

Reframing the Problem of Statelessness: Quest for a Supra-Legal Perspective

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BACKGROUND

Any democratic state must internalize and be sensitive to the human rights of susceptible groups. Most successful democracies seem to have realized this paramount goal, though reality presents a contradictory proposition where a considerable amount of people are still deprived of the mainstream protective umbrella of legal and social regimes. One such group that can often be excluded from the ideological basis of human rights discourse is stateless persons. Carol A. Batchelor asserts that “statelessness is not merely a legal problem, it is a human problem.”¹ Both the international legal regime and community of nation states have demurred the significant problem of statelessness and the protection of stateless persons. This challenge facilitates the negation of the philosophy of the universal character of human rights. This point is supported by the fact that nearly ten million stateless persons exist in the world despite the existence of a strong international legal regime to protect and promote human rights.² Statelessness is a growing problem today. The challenges countries face due to statelessness are exemplified by stateless Rohingyas, Windrush immigrants in United Kingdom, Guantanamo detainees, stateless persons in Brunei, Haitians in the Dominican Republic, and Palestinians in Syria and Lebanon. Statelessness and the associated issues have been in the limelight in recent political and legal discourse because of the controversial status of Rohingyas. Kaveri estimates that nearly 1.9 million stateless Rohingya individuals are refused rights, with 140,000 Rohingyas forced into displaced persons camps and

¹ Carol A. Batchelor, *Stateless Persons: Some Gaps in International Protection*, INT’L J. REFUGEE L. 232, 159 (1995).

² *Id.*

120,000 fleeing to neighboring countries.³ It is not clear how these stateless people can become stateful.

A stateless person is one who is “unprotected by any specific law or political convention.” Hannah Arendt, the author of *The Origins of Totalitarianism* and an exponent of statelessness, refers to this situation as “potentially dangerous and sinister.”⁴ Statelessness presents a danger because, by definition, it is a gap in protection. Scholars have observed that “[n]ationality forms the basis of the legal and moral obligations between the individual and the state” and thus is a fundamental human right.⁵ The established scholarship on vulnerable groups affected by the legal status of nationality conflated the problem of statelessness with that of refugees. Writings on the topic hardly made any distinction between the two problems in terms of fundamental identities.⁶ Also, the concerns of the stateless persons were camouflaged by those of refugees.⁷ Advocates focused on the concerns of refugees regarding the clout of first world nations and inadvertently overemphasized the problem. This is also one of the perceivable reasons for less recognition and regulation of this issue.

Traditional ideas surrounding this issue have presented the problem of statelessness as a legal one, despite its inherently social, economic, ethnic, political, and moral dimensions. The regulatory provisions and reforms codified to address the problem reflect this, focusing more on the legal treatment of the problem and being less cognizant of other aspects. The international regime has even placed greater emphasis on the legal treatment of the stateless Rohingyas, rather than focusing on other issues (e.g., ethnic, religious, social, and political) that have a tremendous impact on categorizing these individuals as citizens. In turn, this has resulted in a skewed perception of the problem and a failure to understand the bigger picture. As Laura Van Waas, an eminent professor from Tilburg Law School in the Netherlands, argues, statelessness is a timeless problem because it is the nature of human beings to always associate themselves into groups in ways that make

³ Kaveri, *Being Stateless and the Plight of Rohingyas*, 29 PEACE REV.: J. SOC. JUST. 31, 33 (2017).

⁴ Richard J. Bernstein, *Hannah Arendt on the Stateless*, 11 PARALLAX 46, 51 (2005).

⁵ *Id.*

⁶ Kate Darling, *Protection of Stateless Persons in International Asylum and Refugee Law*, INT'L J. REFUGEE L. 742, 744 (2009).

⁷ See generally Kristy A. Belton, *The Neglected Non-Citizen: Statelessness and Liberal Political Theory*, 7 J. GLOBAL ETHICS 59 (2011).

the process of “inclusion” and “exclusion” an inevitable part of life.⁸ Van Waas notes that statelessness “serves as an example of a social problem that has not yet fully emerged onto the international human rights agenda.”⁹ This statement demonstrates that the problem of statelessness cannot be treated by simply dealing with its legal aspect. Therefore, a need to revamp the legal perception of the problem of statelessness arises and also the need to look for further perspectives. It becomes imperative to perceive the problem through social, political, economic, moral, demographic, ethical, and psychological lenses. In fact, the traditional treatment of statelessness has resulted in serious disputes on the topic. These disputes have prompted the need to look for a “supra-legal” perspective that could navigate possible pathways to resolve statelessness through an ontological framework.¹⁰ An ontological framework seeks to identify the grounds for determining the residential status of a person, the changes in status to and from statelessness, and the process involved. It also addresses the effects of statelessness locally, nationally, and internationally.

A. Ontology of Supra-Legal Perspective on Statelessness

The following Section outlines an ontological framework that presents the problem of statelessness in its entirety. Ontology is a major branch of metaphysics that involves a philosophical study of being. In recent years, there has been a surge in the scholarly interaction between metaphysics and the social sciences. Ontologies can be used to study and investigate the realities of the social world.

An ontology represents our conceptualization of a domain.¹¹ It helps us construct a structured natural language framework by connecting the constitutive taxonomies and terminologies. Thus, it helps in comprehensively conceptualizing and visualizing a complex problem.¹² This necessitates a broader rethinking of a problem like

⁸ Laura van Waas, “*Are We There Yet?*” *The Emergence of Statelessness on the International Human Rights Agenda*, 32 NETHERLANDS Q. HUM. RTS. 342, 342 (2014).

⁹ *Id.*

¹⁰ Ruma Mandal & Amanda Gray, *Out of the Shadows: The Treatment of Statelessness Under International Law*, CHATHAM HOUSE (Oct. 2014), https://www.chathamhouse.org/sites/default/files/field/field_document/20141029StatelessnessMandalGray.pdf.

¹¹ Thomas R. Gruber, *Toward Principles for the Design of Ontologies Used for Knowledge Sharing?*, 43 INT’L J. HUMAN-COMPUTER STUD. 907 (1995); Thomas R. Gruber, *Ontology*, in *ENCYCLOPEDIA OF DATABASE SYSTEMS* (Ling Liu & M. Tamer Özsu eds., 2009).

¹² See Arkalgud Ramaprasad & Thant Syn, *Design Thinking and Evaluation Using an Ontology*, in *DESIGN SCIENCE: PERSPECTIVES FROM EUROPE* 63–74 (Markus Helfert et al.

statelessness. An ontology may also be described as a frame¹³ of the domain, or a theory¹⁴ or metatheory of the domain.¹⁵ Ultimately, the ontological framework can help to better understand and synthesize the voluminous discourse about a problem such as statelessness.¹⁶

Ontology is a hierarchical deconstruction of the problem that articulates the combinatorial complexity of which statelessness is a part.¹⁷ This Article conceptualizes statelessness as one of the many possible statuses of a person. The grounds for determining the status of a person may vary by geographic unit, and the status of the people in a geographic unit may have a variety of impacts upon that unit. Thus, this Article considers statelessness in the context of the other possible statuses of a person, the grounds for determining these statuses, the geographical unit determining these, and the impact these could have on that geographical unit. In Figure 1, impact, geographical unit, status, and grounds are shown as four dimensions of the ontology, each represented as a column. Each dimension of the ontology is articulated by a taxonomy of elements described briefly and discussed in detail in this Article. Each element of the ontology is defined in the glossary.

The ontology of the supra-legal perspective on statelessness is a logical and practical framework that invites a structured discourse on finding solutions based on the merits of a systemic approach. It contests the traditional supposition that statelessness is primarily a legal problem. By reframing the fundamental legal conceptualization of the problem, this framework renders a supra-legal corrective that can yield the best possible solution through the combined possibilities it articulates. The ontology systematically explores the issues associated with the status of the people in a population. It will help reinvigorate the debate on the problem of statelessness by leveling an epistemic critique of the established notion of statelessness.

eds., 2013); *see also* Arkalgud Ramaprasad & Thant Syn, *Ontological Meta-Analysis and Synthesis*, 37 COMMUNICATIONS OF THE ASS'N FOR INFO. SYS. 138, 138–53 (2015).

¹³ See W.E. Douglas Creed et al., *A Picture of the Frame: Frame Analysis as Technique and as Politics*, ORGANIZATIONAL RESEARCH METHODS 34 (Jan. 2002).

¹⁴ See W.V. QUINE, *FROM A LOGICAL POINT OF VIEW* (2nd rev. ed. 1980).

¹⁵ See Simon K. Milton & Ed Kazmierczak, *Ontology as Meta-Theory: A Perspective*, 18 SCANDINAVIAN J. INFO. SYS. 85 (2006).

¹⁶ See B. Chandrasekaran et al., *What Are Ontologies, and Why Do We Need Them?*, 14 IEEE INTELLIGENT SYS. 20 (1999).

¹⁷ See Herbert A. Simon, *The Architecture of Complexity*, 106 PROCEEDINGS OF THE AM. PHILOSOPHICAL SOC'Y. 467 (1962).

Figure 1. Ontology of Supra-Legal Perspective on Statelessness.

<u>Impact</u>	<u>Geographical Unit</u>	<u>Status</u>	<u>Grounds</u>
Demographic	Locality	[of] Citizen	[status based on] Birth
Economic	City	Partial	Education
Ethical	State	Single	Employment
Legal	Region	Dual	Heredity
Moral	Nation	Multiple	Immigration
Political	Union	Resident	Forced
Psychological		Transient	Voluntary
Social		Displaced person	Investment
		Refugee	Legalization
		Asylum seeker	Religion
		Stateless	Residence
		Illegal	Persecution
		Null	Honor
			Nationality
			Disintegration
			Renunciation
			Gender

B. Impact of Statelessness

The first dimension in the ontology reflects the impact of statelessness on various spheres of an individual’s life. Previous research, mainly focused on a legal perspective, presented a narrower view of the issue of statelessness. This Article will explore statelessness from a broader view inclusive of the demographic, economic, ethical, legal, moral, political, psychological, and social impact of statelessness.

1. Impact of Statelessness on Geographical Unit

This dimension demonstrates the impact of statelessness on different geographical units. The epistemological novelty of this Article is that it not only conceptualizes the problem of statelessness as an international and national problem but also examines how it affects all geographical units. Accordingly, statelessness would affect the locality, city, state, nation, and union.

2. Status of a Person

The existing research on statelessness conflated the determination of this issue with an individual’s citizenship status. However, identifying all legal and political identities of an individual, beyond citizenship,

helps conceptualize statelessness as a classification including many statuses (e.g., citizen, resident, transient person, displaced person, refugee, asylum seeker, illegal person, null person, and stateless person).

3. Grounds for Determining Statelessness

Statelessness is based on various determinants, which determine the status of other categories of people. These determinants include birth, education, employment, heredity, immigration, investments, legalization, religion, residence, persecution, and honorary status. A stateless person can be a refugee, and states may consider combining statelessness and refugee determinations in the same procedure.

4. Components of Supra-legal Perspective on Statelessness

The four dimensions of the ontology in Figure 1 are arranged left to right with connecting words and phrases. Linking one dimension with the connecting words and phrases creates a sentence that describes a component of the supra-legal perspective. There are 8,640 components encapsulated in the ontology. The following are illustrative components with examples:

- Demographic impact on a nation of stateless status based on persecution.
Example: Rohingya refugees' fear of persecution based on religious and ethnic factors.
- Legal impact of persecution on the state of a citizen's status.
Example: Problem of statelessness of Kurdish community in Syria based on ethnicity.
- Economic impact of legalizing a previously stateless status on a region.
Example: Problem of stateless Bedouins in Kuwait based on lack of legal recognition.

The 8,640 combinations help the reader conceptualize the problem of statelessness in the broader context of determining a person's status and the effects of such status on people. They enable the reader to find solutions to the problem of statelessness by exploring multiple alternative pathways. The feasibility of each pathway may vary. Pathways that are previously undiscovered or unexplored in research and practice could lead to new research solutions. The frequently, infrequently, and never-used pathways in research and practice can be discovered by mapping the corpus of research and case law onto the

ontological framework. The frequently used pathways may be so because they are effective or simply easy to continue to use. The infrequently used ones may be so because they are ineffective or difficult to pursue. The never-used pathways may be oversights because they are infeasible. Mapping the pathways in research and practice and resolving the equivocality of the motivating forces can lead to creative solutions to the challenge of statelessness and the associated dynamics. In the following Section, we reframe the problem of statelessness using the supra-legal framework, which etymologically means a framework beyond legal perspective, the understanding of which is rendered by the ontology.

I

CONCEPT OF “STATELESS PERSON”

A. Historical Evolution of the Concept of “Statelessness”

The status of a person has been one of the central issues that drew global attention in the field of human rights. The focus of human rights discourse prior to the Second World War concentrated mostly on asserting the basic human rights of an individual. As the situation in the international political spectrum turned complex, the scholarly and policy attention shifted from general issues to specific ones. The focus of international human rights law became visible in two important categories: (1) rights of certain groups of people such as the rights of women, children, minorities, migration workers, refugees, etc., and (2) issue-oriented subjects such as the human rights of those who are affected by racial discrimination, torture, slavery, etc. Among the rights of other vulnerable groups, the rights of stateless persons were widely debated, and policy makers realized the need to outline the status of a person in more concrete terms. The issue of stateless persons also became one of the major issues that called for immediate policy and scholarly attention.

This Section attempts to trace the history of the legal conception of “statelessness” that evolved through various international legal instruments dealing with stateless persons. This Section also attempts to test whether the international normative regime is efficacious in regulating the problem of stateless persons. This discussion becomes essential to reaffirm the quest for a “supra-legal perspective.” Stateless persons have always constituted a vulnerable portion of society who are targeted and victimized by every society. The era of the League of Nations in the 1930s endeavoured to address the problem of

statelessness through adoption of two remarkable legal instruments: (1) the Convention on Certain Questions Relating to the Conflict of Nationality Laws; and (2) the Protocol Relating to a Certain Case of Statelessness, which provided under Article 1 that a child should acquire the nationality of her state of birth if her mother was a national of the state of birth and her father was of unknown nationality.¹⁸ Even though these conventions alerted the nations to an existential crisis of statelessness, they failed to make a significant contribution in regulating the problem.

Although the problem of stateless persons has always posed a threat to national security as well as a challenge to human rights philosophy, the international community did not have any impulse to address the issue of stateless persons in an international arena until the late 1940s. The rising sense of nationalism in Europe increased displacement of large numbers of people due to war. Additionally, the practical difficulties faced by the recipient countries to rehabilitate and assimilate such people in their respective countries created an impetus for the countries to become sensitive to the problem of statelessness in their policy and legal domains.¹⁹

The international legal regime has codified a huge corpus comprising both hard and soft law instruments through which it envisaged absolving and reducing the problem of statelessness. Through this vast corpus, the international legal regime has also attempted to propagate nationality as a human right. Article 7 of the Convention on the Rights of the Child (CRC) states, “The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality. . . . States parties shall ensure the implementation of these rights”²⁰

Article 9(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, a key legal instrument that aims at the protection of women against discrimination, adopted by the United Nations General Assembly in 1979, states:

States Parties shall grant women equal rights with men to acquire, change, or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband

¹⁸ Convention on Certain Questions Relating to the Conflict of Nationality Law, Jul. 1, 1937, 179 L.N.T.S. 89.

¹⁹ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 Vol. III at 71 (1948).

²⁰ Convention on the Rights of the Child, art. 7, Sept. 2, 1990, 1577 U.N.T.S. 3.

during marriage shall automatically change the nationality of the wife, render her stateless, or force upon her the nationality of the husband.²¹

Article 2(4) of the 1997 European Convention on Nationality states:

everyone has the right to a nationality; statelessness shall be avoided; no one shall be arbitrarily deprived of his or her nationality; neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.²²

The Convention on the Nationality of Married Woman states, “Each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.”²³

Article 1 of the 1954 Draft Convention on the Reduction of Future Statelessness, which was adopted by the International Law Commission in its sixth session, reiterates that

a stateless person shall acquire the nationality of the state in which he is born. The national law of such nation may make preservation of such nationality dependent on the person being normally resident in its territory until the age of eighteen and if a person on attaining the age of eighteen years become stateless, he shall acquire the nationality of one of his parents.²⁴

The Draft Convention on the Elimination of Future Statelessness asserts that the stateless shall acquire the nationality of the place in which he is born, and if the place is unknown he “shall be presumed to have [been] born in the territory of the Party in which he is found.”²⁵ It also asserts that if a child is not born in the territory of a state party to the convention, he would acquire the nationality of the party of which one of his parents is a national.²⁶

²¹ Convention on the Elimination of All Forms of Discrimination Against Women, art. 9.1, Sept. 3, 1981, 1249 U.N.T.S. 13.

²² European Convention on Nationality, ch. II, art. 4(a)–(d), Nov. 6, 1997, C.E.T.S. No. 166.

²³ Convention on the Nationality of a Married Woman, art. 1, Aug. 11, 1958, 309 U.N.T.S. 65.

²⁴ Draft Convention on the Reduction of Future Statelessness, [1954] 2 Y.B. INT’L L. COMM’N 143.

²⁵ Draft Convention on the Elimination of Future Statelessness, art. 2, [1954] 2 Y.B. INT’L COMM’N 143.

²⁶ *Id.* art. 4.

The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness constitute the basic premise on which the international legal regime of statelessness is structured, and it has become a part of jus cogens or peremptory norms of customary international law. Article 1 of the 1961 convention states that a “stateless person is someone who is not considered as a national by any state under operation of its law.”²⁷

If we look at the jurisprudence surrounding the 1954 convention, it is apparent that the convention has few mandates in terms of attribution of nationality to individuals. It also aims to create a conducive environment for the stateless persons by endowing minimum standards of living which are similar to those endowed on the citizens of a country and nonnationals. The convention halts the expulsion of stateless persons who are lawfully residing in the state, “save on grounds of national security or public order” under article 31, and further requires states to facilitate their naturalization “as far as possible” under article 32. If we look carefully at the intricacies and the language of the provisions of the 1954 Convention, it is evident that the United Nations High Commissioner for Refugees (UNHCR) has made a novel attempt to render practical solutions to the problem of stateless persons by making them stateful. But to what extent these solutions are practical is debatable, as their implementation feasibility varies across territories and is subject to the municipal jurisprudence of the country.

The impasse that was created after the adoption of the 1954 Convention triggered the international community to investigate the more profound issue that was flagged by the United Nations Secretary General in 1949—to ensure that no new cases of statelessness would arise in the future.²⁸ To achieve this goal, they focused on materializing the aspirations of article 15 of the Universal Declaration of Human Rights (UDHR) into concrete standards for states to incorporate into their nationality laws.²⁹ For this purpose, members of the United

²⁷ Guy S. Goodwin-Gill, *Convention Relating to the Status of Stateless Persons*, U.N. AUDIOVISUAL LIBRARY INT’L L. (Sept. 28, 1954), <http://legal.un.org/avl/ha/cssp/cssp.html>.

²⁸ See generally Gevisa La Rocca & Luigi Prospero, *Απόλιδας: An Analysis of the International Legal Framework in the Field of Statelessness and U.N.H.C.R.’s Communication Campaign*, 27 INT’L REV. SOC. 2, 261–76 (2017).

²⁹ *Id.*

Nations decided to adopt another convention—the Convention on the Reduction of Statelessness, which entered into force in 1961.³⁰

The most striking contribution of this convention is that it mandates the UNHCR to incisively look into the complaints from individuals who want to avail themselves of the benefits of the convention or help them to submit the complaint to the proper authorities. These two conventions form the premise on which the entire stateless regime is structured, but they are not free from flaws. Both conventions have failed to give effect to the right to nationality, which is enshrined in most human rights instruments. They have also failed to strike at the supremacy of the international legal regime's power over municipal law, which has been exercising discretion in codifying its own nationality laws.³¹ Since each country is codifying its respective nationality jurisprudence, it is resulting in territorial arbitrariness in terms of implementation of the treaty provisions.

To sum up, the problem of statelessness is a subject of extensive regulation both under treaties and customary international law. However, the regulation of statelessness in various international treaties and conventions by the international community reveals that these are not effective. This is mainly because of their compromising bargain with the developed world during the codification which exhibits a smart codification of laws. All the above-discussed international standards seem to emphasize the obligation of states, which are the primary actors in the international community, and the role of non-state actors is downgraded. In order to make the international community more effective and responsible with respect to statelessness, the non-state actors should be made equally responsible for championing the cause of statelessness. Another important drawback of these conventions is the lack of effective monitoring mechanisms to supervise the recommendations of each resolution. There are hardly any review reports on the extent of the efforts regulating the problem of statelessness. The fact that there are currently no punitive measures for noncompliance by states under these resolutions creates a less than marginal impact on regulating the problem of statelessness.

³⁰ Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175.

³¹ See Paul Weis, *The United Nations Convention on the Reduction of Statelessness, 1961*, 11 INT'L & COMP. L.Q. 1073, 1073–96 (1962).

B. Status of a “Person”

It is a peremptory norm of international legal practice that a state needs to have control over habitable territory. This practice is explicitly recognized and culminated as the customary behavior of states with the Treaty of Westphalia:³² “That territory is a foundational element of the modern international legal conception of statehood.”³³ The legal relation of an individual with the territory is generally determined by a recognition process that involves accordance of nationality status to the individual, which in turn is established by a set of determinants. Accordingly, an individual’s legal nomenclature may take up all the categories ranging between citizen and statelessness.

Citizenship is an idealized notion that each individual aspires to, as it is the legal recognition an individual assumes for having stayed in a legal entity. “Citizenship is an imperative of basic human rights. It entails security. It provides a sense of identity and belongingness. It is empowering and enables development.”³⁴ In fact, citizenship is perhaps best perceived as the epitome of the legal status of a person, which is enjoyed by civil, political, and social rights.

The notion of citizenship is refuted, in contrast, when we see evidence of imperfect citizenship statuses that undermine the legitimacy of citizenship. These imperfections could take any of the following forms: partial citizen, single citizen, dual citizen, multiple citizen, resident, transient, displaced person, refugee, asylum seeker, stateless person, illegal person, and null person. In this backdrop, it becomes essential to understand the conception of various statuses between citizenship to statelessness.

Partial citizenship is when an individual does not enjoy full juridical rights in the recipient country because of that person’s migration.³⁵ Single citizenship is when an individual is exclusively the national of one particular country.³⁶ On the other hand, dual citizenship is when an

³² Treaty of Westphalia (Oct. 24, 1648).

³³ Jonathan Simon & Heather Alexander, *Sinking into Statelessness*, 19 TILBURG L. REV. 20, 22 (2014).

³⁴ Kaveri, *Being Stateless and the Plight of Rohingyas*, 29 PEACE REV. 31, 31 (2017).

³⁵ See generally Rhacel Salazar Parreñas, *Partial Citizens: A Global Perspective on Care Work*, STANFORD U. PRESS BLOG (Aug. 23, 2015), <https://stanfordpress.typepad.com/blog/2015/08/partial-citizens-.html>.

³⁶ See generally Choo Chin Low, IN DEFENSE OF NATIONAL IDENTITY: THE DUAL CITIZENSHIP DEBATES IN SINGAPORE, RESEARCHGATE (Nov. 2017), https://www.researchgate.net/publication/322633996_In_Defence_of_National_Identity_The_Dual_Citizenship_Debates_in_Singapore.

individual holds nationality status in two different countries.³⁷ Multiple citizenship is when an individual is concurrently regarded as citizen of more than one country under the operation of laws of the respective nations.³⁸ Resident status refers to an individual who is domiciled in a particular national territory for either a temporary or transitory purpose.³⁹ The United Nations' Guiding Principles on Internal Displacement provides a definition of internally displaced persons (IDPs). The Guiding Principles define IDPs as

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.⁴⁰

The 1951 Refugee Convention defines a refugee as “an individual who is outside his or her country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group.”⁴¹ A common definition of asylum seeker is a person who flees his or her home country, enters another country, and applies for asylum, i.e., the right to international protection, in the recipient country.⁴² However, there is no universally accepted definition of asylum seeker under international law, and the definitions vary across borders and depend on the law of the country. An asylum seeker can be a refugee, a displaced person, or an illegal migrant in the recipient country.

izenship_Debates_in_Singapore (discussing dual citizenship in contrast with the single citizenship principle most often associated with India).

³⁷ *Id.*

³⁸ See generally Christian Kalin, *Opinion: The Rise of Multiple Citizenship*, HENLEY & PARTNERS, <https://www.henleyglobal.com/industry-news-details/the-rise-of-multiple-citizenship/> (last accessed Apr. 28, 2019).

³⁹ See generally *What Is the Difference Between U.S. Permanent Resident Status and U.S. Citizenship?*, WEAVER SCHLENGER LLP, <https://www.wsmimmigration.com/immigration-resources/faqs/what-is-the-difference-between-u.s.-permanent-resident-status-and-u.s.-citizenship/> (last accessed Apr. 28, 2019).

⁴⁰ U.N. High Comm'r for Refugees (UNHCR), *Guiding Principles on Internal Displacement*, 1, U.N. DOC. E/CN.4/1998/53/Add.2 (Jul. 22, 1998).

⁴¹ U.N. GAOR, Convention Relating to the Status of Refugees, Jul. 28, 1951, 189 U.N.T.S. 137.

⁴² See generally *Asylum-Seekers*, UNHCR, <https://www.unhcr.org/asylum-seekers.html> (last accessed Apr. 28, 2019) (defining asylum seekers).

The term “stateless person” connotes a particular status of a person under a broader spectrum, i.e., status of a person who has distinct statuses ranging from citizenship to statelessness. In between, we find various other categories of statuses that may emanate from similar grounds and which may affect similar domains and geographical units. This Article argues that the concept of “status” makes it imperative to ground our legal and moral claims in accordance with a particular legal identity. There comes the need to conceptualize the status of stateless persons as one of the statuses; this discourse is indispensable and critical for evoking the human right to nationality. The conceptual notion of statelessness would imply deprivation of nationality status to individuals based on certain grounds. Statelessness simply means “the legal condition of being without a nationality.”⁴³ A stateless person, under international law, is defined as “a person who is not considered as a national by any state under the operation of its law.”⁴⁴ Here, the notion of nationality takes on a predominance that determines the legal status of an individual. In order to have a clear understanding of the term statelessness, it becomes essential to calibrate the distinction between certain statuses. For example, IDPs are nationals of a particular country, and their legal status changes with their eventual migration to other countries. In spite of this migration, they cannot be considered stateless. Stateless persons can never be refugees, IDPs, or asylum seekers. This is because they do not possess a nationality of their own, either in their own country or the countries they move to. In common parlance, an illegal person is a person from the foreign land indulging in illegal activities in a foreign territory, having no official legal permission to stay. A null person refers to an individual who does not recognize the existence and function of a state and considers himself unbound by the state’s mandates.⁴⁵

Here, it is important to note that none of these statuses are static, and there is a provision for mobility between the statuses. Statelessness must be perceived as one of many possible statuses of a person. The

⁴³ Jeffrey L. Blackman, *State Successions and Statelessness: The Emerging Right to an Effective Nationality Under International Law*, 19 MICH. J. INT’L L. 1141, 1176 (1998).

⁴⁴ U.N. GAOR, Convention Relating to the Status of Stateless Persons, art. 1, Sept. 28, 1954, 360 U.N.T.S. 117.

⁴⁵ The authors created the Null element to describe a person who does not fit any of the other categories, including those who do not accept the concept of an externally conferred status. This is often applicable to indigenous people of a country (such as the Mapuche in Chile and some tribal people of India), nomads (such as Bedouins), and those who reject the concept of a sovereign state.

ontological framework in Figure 1 clearly shows the ways a person could become stateless and change from being stateless to another category. For example, a citizen from country A migrating to country B can be considered a refugee and not a stateless person. If the same citizen is absolved of nationality from his homeland and denied nationality in the recipient country, he turns out to be stateless. If the same citizen seeks asylum for political reasons in country B, he still possesses a legal identity and is not a stateless person, but he is deemed an asylum seeker. If he flees his home country and enters another country, he is termed an alien or foreigner. If the same person leaves his homeland and flees to another country to settle permanently for either personal or professional reasons, he is considered an immigrant. A person can choose to not recognize the existence of a state and its mandates. This person becomes a null person. None of these statuses are stagnant or permanent. A person can move in between these statuses, which are subjected to different determinants (called “grounds” in the ontological framework of Figure 1). These terms must be considered in understanding the movement of one’s status in and out of statelessness.

II GROUNDS OF STATUS: CHANGING STATUS TO AND FROM STATELESSNESS

Statelessness occurs when a country perpetually abstains from endowing nationality status to an individual.⁴⁶ The reasons for abstaining on the part of the states are numerous and vary across the borders. States, in general, denationalize certain residents for various motives, and the main concern is protection and maintenance of internal and external security.⁴⁷ Some of the well-known grounds on which statelessness occurs are discussed below.

A. Birth

In general, the citizenship of an individual is determined based on two profound principles—*Jus Sanguinis* (nationality derived by descent) and *Jus Soli* (nationality derived by birth).⁴⁸ Generally, the

⁴⁶ See generally *Ending Statelessness*, UNHCHR, <https://www.unhcr.org/stateless-people.html> (last accessed Apr. 28, 2019).

⁴⁷ *Id.*

⁴⁸ Dorothy Jean Walker, *Statelessness: Violation or Conduit for Violation of Human Rights?*, 3 HUM. RTS. Q. 106, 110 (Feb. 1981), <https://doi.org/10.2307/762070>.

nation states adhere to either of these principles to determine the nationality of a person. Regarding stateless persons, the first principle, *jus sanguinis*, stands contested while determining the status. The classic example for this can be witnessed where a person is born in a country where nationality is determined by *jus sanguinis* and his or her parents belong to a state where nationality is determined by *jus soli*. In that instance, the child is declared stateless because neither of the two principles confirms her nationality. Likewise, a child born to stateless parents in a *jus sanguinis* state will become stateless. The lack of consensus and agreement on a universal principle for determining the nationality of a person creates discrepancies in determining the legal status of an individual, which contributes to and aggravates the issue of stateless persons.

Another area fraught with difficulty is according legal status to surrogate children. The practical difficulty in determining the nationality of surrogate children comes when an attempt is made to trace parentage that involves international surrogacy. The municipal legal systems of most countries deprive the commissioning parents from claiming legal parent status for a child born out of international surrogacy, unless the country has legalized commercial surrogacy.⁴⁹ Countries that have legalized commercial surrogacy have established a system that endows citizenship status to a surrogate-born child based on the citizenship of the commissioning parents.⁵⁰ In India, for example, surrogate children are given birth certificates in the name of their commissioning parents and simultaneously cease ties with the surrogate parents.⁵¹ In some instances, countries where the commissioning parents are citizens deprive the surrogate child of nationality status because she has a foreign surrogate mother, and this renders the surrogate children stateless.⁵² The inconsistencies in surrogacy laws around the world have resulted in a mounting stateless problem.

⁴⁹ See Sanoj Rajan, *Resolving Statelessness Arising Out of Surrogacy in India: A Legal Analysis*, 14 ISIL Y.B. INT'L HUM. & REFUGEE L. 177, 177–98 (2014).

⁵⁰ *Id.*

⁵¹ *Id.* at 181.

⁵² *Id.*

B. Heredity

There are cases of *in situ* stateless persons, where they have been experiencing a statelessness situation in their place of origin for many generations.⁵³ These people live in a geographical territory for many decades without nationality. Such people develop ties to the territory because they are born in that territory or because they stayed there over a long period of time. Here, problems of statelessness can become a protracted phenomenon and hereditary in nature. This happens when *in situ* stateless persons give birth. Those children also become stateless without any nationality.

C. Immigration

Immigration can also be a ground for rendering people stateless. In common understanding, immigration is a process where an individual leaves his homeland, goes to a foreign land, and intends to permanently stay there. For example, in the United States, statelessness does not emanate domestically, but individuals who are born outside the United States and have migrated to the United States may be rendered stateless.⁵⁴ Such stateless persons are subjected to various hardships.⁵⁵ These hardships include a threat of detention, onerous immigration reporting requirements, employment barriers, restrictions on international travel, long-term family separation, exploitation vulnerability, and denial of access to services.⁵⁶

D. Registration

Another important factor responsible for statelessness is a lack of authentic and reliable legal registration systems. This is evident in cases of displaced people who flee from their country of origin for various reasons, and they may not be able to register in the recipient country because they may not possess the necessary legal documents.⁵⁷ A definitive example of this can be seen in Lebanon. In Lebanon, there

⁵³ See *Statelessness*, ASIA PACIFIC REFUGEE RTS. NETWORK, <http://aprrn.info/wiki/tiki-index.php?page=Statelessness> (last accessed Apr. 17, 2019).

⁵⁴ *Representing Stateless Persons Before U.S. Immigration Authorities: A Legal Practice Resource from the United Nations High Commissioner for Refugees*, U.N. HIGH COMM’R FOR REFUGEES (UNHCR) (Aug. 2017).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Omer Karasapen, *The State of Statelessness in the Middle East*, THE BROOKINGS INST. (May 15, 2015), <https://www.brookings.edu/blog/future-development/2015/05/15/the-state-of-statelessness-in-the-middle-east/>.

exists a huge population who are declared stateless persons.⁵⁸ This is attributed to the failure of their respective ancestors to register in the census that followed the creation of Lebanon in 1932, or the children are born to Lebanese parents whose birth was not registered in the respective authorities.⁵⁹ The absence of a precise definition, a lack of established corpus on conflicting jurisprudence, and the delay in delivering justice has prevented people from approaching the court, and they eventually turn stateless.

E. Religion

Religion has been a strong ground on which discrimination of stateless persons is premised. In general, discrimination is defined as having a prejudice toward certain individuals based on certain proscribed grounds. Some of the proscribed grounds are race, color, sex, language, religion, political or other opinion, descent, national or social origin, marital status, property, and birth. These grounds are well established and bases of distinction are defined by an international legal regime under various soft and hard law instruments. Some of these instruments include the International Covenant on Civil and Political Rights, International Convention on Economic and Social Rights, Convention Against Elimination of Discrimination Against Women, and the Convention Against Racial Discrimination.⁶⁰ “Most of the world’s stateless peoples are relatively small, obscure minorities scattered in distant corners of the globe.”⁶¹ Nearly seventy percent of stateless persons belong to minorities whose conception is defined by

⁵⁸ Samira Trad & Berna Habib, *The Stateless in Lebanon: Between Shame and Shadows*, THE LEGAL AGENDA (Jan. 7, 2016), <http://legal-agenda.com/en/article.php?id=3115>.

⁵⁹ *Id.*

⁶⁰ See generally U.N. General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, U.N.T.S. 999, p.171, <https://www.refworld.org/docid/3ae6b3aa0.html> [last accessed Apr. 21, 2019]; U.N. General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, U.N.T.S. 993, p.3, <https://www.refworld.org/docid/3ae6b36c0.html> [last accessed Apr. 21, 2019]; U.N. General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, U.N.T.S. 1249, p.13, <https://www.refworld.org/docid/3ae6b3970.html> [last accessed Apr. 21, 2019]; U.N. General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, U.N.T.S. 660, p. 195, <https://www.refworld.org/docid/3ae6b3940.html> [last accessed Apr. 21, 2019].

⁶¹ Bill Berkeley, *Stateless People, Violent States*, 25 WORLD POL’Y J. 3, 11 (2009).

religion.⁶² In most of their countries, they experience stark realities of discrimination based on religion under law and practice.⁶³ Discrimination and the threat of physical violence are part of the daily experience of many stateless persons.⁶⁴ A classic example of statelessness due to discrimination based on religion is the plight of Rohingya Muslim refugees. That group constituted the largest minority among the stateless who have suffered entrenched discrimination and protracted exclusion from established social and political regimes.⁶⁵

F. Persecution

Persecution in colloquial usage means ill treatment levelled against certain individuals or a group of individuals based on particular grounds. In legal terminology, persecution is defined by the Rome statute of the International Criminal Court of 1998. Article 2(g) defines persecution as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”⁶⁶ Persecution is a grave violation of human rights, as well as a crime against humanity, and can happen due to reasons of race, religion, nationality, or membership of a particular group or political opinion. Persecution in action ranges from threats of death and torture to cruel, inhumane, or degrading treatment or punishment. Persecution and protection exhibit an intertwined relationship because protection is denied to persecuted persons by the country, and that denial of protection to individuals may result in the likelihood of persecution against such individuals.⁶⁷ Persecution has been a propelling factor that has enabled mass fleeing of individuals to other territories where they are becoming stateless. One example is the case of the Rohingya Muslims of Myanmar. That group witnessed mass atrocities at the hands of the government, and the fear of persecution

⁶² *Id.*; “*This is Our Home*”: *Stateless Minorities and Their Search for Citizenship*, UNHCR (Nov. 2017), https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR_EN2_2017IBELONG_Report_ePub.pdf.

⁶³ Berkeley, *supra* note 61.

⁶⁴ *Id.*

⁶⁵ See generally Avyanthi Azis, *Urban Refugees in a Graduated Sovereignty: The Experiences of the Stateless Rohingya in the Klang Valley*, 18 *CITIZENSHIP STUD.* 839, 839–54 (2014).

⁶⁶ I Rome Statute of the International Criminal Court, Jul. 17, 1998, art. 7 § 2(g), 2187 U.N.T.S. 90.

⁶⁷ See U.N. High Comm’r for Refugees (UNHCR), *Convention and Protocol Relating to the Status of Refugees* (Feb. 1, 2011).

based on religion propelled them to flee en masse to Bangladesh.⁶⁸ There, their legal status has precipitated much heated debate in the international community.

G. Nationality

1. Disintegration of States

Disintegration or cessation of territories also contributes to statelessness. After the fall of the Soviet Union in 1991 and Latvia gaining its independence, many people living in Latvia found themselves stateless.⁶⁹ Many were rendered stateless without legal recognition. Those who could trace their family's descent to a time before the Soviet occupation and could avail themselves of Latvian citizenship had their passport declared invalid by government authorities. Such people were unable to acquire the nationality of the state in which they resided. They still live under the nomenclature of stateless persons.

2. Renunciation

Renunciation is a process where citizens renounce their citizenship on their own volition and become stateless persons.⁷⁰ This could be a mark of political resistance, negation of the existence of the political notion of statehood, or defiance of nationality laws. It is a known phenomenon in the United States, where some Americans renounce their citizenship at their own discretion. One of the famous renunciations was initiated by Mike Gogulski, of the United States, who voluntarily renounced his citizenship and became stateless.⁷¹ Another classic example of voluntary statelessness was in Zimbabwe,

⁶⁸ Staff, *"Bangladesh Is Not My Country": The Plight of Rohingya Refugees from Myanmar*, HUM. RTS. WATCH, <https://www.hrw.org/report/2018/08/05/bangladesh-not-my-country/plight-rohingya-refugees-myanmar> (last accessed Apr. 25, 2019).

⁶⁹ See Peter Van Krieken, *Disintegration and Statelessness*, 12 NETHERLANDS Q. HUM. RTS. 23 (1994).

⁷⁰ *Renunciation of U.S. Nationality Abroad*, U.S. DEP'T. OF STATE, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/us-citizenship/Renunciation-US-Nationality-Abroad.html> (last accessed Apr. 28, 2019).

⁷¹ James Tuttle, *Mike Gogulski and the Citizens of Nowhere*, CENTER FOR A STATELESS SOCIETY (May 23, 2012), <https://c4ss.org/content/10462>.

where many citizens voluntarily renounced their citizenship in 1985 to the Zimbabwe government and became stateless.⁷²

H. Gender

Gender has been a strong determinative factor in rendering a person stateless in many countries.⁷³ There are approximately twenty-nine countries where women are not allowed to acquire, retain, or transmit nationality equal to that of men.⁷⁴ There are instances where women lose their nationality with marriage. Patriarchy and marriage undermine the right to nationality.⁷⁵ The paradox here is ascertaining the nationality of the wife if the husband dies, or what the nationality of a woman is if she marries the stateless man. Is she entitled to nationality based on her place of birth or the descent of her family? What would be the legal prospects of the children born to such parents whose nationality is complicated? These issues have aggravated the problem of statelessness.

The effect of gender on stateless persons can also be perceived as one of the social impacts of stateless persons. Gender as such is an emerging concept in the epistemological discourse and its growth has been multidimensional in recent years, bearing impact on various segments of the international community. Its impact has been so tremendous that none of the constitutive segments of international governing regimes go without incorporating gender in their studies. In the backdrop of growing influence of gender in all domains, the failure of international law to address the specific concerns of women, and the failure of the prosecution to reflect upon a profound issue such as gender-based violence, comes as a major hindrance.

Women constitute the most susceptible group in any society because their vulnerable nature makes them easy prey and soft targets for oppression.⁷⁶ Contextualizing the concerns of stateless women has

⁷² BRONWEN MANBY, *STATELESSNESS IN SOUTH AFRICA*, U.N. HIGH COMMISSIONER FOR REFUGEES (UNHCR) (2011).

⁷³ See Betsy L. Fisher, *Gender Discrimination and Statelessness in the Gulf Cooperation Council States*, 23 MICH. J. GENDER & L. 269 (2016).

⁷⁴ Maryellen Fullerton, *Comparative Perspectives on Statelessness and Persecution*, 63 U. KAN. L. REV. 863, 875 (2015).

⁷⁵ See Tang Lay Lee, *Gendered Aspects of Statelessness and Irregular Migrant Workers from Burma in Thailand*, in *STATELESSNESS, HUMAN RIGHTS AND GENDER: IRREGULAR MIGRANT WORKERS FROM BURMA IN THAILAND* 115 (2005).

⁷⁶ Sahana Reddy, *Child Soldiers and International Law: Quest for an International Regulatory Framework*, JAWAHARLAL NEHRU UNIVERSITY (2016) (author's doctoral thesis, unpublished).

always been an area fraught with difficulty due to the multiple problems faced by women. Rape is considered as a general and classic manifestation of gender-based violence, and it is also an effective tool used by masculine power to subjugate women physically and psychologically.⁷⁷

The Rohingya women are resorting to unsafe abortions as they are required to abide by the norm of a two-child policy, but they have limited access to employment, education, and health care.⁷⁸ The absence of legal status restrains them from pursuing gainful employment, and they have become easy prey for human trafficking and forced labor. Because of such intensified social and political deprivations, the United Nations has called the Rohingya “the world’s most persecuted minority.”⁷⁹

It has been noted that nationality laws discriminate against women in at least thirty countries that restrict a woman’s ability to acquire, retain, and transmit citizenship to her children.⁸⁰ In many countries, domestic laws require the nationality to be transmitted only by the father to his child.⁸¹ In a few countries, nationality laws deprive women of their citizenship upon marriage to a foreign spouse or prohibit women’s foreign spouses from naturalization.⁸² This impinges on the right of women to claim and enjoy nationality for which they are legally entitled.

In the case of Rohingya stateless women, the complex nature of law makes it difficult for them to procure official marriage licenses, gain legal employment or education, or protect their children from future statelessness, and also aggravates the problem of sexual slavery. In this regard, Alice Edwards argues that violence and vulnerabilities to human trafficking are increased by the lack of legal nationality.⁸³

⁷⁷ *Id.*

⁷⁸ JERI L. DIBLE, *THE SOCIAL AND POLITICAL CONSEQUENCES OF ANOTHER STATELESS GENERATION IN THE MIDDLE EAST* 33 (2016).

⁷⁹ *Id.* at 35.

⁸⁰ Maria Otero, Under Sec’y for Democracy and Glob. Affairs, Remarks on Statelessness and Gender Discrimination, ¶ 5 (Oct. 2011) (transcript available at <https://2009-2017.state.gov/j/176132.html>).

⁸¹ *Id.*

⁸² *Id.*

⁸³ See George Melissa, *Comment: The Effect of Statelessness on Gender Rights*, 4 *RIGHTING WRONGS* 1 (2014).

The most astonishing fact is that these gross human rights abuses haunt women even though there exists a strong legal regime to protect women with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which highlights the legal gap when it comes to the protection and promotion of gender rights and statelessness.⁸⁴ The legal research and policies are exhibiting a strange silence in addressing the concerns of statelessness and the inextricable relationship between nationality and gender rights.

III IMPACT OF STATELESSNESS

The impact of statelessness is multifaceted and has a reverberating effect on the social, political, economic, psychological, demographic, ethical, and moral spheres of a stateless person's life. Statelessness is not just an insidious human rights issue, but its annihilation is also necessary to avail the political, social, economic, and legal rights in any national jurisdiction.⁸⁵ Accordingly, statelessness affects the following factors.

A. Demographic Impact

The impact of statelessness is directly evident in the demography of a nation in which stateless persons reside. The entrenchment of stateless persons not only creates exacerbated shortages in natural resources but also results in shortages in ability to access basic facilities daily. The sharing of the geographic space with the actual inhabitants of the recipient country negatively affects the demographic situation of the recipient country. According to a study by Kingston University, *Cost of Statelessness: A Livelihood Analysis*, the problem of statelessness has a negative bearing on household income, education, health facilities, sanitation, welfare schemes, property ownership, and purchase of assets.⁸⁶ Statelessness creates a huge disparity in income and expenditure, which in turn affects the economic performance of the

⁸⁴ See generally U.N. General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, A/RES/34/180, <https://www.refworld.org/docid/3b00f2244.html> [last accessed Apr. 21 2019].

⁸⁵ See generally Elyse Wakelin, *The Implications of Statelessness on the Politics of Protection*, E-INTERNATIONAL RELATIONS STUDENTS (Aug. 6, 2012), <http://www.e-ir.info/2012/08/06/the-implications-of-statelessness-on-the-politics-of-protection/>.

⁸⁶ *FY 10: The Cost of Statelessness: A Livelihoods Analysis (Kingston University)*, U.S. DEP'T. OF STATE (Nov. 17, 2017), <https://www.state.gov/j/prm/policyissues/prmfund/189501.htm>.

recipient country. The public funds that are meant to be spent on developmental activities are diverted toward providing shelter and basic amenities for stateless persons and thus halts the process of development of recipient countries. According to the Commissioner for Human Rights of the Council of Europe, “[T]he price to pay for the perpetuation of statelessness is high not only for the persons affected, but also for the countries in which stateless persons live.”⁸⁷

B. Economic Impact

One of the debilitating impacts of statelessness is found on the economic front. Stateless persons are perceived as potential competitors with the nationals, claiming to share the scarce natural resources, education, health, infrastructure, transportation, social welfare, employment, and social services.⁸⁸ The increasing number of stateless persons may also amount to market disturbances where the government authorities need to strategize and constitute separate governing mechanisms to aid stateless persons. This may include rendering accommodation, deployment of staff members, and providing logistics and security. If the receiving country is a Least Developing Country or Underdeveloped Country, the situation becomes even more pitiable when the international aid that flows toward the protection of stateless persons becomes insufficient, and the country has to resort to international debts. Thus, according to some studies, the influx of stateless persons generates a negative economic stimulus, which invariably results in mounting pressure on the receiving country’s economy.⁸⁹

C. Ethical and Moral Impact

The problem of moral and ethical stigmatization is a harsh reality with regard to stateless persons. Society in the recipient countries often expresses concerns about assimilating and embracing stateless persons due to the fear that they might eventually become a threat to the

⁸⁷ INSTITUTE ON STATELESSNESS AND INCLUSION, *THE WORLD’S STATELESS* 31 (2014).

⁸⁸ *See generally* Protecting the Rights of Stateless Persons, 1954 Convention Relating to the Status of Stateless Persons, UNHCR (Jan. 2014), <https://www.refworld.org/pdfid/4cad88292.pdf>.

⁸⁹ *See generally* Addie Pazzynski, *How Statelessness Affects Global Poverty*, THE BORGEN PROJECT (Jul. 24, 2016), <https://borgenproject.org/statelessness-global-poverty/>.

recipient country.⁹⁰ The resultant feeling of abandonment and disregard by their new community places stateless persons in a hopeless situation and increases the likelihood of them resorting to either illegal activities or fleeing to other countries, thereby getting trapped in a vicious cycle. Lebanon has been an example of wrongly treating Palestinian stateless persons.⁹¹ They were ostracized. As a result, most of the Palestinian stateless persons lived on less than six dollars per day without employment.⁹² They were not given access to health services or education and were barred from professional syndicates. They were deprived access to legal aid and had restricted freedom of movement. What little freedom they were given could be withdrawn at any time.⁹³ The moral and ethical attitude of Lebanon toward stateless Palestinians was gruesome.

D. Legal Impact

The legal consequences of statelessness on an individual is even more damaging, compared to other impacts. The absence of fundamental legal rights makes their situation pessimistic. Because stateless persons lack nationality status, they are deprived of participating in any legal or political affairs. Stateless persons are not entitled to enter into any legal contracts, operate commercial businesses, or avail themselves of the judicial services, and they are deprived from participating in elections and the formation of government, as they are not electorates. Statelessness deprives an individual of the basic political rights of the civilized world, often including the right to marry, own land, or inherit property.⁹⁴ The

⁹⁰ See generally James Kirchick, *Is Germany Capable of Protecting Its Jews?*, THE ATLANTIC (Apr. 29, 2018), <https://www.theatlantic.com/international/archive/2018/04/germany-jews-muslim-migrants/558677/>; Mikhail Sebastian, *Stateless in the United States*, THE WASH. POST (Jul. 4, 2013), https://www.washingtonpost.com/opinions/stateless-in-the-united-states/2013/07/04/ae4c7a72-debe-11e2-b2d4-ea6d8f477a01_story.html?noredirect=on&utm_term=.a1cd74e673bd.

⁹¹ Phillip Issa, *For Palestinians in Lebanon, 69 Years of Despair*, THE TIMES OF ISRAEL (May 14, 2017, 1:53 PM), <https://www.timesofisrael.com/for-palestinians-in-lebanon-69-years-of-despair/>.

⁹² See JASON TUCKER, CHALLENGING THE TYRANNY OF CITIZENSHIP: STATELESSNESS IN LEBANON (2013); see generally *Being Stateless in Lebanon Means Being Without Rights*, EQUAL TIMES (Jan. 16, 2019), <https://www.equaltimes.org/being-stateless-in-lebanon-means?lang=en>.

⁹³ See JASON TUCKER, CHALLENGING THE TYRANNY OF CITIZENSHIP: STATELESSNESS IN LEBANON (2013).

⁹⁴ Stewart E. Forbes, “*Imagine There’s No Country*”: *Statelessness as Persecution in Light of Haile II*, 61 BUFF. L. REV. 699, 699–700 (May 2013).

inability to possess passports circumscribes their territorial travel, thus rendering them helpless and defeated.

E. Political Impact

In the epistemological discourse of international relations and political science, the concept of “recognition” is given utmost importance, as it is a precursor to claim any legal right. Hannah Arendt, in the context of seeking a resolution to statelessness, argues that “the division of the world into sovereign states meant that with the loss of political status, the stateless ‘no longer belong to any community whatsoever’: their plight is not that they are not equal before the law, but that no law exists for them.”⁹⁵ The statelessness situation generally results in political turmoil in the country and may aggravate external aggression and internal threats. “To be made stateless is to be denied the capacity to act and speak in a polity where others regard one as an equal, and where one’s actions and speech can assume a meaningful political presence.”⁹⁶ The classic example of the extent to which statelessness can intensify political turmoil is the case of Côte d’Ivoire, where there exists a large stateless population.⁹⁷ The social ostracization and the constant rejection by the nationals resulted in a rebellion, inhibiting the country’s economic and political stability.⁹⁸ Statelessness instigates a high level of radicalization and extremism that can serve as a triggering factor to shackle the political and the national security.

F. Psychological Impact

The impact of statelessness on an individual’s psyche is disparate. The situation of statelessness negatively disrupts the psychological health of people and can have lasting effects on their behavioural patterns.⁹⁹ The constant rejection of stateless persons by the recipient

⁹⁵ KELLY STAPLES, STATELESSNESS AND THE POLITICS OF MISRECOGNITION 96 (2012) (quoting HANNAH ARENDT, ORIGINS OF TOTALITARIANISM 296 (5th ed., 1973)).

⁹⁶ Patrick Hayden, *From Exclusion to Containment: Arendt, Sovereign Power, and Statelessness*, 3 SOC’YS WITHOUT BORDERS 248, 265 (2008).

⁹⁷ See generally Mirna Adjami, *Statelessness and Nationality in Côte d’Ivoire*, UNHCR (2016).

⁹⁸ See generally *id.*

⁹⁹ See generally Andrew Riley et al., *Daily Stressors, Trauma Exposure, and Mental Health Among Stateless Rohingya Refugees in Bangladesh*, 54 TRANSCULTURAL PSYCHIATRY 3, 304–31 (2017).

countries makes them prone to violence, retribution, and hatred, and desensitizes them from human feelings of love, affection, peace, empathy, and coexistence.¹⁰⁰ Given the mental naivete of children, the trauma caused by war is so intense that even after reintegrating into society, the manifestations of psychological scars are seen in the stateless children suffering from depression, acute fear, a sense of isolation, mental agitation, cognitive disabilities, and suicidal tendencies.¹⁰¹ The adverse, psychological impact of statelessness is more intense among girls who were subjected to rape and other kinds of sexual abuses.¹⁰²

G. Social Impact

Communities often express serious concerns about embracing stateless persons, considering them threats to internal security. The tarnished image incurred by stateless persons intensifies the fear among the communities that the stateless persons might eventually become a threat to the society.¹⁰³ This fear often stigmatizes stateless persons even after reintegration and legal recognition of their status. The threat of ostracization prevents stateless persons from assimilating effectively into society, and this acts as an obstacle to reaching the goal of social integration of stateless persons.

The above discussion of the implications of statelessness makes it evident that the problem has adversely affected the demographic, economic, moral, ethical, legal, political, psychological, and social dimensions. This comes as an eye opener to researchers and policy makers working on statelessness, to investigate all other perspectives without confining their scholarship to the legal dimension and also the impact it has on different geographical units, so that the problem is perceived more holistically rather in a fragmented way.

¹⁰⁰ See generally U.N. High Comm'r for Refugees: The U.N. Refugee Agency. *I am Here, I Belong: The Urgent Need to End Childhood Statelessness* (Nov. 2015).

¹⁰¹ *Id.*

¹⁰² See generally Alexandra Bradford, *Rohingya Women Traumatized and Stateless After Mass Sexual Violence*, GLOBAL CITIZEN (June 13, 2017), <https://www.globalcitizen.org/en/content/sexual-violence-rohingya-women-traumatized-statele/>; see also *FY14: Gender-Based Violence Among Stateless and National Populations in the Dominican Republic*, U.S. DEP'T. OF STATE (Jan. 2, 2018), <https://www.state.gov/j/prm/policyissues/prmfund/276833.htm>.

¹⁰³ See generally P.K. Balachandrian, *What Is India Going to Do With the "Stateless" Persons Created by NRC?*, THE CITIZEN (Apr. 29, 2019, 9:23 AM), <https://www.thecitizen.in/index.php/en/NewsDetail/index/3/14612/What-Is-India-Going-To-Do-With-The-Stateless-Persons-Created-By-NRC-->.

IV IMPACT ON GEOGRAPHICAL UNIT

Geography plays a significant role in determining the extent and intensity of the problem of statelessness. In fact, geography has a significant bearing in seeking policy resolutions to statelessness; it can affect the micro-, meso-, and macro-levels. One of the best examples to show how the political geography creates statelessness is the creation of the enclaves of India and Pakistan.¹⁰⁴

The postcolonization era resulted in India and Bangladesh procuring around 200 enclaves, which were governed by the territorial legalities of both the countries.¹⁰⁵ Because they are trans-territorial locations, border lands are always considered to be geographical flash points where a lack of legal norms results in a huge number of stateless and rightless persons.¹⁰⁶ Shewly, in this context, argues that such enclaves create statelessness through a politico-geographic-legal trap, and the major factor that acts as a parameter to determine statelessness is geography.¹⁰⁷

There exists a tendency among such enclaves to gradually relegate its citizens and territories when they no longer consider them significant as the facilitators of its geostrategic interests.¹⁰⁸ Here, statelessness occurs not just because of the failure of social, economic, political, or legal mechanisms, or because of ethnicity, religion, and race; rather, geography becomes a major determinant of statelessness.

Another important dimension in which geography fits in the discourse of statelessness can be seen through how the legal and nonlegal implications of statelessness affect the geographical units and the way they percolate from transnational to local level. The author of this Article believes the best example that justifies this argument is the way the geography and its variants have affected statelessness created by Bangladeshi migrants in the state of Assam and the way the transnational problem has affected the local level.

¹⁰⁴ See REECE JONES, SOVEREIGNTY AND STATELESSNESS IN THE BORDER ENCLAVES OF INDIA AND BANGLADESH (2009).

¹⁰⁵ Hosna J. Shewly, *Life in De Facto Statelessness in Enclaves in India and Bangladesh*, 38 SING. J. TROPICAL GEOGRAPHY 108, 113 (2017).

¹⁰⁶ *Id.*

¹⁰⁷ See generally *id.*

¹⁰⁸ *Id.*

The northeast state of Assam has predominantly occupied a geostrategic position where it shares its borders internationally with Bangladesh in the southwest and Bhutan in the north.¹⁰⁹ Internally it shares its borders with six other northeastern states and is comprised of three major geographical locations—Brahmaputra valley, Barak valley, and the Hills of Karbi.¹¹⁰ After the cessation of colonial powers in India, which was followed by the partition under the theory of “two-nations” on communal lines—East Pakistan became Bangladesh, which shares ninety-five percent of its land border with India.¹¹¹

At the outset of the twenty-first century, roughly 3 million Bangladeshis fled to India as migrants, and most of them sought refuge in Assam.¹¹² The major propelling factor for such an influx is the geography of Bangladesh, including environmental factors and climatic vulnerabilities. According to an intergovernmental panel on the Climate Change Report of 2007, there has been a 1°C increase in the average temperature of Bangladesh from 1985–1998.¹¹³ This resulted in slow-onset changes such as increases in sea level, salinity ingress, desertification, increasing water scarcity, monsoon floods, lake outburst floods, storms, and cyclones.¹¹⁴ The high number of deaths in Bangladesh is attributed to its geographic positioning in a tropical climate zone, which is more prone to natural disasters. In Assam, the migration is mostly geographically induced, rather than being propelled by other factors.

The inference can be drawn that geographical factors can be attributed to migration; the geography of the receiving country gets equally affected by such migration.¹¹⁵ It is evident that the transnational problem that was induced by the geographical factors has percolated to the lower ebb of the geographical unit—the local geography of Assam. As India has embarked on seeking a solution to the problem of illegal Bangladeshi migrants in Assam, consideration of geography becomes increasingly more important. This example best showcases how a problem such as statelessness, which was perceived as either interstate

¹⁰⁹ MADHUMITA SARMA, *A STUDY OF MIGRATION FROM BANGLADESH TO ASSAM, INDIA AND ITS IMPACT* 7–8 (2015).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 22.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Graeme Hugo, *Migration, Development and Environment*, (INT’L. ORG. FOR MIGRATION, 2008).

or internation, can sink in through different geographical units and can play a critical role in policy making.

V

THE NEED FOR A SUPRA-LEGAL PERSPECTIVE

As we calibrate the analysis and discussion of statelessness and the ontology which encapsulates the status of a person, the legal regime governing statelessness, the impact of statelessness, and the grounds on which a person is declared stateless, a glaring lacuna becomes visible that makes apparent the inadequacy of the current legal perception of the problem. Most of the aforementioned laws seem to have given the most significance to the legal treatment of the problem and have downgraded the other dimensions and perspectives of the problem. Most of the laws have heavily focused on the “grounds” dimension and have side-lined the impact, the status, and the geographic dimensions.

In fact, perceiving statelessness as merely one of the citizenship statuses, and noting the mobility between the statuses and the grounds on which such mobility takes place, will help in crafting more practical solutions to the problem. Each of these grounds determines the status of a person and accordingly decides the impact that the status will have on various domains. The laws codified thus far on these statuses have hardly given cognizance to the domains that are affected by each of the statuses. Also, the grounds on which these statuses are determined are too vague.

The distinctions between these statuses are articulated in such a way as to serve the legal definitions but not keeping in view the flexibility and rigidity involved in mobility between the statuses. If we have to calibrate the existing scholarship, research, and the protection regime in place for statelessness through the ontological construction, we can infer that the legal dimension is the “bright spot” or overemphasized dimension, and the grounds and the impact dimension are the “light spots” or less emphasized, and the status dimension is the “blind spot” that requires thorough research and emphasis. As long as we treat the problem of statelessness as a sterile legal issue, the existing regulatory regime seems skewed, ambiguous, and inconclusive.

“Statelessness is created at the intersection of the legal citizenship regimes of countries in a region with supra-legal events in a region such as economic migration, refugee flows, territorial transfer, and shifts in

political attitudes.”¹¹⁶ The need for a supra-legal corrective arose out of the sheer inadequacy of the international legal regime to resolve the problem of statelessness. This need emboldens us to stimulate a strong quest for a perspective that is supraliminal to the existing one, that can trigger a global engagement to resolve statelessness.

An attendant argument here is that the evident narratives on statelessness, which are strongly woven around the legal perception, need to be broadened. Perhaps a better way to perceive statelessness is by treating the problem of statelessness in conjunction with other taxonomies presented in the ontology that constitutes a grand strategy to absolve statelessness. The recognition we infer in this Article is limited to the extent that the existing mechanism has failed to engage with other components.

Treating statelessness exclusively as a legal problem has proven flawed. One way to perceive statelessness is not just through failing to engage dialogically with the legal treatment but rather to involve in a more systematic and structured negation by considering the combinatorial possibilities presented in the ontology. For example, the economic impact on a nation caused by statelessness, the ground of which is determined by discrimination based on ethnicity, could result in finding a novel way to deal with the problem rather than sticking to the parochial legal view of statelessness.

Similarly, through the ontology we can explore the psychological impact of statelessness based on the threat of persecution in an international scenario. An ontological presentation of the supra-legal view produces a picture in which the constitution of elements presents a different asymmetrical relation with each other. Though all realities pursued by a pathway are not likely, some are more feasible than the other pathways. The supra-legal perspective adds to existing practical as well as theoretically feasible realities. Each of the other dimensions adds to the broader spectrum of the statelessness structure, thus making it evident that the traditionally perceived view of statelessness has a less than marginal impact in exonerating statelessness. As a result, this necessitates a quest for a supra-legal perspective.

¹¹⁶ RAGHU A. KARNAD ET AL., PROTECTING THE FORGOTTEN AND EXCLUDED: STATELESSNESS IN SOUTH ASIA 3 (2006).

CONCLUSION AND POLICY RECOMMENDATIONS

António Guterres, the U.N. High Commissioner for Refugees stated, “It is wholly within the power of every concerned government to resolve statelessness. We have the opportunity, as never before, to tackle this injustice. Now is the time to act.”¹¹⁷ Because nationality is the precondition for realization and materialization of other human rights, and the international community has committed itself to protecting and promoting the rights of vulnerable people, it becomes essential to protect the rights of stateless persons.

Violation of the human rights of vulnerable people has become a glaring feature of today’s world and it constitutes violation of *jus cogens*—a paramount principle that governs international legal and political regimes. This violation is magnified by the problem of statelessness, the most heinous form of international human rights violation.

The under-recognition of stateless persons impinges on effective functioning of the international human rights regime on two levels. First, it undermines the universal character of the regime which has been too closely linked to the fortunes of major groups. This makes the regime far less “international” than was widely thought. Second, by lacking a concrete framework for the status of stateless persons, the very foundations and the efficacy of human rights discourse is challenged. In fact, the true meaning and essence of human rights will lose its rigor if statelessness persists. Therefore, the need of the hour is to adopt a more pragmatic approach toward the problem of statelessness.

This paramount goal can be manifested by adopting a supra-legal perspective that can encapsulate all other dimensions in a broader spectrum. The task is made easier with an ontological approach that can break the shackles of traditional wisdom, which is accustomed to presenting the problem in a skewed way. Therefore, it is inevitable to incorporate a systemic and systematic approach using the supra-legal framework to manage the complexity of statelessness and its impact. This approach helps in treating the problem of statelessness as a supra-legal problem that can, in the long run, contribute to countering a dreadful problem of statelessness, which is perhaps indispensable to achieving universal adherence to international human rights.

¹¹⁷ Kaveri, *Being Stateless and the Plight of Rohingyas*, 29 PEACEREV.: J. SOC. JUST. 31, 31 (2017).

