

CAUTION NEEDED: ON SUPREME COURT DECISION ON ROHINGYA'S STATUS

Relevant for: Security Related Matters | Topic: Role of External State & Non-state actors in creating challenges to internal security incl. Terrorism & illegal Migration

The Supreme Court's decision to examine the question whether [illegal immigrants are entitled to refugee status](#) needs to be welcomed, but with caution. It is debatable whether the Centre is right in claiming that this has emerged as a substantial question of law in the context of the Rohingya Muslims from Myanmar. For, it is fairly obvious that those escaping persecution in their home country are invariably undocumented. It logically follows that those fleeing conditions of war or conflict will have to be treated as refugees first before their cases can be examined in detail, and deemed fit for deportation as illegal entrants. It will be strange if any court holds that no illegal immigrant is entitled to refugee status. That would amount to a perverse denial of the very existence of refugees as a class. What the government is perhaps looking for is a decision holding that it can choose the class of illegal immigrants it wishes to treat as refugees; and that it can deny that status to any section it deems a threat to national security or is likely to strain local resources. The court's decision to go into the issue, therefore, offers an opportunity to clarify India's approach to the refugee question, which has generally been favourable to vulnerable entrants, but is stridently hostile to the Rohingya.

India is not a signatory to the UN Convention on the Status of Refugees, 1951, and a Protocol adopted in 1967 on the subject. However, since Independence it has by and large adhered to the larger humanitarian principles underlying these instruments. In this backdrop, it is astonishing that the present regime is determined to deport the Rohingya, in utter disregard of the danger to their lives in Myanmar, and in violation of the principle of non-refoulement, the norm that prohibits states from forcibly returning refugees to conditions that caused them to flee their homes in the first place. It will be amoral and unjust if this most vulnerable group from Myanmar's Rakhine state, numbering about 40,000 in India now, is denied refugee status. With the Centre taking a stand against treating them as refugees, a positive ruling is needed from the apex court to prevent their forcible deportation. The government's keenness to deport the Rohingya is rooted in the technicalities of its citizenship law. It defines "illegal immigrant" as any foreigner entering India without valid travel documents, or overstays a permitted period of stay. It rules out giving citizenship by registration to such illegal immigrants. The amendments it proposes to the Citizenship Act do not cover Muslim immigrants and are limited to persecuted Afghan, Bangladeshi and Pakistani minorities. India should work with the world community on the voluntary repatriation of the Rohingya and not besmirch its fine record of humane treatment of refugees by pursuing the deportation option without relent.

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