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Proliferation of Statelessness and Gender Discriminatory Nationality Laws

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ABSTRACT

Women have been deprived of equality in acquiring, changing or passing their nationality to their partner or children from times immemorial. It has always been considered that women's right to nationality has to be read in consonance to their male counterparts like father by the time the girl is not married and thereafter her husband. A women's existence has been viewed as flowing from her relationship with the relevant man in her life.

The situation of women gets bleaker than men with reference to becoming stateless as they could even be stateless at birth as well as they can become stateless at marriage, which is not the case of men. Statelessness can happen both in countries where citizenship can be attained by jus soli as well as by jus sanguinis. Depriving women of the right to pass her nationality does not simply result into criticality of losing right to nationality by her children, rather it has far-fetched consequences as well like affecting the social, cultural, civil, political and economic rights of the child.

If the right to nationality is restrained from any person due to any reason whatsoever, it becomes one of the leading causes of risk of statelessness. Similarly, gender discriminatory nationality laws lead to childhood statelessness. A woman is not the only victim of discriminatory nationality laws; however the geopolitical scenario is also not remained untouched of its massive turmoil. If the international framework could have been simpler and straightforward a women could be saved of statelessness, when she marries a man who has citizenship, consequently their children would also be protected from the risk of future statelessness. However, the situation gets grim due to conflicting nationality laws between different nations.

Keywords: *Stateless, gender, discrimination, nationality, jus soli, jus sanguinis.*

I. INTRODUCTION

Women have been deprived of equality in acquiring, changing or passing their nationality to their partner or children from times immemorial. It has always been considered that women's right to nationality has to be read in consonance to their male counterparts like father by the time the girl is not married and thereafter her husband. A women's existence has been viewed

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as flowing from her relationship with the relevant man in her life. Parallely men's right to nationality has been referred as primary that affects the identity of the women and children all. There are majorly two presumptions on which this inequality is justified, i.e., firstly that a family is considered a unit figure wherein everyone should have same nationality and secondly, that the man is the head of the family and hence it is his nationality that should devolve on the rest of the family members. Furthermore, the interconnectedness of this prejudice against women of not providing them equal right to pass on their nationality with the public-private dichotomy can be clearly ascertained. As per the public-private dichotomy women are restricted and allowed access to only the domestic and within family structure, however men are delegated with the power to govern, manage and maintain the public space outside the domestic sphere dealing with all the worldly affairs, and citizenship is one such domain.³

Consequently, the discriminatory legislative mechanism against women has been twofold in most of the cases with reference to citizenship rights. The first situation is that automatically citizenship of a women is categorically shifted to the citizenship of the man she marries at the time of her marriage. While this shift in citizenship takes place the women is not given right to decide over which citizenship she wants to retain. Whereas, similar right is not approved for women in most of the countries for transferring their citizenship to their husbands at the time of marriage. Correspondingly, the children who were born to parents with different nationalities were provided only the nationality that belonged to their father. Subsequently, the women's citizenship is treated as second class citizenship correspondingly aggrandizing gender-based discrimination in the world panorama at large.⁴

The situation becomes more critical for single women and lesbian mothers and women who have been either widowed or divorced or have been abandoned by their partner husbands as they would resultantly become *in situ* stateless within their own country. Children born to single women and lesbian mothers many a times are forced to statelessness if they are born in a country where citizenship can be acquired by jus sanguinis only or where citizenship can be acquired at birth but birth registration does not take place due to foreigner status of the mother. A good example for the latter case is India wherein citizenship can be acquired at birth conditional upon at least on parent to be an Indian citizen.⁵ Similarly, women who choose to stay within the country of their origin even after marrying a man who is a national of any other country also

³ Margaret Thornton, *The Public Private Dichotomy: Gendered and Discriminatory*, 18 (4) J. L. & Society 450, 448 (1991).

⁴ Sapana Pradhan, Malla & Phanindra Gautam, *Women's Right to Nationality and Citizenship*, International Women's Rights Action Watch Asia Pacific, 9 Occasional Papers Series (2006).

⁵ The Citizenship Act, 1955, § 3 (2).

loose on the citizenship related rights. The discriminatory citizenship right to women inadvertently affects both women and children and consequently forces them into risk of statelessness.

Furthermore, the situation of women gets bleaker than men with reference to becoming stateless as they could even be stateless *at birth* as well as they can *become stateless* at marriage, which is not the case of men.⁶ Becoming stateless at birth can happen both in countries where citizenship can be attained by *jus soli* as well as by *jus sanguinis*. Correspondingly, loosing documents by ones fault, or due to war affecting the civil registry system of the nation, or at the time of human trafficking when all her documents are destroyed so that she cannot prove her existence and belongingness to a particular place and at the time of marriage with a stateless where the countries legislation creates that provision of change of nationality to that of husband's on marriage and husband cannot confer any citizenship to the women due to his own statelessness, or at the time of marriage to a foreigner from a country where citizenship cannot be attained at marriage and women belongs to a country where at the time of marriage the women attains citizenship of her husband, are different scenarios wherein a women can *become stateless*.⁷

With the constant and deliberate efforts to eradicate inequality of women in the societal practice and international framework many countries have done away with such discriminatory practices against women. However, still there are many countries that practice these methodologies even today. Though, such devastating activities are quiet contradictory to the prevalent geopolitical scenario of mass inter state migratory activities and globalization, still gender discrimination has not been totally obliterated from the geopolitical framework with reference to passing citizenship to spouse and children.

Though, formation of the International Convention on Elimination of all forms of Racial Discrimination, 1965, has come as a boon for women's right of equal treatment in the domestic framework as a citizens as well as in the international community as its member. Furthermore, there are other international conventions that stand for women rights namely, the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter CEDAW) that requires states to "to guarantee equal nationality rights to women in the ability to acquire, change and retain their nationality, including the right to confer nationality on spouses."⁸

⁶ Patricia Schulz, *Gender-Related Dimensions of Refugee Status, Asylum and Statelessness*, CEDAW: 30 Years of Working for Women's Rights (3 Nov., 2012).

⁷ U.N. Div. for the Advancement of Women, *WOMEN, NATIONALITY AND CITIZENSHIP*, 4 Women 2000 & Beyond (Jun. 2003).

⁸ International Convention on the Elimination of All Forms of Discrimination Against Women, 1979, art. 9 (1)

CEDAW also “guarantee women equal rights to confer nationality to their children.”⁹ Similarly, the Convention on the Rights of the Child refers to children’s access to nationality and family unity,¹⁰ healthcare,¹¹ and education.¹² Other conventions in this regard are The Convention on Status of Stateless Persons, 1954, the Convention on Reduction of Statelessness, 1961, the International Covenant on Economic, Social and Cultural Right, 1966 and the International Covenant on Civil and Political Rights, 1966. Nevertheless, still there are nations where women are not treated on the equal front as that of men specifically with reference to acquiring and losing nationality as well as transferring the same to their children. There are around twenty-two nations like this namely, “Bahamas, Bahrain, Barbados, Brunei Darussalam, Guinea, Iran, Iraq, Jordan, Kuwait, Lebanon, Madagascar, Malaysia, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Sudan, Swaziland, Syria, United Arab Emirates, West Bank and Gaza.”¹³ Iran, Kuwait, Brunei, Somalia, Swaziland, Qatar and Lebanon are seven nations that strictly do not allow any exception at all to women in not conferring their children with their nationality.

Depriving women of the right to pass her nationality does not simply result into criticality of losing right to nationality by her children, rather it has far fetched consequences as well like affecting the social, cultural, civil, political and economic rights of the child. This can be deciphered from the fact that the 1958 judgment of United States stated the right to nationality as a right to have rights.¹⁴ Correspondingly, as per the Universal Declaration of Human Rights that stands as the breakthrough text deciphering all human rights, states that “All human beings are born free and equal in dignity and rights.”¹⁵ Subsequently, it refers to right to nationality also as a human right under its article 15.

Consequently, though the matter of nationality falls within the domain of domestic legislation still it is required to be harmoniously in consonance to the requisites of the international legal framework in that regard.¹⁶ At the same time, if the right to nationality is restrained from any person due to any reason whatsoever, it becomes one of the leading causes of risk of statelessness. Similarly, gender discriminatory nationality laws lead to childhood statelessness. A stateless person was for the first time technically defined under the Convention on Status of

⁹ *Id.* art. 9 (2).

¹⁰ Convention on the Rights of Child, 1989, art. 7.

¹¹ *Id.* art. 24.

¹² *Id.* art. 28.

¹³ 22 COUNTRIES DO NOT ALLOW MOTHERS TO PASS THEIR CITIZENSHIP ON TO THEIR CHILDREN, MAKE MOTHERS MATTER (17 JULY, 16). [HTTPS://MAKEMOTHERSMATTER.ORG/22-COUNTRIES-DO-NOT-ALLOW-MOTHERS-TO-PASS-THEIR-CITIZENSHIP-ON-TO-THEIR-CHILDREN/](https://makemothermatter.org/22-countries-do-not-allow-mothers-to-pass-their-citizenship-on-to-their-children/). (LAST VISITED 13 MARCH, 2023).

¹⁴ Albert L. Trop v. John Foster Dulles, 356 U.S. 86 (1958).

¹⁵ Universal Declaration of Human Rights (Dec. 10, 1948), art. 1.

¹⁶ Nationality Decrees issued in Tunis and Morocco, Advisory Opinion, 1923 P.C.I.J.

Stateless Persons as “one who is not considered as a national by any state under the operation of its law”.¹⁷ However, this definition of stateless is incomplete as there are four types of stateless people existing in the world namely *de jure*, *de facto*, *in situ* and stateless in the *migratory context*.¹⁸ Whereas, the definition of the Convention on Status of Stateless Persons simply refers to the *de jure* stateless people which means people who are stateless according to law, leaving aside the other three forms of stateless people. *De facto* stateless are people who have legal relation with a nation as per law, i.e., who are citizens of a country but in fact are not able to avail the benefits of that citizenship.¹⁹ *In situ* stateless are the ones who become stateless in their own country i.e., a country with which they have family or other personal ties like they have lived there for long duration of time, but due to the strict rules of acquiring citizenship of that country they remain stateless there. A good example of *in situ* stateless are people living in Latvia, Estonia and Lithuania after their acquiring back their sovereignty from the reign of USSR after its dissolution. Another form of stateless are stateless in migratory context who are people migrating out of their country of origin and not having nationality or even if having nationality in either of the case, due to persecution or fear of persecution.

Either of the four forms of statelessness can happen to a child when he/she is not able to acquire citizenship by birth or is not able to acquire citizenship by descent through either of the parents. Similarly, a situation can arise when a women might lose her nationality due to her marital relationship, as in situations when a women who has citizenship of a country but she marries a stateless individual, she ends up losing her nationality if that country has the provision of acquiring citizenship of husband on marriage. Gender discriminatory nationality laws can be precursors of statelessness in all these above discussed situations.

In the present times there is an estimation of around twelve million stateless persisting worldwide, however very few nations provide a proper data on stateless.²⁰ There are many alarming consequences of statelessness like feeling of alienation, not belonging to any country hence devoid of a legal identity, loosing upon all the basic human rights, becoming susceptible to harassment, harassment can be both mental, physical and in specially in the case of women and children sexual as well, living forever their lives in detention centers that provide living conditions that are worse than compared to criminal jails.²¹ The different forms of human rights

¹⁷ United Nations Convention Relating to the Status of Stateless Persons, 1954, art. 1 (1).

¹⁸ Tasmia Persoob, *The Unheard Voices: Stateless People in South Asia*, 15(1) Osaka Univ. Knowledge Archive 197-209 (2010).

¹⁹ *Id.*

²⁰ Matt Davis, *There Are Twelve Million Stateless People In The World, Who Are They?*, The Present, Big Think (26 Aug., 2019), <https://bigthink.com/the-present/stateless-people/>. (Last Visited 13 Mar., 2023).

²¹ *State of Uncertainty: Citizenship, Statelessness, and Discrimination in the Dominican Republic*, 32 B. C. Int'l &

that are affected by statelessness are political rights like right to vote in elections of the nation, right to healthcare, right to education, right to employment, right to sports, right to own property etc.

Additionally, the gender discriminatory nationality provisions upsurge the situations of gender-based violence as well in different forms. When a woman tends to lose her nationality as a consequence of marrying a stateless person and eventually her children also become stateless as they cannot acquire the mother's citizenship, it becomes nearly impossible for them to deal with the family life full of abuse and torment at the hand of an abusive husband and father and his family members. Correspondingly, probability of human trafficking for such children and women gets a rise as there is no one to fight for them legally, as they themselves are devoid of any legal existence. It also contributes to an exponential rise in forced and child marriages wherein at times the objective can also be of making girls acquire citizenship of their forthcoming husband through marriage. Similarly, the gender-based nationality laws of restraining citizenship only through descent of father also affects the lives of children born to rape victims, divorcee mothers, single mothers, lesbian mothers etc.²²

When women are not treated equally in transferring their nationality to their spouse and they marry a foreigner, the family unit as a whole gets disturbed. It happens as such foreign husbands when could not attain their wives nationality, it becomes really tough for such couples to bear children due to constant absence of both the spouses from each other's physical presence. At the same time, even if they have children, the children's life becomes haphazard as they can't live with both their parents together as attaining permissions of residence and opportunities for jobs gets restricted for such fathers. At the same time, the mother herself cannot transfer her citizenship to the children, so all in all the situation of life for such children and families on the whole gets quite grim and they are forced to live a life of helplessness as stateless.²³

Correspondingly, when neither the husband nor the children are able to attain citizenship through wife/mother, and husband is made to pay high rates for acquiring residence permits, it eventually becomes the major responsibility of the women of the family to provide financial assistance to the household. At the same time, children could not earn even when they become major as they don't get work permission legally in the country of their origin itself due to lack

Comp. L. Rev. 380, 377 (2009).

²² Laura Van Waas, *Fighting Statelessness and Discriminatory Nationality Laws in Europe*, 14 *European Journal of Migration and Law* 252, 243 (2012).

²³ FERNANDO A. LOPEZ OGGIER, *THE IMPACT OF GENDER DISCRIMINATION ON STATELESSNESS: A CASE STUDY OF THE IMPACT OF NATIONALITY LAWS ON STATELESSNESS*, 14 (4) *INQUIRIES J. OF SOCIAL SCIENCES, ARTS AND HUMANITIES* (2022).

of nationality, the women inadvertently become bound to manage all money matters without support even though her family members are willing to do the same.²⁴

Looking at the issue of nationality laws discriminating on women's front from a broader perspective, it is not simply a matter of gender issues. A woman is not the only victim of discriminatory nationality laws, however with her the society gets effected in the name of her husband and children as a family unit. Correspondingly, the geopolitical scenario is also not remained untouched of its massive turmoil. In simpler terms, if the international framework could have been simpler and straightforward a woman could be saved of a life of a stateless the moment she marries a man who has citizenship of a nation, consequently their children would also be protected from the risk of future statelessness as according to the paternity of the child, he/she would attain father's citizenship. However, the situation gets grim due to conflicting nationality laws between different nations. As in, there are countries that do not allow for citizenship through naturalization through marriage, in which case a stateless woman even if she marries a man of particular citizenship, she would not be legally absolved of her statelessness.

Correspondingly, observing the gender discriminatory nationality laws from the perspective of stateless men also showcases heart wrenching results. When nations do not give right to women to confer their citizenship to their husbands, a stateless man even after marrying a woman of proper citizenship cannot get rid of his stateless status. Also, such men are not preferred for marriages as they are commonly seen as incapable in providing existential right to children born to them. This clearly portrays that though the objective of discriminatory nationality laws is marginalizing women but such laws inadvertently affect the family as a whole. Consequently, it cannot be negated from scratch that gender discrimination in nationality laws is a major precursor to statelessness wherein men and women living lives of stateless also create more stateless in the form of their children and it keeps on revolving like a vicious circle to which we have no end. It is essential for the international fraternity to look into the matter of statelessness from this perspective and should put major efforts towards eradicating gender discrimination in nationality laws that would subsequently aid in controlling the menace of statelessness from the world panorama.

Another key impact of discriminatory nationality laws is that a major chunk of the society is restricted from giving their full contribution to the development of the society at large. It

²⁴ *Global Campaign for Equal Nationality Rights*, The Problem, <https://equalnationalityrights.org/the-issue/the-problem>. (Last Visited 13 Mar., 2023).

eventually paves way to huge loss of the particular nations in the form of socio-economic national growth, societal prosperity and overall progress of the nation in the geopolitical scenario. Furthermore, such people gets segregated from the mainstream society and go through situations of distress and marginalization even though they could have be legally members of the same society, if discriminatory nationality laws would not have been in existence. Consequently, such people live life in prolonged depression and loneliness. Children in the age when they should have toys and books in their hands are forced to live life without availing any such basic necessities of life that every child born on this earth deserves.²⁵

Consequently, time has come rather we are already late in controlling and combating gender discrimination from nationality laws of nations. However, if the nations come together in the fight against discrimination against women at the front of them becoming stateless, the outcome of equal treatment of women could be easily ascertained. Domestic legislations can be independently, exclusively and discretely be made to rectify the issue by providing women equal right to transfer her nationality to her children and her partner at par with men. Furthermore, enough resilience must be catered for implementing the process of naturalization and granting citizenship to stateless women and it should be accompanied with the fortitude towards providing citizenship through birth registration. If achieved it would ultimately help in eradicating the appalling presence of statelessness from the world.

One essential step that is required in this regard is addressing the nations that have ratified CEDAW but have raised reservations from article 9 of CEDAW. This action would also affect the particular nations in swelling their socio- economic development in a productive manner. A whole hearted effort be made to completely eradicate such laws and states should individually remove their reservations to article 9 and should create legislative frameworks providing equality in nationality rights to women.

Determination and hard work towards providing free education and detailed training programs for women who are living in statelessness would factor as an extremely beneficial tool for the particular states as well as the women. As the stateless women are already vulnerable to lack of education and employment opportunities, they are mainly forced into prostitution as the only source of income, it becomes essential to provide them literacy through camps organized by government and private authorities. This would finally benefit both the women and her family as she would become financially more stable, and also the state as it would increase the country's labor force.

²⁵ *Id.*

This would consecutively solve the concern of gender inequality in other sectors also. Initially, there would be few women surfacing in this so called men's world, however with the advent of time more and more women would get equipped with knowledge, strength and support and they would come out of their homes with more vigor. This would positively affect the overall development not only of the gender rather also of the nations and international framework as well. Keeping women out of the working sphere means negating their capabilities, talent and forte to deal with any situation. This would also ascertain a better future of children born to stateless women as initially they would not be restrained from attaining their mother's nationality. Eventually, such mothers would also be empowered to balance and share their children's responsibilities with their husbands in a progressive manner which would be beneficial to the child's growth. Subsequently, their other human rights that are restricted due to lack of legal bond with a nation could also be availed by them. This would lead to a better and prosperous world where women are not marginalized because of their gender and they are professionally, personally and emotionally contributing to the growth of the world community at large.
