

REFUGEES IN SOUTH ASIA REGION - A CRITICAL ANALYSIS

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Abstract

The World is witnessing a grave humanitarian crisis of forced displacement due to unprecedented internal civil strife resulting in systematic and gross violation of human rights and humanitarian law. Since the adoption of the Bangkok principle the Asian countries generously granted admission to large numbers of refugees. The convention on the status of Refugees, 1951 is the important instrument to govern refugees situation worldwide. The south Asia is a rapidly growing as a refugee melting pot. None of the members SAARC motions has ratified the Refugee convention 1951. It is pertinent to note that more than 1.2 billion or over one fifth of humanity lives in the countries of the SAARC region. After 1947 portion 7.5 million Hindu and Sikh refugees from Pakistan crossed over to India and 7.2 million Muslim refugees from India crossed to Pakistan. It was the largest recorded refugee movement in history. However all the SAARC countries other than Bhutan and Maldives have offices of the United Nations High Commissioner for Refugees (UNHCR), the UN agency responsible for the promotions of international humanitarian assistance on behalf of the refugees.

. Sri Lanka was once called as "Island of Refugees" due to external displacement of Tamils and internal displacement of Sinhalese, Tamil and Muslims. Sri Lanka never known as an asylum country but it is well known as a refugee producing country. Maldives is the only SAARC country who neither produced nor hosted significant refugee population. Refugee situations in South Asia had become chronic and have affected both national security and inter-state relations due to the reluctance of states to discuss them on pure humanitarian basis. This paper focuses about refugees' situation and problems in South Asia, particularly in SAARC countries and their protection and draw backs in such region.

KEYWORDS: *Refugees, Non-Refoulement, Humanitarian, Asylum, Human rights.*

1. Introduction

One of the biggest and human tragedies of the twentieth century has arisen in the shape of more than fifty million refugees and displaced persons in the world today. This century is referred by many as the century of the uprooted and the homeless men. War and many other military and political conflicts have brought in their way a countless number of uprooted, including millions of refugees in search of new homes. Refugee is a person who has been forced to flee his or her country out of fear for life and liberty with mounting unemployment and growing socio-economic problems, most countries are no longer received refugees with open arms.

The refugees are persons deprived of the protection of the country of their nationality, of the protection of the country of their formal habitual residence. Their very positions, the frequent uncertainty of their nationality status and even of their domicile are bound to create additional legal problems. South Asia is comprised largely of developing and lesser developed countries. Some South Asia countries like Pakistan have been hosting refugees for over three decades. Pakistan was the world's top refugee hosting country. Further South Asia is largely a poor part of the world with more than 500 million living below the poverty line. In the year 2008, South Asia was host to 12 percent of the total world's refugee population.

It is pertinent to note that more than 1.2 billion or over one fifth of humanity live in the countries of the SAARC region. Hence the movements of populations across borders whether they are economic migrants or political refugees will continue to engage the policy makers as a key component of the humanitarian agenda. From a population displacement perspective, South Asia region has a unique history. The states of India and Pakistan and later Bangladesh got defined from massive refugee movements. After 1947 partition 7.5 million Hindu and Sikh refugees from Pakistan crossed over to India and 7.2 million Muslim refugees from India crossed to Pakistan. It was the largest recorded refugee movement in history. In 1979, 3.5 million Afghans fleeing soviet intervention in that country sought and received asylum in Pakistan. In 1992, similarly 90,000 Bhutanese of Nepali origin were expelled and are still located in refugee camps in Tapas district of Nepal. Sri Lanka was described as "Island of refugee" due to external displacement of Tamils and internal displacements of Sinhalese, Tamil and Muslims. Sri Lanka is well-known as a refugee producing country in South Asia.

Despite these past and existing refugee movements in the South Asian countries, none of the SAARC countries have acceded to the 1951 international convention on refugees or its 1967 Protocol which had been ratified by nearly 136 countries in the world. However all the SAARC Countries other than Bhutan and Maldives have offices of the United nations High Commissioner for Refugees, (UNHCR), the UN agency responsible for the promotion of Refugee Instruments and providing international humanitarian assistance on behalf of the refugees. This paper analyze about the refugees in South Asian countries, particularly SAARC nations and their position or conditions in such countries and the problems faced by the host country and refugees in South Asia.

1. A. Methodology

The methodology adopted in this paper is descriptive and analytical in nature with information, analysis and conclusions drawn from various secondary sources. It is more exploratory work that tries to bring out the insight on this topic.

2. Refugees in India From different Countries

India was partitioned in 1947, leading to the creation of two sovereign states as India and Pakistan. The Hindu populations of Pakistan, nearly three millions, were largely concentrated in the southern province of south. After 1947, an influx of Urdu speaking Muslims from India arrived in Sind province. Commercial violence erupted and many Hindus of Sind province were forced to flee due to religious persecution and they sought refuge in India.¹ Though people who crossed over the newly formed boundaries between India and Pakistan – by choice or by forcibly did not lose their nationalities, they were still forced to live the lives of a refugee. Refugee camps across north India served as homes for those refugees come from Pakistan. The intense inter communal relations between the Hindu and Muslim communities in Pakistan have more apparent since the indo-Pak wars of 1965 and 1971. Due to this growing insecurity amongst Hindus in Pakistan cause them to leave for India. Roughly 15,000 people displaced from Pakistan have arrived in India since 1965 and most of them have settled in Rajasthan or Gujarat²

Since India is not a signatory of several international laws and conventions, that govern the status and treatment of refugees like the 1951 United Nations Refugees convention on the status of Refugees or its 1967 protocol In the mean while India deals with refugees and asylum seekers on an adhoc basis by consulting a basic refugee policy and other Indian administrative laws like Passport (Entry of India). Act 1920; the passport Act 1967, the Registration of Foreigners Act, 1939; the Foreigners Act 1946 and the Foreigners order 1948³. Presently the legal status of refugees in India is governed mainly by the Foreigners Act 1946 and the Citizenship Act, 1955. These Acts apply to all non-citizens including refugees.

2. A. Tibetan refugees in India

Subsequent to the Chinese invasion in 1951, China continued to perpetrate human rights violations in Tibet. The Dalai Lama took efforts to find peaceful solution to the ongoing violence in Tibet which proved to be ineffective and his personal security was threatened. Thus Dalai Lama was forced to flee from Tibet. In 1959, approximately 80,000 Tibetans fled to India. The Tibetan refugees settled across northern and north-eastern Indian states and seat of the Dalai Lama, the spiritual as well as the political leader of the Tibetan community was established in Dharamshala, Himachal Pradesh. Thus the Tibetan Government in expel operates from there till now⁴. Many Tibetan refugee settlements were established in many parts of India and rehabilitation programmers were carried out by government of India along with NGO'S. Today approximately 150, 000 Tibetan refugees are living in India.

2. B. Srilankan Refugees in India

Decade after the 1971 refugees influx India once again was severally affected by the influx of thousands of Tamil refugees from Srilanka in 1983. For the past 20 years Srilankan has been facing conflict between Srilankan army and the Liberation Tigers of Tamil Elam (LTTE), who are fighting for independence for the minority /Tamil population. Tamilians from Srilanka have been fleeing their home country for India since 1983, when the conflicts began⁵. More than 1.34 lakh Sri Lankan Tamils crossed the Palk Strait to India between 1983 and 1987 during first in flow. Most of the refugees over a million, settled in the state of Tamil Nadu. According to a report in India Today, more than 60,000 Sri Lankan refugees were currently staying in 109 camps in Tamil Nadu alone. The Indian Government provides basic medical care to Sri

¹ http://www.hrln.org/admin/issue/subpdf/refugee-populations_in_india.pdf assessed on 26.11.18

² Supra

³ <http://indianexpress.com> assessed on 26.11.18

⁴ <http://www.livemint.com> >Sunday app/clanx60MIRZLh citpMraMWD/indias-refugee-saga-from-1947-to-2017.html assessed on 26.11.18

⁵ Ibid .4

Lankan refugees and it also provides education for school-age Sri Lankan refugee children as well as subsidized food grain for the camps inhabitants. None the less, in general the Government of India recognizes Sri Lankans feeling violence at home to be refugees and accordingly grants them protection.

2. C. The Afghan Refugees in India

Following the soviet invasion of Afghanistan in 1979, a number of Afghans also moved from their country and took shelter in India. In subsequent years little groups of Afghan refugees kept coming to India. These Afghan refugees mostly tried to settle in and around the capital city of India. Due to civil war between the Taliban and the ruling Najibullah regime, more violence were emerged all over the country and of resulting in destruction of more than 80% capital city Kabul and more Afghans were forced to flee the country⁶. There are over 9000 recognized Afghan refugees in India and 90 percent of them belong to the Hindu or Sikh faiths, religious minorities in Afghanistan who could not able to practice openly their religions in their home country for fear of persecution. Three decades of fighting have destroyed the country's economy very much and wide spread human rights violations include: extra. Judicial killing, torture, violence against women and restrictions on freedoms of press, religion movement and association made further forcibly displacement of nearly 15,000 people further between July and October 2007 and they are recognized and protected under the United nations High Commissioner for refugees (UNHCR) mandate. The mandate of UNHCR New Delhi is to provide protection and to ensure that these refugees are not deported to their countries of origin or to place where their lives are in danger and that they are assured safety in the country of asylum⁷.

The UNHCR New Delhi is in the fulfillment of its mandate, assisted by two legal implementing partners, namely, PILSARC (Public Interest Legal Support and Research Centre) and SLIC (Socio-Legal Implementing Centre) and three other implementing partners who provide assistance to the refugees. They are the voluntary Health Association of Delhi, the New Delhi YMCA and Don Bosco Ashalayam⁸. In order to promote self reliance among the young refugees a comprehensive skill-building programme is run by the Don Bosco Ashalayam. The purpose of this programme is to impart Vocational training to make refugees self-reliant and it proposed to benefit some 2000 refugees during the period of 4 years. The program me cover three specific categories of refugees particularly, the Indian Origin Afghans (Afghan Hindu and Sikh), the Burmese and the Ethnic Afghans⁹

2. D. The Rohingya Refugees in India

The Rohingya people are a Muslim minority group residing in the western state of Rakhine, Myanmar, formerly known as Arakan.¹⁰ Myanmar government does not recognize them as an ethnic group and they are considered as stateless entities. Thus Rohingya people are regarded as refugees from Bangladesh by the Government of Myanmar and are facing strong hostility in the country¹¹.

Rohingya people have been described as the most persecuted people on earth and they often try to enter South East Asian states illegally and request humanitarian support from host countries¹². The debate over refugees again gained national importance in the year 2015 after 40,000 Rohingya Muslims escaped Myanmar to take shelter in India. However it was found that around 40,000 Rohingya's immigrants have taken shelter in Assam, West Bengal and Jammu & Kashmir, The office of UNHCR has issued identity cards to about 16,500 Rohingya in India to "prevent harassment, arbitrary arrests, detention and deportation of refugees"¹³

However, India has categorized the Rohingya as legal migrants and a security threat, siding with the Burmese Government. India refused to let the refugees to the enter their country as the presence of Rohingya Muslims in Jammu is considered as a sensitive issue for Indian security. The Indian govt has also appealed to Myanmar government to take back the Rohingya refugees. Further the Indian government has stated that the principal non-refoulement does not apply to India, as it is not a signatory to the 1951 refugees' convention.¹⁴ The Rohingya refugee crises has become a major issue for India and Bangladesh, The Rohingya Muslim population is now stateless as Myanmar rejected citizenship to Rohingya people since Myanmar considered them as illegal immigrants from Bangladesh. Due to these refugee crises, refugees are entering India territory and Bangladesh by illegal means. On Bangladesh's request to India for support to resolve the refugee

⁶ Ibid. 4

⁷ Un weekly news letter, 28 August – 3 sept 2004. vol59, Number35, p.4 (pub. United Nations Information Centre New Delhi)

⁸ CHANDRA "Human Rights" (2008), Allahabad Law Agency publication

⁹ supra

¹⁰ https://en.wikipedia.org/wiki/2015_Rohingya_refugee_crisis assessed on 30.11.18

¹¹ Ibid.10

¹² "Rohingya refugee crisis shames south east Asia(2015) The Japan times

¹³ ibid. 4

¹⁴ Ibid.4

issue peacefully, Indian government began “Operation Insoniyat” as humanitarian aid to Bangladesh government to manage the huge Rohingya refugee influx by providing free food materials, tea, mosquito nets and technical assistance to Rohingya refugees in Bangladesh.¹⁵ Indian government has sent 53 tones of relief materials to them.

2. E. Chakma and Hajong refugees:-

Chakma and Hajong refugees belongs to Chakma and Hajong communities – who were once lived in the Chittagong hill tracts, located in Bangladesh and they have been living as refugees in the North – East and West Bengal for more than five decades. As per the 2011 census, nearly 47,471 Chakmas was live in the state of Arunachal Pradesh alone¹⁶. They came to India from Chiitagong Hill tracts in Bangladesh (formerly East Pakistan) having lost their homes and land to the Kaptaidam project (Karnaphuli River) mid 1960s. They also faced religious persecution.

In the case **National Human Rights Commission Vs State of Arunachala Pradesh**.¹⁷ The Supreme Court of India gave an important judgment regarding the protection of chakmas live in Arunachal Pradesh.

The fact of this, case was that of large numbers of chakma migrants crossed over the borders of East Pakistan (Now Bangladesh) in 1964 and entered into India. Most of them settled in Assam and Tripura and acquired citizen of India. However the respective governments of Assam and Tripura expressed their inability to rehabilitate them. Therefore, some of them were moved to the state of Arunachal Pradesh and were settled there. An agitation was launched by the all Arunachal Pradesh students Union to expel them out of the state and threatened to resort to violence against them in, if they were not expelled. The National Human Rights Commission approached the supreme court directed the state of Arunachal Pradesh was under constitutional obligation under Art 21 of Indian constitution to protect and safeguard the life, health and well-being of the chakmas. Thus the protection of life and liberty under Art 21 is guaranteed to citizens as well as to non-citizens.

The apex Court of India in the year 2015 had directed the central government to give citizenship to both chakma and Hajong refugees. Thus the government of India decided to provide citizenship to this group, despite opposition from many groups in Arunachal Pradesh. However, in the absence of National legislation concerning refugees, their problems such as right to employment, right to welfare measures like housing, rationing, education, labor legislation issue of travel documents and of identity papers cannot be solved simply on the basis of Art 21 of the constitution. Thus national legislation on refugees is a matter of Urgent Necessity in India.

3. Refugees situation in Pakistan

As per the report of United Nations High Commission for Refugees, Pakistan is considered to be the home to largest refugee population in the world and further it also stated that Pakistan is hosting the largest number of refugees globally, which counts to more than 1.45 million in the country, and many of them hail from Afghanistan¹⁸. During Soviet invasion of Afghanistan, in the year 1980, nearly three million Afghan refugees escaped to Pakistan due to political unrest, mass arrests, executions and other human-rights violations. Nearly 3.3 million Afghan refugees were entered into Pakistan by late 1988 and they were stayed in 340 refugee camps in Khyber Pakhtunkhwa (KP) along the Afghan-Pakistan border¹⁹. After the September 11 attacks on Twin tower in US and when US-led forces began bombing al-Qaeda and Taliban targets in Afghanistan, a small number of Afghans fled into Pakistan.

The United Nations refugee agency entered into an agreement with the government of Pakistan in the year 2009 for allowing Afghan refugees to stay in Pakistan till end of 2012. It was an agreement clearly stipulating terms and conditions for their stay; making it temporary in nature, stipulating the withdrawal to be gradual but regular and offering international support for the program me, called RAHA (Refugee Affected and Hosting Areas program me). Pakistan is neither a signatory to either the 1951 convention that relates to status of refugees nor the 1967 protocol relating to the status of refugees. Extension of their stay purely was on humanitarian grounds and cannot change their status of refugees²⁰.

In accordance with Pakistani government evaluation nearly 90 percent of terrorist attacks in Pakistan were traced to Afghan refugee camps and many Afghan nationals have been arrested for involvement in various attacks in Pakistan. After Peshawar school massacre, in Dec 2014, Pakistani authorities cracked down on

¹⁵ http://en.wikipedia.org/wiki/2015_Rohingya_refugee_crises assessed on 30.11.18

¹⁶ Ibd4

¹⁷ (1996) 1 sec 742

¹⁸ <https://tribune.com.pk/story/1686897/1-pakistan-worlds-largest-host-refugees-unhcr/> assessed on 1.12.18

¹⁹ http://en.wikipedia.org/wiki/Afghans_in_Pakistan assessed on 1.12.18

²⁰ <https://www.pakistantoday.com.pk/2018/09/24/the-afghan-refugees-in-pakistan/> assessed on 1.12.18

Afghan refugee settlements to apprehend illegal immigrants.²¹ In 2018, UNHCR's effort in Pakistan includes working with the authorities to provide proper medical and education services to refugees, strengthening social cohesion between refugees and their host communities and helping refugees in voluntarily return to their home. This year UNHCR had helped some 54,000 children to enroll in primary schools and it also ensured that the rights of registered Afghan refugees are protected²². As surprise announcement in a public event Imran Khan, present prime minister of Pakistan has pledged to grant citizenship to 1.5 million Afghan refugees who have lived in Pakistan for decades.²³ However, after a backlash from politicians and supporters of the country's powerful military, he said on two days later that no decision had been made. However according to the UNHCR report in February 2017 about 1.3 million registered Afghans still remained in Pakistan.

4. Refugees position in Bangladesh

As of December 2017, an estimated 655,000 to 700,000 Rohingya people have fled to Bangladesh, to avoid ethnic and religious persecution by Myanmar's security forces. There are more 300,000 Rohingyas living in Bangladesh who fled in earlier wave's violence from the Burmese government over the last three decades. At the 73rd United Nations General Assembly, On 28 September 2018, Sheikh Hasina, the Prime minister of Bangladesh stated that there were nearly 1.1 million Rohingya refugees now in Bangladesh.²⁴ The Rohingya people live in the Myanmar's northern Rakhine state that borders Bangladesh and India and they belong to a Muslim ethnic minority group and they are about 1 million people in Myanmar. The Rohingya were not among the 135 officially recognized ethnic groups included in Myanmar's 2014 census. The armed conflict which has been going on for years in Myanmar between minority groups and government military forces accelerated significantly in August 2017 in Rakhine state, causing more Rohingya people and others to flee. United Nations Secretary-General António Guterres described the situation to the Security Council as "the world's fastest-developing refugee emergency, and a humanitarian and human rights nightmare."

After fleeing violence in Myanmar, refugees have fought to live on seasonal monsoon rains and the continuing threat of cyclones during their movement from their country. They've also faced problems like flooding, landslides, collapsed or damaged shelters, contaminated water overflowing latrines, and disease risks in overcrowded refugee camps in Bangladesh. Diarrhea, acute jaundice syndrome, and respiratory infections are common in both adults and children in camps.²⁵

Bangladesh and Myanmar Governments agreed to start repatriation of thousands of Rohingya refugees who fled Myanmar but Myanmar Buddhists have been protesting against the return of Rohingya. The UNHCR suggested that refugees should be allowed to go and see the conditions in Myanmar before they decide whether to return but many Rohingyas, not willing to go back without guarantees of citizenship and freedom of movement.²⁶ Since August 25, 2017, some 700,000 people crossed the border, bringing with them stories of extreme violence, burned villages, murders and rape. The vast majority of the latest arrivals are located in the densely-populated Kutupalong-Balukhali complex, known as the "Mega Camp" and home to more than 600,000 people.

6. Legal protection of Refugees in South Asia

The South Asian countries comprises of seven countries in the southern part of Asia.. This group of seven nations also has a regional organization called the South Asian Association for Regional Cooperation (SAARC). However none of these countries in this region has ratified the major international instruments relating to refugees such as 1951 Convention or the 1967 Protocol relating to the Status of refugees. However, these countries have ratified most of the human rights instruments. All of them have ratified the four Geneva Conventions as well. In relation to other human rights instruments, some of them have ratified a few more and some are in the process of ratifying them. A large part of this region was under foreign rule for a long time before; independence was given to them after the World War 11²⁷.

Even though in South Asian countries the refugee problem is grave in nature, the concerned countries have not developed any formal structure to deal with this issue and the refugees are subjected to the same laws as illegal aliens. As there is no refugee-specific law, asylum seekers and refugees are dealt with under *ad hoc* administrative arrangements which by their very nature can be arbitrary and discriminatory, providing few

²¹ [30,000 Afghans left Pakistan after Army Public School attack: IOM](#). Dawn. 8 February 2015. Assessed on 1.12.18

²² <https://www.unhcr.org/pakistan.html> assessed on 1.12.18

²³ <https://www.theguardian.com/world/2018/sep/17/pakistan-imran-khan-citizenship-pledge-afghan-refugees> assessed on 1.12.18

²⁴ https://en.wikipedia.org/wiki/Rohingya_refugees_in_Bangladesh assessed on 2.12.18

²⁵ <https://www.worldvision.org/refugees-news-stories/myanmar-refugee-crisis-facts> assessed on 2.12.18

²⁶ <https://in.reuters.com/article/myanmar-rohingya/rohingya-flee-refugee-camps-in-bangladesh-as-myanmar-prepares-for-first-returnees-idINKCN1NG0QY> assessed on 2.12.18

²⁷ http://www.mcrg.ac.in/WC_2015/Reading/D_Refugee_Protection.pdf assessed on 2.12.18

rights to refugees. The framing of law on refugee protection can be done in three ways: by acceding to international refugee instruments, by developing a regional instrument for South Asia and by framing national legislation. The vital international instruments regarding protection of refugees are the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. But so far no South Asian country has expressed interest in acceding to the Convention. The happening of statelessness has become more severe due to the lack of proper refugee laws in the states and also due to the lack of a proper care and rehabilitation system of the displaced persons and their protection.

The refugee issue has also been ignored at the regional level by South Asian states and also within the structure of the SAARC Charter since the states look upon cross-border migrations as a bilateral issue within the outline of national security. The refugees have no legal protection against summary expulsions since refugees are treated as illegal immigrants and not as refugees fleeing persecution as there were no proper laws for treatment of refugees in regional levels. As a consequence, the UNHCR, the only organization who actively works for protecting refugees in the region has not been able to provide effective and significant protection to them. To deal with this complicated refugee problem an effective legal framework is essential. The adoption of national laws by the states of South Asia would ensure the protection of refugees in their region and it also make possible for those states to discharge their international treaty obligations in accordance with their constitutions. So the very first step to solve refugee problem of the region is adoption of national laws concerning refugees by all the countries of South Asia. It is highly recommended that the states of the region to ratify the Refugee convention and its Protocol without further delay since it enable them to respect international principles regarding refugees like principle of non-refoulement²⁸.

7. Conclusion

Among over three million refugees in South Asia, around 90 per cent are from within the region. For example, Pakistan is home to the largest proportion of Afghan refugees. While hosting one of the largest refugee populations in the world, South Asian countries continue to ignore compliance with international legal instruments. Except the country Afghanistan, no SAARC members are parties to the 1951 United Nations Convention Relating to the Status of Refugees or the 1967 Protocol. Yet even Afghanistan – one of the world's largest senders of refugees since the 1980s – acceded to the Convention and its 1967 Protocol only in 2005. With nearly four million displaced Afghans, Afghanistan is second, after Syria, as a major refugee source country in the world. SAARC member states do not have national frameworks for managing refugees. The lack of national policies on the issue of refugees enables flexibility and autonomy. It is also the reason why SAARC members have softer policies on accepting refugees and asylum seekers than other nations, Pakistan, Bangladesh, Nepal, and India are good examples of this.²⁹

It is important to note that the top South Asian recipients of refugees, namely Pakistan, Bangladesh and India, are states with the highest population size and density in the region, and are ranked in medium level human development in the 2016 Human Development Index. Thus, these countries have limited capacity to cope with huge influxes of refugees and naturally depend on international support for the protection of refugee population in their countries. Though the countries in South Asia not parties to the 1951 Refugee Convention have permitted the establishment of the office of UNHCR and extended the full co-operation to those offices. These offices are actively involved in series of activities of refugee development and protection. From the above analysis it is evident that the South Asian states have to adopt certain standards through their Municipal laws for the protection of refugees apart from the need of ratifying the international instruments on refugees. It is highly recommended that the states of the region ratify the Refugee convention and it's Protocol without further delay.

²⁸ <https://aprrn.info/refugee-regime-under-saarc-an-agenda-for-action/> assessed on 2.12.18

²⁹ <https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12526> assessed on 2.12.18

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