Deportation of Rohingya Refugees - SC Order

What is the issue?

- In its April 8, 2021 order, the Supreme Court did not allow the release of Rohingyas reportedly detained in Jammu.
- The court also rejected an application to stay the deportation of Rohingya refugees to Myanmar; but they should not be deported unless proper procedure is followed.

What were the petitioners' demands?

- The Court noted the petitioners' contention that -
  i. more than 6,500 Rohingya refugees were illegally detained in Jammu
  ii. 150-170 of them were under imminent threat of forcible deportation
    - This happens at a time when the civilian government of Myanmar stood unseated by a military coup.
- It also noted the petitioners' reliance on a judgment of the International Court of Justice (ICJ) dated January 23, 2020.
- The judgement recorded the genocidal conditions that resulted in 7.75 lakh Rohingyas being forced to take refuge in Bangladesh and India.
- **Demands** - The petition made demands -
  i. to release the detained Rohingya refugees immediately
  ii. to direct the UT government and the Ministry of Home Affairs to expeditiously grant refugee identification cards through the FRRO for the Rohingyas in the informal camps
    - FRRO - Foreigners Regional Registration Officer

Why did the Court reject the plea?

- **Government's stance** - The government's stance was that the principle of non-refoulement applies only to signatories to the UN's Refugee Convention of 1951 or its 1967 Protocol.
  - Non-refoulement is the practice of not forcing refugees or asylum seekers to return to a country in which their life is in danger.
- The government also cited that a previous application for 7 Rohingya refugees in Assam had been dismissed on October 4, 2018.
- In line with these, the Court rejected the present application.
- **Court's rationale** - The court held that the right "not to be deported" is

ancillary to citizenship.

- The rights guaranteed under Articles 14 (equality) and 21 (due process of law) are available to all persons who may or may not be citizens.
- But the right not to be deported, is ancillary or concomitant to the rights guaranteed under Article 19(1)(e).
    - Article 19 (1) (e) guarantees to every citizen of India, the right "to reside and settle in any part of the territory of India".
- It was however made clear that the Rohingyas in Jammu would not be deported until the procedure is followed.

What are the contentions with the SC order?

- The April 8 order signals a disregard of grave human rights issues by a Court which was a beacon for other constitutional courts.
- What is worrying is a conscious refusal by the Court -

i. to consider the facts
ii. to examine uncontested materials placed before it
iii. to hold the central and state governments to their duties under Part III of the Constitution of India, as well as their obligations under binding international law

- It refused to examine the questions raised by the petitioners, and to probe the defences of the government.

What are the challenges involved?

- In India, no legislation has been passed that specifically refers to refugees.
- Hence, the Rohingya refugees are often clubbed with the class of illegal immigrants deported by the government under the Foreigners Act 1946 and the Foreigners Order 1948.
- This is coupled with discrimination against the Rohingyas by the government, they being largely Muslim refugees.
- Legally, however, a refugee is a special category of immigrant and cannot be clubbed with an illegal immigrant.

What could the Supreme Court do now?

- What is expected of the Supreme Court is to hear, consider, examine, evaluate and decide.
- There are two possible solutions.
- The first is that in its interim order, the Court specifies that the Rohingya refugees may not be deported unless "the procedure prescribed for such deportation is followed".

- It is a long-held principle of Indian jurisprudence that the word “procedure” means “due process.”
- In other words, a procedure that is just, fair, and reasonable.
- The Supreme Court can, thus, suo motu clarify that its interim order means that the refugees may not be deported without due process.
- And, due process here requires that they not be deported as long as there exists a reasonable threat of persecution in Myanmar.
- Alternately, since the order in question is an interim order that was passed without a detailed hearing, the damage is not irreversible.
- The Court could, therefore, swiftly hear the main petition on its merits.
- It can then clarify the law on non-refoulement and Article 21.
- By doing this, the Court will redeem its reputation of being the “last refuge of the oppressed and the bewildered”.

Source: The Indian Express, The Hindu

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