



THE REFUGEE PROBLEM OF INDIA

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(Mains GS 2 & 3: India and its neighborhood- relations & Security challenges and their management in border areas - linkages of organized crime with terrorism.)

Context:

The unfolding tragedy in Myanmar, occasioned by the military overturning the election results, portends a new cycle of political repression, humanitarian disaster and geopolitical instability.

The current plight of the Myanmar people has been preceded by that of another group of Myanmar people, the Rohingya.

Appropriate legal and institutional measures are required:

- The debate was again dominated by the concerns of Citizenship (Amendment) Act, 2019 and its impact on those seeking refuge in India.
- New refugees would not be benefited by the law since the cut-off year of the CAA is 2014.
- It is evident now that refugee flows to India are unlikely to end any time soon given the geopolitical, economic, ethnic and religious contexts of the region.
- Therefore, an urgent need today is to clinically address the issue of refugee protection in India and put in place appropriate legal and institutional measures.

Refugees versus immigrants:

- India has emphatically argued over time that illegal immigration from the neighbouring countries to India must come to an end.
- The illegal immigration is a threat to the socio-political fabric of any country, including India, with potential security implications.

- However , in this growing debate about the sources and implications of illegal immigration into the country, the issue of refugees tends to get subsumed under it.
- This impacts justice to the helpless people fleeing from persecution at home.
- The debate in India is about the illegal immigrants, not refugees, hence two categories tend to get bunched together.
- And because we have jumbled up the two issues over time, our policies and remedies to deal with these issues suffer from a lack of clarity as well as policy utility.

Ambiguity in the framework:

- The main reason why our policies towards illegal immigrants and refugees is confused is because as per Indian law, both categories of people are viewed as one and the same and are covered under the Foreigners Act, 1946
- Foreigners Act, 1946 offers a simple definition of a foreigner i.e. “foreigner” means “a person who is not a citizen of India”.
- However, there are fundamental differences between illegal immigrants and refugees, but India is legally ill-equipped to deal with them separately due to a lack of legal provisions.
- India is also not a party to the 1951 Refugee Convention and its 1967 Protocol, the key legal documents pertaining to refugee protection.

Absence of legal framework leads to policy ambiguity:

- The absence of a legal framework also leads to policy ambiguity whereby India’s refugee policy is guided primarily by ad hocism which has its own ‘political utility’.
- Ad hoc measures enable the government to pick and choose ‘what kind’ of refugees it wants to admit for whatever political or geopolitical reasons, and what kind of refugees it wants to avoid giving shelter.
- At the same time, the absence of a legal framework increases the possibility of the domestic politicisation of refugee protection and complicates its geopolitical faultlines.
- The absence of a clearly laid down refugee protection law also opens the door for geopolitical considerations while deciding to admit refugees or not.
- In the recent case of Myanmarese refugees fleeing to India for protection from the junta at home.
- India's concern is that if it takes a decision that irks the Generals in Naypyitaw, Beijing would get closer to the junta and use the opportunity to hurt India’s interests in Myanmar.

- However, if India had a domestic legislation regarding refugees, despite not being a signatory to the relevant international conventions, it could have tempered the expectations of the junta to return the fleeing Myanmarrese.

Legal, moral complexities:

- India has had a stellar record on the issue of refugee protection, a moral tradition that has now come under great stress.
- India has been one of the largest recipients of refugees in the world in spite of not being a party to the 1951 Refugee Convention and its 1967 Protocol
- Whether or not India should be a party to these international legal instruments has been a matter of some debate in the country.
- A proper interpretation of the text of the 1951 Convention and the less-than-perfect western practice of refugee protection could lead to converge opinions at one point.
- A country like India, given its track record of refugee protection as well as a vulnerable geopolitical and socio-economic situation, need not unreservedly accede to the convention and the protocol in the way they currently stand.

Why India not joining 1951 Refugee Convention and its 1967 Protocol:

Economic rights excluded:

- The definition of refugees in the 1951 convention only pertains to the violation of civil and political rights, but not economic rights, of individuals, for instance.
- Thus a person, under the definition of the convention, could be considered if he/she is deprived of political rights, but not if he/she is deprived of economic rights.
- If the violation of economic rights were to be included in the definition of a refugee, it would clearly pose a major burden on the developed world.
- However, this argument, if used in the South Asian context, could be a problematic proposition for India too.
- The West's lopsided obsession with civil and political rights at the cost of economic rights is a convenient excuse with little moral backing.

Conveniently use of convention by western world:

- India should not accede to the 1951 convention as developed countries are violating it in both letter and spirit.
- According to some scholars, India should argue that their accession is conditional on the Western States rolling back the (no entry) regime they have established over the past two decades.

- The non-entrée regime is constituted by a range of legal and administrative measures that include visa restrictions, carrier sanctions, interdictions, third safe-country rule, restrictive interpretations of the definition of ‘refugee’
- This no entree regime also resulted in withdrawal of social welfare benefits to asylum seekers, and widespread practices of detention.
- Thus, India must use its exemplary history of refugee protection to begin a global conversation on the issue.

New domestic law needed:

- India has a refugee problem and the accession to the refugee convention, in the manner it exists today, is neither desirable nor pragmatic.
- Thus response to the refugee situation lies in a new domestic law aimed at refugees. The CAA alone is not the answer to this problem primarily because of its exclusionary nature.
- It is morally untenable to have a discriminatory law to address the concerns of refugees who are fleeing their home country due to such discrimination in the first place.
- More fundamentally the CAA is an act for refugee avoidance, not refugee protection.
- What is perhaps equally important is that new domestic refugee law should allow for temporary shelter and work permit for refugees.
- This is crucial because in the absence of proper legal measures, refugee documentation, and work permit, refugees may end up becoming illegal immigrants using illicit means.

Conclusion:

- The absence of a refugee law incentivises illegal immigration into the country.
- Thus India needs to make a distinction between temporary migrant workers, illegal immigrants and refugees and deal with each of them differently through proper legal and institutional mechanisms.
- Our traditional practice of managing these issues with ambiguity and political expediency has become deeply counterproductive: It neither protects the refugees nor helps stop illegal immigration into the country.

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