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# Rohingya Refugee Crisis and Status of Refugees in India: A Critical Analysis

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## ABSTRACT

*Rohingya Muslims are one of the most persecuted minorities and the world's largest 'stateless' population. The Rohingya community have suffered mass brutality, systematic discrimination, and targeted violence at the hand of Myanmar military and Buddhist extremists. Most of the ones to face extreme violence by the Myanmar authorities are innocent women and children, many women have faced assault violence by the army. The Rohingya Refugee crisis is nothing new, ever since the military came to power in Myanmar in the 1970s, the Rohingyas have suffered very systematic violence and oppression in the state and the community exodus to neighbouring countries has become a very recurring occurrence. Following the crackdown by the military in response to Rohingya Arsa militant's attack on the police posts, in 2017 the wave of new Rohingya refugees left the Rakhine state of Myanmar and started an influx of refugees in the neighbouring state of Bangladesh, some of whom have crossed the borders of India. Many Rohingya refugees have travelled to India for shelter and have settled here as refugees. India has not enacted any dedicated law for refugees and is not a signatory of the 1951 UN Convention or any Protocol which relates to the status of refugees. The paper highlights laws relating to refugees in India and the status of refugees in India about Rohingyas. The paper dwells on international refugee law, Principles, conventions, Protocols, etc. and India's position on international refugee law. Overall, the paper seeks to contribute to the understanding of the Rohingya refugee crisis in the context of refugee status in India.*

**Keywords:** Rohingya, Refugee, Genocide, Ethnic Cleansing, Immigrants, Stateless.

## I. INTRODUCTION

The Rohingya refugee crisis is one of the largest refugee and humanitarian catastrophes in history. The Rohingya, a Muslim minority community have been subjected to a long sequence of systematic persecutions and acts of violence in Myanmar, which are "genocide".<sup>3</sup>

The Rohingyas, have been subjected to institutionalized systemic discrimination and

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<sup>3</sup> Independent International Fact-Finding Mission on Myanmar. "Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar." United Nations Human Rights Council, A/HRC/39/CRP.2, 17 September 2018.

persecution for decades, forcing them to escape their home country, Myanmar, and seek asylum in other nations. No significant measures have been made to alleviate the Rohingyas' desperation, and they are virtually forgotten by the international community. Considering the trauma, they have been through, the United Nations has labelled them "the most persecuted minorities in the world."<sup>4</sup>

The Rohingyas are an Ethnicity minority who have lived in Myanmar's Rakhine State for generations. In past few years, they have become a severely repressed "stateless" group due to Myanmar's 1982 nationality law, which continues to deny them citizenship.<sup>5</sup> This law, along with other discriminatory laws enacted by the previous junta, which controlled Myanmar from 1962 until the conduct of general elections in 2010, has restricted the Rohingyas' fundamental rights, including education, health care, and work. Likewise, the state and central rulers of Burma continuously foment apathy and violence towards the "illegal Bengalis."<sup>6</sup> Throughout the 1970s, there have been reports of large-scale displacement and deaths, which worsened in 2012, a group of Rohingyas was accused of raping and killing a Buddhist woman. Myanmar's military evicted the Rohingyas from their homes, stole their land, and attacked their communities and homes.<sup>7</sup> In August 2017, a huge crackdown in Myanmar resulted in the deaths thousands of Rohingyas and prompted their massive escape to Bangladesh.<sup>8</sup>

#### **(A) Who are Rohingyas?**

Since the eighth century, the Rohingyas, a minority ethnic group in Myanmar, may trace their origins to the state of Rakhine.<sup>9</sup> The Rohingya are a Muslim ethnicity who have lived for generations in Myanmar, previously known as Burma, which is inhabited by Buddhists. Since 1982, despite having been residents in Myanmar over many decades, the Rohingya have been refused nationality, making them the largest 'stateless' people in the world, and presenting unique difficulties in gaining access to health care and other fundamental rights.

Being a stateless community, Rohingya families are refused fundamental protections and rights, leaving them vulnerable to exploitation, sexual and sex-based violence, and assault. Over the

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<sup>4</sup> United Nations. "Secretary-General's remarks at press encounter on Myanmar, UN Headquarters, 6 September 2017." 6 September 2017.

<sup>5</sup> "Myanmar's 1982 Citizenship Law and Rohingya", A Briefing by the Burmese Rohingya Organisation UK (BROUK), December 2014.

<sup>6</sup> Brooten Lisa, "Blind Spots in Human Rights Coverage: Framing Violence Against the Rohingya in Myanmar/Burma," *Popular Communication* 13 (2015): 132–14.

<sup>7</sup> Nehginpao Kipgen, "Conflict in Rakhine State in Myanmar: Rohingya Muslims' Conundrum", *Journal of Muslim Minority Affairs*, 2013, Volume 33, Issue 2.

<sup>8</sup> "Culture, Context and Mental Health of Rohingya Refugees", United Nations High Commissioner for Refugees, 2018.

<sup>9</sup> Debnath, K., Chatterjee, S., & Afzal, A. B. (2022). Natural Resources and Ethnic Conflict: A Geo-strategic Understanding of the Rohingya Crisis in Myanmar. *Jadavpur Journal of International Relations*, 26(2), 186–207.

past few years, before the recent crisis, many of Rohingya undertook risky trips out of Myanmar to escape communal strife or claimed atrocities by the security forces.

### **(B) Background**

The Rohingya are a Muslim ethnicity population dwelling in Rakhine, historically known as Arrakkan, in western Myanmar. The religion of this ethnic group is a synthesis of Sufism, Islam, and Hinduism. The Rohingya are considered "stateless entities" since the government of Myanmar does not acknowledge them as an ethnic group or people. Myanmar's government acknowledges only Buddhists, Christians, Sikhs, and Jains as the real population. Hence, the Rohingyas lack legal rights from the Myanmar government, are considered as Muslim refugees from Bangladesh and Indonesia and Hindu refugees from Thailand, Cambodia, and Laos, and are exposed to severe animosity in the state. The Rohingya have been identified as one of the most oppressed groups in the world. The Rohingya strive to illegally enter Southeast Asian states and request humanitarian help from host governments on a regular basis.

The migration began on 25 August 2017 as Rohingya Arsa terrorists attacked more than 30 police checkpoints with lethal force. Rohingyas arriving in Bangladesh reported that they fled when Buddhist mobs backed by the army burned their villages and attacked and killed residents.

### **(C) Research Objectives**

- To study the reasons behind the Rohingya refugee's mass exodus into neighboring countries.
- To understand international law, principles and conventions relating to refugees.
- To examine the legal framework in India and the status of refugees in India.

### **(D) Hypothesis**

Rohingya are amongst the world's most severely oppressed minority communities in the world, whose mass influx to the neighboring country from Myanmar began in 2017, the number of refugees seeking asylum in neighboring states is more than a million. One such neighboring state is India, which does not have a proper formal law on refugee and have not signed the 1951 UN convention. The paper examines the position of the Indian government towards Rohingya Muslims in India and the Indian government's response to refugees in India. This paper examines the in-depth circumstances of the Rohingya refugee crisis and their status in India.

### **(E) Methodology**

The study is descriptive in nature and employs qualitative research methods. The conclusion of

the study is based on facts and data that are already accessible through open sources. The literature on the Rohingya crisis and India's policy towards the Rohingya in India was consulted for this study. The sources include information from documentary and electronic sources, including books, journal articles, theses and dissertations, conference papers, working papers, reports, etc. The acquired data were evaluated and interpreted to develop conclusions.

## **II. ANALYSIS**

### **a. International Refugee Principles**

The principle of nonrefoulement protects individuals from being sent back to countries where they may face torture, harsh, cruel, or humiliating treatment or punishment, or where they may suffer other forms of extreme cruelty. At all times, and regardless of legal status, this concept applies to all migrants.<sup>10</sup>

The principle of nonrefoulement is most often brought up in discussions about refugee protection because it is spelled out in Article 33<sup>11</sup> of the Convention relating to the Status of Refugees (Refugee Convention) and in regional refugee law legislation.

Under refugee law, those seeking asylum are protected by the same principle of nonrefoulement as those who have been granted it. Refugees benefit from a wide range of legal protections under this framework, including immunity from refoulment. In contrast, while a person who is protected from refoulment under human rights law cannot be returned, this does not automatically entitle them to refugee status and all the protections often associated with it. But a state always has an obligation to respect, protect, and provide for its citizens' human rights.

### **b. General Principles for determining Refugee status**

The Refugee Status Determination (RSD) is an individualized procedure performed on everyone requesting international protection. The major purpose of an RSD process is to investigate in depth because an asylum-seeker cannot return to their place of origin or country of habitual residence. During the RSD interview, the asylum-seeker will be asked about their family, their background, their education, their occupation, and their general personal circumstances. The focus of the RSD interview will be on the reasons why the individual left their country and cannot return. The RSD Unit will analyse the individual case and determine whether the person qualifies for refugee status based on the comments made by the person during the interview as well as facts and reports regarding the current situation in the person's

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<sup>10</sup> "The Principle of Non-refoulement Under International Human Rights Law." United Nations Network on Migration, 1 Jan. 2018.

<sup>11</sup> Art. 33, *Convention relating to the Status of Refugees*.

country of origin at the time of the interview.<sup>12</sup>

If a person fits the conditions under the definition, then he or she is deemed a refugee under the 1951 Convention. This is necessary before his refugee status can be officially decided. So, he is already a refugee; recognition just confirms this fact. It is not that he is going to be a refugee that gets him recognition; it is that already he is. Ascertaining whether someone qualifies as a refugee requires two steps.<sup>13</sup>

First, it is required to determine the pertinent case facts. Second, the definitions in the 1951 Convention and 1967 Protocol must be applied to the newly discovered facts.

The terms "inclusion", "cessation", and "exclusion" have been applied to the three clauses that define someone who qualifies as a refugee under the 1951 Convention.<sup>14</sup>

The affirmative foundation for assessing refugee status is inclusion clauses, which lay down the requirements one must satisfy to be considered a refugee. The so-called cessation and exclusion provisions have a negative meaning since they detail the circumstances under which a refugee no longer meets the inclusion clauses' positive requirements and prevent them from benefiting from the protections afforded by the 1951 Convention.

### **c. 1951 Refugee Convention and 1967 Protocol**

The 1951 Refugee Convention (also known as the Geneva Convention of 28 July 1951 or the Convention Relating to the Status of Refugees) is a United Nations international convention that outlines a refugee, creates the rights of asylum-seekers, and outlines the obligations of asylum-granting countries. Our approach is primarily based on the Refugee Convention of 1951 and its Protocol of 1967. They both provide the obligations and legal responsibilities of States to protect "refugee,"<sup>15</sup> and 149 states have ratified either one or both.

Refugees are granted several protections under the 1951 Convention, and their duties to their new nation are emphasized. Under Article 33, the 1951 Convention establishes the concept of non-refoulement. According to this principle,<sup>16</sup> a refugee should not be forced to return to a country where they face imminent danger to their life or freedom. Refugees who have been convicted of a particularly heinous crime or who constitute a real threat to national security are

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<sup>12</sup> Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, UNHCR, 2011.

<sup>13</sup> Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Paragraphs 41-42. UNHCR. (2011).

<sup>14</sup> United Nations High Commissioner for Refugees. 1951 Convention and 1967 Protocol Relating to the Status of Refugees: Key Legal Considerations. UNHCR, 2019.

<sup>15</sup> What is a Refugee? UNHCR.

<sup>16</sup> UN High Commissioner for Refugees (UNHCR), UNHCR Note on the Principle of non-refoulement, November 1997.

unsuitable for this protection. The scope of the 1951 Convention has been widened by the 1967 Protocol. The geographical and chronological limitations of the 1951 Convention have been lifted by the 1967 Protocol.<sup>17</sup> India has not ratified either the 1951 Refugee Convention or its 1967 Protocol.

#### **d. The role of UNHCR in the Refugee Crisis**

When it comes to the 1951 Convention and the 1967 Protocol, the UN High Commissioner for Refugees (UNHCR) is the "guardian." Authorities must cooperate in order to uphold refugees' legal rights.

The UNHCR works with nations to secure permanent shelter for refugees. An individual's status as a refugee is temporary.<sup>18</sup> States must provide such people and organizations permanent and secure legal status if they are to be safeguarded. On this issue, UNHCR supports different forms of voluntary return, incorporation into the asylum state, and placement in a third country.<sup>19</sup>

UNHCR also collaborates with countries to find long-term solutions for refugees. Being a refugee is a transient status for an individual. To protect such individuals or groups, states must provide them with a stable and permanent legal standing. In this regard, UNHCR favors various kinds of voluntary repatriation, integration into the asylum state, and placement in a third country.<sup>20</sup>

Since 25 August 2017, when the newest Rohingya refugee migration from Myanmar to Bangladesh began, the numbers have gradually climbed. UNHCR has worked hard to scale its response, delivering lifesaving help to refugee families, and notably to the most vulnerable persons including women, children, and the elderly.

#### **e. Laws relating to refugees in India**

Even though India is home to many refugees, it is neither a signatory to the 1951 Convention and 1967 Protocol for the Protection of Refugees, nor does it have a separate legal policy or law governing its refugees. Notwithstanding this, India is a member of numerous organizations involved in refugee management and human rights.

India joined the UN in its inception, and it currently serves as a non-permanent member of the UN Security Council. Along similar lines, India has ratified the International Declaration of Human Rights, which addresses concerns of refugees everywhere. Notwithstanding the absence

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<sup>17</sup> Facing History and Ourselves, "The 1951 Refugee Convention and Protocol," last updated May 4, 2022.

<sup>18</sup> "UNHCR's Mandate." UNHCR.

<sup>19</sup> "Doctors Without Borders | the Practical Guide to Humanitarian Law." Doctors Without Borders | the Practical Guide to Humanitarian Law.

<sup>20</sup> UNHCR. "Voluntary Repatriation, Local Integration, and Resettlement." UNHCR, 20 June 2019.

of a domestic refugee legislation, India's participation in other organizations dealing with refugees and the dignity of persons obligates it to provide humanitarian help and safeguard the human rights of all people including its own refugees, inside its territory.

In India, the name "*Rohingya*" is never used in official statements or papers. The government's stance was made clearer by *the Citizenship (Amendment) Act of 2019*. By amending the *Citizenship Act of 1955*, the Act now gives citizenship to illegal immigrants of Buddhist, Hindu, Jain, Sikh, Parsi, and Christian faiths from Afghanistan, Bangladesh, and Pakistan. Minority groups seeking refuge in India from violence in neighboring countries can now apply for citizenship thanks to changes made to *the Citizenship Act of 1955* by *the Citizenship (Amendment) Act (CAA) of 2019*.

The Indian administration appears intent on expelling Rohingya refugees. Since 2017, the Supreme Court of India has been considering *Mohd. Salimullah v. Union of India*,<sup>21</sup> which challenges the government's order to deport 40,000 Rohingya Muslim refugees.

Indian law and the Constitution provide certain protections to refugees, but the country lacks a legal framework for refugee administration. The Indian government, however, has chosen a unique and intolerant posture towards Rohingya migrants, thus they are not afforded the same protections as other refugees.

There is a growing problem of undocumented refugees in India, which threatens the safety of the country if suitable measures are not taken to handle them. India should apply its refugee legislation equally and consistently, rather than juggling its humanitarian commitments and national security concerns on an ongoing basis.<sup>22</sup>

### III. CONCLUSION

The Rohingya refugee crisis remains one of the most tragic humanitarian crises of the 21<sup>st</sup> century, which needs to be solved at the earliest by regional and international cooperation. The Rohingya Muslims have lived under continuous threat and fear for many years now and this might continue for even longer until some drastic measures are taken by the international community to end the crisis. In the region India needs to play a big part, currently, the country lacks any proper legal framework for managing refugees. Despite that India is currently hosting many Rohingya refugees in the eastern states. Though there are instances of Rohingya deportation by the government citing the 'national security threads. The current situation for

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<sup>21</sup> Mohd. Salimullah v. Union of India, AIR 2021 SC (CIVIL) 1753.

<sup>22</sup> Gupta, Ravi Kumar, and Abhishek Kumar. "Refugee Crisis in India: An Appraisal." *International Journal of Humanities and Social Science Research*, vol. 10, no. 1, 2020, pp. 97-103.



Rohingya in Myanmar is very precarious and the Indian government's move of deporting them might not be the very correct decision. Until and unless the situation of Rohingya does not improve in Myanmar the Indian government should ensure not to deport any more of them and should abide by the principle of non-refoulment. Also, it is about time India might start thinking about becoming a signatory of the UN Convention on refugees, rectifying, and enacting a proper legal framework which would clarify the status of refugees in India and not label them as illegal immigrants.

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**(B) Report**

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**(C) Cases**

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