



The Refugee Problem: Need for a Coordinated Response

From a population displacement perspective, the South Asian region has a unique history. Here, people have been pushed beyond their borders as a result of war or they have left their country of origin on ethnic, racial, ideological or religious grounds. Subsequently, migrations have taken place for environmental or developmental reasons as well. The States of India and Pakistan witnessed massive refugee movements from the time of independence itself. After the 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.

There was little international assistance in this massive humanitarian crisis. Later, in 1971, 10 million refugees crossed over to India during the war of independence of Bangladesh. In 1979, 3.5 million Afghans fleeing Soviet intervention in their country sought and received asylum in Pakistan of which 1.2 million are still said to be there in the refugee villages. Between the 1970s and 1990s, Bangladesh has been witness to the influx of over 300,000 Muslim refugees from Rakhine district in Myanmar, of whom nearly 30,000 refugees are still to be repatriated. Similarly, 90,000 Bhutanese of Nepali origin were expelled and a substantial number of them are still located in refugee camps in Jhapa district of Nepal. However, many of them have been recently resettled in third countries by the United Nations High Commissioner for Refugees (UNHCR).

Sri Lanka has often been described as an 'Island of Refugees' due to external displacement of Tamils and internal displacements of Sinhalese, Tamil and Muslims. Though Sri Lanka is not known as an asylum country, it is well known as a refugee-producing country. Since 1983, Sri Lanka has produced hundreds of thousands of refugees apart from over 500,000 Sri Lankan Tamil 'jet refugees' to the Western world. Major portion of Sri Lankan refugees in Tamil Nadu were voluntarily repatriated, but still over 60,000 have remained behind due to the ongoing security crisis in the North-East Sri Lanka.

Since 1960s, India has been hosting over 100,000 Tibetan refugees and some 50,000 Buddhist Chakma refugees from Chittagong hill tracts in Bangladesh, some of whom were repatriated recently. India also has permitted the UNHCR to assist about 27,000 refugees and 6,000 asylum seekers on pure humanitarian grounds. Maldives is the only SAARC country, which neither produced nor hosted a significant refugee population. As of June, 2014, India was home to around two lakh refugees from around the world.

Despite these past and existing refugee movements and deep rooted humanitarian traditions of asylum, none of the SAARC countries has acceded to the 1951 International Convention on Refugees or its 1967 Protocol, which has been ratified by 136 countries in the world. However, all the SAARC countries, except Bhutan and Nepal, have offices of the UNHCR—the UN agency responsible for the promotion of the Refugee Instruments and marshalling of international humanitarian assistance on behalf of the refugees.

The reasons advanced for the non-accession to the 1951 Convention or the 1967 Protocol by SAARC countries are very similar in content. They argue that they have rich traditions of asylum comparable to international standards, sometimes even better than what is practiced by some of the signatory states to the International Refugee Instruments. Therefore, they would continue to deal with refugee issues on ad hoc bilateral policy basis, but welcome international humanitarian assistance based on burden-sharing (with the exception of India).

SAARC countries further argue that the persecution-based 1951 Convention or 1967 Protocol is inadequate to comprehensively address the current refugee issues in the region, which are mostly the result of internal conflicts and not due to fear of persecution by the states per se. In support of their contention of inadequacy of the International Refugee Instruments, they cite the regional refugee instruments of Africa, the 1958 Organisation of African Unity Convention and the one for refugees in Latin America, the 1984 Cartagena Declaration on Refugees which are more comprehensive in their definition of refugees.

Refugee situation in South Asia has become chronic and has affected both national security and inter-state relations due to the reluctance of states to discuss them on pure humanitarian basis. Since all refugees are technically considered illegal aliens, they have no institutional protection or the protection of the principle of the Rule of Law. In this context, a regional Convention or Declaration on refugees by the SAARC countries becomes timely and relevant. A regional agreement on fundamental questions such as the definition of a refugee, the granting of asylum and the exceptions thereto, the cardinal principle of non-refoulement, or the voluntary nature of eventual repatriation of refugees would reduce the room for friction between the state interlocutors. A SAARC Refugee Convention or Declaration would also mean a great step forward in developing a humanitarian regime in the region.

In the case of India, the Superior Courts have addressed certain humanitarian concerns of the refugees on the basis of constitutionally guaranteed fundamental and human rights. But no such developments have taken place in any other SAARC countries. The prevailing political and security preoccupations of each country determines the standards of treatment for the refugees. These standards may differ from time to time and from one country to another.

By developing a regional Convention or Declaration on refugees, the SAARC countries would not only be recognising and refining the existing traditional humanitarian policies, but will also be developing a set of non-contentious principles, which will enhance the organisational solidarity and its commitment to human rights. Such a Convention or Declaration will not be a document borrowed from outside that is unsuitable for the specific needs of the refugee problem in the region, but a SAARC-developed piece of international law.

There are differing opinions on the advisability of having a regional or a national instrument but, there is definitely unanimity on the fact that there should be a specific legal instrument on refugees in the region to guide the governments in their policy towards refugees. Whether the South Asian governments would like to accede to the existing international refugee regime, or they would like to have a legislation of their own, is something that they need to take a decision about. However, there are certain issues that can be better dealt with within the multi-lateral regional framework.

It is high time the South Asian countries took a stand on the refugee regime issue, rather than dealing with the same through administrative measures. Hence, the South Asian countries should have a specific refugee legislation of their own. Since they have already been accepting and hosting refugees, by having a specialised legislation, they would only formalise and give a concrete shape to the existing practices. This legislation can be specially designed to factor the respective national interests, making it more in sync with the sub-continental reality than the international refugee regime that was drafted in a Cold War context and appears to be out of touch with the ground realities in South Asia.

By doing away with the element of discretion and putting in place an organised structure and infrastructure for dealing with refugees, the new system can be custom-made to regional and national interests. Such a system would make the regional reaction to refugee problem more consistent, coordinated and predictable. It would also help the countries of the region in meeting their international obligation required under the UN system. Drafting of a 'Model National Law' and 'Draft Regional Declaration' on refugees under the leadership of the UNHCR are positive developments in this regard. It is hoped that by taking a positive decision to have a specialised legislation on refugees, the countries of South Asia would live up to their reputation of being a liberal host to the refugees on their shores.

Salient Points

- In South Asia, people got displaced beyond their borders as a result of war or on ethnic, racial, ideological or religious grounds.
- India and Pakistan faced massive refugee issue at the time of independence.
- None of the SAARC countries has acceded to the 1951 International Convention on Refugees or its 1967 Protocol.
- They argue that they have rich traditions of asylum comparable to international standards.
- Since all refugees are technically considered illegal aliens, they have no institutional protection or the protection of the principle of the Rule of Law.
- The Superior court of India addressed refugee concerns as per constitutionally guaranteed fundamental and human rights.

244 Selected Contemporary Essays

- Through a regional Convention on refugees, the SAARC countries would be developing a set of non-contentious principles.
- Whether the South Asian governments would like to accede to the existing international refugee regime, or they would like to have a legislation of their own, is something that they need to take a decision about.
- It is high time the South Asian countries took a stand on the refugee regime issue, rather than dealing with the same through administrative measures.
- Drafting of a 'Model National Law' and 'Draft Regional Declaration' on refugees under the leadership of the UNHCR are positive developments.