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E.MBA, LL.M, PH.D, PGDSAPM

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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“THE DUAL IDENTITY CRISIS: INDIA'S STATELESSNESS POPULATION AND THE GAPS IN INTERNATIONAL LEGAL OBLIGATIONS”

AUTHORED BY - S.SHANMATHI¹

Abstract:

This paper examines India's nationality and citizenship framework in light of international legal standards on statelessness prevention, focusing on the Citizenship Act, the NRC-CAA framework, and constitutional provisions. Despite India not acceding to the 1954 and 1961 Statelessness Conventions, it remains bound by human rights obligations under the UDHR, ICCPR, and CRC. A comparative analysis with South Asian neighbors—Bangladesh, Nepal, and Sri Lanka—reveals regional shortcomings in protecting the right to nationality, exacerbated by postcolonial legacies and weak cooperation. The paper further critically evaluates how India's citizenship verification mechanisms, especially the NRC and CAA, challenge international human rights norms on non-discrimination and risk perpetuating de facto statelessness, particularly among religious minorities and vulnerable children. It identifies significant legal gaps, discriminatory practices, and procedural violations. Finally, it proposes comprehensive legal reforms, procedural safeguards, and regional collaboration to harmonize India's laws with global standards, aiming to prevent further marginalization of stateless and precarious populations.

INTRODUCTION:

Statelessness means an individual who is not recognized by any state as national under its laws. The 1954 United Nations Convention defines a stateless person “a person who is not considered as a national by any State under the operation of its law.” This absence of nationality takeaway individuals of fundamental rights and protections, rendering them vulnerable to exclusion from education, healthcare, employment, political participation, and legal recourse like basic needs of an individual.²

¹ S.SHANMATHI, 5TH Year Law Student from Vellore Institute Of Technology, chennai

² Adil Hasan Khan, *India and Statelessness: An Introduction*, *Statelessness Citizenship Rev.* 3, no. 1 (2021).

A related concept is de facto statelessness, which describes persons who, although possessing a legal claim or who is entitlement to nationality, are unfortunately unable to exercise or prove such nationality due to practical barriers including administrative hurdles, discrimination, or conflict.³ Unlike de jure stateless persons, de facto stateless populations are particularly precarious because their nationality remains unrecognized in practical terms, which resulting in denial of rights and legal insecurity.

India doesn't have any legal definition or domestic legislation to addressing or reduction of statelessness and This absence leaves many individuals such as those are really a indian origin or leave here india excluded under the National Register of Citizens (NRC) or belonging to refugee groups—in a state of uncertainty and vulnerability. Without a national framework, stateless persons remain marginalized and risk passing on this condition to remaining generations.⁴

It happened that The crisis of citizenship and belonging in India is most visible in Assam, where the NRC and Foreigners Tribunals have rendered millions precarious. In the 2019 NRC final list excluded 1,906,657 persons approximately 5.8 percent of Assam's population—primarily from marginalized and rural communities reason that they are lacking adequate documentation. And These individuals, termed “precarious citizens,” and face arbitrary deprivation of nationality and existential insecurity.

Simultaneously, India hosts large populations of de jure stateless persons, including around 110,000 Tibetan refugees, 95,230 Sri Lankan Tamil refugees, 18,914 Rohingya refugees, and others lacking recognized nationality or access to citizenship.⁵

This situation stems from a gap between India's international commitments and its domestic implementation of nationality laws. The Universal Declaration of Human Rights affirms the right to nationality and protection against arbitrary deprivation. India, as a party to the ICCPR, CRC, and CEDAW, is obligated to safeguard these rights and prevent statelessness. However, its failure to accede to the 1954 and 1961 Statelessness Conventions leaves

³ National Law University Delhi & UNHCR, *India and the Challenge of Statelessness: A Review of the Legal Framework Relating to Nationality* (2014).

⁴ Pratik Dixit, *The Citizenship Debate in India: Securing Citizenship for the Stateless*, 38 SSRN 3819159 (2025).

⁵ Ankit Raturi, *Analysis of the Implementation of the NRC with Respect to Statelessness in Assam*, 9 CHRIST U. L.J. 77 (July-December 2020).

significant protection gaps that perpetuate exclusion and legal invisibility.

RESEARCH OBJECTIVE

This research pursues four interconnected objectives:

1. To critically analyze the doctrinal and policy framework governing nationality and statelessness in India, evaluating compliance with international legal norms established through the UDHR, ICCPR, CRC, and customary international law principles on statelessness prevention.
2. To conduct comparative regional analysis of South Asian approaches to statelessness, evaluating how India, Bangladesh, Nepal, and Sri Lanka address nationality determination, refugee protection, and statelessness reduction, thereby identifying regional patterns, best practices, and cooperation deficits.
3. To assess human rights violations emerging from India's citizenship verification mechanisms (NRC and Foreigners Tribunals) and religious exclusion provisions (CAA), analyzing impacts on vulnerable populations including women, children, religious minorities, and linguistic communities.
4. To propose comprehensive legal and policy reforms based on international best practices, enabling India to harmonize domestic citizenship laws with international obligations, prevent arbitrary nationality deprivation, and establish pathways to citizenship for stateless persons.

RESEARCH QUESTION

1. To what extent does India's nationality and citizenship framework comply with international legal standards on the prevention and reduction of statelessness, and what legal reforms are required to bridge existing gaps?
2. How does India's approach to statelessness compare with that of other South Asian states, and what does this reveal about regional compliance with international obligations on the right to nationality?
3. In what ways do India's citizenship verification and exclusion mechanisms, such as the NRC and CAA, challenge international human rights principles on non-discrimination and the right to nationality, thereby risking the creation of new stateless populations?

Research Question 1: India's Compliance with International Legal Standards on Statelessness Prevention

International Legal Obligations and Their Recognition in Indian Jurisprudence

India faces bind to international legal obligations to prevent and reduce statelessness despite of non- accession to the two cornerstone statelessness conventions. And these obligations derive from three authoritative sources:

- 1) India's ratification of multiple human rights instruments including the International Covenant on Civil and Political Rights (ICCPR, 1966), Convention on the Rights of the Child (CRC, 1989), and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979);
- 2) customary international law principles on statelessness prevention that bind all states; and
- 3) constitutional incorporation through Article 51⁶'s directive to foster respect for international law.

The Indian Supreme Court has recognized this framework through "functional monism" and it incorporating customary international law principles directly into the constitutional interpretation without requiring any prior legislative transformation.⁷ And in *Vellore Citizens Welfare Forum v. Union of India* (1996)⁸, the Court established that principles which is accepted as customary international law are incorporated into domestic law automatically. So the obligation to avoid and reduce statelessness has achieved under the customary international law status, making it binding on India independently of formal treaty ratification.

Critically, Article 15⁹ of the UDHR, states that everyone's right to nationality and prohibiting arbitrary deprivation, has achieved customary international law status. The Supreme Court in *Chairman Railway Board v. Chandrima Das* (2000)¹⁰ observed that international Covenants and Declarations taken by the United Nations must be respected by all signatory states, and courts can rely upon these instruments and to interpret the Constitution and to protect human rights of all persons including foreigners. This functional embodied mechanism

⁶ Article 51 of constitution of india

⁷ Adil Hasan Khan, *India and Statelessness: An Introduction*, *Statelessness Citizenship Rev.* 3, no. 1 (2021).

⁸ *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647.

⁹ *Universal Declaration of Human Rights art. 15*, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (Dec. 10, 1948) ("Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.").

¹⁰ *Chairman, Railway Board v. Chandrima Das*, (2000) 2 SCC 674.

creates binding international obligations despite India's non-accession to the statelessness conventions.

Substantive Legal Gaps in India's Citizenship Framework

India's Citizenship Act, 1955, as amended in 2003 and 2019, it contains fundamental gaps and it violating international obligations on statelessness prevention:

First, the absence of jus soli safeguards for stateless children. Here in the act give a time period to hold the citizenship and even a one parent is india and another is illegal migrant also not accepted the child after December 3 2004. In the 2003 Amendment to Section 3¹¹ denies citizenship by birth to children born after December 3, 2004. This directly violates Article 1 of the 1961 Convention and Article 7 of the CRC¹² requiring automatic nationality for stateless children born in a state's territory. So, over 200,000 children aged 15-24 among Rohingya refugee populations denied legal status or nationality recognition, this leads them to denying them access to education, healthcare, and fundamental services¹³.

Second, the lack of statelessness safeguards in deprivation provisions. Under Section 10 of the Citizenship Act¹⁴ which permits citizenship deprivation on grounds including fraud, disloyalty, imprisonment abroad, and prolonged residence outside India, but it contains no safeguard ensuring deprivation does not render persons stateless. In International law, particularly Articles 8 and 9 of the 1961 Convention¹⁵ and customary international law, requires that states refrain from depriving nationality in a manner creating statelessness. India's failure to incorporate this safeguard violates international obligations. Indian courts also have recognized this gap, in *Ramesh Chennamaneni v. Union of India* (2019)¹⁶, the Telangana High Court held that implied limits on Section 10 deprivation include the avoidance of statelessness, reading this requirement into the statute despite explicit legislative silence.

Third, the "illegal migrant" exclusion creating permanent statelessness. In the 2003 Amendment's concept of "illegal migrants"¹⁷ not permit to stay as a citizen without valid

¹¹ *Citizenship Amendment Rules 2004, Rule 4A*

¹² *Convention on the Rights of the Child, Article 7; Convention on the Reduction of Statelessness, 1961, Article 1.*

¹³ *Council of Europe, Explanatory Report to the European Convention on Nationality (1997); SecuringCitizenship- Report_CPIL.pdf.*

¹⁴ *Citizenship Act, 1955, Section 10*

¹⁵ *Convention on the Reduction of Statelessness, 1961, Articles 8-9; Institute on Statelessness and Inclusion, Draft Commentary to the Principles on Deprivation of Nationality.*

¹⁶ *Chairman, Railway Board v. Chandrima Das, (2000) 1 SCC 635*

¹⁷ *India-and-the-Challenge-of-Stateless-A-Review-of-the-Legal-Framework.pdf, 2014.*

documentation from acquiring citizenship through naturalization or registration. This disproportionately impacts marginalized populations, rendering them vulnerable to permanent statelessness. A person who may be stateless cannot demonstrate prior nationality, thereby failing the "not an illegal migrant" requirement, precluding them from naturalization.

NRC-Foreigners Tribunal Nexus: Systematic Arbitrary Deprivation

The NRC process and Foreigners Tribunal proceedings exemplify it is systematic violation of international standards and prohibiting arbitrary nationality deprivation¹⁸. International law establishes three precondition for lawful deprivation: legitimate purpose, proportionality, and legality (procedural fairness). And here the procedures fail all three criteria: the stated objective (deportation to Bangladesh) is unachievable, the harm impose exceeds government interest, and Foreigners Tribunals place burden of proof on accused persons it is contrary to international standards requiring states to prove deprivation necessity. Over 63,000 ex parte orders were issued without hearing the accused, and tribunal members' performance is evaluated based on conviction rates.¹⁹

Children's Right to Nationality: Constitutional Violation

India violates obligations under Article 7 of the CRC and Article 24 of the ICCPR²⁰ say that India must automatically give nationality to children born on its land who would otherwise be stateless. The Citizenship Amendment Act of 2003 says that children born after 2004 cannot become citizens by birth if one of their parents is an illegal immigrant.

India urgently needs to harmonize its laws. This would involve signing the Statelessness Conventions of 1954 and 1961, amending the Citizenship Act to provide for automatic citizenship to children in case of statelessness, incorporating safeguard against loss of nationality, and removing religious discrimination from the processes of citizenship. India needs to change the way Foreigners Tribunals work by having independent judges, making sure that the state has the right amount of proof, and making sure that due process is strong.²¹

¹⁸ *National Register of Citizens (Assam) Final List, 2019; Analysis of the Implementation of the NRC with Respect to Statelessness in Assam (Ankit Raturi, Christ University Law Journal, 2020).*

¹⁹ *Human Rights Watch, Shoot the Traitors: Discrimination Against Muslims under India's New Citizenship Policy (April 2020); Amnesty International India, 125 Civil Society Organisations condemn the exclusion of 1.9 million people from the Assam NRC (2019).*

²⁰ *Article 24 of the International Covenant on Civil and Political Rights (ICCPR), suitable for your research paper*

²¹ *Unmaking-Citizens_online-report.pdf; National Human Rights Commission Report on Assam Detention Centres (2018).*

Only an restructuring of India's citizenship system to bring it in line with international human rights standards may prevent mass statelessness and uphold India's constitutional and international obligations to dignity and equality. Alternatively, India must take the initiative to establish its own regulations to reduce statelessness in South Asia.

RESEARCH QUESTION 2: COMPARATIVE INTERNATIONAL PERSPECTIVE WITH ENHANCED ANALYSIS

India's Ad Hoc Approach:

The Baseline India does not possess a comprehensive refugee law and hasn't signed onto the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The only legal prospective or framework for protection of refugees draws notably from the Foreigners Act of 1946, and discretionary administrative policies, as opposed to having any systematic mechanisms of protection. The Indian government accommodates approximately 110,000 Tibetan refugees, 95,230 Sri Lankan Tamil refugees, 18,914 Rohingya refugees, and various other displaced communities making up hundreds of thousands of stateless persons. Nonetheless, India has a site-specific policy influence and case-by-case policy determination with a significant political influence as opposed to identifying any uniform human rights context.²²

Bangladesh: Mass Statelessness Without Legal Status

Bangladesh is home to more than 900,000 Rohingya refugees at Cox Bazar, the largest refugee camp in the world, but has not yet ratified the 1951 Refugee Convention or the 1967 Protocol, just like India²³. The legal situation for refugees in Bangladesh exists through emergency administrative measures under the Foreigners Act and through temporary ad hoc government policies, and it does not have any coherent refugee legislation to establish rights and protections for refugees.

Importantly, Bangladesh has openly refused to use any initial temporary or permanent legal status for Rohingya in the seven decades that Bangladesh has been hosting refugee populations

²² *India-and-the-Challenge-of-Stateless-A-Review-of-the-Legal-Framework-relating-to-Nationality.pdf* (National Law University Delhi, 2014); *SecuringCitizenship-Report_CPIL.pdf* (2020).

²³ *The Statelessness Problem of the Rohingya Muslims* (Shehmin Awan, 19 Wash. U. Global Stud. L. Rev. 85, 2020); *The Rohingyas Crisis: An Interminable Journey of Statelessness* (Dipikanta Chakraborty, 10 GNLU J.L. Dev. Pol. 53, 2020)

from previous waves of displacement. The government advances the position that Rohingya must be returned to Myanmar and does not invoke or recognize their stateless status without further potential for naturalization. This practice directly violates the obligations Bangladesh has under the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC).

The conditions for the Rohingya refugees in Bangladesh camps show us what raises as a result of their non-recognition: restricted freedom of movement in the camps, inadequate healthcare (43 health camps for over 900,000 people), malnutrition or compromised health status in 75% children and women, systematic problems with sexualized violence and gender based exploitation, and a general prohibition on access to formal employment. Repatriation to Myanmar for Rohingya has consistently failed because Myanmar has not accepted returning Rohingya, leaving them in indefinite limbo with regard to their legal status.

Nepal and Bhutanese Refugees: Prolonged Unresolved Status²⁴

Nepal has around 15,000-30,000 refugees from Bhutan who fled ethnic cleansing and denationalization starting in 1985. Mostly of Nepali nationality, the refugees do not recognition as refugees and have no opportunities for naturalization after decades of residency in Nepal. In addition to the absence of any bilateral agreements enabling their return to Bhutan, and a lack of receive UN coordination mechanisms, these refugees face a permanent legal limbo—an illustration of how a shared ethnicity does not necessarily lead to forms of regional solidarity for citizenship.

Sri Lanka: Progressive Model Through Automatic Citizenship²⁵

Sri Lanka stands as the sole regional victor in tackling the issue of statelessness. After gaining independence in 1948, more than 900,000 Estate Tamils (Hill Tamils) who were the offspring of Indian laborers brought to work in the tea plantations by the British colonizers, were rendered stateless as both Sri Lanka and India refused to grant them citizenship.

Breakthrough Solution: In 2003, Sri Lanka's citizenship law allowed Hill Tamils to obtain citizenship automatically through simplified self-declaration procedures. This law

²⁴ *Statelessness In India_SCPP_Report.pdf* (TISS, 2024).

²⁵ *A Sociological Study on Life and Struggles of Sri Lankan Refugees in India* (K. Pushpam & S. Thirisha, 7 Intl J.L. Mgmt. Human. 1055, 2024); *7Issue5IntlJLMgmtHuman.pdf*.

acknowledged that cumbersome bureaucratic procedures are a major cause of people being stateless and thus, in 2004, more than 200,000 people became citizens of Sri Lanka through this process. Nonetheless, sociological research indicates that even though these communities are legally citizens, they still encounter discrimination in the areas of employment, education, and political participation, which diminishes the real effect of legal reforms.

South Asian Regional Cooperation Failures: Systematic Non-Cooperation Patterns:²⁶

Absence of Regional Frameworks: South Asia is not equipped with any regional treaties systematically dealing with the issue of statelessness as Africa (ICGLR, ECOWAS conventions) or Europe (EU directives) do. Although the SAARC (South Asian Association for Regional Cooperation) covers millions of refugees liable to be protected by regional programs, it has not yet established any refugee or statelessness protection frameworks.

Bilateral Over Multilateral Approaches: The 1964 Indo-Ceylon Pact depicts the drawbacks of bilateral settlements very well. The pact that was supposed to allocate citizenship between India and Sri Lanka for Indian Tamils remained very slow, incomplete, and totally dependent on political goodwill. Sixty years down the line, the same people are still applying for Indian citizenship under the pact without any resolution.

Ethnic Nationalism Predominance: The postcolonial nation-building that has taken place in Southeast Asia has constantly preferred the ethnic and religious identity of the people over the humanitarian obligations, thereby, producing stateless populations. The very fact that Myanmar excluded Rohingya from its 1982 Citizenship Law, Bangladesh denied granting status to them and Nepal has problems in naturalizing ethnically Nepali Bhutanese refugees are all examples that show ethnic nationalism increases at the expense of regional solidarity.

Security Over Humanitarianism: A common practice among neighboring states is to approach the issue of refugees and migration from the angle of security rather than with the human rights framework. For instance, Rohingya are regarded as security threats rather than persecuted minorities. Additionally, people of ethnic Nepali origin who are Bhutanese refugees are viewed with suspicion, despite their ethnic connections. This security-first stance not only hampers the process of creating comprehensive protection schemes but also exacerbates the existing

²⁶ Gerrard Khan, *Citizenship and Statelessness in South Asia*, UNHCR Working Paper No. 47 (Oct. 2001).

situation.

A South Asian perspective of statelessness starts to unfold a place where sovereignty issues, ethnic nationalism, and security concerns are more important than any obligations to humans and regional cooperation. One hand, Sri Lanka's automatic citizenship model is showing the way through the progressive reform. But on the other hand, the region is still without institutional means that would deal with the root causes of the people being without citizenship. The resolution of the problem has to go beyond the currently prevailing approaches of South Asian policy which are bilateral, ad hoc, and security-focused; and cover the entire region as a whole.

RESEARCH QUESTION 3: CRITICAL HUMAN RIGHTS AND POLICY-ORIENTED FOCUS

Conceptualizing De Facto Statelessness: Beyond Legal Formalism

India's citizenship verification procedures, particularly the National Register of Citizens (NRC) in Assam and the Citizenship Amendment Act (CAA) of 2019, put forward a challenge to the international human rights standards especially the right to nationality and the principle of non-discrimination. These devices have caused massive exclusion, thus increasing the likelihood of large de facto statelessness, which in turn has greatly degraded the dignity, security, and rights of vulnerable populations.²⁷

Violations of the Right to Nationality and Non-Discrimination

India is legally bound by several international instruments that recognize the fundamental human right to nationality, such as the Universal Declaration of Human Rights (UDHR) Article 15, the International Covenant on Civil and Political Rights (ICCPR) Article 24, and the Convention on the Rights of the Child (CRC). These norms enshrine universal guarantees that no individual shall be arbitrarily deprived of citizenship or discriminated against based on race, religion, ethnicity, gender, or political opinion.²⁸

India's NRC—aimed at checking citizenship in Assam—was based on strict standards of

²⁷ Hugh Massey, *UNHCR and De Facto Statelessness, Legal and Protection Policy Research Series (Div. of International Protection, UNHCR 2010)*.

²⁸ *Universal Declaration of Human Rights, Art. 15; ICCPR, Art. 24; CRC, Art. 7-8.*

documentary evidence that led to the exclusion of a large number of Bengali-speaking Muslims and other minorities, thus forming a group of insecure citizens who were on the verge of losing legal status and facing detention or deportation. The NRC operation removed 1.9 million people from the citizenship record due to discrepancies in documents or failure to show uninterrupted residence—situations that were frequently a result of poverty, gendered family structures, displacement, and historical marginalization.²⁹ In a procedural manner, the whole process transferred the burden of proof to the inhabitants, worked with a lot of opacity, and demanded heavy evidential requirements, which were among the reasons leading to the exclusion and arbitrariness being more or less systemic.

At the same time, the CAA added religious criteria to accelerate the process of giving citizenship to non-Muslim immigrants from Afghanistan, Pakistan, and Bangladesh—clearly excluding Muslims. Such blatant legal discrimination goes against international human rights laws that forbid any kind of discrimination based on religion in nationality issues. Furthermore, this discrimination adds to the already existing vulnerability of the minority Muslim communities that have been excluded by the NRC, thus reinforcing their social exclusion and legal insecurity.

Creation of De Facto Statelessness

De facto statelessness, which is to say that persons in that situation have no access to nationality yet may still lay claim to it, has been pushed up by NRC and CAA procedures. NRC has made the people who cannot give the necessary documents legal non-persons with no rights of citizenship and potentially subjected to detention and deportation.³⁰ These people, although they have valid claims to Indian nationality based on birth or residence, confront serious practical hurdles that lead to the situation of de facto statelessness. Women, children, undocumented migrants, and linguistic minorities are the ones who are the most affected as their innate socio-economic disadvantages make it harder for them to collect or keep the needed documents. The failure to protect the right to nationality for these groups is tantamount to arbitrariness which is not allowed under international law. Children of parents who are excluded or who are born in refugee communities suffer more risks of being stateless for

²⁹ *National Law University Delhi & UNHCR, India and the Challenge of Statelessness: A Review of the Legal Framework Relating to Nationality (2014).*

³⁰ *Hugh Massey, UNHCR and De Facto Statelessness, Legal and Protection Policy Research Series, Division of International Protection, UN High Commissioner for Refugees 2010.*

generations, thus losing access to formal education, healthcare, and legal protection.

Broader Human Rights Implications

The NRC and CAA processes are in direct conflict with India's commitments under various international human rights instruments that ensure, among other things, the right to life, liberty, and security of the person (ICCPR Article 6 & Article 9)³¹, non-discrimination (UDHR Article 2, ICCPR Article 26)³², and the best interests of the child (CRC Article 3)³³. Arguably, the arbitrary deprivation of one's nationality leads to social and political non-belonging and also jeopardizes access to fundamental rights. The detentions in the Assam NRC-related facilities have resulted in human suffering that has been documented, and among the cases of suffering, some deaths and psychological trauma have been reported.

The gendered aspect is very pronounced: women are not only excluded on account of being from the second gender but also because of family structures controlled by men and lack of documentation; children are not only denied their nationality but also deprived of the basic services; religious minorities are not only subjected to systemic targeting but also to legal discrimination.

Policy Critique and Urgent Legal Reform Needs

Criticism of the NRC and CAA (Citizenship Amendment Act) characterized them as an exclusionary regime that violates constitutional rights to equality (Article 14) and life and liberty (Article 21)³⁴. The process of determining foreignness is said to be racially and religiously discriminatory and to be masking the violation of the norms against arbitrary deprivation of nationality under administrative language.

- Human rights organizations and legal scholars recommend the following legal reforms:
- The effects of NRC/CAA should be immediately suspended until a comprehensive review is conducted.
- In citizenship disputes, the burden of proof should be reversed and placed on the state. Adoption of birthright citizenship safeguards for stateless and vulnerable children.

³¹ *International Covenant on Civil and Political Rights* arts. 6, 9, Dec. 16, 1966, 999 U.N.T.S. 171.

³² *Universal Declaration of Human Rights* art. 2, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (Dec. 10, 1948); *International Covenant on Civil and Political Rights* art. 26

³³ *Convention on the Rights of the Child* art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3

³⁴ *India Const.* art. 14 ("The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."); *India Const.* art. 21 ("No person shall be deprived of his life or personal liberty except according to procedure established by law.").

- Wiping out of religious discrimination provisions in the CAA.
- Setting up of processes for determining statelessness in accordance with 1954 and 1961 Conventions.
- More legal assistance, transparency, and judicial review in citizenship decisions.

India's citizenship verification and exclusion systems create huge problems for the international human rights principles of non-discrimination and the right to nationality, thus leading to great de facto statelessness. Without quick legal and procedural reforms, these policies might continue to push millions into being socially and legally invisible, thus violating India's constitutional and international obligations.

CONCLUSION AND FINDINGS

India's framework of citizenship violates international commitments to prevent statelessness. Although India has binding obligations under the ICCPR, CRC, and CEDAW to take all appropriate measures to ensure that children are not left stateless and to prohibit arbitrary deprivation of nationality resulting in statelessness, there is no protection for stateless children or prohibition on deprivation leading to statelessness under the Citizenship Act. Instruments such as the NRC and Foreigners Tribunals institutionalize exclusion through unfair processes and documentational bias, with a disproportionately adverse impact on marginalized groups.

Across South Asia, postcolonial states have reproduced exclusionary colonial models of citizenship. Ethnic nationalism in India, Bangladesh, Nepal, and Sri Lanka has yielded permanent stateless minorities, and only limited reform in Sri Lanka has been achieved. Regional bodies like SAARC have remained intransigent, with the collective failure of the states persisting.

The CAA and NRC intentionally create de facto statelessness by excluding nearly two million persons and undermining access to fundamental rights. Such exclusions are deepened by gendered and religious biases, in violation of basic norms of human rights.

India's dual crisis of legal and functional statelessness reveals systemic policy choices in breach of constitutional and international standards. This demands that citizenship laws are brought into line with human rights principles, advances regional cooperation, and dismantles exclusionary bureaucratic processes so as to assert nationality as a fundamental right of human

beings.

Reference

1. Adil Hasan Khan, India and Statelessness: An Introduction, 3 STATELESSNESS & CITIZENSHIP REV. 176 (2021).
2. Vasundhara Raje, Citizenship and Statelessness in the Indian Legal System: A Post-CAA Analysis, 5 JUS CORPUS L.J. 412 (June-August 2025)
3. K. Pushpam & S. Thirisha, A Sociological Study on Life and Struggles of Sri Lankan Refugees in India, 7 INT'L J.L. MGMT. & HUMAN. 1055 (2024).
4. Ankit Raturi, Analysis of the Implementation of the NRC with Respect to Statelessness in Assam, 9 CHRIST U. L.J. 77 (July-December 2020).
5. Dipikanta Chakraborty, The Rohingyas Crisis: An Interminable Journey of Statelessness, 10 GNLU J.L. DEV. & POL. 53 (October 2020).
6. Shehmin Awan, The Statelessness Problem of the Rohingya Muslims, 19 WASH. U. GLOBAL STUD. L. REV. 85 (2020).
7. Atsushi Kondo, Human Rights of Non-Citizens and Nationality - The Peculiarities of Japan's Nationality Legislation from a Comparative Legal Perspective, 66 JAPANESE Y.B. INT'L L. 245 (2023).
8. Sanoj Rajan, Resolving Statelessness Arising out of Surrogacy in India: A Legal Analysis, 14 ISIL Y.B. INT'L HUMAN. & REFUGEE L. 177 (2014-2015).
9. Sandra Aleman Martinez, Statelessness in Women, UNHCR Actions and the New Global Alliance to End Statelessness, 2024 LEX 59 (2024).
10. Gerrard Khan, Citizenship and Statelessness in South Asia, UNHCR Working Paper No. 47 (Oct. 2001).
11. Hugh Massey, UNHCR and De Facto Statelessness, Legal and Protection Policy Research Series (Div. of International Protection, UNHCR 2010).
12. Rupaleem Bhuyan et al., Bordering through Legal Non-Existence: The Production of De Facto Statelessness Among Women and Children Through the NRC in Assam (2024) (conference paper).

Legislation

1. The Citizenship Act, 1955
2. The Citizenship Amendment Act (CAA), 2019

3. The Foreigners Act, 1946
4. The Illegal Migrants (Determination by Tribunal) Act, 1983 (India)
5. The Universal Declaration of Human Rights, 1948 (UDHR)
6. The International Covenant on Civil and Political Rights, 1966 (ICCPR)
7. The Convention on the Rights of the Child, 1989 (CRC)
8. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
9. The 1954 Convention Relating to the Status of Stateless Persons
10. The 1961 Convention on the Reduction of Statelessness

Cases

- Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647 – Supreme Court recognition of customary international law incorporation into Indian law.
- Chairman, Railway Board v. Chandrima Das, (2000) 2 SCC 674 – Supreme Court on respecting international human rights covenants in constitutional interpretation.
- Ramesh Chennamaneni v. Union of India (2019), Telangana High Court – Judgement on reading avoidance of statelessness into Section 10 deprivation provisions despite legislative silence.

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