

Research Monograph
On
**“The Challenges of Implementing Safe, Voluntary, and Dignified
Repatriation of Rohingya Refugees under International Law”**

Abstract

The Rohingya refugee crisis represents one of the most complex humanitarian and legal challenges of the 21st century. Over one million Rohingya refugees have fled Myanmar and sought refuge primarily in Bangladesh due to systematic persecution, violence, and denial of citizenship. International law emphasizes that refugee repatriation must be safe, voluntary, and dignified. However, implementing these principles in the case of the Rohingya remains deeply problematic. This study examines the legal framework governing refugee repatriation under international law and critically analyzes the political, legal, and practical challenges hindering the safe return of Rohingya refugees to Myanmar. The paper argues that without accountability, restoration of citizenship, and international pressure, repatriation efforts risk violating fundamental principles of international refugee and human rights law.

Keywords: Rohingya Refugees, Repatriation, International Law, Non-Refoulement, Human Rights

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Chapter 1

INTRODUCTORY CHAPTER

1.1 Introduction

The United Nations High Commissioner for Refugees, the Office of the (UNHCR), was established on Dec. 14, 1950 by the General Assembly which is also known as The UN Refugee Agency since its establishment till now the UNHCR is one of the specialized organs of the United Nations which deals with the refugee issues. The 1951 United Nations Convention Relating to the Status of Refugees has adopted the following definition of a refugee (in Article 1.A.2): Any person who owing to a 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 to or, owing to such fear, is unwilling to avail himself of the protection of that country".¹ Under this definition there are four elements incorporated with being a refugee. These are-

a) They are outside of country of origin,

b) They are unable or unwilling to avail themselves to the protection of the country of origin,

c) Inability or unwillingness to return to the country of origin for well-founded fear of persecuted,

d) Persecution has to be based on race, religion, nationality, membership of particular social or political opinion.

The Refugee Convention of 1951 authorized and directed the Office of the UNHCR to seek, with the cooperation of involved states, international protection for refugees and permanent solutions to their problems. So, the basic duty to assist the refugees comes to their hands. The following groups of people may not claim the refugee status. (a) Persons who have participated in war crimes and massive violations of international humanitarian law. Even any person against whom there are serious grounds of suspicions of this nature will be excluded. (b) A soldier cannot be considered a refugee if he/she continues to pursue armed action against the country of origin

¹Text of "Convention Relating to the Status of Refugees". Retrieved 5 May 2012.

from the country of refuge. A refugee is a civilian.(c) Persons who have been refused, under an equitable procedure, refugee status.²A migrant who leaves his/her country voluntarily to seek a better life in another country is categorized as an 'economic' migrant and is not a refugee.

A "convention refugee" is a person recognized under the 1951 Convention Relating to the status of refugee and its 1967 Protocol. This person is recognized and protected by a state that is party to the Convention.³When a person who meets the criteria of the UNHCR statute qualifies for the protection of the United Nations provided by the High commissioner, regardless of whether or not he is in a country as a refugee under either of these instruments. Such refugees, being within the High commissioner's mandate, are usually referred to as "mandate refugee".⁴When asylum seekers arrive rapidly in large number a situation commonly referred to as a "mass influx" the authorities of UNHCR, as appropriate, may decide to determine eligibility for refugee status on a group basis. Such Convention or mandate refugees are known as prima facie refugees.⁵Sur Place Refugee is a person, who has left his country for reasons such as education, medical treatment or tourism but subsequently owing to well-founded fear of being persecuted, refuses or becomes unable to return to the country of origin.Stateless persons are those people who are not considered to be nationals of any state under the operation of its law. A stateless person does not need to show well-founded fear of being persecuted in his country for refugee status.

The Rohingya people are a predominantly Muslim ethnic minority group. An estimated 800,000 Rohingyas live in Myanmar's western Rakhine State; an additional million are scattered across Saudi Arabia, Bangladesh, Pakistan, Thailand, Malaysia and elsewhere. Most practice a unique blend of Sufi-infused Sunni Islam. More than 140,000 of Myanmar's Rohingyas were pushed to dire displacement camps in 2012 amid regional conflicts. More than 120,000 have since fled the Myanmar/Bangladesh border to escape violence, persecution and economic

²According to the criteria of UNHCR, they are not refugees.

³Convention Relating to the Status of Refugees, 1951 and 1967 protocol

⁴UNHCR

⁵*Ibid*

hardship. The United Nations has called the Rohingyas one of the most persecuted minorities in the world.⁶

The term 'refugee' generally means a person who is in flight seeking escape conditions or personal circumstances found to be unendurable and this flight may be to freedom and safety or from oppression, threat to life or liberty or from prosecution, deprivation, grinding poverty or from natural disasters, earthquake, flood, drought or famine or from war or civil strife.⁷ The Refugee Convention⁸ has accumulated some definitions prevailing in different international instruments from 1922 to 1946 and it tries to define a refugee in Art. 1(A) as "any 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".^[3] But this definition is not yet free from criticism as it narrows down the ambit of the term, even though the definition refugee has dominated the arena of refugee law for the last 30 years. Some commentators have save that it does not include people as refugees who are internally displaced persons or who are deported or expelled from their own countries and some of home have been send to undertake forced labor or persons who are unable or unwilling to avail themselves of the protections of the government of their country of nationality or former residence.⁹ The Cartagena Declaration on Refugees" extends the traditional refugee definition to include 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 oilier circumstances, which have seriously disturbed public order.¹⁰

⁶http://www.huffingtonpost.com/2015/05/19/who-are-the-rohingyas_n_7328828.html [last visited 29 August 2015]

⁷Goodwin-Gill, *Refugee in International Law*, Edition, 1998, (Oxford University Press, London) p. 359-366

⁸*Convention Relating to the Status of Refugees, 1951*

⁹Salomon, K., *The Refugees in the Cold War: Toward a New International Refugee Regime in the Early Post war Era*. Lund University Press, Lund, 1990

¹⁰*Ibid.* Art. III. Para. 3

1.2 Objective of the Study

The major objectives of this study are to--

1. describe the historical background of Rohingyas refugee;
2. find out reason for Rohingyas refugee flew from Myanmar;
3. analyse Myanmar government view regarding Rohingyas issues;
4. identify Problem facing Rohingays in Bangladesh and current scenario in the Refugee camps;
5. analyse reasons for Rohingyas refusal by the Bangladeshi government;
6. find out is there any legal obligations of Bangladesh government to protect Rohingyas refugee?
7. provide recommendations for addressing the Rohingya crisis and discussed how to overcome the situation regarding these issues.

1.3 Nature and Scope of the Study:

Nationality crisis of Rohingya started right after they became stateless. It is a state of having no fixed place to live and no fixed identity. Nationality is a prerequisite to exercise economic, social and political rights. Without identity document many stateless people find it difficult to obtain political asylum. This is exactly what is happening with the Rohingya refugees. They have no fixed place for living, no fixed identity as a result they are deprived of social services and health care. They face problems in getting social care but also deprived of civil and political rights. Myanmar deliberately sets difficult criteria for citizenship. Rohingyas do not have the right to participate in any political activity as they are not citizen of Myanmar. They cannot take part in any decision making process of the country. In contrast, they live in Bangladesh as a burden. Bangladesh is a less developed country in the world map. It has a huge population with 40% of total population living below the poverty line. With its limited resources it is very difficult for

Bangladesh to maintain the extra burden of the Rohingya refugees. Therefore, Bangladesh cannot provide social, medical and health care opportunities to the Rohingyas as well as their children. As a result, Rohingya refugees are suffering from nationality problems in the host country and also in their country of origin.

1.4 Research Methodology

Proper methodology is required for reliable research work. Naturally a research monograph is completed by following two categories methods, one is qualitative methods and other is quantitative method. The research has been conducted by following the quantitative method. The quantitative method has been used by collecting some relevant data and statistical document from the report and survey which was conducted by different organization related the topics. For conducted the research completely there have been used some primary source materials. This research focuses on the nationality crisis and Legal status of the Rohingya refugee. For the objectives of the research, site selection is necessary and this research based on secondary literature. The secondary sources materials have been used through collection of different survey which was conducted by different organization, reading different books, searching internet and collect different document from newspaper, journal, different libraries, website etc.

To complete this thesis a range of research method is used. Particularly collection of data from various sources likes from International refugee law and others international legal norms regarding refugee. The 1951 United Nation Convention Relating to the Status of Refugees has a significant importance for sources of data collection. It also analyses various newspaper like national and international publishing news regarding status of Rohingya refugee. Media focus on particular issue plays major role for collection of data. In this research also focus on media reports on various times regarding Rohingya refugee. As it is an international crisis, this research analyses some reference which came from national and international conference. As this issue a major tension between two countries Bangladesh and Myanmar, this research further focus government person opinion on various times, why they continues refuse to take responsibility of Rohingya refugee. This research takes information from human rights law and humanitarian law which help to produce some report regarding violation right of Rohingya. Further analyses the legal status of refugees in Bangladesh this research collect materials from constitutional

provision of Bangladesh, other statutes law which provide legal protection of Rohingya refugee. It also takes some case decision from Supreme Court of Bangladesh. This research is also present as reference from Myanmar statute law like citizenship law 1982.

1.5 Literature Review:

The publication of an updated version of Azeem Ibrahim's book, *The Rohingyas: Inside Myanmar's Genocide*, is very timely considering the current situation in Myanmar. Ibrahim has written his book with a clear purpose: to draw the world's attention to the ongoing atrocities. Within the text, the urgency of the situation is constantly underlined, and the international community is repeatedly urged to take steps to intervene and stop the violence. At the start of 2018, international actors have stepped in, resulting in an agreement between Bangladesh and Myanmar to start repatriating refugees. Yet, having read Ibrahim's book, this seems unlikely to address the root causes of the situation and to guarantee non-repetition for the victims. The book chronicles the events leading up to the current atrocities: readers gain insight into the origins and causes of the persecutions against the Rohingyas, an ethnic minority group living in Rakhine province in western Myanmar. Although there are many other ethnic minorities in Myanmar, why is it that the Rohingyas are specifically subjected to the denial of their freedom of movement, eviction campaigns, controls over family size, forced labour, expulsion from their lands and property, violence and torture? According to Myanmar's extremists (including some Buddhist monks and the military regime), the Rohingyas came to the region after 1824, which was the year when British colonisers arrived in what was then called Burma. Today, citizenship is still linked to this narrative, and is given to those whose ancestors were deemed to have lived in Myanmar before 1824. It is believed that the Rohingyas were ethnic Bengalis who arrived in the region because of British influence; since they were pro-British, they were the ones who were given employment in the colonial service and administrative structures. In the book, however, Ibrahim challenges this narrative by presenting official documents dating back to colonial era that prove that the Rohingyas were already living in the country before the arrival of the British. Although it is insignificant under international law as to where distant ancestors originated from when deciding citizenship, this point is nonetheless crucial for illustrating how the nationalist discourse both leads to, and is based on, the distortion of historical facts. Ibrahim's work is therefore especially important in challenging some of the myths surrounding Myanmar and the

Rohingya crisis. Another of these is that the Rohingyas have not been denied citizenship or their fundamental rights since the independence of Myanmar in 1948. Between 1948 and 1962, Ibrahim acknowledges that there were some positive steps taken by the Myanmar government: the Rohingyas were treated like any other ethnic group and even had a small number of seats in parliament. However, during the period of military rule of 1962-88, the situation changed and direct persecution began. Ibrahim explains this shift as part of the economic disaster experienced by the country at that time. According to the author, the military regime was failing to sustain socialism, resulting in economic crisis. So can we believe that a democratic about-turn will solve the problems of this minority group? The answer is no, and this is another myth which Ibrahim challenges. The revised and updated edition under review here gives an insight into the period after the 2015 elections: 'the first free polls in the country in decades and [...] widely seen as fair' (144). They were won by (Nobel Peace Prize winner) Aung San Suu Kyi's National League for Democracy (NLD). But has the situation become better after the elections? Unfortunately not. Rather, atrocities have worsened. When we particularly consider the fact that all Muslims were removed from the candidate lists before these elections, we can see one of the reasons behind the failure. Thus, the situation in Myanmar offers another example that shows that democracy should not mean or be regarded as equal to elections only. The title of the book is very clearly based on the argument that what is happening in Myanmar now is genocide. However, the actual language used in the book is more cautious, for example: 'The charge in this book is that Myanmar now stands *on the brink of genocide*' (100, emphasis added); 'the situation in Rakhine can be described as *almost* a text-book case of pre-genocide' (110, emphasis added); and 'the book has argued that Myanmar stands *on the edge of genocide*' (139, emphasis added). This discourse, scattered throughout the book, creates some inconsistency with the title. In addition, the book has a standalone section entitled 'Genocide and International Law'. The main argument of the book is linguistically shaped around a *potential* genocide, and therefore this section raises one's expectations in terms of finding a legal analysis of the situation from the perspective of international law. However, this part remains firmly descriptive. Ibrahim discusses other genocides in history in order to illustrate the similarities with the case at hand. Yet, instead of this, more interviews from the field and depictions of the specific circumstances in Myanmar would likely have given greater insight and an opportunity to present further concrete evidence to establish the key component of genocide, 'genocidal intent'. All in all, the book is a very

welcome contribution to the current literature on Myanmar. It enables readers to comprehend what is happening in the country today and the historical roots of atrocities in the region. As explained at the beginning of this review, the main goal of the book is to draw attention to the Rohingya crisis. In this revised version, Ibrahim makes it clear that an urgent step is needed from the international community. Since the Rohingyas are becoming more and more isolated, new extremist actors within the Rohingyas are emerging: such as the Arakan Rohingya Salvation Army (ARSA), which carried out attacks in 2016 and 2017. Aung San Suu Kyi's NLD and the Myanmar military claim that ARSA has links with Al-Qaeda and/or the Islamic State. There is no doubt that their actions have ostensibly given more 'rationalisation' and 'legitimacy' to the Myanmar military to continue the atrocities. The recent agreement between Bangladesh and Myanmar regarding the repatriation of the Rohingyas sounds like a solution. However, readers of the book will understand that 'repatriation only' is unlikely to enable the Rohingyas to be given dignified and equal citizenship upon returning home, if they have a home remaining.

1.6 Limitation of the Study:

The scope of this study includes the area of information required to collect and analyze material regarding rohingya crisis. The entire study will focus on the information of corruption in Bangladesh. When I do this thesis I face various problem because it is very sensitive issues. Corruption is not identifiable as a single, separate, independent entity, which can be isolated and destroyed. Corruption is a complex set of process involving human behavior and many other variables, some of which are difficult to recognize or measure that's why the government officials are not want to provide proper information .But there are various books and article are avail able which helps me to make this thesis.

1.7 Conclusion

On the basis of above discussion this study tries to focus on the problem associated with Rohingya refugees. The problems faced by stateless Rohingya are typical of the difficulties faced by much other stateless population. By focusing on the above problems facing by Rohingya refugees this study focuses on the deprivation of their rights associated with their identity problem that has resulted in nationality crisis.

Chapter 2

HISTORICAL BACKGROUND

2.2 Introduction

Northern Arakan, consisting of contemporary Maungdaw and Buthidaung townships, has since the late eighteenth century been a region of intermittent unrest and refugee flows. Thousands of Rohingya fled to what is now Bangladesh in four main periods: the late 1700s and early 1800s, the 1940s, 1978 and, most recently, in 1991 and 1992. This Chapter provides a historical background of Rohingya refugees in Bangladesh. In particular it has discussed refugee flows have been prompted by ethnic and religious conflicts which were in turn triggered by broader political struggles. This section provides a description of each of the first three flights and concludes with specific attention to the 1991-92 exodus, asylum and return. A historic overview of the region not only serves to reveal the long history of refugee flows in the area, but also traces the attachment of the Rohingya to northern Arakan and thus their firmly established link to what is modern Burma. This chapter also discussed British colonial rule, World War II and Rohingya flight. It further discussed the background of numbers and the extent of post-independence immigration from Bangladesh is subject to controversy and debate. Finally it analyses history of 'Rohingya' movements (1990) and continued obstacles to repatriation.

2.2 Geographical Reason:

Myanmar, in the past known as Burma, is a country located in South-East Asia and bordered by Bangladesh and India to the west, China to the northeast, Laos to the east and Thailand to the southeast. The southern half of the country reaches the Andaman Sea and Bay of Bengal. The country's largest city and former capital Yangon is situated in the southern delta region of Myanmar. Naypyidaw, a newly-constructed city located to the north of Yangon, was officially declared to be Myanmar's new capital in 2006. The population of Myanmar comprises approximately 51 million persons with nearly 30% of the population living in urban areas [6, 7]. It is an ethnically and religiously diverse country, with 135 officially recognized and recorded ethnic groups as well as several other ethnic groups, such as the Rohingya, that are not officially recognized. The majority ethnic group are the Bamar, who constitute about two thirds of the population, and who dominate the military and government. Myanmar has seven regions (or divisions) that are largely inhabited by the Bamar [8]. Additionally, there are seven states, named

after the ethnic minorities residing in that state: Chin, Kachin, Karen, Kayah, Mon, Rakhine, and Shan [8, 9]. The regions and states are divided into 74 districts and sub-divided into 413 townships [7].

Rakhine State has five districts and 17 townships [10]. It is one of the poorest states in Myanmar with an estimated 78% of the population living in extreme poverty [11, 12]. The largest ethnic groups in Rakhine State are the Buddhist Rakhine and the Muslim Rohingya. A smaller Muslim group in Rakhine State are the Kaman, who are recognized as citizens by the government [10, 13, 14]. Until recently, Rakhine State was home to around 1.2 million Rohingya, comprising around approximately 40% of the total state population [15]. Accurately estimating the Rohingya population is difficult because they are excluded from census data by the government [16, 17]. Roughly two-thirds of the Rohingya resided in three northern townships of the state: Maungdaw, Buthidaung, and Rathedaung (Yethedaung) [18]. Rohingya were the majority ethnic group in Maungdaw and Buthidaung, the only townships in Myanmar with a majority Muslim population. In the 1400s, when Mrauk-U was invaded by forces of the Burman kingdom at Ava, King Narmeikhla sought help from Bengal and expelled the invaders with the help of a Muslim army.¹¹ The link between Bengal and Mrauk-U from this point solidified, to the extent that the Mrauk-U king began to use Muslim court titles along with traditional ones. Buddhist kings ruled Mrauk-U but Muslim officials often played a significant role in the court. Indeed, the inclusion of a variety of ethnic minority and religious officers in courts was a common practice throughout the mainland Southeast Asian sub-region.¹²

2.3 Religious Reason:

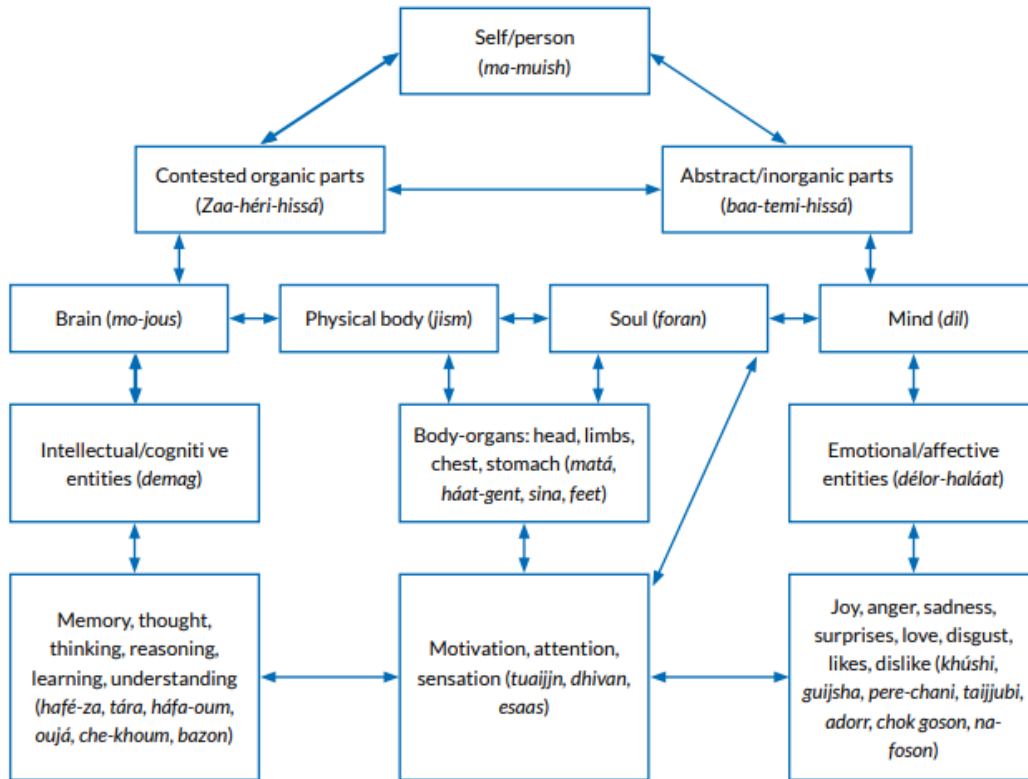
Religion is a primary source of strength and support for Rohingya, with many relying on religiousness and a sense of duty to communities and their families [159] to help cope with the oppression they have faced throughout their lives [160]. Traditional practices, however, are increasingly difficult to observe for Rohingya in Myanmar due to restricted freedom of movement and lack of available religious services. Refugees in Bangladesh and Malaysia have freedom to practice their religion. In the case of spirit possession (by jinn/fawri or ghosts), it is a common practice for Rohingya to seek help from traditional healers and religious leaders such as

¹¹ https://en.wikipedia.org/wiki/Rohingya-people#cite-ref-Aye-chan_2005 [last visited 31st August 2015]

¹² *Ibid*

imam or ustād who then conduct a ritual where they recite verses from the Quran to rid the person of the jinn. Possessed individuals appear psychologically disturbed with significant behavioural changes. Some persons who are considered possessed may suffer from emotional disorders or dissociative disorders, while others may have epilepsy or psychosis. Understanding Rohingya traditional help-seeking behaviour and involving traditional healers in interventions is important in the provision of culturally appropriate psychological treatment and psychosocial support. Traditional healing methods play an important role in the treatment of mental health problems in the Rohingya culture, for many reasons. An important reason is the lack of familiarity with western concepts of mental health and treatment methods such as counselling or psychotherapy. Another reason is that serious mental health problems (such as psychosis, epilepsy, mania) are perceived as socially unacceptable behaviour. People with severe mental health conditions are often believed to have been cursed by Allah for their own misbehaviour. Lastly, traditional healing practices often allow for issues to be addressed privately or even secretively between the healer and patient, thus minimizing the risk of ostracism and stigma in the community.

The core components of the self-represented in the Rohingya terminology



2.4 Economical Reason:

Along with the other causes economic factors have been playing a significant role to the Rohingya as a problematic issue. Identity politics and religious fundamentalism lead the issue to violence, and these causes are fostering by economics calculation and mechanism. The new dimensions of conflict between the Buddhist and Muslim populations in Burma are the merits of the preview on the Burmese nation's building process. Surely in the nation building process economic factors have major role.

Rakhine is one of the natural resourceful states of the country. Despite being resourceful it is one of the country's poorest areas. The nature of the anti-Muslim campaign in Rakhine state is for its resourcefulness. The government is always ready to take over the resource from the area but not to take any initiative for developing the infrastructures as well as the others facilities. Currently, the issue raising the highest interest, both from the government and the international perspective is that of economic openness. "However, beyond the huge needs in terms of development of infrastructure and services, the achievement of national unity is still a main obstacle for the recognition of the country." (Bounry M, 2012)

The Rohingyas are considered as an additional serious economic burden to the country. As they compete for the few available jobs and opportunities to do business. Accordingly “the jobs and businesses in the state are mostly occupied by the Burmese elite.” (Siegfried O. W, 2015)

The government is always supporting Rakhine Buddhist fundamentalists to safeguard their interests in the resource-rich state. And when the interest of the majority groups is in threat by any means conflict are taking place ultimately. It is also true that if any of the conflicts takes place in the region the government along with other groups make condemn to the Rohingya. These economic factors are the major reasons to rise of intercommunal, interethnic and interreligious conflicts in the Rakhine state. (Siegfried O. Wolf, 2015)

Another important phenomenon is to boycott the goods and businesses of Rohingya people. “Several campaigns continue to call for a boycott of Muslim businesses, including the foreign telecom giant Ooredoo; disrupt Muslim or Muslim-sympathetic speakers in public lecture events; threaten boycott against the 2014 census” (Zin M, 2015). The Muslim-owned shops and goods, schools, and mosques have been singled out for destruction in the Mandalay riots and Meiktila massacre, and in the period of violent episodes in Lashio. The phenomenon is getting popular amongst the Buddhist fundamentalist because of their own business interest.

The situations of anti-Muslim phenomena are not changing ever. As part of an intended boycott of Muslim businesses ‘969’ stickers and the special Buddhist flags have been used to be separated and delineate Buddhist shops from Muslim ones as part of an intended boycott of Muslim businesses. The inflammatory anti-Muslim sentiment and propaganda campaigns have also led indicators of atrocity crimes such as the destruction or plundering. APHR reported that, “the so-called 969 movement has organized boycotts of Muslim shops and encouraged anti-Muslim sentiment. A worker at a charity health clinic run by a monastery in Mandalay told that leaders of the 969 movement say things like Muslims are taking everything, and this is why you are poor. They are trying to shift peoples’ anger towards the Muslims.” (APHR, 2015)

The central, as well as the local government and the local administration, provide all assistance to the monasteries. This practice derives from instruction in the military to establish Sayar-Dagar-Setsanye between Buddhist monasteries and battalions in their respective areas to co-opt the clergy. The government asks the business cronies to assist Ma-Ba-Tha monks with lavish donations.

Zin M says, “According to sources I spoke with, senior officials in the government have informally encouraged chief ministers of regions and states to approach and support local Ma-Ba-Tha monks by building ‘Sayar-Dagar-Setsanye’ (a patron-supporter relationship) between Buddhist monasteries and regional administrative leaders”(Zin m, 2015). These initiatives led violence amongst the minority groups in the Rakhine state. More that is, to a political, social, and economic system-manifested in law, policy, and practice designed to discriminate against this ethnic and religious minority. (Zawacki 2012-2013)

2.5 Recognition of the Right of Rohingya:

This study aims to explore the human rights of Rohingya refugees in Kutupalong camp in Cox's Bazar Bangladesh. The deprivation of nationality and the persecution against Rohingyas violate basic principles of human rights. According to the article 15 of the Universal Declaration of Human Rights (UDHR) (1948), everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality. The scope of arbitrariness includes the prohibition against ethnic discrimination and the prohibition against statelessness (Adjami& Harrington, 2008). The prohibition of racial and ethnic discrimination is stated in article 2 of the UDHR and in every international and regional human rights instrument (Adjami& Harrington, 2008). Hence, these instruments limit states from depriving nationality and any deprivation of nationality based on racial or ethnic discrimination will be judged as arbitrary (Adjami& Harrington, 2008).

The UDHR also declares that all human beings are entitled to all the rights and freedoms without distinction such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. International human rights law applies not only to the citizens of a state, but to everyone including migrants regardless if they are documented or undocumented. International law recognizes the right of everyone to leave any country and to return to their own country (Inter-Parliamentary Union et al., 2015). UN 1961 Convention on the Reduction of Statelessness: "A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless." (UNHCR, 2014). The government in Myanmar is aware of the implications of these policies and has said: "Through international media, Bengali groups (Rohingyas) are widely publicizing the extent of government controls over them. Whilst the government deems such measures as necessary in the context of the country's situation and non-citizen status of this group, the international community condemns these measures as violations of fundamental rights. This has undermined the country's reputation and affected its international relations." (The Rakhine Inquiry Commission 2013, as cited in Ibrahim, 2016, p.57) The critique of the UDHR is that it is not a treaty, therefore it is not legally binding by itself. Ironically, in most cases, the state authorities are responsible for violations committed against human rights whereas they are obliged to ensure their protection under the Declaration on human rights. The effective implementation of international human rights law and other legal norms that constrain state sovereignty over nationality matters are required to realize aspiration

of the article 15 (Adjami& Harrington, 2008). The law is contained especially in the International Covenant on Economic Social and Cultural Rights (ICESCR) and the Covenant on Civil and Political Rights (ICCPR) which are the core human rights treaties. Myanmar signed the ICESCR in 2015 and finally ratified it in October 2017. It means that Myanmar has an obligation to ensure economic, social and cultural rights without discrimination for its citizens. In Article 2 of the ICESCR, the States has to guarantee that the rights in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (UN Human Rights, 1976).

The special session on the Rohingya issue by the UN Human Rights Council

The UN Human Rights Council held a special session on crimes committed against Rohingyas in Myanmar in December 2017. The session was convened following a request by Bangladesh and Saudi Arabia and supported by 73 UN member States. With paragraph 10 of General Assembly resolution 60/251, the Council is able to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council (The UN, 2006). The Council has adopted nearly 20 resolutions and other texts addressing the human rights situation in Myanmar since 2006 and there was also a special session on the general human rights situation of Myanmar in 2007. The resolution on the situation of human rights of Rohingyas was first launched in 2013 with Presidential Statement 23/1 in Pakistan and the December 2017 session was a continuation of the 2013 resolution (Universal Rights Group, 2017). In the session, the High Commissioner reported that the patterns of human rights violations against the Rohingya have been documented by successive Special Rapporteurs since 1992 and he expressed his concern over Myanmar's refusal to grant the international community access to Rakhine State (The UN Human Rights Council, 2017). The Chair of the Coordination Committee of Special Procedures of the Human Rights Council expressed her concern over the repatriation agreement signed between Myanmar and Bangladesh, that does not make reference to the recommendations of the Rakhine Advisory Commission and that does not acknowledge the root causes of the situation (Universal Rights Group, 2017). During the session, the draft resolution S27/L.1 on the situation of human rights of Rohingyas was presented. The draft resolution aimed to set out the human rights violations against Rohingyas and call upon Myanmar to respect human rights and

fundamental freedoms, and to end any incitement to hatred and violence and condemnation of such acts and the prosecution of the perpetrators (Universal Rights Group, 2017). The resolution calls upon Myanmar to fully cooperate with the Fact-Finding Mission established by the resolution 34/22 and grant access for the Fact-Finding Mission as well as to allow full, immediate, safe, unconditional and unhindered access to the UN agencies and other international humanitarian actors (Universal Rights Group, 2017). Moreover, the Council calls upon Myanmar to address the root causes of the Rohingya crisis including granting the full citizenship and related rights to Rohingya population and urges the government to create conducive atmosphere for safe, voluntary, dignified and sustainable return to their places of origin in Myanmar (Universal Rights Group, 2017). It was adopted by a vote of 33 in favour, 3 against and 9 abstentions.

Chapter 3

INTERNATIONAL INSTRUMENTS ON REFUGEE

3.1 Introduction

In Bangladesh, the Rohingyas are faced with hardly any protection from their host country. A burden to the densely populated country, the Rohingyas is living a harsh life in refugee camps, struggling from malnourishment, isolation, illiteracy and neglect. Chapter 4 deals with the issue of Problem facing Rohingays in Bangladesh. In this chapter discussed Situation Rohingyas in Bangladesh and current scenario in the Refugee camps. It also analyses reasons for Rohingyas refusal by the Bangladeshi Government. It is Burma's duty to accept the Rohingya as citizens, accept their history and ensure the safe repatriation of each and every single member of the community back into Arakan. Although safer than being persecuted and killed in Burma, the Rohingya communities in Bangladesh are a stateless community who want to return to Arakan when it is safe to call it home.

3.2 Refugee Convention:

The United Nations High Commissioner for Refugees, the Office of the (UNHCR), was established on Dec. 14, 1950 by the General Assembly which is also known as The UN Refugee Agency since its establishment till now the UNHCR is one of the specialized organs of the United Nations which deals with the refugee issues. The 1951 United Nations Convention Relating to the Status of Refugees has adopted the following definition of a refugee (in Article 1.A.2): Any person who owing to a 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 to or, owing to such fear, is unwilling to avail himself of the protection of that country".¹³ Under this definition there are four elements incorporated with being a refugee. This are-

- a) They are outside of country of origin,
- b) They are unable or unwilling to avail themselves to the protection of the country of origin,

¹³Text of "Convention Relating to the Status of Refugees". Retrieved 5 May 2012.

c) Inability or unwillingness to return to the country of origin for well founded fear of persecuted,

d) Persecution has to be based on race, religion, nationality, membership of particular social or political opinion.

The Refugee Convention of 1951 authorized and directed the Office of the UNHCR to seek, with the cooperation of involved states, international protection for refugees and permanent solutions to their problems. So, the basic duty to assist the refugees comes to their hands. The following groups of people may not claim the refugee status. (a) Persons who have participated in war crimes and massive violations of international humanitarian law. Even any person against whom there are serious grounds of suspicions of this nature will be excluded. (b) A soldier cannot be considered a refugee if he/she continues to pursue armed action against the country of origin from the country of refuge. A refugee is a civilian. (c) Persons who have been refused, under an equitable procedure, refugee status.¹⁴ A migrant who leaves his/her country voluntarily to seek a better life in another country is categorized as an 'economic' migrant and is not a refugee.

A "convention refugee" is a person recognized under the 1951 Convention Relating to the status of refugee and its 1967 Protocol. This person is recognized and protected by a state that is party to the Convention.¹⁵ When a person who meets the criteria of the UNHCR statute qualifies for the protection of the United Nations provided by the High commissioner, regardless of whether or not he is in a country as a refugee under either of these instruments. Such refugees, being within the High commissioner's mandate, are usually referred to as "mandate refugee".¹⁶ When asylum seekers arrive rapidly in large number a situation commonly referred to as a "mass influx" the authorities of UNHCR, as appropriate, may decide to determine eligibility for refugee status on a group basis. Such Convention or mandate refugees are known as prima facie refugees.¹⁷ Sur Place Refugee is a person, who has left his country for reasons such as education, medical treatment or tourism but subsequently owing to well-founded fear of being persecuted, refuses or becomes unable to return to the country of origin. Stateless persons are those people

¹⁴ According to the criteria of UNHCR, they are not refugees.

¹⁵ Convention Relating to the Status of Refugees, 1951 and 1967 protocol

¹⁶ UNHCR

¹⁷ *Ibid*

who are not considered to be nationals of any state under the operation of its law. A stateless person does not need to show well-founded fear of being persecuted in his country for refugee status.

The Rohingya people are a predominantly Muslim ethnic minority group. An estimated 800,000 Rohingyas live in Myanmar's western Rakhine State; an additional million are scattered across Saudi Arabia, Bangladesh, Pakistan, Thailand, Malaysia and elsewhere. Most practice a unique blend of Sufi-infused Sunni Islam. More than 140,000 of Myanmar's Rohingyas were pushed to dire displacement camps in 2012 amid regional conflicts. More than 120,000 have since fled the Myanmar/Bangladesh border to escape violence, persecution and economic hardship. The United Nations has called the Rohingyas one of the most persecuted minorities in the world.¹⁸

The term 'refugee' generally means a person who is in flight seeking escape conditions or personal circumstances found to be unendurable and this flight may be to freedom and safety or from oppression, threat to life or liberty or from prosecution, deprivation, grinding poverty or from natural disasters, earthquake, flood, drought or famine or from war or civil strife.¹⁹ The Refugee Convention²⁰ has accumulated some definitions prevailing in different international instruments from 1922 to 1946 and it tries to define a refugee in Art. 1(A) as "any 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".^[3] But this definition is not yet free from criticism as it narrows down the ambit of the term, even though the definition refugee has dominated the arena of refugee law for the last 30 years. Some commentators have save that it does not include people as refugees who are internally displaced persons or who are deported or expelled from their own countries and some of home have been send to undertake forced labor or persons who are unable or unwilling to avail themselves of the protections of the government of their country of nationality or former

¹⁸http://www.huffingtonpost.com/2015/05/19/who-are-the-rohingyas_n_7328828.html [last visited 29 August 2015]

¹⁹ Goodwin-Gill, *Refugee in International Law*, Edition, 1998, (Oxford University Press, London) p. 359-366

²⁰ *Convention Relating to the Status of Refugees, 1951*

residence.²¹ The Cartagena Declaration on Refugees" extends the traditional refugee definition to include 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 oilier circumstances, which have seriously disturbed public order.²²

3.3 Formation of UNHCR

Bangladesh is an impoverished country of over 160 million people. In its short history as an independent nation, Bangladesh has faced a major civil war, massive internal displacement, famines and frequent natural disasters. In addition, Bangladesh is hosting over 200,000 Rohingya refugees from Burma in the eastern region, and in recent years recognized the nationality rights of large numbers of Urdu-speaking minority (also known as Biharis or Stranded Pakistanis).²³ The Rohingya ethnic minority of Burma is one of the most persecuted and at the same time one of the largest stateless groups in the world. Stripped of their citizenship by the Burmese government in 1982 and forced to flee by violent military campaigns and sustained persecution since at least the 1940s, over one million Rohingya live in exile. They are the only ethnic group in Burma restricted in marriage, traveling beyond their village or building or maintaining religious structures. About 29,000 Rohingya live in official refugee camps in Bangladesh, where they are assisted by UNHCR and NGOs, and are not legally permitted to work or go outside the camps.²⁴ Another 200,000 Rohingya refugees reside in unofficial camps or Bangladeshi villages where there is no legal protection from arrest or abuse and little to no humanitarian assistance. These unregistered refugees live a hand-to-mouth existence – only marginally worse off than the host population. Humanitarian needs continue to grow for Rohingya refugees. In one unofficial camp, malnutrition rates are twice the emergency threshold. The lack of assistance for both unregistered refugees and host communities have increased tensions over scarce resources such as water and firewood, leading to physical and sexual violence against refugees, particularly women and girls.²⁵ There is little security for

²¹ Salomon, K., *The Refugees in the Cold War: Toward a New International Refugee Regime in the Early Post war Era*. Lund University Press, Lund, 1990

²² *Ibid.* Art. III. Para. 3

²³ <https://www.refintl.org/policy/field-report/bangladesh-silent-crisis> [last visited 15th July 2015]

²⁴ Rohingya refugees in Bangladesh refuse repatriation, AFP Report, Dec 30, 2009,

²⁵ UNHCR Report, Rohingya refugees living in tough conditions in Bangladesh camps, <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?id=43316f084&tbl=NEWS> [last visited 9th July 2015]

undocumented refugees and no access to the police or justice system. Urdu Speaking Minority (also known as Biharis or Stranded Pakistanis) Bangladesh is home to some 200,000 Urdu speaking minorities who during the country's civil war with Pakistan took the side of Pakistan, losing their homes, jobs and positions in society and were forced eventually to take up residence in more than 100 overcrowded and now dilapidated urban camp settlements.²⁶ Many of the Urdu speaking minority hoped to be permitted to move to Pakistan, but only a small percentage were admitted; some continue to cling to the hope that Pakistan will relent and admit them to reunite with their families in Pakistan. For almost 40 years, the camp residents were stateless, non citizens of Bangladesh or Pakistan. They were denied access to government services, including education, formal employment, property ownership, and driver's licenses. In 2008, a Supreme Court decision recognized their nationality rights. A large percentage of the adults were registered to vote in the 2009 election. After decades of isolation and discrimination, the group's is 94% illiterate, almost double the national rate. Despite being registered as voters and recognized as citizens, many Urdu speakers still are unable to obtain government jobs, access credit, get passports or obtain compensation for their property confiscated during the war.²⁷

Current Scenario in the Refugee Camps:

Repatriation of 28,000 Rohingya refugees, who are staying UN camps in Cox's Bazar, is one of the burning issues. . The number of residual refugees has reached about 28,000 as many women have given birth to more than three babies at camps. As per the refugee law, no government or UNHCR can put pressure on any refugee to return to homeland. The repatriation must be voluntary. Bangladesh is doing more than it should have done for last 30 years to help the Rohingyas, who were pushed inside the boundary but now it is overburdened with manifold problems.²⁸

Violence against Women a Major Concern

Violence against women has been increasing over the years as the number of unregistered refugees is increasing. Recent violence against women and children proves that without

²⁶*Ibid*

²⁷ UNHCR Report, Rohingya refugees living in tough conditions in Bangladesh camps, <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?id=43316f084&tbl=NEWS> [last visited 9th July 2015]

²⁸<http://www.dhakatribune.com/foreign-affairs/2014/feb/03/bangladesh-see-us-help-address-rohingya-issue#sthash.2qcNsE5u.dpuf> [last visited 30th August 2015]

registration or any legal status in Bangladesh, refugees who fall victim to such violence have no legal recourse and that has raised serious violation of human rights against the refugees who find no way to escape but to accept.

Desperate Situations call for Desperate Measures

Without food aid, unregistered people are forced into illegal activities to survive. Refugees have latrines and water but they also need housing and food. As things are not easy to get, they have to go find work to pay for it. The UNHCR released a statement saying that “people [living outside the official camp] have found informal ways to survive without government or UNHCR support.”

Restrictions on Humanitarian Agencies

Critics say the sheer number of Rohingyas in Bangladesh signals a failed humanitarian effort, with an “embarrassing gap between the numbers in-country, and those officially recognized by the UN agency responsible for protecting them, and the host government. A 2011 review of UNHCR’s work with the Rohingya in Bangladesh said the agency had been unable “to develop an effective advocacy strategy” for the rights of the hundreds of thousands of unregistered Rohingya residing in “emergency-like conditions” in makeshift sites. Rohingya refugees are going through humiliation and exploitations in the camps and makeshift sites.²⁹ After recent exodus of refugees from Myanmar to Bangladesh, In June, 2013, Bangladesh Government has been trying to restart a long-delayed voluntary repatriation program for Rohingya Muslim refugees living in the country which Myanmar approved on principle. Bangladesh has been pushing for a resumption of the program since Myanmar refused to extend the original agreement past 2005. The process stopped completely in July 2005 after the Myanmar government refused to extend the deadline continuing to block some repatriation efforts. Plans to restart it in 2009 were stalled after about 9000 refugees cleared for repatriation refused to return.

²⁹ (<http://www.irinnews.org/report/99157/analysis-how-bangladesh-aid-restrictions-impact-rohingyas>). [last visited 26th august 2015]

3.4 Conclusion

Conditions are horrific in the camps and the Bangladeshi governments view is that the Rohingya are a heavy burden on Bangladesh economically, socially, environmentally and also in terms of law and order. The government is of the view that the Rohingya should be repatriated to Myanmar, but under current circumstances the refugees are at risk of being persecuted, beaten and raped on return to Myanmar. Myanmar has failed in its obligation to protect its citizens and as such it is up to the international community to attempt to deal with situation. Whilst Myanmar claims absolute sovereignty its inability to protect its citizens negates this sovereignty, as it has not met its responsibilities under the international norm of the responsibility to protect.

Chapter-4

Status of Rohingya Under International Law

4.1 Introduction

Recently denial by the Bangladesh Government of extending any refuge to the Rohingyas fleeing communal violence in the Northern Rakhine State, and apparent “push back” have created concerns among the human rights organizations and international communities. This Chapter provides that what are the international norms in Bangladesh obligation for protection Refugees. This chapter also analyses what are the obligations of Bangladesh under national law to protect Rohingya Refugees and it put reference of different case law of Supreme Court of Bangladesh. This further discusses principle of non-refoulement as a state responsibility. Main object of this chapter is the legal basis of Rohingya Refugees protection.

4.2 Can we consider Rohingya as Refugee?

The 1951 Refugee Convention and its 1967 Protocol are basic legal instruments with regard to protection of refugees. The 1951 Convention provides criteria to be recognized as a refugee, their rights and obligations, and visa vie obligations of State parties. Under 1951 Convention, a person can claim refugee status with three conditions: (i) being out of the country, (ii) well-founded fear of persecution for specific grounds, and (iii) unable or unwilling avail protection from the government of the country of origin. And, the specified grounds are of persecution are based on one’s race, religion, nationality, membership of special group, and political opinion.³⁰ The principle of non-refoulment has been incorporated in a number of international instruments relating to refugees, both at the universal and regional levels. Article 33(1) of the 1951 Refugee Convention states: “No contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”³¹ This principle has been reiterated in article 1(1) of the 1967 Protocol and art.3 (1) of the United

³⁰*Convention Relating to the Status of Refugees*, 1951

³¹ Article 33 *Convention Relating to the Status of Refugees*, 1951

Nations Declaration on Territorial Asylum. The principle of non-refoulement is also recognized in art. 3 of the UN Conventions against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 provides: “No State shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” However, the principle of non-refoulement is not an absolute principle as it can be claimed by a refugee when there are reasonable grounds for regarding him as a danger to the security of the country of asylum or has been convicted for a serious crime.³² This principle is now considered as part of international customary law and is widely practiced (including Bangladesh in previous years, even for the Rohingyas). The Principle has indeed expanded State's protection obligations beyond the 1951 Refugee Convention framework; therefore, one cannot be returned to his or her country of origin; hence, contributing to deprivation of life, and putting forward to torture, or cruel, inhuman or degrading treatment or punishment. Generally, those countries which are parties to the Refugees Convention are legally bound to follow all the provisions thereof.

Bangladesh, despite of not being a party to the Refugee Convention is expected to respect the principle of non-refoulement as part of customary international law, as argued by Mostafa Mahmud Naser, an Assistant Professor of Law at the University of Chittagong in his article published in The Daily Star on 23 June 2012.³³ According to this academic, who is now pursuing his doctoral research at Australia’s Macquarie University, Bangladesh has obligation to asylum seekers and refugees despite of not ratifying the 1951 Convention or 1967 Protocol as because it is a member to the United Nations and is thus obliged to protect and promote human rights. Apart from that Bangladesh is a party to the International Covenant on Civil and Political Rights, 1966 (ICCPR) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT) among other human rights instruments.³⁴ Article 14 of the Universal Declaration of Human Rights 1948 (UDHR), guarantees for “...right to seek and to enjoy in other countries asylum from persecution.”³⁵ The UDHR is consider as jus cogens, thus those rights are universally accepted and enforced by all parties despite of whether they are party to the 1951 Convention or 1967 Protocol. Bangladesh has also obligation under Article 3 of CAT

³²*Ibid* article 33 (2)

³³ (Link: <http://www.thedailystar.net/law/2012/06/04/index.htm>) [last visited 10th July 2015]

³⁴ (Link: <http://www.thedailystar.net/law/2012/06/04/index.htm>) [last visited 10th July 2015]

³⁵ Article 14 *Convention on Universal Declaration of Human Rights* 1948

(non-return of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture).”³⁶In case of the Rohingyas, it is very likely that they would be targeted for torture, inhuman and degrading treatment upon pushed back to Myanmar which is tantamount to persecution. Also, persecution by “non-state actors” (in presence of apparent reluctance or inability by State actors to prevent or/and prosecute such persecution) does qualify one for a refugee status under refugee law.

4.3 Right of Rohingya

Bangladesh does not have any domestic or national law which can cover the issue of asylum seekers. In Bangladesh, foreigners irrespective of asylum seekers or simply visitors are treated under some old laws (e.g., The Passport Act, 1920; The Naturalization Act, 1926; The Registration of Foreigners Act, 1939; The Foreigners Act, 1946; The Registration of Foreigners” Rules, 1966; The Bangladeshi Citizenship Act, 1951; The Bangladeshi Control of Entry Act, 1952; The Bangladeshi Citizenship (Temporary Provision) 1972; The Bangladeshi Passport Order, 1973; and the Extradition Act, 1974).³⁷ This is particularly caused by Bangladesh’s refusal to be a party to the UN Convention Relating to the Status of the Refugees, 1951 or its 1967 Protocol. Thus, Bangladeshi government has irrefutably valid reason to refuse the Rohingya refugees.³⁸ In 2003, in the landmark judgment of Abid Khan decision,³⁹ the Supreme Court of Bangladesh (High Court Division) held that the ten Urdu-speaking petitioners, born both before and after 1971, were Bangladeshi nationals pursuant to the Citizenship Act of 1951,⁴⁰ and the Bangladeshi Citizenship (Temporary Provisions) Order of 1972,⁴¹ and thereby directed the Government to register them as voters. The Supreme Court further stated that

³⁶*Ibid*

³⁷ Md. Akhtaruzaman, *Legal Protection of Refugees under Bangladesh Laws*, in Dr. Mizanur Rahman (ed), Human Rights & Domestic Implication Mechanisms, ELCOP, Dhaka, 2006, p. 175.

³⁸ Intiaz Ahamed (ed.), *The Plight of the Stateless Rohingyas*, The University Press Ltd, Bangladesh, 2010, p 103.

³⁹ *Abid Khan and others v. Govt. of Bangladesh and others*, (2003) 55 DLR (HCD) 318, available at <http://www.unhcr.org/refworld/docid/3ae6b52a8.html>

⁴⁰ *The Citizenship Act, Act II of 1951*, 13 April 1951, available at <http://www.unhcr.org/refworld/docid/3ae6b52a8.html>. The Act is still applicable in Bangladesh by virtue of the Adaptation of Existing Bangladesh Laws Order 1972.

⁴¹ Bangladesh Citizenship (Temporary Provisions) Order, No. 149 of 1972, 26 March 1971, available at <http://www.unhcr.org/refworld/docid/3ae6b51f10.html>

residents of the camps and settlements had not “attained any special status so as to be excluded from the operation of the laws of the land”, and hence “mere residence” in the camps could not be deemed as allegiance to another State. The effect of the 2003 decision was limited to the ten petitioners. Subsequently, on 18 May 2008, in the case of Md. Sadaqat Khan, the Supreme Court of Bangladesh (High Court Division) reaffirmed that all members the Urdu-speaking community were nationals of Bangladesh in accordance with its laws and directed the Election Commission to “enroll the petitioners and other Urdu-speaking people who want to be enrolled in the electoral rolls and accordingly, give them National Identity Card without any further delay.”

However, the Rohingya issue is entirely different from the Urdu-speaking Bihari issue. The Bihari people were already in Bangladesh and have been living there since 1947 and afterwards. On the other hand, the Rohingyas are foreigners’ as they were being pushed back by the Myanmar Government. Article 27 of the constitution of Bangladesh states that “All citizens are equal before the law and are entitled to equal protection of the law.” The Citizenship Act 1951 provides details on the procedure to be a citizen of Bangladesh. The Rohingya people do not fall within the categories.⁴² According to Article 25 of the constitution of Bangladesh: “The state shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter....” It is pointed out that probably Article 25 of the constitution of Bangladesh is the only reason of obligation for Bangladesh to continue with the refugee issue coming from other states. International commitment mentioned in the decision merits to be interpreted not only as a commitment arising out of the obligation under the UN charter but also as commitments and obligations under the customary international law which Bangladesh is a party to.⁴³ But the question is how far should a country abide by the international law? And in the case where obligation arises under the terms of treaties, it depends on the internal policy

⁴² Section 3 of *the Citizenship Act, 1951*

⁴³ Shah M. Alam, *Enforcement of International Human Rights Law by Domestic Court*, New Warsi Book Corporation, Dhaka, Bangladesh, 2007,p-108

which literally means the domestic law of the land. In *Saiful Islam Dildar v Government of Bangladesh and Others*⁴⁴ the High Court Division considered the issue of the customary international law's right to self determination vis-a-vis the provision of the Constitution of Bangladesh. Justice A.M. MahamudurRahaman interpreted Article 25 of the Constitution of Bangladesh, and opined that the fundamental principle of the State Policy cannot be enforced by the court.⁴⁵ A significant judgment regarding the implementation of the international human rights law by the domestic courts in Bangladesh was given by Justice Bimalendu Bikash Roy Chowdhury.⁴⁶ In *Hussain Muhammad Ershad v. Bangladesh andOthers*, Justice Chowdhury observed, "True it is that the universal human rights norms, whether given in the universal declaration or in the covenants, are not directly enforceable in the national courts. But if their provisions are incorporated into the domestic law, they are enforceable in the national courts. The local laws, both constitutional and statutory, are not always in consonance with the norms contained in the international human rights instruments. The national court should not, I feel, straightway ignore the international obligation, which a country undertakes. If the domestic laws are not clear enough or there is nothing there in the national courts, only then should the national courts draw upon the principles incorporated in the international instruments. But in the cases where the domestic laws are clear and inconsistent with the international obligations of the state concerned, the courts will be obliged to respect the national laws, but shall draw the attention of the law makers to such inconsistencies."⁴⁷

4.4 Status of Rohingya

Bangladesh's economy will face multiple adverse impacts if the recently arrived Rohingya from Myanmar's Rakhine State are not repatriated soon, economists and experts have warned. The detrimental effects are expected to include local food and transport price hikes, food grain shortages, and reduced tourism, along with increased pressure on natural resources and various

⁴⁴*Saiful Islam Dildar v Government of Bangladesh and Others*, 50 DLR (1998), p.318.

⁴⁵ Justice Latifur Rahman, *The Constitution of Peoples Republic of Bangladesh with Comments & Case Laws*, Mullic Brothers. 2nd Edition, p- 48.

⁴⁶ Shah M. Alam, *Enforcement of International Human Rights Law by Domestic Court*, New Warsi Book Corporation, Dhaka, Bangladesh, 2007,p-108

⁴⁷*Hussain Muhammad Ershad v. Bangladesh and Others* 21 (2001) BLD(AD),p-69

social issues. The intensity of these will be more visible when flow of international aid lessens, experts observed. They said if the crisis is not resolved soon then a huge amount of money, food and natural resources will need to be spent to support the Rohingya. "Once our economy will be affected badly; food items and household materials will witness price hike," former finance adviser to caretaker government ABM Mirza Azizul Islam told the Dhaka Tribune. He said the budget allocation of FY2017-18 may even fall short as it was finalized without considering the latest Rohingya influx, and the government will continue to spend a lot of money to feed and shelter the refugees. "The government will have to revise the budget and increase the allocation. Otherwise, projects will be shelved and expenditures will be cut," he added. According to the UN, about 480,000 Rohingya refugees entered Bangladesh for shelter since the Myanmar army crackdown started on the ethnic group in late August. Many have settled in makeshift refugee camps in Ukhiya upazila in Cox's Bazar, where local residents have also been expressed their concerns to the Dhaka Tribune over the climbing prices of essential commodities. "The prices of almost everything have risen in the last two weeks due to higher demand following the Rohingya influx," said Shamsul Alam, a resident of Balukhali. As of Monday in Ukhiya, onions were selling at Tk60 per kilogram and potato at Tk40 per kg, compared to Tk45 and Tk25 respectively in Dhaka. However, traders claimed the prices have risen due to higher transportation costs and a price hike at source level. "Transportation costs here have almost doubled," concurred Shamsul. Meanwhile, tourism officials in Cox's Bazar district are concerned about the upcoming season starting from November as the refugee crisis is yet to de-escalate. "If the crisis is not resolved soon, it will threaten and impact the business," an owner of a Cox's Bazar hotel.

He said the marine drive, one of the most attractive tourist spots on the coast, should be made inaccessible to all Rohingya. ABM Mirza Azizul Islam also said that Rohingya refugees spreading throughout the district will threaten tourism as tourists will be reluctant to visit over security issues and fears of possible chaos. However, James Babu Hazra, secretary general of Bangladesh Hotel and Guest House Owners Association, told the Dhaka Tribune that holidaymakers should be reassured that the army is now monitoring the Rohingya issue. "The tourists won't face any security issues and will be able to move freely, but the businesses in Teknaf and Saint Martin's Island will suffer if proper measures are not taken," he said. Md Nasir Uddin, chief executive officer of Bangladesh Tourism Board, said the local tourism sector will not

face any problem if the government manages to shelter the Rohingya properly. “We can’t avoid the Rohingya, considering humanitarian grounds. But if we can bring their unrestricted movement under control, everything can be managed,” he said. Experts have also warned of the high cost of housing and feeding the 480,000 Rohingya refugees. “The current estimate stands at over Tk6,400 crore to Tk8,000 crore a year for the refugees: up to 70% of Bangladesh’s income per capita,” Ashikur Rahman, a senior economist of Policy Research Institute, told the Dhaka Tribune. “This, however, is a conservative estimate, which would provide only for basic services.” A distinguished fellow at the Centre for Policy Dialogue, Debapriya Bhattacharya, said earlier that there were two types of costs involved in providing the stricken Rohingya with essential services: direct and indirect. “Direct costs include food and health services while indirect costs are incurred by the community and environment,” he said.

Rohingya effect on economy: Academics for more research

The influx of more than half a million Rohingya refugees from Myanmar since August is having a huge effect on Bangladesh, including on its economy.

Many university groups in Bangladesh are protesting against the plight of the Rohingya and are calling on Myanmar to accept their return.

Academics are also pushing for more research to be undertaken on the crisis, its origins and the needs of the Rohingya group, in order to better prepare Bangladesh for its possible long-term impact on the country and its economy, according to a report by www.universityworldnews.com.

“Academic research on this issue so far is inadequate. There should be collaboration between international aid organisations and universities to do research on the Rohingya crisis,” MdReazulHaque, a Assistant at the University of Dhaka’s department of development studies, told *University World News*.

In particular, health and education are the major challenges for the Rohingya, he says.

“The Bangladesh government must have a long-term plan to address the issue and should take the issue to different international platforms,” he said.

Some research is underway in his department on Rohingya health and education needs, which are stark.

Opportunities for Rohingya education in Myanmar's Rakhine state had been limited prior to 2012, with very high rates of illiteracy reported – up to 80 per cent illiteracy, according to some studies.

Access to university education has for years been restricted within Myanmar for this Muslim minority. In addition, academics in Bangladesh are particularly well placed to help counter the Myanmar government's version of history. Azrin Afrin, a history lecturer at Jahangirnagar University, Dhaka, told *University World News* historical documents show that Rohingyas have been living in Myanmar's Rakhine state for centuries, yet the Myanmar government insists they are illegal immigrants from Bangladesh, which underpins their moves to drive them out of Myanmar. "This is absurd. Bangladeshi academicians should write more in international journals on the history of Rohingyas," she said. More than 507,000 Rohingya refugees have fled Myanmar to Bangladesh over the past few weeks as Myanmar security forces launched a crackdown on 25 August, following attacks on border posts in Myanmar's northern Rakhine state by a Rohingya armed group. Refugees are still coming to Bangladesh weeks after the start of the violence.

'Rohingya problem a big threat to Bangladesh economy'

Special Correspondent: Finance Minister AMA Muhith said Rohingya people who have crossed into Bangladesh facing persecution in Myanmar are a major threat to the Bangladesh economy. Army-backed Myanmar government is responsible for this.

Muhith said it is a big challenge for Bangladesh to deal with the huge number of Rohingyas fled to Bangladesh facing persecution in Myanmar. Myanmar is apparently destroying the economy of Bangladesh, he added.

The Finance Minister made the statements while talking to journalists after attending a meeting of the International Monetary and Financial Committee (IMFC) on Saturday. Finance Ministry Senior Information Officer Shahedur Rahman confirmed the matter.

Bangladesh losing its geo-economic importance to Myanmar:

If Bangladesh intends to be an influential economic and geo-political player in the Bay of Bengal, there is no alternative but to develop maritime infrastructure in Chittagong. Photo: Star



The Rohingya refugee crisis has exposed Bangladesh's diplomatic weaknesses. No permanent member of the United Nations Security Council has strongly backed Dhaka to solve the refugee problem. China rendered its support to Myanmar at the UN so that the country does not face any immediate threat such as sanction. The United States' intention to solve the Rohingya refugee problem is at best half-hearted, as has been reflected by the fact that the issue was not even mentioned in President Donald Trump's speech at the UN General Assembly.

India, though it does not have a strong voice at the UN, rather backed Naypyidaw condemning the terrorism in Arakan, ignoring the flight of thousands of Rohingyas. Japan, another important Asian power, also supported Myanmar.

Why are so many influential regional powers backing Myanmar despite the fact that the country has grossly violated human rights in Rakhine State? What are their stakes in Myanmar? What makes Naypyidaw so influential compared to Dhaka?

Can economic factors explain this phenomenon? The Bangladesh economy, which is now about USD 221 billion, is at least three times bigger than Myanmar's. Bangladesh is also in a better position when it comes to trade relations with almost all the major regional and global powers, including China and India. What then makes Myanmar so important to the regional powers?

Bangladesh's trade and other economic advantages are apparently not enough to compete with Myanmar when it comes to the latter's geography. There is no denying that Myanmar is better placed than Bangladesh in terms of geographic location as it lies at the intersection of Southeast Asia and South Asia. Bangladesh's geography, however, is no less important either, at least as far as India and other smaller nations of South Asia are concerned. Given the size of its domestic market and its location, it is equally attractive to China.

Pakistan has built one of Asia's largest deep-sea ports in Gwadar, and it is currently developing a multi-billion-dollar SEZ with the help of China. India has at least 10 major sea ports and is currently building one in Kerala. Bangladesh is the only country in this part of the world that has failed to modernise its maritime infrastructure utilising the country's thousand-year-old port city Chittagong, located at the heart of Bay of Bengal.

Beijing's interest to develop a deep-sea port in Chittagong was successfully thwarted by some influential regional powers citing security concerns. They reasoned that China's "string of pearls" strategy, which is associated with a series of ports and other maritime infrastructure build-up in the Indian Ocean, is a security threat. There were, however, proposals from the UAE and the Netherlands—both with experiences in port development—to build maritime infrastructure in Chittagong. But successive governments in Bangladesh have failed to capitalise on those opportunities leaving Chittagong impoverished, ultimately jeopardising the country's core interest.

The cost of not having a deep-sea port is enormous. The existing infrastructure of Chittagong port had reached its limit long ago. The cost of cargo handling is much higher in the Chittagong port as mother vessels cannot dock at the port. A deep-sea port would not only help Bangladesh economy, it is also bound to reshape the economic geography of the region. Such an infrastructure is often followed by development of SEZs drawing large investment. However, surrendering to regional powers, the current government has adopted the second-best solution of developing limited-scale ports in Payra and Matarbari.

Not only in terms of maritime infrastructure, in the past few years one has observed the centre's neglect of Chittagong. The city is in decline. Chittagong is lagging behind Dhaka. Per capita capital expenditure in Chittagong, critical for its long-term development, for instance, is barely USD 3 compared to Dhaka's USD 11. Had the centre been serious in developing its port city, Bangladesh's position in regional geo-politics would have been very different from what it is today.

4.5 Conclusion

Therefore, in the light of the discussion, it could be concluded that the Bangladeshi government has had a legitimate security concern regarding the Rohingya issue. By denying the Rohingya to cause a refugee influx, Bangladesh did not violate the principle of the non-refoulement as per Article 33 (2); rather Bangladesh gave priority to its national security. However, Bangladesh is not only the states who „push back“ the Rohingya refugees as the same treatment was also meted out by Thailand and Malaysia to the Rohingya. It is said that the Rohingya refugees are „a threat to and a burden for Thailand.“⁴⁸ In 2009, the Malaysian Prime Minister has called for the repulsion of the Myanmar's Muslim boat people to be pushed back if they attempted to land on any Southeast Asian shores in search of asylum.⁴⁹

⁴⁸*Myanmar: Rohingya Refugees and Thailand's „Push-Back“*, PanchaliSaikia, 30 December 2011, available at <http://www.ipcs.org/article/southeast-asia/myanmar-rohingya-refugees-and-thailands-push-back-3539.html>. [last visited 15th July 2015]

⁴⁹ UNHCR, *Refugees Daily: Refugees Global Press Review*, 27/02/2009; <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=49a78c228>. [last visited 15th July 2015]

Chapter 5

CONCLUSIONS

5.1 Introduction

If we consider the above following reasons then it could be argue that the framing of law on refugee protection in Bangladesh and other South Asian States are necessary. This chapter offers recommendations for addressing the Rohingyas crisis regarding Rohingyas problems and provide conclusion. It discussed how to overcome the situation regarding these refugee issues. This chapter offers framing of law on refugee protection can be done in three ways by according to international refugee instruments, by developing a regional instrument for Bangladesh and other states of South Asia and/or by framing national legislation.

5.2 Findings of the Study

- The current unprecedented influx of Rohingya is pressuring the Bangladeshi government to find a solution. Foreign Minister Abul Hassan Mahmood Ali has even suggested deporting the Rohingya to Bhashan Char, a remote and uninhabited island that regularly floods during the monsoon season.
- At the UN General Assembly last week, Prime Minister Sheikh Hasina proposed creating 'safe zones' in Myanmar that will allow the refugees to return in a sustainable manner. *Read More:* Rohingya refugees consider fighting with Myanmar rebels Human Rights Watch quickly criticized the Prime Minister's proposal, claiming that safe zones "rarely if ever live up to their name." In an online statement, HRW said that the examples from Bosnia- Herzegovina and Sri Lanka should serve as a warning, pointing out that in both countries, large numbers of civilians were executed in safe zones.
- In Cox's Bazar most people hope a solution will be found quickly. If not, serious problems could arise.
- "We don't have enough land here to settle all these people. It will be a disaster if they have to stay for a long time," Bangladeshi teacher Nurul Absan, told DW.
- "I think other countries should help us. Bangladesh is a poor country. We can't handle this crisis alone."

5.3 Recommendations:

There is no refugee law and policy in Bangladesh which, incidentally, is not a party to the 1951 Refugee Convention/1967 Protocol. The provisions of the municipal law have always been given priority over the customary international law where the existence of domestic law is present. Bangladesh has been criticized for not opening its doors to the Rohingya refugees in recent times. If Bangladesh wants to overcome the situation regarding these refugee issues firstly, framing of national legislation: It has to enact a strong domestic legislation on the refugee and the immigration law, which may restrict the flow of refugees. This will enable to handle the problem in more humane and effective ways and enhance country's image in terms of implementation of obligations promised through signing and ratification of different human rights instruments. Enactment of a law in JatiyaSangsad regarding the refugee issue is a need of the hour though Bangladesh has not yet signed the International Refugee Convention 1951. The opinion came from a workshop on 'Refugee Rights and Role of the Media' organized on August 18, 2005 at a city hotel by the United Nations High Commissioner for Refugees (UNHCR). UNHCR Representative to Bangladesh Christopher Beng Cha Lee at a workshop on 'Refugees' Rights and Role of Media in the city criticized the government for not signing the 1951 UN Convention on the status of refugees to protect basic human rights of the refugees in the country. "The government does not allow us to make arrangements for minimum standard houses for Rohingya refugees, education of their children, plantation in their camps and teaching them Bangla language that they speak," Bangladesh should adopt specific law on refugee protection to deal with all kinds of present and potential refugee situations. A specific law will be helpful for creating permanent legal arrangement instead of current adhocbasis treatment for refugees. A specific law will also provide guidelines to the implementing agencies to uphold the refugee cause. Secondly, it has to find out all the unlisted and unregistered refugees living within its territory. Thirdly, Bangladesh can go for some bilateral or multilateral treaties with its neighbor countries as well as other countries of Asia for dealing with the refugee influx. And finally, Bangladesh will have to

convince the international community's to put pressure on Myanmar to resolve the Rohingya refugee problem that Bangladesh has been carrying for the last 20 years without any foreseeable economic and social benefits whatsoever.. A similar analogy could be drawn in the form of water being constantly poured into a glass of milk in which the milk would ultimately be spilled out of the glass by the water which would then ultimately occupy the glass. Before the situational circumstances can be fully dictated by the external influence of the Rohingya refugee influx and possibly develop into immitigable proportion, it is highly timely for Bangladesh to take a convincingly effective proactive and preventive measure to restore the viability of its national economy, prosperity, welfare and security so as to curtail the brain drain of Bangladeshi specialists from exploring further afield in the international labor market.

Regional instruments constitute another important structure of refugee protection. The OAU Convention of 1969 reflected the frame of minds of political leadership of a continent engaged in anti-colonial movements. It broadened the scope of the definition of refugees to include those fleeing apartheid, colonial oppression and generalized violence and emphasized voluntary repatriation as a solution to refugee problems in Africa. In Europe, the Schengen (1985) and Dublin (1990) agreements were directed to develop a common strategy to deal with asylum seekers within the continent. To address their own regional needs, Latin American states opted for non-binding Cartagena declaration (1984). The Declaration was formalized by the non-governmental sector only, yet the governments of the region tend to follow it as a matter of policy. The Cartagena Declaration further broadened the scope of the refugee definition to include foreign aggression, internal conflicts and those fleeing massive violation of human rights.

5.4 Conclusion:

Over the time, the Rohingya refugees have a significant impacts on the economic, social, cultural, environmental, and law and order situations in Bangladesh. At the latest, it has added to the security concern. It is reported that a section of the Rohingyas have link with domestic terrorist groups like JMB and guerilla group operative in Myanmar-India- Bangladesh borders who receive funds from abroad. Only Myanmar can solve the longstanding crisis besetting their Muslim minority Rohingya population. The International community should also exert pressure forcefully on Myanmar to bring an end to the decades old oppression on Rohingyas. When it is beyond any doubt that a permanent solution to the Rohingya problem rests in the hands of Myanmar, surprisingly some international quarters are pressurizing Bangladesh to open its border for Rohingyas and arrange their safe sheltering. Foreign powers efforts of making Rohingya crisis an issue for Bangladesh seem an attempt to impose a problem on Bangladesh which is an inherent responsibility of Myanmar. None except the Myanmar government created this crisis through oppression carried out against a vulnerable minority Rohingya population.

Therefore, the Government should be serious on the matter. It is a high time that Government of Bangladesh adopts a comprehensive policy on Rohingya refugee issues with a view to resolve the problem through bilateral and multi-lateral means. For this, pro-active diplomacy is required.

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