

Addressing the Issues of Rohingya Detention and Human Rights Violations in India at G20

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Introduction: The Legal Context

According to India's Ministry of Home Affairs (MHA), there are around 40,000 Rohingya refugees in India with approximately 18,000 registered with the UN High Commissioner for Refugees (UNHCR).¹ The Indian state has historically welcomed refugees from different countries and communities. However, during the genocidal violence experienced by Rohingyas in 2017, the Minister of State for Home Affairs in India issued a directive to state governments asking them to identify all "illegal immigrants" within their respective borders, for deportation.²³ They confirmed that "illegal immigrants" in the country, including Rohingyas, were being deported on the basis of the Foreigners Act of 1946.⁴ Incidents of individuals across the ruling party's rank and file, calling for Rohingyas to be deported, forcefully if needed, were recorded across the same year and the following^{5 6}. The then MHA Minister of State also stated that "India has always been soft on those who have entered this country. Millions of refugees have been staying in this country. That does not mean, anyone can walk into this nation and claim citizenship of this nation. We have created facilities for Rohingyas in Rakhine province."⁷

Aside from specific questions, any debate in India concerning the Rohingya community is met with hostile statements portraying them as a threat to the security of the nation and reasserting that they are considered "illegal immigrants", not refugees.⁸ In August 2021, the MHA was asked about the conditions of the Rohingya in India, to which the response was: *"India is not a party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. All foreigners are regulated through the Passport and Citizenship Acts. Those who enter without necessary documents are illegal immigrants. Since their [Rohingya] entry into the country is through illegal and secretive means, their accurate numbers are not available. The Central government has instructed state governments to identify illegal immigrants and begin deportation procedures according to law."*

¹ [063 briefing-paper Rohingya India.pdf \(mixedmigration.org\)](#)

² https://www.mha.gov.in/sites/default/files/advisoryonillegalmigrant_10092017_2.PDF

³ <https://scroll.in/article/856711/rohingya-refugees-history-will-judge-us-by-how-we-treat-the-worlds-most-persecuted-ethnic-minority>

⁴ Question No 2615 Rajya Sabha August 09 2017.

⁵ <https://www.indiatvnews.com/news/india-bjp-leader-compares-rohingyas-illegal-bangladeshis-with-insects-says-shoot-them-if-they-don-t-leave-455597>.

⁶ See also <https://www.news18.com/news/politics/have-all-info-on-them-union-minister-repeats-bjps-anti-rohingya-rhetoric-ahead-of-hyd-civic-polls-3121547.html>

⁷ <https://www.timesnownews.com/india/article/national-register-of-citizens-nrc-issue-kicks-off-a-debate-over-rohingyas-in-lok-sabha/262190>

⁸ See for instance, Special Mention Zero Hour (22/3/21), statements by Arvind Dharmapuri on 'Issues regarding fair inquiry into the communal riot created by Rohingya Immigrants in Telegana'; See also Matters under Rule 377 (19/7/17), statements by Gajanan Kirtikar on 'Need to identify and deport Rohingya people living in India in an illegal manner'; See also Special Mention (6/4/17), statements by Shri Bhartruhari Mahtab on "Regarding emergence of new insurgent group called Harakah Al Yakin (HAY) consisting of Rohingya Muslims".

A more elaborate question was asked to eke out a clear response from the MHA, regarding the rehabilitation and the violation of the principle of *refoulement* against Rohingya in India. The government response ran as –

“Illegal migrants (including Rohingyas) pose a threat to national security. There are reports about some Rohingya migrants indulging in illegal activities... Foreign nationals who enter into the country without valid travel documents, or whose travel documents expire while staying in India, are treated as illegal migrants and are dealt as per the existing legal provisions.

India signed the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 14 October 1997. However, India has not ratified the Convention. India acceded to the International Convention on Civil and Political Rights (ICCPR) on 10 April 1979.

Detention and deportation of undocumented migrants after nationality verification is a continuous process. The powers of the Central Government under Section 3 of The Foreigners Act, 1946 to deport illegal foreign nationals and powers under Section 5 of The Passport (Entry into India) Act, 1920 to remove an illegal foreigner by force, have also been entrusted under Article 258(1) of the Constitution of India to all the State Governments.

Further, under Article 239(1) of the Constitution of India, Administrators of all Union Territories have been directed to discharge the functions of the Central Government relating to the aforesaid powers. A Writ Petition No. 793/2017 has been filed in the Hon’ble Supreme Court of India, inter-alia, praying not to deport Rohingyas from India. The matter is sub-judice in the Hon’ble Supreme Court. However, no stay has been granted by the Hon’ble Court on the deportation of Rohingyas being done as per procedure established by law.”⁹

Aside from presenting no evidence on how the Rohingya were involved in illegal acts, the response clearly evades the question of whether such acts violate international law, particularly international customary law. This response was almost a verbatim replica of another given in June 2019, on a question pertaining to the details of the number of Rohingya in India, the status of talks with the Government of Myanmar, and the measures taken by the government to deport them from India. The MHA had then additionally stated that it had:

“held a number of meetings and Video Conferences at various levels and has impressed upon the State Governments and other stakeholders to identify illegal migrants including Rohingyas, watch their movements and cancel any Indian documents such as Personal Account Number (PAN) Cards, Aadhaar Cards¹⁰, Driving Licenses, Ration Cards etc. fraudulently obtained by them... Government has also taken up the issue of Rohingya migrants with the Government of Myanmar. It has emphasized the need for safe, speedy and sustainable return of these displaced persons. Since illegal immigrants enter into the country without valid travel documents in clandestine and surreptitious manner, there is no accurate data regarding number of such migrants living in the country.”¹¹

⁹ Lok Sabha Unstarred Question No. 296 (20/7/21).

¹⁰ An Indian identification document issued to all residents. Allegedly obtaining Aadhaar illegally has been grounds for detention for several Rohingya across India.

¹¹ Lok Sabha Unstarred Question No. 561 (25/6/19).

By the 2019 elections in India, the Rohingya refugee crisis had made headways into the national political thinking and the narrative surrounding the issue hence metamorphosed into one of 'save ourselves' instead of 'save them', courtesy to the ruling party's incendiary campaign to portray the Rohingya as a potential threat poised to strike, if the country and its people are not wary.

Since the start of the Covid-19 pandemic, Rohingya refugees in India were increasingly targeted as the sources of the virus and thereby being denied access to medical services. Terms such as 'Corona Bomb' were used and there was an intense crackdown on the camps in the aftermath of suspicions that the refugees have been responsible for triggering the spread of the virus by attending the Tablighi Jamaat (a religious gathering), held in early March 2020.

At a session with the MHA on August 2021, where the government was questioned on The Home Ministry's blunt response to this, the reply was that *"no such campaign against the Rohingya has been brought to the notice of the central government."*¹²

Any response pertaining to identifying solutions to the refugee crisis, and addressing long term goals, has been invariably centred on the 'state', negating the 'individual'. Such an approach disregards the core issues driving the Rohingya to seek refuge in India, as well as their experience fleeing a state sponsored sustained campaign of ethnic cleansing, and, additionally, whitewashes the actions of the Myanmar government.

¹² Lok Sabha Unstarred Question No. 1414 (11/2/2020). There is substantial evidence proving the large amount of online hate that the Rohingya face. For example, see <https://www.nytimes.com/2019/06/14/technology/facebook-hate-speech-rohingya-india.html>

Timeline of Events:

6 March 2021

168 Rohingya, including women, children, and elderly were detained by the Jammu and Kashmir police. The refugees were rounded up in the Maulana Azad Stadium in Jammu for biometric verification, during which some refugees were randomly chosen by the police and detained. Infants were left alone in the camps as their parents were taken by the police. Out of the 168 detainees, more than ten were above the age of 65, and some of the women were pregnant. The refugees are held to this day in Hari Nagar Jail in Jammu.

11 March 2021

72 displaced Rohingya from Jammu were detained by the Foreigner Regional Registration Office (FRRO) in Delhi's Vikipuri while they were camping outside the UNHCR office seeking protection.

22 March 2021

Hasina Begum, a 36-year-old Rohingya woman, was taken away from Hiranagar Jail. She had been detained there since 6th March 2021, separated from her three children and husband, and lived alongside 237 other Rohingya refugees.

24 March 2021

Twelve Rohingya refugees from Delhi's Shram Vihar and Madanpur Khadar camps were taken away by the police and sent to the Foreigners Regional Registration Office (FRRO) Delhi.

31 March 2021

Another 25 Rohingya refugees were detained in Jammu. On the same day, another Rohingya family of four was detained from the Madanpur Khadar camp in Delhi and taken to the FRRO.

8 April 2021

The Supreme Court refused to grant relief in a petition challenging the detention of Rohingya refugees detained in Jammu and the move to deport them back to hostile Myanmar.

Jan 2022

14 Rohingya refugees detained in Hyderabad under the foreigners' act. The detained UNHCR card holding refugees are at risk of deportation to hostile Myanmar.

15 March 2022

Hasina Begum, a 36-year-old Rohingya woman taken away from Hiranagar Jail where she was detained since March 2021 along with 237 Rohingya refugees, separating her from her husband and her 3 children.

24 March 2022

7 Rohingya refugees travelling to UNHCR office in Delhi detained at Shiliguri of Assam.

25 March 2022

Director of Rohingya Human Rights Initiative, Sabber Kyaw Min was detained at Balapur police station of Hyderabad in Telangana state. Later he was released the same day following the pressures raised by rights bodies.

1 April 2022

12 Rohingya refugees detained in Ramban district of Jammu. They had arrived at Dar village in Gool tehsil as part of a Tablighi group, the local police said. However, R4R found that the refugee individuals have had families at Bhatindi and Narwal of Jammu for 8 years.

20 April 2022

Two more families were detained at Hira Nagar sub-jail from Batindi of Jammu.

6 May 2022

Jafar Alam, a Rohingya refugee, was deported to Myanmar. He was also separated from his family like Hasina Begum.

6 April 2023

2 years passed since the mass detention. Three refugees died in detention while two were deported.

Late April 2023

The refugees decided to protest their conditions through a hunger strike. Their demands were to be freed from the detention centre to live in Jammu, or to be allowed to leave India to meet their family members settled in other countries. None of the family members of those detained has been able to meet them since the protest started, with the only exception being on the 28th of June (Eid al-Adha). The authorities said they would take 2 days to give them their decision, however, no answer was given.

17 July 2023

After 2 years of being detained arbitrarily, separated from their families, having received no answer to their requests, refugees gathered and tried to leave the detention in mass. 7:00 AM, police began firing at the crowd and throwing tear gas at the refugees. Several refugees were injured. Family members of detained refugees approached UNHCR in a state of urgency, but only received ID cards, which the detainees already had.

19 July 2023

A 5-month-old dies in the tear gas attack. The authorities chained the bereaved mother. Many more people are reported to be on their deathbeds due to extreme police brutality. Five refugees were arrested, two women and three men. They reportedly suffered custodial violence.

24th July 2023

Police along with the Anti-Terrorism Squad surrounded Rohingya camps in Mathura, Aligarh and Faridabad to arrest refugees. According to verified sources, more than 200 Rohingya refugees, including women, children, elderly, disabled persons, and pregnant women, were unlawfully detained without any registered First Information Reports (FIR).

Impact on the Rohingya community

Family separation

Most Rohingya families now find themselves undergoing similar traumatic incidents in India which had prompted them to run away from Myanmar in the first place. Sudden arrests and mass detentions have led to breaking up of families. *“My father is 88 years and is in Hirangar holding cell. After the first round when they detained 150 people. My father was detained during the month of Ramzan. He was detained as a part of Tablighi Jamaat. He was detained from Ramban mosque. They detained all 25 of them. We can meet them through glass. They let us talk through the glass. They are getting jail food. It is of very bad quality. We have tried a lot to get them released. We have paid a lot to the lawyers. The police have not put a case against them. The UNHCR is unable to answer us”*

- Rohingya Women in Jammu.

Health-risks and Issues Concerning Security

Narratives from the families of those in detention show that they suffer terrible fates at detention centers. Lack of adequate health care facilities is common in holding cells and detention centers. Additionally, there is the fear of abuse and violence inside detention cells from the guards, as well as fellow inmates. Young women often fear that they shall be subjected to abuse and violence yet again in the detention cells with no channels to report incidences of abuse.

Increased Financial Burdens in Caring for Dependents and Visiting the Detained

Those who have extended family members in detention have the additional responsibility of caring for their younger children or older dependents. This creates extra burdens on their lives, both financially and otherwise. Hiranagar Detention Centre is located about 60 kilometers a from Jammu Spouses of those detained have to work every day and care for children and parents left behind, and cannot afford time to visit.

“My sister is sick, she needs to take her medicine regularly. The medicine is expensive. Both she and her husband have been detained. Their children stay with me. I visit her every month and bring medicine. I don’t have much money and sometimes have to borrow from my neighbor.”

- Rohingya woman from Jammu, 26 years

List of Recommendations:

The recommendations below call for action on the immediate needs of the Rohingya people while also working towards a sustainable solution that involves international cooperation and protection of the rights of Rohingya in India.

TO THE INDIAN GOVERNMENT

- Adopt a legal framework or introduce a category within existing laws that ensures refugees and other displaced persons in India have access to protection. Address the legal vacuum in which refugees and stateless persons are considered ‘foreigners’, conflated with undocumented migrants and other aliens with no rights and access to services and opportunities. Being denied access to asylum and government-issued documentation often results in distressed groups becoming even further excluded and marginalized.
- Due acceptance of UNHCR RSD procedures and UNHCR recognized refugees having the right to reside peacefully in India prior to being offered a durable solution.
- End arbitrary detention of Rohingya refugees and asylum seekers across India.
- Ensure protection of vulnerable groups, including women, children and LGBTQIA
- Immediate release of those who have been arbitrarily detained across Jammu, Uttar Pradesh and other parts of the country.
- Respect international human rights and humanitarian law including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) to which India is a signatory.
- Take measures to stop the legal violation of Article 51(c) of the Constitution of India which directs the State to “foster respect for international law and treaty obligations in the dealings of organized peoples with one another”.

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