State Sovereignty Vs Statelessness: An Analysis of Human Rights Turmoil in the Context of Rohingya Crisis

Poonam Singh
PhD Research Scholar, Centre for Indo-Pacific Studies/ School of International Studies/ Jawaharlal Nehru University, South West Delhi, State: Delhi, Pin Code: 110067

Received: February 08, 2019
Accepted: March 26, 2019

ABSTRACT: State is the protector of the citizen but what if it becomes the oppressor of the citizen. The problem of Rohingya lies in the historical context of State sovereignty of Myanmar while the solution needs to be taken in the present context of statelessness. The aim of this paper is to analyze Rohingya’s problem in the theoretical context of state sovereignty as it is the State that has created the problem by refusing them the right to citizenship and only the State holds the position to resolve it. The paper intends to discuss the political, social, cultural and economic aspects of the struggle for citizenship by Rohingya. While explaining statelessness as the main reason for regional turmoil it will also explain that there are lack of legal terminology, right methodology and an absolute parameter for deciding someone’s citizenship rights in case of the Rohingya community. These have been reasons forcing the Rohingya to seek human rights for their survival. There is a clear and urgent need of international law made by an international treaty such as Westphalia treat which gave legal strength to the State for its right to Sovereignty but failed to deal with the issue of Statelessness. Although under the Universal Declaration of Human rights to nationality, Stateless people are entitled to a broad range of Human rights, those rights remain an illusion for Rohingya. In 1974, the United Nations General Assembly designated the United Nations High Commission for Refugees (UNHCR) as a UN agency responsible for helping the member countries to reduce and then resolve the problem of statelessness. In spite of all these international aids, institutions and NGOs there is no progress because the origin of the problem is not from external factors. The internal institutional and political changes caused the identity and nationality problem for Rohingya. Historically, three parties were involved for the Rohingya problem we see today- the British Colonial Power, the native Myanmar people and the Rohingya immigration. During the transformation of power, many issues have been left unresolved by the first two parties. Now while the International community is trying to deal with the crisis, its success depends upon the Myanmar government due to its state sovereignty. In the context of Myanmar, the Government attitude is not very much accommodating. However, the question which arises is that how far can Myanmar avoid the Rohingya crisis? Is the cost-benefit analysis of the crisis in favour of Myanmar government? What could bring both the parties (Government and Rohingya community) on one desk to compromise and compensate for settlement enabling a permanent solution? All these questions will be dealt with in the paper by using the critical method and will conclude that the solution is possible only when the State wants it.

Key Words: Rohingya, Myanmar, citizenship, statelessness, State, Tatmadaw.

Introduction
State sovereignty and statelessness has a direct but divergent connection. The condition of someone’s statelessness arises from the denial of his belongingness/citizenship of State. The right to decide citizenship right which is one among the basic rights of human being is under the State’s sovereign power. The state has the power to set rules for acquisition, change and loss of citizenship of a person. However, the discretion of a State with regards to nationality is limited by some obligations under international treaties to which they are a party. The melancholy fact is that not all the countries are signatories of the 1954 Convention relating to the status of Stateless Persons, though they are bounded by other moral laws towards humanity. In the case of Myanmar, the picture is more despair. Myanmar is one among those countries who have not signed the 1954 Convention related to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, making themselves free from the responsibility towards stateless people. Stateless is a condition when a person is not recognised by any nation as its citizen, raising a question on its identity. In another word, statelessness is a condition of an identity crisis. In this situation, it is not the person’s choice to identify himself as a citizen regardless of his history of being there for decades but it is the sovereign right of a State to grant or recognise that person as its citizen. Those are denials of citizenship are the most vulnerable people on the earth and Rohingya community of Myanmar is a perfect example for those kinds of people. According to the UN, Rohingya is the world’s most persecuted minority group, facing
a long decade's crisis of identity, making them fall into the category of stateless people. According to the United Nations High Commissioner for Refugees (UNHCR), the majority of stateless people are born in the country where they have lived their lives. Without any nationality, the stateless person often denied of basic human rights which also affects their social-economic rights such as health, education, housing and employment. The denial of socio-economic rights led them to become an alienated and marginalized community. In the worst cases, statelessness can lead to conflicts and cause displacement. As State refused to take any responsibility to these stateless people, they become extremely vulnerable and not even could enjoy their basic human rights.

Some human rights activists argue to use an international law known as an international humanitarian intervention to deal with the Rohingya crisis. Though, under this law, the International community could intervene only when a state is not able to protect its citizens or becomes a prosecutor of its own citizen. And in the case of Rohingya, International community is unable to do that for two reasons. Firstly, Myanmar has not recognized them as its citizen thus has not violated any international law. Moreover, the past experience of the international community along with economic weakness and power distribution made this option almost unsustainable. Furthermore, humanitarian intervention is not the solution preferred by any regional as well as international government. As the Rohingya crisis is an outcome of State's policy, therefore, its permanent solution should also be materialized by the State itself.

Understanding Rohingya's Statelessness

The actual population of Muslim including Muslim Rohingya is estimated to be around 4.61% that translates the Muslim population of Myanmar to 2.5 million Muslims out of total population of 51 million. The largest Muslim community in Myanmar is the Rohingya living in Rakhine State, though there is the sizeable population in Yangon. They speak a dialect of Bengali and are ethnically South Asian. Rakhine is a controversial term of reference in Myanmar, partly due to the dispute over the history of the Rohingya's presence in Myanmar. The Independent Kingdom of Arakan, now called Rakhine State, was the first settling area of Arab Muslim settlers arriving as early as the eighth century. During the 16th and 17th centuries, the Arakanese launched regular raids into Bengal (their neighbouring State) and kept Bengali Muslims forcibly in Arakan, either to sell them as slaves or compelling them to serve in the King's army as soldiers. Burmese army conquered the kingdom of Arakan in 1785. During the first Anglo-Burmese war in 1825, Arakan became the part of the British empire and hundreds of thousands of Muslim Bengalis, or ‘Chittagonians', travelled from Bengal to Arakan from 1825 until 1942.

There was little tension between Muslim and Arakanese up until this arrival of Muslim from Bengal facilitated by the British. This mass immigration of Muslim to Arakan changed the demography and economy of Arakan. The mass immigration was resented by local Arakanese because they assumed that their works and lands were being taken over. This hostility between the Rohingya Muslim and Buddhist Arakanese worsened with their supports to different party during and after World War II. The hostility continued when in 1947, the Rohingya formed an army and approached President Ali Muhammad Jinnah of the newly established East Pakistan. Their plea was rejected and northern Rakhine remained a part of independent Burma in 1948. Rohingya has never been accepted by other local ethnic groups but the actual plights of Rohingya started with the Military rule in Myanmar.

Rohingya Exodus Reasoning or Resulting Identity Crisis

Regardless of the historical presence of Rohingya's in Myanmar, they have faced and are still facing significant discrimination since the former military regime came into power in 1962 following a coup d'état, entitled Rohingya as illegal Bengali migrants. Due to the military violence, the mass exodus of Rohingya has occurred at least three times in the past 50 years: 1977 to 1978, 1991 to 1992 and in 2012. Each time they fled from Myanmar to Bangladesh and other neighbouring countries. Only thousands returned to Rakhine when the worst of the violence was over. The Rohingya Muslim continued to face state-sanctioned violence from Myanmar’s military, who often justify their actions as responses to attacks by the Arakan Rohingya Salvation Army.

Similarly in August and September 2017, when the Arakan Rohingya Salvation Army killed twelve State officials in their attack on thirty police outposts and an army base, the military carried out a 'scorched-earth campaign' by burning down entire Rohingya villages and shooting people all under the guise of "clearance operation" to find militants. The massive scale of the violence seemed to be designed to push the Rohingya Muslim population of northern Rakhine state out of the country making it very hard for them to return.
Myanmar’s Socio-Political structure against Rohingya’s survival

Decades-long Military rule and government policy and institutions have been designed specifically to discriminate against Rohingya. The Rohingya had a definite scope for citizenship under the 1947 Constitution, which permitted those born and living in any territories of the former British regime for at least eight years during 1932-1942 to obtain citizenship. Even being excluded from the list of an indigenous group of Burma, the then democratic government recognized Rohingya’s right to citizenship which was supplemented under the 1948 Citizenship Act. However, after the military coup in Myanmar following the assassination of Aung San, the 1948 Union Citizenship Law was replaced by the 1982 Citizenship Law.

- **1982 Citizenship Law**
  Like Union Citizenship Law, the Citizenship Law of 1982 also lists specific groups that are considered nationals. Although the Law recognizes 135 ethnic groups it does not recognize Rohingya. Another change that 1982 law brought is the introduction of three classes of citizenships- full, associate and naturalized.

  **Full citizenships** for those listed ethnic groups have been in Burma from 1185 to 1823 A.D. While **associate citizenship** which granted under certain conditions such as to those persons and their children who have applied for citizenship under the 1948 Law and whose application was ongoing at the time of promulgation. The majority of Rohingya cannot claim for claim associate citizenship because the 1982 Citizenship Law limited association citizenship to only those applications that were lodged within one year of the Law’s coming into force. Considering the Rohingya’s social, economic and linguistic backwardness many of them were not aware of this law.

  The naturalized citizenship maybe granted to non-nationals which includes Rohingya. Despite the availability of this pathway, very few have access to the required documentary evidence of ancestral or parental residence. Moreover, applicants for naturalization must be able to speak one of the national languages as well. The Rohingya speaks their dialect which has some similarity with Bengali as is not recognized as a national language. Further Rohingya have restricted to access to education through which additional language skill could be obtained. As a result of 1982 Citizenship Law, many Rohingya have been rendered stateless even being there for decades.

- **The State government’s “Four Cuts” policy**
  Four cuts State's policy deliberately forced Rohingya with no options but to flee. These policies involve undermining the capacity of ethnic armed opposition/independent groups. Another policy was the construction of “modern villages”, which involved confiscating land and transferring individuals and families from urban areas to border region like Rakhine State. Third, Myanmar’s Military actions such as communal violence, ethnic cleansing, destroying mosques and schools, including rape and murdering women and children. Increased militarization of northern Rakhine State since 1994, resulted in significant land confiscations and forcibly employing Rohingya to construct military installations and upkeep of the border security force or NaSaKa. These have been the enduring nature of Rohingya Statelessness in Myanmar.

- **Restrictions on Interfaith Marriage by Law**
  Growing Buddhist nationalism in Myanmar, where 90 per cent of the population identifies with Buddhism, has led to a number of laws based on religion, including restrictions on interfaith marriages. This restricted the communal harmony by dividing them on the base of their religion and ethnicity.

- **Buddhist Nationalism Accelerated due to Eco-Religious Factors**
  Human rights activist and president of Burmese Rohingya Organisation UK, TunKhin, consider Buddhist nationalism as the main cause that fueled racism towards Rohingya. They said that it is a poisonous drink of ethnic, economic and religious nationalism spread for decades by the military and extend easily via social media across a population. According to him, Buddhist nationalism is built on fundamental racial differences they have. According to the Buddhist nationalists, Rohingyas are physically and culturally more similar to the peoples of Bangladesh and India than to Myanmar’s ethnic Burman majority, therefore, they could not be Burmese. They are only Bengali migrants living on their lands.

  For years, the military of Myanmar has united Buddhists promoting threat perception by claiming that Muslims are plotting to overtake the country. Military rewrote the country’s enigmatic citizenship laws to exclude the Rohingya and routinely disregarded hardline monks who disgorge hatred toward Muslims. Their propaganda was ostensibly confirmed after a small insurgent group known as ARSA (the Arakan Rohingya Salvation Army) up surged few years back by attacking Myanmar security forces. Buddhist nationalists are seeking to maintain their case against the Rohingyas with their standard academic work citing Rohingya as migrants living illegally in Myanmar has an ineffective heading: “Influx Viruses: The Illegal Muslims in Arakan.” According to a scholar of Myanmar’s political history, Robert Taylor, vociferous type of
Buddhists deliberate Rohingya as trying to destabilise their faith while others perceived them as outsiders who are trying to penetrate the country.

Regional and International Response
Western countries could do nothing more than widely condemning Myanmar’s action of human rights violation on Rohingya issue. Western denunciation of Myanmar’s treatment of Rohingya might turn it more towards China which has been a top trading partner, biggest investor and its traditional patron. On the other hand, China has decided to take a mediatory role between Myanmar and Bangladesh due to its own economic and strategic reasons. Compared with China, the U.S. has little to sway over Myanmar due to its democratic development. It has raised its concerns about ethnic violence but did not use the term Rohingya. India has played apparently balanced diplomatic role from the very beginning of the Rohingya crisis without offending either Myanmar or Bangladesh. Though it is another issue that the Bangladesh governments continuously ask India (and China) to involve more vigorously. India avoided it by giving its national interest more weight against its condemnation of human rights violations.

ASEAN is also not able to take any concrete measuring to deal the Rohingya issue as unlike to the European Union ASEAN is not a regional body and its charter itself gives assurance of non-interference of internal matter of their member states. Moreover, it does not have a budget or a mechanism for dealing with this kind of situation. Consequently, it is only Bangladesh, which has absorbed a remarkable number of people in just six months, leading to desperately cramped conditions in the camps. Bangladesh is a small, under-resourced, low-lying and overcrowded country. In late August 2017, when the ethnic violence started, under the international pressure and on humanitarian ground, Bangladesh was initially reluctant to open its border to Rohingya refugees. And now, Bangladesh has been unable to organize the international diplomatic support needed to decisively end the crisis.

Despite the international recognition of a right to a nationality and international community’s call for the conferral of citizenship upon the Rohingya, the Myanmar authorities maintain that it is within their national sovereignty to determine how citizenship is granted. Moreover, the majority of Burmese society, from the masses to elites wholeheartedly disagrees for granting the citizenship to Rohingya and believes they are illegal Bengali so they just go.

Democratic Myth in Myanmar’s Political Transition
Myanmar has its democratic government following the 2015 general election, however, no one can repudiate the influence military has in Myanmar politics. The influence of the military in Myanmar politics can be understood by the fact that the military and its political party had ruled the country for the sixty-six years out of fifty-nine out of since it gained independence. Unlike other countries in the world, the military here is manifestly at the epicentre of the country’s politics traditionally, constitutionally and historically. Even today, the political modification has not grown beyond structure designed by the former military regime. Military earned its legitimate power with its accomplishment during Myanmar’s struggle for independence from the British in 1941. Myanmar’s military waged its independence as the Burma Independence Army formed by patriotic politicians led by independence leader Gen. Aung San, father of Aung San Suu Kyi. With such roles in history and politics, the military has strengthened itself throughout history that the current government could not challenge its authority.

Current Posture of Government and Gloomy Future of Rohingya
Newly formed democratic government has found it difficult to rule the country as it planned in important areas such as changing the undemocratic Constitution, amending some laws, dealing with Rohingya issue and other issues. It is only the military’s collaboration that can make the current government feasible and if military hesitates the situation of Myanmar will stall completely. Therefore any upcoming reform in Rohingya situation is unlikely until the ruling party’s objective to amend the 2008 constitution could be achieved which gives the Tatmadawreel power to play a large role in Myanmar’s economic and political state of affairs. Additionally, the Party’s concern also surrounds towards inter-elite relations between (former) Tatmadaw personnel and civilian polity where the majority is from NLD Party and its allies but the real power still holds the Tatmadaw. And Tatmadaw is not at all in favour of resolving the issue of Rohingya it is contradictory to their objectives.

Conclusion
International observers hope democracy can provide the natural environment for the protection of human rights and consequently resolve the citizenship issue of Rohingya through either the amendment or
repellent of 1982 Citizenship Law. However one could not deny the fact that for the creation of a culture of respect for human rights along with the consolidation of democracy is complex actions in Myanmar which require political will too, which has always been absent. In addition, until the military and its own citizen (those have real State power) would accept Rohingya as legitimate people of Myanmar the democratic government would not succeed in resolving the issue.

Besides, the current situation of Rohingya in Myanmar shows a multitude of flawed international laws and principles along with the rejection of their history and identity by the government and society. The incompetence of the international community to pressurize government and China’s support to Tatmadawhas contributed to the long-lasting statelessness of the Rohingya community. Above and beyond, what can the democratic transition of Myanmar bring for Rohingya be seen only when the actual democratic system is in place. When the two party systems will be along with strong opposition party to make the government responsible in its both domestic as well as a foreign policy that could be the time when we can expect from Myanmar of taking consideration of Rohingya issue seriously and transparently.

4Ibid
5Ibid
6Ibid
8Ibid
10Ibid
11Ibid
12Ibid
14Ibid
19Ibid
21Ibid

964 | IJRAR- International Journal of Research and Analytical Reviews

Research Paper
25 Ibid
28 Ibid
29 Ibid
30 Ibid
31 Ibid
32 Lin Htet Aung (2016) ‘Democratic Myths in Myanmar Transition’ ISEAS, ISSN 2335-6677, no. 65, pp 1-8