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TO
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Stateless persons - International Law
Refugees - Legal status, laws etc.
Stateless persons - Law and legislation

International Islamic University Islamabad

Faculty of Shari'ah & Law

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Approval Sheet

This is to certify that we evaluated the thesis entitled "Legal Rights of Stateless Persons; A Case Study of Biharis and Rohingya" submitted by Mr. Muhammad Kamran Ashraf Gill, Reg. no. 158-FSL/LLMIL/S13 in partial fulfilment of the award of the degree of L.L.M. International Law. The thesis fulfils the requirements in its core and quality for the award of the degree.

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DECLARATION

I, Muhammad Kamran Ashraf Gill, hereby declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

Student: Muhammad Kamran Ashraf Gill

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Abstract

This thesis tries to highlight a very important and current Human Rights issue. This issue is gaining attention all over the world with each passing day. The issue under study is rapidly increasing number of Stateless people in the world. This thesis provides a brief picture of what International Law is saying about these Stateless people; who they are? And what rights they must be given for peaceful subsistence in this world. This thesis analyses in detail the International Law instruments regarding the Stateless people. This thesis provides a complete picture of two communities which are facing the problem of Statelessness; Rohingyas in Myanmar and Biharis in Bangladesh. It provides historical background of their problem and describes the current hardships these two communities are facing because of their Statelessness. This thesis elaborates their legal status and discusses the rights that International Law provides to these stateless people and which these two communities must enjoy under the light of International Law.

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CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

The aim of this thesis is to know the concept of Statelessness. How International Law does define it and set guidelines for the protection and elimination of statelessness from this world. This thesis will try to discuss and analyse the International documents concerning the issue of Statelessness. Two major documents relating to stateless people[1] will be discussed in detail so that we can understand the issue of statelessness and what human rights protections are available to the two persecuted communities under International Law. This thesis will also study and discuss different International Law documents that consider Nationality or Citizenship as the basic right of all human beings. This thesis will provide a comprehensive detail of the issue of statelessness through the eyes of International Law.

After elaborating the issue of statelessness, this thesis will provide the complete picture of the legal status and current situation of the two most persecuted Muslim communities of the world namely Rohingyas in Myanmar and Biharis in Bangladesh. The issue of Rohingya Muslims and their persecution by the state authorities is gaining importance nowadays and it is the best time to analyse their actual problem. The most important issue is to clarify that what is their actual legal status, whether they are stateless or not? This thesis will find out the answer to this important question. After knowing the answer to this question the thesis will find out what

[1] Convention relating to the Status of Stateless people, 1954 & Convention on the Reduction of Statelessness, 1961.

kind of atrocities and discrimination these Rohingyas are facing because of their legal status. This thesis will also try to put forward some suggestions to solve the issue of this community.

The other issue under study is to know the unsettled issue of stranded Biharis. Biharis are living in Geneva Camps in Bangladesh after they were left behind in East-Pakistan after 1971 war. In recent past their issue has just lost its importance and no one in political and social sector is talking about it. There is a need to know the current situation of these Biharis. What is their legal status in Bangladesh and how they are being treated by the state authorities? As they are those people who were by the sided with Pakistan and supported Pakistan army at the time of 1971 war and they have suffered a lot of persecution just because of that support for Pakistan. This paper will try to find out the answer to this important question.

1.2 DEFINITION OF STATELESS PEOPLE

Statelessness is a phenomenon that is mostly caused by the actions of the state governments rather than the actions and intentions of the individuals.[2] In recent past when the phenomenon of state sovereignty has gained so much importance that no state is willing to allow people of other states to enter their state without their permission. And world wars has played a greater role in depriving the people of their nationality as mostly state started to award citizenship on the basis of race and religion. That's is why after the war when people left behind stranded in hostile territories and had no option to move to a safer and more favourable place they face the dilemma of Statelessness. The state in which they are residing is not accepting them as their citizen as the state considers them as people belongs to other state and the state in which

[2] Kristy Belton, "THE GREAT DIVIDE: CITIZENSHIP AND STATELESSNESS", *University of Central Florida,* (2005): 1.

they want to shift or reside is not willing to accept them as their citizen mostly because of adjustment problems.

Article 1 of The Convention relating to the Status of Stateless Persons, 1954[3] has defined the Stateless persons in best possible way and it is considered as the definition of a stateless person and whoever fulfils the criteria defined in this Convention is considered as Stateless Person. This definition is quite comprehensive and easily understandable for everyone.

It states that

> *"For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law."*[4]

So it is absolutely clear from this definition that a stateless person is the one who does not have any kind of privilege in the eyes of the state as they don't consider them as their own citizen so they are not entitled to any kind of rights at all. This dilemma has disturbed the lives of millions of people nowadays all around the world. Nationality/ Citizenship is a right to have right and if someone is striped of this right then it means he has no right to have right at all.[5] This problem is increasing as the states are not willing to follow the guidelines provided by the UN convention relating to these kinds of people.

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[3] See Article1 of Convention Relating to Status of Stateless Persons, 1954.
[4] Ibid.
[5] Jaya Ramji-Nogales, "'The Right to Have Rights': Undocumented Migrants and State Protection", *Kansas Law Review 63,* (2015): 1045.

1.3 TYPES OF STATELESSNESS

There are two types of Statelessness that are mainly present in our contemporary world.

1.3.1 DE JURE STATELESSNESS

It is a type of statelessness in which the state where a person belongs ceases to exist. It may be because of war or any other reason.[6] For example the Bihari people in Bangladesh are stateless because they think Pakistan is there state but they are stuck in Bangladesh as that part of Pakistan ceases to be a part of Pakistan and became a new state. So these Bihari people were considered as stateless people until 2008.[7]

1.3.2 DE FACTO STATELESSNESS

In this case the state where a person belongs exists but either he is not willing to go there as he fears persecution on the basis of race, religion or political views or the state where he belongs does not want to allow him protection under its law. In this case the person does have citizenship but he can't enjoy the benefits of citizenship.[8] This is the case with Rohingya of Myanmar. They have been living in Rakhine state for over 400 years but they are now declared stateless after the military coup and their state does not want to award them citizenship. Their state does not even consider them as human beings so they do not have any sort of rights whatsoever in Myanmar and they are the worst case of Statelessness in contemporary world.

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[6] Md Mustakimur Rahman , "Existing Paradox In The Nationality Status Of Biharis In Bangladesh: An Appraisal", *Notre Dam University*, (2016) SSRN: https://ssrn.com/abstract=2819280. Accessed on 12-12-16.

[7] Dr. Mizanur Rahman, "A community in Transition: The Biharis in Bangladesh", (2003):77.

[8] Audrey Macklin, "Who Is the Citizen's Other? Considering the Heft of Citizenship", *Theoretical Inquiries in Law* 8, 2 (2007): 341.

1.4 CONTRIBUTION OF FRIDTJOF NANSEN (1861-1930)

After WWI, Fridtjof Nansen was the first person who played a great role in highlighting the issue of refugees and stateless persons. He was a Norwegian traveler, explorer, humanitarian and Noble Peace Prize Winner who visited the places of war and observed the plight of refugees. In the year 1919 Nansen represented Norway in League of Nations and in Peace Conference in Paris. Under his leadership League of Nation established a high commission for refugees in 1921. He was given the responsibility to administer this commission and he repatriated almost 400,000 people from Russia. Under his guidance Nansen Passports was invented and were given to the people who are suffering from this Stateless dilemma. This passport was used for travelling between states by these people. This passport was recognised by fifty two countries at that time. Nansen also played his important role in humanitarian aid to the Russians during Russian famine. During Greek and Turkish war, Nansen played a great help in exchange of Greeks and Turks struck on both hostile soils. But after his death these efforts did not find a solid support and in result these passports ceased to work.[9]

Now in our contemporary world we also badly need another Nansen to solve this increasing menace of Statelessness from this world. Special and sincere efforts are needed to eradicate this problem otherwise it will continue ruining lives of millions of people.

1.5 STATELESSNESS AND PAKISTAN

History has witnessed its biggest migration of people at the time of partition of Indian Subcontinent in 1947. Almost fourteen million people migrated during this partition. As the borders were decided in haste the people had to migrate without prior preparations. Because of

[9] Jay Milbrandt, "Stateless", *Research Paper, Pepperdine University School of Law*, (2013): 17.

this hasty migration many people have suffered tremendous losses. Communal violence erupted in the area and thousands of people lost their lives in this migration.

During this migration people from Punjab migrated to adjacent West-Punjab or West-Pakistan and people from other area like Bihar, Uttar Pradesh, West Bengal and adjacent areas migrated to East-Pakistan. Among them were the Biharis. With the passage of time they settled in the areas of East-Pakistan and started living a normal life as citizens of Pakistan.[10]

During the 1971 war Bangladesh gained separation from Pakistan with the help of India. In this war time Biharis were supporting the Pakistan army as they were against the idea of separation from Pakistan. They supported Pakistan Army and sacrificed their lives and business for Pakistan. But after Bangladesh came into being the people of Bangladesh who already had resentment against Biharis because of Language difference got a valid point for persecution of Biharis and killed thousands of Biharis. And they did not recognise them as their citizens and the Biharis had to move to refugee camps set upped by United Nations High Commission for Refugees. For almost 35 years they had to face the problem of Statelessness in those camps.[11]

Pakistan was the ultimate desired destination of those Biharis. President of Bangladesh also requested United Nations to help in repatriation of Biharis to Pakistan. In result of efforts of United Nations High Commission for Refugees more than 1.5 million people repatriated to Pakistan.[12] But still almost three million people are living in camps in Bangladesh and due to lack of interest from both sides of border they have lost hope of repatriation to Pakistan and

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[10] Iqthyer Uddin Md Zahed, "A Theoretical Analysis of Stranded Biharis in Bangladesh: Seeking for nationality since four decades", *International Journal of Advanced Research* 1, 8 (2013): 62-68.

[11] Ibid.

[12] Chowdhury R Abrar, "Issues And Constraints In The Repatriation/Rehabilitation Of The Rohingya And Chakma Refugees And The Bharis", paper presented at *Conference of Scholars and other Professionals Working on Refugees and the Displaced Persons in South Asia,* Bangladesh, 1998.

started to settle in Bangladesh. Pakistan has not played its role well because of resources constraints and lack of political will for repatriation of Biharis.

At the moment Pakistan is not a signatory of both International Convention relating to Status and Reduction of Statelessness and does not have stateless people. Yes it has Afghanis as refugees but they are not stateless and they are enjoying all the benefits of a normal citizen in Pakistan. They are staying here as it is their own state and no discrimination is being aimed at them. But due to difficult security conditions in Pakistan, the government of Pakistan has decided to force them to go back to Afghanistan. Now they are going back to Afghanistan in a peaceful way.

So as far as the problem of stateless is concerned Pakistan is not facing this problem. But as a Muslim state it is its duty to safeguard the interests of Muslims all over the world. Rohingyas in Myanmar needs immediate attention of Muslim Community from all over the world. Pakistan can play very important role in highlighting this issue on International forums like United Nations and Organization of Islamic Cooperation. Through these forums Pakistan can ask for sanctions as well as armed interference in Myanmar to protect the persecuted Stateless people in Myanmar. Pakistan can also arrange residential facilities with the help of Arabic Muslim States. These rich states can handle these few millions of people easily. So there is a need for Pakistan to play its role as a big brother of Muslim world and it must try all its muscles in resolving the Rohingya issue before it's too late.

1.6 THESIS STATEMENT

Biharis in Bangladesh and Rohingya in Myanmar, being Stateless Persons, are deprived of their most fundamental Human Rights and there is need to elaborate the scope of their rights under various International Treaties.

1.7 SIGNIFICANCE OF THE RESEARCH

The intention of this research is to analyse, understand and define the legal status of Bihari community in Bangladesh and Rohingya community in Myanmar. Furthermore this thesis will try to outline the rights they deserve in the light of International Conventions and Treaties. And point out the responsibilities of States towards these Stateless People.

Problem of statelessness has already been discussed by many authors and research scholars but this particular thesis will study International Conventions relating Statelessness and give complete picture of rights provided by these two conventions and other international documents relating to the issue of Nationality.

After extracting the provided rights by International Law and knowing who are stateless people in the eyes of International Law, this thesis will analyse the situation of the two communities in their respective states. It will try to find out their legal status and then the important question whether they are stateless people or not will be tried to answer. Then it will provide complete picture of their current situation which they are facing due to their legal status in the state.

After knowing the complete picture this thesis will try to provide suggestions for the improvement of the legal status and overall condition of these two above mentioned

communities. As it is very important to protect the rights of these two persecuted communities so that they may live a normal human life.

As far as the previous research regarding this topic in concerned its account is given as follows.

In 2005, United Nations High Commissioner for Refugees published a handbook named as Nationality and Statelessness: A Handbook for Parliamentarians.[13] This handbook provides complete guidelines to the parliamentarians regarding nationality and statelessness. Every state regulates law through their parliamentarians so this book aims to guide them regarding the issue of statelessness. This handbook provides examples of good practices done by the states to overcome the problem of statelessness. This handbook provides complete legal framework to the parliamentarians for the eradication of the menace of statelessness.

Mr. Iftekharul Bashar wrote an article about the human rights situation of Biharis.[14] His emphasis was on the importance of efforts by both concerning state Pakistan and Bangladesh. He is of the view that if these two governments have tackled this issue with sincerity then this community would have been saved from persecution by the hands of people in power. His article discussed in detail the current demographics of Bangladesh and in what condition the Biharis are living in camps.

In year 2007, a report submitted by Mr. Ashrafuzzaman Khan and Mr. Mrinmoy Samadder in Research and Evaluation Division of Dhaka, Bangladesh.[15] This report very

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[13] Ms. Marilyn Achiron, *Nationality and Statelessness*, Switzerland: UNHCR, (2005).

[14] Iftekharul Bashar, "Unresolved Statelessness: The Case of Biharis in Bangladesh", *Journal of International Affairs* 10, (2006).

[15] Ashrafuzzaman Khan and Mrinmoy Samadder, "*Living Like Prisoner: Documenting the Experiences of Crime and Insecurity of Bihari Community in Bangladesh*", (2007).

beautifully highlights very sensitive issue of crime happening in the Geneva Camps set up for the Biharis. This report is a valuable document which tells us about the crimes happening in the camps and discloses the main culprits behind these crimes. It says that drug's business is on a very high in these camps because influential people are using these camps as a safe heaven. Local residents are weak and cannot go to the authorities as these mafias are run by the authorities themselves. This report is an eye opening documents that shows us the true picture of havocs of camp life.

Dr. Kazi Fahmida Farzana in her paper[16] regarding Bihari community has discussed socio-political problems of the Bihari community in Bangladesh. This study discusses what kind of problems Biharis are facing because of their inability of repatriation to Pakistan. This paper analyse the status of Biharis and suggests that they are not stateless people but they are facing severe human rights violations by the hands of authorities. This paper gives complete picture of Human Rights situation of Biharis in Bangladesh. This paper also discussed in detail the lack of serious efforts for repatriation of these Biharis to Pakistan by both the governments of Bangladesh and Pakistan.

Refugee Review Tribunal, Australia has produced a research response on the issue of status of Biharis in Bangladesh in 2009.[17] In this research response the study answers very important question regarding the legal status of the Biharis in Bangladesh. They find out whether these Biharis are stateless or not and they find out that they are not stateless anymore rather they are now getting citizenship. This response also provides picture of discrimination faced by these

[16] Dr. Kazi Fahmida Farzana, "The Neglected Stateless Bihari Community in Bangladesh: Victims of Political and Diplomatic Onslaught", *Journal of Humanities & Social Sciences* 2, (2008): 1-19.

[17] Refugee Review Tribunal, Australia, "RRT Research Response", Number: BGD35056 & BGD35105, (2009).

camp dwellers by the majority Bengalis and authorities. All such important questions relating to the legal status of Biharis are answered in this report.

Ms. Ninette Kelley's article describes the important ideas, interests of influential power houses and institutions who have helped the Biharis in gaining back their citizenship.[18] Shift in public is not overnight, it has consecutive efforts by the legal and human rights advocates and academics that constantly jolted the government and demanded the right of Biharis. In this article the author also praised the role of judiciary that decided matters according to law and not under the influence of wishes of the authorities. This study also highlight he role played by the younger generation of Biharis who have refused to follow footsteps of their elders. They have decided to integrate in the society and have forgotten the unfulfilled dream of repatriation to Pakistan.

Mr. Khalid Hussain, President of Association of Young generation of Urdu Speaking Community (AYGUSC) has spoken in his article about the atrocious attitude of the state authorities towards Biharis.[19] He describes the life of camp dwellers as inhuman and discussed briefly the situation of camps. He considers the situation as very depressing and clear violation of Human Rights have observed by him. He finds all kinds of evils starting from child labour to unemployment and lack of legal protection from the government for these Biharis living in the Geneva Camps.

Ms. Nida Sattar, a student of International Development wrote a very good article regarding the role played by the Bangladesh and Pakistan Government in handling the issue of

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[18] Ninette Kelley, "Ideas, Interests and Institutions: Conceding Citizenship in Bangladesh", *University of Toronto Law Journal 60, 2* (2010): 349-371.

[19] Khalid Hussain, "Inhuman Camp life of Bihari Urdu speaking linguistic minority of Bangladesh: Patterns of inequality, discrimination, political and social marginalization of affected Bihari Urdu Speaking community in Bangladesh", *Bangladesh Universal Periodic Review*, (2012).

Biharis in Bangladesh.[20] She discussed the background of the issue of Biharis and why these Biharis are not accepted in the Bangladeshi community. She emphasized that it was the bad policies and insincerity of both states that these Biharis have faced a lot of hardships. This article also throws some light on the current struggle of Biharis for their right of citizenship.

Ms. Engy Abdelkader[21] wrote a comprehensive and detailed report/article on the condition of Rohingya in Myanmar.[22] This article discussed the issue of Rohingya in great detail. It provides complete background of the issue and how these Rohingya came to Rakhine state almost 400 year ago and settled here. And it discussed how after the independence of Myanmar the state has refused to accept them as their citizen. Then this article also highlights the current deteriorating situation of Rohingya. In the end of this article the author asked U.S to take this matter seriously to take serious measures to rehabilitate the Rohingya. She recommends the authorities of Myanmar that they must ratify the two conventions relating to the stateless people and ensure the protection of Rohingya and ask U.S to take serious actions against the Myanmar if they fail to protect their people.

Mr. Aydin Habibollahi, Ms. Hollie McLean and Mr. Yalcin Diker have prepared a report[23] in which the persecution against Rohingya is considered as crimes against humanity. This report is prepared for the parliamentarians of Canada so that they may know what is the problem with these Rohingya? And through this report the author urged the Canadian parliament to influence Myanmar government to stop these crimes against humanity by using their regional

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[20] Nida Sattar, "The Rejected Biharis", *Hydra Interdisciplinary Journal of Social Science* 1, 2 (2013): 13-24.

[21] U.S. representative on the Advisory Panel of Experts on Freedom of Religion or Belief with the Organization for Democratic Institutions and Human Rights at the Organization for Security and Cooperation in Europe; chairperson of the American Bar Association's Committee on National Security and Civil Liberties.

[22] Engy Abdelkader, "The Rohingya Muslims in Myanmar: Past, Present, and Future", *Oregon Review Of International Law* 15, (2013): 101-119.

[23] Aydin Habibollahi and Hollie McLean and Yalcin Diker,"*Crimes Against Humanity The Case of the Rohingya People in Burma*", (2013): 127-143.

diplomatic relationships with them. It provides whole picture of the background of this Rohingya issue and also provide current situation of them.

International Crisis Group published a report on Myanmar in 2014.[24] This report is the most comprehensive and detailed study of issue of Rohingya. It clearly provides complete picture of current situation of Rohingya as being stateless as well as detailed background history of Myanmar and Rohingya. It also discuss about the other ethnic communities suffering from discrimination by the state authorities. But this report clearly declares these Rohingya as the most persecuted people because the does not even recognise the term Rohingya at all. This report beautifully encompasses the whole scenario prevailing in Myanmar and recommends immediate serious efforts to solve this issue.

Ms. Penny Green, Mr. Thomas MacManus and Ms. Alicia de la Cour Venning wrote a report [25] International State Crime Initiative in which they have discussed the current persecution of Rohingya as genocide. They are of the view that this contemporary genocide is being watched by the whole world and efforts being done by the world are not enough. This report describes six stages of genocide with regards to Rohingya. This report says that at the moment Rohingya are facing final stages of genocide: mass-annihilation and erasing of this ethnic group from Myanmar's history forever. 12 month long research provides complete account of the events that the authors observed and found genocide happening in Myanmar.

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[24] International Crisis Group, *Myanmar: The Politics of Rakhine State,* (Belgium, 2014) http://www.crisisgroup.org/en/publication-type/media-releases/2014/asia/myanmar-the-politics-of-rakhine-state.aspx. Retrieved on 20-05-16.

[25] Penny Green and Thomas MacManus and Alicia de la Cour Venning, "Countdown To Annihilation: Genocide In Myanmar", (2015): 1-106.

1.8 IMPORTANT QUESTIONS

This study will try to find out the answers of the following legal questions:

First this study will try to find out what is the status of stateless people under International Conventions? Secondly it will elaborate the rights granted by the different international treaties and conventions regarding stateless people. Then this study will try to find out the actual legal status of Biharis in Bangladesh and Rohingya in Myanmar. In the end this study will try to find out some solutions regarding the situation of Rohingyas and will discuss State's obligations under International Law with respect to Stateless Persons.

1.9 METHODOLOGY

As far as the methodological issues are concerned, Case Study method will be used. The Case study method of research excels at bringing us to an understanding of a complex issue and helps us to extend experience or add more strength to what is already known through previous research. Case study methodology emphasize on detailed contextual analysis of events or circumstances and their relationships.[26]

This research method is mostly use to enhance the existing knowledge regarding an issue. It is a way to add something new regarding the subject under study. This research methodology is beneficial to check the behavioural approach of people towards a particular issue. It is also important in scenarios where the researcher has no access or control over the issue under study to perform investigations.[27] That is why it is being used here in this research because it is beyond the limits of the researchers to have access to the actual persecuted people.

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[26] Zaidah Zainal, "Case study as a research method", Academy *of Management Review,* (1997): 301-316.
[27] Jennifer Rowley, "Using Case Studies in Research", *Management Research News* 25, 1 (2002):16-27.

The case study method is also helpful in knowing a contemporary phenomenon that is of utmost importance and where the boundary between myth and reality is not very much clear. This research is based on exploratory case study technique to clearly understand the issue of Statelessness and situation of Rohingyas and Biharis. In exploratory case study method a phenomenon is explored in depth and its realities are tried to discover for better understanding of the issue.[28]

The case study method helps in simplifying the complexities of an issue under consideration of the researcher. Mostly question like "How" and "Why" are answered through this case study methodology.[29]

[28] Robert K. Yin, "CASE STUDY RESEARCH Design and Methods", *Applied Social Research Methods Series* 5, Ed. 6, (2006): 8-13.
[29] Ibid.

CHAPTER 2

RIGHTS OF STATELESS PEOPLE UNDER INTERNATIONAL LAW

This chapter tries to understand how International Law deals with the phenomenon of Statelessness. This chapter will provide a complete picture of what International Law is saying about the issue of Nationality and Statelessness and what rights it provides to the Stateless people. In this chapter human rights that are provided by the major documents relating to Stateless persons will be discussed. Major documents providing code of rights to Statelessness persons are:

i. Convention relating to the Status of Stateless People, 1954

ii. Convention on the Reduction of Statelessness, 1961

These two conventions and other documents which discuss Nationality as basic Human Rights are discussed here in this chapter. And moreover it also provides guidelines for the protection of the Stateless people. After reading this chapter the reader will be able to understand the issue of Statelessness. And will grasp the idea about the ambit of rights provided by International Law. International law treats the stateless people as normal citizens but asks the contracting states to deal with these people with extra care. The stateless people need proper protection by contracting states against their vulnerability because of their statelessness.

2.1 AMBIT OF RIGHTS PROVIDED BY INTERNATIONAL LAW

The UN General Assembly held a conference to lay down International Rules to regulate laws regarding Refugees and Stateless people in the year 1951. The convention relating to the Refugees was adopted very same year but The Convention relating to the Status of Stateless Persons was adopted on 28th of September, 1954 later entered into force on 6th June, 1960.[30] It is the most important and main document that describes the rights of the stateless persons. For the first time the term "Stateless Person" was defined in this code and these people got recognition in the eyes of International Law.

Stateless Persons are the one who are not recognised by any state as their citizens. And for such people the International Conventions provides minimum level of rights that any other ordinary non-national person would enjoy. It mainly includes freedom of Religion and Education, freedom of employment and association etc. So basically this Convention gives some respect to Stateless person to live like Humans. To have nationality is basically to have the right to have rights.[31]

In the year 1961 a Convention on the reduction of Statelessness in the world was adopted and UNHCR (United Nation High Commission for Refugees) had bestowed with the leadership role in monitoring the concerns of the Stateless Persons. It has the responsibility to identify and prevent the Stateless Persons all over the World. Since very few countries are party to this Convention so High Commission is in constant effort to enhance the importance of this Convention. It has a goal to eradicate Statelessness by the year 2024. It is constantly working to

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[30] Kate Darling, "Protection of Stateless Persons in International Asylum and Refugee Law", *International Journal of Refugee Law* 21, 4 (2009): 742-767.

[31] Maryellen Fullerton, "Without Protection: Refugees and Statelessness A Commentary and Challenge", (2013):1.

promote the importance of this Convention and persuade maximum countries to accede to this Convention and take steps to eradicate this menace of Statelessness from the world.

2.2 RIGHTS PROVIDED BY THE CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS, 1954

In preamble of this convention it is considered that the Charter of UN and Universal Declaration of Human Rights that was approved on 10th December, 1948 has given all the individuals of the world the rights to live like Human beings. It also emphasised that all the Stateless Persons should enjoy equal rights as of other Citizens or non-Citizens of any State. The UN through this Convention pledged to enhance the overall condition of the Stateless Persons all over the world.[32]

This Convention is a handbook of rights of Stateless people that provides guidelines to the states to deal with the Stateless persons. Rights provided by this convention are as follows:

2.2.1 FREEDOM FROM DISCRIMINATION

This Convention bounds the contracting States to deal all the Stateless persons according to the provisions of this convention without any kind of discrimination. The States must not consider the race, religion or country of origin of the Stateless persons while dealing with them and must facilitate them under the provisions of this Convention.[33] Rohingyas of Burma are facing this problem at the highest level.[34]

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[32] See Preamble of Convention Relating to the Status of Stateless Persons, 1954

[33] See Article 3, Convention Relating to the Status of Stateless Persons, 1954.

[34] Amal De Chickera and Jim Fitzgerald, "Protecting the Human Rights of Stateless Persons", Event Report, Geneva, (2010): 3.

There must not be any kind of discrimination against stateless persons and the principle of equality must be applied to them and they must not suffer due to lack of Nationality.[35]

2.2.2 FREEDOM OF RELIGION

This Convention guides the contracting States to give complete freedom to the Stateless persons as they give to their own Nationals with regards to practice and education of their respective religion.[36] There must be no bar in practice of religion to any person anywhere around the world and this Convention also protects this important aspect of Stateless Person's lives.

2.2.3 RIGHT OF SPECIAL TREATMENT AS GUESTS

This Convention does not stop any contracting State from providing any extra rights and privileges other than provided in this Convention. Means the Contracting State must provide the privileges provided in this Convention at least but it can grant any other privileges to them. The stateless people should be considered as special guests so that they must feel secure and protected in the contracting state.[37] But it is seen that political thinking is becoming anti-immigrant all over the world which is discouraged in 1954 convention.[38]

2.2.4 NO HOSTILE LEGISLATION

This Convention states that the provisions of this Convention do not have reciprocal effect. It means that all the privileges the Stateless persons are enjoying as a Stateless person will remain unchanged after this Convention. The provisions of this Convention will determine the rights of Stateless peoples for future course. They shall be treated as aliens in the country by the hosting State. This reciprocity also includes the laws made by the contracting state. So there is

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[35] UNHCR," Handbook on the Protection of Stateless Persons", (2014):50.
[36] See Article 4, Convention Relating to the Status of Stateless Persons, 1954.
[37] See Article 5, Convention Relating to the Status of Stateless Persons, 1954.
[38] De Chickera and Fitzgerald, "Protecting the Human Rights of Stateless Persons", (2010):4.

absolute shelter from reciprocity of any law made by the contracting state after this Convention. And the contracting states must refrain from making hostile legislations that may harm the interests of Stateless persons.[39]

2.2.5 RIGHT OF DIFFERENT TREATMENT THAN ALIENS

This Convention declares that the contracting state will not apply any exceptional measure which it might want to apply to other foreign nationals or previously foreign national residing in the country.[40] Means, that Stateless person will be treated differently from all other foreign nationals or people who were foreign nationals before but acquired nationality of the contracting state. The stateless people are suffering from many kinds of problems so they must be treated with care until they get their right of citizenship in any state.[41]

2.2.6 RIGHT OF RESIDENCE

This Convention deals with the continuity of residence of any person in a particular area or state. The contracting states must not deprive or expel the stateless person residing in their territories except in extra-ordinary circumstances.

- It considers the stay of any alien or foreigner in a contracting state as lawful if he is displaced during WWII and moved to the contracting state.
- It also considers the stay of an alien or foreigner as lawful and continued stay if he stayed in contracting state before the WWII and came back to that contracting state after WWII for residence.[42]

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[39] See Article 7, Convention Relating to the Status of Stateless Persons, 1954.
[40] See Article 8, Convention Relating to the Status of Stateless Persons, 1954.
[41] Fullerton, "Without Protection: Refugees and Statelessness", (2013):4.
[42] See Article 10, Convention Relating to the Status of Stateless Persons, 1954.

2.2.7 RIGHT TO HAVE TRAVEL DOCUMENTS

This Convention guides the contracting states to issue travel documents to sea-men who serves as a crew member on a ship that fly the flag of contracting state. It may help that stateless person to get residence in any other state.[43] The peaceful existence of the stateless persons is the main objective and this objective must be protected in all circumstances.

The issuance of travel document to stateless persons is important so that they can travel in the world.[44] The state in which a stateless person resides lawfully will provide a travel document to that person so that he may travel to other countries. And if he does not reside in that very state but being a stateless person, the state will consider his matter with sympathy and issue him a travel document to travel across borders. The stateless person should follow the rules and regulations of states. In the end of this convention a specimen or schedule of travel document is provided for guidance.[45]

2.2.8 PERSONAL LAW MUST PREVAIL

This Convention deals with the personal status of the stateless persons. Means which law will govern the life of that stateless person? This question is answered in this article. His personal life must not be harmed as it is past and it is not possible for him to abide by the laws that were not applicable to him previously.

- Personal status of the stateless person will be determined by the law of the country of his domicile and if he does not have a domicile then by the low of the country of his residence.

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[43] See Article 11, Convention Relating to the Status of Stateless Persons, 1954.

[44] Ruma Mandal and Amanda Gray International, "Out of the Shadows: The Treatment of Statelessness under International Law", (2014).

[45] See Article 28, Convention Relating to the Status of Stateless Persons, 1954.

- Laws which were previously applicable on any stateless person before becoming stateless must be respected by the contracting state. Especially laws relating to marriage must be respected. Though if it is necessary, then formal procedures necessary according to the law of contracting state may be followed but previous personal status must not be disturbed. He must be treated equally as a foreigner and laws of that state must be respected by the contracting state.[46]

2.2.9 RIGHT TO ACQUIRE PROPERTY IN CONTRACTING STATE

This Convention recognises the right of stateless persons to acquire moveable or immovable property in contracting state by the stateless person.[47] It guides the contracting states to deal with the stateless person as a foreigner or alien when it comes to acquisition of property, lease or any other contract relating to moveable or immoveable property.

This convention also allows the stateless persons to transfer their properties if they want as normal citizens of the contracting states.[48] The stateless persons may transfer their assets to another state where they want to move for future residence. If the assets are acquired by legal means then their use should be allowed within the legal framework of the state. Their case must be treated with sympathy as they are facing special circumstances as stateless persons.

2.2.10 RIGHT TO PATENT INTELLECTUAL WORK

This Convention also protects intellectual and industrial rights of the stateless people. If a stateless person generates an idea or produced a scientific work or literary work he must be allowed to have it trademarked or trade named as a normal national of that state where he resides normally. He must be treated equally with other national of that state. His habitual residence will

[46] See Article 12, Convention Relating to the Status of Stateless Persons, 1954.
[47] See Article 13, Convention Relating to the Status of Stateless Persons, 1954.
[48] See Article 30, Convention Relating to the Status of Stateless Persons, 1954.

be considered as his country and he must be treated as a national of that country. Artistic rights of Stateless persons are safeguarded by this convention.[49]

2.2.11 RIGHT TO MAKE ASSOCIATIONS

This Convention states that if a stateless person resides in a state and desires to create a non-political and non-profit making unions or trade unions and for this purpose follows all the rules and regulations of the state then he must be treated as a lawful alien and shall be allowed to make such associations. The right of rightful association is also protected by this convention.[50]

2.2.12 RIGHT TO JUSTICE

This Convention gives full legal access to the stateless persons in the contracting states. He has all the rights equal to the rights of nationals as far as right to justice is concerned.[51] He can go to courts for legal assistance and claims all rights that a national of that state enjoys. If a stateless person moves away to another state and face a legal issue he must be treated as a national of that state where he habitually resides.[52]

2.2.13 RIGHT OF GAINFUL EMPLOYMENT

This Convention deals with the rights of people to have a gainful employment. It states that all stateless persons have rights to indulge in gainful employment in contracting state similar to the right given to aliens by that very state. And if stateless persons have moved to the state as immigrants or under labour recruitment programs, they must have equal status as of nationals to

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[49] See Article 14, Convention Relating to the Status of Stateless Persons, 1954.
[50] See Article 15, Convention Relating to the Status of Stateless Persons, 1954.
[51] See Article 16, Convention Relating to the Status of Stateless Persons, 1954.
[52] UNHCR, "Protecting the Rights of Stateless Persons", (2010).

have access to gainful employment. Employment is necessary for a peaceful and respectable existence in the society so this right is safeguarded by this convention.[53]

2.2.14 RIGHT OF SELF-EMPLOYMENT

This Convention guides the contracting states regarding the right of stateless people of self-employment. All stateless persons if they are living lawfully in the state, have right to earn living through self-employment equal to the rights of nationals or at least must be treated as aliens. They may indulge in Agricultural, commercial or any kind of industrial wok lawfully. So they are allowed to grow and be successful as a normal citizen of any state so that they do not feel discriminated among the others.[54]

2.2.15 RIGHT OF EQUALITY

This Convention states that if stateless persons have acquired diplomas from competent authorities from the contracting state they must be given equal rights as national to indulge in liberal professions.[55] They must be treated equally and if circumstances do not allow it they must be treated as an alien or foreigner.[56]

This Convention also states that the state in which the stateless person resides will not impose extra taxes or duties on stateless persons other than their own nationals of that state. Though, the state can claim charges for issuance of identity papers and other administrative assistances provided to stateless persons.[57]

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[53] See Article 14, Convention Relating to the Status of Stateless Persons, 1954.
[54] See Article 18, Convention Relating to the Status of Stateless Persons, 1954.
[55] Jaya Ramji-Nogales, "'The Right to Have Rights': Undocumented Migrants and State Protection", (2015).
[56] See Article 19, Convention Relating to the Status of Stateless Persons, 1954.
[57] See Article 29, Convention Relating to the Status of Stateless Persons, 1954.

2.2.16 RIGHT OF PROPER RATIONING

This Convention recognises the stateless people as normal citizens of any state. So this convention guide the contracting states to arrange proper rationing for the stateless persons. It guides the contracting state to give same and equal rationing facilities where the system of rationing is maintained by the state.[58]

2.2.17 RIGHT TO HAVE BETTER LIVING STANDARDS

This Convention also protects the right of stateless people to have better housing facilities. This convention gives equal right of housing to stateless person as of nationals of any state. It dictates the contracting states to provide similar housing facilities to the stateless persons and there must be no discrimination at all. It also provides that if the state thinks it is not appropriate or possible to treat stateless persons as nationals they must consider them as foreigners or aliens.[59]

2.2.18 RIGHT TO EDUCATION

This Convention provides direction to contracting states regarding the education facilities for stateless persons. It provides that the stateless persons must be allowed to get elementary education just like normal nationals of the state.[60] It also states that the stateless person shall be eligible for educational scholarships and their degrees and diplomas from their previous states must be recognised and there must be no discrimination whatsoever as far as educational prospects are concerned.[61]

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[58] See Article 20, Convention Relating to the Status of Stateless Persons, 1954.
[59] See Article 21, Convention Relating to the Status of Stateless Persons, 1954.
[60] See Article 22, Convention Relating to the Status of Stateless Persons, 1954.
[61] Ramji-Nogales, "The Right to Have Rights", (2015) .

Parents must be given full liberty in choosing about the educational career of their children. Technical education and professional education must be available to each and every child so that nobody has to suffer for lack of education in his/her future employment opportunities.[62]

2.2.19 RIGHT TO HAVE PUBLIC ASSISTANCE

This Convention states that the stateless persons must be given the public relief and assistance as ordinary nationals of that state. If they need any kind of assistance or guidance regarding any social and economic problems, the state authorities must consider them important and provide them with best possible solution and help them to avail best public facilities. But it is necessary that the stateless persons must fulfil all lawful obligations of that state.[63]

2.2.20 SPECIAL FOCUS IN LEGISLATION

This Convention deals with the social security's and labour legislations of the contracting states. This convention guides the contracting states to consider the stateless persons equal to their own nationals while making laws regarding the labour workforce and social security's such as hours of work, remunerations, overtime arrangements, holidays etc.[64]

The stateless persons are also eligible for compensation if they get any injury during work or in case of death their heirs must be compensated. It is also mentioned here that if the beneficiary of that compensation is residing outside that state, it does not affect the fact that he is eligible to get compensated for that loss.

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[62] Belton, "THE GREAT DIVIDE: CITIZENSHIP AND STATELESSNESS", 144.
[63] See Article 23, Convention Relating to the Status of Stateless Persons, 1954.
[64] See Article 24, Convention Relating to the Status of Stateless Persons, 1954.

The contracting state must consider the stateless persons with sympathy and must provide all kinds of help and assistance to them.

2.2.21 RIGHT TO HAVE LEGAL ASSISTANCE

This Convention deals with administrative assistance to stateless persons. It states that if

a) A stateless person needs assistance to claim a right from any state other than the state in which he resides and he cannot contact or ask that state directly then the state in which he resides will help him in claiming that right from that state. National authorities of that very state will help him.
b) The national authorities will deliver all necessary documents to stateless person which he needs.
c) Documents delivered by the national authorities to the stateless person will be considered as lawful and valid instead of any other documents given to him earlier.
d) National authorities can claim fees from that stateless person in return of the services provided to him.
e) Article 27, 28 of this convention will have their separate affect from this article.[65]

2.2.22 FREEDOM OF MOVEMENT

This Convention allows the stateless person to move freely in the state of his residence. He is bound to follow the law but there shall be no restriction on his movements.[66] He may choose place of residence according to his own wishes. He should be completely free to choose

[65] See Article 25, Convention Relating to the Status of Stateless Persons, 1954.
[66] Fullerton, "Without Protection: Refugees and Statelessness", (2013):11.

his place of residence as normal citizens of the state. There must be no discrimination at all with stateless people.[67]

2.2.23 RIGHT TO HAVE IDENTITY PAPERS

This Convention says that the contracting state in which a stateless person habitually resides will issue an identity paper to that person. It is necessary if he does not have proper valid travel documents. Identity papers will make the stateless person to avail rights as normal citizen of state.[68]

2.2.24 NO FEAR OF EXPULSION

This Convention states that the state in which a stateless person habitually and lawfully resides will not expel him unless there are serious security threats to that very state from that stateless person.[69] The stateless person who is being expelled can appeal against such orders in front of competent authorities and can clear himself. But if the state in which he is residing has decided to expel him anyway then he must be given some reasonable time for resettlement in any other state.[70]

2.2.25 SPEEDY NATURALIZATION OF STATELESS PERSONS

This Convention dictates to contracting states that they must take immediate and all possible steps for naturalization[71] of stateless persons. They must complete this process as early as possible and must try to make it less costly for the stateless persons. As International Law considers nationality as a basic human right, that is why it emphasis on the need of speedy naturalization of the stateless people. So that no one should face this dilemma of statelessness for

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[67] See Article 26, Convention Relating to the Status of Stateless Persons, 1954.
[68] See Article 27, Convention Relating to the Status of Stateless Persons, 1954.
[69] Ms. Marilyn Achiron, "*Nationality and Statelessness*, Switzerland: UNHCR", (2005).
[70] See Article 31, Convention Relating to the Status of Stateless Persons, 1954.
[71] Naturalization is the legal process through which a non-citizen acquires the citizenship of any state.

longer period of time.[72] Naturalization or citizenship is a right that ensures all other rights and it must be given to every person on this planet earth.[73]

2.2.26 CONVENTION AS A CODE OF RIGHTS FOR STATELESS PERSONS

This Convention also includes a Schedule that explains all relevant procedures regarding travel documents issued to the Stateless People. And in Annexure it has a specimen of what a travel document should be.[74]

This Convention as its name suggests is regarding the Status of the Stateless persons. It explains and provides all necessary rights to the stateless persons and binds the contracting states to protect the rights of stateless persons prescribed in this convention. It includes all human rights from food and shelter to education and employment. It allows them to travel as free and respectable person all over the world and the state in which he habitually resides will provide him all legal aid and necessary documents to travel just like their own National.

After this Convention the problem of Stateless persons were considered all over the world with special importance and contracting states kept on making efforts to make this document a useful and important step towards the protection of Legal rights of the Stateless persons all over the world.

2.3 NATIONALITY IN THE EYES OF INTERNATIONAL LAW

Two world wars saw the deaths of millions of people and many people of warring Nations became Stateless. 1954 Convention related to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, 1961 together provide a legal framework for the

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[72] See Article 32, Convention Relating to the Status of Stateless Persons, 1954.
[73] Belton, "THE GREAT DIVIDE: CITIZENSHIP AND STATELESSNESS", 135.
[74] Ivan Shearer and Brian Opeskin, "Nationality and Statelessness", (2012).

protection of Stateless persons and to eradicate Statelessness from the world. The later convention provides guidelines to the States to make their laws relating to Nationality while keeping the Stateless people in mind. It also safeguards the interests of individuals by guiding the States to eradicate Statelessness. In present times Human Rights are being considered more important than State's sovereignty and Nationality is most important of them all.[75]

2.3.1 NATIONALITY AND STATE'S LEGISLATION

This Convention prescribes the way by which a Contracting State should grant its Nationality to a Stateless Person.[76] It comprehensively deals with almost all possible scenarios with which a Stateless Person could face. It has five subsections.

1. State that the Contracting State should clearly define in its National Law the procedure of granting Nationality. It may be on birth or after lodging an application after getting a certain age for Nationality to appropriate authority.
2. States that the person should habitually reside in that Contracting State where he applied for Nationality and should apply in the specified age limit as specified by the National Law of that State. That person must possess good moral attitude and not be convicted of any offence against the security of that State or imprisoned for more than five years in any offence. And most importantly he must always have been a Stateless person.
3. States that a child born of wedlock must be granted nationality of that State if mother of that child belongs to that State and that child must be a Stateless person otherwise.

[75] Laura Van Waas,"Nationality Matters Statelessness Under International Law", (1981):39.
[76] See Article 1, Convention on the Reduction of Statelessness, 1961.

4. States that if a person passed the age of lodging an application for Nationality then he must be granted Nationality by that State or he must be allowed to apply for Nationality. His Nationality would be decided on the basis of Nationality of his/her parents. The question whether his/her Nationality would be decided with regards to his/her mother or father is decided by the National Law.
5. States that the Stateless person must apply for Nationality before the age of twenty three years. He must habitually reside in that State and a Stateless person since birth.

2.3.2 NATIONALITY IS A BIRTH RIGHT

This Convention states that a foundling (child who is found and has no known parents, an abandoned child) shall be considered as the National of that State in whose territory he is found.[77] A child must be given his first right as soon as he opens his eyes in this world. It is the duty of the state to safeguard this right of each individual who is born in its territory.[78]

If a person is a Stateless Person but one of his/her parents were nationals of that Contracting State at the time of his/her birth, he should be granted Nationality of that Contracting State.[79] If parents had different Nationalities then the National Law of that State will decide from which parent his/her Nationality should follow. The Contracting State should consider all the conditions for granting Nationality that are provided in Article 1 of the Convention on the Reduction of Statelessness, 1961.

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[77] See Article 2, Convention on the Reduction of Statelessness, 1961.

[78] Katherine Culliton-Gonz'alez, "Born in the Americas: Birthright Citizenship and Human Rights", *Harvard Human Rights Journal* 25, (2012):127-182.

[79] See Article 4, Convention on the Reduction of Statelessness, 1961.

2.3.3 NATIONALITY WITHOUT BOUNDARIES

This Convention states that if a child is born on a Ship or Aircraft he must be considered as a National of that State whose flag that Ship is flying or in whose territory that Aircraft is registered.[80] That ship or Aircraft is considered as territory of that state in which it is registered. So baby born on these territories are considered as lawful citizens if those states. International law recognises Nationality as supreme right of humans. So it ensures that each human being must be given nationality as soon as possible.

2.3.4 NATIONALITY MUST NOT BE LOST

International law ensures that if a person lost Nationality due to marriage, divorce, ratification of any treaty by State or any kind of legislation; he must be allowed to apply for Nationality according to State's National Law and it must be in harmony with Article 1 of the Convention on the Reduction of Statelessness, 1961.[81] The main aim is that no one losses his/her Nationality due to any social or political reasons.[82]

If the National Law of a Contracting State strips off the nationality of a person because of any reason and it affects the Nationality status of his spouse and children, then the state must be careful if it make that person stateless. The State must not deprive them of their Nationality[83] unless they acquire Nationality of any other State and must not be left Stateless.[84]

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[80] See Article 3, Convention on the Reduction of Statelessness, 1961.
[81] See Article 1, Convention on the Reduction of Statelessness, 1961.
[82] See Article 5, Convention on the Reduction of Statelessness, 1961.
[83] Manley O Hudson., "Nationality including statelessness", (1952):22.
[84] See Article 6, Convention on the Reduction of Statelessness, 1961.

2.3.5 PROCEDURE FOR RENUNCIATION OF NATIONALITY

The procedure a Contracting State should follow while renouncing the Nationality of any person according to his National Law is:

1. It must not renounce it until that very person himself acquires Nationality of any other State. Contracting States must not violate Article 13, 14 of the Universal Declaration of Human Rights 1948 which allows all Humans free movement and right of asylum in any State.
2. It also states that a person does not losses his Nationality if he seeks Naturalization in any foreign State unless he assures that State that he has acquired Nationality of that foreign State.
3. It also states that a person does not losses his Nationality if he stays out of Contracting State for a period not more than seven consecutive years. His mere residence outside the territory does not deprive him of his Nationality unless he himself makes it clear to the authorities that he has acquired another Nationality.
4. It also states that if a national is born outside the territory of a Contracting State then that State will retain his Nationality until after one year after attaining majority under the National Law of that State. But the condition is that he must reside in that State in that period and he must register with appropriate authority.
5. This article also states that in any case a person must not be left stateless in any case.[85]

[85] See Article 7, Convention on the Reduction of Statelessness, 1961.

2.3.6 CIRCUMSTANCE FOR RENUNCIATION OF NATIONALITY

No Contracting State shall renounce or deprive a person from his Nationality unless under certain circumstances as stated below:

1. If that person seeks naturalization in any foreign state or acquire nationality of any other state.
2. If that person has acquired the Nationality by fraud or misrepresentation.
3. If that Contracting State retained the right to deprive a person of his Nationality at the time of its accession or Signature to this Convention on the basis that if any person acts against the interest of that Contracting State or show his allegiance with any other State.

This Article also guides that the very person must be allowed a chance of fair hearing by appropriate authorities.[86]

2.3.7 NATIONALITY WITHOUT DISCRIMINATION

A Contracting State must not deprive a person or group of persons of their Nationality on the basis of any kind of discrimination on the basis of race, religion, ethnicity or political affiliation.[87] It is basic principal of International law that every human being must be considered equal. And no one should face discrimination on whatsoever grounds. All humans are equal and must be treated equally is the core of all human rights.[88]

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[86] See Article 8, Convention on the Reduction of Statelessness, 1961.
[87] See Article 9, Convention on the Reduction of Statelessness, 1961.
[88] Culliton-Gonz´alez, "Born in the Americas: Birthright Citizenship and Human Rights", (2012).

2.3.8 TERRITORIAL TRANSFERS AND NATIONALITY

If any Contracting State transfers its territory to any other State which is not a Contracting State, it must include provisions in the treaty to secure Nationality of people of that territory so that no one become Stateless. And if a Contracting State gets a territory then it must grant its Nationality to the people of that territory.[89]

2.4 UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

Universal Declaration of Human Rights, 1948 is a document that encompasses the whole known rights that modern world has decided a Human should have. It also considers Nationality as an important right of human beings. It is just like a right to have rights. It condemns Stateless in these words:

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.[90]

2.5 EUROPEAN CONVENTION ON NATIONALITY, 1997

European Nations established a community and named it as European Union. They live like a one country but they are all separate States as well. They have common currency and free trade among themselves and people of all member states can travel easily without visa and other problems between member states. They have adopted a convention relating to Nationality issue in 1997 and named it as European Union Convention on Nationality.[91] This convention aimed at

[89] See Article 10, Convention on the Reduction of Statelessness, 1961.
[90] See Article 15 of Universal Declaration of Human Rights, 1948.
[91] Natasa Nikolic, "DE JURE STATELESSNESS IN SERBIA", (2013).

enhancing the respect of basic Human Rights and most importantly Nationality.[92]This whole convention discusses the issue of Nationality in detail and set legal rules concerning this issue. It explains Nationality in following words:

"Nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin."[93]

This Convention further provides that everyone has the right of Nationality and in no case anyone would be deprived of this very right.[94] The whole convention protects every individual's right of Nationality. It clearly states that no State shall deprive any person from Nationality unless he himself applies for renunciation. So it is evident that every civilized nation knows the importance of Nationality and it tries to safeguard the people from becoming stateless.

2.6 INT'L CONVENTION ON CIVIL AND POLITICAL RIGHTS, 1966

This Convention protects the right of nationality of every child who is born on the soil of any contracting state. It clearly dictates that State and the family of child must protect the welfare of the minor without any discrimination.[95] It also requires the naming and registration of the minor. Third sub clause clearly states that every child has a right of acquiring nationality at birth.

2.7 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

This convention states that the contracting states must ensure equal rights to women as men, especially regarding their choice of nationality. It clearly states that nothing will affect their status as citizen of a State if they get married to a man with different nationality. They have full

[92]Waas, "Nationality Matters", 61.
[93] See Article 2 of European Convention on Nationality, 1997.
[94] See Article 4 of European Convention on Nationality, 1997.
[95] See Article 24 (3) of International Convention on Civil and Political Rights, 1966.

choice of acquiring and changing their nationality. They are not bound to acquire husband's nationality after marriage. Nothing shall change their nationality automatically. It also considers them equal to men as far as their right of choice of their children's nationality.[96]

2.8 CONCLUSION:

In the light of above mentioned International documents concerning the Rights of Stateless Persons, it is quite clear that International Community now fully understands and recognizes the importance of this issue of increasing statelessness in the world. International law has fully recognized these effected people and developed a standard of procedure to protect these people in the shape of above mentioned Conventions and Charters. International law clearly demands the contracting states, who have signed these above mentioned documents, that they must protect the interests of Stateless Persons in their respective States.

International Law first of all demands the Contracting states to determine Statelessness in their states. They must recognize if they have people who are living as a stateless person in their state and then they must safeguard those people in the light of these above mentioned International documents.[97] The Contracting States are bound to undergo legislative reformation so that their constitution fully protects the Stateless persons. Constitutional amendments are the best possible ways to protect the Stateless and to eradicate this menace. International Law provides equal rights to all humans whether they are nationals of a State or not. Stateless persons are equally eligible for all kinds of protection that normal citizens of any state can enjoy. They have equal right of education, employment, healthcare facilities, choice to marry, freedom of movement, civil and political rights and right to change or acquire nationality of their own choice

[96] See Article 9 of Convention on the Elimination of all forms of discrimination against women, 1979.
[97] Waas, "Nationality Matters", 25.

etc. International Law basically stresses upon awarding of nationality to the people who are residing in a State as a Stateless person because without Nationality they can't enjoy the basic human rights.

CHAPTER 3

LEGAL STATUS AND HUMAN RIGHTS SITUATION OF ROHINGYA IN MYANMAR

We are living in a world where people are facing restrictions on many basic social and religious freedoms. Almost more than seventy percent of the population of our world is facing religious restrictions. In most populous countries like India and China people are facing worst kinds of religious discriminations and restrictions. Similarly Myanmar is a country where religious freedom is extremely prohibited.[98]

Rohingya[99], a Muslim minority living in Myanmar is facing worst kind of persecution just because of their religious affiliation by the hands of Government backed extremists. This chapter will analyse the current legal status of Rohingya in Myanmar. In this chapter important question; that whether they are Stateless people or not will be answered in detail. If they are Stateless then what kind of discrimination they are facing due to this dilemma of Statelessness. This chapter will provide complete picture of what kind of atrocities these Rohingyas are facing because of their lack of citizenship?

3.1 ROHINGYA IN MYANMAR

Ó®Tomás Ojea Quintana, Special Rapporteur on the situation of Human rights in Myanmar, has expressed the depleting condition and denial of basic Human Rights like

[98] Engy Abdelkader, "The Rohingya Muslims in Myanmar: Past, Present, and Future", *Oregon Review Of International Law* 15, (2013): 101-119.

[99] The name Rohingya is derived from a Word "Rohang", that is an older name of Rakhine State. They were called as Muslims from Rohang previously.

Nationality, freedom of movement, health and education to the Rohingya Muslims in Myanmar in his landmark report in following words:

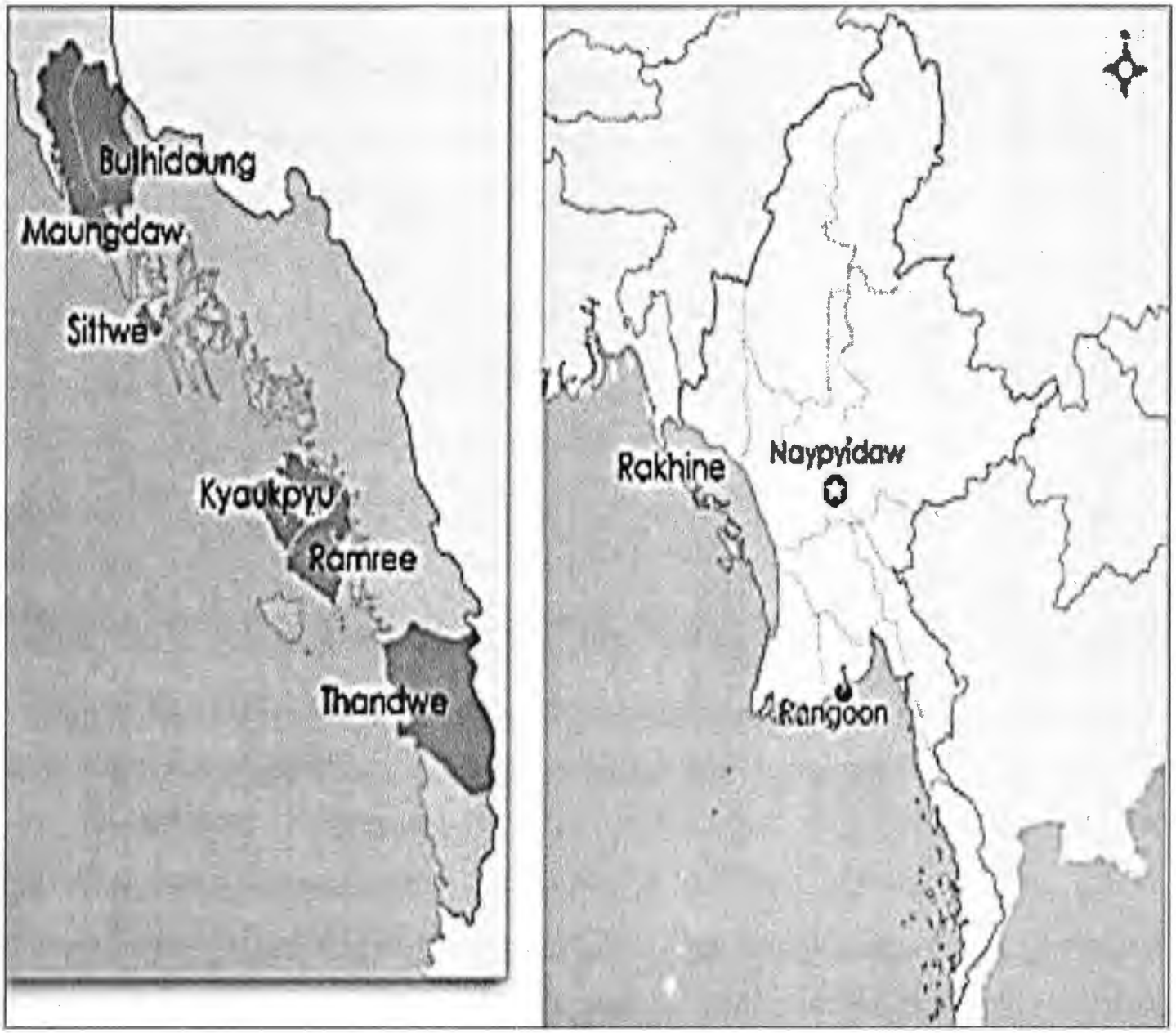
> "The pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court. Extra-judicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State. The deprivation of healthcare is deliberately targeting the Rohingya population, and the increasingly permanent segregation of this population is taking place. Furthermore these human rights violations are connected to discriminatory and persecutory policies against the Rohingya Muslim population, which also include ongoing official and unofficial practices from both local and central authorities restricting rights to nationality, movement, marriage, family, health and privacy."[100]

So it is quite clear form the words of T. O. Quintana that Rohingya in Myanmar are facing persecution. And it is also important to note that; the way they are facing persecution it is quite familiar with the annihilation of the complete community. This treatment is early signs of Genocide. If this treatment continues for more time then these poor Rohingyas will be eliminated from the soil of Myanmar for good. This is a serious Human Rights violation situation and its immediate solution is very much necessary.

[100] Tomás Ojea Quintana, Special Rapporteur on the situation of Human rights in Myanmar, Human Rights Council, 25th Session, 2 April 2014, A/HRC/25/64, Para 51.

3.2 MAP OF RAKHINE

Map of Rakhine state in Myanmar.[101]



[101] http://www.rfa.org/english/news/myanmar/tension-06112012190558.html/, Accessed on 20-12-2016.

3.3 HISTORICAL BACKGROUND

Rakhine (also known as Arakan) state of Myanmar is separated from the rest of the country by a mountain range named as Rakhine Yoma. That is why this state is alienated from the rest of the country as far as political and social development is concerned. In 1785 it was first conquered by a Burmese King, Bodawpaya and this state became part of Myanmar previously now known as Burma. In 1430, a Rakhine Kingdom was established at Mrauk-U with the help of Sultan of Bengal. Due to the influence of Sultan of Bengal, the King of the state though being Buddhist himself used to have Muslim titles with their names and even issued currency bearing Muslim inscriptions. With the passage of time Muslim soldiers and traders from Bengal started to make settlements in this Rakhine state. Rakhine king took advantage of Mughal invasion of Bengal and established full control over the state, though they maintained their Muslim titles. Mrauk-U became a big business hub and the state started to maintain a naval force which protected the sea-shores of the state and dominated the Bay of Bengal in that period.[102]

European settlers invaded the Rakhine state and increased their influence and control over the sub-continent and Rakhine sailors also took advantage of that situation. In 1660, the Muslim Mughal prince Shah Shuja escaped to Mrauk-U and the king of the state welcomed him with open hands. After that Muslims started to settle in this area. But after few years the relationship between the king and Shah Shuja became sour and the king killed Shah Shuja. All the soldiers of Shah Shuja were given great privileges and they were incorporated among the Palace guards and named as "Kaman" which means in English as bow. [103]

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[102] International Crisis Group, *Myanmar: The Politics of Rakhine State,* (2014).
[103] Ibid.

These soldiers enjoyed a great importance in the army for many years and many of them settled there for good. As they were soldiers by nature so they got strong position in the area that is why they were exiled from the Mrauk-U to Ramree (Yanbye) island in 1710. They are still considered as indigenous people and many of them are serving on key positions in Rakhine State today.

Power struggle was ever growing in Mrauk-U province and one of the contender of the throne requested King Bodawpaya of Burma to help him in getting the power. Burmese Forces took advantage of this and attacked the province in the year 1784-85 and captured the area and annexed the province with Burma. Most of the populations of Rakhine approximately up to 200,000 were fled to Chittagong.

King Bodawpaya's army also included a group of Muslim fighters named as "Myedu". That group was posted in Thandwe district in Rakhine. Their families settled in that area and most of the Muslim of this Thandwe area claimed to be the descendants of those Myedu warriors.[104]

3.3.1 COLONIAL INVASION OF BURMA

In the year 1825 Burmese forces were attacked by the British forces and the State of Burma was annexed to India, which was at that time a colony of the Great Britain. As the Rakhine state remained under Burmese kingdom for a very short time, the Rakhine state remained distant from the mainstream political setup of Burma. British government shifted the Rakhine State province to Akyab, now known as Sittwe. In the year 1853, the British

[104] Ibid.

government created a new province encompassing the whole Lower Burma including Rakhine State. It was controlled as a part of Birtish India after 1886.[105]

After this annexation of Rakhine State in India, many Muslims shifted to this area. There were many Muslim settlements in Rakhine already so it was easy for the Muslims to settle there. Due to common border of Rakhine state with Bangladesh, many Buddhist were living in Bangladesh as Muslims were living in Rakhine State. British government focused on Rice cultivation in Rakhine State so they employed labor from India and they were mostly Muslims from Bengal. It also played a great role in increasing the Muslim population in the Rakhine state.[106]

As Burma was part of British India so people travelled through the provinces easily. They done trade and other social exchanges were made between the communities. It resulted in socio-political influences on communities and Buddhists of Burma were not happy with this social and religious mix-up of communities. These hidden resentments were escalated during the WWII. Japanese advanced up to Rakhine state and Buddhist fully supported them as they wanted to get freedom from the British. But the Muslims of the area as being subject of the British government supported the British. Rakhine state was almost a frontline between two warring Nations, Japanese and British. This war sowed the main root cause of permanent conflict between Muslims and Buddhist communities in the area. Muslims moved to the Northern part of the Rakhine state and Buddhist moved to south side and visible divide was created among those two.

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[105] Habibollahi and Hollie and Diker, "*Crimes Against Humanity The Case of the Rohingya People in Burma*", 127-143.

[106] Abdelkader, "The Rohingya Muslims in Myanmar", 101-119.

After the WWII ended the Burma (Myanmar) gained independence from the British rule in 1948.[107] Buddhist being the majority formed government and Muslims were restricted to the northern part of Rakhine state. A Mujahidin movement was also erupted for a short while that tried to annex the northern part of Rakhine state with East-Pakistan (Now Bangladesh). But Pakistan refused to support that movement so it was failed miserably. The people who fled to India and East-Pakistan were not allowed to return to the country and they had no option but live in refugee camps in India and East-Pakistan. But few of those who fled back to their homes were not welcomed by the authorities and were considered as illegal immigrants from Pakistan. There were many rebel groups such as Rakhine nationals group, communist Read Flag and White Flag groups, Arakan People's Liberation Party (Marxist) and Mujahidin were fighting against the new government and these groups inflicted great damages to the interests of the government.[108]

These violent and chaotic efforts of Muslims strained the relations of Buddhist government and Muslim to higher levels and they were considered bitter enemies of the government. Though many Muslims were against such activities and they also demanded weapons from the government to fight against them but government refused to take their help. Mujahidin efforts were failed and in 1961 the Burmese government formed a Mayu Frontier Administration in Northern Rakhine province comprised of army men. These Mayu people described them as Rohingya as a political identity.

In 1962 the Military coup by Ne Win took place in Burma and that coup completely erased the Muslim community from the political scene. New government made anti-Muslim policies and deliberately kept the Muslims from the new social and political set up of the State.

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[107] Allard K. Lowenstein International Human Rights Clinic, "PERSECUTION OF THE ROHINGYA MUSLIMS: IS GENOCIDE OCCURRING IN MYANMAR'S RAKHINE STATE?", *FORTIFY RIGHTS, Yale Law School,* (2015).

[108] International Crisis Group, "*Myanmar: The Politics of Rakhine State*", (2014).

They were not allowed to form any kind of political organization. The new government denied citizenship to the Muslim community and that started the genocide of the Muslims in Burma.[109]

3.3.2 THE MILITARY RULE OF MYANMAR

Before the military coup the previous government of Prime Minister Nu promised the Muslims an autonomous region for them in Northern Rakhine. But after the establishment of military government in 1962, conditions changed for Muslims and continuous requests from Muslims for creation of self-administered region for Muslims were not heard at all. Rakhine was declared an ethnic state according to the 1974 constitution.[110]

There were no specific provisions in the constitution for the administration of the Rakhine state. The fall of Dhaka in 1971 also played a role in displacement of Muslims especially these Rohingya Muslims who fled from East-Pakistan to Myanmar and stuck there after the creation of new state of Bangladesh. Bangladesh refused to accept these Muslims after its separation from Pakistan.[111]

In 1977, the military government started an operation named as Nagamin or Dragon King to tackle the problem of illegal immigration. This operation proved to be the most severe operation against the Muslim minority as they don't have proper documentation as a result of above cited previous incidents. This operation resulted in mass movement of Muslims (Approximately 200,000) towards Bangladesh as Muslims without proper documents of citizenship fled there. During this operation Rohingya Muslims were completely excluded from any kind of citizenship whatsoever. Next year many of them were returned as the Bangladesh

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[109] Ibid.
[110] See Article 31 of THE CONSTITUTION OF THE UNION OF BURMA (1974).
[111] Abdelkader, "The Rohingya Muslims in Myanmar", 101-119.

government refused to accept them but they were not welcomed. They were all lost their right of citizenship for good. In 1982 a new Citizenship Law was introduced that further worsen the situation for the Muslims in Rakhine and all over Burma.[112]

In 1988, military government decided to implement democratic style of government and for this purpose they conducted elections in 1990. National League for Democracy won majority seats. In this election many representatives of the Rohingya and Kaman Muslims won many seats. But it did not go well according to the authorities so the results of that election were not accepted at all and the military government remained in power.[113]

1991 was the year when the military government of Burma started to deploy troops in northern Rakhine state. They forcefully confiscated houses of Muslims and deprived them of their agricultural lands. They were left with no option to leave the place as soon as possible. Approximately 250,000 Muslims fled to Bangladesh but the y were not welcomed their and were forced to live in refugee camps. Buddhist of Arakan state facilitated by the authorities started to settle in the areas that were previously under Muslim use.[114]

After the efforts of settlements by United Nations between Bangladesh and Burma almost 200,000 of them were repatriated back to Burma. But this was involuntary and all human rights organizations of the world saw that repatriation as inhuman and not proper. And they were not

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[112] Section 3 of Burma Citizenship Law, 1982; 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.

[113] Lowenstein International, "PERSECUTION OF THE ROHINGYA MUSLIMS", 5.

[114] ""All You Can Do is Pray"", Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State", *Human Rights Watch*, (2013).

welcomed by the Burmese government and they have lost their own lands as they were taken up by the Buddhist of Arakan.[115]

3.4 CONSTANTLY DETERIORATING SITUATION

In 2001 a small argument between Buddhist monks and Muslim sellers resulted in a chaotic fight and in the result almost 20 people were killed and businesses were set to fire.[116] After that Muslims came under constant attack of the Buddhist monks in Burma, especially in Rakhine. This government backed Buddhist attacks were carried on regularly against Muslim communities all over the Burma.

But 2010, when elections were held in Burma, these tensions were escalated manifold. Union Solidarity and Development Party, that has backing of ruling regime, lied to Muslims for getting their support in election in return of citizenship right for them. Buddhist monks and anti-Muslim power holds were not happy at all with this. So the inter-communal tensions were escalated and in 2012 violence against Muslims reached its peak. In 2014 a population census was conducted by the authorities and they purposefully excluded the Rohingya out from this census.[117]

3.5 CURRENT HUMAN RIGHTS VIOLATIONS

As the above cited historical background of conflict between the Rohingya Muslims of Rakhine and Buddhist majority of Rakhine clearly shows us that Muslims are being persecuted to the extent of Genocide in this region of the world. With each passing day the situation of these

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[115] Kei Nemoto, "The Rohingya Issue:A Thorny Obstacle between Burma (Myanmar) and Bangladesh", *Institute of Developing Economies*, (2004): 1-19.

[116] ""All You Can Do is Pray"", *Human Rights Watch*, (2013).

[117] Green and MacManus and la Cour Venning, "Countdown To Annihilation", 1-106.

Muslims is getting worse. State backed annihilation of Muslims is leading to complete genocide of this minority from the Rakhine state. There are serious Human Rights violations by the Buddhist majority military and other powerful groups who want to completely remove the Muslims from the area. The atrocities against Muslims are unimaginable and it is not easy to understand the pains of those persecuted peoples. Though there is a long list of Human Rights violations but few of them are of great importance and need immediate consideration. They are as follows

1. Dehumanization
2. Denial of Citizenship to Rohingya

3.5.1 DEHUMANIZATION

Rohingyas are being persecuted from all levels of power holds. Government does not consider them their citizens and Buddhist monks want to get rid of them as soon as possible. This persecution is so much increasing that the Rohingya are not considered as humans now by their enemies. They all consider them an evil prevailing in their society and that must be cleaned up as early as possible by any means whatsoever. Mr. Win Mra, head of Human Rights Commission of Myanmar, once said that being human it is our right to have food, health and other Human Rights but if we consider Rohingya then it is a different issue all together. So it is clear that Rohingya are facing complete denial of human rights at the highest level of Government.[118]

This severe persecution started almost thirty years ago in a proper planned manner when the Military government of Mr. Ne Win decided to exclude the Rohingya from the list of citizens in 1982.[119]

[118] Ibid.
[119] Ibid.

Rohingya are considered as ugly or ogres by their own countrymen. They are facing discrimination on the basis of religion, skin color and race. Even they are not allowed to call them Rohingya by the authorities. In 2012 Myanmar Government's official commission of inquiry which reported about the 2012 violence reported as follows:

"The Government of the Union of Myanmar does not recognize the name Rohingya... Bengalis now pushing to use the term Rohingya are surely fanning the flames of sectarian violence... Bengali demands to be recognized as Rohingya will only be divisive, leading to more conflict, possibly with greater losses than before."[120]

In July 2015, the President of Myanmar, Mr. Thein Sin stated that they did not recognize the term, Rohingya, in a meeting held in London.

During the Population census 0f 2014, government officials who were conducting the census clearly declared that if anyone wanted to use the term Rohingya for them, they won't be registered at all. They must have to use the term Bengali for them instead of Rohingya. They were clear in their minds that they will not accept them as Rohingya at all.[121]

The previous military government and now the democratic government of Ms. Aung San Su Ki do not recognize the Rohingya as part of their nation. So there is no voice in favor of these less fortunate people. They were not allowed to participate in 2015 general elections, so in this way they have no one to put their voice at any level and in the result they are being persecuted and no one is even bothering about their situation in the country.[122]

Dehumanization is evident from the ongoing treatment of Rohingya by the authorities in Myanmar. As they are restricted to camps or ghettos or we can easily say prison villages. They

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[120] (Republic of the Union of Myanmar, 'Final Report of Inquiry Commission on Sectarian Violence in Rakhine State', 10 September 2013)

[121] Ibid.

[122] Nehginpao Kipgen, "Addressing the Rohingya Problem", *Journal of Asian and African Studies* 49, (2014):234-247.

are not allowed to leave their respective villages without prior permission by the authorities. They are not allowed to practice their religion openly. They are not allowed at all to get education and work. They have no medical facilities available to them. Most important of them all is denial of citizenship to these people. As they are not citizens they cannot claim any right at all from the authorities. After 1982, citizenship law enforced in the country and Rohingya were deliberately excluded from the list of citizens. No citizenship cards were issued to them even though many of them had national registration cards at that time but they were no issued new cards and in that way they were deprived of their right of citizenship by the government.

In 1995 a white card was issued to the Rohingya that entitled the holder of the card to vote and that was just to use their vote for the elections and it granted no right to them as a citizen at all. In 2015 elections the authorities refused to accept this white card as right to vote as they don't want the Rohingya to participate in elections. Almost 790,000 people held white cards with them and that large number of people can make a difference in elections.[123] The rift between the two religiously different communities is always used by the political forces.

In 1938 election the Takhine Party instigated the Buddhist of Rakhine and Arakan against the Rohingya by saying that their religion is a permanent danger to their religion and Islamic culture would destroy their culture if they were not eliminated from the country. So this type of foul play by the political parties is not new but now the Buddhist majority has decided to get permanent rid from the Muslim minority of Burma and they are eliminating them by any means possible from this country.[124]

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[123] Ibid.

[124] Habibollahi and McLean and Diker, "*Crimes Against Humanity The Case of the Rohingya People in Burma*", 127-143.

3.5.2 DENIAL OF CITIZENSHIP TO ROHINGYA

The other most important and the main problem which needs immediate solution is the complete denial of citizenship to Rohingya by the Burmese government. This is actually the main root cause of all the problems that are being faced by the Rohingya. As they are not considered as a citizen so they have no right at all in the country. This act of the Burmese government is in complete denial of all International Human Rights laws and especially its complete violation of Article 15 of Universal Declaration of Human Rights that clearly states that everyone has the right of nationality and no one should be deprived of its nationality arbitrarily.[125]

This denial of nationality/citizenship is playing the main role in persecution of Rohingya in Myanmar. The National Citizenship law, 1982 of Myanmar recognizes 135 ethnic groups as citizens of Myanmar and Rohingya are not included in them and after the enactment of this law Rohingya Muslims are under permanent persecution. This law is a complete denial of ground realities and complete violation of Human rights norms that are applicable all around the world. This complete disregard of their existence Rohingya is a stateless community according to the definition given by the Convention Relating to the Status of Stateless Persons, 1954.[126] This convention describes all persons who are not recognized as nationals by any state under operations of its law as Stateless persons.

The statelessness of Rohingya deprived them of all rights. Because they have no right of education, work, healthcare facilities and even they cannot travel without prior permission of the authorities even within the country. This denial leads to many problems for those Rohingya who are settled in other countries as they are now considered as refugees and not foreign citizens.

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[125] See Article 15 of Universal Declaration of Human Rights, 1948.
[126] See Article 1 of Convention Relating to the Status of Stateless Persons, 1954.

This is causing great problem for them as they can't travel easily between different countries as travel documents are necessary and their government has stripped them of their nationality.[127]

Though, many voices have risen all over the world against this discriminatory treatment by authorities towards Rohingya but to no avail. United Nation High Commission for Refugees has tries so many times to negotiate with Burmese authorities but they refused to accept Rohingya as their citizens. Since 2012 violence against Rohingya the Burmese government tried to expel the Rohingya to either Bangladesh or into refugee camps administered by United Nation High Commission for Refugees. Though the government has promised many times to Rohingya that they would be awarded with citizenship but it proved all lies in the end. The new State Counselor, a designation equal to Prime Minister, and president of National League of Democracy (NLD) Ms. Aung San Su Ki though has won Nobel Peace Prize for her struggle for democracy in the country but she had done nothing to protect the hopeless and helpless Rohingya.[128]

3.6 GENOCIDE

Genocide is a crime against humanity and it remains a crime whether it is done in times of war or in time of peace.[129] So this is a crime that is prohibited by International Law in all times. Protecting humans from all type of persecution is absolute duty of every state. It is a *Jus cogens* norm[130] and must be respected by every state and must not be violated just on the ground of not being a party to the Convention.

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[127] Roomana Hukil & Nayantara Shaunik, "The Rohingyas of Myanmar", *Institute of Peace and Conflict Studies,* (2013): 1-8.

[128] Abdelkader, "The Rohingya Muslims in Myanmar", 101-119.

[129] See Article 1 of Convention on the Prevention and Protection of the crime of Genocide, 1948.

[130] *Jus Cogens* is a norm that is accepted and respected by whole International Community and it cannot be set aside in any circumstances.

Convention on the Prevention and Punishment of the Crime of Genocide clearly defines Genocide in following words:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.[131]

Genocide convention is clearly saying that it must be against a group of people and Rohingyas are clearly a minority group that is facing hostilities just because of their religious belief. In the light of above cited circumstances and the parameters provided by Convention on the Prevention and Punishment of the Crime of Genocide; it is quite evident that genocide of Rohingya Muslims is undergoing and the world is a mere spectator.[132]

United Nations is not doing its job and the screams of Rohingya are falling on the deafening ears of the world powers. Even the OIC (Organization of Islamic Cooperation) has been silent throughout these years of brutal persecution of Rohingya. Now most of them are living in the refugee camps in Bangladesh or living on the boats in open sea and are called as boat people[133], there is no effort of relief by the Muslim states to protect them. Turkey has spoken and taken some step to help them but they are not enough at all.

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[131] See Article 2 of Convention on the Prevention and Protection of the crime of Genocide, 1948.

[132] Simon-Skjodt Center For The Prevention Of Genocide, "They Want Us All To Go Away" Early Warning Signs of Genocide in Burma, (2015): 1-14.

[133] Hukil & Shaunik, "The Rohingyas of Myanmar", 1-8.

This genocide is state sponsored and the speed of extinction is increasing day by day, as the government looks in a hurry to get rid of these Rohingya. In recent times a new wave of massacre is going on in the Rakhine. It started after an alleged attempt by the Rohingya on three guard posts near Bangladesh border, which killed almost 9 Burmese soldiers on 9th 0f October, 2016. After that state forces have started a brutal operation to find and eliminate the culprits. But it is a clear attempt to erase Rohingya. Men are separated from the families for brutal interrogations and while they were away their women were tortured to rape and other inhumane treatments.[134]

The government has completely locked down the whole portion of Northern Rakhine and they are not allowing anyone to come in or go out of the area. They have cut out all the supplies especially food supplies to the area and in this way they are trying to eliminate the Rohingya by depriving them of food, a pure case of genocide.[135] Almost more than 30,000 people have been displaced during these two months of complete chaos. A women survivor contacted a relative in Malaysia and the woman reportedly said, "Just wish us to die [a] fast death. We can't bear this anymore. They (the Burmese troops) are killing our men and boys. They are doing anything they please with us, women. We don't want to be carrying babies of these monsters. Please, please, send us birth control pills."[136]

United Nations special Rapporteur on the on-going situation of Human Rights violation in Myanmar Mr. Adama Dieng (Senegal) and Ms. Yanghee Lee (Republic of Korea) requested and Independent investigation by UN on ethnic cleansing and other atrocities against Rohingya

[134] STANTON, MAUNG ZARNI AND GREGORY. 2016. "Sorry, Aung San Suu Kyi, the Rohingya Crisis Is No Laughing Matter." *The Wire*, December 6. http://thewire.in/84714/rohingya-myanmar-aung-san-suu-kyi/. Accessed on 05-01-17.

[135] Ibid.

[136] Ibid.

in Rakhine. But, the Burmese government currently run by the Nobel Peace Prize winner Ms. Aung San Su Ki, announced a "National Inquiry Mission". The chairman of the commission is vice president Myint Swe is the chairman of the commission. And this Mr. Myint Swe is retired Lt. General of Burmese Military Intelligence and was involved in persecution of Rohingya in his time of service. So it is clear from the steps taken by the government that they are not willing to do anything positive and effective to stop this persecution or we can easily say Genocide of Rohingya in Rakhine.[137]

3.7 CONCLUSION

This chapter provides us a clear knowledge of current legal status of Rohingya people living in Myanmar. It is a quite alarming inhuman situation in Myanmar that Rohingyas are facing. The situation in Myanmar is giving clear indications of on-going Genocide of an Ethnic minority Community, Rohingya on the basis of Religion. Thousands of people and their villages have been destroyed by the state backed mobs and the state is a mere spectator. Immediate steps are needed to stop this persecution; otherwise this Rohingya community has no chance to survive these atrocities for longer period of time.

The legal status of Rohingya is of stateless people as they are not considered as citizens of Rohingya by state law. This statelessness has deprived these people from all type of rights. It is said that citizenship is a right to have rights. But in this case they don't have it so they have no right to have rights. But International law safeguards these people and states to treat these people with special care until these people get proper nationality in any country of their choice. But

[137] Dieng, Adama, (United Nations Special Adviser on the Prevention of Genocide on the situation in northern Rakhine State, Myanmar). 2016. "Report by UN Special Rapporteur on Torture." New York: United Nations.

Myanmar government is just ignoring all the International norms of treatment of Stateless people. In this case Rohingyas are actual citizens of the country as they are living in the Rakhine state for almost 400 years. But the state is just paying no head to anything.

Efforts from all parts of social society and all states; either they are member of United Nations or not are needed immediately to save these unfortunate people. They have no place to live, nothing to eat and no medical treatment and the state is not allowing any humanitarian aid to them whatsoever. So immediate redressed of the situation is strongly demanded through this research.

CHAPTER 4

LEGAL STATUS AND HUMAN RIGHTS OF BIHARIS IN BANGLADESH

This chapter discusses in detail the problem of Bihari community which is also known as stranded Pakistanis. These are people who were left behind in Bangladesh after 1971 war. These people supported Pakistan army and wanted to migrate or repatriate to Pakistan after the separation of East-Pakistan but they were unable to do so. So they remained stranded there in camps waiting for their departure to Pakistan. But very few of them got the chance to move to the land of their dreams.

On the other side the State of Bangladesh accused them of being Pakistanis and they persecuted them for supporting Pakistan army after 1971 war. The state never forgot their allegiance with Pakistan and treated them as citizens of Pakistan. As they were not accepted as citizens of Bangladesh; they faced phenomenon of statelessness in a state where they were living since independence of Pakistan. Because of their statelessness they faced persecution. They were denied all the rights as normal citizens.

In this chapter their current legal status will be analysed and moreover their current living conditions will be discussed. It will help us in understanding that what kind of human rights they are enjoying.

4.1 CAMP LOCATION AND POPULATION MAP

Name of Camp		Population
Mohammadpur & Dhaka City		40664
Mirpur,	Dhaka:	
Section	X	10086
Section	X1	28836
Section XII (Murapara	camp)	4324
Section XII (Kurmi Tola	Camp)	3770
Section XII (Block C & D)		7787
Bogra		5433
Rajshahi		7057
Rangpur		14998
Chittagong:		
Ferozshah	Colony	2554
Raufabad	Colony	2536
Halishahar		9503
S.B.Nagar		9376
Khulna		7381
Mymensingh		2787
Khalispur		16624
Glatalla		2235
Jessore		5435
Ishurdi		10107
Dinajpur		6899
Saidpur		53647
Narayangunj		1306
Adamjee	Nagar	7710
Total Population		**261055**

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[138] http://www.statelesspeopleinbangladesh.net/camp_location.php, Accessed on 23-02-2017

4.2 HISTORICAL BACKGROUND OF THE BIHARI ISSUE

The term Bihari is used for those people who originally belong to the State of Bihar, an area bordering Utter Pradesh and Nepal in India. This state is one of the largest states in India at this moment and has been a most populated one thorough out known history. It's been religious hub for many civilizations. Hindus and Muslims both have religious affiliation with this State and that is why it has been a centre of all types of activities ranging from religion to business and because of this it's been a heavily populated state always.[139]

At the time of Partition of Indian Subcontinent in 1947, many Muslims (Approximately 100,000) settled in state of Bihar migrated to East Pakistan (now Bangladesh). The migration was basically the result of massacre of Muslims by the majority Hindus in the area. So Muslims started to migrate to East Pakistan as it was near the State of Bihar. After the partition they remained there as Urdu Speaking people. They were also called as Biharis because of their origin from Bihar. [140]

Their major difference with the majority of Bengal is on the basis of language because Biharis are Urdu speaking people and majority is Bengali speaking. So these Urdu speaking Biharis were attached with West-Pakistan on the basis of language. The authorities of West-Pakistan also supported these Biharis and they were given importance over the rest of Bengalis in many ways.[141] These Biharis also supported the idea of declaring Urdu is National language of Pakistan and opposed the 1952 movement of Bengalis to declare Bengali as official language in

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[139] Ashrafuzzaman Khan and Mrinmoy Samadder, "Living Like Prisoner: Documenting the Experiences of Crime and Insecurity of Bihari Community in Bangladesh", (2007).

[140] Iftekharul Bashar, "Unresolved Statelessness: The Case of Biharis in Bangladesh", Journal of International Affairs 10, (2006).

[141] Farzana, "The Neglected Stateless Bihari Community", 1-19.

East-Pakistan. This constant rift between these two communities escalated in later years. In 1971 when Bengalis revolted against the government of Pakistan with the help of India and ultimately got themselves parted from West-Pakistan. During this war the Biharis were sided with West-Pakistan and they opposed the independence of Bengal as a separate homeland. This support of Biharis proved fatal for their future because they got stuck in Bangladesh and had to face the brutal hostilities from the authorities.[142]

They tried their best to repatriate to Pakistan but only about 2.5 million Biharis were repatriated to Pakistan. The governments from both the countries never showed their sincere intentions to solve this problem of Biharis. Some efforts were made by the Pakistan government to settles them but these efforts were not sufficient.[143]

4.3 CURRENT SCENARIO OF BIHARIS

The current situation of Biharis is very poor as far as human rights and living conditions are concerned. After the 1971 War, they were persecuted, killed, raped and every brutality you imagine was forced upon these ill-fated people. They have to find shelter in UN refugee camps. But the number of people was so high that these camps were over crowded within no time and they were presenting the look of a concentration camp. Now after almost 36 years the population has increased so much and it's almost impossible to live a proper life in these camps. The basic problems these Biharis are facing are discussed one by one below.

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[142] Chowdhury R Abrar, "Issues And Constraints In The Repatriation/Rehabilitation Of The Rohingya And Chakma Refugees And The Bharis", *Conference of Scholars and other Professionals Working on Refugees and the Displaced Persons in South Asia,* (1998).

[143] Sumit Sen, "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia", *International Journal of Refugee Law* 11, 4 (1999): 41-70.

4.3.1 LEGAL STATUS OF BIHARIS

The constant dilemma with these Biharis is that there is a confusion regarding the question whether they are refugees or not?

According to the Article 1 (A) (2) of Refugee Convention of 1951, any person who is unwilling to move to the state of his nationality due to the fear of persecution on the basis of race, religion, allegiance to a particular social and political group, etc. and residing outside its own state is a refugee in the state in which he is residing. [144]

This definition does not fully apply to these Biharis. As when they migrated to East-Pakistan in 1947, they were considered as the citizens of Pakistan. They resided here as citizens till 1971. During 1971 war they tried their fullest to protect Pakistan and sided with Pakistan army but this support made them enemy of Bengalis who were the rulers of the newly born state of Bangladesh.

These Bengalis considered them as the people of Pakistan and not of Bangladesh and did not give them citizenship. On the other side efforts of their repatriation by the authorities of both countries Pakistan and Bangladesh were not sufficient so majority of them were unable to go to Pakistan. But these Biharis resided in Bangladesh since they migrated here from Bihar and surrounding areas. So they are not refuges as they are not out of their country. They always resided in Bangladesh and that is why they are de jure citizens of Bangladesh. It was the

[144] Article 1 (A) (2) of Convention relating to Status of Refugees; As a result of events occurring before 1 January 1951 and owing to well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is out- side the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

persecution by state authorities that forced them to find shelter in camps otherwise they were well-settled there.[145]

Now if we see Article 14 (A) of Citizenship Act, 1951 of Bangladesh, it says that only a person with dual nationality can denounce his nationality otherwise not. So according to this act Biharis are not refugees as they don't have dual nationality so they can't denounce their nationality of Bangladesh. So now those people who are still unwilling to apply for national Identity Cards are suffering only because of their own choice. New generation is gaining Identity Cards and trying to make their way in the social and economic corridors. [146]

So according to the current situation the Biharis are neither refugees nor stateless people. Though at one time, they were suffering from this dilemma of Statelessness just because of the state authorities. They did not want them to be a part of their country. But now after the decision of the Supreme Court of Bangladesh, their fate has been decided finally. And now they are citizens of Bangladesh. Now there is no confusion about their status. Previously they were treated like stateless people deliberately by the state authorities but now they have got their true right of citizenship. There are some problems because of their past but they are moving out of the slumps and camps and struggling to become a part of the normal civil society. The older Biharis who still have the desire to repatriate to Pakistan are not willing to apply for citizenship but they have no option available. With the passage of time these Biharis will become normal citizens and they will not be treated as stranded Pakistanis.[147]

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[145] Farzana, "The Neglected Stateless Bihari Community", 1-19

[146] Article 14 (I) Subject to the provisions of this section if any person is a citizen of Bangladesh under the provisions of this Act, and is at the same time a citizen or national of any other country, he shall, unless he makes a declaration according to the laws of that other country renouncing his status as citizen or national thereof, ceases to be a citizen of Bangladesh.

[147] Khalid, "Inhuman Camp life of Bihari Urdu speaking", (2012).

4.3.2 OVERPOPULATION

The major problem these Biharis are facing is overpopulation and no place to live. They are forced to live in UN refugee camps though their population have increased almost to double. They are almost three to five hundred thousand according to rough estimates as they are not part of any consensus.[148] They can't leave these camps as they are not acceptable socially. If they ever try to leave these camps they ultimately have to come back in these camp houses. After 2008 landmark decision by the High Court which entitled many Biharis of their citizenship rights yet they are facing hardships in finding their place in society as a respectable citizen.[149]

4.3.3 SANITATION ISSUES & MEDICAL CARE

The camp life lacks basic necessities of life. There are very few sanitation facilities in these camps. They are facing many hardships due to lack of latrines and bathrooms for the population. In Mirpur, Millat Camp there is only one latrine for over 5000 living human beings.[150] Male and female use same bathrooms and latrines and they have to wait in the queue for their turn. Even they have to bath in groups at a time due to lack of bathrooms. There is no waste management system at all.

They have to collect and through that garbage outside the boundary of their camps and after few days the municipal government collects it. The Convention relating to Status of Stateless person states that the state must provide all the stateless persons minimum facilities of living. But the state government is not willing to provide the Biharis with minimum facilities

[148] Kelley, "Ideas, Interests and Institutions", 349-371.
[149] Sattar, "The Rejected Biharis", 13-24.
[150] Farzana, "The Neglected Stateless Bihari Community", 1-19.

even after the ruling of the High Court which considers all the Biharis born after 1971 as their legitimate citizens.[151]

Similarly on the medical care side the situation is even worse as there is no proper medical facilities are available to the poor Bihari people. People are suffering from many diseases like Cholera, measles and small pox due to lack of sanitation facilities but they have no place to go for medication and treatment. Women have to give birth at home and mortality rate during delivery is very high and infant mortality is also very high due to lack of medical facilities. This makes the living in the camps a living hell and people have no other option except to live there. Now few Non- Government international and national organizations such as Dhaka Shishu funded by Asian Development Bank and World vision Bangladesh are working to provide free medical care to the neglected and badly effected Bihari people.[152] But these efforts are not enough because it is state that can support and provide these necessities to these people; otherwise it is impossible to handle this problem.

4.3.4 EDUCATION AND EMPLOYMENT

Biharis were not considered as the citizen of Bangladesh and in consequence they were not allowed to enjoy the right of education and employment. They were not allowed to get admission in any school. If somehow anyone gets an admission in any school by concealing his identity, as soon as they find that he is a Bihari, the school authorities expel him from the school. They are forced to do petty jobs such as Rikshaw pulling, sweeping and garbage collecting by the authorities because they lack all kinds of education and no one is ready to give them a decent

[151] Khalid Hussain, "The end of Bihari statelessness", *Forced Migration Review* 32, (2009): 30-31.
[152] Farzana, "The Neglected Stateless Bihari Community", 1-19.

job. It is estimated that almost more than 50 thousand families are living in these camps and only about 500 schools are available to this huge population.[153]

Most of these schools are up to 8th standard and quality of education is very poor. Number of teachers and students is very low as people tries to find any job to earn some money because of poverty. Most of the elderly people are bound to adopt begging as they can't find any work to earn a loaf of bread per day. In this scenario of poverty it is difficult for parents to afford 40 to 70 taka. The government has almost stopped to help these Biharis and now they are all by themselves.[154]

4.3.5 POLITICAL SITUATION

The political situation of Biharis was very poor as they were sided with the Pakistan or East-Pakistan. They were considered as Pakistani and they were treated like enemies by the Bengalis. They faced the discrimination by the authorities at all levels and most of all they were not considered as their citizens so they have no right at all.[155] They were not citizens so they were not part of the political sphere. This inability to present their issues and views played a great role in making their condition worse in Bangladesh. Old Biharis still want to repatriate to Pakistan but all their efforts for repatriation have failed miserably. Both states Pakistan and Bangladesh are not considering their problems seriously and in fact these Biharis feel betrayed by the Pakistan government.

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[153] Ibid.

[154] Kristy Crabtree, "Economic Challenges and Coping Mechanisms in Protracted Displacement: A Case Study of the Rohingya Refugees in Bangladesh y", *Journal of Muslim Mental Health* 5, 1 (New York 2010): 41-58.

[155] Tasmia Persoob, "Social Identity and Its Impact on the Camp Based Urdu Speaking Community in Bangladesh", *Osaka University Knowledge Archives,* URL: http://hdl.handle.net/11094/53813, Accessed on 26-10-2016.

On the other hand new generation of Biharis is willing to integrate in the social and political sphere of Bangladesh. They are fluent in Bengali language and they are very much near to Bengalis as far as their way of living is concerned. They have forgotten the dream of their grandparents of going to Pakistan. They are also not considered as refugees by the Bangladesh government and it is depriving them of many rights that refugees can enjoy. So this new generation of Biharis is willing to stay in Bangladesh and become a part of the society.[156]

In the landmark judgement of the Bangladesh Supreme Court in "Sadakat Khan et al. vs. The Chief Election Commissioner"[157] decided in May, 2008 that all people who were minor or born after 1971 are citizens of Bangladesh and they must be included in the voter lists for elections. After this order efforts were made by the Bihari youth for gaining citizenship but still there are many paths which are yet to be conquered. The most important of them is gaining passport for travelling abroad.[158]

Many citizens have applied for passports but the authorities are refusing to issue passport by saying that the court order does not say anything about passports. But the efforts are underway and Biharis are trying hard to attain their rightful right of citizenship to its fullest benefits.

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[156] Khalid, "Inhuman Camp life of Bihari Urdu speaking ", (2012).

[157] Refugee Review Tribunal, Australia, "RRT Research Response", Number: BGD35056 & BGD35105, (2009).

[158] Khalid, "Inhuman Camp life of Bihari Urdu speaking ", (2012).

4.4 CONCLUSION

This chapter has provided us with the clear picture of current situation of Biharis who are suffering from state backed persecution on the basis of their ethnicity. After the separation of Bangladesh from Pakistan they were considered as stranded Pakistanis by the state authorities because of their allegiance with Pakistan. They suffered discriminatory behaviour by the majority Bengali community because of their Urdu language. They were not considered as citizens until 2008. After the landmark decision of the Bangladesh Supreme Court, they finally got the right of citizenship back. For all those years when the authorities did not consider them as citizens they faced the worst kind of persecution on each front. But now they are considered as citizens and new generation of Biharis is rapidly becoming part of the social and political system of the country. So they are in better position than Rohingya.

CHAPTER 5

CONCLUSION AND SUGGESTIONS

5.1 CONCLUSIVE IDEAS

This thesis lead us to some conclusive ideas after analyzing and understanding the answers of legal issues that were the objective of this thesis. This thesis has provided us with complete knowledge of issue of stateless through the lens of International law. And it has also provided us knowledge about the ambit of rights that are provided by International Law. The in depth study of issue of Rohingya and Biharis has provided us a complete picture of the legal status of these two communities in their respective states. This thesis can be concluded with following findings.

5.2 MAJOR REASONS OF STATELESSNESS

This thesis also highlights the reasons for statelessness. Major reasons are as follows:

5.2.1 RELIGIOUS BELIEFS

Religious affiliation of the people is the most important reason for discrimination that leads to statelessness. This thesis provides us with the example of Rohingya community that is being persecuted just because of their religious beliefs.[159] So religion is the most important factor of discrimination between communities all over the world. In case of Rohingya; their only crime is being a Muslim. Buddhist monks consider the Rohingya Muslims as their religious enemies and due to this they want the Rohingyas to leave the place.

[159] Nehginpao Kipgen, "Addressing the Rohingya Problem", *Journal of Asian and African Studies* 49, (2014): 234-247.

5.2.2 LANGUAGE

This thesis also guides us that language of people is another reason for discrimination. And because of this language people are being persecuted and Biharis are perfect example of this persecution. Bangladesh has declared Bengali as their national language and before its partition the Bengalis have tried to make this Bengali as a national language of Pakistan as well. This phenomenon of language is so important for these Bengalis that they rejected everyone who was and is Urdu speaker. Biharis being Urdu speaking community are facing this dilemma since 1971. Now their new generation has leant the Bengali language and now they are trying to integrate in the society as Bengali speaking people.

5.2.3 POLITICAL AFFILIATIONS

Political affiliation is another reason for discrimination. Biharis are also a perfect example of this discrimination. They sided with Pakistan army in 1971 war because they thought they are with Pakistan government. And being a national of Pakistan it is their duty to support the army of Pakistan. But their support became their worst crime and they were persecuted badly after 1971 war. They were considered as Pakistanis and the state of Bangladesh never accepted them as their citizens just because of this reason. So they face the phenomenon of statelessness because of discrimination on the basis of political affiliation.

5.3 STATELESSNESS: A CONTEMPORARY HUMAN RIGHTS ISSUE

This thesis also makes this fact clear that Statelessness is an important contemporary issue of Human Rights. The study of one of the most persecuted community of the world, Rohingya has made it clear that statelessness in an important issue and needs immediate steps for its control. The world is becoming a place where people and state governments are neglecting Human Rights on state level and this dilemma is making the lives of unfortunate people a living

hell. Statelessness of Rohingya is making the lives of Rohingya people miserable and they are denied all human rights. This is not acceptable especially under the guidelines provided by International Law. So special attention and meaningful measures are necessary for immediate solution of this problem.

5.4 LEGAL STATUS OF BIHARIS AND ROHINGYA

This thesis has guided us to a conclusion that Rohingyas are stateless people actually but Biharis though face statelessness kind of persecution but they are now citizens of Bangladesh legally. So the answer about their legal status is clearly provided by this thesis.

The current situation of Rohingya is a clear and perfect example of statelessness. They are denied all the rights and the state is persecuting them to the extent of annihilation. Even the situation of Rohingya provides us alarming indications of genocide. Genocide is a severe human rights crime in the eyes of International Law. This status of Rohingya needs immediate attention otherwise perpetrators of genocide will be successful in their cruel attempts.

The Biharis are facing bad living standards because of their allegiance with Pakistan and being a rejected community. But with the passage of time the new generation has decided to become a part of social and economic setup of the society. They have learnt Bengali and now they can speak Bengali with ease and they have indulged themselves with Bengalis just like they are Bengalis themselves. They have no attachment with Pakistan and they have no plans of repatriation to Pakistan. After 2008 judgment by the Supreme Court of Bangladesh they are now citizens of Bangladesh and no one can deprive them of their right. Now it's a matter of time that they will become a part of normal Bangladeshi social and economic setup.

5.5 INTERNATIONAL LAW AND STATELESSNESS

It is clear from the study of International documents that International Law defines and recognises Stateless people. It also provides code of rights for stateless people that should be protected by the International Community. It provides:

i. Freedom of religion

ii. Freedom of movement

iii. Right to Education

iv. Right to have gainful employment

v. Right to have legal assistance

vi. Right to have health facilities

vii. Right to have nationality

viii. Right to travel

ix. Right to form associations

x. Freedom from all kinds of discriminations, etc.

So International Law clearly guides and provides complete code of rights of stateless people and considers them more special than normal citizens of a state. It demands the states to acknowledge the plight of these people and protect them and help them to solve their issues. The problem of statelessness should and must be handled according to the guidelines provided by International Law so that this menace may be erased from the face of this earth for good.

5.6 SUGGESTIONS

After the study of International Documents relating to stateless persons and knowing the conditions of Biharis and Rohingya this thesis tries to suggest some measures that should be considered to solve this menace from this world.

5.6.1 CENSUS FOR TRUE ACCOUNT

Census of the area where Rohingyas and Biharis are living is very much necessary. As it is important to know that; how many people are suffering from worst human rights conditions? After this it will be easy to understand the magnitude of the problem. During this census the actual account of atrocities will also come to the knowledge of International Community. It is also an important point to note that Rakhine state of Myanmar where Rohingya people live is rich in natural resources. It is also an important factor because the state authorities want full control over the area and these Rohingyas are an obstacle.

5.6.2 MEDIA CAMPAIGNS

Media campaigns can also play a positive role in highlighting this issue and to create awareness regarding this issue in the world. It is necessary that the whole world must know about this problem so that they collectively try to solve this issue. Rohingya needs immediate attention of the world population so that this population can influence their respective governments to take steps to stop this genocide. Electronic and Social media has gained so much importance in this modern world and use of this forum can create awareness regarding this issue within no time and the world will surely come out to speak for the rights of Stateless people.

5.6.3 STATE'S RESPONSIBILITIES

After analysing the available national and international citizenship and nationality laws and the legal status of the two badly persecuted Muslim communities of the world; namely Rohingya in Myanmar and Biharis in Bangladesh, it came to an understanding that states of the world must take their responsibilities seriously and solve this issue of statelessness from the world. International law has two major documents concerning the rights of Stateless people.

1. Convention Relating to the Status of Stateless Persons, 1954
2. Convention on the Reduction of Statelessness, 1961

These two above mentioned conventions provide complete guidelines for the contracting states to deal with the dilemma of statelessness. They provide the definition of the Stateless people so that we can distinguish a stateless person and these two provide complete code of rights to protect these stateless persons from persecution. These two conventions provide these stateless persons right to live, freedom of movement, freedom to have their political and religious views, freedom to education and self-employment and all other human rights that a normal citizen of any state would want to have.

Apart from these two conventions, another important international document which is a code book of human rights is Universal Declaration of Human Rights, 1948. Article 15 of this declaration state that every person born on this earth has the right of nationality and this right must not be snatched from him. Article 24 (3) of International Convention on Civil and Political Rights, 1966 and Convention on the Elimination of All kinds of Discrimination against Women, 1979 also safeguards the right of nationality of each and every human beings.

So it is a well-established international principle that no one should be without nationality in this whole world. But still there are people who are facing the dilemma of being stateless. No state of the world considers them as their citizens and their situation is worse than the refugees because refugees do have an allegiance with a country and may repatriate back to that state if the conditions become suitable for them.

So states of the world must take positive steps, especially the states which are signatories of above said conventions, to solve this problem. They must raise this issue in United Nations and ask the world to stop this cruel behaviour towards stateless people. There must be unconditional permission to United Nations humanitarian efforts to help out these Rohingya as they are facing extreme problems of hunger and health. There must be efforts to rehabilitate these communities. Developed countries can play their positive role by allowing these Rohingyas to settle in their countries and in this way they again can start their life normally. They must force the states to stop this persecution of stateless persons especially of Rohingyas.

5.6.4 SANCTIONS

International Community from the forum of United Nations can put pressure of Myanmar Government by cutting political ties with them or Economic sanctions can be imposed on them to force Myanmar government to stop this persecution of innocent people. Myanmar is not a very developed state and it needs assistance from all the powerful states of the world. These steps will definitely force Myanmar to stop this persecution.

5.6.5 ROLE OF MUSLIM STATES

Muslim states must help these people financially as well as physically. They must arrange residential places for them in rich countries so that these people may get a place to live.

The condition of the Rohingya community is worst in the whole world because they are facing extreme persecution by the authorities and no state in this world is doing anything to protect them from these atrocities of Myanmar government. They are living in Rakhine state for almost 400 years but still they are not considered as the citizens and that is why they are not protected by any kind of state protection. They are perfect case of statelessness and immediate steps are needed for their safety otherwise soon they will be washed out from the earth.

Powerful Islamic nations and especially Pakistan must have to come forward to protect them. They must highlight this issue through media campaigns and by discussing this dilemma on international forums so that the whole world should know about this crime against humanity. It's a complete genocide of this Muslim community. Muslim community must put pressure on Myanmar government to stop this genocide as Myanmar is not very developed country and it needs help from all the powerful states of the world so the world can influence in this regard. Pakistan has the capability to help these Rohingyas economically as well as militarily. It should take this issue seriously and use its influence at all possible forums to save these Stateless people.

As far as the issue of the situation of Biharis in Bangladesh is concerned, they are not stateless in their current legal situation. They faced this phenomenon of statelessness in past but recent developments especially after the landmark judgement by the Supreme Court of Bangladesh on May, 2008 in the case of "Sadakat Khan Et. All vs Chief Election Commissioner". In this judgement the court has finally decided that these Biharis are citizens of Bangladesh and they must be included in the voter lists. So now it's a matter of time and they will become part of the system. But at the moment they are facing grave problems regarding human rights but legally they are not stateless people anymore. So there is need of humanitarian

efforts to improve their living standards. But as far as their citizenship is concerned legally they are citizens of Bangladesh and they are fighting for their rightful right even the state authorities are not living to do so.

But the most immediate issue to handle is of the Rohingyas as they have no place to go and live. It needs immediate efforts from all over the world and being a Muslim it is our supreme duty to protect our fellow Muslims. But Muslim brothers are not taking this issue seriously and there are no signs of efforts to help these unfortunate Muslims.

BIBLIOGRAPHY

BOOKS

Rahman, Dr. Mizanur. "A community in Transition: The Biharis in Bangladesh". (2003):77.

K. Yin, Robert. "CASE STUDY RESEARCH Design and Methods". *Applied Social Research Methods Series* 5, Ed. 6, (2006): 8-13.

Shearer, Ivan and Opeskin, Brian. "Nationality and Statelessness". (2012).

Waas, Laura Van. "Natioality Matters Statelessness under International Law". (1981):39.

CONVENTIONS AND LEGISLATIONS

Burma Citizenship Law, 1982.

Convention on the Prevention and Protection of the crime of Genocide, 1948.

Convention relating to Status of Refugees, 1951.

Convention relating to the Status of Stateless People, 1954.

Convention on the Reduction of Statelessness, 1961.

Citizenship Act of Bangladesh, 1951.

The Constitution of The Union Of Burma (1974).

Universal Declaration of Human Rights, 1948.

RESEARCH REPORTS

Adama, Dieng . "Report by UN Special Rapporteur on Torture." New York: United Nations. (2016).

Achiron, Ms. Marilyn. *Nationality and Statelessness.* Switzerland: UNHCR, (2005).

""All You Can Do is Pray" Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State", *Human Rights Watch*, (USA 2013).

De Chickera, Amal. and Fitzgerald, Jim. "Protecting the Human Rights of Stateless Persons". Event Report. Geneva. (2010): 3.

Green, Penny. and MacManus, Thomas. and de la Cour Venning, Alicia. "Countdown To Annihilation: Genocide In Myanmar". (2015): 1-106.

Hudson , Manley O. "Nationality including statelessness". (1952):22.

Habibollahi, Aydin and McLean, Hollie and Diker, Yalcin. "*Crimes Against Humanity The Case of the Rohingya People in Burma*". (2013): 127-143.

International Crisis Group, *Myanmar: The Politics of Rakhine State,* (Belgium, 2014) http://www.crisisgroup.org/en/publication-type/media-releases/2014/asia/myanmar-the-politics-of-rakhine-state.aspx.

Khan, Ashrafuzzaman and Samadder, Mrinmoy. "*Living Like Prisoner: Documenting the Experiences of Crime and Insecurity of Bihari Community in Bangladesh*". (2007).

Mandal, Ruma and Gray, Amanda. "Out of the Shadows: The Treatment of Statelessness under International Law". (2014).

Review Tribunal, Refugee. Australia. "RRT Research Response". Number: BGD35056 & BGD35105, (2009).

Simon-Skjodt Center For The Prevention Of Genocide, "They Want Us All To Go Away" Early Warning Signs of Genocide in Burma, (2015): 1-14.

Tomás Ojea Quintana, Special Rapporteur on the situation of Human rights in Myanmar, Human Rights Council, 25th Session, 2 April 2014, A/HRC/25/64, Para 51.

UNHCR. "Handbook on the Protection of Stateless Persons". (2014):50.

U.S. representative on the Advisory Panel of Experts on Freedom of Religion or Belief with the Organization for Democratic Institutions and Human Rights at the Organization for Security and Cooperation in Europe; chairperson of the American Bar Association's Committee on National Security and Civil Liberties.

RESEARCH PAPERS

Abrar, Chowdhury R. "Issues And Constraints In The Repatriation/Rehabilitation Of The Rohingya And Chakma Refugees And The Bharis", Paper presented at *Conference of Scholars and other Professionals Working on Refugees and the Displaced Persons in South Asia,* (1998).

Allard K. Lowenstein International Human Rights Clinic, "Persecution Of The Rohingya Muslims: Is Genocide Occurring In Myanmar's Rakhine State?", *Fortify Rights, Yale Law School,* (2015).

Abdelkader, Engy. "The Rohingya Muslims in Myanmar: Past, Present, and Future". *Oregon Review Of International Law* 15, (2013): 101-119.

Bashar, Iftekharul. "Unresolved Statelessness: The Case of Biharis in Bangladesh". *Journal of International Affairs* 10, (2006).

Belton, Kristy. "THE GREAT DIVIDE: CITIZENSHIP AND STATELESSNESS". *University of Central Florida, (*Orlando 2005): 1.

Culliton-Gonz´alez, Katherine. "Born in the Americas: Birthright Citizenship and Human Rights". *Harvard Human Rights Journal* 25. (2012):127-182.

Chowdhury R Abrar, "Issues And Constraints In The Repatriation/Rehabilitation Of The Rohingya And Chakma Refugees And The Bharis", paper presented at Conference of Scholars and other Professionals Working on *Refugees and the Displaced Persons in South Asia,* Bangladesh, 1998.

Crabtree, Kristy. "Economic Challenges and Coping Mechanisms in Protracted Displacement: A Case Study of the Rohingya Refugees in Bangladesh". *Journal of Muslim Mental Health* 5, 1 (New York 2010): 41-58.

Darling, Kate. "Protection of Stateless Persons in International Asylum and Refugee Law". *International Journal of Refugee Law* 21, 4 (2009): 742-767.

Farzana, Kazi Fahmida. "The Neglected Stateless Bihari Community in Bangladesh: Victims of Political and Diplomatic Onslaught". *Journal of Humanities & Social Sciences* 2, (2008): 1-19.

Fullerton, Maryellen. "Without Protection: Refugees and Statelessness A Commentary and Challenge". (2013):1.

Hussain, Khalid. "The end of Bihari statelessness". *Forced Migration Review* 32, (2009): 30-31.

Hukil, Roomana. & Shaunik, Nayantara. "The Rohingyas of Myanmar". *Institute of Peace and Conflict Studies,* (2013): 1-8.

Hussain, Khalid. "Inhuman Camp life of Bihari Urdu speaking linguistic minority of Bangladesh: Patterns of inequality, discrimination, political and social marginalization of affected Bihari Urdu Speaking community in Bangladesh". *Bangladesh Universal Periodic Review*, (2012).

Jay Milbrandt, "Stateless", *Research Paper, Pepperdine University School of Law*, (2013): 17.

Kipgen, Nehginpao. "Addressing the Rohingya Problem". *Journal of Asian and African Studies* 49, (2014):234-247.

Kelley, Ninette. "Ideas, Interests and Institutions: Conceding Citizenship in Bangladesh". *University of Toronto Law Journal 60, 2* (2010): 349-371.

Macklin, Audrey. "Who Is the Citizen's Other? Considering the Heft of Citizenship". *Theoretical Inquiries in Law* 8, 2 (2007): 341.

Md Zahed, Iqthyer Uddin. "A Theoretical Analysis of Stranded Biharis in Bangladesh: Seeking for nationality since four decades". *International Journal of Advanced Research* 1, 8 (2013): 62-68.

Nikolic, Natasa. "DE JURE STATELESSNESS IN SERBIA". (2013).

Nemoto, Kei. "The Rohingya Issue:A Thorny Obstacle between Burma (Myanmar) and Bangladesh". *Institute of Developing Economies*, (2004) 1-19.

Nehginpao Kipgen, "Addressing the Rohingya Problem", *Journal of Asian and African Studies* 49, (2014): 234-247.

Persoob, Tasmia. "Social Identity and Its Impact on the Camp Based Urdu Speaking Community in Bangladesh". *Osaka University Knowledge Archives.* URL: http://hdl.handle.net/11094/53813, Accessed on 26-10-2016.

Ramji-Nogales, Jaya. "'The Right to Have Rights': Undocumented Migrants and State Protection". *Kansas Law Review 63,* (2015): 1045.

Rahman, Md Mustakimur. "Existing Paradox In The Nationality Status Of Biharis In Bangladesh: An Appraisal". *Notre Dam University*, (2016) SSRN: https://ssrn.com/abstract=2819280.

Ramji-Nogales, Jaya. "'The Right to Have Rights': Undocumented Migrants and State Protection". (2015).

Rowley, Jennifer. "Using Case Studies in Research". *Management Research News* 25, 1 (2002):16-27.

Sattar, Nida. "The Rejected Biharis". *Hydra Interdisciplinary Journal of Social Science* 1, 2 (2013): 13-24.

Sen, Sumit. "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia". *International Journal of Refugee Law* 11, 4 (1999): 41-70.

Zainal, Zaidah. "Case study as a research method". Academy *of Management Review,* (1997):

301-316.

NEWS REPORTS

Stanton, Maung Zarni And Gregory. 2016. "Sorry, Aung San Suu Kyi, the Rohingya Crisis Is No Laughing Matter." *The Wire*, December 6. http://thewire.in/84714/rohingya-myanmar-aung-san-suu-kyi/.

WEB ACCESSED

http://www.statelesspeopleinbangladesh.net/camp_location.php. Accessed on 23-02-2017.

http://www.rfa.org/english/news/myanmar/tension-06112012190558.html/. Accessed on 20-12-2016.