LINES OF PARADOX

Rohingya refugee : Casting a third eye

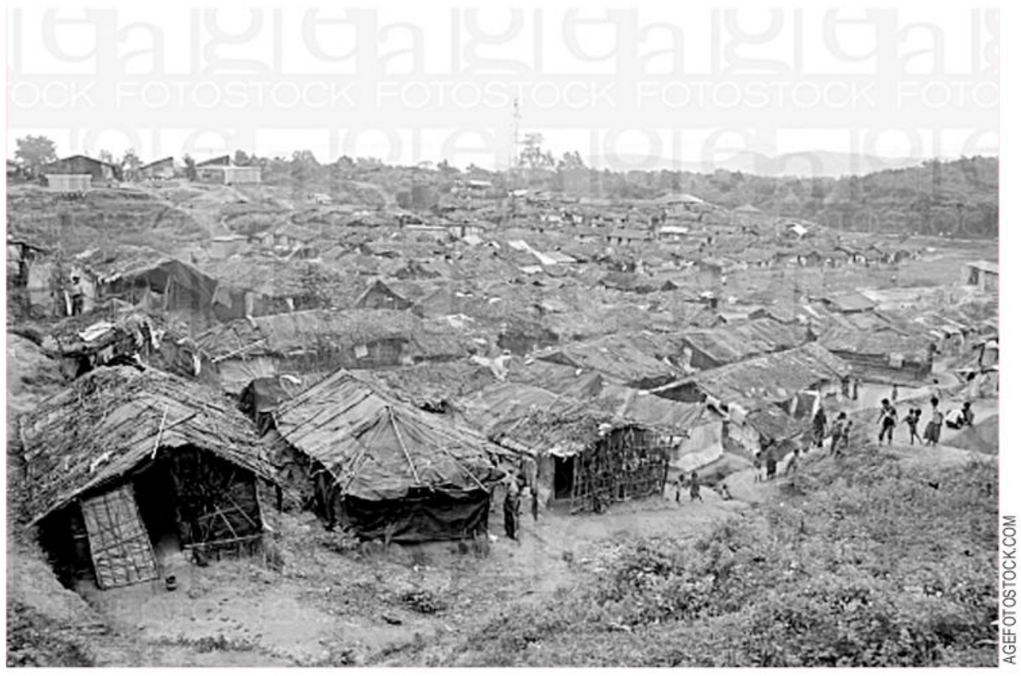
EMDADUL HAQUE

UNDENIABLY, the Rohingya refugees living in Bangladesh under the generosity coupled with humanism of the country are in double edged setback. Myanmar forced them to leave the country through heinous persecution, maltreatment and discrimination branding their ancestors as Bangladeshi and contrarily, Bangladesh refuted the allegation terming it as a politically motivated statement. Due to the historical mistake of the then military ruler along with humanitarian grounds, Bangladesh allowed their entry into the country twice but refused their recent effort for many practical reasons including security concerns and demographic burden.

Amid scores of its own discrepancies Bangladesh has been generous enough to host around 400,000-500,000 Rohingya refugees for more than three decades. Among them only 29,849 are officially registered in two official refugee camps in the southern part of Cox's Bazar while the rest of them are undocumented and scattered in Cox's Bazar and Bandarban. The recent attempt of Rohingya boat people fleeing sectarian violence to enter into Cox's Bazar was prevented by the government providing them emergency reliefs like food, water, and medicine ruling out appeals from international communities.

Bangladesh is always respectful towards international law and international human rights law as well, as per its compassionate attitude and constitutional mandate of cooperation of international peace, security and solidarity. Although Universal Declaration of Human Rights (UDHR) is not legally enforceable, it is a moral guideline for all states recognizing, promoting and protecting life, liberty, equality and dignity of all people irrespective of race, colour, creed and religion. Showing respect to Article 14 of the UDHR, Bangladesh has extended its cooperative hand as a de facto host country of Rohingya refugees. Bangladesh is not a party to the 1951 Convention on the Status of Refugees and its 1967 Protocol. So, the country is not legally obliged to hosting of refugee tacitly or explicitly. Even the demographic vulnerability and socio-economic condition of the country do not suggest taking over extra responsibility but the principle of non refoulement as a part of customary international law reminds us to stay beside those persecuted people or believed to have well founded fear of persecution.

The country being a member of UNHRC has so far ratified eight out of nine core international human rights documents including ICCPR, ICESCR, UNCRC, CEDAW and CAT except the UN Convention on the Rights of Persons of Enforced Disappearance. These human rights instruments do not bind the country to take direct responsibility of such refugees because, the Supreme Court of the country in the case of HM Ershad v. Bangladesh and Others, 7 BLC (AD) 67 held that any international treaty or document after signing or ratification is not directly enforceable unless and until the parliament enacts similar statute, however, how sweet the document is. Here, the country must be cautious to be a party to any international human rights document because after being party to such document moral obligation is lying on the shoulder. Before suggesting for being a party, the high ups must conduct a SWOT analysis as well as cost-benefit analysis of any Treaty or Convention applying the doctrine of priority, necessity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and legitimate expectation.

The gravity of persecution on Rohingya Muslim minority by the government of Myanmar has been intensified after its independence from the British in 1948. The government carried out a large scale crackdown in 1962 and in 1978 and the massive onslaught in 1991 after the military takeover in 1982. In fact, the crisis got aggravated due to enactment of many black laws sideling the rights of Rohingya people and even the 1982 Citizenship law excluded them from the list of 135 races entitled to citizenship. The human rights of these people are under the black claw of military rulers causing humanity suffering. In 1989, the military junta changed the name Burma to Myanmar, a year after thousands were killed in the suppression of a popular uprising but the fate of Rohingya people is unchanged.

People of Myanmar are lucky enough for getting a great leader like Aung San Suu Kyi. In a recent interview with CNN she says she likes military personnel in the country because her father established it but do not like their activities. Regrettably, the present stance of Suu Kyi is a mismatch between her firm commitments of lifelong struggle and sacrifice for expediting democracy, rule of law and human rights in Myanmar and the persisting ethnic Rohingya issue. Of course, if she takes side of Rohingya people then it can hinder her plausibility to be in power in near future as senior leaders of her National League for Democracy (NLD) are not favouring the issue. So, she is cautious on her political career and seems tight lipped.

UNHCR representative in a consultation on the issue at Dhaka University on September 22 urged people not to treat them as a cancer of the society rather treat them humanly searching for a holistic solution. He said, UNHCR is working with the crisis for a durable solution through repatriation, reintegration and resettlement.

International communities are pressurizing Bangladesh, who is predominantly dependent on donor agencies whereas they must convince or compel Myanmar for a peaceful solution rather than lifting of embargos on the country.

In fact, mudslinging by the stakeholders cannot bring a durable solution rather can deepen the crisis. The diplomatic failure of Bangladesh to raise voice against Myanmar in International forums and arrogance of Myanmar is also responsible for its stagnated position. Both must not forget that, "Every problem has in it, the seeds of its own solution. If you don't have any problem, you don't get any solution." The solid stand of both states needs to be changed for finding a sustained solution of the dispute. World communities including regional and international bodies must be involved for a compromised better end of the crisis. Law always cannot solve the problem and so rights based approach as a solution to the problem is unrealistic desiring an equitable solution. While approaching holistic settlement of the crisis, the initiators may remember the quotation of a priest, "Oh Judge! Your damn laws: the good people don't need them and bad people don't follow them so what good they are?" While involving American or European, the initiators must keep in mind that human rights treaties are mostly drafted by either Americans or Europeans but they are born for preaching and teaching human rights outside of their countries but not for practicing.

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LAW REFORM

Juvenile justice system: Needs reform

COLBYCRIMINALJUSTICE.WIKIDOT

DR. NAHID FERDOUSI

(*This is the concluding part of a previous issue, this is a two part story, first part was published in September 22nd issue*)

JUVENILE justice system is not a single but multiple inter-connected justice systems. Law enforcing agencies, courts, and correctional institutions (Kishore Unnayan Kendra) are the major components to deal with juvenile delinquency in Bangladesh. But there is no systematic and child-friendly approach among these components. The provisions to treat the children separately after arrest, to submit separate charge-sheet and to conduct separate trial in a homely atmosphere are not maintained due to avoidance of law, accompanied by an improper attitude of the concerned authority.

At first, the role of police officer is vital factor to create child-friendly justice system. Police officers make decision on whether the child should be produced before the court or should be released. Often they do not maintain the legal procedure which is very critical to promote and enforce of juvenile rights. When juveniles are arrested by the police officers, often age of the juvenile delinquents are not mentioned in the First Information Report (FIR) or anywhere else in the case record. Often they do not maintain birth certificate and increase a child's age, as per their convenience, and send it to court with a forwarding letter. As per the Children Act, a police officer must inform the probation officer and the child's parents or guardian immediately after arresting the child. This provision is rarely applied in practice. Most of them do not inform the probation officer to avoid extra responsibility. Apart from this, there is no fixed mechanism which determines the age of a child. Consequently, police officers cannot ensure the actual age of children. In police custody, there is no separate unit for children. Often juveniles are also kept with adult criminals. Even in many cases, physical abuse, force and torture are applied during the arrest and interrogation. Unfortunately, the police themselves do not go for separate trials, invoking the complexity of the procedures. According to the Children Act the police officer has the authority to release a child on bail, even for non-bailable offences. In practice, the courts often detain children prior to trial for minor offences, or set bail bond requirements that their guardian cannot afford to pay. There are no limitations on the duration of detention. So, the majority of the children who are detained while awaiting trial are sent to regular prisons.

Secondly, Court decides whether the child should be sent correctional center or be released under probation or bail bond. At present there are three juvenile courts in Tongi, Jessore and Konabari KUKs in Bangladesh. There are no other juvenile courts in divisions or districts of Bangladesh. At present, there are no full time judges in juvenile courts in correctional institutions/KUKs. Moreover, these courts cannot take into consideration the cases of juveniles who are convicted of serious offences under section 5(3) of the Children Act. For example, the case of robbery, theft and murder etc. are under the jurisdiction of judges of the session courts. Judges of the juvenile courts usually conduct petty offences and guardian cases. They also conduct cases of those delinquents whose files are sent from the ordinary court to juvenile court of KUKs. Due to insufficient number of juvenile courts throughout the country, children are tried in regular criminal courts together with adults. There is no camera trial for the juveniles in the ordinary court. The trial of juveniles is usually conducted along with adults and the Code of Criminal Procedure is followed in ordinary courts. The court room is overcrowded and the judgment is delivered under non child-friendly surroundings. The judges of the ordinary courts execute trials of children as an additional responsibility. Often they cannot pay attention or have time for additional responsibilities. Having heard many cases in a day, a judge is usually too exhausted to show any kind of extra skill and care in discharging his judicial duties for a juvenile's case. Consequently, juvenile offenders wait for their hearing and judgment for a long time. Most of the times, juveniles have been sentenced to imprisonment by ordinary courts.

Thirdly, Kishor Unnayan Kendra as correctional institutions plays a vital role for rehabilitation and reintegration into the society for the juveniles. The Children Rules, 1976 provide some of the minimal criteria, namely medical facilities, diet, clothing, education and training. In practice, most of the inmates face different problems in three KUKs. The yearly budget regarding the KUKs are very poor than these institutions need. The monthly allotted budget for each inmates of KUK is Tk. 1500/- only. With this small budget inmates do not get proper foods, clothes, toiletries, medicine, books, training instruments etc. Unfortunately, there are no reintegration services of inmates to assist them in returning to society, family life, education or employment after release. House parents, social case workers in the KUKs do their jobs professionally to motivate the inmates to return to normal life. But since there is no rehabilitation and after care services, the children again commit crime even after release. Specialized treatments like drug rehabilitation, treatments for trauma, psychiatric treatments are not available and no initiatives are taken in procuring them as required by the CRC. There is no systematic arrangement with any business enterprise or any Government scheme for the encouragement of released juveniles to settle into dignified and productive occupations in the society. There is no follow-up mechanism after the release of the juveniles from the KUKs.

Remarks on comprehensive legal reform

The following suggestions are made to improve the child-friendly justice system and can help for a better environment for prevent and protect juvenile delinquency in Bangladesh.

- Cancel obsolete and conflicting laws which deal with juveniles and create confusion in application.
- Comprehensive amendment in the Children Act 1974 and other supplementary laws to bring it in consistency with better interest of the children.
- Make a specific juvenile welfare Rules with special protection, rehabilitation and reintegration in the society.
- The definition of child must be uniformed and a full-proof method of age determination should be set-up. And age of children should be mentioned compulsory in all legal dealings.
- Children under age of 18 years should be out of strict implementation of any law. But in case of murder, rape, explosive related offences, crimes against state, etc. it has become urgent to re-fix the age limit of the juvenile.
- Police should stop sending children to court on petty offences. Prosecution process for release of the innocent delinquents should be established.
- Separate register book and child-friendly unit should be opened in every police station. Juvenile bail system should be imposed in juvenile justice system.
- Establish KUKs for both boys and girls children in each division. KUKs should be modernized. Reintegration programme should be introduced for the juvenile offenders.
- Permanent probation officers should be appointed in local level for speeding up of the probation system.
- Establish separate juvenile court in each divisional city. The jurisdiction of the juvenile courts in KUKs should be improved to handle all types of cases similar to session courts.
- Trial of juveniles with adults should be strictly prohibited and punishment should generally be avoided. Alternative measures are needed than punishment.
- An independent monitoring and investigative bodies with full access to children justice should be ensured.
- A special cell should be created in the Department of Social Services under the Ministry of Social Welfare to ensure juvenile justice. Branch offices may be opened at least in the Divisional Headquarters.

At present, protection and care of juvenile delinquency by the separate legal framework is a great challenge for Bangladesh. In order to save the future generation from destructive consequence of delinquency, a comprehensive legal reform is needed. Recently, the Government has prepared a draft amendment of the Children Act, 1974 as the Children Act, 2010 on the basis of the CRC. In the Draft Act, the age of the child has been increased from 16 to 18 years within which a delinquent will be treated as juvenile. As a result of this development, children will have the opportunities to be treated fairly both under the national and international laws. This is high time to come out from that fragmented juvenile justice system and develop a comprehensive system.

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