

**NATIONALITY; A PRIVILEGE OR FUNDAMENTAL RIGHT**  
**(A Comparative Study of the United Kingdom and Pakistan)**

(A dissertation submitted in partial fulfillment of the requirements for the degree of Master of  
Laws (International Law))



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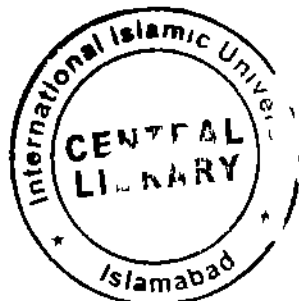
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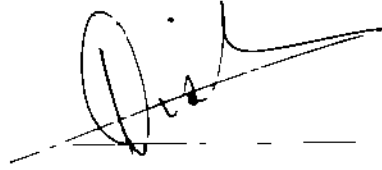
## FINAL APPROVAL

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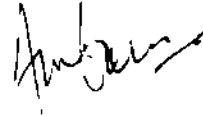
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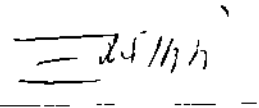
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## **Declaration**

I hereby declared that this thesis is original and has never been presented in any other university or institute of learning. I also declared that this dissertation has never been copied and any secondary information used has been duly acknowledged in this dissertation.

Mahwish Nazir

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## **DEDICATION**

This thesis is dedicated to my most Beloved, devoted, brave and generous MOTHER, who have always been my inspiration Thanks For her endless affection, unbiased support and encouragement Pray to Allah Almighty for highest ranks in Jannah Ameen

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## ACRONYMS

BNA	The British Nationality Act, 1981
CRC	Convention on the Rights of Child, 1989
EU	European Union
GA	General Assembly
GC	Geneva Convention
HR	Human rights
ICJ	International Court of Justice
IL	International law
IHRL	International Human Rights Law
IHL	International Humanitarian Law
ILC	International Law Commission
ICCPR	International Covenant on Civil and Political Rights
POPA	The Protection of Pakistan Act, 2014
PPC	The Pakistan Penal Code, 1860
UNCHER	The United Nations High Commissioner for Refugees

US	United State
UK	United Kingdom
UDHR	Universal Declaration Human Rights, 1948
WW I	World War I
WW II	World War II

## ACKNOWLEDGEMENT

All the praises, thanks and acknowledgement are for creator, the omnipresent, **Almighty Allah** His mercifulness and kindness helped me to pass ups and downs of life My special praise for **Prophet Muhammad (ﷺ)**.

This dissertation would not have been possible without the guidance and the help of several individuals who in one way or another contributed and extended their valuable assistance in the preparation and completion of this study First and foremost, my utmost gratitude to my supervisor, **Ms. Aisha Tariq** whose sincerity and encouragement I will never forget She helped me in each and every way, her hard work and determination really boost up my courage to achieve objectives of my research work She has been my inspiration as I hurdle all the obstacles in the completion this research work and my LLM journey

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**Mahwish Nazir**

## ABSTRACT

This research endeavors to deliberate on the nationality as a privilege or fundamental right in International laws with the special focus on the development of the nationality laws in Pakistan. For the purpose of this study, Pakistani law upon right of nationality as provided in the Constitution of Pakistan, 1973 and denationalized in the Protection of Pakistan Act 2014 is critically analyzed. Further, the issue of statelessness is highlighted which needs to be amended by the different international documents, decisions and judgments.

This study is based on the International treaties, International legal documents. The nationality laws of the United Kingdom has also discussed in it with the reference of section 40 (Special power of Home Secretary) of the British Nationality Act, 1981. The rights and the problem of statelessness due to extra powers and amended laws of their country are discussed briefly. This research describes the similarities and differences of the laws of the United Kingdom and Pakistan on the matter of the statelessness. Moreover, Convention for the protection of stateless person in International law, The Hague Convention 1930, UDHR 1948 and all necessary legal documents and treaties are discussed in detail. Efforts are made to bring out the developments on the right of statelessness in International laws and Pakistani laws. In the end it is suggested that uniform laws can be formulated for Pakistan in the light of International Law.



**NATIONALITY; A PRIVILEGE OR FUNDAMENTAL  
RIGHT  
(A COMPARATIVE STUDY OF THE UNITED KINGDOM  
AND PAKISTAN)**

**INTRODUCTION**

It is a fact that the world where we live in today is marked with divisions. Border posts, border patrols, and elaborate fencing establish the dividing lines between the territory of one country and the next. Meanwhile, partitions have also been created between people, even though individuals do not exist as isolated beings. They are connected to one country or another through the legal relation of membership known as nationality. There are also individuals who remain unclaimed by any country. These are the world's stateless persons. Some fifty years ago, the international community adopted many instruments to challenge the difference that is statelessness. The former was designed to offer a minimum standard of protection to those individuals who found themselves without a nationality, while the latter was crafted in order to prevent new cases of statelessness from arising<sup>1</sup>

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<sup>1</sup>Laur Van Waas, *Nationality Matters: Statelessness under International Law* (School of Human Right Research series Intersentia, 2008), 423-432

with the problem<sup>2</sup> There is a link between our national identity and the way we see ourselves Modeling the way we understand what we are, modeling our sense of the world

Statelessness,<sup>3</sup> or the condition of having no legal or effective citizenship, is a large and critical problem Nationality and Statelessness under International Law provides a careful analysis of what it means to be stateless, and how international law has historically dealt and our sense of life Article 15 of the Universal Declaration of Human Rights, 1948 states that,

*"Everyone has the right to a nationality"<sup>4</sup> and that "no one shall be arbitrarily deprived of his nationality."<sup>5</sup>*

Nationality is the legal word for a person and a state It denotes membership and gives rise to both rights and duties on the part of the individual and the state concerned This legal word is also commonly referred to as "citizenship," and in most writing on the subject, "nationality" and "citizenship" are used as interchangeable synonyms In addition, the terms "national" and "nationality" are used in some international legal contexts and related writing to describe membership of a "nation" in the sense of a particular cultural ethnic, or historic community The two principal doctrines for the attribution of nationality are jus soli (nationality based on birth on state soil) and jus sanguinis (nationality based on descent from

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<sup>2</sup>Alice Edwards and Laura van Waas, *Nationality and Statelessness under International Law* (United Kingdom: Cambridge University Press, 2014), 345

<sup>3</sup>According to Article 1 of the 1954 Convention relating to the Status of Stateless Persons a stateless person is "a person who is not considered as a national by any State under the Operation of its law " Convention relating to the Status of Stateless Persons, adopted 28 July 1951, G A Res 429 (V) 360 U N T S 117 (entered into force 6 June 1960)[hereinafter 1954 Convention]

<sup>4</sup>Universal Declaration of Human Rights, adopted 10 Dec 1948, G A Res 217A (III), U N GAOR, 3d Sess (Res pt 1), at 71 Art 15, U N Doc A/810(1948) reprinted in 43 Am J Int'l L 127 (Supp 1949)

<sup>5</sup>Ibid

a national) A third common ground for the attribution of nationality is long-term residence, which can open the door to naturalization. It is also possible for a person to renounce, lose, change, or be deprived of his or her nationality under certain circumstances. International law recognizes, in principle, the freedom of states to regulate access to nationality as an exercise of sovereignty.

A stateless person is someone who is not considered a national by any state under the operation of its law. There are numerous causes of deprivation of nationality. Statelessness has a detrimental effect on individuals, families, and communities. The lack of a nationality can severely obstruct the enjoyment of a wide range of rights. Although human rights law provides for the right to a nationality,<sup>6</sup> in Pakistan a new act has been passed recently as The Protection of Pakistan Act, 2014 is violating the Fundamental Rights. Its punishment is totally against the International Human Rights Law. Similarly, that in the United Kingdom also has been increased the power of Home Secretary that she can strip out any person in the country is also against the International Human Rights law. The Protection of Pakistan Act, 2014 has been passed recently in which a punishment section 16 has been given to the enemy alien under section 2(d) and militant under section 2(f) has been granted in above mention Act. Both countries are violating the Human Rights. So the punishments are already available in both countries law.

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<sup>6</sup>Laur Van Waas, *Nationality Matters: Statelessness under International Law* (School of Human Right Research series, Intersentia, 2008) 423-432

## **THESIS STATEMENT**

Statelessness is a stigma for the international and national law. The deprivation of the right of nationality on certain reason is not only against the international law but also affected the fundamental rights provided by the constitution of the countries.

## **SIGNIFICANCE OF THE RESEARCH**

This research would discuss different dimensions of nationality especially focused stateless as a military court punishment in our legal system and in the United Kingdom. This issue is extremely important because it has been the great issue for debate among scholars of the world and different legal documents. This research would reveal how the Protection of Pakistan Act, 2014 & the British Nationality Act, 1981 amending laws violating the Human Rights in detail and also analyze the features of different International Human rights documents. So that the punishments are available in The Pakistan Penal Code, 1860 and the British Nationality Act, 1981 for the crimes to deterrence and prevention and also serves as protector of society from reoccurrence of crime. Therefore this punishment in the Protection of Pakistan Act, 2014 and the power of the British Home Secretary of statelessness is unethical and is violation of Human Rights.

## LITERATURE REVIEW

For literature review, the researcher has gone through a number of books, statutes, articles, reports and law journals on the subject. There is a plethora of literature available on purpose and meaning of statelessness but there is no any Law or comprehensive work on the remedy of that people who are deprived nationality as a punishment. This thesis is a minor effort to let the said deficiency get filled to some extent. For this purpose, researcher will get help from the available sources, some of which are primary sources and others are secondary.

The primary sources include national and international legal instruments such as The Universal Declaration Human Rights 1948, Convention on the Reduction of Stateless Person 1961, Convention on the Status of Stateless Person 1954, 1997 European Convention on Nationality, The British National Act, 1981, The Protection of Pakistan Act, 2014. Secondary sources available in the form of books and articles.

The book *Nationality and Statelessness in International Law*<sup>7</sup> by Paul Weis describes about nationality that what things constitute nationality how the domestic and international law deals on the acquiring and losing the nationality and also give the references different conventions and legal documents but did not explain the remedy available to stateless person in the country whose basic rights are infringed due to new present laws.

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<sup>7</sup>Paul Weis, *Nationality and Statelessness in International Law* 2<sup>nd</sup> ed (Publisher Brill Library of World Affairs, 1979)

The book *The Human Rights of Aliens under International and Comparative Law*<sup>8</sup> has been written by Carmen Tiburcio. He explains in his book about the history and treatment of alien. He also elaborates about the nationality and all fundamental rights relating to a national.

The book *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality*<sup>9</sup> has been written by Brad K. Blitz, Maureen Lynch. They explain in this book that in our world, having a nationality and thus access to documents proof of identity has become extremely important. The vulnerability of stateless persons clearly demonstrates the benefits of having a nationality. The work of author explains only the nationality and its benefits but did not explain about that rules which is violating the fundamental rights such as deprivation of nationality.

*Nationality and Statelessness: A Handbook for Parliamentarians*<sup>10</sup> This book has been written with the cooperation of the Bureau of the Inter Parliamentary Union's Standing Committee on Democracy and Human Rights. It explains the legal frame work for acquiring the nationality and to eliminate the statelessness with the role of UNCHR and parliament. But they cannot explain the legal remedy for the stateless person whose rights has been infringed by the extra power of home secretary in England.

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<sup>8</sup>Carmen Tiburcio, *The Human Rights of Aliens under International and Comparative Law* (Publishers: Martinus Nijhoff, 2001)

<sup>9</sup>Brad K. Blitz and Maureen Lynch, *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality* (Edward Elgar: Kingston University London, 2001)

<sup>10</sup>*Nationality and Statelessness: A Handbook for Parliamentarians* (Published by the Inter-Parliamentary Union: United Nations High Commissioner for Refugees, 2005)

The book *Statelessness: The Quiet Torture of Belonging Nowhere*<sup>11</sup> which is written by Coventry Peace House. This book explains about the global statelessness and international law that how groups of people and individuals can become stateless clearly illustrate the points. The chapters on 'Life in Britain' and 'The Power of the State' give helpful descriptions of the asylum process. This book provides the summary about the asylum but did not explain any remedy which is basis need of a stateless person.

The book *Life in the United Kingdom: A Journey to Citizenship* written by Great British Home Office<sup>12</sup> explains all the questions that may be asked for the citizenship. It provides general information and questions about the Life in the UK. This book explains the rule only but did not explain any legal documents or violation of Human Rights which required instant research.

The book *Genealogies of Citizenship: Markets, Statelessness, and the Right to Have Rights*<sup>13</sup> (Cambridge Cultural Social Studies) which written by Margaret R. Somers explains in this book that the market fundamentalism and innovative view of rights as public goods rooted and social practices of equal moral recognition the right to have rights. This book can be used as a basic tool but did not explain the current issues which a stateless person face other than marketing laws. Therefore, the instant research focused on the dire issue.

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<sup>11</sup>Coventry Peace House, *Statelessness: The quiet torture of belonging nowhere* (Coventry Peace House, Stoney Stanton Rd, 2008)

<sup>12</sup>Great British Home Office, *Life in the United Kingdom: A Journey to Citizenship*, 1<sup>st</sup> ed (Publisher: Stationery Office, 2008)

<sup>13</sup>Margaret R. Somer, *Genealogies of Citizenship: Markets, Statelessness and The Right Have To Rights* (United States of America: Cambridge University, 2008)

The book *Nationality Matters: Statelessness under International Law*<sup>14</sup> has been written by Laura Van Waas who describes about nationality and stateless person. It highlights nationality matters is devoted to answering that question by investigating in detail both the enduring value of the two made statelessness conventions, as well as ascertaining what other areas of international law in particular human rights law have to offer in answer to the phenomenon of statelessness. She explains the importance of nationality in this book but did not cover the whole situation which is arising now a day due to statelessness.

The book *Brownlie's Documents on Human Rights*<sup>15</sup> written by Brownlie by Ian categorized in different parts. The first part explains the international organizations with comparatively many other documents. The second part of the book deals with Human rights and self-determination. Finally he explains the Responsibility the serious violation of humanitarian law with the statute of international criminal tribunal for the former Yugoslavia only. This book can also be used for a basic tool. But there is lacuna in the book regarding nationality which becomes innovative part of instant research.

The book *Retheorising Statelessness: A Background Theory of Membership in World Politics*<sup>16</sup> written by Kelly Staples explores that there are 12 million stateless persons. It is a cautious estimate based on a conservative and legalistic understanding of statelessness. Even of their origin or place of residence is known about at least half of these stateless persons, given that only 'minorities of countries have procedures in place for the identification,

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<sup>14</sup>Laura Van Waas, *Nationality Matters: Statelessness under International Law* (School of Human Right Research series Intersentia, 2008), 423-432

<sup>15</sup>Brownlie By Ian, *Brownlie's Documents on Human Rights* 6<sup>th</sup> ed (United States: Oxford New York, 2010)

<sup>16</sup>Kelly Staples, *Retheorising Statelessness: A Background Theory of Membership in World Politics* (Studies in Global Justice and Human Rights) (Publisher: Edinburgh University Press, 2012)



registration and documentation of stateless persons. This book aided in basic factual knowledge about the stateless person but did not provide a legal remedy in current issues.

The book *Statelessness*<sup>17</sup> which is written by William E Conklin explains in it that statelessness is a legal status indicating lack of any nationality. The increasingly widespread problem of statelessness has profound legal, social, economic and psychological consequences but also gives rise to the impossibility of an international community that claims universal standards for all natural persons while allowing its member states to allow statelessness to occur. The problem he argues rests in the obligatory nature of law domestic and international. He could not explain it deeply with the amending laws. Therefore the instant research is required.

The book *Nationality and Statelessness under International Law*<sup>18</sup> which is written by Alice Edwards, Laura van Waas who introduces practice of international statelessness law and explains the complex relationship between the international law on nationality and the phenomenon of statelessness. He also identifies the rights of stateless people, major legal obstacles preventing the eradication of statelessness<sup>19</sup> but there is gap in the book regarding current regime of statelessness which required further research.

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<sup>17</sup>William L. Conklin, *Statelessness the Enigma of the International Community*, 1<sup>st</sup> ed (Hart Publishing, Oxford United Kingdom, 2014).

<sup>18</sup>Alice Edwards and Laura van Waas, *Nationality and Statelessness under International Law* (United Kingdom: Cambridge University Press, 2014).

<sup>19</sup>Universal Declaration of Human Rights adopted 10 Dec 1948, G.A. Res. 217A (III) U.N. GAOR, 3d Sess. (Res. pt. 1), at 71, Art. 15, U.N. Doc. A/810 (1948) reprinted in 43 Am. J. Int'l L. 127 (Supp. 1949).

The book *Citizenship, Nationality and Migration in Europe*<sup>20</sup> written by David Cesarani and Mary Fulbrook highlights the challenges to acquire citizenship in Europe. Moreover, it describes that nationalistic and racist movements are gaining in Europe ground and barriers are being erected against immigration. This book aided in understanding the evolution of citizenship in different countries and its varying contexts. It explores the interconnection between ideas of the nation, modes of citizenship and the treatment of migrants but the gap left by the authors is the remedy which a stateless person needs in his own country. Hence, instant research focused on it.

### **Outline of Thesis**

The thesis comprises of three chapters. In the first chapter, the concept of nationality and reasons of statelessness have been identified. In the second chapter, link between statelessness and human rights has been discussed. In the third chapter, effect of statelessness in Pakistan and the United Kingdom has been explained. Finally, at the end of the thesis, conclusion and recommendations have been elaborated.

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<sup>20</sup>David Cesarani and Mary Fulbrook, *Citizenship Nationality and Migration in Europe* 1<sup>st</sup> ed (Library of Congress, London and New York, 2003)

## CHAPTER NO. 1

### WHAT IS NATIONALITY AND CITIZENSHIP?

#### 1.1. NATIONALITY

Nationality creates a legal link between person and the state<sup>21</sup> by providing jurisdiction and protection to him. The rights and duties relating to nationality differ from state to state<sup>22</sup>. It depends on its national laws<sup>23</sup>. Nationality is the part of national law. However, in some situations, nationality rights are determined by the public international law such as treaties on Statelessness and European Convention on Nationality<sup>24</sup>. The comprehensive definition of nationality is not clear till now. Nationality is used for racial groups in many languages as in English. The meaning of nationality had not defined till now. As there are six kinds of nationality in British Law. The British Home Secretary may deprive any person from his nationality if come to know about any person who may become harmful of the country after his satisfaction<sup>25</sup>.

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<sup>21</sup>Vonk and Olivier, *Dual Nationality in the European Union: A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four EU Member States* (Publishers Martinus Nijhoff, 2012), 19

<sup>22</sup>Weiss, Paul, *Nationality and Statelessness in International Law*, 2<sup>nd</sup> ed (Brill, Sijthoff & Noordhoff, 1979), 29–61

<sup>23</sup>Series, Treaty "Convention on Certain Questions Relating to the Conflict of Nationality Laws, April 12, 1930" *Treaties and International Engagements Registered with the secretariat of the League of Nations* 179, no 4137 (1930) 1937-1938

<sup>24</sup>Ivan Shearer and Brian Opeskin, *Historical evolution of the concept of nationality: Nationality and Statelessness in Brian Opeskin, Richard Perruchoud and Jillvanne Redpath-Cross* (Foundations of International Migration Law, Cambridge University, 2012) 93

<sup>25</sup>Rainer Baubock and Eva Ersboll, *Acquisition and Loss of Nationality: Policies and Trends in 15 European States* (Amsterdam University Press, Amsterdam, Vol 2, 2006) 559-562

In *Nottebohm case*<sup>26</sup> A German by birth was living in Guatemala since 1903. His family and business were also in Germany. He applied for the Liechtenstein citizenship because of outbreak of the World War II. Liechtenstein approved his naturalization application but impliedly waived his three years. He traveled to Liechtenstein and refused to re-enter in Guatemala due to deeming a German citizen. However, he filed a case before the International Court to compel the Guatemala to recognize him as its national. The International Court of Justice decided that "Nationality helps to define all the rights and duties which are determined by the law of any state."<sup>27</sup>

Nationality is a social relation of one's nationality to the country. After determination of this relation, some obligations need to fulfill on the part of a country of which he is a national.<sup>28</sup> The separate independent states and the Peace of Westphalia, 1648 gave the concept of nationality.<sup>29</sup> In fact, nationality is a matter of domestic law in some international situations.<sup>30</sup>

The prerogatives granted to national of any state are social benefits, personal property, the right of residence, vote and confer the assistant to overseas. Moreover a citizen may

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<sup>26</sup>Indicated that 'Nationality serves above all to determine the person upon whom it is conferred, enjoys the rights and is bound by the obligations which the law of the State in question grants to or imposes on its nationals'. Available at Kunz, Josef L. "Nottebohm Judgment (Second Phase) The". *Am J Int'l L* 54 (1960) 536.

<sup>27</sup>Nottebohm Case (Liechtenstein v. Guatemala), Second Phase, International Court of Justice (ICJ) 6 April 1955, ICJ Reports 1955, 4.

<sup>28</sup>Ivan Shearer and Brian Opeskin, *Historical evolution of the concept of nationality, Nationality and Statelessness in Brian Opeskin, Richard Perruchoud and Jillyanne Redpath-Cross* (Foundations of International Migration Law, Cambridge University Press, 2012) 93.

<sup>29</sup>Ibid.

<sup>30</sup>This has been nicely put by Shearer and Opeskin as 'Nationality is essentially an institution of domestic law but it has consequences in international law.'

require doing their civil duties comprising to defend a country against opponents, to cast a vote or even to pay all the taxes<sup>31</sup>

These rights and duties are applicable to the citizen but also extended to the resident (permanent) and some migrant categories. There is much dissimilarity among citizenship in a state<sup>32</sup>. According to an international view, nationality is outside the individual rights regarding its state of nationality.

In fact, nationality creates the right and duties of the state apparently over the other states. The nationality bond provides discretionary rights, such as to aerobics diplomatic protection under international law<sup>33</sup>. Nationality grants personal jurisdiction to individuals and also concern it to other states<sup>34</sup>. The basic element of citizenship will be determined by high level and on the other hand, nationality has no absolute meaning. Every state has a different meaning and importance of the state in its manner<sup>35</sup>. The fundamental content of citizenship will be determined by one's country of citizenship<sup>36</sup>. There are different kinds of nationality such as double nationality and multiple nationalities. In British law, there are six kinds of nationalities such as British Citizenship, British overseas territories citizenship, The British subject, British national (overseas), British oversee citizenship, and the person whom

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<sup>31</sup>Commonwealth Electoral Act 1918. Australia for example imposes an obligation on citizens to vote in elections with the penalty of a fine for failing or refusing to do so.

<sup>32</sup>*Towne v Eisner*, 245 U.S. 418 (1918).

<sup>33</sup>Alfred M. Boll, *Nationality and Obligations of Loyalty in International and Municipal Law* (Martinus Nijhoff Boston, 2005), 205.

<sup>34</sup>*Ibid*.

<sup>35</sup>Alice Edwards and Laura Van Waas, *Nationality and Statelessness under International Law* (United Kingdom: Cambridge University, 2014), 44.

<sup>36</sup>*Ibid*.

are protected in British<sup>37</sup> In return, every question is answerable which is acceptable simultaneously which served to structure the citizenship debates<sup>38</sup> In History, the memory of movements for popular sovereignty and the belief of an Englishman's birth right continued to animate reformers<sup>39</sup>

## 1.2. LEGAL PRINCIPLES OF NATIONALITY

There are different principles of nationality For instance, a person who does crime in a country, the state has complete jurisdiction on him The legal principles<sup>40</sup> of nationality to determine the jurisdiction will be explain in the latter section

In *Trail of Earl Russell* case, a British who got married in England in 1990 He obtained an order of divorce in the United States of America in 1900 and got married again According to the English law, this divorced was considered as invalid because he was not American domicile holder He was arrested and trailed by the Lord of High Steward before the House of Lord when he returned Due to polygamy UK national was punished although hid marriage took place outside the jurisdiction of UK<sup>41</sup> He was guilty of bigamy

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<sup>37</sup><https://www.gov.uk/types-of-british-nationality/british-subject> (Last Accessed May 05 2016)

<sup>38</sup>Linda Bosniak, *The Citizen and the Alien Dilemmas of Contemporary Membership* (Princeton University New Jersey, 2006), 10-12

<sup>39</sup>David Cesarani and Mary Fulbrook, *Citizenship Nationality and migration in Europe* (Published in the Taylor & Francis e-Library, 2003), 59-61

<sup>40</sup>Standard to be observed because of justice fairness other morality is known as legal principle

<sup>41</sup>Lord of the blog life and work in the House of Lord Earl Russell and bigamy Lord Norton (Last Accessed May 06, 2016)

But it is complicated where people have double nationality, in this case, personal interest will be considered for his living<sup>42</sup> Where the person proves the meaningful connection to the state in question

### 1.2.1. Principle of Active Nationality

According to the report for the Harvard Corporate Social Responsibility Initiative suggests that states regard the active nationality principle as the strongest basis for direct extraterritorial jurisdiction. However, some reporters express concern as to the fundamental philosophical justifications for the principle. For example, according to the claim of Chehtman it is, 'as a basis for criminal jurisdiction, the nationality principle is altogether unjustified at the bar of justice'. According to his arguments, 'individuals in any given state lack an interest in having that state's criminal laws enforced against them or their co-nationals (co-residents) abroad'. In the way of example, and referring to declarations of extraterritorial jurisdiction by Spain, he argues 'Inhabitants of Spain may feel horrified by a particular crime committed outside its territory by a co-national, but their belief in the system of criminal laws under which they live being in force is not undermined by these offences'<sup>43</sup>

### 1.2.2. Principle of Passive Nationality

In passive principle, a sovereign can implement the laws on the foreign nationals' offense against sovereign nationals which may be outside of the sovereign territory. As in *Yums*

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<sup>42</sup>Case Nottebohm "Judgment of April 6th 1955" *ICJ Reports* (1955)

<sup>43</sup>Danielle Ireland-Piper *Prosecutions of Extraterritorial Criminal Conduct and the Abuse of Rights Doctrine* (Peer-reviewed section of the Utrecht Law Review) 74-74

case,<sup>44</sup> defendant and other four men entered in an airline flight earlier its departure from Beirut (Lebanon) They carried military assault rifles The hijackers clarified that they wanted to fly the plane to the Tunis Where they wanted to meet delegators of conference there was a conference of Arab League under way It was their goal to remove all the Palestinians from Lebanon Who was a Lebanese national accepted his participation in the hijacking The US court decided that they would exercise Passive personality jurisdiction over Yunis because there were two US nationals on board while the Jordanian airline was hijacked by Yunis<sup>45</sup>

### 1.2.3. Principle of Protective Nationality

In this principle, crime was committed outside the country both the offender and dupes were not state's national In such case, the effective state would be having the discretion to exercise jurisdiction<sup>46</sup>

As it was decided in *Eichmann's case* who was an Austrian by birth was accused who worked for the Security Service in Berlin He got the position of Head Section for Jewish Affairs which was connected to the execution of the Jewish Question as a final solution The crime is committed by Eichmann against the Jewish people and vital interest of Israel was

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<sup>44</sup>Sienho Yee, Jacques Yvan and Morin, *Multiculturalism and International Law Essays in honor of Edward Mc Whinny* (Martinus Nijhoff Boston Netherlands 2009) 443

<sup>45</sup>Ibid

<sup>46</sup><https://ruwanthikagunaratne.wordpress.com/tag/principle-of-nationality/> (Last Accessed May 05 2016)



affected. Due to protective principle, the effective state is Israel, hence its court would exercise the jurisdiction.<sup>47</sup>

#### 1.2.4. Universality Principle of Nationality

In this principle, a sovereign can implement the criminal law which may apply on the performance of every person in the world anywhere, when this conduct is known as a universal principle. One of them is related to piracy.<sup>48</sup>

### 1.3. NATIONALITY UNDER INTERNATIONAL LAW IS A RIGHT

Under international law, nationality is a relationship which provides a right to a nation to defend a person from other nation.<sup>49</sup> Consular and diplomatic protections depend on this relationship between the state and the person.<sup>50</sup> The conflict of laws, a person's status as national can resolve it.<sup>51</sup> It is a legal standard that permits a nation to give rights and impose duties upon the subject.<sup>52</sup> In many circumstances right and duties are not attached automatically to this status, so status is important and prerequisites granted by the state.<sup>53</sup>

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<sup>47</sup>Ibid

<sup>48</sup>[http://www.kentlaw.edu/faculty/rwamer/classes/carter/tutorial/jurisdiction/Crim\\_Juris\\_6\\_1\\_e.htm](http://www.kentlaw.edu/faculty/rwamer/classes/carter/tutorial/jurisdiction/Crim_Juris_6_1_e.htm) (Last Accessed May 08, 2016)

<sup>49</sup>Ibid

<sup>50</sup>Ibid

<sup>51</sup>Von Bogdandy, Armin Bast and Jurgen, *Principles of European Constitutional Law* 2<sup>nd</sup> ed (Oxford: Hart Publications, 2009), 449–451

<sup>52</sup>Ibid

<sup>53</sup>Alice Edwards and Laura Van Waas, *Nationality and Statelessness under International Law* (United Kingdom: Cambridge University Press, 2014) 44

Extensive limits which are forced by international law and some treaties, state can define who their national is and who is not <sup>54</sup>

In *Nottibohm Case* it is an obligation of the state to defend the right of a doubtful national yet it is constructed on a social relation <sup>55</sup> State will determine the effective nationality and applicability of state laws to a person in case of dual nationality <sup>56</sup> No one can eliminate the person's status as a national There are some restrictions which are imposed on it as in *The Universal Declaration of Human Rights, 1948* <sup>57</sup> The German Constitutional Court <sup>58</sup> explains the legal status and relationship of a political community <sup>59</sup>

Many kinds of discretion have been prohibited in the nationality because the *Universal Declaration Human Rights, 1948* firstly grants nationality as a right Nationality may change acquisition as well as retention It is the discretion of the court to impose nationality as a right or to receive it one's choice Moreover, it is well explained in the *International Human Rights law* and in the *Convention on the Reduction of Statelessness, 1961* <sup>60</sup>

Due to acquisition of nationality second and third generation of the asylum seeker, number of issues is created by the concept of nationality In his advisory opinion, the Inter-

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<sup>54</sup>Ibid

<sup>55</sup>Ibid

<sup>56</sup>Ibid

<sup>57</sup>Everyone has the right to a nationality " and "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality "

<sup>58</sup>Nationality is the legal requirement for an equal status implying equal duties on the one hand, equal political rights on the other hand the exercise of which is the exclusive source of legitimacy of power in a democracy

<sup>59</sup>Rainer Baubock and Eva Ersboll, *Acquisition and Nationality Policies and Trade in 15 European States*, Vol 1 (Amsterdam University Press, Amsterdam, 2006), 36-39

<sup>60</sup>Ruma Mandal and Amanda Gray, "Out of the Shadows The Treatment of Statelessness under International Law" Unregistered Stateless Rohingya Refugees from Myanmar at an unofficial camp in Bangladesh (2008) 2

American Court declared that it is a power of the state to regulate the matter relating the nationality by their requirements for the patronages of human rights. Under the Customary International law, there is not any right to gain or change the nationality.<sup>61</sup> Nationality is a fundamental human right from which various human rights are exercised. The rejection of nationality in many cases of vulnerable groups may be harassed. However, sometimes equal distribution of rights of nationality and rejection of any nationality effect the enjoyment of one's rights.<sup>62</sup>

### **1.3.1. How can the Nationality be Acquired and Lost?**

Nationality may be acquired and lost in different ways. The Principle of Equality explains that every person should have the nationality which eliminates the inequality in vulnerable groups. In many countries, nationality may be acquired by *ius soli*, i.e. by birth. This excludes the access to nationality not only of the second generation children but also to the third generation.

## **1.4. CITIZENSHIP**

Citizenship is a political and constitutional concept which is disputed and confusing consideration with respect to identity and responsibility. It is a political and legal act in world language. Judith Scholar described that there is no concept more dominant in politics than citizenship. So, it is disputed theory.

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<sup>61</sup>Rainer Baubock and Lva Ersböll *Acquisition and Loss of Nationality: Policies and Trends in 15 European States* Vol. 1 (Amsterdam University Press, Amsterdam, 2006) 38-39

<sup>62</sup>Scopin Paper, *NRC Statelessness and Displacement* (Tilburg University) 12

Citizenship is associated with the individual's rights and responsibilities in the state of a citizen, which is also attached to options of blood and soil. Balibar nationalism and Racism each is determined by the insertion of citizen and the people who had shared a common source and elimination of the people who are not included in this class. Any person of a nation depends upon, on their relation to the family, some relate nationalism and citizenship to the idea of kingship. In this category, they connect by the blood and law. The nation is different from citizenship by jus soli (right of the soil/ place of birth) and jus sanguinis (right of blood) which are transferred by inheritance. This method is adopted in many different countries as well as in Norway. The main perception of citizenship is explained as a legal subject of the state and a mechanism of political claim which is made by the people<sup>63</sup>. The idea of an active citizenship has come into the strategy of European Commission which made it clear<sup>64</sup>.

## 1.5. RELATIONSHIP BETWEEN NATIONALITY AND CITIZENSHIP

There is no any difference between nationality and citizenship both terms is compatible and is use for political resolutions. We can give an example as, the use of nationality to indicate state citizenship. All the citizens are also nationals. In fact the majority of modern states are

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<sup>63</sup>Daisy Deomampo, *Defining Parents, Making Citizens: Nationality and Citizenship in Transnational Surrogacy*, Department of Sociology & Anthropology, Fordham University, Bronx, New York, USA, 34:3 (2014): 213-216.

<sup>64</sup>Armin Von Bogdandy and Jurgen Bast, *Principles of European Constitutional Law* (Oxford and Portland: Hart publishing, 2006), 496.

multinational but less than ten percent exactly explain the nation states<sup>65</sup> It provides a thought to the nation statehood in a political legitimacy It is a difficult reason but can be summarized and increased its importance in domestic and international<sup>66</sup> the Treaty of Versailles, 1919 after the end of World War I<sup>67</sup>

## 1.6. DIFFERENCE BETWEEN NATIONALITY AND CITIZENSHIP

Nationality and citizenship both the terms are different from naturalization through immigration It is necessary to refuse the previous citizenship but is not the necessary in the previous nationality<sup>68</sup>

Nationality may be claimed by birth but citizenship would be registered in any country's Government Naturalization means to get the nationality inheritance by the parents But people become a citizen of any country when it is accepted by the country's political-legal frame work Everyone has a different citizenship but can't change the nationality<sup>69</sup>

Both terms are different from each other as citizenship is dealt led with the internal political life of a state and the nationality is a matter of international relations<sup>70</sup> Citizenship

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<sup>65</sup>Connor and Walker *Ethno Nationalism The Quest for Understanding Princeton* (New Jersey Princeton University Press 1994), 28-89

<sup>66</sup>The term "international" and organizational names like League of Nations and United Nations are themselves misnomers that perpetuate the ambiguity between state and nation The correct (if unconventional) term in this case is "interstate", the analogous name for the United Nations is, of course already taken

<sup>67</sup>Cassese, Antonio, *Self-Determination of Peoples A Legal Reappraisal* (England Cambridge University, 1995), 33-67

<sup>68</sup>Article on German nationality law Non-German minority groups living in Germany such as Turkish Gastarbeiter, are exceptions to this example

<sup>69</sup><http://www.differencebetween.net/miscellaneous/difference-between-nationality-and-citizenship/>(Last Accessed May 07 2016)

<sup>70</sup>Turner, Bryan S and Isin, Engin F, *Handbook of Citizenship Studies* (Sage, 2003) 278-279

requires full civil, political and social rights<sup>71</sup> In nationality, a person does not exercise full political rights in a state<sup>72</sup> Full citizenship is required for the nationality but some people don't have full citizenship i.e., a second class citizen is one who is denied from full rights<sup>73</sup> The meaning of full citizenship is different from ancient time It was said that the person who was connected to a city or state enjoyed full citizenship till 19<sup>th</sup> & 20<sup>th</sup> centuries Many persons were excluded from enjoying the full citizenship due to vulnerability However, they have the legitimate affiliation with the Government and the current concept of nationality<sup>74</sup>

A person would be a national of a certain country by birth A person has different citizenship but he can't change his nationality Nationality provides a right to live in a country and may enjoy all the rights with he belongs but in citizenship, he cannot live in a country, just can cast a vote For example, the French national can't cast the vote first 5 to 10 year after taking nationality there Same like that there are some cases without nationality in citizenship<sup>75</sup>

Citizenship is necessary if a person is enjoying all the rights having the passport and taking the diplomatic right too in abroad and residence in a country Nationality plays an important role to earn entertain the public services and make sure political participation in

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<sup>71</sup>Ibid

<sup>72</sup>Convention on Certain Questions Relating to the Conflict of Nationality Laws The Hague 12 April 1930 Art 1, "It is for each State to determine under its own law who are its nationals

<sup>73</sup>Ibid

<sup>74</sup>Ibid

<sup>75</sup><http://www.cupedia.com/forum/threads/21134-Nationality-VS-Citizenship> (Last Accessed May 22, 2016)

the country, a right to the judicial system. Where these conditions are not found yet, the problem of the stateless person arises there.<sup>76</sup>

In the study of citizenship status and laws, there is much misunderstanding. The word nationality is used between an individual and sovereign state and citizenship term is used in domestic laws in Public International Law.<sup>77</sup> The most significant difference in citizenship is that citizen can take part in the political field of the country. The most advanced countries nationality is similar to citizenship.<sup>78</sup>

### 1.7. WHO IS A STATELESS PERSON?

There are 15 million people who are stateless around the world which are all deprived of legal identity and their anguish is too much.<sup>79</sup> The importance of statelessness is found in the international relation who is concerned about a number of people who do not have any nationality.<sup>80</sup> According to Article 1 of the Convention Relating to the Status of Refugee 1951,<sup>81</sup> statelessness is an international human rights' issue which is affecting the millions of people' families and communities. It may be called as a form of punishment which destroys

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<sup>76</sup>See NRC Report, *Statelessness and Citizenship*

<sup>77</sup>Kadelbach Stefan *Citizenship Rights in Europe* In Ehlers Dirk *European Fundamental Rights and Freedoms* (Berlin: De Gruyter Recht Part V, 2007) 547-548

<sup>78</sup>Ibid

<sup>79</sup>Alice Edwards and Laura Van Wass *Nationality and Statelessness under International law* (University Printing House Cambridge: United Kingdom, 2014), 1

<sup>80</sup>Carol A. Batchelor, *Stateless person: Some gaps in International Protection* (Oxford University Press, *International Journal of Refugee law*, 7 2 1993), 231-233

<sup>81</sup>Convention relating to a stateless person means a person, statelessness means a person who is not considered as a national by any state under the operation of law

the individual's rights. The person who does not have any nationality would always remain vulnerable and all his rights would be violated<sup>42</sup>

Article 1(1) of the Convention Relating to the Status of Stateless Person, 1954 gives the definition of stateless person "stateless person is that who is not a national of any country under any national law"

### **1.7.1. History of Statelessness Before and After World War II**

The European Union passed the laws and granted the permission to denationalize their citizens after the World War I. These laws become the source of statelessness in the past and present nation state system. States are main cause of statelessness in the modern age because many European States has passed the laws of the exile for the annoying citizens. Another reason for the statelessness is inconsistent laws that permitted to reduce the territory and to create a new nation state. In this regard many changing has been made in the history after the World War I as Old empires like Austria-Hungary collapsed, new nation states such as Czechoslovakia appeared, and border regions, including Alsace-Lorraine, were transferred to other nation states. The Paris Treaties of 1919 becomes the inspiration of Eastern Europe Nationality Policies for the protection of national minorities. Furthermore some different protocol in the treaties become the cause of statelessness and deprived them to their homes.

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<sup>42</sup>Zahra Albarazi and Dr. Laura Van Waas, Statelessness and Displacement (Gillburg University), Report 7



It is informed that international treaties need some obligations because in the common situation are increasing the difficulties. The nationality and citizenship has created the problem for the women due to their marriage and birth place.

There are various international treaties which forbid to the states to banish the people and direct them to follow the principle of non-refoulement.<sup>43</sup> In the postwar period, the refugee took to stay in those countries where they were and got the solution for it under the international laws.

The questions arise here that the international universal documents and the internationally binding convention would be supportive for that who renounces their citizenship. It is astonishing to relate the problem who wants to change the term as state sovereignty. As many actors except de facto stateless transfer their power to the nation state during the postwar. The definition of stateless person has been defined in the United Nations Convention, 1951. The person who voluntarily becomes stateless neither included in it nor protected.<sup>44</sup> A social human rights movement has been started after the World War II. The numbers of international treaties and organizations have been started working for the human rights. So, ratification of the treaties has become increasingly started. In the 20<sup>th</sup> century, when the organizations were working hard for the progress and betterment of the country's situations. A human rights war was fought and won. An extensive range of kinds of persons is covered in the regime? Children, indigenous people, gays and lesbians, and the disabled,

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<sup>43</sup>It is a principle of international law, which forbids the rendering of a true victim of persecution to his or her persecutor. Generally, the persecutor in mind is a state actor. It is a principle of both the customary and treaty law of nations.

<sup>44</sup>Miriam Rurap, *Live in Limbo: Statelessness After Second World War* (German Historical Institute) 118-126. Bulletin of the GHI 49, fall 2011.

for example The detail of the range of rights involved from basic civil and social rights to rights to health, education, social and political participation, and cultural self-expression<sup>85</sup>

### **1.7.2. Reasons of Statelessness**

There are many circumstances which may cause the statelessness such as by birth or during life Despite above mentioned reasons some of other elements are also responsible for it such as vulnerable groups Many of the people are deprived of their nationality due to religion and ethnic groups It was a hidden reason in which states priorities in the legal system created such type of violence State grants some rights and duties for its national but failed to protect vulnerable groups<sup>86</sup> But it is also a duty of the state to protect such kind of groups which are considered as vulnerable groups

#### **1.7.2.1 Conflict of Nationality Laws**

In this example, we can explain that if one state gives the parental nationality and the second state gives nationality by birth In the case of the combination of these nationalities it can be said in the case of parentage no any other nationality is required These countries laws are good but it is difficult to know in which country nationality he /she has

Many regulations had been made for the reduction of the statelessness, but in the case of nationality laws deprived the individual stateless The main reason is the migration at

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<sup>85</sup>John W Meyer, Patricia Bromley and Francisco O, *Human Right in Social Science book cross National Analysis 1970-2008*, American sociology Association (2010) 112-113

<sup>86</sup>Groups that experience a higher risk of poverty and social exclusion than the general population. Ethnic minorities, migrants, disabled people, the homeless, those struggling with substance abuse isolated elderly people and children all often face difficulties that can lead to further social exclusion, such as low levels of education and unemployment or underemployment.

international level which creates the conflicts and by increasing the protection the statelessness can be avoided. For example, Brazil and Indonesia having many new laws and regulations make the report about the difficulties which are facing stateless person, for their citizens who are living outside among countries.

### **1.7.2.2. State Successions**

In specific situation where the conflict of laws was high at the same time, the problem of state succession may arise. When a part of state separated or state split into many new states, then what happens to affected people's nationality is a vital issue in international law. Therefore, theory of state succession means a replacement of state succession<sup>87</sup>. State succession is also a cause of statelessness. These laws leave the people without nationality, sometimes the national of original state may reduce the statelessness. In these cases, the vulnerable groups who are engaged with it remain the stateless person. These types of state successions are the main cause of statelessness in an extensive measure.

### **1.7.2.3. Annexation**

The procedure of de colonization was a method of state succession which needs attention and special care in current regime. The newly independent states tried to make rule for nation building, identity and the treatment of the minorities. This history of de-colonialization did not explain any procedure of discrimination and arbitrariness. All these reasons may be

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<sup>87</sup> Huma Hameed, *International law: Notes and References* (Mozang Road Lahore: Law book house) 134

understood to talk about the stateless person. Randomly denial of citizenship has also become the cause of statelessness.

Arbitrarily acts have affected large number of people on the basis of religion and language. In a country, many stateless groups are minorities in many cases. They are connected sometime to the other states in many cases. All the nationality laws may also contain to restrict certain groups to a right of own property.

Many vulnerable groups have objectives of their political believes while nationality is an access to get the political rights and can cause the removal of opponents rivals. Security grounds are also cause of deprivation of nationality. The criteria which is including as due process of slandered. In the form of nationality policy is another form of discrimination in the nationality which creates the problem of the statelessness. For example, when a woman does not enjoy the equal rights to transfer the nationality to her child as a man, the children are the indiscriminating possibility of statelessness.

In a case where a father cannot transfer his nationality and can't take any step which is required to transfer nationality to the child where a mother is powerless to transfer her nationality. Around the world, this type of gender discrimination is still present.

#### **1.7.2.4. Administrative Barriers and Lack of Documentation**

One of the main causes of statelessness is to get the document of nationality. In such case, they found too many hurdles such as ethnic, religious as urban and rural population. Its main reason is poor administration. The person, who have problems to get the forms of civil

registration and failed to prove his identity to the state as a national, came in these categories from all over the world. All the persons who are failed and having difficulties to get the nationality due to vulnerability as migrant or refugee also came in this situation.

#### **1.7.2.5. Statelessness Due to Inheritance**

Inheritance is also a cause of statelessness. We found its history in ancient times. States have no any law to stop the statelessness which is transferred from parents to child and have no precaution to prevent it. In the case of migration, it creates a new problem of the stateless person in that country. Simply it is a method to promote the statelessness into a new generation. While they don't know how they get rid of statelessness from the birth and how to protect the nationality. It is destroying the whole world. For example, in Arabs nationals are also denationalized after disobeying the rule of government to leave the office after serving the government or military to another country without the consent of their own country.

THU 7/7/1

## 1.8. WHO CAN BE A STATELESS PERSON IN PAKISTAN AND THE UNITED KINGDOM?

### 1.8.1. Pakistan

The concept of statelessness in Pakistan is not clear. A Universal Periodical Review by the submission to the UNCHR in which Pakistan clarifies the Bengalis, Beharites and Burmese are unofficial migrants, who consider themselves the citizen of Pakistan.

In 2012, the BBC reported about the case of Muhammad Idrees, who lived in Pakistan and had been held under Indian police control for approximately 13 years for overstaying his 15-day visa by 2-3 days after seeing his ill parents in 1999.<sup>44</sup> He spent much of those 13 years in prison waiting for a hearing, sometimes homeless or living with volunteer families. Both states denied his citizenship. However, they are not considered as nationals by the government of Bangladesh and Myanmar.

US departmental reported that there are thousands of people who are stateless in the Pakistan and taken by national and International agencies. Statelessness is a worldwide problem, if we consider its scenario in Pakistan, about 3.5 million Bengalis are living in Pakistan. It is the indication that statelessness can exist on the larger scale in the country. For this purpose, UNCHR is working to take measures in future for the statelessness to reduce in Pakistan. A case in Africa is an evidence of statelessness which is severely underreported in Asia and Pacific at present. According to The Protection of Pakistan Act, 2014 a person may

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<sup>44</sup>"Muhammad Idrees: Abandoned by India and Pakistan - BBC News" BBC News (Last Accessed May 12, 2016)

be a stateless person, whose identity is uncontainable as a Pakistani in the locality where he has been arrested or in the locality where he claims to be residing, whether by documentary or oral evidence and

The main purpose of the punishment is restitution for the crime. Some criminals are treated very lightly, who threaten the society's security, and this act is very deleterious. Society has the right to be secure and keep their safe. Recompense should be received by the criminal till getting his pleasure with talking evil path instead of right path. Holy Quran has proclaimed this purpose when revealing a number of castigations.<sup>89</sup> God says

“The recompense for those who wage violent transgression against God and His Messenger and who go forth spreading corruption in the Earth is that they should be killed or crucified or that their hands and feet should be cut off on alternate sides or that they should be sent into exile.” (Quran 5:33)

### **1.8.2. United Kingdom**

Every year thousands of people who seek asylum and submit the applications under the Immigration laws are known as stateless people by the UK authorities.<sup>90</sup>

The British Home Secretary may deprive any person of his nationality if she comes to know about any person that he may become harmful for the country after her satisfaction according to the British Nationality Act, 1981 and the Nationality, Immigration and Asylum

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<sup>89</sup>[http://www.islamicherald.com/index.php?option=com\\_content&view=article&id=161](http://www.islamicherald.com/index.php?option=com_content&view=article&id=161) (Last Accessed May 12, 2016)

<sup>90</sup>Institution on Statelessness and Inclusion, *The World's Statelessness* (Wolff Legal Publishers 2014) 102

Act, 2002. There is a right to appeal but not in any ordinary court. For citizens' rights, there is not any constitutional basis in the United Kingdom, these only depend on the statutory provision which is made by separately from the nationality laws having one exception. The British Nationality Act, 1981 indicates that British Citizen only has right of residence in the United Kingdom.<sup>91</sup>

The United Kingdom had adopted a Statelessness Determination Procedure, in 2013.<sup>92</sup> This procedure would be helpful to any stateless person who is in the United Kingdom and there is no limit for those who are having a lawful residence. However, permanent residence may be granted of stateless person after the five years. It is an efficient procedure for the asylum seeker.<sup>93</sup>

According to the stateless person, this procedure will help to examine the United Kingdom's legal obligations under international law and will analyze the influence of modern strategy and practice. It will make a recommendation report for the improvement, which is based on results. The Home Secretary of United Kingdom assured that this procedure will be practiced in the country.<sup>94</sup>

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<sup>91</sup>Rainer Baubock and Eva Ersboll, *Acquisition and Loss of Nationality: Policies and Trends in 15 European States*, Vol 2 (Amsterdam University Press, Amsterdam, 2006), 553-562.

<sup>92</sup>UNHCR (9 April 2013) "UK's new determination procedure to end legal limbo for stateless" (Last Accessed May 13, 2016).

<sup>93</sup><http://www.ecrc.org/uk-introduces-a-stateless-determination-procedure/> (Last Accessed May 13, 2016).

<sup>94</sup>[http://www.asylumaid.org.uk/wp-content/uploads/2013/08/ST-A1-F1-ESSNESS\\_BRIF.pdf](http://www.asylumaid.org.uk/wp-content/uploads/2013/08/ST-A1-F1-ESSNESS_BRIF.pdf) (Last Accessed May 13, 2016).



## 1.9. CONCLUSION

In the first chapter, it is concluded that nationality creates a legal relation between state and person by providing a jurisdiction and protection to any person depending on its national law. The meaning of nationality has not been defined as yet. In some extent, nationality is the matter of international institutions. There are different kinds of nationality such as double nationality, multiple nationalities. In contrast, in the British law, there are six kinds of nationality such as, British Citizenship, British overseas territories citizenship, The British subject, British national (overseas), British overseas citizenship, and British protected person. There are also different principles of nationality as the legal principle of nationality, the principle of active personality, the principle of passive personality, the principle of protective personality and universality principle. In the international law nationality is a right under Universal Declaration Human Rights as its article states that everyone has right of nationality no one can be denied from his right. Nationality may be changed by acquisition or retention. It is the discretion of the court to grant nationality as a right or to receive it one's choice. In the advisory opinion of Inter-American court it is declared that it is a power of the state to regulate the matter relating the nationality by their requirements for the protection of Human Rights. But under the international customary law, there is not any right to gain or change the nationality. There are different methods to lose and to acquire the nationality. Nationality may be claimed by birth but citizenship would be registered in any country's government. Naturalization means to get nationality inheritance from the parents. But people become a citizen of a country when it is accepted by the country's the political-

legal frame work Everyone has a different citizenship but can't change the nationality  
Citizenship requires full civil, political and social rights In nationality, a person does not  
exercise full political rights in a state Firstly, nationality means a country which is a  
person's birth place Secondly, citizenship means a legal status it means a person has the  
legitimate affiliation with the government in a country There is a long history of  
statelessness before and after the World War II There are many international treaties which  
forbid the states to banish the people and to follow the principle of non-refoulement In the  
postwar period, the refugee took to stay in those countries where they were and got the  
solution for it by the international laws Somehow there are different reasons for the stateless  
person in Pakistan and the United Kingdom The next chapter will explain the link between  
the statelessness and human right in detail

## CHAPTER NO. 2

### LINK BETWEEN STATELESSNESS AND HUMAN RIGHTS

#### 2.1. INTERNATIONAL LAW ON STATELESSNESS

The International organization is formed under public international law with the combination of the different states. For instance, United Nations was formed on 24 October 1945 as an international organization. At the international, regional and domestic levels human rights are promoted and protected by International Human Rights Law, which is made up of treaties, binding legal agreements, and customary international law. We got knowledge of human rights from the consequences of World War I<sup>95</sup>

Due to lack of nationality protection, a stateless person can't enjoy the basic fundamental rights. Moreover, he is treated like a foreigner. Each and every state has established various rules for acquisition and loss of nationality.

In ancient times, nationality and statelessness are the two sides of the same coin and it will be detrimental to speech of one without understanding the impact on other<sup>96</sup>

In New York and Geneva United Nations held a conference in 1959 and 1961 on the Elimination or Reduction of Future Statelessness, with a draft of Convention on Reduction of Statelessness acting as basis for statelessness<sup>97</sup>

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<sup>95</sup>Marcy Damovsky, Diane Beeson, *Global Surrogacy Practices*, International Forum on Intercountry Adoption and Global Surrogacy, International Institutes of Social Studies The Hague 2014, p 7

<sup>96</sup>Institute on Statelessness and Inclusion *The World's Stateless* (Wolf Legal Publishers), 19-22

### 2.1.1. The Hague Convention, 1930

The first convention treaty concerning statelessness in 1930 in which League of Nations advised all of its member countries to eliminate the statelessness<sup>98</sup> Its all provisions are regarding the prevention of statelessness such as among the children and married women The Hague Convention, 1930 and its protocol did not define the term statelessness or stateless person Although this convention has 13 state parties and 11 states has ratified its protocol<sup>99</sup>

This convention is planned to make sure that the Stateless people enjoy the minimum set of human rights<sup>100</sup> According to the 1954 Convention Relating to status a Stateless Person means, someone who does not have the nationality of any country This convention also grants the right of identity When UNCHR launched the Campaign to End the Statelessness There were 83 states parties to this Convention in November 2014<sup>101</sup> Addressing about the statelessness was planned to be within the 1951 Convention relating to the Status of Refugee 41 protocol But it was not planned to grant another nationality

The main purpose of the Convention Relating to the Status of Stateless Person 1954 the case of failure of national protection which has been reflected for the protection of the

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<sup>97</sup> Stefan Zweig, quoted in UNHCR, *Problematising the Conventions on Statelessness* (2008)

<sup>98</sup> That "it is in the general interest of the international community to secure that all its members should recognize that every person should have a nationality"

<sup>99</sup> Natasa Nikolic, *De Jure Statelessness in Serbia*, (A Critical Analysis of the Legal Framework with Regards to Combating Statelessness and the Protection of Stateless Persons), 23-27

<sup>100</sup> As someone who is "not recognized as a national by any state under the operation of its law"

<sup>101</sup> <http://www.unhcr.org/pages/4a2535c3d.html> (Last Accessed May 18, 2016)

international stateless person who is not refugees Article 1 of this Convention<sup>102</sup> entirely focused on the legal relation with a state without discussion the quality of one's nationality

In 1954 Convention relating to the stateless Person the definition which is given known as De Jure statelessness De jure stateless person means the person who has not received the nationality automatically under the operation of any states law, but this statement is wrong There are many stateless people nowadays either De jure or De facto are not a refugee From the human right law and from the Convention of 1954, De facto stateless person can get a benefit and the state parties of the convention are proposed to extend its provisions regarding the de facto stateless person

### **2.1.2. Convention on the Reduction of Statelessness, 1961**

The main purpose of this convention is to prevent statelessness and to decrease it It gives the right of nationality to every person in international frame work It does oblige to every state to establish the safety measure in their nationality laws to prevent the statelessness at birth and later life

The most important provision of the convention states that it is necessary for the children to get the nationality in which country they are born If they don't get any other nationality This convention gives very limited conditions in which a state can deprive a person of his nationality In November 2014 there were 61 state parties to the Convention on

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<sup>102</sup>A stateless person is a person who is not considered as national by any State under the operation of its law"

the Reduction of Statelessness, 1961 when UNCHR launched a Campaign to End Statelessness in 10 years<sup>103</sup>

This law would be applied on the orphans and children who born whether on ships or in plane Article 9 protects the non-discriminatory slandered by stating that a party state can't deprive any person or groups of persons from their nationality on any ground Finally, it is advised to the state parties to confirm that there is not any statelessness arise in the case of transfer of property

Furthermore, the 1961 Convention does not specify how to prove the fact of being at risk of statelessness, who should prove it and what kind of evidence are needed? By this omission, it is up to state discretion to determine how the risk of statelessness is to be proved, which may lead to intentional or unintentional manipulation<sup>104</sup>

### **2.1.3. European Convention on Nationality, 1997**

In Article 4 the main principle of European Convention on Nationality is to give a clear statement to avoid the statelessness The special provisions are designed for the prevention of statelessness among Children, facilitated naturalization, and prohibition of renunciation of nationality in case of statelessness<sup>105</sup>

This convention provides the procedure of implementation and protection of right of nationality By this complement the two United Nations statelessness Conventions it

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<sup>103</sup><http://www.unhcr.org/pages/4a2535c3d.html> (Last Accessed May 18 2016)

<sup>104</sup>Natasa Nikolic, *De Jure Statelessness* (Department of Archaeology and Social Anthropology, University of Tromso, 2013), 27

<sup>105</sup>Ibid 28

provides the international standard on statelessness and it helps the European state to talk about the nationality problems with the states which are not the member of the council of Europe

The Convention Relating to the Status of Stateless Person, 1954 only provides framework for the protection of stateless person and human rights but has not explained the specific legal status for them. Nationality is a fundamental right, the council of Europe has made the European Convention on Nationality and the Europe Convention on the Avoidance of Statelessness in Relation to State Succession

There is much remuneration to the party states and societies under European nationalities Convention on the Avoidance of Statelessness. It is a first international treaty as the Council of Europe Convention that provides the rights and duties of the states which state succession process<sup>106</sup>

#### **2.1.4. European Convention on the Avoidance of Statelessness in Relation to State Succession Council, 2006**

State succession is one of the reasons of statelessness. 2006 Convention urges the successor state to grant nationality to a person who is at risk of being stateless, if they had the nationality of predecessor state or had the habitual residence at the time of state succession

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<sup>106</sup>Directorate General of Human Rights and Legal Affairs Council of Europe F-67075  
Strasbourg Cedex www.coe.int/justice-----  
[http://www.coe.int/t/dghl/standardsetting/nationality/nationality\\_enA3.pdf](http://www.coe.int/t/dghl/standardsetting/nationality/nationality_enA3.pdf) (Last Accessed May 22  
2016)

To eradicate the statelessness at birth it is the responsibility of every state party to grant the nationality to the birth to every child state succession in its territory as the parents were the predecessor national otherwise the child remain would be stateless 2006 convention clearly emphasizes that it would be applied to de jure statelessness, unlike the Convention on the Reduction of Statelessness, 1961 <sup>107</sup>

### **2.1.5. Universal Declaration of Human Rights, 1948**

According to UDHR 1948 Article 15(1) declared "Everyone has the right to a nationality," and "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality "

Due to many contradictions in international law in its necessary condition, it clarifies that what happened to the people who fall between the definitions In the 1950 inauguration of the two groups in the result of World War II, 1951 Convention Relating to the Status of Refugee and as well as 1954 Convention is Relating to the Status of Stateless person There were two drafts of conventions were established One is on the reducing future of statelessness and the second one is on its elimination Pakistan and the United Kingdom is the signatory of UDHR 1948 <sup>108</sup>

In 1949 a committee was appointed of thirteen government's representative it means to eliminate the problem of statelessness In 1950 it was a request for this group the

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<sup>107</sup>The Universal Declaration of Human Rights, 1948

<sup>108</sup> <http://unethiopia.org/universal-declaration-of-human-rights-signatories/>(Last Accessed May 22 16)



International Law Commission (ILC)<sup>109</sup> appointed Manley Hudson permanent Judge of the court of international Justice so as a special Reporter for the study of Nationality including Statelessness. So this report gives an attention about the Convention Relating to Statelessness and Reduction of Statelessness.

## **2.2. ROLE OF UNITED NATIONS HIGHER COMMISSIONER FOR REFUGEES, 1950**

UNHCR has established his office on 14<sup>th</sup> December 1950. It is the official duty only for that stateless person when they are the refugees. In 1974, when the Convention on the Reduction of Statelessness, 1961 came into being it was applied also those who were not the refugee. United Nations held a conference in New York and Geneva in 1959 and 1961 on the Elimination or Reduction of Future Statelessness. It gives an opportunity with former agreements to the states that granting and withholding of citizenship status was a sovereign right of states<sup>110</sup>. It provides an opportunity with former agreements to the states that granting and withholding of citizenship status was a sovereign right of states<sup>111</sup>. It has been suggested sometimes that, UNHCR does not have the authority to make determinations of statelessness, since States alone determine who are their citizens<sup>112</sup>.

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<sup>109</sup>The International Law Commission was established by the United Nations General Assembly in 1948 for the "promotion of the progressive development of international law and its codification." It holds an annual session at the United Nations Office at Geneva.

<sup>110</sup>Stefan Zweig, Quoted in UNHCR *Problematising the Conventions on Statelessness* (2007), 7-11.

<sup>111</sup>Ibid.

<sup>112</sup>Hugh Massey, *Legal and Protection Policy Research Series UNHCR and De Facto Statelessness* (Geneva: Switzerland, 2010), 51.

### 2.2.1. Campaign of UNCHR 2014 to Eradicate Statelessness

It is very difficult to be a state for a stateless person. So, these persons are forced displaced or victim of conflicts and enjoy limited rights or services in their host country. So this campaign makes different goals to eliminate the statelessness. All of these goals are very obligatory and important to eliminate statelessness, although due to the state provision statelessness produces the loss of right and the questions about the actual nature of right has yet to be answered <sup>113</sup>

The year 1949 saw the appointment of a committee of representatives of thirteen governments to consider 'means of eliminating the problem of statelessness'. Following a request from this group, in 1950, the International Law Commission (ILC) appointed Manley Hudson, former judge of the Permanent Court of International Justice, as Special Rapporteur for the Study of Nationality Including Statelessness. He was then supported by Gerrit Jan van Heuven Goedhart, the first United Nation High Commissioner for Refugees (hereafter UNHCR) and Paul Weis, a Harvard academic. This report draws attention to the Conventions Relating to Statelessness and to the Reduction of Statelessness. There were two drafts made under the convention. One is on the reducing future statelessness and the second is to eliminate the statelessness <sup>114</sup>

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<sup>113</sup>Johanna K. Schenner, *Stateless Persons and the Question of Rights* (University of Sheffield 2007), 2-3

<sup>114</sup>Problematizing the Conventions on Statelessness, (Institute on Globalization Culture and Mobility | Endaï Bloom, *UNU-GCM Policy Report*, 2000)7-8

## **2.3. INTERNATIONAL DOCUMENTS AND ORGANIZATIONS**

There are many international documents and organizations which emphasize on the stateless person. For the elimination of Gender inequality, it is the duty of United Nations to increase its efforts equality in nationality laws and also to protect the vulnerable groups and to support the rules related the statelessness.

### **2.3.1. Convention on the Elimination of All Forms of Discrimination against Women, 1979**

Attaining general equality in nationality laws would constitute a major step forward in preventing statelessness. International human rights law grants the equal nationality rights for women as compared to men. All the provisions of convention emphasize the gender equality which is discussed above, for this purpose the implementation of this documents/convention are necessary.<sup>115</sup> Article 9 mandates states parties to "grant women equal rights with men to acquire, change or retain their nationality" and equal rights "with respect to the nationality of their children".

### **2.3.2. Convention on the Right of Child, 1989**

Around the world 12 million people are affected by the statelessness, the child is the vulnerable group among them. According to Open Society Justice, 5 million are minors. In case of lack of nationality, many stateless children brought up in poverty and are denied the

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<sup>115</sup>CEDAW Statement on the Anniversaries of the 1951 Convention Relating to the Status of Refugees and the 1961 Convention on the Reduction of Statelessness Adopted on 19 October 2011 during the 50th session A call for Gender Equality for Refugees and Stateless Persons 1-2

basic rights and facilities such as access to education and health care. Convention on the Right of Child is extremely important when it talk about the certain category of child's right to nationality because every country has to rectify it

Article 7 of the convention granted the child's right to acquire a nationality. It is necessary to the state parties to implement the right where the child is stateless.

Even the Committee on the Right of Child has not explained the accurately that what is the right to acquire a nationality mean practically? It is obligatory on states to take the appropriate steps for the safeguard of the children and to ensure that no children are left stateless. The vulnerable statelessness is those children who belong to ethnic groups particularly when the new states are created or break up. Normally, the people and the minority who belong to the other side are denied nationality in all of the new states.<sup>116</sup>

UN's Human rights council is a body who is responsible for the protecting and promoting Human rights in the world passed an important resolution on the right to nationality focusing on women and children.

The most harmful situation of statelessness for the children is the education. In Inter-American case of *Yean and Bosico v The Dominican Republic*, there were the two applicants who were children denied Dominican nationality. In this case, the Inter-American Commission receives a petition for denying the Dominican Nationality, however, the two children Dilicia Yean and Violeta born in the same country. They cannot attend the school.

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<sup>116</sup>Open Society Justice Initiative Children's Right to a Nationality 1-2

due to lacking of nationality documents. So right of nationality gives the political and civil rights. It is the obligation on state to grant the right without discrimination<sup>117</sup>

Article 8 defines that it is a duty of the Government to protect and respect the child's identity, as no one changes the name or nationality unlawfully. In case, if a child is deprived of his identity illegally, it is a duty of the government to defend and protect the child to reestablish his identity<sup>118</sup>

Considering the CRC's near-universal rectification (compared with the 55 Member States to the 1961 Statelessness Convention), the Committee's full significance to the prevention of child statelessness from birth is yet to be explored<sup>119</sup>. Pakistan and the United Kingdom rectified the Convention on the Rights of Child and 190 states become parties by approving the Convention<sup>120</sup>

## 2.4. HOW CAN A STATE ASSIST TO PROTECT THE PERSON?

UNHCR is selected by the United Nations General Assembly for resolving the statelessness issues and protect the stateless person. Not only the main problem of statelessness and refugee are connected, protection of the stateless person in different ways are similar to dealing with the refugee.

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<sup>117</sup><https://www.escri-net.org/caselaw/2006/case-jean-and-bosico-children-v-dominican-republic-eng> (Last Accessed May 22, 2016)

<sup>118</sup>A summary of the United Nations Convention on the Rights of the Child: A better life for every child 1-2, UNICEF UK Registered Charity No. 1072612

<sup>119</sup>Jill Stein, Child Statelessness: Convention on the Rights of the Child Committee on the Right of the Child Nationality Birth Registration: The prevention of child statelessness at Birth under the convention on the rights of the child: the committee's Role & potential, 3

<sup>120</sup>Dr. T. S. N. Sastry, *Human Rights of Vulnerable & Disadvantaged Groups Registrar*, 1<sup>st</sup> ed (University of Pune: Ganesh khind Pune, 2012), 47

These two situations have lack international protection. About the categories of citizenship different states have different laws that provide the right to a different level. For the purpose of international law, there are two categories which are applicable as to be a national or stateless.<sup>121</sup> The present study was introduced as part of these endeavors.<sup>122</sup> So the current study was commencing endeavors.<sup>123</sup>

## **2.5. Domestic Laws of the Countries (Pakistan and the United Kingdom)**

### **2.5.1. Pakistan**

The Pakistani nationality law governs citizenship of the Islamic Republic of Pakistan. The principal legislation determining the nationality is, the Pakistan Citizenship Act, 1951 was passed by the Constituent Assembly of Pakistan on 13 April 1951. Along with Cambodia Pakistan is one of two countries in the World with unconditional *jus soli* citizenship rights.<sup>124</sup>

There are two legal statutes on refugees one is the Foreigners Act 1946 which was amended in 2001. Second is the Tripartite Agreement. The Foreigners Act 1946 states that a refugee is not a legal citizen of Pakistan. There is no provision in the law that allows a refugee or asylum seeker to be the citizen of Pakistan, thus calling for suitable amendments in the Act by the parliament. Pakistan has allowed refugees not on legal grounds but on

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<sup>121</sup>Alice Edwards and Laura Van Waas *Nationality and Statelessness under International Law* (Cambridge CB2 8BS United Kingdom Cambridge University Press 2014) 41

<sup>122</sup>Mapping statelessness in the United Kingdom. United Nations High Commissioner for Refugees/Asylum Aid, London, November 2011 26-27

<sup>123</sup>Ibid

<sup>124</sup>The Pakistan Citizenship Act 1951, Act No. 11 of 1951

humanitarian grounds<sup>125</sup> That's why Afghan refugees in Pakistan are not given Pakistani nationality, most of them were born in Pakistan<sup>126</sup> Pakistan should review its policy toward Afghan refugees for addressing certain imbedded irritants and subsequent consequences Policies improvised under pressures or fear result in ignoring important long-term factors and irreparable losses<sup>127</sup>

People who have the double nationality can't hold a government office in Pakistan Rehman Malik's Supreme Court-order suspension from the Senate and MNA Farahnaz Ispahani's similar experience not too long ago based on their holding dual citizenship Political and legal circles in Pakistan are currently debating the legality of whether those with multiple passports can hold public office in this country<sup>128</sup> In Rehman Malik case the Supreme Court has deferred his Senate membership as an Interior Minister of the Pakistan A bench of three members of Supreme Court by the supervised of Chief justice Ifikhar Chaudhary heard the dual nationality case and announces its interim order Malik Rehman had claimed that he had stripped of his British citizenship but was unsuccessful to deliver the adequate proof with documents to the Supreme Court<sup>129</sup>

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<sup>125</sup>[http://www.ips.org.pk/the-muslim-world/1023-afghan-refugees-in-pakistan-current-situation-and-future-scenario/#\\_ftn37](http://www.ips.org.pk/the-muslim-world/1023-afghan-refugees-in-pakistan-current-situation-and-future-scenario/#_ftn37) (Last Accessed May 23, 2016)

<sup>126</sup>"PAKISTAN Tolerance wanes as perceptions of Afghan refugees change" *Irin* February 27, 2012 Retrieved September 20, 2014 (Last Accessed May 23, 2016)

<sup>127</sup> The role of UNHCR, in this case, needs to be reevaluated as to why it curtailed the funding subsequently when the repatriation process has gained momentum Its call for integration of refugees without offering tenable incentives to Pakistan does not make any sense Similarly the role of Karzai government to reintegrate these refugees in the backdrop of Tokyo conference funding raises more questions

<sup>128</sup>Qasim A. Moimi Published Jun 05, 2012, 09:01PM Dawn News Paper No Uniformity in Dual Nationality Laws

<sup>129</sup><https://www.geo.tv/latest/45729-dual-nationality-case-sc-suspends-rehman-maliks-senate-membership> (Last Accessed May 22, 2016)

### **2.5.1.1. The Pakistan Citizenship Act, 1951**

In this act, there are different methods to get the citizenship of Pakistan as it may get by birth, by the decedent, by naturalization or by migration. As section 16 of this Act provides the certain condition from the deprivation of citizenship,

A person may be a deprived of citizenship as,

- 1 By any false information, he obtains the citizenship
- 2 He found disloyal to the country from any question
- 3 If he has been engaging with any enemy during the war<sup>130</sup>

### **2.5.1.2. The Pakistan penal code 1860**

In the Pakistan Penal code 1860 chapter five deals all that offences which are relating to the offences against the state. Such as Article 121<sup>131</sup>, Conspiracy to commit offences punishable by section 121, Collecting arm etc., with intention of waging war against Pakistan punishable by section 122<sup>132</sup>

### **2.5.2. United Kingdom**

The Home Secretary of the United Kingdom as, Theresa May already has the power to revoke British citizenship if someone's presence is not "conducive to the public good" or if

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<sup>130</sup>The Citizenship Act, 1951

<sup>131</sup>Whoever wage war against Pakistan, or attempts to wage war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shell also be liable to fine.

<sup>132</sup>Whoever collects men, arm or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against Pakistan shall be punished with imprisonment of either description for a terms not exceeding ten year and shall also be liable to fine.



they have obtained British nationality by fraudulent means, but before this Bill she was not able to remove citizenship on conducive grounds if it left someone stateless. A few months ago the Supreme Court decided in the case of *Hilal al Jedda*<sup>133</sup> that it could not withdraw citizenship from an individual if this would leave him or her stateless. The right-win press had a field day and the government immediately set about changing the law in its favor. And so, Clause 60 of the Immigration Bill was born.

The reasons that people oppose granting the power to make a person stateless to any government is the lessons we have gained from history about the end game of such policies. The policy was utilized by Nazi Germany's Nuremberg Laws and various other totalitarian regimes. But we don't even need to look that far back. Theresa May has been nicking people's passports in almost total silence for a while now. A total 27 UK citizens have had their passports removed by the Home Secretary, according to her own office. At least two of those whose families received the official Notice of Deprivation were suspiciously killed afterward by the use of US drones<sup>134</sup>.

### **2.5.2.1. The British Nationality Act, 1981**

This Act provides the different ways of accusation of citizenship. Any person may be deprived of his citizenship as article 40 provides detail about its Secretary of the state may be deprived for the.

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<sup>133</sup> <https://www.thebureauinvestigates.com/2014/07/11/al-jedda-the-man-mentioned-11-times-by-home-office-as-it-tried-to-change-immigration-bill/> (Last Accessed May 22 2016)

<sup>134</sup> Theresa May Gifted Power to Make UK Citizens Stateless Under Draconian New Law Scriptonite / May 8 2014 (Last Accessed May 22 2016)

- 1 Public bona-fied
- 2 Fraud
- 3 Miss representation
- 4 Concealment of material fact <sup>135</sup>

## 2.6. CONCLUSION

In the second chapter, it is concluded that international, regional and domestic levels of the human rights are protected and promoted by international human rights law. A person can't enjoy the rights in any country due to the lack of nationality protection. Simply you can say that nationality and Statelessness are the two sides of the coin, it will be destructive to talk about the one without understanding the meaning of other. The Convention relating to the status of stateless person 1954 provides only frame work for the protection of human rights and stateless person but it does not explain the specific legal status for them. UN held a conference in 1959 and 1961 on the elimination and reduction of statelessness. There are different conventions regarding the statelessness.

The Hague convention 1930 is the first convention regarding the stateless person. In this conference, the League of Nation advised the state parties to eliminate the statelessness. It's all provision are concerning with the stateless person although this convention did not define term statelessness or stateless person. 1954 Convention gives the legal definition regarding the stateless person or statelessness. The basic purpose of the Convention Relating

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<sup>135</sup> The British Nationality Act, 1981

to the Status of Statelessness, 1961 and Convention on Nationality and European Convention, 1997 to prevent the Statelessness European convention on the avoidance of the statelessness in relation to state succession council 2006 states that it is the duty of every state party to eradicate the statelessness after granting the nationality at birth to every child UDHR grant the right of nationality to every person in its Article 15(1)

Pakistan and the United Kingdom are the signatories of UDHR UNCHR 2014 made a campaign to eradicate the statelessness This campaign has many goals to eradicate the statelessness There are many international documents and organizations who emphasize on the stateless person as CRC and convention on the elimination of all forms of discrimination against women There are different methods to every state to protect the stateless person In Pakistan, the domestic laws such as The Citizenship Act, 1951 and The Constitution of Pakistan, 1973 In the UK, The British Nationality Act, 1981 deals with this matter

## CHAPTER NO. 3

### EFFECTS OF STATELESSNESS IN PAKISTAN & THE UNITED KINGDOM

The effects of the statelessness are severe in Pakistan and the United Kingdom. The effects are not only limited to increase in population of stateless person but in some situation the rights of their children are also deprived.

The Convention Relating to the Status of Stateless Person, 1954 encloses a short set of rights that all the state parties should grant to every stateless person<sup>136</sup>. There are many important rights in this convention as discussed below<sup>137</sup>.

#### 3.1. DEPRIVATION OF BASIC RIGHTS FOR STATELESS PERSON IN BOTH COUNTRIES

The human fundamental rights protect the value and dignity of life. Those are all very important to enjoy the life to get progress in life and to become a member of a society<sup>138</sup>.

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<sup>136</sup>Natasa Nikolic, *De Jure Statelessness* (Department of Archaeology and Social Anthropology University of Tromsø 2013) 60

<sup>137</sup>The 1954 Convention guarantees the rights regarding access to courts, non-discrimination, movable and immovable property, transfer of assets, rationing, education, fiscal charges, naturalization (if being subjected to the State's jurisdiction), freedom of religion, identity papers (if physically present in the territory of the State Party), freedom of movement (in case of one's lawful presence), artistic rights and industrial property, administrative assistance, association, wage-earning employment, self-employment, practicing liberal professions, housing, public relief and assistance, labour and social security, travel documents, prohibition of expulsion, exemption from legislative reciprocity (if meeting the requirement of lawful stay or habitual residence).

Under a democratic Government in every society, basic fundamental rights are granted to every citizen. Different provision of the Constitution of Pakistan, 1973<sup>139</sup> may be offended by of this Act<sup>140</sup> as different rights<sup>141</sup>. The Constitution of Pakistan, 1973 is a basic document and enjoys the supremacy upon all the documents which are in practice. Any law which is contrary to the Constitution of Pakistan 1973 is null and void. As chief Justice Munir wrote<sup>142</sup> in short "the law should be according to the basic document (Constitution)"<sup>143</sup>

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<sup>138</sup>Dr. Faqir Hussain, *Testing the Vires of PPA on the Touchstone of Constitution* Federal Judicial Academy Islamabad 9-10

<sup>139</sup>The Constitution of Pakistan, 1973

<sup>140</sup>The Protection of Pakistan Act, 2014

<sup>141</sup>i. Preamble/Art. 2-A provide for observance of principles of democracy, freedom, equality, social justice, guarantee of fundamental rights including equality of status, opportunity and before law, social, economic and political justice, freedom of thought, expression. The fundamental rights are to be enforced by independent/impartial judiciary

ii Art 4 provides for rights of individual to be dealt with in accordance with law

a No action detrimental to life or liberty, save in accordance with law

b No person shall be prevented from doing that which the law does not prohibit him to do

c No person shall be compelled to do that which the law does not require him to do

iii Art 9 No person shall be deprived of life or liberty save in accordance with law

iv Art 10 provides safe grounds against arrest/ detention. No arrest except for breach of law, right to know grounds of

10 detention, to engage a legal counsel of choice and be produced before Magistrate within 24 hours of arrest. No further detention except on remand granted by Magistrate

v Art 10A provides for right to fair trial and due process

vi Art 14 provides for inviolability of dignity of man, privacy of home and prohibits torture for extracting evidence

vii Art 15, 16, 19 provide for freedom of movement, assembly, speech

viii Art 24 provides for protection of property

ix Art 25 provides for equality before law and equal protection of law

<sup>142</sup>Constitution is the "supreme law from which all authorities derive their powers, all laws their validity and all subjects their rights". Therefore, it should prevail at all times and in all circumstances. It must be respected and enforced. In the words of George Bidault "The good or bad fortune of a nation depends on three factors: its constitution, the way the constitution is made to work and the respect it inspires"

<sup>143</sup>The Constitution of Pakistan, 1973

it would be a challenge and Art 8 appealed to null and void <sup>144</sup> UN Special Report of Non-citizens According to it

A large gap has been seen between realities and international human rights law which is ensured to the non-citizens. Unfortunately, many countries are violating the rights of the non-citizens in the case of terrorism <sup>145</sup> Many states are showing unwillingness for the existence of the stateless person in their territories. However, they are often counted in a residential category or as undifferentiated aliens. By the Refugee International research, the exact number of the stateless person is not known <sup>146</sup> Bangladesh has more than 25000 Beharites living in slums, which was established 33 years ago but both Pakistan and Bangladesh are refusing to give them the nationality.

A stateless person does not get benefits like the refugee and internally displaced person by the Government. Other aiding agencies call the stateless person as the international orphans <sup>147</sup> It is not an unsolved phenomenon. Although Amnesty International, United States of America and Refugee International recommended that

The Government gives respect to all individuals' basic rights, stick to all standards at international level, to protect their stateless people, take every step to lessen statelessness, permit non-citizens to have equality in their rights and ensure that every child has registered

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<sup>144</sup>Dr. Faqir Hussain, 'Testing the Vires of PPA on the Touchstone of Constitution' Federal Judicial Academy, Islamabad, 9-10

<sup>145</sup>David Weissbrodt, *The Human Rights of Non-Citizens* (Oxford University Press, United Kingdom 2008), 212

<sup>146</sup>M. Lynch, *Lives on Hold: The Human Cost on Statelessness* (Refugees International, Washington 2005), 7

<sup>147</sup>Niklaus Steiner, *International Migration and Citizenship Today* (London & New York: Routledge 2009) 104

at the time of birth NGOs and United Nations give relief for needs of persons which are stateless, and also conduct a survey at the global level for identification of stateless populations UNHCR support all NGOs and United Nations which are working for the stateless people <sup>148</sup>

It is a violation of the human rights and fundamental freedoms that to deprive a nationality of a person on the base of racial, national gender grounds or religious base <sup>149</sup> It is the arbitrary deprivation of nationality on the basis of national, ethnic, religious or genders grounds Therefore, it is a violation of the human rights and fundamental freedoms <sup>150</sup>

In July 1986, government of Pakistan has signed an agreement with the Saudi Arabia which was based Humanitarian organization Riba Al-Alam-Al-Islam Saudi Arabia established a trust Rabita Trust Deed to assemble the fund for the deportation of the remaining 250000 Pakistanis from Bangladesh and president Zia –Ul- Haq was appointed the chairman of this trust Suddenly the death of president Zia –Ul-Haq occurred in 1988, and the whole process of this committee again stayed out It was re-established in August 1989 under the presidential form of Mr Yakub Khan as its chairman but it could not get any success

In 1988, Benazir Bhutto after becoming the Prime Minister of Pakistan faced some difficulties in resolving the issues of deportation due to serious domestic challenges in her

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<sup>148</sup>Bill Frelick and Maureen Lynch *Statelessness A forgotten Human Rights Crisis* (New York 2005) 65-66

<sup>149</sup>[http://www.statelesspeopleinbangladesh.net/human\\_rights\\_arbitrary.php](http://www.statelesspeopleinbangladesh.net/human_rights_arbitrary.php) (Last Accessed June 08 2016)

<sup>150</sup>Ibid

province Sindh, where Biharies were deported. However, she promised to take an immediate step for this purpose but in vain. In 1989 under joint initiatives steps the UNCCR and RAAI, the Pakistani government agreed on the deportation of 500 Beharies from Bangladesh as a first batch. Unfortunately, the foreign minister of Pakistan elaborated that the money which is collected under the RAAI was only 300 million which is not enough for the total deportation program. Beharis were suffered in the every reign so it was stopped making any kind of progress after coming to General Pervez Musharraf into power.<sup>151</sup> Beharies community was suffered from different identity crisis being Pakistan and Bangladeshi.<sup>152</sup> They are having the following problems

### 3.1.1. Travel Documents

The Convention relating to a Stateless Person, 1954 of state parties advised that they should issue the travel documents to the stateless person or the person who are residing illegally there.<sup>153</sup> This convention grants a unified travel document system for the refugee and stateless person for the contracting states.<sup>154</sup>

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<sup>151</sup>Kazi Fahmida Farzana, The Neglected Stateless Bihari Community in Bangladesh: Victims of Political and Diplomatic Onslaught, *Journal of Humanities and Social Sciences* 2(2008) 15-17

<sup>152</sup>Journal of South Asian Studies ISSN 2307-4000(online),2308-7846(print)  
Http://www.escjournal.net/JSASpg123(last Assessed June 08 2016)

<sup>153</sup>The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory, they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence. Article 28 of the 1954 Convention

<sup>154</sup>The UNCHR Refugee Agency, Guide for Issuing, Machine Readable Convention Travel Documents for Refugees and Stateless Persons (2013), 3



### **3.1.2. Identity Papers**

According to the Article 27 of the Convention of 1954 that the states parties will issue the identity papers in their territory to any stateless person who have not get the travel documents

### **3.1.3. Wage-Earning Employment**

A stateless person should be treated as foreigners as well as he has the right to wage- earning employment under the Convention Relating to the Status of Stateless Person 1954

### **3.1.4. Right to Self-Employment**

The Convention Relating to the Status of Stateless person, 1954 gives the right of self-employment to the stateless person So the contracting states parties should be treated lawfully as soon as possible

### **3.1.5. Rights regarding Labour and Social Security**

According to the 1954 Convention<sup>155</sup>, states parties should give the equality related to social security and labour rights to the stateless person like nationals

### **3.1.6. Right to Education**

The stateless person also has the right to get the education under the 1954 Convention In this case, they should be treated like as the foreigners They can also get the financial assistant for their education<sup>156</sup>

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<sup>155</sup>The Convention Relating to the Status of Stateless Person 1954

### 3.2. ELIMINATING THE CAUSE OF STATELESSNESS

Statelessness is the cause of many state affairs. These state affairs or problems can be avoided, specifically when citizenship laws are reviewed. They properly draft their laws but the main problem is in implementation.

In order to resolve these issues the following articles should be followed:

➤ According to the 1930 Hague Convention, every state will determine its own laws that who is its national and not. All these laws are coherent from the international convention, customs, and principle of law which are applicable to the question of nationality. Every state should be familiar with the laws which are implemented in practice and must resolve the conflicts which are related to nationality laws.

➤ There are different states that combine the both principles as *ius soli* and *sanguinis* to define that how the states would grant the citizenship to its citizens at birth. States should give the option to the individuals to choose the nationality of the states, who does not accept the dual nationality.

➤ It has been stated in the Convention on the Reduction of Statelessness, 1961 that loss or renunciation of nationality should be conditional. A person who is living abroad for a long time when he comes back due to some formalities and time limited he becomes

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<sup>16</sup>Article 22 of the *Convention Relating to The Status of Stateless Person 1954*. (1) The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education. (2) The Contracting States shall accord to stateless persons treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and in particular as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

exceptionally It would be a rule that every state should make legislation that no one can relinquish his /her citizenship until he can't get another citizenship

➤ The state should introduce the provisions to allow a person for re-getting the nationality if someone has lost his nationality

➤ Some practices and law effects the children The Convention on the Rights of the Child, 1989 (CRC) and International Covenant on Civil and Political Rights (ICCPR) specifies that, all children must be registered instantly at the time of birth, irrespective of where they born, because they all have right to acquire the nationality It is impossible for a child to get the nationality without his identity This problem can be resolved by

• Local administration should have all essential resources, provided by states, to guarantee that all registration of birth has steadily conducted according to article 24 of the ICCPR<sup>157</sup> and article 7 of CRC<sup>158</sup>

➤ Disputed cases of the nationality should be identified before registering the birth The citizenship should be given to child born stateless In the national legislation related the 1961 Convention on the Reduction of Statelessness must be assimilated In the national legislation of countries in the national legislation of countries

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<sup>157</sup>1 Every child shall have, without any discrimination as to race, color sex language religion national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State 2 Every child shall be registered immediately after birth and shall have a name 3 Every child has the right to acquire a nationality

<sup>158</sup>1 The child shall be registered immediately after birth and shall have the right from birth to a name the right to acquire a nationality and as far as possible, and the right to know and be cared for by his or her parents 2 States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field in particular where the child would otherwise be stateless

➤ One of the solutions to eliminate the statelessness is that there should be some changes in citizenship legislation process to acquire a nationality of a country where a child is born

➤ In national citizenship laws, some provisions should be included by states, related to non-discrimination on grounds of sex

➤ When nationality of the child is determined, primary consideration should be of the interest of the child

➤ Some provisions should be included in the legislation guaranteeing that adoptions completed abroad in conformity with international law are recognized in national law. The 1967 European Convention on the Adoption of Children inspires States to enable the grant of nationality to the national's adopted children

➤ A written statement can also be demanded by the State from the concerned individual to declare that he/she does not and will not possess another nationality. That will enable the State to annul its own citizenship if/when it is later discovered that the person concerned has made a false declarations<sup>159</sup>

### **3.2.1. Appeal in the United Kingdom**

It is a privilege to get another nationality. British nationality can be renounced such as a person may deprive of his citizenship if he obtains it by misrepresentation, fraud, and concealment of a material fact<sup>160</sup>. The Home Secretary of the UK may deprive any citizen of

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<sup>159</sup>A Handbook for Parliamentarians, *Nationality and Statelessness* (Inter-Parliamentary Union, United Nations High Commissioner for Refugees, 2005) 12-30

<sup>160</sup>The British Nationality Act, 1981

his nationality or legal status of nationality if he is satisfied with the person. An appeal may be filed but not into an ordinary court. On the religious and racial basis, the Home Secretary can't be discriminating the nationality of any person <sup>161</sup>

### **3.2.1.1. The British Nationality Act, 1948**

Some fundamental changes have been made in the British Nationality Act, 1948. Every country is getting the freedom after the empires. The British gave the power of nationality to the empire. This rule was successful firstly in Ireland. Secondly, in 1946, in Canada this was already an independent. They absolutely declared her own citizenship internationally and issue her own passports. British Government gave the statement to organize a group of legal experts to decide about the general changing of the royal system <sup>162</sup>

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<sup>161</sup>Rainer Bauboc, Eva Ersboll, and Kees Groenendijk, *Acquisition and Loss of Nationality, Policies and Trends in 15 European States*, Vol 2, Country Analyses 553

<sup>162</sup>Ibid, 561-562

### 3.2.2. Appeal in Pakistan

In Pakistan Protection Act, 2014, According to section 19,<sup>163</sup> a person may file an appeal against the final judgment within the thirty days in the high court. According to section 16 of The Pakistan Protection Act, 2014 A punishment will be given to a person, he will deprive of his citizenship

### 3.3. APPROACH IN PAKISTAN

In Pakistan almost 25 percent refugees<sup>164</sup> are enjoying the asylum currently. Many of them have been living for the last 25 years. Pakistan neither signatory to the convention relating to the status of refugee, 1951 nor its protocol 1967,<sup>165</sup> hence the status of refugee is not clear in Pakistan but Afghan refugees are living the last two decade in Pakistan.

In the meaning of prima facie recognition, the result of collective recognition is the name of same privilege as the status of a refugee. This privilege may be cessation, cancellation or revocation and termination. Pakistan has respected all the international protection principles as depicted in a UNCHR report. In March 2002 and November 2007 almost 3.2 million Afghans are banished with the help of UNCHR. According to this report,

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<sup>163</sup>Appeal, (1) an appeal against the final judgment of a special court shall lie to High Court. (2) Copy of judgment of a special court shall be applied to the accused and public prosecutor on the day the judgment is pronounced. (3) Any aggrieved person or the government may file an appeal against the final judgment of a special court within a period of thirty days from the pronouncement of judgment.

<sup>164</sup>United Nations Convention on the Refugees 1951 Article 1A. Any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence, is unable or owing to such fear is unwilling to return to it.

<sup>165</sup>Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report-Universal Periodic Review. Human Rights Liaison Unit Division of International Protection UNHCR (2012)

its record shows that 2.1 million Afghans are residing in Pakistan approximately. UNCHR is working with Pakistan to get a solution for these people.

In Pakistan, there are different Afghan refugees; they belong to different groups. They absconded from Pakistan in several ways starting with the Soviet conquest of their country in 1979. They belong to different parts of Afghanistan and different racial groups. An agreement has been made between Pakistan, Afghanistan, and UNCHR which is about the repatriation of the Afghan refugee from Pakistan. There are many refugees who are registered in Pakistan. UNCHR and the Pakistani government are seeking the solution for them. Pakistan is non-signatory but also providing a substantial support to the refugees.<sup>166</sup>

#### **3.4. NATIONALITY IS PRIVILEGE OR FUNDAMENTAL RIGHT IN “THE CONSTITUTION OF PAKISTAN 1973”**

The preamble of the Constitution of Pakistan, 1973 provides that every citizen of Pakistan has the right without any discrimination until there is no restriction upon him from the law.<sup>167</sup>

In Article 4, Right of individual to be dealt with in accordance with the law, etc.

*To enjoy the protection of law and to be treated in accordance with it is the inalienable right of every citizen wherever he may be, and of every other person for the time being within Pakistan.*

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<sup>166</sup>Shamsar Singh Thapa, *The Safe Third Country Approach vs The Notion of Non-Refoulement in International Law: A critical Examination of Australian law and Policy* (2011) 297-298.

<sup>167</sup>The Constitution of Pakistan, 1973.

*In Particular, (a) no action detrimental to life, liberty, body, reputation and property of any person shall be taken except in accordance with law.*

*(b) no person shall be prevented from or be hindered in doing that which is prohibited by law, and*

*(c) no person shall be compelled to do that which the law does not require him to do*

#### Article 9, Security of Person

*No person shall be deprived of life or liberty save in accordance with law*

#### Article 15, Freedom of Movement, etc

*Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof*

#### Article 19, Freedom of Speech, etc

*Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of press, subject to any reasonable restrictions imposed by the law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court or incitement to an offence*

#### 19A, Right of Information



*Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law*

Article 23, Provision as to property,

Article 25, Equality of Citizens

*(1) All citizens are equal before law and are entitled to equal protection of law*

*(2) There shall be no discrimination on the basis of sex*

*(3) Nothing in this Article shall prevent the state from making any special provision for the protection of women and children*

Article 25A Right of Education

*The state shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law*

Every citizen of Pakistan can get or entertain these rights. Every citizen of Pakistan is its national. Article 40<sup>168</sup> provides the punishments for terrorism.

### **3.5. CONCLUSION**

To conclude third chapter, that the Convention of 1954 grants the different human rights. It is binding on the states who have signed the 1954 Convention to grant all those human rights to its citizens. In both countries, Pakistan and the United Kingdom many persons are

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<sup>168</sup> The Anti-Terrorism Act, 1997

deprived of their different rights due to statelessness. However, the Constitution of the countries is granting the rights to all the citizens. Any law which is contrary to the provision of the constitution is null and void. In 1984 Pakistan has signed an organization with Saudi Arabia to assemble the funds for the deportation of Pakistan from the Bangladesh but it failed due to some reasons.

Lastly, there is need to implement different rules to get rid of statelessness. Such as, section 19 of the Protection of Pakistan Act, 2014 in which a person victimized of statelessness may file an appeal to high court against final judgment within 30 days.

In UK the Home Secretary is authorize to use her discretion in deciding the nationality to the stateless person. Right of nationality is germane fundamental right. Therefore, it needs to be protected and enjoyed by the citizens.

## CHAPTER NO. 4

### CONCLUSIONS & RECOMMENDATIONS

Human rights as a moral principal are the main factor for the enjoyment of life and for the participation in the betterment of a society. In the case of some restriction for public peace the national or citizen of a country should cooperate for the welfare of the state. For granting nationality European approach has left a space for states to choose and to construct appropriate procedures which might seem a more sensible and pragmatic one.

Nationality creates a legal relation between a person and state. In nationality, a person does not exercise full political rights in a state. Firstly, nationality means a country which is a person's birth place. Secondly, citizenship mean a legal status it means a person has the legitimate affiliation with the government in a country. Nationality and citizenship both the terms are different from each other but are similar to some extent. All the citizens are nationals but all the nationals are not citizens. The meaning of nationality has not defined till now. Nationality is a human fundamental right from which different human rights are exercised. Sometimes equal distribution of right of nationality and rejection of any nationality effect the enjoyment of one's rights. Nationality may be acquired and can be lost. There is a long history of statelessness before and after the World War II. There are many international treaties which forbid to the states to banishing the people and to follow the principle of non-refoulement. In the postwar period, the refugee to took stay in those

countries where they were and to get the solution of it by the international laws. Somehow there are different reasons for the stateless person in Pakistan and the United Kingdom.

European Union passed different laws and grants the permission to denationalize the people after the World War I. Moreover, these laws become the cause of statelessness in the past and any old present state. There are different Human rights which are protected and promoted by international human rights law. There are different conventions on the relating to the stateless person, protection of human rights and for the elimination of stateless person. The Hague Convention, 1930 is the first Convention Relation to the Stateless Person. UDHR grant the right of nationality to every person in its Article 15(1).

Pakistan and the United Kingdom are the signatories of UDHR. UNCHR 2014 made a campaign to eradicate the statelessness. This campaign made many goals to eradicate the statelessness. There are many international documents and organization who emphasize on the stateless person such as CRC and Convention on the Elimination of all form of Discrimination against Women. There are different methods to every state to protect the stateless person. Domestic laws of Pakistan are as the Citizenship Act, 1951 and The Constitution of Pakistan, 1973. In UK, The British Nationality Act, 1981 deals with this matter. But these laws are not fulfilling all the requirements regarding the statelessness. There is need of some amendment in provisions of the domestic laws.

There are 12 million people who are statelessness around the world. In this modern era, many countries had passed the laws to denationalize the annoying national. It is increasing the number of statelessness. Same laws are passed in Pakistan and the United Kingdom.

While human rights are promoted and protected at regional, domestic and international level by the different international legal documents, treaties and conventions

The Convention of 1954 grants the different human rights. It is the duty of every states party to grant that right its citizens. In Pakistan and United Kingdom many persons are deprived of their different rights due to statelessness. For the protection of the right of a stateless person, there are also many conventions provided to secure the nationality right e.g. The Hague convention, 1930. Although this convention has so many lacunas about statelessness right, but basically its purpose is to secure the right of nationality. Another Convention 1961, it provides the substantial improvement on the gaps left by the Hague Convention, 1930.

However, the Constitution of the countries is granting the rights to all the citizens. Any law which is contrary to the provision of the constitution is null and void. In 1984, Pakistan has signed an organization with Saudi Arabia to assemble the funds for the deportation of Pakistan from the Bangladesh but it wouldn't be successful due to some reasons. We should follow the different rules to get rid of statelessness. According to section 19, a person may file an appeal against the final judgment within the thirty days in the high court. Such as in UK it is the desecration of Home Secretary.

The demand about nationality has been started from the French resolution in history. But according to Islamic point of view is quite different from the modern laws. There is not any hard and fast rule upon this issue, but one thing is clear that this punishment was present in the Islam which was allotted to the Apo stray.

On the other hand, the laws of the other country as the United Kingdom are also the concern, but the laws of this country are very inflexible. In the United Kingdom, according to section 40 of the British Nationality Act, 1981 which deals with the outline of deprivation of citizenship in different situations. For this purpose, a power has been granted to the Home secretary to denationalize to a person if he fulfills the requirements of section 40 but a right of appeal has been granted to the victim of this punishment.

In Pakistan, the same punishment is followed in The Protection of Pakistan Act, 2014. We can draw the following rule from these sections:

1. The welfare of the public should be considered in each and every case but there should be some exception to this rule or an opportunity should be given to the victim as it is present in the shape of appeal.

2. The order of denationalization may be terminated if the culprit found innocent as corpus delictum or double jeopardy. While the punishment is available in the Pakistan penal code, 1960 then there is no need of this punishment as given in the Protection of Pakistan Act, 2014.

3. It is very necessary for the peace and protection of the countries to make rules

## **RECOMMENDATIONS**

We should follow the following recommendations as.

### **Government should work actively**

The government of the countries should actively work to bring down the number of the stateless person in the country. However, the increasing population may get rid of this situation.

### **Rectify International Documents**

The government of the countries should rectify the International legal documents and Conventions. And follow the rules according to these legal documents and Conventions.

### **Equal Rights**

The governments should grant the equal rights to the non-citizenship such as education, healthcare, social welfare and employment.

### **Birth Registration**

The government should provide registration to the children by birth to reduce the statelessness in the country.

### **Option for a Stateless Person**

There should be an exception for the stateless person to renunciation the nationality. It is prohibited to the person who has not another nationality and can't renounce the previous nationality.

### **Implements the rule of 1954 Convention Relating to a Stateless Person**

The countries should follow and implement the rule of Convention Relating to a Stateless Person, 1954 for the Stateless Person

### **Procedure of Appeal**

The procedure of the appeal or documentation must be timely, fair and impartial in the countries for every stateless person

### **Remedy**

There should be the remedy for those whom are affected by the court or law in the case of statelessness

### **Need for Census**

There is need to conduct for a census because the delineation can be done on the basis of census (and not on National Database and Registration Authority (NADRA) records since the government authority can used its records for personal gains) According to Article 51-3 of the Constitution of Pakistan, the census should be conducted in every 10 years

### **State Party cannot deprive any Person**

A contracting state party can't deprive any person of the nationality on the basis of

- Age
- Sex
- Religion of the minor
- Culture
- Environment



- Health
- Education
- Financial resources
- Second marriage
- Character and capacity

**In the aspect of Pakistan:** Government should amend or passed Citizenship laws in the following terms

1. The principle to eliminate the statelessness should be added in the Citizenship Act, 1951

2. There should be the laws about the strays to prove their nationality in the country if they born outside the territory

3. They should be added the legal definition of the stateless person in the Citizenship Act

4. It should be a condition in the act for loss or renunciation of a nationality

### **To the Society**

The people of the society should follow the rule of their domestic countries according to their constitution. The government should instruct the media to aware the common person about the right and the duties relating to its country by the different ways as newspaper, TV shows, dramas. Moreover it should conduct the seminars in the Universities and other educational institution. However, these crimes may be decreased which is related to public or country peace

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