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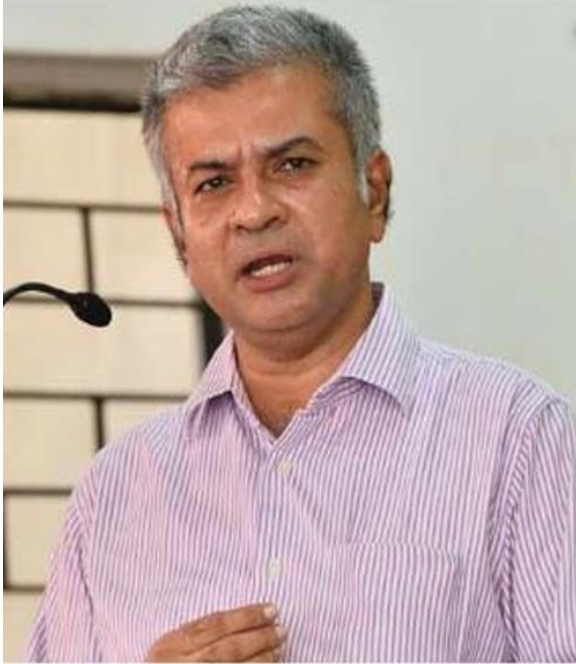
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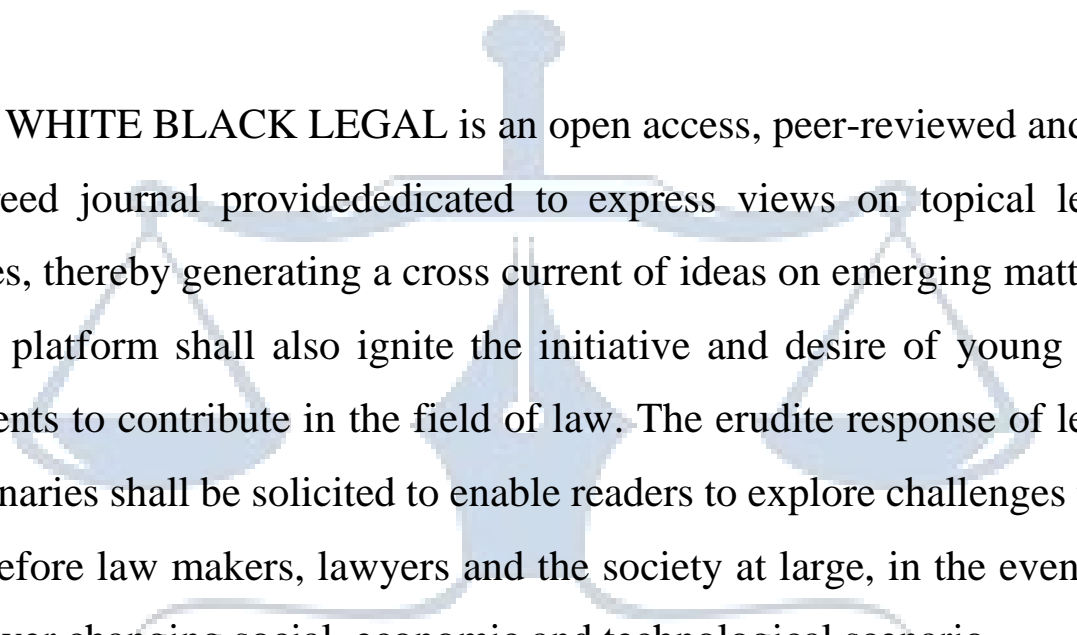
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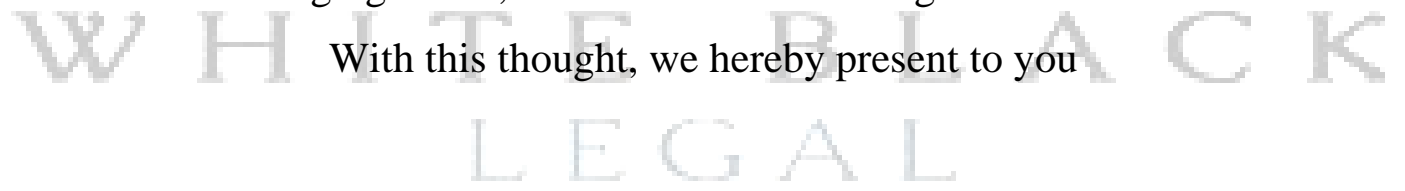
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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



MOHAMMAD SALIMULLAH & ANR V. **UNION OF INDIA**

AUTHORED BY - SANSKRUTI BRAHMA

FACT

Rohingya Muslims are an ethnic group belonging to the state of Myanmar. Rohingya Muslims are fleeing from Myanmar because it has been subjected to state-sponsored persecution and violation since the 1970s. In March 2021, several newspapers published about the illegal detention of several Rohingya Muslims in Jammu sub jails. And those who were detained were getting deported back to Myanmar by the government. This deportation was done because of a circular circulated by the Home Ministry issued in 2017. Almost 40,000 Rohingya Muslims were about to be deported from different camps across the country. Such Rohingya people entered India illegally. This petition was filed by a Rohingya Muslim himself asking the court not to detain them illegally. An interlocutory application No. 38048 of 2021. Also, to stop the process of deportation of such Muslims because they are not feeling safe about going back. This case was filed before Honorable Supreme Court. Mr. Mohammad Salimullah claimed was a member of the United Nations High Commission for Refugees. The objective of the petition was to release the detained Rohingya Muslims from the jails of Jammu and cancel their deportation. As stated in the petition the number of Rohingya Muslims was 6500 in Jammu. Whereas 150 Rohingya Muslims were held in Sub-jail.

ISSUE RAISED

1. Does the principle of non-Refoulment applies to India?
2. The Article 14 being violated of deportation of Rohingya Muslims as place immigrants are not being deported?
3. Knowing the threat in Myanmar to Rohingya Muslims, still deportation by the government of Rohingya Muslims a violation of Article 21?
4. Do the fundamental rights apply to the non-citizen of the country?

CONTENTIONS

ARGUMENT BY PETITIONER

- Petitioner argued that Articles 14 and 21 are also available to non-citizens of India.
- Petitioner argued Article 21 also has the principle of non-Refoulment to the person residing in the country.
- Petitioner also claimed even if India is not a signing party of the United Nations Convention on the Status of Refugees 1951¹ whereas India is a member of the Universal Declaration of Human Rights 1948², the International Covenant on Political Rights 1966³, and, the Convention of the right of Childs 1992⁴ hence the principle of non-refoulment also applies to India.
- Petitioner claimed India signed up for standing up against inhumanity against people in the world.
- Petitioner ruled out that in the international case of the Gambia V. Myanmar⁵ international court of Justice ruled out genocide on Rohingya Muslims. And if deportation happens then the Rohingya Muslims will get subjected to violence.

ARGUMENT BY RESPONDENT

- On 04.10.2018 the court rejected a similar petition regarding the deportation of Rohingya Muslims from the state of Assam.
- India shared the border with several countries, allowing such people to enter India illegally and letting them stay in the country will create a fear of inundation of people.
- The respondent ruled out that the petitioner himself is a foreigner defined under Section 2(a) of the Foreigner Act, 1946⁶. Section 3 of the Act also allows the central government to deport them from India.
- India is not legally bound to follow the principle of non-refoulment as it is not a signatory of the United Nations of Status of Refugees 1951.
- Allowing them to stay in India creates a National Security issue.

¹ United Nations Convention on the Status of Refugees 1951, 28 July 1951, U.N.T.S, 137.

² Universal Declaration of Human Rights 1948, 10 December 1948, U.N.T.S, 217 A (III).

³ International Covenant on political rights 1966, 16 December 1966, 2200A (XXI)

⁴ Convention of the right of Childs 1992, 20 November 1989, U.N.T.S, vol. 1577, p. 3

⁵ Gambia V. Myanmar, ICJ GL No 178, ICGJ 540 (ICJ 2020)

⁶ Foreigner Act, 1946, § 2, No. 10, Acts of Parliament, 1949 (India)

- Article 14, 21, & 19 is only provided to citizen of India.

STATUTES

1. United Nation convention on the Status of Refugees 1951
2. Constitution of India
3. Foreigner's Act 1946
4. Universal Declaration of Human Rights 1948
5. International Covenant on Civil & Political Rights 1996
6. Convention on the Rights of the Child 1992

ARTICLES

1. Article 14⁷- Right to Equality
2. Article 19(1)(e)⁸- Freedom to reside and settle in any part of the country
3. Article 21⁹- Protection of Life and Liberty
4. Article 51¹⁰- Promotion of International Peace and Security
5. Section 3 of Foreigner's Act 1946¹¹- Power is provided to Central Government to make rules regarding Foreigner: regarding prohibition, regulation, restriction, or departure from entering the territory of India.

RATIONALE

The apex court observed that Articles 14, and 21 are available to the non-citizens of India. But Article 19(1)(e) allows a person to move and resides in any part of the country is only available to an Indian citizen. As it allows them to reside in the country. The non-refoulment talks about not sending refugees back to their parental country if persecution is taking place. Even if India is not a signatory of the United Nations refugee convention 1951, hence it does not have a binding effect on the country. Also, there have been mentions of National Security which will get compromised if refugees are not deported. Supreme Court also contented deportation can only be done if the proper prescribed procedure is followed.

⁷ INDIA CONST. art. 14, amended by The Constitution (One Hundred and Fifth Amendment) Act 2021

⁸ INDIA CONST. art. 19, amended by The Constitution (One Hundred and Fifth Amendment) Act 2021

⁹ INDIA CONST. art. 21, amended by The Constitution (One Hundred and Fifth Amendment) Act 2021

¹⁰ INDIA CONST. art. 51, amended by The Constitution (One Hundred and Fifth Amendment) Act 2021

¹¹ Foreigner Act, 1946, § 3, No. 10, Acts of Parliament, 1949 (India)

INFERENCE

This case started with filing an interlocutory application by the petitioner which asked for the immediate release of illegally detained Rohingya Muslims and for stopping the deportation of those Rohingya Muslims back to Myanmar. The contention was they might get subjected to genocide taking place in Myanmar by its government. As they entered the territory of India illegally, they are foreigners under the Foreigner's Act of 1946. A similar application was filed under Assam High Court which got rejected. The apex court emphasized Article 19(1)(e) rather than Article 21. Hence, Supreme Court did not issue an interim order, which will result in the deportation of Rohingya Muslims. It can conclude from the case that Rohingya Muslims are holds a position as Foreigners, therefore will not get any special treatment. Even After being treated as a foreigner Rohingya refugee residing in the country are handled with due humanity by the government. The principal or non-refoulment was getting in conflict with the country's law. As there has been no signed treaty backed upon this principle the apex court could not make it force upon. Even though the principle of non-refoulment is a customary law it did not fulfill "jus Cogen."

JUDGEMENT

The three bench judges were contented after examining the issue, facts, and evidence favored the judgment of the respondent. The bench denied the interim relief for the detained Rohingya in Jammu jails. Also, the plea to stop the deportation got rejected and the deportation of Rohingya Muslims was allowed to Myanmar. Deportation as per the law was not held as violative of Article 21. Article 14 & 21 is available to non-citizens also but in this case, Article 19 (1) (e) talks about allowing people to anywhere, and residing is only subject to citizens of the country. The apex court contented that illegally entering India is a serious National Security Threat. The constant rise of immigration might lead to an increasing population. Which will lead to an economic crisis as the increasing demand for resources. India has already the highest Population it cannot take up more population without proper management. Lastly, India is not a member of the United Nations Convention on the Status of Refugees 1951 hence it is not bound to follow the non-refoulment principle.

REFERENCE

1. MOHAMMAD SALIMULLAH AND ANR. VERSUS UNION OF INDIA AND ORS, AIR 2021 SUPREME COURT 1789.
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