Assessing India's Obligations with Rohingyas

What is the issue?

- India recently deported a group of Rohingya refugees to Myanmar. Click here to know more.
- With UN High Commissioner for Refugees (UNHCR) calling for a report from India on this, it is essential to look at India's refugee obligations.

What is the global framework?

- Refugee law is a part of international human rights law.
- To address the problem of mass inter-state influx of refugees, the Convention Relating to the Status of Refugees was adopted in 1951 in the UN.
- This was followed by the Protocol Relating to the Status of Refugees in 1967.
- One of the most significant features of the Convention is the principle of non-refoulement.
- It mandates not forcing refugees or asylum seekers to return to a country in which they are liable to be subjected to persecution.
- This idea of prohibition of expulsion lies at the heart of refugee protection in international law.

Is Rohingya deportation justified?

- It is often argued that the principle of non-refoulement does not bind India since it is a party to neither the 1951 Convention nor the Protocol.
- However, the principle constitutes a norm of customary international law, which binds even non-parties to the Convention.
- The Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations, UNHCR, 2007 mandates this.
- Also, Article 14 of the Universal Declaration of Human Rights provides that everyone has the right to seek and enjoy in other countries asylum from persecution.
- Moreover, Article 51 of the Indian Constitution imposes an obligation on the state to endeavour to promote international peace and security.
- Article 51(c) talks about promotion of respect for international law and treaty obligations.
- Thus the argument that the nation has not violated international obligations during the deportation is a mistaken one.

- The deportation of Rohingya refugees by India is not only unlawful but breaches a significant moral obligation.

Why do Rohingyas deserve protection?

- The Rohingya are, notably, among the world's least wanted and most persecuted people.
- In Myanmar, they are denied citizenship, the right to own land and travel, or to even marry without permission.
- According to the UN, the Rohingya issue is one of systematic and widespread ethnic cleansing by Myanmar.
- Certainly, the discrimination that the Rohingya face is unparalleled in contemporary world politics.
- By the Indian Constitution, even foreign citizens are entitled to the right to equality and the right to life, among others.
- So the Rohingya refugees, while under the jurisdiction of the national government, cannot be deprived of the right to life and personal liberty.

What are the legal limitations?

- India lacks a specific legislation to address the problem of refugees, in spite of their increasing inflow.
- The Foreigners Act, 1946, fails to address the peculiar problems faced by refugees as a class.
- It also gives unchecked power to the Central government to deport any foreign citizen.
- Further, the Citizenship (Amendment) Bill of 2019 strikingly excludes Muslims from its purview. [The majority of the Rohingya are Muslims.]
- This limitation on the basis of religion fails to stand the test of equality under Article 14 and offends secularism, a basic feature of the Constitution.

Source: The Hindu

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