



Law and Statelessness: A Case Study of the Rohingya Muslims of Myanmar

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Abstract

This study deals with the citizenship issues of Rohingya people and looks into the causes of their statelessness. It argues that the 1982 Burma Citizenship Law is crucial to the Rohingya's persecution and their being deprived of Burmese citizenship. There are 135 'national races' in Myanmar which are known as 'citizens' or 'indigenous people'. The government of Myanmar excludes the Rohingya from this list of national races and uses the 1982 Citizenship Law as a weapon against the Rohingya people. Demarcations among citizens, associate citizens, and naturalized citizens are perceptible in the law. Additional restricted norms have been espoused for associate citizens and naturalized citizens. These norms compel Rohingyas to live as stateless people. This article seeks to answer four major questions: (i) What are the factors that led to the establishment of the 1982 Citizenship Law in Myanmar? (ii) How does Myanmar's 1982 Citizenship Law specifically affect Rohingya Muslims? (iii) Are Rohingyas specifically targeted by the government? (iv) Is the 1982 Citizenship Law expanding statelessness? By tackling these complex issues this article provides opportunities to better understand ethnic politics, conflicts and statelessness.

စာတမ်းအကျဉ်း

ဤစာတမ်းတွင် ၁၉၈၂ ခုနှစ် မြန်မာနိုင်ငံသားဥပဒေသည်ရိုဟင်ဂျာများကို နိုင်ငံမဲ့ဖြစ်စေခြင်း၏ အဓိကအကြောင်းအရင်းဖြစ်ပြီး ယင်းကြောင့်ရိုဟင်ဂျာများ အဖိနှိပ်ခံဖြစ်လာခြင်းကို ဆက်စပ်သုံးသပ်တင်ပြထားပါသည်။ မြန်မာနိုင်ငံတွင် “ဌာနေတိုင်းရင်းသားများ” အဖြစ်သတ်မှတ်

ထားသည့်တိုင်းရင်းသားလူမျိုး ၁၃၅ မျိုးရှိသည့်အနက်၊ မြန်မာအစိုးရသည် ရိုဟင်ဂျာများကို “ဌာနေတိုင်းရင်းသားများ” စာရင်းမှဖယ်ကျဉ်ထားပြီး ၁၉၈၂ ခုနှစ် နိုင်ငံသားဥပဒေကို ရိုဟင်ဂျာများအပေါ် လက်နက်အဖြစ် အသုံးပြု၍ခွဲခြားဖိနှိပ်နေ ပါသည်။ ၁၉၈၂ ခုနှစ် နိုင်ငံသားဥပဒေအ ရနိုင်ငံသားဖြစ်မှု အတန်းအစားများကိုပိုင်းခြား သတ်မှတ်ရာတွင် နိုင်ငံသားဖြစ်မှုကို အပြည့်အဝမရရှိနိုင်သည့် “ဧည့်နိုင်ငံသား” နှင့် “နိုင်ငံသားပြုခွင့်ရသူ” ဟူသည့် အတန်းအစားများ ပါဝင်နေသည်ကို တွေ့ရှိရပါသည်။ “ဧည့်နိုင်ငံသား” နှင့် “နိုင်ငံသားပြုခွင့်ရသူ” အတန်းအစားများ အပေါ်တွင် အခွင့်အရေး အားဖြင့်ကန့်သတ်မှုများ ရှိနေသေးသည်ဖြစ်ရာဤကန့်သတ်ခွဲခြားထား မှုများသည်ရိုဟင်ဂျာများကိုနိုင်ငံမဲ့ဖြစ်စေခြင်း၏အဓိကအကြောင်းအ ရင်းပင်ဖြစ်ပါသည်။ ဤသုတေသနစာတမ်းကဖြေဆိုရန် ကြိုးပမ်း ထားသောသုတေသန မေးခွန်းကြီးလေးခုမှာ ၁-၁၉၈၂ ခုနှစ် နိုင်ငံသားဖြစ်မှုဥပဒေ ပေါ်ပေါက်လာစေသည့် အကြောင်းရင်းများကား အဘယ်နည်း၊ ၂-၁၉၈၂ ခုနှစ် မြန်မာနိုင်ငံ နိုင်ငံသားဥပဒေသည် ရိုဟင်ဂျာများကို မည်သို့ မည်ပုံ အကျိုးသက်ရောက်စေသနည်း၊ ၃- ၁၉၈၂ ခုနှစ် မြန်မာနိုင်ငံ နိုင်ငံသားဥပဒေတွင်ရိုဟင်ဂျာများကို အစိုးရမှ အထူးပစ်မှတ်ထား ဖိနှိပ်ထားပါသလား၊ ၄-၁၉၈၂ နိုင်ငံသားဥပဒေသည်ရိုဟင်ဂျာများ နိုင်ငံမဲ့ဖြစ်မှုကိုပိုမိုဆိုးရွားသွား စေပါသလား တို့ဖြစ်ပါသည်။ ဤရှုပ်ထွေးသော ကိစ္စရပ်များသည် လူမျိုးရေးအခြေပြုနိုင်ငံရေး၊ လူမျိုးရေးပဋိပက္ခများနှင့် နိုင်ငံမဲ့ဖြစ်မှုကို နားလည်သဘောပေါက်ရန်အတွက်လေ့လာရမည့်ကိစ္စရပ်များပင်ဖြစ်ပါ သည်။

Background

Before formally defining statelessness, the article introduces Rohingyas and their apartheid stateless condition in short to provide an idea of the prevailing situation in Myanmar. Rohingyas have been living in Myanmar for centuries, but they are still being excluded from the nation by the government of Myanmar. In order to do so, the government of Myanmar established the 1982 Burma Citizenship Law, which divides the people of Myanmar on the basis of their ethnicity. Rohingyas have never been accepted as an indigenous people by Myanmar; rather they have always been referred as “Bengali” or “illegal migrants”.

In Myanmar the Rohingya are not included in the 135 national races defined by the government. Rohingyas experience ethnic discrimination in their daily life based on the 1982 Citizenship Law. Consequences of this include crimes against humanity, genocide and ethnic cleansing, brutal burnings of villages, visible religious hatred, population control and restrictions on marriage, forced labor, confiscations of land and property, inadequate medical facilities, barriers to receiving humanitarian aid, forcible transfer, denial of women’s rights, and more. Hence, in order to analyze the statelessness of Rohingya people, this article critically analyzes the 1982 Burma Citizenship Law and its severe impacts on them. It tries to understand the formal meaning of statelessness.

Objectives

- (i) To identify the factors that led to the establishment of the 1982 Citizenship Law in Myanmar.
- (ii) To identify the effects of Myanmar’s 1982 Citizenship Law on Rohingya Muslims.
- (iii) To investigate the specificities of the 1982 Citizenship Law that make the Rohingya a targeted community by the government.

(iv) To investigate the reasons behind the expansion of statelessness due to the 1982 Citizenship Law.

Methodology

This article adopts an interpretive method to analyze the text of the law and its social lives and study implications for larger geopolitical issues. This study adopts qualitative techniques and a narrative style as well as a deductive method, as it goes from general understandings to particular details. The article is mainly based on information derived from secondary sources, e.g., books, articles, newspapers, international and national magazines on the themes of the Rohingya refugee crisis, the Myanmar state, human rights, and similar.

Part I: Theories Behind Statelessness

In 2003, the United Nations High Commissioner for Refugees (UNHCR) conducted a survey which affirms that no domain in this world is free from those grounds which lead to statelessness.¹ Article 1(1) of the 1954 Convention describes the definition of a stateless person as “an individual who is not considered as a national by any State under the operation of its law”.² Statelessness is not only a matter of legal trouble but also of social and individual trouble. In modern day nation-states where government services are tied to citizenship, people who are unable to get citizenship face numerous problems. The consequences that emerge compel people to live at risk of long-term detention in a foreign country, particularly when that country is unable to

¹ UNHCR, 2005.

²After the Second World War the problem of refugees was predominant and it became essential for international governments to take action on refugees and their welfare. As a result, the 1954 UN Convention Relating to the Status of Stateless Persons (‘1954 Convention’) came into existence, and this convention shares the same vision as the 1951 Convention Relating to the Status of Refugees (‘1951 Convention’), for more, see UNHCR, 2018.

secure the citizenship status of that particular individual to repatriate him/her to his country of origin.³

Parekh admits that in the boundaries of international law “ethics of admission” are significant, but she argues that we (the people of the nation-state system) should elaborate our understanding beyond the “ethics of admission”, and for that she incorporates two vital reasons.⁴ First, she throws light on *de jure* and *de facto* stateless people. *De jure* stateless people are the people who met the criteria of admission in a country, i.e., those who are affiliated for resettlement by the UN High Commissioner for Refugees (UNHCR); *de facto* stateless people are those who do not meet the criteria of admission and therefore have lost their nationality. Parekh argues that “ethics of admission” mainly works for *de jure* stateless people and leaves behind those *de facto* stateless people who are also in need. Arendt has called *de facto* stateless people the “core of statelessness” and claims that the international world mainly focuses on *de jure* stateless people and neglects the *de facto* stateless.⁵ The 1954 Convention focuses on *de jure* stateless people, but there is an uncountable number of *de facto* stateless persons in the world, which remain out of focus from the 1954 Convention.⁶

The second reason Parekh identifies for the need for enhancing understanding of the “ethics of admission” is that admission ethics do not include those stateless persons who are living outside the political community—in other words, those outside the state boundary that legalizes its citizens by providing them citizenship.⁷ Those who do not have citizenship are compelled to live on humanitarian aid. She adds that the harm of statelessness for those who are living outside the political community for many years has not yet been taken seriously, and although normative philosophers consider it morally vital, they study the issue of statelessness in a more legal manner—e.g., in

³ Batchelor, 1998.

⁴ Parekh, 2013.

⁵ Arendt, 1976.

⁶ Blitz & Lynch, 2011.

⁷ Parekh, 2013.

terms of the loss of nationality—and forget to include another dimension which Parekh says is the “ontological” harm of statelessness.⁸ Parekh conveys that there are two sorts of harms associated with statelessness: one is the political harm of statelessness and another is the ontological harm of statelessness. To study statelessness in a more prominent manner, we have to put apart the two angles, or the ontological harm and philosophical harm of statelessness, so that we can better understand the root of statelessness.

According to the UNHCR, lacunae in nationality laws are the most important cause of statelessness.⁹ Each and every country has its own rules and regulations as to how a national obtains citizenship, and how the state can withdraw it. Some countries have a system of offering citizenship on the basis of descent, which affords citizenship to those children born as nationals whose birth took place in the marked territory of that country (or children born in a state’s territory as nationals of another state).

The movement of people from one country to another makes the issue of statelessness even more complex. If a child was born in a foreign country, her foreign birth can put her nationality in danger if that country does not offer citizenship on the grounds of birth alone. In addition, if the home country of the parents of someone born abroad does not allow them to pass on their nationality to their children through family linkage it can also lead to statelessness. Furthermore, some countries have discriminatory laws that outline who can and cannot transfer their citizenship. For example, in around 27 countries in the world, citizenship laws are biased against women: women are not permitted to transfer their nationality. In addition, some countries provide citizenship only to certain races and ethnicities. India and Myanmar are such countries.¹⁰

⁸ Ibid.

⁹ UNHCR, 2018.

¹⁰ UNHCR, 2014.

The emergence of new states and shifting of border lines provide another reason for statelessness.¹¹ In several cases, certain communities or groups have to give up their nationality even when a new state provides citizenship to all ethnic races and minorities: that state might suddenly withdraw the citizenship rights from a particular group when they cannot prove their ties to the newly-formed state. In countries where nationality can be transferred only by descent from a national, statelessness will be passed on to the next generations; we can call it “Intergenerational Statelessness” (UNHCR).¹² Sokoloff and Lewis claim that denial of citizenship prevails in those states where state-building programs were executed in conjunction with homogenous/monoethnic practices, and state-succession procedures adopted different national identities from the previous state without considering the subsequent consequences, e.g., loss of citizenship, identity, culture, religion etc.¹³ Denationalization is often a consequence of fragile states pursuing biased policies to address poor public health, political or economic systems and strengthen national harmony in order to assemble support for the country’s leadership.¹⁴

The inclusion and exclusion of particular ethnic cultures in the process of nationalization and denationalization can provide an account of emergent civil liberties and their respective prices. Ethnic identity and cultural markers delineate the course of action for nationalization and denationalization. Scholars such as Horowitz call this phenomenon “ethnic politics”.¹⁵ The procedure for denationalization starts from the making of minority groups; majority groups then might be produced by creating a situation of mass migration, for instance the mass exodus of Tamils that occurred in Sri Lanka during the Sri Lankan civil war.

¹¹ Rürup, 2011.

¹² UNHCR, 2010.

¹³ Sokoloff & Lewis, 2005.

¹⁴ Ibid.

¹⁵ Horowitz, 1993.

There are also instances where groups are forced to migrate and resettle again in other parts of the world. One such example is the Crimean Tartars, an ethnic Muslim minority in Russia which was resettled in Uzbekistan.¹⁶ Horowitz elaborates that inclusion or nationalization of certain selected parts of the populace of a given state might impact the allocation of “important material and nonmaterial goods”.¹⁷

In the making of new states, politics is crucial. The evolution of states often follows from a naive belief in democracy to a selectively chosen path of democracy by guaranteeing the rights of some special communities or groups and denying the rights of others. One of the latter groups is the Rohingya, who find themselves unable to flourish to their full potential under the so-called patronage of the government in Myanmar. The Rohingya are a group of people who are targeted on the basis of ethnicity and are being excluded from the country and from participation in its political system. These methods of selective choosing of the vulnerable group are called “politicization of group membership/ethnicity”.¹⁸ It simply means that when culture gardens¹⁹ or when the state allows certain ethnic identities to be more dominant than others—rather than different groups with their distinct identity markers being equally accepted—the sense of a ‘political subject’ arises. These political subjects then experience inclusion and exclusion from the state and society. The politicization of political subjects affects their sense of citizenship or nationality.²⁰

Part II: Critical Analysis of the 1982 Burma Citizenship Law

The expression “citizenship”, though recognized worldwide, has diverse applications. Citizenship is not only an expression

¹⁶ Conat, 2014.

¹⁷ Horowitz, 1993.

¹⁸ Sokoloff, & Lewis, 2005.

¹⁹ Nimesh, 2010.

²⁰ Sokoloff & Lewis, 2005.

but also a concept propounded by the nation-state system which incorporates different disputing ideologies. In simple words, citizenship is a give-and-take relationship between a person and state. The state gives protection to the person, and in return the individual is obliged to express honesty, honesty towards the discharge of their duties in favor of the nation.

Citizenship follows the framework of inclusion and exclusion: the inclusion of those who bear the traits of a so-called 'citizen', and the exclusion of those who do not fall in the definition of 'citizen'. The entity and the people who frame the characteristics of a so-called 'citizen' are known as 'the state' and 'the statesman'. Statesmen keep the power and authority to run and rule the state, and they are the only ones who are responsible for any biases (if there are any) under the premises of 'citizenship'. The statesman is a biological being, and he is not immune to discrimination, either as the subject of discrimination or as its perpetrator. From here arise the opportunities of unfairness and inequity which includes the threads of race, religion, ethnicity, and other aspects of identity. As Keyes states, ethnicity becomes important when politics and distinct cultural traits of different societies coincide, and especially when they are linked to national ideology.²¹ Hence, the essence of citizenship lies in the fact that citizenship is a model, designed on the basis of the relationship a person has with a particular race, religion, or ethnicity, and how that particular race/religion/ethnicity is used to define the society in which they live.²²

Citizenship refers to the 'power' assumed by the state and statesman to legitimize the people living in the territory of the state. Citizenship refers to the right of inhabitants to inhabit a state, which makes the inhabitants 'legal' and legitimizes the actions that they perform.²³ To legitimize its inhabitants, the state creates nationality laws mainly based on two concepts: *jus sanguinis* (law based on blood), and *jus soli* (laws based on land).²⁴

²¹ Keyes, 1996, as cited in Walton, 2013.

²² See Kanapathipillai (2009, p. 42).

²³ See Gehlot (2018, p. 9).

²⁴ Beydoun, 2005.

States that have an increasing population and are unable to address rising economic insecurities in their country, like Myanmar, often opt for *jus sanguinis*. Nations that possess vast areas of land compared to the inhabiting population go with *jus soli* to grant citizenship to the populace—for instance, Brazil, the United States, or Canada.²⁵

When countries use *jus sanguinis* to grant nationality, it enables discrimination that can lead to inter-ethnic violence and statelessness. The criterion of *jus sanguinis* is problematic because not every individual can prove his or her ancestry. A foreigner cannot acquire Burmese nationality without proving his/her close family ties to people within the country, because Myanmar adopts *jus sanguinis* as the basis of citizenship.

Burmese society is an intensively divided society. This divided society has led to numerous complex issues, e.g., inclusion and exclusion, ethnic conflicts, and identity politics. In this divided society, integration remains difficult and the risk of expulsion is high for certain communities such as the Rohingya.²⁶ In order to analyze the 1982 Burma Citizenship Law critically, this article asks why only selected ethnic groups are entitled to citizenship and consideration as ‘nationals’. Why does the 1982 Citizenship Law not incorporate the Rohingya, an ethnic, linguistic and religious minority group in Rakhine State who profess Islam and share cultural features with Chittagonians,²⁷ in the list of eight major groups, which are subdivided into 135 ethnicities?

The Burma Citizenship Law was first introduced in 1948 and amended in 1982. The amended version of the Citizenship Law²⁸ was laid before the nation on the 21st of April 1982 and it was passed by the People's Assembly in October. It classes Myanmar

²⁵ Bangar, 2017; Beydoun, 2005; Edward, 2009; Haque, 2017.

²⁶ Horowitz, 1993.

²⁷ The Arakan Project, 2008.

²⁸ Kin mentions that the law was enacted with unusual publicity and preparation (1983, p. 93).

nationals in three different categories: “citizens”, “associate citizens” and “naturalized citizens”.²⁹ The “citizens” of Burma are those who resided in the country before 1823 A.D. “Associate citizens” are the individuals who were born in the colonial period of Burma and have resided for eight years since 4 January 1948. It means that individuals who were residing in Burma before its independence who also applied for citizenship are associate citizens. The last category is “naturalized citizens” which includes people who applied for citizenship after 1948, when Myanmar achieved independence.³⁰

The Burma Citizenship Law includes the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine and Shan, and other “ethnic groups” who settled in Myanmar before 1823 AD.³¹ These ethnicities are divided into 135 races based on the languages they speak. These races are national races entitled to Burmese citizenship and deemed ‘citizens’. As the Myanmar government does not consider the Rohingya community as being settled in the country before 1823, the Rohingya are not entitled to citizenship. Burmese authorities do not acknowledge Rohingya Muslims by the name Rohingya; instead, they are called “illegal Bengali immigrants”. Ibrahim says the racial categories used in 1982 to deny citizenship to Rohingya were based on 1948 Citizenship Law.³² The consecutive Burmese governments have used the 1948 Law, which was later updated to the 1982 Citizenship Law, to deny citizenship to an estimated 800,000 to 1.3 million Rohingya people, discriminating against the Rohingya and excluding them from the 135 races of Myanmar.³³

‘Burma Citizens’ as ‘Supreme’ in Myanmar

²⁹ Ibid.

³⁰ Ho & Chua, 2016.

³¹ See section 2.3 of Socialist Republic of the Union of Burma (1982).

³² Ibrahim, 2016.

³³ Burke, 2016.

Nemoto mentions that in the Konbaung Dynasty (1752-1885), the final Burmese kingdom, there was ‘harmony’ among the various religions, e.g., Hindus, Muslims, and Christians, living together under the rule of Theravada Buddhist Burmese kings. The royal authority never categorized the various religions on the basis of ethnicity. Instead, the authority preferred to group people according to their services to the King.³⁴

The idea of dividing people on the basis of ethnicity was only introduced at the time of British rule in the nineteenth century in Myanmar. The trend toward considering Burmese (i.e., Burman or Bamar) culture as supreme was reinforced by people who completed their education under British rule; some of them also learned about ethnicity from the core of Burman nationalist literature, which promoted the idea of the Burmans being superior to other minorities, particularly ‘kala’ or foreigners. This kind of literature was popular during the rise of the independence struggle.³⁵

Haque examined the 1982 Burma Citizenship Law and described three main causes that led to its establishment.³⁶ Haque assumes that the reflections left by immigrants such as Indian and Chinese people on the memory of Burman people were the stepping stone for the establishment of the 1982 Citizenship Law. These reflections include the establishment of a prominent place of Indians and Chinese in Myanmar’s economy, procurement of land in Myanmar, and confrontation with indigenous people, which activated general public dislike against Indians and Chinese.³⁷

During British rule many Indians immigrated to Burma as agricultural workers, but many of them returned to India. Some South Asian people (e.g., Indians and Chittagonians) who were residing in Burma owned properties and were engaged in business. Chettiars engaged in finance. They financed farmers but

³⁴ Nemoto, 2014.

³⁵ See Burke (2016) and Nemoto (2014).

³⁶ Haque, 2017.

³⁷ See Min Zin (2012) and U Myay Kyaw (1958).

levied heavy interest amounts: 15 percent per annum with security, and 60 percent per annum without security.³⁸ In addition, Chettiars did not lend money to those farmers who wanted to become landowners, and those farmers who were not able to return the money were marked as living on land owned by absentee landlords.³⁹ These oppressive practices by South Asian people drove hatred among the Burmese, which led to the commencement of intense anti-Indian riots in 1938 in Burma.

The fear of being dominated by Muslims in the western part of Burma, alongside general fears of the country being crowded with Muslims, filled some Burmese with hatred and non-acceptance. Kei Nemoto has also mentioned how the adoption of “Wahhabism”⁴⁰ by some Muslims in Myanmar played a key role in spreading extreme dislike against Muslims.⁴¹ After operation Naga Min in 1978⁴² and the first Rohingya refugee exodus, the Burmese government realized that the 1948 Citizenship Law failed to manage citizenship and immigration issues. After three decades, the Government of Myanmar recognized that all these elements were interrelated and thus it promulgated the establishment of the 1982 Citizenship Law.

Getting a National Verification Card (NVC) is one of the crucial steps to citizenship in Myanmar. Rohingya refugees in Bangladesh confirm that they have been pressured by the government of Myanmar to accept the NVC. The NVC is a temporary

³⁸ Nemoto (2014).

³⁹ Ibid.

⁴⁰ According to Wahhabism, founded by Muhammad ibn Abd-al Wahabi, Islam has diverted from its original teachings and needs to be reformed (Shipoli, 2009).

⁴¹ Nemoto, 2014.

⁴² The year 1974 marked constitutional and legal changes which enhanced the level of violence in the country towards Rohingya people and contributed to the decision of many to flee to Bangladesh. The well-known operation “Naga Min” was launched in 1977 with its aim to identify every individual in Myanmar as either a citizen or a foreigner. Operation Naga Min was used as a tool to commit crimes against the Rohingya by the Buddhist community and army in Rakhine State. As a consequence, more than 200,000 Rohingya fled to Bangladesh for shelter, but most of them were repatriated back to Myanmar by Bangladesh authorities (Ibrahim, 2016).

document to demarcate verified and unconfirmed migrants that makes them eligible to apply for citizenship later. No religion or ethnicity is mentioned on the NVC.⁴³

Foreigners cannot acquire citizenship in Myanmar without proving their close ties with relatives who are citizens of Myanmar. Each type of citizenship is afforded different entitlements and is evidenced by specific documentation only. “Burma citizens” are entitled to the pink Citizenship Scrutiny Card, whereas the other two groups, namely, “associate citizens” and “naturalized citizens”, are given blue Associate Citizenship Scrutiny Cards or green Naturalized Citizenship Scrutiny cards. Associate citizens and naturalized citizens are secondary to Burma citizens since the pink cards confer privileges in government employment, contractual transactions, and domestic travel.⁴⁴

The 1982 Burma Citizenship Law states that if a father or mother who is an associate citizen or naturalized citizen loses their identity, then their child will face the risk of statelessness (sections 29 and 51). This means the citizenship is designed by the government of Myanmar in a way that there is minimum probability of Rohingya and their offspring becoming citizens. For an associate citizen to acquire citizenship, it is mandatory to appear before an organization prescribed by the Ministry of Home Affairs, and affirm one’s citizenship; however, this requires that one’s parents are also associate citizens, and it is impossible once a person exceeds the age of eighteen (sections 24, 27, and 49). Hence, the 1982 Citizenship Law programs intergenerational statelessness.

People from remote and hard-to-reach rural areas reported additional barriers—such as hilly terrain, long walks, and shortages of money—that made it difficult to get themselves registered for citizenship documents. Also, there are a range of gender-specific barriers that work to hinder women’s access to citizenship documentation. An applicant for citizenship and citizenship documentation is usually required to provide evidence

⁴³ Mahmud, 2017.

⁴⁴ Ho & Chua, 2016.

of the citizenship of both of their parents. This means that children born to fathers who are unknown or otherwise absent face significant difficulties in acquiring and confirming citizenship.⁴⁵

Before a child reaches eighteen, he or she must obtain Burmese citizenship. If the child crosses this age bar⁴⁶ or fails the verification process,⁴⁷ then he or she might not be able to obtain citizenship. Failing the verification process can take multiple forms, including: an inability to prove parents' citizenship; missing verification documents; problems with their mother's or father's citizenship status; finally, the verification process might fail if an applicant is unable to reach the verification venue on time. This article also finds that if one parent is an associate citizen or a naturalized citizen, and the other is a foreigner, then the death of the associate citizen or naturalized citizen would also become a cause of statelessness for his or her offspring.

The 1982 Burma Citizenship Law has been designed in a manner that enables discrimination between citizens, associate citizens and naturalized citizens. One perilous clause of the law states that in order to achieve naturalized citizenship, the aspirant should be of "sound mind"; however, the law does not clarify or properly define the concept of sound mind. This article argues that the term 'be of sound mind' has been deployed to deny Rohingya of citizenship, even if they are eligible under one of the three categories outlined in the law.⁴⁸ According to the Union Citizenship Act, 1948:

Any person acquiring a Burma Naturalization Certificate issued under section 5 of the Burma Naturalization Act and whose name is included therein shall be of good character and unless such person is under a disability, he may apply for a Burma Naturalization Certificate, if he declares before the first day of April 1955.⁴⁹

⁴⁵ Norwegian Refugee Council et al., 2018.

⁴⁶ Ibid.

⁴⁷ See S. 28, S. 50 of Socialist Republic of the Union of Burma (1982).

⁴⁸ See S. 44 of Socialist Republic of the Union of Burma (1982).

⁴⁹ Government of Burma, 1948.

Before the enactment of the law according to the 1948 Constitution, if a person was under any disability, he or she might not acquire naturalized citizenship; after the enactment of the law, the language about “disability” was replaced with the criteria of “sound mind”. The Burmese government never explained why this criteria is only applicable to those persons who aspire for naturalized citizenship. Why does it not apply to Burma citizens and associate citizens? This clearly shows that the government of Myanmar has applied a disability exclusion to the Rohingya.

The process of official documentation is so arduous in Myanmar that it often causes individuals to fail to obtain citizenship. The documentation process includes proving one’s parents’ citizenship, and a lengthy document verification process; this process often involves paying illegal fees in order to get the verification done. Sometimes, an official might demand three times the amount of money of a one-month salary; poor Rohingya people cannot bear these costs. Furthermore, the documentation process often requires applicants to travel to their birth village to obtain relevant information as to their ancestors’ citizenships. For both men and women, the ability to pay ‘unofficial fees’ was described as the most efficient way to overcome all of the above mentioned barriers, but it is obviously only a strategy for those with disposable income.⁵⁰ If any changes occur in the households regarding family size, all Rohingyas are obliged to inform the Na Sa Ka,⁵¹ known officially as the Border Area Immigration Control Headquarters, composed of army and police officers as well as customs and immigration officials.⁵²

The unofficial fees which people pay when they go to register births and deaths differ from place to place and range in amount from 1,000 to 8,000 Myanmar Kyat. A Rohingya family has to pay 7,000 to 8,000 Myanmar Kyat in order for the event to be registered in their family list. This analysis of the 1982 Burma

⁵⁰ Norwegian Refugee Council, et al., 2018.

⁵¹ Hossain, 2021.

⁵² Htet Naing Zaw, 2013.

Citizenship Law shows that the government of Myanmar is taking every possible step to prohibit the Rohingya from acquiring citizenship. The discriminatory nature of the citizenship law enlarges the gap between ethnicities. This denial of citizenship put limitations on movement and access to education, as well as to the loss of land holdings which made thousands of Rohingya homeless.⁵³

⁵³ Ibrahim, 2016.

Part III: The Statelessness of the Rohingya

In the words of Fiddian-Qasmiyeh, a stateless person is a “political subject” who is demanding personal and communal rights.⁵⁴ Rohingya are stateless people and appear to be unwanted by the Myanmar government. The years 2012-2019 have been the cruelest on the Rohingya in terms of their political and social situation; seven hundred thousand Rohingya had to flee to Bangladesh for shelter.⁵⁵ The Myanmar government framed the 1982 Burma Citizenship Law in a manner that caused the Rohingya to lose everything, most importantly their nationality and their right to be called nationals of Burma. Citizenship is a legitimate linkage between citizens and the state which enables the citizen to represent himself/herself and connect to his/her country at the international level; in this regard, citizenship obliges a state to afford political protection to its citizens. Nationality symbolizes the identity or identities present in the territory of any state.⁵⁶

The UNHCR records the number of stateless people around the world at 10 million; stateless people who are denied citizenship are also often denied the basic things that they need for survival. They remain weak, helpless, exposed and defenseless. Agamben calls this “bare life”. This bare life strips them of political rights and leaves them susceptible to human rights violations.⁵⁷

According to a report by Amnesty International, Rohingya people living in Rakhine State are struggling with several unfair situations, including biased citizenship laws. In this systematically organized apartheid condition, the rights of the Rohingya are being violated, including the right to citizenship, freedom of movement, and the basic right to life.⁵⁸ This condition can be seen through the lens of history which provides a plethora of

⁵⁴ Fiddian-Qasmiyeh, 2016.

⁵⁵ UNHCR, 2019.

⁵⁶ See Batchelor (1998, p. 160)

⁵⁷ Agamben, 1998.

⁵⁸ Amnesty International, 2017.

examples of the persecution of the Rohingya. For instance, the Government of Burma chose to discriminate against the Rohingya by replacing National Registration Certificates with Foreign Registration Cards.⁵⁹ The next step the Government of Burma took in order to extinguish the Rohingya's rights was the establishment of 1982 Citizenship Law.

Ethnic Violence as a Consequence of Citizenship Law

Systematic and organized crimes against the Rohingya community are consequences of multiple issues, but the Burma Citizenship Law plays a crucial role among them. Amnesty International calls the Rohingya a “targeted community” in crimes against humanity occurring in Myanmar.⁶⁰ Ibrahim explained another side of the repetitive violence against the Rohingya.⁶¹ He notes that it is remarkable that the attacks on the Rohingya in 2012 appeared at the time when the economy of Myanmar was strangulated, and the government wanted to divert the awareness of the populace. Ibrahim has called the Rohingya a “target of opportunity” and expressed that the Rohingya are a trouble-free and harmless target for the Myanmar administration because they are not equipped with arms and ammunition.

In 2017, the outburst of violence against Rohingya people erupted due to the systematic attack performed by the Arakan Rohingya Salvation Army (ARSA) on 30 military checkpoints.⁶² In response, the government military launched a mass killing operation against Rohingya in the form of genocide and ethnic cleansing along with several violent acts i.e. rape against women and minor girls, systematic burning of villages, encampment of Rohingya, confiscation of properties of Rohingya, abduction of people, killings of men, women, and children, deportation of Rohingya, etc.

⁵⁹ Ibrahim, 2016.

⁶⁰ Amnesty International, 2017.

⁶¹ Ibrahim, 2016.

⁶² Norwegian Refugee Council et al., 2018.

Crimes Against Humanity⁶³

Crimes against humanity are prohibited, but they have been committed around the globe. “The Rome Statute of the International Criminal Court” defines crimes against humanity in Article 7. The words of the Rome Statute are as follows:

For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack ... Article 7(1) lists 11 crimes, or “acts,” including “[m]urder”; “forcible transfer of population”; “[t]orture”; “[r]ape”; as well as “[p]ersecution against any identifiable group” on any “grounds that are universally recognized as impermissible under international law.”⁶⁴

Genocide and Ethnic Cleansing⁶⁵

The United Nations has said the persecution of the Rohingya ‘bears all the hallmarks of genocide’, but the government of Myanmar denies the allegations made by the UN and says the military performed the attacks in response to the brutal attacks conducted by Rohingya on 30 military checkpoints. It is worth noting here that many essential parts of Rakhine State are off limits to journalists, NGOs, and human rights activists.⁶⁶ The deliberate killings of masses of people is called genocide. The term ‘genocide’ might indicate the pursuit of some state, political or religious interest. The term ‘genocide’ supports the terminologies like ‘organized attack’, ‘systematic attack’, and ‘mass murder’.

Al Jazeera reports that due to the mass killing of the Rohingya, the United Nations has accused the Myanmar military of

⁶³ Fortify Rights, 2017.

⁶⁴ Amnesty International, 2017.

⁶⁵ Calamur, 2018.

⁶⁶ Doherty, 2018.

committing crimes against humanity.⁶⁷ Amnesty International mentioned an interview with ‘Foyzullah’, age 32, who said the following:

[The] military came to our village and started firing; I heard the noise coming from my home. The military opened fire. I took my family with me and went towards the hill. We came across the military. People were getting hit by the bullets. My brother's wife and my daughter got hit by the bullets and we had to run, but we came back when the military left. I dug a hole with my brother to bury our relatives. But we did not have enough time to bury them properly.⁶⁸

Fortify Rights interviewed many eyewitnesses to the mass killings performed in three Rohingya villages located in Maungdaw, Buthidaung, and Rathedaung townships. The mass killings in these villages occurred during the second wave of violence starting in August 2017. N. Islam, (51), told Fortify Rights about a mass killing that he witnessed at the Purma riverbank: “some small children were thrown into the river... They hacked small children who were half alive. They were breastfeeding-age children, two years, three years, five years”.⁶⁹

This evidence should be enough to get the perpetrators sanctioned with proper penal actions, but when the authorities are the culprit, one cannot do anything. In 2018, authorities acknowledged for the first time that Burmese security forces committed ten unlawful killings in Inn Dinn Village near Maungdaw.⁷⁰ The government of Myanmar arrested two Reuters reporters, Wa Lone and Kyaw Soe Oo, on 12 December 2017 for allegedly revealing the country’s secrets related to Rakhine State and charged them with allegations of disobeying the country's Official Secrets Act. However, the reporting agency says that their reporters were arrested due to their discovery of the

⁶⁷ Husein & Khan, 2017.

⁶⁸ Amnesty International, 2017.

⁶⁹ Fortify Rights, 2017.

⁷⁰ BBC, 2018.

massacre of ten people in Inn Din village.⁷¹ A report produced by Human Rights Watch in 2018 condemns the “2013 Telecommunication Act” for restricting free reporting and criminalizing some broad categories of online speeches.⁷²

Brutal Burnings of Villages and Visible Religious Hate

To clear northern Rakhine State’s villages of Rohingya, Burmese military forces set them ablaze.⁷³ Rohingya people lost everything in the burnings: beloved ones, their belongings, property, and most importantly, their memories. A displaced woman named Zubairia said to reporters that in 2018 she visited her home in Myin Hlut and she was shocked to see the empty village: “everything was gone, not even the trees are left”.⁷⁴ Shafiq, another man who told his story to Al Jazeera, said that “[the military] burned my home and went around raping women in our village. They burned my shop”.⁷⁵ Religious hate is widespread in Myanmar. Shafiq said that “[military personnel] hate any marks of Islam—my beard, my cap, my dress”.⁷⁶ In 2001, a mob attacked 28 mosques and religious schools; they destroyed each and every building, but state security did not do anything—rather, they joined them and demolished all the mosques.⁷⁷

Population Control and Restriction of Marriage⁷⁸

The Government of Burma has tried to limit every aspect of life for the Rohingya. They have chosen the tools to restrict the Rohingya population in terms of their movement and their rights to

⁷¹ Doherty, 2018.

⁷² Human Rights Watch, 2018.

⁷³ McPherson, 2017.

⁷⁴ Doherty, 2018.

⁷⁵ Husein & Khan, 2017.

⁷⁶ Husein & Khan, 2017.

⁷⁷ Lowenstein, 2015.

⁷⁸ Abbamonte, 2018.

observe their religion and faith. The Rohingya people are compelled to get a marriage license before getting married and to follow a 'two-child policy'.⁷⁹

A report from Yale Law School authored by Lowenstein reveals the fact that for Rohingya to get a marriage license it is necessary to take a picture which should be without a beard for men and without a hijab for women.⁸⁰ A beard for Muslim men and a hijab for Muslim women represents their culture, and they keep faith in them. Na Sa Ka⁸¹ makes it essential for women to have a pregnancy test before issuing a license for marriage; and Na Sa Ka officials also demand illegal fees to process the marriage documents. Hence, it becomes difficult for Rohingya women to get a marriage license and follow the official procedures.

Forced Labor

To put a stop to forced labor, the government of Thein Sein signed a memorandum of understanding⁸² on 16 March 2012 to jointly develop action plans for the total elimination of forced labor by 2015;⁸³ instead, Rohingya are still compelled to work and forced into labor jobs, including the following: road construction/rehabilitation, other infrastructure construction, camp maintenance, animal husbandry, cultivation and plantation work, collection of logs and bamboos, pottering, sentry duty, and more.⁸⁴ The practice of forced labor is ongoing in Rakhine State. Security forces have conscripted Rohingya to do forced labor, including sanitary duties, cleaning of roads, and some camp related jobs.⁸⁵

⁷⁹ Human Rights Watch, 2013.

⁸⁰ Lowenstein, 2015.

⁸¹ The Na Sa Ka, known officially as the Border Area Immigration Control Headquarters, comprises army and police officers as well as customs and immigration officials (Htet Naing Zaw, 2013).

⁸² International Labor Office, 2012.

⁸³ The Arakan Project, 2012.

⁸⁴ Ibid.

⁸⁵ Lowenstein, 2015.

Instances of forced labor amongst Rohingyas in Yan Aung Pyin village, located in Maungdaw Township, are very common. Min Min and Moe Aung reported that the chairman of Yan Aung Pyin compelled 40 Rohingya men to labor in constructing the border guard police check post.⁸⁶ The Rohingya men were made to work without being paid any daily allowances and without being provided any food.⁸⁷

Confiscations of Land and Property⁸⁸

Confiscations of land and property are also being done by the military in Myanmar by using temporary verification documents provided by the Burmese authorities to some Rohingya. Shamsu Alam, a Rohingya refugee from Myanmar reached Bangladesh and told the *Dhaka Tribune* that his NVC made him ineligible to own property worth more than 50,000 Myanmar Kyat. He also mentioned that many Rohingya are being threatened to be killed if they refuse to accept the NVC. Shamsu affirmed that the NVC is used to give temporary citizenship to the Rohingya without confirming ethnic identity and properties are confiscated in the process.⁸⁹

According to Human Rights Watch's World Report for 2019,⁹⁰ the National League for Democracy quasi-civilian government put some effort in to resolve land confiscation issues but many were unresolved. According to the World Report many farmers were arrested for protesting and demanding their land for farming. 'Illegal' trespassing for farming land near a special economic zone that had been seized in 1996 also made 33 farmers appear blameworthy and run afoul of the law in May 2018.⁹¹

⁸⁶ Min Min & Moe Aung, 2015.

⁸⁷ Chakraborty et al., 2015.

⁸⁸ Yeung, 2019.

⁸⁹ Mahmud, 2017.

⁹⁰ Human Rights Watch, 2019.

⁹¹ Ibid.

Barriers on Free Movement and Inadequate Medical Facilities

One factor behind Myanmar's stagnant growth is the limitation on the free movement of Rohingya people. When movement without barriers is denied, then it shuts the doors of business, development, education and employment. The Rohingya are bound to take permission before travel.⁹²

In this apartheid condition, the Rohingya are mainly dependent on international humanitarian aid, which is also obstructed by security forces. In February 2014, the government expelled the global medical care organization Médecins Sans Frontières from Rakhine State, charging them with allegations of being biased towards the Rohingya. This step, taken by the government, deprived the Rohingya of the only medical care they could access. In March 2014, many international nongovernmental organization offices were damaged and looted by the security forces. The security forces displaced more than 300 humanitarian workers and disturbed medical services available for the vulnerable Rohingya. This resulted in inadequate medical facilities for those both in and outside of camps.

In Balukhali camp, Bangladesh, there were many Rohingya people without access to proper medical facilities in 2017. The so-called 'local doctors' say that they are trained doctors, but only had a Local Medical Assistant and Family Planning qualification, which is not a qualified degree for therapeutic medicine. Al Jazeera reported that Rohingya refugees have been living in Bangladeshi camps since the 1970s, and the number of Rohingya refugees in Bangladesh at that time varied from three lakh (300,000 Myanmar Kyat) to five lakh (500,000 Myanmar Kyat).⁹³

⁹² Ibid.

⁹³ Husein & Khan, 2017.

The Denial of Women's Rights

Edward writes that gender discrimination spoils the rights of women and girls and can be a cause of their displacement.⁹⁴ Discrimination against women can also happen during movement, which includes departure, stay and restoration. Women in Myanmar suffer a variety of issues, which include societal, legal, and cultural difficulties. Women in Myanmar cannot access the rights that have supposedly been granted to them. Under the brutality and unfriendly behavior of some Burmese ethnicities and the government of Myanmar, women are compelled to live a persecuted life. A Norwegian Refugee Council report conveys shocking figures of the women who are not enjoying legal rights.⁹⁵

Almost 33 percent of people in Myanmar do not possess any identity card, and among who do not have identity cards, five percent are women without proof of citizenship. As of 2017, 700,000 Rohingya people had fled to Bangladesh and are now residing there. Among them, 14 percent were single mother households, and half of the refugee population were women.⁹⁶

Part IV: Conclusion

The 1982 Burma Citizenship Law violates the civil rights of the Rohingya people in the modern Burmese political system. This is intriguing enough to make one enquire about the foundational basis of discriminatory nationality laws around the world and also compels one to study the politicization of identities. Politicization is a political behavior which is bound to political norms of the state. Extreme politicization does not abide by laws; hence, it can alter the laws in the process of dehumanizing and excluding certain ethnicities and races which ultimately leads to conflict.

⁹⁴ Edward, 2009.

⁹⁵ Norwegian Refugee Council et al., 2018.

⁹⁶ Ibid.

Knuters argues that when Rohingya are denied citizenship, they are automatically denied the most basic human rights. He has introduced the term “Political Buddhism”, which describes an identity-driven force for the unrest in the country; along with political Buddhism, poverty and inequality are other reasons for violence in Myanmar.⁹⁷ A report commissioned by the Norwegian Ministry of Foreign Affairs in 2018 says that a lack of proper accountability and complaint mechanisms has been the reason for the continuation of violence, unrest, and disagreements among the people. Hence, human rights violators take advantage and escape punishment.⁹⁸

In this regard, the institutionalization of proper complaint mechanisms becomes an important factor. South says that there is need for public education enabling minorities to show their ethnic values to the majority and asks the authorities for a national conversation on the nature of citizenship.⁹⁹ The education system also needs to make the public aware of different ethnicities in the country and teach all students to respect mutual diversity. Further, South argues that in conflict-ridden countries like Myanmar, education that merely focuses on mutual respect will not be adequate. In such situations, state capacity, accountability, and rule of law should be pooled together with the value of locally-rooted legitimacy. This can be attained by better recognition, certain mutual understandings, and the sharing of benefits through proper channels.¹⁰⁰

On a positive note, this article seeks a coming future that will bring certain good happenings for the Rohingya and concludes that the Rohingya issue is complex to understand and is an important opportunity to study citizenship and statelessness further, the understanding of which is of immense importance to establish peace in Myanmar.

⁹⁷ Knuters, 2018.

⁹⁸ Stokke et al., 2018.

⁹⁹ South, 2018.

¹⁰⁰ Ibid.

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