

Understanding the rohingya crisis: a comparative analysis of the citizenship laws and constitution of Myanmar

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The current crisis in Myanmar concerning the Rohingya people has resulted in a huge number of stateless refugees. An answer to the citizenship of these refugees is urgently required. This study summarizes the comparative analysis of the existing citizenship framework of Myanmar with the older version. After briefly reviewing earlier legal framework Citizenship Law of the Union 1948 concomitant to the 1947 Constitution of Burma, the study analyzes the changes made in Citizenship Law of Burma 1982 concomitant to the 1974 Constitution. Major results from the empirical studies conducted earlier suggest that there exist three types of citizenship in Myanmar while this study has found that there are four types of citizenship prevails in Myanmar. The study also has come out with the finding that there exists very little scope for Myanmar government to legalize a large number of Rohingya populations unless the Law is revised first. Therefore, the government should focus on the revision of the law if it really wants to prove its good intention for a sustainable solution.

Key Words: Refugee, stateless, citizenship, sustainable solution, revision of law

INTRODUCTION

Rohingya, the Muslim minority of the northern part of Rakhine State of Myanmar, has become the subject of “the world’s fastest-growing refugee crisis” (UNHCR 2017) United Nations High Commissioner for Human Rights, in his speech before world capitals at United Nations, termed the situation as “a textbook example of ethnic cleansing” (United Nation Human Right 2017) causing more than 700,000 refugees to flee to Bangladesh. However, the Myanmar Government denies any sort of genocide or ethnic cleansing and claims the situation in Rakhine state as unsubstantiated chatter or propaganda tactics. The issue has categorically questioned human solidarity and adequacy of the focus of the world on what is happening in Myanmar. It carries further disappointment as the world sees the situation is getting worse

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and intricate without any indication of the sustainable solution while Myanmar's de facto leader Nobel Laureate Aung San Suu Kyi's party National League for Democracy is in power.

The Rakhine State of Myanmar, formerly known as Arakan, was settled by the Arab Muslim traders since the beginning of the 7th century (Kyaw 2008). These people, with collective cultural and ethnic identity, identify themselves as 'Rohingya'. Their existence was empirically established by the 1931 Census of India³, the Constitution of the Union of Burma (1947) and The Union Citizenship (Election) Act, 1948. Yet, the Rakhine scholars oppose these facts by presenting Rohingya Muslims as aftermath migrants of the Arakan annexation by the British in 1824 and illegal migrants afterward (Pugh 2013). They do not recognize the name 'Rohingya'; rather term them as 'Bengalis' indicating that these people are illegal intruders from Bangladesh. The Rohingya people participated in the general election and became members of parliament and Ministers, enjoyed total freedom of movement as well as livelihood including full access to higher education until 1982 when the new Citizenship Act of Myanmar was introduced by the then military government (South 2017). The controversial Act, found to be non-compliant with internationally agreed norms and principles, denies neither the Rohingya's recognition as national nor an ethnic minority group (Advisory Commission on Rakhine State 2017). Asia Report N 261(2014) found that the successor military regimes continued leveling them as intruders (Bengalis), separatists, and insurgents, and using them as political pawns to control Rakhine people who are deeply embedded with institutionalized Islamophobia. Thus, Rohingyas have increasingly become targets of military campaigns, citizenship revocation, and subsequent rights violation as well as animosity of mainstream Buddhists which altogether gradually led them to be acutely discriminated, persecuted, disenfranchised stateless people with bottomless grievances. This systematic denial of their rights along with violent atrocities is linked with the massive exodus of Rohingya into Bangladesh in 1978, 1991-92, 2012 and 2017 (Dapice, Rakhine State: Dangers and Opportunities 2017). This continued influx over decades in Bangladesh (more than a million Rohingyas) as well as in other countries like Malaysia, Pakistan, India, and other Middle Eastern Countries (approx. another one million) has affected sustainability and security in the region.

In 2016, the State Counsellor of Myanmar, Aung San Suu Kyi, established an Advisory Commission in collaboration with Kofi Annan Foundation and the Office of the State Counsellor with an ambition to find a sustainable solution to the Rohingya crisis and the commission recommends revisiting the law as one of the sustainable solutions. This has also been emphasized by UN

³Detailed analysis can be found at Baxter Committee report, 1940 on indigenoussness of Indians in Arakan based on Census

Human Rights Council Special Rapporteur. The Council, 2018 Report also asserted,

“if Myanmar truly wants to break the cycle of violence in Rakhine, this can only be achieved by recognizing the ‘Rohingyas’ right to self-identify, restoring their citizenship and upholding their human rights”.

Although many studies and international organizations have recommended that giving citizenship is the only way for a sustainable solution, however, no attempts has not seen yet from Myanmar government to amend the Burma Citizenship Law 1982. Instead, the government’s approach appears that it limits itself to an unchanged position just as before. The study, therefore, aims examines if there exists any legal scope to accommodate the Rohingya population in Myanmar in such a way that ensures long-term sustainability. In pursuing this objective, the study compares the existing laws in Myanmar with its former laws to examine how and which sections of the existing Burma Citizenship Law (1982) cause failure in bringing a sustainable solution in the country.

METHODOLOGY

This is basically depending on Desktop/ Secondary source based research, available documents will be reviewed critically. The study summarizes the comparative analysis of the existing citizenship framework of Myanmar with the older version.

Inter-linkage of Myanmar’s Citizenship Law to Rohingya Crisis

In terms of cultural diversity, ethnicity, and distinctiveness, Myanmar is one of the very few countries that are supposed to be very proud of itself. Out of its total population of only around 53 million, the government officially recognized 135 ethnic groups (Taylor 2015). Unfortunately, the history of Myanmar recorded many unfortunate events involving clashes and tensions among ethnic groups. As mentioned earlier, conflict with the Muslim community in the northern part of Rakhine State is the biggest strife resulting in more than 2 million people stateless⁴. Although the reasons behind this long continuing crisis are many, however, the 1982 Citizenship Law of Myanmar being instrumental for marginalizing the Rohingya as well as the proof for establishing rationality of the heinous crime against the humanity. Therefore, almost all international bodies and research unanimously suggest for the amendment of the citizenship law.

Myanmar’s citizenship framework has been igniting tensions within the country since the 1970s particularly in the Rakhine State that shares a border with Bangladesh (Arraiza 2017). It was General Ne Win’s regime (1962-1988) when the tension took a significant rise. General Ne Win authorized a scrutiny

⁴ ibid

to determine who is a full citizen or an intruder i.e. illegal migrants or descendants of unrecognized groups of people. The scrutiny system was based on 1982 Citizenship Law and its conducting standards⁵ of 1983 that offers different statuses and entitlement of rights among classes of citizens. Arraiza (2017) noted that the outcome of the scrutiny resulted in a large number of 'others' (unfit for any citizenship status as per Law). To perceive the number of people descended from these 'others', we can refer to the 2014 Myanmar Housing and Population Census, The Union Report, where 11,000,207 people were listed lacking valid identity (27.3% of the total population). Obviously, the whole 11 million people are not being persecuted due to the Law, but it indeed does to more than 2 million (as of today) Rohingyas living in Myanmar or abroad.

Saito (2006) emphasized that despite having categories in previous laws, the newly drafted 1982 Citizenship Law was based on 'pure bloodlines' i.e. dividing citizens into indigenous and non-indigenous nationals as well as doubting the trustworthiness of the associate or naturalized citizens. General Ne Win's government was not ready to accept other, especially Rohingyas as the citizen of Myanmar (Mallat & Connors 1990).

It seems that General Ne Win wanted to distinguish the people settled after First Anglo-Burmese War (1824–26) and referring Muslims of Rakhine as the new-settlers meaning not legal citizens. The objective of dividing people or marginalizing a group of people who live in the country for centuries clearly gives a legal ground for ethnic tensions among people. At this point, the history of legislative structure pertinent to citizenship is analyzed below:

Timeline of Founding Legal Layout with Particular Reference to Muslims in Rakhine

Available historical accounts reveal that Myanmar has been home to different ethnic groups for centuries including Muslims. Thein (2016) as stated in Arraiza, 2017, recorded as many as eleven Muslim groups in Myanmar. The existence of Muslims is never actually denied by anyone. Before British colonization (prior to 1824), the land was ruled by dynasties of monarchs. The problem basically started after British gained control over Arakan (Rakhine) and Tenasserim (Thanintaryi) provinces as the aftermath of First Anglo-Burmese War (1824–26). Since three bordering countries of today i.e. Myanmar, Bangladesh, and India, were once under one British rule, many people shifted and started living in different places in Burma for livelihood. Baxter Committee report, 1940⁶ on indigenes of Indians in Arakan (Rakhine) stated that 23 % of Indians of Arakan (50,565 out of 217,801) were born in India but settled in Burma. The rest of the population was recognized with the right to citizenship indifferent legal documents from 1935 to 1947

⁵Procedures on Citizenship Law was enacted on 20th September 1983 that describes how the government bodies issue Citizenship Scrutiny Card and National ID with birth and death certificates ((Aung, 2007)

⁶ Link of Baxter, 1940 is included in Reference Section of the paper

and was further guaranteed in the Constitution of Myanmar of 1948. He also mentioned in his report “The migration from India to Myanmar is no new thing. It has been going on as far back as Burmese history can be traced through its chronicles and legendary lore.”

In 1940, British government enacted a law named “Registration of Foreigners Act” that required the foreigners to register to get a Foreigner Recognition Card (FRC) along with the existing The Myanmar Passport Act, 1920. These Laws, as well as Baxter (1940), indicates the possibility of the fact that the government and people of Myanmar had been deeply concerned over the infiltration of foreigners. Several British government documents registered the concern and the colonial period was marked with many bloody clashes and struggle of the British government to manage the issue. However, no law had ever discussed or defined ‘Citizens’ during the British era. Moreover, there lacks adequate data or evidence to prove who among the unrecognized population has root before 1823, the cutting-off year set by the Myanmar government to determine indigenoussness in the 1982 Law. Rohingya leaders claimed that the cutting-off year 1823 is set from mala-fide intention (Chan 2005). The British annexation of Arakan was the second occupation followed by the first one by Burmese in 1784. Before 1784, Arakan used to be an independent kingdom (Alam 1999). Many Arakanese was forcibly shifted to Central Burma; many took shelter in British Bengal due to extreme oppression (Charney 1999). The rule of 1982 Citizenship law is therefore necessitated to consider the forced migration happened during that period. Again, Arakan, being the renowned hub of trade for centuries, had attracted many Burmese to settle down for livelihood (Chan 2005).

However, according to the Constitution 1947 of Union of Burma, “there shall be no citizenship of the unit as distinct from the citizenship of the Union”. The Article 11 of the constitution provided for the following categories which were inclusive in nature and the Rohingyas were entitled to full citizenship under the constitutional provisions.

The Constitution also adopted on the basis of both principles *Jus sanguinis* and *solii*⁷. Under the 1948 Constitution, the government of Burma enacted ‘The Union Citizenship (Election) Act, 1948’ which identified races that had settled in the territory as permanent home before 1823 as indigenous people of Burma. According to the law, those who did not belong to the indigenous category would also be given certificates of naturalization under article 11 of the constitution. However, there were not any discriminatory provisions for the bearers of certificates of naturalization. Furthermore, the following qualifications were determined for eligibility of certificate of naturalization: a) applicant has to complete the age of 18 years; b) have to reside in the Union for five years c) have to be of good character and be able to speak any

⁷According to Oxford Reference, “jus sanguinis is the principle that the nationality of children is the same as that of their parents, irrespective of their place of birth. This contrasts with * *jus soli*, whereby nationality is dependent on place of birth.”

indigenous language. Apart from these, a foreigner married to a citizen upon no less than one year of continuous stay could apply for a certificate of citizenship.

Features of the Union Citizenship Act, 1948

In the Union Citizenship Act, 1948, there were provisions for two wings of citizenship certificates: 1. Certificate of Citizenship (Sec 5-6), 2. Certificate of Naturalization (Sec7) According to the Section 3, the indigenous races including Arakanese, Burmese, Chin, Kachin, Kayah, Mon, Shan and other racial groups who were living in any of the territories from a period anterior to 1823 AD (1185 B.E.) were recognized as Union's citizen. Through 1947 Constitution and 1948 citizenship act, the country first ever attempted to define the nation's indigene. It appears that the citizenship and indigene structure was accommodative and broad in the law. It was likely to have created a comfortable atmosphere for Rohingyas and other unlisted groups to remain less concerned for the citizenship process. Again, the term 'Arakanese' colloquially include Muslims in Arakan that caused tension among the population in Myanmar (Saw 2005).

As per the section 4(1), the person who had citizenship certificate or naturalization certificate or who had otherwise been granted the status of a citizen under that Act continued to be the citizen of the Union, until he or she had lost their citizenship right. Section 4(2) denoted that, Any person descended from ancestors who for two generations at least have all made any of the territories included within the Union their permanent home and whose parents and himself were born in any of such territories shall be deemed to be a citizen of the Union. According to section 5, there were three types of persons who were capable of being citizens such as

- (a) A child born in the Union one of whose parents is a citizen;
- (b) A child born outside the Union of a father who is a citizen; [registration required]
- (c) A child born outside the Union of a parent who, being a citizen was at the time of child's birth in the service of the Union.

Under section 6, the grant of a certificate of citizenship is dependent on the discretionary power the Minister nominated by the Union. Section 7 denoted that, any person who wanted to get a certificate of naturalization had to be of eighteen years old, a minimum stay of five years in the state, of good character and knowledge any of the indigenous languages. In addition, the person must intend to stay in the Union, renounce foreign citizenship and declare to remain loyal. However, the majority of the population did not receive Union citizenship certificates in 21 years after independence despite having the two acts due to anti-fascist nature of the government (Kyaw 2017).

These laws include liberal views on the people and citizenship was not a concern for Rohingyas as they took part in successive elections, became MPs and Ministers, and enjoyed access to higher education as well as total freedom

of movement and livelihood. The necessity of showing proof for citizenship was also relaxed by a court verdict in the 1965⁸ making the registration mandatory only for the foreigners. Kyaw (2017) also added that the government initiated registration of its people by issuing National Registration Card (NRC) in 1949. With a different color for male and female, the government had issued 18 million NRCs by 1960. Another Temporary Registration Card (TRC) colloquially known as White Card was issued to avoid risk from loss, damage, etc.

In 1962, General Ne Win's Revolutionary Council overthrew the constitutionally elected government and assumed the power. During his period, a new constitution was enacted in 1974 where the 'citizen' has been defined as "All persons born of parents both of whom are nationals of the Socialist Republic of the Union of Burma are citizens of the Union. Persons who are vested with citizenship according to existing laws on the date this Constitution comes into force are also citizens⁹." This constitution has recognized Arakan as ethnic minority state, but the fate of Rohingyas remained vague because of existing 1948 Citizenship Law as the state law of citizenship. This change in the 1974 Constitution paved the way for drafting of a new citizenship law to redefine criteria for citizenship, naturalization, and revocation of citizenship. The 1948 Law was in force until 1982 when the new citizenship law was enacted. It, therefore, appears that state had no systematic or even uncontroversial medium to deny the legislative rights of Rohingyas. However, the period experienced a debate of their origin with the lean towards terming as 'Bengalis'. In such situation, the authorities started a census named 'Operation Naga Min' to screen out foreigners with renewed zeal and caused a large exodus (more than a quarter million people) took place in 1978 in Bangladesh territory (Elahi 1987). Massive destruction of Rohingya properties also held by Buddhist Arakanese while the authority remained almost silent by taking no effective actions to stop the massacre (Yegar 2002). Refugees reported that the Burmese army had forcibly evicted them and alleged widespread army brutality, rape, and murder (Smith 1991). After long discussions and international pressure, the Myanmar government agreed to repatriate with conditions those who have the lawful residents of Burma and who are now sheltered in the camps in Bangladesh on the presentation of 'Burmese National Registration Cards'. The government also agreed to bring back those who would show evidence of their residence in Myanmar.¹⁰

Features of the Burma Citizenship Law, 1982

⁸Supreme Court of the Union of Burma, Peer Mohamed v. Union of Burma, 1965 B. L. R. (C.C.) 51 clarified that citizens who automatically acquired citizenship under section 4(2), were not required to submit Union Certificate of Citizenship issued under Article 6(2).

⁹ Article 145 (a & b) of 1974 constitution

¹⁰1978 Repatriation Agreement

After the promulgation of the Burma Citizenship Act, 1982, the citizenship right of the Muslim Rohingya community in Myanmar is infringed in a drastic way (Dapice 2017). Notably, the aforementioned fact has been debated by the Burmese authority since inception. The authority has also been denying the violation of human and other fundamental rights on the ground that these ‘so-called’ Rohingyas which they regard as ‘Bengalis’ are not their citizens according to the law. They also claimed that these people do not possess any valid proof or evidence that satisfies the state’s law to recognize them as lawful citizens (Country Policy and Information Team, 2017). This study mentioned earlier that the intention behind enacting the Burma Citizenship Law, 1982 does not possess any affirmative treatment for ‘others’. While myriad reports, analysis, discussions from scholars, think tanks, international bodies and many others refer the Burma Citizenship Law 1982 as crucial catalyst behind the Rohingya issue, according to Cheesman (2015) “Myanmar’s citizenship law contains no reference to the 135 ethnic groups that today make up the country’s official “national races”. Nor does it include any specific sections to deny Rohingya citizenship.” The new Law prescribed four kinds of citizenship¹¹: 1. Citizen by birth 2. Citizenship 3. Associate Citizen 4. Naturalized Citizen. Detailed analysis of the four kinds of citizenship is furnished below:

Table 1: Comparison among types of citizenship prescribed by Burma Citizenship Law, 1982

	Citizenship by birth	Citizenship	Associate Citizenship	Naturalized citizenship
Definition & Criteria	Nationals (Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine, and Shan are citizens by birth [Art 3])	- Ethnic groups (135 recognized officially) that settled in the territory before 1823 AD [Art 3] - A person already recognized as a citizen by the 1948 Law [Art-6]	- Applicants under 1948 Citizenship Law conforming to the stipulations and qualifications [Art-23]	Persons that have entered and resided in the territory before 04 January 1948 and their offspring, if not yet applied under 1948 citizenship law [Art 42]

¹¹Almost all previous analysis regarding citizenship in Myanmar (for example Arraiza, 2017, Haque, 2014) claimed that there exists three types of citizenships in Myanmar. This study has found that there are four different types of citizenships. The differences are discussed in the later part of the study.

Eligibility	<ul style="list-style-type: none"> - Persons born of parents are both of who are nationals are citizens by birth; [Art 5] 	<ul style="list-style-type: none"> - Both parents are citizens - One parent is a citizen and other is an associate citizen/naturalized citizen - One parent is a citizen/associate/naturalized citizen and other is born of parents both of whom are any combination of associate/Naturalized citizens [Art 7] 	<ul style="list-style-type: none"> - Must make an affirmation physically [Art-24] - Child of associate citizens whose name is listed with parents and must make an affirmation before 22 years of age [Art-23] 	<ul style="list-style-type: none"> - need to furnish conclusive evidence by themselves [Art 42] - Must make an affirmation physically [Art-46] - One parent is a citizen/associate/naturalized and other is a foreigner - One parent is an associate and other is a naturalized citizen - Both parents are naturalized [Art 43] - a foreigner married to a citizen/associate/naturalized may apply upon three years of continuous stay [Art 45(e)] - Child of naturalized citizens whose name is listed with parents and must make an affirmation before 22 years of age [Art-47-50]
Conferability	<p>Council decides whether any ethnic group is national or not [Art 4]</p>	<p>Council of State may confer [Art-8(a)]</p>	<p>Council of State may confer [Art-8(a)]</p>	<p>Council of State may confer [Art-8(a)]</p>
Entitlement of	<p>Entitled to enjoy</p>	<p>Entitled to enjoy the all rights prescribed</p>	<p>Entitled to enjoy the</p>	<p>Entitled to enjoy the rights of a citizen, with</p>

rights	the all rights prescribed by the law of the State [Art 12(c)]	by the law of the State [Art 12(c)]	rights of a citizen, with the exception of the rights stipulated from time to time by the Council of State	the exception of the rights stipulated from time to time by the Council of State
Qualifications	No dual citizenship [Art 16]	<ul style="list-style-type: none"> - must respect and abide by the laws of the state - Discharge duties prescribed by the laws - No dual citizenship - Can't renounce citizenship during war [Art 12, 13, 14] 	<ul style="list-style-type: none"> - parents must not lose associate citizenship before the child make an affirmation [Art 29] - must respect and abide by the laws of the state - Discharge the duties as prescribed by the laws - No dual citizenship - Can't renounce citizenship during a war [Art 30-34] 	<ul style="list-style-type: none"> - All qualities as same as associate citizens [Art 51, 53, 54-57] - have to complete the age of eighteen years - be able to speak well one of the national languages - be of good character and sound mind - has to be the only husband or wife in case of foreigner spouse [Art 45]
Revocability	- Citizenship by birth is	- The State may revoke the citizenship of any person in the	- The Council of State may revoke the	- The Council of State may revoke the naturalized citizenship of any person in the

	not revocable	interest of the State	associate citizenship of any person in the interest of the State	interest of the State
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Table 2: Impact of Rules and Practices before and after Enactment of the Burma Citizenship Law, 1982 upon Rohingya

Aspect	Scenario before enactment of Burma Citizenship Law 1982	Scenario after enactment of Burma Citizenship Law 1982
Legal Basis	<ul style="list-style-type: none"> (i) The Constitution of the Union of Burma, 1947 (ii) The Union Citizenship Act, 1948 (iii) The Union Citizenship (Election) Act, 1948 (iv) The Union Citizenship Regulations, 1949 	<ul style="list-style-type: none"> (i) The Constitution of the Union of Burma, 1974 (ii) The Burma Citizenship Law, 1982 (iii) Procedures on Citizenship Law, 1983
Constitutional Provisions	<p>Rohingyas were fully eligible to get the same citizenship status as any other races since Article 11(i) of the Constitution, and Section 3(1) of Citizenship Act recognize Arakanese as the indigenous races of Burma. Article 11(ii)-(iv) was also very befitting for all Rohingyas to be recognized as citizens. [Refer to Table:1]</p>	<p>Article 145 (a) states “All persons born of parents both of whom are nationals of the Socialist Republic of the Union of Burma are citizens of the Union;” Here, the attention goes to the word ‘nationals’ previous constitution and laws said ‘indigenous race’.</p> <p>Article 146 Citizenship, naturalization, and revocation of citizenship shall be as prescribed by law.</p> <p>The Articles necessitate revision of the previous citizenship law. At the same time, the constitution omits the previous definition of citizenship. Therefore, Rohingyas lose to claim constitutional provision in their favor.</p>
Types of	Only one type of citizenship	Four types of citizenship prescribed:

Citizenship	<p>prescribed:</p> <p>1) Citizenship of the Union</p> <p>[Rohingyas enjoyed as equal status as any other races in Myanmar; the rights applies in case of Certificate of Naturalization]</p>	<p>1) Citizenship by birth 2) Citizenship 3) Associate citizenship 4) Naturalized citizenship</p> <p>[Rohingyas, at best, fall in category 2,3 or 4]</p>
Defining criterion	<p>Rohingyas complies with the denoted provisions to apply for or to be a citizen.</p>	<p>The Citizenship Law defines ‘Nationals’ where Arakanese was replaced by Rakhine. The change in the name has connection Rohingya since Arakan is a more affiliated term for them.</p> <p>Rohingyas were not recognized in official ethnic groups nor in nationals in the definition prescribed by Citizenship Law. Therefore, the year 1823 AD does not purview them. However, they fall in Associate/Naturalized category subject to compliances prescribed by the Law. Most importantly, they have to prove by themselves with proper evidence that they conform to the rules, which is practically impossible for many Rohingyas. The study has not found sufficient information on how central body determines citizen/associate/naturalized citizens. There was no representation from the Rohingya in the Central Body as well.</p>
Eligibility by parentage	<p>Citizenship of the Union</p> <ul style="list-style-type: none"> - Persons descended from ancestors who for two generations made any of the territories their permanent home [befitting for Rohingyas]; - Persons whose parents and themselves were born in the 	<p>Citizenship by birth</p> <ul style="list-style-type: none"> - Persons born of parents both of whom are nationals [Sec 5] <p>[Rohingyas are not eligible in this category]</p> <p>Citizenship</p>

	<p>territory [befitting for Rohingyas];</p> <ul style="list-style-type: none"> - A child born in the Union at least one of whose parents is a citizen; - A child born outside the country whose father is a citizen; - Minor children whose names are included in the certificate of citizenship/naturalization; - Children born in the Union of parents none of whom are citizens but both are permanently residing in the Union may apply for citizenship within one year of attaining majority. (applicant has also to be a permanent resident) ¹² <p>[The study has not found any concern for Rohingyas to be ineligible for citizenship]</p>	<ol style="list-style-type: none"> 1) Both parents are citizens, 2) One parent is a citizen and other is an associate citizen/naturalized citizen, 3) One parent is an associate /naturalized citizen and other is born of parents both of whom are associate citizens/both of whom are naturalized citizens/one is an associate citizen and another is a naturalized citizen. <p>[A typical Rohingya with associate /naturalized citizen has to wait for two to three generations to become a citizen and ceteris paribus]</p> <p>Associate Citizenship</p> <ul style="list-style-type: none"> - Children of associate citizens whose name had been mentioned in the application made under 1848 citizenship Law. <p>[A typical Rohingya with Associate Citizenship has to remain in this category for infinite time unless married to a citizen and wait for next generation]</p> <p>Naturalized Citizenship</p> <ol style="list-style-type: none"> 1) One parent is a citizen/associate citizen/naturalized citizen and other is a foreigner 2) One parent is an associate citizen and other is a naturalized citizen 3) Both parents are naturalized citizen¹³ <p>[A typical Rohingya with Naturalized Citizenship has to remain in this category for infinite</p>
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¹²Section 5 of the Union Citizenship Act, 1947

¹³ section 7 of the Burma Citizenship Act, 1982

		time unless married to a citizen and wait for next generation]
Entitlement of rights	There prevailed equal rights and opportunities for all citizens, so were for Rohingyas.	Citizens by birth and Citizens are entitled to enjoy the all rights prescribed by the law of the State while Associate/ Naturalized Citizens enjoy the rights of a citizen, with the exception of the rights stipulated from time to time by the Council of State. Therefore, Rohingyas having Associate/Naturalized citizenship enjoy a bit less. However, Rohingyas with no identity are entitled to enjoy nothing as prescribed which is the ground reality of today.
Children's right to citizenship	-Children's rights to citizenship ensured. Minor children whose names are included in the certificate of citizenship/naturalization are <i>ipso facto</i> citizens. Declaration of allegiance upon reaching 18 years would be required. ¹⁴ - Loss of citizenship by parents did not deprive the child who was citizen earlier. ¹⁵	- Children of Associate and naturalized citizens are not entitled to citizenship. They can be associate and naturalized citizens conditionally. -Children ceased to be associate ¹⁶ /naturalized ¹⁷ citizens when both parent or one parent (in case other is a foreigner) loss associate/naturalized citizenship
Naturalization Process	-Minister may grant a certificate of naturalization to an alien on the following conditions: 1) is of 18 years old; 2) has resided in the Union for five years 3) have to be of good character and able to speak any	-Persons who fulfill ancestral requirements along with the following previous qualifications may be naturalized; 1) have to complete the age of eighteen years 2) be able to speak well one of the national languages 3) be of good character and

¹⁴Section 12 (2) (4) of the Union Citizenship Act, 1948

¹⁵ Section 14 of the Union Citizenship Act, 1948

¹⁶ Section 29(b) of the Burma Citizenship Act, 1982

¹⁷ Section 51 of the Burma Citizenship Act, 1982

	<p>indigenous language; [Section 7]</p> <p>-Foreigner woman married to a citizen upon no less than one year of continuous stay may apply for a certificate of citizenship. [Section 11]</p> <p>-Naturalization is equivalent to citizenship and it is convertible after fulfilling required conditions.</p> <p>-Grant of certificate of naturalization shall be in the discretion of Minister. [Section 7]</p>	<p>sound mind</p> <p>[Rohingyas' ancestral evidence is not satisfactory to the Government. It also lacks due proof. Moreover, Rohingyas spoken language is not recognized; making many of them ineligible]</p> <p>-Foreigner, holding Foreigner Registration Certificate, married to a citizen/associate/naturalized citizen may also apply upon three years of continuous stay (has to be the only husband or wife in case of foreigner spouse)</p> <p>[Polygamy is widely seen among Rohingyas causing them unfit in relevant cases]</p> <p>-Naturalization leads of naturalized citizenship</p> <p>-Grant of naturalized citizenship is in the discretion of Central Body. ¹⁸</p>
<p>Revocability/ Cessation</p>	<p>Since there prevailed only one sort of citizenship and naturalized certificate holders were not discriminated, both cessation and revocation of citizenship applied equally to all. A citizenship/naturalized certificate would be ceased if the holder of that acquires or does not renounce foreign citizenship. Similarly, Citizenship/Certificate of Naturalization will be revoked if the holder uses a fraudulent way to acquire it, shows disloyalty to the Union, involves in unlawful trading/communication with enemy state, commits anything</p>	<p>Here exists the most potential threat and vulnerability to Rohingyas. Cessation and revocation criteria are more or less the same as before (as mentioned in left side), but it has been applied to different categories of citizens. It is explained as follows:</p> <p>Citizenship by birth:</p> <p>This status is not revocable by anyone by any means unless the person acquires foreign citizenship.</p> <p>Citizenship:</p> <p>Citizenship can be revoked by the Council of State in the interest of the State. It is also revocable by</p>

¹⁸ Section 68 of the Burma Citizenship Act, 1982

	<p>that affects sovereignty, and <i>is sentenced for a minimum term of one year or a fine of one thousand Kyat (less than one US Dollar as of 2018) for committing an offence of moral turpitude</i>¹⁹, is a residence of a foreign country for more than five years without registration, is of bad character as to prejudice the public interest, and injure the safety, public order or interest of the Union</p>	<p>acquiring foreign citizenship, using fraudulence to acquire citizenship, and holding canceled citizenship documents.</p> <p>Associate/Naturalized Citizenship:</p> <p>It basically includes all sorts of possible criteria. Rohingyas, if categorized, match the highest in either Associate or Naturalized category. However, this status can be revoked in the interest of the State; unlawfully trading/communicating with enemy countries/with citizens of such countries/with organizations or their members which are hostile to the State and assist them during a war; transmitting state secrecy to any person/country/ organization; any abetting acts mentioned above; committing/attempting an act likely to endanger state sovereignty/ state security/public peace; showing disaffection or disloyalty to the State; <i>being sentenced for a minimum term of one year or a fine of one thousand Kyat (less than one US Dollar) for committing an offence of moral turpitude.</i> [refer to Table 2]</p> <p>Passing two to three generations to get citizenship by complying above conditions raises the very fundamental and curious question, “How is it possible to maintain?” It perhaps tenders the most vulnerability/threat to a sustainable solution.</p>
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<p>Decision-making Procedures</p>	<p>-Bureaucratic procedures are less because Minister is the highest authority.</p>	<p>-Council of State is the highest authority and Central Body is the working level authority. It appears that the bureaucratic procedures are lengthy and time-consuming. Notably, there exists no official body named ‘Council of State’ in the government till date.</p>
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CONCLUSION:

Myanmar, being rich in diverse ethnicity and indignity, has been attracting grave concern in citizenship issues for a long time. Many reports including the Advisory Commission on Rakhine State (2017) concluded that this issue is contentious and cannot be ignored. On 23 November 2017, the Myanmar Government has entered into an agreement, which will be executed based on a mutually agreed process with Bangladesh, to return the displaced Myanmar residents. It may be added here that another two mirror agreements were made with Bangladesh after 1978 and 1991 exodus took place. With time, many returned to Myanmar but the return remains unsustainable. This paper examines the legal obstacles to Rohingyas to get recognized under the prevailing citizenship law in three steps. First, it studies features of previous laws (the Union Citizenship Act 1948 & the 1947 Constitution) under which Rohingyas were recognized. Second, it examines the types of citizenship and the relevant rules imposed through the new laws (Burma Citizenship Law 1982 & the 1975 Constitution). Finally, the scenarios are put together side by side to observe how the new laws lead Rohingyas from indigenous to stateless.

The study finds that the legal layout of Myanmar does not provide any sustainable scope to accommodate a vast number of Rohingya populations. With the new citizenship law of 1982, Rohingya people has lost its indigenesness leading to Associate/Naturalized category of citizens which again led to exclusion in the list of ethnicities in Myanmar. Their own spoken language has been delisted while language has become a prerequisite to get naturalized status in Myanmar. The Burma Citizenship Law 1982 has classified the people of the land into pure Burmese blood referred as nationals/Citizen by birth; and mixed blood along with naturalized/foreigners referring to citizens/associate/naturalized citizens. This classification is embedded with different entitlements of rights as stipulated by the 1982 Law. Children of the aforementioned classes remain in that category. Naturalization process prescribed in the Law is also arduous to maintain since the applicant has to fulfill and prove the ancestral requirement along with other stated qualifications. The problem with Rohingya is that the government has poor documentation/record and so does Rohingya people. Unless bringing flexibility in the process, it does not seem to be effectively implemented.

Foreigner, holding Foreigner Registration Certificate, married to a citizen/associate/natural citizen can apply for applicable citizenship upon three years of stay. However, this law requires a foreigner to be the only spouse which may create a further complication for Rohingyas due to their custom of polygamy. With all the above weakness of the law, it takes more than one generation along with establishing marriage with a citizen in order for an associate/naturalized citizen to become a regular citizen.

While many studies have been conducted earlier that discusses problems of existing legal structure and how the structure marginalize Rohingyas, this study presents the comparative analysis between previous and present legal framework and its implications upon Rohingya. This is broadening the understanding of marginalization of Rohingyas with more clarity than ever before. In addition, the study adds that there exist four types of citizenship in the Burma Citizenship Law 1982 whereas most studies refer three types. According to the Law, Citizen by Birth is different from Citizen/Associate/Naturalized Citizenship in terms of revocability and cessation of citizenship. This study has found that revocability or cessation of citizenship prescribed in the Law is likely to be most threatening for future sustainability since all types of citizenship except citizen by birth can be revoked or ceased. The stated clauses include some reasons which are highly dilapidated and need to be revised, such as; citizenship can be revoked only because of being sentenced for a fine of one thousand kyat which equals to less than a dollar as of today for committing an offence of moral turpitude. Moreover, there remains a possibility of misusing the term 'moral turpitude' by the authority; therefore, it should be well defined in the Law.

The study has limitations in citing or analyzing the Myanmar Government's position in few occasions because of language barrier which simultaneously opens future scope to work further using proper translation of many legal documents, court verdicts and explanations. In the end, the study concludes that the Myanmar government must prioritize the amendment of the Law at the top if the government seeks for sustainable development in the region and revisit section 3, 7, 22, 35, 41, 43, 44, 45, 51, 52, 58, and 64 of the Burma Citizenship law (1982).

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