

Violence against Rohingya Refugee Women and Children: Protection under International Law

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Abstract:

Since 1962 *the Rohingya people have been subjected to systematic violence and discrimination in their own lands. The recent violence of 2017 has forced almost 6,50,000 Rohingya to take refuge in Bangladesh and major numbers include women and children. For decades the Rohingya people were deprived of their civil, political, economic, social and cultural rights. The recent sexual violence, torture and persecution is considered as crime against humanity. The violence led to the loss of over thousands lives, genocide against this group, destruction of thousands of homes, and the displacement of tens of thousands of people. This article attempts to identify and categorize the crime against humanity against the women and children under International legal instruments. The paper also intended to recommend effective measures to constitute a call for sustainable solutions to the decade's long violence, torture and discrimination. The last part of the paper has recommended some measures to fight this crisis and to ensure the dignified life of the Rohingya people in the light of International legal instruments.*

Keywords: Rohingya Refugees, Violence against Rohingya, Protection of refugees.

1. The Story of Rohingyas: Finding the Identity

The state of Rakhine in Myanmar, formerly known as Arakan, was populated by a Muslim ethnic group now recognized as the "Rohingya". Through the trading links to India and Arabia, Islam arrived in Arakan during the 7th century and Rohingya's language evolved under these influences and adopted Arabic and Persian words which makes the language similar to Bangla (Ibrahim,

2016). In the late 1960s, the government used the term Bengali instead of Rohingya, which implied immigrant status to them. In 1784, Arakan was conquered by Burma and Burmese oppression including forced labor which resulted in Arakan rebellion and continual state disorder. (Farzana, 2015). The British people started ruling all of Burma after the Anglo- Burmese wars in 1886. The boundaries between ethnic Burmese and Rohingyas were solidified primarily when Arakan was used as a buffer zone by the British to invade Burma and secondly employment of Arakanese Muslims (Rohingyas) in different working sectors (Farzana, 2015). 1872's report of the British census mentioned the presence of 58,255 Muslims in Akyab District which was increased to almost 1, 79,000 because of the requirement of cheap labor from the colonial rulers to work in different sectors. After the India-Pakistan separation, a number of Rohingyas of the northern Arakan wanted to be a part of the former East Pakistan, now recognized as Bangladesh, but the attempt failed (Ibrahim, 2016). When the Constituent Assembly in Rangoon was formed after the independence of Burma in 1948, a petition was filed to the assembly for the integration of Maungdaw and Buthidaung districts into Bangladesh by Arakanese Muslims. The petition created a negative impact and the consequences were serious. The Muslim population of Arakan was regarded hostile to the new regime by the Burmese authority and they were regarded as outsiders with loyalty for Bangladesh inside their heart (Ibrahim, 2016). The persecution against Rohingyas started gradually. The Myanmar constitution of 1948 established Myanmar (formerly known as Burma) as an independent nation. Although almost all the ethnic peoples gained citizenship during that period, the Rohingyas were denied. "Rohingyas has the equal status of nationality with Kachin, Kayah, Karen, Mon, Rakhine and Shan", mentioned by Prime Minister U Nu and in the 1961 census there was an ongoing recognition of Rohingyas but it was removed by the "1974 Constitution of the Socialist Republic of the Union of Burma" which resulted periodic violence against Rohingyas and refugees started to enter Bangladesh. The 1982 Burmese Citizenship Law declared Rohingyas as aliens and the reason was not recognizing Rohingyas' existence in Arakan before 1823. The Constitution of Burma of 2008 stopped granting citizenship to peoples already under reasonable expectation or newly borne of the recognized citizens (Ibrahim, 2016).

2. Violence against Women and Children:

Rohingya people were refused by the government to be identified as Bengali Muslim and in the 2014's census, one-third Rakhine's population went uncounted. Without any state recognition as citizens, refugee camps were the destination of the Rohingyas without the right to vote, health and education service (Ibrahim, 2016). Almost half a million people took refuge in Bangladesh after the violence of the Rakhine State in August 2017. According to the report of the UNICEF, estimated 693,000 Rohingya had fled Bangladesh till April 2018. The alarming news is that almost half of the number was children (Unicef, 2018). In August 2017, targeting the Rohingya Muslim people, violence started in Rakhine State in Myanmar and more than half a million people went to Bangladesh, triggering one of the fastest growing humanitarian crises in the world. During this period Rohingya victims faced lots of atrocities and discriminations and these are given below:

(a) Gender Based Violence & Rape:

Rohingya women were the victim of anti-Muslim violence through various restrictions imposed by the Myanmar Government (Human Rights Watch, 2012). In June 2012, Arakan Buddhist extremist's gang raped a huge number of Rohingya women (Zarmi, & Cowley, 2014). MSF health surveys reveals widespread data of sexual violence in northern Rakhine State. Almost 3% of the displaced Rohingya females were victim of sexual violence within the time frame of 25 August to 24 September of 2017. The victims' aged between nine to fifty years. The victims were taken away in unknown military camps where they were raped or gang raped, sometimes in front of the family members (Rohingya refugee crisis, 12 December 2017,).

(b) Forced Labor:

In Myanmar, forced labor is prohibited by the government but they forced it only for the Rohingya Muslim people and their children. Although the Myanmar government had launched many campaigns to end the practice of forced labor, the Rohingya people near the border were victims of it (Aubrey Belford, 2015). Anwar Sardad in October 2013 in an interview said that the forced labor was targeted to Muslims, only. Children were forced to carry rocks for almost 10 hours per day and earned less than 1000 kyats (1\$). That was the major cause for malnutrition and threatened the children's development (McDowell, 2013).

(c) Torture:

The Rohingya people were tortured and imprisoned by the state authorities. Both the resident and the refugees returning from Bangladesh were subjected to torture. On August 27, almost half a dozen of Muslim Rohingyas were slaughtered in the village of ChutPyin. The people responsible for this heinous act were known by the victims (Schwartz, 2018). Some of the gruesome methods of torture included severe beating, electrocution to genitals, rubbing iron rods to rip of flesh from victim's body, burning with lighters etc.

(d) Slaughtering and Killing:

New York Times' journalist Jane Perlez documented the discovery of at least 10 severe heads of Rohingya people inside a water tank in the area of Sittwe where some of them were children. This was mentioned in the UN and USA reports (Perlez, 2014). Rohingya refugee named Muhammad Shafiq was burned severely when Myanmar military set fire to his house in Myanmar and was admitted to a UNICEF-supported nutrition clinic (UNICEF, 2018). These violence's between 25 August and 24 September caused the death of almost 75% male and 56% female. A survey conducted in refugee settlement camps in Bangladesh by Médecins Sans Frontières (MSF) estimated the slaughtering/killing of almost 9,000 Rohingya in Myanmar between 25 August and 24 September (MSF, 2017).

3. Recent Scenario, Challenges and Implications:

In Bangladesh, an estimated 700,000 Rohingyas including people who fled Burma during earlier occurrences of violence required urgent humanitarian support (CRC, 2018). Along with the previous 200,000 Rohingyas who had already taken refuge in Bangladesh, the total number of Rohingyas in Cox's Bazar district reached nearly 919,000 which has imposed greater challenges to ensure the human rights of the Rohingyas. Despite the conditions of the refugee camps which were unsuitable for habitation, emergency food, shelter, water, sanitation, health, and protection services have been successfully provided within 900000 refugees, while tackling diphtheria and measles outbreaks (MSF, 2018). Enormous steps have been taken for the habitation of the refugee but it faced some limitation of the geography like vulnerable to landslide, at serious risk from cyclone as well as the water supply points and latrines could be overwhelmed by monsoon rains (ICG, 2018). Recently the Bangladesh Government, with the help of the Bangladesh Armed Forces have relocated the Rohingya refugees to remote Bhasan Char Island with better living conditions.

(a) Insecurity, Violence and Protection in the Refugee Camp

Gendered insecurities in the refugee camps are increasing day by day. Many unmarried women of the refugee camps have complained that they face sexual harassment by the members of their own community in the camps (The Daily Star, 2018). Many refugees reported that they have faced violent attacks, abductions, and kidnapping in the camps. To ensure safety in the camps, the curfew law enforcement patrols have been increased particularly by the concerned authority at night (MSF, 2018). Consequently, getting emergency healthcare during the night may be difficult for the patient due to curfew.

(b) Uncertainty about the Future of the Refugees

Rohingya refugee women and children face an uncertain future although the host country with the help of International community is trying to provide all type of humanitarian supports. The return of the Rohingyas to the homeland are supposed to be voluntary. But the refugees cannot surpass the Myanmar boundaries, due to lack of trust in the Nationalist Government and mostly due to fear (WORLD, 2018). In the meantime various precautionary measures have been taken by Médecins Sans Frontières (MSF) International to influence the Government of Myanmar, to preclude the discrimination against Rohingya as well as to return them in Myanmar and to ensure the freedom of movement. In the meantime for the certainty of the Rohingya, Bangladesh should be granted their refugee status as well as another legal status due to access to various services (WORLD, 2018). After the recent coup in Myanmar, its military has seized power after detaining Aung San Suu Kyi and other democratically elected leaders. That has imposed another challenge for the returning of the Rohingya refugees (BBC, 2021).

(c) Current health concerns

In the Rohingya Camp, the refugees are facing the shortage of healthcare systems, personal hygiene, sanitation etc. The surgical facilities that are given to the camps are very limited for the

huge number of people. The financial support received by the humanitarian organization and NGO's are not adequate to fight this crisis.

(d) Sexual and Gender-Based Violence (SGBV)

“Sexual and gender-based violence (SGBV) refers to physical, emotional, psychological, or sexual in nature, and can take the form of a denial of resources or access to services. It inflicts harm on women, girls, men, and boys” (UNHCR, 2018). Sexual and gender-based violence' covers numerous dissimilar acts, fluctuating from rape to genital mutilation. Médecins Sans Frontières (MSF) International had provided treatment to a number of victims of sexual violence. More than 600 patients were reported experiencing sexual violence in the camps of the Myanmar army (MSF, 2018).

(e) Human Trafficking:

More than 100 human trafficking cases were traced by the International Organization for Migration (IOM) during 2017. Between the 100 cases almost 40 were girls and 10 children (IOM, 2018). Lack of education has made the Rohingyas more vulnerable to human trafficking and endless social discriminations (UN migration agency).

4. Protection under International Law:

In January 23, 2020; The International Court of Justice (ICJ) unanimously issued an Order on provisional measures by a seventeen judge's full bench in *The Gambia v Myanmar*. It is considered as a historical development under the International law with greater significance. It recognizes and highlights the need for protective measures for ethnic Rohingyas residing in Myanmar, and by extension to those several hundred thousand Rohingya refugees seeking asylum in Bangladesh. Although this decision has been appreciated by many countries and governments, it is not enough to solve the Rohingya crisis. All the available protection mechanism under the International law has been discussed below:

(a) Responsibility to protect doctrine

The Responsibility to Protect (R2P) principle was conceptualized by the “International Commission on Intervention and State Sovereignty” (ICISS) in 2001. In 2005, the R2P principle principles were endorsed at the UN 60th Anniversary World Summit. Under Paragraph 138 of the 2005 World Summit Outcome Document, all the states are under responsibility to protect the citizens from genocide, war crimes, ethnic cleansing and crimes against humanity. Under Paragraph 139, the United Nations and the International community is also responsible for protecting peoples from genocide, war crimes, ethnic cleansing and crimes against humanity using peaceful means. During the UN General Assembly meeting in 2018, all members voted on a draft resolution calling to end violence's against Rohingya Ethnic Muslims (UN General Assembly,

2018). The gross human rights violations against the Rohingya population can't be stopped without the effective intervention from the international community.

(b) Self-Determination:

As per UN Resolution 1514 (1960) "All the people have the right to Self-determination. By virtue of that right they freely determine their political status and freely pursue economic, social and cultural development." The right to self-determination is recognized under the international law regime. According to Article 1(2) of the UN Charter, one of the main purposes of the United Nations is to respect the self determination of people for ensuring universal peace (Charter of the United Nations). Under Article 1(1) of the twin convention adopted by the international community in 1948 namely "International Convention on Civil and Political Rights" (International Covenant on Civil and Political Rights) and "International Convention on the Economic, Social and Cultural Rights" (International Covenant on Economic, Social and Cultural Rights), every person is entitled to right of self-determination for determining self-political status and to pursue development goals freely. To resolve this crisis a genuine federal Union of Burma should be established where all the democratic rights of all the ethnic people will be guaranteed. A federal system that combines and balances between self-rule for ethnic nationals and a share-rule for the Union is the federal system (Ullah, 2017). The recognized mechanisms for ensuring right to self-determination are: Firstly, any group can formulate a separate state within the territory of the current state with complete separation and secondly without complete separation they are entitled to absolute territorial sovereignty on any particular part of the state and thirdly they can be a part of any other country.

(c) Smarter International Sanctions

International sanctions are economic or political decisions which can be taken by regional or international communities against any state by way of diplomatic efforts to protect national security interest. In the context of the present situation, sanctions may be a helpful tool in inducing the regime to make the appropriate changes in Rakhine state in Myanmar (Peksen, 2009). Prominent scholar, Susan Allen, has argued that smarter sanctions can be more effective because it is directly targeted towards those in power – those whose behavior we wish to change (Allen, 2004). In addition to the benefits of imposing economic costs on the political leadership, targeted sanctions can also work to strengthen the opposition capacity of democratic forces in Burma. Specially, economic sanctions can contribute to a decrease in individual states' human rights violations and can be an effective enforcement tool for international law. Despite the location of the gross human rights violators, the UN and the International community should impose economic sanctions effectively. The Security Council of the UN is empowered to take actions necessary to confirm International peace and security by means of intervention or permission to intervene and though imposing restriction to member states sovereignty. These powers have been granted under Article 24 (1) and (2) of the U.N. Charter and laid down in Chapters VI, VII, VIII, and XII (Charter of the United Nations). Agreeing to treaties or customary norms, a limitation is imposed to state sovereignty principle. The Universal Declaration of Human Rights (UDHR) of 1948 was the first

International legal document to protect human rights and dignity. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 had transferred the UDHR into a binding treaty law. A number of additional treaties have been widely ratified by the International Community namely: the Torture Convention, the Convention to Eliminate All Forms of Racial Discrimination, the Convention to Eliminate All Forms of Discrimination against Women, and the Convention on the Rights of the Child, four Geneva Conventions in Time of War and the subsequent 1977 Additional Protocols, the Genocide Convention, the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and People's Rights. When the human violation is so gross that violating several legal obligations is not a concern of any state's domestic jurisdiction and such violations must be addressed and punished (Baek, 2008).

(d) Cooperative Diplomacy

From a historical point of view, the Rohingya crisis has its roots in many social and political misunderstandings (Nguyen, 2018). Jacques Leider argued that the victimhood discourse – in which international media focuses solely on the plight of the Rohingyas – has reinforced the prejudices and discrimination in the Rakhine State. He suggests that future discussions about the issue should include historical research that not only acknowledges the identity and history of all people in the crisis, but also allow space for the ethnic Rakhine's to express their discontents (Leider, 2018). Similarly, Ardeth Thawngmung also argues that the international community often discredits the views of the Buddhist majority. As an ethnic Muslim minority group, the Rohingyas have faced institutionalized discrimination from the Buddhist majority in every spheres of their social life. In 2016, Myanmar's first democratically elected government in a generation came to power, but critics say it has done nothing to help Rohingya and other Muslims for fear of alienating Buddhist nationalists and threatening the power-sharing agreement the civilian government maintains with the military (Council on Foreign Relations, 2020). Strong diplomacy tactics such as demanding the Rohingyas be granted full citizenship status or providing aid access exclusively toward Muslims only serves to alienate the Buddhist Rakhine's (Thawngmung, 2016). Bertil Lintner, a journalist who specializes in Burma, has repeatedly stressed the power that the military holds within the political system. With a guaranteed 25 percent of seats in the National Assembly, control of the three most important ministries (Defense, Home Affairs and Border Affairs), and a deep-rooted need to preserve its dominance, Lintner is skeptical that the military will take any actions that align with international expectations in the near future (Lintner Bertil, 2017) Thus, cooperative diplomacy requires Western governments and IGOs to change their Euro-centric approach. A combination of strong legal framework, smarter sanctions, and cooperative diplomacy can be the right policy mix for a better way forward. Most importantly, critically engaging Burma does not mean giving in to humanitarian abuses and authoritarian politics (Nguyen, 2018).

(e) Rohingya Repatriation

A third effort to repatriate hundreds of thousands of Rohingya refugees to Rakhine state by Bangladesh was expected to start in June but the recent military coup has created an uncertainty whether the repatriation is going to be initiated or not. In November 2018, according to the report of the Guardian, a list of almost 4500 people were made to send them back to Myanmar without their consent. Many people were traumatized when an attempt was made to send them back without their consent. In serious cases, continuous anxiety and lack of sleep resulted in heart attack from the fear of repatriation (The Guardian, 2018). Forcible repatriation is a violation of the international obligation (UNRC, 1951). United Nations Secretary-General Antonio Guterres said reporters on January 16: “The worst would be to move these people from camps in Bangladesh to camps in Myanmar [Burma], keeping an artificial situation for a long time and not allowing for them to regain their normal lives” (Fortify Rights, 2018). Repatriation should be done with the presence of mutual understanding and cooperation between Myanmar and Bangladesh. The success of the repatriation requires the guarantee of the Rohingyas legal recognition and a promise to a dignified life.

5. Conclusion

Historically the Rohingyas in Myanmar have been subjected to persecution and targeted for discrimination in all aspects of their lives, both in law and in practice for decades from 1977 to 2017. The recent crackdown of violence from August 2017 till now took their suffering to an unaccepted level, leaving hundreds of thousands of Rohingyas dead and forcing those who survived the violence and persecution to flee to Bangladesh. The recent violence in the Rakhine state has killed almost 10000 people in the first month only. A survey report of the Médecins Sans Frontières (MSF's) claimed that almost 800 children were killed under the age of five. The root cause of this violence is Myanmar's Citizenship Act, 1982 through which the Rohingyas had been declared stateless by the Myanmar government (Ullah, 2013). Though different organizations are working for the solution of this problem, neither the international community nor the internal authority have been able to offer a way forward towards long-term that will require meticulous planning, enthusiasm and sincerity to solve and sustainable solution. Now the United Nations along with the international community should take the responsibility of facilitating the Rohingya with the status of refugees in Bangladesh and arrange their early repatriation along with full status of citizenships by amending the Citizenship Act, 1982 (Javaid, 2018).

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