Citizenship, Cross-border Migration and India's foreign Policy A Paradigm shift: Assessment of the Rohingya Crisis.

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Abstract: India's foreign policy towards refugees has always been welcoming in nature since India got independence in 1947. But India's stand is different in case of stateless Rohingya, which is also criticised by the global community. Rohingya Community is one the ethnic minority groups living in Myanmar, a Buddhist majority nation. They have been facing persecution by their government through various forms since Myanmar got independence from British colonial rule. Time and again Rohingya have been fleeing from their dwelling place to the various parts of the world, particularly to Asian nations. India considers the Rohingya as illegal migrants and a threat to the internal security of the country. Whereas. International Organisations and especially western countries have been continuously pressurising Myanmar to resolve the Rohingya issue. But India never interfered into the matter of Myanmar, as it looks like India does not want to disgruntle Myanmar for a healthy bilateral interest. The paper intends to study the foreign policy for Refugees in contemporary India in general and Rohingya issue in particular. It also analyses the Citizenship Act of India in giving a scope to the stateless communities.

Keywords: *Citizenship, Cross-border Migration, Foreign Policy, Refugee, Rohingya, CAA,NRC*

Introduction

After the end of colonialism, a number of Independent nation states came into existence with different political ideology to nourish the newly independent state. These third world countries required a foreign policy that would guide to build up a healthy relationship and interaction with other realms. Foreign policy is an activity of the State with which it fulfils its aims and interests within the international arena. A state without a foreign policy has been compared to a ship in the deep sea without any knowledge of directions. Majority of international relations scholarship define foreign policy as "the sum of official external relations conducted by an independent actor (usually a state) in international relations (Hill 2003: 3)."Leopold von Ranke, a political historian of nineteenth century put emphasis on primacy of geography and external threats in framing foreign policy, whereas later scholars emphasized on various domestic factors of a state. Calvert defines the concept of foreign policy as decisions and activities which largely concern relations between one State and the others (Calvert 1986: 1). Foreign policy of any independent nation always reflects its national interests that need to be achieved by making appropriate policy within its international relation milieu. It is highly influenced by both external and domestic factors taking into consideration. India, as a democratic set up of governance, has been making its foreign policy so to

fulfil its hegemonic interests and to have a wealthy bilateral and multilateral relation with the rest of the world, and particularly in South Asia.

There has been a flow of irregular cross-border migration to India from its neighbouring countries mainly due to various ethnic conflicts since decades. In this regard, India'spolicy was quite clear of raise it's helping hands to the people in distress and adopts them as refugee. But with the change of time India seems to have changed its old nature of welcoming people as refugees in the country. One burning example can be felt on the stand of Indian government on Rohingya community, a minority ethnic group of Myanmar (erstwhile Burma). India considers Rohingya as illegal migrants, who are a threat to the internal security, which was never in the case of any migrants that entered India due to ethnic conflict and persecution before. Critics look it as bias of Right Wing ideological government of BJP towards a persecuted and suppressed community, majority of whom, are the followers of Islam, a Sunni Muslim community. Continuously,an accusation has been made onthe prejudice attitude towards the Muslim community of the country, since the BJP government came to power in 2014. Critics find it clearly visible in the policy of the government, carrying the burning example of Citizenship Amendment Act 2019, which closes the door for Muslims to take citizenship in India. Today, the Rohingya issue has become flash point of attention for the international community as a whole and the India's foreign policy toward refugee have been questioned in international platform.

Cross-Border Migration

Migration is universal and a growing phenomenon in the global society, a reality of human being that has been taking place with the origin of mankind. With the evolution of nation states boundaries have been made to protect the liberty and rights of the citizens living within the territorial boundary. Time and again people cross the territorial border due to different social, economic, political and technological transformation that affects a wide range of high priority policy issues. International migration is the result of significant global events like revolution, wars, and the rise and fall of empires which is associated with the change in economic expansion, nation building and political transformation. These significant changes subsequently give birth to conflicts, persecution and dispossession resulting into cross-border migration of individuals (Koser 2016: 5). It can be both legal and illegal depending upon the perception of the host nation. According to the data provided by the World Migration Report of 2020, there are around 272 million migrants worldwide, which is 3.5 per cent of the total population of the world. Previously it was around 150 million in the year 2000, which was 2.8 per cent of the total global population (IOM 2019). This figure indicates a massive increase of cross border migration over a period of time, which is also a matter of concern for the global community as it affects the different aspects of sovereign nation states. According to the report Asia hosts a highest of around 84 million global migrants whereas Europe account for the second highest of 82 million international migrants. Both the continent alone host almost 61 per cent of the total global migration stock (IOM 2019).

India is one of the most populous countries of Asia, which is constantly dealing with the issue of cross-border migration. The country shares its boundary with seven countries through land and coast. The principle reason of constant migration from its neighbouring states to the territory of India looks to be more for the socio-economic reasons. A huge population from the neighbouring

countries often cross the border to get a better employability and livelihood. But this is only one side of the coin, the other side of reason for cross-border migration is much complex and miserable. It is not voluntarily but as a result of various unpleasant development that took place within the territorial boundary of the neighbouring states. The saga of mass movement of people can be traced down from the partition and creation of two nation states (India and Pakistan) in 1947, which witnessed a two way massive involuntary cross-border migration in the human history. Furthermore, India also witnessed a huge moment of people from time to time to due to the ethnic clashes that took place in its neighbouring countries, mostly in 20th century, starting from Tibetan refugees in 1960 to Rohingya asylum-seekers in 21st century. All these involuntary migration have been a matter of great concern not only for the government but also for the people of India at different period of time.

The Stateless Rohingya

The origin history of Rohingya community has always been in controversy and it has a contrasting narrative, one from Rohingya minority and another from the Buddhist government of Myanmar. Rohingya claim that they lived in Rakhine region of Myanmar much before the arrival of Islam during late 8th century and their culture and language was dominant during the rule of Mrauk U Dynasty from 15th to 19th century. The people of Myanmar, majority are Buddhist with different perspective. They strongly believe that Buddhists were in majority during Maruk U Dynasty and Islam had a very low representation. Moreover, they claim that the modern Rohingya are not the descendants of a small number of Muslims who lived in Rakhine before British colonialization. Rather, they are Bengali migrants, who came after Britishers conquer Rakhine state (Tanenbaum 2017). There have been arguments among scholars regarding the origin of Rohingya community on basis of facts and interestingly, both the narratives have facts to support some of their claims. However, most of the scholars believe that Rohingya are the amalgamation of people.

The status of Rohingya community was quite stable during colonial rule as they took the side of Britishers and even fought Guerilla war against the Japanese who were supported by Burman Buddhist. Rohingya wanted to make Rakhine an independent state and letter tried to join East Pakistan (Bangladesh). But their entire attempt could not bear fruit and Rakhine remained as an integral part of independent Burma (Tanenbaum 2017). The process of persecution of Rohingya community had already been started which was clearly reflecting in the policies formulated after Burma got independence from British colonial rule in 1948. Their identity came into danger after the enactment of 1982 Citizenship Act., which expelled their citizenship in their own homeland. Rohingya were not included among 135 ethnic communities of Myanmar (Blakemore 2019). This denial of citizenship dragged them to the hole of statelessness in the world.

The seed of hatred between Rohingya Muslims and Buddhist was sawn long back, by the Britishers during colonial rule in order to successfully rule over the country. Britishers went back, but the tension and conflict between both the communities went on increasing with the time. Rohingya community has faced decades of state sponsored systematic discrimination, statelessness and targeted violence in Myanmar, a land of Buddhist majority nation. There have been significant spikes of violent attacks on Rohingyas in1978, 1991-1992, 2012, 2016 and recently in 2017(OCHA nd.).As a result of continuous ethnic cleansing a large number of Rohingya population have fled to

different countries of the world. According to different agencies it is estimated that a highest of 890,000 Rohingya have taken shelter in Bangladesh, followed by 350,000 and 40,000 in Pakistan and India respectively. Besides, they also have a huge population settled in Saudi Arabia, UAE, Thailand, Malaysia and Indonesia (Aljazeera 2018). It is estimated that less than 1 million Rohingya are staying in Myanmar with fear and anxiety.

An estimate of around 800,000 Rohingya fled to Bangladesh during 2016 to 2017, bringing accounts of genocide, rape and arson done by the Myanmar Army. This cruel action was made on response to two separate waves of attacks by the Arakan Rohingya Salvation Army (ARSA), a Rohingya militant group, killing nine soldiers and 12 officers at border guard posts. Despite of producing a number of evidence and proofs, the Myanmar government has been in denial mode to the action of atrocity made by their Army. The Gambia, a small West African country had filed a case on behalf of Organization of Islamic Cooperation in International Court of Justice (ICJ) against Myanmar on 11November 2019 for Myanmar's military brutal campaign against the Rohingya in August 2017 and violating the 1948 Genocide Convention **(**Choudhury 2020).Aung San Suu Kyi, a Nobel Peace Prize winner who spent over a decade fighting against the Burmese military was defending the country and had asked the court to drop the genocide case against Myanmar. The International Court of Justice (ICJ)on 23 January 2020 ordered Myanmar to "take all measures within its power" to prevent the genocide and to protect Rohingya Muslim minority. The court also indicated four specific "provisional measures" in this regard and ordered Myanmar to report regularly to the tribunal about its progress (Brody 2020).

Understanding Citizenship

Citizenship can be defined as a relationship between an individual and a state to which the individual owes allegiance and in turn is entitled to its protection. Citizenship implies the status of freedom and certain rights with accompanying duties and responsibilities that are only extended to the citizens residing in a state. Historically, citizenship has been linked to the privileges of membership of a particular kind of political community, one in which those who enjoy a certain status are entitled to participate on an equal basis with their fellow citizens in making the collective decisions that regulate social life (Bellamy 2008: 1).

Part II of the Indian constitution (Article 5 to 11) defines citizenship and deals with its related affairs, although there is no definition to the term "Citizen" in the constitution. Articles 5 to 9 of the Constitution define citizenship at its commencement. The constitution also provides for a single citizenship for the entire country. In addition, Article 11 of the Indian constitution authorise the government to make laws pertaining to acquisition and termination of citizenship. Accordingly the parliament enacted the citizenship Act of 1955, specifying how citizenship can be acquired by birth, descent, naturalization, registration and through incorporation of territory. However, it does not talk about the stateless individual who is recognised as a refugee by the United Nations High Commissioner for Refugees (UNHCR). According to the Indian constitution (Article 5 to 8) the following categories of people got the citizenship at the date of the commencement of the constitution:

1. *Those domiciled and born in India;*
2. *Those domiciled, not born in India but either of whose parents was born in India;*
3. *Those domiciled, not born in India, but ordinarily resident in India for more than five years;*

4. *Those resident in India, who migrated to Pakistan after 1 March 1947 and returned later on resettlement permits;*
5. *Those resident in Pakistan, who migrated to India before 19 July 1948 or those who came afterwards but stayed on for more than 6 months and got registered;*
6. *Those whose parents and grandparents were born in India but were residing outside India.*(Roy 2016: 11-12)

The original Citizenship Act of 1955 has been successfully amended in 1986, 1992, 2003, 2005, 2015 and the most recent and the controversial amendment in 2019.

CAA and NRC

The recent Citizenship (Amendment) Act of 2019, on the existing Citizenship Act, 1955, is been widely questioned not only within the country but also by the international community. This amendment seek to provide citizenship to Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians facing religious persecution in Afghanistan, Bangladesh, and Pakistan and who entered India on or before December 31, 2014. This provision clearly reflects about the grant of citizenship to the Hindus fleeing persecution in Muslim-majority countries of neighbouring India. This was also one among the promises made in the election manifesto of the present ruling government, led by Prime Minister Narendra Modi. Critics have argued that the CAA violates the judicial precedent, international law and the basic principles and spirit of secular values of the Indian constitution. Indeed, it also violates the Article 14 of the constitution, which promises "Equality as a fundamental right to every individual" and discriminate the persecuted people of a particular religion. The government argue that the new citizenship amendment is been introduced to provide a permanent shelter, which revolves around the idea of religious persecution of religious minorities in these Muslim countries. If religious persecution is the central basis of the amendment, it is to be noted that Jews and atheists are from these three Muslim majority countries and Ahmadiyya in Pakistan are also not included in this CAA (Kamdar 2020).Moreover, the amendment discriminates with the persecuted persons of the non-Muslim majority neighbouring countries like Tamils from Sri Lanka and Rohingyas from Myanmar. Intellectuals see such development in Indian democracy as an attempt to make a road map for the creation of a *Hindu Rastra* by a Hindu nationalist party, presently who is in power.

NRC has been introduced in India to identify the illegal migrants living in India and to deport them. People were asked to prove their disentrance of Indian citizenship by showing legacy data and the lineage, in order to get registered on the NRC. But the problem is that a large section of Indian population are illiterate or ignorant, which may failed to produce necessary documents to prove their citizenship. Moreover, there has been a flow of natural disaster at different parts of the country from time to time, which may cause the loss of governmental document that is necessary for NRC. This sparked another protest and a Pan-India campaign with a slogan of *"Kaagaz nahi Dikhayenge"* (we will not show our papers) (Raj 2020: 33).Besides, a lot of miss management has been seen in the process of NRC, where it is been conducted in the nation. Further, it is felt that The NRC has been brought with an intention of preventing Muslim immigrants specially from acquiring certain rights and benefits in India. It can be argued that CAA and NRC have been introduced and used as a political tool to identify Muslim community living in India and to deny shelter to the

Muslim asylum seekers like Rohingya. It is also unclear that what will be done with the people who fail to prove their citizenship in India (especially Muslims), as they can't be deported to any other South Asian countries due to lack of arrangements and resources. Further this will lead to intensify the vulnerability of already persecuted and stateless community like Rohingya Muslims.

A nationwide voice has been raised across different educational campus and across different streets against the new Citizenship Amendment Act (CAA) and The National Register of Citizens (NRC).In response, the government has invoked section 144 in many places and had shut down internet followed by detaining and arresting thousands of protesters across the country to put down the voice of the people. Many stalwarts of the Modi, led Bharatiya Janata Party (BJP) have called the protestors anti-nationalist. Some ministers like Anurag Thakur, the junior finance minister of India, have called for "these traitors of the nation" to be shot. Soon after few days of the statement of Anurag Thakur, two gunmen openly fired at the protesters, one outside the Jamia Millia Islamia University on 30 January 2020 and another at women led protest at Shaheen Bagh on 2 February 2020 (Kamdar 2020). The government seems to have remained stubborn with its decision and to have no interest to listen to the queries of the people relating to the recent amendment of Citizenship.

Foreign Policy towards Refugees since Independence

India has been a shelter to the people of neighbouring states, whenever their life is in threat. History has witnessed several events of mass movement of people towards India in order to protect their life and dignity. India has always been generous and altruistic towards the people seeking help in distress.

In 1950s, the Chinese government made an attempt to Liberalise Tibet by attacking on the distinct culture of Tibetian and forcibly imposition of Chinese Marxist ideology and socio-political culture upon them, who practice and preach Tibetan Buddhism. After a failed revolt, Dalai Lama (the spiritual leader) along with thousands of Tibetans came to India in 1959, to protect their life and to save their culture and identity. By the end of 1960, a number of more than 100,000 Tibetans arrived in India via Nepal, beating the most perilous journey through Himalayas (Mehra 2020). The government of India immediately granted them asylum and relief operations were launched. They were settled in different parts of the country with basic facilities including education. Today, India is a home to around 94,203 Tibetan refugees resides in 39 major and minor settlements, out of total 128,944 Tibetan worldwide. They are also eligible to get Indian citizenship upon the fulfilment of conditions set by the government of India. Tibetan refugees are considered as the 'most successful' refugee community in the world (Choedon 2018).

Indian faced another massive movement of people, both Hindus and Muslims from East Pakistan (now Bangladesh) due to the brutality and atrocities made by the Pakistan Army in 1971. By the end of the year nearly 10 million people had arrived in Indian Territory with agonizing memories within their heart. It created an extraordinary problem in India and was a challenge for the then Prime Minister Indira Gandhi leading Indian government, as India did not have the resources to handle such a massive population of refugees. In spite of that the Indian government was concerned for the suddenly arrived guests and sought the help of international community to make necessary arrangements. The then Prime Minister, Indira Gandhi stated in Lok Sabha that a number of 330

camps had been established across Assam, Tripura and Meghalaya for the refugees came from East Pakistan. Although, India was economically not strong enough, it gave shelter to East Pakistan's refugees and played a very significant role in the creation of Bangladesh (Manuvie 2019).

Again India gave shelter to Sri Lanka's Tamil asylum seekers, the victim of Black July Riots of 1983 and the civil war that erupted during 1980s and 1990s. Almost one third of them are Hindus and the rest are Christians. All came from the conflict-affected areas of Sri Lanka's Northern and Eastern provinces. This group is the second highest refugee groups in India. Almost 65,000 Sri Lankan Tamils were settled by the government of India in 133 camps in the south Indian state of Tamil Nadu. Besides, an estimate of around 40,000 refugees lives outside the government refugee camps. Both the government of India and the state of Tamil Nadu has been providing them assistance like free water and electricity, ration, monthly cash grant etc. However, they also receive support and grants from self-help group, the Organization for Eelam Refugees Rehabilitation (OfERR), funded by various international Organisations (Saha 2004).

Another wave of asylum seekers came right from Afghanistan, after the Soviet invasion of Afghanistan in 1979. Afghan refugees continued migrating to the different parts of the world. A massive population walked out during Civil War in 1990s when Taliban took control over the country. Both Hindu and Sikh Afghans continued heading towards Indian Territory in subsequent years in search of asylum. According to the UNHCR report of 2016, a number of 14,464 Afghan refugees are registered in India, majority of them are Sikhs. They are settled in North India, mainly around the refugee camps situated in New Delhi, the capital of India, where Somali refugees are given shelter (Chauhan 2018). As per UNHC Report of 2006, 13 Afghan refugees out of which 12 are Hindus and Sikhs are granted with naturalised Indian citizenship (Bose 2006). This led to a ray of hope for the Afghan refugees residing in India for more than 12 years.

India has traditionally adhered to the policy of non-refoulement since independence though it doesn't possess a domestic legal framework for refugees. But in recent times; the foreign policy of India towards refugees seems to have taken a different shift. In the case of Rohingyas, Indian Ministry of Home Affairs has labelled them "illegal immigrants," accused them of posing a national security threat, which was never the stand of India towards any other asylum seeker groups in the history (Kamdar 2018). Instead, the government is in a denial mode of raising a helping hand toward the world's largest stateless ethnic community. Furthermore, a stigma of Islamic terrorism has been labelled the Rohingya community which made them looked upon suspicious.

Status of Rohingya in India:

The status of Rohingya in India is different and much vulnerable from other asylum seekers that came to India at different period of time. In India, Rohingya are not treated as a vulnerable community struggling to protect their life, rather an illegal immigrants and a community of terrorists that may be a threat to the internal security (just like the Myanmar government does).As of now, there are around 40,000 Rohingya Muslims staying within the territory of India. Minister of State for Home Affairs Kiren Rijiju stated that there are about 10,500 Rohingya Muslims who have taken shelter in different parts of the country. Maximum of them are in Jammu and Kashmir numbering around 6,684, 1,775 in Andhra Pradesh (mainly in Hyderabad), 760 in Delhi, 677 in Haryana, 351 in West Bengal, 162 in Rajasthan, 111 in Uttar Pradesh, 50 in Punjab, 12 in

Maharastra and 3 in Andaman and Nicobar Island (Velath and Chopra 2018: 76). The government however, estimates that the population could be more as estimated by different sources. According to the latest data of UNHCR, a number of 18,914 Rohingya are currently registered with UNHCR in India. The stand of Indian government has been crystal clear, as the Minister of State for Home Affairs Kiren Rijiju made it clear that all Rohingyas are illegal migrants in India, whether registered with United Nations Human Rights Commission or not (Dutta 2017). Such attitude of the government not only goes against the international laws but also against the humanitarian sentiment.

It is also accused that an Anti-Rohingya sentiment has been created in India, as majority of them follow Islam. Indeed, the track record of the present government regarding the attitude toward the minorities has been not so convincing, particularly towards the Muslim community, after the Hindu-nationalist Bharatiya Janata Party (BJP) came into power in 2014.It is observed that over less than a decade, the Hindu-nationalist government and its supporters have dramatically succeeded in eroding the most of the basic fundamental rights of the Rohingya refugees, including access to work, education, shelter, sanitation, healthcare, and basic human dignity, which is easily accessible to the other refugees settled in the country (Kinseth 2019).Majority of critics look it as an anti-Muslim sentiment of the present Indian government. It also reflects in the policies formulated by the government of India to some extent. For instance, the recent 2019 amendment in Citizenship Act 1955 disappoints the Muslim communities coming from the neighbouring countries, as their little hope for getting citizenship in India is closed with this new amendment.

Exigency for a Refugee Law:

Despite of being not a signatory of 1951 United Nations Convention of Refugees and its protocol which was signed by 145 countries of the world, India has a track record of being a home to asylum seekers. History has witnessed that India has been receiving a high asylum seekers from time to time. Due to the absence of Refugee laws, all the refugees and asylum seekers coming to India are brought under the umbrella of "Illegal Migrants". But, India's response to these refugees and asylum seekers differs from one refugee group to another. On one hand India becomes so soft and generous to one refugee group, while on the other hand India becomes strict and ruthless to other. For instance, the refugees from Tibet were even allowed to form an exile government in India. Whereas the Rohingya Community is treated as a threat to the national security and are kept under high surveillance (Kamdar 2020). Since India doesn't have any formal legal framework, all the refugee related affairs in India are dealt by Foreigners Act 1946 which highlights the ad hoc nature of refugee law and practice in India. Further, it also fails to define refugee as a class of persons and their status, rights and entitlements (Bhattacharjee 2008: 71). This gap in policy making has resulted into the arbitrary asylum policy in India. Indeed, India has not only recognised the rights to refugee and non-refoulement but also a signatory to numerous human rights instruments, such as the Universal Declaration on Human Rights 1948, International Convention on Civil and Political Rights 1966, etc, which demands an obligation to secure to refugees a right to status (Raj 2020: 34). Yet, India seems to have failed to provide basic entitlement and humanitarian protection due to the lack of a specific domestic refugee law, as observed particularly in the case of Rohingya.

Concluding Remarks:

No doubt, it's been a challenge for India to control the cross-border migration, yet the government of India also needs to take account of the people who are persecuted by their state. A paradigm shift has been observed in India's foreign policy over a period of less than a decade. The discriminative attitude of the government towards a particular community through CAA and NRC has created several problems and discontent among its own citizens. Further, this recent initiatives of the government looks more problematic in identifying the illegal immigrants, rather disappoints the citizens of the nation who are unnecessarily pissed up in this process. The absence of a national law on protection, rights, and entitlements of refugees has resulted in the denial of basic protection and has further pushed them into a condition of vulnerability, especially in the case of Rohingya. Indeed, there is a need of a specific refugee laws in India, which can deal with all the refugee related affairs and treat the entire asylum seekers equally. In general, India needs to make a genuine attempt to formulate policies as per the international standard to have a qualitative bilateral and multilateral relationship.

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