

INDIA DOES HAVE A REFUGEE PROBLEM

Relevant for: International Relations | Topic: India's Foreign Policy evolution and changes

The heart-wrenching scenes of Myanmar citizens, including little children — fleeing from a junta bent on killing its way into power in Myanmar — being turned away at the Indian border in the Northeast has once again revived the domestic debate about refugee protection in India. The current plight of the Myanmar citizens has been preceded by that of another group of Myanmar citizens, the Rohingya. And not too long ago, the debate was dominated by the [Citizenship \(Amendment\) Act, 2019](#) and its impact on those seeking refuge in India, even though new refugees would not be benefited by the law since the cut-off year of the CAA is 2014. In any case, refugee flows to India are unlikely to end any time soon given the geopolitical, economic, ethnic and religious contexts of the region. There is, therefore, an urgent need today to clinically address the issue of refugee protection in India and put in place appropriate legal and institutional measures.

India has emphatically argued over time, particularly in the recent past, that illegal immigration from the neighbouring countries to India must come to an end. There is little doubt that illegal immigration is a threat to the socio-political fabric of any country, including India, with potential security implications. And yet, 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 or at best relegated to the backburner, neither of which do justice to the helpless people fleeing from persecution at home. While the reality is that much of the debate in the country is about the illegal immigrants, not refugees, the 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.

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](#) which offers a simple definition of a foreigner — “foreigner” means “a person who is not a citizen of India”. Needless to say that 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. Recall that India is not a party to the [1951 Refugee Convention](#) and its [1967 Protocol](#), the key legal documents pertaining to refugee protection.

The absence of such a legal framework also leads to policy ambiguity whereby India's refugee policy is guided primarily by ad hocism which, of course, often has its own ‘political utility’. Ad hoc measures enable the government in office 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, for similar reasons. 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. Consider the most recent case of Myanmar refugees fleeing to India for protection from the junta at home. New Delhi'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. This fear, at least partly, is what has prompted India's decision not to admit the refugees. However, hypothetically speaking, if New Delhi 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 Myanmarese.

India, for the most part, has had a stellar record on the issue of refugee protection, a moral tradition that has come under great stress of late. New Delhi 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 one to conclude that 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.

For one, as is often discussed in India, 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. Put differently, 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. On the other hand, however, this argument, if used in the South Asian context, could be a problematic proposition for India too. And yet, this lop-sidedness is something New Delhi has traditionally highlighted, and justifiably so, as a reason for its non-accession to the treaty. The West's lopsided obsession with civil and political rights at the cost of economic rights is a convenient excuse with little moral backing.

Second, as scholar B.S. Chimni has argued, "India should not accede to the 1951 convention at a time when the North is violating it in both letter and spirit... India should argue that their accession is conditional on the Western States rolling back the non-entrée (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', withdrawal of social welfare benefits to asylum seekers, and widespread practices of detention." In other words, India must use its exemplary, though less than perfect, history of refugee protection to begin a global conversation on the issue.

Let us return to the Indian context. So if we have a refugee problem, as we do, and the accession to the refugee convention, in the manner it exists today, is neither desirable nor pragmatic, what other options do we have to respond to the refugee situation we are faced with and which is increasingly getting mixed up with the raging political debate on illegal immigration into the country?

The answer perhaps lies in a new domestic law aimed at refugees. The CAA, however, is not the answer to this problem primarily because of its deeply discriminatory 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, perhaps, the CAA is an act in refugee avoidance, not refugee protection.

What is perhaps equally important is that such a 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. Put differently, the absence of a refugee law incentivises illegal immigration into the country. New Delhi must also 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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