

WRONG ON THE ROHINGYA



The **UN High Commissioner for Refugees (UNHCR)** called for a report from India on the **deportation** of a group of **Rohingya refugees** to Myanmar in October 2018.

India's process of sending back of the refugees offend against the prohibition or order of **international principles on refugee law** as well as **domestic constitutional rights**.

According to a BBC report, The Rohingya are “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, says the report.

According to the UN, the Rohingya issue is one of systematic and widespread **ethnic cleansing** by Myanmar.

About Rohingyas:

The Rohingya are **Burma's Muslim minority** who reside in the **northern parts** of the **Rakhine region**, a geographically isolated area in western Myanmar, bordering Bangladesh.

The Rohingya are **ethnically, linguistically, and religiously** different from **Myanmar's dominant Buddhist community**.

About **1.1 million Rohingyas** are said to live in Myanmar's Rakhine region, which is **Myanmar's least developed region**, with more than **78 per cent** of households living below the poverty line.

Global framework of Refugee law:

In order to address the **problem of mass inter-state influx of refugees**, UN adopted the Convention Relating to the **Status of Refugees in 1951**.

This was followed by the **Protocol Relating to the Status of Refugees in 1967**.

Most significant features of the Convention: Principle of non-refoulement:

The Principle of non-refoulement norm requires that “no contracting State **shall expel or return a refugee** in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

This idea of prohibition of expulsion lies at the heart of refugee protection in international law.

Argument of India has not violated international obligations:

It is often argued that the principle does not bind India since it is a party to **neither the 1951 Convention nor the Protocol**.

However, the prohibition of non-refoulement of refugees constitutes a norm of customary international law, which binds even non-parties to the Convention.

According to the Extraterritorial Application of Non-Refoulement Obligations, UNHCR, 2007, the **principle “is binding on all States**, including those which have **not yet become party to the 1951 Convention or its 1967 Protocol.”**

Argument that the India has not violated international obligations is a mistaken one:

- **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**.
- **Article 51** of the 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**.
- The **chapter on fundamental rights** in the Constitution differentiates citizens from persons.

While all rights are available to citizens, persons including foreign citizens are entitled to the **right to equality and the right to life, among others**.

The Rohingya refugees, while under the jurisdiction of the national government, **cannot be deprived** of the **right to life and personal liberty**. Therefore, the Constitution conceives of **incorporation of international law into the domestic realm**.

India may have to play to nurture a long-term solution to the problem:

Refugee law is a part of international human rights law.

On the reported **presence of 40,000 Rohingya** in India, view is that this is a **complex problem**.

It is difficult to envisage, given the present circumstances, use of **force to send the unfortunate and suffering people** back as neither Myanmar nor Bangladesh.

At the same time, we obviously cannot send a message that India is willing to receive a huge number of displaced people from Myanmar.

Conclusion:

India's actions make it clear that it would not compromise with the **security concerns** of the country while dealing with Rohingya issue.

But simultaneously, India have to take measures to **ensure safety of Rohingyas** on morality grounds with proper monitoring and supervision that **not to divert to unlawful activities**.

India was able to **nurture good relations** with the military government while **maintaining a cordial relationship** with the pro-democracy movement.

The world expects India to contribute to a **lasting solution to this problem**. This is our region. **Our Act East policy** demands it. We should take an **apolitical, pragmatic position** that is free from ideological inclinations.

The American philosopher **Ronald Dworkin** argues that if we **claim international law to be law**, we must understand it as **part of the greater morality**. In such a conception, the deportation of refugees by India is **not only unlawful but breaches a significant moral obligation**.