

MODULE D - Statelessness in South Asia

Stateless Women in South Asia

This paper introduces the issue of statelessness women, in South Asia. This solution only addresses statelessness women, but also presents a key link to the root cause of larger human rights violation. Statelessness is the condition of not possessing recognized citizenship in a state or nation. People are stateless because they did not acquire a nationality at birth, their state of origin no longer exists, or no state will accept them as citizens . . .¹

A stateless person is someone who is "not considered as a national by any state under the operation of its law"². In other words, a stateless person has no citizenship or nationality. As a matter of international law, citizenship and nationality are congruous, although there may be differences between the two concepts in domestic law. Beyond the Universal Declaration of Human Rights and statelessness conventions, tangential conventions addressing susceptible classes of women have identified statelessness as an issue or recognized the right to nationality.

Similarly, stateless persons are entitled to very limited protection in time of war or other armed conflict; especially in women, article 44 of the 1949 IV Geneva Convention on the Protection of Civilian Persons cites only the case of refugees: the Detaining Power is not to treat as enemy aliens, exclusively on the basis of their nationality, refugees who do not in fact enjoy the protection of any state. The 1977 Protocol I Additional to the 1949 Geneva Conventions goes scarcely farther, including as protected persons only those who, *before the beginning of hostilities*, were considered as stateless persons or refugees (article 73).

Violence against women is occurring everywhere in the world. It is widely recognize that women require special attention in times of disaster. This is so partly because stateless women are minorities within minorities and are therefore doubly vulnerable. It is also due to the fact that they have less access to formal structures of social protection. They are uprooting from their social and cultural contexts to be placed in situations where their basic rights and security may be compromised due to external factors beyond their control. Socio-economic status, cultural patterns and structural conditions render women less powerful actors than men, thus creating a need for special attention to be given to their plight.

These difficulties have been acknowledged to exist for women in 'normal' as well as 'statelessness' contexts and there have been attempts to address them through both law and policy. There has been both international and national recognition of the special needs of women through instruments such as The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Stateless Convention, ICCPR, ICESCR, CMW, and other domestic legal framework.

Thus there is and has been an urgent need to deal with the concerns of stateless women in a sensitive and expeditious manner. In a sense, the state, international organizations, and organs of

¹ GOVERNMENTS OF THE WORLD: A GLOBAL GUIDE TO CITIZENS' RIGHTS AND RESPONSIBILITIES 128 (C. Neal Tate ed. 2006).

² Text of the 1954 Convention Relating to the Status of Stateless Persons

civil society have a unique opportunity with stateless women to address issues that may in other contexts be hidden within what may be termed the “private sphere”, or domestic sphere.