



Research article

## Rohingya Communities' Barrier to Obtain Legal Remedies through the Judicial System in Bangladesh: Legal Standing and Alternate Pathways

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### ABSTRACT

This study seeks to examine the legal hurdles faced by Rohingya refugees surviving in Bangladesh. It also covers how they attempt to use Bangladesh's legal system to obtain justice. Its primary objective is to provide viewers with a thorough understanding of the Rohingya issue by taking into account the historical context, the persecution of the ethnic group throughout history, and the circumstances that led to their mass migration to Bangladesh. The paper looks at Bangladesh's current legal framework for handling refugee cases. It also aims to draw attention to the serious shortcomings and obstacles that prevent Rohingya refugees from advocating for their legal protection. At the moment, several hurdles impede Rohingya refugees in the country from being able to use the judicial system. The article delves further into these barriers, highlighting three main issues: a lack of laws, a lack of legal recognition, and inadequate legal aid. Several proposals for enhancing legal frameworks and changing practices that can support increasing access to justice are also included in the article.

### Introduction

Rohingyas are one of the ethnic minorities in Myanmar. In the western border of Burma, Rohingya people live (Sohel, 2017). Although the majority of people in Myanmar are Buddhists, the Rohingya are predominantly Muslims ("Myanmar Rohingya," 2017). The United Nations High Commissioner for Refugees (UNHCR) claims that this ethnic group is among the most oppressed minority in the world. Muslim settlers started to come to Myanmar's Arakan state in the 1430s (Blakemore, 2019). Muslims lived in Arakan, which the Burmese Empire had taken over in 1784. After Britain conquered Burma in 1824, the British settled in that country (Sohel, 2017, p. 1008).

Bengal, at the time, was the source of a massive migration of Muslim migrant workers bound for Burma. By assisting the Rohingya government during World War II, Britain guaranteed the Rohingya people would have their own independent state. But it was never implemented, and the Burmese people hated the undocumented immigrant wave. In 1948, Burma gained its independence from British colonial rule (Leider, 2018). The governor was strongly opposed to the formation of an entity in which Muslims would make up a large proportion of the population at that time (Leider, 2018). The governor also talks about the Muslim ethnic group known as the Rohingya, who fled the Arakan State and moved to Burma.

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The Rohingya were forced to flee their nation and were not included in the Constitution of Myanmar, and subsequently, in 1982, a law was issued by the Burmese government denying citizenship to the Rohingya people (Mohajan, 2018). The Rohingya group has consequently been refused citizenship, and their fundamental rights are abused both inside and outside of Burma. As a result, they are considered stateless.

The military took control of Myanmar's government in 1962 (Devi, 2014). Subsequently, the government deliberately fostered hatred towards the Rohingya. The armed forces have been conducting "Operation King Dragon" against the Rohingya and they were accused of mass arrests, rape, and breaching human rights by demolishing towns and houses (Kanji, 2019). Many Rohingya refugees escaped to Bangladesh as a result of this awful incident since the 1970s, with notable migrations in 1991, 1992, and 2017. They are also in charge of Operation Clean and Beautiful throughout the nation, which led to the forced evacuation of 200,000 individuals from the nation (Bay, 2018).

On June 22, 2017, security forces purportedly killed three militants during a raid on an alleged insurgent camp as part of a two-day "Area Clearance Operation" by the government. Police seized wooden guns, ski masks, and gunpowder from a Rohingya rebel organization. A large number of civilians were casualties among the Rohingya

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people due to the attacks. Numerous women were kidnapped and subsequently sexually abused. They started to escape the turmoil and traveled to Bangladesh. Approximately 7,23,000 Rohingya people fled to Bangladesh as refugees in August 2018 (Kipgen, 2019). The Rohingya people now reside mostly at Kutupalang Refugee Settlement. Right now, this spot is home to the biggest refugee camp in the world, with 33 camps acting as the primary residence for Rohingya migrants (Bangladesh Hosts the Largest Refugee Settlement in the World, n.d.).

There is cause for concern, given the horrifying history of violent crimes committed close to the camps by specific Rohingya minority members. In addition to drug misuse, these offenses include rape, robbery, murder, and felonies like falling trees and seriously hurting oneself or another person. Punishing offenders in Bangladesh is challenging due to the complexity of the country's sluggish legal system, burdened with procedural hurdles. As human beings, they have an inherent right to justice under human rights principles, regardless of the ambiguity surrounding their legal status as citizens or refugees, both in their home country and abroad. Between August 25, 2017, and July 31, 2023, there were 3,223 incidents of violence against the Rohingya population that were documented (Kipgen, 2019). The accusations included everything from drug and weapon trafficking to rape, killing, and kidnapping (Kipgen, 2019).

In the five years that followed the start of the migration on August 25, 2017, 2,438 Rohingya people lost their lives (Khan & Jinnat, 2023). This has led to a substantial rise in criminal activities. There are currently too many cases for the police and courts to cope with. Bangladesh refuses to accept the Rohingya that have settled in its territories as refugees since it is neither a party to the 1951 Refugee Convention nor its 1967 Protocol. Because of their status, they are ineligible for formal legal protection or safeguards (Khan & Jinnat, 2023). It is even more difficult for them to get justice because they are unable to obtain the legal documents required to use in the conventional court system.

Rohingya refugees in Bangladesh face significant barriers to accessing justice due to their lack of legal recognition, statelessness, and restricted rights. Without formal refugee status, many struggle to file cases, seek legal remedies, or obtain fair trials. Language barriers, financial constraints, and limited awareness further hinder their access to the judicial system. While some NGOs and government initiatives provide legal aid, these efforts remain inadequate. Many refugees rely on informal justice mechanisms, which may not ensure fair outcomes. Strengthening legal aid, raising awareness, and creating legal pathways are crucial for improving their access to justice in Bangladesh.

### Statement of the Problem

Since the Myanmar government has not yet addressed the denial of citizenship, freedom of movement, security, and other fundamental rights to the Rohingyas, there is little prospect that they will return. Yet again, numerous Rohingya inhabitants of the refugee camps within Cox's Bazar refuse to return home because of their fear of being abused in Myanmar (Rahn, 2018). Due to their lack of

Myanmar citizenship, the Government of Myanmar (GoM) repeatedly singled out the Rohingya for numerous abuses of the rights of individuals ("Join Response Plan: Rohingya Humanitarian Crisis," 2024). Consequently, the Rohingya issue creates difficulties with identity, security, and community development in addition to humanitarian concerns. At least not very soon; it is quite doubtful that the Rohingyas will be allowed to return to their own country (Imran & Mian, 2014). In September 1991, more than twenty camps emerged in the area of Bandarban and Cox's Bazar to accommodate the Rohingya (Imran & Mian, 2014a, p. 227).

### Refugee and the Rohingya Community in Context

The Rohingya, an ethnic Muslim minority group predominantly residing in the Rakhine State of Myanmar, are widely regarded as one of the most persecuted ethnic groups in the world. Both Bangladesh and Myanmar deny citizenship to the Rohingyas, an ethnic minority of Muslims (Imran & Mian, 2014a, p. 228). According to the 1951 Refugee Convention, a refugee is someone who has been forced to flee their country due to a well-founded fear of persecution because of factors such as race, religion, nationality, membership in a particular social group, or political opinion. While the 1951 Refugee Convention primarily focuses on persecution, the broader understanding of refugees today also includes those who flee due to environmental changes, violence, or conflict, though the Convention does not explicitly cover these additional reasons.

### Convention on the Status of Refugees

According to chapter II of the Convention on the Status of Refugees, an individual cannot be granted refugee status if they are involved in not politically illicit activities, possess a record of committed violations towards human beings or other offenses specified in global accords, or harbor suspicions of committing any further crimes against UN prohibitions. The following things are listed in Article 1A (2) of the 1951 Refugee Convention as situational conditions: (i) a genuine fear of oppression; (ii) the decision to leave one's country; (iii) the fear of running into discrimination because of one's gender, race, or religious beliefs; and (iv) the inability to return home until safety is ensured (The 1951 Refugee Convention | UNHCR, 1951). For refugees to be considered, they need to fulfill the four requirements mentioned above. After fleeing persecution and violence in Myanmar, particularly the brutal crackdown in 2017, hundreds of thousands of Rohingya refugees sought refuge in Bangladesh, specifically in the Cox's Bazar region. The country has since hosted one of the largest refugee populations in the world, with the Rohingya living in crowded refugee camps under difficult conditions.

### Literature Review

In a study, Shyikh Mahdi assesses the legal access that registered Rohingya Refugees in Bangladesh titled "The Plight of Rohingya People in Bangladesh: Access to Justice and Human Rights Protection." The researcher studies the existing situations related to the rights of Rohingya people who have registered, with specific emphasis on their availability to justice, legal assistance,

counsel, and a fair trial. The researcher further assesses the present situation of issues, providing a precise and understandable assessment of domestic as well as worldwide human rights standards. Several recommendations are made in the end to improve the Rohingya population's access to the judicial system (Mahdi, 2018). While it evaluates the current situation, aligning it with domestic and international human rights standards, it does not fully analyze the institutional and legal obstacles specific to the court systems in Bangladesh, such as how bureaucratic hurdles, statelessness, and a lack of legal recognition affect their ability to access formal judicial processes.

The Asia Foundation, BRAC University (CPJ), and the Centre for Peace and Justice organized the conference "Community Perspectives on Access to Civil Justice after Cross-Border Displacement" to discuss the concerns of the Rohingya refugees dwelling in Bangladesh. This policy brief made them aware of the pertinent difficulties in obtaining access to civil courts following a cross-border relocation. They concluded in their policy brief that civil court proceedings should be more accessible to refugees in order to settle conflicts involving interpersonal issues, divorce, domestic abuse, polygamy, and other pertinent subjects. They also want assistance in settling disagreements about marriage and birth certificates. The study team made several significant recommendations, including creating a framework for resolving disputes in camps, starting awareness efforts, ensuring civil recordkeeping, educating key figures, and promoting community involvement (Pereira, 2021). The research gap lies in understanding how the particular legal and socio-political context of Bangladesh, including the lack of legal recognition for Rohingya refugees, influences their access to civil justice.

The legal options available to those who have been abused by their intimate partners (IPV) were examined in the study titled "Accessibility of Justice for Victims of Intimate Partner Abuse in the Customary Court at Rohingya Refugee Camp, Bangladesh" by Korima Begum. The researcher in this publication went on to suggest that in cases of intimate partner violence (IPV), the community-based committee should be approached first. The committee's trial methods, however, are illegal under both domestic and international Law. Rather, this group adheres to societal norms, convictions about faith, and experiences from life. The report suggests that the United Nations High Commissioner for Refugees (UNHCR) should establish guidelines and criteria for traditional courts that will safeguard individuals from abuse in intimate relationships, as well as provide victims with remedies and select appropriate sentences for criminals. These actions contribute to the public's understanding of human rights and gender equality (Begum, 2021). This study focuses specifically on the experiences of victims of intimate partner abuse within the informal justice system operating inside the refugee camps, while the present study takes a broader approach, examining the overall legal landscape, challenges, and institutional barriers Rohingya refugees face when seeking justice or filing cases in formal courts.

In another study, Imran H. Faruk and Mian Nannu investigated the Rohingya refugee crisis within Bangladesh. Their study, titled "The Rohingya Refugees in Bangladesh: A Vulnerable Group in Law and Policy," focuses on the various ways that Rohingya migrants are harming Bangladesh's reputation abroad by committing a variety of crimes using fictitious passports. The authors opine that the refugee crisis has put Bangladesh in a difficult situation, particularly in light of concerns about human rights and national security. As soon as it is feasible, the author persuasively argues that Bangladesh should enact strict internal regulations to stop the Rohingya population in Myanmar from fleeing their nation without permission (Imran & Mian, 2014). While this study outlines the legal vulnerabilities, it does not deeply investigate how these vulnerabilities manifest in everyday legal processes or the specific barriers refugees encounter in the judicial system.

Nasir Uddin discusses stateless people's human rights in his book "The Human Rights Citizenship," especially in the chapter "State of Stateless People: The Plight of Rohingya Refugees in Bangladesh." The author of the study examined the widespread deprivation that non-citizen refugees and asylum seekers endure in regard to their ability to exercise their civic, political, and rights in society, and also their opportunities for jobs, healthcare, education, along with food and shelter supplies all of which have the potential to jeopardize their lives. Because they lack formal nationality, these people could be the target of sexual harassment, exploitation, persecution, torture, and even death (Uddin, 2015). The research gap arises in understanding how the status of statelessness specifically influences the refugees' ability to access formal justice systems and legal remedies for grievances.

### Objectives of the Study

This study aims to examine the impact of the legal status of Rohingya refugees in Bangladesh on their ability to access formal judicial institutions for any grievances. It will also assess the legal barriers that hinder their participation in formal justice processes. Additionally, the study will evaluate the accessibility and effectiveness of legal aid services provided by both governmental and non-governmental organizations to Rohingya refugees. Based on these findings, the study will propose legal and policy reforms to improve access to justice for this vulnerable population.

### Legal Status of Rohingya Refugee in Bangladesh

Bangladesh shares borders with India and Myanmar, making them its closest neighbors. Citizenship is the precursor of all fundamental rights (Roy, 2022). Several fundamental rights are inherently linked to an individual's citizenship or legal status, as they determine the extent of legal protection, entitlements, and access to justice within a state. Like many other Asian countries, Bangladesh has not become a signatory to the 1951 Refugee Convention or its 1967 Protocol. Additionally, it refused to participate in the Statelessness Conventions of 1954 and 1961. Moreover, Bangladesh lacks legislation to regulate the management of refugee-related issues and protect the rights of refugees (Haque, 2019).

***Forcibly Displaced Myanmar Nationals (FDMN)***

Bangladesh had no prior plans to accommodate refugees from the Rohingya region, as their influx was sudden and unexpected. Bangladesh has historically granted asylum to refugees based on ad hoc rulings despite the absence of a specific statute to that effect (Hossain, n.d.). The country has recognized Rohingyas as FDMNs (Forcibly Displaced Myanmar Nationals) instead of refugees ("Rohingyas Are Forcibly Displaced Myanmar Nationals, Not Refugees," 2017). The GoB has not formally identified any of the Rohingya who managed to flee the conflict between 1991 and 1992 as refugees (Sejan, 2020). The national statute contains no specific refugee regulations, and the Constitution provides robust protections for all those who live on the land.

**International Legal Framework**

The two primary international agreements that govern refugee law are the 1951 Geneva Convention and the 1967 Protocol Relating to the Status of Refugees. Two other documents are the 1957 Agreement Relating to Refugee Seamen and the 1967 Declaration on Territorial Asylum. The promotion of human rights is the aim of the Law governing human rights, which encompasses international refugee law. In a nutshell, human rights are those essential liberties that humans possess (almost) from birth and that are vital to their survival (What Are Human Rights?, n.d.). These rights include equality before the Law, social security, and the fundamental right to life. According to articles 23 and 33 of the 1951 Refugee Convention, those who have fled their country of origin in quest of safety are designated refugees, it is the government's moral duty to provide them with humanitarian help. These legal frameworks recognize a body of international Law that provides the mandate for protecting refugees. As a result, countries continue to fulfill their obligations under international law and humanitarian values by giving sanctuary to people in need (Md. R. Islam & Haque, 2024). The Rohingya, who fled in 2017, have once again been recognized as refugees by the international community, and the UNHCR has granted them temporary registration rights.

***Universal Declaration of Human Rights (UDHR)***

"Everyone has the right to seek and to enjoy asylum from persecution in other countries," states the 1948 Universal Declaration of Human Rights (UDHR), Article 14(1). The Universal Declaration of Human Rights (UDHR) is the first international human rights treaty that outlines the rights to which every individual is entitled. Article 15(1) of the 1948 Universal Declaration of Human Rights states that "everyone has the right to a nationality," however, thousands of individuals worldwide are defying this clause. The freedom from assault and other inhumane, degrading, or disgusting treatment or penalty, as well as the rights to liberty and private security, are among the key human rights that the worldwide community is dedicated to promoting and securing their recognition and observance as per the preamble of the UDHR. This concept embodies this commitment and is derived from Article 14 of the UDHR, which protects the ability to seek and receive asylum from oppression abroad (Universal Declaration of Human Rights, 1948).

***International Covenant on Civil and Political Rights (ICCPR), 1966***

Regardless of their position as foreign nationals in the country of asylum, refugees are guaranteed the same fundamental rights and freedoms as citizens, as stated in Article 2 of the International Covenant on Civil and Political Rights (ICCPR). Everyone's freedom to travel to any country, including an asylum state, is protected by Article 12 of the International Covenant on Civil and Political Rights. The 1966 International Convention on Civil and Political Rights states in Article 26 that everyone has the right to equal protection under the Law, free from discrimination (Universal Declaration of Human Rights, 1948). It is strictly forbidden to maltreat someone because of their age, sexual orientation, language, faith, views on politics, place of birth, belongings, national or cultural background, ethnic or racial background, or any other factor as per article 26. It is asserted to offer robust and just protection against discrimination. thus, it can be inferred from this provision that universal humanitarian rules such as the ICCPR prohibit discrimination against refugees based on their status alone. These laws are based on nondiscrimination, equality before the Law, and equal opportunity under the law principles.

***The Convention Relating to the Status of Refugees, 1951***

This Convention is currently the only internationally acknowledged framework for refugee protection. It safeguards the basic human rights of refugees. The 1951 Convention Relating to the Status of Refugees is the main piece of international Law that outlines the requirements for becoming a refugee, its advantages, and the legal responsibilities of countries. The 1951 Convention was mainly drafted to protect refugees fleeing Europe during World War II, but the 1967 Protocol, ratified in July 1967 at a diplomatic summit in Geneva, expanded the convention's scope to include population displacement as a worldwide concern.

Regardless of their nationality, religion, or ethnicity, Rohingya refugees are granted several rights under Article 3 of the Refugee Convention of 1951. In addition, Article 4 protects their right to free speech; Articles 17, 18, and 19 allow them to enter labor; and Article 21 ensures fair housing. The human rights treaties mentioned above include the essential customary international norms for refugees, such as Article 33 of the 1951 Refugee Convention and Article 3 of CAT. As per Article 33 (1) of the 1951 Convention on the Status of Refugees, no Contracting State shall, in any manner, expulse or return (refouler) a refugee to the borders of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group, or political opinion (The 1951 Refugee Convention | UNHCR, 1951).

***Protocol Relating to the Status of Refugees 1967***

The Protocol's adoption has been heralded as a major achievement since it established a link between the 1951 Refugee Convention and the international protection framework. Procedures including burden-sharing agreements, state-party cooperation plans, and, for a long time, global refugee protection systems founded on the 1951 Convention are not covered by the Protocol. It does

not confer any new or improved rights upon refugees. The 1951 Refugee Convention's provisions are essentially restated in the 1967 Protocol (Protocol Relating to the Status of Refugees | OHCHR, 1966).

***The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984***

Article 3 of the 1984 Convention against Torture states that no state party may decline, expulse, remove (refouler), or repatriate a person to another state if there are reasonable grounds to suspect they are being tortured.

***The Office of the United Nations High Commissioner for Refugees (UNHCR)***

The UN agency in charge of all affairs relating to refugees is UNHCR. To find permanent solutions to the challenges caused by refugees, it provides international protection, manages volunteer agency operations, and assists the most marginalized groups of refugees, especially with their voluntary return, local integration, or relocation to another nation. The United Nations High Commissioner for Refugees is a global nonprofit organization (UNHCR). To expedite their repatriation when it is acceptable and safe, UNHCR states that data on refugees will only be shared with the GoM with permission from enrolled refugees. Article 35(1) of the convention, which UNHCR supervises, asks for burden sharing as well as collaborative remedies for refugees due to the high number of refugees.

***Principle of non-refoulement***

The concept of non-refoulement is explicitly incorporated into the legal frameworks that oversee the application of international humanitarian law, international refugee law, and international human rights law. The extent and applicability of these legal regimes vary (Shahabuddin, 2021). Refugees are, therefore, protected from persecution when they return. Based on customary international Law and the doctrines of non-refoulement, any nation has to grant asylum to a refugee. It is common to refer to the fundamental principles of international asylum and refugee law as "non-refoulement." Derived from the French word "refouler," non-refoulement refers to a state's duty to guarantee that a refugee's freedom and life are not jeopardized due to their nationality, ethnic background, membership in a particular social group, or political convictions. States have no right to remove refugees from or send them back to designated zones. The seventh article of the International Covenant on Civil and Political Rights (ICCPR) guarantees that nobody shall be tortured to abuse or inhumane, degrading, or cruel treatment or penalty; this language appears to imply an implicit ban on the return of refugees. Human rights must be guaranteed "to all persons who may be within their territory and to all persons subject to their jurisdiction," including vulnerable refugees and asylum seekers, according to Articles 2(1) as well as 7 of the International Covenant on Civil and Political Rights.

***National Legal Framework***

Bangladesh does not have a specific statute dedicated to refugees. Refugees are subject to the same laws, regulations, and entry restrictions. A person is classified as a refugee if they are living in a camp and have permission

from the Bangladeshi government; otherwise, they are classified as "illegals." Therefore, when necessary, by offering sanctuary to refugees, countries fulfill their commitments under international Law and humanitarian aims, even if they are not parties to the 1951 Convention on Refugee Status. Despite this, Bangladesh has accepted several international agreements that have clauses that alter refugees' rights in different ways. The great majority of migrants are encouraged by Bangladesh to apply for asylum on the grounds of humanitarian need. (Noor et al., 2018). However, both immigrants and non-citizens are granted certain human rights under the Bangladeshi Constitution. It is significant since Bangladesh has ratified numerous international human rights accords and maintained the legal protection of foreign nationals. Its Constitution now includes clauses that protect the duties and rights specified in the UN Charter. There exists no internal or national legislation in Bangladesh that addresses the matter of asylum seekers. Foreign nationals are subject to restrictions in Bangladesh due to outdated legislation, irrespective of their intention to visit or seek sanctuary (Alam, 2020). When there is no clear national legislative framework, the refugee issue must be addressed through a range of customs and behaviors that serve as the cornerstone of both formal and informal traditions. Legal and humanitarian emergencies. The Rohingya crisis has touched a great number of people, despite recent funding and access restrictions. The government's obligations might be further extended and expanded through the use of internal and constitutional legal frameworks, in addition to the internationally recognized human rights frameworks that the Republic of Bangladesh has become a party, such as the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration of Human Rights (UDHR). The requests of the refugee people for justice are hampered by the complexity of both written and unwritten conventions. All significant international human rights agreements have been ratified by Bangladesh, except the CED convention, which forbids kidnapping.

Every one of these documents affects Bangladesh's responsibility to uphold the rights of Rohingya. Within the legal field, there are three different systems: semi-formal, informal, and formal. Together with several other acts and laws, the Constitution makes up Bangladesh's legal framework. It is made up of magistrates, law enforcement, prosecution, and courts. The village court is a tool for the community even though it is a legally funded, semi-formal entity. Non-governmental organizations support the traditional Salish system, which is a component of the unofficial system that has historically been the primary means of resolving conflicts in rural communities. Furthermore, certain statutory criminal and civil laws afford refugees legal safeguards.

***The Constitution of the People's Republic of Bangladesh, 1972***

In addition to having provisions in its Constitution that support the rights and obligations specified in the Charter of the United Nations, as well as offering further legal assistance to all non-citizens on the territory of the nation, Bangladesh has also signed several major international treaties relating to human rights. Because of this, it

acknowledges some international laws and regulations that establish the foundation for safeguarding refugees, and the Constitution of Bangladesh (CoB) has numerous clauses that guarantee everyone, irrespective of nationality, equal legal protection, such as in Article 31. It states that it is the inalienable right of every citizen and of every other person for the time being within Bangladesh to enjoy the protection of the law, and to be treated in accordance with the law. In terms of "reasonable restrictions imposed by law in the public interest," no one's freedom of movement is impeded by the CoB. Numerous essential rights are guaranteed in the third part of the Constitution, the majority of which are drawn from the global human rights paradigm.

#### **Article 25**

It should be mentioned that Bangladesh's will to continue addressing the issue of refugees from other states is likely supported by Article 25 of the Constitution of Bangladesh. The conclusion states that "international commitments" must be interpreted to include both obligations deriving from the United Nations Charter and obligations specified under international customary legislation to which Bangladesh acts as a political entity. Jus cogens is constitutionally exemplified in the part of the Constitution that deals with global legislation.

#### **Article 31**

Article 31 gives temporary foreign residents of the nation the same legal rights as citizens. Above all, one may claim that Articles 31 through 35 guarantee the rights of refugees.

#### **Article 32**

Furthermore, Article 32 specifies, "No person shall be deprived of life and liberty save in accordance with the law." Nobody can be denied freedom or life once they enter Bangladesh, as the word "person" appears in the Articles instead of the word "citizen." This declaration applies to people who are not citizens as well.

#### **Article 33**

Protections against Detention and arrest are both provided via Article 33. The provisions of Article 34 forbid forced labor in any form, whereas Article 35 assures everyone an equal opportunity to a free and impartial trial and sentence. Regardless of nationality, everyone residing on Bangladeshi territory is entitled to the same degree of protection under the principles above. However, Rohingyas are compelled to work illegally or just at the camps on whatever employment might pay the rent because of restrictions on their freedom of movement and lack of capacity to engage outside of the camps. There are restrictions on the kind of occupations that foreigners can apply for. Furthermore, immigrants find it more difficult to advance to positions requiring more power because there are no formal procedures in place to recognize degrees earned overseas.

#### **The Foreigners Act, 1946**

In the absence of any specific asylum and refugee protection rules, foreigners' entry, departure, and residency in Bangladesh are governed under the 1946 Foreigners Act. It offers refugee coverage as well. Bangladesh employs this Act to regulate foreign visitor arrival and departure timings as well as the length of their stays. As stated in Section 2(a) of the Foreigner Act, every

individual who fails to qualify as a citizen in Bangladesh, including Rohingyas, is considered a foreigner. Under The Foreigner Act 1946, Section 3, grants government officials the right to restrict foreigners from entering, remaining in, or leaving Bangladesh.

#### **The Penal Code 1860**

In addition to committing several crimes, Rohingya migrants damage Bangladesh's reputation abroad. Extraterritorial circumstances, such as the Rohingya refugees from Myanmar, are covered in Sections 3 and 4 under the penal code 1860. The same trials and sentencing procedures that apply to native Bangladeshis will also apply to immigrants, including Rohingya, as there is no unique law in Bangladesh that would look into or punish them.

#### **The Code of Criminal Procedure, 1898**

Section 5 of the code of criminal procedure 1898 mandates that foreign nationals adhere to the same procedure as Bangladeshi natives. The Rohingya Refugees will have recourse to justice since the Bangladeshi Constitution protects the criminal justice system.

#### **National Legal Aid Services Act, 2000**

The National Legal Aid Agency in Cox's Bazar, Bangladesh, is currently providing government legal aid to the Rohingyas, who managed to flee persecution in Rakhine state, Myanmar. The government provides legal assistance to Rohingyas living in asylum camps who are parties to multiple cases and may be entitled to justice in line with the National Legal Aid Services Act of 2000.

#### **The Passport Act, 1920**

As noted in The Passport Act of 1920 Section 3(2) (a), a valid passport is required for entry into Bangladesh, whether via sea, land, or air. The state could deport "any person" who does not have a passport (s. 5). Act violators may be held without a warrant by law enforcement or customs officers (s 4).

#### **Other laws**

Apart from the aforementioned laws, there are some other laws governing the entry and departure of non-citizens. The Registration of Foreigners Act of 1939 and the Naturalization Act of 1926, The Registration of Foreigners' Rules, 1966; The Bangladesh Citizenship Act, 1951; The Bangladesh Control of Entry Act, 1952; The Bangladesh Citizenship (Temporary Provision) 1972, The Bangladesh Passport Order, 1973, The Extradition Act, 1974, The Code of Civil Procedure, 1908, The Children Act, 2013. Not even the legal framework acknowledges refugees as a separate group deserving of special attention.

#### **Ministry of Disaster Management and Relief (MDMR)**

Administering refugee issues and supervising government measures for refugees living in camps are within the purview of the Ministry of Disaster Management and Relief (MDMR). The official point of contact for the MDMR on a range of camp administrative issues, such as management, aid delivery, medical treatment, sanitation, and drinking water, along with the camp's regular

consumption, belongs to the workplace of the Refugee Relief and Repatriation Commissioner (RRRC).

### ***Refugee Relief and Repatriation Commissioner (RRRC)***

The government appoints an organizer to oversee all camp activities, uphold the law and order, and provide facilities for refugees. The highest tier of accountable authority is the RRRC. The Army, Police, and Ansar, who are also sent to the camps to provide security, are directly in charge of the organization.

### ***Legal Barriers to Justice for Rohingya Refugees***

Moreover, unions of Rohingya and Bangladeshi nationals are prohibited by a 2014 regulation. The Rohingya minority cannot access formal education, and classes are taught in either Rohingya or English in the camps. Additionally, the government has restricted the Rohingya's freedom of movement within the camps. Legislation that is not supported by the required evidence does not have a dispute resolution procedure.

### ***Access to justice***

"Access to justice" covers the different channels via which individuals may reach lawmakers, courts, government organizations, and lawyers to seek substantive and procedural justice. It consists of all the procedures, guidelines, and institutional structures needed to successfully and equitably dispense justice to the general population. (Moran, 2015). The governments of the Commonwealth founded the panel of experts on the availability of justice, and its responsibility was to ensure Equal opportunity for justice, Fairness before the rule of Law, and National equality.

### ***Absence of Family Court***

Since the Family Court does not grant refugee spouses official status or marriage licenses, access to it is restricted. Because of this, female migrants are unable to assert their rights to guardianship, divorce, maintenance, and dowry. The legal system in Bangladesh has flaws that cause information about cases, investigations, trials, and verdicts to be disclosed more slowly. Victims of violence face the possibility of becoming victims again as a result. It takes time to complete the legal and administrative procedures related to any action, whether it be criminal or civil (Imran & Mian, 2014a).

### ***Shortage of judges***

Judges and attorneys must maintain the highest standards of efficacy, independence, obligation, and honesty to ensure that everyone has equitable access to justice. With the limited number of judges in Bangladesh, it is not possible to entertain the already pending millions of cases, let alone entertain the disputes of Rohingya refugees.

### ***Huge backlog of pending cases***

There is an old proverb that goes, "Justice denied, justice delayed." The primary impediment to the administration of justice is delay. The largest cause of injustice and violations of human rights is protracted legal proceedings. A lawsuit may take twelve, fifteen, or even more years to resolve—longer than the one or two years permitted by statute. The choice rendered at the time of the judgment

might not have been required under alternative conditions. Professor M. Shah Alam has earned the moniker "eating Bangladesh judiciary" as a result of the agonizing delays in the selection process caused by the backlog of cases. Even in situations when the backlog is the consequence of court system delays, the growing backlog places a great deal of strain on the cases that are still waiting. Although the issue is not one of accessibility—given the constraints of time, cost, and other factors—but rather one of eligibility, it can be argued that the country seeks to avoid further overburdening its judiciary. With millions of cases already pending, granting broader access to justice risks exacerbating the backlog rather than alleviating it.

### ***Corruption***

Corruption is the main cause of the court's poor performance. Our legal system has been destroyed by it. Bangladesh's criminal justice system suffers from pervasive corruption and ineffective management. Numerous causes, including the judiciary's independence from political influence in Bangladesh, the lack of accountability structures and disciplinary procedures, financial limitations, and judges' insufficient pay packages, all contribute to these issues.

### ***Legal Aid***

Bangladesh's criminal justice system suffers from pervasive corruption and poor administration. These issues are caused by several things, such as inadequate procedures for disciplinary action and accountability, low compensation for judges, a lack of openness, and the judiciary's limited political clout in Bangladesh. Both governmental and non-governmental organizations have to work together to guarantee that everyone has the right to human rights and justice through legal assistance and public education. Aside from these, the Rohingya population in Bangladesh faces additional challenges in obtaining justice, including antiquated and unclear legal laws and inadequate infrastructure (Kabir et al., 2021).

### ***Potential Reforms and Solutions***

#### ***Establishing an interpersonal family court***

The Rohingya require an interpersonal family court to address issues like birth and marriage registration, as well as instances involving interpersonal matters, separation and divorce, domestic assault, and polygamy, among other concerns. They view the denial of civil justice rights to refugees as an aspect of an intricate series involving interrelated problems that include safety and security, human rights violations, and societal concerns.

#### ***Sending back to Myanmar***

On November 23, 2017, in Naypyidaw, Myanmar, an agreement was reached between Bangladesh and Myanmar about the repatriation of Rohingyas to their native country. It must be treated carefully.

#### ***Enacting Strong National Policy***

Bangladesh should establish strict national rules to guarantee that the provision of universal assistance complies with legal requirements. It is advised to make it simple and inexpensive for individuals in need to receive legal counsel, the government opens a local office inside

the refugee camps. Legal aid services must be easily accessible to populations of Rohingya refugees as well as women, children, and other vulnerable groups. Furthermore, because it prioritizes the needs of the host nation over the interests of the refugees, a realist perspective on immigration supports their deportation to safeguard national security.

### **Role of NGOs**

Non-governmental organizations (NGOs) should collaborate and exchange information in order to support and give Rohingya Refugees access to legal aid information. For example, they could overcome gaps in access to the judicial system by offering civil papers.

### **Reviewing and developing the legal framework**

To facilitate the submission of claims by individuals who have been forcibly taken from their homes and registered as refugees, the government should consider revisiting its current policies and procedures. In addition to enhancing the current legal framework for administering justice, which includes the courts, a human rights philosophy should be developed to ensure Rohingyas' access to justice and to direct current policy initiatives and programs regarding the necessities of Rohingya in the country of Bangladesh.

### **Reforming the existing Human Rights instrument in Bangladesh**

Bangladesh has to update its current protocols and include them in the agreement on Rohingya refugees. Bangladesh has approved several international human rights organizations. It is to safeguard their rights as human beings, which provides for their life, irrespective of their gender, nationality, religion, or place of residence.

### **Flexible laws and Interference of the UN team**

Foreign Law must welcome their entry, providing simple access to the legal system. Also, International organizations that support human rights, in particular, must keep a careful eye on the Rohingya situation and dispatch country teams to observe and report back to the UN. Consequently, the UN will compel the Rohingyas to

return to Myanmar so they can file a lawsuit against the Burmese government there. Moreover, Myanmar continues to behave as though it cannot mistreat, torture, or otherwise mistreat the Rohingya people.

### **Conclusion**

The Rohingya, one of Myanmar's most oppressed and disenfranchised ethnic groups, were forced to flee their nation following years of crimes that the government had approved of. Immediately after Bangladesh obtained its nationhood in 1971, Muslim Rohingya of the Myanmar nation started to migrate there to avoid anxiety over oppression on the basis of ethnicity or faith. The international legal standard that governs refugees is non-refoulement. International recognition has been accorded to this as a universally recognized principle. Such a lax refugee policy is normatively and legally supported by a plethora of worldwide rights-related and humane laws. The Law of international humanitarianism and the rights of people legislation are currently Bangladesh's top two concerns. To end the Rohingya people's suffering, known as UNCHR, the global community as a whole, the government of Bangladesh, and humanitarian groups must work together. Strict local laws need to be implemented to prevent Rohingya people from Myanmar from inadvertently crossing into Bangladesh.

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### **Conflict of Interest**

There are no competing interests to declare.

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