

‘Regime of Protection’: Problematizing the institutional framework for statelessness

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In a global framework based on the territorial construct of nation-states, a ‘stateless’ person is an aberration. Despite the customary international law that defines statelessness as a condition of “not being considered as a national by any State under the operation of its law” as per the Article 1 of the 1954 Statelessness Convention, the concept of statelessness continues to be theoretically and effectively problematic. As the exclusion produced by statelessness is axiomatically entwined with inclusion offered by the membership in political community, the normative understanding of statelessness is complicated by the concepts likenational sovereignty, humanitarian/human rights law etc. The absence of a well-structured and systematically organized institutional framework for statelessness complicates the status of such stateless people. The notion of inalienable rights that any individual possesses by virtue of being human renders itself obsolete in the absence of validation by a ‘nation-state’. The spatial and temporal variables of such a validation is perpetuated through instrument of citizenship. Through this paper , I re-problematize and question the conventional normativity associated with statelessness and there by dis-engage it from the binary of ‘protection of rights’ and ‘assertion of sovereignty’.

The definition of statelessness put forth by 1954 statelessness convention by itself is restrictive, as it is hyphenated with legal understanding of citizenship which is largely procedural and methodological rather than being inclusively protectionoriented on humanitarian norms. I start the paper by an holistic evaluation of statelessness including the genesis of the phenomenon, formulation of the jargons associated, its restrictive composition that by default determines the legal edifice and procedures of protection extended to the stateless individuals. Largely the extent of such an introspection would focus on the ‘legal protection’ made accessible to stateless individuals . Such an academically hypothetical analysis would provide the ground to determine the efficacy of the existing protection system, but would need to be looked along with the systemic procedures adopted by the legal systems of individual countries. Hence, I would do a consonant introspection on the efficacy of the global protective system for statelessness that evolved through international agreements and covenants. Then I examine the ways in which modern nation state has contextualised these international norms for protection of stateless persons and how they are implemented through various laws within the ambit of domestic legal framework of

respective states. Overtly and otherwise, such an analysis underscores the predominance of providing recognition by the nation-state as a pre-requisite for any efforts to impart viable resolution to the plight of stateless people and to formulate effective protection framework.

In the later part of my paper, I look at the most feasible provisions in a practical level that can be implemented to accommodate the concerns of the stateless people. The best practices on a global scale would be analysed like the experience of stateless Nubia community who were denied citizenship in Kenya, whom through their collective advocacy of rights have been now granted national identification cards. The international framework for matters of nationality and statelessness must be re-conceptualised, re-formulated and re-defined through the lens of citizenship, while taking into account diverse claims of various stateless individuals. This can be reasserted through developing a narrative of exclusion of these stateless people and locating these narratives within the theoretical framework on statelessness to bring in tangible solutions for their dilemma.