

**POLITICS OF STATELESSNESS:
A CASE STUDY OF ROHINGYAS, 2008- 2017.**

*Dissertation submitted to the Jawaharlal Nehru University
in partial fulfilment of the requirements
for the award of the degree of*

MASTER OF PHILOSOPHY

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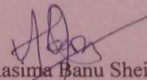


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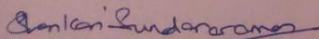
DECLARATION

I declare that the dissertation titled "Politics of Statelessness: A Case Study of Rohingyas, 2008-2017" submitted by me in partial fulfilment for the award of the Degree of **Master of Philosophy** is my original work and has not been previously submitted for any other degree of this University or any other university.



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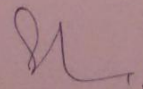
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We recommend that this dissertation be placed before the examiners for evaluation.



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TO TOLERANCE

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Contents

1. Introduction	1-11
• Background	
• Literature Review	
• Rationale and Scope of Study	
1.1.1 The aspects that have been covered in the research	
• Research Methodology	
2. Concept and Mechanisms of Statelessness	12-32
• Understanding Statelessness	
• What State means for Stateless?	
• Conceptualising Statelessness	
• Mechanisms of Statelessness	
2..1 De jure Statelessness	
2..2 De facto Statelessness	
• Rohingyas Statelessness	
• Problems of Statelessness	
• Why is it difficult to handle Statelessness?	
• Conclusion	
3. The Stateless Rohingyas	33-54
• Historically	
3..1 Burma (Pre 1886)	
3..2 Arakan (Pre 1886)	
• Religion in the Arakan	
3..1 Buddhism	
3..2 Islam	
• Rohingyas in Myanmar	
• Colonial Arakan History(1824-1948)	
• Post-Colonial Arakan State	

- Road Map to Democracy(2008- 2017)

4. Post Statelessness: The Role of Regional and International Dynamics	55-81
<ul style="list-style-type: none"> • Major Crisis: 2012 Massacres • 2013-2014 Crisis • Crisis in the Successive Years • Causes of the Crisis • Regional Dynamics • The Role Aung San Suu Kyi • Redressal Mechanism <ul style="list-style-type: none"> 4.7.1. Important recommendations by the commission 4.7.2. On the basis of citizenship • International Community <ul style="list-style-type: none"> 4.8.1. Role of India and China 4.8.2. Role of Bangladesh • What can be done? 	
5. Conclusion: Is State a solution for Stateless?	82-88
Bibliography	89-96

Maps and figures

2a .Ratification I	31
3a. Map of Myanmar	35
3b. Division of Myanmar ethnic groups	36
3c.Burma’s Dynasty	38
3d.British Census of Arakan	45
3e.Census of 1824 and 1911	44
4a.UNHCR: Refugees and migrants crisis	61
4b. Refugee Settlement in Cox Bazar	63
4c. Map on Rohingyas exodus	75
4d.Security Governance Framework	77

List of key Individuals

- **Kwan Kyi** Minister in the democratic government from 1948–62. Mother of AungSan Suu Kyi
- **Aung San Suu Kyi** Leader of the NLD
- **Shwe Mann** USDP party chairman until 2015 when he was removed by Thein Sein for being too close to the NLD. Ally of Than Shwe
- **U Nu** Prime minister from independence in 1948 until the military coup in 1962 (with hiatuses)
- **Aung San** Important military leader in the independence movement, assassinated in 1947. Father of Aung San Suu Kyi
- **Thein Sein** Myanmar's president since 2011, backed by the military and the USDP
- **Than Shwe** Leader of the government from 2004–11. Widely believed to still be influential and to control one of the major factions in the USDP.
- **Ashin U Wirathu** Major figure in the 969 Movement, sometimes called 'Buddhism's Bin Laden'
- **Ne Win** General who organised the 1962 military coup; was forced to stand down after the 1988 popular revolt

ABBREVIATIONS

A.D	anno Domini
ARSA	Arakan Rohingya Salvation Army
ASEAN	Association of South East Asian Nations
B.C	Before Christ
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CPB	Communist Party of Burma
CRC	Convention on the Rights of Child
CRS	Convention on the Reduction of Statelessness
CSSP	Convention Relating to the Status of Stateless Persons
EU	European Union
HMS	Helsinki monitor of Slovenia
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Convention on Civil and Political Rights
ICG	International Crisis Group
IOM	International Organization for Migration
JWG	Joint Working Group
NGO	Non- Governmental Organization
NLD	National League for Democracy
SAARC	South Asian Association for Regional Cooperation
SEZ	Special Economic Zones
SLORC	State Law and Order Restoration Council
UDHR	United Declaration on Human Rights
UK	United Kingdom

UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
USA	United States of America
USDP	Union Solidarity and Development Party
WW II	World War II

Chapter 1

Introduction

"We do not have the term 'Rohingya.'"

Thein Sein, Myanmar President,
Chatham House London,
July 17, 2013.

1.1. Background

The Rohingyas¹, the western coastal population of Rakhine (Arakan)² state in Myanmar³ is the world's most persecuted population today (Schulz, 2016). The biggest problem that they are facing is the problem called Statelessness. Today, the Rohingyas crisis has attracted global attention and what is important here is not the amount of attention that they have garnered but the level of human rights that they have sacrificed in return to the attention. Statelessness is the precondition to every other systematic crisis, from losing an identity to the dehumanizing of human dignity. Statelessness as a concept is a historical phenomena that traces back to pre-World War II, known for having no umbrella of recognition to some authority or territorial space as one state's citizens. However after the Second World War, the United Nations was set up in 1945 to address the mayhem of the war including enormous refugee populations across Europe, statelessness, then has become a contention of several conflicting national laws, not only for refugees, as not all refugees are stateless, there are stateless who have not even crossed an international border.

In case of *Rohingyas* in Myanmar, statelessness emerged out of citizenship reformed laws under General Ne Win's regime in 1982. It remained as an internal crisis for several decades but today it is an international crisis reflecting global criticisms and affecting several borders. There has been enough discussion about Myanmar's transformation, power, and relevance but now the focus is on the population who has

¹The self identified name through their cultural attachments, a designation which is not accepted by the majority of the Rakhine population and state authorities of Myanmar.

² Arakan and Rakhine have been interchangeably used where Arakan is the one name of Rakhine.

³Burma and Myanmar is also interchangeably used.

been kept out of state arrangements. In order to address the Rohingya issue, an independent commission was formed in 2016 chaired by Kofi Annan to follow up recommendations. It is to study whether statelessness reduction and ethnic recognition could be determined on such basis. According to Article 1(1) of the *1954 Convention to statelessness* stateless has been defined “a person who is not considered as a national by any state under the operation of its law”. Statelessness is not just a challenge to human rights but it is a fact that in many nations, its condition becomes the reason for their inaccess to political, judiciary, economic or cultural rights since nationality is the prerequisite requirement to facilitate the population. In case of Rohingyas, statelessness has resulted into the mass destruction of human security. Stateless is asserted as “one could do as one pleased” (Arendt, 1973). To Arendt,

“the calamity of the rightless is not that they are deprived of life, liberty and the pursuit of happiness, or of equality before the law and freedom of opinion-formulas which were designed to solve problems within given communities but that they no longer belong to any political community whatsoever. Their plight is not that they are not equal before the law, but that they no longer exist for them; not that they are oppressed, but that nobody wants even to oppress them.” To her, not be the part of any political community is to be expelled from humanity itself. That population beyond the boundaries to Arendt is the people who have no “right to have rights” (Arendt 1963).

Therefore, the citizen right is the "man's basic right for it is nothing less than the right to have rights" (v. Brownell, 1957). With citizenship being the primordial condition of recognition, the research will study about the stateless Rohingyas and their stake in citizenship. Since independence from Great Britain in 1948, Burma has been the scene of the longest-running and most diverse ethnic insurgencies in the contemporary world. Ethnic conflict has become one of the most dominant characteristics of a country striving for political life in both government and opposition which has been deeply militarized. The very durability of this impasse, arise a fundamental question whether the politically “militarized democracy” would cover the plight of the Rohingyas which is actually the most thorny, painful and difficult situation to have encountered by the history of human crisis all the times. Due to which statelessness remains as outcomes with no right to have rights and the conditions of their existence in the nation state spectrum of the world in the most persecuted form.

The interpretation of international law scholars claim that the right to nationality is 'the right to have rights' which indicates political rights but the human rights principles indicate otherwise. The human rights principles advocate the rights to have rights are basic right of a human being. But in actual condition how would this international law or the organizations facilitate those rights outside the state mechanisms remains enigmatic. Donnelly, the human rights scholar argued, "human rights are literally the rights that one has simply because one is a human being"(Donnelly, 2006). Although "national governments may have the primary responsibility for implementing internationally recognized human rights in their own countries human rights are the rights of all human beings, whether they are citizens or not."(Donnelly, 2006).

With the above notion, the dilemma of reaching human rights before any civil, political or economic rights strive for more humanitarian grounds, the grounds which remain vaguely accomplished. Like Arendt postulated stating stripping off one's political rights is the reason for much statelessness since it is also a stripping off humanity. However relatively there are several other conditions due to which one becomes stateless. In order to understand this further I have briefly looked into the United Nations High Commissioner for Refugees (UNHCR) drafted handbook of stateless persons from which the path to statelessness through the 'information and accession package' of the Conventions of 1954 and 1961 that listed ten reasons for one to become stateless. These reasons are as follows:

“conflict of laws; transfer of territory; laws related to marriage; administrative practices; discrimination; laws related to registration of births; *jus sanguinis*; denationalization; renunciation of citizenship; and automatic loss of citizenship by operation of law. Rather than attempting to delineate the reasons for statelessness, a task that would require one to consider everything from human motivation to the climate of international relations, it is more suitable to identify the mechanisms by which people become stateless” (UNHCR, 1954).

The dissertation consists of five chapters. The first introduces the brief content of all the chapters. Second, demystifies its conceptual framework and explains the types of statelessness. Majorly this chapter has discussed several mechanisms including government laws of comparative states, relevant United Nations (UN) citizenship laws and other international organizations working on the reduction of statelessness by giving examples of several countries that recognises statelessness. This chapter

also tries to link the theoretical framework of statelessness to the actual condition of statelessness. While mentioning about the state's demographic divisions and identity crisis, mostly the focus has been on Rohingyas condition. Since nationality remains the prerequisite condition to acquirement's protection, the statelessness of Rohingya must be an intervening factor for international community and international law. The Rohingyas and other stateless population have suffered from being unwanted and unwelcomed to any of the state. Statelessness has occurred due to several reasons. This resulted through the major role played by the state in dislocation, discrimination and alterations. Why is state still important in deciding the factors of accommodating the stateless population is what we need to know. To Arendt, it is the state which gives the rights to have rights. This is what we called as political rights which facilitates the basic needs to the population and that draws from the citizenship rights provided by the state (Arendt, 1973). To Foucault with the transition of modernity, it is the state which increasingly took care and regulates the biological aspects of human life. Foucault coined the term as 'biopower', "a regularising technology of power that 'distributes the living in the domain of value and utility'" (Foucault, 1984). To Foucault, biopower differs from that of sovereign power. This tool of power, to him was used to "qualify, measure, appraise, and hierarchise, rather than display itself in its murderous splendor" (Foucault, 1984). To Agamben, there was nothing called threshold to the modernity. He added to the Foucault idea of biopower saying, State or sovereign power always existed in continuity with the biopower which functioned in the ban state of sovereignty on an exceptional basis, so there was no sudden emergence with the so called modernity.

Hannah Arendt argued that the concepts of human rights that linked to statelessness are nothing but the violation of political and human life. Nothing better illustrates the fundamental dilemma facing human rights today than the situation of statelessness as mentioned in her book *Origins of totalitarianism* (1951). The right to freedom on Arendt's *Origins of Totalitarianism* is described as the very essence of human rights. Arendt felt that the freedom has been totally displaced for European Jewish peoples after World War II. Contextually this book is a powerful implication to the situation of WWII Human Rights violations. Through the **concept** of Arendt ontological basis, the idea opened up a series of complications concerning human rights. The problems as defined by statelessness have two fold. The very concept of human rights having its

roots in the European tradition of thinking that privileges the idea of public space, which is seen as the genuine sphere of politics. And secondly, the Greek distinction of dividing *bios* (a particularly form or way of life-political life for instance) and *zoe* (life as merely as biological existence, the Fact of being alive). The former was regarded as pre-eminent as like for **Aristotle** how he consider man as political animal someone whose existence is defined by certain activity or form of life-politics rather than simply by his biological existence. This is what Arendt had in her idea, thus for her too, it is only in the polis by participating in political affairs that one becomes fully human. To Arendt the activity of labour in private life or domestic economy which possibly where public life is depended represents barely human as deprived from fully political life. Then between the distinction of this political community and public life, there lies one outside sphere that of necessity and savageness which does not as yet to her qualified as fully human.

The Human Rights of Stateless Persons (Weissbrodt, 2006) provides a broader picture of the stateless human rights persons by discussing “the rights of stateless persons” as given in several mechanisms, illustrating the actual struggle of the stateless, providing the mechanisms and also examining the problems towards the role of regional and international dynamics. He further suggested mechanisms to reduce statelessness by discussing about several international human rights treaties and the provisions intended to prevent or reduce statelessness including “the international Covenant on Civil and Political rights, the Convention on the Nationality of married women, the convention on the reduction of statelessness and the convention relating to the Status of stateless persons as well as the Universal Declaration.” The article gives a holistic approach from discussing a distinction of “De Jure and De Facto statelessness and the 1954 and 1961 statelessness conventions”, where according to 1954 Convention, “a stateless person is declared as a person who is not considered as a national by any state under the operation of its law”. This definition is declared as *de jure* statelessness for its clear legal account. This became a debatable discourse, some agreed and some considered it to be quite narrow. The above statements exemplify the statement that “persons with no effective nationality are, for all practical purposes stateless, and should be labeled and treated as such”. While keeping in this view, the definition of statelessness was widened to embrace *de facto* stateless. The category of *de facto* stateless persons defined to include all persons who exercises citizenship

right yet do not get any protection and means that are typically acquired through the citizenship laws.

The third chapter talks about the history of Rohingya and how they were rendered stateless. This Chapter gives the holistic framework of Rohingyas population and Arakan (Rakhine) state. It traces how the crisis of statelessness occurred and the aspects of their citizenship which later on transformed into statelessness. This chapter will also discuss about the violation of several rights majorly human rights and their present conditions with effect from several ethnic crises, the role of Burma state machineries, international organizations and regional organizations to which it comply. Whether it was an advent of modernity through the nation-state divisions or the traditional values of identity and ethnicity, Rohingyas have suffered from both the factors in a dehumanized manner, forcing them scattered around places to places. The plight of the Rohingyas traces back two centuries ago. Rohingyas' history can be classified into three divisions: pre-colonial (prior 1886), colonial (till 1948) and post-colonial (post 1945). Arakan was not a part of Burma. She was an independent state, presently known as Rakhine. The traces of Muslim goes back to the 7th century (Milton et al 2017) rendered through the Muslim Arabic sailors from 788 to 810 AD (Abul Hasnat Milton, 2017) then followed by the colonial entries from India, the Bengali speaking people from fifteen to seventeenth centuries.

Arakan in pre-colonial times was a kingdom of peaceful terrain. Both the communities, Buddhist and Muslim of Arakan (Rakhine) lived in a harmony. Things changed with the colonial times, particularly by the first Anglo-Burmese war in 1825. The conflict deepened during the Second World War, were the support of the two communities differed, Rohingyas supported the British and Buddhist Arakanese supported the Japanese. The period when Japan occupied Burma including Arakan, Rohingyas were attacked both by the extremist Buddhist and Burma independence army. More than millions Rohingyas were killed fifty thousand were forcibly migrated werekilling 100,000 Rohingyas and forcibly migrating 50,000 to the border of east Bengal which is a Bangladesh today. After Burma's independence in 1948, anti-Rohingyas campaign went on openly by transforming the citizenship law in 1982 and left them stateless. With the lost of citizenship in the state, they were deprived from freedom of movement, freedom of expression to the extent of lost in right to life. Today they are at the edge of genocide.

Martin Smith's book titled "The Muslim Rohingyas of Burma" have precisely explained Burma and its discourse in a structural manner. In this book it has graphed the causes and consequences of the Rohingya's conflict, portraying the two ethnic divisions of Muslim (Rohingya) and Buddhist (Rakhine) in Arakan state. He derived historically by bringing some elements:

"firstly, with regard to ethnic communalism, which has resulted in periodic but unpredictable outbreaks of social violence and upheaval; secondly, stating there are strong religious undercurrents which relate to the situation of all Muslims in Burma at large; and, thirdly, saying, there is an intransigence on the part of many of the main protagonists, which have made the finding of lasting solutions so very difficult" (Smith M. , 2014).

Martin Smith also pointed out the difficulties stating "after decades of isolation, the whole crisis is overshadowed by a complete absence of reliable anthropological or social field research, which means that different sides continue to circulate – or even invent – very different versions of the same people's histories" (Smith, Burma, 1991). The study of this very discourse is important because it is the case of lost history, misguided land and the battered lives. Already lakhs of Rohingyas have been isolated as refugees. This concern of battered lives has been taken up by Amnesty international human rights organization for having disregarded the basic rights by Burma's government. However, little has been done even after the recent adoption of militarized democracy.

The classic titled "History of South - East Asia" (Hall, 1950) described about today's Arakanese of Burma as "basically Burmese with an unmistakable Indian admixture" (Hall, 1950). The dissimilar culture resulted calling the Rohingyas as Bangladesh's fledged Bengali and treated them as alien. Since independence, Arakan was not even recognized as the ethnic statehood although, the evidence showed the Muslim candidates winning four seats and the role they played in history forming the first Mujahid Party. Thus this few literatures gave the impactful insight to statelessness and crisis in Burma and what is to be done is to interlink and discuss both as the outcomes of the main domain.

The fourth chapter talks about the Post-Statelessness: Regional and international Dynamics. This chapter discusses about the statelessness Redressal mechanism and highlights the importance of regional and international community. As statelessness is no more a state problem so it is highly expected to have a multi-layered dialogue among state authorities, regional organizations, international organizations, non-governmental organization (NGO), civil society, etc. Thus the chapter has discussed about the non-traditional security threats and statelessness being one.

The focus has been on the geopolitical relevance of Southeast Asia since, in the face of the unfolding major power rivalries, what regional power like ASEAN has done. The chapter has highlighted the issues and the violations faced by the stateless population. Further it has covered the mechanisms and the aspects that are liable to be addressed by the regional and international community as the future prospects of Redressal tools by the affected states. In this chapter mostly have taken up the original reports from human rights watch, international crisis group, UNHCR, etc. Like Arendt has postulated the problems of incurring “right to have rights” as the major issue of stateless so the basis of the research has focused on finding a way to have that shift in idea from territorial monopolies to a world of *borderless* civic networks where parent right could be drawn beyond the borders.

The article titled “The Rohingya: Forced migration and statelessness”(Lewa, 2001) attempts to examine the causes that led the forced migration of millions Rohingyas, the “refugee problem” which is the most evident evacuation of today’s world. Lewa argued upon the geopolitical relevance of the Arakan and regional order that is absent in the coverage of the situation. It thereafter studies the context in which “forced displacement has and is still taking place i.e. the policies implemented by the Burmese government towards the Rohingyas and looks at the problem of statelessness which is a central factor of their flight” (Lewa, 2001). It then highlights the consequences of these policies, and the extent of the out-migration of Rohingyas throughout the region. Lewa, at the end, analyses the international community’s response and the role of UNHCR.

The fifth chapter is the conclusion. This chapter has been the connecting points of all the above mentions points. In this chapter, all the arguments and observations made above find its meeting point with the arguments that the missing gaps between the

state and statelessness has to be filled by the multilayered dialogue of new security governance that will take care of all the non-security threats. Focusing on the Rohingyas statelessness, it has concluded that solution lies not in sending back the Rohingyas to Myanmar but ensuring them a dignified life by revisiting the 1982 citizenship laws and channelizing the laws in a way that they are given justice.

1.2.Rationale and scope of the study

With the government highlighting the human rights abuses in Balochistan, Syrian refugees crisis with the advent of Trump and the Rohingyas at the periphery of genocide, the world is an unfriendly place for stateless today. However, any grant of asylum is considered to be tempered by country's track record towards refugees. In this scenario, where refugees and stateless are treated as an unwanted and redundant the study of this discourse eventually becomes relevant with a focal point as to where such population gets comes and goes later on. Such exodus is often considered as the result of the failed nation-state theory considering it to be one of the major international discourses. It highlights the fact that, world is moving or shifting somewhat from state towards the statelessness. Even if the government of the particular state staged statelessness, there is a way that is works beyond the borders, the importance of one's nationality or citizenship is often outshined by the very aspects of individual human rights to be honored. In this case, it will be quite relevant on analyzing issues of statelessness, refugees and especially on Rohingyas which is still suffering with the recent clashes.

The research analyzes the reason of this crisis studying the society of Myanmar and its ethnic war. While Myanmar's ethnic and political grievances have fueled conflict in every governmental era, still there are some underpinnings factors that led the Myanmar thrive in ethnic divisions. A historic inter-mix of culture, military, socio – economic and international causes has been integral to sustaining Myanmar's conflict environment at different times and making the Rohingyas population stateless. So the research seeks to explore the status quo of the stateless population of Rakhine state in Myanmar, who is now rendered stateless. The crisis of this very population has come to the scrutiny of several countries stance including the regional power like ASEAN. Rohingyas known to be the most persecuted population rendered stateless with the

change in law of the citizen in 1982 in Myanmar, however, there raised some hope with the reformation of Myanmar political system among the international population but fostering no new place for this population, Burma state of affairs is under serious charges of human rights violation and for staging statelessness. This study further discusses the causes and consequences and also the aspects of international law on stateless persons. Due to the limitation of the international law provision that states that “nationality is the essential condition for securing to the individual the protection of his rights in the international sphere, it becomes next to impossible if no international interventions comes up beyond the territory bounded nation- state and diagnose some resolution ground”(Sheikh, 2018). Thus, the chapters will address the role of citizenship as a fundamental human right that brings forth the ability to exercise other human rights and also about the ethnic recognition factors in Myanmar’s citizenship Law.

1.1.1. The aspects that have been covered in the research are as follows:

1. How statelessness occurred in the territorially legitimized world?
2. Why it is difficult to handle Statelessness?
3. How do regional powers like ASEAN and others address statelessness?
4. What are the reasons behind the unclear history of Rohingyas?
5. How to ensure ethnic recognition with the citizenship laws?
6. Can there be any better prospects for resolving Rohingyas’ exodus and statelessness crisis?
7. What if Burma takes back Rohingyas, will the crisis be resolved?

This research is an embodiment of both qualitative and quantitative methods. As a qualitative source, the opinions from the Rohingyas people who reside as refugees in Delhi have been collected and for the quantitative means, the secondary sources like books, journals, articles and newspapers were extensively used. The reports and survey from the organizations like Human Rights Watch (HRW), UNHCR, IOM, and ICC, etc, have been collected from online (however the research is less of a factual and more of a theoretical and practical approach). The research started with the conceptual framework of statelessness and its importance in the existing scenario of increasing stateless world. Followed up by the content analysis of the concept of statelessness and the status of Rohingyas who are extensively battered; the major

inputs of the research is strongly depend on understanding the regional and International dynamics upon Rohingyas statelessness and its consequences that includes violation of human security.

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Chapter 2

Concepts and Mechanisms to Statelessness

Statelessness is a global phenomenon that reveals the darker sides of modernity affecting enormous individuals revoking their citizenship, de-recognizing their identity and questioning their existence. Being stateless, once was considered, as “a form of punishment more primitive than torture for it destroys for the individual the political existence that was centuries in the development” (Trop v. Dulles, 1957). An individual whose national identity if not recognized by any state will find himself vulnerable. This vulnerability further tends to violate human rights (UNHCR, 2015). Thereby, this chapter will discuss the fundamentals and concept of statelessness and how it has occurred and affected the population.

A stateless person is “a person who is not considered as a national by any state under the operation of its law” (UNHCR, 2018). This definition has been declared as *de jure* (*by law*) and not a *de facto* because of its clear description about the legal status of a stateless, which means that the characteristics and value of a person’s nationality is irrelevant to the definition of statelessness. (Refugees, 1957). This definition is a customary international law, which means it is universally applicable to all the countries, regardless of any country ratifying 1954 convention (Weissbrodt, 2006). Statelessness has occurred due to several reasons. In the territorially legitimized world, stateless population remained grappling in the complexities of the nation-state boundary without any facilitation of legitimacy of the boundaries. The international laws remain lackadaisical and questionable with no stakeholders to protect them. Their rights and dignity are taken for granted on the face of humanity. In this process of dislocation, discrimination and alterations, state plays a major role and they are still expected to play a major role for their protection. Thus, the question remains why state is expected to decide the fate for the stateless population even after being the offender.

While UNHCR estimated the population of existing stateless people worldwide, the figure was unacceptable to many scholars, the population that they declared were around 10 million (approx) that excludes Palestinians and other scattered stateless

completely (UNHCR, 2013) this figure that completely overlooked their existence. (UNHCR, 2013) A recent report suggests, for instance, that there are likely an additional growth of 1.5 million stateless refugees to add to the global statelessness tally (Inclusion, 2014). This demonstrates the strong nexus between statelessness and displacement; indeed, out of every three stateless persons one has been forcibly displaced (Inclusion, 2014).

2.1. Understanding statelessness

In order to understand the statelessness, we need to actually understand the elements of statelessness. A stateless person is an individual who is not attached to any strings of nationality and their connected mechanisms—when we refer nationality it means the legality that binds between a state and a person. There are two important cases of statelessness that has to be taken account, one is *in situ* (Vlieks, 2013) i.e. people who are stateless in their own country and another one is the *migratory* stateless, who become stateless by remaining out of their place of origin. It becomes complex when the statelessness occurs in both the grounds as non-abiding to any laws of the land *in situ* and in *migratory* too. If we look at the Rohingyas population today, they are in both the cases of *in situ* and *migratory*. They are de-recognized in their own origin state and suffering through forced migration now they are migratory stateless.

Migratory situation includes those expatriates who compromised their nationality without having acquired the nationality of a country of which he/she is a residence. In *in situ* cases, the stateless individuals, crossed no borders and limited themselves in their “own country” (Vlieks, 2013). Their dilemma existed in their own country that is in the country of their long-term residence, in many cases the country of their birth. For these individuals, statelessness is often out of the legislation of country’s laws.

The point of differentiating these stateless was to know, whether they are attached to any state or not. This distinction has become legitimate and meaningful with the advent of the United Nations High Commissioner for Refugees (UNHCR) handbook on the protection of stateless persons which is known as international soft law demonstrated explicitly as a guidance to the state by mentioning particularly that people who are migratory should be able to obtain protection as a stateless person facilitating the naturalization process and the right to acquire the citizenship rights from the state through the determination of statelessness. And for the *in situ* the

UNHCR have given guidance stating the people who are in situ have connections with the country they live in and not with any other nations should be granted nationality. This are the guiding principles which remains well crafted but with no certain direction to be realized and executed as said.

2.2. What state means for stateless?

To the stateless state means a legitimacy that provides all the basic necessities and protection of life but at the same it is also means the system of exclusion, exploitation and dehumanisation. For stateless, there is a negative connotation about state as it aborted them out of their respective country. At the same time, there are stateless who are still hopeful that with the change in regime, they would retain their nationality the reason they wanted to have their state back is because state plays as a guardian of their life, from the pre-natal care to old age home.

With the divisions of two kinds of rights that are human rights and political rights, the world has ignored the former one. The state then facilitated the later one which further guarantees to give the rights to have rights; what we called as citizenship rights which ensures the basic needs to the population drawing from the citizenship rights provided by the state (Arendt, 1973).

With the transition of modernity, it is the state which increasingly took care and regulates the biological, human life itself. Foucault coined the term as 'biopower', "a regularising technology of power that 'distributes the living in the domain of value and utility'" (Mader, 2007). To Foucault, biopower differs from that of sovereign power. This tool of power, to him was used to "qualify, measure, appraise, and hierarchize, rather than display itself in its murderous splendour" (Mader, 2007). To Agamben, there was nothing called threshold to the modernity. He added to the Foucault idea of biopower, saying, State or sovereign power always existed in continuity with the biopower which functioned in the 'ban' state of sovereignty on an exceptional basis, so there was no sudden emergence with the so-called modernity (Jennings, 2011). There was only connections that existed together to manifest the political order. From the time immemorial, state has been decision maker, the executor, the judicially safe-guarder.

2.3. Conceptualising statelessness

In order to understand the concept of statelessness, it is important to review the concept of Hannah Arendt's and Agamben's conspicuously. The question often arises in a sense of urgency as to how stateless could be protected, under no rule of state protection. This is when the stateless falls under the international domain of principle of human rights for their existence. It was in the Second World War when the detention and control border violated life and dignity of the people, human rights principles were set out in 1948 declaration. But around the World War II, even the human rights principles were violated by forbidding the subjecting people to seek for asylum which was granted in the convention and also contravene various other international protocols especially that of 1951 refugee convention. This was done in an unbounded manner under the garb of a state power, fashioned by the prerogatives of state power. Thus, this is a situation where international conventions still cannot function outside the state discretion. "Sovereign power and international protocols face off in an opposite axis. There is a hassle between the principle of human rights and state sovereign to control their borders and to monitor the quality of and quantity of admittees"(Benhabib, 1975). Here the illustration of the Arendt's poignant note in the *origins of totalitarianism* explains about the problems of the refugees and stateless that faced during their demands for their rights to be given them on the basis of the rights of a man- if a man loses his political right, he should be treated humanely for solely being man but it is happening oppositely once the political right losses, the quality of inalienable human rights also get lost (Arendt, 1973).

Arendt crucial challenge to the human rights showed the tension between the two different orders of rights- universal human rights that is inherited rights for human being and civic rights drawn by the citizens by becoming the part of political community. Arendt with this division pointed out that the later one is what actually matters and offer protection under the territorially bounded region and the former one that is universal human rights just exist in the abstract form, offering no protection and dignity of being a human. She mentioned that this abstraction rather confirms the alienation and exclusion of a human from the humanity itself, this exclusion simply reduces the one to the form of a 'bare life'. The term bare life is also referred by

Agamben that draws his biopolitics from. The bare life originates from the two distinctive words of the Ancient Greeks made by Aristotle that simply means 'life' in contemporary European languages; that two distinctive words are "*bios*" and "*zoë*". Here, the *Bios* means the form or manner in which "life is lived" and *Zoë*, "the biological fact of life". To Arendt, reducing one to the bare life means reducing to just a mere biological fact of being alive and this is by addressing to the abstract form of this universal human rights. Similarly, Agamben mentioned about the bare life with the argument that there is a loss of distinction that ambiguous the meaning of the life. In a political context, the word 'life' simply connotes to the biological dimension of a life that is *zoe* and provides no guarantees about the quality and dignity of the life lived and bare life refers to this conception of life which is nothing but a sheer biological dimension or fact of life (*Zoë*) prioritizing over the way a life is lived (i.e. *Bios*) (O'Donoghue, 2015).

Agamben used the concept of bare life to expand the idea of biopower of Foucault stating, "placing biological life at the centre of its calculations, the modern state.... does nothing other than bringing light to the secret tie uniting power and bare life" (Agamben, 1995). That means bringing biological life in the forefront it has uncovered the hidden tie of sovereign power and biopower that existed always in the political order. Thus, Bare life, to him, is the concept for life that has been out in the open and functioning to what he terms as the structure of exception and what he considers as the constitutes of contemporary biopower and not a threshold to modernity as referred by Foucault. Sovereign power itself laid by the fabrication of a political authority based on the bare, human life. This, to him, is accomplish not through the exclusion of the human beings, but by the suspension of the law from the human beings, remains comprehending in the state of exception ordered by the state sovereignty.

With due regards to the stateless person, "it is not that he does not have rights; rather that within the order of sovereign states, such rights become meaningless, because political life is dominated by the situations, as hardly anyone has interest or concern about the inalienable rights that is universally inherited for human and which are actually due" (Sheikh, 2018). In this regard, one need to fully analyse the condition of what has been described as 'biopolitical exceptionalism' (Lechte, 2013) by Agamben, where it may be that the division between statehood and statelessness, belonging and

exclusion, rights and rightlessness becomes ambiguous, to the point where it could be that we are all unable to understand the increasing reduction to a condition of statelessness.

Statelessness in many countries has occurred due to the sovereign power's suspension, exclusion and dysfunction of the laws or reducing one to the condition where one cannot realize about all such discrimination that they often give up their rights that are inherited within them as a human. Though it might not be like the Agamben state of exception where the suspension of laws functioned, however, the concept of making the population only a mere biological fact of life, considering no guarantee of rights and dignities and making ambiguous about have and have not's have certainly led the stateless population not any lesser than what Arendt and Agamben called as bare life. Thus this makes sense and applicable to the study of statelessness or the stateless discourse.

The concept is incorporated to make a comparative study with the condition of the **Rohingyas** population, which is the victim of de-recognition, exclusion, and the inhumanity on a face of the earth today. They have lost their so called political rights along with their rights of a human. The political right which is also known as the civil rights that draws from the citizenship was snatched from them and left them in a condition of a forbidden ground. They are the most persecuted and highest numbered stateless today. Interestingly, Agamben in his *homo sacer*, the celebrated book of his argued that those who dwell in the state of exception remain confined to the juridical order and sovereign rule; bare life is not "simply set outside the law and made indifferent to it". Through this suspension, "law encompasses living beings" that created boundaries and deserted to it. As such, the bare life captured in the sovereign ban is included in the juridical order 'through its exclusion'; it finds itself tied to the order, and the sovereign power by which it is constituted, in the relation of exception.

"The paradigm of the bare life captured in the sovereign ban Agamben finds in the figure of *homo sacer* of archaic Roman law. *Homo sacer* has been excluded from the religious community and from all political life: he cannot participate in the rites of his *gens*, nor [...] can he perform any juridically valid act. What is more, his entire existence is reduced to a bare life stripped of every right by virtue of the fact that anyone can kill him without committing homicide; he can save himself only in perpetual flight or a foreign land" (Agamben, 1995).

Due to the revoking of legal status and ostracizing from the political community, *homo sacer* has been ousted unconditionally into the potential threat of exploitation and execution. *Homo sacer* “is in a continuous relationship with the power that banished him precisely insofar as he is at every instant exposed to an unconditional threat of death” (Agamben, 1995).

The above inscribed words are exactly what are describable for the **Rohingyas** population. In the history of this population, the circumstances have followed in a manner where their sense of belonging for their own territory was forced to suppress. Under the Ne Win regime, the government barred this population from their movements by prohibiting their travelling even between their villages within a single township (UNHCR, 2013). They were tortured extensively within the Naga min operation: “a campaign of murder, rape and torture targeted specifically at the Muslim population, and designed to drive the foreigners out of Burma and back to Bangladesh” (Smith, Burma, 1991). This was followed by transforming the country's citizenship laws in 1982 and by striking off their citizenship, making them stateless till today. This is how they were rendered rightless to escape and leave Arakan resulting in huge influx of refugees in Bangladesh.

2.4. Mechanism of Statelessness

There are diverse trajectories to statelessness. But the Office of the United Nations High Commissioner for Refugees listed ten reasons in becoming stateless. They are as follows:

“conflict of laws; transfer of territory; laws related to marriage; administrative practices; discrimination; laws related to registration of births; jus sanguinis; denationalization; renunciation of citizenship; and automatic loss of citizenship by operation of Law” (Inclusion, 2014).

Statelessness occurs through many ways. Methodologically there are two concrete ways defined by 1954 and 1961 stateless Conventions. They are *de jure* and *de facto*. The 1954 Convention definition of a stateless person is “a person who is not considered as a national by any state under the operation of its law”⁴ has been

⁴ This particular definition has also defined the 1961 Convention on the Reduction of Statelessness along with 1954 Convention.

classified as *de jure* statelessness because of its clear legal explanation. Some have accepted this classification for its clear and unambiguous criterion for statelessness but not everyone lauded it because it has failed to cover the population whose laws of the land were yet to be protected. Therefore, 1954 conventions attracted lot of criticisms for its constricted and restrictive definitions that excludes and isolated certain population from all the beneficiaries and protection of life and dignity of those individuals that technically possess nationality (Weissbrodt, 2006).

These statements embody the argument that persons with no effective nationality are, for all practical purposes, stateless, and should be labelled and treated as such. Therefore in this view, I have argued to make legislation and broaden the definition of statelessness by including *de facto* statelessness. The people who are *de facto* stateless are the ones who hold nationality according to the law, but their nationality remains non-functional as they cannot declare their nationality. This situation of *de facto* occurs when government withhold the beneficiary requirement of citizenship as per the laws of the country. The state provision provides only to the persons who possess the nationality verification documents. Thus, due to the lack of such, the protection and assistance from the government remains completely shut.

There has been a lot of criticism to the Convention of 1954 for its constriction in delivering of an effective nationality. It possesses technicality and legality that could only address technical and legal problems. The essence of civility is neglected. The qualitative attributes of citizenship were completely ignored. Citizenship Principles to providing human rights were deserted despite the fact that the Conventions of 1954 drawn its principles and inspiration from the Article 15 of the Universal Declaration of Human Rights. The definition thus remains less in quality and more on fact. According to the laws and court system, consideration of a person's citizenship to a state is decided upon the statement that "while there may be complex legal issues involved in determining whether or not an event has occurred by operation of law, national courts have means of resolving such questions" (BATCHELOR, 1995). However, the inclusion of *de facto* stateless has still not yet enshrined in any of the legal dimensions. The *De facto* stateless were not defined by the both conventions of 1954 and 1961 due to the following reasons.

First, the 1954 Convention and the 1951 Convention relating to the Status of Refugees was sidestepped to be overlap by the drafters.(BATCHELOR, 1995). There was a wrong assumption with the drafters of both the Statelessness Conventions who assumed that the refugee were, and would be none but the de facto stateless. The de jure definition of a stateless person was preferred

“in order to exclude the question of whether the person has faced persecution, as there are conflicts of laws issues which might result in statelessness without any wilful act of neglect, discrimination, or violation on the part of the State and De facto statelessness, on the other hand, was presumed to be the result of an act on the part of the individual, such as fleeing the country of nationality because of persecution by the State” (BATCHELOR, 1995).

The 1954 and 1961 Conventions has been drafted with the provisions to consider those persons who faces maltreatment and persecution but with no effective nationality to be recognise them as refugees. Under this provision all the beneficiaries and assistance from the international community to be provided as per the regulation of the 1951 Geneva Convention relating to the Status of Refugees. However, things turned out differently. The drafters of 1954 Convention relating to the Status of Stateless Persons with all intentions adopted the definition of stateless persons with strict legal approach.(BATCHELOR, 1995).

Additionally, the clear definition of de facto and de jure stateless was wanted by the drafters of 1954 and 1961 Conventions, as both the convention were bewildering to the drafters. Thus, the drafters of the 1954 and 1961 Conventions, respectively, needed a clear definition of statelessness in order to avoid the perplex situation considering de facto as de jure and de jure as de facto. For statelessness, rather than attempting to explain the kind of statelessness, the provisions need to look from the humanistic dimensions by considering the motivating factor of human behaviour to the change in international outlook, which will provide the holistic approach and help in identifying the intrinsic causes that has affected the stateless.(BATCHELOR, 1995).

2.4.1. De jure statelessness.

As stated above, de jure statelessness is the one who is not considered a national under the laws of any country. When we talk about the statelessness laws, it is always the citizenship laws. The laws that have to be discussed were to be the guiding

principles to statelessness. In fact, the two most omnipresent principles of citizenship are “Jus Soli” and “Jus Sanguinis”(Refugees, 1957). These two are the principles which decide whether to grant or deny the citizenship. Jus soli literally means “Law of the land” and its interpretation means citizenship based on “place of birth”. Jus sanguinis on the other hand means the right of blood, which refer the citizenship based on family heritage or descent. Most of the citizenship laws reflect both the principles for instance in US- it recognizes the citizenship based on birth and also based on heredity. The problem arises when few nationalities follow the principles of jus sanguinis alone. In such country children rights to nationality cannot be drawn from a mother. Hence, in a country that recognizes only paternal descent or has children out of wedlock with a man of her own nationality, the children ultimately become stateless. However, under the Article 25(2) of the Universal Declaration, there is a discrimination against children born out of wedlock, which states that “children whether born in or out of wedlock, shall enjoy the same social protection”.

2.4.2. De facto statelessness:

De facto statelessness includes those persons broadly having a nationality yet not having any access to beneficiaries and protection garbed under the citizenship laws of a state. Therefore, the definition does not include those stateless who do not enjoy any rights like the noncriminal citizens of that particular state. When de jure statelessness occurs out of lawmakers wavering of laws, de jure occurs due to the state discrimination. So, the mechanisms of both de jure and de facto differ to a quite extent. De facto statelessness led to the major human crimes like Slavery and human trafficking. Radhika Coomaraswamy, the UN Special Rapporteur on Violence Against Women, has highlighted problems of de facto statelessness among women trafficked to work in the sex trade(Coomaraswamy, 1996). For many trafficked women, "nationality is not a means to diplomatic assistance because often their passports are taken away by the pimp or brothel owner, and they are unable to prove their nationality" (Coomaraswamy, 1996). Therefore, even if these women were to gain freedom, they still faces a lot of difficulties in the process of returning to their homeland having no documents and proof to be acquainted to any nationality (Coomarashwamy, 2002). Beyond this, the problems also persisted due to the government committing what is called as administrative ethnic cleansing. Several governments are responsible for making the population removing the names from the

list. This was what happened in Slovenia, the non-Slovene roma was removed from the Registrar of Permanent Residents in 1992. The files were transferred from the active to the inactive registrar of permanent residents. According to the government of Slovenia, “29,064 persons were erased”(Parliament, 2007)) which was argued upon by the Helsinki monitor of Slovenia (HMS) that the “number was in fact around 80000” (Dedić, 2003).

2.5. Rohingyas statelessness

The problem of statelessness with Rohingyas is of different case. It is of totally denying them to be part of the country through the changes of laws in Burma. Their de-recognition process was well executed. They were the part of the history and thus part of the Burma citizenship laws. But in 1974 the state mechanism made sudden shift through the Constitution of the Socialist Republic of the Union of Burma that defined citizenship (in Article 145) as follows: “All persons born of parents both of whom are nationals of the Socialist Republic of the Union of Burma are citizens of the Union”. Citizenship, in turn, was redefined as follows: Nationals such as “the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to ... 1823 A.D. are Burma citizens. The Council of State may decide whether any ethnic group is national or not which clearly excluded Rohingyas as ethnicity of Burma” (Ibrahim, *The Rohingyas: Inside Myanmar's Hidden*, 2015).

Prior to the rule of military regime, Rohingyas were entitled with the Burmese citizenship. There have been foreigner's acts and foreigner's registration rules. But Rohingyas were not unrestricted to register under such acts and rules. According to the 'ANNEX A' of the 1947 agreement (Aung San-Attlee Agreement), it was mentioned that,

“a Burma national is defined for the purpose of eligibility to vote and to stand as a candidate at the forth coming election as British subject or the subject of an Indian state who was born in Burma and reside there for a total period not less than eight years in the ten years immediately preceding either 1st January, 1942 or 1st January 1947” (Ullah, 2017)

This clearly stated the criteria of eligibility of vote and to stand in the upcoming election. The Nu-Atlee agreement treaty between the government of the United Kingdom and the provincial government of Burma, 1947 was very important for determining the nationality status of the Burma's people and races(Ullah, 2017).

Article 3 of the agreement states:

“Any person who at the date of the coming into force of the present treaty is, by virtue of the constitution of the union of Burma, a citizen thereof and who is, or by virtue of a subsequent election is deemed to be, also a British subject, may make a declaration of alienate in the manner prescribed by the law of the union, and thereupon shall cease to be a citizen of the union”(Atlee 2011).

Thus, it clearly includes under the section 11 of the constitution that refers indigenous races of Burma which are Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan race to be the permanent settlers within the territories. Thus this automatically applies to the Rohingyas too. Therefore, Rohingyas under every clauses fall as the citizen under the permanent home prior to 1823 AD(Ibrahim, 2016).

After the ordinance of the Atlee agreement, there was a revolutionary change in the Burma's legislation of the 1948 and particularly in 1982 Citizenship laws. Unlike the 1947 constitution and 1948 citizenship law, the 1982 citizenship law established under the three tiered system-full, associate and naturalized. This legislation was instrumental to exploitation, discrimination and categorization. Thus, citizenship was linked to membership with the change in the laws of the citizenships they were completely rendered stateless by removing them from their citizenship patterns. Ever since then they remained most persecuted. Why this was being done is what we need to discuss taking Burmese state into account.

The changes in citizenship laws are one of the major mechanisms of statelessness. This has been the case in Zaire too. In 1971, the Banyarwanda people of Zaire were granted certain civil and political rights such as the right to stand for election and the right to vote. However, in 1981, the previous legislation was reconstituted and their nationality was revoked under the law no.81-002 through which they were rendered stateless. In 2001, Zimbabwe too reconstituted their citizenship laws and claims that the Zimbabwean nationals who fail to renounce their foreign citizenship at the time of the conversion phase would naturally be struck off from the Zimbabwean nationality (PRACTICES, 1995). Essentially, “Zimbabweans who held dual citizenship or with a

potential claim to foreign citizenship had to renounce their foreign citizenship or their claims to foreign citizenship in order to keep their Zimbabwean status going” (The Financial Gazette, 2018). The whole process of this constitution turned millions of Zimbabweans into deplorable condition due to the “foreign parentage” and “foreign sounding names”, but most of them were born and raised in Zimbabwe, and were forced to withdraw their citizenships who had their “national identities . . . confiscated by the state until they prove that they have renounced any claims to foreign citizenship” (The Zimbabwean, 2012). In this way, it just took a moment of redrafting to revoke someone’s nationality and identity to the nation they were born and raised.

There are other cases of stateless like renouncing their citizenship from one state to acquire another one. Person may tend to statelessness even when their government revokes their citizenship and remain with no alternatives. This kind of situation occurred in the case of John Demjanjuk, a United States migrant who was a former German citizen. (Heath, 2003). The Israeli Supreme Court have charged him with “Ivan the Terrible,” an infamous concentration camp guard during World War II, after which his citizenship of the United States was stripped off and put him off to Tel Aviv, where the Israeli Supreme Court have acquitted him and sent him back to United States just to be a stateless (Heath, 2003).

There are conditions for misuse and misinterpretations in several conditions of denaturalization. There are numbers of cases of fraud in obtaining naturalization. In this case, for example, the provisions of the 1961 Convention do not apply where-

“nationality has been obtained by misrepresentation or fraud,” or where a person has,” inconsistently with his duty of loyalty to the contracting state.... conducted himself in a manner seriously prejudicial to the vital interest of the state (Convention 1961). Similarly even in 1954 convention does not apply to persons about whom “there are serious reasons for considering that.... They have committed a crime against peace, a war crime, or a crime against humanity or they have committed a serious non-political crime outside the country of their residence prior to their admission to that country” (Convention 1961).

There are cases like for dissolution or the cases of succession, broken up or when territory is transferred, this could be well understood through the dissolution of Soviet Union, Czechoslovakia, and Yugoslavia (Refugees, 1957), that sought the redefinition of citizenship. This has rendered them stateless and in several others cases people failed to acquire citizenship in their place of origin.

2.6. Problems of statelessness

The problems that the stateless faced are a crime to the humanity. The tendency to measure the atrocities remain limited to the organisation who claims to be the stakeholder for human rights but deeply inclined to the state machineries of the country's interest. The stateless helplessness is best illustrated by the plight of stateless Jews during World War II. History is being repeated in the face of modernity and Rohingyas are the most victimised to it.

Being stateless is the foremost difficulty that they faced. As nationality is the prerequisite identity for one's recognition. Without documents, stateless persons are unable to acquire political asylum. An Undocumented life has resulted into not benefiting any basic social services. Infact, it makes no scope for finding any jobs, medical care, marrying or even starting a family to the owning property, etc. The undocumented Bidun population of Kuwait, for example, often found themselves –

“facing serious obstacles when seeking to register births, . . . divorces, and deaths, because they lacked the required identification and were typically required to go through lengthy security checks before the Ministry of Interior would issue a letter of no objection.”(Bencomo 2000). Many Kuwaiti Bidun also have been deprived of their right to marry and start a family:⁵ "Bidun face difficulty registering marriages between Bidun couples or between a Bidun and a Kuwaiti citizen because the Bidun member(s) of the couple lacks a civil ID and must obtain a letter from the Ministry of Interior and complete a lengthy security check" (Watch, 2000).

In case of **Rohingyas**, the population not only faced the social infringements. They also faced political and human subjections. They were completely shut from the township after the military rule. Not only in Myanmar, Rohingyas refugees and asylum-seekers in Malaysia too undergo all the dehumanised crimes. They are often detained in immigration camps for months where they suffered “malnutrition, unsanitary conditions, and harassments before being pushed over the border into Thailand”(UNHCR, 2013). The Malaysian government increase their restrictions on access to education and health services, and, to date, even the United Nations High Commissioner for Refugees (UNHCR, 2013) office in Malaysia, could not give much effective legal protection to the Rohingyas. Beyond these, usually what stateless goes through is the crimes of rape, torture, trafficking and detention. In case of Rohingyas it

⁵ The ICCPR states that “the right of men and women of marriageable age to marry and to found a family shall be recognized.” ICCPR.

became genocide. The UN High Commissioner for Human Rights Zeid Ra'ad al-Husseini who investigated Myanmar's ongoing atrocities declared Rohingyas crisis to be acts of genocide.⁶ Rohingyas also faced the charges of the extremist Buddhist narratives of closed links with the Saudi Arabia and armed jihadist group as Al-Qaeda or ISIS (CNN Report 2012). A local Rohingya group, the Unity for Peace Network, has taken the step issuing a strict interpretation of what is meant by jihad, the role of mosques and certain Koranic verses (Walton 2013). This network intended to deliberately remove the justifications commonly used by violent jihadist movements that their acts are justified by the Koran and Hadith.

However, the plight of the Rohingyas desperately depends on the expectation from the international community for the intervention on their behalf as they are handicapped with all the state's structured mechanisms before they decide that any intervention on their behalf will do even one from Al-Qaeda or ISIS (Wadhney 2015). So far, any such interventions, even if they are truly linked to Islamist extremism, have been very rare. But the potential for further violence and the intrusion of forces with no interest in compromise is very real, and this is starting to worry some neighbouring states who have substantial numbers of Rohingya refugees (Wadhney 2015).

2.7. Why is it difficult to handle statelessness?

To tackle statelessness, one must be aware of the causes and predicaments. As the above nuances have already given us the clear picture that in most of the cases, it is the territorially guided principles and due to the over prioritized state machineries that have led to the outcomes of statelessness. However, within this overview, there is a whole dynamics of population, that divides to form majority and minorities or as to who belongs to whom. In this exercise of power politics, history is being discarded for instance in case of Rohingyas. Their originality is often questioned, their identity is completely ignored. When the world itself is formed by immigrants and migrants, the question at such in this globalised era is highly debatable.

⁶ He further mentioned saying "it is the deliberate attempt by the authorities to destroy evidence of potential international crimes, including possible crimes against humanity".

The separation is even more restricting but not every stateless are refugees. The United Nations Convention relating to the status of refugees which was adopted in 1951 is the most important protocol of international refugee protection and the Convention that entered in force on 22 April 1954, has been subjected to one amendment in the form of a 1967 protocol, which removed the geographic and temporal limits of the 1951 conventions. The 1951 Convention as a post Second World War focused only to the population fleeing within Europe, these limitations were removed by the Convention of 1967 giving a universal coverage. The Convention is both a status and rights-based instrument formulated by a number of fundamental principles, most notably non-discrimination, non-penalization and non-refoulement⁷. The principle of non-refoulement plays a very important for the country to understand and not send any refugees or stateless which is life threatening and instable. The important provisions which were intended to prevent or reduce statelessness are embedded in several forms like-

“charters, international human rights treaties, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women, the Convention on the Reduction of Statelessness, and the Convention Relating to the Status of Stateless Persons, as well as the Universal Declaration. Indeed, the right not to be stateless, or the right to a nationality, is widely recognized as a fundamental human right”(Weissbrodt, 2006).

While the treaties identified above were not solely created to address the problem of statelessness, the 1961 Convention on the Reduction of Statelessness was made to exclusively focus on reducing statelessness. Under the citizenship rules that contracting states of the 1961 Convention has adopted the clause, many persons who might otherwise be stateless are able acquire a citizenship (Weissbrodt, 2006). International laws and conventions need to protect and play a major role in such crimes against humanity. The covenant of civil and political rights should be taken strictly. Generally remedies for the statelessness are classified in such manner: “a) pre-emptive remedies; b) minimization remedies; c) naturalizing remedies”(Weissbrodt, 2006).

⁷ The practice of not forcing refugees or asylum seekers to return to a country in which they are liable to be subjected to persecution.

Preemptive measures should be taken very seriously, if taken properly statelessness could be stopped. Preemptive measures prevent in a manner that newly born children and women who might be rendered stateless by marriage, minimization remedies do not provide any option for replacement in citizenship. However, 1954 Convention drafted a series of minimization remedies. For instance, Article 27 of the 1954 Convention obligates states parties to "issue identity papers to any stateless person in their territory who does not possess a valid travel document"(Convention 1954). Such provisions are to alleviate the conditions of the statelessness in several ways. For securing citizenship and for the reduction of the statelessness, naturalization remedies have been an important one. Sri Lankan parliament, for example, implemented “ a naturalizing remedy for statelessness in 2003 that passed a law granting citizenship to over 168,000 stateless Tamils”(BBC, 2003). All the three remedies are so important till the stateless exists. The problems lies how the state execute and take care of such remedies. The major problem with the international obligations that were created for the statelessness problems in 1954 and 1961 Conventions were that several states have not even ratified it. Indeed, none of the six bodies of UN that monitor the humanrights treaties are responsible for 1954 Convention or the 1961 Convention.

2a Ratification Information

TABLE 1
Ratification Information For, in the Given Order,
the 1961 Convention on the Reduction of Statelessness (1961 Convention),
the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention),
the Convention on the Nationality of Married Women (CNMW),
the International Covenant on Civil and Political Rights (ICCPR),
the Convention on the Elimination of All Forms of
Discrimination against Women (CEDAW), and the
Convention on the Rights of the Child (Children’s Convention), Respectively

	<i>State Parties</i>	<i>Remaining Signatories</i>	<i>Day of Last Update</i>
1961 Convention	30	3	10/19/05
1954 Convention	58	6	10/19/05
CNMW	73	10	10/19/05
ICCPR	154	7	10/19/05
CEDAW	180	1	10/19/05
Children’s Convention	192	2	10/19/05

Source:(Weissbrodt, 2006)

Given that 1954 and 1961 Conventions are ratified only by few states and also not monitored by associated UN treaty monitoring bodies, thus it becomes impossible to address human rights aspects by these two Conventions instead, provisions drafted to prevent statelessness such as the “rights of the child, the Covenant on Civil and Political Rights, and the Convention Elimination of All forms of Discrimination against woman have covered widely than the above two”.

There is a big gap in understanding that when state itself sponsors statelessness, state is expected to serve the people by abiding the treaties of the human rights or convention. In case of Rohingyas, the international criminal court could not even open up the case as Myanmar is jurisdiction remains limited to the territory as Myanmar is a non-party state to Rome Justice, reason being one it has shut one of the biggest voice from the international jurisdiction. However, the UN Security Council can address the situations to the ICC concerning non-contracting states parties, but there is clear veto from China. To acquire justice, an effective international community is required to counter the non-contracting state. To this the UN Security Council refers a situation in Article 12(2) of the Rome Statute provided that the Court have jurisdiction in two situations could exercise: 1) “the State on the territory of which the conduct in question occurred” is party to the Statute, or, “if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;” or 2) “the state of which the person accused of the crime is a national.” s is a certain gap in UN Security Council Functioning. Since UN Security Council have not given any reference for the sorry state of Myanmar to the ICC, there comes a question, Is the territoriality and internal functioning of the crimes will be overlooked? Will the ICC and the contracting states remain complicit? (Curfman, 2018).

Conclusion

Statelessness as a situation need to be understood properly beyond the state linked stakeholder’s explanation. There should be a mechanism that covers the international humanitarian crisis without any state priorities. There is a nexus between the state and the organisations that has to be delinked in a manner that could independently deploy the jurisdiction without any state’s biasness. In diplomacy interest, their always comes a state’s interest, one should know that in the state extradition of the population, the

bordered states also get affected too because the crisis of statelessness often pertains to migratory crisis which is a border crime.

“Prosecuting crimes against humanity presents immense challenges compassing jurisdictional requirements, including evidence collection, identifying the correct perpetrators, and summoning the suspects for a hearing” (Curfman, 2018).

The challenges mentioned above are being threatened by the non-party or non-contracting states to the Rome Statute. However, ICC being the biggest legitimized jurisdiction expected to make impactful and effective investigation and question the international inhuman crimes happening in Myanmar. ICC’s failure to formally investigate Myanmar is considered to be the lack of strong global Jurisdiction. Therefore, statelessness as an issue should be strongly considered as human rights violation. This should be the aspects that should have its own group of organising committees over the globe to pacify the global crisis encompassing beyond borders as a human chain. Nevertheless, world is a coming together of immigrants and formed by the migrants should never be forgotten.

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Chapter 3

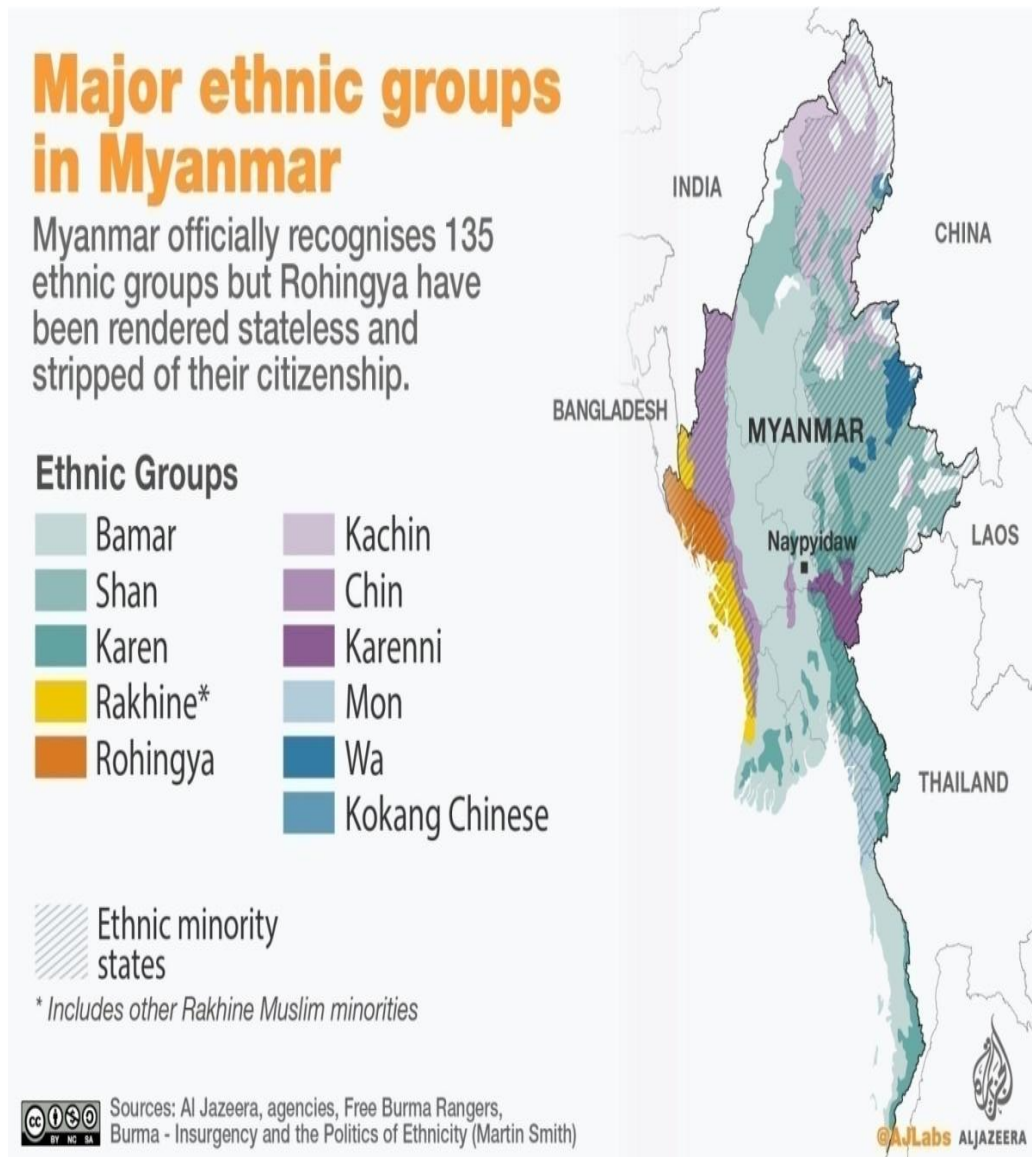
The Stateless Rohingya

3a. Map of Myanmar



(<https://www.google.co.in>, n.d.)

3b. Division of Myanmar ethnic groups



(Al Jazeera, 2017).

Statelessness has been the major issue faced by the Rohingyas. Myanmar's political dynamics and hyper-nationalism proved futile for this particular population. They were not born stateless but were rendered stateless with the major changes in the country's laws. The chapter will discuss the de-jure factor that stripped them of their rights to identity, followed by the phases that cuffed them through the political shift in the Myanmar. Thus, this chapter will throw some light to the different interpretations of their history.

3.1. Historically-

3.1.1. Burma (pre-1886)

Burma as a walled city evolved around 200 BC (Ibrahim, *The Rohingyas: Inside Myanmar's Hidden*, 2015). Burma was manifested by the admixture of India and Thailand, showing the diffusion of Indian norm and culture across South East Asia. With the Indian dominance of city planning, religion like Hinduism and Buddhism travelled and mixed with the old indigenous animist beliefs. There were two major ethnicities that dominated at this period of time; they were Mon (who ethnically was in common with the Khmers of Cambodia) who lived in the south and the Pyu who lived in the north (Ibrahim, *The Rohingyas: Inside Myanmar's Hidden*, 2015). Theravada Buddhism, who plays a remarkable role in Burma's transformation of Buddhism, is credited to have been brought by the Mon from Sri Lanka through their trading mobility. Northern Pyu city-states on the other sides were ethnically related to the Burmese Tibetan group and the language of the Pyu was appeared to have similar roots with Burmese languages. In the southern part of Burma, Pyu reflected the earliest religion of animist, Hindu and Buddhist, with the later growing relatively to others. The Pyu occupied a region that also sat astride an important trade route between India and China and this may have given them access to wealth and exposure to external influences, but it also left them vulnerable to more powerful neighbours (Moore, 2004). The Pyu city in the later period faced wars with the Chinese and got weakened. Several incursions due to the situation occurred and in the ninth century, these minor cities coalesced into the Pagan kingdom. The above facet shows the strong connection between South East Asia and their translocated cultures before any phase called globalization.

Burman ethnic groups steadily gained more influence in central Burma, and by 1100 they had conquered the Mon. This led to the emergence of the powerful Burmese Pagan Kingdom which was probably the first largely ethnic- Burma state in Myanmar (Thwin, 1982). The Pagan Kingdom brought the unification to the areas that were previously divided between the Mon and Pyu under the first king of the dynasty, Anawrahta (1044–77 AD). The new regime adopted Theravada Buddhism (consider to be radical Buddhists) as the state religion, built an enormous number of religious buildings and also introduce own version of innovation by incorporated older animist

deities into a Buddhist religious framework. This was followed by the Ava dynasty (1287-1752) that dominated upper Burma around Kyaukse. Over time this became the dominant power and managed to unify the Irrawaddy Valley by about 1636. This expansion ended the power of the Shan Dynasty that had taken control of northern Burma after the Mongol invasion and had sought to remove Buddhist influence from that region. After this again Ava dynasty got renewed and led to the spread of Buddhism again. This was again succeeded by Konbuang dynasty (1752-1885).

3c. Burma's Dynasty

DYNASTIES	PERIOD
Anawrahta	1044-77 (pagan kingdom)
Ava	1287-1752(pagan kingdom)
Shan	1527-1555(Mongol invasion)
Ava	1752(in continuation)
Konbuang	1752-1885(last dynasty)

(Phayre, 1883)

Konbuang dynasty (also known as Alompra or Alaungpya dynasty) was the last dynasty that ruled Burma. It was the second largest empire in Burmese history which continued to work upon the reforms done by Toungoo dynasty. The reforms were insufficient and counter the British advances and which tot the Anglo-Burmese wars over a six-decade span (1824-1855) and ended the millennia-old monarch of Burma. This period saw the emergence of Burma as a major regional power. It also saw the foundation of Mandalay (in 1857) as the capital of the new state. This assertive and aggressive dynasty won victory in wars against neighbouring Siam and the resultant boost of wealth and power allowed the kingdom to annex Arakan in 1784. The continuous war with the British also led to the loss of Arakan by 1826. And the full annexation of Burma was followed in 1886.

3.1.2. Arakan (pre-1886)

Arakan has become a part of Burma in modern times. Burma is known as Myanmar now. However, earlier Arakan was an independent state. In the past, the state of Arakan was divided into two kingdoms, south Arakan or Sandoway and north Arakan or Arakan proper. The two geographical areas were united only in the later

13th century. It continued united till 1785 A. D. when it was merged with Burma (Myanmar). Several interpretations have been given but one thing is clear that they have got a history of their own. It has proved like many other descendants in Arakan they are also a part of it since years. The problem emerged with the historic division of the territory along the ethnic lines. Bangladesh where Bengali Muslims resided was considered as separate nation. Burma was considered as the Buddhist nation. This division was fatal for the minorities.

Arakan was not new to other nation; it was familiar to Dutch, Portuguese and British traders because it was a land of economic opportunity (Ibrahim, *The Rohingyas: Inside Myanmar's Hidden*, 2015). Arakan is located in the tri-junction between modern day Burma, Bangladesh and India that connects between the Islamic and Buddhist world of Asia. It covers a huge area of over 36000 square kilometres. Its topography includes marshy plains and estuaries along the coast. A 500km long mountain borders the eastern part of the region. Due to this geographical difficulty, the region was disconnected from the affairs of the central Burma. The condition persists despite having strong maritime impending and easy access to Bangladesh in the north. Today Arakan is linked to the Central Burma only by a couple of passable roads. In the backdrop of the continuing conflict and negligence from the government, Arakan remains impoverished backwaters of Burma (Ibrahim, *The Rohingyas: Inside Myanmar's Hidden*, 2015). The earliest rulers of Arakan were mostly Hindus reflecting the links to India (Kristof, 2015). However, Islam arrived in the seventh century via trading links to India and Arabia, but the region remained multi-confessional, with Hindus, Buddhists and Muslims living together.

In the last two thousand years, the movement has been changing; the vibrancy of the local people and the chain of movements brought different ethnicity from time to time. It wasn't only Muslims and Buddhist; there were other minority groups like Chin, Mro and Khami who were mostly animists but converted their belief systems to Christianity. Here it is important to note that Arakan does not only represent majority groups of religion but there are minorities who are often forgotten between the conflicts of two major religions.

The problem with Arakan is not only between Arakanese Buddhist known as Rakhine and local Muslims which is called as Rohingyas today. The problem is between the

Arakanese Buddhist and the central government too. The Rakhines speak a dialect of Burmese like the Tvoians of Lower Burma. The ethnic Rakhine nationalists also claim traditions of great antiquity and political independence from Burma. Hence, there is a conflict between ethnic Rakhine leaders and ethnic Burman rulers or governments in Mandalay, Rangoon and central Burma (Ibrahim, *The Rohingyas: Inside Myanmar's Hidden*, 2015).

Now with the change in 60 years, due to the central government behaviour thus a serious question arises: where have the rights of the Rohingyas gone? The question of historical interpretation does exist. However, the fact Muslims and Buddhist have lived side by side to the Naf River which marks the border to Bangladesh today cannot be disputed. This makes a clear confusion as to how the history turned to an enemy neighbour. According to D.G.E Hall in his classic "History of south-east Asia" describes that the Arakanese of today is "basically Burmese with an unmistakable Indian admixture" (Hall, 1950).

Now as Arakan bounded in the territory of Burma; the history of Burma has to be taken into account. Till 1784 the histories of Arakan (now called Rakhine) and Burma were largely separate (Hall, 1950). This becomes a point of understanding because it is important to know who stayed or lived in Arakan when it was conquered by the British in 1826. Having been part of Burma since 50 years out of the previous 500 years is fundamental to understanding the modern-day persecution of the Rohingyas. Looking at the origins of the Rakhine, it inhabited at the same time with the other ethnic population around 10th centuries A.D. However, the inhabitants' periods of 1826 might be irrelevant for deciding the citizenships today. Before dealing with the history of Arakan, Burma's history shows the evidence that the early communities who lived in that region were culturally linked to other parts of South East Asia (Hall, 1950).

3.2. Religion in Arakan

3.2.1. Buddhism

Buddhism as a religion in Burma was first recorded around 500 AD. Buddhism arrived in the region in stages but had become important by 800 AD (Thwin, 1982). Around this time, there were several other waves of migration from Tibet and this saw

the spread of an ethnically Tibetan Burmese culture⁸ and resulted in the establishment of the pagan kingdom (Thwin, 1982). This was the first state to both unify the entire Irrawaddy valley and to be strong enough to push both west and east. During the period of its power, the Rakhine people crossed into Arakan and settled in the province. They had retained a degree of independence from the pagan kingdom while maintaining religious and linguistic links to central Burma. As Martin Smith says, ‘the Rakhines as an ethnic group...appear to have come into the territory around the same time as the main body of ethnic Burman migration into the dry zone area of upper Burma around the 9th or possibly 10th centuries A.D.’

The pagan kingdom collapsed after a Mongol invasion in 1286 and Arakan broke away at the same time as the rest of Burma fragmented. By the 1750s the Burmese kings have again become a major regional power and made significant gains in a series of wars with neighbouring Siam (Helen, 2000). Making a victory, they then invaded and conquered Arakan in 1784. It has been estimated that around 30,000 Muslims fled Arakan during the brief forty years of Burmese rule. Unfortunately, for the Burmese, their control of Arakan brought them into direct conflict with British-ruled India. Along the first Anglo-Burmese war, Britain annexed Arakan in 1826. After two more wars, by 1886 all of Burma was ruled by the British (administratively as if it was part of India). In 1937 it was ruled a full colony in its own right and it became independent, in that particular geographical form, in 1948.

3.2.2. Islam

Muslims have started migrating into Arakan since a very long time. This history of Muslim immigration has been constructed through the statements of Arab geographers and traders. A place called ‘Rahma’ often finds reference in the old Arab and the Persian writings which Harvey identifies with Lower Burma. Other Arab geographers, al-Masudi, al-Idrisi also refer to the kingdom of Rahma and historians of early Bengal have much speculated about the identify Rahma with “the kingdom of Dharmapala of the Pala dynasty in Bengal or in other words they identify Rahma with Bengal”(Karim, 2000). It was in the golden period of trading that the Arabs come across the Red-sea to the Chinese coast by plying over their merchant-vessels which

⁸Luce, *Phases of Pre-Pagan Burma as cited in Azeem Ibrahim's Rohingyas hidden genocide.*

continued till the 17th century. With the advent of the Europeans, the Arabs lose hold on their eastern trade.

3.3. Rohingyas in Myanmar

Azeem Ibrahim in his book, Rohingyas hidden genocide clearly pointed out the outcomes of the history mentioning about the argument and fixation between Buddhist extremists and Burmese nationalist as to who or who was not living within these artificial borders in 1824-6 which to him was nothing but a nonsensical and inaccurate historical account. For this reason, he felt the need for a historical record about the ethnic make-up of Arakan both before 1826 and during the period of British colonial rule. To him, with the evidence, he manifestly proved that a group of speaking Indo-Aryan language migrated from northern India to Arakan in around 3000 BC (Karim, 2000). To him that particular group is to be identified with the modern –day Rohingyas, and by 1000 AD they had largely adopted Islam and their language had absorbed other influences due to the mobility for the trading purpose which led to the mixture of their culture and the form of their language that was diverged from the original one. There was a change in shift in movement, Arakan got split from the rest of Burma after 1300 AD, it became a multi-confessional (Hinduism, Islam and Buddhism were all presents), multi-ethnic state. Most of its rulers were Muslims and the kingdom had close links (and enduring rivalries) with the Bengali kingdom to its north as well as with the various kingdoms in central Burma. There is substantial evidence that an ethnic group, now known as the Rohingyas, lived in Arakan before the Burmese invasion of 1784 (Buchanan, 2016).

3.4. Colonial Arakan history (1824-1948)

Burma's invasion was a shift. Due to the political crisis, the Burmese king Bodawpaya conquered Arakan in 1785 A.D. and annexed her to his Burmese kingdom. By that time, Bengal was already colonized by the British's East India Company. Burma was under the brunt to be the next colony. It was in 1825, the first Anglo-Burmese war that Arakan was colonized by the British. According to the treaty of yandaboo, Burma ceded Arakan, Tenasserim, Manipur, Cachar and Jaintia to the

English and promised to pay taka one core to the English as war indemnity. The English laid the foundation of the town of Akyab in the same year at the confluence of Kaladan River. Akyab, then, became the capital of the English occupied Arakan. The year 1825 is a landmark in the history of Burma. With the colonial British census, there was one Muslim for every two other Buddhist. All the Burma's constitution and citizenship acts provide indigenous status to all the people who were permanently residing in Arakan or in the union of Burma before 1825. Prior to 1825, they were counted as the indigenous race of Burma. Then the Second Anglo-Burmese War took place in 1852 and resulted in British control over southern Burma, which left upper Burma completely isolated from the rest of the world. The Third Anglo-Burmese War ended in 1885 and by 1886 the British had created a formal division between 'Ministerial Burma' (basically Rangoon and the Irrawaddy region) and the 'Frontier Areas' (Martin Smith, 1994). This clear division resulted into the limited migration internally between the central region dominated by the Burman majority and the other regions of the ethnic diversities. Later to this period, there were several populations that were planned to be imported as the society of Burmese or Arakanese beyond the question of accustomed in the field of agriculture was considered to be lazy and society being matriarchal, it was the women who performed the outdoor works mostly.

There was a migration in phases, which actually happened from British-ruled India to Burma before 1937. This occurred in four main areas. The British on their interest used the fertile land for the major rice production in the lower Irrawaddy Delta and for this; they initially imported Indian labour (as the particular form of rice production wasn't used in Burma). Similarly, they established significant rubber plantations and again imported labour for their own interest to work over these. The British generally at that period favoured non-Buddhists in their colonial administration considering Christians or ethnic Muslims to be more loyal thus the workers again migrated from India to fill such roles. In the later period, Indian workers became the dominant players in the docks and the wider transportation sectors. None of these was significantly involved by the Rohingyas, who mostly were working as farmers and fishermen on their own land rather than taking up work in the colonial administration.

After colonization, Robertson who was a district magistrate of Chittagong was appointed as the first civil ruler of Arakan ((Martin Smith, 1994). He was the report

planner who sought to bring the Muslims cultivators to Burma for the interest of profit. Sooner there was a feeling of anti-British developing at the point of such activities among the majority Burman population where the minorities like Muslim Rohingyas and the Christi a Karen tends to be pro-British. The resultant of such anti-British feelings was important to recapture as it was the profound factor to influence independence movement which led to the formation of Myanmar that we have today, for instances like the anti-colonial riots of 1938 were as much aimed at the Muslim community as at British power. These riots followed on from the unsuccessful rural Saya San uprising in 1930 that had explicitly aimed to restore the pre-colonial Burmese polity (Seekins, 2008).

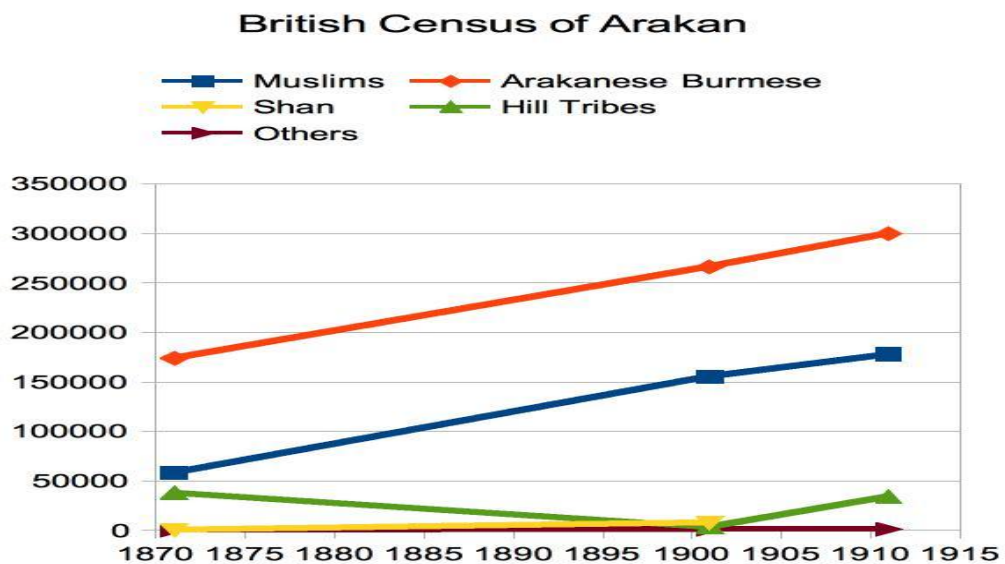
In this way, the seeds for deep divisions in the country along religious lines had already been sown. During the World War II when Burma was caught up in a war in 1942 when Japan invaded the area. They initially welcomed them with the Congress party of India considering it to be way out from Britons and to acquire independence. In 1947 some Rohingyas formed their own army and sought the incorporation of northern Arakan into the newly created East Pakistan, now in Bangladesh. This initiative failed, but after Burma achieved its own independence in 1948, some Arakanese Muslims went on to petition the Constituent Assembly in Rangoon for the integration of Maungdaw and Buthidaung districts into East Pakistan. This was to have dire long-term consequences. It drove the Burmese authorities to regard the Muslim population of Arakan as hostile to the new regime (Yegar, 1972). And to see them as outsiders whose loyalty lay with a different state. These events helped to create a belief that only Buddhists could really be part of the new state, an attitude reinforced by the attempt of the Burmese Communist Party to overthrow the new state after 1948. This is how it fashioned the domination of majority community and formation of ethnic homogeneous society making the history repeated as of Armenian genocide in World War I and Jews genocide in World War II (Walton, 2013).

Several scholars and authors have made their point on Rohingyas as the people of the Arakan. But the report was needed to make this as a valid point. To address the charge of the extremist that the Rohingyas were the alien who entered only during the British rule was countered with the well-drafted examination of the census record of the British colonial era. Shortly after the British conquest, a survey carried out by Charles

Paton indicated the population of the province was around 100,000 (Paton, 1826). As with many British censuses of the colonial period, he focused as much on religion as ethnicity and identified that there were 30,000 Muslims split between three ethnic groups: a large community mainly in the north (the Rohingyas); the Kamans (a group descended from Afghan mercenaries who had served the previous dynasty); and 'a small but long-established Muslim community around Moulmen' (Ibrahim, *The Rohingyas: Inside Myanmar's Hidden*, 2015).

Thus the census proved as a countermeasure to response if Buddhist extremist questions the inhabitants of the Rohingyas about their existence at the time of the 1824 and claiming them to be the population entering from the then India as an illegal migrants will be substantiated with the historical records if one follows and note that in 1911 according to the British census, the Buddhist of Arakan (Rakhine) was of 210,000 (compared to 60,000 in 1824) and the Muslims were of 155,000, which was of no much difference to be called as part and parcel rather than an alien.

3d. British Census of Arakan



Source:(ALJAZEERA R. K., 2017)

3e.Census of 1824 and 1911

Races	in 1824	in 1911
Buddhist(Rakhine)	60000	210,000
Muslims(Rohingyas)	58000	155,000

British's census of Arakan.

There are about 18 lakhs Rohingya Muslims in Arakan. The new Citizenship Act of the military junta in Myanmar has stripped Rohingya Muslims of their rights. Their right to franchise and right to own private property has been taken away. Even the basic human right such as right to dignity is not ensured. They are facing persistent torture where their establishments are burnt and they have to flee the place leaving everything behind. But the point to ponder is -Is it possible for such a huge population to suddenly appear at a point of time such that government can delegitimise their claim to citizenship.

3.5. Post-Colonial: Arakan state.

Postcolonial Arakan was of a different state. State of limitations, state of restrictions, as the region has undergone tension of wars due to the revolt of 1947. Later this period, there were the phases of discrimination against Rohingyas. Rohingyas find themselves as an alien with the state of Myanmar finding its expressions in the constitution. The reason behind all the torturous state of the condition against Rohingyas was the denial of the legal rights of an identified group. This was clearly carried out through the change of citizenship laws in 1982. Under 1982 changed in citizenship laws, Rohingyas find no identity due to the ethnic classification that divided in 1948 where they were not designated as the core member of the state. The systematic discrimination was carried out in a specified manner due to which the questions of originality come into account as they find no identity in the structural changes of the state.

Prior to 1947, the Burma campaign(1941-45), often called as “forgotten war” (Sarkar, 2018), not merely brought geopolitics at the doorstep of British India but also transformed the Rohingyas as the wilful strategic players. This very population stuck

between the two colonial powers, Japan promising independence and Britain willing to control its crown colony, Rohingyas chose Britain and went to accept their whims and fancies with the hope for the administrative autonomy. After Britain retreatment in 1942, there was a communal tussle between pro-British Rohingyas and pro-Japanese Buddhist. One interesting fact that came across was Rohingyas under British regime were made "v force"-the wartime British intelligence-gathering guerrilla group to combat Japanese forces. This situation puts in question as to how this powerful population becomes victimized today?

There was a whole shift in Burmese stance, the pro-Japanese Buddhist population or Aung San, the military leader of the Burma National Army and father of Aung San Suu Kyi, switch their loyalty towards British which led to the Kandy conference at the allied headquarters of the south-east Asia command in present-day Sri-Lanka. The Kandy conference established ethnically homogeneous class battalions in Burma to keep peace in military ranks but initiated no effort to develop a unified civilian government. British colonial administrators found that problematic but were overruled by the supreme allied commander of the south-east Asia command, Lord Louis Mountbatten (Sarkar, 2018).

Post-war British colonial rulers provided significant administrative posts to the Rohingyas in Arakan as a reward for their wartime efforts against Japanese. The Rohingyas through this leverage seek administrative autonomy, but nothing has been done over it. There were findings in which Rohingyas seek two major townships of buthduang and Maungdaw to be incorporated into an East Pakistan which will be a new Muslim country. Jinnah denied to it knowing the demographic complexes and also considering it to be an internal issue of Burma.

Post-independence resulted in the mistreatment of Rohingyas by the Burmese military which led to fleeing of Rohingyas to East Pakistan, the province through which they found military and economic support. The question often arises why does East Pakistan or today's Bangladesh that itself is a poor country give solace and cater such big population? This discussion will be followed by in the next chapter. This is where Rohingyas considered having been influence with insurgency factions. Their link to the mujahedeen or freedom fighters waging jihad against the Burmese state thus goes

back to the early independence of the 1950s. However, this is totally distinctive to any of the international terrorist factions of the 1970s or 80s.

According to the Jayita Sarkar, there was a time when Burmese government sent Pe Khin, the Urdu speaking ambassador to Pakistan to seek an understanding to stop Pakistan from providing aid to Rohingyas rebel. After the two nation-states division of East Pakistan and West Pakistan, insurgencies plagued Borderlands due to negligence and the government support on either side. Aftermath when General Ne Win seized the power by coup d'état in 1962, Rohingyas political and social organizations were completely shut down. This was the time liberation war was undergoing in neighbourhood state Bangladesh. With the insecurities, operation Nagalim also called as Operation Dragon King was carried out in 1978, a military operation carried out by the Tatmadaw and immigration officials in northern Arakan, Burma. The official purpose of Operation Dragon King was to register citizens in northern Arakan and expel so-called "foreigners" from the area prior to a national census (Elahi, 1987). Immigration officials and military personnel conducted the operation together, with the latter being accused by Rohingya refugees of forcibly evicting villagers through intimidation, rape and murder (Martin Smith, 1994).

This was the period Rohingyas solidarity organization formed to fight against the operation Nagalim that had their bases near Cox's Bazaar in the Chittagong district of Bangladesh. However according to the International Crisis Group (ICG) present Arakan Rohingya Salvation Army (ARSA) was formed in 2013 in result to the 2012 Rakhine state riots, under the name Harakah al-Yaqin (translated as Faith Movement in English)(Economist, 2017). The charges of radicalization in the refugee camp in Bangladesh have been put against ARSA but little evidence was found to have any influence or link with al-Qaeda or the Islamic state. ARSA's motive was to fight against the Myanmar government and the military's admission to killing Rohingyas, whose bodies were discovered in a mass grave, remained as the counterforce mechanism.

The 1974 Constitution of the Socialist Republic of the Union of Burma defined citizenship (in Article 145) as follows: 'All persons born of parents both of whom are nationals of the Socialist Republic of the Union of Burma are citizens of the Union' (Burma, 1974). This emergency immigration act imposed ethnicity- based identity

cards (national registration certificates) which led to the losing rights of Rohingyas as they are only eligible for foreign registration cards (non-national cards). This was a critical step because, since the Rohingyas were not formally treated as citizens in 1947, they could not now be citizens of the state. Their National Registration Certificates (from the 1947 legislation) were replaced with Foreign Registration Cards.

The next legal step was the **1982 Burmese Citizenship Law**, which created four categories of citizenship: citizen; associate citizen; naturalized citizen; and a foreigner with the colour coded Citizenship Scrutiny card consistent with his/her citizenship status-pink, blue, and green respectively. Different categories were assigned to ethnic groups on the basis of their residence in Burma before 1824. Anyone not belonging to these categories or not able to provide any evidence that his ancestors had lived before 1823 or any grandparent to be a part of the ancestor was disqualified to be a citizen. Those persons who qualified for citizenship under the 1948 law, but who would no longer qualify under this new law, are also considered associate citizens if they had applied for citizenship in 1948, specifically the Rohingyas, was deemed to be foreign and were could be any part of it as they had no such legal descriptions in the crisis-ridden phase of independence war in 1940's.

Citizenship, in turn, was redefined as follows:

“Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as having settled in any of the territories included within The State as their permanent home from a period anterior to ... 1823 A.D. is Burma citizens. The Council of State may decide whether any ethnic group is national or no” (Karim, 2000).

The author like Azeem Ibrahim articulated the reasons behind the change in attitude towards the discrimination of Rohingyas population in the 1970s as due to the economic disaster of the Burmese road to socialism. The regime needed an easily identifiable group that they could victimise and create a wider discrimination. And so to him, Rohingya was the tool that they used for diverting the larger roles of the country. To him, the military regime used the concept of Buddhist identity as the basis for granting citizenship thus by default nullifying the rights of minorities in Burma.

Followed by 1990s, imposing restrictions, addressing them as foreigners, limiting them to have no children more than two, thus forced birth control, controlling

marriage movements and discriminatory limitations on access to education, and arbitrary confiscation of property have been the outcomes to the denial of citizenship. The dramatic shift from Ne Win regime in the 1960s to the change in citizenship laws by 1974, the life of Rohingyas have been drastically affected finding no identity to be associated with Burma's land.

3.6. Road Map to Democracy (2008-2017)

The 1988 nationwide popular pro-democracy protests also known as 8-8-88 uprisings, or the people power uprisings, the people's democracy movement and the 1988 uprisings were a series of nationwide protests, marches and civil unrest (Houston chronicle 1988). The events occurred on 8 August 1988 that is why it is called as 8888 uprisings.

Since 1962, the totalitarian rule of Ne Win, the Burma socialist programme party ruled the country naming as the Burmese way to socialism which involved economic isolation and military overpowered. This movement was started by the students in Yangon (Rangoon). During this crisis, there was a need for a leader and Aung San Suu Kyi emerged as one. When there was an election in 1990, her party National League for Democracy (NLD) won 80% of the seats in the government (392 out of 492). However, military junta refused to accept the verdict and the ruling of the State Law and Order Restoration Council (SLORC) continued. She was then put under house arrest which was lifted during the making of her biography film, *The Lady in White* in 2010, after the worldwide criticism. The NLD had a U-turn around the early 2000s, as the Buddhist monks inclined towards the party and forged a closer alliance. The 2007 unrest proved that the monks were unhappy with the economic mismanagement and thus wanted a change in the regime. The unrest which was called as a saffron revolution was cemented but a clear resolution was made, the alliance of monks and NLD.

The benchmark was the cyclone Nargis that occurred in 2008, which brought a revolutionary change to the political spectrum of Myanmar. Nargis resulted in the devastation of the Irrawaddy delta resulting into 65 per cent loss of the rice fields and 95 per cent of the buildings in the delta region (Seekins, 2008).

The breakthrough came in the form of an aid; the regime was reluctant of any of the international organization interruption. Initially, the aid was called for ASEAN but

later on UN join by pressurizing to which the regime accepted later. The response of the regime has been on the worse part. Irrawaddy delta being the part of the Karen ethnic group, who have been revolting against the Burmese rule since the 1960s finds military be the reluctant disposition of the totalitarian regime. Due to the unpreparedness of the calamities and the conspicuous absence of the military in the need of destructive phase resulted into the changing of the narratives of political beliefs as to how the regime has neglected them when in need.

Civilians in Rangoon started to ask: 'where are all those uninformed people who are always ready to beat monks and civilians? They should come out in full force and help clean up the area and restore electricity' (Seekins, 2008). The unfulfilled task and mismanagement led to the outburst and the legitimacy of the regime becomes questionable. Then comes another call for the verdict, i.e. the elections of 2010.

The constitution was again put on the table in 2008. The constitution of the Republic of the union of Burma this time allowed democracy of a limited version. Through the rewritten version, the power has to be transferred from the military to the civilian government through elections. To the author like Azeem Ibrahim, this 2008 constitution has done nothing new; it is deeply flawed and only privileged the military. It continued to follow the restrictive citizenship law where only self-define ethnicities of 1874 could be a citizen. They also retained the restrictions imposed through 1974 Emergency Immigration Act under article 345:

All persons who have either one of the following qualifications are citizens of the Republic of the Union of Myanmar:

“(a) a person born of parents both of whom are nationals of the Republic of the Union of Myanmar;

(b) a person who is already a citizen according to a law on the day this Constitution comes into operation” (Myanmar, 2008):

In fact, the above clause shows that this legislation is much more restrictive to that of 1974 one. It straight away nullifies the citizens that were already citizens. This resulted into Rohingyas having no space even in the newly legislated one. Due to which they serve the vulnerable position and becomes to the subject of persecution. It

violates the 1961 UN convention on the reduction of statelessness, in which article 1 states: ‘A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless’ (Human Rights Watch, 2009) . The government in Myanmar is aware of the implications of these policies and has complained that:

“Through international media, Bengali [Rohingya] groups are widely publicizing the extent of government controls over them. Whilst the Government deems such measures as necessary in the context of the country’s situation and the non-citizen status of this group, the international community condemns these measures as violations of fundamental rights. This has undermined the country’s reputation and affected its international relations” (Martin Smith, 1994).

On the other side, the NLD put off its election contest in protest to the imprisonment of their leaders. They instead took a mass movement to promote democracy however it remains divisive as it could not reach out to the others rather than the monks; the students were withdrawn, the peasants and the workers were left out. This has left military advances and threat to the NLD which made the opposition vulnerable. The NLD not only put off itself from contesting but also attacked those pro-democracy factions who decided to contest elections. Undoubtedly, the military-backed USDP won the elections by receiving 80 per cent of the votes.

There was a shift in power politics of the UNDP, they stepped up to rise and boost up for more recognition and notional support. In effect, the USDP, even in the absence of its main rival, resorted to the crudest form of client voting where those who rely on the state for their livelihood are expected to vote for the party that provides them patronage (Hidalgo & Nichter, 2015). In 2011, the military junta dissolved and in 2012 by-elections were held in forty-five constituencies, which were considered to be fairer than in 2010. This time NLD participated and won a majority of seats, forty-three out of forty-five. For the path to democracy, this was nothing less than a revolution.

In the successive years, the political dynamics remained the same. The major interactions continued between the military-backed USDP, NLD and the extremist Buddhist monks. The situation that emerged out of this power politics is of the binary structure where the one side remains as the in-charge of the ethno-nationalist foregrounding and other as the victims of nationalist brutal force, asserting themselves to be the part of a country. The notional democracy has not changed much in the

ideological framework of the military considering international community as enemies.

The election of 2015 was the first openly contested election held in the country since 1990, which was annulled by the military government after the NLD victory. The NLD yet again won the election with a sweeping majority. Despite losing the election, the military remains desperate to rule and to retain the economic dominance, and their strategy “is all about the land ... the control of it and the prospering from its fruits” (Heinemann, 2015).

In late 2013, the USDP—in effect of the old military regime dressed up as a political party—indicated that it supported repealing the clause in the constitution that bars Aung San Suu Kyi from being president on the basis of her marrying to a foreigner (Jagan, 2014). But by late 2014 it had changed its view and was now supporting the continuation of this ban. There was a tussle in the relationship between Thein Sein and Aung San Suu Kyi and the change in stance happened. By 2014, it was clearly visible how Thein Sein wanted to remain in power driving his rivals out of power influence. In 2015 mid-August, Shwe Mann, the USDP party chairman and speaker of the parliament was briefly arrested and removed from his post (Moe, 2015). This was because Shwe Mann was aligning with the NDP, so with the complexities with trust deficit. From the available information, Shwe Mann was also open to some revisions of the 2008 Constitution to remove military privileges that enshrined (Linn, 2015)

The shift in NDP-USDP made a huge impact on Myanmar politics. The interpretation often sighted that generals might overthrow the regime likewise in every last election. While NLD was electorally popular among Burman regions, it had a limited reached to farmers, minorities and students (in the later period). In every political scenario, Buddhism played a significant role, from protest to coup. One important group that emerged is the 969movement. This was formed through 1988 revolt and still, it is in continuation. This very group is known for its extremism. It is important to talk about this particular group because it remains as the pressing force for illiberal laws and repression of the non-Buddhist population.

Conclusion

The dynamics of extremism has led to the division of two schools of thought. The scholar like Jacques P. Leider argues that the outcomes of Rohingyas persecution are due to the emotional and ethno-nationalist and mono-ethnic reactions of the Burmans, Buddhist monks and state. He also added saying itself from the beginning Burmans was unhappy with the British bringing indentured labours to the region. Thus they considered them as alien who has just arrived prior to independence. On the other side, the scholar like Azeem Ibrahim argues that the history of Rohingya could be traced even before Arakan becoming the part of Burma. It is due to the merging and frequent power changes with the divisive laws that have led to the persecution of the Rohingyas population.

The problems and the fear are deeply rooted and it comes from nowhere but from history. The difference in perception has let down in finding any resolution. The scholars, state and organizations remains searching from where have Rohingyas come from, rather than where should they go. Undeniably, Rohingyas have got strong and proven history but the question remains, who are to accept it? The diverse narratives, distorted history and over centric nationalism bent on turning Myanmar into mono-religious polity. Rather than falling into arguments of history, Rohingyas should have been the discussion of due rights, human right violation and the victimhood of state's sponsor crimes.

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Chapter: 4

4. Post-Statelessness: The Role of Regional and International Dynamics.

Post-statelessness, after 1990's, the condition of Rohingyas continues to worsen due to Myanmar stringent laws resulting them into fleeing to the other parts of Asian countries or letting them survive in prisonlike (Gaffar, 2018) villages. Though the state is known for drawing its power from people and exercising over it by acting as a guardian, addressing their grievances and their displeasure has however gone drifted. Today in this process of power exercising- state like Myanmar is better known for its divisive role that fosters the feeling of biases against country's minorities in order to harness the favours from a majority. It is also known for its complex security dynamics for completely forgoing the non- traditional security aspects. The aspect that includes climate change, poverty, terrorism, food insecurity, ethnic conflict, transnational crimes, etc as security threats (Gaffar, 2018). The country fails to recognize or identify Rohingyas as their entity and rendered their survival at stake. Therefore, a long term solution is to be implemented. This chapter suggests a collaborative and collective approach to solve this shared problem. This paper also suggests looking beyond just two collaboration of Ministry of the Office of the State Counsellor of the Republic of the Union of Myanmar and the Kofi Annan Foundation, the Advisory Commission on Rakhine State. There needs to be a bottom-top approach with inclusive, multilayered dialogue bringing out permanent resolution rather than temporary or ad interim cure.

Myanmar is a weak state today. This is well defined by Mohammad Ayoob, a prominent scholar of security studies, recognizing that all state differs, posits that Weak states of less developed states are those states that lack legitimacy and internal cohesion and that are highly insecure and vulnerable (Ayoob, 1991). Myanmar is the most befitting example with the running situation.

4.1. Major Crisis: 2012 Massacres

The events of 2012 were one of the major crisis that reflected the tendency of complete dislocation and de-recognition and an attempt to ethnic cleansing. The initial

violence started in June 2012 in four townships that spread to nine more in October, as initial acts of random violence were turned into a systematic attempt to force Rohingyas from the state (Human Rights Watch, 2012). The events in June commenced after the rape and murder of a Rakhine woman by three Muslims (Human Rights Watch, 2013) in late May. On 3 June, a large group of Rakhine Buddhists stopped a bus and killed the ten Muslims who were travelling on board. Following this, the violence escalated to attacks on a number of villages and both communities suffered equally. There were aggressors in this phase with armed mobs carrying out violent acts of murder. Both the groups have undeniably mistaken from the culpable for tragedies. However, in the later period, the major twist happens when state machinery favoured one group over others.

Even the international population paid no heed. Despite the evidence of military and police involvement in the riots, both the EU and the US supported the regime for its action in containing the violence (Human Rights Watch, 2013). The EU Foreign Affairs Commissioner, Catherine Ashton, felt moved to claim, 'We believe that the security forces are handling this difficult inter-communal violence in an appropriate way. We welcome the priority which the Myanmar government is giving to dealing with all ethnic conflicts' (EU welcomes "measured" Myanmar response to rioting, 2012) (Reuters, 2012).

In reality, after the June violence, the state completely overlooked those people who had suffered from the security forces' involvement. Instead, President Thein Sein called for Rohingyas, once again described as 'illegal' non-citizens, to be transferred to other countries (Human Rights Watch, 2013). This statement has led to the complete displacement of the Rohingyas community. By the end of June the first wave of spontaneous violence died down. In the meantime President Thein Sein established a committee to investigate the June events and 'find solutions for communities with different religious groups to live together in harmony' (Smith, 2014). In a speech at the end of August, he suggested that the Rakhine bore responsibility for the June violence, stating that 'political parties, some monks, and some individuals are increasing the ethnic hatred' (Human Rights Watch, 2013). However, when his commission finally took out the report in July 2013 it pointed out the Rohingyas for harming the good name of Myanmar with the international community (Smith, 2014) and said nothing about state complicity in the violence.

The process of eventful violence continued after that, incident again occurred in October. Thus, the June was nothing but a prelude to a larger wave of attacks in October. After the first wave of violence, Buddhist monks emphasized on limiting the rights of the Rohingyas by circulating pamphlets and demanding that ethnic Rakhine cease all economic ties with the Rohingyas, ordering them not to sell them goods or associate with them. The pamphlets claimed that the Rohingyas were planning the ‘extinction of the Arakanese’ (Human Rights Watch, 2012) as they were ‘stealing our land, drinking our water, and killing our people. They are eating our rice and staying near our houses. So we will separate. We don’t want any connection to the Muslim people at all’ (Human Rights Watch, 2012). Such kind of belief system was widespread. This campaign was extensive, wide, clearly hatch out to isolate the Rohingyas in every aspect whether economically or socially also claiming and validating that their presence is life threatening for Rakhine. In effect, there were two demands put on Rohingyas that to go ‘home’ (that is, to Bangladesh) and if stayed back to be isolated within the state itself. One monk even went on telling the BBC that ‘around the world there are many Muslim countries. They should go there. The Muslim countries will take care of them. They should go to countries with the same religion’ (Keane, 2012).

There lies deep resentment between the two populations. The level of intolerance between them is extreme. The hatred simply stirred up on social media and becomes the major source of information. Many stories originated from social media and then got published in print. This is best supplemented with the example coming from the top director of President Sein’s office, who posted on his Facebook page:

“It is heard that Rohingya Terrorists of the so-called Rohingya Solidarity Organization are crossing the border and getting into the country with the weapons. That is Rohingyas from other countries are coming into the country. Since our Military has got the news in advance, we will eradicate them until the end! I believe we are already doing it. ... We don’t want to hear any humanitarian issues or human rights from others. Besides, we neither want to hear any talk of justice nor want anyone to teach us like a saint” (Allchin, 2012).

The biggest problem that we see is that the leader of the country indulging in manifested crimes and hatred amongst people. The binary on identity is created with clear-cut demarcation as two groups existing from different planets. The hatred that lasted from last 40 years is not an easy task to wind it up in a moment as it is deeply

rooted and engrained to feel one as native and other as alien. The normalisation of every wrong-doing as right and endorsing elements of ultra-nationalist and fascist were the clear-cut tendencies of Myanmar authorities and Buddhist extremist.

Recent scholarship has indicated that there are seven characteristics that will determine if a given instance of ethnic tension is likely to turn into an act of genocide (Harff, 2005). These are:

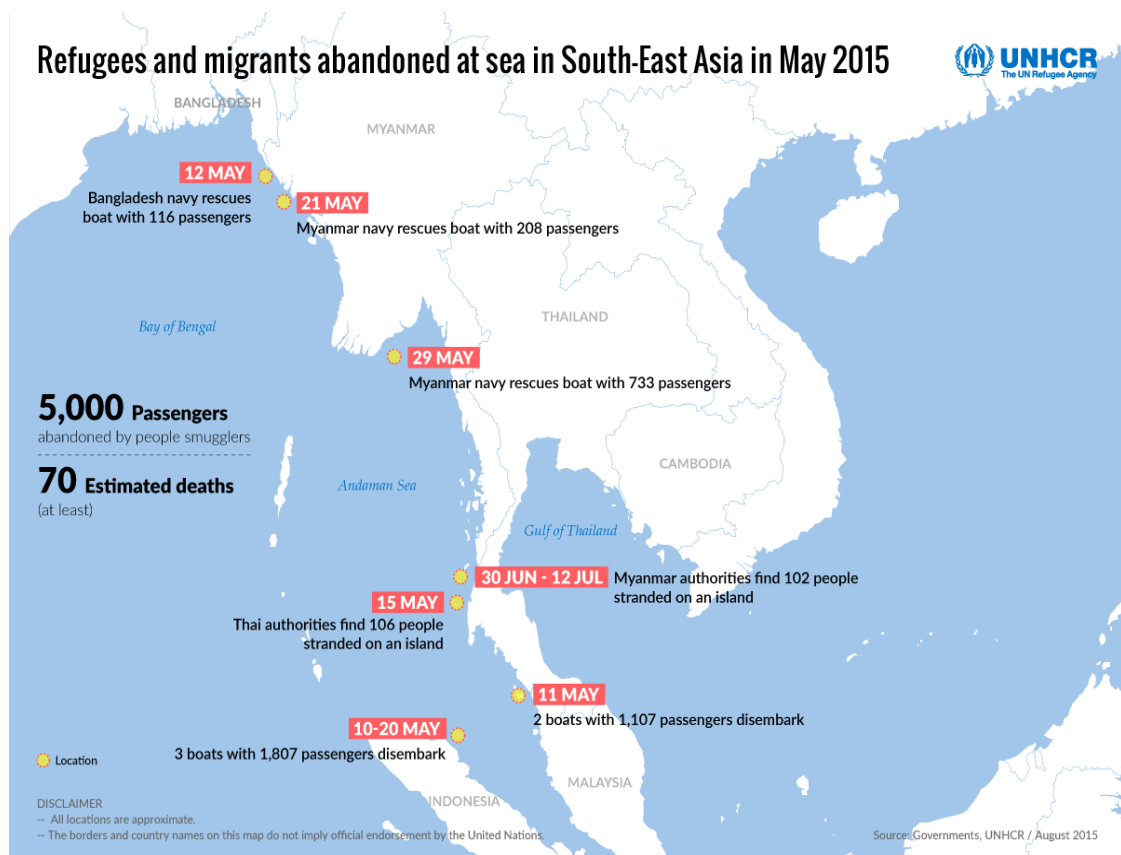
- Previous instances of severe ethnic tension;
- Political upheaval;
- The governing elite are drawn overwhelmingly or entirely from a particular ethnic group;
- That elite has an ideology that believes it is right to persecute a particular ethnic group;
- The regime is autocratic;
- The regime is closed to the wider international order;
- A minority is targeted for severe political or economic discrimination.

Violence by the state machinery is normalised in a manner as though they were bound to discriminate and spread hatred. State security forces carried out attacks even after the communal attacks died down. To the utter dismay, the president too clearly disowned any involvement of the state security forces in the violence. However he accepted at the end and amidst the crisis attracted much of international attention and by November president was forced to write to Ban Ki-moon, the UN secretary at that time to acknowledge that there have been communal violence and to pledge to address problems of forced resettlement and to grant citizenship to the Rohingyas (Human Rights Watch, 2013). UN Interventions was much needed and thus it happened but UN complained as follows-

“no credible investigation has taken place to uncover the human rights violations that have occurred there. The Government has prosecuted people from both communities accused of being involved in the violence. However, no State officials have been held to account and, in the absence of an independent and credible investigation; it remains unclear whether the main perpetrators have been prosecuted” (Quintana, 2014)

UN has continuously raised the concerns about organising violence through the state. In this situation National League of Development could have taken the chance to make difference but nothing has been done or said. They easily complied with the decisions to throw out Rohingyas from the territory. On the other side, there was an accusation by the Buddhist extremist member U Wirathu who told that the consequences of Rohingyas are because ‘Muslims deliberately razing their own houses to win a place at refugee camps run by aid agencies’ (Hayward, 2014).

4a. UNHCR-Refugees and migrants crisis



Source: (Despair, 2016) UNHCR.

Beyond all the narratives what occurred was the major displacement fleeing violence and persecution. And the human rights watch has estimated that 100,000 Rohingyas ended up in internal refugee camps in Myanmar, while the UNHCR estimated that 13,000 arrived in Malaysia and 6000 in Thailand between October 2012 and April 2013. In a foretelling of the events to unfold in 2015, hundreds were reported to have died at sea itself (HRW 2014) and most of those arriving in neighbouring countries quickly disappeared into the unregulated migrant labour pools (Ibrahim, 2017).

4.2. 2013-2014 Crisis.

Subsequent to 2012 the level of violence declined but it wasn't completely stopped. The threat of violence continues to be pervasive in Rakhine, (Fortify Rights, 2014) (Fortify Rights 2014) and outbursts have continued to occur throughout 2013–15. The attacks followed even to the non-Rohingya Muslims living elsewhere in Myanmar (International Crisis Group, 2013). In March 2013, there were attacks led by Buddhist monks in Meiktila near Mandalay, where over 12,000 people were displaced. In advance of the violence, online Facebook postings described-

“the local Muslim population as preparing a Jihad. They are gathering in mosques in Mandalay under the guise of Ramadan but in reality, they are recruiting and preparing for Jihad against us. The government of Myanmar must deal with these Islamic extremists and raid all suspicious mosques and homes. All Burmans must be ready and not falls into these Muslims' traps” (Justice Trust Policy Report, 2015).

The whole incident set out a single conclusion of similarity with the pamphlet circulation that happened in Rakhine before the October 2012 riots and after the June incident. The state and its authorities were more worried about the image that has been created in front of international community rather than bothering about the internal failure. The limitation and curtailing of voice extended in many ways but that could not stop the social media leverage. Social media played a big role in reaching out to an international community. When the physical movement was barred, technology came as a freedom. In addition, there was an action carried out to stop aids agencies from entering Myanmar. One such incident is that of the *Medécins Sans Frontières* (MSF) which was ordered to be out of Rakhine and prevented them from supporting the Rohingya community after the events in 2014 (Hodal, 2014). In such a situation, a question arises whether international organisation have any say over the state power?

4c. Refugees' settlements



Source:(Asrar, 2017) ALJAZEERA. Inter-Sector Coordination Group, IOM.

4.3. Crisis in the Successive years.

In 2015 and 2017 the outburst of exodus and refugee crises occurred. Trying to make the internal refugee camps permanent was the main motive of the Myanmar authorities. The census of 2014 on the other side came out as disparities construction. The 2014 census, for example, is being used for this purpose: ‘the authorities will construct temporary camps in required numbers for those who refuse to be registered and those without adequate documents and sequester them in closed camps in what amounts to arbitrary, indefinite detention with the possibility of deportation’(Human Rights Watch, 2014).

The massive refugee problems through the systematic persecution are clearly visible. Perhaps the most disturbing aspect of the refugee crisis from the point of view of ordinary observers was that in early summer 2015 when the crisis finally came fully to our attention, there was no obvious immediate trigger in the internal situation in Myanmar(Kiersons, 2015). There are other reports that among those paying to flee are many who are forced onto the refugee boats as part of the political goal of removing

the Rohingyas. This makes former Australian Prime minister Tony Abbott calling the boat people ‘reckless’ all the more unedifying. When asked if Australia would consider resettling any Rohingyas found to be refugees, he replied ‘Nope, nope, nope’ (Human Rights Watch, 2015). Fortunately, not all world leaders have been so indifferent. Pope Francis has described the persecution of the Rohingyas as a ‘form of war’:

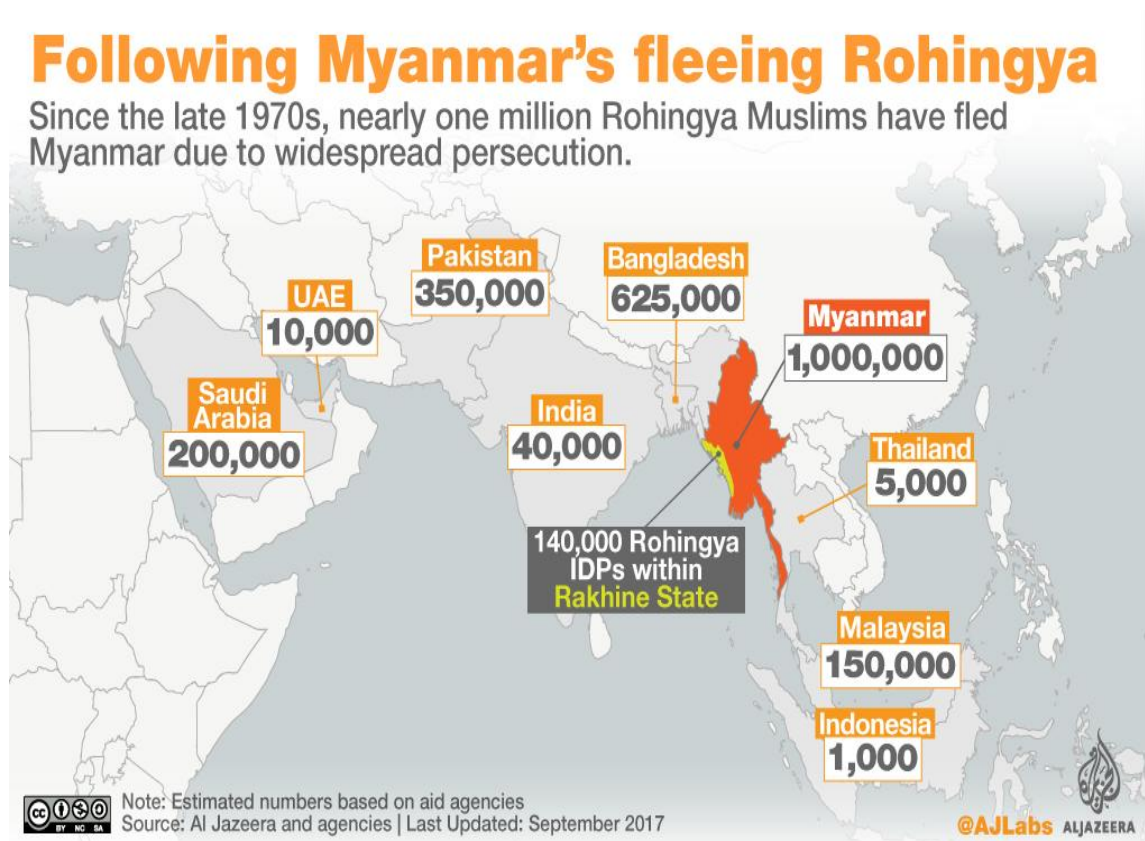
“Let’s think of those brothers of ours of the Rohingya, they were chased from one country and from another and from another, when they arrived at a port or a beach, they gave them a bit of water or a bit to eat and were there chased out to the sea. This is a conflict that has not resolved, and this is war, this is called violence, this is called killing!” (McElwee, 2015).

4.4. Causes of the Crisis

There is no such particular reason to be called as the root of the crisis. Burma is a state with complex identity crises. The country is multi-cultural, multi-confessional and diverse but driving itself into one identity, following only Burmese culture and considering itself to be Buddhist state by excluding half of the other ethnic population is the major reason for the communal upbringing. Ultimately, this results in the above incidents. There are a certain gap and misunderstanding and a lack of trust and acceptance. In fact, there is a loss in history which went unwoven. Recognizing Burmese as the national identity leaves Rohingyas perpetuating identity problems , leaving no space for legal, economic, or in fact human rights arguments. They live in a state being out of the state with no rights and recognition. This is the precondition of the crisis and violence that occurred further. State authority has to be practical and understand that if these two communities were to live together they have to make them separate yet united. But the problem lies in state authority completely denying their originality or connections to the state. In whatsoever, due to the crises Rohingyas lies scattered across the villages in Rakhine as the internally displaced persons (IDPs) in and now mostly concentrated in the coastal area of the north of Sittwe. The forced isolation of Rohingyas from the rest of the Burmese society, in fact, rises in the suspiciousness of the extremist Buddhist—they believed that traditionally, the Islamic community in Myanmar was open and active and mingled among them too, for example running the Muslim Free Hospital in Rangoon (Walton, 2013)but now the

isolation is even more mysterious. The suspicion towards Rohingyas was more radical, first, they were forcedly isolated and secondly they were suspected to be indulged in secret jihad movements. What reasons could be needed more to the Rohingyas to distrust their neighbours? The reverse formed the hatred that went by until today. The crises continued thereafter even in 2015 and in 2017 resulting into forced migration.

4c. Map on Rohingyas exodus



Source:(ALJAZEERA, 2018)

4.5. Regional dynamics

The Rohingyas crises have certainly cross human tolerance. One cannot sit and watch people being killed on the principle of neutrality and non-interference. As due to the nation-state divisions, statelessness has occurred in resultant. So the geopolitical importance has to be considered. In fact, Rohingyas is an international humanitarian crisis that has affected beyond borders which cannot be called a state-centric discourse anymore. Now, the world has to look at them empathetically beyond the nation-state divisions.

ASEAN as a regional organization expected to take some serious steps. Their collective voice and regional dialogue on Rohingya issue are needed the most. When the regional state like Myanmar faces the major crises, it is must for the regional organization to come together and have their say. One million populations have been deprived of state of the 135 ethnic groups, calling them alien is a major allegation to look at. But the response from international and regional organizations has been different. A report highlighted by the United Nations High Commissioner for Human Rights in 2016 stated that violations of the human rights of the Rohingya Muslims suggested “the possible commission of crimes against humanity, if established by a court of law” ((UNGuterres, 2015), and a very critical report analysed by Green Macmanus and de la CourVenning(UNGuterres, 2015)by the International State Crime Initiative of the previous year concluded that “the Rohingyas face the final stages of genocide” and the ASEAN response to the Rohingyas issue has been something every close to saying nothing. They stood saying it is a state responsibility to resolve through the state mechanism. ASEAN took the position of neutrality, but that Rohingyas crisis is no more blinded to a border, in five years, a full-blown humanitarian problem that undeniably shows regional consequences. It is highly questionable for the 10-member ASEAN⁹and its institutions, highlighting ASEAN’s inability to deal with the political and legal framework of the country so close in a refugee’s crises. If we look at the ASEAN nations, only two (the Philippines and Cambodia) are parties to either the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol. The situation, thus, becomes more vulnerable with no place to address their grievances.

Looking at the distinctive nature of every country, ASEAN often stood behind its principle of non-interference. However there were country like Indonesia and Malaysia which were often questioned for being Muslim majority country and yet not have spoken anything. Both the countries, however, took up its strong stance on behalf of Rohingyas Muslims following the regional crises in 2015. Although in the earlier phase of crisis Indonesia stated that Rohingya crisis is a regional problem, and it is must for the ASEAN country to be following the non-intervention principle, emphasizing on neutrality approach and the aspects of ‘constructive engagement’

⁹ASEAN Member States are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

rather than pressurising and forcing on Myanmar. Malaysia, on the other side, was vocal enough to strongly condemn Myanmar's behavior on the Rohingyas: their Prime Minister Najib Razak made his point clearer on rally that took place in Kuala Lumpur 2016 that the "world cannot sit by and watch genocide taking place"(Rajak, 2016).

Due to the major criticism around the globe and to the response of Malaysia's request, Aung San Suu Kyi called a meeting with ASEAN foreign ministers in Yangon in 2016 to discuss the situations that concern the international community. Through the meeting Myanmar ensure the members that the state will provide the updates about the Rohingyas situations and will continue to engaged with the fellow ASEAN members to discuss and form a cooperative engagement. Instead of ASEAN as a regional organization calling for a dialogue, it was Malaysia's called that materalised and the meeting happened with the positive response from Aung San Suu Kyi. The meeting somehow showed up some positive aspects by the government of Myanmar allowing media persons to enter the conflict area at Maungdaw which is quite unusual. However it worked as one to one approach. The Collective engagement still lacks behind when it come to bringing resolution and standing for one voice.

The Rohingyas crisis has proven how immature and ill-prepared is a regional organisation to deal with such humanitarian crises. When a group of 10 countries is incapable of coming together and finding a position against the non-traditional security crisis, it thus becomes questionable, the very purpose of their existence that stood on the line of peace and co-operation.

4.1. The role of Aung San Suu Kyi

Since her advent to the power system, the ethnicity problem has been graved. Her advocacy to the principles of democracy and as a Nobel laureate what the world expects is to be a powerful voice against the human rights violation. But things turned out to be different. However, without the idea of the internal state functioning mechanism one cannot go straight and blame her for not being the Messiah. Her power relations to the military should also be taken care. The first attack on Rohingyas after independence that happened, Aung San her father was among the actors who endorsed. He was a nationalist and a founder of military rule (Tatmadaw). But now she holds a different position and she is a nominal head with no such real

power. Her stand matters but her decision is not always taken care. She has no actual power to overrule the mandate of the military rule. Although Suu Kyi has ensured that the recommendations by the advisory commission of Kofi Annan will be implemented soon but Tatmadaw on the other side has consistently disapproved the recommendations and still remains in veto power over government. So there is a complete disillusionment in the process of making justice possible and Aung San Suu Kyi cannot do anything.

4.7. Redressal Mechanism

The role of the advisory committee:

The major steps that have been taken up was the establishment of an Advisory Commission on Rakhine State, chaired by Kofi Annan and including six national and three internal members in September 2017. The commission was formed to the incidents that plunged the state due to the attacks by the Arakan Rohingya Salvation Army on August 25 which resulted into deeper turmoil. After one year, the advisory committee of Rakhine submits its final report to national authorities in August 2017.

Major points highlighted of the final report (that named towards a peaceful, fair and prosperous future for the people of Rakhine) of Advisory Commission on Rakhine:(Advisory, 2017)

- The first point of the report clearly pointed out the Rakhine's risk of new violence if the government authorities and society do not take up a major action (Advisory, 2017).
- The nomenclature was used with the request of the state counsellor, the commission neither uses "Bengali" nor "Rohingya" and referred to as "Muslims or "the Muslim community in Rakhine".
- Commission found the Rakhine's fertility, relatively rich in natural resources and an importance of its strategic location. Yet, it is also found that it is the most stagnant, underinvested and under-developed economy with the poverty rate of 78 percent which is twice to the country's poverty rate of 37.54 percent and makes it one of the poorest portions of the country. The communities as a whole in Rakhine suffer from poverty, poor social services and a scarcity of livelihood.

- The advisory commission on Rakhine recognises the existence of Muslims in Rakhine before the Burmese invasion itself. This clears the argument against the scholars who posit their existence only with the colonial times. Committee found the increase in number of Muslims with the colonial time but not the origins to their existence.
 - Some ten percent of the world's stateless live in Myanmar itself, and Muslims in Rakhine constitute the biggest stateless community in the world.
 - The report proposes a ministerial-level appointment particularly to coordinate policy on Rakhine state for taking up the effective implementation. The appointee to be supported hand in hand by the permanent well- staffed secretary which will manifest the central committee on implementation of peace and development in Rakhine state and enhance its work.
 - The turmoil was more for women; they suffered excessive challenges whether with the uneven pay in the agricultural sector or to the horrendous crimes of rape, torture, and trafficking in the migration process.
 - Rakhine is capable of being a potential business partner. It has investment projects of significant importance. The Kaladan multi-modal transport transit project hatched out as the multi-sectoral joint project to connect India and Myanmar through Mizoram and Chin and Rakhine state.
 - Special Economic Zones (SEZ) planned to projects oil and gas terminal at Madae island which is the initial point for oil and gas pipeline to Yunnan in China. Rakhine plays an important role in offloading site for international oil tankers.
- The commission, in short, wants to highlight the fact that is a formidable task for creating Rakhine a growth and sustainable development. But everything depends on the internal situation, the relations of inter-communal harmony.

4.7.1. Important recommendations by the commission.¹⁰

- Commission recommended making local Rakhine communities to take part in the decision making process.
- The commission asked to provide adequate compensation and an appropriated land for the displaced population.

¹⁰. This recommendation is taken from the Rakhine commission organisation report. This is an original draft in English version.

- The commission importantly mentioned that in the economic and globalised competition of changing Kyawkpuyh town by SEZ it should be taken care that resources and population are not exploited this to be taken care by government authority.
- The Government should take care of the gap in gender participation. For the women whose labour force participation is excessively low.
- The commission suggested taking care of the climatic conditions through the mitigation and adaption measures to counter the climate change and facilitate the farmers with the advisory mechanisms.

4.7.2. On the basis of citizenship.

In order to exercise the verification process of the 1982 citizenship law:

- The commission recommended ensuring all benefits, rights and freedom of the citizens.
- The government to provide clear and transparency over the process of citizenship verification process by providing the proper timeline for the process to be done. The process to be made simpler and include Rakhine Muslim communities in hatching out the plan and making the decisions.
- Government to clarify the reasons clearly for those who were not accepted as citizens.
- The commission strongly recommends putting no barrier to the Muslims community to engage with the Rakhine population in revitalizing their citizenship process, to encourage and to make voluntary.
- The commission also government to be swift with the responses on the ongoing process of verification.
- Commission recommends individuals who have lost their citizenship to reacquire it and not be left them stateless.
- Finding possible provisions for individuals to be citizens through naturalisation provisions.
- Most importantly to re-examine the linkages between citizenship and ethnicity and to review the 1982 citizenship law.

Commission also looked at the aspects of curtailing the freedom of movement. While Muslims who are internally displaced persons (IDPs) are entirely deprived of freedom of movement other are Rakhines who faced the problem through the limitations created by the state. The freedom of movement is one the most important aspects that have hindered the economic progress of the Rakhine state and particularly of the Muslim in Rakhine.

Commission took up a holistic approach, it recommended about the media accessed, IDPs role in policy formulation of the citizenship, education to be provided without any divisions, healthcare to be supervision in a fundamental and standardized manner as the nutritional status of children in Rakhine remains the worst of all the parts where 38 percent of children stunted and 34 percent underweight¹¹ including drugs and trafficking aspects. The issues of communal representation, civil society participation and finally about the access to justice were taken into account. When accessed to the opinion, one thing was clearly visible as all the communities wanted to have improvements in the rule-of- law. To have a proper access to the justice mechanism, the justice provider should not to be remaining divided on religion and ethnic ground. The corruption by the justice mechanism fails the hope of rejuvenating to be called as a state acquainted person.

4.8. International community.

When human rights are violated to the extent of genocide, the silence itself is a crime to humanity, in such a situation, the role of the international community becomes the needful measures. In other words, it is the commitment of the international community that will ensure Rohingyas to be united, hopeful and be back to the place of their origin through collective criticism and pressure over Myanmar. It is the global criticism that made Aung San Suu Kyi collaborates with Kofi Annan to form an advisory committee to look after the situation and to provide recommendations (however the recommendations are still denied by Tatmadaw). Not only the international community but the understanding of international laws is must. The customary international law which means regardless of states being non-party to the Convention relating to the Status of Refugees 1951 or its 1967 Protocol that applies to

¹¹ Myanmar demographic and health survey 2015-2016, Myanmar Ministry of health and sports, March 2017. Accessed from Rakhine commission organization. Online.

all should be understood and taken care. Especially by the state like Burma and many others that underlook the aspects of the right to life, right to freedom from torture, cruelty, punishment and to liberty and security of an asylum seeker or refugee by forbidding a country from returning them to the country which is likely to cause danger of persecution. The customary law like non-refoulement which is the cornerstone of asylum and of the international refugee law becomes important for a country like India and Bangladesh who are planning to repatriate Rohingyas in the situation which is still not stable and likely to go through repeated attacks. According to the article 33(1) of the 1951 Refugee Convention,

“ No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (UNHCR 1983).

This is where the international community should voice their needful stance to protect against the horrendous crimes going through against Rohingyas. After the 2012 incident, President Thein Sein declares a state of emergency in Arakan. When the UN showed the concern, on 12 July 2012 President Thein Sein told the UN High Commissioner for refugees that it is the responsibility of its own state to take care of the ethnic communities but it is not their duty to take care of the illegal Rohingyas who is not their ethnicity. ¹²In fact, this very population is a threat to their national security so possibly the third country should take care of their resettlement¹³. The kind of attitude that foster by the leaders of the country like this could only be questioned through the international dialogue with all the major powers to be answerable through proofs.

If the stand of the president remains like this, the whole purpose of establishing advisory committee becomes useless when the state authority radically denies the Rohingyas belongingness. The UN High Commissioner for Human Rights Navi Pillay strongly condemned looking at the reports of human rights violations committed by security forces against the Rohingyas, and he called for a prompt and independent

¹² It is the timeline provided by the Global centre for the responsibility to protect to the situation of the Rohingyas in Burma/Myanmar.

¹³ It is the timeline provided by the Global centre for the responsibility to protect to the situation of the Rohingyas in Burma/Myanmar.

investigation that could rightly conduct the investigation and report the international community.¹⁴

Organization for Islamic cooperation too condemned and asks to bring justice through the possible justice mechanism. In 16, February 2013, UN Special Rapporteur Tomás Ojea Quintana releases a statement on the human rights situation in Myanmar at the end of his five- day visit to the country. He pointed out the poor functioning of human rights and a gap between the reformations at the top level to the implementation on the ground level. He strongly said to removed discrimination against Kachin and Rohingyas. In June 2013, even the EU resolution condemns the grave human rights violation and asked the state authority to allow the UNHCR to regulate and monitor the human rights situation.

4.8.1. Role of India and China

India and China the two most important regional powers, influences decision makings of the regional settings. Their presence and their absence both are the preconditions to the outcomes of relations to the country. To the Myanmar Rohingyas issues, both the countries have shown an inhuman picture. China has completely denied making any form of dialogue on the basis of the Rohingyas crisis and the reason is clear, the connection that China keeps with the state authority of the Myanmar did not want it to be messed. China has even blocked attempts to the meaningful dialogue that the United Nations Security Council (UNSC) made by using its veto power. India on the other side, with its confusing refugees' laws, have alarmed the country by the ministry of home affairs that approximately 40,000 Rohingyas have been living in India and they are to be deported soon as Rohingyas are “illegal immigrants” (Hindu, 2017). This statement from Kiren Rijiju has stunned people that considers India's values and history for having accepted refugees from years, especially Tibetans and Afghanis.

4.8.2. Role of Bangladesh

The second country which is affected the most in the Rohingyas crisis is Bangladesh. When hundreds of thousands terrified Rohingyas found themselves stranded, they

¹⁴ It is the timeline provided by the Global centre for the responsibility to protect to the situation of the Rohingyas in Burma/Myanmar.

flooded towards the country since 1992. (**International Organization for Migration**, IOM report, 2017). Bangladesh has witnessed a persistent influx of Rohingyas since then. Bangladesh itself is among the poorest country in the world. Several outbreaks of unrest in October 2016 and August 2017 in the Rakhine State of Myanmar amounted large influxes of Rohingyas crossing borders in Teknaf and Ukhia of Cox's Bazar. An estimated 507,000 additional Rohingyas have crossed into Bangladesh since October 2016 (IOM 2017), including 420,000 since 25 August 2017. How and why Bangladesh is hosting such a large population beyond its capability? Geographically, the Rakhine state of Burma and Bangladesh Naf river is the closest among any other regions. Moreover, Rohingyas are curtailed from the freedom of movement so it is impossible for them to flee towards any other parts of Myanmar. If there is any way out, then it is Bangladesh or any other foreign countries. Bangladesh Prime minister Sheikh Hasina has already urged United Nations to put pressure on Myanmar. Myanmar is not even a state party to the **International Criminal Court** (Rome Statute). However a prosecutor requested the court for giving a jurisdiction over the forced deportation of millions of Rohingyas to Bangladesh. The prosecutor did so because Bangladesh, the affected party is a party to the ICC (Farhaan 2018).The investigation is still yet to be done. Bangladesh has also restricted Rohingyas from moving towards designated areas (Khalid 2017). Bangladesh is not the actual provider of all the sustenance, it the aids from the NGOs and international organizations that help fostering them. However, the country is bearing the human security threat with the overpopulation of the stranded population.

4.9. What can be done?

The twenty-first century is a globalized world defined by new security problems unconstrained and unbounded by borders—from climate change, disease and poverty to drug and human trafficking, ethnic conflicts and refugee crises, to extremism, the proliferation of small arms and terrorism. (G7 Report 2015).

- **Firstly, Identifying the root cause.**

Myanmar has to be studied from the roots; it has been ruled by the military junta since early 1960s. In order to strengthen its power base it has promoted the nationalist agenda(ICG 2001). The nationalist agenda is of promoting “Burmanisation” based on the exclusivity of the Myanmar culture and language as well as the religion of the

majority—Buddhism(ICG 2013). This tendency of homogenisation is the condition for which ghettoisation and sporadic massacres has been done. This agenda has led to changed in the citizenship laws in 1982 and making Rohingyas out of the state completely. International and regional organisation knowing the fact the cause lies in the history with the Myanmar government’s discriminatory laws and policies still they over float with topic of human rights problem and routine temporary management rather than forcing for the underlying causes to be corrected. Thus what is needed is to revisit the citizenship draft and reform the citizenship draft.

- **Secondly, finding the major players.**

The culprits come with the garbed, the disaster comes with the aids and it is the vicious circle since independence that the Rohingyas have been scattered. Who are the people involved in the genocide and thereafter is to be identified? Myanmar being the host and Bangladesh being the affected one are the two major players. There are others from western countries who are the stakeholders such as Australia, Canada Denmark, the United Kingdom, and the United States of America (US) and also from the European countries that have volunteered for third-country resettlement. Globally the total number of resettlement countries increased from 14 in 2005 to 26 in 2012 (Gaffar 2018).

- **Thirdly, need for an inclusive dialogue.**

Myanmar policy making agenda is rule by the military and by the mandate of majority population which are Buddhist. The extremist Buddhist who indorsed an anti-Muslims campaign will be the cover of the policy. Therefore, there has to be a member from the other communities not only Rohingyas, but also Kachin, Mon, etc. along with the international advocacies of human rights and civil societies.

- **Fourthly, resetting of regional voice with functionality.**

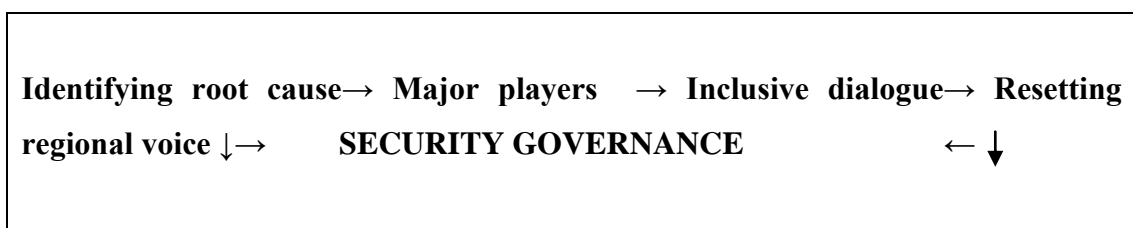
The regional organisation like ASEAN should be active enough to voice and come out to address the regional problems. ASEAN needs a mechanism for addressing the refugee crisis of its own it needs its own security governance. There has to be a collective structure where they could address non-traditional security aspects. The functionality of the security governance works in a horizontal framework promoting

governance, networking between states, intergovernmental organisations, international organisations, international nongovernmental organisations, nongovernmental organisations, regional organisations and civil society organisations at different levels from domestic and regional to global is essential (Gaffar, 2018).

- **Fifthly, setting up of security governance.**

Security governance is based on the principle of “social coordination” (Gaffar, 2018) that work with the coordination with formal as well as informal channels and plays a major role in the formulation of policies ,where the state is a strategic partner but not the dominant one(Held and McGrew 2002). This is so much important to come up with where the power sharing will be on horizontal basis and not a vertical one. In this process, the highest level of interactions could be achieved at different level. This governance will make a nexus between system of rulemaking, adjudication, political coordination and problem solving mechanisms (Rhodes 1996). As ensuring security to the new threats has gone out of the state capacity, reason being the threats are borderless and do not confine anymore to a terrain. So there is a need of governance that will work with security dynamics by involving in special task of formulation and implementation of policies including the Government to it. The security framework is in fact, form by the above aspects.

4d.Security Governance framework¹⁵



8. Conclusion

With the above-mentioned mechanism, the most important aspect for the Rohingyas to come out of the horrendous crimes is to be recognising them as the citizen of Myanmar. With no umbrella of nationality, their rights are simply drawn away and

¹⁵Some idea of this security governance framework has been taken from the security governance model of Abdul Gaffar. 2008. Approaching the Rohingya crisis. However the approaches are distinctive.

what they get is a day to day aid to fill their nights. They are restricted even in the Bangladesh camps; International media clearly depicted their human rights violations both in and outside Myanmar. The functionality of the UNHCR, the primary international body mandated to protect and address refugees has been compromised due to the own functionality of the nation-states divisions and their stringent state authorities. Hence, this particular population lives a life of a compromising state, unwanted and non-recognized. The ten percent of the worlds' most persecuted stateless population has been viewed as a burden to the state, regional and international powers rather than as the biggest crime to the humanity. The protracted Rohingyas refugee situation and their continued violation of human dignity is not just a personal threat, it is a threat to whole Southeast Asia region.

Thus, there is a need of an engagement with collective stakeholders making a dialogue in a rational and in an inclusive manner. As mentioned above, the dialogue should not be just the collaboration of Ministry of the Office of the State Counsellor of the Republic of the Union of Myanmar and the Kofi Annan Foundation, the Advisory Commission on Rakhine State. There have to be some members from the Rohingyas communities as advised by the commission itself for the policy formulation. It should be a bottom-top approach with inclusive, multilayered dialogue bringing out permanent resolution rather than temporary or ad interim cure. The recommendations made by the Advisory Commission on Rakhine State have been vetoed by the Tatmadaw which has to be looked forward. This kind of deteriorating and demoralizing factors by the state machinery has to be collectively addressed by the regional and international community with pressure and strong criticism.

Thus the chapter has discussed the hardships and obstacles faced by the Rohingyas, politically, legally and economically. The focus has been on the geopolitical relevance of Southeast Asia since, in the face of the unfolding major power rivalries, regional power like ASEAN has exercised neutrality. The chapter has highlighted the issues and the violations faced by the stateless population. Further it has covered the mechanisms and the aspects that are liable to be addressed by the regional and international community as the future prospects of Redressal tools by the affected states

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Chapter 5

Conclusion: Is State a solution for Stateless?

“You have a vision and I have full of uncertainty

SALIM, a Rohingya refugee,

17th May 2018. New Delhi.

By exploring statelessness with respect to theoretical, political and legal aspects, the politics that determined statelessness were found to be nothing but structured biases that functions as a tool to homogenise the country. Since the World War II, statelessness process seems to have reflected with a different story but with similar plotting, the Jews too have been killed and thrown out of the state in the process of homogenisation. Similarly in case of Myanmar, the process of homogenisation resulted to the thorny Myanmar situation. It has proven the deep rooted layered of history that comprises of two different religions where one tries to exert their religious and cultural dominance another one demands freedom from all such dominance. Burma since the 1960s, the process of ‘Burmanisation’ got adopted to form the country a mono-ethnic and mono-religion state. Knowingly or unknowingly in the process of burmanisation, humanisation has been completely dumped. The defining of Burma as the ‘Buddhist’ religion in 1961 was more of an assault to the diverse sect like Kachin who comprises ninety per cent of Christians and Rohingyas who are almost Muslims and others who are animist.

From the above research there are two set of narration that developed in context of Rohingyas Statelessness. The scholar like Martin Smith and Ibrahim argued that the sufferings so far faced by the Rohingyas are due to the well structured hegemonic preoccupation of the State authorities, military and the extremist Buddhist who wanted to distort the history of their existence and by calling them Bengali (to the people who have been residing since 7th century), they are forcing them to believe that they are Bengals and I called this process as ‘normalisation of norms’. On the otherside, the well known scholar like Jacques Leider argues that the name “Rohingya” itself is a movement, a self defined and well equipped to make Arakan

their own homogenise society. Thus, these arguments ultimately provide two good rivals of homogenization- Arakanisation and Brmanisation. There is no truth findings to the argument but one thing to be realised is that Rohingya today is a population who is at the peripheral of genocide so the question no more can be derive for higher motives of creating political society when legally and humanly, stripping off their human rights.

Hannah Arendt who advocated the concept of statelessness, rightly pointed out that with statelessness the rights of the human completely get denied. The status of stateless has treated Rohingyas as a rational beast (even the beast has rights today). One of the Rohingyas refugees said, “There is vision with you and uncertainty with us”.¹⁶ Arendt crucial challenge to the human rights showed the tension between the two different orders of rights- universal human rights that are inherited rights for the human being and civic rights drawn by the citizens by becoming the part of the political community. Through this research what has been found is that both kinds of research have been taken away in case of Rohingyas. Arendt with this division argued that the later one is what actually matters and offer protection under the territorially bounded region and the former one that is universal human rights just exist in the abstract form, offering no protection and dignity of life as a human.

The stateless characteristics are what Arendt referred to as *Zoë* (the biological fact of life) that characterised with no quality and dignity of life, existing just for the mere existence. This very concept is what addressed most of the stateless, whether it is Kurdish or Rohingyas who live their life just as a biological fact with no purpose of growth and development. Their rights being curtailed, with no freedom of movement, remains like a monitored robot. Rohingyas at the edge of genocide facing a state structured systematic crime. This paper argues that there needs a well structured ‘security governance’. A horizontal functioning of the security system with an equal platform of dialogues among State authorities, regional organisation leaders, NGOs, Civil Societies, International organisations and most importantly the members from all the ethnic communities of Myanmar.

¹⁶ Told by SALIM, a Rohingyas refugee residing at Kalindi Kunj, New Delhi India. I went to the camp on 17th May 2018 to have firsthand information and what I saw was that their lives are limited to today as they have no idea what their future holds. Recently in April, their camps were completely burnt. To which UNHCR and Zakat foundation and several individuals reached out as helping hands. Some of the refugee’s cards were expired and they were running throughout to renew them.

The chapters dealt with the aspects of concept, the international laws on Statelessness, Burma and Arakan history and mechanisms to reduction of statelessness with an excerpt of the Crisis. The research has found out that argued that one way to ensure stateless persons guaranteed rights is to trace back the genuinely of a link to the country. To this setting up of the proper timeline is a must. Rohingyas having a history that traces back to years of pre-independence cannot be dying down with the change in regime. Rakhine state was independent in itself. So Burma joining Arakan in the later period should not be the reason of diluting history.

The chapters also argued that an increase in the number of stateless to a place will ultimately affect the region. This tendency results into instability of a region. Regional pressures were effective in the case of Estonia's and Latvia's treatment on their stateless persons. Latvia's recent entry to the European Union was being threatened by their stateless population, which resulted into an impactful response from the country. Now the country started providing naturalised citizenship to nearly 70,000 persons and also started granting citizenship to the children of stateless and non-citizen persons born within the country's territory from 1995 (Weissbrodt and Collins 2006:275).

Similarly, there needs to be a pressure on Myanmar from internal as well as external. The forced deportation have already affected countries beyond borders even to far as Saudi Arab where more than a lakh Rohingyas have fled, including Indonesia, Malaysia and India. So the regional organisation like ASEAN and SAARC are expected to address the non-traditional security threats before it goes beyond the tolerance and capacity of regional settings. The criticism has led the Aung San Suu Kyi to collaborate with the advisory committee on Rakhine chaired by former UN secretary Kofi Annan. The recommendations mentioned in the above chapters if hatched out properly, the country could have alleviated some image and respect out of it. But to the utter dismay, President Thein Sein has blocked the recommendation by making veto over the recommendations.

There is a clear systematic arrangement of starting the repatriation from Bangladesh Cox bazaar to Myanmar with Bangladesh and Myanmar forming a **Joint Working Group** (JWG) for repatriating Rohingyas refugees. The JWG comprises of 15 members from each country and was formed under the terms and conditions of the

bilateral arrangement. As per the deal, Burma has to accept 1,500 Rohingyas per week with the plan of taking more than 700,000 populations in two years. It plans on setting out in phases where Rohingyas will be first placed in temporary camps between the borders and shift to the locality under Burma's authorities. According to the agreement, the arrangement made a legal requirement and announces return be voluntary and process be safety and dignified. The JWG ensured working not only to repatriate the displaced Rohingyas but also in resettling them in Rakhine state and provide support to reintegrate them in the society. It is difficult to imagine how this could be achieved without having transformed any of the policies from Myanmar side. The straight denials of the Myanmar military on the other side, regarding the atrocities and claiming whoever they have killed so far to be all terrorists is a dangerous attitude for the community. In such a situation, it becomes important to hear from refugees themselves. Meanwhile, a group of Rohingyas elders in Cox Bazaar camp showed a report of the petition to the Reuters reporter. It listed few of the conditions that they wanted before the repatriation begins which includes demands like citizenship, land of their origin and military to be held charged for all the crime that they have done to them. They are aware of the fact that if they return, it will be a case of displacement as there are no more homes and both the governments are planning to reside them in transit camps between the borders (Sheikh, 2018).

It is more of a nightmare. Sending back of Rohingyas to Myanmar is not the solution but ensuring them their dignified life does. They should be sent back only when they are ensured of their citizenship, the land of their origin and deep down recognition (which might take time). The Rohingyas community is still in a serious trauma as the conditions at home have not yet improved, their houses and cow sheds are being destroyed in several places of Buthidaung Township and Kat Pa Kaung hamlet of Shweza Village in Maungdaw, and setting out of repatriation plan is no less than a nightmare for them. It is not that they do not want to go back, but it is a matter of life and death and repatriation guarantees only certain deaths for them. The plan to repatriate Rohingyas without any protection to their life is whitewashing the crimes committed by the Burmese regime and allowing them to act as concern guardians. Medecins Sans Frontieres (Doctors Without Borders) reported in a statement released in December that at least 6,700 Rohingyas, including 730 children, have been killed in Myanmar in the first month of the crisis. Coupled with reports of rape cases,

trafficking, outright murder, Rohingyas live in a defenceless situation of unspeakable atrocities. In this status quo, it is obvious for them to face the same atrocities and apartheid conditions which will be no less than a wishful crime committing by any country.

When the country like Latvia and Estonia could come out of stateless problems and could think about development, the country like Myanmar should also be pressured and guided to manifest as such. India and China could play a major role in this. If only China threatens Myanmar for isolating and charging with the crimes of human insecurity. But to achieve this there needs to be a well-formed multi-layered approach to making a dialogue from bottom to top approach.

Beyond the role of the international and regional community, the state like Myanmar and Bangladesh need to understand international laws. Especially, the customary international laws those are applicable to all the states irrespective of any state being party/ non-party to the convention. For instance, the principle of non-refoulement which is the cornerstone of asylum and of the international refugees' law. According to the article 33(1) of the 1951 Refugee Convention,

“ No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

This customary law abides by the rule that even if the state is non- party to the Convention relating to the Status of Refugees 1951 or its 1967 Protocol which are non-contracting states but planning to repatriate Rohingyas to the non-viable state of condition in Myanmar will be a violation to the international clause. Such standard principles of international laws should be clearly understood and followed by the state which is trying to repatriate the stateless population to the state which is, in fact, the main accused of the crime. State-sponsored crime should not be given chance for state-sponsored repatriation; it should be redrafted in the purview of UNHCR the international organisation and NGOs, etc, ensuring that their lives are taken care by international community and international laws possibly as Myanmar's ethnic minorities with guaranteed citizenship.

Interestingly, the nation –states theory that emerged out of the Westphalia treaty is considered to be the major sign of modernity. Today the world is witnessing the odd side of this modernity, the more this modernity claimed to have achieved something out of it, it is always by suppressing millions of lives in the boundaries of nation-state divisions. In fact, the idea of nationalism got radical including the traditional values of identity and ethnicity. There is still no separation of traditional aspects and modernity, it goes hand in hand. In fact, using the traditional values of recognition, the modernity has dwelled and created divisions among people. Sometimes this division remains as a tool for identifying people but most of the time it is a tool to sectarian and power politics. This is how the Myanmar state has functioned too, with the strong demarcation of the nation, half of the population has fallen out of it by negatively playing with the identity and religion card, thus the admixture of traditional and modernity failed in context of Myanmar. Now what is to be done is to strongly reanalyse itself coming out of the ultra-nationalist role.

Thus, from the above findings, the hypothesis that stated citizenship is a fundamental human right that brings forth the ability to exercise other human rights is proved to be most accurate factor that the modern state have relied on. However, the argument had set forward in the second chapter that not to consider the connection of citizenship and other human rights because human rights is person's own right for simply 'you are a human'. The Stateless persons, the Refugees, the immigrants, etc are no less human. The Rohingyas who are in the most deplorable condition is all due to the revoking of citizenship rights. The modern state political dimensions is all about the hegemonic tendency of occupying all the sphere of political, social or economic structure set out through the divisive plans to link all the rights that exist for a human and used it for the political benefits. In this process, dehumanisation, de-recognition and destruction of a human dignity are used by the territorially legitimized world for the construction of their favourable state. Therefore the research was more on understanding and analysing the legal and political aspects of statelessness that have been manufactured by citizenship laws.

Myanmar is a state of diverse set of culture and religion; however, the findings proved that the particular state is in the motive of regularising mono-ethnic and mono-religious policies. Therefore the hypothesis that stated ethnic recognition is the primordial factor for constitutionally legitimizing your identity in Myanmar's

citizenship is vague. Until and unless, the ethnicity is not known with the adaptive behaviour to the burman's society and in its homogenisation process, the question of ethnicity will go unanswered likewise in Rohingyas' case who traces its history as similar to the Buddhist in Burma, but still in demand of freedom from the other sects even after the seventy years of Independence. In the conflict of ethnicity, Burma has dragged all the regional and International community into the questions of their position on the violation of human security.

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