

Statelessness, Citizenship and the Human Rights Crisis of Belonging in South Asia

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ABSTRACT

The condition of individuals who are not acknowledged by any state according to its laws and referred to as “statelessness” is still an acute human rights problem in South Asia . Under the 1954 Convention , the term ‘statelessness’ refers to such individuals. While growing international awareness is evident, the situation of millions in the area remains unchanged, they are still living without any legal status and thus deprived of the rights, civil, political and socio-economic, that come with it. The present study delves into the exclusionary forces gender-discriminatory nationality laws, non-availability of universal birth registration, and uneven enforcement of jus soli and jus sanguinis principles as the base factors of statelessness in the region. The focus of the analysis is on the groups who are most affected, such as the Rohingya refugees in Bangladesh, the displaced Afghans without any document, and the children of cross-border migrants in India and Nepal.

The article also illustrates how the South Asian countries that have not ratified the 1961 Statute on Statelessness Reduction , fall short of the international obligations laid down in the Universal Declaration of Human Rights under Article 15 , mainly regarding the nationality rights and the prevention of unlawful deprivation. It is based on legal analysis and UNHCR case data, and it evaluates the effects of statelessness on the right to education, health, and legal recognition, taking into consideration that legal identity and human dignity are tightly linked. Reference is made to *Mohammad Salimullah v. Union of India (2021)*, where the Indian Supreme Court dealt with the issue of the deportation of refugees against the background of disputed nationality. The recommendation for legislative reforms comes at the end of the study, such as the introduction of gender-neutral nationality transmission laws, the establishment of digitized birth registration systems, and the cooperation among the SAARC countries. South Asia can enhance its commitment to human rights and reclaim legal possession for the stateless by following the 1954 and 1961 Statelessness Conventions and thereby setting up the inclusive legal standards.

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I. INTERNATIONAL LEGAL FRAMEWORK ON STATELESSNESS

i. The 1954 and 1961 Statelessness Conventions

The international legal response to statelessness is principally grounded in two core multilateral instruments: the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention was the first legally binding international agreement to define a stateless person as “a person who is not considered as a national by any State under the operation of its law.”³⁷⁹ This definition provides the foundation for legal protections afforded to individuals who are de jure stateless i.e., those who lack legal nationality despite residing within or outside state borders.

The 1954 Convention obligates signatory states to provide basic civil and socioeconomic rights to stateless persons. These include protection against expulsion (except on grounds of national security or public order), the right to identity and travel documents, access to courts, and rights related to employment, housing, and education.³⁸⁰ Although it does not impose naturalization obligations on host states, the Convention encourages facilitating the assimilation and eventual naturalization of stateless persons.³⁸¹

The 1961 Convention on the Reduction of Statelessness complements the 1954 instrument by aiming to prevent statelessness from occurring in the first place. This makes it obligatory for states to confer nationality on those born in their territory who would lack nationality, and also imposes a restriction on the arbitrary loss of nationality, particularly in situations where the loss of nationality would make a person stateless.³⁸² It also contains provisions on preventing statelessness resulting from renunciation of nationality, loss of nationality, and succession of states.³⁸³

³⁷⁹ Convention Relating to the Status of Stateless Persons art. 1(1), Sept. 28, 1954, 360 U.N.T.S. 117.

³⁸⁰ Id. arts. 27–32.

³⁸¹ Id. art. 32.

³⁸² Convention on the Reduction of Statelessness arts. 1–2, Aug. 30, 1961, 989 U.N.T.S. 175.

³⁸³ Id. arts. 6–8.

Although the normative force of these instruments is strong, ratification of these agreements has not been global. As of 2023, 96 states are parties to the Convention of 1954, whereas only 77 states are parties to the Convention of 1961.³⁸⁴ It is pertinent to mention that South Asian states like India, Bangladesh, Pakistan, Sri Lanka, and Nepal are not parties either to Convention of 1954 or Convention of 1961.³⁸⁵ The general hesitation among them is that accession to these agreements may compel states that are already under mass migration pressure into complex ethnopolitical identities.³⁸⁶

The non-accession of these countries leaves millions in legal limbo. For example, the Rohingya in Bangladesh remain without a path to citizenship or permanent legal status. Stateless Afghan refugees in Pakistan and India continue to face bureaucratic exclusion. Without adherence to the 1954 and 1961 Conventions, these countries operate with insufficient or inconsistent domestic legal frameworks to address or resolve statelessness.

ii. Universal Declaration of Human Rights and Customary Norms

The Universal Declaration of Human Rights (UDHR), adopted in 1948, provides a moral and normative foundation for modern international human rights law. Article 15 unequivocally states that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”³⁸⁷ Although the UDHR is not a treaty and thus not legally binding, many of its provisions including Article 15 have acquired the status of customary international law, binding on all states irrespective of ratification.³⁸⁸

Beyond the UDHR, several binding multilateral treaties reinforce the right to nationality and the obligation to prevent statelessness. The Convention on the Rights of the Child (CRC), ratified by every country in South Asia, mandates that states register every child immediately after birth and guarantee their right to acquire a nationality.³⁸⁹ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires gender

³⁸⁴ U.N. High Comm’r for Refugees, States Parties to the 1954 and 1961 Statelessness Conventions (2023), <https://www.unhcr.org/>.

³⁸⁵ U.N. High Comm’r for Refugees, Statelessness Around the World: South Asia (2001), <https://www.unhcr.org/ic/sites/en-ic/files/legacy-pdf/3bf0ff124.pdf>

³⁸⁶ Laura van Waas, Nationality Matters: Statelessness under International Law 91–96 (Intersentia 2008).

³⁸⁷ G.A. Res. 217A (III), Universal Declaration of Human Rights, art. 15 (Dec. 10, 1948).

³⁸⁸ Hurst Hannum, The Status of the Universal Declaration of Human Rights in National and International Law, 25 Ga. J. Int’l & Comp. L. 287, 290 (1996).

³⁸⁹ Convention on the Rights of the Child art. 7, Nov. 20, 1989, 1577 U.N.T.S. 3.

equality in nationality laws, ensuring women can confer citizenship to their children and spouses on equal terms with men.³⁹⁰

Despite these obligations, gender-discriminatory laws and inconsistent birth registration procedures remain key causes of statelessness across South Asia. In Nepal, for instance, women cannot independently pass on nationality to their children unless the father is stateless or of unknown nationality contravening CEDAW obligations.³⁹¹

One of the customary international rules which has had the greatest influence on statelessness persons has to do with the principle of non-refoulement, which was incorporated under Article 33 of the 1951 Refugee Convention.³⁹² This rule makes it imperative that a person should never be expelled to a state that may present danger to their life or freedom. This rule has its roots in the refugee convention but has since been accepted as customary international law to which all countries must be bound irrespective of their status on the issue.³⁹³ This means that statelessness persons, especially those at the risk of persecution and discrimination, should never be expelled to any country.

In spite of this legal clarity, the degree to which this law is upheld is inconsistent. The holding in the case of *Mohammad Salimullah v. Union of India*, in which the deportation of the Rohingya refugees was upheld despite the fact that the challenged individuals were stateless, is indicative of the conflict that exists between the discretion for the states to act unilaterally and the principles established by the international system that must be followed by national systems concerning this issue.³⁹⁴

II. STATELESSNESS IN SOUTH ASIA: CASE STUDIES

i. Rohingya Refugees in Bangladesh

“The situation for the Rohingya is one of the longest-standing and most disastrous instances of statelessness in the modern state system.” The Rohingya are an ethnic minority group in the

³⁹⁰ Convention on the Elimination of All Forms of Discrimination Against Women art. 9, Dec. 18, 1979, 1249 U.N.T.S. 13.

³⁹¹ U.N. Comm. on the Elimination of Discrimination Against Women, Concluding Observations: Nepal, U.N. Doc. CEDAW/C/NPL/CO/6 (2011).

³⁹² Convention Relating to the Status of Refugees art. 33(1), July 28, 1951, 189 U.N.T.S. 150.

³⁹³ See Guy S. Goodwin-Gill, *The Refugee in International Law* 207–14 (3d ed. 2007).

³⁹⁴ *Mohammad Salimullah v. Union of India*, Writ Petition (Civil) No. 793 of 2017, (India).

country of Myanmar more specifically, they are an ethnic group within the Rakhine State that is Muslim that was made stateless through the Citizenship Law passed in Myanmar in 1982 when they were excluded from the 135 ethnic groups that are recognized within the state.³⁹⁵ This legal exclusion was compounded by decades of systemic discrimination, violence, and denial of access to basic services like education, healthcare, and freedom of movement.³⁹⁶

The situation escalated in August 2017 when the Myanmar military launched a violent crackdown under the guise of counter-insurgency operations, resulting in mass atrocities, which the United Nations later described as bearing “hallmarks of genocide.”³⁹⁷ Over 740,000 Rohingya fled across the border into Bangladesh in a matter of months, joining approximately 200,000 who had previously fled in earlier waves of persecution.³⁹⁸ Today, nearly a million Rohingya live in the refugee settlements of Cox’s Bazar, currently the world’s largest stateless refugee concentration.³⁹⁹

Bangladesh has shown humanitarian leadership by offering temporary asylum and basic aid, but it is not a signatory to the 1951 Refugee Convention or its 1967 Protocol.⁴⁰⁰ Consequently, Rohingya are not legally recognized as refugees under domestic law and lack access to long-term residency, employment rights, or naturalization pathways.⁴⁰¹ While temporary identification cards (so-called “Rohingya Registration Cards”) offer some limited protections, they do not confer legal status or entitlements.⁴⁰² Repatriation negotiations with Myanmar have consistently failed, given the ongoing threats of violence and continued legal disenfranchisement in Rakhine State.⁴⁰³

³⁹⁵ Myanmar Citizenship Law, 1982 (Myanmar), translated in UNHCR Refworld, <https://www.refworld.org/docid/3ae6b4f71b.html>.

³⁹⁶ Human Rights Watch, “All You Can Do is Pray”: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State, (2013).

³⁹⁷ U.N. Human Rights Council, Report of the Independent International Fact-Finding Mission on Myanmar, U.N. Doc. A/HRC/39/64 (2018).

³⁹⁸ UNHCR, Rohingya Emergency, <https://www.unhcr.org/emergencies/rohingya-emergency>.

³⁹⁹ Id.

⁴⁰⁰ UN Treaty Collection, Status of Ratifications of the 1951 Refugee Convention and 1967 Protocol, <https://treaties.un.org/>.

⁴⁰¹ Md. Rizwanul Islam, Rohingya Refugee Crisis and Bangladesh: An Analysis of Bangladesh’s Legal Obligations, 29 Int’l J. Refugee L. 570, 574 (2017).

⁴⁰² UNHCR, Rohingya Situation: Operational Update, (2022), <https://reporting.unhcr.org>.

⁴⁰³ Human Rights Watch, “Are We Not Human?”: Denial of Education for Rohingya Refugee Children in Bangladesh (2020)

ii. Displaced Afghans

Afghanistan has endured more than four decades of uninterrupted conflict beginning with the Soviet invasion in 1979, followed by civil war, Taliban insurgency, U.S.-led intervention, and culminating in the 2021 Taliban resurgence. Each of these phases has triggered massive displacement both within and beyond its borders.⁴⁰⁴ As of 2023, Pakistan hosts over 3 million Afghans, only around 1.3 million of whom are recognized refugees registered under the United Nations High Commissioner for Refugees (UNHCR).⁴⁰⁵ The remaining live in uncertain legal status, many under expired or unrecognized documentation.

Second and third generation Afghans born in exile particularly in Pakistan and Iran often face severe bureaucratic hurdles to acquire nationality in either their country of birth or origin.⁴⁰⁶ In Pakistan, the government has alternated between issuing “Proof of Registration” (PoR) cards and “Afghan Citizen Cards” (ACC), both of which offer limited recognition and lack any pathway to citizenship.⁴⁰⁷ In 2022, authorities began revoking these cards under national security concerns, heightening fears of deportation and statelessness.⁴⁰⁸

These developments disproportionately impact children born outside the formal registration system. Lacking any legal documentation, they are excluded from education, health care, and formal employment.⁴⁰⁹ Many are rendered de facto stateless, despite long-term residence and familial roots in host countries. Although some host governments, such as Iran, have introduced modest integration policies, there remains no uniform or rights-based naturalization mechanism.⁴¹⁰

iii. Nepal - India Cross Border Migrants

The 1950 Indo-Nepal Treaty of Peace and Friendship grant reciprocal rights to citizens of India and Nepal to reside, work, and move freely in each other’s territories.⁴¹¹ This unique arrangement has fostered deep economic and cultural integration, particularly in border regions. However, in the absence of coordinated civil registration and consistent nationality policies, children born to cross border migrant families often fall through legal cracks.

⁴⁰⁴ International Crisis Group, Afghanistan’s Growing Humanitarian Crisis, Report No. 325 (2022).

⁴⁰⁵ UNHCR, Afghanistan Situation Regional Refugee Response Plan (2023).

⁴⁰⁶ Amnesty Int’l, My Children Will Die in This Heat: Afghanistan’s Displaced and Stateless (2021).

⁴⁰⁷ Human Rights Watch, Pakistan: Halt Renewed Threats to Afghan Refugees (2022).

⁴⁰⁸ Id.

⁴⁰⁹ Id.

⁴¹⁰ U.N. High Comm’r for Refugees, Solutions Strategy for Afghan Refugees (SSAR): Regional Strategy (2023).

⁴¹¹ Treaty of Peace and Friendship, India-Nepal, July 31, 1950, 1950 India-Nepal T.I.A.S. No. 375.

The problem is most acute among children born in undocumented settlements or informal labour communities near the Indo-Nepal border.⁴¹² These children do not possess birth certificates or any documents that would provide evidence of citizenship in either country. The Documentation-heavy “Citizenship Act of 1955” of India creates obstacles, in addition to the discriminatory provisions in the “Constitution of Nepal” and “Citizenship Act of 2006” of the latter country, through which “A citizen of Nepal cannot separately transmit citizenship to her child in most circumstances unless the father’s identity or status is known.”⁴¹³

However, this gap in the law has left thousands of children without citizenship or at risk of becoming stateless. It is also noted that gender disparities in Nepal's nationality law have been challenged by the Committee on the Elimination of Discrimination against Women, also known as CEDAW, in which it is seen to conflict with international commitments.⁴¹⁴ Several civil organizations in the two nations have urged improvement in gender-neutral citizenship transfer and the adoption of joint systems for birth registration.⁴¹⁵

However, concerns over illegal migration, political sensitivities, and nationalist rhetoric have impeded bilateral cooperation on this issue.⁴¹⁶

III. GENDER DISCRIMINATION AND LEGAL IDENTITY GAPS

i. Gender Discrimination in Nationality Laws

Despite growing realization about the importance of gender equality as a basic tenet of human rights jurisprudence, several South Asian nations maintain discriminatory nationality regimes that discriminate against women with respect to conferring citizenship rights upon children. The implications are more pronounced for single, widowed, divorced, or conflict-displaced women.

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⁴¹² Asia Foundation, *Gender and Nationality in Nepal: A Baseline Study* (2014).

⁴¹³ Nepal Citizenship Act, 2006, § 5; Constitution of Nepal, 2015, art. 11.

⁴¹⁴ CEDAW Comm., *Concluding Observations: Nepal*, U.N. Doc. CEDAW/C/NPL/CO/6 (2011).

⁴¹⁵ Forum for Women, Law and Development (FWLD), *Statelessness and the Right to Nationality in Nepal* (2020).

⁴¹⁶ International Commission of Jurists (ICJ), *Citizenship and the Right to Nationality in Nepal: A Legal and Human Rights Perspective* (2021).

The implications are more pronounced for single, widowed, divorced, or conflict-displaced women. Nepal is one of the most extreme instances of this disparity. According to Article 11 of the Constitution of Nepal, 2015, a Nepali woman can only pass down citizenship through descent if “the citizenship and identity of the father are unknown.”⁴¹⁷ The Citizenship Act of 2006 also contributes to this problem by stating that a child born in Nepal, to a foreign mother who claims through affidavit that the father is foreign, shall be eligible for citizenship at birth.⁴¹⁸ However, district officials often reject such applications due to suspicion of false declarations, effectively making maternal transmission illusory.⁴¹⁹

This gender-based discrimination has been subject to sharp criticism from international human rights bodies. The Committee on the Elimination of Discrimination Against Women (CEDAW) has repeatedly called upon Nepal to eliminate all legal and administrative barriers to equal nationality transmission.⁴²⁰ Yet constitutional reform efforts have been met with domestic political resistance and nationalist concerns about “border infiltration,” particularly concerning ethnic Madhesi communities.⁴²¹

In Pakistan, while the Citizenship Act, 1951 technically allows both parents to confer citizenship, women often face administrative obstacles in registering children, especially if the father is a foreign national or unregistered.⁴²² Women married to non-citizens must often undergo additional verification procedures not applied to men. Such practices further strengthen the perception of citizenship transfer as a paternal right and an administrative procedure that is filled with a biased Patriarch.⁴²³

“The Indian system of citizenship is relatively more egalitarian in its statutory provisions.” The Citizenship Act of 1955 allows for citizenship by right through either parent for both sons and daughters.⁴²⁴ However, in practical implementation in government offices in non-urban or

⁴¹⁷ Nepal Const. art. 11(5) (2015).

⁴¹⁸ Nepal Citizenship Act, No. 26 of 2006 (Nepal), § 5(2).

⁴¹⁹ Forum for Women, Law and Development (FWLD), *Statelessness and the Right to Nationality in Nepal* 19–23 (2020).

⁴²⁰ Comm. on the Elimination of Discrimination Against Women, *Concluding Observations: Nepal*, U.N. Doc. CEDAW/C/NPL/CO/6, ¶ 18 (2011).

⁴²¹ International Crisis Group, *Identity Politics and Citizenship in Nepal*, Asia Report No. 276, at 8–10 (2016).

⁴²² Pakistan Citizenship Act, No. II of 1951 (Pak.), § 5.

⁴²³ Amnesty Int’l, *Born in the Shadows: Stateless Children in Pakistan* 10–13 (2020).

⁴²⁴ Citizenship Act, No. 57 of 1955, § 4(1)(b) (India).

border state cases, there has to be proof of paternal lineage.⁴²⁵ Additionally, in instances of mothers or parents who are not citizens of their country of residence or lack documentation of status as such, there could be a lack of citizenship for the entire family or children.”⁴²⁶

Such gender-based legal provisions go against the ideal set forth in Article 9 of the CEDAW Convention, which calls on countries to ensure equality in the transfer of nationality for both women and men.⁴²⁷ Though all three countries, Nepal, Pakistan, and India, are CEDAW conventioners, they remain short in bringing their national law in line with their international obligations.⁴²⁸

ii. Effects on Children and Statelessness Risk

Children suffer the most from this sort of gender-discriminatory nationality laws. Where paternity cannot be established or where the father is stateless, missing, or unwilling to participate in the registration procedures, children may be left without a nationality. It is more common where contexts of armed conflict, displacement, or cross-border migration have been faced, and family structures have been breached.

A study on statelessness by the UNHCR for South Asia underlines that births out of wedlock or to undocumented parents often present major barriers for the child's birth registration and nationality.⁴²⁹ In its absence, these children are commonly denied formal education, public health systems, and other future employments.⁴³⁰ In certain jurisdictions, the requirement to prove legal identity in school enrolments effectively excludes these children from an early age. In patriarchal societies, like those pervasive throughout South Asia, women's inability to independently convey nationality creates intergenerational cycles of statelessness.⁴³¹ Refugee and internally displaced populations are also the most at risk. For example, Rohingya mothers in the refugee camps in Bangladesh cannot legally register their children due to the absence of

⁴²⁵ Bhairav Acharya, *The Indian Citizenship Law: A Case Study of Discretion and Discrimination*, 10 NUJS L. Rev. 321, 337–41 (2017).

⁴²⁶ *Id.*

⁴²⁷ Convention on the Elimination of All Forms of Discrimination Against Women art. 9, Dec. 18, 1979, 1249 U.N.T.S. 13.

⁴²⁸ U.N. Treaty Collection, *Status of CEDAW Ratification* (2023).

⁴²⁹ UNHCR, *Nationality Rights for All: Statelessness and the Human Rights of Women and Children in South Asia* 6–12 (2017).

⁴³⁰ *Id.*

⁴³¹ Melanie Teff, *Out of the Shadows: Statelessness, Discrimination and Marginalization* 13 (Refugees Int'l 2014).

male guardian's documentation, despite being the sole caretakers.⁴³² This administrative inflexibility not only violates the best interests of the child as required by Article 7 of the Convention on the Rights of the Child (CRC) but also enshrines the lack of a legal identity throughout the lifecycle and into adulthood.⁴³³

It has been asserted that gender-discriminatory citizenship laws are structural violence, and these laws bring with them life-long disadvantage, starting with birth.⁴³⁴ Stateless children face life as people who lack the legal status that ascertains the relationship between the citizen and the state, leaving them easily trafficked, poor, and vulnerable.⁴³⁵ Furthermore, lack of nationality leads to no rights to property, no legal marriage, and no rights to property and inheritance in some states.⁴³⁶

Yet, there has been some progress on how to solve these problems. The UNHCR's #IBelong Campaign has found that gender-discriminatory state citizenship laws are one of the ten key actions necessary to solve statelessness.⁴³⁷ Several states, including Indonesia, Kenya, and Tunisia, have changed their citizenship laws to erase any gender differentiation. Yet, states in South Asia are very slow in changing due to cultural norms, bureaucratic friction and political reluctance.⁴³⁸

IV. LEGAL GAPS IN INDIAN JURISPRUDENCE ON STATELESSNESS

i. The Citizenship Amendment Act, 2019

Since independence, the legal architecture for nationality in India has seen considerable evolution; however, there are still glaring lacunae in the way statelessness is addressed. Among the most contentious changes to have taken place in recent times has been the passage of the

⁴³² Human Rights Watch, *Are We Not Human? Denial of Education for Rohingya Refugee Children in Bangladesh* (2020).

⁴³³ Convention on the Rights of the Child art. 7, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁴³⁴ Manby, Bronwen, *Citizenship and Statelessness in Africa: The Law and Politics of Belonging* 182 (2018).

⁴³⁵ Open Society Justice Initiative, *Citizenship and Statelessness in South Asia: A Policy Paper* 17–19 (2021).

⁴³⁶ *Id.*

⁴³⁷ UNHCR, *#IBelong Campaign to End Statelessness* (2023), <https://www.unhcr.org/ibelong>.

⁴³⁸ Equality Now, *Addressing Gender Discrimination in Nationality Laws* (2022), <https://www.equalitynow.org/nationalitylaws>.

Citizenship Amendment Act, 2019, wherein, for the first time, religion was made a basis for naturalization under the Citizenship Act, 1955.⁴³⁹

The CAA offers expedited Indian citizenship to persecuted religious minorities such as Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Pakistan, Bangladesh, and Afghanistan who entered India before 31 December 2014.⁴⁴⁰ However, it excludes Muslims from this provision, thereby excluding entire populations such as Rohingya Muslims, Ahmadiyyas Muslims, Shias, and Sri Lankan Tamils.⁴⁴¹ This selective discrimination has triggered legal as well as constitutional debate, with oppositions arguing that the law violates the very core secular character of the Indian Constitution and breaches Articles 14 and 15, which guarantee equality and non-discrimination.⁴⁴²

Furthermore, the CAA's silence on statelessness is a concern. This is in the sense that the CAA fails to provide statelessness as a defined juristic category of persons to be protected against a lack of protection. Moreover, stateless citizens who are not covered according to the Amendment on the basis of their religiosity or due to the failure of administration are left in a state of perpetual juridical limbo.⁴⁴³ Legal scholars have argued that the CAA embodies two-tiered systems of citizenship that is inherently divisive and unconstitutional.⁴⁴⁴

In addition, the CAA has been seen together with the proposed National Register of Citizens (NRC) and National Population Register (NPR), which have been seen as potentially affecting Muslim groups who lack "legacy documents."⁴⁴⁵ There is no due process procedure offered under the NRC through which individuals may contest exclusion, leaving the population susceptible to statelessness, especially the poor, illiterates, and displaced.⁴⁴⁶ These efforts have been seen together as resulting in "statelessness through documentation failure."⁴⁴⁷ Although

⁴³⁹ Citizenship (Amendment) Act, No. 47 of 2019, Gazette of India, Extraordinary, Part II, § 1 (Dec. 12, 2019).

⁴⁴⁰ Id. § 2(1)(b).

⁴⁴¹ Amnesty Int'l, *Excluded and Unequal: The Citizenship Amendment Act and Muslims in India* (2020).

⁴⁴² India Const. art. 14, 15.

⁴⁴³ Ghosh, Partha, *Statelessness and the Crisis of Citizenship in India*, 55 *Econ. & Pol. Wkly.* 17 (2020).

⁴⁴⁴ Suhrith Parthasarathy, *Citizenship Amendment and India's Two-Tiered Constitutionalism*, 35 *Nat'l L. Sch. India Rev.* 103 (2021).

⁴⁴⁵ Alok Prasanna Kumar, *NRC and NPR: Legal Foundations and Human Rights Concerns*, 12 *Indian J. Const. L.* 41 (2021).

⁴⁴⁶ Human Rights Watch, *"Shoot the Traitors": Discrimination Against Muslims Under India's New Citizenship Policy* (2020).

⁴⁴⁷ Niraja Gopal Jayal, *The Making and Unmaking of Citizenship in India*, 50 *J. Asian Stud.* 112 (2022).

there have been several petitions before the Supreme Court about the CAA, which have questioned the constitutional legitimacy of the Act, as of 2024, the Supreme Court has yet to rule.

ii. Mohammad Salimullah v. Union of India, Writ Petition (Civil) 793 of 2017

In the above-mentioned case, the Division Bench of Supreme Court of India addressed the urgent issue of whether Rohingya refugees who are classified as illegal migrants under Indian law could be deported to Myanmar despite the looming threat of persecution.⁴⁴⁸ The petition was filed as a writ under Article 32, invoking the right to life under Article 21 and seeking protection from arbitrary expulsion.

a. Background

The petitioners were two Rohingya refugees residing in Jammu, facing imminent deportation by the Indian government. Their plea argued that deportation to Myanmar would expose them to ethnic violence, persecution, and potentially death, in violation of both Article 21 of the Constitution and the principle of non-refoulement, recognized under international customary law.⁴⁴⁹

India, while not a signatory to the 1951 Refugee Convention, is bound by the Universal Declaration of Human Rights and various customary norms that prohibit returning individuals to territories where they may face serious harm.⁴⁵⁰ However, Indian domestic law does not currently provide for refugee status, nor does it incorporate non-refoulement as a statutory principle.⁴⁵¹

b. Contentions

Petitioners :

The advocates representing Rohingyas argued that their forced deportation to Myanmar would violate Article 21 which protects the life and personal liberty of every “person,” not just citizens.⁴⁵² They cited the UNHCR’s position that Rohingyas are stateless persons facing

⁴⁴⁸ Mohammad Salimullah v. Union of India, (2021) 10 SCC 1.

⁴⁴⁹ Id. at ¶ 3.

⁴⁵⁰ Universal Declaration of Human Rights, art. 14, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

⁴⁵¹ See Anuj Bhuwania, The Absence of Asylum Law in India, 33 Refugee Surv. Q. 34 (2014).

⁴⁵² India Const. art. 21; see also Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608.

genocide and ethnic cleansing as well as emphasized on India's international obligations, including under customary international law and the Convention Against Torture, to which India is a signatory though not ratified.⁴⁵³

Respondent:

The advocates representing Union of India contended that the petitioners were illegal immigrants and not entitled to fundamental rights beyond those permitted by law.⁴⁵⁴ They also cited various national security concerns, arguing that Rohingya settlements had connections to terrorist groups, including ISI-backed organizations and convincingly argued that in the absence of a domestic refugee law, the executive had the prerogative to deport non-citizens under the Foreigners Act, 1946.⁴⁵⁵

c. Judgment and Reasoning

The Supreme Court, in a brief order delivered by then Chief Justice S.A. Bobde, upheld the government's position and allowed deportation.⁴⁵⁶ The Court noted that:

While Article 21 of the Indian Constitution guarantees the right to life and personal liberty to all persons, including non-citizens such as refugees, the scope of this protection may be curtailed in matters implicating national security. In such cases, the state retains broad discretion to restrict the rights of individuals, particularly those without legal status. The Supreme Court has clarified that the right to remain in India cannot be asserted in the absence of formal recognition as a refugee or lawful residency status. Furthermore, since India is not a signatory to the 1951 Refugee Convention, the country is not legally bound to adhere to the principle of non-refoulement under treaty obligations, although this principle may still carry persuasive force as part of customary international law.

In effect, the judgment emphasized executive discretion and national sovereignty over international humanitarian commitments. The Court also noted that the UNHCR's refugee identification was not binding on the Indian government.⁴⁵⁷

d. Implications

⁴⁵³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁴⁵⁴ Mohammad Salimullah v. Union of India, (2021) 10 SCC at ¶ 5.

⁴⁵⁵ Foreigners Act, No. 31 of 1946, § 3 (India).

⁴⁵⁶ Mohammad Salimullah v. Union of India, (2021) 10 SCC at ¶ 6–7.

⁴⁵⁷ Id.

The matter had received much backlash in India as well as internationally. Lawyers and jurists pointed to the fact that this order undermines the spirit of compassion and secularity which India had enshrined in its Constitution, and the manner in which Article 21 had been interpreted in past decisions such as *Maneka Gandhi vs. Union of India* and in the case of *Vishaka vs. State of Rajasthan*.⁴⁵⁸ The selective treatment of refugees by India, who had accepted some members of the religious minority in relation to the CAA provisions, and rejected others such as the Rohingya, had been particularly emphasized.⁴⁵⁹

The decision has further highlighted that there is no full-fledged regime of protection for refugees in India. Without such laws in place, it is difficult for any refugee or stateless person to be protected against the vagaries of change in government priorities.⁴⁶⁰ The case also demanded for uniform laws for refugees that codifies minimum standards of protection and aligns domestic policy with international obligations.

V. REGIONAL AND INTERNATIONAL RESPONSES TO STATELESSNESS

i. The Role of SAARC and Regional Governance

South Asia, despite boasting nearly two billion people, has no defined regional mechanism to address statelessness. The South Asian Association for Regional Cooperation (SAARC), founded in 1985, has largely concentrated on issues of economic development and regional security, but has thus far maintained a complete and utter silence on matters of legal identity, rights of nationality, or issues of protection for refugees. The lack of an operational SAARC agreement for refugees or an agreed-upon protocol for recognition of nationality has led to each country working alone with regard to statelessness, resulting in a haphazard pattern of discriminatory statelessness that functions to exclude certain sections of society through either displacement, nationality laws, or climate change migration.⁴⁶¹

⁴⁵⁸ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁴⁵⁹ Jayshree Bajoria, *Selective Protection: Rohingya Refugees and the Indian State*, Brookings Inst. (2021).

⁴⁶⁰ Anurag Bhaskar, *Towards a Refugee Law in India: Bridging Constitutional and International Law*, 9 Indian J. Legal Theory 1 (2023).

⁴⁶¹ UNHCR, *Rohingya Emergency Overview*, <https://www.unhcr.org/rohingya-emergency.html> (last visited Jan. 9, 2026).

Importantly, there is no legal instrument in SAARC comparable to the European Convention on Nationality, which ensures the guarantee against statelessness, along with the promotion of birthright citizenship.⁴⁶² In South Asia, bilateralism rather than regionalism continues to dominate. Disputes over refugee return, border communities with unclear nationality and cross-border statelessness due to gender discrimination remain unresolved due to this fragmented approach.

To break this impasse, SAARC must draft and adopt a Regional Convention on Citizenship and Statelessness, drawing upon best practices from the Council of Europe and ASEAN. This should include:

- (a) prohibitions against arbitrary deprivation of nationality;
- (b) minimum procedural safeguards; and
- (c) mutual cooperation in birth registration and documentation.

ii. Involvement of UNHCR and NGOs

In the vacuum left by state inaction, international and civil society actors especially the United Nations High Commissioner for Refugees (UNHCR) have played a pivotal role in mitigating statelessness. Since 2014, the UNHCR's *# I Belong Campaign* has sought to eliminate statelessness globally by 2024.⁴⁶³ In South Asia, UNHCR has led community registration drives, birth documentation campaigns in refugee camps, and legal literacy programs in partnership with governments and bar associations.

However, UNHCR's capacity in the region is hampered by legal and political constraints. In India, where the country is not party to the 1951 Refugee Convention or the 1961 Statelessness Convention, UNHCR lacks formal legal authority and operates only for urban refugees under administrative tolerance.⁴⁶⁴ In Bangladesh, while UNHCR has helped register over one million Rohingya refugees, those registrations do not grant legal status or enforceable rights under domestic law.⁴⁶⁵

⁴⁶² European Convention on Nationality, Nov. 6, 1997, C.E.T.S. No. 166.

⁴⁶³ UN High Comm'r for Refugees, *#IBelong Campaign to End Statelessness* (2014), <https://www.unhcr.org/ibelong/>.

⁴⁶⁴ UNHCR, *Rohingya Refugee Response, Bangladesh 2023 Update* (Dec. 2023), <https://www.unhcr.org/bangladesh>.

⁴⁶⁵ UNHCR India, *Factsheet: Urban Refugees in India* (2022)

Meanwhile, NGOs such as the Statelessness Network Asia Pacific (SNAP) and Asia Pacific Refugee Rights Network (APRRN) have filled key advocacy and technical gaps.⁴⁶⁶ These organizations engage in legal aid, legislative drafting, and regional dialogues. Yet, shrinking civic space, limited political access, and lack of statutory authority continue to constrain their influence.

iii. National Human Rights Institutions (NHRIs)

National Human Rights Institutions in India, Nepal, and Bangladesh have constitutional mandates to promote and protect basic rights such as non-discrimination and equality and enjoyment of legal identity. Statelessness receives minimal and reactive attention from them. Few of them have established statelessness desks or legal procedures to identify and assist stateless persons in their countries.

Typically, NHRIs have limited jurisdiction and no powers to realize remedies and demand changes in policies. Even considering statelessness audits, these are not very common, and cooperation between NHRIs across different nations is close to non-existent.⁴⁶⁷

To remedy this situation, there must be a South Asia Statelessness Oversight Group established through SAARC or the Asia/Pacific Forum, which can be granted the power to:

- (a) examine the laws and procedures regarding citizenship;
- (b) undertake impact assessments; and
- (c) make binding recommendations.

VI. LEGAL AND POLICY RECOMMENDATIONS

The situation of statelessness in South Asia is not one that is caused by a lack of clarity within the law, but is rather a consequence of biased laws, a lack of concern on the part of the state, and state fragmentation. The fact that this condition has continued indicates a basic failure on the part of states in complying with their duties and obligations under international law and the provisions of their constitutions. A change for the better requires enforced and rights-based change at both the national and regional levels.

⁴⁶⁶ Statelessness Network Asia Pacific, Regional Consultation on Nationality Law Reform in South Asia (2021), <https://www.statelessness.eu/updates/blog/statelessness-asia-pacific-birth-nationality-all>

⁴⁶⁷ Asia Pacific Forum of NHRIs, The Role of NHRIs in Addressing Statelessness (2019), <https://asiapacificforum.net>.

i. Treaty Ratification and Domestic Legislation

A foundational step in addressing and solving statelessness is aligning domestic law with international legislature. All South Asian states, especially India, Pakistan, Bangladesh, and Nepal must ratify the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.⁴⁶⁸ These treaties codify minimum standards of protection, define statelessness, and obligate states to avoid rendering individuals stateless through policy or law.

However, ratification without legislative incorporation remains hollow and useless. States must enact enabling legislation that not only defines “stateless persons” but also lays out clear procedures for status determination, access to documentation, and rights such as education, health, work, and protection from detention. Specialized domestic legislation such as a ‘Refugee and Statelessness Protection Act’ should be passed to create administrative tribunals, appeal mechanisms, and government accountability frameworks.⁴⁶⁹ These laws must also domesticate the principle of non-refoulement, binding even on states that are not party to the Refugee Convention, ensuring no person is returned to a situation where their life or freedom would be at risk.

This legal architecture must be supplemented by uniform administrative guidelines, training modules for bureaucrats and border officials, and independent oversight mechanisms to ensure compliance and minimize arbitrariness in enforcement.

ii. Gender-Neutral Nationality Laws

One of the most urgent and systemic reforms required is the elimination of gender discrimination in nationality laws. In several South Asian countries, particularly Nepal and Pakistan, a mother cannot independently confer nationality to her child unless the father’s identity is proven or declared. This patriarchal legal bias disproportionately affects children

⁴⁶⁸ Convention Relating to the Status of Stateless Persons art. 1, Sept. 28, 1954, 360 U.N.T.S. 117; Convention on the Reduction of Statelessness arts. 1–9, Aug. 30, 1961, 989 U.N.T.S. 175.

⁴⁶⁹ See Venkatesh Nayak, *India and the Principle of Non-refoulement: A Human Rights Analysis*, Commonwealth Human Rights Initiative (2021), <https://www.humanrightsinitiative.org>; see also Sumit Sen, *Stateless Refugees and the Lack of a Legal Framework in South Asia*, 9 Int’l J. Refugee L. 567, 575–76 (1997).

born to single mothers, widows, victims of rape, or women married to undocumented migrants or refugees.⁴⁷⁰

Legislatures must enact gender-neutral nationality frameworks, aligning with Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Citizenship transmission must be made unconditional and automatic from either parent, regardless of marital status or paternity recognition. States must also address administrative barriers such as requirements for spousal consent, affidavits, or DNA testing that further burden mothers seeking to secure legal identity for their children.

In addition, technological reforms can support legal ones. Online portals and mobile applications must allow mothers to register births and apply for nationality without dependency on male guardianship. Legal literacy campaigns should be conducted to empower women, particularly in rural and refugee contexts, to assert their children's right to nationality.

iii. Universal and Digital Birth Registration

Without birth registration, the right to nationality remains theoretical. A birth certificate is often the first and only official recognition of legal existence. Yet millions of children in South Asia, particularly those born in camps, conflict zones, or across borders, remain unregistered.⁴⁷¹

Governments must launch universal, free, and real-time birth registration drives, with a focus on high-risk and vulnerable populations. This requires the deployment of mobile registration units equipped with biometric scanners, language translation support, and connectivity tools. Such units should be mandated to visit refugee settlements, informal housing clusters, and migrant transit zones at least quarterly.

The civil registration databases will have to be integrated with the various digital identity schemes existing in the countries, like the Aadhaar in the case of Indian citizens, as well as NADRA in the case of Pakistani citizens.⁴⁷² This will have to happen in a manner which strengthens firewalls against exclusion through identity schemes.

⁴⁷⁰ Constitution of Nepal, 2015, art. 11; Pakistan Citizenship Act, No. II of 1951, §§ 5–6; Convention on the Elimination of All Forms of Discrimination Against Women art. 9, Dec. 18, 1979, 1249 U.N.T.S. 13.

⁴⁷¹ UNICEF, Birth Registration for Every Child by 2030: South Asia Regional Snapshot (2020).

⁴⁷² Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, No. 18 of 2016, India Code (2016); National Database and Registration Authority Ordinance, No. VIII of 2000 (Pak.).

Special provisions need to be made for children to register late and/or retrospectively in situations where there are no records and such children automatically not be made ineligible on the basis of lack of documentation.

iv. Regional Cooperation and NHRI Empowerment

This is a regional issue and therefore requires a regional solution. The SAARC region can no longer be indifferent on this issue. They need to form a "Statelessness Coordination Group." This will consist of delegates from their countries, human rights bodies, and UN agencies. This will be an institutional mechanism for formulating and implementing regional frameworks on nationality and data, as well as refugee affairs and legal identity.

Such a coordinating body will have to be empowered to formulate model nationality laws, develop best practices regarding documentation for children across regions, and coordinate the reporting obligations for countries. Additionally, such a body would be a venue for technical assistance for countries in need of help in formulating the aforementioned laws.

At the same time, National Human Rights Institutions (NHRIs) need to be enabled to monitor, investigate, and intervene in situations of deprivation of nationality and discrimination on the ground of legal identity.⁴⁷³ Their mandates need to extend beyond the issuance of recommendations. Instead, they need to be enabled by statute to stay deportation orders, recommend nationality status, grant emergency identity certificates, and refer to constitutional judicial review.

Such a dual architecture regime would ensure that South Asia not only tackles statelessness in a reactive manner but also prevents it. Statelessness is not an inevitable reality but an injustice that can be undone. It is high time that South Asia harnesses political will and makes the example in inclusivity in citizenship and the right to belong.

VII. CONCLUSION

⁴⁷³ Asia Pacific Forum of National Human Rights Institutions, Role of National Human Rights Institutions in Addressing Statelessness (2019), https://ganhri.org/wpcontent/uploads/2020/07/Manual_on_NHRIs_Oct_2018.pdf

Statelessness in South Asia represents not a temporary concern in international law but a chronic failure in the enforcement of one of the most basic human rights, that of nationality itself. In a region with such complex traditions of partition, migrations, and ethno-religious politics, the sense of legal citizenship has all too frequently been used for purposes of exclusion rather than protection. The denial of citizenship, and specifically in the cases of women, ethnic minorities, cross-border migrants, and their descendants, has resulted in statelessness extending across state borders through generations.⁴⁷⁴

In view of the growing number of refugees and the rhetoric and practices of exclusion associated with populists and nationalists, the objective of reforming nationality regimes, establishing a robust system of birth registration in line with universality and digital principles, and ensuring adequate frameworks for protection is no longer an ideal but a necessity. Statelessness leads to a vicious cycle of poverty, insecurity, and invisibility, which affects not only an individual's dignity but also undermines social cohesion and regional stability.⁴⁷⁵

The way ahead has to be based on harmonization, accountability for human rights, and regional cooperation. By signing on to the Status of Stateless Persons in 1954 and the Convention on the Reduction of Statelessness in 1961,⁴⁷⁶ through national legislation that meets international standards, and gender-neutral and rights-based approaches to citizenship policy, South Asian countries can shift from patchwork solutions to a guarantee. At the same time, strengthening National Human Rights Institutions, formalized involvement from Non-Governmental Organizations and United Nations agencies, and a South Asian Association for Regional Cooperation (SAARC) regional mechanism for oversight are essential for long-term, well-entrenched protection.

The scale of this task is huge, but so is the potential for this region of South Asia, and indeed South Asia itself, to change and become a place where people do not become invisible at birth but are recognized and affirmed in their legal existence from the beginning. Statelessness must cease, not through acts of charity but through justice and will.

⁴⁷⁴ UNHCR, *Global Trends: Forced Displacement in 2022*, at 30 (2023), <https://www.unhcr.org/global-trends-report-2022>

⁴⁷⁵ Tendayi Bloom, *Noncitizenship and Statelessness: New Directions in Statelessness Research*, 32 *Ethics & Int'l Aff.* 377, 379 (2018).

⁴⁷⁶ *Convention Relating to the Status of Stateless Persons*, Sept. 28, 1954, 360 U.N.T.S. 117; *Convention on the Reduction of Statelessness*, Aug. 30, 1961, 989 U.N.T.S. 175.

