



Original Article

# The Hospitality Paradox in South Asia: A Critical Study of the Management and Protection of Rights of the Refugees in the Region

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**Manuscript ID:**

IBMIIRJ -2026-030403

**Submitted:** 10 Mar. 2026

**Revised:** 17 Mar. 2026

**Accepted:** 08 Apr. 2026

**Published:** 30 Apr. 2026

ISSN: 3065-7857

Volume-3

Issue-4

Pp. 10-13

April 2026

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Quick Response Code:



Web: <https://ibrj.us>



DOI: 10.5281/zenodo.20665397

DOI Link:

<https://doi.org/10.5281/zenodo.20665397>



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**Abstract**

The South Asian states represents the hospitality paradox in the context of management and protection of rights of the refugees because on one hand the region hosting a large number of refugees but on the other hand the region is neither signatory to the United Nations Convention and Protocol Relating to the Status of Refugees, which is a principle legal framework protecting rights of refugees and managing refugees worldwide nor have any refugee specific legislation to protect rights of the refugees. The region represents the visible tension between the unique cultural traditions of hospitality towards displaced people within and outside the region yet, the hospitality co-exist with restrictions, securitization and discriminatory treatments in the absence of global, regional or domestic legal guarantee of rights for the refugees.

**Keywords:** Refugees, Asylum Seekers, Repatriation, Human Rights, Persecution, Ethnicity, Equality, Peace, Insurgency, Statelessness, Genocide

**Introduction**

Refugee issue is one of the complex and persistent challenge in International Relations, International Law and global theory and practice of Human Rights. The liberal conception of human rights which is based on the individual centric argues that there exists an indivisible humanity and therefore the responsibilities of the state goes beyond the territorial state to reduce sufferings or promoting welfare of the strangers in cases of willingness and ability to contribute. and Refugees are technically speaking one of the categories of the forceful displacement of population. People are forced to flee from their home states and take refuge in the host states for various reasons including gross human rights abuse, fear of persecution on the grounds of race, religion, nationality, membership to a social group or holding a particular political opinion, terrorism, armed insurgency and even on natural calamities also contributes to a huge number of displacement around the world.<sup>i</sup>

South Asia is organized politically in a very diverse manner with liberal democratic ideas and institutions along with ideals of social justice politically making India a largest democracy in the world to authoritarian variants governing different societies. Its complex in terms of diverse factors making these societies differently organized politically yet share commonalities in terms of issues and opportunities such as poverty, unemployment, lack of technological advancement, agrarian economies, and crime against women, health, sanitation, and gender sensitization and so on. South Asia is a unique region when it comes to the refugee management and protection of their rights because none of the South Asian states are signatories to the refugee convention which is a principle legal framework dealing with the refugee management and protection of their rights at the global level. These states deal with the refugee flows on the case basis and administered by either through bilateral agreement, ad-hoc arrangements or domestic legal frameworks and so on.<sup>ii</sup>

South Asia is a home of approximately 2 billion population which is almost equivalent to not less than twenty per cent of the total population of the world with enormous diversity in terms of culture, political order, languages, geographical conditions, scientific development and economic growth but is also a common region in the world where fourth largest displaced people are residing. Majority of the South Asian population is living under extreme poverty with relatively lower standards of living. South Asia has a long history of displacement of population due to reasons of colonial legacies, wars, civil wars, natural calamities and other instances of persecution forced millions of people flee and take shelter outside the home state.

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**How to cite this article:**

Vegad, P. (2026). *The Hospitality Paradox in South Asia: A Critical Study of the Management and Protection of Rights of the Refugees in the Region*. InSight Bulletin: A Multidisciplinary Interlink International Research Journal, 3(4), 10–13. <https://doi.org/10.5281/zenodo.20665397>

Historical context is one of the major factor forced millions of people displaced particularly due to partition of India and Pakistan which forced an estimated 10 million people from both the state. Millions of Muslim, Sikhs and Hindus fled relatively religious persecution which marked partition of British India as one of the most unfortunate event of the Post World War-II international relations.<sup>iii</sup>

The South Asia is an India centric region because of India's stature as an economic prowess, political influence, defence capabilities, and technological advancement makes the region centered on the Indian state. Apart from the partition of British India related displacement there are seven major categories of refugees are given shelter in India. These are Tibetan refugees, Sri Lankan Tamil refugees, Rohingya refugees from Myanmar state, Afghan refugees, Chakma and Hajong Refugees from Bangladesh (the then East Pakistan), Somali and African refugees and Burmese (Chin) refugees from the Myanmar and so on. The Islamic Republic of Pakistan hosts Afghan refugees, Rohingya refugees, Bengali refugees (1971), Bihari refugees (Stranded Pakistanis), Tajik refugees, Uzbek refugees, Iranian refugees, Kurdish refugees, and Syrian refugees and Somali refugees and so on. Bangladesh primarily hosts Rohingya refugees, Bihari refugees, (Stranded Pakistanis), Afghan refugees, Sri Lankan Tamil refugees, and Chakma refugees (from India) and so on. The Himalayan Kingdom of Nepal hosts Tibetan refugees, Bhutanese refugees (Lhotshampa), Rohingya refugees, Afghan refugees and Pakistani refugees. Sri Lanka hosts Rohingya refugees, Palestinian refugees and Afghan refugees and Tamil refugees (from India, returning or resettled).<sup>iv</sup>

### **The Paradox of Hospitality in South Asia**

The South Asia is one unique example of historically receiving region yet not there is an absence of legal guarantee of protection of rights for the refugees. The major states of the region except Afghanistan are not signatories to the refugee convention and therefore legally not bound to uphold international refugee laws which guarantee basic rights. In fact, none of the states of the region have domestic refugee law either and therefore, the region manages the refugee flows on case to case basis which make it convenient for states to selectively allow certain refugee groups or deport or restrict entry of others. The absence of domestic refugee law makes it a penalized offence to enter in these states without prior permission which violates the 'non-refoulement, non-discrimination and non-penalization principles which are foundational to the international refugee management and protection of rights.'<sup>vi</sup>

Refugee protection in South Asia is beyond political and legal issues; it is undoubtedly one of the pressing moral issues. These South Asian states have made complex choices and might have to make in the wake of complex political, social and economic circumstances. The management and protection of the rights of refugees face unique moral and ideological dilemmas in the region, which are about competing interests of different states and ethical responsibilities to political realities. The detailed scrutiny suggests that these South Asian states need to respond to complex moral and ideological dilemmas such as humanitarian responsibilities versus national security, international collective responsibilities versus state sovereignty, political expediency versus legal recognition, ethical responsibilities versus resource constraints, permanent solutions versus temporary aid, political alliances versus Non-Refoulement, universal refugee rights versus religious and ethnic biases, political manipulation versus humanitarian aid, traditional refugees versus climate refugees and refugee need versus host countries rights and so on. Policymakers and societies in South Asia have a tough road ahead because of these regional complexities regarding the management and protection of the rights of refugees.<sup>vii</sup>

The forceful displacement of the population in South Asia is primarily caused by the armed conflicts in states like India, Sri Lanka and Afghanistan, political instability, persecution on the grounds of ethnicity and religion, displacement due to industrial projects and other developmental projects, natural calamities and other forms of natural disasters and state action, state policies of repressive in nature and inter-state disputes over border and statelessness and so on. These factors are mainly responsible for the forceful displacement of the population, including displacement within and outside of the state's territory. The South Asian region is the home of millions of people, not less than 1.9 billion, and widespread displacement requires attention. However, for various reasons, the states of South Asia, except for Afghanistan, are not signatories to the refugee convention. These states do not have refugee legislation at the domestic level, making it difficult for the region to accommodate and protect the rights of the refugees in these states.<sup>viii</sup>

The South Asian states have witnessed the refugee flows from within and outside of the region and accommodated refugees within and outside of the region. Since the transformation of political power from the colonial entities to the native people in South Asia, the region has witnessed multiple refugee flows due to reasons of war, conflicts, armed insurgency, human rights abuse, natural calamities and so on.<sup>ix</sup>

It may be said that the nature of management and protection of rights of refugees are shaped by historical experiences, regional dynamics and political considerations rather than global standards. The South Asian states being non signatories to the refugee convention of 1951 suggest an alternative refugee management system at the domestic levels interestingly without refugee legislations or concrete refugee policies in each state. Usually forcefully displaced people entering these states as illegal immigrants without any legal status and unlike other regions of the world there is also an absence of regional framework regarding the protection of rights of refugees. There is also excessive politicization of the refugee protection where certain states grants refuge to some categories based on political considerations. Therefore the protection of refugee is temporary and unstable. Each and every state has unique reasoning about the being non-signatories to the refugee convention and historically produced and received huge numbers of refugees. In fact, these all states are signatories to number of legal instruments of International Humanitarian Laws (IHL) which is one of the major instruments of the protection of refugee rights not directly but in different capacities.

These South Asian states are not only non-signatories to the principle international legal frameworks such as the refugee convention but there are also no domestic legislation specific to the refugee management and rights of the refugees and also lack the effective regional framework which may define refugee specific to the needs of the region and include categories of persecution other than race, religion, nationality, membership to the social group or political option to displacement due to the natural calamities and other grounds. The South Asian states are a historically refugee receiving and producing but refugee management and protection of rights becomes an arena beyond the legality due to variety of reasons.<sup>x</sup>

What does this policy vacuum imply? There is no doubt about the humanitarianism of these states in hosting refugees selectively but without a legal guarantee of the rights of refugees. Any category of refugees mentioned above does not have any legal status in any of the host states of South Asia because of a lack of legal terms, and these refugees are managed by administrative measures, executive policies and judicial measures; therefore, there is no uniformity of status and degree of rights of any categories of refugees residing in any part of South Asia. The state of Afghanistan ratified the refugee convention after the decline of Taliban rule. However, the state is more of a refugee-sending state. After the downfall of the democratic political order

and the arrival of the Taliban back to power after the withdrawal of the United States of America, there is ambiguity about the status of signatory status. Besides, the newly established political order is facing serious issues of external recognition, and therefore, the exception of Afghanistan in this regard does not count.

South Asian states are not signatories to the principal international refugee law for variety of reasons. These states have not officially cited these reasons but the careful study of the conduct of these suggests that there are many relatively legitimate reasons why these states are not signatories to the refugee convention. These reasons includes the dilemma between the national interest and the state sovereignty, regional security concerns, economic and resource constraints, alternative legal frameworks and ad-hoc policies, political considerations and bilateral relations and lack of regional consensus.

The flexible and ad-hoc approach to the management and protection of rights of refugee is derived on the assumption that these states might lose the capability to border control and migration policies because of the legally binding nature of the international refugee laws. The border control and migration policies need to have unique considerations in the region because of the complex socio-economic and political landscape and legally binding nature of international law prevents these states to have autonomy the decision making in this regard. Secondly, there are serious concerns over the regional security because the region has historically experienced conflicts and the political upheavals leading to the mass displacement of the population such as the Partition of British India, the Bangladesh Liberation War, and displacement of Rohingya refugees from Myanmar to different South Asian states and so on. There are potential security risks in the region by granting refuge in the region which may cause terrorism, ethnic tensions, cross border insurgencies and so on. Perhaps security concerns are the major reasons why the non-signatory status of these states is justified to certain extent.<sup>xi</sup>

The resource constraints are one of the fundamental reasons behind the non signatory status of South Asian states to the refugee convention. There is high degree of poverty, unemployment; lack of technological advancement, illiteracy and resource constraints restricts these states to host large number of refugees. These are either middle income or lower income states and might not be in a position to bear the burden of the refugee population because of the already overstretched economic and social infrastructure. In the absence of the provisions of the burden sharing responsibilities in the international refugee laws these South Asian states are unable to provide for refugee to certain extent. However, these states have already hosted large number of refugees historically with the help of the support from the government, NGOs and international donations.

South Asian states often face political pressure while handling the forceful displacement of population in the region notably concerning their relations with the neighbouring states. There is lack of regional consensus unlike other regions such as Europe, Africa where due to unique conditions regional frameworks are institutionalized to protect the rights of the refugees. South Asia lacks that consensus and therefore there is absence of any regional arrangements to manage and protect rights of the displaced.

South Asian states not only non-signatories to the refugee convention but also lack the national legislation to protect rights of the refugees. Besides, there is no regional consensus either to manage or protect the rights of the displaced. In this case these states have unique approach to address the refugee crisis. It is worth noticing that the South Asian states are historically refugee receiving countries but the protection of refugees in South Asian states are governed by the alternative refugee management approaches which include ad-hoc administrative policies, judicial interventions, UNHCR and international partnerships, regional and bilateral diplomacy and encampment and containment strategies. There are multiple challenges to this alternative approaches such as lack of legal certainty, inconsistent policies, human rights concerns and regional instability. There is a growing need of the structured refugee policies in the region by strengthening the legal frameworks, enhancing the international cooperation and addressing the human rights concerns could possibly improve the management and protection of rights of the refugees in the region.

## **Conclusion**

The above study suggests that there are certain policy prescriptions are essential for the efficient management and protection of rights of refugees in South Asia. These policy prescriptions includes the need for the regional framework dealing with the management and protection of refugee rights, national refugee legislations, diplomatic efforts for repatriation and resettlement, strengthening humanitarian assistance and infrastructure, social integration programmes, bilateral agreements among the South Asian states and last but not the least addressing the root causes of the forceful displacement can be some effective instruments through which the issues of the displaced can be managed not to be resolves completely as realists suggests.

First, the regional framework specific to the refugee management and protection of rights can be very effective instrument as majority of the regions of the world are managing refugees through the regional framework by alternatively defining the refugees and addressing region specific demands to the forceful displacement of the population. The regional framework can be important for the reasons of ensuring legal protection, burden-sharing responsibilities, enhancing security and stability in the region and strengthening the diplomatic cooperation. However, there are complexities which may hinder the progress in this regard may include political sensitivities, resource constraints, lack of consensus and security concerns to be considered some the important challenges in the way of effective implementation of the regional framework dealing with the refugee issues in the region.

Secondly, South Asian states are not only non-signatories to the principle international refugee law but also lack the refugee specific legislation at the domestic levels. These legislations can be an important tool in the legal recognition of refugees, granting legal rights and responsibilities to the concerned agencies of the state to efficiently manage the forceful population movements in the given state, social and cultural integration, streamlining refugee management and so on. Thirdly, the improved living conditions economic integration through better camps and infrastructure, work rights and livelihood programmes and access to the education can be important to ensure long term integration of the forcefully displaced people in the host states and even addressing the security concerns by preventing the radicalization. And lastly, strengthening the partnership with the international bodies dealing with the management and protection of rights of refugees such as UNHCR and other international organizations could facilitate global aid to provide for the forcefully displaced populations in the region along with addressing the root causes of forceful displacement of population in each category of the forceful displacements.

## **Acknowledgment**

I express my sincere gratitude to all those who directly and indirectly contributed to the completion of this research paper titled "*The Hospitality Paradox in South Asia: A Critical Study of the Management and Protection of Rights of the Refugees in the Region.*"

I am deeply thankful to my colleagues, academic mentors, and well-wishers for their valuable guidance, encouragement, and constructive suggestions throughout the course of this study. Their intellectual support and insightful discussions greatly enriched the quality of this work.

**Financial support and sponsorship**

Nil.

**Conflicts of interest**

The authors declare that there are no conflicts of interest regarding the publication of this paper.

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