

ROHINGYA REFUGEES UNDER FOREIGNERS ACT : POLITY

NEWS: If Rohingya refugees are 'foreigners' under the Foreigners Act, they will be dealt with as per the law: SC

WHAT'S IN THE NEWS?

The Supreme Court held that Rohingya refugees, if deemed 'foreigners' under Indian law, can be deported under the Foreigners Act despite UNHCR recognition. While Articles 14 and 21 apply to all, the right to reside in India is not available to non-citizens.

Context and Supreme Court's Observation

- The Supreme Court of India stated that Rohingya refugees, if found to be "foreigners" under the Foreigners Act, 1946, will be subject to Indian law and procedures.
- The case highlights the legal and humanitarian dilemma of balancing constitutional protections and national immigration laws.

Petitioners' Arguments

- UNHCR Recognition: Rohingya are officially recognized by the United Nations High Commissioner for Refugees (UNHCR) as refugees deserving international protection.
- Non-Refoulement Principle: Deporting them to Myanmar may violate international law, particularly the principle of non-refoulement, which prohibits sending individuals back to places where they face persecution, torture, or death.
- **Constitutional Rights Violated:**
 - Article 21 – Right to Life and Personal Liberty: Deportation endangers their lives in Myanmar.
 - Article 14 – Right to Equality: Arbitrary detention and deportation would violate equal treatment under law.

Government and Supreme Court's Stand

- **India Not a Party to Refugee Convention:** India is not a signatory to the 1951 UN Refugee Convention or its 1967 Protocol, and is thus not bound by their provisions.
- **Broad Powers under Foreigners Act:** The Foreigners Act, 1946 grants the government wide discretion to regulate entry, stay, and deportation of foreigners.
- **Article 19(1)(e):** This right (to reside and settle anywhere in India) applies only to Indian citizens, not to foreign nationals.
- **Articles 14 and 21 Still Apply:** The SC reiterated that basic rights like dignity and protection of life apply to all persons, including non-citizens, but do not amount to a right to reside.
- **Matter Subject to Law:** The final determination of whether the Rohingya may remain in India depends on legal procedures under domestic law.

Who are the Rohingya?

- **Ethnic and Religious Identity:** Rohingya are a Muslim minority group from the Rakhine (Arakan) region of Myanmar.
- **Statelessness:** Myanmar's 1982 Citizenship Law denies them citizenship, making them the largest stateless population in the world.
- **Cultural Distinction:** They differ linguistically and religiously from the majority Buddhist Burmese population.
- **Persecution and Exodus:** In 2017, a military crackdown in Rakhine led over 750,000 Rohingya to flee to Bangladesh. Many have also sought refuge in India and other countries.

India's Policy on Refugees

- **No Formal Refugee Law:** India does not have a specific legal framework for refugees.
- **Not a Signatory:** India has not signed the 1951 Refugee Convention or the 1967 Protocol.

- Governing Laws for Foreign Nationals:
 - Foreigners Act, 1946
 - Registration of Foreigners Act, 1939
 - Passport (Entry into India) Act, 1920
 - Citizenship Act, 1955
- Treatment as Illegal Immigrants: As per the Ministry of Home Affairs, any foreign national entering without valid documents is treated as an illegal immigrant, including Rohingya.

India's Refugee Hosting Record

- India has historically offered refuge to various communities, including:
 - Tibetan refugees (since 1959)
 - Chakmas and Hajongs (from Bangladesh)
 - Sri Lankan Tamils, Afghan refugees, and others
- Approximately 3 lakh refugees are currently residing in India under various categories.

Reasons for India's Cautious Approach on Refugees

- Resource Strain: Refugees burden essential services like housing, health, and education in under-resourced areas.
- Social Cohesion: Large-scale influxes may disrupt local harmony and create friction with host communities.
- Security Concerns: There are fears of radicalization, illegal activities, or extremist infiltration, especially near porous borders.
- Diplomatic Sensitivities: Providing asylum could strain relations with neighboring countries like Myanmar or Bangladesh.

- Economic Pressures: Refugees may compete for low-skilled jobs, impacting the employment prospects of local populations.

Way Forward

- India's stance reflects a blend of humanitarian tradition, realpolitik, and national security priorities.
- Despite not being party to international refugee conventions, India has shown moral leadership in past refugee crises.
- There is a growing need for codified refugee law or policy that ensures:
 - Consistency in refugee treatment
 - Adherence to constitutional values
 - Balanced handling of security and humanitarian concerns
- A comprehensive national framework can also help India assert a stronger position in global refugee diplomacy.

This case underscores the tension between legal sovereignty, international norms, and humanitarian responsibility in shaping India's refugee management approach.

Source: <https://www.thehindu.com/news/national/if-rohingya-refugees-are-foreigners-under-the-foreigners-act-they-will-be-dealt-with-as-per-the-law-sc/article69554086.ece>