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**FOREWORD BY EDITOR-IN CHIEF**

*Prof. (Dr.) Yubaraj Sangroula*

**FEATURE ARTICLE**

Emergence of Principle of Sic Utere Tuo Ut  
Alienum Non-Laedes in Environmental Law and  
Its Endorsement by International and National  
Courts: An Assessment

*T.R. Subramanya and Shuvro Prosun Sarker*

**ARTICLES**

The Problem of Rohingya Refugees in Bangladesh:  
A Critical Analysis

*Nour Mohammad*

Round Tripping and Treaty Shopping:  
Controversies in Bilateral Agreements & Remedies  
Forward-The Double Taxation Avoidance  
Agreement (DTAA) between Mauritius and India  
and the Dilemma

*Rajendra Prasad Gumpth, Anupam Jha and Samperchand  
Pudaruth*

Hindu Kush Himalayan Ecosystem as a Common  
Concern of Humankind: Imperative for Better  
Regional Jurisprudence

*Debasis Poddar*

Citizens of an Enemy State: The Enemy Alien  
Disability Rule in the Constitution of Nepal

*Prakat Khatri and Kundan Raj Sharma*

Protection of Traditional Knowledge: Emerging  
Issue of Intellectual Property Law

*Madhu Soodan Poudyal*

Status of Differently-abled Persons in Work Place:  
A Study of Courts inside Kathmandu Valley

*Anupa Aryal*

Conflict of Laws: Jurisdiction of the Court and  
Choice of Law in Cross-Border Matrimonial Suit  
in India

*Indrani Kundu*

Judicial Activism in Regulating 'Human Rights  
Violations' by Police Authorities in India

*Sandeepa Bhat B.*

An Appraisal of Tourism Law: Eclectic in Nature

*Narayan Prasad Giri*

Right to Education and Employment: A Step Towards  
Empowering Transgender Community

*Naresh Kumar Vats and Megha Purohit*

The Rise of Digital Era: A Changing Scenario  
of E-governance in Nepal

*Ojaswi K.C. and Roshani Regmi*

The Extra-Territorial Applicability of the  
Principle of Non-Refoulement and Its  
Interception with Human Rights Law

*Shishir Lamichhane*

'A Right to Water' in International Human Rights  
Law: Flow from Implicit to Explicit Right

*Swechhya Sangroula*

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# The Problem of Rohingya Refugees in Bangladesh: A Critical Analysis

Nour Mohammad\*

## Abstract

*International refugee law is a part of international human rights law, which advocates for the protection and assistance of refugees around the world. Presently the problem of refugee and internally displaced persons (IDPs) are major challenging issues of the globe. The Greek philosopher Euripides, in 431, recognized that “there is no greater sorrow on earth than the loss of one’s native land.”<sup>1</sup> However, where humankind has existed there have been refugees as well. So refugee problem is not a new phenomenon, it has a long historical background. The huge influx of Rohingya refugees has begun from the beginning of this century and number has gradually increased from that period. Now it is a major concern of international human rights and humanitarian law in Bangladesh.<sup>2</sup> The paper critically analysis and tries to identifies the international law on refugees and the influx of Rohingya refugees being faced by Bangladesh over the years. The paper deals with the Convention Relating to the Status of Refugees 1951 for the protection and assistance of the refugees and regional instruments adopted to address the refugees’ situation in the South Asian region.<sup>3</sup>*

## Introduction

Bangladesh has been facing a refugee problem since 1971, during the period of Liberation war where 10 million Bangladeshi people took shelter as refugee in India. Thereafter the mass Rohingya influx appeared in 1978s as a huge number of Rohingya refugees crossed the border of Burma and took shelter in Cox’s Bazar district in Bangladesh because of fear of persecution in their home country. Bangladesh has received the Rohingya refugees on humanitarian basis and provided the assistance and shelter as her capacity. Due to limited resources, Bangladesh is not able to provide full assistance and support to them to stay for a longer period.

Although Bangladesh has not ratified the Convention Relating to the Status of Refugees 1951 and its 1967 Protocol like some other South Asian countries, the Convention is largely seen as a product of the Cold War and is eurocentric in nature. Both the Convention and Protocol create the universality of atmosphere for the protection of refugees but South Asian countries are claiming that the main problem of refugees and internally displaced person (IDPs) in the Asia

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<sup>1</sup> Grant, Trevor. ‘No Greater Sorrow than the Loss of One’s Native Land’, Journalists for Democracy in Sri Lanka, 18 May 2014, available at <http://www.jdslanka.org/index.php/analysis-reviews/human-rights/458-no-greater-sorrow-than-the-loss-of-ones-native-land>, accessed on 20 September 2017.

<sup>2</sup> Susane Schmeidi, *Political Turmoil and Forced Migration*, New York, 1995, p.41

<sup>3</sup> *The Convention Relating to the Status of Refugees*, 189 UNTS 147 adopted on 28 July 1951 (Refugee Convention)

region is not included in the Convention and its Protocol.<sup>4</sup> In fact, in the twenty first century, the problem of refugees, migrants and asylum seekers have been identified as one of the major challenges for the protection of refugees in national, regional and global governance.<sup>5</sup>

Bangladesh has a long history of hosting Rohingya refugees and performing humanitarian obligations towards them in its territories. Moreover, Bangladesh is neither a party to the Refugee Convention nor its Protocol but under the principle of *Non Refoulement* and other principles of customary international laws, Bangladesh has an obligation to protect and provide shelter to the Rohingya refugees those come from Myanmar and in no way can avoid this responsibility for providing assistance to them.<sup>6</sup> However, the 1951 Convention in article 33(2) provides “state may reject the refugees’ application and restrict their entry into the territory owing to national security and state policy.”<sup>7</sup>

The main purpose of this paper is to deal with the present situation of Rohingya refugees in Bangladesh by exploring their historical background and origin that has great concern for both the countries. This paper also aims to evaluate the protection and obligation mechanism followed by Bangladesh as a hosting country and envisages that Rohingya refugee dispute in this region be solved. Finally, it tries to find out the reasons for solving the Rohingya problem in this region.

### **Development of International Refugee Law: The History of Rohingya Refugees**

The history of the Rohingya dates back to the British colonial period. Their forefathers had been settling in Northern Rakhine state (Known Arakan) from the period of 16<sup>th</sup> century. The Muslim Rohingya are ethnic, linguistic, and religious minority group who fled persecution from Myanmar’s Northern Rakhine state a decade ago. But the state does not recognize them as a national minority since 1974 when the government officially denied their citizenship.<sup>8</sup> They came to Bangladesh in two major exoduses in 1978 and 1992 respectively.

During the year of 1978, more than 200,000 uprooted Rohingya refugees including men, women and children illegally entered and took shelter in Bangladesh. The government of Bangladesh had accepted the refugees and set up 20 camps in Cox’s Bazar and Bandarban to accommodate the refugees with

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<sup>4</sup> Davies, S. ‘The Asian Rejection: International Refugee Law in Asia’, *Australian Journal of Politics and History*, 2006, p.570

<sup>5</sup> Rashid, Ur, H. (2000) *The Refugee Law: With Case Laws and Materials*, 1<sup>st</sup> edition, Anupam Gyan Bhandar, Dhaka.

<sup>6</sup> B Gorlick & B Barbour, *New Issues in Refugee Research, Embracing the Responsibility to Protect: A Repertoire of Measures Including Asylum for Potential Victims*, Research Paper No-159, UNHCR office in New York 2008.

<sup>7</sup> *Refugee Convention* (n 3), art. 33(2)

<sup>8</sup> A, Faruque Al, *International Human Rights Law: Protection Mechanisms and Contemporary Issues*, 1<sup>st</sup> edition, New Warsi Book Corporation, Dhaka 2012, p. 270

temporary shelter, food, and medical care.<sup>9</sup> During the period of 1979-1980, many of them were repatriated to the northern Myanmar and the remaining about 30,000 Rohingya are residing in two registered camps at Kutupalong and Nayapara<sup>10</sup> in Cox's Bazar district, the South Eastern side of Bangladesh.

During the years of 1991-1992's mass movement, approximately 250,000 Rohingya refugees fled to Bangladesh. There was a bilateral agreement between the governments to repatriate the Rohingya refugees in 1992. A major portion of Rohingya refugees has been repatriated in 1992 through a bilateral agreement between Myanmar and Bangladesh. The rest of the undocumented Rohingya are residing in different parts of Chittagong Division. According to a UNHCR report of 2010,<sup>11</sup> besides these two camps, a total of 15,000 refugees are living in Leda-an unofficial refugee camp in Teknaf; and total of 55,000 refugees are residing in an unregistered camp near places at Kutupalong.

However, more than 200,000 unregistered refugees are living in different places, especially in Cox's Bazar and Babdarban district, under the generosity of Bangladesh and with the aid of UNHCR for over 35 years. In 1992, the influx of Rohingya refugees has increased by reason of widespread forced labour, summary execution, physical torture, sexual harassment and rape by the Burmese army. Many other forms of human rights violation occurred in the context of forced labour of Rohingya civilians by the security forces<sup>12</sup>. After 1992, the government of Bangladesh (GoB) actually did not recognize any Rohingya as a refugee. The government source implies that approximately 200,000 and 400,000 Rohingya refugees come to Bangladesh over the last few decades and most of them have not received any assistance either from government of Bangladesh or the international community.<sup>13</sup> In 2012, Myanmar government declared a state of emergency for a deadly clash between Buddhist and the Muslim community; and during this time a huge Rohingya troop fled to Bangladesh. This is the first time the government of Bangladesh refused to accommodate the Rohingya refugees because of national security concerns and economic burden to the country<sup>14</sup>. The Rohingya refugees, who were staying in Bangladesh for more than 25 years, have no contribution in any economic and socio-developmental activities to the host country. Bangladesh is already an overpopulated country and not capable to bear this burden.<sup>15</sup> It would be erroneous to say that the Rohingya refugees were being forced back to Burma. The border security guard did not force them to go back. They only persuaded them to go back to their own country.<sup>16</sup> Government of

<sup>9</sup> Abdullah, Al. F. Plight of Rohingya Refugees in Bangladesh: Legal Aspects of the Problem in Nasir Uddin (ed), *To Host or Hurt: Counter-Narratives on Rohingya Refugee Issue in Bangladesh*, Institute of Culture & Development Research (ICDR), Dhaka, 2012.

<sup>10</sup> A. Azad and F. Jasmin, 'Durable Solutions to the Protracted Refugee Situation: The Case of Rohingyas in Bangladesh' vol.1, *Journal of Indian Research*, 2013 p. 25,

<sup>11</sup> See Report of the WFP-UNHCR Joint Assessment Mission, 30<sup>th</sup> May-14<sup>th</sup> June, 2010.

<sup>12</sup> Islam, Z., Md. 'Rohingya Refugee Problem: A Burden on Bangladesh' *Daily Sun*, Dhaka, Bangladesh 8 June, 2012

<sup>13</sup> Abdullah (n 9).

<sup>14</sup> Al Imran and F.H, Mian, N. 'The Rohingya Refugees in Bangladesh: Vulnerable Group in Law and Policy', *Journal of Social Sciences*, p. 233, 2014.

<sup>15</sup> Interview with Sheikh Hasina, Prime Minister of Bangladesh, Print Media, 28 July 2012.

<sup>16</sup> Ibid

Bangladesh tried to negotiate with the Myanmar government to create a congenial atmosphere to return the refugees to their home country.<sup>17</sup> However, Bangladesh government endeavors to provide all assistance to the Rohingya refugees and has tried to resettle them in any third country with negotiation to that country.

### Definitional Dilemma of the Term 'Refugee'

The problem of refugees is a growing and complex humanitarian issue around the world today. The international community has given due attention to the increasing number of refugees in recent years. Many states and international organizations have taken initiatives to support the refugees for their rehabilitation and repatriation but the problem of refugees still remains tough in the modern world. People who are forced to flee from their countries due to fear of persecution, whether on an individual basis or as a part of a large influx due to religion, nationality, political opinion and a member of particular social group are considered as refugee.<sup>18</sup> After the First World War, the term refugee has been defined under the auspices of the League of Nations in different aspect based on the national legislation of the state parties. But this definition did not gain unanimity among the state parties to the League of Nations. As a result, the definition of refugee varies in instruments and places around the world.<sup>19</sup>

After the establishment of United Nations (UN), the Charter has emphasized for the protection and promotion of human rights for all human beings without any distinctions. For this purpose, the United Nations Convention Relating to the Status of Refugees was adopted in 1951 for specifying the definition of refugee. According to the Convention, refugee is defined as a 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 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 it.<sup>20</sup>

Therefore, the Refugee Convention essentially identified those people who were the victims of the World War II and related to the atmosphere of European situation. According to article 1 paragraph 2 of the Convention, it is applied for those who had become refugees before 1 January 1951. For that reason, it was called Eurocentric convention. Later a Protocol to the Refugee Convention was adopted in 1967 that was an extra addition to broaden the concept of refugees and removes the barrier of geographical and temporal limitations envisaged in the

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<sup>17</sup> See Human Right Watch, *Bangladesh: Assist, Protect Rohingya Refugees*, 2012.

<sup>18</sup> R. Ullah, Protection of Human Rights of Refugees: An Overview, vol.10, The Chittagong University Journal of Law, p.134, 2005.

<sup>19</sup> S. Goodwin-Gill Guy, *The Refugee in International Law*, 3<sup>rd</sup> edition, Oxford University Press, 2007, p.4

<sup>20</sup> *Refugee Convention* (n 3), art. 1(a)(2)

1951 Refugee Convention. The Protocol of the Convention has a universal nature for the protection of refugees in the contemporary world.<sup>21</sup>

### Reasons for Non-Accession of Bangladesh to the 1951 Convention

As noted earlier, Bangladesh is neither a party to the 1951 Convention nor its protocol. Although, the legislative legal framework provides indirect protection to Rohingya refugees in Bangladesh, there is no clear cut declaration on behalf of the government for non-ratification of the 1951 Convention and its Protocol 1967. It is argued that the definition of refugee in 1951 Convention is much more regional rather than universal in nature. The Convention was the result of the Cold War and based on a Eurocentric system. The conventional definition of refugee is too restrictive in contemporary context and does not meet the demand of different kinds of refugees like climate refugees, boat refugees, and Rohingya refugees in Bangladesh. The 1951 Convention has also omitted two important issues: the voluntary repatriation and responsibility of the receiving state on refugees. Bangladesh is geographically linked with Myanmar and shares a common border of approximately 271 kilometers in the South-East side of the country. There is also a historical relationship between Bangladesh and Myanmar, which is the common history, culture and politics from colonial and postcolonial period of time. The common assumption is that south Asian states are the largest host countries in the world constituting nearly about 12% of the total refugees around the world.<sup>22</sup> Bangladesh is especially receiving the Rohingya refugees from its neighboring country Myanmar.

Frequently, the government of Bangladesh has justified the reasons for non-accession to the 1951 Convention and its Protocol. The main reasons for non-ratification of the Convention are as follows:

- (a) The Convention is considered Euro-centric and emphasizes on geo-political issue rather than addressing other situation of refugees.
- (b) The refugee issue can be solved in a meaningful way through bilateral agreement.
- (c) Accession to the Convention and its Protocol creates the undue intervention of the United Nations Agencies.
- (d) Accession to the Convention may put a pressure on the country to provide assistance to the Rohingya refugees.
- (e) Accession to the Convention creates an obligation to the host country to follow the principles of *Non Refouelment*.
- (f) Accession to the Convention officially recognizes and supports them in an emergency situation.
- (g) The existing contemporary law and constitutional guarantee and practices could be used for the Rohingya refugees' protection.

<sup>21</sup> Faruque, Al, A. *International Human Rights Law: Protection Mechanisms and Contemporary Issues*, 1<sup>st</sup> edition, New Warsi Book Corporation, Dhaka 2012, p. 276.

<sup>22</sup> Available at <http://en.wikipedia.org/wiki/Refugee>, Accessed on 10 June 2015.

- (h) The major issue for non-accession to the 1951 Convention is that it does not cover the issue of smuggling, economic migrants, climate refugees, boat refugees as well as human trafficking.<sup>23</sup>

The above arguments are not specific or convincing for the non-accession to the 1951 Convention. There are some others agencies like the UN General Assembly, Economic and Social Council and the United Nations High Commissioner for Refugees (UNHCR); and they have responded to the non-European refugees' situation. Thus, now the 1951 Convention is not only applicable to European situation but also to the south Asian refugee context.

### Protection of Rohingya Refugees in Bangladesh: A Humanitarian Issue

Rohingya refugee problem is not a new phenomenon in Bangladesh. They are the second largest Muslim minority, vulnerable, marginalized group and poorest people in Rakhine State of Myanmar.<sup>24</sup> It has a long history of plights of the Muslim Rohingya<sup>25</sup> refugees migrated in Bangladesh due to fear of persecution. Recently the flow of Rohingya refugees has been tremendously increased and thousands of people are fleeing from Myanmar through boats passing the Naf River and these refugees are called 'boat refugees'. This is the common scenario in everyday life in the border side of both the countries, particularly in the south coastal area of Bangladesh such as St. Martin Island, Shahpori Dip, Teknaf and some areas of Cox's Bazar district. The increasing flow of boat refugees is caused due to deadly clashes between the Buddhist and Muslim communities. Rape and murder of a Buddhist woman in Rakhine province in 2012, which created a communal unrest in the Rakhine locality and continued more than one week, resulted into death of hundreds of people in Rakhine state. Then the government of Myanmar declared state of emergency in Rakhine to stop the conflicts between the two communities.<sup>26</sup> The Myanmar government estimated that more than 200 hundred people were killed in Rakhine conflict since 2012 but the actual figure expected by the Rohingya activists is approximately 1,000 and most of them come from Muslim community. It has been estimated that more than 140,000 people were internally displaced and among them 94% were Muslim.<sup>27</sup> The Muslim community is living in the Rakhine state in Myanmar and there unrest has occurred there between the two communities for their internal religious belief.<sup>28</sup>

### National Security and Rohingya Refugees

National security is a major concern that states must consider when dealing with issues such as Rohingya refugees. The Rohingya issue has critical security implications as well as humanitarian affiliations. A large scale of Rohingya influx

<sup>23</sup> S, N. Janny, & M.Islam 'An Analysis Refugee Problem', vol.3 *Asian Journal of Multidisciplinary Studies*, 2015.

<sup>24</sup> Yeni, E. 'Unwanted anywhere', *The Irrawaddy*, vol. 17(2), 2009, p.19.

<sup>25</sup> S. Haque, 'Forced Migration to Mainstream: A Study on Rohingyas Refugees in Bangladesh' 16 September, 2012, available at <http://www.bdtoday.net/english/thisweekdetail/detail/31>, accessed on 29 February 2009.

<sup>26</sup> BBC News, 'Why is there communal violence in Myanmar', 4 July 2014, available at [www.bbc.co.uk/news/world-asia-19092131](http://www.bbc.co.uk/news/world-asia-19092131) (Accessed, accessed on 17 June 2015).

<sup>27</sup> See UNHCR, 'Refugees Daily: Refugee Global Press Review', 29 February 2009.

<sup>28</sup> Janny and Islam (n 23).

into Bangladesh from Myanmar is a major security concern for Bangladesh as well as Rohingya refugees, who are living in camp or non-camp areas.<sup>29</sup> According to the report of Christian Solidarity Worldwide (CSW), the Muslim minorities who are seeking shelter on the border area of the two states are in dire situation and tortured by both the Burmese military and Border Guard of Bangladesh.<sup>30</sup>

The Rohingya refugees are also posing a great threat to the security, stability, affluence, and image of the Bangladesh because many of them are involved in various serious crimes including smuggling, human trafficking, rape, and robbery, etc.<sup>31</sup> They also engage in many heinous activities in the local community of Cox's Bazar district. It has been reported that the Rohingyas, who have illegally entered Bangladesh from Myanmar as refugees, are trying to get Bangladeshi passports to go to Middle East especially Saudi Arabia. For this end, they attempt making false documents i.e. national ID cards, birth certificates and this is bringing a huge mortification to the Bangladeshi community living in Saudi Arabia and because of their illegal activities and unethical manner, the nationals of Bangladesh are indirectly blamed.<sup>32</sup>

Recently the immigration officers of Bangladesh have arrested some Rohingyas who were trying to go abroad using false Bangladeshi passports. They also tried to introduce themselves as citizen of Bangladesh, thus committing series of crimes all over the world, which might get linked with the image of the country. Most of the Rohingya refugees provide services at a lower rate rather than local people and such practices are disordering the job market in Bangladesh and for that reason, the local workers are losing their jobs and growing upset.<sup>33</sup> This is the practical situation now in Cox's Bazar, wherein they are residing. The author talked to some of them, namely Abdul Karim, Hamid Hossain and Kamal Uddin, and they told that they provide low rate services because of their reliability and skillfulness and the next major factor is that the local community is not interested to pay them a higher rate compared to the local labour.<sup>34</sup>

Another problem is that Rohingya refugees are creating extra pressure on the existing land and forest in the Cox's Bazar areas. Bangladesh has lost considerable forest land in Cox's Bazar district for providing shelter for refugees and they are regularly cutting trees and destroying the forests woods in the local area of Cox's Bazar and Bandarban district. It is causing serious harm to the environment, ecology and bio-diversity.<sup>35</sup> It has been observed that local people do not accept the Rohingya refugees easily because many of them are apparently involved in criminal

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<sup>29</sup> I. Ahmed, *The Plight of the Stateless Rohingyas-Response of the State, Society and the International Community*, 1<sup>st</sup> edition, The University Press Limited, Dhaka 2010, p.100.

<sup>30</sup> Available at [www.mizzima.com/news/regional/1021-rihingyas-in-dire-straits-csw.htm](http://www.mizzima.com/news/regional/1021-rihingyas-in-dire-straits-csw.htm), accessed on 15 June 2015.

<sup>31</sup> N, S. Parnini, *et al*, 'The Rohingya Refugee Crisis and Bangladesh- Myanmar Relations', vol.22, *Asian and Pacific Migration Journal*, 2013.

<sup>32</sup> Al Imran, F. Hassan, M, N. 'The Rohingya Refugees in Bangladesh: A Vulnerable Group in Law and Policy', vol. 8, *Journal of Studies in Social Sciences*, 2014, p. 244.

<sup>33</sup> Ibid.

<sup>34</sup> Interviewed with Rohingya Refugee, Cox's Bazar, 10 June 2015.

<sup>35</sup> Z. Islam, 'Rohingya Refugee Problem: A Burden on Bangladesh', *Daily Sun*, Dhaka 18 June, 2012 .



activities either in the local area or in border side; and it is posing a serious threat to peace, security, and stability of the local community in the region.<sup>36</sup>

### The Causes of Rohingya Flow from Myanmar

The refugee issue is not only a national problem but also an international concern. In the modern world, there is hardly any country in the world that has not been affected by the refugee problems as either country of origin or host or both. The Rohingya refugee also creates the same situation as it creates a lot of extra economic burden for Bangladesh. The primary cause for flow of Rohingya from Myanmar is political, ethnic conflict, religious etc. But this cause is also interlinked with the socio-economic issue. According to Irene Khan “It is no coincidence that the largest number of refugees is in the poorest parts of the world. Deprivation, social disintegration and displacement are often interlinked. Underlying many conflicts is unbalanced development, economic marginalization and social inequalities, exacerbated demographic growth and environmental degradation, and aggravated by inept and corrupt government.”<sup>37</sup>

The Rohingya, as an ethnic Muslim minority group in Myanmar, is considered as one of the most vulnerable and persecuted communities in the world.<sup>38</sup> Medicine Sans Frontiers, working for providing assistance to the Rohingya refugees in Bangladesh, terms them as “one of the ten world’s population in danger of extinction.”<sup>39</sup> The reason for flight of Rohingya in Bangladesh is internal clash with the Buddhist group.

Another cause is that most of the Rohingya refugees speak the Chittagonian regional dialect, which is extensively used in South-Eastern part of Bangladesh especially in Cox’s Bazar, Teknaf, Ukia, Bhandurban. The Rohingya are virtually isolated amongst the other group of minorities in Myanmar because of similarities to people of Bangladesh and also being Muslim.<sup>40</sup> They are not officially recognized as citizens of Myanmar and were excluded from all facilities through the introduction of the Myanmar’s Citizenship Act 1982. They are considered as stateless persons as they are neither citizens of Myanmar nor that of Bangladesh and also have been threatened with other forms of oppressions, discriminations, and manipulations in their country of origin, Myanmar.<sup>41</sup>

Since the enactment of 1982’s Citizenship Act, the Rohingyas have been considered stateless persons and illegal migrants in their country. The new Citizenship Act provisions three categories of citizen namely full citizen, associated and naturalized citizens. But the Rohingyas do not fall in any of the

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<sup>36</sup> Rashid, Ur, H., ‘Why are Rohingyas being refused entry into Bangladesh?’, *Daily Star*, Dhaka 20 June 2012.

<sup>37</sup> I. Khan, ‘The Refugee Problem: Forcing a New Strategy’, vol.1, *Bulletin on IHL and Refugee Law*, 1996, p.113.

<sup>38</sup> Crichton, Emma & Hamid, ‘The Rohingya Crisis of June 2012: A Survivor’s Testimony’, *Open Democracy*, March 2013.

<sup>39</sup> M. Haque, ‘Ethnic Conflict in Burma and Rohingya Issue’, *Refugee law Conference*, Dhaka 20-22 October 2008.

<sup>40</sup> Rashid, Ur, H., *The Refugee Law: With Case Laws and Materials*, 1<sup>st</sup>ed, Anupam Gyan Bhandar, Dhaka, 2000.

<sup>41</sup> Available at [www.unhcr.org/4ee754c19.pdf](http://www.unhcr.org/4ee754c19.pdf), accessed on 15 June 2015.

categories and have been considered non-citizens. They are only considered as ethnic Muslim minority group and prohibited from marrying, traveling beyond the local area, making houses and even religious construction for performing their religious activities.

Apart from this they have been used as forced labour and taxes are also imposed on them. They have faced sexual harassment, as well as confiscations by the Nasaka.<sup>42</sup> The harrowing issue is that women are not allowed to become pregnant without official permission and if they give birth, they secretly send the babies to Bangladesh and most of the young boy and girls flee to Bangladesh to get married because they cannot get permission to marry in Myanmar.

Most of the scholars and law professors as well as civil societies have criticized the new Citizenship Act 1982 for containing provision which denies the Rohingyas to obtain citizenship in Myanmar. This provision violates the Universal Declaration of Human Rights (hereinafter UDHR), the Convention on the Rights of the Child and other international norms prohibiting racial discrimination and religious minorities. The Citizenship Act 1982 has created a legal and practical constraint and render it 'almost impossible' to be the legitimate and recognized citizen of Burma.<sup>43</sup>

### **Legal Obligations of Myanmar Government: Context of International Law**

Myanmar has a legal obligation to protect and preserve the fundamental human rights of Rohingya refugees because as a member of the United Nations it is obliged to follow the principles of the UN Charter, and the preamble is 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."<sup>44</sup> Apart from this, Myanmar government has ratified most of the international human rights instruments. But actual situation is that Myanmar does not follow the principle of UN Charter, rather openly violates the UN Charter by torturing and persuasively displacing Rohingya people from their homeland.

The UDHR is a core international human rights legal instrument. Although it is a non-binding declaration, it contains *jus cogens* norms, which are universally accepted by all state parties whether they are party to the 1951 Convention or not. According to article 15 of the Declaration "everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."<sup>45</sup> The National Human Rights Institution should take into consideration that the Rohingya issue for ensuring their rights in their country where they fear persecution. The government of Myanmar should adopt some measures to stop internal conflict or communal violence between the Muslim

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<sup>42</sup> Nasaka is a Burmese word consist of officers from military customs and immigration known as the border security force in Myanmar

<sup>43</sup> See Special Rapporteur of the Commission on Human Rights, 'Interim Report on the Situation of Human Rights in Myanmar', UN Doc A/52/484, 16 October 1997, para 140.

<sup>44</sup> *Charter of the United Nations*, 1945, preamble, para 2.

<sup>45</sup> *The Universal Declaration of Human Rights*, adopted on 10 December 1948, art. 15(1) & (2)

ethnic minority and Buddhist for the purpose of ensuring aims of the UN Charter as well as other international human rights legal instruments.<sup>46</sup>

The government should take care of minority groups or religious groups and stop any kind of arbitrary arrest without any reasonable ground and should ensure equal opportunities for all kinds of religious or ethnic minority groups like other citizens of Myanmar.<sup>47</sup> The government should provide humanitarian assistance for those, who are affected as a result of internal conflict between the group clashes and if necessary, to establish international inquiry commission to find out the reasons for such internal conflict.<sup>48</sup>

### **Legal Status of Rohingya Refugees in Bangladesh**

The legal status of Rohingya refugees is determined by the Bangladesh Constitution and its national laws followed by the Refugee Convention of the 1951 and its Protocol 1967. Although Bangladesh is not a party to the Convention and its Protocol, as a member of the United Nations and other specialized agencies, Bangladesh has an obligation to follow the principles of Convention and its Protocol mandatorily. The Convention guarantees adequate food, standard living, housing facilities, as well as mental and physical health care for refugees. The primary responsibility for providing these facilities is on the country of origin. However the obligation of the receiving states is not to return the refugees to the country of origin forcefully where they feel fear of persecution.<sup>49</sup> Thus, determination of refugee status depends on whether the person meets the requirement of refugee criteria.

### **The Determination of Refugees Status**

The South Asian region, especially Bangladesh, is refugee prone area but any administrative or quasi-judicial bodies has not been established for the determination of refugee status. In this situational context there may be three types of factors that determine the refugee status.

#### **Group Determination**

The Refugee Convention 1951 does not set any process for the determination of refugees' status. The determination of refugees' status basically depends on the receiving state's capacity to establish constitutional and administrative structure for determining refugees' status. Bangladesh government does not recognize any form of group or individual refugee status determination. In that case government permitted the UNHCR to determine the group status determination under its mandate. In the case of Rohingya refugees, two major influxes of refugees took place during 1978 and 1992 and it is

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<sup>46</sup> S. N. Janny & M Islam, 'An Analysis of Refugee Problems in Bangladesh', *Asian Journal of Multidisciplinary Studies*, vol.3 ,2015, p.97

<sup>47</sup> Ibid.

<sup>48</sup> Ibid, p.98.

<sup>49</sup> *Convention Relating to the Status of Refugee*, adopted on 28 July 1951 arts. 1A and 33; *African Refugee Convention*, 1969, art. 2

estimated that five to ten thousand<sup>50</sup> crossed the border each day enter into Bangladesh. The mass influx of refugee in Bangladesh cannot be managed in any other way other than considering group determination of their status.<sup>51</sup>

### Refugee Status by UNHCR and Court Instance

This type of determination is very limited. These categories are applicable only to those refugees who take the issue before the court for challenging their detention under the Foreigner's Act 1946. However there is no specific legal framework for determination of refugee status in Bangladesh. It may be determined under the Foreigner's Act for taking proper action. The British Parliament enacted this Act. Later, the state parties adopted the law with necessary modifications. Now the court of the host country can apply this law and direct the respondent and appellants to approach the UNHCR to seek refugee status.<sup>52</sup>

### Nationality Crisis of Rohingya Refugees

Nationality is a basic identity for human beings to live in a country. For the past couple of years, Bangladesh has a long experience of Rohingyas movement in a massive form and they enter into the territory of Bangladesh in waves. The question of nationality crisis takes place when a citizen became stateless and has no fixed place to live in and gets no identity under any country. In case of Rohingya refugees, nationality crisis is a major problem because they don't have identity and fixed place for living neither in Myanmar nor in Bangladesh. However, nationality is an essential condition to exercise all facilities and privileges as like of citizen. Rohingyas, who are considered stateless, face difficulty to get political asylum in any country. As consequences, they are deprived of many rights including social services, health care, right to education etc. The Rohingya refugees face the problems of getting social care and go mostly deprived of their civil and political rights too.

The Burma's Citizenship Law of 1982 restricted the criteria for acquiring citizenship and the law itself violates the fundamental principles of customary international law and also denies the Rohingyas to become the nationals of Burma. The law also conflicts with the provision of article 7(1) of the Convention on the Rights of the Child, 1989 article 24(3) of the ICCPR, 1966 article 9 of the CEDAW, 1979 and article 5(d) of the Convention on the Elimination of All Forms of Racial Discriminations, 1965.

The law does not recognize Rohingyas as the national races of Myanmar. They do not have the right to participate in any political engagement in their home country

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<sup>50</sup> Ivor, C, J. *The Refugee Concept in Group Situation*, 1<sup>st</sup> edition, the Hague, Martinus Nijhoff Publishers, 1999, p.315.

<sup>51</sup> See UNHCR, *Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees*, May 2007.

<sup>52</sup> Vijaya Kumar, V, 'A Critical Analysis of Refugee Protection in South Asia' *Refugee Watch*, vol.9, 2001.

because of not being considered as citizen of Myanmar. Rohingya people also have not taken part in any decision making process of the country. Rohingya is entitled to enjoy the legal status as resident foreigners for that reason they are subject to some constraints on their freedom of movement, access to higher education, and also bear restriction from holding public office.<sup>53</sup> Therefore it is very difficult for Bangladesh to take the extra responsibilities of the Rohingya refugees with its limited resources. Subsequently they are suffering from nationality problems in their country of origin as well as host country.<sup>54</sup>

### **Position of Rohingya Refugees in Myanmar**

Every human being has a right to lead a life peacefully in the world. The Refugees, who fled due to fear of persecution in their home country, also have the same rights. The Rohingya refugees are Muslim minority group who migrated from Myanmar to Bangladesh due to local ethnic conflict, religious and political fear in their community with the others groups. But they have some basic rights to live as human beings in the host country. However, they have to face various problems in the host country and cannot exercise their basic human rights as human beings.

#### **Freedom from Forced Labour**

Forced labours are strictly prohibited all over the world. But the Rohingya children are forced to perform forced labour by the Nasaka and Local Peace and Development Committee.<sup>55</sup> The people of Northern Rakhine State are mainly affected by forced labour due to the absence of proper legislation to prevent the forced labour. If the people refused to perform forced labour, they get death threats and even killed. The women are not allowed to engage in any income generated activities outside their locality. Male adults earn the income for daily basis to maintain their family. As a result, children have to bear the burden of forced labor.<sup>56</sup>

#### **Right to Freedom of Movement**

Freedom of movement is a basic fundamental right of every citizen guaranteed by Constitutions around the world. But the Myanmar authorities have restricted the Rohingya people from moving and traveling internally within the country, which is a gross violation of human rights. It is a well-established principle of international law that every person has the right to freedom of movement. The Universal Declaration of Human Rights, 1948 in article 13 and the International Covenant on Civil and Political Rights, 1966 in article 12 also recognize these principles<sup>57</sup> as a

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<sup>53</sup> For more on the Citizenship Scrutiny Cards, see Human Rights Watch, 'Burma: The Rohingya Muslims: Ending a Cycle of Exodus?', *Human Rights Watch*, vol. 8, no. 9, September 1996, p. 26.

<sup>54</sup> I. Ahmed, *The Plight of the Stateless Rohingyas-Response of the State, Society and the International Community*, The University Press Limited, Dhaka 2010.

<sup>55</sup> See Human Rights Watch, *Report: Discrimination in Arakan*, 1999.

<sup>56</sup> L. Chris, 'Issues to be Raised Concerning the Situation of Rohingya Children in Myanmar (Burma)', *Forum-Asia*, 2003.

<sup>57</sup> Human Rights Watch (n 55).

resident of Myanmar they do not need travel pass to visit the neighboring village, but they have been severally restricted from visiting relatives in other places of the country.<sup>58</sup>

### **Right to Food**

Every human being has a right to food. Lack of proper food is another kind of discriminatory attitude towards Rohingya refugee children in Myanmar. Food insecurity is the direct consequence of the discriminatory policies and violation of human rights. As a result 60% of Rohingya children are suffering from chronic malnutrition in Myanmar.<sup>59</sup>

### **Right to Health**

The Rohingya people are totally deprived of the facilities of health care due to restrictions on their freedom of movement. Moreover, there are some other factors barring them the health facilities, like geographical location and infrastructure constraints that cease the accessibility of health during the rainy season.<sup>60</sup>

### **Right to Education**

The Rohingya residents are not entitled to get higher education beyond primary level because they are not recognized as citizen of Myanmar. They are discriminated in field of education because they cannot join a University as a full time student but get education through distance learning. However, Rohingyas, who are qualified are being denied for citizenship, which means they cannot be employed as civil servants and are not employed for teaching in government schools after the introduction of the new Citizenship Law 1982.<sup>61</sup>

## **Obligations of Bangladesh under International Instruments**

As mentioned above, Bangladesh is neither a party to the Refugee Convention 1951 and its protocol 1967. In Bangladesh, there are no specific laws and regulation to determine the refugee status and give protection and assistance to the Rohingya refugees.<sup>62</sup> Bangladesh has acceded the core international human rights instruments which oblige Bangladesh to promote the rights of Rohingya refugees in its territory. These major human rights instruments are: UDHR 1948, Four Geneva Convention 1949 and its two Additional Protocol 1977, ICCPR 1966 (ICCPR), International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), Convention on the Rights of the Child 1989 (CRC) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention Against Torture (CAT).

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Chris (n 56)

<sup>62</sup> U. Kumar Das, 'Refugee and Relevant Laws in Bangladesh', *Daily Star*, Law and Our Rights, Dhaka, 23 June 2007.

The UDHR recognizes that all persons have the “right to life, liberty and security<sup>63</sup>” and freedom from “slavery or servitude, freedom from torture and cruel, inhuman or degrading punishment<sup>64</sup>” and article 6 provides that “everyone has the right to recognition everywhere as a person before the law<sup>65</sup>” as well as equal protection of law.

As we know that Rohingya refugees are not citizens in the host country they may be considered as a foreigner but by virtue of article 2 of the ICCPR, they could enjoy the same rights and freedom as nationals of the host country. The Special Rapporteur on Burma, Professor Yozu Yokota has recommended that

the 1982 Citizenship Law should be revised or amended to abolish its over burdensome requirements for citizens in a manner which has discriminate effects on racial or ethnic minorities particularly the Rakine (Arakan) Muslims. It should be brought in line with the principles embodied in the Convention on the Reduction of Statelessness of 30 August 1961.<sup>66</sup>

The principle of equality, equal protection of law and non-discrimination, which is the foundation of human rights law, is required to be applied to Rohingya refugees.<sup>67</sup>

## Conclusion

The Rohingya refugees are the most susceptible and marginalized section of people in Myanmar. They have faced many problems and fear of persecution because of their religious convictions. For the better protection of Rohingya refugees, both Myanmar and Bangladesh are required to adopt specific legislation and develop policy for the lasting solution of issue. It is high time for the government of Bangladesh to adopt a comprehensive legal framework for resolving the Rohingya issue. The absence of domestic laws, policies and a regional instrument on refugees has compounded the difficulties on solving this issue. The government of Bangladesh should have dealt with the Rohingya refugees’ crisis through bilateral arrangement with the Myanmar government and multilateral negotiations with the other neighboring countries.<sup>68</sup>

The international community, regional organizations, and civil society should request, then exert pressure on the Myanmar government to remodel Rohingyas’ citizenship along with their ethnic minority rights by removing the restriction on marriage, freedom of movement, right to education and right to work freely in anywhere in Myanmar. The Rohingya problems have had great impacts on the

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<sup>63</sup> *The Universal Declaration of Human Rights*, adopted on 10 December 1948, art. 3

<sup>64</sup> *Ibid*, arts. 4,5.

<sup>65</sup> *Ibid*, art. 6.

<sup>66</sup> See United Nations, *Report on the Situation of Human Rights in Myanmar*, February 1996.

<sup>67</sup> Khan, Haque, I. and Nahid R. ‘Rohingya, ‘Outcry and Balancing Test: Obligation under International Instruments Constitutional Framework’, *Year Book of Human Rights, ELCOP*, 2014, p.156.

<sup>68</sup> P. Ahluwalia, ‘Ethical Origins of Refugee Rights and Humanitarian Law’ in Sibaji Pratim Basu (ed), *The Fleeing People of South Asia*, Kolkata, 2009.

foreign policies of Bangladesh and Myanmar in recent years<sup>69</sup> and the relation has often been disrupted between the two countries because of the Rohingya issue. Bangladesh should ratify the Convention Relating to the Status of Refugees 1951 and its 1967 Protocol to ensure minimum level of standard for the protection of Rohingya refugees. It is obvious that the standard set in the convention is fit for the developed countries but not for developing countries like Bangladesh. However, the Convention needs revision to meet the today's demand for refugee. Currently the pros and cons of ratifying the 1951 UN Convention and its 1967 Protocol are being openly debated by civil society, international organization and national community groups in the region.

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<sup>69</sup> Ibid.