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Refuge or a Prejudiced Rhetoric?: Comparison of the Anti-Asylum Practices Followed in Europe and South Asia

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ABSTRACT

This paper provides a comparative analysis of anti-asylum sentiments in Europe and South Asia, examining their impact on the treatment of asylum-seekers. While international obligations and human rights principles shape asylum policies worldwide, their implementation is influenced by domestic politics. The paper begins by outlining the global commitment to providing asylum and the pivotal role of domestic politics in shaping asylum policies. Anti-asylum sentiments, rooted in empirical evidence or subjective political perceptions, often permeate public discourse, sometimes escalating into "populist hysteria" fuelled by host country governments. In Europe, a common regulatory framework for asylum laws navigates challenges such as identity preservation, security concerns, economic strains, and uneven burden-sharing among member states. These factors contribute to the rise of anti-asylum sentiments, driven by both governments and the EU Commission. Negative perceptions of refugees are further exacerbated by media portrayal and political propaganda. In South Asia, where asylum laws vary across countries, opposition to asylum takes on different forms, primarily revolving around sovereignty concerns, internal conflicts, and cultural identity preservation. By comparing Europe and South Asia, this study identifies commonalities and differences in anti-asylum sentiment dynamics. It underscores the influential roles of politics, media, and public opinion in shaping policies and attitudes toward asylum-seekers. The research highlights the challenges faced by refugees and emphasizes the necessity of a nuanced understanding in addressing asylum processes in these regions.

Keywords: *asylum, Europe, South Asia, policies.*

I. INTRODUCTION

Policies regarding immigration and asylum around the world have almost always faced a certain level of criticism regarding their implementation and the obligations of the states while following them. Although there exist international obligations under human rights protection by countries to provide for the right to asylum, the internal politics of the country play a vital

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role in determining how these policies play out in reality. More often than not, countries harbour anti-asylum sentiments towards refugees and illegal migrants due to a plethora of reasons, some having empirical evidence as support and some simply being the subjective perceptions of the ruling political government. Whatever the reason, the rhetoric finds its way into public discourse regarding the concept of asylum and in the way asylum seekers and other migrants are treated by the native population of the country. The problem arises when these sentiments find their way out of public discussion to action being taken by the citizens who believe their government's position on asylum to be accurate and start looking at migrants as 'others'. This phenomenon has been termed as a 'populist hysteria' propounded by the governments of the host countries in question², which further gives rise to instances of xenophobia being wildly prevalent in these countries. In this paper, we will look at the asylum laws of two major blocs of the world which account for most of the refugee population and asylum seekers, i.e., Europe and South Asia, and analyse the anti-asylum rhetoric within their population and governments. We will look at the reasonings for the same, its role in shaping public opinion and as a result, the treatment of migrants and compare the differences and similarities between the two continents in this paper.

II. FRAMEWORKS GOVERNING ASYLUM

Before we explore the 'politics' of asylum in these continents, it is important to understand the general policies governing asylum laws here in the first place, as this would also provide an insight into the frameworks that create an obligation upon countries to grant asylum to those who seek it as a matter of right. While Europe operates mainly on one common regulatory framework governing asylum laws and policy as set out by the EU Commission (Commission of the European Union), the scenario in South Asia has no common regulatory framework defining or governing its laws. This is because unlike most of Europe, South Asian countries are not part of a singular union, governed by a common policy and council that legislates for it. Instead, asylum law and policy in South Asia are dependent on the individual countries and their own regulations; the only requirement being that of compliance with the general international framework. For South Asia, this obligation is provided for generally under the refugee convention of 1951 and its 1967 protocol, whose focus remains on the principle of 'non-refoulement', meaning that refugees should not be returned to any country forcefully where their life or freedom is at a threat of persecution³. The convention falls under the purview of the

² IAN WARD, *A CRITICAL INTRODUCTION TO EUROPEAN LAW* 153 (Cambridge University 2009).

³ UNHCR Israel, <https://www.unhcr.org/il/en/1951-refugee-convention-and-international-conventions#:~:text=The%201951%20Refugee%20Convention%20and%20its%201967%20Protocol%20are%2>

UNHCR (United Nations High Commissioner for Refugees), which also sets out the underlying sentiment regarding protection of refugees as a matter of human rights, thus creating an international customary law obligation upon the states to grant asylum to most of those who seek it. Apart from this, countries in South Asia follow their own laws on asylum, though they may also enter into bilateral agreements with other countries in the region to address issues of certain groups of refugees. In contrast, the European Union has a common framework for the regulation of asylum laws and policy, known as the Common European Asylum System (CEAS). The CEAS follows the principles laid down in the Geneva convention, which seeks to ensure humane treatment of refugees who apply for asylum, with the CEAS thus providing procedures to be followed while granting asylum to refugees and ensuring fair treatment⁴. Alongwith the CEAS, there is also the Dublin Regulation that governs procedures to be followed by member states while assessing applications for asylum that come into their countries⁵. The most important feature of the regulation though is the guideline that the first European country wherein refugees arrive is to process their asylum applications, also making it an obligation on the member state to provide protection to those who have a valid right⁶. The regulation thus creates a problem for the states situated at the border of the continent, who tend to get the greater burden of refugees from the mainland states closer to them, like Sweden for instance. Due to the major responsibility being put on a few states to handle refugees, the development of anti-asylum sentiments within the state is not something unimaginable. This however is just one of many factors that lead to the evolution of hostility towards migrants and refugees, by the governments and citizens alike.

III. PERCEPTIONS TOWARDS ASYLUM AND ANTI-ASYLUM RHETORICS

(A) Europe's perception of threat to security and identity:

Although international obligations of states require them to have positive attitudes towards asylum and accommodate refugees to the best of their capabilities, this is hardly the reality of the situation in these host countries. In Europe, there is a sharp rise in anti-migration and anti-asylum sentiments within the public, which have been initiated by the governments and to some

0the,legal%20obligations%20to%20protect%20them (last visited Apr. 28, 2023)

⁴ Migration and Home Affairs, European Commission, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/common-european-asylum-system-ceas_en (last visited Apr. 28, 2023)

⁵ Migration and Home Affairs, European Commission, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en (last visited Apr. 28, 2023)

⁶ Norwegian Refugee Council, Global Figures <https://www.nrc.no/shorthand/fr/a-few-countries-take-responsibility-for-most-of-the-worlds-refugees/index.html> (last visited Apr. 28, 2023)

extent, the EU commission itself. As understood by scholars and theorists, the major reason why anti-asylum tendencies of the governments are increasing is due to the idea of ‘us and them’. Essentially, the European governments tend to draw a marked distinction between European nationals, or people who have the status of citizenship, and ‘others’, people who have ended up in the Union through legal or illegal means but are not citizens. Additionally, these ‘others’ are seen as a security threat by the EU council and commission, thus resulting in the tightening of the asylum application procedures by the Commission, which gives member states the power to reject the applications of all those who are ‘manifestly unfounded’ by the government⁷. The problem with the general perception being propounded by the EU is that it leads to not just increased instances of xenophobia, but also causes mass hysteria, with the citizens of these countries living under a fear of mass immigration and flooding of an exorbitant number of poor migrants in their communities⁸. Due to the importance given by the EU to citizenship and identity, governments react adversely to increase in refugee population when they believe it to come at a cost of this national identity, due to the ethnic differences and contrasting values and norms that migrants bring along with them⁹. There are many other reasons that can also be said to be the cause of Europe’s aversion to accepting more refugees; security threats, economic concerns and scarcity of resources, and protecting the interests of its citizens being some of them. The economic argument manifests in a country’s duty towards its citizens to protect their interests, and to ensure that all its citizens have adequate access to material goods required for a good quality of life, such as healthcare, education, housing etc.¹⁰. It finds legitimacy from the common-sensical reasoning that a nation is supposed to protect its own first when it comes to distribution of scarce resources during a crisis in the welfare state, however, some scholars argue against this position, asserting that when it comes to people facing persecution, the state’s duty is not to assess costs but to offer unqualified refuge¹¹. Apart from economic concerns, security threats by migrants in the region show two sides to a coin. On the one hand, fears of terrorism and violence conducted by migrants are a justifiable concern, as there have been reported instances of illegal migrants being involved in terrorist attacks, like the 2015 Paris attacks, or reports of sexual harassment of women by migrants in Europe, like the New Year’s Eve crisis in 2015 in Cologne, Germany. However, this is not the entire picture; surveys have shown that certain groups have misconceived notions about migrants, and the only

⁷ IAN WARD, *A CRITICAL INTRODUCTION TO EUROPEAN LAW* 152-153 (Cambridge University 2009).

⁸ *Id.* at 153.

⁹ Liza Schuster, *Common Sense or Racism? The Treatment of Asylum-Seekers in Europe*, 37 *PATTERNS OF PREJUDICE* 233, 242 (2003).

¹⁰ *Id.* at 241.

¹¹ *Id.* at 241-242.

reasons for which they harbour anti-asylum sentiments are due to the government propaganda perpetuated in the country. For instance, when people from the UK were asked about their opinion regarding asylum seekers, they could not relate anything to personal experiences, but ended up displaying their negative emotions around Asians, who didn't even constitute the refugee population in the country¹². Thus, the anti-asylum rhetoric in Europe is based on multiple factors, with political parties advancing their self-serving motives of mobilizing majority support.

(B) South Asia and Asylum – Ethnic Differences and Conflicts caused by Migration

Instances of migration crises and flooding of refugees in safer countries are not uncommon to the South Asian region of the world as well, with countries like India, Sri Lanka and Bangladesh getting an abundant number of refugees from other neighbouring countries. Refugees coming to South Asian countries from the same regions are usually fleeing from religious and minority persecution faced by them in their country of residence, as opposed to migrants coming to the European continent in search of a better life and living. This is mostly because of the rampant discrimination that exists in these countries based on religious, cultural, and linguistic differences, and the rule of the majority community. Though anti-asylum sentiments run through political and public discourse in South Asian host countries as well, the reasons for the same are slightly different from those seen in the EU. The main reason for opposition to granting asylum to people in these countries is the perceived threat to the sovereignty of the host nation due to uncontrolled migration and unrestricted borders¹³. Governments worry that allowing a large number of migrants in their countries would lead to their mobilization into major groups, which could also lead to conflicts between citizens and migrants, as well as within the migrants themselves¹⁴. These fears are not completely unfounded, as previous instances of refugee crises depict violence caused by and due to a huge migrant and refugee population. Some examples of the same are the internal conflicts faced by Sri Lanka between the Sinhalese militant and Tamil militant groups in the 1980s, the partition crisis of 1947 between India and Pakistan, and the armed attacks by the people of the Chakma tribe in Bangladesh¹⁵. These fears are further heightened when the local population starts feeling like they might get culturally dominated by the refugee groups due to their large numbers; the elevated sense of identity of the locals starts

¹² Paul Statham, *Understanding Anti-Asylum Rhetoric: Restrictive Politics or Racist Publics?*, 74 THE POLITICAL QUARTERLY 163, 172-173 (2003).

¹³ Myron Weiner, *Rejected Peoples and Unwanted Migrants in South Asia*, 28 ECONOMIC AND POLITICAL WEEKLY, 1737 (1993) <https://www.jstor.org/stable/4400049>

¹⁴ Id. at 1739.

¹⁵ Id. at 1738-1740.

to play a part in their resistance towards these migrants¹⁶. A change to their linguistic or religious practices, values and socio-cultural norms is what is feared by the local populations, in part due to the narrative spun by the governments regarding refugees and the ‘crisis’ surrounding them. The loss of identity is mainly an apprehension at the central level, with the locals mostly concerned about loss of jobs and a shortage in demand in the labour market. However, this also presents a two-fold debate, with some critics arguing that heavy Indian migration in Nepal resulted in displacement of the local people in the markets, while others contending that Indian workers such as traders, artisans and shopkeepers contributed to the growth of the Nepali economy¹⁷. Therefore, the attitudes towards the non-acceptance of asylum-seekers and migrants in South Asia tend to be for many different reasons, with the loss of identity being at their core, owing to the cultural and ethnic differences in these communities.

(C) Analysis of the discourse on opposition of asylum policies in Europe and South Asia

Studying the above anti-asylum policies and thoughts prevailing in the continents of Europe and South Asia depicts both similarities and differences in the way migration is perceived. Both regions value the notion of their self-identity and wanting to preserve it from being marked and dominated by an external group is not looked upon favourably by either region. Alongwith this, both regions also harbour concerns about security threats due to a surge of migrants in their countries; however, while European governments worry about the spread of terrorism and external aggression, South Asian communities are more concerned with internal conflicts and acts of violence within the migrant groups and amongst the locals and the migrant populations. The difference amongst these rhetorics however can be seen in the value placed on depletion of economic resources as a consequence of migration. While Europe placed more significance on the distribution of scarcity of resources within migrants, South Asian countries focused less on the economic aspects of increased migration flow, with their primary concerns revolving around the superimposing of the ethnic and cultural differences of the migrants on the local population. Interestingly though, there is very little empirical evidence available to support the claims made by Europe regarding economic challenges caused due to migrant inflow. For instance, when Germany received almost 3 million asylum-seekers from Yugoslavia and the Soviet Union in 1992, it was facing huge costs regarding reunification¹⁸. However, the inflow of such a huge number of migrants did not cause any economic collapse or injury to the welfare state. Usually, it is also seen that if integrated into the system properly, migrants can become contributors to

¹⁶ Id. at 1744.

¹⁷ Id. at 1743

¹⁸ Schuster, *supra* note 8, at 233, 242.

the host country's economy as well, as can be seen in certain examples from the instances of South Asian migration, like the Indians in Nepal. These doubts regarding the veracity of the claims made by governments to propagate anti-asylum tendencies and notions make it harder to believe their rhetoric entirely, when it is showcased that migrants are 'bad' for the country and its people. The efforts put in by these governments to promote the 'integrity' of their nation from being overtaken by migrants hence poses questions, such as, to what extents would these governments go to achieve this objective of ousting migrants? And what are the consequences faced by the refugees in these countries as a result of non-acceptance and non-integration into society by the government and the citizens? Possible answers to these questions will be explored in the next part of this paper.

IV. THE TREATMENT OF ASYLUM-SEEKERS AND PUBLIC OPINION

The effects of political propaganda and adverse feelings towards migrants and refugees by the governments may be seen as harmless by the inept eye, but its impact ranges far and wide; from affecting the treatment of refugees and their ousting on a central level, and discrimination against them on a societal level by individuals. The EU has been known for its backdoor policies for reducing the inflow of migrants by tackling the problem at its origination; payments made to the origin countries of refugees to take them back or stop them from crossing the EU borders. Known as the migration policy of remote control, this exclusionary policy followed by the EU governments helps them in restoring public confidence surrounding the problem of mass immigration, with little regard to the inhumane treatment that these refugees would be subjected to in their host countries, a situation they have been trying to escape from in the first place¹⁹. An example of this is the funding of refugee camps in Turkey to detain Iraqi Kurds by the EU²⁰. Apart from this, the EU has also seen a declining trend in the acceptance of asylum applications, with the acceptance rate being a mere 5%, compared to that of 65% in the 1980s²¹.

There are also other strategies used by governments in denying asylum to refugees and ousting these people once they are already in the host country, the most common of which are deportation and detention of refugees. Deportation refers to the state's power to remove those who have no right to stay in its borders, and is usually done under inhumane and degrading conditions, to send a message and prevent potential migrants from entering the country²². Detention on the other hand refers to holding people in detention centres due to irregular

¹⁹ IAN WARD, *A CRITICAL INTRODUCTION TO EUROPEAN LAW* 156 (Cambridge University 2009).

²⁰ *Id.* at 156.

²¹ *Id.* at 155.

²² Liza Schuster, *Common Sense or Racism? The Treatment of Asylum-Seekers in Europe*, 37 *PATTERNS OF PREJUDICE* 233, 251-253 (2003).

documentation, or any other reasons as deemed fit by the government. The issue with detention of migrants is that it is usually done arbitrarily, with no means of redressal and little to no access to healthcare services or support²³. Other than this, the method of dispersal within the state is used to prevent the formation of communities by the refugees by dispersing them to any location without them having a say in the same²⁴. Validated on the grounds that it takes the burden off of asylum centres in a particular area, the method fails to account for individual interests, and ends up subjecting the refugees to abuse in these localities, as they find themselves alone and without a support system²⁵.

These policies and the general sentiment circulated through the public makes its way into acute discrimination faced by these already marginalized groups; discrimination based on their race, religion, and gender. The only difference drawn here between South Asia and Europe is the grounds that these migrants face discrimination on, with Europe having more instances of race and gender-based discrimination, while South Asia having increased reports of discrimination on religious, linguistic and ethnic grounds. This is mainly due to the composition of these communities and the values held by them. Although these policies tend to increase instances of discrimination, the reverse is also true, i.e., inherent stereotypes associated with migrants and refugees shaped by political and personal bias is what leads to the exclusion of these people from society. This bias originates not just from the political discourse involving migrants, but also their portrayal in the media. Often, political parties and the media are seen using words like ‘criminals’, ‘illegal’, ‘terrorists’ etc. when talking about migrants and asylum-seekers²⁶. This results in the depiction of refugees in a negative light, contributing to the anti-asylum rhetoric of them being terrorists and a security threat to the nation. For instance, the depiction of the Rohingya muslims as being Islamic extremists by an Indian newspaper led to the general public’s aversion to the group of refugees, even though such claims may have had no real basis²⁷. To say that media shapes public opinion only negatively would not be entirely true, it only depends on what rhetoric the media wants to follow and disseminate amongst the public. When refugee abuses by the French police were displayed on a French website, it provided refugees with public sympathy and supportive resources for aid²⁸. Therefore, public opinion and treatment of refugees depends on not just the rhetoric of the state, but also the depiction of

²³ *Id.* at 249-250.

²⁴ *Id.* at 247.

²⁵ *Id.* at 248.

²⁶ Mohd. Shahzad, *Role of Media and Politicians in Creating Public Opinion about Refugees and Migrants*, 21 JOURNAL OF GUJRAT RESEARCH SOCIETY, 919-920 (2019).

²⁷ *Id.* at 921.

²⁸ *Id.* at 922.

these asylum-seekers in the media.

V. CONCLUDING REMARKS

Asylum regulations and guidelines might set out state obligations regarding granting of asylum to those who seek it, but the nation's internal attitude towards and their treatment of these refugees is dependent on the state. Through the examples of both Europe and South Asia it can be seen that anti-asylum sentiments have been prevalent in these regions, due to a number of different reasons, ranging from security threats, concerns regarding loss of identity and economic challenges to the nation. However, the entirety of this rhetoric does not derive validity from existing reports and empirical evidence. This political narrative also manifests itself in discrimination seen against refugees in everyday life, which are further advanced by media depiction of these people in a negative image, contributing to the formulation of a largely adverse public opinion on the issue. Thus, both similarities and disparities can be seen in the treatment of asylum-seekers in South Asia and Europe.
