

ROHINGYA: A CRY FOR HELP

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INTRODUCTION

*Hamida, a Rohingya refugee woman, cries as she holds her 40-day-old son, who died as a boat capsized on the shore of Shah Porir Dwip, in Teknaf, Bangladesh, on Sept. 14, 2017. The boat ferrying people, escaping from Myanmar, capsized and many survivors scrambled through the crashing waves to shore. But Hamida's son while attempting to escape the wrath of State sanctioned persecution, succumbed to the will of the Sea. She was cradling the tiny pale body of her child, while the crowd looked on.*¹

The fastest growing refugee disaster in the world unfolded along the Myanmar-Bangladesh border in South Asia last year. More than 400,000 people escaped intense violence in Rakhine State², where Burmese military, backed by the Aung San Suu Kyi³ government, carried out “clearance operations” purportedly targeting insurgents.⁴ These Rohingya refugees crossed into the border of Bangladesh, Thailand, Indonesia and Malaysia to seek an exodus from the violence initiated by the State Military of Myanmar, which is basically text book example of ethnic cleansing⁵.

¹< http://www.huffingtonpost.in/entry/rohingya-crisis-photos_us_5a3bc302e4b025f99e150f1d> (data retrieved on 1st February, 2018).

² Rakhine State is a state in Myanmar (Burma). Situated on the western coast, it is bordered by Chin State to the north, Magway Region, Bago Region and Ayeyarwady Region to the east, the Bay of Bengal to the west, and the Chittagong Division of Bangladesh to the northwest.

³ Aung San Suu Kyi is a Burmese politician, diplomat, and author, and winner of a Nobel Peace Prize. She is the leader of the National League for Democracy and the first and incumbent State Counsellor, a position akin to a Prime Minister.

⁴ <<https://www.cfr.org/blog/women-and-girls-risk-rohingya-refugee-crisis>> (data retrieved on 1st February, 2018).

⁵ Ethnic Cleansing is defined as the purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas. To a large extent, it is carried out in the name of misguided nationalism, historic grievances and

The ensuing article is an attempt to get a glimpse of the crisis from the vantage point of the refugees. It sheds some light on the ongoing situation and authors' perspective on the medical/health issues women and children are facing at the refugee camps. Further, the role of India as a part of the International Community in this crisis has also been examined and some remedies have been suggested, as to how the situation can be contained before the condition of these stateless people further deteriorates.

THE ORIGIN OF CRISIS

The United Nations refers to Rohingyas as one of the most persecuted minorities in the world,⁶ and probably the most forgotten ones. The present act of violence is a part of pattern of discrimination that began 50 years ago.

Rohingyas' history can be described in three categories:

- ❖ Pre-colonial
- ❖ Colonial and
- ❖ Post-colonial.

Pre-Colonial:

In pre-colonial times, the independent kingdom of Arakan (currently known as the Rakhine State), was populated with Muslim Arabic sailors from 788 to 810 AD and afterwards Bengalis from the 15th to 17th centuries.⁷ During the pre-colonial times, the Rohingyas and Arakanese (remainder of population of Arakan Buddhists) lived in harmony.

Colonial:

This changed after colonization by the British following the first Anglo-Burmese war in 1825. The British took Arakan in their first campaign against Myanmar in 1824–1826, and

a powerful driving sense of revenge. See final report S/1994/674 of United Nations Commission of Experts available on < www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf> (data retrieved on 1st February, 2018).

⁶ "Burma: Study: Rohingya Among World's Most Persecuted," UNHCR Refugee Daily, 2014, available on <<http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=52fc6fbd5&id=5445f0238>> (data retrieved on 2nd February, 2018).

⁷ Ahmad, I. *The Plight of the Stateless Rohingyas*; The University Press Limited: Dhaka, Bangladesh, 2014.

encouraged an influx of Bengali Indian migrants. By the early 20th century, the immigrant population was twice the size of the local Muslim population. As the Muslim Rohingya community absorbed new migrants, its religious networks expanded and the Rohingya began to look, dress, and act differently from their Buddhist neighbors. The growing population pushed into the south, displacing some Buddhist villages.⁸

The rift deepened during the Second World War, when the Rohingyas declared their loyalty to the British, while the Arakense sided with the Japanese. British Colonists favored Muslims at the expense of other groups.⁹ They recruited them as soldiers during World War II and appointed them to positions of power in the post war government, as opposed to the Buddhists. As the war played out on Burmese soil, both the armies, British and Japanese, exploited the frictions and animosity in the local population to further their own military aims.¹⁰

During the Japanese occupation of Burma (including Arakan), the Rohingya population was targeted jointly by both the communalist (Buddhist) Rakhine and Burma Independence Army, killing 100,000 Rohingya and exiling a further 50,000 towards the border to East Bengal.¹¹

Post-Colonial:

After Burma received independence in 1948, the anti Rohingya campaign persisted, marked by discrimination and denial of their citizenship rights. In 1962, Burmese Government was taken over by military coup. They got rid of the country's constitution and created a military junta. General Ne Win and his Burma Socialist Programme Party (BSPP) seized power in 1962, the government began to dissolve Rohingya social and political organizations. In 1977, Burmese immigration and military authorities conducted what they called Operation *Nagamin* (Dragon King), a national effort to register citizens and screen out foreigners prior to a national census.¹²

⁸ <<https://rlp.hds.harvard.edu/faq/rohingya>> (data retrieved on 2nd February, 2018).

⁹ <<https://www.hindustantimes.com/world-news/tracing-history-tension-between-rohingya-muslims-buddhists-date-back-to-british-rule/story-9mo9eTjOaJ4JQmXGef0BHL.html>> (data retrieved on 2nd February, 2018).

¹⁰ Yegar, Moshe, "Between Integration and Secession- The Muslim Communities of the Southern Philippines, Southern Thailand and Western Burma/Myanmar" Lexington Books, United States of America, 2002.

¹¹ "Living in Limbo: Burmese Rohingyas in Malaysia" Human Rights Watch (HRW): New York, NY, USA, 2000.

¹² Maudood Elahi, K. "The Rohingya Refugees in Bangladesh: Historical Perspectives and Consequences," In John Rogge (ed.), Refugees: A Third World Dilemma, (New Jersey: Rowman and Littlefield), 1987, p. 231.

By May 1978, more than 200,000 Rohingya had fled to Bangladesh: this, the Burmese authorities claimed, signified the Rohingya's illegal status in Burma. Refugees reported that the Burmese army had forcibly evicted them and alleged widespread army brutality, rape and murder.¹³ The International Committee of the Red Cross and the Bangladeshi government supplied emergency relief but were quickly overwhelmed. The Bangladeshi government requested assistance from the United Nations and soon thirteen camps for the refugees were established along the border.¹⁴

BURMA CITIZENSHIP ACT 1982

The most critical issue remains till date is the legal status of the Rohingya in Burma and the implications that it carries in practice. While they have been permitted to reside in Burma, most Rohingyas are considered by the Burmese authorities to be "resident foreigners," not citizens. This lack of full citizenship rights means that the Rohingya are subject to other abuses, including restrictions on their freedom of movement, discriminatory limitations on access to education, and arbitrary confiscation of property. Denial of citizenship, and of the rights that go with it, inevitably pose serious obstacles to the achievement of a durable solution to the refugee flows.¹⁵

The 1982 Burma Citizenship Law, promulgated not long after the mass return of Rohingya who fled in 1978, distinguishes between three categories of citizenship: citizenship, associate citizenship, and naturalized citizenship. A person is issued a color-coded Citizenship Scrutiny Card consistent with his or her citizenship status - pink, blue, and green respectively.¹⁶ Citizens are persons who belong to one of the national races (Kachin, Kayah (Karenni), Karen, Chin, Burman, Mon, Rakhine, Shan, Kaman, or Zerbadee) or whose ancestors settled in the country before 1823, the beginning of British occupation of Arakan State. If a person cannot provide

¹³ Smith Martin, "Burma Insurgency and the Politics of Ethnicity", (London and New Jersey: Zed Books), 1991, p. 241.

¹⁴ Riaz Ali, "Islamist Militancy in Bangladesh: A complex Web", Routledge, 2 Park Square, Milton Park, Abingdon Oxon, OX14 4 RN.

¹⁵ The Rohingya Crisis from Humanitarian Perspective, available on <<https://rohingyastory.wordpress.com/the-rohingya-crisis-from-a-humanitarian-perspective/>> (data retrieved on 2nd February, 2018).

¹⁶ Major General (Retd.) Anup Kumar Chakma , Tasmiah Nuhiya Ahmed, "Myanmar's 1982 Citizenship Law and Rohingyas' Citizenship" available on <<http://daily-sun.com/home/printnews/274979>> (data retrieved on 2nd February, 2018).

evidence that his ancestors settled in Burma before 1823, he or she can be classified as an associate citizen if one grandparent, or pre-1823 ancestor, was a citizen of another country. Those persons who qualified for citizenship under the 1948 law, but who would no longer qualify under this new law, are also considered associate citizens if they had applied for citizenship in 1948.¹⁷ To become a naturalized citizen, a person must be able to provide "conclusive evidence" that he or his parents entered and resided in Burma prior to independence in 1948. Persons who have at least one parent who holds one of the three types of Burmese citizenship are also eligible. Beyond these two qualifications, Section 44 of the act stipulates that the person must be eighteen years old, be able to speak well one of the national languages (the Rohingya language, a dialect related to Chittagonian, is not one), be of good character, and be of sound mind.¹⁸

The stipulations of the Burma Citizenship Law governing the right to one of the three types of Burmese citizenship effectively deny to the Rohingya the possibility of acquiring a nationality.¹⁹ Despite being able to trace Rohingya history to the eighth century, Burmese law does not recognize the ethnic minority as one of the national races. Many Rohingya families migrated to and settled in Arakan during the British colonial period which would immediately exclude them from citizenship. Even for those Rohingya whose families settled in the region before 1823, moreover, the onerous burden of proof has made it nearly impossible for all but a handful to secure citizenship.²⁰ Rohingya who cannot provide "conclusive evidence" of their

¹⁷ Ghosal, Soma, "Agony Continues: Refugee Women of Bhutan", available on <<http://www.mcrg.ac.in/Refugee%20women%20of%20Bhutan.pdf>> (data retrieved on 2nd February, 2018).

¹⁸ Sections 42 to 44 of the 1982 Burma Citizenship Law on the qualifications required for Burmese naturalized citizenship read:

42. Persons who have entered and resided in the State prior to 4th January, 1948, and their children born within the State may, if they have not yet applied under the Union Citizenship Act, 1948, apply for naturalized citizenship to the Central Body, furnishing conclusive evidence.

43. The following persons, born in or outside the State, from the date this Law comes into force, may also apply for naturalized citizenship: (a) persons born of parents one of whom is a citizen and the other a foreigner; (b) persons born of parents, one of whom is an associate citizen and the other a naturalized citizen; (c) persons born of parents, one of whom is an associate citizen and the other a foreigner; (d) persons born of parents, both of whom are naturalized citizens; (e) persons born of parents, one of whom is a naturalized citizen and the other a foreigner.

44. An applicant for naturalized citizenship shall have the following qualifications: (a) be a person who conforms to the provisions of section 42 or section 43; (b) have completed the age of eighteen years; (c) be able to speak well one of the national languages; (d) be of good character; (e) be of sound mind.

¹⁹<<http://www.irinnews.org/report/100609/briefing-myanmar%E2%80%99s-%E2%80%9C Rohingya%E2%80%9D-what%E2%80%99s-name>> (data retrieved on 2nd February, 2018).

²⁰ Gulati, Rishi. "International Pressure the Key to Citizenship for the Rohingya", available on <<http://www.internationalaffairs.org.au/australianoutlook/international-pressure-the-key-to-citizenship-for-the-rohingya/>> (data retrieved on 2nd February, 2018).

lineage or history of residence find themselves ineligible for any class of citizenship. And because of their formal legal status as resident foreigners, Rohingya are subject to restrictions on their freedom of movement, are denied access to higher education, and are restricted from holding public office.²¹

UNHCR has urged the Burmese government to review its citizenship law, including as part of its National Convention deliberations, and has offered to consider the provision of financial, technical, and legal support for government distribution of Citizenship Scrutiny Cards.²² But Burma's ruling State Peace and Development Council has, till date, made no progress in addressing the legal obstacles to a sustainable return of Rohingya refugees and has responded negatively to UNHCR overtures.

OPERATION CLEAN AND BEAUTIFUL NATION

On similar lines to Operation Dragon King 1978, this operation actuated by the military, forced hundreds and thousands of Rohingyas to flee Burma into Bangladesh. The widespread violence, forced labor, harassment, rape and arbitrary seizure of land and destruction of property forced families to cross the Naf river into Bangladesh.²³ The United Nations Refugee Agency referred to those operations as “ethnic campaigns led by military junta itself”.²⁴ Dr. Michael W. Charney, a University of London scholar who specializes in South East Asian studies, wrote in his paper Buddhism in Arakan: Theory and Historiography of the Religious Basis of the Ethnonym that the “Rohingya [...] are compelled to thrive under really testing conditions where even their personal lives are under strict state scrutiny. Whatever property they inherited from their ancestors have been forcefully taken away from them, and granted to

²¹ “Muslim World: Issues and Solutions” Islamic Solidarity. Published in The Muslim World League Journal, The 2nd International Conference, available on < <http://en.themwl.org/content/conference-islamic-world-problems-and-solutions-2-islamic-solidarity-program>> (data retrieved on 3rd February, 2018).

²² Diller, Janelle M., "The National Convention: an Impediment to the Restoration of Democracy" published in Peter Carey (ed.), Burma: The Challenge of Change in a Divided Society, (New York: St. Martin's Press) 1997, pp. 27-54.

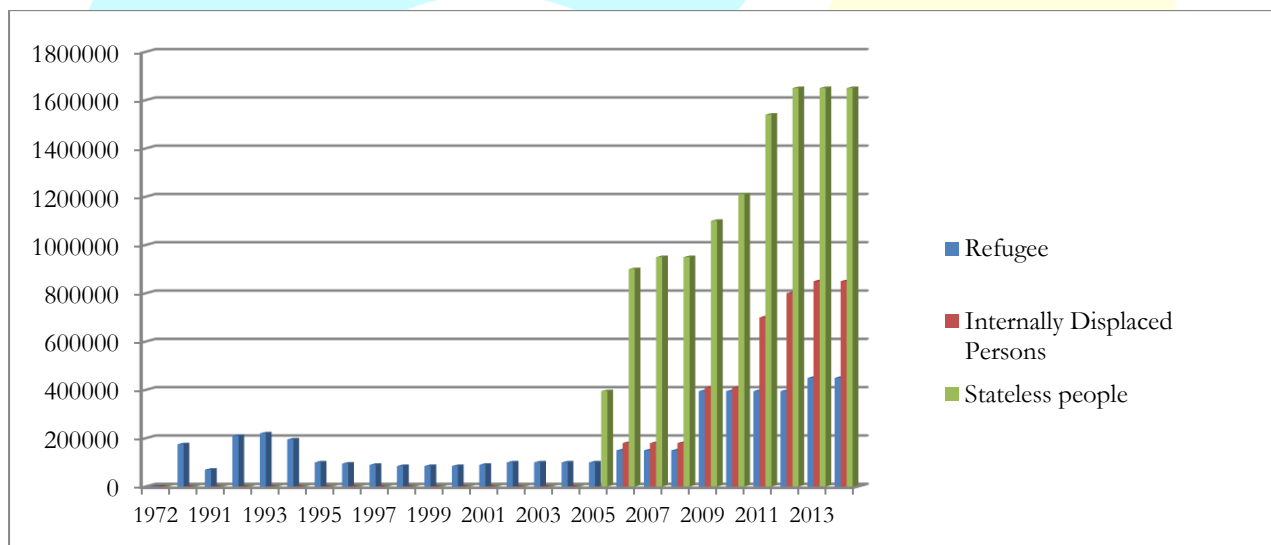
²³ <<http://www.rohingya.org/portal/index.php/rohingya-library/32-refugee/545-shining-light-on-the-rohingya.pdf>> (data retrieved on 3rd February 2018).

²⁴ <<http://www.eurasiareview.com/04122016-the-rohingya-genocide-no-longer-a-myth-oped/>> (data retrieved on 3rd February 2018).

the Buddhist majority under the banner of different national schemes that served to institutionalize and hence legitimize racist discrimination of Rohingya”.

THE CURRENT SITUATION

The Rohingya community has suffered the abridgement of fundamental rights, such as freedom of movement, religion, employment, and access to education—a situation made worse by additional measures taken against ethnic identity that limit their rights to get married or even to have children. Consequently, over the years Myanmar, and especially the Rakhine State, has registered an increase in the number of people fleeing the country, mainly towards safer neighboring States.²⁵



This data has been sourced from United Nations High Commissioner for Refugees depicting number of refugees from Myanmar from 1972 to 2013. Although this data refers to all Myanmar refugees and therefore also includes those escaping other forms of persecution, what is interesting here is the escalation of the exodus occurring in 1978 and 1992-1993, during discriminatory measures undertaken by the Burmese authorities against Rohingyas. The data

²⁵ ‘All You Can Do is Pray.’ Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State,” Human Rights Watch (2013), available on <https://www.hrw.org/sites/default/files/reports/burma0413webwcover_0.pdf> (data retrieved on 3rd February 2018).

also shows, beginning in 2005, a sharp rise in the number of stateless people and internally displaced persons (IDPs) who include Rohingyas.

It is also important to note that the persecution of Rohingyas has fueled widespread tension among local ethnic groups, as confirmed by several episodes of violence caused by Rohingyas. This was demonstrated in 2012 when a young Arakanese woman was raped and killed by three Rohingyas giving rise to fights and several deaths in a number of villages. The riots, which were triggered as a result, went on for almost a month with casualties on both the sides.²⁶

A fresh outbreak of violence took place on August 25, 2017, after Rohingya militants i.e. Arakan Rohingya Solidarity Army (ARSA) attacked three police outposts in the Maungdaw and Rathedaung townships, killing nine police officers. ARSA's actions were defended by stating it not to be a terrorist organization aimed at striking the heart at the heart of the Myanmar society, but, it is kind of self defence group for protecting its people who are living in conditions akin to a Nazi concentration camps. Another fact that is worth mentioning is that ARSA has no links with Al-Qaeda, the Islamic State of Iraq and Levant (ISIS), Laskar-e-Taiba or any other transnational terrorist group.²⁷

Human Rights Watch has periodically released satellite imagery showing wide-spread fire-related destruction in Rohingya villages. The latest release on September 2, 2017 estimates 700 buildings burnt down.²⁸

ROHINGYA REFUGEE CAMP CRISIS

As on 21 January 2018, about 688,000 new arrivals in the refugee camps of Bangladesh have been reported as per the survey conducted by IOM Needs and Population Monitoring (NPM)

²⁶<<http://www.thehindu.com/news/international/for-rohingyas-there-is-no-place-called-home/article19620567.ece>> (data retrieved on 3rd February 2018).

²⁷<<http://www.aljazeera.com/news/2017/09/myanmar-arakan-rohingya-salvation-army-170912060700394.html>> (data retrieved on 3rd February 2018).

²⁸ <<http://thesouthasian.info/wp-content/uploads/2017/01/13-september-2017.pdf>> (data retrieved on 3rd February 2018).

Baseline.²⁹ The United Nations has called Rohingya crisis in Myanmar the world's fastest growing refugee crisis and has gone so far to call it a textbook example of ethnic cleansing.

The present situation at the refugee camps is not any different from 2012, when a member of Bangladesh National Human Rights Commission's (NHRC) fact finding team conducted the Refugee case studies on site, about lack of basic facilities and restriction on movement. The refugees are suffering vagaries of the weather, with not enough clothes to protect themselves from the harsh weather. Representative examples of the conditions are summarized as below:

- ❖ Latif Ahmed, who is in his 60s, is staying at the Balukhali camp. His polythene tent cannot ward off the cold wave. The cold wave hit them following the rainfall on Tuesday and Wednesday nights last week. Three of his grandchildren are suffering from fever because of it.³⁰
- ❖ A pregnant refugee woman is living in the shabby corner of an unregistered Kutupalong Makeshift Camp, which is known as a breeding zone of mosquitoes. During the pregnancy she fed herself and had to work 18 hours a day with nominal wages. She gave birth to a baby girl, but was restrained to seek help from hospitals by the local police. Owing to improper treatment, her baby died after two days.³¹

There is a massive struggle to get shelter and other lifesaving needs. In the first few weeks, the sites had virtually no access to water and sanitation facilities, raising the risks of an outbreak of disease. Shanties, tented structures and tarpaulin covered tenements are to be seen everywhere with maximum demand being shelter materials. Relief has been although pouring in from WHO, MSF, IOM, UNHCR, ICRC etc, yet the situation continues to remain grim.³² The general health status of refugees in various countries is reported to be poor with malnutrition being major health problem due to lack of access to sufficient food and nutrient

²⁹< https://www.humanitarianresponse.info/system/files/documents/files/180121_iscg_sitrepre_one_pager.pdf> (data retrieved on 3rd February 2018).

³⁰ <<https://scroll.in/article/867518/sad-serious-acronym-disorder-twitter-users-are-on-top-of-the-world-over-modis-latest-wordplay>> (data retrieved on 3rd February 2018).

³¹ Trapped in Statelessness: Rohingya Refugees in Bangladesh, available on <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5580644/>> (data retrieved on 3rd February 2018).

³²< <http://www.searo.who.int/publichealthsituationanalysis29092017.pdf?ua=1>> (data retrieved on 3rd February 2018).

intakes. Other health problems among refugees include mental illness, intestinal parasites, hepatitis B, tuberculosis, sexually transmitted diseases, HIV/AIDS, malaria and anemia.³³

Infants and young children are often the earliest and most frequent victims of violence, disease and malnutrition which accompany population displacement and refugee outflows. There are no specific services available to refugee children with special needs or disabilities.³⁴ Rohingya children's health is affected by substandard conditions that they face in the camp, such as open sewers between the sheds in the camps. Children are often seen playing along the banks of trenches being at risk of various diseases. They also use the sewer for urination and defecation. The sewers time and again overflow because of poor inhibition maintenance during the rainy season.³⁵

Girls have a more tenuous state of health than the boys in the camp. Early marriage and its consequences, such as teenage pregnancy, have an extensive impact on refugee girls' health. Parents think that spending money for their daughters is a worthless expenditure, since daughters live with their husband's family after marriage. Also, many parents intend to marry their daughters to local men to get economic advantages and to receive Bangladeshi citizenship.³⁶ As a result, they wish to marry off their daughters as soon as possible, and early marriages of girls are increasing among Rohingya refugees in Bangladesh.³⁷ Early marriage impacts these girls in three areas: dangers to health for both the young mother and the child; problems of social integration; and the risk of experiencing abuse within marriage. Refugee girls frequently experience giving birth at early ages (between age 12 and 18) which has severe negative effects on their health³⁸ found that the average age of marriage and the average age of first pregnancy in the camp are 14 and 16 years respectively.³⁹

³³ Teng TS, Zalilah MS. "Nutritional status of rohingya children in kuala lumpur." *Malaysian J Med Heal Sci.* 2011;7(1):41–9.

³⁴ Refugee Children: Guidelines on Protection and Care, available on <<http://www.unhcr.org/protect/PROTECTION/3b84c6c67.pdf>> (data retrieved on 3rd February 2018).

³⁵ Feeny, T. (2001). "Rohingya refugee children in Cox's Bazar, Bangladesh." Available on <www2.ipr.mahidol.ac.th/.../JPSS-v25n2-Prodip_Rohingya%20refugee%20children.pdf> (data retrieved on 3rd February 2018).

³⁶ Danish Immigration Service, "Rohingya refugees in Bangladesh and Thailand: Fact finding mission to Bangladesh and Thailand." 2011, Available on <<https://www.nyidanmark.dk/NR/rdonlyres/B08D8B44-5322-4C2F-9604-44F6C340167A/0/FactfindingrapportRohingya180411.pdf>> (data retrieved on 3rd February 2018).

³⁷ Op Cit 35.

³⁸ Ullah, A. A." Rohingya refugees to Bangladesh: Historical exclusions and contemporary Marginalization." *Journal of Immigrant & Refugee Studies*, 9, 139–161.

³⁹ *Ibid.*

The crisis situation disproportionately affects women, girls and the most vulnerable and marginalized Rohingya refugee population groups by reinforcing, perpetuating and exacerbating pre-existing, persistent gender inequalities, gender-based violence and discrimination. Women and children are also at heightened risk of becoming victims of human trafficking.⁴⁰

Integrating gender equality measures into the refugee response is critical to ensuring that women and girls – particularly the most vulnerable and marginalized – have equitable access to (and benefit from) relief, services and information. The understanding of how crisis affects different vulnerable groups, is the key to designing gender responsive human rights based humanitarian actions that meet the needs and priorities of the population in a more targeted manner and ensure that all people affected by the crisis are acknowledged (and that their needs and vulnerabilities are taken into account); and that the humanitarian response is more effective and efficient.⁴¹

RESPONSE OF INTERNATIONAL COMMUNITY

Myanmar cannot be considered a politically stable nation, especially from the ethnic point of view. Apart from Rohingya issue, the country has still to manage tensions (which turn into conflicts) among other minorities (Shan, Karen, Kachin and Lisu) that together account for 40% of the population. In fact the Rohingya crisis is not even the top priority of the nation.⁴² In 2016, Myanmar's first democratically elected government in a generation came to power, but critics say that the Aun San Suu Kyi's government is reluctant to advocate for Rohingya and other Muslims for fear of alienating Buddhist nationalists and threatening the power sharing agreement⁴³ the civilian government maintains with the military.⁴⁴ The de facto leader has altogether denied that ethnic cleansing is taking place and dismissed international criticism

⁴⁰ Omi Huq Saiful, "Gender Brief on Rohingya Refugee Crisis Response In Bangladesh", available on <<https://www.humanitarianresponse.info/system/files/documents/files/gender-advocacy-paper-for-rohingya-refugee-crisis-response-in-bangladesh-r09s.pdf>> (data retrieved on 3rd February 2018).

⁴¹ *Ibid.*

⁴² Pagano, Antonietta, "The Rohingyas Refugee Crisis: A Regional and International Issue?", available on <<http://www.mei.edu/content/map/rohingyas-refugee-crisis-regional-and-international-issue>> (data retrieved on 3rd February 2018).

⁴³ Military appoints 25 percent of parliamentary seats and controls the home, border affairs, and defense ministries.

⁴⁴ Eleanor Albert, "The Rohingya Crisis", available on <<https://www.cfr.org/backgrounder/rohingya-crisis>> (data retrieved on 3rd February 2018).

of her handling of the crisis. To corroborate the crisis, in December 2017, the Myanmar Government denied access to the UN Special Rapporteur on human rights in Myanmar, Yanghee Lee, and suspended cooperation for the remainder of her term.⁴⁵

Myanmar is a party to the Genocide Convention 1948, which require similar obligation from it to prevent and punish individuals responsible for the crime of genocide. But how will the perpetrators of crime punish themselves? Though Myanmar Government is justifying the indiscriminate attacks on civilians as a response to ARSA attack, the history is self-explanatory on how Rohingyas have been systematically targeted by the Government.

The response of international community on the other hand has been extremely slow and reserved towards this crisis. There is a common belief among Rohingya as well as many Bangladeshis that international community is discriminatory to the Muslims. The United Nations Security Council (UNSC) which is a potential avenue to take action against serious human rights abuse such as genocide became neutralized by the presence of reliable friend China. Following the eruption of violence in late August, Britain requested a Security Council meeting but China resisted stronger involvement by the UN. Another UNSC resolution demanding an end to political repression and human rights violations in Myanmar was also blocked by China and Russia using VETO power. Chinese interests in Myanmar can be visible by the \$7.3 billion deep-sea port project in KyaukPyu as part of its ambitious 'One Belt, One Road' plan. KyaukPyu is important for China because the port is the entry point for a Chinese oil and gas pipeline which gives it an alternative route for energy imports from the Middle East that avoids the Malacca Straits, a shipping chokepoint.⁴⁶

Being a strong regional economic association, ASEAN has strong capability to improve the situation in Myanmar. However, it is limited by its principle of non-interference in the internal affairs of member states. Only the Muslim majority Malaysia, has expressed concern against the situation. Despite the issue spilling into neighboring countries and becoming trans boundary, ASEAN still has not shed their non-interference behavior in tackling the multidimensional humanitarian crisis.

⁴⁵ <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22553>> (data retrieved on 3rd February 2018).

⁴⁶ Azad, Ashraful, "Rohingya genocide and role of international community", available on <<http://www.banglanews24.com/open-forum/article/65397/Rohingya-genocide-and-role-of-international-community>> (data retrieved on 3rd February 2018)

Available protection space for Rohingya refugees in the region has become extremely volatile due to the reluctance to sign the 1951 Refugee Convention and a lack of national legal frameworks in most South-East Asian countries. These countries abstain themselves from becoming party to the 1951 Refugee Convention and the 1967 Protocol under the pretext that signing the Convention may lead to an increase in the number of refugees arriving in their territory, which may claim heavy financial burden.⁴⁷

The United Nations have appealed to the entire international community to keep political differences aside and support the ongoing humanitarian efforts to help Rohingya Muslim refugees. Major role players including India in particular have actually not come out and supported when their support could have been actually crucial.⁴⁸

ROLE OF INDIA

It is not deniable that crisis in Myanmar has collateral effect on its surrounding countries. The influx of refugees has also gravely touched India. However, the country has not taken a decisive stand against this ghastly situation.

India has a unique history of providing asylum to many people who migrated from the imminent threat in their respective countries. They expected security and necessities while harboring in this country and it performed its role as protector of human rights in the international community. It provided shelter to Tibetans, Chamkas from Bangladesh, refugees from Afghanistan, Sri Lanka etc. However, it has refused to extend similar hospitality to Rohingyas who have settled in places like Delhi, Hyderabad, Kashmir, West Bengal and the northeastern states. The Government refuses to even recognize Rohingyas as refugees. The refugees lie in a state of void where they cannot return to their home and the country wherein they seek asylum refuse to acknowledge them.

Union Minister for Home Affairs, Kiren Rijiju of Bhartiya Janta Party, is ignorant about India's history in granting refuge and its obligations under the Customary International Law. His

⁴⁷ Ullah, AKM Ahsan, "Rohingya Crisis in Myanmar: Seeking Justice for the "Stateless"", available on <<http://journals.sagepub.com/doi/abs/10.1177/1043986216660811>> (data retrieved on 4th February 2018).

⁴⁸ <<http://www.thehindu.com/news/international/un-appeals-international-community-to-help-rohingyas/article19674803.ece>> (data retrieved on 4th February 2018).

statement about Indian being not signatory to the accord on refugees, starkly contradicts the conduct of the Government when it came to granting asylum to refugees in the past on ad hoc basis under The Passport (Entry of India) Act, 1920, The Passport Act 1967, The Registration of Foreigners Act, 1939, The Foreigners Act 1946 and Foreigners Order 1948. Even otherwise, India is a party to the International Covenant on Civil and Political Rights (ICCPR), wherein as per Article 2 and 26 of the Convention, protection can be granted to the stateless Rohingyas in India. However, India and Indians instead of showing leadership and setting an example for the international community, are creating an atrocious atmosphere for the Rohingyas.

Rohingyas are largely living in the northern states of India. Since 2016, they have been targeted by the right-wing Hindu groups who have been calling for their eviction from the State, with groups even threatening attacks if the government rejected their call. In December 2016, the Vishwa Hindu Parishad, a group with links to the ruling Bhartiya Janta Party (BJP), demanded eviction of refugees from Jammu, calling them a threat to security. Another group, the Jammu and Kashmir National Panthers Party, started a public campaign against the Rohingya, putting up billboards in the city calling on Rohingya and Bangladeshis to leave the State. In February 2017, a BJP member whose lawyer is the BJP spokesman in Jammu, filed a petition in the state High Court seeking Rohingya's deportation, arguing that there had been a sharp increase in illegal migrants from Burma and Bangladesh.⁴⁹

The campaign by Hindu groups against the Rohingya in Jammu has prompted vigilante-style attacks against them. In April, unidentified assailants reportedly set on fire five huts housing Rohingya in Jammu. Four days earlier several Rohingya families living in the outskirts of Jammu alleged that unidentified people beat them up and set ablaze the scrap they collected to earn a livelihood.⁵⁰

The basis of this extreme violence and hostility towards Rohingyas by the Government is to safeguard its political and international relations with Myanmar. When Prime Minister Narendra Modi visited Myanmar on 05th to 07th September 2017, on his return, he generously praised the leadership of Aung San Suu Kyi and expressed full support against the terrorist

⁴⁹ <<https://www.hrw.org/news/2017/08/17/india-dont-forcibly-return-rohingya-refugees>> (data retrieved on 4th February 2018).

⁵⁰ *Ibid.*

attacks on Myanmar Security Forces. Myanmar is extremely significant for India's security, stability and prosperity. It's vital for its business and connectivity initiatives.

In July 2017, Senior General Min Aung Hlaing, the commander-in-chief of Tatmadaw visited India and met with Indian army's chief, Prime Minister, Defence Minister, and National Security Advisor. India is maintaining a distinct relationship with Tatmadaw apart from diplomatic relations with Naypyidaw and heavily investing in Tatmadaw with huge arms export and 'appears apathetic about the humanitarian ramifications of emboldening an army that has been widely accused of serious human rights violations and subversion of democracy'.⁵¹

THE WAY FORWARD

In violence of Partition, Rakesh Gupta's family fled Pakistan-occupied Kashmir to seek refuge in Jammu. Seventy years later, he is running a campaign against another set of persecuted minorities fleeing violence, living on the fringes of Jammu-Rohingya Muslims from Myanmar. He is the president of Jammu Chamber of Commerce and Industry (JCCI). Without any emotion he claims-"If the government does not deport Rohingyas, we will identify and kill them. Otherwise, people will have no choice but to deport them against the law. It can be civil war or communal riots. They want to change Jammu into an Islamic state which will not be tolerated by the people."⁵²

Jammu has become a battleground for anti-Rohingyas sentiment. Earlier they narrowly escaped the persecution from the Burmese army and now they face the heat from the citizens and Government of India. The state police and CID have been monitoring the Rohingyas closely. Both agencies have lists with names and numbers of Rohingyas living in the city, as well as record of arrivals and departures. Much of the concern of Rohingyas as a security threat appears to be based on the actions of ARSA. A Home Ministry notification to state governments on August 8 refers to the "security challenges" posed by "infiltration from Rakhine state of Myanmar." So far however, there is no credible evidence to suggest the Rohingyas in India

⁵¹ Op Cit 46.

⁵²<<https://www.hindustantimes.com/india-news/left-in-the-lurch-fleeing-myanmar-and-tagged-illegal-immigrants-in-india-rohingyas-continue-search-for-a-safe-refuge/story-qdV42M5MmF745pCmRBVsMI.html>> (data retrieved on 4th February 2018).

have links to Arsa, or are tilting towards violent radicalisation. Instead, those anxieties are fuelled by nebulous media reports quoting intelligence sources.⁵³

India can no longer criticize the West for being hostile to Syrian and Sudanese refugees. One thing is clear. No Nehruvian state, or even regime of Indira Gandhi, would have made such a decision. Both upheld the principle of hospitality, of the openness of borders. Jawaharlal Nehru was open to Tibet and courageously invited the Dalai Lama to make a home here, and Indira Gandhi played host to refugees from the then East Pakistan, ignoring the threats of tough people such as Henry Kissinger and Richard Nixon.

Antonio Guterres, United Nations High Commissioner for Refugees had once spoken highly about the generosity India had shown and opened its borders to all people who have come looking for safety and sanctuary. It had considered India a more reliable partner in the world to guarantee that people who need help will find a place. But unfortunately, concerning the Rohingyas, it has forgotten its principle of “Athithi Devo Bhava”.

The Supreme Court of India had declared that fundamental rights are applicable to all regardless of whether they are citizens of India. Yet such appeals to rights and humanitarianism cut little ice in today’s bureaucracy which is obsessed with security issues and content to raise the bogey of terrorism and law and order when it comes to such helpless people.

It is clear that the everydayness of Rohingya life is apparently miserable. Rohingyas more than money are on the lookout for safety and security. Even the refugee camps face issues in day to day activities which can precipitate and become life threatening. There needs to be integrated approach that involves: (i) improved awareness of the community on maternal and child health. (ii) increase in capacity of community traditional birth attendants for skilled care (iii) converting the community traditional birth attendants as a frontline force for maternal and neonatal care (iv) educating peers for HIV/AIDS prevention etc. Although, refugee children have suffered from inadequate health and educational programs at the camps, however, their displacement has mostly created an improvement in children’s health and education. Rohingya children are deprived of any opportunity for health and education in Myanmar, whereas the Rohingya

⁵³ *Ibid.*

refugee children in Bangladesh have received basic health services from the government and UNHCR.⁵⁴

The primary thrust of the ASEAN member states, although following the principle of non-interference in the internal affairs of each other, must be to address the issues of human rights violations and how to contain the deteriorating health situation of the refugees. Sadly, the Terms of Reference of AICHR⁵⁵ developed under the aegis of the ASEAN is lacking the power to address human rights violations with Southeast Asian Countries. Being the main human rights body in Southeast Asia, the AICHR should take a bolder stance in responding to human rights concerns. The AICHR ought to be given a free hand by the ASEAN to investigate human rights issues in Myanmar and the Rohingya refugees. Article 4.10 provides AICHR the power to obtain information from ASEAN Member States on the promotion and protection of human rights, however, in practice there is no such function performed.

Further, there exists one Healthcare Services Sectoral Working Group (HSSWG) established by the ASEAN Coordinating Committee on Services. The HSSWG discusses matters pertaining to facilitation and cooperation in healthcare services which is an important part of the liberalization process of the ASEAN Framework Agreement on Services (AFAS). Towards this end, the agenda of the HSSWG is as follows: 1) Offers and schedules of the AFAS package; 2) Mutual Recognition Arrangements (MRAs) on Medical Practitioners, Nursing and Dental Practitioners; 3) Information exchanges; 4) Regional profiling and databases of professionals; institutions; infrastructures and systems; domestic regulations; 5) development of core competencies and equivalences; 6) Capacity building programs; 7) Formulation of yearly work programs and; 8) other activities and initiatives relevant to the implementation of AFAS.⁵⁶ Despite so much put on paper by the ASEAN for development of health services, yet there is no sight of this group improving the failing health care services in the refugee camps.

ASEAN countries are also party to Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Both of these conventions aim at promoting measures for the prevention and

⁵⁴ Mahbub Alam Prodip, "Health and Educational Status of Rohingya Refugee Children in Bangladesh", *Journal of Population and Social Studies*, Volume 25 Number 2 April 2017: 135– 146.

⁵⁵ <<http://aichr.org/>> (data retrieved on 4th February 2018).

⁵⁶ <<http://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/services/healthcare-services/>> (data retrieved on 4th February 2018).

elimination of all forms of violence of the rights of women and children, including the protection of victims and support women's and children's participation. However, much time is apparently spent on drafting elaborate instruments on protection of rights, when in fact proactive role is required to advocate the rights of the refugees.

It is understandable that India's relationship with ASEAN is a key pillar of its foreign policy and the foundation of the Act East Policy. It has upgraded its relationship into a Strategic Partnership in 2012 since it became Sectoral Partner of the ASEAN in 1992, Dialogue Partner in 1996 and Summit Level Partner in 2002.⁵⁷ However, to not take a concrete stand in the face of international crisis and choosing diplomacy along with strategic placement in the ASEAN group, is not what a Gandhian nation ever ought to have been. A nation which significantly works towards protection of human rights of free individuals to incarcerated, a nation despite being termed as 'Hindustan' has major chunk of its population as Muslims, surprisingly failed to take a stand in the eye of the worst humanitarian crisis against Muslims.

The question though in this article is more than mere taking a stand. It is about how to contain the situation and maintain harmony amongst the already displaced. No doubt India is providing its moral and material support to Bangladesh for the refugees, but instead of providing asylum itself, it is doing worse by declaring the intent to deport refugees. India needs to understand that deportation is not the solution. Is it even wise to deport the stateless refugees to the place they escaped from? It is true that India is still a growing nation and adding more refugees has its cons, but can it not adopt the model followed by the South East Asian Countries like Malaysia, Indonesia, Bangladesh etc and contain the refugees in camps by providing them the basic amenities to sustain till the situation normalizes and Myanmar Government realizes its responsibilities. India should show leadership by protecting the beleaguered community and calling on the Burmese government to end the repression and atrocities causing these people to leave.

Even otherwise from a strategic point of view, India should proactively take interest in Myanmar as similar concerns stand voiced by Japan. India should bank upon their old relationship with Myanmar and avoid China to capitalize on the peace process with the ethnic

⁵⁷ <<http://mea.gov.in/aseanindia/20-years.htm>> (data retrieved on 4th February 2018).

groups. There is little coordination as of now between India and Myanmar and as a result there is a threat to Indian and Japanese security with China building its stronghold in Myanmar.

Further, due to severe international pressure, although repatriation process with Bangladesh of the Rohingyas has begun, still, the question now in concern is, whether driving out the Rohingyas, either via repatriation or forcefully and sending them back to Myanmar, would resolve the issue. Although an Advisory Commission on the Rakhine State submitted its recommendation and as authors of this article we could not agree more, that inter-alia citizenship is very dear to the Rohingyas. As citizens the Rohingyas will attract many rights as well, but what still remains to be seen is the performance of duties by the Myanmar Government. The International Community should encourage the Myanmar Government to seriously consider implementing suggestions contained in the Commission. Demilitarization of ethnic areas; investment in development and infrastructure; legal reforms to ensure an end to discrimination on grounds of ethnicity and religion are immediate steps need to be taken. The Rohingyas should be given concrete guarantees of security on return, of a restoration of identity documentation and citizenship status; of practical support to ensure future livelihoods. Though Myanmar bears primary responsibility for the Rohingya crisis, deplorable treatment of the Rohingya in host countries must immediately come to an end.

Aung San Suu Kyi, the leader of Myanmar needs to remember what she herself said in her Nobel Prize acceptance speech that -

“Whenever suffering is ignored, there will be seeds of conflict, for suffering degrades and embitters and enrages”.