SC Decision on Rohingyas Deportation

What is the issue?

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- Seven Rohingya men were recently deported to Myanmar for being "illegal immigrants".
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- The Supreme Court dismissed an application to restrain the government from taking steps for deportation.
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What is the deportation case?

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- The men had entered Assam in 2012 without documentation and were prosecuted for illegal entry under the Foreigners Act.
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- A case challenging the government’s move to carry out en masse deportation of Rohingya refugees is still pending before the Supreme Court.
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- Given this, the deportation of seven Rohingya men was unexpected and contentious.
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- The government says that the detainees had consented to return and the Myanmar Embassy had confirmed they were “citizens”.
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- An intervention application was filed before the SC, seeking a stay order.
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- The petition says the detainees were “refugees” as they were at the risk of persecution.
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- But the matter was dismissed by the Bench noting that they were “illegal

immigrants”.
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Why is the court's decision disputable?

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- **Constitution** - In NHRC v. State of Arunachal, the Court extended protection under Article 14 and 21 to refugees.
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- Given the circumstances, refugees often cross borders without prior planning or valid documentation.
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- If not for anything, this should reinforce their status as “refugees” and not "illegal immigrants".
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- Here, evidently, the Rohingya deported to Myanmar are at the risk of being tortured, indefinitely detained and even killed.
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- **International law** - Further, various high courts have upheld the customary international law principle of non-refoulement.
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- It is the practice of not forcing refugees or asylum seekers to return to a country in which they are liable to be subjected to persecution.
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- In view of these principles, the deportation potentially violates Article 21, and India’s international obligations.
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- **Citizens** - The argument that the men are “citizens” and therefore not in need of protection is without legal basis.
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- Refugees frequently, though not always, are citizens of the state they are fleeing from.
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- Government's claim that the men have been accepted as “citizens” by Myanmar is disputable as the root of the plight of the Rohingya is the denial of citizenship.
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- In Myanmar, they are being issued the controversial National Verification Card.
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- This does not recognise their religion or ethnicity and definitely does not confer citizenship.

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- **Judiciary** - In the absence of a domestic refugee protection law, it is for the judiciary to extend minimum constitutional protection to refugees.
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- By allowing this deportation, the SC has set a new precedent that is contrary to India’s core constitutional tenets.
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- However, it is important to not overstate the implications, as the order was based on the notion that the men had consented to return.
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- So in cases where there is no consent, this cannot apply as a precedent.
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Source: Indian Express

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