

## **THE DILEMMA OF STATELESS PERSONS IN INTERNATIONAL LAW: A LIBERAL CRITIQUE**

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### **ABSTRACT**

*Despite the existence of the International Conventions of 1954 and 1961 on Statelessness there remains a serious concern regarding their implementation and acceptance by states as per International Law. This causes stateless persons to remain unregulated and unrecognized by law in many jurisdictions. According to the UNHCR, it has been estimated that there are about 10 million stateless people in the world at present. Therefore, there is a need to adopt the provision of the 1954 and 1961 conventions to ensure the protection and recognition of stateless persons across borders. Nationality and statelessness are closely connected. The obligation to stop statelessness has been portrayed as a negative right emerging from the right or privilege of nationality. Grey areas in nationality laws or their inadequate or unfair application, for instance, can prompt statelessness. Statelessness is the reality of having no nationality perceived by any state under the applicability of its laws. The 1961 Convention is devoted altogether to the reduction of statelessness. The acknowledgement of the recommendations for avoiding statelessness has risen as a general guideline of International Law (which of course is not enough to curb the miserable conditions of stateless persons). States who are not a party to the convention but that do deal with stateless children is an example of a universal state practice that reflects the principles of the 1961 Statelessness Convention. These patterns show that the obligation to avoid statelessness is developing a standard of*

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*international law and further as a custom under the said international law, and states shall be held responsible under the rules of customary international law for not complying with these rules for stateless persons. The dilemma of statelessness has not yet been clearly addressed by international law, the right to a nationality is a fundamental human right and States need to consider individual choice concerning citizenship issues. However, if such choices are not considered and individuals are deprived of a nationality and all the rights that come with it, they will be performing a disservice and will be in breach of Article 15 of The Universal Declaration of Human Rights. This article further deploys a Liberal Critique research methodology using international and domestic human rights laws to examine and critique what statelessness is and how it ought to be regulated.*

**Key words:** Statelessness, Refugees, Migrants, Nationality, Asylum, International Law.

## **INTRODUCTION**

Statelessness is the state of being without a nationality of any country. The significance attached to citizenship, under both domestic and international law is that being stateless puts that person in a situation where he/she is not given rights and protections granted under law. The stateless individual has this way been alluded to as a non-entity (Blackman, 1997). large number of human rights are allowed under international law, i.e. treaties, which are an advantage to all individuals, regardless whether they have a nationality or not. Except for the political rights of an individual, which are rights explicitly relating with citizenship, e.g. the right to vote and the right to contend for a political office, stateless individuals are qualified and entitled for every other reason on similar terms and in a non-discriminatory way. However, the absence of legal recognition and status of stateless people is taken as a ground on which they are denied various human rights. Laws, policies and state practices differ all over the world, it is not surprising for stateless people to be denied

rights, for example, education, medical services, i.e. healthcare, livelihood and movement, based merely on their absence of lawful status (Keating, M, 2001). Similarly, the inability of states to distinguish and address the vulnerabilities of the stateless can bring about infringement of rights, for example, freedom and security of the individual, torture, brutal, cruel or inhuman treatment or degrading treatment. It is not surprising in a particular context, for the discriminatory treatment of stateless people to rise to persecutory treatment, bringing about forced migration and taking refuge in other countries, where they then face a lot of huge problems, which will be discussed in a later part of this article. This research is qualitative as the research was primarily conducted on the basis of existing literature on statelessness. Existing treaties and principles concerning statelessness were studied and were then analyzed. It is also normative research as the principles and treaties established as part of the customary international law and state practice in Pakistan were applied on the issue of statelessness. This research paper is a combination of different research methodologies namely qualitative, normative, analytical and liberal critique.

#### **STATELESS PERSONS IN GENERAL**

According to the 1930 Hague Convention, it is upon each state to specify its nationals according to their own laws and regulations. Under Article 15 of the Universal Declaration of Human Rights (UDHR), it is stated that every person has the right to a nationality and that no one shall be deprived of it. Despite the fact that even though promises were given by conventions, stateless people in most parts of the world are still living without such rights and are facing lack of protection and security which can only be provided by nationality (Belton, 2005). Certain international instruments that talk about nationality are as follows; Articles 1, 2 and 3 of the 1957 Convention on the Nationality of Married Women (CNMW), Article 5 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 24 and 26 of the International Covenant on Civil and Political Rights (ICCPR), Article 9 of the

1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 2 and 7 of the 1989 Convention on the Rights of the Child (CRD). Usually the place of birth of a particular person forms a basis of that person's nationality, however, it can be changed if a person has managed to establish it with another state, for example, by marrying someone belonging to a different nationality (Heuston, RFV, 1951). Another important international instrument is ICCPR, Article 24(3) specifically, which constrains its application to children while making it clear that they have a right to get nationality. Though, neither a provision addressing the obligation upon a state to grant nationality to every child born within its territory was included, nor was any provision relating to the protection against the arbitrary deprivation of nationality added. On the other hand, UNHCR has expressed that: 'States are as per Article 24(3) to take every proper measure, both internally and in collaboration with other countries, to guarantee that each child has a nationality.' This duty incorporates the prerequisite to registering every child at birth. CRC, another international instrument also provides for the entitlement of a child to secure nationality and enlists protection against statelessness (Engstrom & Obi, 2001).

The different modes of getting a nationality namely are by birth, *jus sanguinis* (which is citizenship through descent), *jus soli* (which means citizenship is acquired through birth) and *naturalization* (the admittance of a foreigner to the citizenship of a country). Though these conditions are different in every state the general principles followed mostly are naturalization by residence, oath of allegiance, purchase of real estate, marriage and service be it civil or military and such theory may be called the theory of nationalism. The term nationalism has various meanings, but mainly encompasses two phenomena at the outset. Those being, the attitude that the members of the nation have when they care about their identity as members of that nation and the actions that the members of a nation take in seeking to achieve or sustain some form of political sovereignty. The former gives rise to questions about the concept of a nation or national identity, about what it is to belong to a nation, and about

how much one ought to care about one's nation. The latter concerns itself with whether sovereignty requires the acquisition of full statehood with complete authority over domestic and international affairs, or whether something less than statehood suffices. However, sovereignty is often taken to mean full statehood.

The International Court of Justice in the *Nottebohm* case (*Liechtenstein v. Guatemala* 1955), it has specified that the purpose of nationality is to determine that all persons on whom it has been conferred upon enjoys the rights and is bound by the obligations provided by the laws which the state grants and imposes on its citizens. Most frequently, the meaning of nationality has been cited in a passage wherein the ICJ held that, nationality is a legal bond between the state and citizens as it is based on the social fact of attachment, a genuine feeling of existence, sentiments and interest, which also includes the existence of rights and duties of citizens with it (Edwards A, 2014).

When a nationality is established, it determines a person and their connection to a state which further results in the establishment of rights and duties of the state towards its citizens and also upon its citizens (Edwards, A., & Waas, L.V. 2008). It has been observed by L. Oppenheim that any person may be deprived of nationality whether he is aware or unaware, intentionally or through no fault of his own. Despite the attempts made to reduce statelessness via national citizenship laws and the enactment of 1961 Convention and other similar instruments, according to UNHCR, it has estimated that there are about 10 million stateless people in the world at present (Refworld, 2005) The 1954 Convention recognizes a stateless person; it encourages for these people to acquire a legal identity and also safeguards the stateless person from discrimination for them to enjoy fundamental rights and freedom.

#### **WHO IS A STATELESS PERSON?**

Definition of statelessness has been given under Article 1 of the 1954 Convention as “someone who is not considered as a citizen under law by any State”. The definition is constructive as it is unambiguous and

concise. However, it is also very limited as it is silent regarding the de jure stateless people who unlike the de facto stateless individual do not enjoy any protection of the government even when they have a nationality (Teacher, Law 2013).

To approach the concept of statelessness, it needs to be looked at a broader sense, to point out all those individuals who lack an effective nationality and as a result are incapable of enjoying the rights that are associated with it (Teacher, Law 2013). The UN later extended the definition of statelessness in order to include de facto stateless individuals or those that have left their countries while possessing its nationality who cannot enjoy the protection and aid of their government, perhaps due to the government not granting them protection and aid or the individuals have renounced the aid and security of the countries to which they are nationals to (Teacher, Law 2013). The Convention does not allow any uncertainties or questions to be raised against Article 1 (1) so this definition is to be followed because it is binding on the States that are party to the convention. According to International Law Commission (ILC), it has been concluded that Article 1(1) which consists of the definition of statelessness is a part of the customary international law.

Now an important distinction needs to be made between statelessness and the state of being undocumented of either uncertain nationality or at risk of statelessness. When an individual lacks such documentation that does not mean that the individual is stateless, however, may become stateless in the future, e.g. being unable to prove that there exists a link between that particular individual and the State of nationality, therefore, that person will not be considered as a national.

It is important to know that a stateless person can be anywhere in the world; can be where he/she is born, where he/she has always lived and has all family ties. Statelessness means lack of nationality and nothing more and nothing less. Many stateless people are still living in their homes and have not moved from their countries. Subsequently, vulnerability is increasing for the stateless person due

to discrimination, abuse of human rights and even persecution on the part of the State, which can prompt forced displacement.

**Difference between Stateless Persons, Refugees, Migrants, Asylum Seekers and Internally Displaced Persons.**

A person who is not considered as a citizen of any State is said to be a stateless person. A legal tie between the government and the individual is provided with citizenship, which allows individuals to exercise their social, economic, political and other rights including responsibilities of both government and citizen. There are many reasons due to which a person becomes stateless usually depending on the sovereign, administrative, legal, technical decisions or errors. UDHR emphasizes that everyone has the basic right to a nationality.

***Who is a refugee?***

Any person being forced to flee his or her country due to State prosecution, violence or war is known as a refugee. A refugee has a reasonable fear of discrimination and ill-treatment by race, color, ethnicity, religion, nationality, political opinion. Hence, such people are less likely to return home due to fear or cannot return at all. Main factors causing an increase in refugees fleeing is due to war and religious violence (unrefugees.org 2020).

***Who is an internally displaced person?***

There are some people in the world who are forced to flee their homes but unfortunately are unable to cross an international border; such people are called Internally Displaced Persons (IDPs). Such people have to face the hardship to find safety wherever it is available to them. Such haven can be availed in a nearby town, private campsites, schools, settlements, or even forests and fields (unhcr.org 2020). Such IDPs are massively assisted by UNHCR, as they face internal conflict within their state or even due to any natural disaster. IDPs are not given the same sanctuary under any international instruments as refugees as they are not equally eligible

to obtain any assistance; this is because it is upon their government to protect them (unhcr.org 2020).

***Who is an asylum seeker?***

An asylum seeker is one that retreats from their own country to seek sanctuary, however, for them to do that, they have to apply for asylum in order for their right to be identified and recognized as a refugee and to receive legal protection and basic material assistance (unrefugees.org 2020). It must be proven by the asylum seeker that their fear of persecution is valid in their home country.

***Who is a migrant?***

A 'migrant' is fundamentally different from a refugee. Refugees are forced to flee to save their lives or preserve their freedom, but 'migrant' describes any person who moves, usually across an international border, to join family members already abroad, to search for a livelihood, to escape a natural disaster, or for a range of other purposes (unhcr.org 2020).

**DE FACTO AND DE JURE STATELESSNESS**

De facto statelessness is one of the types of statelessness and has been defined in the 1954 Convention in which it has been classified as a pure legal description. Therefore, the characteristics, worth of a person's nationality of a specific state has nothing to do with this definition. This definition has been praised by many because of it is to the point, and the briefness of this definition is esteemed simply because it provides an unambiguous, clear standard for statelessness; therefore, a person is simply a citizen of a state or not a citizen in the legal sense. However, legal scholars on the other hand also believe should be expanded more than de jure statelessness. They say that the definition of statelessness, given in 1954 Convention, is way too constricted and limited since it does not talk about those people whose citizenship are of no use and that they cannot prove or verify their nationality. There are some factors pointed out about the definition of de jure statelessness is that it ignores those people who



technically have a nationality yet are unable to exercise basic rights in connection with benefits and protection unlike those who can enjoy them (Edwards, A., & Waas, L.V. 2008).

It would additionally appear more suitable to focus on the protection characteristic, as nationality can be associated with several forms of defense (Edwards, A., & Waas, L.V. 2008). In this respect the difference between "unable" and "unwilling" should be strained on, stateless people usually are incapable to raise any claims as to protection, while asylum-seekers with nationality typically are disinclined towards benefiting themselves from the security of their state of citizenship.

Some legal scholars think that the meaning of statelessness provided in the 1954 Convention is very narrow and limited since it ignores those persons whose citizenship is almost impractical or who cannot attest or authenticate their nationality. In order to be definite, it is every so often pointed out that the problem with the explanation of de jure stateless is that it discounts those people who officially might have a nationality but are not able to attain or enjoy the affiliated facilities and protection (Edwards, A., & Waas, L.V. 2008). The definition does not include de facto stateless, in which case the definition needs to be broadened. Individuals who are de facto stateless usually have a nationality by law, but they cannot prove its existence (Parikrama G, 2006). In a situation, where the government refuses to provide a standard set of benefits to which the citizens are entitled, e.g. protection or assistance, is when de facto statelessness follows. Another way of understanding de facto statelessness is that in most cases they have a legal entitlement to the benefits of nationality but for many reasons are unable to enjoy them; effectively, such people are considered to be without citizenship (Weissbrodt D. and Collins C., 2006).

As stated by Carol Batchelor, that the de facto and de jure stateless people who require protection attached to their nationality are not considered refugees. In the 1951 Refugee Convention, it has been

mentioned that a refugee is one who has fled his/her home country and is reluctant or incapable of returning due to justified fear of State persecution to which he/she cannot avail its protection (unhcr.org 2020). Put another way, it is not necessary that a de facto stateless person is outside his/her country because, in order to be considered a refugee, one must retreat from his home country to escape from persecution and cross an international border into another country, hence all de facto stateless individuals within their home country cannot be considered a refugee some of the sentences such as this one are too long where the reader cannot connect what is going on in the sentence. Also, the de facto stateless person does not inevitably have a fear of oppression.

To get rid of any misunderstanding, de jure statelessness was also defined to eliminate the question whether the prosecution was faced by the person or not. It needs to be clarified that statelessness can occur due to conflict of laws- explain this conflict of laws briefly here, although you have explained it later without any cause like discrimination, negligence or any violence by the State. Alternatively, de facto statelessness is followed due to the action on the part of the individual such as retreating from their habitual residence to escape the State persecution.

#### **PROCEDURE FOR DETERMINING A PERSON AS STATELESS**

The 1954 Convention expressly defined a stateless individual, however, was unable to elaborate a procedure for the purpose of identifying a stateless person. It is upon the States to help create a means to implement a procedure in which stateless person can be recognized. Most States have no such particular method; however, coincidentally, they can simply use the (method of application through the asylum regime) if you could elaborate this method a little here, that would help the reader (Achiron M., Bactchelior C. and Leclerc P., 2005).

In France, the French Office for the Protection of Refugees and Stateless Persons carries out a specific procedure- what are those specific procedures to identify the stateless person. Such institute is authorized to protect individuals who are stateless on judicial and administrative grounds. Alien laws prevailing in Spain mentions that Ministry of Interior shall identify a stateless person. Applicants have the freedom to inform the police station or to the Office for Asylum and Refugees which then further carries out an investigation when a report is forwarded to the Ministry of Interior for assessment. In Italy, authorization has been given to the Ministry of Interior identify the status of a stateless individual (Achiron M., Bactchelore C. and Leclerc P., 2005).

#### **What are the causes of statelessness?**

When there is a violation of a right, no situation can be worse than the violation of the right to nationality especially when it results in statelessness. Statelessness can arise due to many circumstances either at birth or later in life. In many cases, usually, discrimination and arbitrariness play a vital role due to which many people turn stateless. Such factors, when inconsistent can lead to deprivation of nationality of entire groups; this is when States fails to provide any legal method to reduce the gaps in the law which causes statelessness (Achiron M., Bactchelore C. and Leclerc P., 2005).

#### **Conflict of laws:**

Every State has their law regarding grant of citizenship, some states follow *jus soli* which means citizenship is acquired through birth or *jus sanguinis* which is citizenship through descent- the footnote does not match the concept elaborated here, that's purely related to the conduct of hostilities and you are talking about private international law. Kindly cross check all the FNS in the document (Queguiner J.F. 2006). However, in most cases, citizenship is neither granted according to the individual's birthplace nor by parentage. It is usually because that individual concerned is unworthy or not eligible under

any of the States' operation of law with which he or she has connections.

- **State succession:**

When a State divides into many parts, forming multiple new independent States, the nationality of the people is questioned and what is to happen to them (institutesi.org 2019). People of the dissolved state may be left without a nationality since the nationality laws of the successor state may cause a conflict.

- **Arbitrary deprivation of nationality:**

State are usually involved in arbitrary acts in which entire population group's nationality is denied or withdrawn. Ultimately, by the arbitrary and discriminatory act, those groups are singled out according to their religion, ethnicity and language, which can immensely influence individuals whose nationality is deprived. Most of these population groups form a minority in many States, therefore making them vulnerable to arbitrary deprivation of nationality (unhcr.org 2020). In certain cases, when criteria on the ground if security is not met, arbitrary action can take place or in another situation, discrimination can linger in the nationality policy resulting in creation, preservation and prolonging the issues of statelessness. e.g., unlike a man, a woman cannot confer nationality to her child, which puts children at high risk of statelessness especially when the father is stateless himself or unknown.

- **Administrative barriers and lack of documentation:**

Lack of documentation is the most difficult issue a stateless person has to face, as it makes it difficult for individuals to prove and verify their nationality. In such situation, discrimination also takes place for the religious and ethnic minorities, and the people are living in rural areas are also likely to face barrier acquiring documentation (institutesi.org 2019). Such situations are created due to the poor functioning of administration and documentation while a new State is formed or when redefining by carrying out citizenship registration

(institutesi.org 2019). For example, when a person's place or date of birth or descent is not proven or verified, State considering this refuse to grant that person citizenship.

- **The inheritance of statelessness:**

This certain cause of statelessness regarding inheritance is the biggest issue and stands above all other problems of statelessness. Concerned states hardly put any effort to implement any method to put a stop to statelessness from passing from parent to child. Inheritance of statelessness forcibly migrates into new countries allowing the increase in statelessness in the next generation. Unfortunately, if children become stateless at birth, they may never get to experience the protection of nationality.

- **Discrimination:**

The high percentage of statelessness is due to the element of discrimination is at play. States discriminate against people based on a particular religion, race and ethnicity by denying them nationality which leaves the minority groups stateless. Over 20 countries do not let mothers confer her right of nationality to their children. Children in over 20 countries- for example- are not entitled to acquire nationality from their mothers. In most situation, when the status of the father is stateless or unknown even, then nationality cannot be conferred to the child.

### **REPERCUSSIONS OF STATELESSNESS**

The story about the reality of many stateless individuals is very severe and unfortunate.

Such people face lack of opportunity, lack of protection of their basic rights and lack of participation in society. Countless obstacles are confronted by the stateless in their day to day lives, such as possessing a birth certificate, education, health services, purchasing a land, getting a loan, getting a marriage certificate or even a death certificate (Kerber L.K 2007). Stateless people have a hard time

issuing any form of identification papers or a passport. Hence, they have no way of proving that they exist and have no means to help them identify themselves in their daily routine with the state and even private bodies. Stateless people hardly have any freedom of movement within the territory in which they are born, let alone international travel unless through unlawful and dangerous means (Kerber L.K 2007). In most cases, detention and arbitrary arrest are very common, in which detention is usually prolonged or even indefinite. In furtherance, when a stateless individual wish to exercise their rights or when they fall victim to a crime or mistreatment, their status can reduce the possibility of accessing justice (ICCPR, Art-25. 2020).

Stateless people can be treated differently and may be subject to some rules and regulations, which does not concern to other people in the state such as the limit on their movement within the territory or denial of land rights. However, in severe cases, they are also restricted on rights of marriage and reproduction. Consequently, stateless people fall victim to exploitative practices like forced labor, extortion and other harsh treatments leading to persecution (unhcr.org 2020). Living in such difficult situation may cause people having diminishing self-worth due to the limitation experienced, knowing the fact that they may never be formally recognized as a citizen of any State. Ultimately, this can lead to the immediate sense of anxiety, hopelessness and depression making a direct impact on their well-being (unhcr.org 2020).

Subsequently, a ripple effect comes into play as not only a stateless person is experiencing a huge impact on his/her life but also the family members, society and the international community. A mother, herself holding a nationality is unable to confer it to her child, worries that he will never have a family of his own (unhcr.org 2020). However, a mother herself may hold a nationality, but her son is stateless as she was unable to confer her nationality to him, which makes her worry that her son can never have a family of his own.

Proving your existence through a nationality can be a huge difficulty as even the most basic human rights are provoked. For instance, in most ex-Yugoslav states, at a certain age, all citizens were required to hold a valid state-issued identification card to avail social services. For the card, one had to apply for it that required documents which a stateless person is unlikely to possess a birth certificate and proof of citizenship. Hence, a person being stateless is unlikely to possess documents like the birth certificate or verification of citizenship, so without holding a card, living a normal life is difficult. In another example, in Macedonia, ARKA writes- who is ARKA? that any person without any form of identification or birth certificates is deprived of basic essential human rights such as education, justice, legal marriage, healthcare and housing including limitation on the movement of the individuals without a passport. The outcome of statelessness also extends to democracy and public safety. Without any form of identification, then a substantial part of the population group cannot either cast a vote or be elected to any public office. As a result, they become vulnerable to acts like human trafficking and child prostitution, and there is the higher risk of child labor and early marriages because of non-availability of official proof of age. Since so many people are not identified, it makes it hard for the States to keep track of the population and ensure their safety.

In cases where parents do not hold any nationality, it is most likely that they pass their status of statelessness to their children as well. Statelessness is like a curse that one cannot get rid of as it paralyzes a person, existing but not being able to exercise your rights and the worse part of this issue is children go through life with the same maddening procedure passed down by their parents.

#### **STATELESSNESS IN PAKISTAN**

The issue of statelessness needs to be known widespread among the citizens of Pakistan

as an issue that certain segments of the population face due to the state's neglect (unhcr.org 2020). According to Pakistani policy, the

Rohingya settled in Karachi do not qualify as asylum seekers or refugees. But since the government has not specifically explained what rights stateless people have, the future of the Rohingya in the country remains in instability. UNHCR in a report stresses that under the UNHCR 1961 Convention on the Reduction of Statelessness 'there is a need in Pakistan to identify stateless persons and attend to their protection needs.

The constitution of Pakistan does not talk about the status, or the rights of stateless person and not much literature can be found in the research settings of Pakistan and the stateless. However, Pakistan enacted the Pakistan Citizenship Act, 1951 and the Pakistan Citizenship Rules, 1952 but they too do not specifically cater to the problem of the stateless. Keeping in mind also the fact that Pakistan is not a State party to the 1954 Convention relating to the Status of Stateless Persons, or to the 1961 Convention on the Reduction of Statelessness, accession to these Conventions is regarded as a primary step to prevent statelessness globally. Even in case of not a signatory, the states are still obliged by the rules of customary international law.

### **THE STRANDED BIHARIS IN BANGLADESH**

Biharis in Bangladesh are the Urdu-speaking Muslim decedents. At the time of Pak-Indo

partition, they moved to Bihar which later on became East Pakistan. After the war in 1971, East Pakistan was no longer a part of Pakistan, and Bangladesh came into being. Many people living in Bangladesh were not welcomed as they supported West Pakistan at the time of war and were treated as stateless. Bihari camps which are mainly in urban areas lack basic facilities mainly suffering from poor sanitation and over-crowding. Due to growth in population with time these conditions have gone worse. The state is facing severe chronic hygiene problems such as poor sewage system, waste disposal etc. Camp residents face discrimination even in getting the basic necessities of life (Singh D.K 2010).



Some of the camp residents are still struggling to be recognized as Bangladeshi citizens. In 2008, the Supreme Court of Bangladesh stated that every person in the Urdu-speaking community is to be given the status of a citizen of Bangladesh under the operation of its law and also instructed the election commission to update their electoral-rolls by adding the new nationals. Since then the Urdu speaking community was given its identity and the right to vote. Due to this declaration, more than 300,000 people in the Urdu-speaking community were given Bangladeshi citizenship (unhcr.org 2020). This was the first positive approach towards integrating these minority groups into Bangladeshi society. After a couple of days, the Commission managed to register hundreds of people a day, carrying out the door to door service to fill out registration forms. Despite recent progress, camp- residents are still having trouble with discrimination which puts them in a vulnerable position and are also denied access to Bangladeshi passport.

#### **THE INTERNATIONAL LEGAL FRAMEWORKS**

There are two conventions that have been promulgated that are specifically about statelessness the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness. It would not be wrong to say that the right not to be stateless, or the right of nationality, is primarily perceived as a fundamental human right. Despite the fact that the 1961 Convention involves various provisions, the challenges that all these legal instruments face are not just that there is a lack of unambiguous meanings of certain terms, but one of the most crucial problems is their adoption among states. The 1954 Convention has only been ratified by 78 parties and the 1961 Convention just by 55 states.

#### **THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS**

The Protocol relating to stateless individuals that had been proposed as an appendix to the 1951 Refugee Convention and was made into a

covenant in 1954. It is a vital international instrument that aims to strengthen the position of stateless people. It also seeks to guarantee that the stateless are given their rights and opportunities without any sort of discrimination (Weis P. 1961). Regardless of how broad the rights given to a stateless individual might be, they are not what might as well be called obtaining a nationality (Weis P. 1961). The 1954 Convention defines and gives the legal meaning of a stateless individual, i.e. "a man who is not taken into account as a national by any State as per the law of that State"

In spite of the fact that the drafters of the Convention were of the opinion that it was essential to differentiate between de jure stateless and de facto stateless persons. De Jure Stateless people are those individuals who have not gotten nationality naturally or through personal preferences in accordance with the law of that state and de facto stateless are those individuals who can not validate their nationality. The Convention focuses on the subject of de facto stateless people with a non-confining and non-obligatory suggestion:

*"When every Contracting State, accepts the reasons as legitimate regarding as to why a man would forgo the protection, he is getting from the law of the State for being its citizen, they shall consider favorably of according that individual with the treatment which the Convention grants to stateless people."*

Each State Party is given a choice concerning whether an individual qualifies for the benefits of the Convention and is made by its own methods or procedures. UNHCR is accessible to give guidance on how to make and establish such systems or mechanisms if asked. The starting foreword of the 1954 Convention reiterates that stateless refugees are dealt with by the 1951 Convention, and that is why refugees are excluded from this Convention (Refworld, 2019). Article 1 of the 1954 Convention additionally distinguishes those people who, in spite of falling under the definition of a stateless being but are still left out from the benefits of this Convention. (Weis P., 1961). Reasons as to why they are omitted are either because of to

the fact that they do not wish to be protected since they are presently benefitting from some other particular legal schemes or international aid or due to circumstances that make them unsuitable of international protection based on their criminal behaviours.

### **THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS**

United Nations Economic and Social Council asked the International Law Commission in

August 1950 to draft proposed international Conventions for eliminating statelessness and hence prepared a Convention, dealing with issues of statelessness that are an outcome of conflict of laws. The Convention had provisions that were catering to the eradication and limiting instances of statelessness in the future (Weis P., 1961). A conference was conveyed where participants considered the issues and concluded that the first convention was wide ranging and extensive and suggested to work on drafting a new Convention based on cutting down future statelessness and as a result the 1961 Convention established.

The International Law Commission and State representatives confirmed that international help in the form of assistance was vital in light of the fact that when a person is precluded or denied the nationality of a State, he or she would not have had the financial resources nor the required aptitude that is looked-for to present their entitlement to a nationality before competent authorities of that particular state. Representation by an international organization would likewise evade the question as to whether the individual was a subject of international law or not and additionally an agency to this work would be created later sown the line to provide expertise on the issue that would be helpful for prompting concerned individuals as well as for recommending ways for getting a nationality and of reducing statelessness.

To limit down the instances of statelessness, the Convention asks that signatory States should implement nationality laws that echo the set

morals concerning attaining or losing nationality. Disputes concerning the application and interpretation of the Convention which are not settled by different means can be taken up before the International Court of Justice on the request of any of the state involved in the dispute. In the end, the convention urges States Parties to broaden the provision of the Convention to de facto stateless people at whatever point it may be possible.

### **STATE RESPONSIBILITY AND THE PREVENTION OF STATELESSNESS**

There is a visible trend towards perceiving and recognising the right to nationality as a

human right, and it has been acknowledged that in issues regarding citizenship the states must consider a person's personal interests. Nationality not only connects a person to a country; it similarly interfaces or connects people to international law.

The best methods for redressing statelessness are to stop it from happening. States play a central role in the prevention of statelessness because they have the power and are in control of deciding how nationality can be obtained, modified and lost (Weis P., 1961). In deciding who their nationals are, States must act in accordance to the restrictions set by international law. The legal principles suggest that the states should adopt precautionary measures in their laws keeping in mind that they have to prevent statelessness, at birth or at a later stage. Human rights treaties contain various precautionary measures, but the most wide-ranging set of guidelines in this regard are found in the 1961 Convention. For instance, it states that children must procure the nationality of the country in where they are born in case that they would otherwise be rendered stateless, that no individual can let go of their citizenship until they have gained another nationality and that they can not be stripped of nationality on oppressive and discriminatory grounds (Refworld, 2005).

Despite these efforts, instances of statelessness still continue, regularly in circumstances of State succession or with regards to

relocation, i.e. migration. UNHCR's Executive Committee has in this way stated that necessary steps must be taken by States to minimize the number of statelessness instances and that the necessary step would be to come up with an appropriate solution for existing instances of statelessness. Reducing statelessness requires conventional, judicial incorporation in the State through the law of nationality of that state. It additionally needs to expand social and financial cooperation and participation and keeping in mind that states can regulate the obtaining and maintenance of nationality, they should regard human right standards in doing so (Refworld, 2005).

The convention of 1961 requires states to give nationality to individuals who are born on their land and who will be considered as stateless otherwise. The Convention of 1961 further stops states from denying individuals a nationality if such stripping makes them stateless. The transposition of Article 15 of UDHR into Article 24(3) of ICCPR constrains its application to children while making it clear that they have a right to get nationality. UNHCR has expressed, for instance, that: 'States are as per Article 24(3) to take every proper measure, both internally and in collaboration with other countries, to guarantee that each child has a nationality. The Convention of 1961 is the only UN treaty where a few guidelines on loss and stripping away of nationality are stated, there are different ways in which nationality might be lost or taken away. For instance, one may lose one's nationality where the law states of loss of nationality as an outcome of a change in the individual status of that individual, for example, marriage, dissolution of marriage, legitimation, acknowledgement or adopting. The 1961 Statelessness Convention includes that any loss of nationality as a result of any change in the individual status is conditional upon securing the nationality of another state.

Taking away or stripping of nationality has numerous forms, the Convention of 1961 perceives that a state can take away a person's nationality, for instance, since that nationality was obtained through fraud or deception, i.e. misrepresentation, even where statelessness

may occur. Not being loyal to the state or striping in the interest of the state are further allowable for striping of nationality. These practices are allowed by the 1961 Convention in specific conditions, even where the individual might be left stateless. Ways in which one can be deprived of nationality that are not acknowledged under international law incorporate the arbitrary striping of nationality, for example, based on race, ethnicity, religion or political perspectives.

### **CONCLUSION**

Statelessness is a serious issue which is prevailing all over the world and it is a problem for the states to resolve. The major cause of statelessness is the act of the States, either there is a conflict of nationality law or discrimination is involved. The responsibility of a State regarding statelessness must be structured in such a way that the basic human rights of a stateless person and the benefits of citizenships are not taken away by their respective governments. Nationality is a states internal matter as long as international law including general standards, and custom do not administer opposing practices, and as long as states domestic law is not in conflict with international law.

It has been shown and proven by the member States that other non-member States who do not have to deal with major issues can adopt or improve their nationality laws in order to avoid statelessness.

Primarily, States should consider some principles to be adopted, for instance; States should make sure that every child acquires nationality immediately at birth, whether *jus sanguinis* or *jus soli*. Any argument, stating that any child being born within a state does not establish a legal bond between State and the individual, should not be considered relevant if statelessness is in question. Those Member State that does not follow the nationality law of *jus soli* should otherwise provide nationality to those born within their territory since those children could not acquire from another nationality. It should be ensured by the Member State that such

exception does not cause an increase in statelessness if a child is born out of wedlock.

Member States should not include provisions in their national laws regarding the loss of citizenship when chances of an individual of becoming stateless are at stake. In situations like State succession, a rational guideline needs to be taken into consideration regarding the acquisition and loss of citizenship as history should not be repeated because the minority groups are directly affected at all times. In order to minimize any loss in the outcome of State succession, nationality laws should be reviewed according to the conventions for the avoidance of statelessness. International conventions should be followed by States that deals with the issue of statelessness. Provisions given under these international instruments should be put into practice by the States. The stateless people are treated as a legal ghost because they are known to be invisible and overlooked. States should carry out an investigation as to statistically map and identify stateless individuals, individuals at the risk of becoming stateless and even those persons who are unaware of their nationality. State legislation should pass a legal act that clearly regulates the stateless people within a State, giving them a special status in which basic fundamental rights are granted to them. Such act should also include chapters dealing with asylum-seekers and migration and other related matters. Just like the stateless people, the term statelessness is obscure, meaning it is not well-known to the general population. In order to create awareness, statelessness should be incorporated into academic courses, media, campaigns and conduct seminars in order to draw attention to a global issue. At first, a legal provision should be regulated, in order to inform the stateless persons that they can claim protection through legislative measures and non-legislative measures. State authorities should facilitate the stateless persons with a chance to be heard, access interpreters without being charged and receive legal counselling.

The main issue with statelessness is that it is very long-lasting. Hence, protection should be granted so that they can lead to a long-

term normal and dignified life. Therefore, as clearly structured in the 1954 Convention, any person holding the status of statelessness, shall be granted all rights. The protection of a stateless person should include providing them with a home, legal document for identification, admittance to labour market without any limitation, education, healthcare and legal documents allowing them to travel.

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