
STATELESSNESS AND THE ROLE OF LAW: A COMPARATIVE STUDY OF THE ROHINGYA IN MYANMAR AND NRC-AFFECTED COMMUNITIES IN ASSAM, INDIA

Dharamvir, Chandigarh University

Introduction

Statelessness is a legal condition where an individual is not considered a national by any state under the operation of its law. This legal void is not a mere administrative oversight but a profound crisis that strips individuals of their fundamental right to a nationality, as enshrined in **Article 15 of the Universal Declaration of Human Rights (UDHR)**. Beyond the denial of legal status, statelessness is a precursor to a cascade of human rights violations, rendering individuals and communities vulnerable to exploitation, violence, and systematic discrimination. This paper argues that statelessness, while manifesting as a humanitarian crisis, is fundamentally a product of **exclusionary citizenship laws** and political agendas. Through a deep comparative analysis, this study examines how legal frameworks in Myanmar and India have been weaponized to create and perpetuate statelessness, focusing on the Rohingya Muslim minority and communities affected by the National Register of Citizens (NRC) in Assam. By deconstructing the legal mechanisms, political rationales, and international legal implications, this paper seeks to provide a comprehensive understanding of how law, in both authoritarian and democratic contexts, can be a tool of ethnic and religious exclusion, and it proposes a pathway toward more just and inclusive citizenship regimes.

Existing Literature and Contextual Analysis

The issue of statelessness is not new, but its contemporary manifestations in countries like Myanmar and India reveal a disturbing trend of states using domestic law to formalize discrimination against minorities. The existing scholarly literature, while extensive, often treats these cases in isolation. This project builds upon and integrates these separate bodies of work to offer a holistic, comparative legal analysis.

The Rohingya in Myanmar: A Case of De Jure Statelessness and Legalized Erasure

The plight of the Rohingya is a textbook example of **de jure statelessness**, where a population is systematically stripped of its nationality through formal legislation. The cornerstone of their legal persecution is the **1982 Citizenship Law**, enacted by the military junta of then-Burma. This law established a racialized and hierarchical citizenship framework, categorizing the population into three tiers: "full citizens," "associate citizens," and "naturalized citizens." The law's central and most discriminatory provision is its reliance on a list of **135 "national races"** whose ancestry must be proven to predate 1823, the start of the First Anglo-Burmese War. The Rohingya, despite a centuries-long presence in the Rakhine State, were deliberately omitted from this list.¹

This law was a deliberate act of **"legalized erasure."** By denying them an ethnic identity and a legal history, the state effectively transformed a long-standing community into a foreign, illegal population. Scholars like Matthew Brett (2018) and Husan and Islam (2024) argue that this legal architecture served a dual purpose: it solidified the military's nationalist ideology based on Burman ethnicity and provided a legal pretext for systematic violence and oppression.² The result has been a cascade of human rights abuses, including restrictions on freedom of movement, marriage, education, and employment, all of which culminated in the 2017 military "clearance operations" that have been widely condemned as acts of ethnic cleansing and genocide. The denial of citizenship is not merely an inconvenience; it is the very foundation upon which their persecution is built, rendering them "right-less" in the eyes of the state.

The NRC in Assam, India: De Facto Statelessness and Administrative Violence

In India, the situation is more complex, involving a democratic state's use of administrative and bureaucratic processes to produce a similar outcome of statelessness. The **National Register of Citizens (NRC)** in Assam was initiated to identify undocumented immigrants, primarily from Bangladesh. The process relies on a rigid, **documentation-based system** where residents must provide documentary proof of their or their ancestors' presence in Assam

¹ Peggy Brett, Myanmar's 1982 Citizenship Law in Context, Torkel Opsahl Academic EPublisher (2018), available at <https://www.toaep.org/pbs-pdf/122-brett-kyh>.

² Sayedul Husan & Md. Shahidul Islam, Statelessness and Citizenship: Examining the Consequences and Legal Implications of the Denial of Citizenship to the Rohingya People in Myanmar, 2(1) J. L. & Soc. Sci. 1 (2024), available at <https://journals.uot.edu.pk/jlss/article/view/42>.

before the cut-off date of March 24, 1971.

This process has been criticized as a tool of "**administrative violence**" that disproportionately affects marginalized communities. Legal scholars, such as Padmini Baruah (2022), argue that the system is fundamentally flawed in a post-colonial society with high rates of poverty, illiteracy, and a history of disorganized record-keeping.³ The NRC's final list, published in 2019, excluded approximately **1.9 million people**, many of whom are Bengali Muslims. While not officially designated as stateless, these individuals are trapped in a legal limbo. They are forced to appeal to highly politicized **Foreigners' Tribunals**, where the burden of proof is unreasonably high and legal representation is often inaccessible.

This legal limbo is a form of **de facto statelessness**. As Kamal (2024) argues, the state's policies create the "specter of the potential foreigner," where citizenship is not an inherent right but a precarious status that must be constantly re-proven.⁴ The subsequent passage of the **Citizenship Amendment Act (CAA)**, which offers a path to citizenship for non-Muslim refugees from neighboring countries while explicitly excluding Muslims, further exposes the ethno-religious bias underlying the NRC process. The combination of the NRC and CAA, as many critics have pointed out, has created a legal framework that could render millions of Indian Muslims stateless, violating both India's secular constitutional principles and its international human rights obligations.⁵

Research Gap

While the humanitarian and political dimensions of these crises are well-documented, there remains a significant gap in academic literature that provides a deep, comparative legal analysis. Most studies focus on either Myanmar or India in isolation, failing to connect the underlying legal and ideological threads that run through both cases. This paper fills this gap by:

³ Padmini Baruah, *The Right to Have Rights: Assam and the Legal Politics of Citizenship*, Socio-Legal Rev. (2022), National Law School of India University, available at <https://repository.nls.ac.in/slr/vol16/iss2/2/>.

⁴ Elizabeth L. Rhoads & Ritanjan Das, *The Specter of Potential Foreigners: Revisiting the Postcolonial Citizenship Regimes of Myanmar and India*, 56(2) Critical Asian Stud. 155 (2024), available at <https://www.tandfonline.com/doi/full/10.1080/14672715.2024.2340996>.

⁵ Aastha Siddiqui, *Citizenship and Belonging: The Muslim Experience in India* (Routledge 2021), available at <https://www.routledge.com/Citizenship-and-Belonging-The-Muslim-Experience-in-India/Siddiqui/p/book/9780367546029>.

1. **Deconstructing the Legal Architectures:** It compares a **de jure** discriminatory law (Myanmar's 1982 Law) with a **de facto** discriminatory administrative process (India's NRC), revealing how different legal mechanisms can achieve the same goal of exclusion.
2. **Connecting to International Law:** It analyzes the obligations of both states under key international human rights instruments, including the **UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the Conventions on Statelessness**. This analysis highlights the legal violations and the potential for international accountability.
3. **Analyzing the Role of Nationalism:** It explores how populist politics and ethno-religious nationalism drive the implementation of these laws, showing that this phenomenon transcends political systems and is a global trend.

Analysis and Discussion: The Intersection of Law, Politics, and Human Rights

The comparative analysis reveals that while the political contexts are different, the legal and ideological foundations of statelessness in Myanmar and India share a common DNA of **exclusionary nationalism**.

In Myanmar, the 1982 Citizenship Law is a deliberate legal instrument of **ethnic nationalism**. By enshrining a "purity of blood" principle (**jus sanguinis**), the state sought to define its citizenry in narrow, ethnic terms. This form of "citizenship based on descent" is one of the most significant causes of statelessness globally.⁶ The law's retroactive nature—requiring proof of ancestry from centuries ago—is a clear violation of international legal principles, as it arbitrarily strips individuals of their nationality. The international community, including UN bodies, has recognized the 1982 law as a direct cause of the Rohingya crisis, with the International Court of Justice (ICJ) and the International Criminal Court (ICC) now investigating alleged acts of genocide and crimes against humanity.

In India, the NRC's legal framework appears to be based on more neutral principles of documentation. However, its implementation has been politically charged and deeply

⁶ United Nations High Commissioner for Refugees (UNHCR), Global Action Plan to End Statelessness: 2014–2024 (2020), available at <https://www.unhcr.org/in/media/global-action-plan-end-statelessness-2014-2024>.

discriminatory. The process exemplifies the concept of "**legal violence**"—where legal systems are used to inflict harm on marginalized populations. The Foreigners' Tribunals, with their high bar of proof and lack of due process, have been described as sites of "bureaucratic torture." The judiciary, instead of acting as a check on executive power, has often legitimized and even accelerated the NRC process.⁷ The subsequent CAA, by linking citizenship to religion, directly contravenes the secular principles of the Indian Constitution and key international human rights norms against discrimination. This legal synergy of the NRC and CAA is a clear example of a state using its legal authority to create a permanent underclass based on religion, a practice that mirrors the exclusionary policies seen in Myanmar.

Both legal regimes demonstrate a profound disregard for the principle of **non-refoulement**, a core tenet of international law. In Myanmar, the government actively created the conditions that led to mass flight and has refused to grant the Rohingya the right to return with safety and dignity. In India, the government's rhetoric and policies threaten to deport those who have been living in the country for decades, potentially returning them to a country that may not recognize them. This circular logic—where a country creates refugees and then denies them the right to return—is a fundamental violation of international law.

Suggestions and Policy Recommendations

Addressing statelessness requires a comprehensive, multi-layered approach that targets both the legal root causes and the political drivers of exclusion.

Domestic Legal and Policy Reforms

1.Repeal Discriminatory Laws: Both countries must be pressured to repeal or fundamentally reform the laws that create statelessness.

- **Myanmar:** The 1982 Citizenship Law must be fully repealed and replaced with a new nationality law that is based on principles of **jus soli** (citizenship by birth in the territory) and **jus sanguinis** without discrimination. It must recognize the Rohingya as a legitimate ethnic group with a right to nationality.

⁷ Vikram Khanduri, *An Analysis of the NRC Controversy in Assam: Migration and Citizenship in India*, Oxford Hum. Rts. Hub (2019), available at <https://ohrh.law.ox.ac.uk/an-analysis-of-the-nrc-controversy-in-assam-migration-and-citizenship-in-india/>.

- **India:** The legal framework for the NRC and CAA must be revised. The burden of proof should not fall on the individual but on the state. The Foreigners' Tribunals should be replaced with a fair, transparent, and non-discriminatory process for citizenship determination, and the CAA must be amended to be religion-neutral.
- 2. Strengthen Documentation Systems:** States must invest in robust and accessible civil registration and identity documentation systems. Birth registration must be universal, free, and non-discriminatory, as it is a crucial safeguard against statelessness at birth. Mobile teams and community-based outreach should be deployed to ensure documentation reaches the most vulnerable populations.
- 3. Provide Legal Aid:** The state must guarantee legal aid for all individuals facing citizenship challenges. This is critical for ensuring due process and a fair hearing, especially for those who are illiterate, poor, or geographically isolated.

International Cooperation and Accountability

- 1. International Pressure and Sanctions:** The international community, including the UN, regional bodies (like ASEAN and SAARC), and individual states, must apply sustained diplomatic and economic pressure on governments that create and perpetuate statelessness. This includes targeted sanctions against officials responsible for human rights abuses.
- 2. Reinforce International Legal Frameworks:** There must be a global push for more states to accede to the **1954 Convention Relating to the Status of Stateless Persons** and the **1961 Convention on the Reduction of Statelessness**. These conventions provide the legal and institutional frameworks for protecting stateless people and preventing future cases.
- 3. Hold States Accountable:** The international legal system must be used to hold states accountable. The ongoing cases at the ICJ and ICC against Myanmar are crucial precedents. Similarly, human rights organizations must continue to bring legal challenges against discriminatory laws in domestic courts and at international forums.

Outcome

Implementing these reforms would lead to a profound and multifaceted positive outcome:

1. **Restoration of Human Dignity and Rights:** The legal recognition of stateless populations would restore their access to fundamental rights, including the right to education, healthcare, and employment, which are often contingent on citizenship. This would lift millions out of a life of perpetual marginalization.
2. **Reduction of Regional Instability:** Statelessness is a key driver of conflict and forced displacement. Resolving these issues would lead to a reduction in refugee crises, easing the burden on neighboring countries and promoting regional stability.
3. **Strengthening of Democratic and Legal Institutions:** A commitment to inclusive citizenship would reinforce the rule of law and democratic values. It would send a clear message that states cannot use domestic legislation to bypass their international human rights obligations.
4. **Creation of a Global Precedent:** The successful resolution of the Rohingya and Assam NRC crises would serve as a powerful global precedent, demonstrating that even in complex political environments, statelessness can be resolved through legal and political will.

Conclusion

Statelessness, as revealed by the cases of the Rohingya in Myanmar and NRC-affected communities in Assam, is not an accident of history but a deliberate legal construct. In Myanmar, a deliberately discriminatory law was used to legitimize ethnic cleansing. In India, a flawed bureaucratic process, fueled by political rhetoric, threatens to do the same. The comparison of these two cases illustrates a critical point: whether in an authoritarian regime or a democratic state, the law can be weaponized to strip people of their most basic rights and identity.

Addressing statelessness requires a dual approach: a commitment to legal and policy reforms at the domestic level and sustained international pressure and accountability. The path forward must be one that champions universal human rights, rejects exclusionary nationalism, and ensures that the law serves as a shield for the vulnerable, not as a sword for the powerful.

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- Myanmar's 1982 Citizenship Law: This domestic law is a central focus, as it is the primary legal instrument used to strip the Rohingya of their citizenship.
- India's Citizenship Act, 1955: This is the principal statute governing Indian citizenship,

which has been amended over time, notably with the Citizenship Amendment Act (CAA), and is the legal basis for the National Register of Citizens (NRC) process.

- India's Foreigners Act, 1946: This pre-independence law empowers the government to regulate the entry, presence, and departure of "foreigners," and is used in conjunction with the NRC to identify and detain those who are not citizens.
- Universal Declaration of Human Rights (UDHR): A foundational international document that, in Article 15, asserts that "everyone has the right to a nationality" and that no one shall be arbitrarily deprived of it.
- 1954 Convention Relating to the Status of Stateless Persons: This convention provides a framework for the international protection of stateless persons.
- 1961 Convention on the Reduction of Statelessness: This convention establishes safeguards to prevent statelessness from occurring, particularly at birth.
- International Covenant on Civil and Political Rights (ICCPR): This treaty, which India has ratified, includes provisions that protect against arbitrary detention, ensure due process, and prohibit discrimination based on religion or origin