

Refugee Protection Under the Constitution of Bangladesh: A Brief Overview

By

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Introduction

The issues of refugee, forced migration and internally displaced persons are in much focus nowadays. 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. In the twenty-first century, forced migration and its management are increasingly being identified as one of major challenges for local, national, regional and global governance. In addition to international and regional conventions, there are a number of inter-governmental declarations that deal with general or specific refugee problems in different geographical regions.

Just like most other South Asian countries, Bangladesh has a long record of performing humanitarian obligations towards refugees (for instance Rohingya refugees) residing in her territories and has always followed the principle of *non-refoulement*, without having a national law or acceding to any international instruments. This paper, aims at analyzing the situation and protection of refugees under the constitution of Bangladesh and other statutory laws and looking for ways to protect their human rights and dignity.

Refugees and the UN

The office of the United Nations High Commissioner for Refugees (UNHCR) succeeded the IRO as the principal agency concerned with refugees¹ to provide international protection and to seek permanent

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solutions for the problem of refugees in 1951. The mandate of UNHCR was eventually extended to cover all other refugees worldwide, as the numbers continued to increase. 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 this, it oversees registration, protection and assistance to specific groups of refugees in 115 countries; monitors compliance with international refugee law and advocates for international refugee rights standards; seeks durable solutions to refugee flows; coordinates the provision of basic needs to refugee populations; and funds and supervises voluntary repatriation programmes. Where requested by governments, it administers the process of status determination for asylum applicants. Different interpretations of basic refugee law have been incorporated into regional and national conventions, so that in practice, responsibilities may vary in different countries. Food relief for refugee settlements may be provided by UNHCR, the World Food Programme (WFP), the host government or various combinations of these. The responsibilities of host governments include registration and physical protection of refugees and protection of their rights to livelihood and security. Three out of four of the world's refugees are under the protection of host countries in the developing world. This places pressure on welfare and social services, shouldered by host communities already weighed down by poverty².

Norms and Principles of International Refugee Law

Universal Declaration of Human Rights recognized that "everyone has a right to seek and enjoy in other countries asylum from persecution".³ This right came into effect as a response to the concern for refugees and stateless persons after the World War II. Further the General Assembly of United Nations unanimously adopted a resolution in 1967 entitled a Declaration on Territorial Asylum⁴ which states that 'no one shall be subjected to measures such as rejection at the frontier, expulsion, or compulsory return to any state where he may be subjected to persecution. Asylum has two fundamental aspects, one being that, "every state has a right to grant asylum to an alien" and the other is that "every person who has a well-founded fear of being persecuted in his own country for reasons of race religion, ethnicity, political opinion or member of a social group has a right to seek asylum in other countries". This latter right is more recognized by the international law under universal movement for human rights. On the other hand, the right of a State to grant asylum to a person for above reasons is recognized under customary norms of international law⁵. Providing asylum involves giving admission to a person, allowing him to remain, not expelling him, refusing to extradite and not prosecuting or restricting his liberty. Grant of asylum creates certain obligations for the

asylum state which it must fulfill towards the person who has been granted asylum. He must be protected from any internal or external source of threat to his life and property and the State should provide him assistance in procuring food and accommodation.⁶

Universal Treaties

The Convention Relating to the Status of Refugee 1951 and its Protocol 1967 form the core of the international legal framework for refugee protection. The Convention has legal, political and ethical significance that far exceeds its specific terms. It has legal significance in the sense that, it provides the basic standards on which principled action can be founded. It has political significance because, it provides a truly universal framework within which States can co-operate and share the responsibilities in case of events of forced displacement. And it is ethically important as 147 states have expressed their commitment to uphold and protect the rights of some of the world's most vulnerable and disadvantaged people⁷. In addition to providing, a legal definition of a refugee, the 1951 Refugee Convention has established a number of principles that have become the basis of refugee protection over the past few decades.

I. Asylum-seekers and refugees should not be returned to a country where they are at risk of being persecuted (the principle of *non-refoulement*). This is the cornerstone of refugee protection and has been interpreted to mean that rejection at the border also constitutes refoulement.

II. Protection must be extended to all refugees without discrimination.

III. As the protection of refugees is social and humanitarian in nature, it should not become a cause of tension between States.

IV. Since the granting of asylum may place heavy burdens on certain countries, a satisfactory solution can only be achieved through international co-operation.

V. As persons escaping persecution can not be expected to leave their country and enter another country in a regular manner, they should not be penalized for having entered the country where they seek asylum or are living there illegally⁸.

VI. Extreme measures of expelling refugees should only be adopted in exceptional circumstances that directly affect national security or public order.

VII. States bear primary responsibility to provide protection to refugee. If the State violates the rights of refugee, UNHCR's role is to intervene on behalf of the refugee.

Regional Instruments

There are a number of other instruments, both international and regional, that address the protection of refugees. The Organization of African Union's (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), is particularly important.⁹The OAU Convention adopts a broader definition of a refugee than the 1951 Refugee Convention¹⁰. It also elaborates a few measures that specifically address forced displacement.

Under the auspices of the European Union, European States first sought to harmonize their asylum policies and practices. Since 1999 however, they have been working to establish a Common European Asylum System.

In 1984 the Convention of Cartagena was adopted, by a group of Government representatives, academics and distinguished lawyers from Latin America. While the 'declaration' is not legally binding, its principles and its definition of a 'refugee', have been incorporated into the national legislations and practices of many Central and Latin American States. Very recently, in 2001, the Asian-African Legal Consultative Organization (AALCO) has agreed on a set of non-binding principles concerning the treatment of refugees. They are known as the Bangkok Principles. These regional instruments harmonize the 1951 Refugee Convention and the rights they contain are more generous or more specific than those found in the 1951 Refugee Convention. UNCHR when needed, should refer to them to advocate for higher standards of protection for persons of concern to the Organization.

Standards of Treatment for Refugees

The 1951 Convention establishes three standards of treatment with regard to specific rights of refugees:

- a) National Treatment- The refugees and the nationals should be treated alike.
- b) Most favoured nations treatment, refers to the most favourable treatment accorded to nationals of foreign country; and
- c) Then there is the treatment as favourable as possible which in any event should not be less favourable than that accorded to aliens generally in the same circumstances.

According to the 1951 Convention, refugees are to be given the same treatment as nationals in respect to certain basic rights, such as freedom of religion, access to courts, possession of property, as well as matters pertaining to public relief, rationing and elementary education. The personal status of refugees is to be governed by the laws of the countries of asylum,

and they are to be exempted from exceptional measures. Moreover, after three years' residence, exemption from legislative reciprocity is ensured.

"Treatment as favourable as possible and in any event, not less favourable than that accorded to aliens" is granted in matters of the acquisition and lease of property, the right to engage in agriculture, trades, handicrafts or business, and to practice a liberal profession. Matters such as housing, higher education and related subjects are regulated in a similar manner.

The refugees should have free access to employment. In case of wage-earning employment, the Convention provides that, the contracting state shall accord to refugees lawfully staying in their territory, the "most favourable" treatment accorded to aliens¹¹. In addition to this general principle there are special provisions in favour of refugees who have completed three years' residence in the country, or whose children or spouse possess the nationality of that country.

So far the freedom of movement is concerned, the Convention proclaims the rights of refugees to choose their place of residence and to move freely within the territory of the country concerned¹². Although the principle of free choice of place of residence is very widely accepted, its application is sometimes hampered by the issues of access to employment. The OAU convention provides that, refugees shall as far as possible be settled at a reasonable distance from the frontier of their country of origin¹³.

Principles of *Non-Refoulement*

The principle of *non-refoulement* broadly speaks about the right of the refugees not to be returned to a country where he or she is likely to face persecution. After the 2nd World war, the UN was set up and thereafter the principle of refoulement stood on solid grounds. Article 33, of the 1951 Convention states, "...no contracting state shall expel or return 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."¹⁴The 1967 Declaration on Territorial Asylum declares that "no asylum seeker shall be subjected to measures such as rejection at the frontier or if he has already entered the territory in which he seeks asylum, be expelled from or be forced to go to any state where he may be subjected to persecution."¹⁵ There are some other instruments which have reiterated the principle of *non-refoulement*. The 1984 Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment provides that, "no state party shall expel, repel, return 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"¹⁶.

The principle of *non-refoulement* was embodied in the 1969 Organization of African Unity (OAU). The Convention Governing the Specific Aspects of Refugee Problems, and the 1950 European Convention on Human Rights, covered the principle of *non-refoulement*. All these legal instruments indicate that the states have accepted the principle of *non-refoulement* to be an important part in the discourse of refugee studies and refugee law.

The 1969 American Convention on Human Rights declared, “In no case may an alien be deported or returned to a country, regardless of whether or not it is in 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”¹⁷. The 1966 Asian-African Legal Consultative Committee, (of which Bangladesh is a member) adopted a declaration, known as the Bangkok Principles, which recognizes *non-refoulement* concept. The 1984 Cartagena Declaration not only endorsed the concept of *non-refoulement* but went further in reiterating that the concept of *non-refoulement* is a corner-stone of international protection for refugees, having the status of *jus-cogens*¹⁸. The same Convention provides an exception to the principle of *non-refoulement*. This means that, the refugees can exceptionally be returned on two grounds: (1) in cases of a serious threat to the national security of the host country; and (2) in cases where their proven and grave criminal record constitutes a continuing danger to the community. The various elements of these extreme and exceptional circumstances need, however, to be interpreted restrictively¹⁹. It also recognizes that refugees posing such a danger may be expelled in pursuance of a decision reached in accordance with due process of law. In such situations, the danger to the country of refuge must be very serious.²⁰ In addition, there must be a rational connection between the removal of the refugee and the elimination of the danger. *Refoulement* must be the last possible resort to eliminate the danger. These issues have come under scrutiny in the judgment concerning Suresh, which was issued by the Supreme Court of Canada in January, 2002. The Court held that under the Canadian Charter of Rights and Freedoms, in most circumstances the government cannot deport someone to a country where they risk being tortured, however, it was ruled that refugee claimants can be deported to their homelands if they are a serious security risk to Canadian society. Article 33, of the Refugee Convention protects, in a limited way, refugees from “threats to life and freedom” from all sources. By contrast, the Convention Against Torture protects everyone, from state-sponsored torture. Moreover, the Refugee Convention itself expresses a “profound concern for refugees” and its principle purpose is to assure refugees the widest possible exercise of fundamental rights and freedoms.²¹ If the principle of *non-refoulement* attains the status of *jus-cogens*, a state (whether a party to the Convention or not) cannot deviate from the obligation either by reservation or not ratifying it.

Human Rights and Refugees

The 1951 Refugee Convention affirms “the principle that human beings shall enjoy fundamental rights and freedoms without discrimination.” International refugee law instruments also codify a number of specific rights which states are obliged to provide to refugees.²² In view of rapid developments in the domain of human rights law which may complement and inform the interpretation of the refugee instruments, the Refugee Convention is very much a living document which, despite its vintage, maintains its relevance in respect of providing a normative framework to address contemporary refugee problems. Rights of refugees are all too commonly ignored by states and other actors as a disproportionate amount of energy and resources tends to be focused on determining who is a refugee.

For example, Article 3 of the 1951 Convention provides that state parties shall apply the provisions of the convention without discrimination as to race, religion, or country of origin of the beneficiary. Art.4 governs freedom to practice religion and religious education²³. Article 16, provides that a refugee shall have free access to the courts of law on the territory of all contracting states.

Other rights granted to the refugees include freedom of movement in the territory of the contracting state²⁴ and facilitating assimilation and naturalization.²⁵ Still other provisions include freedom of association with non-political and non-profit-making associations and trade unions and free access to the courts of law²⁶ and provisions of administrative assistance by the contracting state authority to allow a refugee to exercise a right under the convention and further provides that nothing in the convention shall be deemed to impair any additional rights and benefits granted by a contracting state apart from the convention.²⁷

Thus, the states should consider the rights provided in the Convention as minimum standards of treatment. A brief review of the above-noted provisions reveals that, the Convention is an extra-ordinary Bill of Rights for the refugees. The two other principles that are very important for providing protection for the refugees are non-discrimination and protection from persecution (i.e. denial of life, liberty and personal security). These are enshrined in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR) of 1966, the 1984 Convention against Torture and 1989 Convention on the Rights of the Child.

The Situation in Bangladesh

At present, Bangladesh is acting as a host country for refugees from Myanmar. Problem arises when, at times, they violate the existing laws of the country and commit different kinds of criminal activities in the host country. In such situations, the statutory laws are applicable to try them. If the basic rights of the refugees get infringed due to any internal clash or conflict between the refugees and citizens, they can go to the court and get justice. In most of the cases, refugees are not financially well placed to continue their suit. It is very difficult for them to engage a lawyer. The Government of Bangladesh passed the Legal Aid Act, 2000 (Act 6 of 2000), to help the poor litigants. If the refugees are litigants in any litigation, in appropriate cases, they can take the advantages of the said Act and get justice.²⁸

Refugee Protection and the Constitution of Bangladesh

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:

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.”²⁹

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.

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 can not be denied. However, this right is not applicable to any person, who for the time being is an ‘enemy alien’³⁰.

Prohibition of Forced Labour

Article 34 of the Constitution can well be used to safeguard the rights of the refugees. It says that any form of forced labour is prohibited and any contravention of this provision shall be an offence, punishable in accordance with law³¹.

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 oppressed peoples' struggle against racialism in all parts of the world³². 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.

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.³³

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.

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.³⁴ 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 honoured even though Bangladesh is not a party to the Convention of refugee.

Similarly during the war of 1971, millions of Bangladeshi refugees crossed the border and entered India. They were offered assistance, provided with shelter and were treated as refugees although India is not a party to the convention.

Let us take the instance of Bangladesh's neighbor, India. In *Zothansangpuri vs. State of Manipur*³⁵, the Gauhati-Imphal bench of the Gauhati High Court ruled that, refugees have the right not to be deported if their life was in danger. Again, in *Dr. Malvika Karlekar vs. Union of India*,³⁶ the Supreme Court held that, authorities should consider whether refugee status should be granted and until this decision was made, the petitioner should not be deported. In *Bogyi vs. Union of India*,³⁷ the Supreme Court held that authorities should consider whether refugee status should be granted and until this decision was made, the petitioner should not be deported.

The case of *U. Myat Kayew and Nayzan vs. State of Manipur*,³⁸ has contributed substantially to India's refugee policy. It involved eight Burmese people, aged 12 to 58, who were detained in the Manipur central jail in Imphal for illegal entry. These people had participated in the democracy movement, had voluntarily surrendered to the Indian authorities and were taken into custody. The cases were registered under Section 14 of authorities and were taken into custody. The cases were registered under Section 14 of the Foreigners Act for illegal entry into India. They presented their petition for release and requested the court to enable them to seek refugee status with UNHCR in New Delhi. The Guahati High Court, under Article 21, ruled that asylum seekers, who had entered India, even if not by legal means, should be permitted to approach the office of the U.N. high commissioner to seek refugee status.

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.³⁹ Bangladesh has acceded to a number of international human rights treaties, whose provisions indirectly promote the rights of 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.

Universal Declaration of Human Rights (UDHR) 1948

The UDHR is the first international document which recognizes, that everyone has the right to seek and enjoy asylum from persecution⁴⁰. It is pertinent to mention here that there are some specific provisions in the UDHR which are applicable for every human being irrespective of his or her location. It is clearly stated that:

- a) "No one shall be subject to arbitrary arrest, detention or exile"⁴¹
- c) "Everyone has the right to a nationality"⁴²
- d) "Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and return to his country"⁴³

Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949)

This treaty protects refugees during war. Refugees cannot be treated as "enemies". In applying the measures of control mentioned in the present Convention, the 'detaining power' shall not treat anybody as an "enemy" solely on the basis of their nationality. Protected persons shall not be arrested, prosecuted or convicted by the 'occupying power' for acts committed or for opinions expressed before the occupation, or during a temporary interruption. Nationals of the 'occupying power' who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.⁴⁴

Convention Relating to the Status of Refugees (1951)

This was the first international agreement covering the most fundamental aspect of a refugee's life. It spelled out a set of rights that should be at least equivalent to freedoms enjoyed by foreign nationals living legally in a given country and in many cases those of citizens of that state.

International Covenant on Civil and Political Rights (1966)

The main international treaty on civil and political rights stipulates that states should ensure the civil and political rights of all individuals within its territory and subject to its jurisdiction.⁴⁵ The Covenant also guarantees freedom of movement and prohibits forced expulsion.

Everyone living lawfully within the territory of a State shall, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own. The above-mentioned rights shall not be subject to any restrictions except those, which are provided by law and are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. No one shall be arbitrarily deprived of the right to enter his own country⁴⁶.

An alien living lawfully in the territory of a State, party to the present Covenant may be expelled from the territory, only in accordance with law and if there is a threat to the national security. However, the State has to provide a reason behind the commission of such an act.

Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (1948)

Article 3 (2), provides that a consistent pattern of gross and massive violations of human rights should be taken into account by the State when deciding on expulsion. The monitoring body of this convention, the Committee against Torture, has established some fundamental principles relating to the expulsion of refused asylum seekers. It offers important protection to refugees and their right not to be returned to a place where they fear persecution.

Convention on the Rights of the Child (1989)

Article 22(1) of the Convention states, "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 they said States are Parties."⁴⁷

Article 22(2), states that, the “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.”⁴⁸

The above mentioned instruments have some provision which has obliged States to provide protection to asylum seekers and refugees. Bangladesh is a member of the UNHCR’s Executive Committee. Thus, the country honours the principle of *non-refoulement* and ensures protection of refugees⁴⁹. All states are obliged to promote and protect a common set of rights according to the principle of *erga omnes*,⁵⁰ which is a part of the international human rights jurisprudence

Implementation of International Refugee Law in Bangladesh

As has been already mentioned, Bangladesh is not a party to the 1951 Refugee convention or the protocol 1967, and there is no specific domestic law or national policy governing the protection of refugees in Bangladesh. In most of the cases, the powers to grant residential permits have been relegated to administrator at district and sub-district level. Under municipal laws, refugees being considered as foreigners are governed by the provisions of the Foreigners Act of 1946.⁵¹

Besides this, there are some other laws dealing with the non-nationals of Bangladesh. These are as follows:

1. Registration of Foreigners Act 1939
2. Passport Act 1920
3. Bangladesh Citizenship (Temporary Provision) order 1972
4. Extradition Act 1974
5. Naturalization Act 1926 etc.

In the absence of any legal or specialized statutory frame work for the protection of refugees, Bangladesh relies on these acts, to govern the entry, stay and exit of foreigners in Bangladesh. Section 2(a) of the Foreigner Act defines a foreigner, as a person who is not a citizen of Bangladesh, thus covering all refugees within its ambit as well.

Section 3 of the Foreigner Act 1946, empowers the Government to enact rules regarding the banning or controlling of the entering, staying and leaving of the foreigners in Bangladesh. Section 4 of the same Act specifically provides that any foreigners can be intervened in a limited space vide this Act.⁵²

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.⁵³ The Government also allowed NGOs both national and international in the refugee operation

Conclusion

At present, most of the countries in the world have agreed to grant asylum to refugees. Granting asylum means, offering protection in a safe country, to people who are in danger in the country of their origin. The argument has been made that; Bangladesh should not ratify the 1951 convention. But this, however, has not, relieved it of its responsibilities to establish a humane and rights based regime for dealing with asylum seekers and refugees.⁵⁴

It would be better if the South Asian countries deal with the refugee problems in a united way. Legislation of refugee sensitive laws by the respective national parliaments would be a positive step in protecting the rights of the refugees. Bangladesh, in this regard, should not be an exception. Otherwise, the scope for the refugees to get justice in Bangladesh gets very limited. Faced with such a problem, it can be argued that the signing of the 1951 UN Convention Relating to the Status of Refugees by Bangladesh will surely provide a legal framework and certain rights to the refugees in the region⁵⁵. However, one should be aware of the reality that, no amount of laws can give the refugees their due rights, if the administration at various level do not have the 'will' to help , one of the most disadvantaged groups in the world.

Notes and Reference

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² *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, (Geneva: UNHCR, 1992).

- ³ See Art.14, *The Universal Declaration of Human Rights*, 1948
- ⁴ United Nations, *General Assembly Resolution*, 2312(xx11), December 14, 1967
- ⁵ Alam, M. Shah, "International Refugee Law: A Critical Review", *Bangladesh Journal of Law*, Bangladesh Institute of Law and International Affairs, Vol.1, No.1, June 1997, pp.115-116.
- ⁶ *Ibid.*, at p 116
- ⁷ Erika Feller, "The Convention at 50: The Way Ahead for Refugee Protection" *Forced Migration Review*, April 2001.
- ⁸ See Art.31, *The Convention Relating to the Status of Refugee 1951*.
- ⁹ Fifty-three African Countries have ratified the OAU Convention.
- ¹⁰ The OAU Convention states that the term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality
- ¹¹ See Art. 17, of the *Refugee Convention*, 1951
- ¹² *Ibid.*, Art.26.
- ¹³ Manik Chakraverty, *Human Rights and Refugees*, (New Delhi: Deep and Deep Publication, 2000).
- ¹⁴ *Ibid.*, Art.33.
- ¹⁵ Art.2, *The Declaration on Territorial Asylum*, 14 December 1967.
- ¹⁶ See Art.3, *The Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment*, 1948.
- ¹⁷ See Art. 22(8), *American Convention on Human Rights*, 1969.
- ¹⁸ Rashid Harunur, "Refugees and Legal Principles of Non-Refinement" Law and Our Rights, *The Daily Star*, 9 July 2005.
- ¹⁹ See Art.33(2), *Cartagena Declaration on Refugees Convention*, 1984.
- ²⁰ *Supra* note 36.
- ²¹ "Preamble", *Convention Relating to the Status of Refugee*, July 1951.
- ²² Frances Nicholson and others, eds., *Refugee Rights and Realities: Evolving International Concepts and Regimes*, (Cambridge: Cambridge University Press, 1999).
- ²³ See Art. 3 and 4 of the *Convention Relating to Status of Refugee*, 28 July 1951
- ²⁴ See Art.30 and 31 of the *Convention Relating to Status of Refugee*, July 1951.
- ²⁵ *Ibid.*, Art. 34.
- ²⁶ *Ibid.*, Art. 15 and 16.
- ²⁷ *Ibid.*, Art. 25 and 5.
- ²⁸ *Supra* note 41
- ²⁹ See Art.31, *The Constitution of Peoples Republic of Bangladesh*.
- ³⁰ *Ibid.*, Art.33.
- ³¹ *Ibid.*, Art.34.
- ³² *Ibid.*, Art.25.
- ³³ Md. Akhtaruzzaman, "Right of the Refugee in Ours Laws" Law and Our Right, *The Daily Star*, 24 2006
- ³⁴ Guy S. Goodwin-Gill, *The Refugee in International Law*. (Oxford: Clarendon Press, 1995) p. 264
- ³⁵ Civil Rule No. 981, 1989.
- ³⁶ Criminal writ petition No. 583, 1992.

³⁷ Civil Rule No.981 of 1989.

³⁸ Civil Rule No.516 of 1991.

³⁹ Uttam Kumar Das, “Refugee and Relevant Laws in Bangladesh”, Law and Our Rights, *The Daily Star*, June 23, 2007.

⁴⁰ Supra note 1

⁴¹ Ibid., Art 9.

⁴² Ibid., Art 15

⁴³ Ibid., Art 12

⁴⁴ Ibid.,

⁴⁵ *International Covenant on Civil and Political Rights*, 1966.

⁴⁶ Ibid., Art.12 (1), (2), (3), (4).

⁴⁷ *Convention on the Rights of the Child*, 1989.

⁴⁸ Ibid., Art.22.

⁴⁹ Ibid.,

⁵⁰ *Erga omnes* means main human rights like right to life, food, shelter, medicare, freedom of worship, thought and conscience etc. from which no state can derogate and is bound to respect.

⁵¹ Samaddar, Op.Cit.

⁵² See section 3 and 4 of the *Foreigner Act 1946*

⁵³ Supra note 16

⁵⁴ Supra note 34.

⁵⁵ Supra note 32.