

**HUMAN RIGHTS MONITOR**

# STATUS DETERMINATION OF REFUGEES

ARIF AHMED

**T**HE Refugee Status Determination (RSD) is a legal and administrative process undertaken by a State or the United Nations High Commissioner for Refugees (UNHCR) to decide as to whether a person can be considered a refugee as per the national or global legal framework. It is considered a key component to enjoy their rights and freedoms under the international law that has a profound implication for the life, liberty and security of people. The sole purposes of RSD are to recognise the criteria that applies in the granting of refugee status; to be familiar with the means of evaluation of an application; to scrutinise the applications upon which one should seek the expert legal opinion; to determine the salient features of eligibility procedures; and finally to learn the process of recommendation of improvements to the existing procedures for determining the status of refugees.

On the universal level, RSD is governed by the 1951 Convention and its 1967 Protocol. But the Convention does not indicate the RSD procedures; rather it is left to each Contracting State to create the procedure that it thinks most appropriate. The RSD procedure primarily takes place in two stages: (1) it is essential to ascertain the relevant facts of the case; and (2) the definitions in the 1951 Convention and 1967 Protocol have to be applied to the facts thus ascertained. The provisions of 1951 Convention defining who is a refugee consist of three parts, that is termed respectively "inclusion", "cessation" and "exclusion" clauses.

Article 1A(2) of the Convention contains the "inclusion" clauses according to which, the term "refugee" shall apply to a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and

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being outside the country of his former habitual residence as a result of such events, is unable or unwilling to return to it. This definition clarifies that a person becomes a refugee within the meaning of 1951 Convention once he fulfills the criteria contained in the definition therein. This might happen before his refugee status is officially determined. Thus the determination of his refugee status does not make him a refugee but declares him to be one. He does not become a refugee as a result of recognition, but is recognised because he is a refugee.

Article 1(C) of the Convention contains the cessation clauses which stipulate that a person shall no longer be considered a refugee if there has been a fundamental change in political circumstances in the State of origin enabling him to take up renewed residence there. This clause may be applied after the person has been recognised as a refugee. The exclusion clauses are inserted in Article 1(D), (E) and (F) of the said Convention which respectively stipulate that the Convention shall not apply to the persons who meet the inclusion criteria, but do not need or

deserve protection. This would apply to a person who is already receiving protection from the agencies of the UN other than the UNHCR, or who has committed a crime against peace or humanity or war crime, or who has violated the objects and principles of the UN.

The assessment as to who is a refugee under the 1951 Convention is incumbent upon the States to which the refugees submit application for their status being legally recognised. Under the international law, States have the key obligation to conduct the RSD due to their membership of the UN. But problems might occur where States are reluctant to resolve the refugee problems through conducting the RSD, or where various RSDs are accomplished both by the States and the UNHCR. Where the States are unable or unwilling to conduct the RSD, the UNHCR does the same. In maximum States of the world, RSD is conducted not by the States but entirely by the UNHCR. In recent years, owing to changes in patterns of forced displacement, the UNHCR has been required to conduct the RSD in more States than before.

Even in most of the countries of Asia, RSD is conducted not by Governments but by the UNHCR and the practice of RSD conducted by the UNHCR differs from one place to another. The UNHCR usually conducts the RSD in States that are not party to the 1951 Convention; or States that have not established asylum procedures; or States that retain the geographic limitation thus denying some access to their asylum procedures.

Refugees are the most persecuted and thus vulnerable group of people all over the world. In recent times the number of refugees has been increasing because of armed conflicts, natural disasters, environmental degradation and persecution in various parts of the world. In order to protect their rights in international law, determination of their status is indispensable for the governance of the international refugee regime. The RSD is the linchpin of refugee protection as it is the means through which those who need protection are identified.

**THE WRITER IS A LECTURER OF LAW, SOUTHEAST UNIVERSITY.**

**FOR YOUR INFORMATION**

# Remission of imprisonment

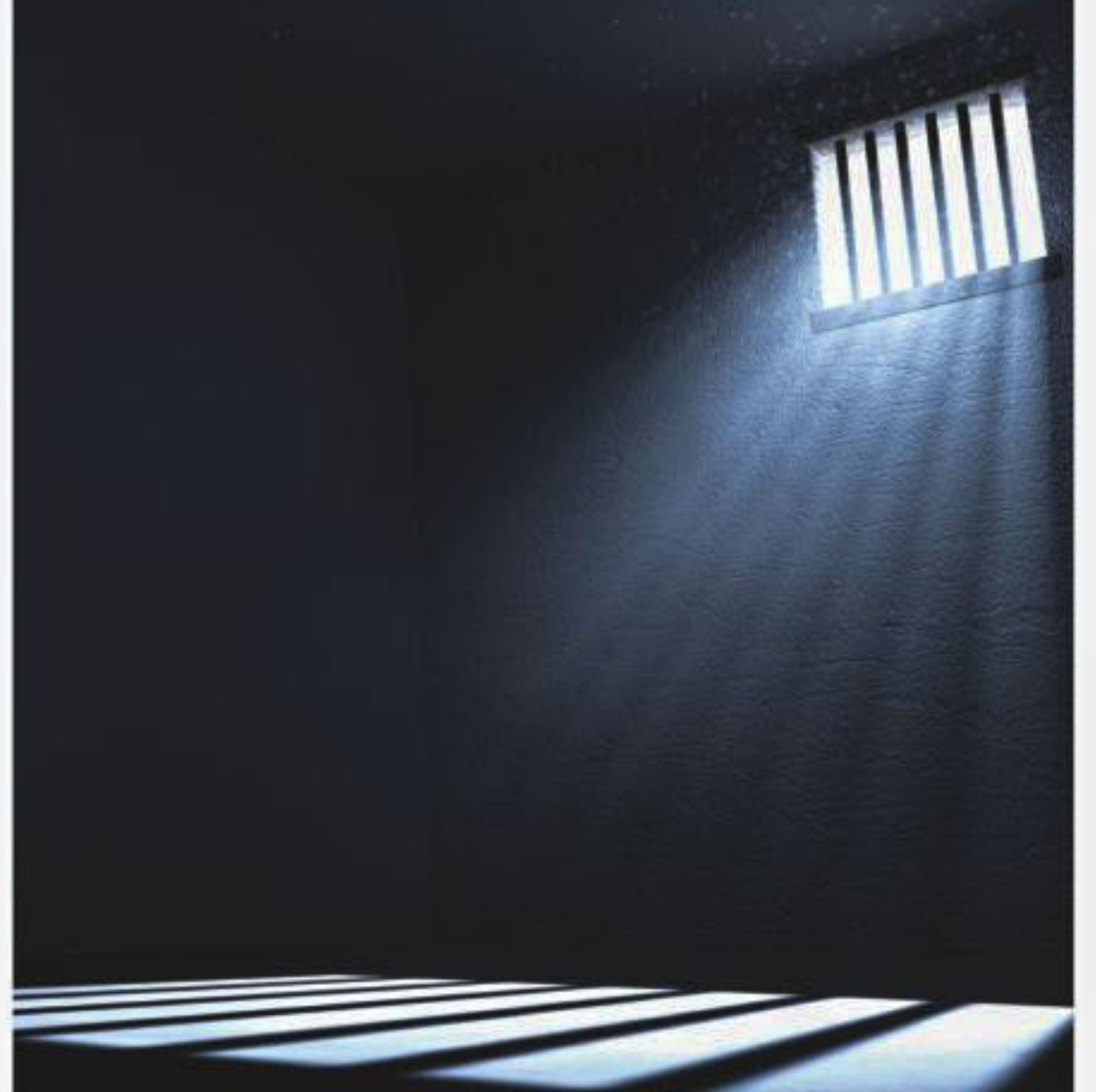
MD. ABDUR RAHIM

**I**MPRISONMENT in jail is a lawful form of punishment in the criminal justice system of Bangladesh. As the Jail Code provides, offenders serving imprisonment for different period of time, are desired to work for their self-improvement so that they can easily reintegrate in the society after being released from the prison. Chapter XXI of the Code prescribes detailed procedure, terms and conditions of remission of term of imprisonment, which are meant to develop good conduct among the prisoners. On fulfillment of some conditions, the prisoners are awarded with remission of terms by the prison authority. Meticulous behaviour of the prisoners in the jail compound is specially considered in this regard. This is one of the ways by which the terms of imprisonment may be reduced to a great extent and a prisoner may be released from the jail before the completion of his/her period of imprisonment which was earlier decided by the court.

According to the Jail Code, there are two types of remission available for the prisoners in jail, namely (a) ordinary remission; and (b) special remission.

Ordinary remissions are granted to the prisoners in the following scale under Chapter XXI of the Code:

- a) three days per month for thoroughly good conduct and scrupulous attention to all prison regulations;
- b) two days per month for industry and the due performance of the daily task imposed;
- c) convict overseer and night watchman shall receive 7 and 6 days ordinary remission respectively per month;
- d) Prisoners employed on prison services, such as cooks and sweepers, who work on Fridays and holidays, may be awarded three days ordinary remission per quarter;
- e) One day remission may be credited to the prisoner at



the end of every month during which he has been employed on any prison service; and

f) Any prisoner who for a period of one year reckoned from the first day of the month following the date of his sentence or the date on which he was last punished for a prison offence, has committed no prison offence whatever, shall be awarded fifteen days ordinary remission.

In addition to facilitating ordinary remission, the Senior Superintendent or Superintendent and Inspector General of Prisons or the Government may award a special remission of 45 and 90 days in a year respectively in the following cases:

- a) assisting in detecting or preventing breaches of prison discipline or regulations;
  - b) success in teaching handicrafts;
  - c) special excellence in, or greatly increased out turn of, work of good quality;
  - d) protecting an officer of the prison from attack;
  - e) assisting an officer of the prison in the case of outbreak of dis-contentment, disturbances, fire or similar emergency;
  - f) economy in wearing clothes;
  - g) showing proficiency in receiving technical or academic training; and
  - h) scrupulous attention to Jail Regulations and remaining free from Jail punishments except warning, for three consecutive years.
- Moreover, section 401 of the Code of Criminal Procedure, 1898 empowers the Government to remit the terms of punishment of any prisoner with or without condition. By this way the total tenure of imprisonment of a prisoner may be shortened deducting total remission earned by him in jail. However, there is a condition that the total remission awarded to a prisoner shall not exceed one-third of total sentence. Hence a year equals to nine months in jail and a prisoner of life imprisonment (life imprisonment amounts to 30 years) may be released from jail after serving 10 years imprisonment.

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**YOUR ADVOCATE**

**This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.**

**Query**  
I am a resident of Dhaka. I have been facing this problem of graffiti being drawn and sticking of posters on the walls of my house. This increases during any election time, and throughout the year I have to repaint my boundary walls at regular intervals and remove posters from it. I have not contacted the authority yet since the posters are of politically influential people and I am unaware of any law regarding this problem. I want to know if there is any law in Bangladesh regarding this problem of mine, and how can I get a permanent solution for this issue?

**Mustofa Kamal Dhaka.**

boundary demarcation fence and tree, electrical pillar or post, road island, road divider, bridge, culvert, upper portion of the road and roof of the house. Secondly, "Graffiti writing" stands for any writing,

billboard made of paper, cloth, or by electronic means.

Under section 4 of the Act except for designated places it is illegal to draw graffiti or stick posters. Therefore, graffiti and

that graffiti can be drawn and/or posters can be put up other than the designated location with due permission from the local authority and by payment of a fixed fee. It is understandable that the authorities cannot grant permission to do so on someone else's property.

Under the said Act, the punishment for unauthorised poster sticking or drawing of graffiti is a minimum fine of Tk. 5000 to a maximum fine of Tk. 10000 and default of such may result in simple imprisonment of 15 days. Furthermore, if any beneficiary or privilege-holder of such publication breaks any provision of this Act, such persons shall be subjected to a fine of minimum Tk. 10000 to a maximum of Tk. 50000 default of which shall result in simple imprisonment for 30 days and such privilege-holder shall also bare the cost of erasing such graffiti and/or removing such posters.

Therefore, it appears that there is sufficient law enacted to tackle the particular problem that you are facing at the moment. I hope that from the above discussion you will be encouraged to contact the relevant authorities and notify them if the problem persists.

**FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.**



printing, and dies, drawing or painting by any colour or lime or chemical substance against the wall or vehicle for publicity or otherwise. Finally, The term "poster" means any publicity placard, picture, advertisement and any type of banner and

posters cannot be put up anywhere as one desires. In fact, the local government authorities and the city corporation by administrative orders can specify the place for posters sticking and graffiti writing. However, it is also pertinent to mention

**Response**  
Dear reader, thank you for your query. I understand that your walls are being spoiled with graffiti drawings and sticking of posters and you wish to know if there is any applicable law to stop such activities. The Graffiti Writing and Poster Sticking Control Act, 2012 was enacted to deal with such issue.

According to this Act, the term "walls" includes the interior and exterior wall of any residence, office, court, educational institution, business centre, industrial factory, shop or any foundation or

**LAW EDUCATION**

**SHEIKH AMENA JAHAN**  
**"Y**OU never really understand a person until you consider things from his point of view . . . until you climb into his skin and walk around in it."  
These intriguing lines, are from the famous legal thriller *To Kill a Mockingbird*, by the celebrated author, Harper Lee. This single piece of advice given by Atticus guided Scout throughout her journey in the novel. Unexpectedly enough, we as law students are expected of something similar, to embody the persona of fully fledged lawyer.  
One of the first steps of this expedition requires a law student to often interpret and elucidate the words of judges, be it in order to understand a legal principle or just to form an argument. Predicament regarding such a scenario comes into play when the judgment in question is a preeminent one and has already been re-interpreted by several judicial minds. More arduous it is in

# Maintaining ethical standard

deciphering those judgments, which are from such an era which had completely different sets of moral and ethical values. From the point of view of a law student, for whom the sheer idea of becoming a lawyer is daunting, such a task if not impossible is inherently onerous.  
Other than excelling in the compulsory modules every year, law students around the world are also required to have a good grip on public speaking which in turn requires them to debate and moot. Mooting is the closest a law student can get in regards to embodying the idiosyncrasies of a lawyer. Not only do they have to dress and address everyone in an appropriate manner, but it is also mandatory to use very formal language, unlike. Therefore, for a law student, mooted in other words is putting on the shoes of a lawyer and walking a mile in it.  
Most law students are somewhat obliged into the legal profession which often results

in a lack of passion and perseverance. Personalities like Abraham Lincoln, Mahatma Gandhi and Nelson Mandela have pursued legal profession in order to construct the bony structure of an anachronistic legal system with the flesh of justice. On the other hand, some people chose to be in this profession to help miscreants with their misdeeds.  
Emphasising on the aspect of miscreants and misdeeds, a question comes into light: does stepping into the skin of a lawyer necessarily require one to be a 'liar'? First of all, it is quite amusing how such a trait is unceremoniously stamped on the forehead of a lawyer. It is perplexing how lying, being one of the greatest sins, is associated with a profession that is instrumental in dispensing justice to the nation at large. What is more doltish is how the mere similarity in the pronunciation of a term has actually lead people into thinking and, at times even

believing such misleading conclusions. If we take a moment and think about it, we are not only disrespecting a profession indiscriminately, but also clearly subjecting it to mockery at a global scale. The fact that is often overlooked while making such preposterous assumption is that lying, at the end of the day, is a flaw inherent to mankind and not exclusive to any particular profession. To point at the legal profession and expecting it to be 'lie free' is not only bemusing but at the same time quite impossible and very hypothetical indeed.  
At the end of the day, lawyers are complex beings, a blend of so an assortment of components: one would not be entirely wrong in suggesting that they do not possess a single layer of skin.  
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