

Challenges to the Protection of Refugee's Rights in Bangladesh: In Search of a Comprehensive and Effective Legal and Institutional Frameworks

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Abstract

Protection of the rights of the refugee, and the deterrence of discord between the countries of origin and the asylum countries, have currently posed a large scale of socio-political, economic, ethnic and communal tension to the national and international community. Adversely, Bangladesh has no uniform domestic legislation and unique policy to deal with the matters relating to refugee's rights status and protection. To this end, the present paper addresses the question of how and to what extent, a legal and institutional framework can be developed for Bangladesh for the specific identification, treatment and protection of refugees and asylum seekers. In this course, this article looks into the existing laws and policies to understand the status of age-old refugee problems and it identifies the protection gap in both the national and international legal frameworks. And finally this article come up with the proposition that to develop a strong protection mechanism for the refugees in Bangladesh, there is no alternative but urgently needed a fresh look to this issue with a specific legal and policy framework complying with international and regional refugee instruments.

Key Words: Refugees, human rights, status, protection, national law and policy

1. Introduction

In the era of globalization, where opening of the border is being generated widely all over the globe, the matters relating to forced migration, refugee, and internally displaced persons are hardly compromised by the nation-states with its territorial borders, on the ground of internal security, sovereignty, independence and above all national interests. As a result, fortification

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of the refugees rights, who are totally outside the domestic security and the deterrence of discord between the countries of origin of the refugees and the asylum countries, have currently posed a large scale of socio-political, economic, ethnic and communal tension to the national and international community. In addition, it has also geared up cynical bilateral relations between the neighboring countries and to some extent, caused a big obstacle in balancing government's international obligation to provide fair treatment and asylum to those in need.

There are multiple traits concerned with refugees who are of vital significance both to Bangladesh and to the refugees, especially in term of protection of their legal rights (Cornelius, 1998). In this context, among others, more particularly, the issue of Ruhingya refugees, as one of the vulnerable amongst the refugee communities, started in 1970s because of religious fanaticism, mandatory labor, land ejection, rape and variety of maltreatment by the Myanmar military administration (Wiggers, March 2002).

It was just the initiation of the flight of refugees to this country and it is still going on rolling. But this refugee issue recently turns into as an alarming proportion in Bangladesh causing numerous social and economic complexities while giving them the required protection. However, Bangladesh is not duty-bound to be the ultimate marina for the victimized refugees coming from Myanmar or from any other country. Like other Asian countries, Bangladesh did not ratify the 1951 Refugee Convention or its 1967 Protocol, nor its accomplice to the 1954 and the 1961 Statelessness Convention (UNHCR- PDES, 2011).

It is well recognized that the international refugee regime is a mix of international universal instruments and institutions, supplemented by regional arrangements, both of which are implemented in the domestic level through national laws and procedures (Naser & Afroz, 2007). Interestingly, in pursuance of customary international law and being a member of United Nation as well as a signatory of international refugee instruments every state has implicitly shouldered the responsibility to safeguard the fundamental human rights of refugees. To this end, state can extend their respect and protect the rights of refugees and asylum seekers in its domestic level through a series of national, international and regional human rights instruments and mechanisms. The key international legal instruments that ensured the basic human rights and surrogate protection of the refugees are 'United Nations Convention Relating to the Status of Refugees of 1951' and its 'Protocol 1967'(Turk and Nicholson, 2003).

It cannot be denied that sustainable protection of refugee's rights in any country depends, to a large extent, on a particular sovereign state mechanism considering multiple factors and Bangladesh is not exception to this rule. However, Bangladesh as a least develop country (LDC) with limited resources and being non acceding to any international instrument relating

to refugees, has not only a long record of hosting a big portion of refugees in its territory but also performed considerable degree of humanitarian obligation towards the refugees for the protection of fundamental human rights. Adversely, in Bangladesh, available protection space for refugees, asylum seekers, and stateless people is very limited and unpredictable due to nonexistence of comprehensive national law to deal with the rights and status of refugees and asylum seekers.

In such a situation, scholars and academicians in the field argued that a national framework in refugee law is a must to extend the protection measures of genuine refugees and to advocate the refugees and migratory flows properly by the country (Sunna, 2009). To this end, the present paper comes up with the proposition that to develop a strong protection mechanism for the refugees in Bangladesh and to reach in a viable solution to the refugee problems there is no alternative but urgently needed a fresh look to this issue with a specific legal and policy framework complying with international and regional refugee instruments aiming at ensuring basic human rights and accessing justice system to the refugee and asylum seekers.

The imperative objective behind this study is, however, to explore how and to what extent, a legal and institutional framework can be developed in Bangladesh for the specific identification, treatment and protection of refugees and asylum seekers. In this context, this paper also aims to look into the existing legal regime and policies in connection with the laws and regulations involving refugee's rights. Another objective of this study is to realize an appropriate way out to upgrade the domestic legal regime with a specific legal and policy framework complying with international and regional refugee instruments

Methodology:

To design this article analytical method has been used following qualitative and descriptive approach which is based on secondary sources of information like text books, national and international journals and instruments, research reports and news reports. Relevant literature also collected from different websites. An examination of substantial background was considered to develop a strong protection mechanism for the refugees in Bangladesh.

2. Understanding the Refugees and Refugee Status.

Generally speaking a person is said to be a refugee when he is compelled to stay in outside the country of his nationality for certain situational circumstances which are beyond his control, often heartbreaking. The classical definition of 'Refugee' is inserted in the Article 1, Para 2 of the 1951 Convention-

"A person who owing to 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 or,

owing to such fear, unwilling to avail himself of the protection of that country.”

Thus, as per Article 1A(2) of the 1951 Refugee Convention, four vital elements are to prove before a person claim to be refugee i.e., i) “well-founded fear of persecution”, ii) “flee across the border of one's country”, iii) “discriminations based on race, sex, and religion” and iv) “unwilling to return to one's country unless safety or security is ensured” (Al-Imran *etl.* 2014); and reflection of some other factors which may operate individually or collectively (Ananantachari, 2001).

However, there are considerable differences between the refugees and migrant people or other foreigners. The vital principle to satisfy the refugee status is that he must be ‘genuinely at risk’. Recently various judicial tests have been introduced by the judiciary of a number of countries as a standard of proof to constitute a claim of refugee. Interpreting the principle ‘well founded fear’, US Supreme Court in *INS vs. Cardoza Fouseca case*, observed that –

“So long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is not enough that persecution is a reasonable possibility...”

Applying the same testimony by the US Court in *R Vs. Secretary for the Home Department* (AII ER 193, 1998) and in *Sivakumaran* (House of Lords, 1998) cases the court opined that the ‘Test’ should also include the proof of a “real or substantial danger of persecution”. In sum, it is established that the courts always followed a liberal approach in determining the status of refugee. In Bangladesh, in deciding whether a person is said to be refugees or not, the government or courts has not applied any particular test rather taken the decision either on the facts and circumstances of the cases or on the bilateralism policy. However, there is no official or written policy framed by the Bangladesh government to recognize the claim of refugee status.

3. Existing Refugee Regime in Bangladesh

Present refugee scenario in Bangladesh very strongly supported the truth that from the very independence of this country, Bangladesh is welcoming diverse group of refugees from other neighboring countries given them a place of dignity and honor in the society. It is relevant to mention here that since its independence, Bangladesh has, repeatedly, received a large quantity of refugees belonging to all religious and sects from different countries, in keeping with its secular policies.

After independence, about 30,0000 Biharis turned into refugees who considered themselves as ‘Stranded Pakistanis’ and of which a large number of ‘Biharis’ preferred to stay in the new state, Bangladesh, while the remaining section opted for Pakistan. Besides, since 1978

Bangladesh is facing this refugee problem and according to the report of ASEAN Parliamentarians for Human Rights (APHR) January 2018, "the Cox's Bazar district is now overburdened with 1 million Rohingya refugee including nearly 700,000 newly persecuted refugees since August 2017 and the contiguous Kutupalong and Balukhali camps and Transliterate makeshift settlements together constitute both the largest refugee camp in the world" (APHR Report, 2018). A portion of these refugees are enjoying *prima facie* refugee status by the executive order of the government. Now around .65 million documented and undocumented Rohingya refugee are staying in Cox's Bazaar, Bandarban and its adjacent are as Kutupalong with the generosity of Bangladesh government (Hoque, 2015).

Though Bangladesh is not a signatory of the 1951 Convention and the 1967 Protocol, acknowledging the international dimension of the refugee crisis she is conscious of her role to respect the basic human rights and committed to undertake humanitarian assistance to the refugee in need.

In this context, Bangladesh government invited the international Refugee Agency UNCHR during the refugee influx from 1991 to date, to launch their operation in Bangladesh.(Nour, 2012). Initially Bangladeshi Government welcomed the UNHCR, the Red Cross and various other international agencies to assist the refugees. By then about 258,000 Rohingyas were registered by the government of Bangladesh and granted refugee status through executive order (D'Costa, 2012). However, The Government of Bangladesh decided not to welcome the Rohingya refugees in the territory of Bangladesh because of national security and for over burdening of the country with refugees (Huda, 2013).

It is obviously that refugees in Bangladesh are posing a serious threat to the security, stability, prosperity, welfare and image of the country through their involvement in serious crimes including drug and human trafficking, smuggling, robbery and other organized crimes. In early 2014, the Government of Bangladesh announced its national strategy for Refugee (including Myanmar) and undocumented Nationals, admitting their need for basic humanitarian relief (UNHCR, 2015), pending the identification of durable solution.

4. Refugee Rights and the Convention of 1951.

As the 'Magna Carta' of the internationalization of refugee law, the 1951 Convention on Refugee works as a core legal instrument to safeguard the multifarious rights of the refugees but those rights are, unfortunately, blatantly violated over the globe posing the refugee crisis one of the biggest political and human tragedies of the twentieth century. The Convention has diverse implication in the sense that "it provides the basic standards upon which a genuine refugee can be identified and protected; it sets out a truly universal framework within which state can cope with and share the responsibilities; it also ethically exposed that world community have expressed their commitment to uphold and protect the rights of some those

vulnerable and disadvantaged section (Nour, 2012).” Emphasizing on a harmonized standard of human rights for refugees the 1951 Convention affirms “the principle that human beings shall enjoy fundamental rights and freedom without discrimination.” For instance Article 3 of the Convention says that

“State parties shall apply the provisions of the convention without distinction as to race, religion and country of origin of the beneficiary.”

In reality, five categories of rights are guaranteed to the refugee under the convention (Muntarbhon, 1998). First, the refugee has the rights to be treated in the same manner as others aliens generally, let alone the most favorable clause; Second, the contracting states are to ensure same treatment to refugees within the territory as they provide to their own residents (Article- 17, 1951 Convention), Third, the rights to be treated as least as favorably as local nationals in relation to religion (Article- 4, 1951 Convention); Fourth, the contracting state must accord the most favorable treatment to the nationals of a foreign country, in the same circumstances, such as the right of association, freedom of movement (Article- 26, 1951 Convention); and Fifth, the rights to get treatment as favorable as possible and by no means less favorable than that of aliens generally in the same circumstances i.e. right to education (Article- 22, 1951 Convention), right to property, self employment, and so on.

Since Bangladesh has yet not ratified the Eurocentric character of the 1951 Convention for its limited resources and weak control over the border, the refugees staying in Bangladesh are not accommodated and protected as to the spectrum of the refugee’s rights guaranteed under the said Convention. Despite having no specific law and/or uniform policy to protect the rights of the refugees in Bangladesh, they are given place of honour and dignity in the society complying with the norms and principles of customary international law. However, a big number of similar rights which are embedded in the in the international refugee law, are also inserted in other international human rights instruments. For instance the International Covenant on Civil and Political Rights 1966, the Convention against Torture, 1984 and the Convention on the Rights of the Child. 1989, incorporated some significant rights i.e. protection from persecution and non-discrimination etc. Being a signatory of those international human rights treaties, Bangladesh are entitled, more particularly, has binding obligation to protect the refugees in vulnerable situation.

5. Protecting refugee’s rights under the International Legal Norms and Principles:

The concept of international protectionism of refugees under principles of customary international law is pin down by the world leaders on the ultimate fact that they are the most vulnerable stateless community suffering from systematic discrimination and human rights violation and they are extremely exploited by the government of their country of origin. Refugees need either temporary or permanent protection or minimum humanitarian support

until and unless they are repatriated in their country of origin or put together in the host country or shifted in a third country (Al-Faruque, 2015). As a short-term strategy, in order to external safety of refugees state may provide provisional protection and it expectedly makes a way forward for a durable solution; and it is also worked as an interim measures in case of mass influx of refugees to restore condition for safe repatriation (Fitzpatrick, 2000). However, the important norms and principles of international customary law particularly relating to the refugee protection may be articulated in the following headings:

5.1. Non-refoulment

The principle of non-refoulment, as the most fundamental and dogmatic principle of international refugee laws, broadly means that states are imperatively bound not to send back the refugees to a country where he/she has apprehension to face persecution, nor be barred to stay if he has crossed the border unlawfully. Simply, as regards the non-refoulment, states are strongly prohibited from returning a refugee or asylum seeker to any place or region where he/she is in a genuine risk of "well-founded fear of persecution" "due to racial or religious conflict, nationality, social or political disparity.

Accordingly, Article 33(1) of the 1951 Refugee Convention very clearly enumerates that

"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 particular social group or political opinion."

Thus, it would be amount to violation of fundamental human right norms of international customary law if any state forces the refugee to return to a frontier in which he/she likely to face reasonable fear of persecution (Plender, 1995).

Again Article 2 of the Declaration on Territorial Asylum 1967, states 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."

Reiterating the notion of non-refoulment, Article 3 of the 'UN Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, 1984' says-

"No state shall expel, 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".

In addition this non-refoulment principle for refugee protection has also been integrated in some other international treaties and conventions. The 1966 Asian African Legal Consultative

Committee, known as the Bangkok Principles (of which Bangladesh is a member) has not only recognized the non-refoulment principle but emphasized on saying that the notion of non-refoulment is a cornerstone of international refugee laws for the protection of refugees (Nour, 2012). Article 3(5) of the Cartagena Declaration 1984 further reaffirmed that this is an obligatory principle as regard to refugees and current international law must be accepted as '*Jus Cognis*'.

However, refugees are not entitled to avail this principle in certain exceptional circumstances i.e. in cases of a serious threat to the national security or in case of a continuing danger to the community.

5.2. Asylum

Generally concept of asylum implies great significance in the customary international law especially for the protection of the refugee's fundamental human rights. Article 14(1) of the UDHR stresses that

"Everyone has the right to seek and enjoy in other countries asylum from persecution". Recognizing the asylum as the first need for a refugee international community affirmed that

"Asylum is the protection which a state grants on its territory or in some other place under the control of certain organs, to a person who comes to seek it"(Article-1, 15(1951).

Besides, the right to asylum have also recognized as the right to life for a refugee through Article 3(3) of the United Nation Declaration on Territorial Asylum and Article 2(5) of the OAU Convention on Refugees, 1969.

Thus, it can rightly be argued that person who has left their home country on account of persecution has prime and first right to be granted asylum in another country along with the momentary stay in the realm of that country pending permanent settlement of repatriation to refugee's own country (Al-Faruque, 2015).

5.3. International Solidarity and Burden Sharing

The principle of International Solidarity and Burden Sharing refers that refugee matter is a concern of international community rather a problem of individual state and every state is under an obligation to share the responsibility to make a way forward for a durable solution for those distressed community. This Principle is significantly important in cooperation for the protection of refugee and degree of responsibility will certainly be extended in case of mass influx of refugee, particularly, if the country is poor and weak.

As regards to the principle of burden sharing the preamble of the 1951 Convention asserts:

"Considering that the grant of asylum may place unduly heavy burden on certain countries the international scope and nature cannot, therefore, be achieved without international cooperation."

Moreover, Article 2(2) of the Declaration on Territorial Asylum, 1967 states:

“Where a state find difficulty in granting or continuing to grant asylum, states individually or jointly or through the United Nations shall consider, in spirit of international solidarity, appropriate measures to lighten the burden on the state.”

Thus, the principle of international solidarity and burden-sharing will certainly works as a guideline for the concerned countries to reach in a satisfactory solution in case of mass refugees influx and it will, ultimately lighten the burden on the poor states, in need.

6. Refugees and Current Legal Framework in Bangladesh

Although virtually, Bangladesh is still far behind from a consistent and uniform legal regime for the protection of the refugee's rights, the liberal constitutionalism of the country implied that certain fundamental human rights guaranteed under it can certainly protect the rights of the refugees under varying circumstances for they are applicable for all people within Bangladesh. In the absence of any specific provision safeguarding refugee's rights either in statutory law or state policy, scholars and professional in the field believe that we need to have a fresh look at the constitutional provisions and other international refugee instruments respecting the basic human rights norms.

6.1. Refugees rights and the constitution of Bangladesh

Bangladesh constitution, as a supreme law, not only secured a large number of fundamental human rights together with the right to life and personal liberty (Article 32, Constitution of Bangladesh) of an individual citizen but also for everyone who inhabits within the territory of Bangladesh. For instance, Article 27 of the Bangladesh constitution guaranteed equal protection of law for everyone and Article 31 also affirmed that the foreigners (non-citizens), who are staying in the country for the time being, are allowed to enjoy the right to protection of law as like as the citizen of the country entitle to have so. Besides, it is emphasized in Article 32 that “no person shall be deprived of life and liberty saves in accordance with law”. Mentionable that as the word ‘person’ is used in the said Article instead of citizen, the rights can be extended automatically to the every person –whether he/she is citizen or refugees in Bangladesh.

In addition, upholding the dignity of the individual the Constitution also guarantees right to safeguard against unlawful arrest and detention (Article 33, Constitution of Bangladesh); prohibition of forced labour (Article 34, Constitution of Bangladesh); right of fair trail (Article 35, Constitution of Bangladesh); freedom of movement (Article 36, Constitution of Bangladesh); assembly (Article 37, Constitution of Bangladesh); association (Article 38,

Constitution of Bangladesh); freedom of expression (Article 39, Constitution of Bangladesh); profession or occupation (Article 40, Constitution of Bangladesh); religion (Article 41, Constitution of Bangladesh); etc. However, these constitutional rights remain hectic unless and until a comprehensive legal interpretation and tangible initiatives from the government is taken to invoke these rights by the refugees in Bangladesh.

6.2. Refugee protection under the statutory law

As regards statutory legal protection, in fact, refugees in Bangladesh are considered as foreigners in the context of the aged old law, the Foreigners Act of 1946, though this law is totally silent about refugee and is not enough totally in the sense of protection mechanisms. As such, absence of strong and effective protection system under present legal regime poses a harsh contrast to the basic fundamental rights contained in Bangladesh constitution and other international norms and principles under international refugee regime (Naser & Afroz, 2007). In most of the cases they were given prima facie refugee status by the 'executive order' of the Bangladesh government but these measures do not even acknowledge the refugees as a separate class deserving special treatment rather create varying standards of treatment to the refugees.

Thus, in absence of any specific and uniform legal regime, the following legislations, though arguably not made for the refugee, are generally applied to protect the interests of them in Bangladesh:

- a) The Foreigners Act, 1946;
- b) The Foreigners Order, 1951;
- c) The Registration of Foreigners Rules, 1966;
- d) The Passports Act, 1920;
- e) The Bangladesh Passport Order, 1973;
- f) The Citizenship Act, 1951;
- g) The Bangladesh Citizenship (Temporary Provisions) Order, 1972;
- h) The Bangladesh Control of Entry Act, 1952;
- i) The Extradition Act, 1974;
- j) The Naturalization Act, 1926;
- k) The Code of Civil Procedure; 1908;
- l) The Children Act, 1974;

7. Commitments of Bangladesh through International Instruments

Despite neither a non-signatory state of the 1951 Convention nor its protocol of 1967, Bangladesh has ratified couple of United Nation and international Convention on Human Rights, particularly on refugee's rights and related matters. Being a party of the Executive Committee of the High Commissioner's Program (EXCOM) since 1995, Bangladesh has a concern and obligation to the matters related to the refugee's rights. Moreover, among other, Bangladesh has ratified UDHR; International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Rights Of the Child (CRC) 1989; Four Geneva Convention of 1949 and their two additional Protocol of 1997; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention Against Torture (CAT)" etc.

With a view to have an in-depth idea about the basic rights of the refugees protected under these international instruments, it is pertinent to enumerate some of them bearing significance. In this regard, as regards the provisions of UDHR, "all persons are guaranteed the right to life, liberty and security of person (Article 3, UDHR 1948); freedom from slavery (Article 4, UDHR 1948); freedom from torture and cruel, inhuman or degrading punishment (Article 5, UDHR 1948); right to be recognized as a person before law (Article 5, UDHR 1948); equality before law; eave or return to his country (Article 12, UDHR 1948); and seek and enjoy asylum from persecution in other country (Article 14(1), UDHR 1948)."In the ICCPR Article 6(1) ensures that:

"Every human being has the inherent right to life and the state shall be protected this right by law".

And also Article 7 of the same enumerates that

"No one shall be subjected to torture or to cruel, inhuman degrading punishment".

Hence, in pursuance of Article 2, 6(1) & 7 of the ICCPR, despite foreigners, the refugee could enjoy the same fundamental rights and freedoms as national and Bangladesh, as a signatory of ICCPR, should respect these rules. In addition, under the provisions of CRC state party has an obligation to ensure "the rights of each child without any kind of discrimination (Article 2, CRC, 1989); to consider the best interest of every child in all action(Article 3, CRC, 1989) and right to health(Article 24, CRC, 1989); right to education(Article 28, CRC, 1989) and juvenile justice(Article 37, CRC, 1989)."

Article 22(1) of the CRC further stipulates that:

"state parties shall take appropriate measures to ensures that a child who is seeking refugee status or who is considered as refugee in the spectrum of

international or domestic law and procedures shall, either accompanied or unaccompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present convention and in other international human rights or humanitarian instruments to which the said states are parties.”

Accordingly, Article 3 of the CAT emphasizes that

“The member states shall not expel, 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”.

In addition to the foregoing international instruments, Bangladesh is a party to the United Nation Declaration on Territorial Asylum, which strengthens her commitments and obligation to the protection of refugees in Bangladesh and *non-recoupment* (Naser & Afroz, 2007). In adherence to the assurance for social security to refugees and stateless person in its territory, Bangladesh, as a party has also commitment under the ILO’s Convention No. 118. Thus, the country honors and respects different international legal norms as its greater responsibility to the protection of the refugees’ right. However, as to the principle of *erga omnes*¹, each and every state is imperatively duty-bound to protect and promote some substantial human rights as a part of the international human rights jurisprudence.

8. Towards an Effective Solution of Refugee problem

Despite all refugees have eagerness to return their home country as early as possible, a big portion of them are felt unsecured or practically not able to go back to their country of origin for couple of years. In these circumstances, they need a permanent and constant platform that provides a durable solution to meet the challenges they face as a refugee. In this respect, Bangladesh needs to develop an inclusive legal system for the protection of the basic human rights of refugees and to assist asylum seekers ensuring access to justice system. In addition, considering the present context of the South Asian countries, efforts may be taken by the political leaders towards developing a comprehensive regional mechanism and institution that would uphold the universal principles of international refugee protection. Moreover, a flexible statutory regime common to the nations in South Asia may be formulated to develop a model law for refugee protection in the South Asian territory.

¹*Erga Omnes* means some substantial human rights like right to life, food, shelter, Medicare, freedom of worship, thought and conscience etc. from which no state can derogate and bound to respect.

8.1. Formulation of a Comprehensive National Legal Regime

A formal and uniform legal frame work or policy for refugees will certainly create a platform accelerating a standard of treatment to the recognition and protection of refugees as well as provide a guideline to settle multiple legal and administrative issues. Given the predominance of the rule of law, Bangladeshis required to frame a comprehensive legal and policy framework to advocate the rights of refugees and asylum seekers in an organized way. Ratification of a number of international refugee instruments may be chaotic without having a specific domestic law complying with international refugee instruments (Wijeatne, 2000). Development of a specific legal framework for refugee protection also enhance the administrative control by the government -such as development of a database that contains detailed information of refugees or asylum seekers, including present whereabouts, family profile, their background in the country of origin, and reasons behind their departure etc(Naser & Afroz, 2007). Under the domestic legislation they may be required to keep regular contact with the concerned administrative authorities for location of residence, work or movement to other part of Bangladesh and other issues that might be raised (Regini at el. 2008).

As regards appropriate coordination and cooperation among the different concerned agencies, a uniform domestic legal regime may also provide specific guidance regarding the functions and responsibilities of the different agencies i.e. Government, judiciary, National Refugee Commission and Human Rights Commission etc.

8.2. Formulation of a Flexible Model Legal Regime for south Asian countries

By this time, Refugee problem has become a tough and tricky issue in Bangladesh in terms of socio-economic and political perspective. Recently, in south Asian region, more particularly, Bangladesh has become the prime sources of world's refugees and asylum seekers alike Bhutan and Sri Lanka. Pakistan is facing problem of Afghan refugee, Bangladesh is struggling with refugee basically from Myanmar, Nepal has the refugees from Bhutan and Sri Lanka is burdened with her own problems arising from internal displacement (Sinha, 2004). Interestingly none of these Asian countries including India, has ratified the 1951 Convention and 1967 Protocol or nor formulated any unique domestic legal regime for the protection of the refugee's interest within their respective territory. To this context, it can rightly be argued that South Asian nations, including Bangladesh should come up with a satisfactory and flexible model law for the sustainable development of refugee crisis.

Primarily, it was the Constitution of the Eminent Person Group (EPG) for South Asian in 1994, later, The Colombo Consultation of 1995 emphasized on the need of a south Asian regional legal regime for refugees(Naser & Afroz, 2007). Accordingly the New Delhi Consultation of 1996 underscored the need for a model law for refugees. At last, it was the Dhaka Consultation of EPG in 1997 in which a national model law approved by the state parties aiming at the proper protection of refugees basic rights in an effective way (Naser &

Afroz, 2007). Although there have been some technical and political differences about the model law, there is a degree of unanimity on its acceptance as a framework for future discussion on refugee protection (Dhavan, 2004).

However, to reach in a successful implementation of such kind of model law common to all South Asian Nations, it needs to create a body considering its objectives, institutional structure and financial supports. In this respect it will be useful to look at the experience of the OAU Bureau of Refugee and have a review of the manner in which the European countries have coordinate their policies on refugee and allied issues (Chimni, 2004). Definitely such kind of effort would uphold the universal principles of international refugee protection considering the diverse trait of the region.

9. Concluding Remarks

It is almost certain that given the reality of security concern along with the other economic aspects, especially in the last few years, Bangladesh has taken the refugee issue on humanitarian viewpoint. But there is yet to develop any comprehensive legal or institutional structure to protect and promote the basic rights of refugees in Bangladesh, though the issue of a strong protection regime for the refugees is repeatedly raised by the political leaders, policy makers and in media. Bangladesh should urgently need to formulate a national legal framework on refugee to develop an adequate and effective protection mechanism to deal with diverse kind of refugee situation smoothly. The proposed national legislation for refugees in Bangladesh also need to concentrate on an institutional structure that would articulate a combination of international, regional and national approaches.

At the same time, highlighting the shortcomings of the 1951 Convention, Bangladesh should not be ignored to ratify the international refugee instrument. Similarly, it would be better to introduce a model law as proposed earlier or uniform regional legal regime common to all nations that would act as a means of strengthening refugee protection solving the related problems in the SARRC region.

Anticipating a durable solution of refugee problem, Bangladesh should respect the international law and fulfill its obligations under various international instruments to protect the refugees in its territory. In this course, the essence and spirit of different international refugee laws and the UN Conventions on the subject can be respected through administrative and judicial activism. To this end, among the strategies, a human right-based approach can be applied upholding the human rights obligation to have a strong protection mechanism for refugees.

Given the importance of the protection of refugee's basic human rights, Bangladesh Supreme Court can, like Indian Supreme Court, also play a pivotal role by interpreting the norms and notions of international customary law with liberal approach complying with international treaties and conventions on refugee law.

Additionally, Bangladesh, enlisting all registered and unregistered refugees living within its boarder, may works on certain bilateral or multilateral agreements with its neighbor states and other Asian countries to regulate the refugee influx efficiently. Lastly not least, Bangladesh can take initiative to arrange dialogue with international community with a view to convince them to put pressure on countries of origin to resolve the refugee problem without further delay.

Thus considering the traumatic condition, accompanying hardship, vulnerability and insecurity of the refugees residing in Bangladesh, the Government, as well as the international community, must urgently address this issue in a sustainable and proactive manner. The absence of a comprehensive and effective national legal and policy framework for this large number of refugees in Bangladesh would have multifarious negative ramifications.

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