

1. Rohingya Deportation Case- Polity

We offer a red-carpet welcome to Rohingya- SC on plea for due process. The Supreme Court recently scrutinized the detention of Rohingya immigrants, ruling that illegal entrants have no automatic right to reside in India without government recognition, prioritizing national security and border integrity. The issue underscores India's reliance on "strategic ambiguity" and the Foreigners Act, 1946, rather than international refugee conventions, to manage asylum seekers.

Current Context- Supreme Court Proceedings

Habeas Corpus Petition- The Supreme Court recently heard a *habeas corpus* petition filed by activists.

The Issue- The petition highlighted the alleged disappearance of several Rohingya individuals who had been in Delhi Police custody since May.

Petitioner's Argument- The core contention was that even in cases of deportation, the state must adhere to due legal process, ensuring that individuals are not arbitrarily removed or lost within the system.

Profile- The Rohingya Community

Ethnic Identity- They are a Muslim ethnic group predominantly residing in the Rakhine state of Myanmar.

Linguistic Distinctiveness- Unlike the majority Burmese population, they speak a dialect of Bengali.

Status in Myanmar- Despite living in Myanmar for generations, the government views them as descendants of colonial-era migrants. Consequently, they are denied full citizenship and rights.

Impact of the 1982 Citizenship Law

Strict Criteria- Under this law, Rohingyas can only obtain citizenship if they prove their ancestors lived in the country before 1823.

Classification- Those unable to prove this are classified merely as "resident foreigners" or "associate citizens," even if one of their parents was born in Myanmar.

Consequences- This legal exclusion results in severe restrictions, including bans on civil service employment and limitations on freedom of movement within the Rakhine state.

Legal Framework for Refugees in India

International Obligations (or lack thereof)

Non-Signatory Status- India is **not a party** to the key international treaties governing refugees- The 1951 Refugee Convention. The Convention Against Torture. The Convention on Enforced Disappearance.

Result- Therefore, India has no direct legal obligation to provide asylum under these specific international statutes.

Domestic Laws Governing Detention

In the absence of a specific refugee law, refugees are detained and managed under older general laws-

The Foreigners Act, 1946- Grants the government powers to restrict the movement of foreigners and order their deportation.

The Passport Act, 1967- Regulates entry into India through valid travel documents.

The Citizenship Act, 1955- Defines who is an Indian citizen and by exclusion, who is an illegal migrant.

"Strategic Ambiguity" Policy

India manages refugee status via ad-hoc executive channels rather than a fixed legal framework.

This approach, termed "strategic ambiguity", allows the Ministry of Home Affairs to treat different groups differently based on geopolitical needs (e.g., the specific handling of Sri Lankan Tamils and Tibetans versus other groups).

Comparative Analysis- Rights & Protections

Feature	Principle of Non-Refoulement	India's Statutory Stance
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Definition	The practice of not forcing refugees or asylum seekers to return to a country where they are liable to be subjected to persecution.	The formal laws (Foreigners Act, etc.) strictly regulate entry and exit based on documentation, not persecution risks.
Legal Status	Accepted by India as Customary International Law.	Not statutorily binding in domestic law. There is no domestic legislation enforcing this principle explicitly.
Constitutional Protection	N/A	Article 21 (Right to Life) offers basic protections to <i>all persons</i> (citizens and non-citizens), but it does not grant the right to reside or settle in India to non-citizens.

Supreme Court's Recent Observations

No Automatic Refugee Status- The Court observed that Rohingyas cannot be automatically classified as refugees. Such status requires an official government declaration.

Illegal Entrants vs. Rights- The Court stressed that those entering the country illegally do not possess inherent legal rights to reside within the country.

Need for Clear Stance- Emphasis was placed on the need for the government to articulate a clear stance on the status of such groups.

Humanitarianism vs. Legal Rights- The Court acknowledged that baseline humanitarian treatment is owed to all entrants. However, it expressed skepticism about extending full legal rights to non-citizens who enter illegally.

National Security Perspective- Highlighting the sensitivity of India's northern borders, the Court remarked that intruders cannot be given a "red carpet welcome" or extensive facilities. Security concerns were cited as a primary reason for strict monitoring and potential deportation.

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