

Stateless in My Own Country: Citizenship, Identity, and the Constitution

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Abstract:

Statelessness, a condition where individuals lack legal recognition as citizens of any state, poses profound challenges to identity, rights, and constitutional protections. This paper examines the phenomenon of statelessness within domestic contexts, where individuals are rendered "stateless in their own country" due to discriminatory laws, bureaucratic failures, or constitutional ambiguities. It explores the interplay between citizenship, identity, and constitutional guarantees, focusing on how legal frameworks shape or undermine personhood. Drawing on case studies from India, Myanmar, and the Dominican Republic, the paper analyzes how constitutional provisions, judicial interpretations, and state practices contribute to or mitigate statelessness. It argues that statelessness reflects a failure of constitutionalism to uphold the right to nationality as a cornerstone of human dignity. The paper proposes legal reforms, including robust judicial review and alignment with international human rights standards, to address this crisis. By situating statelessness at the intersection of law, identity, and governance, this study underscores the urgent need for constitutional protections to ensure inclusive citizenship.

Keywords: Statelessness, Citizenship, Constitutional Law, Identity, Human Rights, Nationality, Discrimination, Judicial Review

1. Introduction:

Statelessness is a global human rights crisis affecting over 4.4 million people, as reported by the United Nations High Commissioner for Refugees (UNHCR).¹ While often associated with displacement across borders, statelessness also occurs within national boundaries, where individuals are denied citizenship in their country of birth or residence due to legal, administrative, or discriminatory barriers. This phenomenon—described as being "stateless in one's own country"—raises critical questions about the role of constitutions in safeguarding identity and belonging. Citizenship, as a legal construct, is the gateway to rights, political participation, and social inclusion. Yet, for many, it remains elusive, rendering them invisible within their own constitutional frameworks.

This paper explores the nexus of statelessness, citizenship, and constitutional law, examining how domestic legal systems create or perpetuate statelessness and how they can address it. It analyzes the constitutional dimensions of statelessness through case studies, including India's National Register of

Citizens (NRC), Myanmar's exclusion of the Rohingya, and the Dominican Republic's denationalization of Haitian descendants. The paper argues that statelessness is not merely a bureaucratic or policy issue but a constitutional failure that undermines the principles of equality, dignity, and justice. It proposes reforms to align domestic laws with international standards, emphasizing the role of judicial review and inclusive constitutional design.

2. Conceptual Framework: Statelessness, Citizenship, and Identity:

2.1 Defining Statelessness

The 1954 UN Convention Relating to the Status of Stateless Persons defines a stateless person as someone “who is not considered as a national by any State under the operation of its law.”² This legal definition captures the essence of statelessness: the absence of a recognized legal bond between an individual and a state. Statelessness can arise from conflicts in nationality laws, state succession, discriminatory policies, or administrative failures. Within a country, statelessness manifests when individuals are denied citizenship despite significant ties to the state, such as birth, residence, or ancestry.

2.2 Citizenship as a Constitutional Right

Citizenship is both a legal status and a marker of identity, conferring rights to political participation, social services, and protection under the law. Constitutions often enshrine citizenship as a fundamental right, either explicitly or implicitly, through provisions on equality and non-discrimination. For instance, Article 15 of the Universal Declaration of Human Rights (UDHR) recognizes the right to a nationality,³ while many national constitutions, such as India's Article 5, define citizenship criteria.⁴ However, gaps between constitutional guarantees and their implementation often leave marginalized groups vulnerable to statelessness.

2.3 Identity and the Constitutional Void

Identity, encompassing ethnicity, religion, and cultural affiliation, is intricately tied to citizenship. Statelessness disrupts this link, creating a constitutional void where individuals are excluded from the legal and social fabric of the state. This exclusion challenges the constitutional promise of equal protection and raises questions about the state's obligation to recognize and protect diverse identities.

3. Constitutional Provisions on Citizenship and Belonging:

The Indian Constitution lays the foundation of citizenship under **Articles 5 to 11**, situated in Part II. While Articles 5–9 deal with citizenship at the commencement of the Constitution, Article 11 empowers Parliament to regulate citizenship by law.

Despite this framework, the Constitution does not explicitly define a permanent right to citizenship or articulate a fundamental right to nationality.² This lacuna has permitted a legislative dominance over the citizenship discourse, often uninhibited by constitutional checks.

The Preamble's promise of "equality", "liberty", and "fraternity" implies an inclusive national identity, which becomes hollow when legal structures selectively confer or deny belonging.

4. The Citizenship (Amendment) Act, 2019 and the NRC: Constitutional Crisis:

The **Citizenship (Amendment) Act, 2019 (CAA)** introduced a religion-based exclusion in the naturalization process by fast-tracking citizenship for non-Muslim migrants from Pakistan, Afghanistan, and Bangladesh. This, combined with the **National Register of Citizens (NRC)** exercise in Assam, has led to widespread fear of mass disenfranchisement.

4.1 NRC and the Production of Statelessness

The NRC required residents of Assam to prove ancestry and presence prior to 1971. The final list excluded nearly **1.9 million** people. Lack of documentation, especially among marginalized communities, became grounds for exclusion.

The constitutional implications are severe—such administrative exercises lack due process safeguards and disproportionately affect minorities, violating **Article 14 (Right to Equality)** and **Article 21 (Right to Life and Liberty)**.

4.2 CAA and its Discriminatory Structure

By explicitly excluding Muslims, the CAA violates the **secular structure** of the Constitution. The Supreme Court has held in *S.R. Bommai v Union of India* that secularism is part of the basic structure. The law also raises issues under **Article 15**, which prohibits discrimination on grounds of religion.

5. Case Studies: Statelessness in Domestic Contexts:

5.1 India: The National Register of Citizens and Assam's Crisis

India's citizenship framework, governed by the Constitution and the Citizenship Act of 1955, has faced scrutiny for creating statelessness, particularly in Assam. The National Register of Citizens (NRC), updated in 2019, aimed to identify "illegal migrants" but left approximately 1.9 million people at risk of statelessness.⁵ The process, rooted in the Assam Accord and judicial oversight, required individuals to prove ancestry dating back to 1971, a task that disproportionately burdened marginalized communities, including Bengali Muslims and indigenous groups.⁶

The Indian Constitution's Articles 5–11 govern citizenship, but their application has been criticized for ambiguity and exclusionary practices. For instance, the Citizenship Amendment Act (CAA) of 2019, which grants citizenship to non-Muslim migrants from select countries, has been challenged for violating Article 14's guarantee of equality.⁷ The Supreme Court's limited intervention in cases like *Assam Sanmilita Mahasangha v Union of India* highlights the judiciary's reluctance to address statelessness comprehensively.⁸

5.2 Myanmar: The Rohingya and Constitutional Exclusion

Myanmar's 1982 Citizenship Law effectively denationalized the Rohingya, a Muslim minority, by excluding them from the list of recognized "national races."⁹ The 2008 Constitution reinforces this exclusion, tying citizenship to ethnicity and marginalizing groups deemed "non-indigenous."¹⁰ The Rohingya, despite centuries of residence in Rakhine State, are labeled as "foreigners," rendering over 700,000 stateless.¹¹

This case illustrates how constitutional frameworks can institutionalize discrimination, violating international norms such as the UDHR and the 1966 International Covenant on Civil and Political Rights (ICCPR).¹² Myanmar's judiciary, lacking independence, has failed to challenge these policies, leaving the Rohingya vulnerable to violence and displacement.

5.3 Dominican Republic: Denationalization of Haitian Descendants

In the Dominican Republic, the 2013 Constitutional Tribunal ruling (*TC/0168/13*) stripped citizenship from thousands of Haitian descendants born in the country, retroactively applying a 2010 constitutional amendment that restricted *jus soli* citizenship.¹³ This decision, affecting an estimated 200,000 people, was criticized for its discriminatory impact on ethnic Haitians.¹⁴ The Inter-American Court of Human Rights condemned the ruling as a violation of the right to nationality under Article 20 of the American Convention on Human Rights.¹⁵

The Dominican case underscores how constitutional amendments and judicial interpretations can exacerbate statelessness, particularly when targeting specific ethnic groups. It also highlights the role of regional human rights mechanisms in addressing domestic failures.

6. Constitutional Failures and Statelessness:

6.1 Discriminatory Laws and Policies

Constitutions are expected to uphold equality and non-discrimination, yet many enable statelessness through exclusionary citizenship laws. In India, the CAA's religious criteria violate constitutional equality guarantees. In Myanmar, ethnicity-based citizenship contradicts international human rights standards. These examples demonstrate how constitutional provisions can be weaponized to exclude marginalized groups, undermining the social contract.

6.2 Bureaucratic and Administrative Barriers

Administrative failures, such as complex documentation requirements or arbitrary decision-making, contribute significantly to statelessness. In Assam, the NRC's reliance on outdated records excluded many who lacked access to documentation. Similarly, in the Dominican Republic, bureaucratic obstacles prevented Haitian descendants from registering as citizens. These barriers reflect a disconnect between constitutional promises and their practical implementation.

6.3 Judicial Inaction

Judiciaries play a critical role in upholding constitutional rights, yet their inaction can perpetuate statelessness. In India, the Supreme Court's oversight of the NRC process failed to address its exclusionary impact. In Myanmar, the lack of an independent judiciary leaves stateless groups without recourse. Judicial review, when robust, can serve as a check against arbitrary state action, as seen in limited successes in the Inter-American system.

7. International Law and Statelessness:

International law provides a framework for addressing statelessness, with key instruments including the 1954 and 1961 UN Conventions on statelessness.¹⁶ The UDHR's Article 15 and the ICCPR's Article 24 affirm the right to a nationality, particularly for children.¹⁷ Regional frameworks, such as the African Charter on Human and Peoples' Rights and the American Convention, further reinforce these obligations.¹⁸

However, compliance with international law remains inconsistent. States like Myanmar and the Dominican Republic have resisted international pressure, citing sovereignty. The UNHCR's #IBelong campaign seeks to end statelessness by 2024, but progress is slow.¹⁹ Constitutional alignment with these standards, through clear citizenship provisions and anti-discrimination clauses, is essential to reduce statelessness.

8. Constitutional Solutions to Statelessness:

8.1 Inclusive Constitutional Design

Constitutions must explicitly guarantee the right to nationality and prohibit discrimination based on ethnicity, religion, or gender. For example, South Africa's Constitution, which grants citizenship to all born in the country and prohibits unfair discrimination, serves as a model.²⁰ Incorporating *jus soli* or *jus sanguinis* principles with minimal restrictions can prevent exclusion.

8.2 Robust Judicial Review

Judiciaries must actively protect stateless individuals through constitutional review. Landmark cases, such as *Mabo v Queensland* in Australia, demonstrate how courts can recognize marginalized groups' rights.²¹ In India, the Supreme Court could adopt a more proactive stance in reviewing the NRC and CAA to ensure compliance with Article 14.

8.3 Administrative Reforms

States must simplify citizenship processes, ensuring access to documentation and legal aid. Mobile registration units, as implemented in Thailand to register stateless hill tribes, offer a practical solution.²² Constitutional mandates for transparent and accessible administrative systems can reduce statelessness.

8.4 Alignment with International Law

Constitutions should reflect international commitments, such as the 1961 Convention's provisions on preventing statelessness at birth.²³ States should ratify and domesticate these treaties, ensuring that constitutional amendments align with global standards.

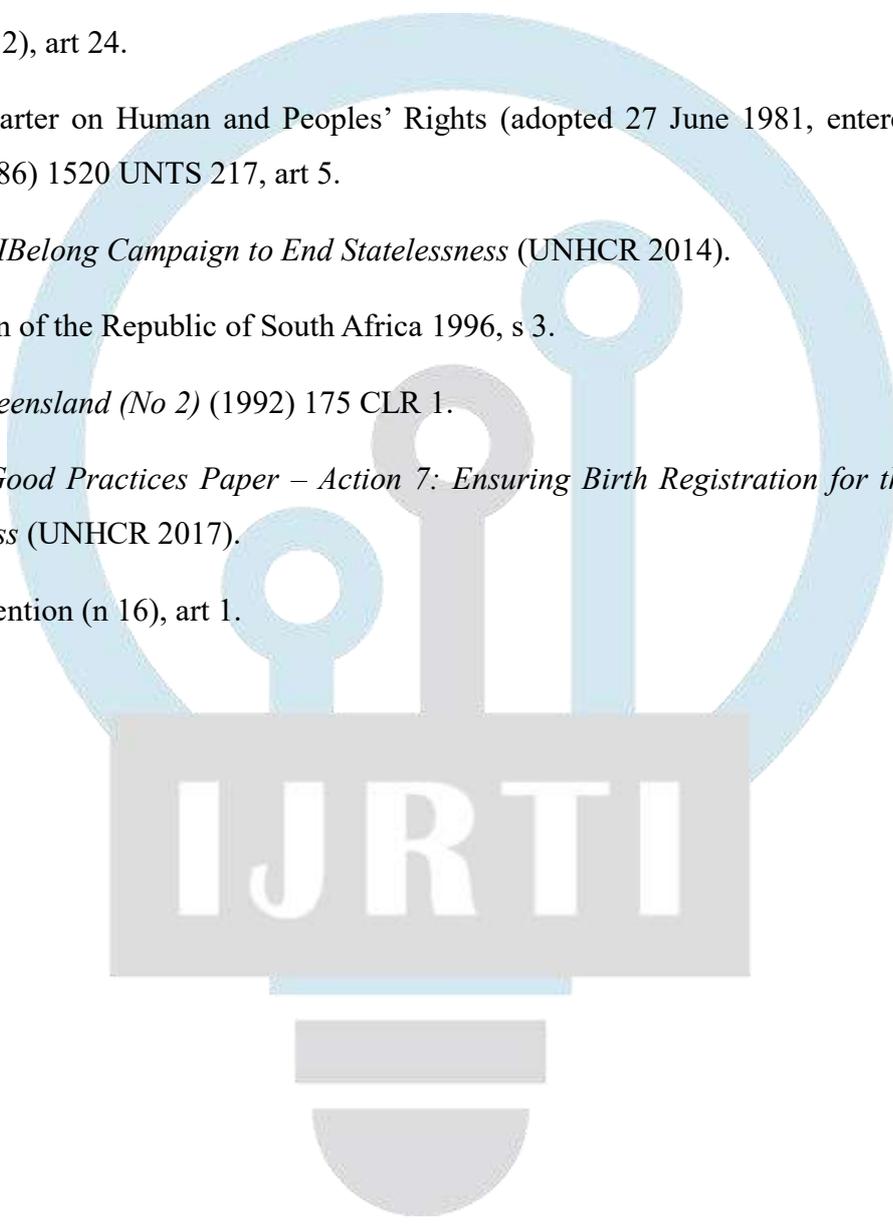
9. Conclusion:

Statelessness within one's own country is a profound violation of human dignity, identity, and constitutional rights. Through case studies of India, Myanmar, and the Dominican Republic, this paper highlights how constitutional frameworks, judicial inaction, and discriminatory policies perpetuate this crisis. Addressing statelessness requires a multifaceted approach: inclusive constitutional design, robust judicial review, administrative reforms, and alignment with international law. By reimagining citizenship as a constitutional guarantee rooted in equality and dignity, states can fulfill their obligation to ensure that no one is left stateless in their own country.

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A large, light blue watermark logo is centered on the page. It features a stylized lightbulb shape with a circular top and a semi-circular base. Inside the circle, there are three vertical lines of varying heights, each ending in a small circle, resembling a circuit board or a stylized 'I' and 'J'. Below the circle is a grey rectangular box containing the letters 'IJRTI' in white, bold, sans-serif font. Below the box are two horizontal bars, one solid grey and one white with a grey outline, forming the base of the lightbulb.

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