

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

