LAW VISION

A historiographical approach to addressing THE REFUGEE CRISIS

Historical injustices perpetuated by colonialism, such as exploitation, violence, and the deliberate undermining of local governance, contributed to the conditions that underlie forced migration in many contexts today.

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The global refugee crisis, with millions fleeing their homes due to violence, war, and persecution, is one of the most pressing issues of our times. While international law, particularly the 1951 Refugee Convention and its 1967 Protocol, provide the legal frameworks for refugee protection, many nations especially former colonial powers remain reluctant to accept their fair share of responsibility. A fresh approach to solving the crisis proposes that former colonial powers should accept refugees from their former colonies as a way of addressing historical injustices.

Colonialism fundamentally altered the political, economic, and social landscapes of many countries including the Indian subcontinent, leaving behind deep-rooted issues that continue to drive migration and displacements. Former colonies, exploited for their resources and subjected to oppression, now struggle with underdevelopment, instability, and conflict factors that directly contribute to forced migration. One glaring example of this is the plight of the Rohingya people. Myanmar, formerly a British colony, became a breeding ground for ethnic tensions between the Burman majority and the Rohingya minority. The colonial divisions have had lasting impacts, culminating in violence, persecution, and the displacement of over one million Rohingya to Bangladesh. Similar colonial legacies play out globally, with migration patterns often reflecting the lingering effects of colonial rule.

International refugee law, particularly the principle of nonrefoulement which prohibits returning refugees to countries where they face persecution forms the bedrock of refugee protection. This principle, enshrined in the 1951 Refugee Convention, has become customary international law, meaning that even countries not party to the Convention are bound by it.

Beyond nonrefoulement, the principle of burden sharing is key to addressing the global refugee crisis. As part of the Global Compact on Refugees, adopted in 2018, burden sharing encourages wealthier nations to accept due share of responsibility, helping alleviate the disproportionate strain on developing countries like Bangladesh. Yet, many former colonial powers, despite their wealth and capacity, remain hesitant to fully embrace this principle when it comes to refugees from their former colonies.

Notably, burden sharing is not only a principle of international law but also a necessity for visualising an equitable refugee protection paradigm. At present, most refugees are hosted by neighboring countries that are often developing countries themselves. Bangladesh, Lebanon, and Jordan, for instance, host millions of refugees relative to their small economies, while wealthier countries resist increasing their hosting of displaced populations.

When discussing whether former colonial powers can take in more refugees, two considerations arise: practical feasibility and theoretical feasibility. Practically speaking, it may seem politically challenging for countries like the UK, France, and Spain to increase their refugee sheltering. Rising nationalism, concerns about cultural integration, and fear of economic competition have fueled anti-immigrant sentiments in many of these countries. But the practical reality is that these countries have the infrastructure and resources to accept far more refugees than they currently do. The strain on a country like Bangladesh, which has a fraction of the wealth of many European countries, is exponentially higher. For instance, Germany's decision to accept over a million Syrian refugees between 2015 and 2016 demonstrates that it is possible for a developed country to accommodate a large influx of refugees with careful planning and international cooperation.

Theoretically, as argued earlier, there is a strong argument that former colonial powers have a moral obligation to take in refugees from their former colonies. Historical injustices perpetuated by colonialism, such as exploitation, violence, and the deliberate undermining of local governance, contributed to the conditions that underlie forced migration in many contexts today. The international community needs a fresh, holistic approach to the refugee crisis, one that recognises the historical legacies of colonialism and emphasises principles like burden sharing, international solidarity, and reparative justice. Only by embracing this approach, can we begin to address both the immediate needs of the refugees and the historical wrongs that continue to shape our world today.

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LAW REFORM

A call to reform the foreign donations regulation law

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The clarion call for change is blowing in the wind of Bangladesh, carrying with it the potential and promise of a brighter future. To usher in this change wholeheartedly, we must acknowledge our past mistakes and work towards rectifying them. In particular, time is ripe for us to revisit the laws that potentially have a negative impact on human rights.

The Foreign Donations (Voluntary Activities) Regulation Act, 2016 is an Act that has kept the NGOs of Bangladesh in a chokehold for a long time. It was passed on October 5, 2016. It came into effect, repealing two ordinances, namely, the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 and the Foreign Contributions (Regulation) Ordinance, 1982. During the drafting and enactment procedure, civil society and international organisations condemned and expressed concern about the Bill. Their primary concern was that by using FDRA, the Government could exert severe control over the foreign-funded NGOs. The Act received a sharp blow for inserting a controversial section that may potentially curtail rights to freedom of expression and assembly.

The Foreign Donations (Voluntary Activities) Regulation Act of 2016 is an affront to the development sector and must be rethought, if not abolished outright.

Ideally, NGOs are supposed to operate independently and without unnecessary interference from the Government. However, the FDRA potentially affects the NGOs of Bangladesh with overly constrictive measures. For instance, the law requires that all NGOs that operate with foreign funds, must get activities clearance from the NGO Affairs Bureau under the Prime Minister's Office. The activities may encompass development, human rights, environmental protection, etc.

Under the FDRA, the Bureau wields significant power. It can approve or reject NGO registrations (section 16), monitor and evaluate their activities (section 10), and even reject applications without providing adequately clear reasons. This lack of transparency and accountability has potential of misuse of power, with the Bureau using its arbitrary discretion to harass NGO representatives and new entrepreneurs in the development sector.

The FDRA has positioned the Bureau at the top tier of the hierarchy. And the plight for the NGOs does not end with the approval of registration.

Subsequent activities, such as auditing, receiving donations, and renewing registration, are subject to the scrutiny of the Bureau. It may call for the cancellation of any non-governmental projects. The NGOs have little timeframe and opportunity to appeal against such cancellation. Such provisions have created a bureaucratic red tape that NGOs must undergo. This is not just a lengthy, cumbersome process but a process potentially rampant with corruption and nepotism.

Another despairing provision of the FDRA is section 8, which entitles the Bureau to be notified when an individual schedules any foreign tours for official work. Section 9 of the Act also prevents banks from disbursing foreign donations without the approval of the Bureau. Human Rights Watch, Amnesty International, and other human rights-based organisations have expressed concern regarding section 14. This section renders it an offence to make "any hateful or indecent comments about the Constitution of Bangladesh or any constitutional institutions" or to engage in anti-state activities. There is no clear definition of what a "hateful" or "indecent" comments entail. The Director General of the Bureau can terminate and suspend registration and voluntary activities, impose fines, or take any action they deem fit. Such stringent provisions paint a worrisome picture for the rights and advocacy-based NGOs. Any criticism or remarks on the government bodies and its policies can be scrutinised and punished severely. This Act contradicts the right to freedom of expression guaranteed in article 39 of the Constitution and article 19 of the ICCPR.

NGOs stand as a significant pillar to lean on for both the state and the public. Bangladesh is shaping its future trajectory where foreign-funded NGOs can play a significant role. We must save the channels of foreign donations from avoidable bureaucratic hassles. The Foreign Donations (Voluntary Activities) Regulation Act of 2016 is an affront to the development sector and must be rethought, if not abolished outright. With further delay, international donors and development organisations may turn their back on supporting the domestic NGOs.

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LAW LETTER

Banning smoking in public places

TAHSINA ZAMAN

While walking along the footpaths of Dhaka, one of the most persistent problems we face is exposure to cigarette smoke. The pervasive smell and clouds of cigarette smoke create an unpleasant experience for non-smokers. Indeed, due to exposure to cigarette smoke, passive smokers tend to be at significant risk of developing respiratory problems, heart disease, and even cancer.

The authorities must focus on both sincere enforcement of the law and public awareness campaigns. Only by making these combined efforts, can we hope to create a more responsible and health-conscious society in Bangladesh.

The interim government has already taken commendable steps by enforcing strict measures against the use of polythene bags and unnecessary honking. It is high time the same level of seriousness was shown to curb smoking in public spaces and public transport. It needs to be noted that public smoking is not just a personal choice; it is a violation of others' right to clean air and a healthier environment.

Bangladesh has an Act to address this issue, namely the Smoking and Using of Tobacco Products (Control) Act 2005. The law was introduced to protect non-smokers from the harmful effects of second-hand smoke and to reduce the overall consumption of tobacco products in the country. According to sub-section 1 of section 4 of this law, smoking is explicitly prohibited in public places and on public transport. Violating this law for the first time can lead to a fine of up to Tk 300, and for repeated offenses, the fine is doubled every time.

Despite this law, enforcement remains minimal, and many are either unaware of or indifferent to the existence of such an important piece of law. One way to ensure that the law is truly effective is by increasing the number of inspections and spot fines for violators in public spaces. Law enforcement agencies, local government officials, and public health authorities must collaborate to ensure consistent application of the law.

Furthermore, increased focus on public awareness campaigns is essential to educate citizens about their rights and the harmful effects of second-hand smoke. Because indeed, one of the major challenges in addressing this issue is a lack of public awareness. Many smokers are either unaware of the legal prohibitions or underestimate the negative impact their behavior has on others. The campaigns should aim at informing both smokers and non-smokers about the serious health risks associated particularly with passive smoking, as well as the legal penalties for violating the smoking ban in public places. Educational programs in schools and colleges, community outreach, and media campaigns can also play a key role in shaping public behavior and attitudes towards smoking in public places.

The authorities must focus on both sincere enforcement of the law and public awareness campaigns. Only by making these combined efforts, can we hope to create a more responsible and health-conscious society in Bangladesh.

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