

When India was a party to the 1951 Refugee Convention: A counterfactual history

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As is well known, India, along with other South Asian states, has never acceded to the 1951 Refugee Convention not to its sister 1967 Protocol. Arguments continue today as to whether or not India should sign and ratify this treaty, or alternatively to pass a national refugee law that would incorporate many of its key elements. What is at stake is a perceived trade-off between, on the one hand, the relative flexibility and generosity of asylum policy concerning entry to India against the rigidity and narrowness of international refugee law, and on the other hand, the poor level of support to refugees once they have arrived in India compared with the access to a high level of legal rights, employment, education etc. in states that follow the refugee law regime.

The main way in which this argument has been conducted is to imagine what asylum in India might look like in the future if it were to adopt a refugee law framework. In this paper, I attempt the reverse: to consider how refugee arrivals in the past might have been treated had India been a party to international refugee law. As with looking to the future, this exercise cannot but be speculative. However, it does offer us one possible way of evaluating to what extent the traditions of asylum in India would have been corrupted or enhanced through the adoption of refugee law, and thus offers a guide as to how it would impact future asylum policy.