

## Chapter I: Introductory Statement

### 1.1 Introduction:

Now a day's refugee crisis is one of the burning issue in the world. An unprecedented 65.6 million people around the world have been forced from home and among them are nearly 22.5 million refugees.<sup>1</sup> Bangladesh has started experiencing the problems of the issues of Refugees since 1978; almost 200,000 refugees came into Bangladesh and took shelter. These refugees fled from Myanmar and known as “Rohingya”. Again in 1991-92 approximately 250,000 refugees fled from Myanmar's western Rakhine state and this ethnic, linguistic and religious minority of the Myanmar community started living in the south east district of Cox's Bazaar. That was just the beginning of the journey of the refugees and it is still proceeding unabated .Now over 688,000 Rohingya refugees seeking safety in Bangladesh.<sup>2</sup> Every human has some rights as a human being. These rights help a person to grow up in the society. When a person deprives from these rights it becomes horrible for a person to sustain. Every man in the world has the rights to get food, clothing, shelter, education, and medical service. All these are called basic human rights. Every Refugee has these rights as a human being. The protection of the rights of refugees, who are without national protection and the prevention of conflicts, between the countries of origin of the refugees and the asylum countries are matters of national and international concern. Bangladesh has a long record of performing humanitarian obligations towards refugees (Rohingya refugees) residing in her territories and has always followed the principle of non-refoulement. In fact, legally Bangladesh is not bound to be the final sanctuary for the refugees from Myanmar or from any other state. As with many other countries in Asia, Bangladesh is not a party to the 1951 Refugee Convention or its 1967 Protocol. Neither is it a party to the 1954 and 1961 Statelessness Conventions.<sup>3</sup> In the absence of any strict domestic law, to save its image in the international arena, Bangladesh is struggling very hard indeed to overcome this refugee issue.<sup>4</sup> The vision of this write-up is to highlight the problems of Rohingya refugees and also to recommend the framing of a strict domestic law to specifically handle this situation.

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<sup>1</sup> *United Nations High Commissioner for Refugee (UNHCR)*

<sup>2</sup> *IBID*

<sup>3</sup> *States of Denial, A review of UNHCR's Response to the Protracted Situation of Stateless Rohingya Refugees in Bangladesh, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES POLICY DEVELOPMENT AND EVALUATION SERVICE (PDES), Geneva, Switzerland, Published on December, 2011, page 1; [http:// www.unhcr.org/4ee754c19.pdf](http://www.unhcr.org/4ee754c19.pdf) [accessed 03 April 2018].*

<sup>4</sup> *2Dhaka Rules out Shelter for Rohingya Refugees, Khairul Amin on 15/06/2012; <http://news.priyo.com/national/2012/06/15/dhaka-rules-out-shel-53558.html>. [accessed 03 April 2018].*

## **1.2 background of the problem:**

The United Nations High Commissioner for Refugees, the Office of the (UNHCR), was established on Dec. 14, 1950 by the General Assembly which is also known as The UN Refugee Agency. Since its establishment till now the UNHCR is one of the specialized organs of the United Nations which deals with the refugee issues. It seeks permanent solutions to the refugee problems, offers international protection to refugees, coordinates the activities of voluntary agencies, and assists the most needy refugee groups, particularly, in their voluntary repatriation, local integration or resettlement to a third country. The UNHCR is a voluntary organization of the United Nations that works all over the world.<sup>5</sup>In July 1951, a diplomatic conference in Geneva adopted the Convention relating to the Status of Refugees<sup>6</sup> which was later amended by the 1967 Protocol.

### **Definition of Refugee:**

According to the 1951 Refugee Convention, a 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 to return there because there is a fear of persecution.<sup>7</sup>

### **1.2.1History Of Refugee:**

"1940 to 1960 Post-World War II nine incidents displaced at least 81.6 million. World War II saw the greatest displacement of people from their homes in the 20th century, with forced laborers dwelling in the lands of the German Reich, millions of ethnic Germans expelled from the Soviet Union, and millions more fleeing the increasingly harsh regime of Joseph Stalin. In 1950, the Allies set up the United Nations High Commission on Refugees, which has since sought to provide relief for people fleeing conflict.1960 to 2000 End of the colonial era and post-Cold War 32 incidents displaced at least 46.5million.Decolonization movements swept

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<sup>5</sup> General Assembly Resolution 428 (V) of 14 December 1950.

<sup>6</sup> Convention relating to the Status of Refugees [hereinafter Refugee Convention], adopted on July 28, 1951 by the U.N. Conf. of Plenipotentiaries on the Status of Refugees & Stateless Persons convened under U.N.G.A. Res. 429 (V) (Dec. 14, 1950), 189 U.N.T.S. 150 (entered into force Apr. 22, 1954).

<sup>7</sup> Article 1A(2) of the 1951 Refugee Convention.

over Asia and Africa in the 1950s and '60s, starting with the Indian subcontinent, where 14 million people were displaced by the partition of India and Pakistan in 1947. Wars of independence and the civil conflict that followed sent millions flooding out of Algeria, Congo, Angola, Nigeria and others into neighboring countries, and newly minted military regimes often uprooted ethnic communities even after peace was restored. During the 1970s and '80s, the Cold War's proxy battles displaced millions of people from Afghanistan, Bangladesh and between countries in the Horn of Africa. With the declining power of the Soviet Union, many ethnic and nationalist communities in Eastern Europe began to agitate for self-determination, resulting in mass movements between Armenia and Azerbaijan and within Georgia and Tajikistan. After the fall of the Berlin Wall in 1989, millions of ethnic Russians flowed into Russia from the newly independent states. 2000 to present Instability in the Middle East five incidents displaced at least 22.9 million. Global displacement levels declined to a historic low in 2005, but started escalating again because of a series of conflicts, including the U.S. invasion of Iraq. By mid-2015, the total number of refugees and internally displaced people had climbed to an all-time high of more than 65 million people, the UNHCR estimates reflecting both the masses of people newly uprooted from war-torn regions of Syria and South Sudan, as well as those displaced years ago from places like Pakistan, Myanmar and Afghanistan who still haven't been able to return home."<sup>8</sup>

### **1.2.2 Refugee Problem In Bangladesh:**

In 1784, the Burmese King Bodawpaya conquered and incorporated the Arakan region into his kingdom of Ava in central Burma. As a consequence of the invasion, refugees began to pour into what is today the Cox's Bazaar area of southern Chittagong. Many of the Rohingya that fled during this period never returned to Burma, but instead settled in the area of Cox's Bazar and became integrated with the local community.<sup>9</sup> Following the partition of India and Pakistan in 1947, many were displaced due to religious riots. One of the oldest Refugee camps that were set in the country was that of Satkhira District of South-west Bangladesh. The camps were established for Muslim Refugees who fled from the Hindu-Muslim riots in West Bengal, India in the 1950s. *"We got into our boats in the dead of night and floated quietly over to this side with nothing but our beating hearts in our hands. We couldn't carry anything for fear the boat might sink. There were fifteen of us in it huddled together in terror."* Anwara describes her journey to

<sup>8</sup> <https://www.washingtonpost.com/graphics/world/historical-migrant-crisis/>

<sup>9</sup> A Report published in the year 2000, from the website of HUMAN RIGHTS WATCH (www.hrw.org)

East Pakistan from India in the 1950s<sup>10</sup> Most of the migrants were Urdu speaking Muslims who settled in East Pakistan following the partition of India and Pakistan. After the creation of Bangladesh, they began addressing themselves as ‘Stranded Pakistanis’.

### **1.2.3 Biharis or stranded Pakistanis:**

A Small linguistic minority who spoke Urdu resided in East Pakistan which is now called Bangladesh. Most were from the Indian State of Bihar or Uttar Pradesh and had reached East Pakistan about two decades earlier to escape communal violence in India in 1947 when Pakistan was created.<sup>11</sup> These group of stateless people are commonly termed as ‘Biharis’, ‘Stranded Pakistanis’ or ‘Non-Bengalis’ in Bangladesh. The non-bengalis consisted of Punjabs, Pathans and Balochs from Pakistan. The Indian Muslim leader Muhammad Ali Jinnah encouraged Bihari Muslims, specially railway workers to relocate to East Pakistan to contribute in the construction of East Pakistan. After the independence of Bangladesh in 1971, they became stranded and were relocated to Refugee Camps, where their descendents have been born. They appealed to the Pakistani Government for resettlement, however the petition hardly received any support from Pakistan. The ethnic Bihari minority were subject to persecution after the 1971 war in Bangladesh. The Supreme Court of Bangladesh however ruled that Biharis are eligible for citizenship in 1972, but about 500,000 chose repatriation to Pakistan. The camps have become slums, the largest of which (known as "Geneva Camp", with over 25,000 people) is crowded and undeveloped; families up to 10 people typically live in a single room, one latrine is shared by 90 families and no more than five percent of the population has a formal education. Health and sanitation problems persist due to poor drainage and sewage systems and the economic condition of Bihari refugees has been described in news reports and academic journals as extremely poor.

### **1.2.4 ROHINGYAS:**

The Rohingya are an ethnic group closely linked through language, culture, and religion to the dominant Bengali population of Bangladesh. Indeed, the Rohingya language is very close the variety of Bangla spoken in Chittagong, Bangladesh’s major port in the southeast, and until the

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<sup>10</sup> An Article with the title ‘Bangla Mobility’ from the website ([www.movingpeoplechangingplaces.org](http://www.movingpeoplechangingplaces.org))

<sup>11</sup> Extract from the homepage of the website of Humans in Crisis ([www.statelesspeopleinbangladesh.net](http://www.statelesspeopleinbangladesh.net))

late 1600s part of the Arakanese Empire in today's Myanmar<sup>12</sup>. The issue of Rohingya refugees is one of the long standing refugee problems of the world and they are most vulnerable amongst the refugee communities. The UNHCR provides protection and life-sustaining assistance to refugees residing in the two official camps, pending the identification of durable solutions. The organization advocates for the prevention of statelessness, more self-reliance opportunities for urban refugees and durable solutions<sup>13</sup>. The mass exodus of Rohingya Muslim started in the late 1970s due to forced labour, land confiscation, religious intolerance, rape, and other forms of persecution by the Myanmar military regime. They were rendered stateless by the 1982 Burma Citizenship Law, which mainly confers the right to a nationality on members of the 135 'national races' listed by the government, amongst which the Rohingyas are not included. This statelessness exposed them to systematic discrimination and human rights violation, which force them to migrate in Bangladesh<sup>14</sup>. Since 25 August 2017, 6,88,000 Rohingya refugees escaping violence in Myanmar have sought protection in Cox's Bazar district, Bangladesh, increasing the area's refugee population to more than 9,00,300<sup>15</sup>. Some 91 percent live in highly congested makeshift settlements and camps. Many thousands more have crossed into Bangladesh, where despite offers of international assistance, the Bangladesh government continues to deny the majority of Rohingya basic humanitarian relief or the right to legally register as refugees.<sup>16</sup> The Rohingyas continue to face harassment from the Myanmar Government. Even the leader of Myanmar's democracy Aung San Suu Kyi remained silent on this issue. The UN refugee agency, which has been helping the refugees in the camps since 1991, said such a scheme would have to be voluntary to succeed. The move would not include the estimated 200,000 unregistered Rohingya asylum seekers who have fled across the border over the past decade and taken refuge in Muslim-majority Bangladesh. Most live close to the two camps but are not entitled to food or other aid.<sup>17</sup> Refugees are expected to return to their homeland when a war or their fear of being persecuted is over. However in the case of Bangladesh, the problem seems to be never ending. The solution to such problem might be voluntary repatriation to the country of origin and resettlement to another country. The UNHCR suggested voluntary repatriation of Rohingyas to

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<sup>12</sup> Ganguly S, Miliate B, 'Refugees and Neighbors: Rohingya in Bangladesh', ([www.thediplomat.com](http://www.thediplomat.com))

<sup>13</sup> Extract from the Bangladesh overview of the UNHCR website ([www.unhcr.org](http://www.unhcr.org))

<sup>14</sup> Faruque A, 'Plight of Rohingya Refugees in Bangladesh: Legal Aspects of the Problem'

<sup>15</sup> <https://reliefweb.int/report/bangladesh/iscg-situation-report-rohingya-refugee-crisis-cox-s-bazar-25-march-2018>

<sup>16</sup> Ganguly S, Miliate B, 'Refugees and Neighbors: Rohingya in Bangladesh', ([www.thediplomat.com](http://www.thediplomat.com))

<sup>17</sup> Article published on the website of THE GUARDIAN on May 28<sup>th</sup>. 2015, ([www.theguardian.com](http://www.theguardian.com))

the Government of Bangladesh as the optimal solution. The Government should enact strict laws regarding this issue so that it is controlled. Besides treating the Refugees humanely, the International organizations should come forward and work alongside to tackle this situation. Only then can peace be prevailed in this region.

### **1.2.5 The Cause of Flight of Rohingyas from Myanmar:**

The Rohingya, an ethnic minority of Myanmar (previously known as Burma) is one of the most persecuted groups of people in the world.<sup>18</sup> They speak a version of Chittagonian, a regional dialect of Bengali which is also used extensively throughout south-eastern Bangladesh. The Rohingyas are virtually friendless amongst the Myanmar group of other ethnic, linguistic and religious communities. They were not formally recognized as one of the country's official national groups when the country gained independence in 1947, and they were excluded from both the full and the associate citizenship when these categories were introduced by the 1982 Citizenship Act. As well as being stateless, Myanmar's Rohingyas are confronted with other forms of persecution, discrimination and exploitation.<sup>19</sup> The 1982 Citizenship law of Myanmar left the Rohingyas as stateless and rendered them illegal migrants in their own country. According to the new citizenship law, there were three categories of citizens, namely, i) full, ii) associated, and iii) naturalized citizens. The Rohingyas do not fulfill any of these three criteria.<sup>20</sup> They are the only ethnic group in Myanmar restricted from marriage, traveling beyond their village or building as well as maintaining religious structures. In addition, they are subject to frequent forced labor, arbitrary taxation, and sexual violence and land confiscations by the Nasaka. Even, Rohingya women cannot become pregnant without official permission. Some deliver their babies secretly in Bangladesh and many young couples flee to Bangladesh because of the inability to obtain permission to marry in Myanmar.<sup>21</sup> It has been criticized that the effect of the Burma Citizenship Law 1982 is to make it almost impossible for the Rohingya to gain citizenship. This violates the Universal Declaration of Human Rights, the Convention on the Rights of the Child and international norms prohibiting discrimination of racial and religious minorities. The legal and practical constraints imposed by the Burma Citizenship Law 1982

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<sup>18</sup> 37Hamid and Emma Crichton, *The Rohingya Crisis of June 2012: A Survivor's Testimony*, *Open Democracy*, 6 March 2013; <http://www.opendemocracy.net/opensecurity/hamid-emma-crichton/rohingya-crisis-of-june-2012-survivors-testimony>. [Accessed on 06 April 2018]

<sup>19</sup> <http://www.unhcr.org/4ee754c19.pdf> [accessed 06 April 2018].

<sup>20</sup> [http://en.wikipedia.org/wiki/Burmese\\_nationality\\_law](http://en.wikipedia.org/wiki/Burmese_nationality_law) [accessed on 10 April 2018]

<sup>21</sup> <http://www.independentworldreport.com/2009/09/caught-between-a-crocodile-and-a-snake/>. [Accessed on 10 April 2018]

render it “almost impossible” for the Rohingyas to be recognized as the legitimate citizens of Burma.<sup>22</sup> As a result of such discrimination, large numbers of Rohingyas have left Myanmar and taken up residence elsewhere. While there is a general lack of precision with respect to the number of people involved, they are estimated to be up to 400,000 in Bangladesh, a similar number in the Gulf States, some 200,000 in Pakistan, 20,000 in Thailand and 15,000 in Malaysia. UNHCR estimates some 750,000 Rohingyas remain in northern Rakhine state and other parts of Myanmar.<sup>23</sup>

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<sup>22</sup> *Interim Report on the situation of human rights in Myanmar, prepared by the Special Rapporteur of the Commission on Human Rights, UN Doc A/52/484, 16 October 1997, para. 140.*

<sup>23</sup> <http://www.unhcr.org/4ee754c19.pdf> [accessed 10 April 2018]

### 1.3 Present Status of The Title:

In May 2003, in *Abid Khan and Others vs. the Government of Bangladesh*,<sup>24</sup> a significant ruling was given by the honorable High Court Division of Bangladesh which allowed 10 Bihari voting rights and declared that they were still the citizens of the country in Bangladesh.<sup>25</sup> On May 19, 2008, the Dhaka High Court approved citizenship and voting rights for about 150,000 refugees who were minors at the time of Bangladesh's 1971 war of independence.<sup>26</sup> In Bangladesh, the Rohingya have been blamed for drug-related and violent crimes. The recent rise of methamphetamine (YABA) addiction in Dhaka can be traced from the borders of Bangladesh and Myanmar. There are temporary camps in the country's southeasternmost areas, Nayapara and Kutupalong, set up in the 1990s and now housing about 30,000 registered residents,<sup>27</sup> according to the UNHCR, the United Nations's refugee agency. But these are longtime Bangladesh residents—the majority of them were born in the country or came as children. Newer arrivals have set up temporary shelters, and the situation is unsustainable. Recently the government of Bangladesh plans to relocate thousands of Rohingya refugees who have spent years in camps near the Burmese border to a southern island. The government has started planning the move to Hatiya Island in the Bay of Bengal in a plan backed by the prime minister, Sheikh Hasina, according to a government official, Amit Kumar Baul. “The honorable prime minister wants to resettle them in Thengar Char, though some people say that island will not be a suitable place for them,” said Hasina aide, who declined to be named. “But there are many such areas in Bangladesh, where Bangladeshis live. It's our country, and we decide.”<sup>28</sup>

#### 1.3.1 International Obligations on Bangladesh:

Bangladesh like other South Asian countries, is neither a party to the UN convention relating to the status of refugees 1951 nor its protocol of 1967. There are no national laws, which define and regulate the status of refugees in the countries of South Asia.<sup>29</sup> Bangladesh has acceded to a number of international human rights treaties, whose provisions indirectly promote the rights of

<sup>24</sup> *Abid Khan and Others vs. Government of Bangladesh and Others*, (2003) 55 DLR (HCD) 318

<sup>25</sup> Rahman, Waliur, *Vote for Stranded Pakistanis*, BBC News, Tuesday, 6 May, 2003, [http://news.bbc.co.uk/2/hi/south\\_asia/3003949.stm](http://news.bbc.co.uk/2/hi/south_asia/3003949.stm) [Accessed on 06 April 2018].

<sup>26</sup> 'Persecution of Biharis in Bangladesh', Wikipedia

<sup>27</sup> <https://qz.com/1075444/the-island-bangladesh-is-thinking-of-putting-refugees-is-hardly-an-island-at-all>. Accessed on 18 April 2018].

<sup>28</sup> <https://www.dhakatribune.com/bangladesh/nation/2017/09/08/bangladesh-revives-plan-settle-rohingyas-thengar-char>. [Accessed on 10 April 2018].

<sup>29</sup> Uttam Kumar Das, “Refugee and Relevant Laws in Bangladesh”, Law and Our Rights, The Daily Star, June 23, 2007.

refugees. However, in reality, the international human rights are not enforceable in courts of law unless, specific provisions are incorporated into existing municipal laws or given effect through separate legislations. Even then, Bangladesh has some major international human rights instruments. Some of those major international instruments are discussed below.

### **1.3.2 Legal Status of Refugees in Bangladesh:**

International instruments such as the 1951 Convention is binding upon the signatory states. Declarations or resolutions such as the Cartagena Declaration express international consensus but unfortunately, are not legally binding. Furthermore, there is no international police force to enforce the laws. However, even when the states are not party to any convention, they follow some internationally accepted and recognized standard which is often termed as the customary international law. For example, at present, Bangladesh is offering shelters to around 26 thousand registered refugees from Myanmar. They are not being pushed back and the principle of non-refoulement is being honored even though Bangladesh is not a party to the Convention of refugee.

### **1.3.3 The Real Situation in Bangladesh:**

The asylum seekers are accorded refugee status by the Government of Bangladesh under “Executive order”. For Example during 1978 and the time between 1991 to 1992, the Rohingya asylum seekers from Myanmar, were provided refugee status under Executive order’s of the Government of Bangladesh. They were granted prima facie refugee status. This adoption of different approaches by the authority creates problem. Situation gets further complicated as Bangladesh adopts different solutions and varying standards of treatment for the refugees. During the refugee influx from 1991 to 1992, the Government invited the International Refugee Agency UNHCR, to launch their operation in Bangladesh.<sup>30</sup> The Government also allowed NGOs both national and international in the refugee operation.

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<sup>30</sup> See Art.3, The Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, 1948.

#### 1.4 Problem Of the Title :

There is no specific law relating Refugee rights in Bangladesh. Bangladesh is not member of 1951 refugee Convention and its 1967 Protocol. There are lots of Refugee convention but Bangladesh hasn't member any one. So there is no legal responsibility towards refugee and for this International Community can't force Bangladesh to ensure Refugee Rights. Generally Bangladesh has no legal obligation toward Refugee. In 2012, for the first time Bangladesh refused to accommodate the Rohingyas. The Government of Bangladesh decided not to welcome the Rohingya refugees in the territory of Bangladesh because of national security and unmitigatingly over burdening the country due to the Rohingya refugees, who have been staying in Bangladesh for more than 20 years without contributing any economic and social benefit to the host country.<sup>31</sup> In June 2012, Bangladeshi security forces turned back 16 boats carrying more than 660 Rohingya people, most of them women and children as they tried to enter from neighboring Burma a crossing the Naf River.<sup>32</sup> A senior official of the Foreign Ministry said, "Our position is clear that we won't accept any more refugees in Bangladesh. There are already 400,000 Rohingyas here and we cannot allow anymore. Rather, we are in a process to send back the existing refugees."<sup>33</sup> It was criticized that "on June 10, 2012, Myanmar declared a state of emergency in the western state of Rakhine after clashes between the Buddhists and the Rohingyas that left 50 people dead. Ten days later, on June 20, 2012, more than 90,000 Rohingya refugees fled Myanmar to the Bangladeshi border, only to be denied access. The irony is that June 20 is coincidentally the World Refugee Day."<sup>34</sup> On June 2012, the Foreign Minister of Bangladesh, Dipu Moni, expressed anxiety that it would be a serious problem for Bangladesh if there was any fresh influx of Rohingyas, as there were already a huge number of them in the country. The Foreign Minister also pointed out, "Bangladesh is a densely populated country and the Rohingyas have seriously impacted on our society, law and order, and environment. Considering all aspects, it will create serious problems for us," adding, "We are not interested in

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<sup>31</sup><http://southasiajournal.net/2013/03/the-rohingya-refugee-crisis-of-2012-asserting-the-need-for-constructive-regional-international-engagement/>. [Accessed on 15 April 2018].

<sup>32</sup> *Bangladeshi Authorities Turn Away Rohingya Refugees*, 13 June 2012; <http://www.dvb.no/news/bangladeshi-authorities-turn-away-rohingya-refugees/22428>; [Accessed on 12 April 2018].

<sup>33</sup> *Riot in Rakhine State: No more refugees*, *The Daily Star*, Wednesday, June 13, 2012; <http://archive.thedailystar.net/newDesign/news-details.php?nid=238074>. [Accessed on 15 April 2018].

<sup>34</sup> *Rohingya Refugees Refused Access on World Refugee Day*, *Asian Society*, 20 June 2012; <http://asiasociety.org/blog/asia/multimedia-rohingya-refugees-refused-access-world-refugee-day>. [Accessed on 20 April 2018].

more people coming to Bangladesh.”<sup>35</sup> On 9 August 2009, Foreign Minister Dipu Moni, in a statement said that around 400,000 illegal Rohingya refugees in Bangladesh have been causing law and order to slide including environmental damage in the form of illegal clearing of forested land for habitation and that statement was released after a meeting between Dipu Moni and Raymond Hall, the regional representative of the United Nations High Commissioner for Refugees (UNHCR).<sup>36</sup> On 17 August 2012, the Foreign Minister further said that Rohingyas would definitely be sent back to Myanmar soon, categorically adding, „We have finalized to send them back to their homeland through discussion with the Myanmar authority but could not do so due to the occurrence of a riot there,” Dipu Moni further said, „We have already urged Myanmar about the safe return of the Rohingyas so that they can come back to their homeland voluntarily with their rights and dignity,” she said.<sup>37</sup> On 29 August 2013, Foreign Minister Dipu Moni continued further, “Bangladesh was already hosting a huge population of Rohingya refugees from Myanmar and cannot take in any more,” to newly appointed country representative of the UN refugee agency UNHCR, Stina E Ljungdel.<sup>38</sup> Bangladesh turned down the requests made by some international agencies, NGOs and friendly countries to open its 238 Journal of Studies in Social Sciences border to Rohingyas fleeing sectarian violence in Myanmar. Foreign Minister Dipu Moni in a statement in Parliament requested those agencies and friendly countries to request the Myanmar government to resolve their internal problem without over spilling it into its peaceful neighboring countries. She also advised the donor agencies to extend their help to the Rohingya victims in Myanmar instead of in Bangladesh.<sup>39</sup>

#### **1.4.1 Refugees and National Security:**

The Myanmar refugees and undocumented nationals are posing a serious threat to the security, stability, prosperity, welfare and image of the country through their involvement in serious crimes including drug and human trafficking, smuggling, robbery and other organized crimes. There have also been confirmed reports that these illegal Myanmar nationals are obtaining Bangladeshi passports to go to Saudi Arabia through fraudulent means, falsification of national

<sup>35</sup> Riot in Rakhine State: No more refugees, *The Daily Star*, Wednesday, June 13, 2012; <http://archive.thedailystar.net/newDesign/news-details.php?nid=238074>. [Accessed on 17 April 2018].

<sup>36</sup> <http://bdnews24.com/bangladesh/2009/08/09/400000-illegal-rohingyas-in-bangladesh-dipu-moni>. [Accessed on 12 April 2018].

<sup>37</sup> Rohingyas to be sent back to Myanmar soon: Dipu Moni, *New Age*, Sunday, August 18, 2013, <http://www.newagebd.com/detail.php?date=2013-08-18&nid=61459#UssJu7T6tdg>. [Accessed on 14 April 2018].

<sup>38</sup> Bangladesh Can’t take in more Rohingyas, *The Daily Star*, Friday, August 30, 2013, <http://archive.thedailystar.net/beta2/news/bangladesh-cant-take-in-more-rohingyas/>. [Accessed on 12 April 2018].

<sup>39</sup> Bangladesh won’t open border to Rohingyas, *Priyo News*, 14 June 2012; <http://news.priyo.com/politics/2012/06/14/bangladesh-won-t-open-53531.html>. [accessed 14 April 2018].

ID cards and birth certificates and are causing huge embarrassments to the Bangladeshi community living in Saudi Arabia following their arrests of unruly and unethical behavior and practices all of which are summarily blamed on the Bangladeshi nationals. Recently some Myanmar refugees had been arrested, while they were trying to go abroad using forged Bangladeshi passports. The Rohingyas offer services at a much lower rate than the local population and such practices are upsetting the job market in the region. About 90% of the lower skilled laborers and staff employed in local hotels, motels, ports and small business are all of Rohingya origin. They also work as rickshaw pullers and day laborers. As a result, Bangladeshi workers are losing out on their jobs. The Rohingyas refugees are adding extra pressure on the existing crisis of the land and forests in the Cox's Bazaar region. Bangladesh has lost considerable area of reserve forest for providing land to the refugees for construction of their shelter. Moreover, the refugees and undocumented Myanmar nationals are regularly cutting off valuable trees and destroying woods in the reserve forests in the Bandarban and Cox's" Bazaar areas causing serious harm to Bangladesh's environment, ecology and bio-diversity.<sup>40</sup> Rohingya refugees impose quite a heavy burden on Bangladeshi economy and scant resources. It is reported that many local people do not want to accept Rohingya refugees, some of whom are allegedly involved in undesirable activities either within the local area or on the border, posing a threat to peace and security of the local people.<sup>41</sup>

### **1.5 How To recover it:**

To recover the Rohingya crisis is not possible for Bangladesh without help of Myanmar and International Community like as United Nation(UN).European Union And other developed country should come forward and need to take the responsibility. China can play a major role in this regard because there is a good relationship between China and Myanmar. Bangladesh is a poor and densely populated country so it becomes tough for Bangladesh to give shelter and maintenance to the Rohingya refugee. Though Bangladesh and Myanmar both country are not member of 1951 Refugee Convention and it's 1967 protocol but still UNHCR can create pressure on the both countries.

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<sup>40</sup> [http://www.daily-sun.com/details\\_yes\\_18-06-2012\\_Rohingya-refugee-problem:-A-burden-on-Bangladesh\\_178\\_2\\_17\\_1\\_1.html](http://www.daily-sun.com/details_yes_18-06-2012_Rohingya-refugee-problem:-A-burden-on-Bangladesh_178_2_17_1_1.html). [Accessed on 12 April 2018]

<sup>41</sup> <http://archive.thedailystar.net/newDesign/news-details.php?nid=238943>. [Accessed on 12 April 2018]

### **1.5.1 The Duty of Myanmar Regarding Rohingya Crisis:**

Aung San Suu Kyi, Myanmar's de facto head of state, has shown neither an understanding of the seriousness of the challenges her country faces, nor the political will to meaningfully address the Rakhine crisis. In less than 18 months, 800,000 Rohingya have fled from Rakhine State to Bangladesh to escape brutal clearance operations carried out by Myanmar's military, in the wake of attacks by a new Rohingya militant group.<sup>42</sup> She has failed to show moral leadership on Rakhine and appears unwilling to listen to frank advice. The first duty of Myanmar government is to stop violence and genocide. It is the first duty to the Myanmar government to ensure Human rights for Rohingyas. Myanmar should return the Rohingyas who are now in Bangladesh. Myanmar need to make a Bilateral contract with Bangladesh so that the task can be made easily . "Responsibility for repatriation of Rohingya people lies with the government of Myanmar ... safe and secure repatriation is the best possible way to resolve the crisis," the US official said at a press conference in the city. "Part of bringing people back to Rakhine State requires these people be allowed to return to their land .... And for those whose villages are burnt, quick efforts need to be made to restore their homes and their villages," he added.<sup>43</sup> This violence must stop, perpetrators must be held accountable, and there must be meaningful civilian control over Burma's military and security forces. The Myanmar government should create an sustainable environment so the Rohingya can live in Rakhine state. The Myanmar government need to make and investigation board to find out the reason for violence and punished the guilty persons. As an UN member Myanmar government cannot denies its responsibility toward Rohingya. Rohingyas are not Myanmar citizen as Myanmar Citizen Act,1981so the Act must be amended and shall be included Rohingyas. Myanmar government shall ensure Rohingyas fundamental rights.

### **1.5.2 Duty of Bangladesh regarding Rohingya crisis:**

Though Bangladesh is not party of 1951 convention and its 1967 protocol even there is no domestic law regarding refugee in Bangladesh but Bangladesh full fill Her duties on humanitarian grounds. To give shelter and maintenance to the Rohingyas not possible for

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<sup>42</sup> Richardson Bill: How the West Can Help Fix the Rohingya Crisis, Published on February 15, 2018, <http://time.com/5158603/bill-richardson-myanmar-rohingya-bangladesh/>[accessed on 15 April 2018]

<sup>43</sup> <https://www.thedailystar.net/frontpage/repatriation-rohingya-myanmars-responsibility-1486411>[accessed on 15 April 2018]

Bangladesh. Bangladesh government has decided to relocate the Rohingyas in Thangar Chor Island but it is not suitable for living. Tension between refugees and their Bangladeshi hosts are already on the rise, as prices in local markets and competition for unskilled work have increased. Meanwhile, Bangladesh has repeatedly threatened to relocate refugees to an uninhabitable island in the Bay of Bengal and has not yet granted UNHCR a formal role in managing refugee populations or planned repatriation efforts. Bangladesh Government need to communicate with Myanmar and International Community so that repatriation of Rohingya people can be made easily. Bangladesh and partner governments must begin to move from crisis response to a long-term strategy that recognizes that few Rohingya will soon voluntarily return to Myanmar. "Addressing the challenges in Rakhine State requires a strong bilateral relationship between Myanmar and Bangladesh. Events in one country have a profound effect on the other, as demonstrated by the thousands of Muslims from northern Rakhine State who sought refuge in Bangladesh after the violence in late 2016. There are profound developmental and humanitarian needs on both sides of the border, but also opportunities for cooperation that would benefit both countries. The last year has seen some efforts to strengthen bilateral engagement. In September 2016, State Counsellor Aung San Suu Kyi and Bangladesh Prime Minister Sheikh Hasina met at the UN General Assembly in New York. In June 2016, the Bangladesh Prime Minister sent her Foreign Secretary Shahidul Haque as her Envoy to meet with Aung San Suu Kyi in Naypyitaw. In January 2017, the Myanmar Minister of State for Foreign Affairs U Kyaw Tin visited Dhaka, and in July 2017, Myanmar's National Security Advisor U Thaung Tun also visited Bangladesh. There is significant scope to strengthen the relationship through more regular, structured and substantive bilateral exchanges. The span of issues that both countries can cooperate on is wide: Infrastructure projects, trade promotion, the management of illegal migration, documentation of refugees and IDPs, voluntary return of refugees, preventing human trafficking and drug smuggling, climate change, and security cooperation to combat violent extremism. Existing offers from Bangladesh to work together with Myanmar on these issues should be taken up urgently. Myanmar and Bangladesh have different narratives on the challenges along their shared border. Despite the large numbers who have fled from Myanmar to Bangladesh, the popular perception in Myanmar is that the problem is illegal immigration into Myanmar. There are also different historical narratives about the origin of communities and their population growth. These differences can only be narrowed by dialogue that promotes better

mutual understanding, both at the level of the country's leaders and people-to-people ties. Both countries have a clear mutual interest in cooperation. There are economic opportunities from increased trade. The flow of drugs needs to be stemmed. And, most crucially, joint action is required on security management of the border."<sup>44</sup>

### **1.5.3 Duty Of United Nation And International Community:**

The United Nations' foundation is built upon three pillars: peace and security, development, and human rights. It works very hard around the world upholding these core principles. Many of the issues confronting the global community today will require a multilateral approach to solve. The United Nations and its member states working together is the only chance for real progress to be made. The Rohingya "crisis" is one issue requiring greater attention. The term genocide is not often used in connection with this matter; it has been labeled as ethnic cleansing. Earlier this year, U.S. ambassador to the UN, Nikki Haley, did draw attention to the plight of the Rohingya by saying the Myanmar government's denial of ethnic cleansing was "preposterous." Moreover, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, said late last year that the atrocities waged against the Rohingya may be tantamount to the crime of genocide. He further stated that he would not be surprised if Prime Minister Aung San Suu Kyi had charges imposed against her for the crime of genocide. Under Article II of the UN Convention on the Prevention and Punishment of the Crime of Genocide, "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group." I would argue that this description would certainly fit what is occurring to the Rohingya today. The government of Myanmar, for some time now, has readily, knowingly, and supportively permitted atrocities to be perpetrated upon the minority Muslim Rohingya population in the western state of Rakhine. The 1982 citizenship law passed by the government of Myanmar declared the Rohingya people as illegal immigrants from Bangladesh subsequently denying them rights as citizens in the country. According to the UN, the Rohingya are the world's most persecuted minority. Information regarding the Rohingya people is at a premium as the government does not allow anyone into areas where the Rohingya are located. In recent weeks, two Reuters journalists were arrested and charged under the government's Official Secrets Act – a law dating back to 1923 when Myanmar, then Burma, was a province of British

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<sup>44</sup> Towards a peaceful, fair and prosperous future for the people of rakhine, final report of the advisory commission on rakhine state, published on August 2017. ps-59-60.

India. The act states that anyone who “obtains, collects, or publishes...any official document or information...useful to an enemy” is in violation of the law. The journalists were reporting on the “military crackdown” of the Rohingya in northern Rakhine state. The human rights violations perpetrated by the government even extends to the denial of food and healthcare services to the Rohingya people evidenced by The New York Times columnist Nicholas Kristof in his most recent column titled, “I Saw a Genocide in Slow Motion.” The denial of these necessities of life should prompt greater outrage at the highest levels of government. The UN’s independent investigator, Yanghee Lee, has called upon China and Russia to oppose the Myanmar government’s violations of human rights. She has stated publicly that it is her hope to see the international community work with China and Russia to condemn these actions. As two of the five members on the UN Security Council acting against Myanmar requires their backing. The words “never again” have been uttered many times throughout the course of history. Once again we witness crimes against humanity play out before us. It is time for the global community to summon the political courage to put an end to these atrocities.

### **1.6 Purpose of the Study**

Refugee crisis is one of the major problem in the world at present time and Bangladesh also suffering is problem. How the problem can be solved and what are the relevant laws can help to solve the problem. What are the obligation toward the host county as well as previous countries and also responsibilities of the UN and International Communities. Everything has been included there. So It can help a person to obtain his right and also his duty and a country and resolve this problem.

### **1.7 Scope of the Study**

This study will cover the topic and its related issues. This study is conducted on the subject which is related to the Constitution of the Peoples Republic of Bangladesh and the International Instruments'. This study also analysis the existing national and international laws and instruments relating to Refugee Rights and Protection. E.g.

- The Constitution of the Peoples Republic of Bangladesh, 1972
- Universal Declaration of Human Rights
- ICCPR

➤ ICESER

This study also analyzes the problems relating to Refugee rights and protection and also analyzes the obligation toward the host countries not being a party of 1951 refugee convention and its 1967 protocol.

**1.8 Methodology:**

This Research work is based on both the primary and secondary data and includes both qualitative and quantitative approaches.

Primary sources of the research include Acts, Policies, Case laws, international instruments etc.

Secondary sources of the study include books, articles, journals, research report, news papers, thesis, website etc.

## **Chapter II: Title Related law and International instruments**

### **2.1 International Instruments:**

The international refugee law is a part of the human rights law the aim of which is to promote human rights. In simple words, human rights are those basic rights of human which they own from the very moment of their birth (mostly) and without which a human cannot survive and among the human rights are right to life and equality before the law social security.

International and regional instruments relating to refugee's rights include:

- 1951 Convention relating to the Status of Refugees
- 1967 Optional Protocol relating to the Status of Refugees
- Universal Declaration of Human Rights (art. 14)
- American Declaration on the Rights and Duties of Man (art. 27)
- American Convention on Human Rights (art. 22)
- Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (Cartagena Declaration)
- African [Banjul] Charter on Human and Peoples' Rights (art. 12)
- OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa
- Arab Charter on Human Rights (art. 28)
- Cairo Declaration on Human Rights in Islam (art. 12)
- European Convention on Human Rights (arts. 2, 3, and 5)
- Council Regulation EC No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3)
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa

- Convention on the Rights of the Child (art. 22)

## 2.2 Refugee Laws In Bangladesh:

Bangladesh is neither a party to the UN Convention Relating to the Status of Refugees, 1951 nor the Protocol of 1967. Nonetheless, Bangladesh is obligated to protect refugees under certain other international human rights instruments. Hence, states, instead of not being part of 1951 convention and it's 1967 protocol relating to the status of refugees, still provide shelter to refugees whenever it is needed as a respect under the obligations of the international law and the humanitarian ground.

According to the Universal Declaration of Human Rights (UDHR) 1948 of Article 14(1), “*Everyone has the right to seek and to enjoy in other countries asylum from persecution*”. The UDHR is the first ever international human rights document which represents the rights which are entitled to all human beings. It was adopted by the United Nations General Assembly on 10th December, 1948.<sup>45</sup>

Article 3 of the 1984 Convention against Torture states, “*No state parties shall expel, repel, return (refouler), or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.*”<sup>46</sup>

Article 26 of the International Convention on Civil and Political Right, 1966 states that “*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law*”. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion of national or social origin, property, birth or other status.”<sup>47</sup> As per the principle of non-refoulement, a state is obliged to provide

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<sup>45</sup> <http://www.ohchr.org/en/udhr/pages/introduction.aspx>; [accessed 06 April 2018].

<sup>46</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46). The Convention entered into force on 26 June 1987.

<sup>47</sup> International Covenant on Civil and Political Rights 1966, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

shelter to a refugee as customary international law. The principle of non-refoulement is often referred to as the cornerstone of asylum and of international refugee law.<sup>48</sup>

Article 33 (1) of the 1951 Convention relating to the Status of Refugees, states: *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, membership of a particular social group or political opinion.* In fact, the respect for the principle of non-refoulement requires that asylum applicants be protected against return to a place where their life or freedom might be threatened until it has been reliably ascertained that such threats would not exist and that, therefore, they are not refugees. The protection against refoulement under Article 33(1) applies to any person who is a refugee under the terms of the 1951 Convention, that is, anyone who meets the requirements of the refugee definition contained in Article 1A (2) of the 1951 Convention (the “inclusion” criteria) and does not come within the scope of one of its exclusion provisions as per Article 1A (2) of the 1951 Convention.<sup>49</sup> The non-refoulement obligation under Article 33 of the 1951 Convention is binding on all organs of a State party to the 1951 Convention and/or the 1967 Protocol as well as any other person or entity acting on its behalf.<sup>50</sup> Within the framework of the 1951 Convention/1967 Protocol, the principle of non-refoulement constitutes an essential and non-derogable component of international refugee protection. The central importance of the obligation not to return a refugee to a risk of persecution is reflected in Article 42(1) of the 1951 Convention and Article VII(1) of the 1967 Protocol, in which list Article 33 as one of the provisions of the 1951 Convention to which no reservations are permitted. While the principle of non-refoulement is basic, it is recognized that there may be certain legitimate exceptions to the principle.

Article 33 (2) of the 1951 Convention provides that the benefit of the non-refoulement principle may not be claimed by a refugee. *Article 33 (2) states that: The benefit of the present provision may not, however, be claimed by a refugee to whom there are reasonable grounds for regarding him/her as a danger to the security of the country in which he/she is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.* According to Article 33(2), refugees can exceptionally be returned on

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<sup>48</sup> <http://www.unhcr.org/4d9486929.pdf>. [Accessed on 06 April 2018].

<sup>49</sup> *Ibid* P-2

<sup>50</sup> Article I (1) of the 1967 Protocol provides that the States Party to the Protocol undertake to apply Articles 2–34 of the 1951 Convention.

two grounds: (i) in case of threat to the national security or public order of the host country; and (ii) in the case that their proven criminal nature and record constitute a danger to the community.<sup>51</sup>

Article-2 of International Covenant on Civil and Political Rights(ICCPR)," *a state is to respect and ensure all rights recognized in the covenant to all individuals within its territory, which includes the scope of refugees.*" Even the rights recognized in International Covenant on Economic Social and Cultural Rights are available to the refugees(ICESCR).

Article-22 of Convention on the Rights of the Child(Child Convention) places obligation over Bangladesh to ensure appropriate protection and humanitarian assistance to the refugee children;

*1.States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*

*2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention."*

Besides this Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment(Torture Convention), C118 - Equality of Treatment (Social Security) Convention etc places different responsibilities on Bangladesh regarding refugee protection. On the other hand,

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Bangladesh has been the member of the Executive Committee of UNHCR (EXCOM) since 1995. This ascertains the commitment of Bangladesh towards ensuring protection for the refugees, based on the international human rights standards.

### **2.3 Principles of Non-Refoulement:**

The principle of Non refoulement is seen by most in the international law arena, whether governments, on governmental organizations or commentators, as fundamental to refugee law. Since its expression in the Refugee Convention in 1951, it has played a key role in how states deal with refugees and asylum seekers. An expert in refugee law defines it as the idea that “*no refugee should be returned to any country where he or she is likely to face persecution or torture*”<sup>52</sup>. Article 33, of the 1951 Convention states, “*no contracting state shall expel or return a refugee in any manner what so ever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion ,nationality, membership of a particular social group or political opinion.*”<sup>53</sup> In fact, the respect for the principle of non-refoulement requires that asylum applicants be protected against return to a place where their life or freedom might be threatened until it has been reliably ascertained that such threats would not exist and that, therefore, they are not refugees. The protection against refoulement under Article 33(1) applies to any person who is a refugee under the terms of the 1951 Convention, that is, anyone who meets the requirements of the refugee definition contained in Article 1A (2) of the 1951 Convention (the “inclusion” criteria) and does not come within the scope of one of its exclusion provisions as per Article 1A (2) of the 1951 Convention.<sup>54</sup> Non-refoulement has been defined in a number of international refugee instruments, both at the universal and regional levels, notably the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa, the 1969 American Convention on Human Rights,<sup>55</sup> the 1984 Cartagena Declaration on Refugees, and the Declaration on Territorial Asylum adopted by the United Nations General Assembly on 14 December 1967.

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<sup>52</sup> Guy GoodwinGill, *The Refugee in International Law*(2 ed, Clarendon Press, Oxford 1996) 117.

<sup>53</sup> See Art. 33, of the *Refugee Convention, 1951*

<sup>54</sup> <http://www.unhcr.org/4d9486929.pdf>. [Accessed on 06 April 2018].

<sup>55</sup> 1969 American Convention on Human Rights “Pact of San José, Costa Rica”, 1144 U.N.T.S. 123, entered into force 18 July 1978 [hereinafter, “ACHR”]. Article 22(8) reads: “In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.”

## **2.4 Refugee Rights protection Un Bangladesh Constitution:**

The constitution is the supreme law of the land. The fundamental rights are enlisted in Part III of the constitution with a view to ensuring equality before law. We have as many as 18 fundamental rights from which some are applicable to non –citizens also. These include-

### **2.4.1 The Right to Protection of Law:**

The refugees have constitutional right to enjoy the protection of law in this country. Article 31 of the Constitution has conferred the right to them. Article 31 states, *“To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.”*<sup>56</sup>

### **2.4.2 Protection of Right to Life and Personal Liberty :**

Article 32 of the Constitution provides that *"no person shall be deprived of life or personal liberty save in accordance with law."*<sup>57</sup>

### **2.4.3 Safeguards as to Arrest and Detention:**

Article 33 of the Constitution provides safeguards against arrest and detention for the citizens and non citizens alike. It enumerates that, *"no person who is arrested shall be detained in custody without being informed, as soon as possible, of the grounds for his arrest."* Moreover, his right to consult and be defended by a legal practitioner of his choice cannot be denied. However, this right is not applicable to any person, who for the time being is an ‘enemy alien’.<sup>58</sup>

### **2.4.4 Prohibition of Forced Labor:**

Article 34 of the Constitution can well be used to safeguard the rights of the refugees. It says that, *"any form of forced labor is prohibited and any contravention of this provision shall be an offence, punishable in accordance with law."*<sup>59</sup>

### **2.4.5 Enforcement of the Fundamental Rights:**

For the enforcement of the above mentioned rights, any refugee, like a citizen of Bangladesh, can move the Honourable High Court Division in accordance with the Article 102, of this Constitution. Moreover, The Constitution of Bangladesh has obliged the government to support

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<sup>56</sup> See Art.31, The Constitution of Peoples Republic of Bangladesh.

<sup>57</sup> Ibid,Art.32

<sup>58</sup> Ibid,Art. 33

<sup>59</sup> Ibid,Art.34

oppressed peoples' struggle against racialism in all parts of the world.<sup>60</sup> In part II of our Constitution comprises the Fundamental Principles of State Policy which adheres to the the principles of international law, including the principles laid down in the United Nations Charter. For the execution of the legal provisions, protecting the interest of the refugees, proper legal interpretations and proactive initiative from the government, are needed. Bangladesh, has to do lot in this regard.

### **2.5 Refugee Protection under Statutory Laws:**

The essence of Article 31 got reflected in the case, Abdul Latif Mirza v. Bangladesh. It was declared by the Appellate Division of the Supreme Court of Bangladesh that Article 31 gives citizens a constitutional guarantee and that they will enjoy the protection of law and should be treated in accordance with law and this will be their inalienable right. A refugee is a person who has been pushed away from their home country and has sought refuge elsewhere. So he is not entitled to the rights of a citizen. However, it is laid down in Article 31, that no action can be taken which is detrimental to the life, liberty, and property of any person including a refugee except in accordance with law.<sup>61</sup> It is already known that, people become refugees when their basic human rights and dignity are not ensured in their home country owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, and are outside the country of their nationality, and is unable to or, owing to such fear, are unwilling to avail the protection of that country. In Bangladesh, there are some statutory laws like civil and criminal laws which provide the legal protection to refugees. Civil and criminal courts are also endowed with the task of looking into the interests of the refugees. As already mentioned, the Government of Bangladesh through the Legal Aid Act, 2000 (Act 6 of 2000), is trying to reach out to the refugees.

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<sup>60</sup> *Ibid* .,Art.25.

<sup>61</sup> *Md. Akhtaruzzaman, "Right of the Refugee in Ours Laws" Law and Our Right, The Daily Star , 24 2006*

## Chapter: Literature Review

Refugee issue is one of the alarming is in the world at present time. Bangladesh is closely related with refugee issue because Bangladesh has performed the hosting duty since 1972. This issue has been analyzed many times by many learned person.

Imtiaz Ahamed, Professor of International Relations of Dhaka University;

*identified that "Rohingya refugees are a serious threat to the security of Bangladesh. He pointed out four dimensions of security threat caused by the Rohingyas, namely, i) Politico-Military Dimension of Security, ii) Economic Dimension of Security, iii) Social Dimension of Security and iv) Environmental Dimension of Security."*<sup>62</sup>

Md Zakir Hossain, A National Consultation United Nation High Commission for Refugee,' at Dhaka University Nabab Nawab Ali Chowdhury Senate Bhaban, September 23 2012, talked about Rohingya Refugee issue in his Article "Journey towards Solution of Rohingya Refugee Crisis" :

*"Refugees coming from Myanmar are called Rohingyas who are an ethnic group of people and considered as a minority community living in North Arkan in Myanmar. This minority community is not regarded as the citizen of Myanmar in spite of their residence in Myanmar for centuries. Rohingyas have no freedom of movement and need to apply for passes (even for traveling purposes in their country of domicile) which are not free of charge, limited marketing access and limited employment opportunities."*<sup>63</sup>

Barrister Harun Ur Rashid talked about Rohingya issue:

*"Rohingya refugees impose quite a heavy burden on Bangladeshi economy and scant resources. It is reported that many local people do not want to accept Rohingya refugees,*

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<sup>62</sup> Ahamed Imtiaz (ed.), The Plight of the Stateless Rohingyas, The University Press Ltd, Bangladesh, 2010, p 69 – 85.

<sup>63</sup> Md Hossain Zakir, "Journey towards Solution of Rohingya Refugee Crisis" (paper presented on the discussion on Rohingya issue, organized by National Human Rights Commission (NHRC) of Bangladesh. The title of discussion was „Journey to Solution of Rohingya Refugee Crisis: A National Consultation United Nation High Commission for Refugee,' at Dhaka University Nabab Nawab Ali Chowdhury Senate Bhaban, September 23 2012).

*some of whom are allegedly involved in undesirable activities either within the local area or on the border, posing a threat to peace and security of the local people.*<sup>64</sup>

Md. Zahirul Islam delivered his opinion about Rohingya Refugee Issue in An Article in Daily Sun Newspaper:

*"The Rohingyas refugees are adding extra pressure on the existing crisis of the land and forests in the Cox's Bazar region. Bangladesh has lost considerable area of reserve forest for providing land to the refugees for construction of their shelter. Moreover, the refugees and undocumented Myanmar nationals are regularly cutting off valuable trees and destroying woods in the reserve forests in the Bandarban and Cox's Bazar areas causing serious harm to Bangladesh's environment, ecology and bio-diversity.*<sup>65</sup>

According to Hamid and Emma Crichton;

*"The Rohingya, an ethnic minority of Myanmar (previously known as Burma) is one of the most persecuted groups of people in the world.*<sup>66</sup>

Emdadul Haque talked about the amount Of Rohingya in the Daily Star Newspaper;

*"Now around 0.5 million documented and undocumented Rohingya people are living in Cox's Bazaar, Bandarban and its adjacent areas under the generosity of Bangladesh for over 30 years".*<sup>67</sup>

Udatta Bikash talked about Rohingya Refugees in The Daily Star, on Sunday, March 2, 2008;

*"About 258,000 Rohingyas were registered by the government of Bangladesh and granted refugee status through an executive order, however, without any proper legal*

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<sup>64</sup> Barrister Ur Rashid Harun, Why are Rohingyas being refused entry into Bangladesh? The Daily Star, Wednesday, 20 June, 2012; <http://archive.thedailystar.net/newDesign/news-details.php?nid=238943>. [Accessed on 8 April 2018].

<sup>65</sup> Md Islam Zahirul, Rohingya Refugee Problem: A Burden on Bangladesh, The Daily Sun, Dhaka, Monday 18 June 2012; [http://www.daily-sun.com/details\\_yes\\_18-06-2012\\_Rohingya-refugee-problem:-A-burden-on-Bangladesh\\_178\\_2\\_17\\_1\\_1.html](http://www.daily-sun.com/details_yes_18-06-2012_Rohingya-refugee-problem:-A-burden-on-Bangladesh_178_2_17_1_1.html). [Accessed on 10 April 2018].

<sup>66</sup> Hamid and Crichton Emma , The Rohingya Crisis of June 2012: A Survivor's Testimony, Open Democracy, 6 March 2013; <http://www.opendemocracy.net/opensecurity/hamid-emma-crichton/rohingya-crisis-of-june-2012-survivors-testimony>. [Accessed on 11 April 2018]

<sup>67</sup> Haque Emdadul, Humanitarian vs. Legal Deals : Human Rights Monitor Rohingya people, The Daily Star, Tuesday, July 2, 2013; <http://www.thedailystar.net/beta2/news/humanitarian-vs-legal-deals/>. [accessed 10 April 2018]

*sanction. In addition to that, more thousands of Rohingyas arrived in Bangladesh and allowed to freely mix with the local population over the years."*<sup>68</sup>

Mirza Sadaqat Huda talked about Rohingya issue in his Article Asserting the Need for Constructive Regional & International Engagement, South Asian Journal, Issue 7 - January 2013;

*"In 2012, for the first time Bangladesh refused to accommodate the Rohingyas. The Government of Bangladesh decided not to welcome the Rohingya refugees in the territory of Bangladesh because of national security and unmitigatingly over burdening the country due to the Rohingya refugees, who have been staying in Bangladesh for more than 20 years without contributing any economic and social benefit to the host country."*<sup>69</sup>

Utpala Rahman delivered his opinion about Rohingya issue in his article A Security Dilemma for Bangladesh, Journal of Immigrant & Refugee Studies;

*"Illegal small arms trade, a flourishing business along the border, is also a security concern for Bangladesh whose Border Guard has only one border outpost (BOP) to keep vigil on the 129-km border. Those pushed back refugees live in the border jungle and get involved in smuggling."*<sup>70</sup>

Mohammad Akhtahrizzan talked about Rohingya Issues in his article Human Rights & Domestic Implication Mechanisms;

*"Bangladesh does not have any domestic or national law which can cover the issue of asylum seekers. In Bangladesh, foreigners irrespective of asylum seekers or simply visitors are treated under some old laws (e.g., The Passport Act, 1920; The Naturalization Act, 1926; The Registration of Foreigners Act, 1939; The Foreigners Act, 1946; The Registration of Foreigners" Rules, 1966; The Bangladeshi Citizenship Act, 1951; The Bangladeshi Control of Entry Act, 1952; The Bangladeshi Citizenship*

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<sup>68</sup> Udatta Bikash, Rohingyas Refugees, The Daily Star, Sunday, March 2, 2008; <http://archive.thedailystar.net/newDesign/news-details.php?nid=25644>. [Accessed on 12 April 2018]

<sup>69</sup> Huda Mirza Sadaqat, The Rohingya Refugee Crisis of 2012: Asserting the Need for Constructive Regional & International Engagement, South Asian Journal, Issue 7 - January 2013; <http://southasiajournal.net/2013/03/the-rohingya-refugee-crisis-of-2012-asserting-the-need-for-constructive-regional-international-engagement/>. [Accessed on 12 April 2018]

<sup>70</sup> Rahman Utpala, The Rohingya Refugee: A Security Dilemma for Bangladesh, Journal of Immigrant & Refugee Studies, 2010, p 233. <http://www.creatingaroadhome.com/new/the-rohingya-refugee-a-security-dilemma-for-bangladesh/> [accessed 19 January 2014].

*(Temporary Provision) 1972; The Bangladeshi Passport Order, 1973; and the Extradition Act, 1974).*"<sup>71</sup>

Mostafa Mahmud Naser & Tanzima Afroz, Protection of Refugees in Bangladesh: Towards a Comprehensive Legal Regime, Dhaka University Law Journal Studies said;

*"However, these Biharis could not be considered as Refugees because they did not comply with the requirements provided under Article 1 of the 1951 convention, i.e., Bihari people did not cross the border and they did not flee from their habitual residence."*<sup>72</sup>

Thailand and Malaysia to the Rohingya;

*It is said that the Rohingya refugees are „a threat to and a burden for Thailand.”<sup>73</sup> In 2009, the Malaysian Prime Minister has called for the repulsion of the Myanmar's Muslim boat people to be pushed back if they attempted to land on any Southeast Asian shores in search of asylum.*<sup>74</sup>

*Bangladesh v. Unimarine S.A. Panama and Others;*

*"relates to the Bangladeshi position on the international custom. The court in this case declared that the customary international law is binding on the state, and generally gives effect to the rules and norms of the customary international law."*<sup>75</sup> The court also observed, "Immunity is available under the public international law to persons and properties of classified companies as mentioned in the list which is usually filed by foreign missions and international agencies."<sup>76</sup>

<sup>71</sup> Akhtaruzaman Mohammad, Legal Protection of Refugees under Bangladesh Laws, in Dr. Mizanur Rahman (ed), Human Rights & Domestic Implication Mechanisms., ELCOP, Dhaka, 2006, pp 175.

<sup>72</sup> 59Imtiaz Ahamed (ed.), The Plight of the Stateless Rohingyas, The University Press Ltd, Bangladesh, 2010, p 103.

<sup>73</sup> Mostafa Mahmud Naser & Tanzima Afroz, Protection of Refugees in Bangladesh: Towards a Comprehensive Legal Regime, Dhaka University Law Journal Studies (2007) Part 1. Vol. – XVIII (Issue No-1) p-112

<sup>74</sup> Myanmar: Rohingya Refugees and Thailand's „Push-Back“, Panchali Saikia, 30 December 2011, available at <http://www.ipcs.org/article/southeast-asia/myanmar-rohingya-refugees-and-thailands-push-back-3539.html>. [Accessed on 19 April 2018]

<sup>75</sup> UNHCR, Refugees Daily: Refugees Global Press Review, 27/02/2009; <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=49a78c228>. [Accessed on 19 April 2018].

<sup>76</sup> Bangladesh v. Unimarine S.A. Panama and Others, 29 DLR (1977) p. 252

<sup>77</sup> Ibid. p. 259.

In *Saiful Islam Dildar v Government of Bangladesh and Others*;

*"The High Court Division considered the issue of the customary international law's right to self determination vis-a-vis the provision of the Constitution of Bangladesh. Justice A.M. Mahamudur Rahaman interpreted Article 25 of the Constitution of Bangladesh, and opined that the fundamental principle of the State Policy cannot be enforced by the court."*<sup>77</sup>

In *Hussain Muhammad Ershad v. Bangladesh and Others* Justice Chowdhury observed;

*"True it is that the universal human rights norms, whether given in the universal declaration or in the covenants, are not directly enforceable in the national courts. But if their provisions are incorporated into the domestic law, they are enforceable in the national courts. The local laws, both constitutional and statutory, are not always in consonance with the norms contained in the international human rights instruments. The national court should not, I feel, straightway ignore the international obligation, which a country undertakes. If the domestic laws are not clear enough or there is nothing there in the national courts, only then should the national courts draw upon the principles incorporated in the international instruments. But in the cases where the domestic laws are clear and inconsistent with the international obligations of the state concerned, the courts will be obliged to respect the national laws, but shall draw the attention of the law makers to such inconsistencies."*<sup>78</sup>

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<sup>77</sup> Saiful Islam Dildar v Government of Bangladesh and Others, 50 DLR (1998), p.318

<sup>78</sup> Hussain Muhammad Ershad v. Bangladesh and Others 21 (2001) BLD(AD),p-69

## Chapter IV: Findings & Recommendations

### 4.1 Findings:

The Rohingyas are persecuted on the basis on religion and they are minority in Myanmar. They are depriving from the first of Myanmar. Myanmar government did not include them into citizen according to their Citizenship Act,1981.The Rohingyas are stateless persons as a result Myanmar is their habitual residence. Myanmar Military joined in the riot and they helped Myanmar government to persecute Rohingyas. Myanmar is not suitable for Rohingays because they don't get basic human rights from Myanmar government. The Rohingyas also pushed back by Border guard Bangladesh(BGB).About 8,00,000 rohingays resides in Bangladesh so it becomes tough for Bangladesh to give shelter and maintenance to them. Some finding pints are;

1. The Rohingya are atomised, traumatised and angry. They lack political leadership, suffer from a lack of education and have endured extreme deprivation. Many say they will not return to Myanmar without citizenship and guaranteed security.
2. Tensions are already rising between the Bangladeshi and the refugees. Locals feel under threat as they are outnumbered. Prices are up, wages for day laborers are down and there has been much environmental and other damage. Sympathy is fading fast. Urgent action is needed to assist a mostly impoverished host community that bears an excessive burden from the crisis.
3. The most significant human security problems are trafficking and gender-based violence targeting women and children. This has long been an issue in Cox's Bazar and the arrival of a large and very vulnerable population may amplify it.
4. The host community almost universally has negative views of the Rohingya even though they are sympathetic to their plight in Rakhine: many see them as uneducated, coarse and potentially criminal. Most locals also say that if they do not go home soon, they should be isolated in a closed camp.
5. Rohingya refugees involved some criminal activities like human trafficking, smuggling ,

#### **4.1.1 Results:**

Of the 400,000–500,000 Rohingyas living in Bangladesh, 33,131 are registered as refugees living in two camps (Ukhiya and Teknaf). However, there are 63,000–80,000 undocumented refugees living in nearby makeshift camps. There are schools and medical facilities (in-patient and out-patient) available for registered refugees in the camp. However, access to education remains partial and ad hoc, with no entitlement to education for non-camp Rohingya children. The distribution of the registered Rohingya refugee population based on age and sex. Children comprise one-fourth of the camp population, and most were born in the camp. The morbidity and mortality status of the registered Rohingya refugees are presented above. Both camps have clinics for providing a basic level of healthcare free of charge, which includes limited referrals to specialists in the Cox's Bazar and Chittagong districts. Overall mental health conditions, as well as epilepsy/seizures, are a concern in both camps. Psychotic disorders are also prevalent, although precise data are unavailable for Nayapara. Information on access to healthcare, water and sanitation. Access to antenatal care, antenatal tetanus vaccination and birth attendance is a key focus of the clinics. However, access to clean water remains a problem, particularly in Nayapara, owing to shortage of groundwater. In the camps, rainwater is channeled into a basin, cleaned and then pumped to distribution points twice daily for two hours.

#### **4.2 Recommendations :**

1. Myanmar Government to establish a Joint Commission with Bangladesh, to discuss bilateral relations, challenges, and opportunities of mutual interest. The Joint Commission – which should meet at least every quarter should address issues such trade promotion, infrastructure, people to people contact, the management of illegal migration, documentation of refugees and IDPs, voluntary return of refugees, combating human trafficking and drug smuggling, and security cooperation to combat violent extremism.
2. The Governments of Myanmar and Bangladesh should facilitate the voluntary return of refugees from Bangladesh to Myanmar through joint verification, in accordance with international standards and with assistance from international partners.
3. When refugees from northern Rakhine State return from Bangladesh, the Government of Myanmar should help create a secure environment and, where necessary, assist with shelter construction for those whose homes have been destroyed.

4. Cooperation on security and border management requires urgent attention, particularly in light of the October 2016 attacks in Maungdaw. Substantial progress has been made since the interim report on security cooperation and border issues, including a clear willingness to finalize the three Moue's which will formalize a deepening of Myanmar-Bangladeshi security cooperation. The Commission is of the opinion that this effort should be continued and intensified, and the implementation of the MoU's started as soon as possible.

5. The work of the Joint Trade Commission and encourages both governments to rapidly increase their bilateral trade. The Governments of Myanmar and Bangladesh could actively encourage more exchanges between civil society, think tanks, academics and the private sector to promote mutual understanding and cooperation.

6. The secretariat's staff should be in permanent consultation with groups in Rakhine State in the implementation of its work.

7. The Myanmar government should give citizenship to The Rohingyas.

8. The international community should nonetheless continue to push for efforts to establish accountability mechanisms, such as a joint Myanmar-international investigation into human rights abuses and the mass graves discovered in Rakhine thus far; while Myanmar's intent to hold 16 people, including some military officials, accountable for the extrajudicial killings at Inn Dinn, its response to recent media reports of new mass graves does not bode well for such an endeavor. Nonetheless, efforts to meticulously document what has occurred may provide opportunities to hold perpetrators accountable in the future or to help facilitate eventual efforts to establish the truth and promote reconciliation.

9. United Nation as well as China and others Developed Countries Should create embargo upon Myanmar Government.

10. Bangladesh Government should enact a domestic or specific law regarding Refugee.

11. NGOs and International Communities should come forward for funding and should continue it.

## Chapter V: Ending Part

### Conclusion:

There is no refugee law and policy in Bangladesh which, incidentally, is not a party to the 1951 Refugee Convention/1967 Protocol. The provisions of the municipal law have always been given priority over the customary international law where the existence of domestic law is present. Bangladesh has been criticized for not opening its doors to the Rohingya refugees in recent times. If Bangladesh wants to overcome the situation regarding these refugee issues, firstly, it has to enact a strong domestic legislation on the refugee and the immigration law, which may restrict the flow of refugees. Secondly, it has to find out all the unlisted and unregistered refugees living within its territory. Thirdly, Bangladesh can go for some bilateral or multilateral treaties with its neighbor countries as well as other countries of Asia for dealing with the refugee influx. And finally, Bangladesh will have to convince the international community's to put pressure on Myanmar to resolve the Rohingya refugee problem that Bangladesh has been carrying for the last 20 years without any foreseeable economic and social benefits whatsoever. Nonetheless, it is to be seriously and rationally viewed through the economic and social perspectives that it is mainly because of the large Rohingya refugee influx into Bangladesh for over 20 years that has critically over spilled its disastrous effect on the social economic stability of the home citizens who have been situationally displaced due to the pressure brought about by the Rohingya refugees that ultimately causes the Bangladeshi citizens themselves to seek better livelihood elsewhere, especially into Malaysia and the Middle East countries. This phenomenon is brought about by the fact that as the Rohingya refugees are critically desperate to earn a living for their very survival, they would quote a much lower fee or salary for any job offered to them and this, incidentally, has seriously upset the wage pattern in the labor market of the host country. A similar analogy could be drawn in the form of water being constantly poured into a glass of milk in which the milk would ultimately be spilled out of the glass by the water which would then ultimately occupy the glass. Before the situational circumstances can be fully dictated by the external influence of the Rohingya refugee influx and possibly develop into immitigable proportion, it is highly timely for Bangladesh to take a convincingly effective proactive and preventive measure to restore the viability of its national economy, prosperity, welfare and

security so as to curtail the brain drain of Bangladeshi specialists from exploring further afield in the international labor market.

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