



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

THE RIGHT TO BELONG: A JURISPRUDENTIAL INQUIRY INTO NATIONALITY, STATELESSNESS AND THE UNIVERSALITY OF HUMAN RIGHTS

~ Rudrali Deshpande

ABSTRACT

The term nationality is typically referred to as 'the right to have rights', but international law has not definitively provided that right to every individual. The purpose of this paper is to study the relationship between nationality and statelessness, and the theory that human rights have universal application. This includes an examination of the doctrine's evolution from the Permanent Court of International Justice's view that nationality is purely a matter of domestic jurisdiction through the International Court of Justice's 'genuine link' test in the Nottebohm case, as well as through the provisions of the Statelessness Conventions of 1954 and 1961 and Article 15 of the Universal Declaration of Human Rights. Furthermore, it will analyse the case studies from India concerning the Citizenship Act of 1955, the Assam Accord, the National Register of Citizens and the Citizenship (Amendment) Act of 2019, all of which will be situated in the broader context of the constitutional provisions found in Articles 14 and 21 as well as India's Supreme Court decisions related to Sarbananda Sonowal, the Chakma case and Assam Sanmilita Mahasangha. By referencing Hannah Arendt's description of statelessness as a loss of one's 'place in the world' and the UNHCR statistics that estimate more than four million people worldwide who are stateless, the paper asserts that international law permits the state to determine one's eligibility for belonging rather than the person, indicating that such residual sovereignty represented by the state impedes establishing a truly universal system of protection of human rights. The paper concludes by providing several recommendations in the sphere of municipal law, treaty formulation, and judicial procedures.

Keywords: *nationality; statelessness; citizenship; human rights; Nottebohm; NRC; CAA, 2019; Hannah Arendt*

I. INTRODUCTION

International human rights law recognises that human rights are made realisable because there is always an individual who can invoke them with someone who is in a position to listen. In most cases, that individual or entity is the sovereign state of which the person is a citizen. However, for the stateless, such an assumption fails right from the beginning. The philosopher Hannah Arendt, writing after World War II about the millions of people left without any state after the collapse of empires, describes the loss of nationality as the loss of not only certain rights but the loss of the ‘right to have rights’ in the sense of belonging to a political community that would guarantee any rights at all.¹ The importance of her expression relates to a fundamental problem of the human rights movement that has remained unresolved ever since. A right to a nationality exists, but it does not necessarily imply an obligation on any specific state to award a nationality to anyone; this means that the exclusive power of determining one’s nationality is still mainly a matter of domestic jurisdiction.²

In this context, the article studies whether the gap between theory and practice has been narrowed due to the established treaty law system and cases where the issue was solved, especially when it comes to the international debate on the universality of human rights. This part deals with some theoretical background of nationality and its treatment in the light of international law, specifically addressing the issues of the PCIJ opinion in the Tunis-Morocco case and the ICJ concept of “genuine link” in the Nottebohm case. The paper continues by discussing the history of statelessness treaty law from the years 1954 to 1961. The fourth section shifts the focus to India. With the creation of the Assam National Register of Citizens and the Citizenship (Amendment) Act, 2019, India has provided a more modern challenge to the relationship between citizenship law and statelessness. The fifth section evaluates important constitutional and human rights issues and the sixth section

¹Hannah Arendt, *THE ORIGINS OF TOTALITARIANISM* 296–97 (1951).

²Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 15, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

provides a socio-legal assessment with supportive data. The seventh section proposes reforms.

II. NATIONALITY IN INTERNATIONAL LAW: SOVEREIGNTY AND ITS LIMITS

A. Nationality as a Reserved Domain

The classical international law stance was that nationality was a form of sovereignty handled by each state according to its own laws. The idea was expressed most clearly by the Permanent Court of International Justice in the *Nationality Decrees Issued in Tunis and Morocco* advisory opinion, in which it stated that states have absolute jurisdiction over the classification of nationality entities, notwithstanding the fact that such jurisdiction is also relative whenever international relations evolve.³ The position was shared in the *Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws*, 1930, which states that nationality classification is a matter that lies within the exclusive jurisdiction of each state based on its own laws that must be recognised by other countries in line with the practice of international legislation, customary law, and basic principles of law and justice.⁴ Article 15 of the Universal Declaration has been deemed an exception to the rule of sovereignty in an implied way by stating that there are people entitled to a nationality and to be protected from any arbitrary deprivation of it, but it does not entail that the Declaration itself is a legally binding document or that any state is responsible for exercising the right.

Reserved-domain doctrine has a long history in state practice. Nationality was viewed by the nineteenth-century positivists as intrinsically linked to territorial sovereignty doctrine that allowed states to change borders with little consideration for the sentiments of the inhabitants. In the twentieth century, the process of denaturalisation gave the doctrine its blackest illustration through the *Reich Citizenship Law* of 1935 promulgated by Nazi Germany that deprived Jews and other groups of their citizenship in advance of persecution, indicating that the unlimited right of the state in deciding who can be considered a national can be used for exclusion purposes.⁵ Given this context, the authors of the Universal

³*Nationality Decrees Issued in Tunis and Morocco*, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 4 (Feb. 7).

⁴*Convention on Certain Questions Relating to the Conflict of Nationality Laws* art. 1, Apr. 12, 1930, 179 L.N.T.S. 89.

⁵*See* Arendt, *supra* note 1, at 269–79 (discussing denationalisation under Nazi rule).

Declaration were prompted to include Article 15; however, it has been shown by subsequent experience that the article has not been influential in curbing state power.

B. The Nottebohm Case and the “Genuine Link”

The Nottebohm case was a significant one in the International Court of Justice, taken for deciding on issues related to competing nationality claims. Friedrich Nottebohm, a German citizen who had spent many years in Guatemala, got a Liechtenstein nationality shortly before the inception of World War II and was looking to get diplomatic support from this country against Guatemala's expropriation of his property. The Court held that a state could not get diplomatic support on behalf of a naturalised citizen in relations with another state until the citizenship was genuine, meaning that the person had a real connection with this state through his sentiments, residence, interests and family ties.⁶ The decision has been interpreted and denounced both as a decision that restricted the international implications of a nationality instead of restricting its effect at the local level, as Guatemala was not allowed to claim Nottebohm as stateless; rather, Liechtenstein was barred from standing up for Nottebohm against third parties.⁷ Nottebohm actually did demonstrate, even with this careful interpretation, the fragility of nationality as a legal status: people can have a nationality recognised in their country of origin, but on some occasions, they are treated as if they have no nationality at all abroad.

C. The Right to a Nationality in Treaty Law

In the course of time, the instruments shifted cautiously from aspirations to obligations; not uniformly, though. The International Covenant on Civil and Political Rights stipulates that the right to nationality belongs to every child; the right that is intended to protect the interests of children.⁸ The Convention on the Rights of the Child restates this right and adds another one: the right to be registered immediately after birth.⁹ The Convention on the Elimination of All Forms of Discrimination against Women demands that states provide women with equal rights with men to acquire, change or keep their nationality and equal rights to transmit nationality to their children; this provision aims at dealing with the

⁶Nottebohm Case (Liech. v. Guat.), Second Phase, 1955 I.C.J. 4, 23 (Apr. 6).

⁷See Ian Brownlie, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 407–10 (7th ed. 2008) (discussing the scope and criticism of the genuine-link requirement).

⁸International Covenant on Civil and Political Rights art. 24(3), Dec. 16, 1966, 999 U.N.T.S. 171.

⁹Convention on the Rights of the Child art. 7, Nov. 20, 1989, 1577 U.N.T.S. 3.

widespread custom of denying women the right to transmit nationality.¹⁰ However, none of these tools gives an adult an independent right to the nationality of a certain state, nor does it change the primary principle that each state determines the rules for acquiring and losing its citizenship.

Regional human rights courts have provided gradual improvements. The European Court of Human Rights ruled in *Genovese v. Malta* that although the European Convention on Human Rights does not provide the right to a concrete nationality, an arbitrary refusal of a state to grant its nationality may raise a relevant question under Article 8 regarding the right to private life.¹¹

III. THE STATELESSNESS REGIME: THE 1954 AND 1961 CONVENTIONS

A. *Defining and Protecting the Stateless*

The Convention Relating to the Status of Stateless Persons, 1954 provides the definition upon which the current regime stands: a stateless person is defined as anyone who “is not regarded as a national by any state in accordance with its laws.”¹² This is a descriptive rather than a rectifying definition because it tells us who a stateless person is, but does not obligate any state to prevent the stateless status of persons.¹³ The contracting countries must grant stateless persons in their country of residence a treatment which, while providing a standard for employment, housing, education and identification, is of a quality comparable to that offered to other foreign citizens and even, to some degree, to citizens of that country.

B. *The 1961 Convention and the Limits of Prevention*

The 1961 Convention on the Reduction of Statelessness is concerned with causes, rather than with status.¹⁴ Through it, states that have signed the document must ensure that, where persons are born on their territory, such persons will be granted citizenship, and where there are certain conditions, such as habitual residence, these persons can be at risk of statelessness.¹⁵ States are also restricted from taking citizenship away from such persons,

¹⁰Convention on the Elimination of All Forms of Discrimination Against Women art. 9, Dec. 18, 1979, 1249 U.N.T.S. 13.

¹¹*Genovese v. Malta*, App. No. 53124/09, Eur. Ct. H.R. (2011).

¹²Convention Relating to the Status of Stateless Persons art. 1(1), Sept. 28, 1954, 360 U.N.T.S. 117.

¹³*Id.* arts. 12–32.

¹⁴Convention on the Reduction of Statelessness art. 1, Aug. 30, 1961, 989 U.N.T.S. 175.

¹⁵*Id.* art. 8.

as they would become stateless if that were to happen. Article 9 also makes sure that states can't take away citizenship from someone because of their race, ethnicity, religion, or political affiliation.¹⁶ However, even this convention has limitations, as not many states have ratified it. Moreover, it is possible for countries that don't sign this document to have states under their nationality laws, being bound only by customary national law and obligations arising from other conventions. Such is the case with India, which has not signed either of the conventions mentioned above, which can greatly affect the following analysis.

C. Group Statelessness and the Limits of Individual Remedy

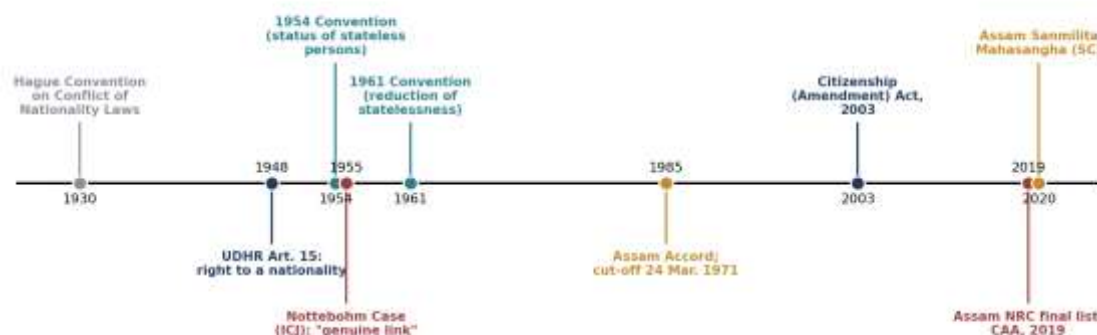
The two Conventions were formulated mainly in response to the individual occurrences of statelessness caused by discrepancies in conflicting nationality statutes. They are not as effective in dealing with collective statelessness caused by discriminatory deprivation of nationality, such as in the case of the Rohingya people of Myanmar, who lost their nationality under the 1982 Burman Citizenship Law just because of their ethnic affiliation.¹⁷ As a result, the entire community has become stateless. The Inter-American Court for Human Rights has faced a similar issue in the case of *Yean and Bosico v. Dominican Republic*, ruling that the decision of the Dominican Republic not to grant birth certificates to children of Haitian heritage has made them stateless, thus infringing their rights to nationality, protection and identity under the American Convention on Human Rights.¹⁸

¹⁶*Id.* art. 9.

¹⁷See U.N. Human Rights Council, Rep. of the Indep. Int'l Fact-Finding Mission on Myanmar, ¶¶ 575–end (describing statelessness), U.N. Doc. A/HRC/39/64 (Sept. 12, 2018).

¹⁸*Girls Yean & Bosico v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 130 (Sept. 8, 2005).

Figure 1. Milestones in the international and Indian law of nationality and statelessness, 1930-2020



Source: compiled by the author from the instruments and decisions cited in Parts II-IV.

IV. THE INDIAN EXPERIENCE: CITIZENSHIP, THE ASSAM NRC AND THE 2019 AMENDMENT

A. The Constitutional and Statutory Framework

The subject of Articles 5 to 11 of the Indian Constitution is citizenship and allows Parliament to make laws regarding citizenship.¹⁹ Parliament has acted according to the Constitution in the Citizenship Act of 1955, which deals with citizenship by birth, descent, registration, naturalisation and acquisition of territory, as well as the termination of citizenship by renunciation, termination or deprivation. The Act has witnessed several amendments over the years, with the key amendments occurring in 1986, 2003 and 2019 where every amendment has restricted or changed citizenship by birth.²⁰ The amendment of 1986 limited citizenship by birth only to those children born to at least one Indian parent, thus changing the concept of unconditional *jus soli* provided in the original Act. The amendment introduced in 2003 was an improvement in that aspect as well and broke the tradition by taking away the citizenship of a person born in India if one of the parents was an illegal immigrant at the time of his or her birth. Additionally, the amendment also provided for an arrangement of the entire population of the country in the form of a citizen

¹⁹India Const. arts. 5–11.

²⁰Citizenship Act, 1955, No. 57, Acts of Parliament, 1955, §§ 3–10 (India).

register.²¹ The Foreigners Act, 1946, gives the government the authority to designate foreigners and require citizens to prove their citizenship.²²

B. The Assam Accord and the National Register of Citizens

Assam has its own storyline, which dates back to a six-year-long struggle against a big influx of migration from East Pakistan and subsequently Bangladesh, which led to the signing of the Assam Accord in 1985. The Accord stipulated March 24, 1971, which is the day before the start of war against Bangladesh, as the cut-off date: people who came to Assam before this date were supposed to be given citizenship, and people who arrived after that were to be detected and, in principle, deported. The implementation of the Accord was delayed by decades.²³ The Indian Supreme Court, in the case of *Sarbananda Sonowal v. Union of India*, struck down the Illegal Migrants (Determination by Tribunals) Act of 1983, the vigilance statute applied in Assam for the detection of illegal immigrants was much harsher compared to the extent of application of the Foreigners Act in the rest of India, holding that the burden of proof of the statute on the complainant, instead of the suspected illegal migrant, had made it practically impossible to detect illegal immigrants and had failed to fulfil its constitutional obligation to protect the State against outside aggression in terms of Article 355.²⁴

The National Register of Citizens for Assam, first made in 1951 and subsequently updated as per the direction of the Supreme Court under the 2003 amendment and the regulations made under it, states that each inhabitant shall prove descent from someone who was in Assam or was mentioned in voting or other government documents before the cut-off date of 1971.²⁵ The final list released on 31 August 2019 included 31,121,004 names and excluded 1,906,657 names, which approximated about 6% of the applicants from a state having a total population of over 3 crore people.²⁶ Those who are excluded do not simply become stateless because of it; they have the right to go to the Foreigners Tribunals and

²¹Citizenship (Amendment) Act, 2003, No. 6, Acts of Parliament, 2004, §§ 3, 14A (India).

²²Foreigners Act, 1946, No. 31, Acts of Parliament, 1946, § 9 (India).

²³Memorandum of Settlement (Assam Accord), cl. 5, Gov't of India–All Assam Students' Union–All Assam Gana Sangram Parishad (Aug. 15, 1985).

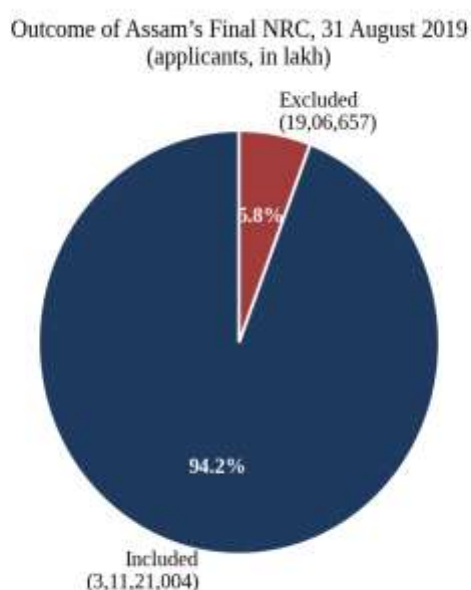
²⁴*Sarbananda Sonowal v. Union of India*, (2005) 5 S.C.C. 665 (India).

²⁵Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, r. 4A & sch. (India); see *Assam Sanmilita Mahasangha v. Union of India*, (2015) 3 S.C.C. 1 (India) (directing completion of the NRC update).

²⁶NRC Assam, Press Release (Aug. 31, 2019); see also *Assam Sanmilita Mahasangha v. Union of India*, (2020) 7 S.C.C. 426 (India) (disposing of residual issues after the final NRC).

courts, and the government has assured that they will not be detained while going through this process. However, their status in the interim is uncertain in that they have no determination of foreign nationality or confirmed Indian nationality either. At the same time, Bangladeshi authorities have constantly denied that any of them are its citizens. Look at Figure 2 for the results of the exercise.

Figure 2. Outcome of the Assam NRC, final list of 31 August 2019



Source: Press release of the NRC State Coordinator, Government of Assam (Aug. 31, 2019).

C. The Chakma Case and the Problem of Long-Term Refugees

A difficulty regarding the Chakma community developed in a unique way, where the Buddhist refugees migrated from the Chittagong Hill Tracts to India after 1964 and settled in Arunachal Pradesh legally. After many years, most of these individuals did not have citizenship and were both subjected to hostility from local groups. In *National Human Rights Commission v. State of Arunachal Pradesh*, the Supreme Court concluded that the State was obliged to protect the lives and liberties of its individuals as per Article 21.²⁷ This ruling plays a key role in establishing the basis of protection for stateless or precariously documented populations in relation not to any instrument which deals with statelessness

²⁷Nat'l Human Rights Comm'n v. State of Arunachal Pradesh, (1996) 1 S.C.C. 742 (India).

and which India has refrained from ratifying but to the ordinary guarantee contained in Article 21 which applies to “any person” and not necessarily to citizens only.

D. The Citizenship (Amendment) Act, 2019

The said addition in the Citizenship (Amendment) Act, 2019 amended the provisions of Section 2(1)(b) of the 1955 Act where certain people have been excluded from the definition of “illegal migrants”. The Act is applicable on Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians if they belong to any of these communities and have come into India from Afghanistan, Bangladesh, or Pakistan on or before 31 December 2014.²⁸ It also reduces the period of residence required for naturalisation from eleven years to five for this specific group. The Act is limited to the three countries and the six mentioned religious communities but does not include Muslims from these three countries or minorities who are being persecuted by different nations such as Myanmar or Sri Lanka. Many petitions challenging the Amendment on the basis of Article 14, which argue that the distinctions made based on religion and place of origin are insufficient and lack a rational basis that is relevant to the objective of protecting religious minorities, have been submitted to the Supreme Court; some interim relief was granted against the implementation of the rules based on these petitions; however, the issue has not been determined completely in the latest hearings.²⁹ The Amendment, though, does not claim to take anyone's citizenship away, but it is controversial because of its link with the NRC process; if a Muslim is excluded by the NRC, there is no opportunity to nationalise due to the religious criteria, which has been voiced by petitioners and commentators but remains unaddressed by the Court.

V. HUMAN RIGHTS AND THE UNIVERSALITY CLAIM

A. Article 21 and “Any Person”

The Indian Constitution gives partly the solution to the issue that Arendt raised. According to Article 21, no person can be deprived of life or personal liberty without a legal procedure. The Supreme Court has established that the term “person” includes both foreigners and those without a definite nationality.³⁰ The following claim expresses an important element

²⁸Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019, §§ 2, 6B (India).

²⁹See In re: Citizenship (Amendment) Act, 2019, W.P.(C) No. 1470/2019 and connected matters (India) (pending).

³⁰Louis De Raedt v. Union of India, (1991) 3 S.C.C. 554, 558 (India) (holding that the fundamental right under Article 21 is available to foreigners as well).

of absolute territorial sovereignty: even a country that has not approved any of the Statelessness Conventions, which does not have any special treaty obligations towards stateless people, can still provide, according to its constitutional document, fundamental types of protection of life and liberty to stateless people. However, Article 21 specifically provides for both personal safety rights and access to legitimate process, but it does not grant any political rights, such as the right to work freely or the right to residential appeal.

B. Equality and the Problem of Classification

According to Article 14 of the Constitution, classification is possible only if there exists an understandable and logical difference between either group being compared. The Supreme Court has been using the Article to decide citizenship and residency cases. The classification in question only relates to certain religions in certain countries, hence it must answer the universality question as it is posed here: what if the law prohibits the concept of certain religions and countries from protecting the rights of persecuted people belonging to different religions and countries? Such reasoning worked in *the Anuj Garg case*, whereby the court ruled that any classifications based on stereotypes and no real difference should fail the Article 14 and 15 test, regardless of whether the classification was implemented as a protective one.³¹ It is still uncertain whether the religious and national origin classification made by the amendment introduced in 2019 would be approved or not, but the legalities for filing a case against it demonstrate how domestic equality laws could help curb the restrictive national laws that are not effectively addressed in the international legal framework.

C. Arendt's Critique Revisited

Arendt's thought still bears relevance due to this remaining sovereignty. In her view, it was not an absence of a particular right, like freedom of speech, that defines a plight of the stateless person, but rather there is no community ready to assure the rights having been expelled from one political community. If once again paraphrased, we can say that, once the person has been excluded from the political community, no other political community is willing to call this individual deserving of acting independently in society and sharing his/her opinion anymore; the only thing that will remain for them.³² The Assam NRC

³¹Anuj Garg v. Hotel Ass'n of India, (2008) 3 S.C.C. 1 (India).

³²Arendt, *supra* note 1, at 296–302.

provides a modern example of the same. To be more precise, an individual does not receive the status of a Bangladeshi citizen, nor is this individual declared stateless under Indian law (with no statute of this kind). As a consequence, the outcome becomes a drawn-out state of legal uncertainty instead of an explicit one, which is probably a more appropriate interpretation of Arendt's statement than conventional statelessness resulting from state succession or mass denationalisation: the issue is not the act of removing the nationality but rather some administrative and evidentiary process voiding nationality of any content.

VI. TOWARDS A MORE UNIVERSAL FRAMEWORK: PROPOSALS

The four reforms would help to close the gap between the theory of universal human rights and the practice. First, all countries, including India, which is not a party, must ratify the 1954 and 1961 Conventions, or else at least establish national procedures for determining statelessness similar to these instruments. A person who is stateless should, after the process of National Register of Citizenship and Foreigners Tribunal, have some official status and rights provided by law and should not remain indefinitely in limbo. Second, the provisions of Article 8 of the 1961 Convention concerning the ban on loss of citizenship with the subsequent occurrence of statelessness must be regarded as customary international law applicable to the entire international community irrespective of ratification.

There should be a requirement that every religion- or origin-based classification used in nationality or refugee-protection laws, such as in the 2019 Amendment, meets a standard of genuine proportionality between classification and claim regarding the purpose of this classification. Thus, it will not be possible to resort to such classifications without any critical discussion, saying that they serve humanitarian goals.

The presumption that large-scale citizenship verification operations will invariably impose the burden of proving citizenship on those most disadvantaged should be dispelled, as procedural safeguards that ensure proper functioning of such operations need to include, among other things, this presumption in favour of people who have been living there for a long time, even if they do not happen to have any relevant documents.

VII. CONCLUSION

The right to nationality has a unique position in international human rights law. Despite being declared in the Universal Declaration of Human Rights, it has been hampered by

treaties that govern its enforcement and remains an almost unexplored state domain defined by the Permanent Court of International Justice. The example of the *Nottebohm* case reveals that even a valid nationality can be rendered ineffective by states' attempts at interpreting it. The 1954 and 1961 Conventions have provided legal definitions for nationality and possible measures against statelessness but the issue is still pervasive due to the limited number of ratifications and an ineffective identification process that leaves millions of people stateless according to UNHCR estimates.

India's implementation of the Assam NRC and the Citizenship (Amendment) Act, 2019 highlights both the strengths and the limitations of constitutional alternatives to the international regime. Article 21, being interpreted to cover “any person”, has achieved what the non-ratification of the statelessness treaties would have otherwise made impossible. Even though constitutional protection exists, it cannot replace the need for a concrete status, and those who are stuck between the exclusion under the NRC and their allegedly indifferent country of origin provide a fitting example, among many such as Arendt might have imagined, of holding rights on paper rather than enjoying them along with a community making it happen.