COLOURING WITH THE SAME BRUSH: REVISITING UNDOCUMENTED MIGRATION IN SOUTH ASIA

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ABSTRACT

Undocumented cross-border migration is an active agent of the state indeed. The inflow single-handedly affects the state policies and bilateral relations with the source country. In this process of interaction, these movements get altered reciprocally. In a heterogeneous society like South Asia, recurrent tension persists between groups and even the States. As a result, the region remains vibrant in territorial and communal disputes. South Asia witnessed mass exodus and constant illegal migrations across the borders that shaped the politics in the region. The paper is developed with two particular aims in design. Firstly, it intends to analyse the internal and external factors that respond to the inflow of people in South Asian countries. The analysis is contextualised within the affairs of the state and the historical experiences of South Asian countries. Secondly, it investigates the obscurity prevailing towards undocumented migrants and ambiguity towards specific refugee communities in India by evoking the country's rich and diverse refugee experience. The uncertainty regarding immigration and the absence of a proper legislative framework exclusive to South Asia results in administrative ad hocism.

Keywords: Illegal Migration, Refugee, South Asia, Cross-Border Migration, Undocumented People.

INTRODUCTION

The concern about the movement of people across national boundaries unauthorised extends beyond communities and states. Illegal migration becomes one of the trivial issues that redefines bilateral relationships between countries while being the point of debate in regional and international conventions. When the Maharashtra government decided to identify and deport undocumented migrants from Bangladesh, it urged discussions in the South East Asia Association for Regional Cooperation (SAARC). Such dialogue should be read concerning SAARC's tendency to detach from refugee issues, although all countries are either refugee-producing or receiving or both. This topic of discussion further blazed with the economic making of this region, characterised by scarce resources to rocketed population size. Hence, any influx from outside perceives as a potential threat to the local population and regional economy. The idea of immigrants as cancer carving resource base and labour market waters the

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fear of loss of economic monopoly of local. When mixed with religious, ethnic, historical and cultural sentiments, this angst could transform into the worst nightmare where rationality and apprehension of reality seldom motivate the host to commit to the protection regime (Murthy 1998).

Migration as a process is evident in all historical phases. However, the term acquired political meaning with the increased surfacing of the Nation-state ideal and its fixation on the boundaries that redefined its people. Hence migration is a more loaded term than mobility, associated with social and political controversies. A state with sovereign power is superintended to maintain its coherence in safeguarding the security of its citizen and itself, thus becoming paranoid about the presence of undocumented foreigners in its territory. As a result, the country strengthens its borders through various mechanisms such as militarization and surveillance to protect it from alien encroachment, which leaves destitute immigrants restricted from life choices even if there persecuted or escape from their own country. In general, the term refugee can instil a deep sense of inclusion, unlike 'illegal migrants', as the 1951 United Nations Convention relating to the status of refugees acknowledged that any person can seek refuge in another country if she or he has a fear of being persecuted. It also ensures the principle of non-refoulment, whereby a refugee should not deport back to the countries of their origin (Chaudhary & Gosh 2020).

National borders in South Asia are a product of the topographic diversity of the region and arbitrary demarcation undertaken by colonial Masters. Delineating boundaries had been executed without proper scrutiny of the pre-existing ethnic-religious, geographical, economic and linguistic circumstances. It has often manifested into territorial disputes and unauthorised cross-border activities along its borders. Hence, fencing of borders is the most accustomed mechanism by the government. The countries in the region are also known for cross-border drug trafficking, where neighbouring countries facilitate transit routes. Afghanistan remains the largest opium manufacturer while smuggling across Pakistan and Iran. Redundant in neighbouring countries, India has always been in a troubled position. This uneasiness had deepened by its Maritime boundaries with seven countries (Maldives, Sri Lanka, Bangladesh, Pakistan, Indonesia, Thailand and Myanmar) which India could not ratify with Pakistan and Bangladesh (Saddiki 2018).

This paper expounds on cross-border migrations in South Asia without proper documents or authorisation. The aim of the paper is twofold. Firstly, it intends to analyse the

internal and external factors that respond to the inflow of people in South Asian countries. These factors are explored within the historical and political context of South Asia. Secondly, it investigates the ambiguity prevailing towards undocumented migrants in India by evoking the country's rich and diverse refugee experience. Even though undocumented migration encompasses unauthorised economic migrations and infiltration, the paper focuses mainly on refugees/asylum seekers. The concern of the paper further extends to the differential treatment of refugee communities in India within its particular contexts. Primacy has been given to India because it is a single country with extensive experience in cross-border migrations. A relatively stable democracy in South Asia with socioeconomic supremacy makes India the region's most preferred destination for influxes. In its course, the paper scrutinises the prospect of India having a refugee policy and framework.

The U.N. Protocol against the smuggling of migrants by land, sea, and air describe illegal entry as crossing borders without necessary legal requirements prescribed by the receiving country. It is achieved through various means, such as concealing from the border police, evading border control, using falsified documents, and other illicit means (UNODC 2018). As a result, conceptual clarification is required to distinguish refugee movements, asylum seekers, illegal migration and infiltration, though all deem illegitimate under the criteria proposed by the country. Refugees and asylum seekers fled from their native land for fear of persecution and were incorporated into the humanitarian framework for protection and inclusion, though only the former was granted recognition. On the other hand, the notion of illegal migration contains an element of economic and social motives and is most probably voluntary. The treatment of these groups shows substantial inconsistencies in South Asia (Bhattacharjee 2008).

Literature Review

Donato and Massey (2016) postulate that illegal migration is a relatively novel phenomenon that emerged from the global economic change attributed to the capitalist economy and the globalisation of the market. In the contemporary world, the scope of such movements increased with immediate threats in one's own country and structural transformation in the economy worldwide. Donato and Massey argue it is a paradoxical situation where the inequality among immigrants around the globe widen when the new phenomenon of illegal migration imposes severe disadvantage on people. From a stance of the expected increase in 'illegal migrants', they analysed various empirical data emphasising the scope for studying the

irregular adaptation of the parties. Scheel and Squire (2014) provide different insights into 'forced migrants as illegal migrants since labelling actively influences migration and related politics. One such perspective involves rendering forced and voluntary migration as two ends of a continuum rather than treating it as two exclusive categories. Secondly, the criminalisation of migrants and assigning illegal status to them can be observed as the product of the migration policy shift. These two perspectives lead to the third standpoint, where displaced people are actively reproduced as illegal migrants through problematisation and the tendencies of targeting and framing.

Karen Jacobsen (1996) broadly details the factors that affect the host country's attitude towards the inflow of people, especially towards refugees/asylum seekers. He covers almost every factor concerned and emphasises security concerns, analysis of the costs and benefits of accepting international assistance, bilateral relations with the country of origin of movement and calculations about the local community's absorption capacity. Among them, the prime driver of attitude towards refugee policies is security threats. An increased security threat grants more authorisation and command to the army in functions of the state, whose preference is national safety over human welfare. He further talked about factors such as Bureaucratic choices, International Relations, intervention and influence of the International refugee regime, conditions in refugee-sending countries, ethnicity and kinship and historical experiences with the immigrant communities in determining such behaviours. Murthy (1998) has provided a clear picture of cross-border migration in South Asia, drawing from colonial realities to contemporary territorial disputes of countries in the region. She attributes recurrent illegal cross-border migration to the historical process of nation-state building, which assumed fixation since the arbitrary demarcation of territorial boundaries without considering the ethnic, cultural and geographic linkages. Similar arguments are also evident in the paper by Chaudhary and Gosh (2020), which claims illegal migration is a result of the nation-state formation within a previously united region as devised by the colonial power. As a part of that legacy, the countries in this region actively compete for the claim in certain territories and perpetuate border disputes. They further argued, "securitisation off borders is not equivalent to the securitisation of migration".

Research Statement

South Asia is well known for its vibrancy in interstate conflicts and border disputes. It is also well known for the mass influx of undocumented people across national borders.

However, most countries in this region neither define nor differentiate between illegal migrants and refugees. Hence, they were often treated with inconsistent and arbitrary measures. Consequently, they were assigned with 'illegal infiltration and illicit activities in this region. This paper tries to identify significant implications of the cross-border influxes in South Asia, which are labelled across various categories such as illegal immigration and refugee. The enquiry is extended to the recurrent and unsettling nature of these movements in this region. Furthermore, it tries to explain why the host country's government imposes ad hoc measures to treat them rather than ensure the needy's protection. The states can no longer linger away from the responsibility under any justification. The global climate crisis is more likely to bring a drastic escalation of population inflows in the immediate future that requires transnational coordination in this region.

Discussion

Migration can be either voluntary or forced, triggered by numerous socio-political conditions. However, the prime question regarding cross-border movements revolves around their legality. Those deemed illegal migrants to a nation do not secure the benefit of protection yet suffer from the labelling. Hence they are ostracised from rights and opportunities and excruciated by the struggle for economic opportunities and identity. Therefore cross-border migration, as far as a nation is concerned, is an issue of antagonist forces of national security and humanity at large (Chaudhary & Gosh 2020). The state-approved migration, especially those that transcend national boundaries, proceeded with the political transition of South Asia during the 1950s with the advent of newly independent States. The demarcation of borders and the introduction of the passport system have led to a more profound concern for state security. As an outcome, undocumented migrants get marked illegal outsiders or encroachers (Chaudhary & Gosh 2020).

On the contrary, the legitimacy of border demarcation is disputed because the process has entirely avoided the cultural identities, extended natural landmarks and social linkages between communities. Therefore, the tendency to claim and concretize the borders is conspicuous among the south Asian States. Every boundary in this region is artificially-built and unequivocally results from ignorant territory building of colonial power.

India shares an enormous border with various countries in the Indian subcontinent. The geographical terrain of these borders positions it in a highly complex position. These borders are vulnerable to smuggling, refugee influx, smuggling and insurgencies. The deadliest attack

on Indian soil occurred in the Pulwama attack in 2019 imposed severe pressure on these borders to detect illegal infiltration. Given the complexity of the terrain with the sea, marshes, glaciers, deserts and lands, patrolling the borders can be challenging (Saddiki 2018). By considering the ethnic ties of migrants with the native population, it is tough to measure illegal migration in India. Hence, it is uncontrollable (Chaudhary & Gosh 2020).

South Asia became the fertile ground for constant turmoils since the bilateral relationship between the countries is the product of historical experiences and nation-state building. This has inevitably made the region prone to the issues of the undefined status of social groups, unresolved border disputes and even terrorist insurgencies and separatist movements. The Cold war and the involvement of two global superpowers- the U.S. and the USSR- have accentuated the rivalry prevailing between India and Pakistan, thus creating enduring ripples in the entire South Asian region. Though the Soviet Union collapsed, the persistent external influence of the U.S. stirred permanent turbulence. The exceptional capacity for interstate conflicts within the region, coupled with the rise of religious fundamentalism, sectarian militancy and Ethnic antagonism nurtured by its inherent legacies, persuaded or forced people to move. In the context of tenuous democratic experiences between countries, recurrent tensions can result from the struggle to assert power in this region (Mohanty 2009). Such circumstances invariably invite people's mobility across the border, regardless of the motives. On the one hand, the same reason equips the state to be cautious enough to defend the inflow, while on the other hand, it upholds ambiguous responses towards refugees and illegal migrants (Bhattacharjee 2008).

Though the region is rich in its migrant/ refugee flow, no South Asian States except Afghanistan are signatories of international treaties such as the 1951 U.N. convention, 1967 U.N. protocol, 1954 convention relating to the status of stateless persons, and Cartagena declaration on refugees 1984. It contributes to a severe controversy that refuses stateless persons and illegal immigrants to be treated alike and subjected to the same vulnerabilities. Refugees in India are still under the darkness of rootlessness and deprivation, which has not been tackled due to the lack of uniform law (Chaudhary & Gosh 2020). In India, Refugees have been administered under an antiquated Foreigners Act 1946 equivocally encompassing tourists, refugees, and unauthorised migrants under the cover- of 'foreigner'. Besides, statutory documents neither define refugees nor distinguish them from illegal immigrants. Colouring all these conceptually different categories same is thus frequent in countries in this region (Bhattacharjee 2008).

Rejecting the Refugee convention (1951) and protocol (1967), the government of India defended by giving eight reasons that can be categorized into three. Firstly, both instruments did not sufficiently consider the mass influxes situations, thus only representing a partial regime. India was always hospitable to mass influxes from neighbouring countries and concurrently allowed the cases of individual entry of asylum seekers under the wings of UNHCR. It maintained an impression that the state's approach to the issue corresponded with international standards and humanitarian values despite being a signatory but kindling the ancient Indian philosophy and cultural prototypes. Secondly, the Refugee Convention and the protocol were largely criticized for not addressing the issues and conditions faced by developing countries, instead being essentially eurocentric. Developing countries, particularly in South Asia, experience an active economic migration which unequivocally comes under the same Indian laws that treat asylum seekers and illegal migrants. The third reason is that both instruments we discussed are ineffective on international burden sharing, state responsibility not to produce refugees and the rights and obligation of refugee-producing and refugee-receiving countries (Sarkar 2017).

In the contemporary political atmosphere, security is increasingly comprehended by social-cultural, environmental, demographic, ecological and technological aspects of the Trans-border influx that Chaudhary and Gosh identified as the 'monumental security threat'. Often the receiving country is concerned about whether movements are coercively engineered by the source country or impose severe pressure on foreign policy. Adding impoverished masses to the already deprived population of the host country can invite devastating effects. The abundance of undocumented immigrants leads to controversies since demographic strength is the driving force of democracy. Simultaneously, it is complicated to determine the sentiments of the population and officials towards refugees or immigrants since emotions like hostility or empathy constantly fluctuate (Chaudhary & Gosh 2020). Hence, the selling point of the Non/anti-refugee/asylum/undocumented immigrant perception is the fear of political insecurity that spread across India. The dread is attributable to the country's geopolitical location, vast porous borders, distress over the presence and infiltration of extremist groups, and past terrorist strikes. Under this scenario, national security is held as a topmost priority which the refugee stream can interrupt. According to Mahendra P Lama, the stream can threaten National security in South Asia in three ways.

- Strategic-level security (refugees are armed, and the government face challenges in controlling them)

- Structural-level security (Higher demands on resources and associated conflicts)

- Regime-level security (Refugee's access to domestic political processes pressurise the government) (Nair 2007).

Similar points are apparent in Jacobsen's (1996) work 'Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes';

- Strategic dimension (Defensive power of military towards external threats)

- Regime dimension (government capacity to protect from internal threats.)

- Structural dimension (balance between a state's population and its resource)

However, from a different perspective, a unified refugee protection framework and allocation of refugee status can remedy the existing anomalies to a certain extent. The inflow of ethnically connected refugees created great turmoil in India, especially after former Prime Minister Rajiv Gandhi's assassination, where the people indicted were recorded as asylum seekers from Srilanka. The ethnic connection between Tamils in India and Srilanka compelled the state to accept the stream of people and simultaneously made it prone to militancy and terrorism. Furthermore, the absence of distinction between illegal immigrants and refugees often creates resentment among the local population due to the addition of masses in enhancing cheap labour with a low wage rate, affecting the local economy. The discontent worsens when both secure humanitarian treatment from the government, even leading to civil strife (Nair 2007).

Ever since colonial rule ended, South Asia has witnessed the movement of people impacted by political instability, religious persecution, ethnic proximity and socio-economic opportunities. The decision to migrate is also susceptible to complex networks of ascribed identities such as caste, religion, ethnicity, and kinship that repeatedly redefine the borders. It is evident in history's vibrant attempts to reconstruct state boundaries based on communal ties. Since no South Asian state ratified international agreements, their act of granting refugee status often equates with generosity from a domestic perspective. The current making of this region and its politics is undeniably the result of two political partitions in history that divided its people and entirely rewritten the fabric of South Asia in every aspect. In 1947, the bifurcation of India and Pakistan violently parted the eastern and western territories of South Asia. With the outbreak of civil war in 1971 in initially East Pakistan-today's Bangladesh, people fled towards eastern and north-eastern India. The sudden rupturing of regional configuration and

political stability has resulted in the exodus of uprooted masses, making citizenship a breeding ground for distrust and suspicion (Chaudhary & Gosh 2020).

India's 4097 kilometres of border with Bangladesh is fenced only for a small portion leaving the remaining border porous for illegal migration to Assam and West Bengal. Most migrants cross the border as youth and spend a substantial lifetime in the host country. In the same way, India and Nepal share a 1900 km porous border by increasing accessibility to Uttar Pradesh, Bihar, West Bengal, and Sikkim. Strong familial links between its people shape the linkage between India and Nepal. As a result, both parties signed a bilateral peace and friendship treaty in 1950 that allowed free mobility across the open border for travel and employment. Such kind of authorisation is not available to any other border states.

During the last decades, Bangladeshi immigrants were perceived as a potential threat in the Northeast due to their overwhelming engagement in physical infrastructure. A large amount of Bangladesh immigrants forced India to form illegal migration determination by the tribunal act 1983, particularly applicable to Assam. As a result, those who settled before 1971 March 25 were given citizenship. However, the Supreme Court in 2005 ruled it unconstitutional to force them to prove their descendance (Sharma, Saraswati, Das & Sarna 2015). History repeated itself in 2019 when the government introduced National Citizenship Register (NRC), where immigrants' barriers and marginalisation were far from being addressed.

The ethnoreligious panorama of South Asia profoundly conditions the electoral politics and external-internal policies of the countries in this region. In Assam, the massive illegal influx and settlement built long-lasting tension that often manifests into ethnic conflicts. Fear of the dissolution of the ethnic-cultural identity of the local population and dread of the emergence of new pressure groups in politics creates a situation of paranoia. The winning parties in the recent Assembly election have succeeded in consolidating the ethnic groups in Assam against the immigrants, specifically against Muslims from Bangladesh. This approach being part of Assam's electoral politics since 1979. Both central and state governments had stood preaching cautiousness to illegal migration yet showed no spirit to implement the Assam Accord. The discontent from natives evident in the Illegal Migrants (Determination by Tribunal) Act (IMDT Act), 1983, with its puzzling provisions. Though brought by Congress Party, the act transformed immigrants into vote banks for the same party. Because of this favourable nature of the scenario, the prevailing government restrain itself from altering the status quo. This political agenda has been altered by the outstrip of the right wing in the political hegemony of

Assam. BJP upheld commitments to illegal migration and infiltration through claims for permanent border fencing, mass support, the National Citizenship Register (NRC), provisions of photo identity cards, and others. They attribute infiltration to acute poverty, more importantly, to planned population invasion. The religious composition of migrants and hosts polarised the political interests on such lines.

On the contrary, the Trinamool Congress and CPM in West Bengal have supported these migrants and mobilized the migrants' votes in the election. General S. K. Sinha Report, 1998, recognizes the function of economic factors and ethnic, religious and linguistic affinities in determining the illegal migration from Bangladesh by seldom avoiding the role played by political parties. The change in demographic composition concerning the resource base and the rise of Islamic fundamentalism in Bangladesh remains a significant concern (Ragi 2016). The disinterest in supporting a refugee law is associated with political actors' affinity to minority politics. Political parties exploit illegal immigrants' vulnerability into captive vote banks (Nair 2007).

Refugees and illegal migrants in South Asia include inflow from neighbouring countries and African and Middle Eastern regions. These refugees were either repatriated or accommodated into the country. In some cases, they have several decades of stay or get assimilated entirely into local communities. Pakistan witnessed a serious Afgan refugee inflow since the 1979 Soviet Union invasion, while Nepal has encountered Tibetans, Burmese, and Bhutanese refugees. Before 1989, Nepal refused entry of Tibetan Refugees and then modified its stance to provide for their smooth migration to India. The 1947 partition and subsequent bloodshed were the greatest refugee crisis in the history of the subcontinent, by which people were divided on communal lines into two separate nations. Bangladesh hosted 'Urdu Speaking Biharis refugees earlier but was challenged substantially by the Rohingya issue in Myanmar. India's position in the region;- democratic ideal, vast size, secularism, federal constitutional structure, porous borders, and better economic opportunities reinforce its reputation as a preferred choice of migration. At the same time, India's commitment to refugees or asylum seekers has been a political puppet show that favours some communities over the rest. India owns the most diversified host experience, including Tibetans accompanied by Dalai Lama 1959, Sri Lankan Tamils, Afghan Sikhs, Pakistan Hindus and Christians, Chakmas from Bangladesh, Rohingyan Muslims, African and Middle Eastern refugees, Chin refugees and so on (Louie Albert 2020). Apart from the migration in South Asia, there are increased reports on the smuggling of people outside the region. Pakistan is the front-runner in smuggling migrants

to Europe and gulf countries. The borders have infamy for human trafficking, especially targeting illegal women migrants (UNODC 2018).

India's geopolitical location with the expanded territory and several neighbouring countries, relative political stability and economic resurgence have posited it as the most preferred destination of these masses. Nevertheless, the enduring hostility of Indo-Pak has a limiting effect on people's movement across its border. On the other hand, India had a more amicable relationship with its eastern neighbours; Bangladesh, Bhutan, Nepal and Myanmar. The diverse characteristics of South Asia can perpetrate violence-induced migration, where the majority constantly targets the minority. The hostile Islamist fundamentalists in Bangladesh and Pakistan, Buddhists in Myanmar, and Bengali nationalists in Bangladesh have made minorities run for life. The partition along the religious lines still feeds into people's minds so that they are instilled with suspicions and prejudices long after the independence. Incidents of construction of the Kaptai Dam, religious persecution, and eviction of Buddhist Chakmas and Hindu Hajongs from the Chittagong Hill Tracts (CHT) in erstwhile eastern Pakistan in 1964 resulted in the subsequent most significant influx. Masses were displaced and rehabilitated in India. Settlement facilities have been provided in today's Arunachal Pradesh, whose state formation in 1987, tensions between indigenous populations have increased.

The native population perceives refugees as a mechanism to be marginalized politically and economically from their motherland. Even though the Indian state was accommodating towards the 1971 great exodus, the prolonged entry of undocumented migrants through eastern borders has reversed these tendencies. From 1978 onwards, strong anti-immigrant movements against Bangladeshi emerged, especially from native Assamese. These psychological divides, many years later, reshaped into a National Citizenship register NRC which unequivocally targeted Bangladeshi immigrants. It has resulted in disputes and tension in the Northeast, provoking nationwide political campaigns. The world's most persecuted minorities, Rohingyas, also sought refuge in India. United Nations High Commissioner for Refugees (UNHRC) confirms that over 6,324 Rohingya Muslims entered India between 1988 and 2001, out of which only 1,245 were granted UNHRC refugee status. Later, the Myanmar government was concerned about a rebel group, the Karen National Union (KNU) of Myanmar, among refugees in India who managed to cross the border. However, the Indian government started to dismiss its initial encouragement for Myanmarees to cross the boundaries. Two different notions nurtured this attitude change; fear of China's growing proximity with Myanmar and doubts about Myanmar's support to the North-East insurgency. Insurgencies in India's Northeast are

permanently assigned to cross-border linkages and redeemed to be complicated. Even though things have improved after the 1990s, the initial sentiments were not settled (Chaudhary & Gosh 2020).

Whether enough resources are available to support and sustain the added masses to a vast population base in the country forms a primary concern. The question of local absorption capacity, the willingness of the local community to assimilate, is equally important, like the balance between demand and supply of physical infrastructure and resources. Social receptiveness is highly doubtful while assimilating large masses into a country, considering the lingering sentiments, politics and historical experiences. The host populations' beliefs and attitudes towards outsiders and the potential permanence of migrants in the region can complicate and culminate in adverse outcomes (Jacobsen 1996). Apart from the bilateral relationships with the source country, international events were also crucial in impacting policy outcomes directly or indirectly.

In contemporary South Asia, cross-border migration is one of the significant sources of interstate conflicts, and governments often attempt to influence the exit policies of their neighbours to control the migration streams. Instances of diplomatic pressurising on the sending country, armed intervention, border clashes, and violent attacks by the local elites of the receiving country are thus conspicuous (Raj 2020).

UNHCR is the single institutionalised body committed to facilitating all refugee assistance in South Asia. Neither the regional mechanism at SAARC nor the states' policy account for such influxes. Instead, refugee issues were dealt with archaic Acts and political ad hocism without commitment to international treaties and conventions. In this state of ambivalence and with no distinction between different categories of non-citizens, a refugee is detained as an illegal migrant until his/her status is determined officially (Louie Albert 2020). While India possesses a stellar record of uprooted people in its territory, it was held inadequate to form a refugee policy in India. Over the last decade, the debate on asylum/refugee law has been a tug-of-war between humanitarian interests and political agendas. However, serious advancement has yet to be delivered towards a uniform law serving the refugee population in India, except for the Asylum bill introduced in the parliament in 2015 (Bhattacharjee 2008). The lack of a consolidated legal framework in India, notwithstanding the massive perpetual influx, has been justified by the cultural prototypes as a host/ welcoming nation over the years. The Indian state continues to attract stateless people with minor legal procedures in South Asia.

Hence, the state could not ignore the responsibility towards the stateless and those who settled in India for a prolonged period, even if it hesitates (Nair 2007).

The Model National Law on Refugees (MNLR), drafted in 1997, is closest to India's first attempt towards refugee protection. It was only in 2015 that the three consecutive attempts, namely the Asylum Bill, the National Asylum Bill, and the Protection of Refugees and Asylum Seekers Bill, were introduced in Loksabha, yet effaced before the blaze. All three bills were private members' bills, introduced by Members of Parliament Dr Shashi Tharoor, Feroze Varun Gandhi, and Rabindra Kumar Jena, respectively, with no involvement of the ministry concerned. As mentioned earlier, the eighteen years from MNLR to the three bills were completely inert in catering commitment to the refugee framework. Though the bills deal with different provisions, the basic structure includes the principle of non-refoulment, a status determination procedure, an appeal procedure, rights and obligations of refugees and the mass influx situation. India requires a consistent and non-discriminatory legal framework corresponding to evolving international protection standards (Sarkar 2017).

India has been dubiously placed amidst international communities since it deviated from acknowledging the U.N. regulations about refugee protection, especially the 1951 Refugee convention and 1967 Refugee protocol. It has been discarded, insisting that those convents were Eurocentric, hardly incorporating the status of developing countries. In India, an initial effort towards defining refugees was the Justice P N Bhagwati Commission in 1997 which endeavoured to perceive the term on a criterion with modern law (Bhattacharjee 2008). As against these criticisms, the absence of a refugee policy is often justified on the premise that India's approach hitherto corresponds with international standards. The spirit of the Indian constitution protects the human rights of any person residing within the territory of India, whether a refugee, migrant, or citizen. All fundamental rights, including the Right to Equality-Article 14, the Right to Life and Dignity-Article 21, the Right to practice and propagate religion-Article 25, and the principle of non-refoulment were guaranteed and protected with an extensive judicial interpretation of the constitution.

At the same time, inspecting an asylum seeker or the community in the light of the Foreigners Act 1939, the Foreigners Act 1946, and the Foreigners Order 1948 Is not appreciatable or compatible either. Instead, it invites contrasting outcomes where the government derives immense authority to restrict opportunities and refoul any no-citizen entering India without the proper authorisation. Though the Refugee Convention inhibited those

tendencies, the empirical realities show a different picture. Conferring the rights and privileges of refugees is a group-specific affair that attacks the Constitution's pillars. Tibetan, Chin, Jumma and Chakma, Sri Lankan-Tamil refugees, were granted special treatment from the state, putting India's secular face into question (Nair 2007).

Following the Delhi High Court's judicial decision in 2010, the Election Commission of India, in 2013, enthusiastically declared that Tibetan refugees born in India between January 26, 1950, and July 1, 1987, could cast their vote in India. This decision is exclusively enjoyed by Tibetan refugees, not a single other community. Similarly, a person from a minority community from Pakistan and Bangladesh who entered India on or before December 31, 2014, was exempted from various provisions and rules of the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920 (Sarkar 2017).

As a commitment to numerous other global treaties such as the U.N. Deceleration on Territorial Asylum (1967), the Universal Declaration of Human Rights, membership in the Executive Committee (ExCom) of the UNHCR, two parallel agencies manage to issue refugee status in India; the Indian government and UNHCR. The government inclined more towards certain refugees from specific countries, leaving a considerable responsibility to assist other refugees (Burmese, Afghan, Iranian, Somalian, Sudanese and Iraqi) to UNHCR, which has only restricted access. Since the authority of decision-making vested in the Indian government may not correspond with the interests of international organisations and donor countries, the government control over administrative arrangements can often restrict the UNHCR's role and trouble their purposes. A UNHCR cardholder is not acknowledged by the Indian government as a refugee and hence denied national and regional assistance. Possession of a UNHCR refugee status card may help access the benefit of UNHCR services, yet, in the lens of the nation, they are undocumented immigrants staying in the territory without any refugee status. This ambiguity has resulted in extreme disparities in assistance and protection for refugees, and without a common law, non-citizens are subjected to arbitrary government policies.

Furthermore, the inconsistencies in the treatment of refugees restrain them from work permits and subsistence opportunities. It would force them to the bottom of the informal sector, where they encounter constant abuses. These communities and individuals were handled more along the lines of illegal immigrants. Alternatively, specific groups which are well-assimilated to local communities, for instance, Chin refugees in Mizoram, due to their ethnic and cultural similarities, are often left out of interventions of UNHCR and the Indian government

(Bhattacharjee, 2008). The policymakers in India should exploit UNHCR's role in pursuing a national legal framework for refugees as a remedy to the existing cleavage. Such a fabric should include these multiple scenarios and must recognise the interplay of ad hoc administrative practices with legal frameworks. The National Human Rights Commission (NHRC) has launched several ventures to support this course yet has yet to succeed in reassuring it.

Bilateral relations with the source country and national defence concerns simultaneously determine the treatment of asylum seekers. Likewise, the inflow of people can still redefine these mutual relations between India and the country of origin. Amidst these considerations and diverse agreements with neighbouring countries, the state acts reluctant to aim for a uniform refugee law promulgated as politically nonviable. The judicial system should govern refugee status and protection rather than sporadic political-administrative gestures, and the latter could aid the former. Without a law, full autonomy is granted to the government, and India cannot further manage the situation without legislation since its non-citizen base has enlarged considerably. Therefore, the people must be safeguarded from hesitancy and inconclusiveness with respect to humanitarian values and international standards (Nair 2007).

Amidst these concerns, India was appraised of handling matters with the principle enshrined in the constitution. Nevertheless, how far they were met is a serious question. Supreme Court verdict on De Raedt vs Union of India and State of Arunachal Pradesh vs KhudiramChakma ensure foreigners' protection of rights entitled in article 21. In several cases, India has protected non-refoulment and non-deportation principles and advised them to have UNHCR status. Guwahati High court has given this right to those asylum seekers who entered illegally in Myat Kayew and Nayzan vs State of Manipur Civil Rule No. 516 of 1991.

Similarly, the judicial system also acknowledges the right to leave the country and the right to have an exit permit for those whose cases are pending illegal entry (Nuang Maung My Nyant vs government of India 1998) (Bhattacharjee 2008). Until recently, the refugees were protected under the principle of non-refoulment, and now it is not the case. After Rohingya Muslims were added to the population, India witnessed fierce panic; multiple reports surfaced on the arrest and detention of over 300 Rohingyas. The most persecuted and impoverished minority in the world was detained for violation of legislation such as the Foreigners Act 1946 and the Passports (Entry into India) Act 1929. In the recent judgment, the Mohammed Salimullah v. Union of India case, the Supreme court ordered deportation in defiance of the principle of non-refoulment (Nair & Chinnappa 2021).

The fastest enactment of the Citizenship (Amendment) Act (CAA), 2019 after 1955, was another slap in the face of refugee protection. As a result, India assured citizenship to minority communities fleeing from Bangladesh, Afghanistan, and Pakistan. It is conspicuous that it is not applied to neighbouring countries that have Muslims as minorities in the population. Citizenship was offered to Hindus, Parsis, Buddhists, Sikhs, Jains, and Christians but ignored minority Muslim sects within Muslim-majority countries who have been facing religious persecution for a prolonged time. Subsequently, North-eastern states implemented the National Citizenship register, a related election proclamation of the current ruling party. Despite nationwide protests and campaigns, it instructs people to prove their descendants based on printed evidence. It has rendered a considerable portion of the population stateless and increased the risk of abuse and persecution, where UNHCR has restricted access (Raj 2020).

India must adopt a more effective channel of communication with source countries considering the eventual return of refugees and foster a trust-based approach. Promoting cross-border kinship and community ties would be an excellent stand to maintain border ties. South Asia is known for its vibrant labour migration too. Economic aspects of migration do not fall under the current purview of international refugee protection. This could lead to added disadvantages for those who transcend the border. The host country could perceive such movements as voluntary, routine and even "unnecessary" and take necessary actions (Chaudhary & Gosh 2020). Efficiency can regulate cross-border migration with a standard protocol, secure database, and refugee management system. An effective security database enables the system in two ways. Firstly, it would check the insurgencies and infiltration on the border. Secondly, it will prevent non-eligible individuals from acquiring refugee status (Nair 2007).

CONCLUSION

The movement of people across South Asia has a rich history which acquired political meaning after the development of nations with rigid boundaries. Considering the interwoven histories and tension between countries, migrations that transcend boundaries in South Asia are abundant in their scope for enquiry. Over the last half-century, the region has witnessed massive refugee crises owing to various religious causes and political processes. At the same time, past ties of ethnicity, kinship and cultural ties in this region, once united before the emergence of sovereign states, have naturalized these movements across the border for a prolonged period. Even if the influx of people is a recurrent issue, governments treat people without a proper legal

framework. Without a legal framework, the people cut across national boundaries without authorization, subjected to suspicions and violence alike.

The ambiguity regarding the undocumented migrants that necessitate the state to treat all categories of cross-border migration to be treated alike is neither an enduring solution nor pertinent. The borders are the active grounds of refugee streams, economic migration, infiltrations and smuggling, for which South Asia has a peculiar vibrancy. Thus, not distinguishing between the types of inflows is to do more harm than being dormant. One thing to be sure about is that the internal and external factors that shaped the state's current approach to undocumented migrants are undoubtedly derived from historical experiences and the region's politics.

Nonetheless, contemporary India requires an active commitment to refugee protection, from which the state can no longer linger away. Firstly, as a focal point of mass influxes in South Asia, India already possesses a substantial portion of refugees in its population. The nation will continue to attract new streams of migrants due to its geographical, economic and political charm in the region. The state cannot ignore the welfare of people added to it in the shades of security concerns. Secondly, the condition of refugees in the country is unpleasant and substandard. The refugee experiences itself ambivalent since they are subjected to ad hoc administrative and political measures. Any nation dedicated to the modern welfare state ideals and striving to reposition as a global player must handle the issue with utmost seriousness. At this point, no South Asian country has a system or the spirit to address the dilemma of refugee protection. The best way to encourage India to achieve this goal is to provide it with the prospects of transforming the nation in its approach to refugees. As geopolitical power in South Asia, India can negotiate its relationship with neighbouring countries without compromising its ties with the countries and the well-being of asylum seekers. In this way, the nation can also transform the concerned population as a country's resource.

While Envisioning a refugee law in India should incorporate the instances of mass influx situations and individual entries into consideration. The first step is to distinguish the categories of cross-border migration and undocumented migrants instead of homogenizing all. It would help the country efficiently monitor security concerns with a coherent refugee identification system. The role of NHRC and UNHCR must sufficiently be explored to ensure the goals. The provision of law must identify discrimination towards different refugee communities and

consider the exceptionality of India's refugee experiences. In short, the state must review its conduct and stand over the years to gain new insights into the topic.

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