

Myanmar's Crackdown On the Rohingya : Justification as Genocide and Ethnic Cleansing.

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Abstract:

We live in a rapidly changing world in which people often seek about human rights. But it turns meaningless when we see the number of refugees around the world is increasing rapidly. It will be unbelievable to hear that, the present world is facing the most global refugee crisis and we are witnessing a massive shift of humanity due to racial violent disorder, religious virulence, extreme nationalism, political and social conflict. In recent worlds Rohingya Muslims refugee have been the focus of considerable loved ones public concern .

It is believed that Rohingya Muslims are the most persecuted population all over the world. They have faced decades of systematic discrimination, stateless and targeted violence since the early 20th century. But the Rohingya affair has been largely ignored by the world community due to geopolitics , something that pushed some scholars to think that they represent a ghost and forgotten ethnic group, suffering slow burning genocide. The UN called the Myanmar authority to put an end the brutal security operation claiming the atrocities against the Rohingya as “a textbook example of ethnic cleansing”

As Myanmar authorities are subjecting the Rohingya Muslim minority to collective punishment ,millions of Rohingya muslims crossed the international border and took shelter in Bangladesh. Bangladesh provided shelter for them from the humanitarian perspective as it was going on for many years with a significant spikes following violent attacks in 1978 ,1991-1992 ,2016 and finally in late August 2017.

Following the co-ordinate attack on 30 police camps and an army base by so called the Arakan Rohingya Salvation Army (ARSA)¹ a group previously known as Harakah al-Yaqin

¹ (The Arakan Rohingya Salvation Army (ARSA), also known by its former name Harakah al-Yaqin (meaning Faith Movement in English), is a Rohingya insurgent group active in northern Rakhine State, Myanmar. According to a December 2016 report by the International Crisis Group, it is led by Ataullah abu Ammar Jununi, a Rohingya man who was born in Karachi, Pakistan, and grew up in Mecca, Saudi Arabia. Other members of its leadership include a committee of Rohingya émigrés in Saudi Arabia. Myanmar's Anti-Terrorism Central Committee declared ARSA a terrorist group on 25 August 2017 in accordance with the country's counter-terrorism law. The Burmese government has alleged that the group is involved with and subsidised by foreign Islamists, despite there being no firm evidence proving such allegations. ARSA released a statement on 28 August 2017, calling government allegations against it as "baseless" and claiming that its main purpose is to defend the rights of Rohingyas. Wikipedia)

on August 25, 2017, causing deaths of 12 police officers, the Myanmar military began a major crackdown in the villages of Northern Rakhaine State. The atrocities included attacks on Rohingya people and locations, looting and burning down Rohingya villages, mass killing of Rohingya civilians, gang rapes, and other sexual violence. As a result Rohingya Muslims started to flee to save their life to avoid ethnic and religious persecution by Myanmar's security forces and as a neighbouring country their destination is of course Bangladesh. As of 15 October 2017, the Inter-Sector Coordination Group (ISCG)² reported that 537,000 Rohingya refugees have entered Bangladesh since the attacks. But another report says that at least 720,000 Rohingya fled after the bloody crackdown and entered Bangladesh to join some 300,000 already living in the camps who took shelter during past influx. More than 6,700 Rohingya Muslims including at least 730 children under the age of five were killed in the first month of the crackdown according to Medcins Sans Frontieres (MSF) an international humanitarian medical non governmental organization (NGO) of French but Myanmar claims officially the figure is only 400. Whatever the figure is, the question arises towards international community whether it will be regarded as "Genocide" or "Ethnic cleansing."

Ethnic cleansing defined:

Ethnic cleansing and genocide seems to be same in nature but completely two distinct concept. The term ethnic cleansing is a literal translation of the Serbo-Croatian phrase : "etničko čišćenje" , that is focused in the context of the 1990's conflict in the former Yugoslavia . But the roots of the term and who started the term is still unknown. It is believed that the term ethnic cleansing is invented by Slobodan Milosevic.³ The expression ethnic cleansing has been used in resolutions of the Security Council and the General Assembly and has acknowledged in judgements and indictments of the ICTY.

There is no international treaty relating to the crime Ethnic Cleansing. As it has not been considered as an independent crime under international law ,so no exact definition will be given or what exact acts will be constituted for the purposes of the ethnic cleansing is not cleared. However a United Nations Commission of experts mandated to look into violations of international humanitarian law in the territory of the former Yugoslavia defined ethnic cleansing in its interim report S/25274 as

² (ISCG-Inter Sector Coordination Group .International Organization based in Bangladesh)

³ Slobodan Milošević was a Yugoslav politician who served as the President of Serbia from 1989 to 1997 and President of the Federal Republic of Yugoslavia from 1997 to 2000

*"... rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area."*⁴

In its final report S/1994/674 the same Commission described ethnic cleansing as

*".....a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas"*⁵ So Ethnic Cleansing is the systematic forced removal of ethnic or racial groups from a given territory by a more powerful group. Ethnic cleansing accompanies the efforts to remove physical and cultural evidence of the targeted group. It includes the destruction of homes , social centres, farms and infrastructure ,destruction of monuments ,cementaries and places of worship. The force includes forced migration, deportation, population, transfer etc.

The official United Nations definition of ethnic cleansing is "rendering an area ethnically homogenous by using force or intimidation to remove from a given area persons of another ethnic or religious group"⁶

In the words of **Andrew Bell-Fialkoff**,

[E]thnic cleansing [...] defies easy definition. At one end it is virtually indistinguishable from forced emigration and population exchange while at the other it merges with deportation and genocide. At the most general level, however, ethnic cleansing can be understood as the expulsion of a population from a given territory.

Terry Martin has defined ethnic cleansing as..

"the forcible removal of an ethnically defined population from a given territory" and as "occupying the central part of a continuum between genocide on one end and nonviolent pressured ethnic emigration on the other end"

Genocide defined :

Genocide ,as General Assembly Resolution 96 (I) declared-

⁴ United Nations Protection Force (UNPROFOR)

⁵ United Nations Protection Force (UNPROFOR)

⁶ United Nations Website

'Is a denial of the right of existence of entire groups, as homicide is the denial of the right to live of individual human beings'

It is a crime simultaneously directed against individual victims , the group to which they belong ,and human diversity. Considering the gravity of the crimes it is regarded as crimes of crimes.

The term "genocide" did not exist before 1944. It dates back to the second world war. In response to the horrors of the Nazi "Final Solution" scholars Raphael Lemkin (1900-1959) , a Polish Jewish lawyer conceived the word to denote a crime aimed at the destruction of a group. He described the term "genocide" in a book documenting Nazi policies of systematically destroying national and ethnic groups, including the mass murder of European Jews. He formed the word by combining geno-, from the Greek word for race or tribe, with -cide, from the Latin word for killing.

According to **Lemkin** -

"By genocide we mean the destruction of a nation or an ethnic group".

Lemkin went on to argue that-

"Genocide has two phases :one, the destruction of the national identity of the oppressed group, the other the imposition of the national identity of the oppressor."

It may be committed in time of peace or in time of war. On December 9, 1948 the United Nations adopted by Resolution 260(iii) A and approved the "Convention on the Prevention and Punishment of the Crime of Genocide" under the influence of Holocaust in Germany and by the special akin of the Lemkin himself. Article 2 of the Genocide Convention 1948 and later Article 6 of the "Rome Statute of the International Criminal court" defined the term as following-

Genocide means any of the following acts committed with intent to destroy, in whole or in part ,a national, ethnical, racial or religious groups , as such :

- (a) Killing members of the group,
- (b) Causing serious bodily or mentally harm to members of the group,
- (c) Deliberately inflicting on the group conditions of the calculated to bring about its physical destruction in whole or in part,
- (d) Imposing measures intended to prevent births within the group,
- (e) Forcibly transferring children of the group to another group.

State parties to the convention must prevent genocide and punish those military authorities, government officials, individuals who commit it. Significantly Myanmar has been a party to the treaty since 1956. As such, it has explicitly agreed to these affirmative legal obligations.

Justification as Ethnic Cleansing:

Ethnic cleansing can only be a form of genocide within the meaning of genocide convention, if it corresponds to or falls within one of the categories of acts prohibited by article II of the convention. The 2017 persecution against the Rohingya Muslims and non-Muslims has been termed as ethnic cleansing by various United Nations agencies, International Criminal Court officials, human rights groups, and governments. The reasons of such recognition are diverse. Myanmar authorities and their native citizens Buddhists shows negative attitudes towards the Rohingya Muslim claiming that they are Bengali even they are reluctant to recognize them as Rohingya. Actually their thinking is baseless in the light of historical background. The earliest Muslim settlements in the Arakan region began in the 7th-century. Muslim merchants from Arabia, Iraq, Persia and other regions of Central Asia had started coming to Arakan from 9th century, and some of them had settled there for commercial purposes. Along with them Muslim preachers and saints, who penetrate deep into the country and proceed down the coast to Arakan, which had a Muslim Settlement.⁷ The Arab traders were also missionaries began converting the local Buddhist population to Islam. Besides these locals converting to Islam, Arab merchants married local women and later settled in Arakan. As a result of inter marriage and conversion, the Muslim population in Arakan grew.

⁷ East Pakistan District Gazeter, Chittagong, Government of Pakistan, 1970, pp 110-111

Following the Konbaung Dynasty's conquest of Arakan in 1782-1819, as many as 35,000 people of the Rakhine State fled to the neighbouring Chittagong region of British Bengal in 1799 to escape persecution by the Bamar and to seek protection under the British Raj. The Bamar executed thousands of men and deported a considerable portion of people from Rakhine population to central Burma, leaving Arakan a scarcely populated area by the time the British occupied it. During the second world war Arakani Muslim supported British but Burma supported Japan by which the issue has been politicised. Consequently a riot between Burmese and Buddhists began and a large number of Rohingya Muslim were killed and fled. Besides during the separation of Subcontinent they wanted to remain under Pakistani region. It added a new dimension to the conflict with the Arakan Muslims from the historical perspective.

Myanmar is extremely ethnically diverse nation with 135 distinct ethnic groups. They are officially recognized by the Government in their Constitution except Rohingya Muslims. They are grouped into eight major ethnic national races such as bamar, Chin, Kachin, Kevib, Kavah, Mon, Rakhine, Shah. Where the Muslims are major groups in the Buddhists country and make up around one million of the total 50 million population.

Although Rohingyas have lived in Myanmar for generations, the Myanmar government identifies them as illegal Bengali migrants from Bangladesh and as such refuses to grant them citizenship which is universal human rights of a people under Article 15 of Universal Declaration of Human Rights (UDHR) 1948. Since the military came to power in 1962, Rohingyas have not been treated as citizens of their own country and in same happens in 1982 when Parliament passed the Citizenship Act. Their economic livelihood has been dismantled. Rohingyas do not have right to found a family freely as they have to ask permission from the Government 3 months before marry, they have to give additional fee for marry otherwise no permission is given. On the other hand they restricted to have more children than two.⁸

The 2005 two child policy regulations was an addition to longstanding discriminatory marriage restriction on Rohingya Muslims in Buthidaung and Maungdaw townships in northwestern Arakan State along the Bangladesh border and they have to give extra fees for marriage. Advance permission for 3 months required to marry from an Na Sa Ka, a corrupt interagency border guard force comprising military, police, immigration, and customs and must be given an undertaking that they will have no more children than two. If they overrule the condition it will be regarded as crime under 312 of The Burmese Penal Code. Rohingya women who become pregnant before official approval to marry or after having two child have restore to unsafe and illegal abortions. Couples often have to wait for extended periods, sometimes as long as two years, before receiving permission.

8. Daily Prothom Alo, 9 February 2015, Article of Shohorab Hossain

Officials have also forced many women to undergo pregnancy tests as part of the marriage application process.⁹

The government of Myanmar deprived them from nationality as well as from civil, political, social and cultural rights that was documented by the UN, international NGOs and Myanmar Human Rights and civil society organisations. They are arbitrary detained and inflicted mental and physical torture on them including young and children. Even the arrested person are not appeared before the court and their family members so they do not know their fate. Rape and other sexual forms of sexual abuse bonded with horrendous scenes of the killings ,disappearance and injuring of their family members, children and neighbours. Looting, confiscation of their property destruction of their homes and workplace ,religious institutions added the persecution extremely.

The above deliberate and widespread thinking and oppression of the Myanmar is to impede the extension of generations and to drive away the Arakan Muslims from the Arakan state. Not only the state but also extremist Buddhists like Ashin Wiathu who is known as Bin Laden of Myanmar are responsible for such heinous activities. They have no right to access in educations, even they have no right to travel their relatives outside their area without permission.

The Security forces started to burn the Rohingya inhabited villages and their dwelling houses to create fear among them and allured them to go back neighbouring country Bangladesh. **Human Rights Watch** has used satellite imagery to assess and monitor over 1,000 villages and towns in the townships of Maungdaw, Buthidaung, and Rathiduang, where the Burmese military and vigilantes have engaged in attacks on Rohingya. Human Rights Watch found that the damage patterns in the **354** affected villages are consistent with burning occurring in the weeks after the military operations began in late August 2017. Human Rights Watch identified **40** villages with building destruction occurring in October and November 2017. According to **The Daily Samakal(18 September 2017)** newspaper report Myanmar military openly declared to vacate the area and leave the Rohingya people within 24 hours otherwise they will be killed by gunfire. Even in some areas they started to burn their houses and villages before 24 hours indiscriminately which is confirmed by some of the Rohingya muslims to the Reporter.

In the passage of time the military forces committed massive atrocities and killed innocent Rohingya people, gang raped last few decades and the final attack is after August 25,2017 which attracted the world to think newly about the persecuted Rohingya Muslim. According to the humanitarian group Medecins Sans Frontieres (MSF) at least 6700 Rohingya muslims were killed over 700 of whom were children, based on survey data of refugees in Bangladesh.

⁹ Human Rights Watch Report

Human Rights Council in its **Report of the independent international fact-finding mission on Myanmar** describes the systematic oppression and persecution of the Rohingya stating that –

"In Rakhine state muslims are like in a cage,they can not travel outside.There are no human rights for the Muslims of Rakhaine state.I don't know why God sent us there"

The travel of Rohingya between villages ,townships and outside Rakhaine State has long been restricted on the basis of discriminatory travel authorization system. This has had serious consequences for economic ,social and cultural rights including the rights to food, health and education.The degree of malnutrition witnessed in Northern Rakhaine State has been alarming, other discriminatory restrictions include procedures for marriage authorization ,restrictions on the number and spacing of children.For decades ,security forces have subjected Rohingya to widespread theft and extortion, arbitrary arrest forced labour ,ill-treatment and sexual violence have been prevalent.¹⁰ According to UN report Commander in Chief's statement reveals the "Clearance Operations" were not a response to a concrete threat from ARSA but to the "*Unfinished Jobs*" of "*Solving the Long – Standing Bengali Problem*" People were killed or injured by gunshot, Rape and other sexual violence were perpetrated in massive scale ,Children were subjected to and witnessed, serious human rights violations including killing, maiming and sexual violence with a "*Genocidal Intent*". UN report describes it a "*Textbook example of ethnic cleansing*"

So UN Fact Finding Mission on Myanmar stated Myanmar's military committed atrocities against Rohingyas with a *genocidal intent* and must be prosecuted for Rohingya Ethnic Cleansing.

A declaration of genocide by the US government ,which has only gone as far as labelling the crackdown ethnic cleansing. A US state Department report in September which relied on Washington based Public International Law and Policy (PILPG) will also say that the Myanmar's military waged a well-planned and coordinated campaign of mass killing ,gang rapes and other atrocities against the Rohingya. Following the lead of the United Nations and the European Union, then-Secretary of State Rex Tillerson declared that the Rohingya crisis constituted "ethnic cleansing," a designation that increased pressure on its civilian leader, Nobel peace laureate Aung San Suu Kyi.Later the United states Secretary Mike Pompeo described the atrocities conducted against Rohingya Muslims as "*Abhorrent Ethnic Cleansing*" In November. British Prime Minister Theresa May also supported that, Myanmar Security Forces constituted the crime of ethnic Cleansing.

A group of Islamic countries named The "Organisation of Islamic Conference" issued a joint statement that Myanmar' treatment of Rohingya muslims is a serious violations of international law and call the crisis as *Ethnic cleansing*.

¹⁰ UN Report on fact finding mission in Myanmar

From the above discussion it can be said that Myanmar military forces committed atrocities including mass killings ,forced deportation by proclamation by the security forces and extremists Buddhists according to the statement of the Rohingya, sexual violence and widespread arson, burnt the villages with intent to destroy the whole or partly the ethnic Rohingya muslim .As a result approximately 700,000 muslims crossed the border after 25 August invasions and added with the previous 300,000 Rohingya. They tried to vacant the Arakan and drive the Rohingya away to fulfill their long cherished dream with the direct or indirect support of the so called neighbouring countries.So we can undoubtedly describe it as an ethnic cleansing.

Justification as Genocide:

Genocide has a statutory definition which is enshrined for the first time in the Convention on the "Prevention and Punishment of the Crime of Genocide" in 1948.A large number of jurists and legal experts described the atrocities conducted against Rohingya as genocide rather than ethnic cleansing because there was indiscriminate killings, villages burned to the ground ,children assaulted, women gang raped, participation of extremist Buddhists which is surely intent to destroy whole or part of the ethnic and religious group Rohingya.The distinctive feature of the genocide, according to Lemkin and to the convention, is that it aims to destroy a group rather than the individuals that make up the group.The ultimate purpose of genocide is to destroy the group's identity of the oppressor on the survivors. This idea gives us a useful insight into the workings of power systems in the modern era and particularly, in the case of state of Myanmar which is under scrutiny. About 725,000 Rohingya Muslims fled Bangladesh to save their life after 25 August,2017.Actually Rohingya have been subjected to racial discrimination since the military coup in 1962.In 1974 the Burmese Janta launched "***Operation Jasmin***" locally known as "***Operation Sabae***" resulted a large number of Rohingya homeless residing in the open air and most of them fled from Myanmar to neighbouring country Bangladesh.In 1982 Rohingya became stateless within their own countries after the enactment of the new Citizenship Law describing them as deported Bengali Muslim where 135 ethnic groups have been included around the country. But history shows that Rohingyas are living in the Arakan state generation to generation but the Myanmar government deny to recognized them as their citizen.They have a religious values ,social values, and ideological values which seems to contradict with the Myanmar Govt.So the Government frequently attacks Rohingya Muslim creating different issues.

Now we will justify the elements that exists in the definition of Genocide (Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide 1948) infavour of genocide.

(a) *A distinctive group:*

Rohingya muslims are the distinctive group in Myanmar as it has its culture, language ,religion, history and they are living Arakan state generation to generation.The Genocide convention lists the national ,ethnic, racial and religious groups as protected groups. It is unfortunate that there is no internationally recognized definition of any of the terms it uses. In past judgements it has described a national group as a '*collection of people who are perceived to share a legal bond based on common citizenship ,coupled with reciprocity of rights and duties.*'¹¹,what it describes as the conventional definition of racial group '*is based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic ,culture ,national or religious factors*'¹² ;an ethnic group it described as '*a group whose members share a common language or culture and 'a religious group includes denomination or mode of worship or group sharing common beliefs*'¹³

If we scrutinize the above mentioned definitions given in ICTR Rohingya Muslims certainly holds all the elements of the protected group being a national, ethnical ,racial and religious groups. But Burmese believe that Rohingya are illegal immigrants from Bangladesh and they refuse to recognize them as indigenous people, right to freedom of speech, right to movement and right of religious freedoms.The majority Rohingya muslim who are living in the state are regarded as stateless person depriving them from citizenship rights in 1982.Even they are excluded from their voting rights rather are forced displacement and victims of extra judicial killing.

(b) *Special Intention of the State:*

It is worth nothing that, unlike the crime of aggression ,genocide is not a crime that may be committed only by those who lead and plan the campaign of destruction. The rank and file may also be principal perpetrators of genocide ,provided they have the requisite intent.¹⁴The special intent required for genocide necessitates each individual perpetrator

¹¹ Akayesu ICTR T. Ch .1 2.9.1998 Para 511

¹² 14ibid ...Para. 513

¹³ ibid

¹⁴ Kayeshema ICTR A. Ch. 1.6.2001 para 170

,whether leader or foot soldier ,having the intention to destroy the group or part of it when committing any of the prohibited acts.¹⁵

It is very difficult to prove the special intent of the persecutors. However the definition requires special intention to destroy the whole or part of the ethnic group which is evident in the crackdown. When military forces started atrocities on the Rohingya the Myanmar government did not take any steps to control the rampant attack of the Security forces. Even the security forces were reluctant to control the Buddhists and raping the innocent Rohingya muslim. The intention is strongly evident when the security forces openly declared to vacate the area within 24 hours otherwise they would be killed. Since independence Rohingya have suffered gender based expulsion, gender based violations, unlawful detention from time to time and it appears greatly after military coup in 1962.

It is true that special intention is very difficult to prove without persecutors confessions. But credible information relating to the atrocities and silence of the highest authority can easily prove the intention of the persecutors. They burnt their houses, livestock, crops even tress to deprive them from leading a normal life. Here genocidal intent is totally circumstantial which is confirmed by UN report.

(c) Killing members of groups

Myanmar Military Forces with the collaboration of the local extremist buddists conducted mass killings in the Arakan state after 25 August 2017. It is not the first time but a running process after 1942 riots. Since 1948, successive governments have carried out 13 military operations against the Rohingya (including in 1975, 1978, 1989, 1991–92, 2002, 2012) During this operations the military forces committed internationally recognized crimes including murder, torture, deportation or forcible transfer, rape and other sexual violence, persecution, enforced disappearance, and other inhumane acts, such as forced starvation. In 2017 they led massive atrocities. During the military operations, the Myanmar military burnt down and destroyed hundreds of Rohingya villages, killed thousands of Rohingya civilians, raped and sexually abused Rohingya women, and committed other crimes against humanity.

A Rohingya Muslim named Abdur Rahman , (41) said he had survived a five hours attack on Chut Pyin Village. He said , that a group of Rohingya men had been rounded up and detained in a bamboo hut, which was then set on fire. He added that his brother was burned with the group. He further added that he founded other his family members in the fields marking on their bodies from bullets and some had cuts off. "My two nephews, their heads were off. One was six years old and the other was nine years old. My sister in law was shot with a gun." He said.

¹⁵ Akayesu ICTR T. Ch. 1 2.9.1998, para 170

I saw a woman who lives in the camp with her daughter. Her husband and son were killed, and her other daughter was raped then killed. The woman was suffering from anxiety, heart palpitations and was "crying, crying, crying."

Another man from the same village named the as Sultan Ahmed,27,told "Some people were beheaded, and many were cut. We were in the house hiding in the house when armed residents from a neighbouring village were beheading people. When we saw that ,we just ran out the back of the house." "Some people were beheaded ,and many were cut" He said.

At least 6,700 Rohingya, including at least 730 children under the age of five, were killed in the month after the violence broke out, according to **Medecins Sans Frontieres (MSF)** .The report states that at least 9,000 Rohingya died in Rakhine state between August 25 and September 24, with 71.7 percent of those deaths caused by violence. More than 59 percent of those under the age of five killed during that period were shot, 15 percent were burned to death, 7 percent were beaten to death and 2 percent killed in landmine blasts, according to MSF. The government which puts the the number of dead at 400.They claims that they started "Clearance operation" against the insurgents and ended on 5 September 2017 .But the reality is not saying so.

Myanmar killed civilian which is clearly proved when In December 2017, two Reuters journalists who had been covering the **In Din massacre** event were arrested and imprisoned. Myanmar's government had arrested these two Reuters journalists Wa Lone and Kyaw Soe Oo and sentenced to imprisonment for disclosing how soldiers and Buddhist villagers carried out the killings in September and buried the victims in a single grave. Based on eyewitness accounts, the investigation includes photographs of the Rohingya men tied up and kneeling before their execution, and images after their deaths. The reporters had been working on stories about a military crackdown on the Rohingya Muslim minority in Rahkine State. **Reuters says** its two journalists had been collecting evidence of the execution of 10 men based on interviews with Buddhist villagers, security personnel and photographs to them.



These are the men whose deaths the Reuters journalists were investigating .Source:Reuters.

(d) Causing serious bodily or mentally harm to members of the group:

In spite of the popular understanding of genocide as being confined to conduct causing death, the drafters of the genocide Convention were not so limited in their understanding of the crime. Article II (b) of the Convention also criminalizes the causing of serious bodily or mental harm to victims. In the *Eichmann* case, the District Court of Jerusalem said that serious bodily and mental harm could be caused 'by the enslavement, starvation, deportation and persecution of people.....and by their detention in ghettos, transit camps and concentration camps in conditions which were designed to cause their degradation, deprivation of their rights as human beings and to suppress them and cause them inhumane suffering and torture.'¹⁶

The ICTR in the *Akayesu* case broke new ground in deciding the acts of sexual violence and rape can constitute genocide; sexual violence was found to be an integral part of the process of destruction in the Rwanda genocide.¹⁷ Serious mental harm does mean more than minor or temporary impairment of mental faculties, but neither mental nor physical harm need to be permanent or irremediable.¹⁸

When security forces of Myanmar conducted their operations many people have been killed, some were beheaded and some were cut. Local Buddhist extremists tortured them and forced them to flee. When Myanmar's military and Buddhist vigilants descended on Rohingya Muslims in the late August, burning homes and spraying gunfire,¹⁴ members of Johora's (12) family-including her mother, her father and four of her siblings-could not run quickly enough. They all died, according to witnesses and human rights groups investigating the massacre in Maungdaw township. Johura was shot as she waded through a canal, the bullet lodging near her pelvis. An X-ray report shows the bullet still lodged near Johora Begum's pelvis.¹⁹ Like Johora thousands of people have seriously injured during crossing the border both by the military forces and Buddhist vigilants especially children are the worst sufferer. Since 25 August 2017, government forces attacked villages, assaulted villages, gang raped and tortured inflicting both physical and psychological injury. They forced them to watch the burned lifeless bodies. Even the forces threw their infants when they were going to hide their infants. After crossing border the Rohingya Muslims took shelter in the camp but they can not forget such brutality what happened just before them. Whenever they go to sleep, some of them frequently wake up and utter words abnormally.

Abdul Karim (65) who was solvent in his village is now living with his other 6 family members in a room which is so pathetic for her sanitary problem, lacking of sufficient space for sleeping, lacking of enough food for his family members, unavailable of proper treatment makes him almost mentally disabled.

¹⁶ A-G of Israel v. Eichmann (1968) 36 ILR 5 (DC) 340

¹⁷ Akayesu ICTR T. Ch I 2.9.1998 para 731

¹⁸ Semaza ICTR T. Ch. 15.5.2003 para 321

¹⁹ New York Times Report.}

Mental health workers say refugees are suffering from flashbacks of violent, traumatic events, anxiety, agitation, acute stress, recurring nightmares, not being able to sleep, eat or even speak, and in more severe cases, being unable to look after themselves or their families.

When they go to sleep, they imagine soldiers "killing all their family members, their parents and they're killing Muslim people", feelings of guilt, exacerbated by seeing other mothers with their children.

Mental health impact on the forcibly displaced refugees are significant. Refugees are reported to suffer from the flashback of the massacre, anxiety, acute stress, recurring nightmares, sleep deprivation, eating or even speaking disorder. Methodical rape on women and girls and violent deaths of family members have compounded the mental health situation of the survivors of this physical violence. Women and children reported facing sexual violence including gang rapes which resulted in vaginal tears, infections and posttraumatic disorders.

There has been increase in the incidence of sexual violence among the refugees in Bangladesh which was exacerbated by the unavailability and low quality of post-rape care services. From the end of August 2017 to the end of February 2018, MSF has treated 226 survivors of sexual violence at MSF's Sexual and Reproductive Health Units, out of which 162 of them were rape survivors. Majority of the survivors were below 18 years . Children face the danger of long-term psychological and social distress. Since refugees are dependent on the humanitarian assistance for their survival and struggle daily for food assistance, this acts as a stressor for majority of them as well.

(e) Deliberately inflicting on the group conditions of the calculated to bring about its physical destruction in whole or in part:

This category of prohibited acts comprises methods of destruction whereby the perpetrator does not immediately kill the members of the group ,but which seek to bring about their physical destruction in the end.²⁰ The ICC Elements of Crimes interpret the term 'conditions of life 'as including but 'not necessarily restricted to ,deliberate deprivation of resources indispensable for survival ,such as food or medical services ,or systematic expulsion from homes'.²¹ The Rohingya people would live in an extreme poverty line.They do not have right to education, right to vote, even they have no right to visit outside their area. Imposing conditions on their conjugal rights they are systematically deprived from the procreation of children. The government would not take

²⁰ Akayesu ICTR T Ch . I 2.9.1998 para 505

²¹ ICC EOC, Article 6(c), n.4

initiatives to develop the Rohingya communities rather systematic and widespread discrimination used to happen. They wanted to lead the Rohingya muslim to a slow death depriving them from food, water, medicine and other humanitarian rights and forced them to flee. Frequent conflict with the extremist under the supervision of the military government made their life in threat. In addition depriving them from the citizenship Act 1982 they are regarded as stateless person where they do not claim rights as the nationals. Policy makers develop their policy only to impose conditions which bring about its physical destruction as a whole or in part.

(f) Imposing measures intended to prevent births within the groups:

The 2005 two child policy regulations was an addition to longstanding discriminatory marriage restriction on Rohingya Muslims in Buthidaung and Maungdaw townships in northwestern Arakan State along the Bangladesh border and they have to give extra fees for marriage. Advance permission for 3 months required to marry from an Na Sa Ka, a corrupt interagency border guard force comprising military, police, immigration, and customs and must be given an undertaking that they will have no more children than two. If they overrule the condition it will be regarded as crime under 312 of The Burmese Penal Code. Rohingya women who become pregnant before official approval to marry or after having two child have restore to unsafe and illegal abortions. Couples often have to wait for extended periods, sometimes as long as two years, before receiving permission. Officials have also forced many women to undergo pregnancy tests as part of the marriage application process.²²

In late September 2017, a seven-member panel of the **Permanent People's Tribunal** found the Myanmar military and the Myanmar authority guilty of the crime of genocide against the Rohingya and the Kachin Minority Groups. The Tribunal announced its verdict after considering documentary and expert evidence as well as of some 200 victims of the atrocities committed against Rohingya.

In August 2018, the office of the United Nations High Commissioner For Human Rights declared after investigation that Several commanders should face charges in the ICC for crimes against humanity including acts of Ethnic Cleansing and Genocide specially for the attack after 25 August 2017.

French President Emanuel Macron described the situation as "genocide"

²² 23 Human Rights Watch Report

Argument on favour of Genocide

The long history of discrimination and persecution against the Rohingya community continues to the present day. The largest Muslim group in Myanmar are the Rohingya people in the Buddhists majority country. Before 1962 military coup the Muslim had participation in the government but most Muslims were struck out from the administration after the coup. Later the Janta government started to deprive their civil, political even human rights which so extent that the UN finally confessed that the Rohingyas are the most persecuted groups in the world.

Myanmar government frequently attacks on the Rohingya creating different issues and the they fled to Bangladesh and other neighboring countries to save their lives. The present Rohingya crisis that began on 25 August 2017 has become the hot issues in the world politics when the Myanmar military forces and local Buddhist Extremists started attacking the Rohingya people and committing atrocities against them in the country's north-west Rakhine state. The atrocities included attacks on Rohingya people and locations, looting and burning down Rohingya villages, mass killing of Rohingya civilians, gang rapes, and other sexual violence which is regarded as "genocide" and "ethnic cleansing."

Many people think "genocide" requires millions of deaths. Thousands are not enough. But the Genocide Conventions only describes "in part" of ethnic groups. Use of terms has no relationship to the number of people. Eight thousand killed at Srebrenica in 1995 was considered as Genocide by International Criminal Tribunal for the former Yugoslavia. The UN commission of Inquiry held that over 50,000 people were killed in Darpur Crisis is "crimes against humanity" not "genocide". An estimated 5,00,000 to 1,000,000 Rwandans were killed which was recognized by US as "acts of genocide". Darpur is the only exception where UN refused to invoke the word Genocide because world leaders avoid military action to stop it where NATO with peacekeeping mission took action against serb forces.

Proof of intention beyond reasonable doubts seems to be very absurd in this fact. Myanmar's systematic campaign of mass killing, depriving their rights, barring in their family rights are enough to prove of specific intent to destroy part of the Rohingya people.

The term Ethnic Cleansing is not a crime under the Rome Statute of International Criminal Court. It has no legal meaning in international law. Those who argue that the power of words the "Ethnic Cleansing" , "Crimes Against Humanity" are synonymous of "Genocide" I think they are wrong. Genocide is a much powerful word. The UN avoids the word because world leaders avoid military actions to stop it.

So Myanmar's Crackdown on the Rohingya can surely be described as "Genocide" rather than using weaker term "Ethnic Cleansing", "Crimes against humanity" or "Atrocities". It is not a magic word but when used, force to stop it becomes possible. If UN don't come forward to stop the crime of crime along with the world leaders the exodus and genocide will continue and the perpetrators will be out of their responsibility.