

ROHINGYA REFUGEES IN INDIA – POLITY

NEWS: Recently , the Supreme Court stated that Rohingya refugees, if found to be ‘foreigners’ under Indian law, will be dealt with per the Foreigners Act, 1946.

WHAT’S IN THE NEWS?

Challenge to Deportation

- **Legal Petitions Filed:** Multiple petitions were submitted in Indian courts challenging the Central Government’s decision to deport Rohingya refugees.
- **UNHCR Cards Cited:** Many of the Rohingyas in India possess refugee identification cards issued by the United Nations High Commissioner for Refugees (UNHCR), which petitioners argued should offer them a degree of international protection.
- **Violation of Non-Refoulement:** Petitioners contended that deporting the Rohingyas to Myanmar would violate the international principle of non-refoulement, which prohibits returning individuals to a country where they may face persecution, torture, or death.

Centre’s Argument on National Security

- **Priority of Sovereignty:** The Indian government maintained that protecting national security and preserving state sovereignty are paramount.
- **Foreigners Act Provision:** It invoked Section 3 of the Foreigners Act, 1946, which grants the executive broad powers to expel foreigners deemed a threat.
- **Rohingyas as Security Risk:** The government classified Rohingya settlements as potential security threats due to alleged links with extremist groups.

Supreme Court’s Stand on Constitutional Rights

- Articles 14 and 21 Apply to All: The Supreme Court upheld that the right to equality (Article 14) and the right to life and personal liberty (Article 21) extend to all persons in India, regardless of nationality.
- Article 19(1)(e) Not Applicable to Refugees: However, the right to reside and settle in any part of India under Article 19(1)(e) is exclusive to Indian citizens, limiting legal claims by refugees for permanent residence.

Human Rights Issues Involved

- Violation of Right to Life: Deportation without assessing the dangers in the home country could result in a breach of Article 21 of the Constitution.
- Discrimination Concerns: Petitioners argued that selective deportation of Rohingyas violates Article 14, amounting to arbitrary and discriminatory treatment.
- Statelessness and Vulnerability: Myanmar's denial of citizenship to Rohingyas has left them stateless, raising grave concerns under international human rights law.
- Protection of Women and Children: Reports of deportations involving women and minors prompted calls for adherence to humanitarian principles and special care for vulnerable groups.

Legal Status of Refugees in India

- Absence of Dedicated Refugee Law: India does not have a codified refugee protection framework; instead, refugee-related issues are managed under the Foreigners Act, 1946 and through executive orders.
- No Legal Distinction in Law: Refugees are treated as generic "foreigners" under Indian law, receiving protection only on a case-by-case basis.
- Limited Legal Value of UNHCR Cards: While UNHCR recognition holds weight internationally, it does not translate to enforceable legal rights in India unless backed by domestic policy or judicial orders.

Foreigners Act, 1946 – Legal Framework

- Extensive Executive Powers: Section 3 empowers the Central Government to regulate or restrict the entry, stay, and deportation of foreigners at its discretion.
- Lack of Inherent Right to Stay: In the absence of legal protection, a person identified as a foreigner can be deported, regardless of refugee status.
- Requirement of Due Process: Deportation must still adhere to principles of natural justice and constitutional guarantees like those under Article 21, requiring fair procedure and risk assessment.

India's Obligations under International Law

- Not Party to Refugee Convention: India has not signed the 1951 UN Refugee Convention or its 1967 Protocol, and therefore is not legally bound by their standards.
- Signatory to the Genocide Convention: India is party to the 1948 Genocide Convention, and critics argue that deporting Rohingyas to Myanmar—a country accused of genocidal actions—may violate this obligation.
- Non-Refoulement as Customary International Law: Petitioners assert that non-refoulement has become a norm of customary international law and possibly jus cogens, thereby binding all states, including India, irrespective of treaty status.
- Article 51(c) of Constitution: India's Constitution encourages respect for international law and treaty obligations, although the government maintains that this must align with domestic laws and policies.

Background of the Rohingya Crisis

- Ethnic and Religious Identity: Rohingyas are a predominantly Muslim minority originating from Rakhine State in Myanmar.

- **Denied Citizenship:** Despite centuries of residence, the 1982 Myanmar Citizenship Law effectively excluded Rohingyas, making them stateless.
- **Longstanding Marginalisation:** Rohingyas have suffered systemic discrimination, including restrictions on movement, marriage, access to education, and public services.

Escalation in 2017

- **Triggering Event:** In August 2017, attacks on Myanmar security forces by the Arakan Rohingya Salvation Army (ARSA) led to a brutal military crackdown.
- **Widespread Atrocities:** The military response included mass killings, sexual violence, and destruction of Rohingya villages.
- **Global Condemnation:** The actions were condemned by the UN and rights groups as ethnic cleansing and even genocide.

Current Status of Rohingya Refugees

- **Mass Displacement:** Over 900,000 Rohingyas fled to neighbouring Bangladesh, with the Kutupalong camp in Cox's Bazar being the world's largest refugee settlement.
- **Presence in India:** Around 40,000 Rohingyas are estimated to reside in India, facing uncertain legal status and risk of deportation.
- **Lack of Basic Services:** Rohingyas remain stateless and struggle with access to education, healthcare, and formal employment across host countries.

International Response and Challenges

- **Legal Actions at Global Forums:** Proceedings have been initiated against Myanmar at the International Court of Justice (ICJ) and International Criminal Court (ICC) for alleged crimes against the Rohingya.
- **Sanctions and Diplomatic Pressure:** Multiple nations have imposed sanctions targeting Myanmar's military leadership and defense sectors.

- **Stalled Repatriation Efforts:** Attempts to repatriate Rohingyas have failed due to ongoing insecurity in Myanmar and lack of guarantees for restoration of citizenship and protection.
- **Need for Global Action:** The crisis demands sustained international cooperation for durable solutions, including third-country resettlement and restoration of human rights in Myanmar.

Way Forward

Formulate a Refugee Law: India should consider enacting a national refugee law that clearly outlines the legal rights and protections available to refugees.

- **Ensure Due Process:** All decisions related to deportation, especially involving stateless individuals or vulnerable groups, must comply with the constitutional safeguards of Articles 14 and 21.
- **Adhere to Humanitarian Standards:** India, even without formal commitments under refugee conventions, should uphold humanitarian values, including the principle of non-refoulement.
- **Balanced Policy Approach:** Develop a rights-based framework that accommodates both national security concerns and humanitarian obligations, reflecting India's democratic ethos.