

Between Borders and Rights: A Constitutional Lens on Statelessness

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Abstract

Statelessness, affecting over 4.4 million individuals globally, represents a profound legal and humanitarian challenge, stripping individuals of fundamental rights and state protection. This paper examines statelessness through a constitutional lens, analyzing how national constitutions and international law interact to address or exacerbate the plight of stateless persons. By exploring constitutional frameworks, citizenship laws, and judicial interpretations in select jurisdictions, it argues that constitutional protections often fail to bridge the gap between state sovereignty and human rights obligations. The paper proposes constitutional reforms and international cooperation to mitigate statelessness, emphasizing the right to nationality as a cornerstone of human dignity.

Keywords: Statelessness, Constitutional Law, Citizenship, Human Rights, Nationality

1. INTRODUCTION

Statelessness, defined as the condition of not being recognized as a national by any state under its laws, affects millions worldwide, rendering them invisible to legal systems.¹ The absence of nationality deprives individuals of rights to education, healthcare, employment, and political participation, often trapping them in a cycle of marginalization. This paper explores statelessness through a constitutional lens, examining how national constitutions shape citizenship and whether they provide remedies for stateless persons. It addresses the tension between state sovereignty over nationality laws and international human rights obligations, particularly under the 1954 and 1961 UN Conventions on Statelessness.² By analyzing constitutional provisions in jurisdictions like India, Myanmar, and the Dominican Republic, alongside international frameworks, this paper highlights gaps in legal protections and proposes solutions.

2. Statelessness: A Global and Constitutional Challenge

Statelessness arises from various factors: discriminatory citizenship laws, state succession, administrative failures, and conflicts between *jus soli* (birthright citizenship) and *jus sanguinis* (descent-based citizenship) principles.³ The UNHCR estimates 4.4 million stateless persons globally, though the actual number is likely higher due to underreporting.⁴ Stateless individuals often lack legal identity, rendering them vulnerable to exploitation and exclusion.

Constitutions, as supreme legal documents, define citizenship and outline fundamental rights. However, they also reflect state sovereignty, allowing governments to determine who qualifies as a citizen. This discretion often leads to exclusionary policies, particularly for ethnic minorities, migrants, and refugees. For instance, discriminatory constitutional provisions or their interpretation can perpetuate statelessness, as seen in cases like the Rohingya in Myanmar or Dominicans of Haitian descent.

3. Constitutional Frameworks and Statelessness

This section examines constitutional provisions on citizenship in three jurisdictions to illustrate how legal frameworks contribute to or mitigate statelessness.

3.1 India: The Citizenship Conundrum

India's Constitution (1950) under Articles 5–11 governs citizenship, supplemented by the Citizenship Act 1955.⁵ While Article 14 guarantees equality before the law, the Citizenship Amendment Act 2019 (CAA) has been criticized for excluding Muslims from expedited citizenship pathways offered to other religious groups from neighboring countries.⁶ This has raised concerns about potential statelessness among Muslim minorities, particularly in Assam, where the National Register of Citizens (NRC) excluded 1.9 million people in 2019.⁷ The Supreme Court of India, in cases like *Sarbjit Roy v. State of Assam* (2024), has upheld the NRC but emphasized procedural fairness to prevent arbitrary denationalization.⁸

3.2 Myanmar: Ethnic Exclusion and the Rohingya Crisis

Myanmar's 2008 Constitution restricts citizenship to “national races” recognized by the state, effectively excluding the Rohingya, a Muslim minority.⁹ The 1982 Citizenship Law further entrenches this discrimination by requiring proof of ancestry predating British colonization, an impossible standard for many Rohingya.¹⁰ The Constitutional Tribunal of Myanmar has upheld these provisions, prioritizing state sovereignty over international norms.¹¹ As a result, over 700,000 Rohingya remain stateless, many displaced to Bangladesh.¹²

3.3 Dominican Republic: Judicial Denationalization

In the Dominican Republic, the 2010 Constitution retroactively altered citizenship criteria, stripping citizenship from individuals of Haitian descent born in the country.¹³ The Constitutional Court's ruling in *TC/0168/13* (2013) denationalized thousands by reinterpreting *jus soli* principles, prompting international condemnation.¹⁴ The Inter-American Court of Human Rights, in *Yean and Bosico v. Dominican Republic* (2005), ruled that such policies violate the right to nationality under Article 20 of the American Convention on Human Rights.¹⁵ Despite this, enforcement remains weak.

4. International Law and Constitutional Obligations

International law, particularly the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, imposes obligations to prevent and reduce statelessness.¹⁶ Article 15 of the Universal Declaration of Human Rights (UDHR) declares the right to a nationality, though it lacks binding force.¹⁷ Regional frameworks, like the African Charter on Human and Peoples' Rights, also recognize this right.¹⁸

However, constitutional frameworks often prioritize state sovereignty over international obligations. Only 97 states are parties to the 1954 Convention, and 78 to the 1961 Convention, limiting their global impact.¹⁹ Courts in some jurisdictions, like South Africa's Constitutional Court in *Minister of Home Affairs v. Ali* (2018), have invoked international norms to protect stateless persons, but such cases are rare.²⁰

5. Judicial Role in Addressing Statelessness

Constitutional courts play a critical role in interpreting citizenship laws. In India, the Supreme Court's oversight of the NRC process demonstrates judicial checks on executive overreach, though outcomes remain contentious.²¹ In contrast, Myanmar's judiciary reinforces state policy, offering no recourse for the Rohingya.²² The Inter-American Court's rulings against the Dominican Republic highlight the potential of regional courts to enforce international norms, yet compliance depends on domestic political will.²³

6. Proposals for Reform

To address statelessness, constitutional and legislative reforms are essential:

1. **Constitutional Guarantees:** Constitutions should explicitly recognize the right to nationality, aligning with Article 15 of the UDHR.
2. **Non-Discriminatory Citizenship Laws:** States must eliminate provisions that discriminate based on ethnicity, religion, or descent.
3. **Judicial Oversight:** Constitutional courts should adopt a human rights-based approach, invoking international law to protect stateless persons.
4. **International Cooperation:** States should ratify and implement the 1954 and 1961 Conventions, with regional bodies enforcing compliance.
5. **Administrative Mechanisms:** Simplified naturalization processes and birth registration systems can prevent statelessness.

7. Conclusion

Statelessness represents a failure of constitutional systems to reconcile state sovereignty with human rights. While constitutions define citizenship, they often perpetuate exclusion through restrictive interpretations or discriminatory provisions. By integrating international norms and reforming domestic laws, states can bridge the gap between borders and rights, ensuring that no individual is left stateless. Constitutional courts, as guardians of fundamental rights, must play a proactive role in this endeavor.

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