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HUMANITARIANISM UNDER SIEGE: THE ROHINGYA REFUGEE DILEMMA

AUTHORED BY - RIYA KUMARI & VRADHI TIWARI

Introduction

It is difficult for anyone who has never been displaced to imagine what it is like to be a refugee.

-Kofi Annan, Former Secretary General of the United Nations (Ullah, 2011)

In world history, many times, because of riots, wars, and disturbances, people are forced to leave their homes, their country of origin, and have to take shelter in other countries. These people are termed as *refugees*. These people leave their places of origin because they have to face life threats, discrimination, and other atrocities and persecution in their own countries and are unable to move back to their native place. In such situations, these refugees consider places they take shelter in as their safe heaven. The word *persecution* refers to the mistreatment of a group of people by some other dominant group because of some hatred. The refugees face various issues and problems in the countries where they flee to; they are denied their basic human rights, denied education, and live in poor conditions, which makes this situation an issue of utmost importance globally. Therefore, nation states should make laws on the issue and where there are laws, focus should be made on its implementation. One of the most suppressed groups of refugees is the Rohingya community. Rohingyas are basically an ethnic minority consisting of Muslims, majorly living in the western parts of Myanmar. Western Myanmar shares borders with Bangladesh and India; they mainly speak the Bengali language. The Rohingya refugee crisis has not originated in India only from Bangladesh but also from Myanmar.

India's history remains that we are a very hospitable nation; we believe in the philosophy of *Vasudhaiva Kutumbkam* and *Atithi Devo Bhava*. Yet the Rohingya refugee crisis came as a challenge to these philosophies because it was a very complicated issue in itself. At the world level, the refugee convention deals with the issues of refugee crises, but India is not a signatory member of the UN Convention. India does not have explicit laws or policies over the refugee situation. The Rohingya community faced various atrocities and discrimination for almost five

decades starting from 1978, but this took the shape of a crisis in August of 2017. The Rohingya crisis is considered one of the biggest refugee crises. The United Nations considers Rohingya Muslims as a *highly oppressed minority group*. Myanmar and Bangladesh came into an agreement in November 2017. After the infiltrations started, the agreement stated that Myanmar would work on the issue and soon provide solutions. The international community is also putting pressure on the Myanmar government to resolve the issue at the earliest convenience possible, but a constant fear instils in the international sphere that whether the roots of the crisis will settle or not.

Historical Background and Causes

The origin of Rohingyas is from the Arakan region in Myanmar, which dates back to the seventh century A.D.; their generations can be traced to Arabs, Pathans, Moors, Mughals, Central Asians, and Indo-Mongoloid people. Predominantly the Rohingyas were Arab descendants and followed the Muslim faith and traditional customs of Islam, but with time this community has become culturally diverse. Myanmar was also a British colony, under the rules of Great Britain, and became an independent republic in 1948. One third of the community is found in Rakhine state. The subject matter of the issue is that despite the Rohingyas living in Myanmar for several decades, they are still denied citizenship by the government. They are ready to provide citizenship to the community only if they are able to show proofs that their ancestor belonged to that country only. The reason behind this condition is that the Myanmar government considers them as migrants that fled from another country during the British colonial period. The Rohingyas have become the world's largest stateless population owing to the citizenship laws of 1982 in Myanmar, which deny citizenship by birth.

The persecution of Rohingyas was started way before independence and dates back to 1942-1945, the era of World War II. At this time an administrative ruling government was formed; this government had ties with the majority Buddhist faction and started oppressing the Rohingya community. This oppression became the reason for refugee crises and infiltrations in the neighboring countries, including India. The concept of refugees is not new to India; the first refugee crisis faced by India was during the partition in 1947. At this time a number of refugees came to Pakistan to settle in India. Firstly, the Tibetan migrants entered India in the year 1959. In 1960, Chakma and Hajang (modern-day Bangladesh). In 1965 and 1971, Bangladeshi refugees sought shelter in India. In 1980, Sri Lankan Tamils, then in 2002 Rohingyas entered India.

The number of Rohingya people residing in various countries had significantly increased till the year 2018. The International Development Committee's report of 2018 states that by the end of March 2018, Bangladesh had over 1.1 million migrants, Malaysia had 1,33,263, Thailand had 40,000, Pakistan had 55,000, and Indonesia had 1,000 Rohingya refugees. India's ministry of home affairs issues an official report according to which approx. 40,000 Rohingyas came to India, and these people were considered by the Bharatiya Janata Party as "illegal immigrants.". As it was perceived as a threat to national security. Thus, they have to face many difficulties and restrictions, and they are denied basic rights like education, the right to employment, health facilities, etc.

Impact of Rohingya Influx in India

Rohingyas reside in India mainly in urban areas such as Jammu, Hyderabad, Kanpur, Haryana, and the periphery of Delhi. The 40,000 people living in India are not considered to be refugees because India has not ratified the 1951 United Nations Refugee Convention. The refugees do not have any permanent residence in India; they live in makeshift homes that are not completely safe and secure. The living conditions of these refugees are extremely harsh, as they live in densely populated areas that are breeding grounds of various health issues like tuberculosis and other communicable diseases. Studies conducted show that the children belonging to the age group of six months to 59 months are severely anemic, and almost one-fourth of the populations suffers from global acute malnutrition (GAM). The Indian government has completely neglected the issue. They live in slum-like settlements, where they lack proper sanitation and basic and urgent healthcare facilities; for them, taking admission in local schools is next to impossible because of lack of documents. They are facing blatant violations of constitutional and human rights.

Apart from this, the women of Rohingya Muslims face humiliation and discrimination both inside and outside their community. In order to provide for their family, they have to work and earn money, but getting proper employment is a task in itself, which makes their survival a lot more difficult. The lack of proper documentation is the major cause of their unemployment. They also cannot work in the informal sector as they are vulnerable to exploitation. Some of their common employments are daily wage labourers, construction workers, and rag pickers. There have been instances where Rohingyas have been accused of being involved in criminal activities like smuggling and even forging documents. But more often than not these instances

are overexaggerated, which causes harm to their communities' reputation and image.

The government of India has taken a strict stance towards Rohingya refugees, labelling them illegal migrants, illegal Bengalis, a threat to national security, and many such similar terms. The main arguments of the government are about national security, and under this argument, the government has denied them basic human rights. Which shows that the government shows no account of the national and international legal standards of Rohingya refugees in this case. In addition to this, recently the government of India has also decided to not recognize the UNHCR-issued cards that gave the status of refugee to the Rohingya population.

Legal Status of Refugees in India

At present, India does not have a distinguished legal framework capable of dealing with the issue regarding refugees. At the global level, there are conventions and policies that protect the rights and dignity of the refugees owing to their vulnerable status. One such convention is the Refugee Convention of 1951, provided by the UNHCR. India is not a signatory to the refugee convention. This convention mainly talks about their rights and responsibilities of a country towards their refugees and provides them asylum. Some of the rights provided under this convention are the right to education, the right to work, and the right to documentation provided by the country. In 1951, the refugee convention and its "1967 protocol" included the principles of non-refoulement, which stops states from forcefully removing individuals from their territory who have taken refuge in their country if there is a possibility that the refugee might face persecution or torture in their native place or any other serious human rights violations. As of now, 149 countries have signed this convention, but India has not signed the refugee convention of 1951. India has not signed owing to some reasons, which mainly are the security concern (uncontrolled refugee movement); the second reason is that India is still a developing country, because of which India already has limited resources, and, in this situation, providing for and fulfilling the requirements of refugees is a difficult task. It can give rise to terrorism (sovereignty issue); it can also increase geopolitical issues; we can link it with the Bharat First policy.

In addition to this India is also not a signatory or part of other international instruments like the Convention Against Torture and other Cruel Inhuman Acts towards persons. Which is why the perspective of India towards dealing with these issues is entirely different and is not bound by the international organizations and institutions to deal in a prescribed manner. Currently, it was

noticed that India is restraining Rohingya refugees in accordance with various laws, such as the Foreigners Act of 1946 and the Passport Act of 1976. The refugees are defined as *illegal migrants* according to these laws.

A PIL was filed in the Supreme Court, asking for the release of detained Rohingya refugees. But the government has emphasized that while these refugees are entitled to the right to life, they do not possess the right to settle in India. In another case in 2021, the Supreme Court of India refused the deportation of 170 Rohingya refugees detained in Srinagar owing to national security reasons. This was held in the case of Mohammad Salimullah and Anr. v. Union of India¹. Further, in 2024 a PIL was instituted for acceptance of admissions of Rohingya refugee children in local schools. This plea was also rejected by the courts.

Internationally, India is a signatory member of the International Covenant on Civil and Political Rights (ICCPR), so India follows the non-refoulement principle, article 7, which states no refugee shall be returned in any manner to any country where he or she would be at the risk of persecution. India does not have specific domestic refugee laws, but still the Supreme Court, in the case of Vishakha v. State of Rajasthan² and National Legal Services Authority v. Union of India³, has stated that in the absence of laws, the international norms or conventions must be implemented so that the basic human dignity of these individuals is mandatory.

Political and Social Impact of Refugees in India

As India does not have specific laws on the refugee situation, the government deals with these issues as per their political convenience. The government has been making discriminatory decisions with respect to the issue of Rohingya refugees; the Sri Lankan Tamil refugees get a lot better treatment and aid as compared to the Rohingya Muslims. The government has enacted certain laws and policies, introduced by the BJP-led central government in India, which created more tensions for the refugee situation. The 'anti-Muslim' sentiment created towards the minority refugee population is clearly visible. Rohingyas are treated as illegal migrants, enemies, and perpetrators of crime. The Rohingya issue made the ugly side of politics clearly visible, with the hostile, unfavorable environment created for the Rohingya Muslims and the Muslim minorities. The Citizenship Amendment Act, 2019, is a clear case of discrimination

¹ Mohammad Salimullah and Anr. v. Union of India AIR 2021 SC 1789

² Vishakha v. State of Rajasthan (1997) 6 SCC 241

³ National Legal Services Authority v. Union of India AIR 2014 SC 1863

against the Muslim minorities, as according to this law the non-Muslim suppressed groups are allowed to move to India and are also granted refugee status. Despite the extreme situations in India with respect to the Rohingya refugee crisis, India has been relatively silent on the issue. Because of its ties with Myanmar and their international relations, India is not pressurizing Myanmar enough to improve the situations readily.

The social challenges faced by the refugees include lack of proper health facilities, poorly executed law and order, public perception of the group as a security threat. The main component of social challenges is the 'minority stress,' which refers to the social issues of these groups, mainly low social security, low standard of living, and income inequalities and discrimination; all these social issues in turn lead to physical and mental health issues in these vulnerable groups. The Rohingyas are subjected to racial discrimination. In India, there are no set laws for refugees; instead, laws are made *ad hoc*. During the period of COVID-19, their situation was way worse; they did not get even masks, food, or other basic amenities. Another social problem is the unemployment issue; the Rohingyas are denied employment, because of which they are forced to resort to other methods and various criminal and illegal activities for the survival of their family. Another social challenge faced in the Rohingya refugee community is the issue of marriage; if a Rohingya woman wants to marry an Indian national, she cannot do so as the society will not accept this relation. The perception of this group has become so distorted among the common citizens that the institution of marriage with a person belonging to the Rohingya community is not considered acceptable by the people.

International Laws on Refugees

Every person has the right to move to another country if he is subjected to human rights violations or persecution in his own country. This process of taking shelter in another country is known as seeking asylum, and the UDHR (Universal Declaration of Human Rights) is one such treaty that provides the right to seek asylum in some other place in order to escape from persecution. Article 14(1) of the UDHR states that every individual has the right to seek refuge in some other country. Myanmar is a signatory of this treaty, but despite this, it failed in its responsibility to keep the community safe from oppression and grant citizenship to them. The Rohingyas are considered the world's largest stateless communities due to Myanmar's refusal to grant citizenship. The United Nations (UN) was formed in 1945, and after its formation many international organizations were formed with the purview of safeguarding human rights and maintaining the peace and security of vulnerable sections of the society. Some of these

organizations were the UNHCR, the UNSC, the ICC, and the ICJ.

The United Nations High Commissioner for Refugees (UNHCR) has taken into account the actions of Myanmar and has also criticized their actions. The main objective of UNHCR is to provide safe, surviving conditions to the refugee population and not to forcefully send the refugees back to their native country if there is a possibility that they will face persecution in their nation. It also talks about the responsibilities of host countries towards their refugee population. Similar steps have also been taken by the United Nations Security Council and General Assembly to protect human rights and provide aid and assistance to such groups. The International Criminal Court (ICC) and International Court of Justice (ICJ) are also parts of the United Nations Human Rights system. The ICC deals with the investigations of criminal cases against severe human rights violations, for example, ethnic cleansing, genocide, etc. The ICJ helps in the implementation of the rulings of the ICC and also deals with the cases of human rights violations.

India has tried to maintain its ties with Myanmar while expressing concerns over the Rohingya crisis. But a clear difference in the approach towards Rohingya refugees and other refugees can be observed; India's approach towards Rohingyas has been stricter and hostile. India is a signatory to the ICCPR, so India follows the principle of non-refoulement, which refers to the refugee not being sent back to the place where they might face persecution. India's decisions with respect to Rohingyas suggest that India does not, in fact, abide by this principle. As India is a member of the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), it has time and again talked about the issues of terrorism and extremism but has tried to avoid highlighting the Rohingya issue to avoid conflict and bilateral tensions. India is a powerful nation in the South Asian region, and because of this, its actions are closely monitored; it is expected to actively address the Rohingya issue while keeping a balance between its relations with Myanmar and the rights of the refugees. However, its silence and inactiveness could lead to other countries like China capitalizing on this issue.

Humanitarian Concerns/ Violation of their Basic Human Rights

The Rohingya crisis has raised severe human rights violations, humanitarian and ethical issues, especially in India, where the community has been denied basic human rights. The Rohingya refugees live in very overcrowded places in makeshift houses or camps; they do not even have a place they can call home. These places lack basic sanitation facilities and become a ground

for the spread of various communicable diseases. The Rohingya Muslims in India do not have access to proper healthcare and are also denied several other basic rights, such as the right to education and the right to employment, as most of them are employed in low-paying jobs and are often exploited and subjected to discrimination. The Rohingyas were subjected to military suppression and persecution in Myanmar from 1978 to 2017. The United Nations have given the term '*ethnic cleansing*' for the pertaining persecution.

Their situation in Myanmar is ironic in itself; Myanmar is a member of the Association of Southeast Asian Nations (ASEAN) since 2009, and being a member has certain responsibilities towards its people in safeguarding their interests and ensuring their freedoms and rights. But the Rohingya crisis is a black dot on the history of Myanmar's treatment towards their own people and the steps to mitigate the issue. Myanmar has time and again proved with its oppressive nature of conduct towards Rohingyas that it does not care much about abiding by the human rights obligations. The poverty rate in Rakhine state is significantly higher than the national average.

The host country also has certain responsibilities and obligations towards these oppressed and vulnerable groups, and UNHCR actively works towards its goal to safeguard the basic human rights of these refugees. But India, as a host country, has taken several steps that are not in furtherance of protecting the human rights of Rohingya refugees. As India is not a signatory to the UN Refugee Convention, it is obviously not bound by its principles and policies, but it has been observed that the status of Rohingya refugees in India is far worse than any other refugee groups. They live in poor conditions and are denied the basic human rights like education, sanitation, employment, and the right to live with dignity. In India the Rohingya refugees face disparate treatment; they have to face unequal treatment of different refugee groups by the government based on the geopolitical interest; one such example is the CAA, 2019. The second major issue is the lack of legal aid and limited access to legal representation and assistance for the detained Rohingyas. Another issue is that they are facing dehumanizing detention conditions; trafficking also becomes the main concern, considering their state, especially since women and girl children are more prone or vulnerable to such acts. The Rohingyas are the world's largest stateless and the most oppressed refugees, and in India their situation is not much different.

The UNHCR actively works to provide the refugees with an identity in the host country for

which it issues certain cards; these are known as Refuge Cards and are helpful in ensuring human rights for them in the host country. But, since this does not have a binding effect on the host countries, it has done little to improve the conditions at an international level. India itself has cancelled these cards and does not grant the status of refugee to the Rohingya Muslims.

Recommendations

The treatment of refugees in their host countries and especially the conditions of Rohingyas in various states is very concerning. Even in the 21st century, the people are subjected to oppression and various atrocities to the point of their human rights violations, and the so-called international organizations for the protection of their human rights are still unable to do something efficiently. For the protection of the dignity and basic human rights of such individuals, various steps can be adopted.

- India should adopt the refugee policies. Even if we are not signing the international laws, we must create a domestic law to ensure fair treatment for all refugees, aligned with international principles.
- The detention conditions should also be improved; the government should reform the detention center and address the needs of vulnerable groups.
- The policies and laws should be more inclusive and should not be against a particular community or group on the basis of their religion, and the decisions made by the government must not be biased towards any particular community.
- India's ties with Myanmar and Bangladesh are equally good, because of which it has been observed that India's stance has been relatively silent on this issue. But India should try to find a solution to this problem while maintaining a balance between the diplomatic relations of both these countries.
- Financial assistance should also be provided to the refugee community in the host countries. In India the Supreme Court intervened in this matter in the year 2018, where it ordered that nodal officers should be appointed by the government at the refugee camps. It also stated that the government should grant them certain rights, and these officers should ensure that the basic health facilities and human rights are ensured.
- The government should also put an end to the surveillance and control by measures such as taking their biometrics, and if their information is collected, they should be given some form of identification, which could help them avail themselves of their basic human rights and some other benefits.

Conclusion

The Rohingyas are the world's largest stateless population, and their status has remained so for a considerable period of time. Still, there are no improvements in their conditions globally, and in Myanmar, they continue to become victims of various atrocities and are constantly subjected to persecution and violation of their basic human rights. Their condition in India has been specifically worsened by the media portrayal of this community. They are termed as illegal migrants, illegal Bengalis, a threat to national security, and even terrorists, and the Indian media is highlighting and exaggerating these notions to increase their engagement and TRP. It is not completely correct to call them by these names. The media has the ability to garner support and define and shape the opinions of the general public, and at this sensitive time, their portrayal is creating more problems and hardships for the Rohingya refugees.

The Rohingya issue taking the face of a crisis is a clear example of the inability of the governments and international organizations to handle this issue effectively and find an efficient solution. While India's argument about the concerns of national security is valid, it should not in any manner imply that the humanitarian rights and obligations of India towards their refugees can be ignored or neglected. The conditions of other refugees in India are far better as compared to the Rohingya Muslims; the laws like CAA are hostile towards this community as it exclusively prohibits the refugee movement of the Muslim community into the country and refuses to grant refugee status to them. One of the main challenges for the international community is to persuade Myanmar to stop its forced migration and atrocities on the Rohingyas. Then only the situation can be made better, and solutions can be sought.

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