HUMAN RIGHTS *advocacy*

Have we forgotten the Rohingyas?

HUSSAIN M FAZLUL BARI

FOR the last few decades, the ill-fated Rahingyas have gone through oppression, torture and frequent massacres in their historical homeland of Arakan. Since 1948, expelling the Rohingyas from their ancestral land and depriving them of properties have become almost a recurring phenomenon.

Bangladesh is the most affected neighbour

Millions of uprooted Rohingyas have taken shelter in many countries of the world since ethnic cleansing of 1942 in Arakan. The crisis took a serious turn in 1992 when 250877 refugees had trekked into Bangladesh fleeing persecution on the other side of border-Myanmar. Bangladesh has almost been successful in handling the issue by sending back 236490 refugees to their homeland. Bangladesh itself is encumbered with its vast population and beset with multifarious problems, yet the way it has dealt the crisis is hailed internationally. The UN (UNHCR in particular) has also played commendable role in this regard. Arithmetically the number of the refugees is now supposed to be around 2000; but in reality the figure exceeds 20000. Apart from new born babies in Rohingya camps, the influx of refugees has been continuous for years. The Bangladesh government provides inadequate facilities in the refugee camps where the vulnerable Rohingyas are passing their days in a shabby and inhuman condition. Again, many trespassers have been mixed with the local populace. It is almost impossible to identify the illegal immigrants as both are identical in appearance and complexion. Most of them are reluctant to return Myanmar as well. These settlers, being ill-paid labourers, are frequently engaged in criminal activities and environmental degradation in the hilly areas of Cox'sbazar, Chittagong, Bandarban etc. There is no official census available regarding their number and status.

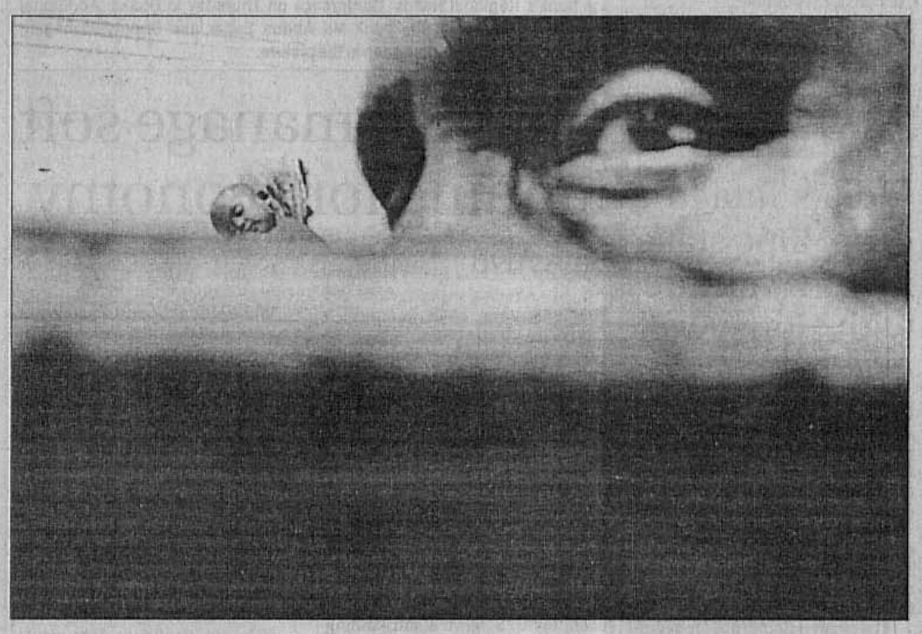
Historical background

Arakan, a continuation of the Chittagong plain, was neither purely a Burmese nor an Indian territory until 18th century AD culturally, socially, economically and politically, the people of Arakan (also known as Rosang) were independent for centuries. It had remained district due to its topographical peculiarity. Arakan was virtually ruled by Muslim rulers under Sultanate system from 1430 to 1531. The Muslims (Rohingyas) and the Buddists (Maghs or Rakhines) constituted the population of this area. In addition to these majority groups, these are other minority people lived here. In fact, Rohingyas and Maghs had been peacefully co-existing in Arakan like twin brothers in perfect amity until Burmese occupation in 1784. During Burmese rule, two sister communities were put at loggerheads and this heinous policy has been continued with more intensity today.

Myanmar (preciously Burma till 1989) has been ruled by a despots or military junta since 1952. The successive ruling councils are bent on eradicating Rohingyas by terming them illegal settlers. The Buddist settlers have also gradually marginalized and allowed the Rohingyas out of their homestead under clear state-patronage. Actually, Myanmar under military dictatorship continues to be centre of instability and, political and ethnic persecution. The rule of law, human rights, democracy -- these phrases are still far cry in autocratic rule.

The doctrine of self determination

The doctrine of self determination is one of the major concepts in political theory and jurisprudence. If played an important role in the process of decolonisation and emergence of many sovereign states in Asia, Africa and Latin America. The issue of self determination and the right to secede versus the territorial integrity attracts huge discussion among scholars and politicians. Nevertheless, this concept has acquired new significance under the UN charter. Subsequently the UN General Assembly attempted to provide greater content to provisions of the charter on self determination through its resolutions and declarations, viz --



(a) Declaration on the Granting of Independence to the colonial countries and peoples (1960);

(b) Declaration on Principles of International Law Concerning Friendly Relations and co-operations among states (1970);

(c) Declaration on the Rights of Indigenous Peoples, 1993

Neither General Assembly Resolutions nor Declarations provide legal framework for the right to self determination as they fall within the ambit of soft international law. Two International Covenants on Economic, social and cultural rights and on civil and political rights (1966), being directly binding on state-parties, contain the right to self determination in identical language in common article 1. Upon close examination of article 1 of both the covenants, self determination is classified as internal and external self determination.

Para 1 of Article 1 refers to the internal aspect of self determination when it states that 'all peoples have the right to self determination.' Here the reference is not only to the people of dependent countries, but also to the peoples of sovereign states as well. Therefore, internal aspect of self determination is universally applicable to all people. Article 1 conveys two ideas. Firstly, the choice of domestic political institutions must be ascertained by the peoples themselves through free and fair election. Secondly, it necessitates other related rights enshrined in the covenants such as freedom of speech and expression, the right to peaceful assembly, association, right to vote and to be elected and more importantly right to take part in the conduct of public affairs through representatives. Wherever these rights are recognised and respected, the people enjoy the right of internal self determination: and whenever it is tramped down, it is infringed.

Article 1(3) commits all state parties to respect and promote the right to self determination. A close study of the provision reveals that the emphasis is clearly on the trust and other non-self-governing territories.

While the internal self determination is closely linked to the realisation of basic human rights, the external aspect played a key role in ending colonialism.

Is self determination relevant for Rohingyas?

With the passage of time, wave of change all over the world, human thirst for knowledge, honour and dignity, a man can no longer tolerate the oppression and injustice of another man. No government is allowed to treat its people in any damn way it likes. Non interference in the domestic affairs of a country is no more available in contemporary international law when it concerns the human rights. The UN charter places human rights in a pivotal position. Several international treaties and declarations in unequivocal terms affirm that gross violations, as seen in Myanmar, of human rights is an issue of international concern. The barbaric and inhuman acts of the junta with an indigenous minority Muslim community is not only insult to UN charter, it is a dangerous signal to the peace & security of the region.

As indicated earlier, Arakan is a territory geographically separate to Myanmar. Its people particularly the Rohingyas are ethnically and culturally distract from others. Besides, it has been arbitrarily placed in a situation of subordination. Furthermore, they are not listed among 135 ethnic nationalities of the country. Since they been persistently subjected to persecution, genocide and expulsion from their homeland, their right to self determination accrues from many standpoints. As the UN practice has not been to endorse the right to secede outside decolonization at least internal aspect of self determination is quite relevant for Rohingyas.

Concluding remarks

Regarding Rohingya issue the most important of all is a permanent solution to their long-standing problem. It inter alia involves inviolable human rights commitment about rights and freedoms of the Rohingyas that should be incorporated in the constitution of Myanmar. In this regard, a true representative government is welcome in the process of roadmap to Democracy in Myanmar. Bangladesh, as the affected neighbour, may come forward for viable political solution of the crisis. Actually the conclusion is declared by the then UN Secretary General Boutros B Ghali at the time of Rohingya influx to Bangladesh in 1992.

'UN should endeavour to achieve a political solution to the crisis not merely for the time being but for future as well."

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LAW *opinion*

TIN:An indicator of citizen's consciousness

MD ZAHIDUL ISLAM

A TIN or Taxpayer Identification Number is a 10-digit number made up of 9 numbers and 1 check digit. It is a number awarded by the National Board of Revenue (NBR) to a person who applies for it as per provision of the Income Tax Ordinance, 1984. Here, a person also means a person under the Income Tax Ordinance, which includes an individual, a firm, an associate of persons, a Hindu individual family, a local authority, a company and every other artificial juridical person. At present TIN is being used for many purposes under the Income Tax Ordinance, 1984. Besides, section 184AA of the Income Tax Ordinance, 1984 clearly says that National Board of Revenue may with the government's approval specify any class of documents where a TIN is to be mentioned. So, the area of application of TIN may at any time be elaborated. Hence, the importance of TIN is simply apprehended. In fact, having TIN is not a fashion but a necessity.

Where does it apply?

Every person, who is liable to submit a Return of Income, is to use TIN, as the Forms of Return of Income require it. Moreover, section 184A of the Income Tax Ordinance, 1984 has set out some other cases where a TIN is required to be produced. According to the said section a person is required to produce a TIN at the time of

- Opening a letter of credit for the purpose of import;
- Submitting an application for the purpose of obtaining an import registration certificate;
- Renewal of Trade license in the area of a corporation or of a paurashova of a divisional Headquarters;
- Submitting tender documents for the purpose of supply of goods, execution of a contract or for rendering services;
- Submitting an application for membership of a club registered under the Value Added Tax Act, 1991;
- Issuance or renewal of license or enlistment of a surveyor of general insurance;
- Registration for purchase of land, building or an apartment situated within any city corporation, deed value of which exceeds one lakh taka; of course this provision shall not apply in case of a non resident Bangladeshi; and
- Sanction of loan exceeding five-lakh taka to a person by a commercial bank;
- Issuing credit card;
- Issuing of practicing licence to a doctor, a chartered accountant, a cost and management accountant, a lawyer or an income tax practitioner;
- Giving connection of ISD telephone; and
- Registering of a company under the Companies Act, 1994 in respect of sponsoring directors.

How to obtain a TIN

The application Form for obtaining a Taxpayer's Identification Number is prescribed under Rule 64B of the Rules. This prescribed application form just requires some general information of the assessee. However, the application Form can be collected without cost from the zonal offices of tax authority e.g. the office of the Deputy Commissioner of Taxes (DCT). This application form for a TIN, completed by the assessee, should be submitted to the DCT whose jurisdiction they fall to be assessed under. As a rule, jurisdiction depends on residence or the place of business of the person (assessee).

That is all an assessee has to do. If the correct and complete application form is submitted, the DCT shall issue a TIN certificate within the next working day of submitting the application.

Concluding remarks

Non-compliance with any legal requirement follows a legal consequence. This is also true here. Where any person without reasonable cause fails to obtain a TIN certificate or after getting it fails to display the same at the specific place within the specified time, he will be fined by the DCT for time during which the default continues. However, each and every citizen, who is under a legal obligation, is expected to collect TIN not just to escape the legal arms of the state but to perform his duty towards the state as a conscious and patriot one.

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LAW *update*

UPDATED

RIGHT TO DIE - JUSTICE DONE OR JUSTICE DENIED?

The case of Euthanasia

KAMRUL HOSSAIN

RIGHT to die, as a concept in the discussion in the field of law has relatively recently emerged, especially during the last half of the twentieth century. This has created an intense debate about the morality, as well as the legality of such right. But it has been in the last hundred years that there have been concerted efforts to make legal provision for voluntary termination of life, which in other word is - euthanasia. Although assisted suicide has been legally tolerated in Switzerland for many years, voluntary euthanasia or termination of life was not formally recognized by law. The Netherlands has become the first country in the world where euthanasia is now formally allowed. Despite the tolerance of the practice for years, and which was largely governed by case law, the Dutch parliament set down in law the practice of euthanasia. The legislation passed through all the parliamentary stages early in 2001 and so became law. The Belgian parliament has also passed similar legislation in May 2002.

What is Euthanasia?

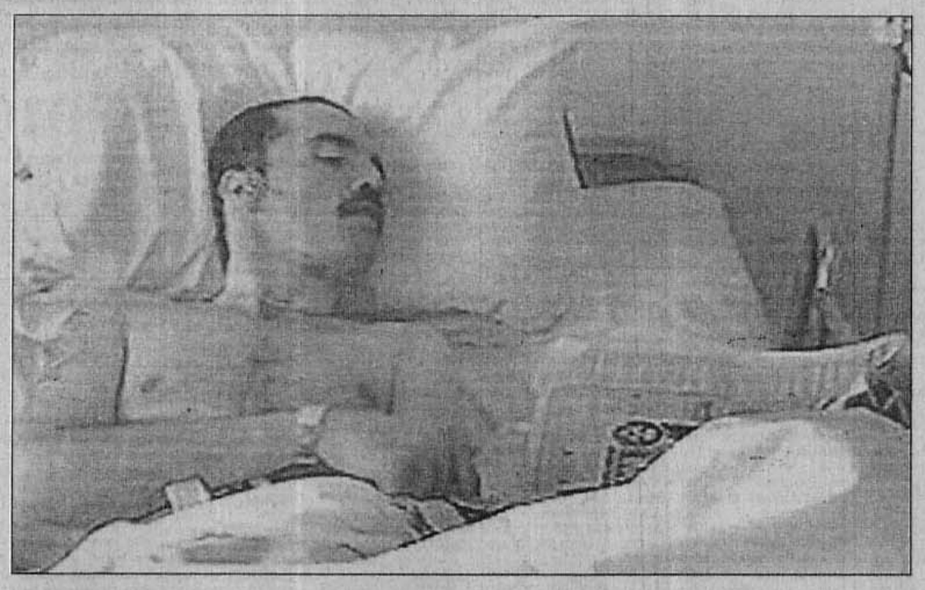
The very concept of euthanasia contemplates the idea of one's free choice of termination of life by the help of the others. It may include idea of an assisted suicide, although there are important differences between these two. The former is an action, while the later is a facilitation. Euthanasia may be discussed in two ways. One is active euthanasia, and the other is passive. Active euthanasia is killing any person, even with his consent, no matter how terrible and painful his condition. There is a flat prohibition in general against active euthanasia. The law regards life as sacred, and it will punish for murder anyone who kills another individual or even hastens death by active means, be it by blows, strangulation, shock, starvation, injection or poison. Passive euthanasia is more difficult to analyze because the law rests uneasily on the distinction between acts and mere omissions, where the latter, in the absence of a legal duty, are not ordinarily regarded as culpable. Today it is generally permissible to cease treatment, such as medication or chemotherapy, even though it is known that death will quickly ensue. It is also generally permissible to withdraw artificial support systems, such as a respirator, if that course of action is demanded by the patient. Indeed some cases go so far as to view the withdrawal of food and fluid as the mere cessation of treatment and not the killing of another person.

Right to Life

The right to life is the most fundamental of human rights. If the right to life is not protected other human rights lose their relevance. As a human right, the right to life means, first and foremost, the prohibition directed against the state and public authorities in general to illegally or arbitrarily kill people. Secondly, the right to life also presupposes legislative and other measures that can, for example, be used to create a protective system against violence between individuals and to set up a functioning health care system. Almost all international documents of the Human Rights treaties, and the national constitutions of all states have recognized this right. In every religion, right to life is again and again emphasized as a basic fundamental right. However, the point is that from when exactly this right to life starts, and up until when it exists. From the religious (catholic, Islamic and so on) point of view, for example, a baby in the womb has its life; thus, abortion constitutes a murder. Critics to this view, however, argue that life starts after the baby has been born; in the womb it is only a part of mother's body, and therefore, any restriction on the prohibition of abortion infringes mother's right to privacy. The same is about euthanasia, whether it is in violation of the right to life. It has been very convincing in the public opinion of the United States, the UK and in Australia that euthanasia is contrary to the right to life. Strong voice in support of euthanasia is more and more urged.

Grounds argued for Euthanasia

Those who argue in support of euthanasia, contends that if a person is, (a) suffering from a terminal illness; (b) unlikely to benefit from the discovery of a cure for that illness during what remains of her life expectancy; (c) as a direct result of the illness, either suffering intolerable pain, or only has available a life that is unacceptably burdensome (because the illness has to be treated in ways which lead to her being unacceptably dependent on others or on technological means of life support); (d) has an enduring, voluntary and competent wish to die (or has, prior to losing the competence to do so, expressed a wish to die in the event that conditions (a)-(c) are satisfied); and (e) unable without assistance to commit suicide, then there should be legal and medical provision to enable her to be allowed to die or assisted to die. It should be acknowledged that these conditions are quite restrictive, indeed more restrictive than some would think appropriate. In particular, the conditions concern access only to voluntary euthanasia for those who are *terminally ill*. While that expression is not free of all ambiguity, for present purposes it can be agreed that it does not include the bringing about of the death of, say, victims of accidents who are rendered quadriplegic or victims of early Alzheimer's Disease.



Arguments against Euthanasia

It is often said that it is not necessary nowadays for anyone to die while suffering from intolerable or overwhelming pain. We are getting better at providing effective palliative care and hospice care is available. Given these considerations it is urged that voluntary euthanasia is unnecessary. One may also argue that permitting the legalization of voluntary euthanasia is to the effect that we never have sufficient evidence to be justified in believing that a dying person's request to be helped to die is competent, enduring and genuinely voluntary. There is a widespread belief that passive (voluntary) euthanasia, where life-sustaining or life-prolonging measures are withdrawn or withheld, is morally acceptable because steps are simply not taken which could preserve or prolong life (and so a patient is allowed to die), whereas active (voluntary) euthanasia is not, because it requires an act of killing. The distinction, despite its widespread popularity, is very unclear. Whether behavior is described in terms of acts or omissions (which underpins the alleged distinction between active and passive (voluntary) euthanasia), is generally a matter of pragmatics not of anything of deeper importance. It is often said that if society allows *voluntary* euthanasia to be legally permitted we will have set foot on a slippery slope that will lead us inevitably to support other forms of euthanasia, especially non-voluntary euthanasia. The fear of the slippery slope is, no doubt, part of the concern expressed here. But, as well, there are concerns about the role of the law and more particularly, its contribution to the regulation of medicine.

Nevertheless, the central ethical argument for voluntary euthanasia - that respect for persons demands respect for their autonomous choices as long as those choices do not result in harm to others - is directly connected with this issue of competence because autonomy presupposes competence. People have an interest in making important decisions about their lives in accordance with their own conception of how they want their lives to go. In exercising autonomy or self-determination people take responsibility for their lives and, since dying is a part of life, choices about the manner of their dying and the timing of their death are, for many people, part of what is involved in taking responsibility for their lives. Most people are concerned about what the last phase of their lives will be like, not merely because of fears that their dying might involve them in great suffering, but also because of the desire to retain their dignity and as much control over their lives as possible during this phase. Therefore, moral justice are not prejudiced, rather respected in euthanasia.

Dutch Law on Euthanasia

Dutch law regarding Termination of Life on Request and Assisted Suicide (Review Procedures) Act has entered into force on April 1, 2002. The inclusion in the Criminal Code of a especial ground for exemption from criminal liability means that doctors who terminate life on request or assist in a patient's suicide can no longer be prosecuted, provided they satisfy the statutory due care criteria and notify death by non-natural causes to the appropriate regional euthanasia review committee. The main aim of the policy is to bring matters into the open, to apply uniform criteria in assessing every case in which a doctor terminates life, and hence to ensure that maximum care is exercised in such cases. There should, however, be twofold criteria first, a patient's voluntary and explicit request to terminate his or her life when the s/he is facing a future of unremitting an unbearable suffering; second, the doctor should seek a second opinion from an independent physician who must also reach the conclusion that there is not alternative medical solution. According to article 3 of the Act a regional review committee will be established for the review of notification of termination of life. The Act overall culminates to provide necessary safeguard that abuse of the application of euthanasia is highly unlikely. Even more the doctors who are playing a big role here are regulated by their own professional ethical code. Therefore, the law is as a matter of fact well protected.

There were nonetheless, some debate with regard to the respect for the international human rights treaties. For example, Article 6 of UN's International Covenant of Civil and Political Rights (ICCPR), and article 2 of the European Convention on Human Rights states that right to life shall be protected by law. Therefore, by enacting law in order to let the life terminate is whether in violation of international obligation is a question. In accordance with the view provided by the Dutch government, Act does not conflict with its duty under international law to defend its citizen's right to life against violation by government or by any other individuals. According to the Dutch government, the convention deprive government and others of the right to take an individual's life against his will (except is specified circumstances). However, even if the conventions cannot be interpreted as imposing a general prohibition on the termination of life on request or assisted suicide, the national provisions of signatory states must certainly provide sufficient protection to meet the criteria of "respect for life". This is the basis of Dutch legislation on euthanasia. Performing euthanasia in response to a voluntary request from a patient does not constitute international deprivation of life within the meaning of the article of the convention cited above.

Concluding remarks

Whether euthanasia is moral, ethical or just depends on the construction of social value among the people living in a particular society. In Netherlands, for example, the bill when was finally tabled, an overwhelming majority in parliament approved. The opponents were only mainly the Christian parties who did not have, in fact, much political influence. In a democratic society, where individual rights are being emerged more and more, and state's control on its citizen's choice is more and more relaxed, it is the decision of the people at large to decide whether they wish to have a law alike. Justice thus is done once peoples' opinion is respected. Yet, a proper safeguard mechanism is the pre-condition to such enactment, which may be ethically justified. It maybe rationale, therefore, to argue that justice will not be done, if right to die is denied where there is a popular support behind such right as long as it does not harm someone else.

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