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# REFRAMING VULNERABILITIES: GENDER AND CHILDHOOD IN ROHINGYA REFUGEE PROTECTION THROUGH INDIAN LENSES

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## ABSTRACT

This article interrogates the Rohingya refugee crisis through the lens of India's asylum architecture by defining the challenge for international protection and highlighting the compounded vulnerabilities faced by women and children. It traces the historical roots of Rohingya statelessness, beginning from Myanmar's 1982 Citizenship Act and subsequent waves of violence that forced mass displacement into Bangladesh, India, and Southeast Asia. This highlights India's shift from its traditional "strategic ambiguity" in refugee policy to rigid enforcement under the Foreigners Act, 1946, which classifies Rohingya as "illegal immigrants". This legal framing produces a "protection trap", where women and children face compounded vulnerabilities. These underscore gendered impacts, intimate partner violence, denial of education, detention, and exploitation in shadow markets. Judicial responses reveal a stark divide: while some courts affirm dignity and non-refoulement under Article 21, others defer to national security and executive discretion. The absence of a statutory refugee framework entrenches exclusion, undermines jus cogens norms, and erodes democratic credibility, leaving the Rohingya as "excess people". By centring gendered and childhood vulnerabilities, article argues that India's refugee policy fractures Rohingya lives through statelessness and denial of rights, exposing the limits of humanitarian protection in the region.

**Keywords:** Rohingya Refugee, Statelessness, Gendered Vulnerabilities, Childhood Vulnerabilities, Refugee Protection in India, Foreigners Act 1946, Non-Refoulement, Refugee Rights, Judicial Responses to Refugees, Humanitarian Protection.

*"The far-reaching and myriad protections afforded by Article 21 of our Constitution, as interpreted and adumbrated by our Supreme Court time and again, would indubitably encompass the right of non-refoulement... It may be noted that the concept of 'refoulement' encompasses not just the act of return but also the act of rejection at the frontier.... The Constitution of India enjoins the State to respect the right of an asylum seeker to seek protection from persecution and life- or liberty-threatening danger elsewhere."*

— *High Court of Manipur, Nandita Haksar v. State of Manipur (2021)*

## 1. INTRODUCTION TO ARCHITECTURE: HUMAN STORIES OF ROHINGYA REFUGEES IN INDIA

The Global Rohingya crisis was marked by unprecedented displacement, prolonged statelessness, and erosion and weakening of international protection and norms, and it finds one of its most acute and complex manifestations in the plight of the Rohingya people. The *United Nations and human rights organisations described them as the "world's most persecuted minority".<sup>1</sup>* The Rohingya have faced problems like *decades of systematic institutional discrimination, state-sponsored ethnic cleansing, and genocidal violence in their native Rakhine State of Myanmar.*

One million refugees are sheltered in Bangladesh, with others scattered across India, Malaysia, Thailand, and Indonesia. This type of crisis is fundamentally gendered and paediatric in nature. Women and children disproportionately suffer the immediate violence in Myanmar and the structural exclusion that follows in host countries. The result is not merely displacement; it is a crisis that fractures families, erodes futures, and compounds vulnerability.

The Indian society response marks a pivotal moment in its post-colonial refugee policy. As a democracy, India, the world's largest democracy, has not adopted the 1951 Refugee Convention or the 1967 Protocol and lacks a specific domestic refugee framework law. India has historically maintained a flexible "*ad hoc*" administrative approach, often termed "*strategic ambiguity*", to refugees, granting protection as a group, like Tibetans or Sri Lankan Tamils.<sup>2</sup> This "*strategic ambiguity*" allowed the state to extend beyond the humanitarian aid

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<sup>1</sup> United Nations High Commissioner for Refugees (UNHCR), *Rohingya Refugee Crisis Explained*, USA for UNHCR (2017), <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/>.

<sup>2</sup> *Madras High Court Establishes Civil Nature of Domestic Violence Proceedings*, Casemine (n.d.), <https://www.casemine.com/commentary/in/madras-high-court-establishes-civil-nature-of-domestic-violence->

without conceding the legal rights. The policy allowed the state to extend protection and humanitarian aid without conceding formal legal rights or binding obligations.

However, regarding the Rohingya, this ambiguity hardened into exclusion. In 2017, the Home Affairs Minister issued directives that classifying the Rohingya not as refugees but as "*illegal immigrants*" or "*intruder*" strips them of protection and subjects them to the full machinery of the *Foreigners Act, 1946*.<sup>3</sup>

That reclassification does more than change terminology; it strips individuals of humanitarian protections and exposes them to criminal penalties. The legal shift has severe, gendered consequences.

- **For women**, the intersection of statelessness and gender creates a unique "*protection trap*", where accessing legal remedies for sexual or domestic violence invites the risk of detention and deportation.
- **For children**, the denial of education and the threat of indefinite detention threaten to manufacture a "*lost generation*", severed from both their past heritage and their future potential.

India's policy choices therefore carry both immediate humanitarian costs and long-term social consequences. They shape who can access safety, justice, and opportunity and who remains excluded.

## 2. OBJECTIVE OF THE STUDY

The primary objective of this study is to critically examine the Rohingya refugee crisis through the prism of India's asylum architecture, with particular emphasis on the compounded vulnerabilities of women and children. By reframing the discourse around statelessness, gender, and childhood. The study seeks to –

- Highlight how India's legal framework, especially the Foreigners Act 1946, creates a

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*proceedings:-dr.-p.-pathmanathan-&-others-v.-v.-monica-&-another/view* (last visited Dec. 5, 2025).

<sup>3</sup> *Weakens the Moral Authority of the Judiciary: Former Judges, Senior Lawyers, Academics Push Back Against CJI Surya Kant's Comments on Rohingya Refugees*, Leaflet (n.d.), <https://theleaflet.in/leaflet-reports/weakens-the-moral-authority-of-the-judiciary-former-judges-senior-lawyers-academics-push-back-against-cji-surya-kants-comments-on-rohingya-refugees>.

“*protection trap*” for the Rohingya refugees.

- Explore the intersection of statelessness and gender, focusing on intimate partner violence, trafficking, and denial of maternal and reproductive rights.
- Investigate the systemic exclusion of Rohingya children from education, healthcare, and protection laws, leading to the emergence of a “*Lost Generation*”.
- Assess judicial responses and their divergence between the humanitarian obligation and national security imperatives.
- Contribution to the broader discourse on refugee protection by situating India’s policies within international human rights norms and *jus cogens* principles.

### 3. RESEARCH METHODOLOGY

This research adopts a qualitative, interdisciplinary approach, combining doctrinal legal analysis with socio-legal perspectives. The methodology includes:

- **Doctrinal Analysis:** Examination of Indian constitutional provisions, statutory frameworks (*Foreigners Act, Protection of Women from Domestic Violence Act, Juvenile Justice Act, etc.*), and judicial pronouncements such as *Mohammad Salimullah v. Union of India* (2021) and *Nandita Haksar v. State of Manipur* (2021).
- **International Legal Frameworks:** Analysis of global refugee protection norms, including the 1951 Refugee Convention, the 1967 Protocol, and jurisprudence from the International Court of Justice (e.g., *The Gambia v. Myanmar*).
- **Secondary Sources:** Review of UNHCR reports, NGO documentation (2024–2025), and scholarly literature on statelessness, gendered vulnerabilities, and refugee rights.
- **Case-Based Human Stories:** Incorporation of narratives from Rohingya refugee settlements in India and Bangladesh to illustrate lived experiences of exclusion, violence, and resilience.

- **Comparative Lens:** Situating India's asylum practices against global standards and regional responses to refugee crises, highlighting gaps and divergences.

This methodology allows the study to move beyond abstract legal analysis, grounding the discussion in human-centred realities while interrogating the structural failures of refugee protection in India.

#### 4. HISTORICAL GENESIS OF STATELESSNESS: FROM CITIZENS TO "INTRUDERS"

For understanding the precarious position of Rohingya refugees in India today is most important. One must first dissect the historical mechanisms that rendered them stateless. The status of the Rohingya is not an accident of history or divine intervention; it is the calculated result of decades of legislative exclusion and ethno-nationalist engineering.

##### 4.1. Who are the Rohingya?

The Rohingya are a Muslim ethnic minority from the Rakhine State of Myanmar, widely regarded as the world's most persecuted minority state. This Rohingya Muslim lived for centuries in predominantly Buddhist Myanmar (formerly Burma). That people on a large scale, despite living in Myanmar for many generations, are not officially or unofficially recognised as an official ethnic group and have been denied citizenship.<sup>1</sup> Myanmar's 1982 Citizenship Act effectively stripped and excluded the Rohingya from the list of "*National Race*" (*Taingyintha*), rendering them foreigners in their own land. The law reclassified them as foreigners – often labelled "*resident foreigners*" or "*illegal Bengalis*" – and created one of the world's largest stateless populations, **estimated globally at some 2.8 million people.**<sup>4</sup>

Statelessness for Rohingya families removes basic protections. Rohingya families face heightened risk of exploitation, sexual and gender-based violence, and trafficking. Repeated waves of violence and abuse, most notably in 2012, 2016, and the mass exodus of 2017, forced hundreds of thousands to flee. Bangladesh received the largest influx in Cox's Bazar; tens of thousands crossed into India through porous borders in the Northeast and West Bengal.<sup>1</sup>

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<sup>4</sup> Jason Mills, *Behind the Wire* 3 (Aug. 2024).

## 4.2. The 2017 Exclusion & Demographic Reality

This *de jure* statelessness laid the groundwork for decades of state-sponsored discrimination, culminating in the "*clearance operations*" of 2017. The August 2017 clearance operation marked a brutal escalation. Following attacks by the *Arakan Rohingya Salvation Army (ARSA)*, the Myanmar military launched a brutal crackdown, which the UNHRC termed a "*textbook example of ethnic cleansing*".<sup>5</sup> This operation forced over 740,000 Rohingya people (half of them children, as per the UNHCR REPORT) to flee across the Naf River into Bangladesh, joining those displaced by earlier waves of *genocidal violence* in 1978, 1991, 2012, and 2016.<sup>6</sup>

The demographic reality of the Rohingya population and the state's security-centric response are profound. In Bangladesh's Cox's Bazar, the largest refugee settlement in the world,<sup>1</sup> more than half of the refugees are children, and a significant majority of adults are women. In India, a significant portion of the 22,500 UNHCR-registered Rohingya are women and children.<sup>7</sup>

## 4.3. Clash of Narratives

States often frame the Rohingya as a security problem. Framing ignores the specific population's protection needs. Many are survivors of sexual violence, trafficking, and severe paediatric trauma.

In India, the failure of existing laws meant to safeguard vulnerable groups to function. Rohingya women are trapped in a legal paradox where statuses designed for their protection, such as the *Protection of Women from Domestic Violence Act, 2005*, are rendered practically inaccessible by the overarching threat of detention under the *Foreigners Act*. Similarly, the Rohingya children exist in a liminal space, legally entitled to the rehabilitative care of the *Juvenile Justice Act, 2025*, yet frequently subjected to the carceral machinery of adult immigration detention or denied access to formal education.<sup>8</sup>

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<sup>5</sup> *Raushan Tara Jaswal v. Union of India*, Diary No. 29453/2017 (Sup. Ct. India Sept. 15, 2017).

<sup>6</sup> Human Rights Watch, *Are We Not Human? Denial of Education for Rohingya Refugee Children in Bangladesh* (Dec. 3, 2019), <https://www.hrw.org/report/2019/12/03/are-we-not-human/denial-education-rohingya-refugee-children-bangladesh>.

<sup>7</sup> Global Detention Project, *India* (n.d.), <https://www.globaldetentionproject.org/countries/asia-pacific/india> (last visited Dec. 19, 2025).

<sup>8</sup> Refugees International, *A Lifetime in Detention: Rohingya Refugees in India* (Dec. 15, 2022), <https://www.refugeesinternational.org/reports-briefs/a-lifetime-in-detention-rohingya-refugees-in-india/>.

## 5. THE SHIFT OF INDIAN ASYLUM ARCHITECTURE

India's response to the Rohingya crisis departs sharply from its past practice. The state has turned a flexible, case-by-case approach into a hardline enforcement regime. That shift relies on legal tools repurposed to exclude rather than protect.

### 5.1.Strategic ambiguity & Foreigners Act

For decades, India has been known for hosting Tibetans, Afghans, and Sri Lankan Tamils. It was always executive-driven rather than law-driven. The "*strategic ambiguity*" allowed the government to respond to each group based on foreign policy interests. For the Rohingya, this ambiguity has been replaced by a rigid enforcement of the *Foreigners Act, 1946*.

Since 2017, the *Foreigners Act* vests the Central Government with absolute powers to detain and deport foreign nationals. Many Rohingya lack identity documents after Myanmar stripped their citizenship, so they cannot meet formal entry requirements.

The Ministry of Home Affairs directives to state governments to identify and deport "*illegal immigrants*", explicitly naming the Rohingya. This directive strips them of protection and subjects them to criminal law. This policy shift effectively criminalises the act of seeking asylum.

### 5.2.Paradox of Protection Laws

This hostile immigration framework creates a "*protection trap*". Where domestic laws are meant to safeguard vulnerable groups but fail to function because they are superseded by the *Foreigners Act*.

- **Women:** Rohingya women are trapped in a legal paradox, where statutes designed for their protection, such as the *Protection of Women from Domestic Violence Act, 2005* (PWDVA), are rendered practically inaccessible by the overarching threat of detention under the *Foreigners Act*.

This policy mix transforms humanitarian need into a security problem. It denies access to justice, interrupts recovery, and entrenches statelessness across generations.

## 6. GENDER VULNERABILITIES: SILENT CRISIS OF ROHINGYA WOMEN

Rohingya women face the harshest impact of displacement. They are shaped by the twin traumas of sexual violence, trafficking, and mass rape, used as a weapon in Myanmar, and the risk of exploitation in Myanmar and host countries.

The concept of “*Gendered Vulnerability*” in this context extends beyond the biological sex to encompass the social, legal, and economic structures that disproportionately disadvantage women who become, in the present, past, and future periods, both stateless and displaced.

### 6.1. Firewall Gap: Between Domestic Violence and State Protection

The Indian protection landscape is the existence of the “*Firewall Gap*”. India lacks a policy firewall between the service providers and immigration enforcement. The service providers, like the police, healthcare, and courts, can share immigration information with the enforcement authorities.

In many jurisdictions globally, “*firewall*” policies prevent police from asking about immigration status when a victim reports a crime, ensuring that protection remains accessible. In India, no such firewall exists.

*“India cannot claim the mantle of a humanitarian refuge while simultaneously criminalising the very women who seek protection under its domestic violence and anti-trafficking laws. Statelessness should never be weaponised against survivors of abuse.” — Deewanshi Vats, Geneva Academy of International Humanitarian Law and Human Rights<sup>9</sup>*

In India, Rohingya women face high levels of *Intimate Partner Violence (IPV)*. The stress of displacement, the loss of traditional male livelihoods, and the cramped, unhygienic living conditions in slums in the biggest cities in India, like Delhi, Haryana, or Hyderabad, often manifest as hunts by their family units.<sup>10</sup> In Consequences, the survivors who report abuse risk

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<sup>9</sup> Deewanshi Vats & Alanah Vargas (eds.), *From Haven to Hostility: India’s Changing Immigration Policy on Rohingya Refugees*, Geneva Acad. of Int’l Humanitarian L. & Hum. Rts. (June 10, 2025), <https://www.jurist.org/commentary/2025/06/from-haven-to-hostility-indias-changing-immigration-policy-on-rohingya-refugees/>.

<sup>10</sup> Mixed Migration Centre, *Protection Risks for Rohingya Women and Children from Departure Country to Arrival in Malaysia* (Mar. 2022), [https://mixedmigration.org/wp-content/uploads/2022/03/218\\_Protection\\_risks\\_for\\_Rohingya\\_women\\_and\\_children\\_from\\_departure\\_country\\_to\\_arrival\\_in\\_Malaysia.pdf](https://mixedmigration.org/wp-content/uploads/2022/03/218_Protection_risks_for_Rohingya_women_and_children_from_departure_country_to_arrival_in_Malaysia.pdf).

detention and deportation. Service providers hesitate to act. Abusers exploit undocumented status to silence victims. The absence of a firewall turns protections into traps.

## 6.2. Reporting Paradox

The *Protection of Women from Domestic Violence Act, 2005 (PWDVA)* is a progressive piece of legislation applicable to “*any women*” in a domestic relationship in India, including children (any person below 18 years of age includes any adopted or step). Here any woman who is, or has been, in a domestic relationship with the respondent, “*the spouse or the family members*”, and who alleges to have been subjected to any act of domestic violence by the respondent. This type, irrespective of citizenship, has its practical applicability for Rohingya women nullified by a structural failure known as the “*Firewall Gap & Reporting Paradox*”.

*“The protection of women from domestic violence is a civil remedy. Yet, when the applicant is a foreigner without valid papers, the spectre of criminal liability under the Foreigners Act looms large. This contradiction silences the very women the law was meant to empower.” — Madras High Court, 2020<sup>11</sup>*

To access relief under the *Domestic Violence Act, 2005*, for such protection orders, residence orders, or maintenance from the family, a woman needs to approach the police officers or the magistrate. In practice, there is a fear of revealing identity.

- **Identity Documentation:** Rohingya women often lack valid visas or passports. Her UNHCR refugee cards are not being recognised as a valid identity for the residency, local police, or courts for legal proceedings against respondents.
- **Risk of Detention:** If the woman approaches the police or the magistrate for her complaint or to report domestic abuse, she must reveal her identity and status. In the absence of a “*Firewall*” policy that separates immigration enforcement from criminal justice services, the police are mandated by the *Foreigners Act* to arrest her as an “*illegal immigrant*”.<sup>12</sup>

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<sup>11</sup> *Dr. P. Pathmanathan v. Tmt. V. Monica*, 2020 SCC OnLine Mad 3273 (Madras HC) <https://indiankanoon.org/doc/66169208/>.

<sup>12</sup> Refugee Law Initiative, *The Rohingya Refugee Crisis: International Justice and Rethinking Solutions*, Sch. of Advanced Study, Univ. of London (Feb. 4, 2020), <https://rli.blogs.sas.ac.uk/2020/02/04/the-rohingya-refugee-crisis-international-justice-and-rethinking-solutions/>.

This paradox effectively silences survivors and grants impunity to abusers, who often use the woman's illegal status as a tool of coercion and control. The choice is stark: endure severe domestic abuse or face detention, separation from children, and potential deportation to a country where she faces genocide.

Unlike other countries' policies, there is no such safeguard, where **"firewall"** policies prevent police officials from sharing the data about the victim women with the immigration enforcement directory.

### 6.3. Judicial Ambiguity: Civil Rights versus Criminal Liability

The judiciary attempted to navigate this **"legal conflict"**, but the ambiguity remains present. The Madras High Court, *Dr P. Pathmanathan v. Tmt. V. Monica (2020)*, clarified that proceedings under the DV Act are essentially civil in nature, designed to provide remedies rather than punishments.<sup>2</sup> Held that a petition under sec 482 of CrPC (to quash criminal proceedings) is not maintainable against a DV Act case because the Act is civil.<sup>13</sup>

This distinction does not immunise an undocumented application and applicant from the concurrent criminal liability of the illegal entry under the *Foreigners Act*. Even if a magistrate grants a protection order under this act, the police can simultaneously arrest the applicant for being an illegal foreigner.

## 7. SHADOW MARKETS: TRAFFICKING AND SURVIVAL SEX

The economic destitution faced by the Rohingya women in countries like India, Bangladesh, and Malaysia, coupled with the denial of the right to work, has given rise to the **"Shadow Markets of Protection"**. These informal economies and unregulated factors step in to regulate women's lives in the absence of state accountability, often leading to severe exploitation.<sup>14</sup>

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<sup>13</sup> *Madras High Court: Petition under Section 482 CrPC Challenging a Proceeding under Section 12 of the DV Act Is Not Maintainable*, SCC Online Blog (Nov. 25, 2022), <https://www.scconline.com/blog/post/2022/11/25/madras-high-court-petition-under-section-482-crpc-challenging-a-proceeding-under-section-12-of-the-dv-act-is-not-maintainable-legal-research-legal-news-updates/> (last visited on Dec. 5, 2025).

<sup>14</sup> Irshad Khan, *Rohingya Women and the Shadow Markets of Protection: A Study of Gendered Vulnerability in South and Southeast Asia*, ResearchGate (n.d.), [https://www.researchgate.net/publication/395872075\\_Rohingya\\_Women\\_and\\_the\\_Shadow\\_Markets\\_of\\_Protection\\_A\\_Study\\_of\\_Gendered\\_Vulnerability\\_in\\_South\\_and\\_Southeast\\_Asia](https://www.researchgate.net/publication/395872075_Rohingya_Women_and_the_Shadow_Markets_of_Protection_A_Study_of_Gendered_Vulnerability_in_South_and_Southeast_Asia) (last visited on Dec. 5, 2025).

### 7.1. Trafficking Corridors and Digital Recruitment

A sophisticated network of human traffickers operates between the camps in Bangladesh and destinations in India, via West Bengal and the Northeast, and onwards to Malaysia via high-risk maritime routes. Now use social media and messaging apps to recruit women with false job offers by promising dignity and pay.

Recent data from 2024 NGO reports indicates a disturbing shift in trafficking methodologies:

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- **Target Destinations:** Victims are led into sex trafficking rings in major Indian cities such as Delhi and Pune. Serving as a transit point where women are transported through containers for destinations in the Middle East and Western countries.
- **Pretext of Marriage:** Rohingya girls are frequently trafficked under the pretext of marriage. In the absence of legal protections, these arrangements often descend into domestic servitude or sexual slavery.

### 7.2. Survival Sex as an Economic Necessity

In the refugee camps in Bangladesh and some urban slums in India, destitute women often resort to “*survival sex*”, trading sex for food, housing, medicine, or debt repayment. This is not merely a social illness but a direct consequence of policy exclusion that denies refugees the right to work and earn a dignified livelihood.

From the ground base reports, it was indicated that women who have lost male guardians or are heads of households are particularly vulnerable. Local powerbrokers, landlords, or even the community leaders may exploit this vulnerability, demanding sexual favours in exchange for including the family on aid distribution lists or preventing eviction.

In 2024 an NGO report clarified that there is an increase in traffickers using social media and technology to recruit girls, including married or unmarried women, with false offers, leading

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<sup>15</sup> Marufa Akter, *Sexual/Gender-Based Camp Violence and Institutional Response Limits: Rohingyas in Bangladesh*, ResearchGate (n.d.), [https://www.researchgate.net/publication/360986773\\_SexualGender-Based\\_Camp\\_Violence\\_and\\_Institutional\\_Response\\_Limits\\_Rohingyas\\_in\\_Bangladesh](https://www.researchgate.net/publication/360986773_SexualGender-Based_Camp_Violence_and_Institutional_Response_Limits_Rohingyas_in_Bangladesh) (last visited Dec. 19, 2025).

them into sex trafficking rings in cities like Delhi, Pune, etc., cities in India, and they are transported through containers to the western and Middle Eastern countries.<sup>16</sup>

### 7.3. Forced Marriage as "False Protection"

Families often present early marriage as protection from sexual violence or to reduce economic burden. Early marriage removes girls from education and exposes them to early pregnancy and health risks and often places them in situations of domestic servitude or violence. The "*Shadow Market*" thus operates to commodify the bodies of Rohingya women and girls, trading their autonomy for a fragile sense of physical security.

## 8. MATERNAL AND REPRODUCTIVE RIGHTS: BIOPOLITICS OF EXCLUSION

Access to health care is not only a fundamental right under Article 21 of the Constitution but also a human right. As recognised by the SC in India in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*<sup>17</sup>. However, administrative rules and barriers systematically block and exclude Rohingya women and children from essential & health services. It includes maternal health services also, creating a regime of "*biopolitical exclusion*" that endangers lives.

### 8.1. Documentation Barriers in Public Health

Now, public hospitals are increasingly making mandatory the *requirements of an Aadhar card or any other national identity document for admission or to access great subsidised maternal health schemes like Janani Suraksha Yojana*, launched in 2005 to reduce maternal and neonatal mortality by promoting institutional deliveries among poor pregnant women. It provides cash assistance and post-delivery care, with ASHA workers acting as the link between families and health services.

But UNHCR cards are frequently rejected by hospital administrators who fear legal repercussions for treating "*illegal immigrants*". The Rohingya women, being stateless and undocumented, are excluded from accessing the *Janani Suraksha Yojana benefits*. This administrative violence effectively bars one of the most vulnerable populations from life-

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<sup>16</sup> U.S. Dep't of State, *State Reports* (n.d.), [https://www.state.gov/page/60/?post\\_type=state\\_report](https://www.state.gov/page/60/?post_type=state_report) (last visited Dec. 19, 2025).

<sup>17</sup> *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, AIR 1996 SC 2426; (1996) 4 SCC 37 (India).

saving care.

## 8.2. Consequences of Maternal Mortality and Morbidity

Lack of access to institutional healthcare forces many Rohingya women to give birth in unhygienic conditions without skilled medical assistance, exacerbating health risks.

In the Bangladesh view, the fear of detention leads many Rohingya women to avoid public hospitals entirely. Consequently, a significant number of births occur in unhygienic conditions within the slums or camps, assisted only by traditional midwives or untrained relatives.<sup>18</sup>

The United Nations Human Rights Committee's 2024 review of India expressed specific concern over these legal and policy barriers to sexual and reproductive health services for refugees.

The denial of reproductive care is particularly egregious given the history of sexual violence many of these women faced in Myanmar, leaving them with complex physical and psychological trauma that requires specialised medical attention.<sup>19</sup>

## 9. Children's Vulnerability: A Generation in Limbo

Rohingya children stand at the sharpest edge of displacement. They inherit statelessness, violence, and exploitation. They are the **"Lost Generation"**, systematically deprived of the tools to build a future.

**India's treatment of Rohingya children reveals a profound conflict:** the state's duty to care for minors versus its desire to police borders. Domestic laws and international conventions mandate that all children within its borders, regardless of their nationality or origin or immigration status, must be treated with the priority given to their *"best interests"* and provided basic care and protection.

Law provides a legal mechanism to use and handle unaccompanied or separated minors, typically placing them in state-run children's homes. But the government views the

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<sup>18</sup> World Health Organization (WHO), *Cox's Bazar Rohingya Emergency Crisis Situation Report, October 2024* (Oct. 2024), <https://www.who.int/bangladesh/publications-detail/who-cox-s-bazar-rohingya-emergency-crisis-situation-report-october-2024>.

<sup>19</sup> Global Centre for the Responsibility to Protect (GCR2P), *Myanmar Q&A V2* (n.d.), <https://www.globalr2p.org/publications/myanmarqav2/> (last visited Dec. 19, 2025).

classification of Rohingya as *"illegal immigrants"* rather than refugees. The state's imperative to police its borders and manage national security sometimes clashes with the duty of care, leading to policies of detention and potential deportation.

### 9.1. Denial of Education: Erasure of Potential

The right to education is recognised internationally. Article 28 of the *Convention on the Rights of the Child* (UN General Assembly), the *Right of Children to Free and Compulsory Education Act, 2009*, and Article 21A of the Constitution recognised that the right to education is a basic and fundamental right for all children. However, reality for Rohingya children involves systematic exclusion and policy incoherence.

- **Indian “Aadhaar” Wall:** Admission to government schools is contingent on documentation that Rohingya families cannot provide. Schools routinely demand Aadhaar cards, ration cards, or bank account details for admission, requirements that stateless refugees cannot meet. Which was demanded from the basic classes. At this point, the refugees cannot obtain this document or provide these documents. While UNHCR cards were previously accepted in some states, recent trends in 2024–2025 show a sharp regression. Directives in states like Delhi have explicitly instructed schools not to admit Rohingya children, citing their status as *“illegal migrants”*.<sup>20</sup> This led to the denial of admission for at least 18 children in Delhi.<sup>21,22</sup>
- **Supreme Court Intervention:** In 2025, it ordered the admission of Rohingya children, but implementation remains stalled due to bureaucratic hostility, and it directed that *“all Rohingya children should be granted admission to educational institutions, free of cost.”*<sup>23</sup>
- **Implementation Stalled:** While the order is a legal victory, implementation is stalled

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<sup>20</sup> *Rohingya Refugees in India*, Wikipedia (n.d.), [https://en.wikipedia.org/wiki/Rohingya\\_refugees\\_in\\_India](https://en.wikipedia.org/wiki/Rohingya_refugees_in_India).

<sup>21</sup> *Keeping Rohingya Children Out of Schools Is a Denial of Basic Rights*, IndiaSpend (Mar. 21, 2018), <https://www.indiaspend.com/education-check/keeping-rohingya-children-out-of-schools-is-a-denial-of-basic-rights-942760> (last visited on Dec. 10, 2025).

<sup>22</sup> *Education: Rohingya Refugee Children in India Schools*, Guardian (Nov. 26, 2024), <https://www.theguardian.com/global-development/2024/nov/26/education-rohingya-refugee-children-india-schools>.

<sup>23</sup> *Despite Supreme Court Orders, Constitutional Guarantees, Rohingya Refugee Children in Jammu Denied Education*, Article 14 (Sept. 27, 2021), <https://article-14.com/post/despite-supreme-court-orders-constitutional-guarantees-rohingya-refugee-children-in-jammu-denied-education--68dca35e2704a> (last visited on Dec. 10, 2025).

by bureaucracy. Schools demand “*Transfer Certificates*” or affidavits that parents cannot provide. The hostility of local administration, fuelled by the “*intruder*” narrative, means that even with a Supreme Court order, the school gate remains closed for many.

## **9.2.Violation: Indefinite Detention and Family Separation**

The detention of Rohingya children in India represents one of the most egregious violations of rights. It directly contravenes both domestic law and international obligations.

The *Juvenile Justice Act, 2015*, requires that children in conflict with the law or in need of care and protection must be placed in observation or shelter homes, never in prisons or adult detention centres. The Act applies to every child in India, regardless of nationality or legal status.

Despite these clear legal mandates, Rohingya children are frequently detained in “*holding centres*”, often converted prisons, such as in Hiranagar, Jammu, along with adults. Placing minors alongside adult detainees collapses the distinction between vulnerable children and criminal offenders. This systemic failure erodes the very foundation of child protection law.

2024-25 reports indicate that children are often forcibly separated from their parents during detention drives—a violation of India’s model detention code, which states, “***Families should not be separated.***”

Immigration detention has no fixed term. Children grow up behind bars, denied access to formal schooling, play, and socialisation. Some children detained as infants have never experienced life outside a detention centre. This constitutes a gross violation of the “*best interests of the child*” principle enshrined in the *Convention on the Rights of the Child (CRC)*.

## **9.3.Child Marriage and Labour**

In Bangladesh’s camps, the lack of educational and livelihood opportunities drives high rates of child labour and child marriage.

The *CPSS Situation Analysis Report 2024* found that 34% of respondents were aware of child marriage. Poverty 17.89% and the desire to “secure” a daughter's future in an unsafe

environment (7.11%).<sup>24</sup> Girls are often married off to older men or traffickers posing as suitors, believing it is their only escape from the misery of the camps.

With adults barred from legal employment in both India and Bangladesh, children are pushed into work in hazardous conditions—rag-picking, construction, or domestic work—to supplement family income. This condition exposes them to exploitation, abuse, and health hazards.<sup>25</sup>

## 10. BATTLE FOR RIGHTS IN COURTS

The struggle for the refugees' rights unfolds in courtrooms from New Delhi to The Hague. These cases expose a deep divergence between the international human rights norms that prioritise the protection of individuals, while national security frameworks elevate the sanctity of borders.

Indian jurisprudence shifted dramatically between 2021 and 2025. The Supreme Court of India, once a guardian of human rights, increasingly adopted the executive's securitised language, **viewing refugees through the lens of "intrusion" rather than "asylum"**.

### 10.1. International Jurisprudence: *The Gambia v. Myanmar* (ICJ)

The International Court of Justice marked a watershed for accountability in the Rohingya genocide, establishing precedents on *gendered violence*. At first, a state without a direct connection to the crimes invoked the *Genocide Convention*, relying on obligations owed *erga omnes* to the international community.<sup>26</sup>

In 2020, the ICJ unanimously ordered Myanmar to prevent genocide, preserve evidence, and

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<sup>24</sup> Centre for Peace & Soc. Studies (CPSS), *Situation Analysis Report 2024* (Oct. 2024), <https://rohingyaresponse.org/wp-content/uploads/2024/10/CPSS-Situation-Analysis-Report-2024.pdf>.

<sup>25</sup> Raushan Tara Jaswal, *Rohingya Women and the Shadow Markets of Protection: A Study of Gendered Vulnerability in South and Southeast Asia*, ResearchGate (2024), [https://www.researchgate.net/publication/395872075\\_Rohingya\\_Women\\_and\\_the\\_Shadow\\_Markets\\_of\\_Protection\\_A\\_Study\\_of\\_Gendered\\_Vulnerability\\_in\\_South\\_and\\_Southeast\\_Asia](https://www.researchgate.net/publication/395872075_Rohingya_Women_and_the_Shadow_Markets_of_Protection_A_Study_of_Gendered_Vulnerability_in_South_and_Southeast_Asia) (last visited on Dec. 10, 2025).

<sup>26</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (The Gambia v. Myanmar), Application Instituted, Nov. 11, 2019 (I.C.J.), <https://www.icj-cij.org/case/178>. Human Rights Watch, *Developments in Gambia's Case Against Myanmar at the International Court of Justice* (Feb. 14, 2022), <https://www.hrw.org/news/2022/02/14/developments-gambias-case-against-myanmar-international-court-justice>. Am. Soc'y of Int'l Law (ASIL), *Insights: Volume 26, Issue 9* (2022), <https://www.asil.org/insights/volume/26/issue/9>.

report on compliance. Crucially, the court recognised the Rohingya as a protected group under the Genocide Convention, **rejecting Myanmar's narrative that they are merely "illegal Bengali immigrants"**.<sup>27</sup>

The Court and supporting interventions (by Canada, the Netherlands, the UK, etc.) have explicitly recognised *sexual and gender-based violence* as a constitutive act of genocide. The "*biological destruction*" of the group through mass rape and the prevention of births was a key argument accepted by the Court as evidence of genocidal intent.<sup>28</sup> Enforcement remains weak; displacement continues, and safe repatriation has not materialised.

## 10.2. Watershed: Mohammad Salimullah v. Union of India (2021)

Represents the crumbling of the refugee protection firewall. Two Rohingya petitioners sought protection against deportation to Myanmar, where persecution was certain. The Supreme Court refused to stay the deportation and relied on a restrictive interpretation of fundamental rights.

- **Art 19 v. Art 21:** The Court held *"the right not to be deported is ancillary or concomitant to the right to reside or settle in any part of the territory of India guaranteed under Article 19(1)(e)"*.<sup>29</sup>
- **Non-Refoulement:** The court explicitly noted that since India is not a signatory to the *United Nations Convention on the Status of Refugees 1951 ("1951 Convention")*<sup>30</sup> and/or to the *Protocol of the year 1967 ("1967 Protocol")*,<sup>31</sup> the principle of non-refoulement is not binding on the Indian state, despite arguments that it constitutes customary international law.
- **Sealed Covers:** The court accepted the government's sealed cover claims of terror links

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<sup>27</sup> *International Court to Rule on Rohingya Genocide Safeguards*, Guardian (Jan. 23, 2020), <https://www.theguardian.com/world/2020/jan/23/international-court-to-rule-on-rohingya-genocide-safeguards>.

<sup>28</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (The Gambia v. Myanmar), Judgment on Preliminary Objections, July 22, 2022 (I.C.J.), <https://www.icj-cij.org/index.php/node/203299>.

<sup>29</sup> *Supreme Court on Rohingya Deportation: Legal and Constitutional Perspective*, Usthadian (2021), <https://www.usthadian.com/supreme-court-on-rohingya-deportation-legal-and-constitutional-perspective/>.

<sup>30</sup> United Nations High Commissioner for Refugees (UNHCR), *The 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees* (1951 & 1967; reissued May 2024), <https://www.unhcr.org/media/1951-refugee-convention-and-1967-protocol-relating-status-refugees>.

<sup>31</sup> United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (reissued Dec. 2011) <https://www.refworld.org/docid/4ec4a7f02.html>.

without requiring evidence against the individual refugees, signalling deference to executive discretion in the name of "*National Security*".

The order legitimised deportation policy, emboldened state agencies, and created a climate of fear, leading refugees to withdraw from public services to avoid identification and detention.

### 10.3. High Court of Manipur: Nandita Haksar v. State of Manipur (2021)

In contrast, the Manipur High Court delivered a progressive judgement on refugee rights in India. Held that while Article 19 rights are restricted to citizens, *Article 21 extends to all persons, including non-citizens.*

The court read the principle of *non-refoulement* into Article 21, holding that it "*enjoins the State to respect the right of an asylum seeker to seek protection from persecution and life- or liberty-threatening danger elsewhere.*"<sup>32</sup> The Court granted safe passage to refugees seeking UNHCR, distinguishing "*migrants*" and "*asylum seekers*" based on the threat to life.

### 10.4. Hardening Stance: Rita Manchanda v. Union of India (2024-2025)

Filed a *Habeas Corpus* writ petition by rights activist Rita Manchanda regarding the disappearance of five Rohingya refugees from the custody of the Delhi Police. The petitioner alleged that these individuals were picked up in May 2024 and their whereabouts were unknown, raising fears of secret deportation or extrajudicial action.<sup>33</sup>

The bench made a series of sharp oral observations that reveal the current judicial philosophy towards refugees, framing the refugee not as a subject of rights but as a competitor for scarce resources.

***"If an intruder comes, do we give them a red-carpet welcome, saying we would like to give you all facilities? What is the problem in sending them back?"***<sup>34</sup> This "*Red Carpet*" metaphor

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<sup>32</sup> *Breathing Life into Article 21: The Manipur High Court's Order on Refugee Rights and Non-Refoulement*, Indian Constitutional Law & Philosophy Blog (May 3, 2021), <https://indconlawphil.wordpress.com/2021/05/03/breathing-life-into-article-21-the-manipur-high>

<sup>33</sup> *Do We Give Them a Red Carpet Welcome?: SC Questions Maintainability of Plea on Illegal Deportation of Rohingya*, Hindu (Apr. 9, 2021), <https://www.thehindu.com/news/national/do-we-give-them-a-red-carpet-welcome-sc-questions-maintainability-of-plea-on-illegal-deportation-of-rohingya/article70349307.ece> .

<sup>34</sup> *SC Questions Rohingyas' Legal Status: Asks Why Should Intruders Get Red Carpet Welcome When Citizens Face Poverty*, Econ. Times (Apr. 9, 2021), <https://m.economictimes.com/news/india/sc-questions-rohingyas-legal-status-asks-why-should-intruders-get-red-carpet-welcome-when-citizens-face->

is particularly telling of the demand for basic non-refoulement.

**"We have many poor people in the country. They have a right over the country's resources, not the illegal migrants."**<sup>35</sup> This zero-sum formulation pits the impoverished Indian citizen against the destitute refugee, delegitimising the humanitarian claim of the latter.

**"Where is the order of the Government of India declaring the Rohingya as refugees? 'Refugee' is a well-defined legal term... 'If there is no legal status of a refugee, and somebody is an intruder, and he enters illegally, do we have an obligation to keep that fellow here?'"**<sup>36</sup>

By demanding a government order to recognise refugees' status.

Court reinforced the 'dualist trap': without domestic law or executive order, refugees lack legal recognition and are treated as intruders. Its refusal to issue notice to the government and adjournment of habeas corpus hearings reflected reluctance to extend liberty protections to non-citizens.

## 11. CONCLUSION: CRISIS OF PROTECTION AND IMPERATIVE OF LAW

Justice Bhagwati once observed, "The right to life does not merely mean animal existence but includes the right to live with human dignity."<sup>37</sup>

Protection of refugees exposes a stark dissonance between constitutional guarantees and executive practice in India. Article 21 extends a wide umbrella of "life and liberty" protection to all individuals on Indian soil. The *Foreigners Act* and the political rhetoric of national security repeatedly puncture that promise, leaving the most vulnerable unprotected.

For women the "**Firewall Gap**" is a lethal policy. The absence of safeguards against domestic and sexual violence forces them into cycles of violence, detention, and deportation. In response, the administrative must provide and create "**shadow markets of protection**", bartering their safety and autonomy for survival in hostile environments.

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poverty/articleshow/125716421.cms .

<sup>35</sup> *If an Intruder Comes, Do We Give Them a Red Carpet Welcome?: CJI Surya Kant on Rohingyas*, Wire (Apr. 9, 2021), <https://thewire.in/law/if-an-intruder-comes-do-we-give-them-a-red-carpet-welcome-cji-surya-kant-on-rohingyas>.

<sup>36</sup> *Supreme Court Questions 'Red Carpet' for Rohingya amid Plea on Missing Detainees Case*, Telegraph India (Apr. 9, 2021), <https://www.telegraphindia.com/india/supreme-court-questions-red-carpet-for-rohingya-amid-plea-on-missing-detainees-case-prnt/cid/2135913>.

<sup>37</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (India).

Children face an even grimmer reality. Denied education, detained, and stripped of nationality, they form a *“lost generation”*. This blatant violation of the *Juvenile Justice Act* in India underscores the collapse of the rule of law when applied to non-citizen children.

Jurisprudence mirrors this reality. Judgements represent the *“constitutional conscience”*, affirming that dignity cannot be tied to citizenship and that the principle of non-refoulement is an integral part of the right to life. In contrast, the proceedings reflect the *“sovereign anxiety”*, privileging borders over human dignity and deferring to executive discretion.

Without a statutory framework for refugees, the Rohingya remain the *“excess people”*: unwanted, unprotected, and unable to return. Ignoring their gendered and paediatric vulnerabilities is not just a humanitarian oversight. It is a systemic violation of the *jus cogens* norms and a stain on the democratic credentials of the host states.