

A photograph of a group of Rohingya people on a small boat. Several men are visible, some standing and some sitting. One man in the foreground is wearing a red and white floral sarong. The boat is blue and has some text on its side. The background is a hazy sea and sky.

# **ROHINGYAS: THE EMERGENCE OF A STATELESS COMMUNITY**

**A Report  
by  
Calcutta Research Group  
2015**

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# **Rohingyas: The Emergence of a Stateless Community**

**A Report by Calcutta Research Group**

Edited by  
**Sabyasachi Basu Ray Chaudhury  
Ranabir Samaddar**

Kolkata  
2015

## **Contributors**

**Sahana Basavapatna**

**Madhura Chakraborty**

**Kriti Chopra**

**Suchismita Majumder**

**Sucharita Sengupta**

**Priyanca Mathur Velath**



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# Introduction

WHEN THE image of the body of Aylan Kurdi, a toddler, brought ashore in Turkey, went viral on the social media network, the world woke up, as if overnight, to take stock of the crisis of migrants/refugees/asylum-seekers in Europe that has been persisting for some time. The picture, released by a Turkish news agency, started spreading worldwide on Twitter under #KiyiyaVuranInsanlik ('humanity washed ashore'). The disturbing image of a boy lying face down on the beach has sparked an international outcry over the human cost of the crisis. Europe, indeed, has not witnessed except during and in the aftermath of the Balkan wars in the 1990s so many people moving from one place to another since World War II. But is Europe alone witnessing massive migrations?

Almost four decades back, the stories of Vietnamese boat people looking for shelter hit the headlines. Of late, the migrants/refugees/asylum-seekers/stateless persons have been paying high prices for space aboard unseaworthy ships with small food supplies and terrible sanitary conditions to flee their respective home countries. After their journey for weeks on rickety, overcrowded vessels, they are either brought ashore to Thailand, Malaysia and Indonesia, where they are placed in the camps set up by the governments, or denied shelter in alien lands they perished in the seas, or find their end in mass graves. Asia has seen, in particular, thousands of Rohingyas, a persecuted ethnic minority from Myanmar, cross the Bay of Bengal and Andaman Sea in recent times towards treacherous, precarious and uncertain futures. This is a high risk the Rohingyas take to escape their statelessness in conflict-ridden Myanmar. But, can they really escape the condition of statelessness? The answer is an emphatic NO. Rather they are landing up in a situation of precarity. Howsoever we brand them – refugees, migrants, asylum-seekers – they remain stateless in the world of nation-states. In countries marked by post-colonial societies, torn apart by the delineation or re-lination of borders and boundaries, the Rohingyas are among the excluded. To grasp this sordid saga of the Rohingyas, one first needs to go back to the history of this community.

## The Boat People

India, Bangladesh and Myanmar were united or closely linked historically and shared a past before borders divided them into separate independent nations. The borders dividing these territories, however, have largely remained porous and the more governments try securitising them, the more migration, be it 'legal' or 'illegal' takes place. Therefore, it is not surprising that the Rohingyas of Myanmar, in a milieu of 'well-founded fear of persecution' cross the Naf river to enter Bangladesh in search of a safe place to live. On the other hand, the second or third generations of the Rohingyas, already settled in either refugee camps or makeshift settlements in Bangladesh, are taking to the sea to seek jobs in the Southeast Asian countries. Rohingyas are migrating not only as asylum-seekers, but also as economic migrants from Bangladesh to mainly Southeast Asian countries over the high seas. The nature of migration is thus mixed. Despite the high risk of travelling in rickety boats with the assistance of middlemen, the accessibility of the sea, compared to land, seems easier. They are also trafficked to Southeast Asia, West Asia and even Australia. The precariousness of their journey to find a comparatively secure territory needs to be underscored. It has landed them in border-detention camps, often on the road to death, or turned them into bonded labour. The 'pull factors',

conventionally called so in economic literature, have trapped them in a trafficking nexus that involves many actors.

Recently, the international media had publicised several reports and video clippings of the precarious situation in which the mixed and massive flows of population from Bangladesh and Myanmar are taking place involving deaths and torture in high seas and detention camps. Followers of the situation may find a close similarity between the recent Rohingya exodus and that of the Vietnamese boat people in the late 1970s. The term *boat people* was first used to describe Vietnamese refugees from communist rule, following the Vietnam War in the 1970s. They fled in small, often fishing boats. The Vietnamese during that time sought refuge elsewhere, before being accepted into Europe, North America and Australia.<sup>1</sup> As Sengupta points out, it was only after some graves were unearthed on a remote and rugged mountain in the border district of Sadao in Songkhla, Thailand, that the enormity of the Rohingya problem started capturing public imagination.<sup>2</sup>

The Rohingyas are now the world's most persecuted minority without citizenship. Currently around 32,000 Rohingyas are registered with the United Nations High Commissioner for Refugees (UNHCR) in Bangladesh living in two camps in Cox's Bazaar in Teknaf and Kutupalong in Ukhiya, near Teknaf. However, unofficially around 300,000-500,000 unregistered refugees are living in conditions of abject poverty and malnutrition outside the formal camp areas. Being unregistered, they do not have formal access to food, shelter or work permits in Bangladesh. In search of a better life, some of them are now being compelled to take to the seas in perilous journeys to the Southeast Asian countries.

It is quite difficult to enumerate the Rohingyas in India, given the large number of unregistered refugees and stateless persons in the country. Thus, there are many 'guesstimates.' According to a recent and 'official' data publicized in July 2015, there are nearly 6,684 families of Rohingyas settled in Jammu and Kashmir, while 1,755 are reported to be in Andhra Pradesh.<sup>3</sup> The number of families settled in different states of India is 10,565, spread all over India as follows: Jammu and Kashmir 6,684, Andhra Pradesh 1,755, Delhi 760, Haryana 677, West Bengal 361, Rajasthan 162, Uttar Pradesh 111, Punjab 50, Maharashtra 12, Andaman and Nicobar Islands 3.<sup>4</sup> Chief Minister of Jammu and Kashmir Mufti Mohammad Sayeed recently said that, over 5,000 Rohingya refugees were living in many settlement colonies in Jammu. 'There are about 1,219 Rohingya (Burmese) families comprising 5,107 members who are staying in Jammu,' he said<sup>5</sup>. Nearly all of the refugees live in the Jammu district alone, most of them in Narwal area of the city. 'Out of the total Rohingya refugees living in Jammu province, 4,912 members are having United Nations High Commissioner for Refugees (UNHCR) cards and 186 members are without the cards,' said Sayeed. Their children are reportedly being provided education in six Madrasas (Islamic seminaries) in many city areas.<sup>6</sup> Mohammad Rafik, a Rohingya refugee in Jammu says that, 'We have been forced to be scrap dealers as there are no employment avenues available. A large number of refugees here

<sup>1</sup> [http://www.huffingtonpost.com/elliott-brennan-/southeast-asia-boat-people-crisis\\_b\\_7437498.html?ir=India&adsSiteOverride=in](http://www.huffingtonpost.com/elliott-brennan-/southeast-asia-boat-people-crisis_b_7437498.html?ir=India&adsSiteOverride=in), accessed on 26 July 2015.

<sup>2</sup> <http://www.thedailystar.net/country/mass-grave-bangladeshi-myanmar-migrants-found-thailand-80115>, accessed on 26 July 2014.

<sup>3</sup> [http://articles.economictimes.indiatimes.com/2015-07-21/news/64682996\\_1\\_security-agencies-jammu-and-kashmir-myanmar](http://articles.economictimes.indiatimes.com/2015-07-21/news/64682996_1_security-agencies-jammu-and-kashmir-myanmar), accessed on 16 October 2015

<sup>4</sup> Rahul Tripathi, 'Rise in number of Rohingya Muslims settling in India set alarm bells among security agencies', [http://articles.economictimes.indiatimes.com/2015-07-21/news/64682996\\_1\\_security-agencies-jammu-and-kashmir-myanmar](http://articles.economictimes.indiatimes.com/2015-07-21/news/64682996_1_security-agencies-jammu-and-kashmir-myanmar), accessed on 10 October 2015.

<sup>5</sup> <https://in.news.yahoo.com/over-5-000-rohingya-muslims-settled-jammu-sayeed-154403590.html>, accessed on 11 October 2015.

<sup>6</sup> <https://in.news.yahoo.com/over-5-000-rohingya-muslims-settled-jammu-sayeed-154403590.html>, accessed on 11 October 2015.

are unregistered as there is a long process to get your name registered with UNHCR who provide a registration card.<sup>7</sup> Children of these refugee families support their families by collecting and selling recyclable material, and some women work in walnut factories up to twelve hours a day, cracking shells and removing nuts.<sup>8</sup> Interestingly, none of the available figures includes families staying in Manipur. In any case if one goes by various available figures, the number of Rohingyas in India could be somewhere in between forty to fifty thousand, assuming that each family on an average has four or five members. However, if we take into account the not enumerated refugees and asylum-seekers (on the basis of estimates of other unregistered groups of foreigners compared to the registered groups of those foreigners), the total number can go up to one hundred thousand or more.

Labelled *Asia's new boat people* and compared to the Vietnamese exodus, the fate of thousands of Rohingyas depends on countries willing to help and provide them with shelter. But, on several occasions, the Rohingyas and Bangladeshis often riding the boats together are abandoned in the sea by traffickers. A Malaysian deputy minister has said that the Rohingyas will not be welcome in his country any more. The Prime Minister of Thailand has also claimed that their country lacks the resources to host the refugees. The least said about Australia the better.

The process of smuggling Bangladeshi nationals along with the Rohingyas in boats has been going on for a little more than a decade. There were police reports of young boys missing in areas adjoining Cox's Bazaar, but the reasons for it were unknown. Recent media reports give us an idea of the extent of migration taken place through the past ten years. The fact remains that labour migration from Bangladesh to Malaysia was a practice recognised by both the governments of Malaysia and Bangladesh. Rohingyas from Bangladesh began going to Malaysia probably because the latter was a Muslim country, and they felt that there was a huge labour market with high demand for labour. Consequently, the traffickers worked month after month to lure Rohingyas along with Bangladeshi nationals. The Bangladeshis were included as they were likely to pay more than what the Rohingyas could afford.<sup>9</sup>

Sucharita Sengupta's account in this report in this collection gives the details of the population group that has now come to be known as the *boat people*, evoking comparison with the Afro-Asian groups often perishing in the Mediterranean and other seas while trying to reach European shores.

## In Retrospect

The contributions to this report require a historical perspective to the crisis. It helps us understand different aspects of the present phenomenon of statelessness of the Rohingyas.

The etymological origins of the word Rohingya lie in an older name of the Arakan region which used to be called Rohang. As Nemoto points out:

Historically, Rohingyas belong to a community that developed from many stocks of people, including Myanmarese, Arabs, Moors, Persians, Bengalis and others – all adhering to Islam. Though the naming of *Rohingya* seems to have come about only recently, around the beginning of 1950s, the Muslims in Arakan have a long history since the beginning of the Mrauk-U dynasty (1430-1785) of Arakan. There is a possibility that they resided there even before the emergence of the kingdom.<sup>10</sup>

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<sup>7</sup><http://www.aljazeera.com/indepth/inpictures/2014/12/rohingya-refugees-find-safe-h-20141223163741968194.html>, accessed on 11 October 2015.

<sup>8</sup><http://www.aljazeera.com/indepth/inpictures/2014/12/rohingya-refugees-find-safe-h-20141223163741968194.html>, accessed on 11 October 2015.

<sup>9</sup> Interview taken by Sucharita Sengupta on behalf of CRG at Cox's Bazaar on 3 July 2015.

<sup>10</sup> Kei Nemoto 'The Rohingya Issue: A Thorny Obstacle between Burma (Myanmar) and Bangladesh', p.5 [http://www.burmalibrary.org/docs14/Kei\\_Nemoto-Rohingya.pdf](http://www.burmalibrary.org/docs14/Kei_Nemoto-Rohingya.pdf), accessed on 10 October 2015.

However, since Arakan and Tenasserim were occupied by the British after the first Anglo-Burmese War (1824-26), the confrontation between the Muslims residing in the north-western part of Arakan and the Buddhists as the majority in central and southern Arakan became tense as large-scale Indian immigration was subsequently encouraged by the British.

The defeat by the British forced Burma to sign the Treaty of Yandabo in 1826 which resulted in the absorption of Arakan to the west and Tenasserim, Burma's southern coastal strip, into the British Empire. Eventually, Burma became a province of British India, and the porous border between Bengal and Arakan facilitated a variety of cross-border contacts.<sup>11</sup> Over time, numerous Bengali Muslims, some of whom were *Chittagonians*,<sup>12</sup> moved into northern Arakan and began to merge with the Rohingya community. In this way, the distinction between these ethnic groups became blurred due to easy cross-border and inter-community interactions.

As Nemoto points out:

The immigrants coming into the Arakan included many Muslims from Chittagong. They were classified as the *Chittagonians* or *Mohammedans* by British officials. The confrontation came to a head during the Japanese occupation period (1942-45), when Japan armed the Buddhist Arakanese in order to fight against the British and the British used Muslim forces for a counter-attack. The situation did not change even after the independence of Burma in 1948.<sup>13</sup>

Arakan, the westernmost state of Myanmar, is now officially known as the Rakhine State. Rakhine or Arakan State of Myanmar (Burma), the traditional homeland of the Rohingya community is situated on the western coast of the country, bordered by Chin State to the north. To the east it is bordered by the Magway Region, Bago Region, and Ayewardy Region. The Bay of Bengal lies to the west of this region. Lastly, the Chittagong Division of Bangladesh lies to the northwest of Rakhine. Rakhine has four districts, seventeen townships and 3,871 villages, according to a government report of Myanmar, published in 2001.<sup>14</sup> The province, with an area of more than 36,000 square kilometres, is a narrow strip of coastal region at the crossroads of rivers, mountains and valleys.

Rakhine is on the frontiers between the Islamic and Buddhist cultures of Asia as it is located in the tri-junction of Myanmar, India and Bangladesh. This has a huge area of swampy plains and estuaries along the coast, bordering a long range of deep mountains to the east. These mountains are perceived to have kept Rakhine, or Arakan of the past, comparatively isolated from the affairs of the central region of the Republic of the Union of Myanmar. Even today, despite its maritime potential and easy access from its northern part to Bangladesh, Rakhine remains connected to central Burma only by a handful of barely motorable roads. Therefore, till recently, Rakhine remained a forgotten and impecunious remote place within the country – but, not any more.

Sittwe, the capital of the Rakhine State, is now at the centre of one of China's most crucial international investments. Both Sittwe port and a pipeline project are now vital for China's energy security. The oil and gas pipeline will pass through Myanmar to link China's southwestern Yunnan province with the Indian Ocean, and will in due course, according one opinion provide Beijing land-based access to energy resources from Africa and the Persian Gulf region.

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<sup>11</sup> For details, see G. E. Harvey, *History of Burma*, 1925; and Nihar Ranjan Ray, *An Introduction to the Study of Theravada Buddhism in Burma: A Study in the Indo-Burmese Historical and Cultural Relations from the Earliest Times to the British Conquest*, 1946, cited in Parimal Ghosh, *Brave Men in the Hills, Resistance and Rebellion in Burma, 1825-1932*, C. Hurst & Co., London, 2000, p. 64.

<sup>12</sup> Clive J. Christie, *A Modern History of Southeast Asia: Decolonization, Nationalism and Separation*, Tauris Academic Studies, New York, and Institute of Southeast Asian Studies, Singapore, 1996, p. 164.

<sup>13</sup> Kei Nemoto 'The Rohingya Issue: A Thorny Obstacle between Burma (Myanmar) and Bangladesh', p.3 [http://www.burmalibrary.org/docs14/Kei\\_Nemoto-Rohingya.pdf](http://www.burmalibrary.org/docs14/Kei_Nemoto-Rohingya.pdf), accessed on 10 October 2015.

<sup>14</sup> *List of Districts, Townships, Cities/Towns, Wards, Village Groups and Villages in Union of Myanmar*, Ministry of Home Affairs, Government of Union of Myanmar, 2001.

A number of minority ethnic groups in course of time settled in Rakhine (then Arakan), including Chin, Mro and Khami (mainly Christians now), Kamans in the coastal areas (largely converted to Islam), in addition to the Buddhist majority groups, and other Muslims. The Rakhines usually speak a dialect of Burmese, like the Tavoyans of Lower Burma. The people of Rakhine have claimed political autonomy from Myanmar. As a result, there is a history of long-drawn conflict between Rakhine leaders and Burman rulers or governments in Mandalay, Rangoon (now Yangon) and central Burma. This situation has continued till this time. However, the cultural and ethnic dissimilarities between the Buddhists and Muslims or Rohingyas and other Rakhines as clearly perceived today were not always quite as clear in the past, and the fact remains that Muslims and Buddhists in the past had lived on both sides of the Naf river that marks the present border with Bangladesh.

The Rakhines used to practise *Theravada* or *Hinayana* Buddhism, the influence of which is generally dated back to the eleventh century AD, when the Burman king and unifier of Burma, Anawrahta, overwhelmed the kingdom of the Buddhist Mons in Lower Burma, and moved hundreds of monks and scholars to Pagan, the capital. Subsequently, the Rakhines started challenging the supremacy of the Burman kings, and a number of powerful Buddhist rulers arose in Arakan, with proud cultural and political traditions similar to the Burmans, Shans and Mons in the east. The Royal Court at Myohaung or Mrauk U, established by King Naramaikhia in the fifteenth century, turned into a seat of power for Arakan.<sup>15</sup>

Comparatively speaking, the Islamic influence in Arakan seems to have come from a number of sources. Many historians have shown evidence of Muslim presence along the coastlines of Arakan from the ninth and tenth centuries. It is argued that the Arab traders and proponents of Islam arrived first in this region. Thereafter, as the Muslim influence under the Sultanate and later the Mughal empire extended deep into Bengal and Chittagong in particular, the situation began changing. This became more evident during the rule of King Naramaikhia in the fifteenth century. King Naramaikhia, after taking shelter in King Ahmed Shah's kingdom of Chittagong during a conflict with the Burman kings, took Muslim titles after reclaiming his throne. Some say that Naramaikhia had converted to Islam although it also could be that, he simply used these titles as royal honours, which were of great prestige in the region. Be that as it may, as the Arakan kings started reasserting themselves, Chittagong became a bone of contention between local rulers in Arakan and Bengal for the next two centuries. As a consequence, this territory also changed hands several times until it was picked up by the Mughal emperors in 1666.<sup>16</sup>

The first census of Burma was taken in August 1872 when Burma was under British rule. At this time Burma was comprised of the following provinces: Arakan, Pegu and Tenasserim. Muslims, under this census exercise, were categorised either as Indian Muslims or Burman Muslims. Out of the total Muslim population in Burma in 1872, about over 65% lived in the province of Arakan. This amounted to a population of 64,000 people in absolute number.<sup>17</sup> The census of 1891 included most of the recognised territory of Burma today. It recorded Muslims under the categories used for the broader India census. Thus, Muslim people were divided as Shaykhs, Sayyids, Moghuls, Pathans, and other groups, including Arakanis, Panthays, Shan Muslims, Turks, Arabs and Choulis. According to Moshe Yegar, many Arakan Muslims, who were offspring of intermarriages between the Indian Muslims and Burman Buddhists, were registered as Shaykhs in the census. By 1921, there were over

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<sup>15</sup> For details, see Martin Smith. *Burma: Insurgency and the Politics of Ethnicity*, London, 1991.

<sup>16</sup> For details, see Vasanta Choudhury, 'The Arakani Governors of Chittagong and Their Coins', *Journal of the Asiatic Society of Bangladesh*, Dhaka, Vol. 42, No. 2. pp. 145-162.

<sup>17</sup> For further details, see Moshe Yegar, 'The Muslims of Burma' in Raphael Israeli (ed.), *The Crescent in the East: Islam in Asia Major*, London, 1982. p. 102.

500,000 Muslims in a population of over thirteen million.<sup>18</sup> Muslims of Indian origin came from several different provinces of India.

According to the 1931 census, the category of Indian Muslims constituted the great majority of Muslims in Burma, particularly in the urban areas. But, of more than one million *Indians* recorded in Burma, the majority was Hindu.<sup>19</sup> There was a geographical concentration of Muslims in Arakan that accounted for a sizeable section of the total Muslim population of Burma.

Henceforth there would be both regular mingling of different ethnic and religious communities as well as conflicts, especially around the Naf river border. The Rakhines had earned notoriety for coastal raids into Bengal, and therefore they received the epithet of *Mags* or bandits, and accordingly, Arakan was popularly referred to as *Mager muluk* (in Bengali) or the Land of Mags. Cox's Bazaar also turned into a Rakhine majority town till the withdrawal of the British Indian administration in 1947.<sup>20</sup> Meanwhile, the coastal Kamans adopted Islam. Many Bengali traders and craftsmen started visiting the Royal court at Mrauk U. Many of them settled in the coastal areas of Akyab (Sittwe), where one of Rakhine's largest mosques, the Jame Mosque, was constructed in the seventeenth century.

Meanwhile in 1784, the Burman king Bodawpaya invaded Arakan, ousted the last Arakanese king Thainada, and took away the Mahamuni image to Mandalay. Thus, Arakan's historic independence came to an end. Afterwards, over 20,000 Arakanese, led by their king, took shelter in the British-controlled Bengal, and requested assistance and protection. This finally brought the British into Burma, and culminated in the earlier mentioned first Anglo-Burmese War.

During British rule, labourers, merchants and administrators migrated to Burma from outside. They included Hindus and Muslims, Nepalis and Tamils. Similarly, many migrated to the Arakan towns of Maungdaw and Sittwe or Akyab from Chittagong. Some of them were seasonal workers to help local rich landowners during harvest time. However, it was the activities of Chettiyar moneylenders from southern India, which caused the most resentment amongst impoverished rural farmers in central and lower Burma. This led to violent anti-Indian riots in 1930-31 and 1938 which were fuelled by the growing surge of Burmese nationalism. This resulted in a trend of conflating the Indian Muslims with the Muslims indigenous to the Arakan region.<sup>21</sup>

In this situation, at the time of World War II, sizeable numbers of Indians, including Indian Muslims, left Burma. While some followed the British administrators who were on their way out, others were mercilessly driven out by the Burma Independence Army.<sup>22</sup> Thousands also died of starvation, disease, and in military attacks, accounting for one of the darkest episodes in modern Burmese history. In any case, the simmering discontent continued in Arakan even after World War II and the departure of the British rulers from the region. A number of different armed and communist groups of Rakhine, spearheaded by a former Buddhist monk, U Seinda, fought against both the British and later the first post-independence government of U Nu after General Aung San's assassination. At the same time, the Muslims of Arakan started demanding autonomy for the Muslim-majority Mayu Division adjoining the Naf river border.

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<sup>18</sup> S.G. Grantham, *Census of India 1921*, Vol. X, Part I, Rangoon, 1923, cited in Swapna Bhattacharya, *India-Myanmar Relations, 1886-1948*, Kolkata, 2007, p. 374.

<sup>19</sup> Yegar, 'The Muslims of Burma', p. 103.

<sup>20</sup> Chapter 2 'The Rakhine State of Myanmar in the Realm of South Asia', in Swapna Bhattacharya, *The Rakhine State (Arakan) of Myanmar: Interrogating History, Culture and Conflict*, Manohar Publishers, New Delhi, with MAK AIS, Kolkata, 2015, pp. 44-64.

<sup>21</sup> See <http://www.kaladanpress.org/index.php/scholar-column-mainmenu-36/36-rohingya/194-the-muslim-rohingya-of-burma.html>.

<sup>22</sup> Ibid.



Since Burma's independence in 1948, the political demands of both Muslim and Buddhist communities in Arakan were entirely overlooked by the central government in Rangoon. Arakan was not even granted provincial autonomy. In 1962, General Ne Win seized power in a military coup, imposed his *Burmese Way to Socialism*, which set off a new wave of social unrest and insurgencies in the country. Under the 1974 constitution, Arakan was granted statehood, and was given the official title of the Rakhine State. The name of the state capital Akyab was changed to Sittwe. Many Muslims in the Rakhine State feel that this was the beginning of a long-term policy to exclude their culture and people from Arakan. After all, in both governmental and Rakhine terminology, a Rakhine must be a Buddhist. The attempt to eliminate the Muslim voice from the everyday business and political affairs of Arakan after 1962 was backed by intense military pressures. Under Ne Win, a draconian military operation known as the *Four Cuts* policy was introduced. The Burmese army targeted the entire region, and began relocating villagers in relentless military operations in order to flush out insurgent forces and their sympathisers.

In 1978, a military operation code named 'Ye The Ha' was launched in the mountains of north Arakan around the Sittwe plains together with an unusual census operation, known as *Nagamin* or King Dragon, to check identity papers in the border region for the first time. The *Nagamin* census operation generated controversies, amidst widespread reports of army brutality, including rape, murder and the destruction of mosques. As a result, about 200,000 Muslims took refuge elsewhere in fear of their lives. The state-controlled media of Burma blamed the 'armed bands of Bengalis' or 'Muslim extremists' for attacking indigenous Buddhist villages. Moreover, it was also argued by the military junta that many of those who fled in 1978 were in fact illegal Bengali immigrants, who had entered Burma as part of a general expansion in the Bengali population in this region of Asia. The counter-argument was that many displaced persons had either never had national registration cards, or they had been confiscated by the immigration authorities during the 1978 operation. This point that the Rohingyas were deliberately being discriminated against was further strengthened after a tough Citizenship Act was passed by the Ne Win government in 1982. Under this act, three categories of citizens – national, associate and naturalised – were created. Full citizenship in Burma was only for national ethnic groups, such as the Burmans, Mons or Rakhines, or those who could prove their ancestors resided in Burma before the first Anglo-Burmese war.

For many Muslim residents, this was a near-impossible task. There were no such records to be found and, in fact, such a law was discriminatory according to international law and covenants. In any case, many Muslims have since been forced to apply for naturalised citizenship, if they had not already applied for citizenship under the earlier 1948 Citizenship Law, in which case they now found themselves reclassified as associate citizens. Many Muslims complain that this second-class status is deliberately used as the basis for every kind of petty harassment and economic or social discrimination. In fact, this turned into a long-term government plan to drive Muslims out of Burma. Since the early 1980s, there have been continuing reports of anti-Muslim persecution throughout the country. The result was a continuing flow of Muslim refugees, including holders of national registration cards, out of Arakan to countries such as Egypt, Saudi Arabia, Pakistan and other parts of the Muslim world where they were referred to as Asia's 'New Palestinians'. Therefore, after 1982, the continuing destruction or uprooting of Muslim villages and mosques were reported in several parts of Arakan, from Sandoway to Tongup. This was the backdrop to the exodus of 1991-92.

From the middle of 1991, several new regiments as well as a local border police militia known as the Na Sa Ka were deployed in the northern border region. In response, local Rakhine, Mro, and Chin populations began to complain of forced relocations and military harassment. Subsequently, over 250,000 Muslim refugees from Maungdaw, Buthidaung and Rathedaung fled to the Cox's Bazaar area of Bangladesh. However, the state-run *Working People's Daily* claimed in

January 1992 that, the ‘Rohingya problem is no more than the problem of unregistered illegal immigrants.’

The Rohingyas become a stateless population in 1982 with the revised Myanmar Citizenship Law that excluded them from the list of 135 national ethnic groups. The category of *non-state persons* has come into existence with the concept of citizenship, which on the one hand indicates certain rights, and on the other hand hastens the miseries for those who are deprived of citizenship rights. Sahana Basavpatna’s report touches on various aspects of the legal situation of the Rohingyas in India. One of the most important aspects of the Rohingyas is their statelessness. Statelessness is one of the most pressing humanitarian issues of the twenty-first century. In law, statelessness is the lack of any nationality, or the absence of a recognised link between an individual and any state. As Goris, Harrington Reddy and Kohn write in their article explaining statelessness:

There is not only a lack of systematic attention given to collecting reliable statistics but also a lack of consensus on whom to include when counting stateless people. There is a general agreement that a *de jure* stateless person is someone who is ‘not considered as a national by any state under the operation of its law’ (Convention Relating to the Status of Stateless Persons, article 1(1)). However, there are millions of people who have not been formally denied or deprived of nationality but who lack the ability to prove their nationality or, despite documentation, are denied access to many human rights that citizens enjoy. These people may be *de facto* stateless – that is, stateless in practice, if not in law – or cannot rely on the state, of which they are citizens, for protection. Although individuals who have legal citizenship and its accompanying rights may take both for granted, what they enjoy is one extreme of a continuum between full, effective citizenship and *de jure* statelessness, in which individuals have neither legal citizenship nor any attendant rights. In between these extremes are millions of *de facto* stateless persons denied effective protection.<sup>23</sup>

People can be stateless for a variety of reasons, including inequitable laws (such as marriage statutes), transfers of territory between countries, flawed or discriminatory administrative practices, lack of birth registration, and the withdrawal or renunciation of citizenship rights. Conservative estimates of the current number of stateless persons in the world range from about 11 to 15 million who live without a nationality – in a legal limbo.

One of the main reasons people are denied or deprived of nationality, and thus rendered stateless, is racial or ethnic discrimination. The denationalisation and expulsion of tens of thousands of black Mauritanian citizens in 1989 were racially motivated. In Estonia, ethnic Russians have struggled with statelessness since independence in 1991. Likewise Rohingyas, a stateless minority, are also victims of ethnic discrimination. Ethnic and national identities have been effectively merged in Myanmar, with words like Burmese, Burman and Buddhist often being used interchangeably. Myanmar as described by Brown is an ‘ethnocratic state’, and Ne Win, head of state from 1962 to 1981, believed that one’s ‘Burmeseness’ is something that Burman people are naturally endowed with. As Shafer quotes an official message to fellow heads of mission, the Burmese Consulate General in Hong Kong said, ‘in reality, Rohingya are neither ‘Myanmar People’, nor Myanmar’s ethnic group...their complexion is ‘dark brown’...They are as ugly as ogres.’<sup>24</sup>

For decades, Muslims in Arakan, and particularly the Rohingyas, have been subjected to excessive violence, human rights abuses, and forced resettlement both within Burma and across borders, which has created hundreds of thousands of refugees and internally displaced persons (IDPs), and has led to a protracted humanitarian crisis. Often compared to South Africa under the apartheid regime and the current situation in the West Bank, the situation has resulted in substantial

<sup>23</sup> Indira Goris, Julia Harrington Reddy and Sebastian Kohn(2009) ‘Statelessness: What it is and Why it matters’. <https://www.opensocietyfoundations.org/voices/statelessness-what-it-and-why-it-matters>, accessed on 10 October 2015.

<sup>24</sup>Colin Boyd Shafer (2013) *The Rohingya: Impediments to Inclusive Citizenship* <http://cosmopolistoronto.com/wp-content/uploads/2013/12/The-Rohingya-Impediments-to-Inclusive-Citizenship-by-Colin-Boyd-Shafer.pdf>, accessed on 14 October 2015.

political, social and economic marginalization of the Rohingyas. Rather than addressing the underlying issues of historical interactions, political and socio-economic inequity and military aggression, there is a tendency by the Myanmar government to view the Rohingya themselves as the problem.

According to Van Hear, under the constitution at the time of independence, the Rohingyas had a good claim to citizenship, yet today they are considered ‘resident foreigners’, even though their families have been there for generations. As identified by Stewart, the distribution of citizenship is often highly politicised, reinforcing hierarchies of power, which is clearly the case for the Rohingya. Unlike the preceding 1948 Citizenship Act, the 1982 law is essentially based on the principle of *jus sanguinis*. Very few Rohingyas can fulfil the requirements of citizenship.

As Chris Lewa writes:

In 1989, colour-coded citizens scrutiny cards (CRCs) were introduced: pink cards for full citizens, blue for associate citizens and green for naturalized citizens. The Rohingyas were not issued any cards. In 1995, in response to UNHCR’s intensive advocacy efforts to document the Rohingyas, the Burmese authorities started issuing them temporary registration cards (TRCs), a white card, pursuant to the 1949 Residents of Burma Registration Act. The TRC does not mention the bearer’s place of birth and cannot be used to claim citizenship.<sup>25</sup>

## The Plan of the Report

Following from the above comments, this report seeks to outline various aspects of the Rohingya question. In the first chapter, Sucharita Sengupta primarily traces the migration of Rohingyas as asylum seekers from Bangladesh to mainly Southeast Asian countries in boats and examines the reasons for the same. She shows how in order to seek a better life the Rohingyas are compelled to take to the sea in perilous journeys to Southeast Asian countries like Malaysia, with Bangladesh and Thailand being the main transits. Despite risks, the accessibility of sea as compared to land has ushered them into being trafficked to the southeast and middle east, and also to countries like Australia. The focus in this report is on their evolution as ‘boat people’, and the precariousness of their journey to seek out a secured territory. She points out that many do not even make to the destination and perish midway. The piece tries to trace the history and context of these maritime drives- arguing that the phenomenon is not new, reasons that allure them to take to the sea from Bangladesh, reactions of the recipient countries, and also the recent media attention to the phenomenon generating mass awareness of the issue internationally, especially in Bangladesh, and to some extent in India. Labeled as the ‘Asia’s new boat people’ their plight is also being compared to the ‘Vietnamese exodus by boat in the 1970s.’

In the second chapter Sahana Basavpatna looks at dimensions of Rohingya refugees’ lives in India. Various represented as foreigner, Muslim, stateless, suspected Bangladeshi national, illiterate, impoverished-- a large number have been and continue to be arrested for violation of the Foreigners Act, 1946, and the Passports (Entry into India) Act, 1929, among other legislations. A majority lives in deplorable conditions in slums or unauthorised colonies. Unlike other mandate refugees, Rohingyas are spoken of in the same breath as the Bangladeshi nationals. Lastly, their proximity or collaboration with some Muslim organisations may have provided them with material needs but not the credibility needed by a community seeking asylum from persecution. Against this background, this essay approaches the Rohingya migration into India from a legal perspective. The primary focus in her report is the ways in which laws view Rohingyas in India, and in doing so, the paper provides a snapshot of Rohingya lives in Delhi, Jaipur, Jammu and Mewat. It is foregrounded in refugee

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<sup>25</sup> Chris Lewa ‘North Arakan: An Open Prison for the Rohingyas in Burma’, *Forced Migration Review* 32, p.11 <http://www.fmreview.org/FMRpdfs/FMR32/11-13.pdf>, accessed on 14 October 2015.

experiences, analysing the plenary powers of the government of India vis-a-vis foreigners, the place of the new legal developments in the broader context of 'refugee law' and the extent to which being recognized as a refugee has secured rights for Rohingyas. It also seeks to analyse developments in refugee law, one in which a state-led status determination mechanism appears implicit.

The report by Priyanka Mathur Velath and Kriti Chopra, forming the third chapter seeks to document Rohingyas in Hyderabad through primary interviews and establish the situation of refugees/stateless persons in India. The process of addressing any refugee issue has been hindered by the lack of an effective legal framework in India. If issues have been dealt in the past they have often been politically motivated or actions have been taken mainly to improve diplomatic relations with a particular country. The existing laws in India like the Foreigner's Act of 1946 are completely outdated in the 21st century. In India, refugees are placed under three broad categories. Category I refugees receive full protection from the Indian government, Category II refugees are those who are granted refugee status by the UNHCR and are protected under the principle of non-refoulement and Category III refugees who are neither recognized by the Indian government nor the UNHCR but have entered India and assimilated into the local community. There is lack of clarity on the legal framework within which refugees and stateless persons stay on Indian soil and hence people like the Rohingyas will always be living in a state of limbo. These are some of the things that the paper intends to explore through examining various aspects of the condition of the Rohingyas in Hyderabad including their living condition, insecurity, and the support structure.

The fourth chapter authored by Suchismita Majumder focuses on Rohingyas detained in the Correctional Homes of West Bengal, India. Through testimonies, narratives, and analysis of data gathered from February 2015 to July 2015, she tries to understand the lives of the Rohingyas- how they live amidst persecution; what they do; how they migrate and what they need at present to have a life of a human being. The research is based on both primary and secondary sources. With these objectives the study conducts in depth interviews with 100 Rohingyas in the Correctional Homes.

The fifth and the final chapter written by Madhura Chakraborty focuses on media representations of Rohingyas in Bangladesh and India to highlight how the Rohingya refugees enter into and shape popular discourse on asylum, refugee and infiltrators in these two countries. It also draws from primary interviews conducted in Bangladesh and Kolkata. The chapter examines through all these how public opinion shape the response of the nation-states towards various stateless population groups

## **Regional Initiative**

Regional and bilateral initiatives mostly fail. In the aftermath of the increasing global focus on the issue, the Thai government had called for a meeting involving fifteen countries in the region to address the problem on May 29 of this year. The countries included, among others, Bangladesh, Myanmar, Indonesia, Malaysia, Thailand as well as Australia, and United States of America. While most countries insisted on a discussion on the root cause of the issue, namely the Rohingya exodus from Myanmar, the Myanmar government threatened to boycott the meeting and laid the charge of going easy on trafficking at the door of the countries. With the intense global attention on the issue, it became clear that the fledgling democracy in Myanmar would be assessed on the basis of its treatment of the country's minority populations including Rohingyas. It of importance to take cognizance here of the fact that the Indian Navy has consistently participated in operations of relief

and rescue in the region, particularly in the Bay of Bengal. However, India needs to be more proactive in lending assistance to the humanitarian crisis unfolding in this region.<sup>26</sup>

Before this initiative, there was another regional initiative taken in 2002 known as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. It has attempted to raise regional awareness of the consequences of the smuggling of people, trafficking in persons and related transnational crimes. Accordingly, it has developed and implemented strategies and practical cooperation in response. More than forty-five members, including the UNHCR, the International Organization for Migration (IOM) and the United Nations Office of Drugs and Crime (UNODC), as well as a number of observer countries and international agencies participate in this voluntary forum.<sup>27</sup> The core objectives of the Bali process are:

- The development of more effective information and intelligence sharing;
- Improved cooperation among regional law-enforcement agencies to deter and combat people smuggling and trafficking networks;
- Enhanced cooperation on border and visa systems to detect and prevent illegal movements;
- Increased public awareness in order to discourage these activities and warn those susceptible;
- Enhanced effectiveness of return as a strategy to deter people smuggling and trafficking through conclusion of appropriate arrangements;
- Cooperation in verifying the identity and nationality of illegal migrants and trafficking victims;
- Enactment of national legislation to criminalise people smuggling and trafficking in persons;
- Provision of appropriate protection and assistance to the victims of trafficking, particularly women and children;
- Enhanced focus on tackling the root causes of illegal migration, including by increasing opportunities for legal migration between states;
- Assisting countries to adopt best practices in asylum management, in accordance with the principles of the Refugees Convention; and
- Advancing the implementation of an inclusive non-binding regional cooperation framework under which interested parties can cooperate more effectively to reduce irregular movement through the region.<sup>28</sup>

Later on, an ad hoc group was set up to develop and pursue practical measures to inform future regional cooperation on people smuggling, trafficking in persons and the irregular movement of people.<sup>29</sup>

In 2009, a few Southeast Asian countries agreed to use the Bali process to solve the Rohingya issue. Earlier, Thailand's Prime Minister Abhisit Vejjajiva said in February 2008 that the issue of Rohingyas needs greater discussion in the form of a regional forum. He told reporters in Jakarta during his visit to Indonesia then, that, the regional governments would take up the issue of the Rohingyas at the Bali process.<sup>30</sup> In fact, all the countries of the region that are affected by the Rohingya issue are both members as well as Ad-hoc Group members of the Bali Process.

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<sup>26</sup> K. Yhome (2015) 'Rohingyas Adrift, Far From the Shores of Asia's Conscience', *The Wire*, <http://thewire.in/2015/05/21/rohingyas-adrift-far-from-the-shores-of-asias-conscience-2149/> accessed on 14 October 2015.

<sup>27</sup> For details, please see [www.baliprocess.net](http://www.baliprocess.net), accessed on 10 October 2015.

<sup>28</sup> For details, please see [www.baliprocess.net](http://www.baliprocess.net), accessed on 10 October 2015.

<sup>29</sup> For details, please see [www.baliprocess.net](http://www.baliprocess.net), accessed on 10 October 2015.

<sup>30</sup> <http://archive-2.mizzima.com/archive/1752-bali-process-to-take-up-rohingya-issue.html>, accessed on 10 October 2015.

However, during the 2014 ASEAN Summit, in Naypyidaw, the first one to be held in the new capital of Myanmar, the plight of the Rohingya Muslims was left off the agenda. The Government of Myanmar's decision in March 2014 to expel humanitarian groups and prevent them from providing health care and aid has also led to the increase of number of the Rohingyas moving out to other countries.

When the rickety boats carrying Rohingyas, with depleting food and drinking water, hit the headlines in May 2015, at least Malaysia and Indonesia bowed to international pressure, and said they would no longer turn away migrant boats, offering instead to take in a wave of asylum-seekers provided they can be resettled or repatriated within a year. But, Prime Minister Tony Abbott's comments were a massive blow to efforts to ensure an effective regional response to the worsening humanitarian crisis on the Bay of Bengal and the Andaman Sea.<sup>31</sup> Tony Abbott categorically stated that, they want other countries to help with resettlement, and said those seeking a better life in Australia needed only to come through the 'front door.' He said that, while Australia stood ready to assist in other ways, there was no way any of those fleeing would be allowed to settle in Australia. 'Nope, nope, nope,' he said, shaking his head.<sup>32</sup>

He went on to say, 'If we do the slightest thing to encourage people to get on boats this problem will get worse, not better.' He also said: 'Australia will do absolutely nothing that gives any encouragement to anyone to think that they can get on a boat, that they can work with people smugglers to start a new life.' Without batting an eyelid, he continued, 'Our role is to make it absolutely crystal clear that if you get on a leaky boat, you aren't going to get what you want', although Indonesia's foreign ministry spokesman, Arrmantha Nasir, said that Australia was obliged to help as a signatory to the United Nations Refugee Convention. According to Abbott, 'This is quite properly a regional responsibility and the countries that will have to take the bulk of the responsibility are obviously the countries which are closest to the problem.' In his opinion, 'Australia can show leadership and compassion, just as it did after the Tiananmen Square massacre and the Vietnam War, by authorising special intake of refugees fleeing war and persecution.' Therefore, it became absolutely clear that none of the 8,000 plus Rohingya refugees caught in the standoff at sea for weeks would be resettled in Australia even on humanitarian grounds in spite of Greens Senator from Australia Sarah Hanson-Young saying: 'The asylum seekers, many suffering from starvation, are in desperate need of assistance, and Australia, as a regional leader, has an international responsibility to provide leadership and provide immediate assistance.'<sup>33</sup> The fact remains that, Australia would prefer to resettle the Rohingya asylum-seekers and/or refugees in the poorer countries, where there are already allegations of human rights violations. Australia, in fact, is already running prison on the Pacific island nation of Nauru and having a multimillion-dollar deal with Cambodia for this purpose.<sup>34</sup>

The Refugee Council of Australia (RCOA) has expressed its deep dismay at the Australian Prime Minister's stand. RCOA chief executive officer Paul Power said that, 'No nation in the Asia-Pacific region is better placed than Australia to assist with this resettlement (of Rohingya refugees).' He rightly said that, 'If the Australian Government wants to see more order and control in the movements of desperate people across borders, then surely it has a particular responsibility to help a

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<sup>31</sup> <http://www.refugeecouncil.org.au/latest/australia-closes-door-on-persecuted-rohingya/>, accessed on 11 October 2015.

<sup>32</sup> <http://www.abc.net.au/news/2015-05-21/rohingyas-migrants-indonesia-says-australia-obliged-resettle/6486590>, accessed on 11 October 2015.

<sup>33</sup> <http://www.theguardian.com/world/2015/may/21/nope-nope-nope-tony-abbott-says-australia-will-take-no-rohingya-refugees>, accessed on 11 October 2015.

<sup>34</sup> <http://www.aljazeera.com/news/2015/09/rohingya-refugee-cambodia-home-150906113212848.html>, accessed on 11 October 2015.

multi-country effort such as this'. He also said that, 'the way in which the Prime Minister dismissed the request leaves serious questions about the (Australia) Government's commitment to protecting persecuted people'.<sup>35</sup>

It is worth mentioning that, Australia's restrictive policy changes introduced previously were further reinforced by the coalition Government elected in September 2013. The introduction of (regional) offshore processing in Papua New Guinea and Nauru in 2012, with no prospect of durable settlement in Australia, was combined with 'Operation Sovereign Borders' to implement the Government's policy of intercepting and returning boats to Indonesia. Under the Australian government policy, all people who try to reach Australia by boat as refugees are held in offshore centres such as the one in Nauru.<sup>36</sup> In short, Australia does not allow asylum-seekers or refugees onto its shores, instead detaining them at facilities on the island of Nauru and Manus Island in Papua New Guinea.

The new Government of Australia has reduced the humanitarian programme from 20,000 resettlement places in the fiscal year 2012-2013 to 13,750 places in 2014-2015. Over and above, in September 2014, Australia and Cambodia have signed a memorandum of understanding for the relocation of recognized refugees from Nauru to Cambodia.<sup>37</sup> Australia, in fact, has set aside about AU\$55.5m (\$40m; £25m) for the deal, including a \$40m aid package, which means almost AU\$14m per refugee so far, according to figures from the Australia Associated Press.<sup>38</sup>

## Concluding Remarks

To conclude: There are four dimensions to the Rohingya crisis: the root factors pushing a vulnerable community to undertake dangerous sea voyages and long marches across lands to gain protection and security of life; the economy of human trafficking in the Bay of Bengal; the policies of protection, asylum, and hospitality of the respective countries in this region that fall short of the requirements of human rights protection and humanitarian care; and lack of a proper regional policies toward migration and refugee flows, and the inability of the global protection regime to respond to the crisis. All these elements are present in the humanitarian tragedy that is under way in the Bay of Bengal.<sup>39</sup>

Even a cursory reading of reportage, commentary, essays and articles on the precarious condition of the Rohingya refugees and asylum-seekers will tell us of the growing statelessness of people in protracted condition of displacement and refugee. As nationality issues get more ethnicised and securitised, we shall witness more the phenomenon of growing statelessness – *de jure*, but more *de facto*. The question is: When will international law recognise this? When will the UNHCR and the international community in general become active to raise its response to the level the problem requires? Why don't the UNHCR and the international community prevail upon Australia so that the latter does not follow practices of warehousing, offshore detention, interception in mid-sea to prevent the boat people from seeking shelter, and then clamping security restrictions on people engaged in protection of the asylum-seekers? And, finally, when will the states – at least of South Asia – move beyond humanitarianism and attempt a regional or at least bilateral solution,

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<sup>35</sup> <http://www.refugeecouncil.org.au/latest/australia-closes-door-on-persecuted-rohingya/> accessed on 11 October 2015

<sup>36</sup> <http://www.bbc.com/news/world-australia-34450776>, accessed on 11 October 2015.

<sup>37</sup> <http://www.unhcr.org/pages/49e4889e6.html>, accessed on 11 October 2015.

<sup>38</sup> <http://www.bbc.com/news/world-australia-34105064>, accessed on 11 October 2015.

<sup>39</sup> K. Yhome. 'Rohingyas Adrift, Far From the Shores of Asia's Conscience', [http://thewire.in/2015/05/21/rohingyas-adrift-far-from-the-shores-of-asias-conscience-2149/?relatedposts\\_hit=1&relatedposts\\_origin=11528&relatedposts\\_position=1](http://thewire.in/2015/05/21/rohingyas-adrift-far-from-the-shores-of-asias-conscience-2149/?relatedposts_hit=1&relatedposts_origin=11528&relatedposts_position=1), accessed on 11 October 2015.

because more often than not, redress of injustice to the displaced caused by statelessness requires the cooperation of several states involved.

Why doesn't all this happen? This is where we must recognise the unequal nature of power, influence, and responsibility in the global protection regime. In the light of this report and on the basis of the experiences of the Rohingya exodus from Myanmar, reflective of worldwide post-colonial experiences, we have to ask: What is the nature of this *power, influence, and responsibility*? To ask this is important because through all these years following the convention on statelessness, the global protection regime has never questioned the dissociation between power and responsibility – primarily for two reasons: first, in the age of majoritarian democracy, responsibility lies with the minority groups to conduct themselves *responsibly* to be acceptable to the state; and second, international responsibility is formally exercised by nation-states, while power is vested with transnational agencies and empires which will exercise power without responsibility. In this situation of graded responsibility and its hierarchical history, it is important to ask: What is the nature of power and responsibility at the margins, rather than power and influence at the centre, which is called by that euphemism, *protection regime*?

And yet there remains one more point. Is this so-called regime capable of addressing the issue of *de facto* statelessness? The present situation of flows of potential stateless groups of people is not marked by some mere discrimination and liminal violence, but brutal violence and stripping them of citizenship. The convention on statelessness barely touches the problem. Framed in the context of Europe and World War II, the question of responsibility for production of statelessness is stark today in as much as the ineffectiveness of the global protection apparatus for the stateless groups becomes apparent.

We evaluate people and groups as responsible or not, depending on how they exercise their power. Often we exercise moral judgment. Sometimes we do this formally, for instance via legal judgement. The question will be: How do we relate moral responsibility and legal responsibility – not only of individuals but of empires, global powers, and other collectives? The current protection regime has no particular idea of (a) what we may term as *responsible agency*, whereby an institution like the state is regarded as a moral agent; or (b) *retrospective responsibility*, when a state is judged for its actions and is blamed or punished; or (c) *responsibility as a virtue*, when we praise a state as being responsible. Philosophical discussions of responsibility abound. However, we need in the context of post-colonial experiences, a wider view of responsibility in order to explore connections between moral and legal responsibility, and between global and national responsibilities. After all was it not the original philosophical invocation of the dual notions of power and responsibility which was at the foundation of political thought?



# Chapter I

## ‘Maritime Ping-Pong’: The Rohingyas at Sea<sup>1</sup>

*Sucharita Sengupta*

SINCE THE Indian subcontinent was partitioned in 1947, it has witnessed continuous trans-border and internal migration caused by ethnic violence, economic compulsions and other factors. The borders dividing India, Bangladesh and Myanmar in the post-colonial period, for instance, are porous, defying the governments’ attempts to control population flows. Illegal migration has inevitably increased.

This paper attempts to trace the sea-borne migration of the Rohingyas of Myanmar, the uncertain conditions they exist in and the precariousness of their destinies and destinations. A Muslim minority ethnic group from the Arakan province of Myanmar, the Rohingyas have been in such a state of flux that they have been in no position to negotiate with a particular nation-state to secure a home for them. Being denied citizenship in Myanmar, they constitute one of the world’s largest deracinated communities in existence. Their identity is, however, difficult to pin down and, in context, it is difficult to categorise the community as stateless/refugee/asylum-seeker. Following massive persecution in Myanmar, the Rohingyas have been forced to flee to neighbouring countries like Bangladesh, separated from the Arakan only by the Naf river, from the 1970s, to seek asylum. Since then, they have been living for a protracted period as refugees, mostly in the Cox’s Bazaar area of Bangladesh’s Chittagong Hill Tracts in two camps, whose residents are not allowed to interact with the local population. They are supported by the Government of Bangladesh and the United Nations High Commissioner for Refugees (UNHCR), along with other organisations, for instance, the International Organization for Migration (IOM). After a new government came to power in Bangladesh in January 2009, followed by fresh violence in Myanmar in 2012, it has adopted strict measures to stop the inflow.

An attempt has been made here to trace the Rohingyas’ journey not from Myanmar itself, but from Bangladesh to Southeast Asian countries across the Bay of Bengal and Straits of Malacca and investigate the circumstances that prompt the ‘Bangladeshi Rohingyas’ to flee over land to India and across the seas to Thailand and Malaysia. Several questions crop up: Do they remain asylum-seekers or become economic migrants? What is it that compels them to take to the sea on perilous journeys, usually in fishing trawlers, to cross to Malaysia and why is the role of Bangladesh crucial? What are the conditions that reduce the Rohingyas to being a community of ‘boat-people’, compelled to risk their lives in their search for settlement and livelihood? The transformation of the Rohingyas into a ‘boat people’ will be the main focus of this paper. Mapping this maritime and terrestrial journey through various legal regimes, this piece argues that the outcomes faced by the community have been historically inevitable.

My fieldwork in Bangladesh shows that it is generally members of the second and third generations of Rohingyas, between eighteen and twenty-one, who are trying to leave Bangladesh

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<sup>1</sup> I have borrowed the term from Joe Lowry, a spokesman for the International Organization for Migration in Bangkok and Masum Billah, “Illegal Migration: Maritime ‘ping-pong’ must end”, *The Daily Observer*, Dhaka, 18 May 2015.

mainly for Southeast Asia. In this paper I try to examine why this is so, for which understanding the history of the region, especially Bangladesh, is important. Already settled in the two refugee camps or in makeshift settlements in Cox's Bazaar, these young men and women are taking to the sea to seek jobs in the Southeast Asia countries. Despite the risks, greater access to sea routes, in comparison to those across land, makes migrating, or often being trafficked to Southeast Asia and Australia easier, even though they end up, all too often, in border-detention camps, where they either die or become bonded labourers. The 'pull' factors which draw them into the smuggling-trafficking nexus, involving many regional and international actors, will be analysed. The three primary themes that will be discussed are: the evolution of Rohingyas as 'boat people'; the legal regimes to protect them; and their lives in camps in Bangladesh and the reasons for which they want to leave that country.

There are two broad sections in the paper: one deals with the overall history of the region, of crossing the sea, the coinage of the term 'boat people' and the subsequent mixed flow of Rohingyas and Bangladeshis over the seas; and the other deals with the lives of Rohingyas in the camps and explores the reasons behind Bangladesh producing the largest number of migrants in the world. The first section is based mainly on newspapers housed in Bangladeshi archives and online media resources. The second section is based on primary material and interviews with residents of the camps in the Teknaf area of Noyapara and the Kutupalong area of Ukhiya in Cox's Bazaar and also people living in makeshift settlements, where unregistered Rohingyas have been living without any formal acknowledgment or permission from the government. Since we did not have formal access to the camps, we mainly interviewed both registered and unregistered Rohingyas in the makeshift camps, commonly known as *leda*. These settlements are scattered just outside the formal camp areas. We talked to approximately forty people about their lives in Bangladesh and why members of their families or from the neighbourhood have been leaving for other destinations. Some of these narratives also describe their sea voyages. Information was also gathered from officials of various non-governmental and human rights organisations of Bangladesh.

## Section – I

### *The Context*

Since May 2015, the international and Bangladesh media have been abuzz with news reports and video clips of a boat full of migrants from Bangladesh and Myanmar that was adrift. Countries in Southeast Asia were expected to help rescue the migrants and provide asylum. What was unveiled, however, was a petrifying picture of death, a smuggling-trafficking nexus and torture on the high seas and border-detention camps. It was after thirty-two shallow graves were discovered on a remote and rugged mountain in the border district of Sadao in Songkhla, Thailand, in 2015 that the enormity of the problem was exposed by media activism.<sup>2</sup> The migrants were a mix of Rohingyas and Bangladeshis. Bangladesh was first in a state of denial over claims that the boats were carrying Bangladeshi nationals, then shocked and finally came up with the response that the Bangladeshi nationals had been kidnapped whereas the Rohingyas had willingly embarked on these precarious journeys. *Dainik Janakantha*, a local Bengali daily published from Bangladesh, reported on 8 May 2015 that many Bangladeshis had gone missing from the regions of Cox's Bazaar, Pekua, Maheshkhali, Ramu and Shatkania, Lohagara and Bandarban of Chittagong.<sup>3</sup> Most of these men had

<sup>2</sup> <http://www.thedailystar.net/country/mass-grave-bangladeshi-myanmar-migrants-found-thailand-80115>, accessed on 26 July 2015.

<sup>3</sup> 'Thailand er Jangal e aro 30 Ganakabarer Shandhan', *Dainik Janakantha*, 8 May 2015.

been victims of trafficking. They had been lured with the promise of prosperity in Malaysia, but before they could reach there, were kidnapped and imprisoned in Thai border-detention camps. Investigations indicated that 200,000 Bangladeshis and Rohingyas had attempted to cross the sea in order to reach Malaysia. Most of them had been forced to do so. According to another report on 14 May 2015, the UNHCR has claimed that around 87,000 people have been trafficked across the Bay of Bengal since 2013-14.<sup>4</sup> Several syndicates operate in these four countries targeting poor Bangladeshis for ransom. The Rohingyas, however, migrate because the UNHCR issues Rohingyas refugee cards in Malaysia and they are not arrested there. This, coupled with the image of Malaysia being a dream destination, increasingly prompts Rohingyas to migrate there.

A senior *Daily Star* reporter, S. Ashraf visited the Thai border and interviewed migrants there.<sup>5</sup> He was also present at a meeting of states concerned in Bangkok on 29 May 2015.<sup>6</sup> Ashraf stressed the fact that Bangladeshis found in boats crossing the sea had been kidnapped, so their reasons to be in the boats clearly were different from those of the Rohingyas found on board. There are two ways of illegally trafficking Bangladeshis. Either they are kidnapped or children below eighteen are promised tours of Malaysia and then imprisoned in detention camps. He talked of a particular case in which a group of young boys who had never seen the sea before and hailed from a very poor region of Bangladesh was tempted to cross the sea. Once the boys boarded the ship, they were kept hungry and finally locked in a room at one of the transit points. So while Bangladeshis were being trafficked, Rohingyas genuinely wanted to leave Bangladesh for better opportunities, usually work in rubber plantations. Women were hardly ever found on these boats, the few found were always Rohingyas. Ashraf claimed no Bangladeshi woman has yet been found to have taken to the sea.

The *New York Times* had reported that around 6,000 to 20,000 people had been found in 'rickety flotillas' in the Andaman Sea and the Straits of Malacca.<sup>7</sup> After the graves were discovered in Thailand, the Thai government took strict measures to crack down on the traffickers.<sup>8</sup> Initially, after the Rohingyas and Bangladeshis were abandoned at sea by traffickers, Malaysia had turned away two boats with more than 800 persons on board and Thailand had also "kept at bay a third boat with hundreds more".<sup>9</sup> A Malaysian deputy minister had stated that Rohingyas would not be welcomed any more after they illegally entered Malaysia in boats. The Thai prime minister had also claimed that they lacked resources to host these refugees. Another boat was spotted on the maritime border between Thailand and Malaysia.<sup>10</sup> On receipt of news that Malaysia, Indonesia and Thailand had denied assistance to migrants, Zeid Ra'ad al-Hussein, the UN human rights chief, issued a statement saying: "I am appalled at reports that Thailand, Indonesia and Malaysia have been pushing boats full of vulnerable migrants back out to sea, which will inevitably lead to many avoidable deaths. The focus should be on saving lives, not further endangering them."<sup>11</sup>

<sup>4</sup> H.M. Ershad, 'Sagar e bhashche hajar abhibashi', *Dainik Janakantha*, 14 May 2015.

<sup>5</sup> Interview taken at the Office of *Daily Star*, 30 June 2015

<sup>6</sup> 'Southeast Asia nations agree on anti-trafficking task force', *Asia Pacific*, 29 May 2015  
<http://www.channelnewsasia.com/news/asiapacific/southeast-asia-nations/1880868.html>. accessed on 30 July 2015

<sup>7</sup> <http://www.nytimes.com/2015/05/16/world/asia/migrant-boat-myanmar-thailand.html?module=ArrowsNav&contentCollection=Asia%20Pacific&action=keypress&region=FixedLeft&pgtype=article>, accessed on 5 September 2015.

<sup>8</sup> <http://www.nytimes.com/interactive/2015/05/14/world/asia/Understanding-Southeast-Asias-Migrant-Crisis.html>, accessed on 5 September 2015.

<sup>9</sup> 'Malaysia and Thailand turn away hundreds on migrant boats', *The Guardian*, 14 May 2015,  
<http://www.theguardian.com/world/2015/may/14/malaysia-turns-back-migrant-boat-with-more-than-500-aboard>, accessed on - 31 July 2015.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

A UNHCR report on illegal maritime migration between April and June 2015 said 6,000 refugees had been abandoned by smugglers in the Bay of Bengal and Andaman Sea in May 2015. Since 2014, approximately 94,000 migrants had attempted to cross the seas. In the first three months of 2015, the figure was 25,000, which between April and August 2015 increased to 31,000 with 370 deaths in 2015 alone. This UNHCR report gave a day-to-day account of what unfolded between May and July 2015 after the migrants had been abandoned at sea. The UNHCR report is titled *South-East Asia: Mixed Maritime Movements*.<sup>12</sup> This, in brief, is the backdrop to the present crisis.

### ***History and the Current Scenario of the 'Boat People' in Southeast Asia***

There is an uncanny resemblance of the Rohingya exodus with that of the Vietnamese boat people in the mid-1970s. The Vietnamese had also sought refuge in Southeast Asian countries like Indonesia and Malaysia before being accepted by Europe, North America and Australia.<sup>13</sup> The term 'boat people' was coined at this time while describing the escape of Vietnamese people from communist rule following the Vietnam War. The Vietnamese also fled in small boats, most often wooden fishing boats, after the Chinese invasion of Vietnam in 1979. Before the latter exodus, no other incident of people fleeing in boats to seek asylum had drawn worldwide attention. More than a million people fled Indochina after the war and many perished either by drowning or at the hands of the pirates. The survivors were accepted as refugees in the USA, Canada, and Southeast Asian countries in the late 1970s and 1980s.<sup>14</sup>

The 'Boat for Vietnam' Committee was formed on 27 November 1978, when more than 160 prominent Parisians signed an appeal to stop the exodus. The crisis was alarming, since with each passing day more and more boats were reaching Malaysia, Philippines, Indonesia and Hongkong. Refugee camps were already full when suddenly the Malaysian vice-president announced his country would not accept any more refugees and pushed 76,000 boat people back to the sea.<sup>15</sup> To ensure greater and more binding protection, and more resettlement commitments worldwide, in particular from western countries like the USA, an international convention was organised in Geneva after the first phase of the Vietnamese crisis aiming to solve the crisis.<sup>16</sup>

There has always been a tendency to perceive 'boat people' as a threat – countless incidents of pushing back vessels back into the high seas testify to this. For instance, Australia has time and again expressed intolerance towards 'boat people' arriving there. It flouted maritime rules by ordering the *MV Tampa* to return to sea in dangerous weather conditions.<sup>17</sup> This was a landmark event in the history of the boat people's migration that made Australia review its policy regarding disembarkation of boats and providing asylum to the people on board.<sup>18</sup> This policy was known as the 'Pacific strategy' with countries like New Zealand, Nauru, Papua New Guinea and Indonesia

<sup>12</sup> *South-East Asia Mixed Maritime Movements*, UNHCR, April-June 2015.

<sup>13</sup> [http://www.huffingtonpost.com/elliott-brennan-/southeast-asia-boat-people-crisis\\_b\\_7437498.html?ir=India&adsSiteOverride=in](http://www.huffingtonpost.com/elliott-brennan-/southeast-asia-boat-people-crisis_b_7437498.html?ir=India&adsSiteOverride=in), accessed on 26 July 2015.

<sup>14</sup> <http://www.infoplease.com/encyclopedia/history/boat-people.html>, accessed on 1 September 2015.

<sup>15</sup> <http://www.worldaffairsjournal.org/article/isle-light-look-back-boat-people-and-european-left>, accessed on 5 July 2015.

<sup>16</sup> Christopher Parsons and Pierre-Louis Vezina, 'Migrant Networks and Trade: The Vietnamese Boat People as a Natural Experiment', working paper submitted to the Department of International Development and Department of Economics, Oxford University, 17 September, 2013, pp. 3-4. Available at [http://www.economics.ox.ac.uk/materials/events/12846/VEZINA\\_vietnam.pdf](http://www.economics.ox.ac.uk/materials/events/12846/VEZINA_vietnam.pdf), accessed on 30 July 2015.

<sup>17</sup> Michael Pugh, 'Drowning not Waving: Boat People and Humanitarianism at Sea', *Journal of Refugee Studies*, Vol 17., No. 1, 2004, p. 50.

<sup>18</sup> Selm van Joanne and Betsy Cooper, *The new 'Boat People' Ensuring Safety and Determining Status*, Migration Policy Institute, 2005, p. 23-24.

being parties to it. On 26 August 2001, M.V. *Tampa*, a Norwegian container ship, rescued 433 asylum-seekers from a boat [the *Palapa*] which was sinking between Indonesia and Christmas Island within Australian maritime jurisdiction. The captain of *Tampa* was informed by the Australian Maritime Safety Authority about the *Palapa*. However, *Tampa* was not allowed to dock at an Australian port and was redirected towards the island of Nauru. Over the next few months, New Zealand accepted 150 people from the *Tampa*. Despite being a party to several maritime conventions, and under obligation to provide asylum to refugees as per the 1951 refugee convention, Australia had violated several rules in regard to the *Tampa*.<sup>19</sup>

In the wake of the present crisis, the Australian government took a similar stance. The then Australian Prime Minister Tony Abbott went on record to say that allowing the refugees, in this case, a mixed group of Rohingyas and Bangladeshi, to enter Australia would encourage more such illegal sea voyages.<sup>20</sup> Historically, maritime migrants have always been more vulnerable than their terrestrial counterparts, especially because they can be tracked more easily, identified as pirates or can simply drown. Activists have even named the Mediterranean Sea as a 'maritime cemetery'.

### *Search to Rescue or to Kill?*

Search-and-rescue operations have, paradoxically, increased fatalities. Often migrants jump into the sea in desperation failing to comprehend the reasons for interception. The question is whether interception of migrant boats is a rescue measure or one to tighten security. Interception is defined as the process of preventing a boat's onward movement after locating it. The state can either carry passengers on an intercepted vessel in one of its own vessels or force the former to alter course. This might occur in both jurisdictional and international waters.<sup>21</sup> Interception can also be used by a state to prevent the arrival of a ship into its jurisdiction.<sup>22</sup> Rescue, however, "is the practice of assisting seaborne persons in some form of trouble or distress". But in the guise of rescue, boats have actually been intercepted leading to more casualties. So the question is whether rescue operations are humanitarian and achieve the intended objectives. In fact, rescue operations begin with intercepting boats. Italy, for instance, had initiated a search-and-rescue operation after a boat wreck in Lampedusa. Daniele Esibini, the captain of one of the coastguard ships, revealed the danger of such rescue operations. The first problem is overloaded boats which "leads to them capsizing – frequently exactly at the point of rescue. He has never come across a boat that was not overloaded and therefore dangerous". He further states, "The most dangerous part of a search-and-rescue operation is the moment of rescue. As rescuers approach, the very human reaction is to stand up and wave to guide your rescuers. If the [passengers] stand up, the boat capsizes." The operation was abandoned after criticism from the European Union.<sup>23</sup>

While rescue operations are important, there is also a need to examine the situation after a boat is rescued by humanitarian agencies.<sup>24</sup> The human rights of migrants become crucial at this juncture and it is important to ensure that the rescued ships are docked at a safe location. If a shipwreck occurs within the jurisdiction of a state,<sup>25</sup> or when boat people manage to reach the shore,

<sup>19</sup> *Ibid.*

<sup>20</sup> 'Lost Voices of the World's Refugees', *The New York Times*, 13 June 2015, <http://www.nytimes.com/2015/06/14/opinion/lost-voices-of-the-worlds-refugees.html>, accessed on 7 July 2015.

<sup>21</sup> Joanne and Cooper, *New Boat People*, p. 5.

<sup>22</sup> *Ibid.*

<sup>23</sup> 'Death in the Mediterranean', *New International magazine: People, ideas and action for global justice*, 27 May 2015.

<sup>24</sup> *Ibid.*

<sup>25</sup> Mark Pallis, 'Obligations of States towards Asylum Seekers at Sea: Interactions and Conflicts between Legal Regimes', *International Journal of Refugee Law*, Vol. 14, Nos. 2-3, 2002.

the responsibility of the recipient state is to help in safe disembarkation. But ambiguity shrouds these procedures and relevant laws,<sup>26</sup> which usually work against the boat people and put them in a disadvantageous position. It should be borne in mind that in most cases, boat people are actually asylum-seekers in need of refuge. Although a substantial number of them are also economic migrants, the line between volition and coercion; searching for a safe place following threats to life and being compelled to move for economic reasons is very thin – the Rohingyas provide a compelling example.

In 1975, the Executive Committee (EXCOM) of the UNHCR identified the need to address problems when asylum-seekers reached the maritime jurisdiction of a country, which led to the adoption of a series of mechanisms by the UNHCR. The first concern of asylum-seekers is to identify a safe destination even if it means escaping in overcrowded vessels which are often at risk of sinking; many do, in fact, sink. A state has twin responsibilities to render assistance and help in search-and-rescue operations. The need for effective search-and-rescue operations, therefore, is a prerequisite. Article 98(1) of the United Nations Convention on the Law of the Sea (UNCLOS) lays down that “if any vessel is in trouble at sea, the crews of all other ships are under an obligation to rescue those in distress”. It says:

‘Every state shall require the master of a ship flying its flag, in so far as he can do [so] without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need for assistance, in so far as such action may reasonably be expected of him. This rescue is one form of humanitarianism.’

Article 98(2) states that:

‘Every coastal state shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose.’<sup>27</sup>

## Section II

### *Legal Regimes and their Complexities*

The Rohingyas are now the world’s most persecuted minority without citizenship. Currently numbering around 32,000,<sup>28</sup> Rohingyas registered with the UNHCR in Bangladesh live in two camps in Cox’s Bazaar – a tourist spot in Bangladesh with the world’s largest unbroken beach. Unofficially however, around 300,000 to 500,000 unregistered refugees live in abject poverty just outside the formal camps. They do not have access to food and shelter provided by the government or work permits. In order to seek a better life, they are now being compelled to take to the sea in perilous journeys to Southeast Asian countries like Malaysia, with Thailand being the main transit country. Labelled Asia’s new boat people and compared to the Vietnamese,<sup>29</sup> thousands of Rohingyas depend on countries willing to provide shelter and freedom. Malaysia and Thailand have been receiving Rohingyas for a decade, without any specific policy in this regard.

In 2007, a trawler carrying Rohingyas was being smuggled to Malaysia, but it sank in the Bay of Bengal. Only eighty boarders survived. A week later, another boat sank, killing another 150 migrants. On 3 March, 2008, twenty-two persons were saved by the Sri Lankan navy, most of who

<sup>26</sup> Pugh, *Drowning not*, p. 50.

<sup>27</sup> Pallis, *Obligation of States*, p. 332.

<sup>28</sup> <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=52fc6fbd5&id=5567f5185>, accessed on 2 August 2015.

<sup>29</sup> Jonathan Pearlma, ‘Who are the Rohingya boat people?’, *The Telegraph*, Sydney, 21 May 2015, <http://www.telegraph.co.uk/news/worldnews/asia/burmamyanmar/11620933/Who-are-the-Rohingya-boat-people.html>, accessed on 30 July 2015.

were Rohingyas, from a boat that had drifted into the Indian Ocean. According to a survey conducted under the Arakan Project, more than 8,000 boat people had departed from the coast of Bangladesh to Malaysia, through Thailand, between October 2006 and March 2008. So migration or trafficking of Rohingyas from Bangladesh through sea routes is not a new phenomenon.<sup>30</sup> However, following the discovery of mass graves and with international organisations like the UNO and IOM urging Myanmar to take responsibility and appealing to Southeast Asian countries to act on humanitarian grounds, these countries first denied refuge but began accepting migrants after the meeting in Bangkok on 29 May.

Bangladeshi nationals have only recently joined Rohingyas in taking to the sea. This complicates matters: asylum-seekers cannot be termed illegal, but the issue is clouded because boats carrying Rohingyas now also carry Bangladeshis who are neither 'stateless' nor 'asylum-seekers'. The problem is that Rohingyas are known in Myanmar and to the world as 'Bengalis' because of linguistic similarities. Their dialect matches that of the people of Chittagong, especially that of Rohingyas who have been living in Bangladesh for years or who have been born and brought up there. So, it is very difficult to distinguish between them. Although, legally the Rohingyas residing within the camps are not allowed to interact with the locals, they do, working in the informal sector, for instance, pulling rickshaws – this interaction has deepened the similarity of language/dialect and habits. Therefore, the issue of rendering aid to this mixed group of migrants from Bangladesh and Myanmar has become problematic, especially since Bangladeshis often claim to be Rohingyas.

As A. Munir, the IOM protection officer in Cox's Bazaar, who is also in charge of working with unregistered refugees in the makeshift camps in Teknaf, says, "The process of carrying Bangladeshi nationals along with the Rohingyas in boats have been going on since the last ten to twelve years. There were police reports of young boys going missing in the adjoining areas of Cox's Bazaar, but the reasons were unknown till now. It is only due to the media reports in May and June 2015 that we could fathom the exact figures and amount of boat migration that has been going on. Historically, labour migration from Bangladesh to Malaysia was allowed by both the governments in 2010 and even long before it, Rohingyas have been going to Malaysia primarily because it is a Muslim country and there is an active labour market with a demand for cheap labour. After labour migration from Bangladesh to Malaysia was allowed, a boom in the trafficking racket also followed. The traffickers are well aware of the areas from where they can lure Bangladeshi nationals along with the Rohingyas ... and they are targeted because they are likely to pay bigger ransoms than what the Rohingyas can afford."<sup>31</sup> The IOM is in charge of providing health facilities, sanitation and capacity-building facilities to the unregistered Rohingyas since 2009-2010. In collaboration with the Bangladesh government, it also organises medical camps near the camps.

Over the last year, the Bangladesh government has decided to resettle the 32,000 registered Rohingyas to a different region since Cox's Bazaar is primarily a tourist area and the smuggling-trafficking nexus in the region has led to a lot of anti-social activities, including drug smuggling. The place where the registered camps might shift is a barren island in the Bay of Bengal called Thengar Char. It is prime minister Sheikh Hasina's desire that the Rohingyas be relocated, says the police chief of Hatiya, Mohammad Nazrul Huda.<sup>32</sup> The government, however, is silent about the fate of the unregistered refugees. Hence, despite being recognised as stateless or refugees by the UNHCR, the Rohingyas have been living in extreme adversity, sometimes even denied proper shelter. Some of them have received temporary refugee cards from the UNHCR, but still been subjected to violation

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<sup>30</sup> Chris Lewa, 'Asia's New Boat people' *Forced Migration Review*, Issue no. 30, pp. 40-41.

<sup>31</sup> The interview was taken in Cox's Bazaar, at the office of the International Organization of Migration on 3 July, 2015.

<sup>32</sup> <http://www.economist.com/news/asia/21659769-oppressed-myanmar-muslim-rohingyas-are-unwelcome-bangladesh-too-exile-island?frsc=dg%7Cd>, accessed on 28 August 2015.

of basic human rights. While the registered Rohingyas in Bangladesh are comparatively better off in terms of receiving food and shelter from the UNHCR, sanctioned by the government, they still live in appalling conditions, denied freedom of movement or access to sufficient food, water and sanitation till recently. The government has now taken the initiative to distribute cards to families of registered refugees, with which they can buy the necessary quantity of food. This has been a positive development since previously only a fixed amount of food was distributed by the authorities per family. While the camp refugees we spoke to are happy with this step, it is not enough since there is a limit on the quantity a family can buy with the food cards.

According to a 2014 report by the Refugee and Migratory Movements Research Unit, Bangladesh 17 per cent of children below five were found to be suffering from malnutrition. Neither the registered Rohingya children nor the unregistered have access to formal education. Children of the registered camps can study till class seven in the official camps, following a Myanmar curriculum.<sup>33</sup>

After the Awami League was voted into power, the influx of the Rohingyas was combated with harsh measures. Sources in Bangladesh, not willing to be identified, told us that adopting strict measures to combat illegal migration from Myanmar was on the Awami League's agenda before the national elections. Keeping its promise, vigilance was increased at the shores in the Naf area. Following a fresh Rohingya exodus in 2012, it is alleged that the Border Guard Bangladesh (BGB) had pushed back several boats carrying Rohingyas to Myanmar, as a result of which they were forced to turn to countries like Thailand and Malaysia. A sharp rise of sea voyages from Bangladesh was also recorded in 2012.

It was obvious that none of them wanted to return to Myanmar. Some of them were arrested by the BGB on grounds of illegal entry. In India, too, Rohingyas have been indiscriminately incarcerated for illegal infiltration. Although India and Bangladesh are not parties to the 1951 refugee convention, they have agreed to a number of international legal instruments, including the Universal Declaration of Human Rights (UDHR). Article 14 of the UDHR states: "Everyone has the right to seek asylum and to enjoy in other countries asylum from persecution." Paragraph one of Article 3 of the Convention against Torture, of which Bangladesh is a signatory, also says, "No State Party shall expel, return ['refouler'] or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Hence, Bangladesh and India cannot, on humanitarian grounds, violate the principle of non-refoulement, despite not being signatories to the 1951 convention or 1967 Additional Protocol, and cannot term Rohingyas infiltrators or illegal migrants since they are asylum-seekers. The strategy of *refoulement* has followed when they have embarked upon sea as well, either from their homeland, Myanmar, where they are living under continuous persecution, or from other states like Bangladesh, where they are living in a limbo. It has been clearly stated by the UNHCR that the two international conventions on refugees will be applicable to maritime migrants as well if they are found to be refugees or asylum-seekers. Here again is the complication of intermixing, since Bangladeshis are not asylum-seekers and the conventions are not applicable on them.

According to the guidelines on rescue at sea jointly prepared by the UNHCR and IMO, "If people rescued at sea claim to be refugees or asylum-seekers, or indicate in any way that they fear persecution or ill-treatment if disembarked at a particular place, key principles prescribed by international refugee law need to be upheld. The Master is not responsible for determining the status of rescued persons." Article 33[1] of the 1951 Refugee Convention also clearly states that refugees or asylum-seekers cannot be returned to the territory where their lives are under threat. This refers

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<sup>33</sup>'Addressing the Plight of the Rohingyas Summary', *Labour Migration from Bangladesh: Achievements and Challenges*, Annual Policy Brief, Refugee and Migratory Movements Research Unit, Dhaka, March, 2014, pp. 2-3.



not only to the country of origin from where they are fleeing, but also includes the territory where they might face a threat to security. Even "[r]escued persons who do not meet the criteria of the 1951 Refugee Convention definition of a 'refugee', but who fear torture or other serious human rights abuses or who are fleeing armed conflict may also be protected from return to a particular place (*refoulement*) by other international or regional human rights or refugee law instruments." This is applicable even for maritime migrants if they are asylum-seekers. Clearly a violation of rules repeatedly took place with the Rohingyas, particularly when some of them were found stranded at sea. No state was willing to allow disembarkation within its maritime jurisdiction. Though the rescue-at-sea guidelines further states that governments and rescue coordination centres have the responsibility to ensure a 'place of safety' to ships in distress,<sup>34</sup> governments have been found playing insensitively with the lives of thousands crammed in rickety boats, neither rescued, nor allowed to land, blaming each other and debating whose responsibility is it to provide protection and asylum.

States concerned feign ignorance of the plight of the Rohingyas. Pushing back Rohingyas travelling either over land or sea has been the policy followed by most governments. As a result many Rohingyas have either perished in the seas or have been living in detention camps as bonded labourers along the Thai-Malaysian border. On the other hand, when it comes to employing people in the most labour-intensive industries, it is the Rohingyas who are chosen. Thus, we witness the expansion of a well-knit trafficking network, connecting Myanmar, Thailand, Indonesia, Malaysia and Bangladesh to take innocents on perilous journeys with the bait of providing work opportunities. The sea is the most accessible route since Rohingya settlements in Bangladesh are mainly in Cox's Bazaar, which is a coastal area. While young men are trafficked to Thailand, Philippines and Malaysia are robbed, women and children are increasingly being trafficked for sexual exploitation to these countries and India. Economic considerations are major pull factors for young boys, since they are not allowed to work in Bangladesh, even if they are registered with the UNHCR.

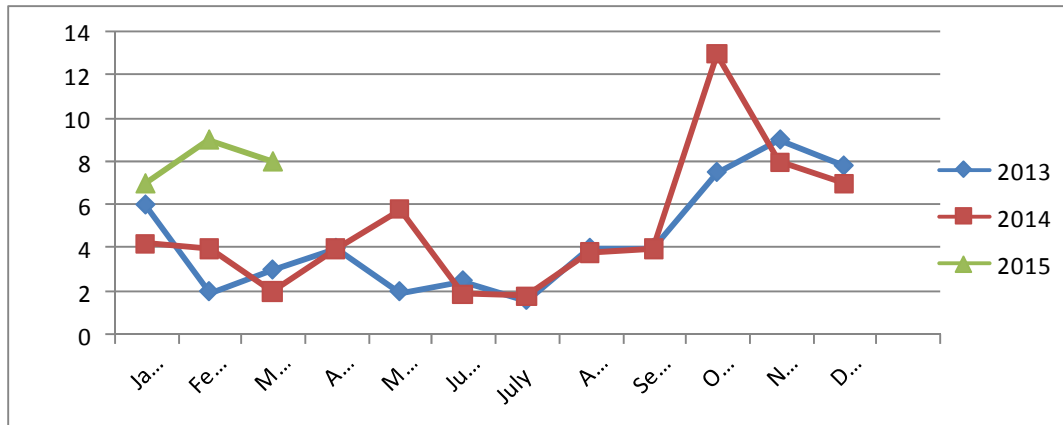
Maritime migration has increased exponentially from 2006, when Malaysia started registering Rohingyas for residence or work permits. The process was soon suspended due to allegations of fraud and trafficking. Around USD 300 was charged for a sea passage to southern Thailand and USD 700-1,000 for one to Malaysia. A big network of officials, brokers and agencies are involved in this process, operating in these countries. Till March 2007, arrested boat people on the southern coast of Thailand were deported to a cease-fire zone in Myanmar, close to Mae Sot. They were released after paying USD 700 and taken back to Thailand or Malaysia. In the initial years, many managed to reach their destination and find jobs. Many have settled in Malaysia, which has encouraged others to follow suit, taking the same risks. But with more and more migrants reaching these countries, the authorities have become more cautious about allowing them in. Still, instead of a reduction in the number of migrants, figures have increased. While traffickers continue to lure people to make these journeys, very few make it to their destinations and find work. In most cases, even after ransoms had been paid, migrants were not released. Many are killed, or simply die from hunger, resulting in mass graves, some of which, as mentioned, were discovered in 2015. It was believed that the Thai authorities had been handing them over to the brokers along the Thai-Malaysia borders. Those who were unable to pay ransoms were sold to plantation owners or fishing boats as bonded labour. The problem with the authorities in these countries is that instead of viewing the Rohingyas as asylum-seekers, they are considered economic migrants and security threats.<sup>35</sup>

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<sup>34</sup> *Rescue at Sea: A Guide to Principles and Practice as Applied to Migrants and Refugees*, IMO and UNHCR.

<sup>35</sup> *Ibid.*

The graph below shows that maritime movement of Rohingyas in the years 2013-15 has been very irregular:



Estimated number of people making irregular departures by sea from Bangladesh/ Myanmar border in thousands. Source: *The Economist*<sup>36</sup>

### *Narratives from the Two Camps in Bangladesh*

Women from among the Rohingyas have mainly attempted to cross the sea attracted by promises of marriage, work and a better future. Tahera Bibi, seventeen, who is registered and lives in the Kutupalong camp in Ukhia of Bangladesh, has studied in the camp till class 7. We met her outside the camp, in the house of a local NGO worker, introduced to us by a research organisation based in Dhaka. Our driver, Mohiuddin, who took us to the camps, and the person associated with the NGO, were our interpreters. Tahera was one among thirteen women, all of them from the registered Kutupalong camp, surrounded by ten men. We wanted to know whether any of them had ever attempted to go to Malaysia over the seas, but were greeted by silence. We were later told that camp-dwellers had been avoiding this subject because of increased surveillance by the government following the recent crisis. After much persuasion, an elder woman persuaded Tahera to narrate her story. After completing her formal studies, she worked on an initiative started by BRAC, an international NGO based in Dhaka, known as 'save the children'. Although there was no official permit for it, she worked there for three years and got BDT 1,000 (taka) a month. At this time, she heard of Malaysia from a friend. "As you know, our society does not give us freedom to work but I heard there was scope for work in Malaysia even for girls," she told us. She also got a proposal of marriage from a person of her community settled in Malaysia. (Tahera was reluctant to divulge details of how she met this person or whether she had at all met him before landing in Malaysia, or who the middleman facilitating the connection was. She confessed, however, to having spoken to this man over the phone a few times before meeting him in person). With dreams of a better life and the hope of freedom, Tahera decided to leave for Malaysia. The agent who had helped Tahera was also a Rohingya from Teknaf. The money for her travel was arranged by her would-be husband, who was working as a labourer in Malaysia. The total amount paid was BDT 150,000. "We were first taken to a small boat which was carrying around eighty persons. From there we were taken to a ship where the number of persons rose to 160. The journey from the small boat to the ship took around fourteen hours. The ship first took us to the Thailand border, which took around twelve days, where we were kept in a cave for five days. From there we were taken to Malaysia, first in a small boat and

<sup>36</sup><http://www.economist.com/news/asia/21651877-poverty-politics-and-despair-are-forcing-thousands-rohingyas-flee-myanmar-authorities>, accessed on 27 July 2015.

then in a car. We were taken to the Thai-Malaysia border – Badamosha – where we were caught by the police and taken into custody. I spent four months in the prisons of Malaysia.” Her husband tried to help her by contacting the UNHCR office, which could not help, since she had been booked for entering Malaysia illegally and did not have a UNHCR registration card. As a last resort, therefore, she paid a hefty sum as bail and fled back to Bangladesh. Tahera, clearly uncomfortable, remained silent on being asked whether she was sexually harassed in the vessel; several UNHCR reports say almost all women who have embarked upon migration by sea have been sexually assaulted either on ships or border-detention camps.

Hatis Sultan Mohammad, another resident of the Kutupalong Camp, talked about his son who has been missing since 2012. He was studying in class 7 and had not informed his family before leaving. It was from other sources and friends that Mohammed came to know that his son had left for Malaysia. Since then they know nothing about his whereabouts -- or whether he is alive. Sanoara Begum, his wife, said they had been living in this camp from 2000. Since they were extremely poor, they did not have enough food and had no work opportunities. Her son had attempted to cross the sea for employment. She said they were generally helped by middlemen who were either Rohingyas or Bangladeshis.<sup>37</sup>

Zahida Begum, twenty-eight, has been living outside the camp area for nine years. She and her family are unregistered. She came to Bangladesh with her husband and two children after being attacked in Myanmar, crossing the Naf river in a boat. They had to pay 6,000 kyat. Her husband was working as a daily labourer clandestinely, but his earnings were not enough for daily sustenance. Zahida said that they also wanted to leave for Malaysia because they had heard of lots of job opportunities in Malaysia. “But do you still want to go, when so many have died or abducted?” I asked them. “There are risks, yes, but if once we can reach there we will have a better life. Is it possible to live here, in this way? During monsoon we face the toughest time. We can’t work, have to constantly live hiding our identity, or else would be imprisoned. Whereas in Malaysia there is ample work opportunity couple with security of life.”<sup>38</sup>

On the next day, we visited the settlement areas outside the Teknaf camp. We were introduced to sixty-year-old Abdul Mafalat. He has been living with his family outside the camp for thirteen years after leaving the Mungdow district of Myanmar. Mafalat is the informal representative of their settlement area. It was decided he would talk on behalf of the entire camp. Most of the residents of this settlement area came to Bangladesh after the violence of 2012 in Myanmar. They were registered and work as daily labourers, receiving BDT 200-500 for their work. We were amazed to see small shops within the settlement area. There was no clear answer about how they collected the capital necessary to start these shops. Mafalat crossed over to Bangladesh with his wife and two children; his eldest son left for Malaysia long back. Although they are not in regular contact, he knows his son is earning well over there. The work is precarious but being in Malaysia is better than living in Myanmar or in Bangladeshi camps. It is unfortunate, however, Mafalat said, that many in his neighbourhood have lost their sons to sea voyages. They are either dead or missing or detained in border camps.

From these accounts and interviews taken in both the camps and with various UNHCR officials and respondents at the United States embassy in Dhaka, it is clear that there is a strong desire among the Rohingyas to leave their camp lives and move to a ‘free space’ in search of job and livelihood. It is also evident that despite strict measures taken by the Bangladesh government to restrict the movement of the Rohingyas – both registered and unregistered – interaction between

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<sup>37</sup> *Ibid.*

<sup>38</sup> Interview taken on 3 July 2015. All interviews are translated by the author unless otherwise specified.

those living in the camps and the settlements, and the local population continues. The Rohingyas have many Bangladeshi friends who help them buy food and work outside their restricted space.

### *Pushed and Pulled*

As noted earlier, officials we spoke to opined that while the Rohingyas had crossed the sea voluntarily in overcrowded boats, Bangladeshis had usually been abducted. On the contrary, Mohiuddin and some Bangladeshis we were introduced to by him told us that they wanted to leave the country. We were surprised and asked them the reason. “*Didi*, we have heard India has more job opportunities. Can you make arrangements for us to go to India, somehow? Our job security is tenuous here and most of us are unemployed. Surely India can offer us jobs.” The allure of India seemed to be a better quality of life.

The Rohingyas and Bangladeshis in Bangladesh, thus, have increasingly become victims of trafficking rackets operating by offering often chimerical safe refuge or economic opportunities, once in West Asia, but increasingly in Southeast Asian countries. They are ferried in small boats, mainly fishing trawlers, to a large ship where they are joined with more persons from other boats. This ship then carries them first to the Thai coast and then to the final destination, Malaysia, through the Bay of Bengal, Andaman Sea and the Strait of Malacca.

The route that the Rohingyas have followed from Bangladesh to Malaysia is shown in the following map:



Cox's Bazaar to Songkhla on the Thai Coast and finally to Malaysia either on small boats or by road.

Source: [https://en.wikipedia.org/wiki/Bay\\_of\\_Bengal#/media/File:Bay\\_of\\_Bengal\\_map.png](https://en.wikipedia.org/wiki/Bay_of_Bengal#/media/File:Bay_of_Bengal_map.png), accessed on 15 July 2015.

A pictorial depiction of the steps the traffickers take to lure Rohingyas or Bangladeshis to take to the sea to get to Malaysia is sketched below:



Source: 'Slave Trade Blooms in dark Triangle', Daily Star, 29 May 2015.<sup>39</sup>

According to the report cited above, transnational human traffickers have kept around 250,000 Bangladeshis captive in Thailand, extracting huge amounts as ransom. First, local brokers get BDT 5,000-10,000 for each person and their bosses anything between BDT 15,000-30,000. They are not released till a sum of BDT 200,000-350,000 is paid. Often, even after this amount is paid, families are unable to trace the victims. Most of the transactions are carried out through various mobile-banking services. In 2014, according to a UNHCR report, 53,000 persons went to Thailand and Malaysia from Bangladesh.<sup>40</sup> The report also states, between January and March 2015, 25,000 persons (40-60 per cent of them Rohingyas) have departed across the Bay of Bengal and around 300 are estimated to have died. Around 5,400 are languishing in detention centres in either Thailand or Malaysia. The figures have doubled from what was reported in the first quarters of 2013 and 2014. Migration of women has also increased. Like Tahera, many are said to have been lured with the promise of marriage or abducted. The money is paid by their 'prospective husbands'. Usually, however, they are sold into the sex trade. Most 'migrants', both men and women, are below the age of eighteen. Since October 2014, boats departing from Sittwe (in Myanmar) have carried thirty to 100 passengers, with arrangements usually handled by friends or associates. These passengers are allowed to carry their own food on board. But even these boats have either fallen in the hands of smugglers, or been attacked during disembarkation in Thailand. The conditions during the journey across the Bay of Bengal and Andaman Sea continue to be dire. Women passengers, who have been interviewed by the UNHCR, have also talked about sexual abuses and rapes on board.

### ***Contextualising Bangladesh: A Migrant's Nation***

This section is crucial to comprehend why Bangladeshis, mostly from Chittagong (and specifically Cox's Bazaar) have also been found on the boats along with the Rohingyas. India, Bangladesh and Myanmar have the same colonial past and the region, despite today's boundaries, has remained tied socially, culturally, politically, geographically and economically. The Awami League government has, on the one hand, adopted strict measures to stop the influx of Rohingyas into Bangladesh, and, on the other, made it clear that Bangladesh needs Myanmar for its own economic benefits. Myanmar is the only country with which it shares a boundary in Southeast Asia. With Myanmar's increasing role

<sup>39</sup> <http://www.thedailystar.net/frontpage/slave-trade-booms-dark-triangle-80354>, accessed on 28 July 2015.

<sup>40</sup> *Ibid.*

in both the Association of South-East Asian Nations and Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation, Bangladesh cannot suspend diplomatic ties with the country on the Rohingya issue.<sup>41</sup> Hence, it has addressed the issue cautiously, particularly in the context of mixed maritime population flows.

Historically, one should also note that Bangladesh is one of the highest ranking countries in migration, especially for work. According to the IOM, around five million Bangladeshis are currently working overseas in various countries. Migration has been recognised as an important livelihood option for Bangladeshi nationals. Remittances sent by migrants, officially, amounted to USD 11 billion in 2010. It is the seventh highest remittance-receiving country. In 2014, it received USD 14.94 billion as remittance, 5.3 per cent higher than the previous year. Of the annual remittance, 30-40 per cent flow through informal channels, according to an International Labour Organization report. But the remittances received are generally not used for directly productive purposes,<sup>42</sup> with families that already have members working abroad trying to send more members using these remittances.

Against this backdrop, it is easy to understand why migration from Bangladesh – both legally and illegally – is so high. Bangladeshis have been migrating across the Bengal-Bangladesh border for several decades. It is, therefore, unsurprising that Rohingya refugees, registered and unregistered, who have been living for a decade in Bangladesh, too, feel the need to migrate, surviving as they do in the most adverse of circumstances. In 2011, the total number of migrants was 568,062, which rose to 607,798 in 2012. In 2013, the number dropped to 409,253, but in 2014, rose to 425,684.<sup>43</sup> The year 2012, was a significant year for Bangladesh in terms of labour migration. Ironically, it was also in 2012, that there was a fresh exodus out of Myanmar, with people fleeing in boats to either Bangladesh or other neighboring countries. And again, it was from that year, that the government of Bangladesh decided not to entertain more migrants from Myanmar, who turned to other destinations – mainly in Southeast Asia.

In 2012, a memorandum was signed between the Malaysian and Bangladeshi governments on 26 November, according to which Malaysia would formally receive workers from Bangladesh in the plantation, agriculture, manufacturing, construction and service sectors. Thirty thousand male workers were to get jobs in the first phase. However, this effort was difficult to activate in practice due to structural and other complexities. Very few migrated under this system. In 2012, only about a thousand could make it and in 2013, the number recorded was 5,191. Plantations in Malaysia require hard work and Malaysia is in need of recruiting labourers in the sector, especially in rubber plantations. So, though there is need of labour from Bangladesh, very few are going. This step also generated among the youth in Bangladesh the idea that Malaysia could provide assured work opportunities, resulting in the steady growth of trafficking as shown above. The idea was that if one could not go there legally, one could do so illegally by sea, paying one's way.

## Conclusion

My piece started with a number of questions on why the Rohingyas, especially those in Bangladesh, sail in rickety boats for new destinations. On the one hand, we have Rohingyas leaving Myanmar, stateless and helpless; on the other hand, we have Bangladesh becoming a major country of transit,

<sup>41</sup> Swapna Bhattacharya, 'Exodus of Rohingyas from Myanmar to Bangladesh: Concern for India', *The Rakhine State (Arakan) of Myanmar: Interrogating History, Culture and Conflict*, MAKAIAS-Manohar, New Delhi, 2015, p. 142.

<sup>42</sup> <http://mac.iom.int/cms/en/sites/iom/home/where-we-work/asia-and-the-pacific/bangladesh.html>, accessed on 31 July 2015.

<sup>43</sup> *Labour Migration from Bangladesh: Achievements and Challenges*, Refugee and Migratory Movements Research Unit, Dhaka, Bangladesh, 2012, 2013 and 2014.

giving rise to complex issues. Many factors produce the migration patterns described above. Chittagong's access to the sea, the economic prosperity of some Southeast Asian countries, the success stories of some camp-dwellers in Malaysia, the initial acceptance of the Rohingyas in rubber plantations in Malaysia and the mobility that Rohingyas in Myanmar, Bangladesh, India, Southeast Asia, Australia and West Asia have acquired over time, having had no particular state to negotiate with while seeking settlement, have sent them on these perilous journeys. The need to leave, even if there is no particular destination, has been of utmost urgency.

Given the variation in contexts I have encountered, it would be unwise to generalise too readily. However, there is no denying the fact that the conditions that create 'boat people' generally stem from crises – war, ethnic clashes and continuous persecution being most identifiable. Thus, deaths or accidents do not act as deterrent for migrants crossing the seas, whether Vietnamese, Rohingyas and now the Syrians leaving for Europe. The distinct feature of Rohingya migration is the mixed character it has acquired, which states concerned have increasingly found difficult to address. On 5 May 2015, representatives of the Southeast Asian countries concerned and Bangladesh, and human rights organisations in these countries assembled to untangle the issues. The assembled countries consented to provide refuge when a boat was located instead of turning it back, following widespread international criticism of the earlier policy. While Bangladesh is bringing back her people from these boats and the detention camps, for the Rohingyas the wait is endless. Arrests of agents and middlemen involved in trafficking have followed. But the problems of illegal migration and statelessness are unlikely to be solved with arrests or the destruction of existing trafficking nexuses. What is also clear is that there is a need for more broad-based dialogue and policy advocacy.

## Chapter II

### Where do #ibelong?<sup>1</sup> The Stateless Rohingyas in India

*Sahana Basavapatna*

#### Introduction

IN INDIA, the image of the Rohingyas is unenviable – foreigner, Muslim, stateless, suspected Bangladeshi national, illiterate, impoverished and dispersed across the length and breadth of the country. This makes them illegal, undesirable, the other, a threat, and a nuisance.

The law and institutions have responded multi-dimensionally. At the level of policy, the United Nations High Commissioner for Refugees (UNHCR) carries out refugee status determination (RSD) and recognises them as *refugees*. Since the end of 2011, the Government of India has ostensibly established an RSD process that will scrutinise asylum claims and issue long-term visas (LTVs). In law, this entitles refugees to legalised stay, employment in the private sector and access to education. Legal protection also technically opens access to protection measures of the UNCHR through its implementing partners.

Rohingya experiences, however, tell a different tale. Unlike most other refugee groups, a large number have been and continue to be arrested for violation of the Foreigners Act, 1946, and the Passports (Entry into India) Act, 1929, among other legislation. Unknown numbers remain in detention, some despite serving out sentences. Those in Assam and West Bengal, for instance, are unable to register with the UNHCR and join the queue for RDS. A majority lives in deplorable conditions in slums or unauthorised colonies.

In Jammu, there is a conscious awareness of the growing number of Rohingyas settling there. The ‘fear of demographic change’ is a view that, it is argued, cannot be discounted. Perhaps because of the politics of Jammu and Kashmir, enforcement agencies such as the Foreigners Regional Office (FRO) view them with circumspection. The fear that Rohingya men marry local people is real. However, those working closely with the Rohingya community, such as the Sakhawat Centre, argue that the fact that Rohingyas have not migrated to Kashmir, which has a Muslim majority, is evidence enough that the community is not taking to violent activities. In Jaipur, there appears to be little awareness of Rohingyas, because of their small numbers. The FRO in Jaipur says there are no Rohingyas in the city. In Mewat, there is a heightened sense of caution, given that Rohingya settlements are considered the ‘hub’ of links to terror organisations. Recent reports in *Daily Excelsior*, a newspaper circulated in Jammu, and the *Business Standard*, a national daily, say that the government is concerned about the large number of Rohingyas migrating to India, a clear indicator that Rohingyas are not considered benign.<sup>2</sup>

Unlike other mandate refugees, Rohingyas are spoken of in the same breath as the Bangladeshi nationals. For the Indian state, Bangladeshi immigration has remained a constant source

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<sup>1</sup> #ibelong is a UNHCR Campaign to draw attention to the 10 million people around the world who are stateless. See more at [www.unhcr.org/ibelong](http://www.unhcr.org/ibelong).

<sup>2</sup> ‘Government calls meet on Rohingya Muslims’, *Daily Excelsior*, 7 July 2015, <http://www.dailyexcelsior.com/govt-calls-meet-on-rohingya-muslims/>, accessed on 2 August 2015.



of worry, with even the higher judiciary agreeing that their migration constitutes ‘aggression’ as interpreted under Article 355 of the constitution. Rohingyas are linked to terror groups and alleged to be members of or participants in activities of the Rohingya Solidarity Organization.<sup>3</sup> Lastly, their proximity to or collaboration with some Muslim organisations may have helped them satisfy material needs but not the credibility needed by a community seeking asylum from persecution.

### A Note on the Structure of the Essay

Against this background, this essay is a legal analysis of statelessness and refugee policy in India. It is grounded in refugee experiences, evaluating the extent to which being recognised as a refugee has secured rights. It attempts to analyse the possible legal consequences of stateless Rohingyas in the context of domestic immigration and other laws in India. It also seeks to analyse what I call a ‘remodelled’ refugee law, one in which a state-led status determination mechanism is under consideration.

The following section provides a descriptive account of the lives of Rohingyas in India. The attempt is to evaluate the experiences of Rohingyas in India within the legal framework. This description should not be taken as being representative of the Rohingya community since it covers a small proportion of the population. I endeavour, through an interplay of law and lives of refugees, to comprehend the degrees to which law and policy live up to stated goals and the various means that refugees and the stateless adopt to secure rights.

In the next section, a sketch is drawn of the law as it impacts Rohingyas. Much has been written about refugee law, and debates going back to the 1990s and 2000s have considered what it meant for courts in India to pass progressive judgments in a milieu in which there was little exposition on how fundamental rights was available to refugees in general.<sup>4</sup> Contemporary academic and empirical research has also reiterated, through an analysis of case law, executive decisions and ethnographic research, the manner in which refugee law may be said to have developed in India and protected and promoted the rights of mandate refugees.<sup>5</sup> Against the backdrop of this body of work, the section on law analyses contemporary developments in the framework of international refugee law and the law on statelessness.

I attempt to see whether the categories of ‘stateless’ and ‘refugee’ are clubbed together, whether developments in law have in fact ignored or been unable to deal with statelessness, and note

<sup>3</sup> Bharat Jain, ‘India alerts Bangladesh about Rohingya terror training camps in Chittagong Hill Tracts’, *Times of India*, 25 July 2013, <http://timesofindia.indiatimes.com/india/India-alerts-Bangladesh-about-Rohingya-terror-training-camps-in-Chittagong-Hill-Tracts/articleshow/21320102.cms>, accessed on 19 July 2015); Sishir Gupta, ‘Lashkar Radicalises Rohingyas to wage war against India’, *Hindustan Times*, 2 August 2013, <http://www.hindustantimes.com/newdelhi/lashkar-radicalises-rohingyas-to-wage-war-against-india/article1-1102056.aspx>, accessed on 19 July 2015; Tanima Biswas, ‘Top Taskher terrorist Abdul Karim Tunda arrested by Delhi Police’, New Delhi Television, 17 August 2013, <http://www.ndtv.com/india-news/top-lashkar-terrorist-abdul-karim-tunda-arrested-by-delhi-police-531895>, accessed on 19 July 2015; Vicky Nanjappa, ‘Rohingya Muslims: Worry ahead for India’, One India News, 4 June 2015, <http://www.oneindia.com/feature/rohingya-muslims-worry-ahead-for-india-1767313.html>, accessed on 29 June 2015); Jayanta Gupta, ‘Khalid's arrest sparks off debate on Rohingyas in India’, *Times of India*, 20 November 2014, <http://timesofindia.indiatimes.com/india/Khalids-arrest-sparks-off-debate-on-Rohingyas-in-India/articleshow/45220794.cms>, accessed on 19 July 2015.

<sup>4</sup> Ranabir Samaddar (ed.), *Refugees and the State: Practices of Asylum and Care in India, 1947-2000*, Delhi, 2003.

<sup>5</sup> Rajeev Dhavan, ‘Refugee Law and Policy in India’, PILSARC, 2004; Ragini Trakroo Zutshi, ‘Refugees and the Law’, Human Rights & Law Network, 2007. See also ‘Urban profiling of refugee situations in Delhi: Refugees from Myanmar, Afghanistan and Somalia and their Indian neighbours: A comparative study’, UNHCR, September 2013, ‘Bright Lights, Big City: Urban Refugees Struggle to Make a Living in New Delhi, Women’s Refugee Commission’, July 2011, available at <http://womensrefugeecommission.org/resources/document/733-bright-lights-big-city-urban-refugees-struggle-to-make-a-living-in-new-delhi> (accessed on 9 March 2015).

areas of success in and barriers to the implementation of domestic laws and international legal principles.

This essay is based on fieldwork in Delhi, Jaipur, Jammu and Mewat, interviews with organisations and individuals who have engaged with issues of forced migration and officials at the Foreigners Regional Registration Office (FRRO) in New Delhi and the FROs in Jaipur and Jammu, and right-to-information (RTI) applications filed with the union ministry for home affairs (MHA). The research was conducted between January and July 2015 but also draws from my engagement with Rohingyas and others who have sought asylum over several decades.

The fieldwork consisted of interviews with Rohingyas.<sup>6</sup> While structured interviews gathered data about documentation, employment and other issues, interviews with women had to employ the unstructured method. Women remain a silent community within the Rohingyas, with religious and cultural norms dictating relationships between men and women, the role of women in their society and their role outside. It is to be noted that structured questionnaires yielded little in interviews with women. My preliminary observation is that women are articulate and strong, yet their mobility is restricted and little or no engagement outside the community allowed.

### **A Fragmentary Account from North India: Seeking Refuge, Eking Out a Living**

The introduction began by advancing the view that Rohingya migration to India has been characterised by a vocabulary that articulates diverse and conflicting concerns and assumptions. The impression that Rohingyas are ‘vulnerable to radicalization’,<sup>7</sup> coupled with the fact that they are poor and seek refuge, has resulted in atypical reactions from several quarters, some of which amount to discursive and policy breaks. The increase in the numbers of Rohingyas – said to be more than 100,000, according to government estimates<sup>8</sup> – has put it on alert. On the other hand, as stateless people, Rohingyas present a situation which, in law, has not been explored adequately. Are Rohingyas recognised only as foreigners or refugees, or are they officially considered ‘*de jure* stateless’ in keeping with ground realities and international consensus?

In these circumstances, and the various questions they pose, this section provides a summary account of Rohingya lives and their prospects in India, elaborates on the various reactions they have prompted and takes stock of the several efforts for interventions that are currently afoot. This forms the crux of this section and the lens through which the section on law should be understood.

### ***Introducing the Rohingyas in India***

Rohingyas have been known to have migrated to India since the late 1970s in a trickle and until a few years ago remained unknown. Protests in May 2012, when an estimated 3,000-4,000 Rohingyas squatted in Delhi, caused much alarm and made this stateless community visible. Demanding legal protection and aid, the group stated that the ‘asylum-seeker cards’ issued to them did not amount to legal protection. They demanded UNHCR documentation that would *recognise* them as refugees. In the Rajya Sabha, Sumitra Mahajan, a BJP MP, remarked that the journey of such a huge number of people travelling 2,500-3,000 km to reach Delhi raised concerns of the safety of local people and of Delhi. She also raised concerns of terrorism. In pointing to lacunae in the law, she asked how, in the

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<sup>6</sup> The names of all interviewees have been changed to protect their identity.

<sup>7</sup> ‘Govt calls meet on Rohingya Muslims’, *Daily Excelsior*, 7 July 2015, <http://www.dailyexcelsior.com/govt-calls-meet-on-rohingya-muslims/>, accessed on 2 August 2015.

<sup>8</sup> *Ibid.*

absence of a refugee law, protestors were asking for refugee cards and the government had announced it would give LTVs.<sup>9</sup>

Since India does not have borders with the province of Arakan, Rohingyas usually migrate to Bangladesh before travelling northwest into India. Some Rohingyas that I spoke with said they had lived in Bangladesh for up to a decade before travelling to India. The decision was made on the basis of what their compatriots had to say about conditions in India and the levels of insecurity faced there.<sup>10</sup> Karim, twenty-four, fled to Bangladesh around 1995 with two aunts, Ruksana and Shazia, and his cousins. He left behind his mother, Fatima, and younger sister. He lived in Bangladesh for around fourteen years. None in the family, I was informed, had registered with the UNHCR in Bangladesh. Karim's life revolved around catching fish and scrap-dealing to supplement the meagre family income. They migrated to India around five years ago and registered with the UNHCR. Karim has little recollection of his parents or contact with his younger sister. I was also told that his father died when his sister was about a year old and he was taken from his mother's custody, since she suffered from a 'mental illness'. Karim's life for the last fifteen-odd years has been one of dire poverty coupled with no legal existence. For the state, Karim is an illegal migrant who can be proceeded against not only for illegal entry but also failure to possess valid Myanmar identity documents. His mother apparently followed this route and is currently lodged in a jail in Balurghat, West Bengal, having been arrested *en route* to Jaipur. Another respondent was a young man of about twenty-five who grew up in Bangladesh. He said his mother had spent about twenty-five years there. His father left for Malaysia and now wants his family to move in with him.<sup>11</sup>

Hanifa came to India about six years ago around 2009 after having lived for about three years in Bangladesh. She says she was about five when she left Arakan, with her mother and two sisters. Her father was already in Saudi Arabia and her mother was preparing to leave to join him. She told me her brother died at that time and due to the shock of losing his son, her father also passed away. Her family felt unsafe in Bangladesh and left for Jammu via Dhaka with the help of a trafficker.

In the early years after arriving in India, Rohingyas seemed to have waited before approaching the UNHCR. Mehrana, one of the earliest arrivals in India with whom I was able to speak, registered with the UNHCR only in 2009 although she came to Jaipur in 2005.<sup>12</sup> When asked why she waited for so many years, she said she did not know there was an avenue in the form of the UNHCR. Rohingyas are extremely poor or may often migrate internally for better prospects or safety, another reason for not registering with the UNHCR. The caution evident in both Karim and Mehrana's story is also the result of strong reliance on informal and invisible information networks, a hedge against insecurities and threats, which span many countries. With the availability of technology, these networks have been strengthened and information flows facilitated.

Rohingyas began to be recognised by UNHCR after the protests in 2012. In several interviews it was noted that the UNHCR began issuing 'asylum-seeker cards' in 2011.<sup>13</sup> Registration prior to this period did not start the RSD process. An under-consideration certificate was given and

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<sup>9</sup> Lok Sabha Debates, 'Situation arising due to the arrival of refugees from Myanmar in Delhi', Sumitra Mahajan, available at <http://164.100.47.132/LssNew/psearch/Result15.aspx?dbsl=7319>, (accessed on 2 August 2015). Translation from Hindi by the author.

<sup>10</sup> Interview with Shazia, Jammu, 9 July 2015, Noor Mohammad, Jaipur, 16 July 2015, Mohammad Salim, Jammu, 7 July 2015.

<sup>11</sup> Interview with Abdul, Jaipur, 16 July 2015.

<sup>12</sup> Interview with Mehrana and Anwar (son), 18 July 2015, Jaipur. Similar was the case of Mohd. Tariq who arrived in India in around 2009 and was recognised as a refugee only in 2013. Interview with Mohd. Tariq, 16 July 2015, Jaipur.

<sup>13</sup> Interview with Mehrana and Anwar (son), 18 July 2015, Jaipur. Interview with Mohammad Mohammad Amir, 16 July 2015, Jaipur.

an interview fixed for a date about a year to a year and a half away.<sup>14</sup> There was a mandatory period of six months before which asylum-seekers were not to contact the UNHCR enquiring about results.<sup>15</sup> In 2012, following protests, some policy announcements were made. It was stated :

...following discussions with the Government of India, UNHCR has been informed that the Government will give them long stay visas that will allow them to legally remain in India, based on their UNHCR asylum-seeker cards. For this purpose, they need to return to their places of residence in India and approach the local Foreigner's Registration Officers (FRO).<sup>16</sup>

### *The Nature of Refuge*

Rohingyas, a highly mobile group,<sup>17</sup> have found refuge and shelter in the literal and figurative margins. In Jammu,<sup>18</sup> Mewat,<sup>19</sup> Delhi,<sup>20</sup> and Jaipur,<sup>21</sup> they show a remarkable similarity in living conditions in that a majority live in slums, slum-like settlements or unauthorised colonies. Some reports describe the slums or slum-like settlements as 'camps' though officially neither the Indian government nor the UNHCR considers them as such. A report of in the *Times of India* dated 20 November 2014 described the settlement in Jammu as the only officially recognised 'camp'.<sup>22</sup> The article said, 'While an official camp for Rohingyas, under the United Nations High Commissioner for Refugees (UNHCR), is located in Jammu, members of the community are spread across India,

<sup>14</sup> Same interviews. In Mehrana's case, an asylum-seeker card was issued in August 2011 and refugee cards given in February 2014.

<sup>15</sup> Several of the interviewees currently awaiting results showed a slip stating that UNCHR would contact the application within six months, and clearly indicating that the office should not be contacted before the expiry of the six-month period.

<sup>16</sup> For reports about the protests, see Zarni Mann, 'Rohingya Protesters in Delhi Urged to Leave', *Irrawaddy*, 16 May, 2012, <http://www.irrawaddy.org/refugees/rohingya-protesters-in-delhi-urged-to-leave.html>, accessed on 24 February 2015, and S. Bhattacharya, 'India's Myanmar refugees get visas after month of protests in Delhi', *The Nation*, 17 May 2012, <http://www.thenational.ae/news/world/south-asia/indias-myanmar-refugees-get-visas-after-month-of-protests-in-delhi>, accessed 12 August 2012. See also 'Summary conclusions of meeting with representatives of asylum-seekers from northern Rakhine State, Myanmar, 2012, UNHCR, <http://www.unhcr.org.in/pages/showmainstory/10>, accessed 11 August 2012.

<sup>17</sup> See, for instance, Bindu Shajan Perappadan, 'Rohingya asylum seekers back in Delhi', *The Hindu*, 18 May 2012, <http://www.thehindu.com/news/national/rohingya-asylum-seekers-back-in-delhi/article3433267.ece>, accessed on 22 February 2015.

<sup>18</sup> Twenty-two localities spread across the city and its suburbs. A significant majority of the families live in squatter settlements. Typically, a group of families rent a small piece of land from a private owner. Jammu settlements appear like camps but are not officially designated as such; people live in close proximity in each *basti* but have spread out because of lack of space and the competition with respect to employment. This city has the largest population of Rohingyas. For a preliminary account of Rohingyas in Jammu, see 'National Consultation on the Right to Survival, Protection and Education of Children of refugees, migrants and stateless persons in India', Development and Justice Initiative, 2012, unpublished.

<sup>19</sup> Six plots of land most concentrated in Nuh tehsil, about three hours drive from New Delhi. See also, 'Rohingya Refugees and Asylum Seekers in India: A Situational Analysis', UNHCR India, February 2014.

<sup>20</sup> Rohingyas are scattered in Delhi. Delhi has a mixed settlement type. There are slum-like settlements such as in Madanpur Khadar, a resettlement colony, adjoining Shaheen Bagh and Khajuri Khas in northeast Delhi as well as scattered families over various unauthorized colonies living in Jahangirpuri, Vikaspuri and Uttam Nagar. In Madanpur Khader, a slum housing about seventy families is on land owned by a non-governmental organisation, Zakat Foundation, 'which collects and utilizes 'zakat' or charity for socially beneficial projects in a transparent and organized manner.' The organization has been providing assistance to the Rohingyas since 2012. <http://www.zakatindia.org/AboutUs.html>, accessed on 2 March 2015.

<sup>21</sup> Around 100 families live in and around Hatwara, a predominantly Muslim-populated locality near the railway station. This comprises a few slum hutments running parallel to an open sewerage at the edge of the unauthorized colony.

<sup>22</sup> See note 4.

including some parts of Kolkata. There are nearly 20-25,000 Rohingyas (sic) living in India, most of them in Jammu.<sup>23</sup>

The term 'camp' in its classical sense denotes some organisation and management of the refugee population. It would be more appropriate to understand these spaces as they are officially described, i.e. slums or slum-like settlements. Employing official labels reveals not only the reasons for the lack of basic facilities but also allows us to understand the limits of the law that is invoked in support of refugee rights.

These habitations are defined by open sewerage systems, lack of sanitation, and absence of water or electricity. Excepting in Mewat, Rohingya settlements are located in urban areas. Slums/unauthorised colonies occupy densely populated government or private land that are central to the imagination of the city. The master plans of cities view slums as an aberration that ought to be improved, while slum-dwellers should be 'resettled',<sup>24</sup> so that 'world-class' cities can emerge as new locales for growth and industry. Slums, however, host more than half of the country's urban population. From the perspective of refugee protection policy, it is relevant to ask how scholarship on slums may inform refugee management and care. How would an indeterminate body of refugee law, inherently capable of being withdrawn, speak to demands for shelter, health care, education and food? In what ways can these fundamental rights be invoked by Rohingyas as slum-dwellers?

In this typology of housing, the best-case scenario of being a *refugee*, which formally provides legal status, does not always assure safety, security or economic mobility. In situations of unsuccessful claim-making or when claims are under consideration by the UNHCR, arrest, harassment or other hazards can follow. In all the four areas, evictions and the non-renewal of informal lease agreements are common.<sup>25</sup> Settlements with a concentration of Rohingyas may not attract such risks in Jammu, but they do in Mewat and Jaipur. A group of about fifty families living on a government plot a few kilometres from Chandeni near Mewat district's headquarters, Nuh, was asked to shift in around the third week of February 2015.<sup>26</sup>

Even when not evicted, families move in search of employment, to be in close proximity to the UNHCR, escape harassment or look for cheaper accommodation. There is a slow yet consistent effort to build social ties with the neighbourhood, supporting organisations and enforcement agencies. The temporary and unreliable nature of informal sector work requires a concerted effort to build a relationship with, for instance, *thekedars* or middlemen, welfare organisations and landlords. In the process, community 'leaders' mediate in case of labour disputes or skirmishes in the locality. It is not uncommon for such leaders to intervene and broker peace between locals or Rohingyas on the request of the local police.<sup>27</sup> The loss of a home obviously has an adverse impact on employment, the ability to build local social ties, acquiring documents such as LTVs, for which proof of residence is required.

<sup>23</sup> Jayanta Gupta, 'Khalid's arrest sparks off debate on Rohingyas in India', *Times of India*, 20 November 2014, <http://timesofindia.indiatimes.com/india/Khalids-arrest-sparks-off-debate-on-Rohingyas-in-India/articleshow/45220794.cms>, accessed on 19 July 2015.

<sup>24</sup> While scholarship on slums and slum policies are far too many to cite, I would like to note some that have focused on Delhi. See the set of research papers on the website of the Centre for Policy Research under their 'Cities of Delhi' project (<http://citiesofdelhi.cprindia.org/about/>, accessed on 19 July 2015). See also, D. Asher Ghertner, 'Analysis of new legal discourse behind Delhi's slum demolitions', *Economic and Political Weekly* Vol. 43, No. 20, 2008, pp. 57-66, Tarangini Sriraman, 'Enumeration as Pedagogic Process: Gendered Encounters with Identity Documents in Delhi's Urban Poor Spaces', *South Asia Multidisciplinary Academic Journal*, 8/2013, <http://samaj.revues.org/3655>, accessed on 15 July 2015.

<sup>25</sup> Interview with Abdul Salam, 16 July 2015; Mohammad Amir, 16 July 2015; and Mohd. Tariq, 16 July 2015.

<sup>26</sup> Interviews with Mohammad Najeeb, Abdul, Sikander and Ali, Mewat, 12 February 2015.

<sup>27</sup> Interview with Mohd. Hamid, Jammu, 7 July 2015.

The last few years have seen an engagement by several organisations with the Rohingyas and their concerns. Much has been written about the Rohingyas, especially in the English-language media.<sup>28</sup> Many ethnographic and baseline studies have been carried out by the UNHCR and its collaborating NGOs, focusing on Rohingyas but also generally analysing urban spaces, self-reliance and refugee lives.<sup>29</sup> Interventions have been made in the areas of education, access to health care and provision of household needs. The social welfare wing of Jamaat-e-Islami Hind allows all recognised refugees free treatment at Al Shifa hospital near Jamia Nagar in Delhi.<sup>30</sup> The Sakhawat Centre in Jammu, the Zakat Foundation in Delhi and Tayyab Trust based in Deoband have not only provided humanitarian assistance in times of crisis, but appear to be engaging with the Rohingyas from a more sustained and long-term perspective. In Delhi, the Zakat Foundation's property has been let out to fifty-four families.<sup>31</sup> Discussions are underway on how housing conditions can be improved and, whether over time, Rohingyas may shift from slum-like settlements to concrete houses.<sup>32</sup>

In addition, legal intervention has aimed at compelling state authorities to implement schemes and programmes on the strength of the argument that even as non-citizens Rohingyas are entitled to a minimum of charity and protection under the Indian constitution and statutory enactments.<sup>33</sup> In 2013, two Rohingya refugees filed a writ petition under Article 32 of the constitution in the Supreme Court seeking a number of directions against the central government and the governments of Delhi and Haryana praying for basic facilities. It argued that the Rohingyas, who have suffered persecution, violence and displacement in Myanmar, are being subjected to further violations of the rights to life, maternal health and basic human dignity. It noted that Rohingyas live in deplorable conditions in 'makeshift camps'<sup>34</sup> in Delhi and Mewat where basic medical care, education and an atmosphere conducive for life of dignity are denied. The petition made it clear that it '...does not seek changes to the official refugee status of this community...', but only humanitarian assistance.<sup>35</sup>

The outcomes of these interventions, especially with respect to education, health care and housing, are uneven. Organisations such as the Development and Justice Initiative (DAJI), an

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<sup>28</sup> For some stories focusing on living conditions, employment and local civil society interventions, see, 'Muslim organization from Kerala extends helping hand to Rohingya refugees', *Two Circles*, 24 May 2015, [http://twocircles.net/2015may24/1432446533.html#.VXEp\\_XW1Gko](http://twocircles.net/2015may24/1432446533.html#.VXEp_XW1Gko), accessed on 2 August 2015; 'Delhi Slum Better Than Life in Myanmar, Rohingyas Say', Radio Free Asia, 19 May 2015, <http://www.rfa.org/english/news/myanmar/india-rohingya-05192015101001.html> (accessed on 29 June 2015); Navtan Kumar, 'Burmese Muslim refugees in Delhi, search for haven in J&K', *Sunday Guardian*, 2 November 2013, <http://www.sunday-guardian.com/news/burmese-muslim-refugees-in-delhi-search-for-haven-in-jak>, accessed on 2 August 2015; Nandita Sengupta, 'Delhi plays reluctant host to Myanmar's nowhere people', Times News Network, 26 May 2012, accessed on 29 June 2015.

<sup>29</sup> 'Rohingya Refugees and Asylum Seekers in India: A Situational Analysis', UNHCR India, February 2014; 'National Consultation on the Right to Survival, Protection and Education of Children of refugees, migrants and stateless persons in India', Development and Justice Initiative, 2012, unpublished; 'Report of the Rohingya Refugee Camp, Kalindi Kunj', Human Rights and Law Network, New Delhi, 2012, available at <http://www.hrln.org/hrln/reproductive-rights/reports/1626-rohingya-refugee-camp-kalindi-kunj-new-delhi-november-2012.html>, accessed on 12 January 2015; 'Urban profiling of refugee situations in Delhi: Refugees from Myanmar, Afghanistan and Somalia and their Indian neighbours: A comparative study', UNHCR, 2013, pp. 12-13.

<sup>30</sup> Interview with Mohammad Nayyar, production manager, MMI Publishers, 16 February 2015.

<sup>31</sup> Interview with Imtiaz Siddiqui, director, Zakat Foundation, New Delhi, 1 July 2015. Zakat Foundation's website can be accessed at <http://www.zakatindia.org/>.

<sup>32</sup> Meeting with Asim Qasmi, chairman, Tayyab Trust, Jammu, 9 July 2015. Tayyab Trust's website can be accessed at <http://www.thetrustofindia.org/about-us.html>.

<sup>33</sup> Jaffar Ullah and Anr v Union of India, W.P(C) No. 859 of 2013, Supreme Court, pending. Copy of the writ petition was accessed on the website of Human Rights & Law Network ([www.hrln.org](http://www.hrln.org))

<sup>34</sup> *Ibid*, para 1.

<sup>35</sup> *Ibid*.

implementing partner of the UNHCR, are mandated to ‘create awareness in the community about the importance of education...’ and persuade ‘...schools and authorities to enhance access for refugee children’.<sup>36</sup> District education officers have issued instructions to government schools to enrol Rohingya children as is reported in Jaipur, Jammu and Mewat.<sup>37</sup> In the absence of a policy, one of the recurring concerns with respect to education is the failure to enrol children in grades that match their age. Schools in Jammu for instance, insist on all children being enrolled in grade/standard/class 1. Organisations like the DAJI focus on children between six and eight.<sup>38</sup> Enrolment involves considerable documentation with no clear guidelines on whether UNHCR documentation is universally acceptable. Even when this hurdle is crossed, as in Jaipur and Mewat, birth certificates and a rent agreement as proof of residence are mandatory. For children with no birth certificates, the procedure under the Registration of Births and Deaths Act, 1969, is long drawn out, requiring an order from a magistrate. Even at the best of times, many children are likely to be denied formal schooling. Informal literacy classes, involvement of refugees as teachers, and open schools have been initiated.<sup>39</sup>

Migration is seldom linear; interruptions are integral parts of forced migration, with decisions to flee dependent on the invisible and yet thriving network of information. Escape can be temporary and refuge can be just one of many objectives. Recognising these factors and being aware that most Rohingyas have fled poverty and blocked access to education, linked directly to the Myanmar government policy of institutional discrimination and denationalisation, the idea of refuge may not match the definition of a refugee provided in the 1951 refugee convention. Second, while the efforts of various organisations, including those who have no direct collaboration with the UNHCR, are ‘life-sustaining’, transforming conditions of slums and springing the poverty trap should remain central to the Rohingya debate. Slums are contested spaces, where slum-dwellers are caught in ambiguities of legal interpretation of slums and governmental policy.<sup>40</sup> Existing scholarship on slums reminds us that slums or illegal settlements have only further marginalised their dwellers.<sup>41</sup>

### Legal Status of Rohingyas

In the course of over five decades, governments in Myanmar have discriminated against Rohingyas, failing to count them as a ‘national race’ or even a distinctive linguistic, religious and cultural group. Officially, they are Bengalis.<sup>42</sup> One of the important prerequisites to claiming citizenship under the Burmese Citizenship Act of 1982 is to be counted among the more than hundred national races.

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<sup>36</sup> Booklet of Development and Justice Initiative, undated.

<sup>37</sup> Meeting with Vishnu Swamy, district education office, education department, Jaipur, 17 July 2015, Jaipur.

<sup>38</sup> Interview with Rena Sanyal, programme manager, Jammu, Development and Justice Initiative, 6 July 2015.

<sup>39</sup> Interview with Abdul Rashid, administrator, Sakhawat Centre, J&K, Jammu, 10 July 2015.

<sup>40</sup> While scholarship on slums and slum policies are numerous, I would like to note some that have focused on Delhi. See the set of research papers on the website of the Centre for Policy Research under their Cities of Delhi project (<http://citiesofdelhi.cprindia.org/about/>). See also, D. Asher Ghertner, Analysis of new legal discourse behind Delhi's slum demolitions, *Economic and Political Weekly* Vol. 43, No. 20, 2008, pp. 57-66, Tarangini Sriraman, ‘Enumeration as Pedagogic Process: Gendered Encounters with Identity Documents in Delhi's Urban Poor Spaces’, *South Asia Multidisciplinary Academic Journal*, 8/2013, <http://samaj.revues.org/3655>, accessed on 19 July 2015

<sup>41</sup> See note 28.

<sup>42</sup> See Martin Smith, ‘The Muslim Rohingya of Burma’, 11 December 1995, unnumbered, p. 8, <http://www.netipr.org/policy/downloads/19951211-Rohingyas-of-Burma-by-Martin-Smith.pdf>, accessed on 1 August 2015; ‘The Government Could Have Stopped This, Sectarian Violence and Ensuing Abuses in Burma's Arakan State’, Human Rights Watch, 2012, p. 5.

Under this act, the Rohingyas have to prove that their ancestors lived in Burma before 1823. An insignificant number of Rohingya Muslims have been able to claim 'associate citizenship'.<sup>43</sup>

In the latest round of a citizenship verification process initiated in early 2015 under the 1982 law, Rohingyas were asked to identify themselves as Bengalis and provide evidence of three generations of ancestry to be eligible as naturalized citizens. Chris Lewa of the Arakan project notes that 169 individuals were granted citizenship as part of a pilot initiative in Myebon Township, southeast of Sittwe, but the drive was stopped following protests by Rakhine Buddhists. Lewa argues that citizenship has changed little because Rohingyas in Myebon Township have been confined to camps for internally displaced people and not allowed to travel.<sup>44</sup> Later reports reiterate this situation.<sup>45</sup> Susan Cunningham also argues that citizenship for a handful (400 in her account) has not allowed exercise of rights; Rohingyas do not have access to government jobs, education or the right to live in areas where Rakhines live.<sup>46</sup>

Against this backdrop, under international law, a Rohingya is considered *de jure stateless*, i.e. "...a person who is not considered as a national by any State under the operation of its law".<sup>47</sup> It is in these circumstances that the Rohingya Muslim migration into India should be seen.

### A Remodelled 'Refugee Policy'

Under the domestic Indian legal framework, an indeterminate<sup>48</sup> body of judge-made law and delegated legislation constitutes 'refugee law'. The foundation is the constitution; legislation and executive/administrative actions must conform to constitutional provisions and, conversely, legislation or administrative/executive action that is violative of fundamental rights can be struck down by courts. Since 1978, the case of *Maneka Gandhi v Union of India* interpreted Article 21 to mean that a legislative provision depriving a citizen of fundamental right should do so under a procedure that is just, fair and reasonable. The constitutional validity of legislation or administrative action was now to be adjudicated in accordance with Articles 14, 19 and 21. Over several decades, the scope, meaning and ambit of Articles 14 and 21 witnessed a critical development. The case of *Maneka Gandhi v Union of India*<sup>49</sup>, and others that followed,<sup>50</sup> held that not only should legislation be in tune with fundamental rights, but the procedure for any deprivation of rights under Article 21 had to be 'just, fair and reasonable'.<sup>51</sup> This, along with other constitutional provisions, constitute the bases on which the judiciary has interpreted the rights of refugees. Several academics and lawyers

<sup>43</sup> Chris Lewa of the Arakan Project is a long-time researcher and activist associated with Rohingya issue. See also Susan Cunningham, 'Do Myanmar's Rohingya Really Need Citizenship Now?' *Forbes Asia*, 7 August 2015, [http://www.forbes.com/sites/susancunningham/2015/07/04/do-myanmars-rohingya-really-need-citizenship-now/?commentId=comment\\_blogAndPostId/blog/comment/2947-2390-35](http://www.forbes.com/sites/susancunningham/2015/07/04/do-myanmars-rohingya-really-need-citizenship-now/?commentId=comment_blogAndPostId/blog/comment/2947-2390-35) accessed on 1 August 2015.

<sup>44</sup> Email communication with Chris Lewa, Arakan Project, 26 February 2015.

<sup>45</sup> Tin Thein, Green card meetings in Akyab and Maungdaw', *The Burma Times*, 16 July 2015, available at <http://burmatimes.net/green-card-meetings-in-akyab-and-maungdaw/>, accessed on 3 August 2015.

<sup>46</sup> *Ibid.*, supra note 2; see Susan Cunningham, 'Do Myanmar's Rohingya Really Need Citizenship Now?' *Forbes Asia*, 7 April 2015, [http://www.forbes.com/sites/susancunningham/2015/07/04/do-myanmars-rohingya-really-need-citizenship-now/?commentId=comment\\_blogAndPostId/blog/comment/2947-2390-35](http://www.forbes.com/sites/susancunningham/2015/07/04/do-myanmars-rohingya-really-need-citizenship-now/?commentId=comment_blogAndPostId/blog/comment/2947-2390-35), accessed on 1 August 2015.

<sup>47</sup> Article 1, Convention Relating to the Status of Stateless Persons, 1954; see also Article 6(B), Statute of the Office of the United Nations High Commissioner for Refugees.

<sup>48</sup> See also, Rajeev Dhavan, 'Refugee Law and Policy in India', PILSARC, 2004, for a composite account of refugee policy, the legal framework and its evolution. Although more than a decade old, this and other accounts of India's refugee policy provide a historical and legal account that remains relevant. Other references include: Ragini Trakroo Zutshi (ed.), *Refugees and the Law*, HRLN, 2007.

<sup>49</sup> (1978) 2 SCR 621.

<sup>50</sup> Sunil Batra v Delhi Administration, (1979) 1 SCR 392; Bachan Singh v State of Punjab, (1980) 2 SCC 684.

<sup>51</sup> Mithun v State of Punjab, (1983) 2 SCR 690, pp. 698-99.



have analysed the import of these precedents, the nature of refugee law and the various subjects that it covers.<sup>52</sup> RSD, the principle of non-refoulement and access to basic rights have been recognised as being an integral part of Articles 14 and 21, and the right to equality and life.

From this position, we may examine what this new variety of domestic refugee law means for India's management of and care for refugees. To appreciate policy development, it is pertinent to note that Rohingyas in India occupy a field that covers both mandate as well as non-mandate refugees, categories that are central to understanding refugee law.

### ***Mandate and Non Mandate Refugees***

'Mandate refugees' is a term referring to nationals who do not migrate from India's immediate neighbourhood (except from Myanmar).<sup>53</sup> The UNHCR, under the aegis of the United Nations Development Programme, discharges its functions by conducting RSD and outsourcing protection functions to various local NGOs that work as implementing and operational partners. Under this policy, refugees from Africa (Congo, Sudan, Somalia, Eritrea), the Middle East (Afghanistan, Syria, Palestine, Iran, Iraq) and Myanmar (Chins, Kachins, Burmans, Rakhines and most recently, the Rohingyas) have sought asylum. Successfully seeking asylum, opens three possibilities: resettlement, repatriation or integration in India.

Some categories of mandate refugees (Chins, Kachins, Burmans and Rakhines from Myanmar, ethnic Afghans [Muslims]) have been issued with residence permits, signifying tacit recognition as refugees by India. A large number of Chins, a number of Afghans and a few from the African continent have been resettled over a period of time. Overall, the Indian government has formally allowed access to government schools and hospitals, reiterating its tacit acceptance of refugees on its soil. The aspiration for citizenship has, however, never been articulated in most of the discussion on mandate refugees.<sup>54</sup> It is pertinent to note that mandate refugees have primarily aspired for resettlement. In the case of non-mandate refugees, the UNHCR has almost no role to play. They include Tamil asylum-seekers from Sri Lanka, Tibetans, Chakmas from the Chittagong Hill Tracts, and the minority communities from Bangladesh and Pakistan. Myanmarese<sup>55</sup> and Afghan refugees<sup>56</sup> have been granted residence permits, the Tibetans have been issued with registration certificates, identity certificates and special entry permits.<sup>57</sup> The Indian government's policy towards Bangladeshi and Pakistani Hindus has been to issue them with LTVs until their application for citizenship is processed. It is against this background that the Rohingya LTV policy makes for an interesting debate. The Indian government has implied a RSD system, a function in the exclusive domain of the UNHCR in the absence of an existing RSD system, which is a 'standard operating

<sup>52</sup> *Ibid.*; See also, Ranabir Samaddar (ed.), *Refugees and the State: Practices of Asylum and Care*, 1997-2000, Delhi, 2003.

<sup>53</sup> See UNHCR, Figures at a glance,

[http://www.unhcr.org.in/index.php?option=com\\_content&view=article&id=3&Itemid=125](http://www.unhcr.org.in/index.php?option=com_content&view=article&id=3&Itemid=125), accessed on 18 July 2015.

<sup>54</sup> Most literature on mandate refugees has not considered the possibility of citizenship. On the other hand, a discussion on mandate refugees has often opened up the most vexed question of refugee law for India. It may not be incorrect to also state that no mandate refugees have themselves sought citizenship in India; their aspirations have always been to be settled in a third country.

<sup>55</sup> Sahana Basavapatna, 'Counting the Migrant in India: Forced Migration and the Identification Project' in Ashish Rajadhyaksha (ed.), *In the wake of Aadhar: The digital ecosystem of governance in India*, Centre for the Study of Culture and Society, Bangalore, 2013, pp. 446-447.

<sup>56</sup> 'Abandoned and Betrayed: Afghan refugees under UNHCR protection in New Delhi', South Asia Human Rights Documentation Centre, November 1999, pp. 30-33.

<sup>57</sup> 'Tibet's Stateless Nationals II: Tibetan Refugees in India, A Report', Tibet Justice Centre, September 2011, pp. 44-50 available at <http://www.tibetjustice.org/reports/stateless-nationals-ii/stateless-nationals-ii.pdf>, accessed on 3 August 2015.

procedure' to "to deal with foreigners",<sup>58</sup> issue LTVs without any indication that citizenship will ensue and the clear official recognition that Rohingyas are refugees while legally resident in India. The following is a note on this policy and its legal implications.

### *India's Refugee Determination System*

In June 2012, the Foreigners Division of the MHA issued executive instructions to FRROs/FROs to aid them in gathering information with respect to application for LTVs from Myanmarese refugees. Their recommendations were the basis on which the MHA would decide to grant or refuse LTVs. The reports were to contain:

1. Complete details of the reasons for leaving the originating country and the version of the foreign national making such claim;
2. Manner in which entered – border checkpoint etc.;
3. Documents possessed by the foreigner – issued by anybody either in India or abroad;
4. Full justification for claiming status as refugee, i.e. whether on the grounds of well-founded fear or persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion;
5. Explicit opinion about whether an LTV could be considered or not.<sup>59</sup>

In response to a question regarding refugees by Maheish Girri dated 5 May 2015 in the Lok Sabha, the minister of state for home affairs, Kiren Rijiju, answered that '[o]nly Standard Operating Procedure are issued by Ministry of Home Affairs to deal with foreign nationals in India, who claim to be refugees'.<sup>60</sup> It was also stated that 'Long Term Visas are granted to refugees based on existing guidelines after due security verification etc which permits them to access facilities at par with other foreigners...'<sup>61</sup> and were valid initially for one year 'which can be renewed every year on case to case basis on merit'.<sup>62</sup> The executive instructions were characterised as an RSD by the Indian government.<sup>63</sup> They were described by the MHA as a system to guard against 'possibilities of misuse of law by illegal economic migrant by way of wrongful representation of facts'. It added that '[t]here are also reports of foreign nationals having entered the country without documents'.<sup>64</sup>

### *Constitutional Basis and Legal Validity of the 'Refugee Determination System'*

Articles 245 and 246 read with entries 17 to 19 and 97 on list I of the seventh schedule of the constitution, give powers to the central government to frame laws with respect to matters that broadly fall under subjects relating to foreigners, aliens and immigration. Articles 245 and 246 are about the legislative powers of parliament and state legislatures. Read together, these two articles mean that parliament has exclusive powers to make laws with respect to matters enumerated in list I of the seventh schedule and the union list of the constitution.

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<sup>58</sup> *Infra* note 76.

<sup>59</sup> "Case of registration in respect of Myanmar nationals Claims to be refugees – reg. No. 18029/23/2012-F-IV", 11 July 2012, Ministry of Home Affairs, Government of India.

<sup>60</sup> Press Release, Refugee Determination System, Minister of State for Home Affairs answer in the Lok Sabha, Press Information Bureau, Government of India, 5 May 2015, <http://pib.nic.in/newsite/mbErel.aspx?relid=121170>, accessed on 1 August 2015.

<sup>61</sup> *Ibid.* *Supra* note 40.

<sup>62</sup> Reply dated 12 March 2015 to a RTI application by the author dated 15.1.2015 by Foreigners Division, Ministry of Home Affairs, Government of India.

<sup>63</sup> *Ibid.* *Supra* note 76.

<sup>64</sup> *Ibid.*

Further, under articles 73(1)(a) and (b), the executive power of the union extends to ‘all matters with respect to which Parliament has power to make laws’ and to ‘the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement’. Executive power is co-extensive with the legislative competence of the union. The case of *Ram Jawaya v State of Punjab*<sup>65</sup> interpreted Articles 73 and 162<sup>66</sup> and held that these provisions neither defined ‘executive function’ nor what activities would legitimately come within its scope. Article 73 implies that the power of the central government extend to matters on which parliament is competent to legislate. It is not confined to matters over which legislation has been passed already. The constitution does not strictly follow the doctrine of separation of powers. It can exercise the powers of departments or subordinate legislation when such powers are delegated to it by the legislature. It can also exercise judicial functions in a limited way but not go against the provision of the constitution or any other law.<sup>67</sup> The foregoing speaks of two ways in which a valid law may be made. One is in the form of delegated/subordinate legislation under an existing and valid statute and another through the exercise of executive functions under Article 73. A reply by the MHA to an RTI application states that these instructions have been passed under the Foreigners Act, 1946.<sup>68</sup> This act is validated by the constitutional framework.<sup>69</sup>

Section 3 of the act gives powers to the central government to make an order providing ‘either generally or with respect to all foreigners or with respect of any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure there from or their presence or continued presence therein’.

The executive instructions on LTVs may thus be said to be subordinate/delegated legislation. The power to delegate is also clear from a reading of section 12, Foreigners Act, 1946, which permits sub-delegation of authority to carry out the aims of objectives and orders passed under it. If it is thus established that executive instructions are pieces of subordinate/delegated legislation, it is a principle of law upheld by courts that such legislation should comply with the parent statute.<sup>70</sup> Subordinate/delegated legislation cannot go against the grain of the statute under which it is purported to be passed. This development marks a break from the *status quo*. If it is to be understood as a creation of a system of RSD, such a step is unprecedented.

### ***Potential Legal Hurdles in the Remodelled Asylum System***

What is the mechanism that is envisaged in this RSD? What relationship does this mechanism have with the UNHCR’s RSD, which covers all mandate refugees? Are there potential constitutional concerns that arise with this new system, the contours of which are unclear?

In 2003, Rajeev Dhavan, a Supreme Court lawyer and at that time the head of an organisation called PILSARC, the operational partner of the UNHCR, was asked by the National Human Rights Commission to respond to the Model Law on Refugees. Since the terms of reference for the query were vague, Dhavan set out ‘...to examine broader issues and controversies relating to the Convention of 1951 and the constitutional and legal regime on the protection of foreigners in

<sup>65</sup> AIR 1955 SC 549.

<sup>66</sup> Extent of executive power of the state.

<sup>67</sup> Supra note 21, para 7 at p. 554 and para 12 at p. 556. (*Ram Jawaya*, AIR 1955 SC 549).

<sup>68</sup> Reply dated 12.3.2015 to RTI application by the author dated 15 January 2015 by Foreigners Division, Ministry of Home Affairs, Government of India.

<sup>69</sup> *Ibid*.

<sup>70</sup> See *B.N. Nagarajan etc v State of Mysore*, AIR 1966 SC 1942; *Sant Ram Sharma v State of Rajasthan*, AIR 1967 SC 1910; *Secretary, Government of Karnataka v Umadevi and Ors*, AIR 2006 SC 1806.

general and refugees in particular'.<sup>71</sup> He advised that '[g]enerally, the Model law is based on a judicialised model, which needs to be discussed further....But this can be done during the parliamentary process. In other words, it is not necessary to refine the Bill further. It should be introduced in Parliament...'. He concluded that short of parliamentary legislation, "immediate and interim reliefs" can be provided by 'enacting rules through the Foreigner Act 1946 which (a) defines refugee according to the model law (b) sets up a process of refugee determination (c) enshrines the principle of non-refoulement and (d) provides basic protections'.<sup>72</sup> In 2006, Dhavan, in an opinion titled 'Refugee protection by executive action',<sup>73</sup> argued that a refugee-protection system can be drawn up by executive action or under the Foreigners Act, 1946.

The executive instructions issued in 2012 appear to be in that vein, i.e. under the Foreigners Act, 1946. The executive has adopted the definition of refugee as per the 1951 refugee convention, overtly recognised a class of foreigners as refugees and guaranteed the most basic protection by issuing a document legalising stay. A perusal of the executive instructions does not, however, indicate any 'process of refugee determination' that conforms to the principles of natural justice and fair hearing. Does refugee law now have to reckon with two parallel systems of RSD? Are there points of convergence between the purported state mechanism and the UNHCR process? If not, what purpose does the mechanism envisaged by the central government serve? Is RSD conducted by the UNHCR the basis for a further independent scrutiny by the government of India?

Refugee law recognises that everyone, including a refugee and a stateless person, can exercise fundamental rights under Article 14.<sup>74</sup> An important facet of the equality principle is a guarantee against arbitrariness; 'equality is antithetic to arbitrariness'.<sup>75</sup> Such a guarantee includes the requirement of every state action to be fair<sup>76</sup> and procedural safeguards to minimise the risk of an arbitrary order. The right to hearing or the *audi alteram partem* rule, has been held to enforce the equality clause under article 14 and applies to both quasi-judicial and administrative orders.<sup>77</sup> In *Maneka Gandhi v Union of India*, principles of natural justice were held to be an integral part of the guarantee of equality in Article 14.

Further, can these instructions be challenged on the grounds of violation of the principles of fairness, natural justice and the right to be heard under article 14? The executive instructions in themselves provide merely specific instructions to the FRROs/FROs to send their reports. There is nothing to indicate who processes the LTV application, whether an opportunity is given to the applicant to present the reasons for fleeing and in case of rejection, the grounds for rejecting the application. No appeal provision/mechanism is indicated. Is it a quasi-judicial role such as is envisaged under the Citizenship Act, 1955, or the Passports Act, 1967?

The Foreigners Act, 1946, regulates the entry, stay and exit of all foreigners. The restrictions imposed on foreigners have been held to be constitutionally valid in a number of decisions; courts have held, in cases involving deportation,<sup>78</sup> that plenary powers of the central government over matters that touch upon internal security and sovereignty are unrestricted and they will not

<sup>71</sup> Rajeev Dhavan, "On the Model Law for Refugees: A Response to the National Human Rights Commission (NHRC)", 2003, Para 1.4.

<sup>72</sup> *Ibid.*, paras 7.12 and 7.13.

<sup>73</sup> Rajeev Dhavan, "Refugee protection by executive action", PILSARC, 2006, unpublished.

<sup>74</sup> See *Vincent Ferrer v District Revenue Office, Anantpur*, AIR 1974 Andhra Pradesh 313, at 314 where the court held that a foreign national is entitled to equality before the law and equal protection of laws guaranteed by Article 14.

<sup>75</sup> *E.P. Royappa v State of Tamil Nadu*, AIR 1974 SC, p. 555.

<sup>76</sup> *Delhi Transport Corporation v DTC Mazdoor Congress*, AIR 1991 SC 101, p. 196.

<sup>77</sup> *Union of India v Amrik Singh*, AIR 1991 SC, p. 564.

<sup>78</sup> *Hans Muller of Nuremberg v Superintendent Presidency Jail, Calcutta*, AIR 1955 SC, p. 367; *P. Mohammad Khan v State of Andhra Pradesh*, 1978 Andh WR (HC) 408 and *Tudor Gunasekhar Jayavrdene v Government of India*, (1982) 2 Mad LW (Cri) 175, *Gilles Pfeiffer v Union of India*, AIR 1966 Mad 322, 330-333.

adjudicate on such questions.<sup>79</sup> The powers exercised by authorities under the Foreigners Act, 1946, are not, however, entirely unguided. Under Section 9, the burden of proving that a person is not a foreigner is on the person against whom the allegation is made. Courts have held that affording an opportunity to the alleged foreigner to discharge the burden under Section 9 is sacrosanct.<sup>80</sup>

The RSD procedure is unlike an order of deportation for which the courts have held that principles of natural justice do not apply. Representation made to the UNHCR is that it should provide reasons for rejection (which is absent in India at the moment) so that appeals may be on a sound footing is also testimony to the fact that a fair procedure is in-built in the law governing RSD.

Further, fundamental rights and duties in parts III and IV of the constitution have been read together in furthering some of the basic procedural and substantive rights of refugees. Under Article 51(c),<sup>81</sup> read with Article 21, the higher judiciary has included the opportunity to undergo RSD and the right not to be deported as a fundamental right to life.<sup>82</sup> In effect, this body of judge-made law has trumped the state's power to illegally detain or deport refugees and ensure that claimants have the opportunity to undergo RSD. Government orders/guidelines giving executive instructions are silent on all of these aspects. It is unclear what procedure is envisaged, whether an interview as detailed as the one carried out by the UNHCR will be undertaken and whether there is a right to appeal. The failure to set up a mechanism that guarantees procedural fairness would not only be violative of Article 14 but also Article 21.

The current practice also strengthens the argument that there is barely any procedural safeguard in the LTV mechanism. Typically, applications are made online (or at the local FRO) and the proof is the 'refugee card', a letter from the UNHCR stating that the individual is a refugee as recognised by it with details of its family and proof of residence. It appears from applications made so far that the LTV procedures are akin to those for a residence permit, which must be possessed by every foreigner in India on a valid visa and intending to stay in India for more than 180 days.

Lastly, there is much that is not clear about the process. According to information available from the MHA and FRRO, long-stay visas, stay visas/residence permits are issued by the FRRO. This process involves, for refugees, an application to the FRRO, a letter from the UNHCR confirming that the applicant is a recognised refugee, utility documents as proof of residence and a letter from a house-owner confirming residence. Media reports have quoted the MHA as having said that on the basis of the verification conducted by the FRRO or FRO, it will further verify whether a refugee is an economic migrant or a refugee fleeing persecution and issue an LTV only to the latter.<sup>83</sup> On the other hand, there is even the understanding that LTVs are in fact residence permits.<sup>84</sup> The distinctive aspect of the LTV scheme that is envisaged for individuals from Myanmar is scrutiny or assessment based on the definition of refugee under the 1951 refugee convention.

<sup>79</sup> Hesham Badawy Mehmoud Pushkarna v Union of India and ors, 1998 (47) DRJ (DB), p. 273, Louis de Readt v Union of India, AIR 1991 SC 1886, para 13; Hans Muller of Nuremburg v Superintendent, Presidency Jail, Calcutta, AIR 1955 SC 367, para 34; Sarbananda Sonowal v Union of India, AIR 2005 SC 2920, para 75

<sup>80</sup> G.. Karunairaj v State, Writ Petition No. 27221 of 2011, Madras High Court, decided on 29.2.2011, para 17.

<sup>81</sup> A directive principle urging the state to try and foster respect for international law and treaty obligations.

<sup>82</sup> See Mr. Bogyi v Union of India, CR 1847 of 1989, Guwahati High Court, Dr. Malvika Karlekar v Union of India, W.P. (Cr.) No. 583 of 1992, Supreme Court of India, State v Khy-Htoon, CR 515 of 1990, Ktaer Abbas v State, CR 3433 of 1998. Relevant extract in Bogyi's case quoted in Rajeev Dhavan, "Refugee Law and Policy in India", PILSARC, 2004, p. 85.

<sup>83</sup> P. Raina, "Thousands of Myanmar Rohingyas struggle for refugee status in India", *The New York Times*, India Edition, 18 May 2012, <http://india.blogs.nytimes.com/2012/05/18/thousands-of-myanmar-rohingyas-struggle-for-refugee-status-in-india/>, accessed on 7 September 2012.

<sup>84</sup> Interview with Harbhajan, assistant FRRO, New Delhi, 9 December 2014, by the author.

### *Statelessness in the Indian Legal Context*

The legal status of the 'stateless' is no different from ordinary foreigners who are dealt with under the Foreigners Act, 1946. In its India operations, the UNHCR does not recognise Rohingyas as 'stateless' but as refugees,<sup>85</sup> although in registering individuals, their legal status is marked 'stateless'.<sup>86</sup> The UNHCR's stance may be explained by the fact that its mandate permits it to carry out RSD under the 1951 refugee convention and the Statute of the Office of the United Nations High Commissioner for Refugees (hereafter 'UNHCR statute'); in India it is allowed no role in the protection of stateless individuals irrespective of nationality. Given the large number of Rohingyas in India who find it extremely difficult or even impossible to access the UNHCR, failure to officially recognise refugees as stateless has serious implications.

### *India's Nationality Laws and Statelessness*

In a study titled *India and the Challenge of Statelessness: A Review of the Legal Framework relating to Nationality* (hereafter 'NLU Nationality and Statelessness Study') carried out in 2012, Indian laws relating to nationality were reviewed under two enactments, the Convention Relating to the Status of Stateless Persons, 1954, and the Convention on the Reduction of Statelessness, 1961.<sup>87</sup> In addition, its analysis also took into account international legal instruments that India was a party to.

Part II of the constitution along with the Citizenship Act, 1955, defines citizenship and prescribes rules for its acquisition. While articles 5-9 of the constitution define citizenship at its commencement<sup>88</sup>, the modes of acquisition of citizenship after the commencement of the constitution is provided for in sections 3 to 7 of the Citizenship Act, 1955.<sup>89</sup> These include birth, descent, registration, naturalisation and incorporation into territory. I will leave out the last.

'Illegal migrants' under the category of foreigners, covers a handful of sub-categories: refugees, the stateless or economic migrants. In the last case, the law is straightforward and leaves no ambiguity about its consequences. With refugees and stateless, the 'illegal migrant' tag can perpetuate illegal status in the absence of an explicit recognition.

Under sections 3(1)(c) (birth), 5(1) (registration) and 6(1) (naturalization) of the Citizenship Act, 1955,<sup>90</sup> an important prerequisite for citizenship is that a person or one of her parents must not be an illegal migrant. With respect to a child born to stateless individuals in the territory of India, the NLU Nationality and Statelessness Study argues, '[t]he Citizenship Act falls short of encompassing the position of a child born in the territory of India, where both parents may not be citizens of India

<sup>85</sup> Interview with Ragini Trakroo Zutshi, senior protection officer, UNHCR India (2 July 2015).

<sup>86</sup> Interview with Ravi Hemadri, executive director, Development and Justice Initiative, New Delhi, 2 July 2015.

<sup>87</sup> Sitharamam Karkala, "India and the Challenge of Statelessness, A Review of the Legal Framework relating to Nationality", National Law University, Delhi, 2012.

<sup>88</sup> Article 394 states that the date of commencement of the constitution is 26 January 1950. However, Article 394 and Articles 5 to 9, among others, came into force "at once", meaning 26 November 1949 (See Preamble).

<sup>89</sup> Under Article 10 of the constitution, every person who is or deemed to be a citizen of India under Articles 5 to 9 shall, subject to the provisions of any law that may be made by parliament under Article 11, continue to be such citizens. In the absence of a law expressly made under Article 11, the right of citizenship which a person may have acquired under Articles 5 to 9 cannot be taken away by legislation for any other purpose. This provision should be seen in the pre-1955 years when the Citizenship Act was not passed by the Parliament. See *Ebrahim Wazir v State of Bombay*, AIR 1954 SC 229.

<sup>90</sup> Under the proviso to Section 6(1), all conditions including that of being an illegal migrant is waived if the person is considered to have "rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally...."

or either of the parents may be without a nationality'.<sup>91</sup> It may be added that the Citizenship Act, 1955, is also unclear about whether a stateless individual who is recognised as a refugee by the UNHCR will be able to invoke citizenship for her child. It also points out the implications of the failure of the law to define a parent, including biological and adoptive parents. The Foreigners Act, 1946, defines a foreigner under Section 2(a) as 'a person who is not a citizen of India'. Section 8 applies to a case in which 'a foreigner is recognised as a national by the law of more than one foreign country or where for any reason, it is uncertain what nationality, if any, is to be ascribed to a foreigner'. This provision thus provides a mechanism to enquire into the nationality of an individual but not for a mechanism to establish whether a person is stateless. Rohingyas who are unable to make successful claims for refugee status are in this category.

## Conclusion

Indian law is inadequate to deal with statelessness; thanks to judicial pronouncements, the category 'refugee' is a recognised sub-set under the Foreigners Act, 1946. The positive yet deficient 'remodelled' policy applicable to Rohingyas, may safeguard their rights as refugees. The executive instructions are obscure and their intentions unclear. They seek to carry out RSD but may be faulted on legal and constitutional principles, apart from the questions raised about their relationship with the UNHCR mechanism.

For stateless individuals, the Foreigners Act, 1946, neither offers protection nor avenues to legal residence in the country. The consequences of this vacuum is manifest not so much in the arrests made for violation of laws, as in continued detention caused by the state's inability to identify a state for the person. 'Habitual residence' does not offer much clarity in law since the right to return is not an option shorn of the hazards of illegal entry. It appears from a preliminary analysis of the remodelled policy that although it appears to be geared towards the Rohingya, it fails in taking a holistic view of their status in international law.

In addition, the growing concern about Rohingyas living in slums, the allegations of terror links and the conflation of Rohingyas with Bangladeshis, present a distinct set of problems. The Rohingya situation is unlikely to improve unless the shelter and employment situation improves. The cumulative impact of conditions in slums, continuing detentions, informal-sector work and an uneven response of local governments requires clear intentions and a stronger role for the UNHCR that includes a distinct and discernible response to the stateless Rohingyas.

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<sup>91</sup> Supra note 110, p. vi. An example of how the Citizenship Act, 1955, recognises a specific category of "foreigners" who were granted the right to register as citizens is in Section 6-A, Citizenship Act, 1955. Further, stateless foundlings and unaccompanied minors are also not covered in the Citizenship Act, 1955.

## Chapter III

# The Stateless People: Rohingyas in Hyderabad

*Priyanca Mathur Velath and Kriti Chopra*

### Introduction

‘BOAT PEOPLE’ and ‘nowhere people’ are terms that have become synonymous with one of the most persecuted minority in the world, the Rohingyas. Unable to claim citizenship in Myanmar, where about 1.1 million of them live in the Rakhine province, or in any other country, these ‘stateless’ people have been living with the curse of having no nationality to claim as their own.<sup>1</sup>

The world witnessed one of its gravest humanitarian challenges in recent times when images started flooding the media of people fleeing religious persecution in Myanmar and economic misery in Bangladesh, left to die in traffickers’ boats in the Andaman Sea and Indian Ocean.

The Myanmar government’s peace process makes no provision for dealing with the ongoing sectarian violence. The country refuses to even recognise the term ‘Rohingya’ – let alone recognising that the community exists. If the situation does not change, it may soon have its wish. Since 2012, 153,300 Rohingyas-well over 10 per cent of the population in Myanmar-have boarded boats operated by human traffickers in an attempt to reach Malaysia, according to data released by a human rights organisation, Arakan Project.<sup>2</sup>

The Rohingyas’ claim to citizenship rests on their assertion that they constitute an ethnic indigenous group of Myanmar, which can trace their lineage to the old Arakan kingdom, and that they are not merely Bengalis. The word Rohingya can be could originally just have meant inhabitant ‘of Rohang’, the early Muslim name for the independent kingdom of Arakan (now Rakhine).

But the Myanmar government continues to deprive the Rohingyas citizenship, marking a policy of exclusion that was implemented since anti-Muslim violence started in 2012, with hundreds of thousands Rohingyas fleeing the country and another 150,000 winding up in camps within the country. They continue to flee to Indonesia, Malaysia, Thailand and the Philippines. Some have even come to India.

This paper seeks to look at the Rohingya refugees living in Hyderabad city from an ethnographic, anthropological and human-rights perspective, particularly through the lens of their crisis of assimilation.

### Statelessness and Rohingyas

Statelessness refers to a legal condition in which a person is deprived of the nationality or citizenship of any country. While numerous causes lie behind this phenomenon of statelessness, one of the

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<sup>1</sup> See Priyanca Mathur Velath, ‘The Tragic Case of the Rohingya Refugees’, *Deccan Herald*, 25 July 2015, <http://www.deccanherald.com/content/485583/tragic-case-rohingya-refugees.html>, accessed on 7 September 2015.

<sup>2</sup> *Ibid.*



primary reasons is the conflict which exists in the laws determining nationality or citizenship in a given nation-state.

The international legal definition of a stateless person, as set out in Article 1 of the 1954 Convention Relating to the Status of Stateless Persons, says a stateless person is one “who is not considered as a national by any State under the operation of its law”. A prominent example of this kind of statelessness is found in the Palestinian territories. Rohingyas are a similar group of people who have been rendered stateless as they are not recognised under any country’s legal framework.<sup>3</sup>

The name Rohingya has been a matter of debate for a long time now. To some, Rohingyas are a group of people who originally belonged to Bengal but subsequently migrated to Burma during colonial times, whereas another viewpoint is that Rohingyas hailed from Arakan in Myanmar. Many historians are of the belief that there were no people called the Rohingyas before the 1950s; it was only after that decade that a group of Bengali Muslims migrating to Burma started calling themselves Rohingyas. Whatever their origin might be, the stateless Rohingyas have been facing a number of challenges not only in Myanmar but also in the countries to which they have been migrating. This paper specifically aims to look into the kind of challenges the Rohingyas face in India, particularly in Hyderabad.

### Legal Refugee Framework in India

India’s laxity in framing proper refugee laws seems to have escalated the problem. Despite being asked to sign the refugee convention of 1951 and the additional protocol of 1967, and promulgate a legal framework for refugees, the Indian government has been lackadaisical. The United Nations High Commissioner for Refugees (UNHCR), however, hails India for its record in supporting refugees. It says in a report, “Overall, India offers safe asylum to refugees and asylum seekers. Even in the absence of a national legal framework for refugees, India has traditionally been hospitable towards refugees.”<sup>4</sup>

Meanwhile, judicial intervention has done some good for refugees. In respect of Articles 21 and 14 of the constitution, the Supreme Court has declared that these (apart from other constitutional rights) are applicable to everyone residing in India, not merely to citizens of the country.

### Rohingyas in Hyderabad

Rohingya refugees have been crossing the international border and coming into India for a long time now. In 2013, when the conflict between the Rohingya Muslims and the Buddhists in Myanmar intensified, several thousands of Rohingya Muslims fled Myanmar and took shelter in India. It has been estimated that around 25,000 Rohingya Muslims have taken shelter in India, but not all of them are in government refugee camps.<sup>5</sup>

Minister of state for home affairs Kiren Rijju (in a written reply to a question by Shri Adhalrao Patil Shivaji Rao in the Lok Sabha) had recently stated that there are 10,500 Rohingya Muslims who have taken shelter in India. Of them, 6,684 are in Jammu and Kashmir, 1,755 in Andhra Pradesh (mainly Hyderabad), 760 in Delhi, 677 in Haryana, 351 in West Bengal, 162 in

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<sup>3</sup> See <http://www.unhcr.org/pages/49c3646c155.html>, accessed on 1 January 2015.

<sup>4</sup> Tejaswini Pagadala, ‘Seeking New Homes in Hyderabad’, *India Together*, Hyderabad, 2013, <http://indiatogether.org/rohingya-human-rights>, accessed on 1 January 2015

<sup>5</sup> See Vicky Najappa, ‘Rohingya Muslims: Worry Ahead for India’, 4 June 2015, <http://www.oneindia.com/feature/rohingya-muslims-worry-ahead-for-india-1767313.html>, accessed on 1 August 2015.

Rajasthan, 111 in Uttar Pradesh, fifty in Punjab, twelve in Maharashtra and three in the Andaman and Nicobar Islands.<sup>6</sup>

“More than 1,500 Rohingyas who were displaced from Myanmar have been camping in the city of Hyderabad for more than a year, but basic amenities such as food, clean water, medicine and clothes still eludes them,” writes Nanjappa.<sup>7</sup> According to police records, 1,679 Rohingya refugees live in ten different parts of Hyderabad: Camp 1 in Balapur (298), Camp 2 Balapur (150), Camp 3 Balapur, Pahadishareef (87), Shaheen Nagar, Pahadishareef (127), Near Fatima Masjid, Balapur (258), Royal Colony (160), Baba Nagar, Kanchanbagh (412), Barkas, Chandrayangutta (51), Shastripuram, Mailardevpally (29) and Kishanbagh, Bahadurpura (153).<sup>8</sup> That the state’s knowledge and documentation of Rohingyas is far from perfect is clear: the number provided by the police doesn’t tally with the sum of the break-up provided.

The Rohingyas arrived in India after being attacked by the ethnic Rakhine Buddhists, while Myanmar’s government forces did little to stop the violent assaults. Mohammed Shaker was one of those who reached the Muslim-friendly city of Hyderabad.

[He took] a circuitous route travelling the first three days on foot through rough mountain terrain in the dead of the night to reach the Myanmar border. Then he boarded a boat run by smugglers to reach the Bangladesh border. Hours later, he was stowed in a truck to be finally dropped near the West Bengal border. All in all, it took him nine days to finally land in Hyderabad.<sup>9</sup>

Delhi, being the national capital and the seat of the UNHCR office, is naturally the place they get pulled to. The Rohingya migrants also believe that Hyderabad, on account of its substantial Muslim population, will welcome them. In fact, Hyderabad-based Confederation of Voluntary Organisations (COVA), an NGO at the forefront of Rohingya rehabilitation, says many more are likely to come. The influx of Rohingya Muslims into Hyderabad has been taking place over the past five to six years, explains Mazher Hussain, executive director of COVA, implementation partner of the UNHCR in Hyderabad. According to Hussain, Hyderabad received around 100 refugees in 2010.<sup>10</sup> According to COVA data, from about 150 settlers in early 2011, the number of Rohingya Muslims currently residing in the city stands between 1,400 and 2,000. It also says 1,200 asylum seekers have registered with them so far and many more are likely to come.<sup>11</sup> ‘Most of the refugees live in groups, with the highest number of them concentrated in Balapur,’ says Kiran Kumar, program officer at COVA, who looks after the welfare of these asylum-seekers.<sup>12</sup>

According to UN estimates around 11,000 Rohingyas have moved to various parts of India in the aftermath of communal violence since June 2012.<sup>13</sup> According to Malla Reddy, joint commissioner of police, special branch, Hyderabad, many Rohingyas end up in Hyderabad while others move to Delhi, Aligarh, Mathura, Kolkata and other places.<sup>14</sup>

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.* The Government of India says that as long as the Rohingyas obtain a valid visa and a refugee card there is no major problem. However the issue is with those who are staying illegally. There is a dedicated refugee camp in Jammu and Kashmir and all formalities need to be completed there. The problem, however, is that the Rohingya Muslims are found in several other places such as Delhi, Noida, Mewat, Saharanpur, Muzaffarnagar, Aligarh, Hyderabad and Mumbai. These places do not have certified camps and many are living illegally without a valid visa or refugee card.

<sup>8</sup> See Sreenivas Janvala ‘Cyberabad Police seek UNHCR help to keep tab on Rohingya refugees’, 1 August 2015, [www.indianexpress.com](http://www.indianexpress.com), accessed on 1 September 2015.

<sup>9</sup> Interview held on 9 January 2015. All translation of interviews, if not mentioned otherwise, are done by the authors.

<sup>10</sup> *Ibid.*

<sup>11</sup> See Syed Mohammed, ‘Rohingyas in Hyderabad Live in Fear’, *The Times of India*, 9 July 2013, <http://timesofindia.indiatimes.com/city/hyderabad/Rohingyas-in-Hyderabad-live-in-fear/articleshow/20980972.cms>, accessed on 1 January 2015.

<sup>12</sup> *Ibid.*

<sup>13</sup> Pagadala, ‘Seeking New Homes in Hyderabad’.

<sup>14</sup> *Ibid.*

We visited the Kiskanabagh area in Hyderabad where we met Rohingya families living in rented houses. The first family we spoke to was of Rahman, his wife, Iffat, and son, Arfat, who had come to Hyderabad in 2012 fleeing riots in Myanmar. Initially they lived in a camp in Myanmar but decided to migrate to Hyderabad because living conditions there were bad. They took boats and travelled for days to reach the city. Having reached, they were confronted greater problems of shelter, food and water. This family had come to Hyderabad with a group of other refugees. Lack of money forced them to stay on the footpath and streets. Later on, having found jobs, they collected money to rent the room they were staying in. When we asked them that what the problems they faced were, they said the people in the area were cold and shop-owners were often rude because they were poor. Apart from this, surviving each day without proper food was a major challenge, given the lack of employment opportunities.

Fatima and her son Farzan also live in Kiskanabagh. They fled to Hyderabad after her husband was killed in riots. They were hesitant to tell us much about what they went through faced by the callous response of the Myanmar authorities. She said that her husband was beaten to death in front of her; the trauma of that horrific incident was evidently still with her. It compounded her feeling of helplessness. She migrated to Hyderabad because all other families who got on to the ferry did the same. She began to look for jobs but for a year found it difficult to find one. Finding shelter, too, was a problem. Now she works as a domestic help near where she lives and gets by, but she can't afford an education for her son.<sup>15</sup>

### UNHCR Refugee Status: Identity Crisis

Recognition, Malik says, is the most important thing. 'Our cries are heard but not acted upon. We were born to see bloodletting. Now, we have resigned ourselves to torture and persecution,' he says.<sup>16</sup>

The survival of Rohingya refugees in Hyderabad depends on getting UNHCR refugee cards. The inability to get refugee cards compounds the hindrances of their daily activities. The prospective refugee has to undergo gruelling interviews to establish his or her identity and the purpose of migration. If the UNHCR is convinced, it can take three to six months to process the application and give the asylum-seeker a temporary card. A Rohingya can only get a refugee card once he passes the temporary card stage. That takes two more years; the refugee card has to be renewed every five years. Under the 1951 refugee convention, a refugee applying for asylum has to prove that he or she underwent persecution in his or her home country. If a migrant is from the eastern part of Myanmar where there is no disturbance, the UNHCR may reject his request for asylum and send him back to his country. But, the refugee is also given a chance for second appeal. Abdul Majeed Madani and Mohammad Jawad, now living in Hyderabad as refugees holding identity cards jointly issued by the Indian government and UNHCR, recalled, 'The attack and killing of Muslims in Myanmar have become a norm. One night about six months ago, a Buddhist mob attacked and torched the madrasa founded by my father Jalaluddin Usmani and killed him,'<sup>17</sup> said Madani.

### Community and International Support

Rohingya migrants survive on community support and the networks they have created amongst themselves. With little money and no aid from the government most of them struggle to meet day-

<sup>15</sup> Narrated in interviews conducted by Kriti Chopra in Hyderabad on 10 January 2015.

<sup>16</sup> Pagadala, 'Seeking New Homes in Hyderabad'.

<sup>17</sup> See 'Buddhist mob attacked madrasa at 02 midnight, killed over 200', *Ummid.com*, 10 July 2015.

to-day expenses. COVA and Civil Liberties Monitoring Committee (CLMC), an NGO in Hyderabad, seek donations from local people to support the migrants. 'Last year, during Ramadan, donations poured in. It was more like a Ramzan fad. Scores of people made donations to help them survive,' says Kiran, adding that donations have gone down this year (2015). Lateef Mohammad Khan, the convenor of the CLMC, stated that some locals have decided to help them as a goodwill gesture.<sup>18</sup> Nazimuddin Farooqui, Chairman, Salamah Trust, said his organisation planned to help Rohingyas by providing basic education to their children by enrolling them in schools and providing hostel facilities, besides taking up issues including refugee status.<sup>19</sup>

Iran had offered cash assistance to a group of Rohingya migrants in Hyderabad who had fled the ethnic violence in Rakhine state. The Iranian consul-general in Hyderabad, Mahmoud Safari, handed over a cheque of Rs. 65,000 to the COVA, trying to help them get official status for the Rohingyas from the UNHCR in 2012. Qaderi, trustee of the Dargah, thanked the Iranian consulate for extending assistance and said Iran was the first country which came forward to help the Myanmar refugees in Hyderabad. He added, 'Iran's spiritual and material support has been a ray of hope among the victims of the ethnic clashes in Myanmar'.<sup>20</sup>

A delegation from *Siasat Daily* had visited the refugee camp at Shaheen Nagar and interacted with all forty-two families.<sup>21</sup> A programme of distribution of food grains among the refugees will be conducted on Tuesday, 2 July 2013. In the meantime, efforts are also on to donate rickshaws and *bandi* for vegetables to the male members of the refugees to earn a livelihood. Ahmed Al Saadi, a businessman, was among those who donated land for the refugees. 'What I am doing is a kind of charity but they need a lot more help and support from individuals and organisations. They left everything back home,' he said.

But local residents sometimes fear differences cropping up in the larger community due to the presence of these refugees. Thus the Rohingyas live in constant distress and fear of being attacked.

### Language and Cultural Barriers

Language is another barrier for the community in India, especially in Hyderabad. This restricts employment opportunities since they do not know either Urdu or Telugu. Some of them who speak Urdu help others to communicate. Besides, their food habits and culture are completely different. All this creates problems of assimilation and make the Rohingyas feel insecure, alienated and discriminated against. The feeling of alienation is the major reason behind conflicts, which cause disharmony and turmoil.

<sup>18</sup> See 'Around 1500 Rohingya Muslims take refuge in Hyderabad', 11 July 2013 <http://www.rediff.com/news/report/around-1500-rohingya-muslims-take-refuge-in-hyderabad/20130711.htm>, accessed on 10 August 2015.

<sup>19</sup> See 'Hyderabad's Rohingya Refugees fight language barriers', 30 June 2013, <http://www.thehindu.com/news/cities/Hyderabad/hyderabad-rohingya-refugees-fight-language-barriers/article4866622.ece>, accessed on 10 August 2015.

<sup>20</sup> See 'Iran offers cash assistance to Rohingya refugees in Hyderabad', *Reliefweb*, 3 August, 2012, <http://reliefweb.int/report/india/iran-offers-cash-assistance-rohingya-muslim-refugees-hyderabad>, accessed on 10 September 2015.

<sup>21</sup> The *Siyasat Daily* is an Urdu-language daily published from Hyderabad.

### Search for Livelihood

Often met with suspicion, the Rohingyas' search for livelihood becomes even more difficult. To make a living they work as daily-wage labourers and seek odd jobs as security guards and helpers in small shops, says Lateef Mohammed Khan of CLMC. As Dudu Miyan, another migrant, says, around 150 men went to the local 'labourer *adda*' in Babanagar one day, but only fifty found work. This happens every day. 'A man who is busy looking for work every day has no time to even think about causing trouble,' he said, countering allegations that Rohingyas were involved in violent incidents.<sup>22</sup>

At the Balapur Camp, we asked the Rohingyas living there a number of questions: How long they had been there? What kind of work did they do? How much did they earn? Why had they come to Hyderabad? What was it like living in Hyderabad? What were the problems they faced? Did they want to return to Myanmar? Did staying in Hyderabad satisfy their needs?

Abu Hussain, who has been living in the camp from the past two years, said he came to the camp in 2012. He said there was no fixed work and went to a nearby place where they were given daily jobs. There were days when they did not get any work, but when they did they earned around Rs. 400 a day. The reason why he came to Hyderabad was that he thought that if he stayed in Myanmar any longer his family would be killed.

### Living Conditions

The hundreds of Rohingyas settled in makeshift camps in Hyderabad struggle for survival every day. The living conditions in the camps are pathetic: they live in unsanitary conditions and have no water to drink most of the time. Many have been camping in the city for more than a year, but basic amenities such as food, clean water, medicine and clothes still eludes them.<sup>23</sup> Instead, tarpaulin sheets and open sewerage drains greet visitors. At the Balapur Camp, however, the Rohingyas said they had faced water problems in the past, but thanks to the efforts of the Salamah Centre a borewell had been installed to solve the problem.

### Women and Children

A number of widows and pregnant women live in precarious conditions in the Rohingya camps, but children are the worst affected, with many falling sick due to the lack of proper food and medicine.<sup>24</sup> The UNHCR says many children work to support their families instead of attending school. 'Sanitation and health issues are of concern, especially in the makeshift settlements, including maternal and child health,' a spokesperson of the agency said.<sup>25</sup>

We conducted a focussed group discussion at the Balapur Camp, speaking to eleven women in a group – Kaushala, Zoharhati, Mariam, Alwar, Umahato, Arafa, Jamila Behen, Sanam, Swamina, Anawar Begum and Noor Fatima. All of them have been staying in the camp for the past two years except Jamila Behen and Zoharhati. During our discussion it was revealed that these two women had been living in the camp for the past ten years. Though we had got the impression that the Rohingya refugees had been migrating to Hyderabad in recent times we realised that migration could

<sup>22</sup> Mohammed, 'Rohingyas in Hyderabad Live in Fear'.

<sup>23</sup> M.A.R. Farheed, 'Rohingyas Exile Struggles in India', *Al Jazeera*, 6 January 2014, <http://www.aljazeera.com/indepth/features/2014/01/rohingya-exiles-struggle-survive-india-201416143243337187.html>, accessed on 23 November 2014.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

be traced further back. Jamila Behen and Zoharhati's responses were similar to those of more recent refugees, which showed that their issues had remained largely unaddressed for so many years. Most of them believed that unemployment and health care were the biggest challenges they faced; due to lack of money they went hungry for days, or sometimes ate on alternate days; the children in the camp lived in unhealthy conditions, with no proper sanitation and nutrition. Language was a major problem for them, hampering negotiations for jobs. Nonetheless, the women felt they were much safer in Hyderabad as compared to Myanmar, where many women have been raped and abused frequently. The education of the children was also an issue, the money they earned was not sufficient to provide it.

The Salamah Centre, administered by Mansoor Ahmed, takes in migrants, including Rohingyas, and gives children an education, along with accommodation. Field visits to Rohingya camps in Hyderabad revealed that education can make a big difference, evident when we met the children at the centre who were better read, better spoken and more motivated to do something in life compared to the children we met in the Balapur camp.

On 7 January 2015, I visited the head office of the Salamah Centre in Char Minar.<sup>26</sup> It was basically a relief-and-rehabilitation committee run by Mansoor Ahmed. I spoke with some children – Sheikh Alkama, Farhana, Asama, Nazima, Farzan and Sheikh. All these students loved staying in the hostel and going to school every day. When I asked them whether they missed home, they said they did a little but enjoyed being in Hyderabad. I asked them their favourite subjects; they ranged from mathematics to English and the social sciences. A feature of this school, beginning with lower kindergarten and going up to class 10, was that it was not an Islamic institution, giving equal weight to all subjects. I went to see the school and the hostel the girls were living in – it was neat and clean, the kitchen was hygienic and the space adequate. The students were happy and did not experience the difficulties their parents faced. Talking to Mansoor Ahmed, I gathered that the Salamah Centre was a place for children from the disadvantaged and backward sections of society. The fees were nominal, Rs. 300 per month. The school was only for girls.

### Health Facilities and Issues

Rohingyas face health-care problems not only in their country of origin but also in India. The physical infirmities suffered by the Rohingyas in the Balapur camp are exacerbated by their inability to afford a doctor. There have been instances of Rohingyas having to collect money for months just to afford medical tests and buy prescribed medicines. Field interviews also showed that there were some clinics and doctors who exploited their vulnerability, charging for repeated and unnecessary check-ups and tests.

During an interview, Abu Hussein at the Balapur Camp reiterated that the major issue was healthcare. He had taken his son Zia to a local hospital called St. Martha's where the doctor asked him to undergo a number of cumulatively expensive blood tests. Not having enough money, he could not get all the tests done so he started saving money for the tests. When he went to the doctor the second time, after the tests were done, he gave him a list of other tests to be carried out. This attitude of doctors to the Rohingyas was a matter of deep concern for them.<sup>27</sup>

<sup>26</sup> First-person account of Kirti Chopra.

<sup>27</sup> After interviews with the migrants, as the researcher was leaving the camp, a man called Rehman came by, desperately asking for help, asking for money to be given to him as the doctor had prescribed him a few medicines and a number of tests for which he did not have money. The researcher herself took the prescription and went along with him to St. Martha's hospital to look into the matter. On reaching there around late evening she found that the doctors had left and the hospital was going to be closed soon. She tried to talk to the authorities but they refused to talk to me about anything and they were rude in all their replies.

## Police Persecution

The Rohingyas in Hyderabad are wary of needless police interrogation every time a Hindu or Buddhist structure comes under attack as the needle of suspicion invariably points to them. Although hundreds of Rohingya refugees have made the city their own, they are still apprehensive about policemen knocking on their doors, as after the serial blasts in Bodh Gaya, Bihar, in July 2013. Says Abdullah, a Rohingya who came to Hyderabad in 2012, 'The local people told us about the blasts. The police frequently ask us to produce documents and such harassment has become part of our lives.'<sup>28</sup>

Then in November 2014, Khalid Mohammed, arrested by the National Investigation Agency from Hyderabad in connection with the Khagragarh blast in Bengal, turned out to be a Rohingya Muslim from Myanmar, who had allegedly spent considerable time in Myanmar training batches of militants along with members of the Lashkar-e-Toiba, before slipping into India in 2013.<sup>29</sup> This irreversibly cast the entire Rohingya community under a shadow of suspicion.

A government official told the news agency Press Trust of India that a meeting convened for state principal secretaries (home) was to take note of alarming reports of Rohingyas marrying Indian girls, especially in Jammu and Kashmir (Rohingya Muslims get married to natives of Kishtwar and Baramulla),<sup>30</sup> and staying in Jammu and Kashmir, Delhi, Haryana, Maharashtra, Rajasthan, Uttar Pradesh, Andhra Pradesh and Manipur. An alert had been sounded across India after to keep an eye on Rohingya migrants. Nonetheless, as a senior police officer said, 'Since they are poor, uneducated and alien to the land here, they are likely to be exploited and used by hardliners. *There is no hard evidence to suspect anyone and police are maintaining total surveillance. Other than offences related to fake passport or Aadhar, they have not been involved in any act threatening the security of the nation.*'<sup>31</sup>

The police and security agencies have been caught off guard by the presence of the Jamat-ul-Mujahideen Bangladesh, connected to the Rohingya Solidarity Organisation, in their backyard. So they are keeping tabs through a host of measures like finger-printing, keeping records of employment status, demographic details and photographs, and stepping up vigilance.<sup>32</sup> Hyderabad police commissioner C.V. Anand has issued instructions for migrants to be registered in some way and wants long-term visas and UNHCR cards issued to them immediately so that the local police and intelligence agencies can monitor them. On 20 July 2015, the Indian government convened a meeting of principal secretaries (home) of seven states to discuss the arrival of more than 100,000

<sup>28</sup> See 'Serial Blasts Rock Bodh Gaya Temple', *The Hindu*, 8 July 2013, <http://www.thehindu.com/news/national/other-states/serial-blasts-rock-bodh-gaya-temple/article4891094.ece>, accessed on 20 September 2015.

<sup>29</sup> According to intelligence officials Khalid mentioned receiving large funds from Rohingyas based in Karachi and Saudi Arabia. After slipping into India in November last 2014, Khalid confessed having travelled extensively to meet Rohingya migrants in Delhi, Lucknow and Jammu before setting up a base in Hyderabad. It confirmed the suspicions of the Intelligence Bureau of India that terror groups like the Jamaat-ul-Mujahideen Bangladesh (JMB) and the Al-Qaeda had managed to infiltrate their men into Rohingya camps. See Saikat Datta, 'Arrested Rohingya trained Militants in Myanmar', *Hindustan Times*, 23 November 2014, <http://www.hindustantimes.com/india-news/arrested-rohingya-trained-militants-in-myanmar/article1-1289131.aspx>, 30 March 2015.

<sup>30</sup> 'Government calls meeting with 7 states to discuss activities of Rohingya Muslims in India', Press Trust of India, 6 July 2015.

<sup>31</sup> See 'Terror Threat in Hyderabad, Rohingya Muslims under scanner', *The Siasat Daily*, 23 July 2015.

<sup>32</sup> See Rahul V. Pisharody, 'After Terror Threat in Hyderabad, Cops Step up Vigil on Rohingyas', *The New Indian Express*, 23 July 2015.

Rohingya Muslims who were settling in India and measures to monitor 'their activities given their vulnerability to radicalisation'.<sup>33</sup>

According to the COVA, 1,806 Myanmarese refugees have registered with them. Physical verification has shown that only 1,725 refugees were found staying in camps in Hyderabad. Only 461 Myanmarese refugees were issued refugee cards – they were being processed.<sup>34</sup> Till the UNHCR issues cards to all of them – the COVA will help the local police station to get Rohingyas staying in their area registered and get details of families, SIM cards/cell numbers, Aadhar cards, voter identification cards, ration cards, driving licences and other forms of documentation. A sub-inspector will maintain separate registers for the camps in relevant police stations. If they are moving in and out of settlements and travelling to Jammu and Kashmir or other states, they have to inform the local police station about their movements and report to relevant police stations on their return. Their sources of livelihood will also be enquired into and noted along with details of bank accounts. Police officials do not deny the vulnerability of Rohingyas who, they believe, can be easily persuaded by extremists to take up radical paths.

The criminalisation of the Rohingyas is thus a reality in India. As Arendt had foretold years ago:

The stateless person, without right to residence and without the right to work, had of course constantly to transgress the law. He was liable to jail sentences without ever committing a crime. More than that, the entire hierarchy of values which pertain in civilized countries was reversed in his case. Since he was the anomaly for whom the general law did not provide, it was better for him to become an anomaly for which it did provide, that of the criminal...<sup>35</sup>

### Humanitarian Perspective

The challenges that Rohingyas continue to face are grim reminders of a humanitarian crisis. Their daily struggle for existence persists not just in Myanmar, but as this article has illustrated, even in countries they have been migrating to. In Myanmar the Rohingyas faced continuous discrimination as was evident from the 2014 census which took place in Myanmar and from which the Rohingyas were excluded.<sup>36</sup> Actions like these merely illustrate the unequal and unfair treatment meted out to Rohingyas in the state of Myanmar. The Buddhist majority believes that the state belongs to them and not to the Rohingyas. Ethnic violence has become an everyday part of the lives of people in Myanmar and created fear in the minority group.

The facilities given to the displaced Rohingyas in the camps set up in Myanmar are inadequate. The quality of health care is poor, especially since most doctors treating the Rohingyas are Buddhists and in many cases not very concerned about their patients. The deplorable conditions in the Rohingya camps in Myanmar highlight their terrible condition. The actions of the authorities have been described as a 'crime against humanity'.<sup>37</sup>

<sup>33</sup> See, 'India Calls Meet with 7 States on Rohingya Muslims', 8 July 2015, <http://www.worldbulletin.net/todays-news/161896/india-calls-meet-with-7-states-on-rohingya-muslims>, accessed on 15 September 2015.

<sup>34</sup> See Press Trust of India, 'Cops seek UNHCR help to monitor Rohingya refugees in Hyderabad', *www.business-standard.com*, 31 July 2015.

<sup>35</sup> Hannah Arendt, *The Origins of Totalitarianism*, Meridian Books, World Publishing Company, Cleveland and New York, 1958, <http://www.cscd.osaka-u.ac.jp/user/rosaldo/1010100THA.htm>, accessed on June 1, 2015.

<sup>36</sup> See <http://www.theguardian.com/world/2014/apr/02/burma-census-rohingya-muslims-un-agency>, accessed on June 1, 2015.

<sup>37</sup> See <http://time.com/2888864/rohingya-myanmar-burma-camps-sittwe/>, accessed on 1 August 2015.



### Legal Perspective

The process of addressing any refugee issue has been hindered by the lack of an effective legal framework in India. The manner of dealing with issues has often been politically motivated; often, actions have been taken mainly to improve diplomatic relations with a particular country. Existing laws in India like the Foreigners Act of 1946 are completely outdated. This law simply defines any person as a foreigner who is not a citizen of India; this includes refugees and stateless people. A similar provision was also introduced through an amendment of the act in 2003 which failed to make any distinction between refugees and their special circumstances and other foreigners and illegal immigrants.<sup>38</sup>

Under Section 3(2) of the act, the Indian government has wide discretionary powers to regulate the entry and movement of foreigners within India. The Foreigners Order of 1948 also restricts the entry of foreigners into Indian territory without proper authorisation at given entry points. Every foreigner should be in possession of a valid passport and visa while entering India, unless exempted. Most often, refugees are not in possession of these documents and thus are refused entry.<sup>39</sup>

India is not a party to the 1951 refugee convention, but it is bound by the international principle of non-refoulement, which prevents a country from repatriating refugees to countries where their life and liberty are under serious threat. The Foreigners Act lays down the principle that the Indian government can repatriate foreigners, including asylum-seekers, through deportation, and is therefore in violation of international customary law. Here again we see a conflict between the existing laws.

Article 51(c) of the constitution provides that India “shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another”. Article 253 of the constitution gives parliament the “power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body”. India is in favour of formulation of an international and domestic law consistent with its fundamental rights.

A national model refugee law for granting statutory protection to refugees has long been considered in India but is yet to be implemented. The model law aims to harmonise norms and standards on refugee law, establish a procedure for granting refugee status and guarantee them their rights and fair treatment.

In India, refugees are placed under three broad categories. Category I refugees receive full protection from the Indian government (for example, Tamil refugees from Sri Lanka); category II refugees are those who are granted refugee status by the UNHCR and are protected under the principle of *non-refoulement* (for example, Myanmar and Afghan refugees); and category III refugees, who are neither recognised by the Indian government nor the UNHCR but have entered India and assimilated into the local community (for example, Chin refugees from Burma living in the state of Mizoram). The question is whether India needs a refugee law and what are the advantages of framing such a law. Till there is further clarity on the legal framework within which refugees and stateless persons stay on Indian soil, people like the Rohingyas will always be living in a state of limbo.

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<sup>38</sup> B. Acharya, ‘The Law, Policy and Practise of Refugee Protection in India’, 2004, [http://www.researchgate.net/publication/256016766\\_The\\_Law\\_Policy\\_and\\_Practice\\_of\\_Refugee\\_Protection\\_in\\_India](http://www.researchgate.net/publication/256016766_The_Law_Policy_and_Practice_of_Refugee_Protection_in_India), accessed on 1 August 2015.

<sup>39</sup> *Ibid.*

### Political Dimension

The challenge for the Rohingyas is not just to deal with the ethnic conflict but also to deal with the government in Myanmar, which opposes the community due to perceived threats. One of the major reasons for the government of Myanmar to not recognise the Rohingya community is the fear of the other ethnic communities in Myanmar who are and can be in conflict with them in the future. Thus the Rohingyas live in the fear of the government eventually committing genocide against them. Therefore, there is a great need for international support to promote awareness about their plight. Although the international media played a crucial role in focusing attention on the grave plight of the Rohingyas in 2012, it is seen to be generally skewed towards emphasising the 'unsympathetic' role played by Bangladesh and Thailand in turning back genuine refugees, and criticising their approach towards the accommodation of vulnerable individuals.

Myanmar's president, Thein Sein, has been much appreciated for successful political and economic reforms in the country but at the same time has been criticised for discrimination against Rohingyas by the government. The Rohingyas were given voting rights in Myanmar's 2010 elections, with the promise of citizenship if they voted for the military regime's representatives. But the Rohingyas continued to remain deprived of citizenship, marking a policy of exclusion that was made official with the passing of the 1982 Citizenship Law that deemed them stateless. Then came the ethnic cleansing in Rakhine state in 2012, triggered by the rape and murder of a Rakhine woman by three Muslim men which led to Rakhine mobs rampaging through Sittwe and other parts of Rakhine to drive out the Rohingyas from their midst. The violence that ensued led to the death of hundreds and mass displacement of thousands of Rohingyas.

Myanmar's policies continue to be discriminatory towards its minorities and Thein Sein has recently signed a new law that requires women to wait at least thirty-six months between bearing two children. Activists allege that this law is to target the Muslim Rohingya community, in the context of the perception that their high rate of population growth will turn the Buddhists into a minority in Rakhine state. More disturbing is the fact that even some pro-democracy dissidents belonging to Myanmar's ethnic majority refuse to acknowledge the Rohingya as compatriots. Pro-democracy organisations are of the view that the Rohingya are not a Burmese ethnic group. The nationalists also say that countries criticising Myanmar for its refusal to recognise the Rohingya should respect the country's sovereignty. They are not alone in taking this position.

When it comes to the Rohingyas and the kind of atrocities they live under, one needs to question the political willingness of the governments of Myanmar and other countries to work towards a solution. The major countries to which the Rohingyas have migrated are Bangladesh, Thailand, Malaysia and India. Bangladesh has been receiving Rohingya migrants for a long time now and this trend is not likely to stop in the near future, to enable them to escape the atrocities in Myanmar, since they are believed to belong to Bangladesh and not to Myanmar. Though Bangladesh has been trying to accommodate the Rohingyas they have not been able to provide basic necessities. Efforts have been made by the Bangladesh government to resettle the Rohingyas but have failed. This failure is partially due to political unwillingness and also because resettlement is not a viable option with regard to the Rohingyas, who are a stateless people.

The recent humanitarian crisis that was exposed with reports and images of thousands of Rohingya Muslims being trapped in rickety boats on the high seas, fleeing persecution at home, and not being admitted by Malaysia, Thailand and Indonesia, has turned the world's eyes towards 'the most persecuted people'.<sup>40</sup> Still, the Rohingyas remain stateless and unwanted.

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<sup>40</sup> See <http://theinternationalpostmagazine.com/10/06/2015/world/plight-rohingya-muslims-world-turns-blind-eye/>, accessed on 1 September 2015.

## Chapter IV

# Rohingyas: In Search of Life

*Suchismita Majumder*

### Stateless in Fact

AMONG MYANMAR'S ethnic minorities, the Rohingyas, a stateless population, stand out for the severe repression they have suffered at the hands of the Burmese authorities for decades. The term 'Rohingya' refers to Muslims from Northern Rakhine State (formerly Arakan) in Myanmar. They form an ethnic, linguistic and religious minority both in Buddhist-majority Myanmar and in their province Rakhine and have been subjected to repeated waves of persecution and forced displacement.

The Rohingyas lack a nationality or 'status', in accordance with the liberal notions of citizenship. They became stateless in 1982 with the enactment of a revised citizenship law, which excluded Rohingyas from a list of 135 national ethnic groups. In law, statelessness is lack of nationality or the absence of a recognised link between an individual and any state. A *de jure* stateless person is someone who is 'not considered as a national by any state under the operation of its law', says the Convention Relating to the Status of Stateless Persons. However, there are many millions of people who have not been formally denied or deprived of nationality but who lack the ability to prove their nationality or, despite documentation, are denied access to many human rights that other citizens enjoy. These people may be *de facto* stateless – that is, stateless in practice, if not in law – or cannot rely on the state of which they are citizens for protection. Although individuals who have legal citizenship and its accompanying rights may take both for granted, what they enjoy is one extreme of a continuum between full, effective citizenship and *de jure* statelessness, in which individuals have neither legal citizenship nor any attendant rights. In between these extremes are millions of *de facto* stateless persons denied effective protection. Estimates of the current number of stateless persons in the world range from 11 to 15 million, who live without a nationality in a legal limbo.<sup>1</sup>

Though Myanmar shares borders with five countries (Bangladesh, China, India, Laos and Thailand), Rohingyas are found across the world. Many of them have crossed more than one international border in search of a secure life. They enter India through the Northeast, say officials. Thousands of Rohingya Muslims have taken refuge in Delhi, Jammu, Noida, Mewat, Saharanpur, Muzaffarnagar, Aligarh, Hyderabad and Mumbai.<sup>2</sup> A steady influx of Rohingyas into West Bengal via Bangladesh is causing concern. A senior intelligence official told *The Hindu* that "more than one thousand" Rohingya refugees had been detained and sent to prisons in the state in the last six months. But the West Bengal government has no clear idea of the actual number of the

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<sup>1</sup> B. Baseerat, 'Riot-hit Rohingya Muslims take refuge in Hyderabad', Hyderabad, *Times of India*, April 2015.  
<http://timesofindia.indiatimes.com/city/hyderabad/Riot-hit-Rohingya-Muslims-take-refuge-in-Hyderabad/articleshow/19551921.cms>, accessed on 10 September, 2015.

<sup>2</sup> See <http://www.sunday-guardian.com/news/burmese-muslim-refugees-in-delhi-search-for-haven-in-jak>, accessed on 10 September, 2015.

undocumented immigrants who have entered the state in the past few years.<sup>3</sup>

This paper is an attempt to depict briefly the life of Rohingyas in their own country as well as in Bangladesh and India, where they have migrated to seek refuge. It explores the struggle of these people for survival, against all the discrimination, exploitation and difficulties they face, focusing on those who are detained in correctional homes in West Bengal.<sup>4</sup> It also tries to understand how Rohingyas live amidst persecution; what they do; how they migrate; and what they need at present to have a secure life. With these objectives the author conducted interviews with 100 Rohingyas in correctional homes. The data used in this study was gathered from February 2015 to July 2015. Discussions and interviews were also held with officers of the Department of Correctional Administration. At a meeting with the Relief and Charitable Foundation of India (RCFI), their services for Rohingya people in correctional homes were also discussed. The RCFI has signed a memorandum of understanding with the Global Rohingya Centre (GRC) to support and rehabilitate Rohingyas in India. The RCFI will be the only partner of GRC in India.<sup>5</sup> Some information about Rohingyas in Bangladesh was provided by the Ain o Salish Kendra (ASK), a human rights organisation in Bangladesh. Apart from these, research papers, articles and media reports were also consulted.

### Driven Out

Of the 100 Rohingyas who were interviewed, sixty-nine were male and thirty-one female; ninety-nine of them were born in Arakan. Most of them were from Akyab, but a few from Buthiadaung. Most of those interviewed were between eighteen and thirty; six were above sixty. Most could speak only their mother tongue, Rohingya/Ansolik, Bengali mixed with Urdu, Arabic, English and Burmese. They knew little Bengali. Fifty-seven per cent of respondents were illiterate. Though the International Organization for Standardization has recognised the Rohingya language, it does not have a script. The literate among them can read and write the Burmese language. Some Rohingyas know Urdu and a few of them also learn Arabic to read the *Quran*.

**Table No.1: Age- and Sex-Wise Distribution of Respondents**

Age	Sex		Total
	Male	Female	
Below 18	2	0	2
18-24	33	15	48
25-30	13	8	21
31-35	3	4	7
36-40	5	1	6
41-45	3	0	3
Above 45	6	1	7
Above 60	4	2	6
	<b>69</b>	<b>31</b>	<b>100</b>

Source: Data Collected from Field

<sup>3</sup> See <http://www.thehindu.com/news/national/other-states/rohingya-influx-a-brewingcrisis/article5797314.ece>, accessed on 10 September, 2015.

<sup>4</sup> From 1992, in accordance with the West Bengal Correctional Services Act, the jails/prisons in the state are known as correctional homes.

<sup>5</sup> See <http://rcfi.in/events/event/rcfi-sign-mou-grc/>, accessed on 10 September, 2015.

**Table No.2: Educational Qualification of Rohingyas**

Education	Rohingyas		Total
	Male	Female	
Illiterate	32	25	57
Literate	26	5	31
Primary Education	11	1	12
Total	69	31	100

Source: Data Collected from Field

In Myanmar, the respondents had mainly been agriculturists. A small percentage was engaged in fishing and trade and business. A few Rohingyas were daily labourers and two were clerics. Women were mainly involved in household work. Fifty-five per cent of the respondents, mainly those who were below twenty-four, were unmarried.

**Table No.3: Marital Status of the Rohingyas**

Marital Status	Rohingyas		Total
	Male	Female	
Unmarried	30	5	35
Married	37	18	55
Widow/ Widower	1	6	7
Other	1	2	3
Total	69	31	100

Source: Data Collected from Field

Violence against Rohingyas has mainly been committed by the border police (the infamous Na Sa Ka) in recent times. The forms of violence as reported by respondents under the study were as follows:

**Forced Labour:** All Rohingya men had experienced this. The women confirmed this. At least a week every month, Rohingyas had to work without payment for the military or the border police, when they were beaten indiscriminately or physically tortured in other ways. They had to provide for their own food. Forced labour was a huge burden, leaving them with insufficient time to earn a living. Protest could lead to death.

**Restrictions on Movement:** Rohingyas were virtually confined to their village tracts. They had to apply for permission to leave their village, even to visit another one nearby. Sometimes they had to pay for this permit as well. Those given permission to travel had to return home before 10 p.m. 'A Rohingya of my village was murdered by the Buddhists as he was travelling at night,' a respondent said. Though Rohingyas were not allowed to have mobiles, some did so secretly to maintain contact with family members in the other countries.

**Restrictions on Religious Activities:** Burning of mosques is very common in Arakan. In the Ramzan month, Buddhists lock the mosques. Rohingyas cannot celebrate Id and are not

allowed to sacrifice animals. Sometimes, Buddhists lock the doors of mosques and throw stones at the people inside at the time of *namaz*, killing many. The brother of Md. Kalu, a respondent, was attacked with a sword when he was returning from a mosque. His head was separated from his body. 'There is no place for the son of a Muslim. It is a curse to be a Muslim in Burma,' said a respondent. But none of the Rohingyas mentioned forced conversions.

**Restrictions on Marriage:** Since the creation of the border police in 1992, the authorities in Northern Rakhine State have made it mandatory for Rohingyas to seek permission to get married. In recent years, imposition of restrictions on marriage has further intensified. Both families have to pay a fee to get permission. The amount varies. The age of consent for girls is eighteen.

**Restrictions on Family Size:** Respondents said that from 2007 couples who wanted to marry had to sign a contract specifying they would not have more than two children. Non-compliance was punished with imprisonment. A Rohingya family had to pay 7,000 to 8,000 Kyat to register a birth.

Land Confiscation and burning the houses of Rohingyas are regular incidents in Arakan. 'We had our own paddy field, vegetable garden, and a house. Our house was set on fire. Our land was taken away. We have lost everything,' said a respondent.

Since independence, Myanmar has been plagued by ethno-religious tensions and armed conflicts. While the majority of conflicts have been between the central government and ethnic minorities on the question of autonomy, tensions also exist between ethnic groups as with those between the Rakhine Buddhists and Rohingya Muslims of Rakhine state. In 2012, the tension between these two communities was sparked with the rape and murder of a Rakhine Buddhist woman on 28 May, which was followed by the retaliatory killing of ten Muslims by Rakhine Buddhists on 3 June. Following the two incidents, riots broke out between the two communities in three different townships – Sittway, Maungdaw and Buthidaung. Rioters on both sides torched and destroyed homes, shops, guest houses, and engaged in a killing spree.<sup>6</sup> But tension between Buddhists and Muslims in Arakan State has existed for several decades, leading, for example, to an exodus of Rohingya Muslims in 1978 during the Burma Socialist Programme Party (BSPP) military government and in 1991-92, at the time of operation Pyi Thaya.

**Table No.4: Rohingyas at the Times of Mass Exodus**

Mass Exodus	Rohingya		Total
	Male	Female	
2012 Riot	50	18	68
Operation Pyi Thaya	1	1	2
Both	1	2	3
Operation Nagamin	0	0	0
Not applicable	17	10	27
Total	69	31	100

Source: Data Collected from Field

<sup>6</sup> Kipgen Nehginpao, 'Addressing Rohingya Problem', *Journal of Asian and African Studies*, Vol. 49, No. 2, 2013, pp. 234 – 247.

Sixty-eight of those interviewed in this paper were affected by the 2012 riots. Abdul Kasim, 19, was in Akyab, Arakan, at the time of riot in 2012. The madrassa where he studied was burnt, as was his neighbour's house. He wandered in the hills for seven days, eating what he could gather. Returning to his village he found that it had been completely destroyed. He went from village to village in the mountains looking for his parents. While he was roaming, he met a group of Rohingya people who were escaping. He came to India with them. After crossing the border he was arrested.

Satara Bibi was burnt while trying to save her belongings. Hospitals refused to provide treatment to people who had suffered burns. Saidul Golami, nineteen, said that at the time of riots in 2012, bodies of murdered Rohingyas were carried away by rivers. He also said that the permission of the army or border police was needed to bury the dead as a result of which bodies kept piling up. Harun Rasid, sixty-five, is one of two Rohingyas who were in Myanmar in 1991-92. His house was set on fire. He left with his family and lived in Kutupalong camp in Bangladesh for two years. When the crisis was over he returned to Myanmar. He built a house again but ultimately he had to leave in 2008 with his family.

Jallal, Amina and Belua saw the violence of 1991-92 and 2012. Jallal, fifty-three, escaped to Teknaf in Bangladesh in 1991. After a year and a half he returned to Myanmar, where his house had been taken over by Buddhists. He managed to build a hut, but in 2012 he decided to leave, in the face of increasing danger.

Women are victims of double discrimination: for being Rohingyas and for being women. Rape of Rohingya women, even those who are pregnant, is common in Arakan and Rohingyas men are powerless to protest. Women are also abducted. Some are released and some never return. Pregnant women fearing that they can be murdered in hospitals, deliver at home. Those who are very near delivery are often attacked and eviscerated. At least ten respondents, both men and women, mentioned this. Some of them had witnessed such brutality. Minors are also tortured sexually. Parents of 'good-looking' women are required to pay exorbitant amounts to get marriage permits so that they can't get married. These women are the main targets of the border police. Alima and Belua, both sixty, who were in Myanmar in 1991-92, had seen soldiers cut the breasts of many women. Only three Rohingya men disclosed how women in their families were tortured.

Multiple causes, including forced labour, confinement to home, the fear of rape and fear of being killed have caused migration. Though 2012 and some other years are marked for extreme human right violation and mass exodus, violence against Rohingyas has continued over the years leading to continued migration. Of the respondents in this study, seventy-eight had migrated in 2012 or after that.

**Table No.5: Cause of Leaving Burma**

Cause	Rohingyas		Total
	Male	Female	
Fear of death in 1991-92	0	1	1
Fear of death in 2012 and after	51	20	71
Multiple	14	6	20
Left in Childhood	3	4	7
Not applicable	1	0	1
Total	69	31	100

Source: Data Collected from Field

### In Transit

Rohingya migration has been a serious concern for Bangladesh since 1978. The majority of the 2,50,000 Rohingyas who fled in 1991-1992 were initially sheltered in government-administered refugee camps in Cox's Bazaar district. The Rohingya were recognised as *prima facie* refugees by executive order because they were Muslims. Not long after, Bangladesh and Myanmar signed a bilateral agreement to return those Rohingya who could establish *bona fide* residence. A controversial repatriation programme followed, in which almost all of the 2,50,000 were repatriated to Myanmar by 2,000. Rohingyas who had reached Bangladesh by mid-1992 were registered. The estimated 2,00,000 who arrived after that were not recognized as refugees and not permitted in the camps. At the same time, the porous border with Myanmar means there is a constant flow of persons who enter Bangladesh illegally. Consistent with the government's policy, UNHCR has not registered those outside the camps nor does it actively engage with this self-settled population. Documentation is not provided to those outside the camps.

At present, the UNHCR provides support to around 32,000 registered Rohingya refugees in partnership with some NGOs. The refugees are not legally allowed to work or go outside the camps. But the number of undocumented Myanmar Rohingya in Bangladesh is about 2,00,000-5,00,000. They live in unofficial settlements or in Bangladeshi villages with no legal protection from arrest or abuse and little or no humanitarian assistance. They are scattered over Chittagong, Bandarban, Rangamati, Khagrachari and Cox's Bazaar city and survive mainly on daily wage labour. Some run small businesses. Traffickers are also found among this population. In one unofficial settlement, malnutrition rates were twice the emergency threshold. The lack of assistance for both unregistered refugees and host communities have increased tensions over scarce resources such as water and firewood, leading to physical and sexual violence against refugees, particularly women and girls. There is little security for undocumented refugees as they have no access to the UNHCR and other human rights organizations.<sup>7</sup>

Though 98 per cent of Rohingya refugees head into Bangladesh first, it is not their choice of destination. Of the 100 interviewed, sixteen wanted to be in Bangladesh while sixty-five preferred India. One Rohingya man, now forty-two, was born in Bangladesh and had never been to Myanmar. His parents, wife and children are in Cox's Bazaar. His has come to India to earn more money.

**Table No.6: Target Country at the Time of Leaving Burma**

Target Country	Rohingya		Total
	Male	Female	
Bangladesh	13	3	16
India	43	22	65
Pakistan	0	0	0
Other	0	0	0
No Target	9	2	11
N.A	4	4	8
<b>Total</b>	<b>69</b>	<b>31</b>	<b>100</b>

Source: Data Collected from Field

<sup>7</sup> Information about the number of Rohingyas in Bangladesh, their living areas and their problems was provided by an officer of Ain O Salish Kendra, a leading human rights organisation in Bangladesh.



Seven Rohingyas – Bodiul Alam, Nur Kabir, Noor Alam and Ayesha Bibi, Ushnara Bibi, Hamida Begum, Nur Begam – migrated to Bangladesh in their childhood. Bodiul Alam and Nur Kabir entered Bangladesh in 2008, when they were eleven and twelve respectively. After spending five years there, Bodiul came to India. Nur escaped from Myanmar with some neighbours leaving his family behind. After living in Cox's Bazaar for seven years he came to India to live in Jammu with his uncle. He does not know what happened to his parents, sisters and brothers. He has been in the Balurghat District Correctional Home since May 2015. Noor Alam spent twelve years in Bangladesh where he went with his parents in 1997 at the age of five. In 2009, he left Bangladesh with all most all family members to settle in Delhi.

Ayesha Bibi, twenty-one, and Ushnara Bibi, twenty-two, had been in the Kutupalong camp since childhood. Both of them got married there. Ushnara Bibi has a Bangladeshi refugee card. Hamida Begum, eighteen, lived in a village in Bangladesh for ten years. Her parents have refugee cards in Bangladesh but she was not able to get one. Noor Begum, twenty, has been in Cox's Bazaar since she was a child. Her parents still live there. She knows many Rohingya people who are in Jammu and Delhi. None of these women can tell the exact year they left Myanmar. It appears that they migrated to Bangladesh between 2003 and 2005.

**Table No.7: Staying in Bangladesh**

Time Period	Places of Staying												Total
	No Specific Place		Nayapara		Kutupa long		Cox's Bazar		Technaf		Other		
	M	F	M	F	M	F	M	F	M	F	M	F	
Less than 1 year	48	22	0	0	0	0	0	0	1	0	0	0	71
1- 5 years	7	1	0	0	3	1	3	0	1	2	0	0	18
6- 10 years	0	0	0	0	0	0	2	1	0	0	2	1	6
10- 15 years	0	0	0	0	0	2	1	0	0	0	0	0	3
16- 20 years	0	0	0	1	0	0	0	0	0	0	0	0	1
From Birth	0	0	0	0	0	0	1	0	0	0	0	0	1
Total	55	23	0	1	3	3	7	1	2	2	2	1	100
	78		1		6		8		4		3		

Source: Data Collected from Field

Among the reasons why Rohingyas leave Bangladesh for India is the search for a livelihood and a better life, the presence of relatives, some of whom have refugee cards, harassment, including frequent arrests, in Bangladesh and the fear of being sent back to Myanmar. Migration out of

Bangladesh is also caused evidently by the fact that in a number of cases some members of a family get refugee status while others don't, forcing all of them to leave if they want to stay together.

After crossing the border, Faruk was in Bangladesh for a month. Then he was pushed back to Myanmar. After wandering for some days in the mountains, he entered Bangladesh again with sixteen other Rohingyas who had also forced back to Myanmar. Later, he came to India. Nur Sahatu, seventy, lived in Bangladesh for twenty years fleeing there in 1991 with five children after her husband was murdered. She was in the Nayapara camp and had a refugee card in Bangladesh, but none of her children were registered. Since one of her daughter lived in Delhi, the whole family decided to relocate. They were arrested from English Bazaar, Malda. Only two women of all the 100 people interviewed had Bangladeshi refugee cards – Nur Sahatu and Ushnara Bibi.

### **Negotiating Borders**

The first Rohingyas reached India some twenty years ago, some of whom were asylum-seekers, now settled in Jammu. Those who arrived later have settled in different locations. Jammu city and its surrounding areas host the largest population of Rohingya in India with nearly 4,000 persons, followed by Hyderabad with about 1,300 Rohingyas. Smaller numbers, 250-700, have settled in Delhi, Jaipur and Mewat. Smaller groups live in Uttar Pradesh – Muzaffarnagar, Saharanpur and Aligarh. The majority lives in camp-like situations, while only a minority can afford rented rooms and is scattered among the local population. A few migrant clusters are located in slum areas where the Rohingyas share space with local people. Rohingyas who have arrived in India recently continue to move to Jammu because of the already established community networks in the area. Thirty-six respondents chose Jammu as their preferred settlement destination and the same number chose Delhi. Like other refugee groups, such as the Chin from Myanmar and Somalis, Rohingyas feel safer living in a community. The UNHCR in India was approached by over 2,700 new Rohingya asylum-seekers during 2012 and 5,522 in 2013. As of 1 January 2014, 5,990 Rohingya refugees and asylum-seekers have been registered with UNHCR in India. Many more await registration.<sup>8</sup>

In West Bengal, there is no fixed settlement area for Rohingyas. The largest identifiable number is concentrated in correctional homes. ABP Ananda, an electronic news channel headquartered in Kolkata, reported on 6 July 2015 that the number of Rohingyas in the state is over 100,000 and that the union government is worried about the continuing migration.

Of those interviewed, ninety-eight had crossed two international borders to come to India, transiting through Bangladesh before entering West Bengal. South Dinajpur, Cooch Behar and North 24 Parganas are the three districts used by Rohingyas as a gateway to West Bengal and India. The greatest volume of infiltration occurs through Hilli into South Dinajpur, which is surrounded by Bangladesh on the north, east and south. The Hilli railway station is in Bangladesh and is separated from India only by the tracks. Dinajpur-Dhaka and Dinajpur-Rajshahi trains have to cross Hilli station. Many passengers get down from the overcrowded trains before reaching the station, after which it is easy to cross into West Bengal without papers.<sup>9</sup>

Petrapole and Basirhat are in the North 24 Parganas district. Petrapole is the Indian side of the Petrapole-Benapole border checkpoint between India and Bangladesh. Two Rohingya men said that they entered Basirhat from Satkhira, Bangladesh; seven who have come through Basirhat said that they had taken shelter in Taki, a town in the same district, for some days. Changrabandha is

<sup>8</sup> See the report 'Rohingya Refugees and Asylum-Seekers in India: A Situational Analysis', February 2014. This report was jointly researched and written by four national NGOs – Development and Justice Initiative (DAJI), BOSCO, Socio-Legal Information Centre and Confederation of Voluntary Associations, with UNHCR support.

<sup>9</sup> The information about the Hilli border was collected during fieldwork.

another border crossing and a defunct rail transit point on the India-Bangladesh border in Cooch Behar district. The corresponding point on the Bangladesh side is Burimari in Lalmonirhat district. Only two men chose this border to enter in the state. Whereas Changrabandha and Hilli are in North Bengal, Petropole and Basirhat are in South Bengal.

Rohingyas follow different routes after crossing the border to reach their desired destinations. Among the sixty-four who crossed the border at Hilli, ten managed to reach Delhi, with six of them finally going to Jammu. The rest, who were arrested in Bengal, had planned to follow the same route. After crossing Hilli they usually go to Balurghat. However, some informants said that people sometimes travel to Bardhaman, in south Bengal, to get a train to Delhi and evade arrest. Most of the twenty-two respondents who crossed the border at Petropole also wanted to go to Delhi or Jammu. Rohingyas who entered through Basirhat mostly wished to go to Hyderabad. Only one Rohingya man in this study tried to go to Mumbai after reaching the railway station in Howrah from Basirhat.

Jahid Hossain was among the six who found their way to Jammu. His Bangladeshi wife and five children were, however, arrested at Hilli. Jallal Ahammad and Satara reached Jammu with their five children leaving behind one child and others who were arrested in Balurghat. Md Alam and Bodiul Alam reached their destination with their families. Of the six, four have got refugee cards, while Md Alim, twenty-five, who has lived in Jammu for three years, and Bodiul Alam have not.

Md. Karim and his family reached Delhi safely. But Noor Islam, twenty-six, lost his 'mentally ill' brother at the time of the 2012 riots. Their eldest brother was murdered by the border police. A cousin went to Myanmar to bring them to India. They came through the Hilli border. After reaching Delhi, Noor applied for a refugee card and lived for six years in a Zakat Foundation camp with his parents, grandparents and others.<sup>10</sup> He then set off to scour Aligarh, Jammu, Meerut and Kanpur in search of his brother. He returned to Bengal thinking that his brother might be in the border area from where they entered. He was arrested at Hilli More.

Jahid and Abu Sidhi were in one of the Balapur camps in Hyderabad for some days. Jahid had been in different places: Delhi, Jammu, Rajasthan, and Hyderabad. He was arrested in Balurghat, from where he had started his journey. Spending four months in Balapur, Abu, eighteen, wished to return to Bangladesh to his maternal uncle. He could not adjust in India. His parents and other family members were in Myanmar. He was arrested at the Petropole border.

A seventy-year-old woman was hiding with her family members in a village near Hilli border. They intended to go to Delhi to apply for a refugee card. But after fifteen days they were arrested on the way to Malda station in West Bengal. Md. Islam, Md. Amin and Jallal took shelter in Buniadpur, South Dinajpur. They were with their families and were engaged in jute cultivation as daily labourers. After four or five months, they were spotted by the police while going to Malda station with some other people to catch a train for Delhi. All of them were arrested. Harun Rasid was also engaged in jute cultivation in Buniadpur. Police arrested him from there. He has been awaiting trial for twenty-one months. His wife and children live in Jammu. All of them came to India in 2008 and they have refugee cards.

Nur Alam, forty-eight, and Md. Faruk, eighteen or nineteen, who are related, entered West Bengal through the Changrabandha border of Cooch Behar. They left Myanmar in 2011 in search of work and a better living. Nur Alam sold his land in Rakhine and paid the money to a tout who was supposed to help both of them to go to India and to get work. They entered Bangladesh and stayed there for about a fortnight before entering West Bengal. Instead of organising work for them, the tout took them to Phuntsholing in Bhutan. There they worked for three months for practically no wages and were given food once a day. They left the job to return to Myanmar and went back to the

<sup>10</sup> See <http://www.zakatindia.org/RohingyaMuslims.html>, accessed on 10 September, 2015.

same border crossing and approached Border Security Force (BSF) personnel to allow them to go to Bangladesh. But from there they were handed over to police. They were then held in the Jalpaiguri Central Correctional Home and now they want to be shifted to some other correctional home where they can live with fellow Rohingyas. The other eighty-two Rohingyas were spotted by BSF personnel or policemen as soon as they crossed into India, being noticeable because of their language. They were arrested near the borders, within a couple of days of entering Bengal.

Thirty-eight Rohingyas are arrested from or near the border areas, ten in Bongaon, five in Chandpara, one in Basirhat, six at the Kharagpur railway station and five at the Malda railway station. None of them faced any problems at the Howrah or Sealdah railway stations in Kolkata. Some Rohingyas said BSF personnel let them go at the Benapole-Petrapole border even though they have no legal documents but ultimately they were caught.

The 100 Rohingyas in correctional homes in West Bengal in July 2015 were distributed across the Balurghat District Correctional Home, where there are forty-eight Rohingyas, Behrampore Central Correctional Home, where there are eighteen, Jalpaiguri Central Correctional Home, where there are two, Midnapore Central Correctional Home, where there are six, and Dumdum Central Correctional Home, where there are twenty-six. Officials in these correctional homes said that they had been brought in over the past three or four years, usually in family groups.

Rohingyas in correctional homes belong to three categories – those under trial (eighty-two), those convicted (four) and those who have served their sentences but are still in prison because they cannot be released due to procedural reasons and who have to live on charity because the government doesn't provide rations (fourteen). Rohingyas who are under trial are found in all the correctional homes except the Jalpaiguri one. Convicted Rohingyas are found only in Behrampore. Those who have served their sentences can be found in Jalpaiguri, Behrampore and Midnapore. Fifty-four of the Rohingyas interviewed had been in correctional homes for under a year, all of them under trial; twenty-six had been incarcerated for thirteen to twenty-four months, of whom twenty-three were under trial and three had been convicted; thirteen had been incarcerated for twenty-five to thirty-six months, of whom five were under trial, one had been convicted and seven had served their sentences; and seven had been incarcerated for three to five years, all of whom had served their sentences.

Seven Rohingyas remained imprisoned even though they have refugee cards, which they had shown the police. They had been told that the cards were valid only in Delhi. Five of them were arrested near the Behrampore home, where they had gone to meet family members. Jallal Ahammad and his wife Satara, who managed to get to Jammu leaving one of their six children in Bengal, have been mentioned earlier. They got refugee cards there. After a couple of years they came to the Behrampore home to meet their lost child, having been told that the cards permitted free movement in India. But while they were returning to Jammu, the police arrested them and seized their cards. Now they are in the Behrampore home and their five children are in Jammu. They don't know what is happening to them. When asked why people with cards were being arrested, a police officer replied that the cards did not permit free movement and were for staying in a particular place. 'Why are people who have been given cards in Delhi coming to West Bengal again?' he asked.

Some Rohingyas are allowed to keep their cards – two of them showed their cards during the interview. Correctional home officials admit that some of the people in custody have refugee cards, but the police flatly deny that. They say nobody is allowed to keep anything with them after being arrested. The police seem to be completely unaware of the fact that people with refugee cards sometimes come to meet relatives in correctional homes. Prejudice bred by linguistic differences make the police even more intolerant.

The two Rohingya men who have refugee cards are in the Balurghat Home. One of them is Harun Rasid, who repeatedly says that he had been picked up at the Hilli border while waiting for

someone. Other Rohingyas in the correctional home said that it was well known that he used to help people reach Jammu and Delhi after crossing the border. Noor Alam also has a card. In May 2015 he came to Patiram in South Dinajpur from Delhi, where he had been living for six years, to receive an uncle and other relatives who were coming to India from Myanmar via Bangladesh. The whole family was trying to shift to India.

Md. Ali had been living in Jammu for three years with his family and had applied for a UNHCR refugee card. He was arrested near the Hilli police station with his wife and child who were coming from Myanmar through Bangladesh. Ali had gone to Hilli to receive them. This is the story of thousands of Rohingyas who are trying to shift to India. Since not all can afford to pay touts big sums of money, all members of a family do not come together, but make the crossing in groups following one another. So families get divided between Myanmar, Bangladesh and India. Abdul Hamid, twenty-two, used to travel between Burma and Bangladesh clandestinely since he was twelve. In 2007, he settled in Bangladesh. After staying there for a couple of years he came to India to earn more money. One of his brothers, who is a labourer, still lives in Cox's Bazaar with his parents, while four sisters and two brothers are in Rakhine. Bodiul lived in Jammu with his family for two years. In April 2015, he came to the Hilli border to meet friends who were in Bangladesh. Mention has been made of Noor Islam's cousin who went to Myanmar to bring him to India and the tout who took Noor Alam and Md Faruk to Bhutan via Bangladesh and India.

In some cases, families get separated after coming in India, because while crossing border some escape arrest and others don't. I met some Rohingya people who had spouses somewhere else in India. On the other hand, sometimes couples or families are arrested together and end up in West Bengal's correctional homes. Those who suffer the most are the ones who are separated from their children. Children above seven are not allowed to stay with their mothers and are sent to children's homes.

A problem of invisibility is also noticeable. Md. Sarek and Md. Kharesh are two Rohingya men who have been in the Dumdum home for sixteen months, under trial. They were arrested from Bongaon station with their wives and children. Soon after, their wives were sent to Alipore Women's Correctional Home following a court order, though the Dumdum home had a female ward where these two women had been lodged. Their children were also separated, some staying in the Dumdum home and some going with their mothers. Now Sarek and Kharesh don't know how they can contact their wives. Members of a family can meet once a week if they are in the same correctional home, but there is no such arrangement for inmates of separate correctional homes. Their complaint is that nobody asks them who they are or what they need. But the bigger problem is that the two Rohingya women have become invisible to the government. When I wanted to work in correctional homes, I was granted permission to go to the Dumdum home and the Midnapore home, since these two places were known to house Rohingyas. Alipore Women's Correctional Home was not mentioned because the authorities did not know about these women.

Still, some Rohingyas feel life behind bars in Bengal is more secure than life in Arakan. The language problem is not insurmountable because the correctional homes have some Bangladeshis from Cox's Bazaar who understand the language of the Rohingyas, but communication gap remains. New dresses are usually arranged by the authorities concerned as and when needed, but one man lamented that he had been wearing the same clothes for eight months. He had not been able to communicate his need to the relevant officials.

Of the 100 Rohingyas interviewed, seven are refugees and the rest asylum-seekers. There are also twelve people in correctional homes who are stated to be Myanmar nationals in court documents, but they are not counted as Rohingyas because they are Bangladeshis by their own account. What could account for this mismatch is that some Bangladeshis say they are Rohingya, if caught while crossing the border, but later admit of being Bangladeshis. The courts go by the

original statement and treat them as Myanmar nationals. These people say they are Rohingyas either in the mistaken belief that this will help to get them refugee status or because that is the advice they get from touts. Whatever be the reason, it makes it difficult to get back to Bangladesh, though eight of them have served their term, while two each are under trial and convicted.

Marriage between Bangladeshi women and Rohingya men is another cause of this problem. After crossing the border, women arrested with their Rohingya husbands and in-laws are labeled as Rohingya. Margina Begum, thirty-five, is from the Cox's Bazaar. She is married to Jahid Hossain, a Rohingya, for twenty-two years. Her husband has no Bangladeshi refugee card. At some point, Jahid got the idea that poor people could live a peaceful life in India and they made their way to India in the middle of 2012. While crossing the border, Margina was arrested at the Hilli border with five children. She has been in the Behrampore home for two years. Among her five children, two sons are in Behrampore, two daughters in a correctional home in Malda and the youngest one is with her. After serving her term, she may have to remain incarcerated like Nur Sahatu, another woman from Cox's Bazaar, who has been behind bars for four years though her detention period was for two years. Her husband, too, is a Rohingya. They got married in the Nayapara camp in Bangladesh. She was arrested from English Bazaar, Malda.

Refugees and asylum-seekers who are in detention have not committed any crime; under international conventions they have the right to seek asylum in any place without papers. Refugees and asylum-seekers have legally distinct claims on hospitality. But such legal conventions are usually of no help.

### **Escaping Confinement?**

The tragic irony of the Rohingyas in Bengal is that they ended up incarcerated in a place they believed would free them from the confinement of the 'open prison' of Myanmar and the camps of Bangladesh. The US, however, believes the 'real solution' to the Rohingya refugee issue lies in their going back to Myanmar when the situation changes in Rakhine state. Assistant Secretary of State of the Department of Population, Refugees and Migration, Anne Richard has said, 'International pressure could play a part in changing that situation. The real solution for most Rohingya is that we should strive for this that they go home.'<sup>11</sup>

Myanmar has halted a national pilot project to verify the citizenship status of Muslim minorities in western Rakhine State. 'The Rakhine situation is too complicated. The verification process is difficult since applicants are applying [for] an identity which does not exist in the country,' said Rakhine Chief Minister Maung Maung in February 2015. This was a reiteration of the government's position that the Rohingyas were illegal migrants from Bangladesh. Officials have said that the verification process was being conducted under a 1982 law that bars citizenship registration using the term Rohingya instead of Bengali.

Shwe Maung, a Muslim member of parliament from the western part of Rakhine, says there may be a way around the problem. 'I want to point out we should look at the generation of those who hold temporary citizenship cards,' he said. 'The problem will be solved in the short term if those who hold [temporary] citizenship cards and whose parents hold [temporary] citizenship cards are allowed to apply for citizenship [using] normal procedures, instead of a specific project.'<sup>12</sup>

<sup>11</sup>See <http://www.rohingyablogger.com/2015/01/us-pitches-for-myanmar-citizenship-for.html#sthash.WfWW9cQt.dpuf>, accessed on 10 September, 2015.

<sup>12</sup>See <http://www.rohingyablogger.com/2015/02/myanmar-halts-citizenship-verification.html#sthash.pf5R8fjs.dpuf>, accessed on 10 September, 2015.

Aiming to deal with the Rohingya crisis, the Commonwealth Human Rights Initiative in collaboration with the UNHCR organised a one-day training programme for officers of correctional homes in West Bengal on 'Human Rights and Refugee Protection' on 5 December 2014. The training was aimed at facilitating discussions and initiating a dialogue between them, the inmates of the homes, and the UNHCR. Such discussion was aimed at enhancing coordination between prison administration and the UNHCR to enable seamless flow and exchange of information, thereby expediting the release of asylum-seekers in detention. The training focused on: sensitisation to the persecution of Rohingyas in Myanmar; imparting appropriate knowledge about displaced people, asylum law and international principles; timely identification of asylum-seekers in detention through various identification tests relating to language, religion, education, occupation, etc.; creating a formal channel to direct the flow of asylum-seekers to the UNHCR; and India's position on asylum-seekers and refugees and the UNHCR's operational procedures in India.

Communication is a huge problem and language is only one part of it. The Rohingyas cannot tell people about their history, which undermines their case for asylum. They either don't understand how the process works or are advised to share as little as possible. Involvement of NGOs can improve the situation somewhat. Though RCFI has provided some help to the Rohingyas in Delhi, it is completely unaware about their problems in correctional homes in Bengal. Officials say that members of the Gour Bangla Human Rights Awareness Centre visit the correctional homes occasionally to discuss the Rohingya issue, but no NGO intervenes on a regular basis. The involvement of some opportunistic middlemen makes matters worse. Regular involvement of NGOs or the state human rights commission along with government support may produce positive results. The issues which need attention are: providing refugee cards after quick verification; sensitising police about the problems of Rohingyas, especially regarding the arrest and incarceration of people who have refugee cards and visit correctional homes to meet relatives; helping separated families, particularly when children are not with parents; and understanding that Rohingyas are not satisfied with getting refugee card only for themselves, they want to bring family members, friends or other members of the community after securing some position in India.

'We will never go home. They will kill us.' This is a standard reaction of Rohingyas when asked whether they wish to return to Myanmar, because they are sure that their homeland will never be safe enough for them. Moreover, once outside Myanmar, Rohingyas are systematically denied the right to return to their country. Twice every year, Rohingyas in Myanmar are photographed by local authorities and those absent at the time are presumed to be gone and their names are deleted from 'family books'. If such people are found by officials or the police they are killed on spot, the respondents say. Even people who have family members in Rakhine don't want to go back. They don't think their relatives are alive anymore. Most respondents were categorical that they wanted to be in India, either in Jammu or in Delhi where they have relatives or just people of their own community. The main reason for wanting to stay is that they are sure their lives are not in danger here. The experiences of Rohingyas are traumatic, uprooted as they are from one social setting and thrown into another, in the process undergoing untold sufferings. They spend years in refugee camps, where births, marriages and deaths take place within the confines of unfamiliar settings. Family lives are destroyed, as many Rohingyas do not even know whether their homes still exist and whether their relatives are alive or dead. Generally, postcards are supplied to inmates of correctional homes so that they can write home. Many Bangladeshis send letters, but no Rohingya does. Acute depression is common in people who experience such a void in their lives.

# Chapter V

## The Limits of Belonging: Rohingyas in Bangladesh and India

*Madhura Chakraborty*

### Introduction

STATELESS PEOPLE, numbering about 10 million according to United Nations High Commissioner for Refugees (UNHCR) estimates,<sup>1</sup> represent a rupture in the very fabric of our imagined geography of a world neatly divided into bordered nation-states. Stateless populations, though non-citizens are in most cases 'subjected non-subjects'<sup>2</sup>: without rights, but not without the state's disciplinary interventions and discrimination. This paper tries to examine how nation-states treat stateless non-citizens fleeing persecution, with particular reference to the Rohingyas in Bangladesh and India.

Native to the Arakan area or Rakhine state of today's Myanmar, the Rohingya minority Muslim community has been the subject of controversy. The Burman and Buddhist-dominated leadership of the country has long treated the Rohingyas as illegal Bangladeshi infiltrators. Since the late 1970s, Rohingyas have been present in large numbers in Bangladesh, particularly in the Teknaf area of Chittagong district across the Naf river separating the Rakhine State from Bangladesh, in refugee camps and elsewhere. Increasing hostility towards the Rohingya from the Awami League government in Bangladesh and continuing discrimination and violence against them in Myanmar has meant that large numbers of Rohingya are now seeking shelter in India.

This paper is based on interviews as well as ethnographies, newspaper reports and theoretical writings. I have conducted group interviews with seven Rohingya girls at a shelter for minors in Kolkata, India, and an interview with a member of the Kozhikode-based Relief and Charitable Foundation of India, which is a Muslim charitable organisation working with Rohingyas. In Bangladesh, I spoke with officials from various international organisations and local experts as well as some Rohingyas. In the following sections I argue that the history of this region, coupled with the post-9/11 regime of securitisation and the increasing currency of the discourse of terrorism and the concurrent rise of Islamophobia have combined to make the plight of the Rohingyas precarious in ways that are difficult to redress.

Myanmar, Bangladesh and India have a shared colonial past that has shaped their present borders and histories to a great extent. Looking at the colonial and post-colonial history of this region, starting with the Treaty of Peace between the British and the King of Ava in 1826 through the partition of 1947 and post-partition boundary-making through acts such as the North East Reorganisation Act of 1971 (India), Ranabir Samaddar writes:

[W]hat is remarkable in this nearly two hundred years' history is that, with repeated boundary fixing in this huge region both as internal boundaries between different units of the country and as borders with outside

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<sup>1</sup> UNHCR, *Stateless People Figures*, <http://www.unhcr.org/pages/49c3646c26.html>, accessed on 5 October 2015.

<sup>2</sup> C. Ryan, 'The subjected non-subject: security, subjectification and resistance in the occupied Palestinian territories', *Critical Studies on Security*, Vol.1, No. 3, 2013, pp. 295-310.



regions/countries, and creation of different administrative-political units, we have in this region the incipient nations and nationalisms, territorialities and ethnicities, peoples and people-hood(s), which cannot live without the links of the past ages, yet cannot digest these links in light of their own emerging claims. They are in many ways therefore the “divided peoples” – divided across international and the various internal political-administrative borders that cut what they consider now to be their nation. Inasmuch as they must now find out who they are in order to claim national status, they must to an equal degree demarcate who they are not in order to reinforce the claim<sup>3</sup>.

In the following sections I will examine how the Rohingyas’ claims upon citizenship and humanitarian assistance are repeatedly repudiated through the discourses of (il)legitimacy and security that reinforce the tenuous and often arbitrary borders between these three nation-states.

### Rohingyas in Bangladesh: Insecure and a Threat to National Security

My co-researcher and I were invited to the house of an NGO worker just outside one of the registered refugee camps in Teknaf, Bangladesh. About thirteen Rohingya women, all camp dwellers, mostly from unregistered settlements around the official camp, sat around us in their black *burqas*. The translator was a young Rohingya man, one of the few attending college from his community. There was palpable discomfort, a certain unease, even mistrust. We asked routine questions: Did you come from Myanmar? How long ago was that? Are there any family members left there? What kind of problems do you face? I had a camera and to relieve the tension started taking photographs of a toddler in one of the woman’s lap and then showed it to the mother and child. There was curiosity, everyone smiled and the tension eased. Soon two of the most vocal women, one in her forties and the other in her twenties, took charge of the conversation. They clearly believed that narrating their tales of woes would get them some redressal. As a result, they were eager to tell us about the lack of daily necessities that form part of the everyday camp life. We could get only a bare minimum about their travails in Myanmar.

Sensing that we were more interested in tales of trafficking, our young translator exhorted the youngest woman, a shy girl still in her teens, to tell us her tale of being smuggled to Malaysia. He himself, afterwards, talked about how he managed to escape from the clutches of the smugglers after being kept imprisoned in a small boat. From these tales of escape, it became clear that for the younger Rohingyas, born and brought up in Bangladesh, the urgency to escape camp life was of paramount importance. For the boy Rasool, it formed the leitmotif of his life – as a teenager he had escaped repeatedly to Dhaka to reach India but was unsuccessful. For Sahanara, the girl, the escape was coupled with romance. She started speaking to a Rohingya man settled in Malayasia over phone. He paid the traffickers for her passage to Malaysia. However, she along with others on the boat, were captured and sent to detention centres upon landing in Malaysia. With the help of her fiancé, Sahanara managed to finally get bail and she and her betrothed flew back to Bangladesh paying hefty sums to smugglers for fake documents. In a twist of fate, it was here that Sahjanara’s fiancé got arrested under the Foreigners Act (1946) and now faces an uncertain future.

Both these youngsters were aspirational, had been educated and worked with NGOs within the camps. Clearly for the young Rohingyas escape, at any cost, is a means of survival, even if it might seem dangerous and naive to board buses to reach India or trust a stranger and set out on the sea to Malaysia. Whereas the older women saw themselves as settled in Bangladesh, though complaining about lack of amenities, the young people could only envision life outside the constricting camps. Young Rohingyas are increasingly frustrated with the restrictions of camp life and are constantly on the lookout for better prospects. We encountered parents in the community whose teenage sons had gone missing and it was only later they found out that they had tried to take

<sup>3</sup> P. Banerjee and R. Samaddar, *Migrations And Circles of Insecurity*, Delhi, 2012, p.5

boats to Malaysia. Similarly we heard stories of nuclear family units who had left for India – mostly Jammu and Hyderabad. At least in one case there were reports of a smuggler/trafficker holding a family as bonded labourers till they worked off a sum ‘owed’ to him.

About 28,000 Rohingyas live in the two UNHCR camps at Kutupalong and Nayapara in Cox’s Bazaar. An estimated 300,000 live outside the camps in villages or makeshift camps and are neither registered by the Government of Bangladesh nor UNHCR. They have stopped registering Rohingyas since 1992. The insecurity and vulnerability of the unregistered Rohingyas has increased following the voters registration verification process in 2007-08 when many unregistered Rohingyas had their names struck off the voters list. From interviews with a number of stakeholders and aid organisations, it turned out that villagers would often adopt a Rohingya family and provide an identity in exchange for free or cheap labour. Till now marriage and citizenship through it is a possibility. However, a draft law banning marriage of Bangladeshis with the Rohingyas has been in the pipeline for some time now.

Older residents from the registered camps informed us that it was not so difficult to get help from locals. The most common favour was help in enrolling children in regular schools and colleges using the status of a Bangladeshi. Some government primary school teachers said that there were significant numbers of Rohingya children enrolled in school and that as teachers they could tell, often from linguistic clues, the Rohingya children apart from the Bangladeshi ones. In the camps we heard stories of Rohingya children who did well enough to get scholarships but had their scholarship withdrawn after classmates revealed their true identity. For Rasool, this threat of betrayal came with his first job where he quickly rose through the ranks and attracted the ire of some co-workers who threatened to get him arrested for leaving the camp.

In an interview with Barnaby Phillips of Al Jazeera on 27 July 2012, Bangladeshi Prime Minister Sheikh Hasina repeatedly asserted that it was not her country’s problem to deal with the Rohingyas and she could not intervene because it was unwise to meddle in the internal affairs of another country. She also said that the international community should insist on Myanmar taking back the Rohingyas and not point an accusing finger at Bangladesh. Responding to accusations that fleeing Rohingyas were forced back by Bangladeshi border guards, she said the guards had responded in a humanitarian way and offered money, medicine and food to the Rohingyas and they ‘persuaded’ them to go back. As journalist Subir Bhaumik points out:

Today, Bangladesh’s Awami League government sees them as Islamist extremists closer to their arch-rivals, the Jamaat-e-Islami. The United Nations High Commissioner for Refugees has been asked to shut down Rohingya refugee camps in southern Bangladesh.<sup>4</sup>

Bangladesh is becoming increasingly inhospitable to the Rohingyas living there. In July 2014 law minister Syed Anisul Haque announced a draft law through which Rohingya marriages could no longer be solemnised in the country. This applied to marriages within the community as well as marriage between a Rohingya and a Bangladeshi national – the latter allegedly being ‘used’ by Rohingyas to escape camp life and gain legitimacy as citizens.

In November 2014, Nigel O’Connor of Al Jazeera reported about the plans of the Bangladeshi government to intern and repatriate 270,000 undocumented Rohingyas.<sup>5</sup> Al Jazeera also revealed a five-page foreign ministry document dated 31 March 2014, which said, “It has been suggested that a survey/listing of undocumented Myanmar nationals in Bangladesh would be carried out in order to identify them and determine their actual number and location...The listed individuals

<sup>4</sup> S. Bhaumik, ‘No Country for Rohingyas’, *India Today*, 22 March 2013, <http://indiatoday.intoday.in/story/rohingya-muslims-rakhine-myanmar-bordering-bangladesh/1/259014.html>, accessed on 10 September 2015.

<sup>5</sup> N. O’Connor, ‘Bangladesh Proposes Interning, Repatriating up to 270 k Rohingyas’, *Al Jazeera*, 2014, <http://america.aljazeera.com/articles/2014/11/26/bangladesh-proposesinterningrepatriatingupto270krohingyatomyanma.html>, accessed on 10 September 2015.

would be housed in temporary shelters in different suitable locations pending their repatriation to Myanmar through regular diplomatic/consular channels.” As the report pointed out, there was no indication in the document about what rights the interned Rohingyas would have. In interviews with the legal officer at UNHCR, Dhaka, we were informed that there was no official communication between the Bangladeshi government and UNHCR about this and that the UNHCR too had found out from media reports.

At the same time, Rohingyas provide cheap labour. According to a comprehensive report by the Danish Immigration Services (DIS)<sup>6</sup>, Rohingyas both in the camps and outside them (as well as the unregistered Rohingyas outside the camps) are not allowed to work, but they do participate in the informal labour market. In 2009-2010, a number of Rohingyas were arrested and ultimately released through the intervention of their employers. In fact, as Al Jazeera reported, this has further alienated the Rohingyas from the local population because the former sell their labour cheaper.<sup>7</sup>

The DIS document showed that Bangladeshi government officials constantly harped on push and pull factors that brought Rohingyas to Bangladesh. The district commissioner of Cox's Bazaar was quoted as having said that the opportunity to travel to other countries from Bangladesh was a major factor in drawing the Rohingya to Bangladesh. Inherent in this statement is the denial that the Rohingyas are political asylum-seekers and do not migrate only due to impoverishment. In fact, their political disempowerment in Myanmar is directly linked to their economic impoverishment. The DIS report further quotes various officials of international NGOs who posit that the Bangladeshi government suspended the policy of resettling the Rohingyas in countries abroad through the UNHCR because it regarded this as a major reason for ‘attracting’ Rohingyas to the country. An Al Jazeera report also pointed out that by neglecting the Rohingyas in Bangladesh in order to discourage greater refugee influx from Myanmar, the government had created a population without access to healthcare, education, employment and basic means of survival.<sup>8</sup> Many articles by Bangladeshi scholars on the Rohingya ‘problem’ look at the situation from an internal security perspective. Utpala Rahman mentions the proximity of the Rohingyas to various Islamist organisations and argues that the Rohingya camps in Cox's Bazaar District are fertile ground for recruitment by Islamic militants and that the Rohingyas are involved in smuggling drugs and arms from Myanmar.<sup>9</sup>

Rohingyas are also characterised as threatening the moral and economic fibre of Bangladeshi society:

[A]ntisocial activities are increasing among the unregistered Rohingya refugee community. The social vices in the Rohingya community: commercial sexual exploitation, fake marriages, fake proposal of work, and the prevalence of sexually transmitted infections (STI) threaten the local social life and damage the stability of the Bangladesh-Myanmar border region...Undocumented Rohingya refugees use Bangladesh passport (sic) to travel abroad...Because Bangladesh depends on overseas remittance for its foreign currency reserve, the decline of the labor market could damage the country's economic stability.<sup>10</sup>

Thus, Rohingyas become characterised as a ‘problem’, a figurative disease carrier that literally infects Bangladesh (with sexually transmitted disease, for instance) and metaphorically infects the country by strengthening the cause of Islamist fundamentalism. Meghna Guhathakurta writes:

<sup>6</sup> Danish Immigration Services, *Rohingya refugees in Bangladesh and Thailand: Fact finding mission to Bangladesh and Thailand*, 2011, <https://www.nyidanmark.dk/NR/rdonlyres/B08D8B44-5322-4C2F-9604-44F6C340167A/0/FactfindingrapportRohingya180411.pdf>, accessed on 10 September 2015.

<sup>7</sup> *Ibid.*

<sup>8</sup> O'Connor, ‘Bangladesh Proposes Interning, Repatriating up to 270 k Rohingyas’.

<sup>9</sup> U. Rahman, ‘The Rohingya refugee: A security dilemma for Bangladesh’, *Journal of Immigrant & Refugee Studies*, Vol. 8, No. 2, 2010, pp. 233-239.

<sup>10</sup> *Ibid* p.235

A new security era has emerged in the world after 9/11 and one in which the southern states[such as Bangladesh] have been caught up as pawns in the war against terrorism. Much of the dominant security concerns of these states centre around following policies of counter-terrorism, which entail adopting strong vigilante technologies and techniques that bolster and reinvent dominant cartographic anxieties of the state. Needless to mention these technologies, sometimes derived directly for western economies fail to combat actual acts of terrorism and only manages to strengthen a xenophobia that ushers in a new security regime. Thus in a period of fluid population movements, states are compelled to engage with reinvented phobias of the cold-war instead of taking up creative policies of engagement.<sup>11</sup>

Bangladeshi scholars like Rahman<sup>12</sup>Azad and Jasmin,<sup>13</sup>and Parnini<sup>14</sup> focus on how the Rohingyas are a threat to security and national interests of Bangladesh and also how the influx of Rohingyas is damaging strategic bilateral relations with Myanmar. In fact, Rahman recommends ensuring better educational and socio-economic opportunities for the Rohingyas – not because they are political asylum-seekers facing a humanitarian crisis, but precisely because their impoverishment is seen as the destabilising factor in the border region:

If the situation of Rohingya Muslims is not addressed quickly, with an emphasis on justice and rights, the refugee camps can easily become a thriving breeding ground for terrorism and bring trouble for Bangladesh and the region.<sup>15</sup>

The Bangladeshi government does not seem to have the will to improve the lot of the Rohingyas in any way. As a *Guardian* report from 2012 points out, the NGO Affairs Bureau in Dhaka has a policy of not approving plans for educational and health facilities in the Cox's Bazaar district, even when it benefits local, non-refugee population.<sup>16</sup> In fact, in 2011 the government rejected a USD 33-million joint initiative with the UN to develop the region with special focus on health and education.

Ethnographic researches conducted on the Rohingyas open up a new way of looking at their problems beyond the paradigms of 'security' and 'protracted refugee problem' which have seemingly become buzzwords while referring to the Rohingya in Bangladesh. An article by Kazi Fehmida Farzana describes and analyses the 'cultural artefacts', songs and paintings, of the Rohingyas residing in Teknaf. Farzana argues that they help create a sense of community, and maintain a collective memory of 'home' and are also a way of resisting dominant codes rewriting the Rohingyas as disempowered, impoverished, nowhere people. Following James Scott's *Weapons of the Weak: Everyday Forms of Peasant Resistance*,<sup>17</sup> Farzana argues that these songs and paintings are a way of registering protest against the mistreatment and oppression they have faced in both Myanmar and Bangladesh and in a context where other means of resisting is impossible.

<sup>11</sup> M. Guhathakurta, 'Cartographic Anxieties, Identity Politics and the Imperatives of Bangladesh Foreign Policy,' *Peace Prints: South Asian Journal of Peacebuilding*, Vol. 2, No. 3, Winter 2010.

<sup>12</sup> Rahman, 'The Rohingya refugee'.

<sup>13</sup> A. Azad and F. Jasmin, "Durable Solutions To The Protracted Refugee Situation: The Case Of Rohingyas In Bangladesh", *Journal of Indian Research* Vol. 1, No.4, 2013, pp. 25-35.

<sup>14</sup> S. N. Parnini, 'The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh', *Journal of Muslim Minority Affairs*, Vol. 33, No.2, 2013, pp. 281-297.

<sup>15</sup> Rahman, 'The Rohingya refugee'.

<sup>16</sup> S.Z. Al Mahmood, 'Burma's Rohingya Refugees Find Little Respite in Bangladesh', *The Guardian*, 2012, Teknaf <http://www.theguardian.com/global-development/2012/jun/29/burma-rohingya-refugees-bangladesh>, accessed on 5 October 2015.

<sup>17</sup> J. C. Scott, *Weapons of the Weak. Everyday Forms of Peasant Resistance*, Massachusetts, 1985.

In media reports, from local Chittagong dailies to national Dhaka-based newspapers, the Rohingyas are most frequently mentioned in connection with the *yaba*<sup>18</sup> smuggling from Myanmar.<sup>19</sup> Even in connection with the boat people and trafficking networks, it is the plight of Bangladeshi migrants that is highlighted. From print to audiovisual media, Bangladeshi boat people were almost exclusively those interviewed in the aftermath of the crisis in the Bay of Bengal and Strait of Malacca in the early months of 2015. A senior journalist from *Daily Star* who was present in Thailand as the crisis unfolded told us that the smuggling networks have only recently started abducting Bangladeshis since the Rohingyas were too poor to pay a lucrative ransom. Further, Bangladeshis were either lured or kidnapped by smugglers and, therefore, were not really willing participants in these boat journeys in the way that Rohingyas were. This was a version of events echoed by many other journalists. One of them recounted a story of a Bangladeshi man who broke down in tears after having confessed to initially introducing himself as a Rohingya in Malaysia in order to be able to stay on as an asylum-seeker. While it is true that many Bangladeshi people smuggled/trafficked might have been lured with false promises, it is also true that Bangladesh is one of the highest migrant labour-exporting countries in the world. To say that the Rohingyas had opened up this route and helped create a trap for unsuspecting Bangladeshis is both disingenuous and naive.

One of the main reasons for the increase in the number of boat people is Bangladesh's strict stance against taking in any more refugees from Myanmar. The failure of the Malaysia-Bangladesh agreement to send willing labourers to Malaysia through a legal route has also meant that many choose the illegal way to find a better life in Malaysia. In an article published in the *Dhaka Tribune* on 30 July 2015 titled 'Why Risk Your Lives on the Open Seas', Abid Azad and Adil Sakhawat cited the exact statistics: according to the Bureau of Manpower, Export, and Training (BMET), roughly 200,000 migrants have gone abroad legally till July 2015. The number was 425,000 in 2014.<sup>20</sup>

'After five years of closed doors, the Bangladesh government signed a deal with the Malaysian government on 22 October 2012 to send migrants to that country. The registration database shows that over 1.4 million had registered their names as applicants. Since then, 3,853 went to Malaysia in 2013, 5,134 in 2014 and 1,047 have gone in the current year under this agreement. The database maintained by BMET also shows so far 1.45 million aspirants have already registered to go to another preferred destination, Saudi Arabia, which has opened its doors after seven years. But in the past five months, [that is, between February and July, 2015] only 9,726 aspirants have been able to go there through government initiative.'<sup>21</sup>

This article is a prime example of how Rohingyas are invisibilised in the mainstream discourse on risky migration from Bangladesh. Though Rohingyas also risk their lives on the open seas, in equal if not larger numbers, this is barely acknowledged in the report. The infographic below further illustrates this.

<sup>18</sup> *Yaba* is an illegal drug containing methamphetamine and caffeine in pill form. It is smuggled from Myanmar to neighbouring countries like Bangladesh and Thailand.

<sup>19</sup> See, for instance: *Prothom Alo*, 'Yaba Shebon 6 Bochorhe 77 Goon Berechhe', 9 December 2014

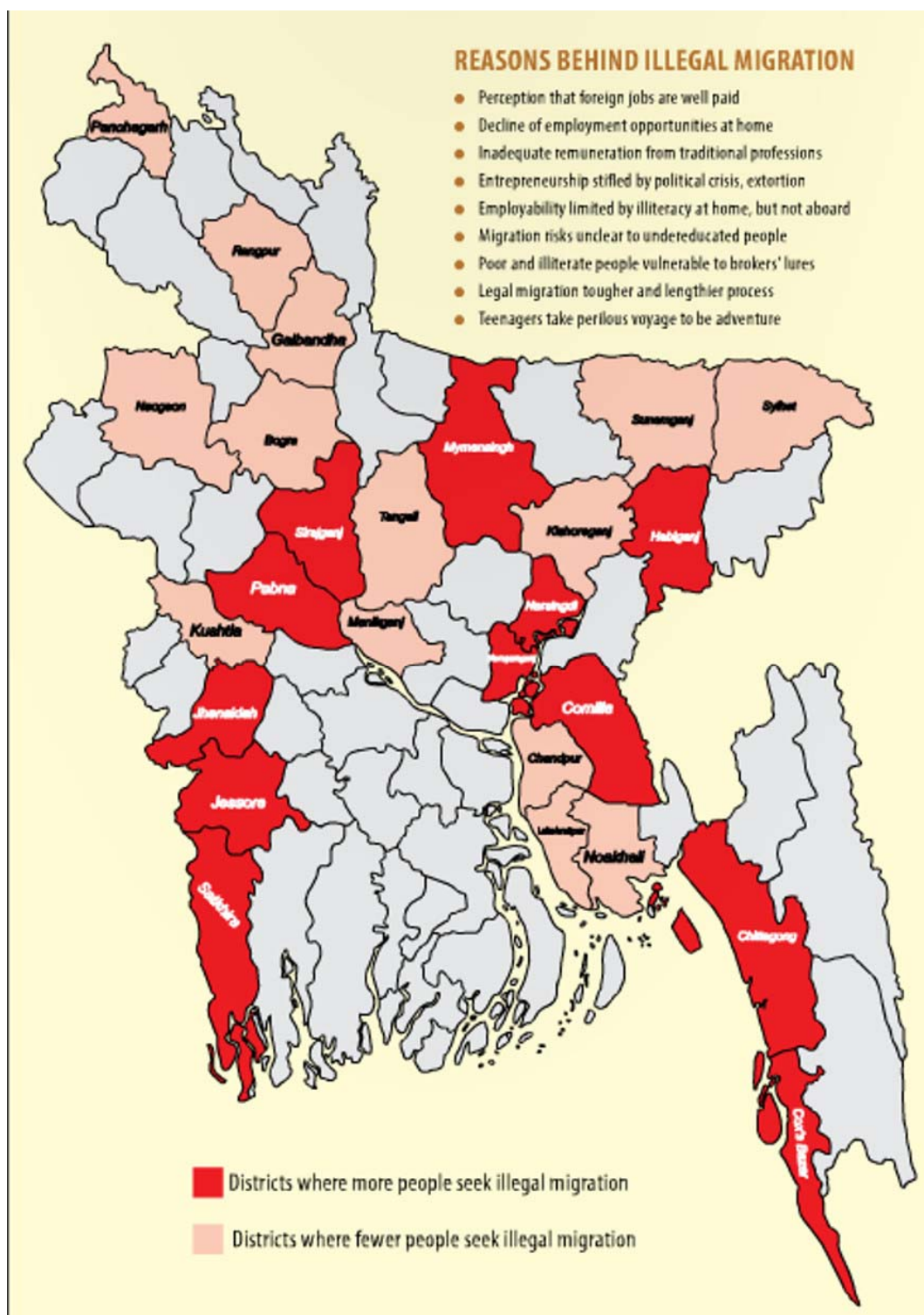
[http://www.prothom-](http://www.prothom-alo.com/bangladesh/article/392629/%E0%A6%87%E0%A6%AF%E0%A6%BC%E0%A6%BE%E0%A6%AC%E0%A6%BE-%E0%A6%B8%E0%A7%87%E0%A6%AC%E0%A6%A8-%E0%A7%AC-%E0%A6%AC%E0%A6%9B%E0%A6%B0%E0%A7%87-%E0%A7%AD%E0%A7%AD-%E0%A6%97%E0%A7%81%E0%A6%A3-%E0%A6%AC%E0%A7%87%E0%A6%A1%E0%A6%BC%E0%A7%87%E0%A6%9B%E0%A7%87)

[alo.com/bangladesh/article/392629/%E0%A6%87%E0%A6%AF%E0%A6%BC%E0%A6%BE%E0%A6%AC%E0%A6%BE-%E0%A6%B8%E0%A7%87%E0%A6%AC%E0%A6%A8-%E0%A7%AC-%E0%A6%AC%E0%A6%9B%E0%A6%B0%E0%A7%87-%E0%A7%AD%E0%A7%AD-%E0%A6%97%E0%A7%81%E0%A6%A3-%E0%A6%AC%E0%A7%87%E0%A6%A1%E0%A6%BC%E0%A7%87%E0%A6%9B%E0%A7%87](http://www.prothom-alo.com/bangladesh/article/392629/%E0%A6%87%E0%A6%AF%E0%A6%BC%E0%A6%BE%E0%A6%AC%E0%A6%BE-%E0%A6%B8%E0%A7%87%E0%A6%AC%E0%A6%A8-%E0%A7%AC-%E0%A6%AC%E0%A6%9B%E0%A6%B0%E0%A7%87-%E0%A7%AD%E0%A7%AD-%E0%A6%97%E0%A7%81%E0%A6%A3-%E0%A6%AC%E0%A7%87%E0%A6%A1%E0%A6%BC%E0%A7%87%E0%A6%9B%E0%A7%87), accessed on 5

October 2015.

<sup>20</sup> Abid Azad and Adil Sakhawat, 'Why Risk Your Lives on the Open Seas', *Dhaka Tribune*, 30 July 2015, <http://www.dhakatribune.com/bangladesh/2015/jul/06/why-risk-your-life-open-seas>, accessed on 5 October 2015.

<sup>21</sup> *Ibid.*



Source: <http://www.dhakatribune.com/bangladesh/2015/jul/06/why-risk-your-life-open-seas>, accessed on 1 September 2015.

An interesting distinction is made between Rohingyas as victims and Bangladeshis as victims. A *Daily Star* report from 5 May 2015 titled 'Rohingyas are the easy prey of human trafficking' provided this account from a Rohingya person:

Zafar said that soon after they reached Malaysia sometime in 1992, he and some other Rohingyas were arrested and put in jail. Released after four months, he was handed over to the 'agents' in Thai bordering areas of Kelantan, northeastern state of Malaysia, only to be extorted twice.

Eventually, he reached Kuala Lumpur and got registered with the UNHCR after months of efforts, but that was of no use as Malaysia neither has refugee camps nor provides aid to the refugees.

With no passport or legal job document, life in Malaysia has always been difficult and humiliating for him. He was arrested a dozen times there.

'I sometimes work in construction, but the pay is very low. I have a wife and three children to look after, but I can't do much for them,' said Zafar.

'I have no state, no security of life. I feel very sad, frustrated. Often I cry and have sleepless nights,' he went on.

His tale sums up the plight thousands of stateless Rohingyas go through.

On 29 May 2015 the same newspaper published a report titled 'Traffickers kidnap Bangladeshis and send to Malaysia as slave labour', in which words like kidnapped, tricked and trapped featured repeatedly. It seemed that the two groups of migrants were distinguished by levels of voluntariness. While Rohingyas are 'easy prey', Bangladeshis have to be tricked into migrating.

However, looking at facts and figures provided by International Organisation for Migration (IOM), just under half of the boat people rescued earlier in 2015 were Bangladeshis while the rest were Rohingyas.<sup>22</sup> In fact, it was repeatedly asserted by various journalists we interviewed in Dhaka that Bangladeshi migrants consisted exclusively of young and able-bodied men whereas the women and children were all Rohingyas. And, as the reasons for migration listed in the *Dhaka Tribune* infographic show, political and religious persecution isn't why Bangladeshis are choosing perilous sea and land journeys to South and Southeast Asia. The need to constantly separate these two groups seems paramount in Bangladesh, while the impossibility of this attempt becomes clear in the face of this mixed and massive population outflow from the region.

This mixed and massive flow has given rise to unique problems for the Rohingyas. Whereas the Southeast Asian and Bangladeshi governments are eager to separate the Rohingyas from the Bangladeshis, the boat people often get clubbed together in the international arena, much to the chagrin of the Bangladeshi government. For Bangladeshi migrants, adopting a Rohingya identity is often more beneficial for getting legal asylum as the account of the Bangladeshi journalist mentioned above shows. Rahman's article expresses anxiety over the fate of remittances by Bangladeshi migrants when Rohingyas take advantage of these migrant networks. She writes:

Undocumented Rohingya refugees use Bangladesh passport[s] to travel abroad. Because Bangladesh has no law, regulation, or formal policy regulating the confinement of refugees and asylum seekers,<sup>23</sup> influential people patronize Rohingyas and help them get passports in exchange for bribes. Bangladesh has already started to suffer from the practice. Around 700 Rohingyas traveling on Bangladeshi passports were arrested in Saudi

<sup>22</sup> International Organization for Migration, 'IOM Sees Progress in SE Asia Migrant Crisis, But Warns More Must be Done', 22 May 2015, <https://www.iom.int/news/iom-sees-progress-se-asia-migrant-crisis-warns-more-must-be-done>, accessed on 5 October 2015.

<sup>23</sup> This is not true. The nearly 30,000 registered Rohingyas under the UNHCR mandate are legally speaking supposed to be confined to the camps although in practice they do move around more freely but not entirely without risk of capture and confinement. In fact, one of the main points of advocacy for the UNHCR Bangladesh with the country's government is to release Rohingya prisoners currently confined under the Foreigners Act in Cox's Bazaar prison who have already served their terms of punishment.

Arabia after becoming involved in various crimes. Saudi authorities have been holding them in a deportation center in Jeddah...Saudi Arabia, the largest labor market for Bangladeshi migrant workers, also hinted that they would not address Bangladeshi workers' problems if the arrested Rohingyas were not taken back. Because Bangladesh depends on overseas remittance for its foreign currency reserve, the decline of the labor market could damage the country's economic stability.<sup>24</sup>

Rahman's article, thus, shows that Rohingyas in Bangladesh are seen in mainstream opinion as people who steal jobs and give the country a bad name through their illicit activities. However, through our personal interviews, particularly with the Rohingyas in Bangladesh, we came to know that not only are Rohingyas used as cheap labour, there are gangs that extort money from them for gathering articles of daily necessity. Further, Bangladeshis have been using the sea route to illegally migrate to Malaysia, which was initially opened because of the desperation of Rohingyas trying to find asylum in Southeast Asia. Lisa Brooten,<sup>25</sup> analysing a series of reports by Reuters on Rohingyas in Myanmar, identifies the 'savage-victim-saviour trope' drawing on Mutua's<sup>26</sup> analysis of how the western liberal human rights discourse frames developing world crises. Drawing from that analysis, I would argue that the creation of the Bangladeshi victim necessitates the erasure of Rohingyas as victims. Rohingyas become footnotes in the Bangladeshi boat-people story. However, in domestic reportage, often tangentially connected to the boat people crisis, they are certainly the savage perpetrators. A June 2015 report published in *Prothom Alo*, a leading Bengali daily published from Dhaka, charged the Teknaf-based parliamentarian Abdur Rahman Badi of being involved with a crime syndicate operating from Teknaf. He was charged with involvement in human trafficking and smuggling, the illegal *yaba* trade from Myanmar, and accused of getting Rohingyas included in the Bangladeshi voters' list.<sup>27</sup> All three of these crimes were related to and perpetrated by Rohingyas to a greater or lesser degree. The article also indirectly alleged that Badi was involved in helping Rohingyas cross over to Bangladesh, letting them stay there and arranging for illegal identity and travel documents. In fact, talking to the locals in Teknaf and Cox's Bazaar we also came to know that it is rumoured that Badi himself is a Rohingya.

### Rohingyas in India: Victims or Terrorists?

*[C]an there be a policy for hospitality, a policy to be kind?...The pertinence and the impossibility of the question suggest for us, of course, the need for a dialogic approach to the issue of care and hospitality. New rules can be built only on such dialogic awareness that will tell us of the need for continuous conversation within the country and internationally; among shelter-seekers, shelter-givers, and the institutions of care and justice, including public and community bodies*

Ranabir Samaddar<sup>28</sup>

According to the UNHCR, New Delhi, roughly 8,000 Rohingyas in India are undergoing the process of determination of refugee status. An accurate estimate is hard to come by. Rohingyas are a mobile group of refugees spread out in settlements across Hyderabad, Delhi, Mewat, Jaipur and Jammu as well as some rural areas in North India. And, of course, in jails in West Bengal.

<sup>24</sup>Rahman, 'The Rohingya refugee'.

<sup>25</sup> L. Brooten, 'Blind Spots in Human Rights Coverage: Framing Violence against the Rohingya in Myanmar/Burma', *Popular Communication*, 13(2), 2015, pp. 132-144.

<sup>26</sup> M. Mutua, *Human Rights: A political & cultural critique*, Philadelphia, 2002.

<sup>27</sup> S. Hasan, 'Teen Talikatei Shangshod Bodi', *Prothom Alo*, 18 June 2015, <http://www.prothom-alo.com/bangladesh/article/556429/%E0%A6%A4%E0%A6%BF%E0%A6%A8-%E0%A6%A4%E0%A6%BE%E0%A6%B2%E0%A6%BF%E0%A6%95%E0%A6%BE%E0%A6%A4%E0%A7%87%E0%A6%87-%E0%A6%B8%E0%A6%BE%E0%A6%82%E0%A6%B8%E0%A6%AC%E0%A6%A6%E0%A6%BF>, accessed on 5 October 2015.

<sup>28</sup> R. Samaddar (ed.), *Refugees and the State: Practices of Asylum and Care in India, 1947-2000*, New Delhi, 2003, p. 60.



Since the violence in Myanmar in 2012, Bangladesh has not been admitting any more Rohingya refugees (see Sheikh Haseena's interview cited above). Thus, most of the desperate refugees take to boats trying to find refuge in Southeast Asia. But a smaller group (and again there are no actual numbers) choose to come to India through Bangladesh. Hamida Hossain, vice-chairperson, Research Initiatives Bangladesh,<sup>29</sup> recalled that Rohingyas would cross into Pakistan through Jammu and Kashmir till the 1990s. Anwar's work on the Bangladeshi and Rohingya fishing settlements in Karachi corroborates this claim.<sup>30</sup> However, with the increasing securitisation of the north-western border with Pakistan, for many Rohingyas India has become the final destination. Subir Bhaumik points out that the plight of the Rohingyas came into sharp focus in India when the coast guard rescued a boatload of 109 Rohingyas in Northern Andaman in March 2013.<sup>31</sup>

The mixed flow of Rohingyas and Bangladeshis through the porous eastern border has thrown up a number of challenges for the state. Samaddar talks about the state's dichotomous tendency to provide care while exerting power:

[A] game of protection, hospitality, security, morals, nation-making, citizenship-conferring; a game of states, human rights, rights of citizens, and of statecraft – in short, a game of care and power...Which is to say, the game of care produces power.<sup>32</sup>

The 'calculated hospitality' of the Indian state towards displaced populations,<sup>33</sup> despite not being a signatory to the 1951 Refugee Convention is well-documented. In fact in the 'calculated hospitality' that Samaddar mentioned is something that is not accounted for in the global north-centric approach to humanitarian aid to refugees/forced population: not being bound by laws defining issues connected to refugees (the 1951 convention, for instance does not recognise gender as a category on which discrimination can be premised whereas the 1966 Bangkok protocols, to which India is a signatory, does).

The ethics of international law and the imperatives of hospitality directly clash with the post-9/11 securitisation regime producing a schizophrenic oscillation between asserting sovereign power and providing hospitality. The media mirrors this.

Looking at reports across the country since 2012, two distinct strands of reportage about Rohingyas are noticeable. In the coverage of the crisis in Myanmar, the Indian media is unflinchingly critical of the Myanmar government. An editorial on 9 November 2012 in the *Anandabazar Patrika*, a leading Bengali daily published from West Bengal, for instance, pointed out that Thein Sein's government was faltering in its first steps towards democracy, since violence perpetrated by the majority over the minority Rohingyas continued unabated. It went on to criticise the refusal to grant citizenship to Rohingyas by both Myanmar and Bangladesh as a result of which 800,000 people were virtually rendered stateless.<sup>34</sup> The editorial was interesting because of three things. First, it linked violence against Rohingyas in Myanmar with revenge attacks on minority Buddhist Chakmas in the Chittagong Hill Tract by the Muslim majority.<sup>35</sup> Secondly, while critiquing Aung San Suu Kyi and the USA's role in the region it remained silent on India's role. Lastly, it pointed out that

<sup>29</sup> Personal Interview, Dhaka: 5 July 2015.

<sup>30</sup> N.H. Anwar, 'Negotiating new conjunctures of citizenship: experiences of 'illegality' in Burmese-Rohingya and Bangladeshi migrant enclaves in Karachi', *Citizenship Studies*, 17(3-4), 2013, pp. 414-428.

<sup>31</sup> Bhaumik, 'No Country for Rohingyas'.

<sup>32</sup> Samaddar, *Refugees and the State*.

<sup>33</sup> R. Samaddar, 'Refugees and Dynamics of Hospitality: The Indian Story', *Immigration Worldwide Policies, Practices, and Trends*, 2009.

<sup>34</sup> 'Gorishthyer Adhipaty', *Anandabazar Patrika*, 9 November, 2012, <http://archives.anandabazar.com/archive/1121109/9edit2.html>, accessed on 5 October 2015.

<sup>35</sup> This claim that the Rohingyas are responsible for the attacks on the Buddhist minority in Bangladesh is debatable and all the experts that I spoke to in Bangladesh – from professors in Dhaka University to UNHCR officials – pointed this out repeatedly, especially with reference to incidents of violence against Buddhist minorities in Ramu, Bangladesh.

desperate Rohingya refugees were taking to the seas in small boats and blamed Bangladesh border guards for deaths during maritime transit. Another editorial on 3 June 2013 talked about democracy in Myanmar and the condition of minorities, particularly Rohingyas, in the country. Interestingly, it compared the bottom-up democratisation brought about by the Arab spring with the top-down democracy in Myanmar and expressed scepticism about the latter. It also pointed out that the opening up of Myanmar meant that human rights issues would be ignored in the rush for a share of the pie by multinational corporations.<sup>36</sup>

Between these two editorials, *The Hindu* reported in December 2012 the setting up of a consulate in Sittwe, which made India the first country with three consulates in Myanmar. As the report went onto state:

Sittwe port, about 550 km from Kolkata, is slated to see considerable Indian activity soon after it becomes the mouth of a maritime-cum-road route to India's North-East as an alternate to India's sole link to the region via the congested Siliguri corridor...The External Affairs Minister discussed four other major economic issues – a trilateral highway linking Myanmar and India to Thailand by 2016, the Rhi-Tiddim road connecting both countries, gas exports to India and the possibility of supplying power from the India-assisted Tamanthi and Shwezaye projects on the Chindwin river basin.<sup>37</sup>

The Rohingyas came into the media spotlight again in July 2013 in the context of the serial blasts in Bodh Gaya. Supposedly perpetrated by the Indian Mujaheedin group, it was seen as a reaction to Buddhist persecution of Rohingyas in Myanmar. A *Times of India* report after the Bodh Gaya blasts of 7 July, entitled 'Rohingyas in Hyderabad live in fear', talks about fear of police harassment.<sup>38</sup> In the report a Rohingya refugee named Abdullah is quoted as having said, 'We were unaware of the attack as most of us cannot read, write or even speak local languages. We are first concerned about earning money to buy food and get refugee status.' The report goes on to say that 'a substantial number [of Rohingyas] chose Hyderabad as their new home. They believed the city, on account of its substantial Muslim population, would welcome them with arms wide open. Little did they think about police questionings and needless interrogation each time a Hindu shrine or a Buddhist structure comes under attack'.<sup>39</sup> The report also quotes the executive director of Hyderabad-based Confederation of Voluntary Organisations, Mazhar Hussain, as having said: 'To think that these illiterate and hapless people could be behind any terror attack is unbelievable. Whoever has engineered the blasts has damaged the cause of Rohingyas. This act could lead to another wave of violence against Rohingya population not only in Myanmar, but also in India.'<sup>40</sup>

Another *Times of India* report on 15 April 2013 entitled 'Riot-hit Rohingya Muslims take Refuge in Hyderabad',<sup>41</sup> talked about the Rohingyas and the support they got from local NGOs. Interestingly, it referred to the Rohingyas as 'asylum seekers' directly putting the burden of their protection on the state, although the state is an absent actor in the narrative. The report ended with a reference to police harassment, but while discussing cross-border flows from Bangladesh into

<sup>36</sup> 'Ganatantra o Myanmar', *Anandabazar Patrika*, 3 June 2013, <http://archives.anandabazar.com/archive/1130603/3edit1.html>, accessed on 5 October 2015.

<sup>37</sup> 'India to Open Third Mission in Myanmar', *The Hindu*, 16 December 2012, <http://www.thehindu.com/news/international/india-to-open-third-mission-in-myanmar/article4204046.ece?ref=relatedNews>, accessed on 5 October 2015.

<sup>38</sup> Syed Mohammed, 'Rohingyas in Hyderabad Live in Fear', *Times of India*, 9 July 2013, <http://timesofindia.indiatimes.com/city/hyderabad/Rohingyas-in-Hyderabad-live-in-fear/articleshow/20980972.cms>, accessed on 5 October 2015.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> B. Baseerat, 'Riot Hit Rohingyas Take Refuge in Hyderabad', *Times of India*, Hyderabad, 15 April 2013 <http://timesofindia.indiatimes.com/city/hyderabad/Riot-hit-Rohingya-Muslims-take-refuge-in-Hyderabad/articleshow/19551921.cms>, accessed on 5 October 2015.

West Bengal, issues of illegality and/or security (except for the insecurity of the Rohingyas and their hardships) did not feature.

Soon after the blasts, Firdaus Ahmed wrote in *Kashmir Times*:

[I]n the Bodh Gaya case, the readiness to lap up the theory that this is [a] Muslim backlash for the Buddhist suppression of Rohingya[s] and Sri Lankan Muslims owes to the success of the narrative of Muslim extremism (sic). This completes the circle in which there is then no compulsion to look for evidence.<sup>42</sup>

An *Anandabazar Patrika* report on 8 July 2013 about the Bodh Gaya blasts not only linked the Rohingya issue to the attacks but also to the infamous terrorist outfit Lashkar-e-Toiba and Pakistan. The second line of the report said that the Rohingyas were ‘allegedly’ being tortured by the Buddhist majority.

On 14 July 2013 the same daily ran a short piece with a photo from Meiktila, Myanmar, which showed a cycle being ridden among the ruins of settlements destroyed in riots in 2012. It reported that the courts were giving harsher punishments to Muslims. While Rohingyas were not directly mentioned, it demonstrated how security issues in national contexts overrode any humanitarian impulses. The absence of the national security issue when the focus was on other countries, made it possible to sympathetically portray the Muslim ‘others’ who once within the borders represented a threat to sovereign integrity. I would argue that this dichotomy in reportage is a manifestation of the “calculated hospitality” that Samaddar talked about. The prerogative of the state to care is invisibilised in the media but by reflecting public discourse the duality between care and power is constantly in balance in these reports.

The next reports about the Rohingyas surfaced in two leading dailies, the *Anandabazar Patrika* and *The Hindu*, seven days apart in March 2013. *The Hindu* reported on 17 March 2014 that:

A steady influx of Rohingya Muslims into West Bengal via Bangladesh is causing concern to the security establishment. ... A senior intelligence official told *The Hindu* that “more than one thousand” Rohingya refugees had been detained and sent to prisons in the State in the last six months...The refugees detained under the Foreigners Act, 1946 are now supposed be sent to the Tihar jail in New Delhi as the UNHCR has jurisdiction only in Tihar. Once they get refugee status, they will be sent to India’s only refugee camp, which is in Jammu. “But we do not know when that will happen, as it is not easy to send so many people,” said an official at Alipore jail here.<sup>43</sup>

The *Anandabazar Patrika* report on 10 March 2014 presented a more realistic figure of over 80 incarcerated Rohingyas in West Bengal.<sup>44</sup> The report raised the question of Rohingyas who had escaped the ‘strict border policing by BSF’ and mingled with the general populace and the possibility of such people being used in terrorist attacks such as the one in Bodh Gaya. These pronouncements prove almost prophetic with a Rohingya suspect being arrested from Hyderabad in connection with the Khagragarh blast in West Bengal in November 2014.<sup>45</sup>

<sup>42</sup> Firdaus Ahmed, ‘Distancing from Cloak and Dagger’, *Kashmir Times*, 19 July 2013 <http://www.kashmirtimes.in/newsdet.aspx?q=8775>, accessed on 5 October 2015.

<sup>43</sup> S. Bagchi, ‘Rohingya influx – A brewing crisis’, *The Hindu*, 17 March 2014, <http://www.thehindu.com/news/national/other-states/rohingya-influx-a-brewing-crisis/article5797314.ece>, accessed on 5 October 2015.

<sup>44</sup> Jele Rohingya Koyedir Bohor Dekhe Mathay Haat Shorasthro Montroker’, *Anandabazar Patrika*, 10 March 2014, <http://www.anandabazar.com/state/%E0%A6%B0-%E0%A6%9C-%E0%A6%AF-%E0%A6%B0-%E0%A6%B9-%E0%A6%99-%E0%A6%97-%E0%A6%95%E0%A7%9F-%E0%A6%A6-%E0%A6%B0-%E0%A6%AC%E0%A6%B9%E0%A6%B0-%E0%A6%A6-%E0%A6%96-%E0%A6%9A-%E0%A6%A8-%E0%A6%A4-%E0%A7%9F-%E0%A6%95-%E0%A6%A8-%E0%A6%A6-%E0%A6%B0-%E0%A7%9F-%E0%A6%B8-%E0%A6%AC%E0%A6%B0-%E0%A6%B7-%E0%A6%9F-%E0%A6%B0-%E0%A6%AE%E0%A6%A8-%E0%A6%A4-%E0%A6%B0%E0%A6%95-1.9264#>, accessed on 31 August 2015.

<sup>45</sup> J. Gupta, ‘Khalid’s arrest sparks off debate on Rohingyas in India’, *Times of India*, 20 November 2014, <http://timesofindia.indiatimes.com/india/Khalids-arrest-sparks-off-debate-on-Rohingyas-in-India/articleshow/45220794.cms>, accessed on 5 October 2015.

In fact, since 2014, apart from three editorials criticising the violence unleashed upon the Rohingya by the Buddhists,<sup>46</sup> the promise of granting citizenship to the Rohingyas<sup>47</sup> and the unlikelihood of the situation being favourable for the Rohingyas under the present President Thein Seen,<sup>48</sup> reports in the *Anandabazar Patrika* that mention Rohingyas have only highlighted the issue as being a cause of the blasts as Bodh Gaya, their large-scale infiltration across the border and, since November 2014, have exclusively centred on the Khagrachar blast and the Rohingya mastermind allegedly behind it.

Discussions on Rohingyas in India, following the Khagrachar blast, were predictably focused on ‘Muslim infiltrators’ destroying a Hindu nation in the wake of the earlier theme of Bangladeshi infiltrators destroying national integrity. At the same time, many articles in both the Indian and international media on Rohingyas living in settlements in Delhi, Jammu and Hyderabad, have sympathetically portrayed these beleaguered people. In Hyderabad, Islamic charitable organisations and philanthropists, including a local MLA, have come forward to help the Rohingyas. A report from *Indiatgether* states that in 2012 during Ramzan a lot of donations had poured in. A hefty sum also came from the Iranian government. In Delhi, as in Hyderabad, land on which Rohingyas have been allowed to settle belong to Muslim charitable organisations – for example, the Zakat Foundation near MadanpurKhadar<sup>49</sup> – or Muslim individuals.<sup>50</sup> This can further fuel the paranoia about Muslim ‘others’ out to destroy the Hindu nationhood.

Following the Khagrachar blast, Rohingya encampments in Hyderabad have experienced increased surveillance from the police and harassment as reported in *DNA*<sup>51</sup> and the *Times of India*.<sup>52</sup> Passi points out that ‘the state-centred naturalization of space is produced and reproduced, and how the exclusions and inclusions between “We” and “Them” that it implies are historically constructed and shaped in relation to power, various events, episodes and struggles’.<sup>53</sup> The partition of 1947 and the logic of minorities being proxy citizens of neighbouring countries have constructed economic migrants as well as political asylum-seekers crossing the eastern borders as suspect and threats to security. A *Reuters* report dated 15 September 2014 states: New Delhi has twice blocked draft laws on refugee recognition. Because of its porous borders, often hostile neighbours and external militancy, it wants a free hand to regulate the entry of foreigners without being tied down by any legal obligation, analysts said.<sup>54</sup>

<sup>46</sup><http://www.anandabazar.com/editorial/%E0%A6%B8-%E0%A6%96-%E0%A6%AF-%E0%A6%97-%E0%A6%B0-%E0%A6%B0-%E0%A6%A6-%E0%A6%AA%E0%A6%9F-1.43751>, accessed on 31 August 2015.

<sup>47</sup><http://www.anandabazar.com/editorial/%E0%A6%B8-%E0%A6%9A%E0%A6%A8-1.71907>, accessed on 31 August 2015.

<sup>48</sup><http://www.anandabazar.com/editorial/%E0%A6%B8-%E0%A6%AC-%E0%A6%B0%E0%A6%A4%E0%A6%A8-%E0%A6%A4-%E0%A6%B0-%E0%A6%AB-%E0%A6%B0-%E0%A6%AC-%E0%A6%95-1.48508>, accessed on 31 August 2015.

<sup>49</sup>Personal interviews with staff of Sanlaap, February 2015.

<sup>50</sup>M.A.R. Fareed, ‘Rohingya Exiles Struggle to survive in India’, *Al Jazeera*, 6 January 2014, <http://www.aljazeera.com/indepth/features/2014/01/rohingya-exiles-struggle-survive-india-201416143243337187.html>, accessed on 5 October 2015.

<sup>51</sup>‘Rohingya Muslim refugees in Hyderabad are under surveillance, say police’, *DNA*, 27 December 2014, <http://www.dnaindia.com/india/report-rohingya-muslim-refugees-in-hyderabad-are-under-surveillance-say-police-2047456>, accessed on 5 October 2015.

<sup>52</sup>Gupta, ‘Khalid’s arrest sparks off debate on Rohingyas in India’.

<sup>53</sup>Anssi. Paasi, ‘Boundaries as social processes: Territoriality in the world of flows’, in David Newman (Ed.), *Boundaries, Territory and Postmodernity*, London & Portland (or), 2002, p.83.

<sup>54</sup>N. Bhalla, ‘Myanmar’s Rohingya stuck in refugee limbo in India’, *Reuters*, 15 September 2014, <http://www.reuters.com/article/2014/09/15/us-foundation-stateless-india-rohingya-idUSKBN0HA07F20140915>, accessed on 5 October 2015.

The reiteration of the need for strictly policing the border with Bangladesh also reveals that the subjects of state scrutiny are Muslim aliens. *The Hindu* reported that on 17 December 2014 the Supreme Court of India expressed concern over the insecure borders with Bangladesh. ‘We are at a loss to understand why 67 years after independence the eastern border is left porous. We have been reliably informed that the entire western border with Pakistan, 3300 km long, is not only properly fenced, but properly manned as well, and is not porous at any point,’ it said in a judgment.<sup>55</sup>

The *Deccan Herald* was the only newspaper among those reviewed that consistently portrayed India’s lacklustre treatment of refugees in an unfavourable light. On 17 June 2012, on the eve of the World Refugee Day, in a report titled ‘Refugees subjected to discrimination in India: Activists’, the newspaper highlighted the plight of the Rohingyas living in Delhi and the discrimination they face and compared their fate with other refugees in India and said: ‘When young Ziaur Rehman entered India to escape persecution in Myanmar he thought he could finally live his dream of a better future, little knowing his struggles were far from over as he would be scorned as a pariah, a thief and a terrorist in his host country.’<sup>56</sup>

Activists and experts claim 30-year-old Rehman is just one among thousands of the 200,000-plus refugees in India who are subjected to discrimination and arbitrary detention as a result of the lack of a comprehensive legal framework to govern asylum seekers in the country.

This theme was further elaborated in a report dated 20 October 2012 titled ‘Refugees denied basic facilities’.<sup>57</sup> It showed how difficult it was for refugees in India to access basic facilities like education and how often the most vulnerable sections, women and children, end up being trafficked and having to take to sex work to survive.

On 2 August 2012, a report criticising Bangladesh’s handling of the Rohingya issue was published. Titled ‘Bangladesh bans foreign charities helping Rohingya’, it said:

France’s Doctors without Borders (MSF) and Action Against Hunger (ACF) as well as Britain’s Muslim Aid UK have been told to suspend their services in the Cox’s Bazaar district bordering Myanmar, local administrator Joynul Bari said. “The charities have been providing aid to tens of thousands of undocumented Rohingya refugees illegally. We asked them to stop all their projects in Cox’s Bazaar following directive from the NGO Affairs Bureau,” he told AFP. Bari added that the charities “were encouraging influxes of Rohingya refugees” from Myanmar in the wake of recent sectarian violence that left at least eighty people killed.<sup>58</sup>

The *Deccan Herald* was also the only newspaper which floated an alternative construction of the Bodh Gaya blasts, in a report dated 7 July 2013:

So far, no terrorist organisation has claimed responsibility for the serial explosions, but the police suspect the involvement of Indian Mujahideen (IM) modules. Police sources said it could also be a fallout of the tussle between Buddhists and Muslims in Myanmar.

Another theory doing the rounds is that it was terror tactics adopted by IM modules to spread panic rather than cause actual harm. Yet another unconfirmed report said that it was the ‘internecine war among monks’ which led to the explosions.<sup>59</sup>

<sup>55</sup> K. Rajagopal, ‘SC: why is eastern border still porous?’ *The Hindu*, 18 December 2014, <http://www.thehindu.com/todays-paper/tp-national/sc-why-is-eastern-border-still-porous/article6702655.ece>, accessed on 5 October 2015.

<sup>56</sup> ‘Refugees subjected to discrimination in India: Activists’, *Deccan Herald*, 17 June 2012, <http://www.deccanherald.com/content/257575/archives.php>, accessed on 5 October 2015.

<sup>57</sup> ‘Refugees denied basic facilities’, *Deccan Herald*, 20 October 2012, <http://www.deccanherald.com/content/286895/refugees-denied-basic-facilities.html>, accessed on 5 October 2015.

<sup>58</sup> ‘Bangladesh bans foreign charities helping Rohingya’, *Deccan Herald*, 2 August 2012, <http://www.deccanherald.com/content/268792/bangladesh-bans-foreign-charities-helping.html>, accessed on 5 October 2015.

<sup>59</sup> A. Kumar, ‘Nine explosions rock Bodh Gaya’, *Deccan Herald*, 7 July 2013, <http://www.deccanherald.com/content/343424/nine-explosions-rock-bodh-gaya.html>, accessed on 5 October 2015.

On 5 October 2013, the paper reported that the Supreme Court had issued a notice to the central government on the condition of Rohingyas living in camps in Delhi and Mewat:

The Supreme Court has issued notice to the Centre on a PIL seeking direction to ensure proper health facilities for women and children of Rohingya tribes of Myanmar, residing in refugee camps in Delhi and Haryana...A bench of Justices H L Dattu and Gyan Sudha Misra also sought response from Delhi and Haryana governments on the petition filed by Jaffar Ullah.

According to the petitioner, almost 150 Rohingya refugee families, staying in the camps at Delhi and Haryana's Mewat district did not have access to basic medical care, clean water, nutritious food and secure shelters.

The petitioner sought humanitarian assistance to ensure the survival and wellbeing of the refugees as guaranteed under the Constitution.<sup>60</sup>

Prime Minister Narendra Modi was quoted on 7 May 2014 by *The Hindu* as having said:

'There are two types of people who have come in – infiltrators and refugees. Those who are refugees are our family. It is the responsibility of all of India, whether Gujarat or Rajasthan to rehabilitate them with all respect.'<sup>61</sup>

Going back to Brooten's classification of savage-victim-saviour,<sup>62</sup> it is increasingly clear that the Rohingyas cannot simply be the victims but must embrace the duality of being victims as well as being in some way the savage. They are never the victims who can be recipients of state's munificence and are only characterised as victims when they are external to the state or the state is an indirect actor.

Similarly Bangladesh's focus on maintaining strategic relations with Myanmar<sup>63</sup> has meant that its government will not force Myanmar's hand in stopping the persecution against Rohingyas as they continue to remain a people that have fallen between two stools – neither citizens nor asylum-seekers, they are internally displaced or stateless people. They are, in fact, asylum-seekers who have been invisibilised.

Sanlaap, an NGO working with trafficked women and children, reported that Rohingya children started coming into their shelter homes in large numbers since 2012 and at one point they were providing shelter to over forty children, mostly girls, who came to it through the state Child Welfare Committee. Usually large groups of Rohingya, being smuggled across the borders are captured and sent to correctional homes under the Foreigners Act. Men, women and children are separated and the children end up in shelter homes. Sanlaap conducted a study in Rohingya settlements in Jammu and Delhi as more and more relatives came to the shelter from settlements in these two states, claiming the children as their wards. Their reports from the settlements talked about the insecurity of the Rohingyas, particularly the children going back from the shelter to be reunited with their families in the unsanitary condition of the camps, with little access to basic health care, clean water and other facilities, and exposed to trafficking and other dangers.<sup>64</sup>

In an interview with seven minor girls residing in the Sanlaap Shelter Home in Kolkata, the ideas of security and insecurity were thrown into sharp contrast. On the one hand, in their imagination their native villages in Arakan were idylls where they had freedom to roam, swam in lakes, took buffaloes to the pastures and where the food was wholesome unlike what they got in the

<sup>60</sup> 'SC notice to Centre on Myanmar refugees', *Deccan Herald*, 5 October 2013, <http://www.deccanherald.com/content/361432/sc-notice-centre-myanmar-refugees.html>, accessed on 5 October 2015.

<sup>61</sup> 'Bangladeshi 'infiltrators' would have to go back: Modi', *The Hindu*, 7 May 2014, <http://www.thehindu.com/elections/loksabha2014/bangladeshi-infiltrators-would-have-to-go-back-modi/article5986165.ece>, accessed on 5 October 2015.

<sup>62</sup> Brooten, 'Blind Spots in Human Rights Coverage'.

<sup>63</sup> See, for instance, Parnini, 'The Crisis of the Rohingya as a Muslim Minority in Myanmar and bilateral relation in Bangladesh', *Journal of Muslim Minority Affairs*, Vol. 33, No. 2, 2013, pp. 281-297.

<sup>64</sup> Personal interviews with staff of Sanlaap, February 2015.

shelter. On the other hand, the idea of Jammu, a mythical place where everything would become all right, had also captured their imagination. In her 1943 essay 'We Refugees', Hannah Arendt wrote about the ubiquitous Mr Cohn, the prototype of a stateless German Jew in Europe, who tried to adapt to every new country by becoming the model, patriotic citizen but was suspect everywhere and denied citizenship because of his Jewishness which he tried so much to hide.<sup>65</sup> The Rohingya girls, with their slightly accented Bangla and refusal, at least initially, to talk in their mother tongue and constantly trying to fit in with what they imagined to be my narrative as an Indian reminded me strongly of Mr. Cohn. They refused to criticise the Indian children in the shelter instead choosing to focus on the Bangladeshi girls who made their lives miserable and treated them as outcasts. When I asked about their choice of destination when they fled their homes and whether their families ever considered going to Pakistan, one of the girls responded uncertainly: 'But isn't Pakistan an enemy of Hindustan?' In the course of the three-hour-long interview, the girls began to open up, teaching me words in the Rohingya language and then singing songs for me. I was recording their conversation and eager to listen to themselves they started by first displaying their knowledge of English and Bangla nursery rhymes and eventually a Rohingya love song followed by a song which called for Rohingya brothers to come together across nations. As they exhausted their repertoire, they recited Quranic verses learnt at *madrassas* they attended in Arakan. After reciting a verse from the Quran – whose meaning they could not recall – one of the girls asked me whether I was Muslim. She looked crestfallen when I said I was not. Perhaps having the relative freedom of being able to express themselves freely without being ridiculed about their strange language and customs, they had tried to find in me a kindred soul and the closest approximation to what they could imagine would be a sympathetic Muslim. In a world where they have only faced rejection as Rohingyas, as girls brought up in conservative social environments where boys are allowed to venture out and watch Bollywood films but not girls, as illegal trespassers in a country, as alien in their shelter homes, it must have been difficult for them to imagine kindness outside the family. Forced to live in a shelter, separated from their families, they only dreamt of Jammu where they would be reunited with their families. The better health, education, clothing and shelter they got at the shelter did not at the moment hold any attraction for them. They named their favourite television serials and their favourite actors, soon after saying it was '*gunah*' for girls to wear make-up, or watch Bollywood films back in Arakan. I asked them if they would miss these when they went to Jammu. They all replied that they would not and they knew it was *gunah* but it was okay to watch television at the shelter because they were suffering. They would never miss these when they were with their families in Jammu. While some of this was performed for my benefit, to show loyalty to their families, it is also true that these girls viewed their families as their only refuge and shelter. Being together as a family, in a world which only displayed hatred and indifference, was beyond everything.

## Conclusion

In 'We Refugees', Arendt writes:

We lost our home, which means the familiarity of daily life. We lost our occupation, which means the confidence that we are of some use in this world. We lost our language, which means the naturalness of reactions, the simplicity of gestures, the unaffected expression of feelings. We left our relatives in Polish ghettos and our best friends have been killed in concentration camps, and that means the rupture of our private lives.<sup>66</sup>

The words still ring true, applicable to persecuted, stateless people across the world. Efforts to curb statelessness after World War II through international covenants have failed as the number

<sup>65</sup> H. Arendt, 'We Refugees', in M. Robinson (ed.), *Altogether elsewhere: writers on exile*, London, 1994, pp.110-119.

<sup>66</sup> Ibid., p. 111.

of stateless people continues to grow. Arendt writes that ultimately the life of a stateless non-citizen is reduced to the 'abstract nakedness of being human'<sup>67</sup> or what Agamben calls 'bare life', or reduction to just biological life without a political voice. Interpreting Arendt's work in context of asylum-seekers in Holland, Borren<sup>68</sup> writes that citizenship is the basis on which we are granted human rights and it is almost impossible for a sovereign nation-state to grant human rights to a non-citizen. Civil and political rights in today's world of nation states are premised on citizenship, nationality and nativity.<sup>69</sup>

Interpreting Arendt's work, particularly in *Eichmann in Jerusalem*,<sup>70</sup> Butler says that our precarity as humans leads to interdependency and the only way to avoid genocide is to not choose who we cohabit in this world with:

We might think that interdependency is a happy or promising notion, but it is often the condition for territorial wars and forms of state violence (p.149)...[U]nwilled proximity and unchosen cohabitation are preconditions of our political existence, the basis of [Arendt's] critique of nationalism (p.145)...[F]rom unchosen cohabitation, Arendt derives notions of universality and equality that commit us to institutions that seek to sustain human lives without regarding some part of the population as socially dead, as redundant, or as intrinsically unworthy of life and therefore ungrievable (p.145).<sup>71</sup>

To translate such a philosophy into a viable policy to reverse genocidal violence in Arakan, and the rest of the world, is a challenge facing us all.

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<sup>67</sup> *Ibid.*

<sup>68</sup> M. Borren, 'Towards an Arendtian politics of in/visibility' *Ethical Perspectives*, Vol.15, No.2, 2008, pp. 213-237.

<sup>69</sup> *Ibid.*

<sup>70</sup> H. Arendt, *Eichmann in Jerusalem*, New York, 1963.

<sup>71</sup> J. Butler, 'Precarious Life, Vulnerability, and the Ethics of Cohabitation', *The Journal of Speculative Philosophy*, Vol.26, No. 2, 2012, pp. 134-151.



## Major Observations and Recommendations

### Taking Cognizance of the Following:

1. That vide the 1982 Burma Citizenship Law in Myanmar, the Rohingyas have been deprived of citizenship in the country as a result becoming *de jure* and *de facto* stateless.
2. That a long-term and durable solution to the situation can only be through the willing participation of the Government of Myanmar.
3. That this issue has turned into a regional issue involving the countries of South and Southeast Asia.
4. That UNHCR, as the apex body dealing with all issues of asylum seekers, refugees and stateless people internationally, has an important role to play in the resolution of the crisis.
5. That regional organisations, like ASEAN, SAARC and APEC, cannot ignore or overlook the enormity of the humanitarian crisis.
6. That since 2012 Rohingyas in large numbers have taken to the sea to seek refuge in Southeast Asian countries such as Thailand, Malaysia and Indonesia and taken the land route into India.
7. That there are about 30,000 registered and an estimated 200,000 Rohingyas living in abject or uncertain conditions in Bangladesh.
8. That there are significant numbers of Rohingya people detained in the Correctional Homes in India under the Foreigners' Act 1946 and the Passport Act 1967.
9. That the disintegration of the refugee family unit upon incarceration, particularly the separation of children from their mothers, is a cause of ongoing trauma, loss of identity and is against all humanitarian principles.
10. That Rohingya women and children are the most vulnerable amongst this population and are a target of sexual violence at the hands of the troops manning the borders between Myanmar and Bangladesh and Bangladesh and India, traffickers and smugglers as well as military in Myanmar.
11. That UNHCR issued refugee identity proofs are not accepted as valid documents by the police in West Bengal.

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12. That Bangladeshi migrants and Rohingyas have constantly been conflated together in this mixed and massive flow of population in the region, making it difficult for the Rohingyas to access refugee rights.
13. That Australia does not allow refugees and asylum seekers to come to their shore, instead detaining them at offshore facilities and thereby weakening the international regime of refugee rights and the fundamental tenet of *non-refoulement* and directly affecting the boat people, particularly Rohingyas taking to the seas, in the region.

### The Report Recommends:

1. That the other Southeast Asian and SAARC countries have to engage with Myanmar to find durable solution to issues of the Rohingya people.
2. The UN system, including UNHCR, must prevail upon the global community and the countries in the Asia-Pacific region, in particular, to resolve the crisis within and without Myanmar.
3. That UNHCR has to see the crisis itself as a manifestation of the growing crisis of statelessness around the world as well as connected to the mixed and massive flows of populations across borders.
4. That regional and international bodies like SAARC, ASEAN, APEC and UNHCR should actively pursue a durable solution to this issue with the local and non-local stakeholders.
5. That Malaysia, Thailand, Indonesia and Australia should stop their policy of pushback of boats, warehousing, offshore internment and take the necessary rescue, relief, and rehabilitation measures and humanitarian aid.
6. That Bangladesh has to sustain a policy of protecting the refugees and the stateless and discontinue the policy of forcing the Rohingyas to exit.
7. That India has to discontinue the policy of putting asylum seekers and unwanted migrants in jails or severely restricted places.
8. That local authorities, particularly the police and paramilitary personnel, should be sensitized about the refugees carrying UNHCR issued refugee identity cards to prevent their detention and incarceration.
9. That the Rohingya people currently incarcerated in West Bengal should be provided with free and quality legal aid by the state.
10. That Indian Navy should be directed by the Government of India to proactively rescue boat people and provide humanitarian assistance in the Bay of Bengal.
11. That there should be presence of women paramilitary/police personnel in case of detention and arrests of Rohingya women at the border and due process of presenting those arrested before the Magistrate should be followed.

12. That after serving their term, the state is responsible for the reunification of the incarcerated refugees with their children and other family members and a due process should be established in all such cases.

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## Mahanirban Calcutta Research Group

GC-45, Sector- III, 1st Floor, Salt Lake City  
Kolkata 700 106, West Bengal, India

Phone : +91-33-23370408, Fax : +91-33-23371523

E-mail : [forcedmigrationdesk@mcrgh.ac.in](mailto:forcedmigrationdesk@mcrgh.ac.in)