



Rohingya people

Humanitarian vs. Legal deals

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ON the face of records of reality, Rohingya people are destined to be persecuted and suffer degrading treatment unabatedly. The ethnic minority people are struggling for survival and facing the threat of existence leading them to deprive basic human rights and dignity, demanding regional and global humanitarian deals.

Widespread controversy as to origin of this community is in flow both in Myanmar and Bangladesh. The haggling of the historians has added their sufferings like insult to injury. Historical exclusion and contemporary marginalization of them have been turned into an age old dichotomy piercing humanity. Myanmar branded them as Bangla speaking migrated Muslim workers community in the Arakan (now Rakhine) state because the term Rohingya was unknown to the country before 1950s and more specifically the term is not even used in the 1824 census, conducted by the British colonial regime.

Myanmar's population although exact numbers cannot be cited owing to the regime's refusal to allow independent observers and negligence of the community as well.

The first wave of Rohingya refugees fleeing from Arakan to the area of Cox's Bazar occurred in 1784 when the Burmese King Bodawpaya invaded and annexed Arakan to the then Kingdom of Ava in central Burma. Apart from the inflow of 1942, two major influxes of Rohingya people took place in Bangladesh in 1978 and during 1991-92 to escape Myanmar governed backed systematic genocidal and ethnic cleaning. Now around 0.5 million documented and undocumented Rohingya people are living in Cox's Bazaar, Bandarban and its adjacent areas under the generosity of Bangladesh for over 30 years.

Among them only around 30,000 are officially registered in two official refugee camps in the southern part of Cox's Bazar while the rest of them are undocumented and leading a scattered life.



On the contrary, Bangladesh combed through the entire history of this community and found its existence since 8th century. The term Rohingya was in fact used in the late 18th century report published by the British Francis Buchanan-Hamilton and in his 1799 article "A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire". He stated that three dialects were spoken in the Burma Empire, evidently derived from the Hindu Nation and among three dialects one was spoken by the Mohammedans, who have settled in Arakan, and who call themselves Rohingya or natives of Arakan.

The Rohingya community both at home and abroad constitutes some 3.5 million people and out of it, about 1.5 million have been uprooted from their motherland and those displaced Rohingya people are leading a gypsy life in different countries of the world mostly in Bangladesh, Pakistan, Thailand, Malaysia and in Middle East. Now, the Rohingya people account for approximately 4% of

However, in 2012 Bangladesh refused to accept any more Rohingya boat people and sent them back providing basic humanitarian support to them. The overpopulated, poverty stricken and natural disaster prone country is now embittered of the adverse economic, social and environmental consequences and their burden in the future because this issue is not likely to be ended soon.

If Bangladesh in spite of its manifold limitations is to observe the principle of non refoulement upon which the International Convention Relating to the Status of Refugees, 1951 is grounded, the country has done a lot despite not being a party to the Convention and its related Protocol, 1967. The principle of burden sharing is beyond the capacity of Bangladesh to obey.

Besides, to some extent as part of its Constitutional pledge the basic rights and minimum dignity of them are recognized and promoted by the country but due to its own vulnerability can-

not take maximum protection measures. The country is a state party to eight human rights documents out of nine core international human rights documents and very respectful towards international law.

The track record of observing Constitutional commitment and basic human rights in Myanmar is very deplorable, though it became the UN member 26 years ahead of Bangladesh. Preamble of the Myanmar Constitution, 2008 envisages the principles of justice, liberty, equality, perpetuation of peace and prosperity of the National people with a pledge to uphold peaceful co-existence among the nations. The country is only state party to UNCRC, CEDAW and Four Geneva Conventions of 1949 under which it is duty bound to protect civilians ensuring basic rights. Ridiculously, the state has enacted a draconian Citizenship law in 1982 which excluded the Rohingya from list of 135 races entitled to citizenship. More than 200 Rohingya were killed by the radical Buddhists in 2012. They also injured thousands of them and torched around 10000 houses, businesses and mosques forcing them around 140000 displaced.

One of the moral precepts of the Buddhist philosophy is the 'promise not to kill' imbibed with the virtue of non violence but they have undermined such teachings treating the Rohingya as a threat to their life, liberty and religion branding them terrorists. It is puzzling because this Buddhist dominated country is not facing an Islamist militant threat as Muslims here a generally peaceful and ethnic minority.

In fact, mudslinging by the stakeholders cannot bring a durable solution rather can deepen the crisis. Simultaneously, the economic and geopolitical perspectives of the South Asian countries especially of Myanmar and Bangladesh may suit legal deals only after the matured end of humanitarian deals. To materialize humanitarian deals, these two nations in a joint effort should try to explore the avenue of transferring the Rohingya people staying in Bangladesh. Middle East Countries along with Canada, Australia and Europe as a safe destination to negotiate the crisis aptly.

Moreover, the universal 3R model i.e. repatriation, reintegration and resettlement for durable solution to the burgeoning crisis is not properly applied by the stakeholders. The diplomatic failure of Bangladesh to raise voice against Myanmar in International forums and arrogance of Myanmar is also responsible for its stagnated position. The non cooperation of Myanmar is also a major impediment resolve it. Only Nobel Laureate politician in the South Asia Aung San Suu Kyi's role to advocate resolving the crisis is questionable. Adoption of regional legal instrument like Africa and Latin America understanding the nature of the refugee crisis in South Asia can help minimize the problem. World communities, human rights organizations and even pro-Rohingya regional and national NGOs to be lead by UNHCR should come up with consolidated measures casting neutral eyes to resolve the issue creating mounting pressure on Myanmar.

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Time to recognise marital rape as rape

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WITH the recent surge in incidents of rape in the Indian subcontinent, everyone is arguing for introducing stricter punishments than the current maximum of life imprisonment (S.376 Penal Code 1860). It is therefore an appropriate time to address the issue of marital rape in Bangladesh, because it is my personal belief that if violence against women is to be eradicated, then there should be zero tolerance towards rape and other sexual and violent offences, no matter who stands accused.

According to R K Bergen (1999) marital rape can be defined as any unwanted intercourse or penetration (vaginal, anal, or oral) obtained by force, threat of force, or when the wife is unable to consent. The legal immunity for husbands can be traced back to the 17th century views of Hale CJ:

"[t]he husband cannot be guilty of rape committed by himself upon his lawful wife for by their mutual matrimonial consent and contract, the wife hath given up herself in this kind unto the husband which she cannot retract" [History of the Pleas of the Crown (1736)]. This judicial opinion formed the basis for the notion that once married, a woman does not have the right to refuse sex to her husband. Given Britain's imperial past, this common law presumption seeped its way into other legal systems too with time.

Researchers estimate that between 10% and 14% of all married women experience rape in marriage [D. Finkelhor & K Yllo (1985)]. Since in Bangladesh, these topics are very much taboo, there hasn't been any comprehensive research on the severity of the problem. However, given the prevalence of domestic violence (2291 incidents 2001-2004) and rape generally (5196 incidents 2001-2004) in Bangladesh, the number of unreported marital rape cases will be substantial to say the least (S Farouk, 2005). However, given our socio-cultural similarities, we can look at India as a guide. In India, 2/3rds of all married women claim to have been victims of marital rape

(UNFPA, 2000), while one in every five men admitted to raping their wives (ICRW, 2011)!

According to research by RAINN, marital rape often results in more damage to victims than rape by strangers, such as: a) Longer recovery from trauma; b) Higher likelihood of repeated assaults; c) The perpetrator is more likely to use "anal and oral rape to humiliate, punish and take 'full' ownership of their

wife, the wife not being under thirteen years of age, is not rape". A similar exception is created by S.9 of the Women and Children Repression Prevention Act, 2000. What about the other jurisdictions?

In USA, since July 1993, it is now illegal in every state to rape one's spouse. However, the offence remains worryingly under-prosecuted. In Britain, spousal exemption effectively remained in place till 1992 when it was abolished by the House of Lords [(R V R (1992); Criminal Justice and Public Order Act 1994]. South Africa too has amended its penal laws to accommodate marital rape [The Criminal Law (Sexual Offences and Related Matters) Amendments Act (SOA) 2007].

In India, the Verma Committee recently recommended, inter alia, that the spousal exemption be abolished. Indian MPs however, decided against it on the basis that criminalizing marital rape would weaken traditional family values in India, and that marriage presumes consent. To this 'rationale', it can be said that the act of rape itself destroys the institution of marriage, not the ability, nor the inability to legally prosecute such an offense.

The tide is towards abolition worldwide. In 2006, marital rape was prosecutable in 104 countries. Even Muslim majority countries have amended their laws accordingly, e.g. Malaysia and Turkey. Only a handful of countries, viz. China, Afghanistan, Pakistan and Saudi Arabia still allow this shameful practice. Therefore, it is submitted that this anachronistic and archaic provision be abolished in Bangladesh too in line with the growing demands of time. To cite Lord Lane CJ in RVR:

"...There comes a time when the changes are so great that it is no longer enough to create further exceptions restricting the effect of the proposition, a time when the proposition itself requires examination to see whether its terms are in accord with what is generally regarded today as acceptable behavior"

THE WRITER IS A BARRISTER.



LAW NEWS

A backdated law to control updated Drug Abuse

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26th June has been observed as the International Day against Drug Abuse and Illicit Trafficking with the theme of "make health your 'new high' in life, not drugs" domestically and globally through a variety of programmes. The General Assembly of the United Nations declared the day to be observed as an expression of its determination to strengthen action and cooperation to achieve the goal of an international society free of drug abuse in 1987. There were a number of programs organized by various governmental as well as non-governmental organizations to save our future generation from the curse of drug addiction. This writing is to analyze the legal aspect how far the existing legislations are effective to control drug abuse in Bangladesh and what the initiatives are eminent to prevent that abuse.

The Narcotics Control Act of 1990 (Act no XX of 1990) is the prime law to control narcotic drugs and psychotropic substances in Bangladesh. There are many others laws as to the matter as the Acid Control Act 2002, The Narcotics control Rules 1999, The National Narcotics control Board Fund Rules 2001, Alcohol Control (License Fee) Rules 2002 and Acid Control Rules 2004. Drug use is considered as a treatable condition rather than a criminal offence under the Narcotics Control Act of 1990. Section 19 and 20 of the Act prohibits any kind of illegal operations regarding narcotic drugs, psychotropic substances as well as precursor chemicals. Additionally, a rule relating to the licensing of precursor chemicals were framed and adopted. It is a special law having predominance over other laws in respect of its ambit and jurisdiction on drugs and drug related issues. Interception of illicit drug trafficking through law enforcement, control of narcotic drugs and psychotropic substances used in medical, industrial and scientific purposes coupled with treatment and rehabilitation of the drug addicts underlie the propriety of this law. But there has no adequate and enabling law to handle the sordid condition created by drug abuse and the related issues. Therefore the law has been proved to be inadequate to suit the needs of the time. Statistics show that use of drug is ever. For example, the total Seizure of Injecting Drug (Ampule) by all Agencies in Bangladesh in 2009 was 89469 which has increased to



157995 in 2012, ATS (Yaba) (Tab) was 129644 in 2009, has increased to 1951392. Therefore, The Narcotics Control Act of 1990 needs to be amended with two dimensions, firstly, preventive strategy and secondly, mutual co-operation.

Preventive strategy

The Narcotics Control Act of 1990 needs preventive strategy to control over a considerable area of both supply and demand reduction of drugs. The major supply reduction activities in Bangladesh may be prevented by Licensing, Monitoring and Inspection, Intelligence and Enforcement, Crop Eradication and Destruction of Drugs, Investigation, and Prosecution and Sanctions.

Licensing should be used in Bangladesh to control the production, processing, export, import, transport, distribution or sale, use or consumption of alcohol, spirit, alcohol-containing products, and certain narcotic drugs used for medical purposes. It should be more strict to control and limit drug-supply facilities. Monitoring and inspection of the supply system of drugs need to be more regular and transparent without any corruption. Intelligence and enforcement agency should be more concern directly engaged in the pipeline of drug supply through its intelligence and enforcement activities. There should have system of Crop eradication, crop substitution and destruction of drugs Because Bangladesh produces no narcotics drugs, it has no crop eradication or crop substitution programmes. However, it seizes and destroys the small amount of cannabis plants cultivated illegally in remote rural areas.

Prosecution and sanction need to be carried out prosecution of drug cases in courts. There should have a special court to deal with drug and drug related offences for speedy disposal. Demand reduction is another aspect of preventive strategy. The drug abuse prevention programmes will not succeed unless they consists both of supply and demand reduction programmes. Therefore, the government needs to conduct various demand reduction activities. A major role in demand reduction activities in Bangladesh may be played by the ministries of information, education, social-welfare, health, youth and sports, and local government. The drug control activities carried out through various methods of demand reduction in Bangladesh may be by- programmes for public awareness campaigns against drug abuse throughout the country, including organisation of rallies, seminars, and discussion meetings. The government may introduce drug education in regular school curricula. Control and restriction on advertising for drugs may be effective means to prevent wide spread of drug.

International co-operation

Bangladesh is located between the Golden Triangle and the Golden Crescent making it vulnerable to be a transit for trafficking of drugs. Drug traffickers find it comparatively easy to traffic their merchandise through the seacoast and waterways of the country. Bangladesh has a very large porous border with India, where Phensedyl is produced legally. Moreover, an injectable Indian drug known as tidigesic injection is being abused in Bangladesh. Through its large and porous border, it is very easy to smuggle these drugs into Bangladesh. Therefore, Bangladesh can not control and reduce drug abuse unless it gets mutual co-operation from neighboring countries. Moreover, Bangladesh may avail help from the United Nations Office on Drugs and Crime (UNODC) which works on international drug control. Regional co-operation may be an additional blessing to solve the problem. Bangladesh has signed the SAARC Convention on Narcotic Drugs and Psychotropic substances in 1990. The national agency should collaborate with other national and international agencies like International Narcotics Control Board (INCB), Commission on Narcotics Drug (CND), International Police Organization (INTERPOL) and SAARC Drug Offence Monitoring Desk (SDOMD). Bangladesh has also signed Bilateral Agreement/MOU (Memorandum of Understanding) with Myanmar, Iran and India for Preventing Illicit Trafficking in Narcotics Drugs and Psychotropic Substances and Related Matters. It may initiate mutual plan and policy to control illegal supply of drug from one to another.

If the stakeholders do not feel headache about the danger of ever increasing drug abuse in Bangladesh, it has to compensate with thousands offences complexly around the abuse

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