



Publisher homepage: www.universepg.com, ISSN: 2707-4668 (Online) & 2707-465X (Print)

<https://doi.org/10.34104/ajssls.021.0990106>

Asian Journal of Social Sciences and Legal Studies

Journal homepage: www.universepg.com/journal/ajssls



Statelessness in South Asia: Present Scenario, Violation of Human Rights, Grounds and Redresses

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ABSTRACT

After a lengthy and troublesome journey, statelessness (Stlns) has now reached as a recognized emphasis of both theoretical and policy-oriented study. This article discourses how the issue has received great attention from scholars over the world. A broad examination through practical, theoretical and legal lenses of violation of human rights (HRs) of stateless persons (SPs) is presented by this article. The article outlines the present scenario of Stlns in South Asia and several HRs of SPs as contained in several HRs treaties; Shows how these HRs are violated and illustrates the real struggles of SPs highlighting the difficulties of various stateless inhabitants; Scrutinizes how the issues of Stlns are being addressed; Considers the multifaceted regional and political forces touching rules regarding SPs. The article ends with references concerning remedies and keys for Stlns.

Keywords: Stateless, Persons, Human Rights (HRs), Actions, Nationality, Law, Citizenship, and Convention.

1. INTRODUCTION:

Statelessness, the position of being a national of no state, is one of the most grave but unidentified violations of HRs, and that is the cause why the United Nations (UN) have been gradually inspired to deal with this issue. Recently, Rohingya Muslims in Myanmar are in threat of ethnic cleansing by the military forces and deprivation of nationality by applying the National Register of Citizens (NRC) in Assam state of India, which has drawn the attention of the world communities about the issue of statelessness. Stlns is a worldwide HRs issue that touches not less than 15 million persons at present. The presence of Stlns is in contrast to the basic HRs norm: everyone's right to have a nationality. Stateless people are deprived of many more HRs because the people are tremendously vulnerable. In spite of the importance of Stlns as an HRs issue, the UN High Commissioner for Refugees, whose office is instructed by the General Assembly to assist states to reply to

Stlns, newly detected that it is one of the utmost overlooked sectors of the Universal HRs program. But, over the previous few years in precise, there has been a substantial and undisputable increase in attention to Stlns from a wide array of stakeholders including national governments, intergovernmental organizations, regional and International HRs administrative bodies, NGOs, academics and legal practitioners.

2. Definition of Stateless Persons (SPs)

SPs are those who are not regarded as a national by any State under the operation of its law. In other words, persons having no nationality of any state of the world are SPs. They have not been regarded as a national by the domestic law of any country. They have no nationality or citizenship¹ and they are not safeguarded under the statute of any country. Here, nationality is meant for the bond of a person with a State and this bond confers certain rights and duties

upon the national. Nationality and citizenship are similar under the international law though there may be some variances between the ideas under the domestic law. It is irrelevant, where a person is located, for being a SP. Even a person who spent whole of his/her life in the same State without overlapping international border may consider as SP. To determine the nationality of a person it is very important to consider the viewpoint of the State regarding the nationality law of the State and how the law is applied in individual case (Khan and Ahmed, 2016)².

2.1 De Jure and De Facto Statelessness - Statelessness is classified into two types that are de jure (DJ) Stlns and de facto (DF) Stlns. The individuals who are not citizens or nationals of any state under the legal framework or court system fall within the category of DJStlns. The definition contains in the first article of the Convention (CRSSP, 1954)³ deals with DJStlns as persons who are stateless in law and are not documented as nationals by any government (Arif Ahmed, 2014)⁴. Though the DJStlns is easy to understand and identify the other kind of Stlns that means DFStlns is more difficult identify. DFSPs are those who are not stateless in law but they are stateless in practice. According to Goris, Harrington and Kohn⁵DFSPs are those who have nationality but who have no ability to verify their nationality for the lack of documentation; they have no access to a lot of HRs which are enjoyed by other citizens. DFSPs lawfully possess a nationality which is ineffective. On the other hands the DJSPs are those who are deemed a national by no state under its legal framework. As the nationality of DFSPs is ineffective not only inside but also outside his/her country they are deprived of diplomatic and consular defense in case of wrongful act outside the international border. In the past it was thought that all DFSPs are also refugees but this presumption has changed. DFSPs may or may not be refugees. The persons who are not nationals or citizens of any state by the law and by the court are DJSPs. All other persons not stateless in law but in practice are practically deprived of nationality, a lot of HRs and state protections i.e. diplomatic and consular protections are DFSPs. Situation of DFStlns generation after generation may cause to DJStlns (Khan and Ahmed, 2016)⁶.

3. Statelessness in South Asia

3.1 Statelessness in Bangladesh - At least 2.5 million Biharis who have no nationality or citizenship

have been living at Geneva Camp in Bangla-desh. Around 1 million Biharis moved to Pakistan (now Bangladesh) from Bihar and Uttar Pradesh during the partition in 1947. After 1951 they were complete citizens of East Pakistan and appreciated state protection. They were Urdu speaking minority of East Pakistan. They stood for the united Pakistan when East Pakistan declared independent state of Bangladesh in 26 March, 1971. After the victory of Bangladesh, the Biharis became stateless because Bangladesh did not accept them as citizens and Pakistan did not take them into West Pakistan. Now they are stateless and also not in status of refugees, so they have no state protection as well as no humanitarian assistance from the international bodies. They are deprived of a lot of inherent and inalienable rights as such they are prevented from acquiring property outside the camps, entering into government job etc. They had to bear enormous social, economic and political consequences. Due to economic scarcity they cannot afford their educational and medical expenses (Khan and Ahmed, 2016)⁷.

3.2 Statelessness in Myanmar - According to the report of UNHCR⁸ there were estimated 1.9 million of SPs in Myanmar by June 2020. The majority nearly 1.6 million are Rohingya, a Muslim minority group who were bound to flee from Myanmar by force. Almost 1 million Rohingya people seeks asylum in different countries such as 860,000 in Bangladesh, 101,000 in Malaysia, 18,000 in India and smaller numbers in Thailand, Nepal, Indonesia and other countries. About 600,000 Rohingya are still remain in Rakhine State of Myanmar among them 142, 00 are internally displaced (UNHCR, January, 2021)⁹. Rohingya is not only the ethnic group in Myanmar who are stateless there are also other stateless ethnic minority like Tamils, Gurkhas, Hindu Speakers of Bengali-dialects etc. The core reason for Stlns in Myanmar is their discriminatory citizenship law. In Myanmar citizenship rules are main based on race or ethnicity under the Citizenship Law of 1982. Only 135 ethnic groups are officially recognized under the citizenship law so, the persons who don't belong to any one of these groups are in danger of Stlns. The Children whose both the parents are belonged to the recognized ethnic groups are eligible to citizenship only. Children of mixed religion or mixed ethnicity are in danger of being stateless because they are unable to meet the strict criteria embodied in the Citizenship Law. They are still able

to obtain citizenship in certain cases but it hardly occurs.

3.3 Statelessness in Sri Lanka - The most of Sri Lankan people are Buddhist Sinhala and the minority people are Hindu Tamil. There are two distinct parts in Tamil population: one is Sri Lankan Tamils who travelled to the north-eastern part of Sri Lanka from the Tamim Nadu of India and the rest is Estate Tamil who were taken by the British to the center part of the Sri Lankan Island in 1834 to labor on the coffee and later tea plantation. The dialect and cultural habits of Estate Tamils are different from that of the Sri Lankan Tamils. Before the independence by the constitutional reforms in 1928 the Estate Tamil was provided with the voting right and they lived with peace and harmony with the Sri Lankan Tamil and the Sinhalese. But after the independence in 1948 Estate Tamils were unwanted by both the Sri Lankan Tamils and the Sinhalese. They thought that the Estate Tamils had no right to stay there and they should go back to home (Weiner, Myron, 1993)¹⁰. Immediately after the independence the political leaders took steps to take away the voting rights of the Estate Tamils by introducing Ceylon Citizenship Act (CCA) of 1948. Registration and descent are the two ways to claim Sri Lankan citizenship under the law (CCA, 1948)¹¹. As there was absent of official registration procedure until 1897 it was hardly possible for the Estate Tamils to prove the birth of grandfathers and great grandfathers in Sri Lanka. A lot of Estate Tamils return to Tamil Nadu to discover spouses and to procure children. As a result 95% of Estate Tamils amounting to more than one million was denied to citizenship (Peiris, T., 1974)¹².

3.4 Statelessness in Bhutan - The Nepal is (Lhotshampas) started to migrate into the southern part of Bhutan in 19th century having no obstruction from the governing monarchy. Rather up to 1960s and 1970s the government encouraged migration because there had shortage of labor in Bhutan. The Nepalis (Lhotshampas) were approved citizenship of Bhutan in 1958 (Lee Tang, 1998)¹³. Over one lac Nepalis (Lhotshampas) who have peacefully been living for generations in the southern part of Bhutan fled or were evicted by the army from Bhutan due to denial of citizenship from 1990. About 90% Lhotshampas took shelter in UNHCR maintained camps in Eastern Nepal and rest of them joined in homegrown com-

munities in Bhutan and Nepal (Lee Tang, 1998)¹⁴. The Nepalese migrants who have own cultivated land and been living for ten years were allowed to gain citizenship by the Nationality Law of 1958 (Piper, Tessa, 1995)¹⁵. But the intended Citizenship Act of 1977 was enacted to prevent Lhotshampas from citizenship by increasing period of residence from 10 years to 20 years and including some other conditions as, the claimants should have familiarity of Bhutan and should be able to write and to speak the Drukpa Dzongkha, majority Bhutanese language (Lee Tang, 1998)¹⁶. More restriction had been imposed under the Citizenship Act of 1985 by including further conditions as knowledge of Bhutanese history, culture, customs and traditions. The applicants had to show documentary evidence of their residence. All the conditions were intended to deter the Lot stomp as from citizenship as they are very poor in literacy. The government of Bhutan is in the opinion that the most of the refugees (Lhotshampas) are not original Bhutanese citizens on the other side the government of Nepal refute the claim of Bhutanese government. Thus, the Lhotshampas are still living without having effective nationality or citizenship.

3.5 Statelessness in India - In South Asia a great number of SPs live in India. In 1947 by the partition of British India created two independent states namely India and Pakistan. In consequence of partition a huge number nearly 14 million of people moved either to India (mostly Hindus & Sikhs) or to Pakistan (mostly Muslims) (Cutts, M. 2000)¹⁷. Indians who went to Sri Lanka at the time of colonization are suffered from legal status crisis due to decolonization (Pillai R.S., 2012)¹⁸. In granting Indian citizenship legal status is taken into consideration, contingent on when they entered into India. Later after the partition in 1971 at the independence of Bangladesh from Pakistan many Bengali Hindus migrated to India from Bangladesh. Recently, many Tibetans and Rohingyas moved to India and seeking shelter (Asha Bangar, 2017)¹⁹. Historically India hosted a huge number of SPs and refugees but does not recognize them in term of law. The migrated people of Bangladesh who are not legally recognized is a substance of concern for a long time. It was determined that he who entered into India after 24 March 1971 would be deemed a foreigner. At the present time the disputed National Register of Citizens (NRC) that nearly 4 million

people of Assam are illegal. Chakmas of Arunachal Pradesh, inhabitants of the Chhitmahals (Bangladeshi enclaves in India), Hindus who displaced from Pakistan, Sri Lankan Tamils, Rohingyas from Myanmar and many more internally displaced individuals are stateless in India without having legal recognition and suffering from identity crisis.

4. Statelessness and Violation of Human Rights

Human rights are those inalienable rights of every natural person as of being human disregarding sex, race, colour, religion, caste and place of residence (ICCPR, 1966)²⁰. Statelessness is a violation of human right and a cause of violation of many other HRs. Being national of any state is a human right approved by several international laws and conventions. The Universal Declaration of HRs (UDHR) states that “Everyone has the right to a nationality” and “no one should be arbitrarily deprived of his nationality” (UDHR, 1948)²¹. When a child is taken birth, he immediately has the right to a nationality and to be registered. In this respect state parties have an obligation to implement these provisions according to their domestic law and international instruments specially where the child would otherwise be stateless (CRC, 1989)²². Acquiring a nationality and to be registered immediately after the birth regardless of color, sex, race, religion, language, social or national origin, birth or property is an internationally recognized right of a child (ICCPR, 1966)²³. The nationality of women is protected as the nationality of women shall automatically change due to marriage with an alien or due to the change conversion of nationality by her husband during the existence of marriage (CEDAW, 1979)²⁴. The CNMW²⁵ also deals with the provisions for the right of nationality for married women and thus the legal and real importance of nationality for the satisfaction of HRs is acknowledged.

Beside these conventions the CRS²⁶ and CRSSP²⁷ also address the issue of statelessness. The right not to be stateless, or the right to a nationality, is significant because most of the states only permit their own nationals to enjoy full political, civil, social and economic rights inside their territories. States provide international and domestic protection only to their nationals. Though the CRSSP encourages to provide SPs with the human right namely: right of public education, religion, public relief, labor legislation, access to court, intellectual property, housing,

medical care, freedom of movement, association, ownership, wage earning employment but they can hardly enjoy these rights.

“Everyone has the right to a nationality” and “no one should be arbitrarily deprived of his nationality” (UDHR, 1948)²⁸. Thus the legal and real importance of nationality for the satisfaction of HRs is acknowledged. Government should therefore effort to make firm that everybody embraces with a nationality. Notwithstanding these and provisions of above-mentioned HRs laws, numerous people never obtain or are deprived of their citizenship. Stateless people are in vulnerable position because they have no tie of nationality to any State. Although some definite rights are for citizens only, all persons are permitted to the shield of their fundamental HRs. While most of the HRs is usually to be enjoyed by everybody, selected rights such as the right to vote may be restricted to citizens. Stateless public live in a condition of legal limbo. For the lack of safety from any country, stateless public are often oppressed and mostly offspring and women may be more susceptible to harassment, smuggling and violence. As the stateless public are not registered and recognized as nationals of any state are also deprived of concomitant rights such as the right to reside legally, to make registration of the children’s birth, to acquire property, to create a bank account, to contract to marriage legally and many more. As a result, not only the stateless people refused their HRs and met with living in limbo, but their condition is hardly recognized by mainstream society. The feeling of being invisible leads to a debilitating sense of desperation. As a result of their plight, many SPs are forced to cross international borders and become refugees (Tropa, 2021).

5. Grounds of Statelessness

There are various grounds of being stateless in the world. The number of SPs is increasing gradually around the world. The world is concerned about the national and international safety. International community is revisiting international treaties which deal with matters relating to nationality and citizenship.

5.1 State Sequence - State sequence is a reason of extensive statelessness where people fail to sustain citizenship in successor states. For illustration, when the separation of Indian Subcontinent into two new states namely India and Pakistan in 1947 and independence of Bangladesh from Pakistan in 1971

large numbers of people became stateless. The most affected people are the marginalized social and ethnic groups and the Migrants. In several cases, Stlns is a consequence of state succession. Stlns also causes by the extinction of sovereignty and when the territories are occupied by another states.

5.2 Impact of Citizenship Laws - Impact of citizenship laws is another reason of Stlns. Generally, there are two modes of acquiring Citizenship: jus soli and jus sanguinis. Jus soli means a rule by which citizenship is obtained through taking birth on the definite land of the country. Another way of obtaining citizenship is Jus sanguine by which citizenship is obtained from the birth of descendants through a father or mother who is a citizen. At present, most of countries follow an amalgamation of the both methods. Stlns can also be caused if both the men and women are not treated similarly. Where fathers are stateless, absent or unable to confer their nationality to their offspring, these offspring are left stateless.

5.3 Non-state Territories - An ultimate result of Stlns is territories of no state. According to meaning of stateless person, nationals are belonged to the states only. So, the people who live in a territory which is not owned and recognized by any state are stateless. This contains, for instance, engaged territories where statehood has terminated to exist or not ever emerged in the initial place.

5.4 Leaving Citizenship - In very few cases, persons may be stateless when leaving their citizenship. Persons who pledge to voluntarist or agonist views may wish or pursue Stlns. It is not allowed in many countries to leave their nationality except they obtain another one. Yet, consular officials are unlikely to be acquainted with all citizenship acts of all states, so there may still be circumstances where leaving citizenship leads to Stlns.

5.5 Having No Proof of Nationality - Having no proof of citizenship or without documentation is different from being stateless. However, not having birth certificate, key identity document may lead to a danger of Stlns. Millions of people without documents breath their whole lives but never their nationality being questioned? Nationality may be acquired automatically or by registration. When persons automatically acquire their nationality, then their nationality is proved regardless of documentation status. They may be deprived of certain rights and

services not because of their Stlns but because of their undocumented status. If registration is essential then the individuals are not nationals until registration is completed.

5.6 Prolonged Stay in Overseas - A person who stays in overseas for a long time may lose his or her nationality. He or she may lose his or her own recognized nationality and may not be able to acquire a new one for his or her prolonged stay in abroad.

5.7 Effect of Marriage - Persons particularly women may lose their nationality because of marriage or termination of marriage to a person of other nationality. Children, who are issues of SPs or refugees, or in some cases out of wedlock, may be denied citizenship.

5.8 Defective Administrative Exercise - Defective administrative exercise is a cause of Stlns. Some persons may be unable to afford excessive fees or to be informed of registration or other requirements. Children who are not appropriately registered at birth may easily become stateless, because they are unable to prove where and to whom they are issues.

5.9 Amendment to Nationality Laws - Governments has the right to amend their nationality laws and by this amendment they may impose difficulties to acquire nationality with implied intention to deny nationality of specific groups under the amended laws with a view to marginalize them or to ease their expulsion from the state's territory. The allocation of region or sovereignty or the breakdown and establishment of new states may leave thousands of individuals stateless or with undecided claims of citizenship.

6. Actions May Be Taken to Reduce Statelessness

The 1961 Convention on the Reduction of Stlns offers four main ways in which tangible and complete safeguards to be applied by States for preventing and reducing Stlns. Some other measures may be taken to prevent and reduce Stlns. UNHCR can propose technical assistance to help States confirms that these safeguards are mirrored in their citizenship legislation and exercise.

6.1 Actions to Evade Statelessness of Children - States shall allow their citizenship to offspring who would otherwise be stateless and have ties with them through either birth in the territory or descent. As a result, where children take birth in the territory but

obtain the citizenship of a foreign parent, there is no compulsion to allow nationality. Nationality shall either be allowed at birth, by under the law, or upon request. The 1961 Convention grants States to make the delivery of nationality subject to specific conditions, for example habitual dwelling for a specific period of time. States shall grant nationality to foundlings that mean children found on the territory (CRS, 1961)²⁹.

6.2 Action to Evade Statelessness for Loss or Renunciation of Citizenship - Statelessness may be prevented by demanding previous possession of or guarantee of acquiring alternative citizenship before a citizenship can be lost or left. There are two exceptions to this principle as such: States may take out citizenship from naturalized individuals who afterward take up prolonged residence overseas and from nationals who were taken birth overseas and are not inhabitant in the country when they reach majority, provided some other surroundings are met (CRS, 1961)³⁰.

6.3 Actions to Evade Statelessness for Deprivation of Citizenship - The 1961 Convention contain provisions regarding the deprivation of citizenship. States may not deprive any individual of his nationality on religious, political, racial or ethnic, grounds. Only when nationality is acquired by fraud or misrepresentation then it can be deprived but in any other cause it could not be deprived. There are some other causes for which States may exercise the right to deprive an individual of her or his nationality such as he or she is guilty of acts contrary to a duty of loyalty or has made a formal declaration of loyalty to additional state by oath. In depriving nationality of an individual, the State must full circumstances and the proportionality of this action (CRS, 1961)³¹.

6.4 Action to Evade Statelessness in the Context of State Sequence - State sequence, such as the release of territory by one state to another and the formation of novel states, can cause Stlns unless appropriate safeguards are there. Evasion of Stlns in that case is important to encouraging social stability and inclusion. The 1961 Convention asks States to contain provisions relating to the deterrence to Stlns in any treaty dealing with the assignment of territory. If no treaty is made, the State's involvement shall deliberate its nationality on individuals who should otherwise be stateless as a result of the assignment of territory (CRS, 1961)³².

6.5 Action to Evade Statelessness for Registration of Birth - As an example of a concrete tool to prevent Stlns, the panelists emphasized the importance of birth registration. In order to reduce Stlns, the determination of stateless status is vital. The recognition of an individual's status and the particular HRs challenges that the lack of a nationality brings are also necessary steps in ensuring that, regardless of the lack of citizenship, HRs and non-discrimination norms are respected.

6.6 Compliance with International Treaties - Long time has passed from the adoption of CRS and CRSSP but very few states are signed and rectified the treaties even now. By the increase of member states in the treaties amount of Stlns can be reduced. When a state rectified a treaty, it is its moral and legal duty to implement the provisions of the treaty in its statutory laws. Most of the countries in the world show apathy to the international Conventions.

7. CONCLUSION:

This article designed to analyze South Asia's Stlns issues in light of the present international permitted framework surrounding the Stlns. There are various causes for Stlns in South Asia. State sequence, decolonization harmonizing with new socio-political movements has severely had an influence on the restraining citizenship laws. The SPs may acquire citizenship through registration or naturalization but in the citizenship acts of the South Asian countries there are some provisions which creates hindrances for acquiring citizenship. Furthermore, there are no protections against Stlns rising from renunciation, deprivation or termination of nationality. If the states do not be positive in changing the discriminatory citizenship laws Stlns will last from generation to generation. So, the South Asian countries should for their own interest accede to the Conventions regarding Stlns of 1954 and 1961 as well as make changes to their domestic citizenship laws in accordance with the Conventions. By acceding to the Conventions a positive obligation would be on the states parties to include the international standards of nationality in their citizenship laws. This not only brace the national context on nationality laws but also permit the government to competently maintain such persons with more responsibility and proficiency (Asha Bangar, 2017)³³.

8. ACKNOWLEDGEMENT:

I could not but acknowledge the support, help and cooperation received from my co-researchers and pay special thanks to my beloved wife for strengthening my courage to start this article. Without the support from these persons at different stages of the research this article could not be come into light.

9. CONFLICTS OF INTEREST:

We, the authors firmly declare that this article was written by us only. There is no conflict of interest regarding this work. And we have not sent it to any other places for publication.

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ENDNOTES

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- ⁷ Ibid, p.319-322.
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- ²¹ Article-15, “Universal Declaration of Human Rights”, 1948
- ²² Article-7, “Convention on the Rights of Child”, 1989
- ²³ Article-24, “International Covenant on Civil and Political Rights”, 1966
- ²⁴ Article-9, “Convention on the Elimination of All Forms of Discrimination against Women, 1979
- ²⁵ The Convention on Nationality of Married Women, 1957
- ²⁶ The Convention on Reduction of Statelessness, 1961
- ²⁷ The Convention Relating to Status of Stateless Person, 1954
- ²⁸ Article-15, “Universal Declaration of Human Rights”, 1948
- ²⁹ Article, 1-4, Convention on the Reduction of Statelessness, 1961
- ³⁰ Article, 5-7, Ibid
- ³¹ Article, 8-9, Ibid
- ³² Article-10, Ibid
- ³³ Asha Bangar, “Statelessness Working Paper Series No. 2017/02, Institute on Statelessness and Inclusion, June 2017”

Citation: Alam S, Mukta SY, Iqbal F, and Sarker T. (2021). Statelessness in south asia: present scenario, violation of human rights, grounds and redresses, *Asian J. Soc. Sci. Leg. Stud.*, 3(3), 99-106.

<https://doi.org/10.34104/ajssls.021.0990106> 