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STATELESSNESS AND THE ISSUE OF NATIONALITY THROUGH THE LENS OF HUMAN RIGHTS

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“To deny people their human rights is to challenge their very humanity.”

- Nelson Mandela

We live in a world where the current population is 7.9 Billion. That is, 7.9 Billion individual rights co-existing and governed in tiers of municipal, state and international law. The common link between each individual to the other is the shared umbrella of international law, through their respective States. This can be derived from Lauterpacht’s observation that: “the orthodox positivist doctrine has been explicit in the affirmation that only states are subjects of international law”¹. A state can be defined as “a community which consists of a territory and a population subject to an organized political authority”.² From this definition, we can say that the state and its subjects (population) go hand in hand. A subject’s allegiance towards his state in a manner that his nationality designates the status of him “belonging to the state” has importance with special regard to the international ties between states that concern him³. Nationality is typically described as a "politico-legal term designating membership in a State," a political institution "vested with the nature of an international law subject."⁴ 'Everyone has the right to a nationality,' declared the “Universal Declaration of Human Rights in 1948, a premise reiterated in the 1966 International Covenant on Civil and Political Rights, the 1975 Final Act of the Conference on Security and Cooperation in Europe, the 1989 United Nations Convention on the Rights of the Child, the 1997 European Convention on Nationality, and

¹ Shaw, Malcolm N. “The Subjects of International Law.” Essay. In *International Law*, Eighthed., 157. Cambridge University Press, 2017.

² By The Arbitration Commission of the European Conference in Yugoslavia in Opinion 1 : Shaw, Malcolm N. “The Subjects of International Law.” Essay. In *International Law*, Eighthed., 157. Cambridge University Press, 2017.

³ Koessler, Maximilian. “‘Subject,’ ‘Citizen,’ ‘National,’ and ‘Permanent Allegiance.’” *The Yale Law Journal* 56, no. 1 (1946): 58–76. <https://doi.org/10.2307/793250>.

⁴ Grossman, Andrew. “Nationality and the Unrecognised State.” *The International and Comparative Law Quarterly* 50, no. 4 (2001): 849–76. <http://www.jstor.org/stable/761517>.

everywhere else.”⁵

Reflecting on Nelson Mandela’s quote on human rights, this paper attempts to understand the problem of statelessness, reviews the existing international dialogue on the issue and suggests remedies to improve the situation.

Even though we see that a right to nationality is a human right, there exist a category of people who do not belong to any State. Statelessness, as understood by international law, is a situation where an individual is not recognized by any government as a citizen or a national under its laws⁶. Every ten minutes, a baby is born without a state somewhere on the planet. 24.9 million refugees, 41.3 million domestically dislocated persons, and 3.5 million asylum seekers are among the 70 million dislocated individuals. Eighty percent of migrants seek asylum in countries that are neighbors to their home country. War and intolerance are putting refugees in perilous situations. They are unable to return home, and their own government refuses to safeguard them.⁷ These stateless individuals lack identification, such as a passport, and are therefore legally regarded non-existent. They are unable to travel, obtain an education, access healthcare, marry, own property or a home, and even vote. They are forced to work illegally in order to take care of their families and also live in continuous fear of being imprisoned, repatriated, or exploited.⁸ The position of statelessness includes a significant and drastic reduction in an individual's power. Corresponding to the "right to have rights" within a state, nationality on the global level is the "right to have protection." A stateless individual has no state to "safeguard" him, and he does not even have the option to move about to seek one that will.⁹ Lauterpacht rightly pointed out that because stateless people do not have a nationality, the main bridge through which they could potentially benefit from international law is absent, rendering them unprotected under this law.¹⁰

⁵ Grossman, Andrew. "Nationality and the Unrecognised State." *The International and Comparative Law Quarterly* 50, no. 4 (2001): 849–76. <http://www.jstor.org/stable/761517>.

⁶ Article 1 of the 1954 Convention relating to the Status of Stateless Persons

⁷ Bhiwgade, Sachi Ashok. "Statelessness under International Law: All You Want to Know." iPleaders, February 3, 2020. <https://blog.ipleaders.in/statelessness/#:~:text=Under%20International%20Law%2C%20a%20stateless%20pers on%20means%20an,any%20State%20under%20the%20operation%20of%20its%20law.>

⁸ Sahoo, Simran. "Statelessness under International Law." Edited by Swati Pragyan. *JudicateMe*, July 22, 2020. <https://judicame.com/statelessness-under-international-law/>.

⁹ McDougal, Myres S., Harold D. Lasswell, and Lung-chu Chen. "Nationality and Human Rights: The Protection of the Individual in External Arenas." *The Yale Law Journal* 83, no. 5 (1974): 900–998. <https://doi.org/10.2307/795378>.

¹⁰ McDougal, Myres S., Harold D. Lasswell, and Lung-chu Chen. "Nationality and Human Rights: The Protection of the Individual in External Arenas." *The Yale Law Journal* 83, no. 5 (1974): 900–998.

Nationality is acquired in one of two ways: either naturally upon birth in a given country (Jus Soli), such as through one's parentage (Jus Sanguinis). However, there are multiple causes that leads one to the situations on being stateless. Discrimination based on race, faith, dialect, or gender is a major cause of statelessness. The exclusion of specific groups from the citizenship for discriminatory grounds is connected to long-term and widespread statelessness in the natal country. States can also just strip individuals of their citizenship by legal changes based on prejudiced criteria, effectively leaving entire populations stateless. As a matter of fact, minority groups make up the bulk of the globe's stateless people. Juvenile statelessness is exacerbated by gender inequality in national statutes.¹¹ Speaking of national statutes, careless drafting of the same with respect to the subject of nationality is also one of the causes of statelessness. Other causes include lack of documentation, proving linkage to parent State, State Succession¹², incompatible laws on nationality between two States concerning an individual's nationality and elongated emigration.¹³

Post the debacle and horrors of the two world wars, the world saw a rapid increase in the number of stateless people and this was when active steps were taking by the United Nations in the addressal and redressal of this problem. The 1954 Convention was the first substantial step toward recognizing statelessness. This Convention is regarded as the "center-piece of the international safeguarding system for stateless persons" by the UN. It establishes the concept of "stateless person" as well as the global legal structure for dealing with statelessness. Stateless people gained new rights as a result of their newfound identity, including the ability to obtain identification and travel cards. Less than a decade later, the 1961 Convention, that focuses on a methodology for ending statelessness and requires participating governments to address to statelessness and therefore not arbitrarily strip people of their nationality.¹⁴ Following the CAA-NRC debacle, which wrecked the nearly 19 lakh people, it's worth noting India's position

<https://doi.org/10.2307/795378>.

¹¹ "About Statelessness." IBELONG. Accessed May 1, 2022. <https://www.unhcr.org/ibelong/about-statelessness/>.

¹² When one territory's sovereignty passes to another, this is known as state succession. State Succession is defined in Article 2(1)(b) of the Vienna Convention on State Succession as "the substitution of one State by another in the responsibility for international territorial relations." : "State Succession, Recognition and Jurisdiction under International Law." Law Corner, February 24, 2021. <https://lawcorner.in/state-succession-recognition-and-jurisdiction-under-international-law/>.

¹³ "About Statelessness." IBELONG. Accessed May 1, 2022. <https://www.unhcr.org/ibelong/about-statelessness/>.

¹⁴ "STATELESSNESS: ANALYSIS OF THE LEGAL FRAMEWORK CONCERNING STATELESS PERSONS AND PERSONS AT RISK OF STATELESSNESS IN CROATIA." UNHCR: The UN Refugee Agency, 2020. <https://index.statelessness.eu/sites/default/files/UNHCR%20Analysis%20of%20the%20Legal%20Framework%20Concerning%20Stateless%20Persons%20and%20Persons%20at%20Risk%20of%20Statelessness%20in%20Croatia%20%28July%202020%29.pdf>.

on the matter. The absence of any legislation on statelessness, as well as India's refusal to sign “the 1954 Convention on the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness”, demonstrates how unprepared India is to manage such a denial of a basic human right.¹⁵ “The Protocol Relating to a Certain Case of Statelessness, The Hague, 12 April 1930; The Convention Relating to the Status of Stateless Persons, New York, 28 September 1954; and The Convention on the Reduction of Statelessness, Geneva, 30 August 1961 are by far the most significant global official documents on statelessness.”¹⁶ These are supplemented by certain provisions in other instruments like “Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights¹⁷, the International Convention on the Elimination of All Forms of Racial Discrimination¹⁸ and Convention on the Elimination of Discrimination against Women¹⁹, Convention on the Rights of the Child²⁰.”²¹

We know that though the questions pertaining to one's nationality is central; it is important to note that the jurisdiction of these question remain domestic²². This is because nationality is created by domestic legislation, and its unique form and character differs from one State to another. Citizenship in one state comes with a diverse set of duties and privileges, as well as a varied legal structure, than that in another.²³ Therefore, it is the government that define who their citizens are²⁴. As a result, they are in charge of the legal and regulatory changes that are required to effectively tackle statelessness. Simultaneously, States' choice over nationality is constrained by responsibilities relating to international conventions to that they are parties to,

¹⁵ Sathyanarayanan, Sunethra. “Creation of Statelessness in India: An Analysis of the Crisis and the Way Forward.” The Peninsula Foundation, February 9, 2021. <https://www.thepeninsula.org.in/2020/08/27/creation-of-statelessness-in-india-an-analysis-of-the-crisis-and-the-way-forward/>.

¹⁶ “STATELESSNESS: ANALYSIS OF THE LEGAL FRAMEWORK CONCERNING STATELESS PERSONS AND PERSONS AT RISK OF STATELESSNESS IN CROATIA.” UNHCR: The UN Refugee Agency, 2020. <https://index.statelessness.eu/sites/default/files/UNHCR%20Analysis%20of%20the%20Legal%20Framework%20Concerning%20Stateless%20Persons%20and%20Persons%20at%20Risk%20of%20Statelessness%20in%20Croatia%2028July%202020%29.pdf>.

¹⁷ Article 24

¹⁸ Article 5

¹⁹ Article 9

²⁰ Article 7

²¹ “UNHCR Statelessness - UNHCR - The UN Refugee Agency.” UNHCR: The UN Refugee Agency. Accessed May 1, 2022. <https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf>.

²² Higgins, Rosalyn, Yash P. Ghai, Lung-chu Chen, Valerie Chalidze, Hussein A. Hassouna, and Sidney Liskofsky. “Expulsion and Expatriation in International Law: The Right to Leave, to Stay, and to Return.” *The American Journal of International Law* 67, no. 5 (1973): 122–40. <http://www.jstor.org/stable/25660486>.

²³ Blackman, Jeffery L. “State Successions and Statelessness: The Emerging Right to an Effective Nationality Under International Law.” *Michigan Journal of International Law*. Accessed May 2, 2022. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1460&context=mjil>.

²⁴ Article 1 of the Hague Convention, 1930: “it is for each state to determine under its own law who are its nationals.”

as well as international law and basic legal principles. Furthermore, the UNHCR, various agencies, regional organizations, society, and stateless persons all undertake a role in assisting states. The “United Nations High Commission for Refugees (UNHCR)” is a UN organization that deals with the problem of statelessness. It aims to furnish food, water, and refuge while upholding basic human rights and exploring long-term remedies to refugee issues. UNHCR presently has a staff of over 16 thousand individuals operating in 134 nations.²⁵ UNHCR carries out its mission by collaborating with government agencies, with International bodies, and non-governmental organizations to solve the issue. The United Nations High Commissioner for Refugees (UNHCR) started the “#IBelong Campaign to End Statelessness by 2024” in 2014. The International Strategic Promise to Eliminate Statelessness, presenting a guideline for States to follow in order to fulfil the aims of this Campaign.²⁶ The guidelines include, among other things, guaranteeing that no baby is born stateless, repealing gender-based national legislation, granting nationality documentation to individuals who are eligible, minimizing statelessness in circumstances of state succession and discrimination, and so on.²⁷ Having established that having a nationality is a basic human right, the remedies for statelessness must be based on not revoking the nationality of an individual in any way if it renders one stateless. Along with ensuring that a person's nationality is not cancelled for arbitrary or discriminatory reasons, the State must also ensure that the person obtains a replacement nationality prior to losing the previous one. Preventing childhood statelessness should be a top priority. In the event of a mother getting married to an individual from another country, her kid should be accorded its mother's nationality if the question of statelessness somehow emerges. Finally, when deciding on a child's nationality, the child's best interests must be taken into account.

When Nelson Mandela emphasized on the importance of human rights by equating its denial to that of an act of defying humanity itself, we see how the predicament of such a denial is woven into the lives of those distressed by statelessness. The severity of this issue is even reflected in a percentage: one per cent population to that of the entire globe! This situation not only strips one into a life of constant fear, struggle and an undignified life but strips them of

²⁵ Bhiwgade, Sachi Ashok. “Statelessness under International Law: All You Want to Know.” iPleaders, February 3, 2020.

<https://blog.ipleaders.in/statelessness/#:~:text=Under%20International%20Law%2C%20a%20stateless%20person%20means%20an,any%20State%20under%20the%20operation%20of%20its%20law.>

²⁶ “UNHCR Statelessness - UNHCR - The UN Refugee Agency.” UNHCR: The UN Refugee Agency. Accessed May 1, 2022. <https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf>.

²⁷ “UNHCR Statelessness - UNHCR - The UN Refugee Agency.” UNHCR: The UN Refugee Agency. Accessed May 1, 2022. <https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf>.

their basic human right. A citizen without any state is non-existent on paper and has no protection of any State over him. Statelessness is amongst the most complicated issues that every country faces, and it must be addressed as soon as possible. Throughout the field of refugees, is a principle that it is the paramount duty of every nation to refrain from taking any steps that would force its inhabitants to flee their country, and it is furthermore the state's duty to repatriate the ousted population. Though after the 1954 Convention, Statelessness was acknowledged as an actual problem and the UN started taking steps to improve the situation, the problem still stands at an ever-increasing scale. It is the domestic sphere where the situation can be tackled in, by-far, the most effective manner since giving citizenship is in their hands. This calls for robust measures on the part of the state authorities to make conscious efforts to safeguard their citizens against such disparity. It is an interesting conundrum to see how it is the masses of the globe that made laws on global governance can oust themselves of their basic human rights on mere technicalities, thereby defying humanity itself!

