

CHILD RIGHTS AND THE ROHINGYA CRISIS

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Abstract

Child right turns in to a misnomer when Rohingya villages are revisited in Cox Bazar, Bangladesh. Irrespective of the various child right movement in various parts of the world, the Rohingya children lives a horrific life in the Bay of Bengal with very little option for resuming a life with dignity and freedom. The terrible weather condition and lack of basic facilities have made their life even more miserable in the period of lockdown and international flights being suspended preventing multiple assistance to reach the incumbent residing in the shores of the sea. Life has been as difficult as it can possible be for most of the Rohingya refugees and their new hope for resurrection has been shattered under the new world order. The question remains, would they ever come out of it during their childhood.

Keywords: *Child Right, Rohingya, Bay of Bengal, childhood, refugees*

I. Introduction

The basic elements of justice demand the adherence to the principles of human rights. After the Second World War, two major things developed one, the de-colonization movement and second, the Human Rights movement. The origin of Human Rights in the international forum can be noticed in the provisions of Universal Declaration of Human Rights (UDHR) and its up-liftment in various domestic legislations, both substantive and procedural.

a. Rohingya Crisis

The Muslim minorities of Myanmar mostly belong to the Myanmar's Rakhine State. They are identified as Rohingyas and have a population of around eight lakh people. The relationship between the Buddhist Rakhine community and Rohingya Muslims could be traced in historical records in various economic relations. The relationship and inter dependence continues irrespective of the political turmoil adversely affecting their relationship. There have been stray incidents of conflict and tension which

ultimately gave birth to a long standing tension between the two communities leading to the mass ethnic cleansing steps by the Myanmar Government. In the absence of some basic rights like the right to vote, citizenship rights and also the right to self identify. Some of the major restrictions imposed on the Rohingyas in Myanmar were banning them from free movement, work outside their villages (limiting them to livelihood opportunities) and also in personal decision making process of marriage. This huge physical and mental pressure was a *sine que non* of all the ethnic minorities in the country. Educational rights were also not available to children belonging to these members. The health care facilities were not sufficient to meet the growing demand of the community and there ware strict restrictions to go elsewhere for the said because of such mobility restrictions. Another interesting situation was the administrative existence of the children as there was restriction of children to two. And the actual, being out of control was beyond records.

In the said backdrop, there has been wide spread discontent amongst the Rohingya Muslims in Myanmar and there has been retaliation in certain belts. There has been wide spread violence leading to displacement of ethnic minorities from their location. Violence erupted leading to casualties on both sides. Almost one lakh forty thousand were displaced followed by international initiative to rehabilitate the displaced. However the efforts to rehabilitate was inadequate leading to more than a lakh people living in temporary camps and make shift shelters with nearly no access to education, health care and livelihood opportunities for them. There have been huge reliefs provided by various international organizations to provide relief to these people during 2012. There have been allegations and counter allegations as to the allocation of relief benefits leading to extremist movement amongst the Rakhine Muslims. After a couple of years, in 2014, a series of attacks by these extremist groups resulted loss of huge relief materials including the officials and their residences. This led to a huge setback in the relief and rehabilitation process. However, the process got a boost with the aid flowing in again in 2015.

Rakhine extremists erroneously perceive that humanitarian aid, which is allocated strictly according to needs, is distributed unevenly and benefits only the Rohingya. In March 2014, this triggered organized attacks targeting international community offices, residences and warehouses, which resulted in millions of Euros of losses. The flood and cyclone relief interventions which supported both communities in 2015 allowed to somewhat mitigate this perception, but it remains prevalent in the extremists' rhetoric. Access to the IDP camps around Sittwe remains highly regulated preventing sufficient assistance delivery.

The recent turmoil in the south Asian region relating to the Rohingya issue has played havoc in the maintenance of peace and tranquility of the region and

has been considered as the worst human rights violation of recent times. The creation of ethnic division and the notion of ethnic cleansing has been one of the major issues that led to the killing of hundreds while thousands were forced to leave their country, their place of abode and their way of life.¹

The Rohingya crisis has raised various questions in the international scene. Questions like the mindset and approach of the people in power to take such a decision, the way such directions were carried out and implemented, the helplessness of the people, the refugee rights, the vulnerability of the international community in such crisis and the lack of sting in the approach and process of these international bodies allotted to address these crisis.

Amongst all of these unanswered questions, the primary area of concern is the gross violation of human rights in situation like this and how such violations can be addressed.

The human rights questions raised by various national and international bodies may be summed up in furtherance of issues relating to over use of military power by the Myanmar Government and their acts concerning crimes against humanity, genocide with the objective of ethnic cleansing. The counter allegation by the Burmese Government regarding ARSA as a terrorist outfit is also one of the concern. The situation has now become more complicated with the increasing risk of the Rohingyas joining the ARSA outfit to avenge the arbitrary application of power to harm, torture and murder thousands of Rohingyas. The United Nations Human Rights Council after the immediate impact of the crisis has created an investigation team to investigate the alleged and wide spread human rights violations in

¹ UNHCR, Operational Update: Bangladesh, November 3, 2017; and Inter Sector Coordination Group, Situation Update: Rohingya Refugee Crisis, Cox's Bazar, November 9, 2017

Burma. The Government of Myanmar has however accepted the newly formed fact finding mission to Burma after initial denial of the mass allegations brought against them.

U.N. High Commissioner for Human Rights Zeid Ra'ad Al Hussein told the U. N. Human Rights Council on September 11, 2017:

We have received multiple reports and satellite imagery of security forces and local militia burning Rohingya villages, and consistent accounts of extrajudicial killings, including shooting fleeing civilians.²

Last year I warned that the pattern of gross violations of the human rights of the Rohingya suggested a widespread or systematic attack against the community, possibly amounting to crimes against humanity, if so established by a court of law. Because Myanmar has refused access to human rights investigators the current situation cannot yet be fully assessed, but the situation seems a textbook example of ethnic cleansing.³

The initial impact of the mass exodus of Rohingyas has adversely and coercively affected the women and children of this ethnic community. Child, perhaps is the worst affected amongst those involved in the refugee crisis of Myanmar. UNHCR report matches with other humanitarian as to the fact that 94% of the more than 600,000 displaced people in Bangladesh are Rohingya. Only a very small number includes the Hindu and Rakhine who were amongst the areas affected by the attack. The most fascinating fact seems to be that an estimated 54% of the displaced are

² U.N. Office of the High Commissioner, *Darker and More Dangerous: High Commissioner Updates the Human Rights Council on Human Rights Issues in 40 Countries*, September 11, 2017.

³ *ibid*

children and 4% are elderly. The remaining 42% are adult refugees, roughly 52% of who are women.⁴ The majority of refugees who entered Bangladesh are staying in temporary shelters and there has been inadequate infrastructure to deal with the crisis which may be considered as the worst in recent times. Bangladesh is establishing a new 3,000-acre camp at Kutupalong that is to reportedly accommodate 800,000 people in a single, enormous camp⁵ apart from the one in Cox Bazar, Bangladesh.

II. United Nations and Protection of Children in Rohingya Crisis

The United Nations Organization has declared the crisis in Myanmar relating to Rohingyas as the worst example of textbook style ethnic cleansing. It has condemned the act as the worst affecting human rights involving children. It declares the crisis having very serious humanitarian consequences. It reflected the concern relating to the limited access to basic necessities regarding livelihood and health. The U.N. Security Council in a presidential statement released on November 6, 2017, inter alia, expressed:

grave concern over reports of human rights violations and abuses in Rakhine State, including by the Myanmar security forces, in particular against persons belonging to the Rohingya community, including those involving the systematic use of force and intimidation, killing men, women, and children, sexual violence, and including the

⁴ The Bangladesh Refugee Relief and Repatriation Commissioner (RRRC), launched on October 4, 2017, which conducted a family counting exercise with the support of UNHCR. RRRC Fact Sheet: Family Counting, November 7, 2017.

⁵ MedhaviAroora and Ben Westcott, "Bangladesh to Move 800,000 Rohingya into Single Enormous Camp," CNN, October 23, 2017

*destruction and burning of homes and property.*⁶

Another important concern that was raised in this regard is the status issues of the members of Rohingya community not only for those who are in Bangladesh as refugees but also those who are still in Myanmar. It is a matter of concern as these people are not provided with the status of citizen in Myanmar. They are legally regarded as people illegally staying in Myanmar for decades. The international community has already raised their voice for stopping such discriminatory practice and has urged the Myanmar Government to provide solution to this major hindrance. In the absence of a legal status, the member of this community has been subjected to limited and restrictive access to various basic and necessary facilities available in their country. It has been urged to the Myanmar Government that the standards that they should adhere in this regard must comply with international standards. The UN also recommends initiating State wise programs to develop various section of the society. Another area of concern that has been specifically highlighted by the UN is the widening of regional imbalance which will have a far reaching effect in the decades to come. Rohingyas have because of the crises fled to various other parts of the south Asian countries. The largest flock has gathered in Bangladesh where the majority of refugees have settled in. It has been estimated that around ninety four thousand people have moved into Bangladesh from the border of Myanmar till date.⁷

UN has also focused on the crisis leading to a much wider regional imbalance. There has been large scale exodus of Rohingyas to various parts of South Asia and in Bangladesh alone the numbers of Rohingyas are approximately 94,000 people till date. The

members of the international community and the UNO have appreciated the Bangladeshi government for allowing the refugees to settle and provide them with basic necessities with the support of the UNO. The largest affected in the said crisis includes children as they are in a state of vulnerability from various physical and psychological factors.

III. Child Rights under the Refugee Convention: The Primary Issues

Children are provided with the necessary protective shield by various international conventions including the Refugee Convention. The Universal Declaration of Human Rights 1948 in its declaration has proclaimed the need of special care and assistance for the child. The primary reason behind this is that the majority of child immigrants travel alone leaving behind their parents who have been subjected to major difficulties arising out of challenges and adversities. In majority of the cases that occasioned in the case of Rohingya children the parents are dead. In a case reported, there has been unwarranted attack by the state by air, where bombs were dropped on mud and straw built huts having women and children. People are found in houses engulfed with fire. After people rushed out of their houses there has been realization that some of their relatives are still stuck in their fire engulfed houses.

“Swishhh...In the middle of the night, Ismat Ara heard a faint sound. Within seconds, the 27 year old Ara knew what it meant: her mud and bamboo thatched hut was on fire. She sprang on the floor, lifted her three and a half year old son Absar and ran out, all in one movement. When she turned to look back, her dwelling was engulfed in flames. And then came the shocking realization: her

⁶ United Nations Security Council, *Presidential Statement, S/PRST/2017/22*, November 6, 2017.

⁷ This number includes statistics from 2014-2015 till date.

*13 year old daughter was still inside the hut.*⁸

As a matter of past experiences⁹ it has been identified that there are at least three ways of migration:

1. They move with their family¹⁰;
2. They migrate alone without their parents;¹¹
3. They were left behind by migrant parents who have no other option than going abroad to seek means of sustenance for their family.¹²

The situation of Rohingya children is primarily limited within the first two ways mentioned above. According to various international treaties and the standard set out by these international covenants the country states have some basic responsibility towards the refugee children. Once the country concerned has ratified the treaty, the country promises to the international commitment to follow certain basic standards provided in the treaty. There are two basic Conventions which guides the Refugee Children. One, the Refugee Convention of 1951 and secondly, the Protocol (Relating to the Status of Refugees) of 1967. The standard set forth by the said conventions categorically applies to both the children and the adults.

The three basic standards are as follows¹³:

- (1) a child who has a "well-founded fear of being persecuted" for one of the stated reasons is a "refugee",¹⁴
- (2) a child who holds refugee status cannot be forced to return to the country of origin (the principle of non-refoulement)¹⁵, and
- (3) no distinction is made between children and adults in social welfare and legal rights.¹⁶

Apart from the aforesaid position, Article 22 of the Convention provides that the refugee must receive the 'same treatment' as nationals in primary education and treatment at least as favorable as that given to non refugees while imparting secondary education.

The Convention on the Rights of Child (CRC) 1989 is applicable to refugee children as well as Article 1 of the said convention does not exclude refugee children and is thus applicable to all the children of the world. Article 2 of the said convention also prohibits discrimination. Thus the discrimination made towards the refugee children is also prevented under the said Convention. The rights thus available to the children of the country must also be provided to the refugee children in relation to juvenile justice, family rights, adoption, social welfare, health, education and the like. To make it more effective the United Nations has approached for a mandatory ratification of the said convention. A

⁸SubhojitBagchi, 'For Rohingya, it was all a blinding flash and a smear of ash', The Hindu, October 22, 2017 p 1.

⁹ 'Position paper on migrant and refugee children', 2016 SOS Children's Villages International, p 3 available at <https://www.sos-childrensvillages.org/getmedia/73abf1b5-05ca-4f1a-89bf-841350b7a8ae/SOS-CVI-Position-Migrant-Refugee-Children-A4.pdf>

¹⁰ ibid

¹¹ ibid

¹² ibid

¹³ Available at <http://www.unhcr.org/protect/PROTECTION/3b84c6c67.pdf>

¹⁴ ibid

¹⁵ ibid

¹⁶Ibid. This is one of the primary reasons for most of the countries not to allow refugees in their jurisdiction, as it is one of the prime reasons for increasing the burden on the state over the refugees. India very recently stated by highlighting this point as to why they don't want Rohingya refugees to be in India.

major development took place in this regard when the World Summit for Children adopted a Declaration and Plan of Action in 1990. The primary objectives behind the said Summit were to set major standards to work for protecting the rights of children relating to education and health.

IV. The Major Violations

The majority of refugees have got their basic rights violated due to the Myanmar ethnic cleansing. The crisis has affected basic rights of the refugees, the majority of which are children. Amongst major areas of violation are their deprivations to basic human rights *inter alia* food, medicines, vaccination, sanitation, shelter and education. The various international agencies have stepped up their assistance to provide basic rights for the needy. The three camps that was setup in Bangladesh have been provided with major aids from international assistance. However, the biggest thing missing in the process is providing education to these children. This gap has exposed the child with a massive deficiency in the intellectual development of these children. The story of such deprivation has been a bench mark of most refugee crisis, be it in Bosnia or Syria. It is not that the state concerned is not doing their duty towards the international commitment. As a matter of fact, these countries have done a commendable job but the said situation is so challenging that more efforts from newer dimensions are needed.

Another interesting challenge is the lack of major health care facilities amongst the said refugee children. The primary reason for such a condition

is the lack of basic background information about the child like their age, previous medical history etc. The lack of awareness as to the benefits of such medical advice also contributes to the children for not going for vaccination.

Children also need to be provided with a continuation of care and medical attention as they have already been affected and infected adversely due to huge sanitary issues coupled with human corpses affected ground water contamination. Compulsory monitoring of the situation is not always possible for a considerable span of time which is needed for the said purpose. In the absence of a proper citizenship provided by the Myanmar Government has led to a deprivation of state aided medical support to the Rohingya. Thus the children would, under the current scenario would eventually suffer in the long run as that would have made it worse for the children to be provided with sustained medical support and attention.

Connecting the children with their parents specially those whose parents are still alive would be a mammoth challenge for any organization. But that is what would be best for the welfare of the child concerned. Childhood that has been lost can perhaps never be returned. The children have faced the things that perhaps they should never have experienced at their age. One of the pictures drawn by a Rohingya Child refugee has reflected the various experiences that they have experienced. The figure below portrays the said experience.



Figure 1: A picture drawn by a seven year old child refugee.¹⁷

To bring back the children from the trauma would be a great challenge for all concerned under the backdrop of the traumatic condition of the homeland of these refugee children.

V. Resettlement

Normal community life of the refugees should be one of the best possible way to bring back mental well being of the traumatized refugees primarily the children. Regenerating the community well being is however not an easy task. Some of the major steps that should be taken in this regard are cultural and social re building. The elders amongst the refugees may be oriented to achieve the target audience to bring back cultural association amongst the refugees. This is commonly called Traditional leadership.¹⁸ In the absence of existing leaders there are may be efforts to develop new leadership amongst the refugees. Providing specific arrangements to bring the refugees to stay together rather than on a segregation and distributed form

¹⁷ Drawing by a Rohingya boy, Abdul, reveals horrific experiences he endured while fleeing from Myanmar to Bangladesh, at a child-friendly space at the Balukhali makeshift refugee camp in Cox's Bazar district, Bangladesh, Oct. 2, 2017.

¹⁸ A refugee population may already include part, if not all, of its traditional leadership. The aid worker can help to strengthen and reinforce traditional leaders by consulting and working through them. Preservation of the refugees' traditional form of social organization enhances not only their well-being but also the effectiveness of assistance efforts. *Supra* 14 at p 11

may be a serious effort to bring back the community life amongst the refugees. This provides a sense of security and oneness amongst the community specially the children. Once the people started living together there is every possibility to make people oriented planning on the basis of homogeneous interest areas of the community. Major homogenous areas *inter alia* include language, rituals, religion, art, recreation and the like. Efforts are already on in this direction for providing strategic measures to protect the interest of the refugees.

VI. ICJ on Refugee Rights

Very recently ICJ and seventy seven other civil society organizations and UN agencies made initiatives to protect the refugees and migrant children. The ICJ has called upon the EU institutions as well to take initiatives to prevent the ongoing atrocities of refugee and most importantly children. The ICJ has deep concern about the failure to popularize child rights in the world. Rights like access to education, access to information, access to a lawyer etc.¹⁹ The ICJ has also stated that EU and Member states can do much more than what has been done in the recent past.²⁰

ICJ also emphasized the need to work on areas including strengthening the necessary safeguards in the asylum legislations, to provide more financial aid for national child protection plan and to build developed mechanism to protect the child across borders.

¹⁹ICJ and others call on the EU to protect refugees and migrant children's rights, available at <https://www.icj.org/wp-content/uploads/2016/11/EU-Joint-Statement-Refugee-and-Migrant-Children-Advocacy-Non-Legal-Submission-2016-ENG-.pdf> accessed on 25th February 2018

²⁰ *ibid*

VII. Role of Judiciary to uphold the Rule of Law

It is common that the state shall try to implement Executive discretion to address the refugee crisis. However, the state must understand that judges also have a role to play and more importantly a much effective role to play in a refugee crisis in a state. As a matter of fact the judges must also understand the relevance of jurisdiction of refugee crisis as a part of their discretionary jurisdiction. What has been noticed from past experiences is that the state would not generally appreciate the intervention of judiciary in such cases but it must also be understood that the executive discretion in such scenario has done worse than good to the people concerned including irreparable harm and gross violation of human rights. The judiciary should play a major role that the constitution vests upon it, the rights of the people and the protection of larger interest of the State. That is what rule of law suggests and that is why the Supreme Court (SC) of India accepted the PIL filed by Rohingya Refugees which wanted the SC of India to act in favor of the right of the people whose basic rights have been abused and to prevent any further damage to their already vulnerable condition. In a state of emergency the judiciary is vested upon the power to restore justice to the people in need of it and it is not executive discretion but judicial discretion that should writ large to protect the rights of the refugees most importantly the children. The majority of refugees that are under terrible situation demands the protection of the judiciary to sustain an immediate relief to the ongoing turmoil of their life.

In India there has been sharp criticism over the acceptance of the PIL of the refugee Rohingyas by the government. The Attorney General reiterated in this regard that India would not like to be the refugee capital of the world as it has already been burdened with other problems. India has already been up preventing the Rohingya refugees to enter the country

and access to the main land. India has emphasized largely on the need of deportation of those who have already entered Indian territories and urged the Supreme Court to carry on with the Executive Discretion.

VIII. Conclusion

The cry of the Rohingya child acts as a butterfly effect²¹. As the tears roll down the eyes of millions of children, thousands of miles away, all across the planet debates, discussion and strategies are formulated to remove the difficulties, distress and abuse of human rights of all those who have survived the ordeal in furtherance of ethnic cleansing developed and executed by the Myanmar Government.

Majority of these refugees are children and Bangladesh Government has done a commendable job to provide assistance to them. The world now must stand together to provide sufficient economic and resource assistance to help the Rohingya refugees to come back to basic life. The other arrangements that should also be formulated is the re structuring of the areas in Myanmar where they used to reside. There must also be efforts to provide the solutions to major discrepancies in Myanmar that led to the massive cleansing exercise. It is not possible to solve these aspects in a short span of time. Major solutions would need considerable period of time.

Primary areas that could be taken into consideration are education, health and infrastructure.

Both long term and short term measures are needed to strategically eradicate the problems.

There have been relief teams and aids flooding in to protect the refugees in Bangladesh. Special care has been taken and newer dimensions are explored to make the life of the refugees especially the children more conducive for their overall development. Children in Bangladesh Refugee camps in Cox Bazar

²¹ The concept has been elucidated by the famous radical feminist Catharine Mackinnon.

and other areas have now started staying together in communities. Children are vaccinated on a regular basis. Huge funds are utilized to provide healthy sanitation and hygienic stay of children in these camps. Children are provided with training in various areas that would help them to address the challenges that are facing. Major improvements have been noticed in the mind of these children from the sketches they are now creating. The children are now moving towards a better tomorrow and better days are ahead. However, there shall be sustainable effort to provide them as wells as Bangladesh with the aid and support to realize the goals that the international community seeks to achieve. Recently, the Bangladeshi Prime Minister has reflected the inability to provide support to further refugee crises if created in Burma. She also urged the international organizations to provide necessary support in this regard. Time shall play the biggest role to bring back peace in Myanmar. The role that has been played by UNO is really commendable. Myanmar Government must understand the major outcome of such ethical cleansing and sanctions shall be needed to be imposed upon the Myanmar Government to prevent any such violation of public international law in the near future. Steps must also be taken to bring into books the perpetrating State officials who are grossly responsible for the major violation of human rights in the affected areas in Myanmar. Strategic rehabilitation must be made to bring back the normal and more humane condition in the Rakhine area of Burma. It must however be noted that re foulment shall only be processed when the mind of the refugees shall be without fear of further harm. In order to meet such objectives international communities must take an active role in the process of rehabilitation and refoolment of the refugees in the affected state of Myanmar. The entire world must work hand in hand to bring normalcy in so called the biggest example of

ethnic cleansing and gross violation of human right in the recent past.

World community must take necessary lessons from the turn of events and understand the vulnerable position of international laws in certain situations. The provision of international refugee laws must also need introspection as most of the countries decide to turn a deaf ear and a blind eye to the refugees. The international community needs to make more stringent human right laws to make this world a better place to live in.



Fig. 2: Rohingya Refugee Children drawing in camps in Bangladesh²²

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