**PERSECUTION OF ROHINGYA MUSLIMS**

**Subject- International Humanitarian and Refugee law**

**BY**

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**PERSECUTION OF ROHINGYA MUSLIMS: A GLOBAL REFUGEE CONCERN**

“*Ancient boundaries are meaningless, except for political purposes; old divisions of clan and tribe are sentimental remnants of the pre-atomic age; neither creed nor color nor place of origin is relevant to the realities of modern power to utterly seek and destroy.”*

* [Sydney J. Harris](https://www.goodreads.com/author/show/169034.Sydney_J_Harris)*[[1]](#footnote-1)*
1. **INTRODUCTION**

It is perhaps fitting to remember the opening statement at the December 2001 Ministerial meeting of States Parties to the 1951 Convention and/or 1967 Protocol made by President Vaira Vike-Freiberga of Latvia, who fled her country as a child after the Second World War:

*“No one leaves their home willingly or gladly. When people leave their earth, the place of their birth, the place where they live, it means that there is something very deeply wrong with the circumstances in their country. And we should never take lightly this plight of refugees fleeing across borders….. They are also human beings, they also suffer, they also have their hope their dreams and their aspirations……”*

Myanmar is a small sovereign state located in the Southeast Asian region. The Rakhine State of Mynamar has become a ground of persecution, brutality of rohingya muslims. What is happening in Myanmar is no more a domestic or a regional issue, it has received backlash from the global community wherein various international actors have come to aid the persecuted group. Presently Rohingya Muslims are considered as the most vulnerable persecuted ethnic group. The atrocities inflicted on them is deplorable, inhuman and barbarous.

The impact of globalization on refugees cannot be understated. Globalization is an acceleration of changes induced by the post-industrial revolution in transport and communication. The rapid growth of population in less developed countries combines with a reduction in barriers to migration from formerly authoritarian regimes to induce mobility. Economic inequality combines with demographic pressures and environmental crises to generate ethnic conflict and terrorist threats. Wealthier countries are placing restrictions on the admission of those seeking to improve their economic prospects and/or to escape persecution.[[2]](#footnote-2) While the international bodies like UNHCR, Amnesty International, are playing an important role to curb the crisis.

In this article, the rohingya muslim refugee crisis has been analysed in the light of global perspective, starting with the historical background of the rohingyas, the role of international organization and the existing legal framework to contain the issue.

1. **HISTORICAL BACKGROUND**

*“Rejected by the country they were born in and shunned by the neighbouring states, the Rohingya are among the the most vulnerable amongst forcibly displaced groups.”[[3]](#footnote-3)*

The Rohingya were a part of the Mrauk-U kingdom in Arakan which stood independent of the Burman kingdoms in the Irrawaddy delta and central Burma as well as Bengal and the Moguls to the west. From 8th to 13th century, Muslim sailors and traders started infiltrating the Arakan region. Later on, there was further movement of migrants from the neighboring Muslim Bengal to the Arakan region.[[4]](#footnote-4)

The watershed development in integration of Muslim and the Burman Kingdom ocurred in the 1400s, when Mrauk-U was invaded by forces of the Burman kingdom at Ava, King Narmeikhla sought help from Bengal and expelled the invaders with the help of a Muslim army. The link between Bengal and Mrauk-U from this point solidified, to the extent that the Mrauk-U king began to use Muslim court titles along with traditional ones. Buddhist kings ruled Mrauk-U but Muslim officials often played a significant role in the court. Indeed, the inclusion of a variety of ethnic minority and religious officers in courts was a common practice throughout the mainland Southeast Asia.[[5]](#footnote-5)

In 1784, the Burman King Bodawpaya conquered and incorporated the Arakan region into his kingdom of Ava in central Burma. As a consequence of the invasion, refugees began to pour into what is today the Cox's Bazar area of southern Chittagong.[[6]](#footnote-6)

The British colonized Burma in a series of three wars beginning in 1824. During their rule, the Arakan problem declined as the British allowed for a relative degree of local autonomy. From 1824 to 1942, there were few recorded incidences of uprisings. This period witnessed significant migration of laborers to Burma from neighboring South Asia. The British administered Burma as a province of India, thus migration to Burma was considered an internal movement. The Burmese government still considers, however, that the migration which took place during this period was illegal, and it is on this basis that they refuse citizenship to the majority of the Rohingya. The reality is that the Rohingya have had a well-established presence in the country since the 12th Century.

After Burma became independent in January 1948, tensions between the government and the Rohingya grew. Immediately following independence, a group of Arakanese Muslims went on the political offensive, pushing for the integration of Maungdaw and Buthidaung into what was then known as East Pakistan.[[7]](#footnote-7)The proposal was rejected by the Constituent Assembly in Rangoon. The government contributed to the escalation of tension by treating the Rohingya as illegal immigrants.[[8]](#footnote-8)

The Rohingya are a predominantly Muslim minority group in Rakhine State, Myanmar. Rakhine State, formerly was known as Arakan. An estimated one million Rohingya live in Rakhine State.[[9]](#footnote-9) Rohingya account for most of the population in the three northernmost townships, Maungdaw, Buthidaung, and Rathedaung.[[10]](#footnote-10) Myanmar, as a whole, has considerable ethnic diversity. Bamars, also referred to as Burmans, are Myanmar’s dominant and majority ethnic group, but a number of ethnic minority groups constitute forty percent of the Myanmar population.8 Myanmar’s ethnic diversity does not entail religious heterogeneity. A majority of the population in Myanmar is Buddhist, with smaller religious minority populations.[[11]](#footnote-11) This leads to persecution of Rohingya minority community by the Buddhist majority. Issues faced by the Rohingya muslims are numerous but they have been divided under following heads for the ease of understanding:

2.1 DENIAL OF CITIZENSHIP

Efforts to deprive Rohingya of citizenship began shortly after Myanmar’s independence. The 1948 Union Citizenship Act defined Myanmar citizenship and identified specific ethnicities—the “indigenous races of Burma”- that were allowed to gain citizenship.; which did not include Rohingya [[12]](#footnote-12) . The Union Citizenship Act allowed people whose families had lived for two generations in Myanmar to apply for identity cards. Initially, the government provided many Rohingya with citizenship or identification cards under this provision. However, after the military coup in 1962, the government began giving documentation to fewer and fewer Rohingya children, refusing to recognize fully new generations of the Rohingya population.[[13]](#footnote-13)

In 1974, Myanmar began requiring all citizens to obtain National Registration Cards but allowed Rohingya to obtain only Foreign Registration Cards. Since many schools and employers did not recognize these cards, Rohingya faced limited educational and job opportunities.[[14]](#footnote-14)

In 1982, a new citizenship law was passed, which effectively rendered the Rohingya stateless. Under the law, Rohingya were again not recognised as one of the country's 135 ethnic groups. The law established three levels of citizenship. In order to obtain the most basic level (naturalised citizenship), there must be proof that the person's family lived in Myanmar prior to 1948, as well as fluency in one of the national languages. Many Rohingya lack such paperwork because it was either unavailable or denied to them.

As a result of the law, their rights to study, work, travel, marry, practice their religion and access health services have been and continue to be restricted. The Rohingya cannot vote and even if they jump through the citizenship test hoops, they have to identify as "naturalised" as opposed to Rohingya.

## 2.2 FORCED DISPLACEMENT

In 1978, the military began Operation Naga Min, or “Dragon King,” to find and take action against persons deemed to be illegal immigrants.[[15]](#footnote-15) This operation targeted Rohingya in Rakhine State; the government claimed Rohingya were foreigners rather than an ethnic minority of Myanmar. The military abused, raped, and murdered many Rohingya. As a result, more than 200,000 Rohingya fled across the border into Bangladesh.[[16]](#footnote-16) To deter Rohingya refugees from entering Bangladesh, the Bangladeshi government withheld food and humanitarian aid from the refugee camps. More than 12,000 refugees died of starvation.[[17]](#footnote-17)Following international condemnation, Myanmar’s General Ne Win repatriated many of these refugees, but they continued to face persecution within Myanmar. Rohingya refugees continued to flood into Bangladesh over the next twenty years, with periodic attempts by the Bangladeshi government to expel them forcibly, including as recently as 2010.

For decades, Rohingya have also fled Myanmar to neighboring countries by boat. Exploitative human traffickers facilitate these journeys.[[18]](#footnote-18) The sea crossings are dangerous and fraught with the risk of drowning or being stranded. At least 6,000 Rohingya men and boys are estimated to have attempted the journey by sea to Malaysia via Thailand during 2008 and 2009.[[19]](#footnote-19)

The Myanmar government has confiscated Rohingya lands, causing more Rohingya to become internally displaced or to flee the country. By law, the Myanmar government owns all land in the country, and only citizens have the right to use and enjoy their land.[[20]](#footnote-20) As a result of their statelessness, Rohingya have no legal rights to the land on which they live and work, leaving them vulnerable to land confiscation by the government.

The U.N. Special Rapporteur on the Situation of Human Rights in Myanmar noted that the government has confiscated lands to divide populations that might oppose the government, as well as to take advantage of natural resources on the land.[[21]](#footnote-21) From 1995 to 2010, the government of Myanmar reportedly forced Rohingya to relocate within the country. These internal displacements and forced population transfers have further concentrated Rohingya in northern Rakhine State.

## 2.3 FORCED LABOUR

The Nay-Sat Kut-kwey ye (NaSaKa), a security force forced Rohingya either to pay a weekly fee to avoid work – a fee that many Rohingya cannot afford – or to perform manual labor such as construction work, agricultural work, portering, or serving as guards. The Myanmar Army and local police also forced Rohingya into labor.[[22]](#footnote-22)

In 2008, the U.N. Special Rapporteur reported allegations that Rohingya had been killed for refusal to perform forced labor.[[23]](#footnote-23)

## 2.4 RELIGIOUS PERSECUTION

Persecution in general sense comprises human rights abuses or other serious harm, often but not always with a systematic or repetitive element. While it is generally agreed that mere discrimination may not, in the normal course, amount to persecution in and of itself (though particularly egregious forms undoubtedly will be so considered), a persistent pattern of consistent discrimination will usually, on cumulative grounds, amount to persecution and warrant international protection.[[24]](#footnote-24)

With regard to the definition of the term ‘Persecution’ in context of refugee law, a legal definition of the same exists neither in the 1951 convention nor elsewhere in International law.

In 2002, Human Rights Watch reported that the government issued military orders demanding that unauthorized mosques be destroyed.[[25]](#footnote-25) The government has closed mosques and Islamic schools and used them as government administrative offices. The government has also prohibited Muslims from repairing or renovating mosques. In 2001, mobs attacked at least 28 mosques and religious schools. State security not only did nothing to stop the attacks, but also participated in the destruction.

## 2.5 MARRIAGE RESTRICTIONS AND POPULATION CONTROL

In the 1990s, Myanmar passed a law that required all people in Rakhine State to gain permission before obtaining marriage licenses. This law was enforced only against the Muslim populations of the area. The Border Region Immigration Control Headquarters and the Township Peace and Development Council of Maungdaw issued population control policies in 1993 and 2005, respectively, that state that the Rohingya population is reproducing faster than the “international standards” of population increase.[[26]](#footnote-26)

UN has also referred the Rohingya Crisis as a textbook example of ethnic cleansing.

1. **EXISTING LEGAL FRAMEWORK**

## 3.1 CONVENTION ON THE STATUS OF REFUGEES 1951

The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol to the Convention are modern legal embodiment of the ancient and universal tradition of providing sanctuary to those at risk and in danger. Both instruments reflect a fundamental human value on which global consensus exists and are the first and only instruments at the global level which specifically regulate the treatment of those who are compelled to leave their homes because of a rupture with their country of origin.[[27]](#footnote-27)For half a century, they have clearly demonstrated their adaptability to changing factual circumstances. Beginning with the European refugees from the Second World War, the Convention has successfully afforded the framework for the protection of refugees from persecution whether from repressive regimes, the upheaval caused by wars of independence, or the many ethnic conflicts of the post Cold-war era.[[28]](#footnote-28) Non Refoulment is the magna carta of the refugee law[[29]](#footnote-29)

At present India is not a party to the 1951 Convention on the Status of Refugees or the 1967 protocol. Nor has it enacted a national law on refugees. Instead India has chosen to deal with refugee political and administrative levels. It has therefore only adhoc mechanisms in place to deal with their status and problems.[[30]](#footnote-30) The absence of a special regime does not mean that no protection and assistance is offered to the refugees. But it’s absence has certainly meant that arbitrary executive action and/or acts of discrimination are not easily remedied. The absence of national law on the status of refugees has also meant that refugees are dependent on the benevolence of the state. India is run by jus cogens when it comes to handling refugees.

1. ROLE OF INTERNATIONAL ORGANISATION

The international community saw the origin of the international legal regime relating to refugees at the conclusion of World War I.[[31]](#footnote-31) Environmental and man-made disasters triggered an influx of refugees which demanded a proper established, funded organizational response.[[32]](#footnote-32) In 1946 the International refugee organization was established to extend humanitarian assistance to all displaced persons. The status of refugee convention 1951 spelt out policies and action required of states in dealing with the refugee problem.[[33]](#footnote-33)

* 1. UNITED NATIONS HUMAN RIGHTS COMMISSIONER (UNHCR)

The UNHCR protects and supports refugees at the request of a government or UN and assists in their return or resettlement. It strives to ensure that everyone can exercise the right to seek asylum and find refuge in another state with the option to return home voluntarily, integrate locally or resettle in a third country.[[34]](#footnote-34)

Following reports of forced repatriation of Rohingyas by Bangladesh, UNHCR began to monitor a proportion of the returns in October 1992. UNHCR agreed to a formal Memorandum of Understanding (MOU) with the Bangladeshi government and in May 1993 began to interview refugees individually in order to ensure that the Bangladeshi authorities were respecting the principle of voluntariness. When a UNHCR survey revealed that less than 30% of the Rohingya wished to repatriate, however, the Bangladeshi government responded by insisting that all of the Rohingya should return by the end of 1994 and allowing the MOU with UNHCR to expire in July 1994. The same year, UNHCR gained access to the return sites located in the Buthidaung, Rathedaung, and Maungdaw townships of Arakan State; this, it insisted, would facilitate the safe return of the Rohingya because UNHCR could now monitor what became of them. UNHCR then abandoned its system of individual interviews with refugees in August 1994 in favor of a program of mass repatriation in which thousands of Rohingya returned to Burma each week. Initially, however, UNHCR representatives were not permitted to travel within Arakan state without prior clearance from the Burmese government, and the latter also failed to provide a firm commitment that it would recognize the rights of the Rohingya to Burmese citizenship. At the time, Human Rights Watch questioned the accuracy of the information about conditions in Arakan which UNHCR provided to the refugees and noted the concerns expressed by non-governmental organizations (NGOs) involved with the repatriation that it was being conducted in "less than optimum conditions." Even so, between 1993 and 1997, some 230,000 refugees returned to Arakan.

* 1. AMNESTY INTERNATIONAL

Amnesty International is a London-based [non-governmental organisation](https://en.wikipedia.org/wiki/Non-governmental_organisation) focused on [human rights](https://en.wikipedia.org/wiki/Human_rights). The stated objective of the organisation is "to conduct research and generate action to prevent and end abuses of human rights, and to demand justice for those whose rights have been violated. It has played a very proactive role in containing the ongoing persecution.

* 1. HUMAN RIGHTS WATCH

Human Rights Watch is a non-governmental organization established in 1978 is known for its accurate fact-finding, impartial reporting, effective use of media, and targeted advocacy, often in partnership with local human rights groups.[[35]](#footnote-35) It has been in forefront in collecting data on Rohingyas and bringing the issue to the world’s attention.

* 1. INTERNATIONAL COMMITTEE OF RED CROSS (ICRC)

The ICRC considers itself to be directly concerned by the fate of refugees who are civilian victims of armed conflicts or disturbances, or of their direct results i.e situations covered by its mandates. The ICRC action for these refugees depends inter alia on their protection under International Humanitarian Law. Refugees when not protected by humanitarian law are protected only by refugee law and benefit from the activities of UNHCR. [[36]](#footnote-36)

Even in the issue of Rohinyas, Amnesty International has come up now and then with directives and other forms of aid.

While the above international instruments remain the cornerstone of international protection for refugees and are the strongest expressions of international concern for the plight of the refugees, it has become increasingly clear that they are not sufficient to deal with the magnitude and complexity of today’s refugee problem.[[37]](#footnote-37)

1. **CONCLUSION**

When we see the problems of Rohingya Muslims, we can say that there is a complete failure of the diplomacy of our international community, in spite of having several organs of United Nation like General Assembly, Security Council and other important institutions like International Criminal Court, we have been not able to resolve this issue. The effectiveness of international refugee protection in years to come hinges on the ability of the States and the International Community to address these challenges. These initiatives need to be strengthened if the international community is to address wider economic, social and political problems in refugee producing countries, global inequities, etc. To succeed such international co-operative endeavours require the involvement of all actors, from governments, civil societies, international organisations, the legal professions, and NGO’s to refugee themselves. It is in this spirit that the Global Consultations have sought to inject new energy into the development of international refugee protection and thereby counter unwarranted trends at the national and even regional levels. As Lord Denning has said:

 “In recent times England has been invaded not by enemies nor by friends, but by those who seek England as a haven. In their own countries there is poverty, disease and no homes. In England there is social security, a national health service and guaranteed housing all to be had for the asking without payment and without working for it. Once here, each seeks to bring his relatives to join him. So they multiply exceedingly.”[[38]](#footnote-38)

The displacement resulting from such situations can pose particular problems to host states, especially if they provide asylum to large refugee communities, sometimes for decades. There is thus a real challenge as to how best to share responsibilities so as to ease the burden on any one state unable to shoulder it entirely. There is also a need to put in place burden sharing- not burden shifting mechanisms which can trigger timely responsibility sharing in any given situation.

 “Regional Refugee protection schemes have become a trend throughout the world. While there are positive benefits to ensuring that neighbouring countries meet the standards set out in international refugee law, we must be careful not to create ‘regional fortresses’……..”[[39]](#footnote-39)

1. He was an was an [American](https://en.wikipedia.org/wiki/United_States) [journalist](https://en.wikipedia.org/wiki/Journalist) for the [*Chicago Daily News*](https://en.wikipedia.org/wiki/Chicago_Daily_News) and, later, the [*Chicago Sun-Times*](https://en.wikipedia.org/wiki/Chicago_Sun-Times)*.* [↑](#footnote-ref-1)
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3. Editorial, “For Rohingyas there is no place called home” *The Hindu,* Sept. 25, 2017 available at: [www.thehindu.com/news/international/for-rohingyas-there-is-no-place-called-home/article19620567.ece](http://www.thehindu.com/news/international/for-rohingyas-there-is-no-place-called-home/article19620567.ece). [↑](#footnote-ref-3)
4. Moshe Yegar, *The Muslims of Burma: The Study of a Minority Group*, (Wiesbaden: Otto Harrossowitz), 1972, p. 95 [↑](#footnote-ref-4)
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6. *Ibid.* [↑](#footnote-ref-6)
7. Hugh Tinker, *The Union of Burma: A Study of the First Year of Independence,* (London, New York, and Toronto: Oxford University Press) 1957, p. 357. [↑](#footnote-ref-7)
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15. *Ibid.* [↑](#footnote-ref-15)
16. Human Rights Watch, *All You Can Do Is Pray*, (2012) *available at*: https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims. [↑](#footnote-ref-16)
17. *Ibid.* [↑](#footnote-ref-17)
18. United States Senate Committee on Foreign Relations, Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand, S. Prt-111-18 (Apr. 3, 2009). [↑](#footnote-ref-18)
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