

Study human rights and biharis in bangladesh politics essay



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Refugee problem is an uprising problem in the concurrent world. The Refugee can be made by many ways. The truth is that nobody wants to be a Refugee. But the circumstance made them to become Refugee. These circumstances are sometime created by human beings and sometime it happens by the act of NATURE. The Human Rights of Refugee people are violating in many ways. Sometimes it is seems that Refugee people are not more then a group of people without foods, shelter, clothing and many other necessary things. This make their life same as living in hell.

Bangladesh achieved independence from Pakistan in 1971. After liberation war, a considerable number of non-Bengali citizens in Bangladesh, identified as the Biharis who opposed the liberation of Bangladesh, sought to go to Pakistan but could not do so due to complication in the repatriation process. These people are called “ Stranded Pakistanis” or the Bihari Community.

[1]According to one report, the community is comprised of over 300, 000 yet it is not recognized with a clearly defined identity.[2]They have been living in 66 squalid camps with poor facilities scattered in several areas of Bangladesh for more than three decades.[3]Although they are residing in “ refugee camps,” the United Nations High Commissioner for Refugees (UNHCR) does not recognize them as refugees. Therefore, they are deprived of the benefits and opportunities extended to the refugees by the UNHCR. Therefore, the stranded Biharis in Bangladesh face multiple problems.

The main object of this paper is to observe the status of the Bihari people in Bangladesh, highlight the socio-political impact of their statelessness. The central view of the paper is that the Bihari community in Bangladesh is an ‘ artificial minority’ and they are deprived of Human Rights because they are

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considered as they are not part of Bangladesh, but yet living there as unwanted refugees. The unresolved status of the Biharis is a result of intentional procrastination and political indecision on the part of both Bangladesh and Pakistan. The analysis of the Biharis Human Rights problem is divided into two following sections. The first section discusses the background to the Biharis' problem and their political status in Bangladesh. The second section discusses the socio-political conditions of the Bihari community in Bangladesh. I'll focus three of Rights according to Martha C. Nussbaum's CENTRAL HUMAN FUNCTIONAL CAPABILITIES, these three rights are 1. Rights of Bodily health, 2. Affiliation, 3. Play.

And here the present Human Rights situation of Biharis will be cleared in our eyes.

2. Meaning of the term " Artificial Minority":

The term " artificial minority" requires an explanation. The term " minority" is defined in a number of ways. According to the American Heritage Dictionary of the English Language, a minority is an ethnic, religious, or other group having a distinctive presence with little power or representation relative to other groups within a society.

Here is another meaning of " Minority"[4]

- 1) a. The smaller in number of two groups forming a whole.
- b. A group or party having fewer than a controlling number of votes.

2) a. A racial, religious, political, national, or other group thought to be different from the larger group of which it is part.

b. A group having little power or representation relative to other groups within a society.

c. A member of one of these groups.

3) Law. The state or period of being under legal age: still in her minority.

In municipal and international legal systems, “minority” denotes a particular meaning. The term “minority” was first legally defined by the Sub Commission on Prevention of Discrimination and Protection of Minorities in 1977 in Article 27 of International Covenant of Civil & Political Rights (ICCPR) of 1966. The article notes:

Minorities are considered to be a group numerically inferior to the rest of the population of the state, in a non-dominant position, whose members being citizens

of a state, possess ethnic beliefs or linguistic characteristics differing from the rest of

the population and show if only implicitly, a sense of solidarity directly towards

preserving their culture, traditions, religions or language.

According to this definition, the shield of minorities is linked to the criteria of

Citizenship/nationality, which is usually supported by legal definitions in charters and covenants.

Scrutiny of these definitions shows that the term “ minority” is a combination of five elements: (1) number, (2) subordinate status, (3) ethnic or religious or linguistic traits, (4) a will/wish to safeguard or preserve or strengthen the patterns of lifestyle, and (5) in some cases citizenship.

The Bihari society in Bangladesh also has the minority distinctiveness outlined in the definitions provided earlier. They are ethnically different as they speak in different language. Internally they maintain Bihari cultural values in their social life. Due to these characteristics, they maintain a special ethnic identity despite practicing the religion of the Bengali majority. Yet, the Bihari community in Bangladesh is not considered a minority group. The Biharis have been given a peculiar status which is “ artificial,” that makes them neither refugees nor minorities. It is artificial because it is a product of an historical legacy of 1947, and of a political context of 1971, which made them live in artificially designated areas (camps) under international agreement. Yet they are factually a “ minority” because they are insignificant in number. This arrangement separated them from the rest of the society and gave them an artificial identity.

3. Theoretical Overview:

*Definition of Refugee:

Those who flee their own countries looking for of protection abroad do so specifically because their human rights are at risk in their own country. To

decide that an individual has a “ well-founded fear of persecution” is in effect to conclude that one or more of his or her basic human rights are not being respected.(It is hard to define that violation of which rights may led a man or a group of people to become Refugee. Sometime violation of Political rights, sometime social rights, sometime want of basic needs may make them Refugee). Similarly, to determine that groups of people fleeing conflict or serious disturbances of the public order are prima facie refugees is in most cases to acknowledge that they are victims of violations of human rights or humanitarian law.

According to the general definition contained in the 1951 Convention, a refugee is a

person who: “ As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted ... is outside his country of nationality...”

(The 1951 dateline originated in the wish of Governments, at the time the Convention was adopted, to limit their obligations to refugee situations that were known to exist at that time, or to those which might subsequently arise from events that had already occurred)

The Convention Relating to the Status of Refugees, 1951 as amended by the 1966 Protocol, denoted the definition of Refugee as,-“ A person who, “ owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having
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a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”

According to the Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969 the definition of Refugee is.....

“..... the term “ refugee”[5]shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.”

“..... “ refugee”[6]shall also apply to every person who, owing to external

aggression, occupation, foreign domination or events seriously disturbing public

order in either part or the whole of his country of origin or nationality, is compelled to

leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”

The Organization of American States, 1985 view A Refugee as-

“ Persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.”

Many states give priority to refugees in the acceptance of applicants for immigration and on that basis, qualification as a refugee is essential.

In *Ward v Canada*, Canada’s Supreme Court spoke of that:

“... rationale underlying the international refugee protection regime, for this permeates the interpretation of the various terms requiring examination. International refugee law was formulated to serve as a back up to the protection one expects from the state of which an individual is a national. It was meant to come into play only in situations when that protection is unavailable, and then only in certain situations. The international community intended that persecuted individuals be required to approach their home state for protection before the responsibility of other states becomes engaged.... as surrogate or substitute protection, activated only upon failure of national protection.”

In that decision, the Court also clarified that the state from which refugee status was being sought, needed not to be complicit in the alleged persecution or the “ well-founded fear”

“ What exactly must a claimant do to establish fear of persecution? ...The test is bipartite: (1) the claimant must subjectively fear persecution; and (2) this fear must be well-founded in an objective sense.

In summary, it is apparent that the refugee have to be “ outside” his or her country of origin, and the fact of having fled, of having crossed an international frontier, is an basic part of the quality of refugee, understood in its ordinary sense. However, it is not necessary to have fled because of fear of persecution, or even actually to have been persecuted. The fear of persecution looks to the future, and can materialize during an individual’s absence from their home country, for example, because of prime political change.

* Human Rights; In view of Nussbaum:

Martha C. Nussbaum[7]in her well renowned book, “ Women and human Development, The Capabilities Approach” she has described some rights which are important for a human to live as a human in a society. The most important feature of her theory is the central human functional capabilities. These are as following:

CENTRAL HUMAN FUNCTIONAL CAPABILITIES[8]

1. Life.
2. Bodily Health.
3. Bodily Integrity.
4. Senses, Imagination, and Thought.
5. Emotions.
6. Practical Reason.

7. Affiliation.

8. Other Species

9. Play.

10. Control over one's environment. (A) Political:

(B) Material:

To discuss the situation of Biharis we'll only focus on the three of these rights. These are

1. Life.

2. Bodily Health.

3. Affiliation.

4. Historical Back ground :

During the Partition of British-India in 1947, around one million Urdu speaking Muslims from the present day Indian provinces of Bihar, West Bengal, Assam, Orissa, Nagaland, Manipur, Tripura , Sikkim, Uttar Pradesh, Madhya Pradesh and Rajasthan moved to East Pakistan, which later became Bangladesh.[9] Their movement to East Pakistan was occurred in the wake of communal brutality during and in the consequences of the partition (for example, 30, 000 Muslims were killed in the ' Great Bihar Killing' in October-November 1947) and " to preserve their Islamic way of life." [10], About a million of them migrated to the eastern wing of Pakistan (East Pakistan)[11].

They also saw Hijrat (migration) as an escape from the possibility of living in a Hindu majority India.[12]To their disappointment, when they arrived in East Pakistan, leaving behind their possessions, their familiar environment and professions, they felt divided in the new society in terms of language, customs, traditions and culture. Although speakers of Pakistan's official language, Urdu, they found themselves as a minority in the majority Bengali-speaking East Pakistan. These differences resulted in the Biharis identifying with West Pakistan whose dominance over the Pakistani state assured them of receiving greater privileges from the Central Government. While Bengalis were overwhelmingly employed in the agricultural sector, the Biharis, as full citizens of Pakistan, came to be occupied in the industrial sector, small business, trade and commerce.

The Bihari community never assimilated with the local people and maintained alliance with the West Pakistani regime against the interest of the Bengali people. They supported the adoption of Urdu as the official language in East Pakistan, where the language of the majority was Bengali, and opposed the Bengalis' language movement in 1952. They also supported the issues of United Pakistan in the national and provincial elections in 1970. [13]During 1971 Bangladeshi war of independence, the Biharis as Urdu-speaking people of non-Bengali origin, collaborated with the West Pakistani regime and opposed the Bangladeshi freedom movement. When Bangladesh finally achieved freedom, Bihari people wanted to go to West Pakistan, but could not do so at once due to complication in repatriation process. This situation left them abandoned in Bangladesh. They were promised of repatriation to Pakistan, but this promise was never fully materialized.

5. VIOLATION OF HUMAN RIGHTS IN VARIOUS SPHERE

* Identity crisis of the Biharis in Bangladesh:

The stranded Biharis in Bangladesh are suffering from identity crisis. In Bangladesh, they have three different statuses, according to their present stand.

First, they are considered as ‘ foreign’ (Pakistanis) that are stranded. They have been temporarily accommodated in “ refugee camps,” but they are not regarded as refugees in the conventional sense. According to the Article 6(A) (1) of the Statute of UNHCR and Article 1(A) (2) of the Refugee Convention 1951, a “ refugee” is a person who belongs to the following three criteria:

- (a) The person is outside the country of his nationality, or in the case of Stateless persons, outside the country of habitual residence;
- (b) The person lacks natural protection; and
- (c) The person fears persecution.

All these three criteria are apparently applicable to the Biharis in Bangladesh. However,

According to the cessation clauses of the 1951 Convention and the UNHCR Statutes of 1950, a person shall stop being a refugee if, among others:

- (1) h/she has voluntarily re-established him/herself in the country which h/she left or

outside which h/she remained owing to fear of persecution,

The case of the Bihari Muslims is covered by this clause. Because, firstly, they voluntarily migrated to East Pakistan in 1947 from India; and secondly, in Pakistan they enjoyed protection by the state and were full-fledged citizens after 1951 according to Section 3(d) of the Pakistan Citizenship Act, which reads:

“ At the commencement of this Act every person shall be deemed to be a citizen of

Pakistan who before the commencement of this Act migrated to the territories now

included in Pakistan from any territory in the Indo-Pakistan sub-continent outside

those territories with the intention of residing permanently in those territories.”

Many of the people of Biharis who are over 40 years old like to address themselves as a Pakistani. Because they voted for Pakistan (In the election held in 1970). They fought for Pakistan,(During the liberation war held in 1971). And they believe that they have more similarity between Pakistani's than Bangladesh.

Therefore, the case of the Biharis was not viewed a refugee situation after the partition of 1947, as they were changed and naturalized in their newly demarcated territories. The question of the Biharis' becoming “ refugees”

had arisen when Bangladesh became independent from Pakistan. All of a sudden, these people became stateless as they identified themselves as Pakistanis. On the one hand, they were not refugees as they were not displaced from their place of residence, and on the other hand, they were stranded outside of their country where their status remained unrecognized.

Secondly, these complexities have given rendered the Biharis in Bangladesh a peculiar status, which can be called “ artificial minority”, which gave them second type of identity.

The term was discussed before. According to these definition, the protection of minorities is linked to the criteria of Citizenship/Nationality, which is usually supported by legal definitions in charters and covenants. According to the Council of European Commission for Democracy Through Law (CDL) a minority is:

A group which is smaller in number than the rest of the population of a State, whose

members have ethnic, religious or linguistic features different from those of the rest

of the population, and are guided, if only implicitly, by the will to safeguard their culture, traditions, religion or language. Any group coming within the terms of this

definition shall be treated as an ethnic, religious or linguistic minority.[14]

In this definition, the requirement of citizenship has been omitted because citizenship should not be a requirement for basic human rights. The Bihari community in Bangladesh also has the minority characteristics outlined in the definitions provided earlier. They are ethnically different as they speak in different language. Internally they maintain Bihari cultural values in social life. Due to these characteristics, they maintain a different ethnic identity despite practicing the religion of the Bengali majority. Yet, the Bihari community in Bangladesh is not considered a minority group. The Biharis have been given a peculiar status, which is “ artificial,” that makes them neither refugees nor minorities.

Thirdly and Finally, The Biharis are considered as the citizen of Bangladesh. Because according to the existing citizen laws[15]of Bangladesh The people who are residing in Bangladesh from 26th March, 1971 will be considered as the citizen of Bangladesh. But before the election of 29th December, 2008 no Biharis were considered as eligible for voting. Because the Biharis were thought as non-citizen in all the sphere of the government. After a historic judgment the High Court of Bangladesh has declare them as eligible for the voting.[16]

As noted earlier, due to their crisis of identity, the Bihari people are deprived of both citizenship privileges as well as refugee benefits from the international community. The consequence is that they have to shoulder the impact of this unwanted and unresolved identity in their social, political and economic life.

Here we can see that Bihari people have no socio-political identity except an ethnic recognition. The actual identity of these people should be as BANGLADESH As per the Nationality laws of Bangladesh.

Martha Nussbaum said about this matter in her capabilities approach in number[17]7, Affiliation. “. . . Being able to live for and in relation to others, to recognize and show concern for other human beings, to engage in various forms of social interaction; being able to imagine the situation of another and to have compassion for that situation; having the capability for both justice and friendship. . . . Being able to be treated as a dignified being whose worth is equal to that of others.” If we compare this term with the situation of These Biharis we’ll find that here all of these are violated. So, it is necessary right now to define the political and social identity of these Bihari people.

** Population of Biharis:

Over population and population density are two primary problems in the refugee camps. Since 1971 the community people has almost doubled in number due to high birth rate in the camps.[18]According to a survey report in 1992, the demographic figure of this community was 238, 093 in 66 different camps throughout Bangladesh (Table 1). The number of residents has farther risen over time and that created extreme population density, as the number of camps remained unchanged since their construction in 1972. [19]Presently, it is reported that the demographic figure is approximately 300, 000 people.[20]However, no proper survey has been done recently. The following map shows the geographical distribution of the Bihari camps in Bangladesh. The living conditions in these overcrowded camps are very

squalid. Families of seven to ten members share a small eight by ten feet living space.[21]Being frustrated with the camp life, sometimes the Bihari people escape from the camp and try to integrate themselves within the local community. Among them, very few are fortunate enough to survive and ultimately become able to give their children education. In most cases, they fail to survive by themselves and eventually return to the camps due to their inability to adjust to the social and economic conditions.

Here we can see how these people are deprived from an important human functional capabilities mentioned by Nussbaum. The second human capability[22]is Bodily health . . . Being able to have good health, including reproductive health; being adequately nourished . . . ; being able to have adequate shelter . . . However, living in such densely cannot ensure these rights. Yes, it is true that Bangladesh is a over populated country. In addition, almost everywhere, the density is same, but at least the government can give them a chance to live as other people of Bangladesh.

***Health , Sanitation and Medical Care

The living atmosphere of the camps is very awful. It is unhealthy, dirty, damp and unhygienic. The camp authorities are neither able nor serious to maintain a healthy sanitation facility. The drainage system is tremendously poor, which causes water logging very easily. Therefore, contagious diseases especially diarrhea and dengue are very common. This condition exists in other camps throughout the country. The municipalities/City Corporation cleaners never enter the camps to clear the garbage. It is only when the camp-dwellers drop their garbage in the dustbins outside the camp, that the

City Corporation cleaners will take them out. In addition, the entire camp people share a few common bathrooms and toilets, which are very few compared to the number of people .[23]

Most of the time they need to queue to get their turn. Furthermore, both male and female alike share the same facility, which creates problems for the females. There is no privacy for the females either in toilet or shower facilities. At night, when young ladies need to visit toilet, they take their parents or someone else as their guard. Most of the toilets are without shade, and people need to stand in line for their turn. In the shower rooms, women sometimes have to wait for hours to take bath in groups of three or four. Moreover, there is an sensitive scarcity of safe drinking water in every camp. Deep tube well is the key source of water in camps, but there is also acute shortage of tube well in every camp. Therefore, water born diseases, like cholera, typhoid and skin disease are endemic.

The medical assistance for the Refugee people is too poor.. There is only one medical clinic (Al-Falah Model Clinic) in the camp of Dhaka, which is poorly equipped. Moreover, in some cases, camps do not have a single medical clinic. As a result, infant mortality due to lack of medical care is quite common. Three out of every five newborns die before reaching the age five. Likewise, reserve to proper medical facilities make women vulnerable to unsafe delivery, chronic diseases like polio, Sexually Transmitted Diseases (STD) and other health problems. Many women die every year without getting proper medical care. As these people are very poor, they cannot afford to take medical facilities from other government and private institutions.

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Here we can see that the first condition of human capabilities[24]Life. . .

Being able to live to the end of a human life of normal length . . . ; not dying prematurely . . . is very not in work for these camp living people.

6. Some Proposal:

From the overall study about vulnerable situation of Biharis and The Central Human Capabilities, I think that following steps should be taken and must be implemented as early as possible.

The government of Bangladesh must give the recognition of Biharis.

Moreover, at the same time government should take some initial that can ensure the social and political freedom of Biharis. Moreover, Beharis are the citizen of Bangladesh as per the citizen laws of Bangladesh and the historical background of Biharis reveals them as the citizen of Bangladesh. Therefore, the main thing is that they should be treated as same as a usual citizen of Bangladesh.

The camps must be removed and the status of the Biharis as Refugee should be eliminate. They should given the same opportunities as a people of Bangladesh. In addition, as they are an underdeveloped community, they should given some priority in every sphere of life.

The Biharis must be allowed to move freely and to settle anywhere of Bangladesh. Moreover, the person who wants to go to Pakistan for that they think that they are citizen of Pakistan, the movement must be also allowed and the proper diplomatic and political steps should be taken with honesty.

The health and medical facilities should be increased and the people must be provided with the basic lessons of health and hygiene. And the education facilities also needed to be available for the Behari people..

The safe drinking facilities must be increased so that the safe water is available for every one in the camp.

7. Conclusion:

In *Women and Human Development*, Martha Nussbaum attempts to move the theoretical terrain on which international development policy is currently situated. In doing so, she constructs a universalistic feminist philosophy based on central human capabilities that, if met, would provide the minimum threshold essential for the progress of all people. In place of cultural relativism and aggregated conceptions of the good put forward by utilitarian economics, Nussbaum proposes a set of interconnected and indivisible capabilities, conceived as human rights, which offer moral guidance for the development of political principles that can be translated into constitutional guarantees. The capabilities provide individuals with opportunities for functioning, for making self-defined choices possible.

Nussbaum's chief objective is to place these spheres of choice "beyond the whim of majoritarian politics" by translating them into constitutional guarantees. For her, the political goal of justice, of meeting the threshold for each capability, supersedes liberty-outweighing and morally constraining choices that conflict with the central principle of political liberalism: "do no harm to others." Ensuring equal access to the central capabilities, she

argues, should "constrain all economic choices"[25] Individual and collective
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choices that result in differential access to the capabilities, she argues, ineluctably violate this governing principle.

Because the exercise of certain types of functioning in childhood are an essential precondition to developing “ a mature adult capability,” Nussbaum argues that the state has a compelling interest in “ any treatment of children that has a long-term impact on these capabilities”[26]Thus, it is imperative that children be given genuine opportunities to exercise capabilities that are vital to their functioning as future citizens.

In addition to material prerequisites, actual functi