

The Settlement of Rohingya Issue: Application of International Laws

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Abstract: The concept of Human Rights as some basic features for living on this earth had been developed during the Second World War. During and after the WWII, the world had witnessed a devastating number of homeless people, orphans and people who do not know their whereabouts. These incidents led the world leaders to think further about shaping legal frame regarding some basic rights of human. That attempt resulted into the basic human rights law where refugee law is one of the branches. But the oppression of the feudal society has never stopped. Human race is always struggling with their existence from being homelessness. The recent Rohingya issue created by the Junta govt. of Myanmar is also one of the evidences of that scenario. Bangladesh also can realize the pain of being homeless, stateless and refugee as well. In 1971, Bangladesh has also experienced the same situation as the Rohingya is facing now. This paper aims to find a solution of this international issue can be marked as crisis too, where Bangladesh is also suffering from as a neighbor of Myanmar.

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I. Introduction

“.....Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States.....”¹

1.1 Purpose of the Study

One of the most difficult challenges confronting the world is the problem of refugees and displaced persons. Greek writer Euripides nearly 2500 years ago quoted that “There is no greater sorrow on earth than the loss of one’s native land” (under lines are mine) Ever since mankind has existed there have been refugees. But, the beginning of this century of the “homeless man”, the number of refugees has arisen significantly and an especially in its second half. It is the major concern of human rights law. The leaders of international community being aware of this problem took various attempts to combat this. The 1951 Convention relating to the Status of Refugees and its 1967’s Protocol remains central to international protection of refugees and may be supplemented by regional instruments that address specificities of refugee situations in the regions concerned. Bangladesh has been facing refugee problem from 1971, when more or less 10 million people of Bangladesh took shelter as refugees in India in the liberation war. The same thing appeared after 1990s that huge number of Rohingyas came from Burma (Myanmar) in Cox’s Bazaar of Bangladesh because of fear of persecution and threat on right to life for religious and political causes that are under the criteria of Refugee Convention of 1951. Bangladesh is a developing country and facing numerous problems day by day. Else that Bangladesh has many limitations to host huge people as refugees that come from Myanmar or others.

The purpose of the research is primarily to address the Rohingya refugee problem in both international and national arena and discuss the settlement issues. At present, Bangladesh is facing this refugee problem most vigorously than any other time and more often than any other State as well. Therefore keeping in mind, the Rohingya refugee problem is discussed from Bangladesh perspective. The object is to identify the problems behind the settlement *vis-a-vis* find out a solution for the refugees rather than the traditional settlement solutions. The main purpose of the research is as followed:

1. To analyze the existing Statutes and conventions.
2. To identify the problems behind applying those.
3. To give possible additional solutions to the existing ones.

¹ Convention relating to the Status of Refugees, (adopted on 28 July 1951, entered into force on 22 April 1954) 189 UNTS 150, preamble.

1.2 Scope of the Research

The research is done in a way so that a solution could come. The scope of the study was not so limited neither so broad. Though there are so many journals, articles, documents, books (secondary sources) available regarding the topic, but the time was limited for the study on this significant and critical topic. Moreover, we could observe the refugee issue in Bangladesh practically and very deeply from some incidents took place for the last two months relating to Rohingya, as it is a country which bears more than 500,000 refugees.²

1.3 Research Methodology

Methodology is a means of an inquiry in order to achieve the legal research purpose in a meaningful way.³ There is no rigid rule to follow a specific methodology in legal research. In this study the methodology applied is mainly qualitative where analysis of some data is made as well. Secondary sources as said above as well as primary sources such as Conventions, Statutes and the Constitution of Bangladesh are used.

Key words: Refugees, Rohingya, obligation, convention, *Non-refoulement*, Stateless, humanitarian.

1.4 Limitation of the Research

The main limitation I faced while doing this research was time constraint. There was availability of sources but access to it was limited because of the shortage of time in our last semester. Moreover, as I tried to do the research on the contemporary situation of the Rohingyas in our country but it was very difficult as the rules regarding them in our country is hard. A major part of the research is done on the basis of literature review where it needs to be more standard.

1.5 Shadow of the research

While conducting the study for the purpose of fulfilling the objectives, the research the research is divided in six chapters under the following headings,

In chapter Two: The geographical history and the evolution of the Rohingyas are discussed. In this chapter I tried to find out the connection of the Rohingyas issue to the Myanmar's geographical history.

In chapter Three: The international rights and protections given to the refugees and which are entitled by the Rohingyas are discussed. Also, the concerning international authorities and their roles in the settlement of Rohingya refugee issues are given.

In chapter Four: The problems behind the refugee issues in Bangladesh regarding Rohingya and their current status are given.

In chapter Five: How the settlement of refugee issues over the world is taking place with the finding of the settlement of Rohingya issue by the international community's under the international laws, in addition to this the responsibility of the country of origin towards the Rohingyas have been discussed, along with additional settlement proposal is given.

In chapter Six: Possible recommendations to settle the Rohingya issues with the assistance of the international laws are discussed.

II. Geographical History and Evolution of Rohingyas

2.1 Introduction

Much has been written either empathetically or as a challenge of Myanmar's "Rohingya problem". Between June and November in 2012 and till now it is going on, the Rohingya bore the brunt of Communal violence, human rights violations and an urgent humanitarian situation in Rakhaine state, and still face an uncertain future. A great deal of rhetoric has attended these accounts- by officials and citizens of Myanmar, Rohingya organizations, journalists, human rights groups and others- essentially attaching labels to the situation. And while there have been or even explain the Rohingya problem in historical or political terms, they have been largely drowned out by emotive outbursts media friendly sound bites. This is not only unfortunate, it is also consequential, for as was seen in 2012, rhetoric can influence both the way in which a crisis plays out as well as in how it is responded to. In other words, how we talk about what it is we are talking about matters. Actually what we do mean when we talk about the "Rohingya problem".⁴

The Rohingya are a Muslim minority population living mainly in the state of Arakan, in Myanmar (Burma). Although approximately 800,000 Rohingya live in Myanmar, and apparently their ancestors were in

² See for details: < <http://bdnews24.com/bangladesh/2013/09/09/bangladesh-to-headcount-rohingyas>> accessed on May 8, 2015.

³ Abdullah al Faruque, *Essentials of Legal Research*, 2nd Edition, Palal Prokashoni, Dhaka: 2010, Pg-21.

⁴ Benjamin Zawacki, "Defining Myanmar's Rohingya Problem", *International Commission of Jurists Report*, 2012, Pg-18.

the country for centuries.⁵ The Burmese Government does not recognize Rohingya people as citizens. People without a state, the Rohingya face harsh persecution in Myanmar, and in refugee camps in neighbouring countries.

Arakan was a medieval kingdom located at the edge of South Asia became a province of Burma after the Burmese invasion in 1784 and the subsequent annexation of it with Burma. To the people of India and Bangladesh, Arakan became sadly memorable for the tragic massacre of the Moghul prince Shah Suja and his entire family by the Arakanese king Sandathudamma. In our contemporary period the event of Suja and the massacre of his family is not the reason why understanding the dynamics of ethnic relations in Arakan and by extension in Burma becomes so central; it is largely to watchfully understand the roots of racism in Arakan and to recognize the refugee production trends of the region.

2.2 Rohingyas of Arakan in the Buddhist Period

The first Muslims to settle in Arakan were in the area by the 1400s CE. Many served in the court of the Buddhist King Naramekhla (Min Saw Mun), who ruled Arakan in the 1430s, and who welcomed Muslim advisers and courtiers into his capital.⁶ Arakan is on the western border of Burma, near what is now Bangladesh, and the later Arakanese kings modelled themselves after the Mughal emperors, even using Muslim titles for their military and court officials.

2.3 Buddhist Burmese Invasion in Arakan (1784)

The 1784 Burmese invasion of Arakan was considered by historians as a tragic genocide for its ruthlessness massacre of Arkanese population of both Rohingya and Rakhine groups. In the month of December, 1784 Burmese king Budapawa attacks Arakan with 30,000 soldiers and returned with 20,000 people as prisoners, destroyed temples, shrines, mosques, seminaries, and including the Royal Library. Muslims serving the Royal palace as ministers were massacred.⁷

During the time of the Burmese invasion of Arakan, Chittagong came under the British rule. The British never attempted to rescue the Arakani king to his throne. To escape the brutal attack of the Burmese King both Muslims and Hindus of Arakan fled to safety in Chittagong. Harvey says, traditionally Burmese cruelty was such that “to break the spirit of the people, they would drive men, women and children into bamboo enclosures and burn them alive by the hundreds.” This resulted in the depopulation of minority groups such that “there are valleys where even today the people have scarcely recovered their original numbers, and men still speak with a shudder of ‘manar upadrap’ (the oppression of the Burmese).

2.4 Arakan during the British rule (1826 AD – 1942 AD)

After the Burmese conquest of Arakan, the Burmese king demanded the fugitives be returned. In 1824 a decisive war between the Burmese and the British took place resulting in the British occupation of Arakan. By now due to the merciless massacre, Arakan almost became depopulated. “When the British occupied Arakan, the country was a scarcely populated area. Formerly high- yield peddy fields of the fertile Kalandan and Lemro river valleys germinated nothing but wild plants for many years”.⁸

As of 1826, the British took control of Arakan after the First Anglo-Burmese War (1824-26). They encouraged farmers from Bengal to move to the depopulated area of Arakan, both Rohingyas originally from the area and native Bengalis. The sudden influx of immigrants from British India sparked a strong reaction from the mostly-Buddhist Rakhine people living in Arakan at the time, sowing the seeds of ethnic tension that remain to this day.

After the British conquest, despite the memories of horror, but naturally out of nostalgia, some Rakhines and Rohingya refugees from Chittagong returned to Arakan. Aye Chan, a xenophobic Rakhine writer, calls these returnees as the settlements of foreigners in Arakan. He calls them as Influx Viruses. Surprisingly, he remains silent to the Rakhine returnees to Arakanese returning home. He characterizes the slight increase in the Muslim population in Arakan after the British conquest as the settlement by “Chittagonian Bengali Muslims.”⁹ Aye Chan’s claim of these people as being Chittagonians is due to the fact that he didn’t take into account the fact that many of the original uprooted people of Arakan returned to Arakan to claim their possessions. Given such a disturbing climate in Arakan after such a destruction by the Burmese king, one wonders, why

⁵ See for details: <http://asianhistory.about.com/od/Asian_History_Terms_N_Q/g/Who-Are-The-Rohingya.html,> accessed on 10th May, 2015

⁶ Harvey, A Short Historical Background of Arakan, Boston College, 1947, Pg- 43.

⁷ N. M. Habibullah, History of the Rohingyas, Bangladesh Co-operative Book Society Limited, 1995, Pg- 32.

⁸ A. B. M. Habibullah, “Arakan in the pre-Mughal history of Bengal”, Journals of the Asiatic Society of Bengal, Volume-76, 1945, Pg-11.

⁹ Aye Chan, “Enclave” in Abid Bahar (ed), *Aye Chan’s Enclave Revisited*, 2007, Pg-79.

Chittagonians living in a relatively peaceful region would migrate to Arakan. Naturally, the Muslim migrants were the original Rohingya inhabitants of Arakan returning to their ancestral homes. It is evident from the fact that in the aftermath of the genocide, despite the return of order by the British occupation, but the fear of uncertainty still persisted and the returnees driven by nostalgia.

1930 and 1938 anti-Indian riots: In the meantime, there was 1930 and 1938 anti Indian riots and Burma for Burmese campaign led by the Monks made Muslims of Arakan felt the threat of their existence in Burma but the British census at this time made things more complicated for the Arakani Rohingyas. The British identified the Rohingyas of Arakan as the Indian Muslims.

2.5 Japanese Rule in Arakan (1942-1945)

When World War II broke out, Britain abandoned Arakan in the face of Japanese expansion into Southeast Asia. In the chaos of Britain's withdrawal, both Muslim and Buddhist forces took the opportunity to inflict massacres on one another. Many Rohingyas, moreover, still looked to Britain for protection, and served as spies behind Japanese lines for the Allied Powers. When the Japanese discovered this connection, they embarked on a hideous program of torture, rape and murder against the Rohingyas in Arakan. Tens of thousands of Arakanese Rohingyas once again fled into Bengal.

The next large scale migration of Rohingyas to Chittagong took place during World War II. In 1942 Japan occupied Burma and the ultra-nationalist Buddhists jointly massacred the Karens, the Mons and in Arakan the Rohingyas. Feeling the threat of extinction, and certain Rakhines determined to drive out the Muslims of Arakan, Muslim leaders officially took the already existing name for their suffering community as the Rohingyas. However, Rohingyas were conveniently identified by the Rakhine extremists as being the Chittagonians. During the time of Japanese occupation, the number of Rohingya death in Arakan was staggering to be over 100,000. Rohingyas call the event as the "Karbalai Arakan," the bloodshed in Arakan.¹⁰

2.6 Rohingya Refugees during Military rule (1962)

In 1948 Burma became independent from British rule. Rohingyas again began to be protection less. Aung San became Burma's democracy leader. He was trying to bring ethnic harmony through dialogue with ethnic minorities but the entire team of democracy leaders including Aung San was assassinated by powerful quarters.

1958 Rohingya refugees took shelter in East Pakistan; the number of refugees identified as being 10,000. 1959, Burma agreed with East Pakistan governor Zakir Hossain to take back Rohingya refugees who had taken shelter in Chittagong in 1958. When questioned "why refugees were pouring into Pakistan from Burma, the Governor replied that the government of Burma had nothing to do with it. Actually the Moghs of Arakan were creating the trouble."¹¹ In 1960 The Daily Guardian, Rangoon, reports that Burmese "Supreme Court quashes expulsion orders against Arakanese Muslims."¹²

In 1962, General Ne Win took over power and confiscated most Indian and Chinese owned businesses in Rangoon and began his Burmanization policy which advocated that "Burma is for Burmans," referring that Burma is for racially Mongoloid and religiously Buddhist people. Ne Win first began a policy of "divide and rule" in Arakan between the Mogh and the Rohingyas. His government identified the Rohingyas as "Indian Bengalis" from Chittagong migrated to Burma during the British period beginning from 1826.¹³

As mentioned earlier, in 1978 an officially recorded 207,172 Rohingyas took shelter in Chittagong. UNHCR and Amnesty International investigation found out that Rohingyas were carrying Burmese National Registration cards. This revelation by international agencies, forced the Burmese government to accept the Rohingyas back to Arakan.

In 1982 the military rulers passed the Citizenship Act, in which it made a provision that Burmese people's ancestors who came to settle in Burma before 1826 will be considered as "foreigners." Rohingyas were seen as people migrated from Chittagong of Bangladesh after 1826. But the history shows that Rohingyas called by the Arakan's Tibeto-Burman population as the Kula were the offspring of the aboriginal Indian Chandra's, Arabs, Persians, the soldiers of the Bengal Sultan's army, the offspring of the Mogh-Portuguese captured

¹⁰ Wiesbaden Moshe Yegar, *The Muslims of Burma: A Study of a Minority Group*, Otto Harrassowitz Publication, 1972, Pg- 67.

¹¹ R. B. Smart, *Burma Gazette Akyab District, Volume- A, Rangoon, 1957, Pg-19.*

¹² *The Daily Guardian*, Rangoon, Myanmar, 27th October, 1960.

¹³ See for details in <http://groups.google.com.vn/group/soc.culture.bengali/msg/80428f57a0e9a903>, accessed on 16th May, 2015.

Bengali slaves, Portuguese offspring¹⁴. The name Rohingya was adapted by these people from various origins as a survival mechanism. In 1990-92 again over 268,000 Rohingyas were sent back to Bangladesh. This time the Burmese government made sure that Rohingyas do not carry any official Burmese document. Rohingyas continue to be identified as “foreigners” and now suffer in the land they were born and brought up. The Burma’s military in alliance with the Rakhine ultra-nationalist plays an extermination policy based on fear and intimidation.¹⁵

2.7 Conclusion

Despite a clear evidence of Burmese invasion and atrocities on the Rohingyas, resulting in the later to take shelter in Chittagong, xenophobic writers continue to propagate that Rohingyas are “Chittagonians.” The intensity of the nationalist hatred by the military reached so deep into the Burmese consciousness that today even some Burmese people began to believe that indeed Rohingyas are “Chittagonians” from Bangladesh. The production of refugees in general and the Rohingya refugees in particular from Arakan is not a new phenomenon; the study reveals that the internal troubles in Arakan along with the historic Burman invasions of Arakan from time to time led to the rise of Rohingya refugee. People have migrated for work or love or whatever reason during the entire history of mankind. If the Myanmar’s government go by the logic that Rohingya people have roots in Chittagong they should all be thrown out of Myanmar then by that logic every person of non aboriginal root should be thrown out of Australia, and every person with non Native American root should be thrown out of America. And if we keep on going like this we will reach a point where everyone should be thrown out of everywhere as according to science and genetics there is no so called “pure race”. According to science everyone in the present world has roots in a group of people out of Africa. So should we all go back to Africa? In Arakan however, even after a million Rohingya people left Arakan, who now live in deplorable condition in Bangladesh, India, Pakistan, Malaysia, Japan, Thailand, and in the Gulf states, these ultra-nationalists continue to justify that Rohingyas are not Burmese citizens. So ethnicity is not a basis to determine the citizenship of any ethnic group or class of people. It appears that the problem in Arakan is deep enough to go away sooner that the Govt. of Myanmar systematically had designed the citizenship law which excludes this minority group from being citizen of it and cannot be entitled to enjoy and exercise their rights.

III. Rights and Protection of Rohingyas under International Laws

3.1 Introduction

Refugee issue has been considered as a vital matter in international law since the World War II. Hence the development of international organization and adaptation of Conventions occurred. The United Nations High Commission for Refugees plays the most significant role to ensure the protection and rights of refugees. Along with this international conventions and regional treaties are there to aid it. Refugee issue is an international matter the refugee is always a person from another country who seeks asylum in other country, to determine their rights and protection, to be acquainted with the international laws, roles of the UNHCR, customs and definition of refugee in other regional instruments, is necessary. In this chapter the legal frameworks for refugees protection entitled by the Rohingyas, definitions under the 1951 Convention and other regional Conventions, mandate of UNHCR, rights and the idea of durable solutions will be discussed.

Before discussing the rights of Rohingya as refugees it requires to determine whether they are covered by the definition of refugees under the 1951’s Convention or not.

As agreed in the Vienna Convention on the Law of Treaties (1969), when States interpret the extents if their obligations under a treaty, they must do so in good faith, in accordance with the ordinary meaning of the terms used, and in light of treaty’s object and purpose. In arriving at their interpretations, States may examine the prevailing context in which their obligations are to be exercised, any subsequent agreements, and their own national practices. There are also a number of instruments, conclusions and recommendations that reflect political, rather than legal, commitments by States, but that, nonetheless, influence the overall legal framework for refugee protection. These are known as “soft law”. In some specific situations, legally binding resolutions adopted by the United Nations Security Council under Chapter VII of the United Nations Charter may also form the part legal framework for international protection.¹⁶

3.2 The 1951 Convention relating to the Status of Refugees

¹⁴ Abid Bahar, Dynamics of Ethnic Relations in Burmese Society: A Case Study of Interethnic Relations between the Burmese and the Rohingyas, M.A. thesis, University of Windsor, Canada, 1981. See for details: <<http://groups.google.com.vn/group/soc.culture.bengali/msg/80428f57a0e9a903> > accessed on 16th May, 2015.

¹⁵ Ibid

¹⁶ Alida Binte Saqi, “Settlement of Refugee Issues: Application of International Refugee Law”, Research required under the LL.B. programme, NUB, Pg- 14.

The 1951 Convention is the starting point for any discussion about international refugee law. It is one of the two universal refugee instruments; the second is the 1967's Protocol to the 1951 Convention. Within the meaning of the 1951 convention a person may be considered as a refugee as soon as he fulfils the criteria contained in the definition. Determination of the refugee status is a process which takes place in two stages. Firstly, it is necessary to ascertain the relevant facts of the case.

Secondly, the definitions in the 1952 conventions and the 1967 protocol have to be applied to the facts thus ascertains.

The provisions of the 1951 convention defining who is a refugee consist of three parts, which have been termed respectively "inclusion", "cessation" and "exclusion" clauses. The inclusion clauses define the criteria that a person must satisfy in order to be a refugee. They form the positive basis upon which the determination of refugee status is made. To be a refugee, four basic conditions must be met. The applicant must be:

- (a) Outside of his country of origin;
- (b) Have a well-founded fear of persecution;
- (c) This fear must be based on one of five grounds, e.g. race, religion, nationality, membership of a particular social group or political opinion,
- (d) Unable or unwilling to avail himself of the protection of that country, or to return there, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, fear of persecution.¹⁷

The exclusion clauses stipulate that the convention shall not apply to persons who meet the inclusion criteria, but who do not need or deserve protection. This would apply to a person receiving protection or assistance from organs or agencies of the United Nations other than UNHCR; or, a person who has committed a crime against peace, a war crime or a crime against humanity, a serious, common law crime prior to admission to the country of asylum - or an act contrary to the purposes and principles of the United Nations. The cessation clauses stipulate that a person shall no longer be considered a refugee if there has been a fundamental change of political circumstances in the country of origin enabling him to take up renewed residence there.¹⁸

3.3 Major International legal instruments for the protection of refugee:

Like all other nations, Myanmar and Bangladesh are legally obligated to respect and safeguard the fundamental human rights of persons within their borders, regardless of whether they are citizens or refugees. The major international legal instruments which provide protection to the refugees include charters, declarations, and also specific convention. Some of them are the UN charter, the universal declaration of human rights 1948, the convention relating to the status of Refugees 1951 and its protocol 1967, the Geneva conventions, and other specific conventions.

3.3.1 United Nations Charter

The UN charter does not have any specific articles about the refugees however it has very strong commitments to protect and promote basic human rights that also cover rights of all people of the world. The preamble of UN charter expresses the determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,"¹⁹ one of the basic purpose of UN is "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion,"²⁰ under the UN charter article 13(b) the general assembly is given the duty to work on promoting basic human rights and under article 62(2) the Economic and Social Council (ECOSOC) is entitled to make recommendations on the issue. ECOSOC shall also set up commissions for promotion of human rights.

¹⁷ Convention relating to the Status of Refugees, (adopted on 28 July 1951, entered into force on 22 April 1954) 189 UNTS 150, (Refugee Convention 1951), Article- 1 A (2).

¹⁸ Convention Relating to the Status of Refugees, , (adopted on 28 July 1951, entered into force on 22 April 1954) 189 UNTS 150, (Refugee Convention 1951), Article- 1 C.

¹⁹ United Nations Charter, (signed on 26 June 1945 and came into force on 24 October 1945), (UN Charter), preamble.

²⁰ United Nations Charter, (signed on 26 June 1945 and came into force on 24 October 1945), (UN Charter), Chapter –I, Article-1.

3.3.2 Universal Declaration of Human Rights 1948

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights is the basic document in the field of human rights and reserves the right of all the human beings regardless of their legal status the preamble of the document claims the inherent right of human beings to “enjoy freedom of speech and belief and freedom from fear and want”. Under article 14(1) it states that “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” And article 15 states that everyone has the right to nationality and that no one should be denied of nationality.

3.3.3 Convention Relating to the Status of Refugees 1951

To address the question of the millions of refugee in the war torn Europe, the UN organized a conference in the Geneva, the outcome of this conference is the UN Convention Relating to the Status of Refugees 1951, and it came into force in 22 April 1954. The convention is the principal legal instrument for the rights and the obligations of refugees. The 1951 convention is elaboration of the rights of the refugee derived from the 1948 universal declaration of human rights. Defining the conditions under which a person will be called refugee the convention discusses the different rights of refugee and put binding obligation parties of the convention to provide those rights.

3.3.4 The Protocol Relating to the Status of the Refugees 1967

The 1967 protocol relating to the status of the refugee is basically an instrument to update the 1951 convention, and it sets to remove the limitations of the previous document. The definition of refugees provided by the 1951 convention was focused on the European problems. The 1967 protocol removes the geographical barrier of the convention and provide broader definition of will be considered as refugee.

3.3.5 Geneva conventions

The Geneva conventions are the combined name for the four convention 4 conventions each relating to different aspects of human right during the war and wartime behaviour. Among them the 4th Geneva Convention relating to “protection of civilian Persons in time of War 1949” is a significant convention for the protection of human rights. This convention defines the humanitarian protections of a civilian in a war zone and outlaws the practice of total war. There are currently of the 4 conventions. Together the Geneva conventions are concluded into customary international law making them binding on the non-signatories when they engage into armed conflicts.

3.4 Protection of Rohingya Refugees under International Law

Although discussion of law relating to refugees is broken down into four seemingly distinct categories- refugee law, human rights law, humanitarian law, and customary international law- this division is utilized almost exclusively for the purposes of analysis. In addressing international refugee issues, it is essential to recognize the need for integration of the various sources of law in this area. Refugee organizations, human rights groups, state governments, and international agencies should draw from all available sources to accomplish the goals of refugee protection, temporary asylum, voluntary repatriation and resettlement, or permanent asylum in a third country. The refugee and human rights division of the United Nations have acknowledged this need for greater integration.²¹

3.4.1 Refugee Law

To resolve the problem that existed in Europe after World War II, international refugee law was designed to identify persons fleeing persecution in their homeland and to provide them with the protection of the world community.²²

The most far-reaching instruments to address the plight and defence of refugees are the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Founded on the principle of *non-refoulement*²³, international refugee conventions focus on protecting refugees from forcible return to a place- usually the region or state they fled-where they would likely face further harm or persecution.²⁴ Although the

²¹ “The Human Rights of Refugees and Displaced Persons; Protection afforded Refugees”, Lawyers Committee for Human Rights, Humanitarian and Refugee Law, 1991, Pg- 3-5.

²² P. Nanda, “Refugee Law and Policy”, in Refugee Law and Policy international and Vs Responses 3 Ved P. Nanda (ed), 1989, Pg-69.

²³ Convention relating to the Status of Refugee, (adopted on 28 July 1951, entered into force on 22 April 1954) 189 UNTS 150, (Refugee Convention 1951) Article- 33.

²⁴ Supra note 7.

law is applied somewhat differently in individual cases than in mass involuntary movements, principles relating to individual refugees offer a logical point of departure for this inquiry.

In addition to defining who is a "refugee," the Refugee Convention stipulates that countries must safeguard the basic human rights of refugees within their control, without discrimination by race, religion, or national origin. The rights most of concern to humanitarian refugees and temporary asylum-seekers relate to religious freedom, property, freedom of association, welfare, administrative assistance, and freedom of movement

Convention Refugees and Humanitarian Refugees: A "refugee" is defined in the Refugee Convention and Refugee Protocol 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"²⁵ The evolution of refugee law reflects, to a limited degree, the changing reality of refugee crises throughout the world. Since the 1940s, when the international community developed the early legal approaches to address individual cases of persecution, international treaties and national policies have acknowledged the unique problems caused by mass involuntary movements of people striving to escape armed conflict or general human rights abuses. Traditional laws and strategies were particularly ill suited to address the growing problem of large-scale influxes of refugees seeking protection and temporary asylum.²⁶ Such refugees worldwide now outnumber those who meet the individualized persecution definition, so-called "Convention" refugees.²⁷

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.²⁸ Since its inception in 1950, however, the UNHCR's role has evolved and expanded. Beyond requiring merely that protection be provided to those able to demonstrate, on a case-by-case basis, that they meet the "well-founded fear of persecution" standard, the UNHCR's mandate now includes protection for mass migrations of people fleeing war or widespread human rights abuses at home.²⁹ meeting this description have come to be called "humanitarian refugees" or "temporary asylum seekers," as distinguished from so called "Convention" refugees who satisfy the individualized refugee definition. Because the Rohingyas in Bangladesh are properly characterized as humanitarian refugees, or seekers of temporary asylum, this analysis will concentrate on the legal protections applicable to such refugees.

The rights most of concern to humanitarian refugees and temporary asylum-seekers relate to religious freedom,³⁰ property,³¹ freedom of association,³² welfare,³³ administrative assistance,³⁴ and freedom of movement.³⁵ The UNHCR's primary duty is to provide international protection and material assistance to refugees.³⁶ To accomplish these goals, the UNHCR is required by statute to promote refugee admission, assist in voluntary repatriation efforts, supervise the application of international refugee conventions, and promote any other measures designed to better the refugees' situation or reduce the number in need of protection.

Nonrefoulement Principle in the Refugee Convention

The most important provision, of the Refugee Convention 1951, is Article 33(1) which provides that "no Contracting State shall expel or return ('refouler') 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,

²⁵ Convention relating to the Status of Refugees, (adopted on 28 July 1951, entered into force on 22 April 1954) 189 UNTS 150, (Refugee Convention 1951), Article-1 A (2).

²⁶ Nanda, *supra* note 7.

²⁷ Jean-Pierre Hocke, "Lawyers Committee for Human Rights", (the UNHCR 40: Refugee Protection at the Crossroads 53, 1991), website : <<http://lawdigitalcommons.bc.edu/twlj/vol14/iss2/4/>>, last accessed on 26 May, 2015.

²⁸ Convention relating to the Status of Refugees, (adopted on 28 July 1951, entered into force on 22 April 1954) 189 UNTS 150, (Refugee Convention 1951), preamble.

²⁹ *Note on International Protection*, U.N. High Commissioner for Refugees, Executive Committee of the High Commissioner's Programme, 36th Sess., Para. 6, U.N. Doc. A/AC.96/660 (1985). Website: <<http://lawdigitalcommons.bc.edu/twlj/vol14/iss2/4/>>, last accessed on 26 May, 2015.

³⁰ *Supra* note, Article-4.

³¹ *Supra* note, Articles- 13 to 17.

³² *Supra* note, Article-15.

³³ *Supra* note, Articles 20-24.

³⁴ *Supra* note Article-25.

³⁵ *Supra* note Article-26.

³⁶ *Supra* note at 6.

membership of a particular social group or political opinion." While this definition of *non-refoulement* articulates an extremely important guarantee, it suffers from two basic shortcomings. First, Article 33 is binding only on signatories to the Refugee Convention and Protocol. Second, the article fails to grant a specific right to asylum from persecution. Neither Burma nor Bangladesh has signed the Refugee Convention or Refugee Protocol. A legally binding guarantee of asylum is critical for the majority of today's refugees who, like the Rohingyas, have been forced to flee armed conflict or widespread human rights abuses. To meet the demands of a broader class of modern refugees, the principle of *non-refoulement* like the definition of who is a "refugee" has been expanded by state practice beyond the limits of Article 33.³⁷ Persons fleeing internal strife who have been denied protection by their own government, so-called "humanitarian" refugees, have a right not to be returned to their country of origin for as long as hostilities continue and their personal safety is at risk.³⁸

3.4.2 Human Rights Law (UN Charter and the Universal Declaration of Human Rights)

United Nations Charter provides the primary legal source for many subsequent human rights conventions and agreements, and it is the principal international document that both Myanmar and Bangladesh have signed, so it's the main legal framework the Rohingya refugees can earn protection. The UN Charter requires member countries to work individually and jointly to promote higher living standards, solutions to international humanitarian problems, and universal respect for human rights, without discrimination on account of race, sex, language, or religion.³⁹ The principal document in this area of law is the Universal Declaration of Human Rights, "a common standard of achievement for all peoples and all nations," which sets forth many of the basic canons of international law.

The significance of the Universal Declaration for refugees, asylum seekers, and displaced persons lies in the fact that it aims at unconditional guarantees in contrast to the limited or conditional guarantees under refugee or humanitarian law. The statutes and policies of any single sovereignty, therefore, cannot restrict human rights laws applicable to refugees. In addition, the Universal Declaration recognizes a broader general right to asylum than the one set forth in the Refugee Convention and Refugee Protocol. Several provisions of the Universal Declaration apply to refugees in general, and are relevant to the Rohingyas situation in particular:

Article 1. All human beings are born free and equal in dignity and rights;

Article 3. Everyone has the right to life, liberty, and security of person;

Article 5. No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment;

Article 13.2. Everyone has the right to leave any country, including his own, and to return to his country;

Article 14.1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Article 17. Everyone has the right to own property.... No one shall be arbitrarily deprived of his property;

Article 18. Everyone has the right to freedom of thought, conscience, and religion . . . [A]nd to manifest his religion or belief in teaching, practice, worship and observance.

The principal document in this area of law is the Universal Declaration of Human Rights, "a common standard of achievement for all peoples and all nations," which sets forth many of the basic canons of international law. Both Myanmar and Bangladesh have signed the U.N. Charter. Myanmar signed the Charter and became a member of the United Nations on April 19, 1948. Bangladesh signed and gained membership on September 17, 1974. Under Article 4, signatories must formally pledge to abide by the Charter's requirements.⁴⁰ Thereby pledging to achieve "the promotion of universal respect for and observance of human rights and fundamental freedoms" as set forth in the Universal Declaration of Human Rights.

Several other international documents contain terms that pertain to the rights of refugees, such as the Convention on the Elimination of All Forms of Discrimination Against Women (1979), The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Body of Principles for the Protection of All Persons Under Any Form of Detention (1988), and the Convention on the Rights of the Child (1989). In 1991, under pressure from the United Nations Children's Fund (UNICEF), Burma signed and ratified

³⁷ Hailbronner, *Non-refoulement and "Humanitarian" Refugees: Customary International Law or Wishful Legal Thinking?* in *The New Asylum Seekers Refugee Law in the 1980s* David A. Martin (ed), 1988, Pg-105.

³⁸ Ibid.

³⁹ Karen Parker, "The Rights of Refugees under International Humanitarian Law", in *Refugee Law and Policy*, 1995, Pg-33, 34.

⁴⁰ United Nations Charter,(signed on 26 June 1945 and came into force on 24 October 1945), (U.N. CHARTER) Article- 4.

the Convention on the Rights of the Child. Bangladeshi authorities, however, have signed most of these international treaties.

3.4.3 Humanitarian Law

Humanitarian agreements, such as the Geneva Conventions of 1949 and the Protocols Additional to the Geneva Conventions,⁴¹ primarily shield civilian non combatants who have been displaced by armed conflict. The Article-2 of the Geneva Conventions provide widely accepted rules prohibiting violence to physical and mental well-being, torture, mutilation or other cruel treatment, murder, and outrages against personal dignity such as rape or indecent assault. In addition, civilian non combatants have a legal right to humanitarian assistance, as well as a humanitarian right of *non refoulement* and its corresponding guarantee of temporary asylum.⁴² Myanmar has signed the Geneva Conventions, albeit without the two important protocols relating to the protection of victims of international and internal armed conflicts.

3.4.4 Customary International Law

Treaty law, although extensive, fails to address many issues of concern to the international community, such as the protection of persons in refugee-type situations who do not satisfy the Refugee Convention's individualized persecution definition. In order to locate legal protections for refugees in states not party to the international conventions of refugee, human rights, and humanitarian law, we look at the relevant provisions of customary international law. Certain human rights may now be regarded as having entered into the category of customary international law in the light of state practice. These would certainly include the prohibition of torture, genocide and slavery and the principle of non-discrimination. Custom is often called upon to fill the gaps that exist in codified international law.

According to the Statute of the International Court of Justice, customary international law is the general practice of states accepted as law,⁴³ and embodies those general and consistent state practices which states follow from a sense of legal obligation. Although regarded as a secondary source of international law, after established treaty rules, custom is more generally applicable to state practices than are the international agreements executed by government or party officials. In the area of human rights, the law has identified a number of specific principles as *jus cogens*, peremptory norms of conduct from which no deviation is allowed. Hence, a nation may be held to be in breach of inviolable standards of customary international law if it practices, encourages, or condones: "(a) genocide; (b) slavery or slave trade; (c) the murder or causing the disappearance of individuals; (d) torture or other cruel, inhuman, or degrading treatment or punishment; (e) prolonged arbitrary detention; or (f) systematic racial discrimination."⁴⁴

Whereas the practices listed in (a) through (f) are, by definition, "gross" violations of human rights even if committed singly or infrequently, various other acts breach customary law if perpetrated regularly and in accordance with state policy. Thus, a country also violates international law if it practices, encourages, or condones a consistent pattern of gross violations of internationally recognized human rights. Among the abuses deemed "gross" if carried out as part of a consistent pattern are systematic harassment, invasions of the privacy of the home, denial of the right to return to one's country, mass uprooting of a country's population, denial of freedom of conscience and religion, and invidious racial or religious discrimination. Myanmar's military junta has systematically committed each of these violations in army operations directed against the Rohingyas of Arakan.⁴⁵ So, Myanmar can be obliged by the international community for violating these laws.

3.4.5 Non-refoulement Principle and Temporary Refugee

The body of customary international law relating to refugees, temporary asylum seekers, and displaced persons derives from a combination of the international agreements and United Nations conventions discussed above, the general practice and behaviour of states, and the shared legal expectations of all people, including refugees and persons in refugee-type situations. Principal among the relevant customary laws are the right of *non-refoulement* and the right of temporary refuge. Commentators generally agree that *non-refoulement* is

⁴¹ Protocol-II, Additional to the Geneva Convention 1949, (entered into force 7 December, 1978) U.N. Doc. A/32/144, Annexes I and II (1977)

⁴² Fourth Geneva Convention, 1949, (adapted on 12 August, 1949), Article-45.

⁴³ Statute of the International Court of Justice, (adapted on June 26, 1945 and entered into force 24 October, 1945), Article-38(1) (b).

⁴⁴ Lawrence M. Freidman, "The United States-China Act of 1991" and Customary International Law, Boston College Third World Law Journal, Volume- 13, 1993, Pg- 257, 264.

⁴⁵ Myanmar: Rape, Forced Labour and Religious Persecution in Northern Arakan, Asia Watch, Volume-15, 2012, Pg- 56.

presently considered a peremptory norm of customary international law, and that temporary refuge is an emerging norm.

3.4.5.1 Non-refoulement under Customary Law

According to the High Commissioner for Refugees, the most fundamental of protection principles and the first of refugee rights is that of *non-refoulement*. This principle is today considered as part of general international law. The right of *non-refoulement* provides protection for those whose lives or freedom would be threatened if they returned to their homeland.

Expansion of the rule beyond Article 33 of the Refugee Convention embraces a larger class of "humanitarian" refugees: persons not receiving protection from the government of their own nation who have sought temporary asylum in a third country. Certain conditions trigger this broader principle of *non-refoulement* and the protection it entails. Thus, a state may not return foreigners to a country known to produce refugees or possess a record of persistent human rights abuses, nor to a country engaged in civil war or internal disruption, unless such forcible return can be justified by conditions in the returnees' home country. The existence of a plan for involuntary repatriation therefore places on the returning state the burden of dispelling concerns that the refugees will suffer abuse or persecution upon their return.

Additionally, there exists under human rights law the freedom not to be returned to a nation with a record of widespread or egregious human rights abuse. 'When torture is alleged under human rights law, the right of *non-refoulement* arises when the country of origin tortures or is a gross violator of human rights.'⁴⁶ Because Myanmar under the SLORC (State Law and Order Restoration Council) fits this definition,⁴⁷ international human rights principles protect the Rohingyas against forced expulsion from Bangladesh.

3.4.5.2 Temporary Refugee under Customary International Law

Closely related to the principle of *non-refoulement* is the right of temporary refuge, an important concept for the majority of present day refugees who, although they seek protection from internal strife until conditions improve at home, do not intend to remain permanently in a third country. Like *non-refoulement*, temporary refuge entails a ban on forced repatriation. Although the two concepts are often equated, temporary refuge is properly characterized *not* as an expansion of modern refugee doctrine, but as a norm derived from customary humanitarian law. The right of temporary refuge applies to persons suffering as a consequence of ongoing armed conflict in their country of origin. Persons seeking temporary refuge generally are not themselves the targets of persecution or the victims of an intentional failure to provide protection; rather, they are innocents who *in fact* cannot rely on the government for their safety.

A grant of temporary asylum merely acknowledges a state's inability to safeguard its inhabitants, without assigning blame to the government of the refugees' country of origin. The ban on forced repatriation continues until the armed conflict at home ends and the country of origin can guarantee the security of its nationals. In practice, the UNHCR routinely merges this evolving norm of temporary asylum with the ingrained concept of *non-refoulement*, and treats persons who seek protection under conditions relevant to either principle as refugees. The UNHCR has also indicated that seekers of temporary refugee do not necessarily enjoy the full range of protections provided under the Refugee Convention and Refugee Protocol.

3.6 Conclusion

It may be borne in mind that refugee issues have impact on social and economic costs and require pragmatic approach. In dealing with the crisis; making a proper framework and laws for the management of the refugees in Bangladesh; confining the refugees in designated camps and keeping them under strict security to prevent their melting away into the neighbouring villages; Ensuring food, shelter and medicine in the camps enough for survival; and arranging the repatriation of the refugees with the Myanmar authorities without internationalizing the issue. Many of these efforts have not achieved the desired level of success. Repatriation is not the only solution for recent trends. It is the problem of Myanmar that they have created, a situation where a section of their people has to flee across the border for saving their life. Bangladesh either should go for a bilateral diplomatic approach or for an international approach. It seems that Myanmar has acknowledged the persecution of its stateless Rohingya Muslim minority and is considering giving citizenship to thousands of members of the group as a first step to finding a solution to the conflict with local Rakhine

⁴⁶ Guy S. Goodwill-Gill, "The Refugee in International Law", Oxford University Publication, 1983, Pg-73.

⁴⁷ Ibid.

Buddhists.⁴⁸ Cooperative and combined effort can assist in alleviating problems and assist refugees to participate to the fullest extent possible in their life in Bangladesh and following their return in Myanmar

IV. The Present Status of Rohingyas in Bangladesh and its Obligations under International laws and Constitutional Framework

4.1 Introduction

The Rohingyas are the descendants of Arabic sea farers and the real native of Arakan, the Rakhine state of Myanmar. They have been expelled earlier by the State Law and Order Restoration Council due to their Muslim identity since Myanmar as a Buddhists dominated nation discriminates against Muslims. Medecins Sans Frontiers (MSF) and the Office of the United Nations High Commissioner for Refugees (UNHCR) consider them as one of the most persecuted people in the world.⁴⁹ The 1962 military coup in Myanmar put an end to Muslim political activity, since it banned other forms of political organization, and brought about a more rigid stance toward minorities. New policies effectively denied citizenship status of the Rohingyas and more specifically the passing of the 1982 Citizenship law deemed them officially stateless. Although during the Burmese post-independence period Rohingyas claim of separate ethnic identity was recognized by the democratic Govt. of Premiere U Nu (1948-1958).⁵⁰

There are significant cultural and socio-economic differences between the Rohingya and local populations and there are many challenges to find out a durable solution regarding Rohingya refugee. Many factors are accountable in the protections of refugees in any country and Bangladesh is no exception to this.⁵¹ Bangladesh, being a developing country and not a party to the United Nations Convention Relating to the Status of Refugees 1951 and to its Protocol 1967, has been hosting a large number of refugees and displaced persons on humanitarian grounds since inception. This chapter aims at finding out the obligations of Bangladesh towards Rohingyas as refugee under international instruments and constitutional framework. This chapter will also explore a balancing act between the protection needs of Rohingyas and the security interest of Bangladesh.

4.2 Obligation of Bangladesh under International Instruments

It is axiomatic that Bangladesh is not a party to the 1951 Refugee Convention or the UNHCR Statute⁵²; however, Bangladesh has ratified a number of major international human rights instruments. Among them the significant ones are the Universal Declaration of Human Rights (UDHR)⁵³, Four Geneva Convention of 1949 and their two Additional Protocols of 1977; International Covenant on Civil and Political Rights (ICCPR)⁵⁴; International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵⁵; Convention on the Rights of the Child (CRC)⁵⁶; Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)⁵⁷; Convention Against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (CAT)⁵⁸. All of these instruments have a bearing upon Bangladesh's obligation to protect refugees.

In so far as the UDHR is concerned all persons are granted the right to life, liberty and security of person; freedom from slavery; freedom from torture and cruel, inhuman or degrading punishment; the right to be recognized as a person before law; equality before law. Even though the refugees are foreigners in the country of asylum, by virtue Article- 2 of ICCPR they could enjoy the same fundamental rights and freedoms as

⁴⁸ See for details <http://www.telegraph.co.uk/news/worldnews/asia/burmayanmar/9648329/Burma-considers-citizenship-for-Rohingya-Muslims.html> accessed on 23 May, 2015.

⁴⁹ Ian G. Robinson and Iffat S. Rahman, "The Unknown Fate of the Stateless Rohingya", Oxford Monitor of Forced Migration, Volume 2, Pg-16.

⁵⁰ Imtiaz Ahmed, "The Plight of Stateless Rohingyas: Responses of the State, Society and International Community", University Press Limited, Dhaka, 2010, Pg- 37.

⁵¹ C. R. Abrar, "Legal Protection of Refugees in South Asia", Forced Migration Review, Volume-10, 2004, Pg-1.

⁵² Statutes of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, see for details: <www.refworld.org/docId/3ae6b3628.html>, accessed on 28 May, 2015.

⁵³ Universal Declaration of Human Rights, (adapted on 10th December, 1948), UNGA Res 217 A (III) (UDHR).

⁵⁴ International Covenant on Civil and Political Rights, (adopted on 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁵⁵ International Covenant on Economic, Social and Cultural Rights, (adapted on 16th December 1966, entered into force 3 January 1976), 999 UNTS 171 (ICESCR).

⁵⁶ Convention on the Rights of the Child, (adapted on 20 November 1989, entered into force 2 September, 1990) 1577 UNTS, (CRC).

⁵⁷ Convention on the Elimination of all forms of Discrimination against Women, (adapted on 18 December 1979, entered into force 3 September 1981), 1249 UNTS, (CEDAW).

⁵⁸ Convention Against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, (adapted on 10 December 1984, entered into force 26 June 1987), 1465 UNTS, (CAT).

nationals. The right to equality before law, equal protection of law and non-discrimination which form a cornerstone of international human rights law appear to ban discrimination against refugee based on their status and such. The Vienna Declaration and programme of action of the world conference on human rights, 1993 also reaffirmed the right of every person to seek and enjoy asylum. Furthermore, the CRC also obliged the state party to take care of the interest and the rights of the refugee children including their birth registration.

In addition to the above instruments, Bangladesh ratified, through the General Assembly, the United Nations Declaration on Territorial Asylum, which strengthens its obligation and protection, asylum and *non-refoulement*. It is also a party to the international Labour Organization's Convention No. 118, which provides for social security to refugees and stateless person in addition to other persons in the territory of the signatory states. Additionally, Bangladesh has been a member of Executive Committee of the High Commissioner's Programme (EXCOM) since 1995.⁵⁹ EXCOM, a body composed of 94 governments, oversees UNHCR's budgets and advises on refugee protection. Bangladesh membership in the EXCOM is certainly indicative of its particular interest and greater commitment to the refugee matters.

4.3 Obligations of Bangladesh under Constitutional Framework

The legal system of Bangladesh is grounded in the constitution of the People's Republic of Bangladesh. At its core, the constitution upholds the dignity of individuals. Its central plank is the guarantee that life and liberty of individuals are protected. Not only is the life of citizen of Bangladesh guaranteed, but also everyone who inhabits the terrain in this country is assured of protection in respect of life and liberty.

The fundamental principles of state policy of the constitution essentially reflect international law and the principles enunciated in the UN Charter. Article-25 of the constitution states that-
“.....the state shall base its international relations on the principle of respect forinternational law and the principles enunciated in the United Nations Charter”.

Part III of the Constitution guarantees a series of fundamental human rights, drawing heavily from international human rights discourse. Article -27 of the Constitution provides equal protection of law for all. Article- 31 provides that not only the citizens are entitled to have the protection of law but the foreigners (non-citizen) who for the time being are staying in the country are also entitled to have so. Furthermore, Article-32 states that, “no person shall be deprived of life and liberty save in accordance with law.” It is to be noted that the word ‘person’ and not ‘citizen’ has been used in Article-32 and therefore it is argued that any person, irrespective of whether he or she is a citizen of Bangladesh, he/she cannot be deprived of his/her life or liberty once that person is on the soil of Bangladesh. The Constitution also guarantees right to life and personal liberty; safeguards from arbitrary arrests and detention; prohibition of forced labour; right of fair trial; freedom of movement, assembly, association, freedom of expressions, profession or occupation, religion; right to property, etc.⁶⁰

However, for the translation and the execution of these Constitutional provisions in the interests of the refugees, needs comprehensive legal interpretations and proactive initiatives from the government. Till now, there is no significant indication in this regard.⁶¹ However, the relative success of Bangladesh's policy of dealing with refugees in an *ad hoc* manner without committing itself to a general statutory framework has silenced demands for a law concerning refugees as a separate class.

4.4 Present Status of Rohingyas in Bangladesh

The Rohingya refugee situation in Bangladesh is one of the most protracted in the world, with almost twenty years of continuous camp settlements in some areas in the most recent period. Regarding Rohingya issue Bangladesh is forced into face off with the UN agency UNHCR. According to UNHCR report on 25 February 2010, a total of 250,877 Rohingya refugee entered Bangladesh in the year of 1991-1992. Of them 236,599 refugees have been repatriated. But the Rohingya influx has increased after 1992. A total of 30,325 registered refugees including linked members of refugees are residing in two registered camp at Kutupalong and Nayapara. Besides, a total of 15,000 refugees reside in Leda refugee camp in Teknaf and a total of 55,000 refugees live in an unregistered camp near Kutupalong. At present a total of about 450,000 unregistered refugees live in different places in Cox's Bazar and Bandarban district. In Bangladesh four refugee camps- two UNHCR recognized camps and the other two are not recognized camps by UNHCR and govt. Rohingya inside the

⁵⁹ See for details: <<http://www.unhcr.org/pages/49c3646c89.html> > accessed on 28th May, 2015.

⁶⁰ See for details Part III of the Constitution of the People's Republic of Bangladesh.

⁶¹ Zakir Hossain, 'Journey to Solution of Rohingya Refugee Crisis: A National Consultation United Nations High Commission for Refugee', A Key Note Paper Presented in a Seminar at Nabab Nawab Ali Chowdhury Senate Bhavan, University of Dhaka, 23 September, 2012, Pg-22.

refugee camps are ‘Myanmarese Refugees’ and whereas the Rohingya people staying outside the camps are undocumented ‘Myanmarese Nationals’.

In Bangladesh, the Rohingyas are provided with hardly any protection from their host country. As a burden to densely populated country, the Rohingyas are living in a harsh life in a refugee camps, struggling from malnutrition, isolation, illiteracy and neglect. ⁶²the negative effects for Rohingyas are given as follows:

4.4.1 Security and Immigration Concerns

The Myanmar refugees and undocumented nationals are posing a serious threat to the security, stability and image of the country through their involvement in serious crime including drug and human trafficking, smuggling, robbery and other organised crimes. In the recent months we see those devastated reports on the newspaper and electronic media that about 8,000 Rohingyas including Bangladeshi people were stranded at sea because of human trafficking. ⁶³ And as a consequence at least 140 mass graves found in Thailand and about 139 found in Malaysia. ⁶⁴There have also been confirmed reports that these illegal Myanmar nationals are obtaining passports to go to Saudi Arab through fraudulent means, falsification of national ID cards and birth certificates which causing huge embarrassment for the Bangladesh community living in Saudi Arabia following their arrests for unruly and unethical behaviour and practices. It is also spoils the international relations between Bangladesh and Saudi Arabia. Recently some Myanmar refugees have also been arrested, while they are trying to go abroad using forged Bangladeshi passports.

4.4.2 Socio-economic Concerns

The Rohingyas offer services at a much lower level than the local population and such practices are upsetting the job market in the region. Rohingya refugees are facing shortage of foods as they are not being able to go for work because of the security along the border and the fear of arrest. The refugee from unregistered refugee camps are depending on their own selves for their life struggle by working outside the camp as day labour, cultivation labour, rickshaw puller and fishing industry workers. The restriction was made by the camp authorities not allowing the refugees to go out. The govt. of Bangladesh has deployed security forces on the border areas where the refugee camps are situated.

4.4.3 Environmental Problems

The Rohingya refugees are living in congested areas both inside and outside of the camps. The houses are bad in shape and the sanitation is very poor. It has been seen by a human rights research and advocacy organization that more than 72.72% of the undocumented refugees are illiterate and their living conditions are beneath human dignity with little exposure to sanitary toilets and clean drinking water. Hence, the environment around the camps and outside has been deteriorating over the years. The population density is extremely high on that area. The environment is polluted by the refugees which is largely an outcome of their ignorance. All the sewerage flows into Naf River, spoiling the purity of the river water. The above picture paints a dismal life of the refugees.

4.4.4 Border Surveillance Problem

BGB remains very busy in sending back a very large number of Myanmar nationals attempting to cross the border illegally. And yet there may have been more entries due to lack of adequate number BGBs along the Bangladesh Myanmar borders.

4.5 Conclusion

A progressive and optimistic national policy on Rohingya refugee should be taken on immediately. Government should closely monitor and guide the activities of international organizations and NGOs. Further refugee infiltration should be stopped by all possible means. Efforts should be taken urgently to organize seminar, symposium at national and international level to familiarise the issue worldwide and, thus achieve global support by creating awareness. Bangladesh should expedite its diplomatic effort to bring the regional power in confidence as regards to this issue. Involvement of United Nations (UN), European Commission (EC), South Asian Association for Regional Co-operation (SAARC), and Association of South-East Asian Nations (ASEAN) may be sought to materialize our refugee repatriation plan.

⁶² See for details: << <http://www.msf.fr/files/2002-03-01-Wiggers.pdf>>> accessed on 29th May, 2015.

⁶³ “Rohingyas stranded at sea”, *The Daily Star*, (Dhaka, 16th May, 2015), Front page.

⁶⁴ Ibid.

V. Conclusion by way of Recommendation

5.1 Conclusion:

It is important to recognize that international legal principles such as *non-refoulement* temporary refuge provide nothing more than interim solution to a much larger and more difficult set of problems. The United Nations, the international community and international laws obligates all affected states to work towards albeiting the cause mass refugee migration, be they overt human rights abuses or merely intolerably dangerous living conditions. The United Nations and the International community should work to remove the military regime from power and to replace it with a democratically elected government in Myanmar. Solving the underline animosities and conflicts that produce mass refugee populations would eliminate the need for permanent or temporary third country asylum altogether. Nevertheless, by pursuing all available means to secure international protection, humanitarian assistance and voluntary return or settlement, today's refugees including the Rohingyas of Arakan may become tomorrows recognized and respected national citizens. Although, humanitarian instinct often provided the considerable degree of protection for refugees in Bangladesh, there are also critical gaps and constraints can be traced to the lack of national laws, institutions and also non-association to International Refugee instruments.

The regional regime for refugees shall allow harmonization of refugee policies and practices in the region and encourage regional co-operation to solve the refugee problems. This should clarify the respective responsibilities of the country of origin as well as the country of asylum thereby increasing the prospects for solution and burden sharing. Furthermore, regional consensus on how to deal with refugee problems can help to depoliticize the issue, thereby reducing tensions between states.

5.1 Recommendations:

The United Nations and the International community must therefore devise means of bringing the force of law to bear order to prevent a disastrous outcome of the current Rohingya Refugee crisis. This part recommends various measures that could be taken to persuade Myanmar and Bangladeshi Governments to provide the refugees with the protection and assistance required under international law. Although their legal responsibilities are clear an unavoidable, international law does not amount to much without some procedure to enforce it. Devising an enforcement strategy necessitate moving outside the realm of law to a consideration of solutions attainable via humanitarian assistance and diplomatic intervention. The international community, through the leadership of UNHCR and other multilateral organizations, should pursue three goals with respect to Rohingya refugees in Bangladesh.

First, Bangladeshi officials must guarantee the safety of the Rohingyas in the camps, and must utilize available humanitarian assistance to provide the refugees with adequate services: food, shelter, sanitation and medical care.

Second, UNHCR personnel should monitor the actual repatriation process to ensure that refugees who have expressed the desire to remain in Bangladesh would not be returned against their will. The UNHCR should resume confidential screening of individual refugees, and compile lists of all persons seeking to leave the camps and resettle in Myanmar. For all, who do wish to return home, Bangladesh should safe repatriation to Arakan.

Third, the UNHCR and other international organizations should assist of the resettlement of the returnees inside Arakan, including delivering basic services and monitoring the activities of Burmese military forces in the region. In order to achieve these three goals, the United Nations and involved members of the international community must simultaneously pursue two distinct courses action, one humanitarian and the other diplomatic.

Equally, regional mechanisms are an important means of strengthening refugee protection as well as finding solution to refugee problems. Since there is no national standard for caring to refugees is left to the states in South Asian region. As a result, there are wide variations in refugee treatment which reflected on politics, socio-economic conditions. The proposed model law on refugees for the SAARC countries can be a good source of inspiration in drafting such legislation. Adaption of model with necessary modification peculiar to the specific nature of refugee dynamics, of course, would not exclude from the agenda the question of accession to international refugee instruments and establishments of regional mechanisms.

Bangladesh shall provide domestic law on the light of international principle to protect the refugees in its territory. And also, international pressure should be increased on Myanmar to accept Rohingyas as its nationals and to grant citizenship like other ethnic groups.

Al the international laws are guided for the betterment of the huma kind on this earth. But when the purpose is not served by the principles for which it was established then it all will go in vain. Rohingya are human but not thieves or animals, as the international communities are supporting them as it is required to do. They have been persecuted for a long year by Myanmar's Buddhists majority, and till now there is no such sufficient response to solve the issue. So it is the high time to solve it by applying the international laws.