender.

• International Collaboration

International cooperation is crucial since human trafficking is a transnational crime. To present a cohesive front against traffickers, nations must cooperate in information sharing, action coordination, and harmonizing legal remedies.

• Gender-Sensitive Legal Measures

Legal frameworks and assistance programs ought to take a gender-sensitive stance, acknowledging and resolving the unique difficulties that refugee women confront, like sexual exploitation and gender-based violence.

• Access to Justice and Protection

Legal safeguards ought to guarantee that refugees-including women-have unhindered access to

justice without worrying about retaliation or expulsion. Strong protection measures that provide a safe space for reporting cases of human trafficking are necessary.

• Empowerment and Rehabilitation

A preventive approach is to empower refugee women via economic possibilities, education, and skill development. Establishing thorough rehabilitation programs to aid survivors in their path to recovery and reintegration into society is equally crucial.

• Capacity Building and Awareness

For the purpose of identifying trafficking instances and providing an efficient response, law enforcement, border control personnel, and humanitarian workers must get ongoing training. Simultaneously, initiatives to raise awareness in refugee populations can be extremely important for prevention.

• International Organizations and NGOs

Working together with NGOs and international organizations, especially, the UNHCR, is essential. These organizations play a vital role in promoting policy reforms, offering support services, and increasing public awareness of the problems associated with human trafficking among refugee communities.

• Utilizing Technology

Monitoring, reporting, and preventive actions can all be improved by investigating and utilizing technological improvements. Innovations and digital platforms can be very helpful in giving vulnerable refugee populations information and support.