

SHOULD INDIA ACCEPT ISLAMIC STATE RETURNEES?

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

In 2016-18, four women from Kerala accompanied their husbands to join the [Islamic State \(IS\)](#) in Afghanistan's Khorasan Province. Their husbands were killed in different attacks and the women are now lodged in an Afghanistan prison. Authorities in Afghanistan want to return the women to India, but the [Indian government has not indicated](#) what it proposes to do in this matter. Sources say security agencies have advised against taking them back. What do international laws say about foreign fighters returning to their countries? **K.P. Fabian** and **Kabir Taneja** discuss the question in a conversation moderated by **Suhasini Haidar**. Edited excerpts:

K.P. Fabian: A couple of reasons, actually. One, under the Indian Penal Code, Section 3, any citizen of India can be tried in India for any offence committed in India, abroad, or even in outer space.

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Two, we hear from media reports, not yet contradicted by the government, that Afghanistan wants to deport them and India has refused. Reports also say that they may be a grave threat to India's security and can't return. That is rubbish because these four women, if they are coming back to India, will be in the custody of our security forces. They can be taken to court and held in custody till the court gives a verdict. While in custody, they cannot be of any threat to the security of India.

Finally, they have their families here. In this particular case, Nimisha's mother has said that there is a granddaughter who is four years old. What crime has she committed? It is necessary for that child to be with the grandparents, if the parents are not able to look after her. So, there is no reason for India to stand in the way of their return when Afghanistan has asked for it.

K.P. Fabian: No, there are international treaties which say that you cannot strip anyone's citizenship if it makes that person stateless. Let me draw your attention to Shamima Begum, a U.K. citizen who left the U.K. at the age of 15 to join the IS. After the IS fell, the U.K. government said she cannot return and stripped her of citizenship. The Court of Appeal in the U.K. said the government was in the wrong. The government then went to the Supreme Court and said there are national security reasons for the decision not to let her in. The Supreme Court said she can contest the decision taken to strip her of citizenship, but when she is in a position to do so.

Mystery of the missing twenty-one

The Indian passport enables you to go out. You also need a visa or an agreement that there is no need for visa. The same passport permits you to come back without a visa.

Kabir Taneja: I believe that they should be allowed to come back and be tried as Indian citizens by an Indian court because if they have joined an organisation such as the IS, which is banned in India, they can be tried in court. Arif Majeed (an IS recruit who returned from Iraq in 2014) went through the trial and is now out on bail because the court said it's very difficult for the prosecution to come up with concrete evidence as all the acts committed were outside India's geography. So, after serving six to seven years as an undertrial, he was given bail. Now, you can argue whether that case was a successful case of trying someone who had joined a banned organisation or whether it fell apart.

Due to the fact that India does not have a cohesive policy towards foreign fighters, and also because it does not have that many such cases, it's easy for the state to approach them on an ad hoc basis and tell these women in Afghanistan, 'you did it by choice and we are not responsible for you anymore'.

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Kabir Taneja: The problem here is how do you estimate a person's radicalisation? We've seen this argument play out not just in India; Europe, the U.S., Canada and others are experiencing this phenomenon of IS foreign fighters. Many states are saying it was these people's choice to join a terror organisation and they are not the state's responsibility anymore.

As far as the national security question is concerned, there is no easy answer to it. It ultimately comes down to what a state's policy towards foreign fighters in general is. And if it is ad hoc, if it is on a case-by-case basis, it gives a lot of leverage to the state to decide what kind of action it would like to take towards that particular case. In the case of Arif Majeed, the government allowed him to return, but in the case of these women in Afghanistan, the government is not doing so.

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K.P. Fabian: Even if these particular young women were brainwashed and radicalised, and remain radicalised, we as a state have a duty to get them back and de-radicalise them. The Universal Declaration of Human Rights says everyone has the right to leave any country, including his own, and to return to his country, and the International Covenant on Civil and Political Rights says no one shall be arbitrarily deprived of the right to enter his own country.

K.P. Fabian: No, this must be decided according to legality and morality. I do not accept the argument that India cannot handle the threat posed by these four women. And what happens to that four-year-old girl, especially in Afghanistan, where there is every likelihood of the Taliban coming back? The state has a responsibility to its citizens and it can't wash its hands of that responsibility.

Going over to the dark side

Kabir Taneja: In reality, states have had very different approaches to IS returnees than in the past, for example, when foreign fighters joined the Mujahideen to fight the Soviet Union in Afghanistan in the 1990s. In the case of the IS, a lot of European IS returnees have been kept in the al-Hol camp in northern Syria. Apart from the legal questions, there is also the political push back against allowing these fighters to come back to their original countries. In addition, when foreign fighters would sign up for the IS, they would destroy their own passports and have no papers to prove their claims. Now, the camp poses a different kind of problem — if these fighters are not moved out, IS ideology will fester in these camps and pose a fresh threat. So, there is a need for a broad-based global agreement on what to do with them.

Kabir Taneja: It is hard to tell, and different States in India have different blueprints for de-radicalisation. In the U.K., we have seen people come out of these programmes and still commit acts of terror. With these returnees from Afghanistan, we are still not sure how they were radicalised. Who helped them go to Afghanistan? Until these questions are answered, it may not be possible for the state to be comfortable about allowing them to return.

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K.P. Fabian: Regardless of what India's experience is, all countries must respect international law. It is absolutely clear that Afghanistan has every right under international law to deport these recruits. Now, if Afghanistan has the right to deport them, where does it deport them to? These people have Indian passports. So, if you respect Afghanistan's right to deport them, it follows that you have to say that India has an obligation to accept them.

K.P. Fabian: In the case of Shamima Begum, it is my view that such a decision would not have been made if she were not originally from Bangladesh or another country of that nature. If she were born to [Caucasian British] parents, for example, it would not have happened. Second, even under British law, you cannot strip a person of their citizenship if, as a consequence of that action, that person becomes stateless. The U.K. tried to maintain that she could have Bangladeshi citizenship, but Bangladesh declared that there is no question of her getting Bangladeshi citizenship because she was born in the U.K. I think it is necessary to look at these matters not only in terms of the law, which is always evolving, but also in terms of humanity. If we cannot look at young people who made a big mistake, and if we want to condemn them forever, well, I do not think we are behaving humanely.

Kabir Taneja: I think there should be differentiation on the basis of the crime committed. And of course, there should be differentiation on where the crime was committed. When it comes to foreign fighters, it's not just about the law that comes into play. Security concerns come into play, the legality comes into play, and politics comes into play, both foreign policy and domestic politics.

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Thousands of people like Shamima Begum are still stuck in various camps across West Asia. The problem is formulations on what states should do were not made earlier, despite the problem seen with the Mujahideen in Afghanistan-Pakistan and then with al-Qaeda. This was also the first time where there was such an influx, specifically from Europe, into the IS. And there has been such chaos and confusion — from the security point of view, political point of view and legal point of view — about how these countries should treat people, who would want to come back and say they made a mistake. I think the answers will take time. The problem is the people who are currently stuck in this rut are facing the brunt of both the legal point of view and security point of view. I still believe that a lot of these recruits who have made the decision of joining these kinds of groups are going to face a lot of pushback from the various states that they originally came from.

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To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC

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