



STATELESSNESS AND NATIONALITY: A PRIMITIVE PUNISHMENT FOR INVISIBLE POPULATION

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which may be adopted by UN in order dilute the present helter-skelter situation.

“Citizenship is man’s basic right for it is nothing less than the right to have rights”¹

Key Words: Citizenship; Nationality; Statelessness; Quantification.

I. ABSTRACT

The predicament of statelessness is being faced by more the 10 million people around the globe. As a result of which they frequently aren't permitted to go to school or any institution, see a specialist, hold a job, cast their vote, open a financial account, purchase a house or even get married. In short, complete social exclusion. The need of international action was seen post-second world war, population growth, migration, trafficking, gender inequality and ethnocentric policies and climate change.

Forthwith, 1954 convention remained the sole and imperative authority in addressing the issue of statelessness. There is no region in the world which is free from statelessness. Though, not politically affirmed but scientifically certain. A setback in curbing this melancholy portrays the hollowness of international human rights.

The author intends to exhaustively highlight the entire plight, sufferings faced by such ousted and unseen population. And measures adopted by international community, authorities and natural bodies to curb such issue. The paper exhaustively deals with crucial international judicial pronouncement in regard to questionable ends of statelessness. The paper with its last objective attempts, to contribute towards futuristic, credible and reasonable measures

II. LIST OF ACRONYMS

CTD	Common	Technical
Document		
FMR	Forced Migration Review	
IACrHR	Inter-American	Court of
Human Rights		
IPCC	Intergovernmental Panel on	
Climate Change		
IPU	Inter-Parliamentary Union	
ICJ	International Court of Justice	
MEA	Ministry of External Affairs	
UDHR	Universal Declaration of	
Human Rights		
UN	United Nations	
UNHCR	United Nations	High
Commissioner for Refugees		

III. TABLE OF CASES

- Shekh Abdul Aziz v. NCT of Delhi, W.P. (CRL) 1426/2013.
- Yean and Bosico Children v. The Dominican Republic Inter-American Court of Human Rights (IACrHR), 8 September 2005.
- John K. Modise v. Botswana 28th Ordinary Session, 23 October - 6 November 2000. Cotonou, Benin.

¹U.S. Chief Justice Earl Warren, UNHCR, *Nationality and Statelessness: Handbook for Parliamentarian*, 2005.



- Kurić and Others v. Slovenia [GC], no. 26828/06, Judgment of 13 July 2010
- Attorney-General v. Dow, (2001) AHRLR 99 (BwCA 1992).
- Liechtenstein v. Guatemala, Second Phase, International Court of Justice (ICJ), 6 April 1955.

IV. INTRODUCTION

*'For many of us, citizenship only really matters when we travel abroad, when the Olympic Games are on, or when we vote in national elections. We do not think about our citizenship on a daily basis. For others, citizenship is an ever present issue, and often an obstacle. Because recognition of nationality serves as a key to a host of other rights, such as education, healthcare, employment, and equality before the law, people without citizenship- those who are 'stateless'-are some of the most vulnerable in the world.'*²

After completion 6 decades Human Rights are still one of the essential bedrock for human race and is duly weighted in the international community. After 1954 *Convention on Status of Stateless Persons*³ to which eighty states are party to it, 1961 *Convention on Reduction of Statelessness* and other international instrument it is now clear that granting nationality stems out of human rights. But in practice, statelessness remains un-discussed and with *snow ball effect* has turned into one of the most devastating anomaly. Being 'invisible' mean

that it is difficult to quantify such stateless population. And a huge number is still being unreported and outside the purview of UNHCR or other UN agency.

The topic has been linked, through a common link that person is out to greater risk. Without issuance of citizenship a person cannot apply for travelling document or registration of marriage, limited healthcare, ownership of the property, freedom movement, holding of public offices, contesting election. Whereas, grant of citizenship has wider benefits both material and immaterial such as concrete identification proof, entrance to the labour market, political and personal change is of high considerable value. Having nationality is a gateway for rights to have rights and other fundamental rights.

V. EXECUTIVE SUMMARY

There are different shades and lenses to the problem of statelessness present around the world. The international community commits to prevent statelessness is firm and evident from the Universal Declaration of Human Rights (UDHR), namely, Article 15 that "everyone has the right to nationality". In addition to this major declaration, there was leap of development in this subject in the middle of the 20th century with advent of 1954 *Convention on Status of Stateless Persons* and 1961 *Convention on Reduction of Statelessness*. Persons become stateless by falling into the loop of the inconsistency, gaps, un-mapping of the issue in hand.

The problem of statelessness

As per 1954 convention, a stateless person is one "who is not considered as national by any state under the operation of the law".

² Indira Goris, Julia Harrington & Sebastian Köhn, *Statelessness: What It Is and Why It Matters*, FMR (32), (Feb. 21, 2017, 3.15 PM), <http://www.fmreview.org/FMRpdfs/FMR32/04-06.pdf>.

³*Infra* note 8.



The problem arises where there is wider and destructive interpretation of such definition in relation to the domestic law. Such regional incoherence, leads to deprivation of the relevant rights attached to the acquisition of citizenship such as human rights, prevention from child abuse, economy, healthcare, democratic participation. Such issue requires more effective, collective, and integrated steps from UN and its agency. The paper in its following research objective deals more exhaustively.

De jure v. De facto statelessness

The definition of a stateless individual in the 1954 Statelessness Convention – “a person who is not considered a national by any State under operation of its law” – depicts the circumstance of de jure stateless. Thereby, imposing obligation on the state for *de jure* stateless persons. Although, the Final Act⁴ includes *de facto* stateless persons as well. On the other hand, de facto persons are those who are unable to demonstrate their de jure statelessness and for innumerable reasons don't enjoy all the benefits or rights.

Stateless person as refugee

It was intended by the drafters of the 1954 convention to exclude *de facto* stateless persons outside the ambit of the stateless persons. It was presumed that such persons, being deprived of the nationality and rights associated with it are refugees. Also, such stateless person doesn't signify persecution which is sole criteria in *1951 Convention on the Status of the Refugees*.

The problem of quantification

⁴ United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1

The step towards mapping of statelessness is cumbersome process. Though, state has the primary duty to resolve and effective measure, but it is now essential that there are concrete steps from the side of civic society. But unfortunately, there several states as discussed in the paper which takes deliberate and politically driven steps to deny identification and prevalence of such population. On the top of it, there is evidentiary material of self-identification of statelessness forming a non-accurate data. From a more practical perspective, around 75 countries doesn't provide with cogent data leaving 50% of world's stateless population

Recommendations and Conclusion

The research confirms and offers a number of recommendation, that states should adopt credible measure to quantify the stateless persons, promote the inclusion of definition of the 'stateless persons' with more consistency, a more unified approach to curb the issue, and societal measures inclines towards awareness of benefits attached to the citizenship. The report concludes that there is quest and a huge demand for more clarity on the present subject with the involvement of international and national organization.

VI. RESEARCH OBJECTIVES

Research Objective No. 1: To understand and identify the cause and impact of Statelessness in present scenario.

Research Objective No. 2: To analyse the gaps in the International legal framework relating to the protection of Stateless persons.

Research Objective No. 3: To know the challenge in mapping measures adopted by



UN agency to have quantitative and qualitative data on stateless population.

Research Objective No. 4: To decipher the judicial trends and the approach towards the statelessness.

Research Objective No. 5: List of recommendations to curb future statelessness.

Research Objective No. 1: To understand and identify the cause and impact of Statelessness in present scenario.

A closer scrutiny to the abovementioned objective has multifarious spur attached to it. For instance state succession; discrimination or the arbitrary deprivation of nationality; technical and administrative gaps; and causes linked to climate change.⁵

1.1.STATE SUCCESSION

At the point when part of a state withdraws and gets to be distinctly free, or when it breaks down into numerous new expresses and a conundrum develops in the matter of nationality of influenced. The changed nationality laws of the successor shall leave individuals with stateless; also redefinition of who is now a national of that parent state may likewise render individuals as stateless and vulnerable to the reinterpretation new laws, new citizenship and new administrative procedures prevailing at that point of time⁶.

The analogy can be rightly being drawn out from the experiences embedded in territorial demarcation through colonisation and consequent nation building. And in recent period, countries of the former Soviet Union

⁵ For a good discussion on causes of statelessness, see: Inter-Parliamentary Union (2005).

⁶*Id.*

and Yugoslavia⁷ and South Sudan from Sudan⁸, brings clear picture of the abovementioned object. Such a change in political and geographical move leads to unique challenges with regard to Statelessness and nationality.

1.2.DISCRIMINATION AND THE ARBITRARY DEPRIVATION OF NATIONALITY

In practice arbitrary act involves large-scale discrimination leading to collective withdrawal or denial of nationality of particular state despite well knit relation to that particular state. Discrimination involves grounds such as race, colour, descent, or national or ethnic origin in the determination of nationality and exclusion of civic criteria.⁹ Security can also be a ground for arbitrary deprivation nationality if due process of law has not been followed. Such form of predicament can be seen widely in 25 countries around the world.¹⁰ Most people are considered as national by the principle of blood origin or where the person's parents were nationals i.e. (*jus sanguinis*) and another category involves birth on the territory (*jus soli*)¹¹. Such mode of acquisition is known as automatic acquisition of citizenship. But in many

⁷ See sections 3.IV and 3.V on statelessness statistics in Asia and Europe.

⁸ See section 3.II on statelessness statistics in Africa.

⁹ Weissbrodt (2003).

¹⁰ See for more details on this issue UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2014*, 8 March 2014. See also the GLOBAL CAMPAIGN FOR EQUAL NATIONALITY RIGHTS (Feb. 26, 2017, 6.10 PM) <http://www.equalnationalityrights.org/>.

¹¹ UNHCR, *Handbook on Protection of Stateless Person*, (2014), (Feb 26, 2017, 6 PM), <http://refworld.org/docid/53b67aa4.html>.



countries where nationality based on *jus sanguinis* has left children of many migrants in difficult times for instance Cote d'Ivoire to the Dominican Republic to the former Soviet Union to Germany and Italy¹².

Historically, world has witnessed various arbitrary acts of states, apart from abovementioned states, which has lead to segregation and failure to reintegrate the minorities and their deprivation of nationality. The Bihari community in Bangladesh has been ostracised from the majority Bengali population on the evasive ground of disloyalty by the former community and were inclined to the regime of Islamabad during 1971 war. Gender based discrimination in several Arab states is widely evident as source of statelessness.¹³

1.3. TECHNICAL AND ADMINISTRATIVE GAPS

Surprisingly, documentation regarding nationality designed to act as helping hand in the process can become a snake in the grass, as an inevitable barrier for nomadic, poor and minority population. There are innumerable administrative and logistic ostracism steps that may end up in the loss of the nationality. Excessive fees, red tape, documentary proof, peripheral challenges for the poor. In nations of the erstwhile Yugoslavia and somewhere else in Europe is a reasonable case of where absence of

documentation and registration can rise into an issue of statelessness.¹⁴

1.4. CLIMATE CHANGE

Notably, at UN Conference on Climate Change, the *Intergovernmental Panel on Climate Change* (IPCC) recognised Netherlands, south eastern Asian-oceanic states like Bangladesh and some other states as being threatened by the rising sea level. The reports guarantee that 600 million individuals could be affected by such an ascent in the sea water level, proposing that statelessness may emerge out of such a jibe before the the end of the twenty-first century. Conclusively, UNHCR while addressing the issue remarked that population of the affected state may be considered as *de facto* stateless.¹⁶

1.1.1 IMPACT OF STATELESSNESS

In order to extrapolate the anomaly and untoward subject, it reports to impact 10 million (only mapped countries) as stateless. By all virtues Human rights are to be enjoyed by human race, but due to statelessness, are left high and dry. Being ousted from not only their country but also from all the countries can make stateless as an easy prey for bureaucracy. They can indeed be treated with exploitative practices; forced labour or different means of extortion; persecution;¹⁷ purchasing or acquiring a land; acquiring a birth

¹⁴ See section 3.V on statelessness statistics in Europe.

¹⁵ *Supra* note 11.

¹⁶ UNHCR (2009a).

¹⁷ For example the plight and holocaust of the Rohingya community of Myanmar – see sections 3.IV on statelessness statistics on Asia and 3.VII on statelessness refugees.

¹² B.K. BLITZ & M. LYNCH (eds.) STATELESSNESS AND THE BENEFITS OF CITIZENSHIP- A COMPARATIVE STUDY 7 (2012).

¹³ Southwick and Lynch (2009).



declaration; registration of car; driving permit; arbitrary detainment; marriage authentication; opening a bank account or even death testament; or getting an advance; getting a travel permit or surely being issued any type of personality documentation is to a great degree troublesome in the event that you are not the national of any country, to such a degree, to the point that various stateless individuals have no proof that they exist and no techniques by which to separate themselves in their ordinary communications with the state or with private components. Overall travel is unpragmatic, unless by illicit means. In a few circumstances, statelessness really turns into a course or impetus for human rights infringement. Stateless people might be subjected to particular directions or practices that don't have any significant bearing to different inhabitants in a state. In outrageous cases, additionally crippling and dehumanizing confinements may likewise be forced, for example, on marriage or conceptive rights. Disenfranchisement is an inevitable and universal problem evidently present all over the world.¹⁸

"In Kenya, if you do not have an ID card, you don't exist. Technically you cannot even leave your house, because if you leave your house and you are challenged 'Where is your ID?' That is considered a crime. Now, if you cannot leave your house, how do you live? How do you look for a job? You can't even open a bank account, you can't

*transact business, you cannot own anything, because you don't exist"*¹⁹

The truth is stateless person face distinctive challenges in all spheres of their life from birth to their death.

◆ **Research Objective No. 2: To analyse the gaps in the International legal framework relating to the protection of Stateless persons.**

Presently, it is essential to analyse whether *1954 Convention relating to the Status of Stateless Persons* is fulfilling the need of the hour or whether there scope of any relevant development. In order to achieve pre-determined objectives, UNHCR is sole authority which deals with drafting legislation, training of government officials, cooperating with regional bodies or Non-governmental organizations, Inter-Parliamentary Union (IPU) and implementation of national legislation. In the period of 2003-05 it has worked with not less than 40 states to enact, comment and revise nationality related laws within such states.²⁰

Firstly, access and enjoyment to political rights or holding a public office is a hot potato whenever there was a discussion in drafting 1954 convention. However, rather than protecting and safeguarding the rights of the nationality deprived persons, the delegates deliberately chose to exclude such vital rights in 1954 convention. Such rights

¹⁸ An exception to this rule is present in the Estonia, wherein, it allows stateless population to vote only in municipal elections. But such set ups are not exception in stricter sense, as they are not privilege and can be revoked at any time.

¹⁹ Transcribed from UNHCR, Kenya: Nubians in Kibera (Feb. 27, 2017, 12 PM), <http://unhcr.org/v-4e5ca05e6>.

²⁰ *Supra* note 7, See (See Annex 4 of *Handbook for Parliamentarians* for a list of UNHCR offices around the world)



aren't subjected to possession of nationality. Abrogation of such rights could not be a legitimate in the eyes of International law and may take a destructive form.²¹

Secondly, there is further betrayal and weakness in the 1954 instrument as it fails to settle questions with regard to right to enter the state on the basis of CTD.²² Moreover, there is little clarification on 'State responsibility' in the convention when it comes to statelessness due to denationalization. The 1954 *relating to the Status of Stateless Persons* differs significantly from its sister convention, 1951 *Convention relating to the status of the Refugees*, with regard to wage-earning employment. The latter lifted the restriction on the same subject. The 1954 convention skirts out on many of the essential and difficult questions leaving behind several normative gaps.

The UN ought to increment endeavours to elevate approval or promotion to the 1954 Convention which had just 65 States parties as on 1 January 2011. Notably, reference might be extracted from applicable resolutions of the General Assembly which persuaded and encouraged states to ponder and give consideration to acceding.²³

²¹ Note that article 2 of the 1954 *Convention relating to the Status of Stateless Persons*- where the primary obligation of stateless persons is enshrined- were of the view to curtail the political activities of such individual. See Walker (1981) and Skoloff (2005)

²² Article 31 of 1954 *Convention relating to the Status of the Stateless Persons*.

²³ See General Assembly Resolution 62/124, 64/127, 63/148, 50/152 and 49/169. also numerous Conclusions of UNHCR's Executive Committee including Nos. 78, 85, 87, 90,95,99, 102, and 106. Human Rights Council resolutions on human rights and arbitrary deprivation of nationality 13/2, 10/13 and 7/10.

Besides, States ought to be urged to agree to enhance usage of global and provincial human rights recognised instruments that upgrade the insurance of the privileges of stateless people.

It is essential to develop the national legal framework and bring in to the International legal framework consonance. UN should irrespective of whether a state is a party to the 1954 Convention must promote the

- i. definitional clauses;
- ii. entry to the state;
- iii. supporting institutional responses;
- iv. residence to non-citizens in specific situation;
- v. respect of regional and international human rights and
- vi. legal assistance and integration programmes for the stateless persons.

Research Objective No. 3: To know the challenge in mapping measures adopted by UN agency to have quantitative and qualitative data on stateless population.

As emphatically mentioned in the title of this paper, that statelessness is often regarded as the invisible phenomenon. The main problem to such matter is the difficulty in adopting the methodology to quantify statelessness itself. It must be acknowledged that quantifying such a problem is one of the most intricate job.²⁴ Since 2004, UNHCR has announced, on a nation by-nation basis, the quantity of people who fairly and squarely fall under its statelessness order, and remains the main association which methodically gathers and consistently gives an account of the quantity of stateless people. Just one other organisation has ever attempted a survey at such a global level that

²⁴ See UNHCR, *Guidance document on measuring stateless populations*, May 2011.



is Refugees International. The report, titled 'Lives on Hold', was published in February 2005 and includes a 'Global Review of Statelessness'.²⁵ The report included a narrative section for an extrapolation of the stateless population present in 80 countries. The then global stateless survey was over 11 million.²⁶ A subsequent and updated survey namely, 'Nationality Rights for All'²⁷ rests the number on 12 million people all over the world. Such reports and UN statistics are the only concrete and up-to-date source of data. There several issues attached to these survey and methodologies in determining the actual number of stateless persons

The definition of statelessness "not considered as national....under the operation of its law"²⁸ doesn't hold a stricter but authoritative interpretation on the basis of facts and law.²⁹ The ambit of interpretation gets wider as it excludes those who are stateless as per the competent authorities and those who don't feel connected to the mass of the relevant state due to distinctive political and personal beliefs. Whereas, in many states there is no definition of stateless person in their national laws.

Again, many state authorities with their own deliberate political agenda deny the

existence of stateless population in their state causing hardship to the hidden persons thereon. Going statistically, out of 142 national censuses conducted between 2005-14 for which UN possesses questionnaires, carrying 112 questions on nationality of which only 25% i.e. 28 provide for statelessness to be recorded.³⁰ UNHCR has data for number of stateless persons in 75 countries covering only 50% of the world population.³¹ The reliability of such data is still a bench mark question for the UN agency as different countries compiled their data with different data sets.³² And thereby, no real or complete picture is revealed with such cumbersome statistical practice. To avoid falling into the pit of conundrum, UN practices the indication of asterisk (*) where no reliable or precise data is available for a state and drop them from including into the Global statistics. Hence, with the adoption separate programming and budget system, namely 'Pillar-2' exclusively involves stateless population under the UNHCR statelessness protection mandate and are thereafter, reported in its final statelessness statistics.³³ UNHCR estimates the actual

²⁵ Refugees International, *Lives on Hold. The Human Cost of Statelessness*, 2005.

²⁶*Id.* p. 7.

²⁷ Refugees International, *Nationality Rights for All. A progress Report and Global Survey on Statelessness*, 2009.

²⁸ Article 1(1) of Convention Relating to the Status of Stateless Persons, 1954.

²⁹ UNHCR, *Handbook on Protection of Stateless Persons*, (Feb. 26, 2017, 5:15 PM), at p. 23-24 <http://www.unhcr.org/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

³⁰ These instruments are available here:

<http://unstats.un.org/unsd/demographic/products/dyb/dybquest.htm>. Also See in particular section 2 of the annual *Population Estimates Questionnaire* and table 20 of the *Population Census Questionnaire; General Characteristics*.

³¹ See UNHCR, *Global Trends 2013, 2014*, for statistics for the stateless population as at end-2013.

³² For instance, Myanmar, while conducted their survey in Rakhine state for Rohingya stateless an estimated 500,000 stateless person were excluded from that survey.

³³ See, UNHCR Executive Committee, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, No. 106 (LVII).



total global stateless population today to be “at least 10 million persons”.³⁴ In order to surpass the present data UNHCR as a part of ‘Action 10’ campaign to curb statelessness, strives to achieve credible data coverage for 150 states by 2024.³⁵

◆ **Research Objective No. 4: To decipher the judicial trends and the approach towards the statelessness.**

4.1. Declaring a Person Stateless

In a motion to declare a person stateless Delhi High Court addressed this question in *Shekh Abdul Aziz v. NCT of Delhi*³⁶ wherein, the petitioner was ‘foreigner’³⁷ and was detained in Kashmir. After serving for one year of imprisonment, the petitioner was then shifted to Tihar Jail in Delhi in order to proceed with initiation of the deportation mechanism. But the procedure didn’t take the pace which was required. Delhi High Court directed the Central Authority to determine the nationality of the person within 2 weeks. Thereafter MEA declared the petitioner as stateless but facilitating the whole dispute MEA stated that the person could attain long term visa expeditiously.³⁸

³⁴ *Infra* note 26.

³⁵ See UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, (Feb. 28, 2017, 11.12 AM) <http://www.unhcr.org/protection/migration/4742a30b4/refugee-protection-mixed-migration-10-point-plan-action.html>.

³⁶ W.P. (CRL) 1426/2013. This case is under trial as of date.

³⁷ Clause (a) of Section 2(3) of the Foreigners Act, 1946.

³⁸ A. Mathur, *Stateless man to get visa, ID to stay in India*, IndianExpress 29 May 2014, <http://indianexpress.com/article/cities/delhi/stateless-man-to-get-visaid-to-stay-in-india/>, last seen (Mar. 3, 2017, 6.10 PM)

4.2. Arbitrary deprivation of nationality

In the case of *Yean and Bosico Children v. The Dominican Republic*³⁹ the Inter-American Court of Human Rights concluded that the Dominican Republic has violated various articles of the *American Convention on Human Rights*. Particularly, when it refused to issue birth authentications to children born in the Dominican Republic to guardians of Haitian descent. The Court held that the interpretation of “in transit” in Dominican Republic’s migration and citizenship laws ousted particularly Haitians born in the Dominican Republic from obtaining citizenship and that this treatment of ethnic group was arbitrary and prejudicial.

*John K. Modise v. Botswana*⁴⁰ The African Commission on Human and Peoples’ Rights while deciding on merits held that Modise had born within the territory South Africa and to British Protected Person. And in this way he was a native of Botswana by birth. The Court held that the state had abused Modise’s rights under the African Charter on Human and Peoples’ Rights by not recognizing him as a resident of their state and by extraditing him from Botswana, and consequently made him live in vicious poverty. The Court held that unstable living conditions while being stateless added up to an infringement of his right to respect for

³⁹ Inter-American Court of Human Rights (IACrTHR), 8 September 2005, (Mar. 2, 2017, 2.30 PM) <http://www.refworld.org/cases,IACRTHR,44e497d94.html>.

⁴⁰ 28th Ordinary Session, 23 October - 6 November 2000. Cotonou, Benin, (Mar. 2, 2017, 2.35 PM), http://www.achpr.org/communications/decision/97.93_14ar/



dignity. The Court additionally noticed that registered citizenship granted by the state authority to Modise was insufficient on the grounds that it was not at par with the citizenship by birth in toto.

In some cases, where the states hold the procedure for re-registration of permanent residence of those erased from the registry and non-compliance of such procedure during the prescribed period would render them stateless. The court held such registration procedure as arbitrary and unlawful.⁴¹

4.3. Equal access to the nationality

Also, at the domestic level, the Court of Appeal of Botswana held in *Attorney-General v. Dow*⁴² the Citizenship Act of 1984, which allowed citizenship to the children of a native father that is Botswanan father and to children born out with a native mother that is Botswanan mother, infringed the guarantees provided by the grundnorm. This includes freedom from movement and liberty. Since in the present case, the children of a Botswanan lady wedded to a foreign national, could confront ostracism and in this way law discouraged marriage between native ladies and non-resident men.

4.4. Effective nationality

(*Liechtenstein v. Guatemala*), *Second Phase Nottebohm Case*⁴³

In spite of the fact that Nottebohm does not particularly address statelessness, it has

much of the time been referred to in statelessness in regard to major principle of 'effective nationality'. The International Court of Justice in *Nottebohm* considered the administrative move of Guatemalan such as extradition and seizure of property, a former German national who later on naturalized as a resident of Liechtenstein soon after the set about of World War II. The ICJ held that Liechtenstein's claim was inadmissible as Nottebohm had no real ties to Liechtenstein since he didn't reside there or, conducted any kind of business in Guatemala, and it overtly appeared to just have turned into a native of Liechtenstein with the sole purpose that he certainly be recorded as a native of a nonpartisan nation amid of the World War.

Research Objective No. 5: List of recommendations to curb future statelessness.

The right to nationality in the contemporary context is an essential and indispensable human right. Statelessness is a stage where the person has no nationality due several reasons as discussed in the paper. The report discussed in particular as to how statelessness is caused, what do the statistics shows, international legal framework lacuna, incomplete mapping and judicial mindset to the issue. The major focus of the research was that to determine and examine, quantify the rate at which the citizenship was granted. A comparative review articulates that there has not been much progress and in addition to that poor living standards, underdevelopment and corruption has undermined the potential benefits of obtaining nationality as evident in the states like Bangladesh, Kenya, Sri Lanka, and Republic of Crimea. In order to dilute a far

⁴¹ Kurić and Others v. Slovenia [GC], no. 26828/06, Judgment of 13 July 2010.

⁴² (2001) AHRLR 99 (BwCA 1992).

⁴³ International Court of Justice (ICJ), 6 April 1955, (Mar. 2, 2017, 6.00 PM) <http://www.refworld.org/cases,ICJ,3ae6b7248.html>



stretched responsibility following recommendation has been made in order to bring conduciveness in the curbing future statelessness.

The necessary positive steps in tune with Indian political, administrative and judicial mechanisms are to accede to the 1954 and 1961 Conventions on statelessness. Such an accession would be fruitful to India and will be attached with positive obligation (protecting stateless children). Presently the lacuna is being fulfilled through judicial activism. Consequently, legislative reformation shall prevent future statelessness.

- i. States should adopt credible measure to quantify the stateless persons. This can be done through dedicated mapping exercise and utilisation of more accurate administrative databases.
- ii. State should promote the inclusion of definition of the 'stateless persons' in their national laws and consistently interpreting the same.
- iii. State with major problem of statelessness should revisit their promulgation, procedures and percentage of coherence of their national laws to international status of stateless persons related legal framework.
- iv. In pursuance to the commitment to curb statelessness, state should completely co-operate with UNHCR and paying due diligence on the developments brought in by such UN agency.
- v. Regional and International funding will enhance the knowledge towards this issue with more brevity by introducing more cogent material in this regard. Eventually, making the state less

dependent upon unreliable data and deceitful move of the authorities.

- vi. It is required that UNHCR to come up with unified approach to define statelessness and effective measures to quantify such population.⁴⁴
- vii. UNHCR and UN Regional Commissions can engage themselves during the national census by providing technical support.
- viii. Society should persistently be inclined towards awareness of the plight caused due to statelessness among general public and enthusiastic measures in regard to mapping of stateless population.

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⁴⁴Supra note 28, paragraph (f).



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