

Can India protect Rohingya, SC asks govt.

Kindred spirits: A file photo of children belonging to the Rohingya community playing at a refugee colony at Kalindi Kunj in New Delhi. Sushil Kumar Verma

Can India protect a large section of humanity comprising Rohingya women, children, the sick and the old who are “really suffering”?

This is the question the Supreme Court wants the government to answer.

The government, meanwhile, said the crisis over its move to deport 40,000 Rohingya was not “justiciable”, that is, the issue outside the Supreme Court’s domain.

But the court rejected this stand outright.

“I, for one, believe, from my past experience of 40 years, that when a petition like this comes to us under Article 32 of the Constitution, the court should be very slow in abdicating its jurisdiction,” Chief Justice of India Dipak Misra, who leads the three-judge Bench comprising Justices A.M. Khanwilkar and D.Y. Chandrachud, responded to the government.

The Centre, represented by Additional Solicitor-General Tushar Mehta, submitted that its August 8, 2017 communication to all the States to identify Rohingya and aid in their deportation was based on certain “executive parameters” such as diplomatic concerns, on whether the country can sustain such an influx of refugees and geographically whether there would be tensions and threat to national security. It denied saying all Rohingya were terrorists, but only “some of them”.

Faced with stiff resistance from the Bench, the government climbed down to explain that whether an issue was justiciable or not ought to be decided on a case to case basis.

‘Out of sync’

Senior advocate Fali Nariman, appearing for the Rohingya community, said the government “has gone out of sync” with its August 8 directive for deportation of Rohingya. He submitted that the government’s affidavit claiming the question of deportation of Rohingya was exclusively “within its subjective domain and not justiciable” makes “big inroads into what we thought our Constitution was.”

He rubbished the government’s claims that the Rohingya refugees will eat into the resources meant for citizens. “Our Constitution is not made up of group rights but individual rights,” Mr. Nariman submitted. Mr. Nariman, who introduced himself as a refugee from British Burma, submitted that the fundamental right to life enshrined in Article 21 protects all “persons,” including refugees who fled persecution in their native countries.

Universal obligation

He said the obligation to grant asylum was universal. “The Government of India has constantly made efforts to substantiate, enhance the rights of refugees. The August 8 communication is totally contradictory to Article 14. It sticks out like a sore thumb in our nation’s policy towards protection of refugees,” he submitted.

Mr. Nariman referred to the December 29, 2011 directive which laid out the standard operating procedure and internal guidelines for the Foreigner Regional Registration Offices (FRRO), and if

necessary take steps to provide the foreign national with a long-term visa. This had to be done irrespective of religion, gender, etc.

He said India had been “supportive of burden-sharing, of providing humanitarian assistance,” citing the Nepal earthquake as an instance. The court asked the government to address Mr. Nariman’s submissions that humanitarian concerns of children, women, the sick and the old outweigh justiciability and cannot be viewed in the same light as “everyone”. The next date of hearing is October 13.

The Rohingya had offered that anyone among them found to be a militant can be proceeded against as per the law. They were replying to the Centre’s claims that the Rohingya community was a threat to national security, easy prey for radicalisation. Their affidavit had referred to India’s strong track record of hosting refugees .

The Rohingya community, represented by main petitioner Mohammad Salimullah, said the government could not make a “blanket claim that all Rohingya refugees have terror links.”

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