

## LAW VISION

# Time to sign the Refugee Convention

**In the given context, it would be wise for the current interim government of Bangladesh to sign the 1951 Refugee Convention to maximise the benefits of hosting one million Rohingyas and minimising its harmful effects and bringing a durable solution to the problem.**

DR. MD. MAHBUBUR RAHMAN

In 1905, almost 46 years before the birth of the 'Convention relating to the Status of Refugees', commonly known as the 1951 Refugee Convention, Begum Rokeya, one of the pioneer feminist writers and scholars of Bengal talked about the 'Principle of non-refoulement' in her story *Sultana's Dream*. The principle of non-refoulement is one of the core principles of the Refugee Convention that prohibits the forcible return of refugees in any manner whatsoever to countries or territories where their lives or freedom would be at risk for reasons of conventional grounds (race, religion, and nationality, membership of a particular social group or political opinion). In the story, by providing a safe refuge to the asylum seekers and by taking a strong position of not forcefully returning them to their country of origin where their lives are at risk, the Queen of the Ladyland (in the story) sets an example of managing refugee issues in line with the modern international laws and conventions. The story further reiterates that providing refuge to vulnerable people is part of our national culture. Day by day, *Sultana's dream* is being realised in Bangladesh.

A group of people think that Bangladesh should not sign the Refugee Convention. They place various arguments in favour of their decision. Firstly, they think that it will create a pull factor and encourage more Rohingyas from the Northern Rakhine State of Myanmar to enter Bangladesh. Secondly, they think that Bangladesh has no more capacity to take the burden of refugees as the country already has done enough by

allowing more than one million Rohingyas to enter its territory. Thirdly, they refer to the other South Asian and Southeast Asian countries who still have not signed and/or ratified the Refugee Convention, e.g., India. Fourthly, they argue that it is the responsibility of the global powers and international humanitarian organisations to protect the refugees, not third-world countries such as Bangladesh. Last but not least, they fear that signing the Refugee Convention might pose a threat to the national security of Bangladesh. For these reasons, they think that it will not be wise to sign the Refugee Convention.

Another group of people think that Bangladesh must sign the Refugee Convention. They refute the arguments given by the first group by saying that their fear and logic are irrational as they do not understand the politics of international law and how the international organisations work in providing refugee protection in partnership with the host country. They would like to remind the other group that the primary responsibility of refugee protection lies with the host country as per international laws and practices. This group talks about the 'principle of non-refoulement' which protects any person from being transferred i.e., returned, expelled, extradited, etc. from one authority to another when there are substantial grounds for believing that the person would be in danger of being subjected to violations of certain fundamental rights thereby putting their lives in threat. This principle is found in different instruments of international

law including the 1951 Refugee Convention. Most importantly, the principle of non-refoulement is considered to form a part of customary international law; meaning, even if Bangladesh does not sign/ratify a treaty, this rule will still be binding on Bangladesh. Therefore, even if Bangladesh is not party to the Refugee Convention, it cannot push back the refugees or say that it will not allow any more Rohingyas into its territory.

Moreover, recently Bangladesh signed the International Convention for the Protection of All Persons from Enforced Disappearance. It is important to note that Article 16 of this Convention reflects the principle of non-refoulement. Through the adoption of this instrument, Bangladesh has pledged to domesticate the relevant obligations and principles that it undertook. Therefore, by not signing the Refugee Convention, Bangladesh cannot ignore its commitment to the international community to protect the refugees. Also, the country cannot breach its pledge to contribute to the promotion of humanitarian assistance and protection of human rights. In the given context, it would be wise for the current interim government of Bangladesh to sign the 1951 Refugee Convention to maximise the benefits of hosting one million Rohingyas and minimising its harmful effects and bringing a durable solution to the problem.

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## CRIMINAL JUSTICE

# Unlawful detention: A betrayal of human dignity and the rule of law

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We are all familiar with Article 27 of our Constitution which states that it ensures equality before the law and equal protection of law. But when law enforcement authorities make unlawful detention or arrests in society, can we consider that we all enjoy the protection of law? Let us explore the law to find answer to this question.

The rights of those who are arrested and detained are expressly protected by article 33 of the Constitution. It requires that everyone who is arrested be told why they are being held and be produced before a magistrate within twenty-four hours, not counting travel time. In the case of *Mrs. Aruna Sen v Govt. of Bangladesh* (1975), the court found that arrest and imprisonment without providing



reasons were unconstitutional. The court also highlighted the infringement of constitutional rights caused by arbitrary arrest and detention.

When law enforcement authorities violate the fundamental rights enshrined in the constitution by detaining people without sufficient reason or disregarding due process, then it undermines the country's judicial system. Such actions violate individuals' rights while gravely damaging public trust in the criminal justice process.

Along with constitutional interpretation, the Code of Criminal

Procedure of 1889 provides a solid legal foundation for all criminal procedures in Bangladesh. It describes the arrest, detention, and bail procedures, ensuring that law enforcement officials adhere to legal rules. However, section 54 of the Code of Criminal Procedure, 1898 (CrPC) is frequently exploited. This clause empowers law enforcement to arrest persons without warrant in certain situations, such as when they are implicated in a cognizable offense or are suspected of plotting a cognizable violation. It is precisely at this point that it is misused and takes the form of

leading to arbitrary arrests. Pertinent to note, the Supreme Court of Bangladesh, in its landmark judgment in *BLAST v Bangladesh* (2017), outlined strict guidelines to prevent the misuse of Section 54. These guidelines emphasise the need for law enforcement officers to provide reasonable justification for arrests and to adhere to due process.

The spate of apprehensions over the student-mass movement of July and August, highlighted the pressing necessity for stringent accountability among the law enforcement agencies. Unlawful detention has serious and long term implications. It is tantamount to betrayal with justice and human dignity. Indeed, it destroys lives, wrecks reputations, and causes serious psychological distress. When people do not trust the legal system to protect their rights, a deep sense of anxiety and insecurity arises. Dicey's rule of law asserts that no one, even the state, is above the law. Unlawful detentions subject persons to the arbitrary power of the state, manifesting the exact opposite of rule of law. Unlawful arrests and detentions can also result in serious legal consequences for the state's image. It opens up the possibility of legal issues, compensation claims, and global attention. Such violations can harm a country's international reputation and bring criticism from human rights organisations in today's interconnected world.

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## RIGHTS WATCH

# Internet outage and freedom of expression

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In 2012, a resolution of the United Nations human rights organisation (UNHRC) states, "the rights that people have offline must also be protected online, especially with regard to freedom of expression." Later in 2016, the UNHRC condemned all measures that prevent the use of the Internet as a violation of human rights.

In 2000, Estonia's parliament enacted a law that effectively recognised universal Internet access as a fundamental right. Similarly, France's highest court determined that denying Internet access constitutes a violation of liberty as protected by Article 11 of the 1789 Declaration. In 2010, Costa Rica's Constitutional Court affirmed that Internet access is a human right. That same year, Finland became the first country to legally guarantee broadband access for all its citizens. Additionally, Article 5A of Greece's Constitution mandates that the state must ensure access to the Internet.

In 2020, the Supreme Court of our neighbouring country, India, delivered judgment in the *Anuradha Bhasin v Union of India* case putting restrictions on the government's power to shut down the internet. The court observed that "the use of the Internet for expression and business is entitled to constitutional protection. The internet

cannot be shut down for the purpose of taking away the right to expression. Even if the internet is to be shut down in the interest of national security, the conditions of proportionality and necessity must be met. Every internet shutdown order has to be made public, and the rationale reviewed by a committee headed by the chief secretary within seven days. As well as judicial review, victims can also challenge the justification of internet shutdowns in court."

Coming to our jurisdiction, even though

**The opportunity has now come to withdraw from the culture of internet shutdown under the pretext of maintaining public order for political interests. For this, necessary amendments should be made in the Telecommunication Act 2001 and various licensing regulations.**

Bangladesh does not acknowledge access to the internet as a human right, hindrance to Internet access obviously affects the exercise of the human rights spelled out in our Constitution, resulting in violation of a number of rights, i.e., freedom of expression and information, right to education, right to take part in cultural life, freedom of association and assembly, right to participate in public affairs, etc.

According to Section 97 of the Bangladesh Telecommunications Regulation Act, 2001, the government can order mobile operators and internet service providers to partially or completely shut down the internet if the president declares a state of emergency or 'in the interest of the security of the state or public order in the opinion of the government'. But in reality, the scenario appears to be quite the opposite. As we have seen, government agencies do not usually admit to ordering internet shutdowns. It is noteworthy that although the Act of 2001 only contained the power to shut down the Internet during emergencies, an amendment in February 2006 added the words 'in the interest of state security or public order in the opinion of the government' to Article 97.

If the internet is shut down, then the entire country's economy, including imports, exports, remittances, banking, e-commerce, and f-commerce, suffer greatly both in the short and long term. As a result, shutting down the Internet as a tool to suppress protests or agitations is nothing but a suicidal act. Following the fall of the previous government in the face of a mass uprising, the opportunity has now come to withdraw from the culture of internet shutdown under the pretext of maintaining public order for political interests. For this, necessary amendments should be made in the Telecommunication Act 2001 and various licensing regulations. This way we can uphold the right to access the Internet and respect the spirit of freedom of expression guaranteed by our sacred constitution, the solemn expression of the will of the people of Bangladesh.

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