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# Nationality Without Process: Analysing India's Citizenship Regime

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## Abstract

*Nationality has conventionally been considered as a matter of sovereign competence of the state. International law generally intervenes merely in limited circumstances, particularly, through the prohibitions on discrimination and statelessness. The prohibition of arbitrary deprivation of nationality has now developed a procedural dimension. Arbitrariness is not confined to discriminatory or retroactive statelessness; it is inclusive of absence of an objective criteria, assessment of proportionality, and review mechanisms in structuring access to membership.*

*Using India's post-2015 citizenship framework as a case study, in particular, the Citizenship (Amendment) Act, 2019 ("CAA") and the absence of a codified mechanism for determining refugee status, this paper contends that this law of nationality may violate international standards, not only by what it excludes, but by how it excludes. Where decisions concerning membership are made without a legally defined process, arbitrariness may become structural. The Indian instance reveals a broader doctrinal gap; that the international law has recognised the prohibition of arbitrariness but has not sufficiently articulated the procedural obligations it entails.*

*The paper seeks to examine as to whether the prohibition of arbitrary deprivation of nationality in contemporary international law requires states to structure nationality regimes through objective, proportionate, and reviewable procedures. It further evaluates as to whether India's citizenship framework meets such requirement.*

*The paper advances three interconnected claims. Firstly, in contemporary international law, arbitrariness in nationality law is not confined to discriminatory or unlawful outcomes; it also includes failures of procedure. Secondly, where a nationality regime places reliance on broad identity-based instead of assessing individual circumstances, it fails the aforesaid standard. Thirdly, India's post-CAA framework demonstrates how arbitrariness can also arise in absence of a structured process for determining nationality.*


**Keywords**: nationality, arbitrariness, reasonable and objective, proportionality, citizenship

## Introduction

Nationality has been described as a central place in international law, but it is not completely settled. In *Nationality Decrees in Tunis and Morocco*, the Permanent Court of International Justice clarified that whether a matter belongs to domestic jurisdiction is '*essentially relative*', depending on the development of international law.[1] At the time, nationality was perceived as one of the clearest examples of such domestic authority. The International Court of Justice in *Nottebohm*, even when introducing '*genuine link*' as a pre-requisite, reaffirmed that nationality continues to lie within state competence.[2] Neither decision countered the view of sovereign control over membership; both reflected the prevalent opinion as to nationality being primarily a matter of internal regulation.

The aforementioned perception has gradually changed. The adoption of Article 15 of the Universal Declaration of Human Rights ("UDHR") marked the first explicit recognition that nationality is not immune to international standards.[3] Albeit the non-binding nature of the Declaration, the principle that no one shall be arbitrarily deprived of nationality has since been reinforced through treaty law and state practice. The International Covenant on Civil and Political Rights ("Covenant"), to which India is also a party, guarantees equality before the law under Article 26, and the right of children to acquire nationality under Article 24(3).[4] It is indeed true that these provisions do not directly regulate naturalisation policy, but they do subject the law on nationality to general principles of non-discrimination and legal protection.

The critical development in this domain, however, lies in the meaning attributed to 'arbitrary'. International bodies have consistently held that arbitrariness is not limited to acts that are unlawful under domestic law. The Human Rights Committee ("the Committee") has clarified that arbitrariness must be understood to include elements of inappropriateness, injustice, lack of predictability, and due process of law.[5] Such interpretation is not merely incidental to the concept of 'arbitrariness' but indicates that procedural fairness is embedded within this concept itself. The Human Rights Council has further clarified that deprivation of nationality must pursue a legitimate aim, be proportionate, and comply with due process safeguards.[6] These requirements reflect a broader theme within the international human rights law; that state measures that affect legal status must be justified, specific, and procedurally reviewable.

Once arbitrariness is understood in this manner, it produces significant implications for the law on nationality. A state indeed retains competence to determine the criteria for its citizenship. Yet, where such competence is exercised without an objective standard, (or without an individualised assessment, or without an accessible review), it becomes difficult to demonstrate that the resultant exclusion was proportionate or even predictable. Essentially, the legality of regulating nationality cannot be assessed solely by examining whom the law includes or precludes; it must also consider whether the structure of decision-making permits for such a reasoned justification.

Much of the presently existing scholarship on disputes concerning nationality emphasises on discrimination or statelessness.[7] While these are certainly important concerns, they address outcomes rather than institutional design. The prohibition of arbitrariness, as developed by international bodies as

mentioned above, directs attention to a prior question; that whether the presently existing framework itself provides for a process through which membership claims can be assessed. And further, if not, arbitrariness may arise even in the absence of a formal deprivation of nationality.

This question assumes importance in contemporary citizenship regimes that invoke protection as a justification for differential treatment. India emerges as a particularly instructive case. For instance, India is not a party to the 1951 Refugee Convention and does not possess a statutory procedure for determining a refugee status. Procedure for displaced groups has historically been extended through executive action rather than through a codified legal standard. The Citizenship (Amendment) Act, 2019 presents an expedited pathway to naturalisation for members belonging to specific religious communities from Afghanistan, Bangladesh, and Pakistan. The legislative assembly debates center around the justification referring to "persecuted minorities". Notably though, the Act does not define persecution, or require evidence for proving vulnerability, and does not introduce a procedure for assessing individual claims. Religion and country of origin act as decisive markers in place of an adjudicative process.

The constitutionality of the CAA has consistently been under debate. The paper approaches this issue from a different approach. The primary concern is not whether religion may ever be a permissible classification. Rather, it is, whether a nationality regime that invokes persecution as a rationale can dispense entirely with a mechanism for determining persecution. If arbitrariness requires legitimate aim, proportionality, and due process, then the absence of a procedure to determine refugee status and individual assessment becomes legally relevant. A law might claim to protect vulnerable groups, but such a claim cannot simply be evaluated in the absence of a procedure for identifying vulnerability.

The paper proceeds in three parts. **Section I** examines the doctrinal basis of arbitrariness in the law of nationality, drawing on the Committee's jurisprudence and UN practice to demonstrate its procedural aspect. **Section II** studies the manner in which equality and proportionality operate in the context of nationality under the ICCPR. **Section III** applies these principles to India's citizenship framework, focusing on the absence of a determination of refugee status and the structure of the CAA. The **conclusion** reflects on the broader implications of the subject for international law and hints at proposing minimal procedural bases that are consonant with state sovereignty.

Crucially, the argument does not dispute that nationality continues to be a core attribute of sovereignty. It contends, rather, that sovereignty over membership should instead be exercised through process. While international law has indeed recognised the prohibition of arbitrariness; what remains necessary is a clarification on what that prohibition requires.

## Arbitrariness in International Law

The prohibition of arbitrary deprivation of nationality is well established within contemporary international legal discourse. Article 15(2) of the UDHR bars such arbitrary deprivation. While it is true that the Declaration, is not, in itself, binding, the prohibition has been repeatedly reaffirmed in binding and non-binding instruments, inter alia, resolutions of the Human Rights Council and the General Assembly.[8] The doctrinal question here, however, is not whether the prohibition exists, but what it entails.

### *Arbitrariness as a Legal Standard*

The preliminary interpreting point for arbitrariness is the jurisprudence of the International Court of Justice. In the *Elettronica Sicula S.p.A. (ELSI)* case, the Court enquired as to whether Italy's requisition of a factory could constitute arbitrary conduct under its treaty obligations. The court categorically held that 'arbitrariness is not so much something opposed to a rule of law', but rather, it was held to be a wilful disregard of the due process of law.[9] This definition becomes doctrinally important for two reasons. *First*, it clarifies that the contours of arbitrariness are not merely restricted to illegality. *Second*, it clearly and specifically connects arbitrariness to due process. Such articulation establishes that regularity and reasonability of procedure is inherent in the conception of rule of law that is embedded in arbitrariness.

The Committee adopted a materially similar conception in its General Comment when interpreting Article 12 of the ICCPR. It clarified the notion of 'arbitrariness' as not to be equated with it being 'against the law', but to be interpreted more broadly so as to include the elements of inappropriateness, injustice, lack of predictability and due process of law.[10] The inclusion of the principles of predictability and due process confirms that arbitrariness also has a structural content in addition to its substantive content. It thus follows that compliance with domestic legislation does not circumvent the enquiry into its content; the design and consequent application of the law must also satisfy the standards of fairness and justification.

The Committee has maintained this standard by reiterating this principle in another one of its General Comment on liberty and security of persons. It stated that arbitrariness includes elements of inappropriateness, injustice, lack of predictability and due process of law.[11] The consistent standard of such formulation across distinct Covenant provisions indicates that the Committee treats it as a general interpretive principle rather than a context-specific façade. The underlying theme is, thus, that this principle is a principle of that of interpretation.

The doctrinal basis is therefore clear; that arbitrariness in international law also encompasses procedural defects and lack of rational justification.

### *Arbitrariness in specific context of Nationality*

The Human Rights Council has applied the aforesaid conception *mutatis mutandis* to the law of nationality. In its report titled 'Human Rights and Arbitrary Deprivation of Nationality', the Council lays down that any deprivation of nationality must be in conformity with domestic law.[12] The underlying rationale was to subject the law to a legitimate purpose, and to ensure its proportionality to the stated purpose. The report then build upon the importance of procedural safeguards, mentioning that, *inter alia*, rights like that of fair hearing and effective remedy, are essential to ensure that the deprivation of nationality is not arbitrary.[13]

The conclusion from this report, *therefore*, is its articulation of a *three part test*; that of legality, legitimate purpose, and proportionality, while also subjecting it to procedural safeguards. The usage of the term 'essential' is indicative of the mandatory nature of these procedural guarantees, and that, in absence of such safeguards, any deprivation runs the risk of being classified as arbitrary irrespective of its legitimate form or stated purpose.

Crucially, the Council did not confine its analysis to a formal revocation. The same report defined the term 'deprivation of

nationality' as referring to any withdrawal of nationality, whether automatic or whether through an operation of law.[14] Essentially, deprivation of nationality includes measures that effectively prevent an individual from acquiring a nationality, where, he or she would otherwise be entitled to the same.

This clarification assumes importance considering that even preventing the acquisition of nationality, may, in certain circumstances, fall within the aforesaid scope of deprivation. The prohibition is, therefore, not restricted mere retroactive revocation of nationality, but it may even extend to access regimes where entitlement to nationality would otherwise arise.

This position is also reinforced by the Convention on the Reduction of Statelessness (1961). Article 1(1) of the Convention requires the States to grant nationality to a person born within their territorial jurisdiction, who would end up being stateless if not for such a requirement.[15] The usage of the term 'shall' makes it mandatory for the contracting States to ensure such nationality acquisition. Further, its Article 8(1) bars States from depriving a person of their nationality if such deprivation would render them stateless.[16] The uniformity in withdrawal and grant obligations of nationality is reflective of a shared normative concern; that exclusion from nationality in circumstances concerning fundamental rights must be constrained. Although India is not a party to this Convention, the instrument continues to reflect the broader doctrinal movement restricting arbitrary exclusion.

## Equality, Proportionality, and Individual Assessment

The analysis of arbitrariness must also be read together with Article 26 of the ICCPR. The Committee in its General Comment has clarified that Article 26 does not merely mirror the safeguards provided for in Article 2 but provides an autonomous right in itself.[17] Article 26, *therefore*, prohibits discrimination, in law or in fact, in any field regulated and protected by public authorities. The Committee further states that every differentiation of treatment does not, in and of itself, constitute discrimination.[18] The standard of discrimination is not met when differentiation is reasonable and objective, and if the aim is to achieve a purpose which is legitimate per the Covenant.

The pre-requisite of a 'reasonable' and 'objective' criteria imposes a justificatory burden on the State. Classifications should thus be based on verifiable facts that bear a direct and rational connection to the legitimate aim pursued. This standard has been applied in the context of nationality-related regulations. In *Karassev v Finland*, the Committee considered the validity of the denial of nationality, and although it found no violation on the facts of the case, it affirmed that nationality legislation is amenable to the scrutiny of Article 26 review.[19] The doctrinal implication, *therefore*, is that the criteria for naturalisation must be capable of objective justification. Where a State invokes persecution or vulnerability as its underlying rationale, Article 26 requires that the differentiation be grounded in reasonable and objective assessment of these conditions.

The proportionality element embedded in arbitrariness, however, further precision. In *Nystrom v Australia*, the Committee held that even where expulsion is permitted in law, it must still conform to reasonableness in its particular circumstances.[20] This reasoning requires balancing individual interests vis-à-vis state objectives; it presupposes individualised assessment. Blanket measures that operate without due and proper regard to personal

circumstances risk failing this standard.

Proportionality analysis in international human rights law generally involves three stages: *first*, legitimacy of aim; *second*, rational connection; and *third*, necessity and proportionality *stricto sensu*.[21] Each stage requires enquiring into information about the concerned individual. Without due procedures for gathering and evaluating such information, proportionality cannot be meaningfully demonstrated. Administrative convenience cannot substitute for necessity. The Committee has been consistent in holding that restrictions must not restrict the right of freedom of movement.[22] By analogy, nationality regimes must not nullify access to rights through categorical exclusion that lacks rational and procedural bases.

IN SUM, arbitrariness in nationality law comprises of conformity with domestic law, a legitimate purpose, proportionality between means and aim, reasonable and objective criteria, and procedural safeguards. International law indeed does not eliminate state discretion in matters concerning nationality laws. However, once arbitrariness is defined so as to include lack of predictability and due process, and once equality requires reasonable and objective criteria, nationality regimes must be structured in a manner that permits legal justification.

## Equality and Proportionality under the ICCPR

The preceding part illustrated that arbitrariness in nationality law, as reconstructed from ICJ jurisprudence, interpretations by the Committee, and UN practice, includes procedural safeguards and proportional justification. This part situates the aforesaid structured understanding within the equality framework of the ICCPR. It argues that Articles 24(3) and 26, when read in conjunction, and in light of their *travaux préparatoires*, subject the nationality law to standards of reasonableness, objective justification, and proportionality. The analysis proceeds in three stages; *firstly*, studying the scope of Article 26; *secondly*, analysing the role of proportionality in differentiation; and *thirdly*, examining the relevance of *travaux préparatoires* in understanding the intended scope of these provisions.

### *Article 26 as an Autonomous Constraint on Nationality Law*

Article 26 provides for equality of all persons before the law, entitling them to the equal protection of laws without any discrimination.[23] The provision is not confined to rights enumerated elsewhere in the Covenant. Unlike Article 2(1), which attaches non-discrimination to Covenant rights, Article 26 establishes an autonomous equality guarantee. In its General Comment, the Committee has clarified that the underlying purpose of Article 26 is to create an autonomous right.[24] It prohibits discrimination both in law, or in fact, in any field regulated and protected by public authorities. The ambit of 'any field regulated and protected by public authorities' is a decisive factor. Nationality legislation, inter alia, naturalisation criteria, is plainly a field regulated by public authority. It determines access to political participation, security of residence, and legal protection. It cannot, therefore, be conceptually separated from Article 26 scrutiny on grounds of sovereign prerogative.

Such interpretation is supported and reinforced by the *travaux préparatoires* of the Covenant. During deliberations in the Third Committee, proposals were made to limit the equality clause to the rights enumerated in the Covenant. Such proposals were rejected.[25] Delegates emphasised that equality before

the law should apply to legislative action generally. The drafting history confirms that Article 26 was intentionally framed to prevent legislative differentiation from being excluded from review merely because it fell outside the enumerated rights.

The Committee has consistently applied Article 26 to legislative schemes affecting the status of nationality of persons. In *Karassev v Finland*, while the Committee ultimately concluded that there was no violation, it nonetheless entertained a claim challenging the denial of nationality under Article 26.[26] The implication, *therefore*, is clear; that regulations on nationality are still subject to equality. However, Article 26 does not prohibit differentiation in all forms. The Committee has repeatedly affirmed that differentiation that is unreasonable and lacks an objective under the legitimate aim of the Covenant, will constitute discrimination.

> "*Not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*"[27]

Such a standard introduces a structured form of enquiry: legitimacy of aim and objective reasonableness of criteria. The phrasing is clear and intentional. 'objective' criteria requires factual bases; 'reasonable' criteria require rational justification. A classification that operates without reference to verifiable conditions as mentioned above risks failing both the prongs. *Therefore*, even where nationality remains within the domain of state competence, Article 26 mandates that the distinctions drawn in its allocation be demonstrably grounded in objective and rational standards.

### *Equality Rationale and Article 24(3)*

Although Article 26 does not explicitly mention proportionality, the Committee's interpretation of 'reasonable' and 'objective' criteria has consistently incorporated proportional reasoning. In *Althammer v Austria*, the Committee stated that differentiation must be based on 'reasonable and objective criteria' and pursue a legitimate aim.[28] In subsequent jurisprudence, the Committee clarified that reasonableness requires a relationship of proportionality between means and aim.[29] Such reading aligns with the Committee's broader approach under other provisions of the Covenant, where it has laid the requirement for the measures to be reasonable in the 'particular circumstances'.[30]

The interpretive link between reasonableness and proportionality is not merely inferential but also textually grounded. In another General Comment, the Committee emphasised that restrictions must meet the '*test of necessity and proportionality*'.[31] Necessity presupposes consideration of alternatives; and proportionality presupposes balancing. The same rationale informs the equality analysis: differentiation is permissible only where it is sufficiently directed to a legitimate aim, and not excessive in its impact. This has critical implications in nationality law. If a state differentiates in providing access to citizenship on grounds such as persecution, vulnerability, or historical disadvantage, it is required to demonstrate that the classification is appropriately tailored to those conditions.

Suitability requires that a rational connection be shown between the classification made and the factual condition invoked. Necessity requires that lesser restrictive alternatives, such as that of an individual assessment, be considered. Balancing requires consideration of the impact of exclusion on the affected persons.

In absence of mechanisms for assessing as to whether an individual satisfies the condition invoked, say, for instance, persecution. The very requirement of an objective criteria thus converges with proportionality; in that, both demand structured justification grounded in facts that can be ascertained.

Article 24(3) of the ICCPR affirms right of every child to acquire a nationality.[32] Albeit confined to children, the inclusion of the provision itself within the Covenant is still doctrinally significant. The *travaux préparatoires* bring to the fore the concerns highlighted by delegates that the denial of nationality could undermine the enjoyment of other rights guaranteed by the Covenant.[33] Nationality was viewed as a gateway that is foundational to legal protection and civic participation. The drafting history reinforces a structural understanding; that nationality is not merely an administrative classification but a status deeply connected to the effective enjoyment of rights. In a situation where nationality functions as a gateway to the enjoymeny of other foundational rights, then any nationality regime invoking protective aims must incorporate mechanisms capable of verifying the factual premises of such aims; absent such mechanisms, the justificatory system collapses.

Read conjunctively, Article 24(3) and Article 26 indicate that regulation of nationality is not immune from Covenant standards merely because the Covenant does not expressly codify a general right to naturalisation. While states indeed retain discretion in settling naturalisation criteria, such discretion must be exercised consistently with equality and reasonableness. The convergence of Articles 24(3) and 26 thus strengthens the procedural aspect identified above in the preceding part. Since nationality is foundational to rights, and equality requires objective and reasonable criteria, then the nationality legislation invoking protective aims must provide for mechanisms that are capable of verifying the factual premises of those aims; or otherwise, the justificatory structure collapses.

IN SUM, the preceding parts together establish a composite standard applicable to nationality legislation under international law. Arbitrariness requires bases in legitimacy, proportionality, and procedural safeguards. Equality requires reasonable and objective criteria. The *travaux préparatoires* reaffirm that nationality was understood as foundational to legal protection and thus was not insulated from scrutiny. This composite framework does not displace state sovereignty over nationality. It does, however, condition that sovereignty.

In a situation where a state differentiates in access to nationality on such grounds such as those of persecution or minority protection, it must demonstrate; *firstly*, a legitimate objective; secondly, an objective criteria capable of factual determination; thirdly, proportional tailoring between the means taken and the stated aim; and lastly, procedural mechanisms enabling assessment and review. Absent these elements, differentiation risks failing both the standards of arbitrariness and equality under the ICCPR. The proceeding section applies this composite framework to India's citizenship regime, focusing specifically on the structure of Citizenship (Amendment) Act and the absence of a statutory determination procedure for a refugee status.

## India's Citizenship Framework

The preceding sections established that regulation of nationality under the international law regime is conditioned by a composite standard derived from arbitrariness and equality; that of a legitimate aim, objective criteria, proportional tailoring, and procedural safeguards. This section applies that framework to India's citizenship regime,

with particular attention to firstly, the structure of the Citizenship (Amendment) Act, 2019 ("the Act"), and secondly, the absence of a mechanism for determination of a refugee status. The analysis proceeds in three stages. **First**, it identifies the stated objective of the Act and evaluates it under the legitimacy requirement. **Second**, it examines as to whether the statutory classification rests on objective and reasonable criteria. **Third**, it assesses as to whether the absence of an individualised determination and procedural safeguards undermines proportional justification.

### *Legitimate Aim*

The Statement of Object and Reasons accompanying the 2019 Act states that the amendment seeks to provide relief to '*persecuted minorities*' that belonged to a specified religious communities from Afghanistan, Bangladesh, and Pakistan, who had entered India before 31st December 2014.[34] The protection of persecuted minorities, may, in principle, constitute a legitimate objective under international law. The Committee has recognised that differential treatment may be permissible where it pursues a legitimate aim and is grounded in a reasonable and objective criteria.[35] Furthermore, international human rights law does not preclude the adoption of positive measures aimed at protecting disadvantaged groups, provided that they satisfy equality requirements.[36] Thus, at the level of abstract purpose, the protective rationale invoked by the CAA is not inherently incompatible with the ICCPR. The analysis must *therefore* move beyond mere legitimacy of the stated aim to examine its structure.

### *Objective Criteria and Structure of Classification*

The CAA amends Section 2(1)(b) of the Citizenship Act, 1955 to provide exemption for certain religious minorities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians, from Afghanistan, Bangladesh and Pakistan from being treated as '*illegal migrants*'.[37] This facilitates an expedited naturalisation process under Section 6 of the Act. The Act, although, does not define the term 'persecution'. It equally omits the requirement of the applicants seeking such protection to demonstrate that they were indeed subjected to the purported persecution; nor does it establish criteria for assessing vulnerability. The classification, *therefore*, operates through two categorical filters, that is, *firstly*, the religion of the claimant, and *secondly*, their country of origin.

From the perspective of Article 26 of the ICCPR, the central question is whether these aforesaid filters constitutes a reasonable and objective criteria within the meaning as defined in the General Comment No 18.[38] Objectivity necessitates that the differentiation correspond to factual conditions that are relevant to the aim so pursued. If persecution is the invoked aim, objectivity then requires that such persecution be capable of determination. The absence of a statutory definition of persecution or any evidentiary requirements to define the same then effectively means that religion functions as a proxy. A proxy may be permissible where its correlation to the factual condition invoked to justify its basis is clearly demonstrated. However, in absence of a criteria for verifying persecution, the rational connection between religious identity and the actual vulnerability cannot be assessed within the statutory framework itself.

The structural feature of the Act is also pertinent to note. The Committee's jurisprudence requires that differentiation be grounded in a reasoned and objective criteria.[39] A classification that is disconnected from the mechanisms capable of

verifying the relevant factual condition risks losing its objective character. The statute does not provide a procedure through which the decision makers ascertain as to whether the applicants have actually suffered persecution. Instead, membership a mere membership of the listed religious group from the specified countries is deemed sufficient. This does *ipso facto* establish inconsistency with Article 26; it does, however, intensify scrutiny under the proportionality limb of the analysis.

### *Proportionality and Absence of an Individualised Assessment*

As demonstrated in the preceding sections, proportionality requires that differentiation be sufficiently modified as per the stated objective and be contextually evaluated. In *Nystrom v Australia*, the Committee underscored that status-related measures must be reasonable in light of the individual's particular circumstances.[40] This standard presupposes at least a capability for individual assessment. In this case, India does not maintain a statutory refugee status determination (RSD) system. Instead, lacks a comprehensive legislative scheme that defines persecution, specifies its evidentiary standards, or providing a structured procedure for assessing protection claims. Instead, the grant of protection has historically operated through executive discretion rather than a codified procedure.

When applied to the CAA framework in India, the absence of RSD mechanisms has two consequences; *firstly*, it precludes individualised assessment of whether an applicant satisfies the factual pre-requisite, that of persecution, which has been invoked as the justification of the statute; and *secondly*, it limits the ability of administrative or judicial authorities to assess proportionality in individual cases. Proportionality analysis requires examining the less restrictive alternatives. For instance, an alternative of a categorical religious classification would be an individualised assessment of persecution claims irrespective of a religion. In the absence of a statutory framework that enables such an assessment, the choice of the legislature for categorical differentiation cannot be tested as against feasible alternatives.

The absence of an individualised determination *therefore* affects not only the procedural safeguards but also the substantive proportionality. In the absence of a criteria for ascertaining persecution, the rational connection between the classification and the objective remains assumed rather than demonstrated.

### *Procedural Safeguards and Reviewability*

The composite arbitrariness framework reconstructed in the preceding parts requires existence of basic procedural safeguards, *inter alia*, fair hearing and effective remedy.[41] With respect to the CAA, decisions concerning naturalisation remain subject to executive discretion under the Act. While judicial review is indeed available, the scope of meaningful review depends on the existence of statutory standards. Where statute does not articulate specified criteria for determining persecution, judicial review has to be structurally constrained, nonetheless. Courts may assess whether the statutory requirements, that being, religion, country of origin, date of entry, are satisfied; however, they cannot evaluate whether the classification is proportionate in the individual cases absent statutory standards for comparison.

Procedural safeguards are *thus* limited to formal compliance with categorical criteria. Substantive evaluation of persecution, that is, the very objective invoked, does not occur within the statutory framework. This structural

feature bears directly on arbitrariness. The Human Rights Council has necessitated procedural safeguards to be essential so as to ensure that deprivation of nationality is not rendered arbitrary.[42] While the CAA concerns access rather than withdrawal, the preceding sections have analysed that the standard of arbitrariness also extends to measures preventing acquisition where entitlement to nationality would otherwise arise. The absence of a properly articulated procedure that is capable of evaluating the statute's stated objective, therefore, gives rise to issues concerning arbitrariness.

IN SUM, this analysis does not simply assert that India is prohibited from differentiation in its naturalisation policy. Rather, international law recognises state competence in matters concerning nationality. The question that then arises is narrower; it is whether the institutional design of the CAA satisfies the structured requirements of legitimacy, objective criteria, proportionality, and procedural safeguards. The protective element may be legitimate.

However, *firstly*, the classification rests on identity markers rather than demonstrable assessment of persecution; *secondly*, the absence of RSD mechanism prevents individualised assessment; *thirdly*, the proportionality of the differentiation cannot be meaningfully tested against alternatives within the statutory framework; and *lastly*, the procedural safeguards are confined to verifying the eligibility of the concerned individual rather than assessing their vulnerability. The cumulative effect of these structural limitations raises concerns under the composite arbitrariness-proportionality standard articulated in the preceding parts. The issue here is not merely who the law includes or excludes, but rather as to whether the legal regime permits the justificatory exercise so required by international law.

## Conclusion and Recommendations

The paper commenced with a narrow but significant question; that what does the prohibition of arbitrary deprivation of nationality require under contemporary international law? By reconstructing the doctrine through the ICJ jurisprudence, the interpretations of the Committee, UN practice, and the structure of the ICCPR, the analysis has shown that arbitrariness is not restricted to discriminatory revocation of nationality. It extends to the lack of an objective criteria, proportional justification, and procedural guarantees in the regulation of membership. The initial sections have demonstrated that arbitrariness and equality converge doctrinally. Arbitrariness requires legitimacy, proportionality, and due process. Article 26 requires that differentiation should be based on reasonable and objective criteria. Article 24(3), read in light of its drafting history, reflects the foundational role of nationality in the enjoyment of other subsidiary rights. Read together, these provisions generate a composite standard; that nationality regimes must be structured in a way that allows for a proper and sufficient justification.

The latter part of the paper applies this framework to India's citizenship regime. The analysis does not deny the fact that states indeed retain broad competence in matters concerning nationality; nor does it assume that differentiation in naturalisation policy is inherently unlawful. The focus was institutional. In a situation where persecution is invoked as the objective for differentiation, the absence of verifiable mechanisms for determining prosecution remains legally relevant. In absence of a definitive criteria, individualised assessment, and structured review, proportionality cannot be meaningfully evaluated. The justificatory exercise required by international law risks

remaining theoretical rather than operational. The broader implication, therefore, is doctrinal rather than political. The fact that sovereignty over nationality is not absolute has been consistently recognised in international law. Yet the limits imposed upon such procedure is described only in terms of discrimination or statelessness. This paper suggests that a further development is already implicit in the existing doctrine, that arbitrariness includes procedural design.

This framework does not mandate states to adopt any singular model of refugee protection or naturalisation. It does, however, suggest the existence of minimal procedural baselines consistent with sovereignty;

(a) Where protection is invoked as a legislative objective, there must be an identifiable criterion that is capable of factual assessment.

(b) There must be at least some mechanism, legislative or administrative, for evaluating whether those criteria have been met.

(c) Decisions that affect access to nationality should be subject to review capable of examining proportionality in substance, not merely formal compliance.

These suggestions do not eliminate discretion; they merely structure it. These measures preserve a state's authority to define membership while ensuring that such authority operates within the conception of the rule of law so embedded in the prohibition of arbitrariness.

Nationality has long been treated as one of the most important domains of sovereign autonomy. Contemporary international law does not displace that autonomy, but it certainly does condition it. The evolution from outcome-based scrutiny (that of discrimination, statelessness) to structural scrutiny (objective criteria, proportionality, procedure) reflects a broader transformation in human rights law; the insistence that power be exercised through reasoned justification. In this respect, the prohibition of arbitrary deprivation of nationality is no longer concerned only with who is excluded. It is increasingly concerned with how such exclusion and inclusion are structured. This development, already visible in the existing doctrine, may shape the next phase of international nationality law.

**Endnotes**

[1] *Nationality Decrees Issued in Tunis and Morocco* (Advisory Opinion) PCIJ Rep Series B No 4 (1923) 24. The Court's statement that domestic jurisdiction is "essentially relative" provides the doctrinal basis for recognising that areas once reserved may become internationally regulated.

[2] *Liechtenstein v Guatemala* (Second Phase) [1955] ICJ Rep 4, 20–23.

[3] Universal Declaration of Human Rights (1948) Art 15.

[4] International Covenant on Civil and Political Rights (1966) 999 UNTS 171, Arts 24(3), 26.

[5] Human Rights Committee, General Comment No 27, CCPR/C/21/Rev.1/Add.9 (1999) para 21.

[6] UN Human Rights Council, *Human rights and arbitrary deprivation of nationality*, A/HRC/13/34 (2009) paras 25–27.

[7] See, for instance, B.S. Chimni, *International Law and World Order* (2nd edn, CUP 2006); Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, OUP 2007).

[8] See, for instance, Human Rights Council Res 20/5 (2012) reaffirming 'the right of everyone to a nationality' and condemning such arbitrary deprivation.

[9] *Elettronica Sicula S.p.A. (ELSI) (United States v Italy)* [1989] ICJ Rep 15, para 128.

[10] Human Rights Committee, General Comment No 27 (CCPR/C/21/Rev.1/Add.9, 1999) para 21.

[11] Human Rights Committee, General Comment No 35 (CCPR/C/GC/35, 2014) para 12.

[12] UN Human Rights Council, *Human rights and arbitrary deprivation of nationality*, A/HRC/13/34 (2009) para 25.

[13] ibid para 41.

[14] ibid para 23.

[15] Convention on the Reduction of Statelessness (1961) Art 1(1).

[16] ibid Art 8(1).

[17] Human Rights Committee, General Comment No 18 (1989) para 12.

[18] ibid.

[19] *Karassev v Finland*, Communication No 770/1997, CCPR/C/69/D/770/1997 (1999).

[20] *Nystrom v Australia*, CCPR/C/102/D/1557/2007 (2011) para 7.8.

[21] See proportionality framework applied in HRC jurisprudence under Arts 12 and 17; for instance, Human Rights Committee, *General Comment No 27: Freedom of Movement (Article 12)*, CCPR/C/21/Rev.1/Add.9 (2 November 1999) paras 14–15.

[22] Human Rights Committee, General Comment No 27 (1999) para 11.

[23] ICCPR, Art 26.

[24] Human Rights Committee, General Comment No 18 (1989) para 12.

[25] UN Doc A/C.3/SR.1096 (1961), debates rejecting limitation of equality to enumerated rights.

[26] UN Doc A/C.3/SR.1096 (1961).

[27] General Comment No 18 (1989) para 13.

[28] *Althammer v Austria*, Communication No 998/2001, CCPR/C/78/D/998/2001 (2003) para 10.2.

[29] See, for instance, *Young v Australia*, CCPR/C/78/D/941/2000 (2003) para 10.4.

[30] *Nystrom v Australia*, CCPR/C/102/D/1557/2007 (2011) para 7.8.

[31] Human Rights Committee, General Comment No 27 (1999) para 14.

[32] ICCPR, Art 24(3).

[33] UN Doc A/2929 (1955), Summary Records of the Third Committee on draft Art 24.

[34] Statement of Objects and Reasons, Citizenship (Amendment) Bill, 2019.

[35] Human Rights Committee, General Comment No 18 (1989) para 13.

[36] Ibid, para 10 (recognising permissible differentiation under reasonable and objective criteria).

[37] Citizenship (Amendment) Act, 2019, amending Citizenship Act, 1955, s 2(1)(b).

[38] General Comment No 18 (1989) para 13.

[39] ibid.

[40] *Nystrom v Australia*, CCPR/C/102/D/1557/2007 (2011) para 7.8.

[41] UN Human Rights Council, A/HRC/13/34 (2009) para 41.

[42] ibid.

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