India’s policy on the Rohingya

In News
Recently The Central government reasserted that its policy on the Rohingya refugees in India (who it calls “illegal foreigners”) will not change.
- Rohingya mark 5th anniversary of exodus from Myanmar to Bangladesh.

About Rohingya
- Rohingya, an ethnic group, mostly Muslim, hail from the Rakhine province of west Myanmar, and speak a Bengali dialect.
- Myanmar has classified them as “resident foreigners” or “associate citizens.
- Crisis Linked to them: They were forced to leave Myanmar in large numbers after several waves of violence, which first began in 2012.
  - The Myanmar army revived the attacks in 2017 and lakhs took shelter in Bangladesh.
  - They have been ill treated for so long. They fled Myanmar by boats trying to find refuge, tragically sometimes drowning in the Bay of Bengal.

Protection under international law
- Under international law, refugees have two broad rights: the right to seek asylum in another country, and the right not to be returned to a country where they face a threat to their life. These are also principles enshrined under the 1951 Refugee Convention and its 1967 Protocol, which puts an obligation on state parties to grant them entry and protection.
- However, other specialised international laws and human-rights principles are also applicable for the protection of refugees.
  - Instruments like the Universal Declaration of Human Rights (UDHR), Convention Against Torture (CAT), Declaration on Protection from enforced disappearances, the UN Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, the International Covenant on Civil and Political Rights (ICCPR) and the
Convention on the Rights of the Child (CRC) are also often invoked to provide additional protection.

- The United Nations High Commissioner for Refugees (UNHCR) is also appealing for further investment from the international community to ensure Rohingya refugees can benefit from skills development, including vocational training and other forms of capacity-building for adolescent and adult refugees.

**India’s Policy**

- **No International Commitment**: India is not a party to the 1951 Refugee Convention or its 1967 Protocol and does not have a national refugee protection framework.
  - However, it continues to grant asylum to a large number of refugees from neighbouring States and respects UNHCR’s mandate for other nationals, mainly from Afghanistan and Myanmar.

- **Legislations**: There is no distinction made between ‘foreigners’ and ‘refugees’ under Indian law. The Foreigners Act of 1946, Passport Act of 1967, Extradition Act of 1962, Citizenship Act of 1955 (amended in 2019) and the Illegal Migrant (Determination by Tribunals) Act of 1983 are some of the laws applicable to both.
  - Under these laws, foreigners can be detained and forcibly deported, even if they are refugees escaping their countries of origin in fear of death.

- **Administrative decision-making**: The regulation of refugees and asylum seekers in India is conducted on an ad-hoc basis through administrative decision-making.

- **The judicial response**: The Indian judiciary has been stepping up from time to time to safeguard refugees from deportation, expulsion and forced repatriation.
  - The Constitution of India safeguards the rights of all persons within its territorial jurisdiction, citizen or non-citizen, Indian courts have extended the scope of constitutional rights.
    - These rights include protection from discrimination and arbitrary action under Article 14 and the right to life and liberty under Article 21.

- **Latest Developments**
  - The Minister of Housing and Urban Affairs said the government will move the Rohingya refugees living in Delhi to flats meant for economically weaker sections.
  - The Home Ministry said the government would continue efforts for their “deportation” to Myanmar.
    - Earlier, the Union home ministry had said the rise of terrorism in last few decades has become a serious concern for most nations as
illegal migrants are more vulnerable to getting recruited by terrorist organisations. These illegal immigrants not only infringe on the rights of Indian citizens but also pose grave security challenges.

**Need of Refugee Law in India**

- The country’s need for specific legislation: There are gaps in refugee protection in India that can be traced to the country’s differential treatment of refugees.
- Since the 1951 Convention is not suitable in the South Asian context, where countries like India frequently experience a large influx of refugees, adopting a national law emerges as a better choice.
- Till now, Indian administrative policies and judicial interventions have served as alternatives in the absence of sound domestic legislation.
- However, a long-term practical solution requires that India make a shift from its charitable approach to a rights-based approach by enacting a national refugee law.
- A national refugee law will streamline refugee-status determination procedures for all kinds of refugees and will guarantee them the rights they have under international law.
- Additionally, it could sufficiently address India’s security concerns, while at the same time ensuring that there is no unlawful detention or deportation carried out in the garb of national-security concerns.

**Future Prospects**

- Many Countries that have signed the UN Refugee Convention also do not follow them and therefore the most important thing is that the countries should be non-discriminatory in all their approaches in dealing with refugees and the principle has to always be a commitment to universal human dignity.
- At the national level, India needs to ensure that no Rohingya refugee in India is deported back to Myanmar until it is safe to do so.
  - At the same time, ensuring basic amenities in refugee camps will be critical.
- The international community must do more to ensure that the Rohingya do not continue to languish in displacement and redouble efforts for increased political dialogue and diplomatic engagement to create conditions for voluntary, safe, dignified and sustainable return.

**Mains Practise Question**

[Q] Given the present scenario, does India need a formal refugee policy following UN conventions, or its own refugee law? comment.