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Veiled discrimination: rethinking the limits of state sovereignty

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In December 2019 peaceful women protesters in India led a sit-in that would last over 100 days against the 'anti-Muslim' Citizenship Amendment Act 2019. Unnati Ghia tells us what this means for Muslim women in India where the patriarchal structures of state sovereignty has left them underrepresented and with no access the justice against state policies that perpetuate discrimination.

Who were the women of Shaheen Bagh?

This peaceful congregation of primarily Muslim women in New Delhi, India continued in protest for over 100 days against the [Citizenship Amendment Act, 2019](#) (CAA) and [National Register of Citizens](#) (NRC). The CAA retains the Muslim community within the definition of "illegal migrants" in India,

whilst privileging communities such as Hindu, Sikhs, Christians and Buddhists in the process of acquiring citizenship.

The CAA is sought to be [enforced alongside the NRC](#), an exercise through which any individual lacking relevant documentation may be deemed to be an illegal migrant/foreigner by a [special tribunal](#). The CAA ensures that Muslims cannot then regain citizenship. The UN has labelled the CAA as “fundamentally discriminatory”, and sought to [address India’s Supreme Court](#) on its international law obligations. The Indian state’s response has been that citizenship laws are an exercise of *sovereign* power and therefore cannot be questioned.

Citizenship and State Sovereignty

The Westphalian model positions nation-states at the core of international law. Within this system, there exists a normatively impenetrable enclosure of state power – the principle of state sovereignty.

As far back as the [1930 Hague Convention on Nationality](#), citizenship and nationality have been explicitly relegated to the reserve of sovereignty. States are empowered to independently determine the criteria for citizenship. Sovereignty here means that the states not only possesses *control* over the population, but also the ability to *reconstruct its composition* through citizenship laws. The relation between nationality, rights and security of self was extrapolated by philosopher Hannah Arendt, who argued that the nationality was the [“right to have rights”](#). The loss of citizenship creates situations of statelessness – an abyss in which human rights and the voice to claim them are both lost. Arendt drew her conclusions in the [aftermath of the Second World War](#) and her caveats remain pertinent today.



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International human rights law (IHRL) attempts to address these concerns. For instance, Article 15(2) of the [Universal Declaration of Human Rights](#) grants the right to a nationality and prohibits its arbitrary deprivation, but it is not enforceable. States accept general non-discrimination obligations under the [International Convention on Civil and Political Rights](#) and/or the [Convention on the Elimination of All Forms of Racial Discrimination](#), but these are often flagrantly violated. The [Statelessness Conventions](#) (1954 and 1961) have not been ratified by most nations in the world, including India, China and the United States of America.

The underlying issue remains that the veil of sovereignty enables states to exercise their power in defiance of human rights concerns. Here, the construct of sovereignty must be recognised for what it is — an exercise of majoritarian power.

The Gendered Nature of State Sovereignty

Sovereignty insulates certain decisions of the state from international norms and governance. These decisions are taken within the political echelons of the member states.

[Charlesworth, Chinkin and Wright](#) argue that these structures tend to be patriarchal for two key reasons. First, women are often under-represented within the power structures of the state itself, and therefore excluded from decision-making. Second, these structures continually concentrate power within the same elite who possess a monopoly over the use of force. Given

that both [international institutions](#) and norms are created through processes involving these municipal actors, the prejudice permeates there as well. These structures together function towards relegating women into the margins globally.

The core issue is that sovereignty *legitimizes* the decisions of such power structures and renders them indubitable. Gendered state policies on citizenship are thus buttressed by state sovereignty. Consequently, these decisions are neither sensitive to the unique oppression faced by women, nor can they be challenged easily under international law.



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Previously, this ‘invisibilisation’ of women and their voices resulted in the myth of international law being an order that does not materially impact women. However, the work of feminist scholars demonstrating the gendered character of international law became too strong to be marginalised. Feminist messages have thus permeated into international law discourse through UN resolutions and symbolic conventions. Yet these do little to alter international power structures and gendered decision-making. This is

because [feminist methodology](#) remains at the margins of international law. One cannot of course understate the importance of developments such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). However, the potential for tangible change is often limited by the shield offered to states under the principle of state sovereignty.



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The relevance of Shaheen Bagh to international law

To be clear, the perils of statelessness exist for the Muslim community as a whole. Even so, the State's policies have a [pernicious impact on Muslim women](#) particularly. Historically entrenched gender disparity has resulted in [lower literacy rates](#), as well as limited inheritance and property rights for Indian women. Their names do not appear on land, education or family related documentation. Women who have migrated or been dispossessed of their homes may not even possess their birth or marriage certificate. This places women in a uniquely harsh situation.

Without adequate documentation, these women would be rendered stateless and placed in [detention camps](#) created to hold people until deportation. Statelessness entails a lack of access to justice and state

assistance, in the form of government schemes for healthcare, rations and prenatal support for instance. This position renders women vulnerable to violence at the hands of the state and society at large, even in the absence of conflict.



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The CAA is ignorant of this disparate impact on Muslim women due to the gendered nature of political decision-making, which the Indian state now [legitimises on grounds of state sovereignty](#). This is a growing trend internationally. For instance, a 2014 Inter-American Court of Human Rights decision on the right to nationality of Haitian migrants was [rejected by the Dominican Republic](#) on the grounds of ‘national sovereignty’. In such cases, the principle of state sovereignty functions against the goals of IHRL to ensure rights within a just and equitable world.

The women of Shaheen Bagh were not victims without agency. They were cognisant of the dangers of statelessness – viewing their predicament as

more [dangerous](#) than even COVID-19. Their actions instead personalise the politics of the CAA, setting a precedent for stateless populations globally. First, by challenging a nation-state that failed to ask the woman question in reaching a decision. Second, by reclaiming public spaces and directing attention to their lived experiences. Moreover, the protest indicates the need for greater international scrutiny on state policies perpetuating discrimination. Functioning behind the curtain of sovereignty, such policies instead fester conflicts within society and undermine international efforts at peace.

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