

Unwanted and Uprooted

**A Political Study of Migrants, Refugees,
Stateless and Displaced of South Asia**

Partha S. Ghosh

Unwanted and Uprooted

A Political Study of Migrants, Refugees,
Stateless and Displaced of South Asia

Partha S. Ghosh



SAMSKRITI

SAMSKRITI
C-9020, Vasant Kunj, New Delhi-110070

© Author, 2004
ISBN 81-87374-26-8

All rights reserved. No part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, without the prior written permission of the publisher.

Typeset by Vaibhav Graphics, New Delhi
Printed at Shivam Offset Press, New Delhi
Published by M. Sengupta for Samskr̥iti, New Delhi

Dedicated
to
Bhabani Sen Gupta,
who told me decades ago:
There is no substitute for hard work, and
Do not give excuses for your failures.
Never since, have I looked back.

Preface

In the Autumn of 2000, under the NERC-NEHU (North-Eastern Regional Council of the Indian Council of Social Science Research and the North-Eastern Hill University, Shillong) Lecture Series, I delivered a set of three lectures on the theme: 'Cross-Border Migrations and Regional Security in South Asia.' Those lectures were subsequently published by the NEHU under the title: *Migrants and Refugees in South Asia: Political and Security Dimensions* (Shillong: North Eastern Hill University Publications, 2001). The present volume is a revised and enlarged version of that work with the addition of two altogether new chapters and a discussion on the Internally Displaced Persons (IDPs).

The history of movement of people from one place to another is as old as the history of mankind. It is as much a natural phenomenon as birds nesting from tree to tree or animals demarcating their territories from place to place. Even after the creation of modern nation states in the eighteenth and nineteenth centuries, with their defined borders, people continued to move from one country to another as a matter of course. Since there was hardly any organized protest from the host countries the problem of refugees, migrants, stateless and displaced persons, which we hear so often these days, was unheard of then.

In the nineteenth and twentieth centuries, millions of Europeans moved to the Americas, Australia, New Zealand and South Africa. Between 1846 and 1880, on an average 377,000 Europeans emigrated per annum. Between 1891 and 1910 the numbers reached 911,000 a year, so that between 1846 and 1930, over 50,000,000 people from Europe had left their homes to settle in another continent. The problem of the integration of migrants into the host societies started only when ethnic diversities became sharp and modern developmental processes made the possibility of social assimilation more difficult. Developmental logic legitimized organized human endeavours to tame the nature for unrestricted exploitation by man, which naturally made conflicts over resources more acute. In such situations, making 'aliens' the scapegoats for one's economic hardships was inevitable.

In South Asia, the problem of refugees, migrants, stateless and displaced persons has become serious in recent times. During the last half

century it has witnessed the greatest movement of people in recorded history, both within the national boundaries as well as across them, in such a short time. Within nations, while the processes of development have caused large-scale migrations from rural to urban areas, the regional disparities have resulted in movement of people from impoverished to prosperous regions. Migrations from labour surplus regions to labour deficient regions, particularly for the purposes of plantation and harvesting, as well as for small trade and other economic activities have also taken place. Of late, as a result of ethnocentric terrorism also, large-scale internal migrations have occurred.

In respect of cross-border migrations the dimensions of the problem have been even larger. Ever since the partition of the Indian sub-continent in 1947, about 35 million people have been involved in cross-border movements in search of security of life, honour and property, or in search of protection from religious and other kinds of persecution, or to avoid strife and wars, or for work or food, or just by drives towards ethnic, racial, ideological or religious homogenization. To complicate matters there has been the problem of international terrorism to which is connected the question of drug and arms & ammunition trafficking. Together, all these movements of people have caused complications for internal as well as inter-state security and thwarted regional cooperation.

In this study an effort has been made to understand the dynamic relationship between these movements of people and the politics of the South Asian region, both in its domestic as well as international settings. Primarily, the attempt here is to address the issue from political, humanitarian and security points of view. The study is divided into five chapters. The first chapter deals with certain definitional and conceptual issues in respect of each term used in the title for each one of them has been subjected to considerable scholarly debate. For example, none of the South Asian nations has signed any of the international refugee protocols though the problem is massively there. Indeed this is not without reason. The second chapter identifies the different variables for the movement of people and put all such movements in specific causal categories. Ten such categories have been identified but one could be free to fine-tune them as per one's own conceptual preference.

The third chapter addresses the political issues involved both in out-migration and in-migration situations, meaning thereby, the political issues both in the sending as well as the receiving countries. If the question relates to internal displacement, then it addresses the politics involved between the forces in favour and against the so-called

developmental logic. The central argument here is that many problems, which are viewed as strictly political, have in fact demographic roots. Conversely, policy interventions that are proposed with demographic intents often result in distinctly political consequences. The fourth chapter views the matter in terms of regional security by highlighting the centrality of India both in geographical and political developmental terms. Considering the fact that security is a complex construct in which both military and non-military threats to security matter, for the purposes of this study more emphasis has been given to the non-military threats. The effort is to find the epicentres of the threat to regional security in environmental, demographic, ecological and economic domains and link them up to the question of migrating people, both willingly and unwillingly doing so.

The fifth chapter analyses the whole issue from the perspective of human development and regional cooperation. From that perspective it tries to suggest some long-term developmental goals for the regional actors. The biggest paradox, however, is: The political rhetoric concerning immigrants and refugees has increased in direct proportion to the inability of the states to control or regulate their movements. Can SAARC, the only regional forum, think of playing any effective role?

September 2003

Partha S. Ghosh

Acknowledgments

To write this book, I have taken help from a number of individuals and institutes both within India and outside. The original idea came to my mind when the Centre for Security Studies and Conflict Research, Zurich, and the Swiss Peace Foundation, Bern, invited me to participate in their conference at Ascona held in 1994. My paper in the conference was entitled 'Population Movements and Interstate Conflicts in South Asia.' During my stay in the Italian village of Bellagio as a Rockefeller Resident Fellow in May-June 1997 I continued to research on the theme and delivered a talk to my fellow residents. I thank the Rockefeller Foundation, New York, for its support. Later, at several seminars and conferences, the idea further crystallised culminating in the three lectures in Shillong about which I have mentioned in my Preface. I am thankful to all those who were behind these activities, in particular, Dr. Joshua Thomas, Deputy Director, ICSSR-NERC, who had invited me to deliver the lectures.

I am also thankful to my friend Amod Kanth of the Indian Police Service (IPS), who helped me to visit parts of India's Northeast and also facilitated my discussions with local people about certain aspects of the problem of refugees and unauthorised immigrants in the region. I have immensely benefited from my many academic and professional friends such as Ajay Mehra, Mahendra Lama, Ranabir Samaddar, Wolfgang Peter-Zingel, Tapan Bose, Rita Manchanda, Mohammad Waseem, Sabyasachi Basu Ray Choudhuri, Anasua Basu Ray Choudhuri, C.R. Abrar, and many others. Prof. Willem van Schendel of the University of Amsterdam was most helpful in making me understand about the virtually neglected people living on the enclaves situated along the India-Bangladesh border. I am also thankful to Motilal Koul of the Indian Administrative Service (IAS) for arranging my visits to some parts of the India-Pakistan border in J&K to let me have a feel of the situation on the ground.

Amongst the libraries that I consulted, mention may be made of the Jawaharlal Nehru University, the American Information and Resource Center, the Indian Council of Social Science Research, the Centre for the Study of Developing Societies, the Centre for Policy Research and the

Institute of Economic Growth (all in Delhi), libraries of the University of Amsterdam, the International Centre for Ethnic Studies (Kandy, Sri Lanka), and the Bangladesh Institute of International and Strategic Studies (Dhaka). I owe a deep sense of gratitude to the members of the staff of these libraries for their help and cooperation. I am also thankful to my colleagues, Suresh Chander, Mahesh Madhukar and Krishna Dudeja, who cooperated with me in more ways than one. I would not belittle my wife and children by formally acknowledging their constant support.

September 2003

Partha S. Ghosh

Contents

<i>Preface</i>	ix
<i>Acknowledgments</i>	xiii
<i>List of Tables</i>	xv
Chapter I Definitional and Conceptual Issues	1
Chapter II The Categories	17
Chapter III The Political Connection	63
Chapter IV The Security Connection	105
Chapter V In Perspective	135
Appendix-1	149
Appendix-2	154
Appendix-3	157
Bibliography	159
<i>Index</i>	171

List of Tables

2.1	Migration between East Bengal and West Bengal, Assam and Tripura	19
2.2	Percentage Increase of Muslim Population in Select Districts of Rajasthan, 1981-1991	32
2.3	Statement showing total Foreigners Arrested/Convicted and Deported (1994 to August 1997)	34
2.4	The Numbers of Displaced Persons, Selected Points of Time	51
2.5	Estimated Migration out of the District of Jaffna (1990 to May 1995)	52
2.6	Resettlements up to June 1997	52
2.7	Population of Jaffna District (1981-1997)	53
2.8	Number of Households Affected by Development Projects in Bangladesh	54
2.9	Non-Refugee Population born in Pakistan and Enumerated in Assam and Tripura in 1951	55
2.10	Increase in the Proportion of Muslim Population in Assam, 1901-1991	56
2.11	Distribution of Hindu and Muslim Population in Assam	57
2.12	CRI (Tripura)	57
2.13	Interstate and International Migration to Assam: 1951-1991 Estimate based on Place of Birth	59
2.14	Estimates of Migration to Assam: 1951-61 to 1971-91 (Survival Rate Method)	60
2.15	Composition of Migrants: Interstate and International	61
2.16	Composition of Foreign Migrants: Legal and Illegal	61
3.1	Decadal Growth of Muslim Population in Assam, 1921-71	74
3.2	Illegal Immigrants deported to Bangladesh and Pakistan	83
4.1	Population, Population Density, and Development Index of Indian States with International Borders	106
4.2	Indicators of Regional Hegemony: Leading Country Shares of Regional Aggregates (%)	107
4.3	Factors Favourable or Unfavourable to National Disintegration	134

Chapter 1

Definitional and Conceptual Issues

Any study of movements of people from one place to another must first confront some definitional problems. These problems arise because in the modern world, both on account of technological advances as well as growing awareness of people about their rights and well being, international boundaries are difficult to enforce. In the Third World, the existence of cross-border tribes and ethno-linguistic groups having close cultural and emotional affinities makes the viability of international borders even less. The growing problem of sub-nationalism and the consequent demands for self-determination have further complicated the issue. As a result, there is a sense of helplessness to find a universally acceptable definition for virtually any social phenomenon. Still, to delineate the scope of this study an effort has been made here to define some of the key concepts, however tentatively.

Refugee

The United Nations Convention Relating to the Status of Refugees held on 28 July 1951 defined a refugee as any person who 'as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.'¹ Since then, there has been considerable progress in the discourse. Human rights, military and environmental angles have been added to the list of causes, making the term much more broad-based than before. In

1. UN, Official Records of the General Assembly, Fifth Session, Supplement No. 20 (A/1775), p. 48.

fact, the UN Protocol of 31 January 1967 went further and omitted the phrases 'as a result of events occurring before 1 January 1951 and...' and '...as a result of such events' from its own definition.²

Later, at the OAU (Organisation of African Unity) Convention held on 10 September 1969, the African states revised the definition further. This definition came into force on 20 June 1974. It was decided that in addition to the United Nations' definition 'the term "refugee" shall apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place or habitual residence in order to seek refuge in another place outside his country of origin or nationality.' It added that 'in the case of a person who has several nationalities, the term "a country of which he is a national" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of which he is a national if, without any valid reasons based on the well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.'³

In the Eighties the concept was further revised. On 22 November 1984, the Cartagena Declaration on Refugees reiterated that 'in view of the experience gained from the massive flow of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition of concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.' The Declaration further reiterated 'the importance and meaning of the principle of "*non-refoulement*" (including the prohibition or rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of "*jus cogens*".'

2. *United Nations Treaty Series* No. 8791, vol. 606, p. 267.

3. For the text of the Convention, see *United Nations Treaty Series*, No. 14691.

The Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, in Article 13.2 proclaims that: 'Everyone has the right to leave any country, including his own, and to return to his country.' Article 14.1 declares that 'everyone has the right to seek and enjoy in other countries asylum from persecution.' However, 'this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.'

The Declaration on Territorial Asylum, adopted by the UN General Assembly on 14 December 1967, recognises 'that the grant of asylum by a State to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State.' It recommends that States should base themselves, in their practices relating to territorial asylum, on the following principles.

Article 1.1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

Article 1.2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

Article 1.3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.

Article 2.1. The situation of persons referred to in Article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

Article 2.2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State.

Article 3.1. No person referred to in Article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

Article 3.2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the

population, as in the case of a mass influx of persons.

Article 3.3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

Article 4. States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.

In a meeting organised by the South Asian Forum for Human Rights (SAFHR) held in Kathmandu on 18-22 November 1996 it was decided to have a South Asian Protocol/Charter on refugees, migrants, internally displaced and stateless persons. The Forum took note of all the earlier charters and protocols aimed at defining a refugee and pleaded for an expansion of the definition so as to include 'victims of forced eviction, man-made and natural disasters and environmental refugees.' The Forum believed that 'the states have an obligation to protect the rights of its citizens to remain in their habitat' but 'when such displaced persons seek refuge in another state, the host state should respect the principle of *non-refoulement*.'⁴

This kind of NGO efforts continued and in April 1999 following a Round Table Workshop on Refugees held in New Delhi, under the auspices of the Colombo-based SAARCLAW and the UNHCR a model national law on refugees was suggested. The model law drew primarily from the earlier international conventions in this regard but its basic purpose was to legally address the problem arising out of 'the absence of refugee-specific national and regional frameworks in South Asia coupled with the history and scale of refugee movements within the region.' It was further proposed that the law 'should be harmonized with country-specific legislative and judicial requirements with a view to formally proposing it to the respective governments of the region.'⁵

4. For the text of the Charter, see *Liberal Times* (New Delhi), 4(4), 1996, pp. 39-41. It may be noted that India has not ratified the 1951 convention but is bound by the principle of *non-refoulement*, which is a norm of customary international law. See *Amnesty International and India* (London), March 1996, p.20.

5. For the text of the proceedings of the Round Table and the model code, see SAARCLAW and UNHCR, *Round Table Workshop on Refugees in the SAARC Region: National Legislation on Refugees* (New Delhi: UNHCR, 1999).

Migration

Migration is generally defined as 'a permanent change in place of residence by the crossing of specified administrative or political boundaries. The persons who fulfil these two criteria are regarded as migrants.'⁶ Clearly, this definition has its limits, for it does not take into account the nomadic or wandering people, seasonal migrants, and movements back and forth of people having more than one residence. Moreover, it does not address questions such as what should be the length of one's stay in his second abode to qualify him as a migrant. The United Nations' Multilingual Demographic Dictionary suggests that the expressions 'move' and 'migration' on the one hand and 'internal migration' and 'international migration' on the other, should be distinguished. 'A move is a change of residence within the same political or administrative boundary. Migration is a change of residence and also a crossing of the political or administrative boundary. While internal migration is a change in the place of residence from one administrative boundary to another within the same country, international migration is a move over a national boundary.'⁷

However, since the focus of this study is different, the above definitions are not adequate for it. This study deals with the impact of migrations on politics and security and as such the number of migrants becomes critical for this analysis. Moreover, on account of the humanitarian dimensions of the problem even an alternative nomenclature was suggested. A Swedish minister proposed replacing the word 'immigrant' with the phrase 'person of foreign background' in laws and official speeches. Since the label 'immigrant' was connected with a lot of different negative aspects, like unemployment and social exclusion, Ursula Berge, an adviser to Swedish Integration Minister Ulrica Messing, made the proposal.⁸ After the terrorist attacks on the World Trade Centre and the Pentagon on 11 September 2001 the scene, however, has drastically changed. It is no longer only large number of immigrants that matter from the perspective of national security sometimes even a small number equally matters, a subject, which we would have to take note of.

6. A.K.M. Nurun Nabi and P. Krishnan, 'Some Approaches to the Study of Human Migration,' in Kuttan Mahadevan and Parameswara Krishnan, eds., *Methodologies for Population Studies and Development* (New Delhi: Sage, 1993), p. 83.
7. *Ibid.*, p. 85.
8. Reuters, 1 September 1999. Referred in *South Asian Refugee Watch* (Dhaka), 1(2), December 1999, p. 93.

The crux is that whether large in number or small, migration is generally a sensitive issue because it has both political and security underpinnings.

Stateless People

The Convention relating to the Status of Stateless Persons, adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by the UN Economic and Social Council Resolution 526 A (XVII) of 26 April 1954, defined the term to mean 'a person who is not considered as a national by any State under the operation of its law.' Among the general obligations 'every stateless person has duties to the country in which he finds himself, which require in particular that he conforms to its laws and regulations as well as to the measures taken for the maintenance of public order.' But what about those cases where the state fails to honour its duty? They are also stateless in every practical sense, such as the India-Bangladesh enclave people, which we will discuss in the second chapter.

There are two categories of stateless persons: *de jure* and *de facto*. The stateless persons *de jure* are those who are not nationals of any state, either because at birth or subsequently they were not given any nationality or because during their lifetime they lost their own nationality and did not acquire a new one. The stateless persons *de facto* are those who, having left the country of which they were nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them protection or assistance or because they themselves renounce the protection and assistance of the countries of which they were nationals. A stateless person, in short, is one who is unable or unwilling to avail himself of the protection of the government of his country of nationality or former nationality.⁹

Displaced People

Although not included in the traditional definition of 'refugee', the internally displaced person shares many of the same hardships and deprivation of rights as an international refugee does. This was acknowledged in a 1994 report by the Representative of the UN Secretary General on internally displaced persons.¹⁰

Internally displaced persons are those who, on account of some developmental activity or internal disturbances have been forced by

9. Edward Lawson, *Encyclopedia of Human Rights* (New York: Taylor and Francis, 1996), p. 1076.

10. E/CN.4/1994/44, paras. 61-63, and E/CN.4/1994/44/Add. 1, paras. 132-175.