

The forced migration of Rohingya to India and challenges for Refugee protection

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The conflict in Rakhine State of western Myanmar on account of the political history of Burmese state has led to denial of citizenship and nationality for the Rohingya people. The incidents of atrocities against the Rohingya ethnic minority have displaced them in large numbers to Bangladesh. They currently live in refugee camps in Cox's bazaar and nearby the Burma Bangladesh border. They are fleeing in small numbers to the neighbouring countries in the region of South Asia. According to news articles and reports in national and regional media they live as refugees in different parts of India. In New Delhi, Rohingya live in settlements or clusters in New Delhi city, the extended region of New Delhi, Faridabad and Mewat in Haryana, neighbouring Delhi.

The support and assistance of UNHCR; the local governments, humanitarians and police ensure access to education for refugee children, makeshift shelter in informal housing, access to water and sanitation services in informal settlements, electricity supply and emergency help if needed.

This paper aims to discuss how the Rohingya refugees live and survive by taking shelter in temporary living conditions. They face number of challenges in the city and urban region in camps or refugee clusters. These challenges draw attention to the insufficiency of humanitarian approach under current circumstances and realities of nation-states and laws. Some of the challenges that Rohingya face are psycho-social and family needs, socio-economic challenges and harsh spatial inequality in everyday life. The paper aims to discuss how protection is inadequate and deficient towards the forced Rohingya in India due to structural challenges of law and policy for UNHCR protected refugees but also compounded by the temporal challenges of asylum. Further, it will discuss what are the measures taken by actors and NGOs in addressing various dimensions of the problem and what are the existing fault lines in protection leading to current scenario.

Introduction

India has not signed the 1951 Geneva Refugee Convention, its 1967 protocol and does it have its own national refugee law or even law to deal with Stateless persons. Refugees coming into India seek protection under United Nations High Commissioner for Refugees mandate. Their refugee status is determined based on their claims as per the definition of a refugee according to

International law which is based on the Geneva Convention. As per the statistics 39, 458 refugees are under UNHCR in India. They are given refugee card which allows them to reside and work in informal sector in India. The Refugee card protects them from being detained under the Foreigner's Act in India for illegal entry or residence in India. They are allowed to access education, health care facilities and live in rented accommodation. Some refugee groups, those who are managed directly by Government of India have different set of rules, living conditions, education policy and employment rules. The policies towards them are based on national interest, security concerns and geo-politics. In this situation Rohingya in India claims to protection are handled by United Nations High commissioner for Refugees Office. The final say to determine asylum in receiving State in India for all refugee groups and individuals lies with the authority of sovereign State. Under the current situation the UNHCR is burdened with not only providing protection in form of humanitarian assistance to refugees who have protection claims it is also burdened with arbitrating their human right to asylum in the receiving State of India. Under these conditions the Rohingya in India live in state of temporariness. How they live is determined by the decisions of executive body in Indian parliament and the law and order enacting agencies such as police, military and border forces. In this light it becomes necessary to discuss how Rohingya live and survive in India. The paper discusses in detail three aspects, first, spatial inequality of everyday life, socio-economic challenges of survival and psycho-social/family needs of refugees.

The politics of recognition

The protection of refugees in South Asia in the absence of national policy towards refugees encourages varied responses by the State. In India, the regulation of foreigners is dealt with by the Central Government or the Federal Government. This may result in non-recognition of refugees who enter the territory. The Rohingya in India generally come under the category of refugees that are acknowledged by UNHCR and protected by the principle of *non-refoulement* in international law. While it has been acknowledged that living conditions of refugee groups to India depends on the extent of protection given to them in contemporary time the politics of non-recognition determines aspects of protection such as the access of civil society groups such as NGOs to the refugees, the sense of security and freedom from threat of deportation and the material or physical infrastructure for the living conditions. Non-recognition of Rohingya as refugees by the State in India allows the State to curb their rights and freedoms while also maintaining its control on territory and population of the State. This becomes a major challenge to sustainable solutions of integration into the country. The Rohingya are neither allowed integration nor are they given the right to seek an asylum under the law.

Unauthorized refugees and spatial inequality of everyday life

The Rohingya are in situation of protracted displacement since 2012 and even earlier to that. The UNHCR assistance based on humanitarianism is inadequate to meet needs for dignified living conditions, right to development and sustainable livelihoods. But the basic problem is that Rohingya are unauthorized refugees in India. In the absence of Refugee Law the ruling government and the executive body decide political stand of the State towards foreigners under the Foreigners Act of India. The Rohingya are thus denied a full permission to reside without restriction in India. They must be subject to restrictions as foreigners who are not wanted on the territory. Therefore they enjoy only permission to reside temporarily with their human rights restricted. Particularly their right to shelter and decent living conditions are violated. In the absence of law they also face the fear of having to face deportation from India.

Housing temporarily and precarious living conditions

A majority of Rohingya refugee families in India live in the makeshift settlements which are clusters of refugee households co-habiting in close proximity. The land where the housing sheds are built, or homes are rented are owned and managed by private owners or landlords, some of the land also belongs to government bodies such as the Uttar Pradesh State government land. The Rohingya families pay rent to the landlords. A small cluster of Rohingya families live on land by Humanitarian Trust organization in New Delhi, donated for charitable services. In the third form of housing like other urban refugees the Rohingya live in rented homes in urban villages or residential cum commercial centre in New Delhi. In the fourth type in Faridabad region, Rohingya live in temporary sheds inhabiting farm lands, negotiating the permission to live and work through the rag-picking and sorting work they perform in that land. In housing of the last type in Haryana the Rohingya live on farm land that is not being cultivated but are owned by local community of farmers or cultivators, performing casual work nearby. Thus shelter security is a serious problem facing the Rohingya refugees in Delhi and the neighbouring urban areas. For reasons of their tenuous legal status under the international law particularly because of their illegal entry and trespassing into India's territory they will be denied the right to secure asylum easily. Further due to lengthy negotiations bi-laterally they could have to reside under temporary shelter sheds. Most of the Rohingya prefer to live in cluster settlements because they can get access to humanitarian aid in the form of charity handouts by humanitarians locally and institutionally. Particularly the single women who don't have an earning member but family to look after need to depend on handout ration, since Rohingya women are not accustomed to work outside the home as breadwinners.

The shelter conditions are precarious and Rohingya refugees are allowed to construct only temporary sheds for shelter purposes. The homes are temporary huts, makeshift houses made of bamboo, cardboard and tarpaulin sheets, old sarees and plywood.¹ A report on the experiences of Rohingya found that Rohingya families face sudden evictions and non-renewal of informal leases.² Another study reported ‘constant threat of eviction’ from lands they are living on for the Rohingya in a Delhi settlement.³ Newspapers have reported incidents of fire breakout in shanties in Haryana in May 2018, Jammu in May 2019 and Delhi in April 2018.

The absence of safe and secure water supply is a major concern in all settlements. None of the families can have a pakka toilet. For sanitation facility they use shared sanitation of one or two maybe all families living together. Besides, there lack of safe space for women and children in the settlements. The security in the settlements is difficult to ensure as Rohingya live amongst the local community with very little hope of security in impoverished communities of locals and other migrants. In most of the settlements the Rohingya are left on their own to defend their rights to live there. They could be asked to leave the place subject to the decision of the landlord. With the pressure from authorities that Rohingya are illegal migrants in India the uncertainty associated with their living spaces in rented homes and land becomes even more tenuous. Since the land they face problem with shelter, the problem with toilets and safe sanitation is even more severe. None of the land lords private or government allow them to construct permanent toilet structure close to where they live. They have to depend on makeshift toilets, open defecation, nallahs for waste disposal.

Though the UNHCR card in India would give them some protection from detention, it is not able to get them complete access to education, health services and livelihood unless and only if mediated by volunteers in specific clinics, schools. However, refugees have the right to free education and health care due to efforts of UNHCR to mediate these services that they may reach them. The Rohingya I spoke to said that since they are refugees protected by UNHCR, they want the UNHCR to secure the basic rights of shelter, safety and living conditions. The Rohingya have moved to urban areas whence they face challenges of affording a minimum decent standard of living the city life. This has confined them to clusters in settlements or camps.

Socio-economic challenges of living in Delhi city

¹ HRLN 2018

² Brenner 2019

³ Actionaid 2019

The form of socio-economic challenges that refugees are subject to are because of the lack of adequate measures to help refugees find suitable living spaces. In Faridabad for instance refugees negotiate their spaces to live among the other migrant communities in Delhi and among the rag-pickers from other Indian States. The scale of migration to the city makes it difficult to provide living space in Delhi. The emerging faultlines make it necessary for refugees to seek shelter in the underbelly of cities. In this manner the UNHCR fails in its duty of protecting the refugees. However the existing faultlines also show that refugee migration is linked to scope for finding some work and living thereof. The challenges mainly exist because under current circumstances of non-recognition Rohingya cannot diversify or explore work options in the city. They are structurally and significantly constrained to work in the informal sector where they live.

Forms of work and challenges of finding suitable work

Most of the Rohingya work for daily wage in the informal sector in India. The earnings are just enough to survive for the families. The Rohingya do waste collection. They go to gather waste from neighbouring areas. Single women are engaged in sorting the waste at the collection point. This is dirty work that they are forced to perform where they reside. There is a community of waste collectors who are living in a space that is provided by the garbage trader. They collect garbage, sort it and then sell it to the trader who then sells it on in the market. While in one settlement the refugees have managed to keep the area clean. In neighbouring settlement they do not keep the area where they collect and sort their garbage close to home clean which makes them have to live in filthy setting. The second important work prevalent among Rohingya is drive auto rickshaw. This also has limitations because they can drive only in short distances nearby their enclave or settlement up to the main junction and between the metro station to their enclave. The space is limited and they cannot negotiate to enter the main streets and roads to ply their e-rickshaw. They are not allowed to work without legal license to work on auto rickshaw. They sometimes take the autorickshaw on rent for Rs. 300 to 400 per day. Even in this route they can only ply a short nearby distances around the enclaves. The third kind of work they perform is construction labour. They have gradually picked up this form of work and make progress in skills and some even acquired masonry skills. This gives them some options of work on day to day basis. The refugees face multiple challenges such as making a relationship with the employer in order to secure their work. Though work is informal they have no permanent informal employer-employee relationship because of their identity, their choices and preferences. They prefer to live in mobile way and go to find work whenever they get the opportunity. But they are left with choices of performing work at the bottom of the hierarchy where they compromise many aspects such as negotiating for longer term with the employer, building a employer

employee relationship, more stable, continuous and persistent form of work.

Human Security, Migration, Family needs and psycho-social aspects of Refugee life

The Rohingya refugees face serious problem of family separation due to migration in various countries of South and South East Asia. The second issue is migration within India. They live away from kin and family dispersed in camps of Bangladesh. Some of the family live abroad as asylum seekers in Malaysia.

Some of the multiple protection challenges that have a impact on Rohingya refugees are susceptibility to trafficking and exploitation, early marriage for girls, gender based violence in places where they live, violence against children, rape and abuse of refugee girls in asylum country, the impact of living environment on health and psycho-social well-being of refugee children. These also become the cause for many of the security challenges concerning the refugees.

Challenges for Refugee Protection in Post-colonial state like India

This paper puts forward three main arguments as the cause of challenges to refugee protection taking the case of India within the context of South Asia. The first is rise of nationalism in India. The second is the inadequate protection for International Refugees by the UN mandate and principles and third are the issues of national security and state security compounded by human security concerns particularly in a globalised and borderless world.

The first is the rise of nationalism in India across new spaces and in new ways. Particularly in case of India the use of rhetoric against the Rohingya refugees from within the corridors of power has been a cause for creating fear of the threat of deportation for the Rohingya refugees who have fled to India. Some of the statements that were made were, "Rohingya are not refugees or asylum seekers, they are illegal migrants. None of the Rohingya have applied for asylum in India." And consequently cases or PIL filed in the courts that Rohingya are security threat to the country. The court would decide their future. Since India has no Refugee Law nor is a signatory to the Refugee convention of 1951 it was easy to target the Rohingya. Hindu nationalism used the courts to debate the Rohingya refugee issue and to legitimise its stand on refugee issues which have historically been subject to adhoc treatment by the State in India.

Since the Rohingya are international refugees they face many challenges to international protection under the UNHCR. Some of the significant challenges are the inability of the 1951 Refugee Convention to deal with large scale refugee movements, the question of asylum and the

details of international co-operation.⁴ In terms of principle for Rohingya refugees the challenge of relocating them to a distant island in Bay of Bengal is significant which according to the refugees will further distance them from a sustainable solution. Besides the Rohingya are time and again repatriated with little hope of receiving substantial citizenship or human rights in their homeland this becomes failure of accountability on part of UN refugee agency.

Lastly, the Rohingya in Bangladesh who live in camps up to 1.2 million of displaced people have many challenges such as trafficking, child marriages, safety of women and girls, spread of diseases, damage to environment in the camps and polygamy among them. Due to protracted camp life Rohingya are involved in drug trafficking, small arms sales due to inability to find work. They are exploited because of their current state of vulnerability. These reasons pose a significant threat to Bangladesh. The number of Refugees also threatens the sovereignty of Bangladesh as a country. The Rohingya refugees in India living in camps are vulnerable to similar experience except that they might be controlled or regulated due to few numbers and stronger protection mechanism. However, the threat of radicalisation remains in India as well as in Bangladesh under the growth of various ethnic and armed political movements. This poses a serious concern for countries in South Asia. Further, many of needs of social justice such as decent living conditions, work opportunities, equal treatment and protection of women and girls are concerns of the state.

In the present scenario, several reasons crop up for the Rohingya to be part of the socio-economic and political fabric of people in South Asia. Some of them are the culture and religion of Rohingya which practice Islam makes them feel comfortable and at home among the Indian Muslims. The second are the demands for labour which is unskilled and citizens who are unequal and can perform this labour due to their unequal status since the work demands non-recognition and ability to do physically hazardous tasks such as rag-picking, sorting of waste etc. This acts as pull factors in terms of migration of people in Asia. The last is the availability of free and compulsory education in India for all children below age of 14 years which helps to balance the denial of formal education to Rohingya refugee children in camps in Bangladesh and local schools in Myanmar. These factors contribute to making India a favourable location despite the constraints for Rohingya refugees. The fault lines in refugee protection in terms of laws and policy in South Asia are become the reasons why other States in South Asia are preferred for refugee migration.

⁴ Goodwin- Gill 2001

In this scenario the non- governmental organisations work to assist the refugees in terms of outreach in education, health, maternal care, child protection and safety, youth involvement, training and education. The Rohingya in India also take the support of local politicians who provide them protected space although negotiated for temporary period to live in the various urban and semi-urban locations. Some of the services provided are purely humanitarian while others are mix of humanitarian and political intervention to aid the refugees. The political interventions to assist the refugees are characteristics of political society.

Conclusion

The paper has highlighted the challenges to refugee protection for forced Rohingya refugee to India. It brings out the impact of laws, politics in contemporary post-colonial state on Rohingya refugees. The challenges for refugee protection remain despite the progress of nation-state states to modernity. Thus the need to be addressed through more pro-active steps that look at realist concerns of the State as well as India's changing role in the world. Thus international refugees need to be protected with all their rights and sustainable solutions to refugee problem.

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