

STATELESS IN ISRAEL: AN INTERNATIONAL LAW INTERPRETATION OF THE RIGHTS OF PALESTINIANS IN ISRAEL

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ABSTRACT

Stateless de jure is a person who is not considered by any state to be its national under the operation of its law. Stateless de facto person who is without being deprived of nationality does not enjoy the protection and the assistance of the state. In Israel the Palestinians citizens of the State of Israel their existence is denied by the state of Israel.

This article will focus on the interpretation of minorities in International Law and will give briefly an overview of theoretical questions. The objective of a such investigation is to understand whether the Palestinian minority in Israel has the features of a national or that of an ethnic minority.

The bulk of this article will deal with the legal status of the Palestinians in Israel in order to demonstrate that the Palestinians in Israel are stateless persons.

Keywords: Stateless, Palestinians, Minority, Nationality, Israel

1-STATELESS PERSONS

The legal definition of stateless person, is a person who is not considered by any state to be its national under the operation of its law. This definition derived from article 1 of the 1954 Convention Relating to the Status of Stateless Persons¹. The definition applies to a specific group of people who are de jure stateless, that is to say a stateless person means a person who has no nationality. This definition is a technical legal definition which could only resolve technical and legal problems. The effectiveness and the quality of a nationality is not included in the definition.

A Stateless de facto “person” is who without being deprived of his nationality does not enjoy the protection and the assistance of his state. In other words stateless de facto persons are unprotected and do not enjoy the protection of any government. For example in Germany on 25th November 1941 under the provisions of the third Reich laws of denationalisation the German Jews were classed as nationals but not citizens. Legally they were holding a nationality and were holding a citizenship, but at the same time they lacked effective protection

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¹ See Weis P, Nationality and Statelessness in International Law, Stevens&Sons Ltd, London,1956,p.34. See also U.N.Doc.A/2693,pp.3-2.The Draft Convention on the Elimination of Future Statelessness, 1954. Article 1 of the Convention provides as follows “ A person who would otherwise be stateless shall acquire at birth the nationality of the Party in whose territory he is born”.

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². This is also applies to the Palestinians in Israel. The problem in Israel is not only a problem of an ethnic minority who has not got the protection of the state but more than that it is a problem of nationality.

2. NATIONALITY

Examining the concept of nationality I found that nationality is both a legal and political concept. It is more than a question of residence; it is a concept of nationhood. Thus, nationality is the reflection of a nation: the tie between the individual and the state, the tie in which the individual becomes a part of the nation. However, a nation is a community with a unifying political principle. According to Gellner “nationalism is a theory of political legitimacy”³. Thus, nationalism is the commitment of the individual to remain loyal to the nation. Hinsley, defines nationalism as a “State of mind according to which political loyalty is felt to be owed to the nation.”⁴. Therefore, political loyalty is the tie between the state of mind and the nation State. In the Nottebhom case, the I.C.J defined nationality as follows: “According to the practice of states, to arbitral and judicial decisions and to the opinion of the writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”⁵. Moreover, nationality is the relationship between an individual and state involving a duty of obedience and political loyalty or allegiance on the part of the subject and protection on the part of the State. In the case of the State of Israel, however, the link between the state and its citizens is defined according to a different criterion. The State of Israel adopted a religious criterion for determining whether an individual is or is not part of the nation. As Sussman J. had pointed in the case Shalit, that for the purposes of the Population Register

² See Batchelor Carol A, “Stateless Persons: Some Gaps in International Protection”, *International Journal of Refugee Law* vol.7, No.2, Oxford University Press, 1995, pp.22-223.

³ See Gellner Ernest, “Nationalism and High Cultures”, Hutchinson John and D. Smith Anthony, Ed, *Nationalism*, Oxford University Press, 1994, pp.63-70.

⁴ See Hinsley. F. H, *Nationalism and the International system*, Hodder and Stoughton, London, 1973, p.

⁵ See Nottebohm case (Liechtenstien v. Guatemala) I.C.J., *International Law Report* , vol.22, 1955, p.360. See also pp. 358-359 .In the matter of effectiveness of the nationality the I.C.J., stated that: “International arbitration have decided in the same way numerous cases of dual nationality, where the question arose with regard to the excirse of protection. They have given their preference to the real and effective nationality, that which accorded with the facts, that based on stronger factual ties between the person concerned and one of the States whose nationality is involved”.

there was no material difference between religion and nationality⁶. Despite the amendment of the Population Registry Law in 1980, the link between nationality and religion is inseparable, it is not a question of reciprocal rights and duties, it is the ethnic affiliation or religion which will decide the national identity. However, in Republican States including common law countries the concept of nationality and citizenship is synonymous. But in Israel the terms nationality and citizenship have different aspects. On the one hand to be Jewish means to be a member of the Jewish nation and at the same time be a member of the state of Israel which under the laws will enjoy de jure and de facto full membership of the state of Israel. This will impel to reveal the position of the Palestinians in Israel.

3. International Law Interpretation of a “Minority”

The matter of defining minority in International law is ambiguous. The question of minorities within States remain problematic. There are many States which declared that they have no minorities within their borders. There are many different interpretation of the term “minority” in international legal institutions . For the purposes of the present paper, there are limitations in displaying the different interpretations of the term “minority”. However, the common definition of the term” minority” is a group of persons who live in a large community and believe that they are distinct from others: in their ethnic ties, history, culture, custom and language. According to the Encyclopaedia Britannica, a minority is “ a culturally, ethnically, or racially distinct group living within a larger society”⁷. Similarly Heinz says that the term “minority” obviously refers to the quantitative size of a group as compared with a majority group in any given society ⁸. However ,there are elements which have to be presented in order to decide whether a group is a minority or not. the elements are : the ethnicity element ,religious beliefs, language, custom ,myths or historical experiences and region of residence. Arguably, the exposition of a distinct culture and way of life as compared with the majority culture and the way of living should be seen as the determing criterion of the nature of a “minority”. In this regard Gurr says that “ the key to identifying communal groups is not the presence of a particular trait or combination of traits, but rather

⁶ Bniamin Shalit in his name and in the name of his children Aorin and Ghila shalit v. The Minister of Interior and the Registry of in Haifa, H.C.,No.58/68. (in Hebrew).

⁷ See Gwinn Roberto, The New Encyclopaedia Britannica Inc,vol.27,Chichago,1991,pp-357-364. See also Ibidem.,vol.8.,p.170.

⁸ See Heinz Wolfgan, Indigenous Population Ethnic Minorites and Human Rights, Velaybreitenbach Publisher, Germany,1991,p.1.

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the shared perception that the defining traits, whatever they are, set apart”⁹. The Permanent Court of International Justice in the case of the Greco-Bulgarian communities¹⁰ requested an advisory opinion concerning the interpretation of the Greco-Bulgarian Convention of 9, August, 1920, regarding reciprocal emigration. The P.C.I.J gave its opinion in regard to the interpretation of the term “minority” by using the word “community”. It was read as follows: “ The criterion to be applied to determine what is a community within the meaning of the article of the Convention...is the existence of a group of persons living in a given country or locality, having race, religion, language and tradition of their own and being united by the identity of such race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another.” The P.C.I.J links the objective and the subjective criteria together with the special characteristics that the group preserve within a society. At this point it will be necessary to present the different types of minorities:

a) Ethnic minority: this term applies to a race or group of people which are not identifying with the dominant race, for example, the Chinese in Malaysia.

b) National minorities: These are groups that have lost their autonomy to expansionist states, but still preserve their cultural and linguistic distinctiveness and seek to re-establish some degree of political separation in order to maintain their existence particularly when denied equal opportunity or protection.

c) Indigenous Population and Natives: These groups are often minorities which have resulted from settlers invading their countries. The Convention of International Labour Organisation display an interesting definition of the term “indigenous population”.

Article 1 of the Convention provides:

a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own custom or tradition or by special laws or regulations;

⁹ See Gurr Ted Robert, *Minorities at Risk*, United State Institute of Peace, Washington, 1993, p.1.

¹⁰ See P.C.I.J., Series B, No.17, 1930, pp. 19-22.

b) members of tribal or seem-tribal populations in independent countries which are regarded as indigenous on account of descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than the institutions of the nation to which they belong¹¹.

This definition could be applied in the situation of any minority not only those of indigenous populations. Sub-section (a) on the one hand describes the economic situation of a minority which is less advanced than the majority. But, on the other hand has not mentioned the characteristic of an indigenous population, has not even stated the cultural distinction between the aboriginal groups and the national community. In Sub-section (b), the Convention stated that the tribal groups are the indigenous population which is descended from the population who inhabited the country before the new arrival. The Convention gives a broad definition to the term indigenous population. They are “members of tribal and semi-tribal populations”. This seems to refer only to a group of persons who are collectively living within an area. However, there are populations who live throughout the country. Semi-tribal, seems to mean a group of persons who fail to be integrated within the majority, or most likely live in urban areas which have adapted to a new way of life, but have at the same time kept their old traditions. Cabo’s definition seems appropriate to include at this juncture. “indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems...on an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous, group consciousness and is recognised and accepted by these populations as one of its members, acceptance by the group¹². This definition contains the objective elements and the subjective elements of an indigenous population. The historical continuity of an indigenous people was linked to an experience of colonisation and the preservation of ancestral customs and their incorporation in their social life. The

¹¹ See ILO Convention No.107, On Indigenous and Tribal Populations of 1957.

¹² See UN Doc E/CN.4/Sub.2/1983/Add.8, para.384. See also UN Doc E/CN.4/Sub.2/1983/Add.4, para.28.

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subjective element was clear in the definition which was expressed, “the self-identification of a person with his or her group.” This element will be transmitted from generation to generation. Therefore, the enquiry concerning the Palestinian minority in Israel, is a fundamental question of my paper. I shall pursue this enquiry further.

4. The Palestinian Minority in Israel

The purpose of this section is to provide an overall picture of the Palestinians in Israel . Details are included to better understand the nature of the Palestinian minority in Israel. It is necessary to say that there is no room for political discussion in this investigation, in order to mitigate any possible negative impact on the paper. Therefore, the question to be considered is whether the Palestinians in Israel are a minority in the light of what has been discussed above, and if so which kind of minority they are.

There are objective and subjective element which determine the Palestinians existence as a distinct population in Israel. The objective elements are:

- a) The Palestinians in Israel are part of the Arab nations. Israel is considered a minority in the Middle East, and has been engaged for a long time in bitter conflict with the Arab nations. At the same time Palestinians who are Arabs are a minority within the borders of the State of Israel.
- b) The ethnic element, shows that Palestinians in Israel were originally Semitic population the same as the Jews, who moved and travelled in the Near East. The Jews from the Middle East are likely to be of Semitic origin.
- c) Palestinians are sharing the same history of the Near East despite their accommodation.
- d) They share the same language which is the Arabic language.
- e) The religious element, they are included both Arab Muslims and Arab Christians.
- f) Their size within the State of Israel is less than that of the Jewish population.

The subjective elements are:

- a) Their self-esteem is incorporated in their feeling that they are Arab Palestinians, despite their isolation from the rest of the Arab World.
- b) They have preserved their own way of life which set them apart from the majority. They must not be confused with the Jewish Oriental who emigrated from the Arab States to Israel. The economic and the educational

disadvantages are the cause of disparity between the Oriental Jews and the European Jews¹³.

4.1.The Palestinian Background In Israel

To be a Palestinian in the Jewish State, means to be an Arab in the State of Israel by the definition of the State. It is impossible to point out a distinct nationality or national group called "The Israeli Arab" or "The Arabs in Israel". However, there is one thing which distinguishes them from the rest of the Palestinians. It is the marginalization of their national life, and its transformation to that of a minority in the middle of the Jewish people. They are citizens of a State not of their own choice. Even the State of Israel excluded them from its definition as a State both de facto and de jure. Therefore, the outcome of the birth of the State of Israel in 1948 was the creation of Palestinian refugees¹⁴. 700.000 Palestinians were in the country of Palestine, during the Mandate in 1922. In 1940 their number was 1000.000 and during the decision of the UN to divide Palestine between the two communities the Palestinians were 1300.000, and the Jewish community 600.000. It is clear that the Palestinians were the majority in the country. Tragically after the declaration of the State of Israel in 1948 Palestinians became a minority with a population as small as 160.000. Most of them lived in the countryside for the urban population sadly had been expelled to the Arab countries¹⁵.

Nowadays, Palestinians inside Israel are 18 percent of the total population of Israel. They are concentrated in six areas, but most heavily concentrated in two areas of Galilee in particular around Nazareth and in the south and north of the Traingle the strip of land running adjacent to the west Bank from Qalqiliya to Umm-al-Faham¹⁶. The Palestinians in the area of the Old city of Jerusalem are by law residence and not citizens of the State of Israel. The number of Palestinians since 1948 has increased. Therefore, the Palestinian society to some extent is a young society and the average rate of fertility is higher than that of the Jewish community. This factor has worried the State of Israel which in the last five years has increased the number of

¹³ See Friendly Alfred, Israel's Oriental Immigrants and Druze, Rights Groups, Report No.12, London, 1980, pp.3-22. See also "From a Correspondent Israel" Ethiopians Criticism Pace of Absorption Process", Jewish Chronical, 8th December, 1995, p.6.

¹⁴ See Morris Benny, 1948 and After, Israel and the Palestinians, Claredon Press, Oxford, 1994, p.16.

¹⁵ See Gurman Rahal, the Arab Minority in Israel, Lilakh Ltd, Beitah-Tikva, 1995, p.21 (In Hebrew).

¹⁶ See Appendix one.

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immigrants of ethnic Jews from the former USSR and Ethiopia to the country to redress the balance¹⁷.

4.2. The Structure of the Palestinian Minority in Israel.

The Palestinian minority have ethnic,cultural,linguistic and religious ties. They preserve their patterns of life and are categorised as an indigenous population and national minority. They are not dominant politically. The Palestinians in Israel are a minority scattered throughout the whole country, just like the Kurds who are scattered throughout all the region of kurdistan and who are under different dominations,and like the Indians in North America and the Indians in Canada. The Palestinians status in Israel is unique in the world. They are citizens of a State which was founded on the ruins of their nation¹⁸.

The State of Israel has adopted the policy of “Divide and Rule” in order to destroy the aspiration of solidarity between the different groups of the Palestinian minority within the State of Israel. The State of Israel on the one hand, attempted to make a distinction between the Palestinian refugees and the Palestinians within its boundaries by calling them “Arab Israeli”. On the other hand they divided the Palestinian minority into the following identities: Arab Muslims and Christians, Bedouins and Druze,bearing in mind that the Druze and the Bedouins are Arab Moslems,but the Cercasians are not Arabs but Moslims¹⁹. This division that the State of Israel imposed by law has had a negative effect on the entire population,because the Jewish media are convinced that the Druze are not Arabs therefore, they are not Palestinians, and the Bedouins are just tribes living in the desert of Negev, and are not Palestinians²⁰.

4.3. The Palestinian Refugees in Israel

The Palestinian refugees living inside Israel should be distinguished from Palestinian refugees in the Diaspora. Now a days, over 200.00 are “Internal refugees”. These are the families of the people who fled their homes and villages in 1948 to escape from the terror of the pre-State Zionist force during the 1948 ,and the families who were requested by the Israeli military command to leave the houses to other villages²¹.

¹⁷ See McDowall David, *The Palestinians: The Road to Nationhood*, Minority rights Publication, London, 1994, p.61.

¹⁸ See Bishara Azmi “To be a Palestinian in the Jewish State” *News from within*,vol. VIII, No.3/4, Jerusalem, March and April,1992,p.8

¹⁹ See Gurman,op.,cit.,p.27.

²⁰ See Maddrell Penny, *The Bedouin of the Negev*, the Minority Rights Group, Report No.81, London, 1990, p.19.

²¹ See Morris.,op.,cit.,p.16.

Land Confiscation:

Those people as we mentioned above the Internal refugees have denied the right to return to their homes. This has been achieved on the basis of an Israeli Absentee Property Law which declare that any Palestinian citizen who left his or her ordinary place of residence for another place in Palestine even for short period before 1st September 1948 is a “present absentee”. According to Article 4 of the Absentee Law, the ownership of properties of those absentee owners was transferred to the Minister of Finance²².

The destiny of the Refugees:

The Palestinians who evacuated their homes in 1948 and were forcibly moved to different villages inside Israel by military action, later to witness the demolition of their villages to make way for the construction of new settlements. In upper Galilee area, for example, witness to expulsion of villagers from villages such as the Christian villages Akrath and Kfar Bra'am where they trying by using all legal forms of struggle to get back their lands. Bearing in mind that their homes were demolished, after the verdict of the Supreme Court which gave them the right to return²³.

Representative Body:

The refugees defence Committee within the State of Israel, was established in 1992, in order to claim a collective right to refugees within the State of Israel to return to their villages. According the above committee, there were 385 villages demolished out of 475 were existing before 1948²⁴.

Housing problems:

Those refugees who moved to other villages lived in poor conditions. The policies of the State of Israel has not taken the Arab population into consideration. The goal of the State was to provide housing only for the Jewish immigrants, and its policies were based on the principle of planning and control. For example, in Haifa, housing requires special attention. Arabs are concentrated in the oldest neighbourhoods of Haifa with 90% of homes under the control of the government authorities. Homes are generally old and need repairs. The Housing authorities, in order to evacuate Haifa from its Arab inhabitants, refused to grant repair permits, then declared homes unfit, sealed them, removed residents often forcibly, and failed to provide alternative

²² See Don Perez, Israel and the Palestine Arabs, The Middle East Institute, Washington, D.c. 1958, pp.141-153.

²³ See Ghazi Falah, Galilee and Judaization Plans, Institute for Palestine Studies, Beirut, Lebanon, 1993, pp.58-60.

²⁴ See Wakim Wakim, Study of the Arab Refugees in Israel, The Committee of Defence, Haifa, 1995, p.11 (In Arabic).

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housing²⁵. To better understand the complexity of the situation it is necessary to examine the legal status of the Palestinians in Israel.

5. The Legal Status of the Palestinians in Israel.

The State of Israel was established on 14 May 1948, by unilateral declaration. According to Harris²⁶ On May 1948, Israel unilaterally declared itself an independent State²⁶. The Declaration of the State of Israel states as follows: “ The State of Israel will be open for Jewish immigration and for the ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion conscience, language, education and culture; it will safeguard the Holy places of all religions, and it will be faithful to the principles of the Charter of the United Nations²⁷. Therefore, The State of Israel has committed itself to ensuring equality in social and political rights for all its citizens without religious, ethnic or gender distinction and to grant individual liberty. The Declaration of Independence defines the State of Israel as “ A Jewish State in Eretz- Israel” which would open its gates to every Jew. In this manner the State of Israel does not define itself as the State of all its citizens but rather as the State of one specific religious group. Therefore, the State of Israel has denied the rights of the indigenous population within its border to enjoy its protection. The exclusivity of Israel as a Jewish State was emphasised in the amendment added to the Basic Law: The Knesset in 1984²⁸. Its law refer to the nature of the State of Israel as a Jewish State ,which means 18% of the citizens of the State of Israel have no state and that they are Stateless. This also confirm our hypothesis that the State of Israel has given the Palestinians within its border the citizenship but at the same time has denied the effectiveness of their nationality to be members of the State of Israel. Let me to discuss the effectiveness of their nationality or of their citizenship.

5.1. The Effectiveness of the Palestinians’ Nationality in Israel.

One person is a membership of a State, means he is in possession of a citizenship or nationality, means he is carrying the freedom to exercise certain rights within the law. As we mentioned above there is a kind of relationship between the state and the individual. Citizenship brings with it duties as well as obligations for the State and the Individual. In the case of the Palestinians living

²⁵ See The Social Development Committee of Haifa, Three Year Activity Report, 1990/ 1991/ 1992, Haifa, pp.3-4.

²⁶ See Harris D.J, Cases and Materials on Public International Law, Sweet&Maxwell,Fourth edition, London, 1991, p.206.

²⁷ See The Independence Declaration of the State of Israel of 1948.

²⁸ See Basic Law : The Keneset Amendment of 1984.

in Israel are stateless persons their citizenship or their nationality is an anomaly. They are discriminated against de Jure and de facto. Therefore, it is necessary to illustrate evidence which will show the reader the gravity of the relationship between the State of Israel and the Palestinian.

5.2. Discrimination By Law Against The Palestinians In Israel

The basic law: Keneset in 1984 was amended to emphasise the exclusivity of the State of Israel as Jewish State. In the case law of the Progress List for Peace, was held that the grounds for banning the political party from participating in the parliamentary elections was that the party has denied the Jewish nature of the State of Israel and not its existence²⁹. Therefore, to recognise the existence of the state of Israel as a State for all its citizens means to deny the Jewishness nature of the state. This is one example of the discrimination against the Palestinians in Israel. The second is the Law of Return of 1950 and the Nationality law of 1952. Those laws are clear to be considered as case of overt discrimination. s.1 of the Law of Return stated “Every Jew has the right to come to this country as an immigrant”. Thus, immigration is restricted to Jew throughout the world. The non-Jews can only obtain the citizenship by being in Israel or residing or by naturalisation. In addition the Law of Return and the Nationality law are important in deciding who could acquire a citizenship or nationality, for example in the cases Shalit and Rufeisen and Kandel³⁰ where the High Court lay down the law of Return to be the only cri

terion in deciding who is Jew. This is to say that the nature of the State of Israel excludes the Palestinians to be an effective part of the State of Israel.

5.3. Covert Discrimination

In the Israeli legal system there have been a number of cases where the term discrimination has been given different interpretation. In the covert discrimination it is difficult to provide evidence of direct discrimination on the

²⁹ Election appeal 2/88, Ihurm Ben Shalom v. The Central Election Committee of the 12th Keneset and the The Progressive List for Peace, H.C., PD Vol.MG, Foruth Part, 1989, pp.221-279 (in Hebrew). Also see p. 248 and p.254, where the Levin Shlomo J (of the minority) said that” ...The amis of the progressive list contradict article 7a(1) because the party calls for full equal rights and any one calls for giving the Arab citizens full equal rights to the Jewish citizens could not stand for Parliamentary election because this would be in contradiction with Israel as a Jewish State established for granting the Jewish people privileges and favours for being Jews”.

³⁰ See Shalit case, op.,cit. See also Oswald Rufeisen v. Minister of Interior, H.C., 72/62 and see also Richred Kandal and others v. The Minister of Interior, H.C. 758/88.

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ground of being an Arab and not having your full citizenship³¹. However, in the case of *Watted Tirkel J* stated that “ In examining whether discrimination exists one must not examine only the written text; one must also examine that which is hidden from the eye”³². This case shows that discrimination is hiding there. In the case of *Mustafa Agbaria*³³, where the Education Long Day Act of 1990, was implemented on a discriminatory basis in the country. The Minister of Education imposed a program to progress a longer school day beginning with the most needy communities. Despite the fact that the Arab children lives below the official poverty line, only six out of 564”needy” schools were Arab. When the case was brought to the Supreme Court claiming that the regulations used to decide what constitutes a needy community discriminated against the Arab pupils, the case was rejected in the first year and when in the second year of the implementation of the law resulted in the same low numbers of Arab schools the case was raised to the Supreme Court and for the second time was rejected. The Supreme Court on the basis that the implementation of the law was depended on the circumstances of the Minister of education. The Supreme Court has no authority to interfere in the policy of the minister. Moreover, *Goldberg J* said that the Court recognised that there is small amount of discrimination in the implementation of the law but is not relevant to the law³⁴. At this point it is useful to raise an important fact which will give a clear idea about the function of the Israeli legal system in Israel toward the Palestinians. From the analysis of the cases ,one could see that the Court on the basis of ethnic minority has not got any authority . *Savana*³⁵ said that the intervention of the Judiciary in the relationship between the ethnic groups in Israel, argued that in the last 20 years the state has changed its attitude towards the Palestinians, thanks to the intervention of the Judiciary which has helped to confer individual rights rather than collective rights upon the Palestinians as an ethnic minority within the State of Israel. This to say that when the Israeli Supreme Court dealt with any ethnic case which included evidence of ethnic discrimination, it has never treated the case on an ethnic basis. The question of ethnic minority the US Supreme Court

³¹ See *Watted and his Brothers v. the Minister of Finance*, H.C., 200/83 (in Hebrew).

³² See *Mustafa Subhi Aghbariha, Gabarin Khalid Muhammed and The Local Council of Sakhnin v. The Minister of Education and Culture, The Internal Committee of the Kenesset for Education and Culture and the Minister of Finance*, H.C., 3954/91, ME, 472, The Israel Bar-Central Committee, 1995, p.3.

³³ *Ibidem*.

³⁴ See *Mustafa Subhi Agbarie case*, op.,cit.,p.3.

³⁵ See *Savan A*,” The Relationship between Ethnic group in Israel” University of Tel-Aviv, March 1994 (Seminar in Hebrew). See also *Peled Y*,” The Status of The Palestinians in Israel”, University of Tel-Aviv, 1994 (Paper in Hebrew).

for example, has resolved the problem in Brown case , where the Supreme Court was intended to disapprove the “Separate but Equal” doctrine. Because this doctrine was contrary to the egalitarian requirement of the fourteenth Amendment. Warren,Ch. J., the Suprem Court Unanimously held that “ race-based segregation of public school was constitutionally impermissible”³⁶. In Israel the Palestinians are “Bne-Ma’aot” which means a small quantity of individuals who are living within its border . Examining the legislation Israel there is no definition whatsoever of the term minority, or a clear law or regulation in which defines the right of the Palestinians in Israel or basic law which will help them to base their claims . In addition there are more than 50,000 of the Palestinian Arabs live in villages which are unrecognised by the Israeli Government and as result cannot be connected to the electricity and water grids, nor are they provided with schools or health care services. Therefore, they are unprotected population like all the Palestinian minority in Israel. At this point we could drew the following conclusion

6. Conclusion

The term Stateless person in the case of the Palestinian in Israel is applicable de facto and not de Jure. They are citizens of the state of Israel under its operation law. Internationally they are recognised as the citizens of the State of Israel. On the one hand they are holding Israeli Identity, but on the other hand they are an unprotected population in which the State of Israel has kept them away from the decision-making in its policies. They are excluded from decision-making even regarding their own affairs.

Certainly the Palestinians in Israel are in “detention” unlikely to be part of the State of Israel they have to accept what the State provides them without their consent. Their relationship with the State is based on past persecution they are the Palestinians who remained after the establishment of the state of Israel in 1948. They are a national minority which falls within the a category of an indigenous population. Therefore, in International law they have the right of indigenous population, the right to be protected from State authority, which has abused their existence by denying their minority status. The state of Israel a state for the Jewish Commonwealth nationality which every Jew in the world could benefit in holding this nationality; a nationality de facto and not de Jure. The Law of Return of 1950, is a basic law which protects this nationality. The impact of the Israeli legal system on the Palestinians in Israel has a negative effect on the Palestinian population. The vast majority of the Palestinians especially after the implementation of the peace process with the PLO have seen themselves abandoned from the international power. Their destiny is not any more related with the Palestinian question. They realised that the International power will not

³⁶ See Brown v. Board of Education 347 US 483, 98 L ed 873,1954 .

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rush to rescue them within the state of Israel. There is no easy solution to their situation, especially for a durable solution. In the light of International law the Palestinians in Israel could claim the internal- self-determination which all people are beneficiaries, the right to enjoy the free choice of political, economic and social system in their own area. This right of internal- self-determination was recognised at international level. The Charter of the UN where the first international framework of standards in which the self-determination of people has been supported. The International Covenant on Economics, Social and Cultural Right of 1966 , the Declaration of Friendly Relations and Co-operation between States (Resolution 2625 (XXV) Nov.(1970) and The Algerian document or the Algerian Charter (the Universal Declaration of the Right of Peoples (1976). The Internal-self-determination applies to a minority within a sovereign state³⁷. The Palestinians are titular to exercise this right. Therefore, may they have to face the following options:

1. To separate from mainstream Israel's life by establishing their autonomy within the State of Israel.
2. To participate in a heterogeneous culture while trying to preserve some degree of group identity as a Palestinian minority in Israel.

There is the third option which unlikely to be accepted. This to give up their separate identity through assimilation. They are indigenous population which have a distinct way of life. In addition the nature of the state of Israel as a Jewish state will never accept their integration as Israeli. Therefore, they are stateless de facto in which the international law have to give more intention to ensure an effective nationality or to redress and to ensure their right of internal self-determination.

³⁷ See Simma Bruno,Ed, *The Charter of the United Nations: A Commentary*, Oxford University Press, 1994, pp.XX, XXIX, XXXI, XXXII, XXXIII. See also "The International Covenant on Human Rights: The Covenant on Economic, Social, and Cultural Rights" adopted by the General Assembly on 16th December 1966, and published in 3/1/1976. Article 1 provides: All people have the right to self-determination. By virtue of this right they freely decide their pursue their economic, social and cultural advancement. The Resolution 2625 (XXV) Nov.(1970), See Dusan J. Djonovich, Ed, *The General Assembly ,Un Resolutions, vol.XIII,1970-1971,Oceana Publication Inc,New York,1976,pp.339-340*. See also Rigaux F., *The Algiers Document, The Peace, Firnze,1988,p.137.(Italian)* .The Universal Declaration of Rights of Peoples Algiers (1976). The Declaration, in Article 1 to 4 proclaim the peoples right to existence including therein the right to respect for its "racial and cultural identity".