



THE DENIED RIGHTS AND ENDANGERED IDENTITIES: INDIAN APPROACH TOWARDS ROHINGYAS AMIDST HUMANITARIAN CRISIS

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‘India does not want to become refugee capital of the world’,¹ the sovereign India’s government responded in Apex Court while dealing with multipronged issue concerning deportation of Rohingya people who have sought shelter in India fearing the prolonged persecution in native Myanmar. According to scholars, the stand taken by government is in paradox with our millennium old principle of ‘*Vasudhaiva Kutumbakam*’ and ‘*Atitheo Devo Bhava*’ which we as a cradle of civilization and as an independent constitutional democracy have practiced since long time.

The slowly emerging human rights crisis of Rohingyas was suddenly in news since last few years due to aggravated conditions and rising violence in the state of Myanmar. It is not the first time that humanity faced such mass scale violence against specific community or section of people but the nature and ramifications out of this Rohingya crisis is certainly posing different challenge to human rights regime. In order to trace enduring solution, it becomes essential to unearth the roots of problem, thus causative factors of Rohingya crisis need to be traced.

The Rohingyas are a minority group practicing Islam and residing in the Rakhine state of Myanmar. They claim close ties with Rakhine state and have distinctive language and culture. The State of Myanmar Myanmar has never accepted their affinity to the land and the Rohingyas are treated as illegal immigrants and the laws of Myanmar rendered them as stateless entities. The non-recognition of Rohingya led to their civil and political deprivation and this further formed ground for frequent clashes between majority Buddhist community and minority Rohingyas. Recently in 2012 communal violence erupted on account of criminal incident in one of the villages of Rakhine state. This led to large scale exodus of the Rohingya people to neighbouring countries like India, Bangladesh, Malaysia, Thailand and Indonesia. The Rohingya people migrated to seek safe shelter and this entire process gave rise to Asia’s one of the largest refugee crisis.

The crisis needs to be observed meticulously through multiple micro and macroscopic lenses to point out the real reasons for such large scale human rights violations that are termed as Asia’s largest mass exodus in modern era. Following are the causes of this humanitarian crisis:

- (i) No civil, political and legal recognition: There are numerous complex causative factors of this crisis those are rooted in cultural, national, political, economic and military aspects among them lack of Rohingya’s citizenship is the fundamental root cause. The 1982 Citizenship Law which is at the root of crisis is a flawed and discriminatory piece of legislation, it recognizes nationality on the basis of race

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¹Krishnadas Rajagopal, “Don’t want India to become refugee capital of the world, govt tells SC”, available at: <https://www.thehindu.com/news/national/dont-want-india-to-become-the-refugee-capital-of-the-world-govt-to-sc/article22608096.ece> (last visited on Apr.23, 2018).

and ethnicity.² The Act denies the Rohingya Muslims citizenship of Myanmar state though the community is living there for generations. This legislation leads to stateless condition of minority Rohingya people. Also, ethnic cultural conflicts, minority versus majority tussle, economics behind discriminatory politics and Myanmar's deliberate political landscape favouring majority etc. are other evident reasons which need to be considered cumulatively to trace the nature and gravity of issue.

- (ii) Identity clashes, communal-ideological conflicts: Asian region, specifically South Asian and East Asian region encompasses world's largest array of religious, ethnic and linguistic groups. More the identities, more is the probability of identity clashes and emergence of violence triggered by socio-economic-politico-cultural differences; this creates threat to social order and harmony. Similarly, the roots of Rohingya crisis are deeply embedded in the socio-cultural and political history of Myanmar and adjoining region. Myanmar officially recognizes 135 ethnic groups, each group having its own distinctive language and culture. Each group had history of autonomous self-governance both before and during the colonial period. The clashes between majority Buddhist community and minority Islamic community in Rakhine state is the prime reason for this crisis.
- (iii) Political turmoil, lack of democracy and effect of military rule: The political turmoil in Myanmar leading to conflict and communal violence is decades old problems, inability and lack of legitimacy of successive military regimes to uphold the address contested visions of what constitutes the nation state among the country's ethnic groups and political factions. Myanmar witnessed decades of authoritarianism through military rule, caused founded on authoritarian and biased structure of governance, this led to brutal suppression of democracy movements and ethnic autonomy, consequently resulted in protracted armed conflicts between government security forces and ethnic armed organizations. The militant elements of Rohingya that emerged as a response to prolonged persecution and discrimination is another reason that underlines the failure or inefficiency of governments and governance structure in Myanmar. After studying the Myanmar's ethnic turmoil in absence of rule of law and socio-legal order it can be deduced that 'absence of constitutional democracy and constitutionalism giving rise to violence is a threat to human rights.
- (iv) Resource scarcity and Economic factors: Rakhine is one of the poorest states in Myanmar, it has limited access to basic services and livelihood opportunities for the entire population. The tussle for securing opportunities and obtaining basic economic security leads to intense competition, this economic aspect in turn affects social-political policy. The less developed Rakhine land thus became fertile ground for ethnic clashes and extreme atrocities. Economy paves way to prosperous civilization and polity, hence the economical angle of this issue needs to be addressed properly. The complex causative factors of this crisis are rooted in cultural, national, political, economic and military aspects among them lack of Rohingya's citizenship is the fundamental root cause. Also, ethnic cultural conflicts, minority v. majority tussle, economic behind discriminatory politics and Myanmar's deliberate political landscape favouring majority etc. are other evident reasons as discussed above. After studying the causes of Rohingya crisis it can be

² The Citizenship Law of Myanmar, 1982, available at: <http://un-act.org/publication/myanmars-citizenship-law-1982/> (last visited on Apr.23, 2018).

ascertained that the persecution and atrocities of minority community over the decades has increased or spurred like a social cancer that is killing the spirit of humanity and laws strengthening human rights as well.

In the words of Hobbes, the political philosophy should be grounded on the principle of 'self-preservation' which is everyone's fundamental natural instinct. Considering this aspect fleeing from one territory to another for avoiding persecution and securing survival is in line with natural law and natural instinct. On one hand, the municipal law of any state targets refugees as 'illegal migrants' but on other hand *jus Naturale* and International Refugee Law treats them as victimized human group. Thus, the crisis suffered by Rohingya should also be viewed as convergence as well as divergence between National- International Law. The humanitarian turmoil in Rakhine is "a textbook example of ethnic cleansing," as called by UN High Commissioner for Human Rights.³ The state sponsored atrocities have long history of discrimination against the ethnic Muslim minority group. The ongoing affair emerged out of fierce clashes between minority Muslims and dominant Buddhist community. The Rohingya minority forms about 2 percent of the Myanmar's population and one third population of Rakhine State. It stands to be 'most persecuted minority across the globe,' disenfranchised to vote in elections, oppressed by majority Rakhine Buddhists, left helpless by State as 'illegal migrants' to become stateless and grapple with identity and existence crisis.⁴ United Nation's Human Rights investigators reported that army of Myanmar committed 'crimes against humanity.'⁵ However, the leader of Myanmar Aung San Suu Kyi denied these findings, her deliberate silence on such undemocratic inhumane incidents raises question on credibility of new democratic government of Myanmar.

Theory concerning 'multiculturalism of fear' propounded by Jacob Levy holds that "failure on the part of national governments across the world to protect minority rights might also exacerbate ethnic and cultural tensions between majorities and minorities and consequently gives rise to the splintering of political communities."⁶ There is a strong nexus between ethnic rights of varied communities across the world and political stability which culminates into global peace. This theory answers the prominent questions like; Why it is indispensable to protect minority rights? What should be the ideology behind creating safe ground for minority community? Why International Law values minority protection? The theory further hold that beyond reason of universal value minority rights must be protected because "it mitigates dangers of violence, cruelty, and political humiliation that so often accompany ethnic pluralism and ethnic politics." Thus the theory of multiculturalism of fear explicitly throws light on the significance of maintaining harmony ethnic groups and upholding the mosaic structure as such.

The Rohingya community has been subjected to four stages; stigmatization, harassment, isolation and the systematic weakening of civil right which forms 'process of genocide' and leads to catastrophe of ethnic cleansing.⁷ Thus, at present this community is facing the storm of ethnic cleansing. The right of self-determination, right to preserve distinctive identity and ethnic culture, autonomy and the equitable sharing of power and

³ UN human rights chief points to 'textbook example of ethnic cleansing' in Myanmar, *available at*: <https://news.un.org/en/story/2017/09/564622-un-human-right-chief-points-textbook-example-ethnic-cleansing-myanmar> (last visited on Feb.23, 2018).

⁴ Human Rights Watch on Rohingya Crisis *available at* <https://www.hrw.org/tag/rohingya-crisis> (Last visited on Feb. 20, 2018)

⁵ *Supra* n. 1.

⁶ Jacob T. Levy, *The Multiculturalism of Fear* 12 (Oxford Univ. Press 2000).

⁷ Penny Green, *et.al.*, Genocide Achieved, Genocide Continues: Myanmar's Annihilation of The Rohingya, *available at*: <http://statecrime.org/data/2018/04/ISCI-Rohingya-Report-II-PUBLISHED-VERSION-revised-compressed.pdf> (last visited on Feb.23, 2018).

resources for attaining right to development, right to health, right to education, right to social security and many more such valuable human rights of Rohingyas are constantly subverted. The nations that are looking for prosperous and sustainable world should not forget that the society that undermines inherent basic human rights of an individual is an infertile land for civilization and development.

There is a challenge of balancing moral-humanitarian obligation of providing assistance to refugees versus maintaining internal security of the state. The stand of Government of India in Apex Court underlines security concern. The State receiving influx of refugees or migrants face problem of resource burden, cultural clashes, threat of crimes and terrorism, demographic imbalance, concern of security and integrity of nation.

The stakeholders involved in resolution of crisis should not forget that the nations those stand with independent political identities at present were part of same territory under some or another rule. Thus, there lay antecedents of brotherhood in common history, culture and political movements. Considering this the existing strong states have moral responsibility to extend humane hand of assistance to fragile states undergoing such sort of crisis. This can be termed as principle of past identity and present brotherhood.

The International human rights laws set out obligations for the States “to promote and protect human rights and fundamental freedoms of individuals or groups.” “International human rights law comprises a variety of sources and instruments, including the Universal Declaration of Human Rights, various international and regional treaties, principles of customary international law, and general principles of international law. These sources and instruments provide minorities with several avenues for challenging the exercise of state power.”

Some of the international law provisions which deal with this crisis like statelessness or refugee crisis have been discussed here. The most basic instrument that enshrines human rights values is Universal Declaration of Human Rights, but UDHR makes no explicit mention of minority rights as such. However, Article 2 of the Universal Declaration of Human Rights provides that “States are required to protect and respect the human rights of all, without distinction such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The International Covenant on Civil and Political Rights (ICCPR), an important instrument of International law refers explicitly to minorities, but it frames minority rights in primarily individualistic terms. Article 27 of the ICCPR specifically provides for the rights of minority: “In those States in which ethnic, religious and linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”⁸ The rights of children belonging to Rohingya community is at stake due to mass exodus and consequent statelessness; here comes into light the Convention on the Rights of the Child to which Myanmar is a signatory. This convention states that, from birth, every infant has the right to a nationality. The Genocide Convention 1948 also provides for protection of national, ethnical, racial or religious minority. Further, the Refugee Convention in Article 33(1), provides for Principle of non-refoulment to which any state receiving refugee or stateless people has to abide with conviction. The Article provides that “no Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom

⁸International Covenant on Civil and Political Rights, G.A. Res., 2200A (XXI), preamble, 21 U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) 999 U.N.T.S. 171 (entered into force Mar. 23, 1976)

would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

The European Court held that; in case of extreme competitive atmosphere and ethnic clashes due to cultural differences or resource crunch etc. removal of the cause of tension by eliminating pluralistic culture is not the fair and sustainable solution, but international community must ensure that the competing groups or communities should tolerate each other.⁹

Also, international organisations like UNHCR, UN Security Council, UN General Assembly, etc. should intervene responsibly to ensure generating international pressure on government of Myanmar for stopping atrocities, providing citizenship, land of their origin and making the laws regulating/preventing arbitrary actions of Myanmar military against the community, creating viable socio-economic and political conditions for secure survival of minority. The International community and United Nation must build strong accessible mechanism to intervene and aid in case of such humanitarian crisis. The resistance on the part of Myanmar government to cooperate with intervention of UN was worrisome situation as it delays the response and mitigation process.

It is also important to strengthen practice and implementation of international laws and instruments as a move to prevent crimes against humanity. As far as Indian practice is concerned the non-accession ratification of International Convention on Refugee does not limit practice of underlying legal principles. This can be traced from the fact that India is host to many refugee communities- Jews, Sri Lankan Tamils, Afghan refugees, Bangladeshi refugees, Tibetan refugees, Chakma and Hejong tribes, etc, since centuries. Rather despite the resource burden India has set example by adhering to principle of non-refoulement. The Refugee law of India can be traced to municipal laws, stemming from provisions under Article 21 and Article 51 of the Constitution, also the statutes like Registration of Foreigners Act 1939, the Foreigners Act 1946, the Foreigners Order 1948, the Passports Act 1967, and the Illegal Migrants (Determination by Tribunals) Act 1983 deals with refugee crisis. It is on the basis of these provisions that applications for asylum by refugees are determined. Indian practice of international law is of dualist pattern to international law, and so adheres to “international law principles only insofar as they are incorporated into domestic law.”

It is essential to uphold “the right to seek and to enjoy in other country asylum from persecution,” as set forth in Article 14 of the Universal Declaration of Human Rights. The commitment of the international community to ensure to all persons the enjoyment of human rights should go beyond regional political interests by diluting political boundaries and extending human rights. This is quintessential for existence of fearless and peaceful coexistence of world community.

The solution such mass scale problem needs continued cooperation among national-international stakeholders. International community and group like ASEAN should come forward to build pressure on Myanmar and mobilise resources to the sites of crisis so as to resolve tension and bring enduring solutions. The recently signed pact between Myanmar and Bangladesh over Rohingya repatriation is positive move in this direction.

Human rights or refugee rights should not be strictly based on mere identity documents considering the circumstances in which people flee that does not allow them to avail or carry such identity documents; by the virtue of being human every individual inherits

⁹*Serif v. Greece*, Eur. Ct. H.R. 73 (1999).

right to life, survival and self-preservation. The receiving state should establish recognition mechanism for such refuge seeking people.

The governments of stable and advanced democracies like India must raise voice on international platforms to enable Myanmar government for stopping atrocities, providing citizenship, land of their origin and making the laws regulating/preventing arbitrary actions of Myanmar military against the community, creating viable socio-economic and political conditions for secure survival of minority. Moreover, the attempt should be “to eradicate discriminatory impact of those laws, particularly on minorities and women, and their lack of compliance with Myanmar’s human rights obligations.” It is also crucial “to bring the Citizenship Law of 1982 into line with international standards, particularly by revising discriminatory provisions that provide for the granting of citizenship on the basis of ethnicity or race.”

To resolve the crisis, we need to practice the minimum humanitarian morality, that is without ensuring safety and means of rehabilitation of Rohingya’s, India should not deport them to the native country. The diplomatic way of resolving refugee crisis should be focused by bringing constructive dialogues, interactions and resolutions to solve the issue. The Chinese intervention in this regard can be noticed though it was backed by economic interests. Also, India’s financial assistance to Myanmar for establishing rehabilitation infrastructure in Rakhine state is commendable and required move that underlines our commitment to human values, human rights and international laws. Further, sovereign governments and international organs should act collaboratively for creating viable solutions to prevent such crimes against humanity. The modern techniques of administration and use of technology in streamlining recognition of refugee and conferring them identity documents to monitor law and order conditions can also be looked as part of solution mechanism. No refugee should be repatriated without ensuring strong robust monitoring on ground. To summarise, the crisis needs to be addressed on four fronts, cultural-regional, political, economic and humanitarian. In the words of Ravindranath Tagore:

We should strive to create the world
‘which is not broken down into fragments...
where the mind is without fear and the head is held high...’