

## At home and in the world: on the Rohingya issue

Over the past month, from Cox's Bazar, in the south-east of Bangladesh, smoke can be seen billowing into the grey sky across the country's border. Villages, home to the Rohingya community, in the fractious state of Rakhine in western Myanmar, are being mercilessly, horrifically burnt down. Nurul Islam, a 30-year-old farmer, who had fled to Bangladesh by boat, told *The Economist* that he left his home in Myanmar after the military blasted bullets on villagers and set their houses on fire. They separated the women and men, the magazine reported, and raped Islam's 13-year-old sister Khadiza, proceeding to then mutilate her body.

Despite living for centuries in Myanmar, the Rohingya, who are mostly Muslim, have been denied citizenship and have been rendered stateless. In February, a United Nations report had documented numerous instances of gang rape and killings, including of babies and young children, by Myanmar's security forces. Now, the army's viciousness, already unimaginably ghastly, has escalated even further.

By any account, the Rohingya are at the centre of a humanitarian catastrophe of terrifying proportions. On Monday, the U.N. human rights chief, Zeid Ra'ad al-Hussein, called on Myanmar to put an end to this "[brutal security operation](#)". He termed the state's actions against the Rohingya as "a textbook example of ethnic cleansing". Some would go further. In October, 2015, a Yale Law School study warned that efforts were being made not merely to forcibly displace the Rohingya but towards committing the crime of genocide through the complete annihilation of the ethnic group.

In Bangladesh, a hungry and traumatised Rohingya everywhere

Repercussions of the violence in Myanmar are now being felt around the globe, particularly in nearby countries; in India, where scores of Rohingya are lodged — reportedly totalling 40,000 — it must come to us as a matter of shame that the state is so much as considering returning the refugees back to the jaws of not merely political persecution but of mind-boggling terror and savagery. Going by the [statements made by the Union Minister of State for Home Affairs, Kiren Rijju](#), quite regrettably, it appears India might find itself committing a grave error of substantial moral purport. Although he's since backtracked from some of his assertions, Mr. Rijju's message, delivered over the course of the last week, remains deeply troubling. "They are doing it, we can't stop them from registering, but we are not signatory to the accord on refugees," he said, in one interview, when asked about the registration of Rohingya as refugees by the UN High Commissioner for Refugees. "As far as we are concerned they are all illegal immigrants. They have no basis to live here. Anybody who is [an] illegal migrant will be deported."

These threats are not only chilling on a humanitarian level, if translated into action, they would also constitute a contravention of India's obligations under both domestic and international law.

Indeed, it is precisely such an argument that a pair of Rohingya refugees, Mohammad Salimullah and Mohammad Shaqir, have made in a [petition filed in the Supreme Court](#). Their submissions rest on two broad planks: one, that any deportation would violate their fundamental rights to equality and to life, under Articles 14 and 21 of the Constitution, and, two, that any action by India in returning them to Myanmar would infringe international law, particularly the principle of non-refoulement.

When the case comes up for hearing next, on September 18, in response, the government may expand on Mr. Rijju's statements. It could point out, first, that India is not bound to follow the principle of non-refoulement, since it is not a signatory to the 1951 U.N. Convention Relating to the

Status of Refugees, and, second, that, in any event, any deportation would be saved by the exceptions to the principle, in that the Rohingya are guilty of committing crimes against peace and are a threat to India's national security. On any close examination, however, these arguments ought to fail.

Can India ignore the Rohingya crisis?

The principle of non-refoulement is articulated in Article 33 of the 1951 Convention. It mandates that no state shall expel or return a refugee to "the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". However, it allows for an exception in cases where there are "reasonable grounds" for regarding a refugee as a "danger to the security of the country." What's more, the Convention also excludes generally from refugee status individuals guilty of, among other things, committing war crimes or crimes against peace and humanity.

Now, India is not a party to the 1951 Convention. But we need to heed the existence of sources of law that stretch beyond treaty obligations. These include norms of customary international law, where binding rules have been crystallised as a result of the practice of states. The principle of non-refoulement is widely regarded as one such rule. In fact, some scholars argue that the principle is so well enshrined that it constitutes a peremptory norm from which no derogation whatsoever is permitted. But even if one were to discount such arguments, there is no denying that non-refoulement is now nearly universally accepted as constituting a fundamental rule of international law.

At least two high courts in India have expressly held that the country is bound to follow the principle. In their judgments respectively in *Ktaer Abbas Habib Al Qutaifi v. Union of India* (1998) and *Dongh Lian Kham v. Union of India* (2015) the Gujarat and Delhi High Courts have virtually incorporated non-refoulement into the guarantees of Article 21 of the Constitution. "[The principle's] application," wrote the Gujarat High Court, "protects life and liberty of a human being irrespective of his nationality. It is encompassed in Article 21 of the Constitution, so long as the presence of a refugee is not prejudicial to the law and order and security of India."

Now, the Supreme Court in different cases has incorporated other principles of customary international law into municipal law, where there's no local statute embodying rules to the contrary. There's no reason why non-refoulement should be treated any differently. The Supreme Court can have little option but to recognise, as the Gujarat and the Delhi High Courts have done, that non-refoulement is a foundational principle that creates obligations under both domestic and international law alike.

On arguments concerning national security, it might well be true that the state must be accorded an element of latitude in shaping its policies. But, in the absence of any material, the government cannot plausibly be arguing that each of the 40,000 Rohingya constitutes a threat to India's safety, or that each of them is guilty of committing crimes against peace.

Ultimately, the petitions filed by the Rohingya refugees are an important test of both the Supreme Court and the Indian state's moral calibre. In an interview on Wednesday, Mr. Rijiju urged an end to the "chorus" branding India as a "villain," for its apparent stand seeking to return the Rohingyas, a "calibrated design," in his view, to "tarnish India's image."

However, the present crisis goes beyond matters of mere perception. It goes to the root of what it means to be a civilised state, of treating every person, irrespective of constructs of citizenship, with equal care, compassion and respect.

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