RIGHTS WATCH

Access to criminal justice and the Rohingya refugees

It should be noted that Bangladesh does not have to sign the Refugee Convention to ensure the rights of the Rohingya people. The framework is there in its Constitution and the treaties it has ratified. A rights-based approach to refugee justice in Bangladesh should begin with providing a temporary legal identity to the Rohingyas that allows them to report crimes, lodge complaints, and seek legal support without necessarily intending resettlement.

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More than a million Rohingyas are living in the refugee camps in Southern Bangladesh who are not only deprived of citizenship but also access to justice. Labeled as "Forcibly Displaced Myanmar Nationals" (FDMNs), they are, in practice, deprived of the state's legal protection, and instead governed by an unregulated parallel justice system that provides little legal recourse to the refugees, particularly women and the marginalised ones. In absence of a formal 'refugee' status granted by Bangladesh, Rohingyas find themselves in the grey zone of the law, where they are neither citizens nor refugees and, therefore, are not as such visible to the formal courts.

The crisis is not only humanitarian but also a constitutional one. The equal protection of law, and protection in respect of trial and punishment, as articulated in Articles 31 and 35 of the Constitution extends to every person within Bangladesh. Citizens are not the only people endowed with these rights. In Abdul Latif Mirza v. Bangladesh (1979), the Supreme Court affirmed the universal character of these fundamental rights. But in practice, such guarantees are not translated into reality in the camps. Rohingyas cannot go to the police to submit complaints, nor can they appear in the court or request legal assistance. Instead, their complaints, be they related to robbery, domestic abuse, or gun violence, are arbitrated by non-judicial actors and local power brokers (e.g. camp leaders, religious leaders and some NGOs) with no professional training or responsibility.

In a same vein, the crisis has an international law dimension as well. Bangladesh, although not a ratifying state to the 1951 Refugee Convention, is party to several core human rights treaties—including the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to fair trial to all individuals within the state's jurisdiction. According to Article 14 of the ICCPR, there is a right to fair and public hearing before a competent and independent tribunal, while Article 2 mandates the State to guarantee these rights to all people within their jurisdiction irrespective of their status. Similarly, General Comment No. 32 (UN Human Rights Committee) expounds that the State parties must respect the guarantees contained in Article 14 irrespective of citizenship status of the individual. In addition, the European Court of Human Rights in M.S.S. v. Belgium and Greece upheld the right and need of the refugees to effective remedy before national authority. While the binding nature of these principles on the non-signatories of the Refugee Convention is debatable, it is well settled that the provisions of ICCPR and other international instruments, is binding upon Bangladesh.

We also need to remember that statelessness does not deprive a person of his/her legal entitlement. In both domestic and international law justice is territorial and does not depend on nationality. Thus, the Penal Code (1860) and the Code of Criminal Procedure (1898) extend to the whole of Bangladesh irrespective of one's immigration status.

However, Rohingyas have no access to either of the two in any way. One reason is the continued role of Bangladesh in terming them as FDMNs instead of granting a formal refugee status. It prohibits their identification, recording and inclusion by the court, which creates a system in which rights are not just withheld but even nullified. Even worse, this gap has been exploited by the non-judicial actors, such as the Camp-in-Charges and majhis, who often resolve disputes through coercive or arbitrary means. As a result, the victims are silenced, and the abusers go unpunished. Women are the most vulnerable group who are susceptible to violence and exploitation in such a system.

Notably, Bangladeshi courts have time and again proved their commitment to ensure justice. In Md. Sadaqat Khan (Fakku) v. Chief Election Commissioner (2008), the High Court Division recognised the Bihari population—stateless at that time—as Bangladeshi citizens and their right to get enrolled in the voter list. Internationally, decisions such as A. v. Australia (UNHRC) emphasised that legal status cannot be used to justify arbitrary detention or denial of due process. Nonetheless, the policy is inert with lack of political will.

It should be noted that Bangladesh does not have to sign the Refugee Convention to ensure the rights of the Rohingya people. The framework is there in its Constitution and the treaties it has ratified. A rights-based approach to refugee justice in Bangladesh should begin with providing a temporary legal identity to the Rohingyas that allows them to report crimes, lodge complaints, and seek legal support without necessarily intending resettlement. Secondly, legal aid desks should be set up inside the camps, operated by lawyers, paralegals and interpreters, in line with the Legal Aid Services Act, 2000. Thirdly, the State should be permitted to investigate serious criminal cases and have the case adjudicated in formal courts. In-camp courts administered by judicial magistrates may also be considered. Fourthly, legal support and court services in line with CEDAW commitments should be provided, addressing particular vulnerabilities of the women and girls. Finally, an independent panel of judges, lawyers, human rights representatives and civil society members should be there to oversee camp justice, case reviews and report abuse.

To conclude, it is not always the dominant demand of the Rohingyas to be citizens or be integrated into the Bangladeshi population. The Rohingyas want legal protection and safeguards primarily. Indeed, Bangladesh is only sabotaging itself by not allowing the Rohingyas to access and use the courts.

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LAW REVIEW

An appraisal of the Women and Children Repression Prevention (Amendment) Ordinance, 2025

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The rate of conviction in cases of violence against women and children in Bangladesh is alarmingly low. A 2019 research by ActionAid reveals that, on average, it takes two years to begin trial proceedings in four out of every five cases. The key reasons include victims' fear, insecurity, threats, unwanted financial settlements, and fear of losing privacy. As a result, many refrain from seeking legal recourse. Similarly, witnesses also face pressure and intimidation to testify before court. For years, human rights organisations have demanded a separate law to ensure their protection. Although such a dedicated law has yet to be passed, the recently approved Women and Children Repression Prevention (Amendment) Ordinance, 2025 has incorporated several important provisions that, albeit partially, respond to this longstanding demand.

The Rape Law Reform Coalition (hereinafter 'Coalition'), a platform of 17 organisations with Bangladesh Legal Aid and Services Trust (BLAST), jointly reviewed the draft ordinance and submitted a comprehensive set of recommendations to the interim government, which were reflected in the final Ordinance. The inclusion and revision of several key provisions signal progress and are expected to help victims and witnesses participate more actively in the justice process.

Notably, the Ordinance explicitly prohibits the publication of any information (ie crime committed against them or related legal proceeding) related to a woman or child who is a victim of the offenses covered by this law, such as their name, address, photo, or other identifying details in newspapers, any online platforms including social media, or any other medium [Section 14(1)]. Violation of this provision can result in up to two years of imprisonment, or a fine of up to BDT 100,000 or both [Section 14(2)]. While the previous law did restrict the disclosure of personal information, it did not specifically mention photographs. Also, online and social media platforms have now been integrated within the legal scope. These gaps have now been addressed, making the law more contemporary and responsive to the digital age.

A new subsection has also been added allowing the tribunal to receive testimony via digital means if the witness resides in a remote location, subject to prior approval [Section 24(4)]. The government and relevant authorities are required to provide the necessary technical support to the tribunal in this regard. If implemented, this provision will reduce the burden on remote victims and witnesses, sparing them the need for repeated physical appearances.

Quite undoubtedly the approval of the Women and Children Repression Prevention (Amendment) Ordinance 2025 is a significant milestone. While the provisions that the Ordinance introduced or revised regarding victim and witness protection are vital, implementing them will be equally challenging.

Again, the new amendment has also stretched the scope of protective custody. Under the new Ordinance, the tribunal can order protective custody not only for women or children victims, but also for any person associated with them [Section 31]. Furthermore, such protective custody must be outside prison and in government-designated safe places or other suitable arrangements. If necessary, the tribunal may place individuals under the custody of a specific agency.

One of the major obstacles to justice in cases of violence against women and children is the lack of protection for victims and witnesses. Section 32 Kha (1) of the amendment addresses this issue by allowing the tribunal to issue orders for the safety of the complainant, victim, or witness or take necessary steps to ensure such protection. Again, for witnesses from marginalised and remote areas, frequent court appearances are difficult. The new amendment thus allows for compensation for travel and time lost by any witness [Section 32 Kha (2)]. Such financial assistance is likely to encourage participation and make the process of recording testimony more effective. This provision will be particularly helpful for government witnesses, such as doctors, police officers, and other officials, many of whom may have been transferred to distant locations and need to travel at their own expense and take leave to testify.

However, some proposals from BLAST and the Coalition were not finally included in the Ordinance. For example, the recommendation to legally prohibit disclosing any information that could identify vulnerable witnesses was not accepted. If it had been, the protection and privacy of vulnerable witnesses and their families could be strengthened.

Additionally, the provision for testimony via information technology should not be limited to remote witnesses but also include vulnerable witnesses, particularly children. However, it is crucial to provide adequate training to judicial officers and court staff to facilitate this. Another limitation of the Ordinance is its failure to mention any specific procedure for the protection of adult women or obtaining their consent when placing them in protective custody (but it refers to the Children Act 2013 in ensuring custody of Children).

Quite undoubtedly the approval of the Women and Children Repression Prevention (Amendment) Ordinance 2025 is a significant milestone. While the provisions that the Ordinance introduced or revised regarding victim and witness protection are vital, implementing them will be equally challenging. We hope that the government, in coordination with the Ministry of Law, the Ministry of Women and Children Affairs, the Attorney General's Office, public prosecutors, bar associations, law enforcement agencies, medical professionals, psychosocial experts, and civil society organisations, will develop and publish a comprehensive roadmap to effectively translate this positive initiative on victim and witness protection into reality and create public awareness in this regard. Only then can the path to justice for victims be made easier.

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