
SPECIFIC PROCEDURE FOR IDENTIFICATION OF STATELESS: A CHALLENGE TO BE CONQUERED IN INTERNATIONAL LAW

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INTRODUCTION

Existence of an individual without any legal link to a state is like a fish without natural water. A fish which is fighting for its mere survival due to lack of fulfillment of its basic and fundamental needs as a living being. It is a known fact that one and all are born free as per law and they are obliged to enjoy all the rights connected to human existence without any kind of discrimination because of the mere reason that they are living. The link that actually gives value and meaning to a mere subsistence is a person's status of being a national of a state. It is this footing of being an inhabitant of a state where all the rights and benefits of a man, woman or child comes from. Not only rights rather all kinds of protection whether political or legal are affected by the absence of nationality. A life without any legal bond with a state, neither the one where a person is living nor any other, i.e., life without nationality also leads to a feeling of alienation and isolation even though one is living amidst many others.

Statelessness is synonymous to this lack of nationality. A stateless person is not merely deprived of right of nationality rather he or she has to face many other human rights violations too. Life of stateless persons turns upside down and living a normal life becomes a dream which never comes true. Major impact of statelessness is on people's opportunity to access different kinds of rights whether civil, political, economic, cultural or social and it also puts people at the risk of repeated or prolonged detention and destitution. It is not only this destitution or detentions rather other fragments of life of stateless people also face a huge impact. Few serious and painful situations faced by stateless people are the absence of a legal identity, restricted movement, constraints on finding employment, no property rights, lack of access to health care

benefits, lack of education, no political participation, lack of choice and freedom to marry, registering birth of a child etc.

According to the United Nations High Commissioner for Refugees (hereinafter UNHCR) statistics, by the end of year 2019 the number of people who continued to live with the pain of lack of nationality worldwide came to 4.2 million and there were approximately 68.5 million individuals who were displaced as a result of persecution, conflict, or generalized violence. However, as per their estimates this number would be much more than ten million as the stateless people are not properly reported worldwide.¹

DEFINING STATELESS

Though, we have a strong international regime² working over the problem of statelessness, still even today there are millions and millions of people all over the world who are living a painful life without any nationality and nearly none adhere to their plight. The first time a stateless person was defined in the 1954 United Nations Convention on Status of Stateless, as “Person who is not considered as a national by any State under the operation of its law”³. The UNHCR has stated about the convention that “by providing a specific definition for a stateless person The Convention has made a remarkable addition to the international legal regime on human rights. It has provided for the basic treatment that is to be given to stateless which has to be at par with the rights and benefit of the citizens with special reference to the right to freedom of religion and educational rights.⁴ The Convention not only expects this requirement to be fulfilled by the nations rather also gives weightage to the domestic provisions over right of acquiring nationality in every state. This is clear from the very words of the definition of statelessness.

The definition clearly embarks upon two essential requirements of statelessness i.e., “person not considered a national by the state”, and “under operation of law of the state”. The final say is of the state wherein the question of nationality arises and there is no requirement of having an authentic, legitimate and direct connection of the individual with the state. That is why

¹ United Nations High Commissioner for Refugees, Global Trends Report on Forced Displacement 2019.

² United Nations Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117 [hereinafter the 1954 Statelessness Convention].

³ *Id.* art. 1.

⁴ The 1954 Convention, *supra* note 2, Introductory Note by the Office of the UNHCR, https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf.

statelessness is taken to be a manmade problem and therefore bringing an end to the issue is considered probable at least theoretically⁵. Though, all the states are bound to abide with the *jus cogens* norms, still the determination of nationality of an individual is to be done by the state and if it does not consider the person as a national even if it is against the rules of international legal regime, still the person squarely falls under article 1 (1) of the Convention. The question of legitimacy in nationality arises only when either the nationality is contested or were providing diplomatic protection to the individual by the state is in question. It becomes totally irrelevant whether nationality is voluntarily renounced or it is forcefully taken away. Therefore, it is not the manner by which one loses nationality rather the fact that one is not a national, of essence as per the definition of stateless.

The definition is majorly emphasizing on whether an individual has a “nationality” at all and not on the “effectiveness of that nationality”⁶. Though the words herein appear very simple and clear on the face of it, still it encompasses a major concern over the status of people who are totally not given nationality and not on the ones who are recognized as nationals but not treated like ones. Effectiveness of a nationality is concerned with whether a national is able to enjoy all human rights to its full whereas statelessness is to do with the *right to nationality* in specific. This right to nationality is not limited to people who have crossed the borders of their homeland rather it also concerns with persons living in their origin country.⁷

And it was only many years after this convention in the 1961 United Nations Convention on Reduction of Statelessness, that the methods of controlling and reducing statelessness were first incorporated. These are the two major international United Nations Conventions which deal with the ever existing but invisible menace of statelessness worldwide.

TYPES OF STATELESS

There are two types of stateless persons existing in the world namely *De Jure* Stateless and *De Facto* Stateless. The article (1) of The Convention merely talks about the determination of statelessness at the hands of states i.e., it is dealing with *de jure* statelessness which is acquired

⁵ Institute on Statelessness and Inclusion, The World’s Stateless 2014, <http://www.institutesi.org/worldsstateless.pdf>.

⁶ Institute on Statelessness and Inclusion, *supra* note 5

⁷The Concept of Stateless Persons under International Law, Expert Meeting of United Nations High Commissioner for Refugees (2010), <http://www.refworld.org/docid/4ca1ae002.html>.

as per law. The provision has nothing to do with the *De Facto* form of statelessness⁸.

The de facto statelessness was traditionally concerned with the element of “effectiveness of nationality” and there had not been a universally accepted definition for determining the same. By the concept of effectiveness of nationality, it is understood that a person has nationality though the effectiveness of nationality is not clear. That means that a person being a national of a state and even if living within the jurisdiction of that state still is not getting the complete enjoyment of all legal rights and benefits of his or her status as a national.⁹

One of the foremost and indispensable international rights of a national is the diplomatic and consular protection and assistance provided by the state when the person is on a foreign ground. The extent of this protection is basically in reference to two specific situations i.e., (i) When a wrong is committed with the national in international perspective and, (ii) When the national wants to return back to the state of his origin. And in this reference the term de facto was particularly defined in the UNHCR, Expert Meeting on The Concept of Stateless Persons under International Law. It was concluded here that a person would be termed as De Facto stateless when the person is not within its country and from outside is either not able to take benefits of the protection of its origin country or is not willing to do so on its own¹⁰. This definition also finds support in The 1961 Convention wherein both de facto and de jure statelessness are brought together by the recommendation that “de facto stateless be treated as much as possible like the way de jure are so that even de facto stateless could also come to a situation wherein even they can acquire a nationality that would lead them to live a normal life like others”.¹¹

PROCEDURE TO DETERMINE STATELESSNESS

Though the international law recognizes an individual’s right to be a national still statelessness is not regulated in all of the laws and there are majorly only two conventions regulating the same namely, The 1954 Convention on the Reduction of Statelessness and the 1961 Convention on the Status of Stateless Persons.

⁸ *Id.*

⁹ Protecting the Rights of Stateless Persons: The 1954 Convention Relating to the Status of Stateless Persons, United Nations High Commissioner for Refugees (2014), <http://www.refworld.org/docid/4cad88292.html>.

¹⁰ The Concept of Stateless Persons under International Law, *supra* note 7.

¹¹ Ermolaeva Uliana, Faltinat Elisabeth, Tentere Dārta, *The Concept Of ‘Stateless Persons’ in European Union Law*, Amsterdam International Law Clinic Final Report, 2017, <http://euromedmonitor.org/uploads/reports/Stateless-EN.pdf>.

Most of the international provisions merely acknowledging and conceding with nationality as a human right are the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Nationality of Married Women, the International Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Looking at such a range of international provisions recognizing statelessness as a human rights issue it comes to a lay man's mind that certainly the issue of lack of nationality can be easily dealt with but it is not so. Reason being, barely giving cognizance to a right does not mean everyone is enjoying that right. Especially in the case of statelessness, the right of nationality could be given to the stateless only when once it is confirmed who all are stateless. Now who confirms about the statelessness status of the being, the state itself. And there is no international legal provision that gives a common procedure for the same whereas very few states have created procedure to determine lack of nationality.

Determination of person's status as a stateless being is an intense job as there is range of never-ending causes behind statelessness. And as there is no centralized statelessness determination process at international level therefore this becomes a very vague exercise. The Convention though provides a legal definition of stateless persons, still there is no common provision for statelessness determination neither the states who are parties to The Convention are bound to establish such a procedure.

The main issue in determining statelessness is that it is the state's that determine the nationality status of an individual and that is done by applying the present nationality laws in the domestic sphere of the concerned state. Certainly, in the absence of a universally applicable provision on statelessness determination a chaotic situation arises internationally.

It has also been concluded that some persons who are regarded as de facto stateless they are actually de jure stateless, and therefore particular care should be taken before concluding that a person is de facto stateless rather than de jure stateless. The Convention only deals with the de jure stateless and not with de facto ones as discussed aforesaid¹². Rather there is no similar

¹² Institute on Statelessness and Inclusion, *supra* note 5

legal regime for determination of de facto stateless persons at all making the concept of de facto statelessness more problematic an issue¹³.

Taking a troll over the domestic working on statelessness determination, it is found that there are determination procedures where administration has full discretion over giving nationality rights for example where documentation is required and the particular person could not completely satisfy the formality. At the same time there are situations wherein the authorities do not have any discretion to grant or refuse nationality like in consular registration of a child born abroad.¹⁴All in all the confusion of how stateless be determined is not sorted.

One of the major steps taken in the world panorama to finally achieve the aim of finding out a common procedure to identify stateless people was taken in the year 2006. The UNHCR Executive Committee of the High Commissioner's Programme¹⁵ showed deep concern towards the never-ending statelessness problems internationally. The Executive Committee did not only recognize the responsibility of every state to establish legal provisions to control and curb the issues related to the right to nationality rather also noted that the United Nations General Assembly while dealing with the problems related to State Succession is also looking into the grave matter of increasing number of stateless people.¹⁶Another issue referred by the Committee which certainly encompasses the narrow and restricted impact of the 1961 Convention on the Reduction of Statelessness was that only a very few states have ratified and acceded to the provision.

The Executive Committee also focused on the right of every person to have a nationality accompanied with basic rights like the right of not being arbitrarily deprived of one's nationality¹⁷.

The Executive Committee also actually reaffirmed the responsibilities given by the United Nations General Assembly to the High Commissioner for Refugees to put in efforts towards protecting the stateless and also towards the prevention and reduction of statelessness worldwide. To enunciate this claim, the Committee even took support from its own different

¹³ Uliana, *supra* note 11

¹⁴ *Id.*

¹⁵ United Nations, Resolution Adopted by The General Assembly [on the report of the Sixth Committee (A/55/610)], 55/153 of 2000, Agenda Item 160, Nationality Of Natural Persons In Relation To The Succession Of States (30 January, 2001) Available at: <https://www.unhcr.org/excom/EXCOM/42bc068d2.pdf>

¹⁶ *Id.*

¹⁷ Executive Committee Conclusions, United Nations High Commissioner for Refugees Available at: <https://www.unhcr.org/41b4607c4.pdf>

Conclusions like Conclusion No 78 (XLVI) on the prevention and reduction of statelessness and protection of stateless persons, Conclusions 90 (LII), 95 (LIV), 96 (LIV), and Conclusions 99 (LV) and 102 (LVI) with regard to solving protracted statelessness situations¹⁸.

The next element the Executive Committee worked on was referring to the UNHCR to build up its endeavor to work towards reducing statelessness by working on chosen pursuits. To achieve the referred aim the Committee advised the UNHCR to work in cooperation with different governments and both governmental and nongovernmental organizations at international level. The pursuits to be achieved herein were like prevention, identification, reduction of statelessness, and further the protection of stateless persons.¹⁹

The Committee emphasizes on different steps to be taken namely:

“(i) UNHCR to continue to work with interested Governments to engage in or to renew efforts to identify stateless populations and populations with undetermined nationality residing in their territory, in cooperation with other United Nations agencies, in particular UNICEF and UNFPA as well as DPA, OHCHR and UNDP within the framework of national programmes, which may include, as appropriate, processes linked to birth registration and updating of population data,

(ii) UNHCR to undertake and share research, particularly in the regions where little research is done on statelessness, with relevant academic institutions or experts, and governments, so as to promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which led to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem,

(iii) States which are in possession of statistics on stateless persons or individuals with undetermined nationality to share those statistics with UNHCR and UNHCR to establish a more formal, systematic methodology for information gathering, updating, and sharing,

(iv) UNHCR to include in its biennial reports on activities related to stateless persons to the Executive Committee, statistics provided by States and research undertaken by academic

¹⁸ *Id.*

¹⁹ UN High Commissioner for Refugees, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) - 2006* (6 October 2006) Available at: <https://www.refworld.org/docid/453497302.html>

institutions and experts, civil society and its own staff in the field on the magnitude of statelessness, and

(v) UNHCR to continue to provide technical advice and operational support to States, and to promote an understanding of the problem of statelessness, also serving to facilitate the dialogue between interested States at the global and regional levels.”²⁰

In October 2013, the UN High Commissioner for Refugees called for the “total commitment of the international community to end statelessness.”²¹ Thereafter a Global Action Plan to End Statelessness: 2014 – 2024²², was developed by the United Nations High Commissioner for Refugees in the consultation with States, and other international organizations. It eventually formulated total 10 Actions to be worked upon to end statelessness within 10 years. The only requirement therein was the effective implementation of the Global Action Plan which was impossible to be attained without an intense, influential and strong legal mechanisms in the international community. One of the actions out of these 10 actions was “Better Identification and Protection of Stateless Persons”.

Talking of the European Union and its position on the issue of statelessness determination, though the EU actually deals with stateless people in its legal provisions still it does not actively address the concern of increasing cases of statelessness worldwide. To express it in simpler terms, though the European Union is highly entrenched in the matters of migration and quiet competent to carve out a common determination procedure for status of stateless, still it has not yet done so as it is not bound for the same by any means²³.

It is in this context that a proposal was made to the European Union by the Experts Committee namely Meijers Committee on International Immigration, Refugee and Criminal Law. The committee requested the European Union to make a directive on identification of statelessness. It read as, “European Union should make a legal framework for dealing with the issue of statelessness in the member states of the Union. That legal framework should be commonly applicable in all the states to address the vulnerable situation of stateless people.”²⁴As per the

²⁰ *Id.*

²¹ High Commissioner’s Closing Remarks to the 64th Session of UNHCR’s Executive Committee (4 October 2013) Available at: <http://unhcr.org/525539159.html>

²² Global Action Plan To End Statelessness: 2014-2024, United Nations High Commissioner for Refugees Division of International Protection (November 2014) (Hereinafter referred as The Global Action plan)

²³ Resolution Adopted by The General Assembly, *supra* note 16

²⁴ The Standing Committee of Experts on International Immigration, Refugee and Criminal Law, Meijers Committee: Proposal for an European Union Directive On The Identification Of Statelessness And The Protection

Meijers Committee the 1954 Convention would not be effectual in practical terms until a common specific procedure is determined that would manifest the status of an individual in terms of being a national of a country or a stateless being.²⁵

NEED TO ESTABLISH A DETERMINATION PROCEDURE

The creation of a statelessness determination procedure eventually helps the member states to confirm to the basic commitments expected to be fulfilled by The Convention and the other international human rights laws. Even if a state is not a signatory to the Convention still they have to keep their commitment to the international human rights laws by creating a statelessness determination procedure. But wherein the need to establish the procedure comes from is the issue.

There are majorly two situations where stateless people fall in, (i) Being a part of the country of their birth or long residence, and (ii) Being a part of the migrant populations. Talking of the former first, a significant number of stateless people reside in the country they call their own either by origin or by living there for a long duration of time. There is no requirement of application of a statelessness determination procedure for such stateless people as it would only be a delaying method in giving benefits of human rights to such people. If such people be expected to apply for recognition as stateless persons through a determination procedure the efforts that states can take by focusing on directly facilitating the full integration of these groups so that they acquire the nationality of the country would be ineffective. States can facilitate this integration process by bringing changes in the government policies to reduce or eliminate requirements for the acquisition of nationality or by assisting stateless persons to meet those requirements.²⁶ There is no need of wasting time in finalizing on statelessness determination procedures for such stateless people rather effort should be made towards their direct naturalization in the respective states.

Another large number of stateless persons can be found in the migrant populations. It is not probable for such stateless people to easily fulfill the requirements of naturalization in the country of their residence as establishing strong ties in that state is a tough nut to crack. Even

Of Stateless Persons (13 October 2014) Available at: <http://www.statewatch.org/news/2014/oct/eu-meijers-cttee-call-for-an-EU-directive-on-the-identification-and-protection-of-stateless-persons.pdf>

²⁵ Resolution Adopted by The General Assembly, *supra* note 16

²⁶ Statelessness Determination Procedures: Identifying and Protecting Stateless Persons Available at: <file:///C:/Users/lenovo/Downloads/Statelessness%20determination%20procedures.pdf>

the states with which stateless migrants have impregnable connections do not let them acquire naturalization easily. There is very less chance of such migrants to even enjoy the right to reside in any State at all. In such severe situations wherein there is no right to reside and nationality is yet to be acquired the stateless have rights as per the 1954 Convention in States which are parties to it and pursuant to international human rights law in other states as well. There is a dire need to have a statelessness determination procedure to identify stateless persons among migrant populations to ensure that they enjoy the rights to which they are entitled until they acquire a nationality.²⁷

OBSTACLES IN ESTABLISHING DETERMINATION PROCEDURES

One of the major impediments that states generally face in establishing and finally implementing the statelessness determination procedures is the lack of awareness and understanding of the statelessness as an actual problem for those who are living with it. An evident dearth of capacity of the governments to undertake steps to identify statelessness is very much perceivable. It is as simple as that when we are not able to understand the problem at all how come we would be able to create procedures to control it.

Even if the states somehow come over this deficiency the state governments negatively perceive that establishing an identification procedure for stateless people would result in advancement of more stateless people towards such states to avail the nationality rights. This is a kind of sensitivity in the mindset of the governing bodies of the states concerned in reference to the sovereignty of the state. They misconceive that establishing such procedures would directly impact the sovereignty of the state as the number of migrants would increase resulting in social and political disbalance in the nation.

Another drawback of states in creating identification method is the lack of facts and data on the existence of stateless migrants in the relevant states. The UNHCR Executive Committee in this regard has referred to the High Commissioner to vigorously distribute and circulate the required information and to work on training the executives at national levels in procedures for identifying, recording, and granting a person status of statelessness".²⁸ But such steps are still not enough and we are a long way behind in curbing the menace. Whatever steps the states are taking, if they are taking any, to put a stop on statelessness they are doing it in their domestic

²⁷ *Id.*

²⁸ Action to Address Statelessness: A Strategy Note Division of International Protection, United Nations High Commissioner for Refugees (March 2010) Available at: <https://www.refworld.org/docid/4b9e0c3d2.html>

sphere which naturally does not have much relevance to the other states facing the same problem. And everyday working on a new method brings the entire international regime to square one i.e. no common procedure to determine lack of nationality.

CONCLUSION

The basis of a legal bond between an individual and a state is nationality. Nationality not only provides people with a range of rights rather also give them a feeling of belongingness and a dignified identity. Lack of nationality i.e. Statelessness impairs most of the rights of an individual which he attains as a matter of his or her existence as a human being, and this certainly can be interpreted from the above research. Forced displacement is one such impact of statelessness which results from arbitrary deprivation of nationality i.e. one of the forms of creating statelessness. Though there is a clear recognition to right to nationality in the international forum still curbing statelessness is not an easy task. Rather the number of stateless people worldwide is increasing day by day.

There are broadly two types of stateless people i.e. the ones who are refugees and the ones who are not refugees. In the case of the former they are protected internationally as per the guidelines of the 1951 Convention on the Status of Refugees. Whereas the non refugee stateless are in particular covered under the 1954 Convention.²⁹ The main objective of the latter convention is to synchronize the status of stateless persons with that of normal citizens and also to ensure the widest possible enjoyment of their human rights. Though the Convention sets off in the backdrop of human rights regime worldwide thoroughly working as a supplement to their provisions still there is a persisting lacunae on having a common procedure to determine the status of statelessness in the international regime. No specific statelessness determination procedure is prescribed by the convention which can be followed by all the nations equally and willingly. However, either the nations have created their individual procedures to determine statelessness at regional levels or they have not formed any such procedure at all as there is no compulsion on states to make such procedure. Today a dire need has arisen for all the states to maintain some basic attributes which are necessary to maintain a process in consonance to the international standards of determining stateless people and then working towards making this world a better place to live in for them. An effort is to be made towards establishing a predominant system which would be well versed with the problems, and situations of stateless

²⁹ The United Nations Convention relating to The Status of Refugees, 1951

and also in dealing with their requests for basic rights. The officials should be selected by testing their competence and virtuosity with reference to managing requests for determination of stateless status, the legality in following the procedure for determination and also provision for providing right to appeal against an unfavorable decision accordingly.³⁰

As an outcome it is not that merely an individual is affected rather society as a whole is also a prey to statelessness. It is a matter of fact that when a particular group which is not comprising of a bare minimum number of people, rather the group that would have a direct impact on the working of the state as a whole is excluded from the practical working of a nation that would surely create social disbalance. As a result of this social lacuna the efforts to promote and encourage the economic and political development of the nation would also be at stake.³¹ In order to control the loss of one and all we are in dire need to have a common procedure to determine statelessness so that one and all can be treated equally in all the states. For all of these reasons, UNHCR needs to redouble its efforts to address statelessness by taking common stringent steps to identify stateless together with States and working in coordination with other UN agencies, regional organizations, NGOs and other civil societies for a common acceptable framework.

³⁰ Uliana, *supra* note 11

³¹ Action to Address Statelessness, *supra* note 28