



HUMAN RIGHTS FOR THE STATELESS: CONCERNING MAJORLY WITH THE ROHINGYA CRISIS

By *Tanya Kaul*
From *Symbiosis Law School, Noida*

ABSTRACT

Refugees are one in all the foremost vulnerable sections of the society. They face multiple issues on a usual that we as independent citizens can't even imagine of. The 1951 Convention majorly deals with the protection of rights of the refugees. A refugee, in accordance with 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 opinion¹." In this manner, a person who is not capable to measure exclusive of concern in his place of foundation in addition to a consequence of this moves to another place is implied as an immigrant. On the contrary a displaced person might be a one with the intention that doesn't own the citizenship of any State. This proposes that a stateless individual is dispossessed of the safety given to the individuals as a consequence of in step with law there's no responsibility upon the State to protect the rights of an emigrant person. As a result, the stateless people are at risk of being subjected to a changed behavior as compared to the voters of the State they are residing in. The 1954 Convention with

¹ United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, 1951.

respect to the status of unsettled People characterizes the term "stateless person" as a person Who isn't thought-about as a resident by any State beneath the process of its law. It also endorses the guidelines of conduct to be agreed to stateless persons. In this manner, refugees and stateless persons, being helpless groups of the society are given international protection.

INTRODUCTION

The focal point of this document is at the Rohingyas Who are stateless and are right now being accepted as displaced people by bound nations like Malaysia as a consequence of the crisis situation in Myanmar. The paper in addition analyzes the challenges highlighted by such people especially on the human rights front and gives arrangements to the above expressed issues. The paper is divided into four parts. The main part of it talks about how the states have utilized the displaced people as an explanation for right infringement in addition to why it abuses the Rule of Law of that country. The next part clarifies Who are Rohingyas and why their host nation considers them unsettled. The third part discusses with respect to the sustained Rohingya crisis and its history. The fourth part clarifies how the Rohingyas became unsettled as refugees. At last, the paper concludes by a list of recommendations as per the norms of the law of such countries.

STATELESSNESS AS A JUSTIFICATION FOR VIOLATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights is that the most vita instrument for safeguarding the Human Rights of an individual. The rights that are provided



during such process are a group of tips on how a state ought to accommodate its subjects. The Courts that uphold the Rule of Law should follow these against the state². Article 15 of the Universal Declaration of Human Rights lays down that, "Everyone has the right to a nationality". It is an accepted norm by the law of nations, scholars that States offer domestic and international protection and access to rights solely to their voters. This suggests that a right to status is that of right to possess rights and thus stateless people don't own any rights. But on the other hand, the principles of human rights claim that being human itself implies that not everybody may be bereft of their human rights³. This position has been forwarded within the 1954 and 1961 Convention on the rights of the unsettled or stateless. The 1961 Convention on the Reduction of Statelessness, states that a State party to the present Convention agrees to grant its status to an individual born in its territory who would still be unsettled. The State additionally agreed, subject to bound conditions, to not deprive an individual of his status if such deprivation would render him unsettled. The Convention specifies that an individual or group of people shall not be treated of their status on racial, ethnic, spiritual or political grounds⁴. On the applying of Article 15 of the Universal Declaration of Human Rights along with the 1961

Convention it is well clear that the Declaration is being desecrated if the rule of law is applied to solely the people of the State and not the refugees within the state. This conclusion is supported by the language that is declared within the Article 15 of the Declaration that states that "everyone" is entitled to the rights and freedoms listed within the articles, and no distinction is to be created among individuals thanks to their national or social origin, property, birth or different standing. Therefore, associate individual's claim to the enjoyment of human rights cannot be refused on the shortage of citizenship to it country. Human rights violations are thought-about as a significant reason behind mass exoduses that have an effect on the peace and stability of the planet. Thus, it is necessary for all the States to safeguard the human rights of their subjects whether or not they are citizens of that country⁵.

WHO ARE ROHINGYA'S AND THE REASON WHY THEY ARE STATELESS

Rohingyas are an ethnic and minority group of people who reside within the Arakan state of Myanmar. They were never being accepted as legal citizens of the state and were treated as foreign residents. There are two opposing views in relation to the history of the Rohingya Muslims. The Burmese military government claims that the Rohingyas don't have any historical association to the land on that they're residing and their presence is a mere arrival to that place and thus cannot

² UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 20, Human Rights and Refugees, July 1993, No. 20.

³ David Weiss Brodt and Clay Collins, *The Human Rights of Stateless Persons*, 28 Hum. Rts. Q. 245 (2006).

⁴Supranote 2

⁵Supra note 4



be accepted as voters of that country. However, the Rohingyas claim that they have an extended history of their attachment to the Arakan State. Their claim is that they have been living within the Northern Arakan State which was previously a freelance of Myanmar. They were secure of a separate land by British that didn't happen. As a consequence, they fashioned a military and visited Islamic Republic of Pakistani leader Muhammad Ali Jinnah and requested him to incorporate their land to Pakistan. This event is the major reason that the Burmese Government isn't sympathetic towards this community as a result of which they believe that the Rohingyas have exposed the territorial sovereignty of Myanmar. The Rohingyas are expelled of their right of citizenship, their freedom of movement, instruction and employment opportunities. The atrocities upon these individuals have solely been increasing by the passing decades. They have been treated in a cruel manner and many of their rights are being abused. However, the biggest drawback is that they're not recognized as voters of Myanmar and are thus forced to depart from their countries and take asylum in neighboring countries of Asia nation and Bharat⁶. They have been expelled of their citizenship due to their long history with the Burmese government⁷. There have been various international interventions in regard with this issue and however it has not resulted in anything since the Myanmar

government does not agree to acknowledge the Rohingyas as a part of their country.

HISTORY OF THE ROHINGYA REFUGEE CRISIS

There have been some major developments in Myanmar over the years that prove the associate ever increasing plight of the Rohingya Muslims. The primary events were the Operation Nagamin that came into operation within the year 1978, the aim of the operation was to charge actions against the foreigners who had illegally entered into the country. As a consequence of this operation the documentations accessible with the Rohingyas were detached. Then came the 1982 Citizenship Law that took away all rights of the Rohingyas altogether with their right to citizenship. Before this Act, the ethnicities were broadly speaking outlined however once this law there was publication of a closed list of a hundred thirty-five ethnicities from that the Rohingyas were excluded. For having the ability to use for citizenship, the Rohingyas had to trace their ancestry to the colonial amount that wasn't attainable thanks to lack of documentation⁸. Finally, the most recent development that happened was that Myanmar from being a military country became a democracy after the election of Aung San Suu Kyi diode National League for Democracy in 1990 national elections. Thereafter, the formation of a Constituent Assembly was proclaimed to draft a replacement constitution for the country so new elections may occur. The military government wished to once more gain power in its own hands

⁶ *Living in Limbo: Burmese Rohingyas in Malaysia*

⁷ Equal 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.

⁸ Ibid.



and once it had been unable to try and do thus because of protests they turned to the Rohingya for uniting the individuals against them. There was a rise in right violations against the civilians that forced the Rohingyas to escape to different countries. These refugees told of outline executions, rape, and different types of torture that they'd witnessed or in person endured at the hands of the military⁹. The growing human right violations are continued since the year 1991. Since 1992, successive UN special Rapporteurs have documented patters of human right violations against the Rohingyas¹⁰. In 2016, thousands of Rohingyas claimed that the Myanmar's soldiers were accountable for all the villages that had been burnt down or for any attack on them¹¹. A recent incident reported in February 2017, wherever a whole family, together with old and disabled individuals were fastened within a house by the military of Rakhine villagers, throughout the stifling within the Rakhine State and was ablaze for all of them to die¹².

STATELESSNESS

Dues to the increasing range of the attacks on the Rohingyas, the only option left for

⁹Supra note 7

¹⁰ UN Human Rights Council, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, 20 June 2016.

¹¹ B. Kentish, *Burmese government is 'renewing attacks on Rohingya Muslims,' rights group claims*, The Independent, December 16, 2016.

¹² M. Bulman, *Burma: Rohingya Muslim babies and children 'being slaughtered with knives'*, UN warns, The Independent, February 3, 2017.

them was to flee to other countries as refugees. Being a refugee is another significant drawback that the Rohingyas face. The refugees are pre-supposed to be given permanent shelter once they need become a refugee however this can be not invariably attainable. An exile scenario, which fits on for a substantial amount of your time, is understood because the long refugee scenario that's no less dreadful than being unsettled. during this scenario, the temporary shelter provided to those refugees continues for an amount of your time while not having the rights to maneuver and work therefore living during a state of limbo. Though the risks to their lives could also be radically reduced compared to true from that they flee their lives stay physically and psychologically insecure, oft a lot of insecure than they might be if they came back home¹³.

SUGGESTED SOLUTIONS

Due to the on top of reasons, it becomes imperative that a permanent answer ought to be resorted to accommodate the Rohingya crisis. The urged solutions are enumerated below: -

1. Since the exile Conventions aren't enforceable while not the agreement of the concerned States, the international community may contemplate implementing the UN council Resolution 1674 (UNSC 1674), a reassertion of the 'Responsibility to Protect' (R2P)

¹³ 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.*



populations that suffer from extreme human rights abuses and lack of protection from their own governments. this might be an efficient thanks to curb the atrocities that the Rohingyas are being subjected to by the Myanmar Government providing all the 5 countries of the UN council adopt such a Resolution.

2. The long refugees ought to be allowed to ascertain their own livelihoods and should be given opportunities to become self-directed within the country of refuge. whether or not the country isn't capable of providing such opportunities to the refugees it'll become problematic for his or her country as they'll get entangled in criminal activities to sustain themselves. several Rohingyas living as an exile in Asian nation United Nations agency need to jaunt different countries as migrant employee should be allowed to try and do thus and special travel documents may well be provided by the govt. that may even be helpful for his or her own economy.
3. The current rate at that the Rohingyas are exploit Myanmar associated sinking in neighbor countries is a proof of the try of the Burmese Government to commit crimes against humanity. this may be brought into check through the Rome Statute. Even a non-State Party like Myanmar may be brought inside the ambit of the Rome Statute through Article 13(b) and (c). The UN council (UNSC) might refer true in Myanmar to the ICC underneath Article 13(b) of the Rome Statute. this can be a long-run legal choice

that the planet community may fancy to finish the plight of the Rohingyas¹⁴.

4. A political answer will to be created with the support of the neighboring countries and Association of Southeast Asian Nations (ASEAN) and also the international community. The Association of Southeast Asian Nations Intergovernmental Commission on Human Rights (AICHR) is accountable for the promotion and protection of human rights within the Asian region¹⁵. The Association of Southeast Asian Nations Human Rights Declaration additionally entails the correct of all persons to equality and fairness. This right of equality is additionally accessible to the Rohingya no matter the standing of their status¹⁶.
5. The only answer is that the Union of Burma Government agrees to provide citizenship to the Rohingya Muslims. this might cause a stable and peaceful setting for the whole International community. this may be created attainable by the applying of the belief of real and effective link that says that a person should be eligible to receive citizenship from states with that she or he contains a substantial association or a real and effective link. This should be beholden upon the Myanmar Government and

¹⁴ A. K. M. Ahsan Ullah, *Rohingya Crisis in Myanmar: Seeking Justice for the "Stateless"*, Journal of Contemporary Criminal Justice 2016, Vol. 32(3) 285–301.

¹⁵ Kimberly Ramos Gamez, EXAMINING THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS (AICHR): THE CASE STUDY OF THE ROHINGYA CRISIS, June 2017.

¹⁶ *Supra* note 8.



should be applied as a customary law of nations that doesn't need agreement by the States¹⁷.

6. It's believed that everyone Rohingya born in Burma and their kids have a right to Burmese citizenship. By denial of this citizenship, Burma is violating law of nations. it's therefore forcing its neighbors up-to-date the burden of its actions. The international community should place pressure on Burma to produce full citizenship and attendant rights to its Rohingya population. the correct to status while not impulsive deprivation is currently recognized as a basic right underneath law of nations, which, through legal instruments and also the observe of the many states, imposes the final duty on states to not produce statelessness. although Union of Burma isn't a celebration to those Conventions, however the final principles are to be complied by all the States. The discrimination and right abuses featured by the Rohingya would be restrained to an outsized extent if they're given the correct of citizenship¹⁸.
7. Human Rights Watch has persistently caught up the Myanmar government to amend the 1982 Citizenship Law in line with recommendations created by the U.N. Special registrar coping with Myanmar, and to grant Rohingya full citizenship and different rights. The special registrar has known as on the Myanmar government to "abolish its over- taxing needs for voters during a manner that has discriminatory effects on racial or ethnic minorities."

CONCLUSION

The refugees endure powerful lives although they are protected underneath many international conventions. The explanation is that they're not accepted by the state to that they belong. it's the first responsibility of the host country to not produce such conditions thus on force these individuals to migrate from one country to a different to guide a traditional and healthy life. The Rohingya crisis may be peacefully solved by the intervention created by the International community and specially the powerful international organisation council to exert pressure on the Myanmar Government to safeguard the interests of those Rohingya Muslims who have long suffered from discrimination and violation of their human rights. This solely can be attained once all the five countries of UNSC notice the magnitude of this drawback and are willing to require acceptable action against the Myanmar Government. Once such a resolution is formed, it'll stay permanent and therefore, a stable and peaceful life may be expected for the current and also the future Rohingyas and also the ones Who are refugees may also come back to their home and luxuriate in the rights of citizenship that are complemented by all different basic rights.

¹⁷Supra note 4.

¹⁸Supra note 7.