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# Resilience Amidst Adversity: Unveiling the Human Stories of Rohingya Refugees in India

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## ABSTRACT

*Refugees, often reduced to statistical figures, embody narratives of resilience, hope, and determination. Driven from their homes by conflict, persecution, or natural disasters, these individuals embark on arduous journeys that test the limits of their strength and tenacity. As global citizens, it is imperative to comprehend and appreciate the rich tapestry of experiences that refugees bring, fostering empathy and emphasizing the importance of humanitarian efforts.*

*This abstract delves into the challenging humanitarian situation faced by the Rohingya Muslims in India, highlighting their plight as a microcosm of broader global issues. Originating from Myanmar, the Rohingya, an Indo-Aryan ethnic group, have endured systematic persecution by the government and military since the 1970s. This unrelenting oppression has compelled over a million Rohingya individuals to undertake perilous journeys, seeking safety and refuge in foreign lands.*

*By examining the specific case of Rohingya refugees in India, this article aims to shed light on the narratives of survival, the complexities of their journeys and the challenges they face as displaced individuals come to the forefront. Understanding and empathizing with the Rohingya experience not only deepen our appreciation for the resilience of these refugees but also serve as a poignant reminder of the pressing need for global humanitarian efforts to address the plight of those forced to flee their homes.*

**Keywords:** *Non-Refoulement/ Refugee Crisis / Rohingyas/ Muslims / Bangladesh Crisis / Myanmar Crisis.*

## I. INTRODUCTION

Refugees are not just statistics; they are resilient individuals who carry compelling stories of survival, hope, and determination. Forced to flee their homes due to conflict, persecution, or natural disasters, refugees embark on journeys that test their strength and tenacity. As global citizens, understanding and appreciating the experiences of refugees can foster empathy and

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promote the importance of humanitarian efforts.

Numerous nations have overlooked essential safeguards outlined in international law, particularly within the realm of refugee law. The principle of non-refoulement stands as a pivotal cornerstone in International Refugee Law, explicitly forbidding the repatriation of individuals who have fled their homelands to evade persecution. This principle extends its protective reach to both refugees and asylum seekers, offering a shield against potential threats not addressed by other legal frameworks. It is important to note, however, that adherence to the principle of non-refoulement does not automatically ensure the granting of refugee status or the associated rights. Nevertheless, it remains imperative for states to uphold and uphold the human rights of all individuals under their jurisdiction.

In recent months, there has been a concerning trend of governments violating the principle of non-refoulement by implementing border closures and suspending the refugee protection process. Enshrined in Article 33 of the 1951 Convention, the principle of non-refoulement prohibits the expulsion or return of refugees in a manner that would jeopardize their life or freedom based on factors such as race, religion, nationality, membership in a particular social group, or political opinion.

However, it is crucial to note that the 1951 Convention allows for exceptions to the principle of non-refoulement in cases where a refugee poses a threat to the security of the country or has been convicted of a serious crime. This acknowledgment reflects the delicate balance between humanitarian considerations and national security concerns within the framework of refugee protection.

Furthermore, the principle of non-refoulement extends beyond the provisions of the 1951 Convention, being recognized as a norm of Customary International Law by the Office of the United Nations High Commissioner for Refugees.<sup>3</sup> This underscores its broader significance and acceptance in the global legal landscape, emphasizing the universal commitment to safeguarding the rights and well-being of refugees, even in challenging times.

The plight of Rohingya Muslims in India reflects a challenging humanitarian situation. Originating from Myanmar, the Rohingya, an Indo-Aryan ethnic group, have faced persecution by the government and military since the 1970s. This persistent oppression has forced over a million Rohingya individuals to flee their homeland in search of safety and refuge in other

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<sup>3</sup> UN High Commissioner for Refugees (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, available at: <https://www.refworld.org/docid/45f17a1a4.html> [accessed 9 July 2021]

countries.

India, acknowledging the dire circumstances faced by the Rohingya, has granted refugee status to around 14,000 of them. However, the situation takes a contentious turn as the Indian government contemplates the deportation of approximately 40,000 Rohingya individuals back to Myanmar.<sup>4</sup> This proposed action has stirred considerable controversy and debate.

The debate revolves around balancing the humanitarian principles of providing refuge to those in need against concerns related to national security and diplomatic relations. The Rohingya crisis is not only a domestic issue for India but also raises questions about the international community's responsibility to protect and assist those fleeing persecution.

The complexities surrounding the Rohingya issue highlight the delicate balance that governments must strike between fulfilling their duty to protect refugees under international law and addressing domestic concerns. The situation underscores the need for a comprehensive and compassionate approach to refugee policies that takes into account the human rights and safety of vulnerable populations. The establishment of the world's largest refugee camp in Bangladesh has highlighted the urgent need to address the issues faced by refugees worldwide.<sup>5</sup>

## **II. BACKGROUND OF ROHINGYAS**

The Rohingya, one of Myanmar's many ethnic minorities, have been labeled by UN Secretary-General Antonio Guterres as “one of, if not the, most discriminated people in the world.”<sup>6</sup> The United Nations also regards them as “one of the world's most persecuted minorities”<sup>7</sup> and “amongst the world's least wanted”<sup>8</sup>. They are descendants of Arab traders and other groups who have lived in Myanmar for generations.

Under the 1948 Constitution and civilian rule, the Rohingya and most Muslims with ancestors from India and Bangladesh were considered Burmese nationals until the military coup d'état of 1962. However, the 1974 Constitution did not acknowledge them officially, and the Citizenship Act of 1982 excluded them because citizens must belong to one of the 135 constitutionally recognized “national races”. The majority of Rohingya and many other Muslims were denied citizenship, making them stateless and subject to diverse discriminatory obstacles in areas such

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<sup>4</sup> Krishna N. Das, “India in talks with Myanmar, Bangladesh to deport 40,000 Rohingya”, <https://www.reuters.com/article/us-myanmar-rohingya-india-idUSKBN1AR0MH> (Last Accessed July 9, 2021)

<sup>5</sup> *Id.*

<sup>6</sup> Mark Dummett, “Bangladesh accused of 'crackdown' on Rohingya refugees”, BBC News (18 February 2010)(Last Accessed: July 9,2021).

<sup>7</sup> Agence France-Presse “Myanmar, Bangladesh leaders 'to discuss Rohingya'” (25 June 2012) (Last Accessed: July 9,2021).

<sup>8</sup> See Also “UN’s Guterres: Rohingya face ‘unimaginable’ atrocities”, <https://www.aljazeera.com/news/2018/7/2/uns-guterres-rohingya-face-unimaginable-atrocities>, AL JAZEERA, (2 July 2018) (Last Accessed July 9, 2021).

as education, health, travel, and employment. Since losing their citizenship in 1982, Rohingya Muslims have faced harassment and torture, with the Myanmar Army being responsible for inhumane treatment, extrajudicial killings, arbitrary arrests and imprisonment, rape, destruction of property, forced labor, relocation, and expulsion, and land and property seizure.

The historical context of the Rohingya crisis in Myanmar sheds light on the systematic denial of citizenship and subsequent persecution faced by this ethnic group. Prior to the military coup d'état of 1962, under the 1948 Constitution and civilian rule, the Rohingya, along with most Muslims with roots in India and Bangladesh, were recognized as Burmese nationals.

However, the landscape changed with the introduction of the 1974 Constitution, which failed to officially acknowledge the Rohingya and other Muslims. This exclusion was exacerbated by the Citizenship Act of 1982, which explicitly excluded individuals from citizenship unless they belonged to one of the 135 constitutionally recognized "national races." The consequence was that a significant number of Rohingya and other Muslims found themselves deprived of citizenship, rendering them stateless and subject to various discriminatory obstacles in areas such as education, health, travel, and employment.

Since the loss of their citizenship in 1982, the Rohingya Muslims have endured a litany of human rights abuses at the hands of the Myanmar military. These include harassment, torture, extrajudicial killings, arbitrary arrests and imprisonment, rape, property destruction, forced labor, forced relocation and expulsion, as well as land and property seizure. The Myanmar Army has been implicated in these actions, contributing to a dire humanitarian crisis and drawing international attention to the need for urgent intervention and accountability.

The historical progression outlined here underscores the gravity of the challenges faced by the Rohingya and highlights the urgent need for international efforts to address their plight, promote human rights, and work towards a just and sustainable resolution to the crisis.<sup>9</sup>

The year 2017 marked a tragic turning point for the Rohingya population when the Burmese army initiated a government crackdown, resulting in widespread atrocities. Thousands lost their lives, and numerous others suffered severe human rights abuses, including but not limited to gang rapes and torture. The brutal campaign forced over seven million Rohingya Muslims to flee their homes, seeking refuge in neighboring countries.

Bangladesh became a primary destination for Rohingya refugees, hosting the largest number since 2017, with approximately 600,000 seeking safety within its borders. However, the crisis

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<sup>9</sup> World Directory of Minorities and Indigenous Peoples, Muslims and Rohingya, <https://minorityrights.org/minorities/muslims-and-rohingya/> (last accessed July 9, 2021).

took a concerning turn in March 2019 when Bangladesh declared that it would no longer accept additional Rohingya refugees fleeing Myanmar. This announcement reflected the strain on resources and the challenges faced by host countries in providing for the needs of large refugee populations.

The decision by Bangladesh to halt further Rohingya admissions underscores the complexity of managing refugee flows, with countries grappling with the responsibility of balancing humanitarian concerns with the practical limitations of hosting and supporting large numbers of displaced individuals. The plight of the Rohingya remains a pressing global issue, highlighting the need for concerted international efforts to address the root causes of the crisis, provide humanitarian aid, and advocate for the protection of the rights and dignity of the affected population.<sup>10</sup>

### **III. INDIA AS A REFUGEE HAVEN**

India has been known to provide sanctuary to various groups seeking refuge, such as the Jews during World War II, Tibetans during the 1959 crisis, Sri Lankan Tamils during the Army-LTTE conflict, and many others who have faced persecution. However, India's handling of Rohingya Muslim refugees has been criticized as being inconsistent with its past actions.<sup>11</sup> Although India is not a signatory to the 1951 Convention, the principle of non-refoulement has been recognized as customary international law, obligating governments to adhere to the principle. India's Constitution and its signatures on the ICCPR and UDHR also imply an obligation to follow the principle of non-refoulement.

The non-refoulement principle, preventing the expulsion of individuals when their right to life and protection from cruel, inhuman, or degrading treatment is jeopardized, came into play following India's decision to deport 150 Rohingya refugees from Jammu and Kashmir. This move faced legal challenges, with critics contending that it violated the non-refoulement principle. Despite criticism from the UN Special Rapporteur on racism, the court ruled in favor of the government's decision, sparking an investigation by the International Criminal Court.

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Conversely, the Manipur High Court recently granted safe passage to seven Myanmarese individuals who fled persecution in their home country. The court acknowledged India's non-membership in the 1951 convention but emphasized its obligations under alternative international covenants and Article 21 of the Constitution. These provisions safeguard the right

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<sup>10</sup> BBC, "Myanmar Rohingya: What you need to know about the crisis", <https://www.bbc.com/news/world-asia-41566561> (23 January 2020) (last accessed July 9, 2021).

<sup>11</sup> Article 51, The Constitution of India 1950; *Vishaka & Ors. v State of Rajasthan & Ors.* (1997) 6 SCC 241

of asylum seekers to seek protection from persecution. Consequently, the court authorized the seven individuals to approach the UNHCR in New Delhi for protection.

#### IV. ANALYSIS

The deportation of Rohingya individuals is viewed as unjust and inconsistent with international customary law. The assertion that it is necessary for national security is deemed unfair, lacking an individualized risk assessment. Constitutional Articles 14 and 21, applicable to all within India's territory, underscore the nation's obligation to adhere to the non-refoulement principle. The central goal of refugee protection systems should be to uphold non-refoulement, making the act of sending individuals back to situations of torture and suffering a violation of international customary law norms and unjustifiable. A recent governmental decision to deport 150 Rohingyas detained in Jammu and Kashmir was contested in the legal case of *Md. Salimullah v. Union of India & Ors.* The government contended that these individuals, considered foreigners, entered the country seeking asylum. The Supreme Court ruled in favor of the government, allowing the deportation of the migrants. However, this decision faced criticism for being in violation of the principle of non-refoulement. The UN Special Rapporteur on racism described India's actions as a “flagrant denial of their right to protection”.<sup>12</sup>

It is crucial to interpret these unfolding events within the wider framework of enduring state-sanctioned discrimination and the systematic denial of fundamental human rights experienced by the Rohingya population. This encompasses stringent limitations on their access to food, freedom of movement, healthcare, education, and means of livelihood. Additionally, there has been a promotion of xenophobic violence through state-backed hate campaigns. The International Criminal Court has taken the initiative to conduct a preliminary investigation into these concerning issues.

In a recent case, the Manipur High Court provided safe passage to seven individuals from Myanmar who fled their homeland due to persecution. The court underscored India's responsibility under various international covenants and Article 21 of its Constitution, even if not a signatory to the 1951 Convention, to protect the rights of asylum seekers seeking refuge from persecution. Consequently, the court permitted the seven individuals to seek protection from the UNHCR in New Delhi.<sup>13</sup>

The deportation of Rohingyas is widely criticized as unjustified and undesirable. The rationale

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<sup>12</sup> Zeenat Saberlin, India criticised for deporting seven Rohingya men to Myanmar, ALJAZEERA, (last visited 11 January 2024) <https://www.aljazeera.com/news/2018/10/4/india-criticised-for-deporting-seven-rohingya-men-to-myanmar>

<sup>13</sup> *Nandita Haksar v. State of Manipur & Ors.*, WP(Crl.) No. 6 of 2021

of "national security concerns" is perceived as both illogical and unfair, as it is applied broadly without individualized security assessments. Articles 14 and 21 of the Indian Constitution, applicable to all individuals within the country, irrespective of citizenship, emphasize India's jus cogens obligation to uphold non-refoulement for refugees. Deportation is therefore deemed unlawful and a violation of the Indian Constitution, not merely international agreements.<sup>14</sup>

In the global context, where states, particularly in the industrialized world, intensify efforts to curb irregular immigration, there is a risk of unintended consequences, potentially leading to precarious situations for refugees and the risk of refoulement. It is crucial to ensure that the principle of non-refoulement remains the guiding principle in refugee protection systems, both nationally and internationally. This includes establishing and implementing effective mechanisms for identifying refugee status.

India's decision to deport the Rohingyas is seen not only as unjust but also as a clear violation of norms in International Customary Laws. Ethically, sending individuals to face torture and suffering, unless perpetrated by a despotic regime, is considered indefensible. No nation can morally justify such actions in the name of national interest.

In essence, amidst the growing global focus on reducing irregular immigration, it becomes crucial to prioritize and uphold the principle of non-refoulement. This principle acts as a safeguard against unintentional harm to refugees who may find themselves in precarious situations. The recent deportation of Rohingyas by India stands out as a poignant illustration of a breach of international norms, emphasizing the need for enhanced commitment to human rights and refugee protection principles.

As nations intensify their efforts to control immigration, there is a risk of unintended consequences that may disproportionately affect refugees, potentially leading to refoulement – the forced return of individuals to situations where they face persecution or harm. To mitigate these risks, it is essential for countries to prioritize the non-refoulement principle in their policies and practices, ensuring that the rights and safety of refugees are upheld.

India's decision to deport the Rohingyas serves as a stark reminder of the importance of international norms and standards in handling refugee situations. By violating the principle of non-refoulement, there is a clear deviation from the established principles of human rights and refugee protection. This underscores the need for a re-evaluation of policies and practices to

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<sup>14</sup> Sanya Samtani, "Deporting Rohingya Refugees: Indian Supreme Court Violates Principle of Non-refoulement" (OxHRH Blog, 18 October 2018), <<https://ohrh.law.ox.ac.uk/deporting-rohingya-refugees-indian-supreme-court-violates-principle-of-non-refoulement>> [July 10, 2021].



align them more closely with the ethical and legal obligations that nations bear in ensuring the well-being and safety of individuals seeking refuge from persecution. It calls for a renewed commitment to the principles enshrined in international law, emphasizing the protection of human rights and the dignity of refugees.

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