



Wrong on the Rohingya

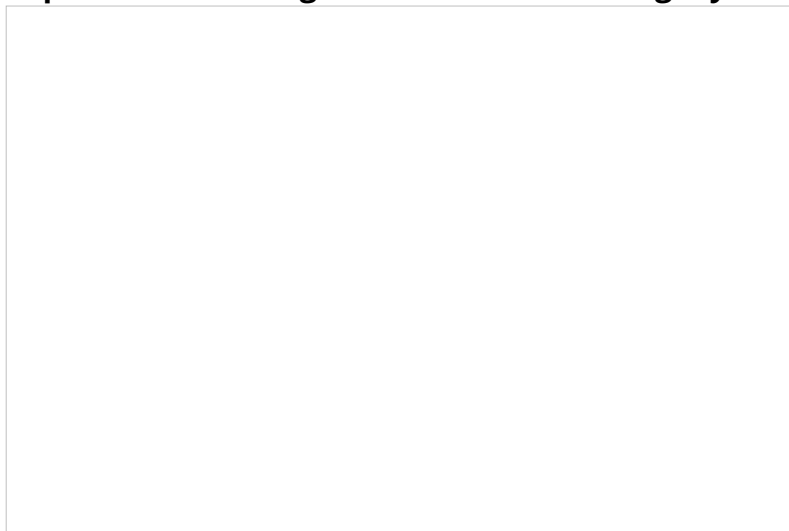
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(This editorial is based on the article “Wrong on the Rohingya” which appeared in The Hindu for 5th February 2019. In this editorial, we’ll discuss the Rohingya crisis and India’s stance on this issue.)

In January 2019, 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 repatriation (the return of someone to their own country) of the refugees contravenes international principles on refugee law as well as domestic constitutional rights where deportation of refugees is considered as legally and morally

problematic.



Background

- Described as the world’s most persecuted people, 1.1 million **Rohingya people live in Myanmar**. They live predominantly in **Rakhine state**, where they have co-existed uneasily alongside Buddhists for decades.
- The Rohingya are reviled by many in Myanmar as illegal immigrants and they suffer from systematic discrimination. The Myanmar government treats them as stateless people, denying them citizenship. Stringent restrictions have been placed on Rohingya

people's freedom of movement, access to medical assistance, education and other basic services.

- **Violence broke out in northern Rakhine state when militants attacked government forces.** In response, security forces supported by Buddhist militia launched a "clearance operation" that has killed at least 1,000 people and forced more than 300,000 to flee their homes.
- **According to the Ministry of Home Affairs, there are approximately 40,000 Rohingyas living in India.** They have reportedly reached India from Bangladesh through the land route over the years.

Global Framework

- **Refugee law is a part of international human rights law.** In order to address the problem of mass inter-state influx of refugees, a Conference of Plenipotentiaries of the 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. **One of the most significant features of the Convention is the principle of non-refoulement.**
- The 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.
- **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 Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations, UNHCR, 2007, **the principle "is binding on all States, including those which have not yet become the party to the 1951 Convention and/or its 1967 Protocol."**
- 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.
- Moreover, **Article 51 of the Constitution imposes an obligation on the state to endeavor to promote international peace and security.** Article 51(c) talks about the promotion of respect for international law and treaty obligations.
- Therefore, **the Constitution conceives of incorporation of international law into the domestic realm.** Thus the argument that the nation has not violated international obligations during the deportation is a mistaken one.

Domestic Responsibility

- **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.**
- In National Human Rights Commission v. State of Arunachal Pradesh (1996), the Supreme Court held: **“Our Constitution confers... rights on every human being and certain other rights on citizens.**
- Every person is entitled to equality before the law and equal protection of the laws. Also, no person can be deprived of his life or personal liberty except according to procedure established by law. **Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise...”**

India’s Stance

- **India lacks specific legislation** to address the problem of refugees, in spite of their increasing inflow.
- **The Foreigners Act, 1946, fails to address the peculiar problems faced by refugees as a class.** It also gives unbridled power to the Central government to deport any foreign citizen.
- Further, the Citizenship (Amendment) Bill of 2019 strikingly excludes Muslims from its purview and seeks to provide citizenship only to Hindu, Christian, Jain, Parsi, Sikh and Buddhist immigrants persecuted in Bangladesh, Pakistan, and Afghanistan. The majority of the Rohingya are Muslims.
- **This limitation on the basis of religion fails to stand the test of equality under Article 14 of the Constitution and offends secularism, a basic feature of the Constitution.**

Way Forward

- **Indian Judiciary is independent of executive and legislature.** Therefore the Supreme Court has placed human rights at the center of Indian polity and has tried to turn them into tool of advocacy and instrument of fairness between communities as well as individuals guaranteeing them for protection through civil and criminal justice process. Above all strengthening the identity of the Indian state and society.
- As per the devastated condition of Rohingyas, they should be provided with basic facilities of sanitation, proper drinking water, and medical facilities and gradually arrangements for their deportation should be made.
- **Any host country considerably should protect them from further difficulties rather than throw them again into the same. The right of living of any individual is a priority and cannot be abridged.**
- **India hasn’t ratified international convention validating refugee status in the**

country. However, India has done the best it can in the circumstances. **India recently built 250 homes for the refugees in Myanmar's Rakhine province for when they return.**

So far, the Indian approach towards the Rohingya crisis has been viewed as contradicting its traditional position on refugees. As the Rohingya crisis unfolds, there is still a lot that India can do to facilitate the finding of long-term solutions. These actions will be key in determining India's regional and global standing.

As a rising power with global aspirations, and with a long tradition in dealing with refugees, India is duty-bound. In the end, India may be in a better position to shape regional and global discourses on emerging issues affecting global governance, including on refugees.
