



**DESTINIES UNDER DETENTION- A  
CASE FOR THE RIGHT TO  
DIGNITY & HUMANE TREATMENT  
Of ROHINGYA REFUGEES IN INDIA**

**A Report by Rita Manchanda  
and Manahil Kidwai**

**July 2024**

**TABLE OF CONTENTS**

<b>Sl. No.</b>	<b>Particulars</b>	<b>Page No.</b>
1.	Table of Authorities	2
2.	Executive Summary	4
3.	Methodology	6
4.	Introduction	7
5.	Indefinite Detention of Rohingyas in New Delhi	8
6.	The Case Study of Shadiya Akhtar - Sister of Sabera Khatoon	8
7.	The Morning of Abrupt Detentions	9
8.	A Pick & Choose Method	13
9.	Complete Disregard and Violation of the Prevailing Law	14
10.	Standard Operating Procedure (SoP) dated 20.03.2019	15
11.	Conditions Inside the Shahzada Bagh Detention Centre in New Delhi	20
12.	Key Findings	20
13.	Health	20
14.	The Death of a 19 year old in March, 2024 at Shehzadabad Detention Centre	22
15.	Food and Nutrition	23
16.	WASH Facilities	24
17.	Other Basic Amenities	25
18.	Analysis on the Legalities of the Indefinite Detention of Rohingyas in the Shehzadabad Centre - A Violation of Indian Laws as well as International Human-Rights Laws	35
19.	Pendency and Delay in Procedures	36
20.	Arbitrary Detention and India's International Commitments	36
21.	Conclusion & Way Forward	37

## Table of Authorities

### Cases

1. DK Basu v. State of West Bengal & Ors. 1997 6 SCC 6422
2. Dongh Lian Kham & Anr v Union of India and Anr 2015 SCC OnLine Del 14338
3. Hussainara Khatoon & Ors (IV) v. Home Secretary, State of Bihar; 1980 1 SCC 98
4. Maneka Gandhi v. Union of India, 1978 SC 59
5. Mohammad Salimullah and Another v. Union of India and Others; 2021 SCC OnLine SC 296
6. National Human Rights Commission vs. State of Arunachal Pradesh & another 1996 1 SCC 742
7. Sabera Khatoon vs Foreign Regional Registration Office & Ors 2023
8. Senora Begum v Union of India (WP(C) 6727 of 2023

### Laws/Statutes/Manuals

1. Bangkok Principles on Status and Treatment of Refugees
2. Citizenship Act, 1955
3. Code of Criminal Procedure 1973
4. Constitution of India
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
6. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
7. Convention on the Elimination of All Forms of Racial Discrimination (CERD)
8. Convention on the Rights of the Child (CRC)
9. Foreigners Act 1946
10. Foreigners Order 1948
11. Global Compact on Refugees.
12. International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)
13. International Covenant on Civil and Political Rights (ICCPR)
14. Model Detention Manual 2019
15. Prison Manual 2016
16. United Nations Convention on the Rights of Persons with Disabilities (CRPD)
17. Universal Declaration of Human Rights (UDHR)

### Key Terms and Definitions

Foreigners- a person who is not a citizen of India

Detention- Depriving a person of his liberty against his will following arrest.

Genocide- the crime of intentionally destroying part or all of a national, ethnic, racial, or religious group, by killing people or by other methods.

Illegal Migrants- An illegal migrant is a foreigner who: (i) enters the country without valid travel documents, like a passport and visa, or (ii) enters with valid documents, but stays beyond the permitted time period.

Liberty- freedom from arbitrary and unreasonable restraint upon an individual. Freedom from restraint refers to more than just physical restraint, but also the freedom to act according to one's own will.

Refugee- someone who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality,

membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it".

Rohingya- A stateless Indo-Aryan ethnic group that predominantly follows Islam and were essential residents in the Rakhine State, Myanmar.

Trafficking in person- the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

### List of Abbreviations

DUSIB- Delhi Urban Shelter Improvement Board  
FRO- Foreigners Registration Office  
FRRO- Foreign Regional Registration Office  
LTV- Long Term Visa  
MCD- Municipal Corporation of Delhi

MEA- Ministry of External Affairs  
MHA- Ministry of Home Affairs  
RSD- Refugee Status Determination  
SoP- Standard Operating Procedures  
UN- United Nations  
UNHCR- United Nations High Commission for Refugees



## Executive Summary

The Rohingya refugee community has been marginalised and oppressed in Myanmar since decades. The discriminatory citizenship laws in Myanmar resulted in the loss of all citizenship documents for the Rohingya community. The Rohingyas in Myanmar continue to be restricted in the Rakhine State area which is an overall prison and labour camp for the Rohingya people living in Myanmar. In Rakhine state, the Myanmar military continues to detain and torture several Rohingyas without following any procedures of law. Several Rohingya women have witnessed their children, babies and infants being taken away from them, impaled on steel rods, thrown in fire pits and brutally murdered. Several Rohingya men have been tortured and women have been raped as sexual violence in Myanmar has been used as an instrument of intimidation in war by the Burmese military. The ongoing genocide against the Rohingya community has been termed as a “textbook example of ethnic cleansing” by the United Nations organization.

These dire circumstances of persecution have led Rohingyas to escape Rakhine state and reach various other countries in desperation to find safety and seek asylum. Their journeys entail swimming for hours, walking several kilometres, and surviving the worst forms of threat to their bodies, lives, and dignity. Rohingya women continue to fall victim to cross-border human trafficking through false promises of marriage and safety. Given their generational oppression and marginalisation, there is a lack of general awareness and standard education amongst the Rohingyas, making them more susceptible to abuse and exploitation.

In India, Rohingyas face a renewed isolation and disregard that is amplified with hate speeches against them alongside unsubstantiated claims by the Union of India that Rohingyas are a threat to national security. These factors have contributed to a general scepticism and a trust deficit against the Rohingyas within the common population in India. The most significant dent on the protection of the Rohingya community in India came on 08 April, 2021, when the Supreme Court of India passed an Order in the case of **Mohammad Salimullah and Another v Union of India and Ors. 2021 SCC OnLine SC 296** refusing the interim stay on the detention of Rohingyas in Jammu and allowing their deportation, subject to the process as established by law. This order escalated the detentions of Rohingyas across India in various “detention centres”. This report aims to document and analyse the procedures that were followed (and not followed) while detaining the Rohingyas across the country with a special emphasis on the Shehzada Bagh detention centre in New Delhi. It asserts that the Rohingyas were not served any notice prior to being detained and neither were they given an opportunity to present their cases before any Court of law. It is particularly observed that the detained Rohingyas’ claim for refugee status was not assessed before their detention orders were processed, which violates the procedure established with the 2019 Standard Operating Procedure circulated by the Union of India. Further, as several [Rohingyas were declared “de jure stateless”](#), they were not provided with identity documents in direct violation of the [Passport Rules of India](#). These circumstances have

pushed the Rohingyas to a state of indefinite detention which is unsustainable in law and inconsistent with their right to equality and their right to life and personal liberty as per the Constitution of India.

Additionally, this report aims to document and analyse the living conditions of the Rohingyas inside the detention centres, that were found to be inherently dehumanising towards the Rohingyas detainees. It is particularly worrying that the architecture of the detention centre has very limited exposure to sunlight and the Rohingyas are not provided with a regular supply of clean blankets, bedsheets and mattresses in the detention centre. There is no provision for clean drinking water inside the facility as the water coolers regularly stop working. The cleaning of the detention centre at Shehzada Bagh is done by the Rohingyas with no arrangements for getting them daily wages for the labour. Rohingyas have complained of unhygienic food that provides limited nutrition and inadequate medical facilities. These concerns have been intensified following the incident in 2024, when a young woman named Hamida, aged 19, died of unknown reasons. She was most probably one of those trafficked women who entered India as a minor and instead of being protected, she was punished with indefinite detention without sufficient care which caused her death.

Nearly every single Rohingya inside the detention centre complains of long-term medical complications, weakness, UTIs, and various other problems that remain undetected. A case in point is that one of the detainees, Ms. Shadiya Akhtar, (whose sister had approached the Delhi High Court on her behalf), who was hospitalised after the Orders of the Court and subsequently she was diagnosed with Hepatitis C. It was not until the Orders of the Supreme Court of India, Shadiya Akhtar was provided complete treatment for Hepatitis C. She was later cured of the Hepatitis. Similarly, in case of another Rohingya detainee at Shehzada Bagh, orders had to be obtained from the High Court of Delhi for the delivery of her baby in 2023 December. These interventions in the Courts contributed to the well-being and protection of young and vulnerable women detainees, yet in regular instances, minors like late Hamida (until 2023) lack necessary life-saving treatments contributing to either their deaths or loss of healthy lives. Discussion around the health situation in the detention centre remains of utmost importance, especially because the facilities house several children and their environment is found to be inconsistent with the requirements of developing a healthy childhood. The findings in the report are worrisome because they are in contradiction with the set standards and procedures established by the 2019 model detention guidelines, the prison manual and the Constitution of India and standards prescribed by the Courts in India. Needless to mention, the rights violations of the Rohingyas in India are also in utter disregard of its international legal obligations and standing within the international community. The country is a party to various international human rights law instruments including the Universal Declaration of Human Rights (UDHR), International Covenant of Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Child Rights Convention (CRC). India is also a signatory to the New York Declaration for Refugees and Migrants.

In summation, it is established from the facts presented in the report that the detention procedures being used by the administrative authorities to detain Rohingyas in India are inconsistent with the legal standards prescribed for this purpose. Their Refugee status claims are not processed within the prescribed time frame. That the [refusal of Myanmar to take back Rohingyas](#) is not noted, and further steps are not taken to provide identity documents to stateless persons in line with the Passport Rules. The detention centre conditions to which these Rohingyas are subject are also in violation of the detention manual rules. The inhuman and deplorable ways in which the persecuted community is cramped up in a small space with no specific regard to their particular vulnerabilities calls into question India's compliance with its domestic human rights standards, as well as its obligations under international laws. The report highlights and recommends that present laws, procedures, and practices be followed by the authorities in detaining Rohingyas and restricting their movement to detention centres, and that standards of detention be made conducive to the fundamental rights guaranteed by the Constitution of India and further reflected in International Human Rights Law.

### **Methodology**

The primary objective of this report is to document and analyse the series of arbitrary detentions of Rohingya refugees and their indefinite confinement across India, particularly at the Shehzada bagh detention centre, in the northwest suburb of New Delhi. The report also studies the living standards of the Shahzada Bagh and other detention centres. On the basis of these readings, the report asserts that the indefinite and arbitrary detention of Rohingyas in India, in an ad hoc, uneven, 'pick and choose' pattern is in violation of national and international legal standards including the Foreigner's Act, 1946, The Passports Act, 1929, the Constitution of India and various international human rights law instruments that India is a party to.

The research analysis is based on the primary data and notes collected by the authors from various group discussions and interviews of Rohingyas who are either detained at various detention centres, relatives of detained Rohingyas or are former detainees at the detention centres. Certain names have been changed to protect identity. The secondary sources for this publication include official documents circulated and published by the Union of India, documents submitted to various Courts by the Union of India, Ministry of Home Affairs, the Foreign Regional Registration Office (FRRO) and the Delhi Urban Shelter Improvement Board (DUSIB). The research also relies on various Court orders passed in the various High Courts of India and the Supreme Court of India. Additional information has been extracted from the various ground reports, policy briefs and other media reports that have been published regarding arbitrary detentions and the living conditions of Rohingya people at the various detention centres in India.

### **Introduction - Issue in context**

The Rohingya community are a group of people with Indo-Aryan origins, speaking the Ruigga language that is similar to Chittagonian Bengali. They have been historically marginalised and discriminated against in Myanmar. Several Rohingyas remain in indefinite captivity and detention without fair trial within Myanmar. There are several reports and videos of women being brutalised, raped and pushed into sexual slavery while men have been tortured and cruelly slaughtered in the bloody conflict in Myanmar. Children were impaled on steel rods and thrown into fires, adults were shot and villages were burnt by the Myanmar military. Rohingyas in [Myanmar](#) continue to face severe violence, particularly sexual and gender-based violence by the military, police and civilian mobs. Approximately 9,000 Rohingyas were brutally killed between 2016 and 2017. According to the United Nations Organisation, various other international organizations and the media, the situation of genocide against the Rohingyas in Myanmar has worsened since the 2021 Coup D'etat. The conditions in Myanmar remain dire and dangerous towards the Rohingya community who continue to flee the Rakhine State to escape brutal torture and certain death. The United Nations organisation has called the Rohingya refugee crisis, a **textbook example of [ethnic cleansing](#)**.

The Myanmar government and military have justified their actions, which include burning down Rohingya-populated villages and [drastic killing](#) of the Rohingya population, as necessary internal security measures. This displacement of Rohingya refugees has been a phenomenon for decades that began with the discriminatory policies of Myanmar regarding the rules of documentation for citizenship.

Following the armed conflict and genocide, several Rohingya groups fled to various countries including Bangladesh and India. According to the Indian Home Ministry and Reuters, an estimated [40,000 Rohingyas](#) sought asylum in India. In January 2019, UNHCR India acknowledged the presence of 18,000 Rohingyas who are [registered](#) as refugees. However, their rights as asylum seekers and refugees remain diminished due to the absence of a clear refugee policy in India amongst other factors.

The refugee camp in Madanpur Khadar in New Delhi houses approximately 50 families. The settlements do not have any ceilings, there are no doors, toilets, sanitation or hygiene [standards](#). The Rohingya community in general is a community that has been historically deprived of all social resources and benefits. Hence, naturally, the Rohingya women face a far greater degree of alienation and marginalisation within the community with regular instances of sexual and gender-based violence.<sup>1</sup> Physical and Mental health of the Rohingyas remains extremely vulnerable at all times. From having several kilometres to walk to reach schools or to even bring water, Rohingya women are particularly stressed. Apart from the usual sexual

---

<sup>1</sup>Priddy, G., Doman, Z., Berry, E., & Ahmed, S. (2022). Gender-Based Violence in a Complex Humanitarian Context: Unpacking the Human Sufferings Among Stateless Rohingya Women, *Ethnicities*, 22(2), 215-232.



and gender based challenges faced by women, there is an unimaginable amount of mental health stress within the community. Many researchers visiting Rohingya camps across the country including in New Delhi have been struck by the fact that, despite all their persisting problems, the Rohingya men, women and children were most haunted by fears of being taken away to detention centres and kept in confinement indefinitely.

### **Indefinite detention of Rohingyas in New Delhi**

The indefinite detention and confinement of the Rohingyas is a particularly important subject that requires attention. In general, there is no pattern in which Rohingyas are being picked up and detained in various detention centres across India. In Delhi particularly, these detentions have occurred on a “pick and choose” basis and without granting any chance to the Rohingyas to either present their cases or exercise their rights within the existing and set laws of India and the Constitution of India. In this report, the authors shall attempt to outline the facts and available data regarding the detention of Rohingyas in New Delhi, and across India and then analyse the arbitrariness of these detentions under the premise of the existing legal structures and obligations of India. The findings in the report conclude that the treatment of Rohingyas in the detention centres is not just arbitrary and illegal but also Rohingyas are being subjected to cruel and inhuman treatment that amount to torture. In conclusion, it is recommended that the procedures established by law are followed by the authorities in India while detaining the Rohingyas as well as in the treatment accorded to them generally across the country.

### **The case study of Shadiya Akhtar- Sister of Sabera Khaton**

Shadiya Akhtar is a 23 year old woman and is one of the Rohingyas from Delhi who has been indefinitely detained at the Shehzada Bagh detention centre.

Shadiya Akhtar had escaped the war and genocide in Myanmar and reached India in 2016. Upon reaching Delhi, she immediately approached the UNHCR and underwent the extensive refugee status determination (RSD) process to support her application for refugee status in India. Within about 3 months, Shadiya Akhtar was granted a refugee ID card by the UNHCR, which till date is her only ID document like most other Rohingyas refugees living in India. As per the rules and practice, Shadiya immediately reported to the Foreign Regional Registration Office (FRRO), submitted her biometrics and regularly marked her presence with them. She is one of the poorest and the most vulnerable of the Rohingyas living in Delhi. She lived in the Madanpur Khadar, Kalindi Kunj camp with her elder sister - Sabera Khaton for a year until in 2017 when she was married to a man living in Shram Vihar, Delhi. At Shram Vihar, she delivered a baby boy. She was a nursing mother when She was picked up on 24.03.2021 without any notice or chance to present her case before any authority.

### **The morning of abrupt detentions**

Most of the detentions usually occur very early in the morning. The pattern is similar in most cases. The refugees are called by the officials to appear before them in order to sign some papers. However, when the refugees appear to sign these papers, they are immediately picked up and detained.

In the case of Shadiya Akhtar, she was called early morning around 6:00 AM to meet officials near a metro station. She was told that she needed to sign some papers and the process shall take a few minutes. Therefore, hoping to return home soon, she left the breakfast she cooked and the water for tea boiling on the stove. Her 3 year old son was spending some time with his aunt - Sabera Khatoon. As Shadiya did not return, her neighbours informed Sabera, who rushed to her home. Shadiya had been picked up and detained by the Foreign Regional Registration Office. The boiling water that she had left on her stove overflowed and her infant 3 year old son was left behind who was crying for his mother. Shadiya was never presented before any Court. There was no complete medical evaluation done for her and neither did she receive copies of the paperwork of her detention.

Being generationally backward refugees, the Rohingyas do not know much about the laws of the country. They cannot speak, read or write English and can barely speak Hindi. Their signatures are often taken on papers in the absence of certified translators and without giving them a chance to present their own cases.

As per the detention order of Shadiya Akhtar, on the same day, five other Rohingyas were detained in similar arbitrary conditions. None of these Rohingyas were served any notice before being picked up and they were never given an opportunity to either present their case or seek legal aid, representation or relief. None of the detained Rohingyas were informed about the grounds of their arrest. They left behind their families, babies, belongings and everything else. Almost all the Rohingyas who were picked up along with Shadiya Akhtar have complained of severe health complications and even temporary paralysis.

The case of Shadiya Akhtar is particularly relevant in the context because her elder sister- Sabera Khatoon had filed a habeas corpus petition in the High Court of Delhi along with prayers seeking medical attention, provision of basic amenities including blankets, pillows, mattresses and clean drinking water. The High Court of Delhi and the Supreme Court of India had passed relevant orders in the matter that are very significant to the issue in context.

During all group discussions and interviews, it was particularly observed that the Rohingya community is in general under immense stress with limited healthcare facilities, prevalent sexual and gender based violence in their homes, threat of human trafficking, lack of

education, poor access to justice amongst several other issues. However, their biggest worry and threat is that they shall be picked up without any prior notice and detained indefinitely under unimaginable conditions of humiliation, abuse and threat to life. They have reported of rotten and inadequate food being served inside the detention centres and that children were not admitted to schools. The detention centres in general have very poor facilities and the Rohingya detainees were denied consular access. Rohingyas informed that it was up to the whims of the authorities to even allow their relatives to meet them while they were in detention. The authorities inside the detention centre were reported to be insensitive, abusive and without adequate training. The fear of arbitrary detention and death inside detention centres was observed in the Rohingyas across India.

For instance, there was the mention of a [man named Arafat, who has been indefinitely detained](#) in Goalpara matia detention centre in Assam since 23 December 2023. He was also never given the opportunity to present his case of being a refugee and he remains detained under provisions of the Foreigner's Act, 1946. It has been reported that the authorities are awaiting confirmation of the nationality of Arafat from the Embassy of Myanmar. Yet, it is a well established fact that Myanmar does not recognise Rohingyas as their nationals which is the main reason behind these indefinite detentions. However, the interviewees who gave these information about Arafat, did not have any official documents regarding his refugee status assessment by the Union of India.

Another such case that was reported during the group discussions were the cases of Rohingyas Abdul Gaffoor and Zomruddin who have been indefinitely detained since 2021 in Heeranagar detention centre at Jammu.

Several Rohingyas as such have been convicted under the Foreigners' Act, 1946 and they have also completed their jail terms. Yet they remain indefinitely detained in detention centres. One such case is the case of Habis Abdullah and Basheer Ahmad, who were arrested and jailed 8 years ago and kept in the Dum dum jail. However, even though their jail terms are over, they continue to remain in indefinite detention.

In West Bengal particularly, several young girls remain in indefinite detention without a chance in education beyond class 5 and having been separated from their parents, relatives, families and friends.

**DESTINIES UNDER DETENTION- A CASE FOR THE RIGHT TO DIGNITY & HUMANE TREATMENT OF ROHINGYA REFUGEES IN INDIA**



Relatives say Abdullah is detained indefinitely at the Dum Dum detention centre for over 8 years. No official documents regarding his indefinite detention were received and his future remains unknown.



19

**FOREIGNERS REGIONAL REGISTRATION OFFICER : DELHI**  
**EAST BLOCK-VIII, LEVEL-II, SECTOR-I, R.K. PURAM, NEW DELHI-110066**

**ORDER**

I, Surender Kumar, Civil Authority/Foreigners Regional Registration Officer, Delhi in pursuance of MHA's/Govt. of India's notification No.381 issued from File No.25022/96/99-F.I dated 13.07.2000 r/w Joint Director/Immigration, New Delhi order No.1/Imm./99(32)-3388/IB/MHA dated 18.07.2000 and MHA's/Govt. of India's Notification No. 2983 issued from MHA Ref. No. 25022/92/2015-F I dated 15.06.2018, MHA Circular No. 513 (ref. No. 25022/46/2018-F.I) dated 10.08.2018, MHA Ref. No. 25022/64/2018-F.I dated 10.08.2018, MHA Ref. No. 25022/92/2015-F.I dated 27.08.2018, MHA Ref. No. 25022/64/2018-F.I dated 30.08.2018 r/w Joint Director/Immigration, New Delhi order No. 02/IT/2019(01)-III-790 dated 29.07.2019, hereby impose the following restrictions under clause (e) of Sub Section (2) of Section 3 of the Foreigners Act, 1946 and under Para 11 (2) of the Foreigners Order, 1948 on the foreign national(s) named: -

Sl.No.	Name	Gender	Age
1.	Mohd. Tayab	M	31 Yrs
2.	Mariyam Khatoon	F	20 Yrs
3.	Atayullah	M	31 Yrs
4.	Mohd. Ismail	M	30 Yrs
5.	Shadia Akhtar	F	23 Yrs
6.	Ayesha Begum	F	24 Yrs

All Myanmar nationals.

All illegal migrants of Myanmar detected & produced by staff of PS- Shaheen Bagh, South-East District, Delhi.

The above named foreign national(s) will not move out/relocate themselves of the Sewa Sadan, Shahjada Bagh, Delhi till their travel arrangements for deportation are made, as there is every likelihood that they may disappear and merge with Indian citizens.

Non-compliance of this order will render them liable for prosecution under Section 14 of The Foreigners Act, 1946 or under relevant section of IPC as the case may be. Police Guards of PS Shaheen Bagh are escorting the foreign national(s) from R.K. Puram to Sewa Sadan, Shahjada Bagh, Delhi.

*Surender Kumar*  
24/3/21

(SURENDER KUMAR)  
FOREIGNERS REGIONAL REGN. OFFICER:  
CIVIL AUTHORITY: DELHI.

No. 2016 / (168/21) For. (I.M. Cell), dated, New Delhi, the 24.03.2021

1. I/C Sewa Sadan, Shahjada Bagh, Delhi to ensure that all facilities including medical, toilet, food and other basic amenities/facilities permissible under the laws are provided to him.

Detention Order of Shadiya Akhtar and 5 other Rohingya refugees dated 24.03.2021



### **A pick-and-choose method**

It is extremely difficult to predict the pattern in which Rohingyas get picked up and detained. Most of them not only have a valid UNHCR identity card but also some substantial paperwork certifying that their refugee status application is under process with the agency. All Rohingyas live in their designated refugee camps and regularly visit the FRRO to mark their presence. Their biometrics are collected by FRRO immediately after registration with the UNHCR. Every fortnight, the local police along with the FRRO conducts a headcount in the designated camps and they keep a very solid track of who lives there and even the visitors going there. Yet, almost regularly, Rohingyas get picked up despite following all directions and cooperating with the authorities.

For instance, Shadiya Akhtar was a peaceful, non-confrontational resident who has no criminal records or antecedents. Yet, she was picked up randomly in a “pick and choose” manner without being offered any particular justification till date. The primary factor that determines these detentions is perhaps the fact that like Shadiya Akhtar, most of the detainees are the poorest and the most vulnerable Rohingyas. Often they have no extended family members or male members who can support them in any manner. Their persecution and marginalisation are the major factors that contribute to their further incarceration and victimisation.

Some of the Rohingyas, who had fallen excessively ill during their detention were released and they narrated stories of absolute horror while speaking about the treatment and living conditions inside the detention centre at Shahzada Bagh detention centre in New Delhi.

Such abrupt detentions have occurred across India including Uttar Pradesh, Haryana, Jammu, Assam, etc. According to the [UNHCR fact sheet of 2022](#), 312 Rohingya refugees remain in immigration detention, 263 in a Holding centre in Jammu, and 22 at a welfare centre in Delhi. It has been reported that many Rohingya children continue to live in welfare centres in West Bengal whereas their families, particularly mothers remain in detention elsewhere. This has contributed to families being detached and children growing up in detention without being able to live with their family members.

As reported by the [Global Detention Project](#), in July 2023, over 22 Rohingyas were picked up in Uttar Pradesh and they have been detained indefinitely. Amongst them were 5 children and 1 pregnant woman. None of them were served any notices prior to being picked up and neither were they given a chance to present their case for refugee status.

**Complete Disregard and Violation of the prevailing laws**

In the infamous case of **Md. Salimullah v Union of India (W.P.(C). 793/2017)**, it was prayed that *direction to the Union of India not to deport the Rohingya refugees who have been detained in the sub-jail in Jammu*. However, this prayer was not granted and Rohingyas were allowed to be deported subject to the procedure prescribed for such deportation being followed. The question that however persists is whether such procedure established by the law is being followed at all. Pertinently, the various cases in the High Courts across India and even the Supreme Court of India are challenging the “indefinite detention” of the Rohingyas across detention centres. In fact, in the pleadings of Shadiya Akhtar before the High Court of Delhi, it was repeatedly highlighted that the case was not in opposition to deportation but the case was against “indefinite detention in violation of the process established by law”.

Essentially, the due process that is established by law comprises the Foreigner’s Act, 1946, Passport Act, 1920 and Passport Rules,1980 (Schedule II, Part II). In order to even begin this conversation, it is pertinent to understand the distinct legal definitions of “illegal migrant”, “refugee” and “stateless” that are often convoluted and used interchangeably. These are terms that have been described within the Indian laws. Therefore, the tabular column below represents these definitions and their sources in the law.

<b>Term</b>	<b>Definition</b>	<b>Source</b>
<b>Refugee</b>	A refugee has a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion.	<b>SoP dated 20 March 2019 as circulated by the Union of India</b>
<b>Stateless person</b>	A stateless person is someone who, under national laws, does not enjoy citizenship – the legal bond between a government and an individual – in any country.	<b>United States of America, Department of State, Bureau of population, refugees and migration.</b>
<b>Illegal Migrant</b>	a foreigner who has entered into India— (i) without a valid passport or other travel	<b>Citizenship Act, 1955, Section 2(b) (i) and (ii).</b>

	<p>documents and such other document or authority as may be prescribed by or under any law in that behalf; or (ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time.  <b>(A foreigner does not have any well founded fear of persecution that defines a refugee)</b></p>	
--	--	--

**Standard Operating Procedure (SoP) Dated 20 March, 2019**

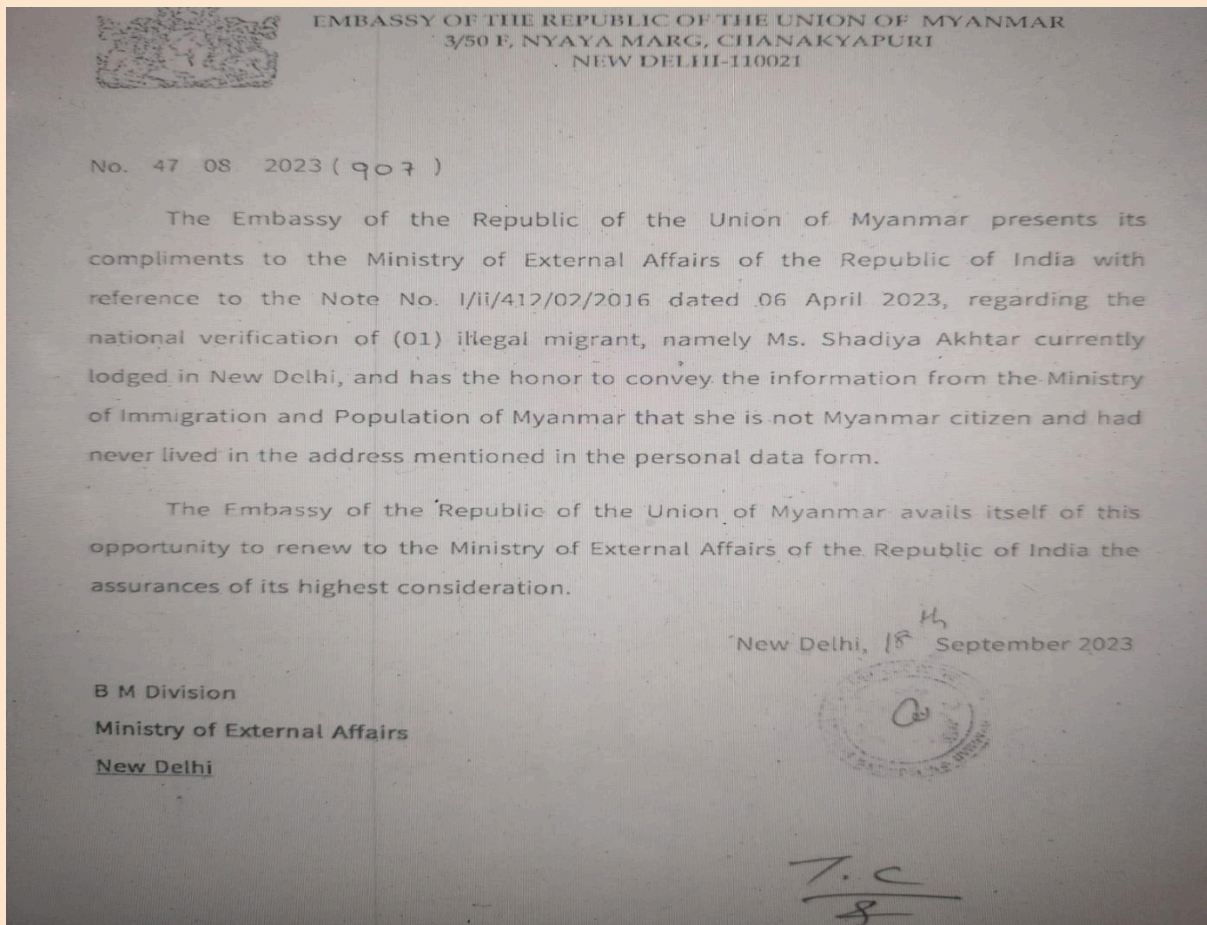
This SoP that was circulated by the Union of India themselves particularly creates a defined and elaborate method of assessing and determining the claims of “*foreigners claiming to be refugees*”. The SoP is very clear on the process of such assessment and the time limit to complete them. It states that in cases as such, the documents available with the foreigner, issued by anybody either in India or abroad, also will be taken as inputs in arriving at a conclusion by the FRRO concerned. In case, it is found that prima facie the claim is justified, (on the grounds of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion), the matter will be recommended by the FRRO concerned to the Ministry of Home Affairs for grant of Long Term Visa (LTV) to the foreigner **within thirty days** from the date of claim by the foreigner. One of the factors to be seen is the general perceived condition in the home country of the people belonging to the community of the foreigner in question. Bio-metrics of such persons shall be captured by the FRRO concerned before forwarding the request to MHA. Subsequently, the matter will then be examined by the Ministry of Home Affairs in consultation with Security Agencies and the Ministry of External Affairs. The Ministry of Home Affairs will consider all the inputs including the report of the FRRO concerned as well as Inputs of Security Agencies and the Ministry of External Affairs and arrive at a decision

on grant of LTV. However, in cases where the foreigner is considered not fit for the grant of LTV, a decision to this effect will be conveyed by the Ministry of Home Affairs to the FRRO concerned within a period of three months from the date of the claim of the foreigner. The foreigner will be confined to a detention centre under the provisions of the Foreigners Act. Steps shall be initiated in such cases for deportation of the foreigner through diplomatic channels. In case it is found that the deportation is not possible to the foreigner's home country, then the MHA shall initiate steps for a third country resettlement.

Hence, the process before detention of the foreigners claiming to be refugees is abundantly clear with specific timelines. Yet, in the case of Shadiya Akhtar, when the High Court of Delhi, on 12.12.2023 demanded to know whether the step was followed or not, the FRRO officials submitted papers that clearly showed that the assessment of Shadiya's claim was done only after the High Court order in December 2023. Yet, Shadiya was detained despite her UN Card and her claim of being a refugee since April 2021. Hence the question that persists is when her assessment for refugee status was only not completed, how could a detention order be passed in 2021. This showed a clear violation of the SoP and became crucial evidence in establishing the fact that these detentions are absolutely illegal in nature.

The FRRO then passed an Order on 05.01.2024 rejecting the refugee status claim of Shadiya Akhtar. This was more than three years after already passing her deportation order in 2021. Needless to say, the Order has no reasoning and contrary to the provisions in the SoP, even the word "persecution" was not mentioned in the entire Order or the personal data form that the order was apparently premised upon. The Order was passed by the FRRO- Afghan cell with an illegible signature and not the MHA. The rejection order stated that Shadiya had come to India for "economic" reasons. Yet, Shadiya has always been a housewife and so are both her sisters as per the personal information form. There was absolutely no semblance of procedure being followed in these detentions at all when the assessment itself is done after the final deportation order is passed.

**DESTINIES UNDER DETENTION- A CASE FOR THE RIGHT TO DIGNITY & HUMANE TREATMENT OF ROHINGYA REFUGEES IN INDIA**



Communication from the Embassy of Myanmar to the Union of India denying citizenship and identity to the detainee - Shadiya Akhtar. Hence, she cannot be deported back to Myanmar.



It is particularly an unsound argument that the Rohingyas are not escaping persecution because the Ministry of External Affairs have themselves on February 06, 2024, published Advisory for Indian nationals travelling to or based in Rakhine State, Myanmar not to travel to the Rakhine State of Myanmar in view of the deteriorating security situation, disruption of means of telecommunications, including landlines, and severe scarcity of essential commodities. Hence, the authorities are well aware of the persisting situation in Rakhine State. Most Rohingyas living in Delhi are particularly from the MaungDaw and Buthidaung villages of Rakhine State where as per the Indian officials themselves, the war is at its peak after the 2021 Coup D'etat by the Myanmar Military. The Orders denying refugee status by the FRRO are so mindlessly done that they do not even get the spellings of these villages correctly. The forms are filled up by the Rohingya detainees in English in the absence of any certified translators or lawyers.

Interestingly, in August 2022, the Ministry of Home Affairs had given a press release where they declared that the Kalindi Kunj refugee camp is the place where Rohingyas in Delhi shall be “restricted” until their deportation back to Myanmar. Hence, it is contrary to their own declarations that now select Rohingyas are being detained in the detention centre at Shehzada Bagh in such an arbitrary manner.

DESTINIES UNDER DETENTION- A CASE FOR THE RIGHT TO DIGNITY & HUMANE TREATMENT OF ROHINGYA REFUGEES IN INDIA

**1**

OFFICE OF THE FOREIGNERS REGIONAL REGISTRATION OFFICER,  
EAST BLOCK NO.VIII, LEVEL-II SECTOR I, R.K. PURAM, NEW DELHI - 110066  
No. ... /Afghan Cell/PRIRO dated, New Delhi the, 05/01/2024.

**Subject: - Regarding rejection of LTV as claimed on basis of Refugee Status**

As per record, you did not move any application for Long Term Visa on the basis of Refugee Status. However, you have approached the Hon'ble High Court and claimed that you are Myanmar National and got the Refugee status from UNHRC.


On the observation of Hon'ble High Court and direction of MHA, you had been considered for Long Term Visa on the basis of your refugee status as a Rohingya. On 02.01.2024, you had been called for enquiry and requested to provide requisite documents for processing your Long Term Visa (LTV). On 03.01.2024, you submitted only UNHCR card which is not recognised by Union of India as a valid travel document. During the enquiry, the following observations have been noticed which are as under:-

1. As per record, your arrival details in India could not be traced. This shows that you had entered India illegally (at an unknown time) as an illegal migrant.
2. You have not provided any travel document/Passport or any other acceptable document issued by your origin country (Myanmar) in support of your nationality claim. You had provided only UNCHR card in support of your nationality which is not recognized by Government of India as legal document.
3. You are unable to provide your complete residential address in Myanmar and address quoted by you is not verified by Myanmar High Commission/Embassy. The Myanmar High Commission/Embassy informed that you are not a Myanmar citizen and you had never lived in Myanmar on the address quoted by you in your personal data form.

**2**

4. You also informed that you entered India illegally in search of economic opportunities. Your travel was facilitated by an agent which was arranged by your elder sister namely Sabera Khatoun.

In view of above, prima facie your claim for Long Term Visa (LTV) as a Rohingya Refugee was found not justified. So, your request could not be accepted.

  
AFRRO  
For FOREIGNERS REGIONAL REGN. OFFICER.

To,  
Ms. Shadiva Akhtar  
UNHCR Card No. 305-17C01478

### **Conditions inside the Shahzada Bagh detention Centre in New Delhi**

The Delhi Urban Shelter Improvement Board (DUSIB), in their [submissions before the Delhi High Court](#) suggests that the Sewa Sadan detention centre at Shahzada Bagh stands on a two-story building. The ground and first floor inhabited by foreign detainees have been operated by the FRRO since 2001, and the second floor by DUSIB as a night shelter for the homeless, shifted temporarily to community hall Sarai Basti for maintenance. At the time of the joint inspection by the two authorities (February 10, 2023) the total strength within the premises was 70. There were 29 males, 12 females, and 4 children living with their detained parents from Bangladesh and Myanmar (Rohingyas). Most of these occupants were residing at Madanpur Khadar and VIKASPURI in New Delhi before they were detained and brought to the detention centre. Separately 25 personnel from the Nagaland Armed Police of the Delhi Police Force reside in the premises as well. The building is with closed windows and stands without any board of identification from the outside.

There have been [multiple reports and research literature](#) that have spoken about the horrible conditions inside the Shahzada Bagh detention centre at New Delhi. As per a [ground report done in 2022](#), Rohingyas who were earlier detained in the detention centre revealed the inhuman conditions and cruel circumstances within this detention centre that houses Bangladeshi and Rohingya people.

The most common grievance against the detention centre was the horrible food, lack of hygiene, healthcare and dignity within the premises. The Rohingyas who were earlier detained inside the detention centre complained of abusive officials who treated them with indignity and there was no grievance redressal mechanism to address this.

### **Key Findings**

#### **Health**

The status reports submitted by the FRRO before the High Court of Delhi in various healthcare matters of Rohingyas suggest that a mobile team headed by a medical officer and some attendants from the Municipal Corporation of Delhi (MCD) dispensary, Shahzadabagh visit the detention centre every week. Prescriptions and medicines were provided for free, and emergencies were dealt with by the nearest government hospital. The report makes no mention of the quality of medicines and treatment provided, caregiving, monitoring and continuity of treatment, regular medications for chronic illnesses, clean and segregated toilet facilities for women inmates, and their access to sanitary pads and clean toiletries. Former inmates complained that officials warned them to not speak about their health conditions fully to the doctors present at the government hospital and that the mobile team visited only to ensure that everyone remained alive.

This issue was particularly evident in the case of Shadiya Akhtar. The High Court of Delhi observed that Shadiya Akhtar repeatedly complained of severe stomach ache and other discomfort for which she was not given adequate treatment. Therefore, upon the Orders of the Court dated 14.03.2023, Shadiya Akhtar was admitted to the hospital and thoroughly checked. She was diagnosed with Hepatitis C. The advice given by the doctors was that she is administered with the prescribed antiviral T. sobosubivir and T. Velapatrir, *rest to continue the same treatment and review with the MRCP report.*

Essentially, Hepatitis C does not have a single line of treatment. Different lines of treatment have to be administered based on how they are reducing the viral load and simultaneously having less harmful side effects on the patient. Thus, meaning, it is essential to regularly follow up and check the levels of viral load and whether it is improving without any major side effects with the treatment. However, for over 20 days, Shadiya Akhtar had not received her medicines because they are allegedly expensive. When this issue was further raised in the Supreme Court of India, the authorities, in their response and through the documents that were submitted by them, admitted with proof the direct antiviral agent (DAA) dosages that were supposed to be administered for 12 weeks were given to the Shadiya Akhtar for only 2 weeks. Shadiya's treatment resumed after a clear Supreme Court order dated 21 August 2023 which directed that all requisite medical treatment shall be provided to the petitioner in accordance with medical advice tendered by the G B Pant Institute of Post Graduate Medical Education and Research and Dr Ram Manohar Lohia Hospital in Delhi where Shadiya was being examined. Fortunately, after repeated persuasion in the case and regular interventions by the High Court of Delhi, Shadiya was declared to be free of Hepatitis C in December 2023.

In 2023, Sanora Begum, another woman detainee delivered a baby in the detention centre around December. She was provided adequate facilities including access to hospital and qualified doctors only after the orders of the High Court of Delhi.

### The Death of a 19 year old in March 2024 at the Shahzada Bagh Detention Centre

In March 2024, another shocking incident of death of a 19 year old young Rohingya girl named Hamida Begum occurred at the Shahzada Bagh Detention centre. She was also being indefinitely detained at the detention centre. Like most other detainees, she was also unwell and was being taken to the medical centre regularly. She had no direct relatives living in India and her parents are living as refugees in Bangladesh. It is alleged that Hamida was trafficked to India on the pretext of marriage as several other Rohingya women. Yet, despite being a victim herself, she was further penalised through detention and without any support or efforts to rebuild and restore her life.

Unfortunately, there were no orders from the High Court or the Supreme Court to get her hospitalised and treated. Her medical conditions were not being monitored. Rohingyas living in the Madanpur Khadar camp in New Delhi, who are from her same village, repeatedly tried to speak to the authorities to get Hamida support. None of these co-villagers was allowed to accompany Hamida during her visits to the doctor. Upon Hamida's death, Sabera Khatoon received her body after repeated visits to the detention centre, police station and several requests for intervention to the UNHCR. No information regarding her death is available so far and no proper investigation into this death ever took place.



UN Refugee ID Card of Hamida Begum

**Note :** It is pertinent to note here that in every group discussions with the Rohingya community, it was brought up that Rohingyas have died in various detention centres across India. Pertinently, [the death of a 5 month old baby of Rohingya woman Namina Khatoon](#), in the detention centre at Jammu had been a massive shock for the Rohingya community. It has been reported that Rohingyas in detention at Jammu were on a hunger strike against their



indefinite detention at the Hiranagar detention centre when the police used teargas to control them. The infant allegedly inhaled this teargas and was reportedly dead

It is pertinent to note that several [Rohingya children and young women](#) are detained in various detention centres, juvenile homes and welfare centres across India and have limited to no access to education or even proper exposure to sunlight inside the detention centres. It was reported during the group discussions that Rohingya children in detention are not given education beyond class 5 and live with a very compromised childhood in the detention centres. Many of these children are separated from their families and relatives. They reportedly receive no vocational training or any form of skill development that can prepare them and allow them to look forward to a brighter future. Most women across detention centres suffer from gynaecological and UTI complications with HCV infection being very common amongst the Rohingya women. This is clear from the case studies and also the repeated incidents of untimely deaths that appear to occur in the detention centres.

[There have been further complaints of the very poor living conditions of the Rohingyas](#) in their detention, particularly in terms of clean drinking water or even pillows and mattresses which the detainees struggle to have.

### **Food and Nutrition**

A common issue that is raised by all those who were formerly detained in the detention centres, present detainees and also those detained Rohingyas from Delhi who filed interventions in the Courts, was that of sub standard food being provided to them. Their food was not nutritious and they complained of poor hygiene. In the case of [Senora Begum v Union of India \(WP\(C\) 6727 of 2023\)](#), it was alleged that only two meals a day were being provided to the Rohingyas living at Shahzada Bagh. The Court had [ordered the FRRO officials](#) to recheck the situation and ensure that they are provided nutritious and proper meals without any infractions.

As per the status report submitted by the FRRO, the inmates of Sewa Sadan were given two meals, along with breakfast in the morning and tea in the evening as refreshments. Children were provided milk separately. The quality and the standard quantity being provided to adults and children is missing from the report. Mention has been made that there was no restriction on the inmates to procure food from outside as per their preference from available staff. However, no cafeteria or canteen existed near or within the premises. There was also no availability of non-vegetarian food items even though nearly all of the detainees are non vegetarian people. The condition of the kitchen where the food was prepared every day was found to be satisfactory by the authorities, the kitchen space, capacity, and working conditions thereof were not stated. Water for food and drinking purposes was supplied through water tankers by the Delhi Jal Board, and there were no RO systems for water purification. No mention was made of water coolers, and refrigeration facilities in the

premises. The detainees also complained of unclean water. In fact, on behalf of Shadiya Akhtar, it was stated in the Supreme Court of India that she was being compelled to buy her drinking water from outside as the water at the detention centre was unclean. Whenever she did not have money to bring water from outside, she remained thirsty.

The assertion by FRRO that the detainees can procure their food as per their preferences is particularly insensitive because they have no access to any money inside the detention centre. Even though the detainees do the cleaning and other work inside the detention centre at Shehzada Bagh, they are not paid even a single penny. They have no access to any vocational training or education or any activity at all that keeps human beings sane. This contributes immensely to the mental health of the detainees, especially women who have been separated from their infant children or are suffering from postpartum complications including depression. There is no trauma centre in the detention centre despite having so many women who were allegedly trafficked. Apart from being severely malnourished and even anaemic, Rohingya women suffer immensely from a complete mental breakdown inside the detention centre, especially amongst insensitive and abusive officials inside the detention centre. This is in contradiction to the manner in which the Delhi High Court had ordered in the case of Sheikh Abdul Aziz, where the Court ordered that the stateless detained person be granted LTV and be given a job with a company where he can earn wages for his survival.

### **WASH facilities**

The status reports suggest that borewell groundwater with an overhead tank facility is used for washing/bathing for inmates. It was acknowledged that hot water was provided from the kitchen when required. The bath and toilet facilities were only on the ground floor of the premises and no separate washing facilities were available for the inmates. The same bath and toilet were directed by the High Court of Delhi to be renovated in its order of 14 March 2023. the report. Pictures of the renovated toilets were provided in the status report submitted by DUSIB.

**DESTINIES UNDER DETENTION- A CASE FOR THE RIGHT TO DIGNITY & HUMANE TREATMENT OF ROHINGYA REFUGEES IN INDIA**



Photo of the repaired toilets that were shared by the DUSIB

**Other Basic Amenities**

The status report presented before the High Court of Delhi described the number of basic amenities like bedding (mattresses, blankets, bedsheets, and pillows) available within the

**DESTINIES UNDER DETENTION- A CASE FOR THE RIGHT TO DIGNITY & HUMANE TREATMENT OF ROHINGYA REFUGEES IN INDIA**

premises. The issued numbers on 23.02.2023 were 44, 80, 47, and 42 respectively. Most of the available beddings were found to be in deplorable conditions and were required to be changed.

The FRRO and Union of India in their status reports noted that all basic amenities except for food is provided by the Delhi Urban Shelter Improvement Board, Govt. of NCT of Delhi, whereas in their separate status report, DUSIB denied this claim. DUSIB restricted their mandate to the second floor where the so-called night shelter was in use. The report makes no mention of availability of common rooms, free space to move around, recreational activities, creche, library, and play areas for children. These lack of facilities stare in the face of the various legal provisions, the Model Detention Manual, 2019 and the Model Prison Manual as represented in the table below.

<b><u>S no.</u></b>	<b><u>Right/safeguard available to arrested persons as the Constitution of India and Indian Criminal Laws.</u></b>	<b><u>Whether available to Sewa Sadan Detention Inmates</u></b>
1.	Know the grounds of their arrest, have copies of all documents regarding such arrest, including a copy of the Complaint against the arrested person. (Section 50(1) CrPC Section 75 of CrPC and 207 CrPC)	<b>No</b>
2.	To be able to meet a lawyer of their choice/be provided legal aid and representation/understand the case against them (Article 22(1) of the Constitution of India); Have MLC conducted (Section 54 of CrPC)	<b>No</b>
3.	To be presented before a Magistrate within 24 hours of arrest (Section 56 of CrPC); (Article 22(2) of the Constitution of India)	<b>No</b>
4.	To be able to present their case for bail/parole before the appropriate Court (Section 50(2) of CrPC)	<b>No</b>

**DESTINIES UNDER DETENTION- A CASE FOR THE RIGHT TO DIGNITY & HUMANE TREATMENT OF ROHINGYA REFUGEES IN INDIA**

5.	To be able to present their case and defence before the appropriate Court of law while being regularly presented before the Court and being given a chance to directly speak about any issues that they may be facing in the confinement (Code of Criminal Procedure,1973)	<b>No</b>						
<b>S no.</b>	<b><u>Guidelines as per “Model Detention Manual 2019”</u></b>	<b><u>Whether available to Sewa Sadan Detention Inmates</u></b>						
1.	<p>The scales of diet for inmates are prescribed by the respective State Governments/ UT Administrations following the scales in the 2016 Model Prison Manual which are itself based on Indian Council of Medical Research (ICMR) recommendations. (4.30)</p> <table border="1" data-bbox="288 1010 1029 1579"> <tr> <td data-bbox="288 1010 1029 1200">The minimum nutrient requirements of 2320 and 1900 kcal per day for male and female inmates respectively is to be followed.</td> <td data-bbox="1043 723 1380 1200"><b>Uncertain</b></td> </tr> <tr> <td data-bbox="288 1200 1029 1391">Additional nutrient requirements are to be made for inmates of both genders taking up moderate work, pregnant &amp; lactating women and their children.</td> <td data-bbox="1043 1200 1380 1391"><b>Uncertain</b></td> </tr> <tr> <td data-bbox="288 1391 1029 1579">The average body weight suggested for Male and Female inmates of 60 and 55 respectively is to be maintained.</td> <td data-bbox="1043 1391 1380 1579"><b>Uncertain</b></td> </tr> </table> <p>2. Special attention may be given to the women/ nursing mother, transgender detainees, children, etc (4.31)</p>	The minimum nutrient requirements of 2320 and 1900 kcal per day for male and female inmates respectively is to be followed.	<b>Uncertain</b>	Additional nutrient requirements are to be made for inmates of both genders taking up moderate work, pregnant & lactating women and their children.	<b>Uncertain</b>	The average body weight suggested for Male and Female inmates of 60 and 55 respectively is to be maintained.	<b>Uncertain</b>	<b>No</b>
The minimum nutrient requirements of 2320 and 1900 kcal per day for male and female inmates respectively is to be followed.	<b>Uncertain</b>							
Additional nutrient requirements are to be made for inmates of both genders taking up moderate work, pregnant & lactating women and their children.	<b>Uncertain</b>							
The average body weight suggested for Male and Female inmates of 60 and 55 respectively is to be maintained.	<b>Uncertain</b>							
3.	Accommodation shall be built in a manner so as to ensure adequate cubic contents of air, floor space, lighting, ventilation and climatic protection. (4.11)	<b>No</b>						



**DESTINIES UNDER DETENTION- A CASE FOR THE RIGHT TO DIGNITY & HUMANE TREATMENT OF ROHINGYA REFUGEES IN INDIA**

4.	There should be sufficient open space within the compound for detainees to move around in a secure environment. (4.20)	<b>No</b>
5.	It should be ensured that members of the same family are not separated and all family members are housed in the same detention centre. (4.22)	<b>No</b>
6.	As regards meeting visitors other than family members, the provisions in the model prison manual 2016 may be followed. (4.26)	<b>No</b>
7.	The staff posted at the detention centre/ holding centre/ camp should be well trained to ensure that the detainees are treated with due dignity. (4.28)	<b>No</b>
8.	A skill centre may also be provided within the detention centre. (4.34)	<b>No</b>
9.	Additional facilities like covered lobby outside rooms, open areas, library, recreational facilities, space for indoor games, yoga & meditation and open space for outdoor games etc. may be provided depending upon availability of space. (4.35)	<b>No</b>
10.	A Grievances Redressal Cell may be set up, and complaints made by the detainees be thoroughly investigated and action must be taken accordingly. (4.38)	<b>No</b>

DESTINIES UNDER DETENTION- A CASE FOR THE RIGHT TO DIGNITY & HUMANE TREATMENT OF ROHINGYA REFUGEES IN INDIA

11.	It may be ensured that amenities as incorporated in the model Prison Manual 2016, which are not specifically covered above, are also provided at the Detention Centres/ Holding Centres/Camps to the extent possible.” (4.39)	<b>No</b>
<b>S no.</b>	<b><u>Guidelines as per “Model Prison Manual 2016”</u></b>	<b><u>Whether available to Sewa Sadan Detention Inmates</u></b>
1.	<p>Food:</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p>The food prepared in the kitchen has to be checked before and after cooking by either the medical officer (in charge) or the chief medical officer every day (6.41, 6.42).</p> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p>Inmates can complain about the quality and quantity of food; a separate register is to be maintained in this regard (6.40, 6.44).</p> </div> <div style="border: 1px solid black; padding: 5px;"> <p>Hospital diets on the advice of the medical officer (in charge) and the chief medical officer are to be provided to sick inmates (6.12, 6.47)</p> </div>	<p><b>No</b></p> <p><b>No</b></p> <p><b>No</b></p>
2.	Accommodation and Ventilation:	<b>No</b>

	<p>No ward should be overcrowded and there must be sufficient ventilation in all of them. (6.64, 6.66)</p> <p>The walls of the ward and outside are to be coloured or whitewashed, trees and grass are to be planted and a garden is to be maintained on the premises. (6.68-69)</p>	<p>No</p> <p>No</p>
<p>3.</p>	<p>Medical Care:</p> <p>Careful attention is to be given not only to the treatment of sick prisoners but also to every matter connected with the health of prisoners and overall hygiene of the prison. Nothing will count more to the credit of the Medical Officers of prisons than their success in maintaining best health standards in the prisons under their charge. (7.01)</p> <p>The government should appoint a chief medical officer/medical officer (in charge) and other medical officers, who would visit the prison daily, check the inmates once a week, and conduct their full medical check ups once a month. (7.05, 7.11-13)</p>	<p>No</p> <p>No</p>

<p>4.</p>	<p>WASH:</p> <div data-bbox="288 423 1027 602" style="border: 1px solid black; padding: 5px;"> <p>The source of water must be from recognised government authority. (6.83)</p> </div> <div data-bbox="288 602 1027 956" style="border: 1px solid black; padding: 5px;"> <p>The tube-wells, mouth of water source like wells, pipes, should be closed and free from pollutants. All wells should be cleaned once a year. (6.84-86)</p> </div> <div data-bbox="288 956 1027 1256" style="border: 1px solid black; padding: 5px;"> <p>Baths and Toilets have to be cleaned at regular intervals, laundry drives have to be conducted by the inmates, and their hygiene should be strictly maintained.</p> </div>	<p><b>Yes</b></p> <p><b>Uncertain</b></p> <p><b>Uncertain</b></p>
<p>5.</p>	<p>Contact with outside world:</p> <p>Every prisoner shall be allowed reasonable facilities for seeing or communicating with, his/her family members, relatives, friends and legal advisers for the preparation of an appeal or for procuring bail or for arranging the management of his/her property and family affairs. He/she shall be allowed to have interviews with his/her family members, relatives, friends and legal advisers once in a fortnight. The number of letters a prisoner can write in a month shall be fixed by the Government under the rules. (8.01)</p>	<p><b>Partly yes. Lawyers and other officials are not allowed to visit.</b></p>

<p>6.</p>	<p>Education:</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p>Prisoners are to be provided comprehensive physical, academic, social, cultural, spiritual and vocational education. They must be engaged and trained in wage-based work.</p> </div> <div style="border: 1px solid black; padding: 5px;"> <p>Every woman prisoner should be offered a suitable educational programme during her stay in prison. Education shall be a compulsory activity in prisons for at least one-hour everyday. It shall aim to enhance their functional capability. Every prison should organise adult education, social, moral and health education, family welfare programmes, and training in various skills for making women self-reliant. For interested prisoners, appropriate facilities for formal and advanced education shall also be provided. (24.90)</p> </div>	<p>No</p> <p>No</p>
<p>7.</p>	<p>Welfare of Prisoners:</p> <p>There must be welfare programmes in prisons to create a relaxed, positive and constructive atmosphere in the institution for a well-rounded and developed mental health of the inmates. (chapter 17)</p>	<p>No</p>
<p>8.</p>	<p>Recreational and cultural activities should be organised depending upon various conditions such as availability of space, climate and weather, composition of inmates and arrangements for security. (15.09)</p>	<p>No</p>



**DESTINIES UNDER DETENTION- A CASE FOR THE RIGHT TO DIGNITY & HUMANE TREATMENT OF ROHINGYA REFUGEES IN INDIA**

9.	The provisions for grant of leave should be liberalised to help a prisoner maintain a harmonious relationship with their family. The privilege of leave should be allowed to selective prisoners on the basis of well-defined norms of eligibility and propriety. (Chapter 17)- See table 17.05	<b>No</b>
10.	When an undertrial prisoner is seriously ill, the Superintendent shall send a report, along with a medical report, to the court concerned in order that if the law permits and the court thinks fit, the prisoner may be released on bail. (22.49)	<b>No</b>
11.	Daily routine and Programs. (22.64)	<b>No</b>
12.	Where the lady Medical Officer, for reasons of health, considers the prescribed diet to be unsuitable or insufficient for a women prisoner, or her child, she may order in writing a special diet or extra diet, for a specific period of time. Special consideration shall be given in this regard to pregnant/nursing prisoners. (24.50)	<b>No</b>
13.	The number of interviews for convicts and under trial prisoners should be liberalized in the case of women. (24.82)	<b>No</b>

**DESTINIES UNDER DETENTION- A CASE FOR THE RIGHT TO DIGNITY & HUMANE TREATMENT OF ROHINGYA REFUGEES IN INDIA**

14.	Every newly admitted prisoner shall be allowed facilities for seeing or communicating with her relatives/friends/legal advisors, with a view of preparing an appeal or revision petition or for procuring bail. She shall be allowed to have interviews with, or write letters to, her relatives more often, if the Superintendent considers it necessary, to enable her to arrange for the management of her property and other family affairs. (24.87)	<b>No</b>
15.	Recreational programmes should be organised for women prisoners which may include simple outdoor games, bhajans, music, folk dances, drama, TV, radio and film shows. Women prisoners shall be provided facilities for meditation and yoga for the benefit of their mental and physical health, Fishery, Mushroom cultivation, Fruit preservation, Local projects. (24.92)	<b>No</b>
16.	Prisoners shall be paid equitable remuneration for their work and no disparity in wages shall accrue on account of gender differences. (24.93)	<b>No</b>

17.	The Superintendent of Prison shall establish a functional linkage and co-operational relation with a select group of social activists/NGOs serving and taking up the cause of women in general and women offenders in particular, so that the prison administration and the NGOs can together wage a war against social stigma attached to women in custody. Frequent seminars/symposia shall be conducted to elaborate on the need for after-release rehabilitation of women offenders, and to create a favourable public opinion. (24.119)	<b>No</b>
-----	--	-----------

**Analysis on the legalities of the indefinite detention of Rohingyas in the Shahzada Bagh detention centre- A violation of Indian laws as well international human rights laws**

While the deportation of migrants after nationality verification is a continuous process, their indefinite and arbitrary detention for the time being, is contrary to India's constitutional and international commitments. Any notion of an indefinite period of detention is wholly foreign to a democratic constitution like that of India. Article 21 of the Constitution extends to all persons the 'right to life and personal liberty', not just to Indian citizens. This has been affirmed by the Supreme Court as long back as in the year 1996, in **National Human Rights Commission vs. State of Arunachal Pradesh & another 1996 1 SCC 742**, in which the apex court observed thus:

*'We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to the procedure established by law. Thus, the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise'*

In the case of **Hussainara Khatoun & Ors (IV) v. Home Secretary, State of Bihar; 1980 1 SCC 98** it was held that it is well settled, as a result of the decision of this Court in **Maneka Gandhi v. Union of India, 1978 SC 597** that when Article 21 provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law, it is not enough that there should be some semblance of the procedure provided by law, but

the procedure under which a person may be deprived of his life or liberty should be 'reasonable, fair and just'.

### **Pendency, and Delay in procedures**

The majority of Rohingyas in detention are arrested initially on immigration charges and are not released even when they have served their sentences, owing to arbitrary delay in deportation procedures. In the case of the **State of Assam And Anr. v. Moslem Mondal And Ors.; (2013) 3 GLR 402**, it was clearly stated that illegal immigrants must be deported within a time frame of a maximum of two months and only for such a time period can any person be detained. Similarly, in the case of **Dongh Lian Kham & Anr v Union of India and Anr 2015 SCC OnLine Del 14338** it was held that in line with the standard operating procedure set out to deal with foreign nationals who claim to be refugees by the Government of India, Ministry of Home Affairs (Foreigners Division)- even an "illegal migrant" cannot be detained under a civil administrative arrest, for more than six months. Despite these established procedures, the undertrial foreigners pending deportation, with no legal representation remain captive in poor and inhumane facilities for years on end in contravention of national and international legal standards. The lacuna in having a definite time frame by which the detention of these inmates will end is repugnant to all notions of democracy and human liberty.

### **Arbitrary Detention and India's International Commitments**

The Working Group on Arbitrary Detention established through resolution 1991/42 of the United Nations Commission on Human Rights regards deprivation of liberty as arbitrary in the following cases:

- (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);*
- (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);*
- (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);*
- (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);*

*(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).*

Falling within at least one of the categories, many Rohingyas continue to be detained arbitrarily, even though the practice is not survivable in the face of justice, due process, and India's international legal obligations. It affects India's standing as a member of the global community, under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) to which it is a party. India has its share of commitment within the Bangkok Principles, 1966 and it is also a party to many other important international conventions that require a change in its practice on detaining refugee men, women, and children like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) and its Optional Protocol. India is also a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance and has ratified the United Nations Convention on the Rights of Persons with Disabilities. India has also very actively endorsed and contributed to the development of the Global Compact on Refugees.

### **Conclusion and Way Forward**

The right to equality before law and the right to life and personal liberty are the most inalienable ingredients of any constitutional democracy. Therefore, indefinite detention of the Rohingya refugees in India is anathema to the principles of rule of law and procedural guarantees within the domestic laws and the constitutional law framework of the country. It is on the basis of this very constitution of India that the country has its international law commitments through the human rights law instruments such as the ICCPR, UDHR, CEDAW, CERD, CAT etc. If the Indian authorities do not accept the RSD evaluations of the UNHCR, they must be able to conduct their own assessment as per the Foreigners Act, 1946 and indeed the Standard Operating Procedures that have been circulated by them. Such arbitrary detentions practically fall on the face of these procedures that have been established by law. One must remember that the subjects of these violations are themselves victims of persecution, brutalities and even sexual violence. Many of these detained women are victims of human and sex trafficking and are in immense need of protection. Yet, they are being thrown into an unimaginable life full of further persecution and torture through such cruel and dehumanised treatment in detentions. These detainees do not have a future to look forward to or a scope of reconciling with normal lives.

The SoP establishes that when deportation is not possible, it is up to the Ministry of Home Affairs to initiate a third country resettlement for the detainees. But in the present practice,



several years pass before the MHA even initiates the conversation on the resettlement of these detainees to any other countries. The findings suggest that the infection of Hepatitis C is strikingly high amongst the Rohingya women detainees. The unfortunate death of Hamida Begum, a young adult who was actually a minor at the time of detention remained inconsequential, and could not change the way things worked in the detention centres. No questions were raised on the quality of medical support being provided to the detainees, especially young children who were supposed to be treated with particular care. In the instance of Hamida she should have either been shifted to a hospital or to the Madanpur Khadar, Kalindi Kunj refugee camp where people from her community, who ultimately received her dead body, could have at least looked after her and given her some love and humane treatment before her death. This recent incident also raises questions on many other unreported deaths that may have occurred in the detention centre prior to Hamida Begum. It is also quite alarming that so many of the detained Rohingyas are in such a miserable state of mental and physical health. The drinking water facility at the detention centre continues to be of poor quality even though water is the most essential and rightful need of every human being.

The fact that there are no grievance redressal mechanisms within the detention centres is particularly unfair as the detainees have no agency to seek their basic human rights inside the detention centre. They do not know or understand the values of democracy, human rights or constitutionalism as they exist in India, because they come from experiences of excessively authoritarian, dictatorial and military regimes. This makes them oblivious to their own rights and makes them more vulnerable to oppressive mechanisms. However, such administrative practices, sub-human treatment and denial of legal protections is unbecoming of the dignity of the constitutional values of India and are required to be more carefully revisited. The Government of India and its administrative machinery requires much introspection along with a relearning of the Constitutional value system of the rule of law- which is the birthmark of any healthy democratic governance.

It is a matter of immediate urgency that the provisions of the Foreigner's Act, 1946, the Standard Operating Procedures and the Constitution of India be followed ad verbatim in the treatment of the Rohingya detainees across detention centres. Not only should their refugee status determination procedures be timely completed, further steps for their stay, deportation, third-country resettlement or other appropriate mechanism be utilised. For the context at hand, it is also pertinent that the complete medical history of the detainees be carefully assessed and accordingly caregiving must be arranged in consultation with organisations from the social sector who may want to work with the authorities to provide medical services, vocational training, mental health support and various other services inside the detention centre as well as in the refugee camps.

While it is of paramount importance that India rethinks its stand on the 1951 Refugee Convention and its 1967 Protocol and formulate a national refugee protection framework, it is also most significant that the foundation of these aspirational future protection mechanisms

**DESTINIES UNDER DETENTION- A CASE FOR THE RIGHT TO DIGNITY & HUMANE TREATMENT OF ROHINGYA REFUGEES IN INDIA**

are based upon the very basic premise of the present laws being carefully followed by the Indian State authorities. It is also important that the directives in the model detention guidelines, 2019 are followed in order to make the detention centres conducive of human existence. Under no circumstances can any form of immigration detention be indefinite in nature. Continued detention is unheard of in any rule of law society and therefore must be done away with immediate effect.

### **About the Authors**

Rita Manchanda, is an established writer, scholar-researcher, and human rights activist specialising in conflicts and peace-building in South Asia with particular attention to vulnerable and marginalised groups, that is, women, minorities, indigenous peoples, and forcibly displaced persons. She is based out of New Delhi.

Manahil Kidwai is a human rights lawyer based in Lucknow who specialises in forced migration & refugee studies. She also works as an independent international law researcher, particularly with reference to laws of war.