

# REFUGEE, MIGRANT AND STATELESS PERSON IN BANGLADESH: PROBLEMS AND LEGAL PERSPECTIVE

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## **ABSTRACT**

This article presents a current issue of Rohingya, stateless and migrant people who faced various problems in Bangladesh and state also faced problems to maintain them. In this regard this paper will provide some solution to overcome these problems. Bangladesh is currently hosting a large number of stateless people namely Rohingya from August 2017. Beside this the liberation war of Bangladesh in 1971 the Biharis were left behind are also treated as stateless and unprotected persons. At present all these people have suffered decades of violence, discrimination and persecution in a massive wave of violence broke out in Myanmar Rakhine State. Rohingya people have fled from Myanmar to seek refuge across the border in Bangladesh and among them 50% are children and they suffered from basic necessity. Bangladesh's economy spends an

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estimated \$1.21 billion a year supporting the Rohingya and also unemployed crisis and also involved in criminal activities like Yaba drug smuggling. Natural disaster like flooding, fires and Covid-19 has created also fresh challenges for Rohingya refugees in Bangladesh. The natural disaster like covid- 19, flood, heavy monsoon, landslide in the camp is also creating a lot of sufferings of the Refugees. This paper will pave a way to overcome these challenges. It will be qualitative research. The information will be taken from many readings, articles, newspapers and books.

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## **INTRODUCTION**

Refugees are persons who are outside their country of origin for reasons of feared persecution, conflict, generalized violence, or other circumstances that have seriously disturbed public order and, as a result, require international protection. At present Bangladesh faces a lot of socio-economic problems, refugee problem is one of them as well as this crisis also creating various socio-economic problems. Bangladesh is not signatory state to the Refugee Convention Protocol as a result the state doesn't create any legal obligations to accommodate all these refugees. Rohingya also created security crises in the present perspective (Akhter, 2014). Besides these refugees and stateless people also faces a lot of problems in Bangladesh and the government can't afford their basic demand. In this situation the refugee and the state less person additional burden in the state (Sumaworo, 2020). The right to nationality is an inherent right and no one shall be arbitrarily deprived of these rights. Citizen enjoys civil, political, social rights which is guaranteed by the state and international laws also ensure the right to nationality where Refugee cannot enjoy the rights above all they create a global problem. The Refugee create human security crisis, the health crisis, humanitarian crisis, citizenship crisis, occupational crisis, physical and mental health frustration also (Al Imran & Mian, 2014).

## **METHODOLOGY**

This research is a socio legal study which analyze the socio – legal problems and identify the socio- legal problems. Methodologies are based on from the humanities as well as social sciences. Legal aspect is the main focus point to analyze the refugee issues. The research is based on statutes, cases, regulations, international conventions and protocols. Secondary legal materials like reviewed articles, legal encyclopedias, and treaties etc. are also taken to interpret the problems. The research paper is mainly based on quantitative method and primary and secondary sources have

been applied for this research article. Law books, articles, journals, enacted laws, newspaper, media, national and international organizational functions and activities, international statutes, conventions, protocols are also assisted to interpret and data analyses for this research articles.

### **HISTORICAL BACKGROUND OF THE ROHINGYA PEOPLE**

The Rohingya lived in the Arakan State of Myanmar for generations they are Muslim but Myanmar denies their citizenship The Rohingya people lived in that region since the arrival of Arab traders in the eighth century and the majority Buddhist communities of Myanmar considered the Rohingyas to be illegal immigrants from Bangladesh. As a result, Rohingya are excluded from freedom of movement, and freedom of access to education and employment, and other rights and their property were arbitrary forfeited of and they were victim of forced labour. A Rohingya woman said about violation of citizens' rights and forced labour that she had to break stones for the road surface but the army did not pay her or give her any food. She had to work in seven to fifteen days shifts for eight hours (Gillan, 2002). She couldn't go home and had to sleep in the army camp. The army would come to collect about twenty to forty villagers for working purpose. The village headman made the lists and if they did not go, they were arrested. She worked a project from 1997 to 1998 and when she left, she had to work for the state-owned Sukrasa Sugar Mill in Kaung Daung.

She had to cut sugar cane and had to carry to the trucks. She had to worked seven to fifteen days shifts but she was not paid any money. The United Nation Commission on Human Rights assessed that about 800,000 persons was stateless and they have no citizenship in the northern part of Rakhine State. The most of the population forced to migrate to Bangladesh because of a large number of killings, rapes and human rights violations performed by state authorities. The United Nations High Commissioner for Refugees has reported about 907,199 persons have been forced to migrate to Bangladesh. There are about 7 million people has fled in Bangladesh to save their lives as there are (Myanmar) human rights violations like rape, gang rape, sexual violence against women and girls, murder, torture, looting and the burning of homes and villages etc. Besides these there are about 25,000 Rohingyas were murdered and 19,000 Rohingya women and adolescents were raped during the conflict as well as 392 Rohingya villages destroyed by torching all settlements to the ground. Bangladesh and Myanmar have an "agreement" for repatriate Rohingya refugees to return native Rakhine State within two months as there are want of consulting among the United Nations High Commissioner for Refugees and any Rohingya refugee communities failed due to Myanmar's insincerity in meeting of granting recognition to the Rohingyas (Islam, 2015).

### **PROBLEMS FOR STATELESS PERSON IN BANGLADESH**

Stateless persons create a number of problems in a country like shelter and humanitarian support as well as security problems. Sovereignty of Bangladesh is largely affected though the refugee and stateless person as the government of Bangladesh has no control of incoming refugee or stateless person. Though the issue has humanitarian appeal but the long-term stateless person creates any other problems like political and socio-economical imbalance. The economic resource of a country is limited to meet the demand for her own population. So, refugee and stateless person are additional burden of that country. It is also violation of sovereignty of a state (Islam, 2017). Rohingya people can't exercise right to work and profession and they also cannot move freely one place to another place. Bangladesh is over populated country and the natural resources are limited as a result the country faces a lot of problems to achieve basic demand like food, clothing, shelter, education, health service etc. Government expended 2500 crores for Rohingya people besides these labour sectors are also at risk because in Bangladesh there are a great unemployment problem and the economic sector has a little scope for their own citizen. At present situation the Rohingya people are additional burden for the government specially in the Teknaf, Cox's Bazar. Beside these The Rohingya people has also spread out in the whole country which is also threat for national sovereignty and additional burden for the state. The situation may not continue for the unlimited time above all the Rohingya problem should come to a successful end though the national and the international legal instrument (Kamaluddin,1985).

In Bangladesh about 5500 acres forests and 1500 hectares of wildlife habitat have been destroyed to give shelter the large number of Rohingya population. The environmental pollution has occurred for destroying forests and wildlife habitat which has causing contiguous environmental disaster in the Teknaf, Cox's Bazar. Refugees involved in the criminal activities in the Chittagong region like illegal small arms trade, a flourishing business along the border, Yaba business, theft and looting, are also noticeable among the community (Kumar, 2009). It is reported that 31 refugees have been killed in different clashes. At the same time, 1088 persons have been accused in 471 cases, with 368 cases related to narcotics. Young female refugees have been used of sex trafficking with many ending up in the sex markets of India and different Middle Eastern countries by using Bangladeshi passport. Human trafficking is one of the strong networks with many corrupt government officials for passport and relevant documents. Bangladesh government has given shelter Rohingyas in the Bhasan Char and 18,334 refugees have been shifted to the island in six phases and the refugees expressing their satisfaction about the camp facilities to foreign envoys who visited the island on 3 April 2021. The COVID-19 pandemic creates a humanitarian disaster in the Cox's Bazar area. Stateless and Rohingyas from Myanmar to Bangladesh creates

security crisis in the state and the Rohingya refugee are also suffering miserable life as their basic demand are not fulfilled adequately. The stateless and Rohingya are not only national problem, it is also an international crisis as the Universal Declaration on Human Rights creates an international obligation of right to nationality. Bangladesh has given shelter the Stateless and Rohingyas on humanitarian grounds though Bangladesh is not a signatory state on the Refugee Convention as well as Myanmar is not a signatory of the 1951 Refugee Convention or of its 1967 Protocol so it has failed to exert pressure on Myanmar through legal procedures. It is the international claim of the stateless Rohingyas to repatriate to their homeland. Bangladesh is not legally bound to give shelter stateless Rohingya refugees and the state must file a suit for reparation against Myanmar on the ground of environment pollution. International arbitration can be a useful instrument for rapid solution of human rights treaties to overcome refugee stateless problems like the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women etc.

Crowded environments, vulnerable and densely populated urban and slum areas the refugees were suffering miserable life during covid- 19. The heavy rainfall in the Bangladesh outbreaks water-borne diseases, like dysentery, cholera, diarrhea etc. The water and sanitation infrastructure are also major problems for the large number of the refugee at the existing refugee camps.

#### **INTERNATIONAL TREATY ON THE RIGHTS OF REFUGEE AND STATELESS PERSON**

The 1951 Convention Relating to the Status of Refugees defines who is a refugee and outlines the rights of the displaced and the responsibilities of states to protect them. It accords refugees with numerous rights including access to courts of law, employment and primary education in the host country. Each State Party ... undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant. The state Parties shall secure to everyone within their jurisdiction the rights and freedoms defined for the Refugee. The state parties undertake to respect the rights and freedoms recognized in the Convention to ensure to all persons subject to their jurisdiction free and full exercise. SAARC's basic principles to respect for the principles of sovereign equality, territorial integrity, political independence, non-interference in the internal affairs of other States. It is difficult to define the reasons which could be regarded as constituting good cause for the illegal entry into or presence in the territory of a State as refugee but it was precisely on account of that difficulty that it was necessary to make more explicit to admit without any reservation that a refugee who had settled temporarily in a receiving country was free to enter another state to grant him a right of immigration which might be

exercised for reasons of mere personal convenience (Uddin and others, 2022).

### **STEPS TAKEN BY THE BANGLADESH GOVERNMENT**

Government has taken initiatives to relocate around 100,000 refugees in the Bhashan Char refugee camps near Cox's Bazar. As a result, a large number of refugees have taken shelter in Bangladesh and the government is trying to fill up their basic demand like food, clothing, education and medical service etc. Government has provided shelter about 1.1 million Rohingyas by housing about 34 camps at Cox's Bazar. Bangladesh's Rohingya asylum policy is playing an important role for the refugees as a humanitarian effort in recent history. The refugee camps are very overfilled and not adequate for the refugee people. There are about 626,500 Rohingya refugees are living in the Kutupalong-Balukhali but these circumstances would not exist day after day since an uncertain and miserable life and it is violation of Human Rights. International human rights organizations are working on refugee issues and they have identified that the Bangladeshi government has relocated about 20,000 Rohingya refugees to Bhasan Char since December 2020. IDA initiated various project like IDA19 Window for Host communities and Refugees (IDA19 WHR) with an initial US\$ 2.2 billion package to support low-income countries hosting large numbers of refugees. IDA contribute various policies to change enabling the socio-economic inclusion of refugees and made a commitment was made by the Bank to conduct a systematic review of refugee policy and institutional environments in countries eligible for initial eligibility to inform support for the construction of socio-economic development opportunities for refugee and host communities in these countries (Yesmin, 2016).

### **BANGLADESH PERSPECTIVE**

Refugee arrivals in the East Bengal from the 1947 when India was divided in the two countries namely India and Pakistan. The refugees are mostly Muslims and they lived in the central and eastern states of whole India. Then the Rohingya was treated a minority ethnic group and they were migrating from Myanmar also pursued refuge in Bangladesh and other countries as they were oppressed in Myanmar. Bangladesh is not party to the 1951 Refugee Convention and protocols and no legal instruments or policy frameworks designed specifically for refugees and asylum seekers and there are no conventional laws and policies in the national level (Milton, 2017). The Constitution of Bangladesh protects fundamental rights which are also applicable to non-citizens and the non-citizen also enjoy the rights as a human being. In Bangladesh there are no domestic laws that define who is a refugee and what rights they may be conferred for them. Bangladesh is a signatory to other international human rights treaties which protect the rights of refugees and asylum seekers like the Universal Declaration on the Human Rights- 1948, International Covenant on Civil and Political Rights 1966, the UN Convention on the

Rights of the Child etc. These treaties are questionable to be enforceable in domestic courts of law as they have not been unified into domestic laws and the laws are not given legal effect through separate legislation. The issue has been mostly spoken by bilateral treaty with the Governments of Bangladesh and Myanmar signing a repatriation deal in November 2017. The rights of the refugees are protected through multilateral organizations like UNHCR and IOM, international aid organizations etc. The Government of Bangladesh also rebuffed to establish a refugee protection in the domestic context though Bangladesh-Myanmar border are in a danger situation. Rohingya refugees are used to be involved in drug trade and other crimes which are mostly harmful for domestic peace and security which are also harmful to the national environment (Mohammad, 2012).

The Rohingya have been seen as a threat to national security and domestic law and order as the government has no control on entry of the non-citizen. The absence of a national policy framework and any legally-binding treaties to deal with refugees in Bangladesh has other national and international implications. The present situation creates an arbitrary and discretionary decision making of the Rohingya. As the lack of a legally-binding framework has resulted in a failure to protect the needs of the refugee population. There is absence of institutionalized legal and policy processes which created logistical inadequacy. Bangladesh has focused on providing transitory relief which has failed to give a permanent solution on refugee's issues. The present situation of the refugee's camps is inadequate space, scarcity of portable water and insufficient medical services. The employment opportunities of the Rohingya refugees also create a negative impact into the economy of the country which increasing a higher incidence of human and drug trafficking and other crimes but the Government can't maintain a refugee protection framework in the domestic context as there are a complex nature between the Bangladesh-Myanmar border (Parnini and others, 2013).

Refugees are also involved in the drug trade crimes which are also harmful to the socio-economic and legal environment. The Rohingya are threat to national security and domestic law and order situation as there are absence a national policy framework, legally-binding structures to deal with refugees in Bangladesh which has also some complexities. As there are absent a legally-binding framework which cannot adequately address the needs of the refugee population in this perspective a permanent solution is the arbitration which would be the principal method of the Rohingya crisis. Slow-moving, ad hoc policies, absence of institutionalized legal policy processes has created logistical hurdles for the refugee crisis. The government are trying to focus on providing transitory relief rather than enabling longer term amalgamation for the refugees. Refugee camps are in inadequate space, scarcity of portable water, insufficient medical attention and other facilities. Absence of any employment opportunities increases the latent for Rohingya refugees to be

exploited which strained burden into the economy which is the main reason of human and drug trafficking and other crimes.

### LEGAL REMEDIES FOR REFUGEE ISSUE

Refugee problems can only be solved in three different ways: - through voluntary repatriation, resettlement overseas and integration either in the country of present residence or in combination with intra-state migration (Ullah, 2010). States should exercise their jurisdiction at their international borders and the state must maintain human rights obligations. State parties, international organizations and other stakeholders must work according to international instruments like the UDHR, ICCPR, ICESCR and other regional instruments with an interest to protect and promote human rights-based border governance. International Court of Justice must play vital role to solve the Refugee issue like *The Gambia v. Myanmar Case*. In the case Myanmar assumed that the state violates the human rights and also violate the Genocide Convention against the ethnic Rohingya population in Myanmar's northern Rakhine State. A bilateral treaty should be made in written and signed by negotiations between the Bangladesh and the Myanmar by representatives of the parties. Bilateral treaty paved the way of Refugee and stateless problem. International protection must ensure as the refugee issues is an International Crisis though the world (Milton and others, 2017).

Concerning state should facilitate voluntary repatriation and sustainable rehabilitation to protect the refugees as an international obligation. Explore local integration options such as leave to remain and naturalization for certain groups. Resettlement and create opportunities though migration frameworks as a complementary method to solve as an equitable solution for refugee crisis. Voluntary repatriation is one of the durable solutions for the world refugee issues. It generally requires appropriate measures to ensure that any choice regarding return made by refugees should voluntary, free from coercion. Concern state must ensure that refugee must get physical, legal and material safety of national protection so that they can return their country with proper safety and dignity. Involvement of all stakeholders like returnee's host and origin countries, UNHCR, other international organizations, NGOs are important element for successful return. A suitable framework for sustainable return must be established by the host country through the provision of information, documentation and financial support with the country origin through legal guarantees for property restitution and restoration for the refugee.

The United Nations High Commissioner for Refugees (UNHCR) a non-political, humanitarian agency, was created by the United Nations General Assembly in December 1950 and began operations on 1 January 1951. Its mandate is to provide international protection to refugees and promote durable solutions to their problems. UNHCR's role is "to lead and coordinate international action for the world-wide protection of refugees and the resolution of refugee problems. To achieve the goal of refugee



protection it also must be ensure oversees registration, protection and assistance to specific groups of refugees in 115 countries; Monitors compliance with international refugee law must be ensured by different stake holders like the state parties, the international Organization and the United Nations though the various remedies which have been required by states from the ICJ have included declarations of a breach, the designation of a boundary line, restitution, the award of damages, and performance. The Government of Bangladesh provides essential services and meet the protection needs of refugees including special services for women, children and persons with disabilities which should be supported by the UNHCR. International support must play a principal role for flexible funding to protect Rohingya refugees until they can safely return home. To protect and promote the refugees the UNHCR must ensure remedies of the Refugees crisis come to a permanent solution (Shamshad, 2017).

### **CONCLUSION**

The Refugee people are one of the most persecuted minority groups in the world and they are forced to live life on the margins of society or in confined camps which causes sexual violence, repeated infectious diseases, child or bonded labor, arbitrary arrest, detention, or even forced deportation. It is not only national crisis but also international problem regarding violation of Human Rights. The Refugee crisis also causes of violation of state sovereignty which is very important any independent state. The Host state and the Refugee suffer years after years which is a continuous suffering in every sector. This is a serious violation of human rights for the Refugee people and they lead an unsecured life in every moment. The problem can be removed through Bilateral international treaties, which specifically regulate relations between two particular states which will play principal role for the refugee and stateless crisis and which shall solve substance and complexity, regarding a wide variety of matters, such as refugee and stateless crisis. Next step can be The International court of Justice which will settle refugee disputes between states in accordance with international law and gives advisory opinions on refugee issues. The International Court of Justice (ICJ) may give a remedy for a violation of Human Rights as the ICJ settles disputes between states in accordance with international law and also gives advisory opinions on international legal issues though ICJ's jurisdiction is based on the consent of the parties. The International Organization like United Nations and others organizations like UN, UNHCR, ASEAN, SAARC, National and International NGOs should play an effective role to solve the Refugees and the stateless person's problems. Not only one policy but also various policies taken by the government and the international organizations may solve the Refugees and stateless persons crisis.

### **RECOMMENDATION**

To give adequate relief the refugees asylum must be established though domestic laws and policies to aid refugees and asylum seekers to access in

the education, healthcare and employment opportunities must be designed and implemented in the national level. To prevent human and drug trafficking across the Bangladesh-Myanmar border law and order situation must be increased through Border Guard of Bangladesh so that the Rohingya cannot be involved in human and drug trafficking across the Bangladesh-Myanmar border. Legal structures and institutional framework and policies must be constituted to meet the refugees' challenge for Bangladesh in the domestic context with limited resources. Regional and international treaties as well as multilateral bodies, national and international organizations, civil society, migration elsewhere may lead to lasting and ethical solutions to the refugees' crisis. International Organizations like ASEAN and SAARC can play an active role to solve the refugees' problems in the regional context to improve SAARC's effectiveness. ASEAN may co-operate to overcome the refugee crisis from a certain humanitarian perspective and compel Myanmar to take an effective step in response to solve the refugees' crisis. Other member states like Malaysia and Indonesia may need to play a more significant role in facilitating this regional cooperation though Malaysia and Indonesia already expressed a desire to mediate the concerned Rohingya issues regarding their desire for constructive engagement through ASEAN to solve the refugees' crisis and to demonstrate a pathway for progressive regional response. Regional organizations and Asian states should learn from the current crisis for developing legal policy frameworks both at regional and national levels to define, regulate and protect refugees and asylum seekers. National and regional frameworks will play a vital role in reducing the uncertainty of the refugee crisis and successful responses to future crises. National interests and transnational policy issues must be addressed through bi-lateral and multi-lateral treaties. Forced migration must be prohibited internationally and must be framed as a national security issue along with a transnational and humanitarian response.

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