EVALUATING THE STATE OF STATELESSNESS — THE CURIOUS CASE OF NO NATIONALITY

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ABSTRACT

In light of recent developments in the international arena pertaining to refugee crises, attempted secession of states and aggression within sovereign territories by terrorist outfits, the issue of statelessness has become an evident threat to the human rights of thousands of people around the world. Statelessness is a complex phenomenon which works in conjunction with several factors and causes havoc in the lives of often unsuspecting victims. Knowledge about why it occurs and the impact that it has on people is key to addressing the issue. In this paper, the author attempts to delineate various dynamics of statelessness so as to enable a better understanding of this matter with a view towards facilitating better discourse in this respect.

With a view to studying the various issues pertaining to statelessness, this paper is divided into five sections. The first section is focused on finding the answer to the question of who is a stateless person by looking into the features that characterize such individuals and the procedures for determination of statelessness in an effort to identify the international best practices. The second and third sections look into the causes and effects of the phenomenon of statelessness respectively. An overview of the numerous reasons and region based consequences felt with reference to statelessness are a primary concern of these chapters. The fourth section thereafter looks at particular recommendations that have been made to counter statelessness with special reference to the 1954 Convention relating to the Status of

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Stateless Persons and the 1961 Convention on the Reduction of Statelessness and evaluates the Indian stance with regard to statelessness in the world in general and stateless individuals within its territory in particular. The concluding remarks of the author are presented in the fifth section.

I. INTRODUCTION

Individuals who are denied a national identity by all recognized States in the international community are referred to as stateless persons. Since most rights in the international community are based on nationality, these individuals are denied the protection of various rights which are otherwise available to the legal citizens of countries. Consequently, the number of cases of human rights violations with regard to such individuals is far greater in comparison to the larger population of persons having settled citizenship.

In recognition of the growing population of stateless persons all over the world and the extremely vulnerable lives that they are compelled to lead, world organizations of the nature of United Nations have been undertaking endeavours to address the situation of such persons in order to ensure that their basic rights are not denied on the ground of lack of citizenship. In this

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4 See Michelle Foster & Hélène Lambert, Statelessness as a Human Rights Issue: A Concept Whose Time Has Come, 28(4) INTERNATIONAL JOURNAL OF REFUGEE LAW 564, 584 (December 2016).
5 Ending Statelessness, UN HIGH COMMISSIONER FOR REFUGEES (UNHCR), (Oct. 28, 2017), http://www.unhcr.org/stateless-people.html; #IBelong Campaign to End
respect, it appears that the current trend is towards ensuring that the world community is more inclusive towards such individuals who do not ‘belong’ to any particular State.

A. Who is a Stateless Person?

Article 1 of the 1954 Convention relating to the Status of Stateless Persons (‘1954 Convention’)\(^6\) provides a definition for the term ‘stateless person’. According to it, ‘a stateless person’ is one who is not “considered as a national by any State under the operation of its law”.\(^7\) An individual may be born stateless or may become stateless as a consequence of the deprivation or loss of the status associated with nationality.\(^8\)

The lack of documentation for refugees and the stringent and discriminatory rules of nationality acquisition in their countries of origin often cause entire generations of persons fleeing war or dissolution of statehood to become stateless.\(^9\) In most instances, specific minority ethnic groups fall victim to the curse of statelessness.\(^10\) Since stateless persons neither possess valid citizenship nor are considered to be nationals of a recognised State in the


\(^{7}\) Supra note 1.

\(^{8}\) Id.


international community, they are often treated as aliens or ‘legal ghosts’ in the territories that they find themselves in.\textsuperscript{11}

\textit{B. De Jure and De Facto Statelessness}

In order to understand the need for extending protection to stateless persons, it is necessary at the preliminary level to distinguish between \textit{de jure} statelessness and \textit{de facto} statelessness. This is because among other factors, while the provisions of the 1954 Convention extend to individuals who are \textit{de jure} stateless the \textit{de facto} stateless are outside the scope of the Convention.\textsuperscript{12}

Those individuals who do not have a nationality by operation of law in any State are considered to be \textit{de jure} stateless.\textsuperscript{13} On the other hand, \textit{de facto} statelessness as a concept applies to those persons who are unable to establish their nationality and thereby fail to rely on it for the purpose of protection, despite formally possessing a nationality.\textsuperscript{14}

This technical distinction drawn between \textit{de facto} and \textit{de jure} statelessness however has received criticism, especially in the light of increase in \textit{de facto} statelessness. Critics point out that by allowing the application of the 1954 Convention to be limited to only \textit{de jure} stateless persons, the international


\textsuperscript{12} Hugh Masey, UNHCR and \textit{De facto} Statelessness: Handbook for Parliamentarians, LEGAL AND PROTECTION POLICY RESEARCH SERIES 18, 19 (2010).

\textsuperscript{13} Nationality and Statelessness, UN HIGH COMMISSIONER FOR REFUGEES (UNHCR), 11 (2005).

community is essentially turning away from the perils of *de facto* statelessness.\(^{15}\)

\[C.\text{ Determination of Statelessness}\]

For the purpose of determination of statelessness under international law, only the fact that someone is stateless at the point of determination is relevant, with the time or process related to the loss of nationality often being disregarded.\(^ {16}\) In this context, it is important to note that despite the specifications in the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (‘1961 Convention’), only a handful of States have established procedures related to determination of statelessness, and even among these procedures, most are unregulated.\(^ {17}\) With a view to standardising statelessness determination procedures utilized by States, the UNHCR has therefore provided guidelines as to the nature of such processes. According to the UNHCR, determination procedures used by States must contain adequate procedural safeguards with a specific focus on due process guarantees so as to ensure transparency in the system.\(^ {18}\)

In its guidelines regarding determination of statelessness, the UNHCR has also enumerated the various safeguards that States should endeavour to incorporate within their statelessness determination procedures.\(^ {19}\) The UNHCR recommends that the criteria being used for the determination of


\(^{16}\) *Supra* note 7.

\(^{17}\) *Handbook on Protection of Stateless Persons*, UN HIGH COMMISSIONER FOR REFUGEES (UNHCR), (2014).

\(^{18}\) *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, UN HIGH COMMISSIONER FOR REFUGEES (UNHCR), HCR/GS/12/02, (2012).

\(^{19}\) *Id.*, ¶19.
stateless identity of an individual and the potential benefits associated with being assessed as a stateless individual should be publicised in various languages for wider dissemination.\textsuperscript{20} Further, it suggests that persons seeking such determination should be allowed to submit written applications (with assistance being provided as to translation/interpretation and filling of the requisite forms so as to ensure clarity and reduce ambiguities in the cases presented before the decision making authorities) followed by a personal interview with an official playing a role in the determination procedure.\textsuperscript{21} Moreover, the Guidelines prescribe that applicants should be provided with access to a legal assistance without a fee where feasible.\textsuperscript{22} Additionally, States are requested to refrain from deporting the individual applicants from their respective territories in the course of the determination process.\textsuperscript{23} Further, the UNHCR advises that the claims of such applicants should be determined based on the law and practice in the field of nationality in the respective State, and in case the determination is conducted by a judicial forum, the process involved should be inquisitorial in nature.\textsuperscript{24} It also urges States to provide a reasoned decision regarding the assessment to the applicant within a reasonable period of time, alongside a right to appeal for the applicant and an access to the UNHCR.\textsuperscript{25}

II. CAUSES OF STATELESSNESS

Research suggests that statelessness occurs due to the overlapping and amalgamation of various factors, which culminate towards weakening the

\textsuperscript{20} Id.
\textsuperscript{21} Id.
\textsuperscript{22} Id.
\textsuperscript{23} Id., ¶20.
\textsuperscript{24} Supra note 18.
\textsuperscript{25} Supra note 17, ¶23, 24, 25.
status of an individual within an international community where national identity is the predominant identifying feature.  

Some scholars view statelessness as a phenomenon caused due to two major factors, namely structural inadequacies and direct discrimination. Structural inadequacies highlighted by these scholars which result in statelessness include but are not limited to the existence of legal systems where mothers are not allowed to pass on their nationality to their child and the lack of proper maintenance of birth records and the resultant existence of unregistered births. They also point out that discriminatory tactics employed by States of the nature of displacement, rejection and deprivation of citizenship to members of certain minority communities residing within a State may result in statelessness persisting within such communities. Additional factors identified by the UNHCR as contributing to the existence of statelessness are existing lacuna within nationality laws and the process of change of borders and emergence of new states. The UNHCR emphasises that the lack of proper drafting and prevalence of improper application of nationality laws often results in the exclusion of certain categories of persons from the protective realm of nationality. In this respect, the UNHCR further highlights that the existence of laws which determine nationality based on the descent from a national of the State can pose the threat of statelessness for innocent, abandoned children without any information as to the nationality or in fact identity of their birth parents alongside other laws which prevent mothers from passing on their

28 Id.
29 Id.
31 Id.
nationality to their children and domestic statutory provisions which limit the access to citizenship to members of specific designated communities thereby putting various other individuals from other communities residing within the territory under the risk of statelessness.\textsuperscript{32}

It is further pointed out that women who forge a marital bond with foreign nationals, under certain circumstances, are particularly vulnerable to statelessness since one can be deprived of nationality by virtue of a variety of factors including marriage, extended stay abroad and subsequent termination of marriage to a spouse of different nationality.\textsuperscript{33} Children, specifically those born out of wedlock, are identified as another section of the population which is particularly exposed to the risk of statelessness in States which deny citizenship to illegitimate or unregistered offsprings.\textsuperscript{34}

In this respect, it is necessary to note that in many cases, statelessness occurs \textit{in situ}, meaning that stateless persons are often denied the status of a national within the country of their birth or long term residence.\textsuperscript{35}

Statelessness mostly occurs despite residence in a State for long periods, in case of migrants who find themselves in States which refuse to acknowledge the length of their residence within the respective territories as a factor relevant to the granting of citizenship.\textsuperscript{36}

While some choose to blame States which refuse to comply with the international standards meant to combat and reduce statelessness as key actors in the existence of the phenomenon, others highlight that even the

\begin{itemize}
\item \textsuperscript{32} \textit{Id.}
\item \textsuperscript{35} \textit{Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level,} UN HIGH COMMISSIONER FOR REFUGEES (UNHCR), (Oct. 28, 2017), http://www.refworld.org/docid/5005520f2.html.
\item \textsuperscript{36} \textit{Id.}
\end{itemize}
States which are compliant with such standards are equally blameworthy due to the fact that statelessness persists only because no State (either compliant or non-compliant) is willing to extend the status of a citizen to certain categories of persons.\textsuperscript{37} The reluctance of the States to accept the stateless as nationals therefore results in a collective responsibility in this respect which is attributable to all States in general.\textsuperscript{38}

Other factors associated with causing statelessness include but are not limited to conflict of laws, alteration of national identity due to trans-boundary marriages (between nationals of different States), targeted discrimination, existence of laws denying nationality of children born during transit, destruction of official records and civil documentation containing information as to national identity, political transfer of territory and relinquishment of nationality without having acquired another before.\textsuperscript{39}

\textbf{III. Effects of Statelessness}

Since statelessness is a sensitive subject in the realm of international politics, a study of its impacts requires careful scrutiny as to multiple factors. Some studies have attempted to analyse the manner in which statelessness affects the lives of individuals by comparing the stateless on various parameters with persons having citizenship of a recognised State. One such study with respect to the effects of statelessness was funded by the US Department of State.\textsuperscript{40}

\begin{itemize}
\item \textsuperscript{38} Id.
\end{itemize}
The study revealed that the per capita income and asset holding of households is substantially lowered by the phenomenon of statelessness.\textsuperscript{41} This reduction in income of stateless households was found to be particularly prominent in households in the States where certain communities had been historically demarcated as stateless and deliberately targeted.\textsuperscript{42} The stateless persons who were studied were also found to be less healthy and much more frugal as compared to citizens.\textsuperscript{43} The study additionally found that stateless persons generally had access to only limited opportunities for education and training and were less happy in comparison to an average citizen.\textsuperscript{44}

Research has also suggested that stateless persons are often denied some basic amenities which are offered only to citizens in some States. These include but are not limited to access to food, shelter, health care, educational and employment opportunities, and social security. In addition to these, stateless persons may also find themselves being deprived of certain socio-cultural and economic rights.\textsuperscript{45} Stateless children in particular, due to the crippling poverty that perpetuation of statelessness across generations causes, become vulnerable to exploitation in the form of human trafficking and forced labour.\textsuperscript{46} The lack of proper documentation and financial resources also exposes stateless children to various health hazards due to the absence of proper immunisation.\textsuperscript{47}

Among the many effects of statelessness, some scholars identify the economic instability caused due to prolonged statelessness to be the most

\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{43} Id.
\textsuperscript{44} Id.
\textsuperscript{46} Id.
\textsuperscript{47} Id.
problematic. They argue that the lack of valid documentation identifying stateless persons keeps them out of the formal labour market thereby increasing unemployment among the stateless and compelling them to serve as cheap labour in the informal sector.\(^{48}\) This ultimately results in continuance of the cycle of poverty which inhibits their upward mobility in the societal ladder, thus feeding into the vulnerabilities of the stateless.\(^{49}\)

The lack of means and support alongside the existence of nationality laws which contribute to the plight of the stateless renders the children of such individuals particularly exposed to the threats of statelessness. Childhood statelessness often evolves into disastrous consequences for an individual in his adulthood when access to education, property and work inhibit his personal growth, compelling him to maintain status quo with no available remedy to rectify his status.\(^{50}\)

Due to lack of proof of citizenship and economic resources, stateless children are often denied access to even primary education either on account of non-acceptance of non-nationals in schools or the demand of a premium fee from non-national attendees which stateless families without access to legal work opportunities are often unable to attain.\(^{51}\) Even when stateless children are provided with the opportunity to avail primary education, higher education in most cases is inaccessible to the stateless, resulting in a fall in self esteem and rise in deviant behaviour among stateless teenagers and young adults.\(^{52}\)


\(^{49}\) Id.


\(^{52}\) Id.
negatively impacts the lives of children, resulting in behavioural changes in stateless children causing them to become insecure and aggressive due to the erosion of their youthful innocence in the face of adverse circumstances.\(^5\)

The range of violations faced against the stateless often ultimately results in large scale displacement of entire communities, most commonly due to discrimination, conflict or collective expulsions.\(^5\) The displacement, either compelled or voluntary, that takes place is generally not followed by any remedial or rehabilitative steps by the concerned authorities, resulting in the imposition of various restrictions on stateless individuals which contribute to their existing vulnerabilities.\(^5\)

The studies conducted seeking to understand the effects of statelessness suggest that stateless persons have a higher risk of being detained, lack access to legal remedies in case of conflicts and face issues with respect to local integration within the new communities in which they reside.\(^5\)

Additionally, the fear of approaching authorities alongside the apathy of officials in facilitating repatriation and consequent restitution of stateless persons adds to their plight, making it harder for them to shed their ‘stateless’ identity.\(^5\)

IV. Responses to Statelessness

A. United Nations on Statelessness

\(^5\) Id.


\(^5\) Id.

\(^5\) Id.

\(^5\) Id.
The United Nations has attempted to tackle the issue of statelessness in a variety of manners. Two major conventions on statelessness, namely the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, seek to delineate obligations of States with respect to reducing incidence of statelessness in the international community and preserving the rights accorded to stateless persons under international law. However, despite the existence of these Conventions as guiding principles for combating statelessness, the issue of statelessness continues to persist.

With a view towards combating the persisting problem of statelessness, the Institute on Statelessness and Inclusion in its 2014 Report presented detailed recommendations to the States, civil society members and the United Nations High Commissioner for Refugee Rights for better quantification of data regarding statelessness. Among its recommendations were suggestions regarding the undertaking of mapping exercises and collaborative consolidation of data alongside directions for extending support to stateless persons and building awareness regarding the phenomenon of statelessness.

In an effort to combat statelessness, the UNHCR has also launched a #IBelong Campaign with goals to provide valid documentation to deserving individuals, reduce discrimination within nationality laws and ensure that no child is born as stateless. The UNHCR has also been consistently working with governments in a collaborative as well as advisory role so as to identify and improve structural inefficiencies which contribute towards


59 Institute on Statelessness and Inclusion, supra note 7.

In addition to this, the UNHCR is also actively advocating the accession of the 1954 and 1961 Conventions on the issue of statelessness in order to get States to become prominent players in the global battle against statelessness.\textsuperscript{62}

Despite the best efforts of the UNHCR however, some States continue to carry out practices which cause and/or facilitate statelessness, thereby adding to the misery of the affected persons. It is suggested that awareness campaigns using media channels, specifically social media due to its global outreach, may be used to create consciousness among the general public around the world regarding the evils of statelessness.

In view of the fact that diplomatic efforts have failed to cause many States to review their citizenship policies to address concerns regarding statelessness, perhaps internal lobbying by the citizens of the errant States can cause the political classes to pay attention to the issues surrounding statelessness and take requisite actions towards their resolution.

\textit{A. India on Statelessness}

In India, the matter of citizenship is determined by the provisions of the Citizenship Act, 1955 (‘1955 Act’).\textsuperscript{63} It has been pointed out that the provisions of the 1955 Act providing for renunciation, termination and deprivation of citizenship allow for statelessness and in fact even prescribe it as the consequence of certain actions and inactions.\textsuperscript{64} In contrast to the


\textsuperscript{62} \textit{Id.}

\textsuperscript{63} Citizenship Act, No 57 of 1955 (India).

1955 Act, various other legislative provisions omit to address stateless persons altogether within their ambit, however ultimately having the same consequence of allowing for the continuance of statelessness. For instance, due to the lack of specific reference to stateless persons, the Census of India conducted under the Census Act, 1948, and Census Rules, 1990, excludes stateless persons from the ambit of the nation-wide population profile which is prepared every year.66

Furthermore, the Registration of Births and Deaths Act, 1969, while mandating registration of births in India, neither contains provisions regarding the ascertainment of the nationality of a child nor addresses the impact of parent’s nationality on the registration of a child in India.68 Even the definition of ‘foreigner’ under the Foreigners Act, 1946 fails to adequately mention whether stateless persons are included within its ambit.70 Only the Passport Rules, 1980 in force under the scope of authority conferred by Passport Act, 1967 recognises ‘stateless’ as a category for the purpose of issuance of certificate of identity as travel documents, thereby partially addressing the issue of lack of identification documents that plagues stateless persons.73

65 Census Act, No. 37 of 1948 (India).
67 The Registration of Births and Deaths Act, No.18 of 1969 (India).
68 Id.
69 Foreigners Act, 1946, §2(3)(a).
70 Kakarala, supra note 65.
71 Passport Rules, 1980, Schedule II, Part II.
72 Passport Act, No. 15 of 1967, 2.
73 Kakarala, supra note 65.
Commercial surrogacy existing in India wherein foreigners utilise the wombs of Indian women for carrying children\(^74\) has also been found to be one of the reasons for the perpetuation of the phenomenon giving rise to stateless children in India, in cases where foreign parents are denied permission from their States of origin to bring the surrogate children with them due to questions regarding legality of parenthood or when the commissioning parents later refuse to accept the child after it is born.\(^75\) While the strong stance taken by the Government of India against commercial surrogacy appears to pose a potential solution to this issue,\(^76\) it must be kept in mind that such a solution would be largely limited in the absence of changes in other associated legislations.\(^77\) Although reports regarding the increase of *de facto* statelessness in India and the potentiality of human rights violations of such persons,\(^78\) due to non-accession, ratification, adoption or signature of the 1956 and 1961 Statelessness Conventions, India cannot be held specifically liable for non-redressal of the phenomenon of statelessness existing within its national territory.\(^79\) Nonetheless, regardless of the lack of enthusiasm of the Indian legislature to develop legal provisions to specifically deal with problems of

\(^{74}\) Although the Government of India has sought to ban commercial surrogacy through the Surrogacy Regulation Bill 2016, the proposed legislative change has not been brought about as of October 28, 2017.


statelessness, the Supreme Court of India has been playing an active role in reducing statelessness by according citizenship rights to previously stateless groups like Chakmas and Hajongs in Arunachal Pradesh\textsuperscript{80} and Tibetans residing in India.\textsuperscript{81}

Finally, it appears that India can effectively utilise its diplomatic channels to address the issue of statelessness. As the experience with stateless persons from Sri Lanka\textsuperscript{82} and Bangladesh\textsuperscript{83} indicates, proper communication between States can play an important role in improving the circumstances of stateless persons. Therefore, it is suggested that India should attempt to use its international relations in addition to the incorporation of necessary changes within its domestic law in order to effectively remedy the miserable state of the stateless in India.

V. CONCLUSION

Statelessness is a serious issue currently facing the international community and requires increased attention. Evidently, the lack of nationality and the resultant lack of protection of rights compel stateless persons to live vulnerable lives deprived of basic rights and facilities. Unless addressed at the root of its causes, the vicious cycle of statelessness is unlikely to end, perpetuating over generations and depriving individuals of their legitimate entitlements. On account of the fact that it is not a region specific matter,


\textsuperscript{81} Namgyal Dolkar v. Government of India, Ministry of External Affairs, 2011 IAD (Delhi) 201W (India).


adequately tackling statelessness will require a concerted global effort which is currently lacking. While dedicated efforts are being made by the United National High Commissioner for Refugees and other concerned international organisations focusing on issues of human rights in order to reduce statelessness, it is only when all States come together in the fight against statelessness that the issue can be properly tackled.

Mapping of statelessness and consequent quantification of number of stateless persons across the world is of utmost importance in order to facilitate proper addressing of the issue. Further, States should necessarily acknowledge their collective role in dealing with statelessness and in pursuance of that consider the introduction of specific legislations related to statelessness within their domestic legal systems or incorporate provisions in relevant statutes already existing within the jurisdiction. In this respect, the Articles in the 1954 and 1961 Conventions can be used as reference guidelines for the drafting of provisions. Research materials and print resources of the UNHCR on the issues surrounding statelessness may also be utilised in this process so as to evolve a holistic law aiming to address the issue of statelessness and related problems. In light of the current circumstances resulting in statelessness, it is suggested that policies and legislations developed in this respect should be oriented towards providing nationality to the stateless and preventing the recurrence of the phenomenon in future generations. Moreover, governments should be open to collaborating with policy bodies and civil society in order to come up with a viable long term solution in the interest of all those who are currently stateless.