

# The Impacts of the Burmese Citizenship Law on the “Rohingyaas”: A Critical Appraisal

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## Abstract:

*The enactment of the Citizenship Law of Burma in 1982 by the Union of Myanmar has brought about a new debate in the arena of International law as the said law is concerned not only with the issue of citizenship but also with human rights, ethnicity and other critical issues. Many, in fact, the majority, argue that the law clearly violates International human rights norms; facilitates the ways of discriminations and thus, becomes a major reason of concern for the global communities. The object of the current study is to assess the impacts of the Citizenship Law of Burma on the “Rohingyaas”. An interdisciplinary approach with legal and socio-political analysis of the said law along with its specific impacts on the “Rohingyaas” backed up by the secondary data is used. In order to achieve the objective, the study before identifying “Rohingyaas” at first focuses on the brief political history of Myanmar and then puts light on the provisions of the said citizenship law. After that, the impacts of the said Law on the ‘Rohingyaas’ are appraised. The study finally argues and thus, concludes that thorough-going exposure is needed in the way the government of Myanmar advocates for the Law of 1982 before the same can be said to reverberate to the popular demands of the right to citizenship in general and the recognition and protection of the rights of the “Rohingyaas” “in particular.*

Key Words: Citizenship, Rohingyaas, Myanmar

## Introduction

"Citizenship comes first today in our crowded world...No man can enjoy the privileges of education and thereafter with a clear conscience break his contract with society. To respect that contract is to be mature, to

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strengthen it is to be a good citizen, to do more than your share under it is noble.”

--Isaiah Bowman

Citizenship is the status held by the member of a politically constituted community who commonly acts towards conferring certain privileges and rights on an individual with the assistance and guidance of the state. It is a means, through which the nation-states and other communities can bind together. Citizenship, thus, is most commonly found in cases where people belong to a country, and is accordingly theorized as the primary means of maintaining a relationship between individual member and the political entity as a whole. This form of citizenship can alternatively refer to as national citizenship.<sup>2</sup> Recently in 1982 the Republic of the Union of Myanmar<sup>3</sup> enacted a law namely the Citizenship Law of Burma, 1982<sup>4</sup> replacing the earlier citizenship laws.<sup>5</sup> Since very beginning of the enactment of this law a lot has been said and written about and against. Many, in fact, the majority, argue that the law clearly violates International human rights norms; facilitates the ways of discriminations and thus, becomes a major reason of concern for the global community. The object of the current study is to assess the impacts of the Citizenship Law of Burma on the “Rohingyaas”. An interdisciplinary approach with legal and socio-political analysis of the said law along with its specific impacts on the “Rohingyaas” backed up by the secondary data is used.

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<sup>2</sup> For more details see, <http://immigration.laws.com/citizenship>, last accessed on 5 August 2015.

<sup>3</sup> Burma officially the Republic of the Union of Myanmar and commonly shortened to Myanmar is a sovereign state in Southeast Asia bordered by Bangladesh, India, China, Laos and Thailand. "Burma" is the official name of the country under the 1947 constitution. After seizing power in a coup d'etat in 1988, a military junta changed the name to Myanmar. "Myanmar" is a contraction of the name "Myanmar naing-ngan," which in the Burmese language means "nation of the swift and strong people." The name Burma is used to show solidarity with all those struggling for democracy and freedom in Burma. See, generally Amnesty International, Myanmar: Human Rights Developments, 1994, U Kyaw Min, Brutality in Burma, L.A. TIMES, Feb. 25, 1992, Steinberg, David I. *Burma/Myanmar: What Everyone Needs to Know*, Oxford University Press, 2010.

<sup>4</sup> The law was published on 15 October 1982.

<sup>5</sup> The earlier Citizenship Laws are discussed elaborately at a later part of the study.

1982 before the same can be said to reverberate to the popular demands of the right to citizenship in general and the recognition and protection of the rights of the “Rohingyaas “in particular.

### **A Brief Political History of Myanmar**

Although, much of Burma's earliest history is unrecorded<sup>6</sup> but by the ninth century the country was already ethnically diverse and roughly divided into two territories along with the great Irrawaddy River.<sup>7</sup> The Mons, who came from central Asia, dominated the lower basin, and the Burmans and Thais, who migrated mostly from China and Tibet and are the largest ethnic group, settled in the upper basin. The country was unified for the first time after a long fight that extended around 1,000 years under the Pagan Dynasty which is considered the Golden Age in Burma's rich history. However, the empire fell in the 13th century with the invasion of Kublai Khan's Mongol army.<sup>8</sup>

In 1824, on an imperialist drive through Asia, British forces invade Burma. Following two more wars, the British take control of the whole country in 1885 and finally in 1886, Burma becomes a province of the British Raj.<sup>9</sup>

The new occupiers rule the country under two-tier system, *firstly*, the Ministerial Burma<sup>10</sup>; and *secondly*, the Frontier Burma<sup>11</sup> which leaves the later group politically isolated and the country became ethnically fragmented.

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<sup>6</sup> See, for details, Topich, William J. Topich and Keith A. Leitch, *The History of Myanmar*, ABC-CLIO, California, 2013.

<sup>7</sup> For more details see, <http://www.pbs.org/frontlineworld/stories/burma601/timeline.html>, last accessed on 5 August 2015.

<sup>8</sup> For more details see, [http://www.quazoo.com/q/Military\\_history\\_of\\_the\\_Mongol\\_Empire](http://www.quazoo.com/q/Military_history_of_the_Mongol_Empire), last accessed on 5 August 2015.

<sup>9</sup> The name of the period of British colonial rule in South Asia between the years 1858 and 1947 is "British raj". The region, called India included areas administered by the United Kingdom. The princely states were ruled by individual rulers under the paramountcy of the British Crown. The political union was officially called the Indian company after 1876. It issued passports under that name. The result of this change was that it was a founding member of the League of Nation and the United Nation, see, for details, <http://www.ukessays.com/essays/history/history-of-the-british-raj-history-essay.php>, last accessed on 5 August 2015.

<sup>10</sup> This portion becomes the heart of the country, both geographically and economically, where commerce and colonial governance is strong.

<sup>11</sup> The Frontier Areas (much of the country's border region) is mostly left to Burma's quarreling ethnic minorities.

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By the 1920s, a fledgling nationalist movement<sup>12</sup> has taken place and the world community saw to organize the students and intellectuals against colonial rule and immediately after that the countrymen joined to the movement.<sup>13</sup> Although the British rulers brutally suppressed the uprising, by the 1930s, the protesters became successful to lead the country towards independence and finally in 1937, Burma became an independent British colony.<sup>14</sup>

The World War II<sup>15</sup> brings many changes to Asia, and new alliances are formed. In early 1942, a good number of Burmese people calling them the *Burma Independence Army* forced the British out of the city which marks the beginning of the end of the British rule. During that time the Burmese nationalists strike a power-sharing deal with the Japanese under which Japan has promised Burma a path to full independence. But, by 1943, the war has turned against them, and Burma comes under Japanese sovereignty.<sup>16</sup>

When it becomes clear that the Japanese would not follow through with their promise, Aung San<sup>17</sup> quickly negotiated an agreement with the British to help them defeat the Japanese and grant full independence and thus, the two forces staged a successful countrywide campaign against the Japanese in March 1945. As the new leader drafted a constitution in

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<sup>12</sup> Gravers, Michael *Nationalism as Political Paranoia in Burma: An Essay on the Historical Practice of Power*, Routledge, 1999.

<sup>13</sup> Michael and Maitrii Aung-Thwin *A History of Myanmar since Ancient Times: Traditions and Transformations*, Reaktion Books, 2013.

<sup>14</sup> After the First Burmese War, the Ava kingdom ceded the provinces of Manipur, Tenassarim, and Arakan to the British. Rangoon and southern Burma were incorporated into British India in 1853. All of Burma came directly or indirectly under British India in 1886 after the Third Burmese War and the fall of Mandalay Burma was administered as a province of British India until 1937 when it became a separate, self-governing colony, see, for details, <http://worldhistoryproject.org/1948/1/4/burma-becomes-an-independent-nation>, last accessed on 5 August 2015.

<sup>15</sup> World War II was a [global war](#) that lasted from 1939 to 1945. It involved [the vast majority of the world's nations](#)—including all of the [great powers](#)—eventually forming two opposing [military alliances](#): the [Allies](#) and the [Axis](#). It was the most widespread [war](#) in history involving more than 100 million people from over 30 countries.

<sup>16</sup> Michael and Maitrii Aung-Thwin *A History of Myanmar since Ancient Times: Traditions and Transformations*, Reaktion Books, 2013.

<sup>17</sup> Aung San (1915 –1947) was a [Burmese revolutionary](#), nationalist and considered [Father of the Nation](#) of modern-day [Burma](#). He was the founder of the [Communist Party of Burma](#). He was responsible for bringing Burma's independence from [British rule in Burma](#), but was assassinated six months before independence. He is recognized as the leading architect of independence, and the founder of the [Union of Burma](#). Affectionately known as "Bogyoke" (General), Aung San is still widely admired by the Burmese people, and his name is still invoked in Burmese politics to this day.

July 1947, the course of Burmese history was tragically altered.<sup>18</sup> Aung San and members of his newly formed cabinet were assassinated by an opposition group. Later on, U Nu, a member of Aung San's cabinet was delegated to fill the position went vacant by the death of Aung San and Burma was finally granted independence on January 4, 1948.

For the Burmese, the first few years of independence are anything but a celebration of unity and freedom. The country is mired in power struggles and mistrust. Within the time span of 1948 to 1960 the world therefore, witnessed a political infighting and a slide into civil war leading to the emergence of a new military leadership.

In 1962, Ne Win<sup>19</sup> overthrows the government in a military coup. By arresting U Nu and forming his own "Revolutionary Council" from handpicked military officers, he abolishes the constitution and begins to rule Burma by decree.<sup>20</sup> Ne Win's totalitarian rule marks a new and particularly brutal period for the Burmese people.<sup>21</sup> The very fabric of Burmese society is altered. Foreigners are expelled; the press is silenced; borders are shut down; and all industry is put under state control. Favored army officials become the new ruling class, and forces are dispensed to crush any kind of rebellion.<sup>22</sup>

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<sup>18</sup> While Burma is still under British colonial rule, the Panglong Agreement is signed by Burmese leader General Aung San and several ethnic nationality leaders from the Shan, Kachin, and Chin areas. The agreement is designed to hasten independence from the British and avert ethnic tensions in the new Burma, as recognized in paragraph 7 that states, "Citizens of the Frontier Areas shall enjoy rights and privileges which are regarded as fundamental in democratic societies." See, <http://www.hrw.org/sites/default/files/reports/burma0508chronology.pdf>, last accessed on 5 August 2015.

<sup>19</sup> Ne Win was a [Burmese](#) politician and military commander. He was [Prime Minister of Burma](#) from 1958 to 1960 and 1962 to 1974 and also [head of state](#) from 1962 to 1981. He founded the [Burma Socialist Programme Party](#) in 1962 and served as its chairman until 1988.

<sup>20</sup> While reporting about that time the Telegraph wrote: "...U Nu won a landslide victory, but soon ran into difficulties, and in March 1962, Ne Win led a military coup, arresting U Nu, along with his cabinet and the tribal chiefs. Claiming he would give Burma a government "appropriate to its needs", he declared martial law, dissolved the legislature and Supreme Court and abolished the constitution. Two months later, as chairman of a ruling Revolutionary Council, Ne Win published *The Burmese Way To Socialism*, promising to end the nation's "pernicious" economic system through "political and economic mysticism". Simultaneously, foreign charitable foundations were told to leave and contact with foreigners was restricted." See, <http://www.telegraph.co.uk/news/obituaries/1415295/General-Ne-Win.html>. last accessed on 5 August 2015.

<sup>21</sup> See, <http://www.pbs.org/frontlineworld/stories/burma601/timeline.html>, last accessed on 5 August 2015.

<sup>22</sup> See, <http://www.pbs.org/frontlineworld/stories/burma601/timeline.html>, last accessed on 5 August 2015.

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It is argued that Gen. Ne Win, with the support of some of his close allies, coined and introduced the Citizenship Law 1982, which is referred and argued as one of world’s most discriminatory and malicious laws designed for the expulsion of an ever naive cum unfortunate people called “Rohingyaas”.

### “Rohingyaas”- Who are?

Many authors like, *Jacques P. Leider* states that in pre-colonial sources, the term *Rohingya*, in the form of “*Rooinga*” appears only once in a text written by Francis Buchanan-Hamilton.<sup>23</sup> In his 1799 article “*A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire*”, Hamilton stated:

*"I shall now add three dialects, spoken in the Burma Empire, but evidently derived from the language of the Hindu nation. The first is that spoken by the Mohammedans, who have long settled in Arakan, and who call themselves Rooinga, or natives of Arakan."*<sup>24</sup>

However, after riots in 2012, academic authors and the international media used the term *Rohingya* to refer to the Muslim community in northern Rakhine. *Professor Andrew Selth* of Griffith University for example, uses "Rohingya".<sup>25</sup> However, among the overseas *Rohingya* community, the term has been gaining popularity since the 1990s, though a considerable portion of Muslims in northern Rakhine are unfamiliar with the term and prefer to use alternatives.<sup>26</sup>

There are around 800,000 “Rohingyas” residing Burma, mostly concentrated in North Arakan or Rakhine State, adjacent to Bangladesh. Of South Asian descent they related to the Chittagonian Bengalis across the border in Bangladesh with a similar language.<sup>27</sup> They profess Sunni Islam and are distinct from the majority Burmese population who are of East Asian stock and mostly Buddhists.

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<sup>23</sup> Leider, Jacques P. "Interview: History Behind Arakan State Conflict". *The Irrawaddy*. See, for full interview, <http://www.irrawaddy.org/archives/8642>, last accessed on 5 August 2015.

<sup>24</sup> Buchanan-Hamilton, Francis (1799). "A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire". *Asiatic Researches* (The Asiatic Society) 5: 219–240.

<sup>25</sup> Selth, Andrew (2003). *Burma's Muslims: Terrorists or Terrorised?*. Australia: Strategic and Defence Studies Centre, Australian National University. p. 7.

<sup>26</sup> Derek Tonkin. "[The 'Rohingya' Identity - British experience in Arakan 1826-1948](http://www.irrawaddy.org/archives/8642)". *The Irrawaddy*, . See, for full interview, <http://www.irrawaddy.org/archives/8642>, last accessed on 5 August 2015.

<sup>27</sup> Available at, <http://sayedarakani48.webs.com/rohingyaarticles.htm>, last accessed on 5 August 2015.

According to several UN reports, “Rohingyas” are one of, if not the most persecuted minorities in the world. However, the history of “Rohingyas” community in Burma actually goes back to 8<sup>th</sup> century as they claim to be original settlers of Rakhine province the country while tracing their ancestry to Arab traders. History reveals that Bengal Muslims from neighboring Bengal<sup>28</sup> started arriving in Rakhine after King Naramaikhla<sup>29</sup> retained his throne with the help of Sultan of Bengal of that time. Besides, a large number of Bengalis migrated to Rakhine province during the British Rule which encouraged Bengali inhabitants to migrate to the fertile valleys of Arakan.

Myanmar has a multitude of ethnic groups, many of whom have conducted sporadic armed rebellions since its independence from Britain in 1948. But the “Rohingyas” are not officially recognized, partly owing to a 1982 law<sup>30</sup> stipulating that minorities must prove that they lived in Myanmar prior to 1823- before the Anglo-Burmese war<sup>31</sup>- to obtain nationality.<sup>32</sup> Many “Rohingyas” say their people were in Myanmar long before then, but citizenship could be granted to those with a long-standing link to the country, proving a Myanmar heritage is difficult.

### **The Citizenship Law of 1982**

As mentioned earlier, on 4 January 1948, Burma became an independent republic, named *the Union of Burma* and at the same year two laws made relating to the citizenship namely, *the Union Citizenship Act (Election), 1948* and *The Union Citizenship Act 1948*. These Acts were put forward by the pioneers of Burma’s independence according to the will of the people of the time and for the betterment of the nation. While all persons born on Burmese soil were considered citizens under the country's earlier 1948 citizenship law, provided one parent was Burmese, General Ne Win's seizure of power in 1962 led to policies that further excluded communities whose ancestors entered the country after 1823. The constitution established by Ne Win in 1974 listed 135 “national races” - including the Karen, Shan and Kachin - while excluding all “non-indigenous” minorities.

In 1982, eight years later after the constitution established by Ne Win a new Citizenship Law was enacted namely, *the Citizenship Law of Burma, 1982* repealing earlier two laws bearing on the matters of

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<sup>28</sup> Which then included Bangladesh also.

<sup>29</sup> From 1430 to 1434.

<sup>30</sup> The Burma Citizenship Law of 1982.

<sup>31</sup> The first Anglo-Burmese War (1824-26) ended on 24 Feb 1826 when Burma ratified the Treaty of Yandabo and ceded Arakan and Tenasserim to British India.

<sup>32</sup> This point is illustrated broadly later on.

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citizenship namely, the Union Citizenship Act (Election), 1948 and The Union Citizenship Act 1948.

The new law of 1982 provides total three categories of citizens of Burma which is regarded as a stratified citizenship system. They are: (i) Citizens, i.e., the descendants of residents who lived in Burma prior to 1823 or were born to parents who were citizens at the time of birth ; (ii) Associate Citizens, i.e., those who acquired citizenship through the 1948 Union Citizenship Law; and (iii) Naturalized Citizens, i.e., persons who lived in Burma before 4 January 1948 and applied for citizenship after 1982 . Citizens, as defined by the 1947 Constitution<sup>33</sup>, are persons who belong to an "indigenous race", have a grandparent from an "indigenous race", are children of citizens, or lived in British Burma<sup>34</sup> prior to 1942. Under this law, citizens are required to obtain a National Registration Card (NRC), while non-citizens are given a Foreign Registration Card (FRC). Citizens whose parents hold FRCs are not allowed to run for public office.<sup>35</sup>

To be mentioned, the dual citizenship is not recognized by Burma. Naturalization in another country immediately voids Burmese citizenship. Foreigners cannot become naturalized citizens of Burma, unless they can prove a close familial connection to the country.<sup>36</sup>

The law does not recognize Rohingyas as one of the 135 legally recognized ethnic groups of Burma,<sup>37</sup> thus denying most of them

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<sup>33</sup> The 1947 constitution was drafted by [Chan Htoon](#) and was used from the country's independence in 1948 to 1962, when the constitution was suspended by the socialist [Union Revolutionary Council](#), led by [Ne Win](#). The national government consisted of three branches: judicial, legislative and executive. The legislative branch was a [bicameral](#) legislature called the [Union Parliament](#), consisting of two chambers, the 125-seat [Chamber of Nationalities](#) and the [Chamber of Deputies](#), whose seat numbers were determined by the population size of respective constituencies, see, "[TIMELINE - Myanmar's slow road to a new constitution](#)", REUTERS, 2008.

<sup>34</sup> British rule in Burma lasted from 1824 to 1948, from the [Anglo-Burmese wars](#) through the creation of *Burma* as a [Province of British India](#) to the establishment of an independently administered colony, and finally independence. Various portions of Burmese territories, including [Arakan](#), [Tenasserim](#) were annexed by the British after their victory in the [First Anglo-Burmese War](#); [Lower Burma](#) was annexed in 1852 after the [Second Anglo-Burmese War](#). The annexed territories were designated the *minor* province (a Chief Commissionership), *British Burma*, of British India in 1862, See, [Imperial Gazetteer of India vol. IV 1908](#), p. 29.

<sup>35</sup> Soe Than Lynn; Shwe Yinn Mar Oo (20 September 2010). “Citizenship criteria trips up election Candidates”, Myanmar Times.

<sup>36</sup> [See, the Myanmar Immigration Policies.](#)

<sup>37</sup> <http://www.economist.com/news/asia/21564909-when-offending-muslim-world-seems-small-price-pay> Myanmar’s Rohingyaas, last accessed on 5 August 2015.



Burmese citizenship.<sup>38</sup> Furthermore, to be a citizen of Burma, one, if he or she is not one of ethnic groups recognized by the *state*, needs to prove the existence of their fore-parents in Burma anterior to 1823 C.E.

Moreover, Section 16, Chapter II, 1982 Burma Citizenship Law says “a citizen who leaves the State permanently, or who acquires the citizenship of or registers himself as a citizen of another country, or who takes out a passport or a similar certificate of another country ceases to be a citizen.”

### **The Impacts of the Latest Burmese Citizenship Law on the “Rohingyaas**

The Citizenship Law of Burma has brought about good inimical impacts on the Rohingyaas in more ways than one- which is not confined in terms of the sole matter of the right to citizenship but extends to other matters which are associated to the right to citizenship. Since, the citizenship right is regarded as the starting right for any person residing within the territory of any particular country, from which other rights begin or reversely, denial of the right to citizenship results in the denial of all other rights usually granted to the people having the status of a citizen. Any state indeed, may get a basis from the citizenship law - how to behave in an equal and non-discriminatory way to those- who are granted the status of a citizen.

#### **V (a). As regards to the Right to Citizenship**

The 1982 citizenship law has brought about various dreadful consequences- legal, political and socio-economic for a particular class of people called the “Rohingyaas”. The first and foremost legal consequence includes- the repudiation of the right to citizenship and thereby widening the way of discrimination between the citizen and non-citizen and the political, socio-economic consequences include bare right in the political decision making and taking away of socio-economic facilities. Thus, it is also suggested that shortly after the refugee repatriation of 1979, the said law was designed to exclude the Rohingyaas. Unlike the preceding 1948 Citizenship Act, the 1982 Law is essentially based on the principle of *jus sanguinis* and identified three categories of citizens, i.e., full, associate and naturalized as mentioned earlier.

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<sup>38</sup> <http://www.economist.com/news/asia/21565638-why-buddhists-and-muslims-rakhine-state-myanmar-are-each-others%E2%80%99-throats-unforgiving>, last accessed on 5 August 2015.

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Full citizens are those belonging to one of 135 ‘national races’<sup>39</sup> settled in Burma before 1823, the start of the British colonization of Arakan. The Rohingyaas do not appear in this list and the government does not recognize the term Rohingyaas. Associate citizenship was only granted to those whose application for citizenship under the 1948 Act was pending on the date the Act came into force. Naturalized citizenship could only be granted to those who could furnish ‘conclusive evidence of entry and residence before Burma’s independence on 4 January 1948, who could speak one of the national languages well and whose children were born in Burma. Very few Rohingyaas could fulfill these requirements.

However, this law of 1982 made a hardship for the Rohingyaas to prove their citizenship. As mentioned earlier the current law categorized the citizenship of Burman into three categories. Furthermore, the law has recognized certain ethnic groups along with the status of citizen under Chapter II, that says:

*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 1185 B.E., 1823 A.D. are Burma citizens.*<sup>40</sup>

Thus, in spite of a good chronological historical background about the ethnic origin the Rohingyaas are not incorporated within the list made and inserted in the latest law of 1982. This omission requires as per the same law to prove their fore-parents before 1823 C.E. But so far as the individual Rohingyas are concerned, it has been always difficult for them to individually prove the existence of their fore-parents before 1823 C.E. Because arguably, *firstly*, their individual documentary evidences have either been systematically destroyed or confiscated by the rulers in the country; *secondly*, most of Rohingyas have either been uneducated or been made so. They couldn’t keep these evidences in their hands; and *thirdly*, for decades, Rohingyas have been made to move from place to place. They have lost their documents meanwhile.

**However**, the fact remains is that they require these evidences to qualify them as the citizens. Since Rohingyas have lost their collective as

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<sup>39</sup> <http://www.myanmar.gov.mm/ministry/hotel/fact/race.htm>, last accessed on 5 August 2015.

<sup>40</sup> Chapter III, Sec 3.

well as individual identities, according to the law, most of them will find hard to even qualify as naturalized citizens today. Yet, the core problem that makes Rohingyas from citizens to stateless is not the law itself alone. It is the double-standard nature in the implementation of the law. The law has been discriminating and exclusively applied against Rohingyaas community. If the law is, without any discriminations, applied to the staunch supporters of the law today, Rakhine people, more than three fourth of them will be disqualified as the citizens of Burma. There are two reasons for it. *Firstly*, more than half of Rakhine populations in Arakan state today are immigrants from Bangladesh settled during Ne Win's era; and *secondly*, the original Rakhines themselves, too, can hardly show any individual evidences that can prove the existence of their fore-parents in Burma before 1823.

Moreover, the Citizenship Law says<sup>41</sup> that a person will cease his citizenship if he , (i) leaves the State permanently; (ii) acquires the citizenship of or registers himself as a citizen of another country,(iii) takes out a passport or a similar certificate of another country. Therefore, those Burmese living in exiles holding citizenships of other countries, passports or any other travel documents are no longer citizens of Burma.

Hence, after the introduction and implementation of this discriminatory law, the identity of a whole community was wiped out and more than a million people were stripped off their citizenships who otherwise were the legitimate citizens of Burma under The Union Citizenship Act (Election), 1948 and The Union Citizenship Act 1948.

#### **V (b). As regards to the Discriminatory Policies**

Deprivation of citizenship has served as a key strategy to justify arbitrary treatment and discriminatory policies against the Rohingyaas. Severe restrictions on their movements are increasingly applied. They are banned from employment in the civil service, including in the education and health sectors. Hence, Burma's discriminatory citizenship law not only deprives Rohingya of citizenship, but for decades has encouraged systematic rights violations. For example, since 2005, Rohingyaas in Rakhine State - who must obtain permission to marry or travel outside of their villages - have been limited to having two children per couple. But with access to birth control limited around the country, Burmese couples have an average of 4.7 children per marriage. The majorities of Rohingyaas families continue to have more than two children, but are

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<sup>41</sup> Section 16, Chapter II, the Burma Citizenship Law, 1982.

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unable to register those over the limit or fear being penalized. These children are blacklisted and without any rights at all even they cannot apply for permission for marriage, to go to school or to move outside of their village with their parents because, according to the authorities, they do not exist.

To be mentioned, in 1989, color-coded Citizen Security Cards (CRCs) were introduced for full citizens, blue for associate citizens and green for naturalized citizens. The Rohingyaas were not issued with any cards. In 1995, in response to the intensive advocacy efforts of the United Nations High Commission for Human Rights (UNHCHR)<sup>42</sup>, the Burmese authorities started issuing the Rohingyaas with a Temporary Registration Card (TRC), a white card pursuant to the 1949 Residents of Burma Registration Act. The TRC does not mention the bearer’s place of birth and cannot be used to claim citizenship. The family list, which every family residing in Burma possesses, only records family members and their date of birth. It does not indicate the place of birth and therefore, no official birth in Burma the actually lengthens their statelessness. To be added further, in November 2012, immigration police and the national army of Burma attempted to register Rohingyaas families, issuing them temporary national residency cards (NRCs) where the registration form used the term ‘Bengali’ to describe to the Rohingyaas- a label referring to their South Asian heritage, used to emphasize their perceived foreignness and they are afraid if they sign the documents then it will prove they are non-citizens leading to the denial of full citizenship along with no other rights. Additionally, to receive the NRC, families must prove they have lived in Myanmar for three generations, but many Rohingyas lost evidence of this in the recent sectarian violence, which destroyed up to 4,800 buildings and forced over 125,000 to flee their homes.<sup>43</sup>

### **V(c). As regards to the Human Rights**

The denial of citizenship along with other factors mainly political in nature have worsened the conditions of the “Rohingyaas” and resulted in

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<sup>42</sup> The OHCHR is a United Nations agency that works to promote and protect the human rights that are guaranteed under international law and stipulated in the Universal Declaration of Human Rights of 1948. The office was established by the UN General Assembly on 20 December 1993 in the wake of the 1993 World Conference on Human Rights. The office is headed by the High Commissioner for Human Rights, who co-ordinates human rights activities throughout the UN System and supervises the Human Rights Council in Geneva, Switzerland.

<sup>43</sup> <http://www.irinnews.org/report/97966/activists-call-for-review-of-myanmar-s-citizenship-law>, last accessed on 5 August 2015.

several other negative consequences for them, for example the gross violation of human rights like, murder, rape, land confiscation, uprooting from ancestral homes, restrictions on movements<sup>44</sup> and so forth.

In Bangladesh, the 28,000 Rohingyas still remaining in two camps are recognized as refugees and are getting benefits and limited protection and assistance from the UNHCR although, it is estimated that up to 200,000 more live outside the camps.<sup>45</sup> Bangladesh considers them as irregular migrants and they have no access to official protection. The combination of their lack of status in Bangladesh and their statelessness in Burma puts them at a risk of indefinite detention. Several hundred Rohingyas are currently languishing in Bangladeshi jails arrested for illegal entry. Most are still awaiting trial, sometimes for years. Dozens have completed their sentences but remain in jail – called ‘released prisoners’ – as they cannot be officially released and deported, since Burma refuses to re-admit them.<sup>46</sup> Tens of thousands of Rohingyas have sought out opportunities overseas, in the Middle East and increasingly in Malaysia, using Bangladesh as a transit country. Stateless and undocumented, they have no other option than relying on unsafe illegal migration channels, falling prey to unscrupulous smugglers and traffickers, or undertaking risky journeys on boats.<sup>47</sup>

As non-citizens, the Rohingyaas are excluded from government employment in health and education and those public services are appallingly neglected in North Arakan. Schools and clinics are mostly attended by Rakhine or Burmese staff who are unable to communicate in the local language and who often treat Rohingyaas with contempt. International humanitarian agencies are not allowed to train Muslim health workers, not even auxiliary midwives.<sup>48</sup> Some Rohingyaas teach in government schools, paid with rice-paddy under a food-for-work programme as they cannot hold an official, remunerated teacher’s post. Restrictions of movement have a serious impact on access to health and education. Even in emergencies, Rohingyas must apply for travel permission to reach the poorly equipped local hospital. Access to better medical facilities in Sittwe hospital is denied. Referral of critically ill

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<sup>44</sup> The Rohingyas are virtually confined to their village tracts. They need to apply for a travel pass even to visit a neighbouring village – and they have to pay for the pass. Travel is strictly restricted to North Arakan. Even Sittwe, the state capital.

<sup>45</sup> See, <http://www.fmreview.org/FMRpdfs/FMR32/11-13.pdf>, last accessed on 5 August 2015.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> [http://ssashah.webs.com/CEDAW\\_Myanmar\\_AP\\_Submission-Final-Web%20by%20chris%20lewa.pdf](http://ssashah.webs.com/CEDAW_Myanmar_AP_Submission-Final-Web%20by%20chris%20lewa.pdf), last accessed on 5 August 2015.

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patients is practically impossible. Consequently, patients who can afford it have sought medical treatment in neighboring countries like, Bangladesh but are sometimes unable to return to their village. Likewise, there are few secondary schools in North Arakan and pupils need travel permission to study outside their village. The only university is in Sittwe.<sup>49</sup> After 2001, most students could no longer attend classes and had to rely on distance learning, only being allowed to travel to Sittwe to sit examinations. Since 2005, however, even that has been prohibited. Not surprisingly, illiteracy among the Rohingyas is high, estimated at 80%.<sup>50</sup> For the Rohingyaas, the compounded effect of these various forms of persecution has driven many into dire poverty and their degrading conditions have caused mental distress, pushing them to flee across the border to Bangladesh.<sup>51</sup>

To be mentioned further, in the late 1990s, a local order was issued in North Arakan, applying exclusively to the Muslim population, requiring couples planning to marry to obtain official permission from the local authorities – usually the NaSaKa, Burma’s Border Security Force. Marriage authorizations are granted on the payment of fees and bribes and can take up to several years to obtain. This is beyond the means of the poorest. This local order also prohibits any cohabitation or sexual contact outside wedlock. It is not backed by any domestic legislation but breaching it can lead to prosecution, punishable by up to 10 years’ imprisonment.<sup>52</sup> In 2005, as the NaSaKa was reshuffled following the ousting of General Khin Nyunt, marriage authorizations were completely suspended for several months. When they restarted issuing them in late 2005, additional conditions were attached including the stipulation that couples have to sign an undertaking not to have more than two children. The amount of bribes and time involved in securing a marriage permit keeps increasing year after year. The consequences have been dramatic, particularly on women. Rohingyaas women who become pregnant without official marriage authorization often, resort to backstreet abortions, an illegal practice in Burma, which has resulted in many maternal deaths. Others register their newborn child with another legally

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<sup>49</sup> Sittwe is the capital of [Rakhine State, Myanmar](#) (Burma). It is located on an [estuarial](#) island created at the confluence of the [Kaladan](#), [Mayu](#), and [Lay Mro](#) rivers emptying into the [Bay of Bengal](#). The city has 181,000 inhabitants as per 2006 census. It is also the administrative seat of [Sittwe Township](#) and [Sittwe District](#).

<sup>50</sup> See, <http://www.muslimpopulation.com/asia/Myanma20TO.php>, last accessed on 5 August 2015.

<sup>51</sup> Ibid,

<sup>52</sup> Forced Migration Review, Issue 32, 2009.

married couple, sometimes their own parents. Some deliver the baby secretly in Bangladesh and abandon their baby there. Many children are reportedly unregistered. Many young couples, unable to obtain permission to marry, flee to Bangladesh in order to live together.<sup>53</sup>

Many, in fact, the majority, argue that the law clearly violates the Article No. 15 of *the Universal Declaration of Human Rights* that says “everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” Let’s not forget that Burma itself was a signatory country that voted in favor of the adoption of UDHR in the United Nation General Assembly on 10<sup>th</sup> December 1948.

However, considering the above impacts some critique raised the question of its acceptability, even they think that the Law is not applicable owing to the text of the law itself. The reason they put forward is that according to section 4, chapter 2- The Council of STATE may decide whether any ethnic group is national or not and the decision of the Council of Ministers is final.<sup>54</sup> Again, as per section 75, chapter VII- the Council of Ministers needs to act for the purpose of carrying out the provisions of this Law with the approval of the Council of STATE. Hence, the STATE has the ultimate power over this law. The STATE is defined<sup>55</sup> as the SOCIALIST REPUBLIC of The UNION of BURMA (SRUB).

Today, the State as SRUB is non-existent since the state has transformed from “SRUB” to “the Union of Myanmar (UM)” to “the Republic of the Union of Myanmar (RUM). The non-existence of the State called SRUB automatically nullifies the 1982 Citizenship Law. Therefore, to make the law effective and applicable, RUM needs: to crawl back to the state of SRUB; to withdraw its Vote and signature of the approval of UDHR; to even withdraw its membership from UN because Myanmar is neither a sole planet itself nor non-member of UN. So, Myanmar needs to abide by UDHR adopted by UN. Without doing so, the implementation of this law today in any form is illegal to the government of Myanmar itself because they have denounced the SRUB government of Ne Win. And it is violation of the article No.15 of Universal Declaration of Human Rights.

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<sup>53</sup> North Arakan: an open prison for the Rohingya in Burma, by Chris Lewa, available at: <http://www.fmreview.org/FMRpdfs/FMR32/11-13.pdf>, last accessed on 5 August 2015.

<sup>54</sup> Section 70 (b), Chapter VII.

<sup>55</sup> section 2 (a), Chapter I.

## **I. The Responsibility upon Myanmar Govt. and Neighboring countries like Bangladesh, if any**

**Under the current situation of the “Rohingyaas” crisis particularly from 1982 following the inception of the said law of citizenship a new question arose. It is the question of the state responsibility to resolve the Rohingyaas issue. International human rights law advocates and critiques tend to ascribe this responsibility not only on the shoulder of the Govt. of Myanmar alone but also on the neighboring countries like Bangladesh from human right and humanitarian laws perspectives.**

**From the viewpoint of International human rights law, although the Myanmar Govt. argues that the Rohingyaas are not the citizen of Myanmar nor even their ancestors, but this cannot legalize the Govt. to violate the human rights of any community within their national jurisdiction.<sup>56</sup> Thus, from international human rights law perspective, the Govt. of Myanmar has a responsibility not to violate the rights of the “Rohingyaas”. Arguing this issue from the same perspective, under international law Bangladesh govt. may not be under same responsibility so far as the Rohingyaas are within the territory of Myanmar. It is for two specific reasons<sup>57</sup>, *firstly*, a person is not the subject of international law rather state is a subject; and *secondly*, it is a state’s own affairs how the internal people will be treated within their own jurisdiction. However, any state may be held liable for the violation of human rights to any particular community even though who are irregular or illegal migrant to that country.<sup>58</sup> A state may act or behave differently between citizen and non-citizen but in no way can violate the human rights of either.**

**Under the humanitarian law perspective, on the other hand, the issue of Rohingyaas got significance attention. This is because humanitarian agreements, such as the Geneva Conventions of 1949<sup>59</sup> and**

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<sup>56</sup> No More: *The Battle against Human Rights Violations*, David Matas, Canada, 1994, p.119.

<sup>57</sup> See, for details, *Fifty Years of the Universal Declaration of Human Rights*, Dr. Borhan Uddin Khan, IDHRB, Dhaka, 1998.

<sup>58</sup> For details see, *International Human Rights Law: An Introduction*, David S. Weissbrodt, Connie de la Vega, University of Pennsylvania Press, 2007.

<sup>59</sup> Conventions for the Protection of War Victims Concerning: I. Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field; II. Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea; III. Treatment of Prisoners of War; and IV. Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S.31 [hereinafter Geneva Conventions of 1949].



the Protocols Additional to the Geneva Conventions,<sup>60</sup> primarily shield civilian noncombatants who have been displaced by armed conflict.<sup>61</sup> The Geneva Conventions provide widely accepted rules prohibiting violence to physical and mental well-being, torture, mutilation or other cruel treatment, murder, and outrages against personal dignity such as rape or indecent assault.<sup>62</sup> In addition, civilian noncombatants have a legal right to humanitarian assistance,<sup>63</sup> as well as a humanitarian right of *nonrefoulement*<sup>64</sup> and its corresponding guarantee of temporary asylum.<sup>65</sup> Burma has signed the Geneva Conventions, *albeit* without the two important protocols relating to the protection of victims of international and internal armed conflicts. Thus, under the Geneva Conventions Burma is bound to take into act for the improvement of the situations of the ‘Rohingyaas’.

Apart from the above, in order to improve the situation the UNHCR may undertake certain initiatives, like training personnel conducting refugee interviews to identify those individuals who meet the requirements for permanent asylum in third countries<sup>66</sup>; providing

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<sup>60</sup> Protocol I, Additional to the Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of International Armed Conflicts; Protocol II, Additional to the Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of Non-International Armed Conflicts, U.N. Doc. A/32/144, Annexes I and II (1977), entered into force Dec. 7, 1978.

<sup>61</sup> See, generally Lawyers Committee for Human Rights, *The Human Rights of Refugee and Displaced Persons: Protections Afforded Refugees, Asylum Seekers and Displaced Persons Under International Human Rights, Humanitarian and Refugee Law*, 3, 1991.

<sup>62</sup> See, Article 3 of the Conventions, which has been ratified by all but two states. Geneva Conventions of 1949.

<sup>63</sup> The right to humanitarian assistance is mentioned repeatedly in the Geneva Conventions. Geneva Conventions of 1949

<sup>64</sup> Nonrefoulement is a technical term, derived from Article 33 of the Refugee Convention, for protection against return to a country "where [the refugee's] life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." THOMAS A. ALEINIKOFF & DAVID A. MARTIN, *IMMIGRATION: PROCESS AND POLICY* 704 (2d ed. 1991).

<sup>65</sup> Article 45 of the Fourth Geneva Convention prohibits countries that have received persons fleeing armed conflict from sending the refugees back while fighting continues. Fourth Geneva Convention 0[1949, supra note 158, art. 45. " The Geneva Conventions of 1949, along with the Genocide Convention of 1948, "are considered today as the core of the contemporary humanitarian law of war in force." G.L.A.D. Draper, *The Development of International Humanitarian Law*, in HENRI DUNANT INSTITUTE, UNESCO, *INTERNATIONAL DIMENSIONS OF HUMANITARIAN LAW* 6, 6 (1988).

<sup>66</sup> Evidence of individual persecution, gained from refugee interviews, would entitle those Rohingyas who satisfy the formal "refugee" definition to the full range of protections available under the Refugee Convention and Refugee Protocol.

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counseling for seekers of asylum; assisting in getting legal assistance to asylum seekers. Recognizing that "a fair status determination process is the key to the legitimacy" of any scheme involving refugee screening, provision of asylum, or repatriation the UNHCR can formulate a plan of action for the Rohingyas that may "sets forth the elements of refugee status determination as well as the requirements for implementation which are to ensure fair screening".<sup>67</sup>

The world's refugee situation is not hopeful, with more than sixteen million persons currently displaced from their countries of origin-unable, or simply too afraid, to return home.<sup>68</sup> Nevertheless, by pursuing all available means to secure international protection, humanitarian assistance, and voluntary return or resettlement, today's refugees-including the Rohingyas of Arakan-may be solved.<sup>69</sup>

### Conclusion

Equal treatment of all citizens under the law is *sine qua non* to realize the full potential and enjoy equal rights and opportunities. Laws that discriminate between and among the people of a particular country not only impede the right to equality but also send a message that the state considers some people to be on a lower footing than other. Amending discriminatory laws may not eliminate discrimination and enacting laws that promote equality may not automatically create equality and equal right to all the citizens. However, without laws that promote and safeguard the rights of citizen, they remain vulnerable and lack the government support and legal standards necessary for the enjoyment of all other rights with dignity.

**Law which cannot come to play the role of public good- either directly or indirectly, loses the quality of a law or becomes a major ground of nullification.<sup>70</sup> It is also a fundamental requirement of the rule of law- which happened because of the latest development that any law made to discriminate deliberately is an obstacle to the rule of**

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<sup>67</sup> See, Deborah Perluss & Joan F. Hartman, Temporary Refuge: Emergence of a Customary Norm, 26 VA. J. INT'L L. 551, 558 (1986)

<sup>68</sup> LINTNER, supra note 17, at 196-215. Other students traveled to India, where many have sought temporary refuge or permanent asylum. U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 1992, at 32-33 (1992).

<sup>69</sup> Burma 's Rohingyas in Crisis: Protection of "Humanitarian" Refugees under International Law, Thomas K. Ragland, Boston College Third World Law Journal, Volume 14, Issue 2, p. 336.

<sup>70</sup> See, <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/tanf/crlawsandwelfareformoverview.html>, last accessed on 5 August 2015.

law.<sup>71</sup> **The citizenship law being a fundamental and primary law before any citizen can claim his right from any particular political entity like state and on which the other associated rights lie must satisfy those conditions.**

**However, the *Citizenship law of 1982* made by the Burma seems to testify that this law brought a miserable socio-legal impacts on the on the Rohingyaas.** The Rohingyaas are recognized neither as citizens nor as foreigners. The Burmese government also objects to them being described as stateless persons but appears to have created a special category: ‘Myanmar residents’, which is not a legal status. However, on more than one occasion, government officials have described them as ‘irregular immigrants from Bangladesh’<sup>72</sup>.

The said law creates a permanent underclass that is exploited with impunity, creating significant resentments [liable to] explode when security forces take advantage of the legal vulnerability of stateless persons through abuse. The discriminatory law may have helped fuel the sectarian violence that broke out between the Muslim Rohingyaas and the Buddhist population in Rakhine State even very recently in 2012 and 2013. The Rohingyaas have been constant victims of arbitrary arrests, extortion, harassment and fines due to their precarious legal status and laws prohibiting basic rights such as freedom of movement.

At the offset of all those situations, the Human rights groups are calling for a review of Myanmar's citizenship law, which has left more than 1.2 million people stateless nationwide, according to the UN Refugee Agency (UNHCR). The recommendations of the six UN Special Rapporteurs<sup>73</sup> put out a joint statement addressing the Rohingyaas situation and called upon the Burmese government to: repeal or amend the 1982 Citizenship Law to ensure compliance of its legislation with the country's international human rights obligations, including Article 7 of the Convention of the Rights of the Child and Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women; and take urgent measures to eliminate discriminatory practices against the Muslim minority in North Rakhine (Arakan) State, and to ensure that no

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<sup>71</sup> The Delhi Declaration of the International Commission of the Jurists, 1959 and also the Law of Lagos 1961.

<sup>72</sup> In Bangladesh, the 28,000 Rohingyas still remaining in two camps are recognized as refugees and benefit from limited protection and assistance by UNHCR but it is estimated that up to 200,000 more live outside the camps. Bangladesh considers them as irregular migrants and they have no access to official protection.

<sup>73</sup> The said recommendations were made on 2 April 2007.

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further discrimination is carried out against persons belonging to this community. Even on December 29, 2014, the UN General Assembly adopted a resolution calling on the Burmese government to amend the 1982 Citizenship Law in order to avoid the discriminates against the Rohingyaas anymore.

The Burmese government should come forward either to repeal the law or at least amend certain provisions. This may include but not confined to amend section 7, providing Rohingyaas full citizenship on a non-discriminatory basis and ensuring that children are never made stateless. The category of “associate citizen” and other forms of second-class citizenship under sections 23-41, which give local officials legal tools and bureaucratic latitude to deny minority groups their full rights should promptly be repealed. Perhaps, the Burmese Govt. should act to strip out the discriminatory provisions and ensure that the law complies with international human rights standards. Indeed, it should be kept in mind that citizenship is what makes a republic -- monarchies can get along without it.