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THE ROHINGYA CATAclysm: CRITICAL ANALYSIS OF THE ROLE OF INTERNATIONAL HUMAN RIGHTS LAW

- Aneesa Firdaus & Ishan Shahi¹

ABSTRACT

The International Human Rights Law (IHRL) was made with the objective of securing Human rights for people of all caste, colour, and creed on the planet. Despite the existence of the whole International Human Rights machinery, the mass genocide of the Rohingya Community, one of the biggest human rights violations, happened and is still happening. What is this Rohingya Crisis? Why is the established law unable to tackle this situation? Why was the international machinery not able to stop the crisis from happening in the first place? Even after it happened, why is it unable to provide the victims with justice? Why are the perpetrators still unpunished? Are the IHRL enforcement bodies dedicated to the cause of the Rohingyas or are they derelict about the same? In the light of all these questions, this article analyses how efficient the existing international human rights laws are de facto.

INTRODUCTION

“The rights of every man are diminished when the rights of one man are threatened.”

-Sir John F. Kennedy.

International Human Rights law is made up of charters, declarations, conventions, and treaties which were aimed to protect the rights of all humans alike. There are bodies, councils and assemblies which claim to be working for the enforcement of the laws. Still, mass human rights violations happen every day. It is true that such violations cannot be stopped by law just like crimes

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cannot be stopped merely by laws. It is the implementation and enforcement mechanism which reduces the crimes and eventually stops them. It is the punishment of the criminal that deters the crime. It is the redressal of the victim that balances the equilibrium of society. However, in cases where the implementation and enforcement are weak, letters of law are mere words without meaning. International human rights law is one such example.

The Crisis of the Rohingya is a much-known issue among the International Communities and even normal populations around the globe. It has received wide media coverage and international attention. What remains troubling, however, is the unchanged circumstances of the victims of such a huge crisis. Such a situation forces one to reflect on the efficiency of the International Human Rights Law in controlling and managing situations of human rights crisis. If there survives a community on this planet whose rights are being violated for decades and the world knows about it and still cannot do much, how protected are our rights on the same planet with the same international mechanisms?

The present article attempts to discuss the same in detail. The article is divided into four parts, the first part being the introduction. The second part of the article explains a brief history of the Rohingya oppression and their present situation. The third part of the article discusses the human rights granted to the people around the globe and which of those rights of the Rohingyas have been violated by the Myanmar Government. The fourth part of the article throws light on the loopholes in the international human rights laws which has made the Rohingya helpless. Finally, the last part of the article consists of suggestions and conclusions.

I. THE ROHINGYA COMMUNITY & ACCOUNTS OF VIOLENCE AND TYRANNY

The Rohingya is an ethnic community which is Muslim by a majority and predominantly resides in the South-East Asian country, Myanmar, which was earlier Burma. They have been described

as “one of the most discriminated people in the world”², according to the UN Secretary-General Antonio Guterres, and “the most vulnerable group of forcibly displaced”³ according to the United Nations Refugee Agency.

The Rohingyas, also known as the Rohingya Muslims, are not accepted as the citizens of Myanmar by the Myanmar Government. A major part of Muslims in Myanmar belongs to the Rohingyas, who speak their own dialect and practice their own culture which is different from the others. They have had a history of oppression where their government blatantly abused their rights and discriminated against them to the extent that they were denied their citizenship and the government even refused to recognize them as people by excluding them from the 2014 census.⁴ Violence, hatred, torture and inhuman treatment forced the Rohingyas to flee from their own land to different countries where they could at least manage to survive. In 2017, there were around one million Rohingyas left in Myanmar.⁵

The Rohingyas have since long witnessed hate crimes against them by the State and population ever since the country’s independence in 1948. Soon after, in 1978, brutal violence by the country’s military forced two hundred thousand Rohingyas out of the country.⁶ Further, the degradation of their status began in 1982, when the new citizenship laws were adopted by the Burmese government which excluded Rohingyas from the list of national races. It laid down that a Rohingya would be classified as a resident foreigner if he does not provide proof of his ancestors’ residence in the same country before 1823.⁷ Such a harsh clause took away the citizenship of millions of Rohingyas as proving ancestry was a tough task. Since they were not citizens anymore, the authorities collected their identity cards forcefully and replaced them with “restrictive and regulated” identity cards.⁸

² ‘Myanmar Rohingya: What you need to know about the crisis’ (*BBC News*, 23 Jan 2020) <<https://www.bbc.com/news/world-asia-41566561>> accessed 9 September 2021.

³ ‘For Rohingya, there is no place called home’ (*The Hindu*, 04 September 2017) <<https://www.thehindu.com/news/international/for-rohingyas-there-is-no-place-called-home/article19620567.ece>> accessed 9 September 2021.

⁴ Supra Note 1.

⁵ Ibid.

⁶ ‘An Open Prison without End: Myanmar’s Mass Detention of Rohingya in Rakhine State’ (*Human Rights Watch*, 8 October 2020) <https://www.hrw.org/report/2020/10/08/open-prison-without-end/myanmars-mass-detention-rohingya-rakhine-state#_ftn358> accessed 11 September 2021).

⁷ Supra Note 2, at 2.

⁸ Supra Note 5, at 2

Another wave of violence against the Rohingyas was carried out in 1991 due to which 2.5 lakh Rohingyas left the country. However, for the duration of the next six years, the majority of them were forced back to Myanmar, to the Rakhine State where they were “concentrated”⁹ away after their properties were taken away forcefully.

Over the years, hatred increased for the Rohingyas among the other populations and the process of “otherization” and “ethnic cleansing” of the Rohingyas was at its peak. Soon, in 2001, the Rohingyas became victims of another wave of violence, this time by the Akanese mobs, another ethnic group of the land.¹⁰

In 2012, a hate campaign began against the Rohingyas by the Buddhist Nationalists which was favoured by the military. In June, of the same year, large violent ethnic clashes broke out between the Rakhine Buddhists and Rohingya Muslims, which was allegedly instigated by the State and military.¹¹ The clashes began in four townships earlier, but within four months it spread to a total of nine townships of the Rakhine State which destroyed mosques, schools, homes and the properties of the Rohingya were seized. After this, the Rohingya were separated from the Ethnic community in the Sittwe Township by the government, in order to harmonize the situation between the two groups. However, later the ethnic Rakhine were allowed to head back home while the Rohingya were discriminately held back in the camps. Ever since the Rohingya were never allowed to return back to their own land.

This was followed by a “brutal and organized”¹² crackdown on the Rohingya by the military in 2016 and 2017. In 2016 and 2017, when the Arkan Rohingya Salvation Army (ARSA) militants attacked the police posts, the military would not spare them after that. “Clearance Operations”¹³

⁹ Ibid.

¹⁰ Ibid.

¹¹ UN, Human Rights Council, ‘Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, Agenda Item 4, A/HRC/39/CRP.2’, (OHCHR, 28 September 2018) <https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf> accessed 10 September 2021.

¹² Supra Note 5, at 2.

¹³ ‘Burma: Security Forces Raped Rohingya Women, Girls’ (*Human Rights Watch*, 16 February 2019) <<https://www.hrw.org/news/2017/02/06/burma-security-forces-raped-rohingya-women-girls>> accessed 12 September 2021.

were carried out against the Rohingyas which involved the burning of structures and extrajudicial killings. Not only this, the Rohingya women and girls were also raped and abused by the Myanmar Military.

More than 700 were below the age of five among the 6700 Rohingyas that were killed.¹⁴ However, the Fact-Finding Mission claimed that the actual number of deaths is much higher than the figures presented to the world. Such widespread killing and arson lead to the exodus of huge numbers of Rohingya fleeing from their country to different parts of the world seeking asylum.

I. STATUS QUO: CHRONICLES OF FEAR, BRUTALITY AND DESPAIR

Ever since, the situation of the Rohingya, those left behind as well as those who moved out, has been very deplorable. They have become stateless people without the citizenship of any country. While they are being helped in some other parts of the world, the Rohingyas who are stuck in their own land suffer the worst because of the inhuman and torturous conditions that they live in.

They are forced to live in camps which are like open prisons, where their movement is restricted on the pretext of their own safety. They cannot exit the camps without the permission of the officials and at night they cannot even move out of their shelters. If they do, they suffer physical assault to the extent that some have even died due to beatings. Residents of Myanmar Registration Act, 1949, under its S.6 (3) asks for detainment and imprisonment for two years, of Rohingyas who move out without their identity documents. Many of those who try to escape the land are often imprisoned under this law.

The camps that they live in for the past nine years were originally built to last only two years. Their shelters are mostly made of temporary roofs attached to stilts. For water, there is a pond near the camp, adjacent to which is sewage so closely attached that it is separated only by a low mud wall. The conditions of these camps are unbearable due to increasing overcrowding and vulnerability to

¹⁴ Supra Note 5, at 2.

floods and fires. However, the state government has refused to allocate them new land for camps.¹⁵ Such conditions put them at higher health risks such as waterborne diseases, tuberculosis and other diseases caused due to lack of sanitation and hygiene. Other than this, the Rohingyas are also prone to malnutrition and higher infant and maternal mortality rates. Deaths have also occurred because many times, the children have fallen into “latrine pits, wells, ponds and pools of standing water”.¹⁶

Also, medical emergencies often result in preventable deaths as the patients do not get immediate medical attention. They are not able to reach the hospital in time because they are not able to get permission from the officials easily, and most of the time, they don’t have enough money to bribe the officials. Due to economic and financial weakness, they are also not able to pay their medical expenses.

Since they are not allowed to exit the camps without permission, the children are also not able to access education other than the learning centres within the camp where volunteer teachers teach. These centres are in very bad conditions due to a lack of resources. Very few people volunteer to teach and the student to teacher ratio in the only high school for Rohingya Muslims is 100:1.¹⁷ After High School, they are not allowed to attend university for higher education. Thus, they have been trapped in a cycle of ignorance and unskillfulness where the next generations to come would remain helpless.

Due to restrictions on movement, the Rohingya cannot work outside their camps. The widespread hatred against them has led to the other communities boycotting trade with them. Thus, they have been left with very little source of income. They don’t have the tools and resources to start their business or do some skilful work. Thus, external aid is their only source of livelihood for now.¹⁸

¹⁵ Supra note 5, at 2.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ ‘Comprehensive update on the Myanmar Country Strategic Plan (2018–2022) in view of recent developments, WFP/EB.1/2018/6-D’ (*World Food Program*, 15 February 2018) <<https://docs.wfp.org/api/documents/WFP-0000051027/download/>> accessed September 12, 2021.

I. RIGHTS GRANTED UNDER THE INTERNATIONAL LAWS & BLATANT VIOLATIONS THEREOF

The International Human Rights law, through various declarations, conventions and treaties provides ample rights for a human being to live with dignity, honour, and comfort. However, the main problem is that not all countries have ratified these laws. This section of the article attempts to shed light on the rights granted to Rohingya Muslims by the International Human Rights Law, which have been violated by the Myanmar Government.

The *Universal Declaration of Human Rights, 1948*, lays down a list of rights most of which have been violated by the Myanmar Government of the Rohingyas. The UDHR was signed and ratified by Myanmar.¹⁹ Article 1 of the UDHR says that all humans are born free and equal in dignity and rights. Further, Article 2 says that everyone is entitled to equal rights without any discrimination on any basis. Article 5 further lays down that none should be given inhuman or degrading treatment or torture or cruelty. Article 15 of the UDHR provides the right of everyone to a nationality and the right that no one shall arbitrarily take the nationality away. The UDHR is even considered a part of customary International Law which is binding upon the nation-states as was proclaimed in the Unofficial Assembly for Human Rights, Montreal²⁰ and International Conference on Human Rights, Tehran²¹

The *International Convention on Economic, Social and Civil Rights* provides that all people, without any discrimination based on any ground including national or social origin, birth race or other status, shall have the basic rights economic social and cultural rights like the right to work freely in favourable conditions²², right to live with an adequate standard of living including food, clothing, and housing. The right to continuous improvement to the living conditions is also a part

¹⁹ 'International Law' (*Burma Link*, 27 October 2014) <<https://www.burmalink.org/background/burma/international-crimes-and-impunity/international-law/#:~:text=While%20not%20a%20treaty%2C%20UDHR,Declaration%20on%20December%2010%2C%201948.&text=The%20Treaty%20was%20adopted%20at,force%20on%20July%201%2C%202002>> accessed 12 September 2021.

²⁰ S.K. Kapoor, *Human Rights under International Law & Indian Law* (Central Law Agency, Allahabad, 7th edn., 2017) 43.

²¹ Ibid.

²² International Covenant on Economic, Social and Cultural Rights, 1966, art. 6, 7.

of this right.²³ Right to physical and mental health²⁴, right to education²⁵, and right to enjoy the benefits of scientific progress and its application²⁶.

Ethnic cleansing, genocide and mass exodus of refugees and displaced persons have been especially criticised by the international community at the World Conference on Human Rights, Vienna, 1993, where it was said that punishment should be given to the perpetrators in such conditions and victims should be compensated.

Coming to the rights provided by the various conventions of international law, the Convention on the prevention and Punishment of the Crime of Genocide was specifically made with the aim and intent to prevent genocides and punish the perpetrators if it happens. Genocide has been defined in the convention under Article 2 as doing acts against a particular group such as killing its members or causing serious bodily harm, inflicting group conditions on the group to bring its physical destruction, imposing measures to prevent births within the group and forcibly transferring its children to some other group, to destroy that national, ethnic-racial or religious group. This convention was ratified by the State of Myanmar in 1949 itself and still, blatant torture and killings of a whole ethnic group took place in front of the whole world.

The International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (CERD) also strictly prevents any form of discrimination among humans based on race, colour, descent, or national or ethnic origin. However, Myanmar has not at all signed or ratified this convention yet.

The International Convention on Suppression and Punishment of Crime of Apartheid (1973) lays down that apartheid is a crime against humanity. It says that practices and policies which favour or commit racial discrimination, segregation or apartheid through inhuman acts intending to destroy a racial or ethnic group wholly or partially are a crime against the international community. The Rome Statute of ICC also holds apartheid and persecution as a crime.

²³ International Covenant on Economic, Social and Cultural Rights, 1966, art. 11.

²⁴ International Covenant on Economic, Social and Cultural Rights, 1966, art. 12.

²⁵ International Covenant on Economic, Social and Cultural Rights, 1966, art. 13.

²⁶ International Covenant on Economic, Social and Cultural Rights, 1966, art. 15.

The discriminatory laws laid down by the government in Myanmar are a glaring example of apartheid and they should have been prosecuted under this law. The segregation has been done to the extent that the Rohingya have been forced to live in a separate ghetto and are not allowed to intermix with the rest of the people.

The Convention on reduction of Statelessness, 1961 also lays down that nationality should be granted to a person born in the country who would otherwise be stateless. By this convention, all the Rohingya children would receive nationality of the country. However, Myanmar is not a party to such a convention. Also, the Convention on the Rights of the Child, 1990 lays down under its Art. 7 that a child has a right to acquire a nationality immediately after the birth, particularly a child who would otherwise be stateless. Myanmar even ratified this convention in 1991²⁷ and still doesn't grant nationality to the children of the Rohingya.

The international laws relating to internally displaced persons say that such a person cannot be detained or confined in one place. However, the Rohingyas have been confined in camps which are more like detention camps for 8 years now, thus violating the international laws on internally displaced persons. The citizenship law of the country is against the international customary law which lays down that if a person has a "genuine and effective link" to any state such as family ties, long-term residence, descent or birthplace, then he cannot be rendered stateless.²⁸

II. INTERNATIONAL HUMAN RIGHTS MECHANISM: DEDICATED OR DERELICT?

The Rohingya Muslims are stateless people because Myanmar does not accept them to belong to their country. Myanmar's constitution lays down that the right in the constitution can be enjoyed only by the citizens of that country. In such a case, the Rohingya do not have any rights except the

²⁷ 'Consideration of Reports Submitted by States Parties Under Article 44 Of the Convention, CRC/C/70/Add.21' (UN Committee on Rights of Child, November 5, 2003) <<https://www.refworld.org/pdfid/403a0f364.pdf>> accessed 12 September 2021.

²⁸ Supra Note 5, at 2.

ones granted by the International Human Rights Law. Therefore, the enforcement of human rights mechanisms in their case becomes even more necessary and essential as they become the most vulnerable group of people in the world.

Proof of this can be seen in the present scenario where the rights of these people are being blatantly violated and the international human rights law has repeatedly failed them. In the case of International Law, a country is not bound to follow it unless it signs and ratifies it. However, if a country does not like a law, it would simply escape by saying that it does not want to follow it and nothing much can be done in that regard. Thus, one of the major failures of International Law is that the countries are not bound by it unless they submit themselves to it. From the International Bill of Human Rights, Myanmar has ratified the ICESCR only recently in 2017²⁹ while it has not even signed the ICCPR yet at all. The implementation mechanism of the former is weaker than the implementation mechanism of the latter. It has also not signed many conventions and treaties.

The sovereignty of nation-states is another factor which does not let the international human rights law be effective in different states because sovereign states have exclusive control over their own affairs in their own land. Though Human Rights are a matter of global concern, and much awareness has been spread among people about it, nothing much can still be done. Individuals have been empowered enough to send complaints to the UN against their own state for the violations of their human rights if no relief is given by their own government. However, on receiving the complaints, the UN bodies cannot do much other than highlight the matter to the world.

The earlier Human Rights Commission too, though received complaints about human rights, could do nothing except hear the complaint and make recommendations to the Governments which have practically no binding force. As such, its recommendations cannot be enforced. It can only criticise

²⁹ 'Myanmar ratified key Human Rights Treaty', (*Right to education Organisation*, 27 February 2018) <[https://www.right-to-education.org/news/myanmar-ratifies-key-human-rights-treaty#:~:text=On%206%20October%2C%202017%20Myanmar,\(Articles%2013%20and%2014\)>](https://www.right-to-education.org/news/myanmar-ratifies-key-human-rights-treaty#:~:text=On%206%20October%2C%202017%20Myanmar,(Articles%2013%20and%2014)>) accessed 12 September 2021.

a government for not complying with the recommendations and bring it to public notice. Thus, public opinion is the only major “sanction behind the international law”³⁰.

The International Courts can pass verdicts that they can hardly enforce. The Gambia filed an application against Myanmar in the International Court of Justice by the end of 2019 where it accused it of violating the provisions of the Geneva Convention. In January 2020, the court’s unanimous decision came against Myanmar ordering it to take “all measures within its power”³¹ to prevent the ongoing genocide and to prevent the destruction of evidence. The report of the implementation of the order was also asked by the court within four months. The report was submitted in May 2020, in confidentiality as is the standard practice at ICJ.³² However, this is a major drawback since even the Rohingya did not come to know what facts were submitted in the report and there have been no actual implementations on the ground for the betterment of Rohingya.

The court had also ordered for reports to be submitted every six months after the first report. The order of the court is legally binding on Myanmar as Myanmar itself is subjected to the jurisdiction of the court by calling the court a “vital refuge for international justice”³³. An order of the ICJ is forwarded to the UN Security Council³⁴ which builds pressure on it to address the concerned issue by passing resolutions to direct the concerned nation, in this case, Myanmar, to take the necessary steps to ensure that the acts of genocide are stopped, and international aid reached the victims of the genocide. However, this power has not been used by the Security Council yet because of the misuse of the veto powers by the stronger nations, Russia, and China in order to protect the Myanmar government.³⁵

³⁰ S.K. Kapoor, *Human Rights under International Law & Indian Law* (Central Law Agency, Allahabad, 7th edn., 2017) 65.

³¹ ‘Rohingya Symposium: Why So Secret? The Case for Public Access to Myanmar’s Reports on Implementation of the ICJ’s Provisional Measures Order’ (*OpinioJuris*, 25 August 2020) <<http://opiniojuris.org/2020/08/25/rohingya-symposium-why-so-secret-the-case-for-public-access-to-myanmars-reports-on-implementation-of-the-icjs-provisional-measures-order/>> accessed 12 September 2021.

³² Ibid.

³³ ‘World Court Rules Against Myanmar on Rohingya’ (*Human Rights Watch*, 23 January 2020) <<https://www.hrw.org/news/2020/01/23/world-court-rules-against-myanmar-rohingya>> accessed 12 September 2021.

³⁴ Statute of the International Court of Justice, Article 41(2).

³⁵ *Supra* Note 32, at 10.

The UN General Assembly can also pass a resolution asking Myanmar to take the necessary steps and hence encouraging other nations to take steps to make changes in bilateral relations with the country if it does not comply with the order. However, no such thing can be seen happening in the near future and the Rohingya keep on being mistreated and living a life of misery. A case was also filed against Myanmar in the International Criminal Court by Bangladesh for the persecution and deportation of the Rohingya.³⁶ Jurisdiction issues had arisen due to this because Myanmar is not a member of the ICC. However, it was held by the court that Bangladesh is a member and the completion of crime (deportation) happening in Bangladesh gives the court jurisdiction over the case.³⁷ In late 2019, the court gave permission for the investigation of the alleged crime against humanity on the Rohingya.³⁸

Widespread hatred was poured into the population openly by the Government and other political powers against the Rohingya, labelling them to be terrorists with “uncontrollable” birth rates who want to take over the state.³⁹ The dominant party in the country, Rakhine Nationalities Dominant Party echoed the words of Adolf Hitler, saying that in the process of “endeavouring to maintain the Rakhine race”⁴⁰, even inhumane acts are sometimes necessary.

The discrimination, persecution, and violence against the Rohingya of Myanmar through laws, policies and full support of the government and the military have been done through systematic planning and with the intention to oppress them. The world knows and still, nobody is able to do anything.

³⁶ *Situation in the People's Republic of Bangladesh v. Republic of the Union of Myanmar* (Order) ICC-01/19.

³⁷ *Supra* Note 5, at 2.

³⁸ ‘ICC judges authorise opening of an investigation into the situation in Bangladesh/Myanmar’ (*International Criminal Court*, 14 November 2019) <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1495>> accessed 12 September 2021)

³⁹ UN Human Rights Council, ‘Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar’ (September 2018) 1409-1410.

⁴⁰ ‘Countdown to Annihilation: GENOCIDE IN MYANMAR’ (*International State Crime Initiative*, 2015) <<http://statecrime.org/data/2015/10/ISCI-Rohingya-Report-PUBLISHED-VERSION.pdf>> accessed 12 September 2021.

SUGGESTIONS AND CONCLUSION: THE WAY FORWARD

For decades, the Rohingya have been living a life of pain and suffering while the world has just been an audience to it. According to Ursula Mueller, UN Assistant Secretary-General, they are living in conditions “beyond the dignity of any people”⁴¹. They have been forced out of their own homes, drove out of their own lands, and forced to leave their own country. They have become a group of stateless people whom no country is willing to accept.

As mentioned in the article, many rights have been granted by international law. It is only the failure of the enforcement mechanism which has made the situation difficult. However, the international human rights law is still growing, and it can be expected that it would soon develop a mechanism which would make this possible too. For now, the dynamics of world politics is such that a lot of interference is not possible.

However, one can say that the UN mechanism is not doing as much as it can actually do, and this is due to the politics of the veto nations. In this aspect, something must be done soon. It should repeatedly urge the government of Myanmar and engage with them to remove the discriminatory policies and laws. International pressure should be created on the Myanmar government to take necessary steps to stop the cruelties on Rohingya, restore the life of the community to normalcy and punish those responsible for the whole crisis. The International Community can place targeted economic sanctions and embargo on Myanmar, in order to pressurise them to take the necessary steps. Trade relations can be used as a tool to make the Myanmar government implement the recommendations of the UN General Council. Governments of Countries neighbouring Myanmar should call out on its brutal policies and ask them to immediately remove all discriminatory laws, practices and policies. Not only this, but they should also volunteer to help the Myanmar government in tackling the problems created by Rohingya Militants. Moreover, other steps should be taken by the UN such as providing relief and aid to the Rohingya who are caught in the detention camps as well as in different parts of the world. Justice should be served. If it is happening in some corner of the world today, it can happen in any corner of the world tomorrow.

⁴¹ Supra Note 5, at 2.