

Human Rights For The Stateless, With Special Emphasis On The Rohingya Refugee Crisis

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Introduction- Who Are Refugees And The Stateless?

Refugees are one of the most vulnerable sections of the society. They face multiple problems on a daily basis that we as independent citizens cannot even imagine. The 1951 Convention is the major instrument relating to the protection of rights of the refugees. A refugee, according to the Convention, "is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion."² Therefore, a person who is unable to live without fear in his place of origin and as a result of this migrates to another place is known as a refugee.

On the otherhand a stateless person is a person who does not own the citizenship of any State. This means that a stateless person is deprived of the protection provided to the citizens because according to statutory law there is no duty upon the State to protect the rights of a stateless person. Therefore, the stateless persons are prone to being subjected to a varied treatment as compared to the citizens of the State they are residing in. The *1954 Convention relating to the Status of Stateless Persons* defines the term "stateless person" as a person who is not considered as a national by any State under the operation of its law. It further prescribes the standards of treatment to be accorded to stateless persons.³ Therefore, refugees and stateless persons, being vulnerable groups of the society are provided with international protection through Conventions. But, the question that arises is how effective are these Conventions when the host countries are not willing to provide equal rights and protection to such people.

The focus of this paper is on the Rohingyas who have been stateless for a very long time and are now being identified as refugees by certain countries such as Malaysia as a result of the

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² United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, 1951.

³ United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954, Article 1(1).

crisis situation in Myanmar. This paper will further analyze the challenges faced by these persons especially on the human rights front and provides solutions to the above stated problem.

The paper is divided into four parts. The first part discusses how the States have used statelessness as a justification for human right violations and why it violates the rule of law of that State. The second part explains who are Rohingyas and why their host country considers them stateless. The third part talks about the ongoing Rohingya crisis and its history. The fourth part explains how the Rohingyas have become stateless as well as refugees. Finally, the paper concludes by a list of suggestions to overcome the situation in Myanmar as per the norms of International law.

Statelessness As a Justification For Violation of Human Rights

The Universal Declaration of Human Rights is the most important instrument for safeguarding the human rights of a person. The rights that have been provided in this instrument are a set of guidelines as to how a State should deal with its subjects. The impartial courts upholding the rule of law must follow these even against the State.⁴

Article 15 of the Universal Declaration of Human Rights lays down that, "*Everyone has the right to a nationality*". It is an accepted belief by international law scholars that States provide domestic and international protection and access to rights only to their citizens. This means that a right to nationality is the right to have rights and therefore stateless persons have no rights. But, the principles of human rights claim that the being human itself means that no person can be deprived of their human rights.⁵ This view has been forwarded in the 1954 and 1961 Convention on the rights of the stateless. The 1961 Convention on the Reduction of Statelessness states that a State party to this Convention agrees to grant its nationality to a person born in its territory who would otherwise be stateless. The State also agrees, subject to certain conditions, not to deprive a person of his nationality if such deprivation would render him stateless. The Convention specifies that a person or groups of persons shall not be deprived of their nationality on racial, ethnic, religious or political grounds.⁶ On the application of Article 15 of the Universal Declaration of Human Rights alongwith the 1961

⁴ UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 20, Human Rights and Refugees, July 1993, No. 20, available at: <http://www.refworld.org/docid/4794773f0.html> [accessed 4 January 2018].

⁵ David Weissbrodt and Clay Collins, *The Human Rights of Stateless Persons*, 28 Hum. Rts. Q. 245 (2006), available at http://scholarship.law.umn.edu/faculty_articles/412.

⁶ *Supra* note 2.

Convention it is clear that the Declaration is being violated if the rule of law is applied to only the citizens of the State and not the stateless residing in that State. This conclusion is supported by the language which is stated in the Article 15 of the Declaration which states that "everyone" is entitled to the rights and freedoms listed in the articles, and no distinction is to be made among people due to their national or social origin, property, birth or other status. Therefore, an individual's claim to the enjoyment of human rights cannot be refused on the lack of citizenship to that country. Human rights violations have been considered as a major cause of mass exoduses that affect the peace and stability of the world. Thus, it is important for all the States to protect the human rights of their subjects whether they are citizens or non-citizens of that country.⁷

Who Are The Rohingya And Why Are They Stateless?

Rohingyas are an ethnic and minority group of Muslims who reside in the Arakan state of Myanmar. They have never been accepted as lawful citizens of the country and have been designated as foreign residents. There have been two opposing views in regard to the history of the Rohingya Muslims. The Burmese military government claims that the Rohingyas have no historical connection to the land on which they are residing and their arrival to this place is a recent event due to which they cannot be accepted as citizens of Myanmar. But the Rohingyas claim that they have a long history of their attachment to the Arakan State. Their claim is that they have been living in the Northern Arakan State which was at that point of time independent of Burma. They were promised of a separate land by the British which did not happen. As a consequence, they formed an army and went to Pakistani leader Mohammad Jinnah and requested him to include their land to Pakistan. This event is the major reason that the Burmese Government is not sympathetic towards this community because they believe that the Rohingyas have threatened the territorial sovereignty of Myanmar.

The Rohingyas are deprived of their right of citizenship as well as their freedom of movement, secondary education and employment opportunities. The atrocities upon these people have only been increasing by the passing decades. They have been treated in a cruel manner and there have been several human right abuses against them. But the biggest problem is that they are not recognized as citizens of Myanmar which forces these stateless

⁷*Supra* note 4.

people to leave their country and take refuge in neighboring countries of Malaysia, Bangladesh and India.⁸ They have been arbitrarily deprived of their citizenship due to the history they have had with the Burmese government.⁹ There has been international intervention in this regard but it can give no results unless the Myanmar government agrees to recognize the Rohingyas as citizens of their country.

Tracing the History of the Rohingya Refugee Crisis

There have been some major developments in Myanmar over the years which prove an ever increasing plight of these Rohingya Muslims. The first of these events was the Operation Nagamin which came into operation in the year 1978. The purpose of this operation was to take actions against the foreigners who had illegally entered into the country. As a consequence of this operation the documentations available with the Rohingyas were taken away. Then came the 1982 Citizenship Law that took away all rights of the Rohingyas including the right to citizenship. Before this Act, the ethnicities were broadly defined but after this law there was publication of a closed list of 135 ethnicities from which the Rohingyas were excluded. For being able to apply for citizenship, the Rohingyas had to trace their ancestry to the colonial period that was not possible due to lack of documentation.¹⁰

Finally, the latest development that happened was that Myanmar from being a military country became a democracy after the election of Aung San Suu Kyi led National League for Democracy in 1990 national elections. Thereafter, the formation of a Constituent Assembly was announced to draft a new constitution for the country so that new elections could take place. The military government wanted to again gain power in its own hands and when it was unable to do so due to protests they turned to the Rohingya for uniting the people against them. There was an increase in human right violations against the civilians that forced the Rohingyas to flee to other countries. These refugees told of summary executions, rape, and other forms of torture which they had witnessed or personally endured at the hands of the military.¹¹ The growing human right violations have been continuing since the year 1991. Since 1992, successive U.N. Special Rapporteurs have documented patterns of human

⁸Human Rights Watch, *Living in Limbo: Burmese Rohingyas in Malaysia*, 1 July 2000, Vol. 12, No. 4, (C), available at: <http://www.refworld.org/docid/3ae6a8743.html> [accessed 4 January 2018].

⁹Equal Rights Trust (ERT) in partnership with the Institute of Human Rights and Peace Studies, Mahidol University. *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*. London: ERT, 2014.

¹⁰ Ibid.

¹¹*Supra* note 7.

rights violations against the Rohingyas.¹² In 2016, thousands of Rohingyas claimed that Myanmar's soldiers, where villages had been burned down, have subjected them to attacks.¹³ A recent incident reported in February 2017, where an entire family, including elderly and disabled people were locked inside a house by the army of Rakhine villagers, during the crackdown in the Rakhine State and was on fire for all of them to die.¹⁴

Stateless To Refugees

Due to increasing number of attacks on the Rohingyas they have fled to the other countries for refuge. Being a refugee is another complicated problem faced by the stateless Rohingyas. The refugees are supposed to be provided with permanent shelter after they have become a refugee but this is not always possible. A refugee situation, which goes on for a considerable period of time, is known as the protracted refugee situation that is no less dreadful than being stateless. In this situation, the temporary shelter provided to these refugees continues for a period of time without having the rights to move and work thus living in a state of limbo. Though the risks to their lives may be radically reduced in comparison to the situation from which they fled, their lives remain physically and psychologically insecure, oftentimes more insecure than they would be if they returned home.¹⁵

Suggested Solutions

Due to the above reasons, it becomes imperative that a permanent solution should be resorted to deal with the Rohingya crisis. The suggested solutions are enumerated below: -

1. Since the Refugee Conventions are not enforceable without the ratification of the concerned States, the international community could consider implementing the UN Security Council Resolution 1674 (UNSC **1674**), a reaffirmation of the 'Responsibility to Protect' (**R2P**) populations who suffer from extreme human rights abuses and lack of protection from their own governments. This would be an effective way to curb the atrocities that the Rohingyas are being subjected to by the Myanmar Government

¹²UN Human Rights Council, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, 20 June 2016.

¹³ B. Kentish, *Burmese government is 'renewing attacks on Rohingya Muslims,' rights group claims*, The Independent, December 16, 2016.

¹⁴ M. Bulman, *Burma: Rohingya Muslim babies and children 'being slaughtered with knives', UN warns*, The Independent, February 3, 2017.

¹⁵ Ashraful Azad & Fareha Jasmin, *Durable Solutions To The Protracted Refugee Situation: The Case Of Rohingyas In Bangladesh*, *Journal of Indian Research* Vol.1, No.4, October-December, 2013, 25-35.

provided that all the five countries of the United Nations Security Council adopt such a Resolution.

2. The protracted refugees should be allowed to establish their own livelihoods and must be provided with opportunities to become self-reliant in the country of refuge. Even if the country is not capable of providing such opportunities to the refugees it will become problematic for their country as they may get involved in criminal activities to sustain themselves. Many Rohingyas living as a refugee in Bangladesh who want to travel to other countries as migrant worker must be allowed to do so and special travel documents could be provided by the Government which could also be beneficial for their own economy.¹⁶
3. The present rate at which the Rohingyas are leaving Myanmar and settling in neighbouring countries is an evidence of the attempt of the Burmese Government to commit crimes against humanity. This can be brought into check through the Rome Statute. Even a non State Party such as Myanmar can be brought within the purview of the Rome Statute through Article 13(b) and (c). The United Nations Security Council (UNSC) may refer the situation in Myanmar to the ICC under Article 13(b) of the Rome Statute. This is a long-term legal option that the world community could consider to end the plight of the Rohingyas.¹⁷
4. A political solution can to be made with the support of the neighboring countries and Association of Southeast Asian Nations (ASEAN) and the international community. The ASEAN Intergovernmental Commission on Human Rights (AICHR) is responsible for the promotion and protection of human rights in the Asian region.¹⁸The ASEAN Human Rights Declaration also entails the right of all persons to equality and non-discrimination. This right of equality is also available to the Rohingya regardless of the status of their nationality.¹⁹
5. The simplest solution is that the Myanmar Government agrees to give citizenship to the Rohingya Muslims. This would lead to a stable and peaceful environment for the entire International community. This can be made possible by the application of the doctrine of genuine and effective link which says that a person should be eligible to receive

¹⁶Ibid.

¹⁷A. K. M. Ahsan Ullah, *Rohingya Crisis in Myanmar: Seeking Justice for the "Stateless"*, Journal of Contemporary Criminal Justice 2016, Vol. 32(3) 285–301.

¹⁸Kimberly Ramos Gamez, EXAMINING THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS (AICHR): THE CASE STUDY OF THE ROHINGYA CRISIS, June 2017.

¹⁹*Supra* note 8.

citizenship from states with which she or he has a substantial connection or a genuine and effective link. This must be obligated upon the Myanmar Government and must be applied as a customary International Law that does not require ratification by the States.²⁰

6. It is believed that all Rohingya born in Burma and their children have a right to Burmese citizenship. By denial of this citizenship, Burma is violating international law. It is thus forcing its neighbors to bear the burden of its actions. The international community must put pressure on Burma to provide full citizenship and accompanying rights to its Rohingya population. The right to nationality without arbitrary deprivation is now recognized as a basic human right under international law, which, through legal instruments and the practice of many states, imposes the general duty on states not to create statelessness. Though Myanmar is not a party to these conventions, but the general principles are to be complied by all the States. The discrimination and human right abuses faced by the Rohingya would be curbed to a large extent if they are given the right of citizenship.²¹
7. Human Rights Watch has persistently called for the Myanmar government to amend the 1982 Citizenship Law in line with recommendations made by the U.N. Special Rapporteur dealing with Myanmar, and to grant Rohingya full citizenship and other rights. The special rapporteur has called on the Myanmar government to "abolish its over-burdensome requirements for citizens in a manner which has discriminatory effects on racial or ethnic minorities."²²

Conclusion

The refugees and the stateless undergo tough lives even though they are protected under several International Conventions. The reason is that they are not accepted by the nation to which they belong. It is the primary responsibility of the host country not to create such conditions so as to force these people to migrate from one country to another to lead a normal and healthy life. The Rohingya crisis can be peacefully solved by the intervention made by the International community and specially the powerful United Nations Security Council to exert pressure on the Myanmar Government to safeguard the interests of these Rohingya Muslims who have long suffered from discrimination and violation of their human rights. This can only be made possible when all the five countries of UNSC realize the magnitude of

²⁰*Supra* note 4.

²¹*Supra* note 7.

²²*Ibid.*

this problem and are willing to take appropriate action against the Myanmar Government. Once such a resolution is made, it will remain permanent and thus, a stable and peaceful life can be expected for the present and the future Rohingyas and the ones who have been refugees can also return back to their home and enjoy the rights of citizenship which are complemented by all other fundamental rights.