

The Refugee Situation in South Asia: Some Pertinent Issues

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If we go by modern terminology and current definitions of refugees, internally displaced persons, economic migrants, etc., we come up with some interesting analogies in history. For instance, the Mayflower Pilgrim Fathers were refugees in the strictest sense of the term because they left their country of origin due to a well-founded fear of religious persecution. Many who followed them to America like different types of Protestants, Roman Catholics, Anabaptists and Presbyterians also come under the same category. Subsequently, many economic migrants followed like the Irish and the Germans. All this led to a massive displacement of the native population, and in Central and South America specially, many areas were subjected to large-scale 'ethnic cleansing'. Looking back at these events from the point of view of twentieth century humanitarian and refugee laws, it appears that America was settled illegally by refugees and economic migrants and the cost was the displacement and even genocide of the natives — something, which is unacceptable today.

Looking at South Asia too, political persecution in his own country led to Babar's invasion of India. He was, therefore, a refugee seeking permanent settlement—and the result was centuries of Mughal rule in what is today India, Pakistan and Bangladesh. Refugees in the past, then, could be security threats to the host country. Today too, many in the Third World still consider them to be a threat to the social, political, economic and ecological stability of refugee receiving countries. However, now there are international conventions to regulate the rights and obligations of refugees as well as host countries; so hopefully, history cannot be repeated. But in South Asia, we still see instances of refugees outnumbering the local population of a given area, thus challenging the ethnic and economic character of the region and causing resentment. This paper will briefly review the influx of refugees in the South Asian region and then analyze certain issues specific to the subcontinent, namely, the approaches of South Asian countries to refugee inflows, the internal and external threat posed by refugees, the necessity of specific conventions and finally, the problems of the internally displaced persons (IDPs).

Overview of Refugee Movements in South Asia

Not a single South Asian nation has signed the 1951 United Nations (UN) Convention of Refugees or its 1967 protocol. Unlike African states, which have the Organization of African Unity (OAU) Convention and the Latin American countries, which have the Cartagena Declaration dealing with refugee-specific problems, South Asia does not have a regional convention. Yet a refugee problem does exist and that too on a massive scale. In fact, since 1947, an estimated 35 to 40 million people have crossed borders in India, Pakistan, Bangladesh, Sri Lanka and Nepal. While some have been economic migrants, a large number comes under the definition of a refugee provided by the 1951 Convention, the OAU Convention or the Cartagena Declaration. The largest single bilateral

refugee movement in the region was in 1947-48 between India and Pakistan. About seven million Muslims migrated to Pakistan from India and eight million Hindus and Sikhs migrated to India from Pakistan.¹ Large scale cross border migration also resulted from the open borders policy following the 1950 Treaty of Peace and Friendship between India and Nepal, but these were mainly economic migrants. Following problems in Tibet, over 80,000 Tibetans followed the Dalai Lama into exile between 1959 and 1962. Today there are about 100,000 Tibetan refugees, 80 % of whom are in India, the next highest concentration being in Nepal. Before the Bangladesh war of 1971, about 10 million refugees escaped from East Pakistan to India. The early '80s saw the massive influx of 3.5 million Afghan refugees into Pakistan. The civil strife in Sri Lanka also resulted in the inflow of 220,000 Sri Lankan, Tamil refugees to India by July 1983. Conflict and repression in the Chittagong Hill Tracts (CHT) region in Bangladesh created 50,000 Chakma refugees, who also came to India. The policy of Bhutanization in Bhutan involving the rigorous imposition of cultural and dress codes (Driglamnamza) and citizenship qualifications in 1988, led to the flight of Bhutanese of Nepalese origin. An estimated 85,000 went to eastern Nepal while another 25,000 or so sought refuge in West Bengal and Assam. There are also many refugees from Burma/Myanmar. In 1962, after the establishment of military rule in Burma, about 150,000 Burmese of Indian origin left Burma for India. In 1984 again, military campaigns against armed opposition led to the outflow of many Karens, Mons, Kachins and Nagas to India, Bangladesh and other neighbouring countries. Intensification of military offensives in 1991-92 and the destruction of mosques and ban on Islamic religious activities led to the displacement of an estimated 250,000 Rohingyas who sought refuge in Bangladesh.

These numbers testify that there have been refugee movements on a massive scale in South Asia. These movements are not restricted to any specific period or country and refugee generating conflicts in the region continue to create new refugees. In fact, the only country, which is neither refugee producing nor refugee receiving in the region, is Maldives; all the other countries are either generators or hosts and most often both. Keeping in mind the high concentration of population and low economic development of South Asian countries, as well as the uneasy bilateral political relations between some of the countries, the refugee movements become volatile issues. Keeping in mind, further, the fact that in the post-Cold War period, domestic threats to security, like ethnicity and religion, are increasing, the inflow of diverse ethnic and religious groups to a region can also be viewed in some cases as a threat to domestic stability.

Responses to Refugee Flows:

The approach to refugees from neighbouring countries in the immediate post-independence period in South Asia was one of accommodation and acceptance. Since India and Pakistan had been one country earlier, the flow of refugee from one country to the other was accepted as a part of state formation and refugee populations were integrated into the social, political economic life of both India and Pakistan. But this itself was the source of later ethnic problems. The settlement of Urdu-speaking Muslims in Sindh in Pakistan resulted in ethnic disturbances in the long run. Similarly, Punjabi Hindus and Sikhs settled in Punjab in India but they soon fell apart on the basis of religion. Today, therefore, there is less tolerance of people from other states and the emphasis is on repatriation at the earliest. This trend became clear from the 1970s. While settlements were started for the Tibetan refugees of the early '60s in India, Sikkim, Bhutan and Nepal and provision was made for their employment and the education of their children, the voluntary return of

Bangladeshi refugees were sought soon after the 1971 war. The financial burden of giving asylum to 10 million refugees was enormous, especially because India did not take much help from the international community.

Apart from economic and social constraints, bilateral relations sometimes make it difficult for countries to give permanent asylum to refugees. India's welcome to the Dalai Lama and the thousands who followed him, may have been one of the indirect causes of the Sino-Indian border conflict of 1962. Subsequently, consideration of China's displeasure as well as internal pressure has affected the attitudes of South Asian host countries towards Tibetan refugees. In the late 80s', the Bhutanese government asked all its Tibetan refugees, numbering 2000, to leave Bhutan. In Nepal too, Tibetan Khampas were asked to stop armed operations against the Chinese in Tibet in 1974. More recently, there have been instances of forced repatriation and the forcible prevention of the entry of new, genuine refugees.

Security considerations, too, have altered attitudes towards refugees. For instance, Tamil refugees from Sri Lanka were divided into three groups in Tamil Nadu —camp refugees, non-camp refugees, and militant refugees in special camps. However, many camp refugees became militant later and it was difficult to keep track of non-camp refugees. Law and Order problems increased and in March 1990 Tamil Nadu refused asylum to 1638 refugees belonging to various militant organizations. They had to be dispatched to a special camp in Orissa.

In general, however, South Asian countries have been very generous in accommodating refugees, given the financial constraints in each of them. Camps have been set up and food, sanitation and education provided. But where the citizens themselves lack these facilities, it is not possible to meet international standards for the refugees. Therefore, there have been complaints regarding inadequate toilet facilities, medical and even water. Refugees also grumble about problems regarding education, employment, and funds. On the other hand, where UN and other agencies have pitched in with financial and other kinds of assistance as they did at Pakistan's requests regarding Afghan refugees, the local people complained that many of them lived in better conditions than they did in their own country and their standard of living was better than that of the Pakistani villagers.

Security Issues

Mass movement of refugees is a product of conflict; but refugees, in turn, can create conflict situations both at the external as well as the internal levels. Refugees may seek to generate sympathy in a host country to intervene in their country of origin. The two examples of intervention in South Asia are Indian intervention in East Pakistan in 1971 and in Sri Lanka in the 80s'. While the refugee problem was not the sole cause for intervention in both cases, it was certainly an important factor.

The internal threats to security are multidimensional and varied. The sudden influx of hundreds of thousands of refugees into economically weak and multi-ethnic states is bound to cause instability. They can also strain the law and order situation in the host country. Trafficking in drugs, arms and women have been found to be common among certain sections of South Asian refugees. The drug menace in Pakistan is a direct fallout of the Afghan crisis.² Gun running and smuggling of small

arms have been indulged in by both Afghan and Sri Lankan refugees leading to increased crime rates in the host countries. Social tensions also rise because of ethnic differences and even similarities between host populations and refugees. Refugees are willing to sell their labour at cheaper rates and competition with local people for scarce resources and jobs exacerbate alienation. Sometimes they outnumber local populations, for instance, the Chakmas in Arunachal Pradesh, who number around 40,000 while the original inhabitants; the Singpyos are around 5,000. The Singpyos feel threatened and in turn, intimidate the Chakmas, who live in fear.³ Moreover, resourceful refugees like some Sri Lankan and Afghan groups involve themselves in local politics and try to influence host governments.

In South Asia, security problems arising from refugee issues are far-reaching. It can even lead to the extension of the influence of extra-regional powers. For instance, Pakistan was drawn further into the Cold War, and the aim became not quite the well being of the Afghan refugees but the ouster of the Soviet Union from Afghanistan. The Afghan refugees and indirectly, Pakistan, became pawn in the hands of US during the Cold War.

A Regional Convention

Since the refugee problem in South Asia is multidimensional and the borders are porous, the question arises as to whether we need a regulatory convention for the region. Although Bangladesh and India are members of the Executive Committee of the UN High Commissioner for Refugees (UNHCR), no South Asian country has acceded to the 1951 Convention or its 1967 protocol. Each country deals with its refugee problem within its own legal framework with or without external help. There is, therefore, no specific refugee rights regime in the region. Some countries, however, have signed other conventions, which can be extended to the refugee situation. For instance, India has acceded to the two 1966 Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, which contain provisions relevant to the rights of the refugees. But these have not been integrated into the municipal laws and are therefore not enforceable in the court of law. India, however, is obliged to “foster respect for international law and treaty obligations in the dealings of organised peoples with one another”, as per a clause in Article 51 of its Constitution. The Supreme Court has also interpreted Article 21 of the Constitution, which states that “no person shall be deprived of his life or personal liberty except according to procedure established by law,” to apply to refugees as well. By extension this can include the right to non-refoulement. Most refugee rights actually come under the category of human rights and all South Asian Countries are parties to the relevant instruments in this area.

However, no South Asian nation has enacted any law specific to refugees, i.e., to regulate their entry, determine their status or spell out their duties and obligations while in a host country. Large groups of refugees are given asylum mainly on the basis of policy decisions, which gives the whole issue a political dimension. Political overtones lead to an increase in bilateral tensions between refugee recipient and refugee generating countries, especially in the absence of a regional refugee regime.

The role of the UNHCR and other international and non-governmental organizations (NGOs) must also be noted. Pakistan, Nepal, Bangladesh and Sri Lanka have all called on these bodies for assistance at different times. Sri Lanka provides an unique example where the UNHCR undertook

a massive project with the internally displaced, which kept them from becoming refugees. The UNHCR is also helping in the voluntary return and resettlement of Sri Lankan, Afghan and Rohingya refugees. India, too, sought its help first in 1969 to rehabilitate Tibetan refugees and more recently to repatriate Sri Lankan refugees. Refugees from outside the region, like Iranians, Afghans, Burmese, Somalis and Iraqis in India also come under its jurisdiction. The role of the UNHCR is also vital in resettlement of refugees where verification procedures are necessary and the host country has no say in the matter once refugees have crossed its borders.

There is, however, no uniform or universal procedure for granting refugee status in South Asia. As a result, there is a lot of discrepancy between refugee groups. For instance, those being assisted by international agencies have better living standards than those who come under governmental care of the host countries. Some, who came earlier like the Tibetans, were provided land and employment, while some who came around the same period into North East India, did not enjoy similar opportunities. Apart from this, although involuntary repatriation is not normally permitted, there have been accusations of forced exit in every country.⁴ Besides, individual countries have specific problems. For instance, those who are determined as refugees in India under the mandate of the UNHCR are subject to the country's normal immigration laws and have an uncertain status, which opens them to the charge of illegal entry. Further, repatriation often becomes difficult without prior determination of status and each South Asian country is facing problems because of refugees and migrants who have mingled with the population and just stayed back.

There is, therefore, a definite need for instruments under which South Asian countries may set minimal common standards for the definition of refugee status and treatment of refugees. The 1951 Convention is limited in scope and every region has its own specific problems. A regional convention can only help to regulate legal procedures and ensure uniform rights and obligations.

Internally Displaced Persons

Internal displacement may be caused by many factors like environmental disasters, economic stagnation, floods or epidemics. These can also lead to migration to neighbouring countries, but these migrants do not come under any accepted definition of a refugee. Victims of disasters can and do avail of the assistance of their own governments, and organizations like the UN Development Programme (UNDP) and the International Committee of the Red Cross (ICRC) often pitch in. However, the problem of internal displacement can prove to be a poser because in South Asian states, an IDP can be one who has fled his home province/state because of a “well-founded fear of being persecuted for reasons of race, religion...membership of a particular social group, or political opinion...”, which is the 1951 definition of a refugee. He, however, seeks refuge in other part of his country and does not get the protection of the central government, at least as long as the centre is not biased in favour of the group, which ousted him. Nevertheless, they are homeless and in exile—one does not have to cross border, actually, to become a refugee. If South Asia ever develops a regional instrument, the status of these IDPs should also be defined and due consideration has to be paid for their systematic rehabilitation. Continuing ethnic, religious, tribal and even caste conflicts make this imperative.

To sum up, the best way to solve the refugee problem is to get rid of the root causes, which create refugee generating situations. But this requires political will and is often an internal matter of a

country, in which external agencies cannot interfere. In South Asia, internal conflicts are many and varied, and permanent solutions are yet to be found. An end to refugee generating conflicts is not perceptible and mass influxes are bound to occur from time to time. The politics of South Asian countries towards refugees should, therefore, be questioned critically and a fairer and more equitable system needs to be worked out which would be applicable to all the states. And since massive refugee movements strain a country's resources, the experience and expertise of international agencies should be drawn upon, whenever necessary, on a basis compatible with the sovereign laws of South Asian nations.

References:

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