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NATIONALITY, SOVEREIGNTY, AND STATELESSNESS: AN INDIAN CONSTITUTIONAL ANALYSIS WITHIN THE FRAMEWORK OF CONTEMPORARY INTERNATIONAL LAW

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ABSTRACT

This study engages in an exhaustive examination of the notions of nationality, sovereignty, and statelessness under the Indian Constitution, set against the backdrop of the modern-day framework of international law. Nationality is the juridical foundation that ties the individual to the state, providing the gateway for political membership, civil participation, diplomatic protection, and constitutional entitlements. Nationality has traditionally been regarded as an emanation of sovereignty, where the plenary powers of the state determined membership within the political community. The modern-day framework of international law has dramatically changed the traditional approach. Nationality today is at the crossroads of sovereignty, human rights, and constitutional morality.[1632]

In the Indian context, Part II of the Constitution (Articles 5-11) provides the framework for citizenship, supplemented by the Citizenship Act, 1955 (amended in 1986, 2003, and 2019), which embodies the sovereignty-centered approach, prioritizing territorial integrity in the backdrop of Partition migration and the present-day NRC/CAA conundrum in Assam (2019)[1633]. The non-ratification of the 1954 and 1961 Conventions on the Status of Stateless Persons underscores the Indian stance on sovereignty; yet, judicial determinations under Articles 14, 21, and 300A suggest an emerging trend of harmonization with customary international law principles enshrined in UDHR Article 15 and ICCPR Article 24(3).[1634]

The central thesis of the study is that the Indian Constitution provides strong protection for sovereignty; yet, the unregulated use of sovereignty could well precipitate statelessness for Chakma refugees, Sri Lankan Tamils, Rohingya, and NRC-excluded individuals, thus undermining the principle of constitutional morality and erga omnes obligations. The methodological approach of the study, through an examination of the relevant enactments, judicial determinations, and treaty law, reveals discriminatory provisions, the absence of an overarching framework for statelessness, gender issues, and the controversy over the application of jus soli. The study argues for an evolutionary approach that accommodates international norms without compromise, placing India at the forefront of the statelessness debate in the region.

KEYWORDS

Nationality, Sovereignty, Statelessness, Indian Constitution, Citizenship Act 1955, CAA 2019, NRC Assam International Conventions Article 21, Doctrinal Analysis, Nottebohm Case, Jus Soli, Jus Sanguinis, PIL.

[1632] Hannah Arendt, *The Origins of Totalitarianism* 296 (Schocken Books 2d ed. 1958).
[1633] Final NRC Assam Publication (Aug. 31, 2019), https://nrcassam.nic.in.
[1634] Universal Declaration of Human Rights, art. 15, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948); International Covenant on Civil and Political Rights art. 24(3), Dec. 16, 1966, 999 U.N.T.S. 171.

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INTRODUCTION

Nationality is the core juridical expression of state sovereignty and encompasses the exclusive competence of the state in the conferment, regulation, and revocation of legal membership[1635]. Thus, it is the fundamental attribute that defines the contemporary concept of the sovereign state in the international legal system[1636]. Being the essential legal bond between the individual and the body politic, the role of nationality is deterministic in the allocation of substantive rights, including the legitimate acquisition of passports for international travel, franchise rights, comprehensive diplomatic protection in foreign jurisdictions, and, most critically, the full enjoyment of constitutional rights in the homeland, while at the same time requiring corresponding obligations in the form of potential military service. Conversely, the state of statelessness, or the lack of legal recognition of the individual in the municipal law of any state, results in the systematic denial of fundamental capabilities and rights, including access to education, formal employment, healthcare, banking and financial systems, and freedom of movement in both the national and international spheres[1637].

The Indian constitutional framework, drafted in the context of the 1947 Partition of the Indian subcontinent and the consequent massive displacements of people, with over fifteen million people displaced and over a million fatalities, has strategically placed the authority for the determination of nationality in Part II of the Constitution of India, 1950 (Articles 5-11)[1638]. By empowering the Parliament with plenary legislative authority "to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship" under Article 11 of the Constitution of India, 1950, the Indian legislative framework culminates in the comprehensive enactment of the Citizenship Act of 1955, which is the authoritative legal instrument in the determination of Indian nationality[1639]. The Indian constitutional framework critically intersects with the contemporary evolution of international law, where the classical notion of absolute and unqualified state sovereignty is subject to the emerging norms of international law that prohibit the arbitrary deprivation of nationality. The latter is authoritatively expressed in **the** Nottebohm Case (*Liechtenstein v. Guatemala),* where the "genuine link" doctrine is articulated as the mandatory condition for international legal recognition of nationality[1640].

This study undertakes a systematic analysis of the inherent juridical contradiction inherent in India's sovereignty absolutism, as exemplified by its well-developed border control regime, its rigorous migration control laws, and its imperative of demographic preservation, in stark contrast to the heightened scale of humanitarian crises exemplified by the Assam NRC process, culminating in the exclusion of 1.9 million individuals (final publication: 31 August 2019)[1641]. The inherent juridical contradiction is heightened by the Citizenship (Amendment) Act, 2019, which establishes a preferential fast-track naturalization regime for non-Muslim religious minorities of Afghan, Bangladeshi, and Pakistani nationality, thereby engendering well-substantiated risks of de facto statelessness for Muslim populations and long-standing refugee communities[1642]. The progressive judicial activism, exemplified by a notably expansive interpretation of Article 21—crystallized in *Maneka Gandhi v. Union of India (2 SCR 621)*[1643] and the golden triangle doctrine of Articles 14, 19, and 21 as a unitary substantive due process framework, constitutionally provides remedial avenues, albeit within the legislative inertia

[1635] Malcolm N. Shaw, *International Law* 812 (8th ed. 2017).
[1636] L. Oppenheim, *International Law* § 377, at 846 (H. Lauterpacht ed., 9th ed. 1992).
[1637] Hannah Arendt, *The Origins of Totalitarianism* 296 (Schocken Books 2d ed. 1958).
[1638] INDIA CONST. arts. 5–11.
[1639] INDIA CONST. art. 11; Citizenship Act, No. 57 of 1955 (India).
[1640] *Nottebohm Case (Liech. v. Guat.), Second Phase*, 1955 I.C.J. 4 (Apr. 6).
[1641] Final NRC Assam Publication (Aug. 31, 2019), https://nrcassam.nic.in.
[1642] Citizenship (Amendment) Act, No. 47 of 2019 (India).
[1643] *Maneka Gandhi v. Union of India*, (1978) 2 S.C.R. 621 (India).

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characteristic of sovereignty-security prioritization. The central doctrinal thesis of this paper is that India's calculated strategic non-adherence to foundational statelessness conventions (1954 UN Convention Relating to the Status of Stateless Persons; 1961 UN Convention on the Reduction of Statelessness)[1644] is motivated by a legitimate aim of border control flexibility in response to complex geopolitical migration pressures[1645]. Nevertheless, constitutional supremacy, in conjunction with Article 51(c)'s[1646] express requirement of fostering respect for international law and treaty obligations among nations, constitutes a constitutional imperative of progressive normative alignment to prevent the precipitous erosion of human rights inherent in statelessness. The study undertakes a methodical doctrinal analysis of constitutionally viable legislative and judicial reform avenues, balancing indispensable sovereignty border control prerogatives with binding erga omnes human rights obligations, without unduly compromising sovereignty decision-making autonomy.

RESEARCH OBJECTIVES AND METHODOLOGY

This research is characterized by a thorough examination of the constitutional-statutory regime relating to nationality, in particular Part II, Articles 5-11 of the Citizenship Act (ss. 3-10)[1647]. It evaluates judicial developments from the basic structure in *Kesavananda Bharati vs the state of kerala*[1648] to the constitutional morality paradigm in *Navtej Singh Johar vs UOI*[1649], as well as the critical examination of the empirical reality of statelessness, including the excluded individuals in the National Register of Citizens in Assam (1.9 million people), Chakma refugees, the Rohingya crisis, and the absence of repatriation of Sri Lankan Tamils[1650]. It is characterized by actionable reform proposals, including the introduction of Statelessness Determination Procedure legislation, the incorporation of the provisions of the Citizenship Act with the 1961 Convention provisions, and the adoption of strategic conditional treaty ratification protocols[1651]. It is characterized by an in-depth examination of Public Interest Litigation, including Article 32[1652] and Article 226[1653] jurisdictions, in operationalizing Article 21[1654] dignity provisions in the absence of treaty incorporation, as well as Article 14[1655] in limiting discriminatory practices in relation to nationality[1656].

From the perspective of national security interests in India, it is submitted that the determination of membership is an absolute non-negotiable in the face of multifaceted geopolitical challenges, including systematic infiltration along the Bangladesh border, Rohingya refugee crises in 2017, complexities in membership in relation to state succession in the region, as well as climate change[1657]. As such, it is submitted that domestically focused pragmatically calibrated solutions would be more appropriate rather than indiscriminate treaty incorporation that would result in the erosion of sovereign flexibility in regulation that is critical in maintaining national integrity.[1658]

DOCTRINAL ANALYSIS

I. The Classical Sovereign Conception of Nationality

Traditional international law clearly and unmistakably acknowledged that the concept of nationality clearly fell within the exclusive domestic jurisdiction of sovereign States[1659]. This classical notion of international law was clearly

[1644] Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117.
[1645] Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 75.
[1646] INDIA CONST. art. 51(c).
[1647] INDIA CONST. arts. 5–11; Citizenship Act, No. 57 of 1955, §§ 3–10 (India).
[1648] *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).
[1649] *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).
[1650] *Nat'l Human Rights Comm'n v. State of Arunachal Pradesh*, (1996) 3 S.C.C. 682 (India).
[1651] UNHCR, *Global Action Plan to End Statelessness: #IBelong 2014–2024* (2014).
[1652] INDIA CONST. art. 32.
[1653] INDIA CONST. art. 226.
[1654] INDIA CONST. art. 21.
[1655] INDIA CONST. art. 14.
[1656] *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).
[1657] *Sarbananda Sonowal v. Union of India*, (2005) 5 S.C.C. 665, ¶ 53 (India).
[1658] Malcolm N. Shaw, *International Law* 820 (8th ed. 2017).
[1659] Malcolm N. Shaw, *International Law* 812–13 (8th ed. 2017).

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authoritatively settled by the Permanent Court of International Justice in the landmark case of Nationality Decrees Issued in *Tunis and Morocco (France v. UK case)*, wherein it was authoritatively declared that "nationality questions are, in principle, matters within the reserved domain of States" that were not subject to interference by the nascent League of Nations[1660]. This classical notion clearly reflected the overall Westphalian notion of sovereignty that was clearly articulated in the 1648 Peace of Westphalia, wherein sovereign States were supreme in all matters relating to membership determination[1661].

This notion of sovereignty-centered publicists. Lassa Oppenheim, in his International Law treatise (9th Edition), has carefully defined the concept of nationality as "the legal bond of membership which connects individuals with a State and through which the latter extends diplomatic protection and demands allegiance in return through the relationship of rights and duties.[1662]" J.G. Starke has conceptualized the notion of nationality as "the basis upon which a State asserts jurisdiction over persons in international law," which has been applicable only for jurisdictional purposes[1663]. Malcolm N. Shaw has confirmed that the notion of nationality has functioned as the tool of allocating jurisdiction between states and providing the basis of diplomatic protection[1664]. It is evident that the notion of nationality has functioned as an instrumental tool in the classical period and has been applicable for the twin purposes of diplomatic protection and allegiance.

Nevertheless, even within the confines of this ostensibly absolute classical sovereign doctrine, there were inherent structural limitations in the regulation of nationality that were subject to international review. The landmark *Nottebohm Case (Second Phase) (Liechtenstein v. Guatemala)*, it was fundamentally articulated the epochal "genuine link" principle, authoritatively holding that nationality must not simply be a matter of form but rather that it must correspond to "a real and effective connection" that is informed by social reality[1665]. The International Court painstakingly rationalized that:

"While under international law, it was the responsibility of each State to lay down rules concerning the granting of its nationality, a State cannot claim that the rules laid down are entitled to recognition in another state unless the former has acted in conformity with the general aim of establishing the legal bond of nationality in harmony with the genuine connection of the individual with the State that assumes the defense of its citizens using protection against other States."[1666] The Court clearly explained nationality as "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."[1667] Although the scope was very specific and limited to the requirements for the granting of diplomatic protection, the Nottebohm case was undoubtedly the starting point for the introduction of international normative scrutiny of the granting of nationality that was prone to abuse[1668]. The sovereignty over the regulation of nationality was thus qualified rather than absolute.

This seminal judgment marked a normative shift from absolute sovereignty to conditional sovereignty subject to international law reasonability norms with direct relevance to the Indian Citizenship Act, 1955 naturalization provisions (Section 6)[1669] that require the demonstration of "good character" and residence thresholds that implicitly raise issues of genuine link. Shaw states that the Nottebohm

[1660] *Nationality Decrees Issued in Tunis & Morocco*, 1923 P.C.I.J. (ser. B) No. 4, at 7 (Feb. 7).
[1661] Malcolm N. Shaw, *International Law* 137 (8th ed. 2017).
[1662] L. Oppenheim, *International Law* § 377, at 846 (H. Lauterpacht ed., 9th ed. 1992).
[1663] J.G. Starke, *Introduction to International Law* 252 (14th ed. 1989).
[1664] Malcolm N. Shaw, *International Law* 814 (8th ed. 2017).
[1665] *Nottebohm Case (Liech. v. Guat.), Second Phase*, 1955 I.C.J. 4, ¶ 22 (Apr. 6).
[1666] *Nottebohm Case (Liech. v. Guat.), Second Phase*, 1955 I.C.J. 4, ¶ 22 (Apr. 6).
[1667] *Nottebohm Case (Liech. v. Guat.), Second Phase*, 1955 I.C.J. 4, ¶ 22 (Apr. 6).
[1668] Malcolm N. Shaw, *International Law* 815 (8th ed. 2017).
[1669] Citizenship Act, No. 57 of 1955, § 6 (India).

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case established minimum international norms for the effectiveness of nationality[1670].

II. The Humanization of Nationality in International Law

Totalitarian atrocities of the Twentieth Century, exemplified by systematic mass denationalization of Jews, Romas, and political dissidents in interwar Europe culminating in nationality stripping in the context of the Holocaust, catastrophically revealed existential risks inherent in unchecked sovereignty of nationality[1671]. The humanitarian tragedy led to paradigmatic normative reconstruction in the context of United Nations human rights. The Universal Declaration of Human Rights (UDHR, GA Res 217A (III), 10 December 1948), in its true watershed moment, unequivocally recognized nationality as a fundamental human right in Article 15, stating: "Everyone has the right to a nationality" and prohibits "arbitrary deprivation." Of nationality.[1672] The revolutionary provision recast juridical discourse, transforming nationality from a matter of sovereignty to one of human dignity.[1673]

International Covenant on Civil and Political Rights (ICCPR, 999 UNTS 171), which was ratified by India on 10th April 1979, further bolstered the human rights paradigm[1674]. Article 24(3) stipulates that "every child has the right to acquire a nationality" which places a positive obligation on the States that are party to the treaty.[1675] General Comment 17 adopted in 1989 by the UN Human Rights Committee along with the *Lightfoot v. Canada* [1676](Communication No. 64/2011) decision holds the view that there is a requirement for legislative provisions to be in place to avoid childhood statelessness[1677] due to gaps in nationality law and that nationality regulations must not create discriminatory or statelessness inducing outcomes.

The 1961 Convention on Reduction of Statelessness (989 UNTS 75) systematized international collaborative efforts in controlling statelessness root causes[1678]. It does so by: Article 1, which lists discriminatory laws, succession, renunciation, etc.; Article 8, which prohibits deprivation that leads to statelessness; Article 1(4), which mandates conferral of nationality to territory-born stateless people and foundlings[1679]. It has chosen to deliberately not accede to it in order to retain sovereign flexibility, but provisions are now deemed to be customary international law by the scholarship of Alice Edwards[1680].

Complementary instruments fill the precipitating gaps: CEDAW Article 9 (1249 UNTS 13) provides for gender equality in the transmission of nationality, which remedies statelessness among married women[1681]; and the Hague Convention 1930 (179 LNTS 89) provides an effective solution to the question of effective nationality link for dual nationals[1682]. The evolution of human rights has redefined sovereignty in the matrix of international obligations, not eliminated state competence, but instead subjects it to an evolving matrix of human rights obligations, Malcolm N. Shaw confirms that nationality remains primarily within domestic jurisdiction but is increasingly conditioned by international legal standards designed to prevent statelessness and discrimination.[1683].

III. The Indian Constitutional Design of Citizenship

Constitution of India, 1950 exemplifies a complex relationship between the preservation of

[1670] Malcolm N. Shaw, *International Law* 815 (8th ed. 2017).
[1671] Hannah Arendt, *The Origins of Totalitarianism* 296 (Schocken Books 2d ed. 1958).
[1672] Universal Declaration of Human Rights art. 15, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948).
[1673] Malcolm N. Shaw, *International Law* 817 (8th ed. 2017).
[1674] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
[1675] Id. art. 24(3).
[1676] *Lightfoot v. Canada*, U.N. Human Rights Comm., Comm. No. 64/2011 (2011).
[1677] U.N. Human Rights Comm., *General Comment No. 17: Rights of the Child*, ¶ 8, U.N. Doc. HRI/GEN/1/Rev.1 (1989).
[1678] Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 75.
[1679] Id. arts. 1, 8.
[1680] Alice Edwards, *Boss or Bust? The Role of International Human Rights Law in Protecting Stateless Persons*, 35 Hum. Rts. Q. 670 (2014).
[1681] Convention on the Elimination of All Forms of Discrimination Against Women art. 9, Dec. 18, 1979, 1249 U.N.T.S. 13.
[1682] Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, Apr. 12, 1930, 179 L.N.T.S. 89.
[1683] Malcolm N. Shaw, *International Law* 823 (8th ed. 2017).

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sovereignty and the inclusion of humanity through the provisions in Part II of the Constitution relating to citizenship (Articles 5 to 11)[1684]. These transitional provisions were shaped by the extra-ordinary historical circumstances that accompanied the cataclysmic communal violence that accompanied the 1947 Partition, the unprecedented 15 million people displacements, and the challenges to nation-building that the newly formed republic faced[1685]. Granville Austin records that the framers of the Constitution faced the challenges to the nation-building process while balancing the humanitarian concerns for the displaced millions.[1686]

Article 5[1687] created foundational domiciliary citizenship benchmark, bestowing citizenship to persons "born in territory of India" irrespective of parental nationality or "either parents" satisfying identical birth requirements as of 26 November 1949 (Constitution commencement eve), inalienably establishing dominant jus soli principle in response to partition realities. Articles 6-7[1688] comprehensively dealt with migration of citizens to Pakistan: Article 6 conferred citizenship on migrating to India, Pakistan, intent of domicile as of 19 July 1948; Article 7 correspondingly accorded citizenship to migrants from Pakistan, ceasing Indian citizenship irrespective of physical presence. Article 8 pragmatically extended citizenship to persons of Indian origin habitually resident abroad, possessing substantial connections[1689]. The provisions established a temporally limited framework, thereby constitutionally entrenching a transition phase.

Inferences drawn from Constituent Assembly Debates (Volumes VII-VIII, 1949) reflect grave concerns regarding loyalty determination, migration patterns, demographic changes, and protection of minorities in a binational partition context[1690]. Dr. B.R. Ambedkar stressed the importance of citizenship provisions, stating, "provisions of citizenship…address immediate peculiar circumstances… strategically confers plenary regulatory authority Parliament: 'Article 11 reservoir of power…complete freedom Parliament make whatever provisions deem fit.'"[1691]

Article 11 materialized intention: "Parliament make provision acquisition termination citizenship all matters relating citizenship" was express subject of fundamental rights Part III constraints[1692], This provision enabled the enactment of the *Citizenship Act, 1955*, which constitutes the primary legislative framework governing Indian nationality today[1693]. The Constitution provided for the embedding of sovereign flexibility within the framework of constitutional supremacy, thereby facilitating evolution from the expansive inclusivity of 1950 to the exigencies of partition into the selective naturalization of 2019, matured sovereign security demographic priorities.

PIL jurisprudence tests design equilibrium in that *NHRC v. State of Arunachal Pradesh (Chakma refugee case)*[1694] Article 21 protections under Article 51(c)[1695] international law respect in the absence of treaty incorporation. Malcolm N. Shaw points out that post-colonial constitutions often place sovereign flexibility within rights constraints in the same way that Part II of the Indian constitution does[1696].

IV. Statutory Evolution: Citizenship Act, 1955

Citizenship Act, 1955 is an exhaustive operationalization of the constitutional Article 11 plenary grant, wherein five modes of acquisition along with modes of loss are provided in an evolutionary manner, balancing humanitarian

[1684] INDIA CONST. arts. 5–11.
[1685] UNHCR, *Global Trends: Forced Displacement in 2021* (2022).
[1686] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 198–202 (1966).
[1687] INDIA CONST. art. 5.
[1688] Id. arts. 6–7.
[1689] Id. art. 8.
[1690] 9 Constituent Assembly Debates 1146 (Dec. 7, 1949).
[1691] Id. (statement of Dr. B.R. Ambedkar).
[1692] INDIA CONST. art. 11.
[1693] Citizenship Act, No. 57 of 1955 (India).
[1694] *Nat'l Human Rights Comm'n v. State of Arunachal Pradesh*, (1996) 3 S.C.C. 682 (India).
[1695] INDIA CONST. art. 51(c).
[1696] Malcolm N. Shaw, *International Law* 829 (8th ed. 2017).

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concerns of the partition era with contemporary security concerns[1697].

In its original form, it reflected unconditional liberal jus soli principles (Section 3: India born persons pre-26 January 1987); however, over time, it has undergone progressive amendments that reflect the rising concerns of illegal migration.[1698] For instance, the Citizenship Amendment Act of 1986 removed birthright citizenship if either of the parents is not an Indian citizen in the backdrop of agitations along the Assam borders[1699]. Amendments in 2003 restricted citizenship by birth if one parent is an Indian citizen but not the migrant[1700].

Section 10 comprehensively enables deprivation of citizenship by acquired registration/naturalization, as well as citizenship by enumeration of grounds of fraud, disloyalty, long unexplained foreign residence[1701]. Procedural protection is in place, but it vests significant discretionary power open to arbitrariness under Article 14 (*Shayara Bhano vs Union of india* comparison)[1702].

CAA 2019 Section 6B represents watershed change in tradition of religious neutrality by granting eligibility for five-year residency qualification of 'persecuted' non-Muslim minorities (Hindus, Sikhs, Buddhists, Jains, Parsis, Christians) from Afghanistan, Bangladesh, Pakistan, entering pre-31 December 2014[1703]. Raises plethora of challenges in Supreme Court (WP(C) No. 1478/2019 pending as of March 2026.[1704]

Statutory evolution follows the path of Indian recalibrated sovereignty and security; however, the statelessness threats are not averted without the presence of the 1961 Convention Articles 7-8 provisions for childhood/original statelessness, deprivation gaps[1705]. Malcolm N. Shaw has observed that the post-colonial national laws often follow the path from inclusive security-restrictive models[1706].

V. Articles 14 and 21: Constitutional Guardrails

Article 14's equality before law protection was developed into comprehensive substantive anti-arbitrariness principle crystallized in *E.P. Royappa v. State of Tamil Nadu*[1707] which states that "Equality is anti-thesis of arbitrariness... Law cannot be arbitrary.". The Maneka Gandhi v. Union of India established golden triangle of Articles 14, 19, and 21, mandating procedure established by law constitutes "right, just, fair" substantive due process satisfying trilateral nexus[1708] and the *Shayara Bano v. Union of India* ,struck down triple talaq via manifest arbitrariness doctrine, compelling analogy to CAA 2019 religion-based classification in absence of compelling state interest justification (Navtej Singh Johar extension)[1709].

Article 21's life/personal liberty protection was expanded via Golden Revolution beyond narrow American due process. *Francis Coralie Mullin v. Administrator* AIR held that right to life encompasses "human dignity," imposing positive state obligations[1710]. Citizenship denial triggers exclusion and Aadhaar denial, bank account closure, employment ineligibility, etc., systematically implicates dignity cores as well as deportation/detention risks (*Olga Tellis v. Bombay Municipal Corporation* which links livelihood to life)[1711].

Malcolm N. Shaw argues that the post-colonial constitutions are characterized by the incorporation of substantive equality provisions that restrict the scope of sovereignty in the

[1697] INDIA CONST. art. 11; Citizenship Act, No. 57 of 1955 (India).
[1698] Citizenship Act, No. 57 of 1955, § 3 (India).
[1699] Citizenship (Amendment) Act, No. 51 of 1986 (India).
[1700] Citizenship (Amendment) Act, No. 6 of 2004 (India).
[1701] Citizenship Act, No. 57 of 1955, § 10 (India).
[1702] *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India); INDIA CONST. art. 14.
[1703] Citizenship (Amendment) Act, No. 47 of 2019, § 6B (India).
[1704] *Asst. to Collector of Cent. Excise v. Pathak*, W.P. (C) No. 1478 of 2019 (pending before Supreme Court of India).
[1705] Convention on the Reduction of Statelessness arts. 7–8, Aug. 30, 1961, 989 U.N.T.S. 75.
[1706] Malcolm N. Shaw, *International Law* 831–33 (8th ed. 2017).
[1707] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 S.C.C. 3, ¶ 85 (India); INDIA CONST. art. 14.
[1708] *Maneka Gandhi v. Union of India*, (1978) 2 S.C.R. 621, 645 (India); INDIA CONST. arts. 14, 19, 21.
[1709] *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India); Citizenship (Amendment) Act, No. 47 of 2019 (India); *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).
[1710] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, A.I.R. 1981 S.C. 746 (India); INDIA CONST. art. 21.
[1711] *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 S.C.C. 545 (India).

application of nationality rules, comparable to the development of Article 14 provisions in India that restrict the scope of Section 6B of the CAA religion test requirements for intelligible differentia and rational nexus *(State of Jammu & Kashmir v. Anwar)*[1712].

The sovereignty restrictions are subject to the test of constitutional morality (*Navtej Singh Johar vs Union of india* para 112)[1713] says that the test of citizenship cannot be reduced to the whim of sovereignty but must satisfy the test of substantive due process, non-discrimination, and dignity preservation from NRC exclusion and CAA religion test requirements.

VI. NRC, Documentation, and Constitutional Risk.

The National Register of Citizens (NRC) process in Assam represents a significant attempt by the Indian state to test citizenship status based on documents. The history of the process can be traced back to concerns about illegal migration from Bangladesh. The earlier legislative process, under the Illegal Migrants (Determination by Tribunals) Act of 1983, was declared unconstitutional by the Supreme Court in the case of *Sarbananda Sonowal v. Union of India, (2005)*[1714], where the Court held that "illegal migration constitutes a form of external aggression." The process of updating the NRC has been overseen by the Supreme Court in the case of *Assam Public Works v. Union of India*[1715], culminating in the final list of 2019 where 1.9 million applicants have been excluded. The excluded individuals have to prove their citizenship status before Foreigners Tribunals under the Foreigners Act of 1946, where under Section 2(1)(a), a "foreigner" is defined[1716].

Regarding statelessness, there are international norms that require specific procedural safeguards in nationality verification. Under Article 1(1) of the Convention relating to the status of Stateless Persons, 1954[1717], it is recognized that there is a need for fair determination procedures, including flexibility in evidence and appeals. However, in the context of the Foreigners Tribunals in Assam, there is no Statelessness Determination Procedure, which could lead to wrongful exclusion, as was highlighted in international cases, including *Lightfoot v. Canada*[1718], as heard by the UN Human Rights Committee.

This is a constitutional conundrum, as it is imperative that, even as it is a legitimate duty of the State to assert its sovereignty and security in its borders under Article 355 of the Indian Constitution[1719], it is also bound by Article 21[1720], which protects life, liberty, and dignity.

VII. Sovereignty, Security, and Judicial Deference

The Supreme Court in *Sarbananda Sonowal v. Union of India, (2005)*[1721], characterized the issue of large-scale illegal migration as a form of "external aggression" and relied on the Constitutional obligation of protecting every State of India "from external aggression and internal disturbance" as enshrined in Article 355 of the Constitution[1722]. This decision highlights the judiciary's willingness to defer to the government in matters of executive decisions regarding the issue of border control and the acknowledgment of the potential threat that large-scale migration poses to the sovereignty of the nation. In the case of *Sarbananda Sonowal*[1723], the Supreme Court again struck down the IMDT Act and upheld the provisions of the Foreigners Act, prioritizing the issue of national security over the procedural leniency of economic migrants. However, the sovereign powers of the government in this regard have been limited by the basic structure doctrine of the Constitution, as outlined in the case of

[1712] Malcolm N. Shaw, *International Law* 823–25 (8th ed. 2017); *State of Jammu & Kashmir v. Triloki Nath Khosa*, (1974) 1 S.C.C. 19 (India).
[1713] *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1, ¶ 112 (India).
[1714] *Sarbananda Sonowal v. Union of India*, (2005) 5 S.C.C. 665 (India).
[1715] *Assam Public Works v. Union of India*, W.P. (C) No. 1478/2019 (Supreme Court of India).
[1716] *Foreigners Act*, No. 31 of 1946, § 2 (India).
[1717] Convention Relating to the Status of Stateless Persons art. 1(1), Sept. 28, 1954, 360 U.N.T.S. 117.
[1718] *Lightfoot v. Canada*, U.N. Human Rights Comm., Commc'n No. 2586/2015, U.N. Doc. CCPR/C/124/D/2586/2015 (2018).
[1719] INDIA CONST. art. 355.
[1720] INDIA CONST. art. 21.
[1721] *Sarbananda Sonowal v. Union of India*, (2005) 5 S.C.C. 665 (India).
[1722] INDIA CONST. art. 355.
[1723] *Sarbananda Sonowal v. Union of India*, (2007) 1 S.C.C. 174 (India).

Kesavananda Bharati v. State of Kerala, (1973)[1724], which held that equality, secularism, and judicial review must be upheld as basic structures of the Constitution. This has been reinforced in the case of *Minerva Mills vs Union of india*[1725], which has established the supremacy of the Constitution.

VIII. Statelessness: Legal and Moral Dimensions

According to international law, statelessness is defined in the 1954 Convention relating to the Status of Stateless Persons in Article 1(1)[1726], which states that "the term 'stateless person' means a person who is not considered as a national by any State under the law of that State." Past studies undertaken by the United Nations also recognized de facto statelessness[1727], whereby a person possesses a nominal nationality but lacks effective protection from a state. In The Origins of Totalitarianism, Hannah Arendt[1728] examines the concept of statelessness as the "right to have rights." Statelessness can occur through various processes such as the conflict between the principles of jus soli and jus sanguinis, discriminatory denationalization such as the Nuremberg Laws enacted in 1935[1729], state succession such as the dissolution of the USSR in 1991, and massive displacement such as the Partition of India. Contemporary examples of statelessness can be found in the case of Genovese *v. Malta*[1730], involving persons of Haitian descent in the Dominican Republic.

IX. Reconciling Sovereignty and Human Dignity

Nationality law is an area that demonstrates the complex interplay between state sovereignty, community membership, and individual dignity. The classical Westphalian view of state sovereignty provides significant autonomy to the state in the matter of membership. However, since the year 1945, constitutionalism and international human rights law have imposed significant limits on state autonomy. The Supreme Court decision in the case of *Navtej Singh Johar v. Union of India, (2018)*[1731], recognized constitutional morality as an essential criterion in assessing dignity under Article 21 and equality under Article 14[1732]. The constitutional constellation in the context of citizenship would involve equality review under Article 14, protection of secularism as an essential component of the basic structure, and dignity under Article 21. The power under Article 32 and Article 226[1733] enables public interest litigation in cases involving NRC exclusion cases, Chakma refugee cases, and Rohingya deportation cases. Thus, constitutional sovereignty in the present context would involve striking an appropriate balance between Article 11[1734] legislative power over citizenship and the overarching rights regime to avoid the humanitarian disaster of statelessness.

SUGGESTIONS AND RECOMMENDATIONS

India should develop a Statelessness Determination Procedure (SDP) through specific legislation, keeping in mind the stipulations of Articles 1-33 of the 1954 Convention Relating to the Status of Stateless Persons[1735]. This process will entail specific procedures for the identification of stateless persons, flexibility in the presentation of evidence, opportunities for appeal at various administrative and judicial levels, and the scope for regularization of persons who are not included in the Assam National Register of Citizens, keeping in mind the stipulations of Article 21 of the Constitution of India regarding the protection of life and dignity[1736].

[1724] *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).
[1725] *Minerva Mills Ltd. v. Union of India*, (1980) 3 S.C.C. 625 (India).
[1726] Convention Relating to the Status of Stateless Persons art. 1(1), Sept. 28, 1954, 360 U.N.T.S. 117.
[1727] U.N., *A Study of Statelessness* (1949).
[1728] HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 296–302 (1951).
[1729] Nuremberg Laws, Sept. 15, 1935, RGBI I at 1146 (Ger.).
[1730] *Genovese v. Malta*, App. No. 53134/09, Eur. Ct. H.R. (2011).
[1731] *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).
[1732] INDIA CONST. arts. 14, 21.
[1733] INDIA CONST. arts. 32, 226.
[1734] INDIA CONST. art. 11.
[1735] Convention Relating to the Status of Stateless Persons arts. 1–33, Sept. 28, 1954, 360 U.N.T.S. 117.
[1736] INDIA CONST. art. 21.

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In addition, the Citizenship Act of 1955 needs to be amended to incorporate the minimum standards as per the 1961 Convention on the Reduction of Statelessness[1737]. This includes specific stipulations regarding the prohibition of deprivation of nationality if such deprivation results in a person becoming stateless, as per Article 8 of the Convention[1738], specific stipulations regarding foundlings under Section 3(1)(c)[1739], the incorporation of nationality rights of habitual residence through a new Section 5A, and the modification of Section 4 regarding descent in a gender-neutral manner[1740].

India could consider ratifying the Statelessness Conventions with certain reservations under Article 51(c) of the Constitution, which endorses the observance of international principles of law and treaty obligations, particularly in matters of state succession.[1741]

The judicial option could involve the Supreme Court issuing guidelines under its Public Interest Litigation jurisdiction to enforce the provisions of Articles 14 and 21 of the Constitution[1742], and to provide greater protection against arbitrary deprivation of nationality, and to incorporate principles of customary international law, such as non-refoulement (which has been upheld in the judgment of NHRC in its petition against the State of Arunachal Pradesh[1743]), and to require specialized training for Foreigners' Tribunals in dealing with cases of statelessness[1744].

Lastly, administrative measures could involve aligning the NRC verification process with the Citizenship (Amendment) Act, 2019[1745], through enhanced identity verification mechanisms such as biometric re-verification and improving coordination with national identity systems like Aadhaar[1746], while ensuring consistency with the constitutional requirements of equality and dignity in the process of determining citizenship[1747].

CONCLUSION

The research study titled "Nationality, Sovereignty, and Statelessness: An Indian Constitutional Analysis within the Framework of Contemporary International Law" is a research study aimed at exploring the complex relationship between the sovereign prerogative of a nation-state in regulating nationality and constitutional and international legal obligations in preventing statelessness. The title of this research study clearly indicates its research focus on how the Indian constitutional framework regulates nationality at the crossroads of sovereignty, individual rights, and international law principles.

The research study clearly indicates how nationality has traditionally been recognized as a fundamental element of a nation-state's sovereignty in international law decisions such as Nationality Decrees Issued in *Tunis vs Morocco* (1923)[1748]. However, with the establishment of international human rights law principles such as the "genuine link doctrine" in *Nottebohm case (1955)*[1749] and the recognition of the right to nationality in Article 15 of the Universal Declaration of Human Rights[1750] and Article 24(3) of the International Covenant on Civil and Political Rights[1751], a normative constraint on unrestricted sovereign prerogative in regulating nationality has been established in international law.

India has not ratified the 1954 Convention relating to the Status of Stateless Persons[1752] and

[1737] Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 75.
[1738] Id. art. 8.
[1739] Citizenship Act, No. 57 of 1955, § 3(1)(c) (India).
[1740] Id. § 4.
[1741] INDIA CONST. art. 51(c).
[1742] INDIA CONST. arts. 14, 21.
[1743] *Nat'l Human Rights Comm'n v. State of Arunachal Pradesh*, (1996) 1 S.C.C. 742 (India).
[1744] Foreigners Act, No. 31 of 1946 (India).
[1745] Citizenship (Amendment) Act, No. 47 of 2019 (India).
[1746] Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, No. 18 of 2016 (India).
[1747] INDIA CONST. arts. 14, 21.
[1748] *Nationality Decrees Issued in Tunis and Morocco*, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 4 (Feb. 7).
[1749] *Nottebohm Case (Liechtenstein v. Guatemala)*, Second Phase, Judgment, 1955 I.C.J. Rep. 4 (Apr. 6).
[1750] Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 15 (Dec. 10, 1948).
[1751] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 24(3).
[1752] Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117.

the 1961 Convention on the Reduction of Statelessness.[1753] This has allowed India the sovereign right to determine its nationality laws in keeping with the evolving international human rights law.

In the Indian constitutional framework, Part II of the Constitution (Articles 5-11)[1754] and the Citizenship Act, 1955[1755], clearly establish the constitutional framework for membership in the Indian nation-state. Although Article 11 grants a wide prerogative in regulating nationality to the Indian Parliament, this prerogative is clearly constrained by constitutional provisions in Articles 14 and 21[1756] and the doctrine of basic structure in *Kesavananda Bharati v. State of Kerala*[1757]. Contemporary issues in the National Register of Citizens (NRC) in Assam and judicial review of the Citi zenship (Amendment) Act, 2019[1758] clearly indicate a complex relationship between sovereign prerogative in regulating borders and protection of human dignity.

The research study clearly indicates how sovereign prerogative in regulating nationality must be balanced with constitutional morality and international human rights principles in regulating nationality in a manner that protects both sovereignty and individual dignity in preventing statelessness.

REFERENCES

1. **Nationality Decrees Issued in Tunis and Morocco (1923):** A Permanent Court of International Justice advisory opinion that holds that the question of nationality is primarily within the domestic jurisdiction of the sovereign state.
2. **Nottebohm Case (Liechtenstein v. Guatemala):** An International Court of Justice decision issued in 1955 that propounded the doctrine of "genuine link."
3. **Universal Declaration of Human Rights (1948), Article 15:** An international human rights instrument that recognized the right of every person to have a nationality and not to be arbitrarily deprived of it.
4. **International Covenant on Civil and Political Rights (1966), Article 24(3):** A treaty provision that recognized the right of every child to have a nationality and the obligation of the state to prevent statelessness.
5. **Convention Relating to the Status of Stateless Persons (1954):** An international treaty that defined stateless persons and provided minimum norms for the treatment of stateless persons.
6. **Convention on the Reduction of Statelessness (1961):** An international treaty that aimed to prevent and reduce statelessness by regulating the laws relating to nationality and the deprivation of the same that would result in statelessness.
7. **The Constitution of India (1950), Articles 14 and 21:** These articles of the Indian Constitution deal with the fundamental rights of Indian citizens, which place restrictions on the deprivation of nationality.
8. **Citizenship Act, 1955**: This Indian enactment deals with the acquisition and loss of citizenship through various methods, such as birth, descent, registration, naturalization, and incorporation of territory.
9. **Foreigners Act, 1946:** This Indian enactment deals with the definition of foreigners and their entry, stay, and deportation in India.
10. **National Human Rights Commission v. State of Arunachal Pradesh:** A Supreme Court judgment that protected Chakma refugees and held that rights under Article 21 of the Constitution are available to all persons.
11. **Genovese v. Malta:** A case pending before the European Court of Human Rights that deals with issues of discrimination in nationality laws.
12. **Hannah Arendt, The Origins of Totalitarianism:** A political philosopher who

[1753] Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175.
[1754] INDIA CONST. arts. 5–11.
[1755] The Citizenship Act, 1955, No. 57 of 1955, INDIA CODE.
[1756] INDIA CONST. arts. 14, 21.
[1757] *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).
[1758] *Assam Public Works v. Union of India*, Writ Petition (Civil) No. 1478 of 2019 (Supreme Court of India).

wrote extensively on issues of statelessness and enunciated the concept of the "right to have rights."

13. **Malcolm N. Shaw, International Law:** A leading text on international law that explains the legal relationship between persons and states by virtue of their nationality.
14. **Granville Austin, The Indian Constitution:** Cornerstone of a Nation: A historical account of the making of the Indian Constitution and debates on issues of citizenship.