

Refugee Crisis in India: An Inquest on the Rohingya Debacle

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Abstract

The main focus of this paper is to assess the existing Indian laws and policies and their compliance with internationally recommended standards for refugee relief and rehabilitation. India is non-signatory to the 1951 United Nations Refugee Convention and the 1967 protocol. Despite being a vibrant democracy it still continues to elude a specific legislation for refugees. This paper sheds light on India's track record in the treatment meted out to refugees throughout its modern history. The study further highlights the need for Indian policy makers to draft regulations that will provide clarity on India's stance on the relief and rehabilitation of refugees and asylum seekers. In light of the Rohingya refugee crisis, there has been a surge in academic and public discourse across India. The issue of the Rohingya(s) is an extremely complex one primarily owing to religious and cultural differences with Indians. The non-existence of a specific asylum law, specifying as to who is eligible for asylum, has led to further complication in deciding the fate of the Rohingya refugees, who have suffered immensely at the hands of the Myanmar's armed forces, turning it only to a political gimmick. As a prominent power in South Asia, India has a responsibility to act in compliance with laid down international standards. This paper analyses news reports and policy documents in order to develop an understanding of the existent means to address refugee crises in India with special reference to the Rohingya issue.

Keywords: Rohingya, Refugee Crisis, United Nations, India, Relief and Rehabilitation

The Rohingyas are a minority Muslim ethnic group from the Northern Rakhine state of western Myanmar, formerly known as the Arakan state. The Rohingyas draw little or no attention from the International community although they are one of the most marginalized communities of South and South-East Asia.¹ Myanmar has over the years witnessed a long term policy of ethnic cleansing against the minority, Rohingyas, whose citizenship was taken away by law in 1982.²

It is because of this reason that, using the prerogative of terrorist attacks against the security forces by the Arakan Rohingya Salvation Army (ARSA) and other rebel forces the Burmese army, in line with the policy of ethnic cleansing, has actively engaged in widespread human rights violations against the resident Rohingya population.³

According to the report of Amnesty International (AI) published in May 2004, since 1978 the Rohingyas continue to suffer human rights violations in their home country Myanmar under the regime of military junta. They have been forced to flee from their home and country for refuge in neighboring countries, not because they have done something wrong but only because they belong to a particular community.⁴

Although the United Nations describes the Rohingyas as one of the most persecuted people around the world, their plight comparable to that of the Palestinians, has received very less coverage in the Western Media.⁵ The Rohingyas are in fact stuck in

¹ S N Parnini, "The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh." *Journal of Muslim Minority Affairs* 33 (England: Routledge, part of the Taylor & Francis Group, 2013), 281-297.

² D. Chaudet, "The Rohingya Crisis: Impact and Consequences for South Asia." *Journal of Current Affairs* 2, Vol. 2 no. 2 (Islamabad: Islamabad Policy Research Institute, 2018): 1-17.

³ Chaudet, "The Rohingya Crisis".

⁴ "The Rohingya Minority: Fundamental Rights Denied", Amnesty International, Accessed January 30, 2018, <https://www.amnesty.org/download/Documents/92000/asa160052004en.pdf>.

⁵ D. Goggins, "The Rohingya of Myanmar: The World's most persecuted people", Legal Aid Board, accessed February 11, 2018, <https://www.legalaidboard.ie/en/about-the-board/press-publications/newsletters/the-researcher-april-2013-vol-8->

a region where geopolitics trumps over human rights.⁶ Countries like China and Pakistan have their reasons for not interfering in this crisis – China for trade reasons and Pakistan, owing to its friendship with China - but India's stance is actually surprising.

India's attitude, as the second largest democracy in the world, has been regressive in the handling of this particular crisis. Rajnath Singh, the Indian Home Minister has time and again reiterated that India is not violating any international law by deporting the Rohingyas as India is not a signatory to the 1951 refugee convention, yet the same is debatable.⁷ Bill Frelick, the Director of the Refugee Rights Program of the Human Rights Watch argued that India's assertion of being a non-signatory to the 1951 refugee convention does not give it a clean chit, as there are certain customary international laws that every nation has to abide by.⁸

The Rohingya refugee crisis is essentially an issue of ethnocentrism which has turned violent – the reluctance to accept the Rohingyas as indigenous to the population of Myanmar is one of the main reasons for the same. The issue of religious identity is at the core of the conflict between the Buddhist Rakhine and the Rohingya Muslims, who do not have anything in common either ethnically or culturally. The crisis has further escalated owing to the reluctance of the regional powers and the international community at large, to intervene.

The Buddhist-Muslim Divide in Myanmar

Myanmar is dominated by the Bamar ethnic group that has little or no cultural similarity with the minority Rohingya community to the North. In fact, at the time of Burma's independence, the Rohingyas formed their own army and also approached Muhammad Ali

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⁶ Chaudet, "The Rohingya Crisis", 1-17.

⁷ Ibid.

⁸ "India Has No Right to Mistreat Refugees: HRW", Star Online Report, The Daily Star. September 25, 2017, accessed January 30, 2018, <https://www.thedailystar.net/world/rohingya-crisis/india-has-no-right-mistreat-refugees-human-rights-watch-hrw-1467475>.

Jinnah, 'asking him to incorporate Northern Arakan into East Pakistan' and this demand continued on to the 1950s.⁹ The Government of Myanmar looked upon the Rohingya as enemies of the state, who never owed any allegiance to Myanmar. Over the years these ethnic differences and rampant mistrust have led to the majority Bamar, who mainly constitute the government, having systematically framed rules and laws to exclude the Rohingya from the mainstream.

To make things worse the rape and murder of a young Buddhist woman by a number of Muslim men in 2012 sparked off one of the deadliest incidents of widespread rioting and clashes between the communities which left over 200 dead and a thousand displaced, mostly Rohingya Muslims.¹⁰

To add fuel to the fire, Ashin Wirathu, 'the Burmese bin Laden', as he calls himself, spread such hatred against the Rohingyas. The following lines bear witness to this fact:

His face as still and serene as a statue's, the Buddhist monk who has taken the title "the Burmese bin Laden" begins his sermon. Hundreds of worshippers sit before him, palms pressed together, sweat trickling down their sticky backs. On cue, the crowd chants with the man in burgundy robes, the mantras drifting through the sultry air of a temple in Mandalay, Burma's second biggest city after Rangoon. It seems a peaceful scene, but Wirathu's message crackles with hate. "Now is not the time for calm," the monk intones, as he spends 90 minutes describing the many ways in which he detests the minority Muslims in this Buddhist-majority land. "Now is the time to rise up, to make your blood boil."¹¹

⁹ Ahmed I., *The Rohingyas: From Stateless to Refugee* (Dhaka: University of Dhaka, 2009).

¹⁰ "Why Is There Communal Violence in Myanmar?" BBC News July 03, 2014, accessed January 30, 2018, <https://www.bbc.com/news/world-asia-18395788>.

¹¹ "Full Text of the Banned Time Story - The Face of Buddhist Terror", Telegraph, accessed February 9, 2018, <https://www.colombotelegraph.com/index.php/full-text-of-the-banned-time-story-the-face-of-buddhist-terror/>.

Looking at both sides of the coin it would be wrong to say that the present genocide, as is being termed, is only a result of Buddhist extremism.

Regional Power Dynamics and the Rohingya

Judging by the position of the countries in the South Asian and South East Asian region on the Rohingya crisis, it will not be wrong to consider the Rohingyas as a doomed race. None of the countries in the region want to intervene in this international crisis.

China, which enjoys very good trade relations with Myanmar's government, and has been able to sell their JF 17 Thunder fighter aircraft to Myanmar's Air force¹², does not want to forfeit its superior position. Non-interference with Myanmar's policy on Rohingyas, becomes a very mutually beneficial and therefore a very probable resolution. Pakistan, which is the only champion for minority Muslim rights in the region, owing to its need based friendship with China, seems to be eluding its traditional role.

India, which sees itself as a responsible super power, is also reluctant to intervene, owing to pressure of countering Chinese influence in Myanmar. India simply does not want to bear the brunt of sheltering and providing for a community of refugees who don't seem to have a foreseeable future – and there is also the question of religion. With a right leaning government at the Centre it is very unlikely that Muslim minority refugees would be accommodated or naturalized as Indian citizens especially when a perceived threat of terrorism still looms in the horizon. More so India, being a non-signatory to the 1951 United Nations Refugee Convention and the 1967 protocol, does not have an obligation to accommodate refugees which makes things even more complicated for the Rohingyas.

Bangladesh, which is a country that is being directly impacted by the crisis, seems to have been isolated in its effort to mitigate the

¹² S. Baruah, "Pakistan, China readying J-17 fighter jets for Myanmar", Asian Age, accessed February 9, 2018, <http://www.asianage.com/india/all-india/250617/pak-china-readying-j-17-fighter-jets-for-myanmar.html>

crisis. Rohingyas, being Muslims, it is an obligation for Bangladesh to provide refuge to persecuted fellow Muslim brethren in order to maintain its reputation in the Muslim world.¹³ Bangladesh has in fact been abandoned by its neighbors but the question is, for how long will a country, that itself is a victim of political instability, be able to contain a crisis of such magnitude. Forced migrations most often than not take place with unprecedented speed and magnitude and the utilization of meager available resources by displaced people tends to create tensions between the native populations and the newcomers.¹⁴ It is therefore argued that the presence of Rohingyas in Bangladesh without international or regional assistance will only worsen the situation.

1951 United Nations Refugee Convention and the 1967 protocol

The Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR) was adopted by the United Nations General Assembly on 14 December 1950 and the Office itself came into existence on January 1951. One of the earliest achievements of the UNHCR was the ratification of the 1951 Refugee Convention by 145 State Parties, which till today forms the foundation for the work of carried out by UNHCR.

The 1951 United Nations Refugee Convention defines the term 'Refugee' and outlines the rights of the displaced and the legal obligations of States to protect refugees. "Non-Refoulment", the idea that refugees should not be forcefully returned to the countries where they might face persecution leading to grave threat to their life and freedom, forms the core principle of the UNHCR.¹⁵ This is now considered as International customary law.

¹³ U. Rahman, "The Rohingya Refugee: A Security Dilemma for Bangladesh." *Journal of Immigrant & Refugee Studies*, Vol. 8, no. 2 (Taylor and Francis, 2010): 233-239.

¹⁴ Shin-wa Lee, "Environmental Impact of Sudden Population Displacements", European Commission Humanitarian Office, 1995, accessed February 30, 2018, <http://repository.forcedmigration.org/pdf/?pid=fmo:1490>.

¹⁵ "Convention and Protocol Relating to the Status of Refugees", UNHCR, United Nations, accessed January 30, 2018, <https://www.unhcr.org/3b66c2aa10>.

UNHCR is the guardian of the 1951 Convention and 1967 protocol. Owing to the fact that it is International customary law, all States, whether they have ratified the protocol or not, are expected to abide by the guidelines of the convention. Despite being a vibrant democracy and an expected responsible power in the region, India is non-signatory to the 1951 United Nations Refugee Convention and the 1967 protocol.

Refugee Relief and Rehabilitation in India

1947, the year of India's independence also ushered critical power shifts, policy changes and also widespread communal violence. In their haste to leave India, the British entrusted the mammoth task of partitioning this huge country to Sir Cyril Radcliffe, who, prior to the assignment had never set foot in the country and was not acquainted with the politics and demographic complications of simply drawing a line on the map. Even so, both India and Pakistan allowed for large scale migration of citizens from either side of the border. This migration is considered as one of the greatest migration in human history.¹⁶

Owing to this haste, in the east however, which is also the epicenter of the Rohingya crisis, the Chittagong Hill Tracts, an area with a majority Buddhist population (97% at the time) was awarded to Pakistan. The Chittagong Hill Tracts were home to a particularly neglected tribe, the Chakmas. In 1962, when the Pakistani government built the Kaptai dam, it displaced at least 40,000 Chakma tribals who then migrated to India as refugees.

India at the time was engaged in war with China and saw this migration as an opportunity to resettle the Chakmas in Arunachal Pradesh, in order to assert more control over the area. Close to 3000 refugee families were settled in this border state. The 1980s saw anti-immigrant protests in nearby Assam and the subsequent burning down of Chakma houses, through 1983 and 1995 a total of

¹⁶ W. Dalrymple, "The Mutual Genocide of Indian Partition", *New Yorker*, accessed February 7, 2018, <https://www.newyorker.com/magazine/2015/06/29/the-great-divide-books-dalrymple>.

130 houses were burned down in Papum Pare district of Arunachal Pradesh.¹⁷

The Chakmas were truly integrated as Indian citizens only recently in 2015 on the direction of the Supreme Court. The Chakmas had opted for India at the time of independence but were routinely ignored then and the same goes on even now.

At the moment The Foreigners Act (1946) and the Registration of Foreigners Act (1939) govern the entry and exit of all refugees. There is no consideration of the exceptional circumstances that they may be in. The Supreme Court, however, extended the rights under Article 14 (Right to equality) and Article 21 (Right to life and personal liberty) to refugees in the 1996 landmark judgment on the case of National Human Rights Commission v/s State of Arunachal Pradesh.¹⁸

India has had a mixed record with reference to the relief and rehabilitation of refugees. With the kind of diversity that India has, it is extremely tough to balance the various stake holders. It is argued that, this is the reason for the non-availability of an all-inclusive and comprehensive constitutional framework for the relief and rehabilitation of refugees but the same is also the need of the hour.

Conclusion

The non-existence of a comprehensive refugee relief and rehabilitation law in India has led to an ambiguous stance on the part of India with reference to the Rohingya crisis. It is argued that, with its reluctance to intervene in this grave humanitarian crisis, India has lost the moral high ground to raise questions on the

¹⁷ M. Handique, "How the 1962 War Played a Part in Resettling Chakmas in Arunachal", *The Quint*, accessed February 6, 2018, <https://www.thequint.com/voices/opinion/how-the-1962-war-played-a-part-in-resettling-chakmas-in-arunachal>.

¹⁸ "National Human Rights Commission vs State of Arunachal Pradesh", *Indian Kanoon*, updated January 9, 1996, <https://indiankanoon.org/doc/767216/>.

human rights violations for issues of similar nature – the Baloch secessionist movement, for instance, which is strategically very important for India. As the second largest democracy in the world, India also has an obligation to rise up to crises especially in South Asia, if it wants to project itself as a world leader. India's handling of this particular issue projects it as an irresponsible stakeholder in the region and is never a good idea for a young nation that looks upon itself as a potential super power. It is a soft power¹⁹ politics disaster. In order to assert regional leadership and exert soft power internationally, India's intervention in the Rohingya crisis becomes extremely important and this can only be done if India legislates an effective law pertaining to it.

¹⁹ J. Nye, "Soft Power." *Foreign Policy*, 1990, 153-171.