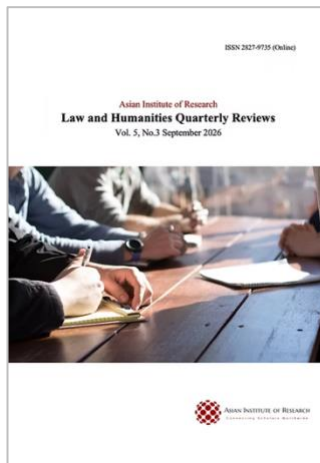




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# The Judicial Domestication of Rohingya Refugees in Bangladesh: Reconciling International Refugee Standards with National Legal Practice

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## Abstract

This research decisively interrogates the juridical condition of Rohingya refugees in Bangladesh in the context of judicial domestication. This vital jurisprudential process elucidates how international norms relating to the rights of refugees are interpreted, adapted, and operationalized within domestic legal frameworks, even in the absence of formal treaty incorporation. Its significance is underscored by the need to examine how courts in non-signatory jurisdictions serve as critical sites of normative translation in a context with legislative gaps and executive ambiguity. This study addresses a notable gap in refugee law scholarship, where the judiciary's pivotal role as a norm-translating institution has often been overlooked in discussions on shaping refugee protection beyond mere legislative frameworks and executive policies. It rigorously assesses the extent to which Bangladeshi courts have reconciled international refugee standards with national legal practices through jurisprudence related to the Rohingya. Utilizing a doctrinal and jurisprudential methodology, this research analyzes constitutional principles, judicial decisions, international refugee and human rights instruments, and comparative jurisprudence, thereby illuminating patterns of judicial interactions with refugee protection norms. Findings reveal that Bangladeshi courts have, albeit inconsistently, engaged in selective judicial domestication by invoking constitutional guarantees, humanitarian principles, and persuasive international norms to address the protection deficits faced by the Rohingyas. However, this process is currently fragmented and constrained by sovereignty-centered security rationales and the lack of a dedicated refugee framework. The research asserts that judicial domestication represents an emergent jurisprudential pathway for aligning international standards with domestic legal practices. It substantially contributes to refugee law scholarship by proposing a court-centered theory of protection and offers valuable normative implications for judicial development, legal reform, and refugee governance in non-signatory states.

**Keywords:** Jurisprudential, Domestication, Normative, Judicial, Reconciliation

## 1. Introduction and Research Framework

### 1.1. Introduction

Everyday violence, poverty, and catastrophic weather disasters drive many people from their homes around the world, forcing them to embark on perilous journeys before reaching a safe sanctuary. Over the last few years, an unprecedented crisis has been escalating significantly. As a result, many people ultimately end up living in horrible conditions with the basic needs for their survival. The protracted displacement of the Rohingya into Bangladesh has generated one of the most legally complex and normatively contested refugee situations in contemporary South Asia. Within this context, the present research, *The Judicial Domestication of Rohingya Refugees in Bangladesh: Reconciling International Refugee Standards with National Legal Practice*, asserts that an effective understanding of refugee protection in Bangladesh transcends conventional treaty-ratification analysis. Instead, it necessitates an exploration of how international refugee norms are selectively internalized, translated, and operationalized through domestic jurisprudence. It is through this process that the concept of ‘judicial domestication’ emerges as an essential analytical lens.

The background of this study is rooted in the increasing tension between international refugee protection standards and the absence of a comprehensive domestic refugee regime in Bangladesh. Existing responses to the Rohingya crisis have largely been interpreted through humanitarian, political, or security perspective, often neglecting the judiciary’s critical role in reconciling international norms with municipal legal structures. Nevertheless, Bangladeshi courts have made significant contributions through constitutional interpretation, public interest litigation, human rights adjudication, and engagement with principles of customary international law. These actions have created an emerging jurisprudential space where refugee norms can be domesticated, despite formal non-incorporation. This raises a fundamental doctrinal question: how does a non-signatory state engage judicially with refugee norms absent formal legislative incorporation?

Despite the growing body of scholarship on Rohingya displacement and refugee governance, a critical gap remains in understanding the jurisprudential dimensions of refugee protection in Bangladesh. Studies in the existing literature have primarily scrutinized policy deficiencies, international burden-sharing, and humanitarian administration, and have overlooked the role of the judiciary as a crucial norm-translating institution. Even when courts are mentioned, they often lack a thorough examination within a coherent doctrinal framework that elucidates how international refugee standards attain normative relevance in domestic adjudication. This study decisively fills that gap by presenting judicial domestication as a pivotal jurisprudential process and critically exploring its protective potential within the Bangladeshi legal system.

The core research problem revolves around the disparity between international refugee standards and national legal practices, and whether this divergence can be harmonized through judicial interpretation. Specifically, this study investigates whether Bangladeshi jurisprudence can establish a meaningful legal framework for Rohingya protection, even in the absence of formal refugee legislation. It critically assesses whether courts merely echo executive restraint or actively contribute to a developing jurisprudence of refugee protection rooted in constitutionalism, human dignity, and international normative influence.

This research holds significant doctrinal and practical implications. Doctrinally, it advances refugee law scholarship by conceptualizing judicial domestication as a distinct method of norm internalization, clearly differentiated from incorporation, implementation, and judicial activism. Practically, it provides a strong jurisprudential foundation for enhancing protection discussions in Bangladesh through judicial avenues, particularly where legislative reform is limited. Furthermore, this study contributes to broader conversations about the role of domestic courts in non-signatory states and the potential for refugee protection beyond traditional treaty frameworks.

Methodologically, the research adopts a qualitative doctrinal approach, firmly grounded in jurisprudential and normative legal analysis. It employs rigorous doctrinal examination of constitutional provisions, judicial decisions,

statutory frameworks, international refugee instruments, customary principles, and relevant soft-law standards on Rohingya protection. The methodology is enriched by comparative and interpretive analysis to evaluate the interplay between international refugee norms and domestic legal reasoning. Data analysis is conducted through rigorous doctrinal content analysis and jurisprudential interpretation. Through critical doctrinal synthesis, this research evaluates the extent to which judicial reasoning reconciles, resists, or reconstructs international refugee standards within national legal practice.

The presentation of the contents of the thesis is structured accordingly. Chapter Two, *Judicial Domestication of Rohingya Refugee Norms in Bangladesh: A Rohingya Jurisprudential Potential Analysis*, lays the conceptual and jurisprudential groundwork for judicial domestication and assesses its protective possibilities within Bangladeshi jurisprudence. Chapter Three, *Reconciliation of International Refugee Standards with National Legal Practice*, scrutinizes the doctrinal interaction between international norms and national legal frameworks, considering the prospects and limitations of reconciliation. Chapter Four, *Towards a Jurisprudence of Rohingya Protection in Bangladesh*, synthesizes the findings and proposes a normative framework for an emergent Rohingya jurisprudence centered on judicial protection. Collectively, this study demonstrates that even within a non-signatory legal framework, the judiciary can serve as a vital arena for the domestication and advancement of refugee protection norms.

### 1.2. Objectives of the Study

- To analyze how Bangladeshi courts interpret, internalize, and apply international refugee protection standards, despite the absence of a dedicated refugee law framework, and to assess the jurisprudential potential of such norm translation.
- To evaluate the extent to which domestic legal practice reconciles international refugee obligations with constitutional principles, administrative responses, and national security concerns in shaping legal protection for Rohingya refugees in Bangladesh.
- To investigate doctrinal and jurisprudential gaps within existing Rohingya-related adjudication and assess whether judicial reasoning contributes to an emerging framework of refugee protection grounded in rights-based legal interpretation.
- To formulate a coherent jurisprudential model for strengthening Rohingya protection in Bangladesh through judicial domestication, reconciling international refugee standards with national legal practice, and advancing a principled trajectory toward refugee jurisprudence.

### 1.3. Research Methodology

This research is of a qualitative nature that focuses exclusively on secondary sources and employs doctrinal methodology characteristic of doctoral legal scholarship. It is grounded in a systematic analysis of primary legal materials, including the Constitution of Bangladesh and relevant judicial decisions, complemented by international legal instruments as normative reference points. Through a thematic and interpretive approach, the study examines how judicial reasoning reflects the implicit domestication of international standards within Bangladesh's constitutional framework. The research is analytical and aims to critically evaluate how a non-signatory state reconciles international refugee norms with domestic legal practice through judicial interpretation.

### 1.4. Literature Review

The protection of Rohingya refugees in Bangladesh reveals a compelling legal paradox: while the state is not a party to the 1951 Refugee Convention, it nonetheless engages in practices that reflect key elements of international refugee protection. As a non-signatory state, Bangladesh navigates a unique juridical space where refugee protection exists neither in formal codification nor in its absence. This literature review positions the concept of judicial domestication, a critical yet often overlooked mechanism of protection, as essential in understanding how international norms can be interpreted and integrated within domestic legal frameworks. It asserts that, despite the lack of formal treaty obligations, the judiciary in Bangladesh can harmonize international refugee standards with national legal practices through constitutional interpretation and rights-based adjudication.

Classical literature on refugee law, especially the works of Hathaway and Goodwin-Gill, establishes the 1951 Convention as the primary legal framework governing refugee protection. (Goodwin-Gill G. S., 2021) (Hathaway J. C., 2014). However, contemporary scholarship underscores that foundational principles, particularly the principle of non-refoulement, have evolved into norms of customary international law binding on all states, irrespective of treaty accession. (Allain, 2001) (Lauterpacht, 2003). Concurrently, human rights-based approaches have broadened the reach of refugee protection. The interpretations by the Human Rights Committee and the Committee Against Torture elucidate that state obligations under the ICCPR and CAT prohibit the return of individuals to situations where they face serious harm (Schabas, 2019) (Rodley, 2009).

For Bangladesh, this body of literature sets a definitive normative baseline: while not formally bound by the Refugee Convention, it operates within an international legal order that recognizes certain minimum standards of protection ( UNHCR, 2007). The key question is not whether these norms apply, but rather how they are internalized within domestic legal practice. The framework of judicial domestication offers an insightful analytical lens for understanding the operationalization of international norms in non-signatory states. Drawing on Koh's theory of transnational legal process, judicial domestication refers to the interpretive incorporation of international standards through domestic adjudication (Koh, 1996) (Benvenisti, 1993). This transformative process does not necessitate formal legislative adoption; it occurs via judicial reasoning that aligns constitutional provisions with international principles. Jackson's concept of constitutional engagement reinforces this perspective, highlighting the crucial role of courts in bridging domestic and international legal realms (Jackson, 2010). Courts, in this context, serve as translators of norms, adeptly adapting international standards to suit local legal frameworks. Slaughter's examination of judicial networks, along with Deva's insights into human rights adjudication in Asia, further illustrate the ability of courts to engage with global norms in a non-binding yet profoundly influential manner (Slaughter, 2004). (Deva S. , 2013)

Applied to Bangladesh, this framework posits that the judiciary can act as a conduit for reconciling international refugee standards with domestic legal practices, even amidst the absence of formal treaty obligations. Judicial domestication thus emerges as a vital mechanism through which protection can be effectively articulated.

As noted by Islam and Ahmed, Refugee governance is decisively executive-driven, marked by ad hoc policies and administrative discretion (Ahmed I. , 2010). The designation of Rohingyas in Bangladesh as "Forcibly Displaced Myanmar Nationals" (FDMNs) strategically circumvents formal refugee recognition, thus limiting the direct applicability of international refugee law. (Mahmood et al., 2017). However, it is important to note that the Bangladeshi Constitution serves as a powerful source of protection. Articles 31 and 32 guarantee the right to legal protection and life, respectively, without being explicitly restricted to citizens. This opens significant possibilities for extending fundamental rights to non-citizens, including refugees (Hossain, 2010).

Hoque's analysis of judicial practice in Bangladesh indicates a "dualist but receptive" approach, where international norms, while not directly enforceable, serve as vital interpretive guides (Hoque, 2011). This doctrinal stance fosters judicial domestication, enabling courts to incorporate international standards indirectly through constitutional reasoning. Although literature specifically addressing Rohingya-related jurisprudence in Bangladesh is limited, existing studies reveal that courts have engaged with broader human rights principles in ways that resonate with international norms. For example, public interest litigation has allowed the judiciary to broaden the scope of fundamental rights, particularly in environmental and social justice contexts (Ahmed N. , 2010).

The case of Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh, reported in 55 DLR (2003) 363, represents a significant development in public interest litigation within Bangladesh concerning arbitrary arrests, custodial torture, etc. The rulings rendered by the courts have invoked constitutional safeguards to uphold due process, thereby reinforcing the rule of law. Although such decisions may not explicitly reference refugee law, they reflect a steadfast commitment to principles such as human dignity and protection from harm, which are foundational to international refugee standards. This emerging judicial domestication demonstrates that while courts may not formally recognize refugee status or directly apply international conventions, they articulate protections that harmonize with global norms.

The literature clearly illustrates that the reconciliation of international refugee standards with Bangladesh's domestic legal practices primarily unfolds through informal and indirect mechanisms. This reconciliation is achieved through a blend of judicial interpretation and administrative accommodation. While the executive branch maintains control over refugee policy, the judiciary emerges as a crucial avenue for rights-based protection. Bangladesh's ability to align with international standards without formal accession is evident in the gradual evolution of judicial practice.

Despite these promising insights, there is a pressing need for more extensive scholarship that systematically analyzes how Bangladeshi courts engage with refugee-related issues at the doctrinal level. The concept of judicial domestication has yet to be explicitly applied to the Rohingya context, indicating a vital analytical gap. Furthermore, much of the existing literature tends to concentrate on policy and humanitarian dimensions, neglecting the judiciary's potential role in shaping legal norms. This research aims to fill those gaps by positioning judicial domestication as a central framework for understanding Rohingya protection in Bangladesh. Even as a non-signatory state, Bangladesh does not operate in a legal vacuum; its judiciary can reconcile international refugee standards with domestic constitutional principles, formulating a context-sensitive and normatively grounded form of protection.

In conclusion, Bangladesh's approach to Rohingya protection transcends a mere understanding through formal legal frameworks. While the lack of treaty accession and domestic legislation presents challenges, it does not hinder the emergence of judicial protections. Judicial domestication provides a compelling lens through which we can understand the internalization of international norms within domestic legal practices, enabling a non-signatory state to engage meaningfully with global standards. This study builds upon this understanding, aiming to articulate a coherent jurisprudence of Rohingya protection deeply rooted in the constitutional and judicial landscape of Bangladesh.

## **2. Judicial Domestication of Refugee Norm in Bangladesh: A Rohingya Jurisprudential Analysis**

Despite not signing the 1951 Refugee Convention or its Protocol, Bangladesh has taken on the significant responsibility of hosting over a million Rohingya refugees. This chapter presents "judicial domestication" of international refugee norms as a critical mechanism of turning refugee-related international standards into effective domestic principles through the use of judicial interpretation and rights-based reasoning. Judicial domestication distinguishes itself from incorporation, implementation, and judicial activism, involving the adaptation of international standards to fit within domestic legal frameworks without explicit statutory enactment. This distinction is particularly pertinent in Bangladesh, where ongoing Rohingya protection issues demand judicial engagement amidst jurisdictional uncertainties and heightened executive securitization.

This chapter addresses two key questions: first, how does the judiciary in Bangladesh effectively domesticate international refugee norms to safeguard the rights of Rohingyas despite the absence of formal treaty ratification? Second, to what extent have judges integrated those principles, particularly through constitutional interpretation and the evolution of refugee jurisprudence, thus paving the way for a distinctive Rohingya jurisprudential framework?

### *2.1. Judicial Engagement with Rohingya Protection Norms*

#### **2.1.1 Rohingya Refugee Issues in Bangladesh and the Protection Controversies**

Rohingya refugee influxes in Bangladesh started in the 1970s because of religious fanaticism, mandatory labor, land ejection, rape, and a variety of maltreatment by the Myanmar military administration. (Wiggers, 2002). The Government of Bangladesh has adopted several policies in response to the large inflow of Rohingyas from Myanmar, granting them access to basic rights and humanitarian aid. This initiative has prompted coordinated efforts across various government ministries and agencies, allocating a certain amount of land for new camp development in 2017. Consequently, national and international organizations, humanitarian agencies, and civil society organizations have promptly mobilized to support these endeavors. (Chowdhury A. R., 2019).

While previously registered Rohingyas maintained their refugee status, Rohingyas arrived in 2017 are classified by the Government as "Forcibly Displaced Myanmar Nationals" (FDMN) and governed by a recent policy framework that ensures their access to humanitarian services. However, the ongoing efforts to establish human rights assessments have shown limited progress in advancing their dignified life. This policy framework imposes constraints on their movements and denies them access to their rights, rendering them reliant solely on humanitarian assistance (Rahman, 2010). This situation may lead to increased involvement in illicit activities such as drug trafficking and terrorism.

Insufficient measures have been implemented to safeguard them from escalating violence, including murder, rape, coerced marriage, and other forms of abuse perpetrated by armed and criminal factions. The absence of a specific legal framework and implementation challenges present numerous challenges in enforcing their rights (Chowdhury M. A., 2018). Especially their lack of recognized legal status under domestic law places them in a precarious position, leaving them susceptible to rights infringements. Also, they are politically invisible, having no political representation, and are excluded from civic participation. Furthermore, the prospects for the Rohingya population in Bangladesh seem uncertain, as the government has recently proposed repatriating them to Myanmar as the sole resolution for refugee settlement (Mostofa, 2022).

### *2.1.2. Evolution of Juridical Response to Rohingyas in Bangladesh*

The emergence of legal disputes related to the Rohingyas has decisively shifted the presence of refugees from a mere humanitarian concern to a complex landscape of juridical contestation. These disputes represent a systematic framework of legal conflicts that expose the shortcomings of the domestic legal order. The typological issues under debate —status disputes, challenges to deportation, access to fundamental rights, restrictions on movement, governance controversies within camps, and public interest litigation regarding humanitarian treatment collectively illustrate that the Rohingya question is intricately intertwined with persistent forms of legal contestation. This situation underscores the pressing need for judicial domestication, rooted in three intersecting deficits: **a normative deficit, a protection deficit, and a doctrinal deficit.**

- First, the typology of Rohingya-related disputes highlights a significant **normative deficit** within Bangladesh's legal framework. The absence of a comprehensive refugee law regime and Bangladesh's non-accession to the Refugee Convention create a state of normative incompleteness, leaving refugee-related claims without a solid juridical foundation. Consequently, disputes involving detention, non-refoulement, or access to socio-economic rights exist in a legal limbo without any clear rules as to how they are to be settled. This normative gap forces courts to become venues where refugee protection norms need to be adapted indirectly through constitutional and human rights reasoning.
- Connected to this is the **protection deficit**, which manifests as ongoing failures to realize rights for Rohingyas, despite the existence of broader constitutional and human rights guarantees. In this context, judicial intervention takes on a critical corrective role. This is especially evident in cases challenging arbitrary detention, resisting expulsion measures, or contesting restrictions incompatible with fundamental rights norms. Judicial domestication here serves as a mechanism for courts to navigate protection gaps by integrating international refugee and human rights principles into domestic adjudicative reasoning (Mollah A. H., 2014).
- The third dimension is the **doctrinal deficit**, characterized by the inadequacy of existing domestic legal categories to address the legal status of refugees. Traditional frameworks of immigration law, alienage regulation, and national security governance often fall short when confronted with claims rooted in forced displacement, statelessness, and international protection obligations. In this context, judicial domestication becomes a process of doctrinal adaptation, whereby courts craft innovative interpretive routes to engraft refugee protection concerns within domestic jurisprudence. Such innovations may occur through expansive constitutional interpretation, the persuasive application of international norms, the harmonization of domestic law with transnational principles, or in the re-conceptualisation of the refugee as a rights holder rather than mere administrative subject.

## *2.2 Theoretical and Jurisprudential Foundations of Judicial Domestication*

- **Constitutionalization of Refugee Protection**

Constitutionalization as a form of judicial domestication represents a vital interpretive process through which constitutional guarantees are harnessed to integrate protection norms. In Bangladesh, this process is firmly based in the extensive interpretation of fundamental rights provisions, particularly the rights to equality before the law, protection of law, and personal liberty, along with the judicially recognized commitment to human dignity embedded in constitutional jurisprudence (Constitution of the People's Republic of Bangladesh, 1972, art. 27,31,32). Through these provisions, refugee protection claims can be reframed from mere immigration control issues into constitutional questions involving core rights. This interpretive shift is important to the process of judicial domestication in that it effectively operationalizes constitutional rights as avenues to bring norms concerning non-refoulement, humane and non-inhumane treatment, and due process into the domestic forum without actually having been enacted by legislation (Hathaway J. C., 2014).

Moreover, Bangladeshi courts have a history of embracing international human rights norms as persuasive interpretive aids in circumstances where domestic law is evasive or unclear. Within the context of Rohingya adjudication, this approach empowers courts to constitutionalize refugee protection by aligning domestic rights guarantees with more extensive international standards.

- **Doctrinal Innovation and Norm Adaptation**

A powerful technique of judicial domestication in Rohingya adjudication is the strategic application of doctrinal innovation and norm adaptation. This approach ensures that courts do not merely import international refugee principles into domestic law; they adeptly transform and localize these norms through context-sensitive judicial reasoning. In the Bangladeshi landscape, where refugee protection operates in a legislative void and under the constraints of a non-signatory legal framework, direct transplantation of international standards is not feasible. Instead, the process unfolds through robust doctrinal transformation, reconstituting external norms within indigenous constitutional and jurisprudential frameworks (Hathaway J. C., 2014).

This process exemplifies the effective localization of refugee standards through judicial reasoning. The shortcomings of conventional legal categories regarding "foreigners" or "undocumented migrants" compel courts to engage in doctrinal innovation, skilfully reconciling domestic constitutional commitments with humanitarian and refugee protection principles. (Chimni, 1998). Such localization embeds universal standards—such as non-refoulement, humane treatment, and procedural fairness within national jurisprudence, all tailored to align with Bangladesh's constitutional structure and institutional realities.

- **Public Interest Litigation and the Expansion of Protective Jurisprudence**

Amongst the various aspects of judicial domestication in Rohingya adjudication, Public Interest Litigation (PIL) appears to be a germane forum in such capacities from both procedural and jurisprudential perspectives. Under a legal regime where refugee rights are not recognized in the law, PIL is a valuable means by which to place constitutional or wider customary refugee rights into the court system. In a context where legislative recognition of refugee rights is lacking, PIL serves as a significant avenue for bringing broader constitutional and humanitarian claims before the judiciary. Its importance lies not only in broadening access to justice but also in empowering courts to translate widely recognized international protection principles into enforceable domestic rights. The Bangladeshi judiciary's expansive PIL jurisprudence has consistently facilitated engagement with marginalized groups through liberalized standing, epistolary jurisdiction, and rights-oriented interpretation (*Farooque v. Bangladesh*, 1996) (*Bangladesh National Women Lawyers Association v. Government of Bangladesh*, 2008).

In the Rohingya context, this procedural flexibility fosters advocacy-driven litigation concerning crucial issues such as humanitarian treatment, non-refoulement concerns, and access to essential rights. Here, refugee-related claims are framed not solely as individual grievances but as significant structural rights questions that engage constitutional commitments to dignity, liberty, and legal protection. This broader framing is central to judicial

domestication, allowing for the effective internalization of international principles and human rights norms through constitutional adjudication.

Unlike traditional adjudication, limited to declaratory relief, PIL empowers courts to issue continuing mandamus, policy directives, monitoring orders, and remedial guidelines aimed at tackling systemic protection deficits. In the context of refugee-related claims, such remedies serve not merely to resolve disputes but actively reshape governance practices that affect displaced populations. This expansive remedial approach marks a significant advancement in protective jurisprudence and highlights the judiciary's crucial role in law development and the protection of vulnerable groups.

### *2.3 Strengthening Rohingya Protection through Judicial Domestication*

This chapter interrogates the juridical processes through which international refugee norms may be internalized within the domestic legal framework of Bangladesh, with particular reference to the Rohingya context. The chapter delves into the relationship between the executive branch and the judiciary, clarifying how courts have sometimes supported restrictive state practices while at other times standing against them. It assesses the potential for judicial engagement to embed fundamental international principles into the country's legal system. Ultimately, it argues for the importance of judicial domestication as a means to enhance refugee protection in Bangladesh, especially where robust legislative reforms are absent.

- **Towards a Rights-Based Rohingya Jurisdiction**

To effectively strengthen Rohingya protection, it is imperative that the judiciary unequivocally affirms the applicability of fundamental rights to all individuals within its territory. This decisive action will dismantle the outdated doctrine that currently limits Rohingya access to vital judicial remedies. The interpretive expansion of Articles 31 and 32 will create a robust pathway for enforcing essential standards of protection, including personal liberty and access to justice (Hoque, 2011). Furthermore, courts must adopt a purposive interpretive methodology that seamlessly integrates customary international law principles into domestic legality. Additionally, procedural innovations, particularly the expansion of public interest litigation (PIL), should be leveraged to dismantle barriers related to standing and representation.

- **Prospects for Transformative Judicial Engagement**

The transformative power of judicial domestication lies in its ability to recalibrate the dynamics between state sovereignty and human rights protection. In case of the Rohingyas, the judiciary must transcend mere formalistic deference and engage in rigorous constitutional scrutiny of executive measures.

By applying a robust proportionality analysis, courts will be equipped to critically evaluate the legality of restrictions imposed on Rohingya individuals—particularly those that hinder mobility or access to justice. Current administrative practices that enforce limitations on providing rights reflect a regulatory approach that prioritizes state control over individual rights, necessitating an intensified level of judicial review (Ibrahim, 2025).

Ultimately, transformative judicial engagement involves integrating refugee protection into Bangladesh's constitutional identity. By aligning domestic jurisprudence with evolving international human rights norms, the judiciary will serve as a powerful counterbalance to administrative exceptionalism. Such a paradigm shift will not only improve the security of Rohingya refugees but also fortify the rule of law and uphold the universality of fundamental rights within the Bangladeshi legal framework.

### **3. Reconciling International Refugee Standards with National Legal Practice**

This chapter critically analyzes the discrepancies between international refugee law standards and Bangladesh's domestic practices, with a particular focus on the Rohingya context. Using a doctrinal approach, it examines comparative normative foundations and reveals protection gaps present in the current jurisprudence. By

delineating inconsistencies between international obligations and national responses, the chapter highlights both structural and practical deficiencies in legal protection. Furthermore, it assesses judicial reasoning and trends that could promote alignment between these frameworks. Ultimately, the chapter proposes specific legal and institutional reforms to enhance protection mechanisms and address contextual challenges in Bangladesh.

### *3.1. Doctrinal Dimensions of Rohingya Jurisprudence: Comparative Normative Foundations and Protection Gaps*

#### 3.1.1. Comparative Normative Foundations

- **Core International Refugee Standards**

The core standards of international refugee protection are firmly anchored in the 1951 Convention Relating to the Status of Refugees and its complementary 1967 Protocol. Together, these documents establish the authoritative framework of contemporary refugee law. Central to this framework is the principle of non-refoulement, which bars all people from being sent back to areas where they are likely to be persecuted, and this principle has attained the status of customary international law. The Convention articulates a high standard of rights-based regime with a commitment to access to asylum procedures, legal identity, freedom of movement, and basic socio-economic rights and entitlements like education and employment. (Convention Relating to the Status of Refugees, 1951, art. 16, 22–28, 31–34)

Broadly, these treaty commitments are supported by other international human rights documents, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which safeguard the rights of people, regardless of their legal status or citizenship. Moreover, UNHCR has a central role in the development of soft-law guidelines and supervision procedures. These standards, taken together, signify a dynamic jurisprudence that integrates refugee protection into the larger framework of international human rights law (Goodwin-Gill G. S., 2021).

- **Bangladesh's Domestic Legal Framework on Refugee Protection**

In contrast to the structured obligations envisaged under international refugee law, Bangladesh relies on an assemblage of constitutional guarantees, statutory provisions, and executive practices that collectively give rise to a de facto protection regime (Islam, 2013). The Constitution enshrines fundamental rights, including the right to life, equality before the law, and protection against arbitrary detention. (Constitution of the People's Republic of Bangladesh, 1972, art. 27,31,32). Although certain rights are confined to citizens, judicial interpretation has, occasionally, extended their applicability to non-citizens, including Rohingya-refugees, reflecting a degree of normative convergence with international human rights standards. (*BLAST v. Bangladesh*, 2003). The domestic legal regime does not, however, explicitly acknowledge refugee status, rights or entitlements when compared to the core principles of international refugee law. This leads to the legal identification of refugees as "foreigners" and thus makes it more difficult to create a rights-based protection system, in line with expectations by the international community (Foreigners Act, 1946).

In practice, executive measures have assumed a central role in addressing refugee situations, particularly concerning the Rohingya influx. These measures have facilitated humanitarian assistance, temporary shelter, and controlled movements. Such actions reflect some degree of working functionality of international humanitarian values, such as refoulement, but are also policy-driven and discretionary. The lack of a formal Asylum determination procedure further emphasizes the differences with the international standards, which require regularized procedures for evaluating protection claims (Human Rights Watch, 2023). The judiciary has, at times, acted as an important intermediary in bridging these normative gaps by invoking constitutional and international legal norms. Nevertheless, in the absence of legislative incorporation, such interventions remain limited in scope and systemic impact. In general, domestic mechanisms in Bangladesh can be characterized as a continuation of pragmatic accommodation, which, to some extent, represents the international standards while lacking full legal and institutional adherence.

- **Comparative Assessment: Obligations and De Facto Practices**

A comparative evaluation of international refugee standards and Bangladesh's domestic legal and policy framework reveals a complex relationship between normative obligations and state practice. While Bangladesh hasn't ratified key international refugee instruments, the large-scale admission of Rohingya refugees and the restraint from engaging in forcible refoulement demonstrate a strong, albeit unarticulated, recognition of essential humanitarian obligations. These practices reflect adherence to customary international law and signify a noteworthy convergence in state behavior.

However, this alignment remains precarious due to its lack of a formal legal framework. Unlike the international standards, which require asylum processes and institutionalised protection commitment, the path to asylum in Bangladesh is largely an executive-driven, discretionary one. The absence of a codified asylum system represents a significant departure from internationally accepted norms regarding refugee status determination and procedural fairness.

Additionally, socio-economic rights are limited, with restrictions on freedom of movement, employment, and education, hindering a robust rights-based protection regime, thus leading to dependency and marginalization. (Human Watch, 2019). Consequently, Bangladesh's framework reflects pragmatic humanitarian accommodation, influenced by political and resource factors, rather than a legally entrenched system aligned with international norms (Amnesty International, 2023). Although selective compliance is evident in its practices, the lack of formal legal incorporation and institutional coherence reveals a significant gap between de facto measures and de jure obligations within the international refugee protection regime.

### 3.1.2. Mapping the Protection Gap: Doctrinal Inconsistencies and Practical Deficits

- **Absence of Formal Legal Recognition of Refugee Status**

A significant doctrinal inconsistency in Bangladesh's refugee governance framework lies in the lack of formal legal recognition of refugee status. The Rohingya have been designated the "Forcibly Displaced Myanmar Nationals" (FDMNs), which lacks legal basis or enforceable rights amongst the expatriates living in the camps. This classification fundamentally contradicts international refugee law, which establishes legal status determination as the basis for attributing rights (Goodwin-Gill G. S., 2021). The absence of a comprehensive domestic legal framework for refugee recognition creates not only normative ambiguity but also limits the implementation of essential international principles. As a result, the protection regime operates in a structurally informal manner, highlighting a deliberate evasion of legal obligations rather than a simple legislative oversight.

- **Divergence between International Standards and Administrative Practice**

Bangladesh's administrative management of Rohingya refugees starkly contrasts with established international protection standards. International norms advocate for a rights-based approach that ensures access to education, livelihood, and dignity. Domestic uses, on the other hand, are mostly focused on securitization and humanitarian issues. The stringent restrictions on employment, mobility, and education underscore a regulatory framework driven by executive discretion rather than clear legal entitlements. Such context is witness to an extreme form of selective norm internalization, where humanitarian assistance is delivered without appropriate legal recognition of rights, resulting in a disjointed protection architecture (Milton et al., 2017).

- **Due Process Deficiencies and Status Determination Gaps**

A significant protection gap exists due to the lack of procedural safeguards in status determination processes. Bangladesh does not have a formal Refugee Status Determination (RSD) mechanism, which effectively denies Rohingya individuals their right to individualized assessment, appeal procedures, and judicial review. This glaring omission violates fundamental due process standards established in international human rights law. It thus

compounds the legal uncertainty that contributes to the dominance of executives and puts refugees under arbitrary administrative control, jeopardising the rule of law in the overall refugee governance framework (UNHCR., 2023).

- **Structural and Institutional Barriers to Norm Domestication**

A significant protection gap revolves around the structural and institutional challenges that hinder the domestication of international refugee norms. Lack of a specific legal framework, combined with an executive-centric governance system and limited judicial specialization, creates an ongoing process of normative inconsistency. Moreover, geopolitical sensitivities and resource limitations dictate Bangladesh's cautious legal stance. Consequently, these factors produce a partial compliance instead of an effective and coherent incursion of international standards into national legislation.

### 3.2. Judicial and Jurisprudential Pathways for Reconciling International and National Standards

- **The Judiciary as an Interpretive Institution**

The judiciary in Bangladesh functions as a critical interpretive authority that has the potential to reconcile normative frameworks. In light of the country's dualist legal structure, the courts have been found to tend to interpret domestic law in a manner consistent with the international obligations, especially in matters of fundamental rights (*Ershad v. Bangladesh*, 2001). This interpretive role enables the judiciary to address doctrinal inconsistencies without necessitating formal legislative incorporation, thereby fostering a constructive dialogue between international norms and domestic legal reasoning.

- **Constitutional Pathways for Internalization**

The Constitution of Bangladesh serves as a strong ground for integrating international refugee standards. Articles 31 and 32, which guarantee the right to life and personal liberty, have been interpreted broadly to include concepts of dignity, protection against arbitrary arrest, and humane treatment (*Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh*, 2003). By adopting a rights-based interpretive approach, the judiciary is positioned to integrate fundamental refugee principles, such as non-refoulement and the prohibition of inhuman or degrading treatment, into constitutional guarantees. The approach is a good example of harmonious construction, in which domestic constitutional norms are aligned with international human rights standards. Consequently, courts are empowered to incorporate vital refugee protections within existing legal frameworks while remaining within the scope of their institutional mandate.

- **Reliance on Persuasive International and Comparative Jurisprudence**

In the absence of binding legislation specific to refugees, Bangladeshi courts have started adopting persuasive international and comparative jurisprudence in their decisions. This approach not only incorporates foreign judicial decisions and international human rights instruments as interpretative frameworks but also demonstrates a commitment to advancing judicial reasoning (Alam, 2006).

Such engagement significantly enhances doctrinal coherence and empowers courts to align their decisions with globally recognized standards, especially regarding non-refoulement and refugee protection. Moreover, this practice firmly positions Bangladeshi jurisprudence within a broader transnational legal discourse, which gives strength and legitimacy to judicial interventions in matters of refugees.

- **Judicial Domestication as a Transformative Method**

Judicial domestication serves as a central mechanism for transforming international refugee standards into enforceable domestic principles. In contrast to legislative incorporation, this process advances through doctrinal development, thereby embedding international norms within constitutional and administrative law frameworks (Chetail, 2014).

In the context of Bangladesh, judicial domestication holds particular significance due to the lack of a national refugee law. Through principled adjudication, the judiciary can effectively internalize protections for refugees, thereby transforming abstract international obligations into concrete legal entitlements. This process not only

addresses normative gaps but also promotes the development of a refugee-sensitive jurisprudence grounded in constitutional principles and human rights.

### *3.3. Toward a Harmonized Protection Framework: Addressing Gaps through Legal and Institutional Reform*

#### 3.3.1. Harmonization Model: Layered Norm Integration

- a) **Interpretive Incorporation by the Judiciary**- Bangladesh's higher judiciary, particularly the Supreme Court, should take an assertive interpretive approach towards the incorporation of international human rights standards on Rohingya refugees. By leveraging constitutional guarantees, which include the right to life and personal liberty, and interpreting them alongside international standards, the judiciary can align domestic law with global protection norms while still upholding national interests.
- b) **Executive and Quasi-Legislative Measures** – The executive branch should establish policies relating to refugees, including clear administrative guidelines and procedures within the Ministry of Home Affairs and the Refugee Relief and Repatriation Commissioner. Such measures should ensure access to basic services and protection from forced return, reflecting internationally recognized best practices through collaboration with organizations like UNHCR.
- c) **Incremental Legislative Reform** – Bangladesh can implement targeted legislative reforms in the absence of an overarching legislation to provide for the minimum level of protection to refugees. This means that provisions of the asylum procedure and basic rights should be incorporated into existing laws. These steps will provide flexibility in response to new needs and will pave the way for a more comprehensive national refugee protection system aligned with international norms.

#### 3.3.2. Doctrinal and Institutional Responses to Protection Gaps

- a. **Judicial Construction of Refugee Rights** - Courts must establish a robust doctrine that unequivocally recognizes refugees as rights-bearing individuals. This move is essential to progress from a discretionary humanitarianism and to assert principled adjudication firmly rooted in constitutional norms.
- b. **Institutionalization of Status Determination** – The absence of a formal Refugee Status Determination (RSD) mechanism underscores the need for a formal executive body to guarantee fairness in the process and minimize arbitrariness in the exercise of executive decision-making.
- c. **Enhancing Access to Justice** – It is essential that refugees' access to legal assistance and procedural guarantees be expanded to effectively address the structural barriers within the judicial system.

#### 3.3.3. Institutional Coordination in Refugee Governance

- a. **Inter-Branch Synergy** – Bangladesh needs to establish better coordination among the judiciary, executive agencies, and international partners such as UN agencies. Creating formal platforms or task forces will help ensure that legal interpretations and policies are aligned, ensuring refugee protection measures meet both domestic priorities and international standards while minimizing duplication and closing policy gaps.
- b. **Judicial Capacity Building** – Boosting judicial capacity through specialized training on international refugee and human rights law is crucial. Incorporating these topics into training programs will improve decision-making for Rohingya refugees, while collaboration with international experts will foster knowledge exchange and develop jurisprudence.
- c. **Administrative Modernization** – Bangladesh should develop centralized digitalized systems for refugee registration and the service system. A single database, accessible to relevant authorities, will enhance transparency and efficiency, while strengthening documentation processes, improving accountability, and

protecting refugee rights. Utilizing modern technology will also facilitate better coordination with humanitarian actors and improved governance.

#### **4. Conclusion: Toward a Jurisprudence of Rohingya Protection in Bangladesh**

##### *4.1 Synthesis of Findings*

The findings of the study demonstrate that the protection of Rohingya refugees in Bangladesh operates in a normative space with no formal treaty obligations but with active juridical engagements. In practice, the judiciary has managed to square the circle between the failure to incorporate fundamental principles of international refugee law, such as non-refoulement and humane treatment, and the resulting jurisprudence. This indirect incorporation of international norms enhances constitutional adjudication and allows the judiciary to evade the dualism and exercise its judicial function with finesse in the context of refugee policy.

The findings show selective engagement in judicial domestication in Bangladesh, with courts addressing fundamental rights violations, but did not establish a comprehensive legal status for Rohingya refugees. This leads to protection that may be of a more sporadic and case-by-case nature, which makes it difficult to form a jurisprudential system. Nevertheless, there is a clear evolution of jurisprudential adaptation, where international refugee standards are gradually moving towards the national legal consciousness via constitutional means.

Finally, the findings demonstrate that, even in the absence of a formal refugee law framework, Bangladesh has created a dynamic model of judicial domestication that helps in reconciling international standards and domestic realities through constitutional flexibility and judicial discretion. While limited in scope, it provides a sound basis for furthering the evolution of a rights-based jurisprudence for the protection of the Rohingyas in Bangladesh.

##### *4.2. Contribution of the Research*

First, this study makes a theoretical contribution by developing judicial domestication as a useful analytical lens for analyzing the degree of commitment non-signatory states demonstrate towards international refugee norms, rather than merely relying on either a compliance or a non-compliance dichotomy.

Second, the study contributes to the jurisprudence of the Rohingya by systematically examining how the Bangladeshi courts have been at the forefront of shaping the protection discourse. It places the judiciary not only as a passive player, but as an active agency of normative change.

Third, the study creates an important connection between international legal theory and domestic judicial practice, demonstrating the potential and role of constitutional interpretation as a powerful vehicle for integrating refugee standards. In doing so, it asserts that meaningful refugee protection in Bangladesh is not bound by formal treaty accession, but is rather gradually developing in the principled engagement of the judiciary.

##### *4.3. Limitations of the Study*

This research conducted is mostly doctrinal, with available case law that is limited in the context of Rohingya protection. The number of reported judicial decisions is not large enough to allow for general conclusions to be drawn regarding the uniformity of judicial perspectives in this area.

Moreover, the study has been light on the empirical viewpoints, such as the experiences of the Rohingya refugees or the practical implementation of judicial decisions. As a result, the results might not be the most comprehensive representation of the realities of this community at the ground level.

Further, this analysis is based on a Bangladesh-centric approach. While this focus allows for in-depth analysis, it may limit the scope for comparative insights with other jurisdictions confronting similar refugee challenges.

#### *4.4 Recommendations for Future Jurisprudential Development*

The advancement of a robust Rohingya jurisprudence demands deliberate and coordinated reforms across judicial, legislative, institutional, and policy sectors. The following recommendations are essential:

##### **A. Judicial Recommendations**

- (a) Establish Precedential Consistency – Higher courts should articulate clear doctrinal standards governing refugee protection and establish authoritative precedents for lower courts in constitutional interpretation, thereby offering guidance to lower courts and uniformity in adjudication. This is not only consistent with current judicial practices but also enhances doctrinal consistency.
- (b) Embrace Refugee -Judicial reasoning must include a comprehensive vulnerability analysis, ensuring that refugee status significantly informs the interpretation of rights and remedies.
- (c) Enhance Judicial Review of Executive Action - Courts should closely review administrative action that affects Rohingya refugees, especially if it involves deportation, detention, or movement restrictions that impact fundamental rights. It is a way that is effective in reconciling executive discretion with legal responsibility.

##### **B. Legislative Recommendations**

- (a) Enact a Refugee Protection Framework - Bangladesh should firmly set up a domestic law on refugee protection that includes the minimum standards for refugee protection, including the principle of non-refoulement, access to essential rights (health, education, limited livelihood), and regulation of the detention and movement of refugees, independent of its accession to the 1951 Convention.
- (b) Implement Refugee Status Determination (RSD) Procedures – Formal refugee status determination mechanisms will bring essential legal certainty and reduce the need for ad hoc administrative determination.
- (c) Incorporation of Procedural Safeguards - Legislation must ensure the refugees' right to be heard, to have legal counsel, to legal assistance, and to a procedure for review or appeal. These protections are essential to bring practice in line with international standards of due process.

##### **C. Policy Recommendations**

- (a) Transition to a Rights-Based Governance Model – Refugee management policies need to move beyond security-centric approaches towards rights & protection-based approaches. These policies should be effective in reconciling the legitimate interests of the State (security, border control) with binding humanitarian and human rights obligations.
- (b) Integration of International Standards into Administrative Guidelines - Executive agencies should adopt operational guidelines that reflect constitutional and international standards, like non-refoulement, humane treatment standards, and the ban on arbitrary detention.

##### **D. Normative Recommendations**

- (a) Reframe Humanitarianism as Legal Obligation – All government branches should treat refugee protection as a legal obligation rooted in dignity, rather than an act of 'humanitarianism' at the discretion of the government. Such dignity should be a guiding principle at all levels of refugee governance and adjudication.
- (b) Develop a National Refugee Jurisprudence - Bangladesh should position itself as one of the active actors in Global South refugee jurisprudence and articulate context-specific principles for use in the transnational discourse on refugee law, instead of having to import models from elsewhere.

##### **E. Institutional Recommendations**

- (a) Specialized Refugee Units or Tribunals – Establishing dedicated bodies within the administration or judiciary will ensure expertise and consistency in refugee matters.
- (b) Judicial and Administrative Training – Capacity-building trainings on international refugee law as a standard for judges, law enforcement, and policy makers should be focused.

(c) Data and Documentation Systems - Accurate and up-to-date registration and documentation of refugees is vital for effective protection and governance, and must be aligned with international standards.

#### 4.5 Final Reflection

This study firmly concludes that the judicial domestication of the Rohingya protection in Bangladesh is a significant process despite the lack of a formal refugee law framework. At key moments, the Bangladeshi judiciary has, albeit cautiously, made use of some constitutional protections, which are broadly consistent with international refugee norms, including the right to life and due process. This practice demonstrates an implicit harmonization of norms, in which international norms are neither completely embodied nor rejected, but rather are selectively integrated into domestic legal reasoning. Therefore, this study argues that a more principled and structured articulation of judicial domestication is crucial for advancing a cohesive jurisprudence on Rohingya protection that effectively aligns Bangladesh's national interest with its legal humanitarian obligations towards Rohingyas under international law.

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