

## **Nature of Human Rights Violation against the Rohingya Refugees in Bangladesh and in Myanmar**

### **Abstract**

*This essay highlights the major Human Rights violations against the Rohingyas in Myanmar, who are recognized as stateless by their own country. To the world they become an example of being refugee without the standard concern of International Community as well as UN High Commission for Refugees. This paper discusses the position of refugees in Myanmar and in Bangladesh comparatively. This paper is tries to find out the reason of Rohingyas' exodus from their history shortly. It will discuss the Human Rights violations before and after this exodus by Myanmar and by Bangladesh. This paper also speaks as a refugee what kind of violations they are regularly facing. Finally, in conclusion attempts are made to evaluate these two countries human rights violation as apparently they are quite similar.*

### **I Introduction**

In present world Refugee problem has become common during humanitarian crises and human rights violation in the modern world. International refugee law defines a refugee as someone who seeks refuge in a foreign country because of war and violence, or out of fear of persecution. The 1951 United Nations Convention relating to the Status of Refugees adopted the following definition of a refugee (in Article 1.A.2):

“Any person who: owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country”.<sup>1</sup>

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Since the Rohingyas are being persecuted from their country because of their race <sup>2</sup> and to some extent persecuted as because of their distinct religion, hence, they, this article assumes, qualify as Refugees.<sup>3</sup> In *Burma Citizenship Law 1982* , Rohingyas are not recognized as national and consequently they are deprived from all citizens' rights as well as constitutional rights also. So it can be presumed, before 1982 Rohingyas are not unrecognized as national by Myanmar. They are being fled from Myanmar as a refugee since 1962.<sup>4</sup> So it can be said Rohingyas are fled to another county (from Myanmar) as refugee for the persecution caused due to their race and to some extent persecution caused by religion from their own country.

In this regard Rohingyas are remaining one of the most persecuted and vulnerable communities in the world, a long time as a consequence of constant persecution, they are unable to rightfully claim Myanmar as their own state.<sup>5</sup> They have been denied Burmese citizenship in *The Citizenship Law 1982*, though, they have been living in Arakan for about thousand years of being a part of Burmese (Myanmar) people.<sup>6</sup>

Looking back to the history, the Rohingyas denied from negotiations with the British during the independence of Burma in 1948. As per the historic Union Treaty on 12 February 1947 signed by the Nationalists, after that state of Burma framed the union constitution which under the heading "Right to Secession" includes the right to secede after ten years.<sup>7</sup> In this treaty Rohingya representatives were not invited and hence the Rohingyas were not recognized as a people in the Union.<sup>8</sup> It may be assumed that the non representation of the Rohingya and

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1 United Nations High Commission for Refugees. (2012). Text of "Convention Relating to the Status of Refugees".

2 *Al Jazeera News*, Reported Document: Rohingya Persecution, [available at: <http://www.aljazeera.com/news/asia-pacific/2013/04/2013421135240814468.html>, accessed on 25 May, 2013].

3 Report Documents, Rohingya Persecution, [ available at: <http://www.aljazeera.com/news/asia-pacific/2013/04/2013421135240814468.html>, accessed on, 20 May 2013 ].

4 Abdur Razaque and Mahfuzul Haque, *A Tale of Refugees; Rohingyas in Bangladesh*, ed. (Dhaka: The Centre for Human Rights, 1995), p.5.

5 Bina D' Costa, Rohingyas and the 'Right to Have Rights', Forum (*The Daily Star*), Vol-6, issue-8, August 2012.

6 Abdur Razaque and Mahfuzul Haque, *ibid.*, pp.15-6.

7 *Ibid.*, p. 16.

8 *Ibid.*, p. 17.

consequently their constitutional recognition created a fusion of deteriorate relation between the State of Myanmar and the Rohingyas which has political manifestations.

Persecution if may be regarded as a consequence of the tension began in resulting exodus of the Rohingyas to Bangladesh. As result of Rohingya exodus, Bangladesh hosts more than 200,000 Muslim Rohingya refugees forced from Western Burma (Myanmar) who fled during 1991-92 to escape persecution by the Burmese military junta.<sup>9</sup> Many are living here almost for twenty years. The Bangladeshi government divides the Rohingya into two categories - recognized refugees living in official camps and unrecognized refugees living in unofficial sites or among Bangladeshi communities.<sup>10</sup> Around 30,000 Rohingyas are residing in two camps in Nayapara and Kutupalong area of Cox's Bazar district in Bangladesh.<sup>11</sup> These camp residents have access to basic services, those outside do not.<sup>12</sup>

Practically the Rohingyas are unwanted in their own country and outside the country also. Based on this crisis towards Rohingya, Firstly this paper highlights some violations of Human Rights of Rohingyas in Myanmar and in Bangladesh as refugees. Secondly, it will prove that the violation of Human Rights in Myanmar and in Bangladesh varies in degree not in substance, though Bangladesh being a democracy is more advanced in Human rights comparatively than Myanmar. The purpose of this article is iconoclastic. It will challenge the pride that we (Bangladesh) bear, perhaps as being a democracy for more than two decades better civilizational standards than that of Myanmar.

## **I I Democracy and Human Rights Concern in Myanmar and Bangladesh**

### ***Myanmar:***

The result of its 1990 elections in Myanmar were never recognized by the ruling Junta and Aung San Suu Kyi the leader of Burma's pro-democracy movement, was denied her victory.

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<sup>9</sup> Dara McLeod, 'Luck of the Draw: Rohingya Refugees in Bangladesh', [available at: <http://refugeesinternational.org/blog/photo-report/luck-draw-rohingya-refugees-bangladesh>, accessed on 10 April, 2011].

<sup>10</sup> Imtiaz Ahmed, *The Plight of the Stateless Rohingyas; Responses of the State, Society & the International Community*, ed. (Dhaka: University Press Limited, 2010), *ibid.*, p. 29.

<sup>11</sup> Brade Adams Report of 'Human Rights Watch : Rohingya Refugees from Burma Mistreated in Bangladesh', [available at: <http://www.hrw.org/news/2007/03/26/rohingya-refugees-burma-mistreated-bangladesh>, accessed on 20 August, 2012].

<sup>12</sup> Brade Adams, Report of 'Human Rights Watch, *ibid.*

She has been under house-arrest <sup>13</sup> till 13 Nov 2010. The way in which the military has exerted its control over the country clearly it's not the sign of democracy anyhow. However as a part of reforms and transition towards democracy, 'Union of Myanmar' became 'Republic of the Union of Myanmar' by established a new constitution in 2008. As a result Myanmar held an election <sup>14</sup> in 2010. Since the 2010 election, government has embarked on a series of reform to direct the country towards liberal democracy. A series of reform includes the release of pro-democracy leader Aung San Suu Kyi from house arrest, establishment of the National Human Rights Commission, granting of general amnesties for more than 200 political prisoners, new labour laws that permit labour unions and strikes, relaxation of press censorship and the regulation of currency practices.<sup>15</sup>

Human Rights concern in Myanmar started with the reforms. Since the establishment of National Human Rights Commission, Myanmar is subjected to continuing criticism of the treatment of the Rohingya minority, particularly following the government response to religious clashes.<sup>16</sup> According to the report to the 59<sup>th</sup> session of the United Nations Commission for Human Rights, Geneva 2003, that the military regime in Burma is one of the world's most repressive and abusive regimes. Not only that, International human rights organizations including Human Rights Watch<sup>17</sup>, Amnesty International<sup>18</sup> and the American

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<sup>13</sup> Michael W. Charney, *A History of Modern Burma*, ed. (London: Cambridge University Press, 2010), pp. 2-5.

<sup>14</sup> TNI-BCN Burma Policy Briefing, Nr-4, 'A Changing Ethnic Landscape: Analysis of Burma's 2010 polls', [available at: <http://www.tni.org/briefing/changing-ethnic-landscape-analysis-burmas-2010-polls>, accessed on 10 October, 2011] .

<sup>15</sup> *News Asia-Pacific*, 'Burma Law to allow Labour Unions and Strikes', *BBC news*, 14 October 2011. [available at: <http://www.bbc.co.uk/news/world-asia-pacific-15303968>, accessed on 10 October, 2012].

<sup>16</sup> Andrew R. C. Marshall's Article at *Router*, 'Muslim, Buddhist Mob-Violence Threatens New Myanmar Image', [available at; <http://www.reuters.com/article/2012/06/11/uk-myanmar-violence-idUSLNE85A01C20120611>, accessed on 10 octobor,2012].

<sup>17</sup> Brad Adams Report of Human Rights Watch, 'Statement to the EU Development Committee', [available at: <http://www.hrw.org/en/news/2004/08/29/statement-eu-development-committee>, accessed on 10 October ,2012].

<sup>18</sup> Amnesty International Report 2009 on 'Human Rights in Myanmar', 4 January 2010. [available at: <http://report2009.amnesty.org/en/regions/asia-pacific/myanmar>, accessed on October, 2012]

Association for the Advancement of Science have repeatedly documented and condemned widespread human rights violations in Burma.

### ***Bangladesh:***

Bangladesh (officially Peoples Republic of Bangladesh) is parliamentary republic with elected parliament named Jatiyo Shongsod. Election is a sign of democracy and Bangladesh has practiced democracy more than two decades.<sup>19</sup> Compare to the other Muslim developing world Bangladesh is more forwards than Turkey, Indonesia, and Malaysia in the question of democracy and human rights concern within a short time.<sup>20</sup>

Bangladesh has signed and ratified a number of human rights instrument like as ICCPR (2000), ICESCR (1998), CEDAW (Convention on the Elimination of all forms of Discrimination against Woman), CAT. It is quite significant that most of the civil and political rights under the ICCPR (International Covenant on Civil and Political Rights) have been guaranteed in the Constitution of Bangladesh as fundamental rights. According to the report of National Human Rights Commission (hereinafter NHRC), over the last two decades there has been a gradual enlargement of the scope of human rights moving. Non state actors are more concern about their rights violated against them by the state or any other.<sup>21</sup> Legal standard protect individual against oppression by the state.

However it may be said that, comparatively Bangladesh is forward than Myanmar in the question of democracy and human rights concern not only in the practice but also the modern political culture. So it can be expected that Bangladesh will treat human rights victim in more friendly way than Myanmar.

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<sup>19</sup> Dilara Chowdhury, 'Woman and Democracy: A Bangladesh perspective', *The Commonwealth Journal of International Affairs*, vol. 89, issue no. 357, 2000.

<sup>20</sup> Sazzad vali Reza Naser, 'The Rise of Muslim Democracy', *Journal of Democracy*, vol; 16, issue no. 2, April 2005.

<sup>21</sup> National Human Rights Commission's Study Report on 'Analysis of Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh', [available at: <http://www.nhrc.org.bd/>, accessed on 10 October, 2012].

### III Violation of Rohingyas Human Rights by Myanmar

At first, in 1962 Burma gone under the military regime who, labeled Muslims as foreigners by *Burma Citizenship Law 1982* and effectively reduces their rights, status as stateless.<sup>22</sup> In the post independence period, some of the Rohingyas tried to redress their grievance by taking up arms but they lay down their arms on false promise of granting all of citizen's rights and semester treatment.<sup>23</sup> After that Burmese authorities repeatedly broke their promises whereas they are forcibly expelled from the country to escape persecution.<sup>24</sup> During 1962 to 1988, Burmese army general Ne win declared Rohingya Muslims of Arakan as terrorist.<sup>25</sup> In 1948, General Ne Win forced them to flee the country by the initiation "Operation Dragon" around 30,000 Rohingyas entered in Bangladesh in 1978, some of them returned in 1982 staged according to *Burma Citizenship Law 1982*.<sup>26</sup> From then onwards the Rohingyas witnessed a painful transformation of their status from "statelessness" to Refugee hood in modern time.

#### *Deprivation of Citizenship*

In 1982, General Ne Win passed *Burma Citizenship Laws 1982*. This law made Rohingyas alien in the land of their father, fore fathers and ancestors.<sup>27</sup> According to section 3, of this Act "Persons belonging to the Burmese race such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D. are Burma citizens".<sup>28</sup> Also the word 'National' belongs importance in this law because by the section 5 say "Every National is a citizen". So the law seemingly did not count the Rohingyas as one of the ethnic groups in Burma to become nationals and as a result citizens. Simply Rohingyas are not citizens of present Myanmar state as per its laws.

Apart from national, if any person born within the territory of Myanmar may become a citizen. When he or she fulfills a host of other conditions. The question of granting citizenship and to decide whether any race is a national or not, depends on the council of

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<sup>22</sup> Jarlath D'Souza, *A case for Human Rights Violation*, ed. (Dhaka: SHETU, 1992), pp. 14-29.

<sup>23</sup> *Ibid*, p. 15.

<sup>24</sup> Abdur Razaque and Mahfuzul Haque, *ibid.*, p. 18.

<sup>25</sup> *Ibid*, p. 17.

<sup>26</sup> *Ibid.*, pp. 14-6.

<sup>27</sup> Abdur Razaque & Mahfuzul Haque, *ibid*.

<sup>28</sup> S. 3 of *Burma Citizenship Laws 1982*.

Minister.<sup>29</sup>In case of Naturalized and Associate citizenship, Central Body is the only authority to allow with conclusive evidence.<sup>30</sup> This implies the recognition of Rohingya as citizen is not fully closed but up to the consideration of the political authorities. Rohingya Arakanese Refugee Committee named this law as discriminatory law or black law.<sup>31</sup>

The person born (new born baby) of parents, one or both are national, one or both are naturalized citizen or one or both are Citizen shall be citizen born in or outside the country of Myanmar.<sup>32</sup> That means to acquire Burmese citizenship for a new born baby, at least one parent must hold one of the three categories' of Burmese citizenship. This section also underlines the importance of National, whose status was denied to the Rohingyas.<sup>33</sup> But according to section 5 of *Burma Citizenship Laws 1982* (Sec.5-'Every national and every person born of parents, both of whom are nationals are citizens by birth'), need to prove them, if a person cannot provide evidence that his ancestors settled in Burma before 1823, he or she can be classified as an associate citizen. If one grandparent, or pre-1823 ancestor was a citizen of another country, those person are qualified under 1948 law but who would no longer qualify under this new law, are also considered associate citizens if they had applied for citizenship in 1948.<sup>34</sup> To become a naturalized citizen person must able to provide "conclusive evidence".<sup>35</sup> To have a clear look in the details of relevant sections, some are mentioned below:

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<sup>29</sup> Sec. 8 of *Burma Citizenship Laws 1982*.

<sup>30</sup> *Ibid.*, Sec. 42 (**Naturalized Citizenship**: Persons who have entered and resided in the State anterior to 4<sup>th</sup> January, 1948, and their off springs born Within the State may, if they have not yet applied under the *Union Citizenship Act, 1948*, apply for naturalized citizenship to the Central Body, furnishing conclusive evidence and Sec. 23, **Associate Citizenship**: Applicants for citizenship under the *Union Citizenship Act, 1948*, Conforming to the stipulations and qualifications may be determined as associate citizens by the Central Body).

<sup>31</sup> 'Immigration Check to Muslims of Arakan by The Burmese Government', [available at: <http://arrcinfo.blogspot.com/2012/11/a-joint-statement-of-undersigned-12.html>, accessed 10 January, 2013]

<sup>32</sup> Section 5 and Section 7 of *Burma Citizenship Laws 1982*.

<sup>33</sup> Zaw Min Hutt, '*Human Rights Abuse and Discrimination on Rohingyas*', ed. (Japan: BRAJ, 2010), p. 57.

<sup>34</sup> Section 42 of *Burma Citizenship Laws 1982*.

<sup>35</sup> Section 42 of *Burma Citizenship Law 1982*.

**Section 7:** "The following persons born in or outside the State are also citizens:

- (a) persons born of parents, both of whom are citizens;
- (b) persons born of parents, one of whom is a citizen and the other an associate citizen;
- (c) persons born of parents, one of whom and the other a naturalized citizen;
- (d) persons born of parents one of whom is
  - (i) a citizen; or
  - (ii) an associate citizen; or
  - (iii) a naturalized citizen;

and the other is born of parents, both of whom are associate citizens;

- (e) persons born of parents, one of whom is

- (i) a citizen; or
  - (ii) an associate citizen; or
  - (iii) a naturalized citizen;

and the other is born of parents, both of whom are naturalized citizens;

- (f) persons born of parents one of whom is

- (i) a citizen; or
  - (ii) an associate citizen; or
  - (iii) a naturalized citizen;

and the other is born of parents, one of whom is an associate citizen and the other a naturalized citizen."

**Section 10:** "A person born outside the State shall have his birth registered either by the parent or guardian in the proscribed manner within one year from the date of birth at the Burmese Embassy or Consulate or organizations prescribed by the Ministry of Home Affairs. Proviso. If registration is not possible within one year from the date of birth, application may be made by the parent or guardian, furnishing sufficient reasons to the Central Body through the Burmese Embassy or Consulate or organizations prescribed by the Ministry of Home Affairs."

**Section 30:** "An associate citizen shall

- (a) respect and abide by the laws of the State;
  - (b) discharge the duties prescribed by the laws of the State;
  - (c) be entitled to enjoy the rights of a citizen under the laws of the State, with the exception of the rights stipulated from time to time by, the Council of State."
- Decision as to Citizenship, Associate Citizenship or Naturalized Citizenship shall depend on concern ministry (central



body or council of state) as per Chapter V.<sup>36</sup>

**Section 65** : “Any person may apply to the Central Body when it is necessary for a decision as to his citizenship, associate citizenship or naturalized citizenship.”

As per Sections 5, 7, 10, 30 and 65 it is clear that, whether a person will be granted citizenship or not is fully a political issue, decided by the concern Ministry.<sup>37</sup> So, naturalized citizen are also deprived from certain rights<sup>38</sup> mentioned in section 27 and Article 15 of *Constitution of the Republic of the Union of Myanmar*<sup>39</sup> 2008. The Rohingyas do not belong to any ethnic race, neither do they possess any rights to become citizens or nationals. Through the *Citizenship Law 1982*, the State Peace and Development Council (SPDC) recognized 135 national race of Burma, the Rohingyas are not one of them, and they were identified and declared as “Resident foreigners”.<sup>40</sup>

### ***Forced Labor and Looting of Properties***

Burmese government policies (policies of forced labor and forced displacement) are ultimately responsible for the influx of refugees into Thailand.<sup>41</sup> Rohingyas are forced by the local government authorities continuously to perform compulsory unpaid labor, with a view to construct “Model Villages” for Non-Muslim migrants in Arakan.<sup>42</sup> Though, forced labor is a violation of Human Rights under *International Covenant on Civil and Political Rights 1966* (hereinafter ICCPR) Article 8(3a).<sup>43</sup>

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<sup>36</sup> Chapter V, of *Burma citizenship Act 1982*.

<sup>37</sup> Abdur Razaque & Mahfuzul Haque, *ibid.*, p. 30.

<sup>38</sup> Section 27 of *Burma Citizenship Laws 1982*. [to elect as public representative, to be head of the body of public service, or any].

<sup>39</sup> Art. 15 “National races representatives are entitled to participate in legislature of region or states and self minister area concern”.

<sup>40</sup> Imtiaz Ahmed, *The Plight of the Stateless Rohingyas; Responses of the State, Society & the International Community*, ed., (Dhaka: University Press Limited, 2010), *ibid.*, p. 20.

<sup>41</sup> UNHCR and Thai Government Failing to Protect Burmese Refugees, Human Rights Watch, 8 October 1998, [available at <http://www.hrw.org/news/1998/10/06/unhcr-and-thai-government-failing-protect-burmese-refugees>, accessed on 10 September, 2013].

<sup>42</sup> Human Rights watch, *Burmese Refugees in Bangladesh: Still No Durable Solution*, 1 May, 2000, C1203, [ available at: <http://www.unhcr.org/refworld/country,,HRW,COUNTRYREP,BGD,3ae6a86f0,0.html>, accessed on 10 September, 2013].

<sup>43</sup> According to this Article “No one shall be required to perform forced or compulsory labor”.

By denying their citizenship, Burmese government has deprived them from all of their national rights, as well as right owing land, property title and land grabbing and other forms of Human Rights abuses.<sup>44</sup> Report of Amnesty International 2004, mentioned people are forced to maintain camps, build and repair roads, build the gas pipe line, work on plantations belonging to *NaSaka*, provide firewood in the military camps, fetch water bake bricks and also perform sentry duties at night in their own village.<sup>45</sup> Extortion, looting and theft of money, livestock and property by local military, police and *NaSaka* is a daily occurrence for the Rohingya.<sup>46</sup> They have been subjected to expulsion and forced eviction, relocation and arbitrary possession of land and property. The government of Myanmar is the owner of all the land of this country and only citizen can acquire land use rights. When Rohingyas are not citizen, Government of Myanmar (hereinafter GOM) were confiscated and many were uprooted, relocated to new areas from the place they have been living for decades.<sup>47</sup> The State Peace and Development Council (hereinafter SPDC) has a policy of relocating Rakhine families into new “Model Village”, to construct that village seized Rohingyas land and forced to unpaid labor.<sup>48</sup> Report of the ILO (International Labor Organization) said, Myanmar is a model of slavery practice, where forced labor is widely practiced.<sup>49</sup>

### ***Massive killing, Sexual Harassment and Physical Torture***

In 1977, Burmese and Military authorities conducted operation Nagamin (Dragon king) a national effort to register citizens and screen out resident foreigners<sup>50</sup>. By May 1978, more than 200,000 Rohingya had fled to Bangladesh. Refugees reported that the Burmese army had forcibly evicted them and illegal wide spread army brutality, rape, and murder.<sup>51</sup> The Rohingya woman and child had been victims of rape and sexual violence rapidly by the army, local *NaSaka* soldier or by Rakhine civilians<sup>52</sup>. In Burma, Rohingya people faced both armed

<sup>44</sup> Zaw Min Hutt, *ibid.*, p. 55.

<sup>45</sup> Sadiya Rozana Rasid, *A Comparative Study on Vulnerability and Coping Mechanism between Rohingya refugee and Chakma IDP women* (Dhaka: BFF, 2005), p. 13.

<sup>46</sup> Imtiaz Ahmed, *ibid.*, p. 26.

<sup>47</sup> Sadiya Rozana Rasid, *ibid.*, p. 157.

<sup>48</sup> Imtiaz Ahmed, *ibid.*, p. 25.

<sup>49</sup> ILO Report on “Forced labour in Myanmar(Burma)”,  
[available at: [http://www.ibiblio.org/obl/docs/ILO\\_Rohingya.htm](http://www.ibiblio.org/obl/docs/ILO_Rohingya.htm), accessed on 10 October, 2011].

<sup>50</sup> Human Rights Watch, *ibid.*, pp. 5-6.

<sup>51</sup> Human Rights Watch, *ibid.*, p. 6.

<sup>52</sup> Imtiaz Ahmed, *ibid.*, pp. 22-23.

and physical violence by the government and NaSaka, on those operation Nagamin or king dragon was the largest and most notorious, when mass arrest of Muslims, male and female, young and old torture, rape and kiting was a common feature.<sup>53</sup> In northern Arakan State, the NaSaka border guard force, the army, police committed killings, mass arrests, and looting against Rohingya.<sup>54</sup> In June 2012, deadly sectarian violence erupted in western Burma's Arakan State between ethnic Arakan Buddhists and Rohingya Muslims (as well as non-Rohingya Muslims). The violence Brock out, Arakan woman was raped and killed in the town of Ramri, Human Rights Watch confirmed that local police and soldiers stood by and watched the killings without intervening.<sup>55</sup>

Where the right to life, liberty, and security is a basic fundamental demand of every human being.<sup>56</sup> Everyone has the right to recognition everywhere as a person before law.<sup>57</sup> In Myanmar people (Rohingya) are subject to a pathetic victim of violation of human rights where not only violence occurred but also victims do not have right to get justice.

According to Amnesty International, the Rohingya people have continued to suffer from human rights violations under the Burmese junta since 1978 and many have fled to neighboring Bangladesh as a result:<sup>58</sup>

“The Rohingyas’ freedom of movement is severely restricted and the vast majority of them have effectively been denied Burmese citizenship. They are also subjected to various forms of extortion and arbitrary taxation; land confiscation; forced eviction and house destruction; and financial restrictions on marriage. Rohingyas continue to be used as forced labourers on roads and at military camps, although the amount of forced labour in northern Rakhine State has decreased over the last decade.”

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<sup>53</sup> *Ibid.*, p. 51.

<sup>54</sup> ‘The Government Could Have Stop This’, *Human Rights Watch*, 1 august, 2012 [available at: <http://www.hrw.org/node/109177/section/2>, accessed on 27 March, 2013].

<sup>55</sup> *Ibid.*

<sup>56</sup> *UDHR 1948*, Art. 3

<sup>57</sup> *Ibid.*, Art. 6.

<sup>58</sup> Report of Amnesty International, 2004. “Myanmar: The Rohingya Minority: Fundamental Rights Denied”, [available at: <http://www.amnesty.org/en/library/info/ASA16/005/2004>, accessed on 15 March, 2011].

During 1991–92 a new wave of over a quarter of a million Rohingyas fled to Bangladesh. They reported widespread forced labour, as well as summary executions, torture, and rape. Rohingyas were forced to work without pay by the Burmese army on infrastructure and economic projects, often under harsh conditions.<sup>59</sup>

#### **IV Human Rights Violation by Myanmar and also by Bangladesh**

##### ***Freedom of movement & access to court in Myanmar***

Rohingya have no right to enjoy movement freely outside the Arakan. They are restricted to go other parts of Myanmar without Arakan.<sup>60</sup> They are not allowed to go anywhere beyond their village boundaries without getting permission from the local Peace and Development Council chairman.<sup>61</sup> Whereas there have a well established international law principle recognized the right to freedom of movement, according to the Art-13 of Universal Declaration of Human Rights and Art-12 of ICCPR (International Covenant on Civil and Political Rights). The mentionable point is Myanmar government, violates Article-17 of her constitution, which ensure the rights to freedom of movement.<sup>62</sup> Lack of freedom of movement is another major cause to leave Myanmar.<sup>63</sup> Rohingya had been victim of rape, sexual violence, forced labor, looting dwelling house property, land property etc. moreover they are stateless in their own country, deprived from the right to get justice, protection before law.<sup>64</sup>

Whereas, the Constitution of Myanmar ensure the rights of equality,<sup>65</sup> rights of freedom,<sup>66</sup> rights relating to religion<sup>67</sup> to all citizen irrespective of birth, race ,sex, religion. Unfortunately Rohingyas became the worst victim of violation of those fundamental rights by GOM (Government of Myanmar) respective of race, somehow religion, class and

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<sup>59</sup> Report of ILO, *ibid.*

<sup>60</sup> Human Rights Watch, *ibid.*, pp. 9-10.

<sup>61</sup> Abdur Razaque & Mahfuzul Haque, *ibid.*, pp. 41-43.

<sup>62</sup> *Ibid.*, p. 43.

<sup>63</sup> ‘The Government Could Have Stop This’, *Human Rights Watch*, 1 august, 2012 [available at: <http://www.hrw.org/node/109177/section/2>, accessed on 27 March, 2013].

<sup>64</sup> Imtiaz Ahmed, *ibid.*, pp. 53-55.

<sup>65</sup> See Art. 13, 14 of The *Constitution of the Republic of the Union of Myanmar 2008*.

<sup>66</sup> *Ibid.*, Art. 16, 17 (iv).

<sup>67</sup> *Ibid.*, Art. 20.

subsequently they did not get an opportunity to invoke the jurisdiction of the supreme court for the enforcement of their rights guaranteed in Article 25 of the constitution.<sup>68</sup>

### ***Freedom of Movement & Access to Court in Bangladesh***

Rohingyas in Bangladesh as refugees are restricted to move outside the camps (Refugee), cannot seek employment outside the camps.<sup>69</sup> They are punished by camp police for going outside the camps, even for urgent doctor's visit.<sup>70</sup> They are not allowed to arrange meeting, forming committee for their own service.<sup>71</sup> In that case Bangladesh is also violating international laws of UDHR, and ICCPR. Because of various form of violation of human rights and persecution, Rohingya are continuously became the worst victim but inside or outside their country they have deprived from their rights to take recourse to the law.<sup>72</sup> In Bangladesh Rohingya Refugees have been victim of rape, sexual violence mainly by the local people, Rohingya men, police, Ansar, and BGB but victim cannot get any access to the court of Bangladesh if victims try to get the protection before law, they faced thousand of anomalies because of being refugees.<sup>73</sup> On the other hand the Constitution of Bangladesh ensures everyone's rights to access to the court whether he or she is citizen or not.<sup>74</sup> Hence the question of denying the refugees right to access to the court cannot arise at all and did not happen.<sup>75</sup>

### ***Deprivation from Education and Religious Practice***

Myanmar government allowed Rohingyas to their state run schools only for primary education, beyond primary they cannot seek education for secondary.<sup>76</sup> GOM reserves secondary education only for citizens.<sup>77</sup> Lack of citizenship Rohingyas are not recognized for

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<sup>68</sup> Abdur Razaque and Mahfuzul Haque, *ibid.*, p. 43.

<sup>69</sup> Imtiaz Ahmed, *ibid.*, p. 29.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*, pp. 30-2.

<sup>72</sup> *Ibid.*, p. 21.

<sup>73</sup> *Ibid.*, pp. 54-55.

<sup>74</sup> Art. 31 of *The Constitution of the Peoples Republic in Bangladesh 1972*.

<sup>75</sup> Abdur Razaque & Mahfuzul Haque, *ibid.*, p. 43.

<sup>76</sup> *The Union Constitution of Myanmar, 2008*, Art. 366- Every citizen has right to education  
Art. 368- The Union shall assist citizens in education. Hence the Rohingya are not citizen at all.

<sup>77</sup> Human Rights watch, *ibid.*, p. 23

civil service, cannot be teachers or health workers, and do not permitted to participate formally in local government.<sup>78</sup> Whereas International law guarantees accessibility to secondary education in all sphere.<sup>79</sup> In case of religious practice of Rohingya who are predominantly Muslims, do not have religious freedom and cannot practice their religion with dignity and honor.<sup>80</sup> GOM are not allowed the Muslims to build permanent structures of mosques, imposed restriction on caring out funeral right to the graveyards.<sup>81</sup> Rohingyas are not allowed by the regime to obtain a government employment.<sup>82</sup> Whereas, in Bangladesh they are not faced any restriction on religious practice because of country's Muslim majority. Rohingyas have been worstly victimized in Arakan because of their religious belief, they are warned to wear Muslim dress or to grow beard.<sup>83</sup> International laws ensure the rights to freedom of religion, to manifest religion or belief in teaching, practice, worship and observance for all human being.<sup>84</sup> The previous constitution of Myanmar guaranteed religious right and said, all person are equally (not only citizen) entitled to freedom of religious practice.<sup>85</sup> However, an amendment in 2008 of Article 34 declares freedom of religious practice for all citizens. Hence they are not citizen at all.<sup>86</sup>

### ***Sexual Harassment & Physical Torture***

In Myanmar Rohingya women were raped by *NaSaka*, freely in detention center<sup>87</sup>. People faced both armed and physical violence by the GOM and the *NaSaka*. Sexual harassment, rape, killing, physical assault was the common feature at Arakan.<sup>88</sup> Rohingya women often complained against the Rohingya men, local police, local people for physical torture and

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<sup>78</sup> *Ibid.*

<sup>79</sup> See Art. 26 (2) of *Universal Declarations on Human Rights 1948* & Art. 13 (b) of *International covenant on Civil and Political Rights 1966*.

<sup>80</sup> Sadiya Rozana Rasid, *ibid.*, pp. 59-67.

<sup>81</sup> Imtiaz Ahmed, *ibid.*, p. 26.

<sup>82</sup> *Ibid.*

<sup>83</sup> Imtiaz Ahmed, *ibid.*, p. 25.

<sup>84</sup> See Art. 18 of *Universal Declaration of Human Rights 1948*.

<sup>85</sup> See Art. 34 of *The Constitution of Union of Myanmar 2008*.

<sup>86</sup> According to Sections 7,10,30,65 and 66 of *Burma Citizenship Laws 1982* and Citizen Chapter, *The Constitution of Union of Myanmar 2008*.

<sup>87</sup> Imtiaz Ahmed, *ibid.*, p. 53.

<sup>88</sup> Imtiaz Ahmed, *ibid.*, pp. 50-1.

other form of violence.<sup>89</sup> Some Rohingya women are forced to become sex workers by local criminals' reasons of livelihood. Many of Rohingya men have passed their life in jail in false case of persecution.<sup>90</sup>

## **V Violation of Human Rights by Bangladesh**

Bangladesh is neither a signatory to the convention on the status of refugees 1951 nor its protocol 1967. Protection of all fundamental Human Rights is a constitutional guarantee in Bangladesh.<sup>91</sup> From that point of view Bangladesh is pledge bound to honor the convention. Bangladesh does not have any refugee law as such, but when refugee entered into Bangladeshi soil the government came under an obligation to provide them basic necessities of life<sup>92</sup> although, they gave detained refugees food and basic medical attention. It is obligated under the customary international law principle of non-refoulement<sup>93</sup> not to reject asylum seekers at its border when they are fleeing threats to their lives or freedom.<sup>94</sup> Bangladesh government technically denied the right to be employed in gainful employment to refugee, as they are confined to a particular area (Camps) and restrict to go beyond the Certain area or move freely.<sup>95</sup> It's a violation of UN Convention by Bangladesh.<sup>96</sup>

UN Convention mentions the personal status and right of association<sup>97</sup> but in Bangladeshi Refugee Camps Rohingyas are not allowed to form any committee or association.<sup>98</sup> Bangladesh Government does not provide travel document to the Rohingya refugee for going outside the country moreover imposed restrictions to move beyond the camp area. Whereas UNHCR said to gave travel documents to refugee.<sup>99</sup> There are some allegations

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<sup>89</sup> *Ibid.*, p. 27.

<sup>90</sup> *Ibid.*, pp. 29-0.

<sup>91</sup> *The Constitution of Peoples Republic of Bangladesh, 1972.*

<sup>92</sup> Abdur Razzaque, *ibid.*, p. 36, 31.

<sup>93</sup> Art. 3 (2) of *The Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment 1948.*

<sup>94</sup> Human Rights Watch, *ibid.*

<sup>95</sup> Abdur Razzaque & Mahfuzul Haque, *ibid.*, p. 37.

<sup>96</sup> See Art. 17, 18 of *A Convention Relating to Status of Refugee 1951* (provision related to wage-earning, employment and self employment).

<sup>97</sup> *Ibid.*, Art. 12, 15.

<sup>98</sup> Imtiaz Ahmed, *ibid.*, p. 31.

<sup>99</sup> Art. 28. *A Convention Relating to Status of Refugee 1951*

against the government of Bangladesh by international agency especially by UNHCR that BD authorities force the Rohingya refugee to leave Bangladesh. There are some other lacking of basic needs in term of adequate food supply, getting cloths, adequate shelters, health care facilities, water & sanitation, education and recreation, safety and security.<sup>100</sup>

## **VI Refugee Protection under the Constitution in Bangladesh**

According to the Constitution of Peoples Republic of Bangladesh, following rights guaranteed for all citizen and of every other person for the time being within Bangladesh; So it may be said that Rohingya may be allowed to have constitutional right to enjoy the protection of law,<sup>101</sup> Article 32 provides that every person shall be entitled to seek protection of law regarding his life and personal liberty.<sup>102</sup> The constitution also safeguards as to arrest and detention for the citizens and non-citizens alike.<sup>103</sup> Any kind of forced labor is prohibited in the constitution and any infringement of this provision shall be punishable offence in accordance with law.<sup>104</sup> This article will be presented as a strong safeguard refugee protection.

## **VII Conclusion**

At the end this can be easily stated that Rohingyas are the prior victim of discrimination by the Government of Myanmar. Before by the Citizenship Law 1982 and now by the Constitution of the Republic of Myanmar 2008, expel them legally, by declaring them foreigners. The legal obligations both Myanmar and Bangladesh require protecting all people especially the Rohingya within their territories or subjected to their jurisdictions, regardless their status as citizens, stateless persons or refugees. Factually the Rohingyas are persecuted in Myanmar and neglected in Bangladesh. Over all they became an example of violation of human rights in global context. It is shows that human rights violations have been persistently occurring both in Bangladesh and in Myanmar. Both the countries are playing a key role in violating the human rights of a poor and stateless people i.e. the Rohingyas. The pattern of violation, though different, in continuous, varying in degree and symmetrical in substance.

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<sup>100</sup> Imtiaz Ahmed, *ibid.*, pp. 19-37.

<sup>101</sup> Art. 31 of The *Convention Relating to Status of Refugee 1966*.

<sup>102</sup> *Ibid.*, Art. 32.

<sup>103</sup> *Ibid.*, Art. 33.

<sup>104</sup> *Ibid.*, Art. 34.



Myanmar being a long cherished authoritarian regime is not unlikely to become somewhat anti-human, but, what this article proves is that Bangladesh is no exception. Being a democracy for more than two decades Bangladesh is supposed to be more human to its treatment to the Rohingyas, but, the state, as it appears, miserably fail to meet the expectation.

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