

Rohingya Crisis: India's Balancing Act

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Introduction

The Rohingya crisis, like most ethnic conflicts is deeply rooted in history. The tumultuous relationship between the Muslim minority of Rakhine and the Buddhist majority has created several civil-war-like situations in the past. These events would help us better understand the nature of the present conflict. The current crisis started after simultaneous attacks on 30 police posts and an army base in Maungdaw, Buthidaung and Rathedaung townships on the northern side of the Rakhine state on 25 August 2017. It was carried out by an insurgent group,² Harakah-al-Yaqin, also called the Arakan Rohingya Salvation Army (ARSA). In that attack, 12 Myanmar soldiers and officials, and 77 insurgents were killed.³ After the attack, State Counsellor Daw Aung San Suu Kyi had a meeting with the Union Ministers for Home Affairs, Defence, Border Affairs, State Counsellor's Office and the President's Office as well as the National Security Advisor.⁴ Thereafter, in an intensified clearance operation by Myanmar's security forces, thousands of people, mostly Rohingyas, have been killed. Around 3,000 Rohingya homes have been burnt down and a large number of Rohingya Muslims have fled from Myanmar. Most of those crossing Myanmar's borders are trying to enter Bangladesh. About 400,000 Rohingyas are estimated to have taken refuge in Bangladesh. Also, in this violence, about 30,000 ethnic Rakhine Buddhists and Hindus have been displaced.⁵

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² Myanmar's government and media use the term militant for the group. On 25 August 2017 the group was declared as terrorist organization by the government of Myanmar. See "Arakan Rohingya Salvation Army (ARSA) declared as Terrorist Group" The Republic of the Union of Myanmar, State Counsellor Office..

³Mahfooz Anam, "Rohingya Crisis: A Concern for the region", The Daily Star, 9 September 2017..

⁴ "State Leaders Take Charge after violent attacks in Rakhine State", The Republic of the Union of Myanmar, State Counsellor Office. Retrieved from <http://www.statecounsellor.gov.mm/en/node/1005>.

⁵ "All eyes on Aung San Suu Kyi as she delivers speech on Myanmar's Rohingya crises", The Strait Times, 19 September 2017. Retrieved from <http://www.straittimes.com/asia/se-asia/all-eyes-on-aung-san-suu-kyi-asshe-delivers-speech-on-myanmars-rohingya-crisis>.

History of the Rohingyas

There are several explanations behind the origin and identity of the Rohingya people. The first, as interpreted and accepted by the government of Myanmar, is that the Rohingyas are a Bengali-speaking Muslim minority in Myanmar. For the Myanmar government and many other ethnic groups in the country, there is no such word as 'Rohingya'. "The Muslims who call themselves such are considered as those who entered into the country from East Bengal during the British Empire or illegal migrants from Bangladesh".⁶

The second explanation is that the Rohingyas are the indigenous people of the Arakan region (now Rakhine state). The word "Rohingya" comes from "Rooinga" and it denotes natives of Rohang which is the old Muslim name of Arakan.⁷

The area of north Arakan that currently makes up the Rakhine state was once ruled by the Hindu kings and was separated from the other parts of Myanmar by a mountain range. Somewhere in the 8th century, the capital of the Kingdom was established in wesali and the practiced religion of the region changed to Buddhism from Hinduism.

The religion of Arakan then remain untouched till at least the 9th century. The region of North Arakan most likely had its first exposure to Islam in the 9th century through the Arab traders who sailed to its coast. The kingdom of Arakan continued to be an independent territory until the mid-fifteenth century after which it subordinated itself to the Sultan of Bengal. Eventually it became an independent kingdom again after renouncing itself from being a vassal of Bengal in 1531.

The fall of the last of the Arakan kingdom occurred due to power struggles among its nobility as it declined with the fall of Chittagong to the Mughal empire in 1666.

Myanmar took advantage of this situation and invaded Arakan in 1784-85. Consequently, Myanmar annexed Arakan.⁸ The military state under General Ne Win constituted the state of Rakhine from what used to be Arakan in 1974 and it remains the same till today.

⁶Adam Taylor, "How Burma's Rohingya Crisis went from Bad to Worse", The Washington Post, 6 September 2017. Retrieved from https://www.washingtonpost.com/news/worldviews/wp/2017/09/06/howburmas-rohingya-crisis-went-from-bad-to-worse/?utm_term=.c635eb88c8a6.

⁷ Francis Buchanan, *A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire*, in Asiatic Researches 5, London, 1799, p. 219-240.

⁸International Crisis group, *Myanmar: The Politics of Rakhine State*, Asia Report N 261, Brussels, 2014 p.2.

Stateless People

Towards the end of the 18th century, the Rohingyas along with other Arakanese people started migrating to neighbouring Bangladesh to escape the tyrannical rule of the Burmeset King Bo-Daw-Hpaya. During the period of 42 years of Burmese rule, almost two-thirds of the indigeneous population migrated to the South-eastern part of Chittagong.⁹

In 1824, the 1st Anglo-Burmese war happened and two years later Arakan became a part of the Burmese province of the British empire. Gradually, the Rohingyas along with other Arakans started returning to Arakan during the British occupation. Burma gained independence from the British in 1948 and Arakan became a part of the new federal republic.

In post-independent Myanmar, ethnic tensions came to the forefront when, in the 1960s, the head of state, General Ne Win, began a process of “Burmanisation” to assert the authority of the Bamars, or Buddhists, in Myanmar.¹⁰ Like most countries with a colonial past, Myanmar had a wave of nationalisation after securing independence. This was reflected in the Burmanisation of Myanmar and in the attempts to establish the culture of the majority Therawada Buddhists. Leading the charge was General Ne Win who reintroduced the methods adopted by the 18th century king, Bo-daw-hpaya. Across Myanmar, General Win appointed Bamars, or Buddhists, to a large number of senior administrative and ministerial posts. By and large, this process was carried out by the succeeding governments to make what Ne Win wanted – an ethno-religiously ‘pure’ Myanmar.¹¹ However, throughout the 1950s, 1960s and 1970s, official Myanmar documents referenced the Rohingyas as inhabitants of northern Rakhine state.¹² Later, as a result of ‘Burmanisation’, the ‘Rakhine Muslim’ category was removed from the 135-strong index of ethnic groups.¹³

The Rohingyas are Muslims and culturally and ethnically different from the 135 other recognised ethnic groups. In addition, Rohingyas speak a language similar to Bengali like their neighbours to the north and unlike the rest of the populace of Myanmar. This makes them an ethnic, linguistic and cultural minority in Myanmar as well as in the Rakhine state.

⁹ Moshe Yegar, *The Muslims of Burma*, Wiesbaden, 1972, p.21.

¹⁰ Wade, Francis (2017), *Myanmar’s Enemy Within: Buddhist Violence and the Making of a Muslim ‘Other’*, London: Zed Books.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

These ethnic and cultural differences have led to severe persecution of the Rohingyas and they have been labelled as the "new Palestinians."¹⁴The most severe operation by the Burmese government occurred in 1978. It was called Naga Min (Operation Dragon King) and was essentially a military offensive consisting of murder, rape, and torture of the Rohingyas. This military campaign resulted in a mass exodus of the Rohingyas to Bangladesh.

Arakan has seen many periods of unrest throughout its history up until the the Second World War and beyond. As Britain took back the reigns of its former colony,¹⁵ the country's various ethnic groups struggled to stake claims in the newly independent territory. As in other regions, rebellion erupted in Arakan: Rakhine nationalists campaigned for autonomous statehood within Burma, while a Muslim-led faction of the same separatist movement pressed to establish an Islamic "frontier state" in the northern part of the province.¹⁶ Various tries to divide the region did not succeed however, and neither did Burma's 1947 Constitution manage to address either Rakhine demands for a separate state nor Muslim pleas for a different province in accordance with their cultural and religious differences.¹⁷ The Rohingyas hence didn't have any representation in the Burman-dominated government.

The Rohingyas pressed for separate statehood or at least autonomous power albeit unsuccessfully. There was low scale uprisings with poorly armed villagers but the Rohingyas were not prepared for the Burmese military campaign that followed.

In 1978, the army in Myanmar started a major offensive, called the Ye The Ha, against opposition factions in Arakan, including all Rakhine groups such as the Arakan Communist Party and also the Rohingya mujahidin.¹⁸ The Burmese army followed this attack with the Naga Min operation: an offensive of murder, rape, and torture of the Muslim population, and created specifically to drive the Rohingyas out of Myanmar and into Bangladesh. The army burned a number of villages, destroyed place of worship of Muslims and drove the Rohingyas into Bangladesh. The Bangladeshi refugee camps were soon overpopulated with scores of Rohingyas fleeing military atrocities from across the border. The Bangladeshi government did not allow any foreign diplomats or journalists to visit the UNHCR-supervised camps.¹⁹

¹⁴Martin Smith, *Burma: Insurgency and the Politics of Ethnicity*, 1991, p. 241.

¹⁵ Burma gained independence from Britain on January 4, 1948, .Jose Vernstein, *Burma: Military Rule and the Politics of Stagnation* 21, 1977.

¹⁶Asia Watch, *Burma: Rape, Forced Labour and Religious Persecution in North Arakan*, 1991, p. 21.

¹⁷ *Supra* 13, at 80-81

¹⁸Asia Watch, *Burma: Rape, Forced Labour and Religious Persecution in North Arakan*, 1991, p. 32.

¹⁹ *Ibid.*

The camps were ill-equipped to deal with this sudden influx of refugees, and thus Bangladesh decided to send back the refugees to Myanmar. Myanmar agreed to a repatriation scheme but the refugees did not want to return fearing for their lives. Bangladesh then cut off food supplies leading to the death of 10000 refugees including 7000 children. The UNHCR which was managing the refugee camps could not do anything to challenge the Bangladeshi policy on Rohingya migrants. Faced with suffering and imminent death, the surviving Rohingyas went back to Rakhine although some of them stayed back unofficially and tried to integrate within the local culture.

In 1982, the current citizenship Act came into effect. It states, “Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 BE, 1823 AD are Burma citizens.”²⁰ It was an effort to deny citizenship to a large number of Muslims who came to Myanmar after 1823. In the absence of pre-British official recorded documents,²¹ many who claim that their forefathers were originally from Myanmar could not get citizenship rights.

However, the Rohingyas used to cast their votes in every election held from 1948 until 2010 with “temporary scrutiny cards” that clearly mentioned that the cards did not entitle them to citizenship.²² The Rohingya parties also took part in the 2010 election but none of their candidates won. Nevertheless, the military’s Union Solidarity Development Party sent three representatives of the Rohingyas to Parliament. However, the Rohingyas were disenfranchised during the election in 2015, which is heralded as the first full democratic election in Myanmar.²³

To look into the Rohingya issue, a nine-member Advisory Commission under former United Nations (UN) Secretary-General Kofi Anan was set up at the request of Myanmar State Counsellor Daw Aung San Suu Kyi. The Advisory Commission on the Rakhine state was set up by the Kofi Annan Foundation and the Office of the State Counsellor in September 2016. The Commission submitted its report to the Office of the State Counsellor on 24 August 2017. After receiving the report, Suu Kyi promised to implement the suggestions as soon as

²⁰ Burma Citizenship Law. Retrieved from www.ilo.org/dyn/natlex/docs/ELECTRONIC/87413/99608/.../MMR87413.pdf.

²¹ Wade, Francis (2017), Myanmar’s Enemy Within: Buddhist Violence and the Making of a Muslim ‘Other’, London: Zed Books.

²² Nirupma Subramanian, “Why no Country Wants Rohingya, why it’s so difficult to deport them”, The Indian Express, 12 September 2017.

²³ Ibid.

possible.²⁴ Appreciating the work of the Commission, the Office of the State Counsellor stated,²⁵ “We will give the report our full consideration with a view to carrying out the recommendations to the fullest extent, and within the shortest timeframe possible, in line with the situation on the ground. We hope to set out a full roadmap for implementation in the coming weeks...As an immediate step, a new Ministerial-led committee responsible for the implementation of the Commission’s recommendations will be established. This will comprise representatives from across government and will be responsible for overseeing delivery and reporting regularly on its progress.”

On the issue of citizenship, the Commission states, “If this issue is not addressed, it will continue to cause significant human suffering and insecurity, while also holding back the economic and social development of the entire state. In the short term, addressing this issue requires an acceleration of the citizenship verification process, and the Commission fully recognises that such an exercise must be carried out under the 1982 Citizenship Law. Yet, there is also a need to revisit the law itself.”²⁶

As the violence increased enormously in August 2017, the Myanmar government is facing strong criticism from many countries as well as from international organisations. Zeid Ra’ad al-Husseini, the UN High Commissioner for Human Rights, speaking at the 36th session of the UN Human Rights Council in Geneva on 11 September 2017, said the situation in Myanmar “seems a textbook example of ethnic cleansing”.²⁷ He urged, “I call on the government to end its current cruel military operation, with accountability for all violations that have occurred and to reverse the pattern of severe and widespread discrimination against the Rohingya population. I strongly urge the authorities to allow my office unfettered access to the country.”²⁸

Besides the condemnations, there have been various demonstrations and protests against the Myanmar Government and its premier Aung- San- Suu- Kyi. There have been demands for

²⁴ Ravi Velloor, “Rohingya Issue and the Danger in Southeast Asia”, The Strait Times, 15 September 2017.

²⁵ “Statement by the Office of the State Counsellor on the Final Report of the Advisory Commission on Rakhine State”, The Republic of the Union of Myanmar, State Counsellor Office..

²⁶ “Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: *Final Report of the Advisory Commission on Rakhine State*”.

²⁷ “Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries: Human Rights Council 36th session – Opening Statement by Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights”.

²⁸ Ibid.

revocation of Su Kyi's Nobel Peace Prize which she won in 1991. Similar protests have been made in Canada to revoke the honorary citizenship she was bestowed with in 2007.

India's Position on the Rohingya Crisis

India's position on the Rohingya crisis can be at best described as ambiguous. India's predilection is for strategic reasons. India cannot afford to sour its relationship with Myanmar while, at the same time, it has to take into consideration the impact of the Rohingya issue on the India-Bangladesh relationship. The previous government under Dr Manmohan Singh walked a tightrope, maintaining a studied silence on the issue. Economically, the continued violence in the Rakhine state has affected the operationalisation of all sections related to India's Kaladan Multi-modal Transit Transport project, which links the western part of Myanmar with India's northeast.²⁹

Around 40,000 Rohingyas are living in India. These include 16,000 who have refugee documents.³⁰ About them, Minister of State for Home Affairs Kiren Rijiju said, "I want to tell the international organisations whether the Rohingyas are registered under the United Nations Human Rights Commission or not, they are illegal immigrants in India."³¹ Earlier the Union government sent an advisory to the states to identify and deport them.³² A plea against deportation was filed by Mohammad Salimullah and Mohammad Shaqir, two Rohingya refugees registered under the United Nations High Commission for Refugees. In their plea, they claimed that they "had taken refuge in India after escaping from Myanmar due to widespread discrimination, violence and bloodshed against the community there".³³

Meanwhile, in an affidavit submitted to the Supreme Court, the Government of India said there was an "organised influx of illegal immigrants from Myanmar through agents and touts facilitating illegal immigrants/Rohingyas into India via Benapole-Haridaspur (West Bengal), Hili (West Bengal), Sonamura (Tripura), Kolkata and Guwahati."³⁴ The affidavit states that a "large influx of illegal immigrants from neighbouring countries" had already caused "serious changes" in the "demographic profile of some of the border states" and this was "causing

²⁹NehginpaoKipgen, "Can India Ignore Rohingya Crisis?", The Hindu, 15 September 2017.

³⁰ "Rohingya crisis: Deplore India's current measures to deport refugees, says UN rights body chief", The Indian Express 11 September 2017.

³¹ "Rohingyas to be deported, don't preach India on refugees", says Kiren Rijiju", The Indian Express, 5 September 2017.

³² "Supreme Court asks Centre why it wants to deport Rohingya refugees to Myanmar", The Scroll.

³³ "Centre Refuses to Tell Supreme Court It Won't Deport Rohingya Refugees", The Wire, 5 September 2017.

³⁴ "Illegal Rohingyas are security threat: Govt to Supreme Court" Anantkrishnan G. The Indian Express 19 September 2017.

farreaching complications in various contexts and is taking its toll and has a direct detrimental effect on the fundamental rights and basic human rights of the country's own citizens".³⁵ The affidavit maintains that, "Some Rohingyas are indulging in illegal/anti-national activities, i.e. mobilisation of funds through hundi/hawala channels, procuring fake/fabricated Indian identity documents for other Rohingyas and also indulging in human trafficking" and "they are also using their illegal network for illegal entry of others into India". Many of them have also been able to "acquire fake/fraudulently obtained Indian identity documents i.e. PAN (Permanent Account Number) cards and voter cards".³⁶ The Rohingyas also pose a security threat, contends the government affidavit. It states, "Many of these illegal immigrants also figure in the designs of ISI (Inter Service Intelligence – a Pakistani intelligence agency) and ISIS (Islamic States) who want to create communal flare-ups in the country. Rohingya militancy may further destabilise the country's north-eastern corridor and there was the possibility of eruption of violence against the Buddhists who are Indian citizens, who stay on Indian soil, by the radicalised Rohingyas... some of them with militant background are also found to be active in Jammu, Delhi, Hyderabad and Mewat and posed a threat to national security".³⁷

India is not bound by the principle of 'non-refoulement', which bars governments from returning immigrants to countries where they face persecution, says Delhi, as India is not a signatory to the 1951 Refugee Convention."³⁸ The government says that "though India is a signatory to the International Covenant on Civil and Political Rights, its scope did not extend to non-refoulement". The government insists the Foreigners Act of 1946 "statutorily empowers" and "casts an obligation upon the Central government to deport a person who is an illegal immigrant".³⁹

India's Legal Obligations Towards Refugees under International Law

Like every other country, India is legally obligated to respect and protect the fundamental human rights of every person within its territory, no matter he/she is a citizen or not

To resolve the refugee crisis that happened in Europe succeeding World War II, international refugee law was created to provide protection to people fleeing from persecution in their

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

country of origin and give them the support they required through a series of conventions and treaties.⁴⁰“After nearly half a century since the international community first addressed the issues of refugees, many nations have completed numerous agreements, to the extent that modern refugee law represents the codification in treaty form of international norms governing the status and protection of refugees.”⁴¹ The most far-reaching instruments to address the plight and defense of refugees are the 1951 Convention Relating to the Status of Refugees (the Refugee Convention) and its 1967 Protocol (the Refugee Protocol).⁴² Founded on the principle of non-refoulement, international refugee conventions focus on protecting refugees from forcible return to a place-usually the region or state they fled-where they would likely face further harm or persecution.⁴³

The most important provision of the 1951 Refugee Convention is Article 33(1),⁴⁴ which provides that "no Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."⁴⁵This definition however fails to address two important issues, firstly, it doesn't apply to countries who are not signatories to the refugee conventions and secondly it doesn't talk about specific rights to be provided with asylum to those fleeing from persecution.⁴⁶

India however is not a signatory to the 1951 Refugee Convention in Geneva and is not bound by the principle of non-refoulement. Although deporting refugees would be against customary international law and the refugees arriving in a country which is not a party to the refugee convention thoroughly deserve the very protection they would get in a country which is a party to the same.

Customary international law is established from various patterns of practice or behaviour among different states and patterns of shared legal expectations- *opinio juris*. The latter derives from the expectations of all "humankind, not merely from the practices of official

⁴⁰Ved P. Nanda, *Refugee Law and Policy*, Refugee Law and Policy: International and U.S. Responses 3, 1989.

⁴¹Lawyers Committee for Human Rights of Refugees, 1989, p 31.

⁴² Convention Relating to the Status of Refugees, opened for signature, July 28,1951, 19 U.S.T. 6259, 189 U.N.T.S. 137.

⁴³*Supra* 40.

⁴⁴ Gunnell Stenberg, *Non-expulsion and Non-refoulement*, 268, 1989.

⁴⁵ Convention Relating to the Status of Refugees, opened for signature July 28,1951, 19 U.S.T. 6259, 189 U.N.T.S. 137.

⁴⁶ Universal Declaration of Human Rights, GA. Res. 217A (III), U.N. Doc. A/810, at 71 (1948).

State elites."⁴⁷ Furthermore, the patterns of expectation which form the source of *opinio juris* may not have universal consent, but "need only be generally shared in the international community."⁴⁸ Countries that are not signatories to international conventions can validly claim not to abide by the terms of the instruments, however, all states are required to comply with the dictates of customary international law.⁴⁹

Certain elements of customary international law do not rest upon either shared patterns of behaviour or generally accepted legal expectations, but are recognized as *jus cogens*. *Jus cogens*, or "compelling law," is "a sort of international law that, once ensconced, cannot be displaced by states, either in their treaties or in their practice."⁵⁰

In the field of human rights, there are various principles of law which have been recognised as *jus cogens*, which are certain conditions or norms from which there cannot be any deviation. Hence, a country might be judged as being guilty of violating customary international law if it practices or fosters : "(a) genocide; (b) slavery or slave trade; (c) the murder or causing the disappearance of individuals; (d) torture or other cruel, inhuman, or degrading treatment or punishment; (e) prolonged arbitrary detention; or (f) systematic racial discrimination."⁵¹ Violations of such kind will be held in violation to customary international law even if they are sanctioned by the local laws of the country or any agreement entered to by the country with another country or international organisation.⁵² The above mentioned acts breach customary law even if they are committed infrequently or even if they are solitary cases of such acts. In addition to this there are certain acts which will be in violation of customary international law if they are perpetrated continuously and in accordance to a rigorous policy of the state. So "a country also violates international law if it practices, encourages, or condones (g) a consistent pattern of gross violations of internationally recognized human rights."⁵³ Burma's military junta has systematically committed each of these violations in army operations directed against the Rohingyas of Arakan by persistently harassing the Rohingyas, breaching their privacy, discriminating against them on lines of

⁴⁷ Jordan J. Paust, *Customary International Law: Its Nature, Sources and Status as Law of the United States*, 12 *MICH.J. INT'L L.* 59, p. 59-62, 1990.

⁴⁸ *Ibid.*

⁴⁹ *Restatement of the Foreign Relations Law of the United State*, p. 12, 1987.

⁵⁰ Mark W. Janis, *An Introduction to International Law*, p. 36, 1988.

⁵¹ *Restatement of the Foreign Relations Law of the United State*, p. 12, 1987.

⁵² Lawrence M. Friedman, Note, "The United States-China Act of 1991" and Customary International Law, *Boston College Third World Law Journal*, p. 264, 1993.

⁵³ *Restatement of the Foreign Relations Law of the United State*, p. 12, 1987.

religion and ethnicity, physically torturing them and creating situation of terror which makes them flee their motherland.⁵⁴

India on its part has been guilty of not following the principles of customary international law. India has been trying to deport the 40,000 odd Rohingya refugees in its territory which is against the principle of non- refoulement which is a principle of customary international law. Furthermore, India's hypocrisy with respect to refugees has been exposed in the face of the current humanitarian crisis in Myanmar. India has been long know to take a moral high stand in the matter of refugees but this episode is poised to blot India's reputation as a refugee welcoming country.

Moreover, India's refugee policy is rather discriminatory with the country favouring asylum seeker who are Hindus, Sikhs, Jains and Buddhists while denying the same to Muslims. It can be argued that the Rohingyas because of their religion are being denied refuge and are being deported.

India hosted close to half a million refugees from its neighbouring countries including, a little over 100,000 from Tibet who fled to India after China annexed Tibet. Another 100,000 Tamil Sri Lankans who were fleeing from the onslaught of the Sri Lankan army which was locked in a battle with the LTTE. 35,000 Chakmas and Hajongs(Buddhist by religion) from former East Pakistan who took refuge in Arunachal Pradesh after Muslims took over their land in 1964. In these situations, the principle of non-refoulement has been abided by, and Article 51(c) of the Indian Constitution⁵⁵ which advocates respect for international law has been followed. This sentiment however has not been reflected in the case of Muslim refugees.

India's constitutional framework itself calls for equal protection for all without any discrimination and bias. The Constitution of India guarantees certain Fundamental Rights to everyone irrespective of them being citizens or not and that includes refugees and they are, Article 14- right to equality, Article 21- right to life and personal liberty, Article 22- right to protection under arbitrary arrest, Article 20- right to protect in respect of conviction of offences, Article 25- freedom of religion, Article 32- right to approach Supreme Court for enforcement of Fundamental Rights.

⁵⁴Asia Watch, Burma: Rape, Forced Labour and Religious Persecution in North Arakan, 1991, p. 31.

⁵⁵INDIA CONST. art. 51, cl. c.

India will be treading a dangerous path by deporting the refugees as it will not be in consonance with the spirit of the Indian Constitution and neither with the customary international law. It will also expose India's double standards with regard to refugees and will paint India as a discriminatory state which acts only for its own benefit even in the face of one of the worst humanitarian crisis this world has ever seen.

Conclusion

To address this grave humanitarian crisis in Myanmar, a permanent solution and framework has to be put in place. Myanmar has to take back the Rohingyas to their places of origin and provide them full citizenship status and rights. The International community with the UNHCR at the helm should come together and make sure that the principle of international law in general and refugee and humanitarian law in specific should be more than just toothless dragons and make them actionable. There should be more number of signatories to the 1951 refugee convention and it should be made sure that all the countries abide by it. India on its part should come up with a refugee specific act which is all encompassing and doesn't mete out differential treatments to refugees based on their religion, ethnicity and culture.