

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 1

2022

© 2022 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for "free" and "open access" by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestion or complaint, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at the **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Human Rights and the Status of Stateless Person

DEEKSHA TEWARI¹

ABSTRACT

Nationality, Citizenship and Human Rights are all interconnected areas which play a vital role in the life of a human being. The denial of Nationality or the loss of Citizenship both will have impact on human being as there increases the chances of becoming Stateless and thereby falling into the gaps which prevail in the society that it becomes impossible to get out of it and live a life that is not just a mere animal existence. Statelessness is a situation where the person does not belong to any nation, he does not have a citizenship of any State and he loses his fundamental rights which are incidental to these main rights. Nationality is the sense of belongingness to a particular State who is in a way guardian of the fundamental rights of its citizen and the citizen gets a right to come to the court and assert those rights and demand for the relief when their rights get infringed by the other individual. Rights and duties are interconnected if one does not come to court with clean hands, he cannot assert the law to provide him the relief. The definition of Stateless person is provided in the Convention relating to status of Stateless person 1954 as a person who do not belong to any of the State. In this paper researcher will examine How far the Convention on the status of Refugee as well as the Convention on Stateless person been helpful in prevention of the violation of Human Rights.

Keywords: *Nationality, Citizenship, Human Rights, Statelessness, Stateless Persons.*

I. INTRODUCTION

The International Human Rights law recognizes the right to nationality to all i.e., every individual born on earth should acquire, withdraw, or retain the nationality. As a person without nationality is rendered vulnerable. Nationality is the connection a bond which an individual shares with the State in which he/she takes birth. It is the tie which gives a sense of security to individual where his right to rights is protected as very well said by Hannah Arendt in the interview given to The New Yorker Columnist. It is the right to belong to a particular Country to reside, to work to live life with dignity and get all the benefits as a citizen of the State. Though Nationality and Citizenship sound very similar but they are little different. In the case

¹ Author is an Assistant Professor at IILM University, Gurgaon, India.

of Nottebohm the International Court of Justice defined Nationality as a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest, and sentiments together with the existence of reciprocal rights and duties.²

Nationality is the status of belonging to a particular nation for example the nationality of a person is his place of birth or the ethnicity the region which he belongs to. Citizenship is a legal right which is granted to a citizen by complying the legal formalities. There are two common approaches to determining whether to grant citizenship to an individual are based on an assessment of the person's link to the state by either blood or soil. Jus Sanguinis (right of blood) i.e., citizenship is granted based on descent to children born to nationals of the state. Jus Soli (right of the soil) i.e., citizenship is granted to children based on their place of birth. If any of the above-mentioned approaches are adopted universally without any discrimination it would help to end statelessness and achieve goal of article 15 of UDHR. The United Nations started the IBelong Campaign in 2014 to understand and have a data as to exactly how much of the population is Stateless. There are 78 States and 4 million stateless persons, but we do not have data for whole states around the world.

The UNHCR advises states to provide for technical and legal advice to encourage stateless people to come up. The UNHCR is trying to end Statelessness 2024. It is important for States to collaborate to tackle the issue. The data shows that still 137 million people in Southern Africa are stateless persons. In Krystan around 13000 people are facing Statelessness issue. Columbia also striving to grant citizenship to more than 24,000 children from Venezuela. Almost one million Rohingya flee from Myanmar and five million Palestinians are stateless. Currently in Afghanistan due to the disruptions in Taliban a situation has come up where people are leaving Taliban and seeking asylum or just leaving Taliban and migrating to a place where they do not be afraid of being killed. This movement will indeed lead to various issues like individuals becoming Stateless or where the people will not reveal their identity or might not show the identity document with a fear that they will be asked to leave the country where they seek comfortableness. These people indeed will loose their basic rights as without a legal identity they won't be able to have access to basic rights i.e., right to education, right to employment etc., and this would be passed to their future generations.

II. WHAT DO YOU MEAN BY STATELESSNESS?

Statelessness is a situation whereby the individual or person neither have nationality nor citizenship or even if he has it becomes tough for him to prove thereby becoming a de facto

² Nottebohm case Liechtenstein vs Guatemala, 1955 ICJ Rep 4at 23

Stateless. Statelessness under International Law has been defined under Article 1 of the Convention on the Status of Stateless Person which defines “a Stateless person as someone who is not considered as national by any State under the operation of its law”.³ Hence if there is no bond of nationality the person will be called Stateless and becomes more vulnerable to various kinds of exploitation and harassment.

III. CAUSES OF STATELESSNESS

The situation of Stateless can arise from several interconnected aspects such as the nationality laws of the State, will of the government, loss of nationality, discrimination, conflict of laws, State Succession, Renunciation without acquiring other citizenship. Whenever a state gets succeeded by another state or a new state comes up it affects a lot of individuals in sense that there might be a group of ethnic groups which belonged to the state which got succeed by the other state and that new state has made new laws for the citizenship or they have rendered those ethnic group stateless by taking away the nationality though the United Nations have made efforts to handle such situations. Sometimes the persons become Stateless as they lose nationality because either they have lost the documents or the State itself has made certain laws which would take the nationality. There are certain countries where gender discriminatory laws prevail which stipulate that a woman is incapable of passing her nationality to her children thereby creating a situation where the generations will become Stateless. Whereas on the other hand there are some countries where a woman can get back her nationality once she takes divorce from her husband who may be a Stateless person and then she can save her children from becoming Stateless but in that circumstance, houses get broken down families get destroyed.

IV. UNITED NATIONS EFFORTS ON STATELESSNESS

At the time of World War, I and World War II the whole society was in fear as it caused violation of the basic human rights of the individuals. There was a need to bring about some mechanism so that the rights of individuals could be secured, protected, and promoted. Hence, the formulation of United Nations organization was done with the objective to bring in a document which ensure the basic rights to everyone since the very inception. In December 1948 Universal Declaration of Human Rights, it provides for the attainment of the goal of removing the fear from the society and create a society where people have freedom of speech

³ The Convention Relating to Stateless person 1954, UNHCR, Article 1(2) definition of the term “stateless person”, Chapter 1, retrieved from:- https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf

and belief which is the highest aspiration of the common people. It further recognized the concept of Human Dignity i.e., to live a dignified life with all the interconnected right which forms the basis of a good life which is the foundation of freedom, justice, and peace in the world. The document had 30 major rights in the form of various articles which included right to equality and that individuals are born free,⁴ everyone is entitled to all the rights and freedoms without any discrimination on the basis of caste, color, creed, sex and place of birth,⁵ right to life, liberty and security,⁶ no one will be treated inhumane torture,⁷ right to nationality,⁸ right to work, right to equal pay and equal opportunities to work.⁹ These are the most important and indispensable right which are interconnected with the nationality or the citizenship where the government provides protection and helps individuals realize these rights.

The Economic and Social Council which is one of the six principal organs of the United Nations requested United Nations Security Council to undertake a study regarding the aspect of Statelessness and thereafter three Conventions were adopted to deal with the situations and control the issue. These Conventions are: -

(A) The Convention relating to Status of Stateless Person, 1954

The Convention on the Status of Stateless person has tried to define the term Stateless person as someone who does not belong to any nation or who does not have any nationality. It in a sense has focused on the aspect of De-jure Stateless and failed to deal with De-facto statelessness situation. The Convention establishes the standard treatment to which individuals are entitled. It does not provide any mechanism to identify the Stateless person. However, it is implicit in the Convention that States must identify the Stateless person within their jurisdiction to provide them the appropriate treatment. Most of the rights granted to Stateless person are like the rights granted to Refugee under the Convention on status of Refugee, 1951.

The 1954 convention contains provisions regarding stateless persons rights and obligations pertaining to their legal status in the country of residence. It also addresses a variety of matters which would play pivotal role on day-to-day life such as gainful employment, public education,

⁴ The Universal Declaration on Human Rights, Article 1, last visited on 24-1-2021 at 10:54 PM, Retrieved from: https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf

⁵ The Universal Declaration on Human Rights, Article 2, last visited on 24-1-2021 at 10:54 PM, Retrieved from: https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf

⁶ The Universal Declaration on Human Rights, Article 3, last visited on 24-1-2021 at 10:54 PM, Retrieved from: https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf

⁷ The Universal Declaration on Human Rights, Article 5, last visited on 24-1-2021 at 10:54 PM, Retrieved from: https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf

⁸ The Universal Declaration on Human Rights, Article 15, last visited on 24-1-2021 at 10:54 PM, Retrieved from: https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf

⁹ The Universal Declaration on Human Rights, Article 23, last visited on 24-1-2021 at 10:54 PM, Retrieved from: https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf

public relief. It can prove to be of great benefit as the chances of migration or displacement of large population decreases and would lead to stability and peaceful co-existence.

Some important provisions of the convention could be summed up as: -

- Article 1 of the convention discusses the definition of Stateless person for the purposes of convention the term stateless person is set out for the purpose of this convention the term stateless person means a person who is not considered as a national by any state under the operation of its law.
- Article 3 of the convention on non-discrimination states that the contracting states shall apply the provisions of this convention to Stateless persons without discrimination as to race, religion, or country of origin.
- Article 28 the issue of travel documents for Stateless persons is addressed. An individual recognized as a Stateless person under the terms of the convention should be issued an identity and travel document by the Contracting State.
- Article 31 states that the Stateless Persons are not to be expelled save on grounds of national security or public order.
- Article 32 regulates the issue of naturalization. The contracting state shall as far as possibly facilitate the assimilation and naturalization of stateless persons.

(B) The Convention on Reduction of Statelessness, 1961.

The Convention on Reduction of Statelessness, 1961 aims at avoiding Statelessness on Birth. To reduce the incidence of Statelessness the Convention focuses on formation of nationality laws in a way that it reflects a standard relating to acquisition or loss of nationality. It says that the States should provide for the citizenship on the birth by operation of law or by application as prescribed. It provides for providing nationality to children born out by nationals outside the territory to avoid the risk of becoming Stateless Person. It also states that the state does not have right to take away nationality from the citizens. It directs the State to grant citizenship to children born on their territory or born to their nationals abroad who would otherwise be Stateless.

(C) The Convention relating to Refugee, 1951.

The Convention relating to Refugee, 1951 was adopted in 1951. It came into enforcement in 1954. The convention originally had limited reach but with the amendment and coming up of protocol of 1954 the coverage increased. The term refugee has been defined under the convention as the persons who flee from their state because of persecution carried against them. The reasons for persecution must be because of one of the five grounds listed in article 1 a (2)

of the Refugee Convention: race, religion, nationality, membership of a particular social group or political opinion. Persecution based on any other ground will not be considered.¹⁰ Hence, the convention is both a status and right based instrument. The convention is based on various principles which guides the community. These principles are as follows: -

1. Non-Discrimination
2. Non-Penalization
3. Non-refoulement

The provisions of the convention are to be applied without any discrimination as to caste, creed, color, sex, and place of birth. The principles of non- refoulement are applied and no refugee can be forced to return to territory where he or she fears threats to life. The convention lays down basic minimum treatment standard. These includes the basic rights would include access to court, primary education, work, and the provision for documentation including a refugee travel document. It does not apply to all persons who might otherwise satisfy the definition of a refugee in Article 1. The convention will not apply to those who are engaged in war crimes and serious offences. It also does not apply to those who fall under the protection of United Nations agency other than UNHCR.

The protocol not only expands the definition of refugee but also expands the applicability of it. The principle of non-refoulement plays an important role and forms an essential protection under international human rights, refugee, humanitarian, and customary law. The principle prohibits the states from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill treatment, or other serious human rights violations.

This principle is explicitly included in the convention against torture and other cruel inhuman or degrading treatment or punishment and the international convention for the protection of all persons from enforced disappearance. The scope of this principle under relevant human rights law treatise is broader than that contained in international refugee law. The prohibition applies to all persons, irrespective of their citizenship, nationality, statelessness, migration status and it applies wherever a state exercises jurisdiction or effective control.

¹⁰ <http://hrlibrary.umn.edu/edumat/studyguides/refugees.htm>

V. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

(A) International Covenant on Civil and Political Rights, 1966.

The international Covenant on Civil and Political Rights, 1966 recognizes the human dignity, equal and inalienable rights of all individuals. It identifies the idea of free human beings enjoying civil and political freedom. There are various articles which deals with various rights. Article 1 deals with the right of self-determination. It states that the state party to undertake to respect and ensure to all individuals the rights without any discrimination of any kind such as race, color, sex, language, religion. If the existing legislative or other measures do not provide for the right, then the state party needs to take measures for the same. Article 3 of the Covenant ensures the equal rights of men and women to the enjoyment of all civil and political rights. The Covenant ensures that no person shall be subject to torture or to cruel in human or degrading treatment or punishment. It attempts to ensure the right to liberty and security of person. Every child will have the right to such measures of protection as are required by his status as a minor on the part of his family or society.

(B) International Covenant on Economic, Social and Cultural Rights, 1966.

The international covenant on economic social and cultural rights 1966 together with the international covenant on civil and political rights were adopted by the United Nations general assembly on 16th December 1966 by consensus. The covenant is structured in five parts. The preamble and parts I and V are common with International Covenant on Civil and Political Rights. The Covenant aims to ensure the protection of rights related to economic, social, cultural rights.

(C) International Convention on the Elimination of all forms of Racial Discrimination, 1965

International Convention on the Elimination of all forms of Racial Discrimination is an international human rights treaty adopted in 1965.

The term “Racial Discrimination” has been defined as “any distinction, exclusion, restriction or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”¹¹

State parties to condemn racial discrimination and to take all necessary steps to eliminate racial

¹¹ International Convention on the Elimination of all forms of Racial Discrimination, Part-I Article 1(1).

discrimination.

Part II of the Convention talks about the creation of a committee on the elimination of racial discrimination consisting of eighteen experts of high moral standing and acknowledged impartiality elected by state parties among their nations. The committee shall be elected by secret ballot from a list of persons nominated by the state parties. Each state party may nominate one person from among its own nationals.¹² The initial election to be conducted within Six months after the entry of the convention.¹³

(D) Convention on Elimination of all forms of Discrimination against Women.

The Convention was adopted by the United Nations General Assembly on December 18, 1979. The Convention was the result of more than 30 Years of work by the UNCW a body established in 1946 to monitor the situation women and to promote women's right. The efforts have helped in the advancement of Women. The document spells out the meaning of equality and how it can be achieved. The Convention tends to cover three dimensions of the situation of women. These includes the right to vote, to hold public office and to exercise public functions. The convention on the nationality of married women adopted in 1957 is integrated under Article 9 providing for the Statehood of women irrespective of their marital status. The Convention in a way tends to bring in light the issue that usually women's legal status has been linked to marriage making them dependent on their husband's nationality rather than individuals. Further it affirms women's right to non-discrimination in education, employment, and economic and social activities. The legislation also focuses upon the reproductive rights.

VI. CONCLUSION

Although, we have with us the precise text, but the problem lies in the fact that those persons who are stateless or who becomes stateless or those who fled from their state to avoid prosecution and don't want to go back either tear their documents or the documents are lost in the transaction. These vulnerable people are not aware of their right to claim right as they are illiterate, or these people don't get access to legal aid which is very much required to understand the aspect. Moreover, when these people will get educated or at least know about this right to get the right then they will come up and which will indeed help the governments also to recognize as to how much of the population is stateless, refugee or undomiciled migrant.

Today the problem which the whole world is facing is that we do not have exact figures as to how much of the population of the world is stateless. Also, we should take into notice the point

¹² International Convention on the Elimination of all forms of Racial Discrimination, Article 8(2).

¹³ International Convention on the Elimination of all forms of Racial Discrimination, Article 8(3).

that governments couldn't function properly, and no rule or law could be enforced without knowing as to where these populations are populated. Although few of them like the Rohingyas people know about their situation but many others are left out. Spreading awareness, organizing legal aid camps for those would indeed help both the government and the community to promote and protect the basic human rights.
