

International Human Rights Laws and the Forced Migration of the Rohingyas: Can Myanmar's Military Dictatorship be Criminalized?

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Abstract

This paper mainly focuses on denial of citizenship and inhuman torment against civilian Rohingya Muslim minority by the military regime of Myanmar and examines how their heinous acts can be criminalized as genocide and crime against humanity under international law. In this article the researcher investigates how and to what extent the Myanmar Government violated the International human rights laws on Rohingya Muslims in Arakan. It further examines the situation of genocide there, as media showed killing of women and children by slaughtering and digging with sharp weapon. Furthermore, it finds out the way to prosecute Myanmar military regime as a criminal for crime against humanity to a special tribunal. It is to be noted that previous tribunals were established for genocide committed during war and that there is no war in Arakan rather complete peaceful situation is existing. However, the outcome of the article is that the Myanmar Army along with other groups is nakedly involved in massive killing disregarding all human rights norms and committed genocide in a peaceful time. Therefore, it should be criminalized and put on trial for the sake of humanity. In doing research the researcher follows doctrinal method and hence the researcher consults related international laws and conventions and reviews latest literatures relevant to this issue.

Keywords: violation, discrimination, torture, citizenship, human rights, genocide, convention.

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1.0 Introduction

Violation of human rights is a common phenomenon in every society of current globalized world. The nature of defilement is varying

depending on socio-political and economic-cultural diversifications for considerations. Nevertheless, the Victims of such oppression are often having less opportunity to seek remedy and torture and genocide. In most cases they are denied to have access to fundamental rights or basic human right to defend themselves against the rulers and dictators. The Rohingya people in Myanmar are unique example of being violated and grossly neglected all three generations of human rights guaranteed by regional and international human rights laws. These human rights treaties and conventions lead to global governance for sustainable inhabitable world with peace and harmony among the people. Therefore, maintaining local, regional and international peace is supreme responsibility of the states for which United Nations Charter was adopted. All the states have given accord to uphold peace and promote human rights for better living with freedom and liberty. Nonetheless, the untold sorrowful events are continuing in Myanmar which are tantamount to atrocious desecration of international human rights norms and principles as well as humiliation of entire humanity. Military *janta* of Myanmar kills civilian people including women and children and sets fire on the houses of poor Rohingya Muslims in Arakan. This systematic ethnic cleansing is the ramification of their anathematization of ethnicity of Rohingya Muslims in the country. In this paper the researcher discusses how Myanmar violated these treaties in general and addresses specifically the two main issues such as right to citizenship or nationality and the right to freedom from torture. paper will further address the remedies as per the international human rights instruments and finally try to find out the ways and means to prevent Myanmar from such violation in future.

2.0 Violation of Human Rights under International Norms and Conventions

The persecution against Rohingya people dates back to early 70s of the last century when all inhabitants of Burma were obligated by the government to register their names and collect National Registration card. However, unfortunately and intentionally the regime allowed Rohingyas only to get foreign registration card which subsequently gave birth to millions of stateless refugee people up to the date and broken regional and international peace and solidarity. Since the beginning, persecution intensified until 2016-2017 when they run a combined operation known as “Tatmadaw” comprising of Army, Navy and Air forces for Rohingya ethnic cleansing in Rakhine State of Myanmar. It seemed evident that this joint force led an undeclared war against civilians where they committed killing countless people including children, robbed the property of the rich, raped woman, and set fire on the residence of Rohingyas. Therefore these are all violations of international human rights laws and norms. Here the researcher focuses on their violation under three generations rights recognized by the international community.

2.1 Violation of First Generation Rights

The first generation rights refer to those rights founded on individualism and non-interference. The characteristics of these rights are basically civil and political in nature which are essentially associated with liberty and participation in political life. These rights have been developed through historical events and instruments such as Magna Carta of 1215, English Bill of Rights, 1689, the United States Bill of Rights, 1787, and French Declaration of the Rights of Man and of the Citizen, 1793. However, these rights achieved global acceptance as International Human Rights Law by the adoption of Universal Declaration of Human Rights (UDHR) in 1948 and later by International Covenant on Civil and Political Right (ICCPR) in 1966 and International Covenant on Economic, Social and Cultural Right (ICESCR) in the same year. In addition, these three instruments together are known as International Bill of Rights (IBR). It is further enshrined regionally by the European Convention on Human Rights (ECHR) in 1953 as European International law.

The First-generation rights contained rights, such as, right to life, equality before law, right to a fair trial, right to seek asylum, freedom of belief and religion, freedom of speech and opinion, peaceful assembly and association, right to vote in regular election, protection from compulsion to join organization, free choice of employment, protection against slavery, torture and cruel punishment, arbitrary exile or arrest, right to privacy, form family, choice of education for children, right to property, to move and reside anywhere within one's country, ownership over any scientific, literary, or artistic production. Rohingya people were denied most of the rights and it is not necessary to discuss each and every one.

2.2 Defilement of Second Generation Rights

The second generation of subjective rights refers to selected social, economic and cultural rights. For example, right to education, specially compulsory primary education, right to learn, freedom to form association, and union, right to work, right to use natural resources, right to have social security like pensions, medical services, insurance for disabilities and sickness and senior citizen rights. The fundamental bases of these rights are the different positive laws and International Covenant on Economic Social and Cultural Rights adopted by United Nations in 1966. It has also been protected by the European Convention on Human Rights, 1950, Additional Protocols to this Convention and European Charter on Human Rights, 2000 (Cornescu, 2009). The Rohingya people in Myanmar are facing serious violation of these rights. We now summarize those violations under few indicators.

As regard the right to work, Rohingya people are mostly depending on agricultural sector and a lower portion of them are doing business and fishing. Nevertheless, after being denied of their citizenship they become subjected to deprivation and discrimination. The Rohingyas are losing their agricultural land due to high rates of agricultural tax, forced labor, variety of restrictions on farming, grabbing land by the Buddhist settlers and confiscation by the Government. Now they are prevented to do any business activity and deprived to join any civil services since 1970 (Islam, 2006). On the other hand, religion is the prime source of culture which reflects the religious values and principles and as a Muslim, Rohingya culture will reasonably be Islamic culture. However, at present Rohingya Muslims are subjected to aggression by the Buddhist culture. Current Military regime said that they have adopted foreign ideology and culture which have no connection with Burmese culture. Therefore, they destroyed many mosques and forced them to take Barman names instead of Islamic names. In the primary School, Islam and Islamic cultures are projected as humiliating, and degrading. In addition, they imposed heavy restriction on college admission of the Rohingya and persuading of professional degree (Islam, 2006). Therefore, it is said that the statement of the authority against Rohingya culture is ridiculous because Islam is totally a distinct ideology and teaches different cultures and values which are obviously dissimilar to the Buddhist culture. And it is also a tyrannical and unjustified attitude to say that due to their cultural differences they will not be the citizens of Myanmar.

2.3 Desecration of Third Generation Rights

The third generation rights signify those rights which are known as "solidarity right" which is more advanced than civil and social rights. These rights are newly accepted categories of rights under International law. The characteristics of these rights are collective in nature and are not associated with an individual only. Therefore, they cannot be acquired by individual and require a collective effort and demand. These categories of rights require to restrict some of the rights in first and second generation rights by way of institutional measures and putting "positive discrimination" over those which mean that people can exercise those rights subject to the conditions and restriction in any other law. These rights are mostly focused on environmental issues of human habitation. Third generation rights are contained in the following rights such as right to self-determination, right to peace, development, right to humanitarian assistance, right of sexual minority, right to environment law, healthy environment, right to communication, right to intergenerational equity etc. (Kiss & Shelton, 2004). The fundamental basis of these rights are United Nation Conference on the Human Environment briefly known as Stockholm Declaration in 1972, Rio Declaration on

Environment and Development, 1992, The African Charter on Human and Peoples' Rights, 1979. Along with other rights, Rohingyas are deprived of their right to self-determination as well. The right to self-determination has been recognized under International laws such as the Atlantic Charter, 1941, Article 20 of the ACHPR, 1979, Article 1 (2) of the United Nation Charter, 1945, Article 15 UDHR, 1948, Article 1 of both ICCPR and ICESCR, 1966 and also UN resolution in 1960 (UN Resolution 1514).

As because they were independent to decide their political stand in the Arakan kingdom and according to Richard Overy Muslim ruled Arakan from 1430 to 1531 which is shown as Islamic state in the world map (Overy, edn. 2010). Therefore, they have a legitimate right of self-determination in terms of their past and present condition. Because in the current time they are even denied their minimum human rights, they are deprived of their citizenship, along with all other rights, and they become subjected to ethnic cleansing, torture and genocide. Therefore, any person with civic sense will say that they deserve complete legitimate rights to self-determination. Let them choose whether they chose to stay there as independent political state like South Sudan, Kosovo, and Bosnia or join Bangladesh (Kamal, 2017).

3.0 Violation of the Right to Nationality or Citizenship

Civil rights include right to life, right to ownership and right to reside anywhere in the country. Nevertheless, it is utmost significant to have a nationality to enjoy other fundamental rights in a country. Unfortunately, Rohingyas are vulgarly deprived and denied these very fundamental civil rights especially right to Nationality or Citizenship. The authority of Myanmar has grossly violated the right to residence of the Rohingya by enacting Citizenship law in 1982 where they were excluded intentionally to become a citizen of Myanmar although they have been habitually residing in the area from time immemorial. The UDHR, which is recognized as customary international law, declared that "Everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality" (Art.15 UDHR, 1948). Beside this a number of International and regional international human rights instruments recognize the importance of having Nationality or citizenship of a country. For instance, Article 20 of the American Convention on Human Rights 1969 (ACHR, 1969), Article 7 of the Convention on the Rights of the Child 1989 (CRC, 1989), Article 5 of the Convention on the Elimination of all Form of Racial Discrimination 1965 (CERD, 1965). Article 24 of International Covenant on Civil and Political Rights, 1966 (ICCPR, 1966), the European Convention on Nationality 1997 (ECN, 1997), Council of Europe Convention on the Avoidance of

Statelessness in Relation to State Succession, Article 19 of American Declaration of the Rights and Duties of Man, 1948 (ADRDM,1948) Article 6 (3) of Africa Charter on the Rights and Welfare of the Child, 1990 (ACRWC,1990), Article 6.g of Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003 (ACHPR,2003),Art. 24 of the Arab Charter on Human Rights, 1994(ACHR, 1994)Article, 18 of Convention on the Rights of Persons with Disabilities, 2006(CRPD, 2006).

All the above mentioned conventions have reflected the provision of UDHR stated that every individual man, woman, children and disables has natural right to a nationality and in that regard no state shall arbitrarily deprive or deny his original nationality or citizenship. Most of the conventions emphasize on the phrase "arbitrarily deprived" because in the absence of unique International law for determining nationality or citizenship states are reluctant and exercise its sovereign power to grant nationality by legislating domestic law. In this context a state may arbitrarily deprive certain groups of people to be their national. Therefore, these conventions including UDHR generate a binding obligation by way of customary international law and principle of *jus cogens* under Vienna Convention on Law of Treaties. The Military Government of Myanmar completely violated the provision of UDHR along all other instruments with regard to Citizenship or nationality of the Rohingya people while Myanmar is a signatory to the UDHR, 1948.Military government arbitrarily cancelled their original citizenship in 1982 by Citizenship law. Before that they were recognized as citizen in Myanmar and they have participated in all national polls since independence of Myanmar 1948. Moreover they were part of the government under British administration in Arakan.

Now the question arises why Myanmar *Janta* denied their nationality, what are the requirements for eligibility to become a citizen or national? Whether these Muslim minority people have met those criteria or not? Whether the claim of Myanmar government is justified or not? Now we would like to answer these questions first of all nationality, it is a pure status of an individual referring membership of state for the purposes of International law with content and substance of municipal law at national level (Kesby, 2012). According to European Convention on Nationality "nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin (ECN, 1997).

According to some conventions, state practices and jurisprudence, there are some requirements to be fulfilled for obtaining nationality which are accepted throughout the world. For instance, attachment with social facts, genuine link between sates and individual (Batchelor, 1998). In other words the attributes and strongest ties that are closely connected with the place from birth to grown up

stage represent his or her place of nationality and also represent the genuine connection between individual and concerned state (Adjami, 2008). Genuine link further includes some basic consideration such as birth, descent, residence, connections, language and ethnicity (Van Waas, 2008). Identically, two more principles are also interlinked with genuine cause for having nationality relating to birth is *jus soil* (law of the soil) and *jus sanguinis* (law of blood) (Hudson, 1952). In the absence, as we mentioned earlier, of specific guideline in international law, the principle of *jus soli* and *jus sanguine* emerged as customary practice to guide states for granting nationality (Hudson, 1952). However, this right has been developed by the course of centuries notably Hague Convention on Certain Questions relating to the Conflict of Nationality Laws, 1930, the Convention on Reduction of Statelessness, 1961 and the European Convention on Nationality 1997. The principles exercised by these conventions later extended and reflected by the several treaties, jurisprudence and state practices around the world. Furthermore, International law obliges the state to follow the principles in determining the citizenship and in this regard no State shall arbitrarily deny this right. Therefore, states should not adopt any means contrary to the international principles relating to acquisition, loss or denial of citizenship which come from the above mentioned conventions and case laws of Permanent Court of International Justice (PCIJ) and International Court of Justice (ICJ) (Batchelor, 1998).

The principle of *jus soil* refers to a citizenship acquired by reason of being born within the territory of the state which solidifying the tie between new born baby with the land. *Jus sanguinis* on the other hand, denotes the descent or parentage as actual link to acquire nationality or citizenship. It is an inherited right comes from the descendent to ascendants and continuing from generation to generation through blood or lineage. In both tests Muslims of Myanmar or Rohingyas have passed because all of them are born and grown up within the Arakan state now Rakhine State and other states in Myanmar from centuries and generation to generation. Therefore, the condition put in the citizenship Act that those who have link of lineage before 1823 shall be eligible to the citizen of Myanmar is obsolete and absurd hence, unjustified and unacceptable.

It is historically evident that the Muslims of Arakan were indigenous to Arakan and has a genealogical linkup with the people of Wesali or Vesali kingdom of Arakan (Vela, 2014). They were early people of Arakan, and decedents from Aryans who were Indians resembling the people of Bengal. Arakan people first accepted the message of Islam during 788 A.D. through the hand of Arab traders. However, the present day Rakhine state was the part of Hindu dynasty of Chandra established in 788 A.D. who built the city of Wesali which became a prominent

tread center at that time (Collis, 1960). On the other hand, Burmese came to Arakan in late tenth century A.D. and Rakhines were the last group to come to the land. They were genealogically different from Dannya Waddy and Wethali or Wesali dynasties (Hall, 1968). Finally, it has been found throughout the history that the Rohingya Muslims or Muslims of Arakan are genealogically Indo-Aryan decedents and genetically mixed ethnic of Bengalis, Indians, Moghuls, Pathans, Arabs, Persian, Turks, Moors and central Asian (Bhattacharya, 2005). Therefore, they are naturally entitled to be the citizen of Myanmar.

As regard the language the Myanmar authority claimed that they are Bangladeshi illegal emigrants as because they are speaking in a dialect similar to Chittogonian of Bangla. They intentionally denied the history as because there was no single inscription found that indicate current language of Rakhines in the ancient Arakan. Nevertheless, the early inscriptions found in Arakan proved that those were Bengali script or Sanskrit, hence, Hall summarizes that the early dynasties presumed to have been Indians governed the people who were identical to those of Bengal (Hall, 1968). In contrast, during medieval time Pagan's became dominant over Arakanese and their language was similar to that of the present day Burmese. From that time Arakanese people started slowly to speak Burmese language (Myint-U, 2007). However, because of mixed ethnicity of Rohingya Muslim they developed a mixed language of their own which has some similarity with that of the Chittogonian of Bangla. Some people called it as "Rohingya Bangla" (Bhattacharya, 2005). Therefore, it is quite foolish argument that their language is similar to Bangla so they are Bangladeshi or Bengali. There are a number of countries in the world which have different languages and that does not mean that different language speakers are not the original people of the particular country.

As far as social and political orientation is concerned the Arakan Muslims were most influential on Arakanese Kingdom. The kingdoms trusted the Muslims and appointed them in various vital positions like chief minister of defense. For instance, Burhanuddin, Ashraf Khan, were the eminent Lashkar Wazirs or defense ministers and Syyid Musa, Navaraj Majlis were the prime ministers in Arakan. There were a large number of Muslim ministers, civil officers and military officers who served the kingdom as well as Islamic values and culture. In addition, many Muslim served as Qagis, the head of the official among them Daulat Qazi, Sala Qazi, Gawa Qazi, Shuza Qazi, Abdul Karim, Muhammad Hussain, Osman, Abdul Jabbar, Abdul Gafur, Mohammed Yousuf, Rawsan Ali and Nur Mohammed were the famous officer in the History of Arakan (Chowdhury, 2006). During Min Saw Mun Arakan established Buddhist-Islamic court which was a juxtaposition of Persian, Indian and Buddhist tradition. This

court offered immense support to Bangali and Arakan literature and as a result Doulat Qazi and Sah Alaol grew up. Shah Alaol was the greatest Bengali poet in the seventeenth century among the courtiers of Arakan. Furthermore, it is a recognized history that the Arakan Kings took Muslim title and used Muslim names in their coins for 200 years from 1430-1645. Moreover, as Ba Shin, who was the Chairman of The Burma Historical Commission, stated that “Arakan was virtually ruled by Muslims from 1430 to 1531” (Ba Shin, 1961). It was represented as an Islamic state in the world map (Overy, 2010). After the long discussion we can conclude in such a way that Rohingyas grew up with distinctive characteristics through *bonafide* historical root in Arakan. Therefore, they are legally entitled to get Myanmar nationality or citizenship. Thus current denial of citizenship is a gross violation of Human rights of the Rohingya people by the Military Junta of Myanmar which can be criminalized by the international human rights instruments and International Courts i.e. ICC, ICJ.

4. Violation of the Right to Freedom

Before elaborating the issue of genocide and crime against humanity in Myanmar we need to elucidate the terms of genocide and crime against humanity first. According to The Genocide Convention, 1948 any of the following acts committed with the intention to destroy a national, ethnic, racial or religious group shall constitute genocide. The acts are:(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 (d) 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 (CPPCG, 1948).In addition, Article 3 further prescribed that the commission of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide; complicity in genocide shall also be punishable. These offences committed in time of peace or war shall be treated as crime under International law. The above definition was also confirmed later by other similar international conventions and opinions and verdict of various International Courts and Tribunals such as Article 6 of the Rome Statute of International Criminal Court (ICC, 1998), Article 2(2) the Statute of the International Criminal Tribunal for Rwanda 1994 (ICTR, 1995), Article 4 of the Statute of the International Criminal Tribunal for the Former Yugoslavia, 1993 (ICTY,1993).This definition and in wider scope the Convention became a customary international law and principle of *jus cogens* (Lindblom, Marsh, Motala, Munyan, 2015).

This norm creates a binding obligation on the states irrespective of their ratification to the convention or not. The Advisory opinion of the International Court of Justice on the Genocide convention confirmed this norm (I.C.J. Reports 1951). Furthermore, this convention mobilized the states to prevent this crime and punish the offenders whether the person or persons is/are constitutionally responsible rulers, public officer or private individual. In this regard all states are under an obligation to take necessary steps to incorporate or legislate the laws to give effect to the Genocide Convention (CPPCG, 1951). As regards the basic elements of the Genocide crime, the definition of convention provides three major elements as (a) intention, (b) particular group and (c) act of genocide. These three elements must be taken into consideration in order to prove an act as genocide. Now we will discuss each of the elements and show how Myanmar government should be liable for committing genocide on the Rohingya Muslims in Rakhine State.

a) Element of Intention:

The convention clearly said that genocide committed at the time when the enumerated acts in the convention are committed with the intention of destroying fully or partly of a national, ethnical, racial or religious group. The International Criminal Tribunal for Rwanda in the case of *Prosecutor v. Akayesu* opined that intention of the offenders can be presumed by the impartial examination of the circumstances surrounding the commission of prohibited acts (Case No. ICTR-96, 1998). It was further, held in ICTY case on *Prosecutor v. Jelisic* that: “As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts” (Case No. ICTY IT-95, 2001). Furthermore, ICTY and ICTR observed in the following cases *Prosecutor v. Akayesu*, *Prosecutor v. Niyitegeka*, *Prosecutor v. Kayishema and Ruzindana* that the intention can be proved by the examination of state policy and the massive action taken against any particular group that indicated a desire of destroying and cleansing a group (Case No. ICTR-96, 2003, Case No. ICTR-95, 2008).

Now we would like to see whether Myanmar government comes under the above criteria to be held responsible for committing genocide in Rakhine State or not. The Human Rights Watch reported that the Myanmar government has taken a “Rakhine State Action Plan” in 2013 according to the recommendation of the “Rakhine Investigative Commission” formed by the current regime after massive killings and

violence against Rohingya in 2012 of the state. By the statement of the Phil Robertson of HRW: “The long-awaited Rakhine State Action Plan both expands and solidifies the discriminatory and abusive Burmese government policies that underpin the decades-long persecution of the Rohingya. It is nothing less than a blueprint for permanent segregation and statelessness that appears designed to strip the Rohingya of hope and force them to flee the country”(HRW, 2014).

This plan has not mentioned the term “Rohingya” rather “Bengalis” and discussed six major area about (a) Security, Stability, and Rule of Law,(b) Rehabilitation and Reconstruction, (c) Permanent Resettlement,(d)Citizenship Assessment of Bengalis, (e) Socio-Economic Development, and (f) Peaceful Coexistence. It is also planned to resettle the meaning of relocation of about 133,023 Internally Displaced Person (IDP) as of 2014 to other different places nit specified in the plan. However, as a result of 1012 massive action approximately 140,000 Rohingyas are living inside the IDP camp and about 40,000 outside the camp. According to the plan government again denied their citizenship and excluded them from the national census in 2014. Accordingly the government imposed high restriction on freedom of movement, employment, obstructed day to day life, denied minimum health care and suppressed their freedom of religion. Minister for Social Development, Relief and Resettlement publicly said that “According to the law, burnt land becomes government-managed land” (CBC News, 2017).Therefore, they made operation to set fire of the Rohingya houses and acquired their land as state land and Rohingyas become stateless and landless people. The satellite images were recorded by Human rights organization shown that more than 400 Rohingya villages have been burnt in the north of Rakhine state in recent time (CBC News, 2017). Robertson further observed that: “The Burmese government’s plan proposes segregation measures that have been advocated by extremists. Moving the Rohingya further from urban areas to isolated rural camps will violate their basic rights, make them dependent on outside assistance, and formalize the land grab of Rohingya property”(HRW Reports, 2014).These above incidences clearly reflected and proved the wrongful intention of the Myanmar government to destroy and clean the Rohingya people from Myanmar. It therefore, corroborates with Article 2 (a), (b), (c) and Article 3 of the Genocide Convention.

b) Element of Particular Group

The second element of genocide is group. The convention made four basis of such group which are nationality, ethnicity, race and religion. There are however, fundamental debates on the formation of a class of people as group because these are inter-connected, overlapping and have not been clearly defined. However,

these have delimited the scope of application within the ambit of the convention (Schabas, 2009). The term “Group” in the convention was started in the name of “National Group” which refers to a group which recognized a nation state (Lemkin, 1944). According to ICTR national group refers to “a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties” (Case No. ICTR-96, 1998). In addition, the term “national” in the view of experts further refers to the sociological or ethnological definition of origin rather than definition of mere citizenship. The ICTR observed in the case of Akayesu about ethnical group can be based on self-identification and quoted an expert opinion as “The primary criterion for [defining] an ethnic group is the sense of belonging to that ethnic group. It is a sense which can shift over time (Case No. ICTR-96, 1998).” Now the “racial group” group which requires a certain group which is distinct from other in terms of hereditary physical traits that can easily be identified by geographical location irrespective of linguistic, cultural, national and religious aspects (Case No. ICTR-96, 1998). Furthermore, “religious group” also defined by the ICTR is a “denomination or mode of worship of a group sharing common beliefs”(Case No. ICTR-96, 1998).

Now it can be said that in overall context of the Genocide convention Rohingya Muslims are holding a status of “group” and covered within the purview of protection under the convention on the basis of four determining factors. The long history of the Rohingya and their culture and behavior proved that they belonged to a national, ethnical, racial and religious group under the convention. For instance, the distinct language of the Rohingya as we mentioned earlier make them a different group which is distinctive from other language spoken in Rakhine State and Myanmar (Kayishema and Ruzindana). Furthermore, they share a common history, language and culture within the group. Therefore, the second element also has been found to prove genocide against Myanmar Government.

c) Element of “act”

Third element is act of committing genocide which is prohibited by the convention. The ICTR has explained two elements to constitute a killing as an act of genocide such as 1. The victim died, and 2. The death is a result of that unlawful act. The tribunal (ICTR) further outlined the grounds of criminal liability for killing a group in case of genocide as “(1) the perpetrator intentionally killed one or more members of the group, without the necessity of premeditation; and (2) such victim or victims belonged to the targeted ethnical, racial, national, or religious group (Alina, 2015).” Furthermore, the Tribunal in *Prosecutor v.*

Stakić decided that intention is enough in such killing to constitute genocide (Case No. ICTR-97, 2003). According to the above rules Myanmar government has become completely liable for committing genocide because it has been enormously reported by the UN agencies, experts, and human rights organizations and therefore, it is evident that state security forces like police force, NaSaKa (border force), and Army jointly operate the massacres of Rohingya people. According to government statistic 500 people have been killed since August 2017 and about 400 hundred were insurgent in their view (Case No. ICTR-97,2003). According to Amnesty International Report thousands of Rohingya were killed in 2015 only (CCB News, 2017). Thus, first condition of killing has been met here under the convention.

In terms of second condition that is serious bodily or mental harm to members of the group, the ICTR defined “serious bodily or mental harm” as “acts of torture be they bodily or mental, inhumane or degrading treatment, or persecution (Amnesty International, 2015).” There are uncountable incidences where Rohingya people are being subjected to torture which caused serious bodily and mental harm within the meaning of the definition of genocide. All large scale of violence and torture such as in 1970s, 1990, 2001, 2012, 2016 and 2017 they was done by the joint forces. Specifically report was published about Buddhist monk killing children by sharp weapons, biting men and women (Prosecutor v. Niyitegeka, 2003). In addition, women were raped by these forces while detaining them in the military base. These tortures definitely constitute a serious bodily and mental harm of the group of Rohingya.

Third condition is deliberately inflicting on the group conditions of life which ICTR defines as a method of destruction which do not kill the victim immediately rather than lead to a slow death of them. These methods include “subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement (Ertürk, 2006).” It also includes “deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes (Prosecutor v. Stakić, 2003).” Continuous persecution from homes to camps, shortage of food, denial of medical care, lack of sanitation, unemployment led to the conditions of life calculated to bring about Rohingya destruction as group.

The last condition is imposing measures intended to prevent births within the group. The ICTR in Akayesu case identified that this includes forced birth control, separation of sexes and prohibition of marriages. In this regard Myanmar government imposed two kinds of embargo such as restriction of Rohingya marriages and restriction on taking children. They required Rohingyas to get

permission to marry by paying certain fees. Therefore, it is further clear that they intended to prevent births within the group which is making them liable to commit genocide in Myanmar.

5.0 Remedies and Recommendations for Violation of Human Rights Treatise

As regards the remedy of the above mentioned violation of human rights, we would like to focus on three possible means to remedy the situation.

5.1 Conducting International Intervention and Pressure

First and foremost remedy should be immediate intervention by the International communities to stop Myanmar for violating Human Rights of the Rohingyas. Secondly, making an international expert committee to conduct an impartial investigation of the situation. Thirdly, raising pressure on the government by imposing economic sanction. Fourthly, revising diplomatic relation with Myanmar. It is postulated that in 2014 The UN General Assembly had adopted a resolution for calling Myanmar to revise the Citizenship law, 1982 in such a way that it would no longer discriminate the Rohingyas. This initiative proved that the world's communities are deeply concerned about the violation. Furthermore, as a regional International Organization SAARC and ASIAN can bring the matter into their forum and prevent Myanmar. Because, the interest of humanity is above the principle of non-interference of domestic affairs. Therefore, government of Myanmar has to respect the UN Resolution and amend the law.

5.2 Remedy in Human Rights Treaties

It is quite reasonable to demand UDHR, though it is not a treaty, for taking initiative to combat the massive violation of human rights in Myanmar. But at the first instance it has failed to do so because there is no provision for interpretation, application and enforcement of these rights globally like ECHR which established a permanent commission and Court of Human Rights to guarantee the rights and freedoms defined in the convention. Similarly, Inter-American Court of Human Rights was established under American Convention of Human Rights, 1978 to enforce these rights. Nevertheless, still there is a hope to move forward as because most of the HR treaties are reflecting rights declared in UDHR therefore, it is implemented worldwide successfully. It is now become a customary international law by virtue of Article 38(1)(b) of the Statute of the International Court of Justice.

In addition, through the acceptance of most of the countries of the world it has gained now more strength in legal argument of any human rights violation. In addition, it is further strengthened by the VCLT 1980. Article 53 introduced the concept of *Jus Cogens* meaning that certain basic principles of International law from which no derogation is ever permitted (ICC, 2002). As a peremptory norm

of International law *jus cogens* created a hierarchy of norms on which human rights are possesses at the very top position. Through this development UDHR has potential to serve as International Constitutional rights like European Court of Justice declared in the case of *Loizidou v. Turkey* that ECHR will be a Constitutional Instrument of European political order. Therefore, UDHR can take special measures such as forming a strong UN delegation involving China and India specially to deal peace package with the government until complete settlement, it can also establish a temporary special trial body for settling Rohingya issue or permanent court of human rights (Brownlie, 1998).

5.3 Impartial Trial for Genocide in Myanmar

The third remedy is harder than the above two processes. In case of failure of the above two initiatives and unable to come with a good solution or settlement then we should go for the third option. In this regard either UDHR or any other state can bring this matter of serious humanitarian crisis in terms of gross violation of human rights to the International Criminal Court or International Court of Justice in collaboration with RSICC, ICTR, and ICTY for trial of genocide against the person or persons, responsible for committing this crime by Myanmar government as well as any private individual or groups. Massive killing and inhuman treatments of Myanmar Government has already been proved in many ways under Genocide Convention 1948 and international human rights organizations recorded those incidences wherein may become potential witnesses during the trial. This trial will also be reinforced by the UN resolution on Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005. This rights can be further boosted and strengthened by the following provisions of international instruments like article 8 of UDHR, article 2 of ICCPR, article 6 of ICERD, article 14 of CAT, article 39 of CRC, article 3 of the Hague Convention respecting the Laws and Customs of War on Land 1907, article 91 of the Protocol Additional to the Geneva Conventions 1949, Protocol I to the Protection of Victims of International Armed Conflicts 1977, articles 68 and 75 of the Rome Statute of the International Criminal Court, article 1 of ACHPR, article 25, of ACHR and article 13 of ECHR.

5. Concluding Remarks

After the long discussion it is revealed that the government of Myanmar has wilfully and mal-intentionally denied the historical existence of Rohingya Muslim in Arakan. In line of their denial they have rejected the very fundamental right to have nationality which is proved discriminatory, unreasonable to the world's

communities at UNGA, therefore, UN resolution for calling the government to amend the law indicated this truth. By rejecting nationality they have denied all other basic human rights as we mentioned under third generation of rights. Furthermore, it has also been expressed in the research that all the elements for committing and proving an offence of Genocide are found there. We mentioned few recommendations in the above and proposed some other suggestions that beside the above initiatives UN should pass another resolution for special trial for Myanmar crisis. We may also propose that the Malaysia, Turkey, Indonesia, Bangladesh can jointly or individually bring the matter into the ICC or ICJ. Finally UDHR with the cooperation of other international organizations may be *su moto* action against the Myanmar government for the sake of humanity. It is further reasonable to think about their own right to self-determination like the people of East Timor. The situations are also identical that once the people of east Timor were independent and got independence again by the interference of world's community similarly Rohingyas were an independent in Arakan and deserved to be independent again.

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