

6. Define 'Nationality' with its modes of acquisition and loss.
6. Signify 'Nationality' with its modes of acquisition and loss.

Synopsis

1. Introduction
2. Definition and Meaning of nationality
3. Development of the law of nationality and its importance.
4. International Importance of Nationality.
5. Nationality is a human right
6. Distinction between nationality and domicile
7. Distinction between nationality and citizenship
8. Modes of acquisition of nationality.
9. Loss of nationality.
10. Conclusion

1. Introduction-

- According to Starke, nationality is the status of membership of the collectivity of individuals whose acts, decisions and policy are vouchsafed through the legal concept of the State representing those individuals. Nationality, as defined by Oppenheim, is the quality of the individual of being a subject of a certain State, and therefore, its citizen. It is a continuing relationship between the sovereign State and the citizen." The fundamental basis of a person's nationality is his membership of an independent political community. This legal relationship involves rights and corresponding duties upon both the citizen and the State.

2. Definition and Meaning of nationality

- Nationality may therefore be defined as the status of natural person who is attached to a state by the tie of allegiance. Thus, the term nationality signifies the legal tie between individuals and the state.
- Fenwick defines – Nationality may be defined as the bond which unites a person to a given state which constitutes his membership in the particular state, which gives him a claim to protection of that state and which subjects him to the obligation created by the laws of that state.

3. Development of the law of nationality and its importance.

- The rule of nationality are determined by state law. But due to lack of uniformity in state laws in regard to the nationality many difficulties were experienced.
- Consequently difficult problems of statelessness, double nationality etc arose.
- In International law, statelessness means – A stateless person is someone who is not considered as national by any state under the operation of its law.
- In Hague conference of 1930, endeavor was made to end the conflicts arising out of divergent state laws in respect of nationality .
- In this connection, an attempt was made to resolve the problems relating to nationality and statelessness. Convention of the Nationality of married women was adopted in 1957.
- Convention of the Reduction of statelessness was adopted in 1961.

4. International Importance of Nationality.

- Nationality is often determined by state laws. Nationality is the principal link between an individual and international law.
- Nationality is the medium through which an individual can enjoy the benefits from International law.
- A state exercises jurisdiction over its nationals, travelling or residing abroad, remain under its personal supremacy.
- The right is necessarily limited to intervention on behalf of its own national because in the absence of a special agreement it is the bond of nationality between the state and individual which alone confers upon the state the right of diplomatic protection, and it is as a part of the function of diplomatic protection that the right to take up a claim and ensures respect for the rules of international must be envisaged .

5. Nationality is a human right

- Article 15 of the Universal Declaration of Human Rights states that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."
- As pointed out by Starke, the laws relating to nationality have following importance under international law.
 - 1) The protection of rights of diplomatic agents are the consequences of nationality.
 - 2) If a state does not prevent offences of its nationals or allows them to commit such harmful acts as might affect other states , then that state shall be responsible for the acts committed by such a person.
 - 3) Ordinarily, states do not refuse to take persons of their nationality.

By nationality we may mean loyalty towards particular state.

- 4) Nationality may also mean that the national of a state may be compelled to do military service of the state.
- 5) Yet another effect of nationality is that the state can refuse to extradite its own nationals.
- 6) According to the practice of large number of state during war, enemy character is determined on the basis of nationality.
- 7) States frequently exercise jurisdiction over criminal and other matters over the persons of their nationality

6. Distinction between nationality and domicile

- Domicile denotes the residence of a person, while nationality denotes the relation of man with his nation. There is a great difference between nationality and domicile.
- While nationality denotes the relation of a man with his nation which protects him and the person is bound to follow the rules enacted by that state, while on the other hand, domicile denotes the residence of the person.
- Consequently a person may acquire nationality through domicile. In different countries there are different rules and process in regard to the acquisition of nationality through domicile.

7. Distinction between nationality and citizenship

- Often Nationality and citizenship are considered to be synonymous of each other.
- By nationality under international law, we mean the legal relationship which exists between the nation and the individual. Citizenship, on the other hand denotes the relations between the person and the state law.

- In other words we may say through nationality the civil and natural rights of a person may come under international law whereas the rights of the citizenship are the sole concern of the state law.

8. Modes of acquisition of nationality.

i. By birth

- A person acquires nationality of the state where he is born. This principle is called as *JUS SOLI*. The UK, The US and many states of Latin America follow the principle of *JUS SOLI*.

ii. Jus soli

- By Birth-*Jus Soli* is a Latin term that means law of the soil. In some countries, *jus soli* system or birthright citizenship is followed. According to this principle, citizenship of a person is determined by the place where a person was born. *Jus soli* is the most common means to acquire citizenship of a nation

iii. By decent

- Nationality of a state may also be acquired by a person on the basis of the nationality of either parents. Thus, a child may become a national of that state which his parents are nationals. This principle is known as *JUS SANGUINIS*.
- Germany, France follow this principle. US, England and India follow both *jus soli* and *JUS SANGUINIS*.

iv. Naturalization

- Nationality may also be acquired by naturalisation. When the nationality of a person changes subsequently, and he acquires nationality of some other state, the process of acquisition is known as naturalisation. Eg. Marriage, legitimating, option, acquisition of domicile etc. Adoption of children by parents who are nationals of the other states also entitles the children to acquire the nationality of his parents. The state has a discretion to confer nationality by naturalisation, on fulfilling of certain conditions and on an application.
- The state has the right to refuse the application without giving any reason. They also cannot impose naturalisation upon individuals against their will.

v. By Resumption

- Sometimes it so happen that a person may lose his nationality because of certain reasons (eg. Naturalisation). Subsequently he may resume his nationality after fulfilling certain conditions this procedure of reclaiming of nationalisation is known as by RESUMPTION.
- When a state is defeated or conquered, all the citizens acquire the nationality of the conquering state.

vi. Cession

- When a state has been ceded in another stated, all the people of the territory acquire nationality of the state in which their territory has been merged .
- There may be some other mode where by a person may acquire nationality.
eg. If a person is appointed in the public service of another state, he acquires the nationality of that state.

9. Loss of Nationality

A person may lose the nationality of a state in many ways. They are,

i. By Release

- In some states law provides that the citizens may lose nationality by release. An application has to be submitted in this regard. If the application is accepted, the person concerned is released from the nationality of the state concerned.

ii. By Deprivation

- In certain state, law may provide that if the national of that state without seeking prior permission of the government obtains employment in another state, he will be deprived of his nationality.
- In some cases, deprivation results in statelessness, and therefore, it is desirable if it is avoided by the states. Universal declaration of Human rights of 1948 under Art. 15(2) prohibits arbitrary deprivation of nationality.

iii. By Expiration

- Yet another mode of the loss of nationality is the long residence abroad. State laws of many states may contain provisions in this connection that if a person resides for a long period abroad his nationality ends.

iv. By Renunciation

A person may also renounce his nationality. The need for renunciation arises when a person acquires nationality of more than one state. He has

to make choice of one particular country and renounce nationality of other country.

v. Substitution

- Some state provide for the Substitution of nationality. According to this principle a person may get nationality of a state in place of the nationality of another state.

10. Conclusion

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