

## LAW OPINION

# Transitional solutions for refugee protection through the lens of the Rohingya crisis

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Around the world, many people are forced to leave their houses, country of origin and cross borders to find dignity and safety from conflict, persecution and gross violation of human rights. Their journeys demonstrate both the failure of states to uplift protection under international norms and human resilience. Often the refugees go to host countries where they absolutely depend on the goodwill of host governments, and in many cases these host states are not signatory to the UN Refugee Convention and its 1967 Protocol. This gap in legal frameworks drags millions of refugees to darkness without formal legal status, dependent on humanitarian aid and limited to no access to education and employment. The principle of non-refoulement and customary international law guide that refugees shall not be returned to danger, but they do not force host countries to give permanent legal protection to the refugees. As an outcome, all the non-signatory countries opt ad-hoc or short-term humanitarian mechanisms, which often fail to assure sustainable, secured and dignified life for the refugees.

Bangladesh has demonstrated exemplary kindness in hosting nearly one million Rohingyas who fled persecution and violence happened in Myanmar in 2017. This presence of the refugees for a long time has created complicated challenges for the state. On the other hand, the Rohingyas are encamped in the overcrowded camps with limited access of necessary services and rights. They neither have legal employment nor formal education. In addition to that, they lack formal refugee status which prevent them from pursuing usual livelihoods. There are insufficient employment opportunities with a few irregular or informal works, that makes most refugees dependent on international aid. These sufferings have caused hopelessness and distress causing many to pursue risky journeys through the sea for a better life elsewhere. Despite the frequent attempts by Bangladesh

and

international community to actuate repatriation, the Rohingyas' hope of returning to Myanmar seems dim in the current situation of insecurity and danger. The whole crisis now turned into a complex protracted refugee crisis, asking not just for empathy but practical and innovative solutions.

In the current scenario, transition solution evolves as a humane and pragmatic approach of refugee protection. These solutions may be used to fill in the gap between long term durable solutions and emergency humanitarian response. By nature, transitional solutions will be different from local integration, voluntary repatriation and resettlement. Transitional solutions will reinforce resilience, prepare host communities and refugees for sustainable future and promote self-reliance among the refugees. Transitional solutions acknowledge displacements as not only a humanitarian crisis but also a governance and developmental challenge that asks for multilateral efforts from international agencies, host country and the refugees themselves. This approach connects protection and empowerment, assuring that refugees can live a safe and dignified life while waiting for the permanent conventional solutions.

The core element of transitional protection frameworks is the principle of temporary refuge. This principle is recognised by the international refugee law and the United Nations High Commissioner for Refugees. This principle allows refugees fleeing armed conflict to take refuge in a host state, while obligating the host state to provide shelter to the refugees for a specific period. This system does not ask for permanent protection or solution to the refugees while focusing on temporary protection. Bangladesh may practice this principle by delivering temporary protection status to the Rohingyas. Temporary permits or temporary identification cards may be provided. Refugees will be brought under the scope of administrative and legal mechanisms of the country. This will not only help to reduce exploitation but also permit access to

limited employment, healthcare and education. Temporary refugee doctrine would also guide Bangladesh to comply with international refugee protection standards while conserving the country's absolute discretion to fix the duration and stipulation of their stay in the country. On a different note, it would give the Rohingya refugees a sense of safety, security, and inclusivity by replacing their present condition of uncertainty with an organised, rights-based, and dignified existence.

The next aspect of transitional protection is local settlement, an approach that has been utilised to balance refugee welfare with the interest of states. Local settlement provides areas for the refugees where they are permitted to participate, live and work in limited educational and economic activities

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without being fully integrated into the host society. This model was successfully applied by the African states during mass influxes and displacement in the 1960s and 1980s. The refugees were made self-reliant and burden on the host states was reduced. Local settlement has several forms such as spontaneous settlement, state-sponsored settlement and agricultural settlement. Bangladesh may choose to adopt any of them. For example, spontaneous settlement would permit refugees to opt for livelihoods and residence by themselves, state-sponsored settlement would include infrastructural support and government planning, and lastly the agricultural settlement would provide refugees land for cultivation. Bangladesh is applying

these models of local settlement without any planned scheme. Hence a blended model blending these approaches will be most effective if applied in a formalised mechanism. Local settlement will increase productivity, contribute to the economic growth and reduce dependency on aid by giving monitored access to vocational training and income generating activities for the refugees. It will also reduce security concerns in the host state by minimising illegal economic activities within the camps.

Local solution is another approach related to local settlement. This is introduced and discussed by the Global Compact on Refugees 2018. Local solutions give temporary legal stay by ensuring access to necessary rights, such as social protection, healthcare, housing, decent work and education without implicating permanent integration of refugees. The purpose of the approach is not to naturalise or integrate refugees but to assure their dignified life while planning for future permanent solutions under the convention. In the scenario of Bangladesh, formalised local solutions approach would permit Rohingyas to join the education system, skill development programs and small-scale enterprises coordinated by international organisation and government. This will benefit the refugees through acquired skills which might be utilised for their eventual return to Myanmar, additionally it would help refugees to contribute to the host community in the development initiatives. Self-reliant and empowered refugees usually do not engage in irregular movements and get involved in crime, maneuvering local solutions as win-win scheme for the host country and refugees. Internal relocation is considered as another dimension of temporary refugee protection. This involved movement of refugees within the host countries to more suitable, and safer places for economic activity. Though relocation is sometimes seen as a management strategy, it can also contribute to developmental schemes if adequately utilised. To execute internal relocation alternative two tests have to be pursued, i.e., relevance test and reasonableness test. Relevant test asks whether the relocation area is accessible and secured, while the reasonableness test sees whether the refugees would lead a dignified and normal life in the relocated place. Bangladesh's

instance of relocating Rohingyas to Bhasan Char can be defined under this approach by shedding light on agricultural productivity, livelihood generation and skills training. Instead of encampment strategy, internal relocation can work as a method for human development and self-sufficiency, guided by technical assistance and international aid.

These transitional solutions, i.e., local settlement, internal relocation, local solution and temporary refuge create compact protection mechanism that connects immediate humanitarian necessities and long-term durable solutions. They establish pathways for the refugees to work productively, stay lawfully and buckle up for their eventual return to their state of origin. For Bangladesh, adopting and executing such a legal framework in combination with the transitional solutions would uphold its moral leadership in the protection of refugees, minimise dependency on aid and upgrade national security by recognising the core causes of unrest in the refugee camps. From the perspective of international community, aiding this new arrangement of refugee protection through burden-sharing, expertise and funding would uplift international commitments to sustainable development and human rights. The Rohingya crisis cannot be solved overnight, hence the hopes of repatriation stay dim in the current situation of Myanmar. Until and unless Myanmar assures accountability, security and citizenship, return is not a pragmatic option. Simultaneously, Bangladesh carries the opportunity to initiate a new approach of refugee management based on human dignity, law, and rights. Hence, transition protection is the pragmatic middle path, that not only supports refugees and host community but also keeps the gate open for eventual repatriation. Through this approach, Bangladesh can transform the Rohingya crisis into a story of shared responsibility, resilience, and empowerment from despair, distress, and dependence. Transitional solutions are not the finishing points of the journey, rather they are the nexus to carry both the host nations and refugees towards more sustainable and just future.

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## RIGHTS AND REMEDIES

# Death by negligence and our legal rights

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The recent Farmgate tragedy, in which a man lost his life after being struck by a bearing pad falling from the Metrorail infrastructure, comes as a timely reminder of how public safety is too often sacrificed to negligence. Besides the tragedy, this incident raises fundamental questions related to accountability, legal responsibility, and the state's duty towards guaranteeing people's safety.

Generally, in tragic incidents like this, the law of tortious liability comes into action. Negligence in tort law comes into play when an

authority or person fails to exercise 'reasonable care' to avoid injury or loss to another human being. The Metrorail authorities, including contractors and relevant regulatory bodies, clearly owe a duty of care to the public, especially when they had the knowledge that pedestrians regularly pass through such areas. Using proper equipment, machinery, or material, which do not potentially put lives at risk, is not only a moral obligation but also a legal obligation.

Here, the occurrence in question could invoke the legal doctrine of 'res ipsa loquitur', meaning 'the thing speaks for itself'. It is a rule of law in



which the incident is of such a nature that it would tend to generate a presumption of negligence on the defendant's part. Hence, the burden falls squarely on the defendant, and he/she has to prove that they were not negligent.

For too long, the perception has persisted that tort law has little

practical application in Bangladesh. However, recent judicial decisions have negated such views. In 2015, a 5-year-old boy named Nirab died after he fell into an open sewer in Dhaka. The government authorities, WASA and DSCC, were made subject to a writ petition by the Children's Charity Foundation to claim compensation.

Thus, it can be said that the victim's family in the present case has a clear legal right to approach the HCD under Article 102(l) of the Constitution, exercising the court's writ jurisdiction to seek compensation for violation of the fundamental right of life and safety. In fact, writ petitions are often more likely to provide relief than traditional civil actions, especially against public authorities.

On the other hand, the victim's family can arguably pursue a civil claim under the Fatal Accidents Act, 1855. According to this law, the relatives of a person who is killed by the negligence of another party are entitled to be compensated for

wrongful death. Given the scale and nature of the damages, the claim ought to be one for large damages to compensate both for the emotional and financial loss incurred by the dependents.

This disaster cannot be brushed off as merely an isolated or unfortunate accident. It reflects basic issues in monitoring the infrastructure development, ensuring safety, and addressing liability in Bangladesh. The Government and Metro Rail authorities must conduct an independent inquiry, pay compensation to the victim's family immediately, and adopt stronger safety protocols. More importantly, the legal community and civil society should push for more effective tort law reforms e.g., more linear and categorical procedures for compensation claims by the public and better mechanisms for enforcing state liability.

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