

WRONG ON THE ROHINGYA

Relevant for: Developmental Issues | Topic: Rights Issues - Human Rights and NHRC

In Januarys, 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 of the refugees contravenes international principles on refugee law as well as domestic constitutional rights.

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 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 endeavour to promote international peace and security. Article 51(c) talks about 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.

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.

The Rohingya are "among the world's least wanted and most persecuted people," according to a BBC report. 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.

Therefore, the discrimination that the Rohingya face is unparalleled in contemporary world politics. 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. So 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 lacks a 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.

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.

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