



The stateless Rohingya refugee: A critical analysis of nation-states of Myanmar and Bangladesh

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Abstract

In every nation-state, there usually underlies a genealogy of incongruent relationship within its elements that determines the dynamics of inclusion and exclusion of members in this system. Although this issue is well-researched in the ‘refugeehood and nation-state’ scholarship, such crises are not over at all. Thus, many more studies are required not only to devise a way out but also to create a consensus against the production of refugees in the future. Therefore, this study takes up the case of Rohingya refugee crisis in the parlance of Arendt’s (1979) critique of nation-state and Agamben’s (1998) sovereign power, whereby the passage of nation-state initially creates refugees and then bare lives in the camps. To that end, exploration of nation-state principles, political development of Myanmar and Bangladesh as well as relevant studies on Rohingya refugee crisis helped to draw the conclusion that the nation-state system cannot end refugee crises. Moreover, an increasing level of critical aspects of this state system regarding refugeehood constitutes an ethical impetus for something alternative to this political entity.

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Introduction

Refugeehood is deeply related to state making and remaking process in an unending cycle of imagined communities in a given territory (Soguk, 1999). It is ideal that everyone will belong to a nation-state which will necessarily ensure political and human rights in the line of domestic and international laws and charters. It entails the trilogy of territory-nation-sovereignty and the state-building process runs in parallel with the construction of an exclusive community. Eventually, the system encounters

many challenges of political conflicts, war, and violence. In this regard, a calculation found that Southeast Asia is a very conflictual region and specifically estimated that Burma/Myanmar (Burma/Myanmar – Myanmar is the official name of present-day Burma since 1989. The existing literatures also use Burma, however, the name ‘Myanmar’ has been used in most of the points of this study) has faced 236 conflict years or 40 percent of conflict in the region (Steinberg, 2013). While Myanmar planned to build up a western style nation-state, many ethnic groups have been waged in self-determination struggle in the peripheries. Recently, state-sponsored persecution has crossed the all-time limits against Rohingya Muslims in Myanmar and generated hundreds of thousands of Rohingya refugees. Bangladesh is now their temporary shelter under the UNHCR humanitarian actions.

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The Rohingya refugee crisis came into the forefront in 1978. However, the Rohingyas were stripped of political, civil and natural human rights since the first military takeover in Myanmar (Lewa, 2009). Resultantly, Rohingya have frequently crossed many international borders particularly into Bangladesh to save lives as in 1978, 1991–1992, 2012 and 2015–2016 (McCaffrie, 2019). The biggest influx of 700,000 Rohingya civilians crossed the border to Bangladesh in 2017. They are now the largest stateless refugee and the most vulnerable ethnic minority in the world (Ahsan Ullah, 2016). Nevertheless, Myanmar authorities have been trying to justify the persecution framing Rohingya people as illegal Bengali immigrants, subversive for the State and disloyal to the sovereignty of Myanmar.

In addition, the sudden influx of refugees has brought extra pressure to the minimal existing infrastructure and services of the host community in Bangladesh. The camps are heavily overcrowded and growing rapidly in every way without minimum scope of movement for daily services and other emergencies. Laslo and Schmidt (2018), Moses and Kengatharan (2018), by defending both traditional and non-traditional security issues, argue that the Rohingya refugee crisis will impede the growth of Gross Domestic Product and achievement of Sustainable Development Goals for Bangladesh. Joehnk (2017) links this security threat with the radical politics in Bangladesh. Rohingya people currently living in Bangladesh have no refugee status or legal rights.

The Rohingya people are registered as Forcibly Displaced Myanmar Nationals (FDMNs) in Bangladesh and depend mainly on humanitarian provisions. They are labeled as victims, problems, threat or burden for Bangladesh (Guhathakurta, 2017; Rahman, 2010; Parnini, Othman & Ghazali, 2013). A large number of Rohingya refugees are involved in human trafficking, drug peddling and militant activities in and outside the refugee camps in Cox's Bazar (Rahman, 2010; The School for Ethics and Global Leadership [SEG], 2018). A group of Bangladeshi nationals are however also involved in those types of criminal activities in that area; Rohingya refugees are criminalized by default in this system (Wolf, 2014). They are considered as a threat to Bengali nationalism and the sovereignty of Bangladesh as well. It is a nation-state only for the recognized Bengali nationals and citizens. Consequently, this paper has presented an analysis on how the pursuant of nation-state of Myanmar and Bangladesh creates refugeehood and ignores the natural and universal human rights of Rohingya people.

The paper is structured into five sections. Following this introduction, the second section clarifies the procedure of the study and underpins the application of Arendt's

(1979) critique of nation-state and Agamben's (1998) sovereign power in analyzing the Rohingya refugee crisis. The next part highlights the genealogy of refugeehood in nation-state, explaining how it forcibly displaces people from a given territory. The fourth section has demonstrated the ontology of the Rohingya crisis since 1978 as well as critically delineated the attitudes and actions of nation-states to the Rohingya people both in Myanmar and Bangladesh. In the upshot, the study comes up with a conclusion that it is impossible for international refugee regime (IRR) to ignore the phenomenon of nation-state for human rights. Thus, this study proposes transnational entities for the solution of refugee crises.

Literature Review

Nation-State and Refugeehood

“Nation-state refers to a state that makes nativity or birth (that is, of the bare human life) as the foundation of its own sovereignty” (Agamben, 1995). The existence and performance of this entity depend on the proper tuning of this trilogy, which often becomes impossible in the given spatial apparatus. They are likely to cause forced migration in an asymmetric relationship among them. Arendt (1979), however, initially advocated for nation-state in mobilizing the popular sovereignty to safeguard the rights of nations and citizen. Later on, she focused on handicaps and unexpected developments in this system of trilogy. Particularly after the First World War, she immersed herself in searching for reasons behind the origin of totalitarianism in which she discovered many loopholes of nation-state that were significant causes of the decline of nation-state and production of stateless people (Villa, 2000). Arendt (1979) forecasted well the failure of the sovereign in handling the increasing heterogeneity in nation-state and growth of political tension. Put differently, transformation of the modern state after WWI through many treaties with minorities ended the rights of man in nation-state and turned man into citizen (Agamben, 1995; Arendt, 1979). Furthermore, considering self-determination as a human right, she argued ‘ethnic cleansing’ as its fruits in nation-state narrative (Canovan, 1999). Thus, Arendt predicted that ‘minorities within nation-states must sooner or later be either assimilated or liquidated (Arendt, 1979). Resultantly, there was not much hope on nation-state and better human rights in the federal republics (Canovan, 1999). Arendt (1979) however resolved herself into worldly nationalism for a nation-state, where only the remnant of tribal nationalism remained in the present day nation-state.

Nation-state consists of two separate entities: nation and state. To Agamben (1998) it is based on constitutive power and constituent power, wherever they refer to nation or citizen and state or juridical order respectively. But these two powers maintain an exceptional ideological relationship between them. Tellingly, constituent power as sovereign can include and exclude the constitutive power freely for consolidation of its power. Every nation-state gains its completeness through exercising the sovereign power over its population, emerges from and represents a single political community whence there is chance of exclusion of minorities from the central decision-making process (Devetak, 1996). Sovereign is the supreme and only authority to decide who is inside or outside of the state (Long, 2012). As Agamben argues “The sovereign decision traces and from time to time renews this threshold of indistinction between outside and inside, exclusion and inclusion, *nomos* and *physis*, in which life is originally excepted in law” (Agamben, 1998). Sovereign exception of the state paves the way to purposive application of law to everyone in the territory.

Methodology

The study adopted qualitative methodology based on secondary resources. The relevant literature was reviewed in two steps. Exploration of literature clarified the understanding that the Rohingya refugee crisis has a connection with the high incongruence of nation-building process in Myanmar. Therefore, firstly Arendt's (1979) work 'The Origin of Totalitarianism' and Agamben's (1998) *Homo Sacer: Sovereign Power and Bare Life* were reviewed systematically to set the theoretical ground of analysis for this study and to determine the position of refugee and non-citizen in a nation-state. Secondly, the emergence of Myanmar and Bangladesh in international state system and how the everyday state reproduction affected the minority people, particularly Rohingya Muslims in Myanmar, were reviewed. British census, Burmese census, studies on historical trans-border mobility of Rohingya people, and dynamics of government policies, and Constitutions were explored carefully to explain identity construction in the nation-state of Myanmar. Systematic exploration of different humanitarian reports, fact finding reports, scholarly studies on ethnic conflicts in South and Southeast Asia were also effective in unfolding the politics behind the exclusionary policies in the said states.

Results and Discussion

People Caught Up in Nation-State

Nation-building is a daunting task for every polity, but the process becomes more complicated for an ethnically heterogeneous society. Most of the newly independent states in the Global South have failed in nation-building process for a long time. Meanwhile, Global North and the formal colonial master took up the responsibility to develop the fledgling states through their state-building and nation-building prescriptions. Most of the countries in the Global South willingly or unwillingly agreed to the western ideas of liberal order, thus nation-state is still in creation. Sometimes the process is so aggressive and inhuman that it produces millions of refugees and they remain out of control of the vast IRR.

Constructing a Nation and Rohingya People

Myanmar is well-known as a pluralistic, multiethnic and heterogeneous state with officially approved 135 ethnic groups, however, there are many ethnic groups excluded from this official recognition. During the British colonial era, Burman were classified geographically and economically rather than by the present-day ethnicity. The British divided the peripheries or the lowlands as 'states', which happens only in the modern concept of nation-state, however, nation-building was never a British priority (Smith, 1999). Colonial administration successfully created and maintained these divisions for easier control of the colony. Put succinctly, the Rohingya crisis is rooted in British colonial policy in Burma. In the post Second World War period, the formation of nation and nation-state was expedited everywhere in the world including in Myanmar. However, although U Nu strived to ameliorate the colonial and ethnic division among the different ethnic groups through an inclusive form of nation-building, the subsequent authoritarian rulers implemented the idea of an exclusive community based on a dominant ethnic group. The collective identity for that intended nation-state was predominantly based on Buddhist nationalism by embracing the religion and language of the majority Buddhist people (Sakhong, 2012). Ne Win declared both the Rohingya's role on the eve of independence as well as the frequent mobility into the then East Pakistan as gross disloyalty to Burmese authority. Moreover, the Burmanization process necessarily included the erasing of century long evidences of Rohingya Muslims, and rewriting and forming of contra-Rohingya discourse to exclude them from the territory (Wade, 2017). But the basic structure was not capable of dealing with such identity constructions

politically, exercising power of the state (Salem-Gervais & Metro, 2012). Consequently, the imagined communities such as Christian, Karen, and Shan emerged as secessionist movements just after national independence (Dukalskis, 2017). However, aspiration for self-determination is intrinsic to nation-state (Arendt, 1979), Burman authority handled the rebellion movement harshly and developed the notion of 'Otherness' against several ethnic groups. The entire nation-building in Myanmar followed tribal nationalism instead of worldly nationalism as Arendt (1979) forecasted in the blow of nation-state in the twentieth century. The Rohingya minority group had been identified as foreign residents and they were given white cards as non-citizens; later on, that document was also confiscated to alienate them. The idea of exclusion was plotted long before the enactment of that law (Cheesman, 2017) and state authority built up the anti-Rohingya discourse through their dominant ethnicity, disregarding existence and humanity as a people of that territory and their loyalty to the sovereign. So, the Citizenship Law of 1982 was instrumental (Pugh, 2013). Citizenship is the nexus between state violence and law (Agamben, 1998) not only in the case of Rohingya but also for other minorities in Myanmar. Many minority ethnic groups had lost equal rights in Myanmar after the beginning of nation-building process based on the elite ethnicity in the 1960s onwards.

Paradox of Sovereign Power and Rohingya Minority

Nation-state requires and maintains a constitutive other as a tool of legitimizing its sovereign power and collective identity, but the power relation in a nation-state tends to exclude the minority and ignores the existence of non-citizen in all of this territory (Nyers, 2006). Sovereignty both in Hobbes and Locke evolves from the allegiance of the nationals in a territory, in which all the people could transfer their power to a central authority for their wellbeing. But the sovereign authority is legitimized to exercise this power in classification of its inhabitants rather than ensuring their human rights.

The Rohingya people are victims of long-term marginalization in an uneven power structure in Myanmar. In the post-independence period, the Burmese authority received the total allegiance of Burmese people to protect and to provide their rights as the central authority who could make decisions about them. Policymakers were busy defining national identity for a nation-state under a union, defying the self-autonomy of other ethnic groups (Silverstein, 1980; Zarni & Cowley, 2014). They imposed the policy of exclusion of the minority groups other than Buddhist. The sovereign authority was neither proactive to

include the minority ethnic groups nor needed the consent of people in the border lands. Ne Win took power and successfully usurped the support of a dominant ethnic group, which led him to suspend the constitution for the multiethnic society and removed status of the Rohingya people (Ibrahim, 2016). In this regard, the sovereign authority exercised both legal instruments and military action as ethnic cleansing against the minority people. The 2014 census and amendments by Union Parliament in 2015 repealed many rights of Rohingya Muslims and declared all the previous facilities unconstitutional (Ibrahim, 2016; Kyaw, 2017). Subsequently, political party registration and election laws ended the scope of participation for Rohingya people in political activities. Those laws had managed to capture the life of men inside itself through their inclusive exclusion (Agamben, 1998). The authoritarian regime declared Buddhism as the source of all power and injected the Burmanization process in the border areas of non-Buddhist ethnic groups (Smith, 1965). Actually, once power is consolidated into the hands of a state authority, it can exercise the power anyway. Thus, the Rohingya people turned into a constitutive Other in Myanmar legally under the authoritarian government that displayed excessive sovereign power in repeated ethnic clearing thereof. For this end, the Burmese authority framed the Rohingya people as disloyal to the Burman sovereignty and at a later stage securitized them decisively.

Myanmar was isolated from Western influence behind the curtain of China and Russia. But the flow of what Arendt calls 'a completely organized community' (Arendt, 1979) had persuaded it to organize the nation-state principle through political and economic liberalization of huge trade with Western countries. Myanmar attempted to integrate with other international systems through democratization and opening international trade. Hence, it focused on two issues- the construction of a homogenous unity in the name of a nation, and democracy, both imported from western discourse. Western countries kept the pressure for democratic activities through their development partnership and investment. All of them wanted to include Myanmar in the nation-state club. Democracy, in general, legitimizes the representation of the majority consent which in the case of Myanmar developed from Buddhism and denied the existence of Rohingya Muslims in Myanmar. The National League for Democracy leader Aung San SuuKyi also prioritized the majority consent of Buddhist electorate rather than the other minority people in the country. And, Rohingya people continue to be marginalized both nationally and globally (Ahmed, 2009). Western countries and the World Bank, IMF by supporting those initiatives, apparently rewarded Myanmar and, thus, promoted the usual connection to the world of imperialism (Arendt,

1979). The international community's support to this nation-building process indirectly motivated Myanmar to engage in ethnic cleansing in the worst form of barring of minority people.

Inalienable Rights of Refugee and Nation-State

Refugees are exposed to the unconditional threat of death in the refuge (Agamben, 1998). After the stripping of legal status and expulsion from Myanmar, Rohingya refugees live between life and death in the camps in Bangladesh. They are deprived of human rights in the humanitarian context. As a nation-state, Bangladesh cannot count the Rohingya people like her nationals. Refugees here are 'Other', not Bengalis and not fit-able to the nation-state apparatus of Bangladesh (Bjornberg, 2016). Geographically, Rohingya Muslims used to travel between Rakhine and the then East Pakistan frequently, but when Bangladesh achieved independence as a nation-state, it tightened its border to protect the territory from non-nationals. Moreover, it did not accede to the UN Refugee Convention that would oblige Bangladesh in some way in its treatment of these ill-fated refugees. The IRR is unable to save refugees and stateless people because of their too state-centric legal framework. And, the UN is also restricted in its urging of human rights rather than enforcing of them. FDMNs in Bangladesh are counted as illegal immigrants, intruders under the jurisdiction of existing Foreigners Act 1946. According to this Law, any non-citizen can be imprisoned for five years and fined for unauthorized entry (Guhathakurta, Begum, & Rahman, 2016). In the words of Arendt (1979), refugees are outsiders of the law of a country, with no right to live, to work and are liable to imprisonment without committing any crime (Canovan, 1994). Ahmed (2014) and Guhathakurta et al. (2016) opined that those laws also limit the capacity of the GoB and determine its role and actions towards the Rohingya refugee in Bangladesh. Rohingya refugees are not allowed free movement and self-reliance, which is a violation of human rights. In fact, laws are suspended and withdrawn in granting human rights but are applied to exclude them from Bangladesh polity. Thus, the application of exception of law (Agamben, 1998) turns the Rohingya people's lives into bare lives having no human rights. They spend their lives in a precarious condition. The life of FDMNs outside the UNHCR camp in some cases exceeds the repression in Myanmar (Crossman, 2014). Refugees, in general, have no rights in the nation-state. Arendt refers to it as "the end of the rights of man" (Arendt, 1979). The refugee is a different paradigm in the 'national order of things' that supposes to break apart the existing state system (Malkki, 1992). Therefore, it can be said that Bangladesh is not a

unique example of refusal of human rights of refugees and stateless persons in the world.

Conclusion and Recommendation

The aforementioned analysis shows that Myanmar and Bangladesh have been focusing on state sovereignty, nationalism, security, citizenship and border issue instead of human rights of the human being living in their territory. Myanmar has displayed high incongruence between state and nation in which Rohingya Muslims confessional group becomes a scapegoat of that system. They have no citizenship rights in Myanmar in the present-day construction of collective identity. Moreover, the international legal frameworks are obstructed in the state border and sovereignty, where the international system can hardly play its role in the hour of need over state sovereignty. Those frameworks accept only recognized citizens and nationals, and Myanmar has been verifying citizenship through their contested legal framework. The UN and different advocacy forums are persuading Myanmar to grant citizenship to Rohingya people rather than to ensure their human rights irrespective of citizenship or human beings living in the territory for decades. The instrument of citizenship is exercised to strip the human rights of minority people, and is one of the loopholes of nation-state and an anomaly of civilized politics (Canovan, 1994). Henceforth, there is no hope of a solution of the refugee crises in this nation based state system (Agamben, 1995).

In this circumstance, Arendt (1979) opted for something transnational such as a federal republic with autonomy of different ethnic groups and regions of a state while post nationalistic scholars argue for universal values for human rights based on 'citizens of the earth' rather than a citizen of a particular nation (Beck, 2000). Transnational and regional bodies can play an effective role in minimizing the dire condition of refugees in different corners of the world. Nationals with more than one nationality or from different nationalities can have their human rights as well as to some extent political rights in the entities such as in the European Union (Benhabib, 2005). While the individual state system does want to share the burden, this strategy can be enforced regionally within a group of states (Aleinikoff, 1992). The Organization of African Unity Convention 1969 for refugee management in African countries and regional integration of Vietnamese refugees in different South and Southeast Asian states were effective to manage the then refugee crisis (Feller, 2001). In the case of Rohingya refugees, South and Southeast Asian countries can regionally integrate them under the supervision of the UNHCR. To that end, the international humanitarian and the human rights law should be based on the rights of Man

instead of citizenship, nationality, and sovereignty (Coles, 1988).

Conflict of Interest

There is no conflict of interest.

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