



State of Rohingya Muslims in India in
absence of a Refugee Law

ROHINGYAS IN INDIA

Stichting the London Story

in association with IAMC

Submission to the Office of High Commissioner for
Human Rights, United Nations, Status of Persecuted
Minorities



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Background

The Rohingya, originally inhabitants of the Rakhine State in Myanmar have been targets of the Myanmar state for a long time (Mohajan, 2018). The Buddhist-majority state has committed mass killings, persecutions and sexual assaults against the Rohingya (Albert & Maizland, 2020), grave atrocities which first surfaced in 2012 and later intensified in 2017-18 (Albert & Maizland, 2020). Since then, millions of Rohingya have sought refuge in the neighbouring states of Bangladesh, India, Malaysia, Thailand and Indonesia (Albert & Maizland, 2020). They have also been called the “most persecuted minority in the world” by the United Nations (Human Rights Council, 2017; UNHCR, n.d.). Trapped in the misery of persecution leading to statelessness and abandonment, reports show that their hardships have worsened after fleeing to India, as Rohingya refugees are further victimized on religious grounds: Religious right-wing Hindutva trolls have accused Rohingyas of being agents of Islamic terrorism and of carrying out militant attacks in parts of India (Chaudhury, 2018). Hindu right-wing media houses such as OpIndia and OneIndia have drawn elaborate conspiracy theories to link Rohingya involvement with ISIS and Lashkar-e-Taiba, overwhelmingly on grounds of them being predominantly of Muslim faith. In the current report we focus on data surrounding the arrival of the Rohingya refugees in India, and the subsequent response of the Indian government. The report also looks at India's obligations under International Law to protect Rohingya refugees, and highlights how the Indian government has ignored its international responsibility of protection through the Citizenship Amendment Act, 2019 (CAA).

Data

As of 2019, the State of Myanmar had a total population of 54 million people (The World Bank, 2019). It has been estimated that out of these 54 million, about 1.3 million people are Rohingyas (Thawngmung, 2016). Following the persecution, several Rohingya groups have fled to the neighbouring states, predominantly Bangladesh and India. According to the Indian Home Ministry and Reuters, an estimated 40,000 Rohingyas have sought refuge in India (Quadir, 2019; The Hindu, 2017). In January 2019, UNHCR India acknowledged the presence of 18,000 Rohingyas which are registered (UNHCR India, 2019). This means that the majority of Rohingyas within India are living in protracted refugee conditions and continue to be stateless and status-less.

India's International Law Obligations

India is not a signatory to the Refugee Convention, 1951 and does not recognise the refugee cards issued by the UNHCR (Shanker & Vijayaraghavan, 2020). This implies that Rohingyas within India do not particularly have a right to seek ration, jobs, housing, education etc. (Kinseth, 2019). As a result, most Rohingyas are believed to be involved in rag-picking and other unskilled and unorganised jobs (Gulati, 2019). It is submitted humbly that while India is neither a party to the 1951 Refugee Convention nor the 1967 Refugee Protocol, India is

signatory to several core treaties which requires states to ensure access to basic human rights and human dignity for all and provide basic protection to people seeking asylum in India. For example, the Universal Declaration of Human Rights (UDHR) 1948 grants persons a right to seek asylum in other countries if they face the threat of persecution in their homeland [Article 14]. Similarly, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) provide affirmative rights to ensure dignity, respect for life and liberty and conducive environment for children to grow. India is a signatory to all three of these conventions which create binding legal obligations through Article 51(c) of the Constitution of India which directs the State to “foster respect for international law and treaty obligations in the dealings of organized peoples with one another”. Indian courts in various decisions have interpreted fundamental rights incorporated in Part III of the Constitution, according to the contours of international law. In the case of *People’s Union for Civil Liberties v. Union of India* AIR 1997 SC 568, the Supreme Court of India had held that the provisions of the International Covenant on Civil and Political Rights (ICCPR) are directly enforceable in India and can be used in effectuating the provisions of the Constitution. In another case, *Vishaka v. State of Rajasthan* (1997) 6 SCC 241, the Supreme Court of India incorporated the entire CEDAW into Indian law. Further, in the case of *Vellore Citizens Welfare Forum v. Union of India* 1996 5 SCR 241, customary international law was held to be automatically incorporated into domestic law in the absence of any contrary provision. Nevertheless, the approach of the Indian government in providing protection and assistance to Rohingyas falls short of its international obligation and responsibility to protect. It is contended Rohingya refugees are neglected primarily on religious grounds and in line with the Indian state’s growing discrimination and persecution of its Muslim minority.

Timeline of Neglect and Discrimination on Grounds of Religion

The table below gives a timeline of discriminatory responses of the Indian Government, its officials, and the judiciary, to the Rohingyas in India.

Date	Event	Explanation
08 August 2017	Centre orders States to identify and deport foreign nationals staying illegally (Haidar & Singh, Government firms up plan to deport Rohingyas, 2017)	<p>The Home Ministry via its advisory No. 24013/29/Misc./2017-CSR.III(i) delegated power to state governments for identification and deportation of foreign nationals staying illegally. It also directed the states to “sensitize all law enforcement and intelligence agencies”. It also stated that “infiltration” from Myanmar aggravated security challenges.</p> <p>States do not have power to deport asylum seekers without giving a due regard to their individual and collective cases. Such deportations violate the non-refoulement principle.</p>

06 September 2017	Prime Minister Modi's "concern" on "extremist violence" in Rakhine State (The Wire, 2017)	During his visit to Nay Pyi Taw, Prime Minister Modi said, " <i>We are partners in your concerns over the loss of lives of security forces and innocent people due to the extremist violence in Rakhine State</i> ". In his address Prime Minister Modi reiterated the Myanmar government's stand on Rohingyas without any regard to the rampant human rights violations against Rohingyas in Myanmar.
08 September 2017	India refuses to sign Bali Declaration (Haidar, 2017)	India rejected the joint statement by the World Parliamentary Forum. The statement expressed concern about the deaths and fleeing of the Rohingya Muslims. India rejected it on the grounds that the session was to discuss Sustainable Development Goals (SDGs) and not country-specific clauses.
09 September 2017	Indian Ministry of External Affairs issues statement during Myanmar visit (Government of India, 2017)	India strongly condemned "terrorist attacks on Myanmar security forces in Rakhine State". The statement highlighted that during the Prime Minister's visit on 06 September 2017, he had agreed to aid Rakhine State Development Programme. The statement has no mention of extending support to Rohingyas or condemnation of the persecution of Rohingya Muslims by the Myanma state.
14 September 2017	Initiation of <i>Operation Insaniyat</i> by the Indian Government (Government of India, 2017)	India aided Bangladesh in hosting a large number of Rohingyas. It provided food kits and necessities with a view to leverage Bangladesh as a host nation. The state in India has not provided food or necessities to Rohingyas arriving in India.

15 March 2018	India rejected that its Border Security Forces (BSF) is pushing back refugees and denied recognition of Rohingya Muslims in the name of 'national interest' (Union of India, 2018)	<p>A petition in the Supreme Court was filed for the recognition and protection of Rohingya Muslims in India in the case of <i>Mohammad Salimulah v. Union of India</i>, Writ Petition (Civil) No. 793 of 2017. In an affidavit filed on behalf of the Union of India, it was submitted that the Border Security Forces (BSF) is "performing its duties" to promote the security of India by stopping Rohingyas entering without passports.</p> <p>The petition was denied on the grounds that the submission was based only on newspaper reports. Further, the affidavit states that increasing influx of Rohingyas is the "<u>root cause of spread of terrorism</u>".</p>
04 October 2018	Supreme Court rejects plea to stop deportation of seven Rohingya Muslims (The Indian Express, 2018)	In response to the first instance of deportation of Rohingyas, the Supreme Court said that it is "not inclined to interfere" with the decision of the Central Government. The judgement by the apex court failed to acknowledge the responsibility to protect under the international law.
24 July 2019	Ministry of Home Affairs' reply to Rajya Sabha Unstarred Question No. 3562 saying no data available.	In response to four questions, the Home Ministry responded saying that they do not have any data on how many Rohingya refugees have crossed borders. The Ministry dodged the question on
		what facilities the Government of India is going to put in place for the refugees and only emphasised detection and deportation.
12 December 2019	Enactment of the Citizenship (Amendment) Act (CAA), 2019	The newly enacted CAA provides fast-track citizenship to people who arrived in India from Afghanistan, Bangladesh and Pakistan before 31 December 2014 and belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian community. While the Act is touted by the Home Minister of India as a refugee policy, it excludes Muslims, and therefore most Rohingya refugees. It is contended that the Act violates the right to equality granted under Article 14 of the Constitution of India.

03 January 2020	Plans to deport Rohingya Muslims from India (The Indian Express, 2020)	In a statement given by the Union Minister of State Dr. Jitendra Singh in the Prime Minister's Office, post-enactment of the CAA, he expressed that the Central Government was "considering ways" to deport the Rohingya Muslims. He said that the CAA does not grant citizenship to Muslim asylum seekers. As a result, the Rohingya Muslims would be deported to Myanmar. He further stated that the CAA is also applicable in the Union Territory of Jammu and Kashmir which holds a sizable Rohingya population.
11 February 2020	Ministry of Home Affairs' reply to Lok Sabha Unstarred Question No. 1414.	When questioned whether the Government has taken note of the hate campaign against Rohingya refugees in social media sites, the Home Ministry responded " <i>No such campaign against illegal migrants including Rohingyas has been brought to the notice of the Central Government</i> ". However, reports of media sites and human rights organisations say otherwise.
17 March 2020	India mentions the words "Rohingya", "Ethnic" and "Persecution" (India, 2020).	In the counter affidavit submitted on behalf of the Union of India in the case of <i>Indian Union Muslim League v. Union of India</i> , Writ Petition (Civil) No. 1470 of 2019, India finally acknowledged that Rohingya Muslims faced ethnic persecution.
		However, it said that these asylum seekers came to India instead of Bangladesh in the lookout for jobs.
08 April 2021	Supreme Court of India refused to stay the deportation of Rohingya.	In <i>Mohammad Salimullah v. Union of India</i> , the Supreme Court rejected an application to stay the deportation of Rohingya refugees to Myanmar. The Court accepted the Government's argument that because India is not a signatory to the 1951 Refugee Convention, it is not obligated to follow the principle of non-refoulement.

Rationalizing exclusion, neglect, and dehumanizing of Rohingyas

Under the current Bhartiya Janata Party (BJP) government in India there has been a rise in hate speech and hate crimes against Muslims in general. We discuss this in a separate report. The response of the Indian State under the BJP government to Rohingya refugees is in line with its wider discriminatory and derogatory approach towards Indian Muslims. The treatment of Rohingya Muslim asylum seekers is in sharp contrast of India's treatment of Buddhist refugees in Tibet and Byllakuppe. In 1951, India welcomed Tibetan (Buddhist) refugees and granted them asylum in India. Tibetans are given Refugee Certificates in India which grant them the same rights as Indian citizens, except the right to vote and right to government employment (Singh, 2017). In the 1980s, the Afghan-Soviet war brought about 60,000 Afghan (majority Sikh and Hindu) refugees in India. Although they have not been granted Indian citizenship, the government has always provided them necessary aid in association with the UNHCR and the National Human Rights Commission (Singh, 2017). The Sri Lankan civil war in the 1980s also brought the Tamil (Hindu) refugees to India. Currently settled in camps in the southern state of Tamil Nadu, the Indian Finance Minister assured that about 95,000 Sri Lankan refugees would be given Indian citizenship under the CAA (Babu, 2020). In all these instances, the response of the Indian government is in stark contrast to that of the entry of the Rohingyas who are predominantly Muslims, but equally persecuted.

Conclusion

The timeline of key responses shows that state has failed to acknowledge and act on its international legal responsibility to protect and have instead created societal as well as legal barriers for arrival and acceptance of Rohingya refugees in India. In 2015, the BJP-led government altered the Passport Act, 1967 and the Foreigners Act, 1946 to exclude people belonging to Muslim community to enter India without passport or in search of asylum. The 2019 amendment through the Citizenship Amendment Act (CAA) reiterates the position of the Indian government from 2015. The enactment of anti-Muslim laws such as the CAA has not only instilled fear among Rohingya Muslims, but also among Muslims who are citizens of India. In a report by the Anadolu Agency, youth Rohingya leader Ali Johar expressed that the CAA has instilled fears in the minds of the Rohingya Muslims, and that more than 3000 persons have left for Bangladesh to avoid the hateful vilification and deportation on account of being Muslim (Kapoor, 2020). He also said that many have also considered converting to other religions. The fear due to state oppression of minorities clubbed with the mainstream narrative of Rohingya being 'terrorists', 'termites', and unwanted criminal elements with connection to Islamic terrorism has created a wider narrative which seeks to criminalize and dehumanize Rohingyas in India.

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