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ON THE TOPIC

STATELESSNESS IN INDIA WITH REFERANCE TO NATIONAL REGISTER OF CITIZENS, ASSAM

Under The Guidance and Supervision Of

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CERTIFICATE

This is to certify that **NEVIL ZACHARIA MATHEW**, Reg. No: LM0119022 has submitted his dissertation titled, **"*Statelessness in India with reference to National Register of Citizens, Assam*"**, in partial fulfillment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law to the National University of Advanced Legal Studies, Kochi under my guidance and supervision. It is also affirmed that, the dissertation submitted by him is original, bona-fide and genuine.

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DECLARATION

I declare that this dissertation titled, **"*Statelessness in India with reference to National Register of Citizens, Assam*"**, researched and submitted by me to the National University of Advanced Legal Studies in partial fulfillment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of **Dr. Liji Samuel** is an original, bona-fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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NEVIL ZACHARIA MATHEW

ABBREVATIONS

1. AAGSP: All Assam Gana Sangam Parishad
2. AASU: All Assam Students' Union
3. AAMSU: All Assam Minority Students' Union
4. CAA: Citizenship Amendment Act
5. CEDAW: Convention to Eliminate Discrimination against Women
6. CHT: Chittagong Hill Tracts
7. CRC: Convention on the Rights of the Child
8. CRPD: Convention on the Rights of Persons with Disabilities
9. DMIT: District Magistrate Investigation Teams
10. EU: European Union
11. FT: Foreign Tribunals
12. GP: Gram Panchayat
13. ICCPR: International Covenant on Civil and Political Rights
14. ICESCR: International Covenant on Economic, Cultural and Social Rights
15. IMDT: Illegal Migration Determination by Tribunal
16. LDC: Legacy Data Codes
17. MEA: Ministry of External Affairs
18. MHA: Ministry of Home Affairs
19. NCT: National Capital Territory
20. NEFA: North East Frontier Agency
21. NGO: Non-Governmental Organization
22. NHRC: National Human Rights Commission
23. NPR: National Population Register
24. NRC: National Register of Citizens
25. NSK: NRC Seva Kendra
26. PIL: Public Interest Litigation
27. UDHR: Universal Declaration of Human Rights
28. UIDAI: Unique Identification Authority of India
29. UNGA: United Nations General Assembly
30. UNHCR: United Nations High Commissioner for Refugees

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18. NHRC v. State of Arunachal Pradesh and Ors., AIR 1996 SC 1234
19. Olga Tellis v. Bombay Municipal Corporation, AIR1968 SC 180.
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CHAPTER: 1

INTRODUCTION

Statelessness had become an important topic of discussion in India after final list of the updated National Register of Citizens in Assam were out which excluded 1.9 million people who are at present without a nationality. Though these people have legal remedies before them to get their names into the list, if they cannot establish their claim, they would be without a nationality i.e stateless.

The international community under guidance of United Nations and its agencies has devised many legal instruments for the reduction and mitigation of statelessness in the world. The two major instruments are the Convention Relating to the Status of Stateless Persons, 1954 and the Convention on the reduction of Statelessness, 1961. Though these are the two instruments specifically deals with statelessness almost all other human rights instruments like UDHR, ICCPR, ICESR deals with combating statelessness by conferring right to nationality. Though India is not a party to Conventions relating to statelessness, India is a signatory to all other legal instruments which confer an obligation to take action combating statelessness.

The Indian legislative framework doesn't define the term statelessness or stateless person. In India matters relating to citizenship is dealt by the Constitution under Articles 5-11 which empowers the parliament to make law regarding citizenship or nationality. The Indian Citizenship Act, 1955 which has been amended many times is the primary law dealing with citizenship. Apart from Indian Passports Act, 1967, none of the legislations even mentions the term stateless. Even though there are inconsistencies in the nationality laws, the Indian judiciary witnessed fewer cases that discusses statelessness. Recently the Delhi High Court had acknowledged the idea of statelessness through a judgement.[1]

The process of updating the National Register of Citizens in Assam which has its roots in Assam Accord signed in 1985 is a step that may increase the number of stateless persons exponentially. Persons who may not be able to prove the citizenship will lose

[1] Sheikh Abdul Aziz v. NCT of Delhi, W.P.(CRL) 1426/2013

their nationality and may be placed in detention centres. These people will technically become stateless though they lived in India for decades. The process is in contravention to international human rights instruments to which India is a party. The people affected by the process also have some of the fundamental rights curtailed.

As the number of stateless persons may increase due to NRC exercise, the Indian legislative and executive machinery must adopt necessary measures, to provide recognition to the stateless, upholding their rights, and make subsequent provisions for the further prevention and reduction of statelessness in India.

1.1 SCOPE OF STUDY

The concept of statelessness has been highlighted after the National Register of Citizens was updated in Assam which excluded 19 lakhs people from the list. The term stateless is closely related to nationality and citizenship as absence or deprival of the citizenship often leads to statelessness. Though the terms nationality and citizenship are used as synonyms, there are some important differences between them. Nationality stresses the international and citizenship relates to the national or municipal aspect. Nationality shows the place a person has taken birth while citizenship implies the place where he is registered as a citizen. In this research though the terms has been defined separately, at times it has been used interchangeably due to the close relation between the two terms.

The National Register of Citizens was prepared for the first time in Assam during the conduct of 1951 Census. It was carried out under a directive of the Ministry of Home Affairs (MHA) by recording particulars of every single person enumerated during that Census.

The National Register of Citizens is a register maintained by the Government of India containing names & certain relevant information for identification of all genuine Indian citizens. The purpose of NRC update in the state of Assam is to identify Indian citizens from among all the present residents of the state thereby leading to identification of illegal migrants residing in that state, who entered into it after the midnight of 24 March 1971. The cut-off date is date is decided on the basis of commencement of the 3rd India-Pakistan War which led to the independence of Bangladesh. Assam witnessed large

scale migration immediately after 1947 from the erstwhile East Pakistan due the communal riots in the aftermath of partition. Though there were migrations during the 1950s, there where large scale influx of migrants due to communal riots and internal disturbances in East Pakistan which finally led to creation of Bangladesh. One of the factors which prompted the Indian government to support the Bangladesh liberation movement was the large scale influx of refugees. Many of these refugees remained in Assam after the war and this led to disturbances among the indigenous populations. These disturbances turned violent during the late 70s and led to the Assam Accord, 1985 signed between the Union government and the protester. One of the main provisions of the Accord was removal of foreigners from the State. The current process of updating NRC has its roots in the Accord.

One of important reasons for the NRC updating is the impact of migrant population on the local or indigenous people. The impacts may be social, economic and cultural. The problems of large scale migration commences when the number of migrants constitutes a substantial portion of the local population. This is evident in the case of Chamkas, a group of people who came to India as refugees and currently residing in Arunachal Pradhesh. The Chamkas may be categorised as stateless people as they have not been accorded citizenship due to the opposition from the people of Arunachal Pradhesh. The number of Chamkas is around is around 1 lakh which constitutes 10 percent population of the State. Similar situation prevailed in Assam, where the number of migrants became substantial so as to make discontent among local population. From the economic point, the migrants compete with the local citizens for scarce resources such as land, water, housing, food and medical services. Over time, their presence leads to more substantial demands on natural resources, education and health facilities, energy, transportation, social services and employment. They may cause inflationary pressures on prices and depress wages. The North East region of India has substantial tribal population whose unique social and cultural life made the government to provide special treatments to the region in the form of Inner Line Permits, special provisions in the Constitution etc. The huge migrant population threatens the demographics of the regions and my lead to unrest.

The current process of updating NRC in Assam is done by making changes to the Citizenship Act, 1955 and Citizenship Rules. But the process has invited criticism due to its poor implementation. The process of updating the NRC is done through

verification centres where residents have to prove their citizenship through verification of documents. The burden of proof is on the people to prove the citizenship. Lack of documents leads a person to be categorised as 'illegal migrant'. Though categorised as illegal migrant, these people cannot be deported as they don't have any host country and thus may become stateless. The government has opened Detention Centres to accommodate these excluded persons which is also against International Human Rights Conventions. The process of keeping people in detention centres also violates the many fundamental rights of these person. Practical implementation of the act was difficult & the measures taken under this act proved ineffective largely due to the vast stretch of open border between the countries. Thus the fate of those who would not be able to get his or her name entered in the register is now uncertain and they would be stateless in the present circumstances.

The research aim to explore various international legal instruments dealing with statelessness and how those instruments has helped in reducing the number of stateless persons. The research will analyse India's present obligations under international law and its implication on citizenship from the vantage point of statelessness. The research will analyse the historical basis for the NRC in Assam and its current status. The research will also study the effect of NRC on the aspect of statelessness and how it violates various human rights conventions.

1.2 RESEARCH PROBLEM

The publication of the updated NRC list resulted in exclusion of 1.9 million people. This act results in generation of statelessness and leads to violation of basic human rights and consequent violation of conventions relating to human rights to which India is party.

1.3 RESEARCH QUESTIONS

1. Who is a Stateless person and what are the protections and rights accorded to such a person under various international legal instruments?
2. What are reasons for updating NRC in India?
3. How Indian legal system deals with the challenge of statelessness?

4. How Indian citizenship laws deals with the concept of statelessness?
5. Whether the NRC updating process in Assam violated international legal instruments to which India is a party and increased statelessness in India?

1.4 OBJECTIVES THE STUDY

1. To explore the concept of statelessness in India by analysing various legislations and responses of judiciary.
2. To assay the NRC updating process in Assam and its impact on statelessness.
3. To identify suitable methods for reduction and mitigation of statelessness in India.

1.5 HYPOTHESIS

1. The NRC updating process violates various international conventions relating to human rights to which India is a party and increases the number of stateless persons.

1.6 METHODOLOGY

The research methodology used in this work is doctrinal. Both primary and secondary sources are used in this research.

1.7 REVIEW OF LITERATURE

The current literature mainly analyses about the concept of statelessness in the world. The research aims to highlight statelessness in India which is not dealt exhaustively by the present literature. The research has depended on the primary sources including the Constitution of India, various legislations, executive orders, judgements of Supreme Court and High Courts, International treaties etc. The research has also used secondary resources like books, commentaries for the proper understanding of the subject and analysing the various topics. The research has extensively depended the electronic resources like online databases, websites for gathering resources.

- ALICE EDWARDS AND LAURA VAN WAAS, NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW(Cambridge University Press 2014)

  The book discusses the analysis and practise of 'international statelessness law' and explores the complicated connexion between nationality law and the statelessness problem. It also describes stateless people's rights, outlines the main legal barriers preventing statelessness from being eradicated, and maps a path for this modern and rapidly evolving subject area. The book takes an accessible, practical approach to explaining the international legal framework and provides solutions for preventing and addressing the problem of statelessness.

- ANUPAMA ROY, MAPPING CITIZENSHIP IN INDIA, (Oxford University Press 2010)

  This book traces the Citizenship Act of India, 1955-from its inception, through the various amendments in 1986, 1992, and 2003. The book identifies amendments in the Citizenship Act as transitions which are framed by major historical choices and decisions. The book argues that the citizenship laws in India show a steady transition from citizenship by birth to citizenship by descent. Through a discussion of laws and judgments, the work also brings out the relationship between citizenship and migration in independent India, particularly the migration from Bangladesh and its negative impacts on North East India.

- SAGEETA BAROOH PISHAROTY, ASSAM THE ACCORD, THE DISCORD, (Penguin Random House India 2019)

  The book looks at the making of the Assam Accord and its long shadow on the state, through political gamesmanship between principle players, periods of militancy, and right-wing propaganda that has split the state along communal lines. The book also gives a detailed account relating to the events that lead to the process of updating the NRC in Assam and gives a good account about the status of migration to Assam from Bangladesh. The books also looks into the problems of NRC process and provides some solutions to minimise the adverse impact of the process.

1.8 CHAPTERISATION

- **CHAPTER 1 – INTRODUCTION**

  This chapter gives a brief idea about the research work by explaining what the research is about and the relevance of the topic. It provides the research questions and the hypothesis of the research. The chapter also says about the method used for research and gives a brief account about the literature used for research.

- **CHAPTER 2- THE CONCEPT OF STATELESSNESS**

  The chapter as the name suggests says about the concept of statelessness including its meaning and nature. It discusses about the importance of nationality for realisation of various human rights and impact of its loss or deprivation. The chapter also discusses about the factors causing statelessness and different kinds of statelessness. It then moves on to the rights available to stateless people and the various international legal instruments dealing with the same.

- **CHAPTER 3- CITIZENSHIP LAWS IN INDIA**

  This chapter mainly says about the citizenship laws in India. It discusses about the constitutional provisions relating to citizenship and then analyses the legislative provisions. The Citizenship Act is analysed including various modes of attaining citizenship and the methods of losing the same. The important judicial decisions relating to citizenship is also mentioned in the chapter. The important amendments to the Citizenship Act is then analysed including the recent amendment in 2019 which created huge furore among the public in India.

- **CHAPTER 4- NATIONAL REGISTER OF CITIZENS ASSAM**

  In this chapter the entire provisions relating to the update of National Register of Citizens in Assam is discussed. The history behind the exercise and various legislations and executive orders under relating to the process are dealt in this chapter. The three main judgements of the apex court are also analysed. The problems involved in the process and also the status of the excluded are also deliberated in the chapter.

- **CHAPTER 5- ASSAM NRC AND STATELESSNESS**

The chapter looks into the connection between NRC and Statelessness and also go through the Indian aspect of statelessness. It says about various instances of statelessness in India. It also deals with court decisions relating to statelessness in India. The chapter also looks into the constitutionality of NRC process.

- **CHAPTER 6- CONCLUSION AND SUGGESTIONS**

  The chapter says about conclusions arrived from the research and suggestion made for the tacking the problems involving NRC and for preventing and reducing statelessness.

CHAPTER: 2

THE CONCEPT OF STATELESSNESS

2.1 INTRODUCTION

In today's world we should belong to one nation or other. The undercurrents of the relationship between a State and an individual has progressed over time, which has made in a positive transformation by bringing in more rights and corresponding duties to persons holding a nationality. But this has also lead to persons slipping through the fissures between domestic nationality laws that States enact which leave them deprived of of any nation's citizenship. Without any doubt these men are one of the world's most unseen and under-represented populations- economically, socially, politically and culturally.[2] International human rights instruments has performed a dynamic role in narrowing this crack by making a series of conventions which State parties may look into in order to look after the fundamental rights of such individuals.

Being unrecognized and obscure means that it is tough to calculate the number of stateless persons around the world. However, according to a UNHCR report in 2014, at least 10 million people are stateless worldwide.[3] Statelessness is a global issue and it affects millions of people across the globe. Part of the issue with statelessness is the lack of reliable documentation of this population. The global estimates are in the 12,000,000 to 15,000,000 range, but these are considered to be low estimates.[4]

In the absence of determined efforts to improve their conditions, stateless persons in various states may have minimal access to various critical civil rights like birth registration, identity documentation, education, political participation, healthcare, legitimate employment, property ownership and freedom of movement.

According to UNHCR, statelessness, is a man-made problem. The UNHCR was assigned to support the refugees in 1950 but it slowly, extended its area of work to solve

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[2] Goris Harrington & S Kohn, *Statelessness: What It Is and Why It Matters.* 15 Forced Migration Review (32) 2009

[3] UNHCR. (2014). *Global Trends Report 2014,* UNHCR (Nov 10, 2019 01:00 PM), http://www.unhcr.org/5399a14f9.html

[4]Veronica Aragon, *Statelessness and the Right to Nationality*, 343 19 Sw. J. Int'l L. 341 (2013).

the difficulties encountered by the stateless persons. The legal foundation of UNHCR's mandate is the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness. The dictate is reinforced by United Nations documents like the Universal Declaration of Human Rights, 1948 and numerous international and regional treaties which endorse the right of every individual to have a nationality.

2.2 STATELESSNESS- DEFINITION AND NATURE

Statelessness is defined by the absence of a legal connection to any state. A "stateless person" is "a person who is not considered as a national by any State under the operation of its law." The right to a nationality is guaranteed to each person in the Universal Declaration of Human Rights, among other international human rights instruments, meaning that statelessness is a fundamental human rights violation in itself. Statelessness can also impede access to a host of other human rights, including to education, to employment, to property, and many others.[5]

Technically, statelessness, is the result of denationalization by the country of origin of a person who has acquired no citizenship elsewhere. However, statelessness was a small phenomenon until the beginning of the twentieth century and, therefore, did not disrupt international life. Although statelessness has long been recognised as an essential international law issue, effective action has been prevented by the reluctance of countries to assert control over stateless persons within their jurisdiction. A significant number of people who are often vulnerable to discrimination because they lack the protection provided by citizenship rights and have been made vulnerable by national government indifference and inaction by the international community. Vehicles for access to human rights, access to security and access to speech as individuals under the law are refused to the stateless.[6]

Article I of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as one who is not considered as a national by any state under the

[5] Betsy L. Fisher, *The Operation of Law in Statelessness Determinations under the 1954 Statelessness Convention*, 262 33 Wis. Int'l L.J. 254 (2015).
[6] Carol A. Batchelor, *Statelessness and the Problem of Resolving Nationality Status*, 170, 10 Int'l J. Refugee L. 156 (1998).

operation of its law. According to P. Weis, stateless person is a person who is not having the nationality under the law of any state.[7] Protection and assistance may be withheld by the country of origin of a person without the nationality of that person being legally suppressed. While not completely nationalised, such a person outside his own country is in a situation to some degree close to that of a stateless person, because he does not have the security of any government either. An individual may be stateless at birth in the sense that, according to the law of any state, he has not acquired nationality at birth or he may become stateless after birth by losing his nationality without acquiring another. A stateless person cannot benefit from the law of diplomatic security of a national abroad to the degree that, with such minor exceptions, such security is available only where he has a nationality. More significantly, a stateless person cannot travel abroad as he is usually without a passport that acts not only as an identity document, but also as an assurance on the part of the issuing state to other states that if expelled or removed, the passport holder will be allowed back into his territory.[8]

While many refugees are stateless, statelessness is not the essential quality of a refugee who, under international law, is described as a person who has been forced out of his country of origin for political reasons or who fears the political consequences of his return. He may or may not be stateless and may not be legally denationalised, but by refusing to return home when there was an opportunity, he may have lost the security of his government. If an individual is without government security, he lacks the benefits of international rights, which rely on his home government's implementation of the action. In addition, many of the privileges of citizens, offered reciprocally by treaties, are denied to a stateless individual who is not a national or any state. These treaties grant people of other states party to the treaties the rights of one state, including the right to work, social security benefits and the right to education.[9]

More significantly, if a national wish to return to their native countries, any country is obliged to receive them. In fact, the stateless have no country to take them back or issue passports for them to join other foreign countries if they so wish, however, in principle,

[7] David C. Baluarte, *The Risk of Statelessness: Reasserting a Rule for the Protection of the Right to Nationality*, 55 19 Yale Hum. Rts. & Dev. L.J. 47 (2017).
[8] *Id*.
[9] Tang Lay Lee, *Denationalization and Statelessness in the Modern World*, 22 6 ISIL Y.B. Int'l Human. & Refugee L. 19 (2006).

if a state of refuge insists, there might be an obligation on the part of the denationalising state to accept their former citizens back.

The gaps in nationality laws are a major cause of statelessness. Every country has laws which establish under what circumstances someone acquires nationality or can have it withdrawn. Rules setting out who can and who cannot pass on their nationality are sometimes discriminatory on the basis of gender, race, religion and ethnicity. Thus if these laws are not carefully written and correctly applied, some people can be excluded and left stateless.

2.3 IMPORTANCE OF NATIONALITY

Nationality is essential in ensuring access to other basic human rights. Nationality is an entitlement every human being has as a result of Article 15 of the UDHR. It is a right that is theoretically afforded to everyone from the moment they are born, without restriction, implying that no person should be without a nationality. Nationality acts as a legal bond between the state and a citizen. Not only does it carry with itself a sense of identity, but also a collection of rights. The significance of nationality is that people are usually excluded from the political process without it, especially the right to vote. Statelessness prevents individuals from achieving their potential and can have a significant knock-on impact on social cohesion and stability; it can also contribute to conflict and displacement in the community.[10]

The words of Article 15 of the UDHR affirm the determination of the international community to ensure that each and every citizen has a legal bond of nationality with a particular State. This pledge also means that, in all situations, statelessness must be prevented by the possession of nationality. Both sovereign states have their own nationality grant process in effect at the domestic level. Quintessentially, deciding if an individual is a citizen is a prerogative of state sovereignty. A combined effort from all states is therefore needed to avoid and minimise cases of statelessness around the globe.[11]

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[10] Batchelor C, *Preparation of a Nationality Law: Promoting the Legal Identity of Women in the Field of Nationality,* (2004) 22 Law Context: A Socio-Legal Journal 35.
[11] *Id*

The definition of nationality is relevant because it specifies not only the benefits to which an individual is entitled, but also any responsibilities for which an individual may be responsible. Nationality is of cardinal importance since the citizen falls within the framework of international law primarily by nationality and has access not only to political and economic rights, but also to any privileges bestowed on their nationals by modern states.[12]

In general, States have in place a mixture of automatic and non-automatic modes for the acquisition of nationality. Automatic acquisition refers to nationality that is automatically acquired at birth, based on jus sanguinis (birth to a national) or jus soli (birth on the territory). Automatic modes are those where a change in nationality status takes place by operation of law. Non-automatic acquisition of nationality, on the other hand, involves an act by a person or a state authority before a change of nationality status can take effect, such as acquiring nationality via the naturalisation process.[13]

In either case, the idea is that nationality represents the relationship with the State, either through the creation of a bond with the territory or through a lineage such as a blood affiliation with a member of the family who is already a national. The grant of nationality by naturalisation remains more squarely within the choice of States compared to the modes of jus sanguinis or jus soli in granting nationality, and has remained essentially unconscionable by international law. It is fair to say that the best mode is jus soli when one considers the results of all the modes of acquiring nationality. The method enables the acquisition of a nationality by any person born within the territory. This reduces the number of stateless cases and governs any contradictory laws on issues of confusion.[14]

The contemporary universal protection of the right to a nationality commenced with the adoption of Article 15 of the UDHR. The key disadvantage of the right to nationality is that the instruments of international law generally do not give the State the duty to give nationality to the citizen. This can be due to the fact that a high degree of independence in conferring nationality is given to States under international law. What restrictions are imposed on the authority of States to support nationality legislation remains

[12] ALICE EDWARDS AND LAURA VAN WAAS, NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW 248-257 (Cambridge University Press 2014)
[13] *Id.*
[14] *Id.*

uncertain. What is clear is that the right to obtain nationality is vital to an individual's human rights and well-being.

2.4 CATEGORIES OF STATELESSNESS

There are two categories of stateless persons: De-Jure and De-Facto.

2.4.1 DE-JURE STATELESS PERSONS

De-Jure Stateless persons are persons who are not national of any state either because at birth or afterward they were not accorded any nationality or during their lifetime they lost their own nationality and failed to acquire a new one. In 1949 de jure stateless was defined as being persons who are not nationals of any State, either occurring at birth, or not being afforded any nationality subsequent to birth, or because during their lifetime they lost their own nationality and did not acquire a new one. In certain cases, by governmental order, people and communities are stripped of their nationality and are consequently expelled from the country they consider to be their home. The identification of de jure statelessness occurs in countries where, due to the inadequate cooperation of the competent authorities in clarifying matters relating to their citizenship, a person is denied citizenship status in her desired country. The precise point at which de jure statelessness occurs will be context-specific and must be determined on the basis of the entirety of the situation. For different reasons, a situation of de jure statelessness involving a large number of individuals. One such reason may be for the government to change nationality laws in order to denationalise specific segments of society, either to marginalise them or to encourage their removal from the territory of the state.[15]

2.4.2 DE-FACTO STATELESS PERSONS

De-Facto Stateless persons: Are persons who having left the country of which they were national, no longer enjoy the security and support of their states, either because they

[15] Sebastian Kohn, *De jure Statelessness in the Real World: Applying the Prato Summary Conclusions,* OPEN SOCIETY FOUNDATIONS (Nov. 19, 2019, 10:20AM) https://www.justiceinitiative.org/publications/de-jure-statelessness-real-world-applying-prato-summary-conclusions

declined to grant them assistance and protection or because they themselves relinquished the assistance and protection of the countries of which they are national. Thus a de-facto stateless person is one who is incapable or disinclined to avail himself of the shelter of the government of his country of nationality or former nationality.[16]

The concept of de facto statelessness has not yet been defined in a robust and comprehensive manner. It is often difficult to draw the borderline between what is generally called de jure statelessness and what is called de facto statelessness, but de facto is in general usage and has acquired a meaning. One such agreed meaning is that, having left the country in which they were citizens, the de facto stateless are individuals who no longer enjoy the protection and assistance of the State of their birth.[17] This may be due to the reluctance of the authorities to offer them assistance and protection, or that they themselves have renounced the assistance and protection of their country of origin. Essentially, it is a person who is unable or unwilling to use the nationality or former nationality of the government of her country to defend herself. The UNHCR defines de facto stateless persons as technically being in possession of a nationality but who do not receive any benefits generally associated with nationality.[18]

A large proportion of the world's stateless individuals are also victims of forced displacement. Owing to the oppression and prejudice they face, these groups of individuals who are stateless are compelled to leave. After fleeing the nation out of fear for their lives and living for a long period of time outside their home state, stateless people frequently find it difficult to return. In the context of mass expulsion and refugee movements, large-scale statelessness under this category of statelessness can also occur, especially when the population concerned has lived in exile for several years without obtaining citizenship from their asylum country. The common thread of de facto statelessness is the governments‟ inability to protect its people, who are already nationals, from harm causing them to seek assistance outside of their origin State.[19]

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[16] The Equal Rights Trust, *Critiquing the Categorisation of the Stateless*‟ EQUAL RIGHTS TRUST(Nov. 11, 2019, 10:50 AM) http://www.equalrightstrust.org/ertdocumentbank/chapter%202.pdf
[17] Betsy L. Fisher, *The Operation of Law in Statelessness Determinations under the 1954 Statelessness Convention*, 262 33 Wis. Int'l L.J. 254 (2015).
[18] United Nations High Commissioner for Refugees, *Statelessness and Citizenship" in The State of the World"s Refugees 1997: A Humanitarian Agenda* UNHCR (Nov. 19, 2019 10:20 AM) http://www.unhcr.org/publications/sowr/4a4c72719/state-worlds-refugees-1997-humanitarian-agenda.html
[19] *Supra* note 16

2.5 CAUSES OF STATELESSNESS

In his policy paper Statelessness, Protection, and Equality, founder of the International Observatory on Statelessness, Dr. Brad Blitz suggests a conceptual division be made between primary and secondary sources of statelessness. Primary sources of stateless are those which are the direct result of discrimination, while secondary sources of statelessness are those which "relate to the context in which national policies are designed, interpreted, and implemented." Since all causes of statelessness are in some way the result of forms of discrimination and inequality, it is often hard to distinguish between them.[20]

Mostly statelessness is the result of the policy discrimination.[21] The ethnic origin or religious persuasion of groups of persons has been the reason for actual, though not specific legislative denial of assistance and protection by States to a certain group of its nationals.[22] Statelessness is now perpetrated, in part, as a consequence of national legislation and administrative procedures relating to the creation, modification or loss of nationality that do not recognise and guarantee the right to nationality. The other commonly cited reasons why people are still becoming stateless are as follows:

First of all, some nationality laws are designed in such a way to deprive and deny nationality. In some countries the citizenship legislations refuse women the right to pass on their nationality to their children and there are some States that automatically revoke the nationality of a woman who marries a non-national, if her spouse's nation does not automatically grant her citizenship, she will be made stateless.[23]

Secondly, the absence of protections against birth statelessness and administrative decisions on nationality and citizenship, including punitive revocation of nationality, is often an invisible cause of statelessness, but often exists. Bureaucracy can lead to individuals not obtaining a nationality that they are entitled to acquire. Long administrative and procedural problems related to the acquisition, restoration and loss of nationality are involved. Even if a person is eligible for citizenship, high

[20] BRAD BLITZ, "STATELESSNESS, PROTECTION, AND EQUALITY" FORCED MIGRATION POLICY BRIEFING 3 (Oxford Refugee Studies Center, 2009)
[21] Hugh Massey, *UNHCR and De facto Statelessness*, UNHCR (November 25, 2019,10:22 AM)https://www.unhcr.org/protection/globalconsult/4bc2ddeb9/16-unhcr-de-facto-statelessness-hugh-massey.html
[22] *Id*
[23] *Id*

administrative costs, deadlines that cannot be met, or an inability to produce the requested documentation because the nationality of the originating states is in the hands of the nationality of the originating states, may all prohibit the person from obtaining nationality.[24]

Thirdly, changes in a state's borders or sovereignty will also lead to groups of citizens falling between the cracks of old and new nationality legislation. In the event that they are refused nationality because of a reinterpretation of previously relevant laws and policies, certain classes of people would become stateless. Independence after colonial rule may establish a situation that can cause new citizenship laws and administrative procedures by dissolving a state into smaller states or by confederating several states into one. Individuals can become stateless in such situations if, under the new legislation, they fail to acquire nationality or are unable to comply with or complete new administrative procedures.[25]

Fourthly, in foreseeable future the climate change could result in more than just displacement. Situations may arose where the state would no longer be able to provide effective citizenship to its citizens as a result of climate change are foreseeable. With the Intergovernmental Panel on Climate Change warning of rising sea levels in the Netherlands, Guyana, Bangladesh, and the Oceanic islands, the possibility of de facto statelessness as a result of climate change must not be dismissed.[26]

Whether statelessness is as a result of de jure or de facto, not having a nationality or not enjoying the protection of a State places one in a position of inferiority that is irreconcilable with the respect of human rights. However, one should bear in mind that before more secure conditions are restored across the world, the political conditions that are actually the key causes of statelessness will not vanish.

2.6 LOSS AND DEPRIVATION OF NATIONALITY

The right to a nationality requires not only that a person can acquire a nationality at birth, but also that arbitrary deprivation of nationality is prohibited. The Reduction of

[24] Charlotte-Anne Malischewski, *Where the Exception is the Norm: The Production of Statelessness in India*. MAHANIRBHAN CALCUTTA RESEARCH GROUP, http://www.mcrg.ac.in/PP60.pdf
[25] *Id*.
[26] *Id*.

Statelessness Convention distinguishes between the two ways in which one can be stripped of her nationality either through loss or deprivation, and deprivation can in turn be voluntary or involuntary. In other words, nationality may be lost by an act of the national or through a commission by the State.[27]

Ideally, a loss of nationality refers to the automatic surrendering of a specific nationality through the operation of law.[28] An example of this would be where a person surrenders her current nationality in favour of acquiring a new nationality. The Reduction of Statelessness Convention provides that a Contracting State is allowed to enact such legislation that would cause the individual to lose her nationality on condition that she acquires another one.[29] However, there are instances where one may voluntarily request the loss of her nationality without having acquired another one.[30] In cases where people disagree with some political policies of the state, voluntary renunciation of nationality takes place. It is advantageous to have a nationality in a modern age, but it also poses a moral dilemma for a person whose state advances discriminatory practises. Being stateless is not something that is favoured by most citizens. This title was not freely selected by the majority of the existing victims of statelessness as they were deprived of the right to obtain and hold a nationality, often arbitrarily.

The deprivation of nationality, as opposed to the automatic loss of nationality, involves a decision by the state executive. A decision to deprive one of her nationality by the administrative authorities can either be valid or arbitrary. In situations where the national has committed a serious crime against his State, a legal deprivation of nationality may be considered. It does not specify what constitutes a serious crime, but it has been defined as involving participation in terrorism, espionage, serious or organised crime, war crimes or inappropriate behaviour. The State is justified in depriving the person of his or her nationality in such circumstances. Deprivation is complicated when the authorities arbitrarily deprive a citizen of the right to obtain a

[27] T Molnar, *The Prohibition of Arbitrary Deprivation of Nationality under International Law and the EU Law: New Perspectives*, 75 (2014) Forced Migration Law Review 71
[28] *Id*.
[29] 1961 Convention on Reduction of Statelessness, Aug. 30, 1961, 989 UNTS 175 Article 7
[30] T Molnar, *The Prohibition of Arbitrary Deprivation of Nationality under International Law and the EU Law: New Perspectives*, 75 (2014) Forced Migration Law Review 71

nationality.[31] The Reduction of Statelessness Convention prohibits the arbitrary deprivation of nationality especially in the instances where it causes statelessness.[32]

The situation in India in relation to the deprivation and renunciation of citizenship has been discussed in the next chapter.

2.7 REFUGEES AND STATELESS PERSONS

In accordance with Article 1A Section 2 of 1951 Convention relating to the Status of Refugees, the term refugees applies to "any person who owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social groups or political opinion, is outside the country of his/her nationality and is unable or owing to such fear, is unwilling to avail him/herself of the protection of the country or who, not having nationality and being outside the country of his/her former habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return it. This definition may also applied to people without nationality in the country of their habitual residence. It distinguishes persons possessing a nationality and stateless persons.[33]

The requirement that a person be outside his country of residence in order to qualify as a refugee cannot be extended to stateless persons. Accordingly, the Convention replaced the country of former habitual residence with the country of nationality in the present case. In general, a refugee is an person who has been forced to leave his home in search of safety and move to another country. Many have fled because of the most appalling abuses of human rights, while others have left their country because of religious or ethnic persecution.[34]

It is also possible to describe refugees as forced migrants, victims of politics, conflict, and natural disasters. Refugees can, in a limited sense, be identified as persons who have fled the territory or state of which they are nationals and who no longer enjoy effective state protection. At present, a vast majority of stateless people are refugees.

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[31] *Id*.
[32] 1961 Convention on Reduction of Statelessness, Aug. 30, 1961, 989 UNTS 175 Article 5
[33] UNHCR, *Comemmorating the Refugees and Stateless Convention*, REFWORLD (December 5, 2019, 8:00 PM) https://www.refworld.org/pdfid/4f461d372.pdf
[34] *Id*.

These refugees are de-jure stateless people, provided they no longer enjoy the protection and support of their national authorities without having been stripped of their nationality. Their position is determined by the law of the receiving State and can be equal to the legal status of its own nationals with some omissions. In the case of refugees, the group on the basis of which international organisations and individual states are engaged in the worldwide efforts.[35]Refugee status is a right or participation granted to those entitled to be one, and such a status offers access to unique limited resources or services outside their own country, such as entry to another country in front of a long line of applicants, overseas legal protection, and sometimes some material assistance from private or public agencies.

Like refugees, stateless persons no longer enjoy the protection and assistance of their national authorities. Refugees have right to return to their original homeland but stateless persons cannot return to their original homeland but stateless persons cannot return to their homeland and no country to take them back, nor to issue travel documents for them to visit other foreign countries. Like refugees, the stateless person is not granted them the same status as that of their own national. Therefore, the rights and legal status of stateless persons varies from country to country. Both refugees and stateless persons have rights to form non-political and non-profit making association and trade union but only refugee has given right to vote in favours of any political parties.

2.8 RIGHTS AVAILABLE TO STATELESS PERSONS

The most fundamental distinction between those who are stateless and those who are not is that those who are citizens of a state should have access to a number of rights provided by that state, at least by law, if not in practise. While not all states give their people the same legal protection for their rights, the legal bond between a person and a state remains the fundamental means by which individuals can enjoy rights, and many states are unable or unable to implement rights that are constitutionally guaranteed. Recently, however, a move away from citizens ' rights towards human rights developed in the 20th century through a series of international legal instruments such that

[35] *Id.*

nationality has been uncoupled from rights, meaning that there are international legal mechanisms that, if applied, ensure that all people, including those who are stateless, enjoy certain rights.[36]

2.8.1 CIVIL AND POLITICAL RIGHTS

The civil and political rights guaranteed by specific statelessness instruments are considerably more limited than those found in broader human rights mechanisms. In terms of civil and political rights, the 1954 Statelessness Convention provides for the right to freedom of religion[37], the right to legal personhood[38], the right to property[39], the right to access courts[40], and the right to freedom of movement.[41] It is, thus, of great importance that the rights of stateless people be based not only on the Conventions of Statelessness, but also on other instruments of human rights that have since been established to the degree that they are applicable to stateless people. In this regard, the ICCPR is of great importance, especially since it has been ratified by India.

2.8.1.1 Freedom of religion

The right to freedom of religion was considered of great importance in the post-Second World War context of the 1954 Statelessness Convention. The drafters not only placed it as the second obligation, preceded only by the definition, general obligations, and right to non-discrimination, but also ensured that it was one of the provision protected from derogation. Article 4 of the convention states that Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.

Despite being protected from reservations, this right is, like others, subject to the convention's general obligations such that despite this protection, stateless people are to comply with the state's laws and regulations as well as to measures taken for the

[36] Charlotte-Anne Malischewski, *Where the Exception is the Norm: The Production of Statelessness in India*. MAHANIRBHAN CALCUTTA RESEARCH GROUP, http://www.mcrg.ac.in/PP60.pdf
[37] 1954 Convention relating to the Status of Stateless Persons, June 6, 1960, 360 UNTS 117 Article 4
[38] *Id*., Article 12
[39] *Id*., Article 13
[40] *Id.*, Article 16
[41] *Id*., Article 27

maintenance of public order as mentioned under Article 2 of the Convention. Here, public order refers to the French "ordre public," which "covers everything essential to the life of the country, including its security." It asserts the right of stateless individuals, either individually or in group with others to follow a religion religion or belief of preference and freedom to manifest their religion or belief in worship, observance, practise or instruction.[42]

2.8.1.2 Freedom of Movement

The right to freedom of movement is most broadly espoused in Article 13 the UDHR, which states that "everyone has the right to freedom of movement and residence within the borders of each state." It is more restrictive under the 1954 Statelessness Convention where each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances. Since many stateless people are also unlawfully in a given territory, many are excluded from the limited protection afforded by this provision.[43]

Similarly restrictive, the ICCPR grants a rights to internal movement in so far as everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.[44] In case of external movement it states that everyone shall be free to leave any country including his own.[45] Thus the internal movement protection applies only to those lawfully in the state's territory. Moreover, it should be noted that the right to external movement is limited to leaving the State in question and does not guarantee the right of entry into specific territories other than the country of the individual to which stateless persons are not entitled, a right to which stateless persons are not entitle.. Finally, these rights can be limited by law if such restrictions are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the ICCPR.[46]

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[42] Charlotte-Anne Malischewski, *Where the Exception is the Norm: The Production of Statelessness in India*. MAHANIRBHAN CALCUTTA RESEARCH GROUP, http://www.mcrg.ac.in/PP60.pdf
[43] Id.
[44] International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171, Art. 12(1)
[45] *Id*., Art. 12(2)
[46] *Id*., Art. 12(4)

2.8.1.3 Right to Legal Personhood

The 1954 Statelessness Convention deals with elements of legal personhood by addressing issues of jurisdiction in matters of personal status, but it does not do so in the explicit way human rights law instruments do. The UDHR under Article 6 states that in no uncertain terms that everyone has the right to recognition everywhere as a person before the law. These exact words are repeated in Article 16 of the ICCPR where they are among the provisions that cannot, under any circumstances, be derogated.

2.8.1.4 Right to Access Courts

For stateless persons, access to courts is a particularly valuable right, because courts can be the means by which they pursue redress for other violations of human rights they have suffered and because courts can be the very means by which they address their status and have legally recognised in a specific state their right to nationality or citizenship.

Article 16 of the 1954 Statelessness Convention holds that a stateless person shall have free access to the courts of law on the territory of all Contracting States. In this way, it grants a more liberal right to access courts than can be found in the UHDR which under Article 8 refers only to a right to an effective remedy by the competent national tribunals in specific circumstances, only for acts violating the fundamental rights granted him by the constitution or by law, but which guarantees a standard of treatment by the courts in the form of a right in full equality to a fair and public hearing by an independent and impartial tribunal. The said provision is under Article 10 of UDHR.

Despite the fact that the language of the Statelessness Convention of 1954 does not limit access to courts to instances of infringement of fundamental rights, it must be noted that, as it does not include any restrictions on the jurisdiction of the courts to which a right of access is conferred, it does not necessarily mean that stateless persons have access to courts qualified to rule on the question of the right of access.[47]

Therefore, the language of "effective remedy" and the security of the right to a fair trial contained in the UDHR may prove more beneficial to stateless individuals who intend to regularise their status. It should also be remembered that the first and greatest right

[47] Charlotte-Anne Malischewski, *Where the Exception is the Norm: The Production of Statelessness in India*. MAHANIRBHAN CALCUTTA RESEARCH GROUP, http://www.mcrg.ac.in/PP60.pdf

of access to the courts is the right of access to the domestic courts. This right should apply to access to international courts and court-like processes such as the Human Rights Appeals Body only when such processes and their associated remedies are exhausted. Access to the UN Human Rights Committee, for instance, is therefore limited.[48]

2.8.2 ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The economic, social and cultural rights guaranteed by the Statelessness Convention, similar to civil and political rights, are considerably more restrictive than those found in wider frameworks of global human rights instruments. In this regard, the International Covenant on Economic, Social and Cultural Rights, 1966, is particularly significant aspect of human rights law, since its interpreting body, has firmly asserted that the 'minimum core content' of the ICESCR rights should not be denied to any party.[49]

The following is an overview of the economic, social, and cultural rights to which stateless people are entitled.

2.8.2.1 Right to Work

Under Article 17 of the 1954 Stateless Convention, the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances with regards to remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on homework, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining. Like the aforementioned restriction of the protection of freedom of movement, this provision is restricted to those who are legally present in a territory which automatically excludes a large number of stateless persons who are unlawfully present in a given territory because of their absence of citizenship or other circumstances.[50]

[48] *Id*
[49] *Id*
[50] *Id*

The frameworks of labour rights that have emerged as part of human rights law provide an unprecedented number of protections on rights, many of which apply to stateless citizens. The right to work and to just and favourable work conditions set out in Article 23 and 24 the UDHR are reflected in the ICESCR and have been elaborated in nearly 100 work-related conventions by the International Labour Organisation, which are meant to apply irrespective of citizenship, meaning they apply to those who are stateless. Article 6 of the ICESCR, for example, grants everyone the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.[51]

2.8.2.2 Right to adequate standard of living

The idea of an "adequate standard of living" is considerably more elaborated in human rights instruments like ICESCR than it is in the 1954 Statelessness Convention, which includes only adequate food, clothing and housing, and continuous improvement of living conditions.[52] While the meaning of the right to clothing has not been authoritatively expounded, the meaning of "adequate" in relation to food and housing has been expounded in human rights conventions and by their associated committees. The right to food is not only a right to be "free from hunger," but also a guarantee of a "quantity and quality sufficient to satisfy dietary needs" and the right to housing is "the right to live somewhere in security, peace and dignity".[53]

2.8.2.3 Right to social security

Social security benefits were not generally understood as universal, but were seen as part of the relationship between citizens of the state, applied only to those citizens of other countries if a mutual agreement existed between the state from which they came and the state in which they then found themselves. Therefore, stateless persons were removed from the conventional model under which social security services are given to non-citizens of the state under question.[54]

The 1954 Statelessness Convention appears generous in this regard. Article 23 grants a right to public relief and assistance same as that accorded to its nationals and article 24

[51] *Id*
[52] *Id*
[53] *Id*
[54] *Id*

a right to legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which according to national laws or regulations, is covered by a social security scheme to the same level as national treatment. However, these rights are, like the right to freedom of movement and the right to work, limited to those lawfully in the state.[55]

In contrast, Article 9 of the ICESCR recognizes the right of everyone to social security, including social insurance, which includes almost the same entitlements as the 1954 Statelessness Convention, but which applies to everyone without regard to the lawfulness of the person's status in a country. Therefore, under the ICESCR, stateless people are guaranteed "medical care, cash, sickness benefits, maternity benefits, old-age benefits, invalidity benefits, survivors' benefits, employment injury benefits, unemployment benefits family benefits." This is, however, only a progressive obligation rather than an immediate one, and there is a widespread implied understanding that social security benefits are only achieved by participating in contributory mechanisms. As for non-contributory social security schemes, the ESC Committee holds that "refugees, stateless persons and asylum-seekers, and other disadvantaged and marginalized individuals and groups should enjoy equal treatment" and specifically supports "reasonable access to health care and family support, consistent with international standards."[56]

2.8.2.4 Right to Education

The 1954 Statelessness Convention distinguishes between the right to education as elementary education and more advanced education. Article 22 grants the same treatment as is accorded to nationals with respect to elementary education while "access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships" for non-elementary education is only granted on parity with similarly placed non-citizens.

However under various human rights instruments non-citizens were first granted equal access to education as the citizens of the given state with the adoption of the UNESCO Convention against Discrimination in Education where Article 3 mandates the same.

[55] *Id*
[56] *Id*

Article 13 of ICESCR addresses the right to education. Article extensively expands the components of the right to education so that it is directed to the full development of the human personality, so that it include compulsory primary education as well as gradually implemented free secondary and higher education, so that it protects of the liberty of legal guardians to choose schools, and so that it affords people the right to establish and direct educational institutions.[57]

2.9 INTERNATIONAL INSTRUMENTS RELATING TO STATELESSNESS

The international community has put in place a common framework for countries to prevent and reduce statelessness within their domestic populations. The two main conventions in this regard are the 1954 and 1961 Conventions relating to statelessness, which lay out positive obligations on contracting states. These Conventions along with certain other relevant legal instruments and international human rights documents that form a critical part of the framework to prevent and reduce statelessness as a worldwide phenomenon.[58]Since international human rights instrument like ICCPR and ICESCR has been already discussed it is not repeated in this section.

2.9.1 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS

It lays down a framework for the international protection of stateless persons and is the most detailed international codification of the rights of stateless persons. It seeks to create fundamental rights and freedom from discrimination against stateless persons. It seeks to strengthen and control the status of stateless persons through international agreements in the long term.[59]

The concept of a stateless individual is the most critical feature of the 1954 Convention. After determining who 'stateless people' are, the Convention then specifies that certain

[57] *Id*
[58] DEEPIKA PRAKASH AND MAANVI TIKU, INDIA AND THE CHALLENGE OF STATELESSNESS: A REVIEW OF THE LEGAL FRAMEWORK RELATING TO NATIONALITY, 5-8, (National Law University Delhi, 2014).
[59] *Id*

basic rights and treatments are given under the Convention to those who qualify as such. The rights available to stateless persons under the Convention has been discussed in the previous section.[60]

In short, the Convention has played a crucial role in establishing a basis for Member States to regularise stateless persons as nationals entitled to basic human rights. Given the advantages it offers, long-term ratification of the Convention must be promoted in order to affirm the obligation of States to recognise, avoid and reduce the injustice of statelessness. However there are a number of rights to which the drafters of the 1954 Statelessness Convention do not make explicit reference. Protections against arbitrary detention and minority rights are absent from the 1954 Stateless Convention, but are rights protected under human rights mechanisms that are of particular relevance to stateless populations.

2.9.2 CONVENTION ON THE REDUCTION OF STATELESSNESS

On August 30, 1961, the United Nations General Assembly adopted the Convention on Statelessness Reduction. This is the second international tool which deals directly with the question of statelessness. Whereas the 1954 Convention provides for the identification of stateless people as a category in itself, the 1961 Convention provides countries with a mandate to avoid and reduce statelessness on their own.

The 1961 Convention establishes a system of universal rules for national states that can be integrated into their domestic legislative system for the issuance of citizenship in a manner that mitigates statelessness. The Convention also serves as a measure for countries which have not acceded to it to change certain loopholes in their legislative structure so that an individual may become stateless. The 1961 Convention only lays down rules for the grant or non-withdrawal of nationality if the individual in question is left stateless. In other words, the provisions of the 1961 Convention give, without defining any further criteria of that treaty, carefully comprehensive protections against statelessness that should be applied by the nationality law of a State. In addition to these few basic protections, states are free to expand on the content of their nationality

[60] *Id*

legislation. However, these rules must be compatible with other nationality-related international standards.[61]

The Convention directs the contracting states to grant nationality to a person born on its territory, either at birth or on registration, who would otherwise be stateless. The conditions stipulated for such grant of nationality is that the person must have applied for such nationality within the stipulated age limit and to the concerned authority. The Convention also avoids the discrimination between man and woman in conferment of nationality where a child may be left stateless due to the operation of domestic laws wherein a mother's nationality is not considered of nationality to her child's. The Convention also deals with foundlings[62] and children born on ships and aeroplanes.[63]It also deals with potential loss of nationality on change of a person's personal status[64], such as through marriage, termination of marriage, legitimating, recognition or adoption and provides for steps against generation of statelessness due deprivation[65] or renunciation[66] of nationality.

Thus the Convention provides a yardstick for international community to prevent the menace of statelessness by making suitable changes in their domestic law.

2.9.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) remains the foundation of international human rights law. It was adopted on December 10, 1948 by the UN General Assembly and is non-binding in status, making it an inherently versatile document that provides enough space for new human rights promotion techniques and has served as a launching pad for the creation of numerous international human rights law legislative initiatives. It has been a part of customary international law over the years.[67]

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[61] *Id* 10-13
[62] 1961 Convention on Reduction of Statelessness, Aug. 30, 1961, 989 UNTS 175 Article 2
[63] *Id* Article 3.
[64] *Id* Article 5
[65] *Id* Article 8
[66] *Id* Article 7
[67] DEEPIKA PRAKASH AND MAANVI TIKU, INDIA AND THE CHALLENGE OF STATELESSNESS: A REVIEW OF THE LEGAL FRAMEWORK RELATING TO NATIONALITY, 11, (National Law University Delhi, 2014).

The most important article of the UDHR, from the perspective of statelessness, is Article 15, which states that everyone has the right to nationality, and that no one shall be arbitrarily deprived of his or her nationality or refused the right to change his or her nationality. However, this article does not make it clear on whom the right to grant nationality is based. Nor does it categorically state that the affirmative responsibility to grant nationality rests with the States. Nevertheless, the article proceeds to establish a negative obligation on the state not to build statelessness, such that any deprivation must be followed by strict procedural rules and should not result in statelessness. Consequently, it can be said that the UDHR is an integral part of the international legal instruments that discuss the question of nationality and the prevention / reduction of statelessness.[68]

2.9.3 CONVENTION ON THE RIGHTS OF CHILD (CRC), 1990

Among stateless people, the most vulnerable and impoverished group are stateless children. From their very birth, denial of nationality also condemns them to a life of extreme poverty and misery, without any fundamental human rights or opportunities. In terms of the basic defence of children's right to nationality, the CRC is particularly significant since it has been ratified by almost every country. Articles 7 and 8 are the key clauses of the CRC that should be viewed from the perspective of statelessness.

According to Article 7, the States Parties should ensure that the child is registered immediately after birth and has the right to a name from birth, the right to acquire a nationality and, to the extent practicable, the right to be recognised and cared for by his or her parents, and the States shall ensure that those rights are exercised in accordance with their authority and their obligations the relevant international instruments relating to human rights.[69]

Pursuant to Article 8, States agree to respect the right of the child to retain, without arbitrary intervention, his or her identity, including nationality, name and family relations as recognised by statute, and if the child is unlawfully deprived of any or all

[68] *Id*
[69] Convention on Rights of Child, September 2, 1990, 1503 U.N.T.S 3, Article 7

of the elements of his or her identity, the State shall provide appropriate assistance and protection with a view to promptly restoring the child's identity.[70]

Thus it can be seen that from the perspective of statelessness, the Convention tries to avoid statelessness at the time of birth due to the inconsistencies in domestic law.

2.9.4 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), 1979

The Convention aims, in all its ways and manifestations, to reduce / prevent gender discrimination. The Convention illustrates that, despite the presence of numerous international instruments, such as the UDHR, the ICCPR, the ICESCR, various UN resolutions, declarations and recommendations, and the work of specialised agencies supporting gender equality, discrimination against women continues to exist. The CEDAW is often seen as a rationalised arrangement to directly resolve discrimination against women in matters of statelessness and nationality. Articles 9 and 15 are the CEDAW provisions relating to the question of statelessness.

Under Article 9, State Parties shall give equal rights to women as men to obtain, modify or maintain their nationality. The parties shall ensure that neither marriage to an alien nor a change of nationality by the husband during the course of the marriage shall automatically alter the nationality of the wife and render her stateless. The parties shall grant equal rights to women and men in relation to the nationality of their children.[71] Article 15 of the Convention provides that women shall be accorded equality with men by the member states before the law.[72] This Convention is an inclusive mechanism aimed at striking at all aspects and at all indices of discrimination against women. In particular, the Committee on the Elimination of Discrimination against Women acknowledged that the human rights of are binding on member states on all women within their jurisdiction, including displaced persons and stateless persons.[73] The

[70] *Id* Article 8
[71] Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, 1249 U.N.T.S 13, Article 9
[72] *Id* Article 15
[73] Committee on Elimination of All forms of Discrimination against Women, *General Recommendation No. 26: Women Migrant Workers*, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (Nov. 20, 2019, 2:00PM) http://www.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf

provisions referred to above are very relevant for efforts to reduce statelessness, since equality between men and women in matters of granting nationality affects not only women's right to nationality, but also their right to transfer their nationality to children.

2.9.5 CONVENTION ON THE NATIONALITY OF MARRIED WOMEN, 1957

The Preamble to the 1957 Convention on the Nationality of Married Women resonances the UDHR provisions by specifying the right to a nationality and the right to not be deprived of a nationality. It also upholds equality in matters of enjoyment of human rights since it promotes observance of human rights without discrimination as to gender. This Convention holds the foreground in advocating the rights of women in matters of obtaining, retaining and passing on nationality.

The Convention provides that neither marriage nor its dissolution between two people having different nationalities, nor the change of nationality by the husband during marriage, shall affect the nationality of the wife[74] and also provides that the voluntary acquisition by one of its nationals of the nationality of another State or the renunciation by one of its nationals of the nationality of that State shall not affect the possession of the nationality of that national's wife.[75] It also creates a duty for States Parties to ensure that their nationality laws grant rights to the alien wife of a national of that State, to apply for the privileged naturalisation, if the wife would not otherwise become naturalised as a matter of right under that State's legal structure.[76]

The provisions of this Convention encourage State parties to provide equality in acquisition of nationality by a woman as an individual and not just a married accessory to a national. India has been party to the Convention since 1957. The Convention along with CEDAW is certainly a cornerstone in preventing statelessness as a direct result of gender-based discrimination in bestowal of nationality.

2.9.6 CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD), 2006

[74] Convention on the Nationality of Married Women, February 20, 1957 309 U.N.T.S 65, Article 1
[75] *Id* Article 2
[76] *Id* Article 3

The UN adopted the Convention on the Rights of Persons with Disabilities in 2006, accepting disability as an emerging definition of attitudinal and environmental obstacles that hinders the complete and successful involvement of persons with disabilities in society on an equal basis with others. The need to foster respect for and the protection of the human rights of people with disabilities is addressed by this Convention.

From perspective of the issue of statelessness, the Convention underlines that discrimination against people with disabilities is forbidden in matters relating to nationality.[77]

2.10 CONCLUSION

Thus it can be observed that the issue of statelessness is becoming important human rights issue in contemporary times. The importance of having access to a nationality for the successful protection of human rights is highlighted by the fact that the almost every major instruments relating to human rights has dealt with the aspect of nationality. Though many factors causing statelessness were highlighted the aspect of climate change is important as the phenomenon cannot be reversed and the only solution would be cope with it. With the states around the world tightening the nationality laws and following an isolationist approach, the chances of generation of statelessness is very high and as a consequence the world must be prepared to tackle this menace by proper cooperation and co-ordination between the states.

[77] Convention on the Rights of Persons with Disabilities, December 13, 2006, 2515 U.N.T.S 3, Article 18

CHAPTER: 3

CITIZENSHIP LAWS IN INDIA

3.1 INTRODUCTION

India is a signatory to numerous international human rights instruments which forms basis of international human rights regime and thereby tackling many human rights issues. But despite this India has been reluctant to incorporate the international developments in relation to the reduction and prevention of statelessness into national legislations regulating citizenship. Thus there is a gap in the literature and data regarding statelessness in India.

Currently, Indian nationality laws have been much more restrictive since independence in 1947. Decolonization culminated in the separation of British India and the formation of two independent countries: India and Pakistan. This led to a massive mass exodus of around 14 million people who were displaced, migrating either to Pakistan (mostly Muslims) or to India (mostly Hindus and Sikhs). Depending on the time they reached India, the grounds for granting Indian citizenship were dependent on legal status. The legal status of many Indians who were sent to Sri Lanka during colonial times was also affected by decolonization, and were declared stateless upon independence. To this day, many people and communities are still recovering from the legal consequences of decolonization, especially statelessness. In addition, thousands of refugees, including stateless refugees, fleeing persecution, such as Rohingya and Tibetans, have found shelter in India in recent years. Though India has a long history of hosting a large number of refugees and stateless people, it does not accept them legally, causing integration problems.

After Independence in 1947 but before the enactment of the Constitution in 1950, Indians were still British subjects by virtue of Section 18(3) of the Indian Independence Act of 1947. The Constitution of India is the first legal instrument that lays down who is considered to be a citizen of India. Although the Constitution does not define citizenship, articles 5-11 of the Constitution lays down a primary provision for deciding who is a citizen of India.

3.2 CONSTITUTION OF INDIA

Article 5 of the Constitution of India says about citizenship at the commencement of constitution of India. According to the article, any such person, who was, or whose parents were, born in the territory of India, or who was ordinarily resident in India for a period of at least five years prior to the commencement of the Constitution, shall be deemed to be a citizen of India if, at that beginning, he was resident in the territory of India. This article deals with the question of citizenship for those individuals who were domiciled in India at the time of the Constitution's inception.

However, the article remains silent on the meaning of 'domicile' and has left the matter to be interpreted by the courts. Though for citizenship purposes, the word 'domicile' has not been specified in any legislation but the term was defined for other purposes by such statutes such as the Indian Succession Act, 1925. The Supreme Court has interpreted the term 'domicile' in the following manner- "By domicile is meant a permanent home. Domicile means the place which a person has fixed as a habitation of himself and his family not for a mere special and temporary purpose, but with a present intention of making it his permanent home."[78]

Apart from the above provision, Article 6 deals with persons who migrated to India from Pakistan before 19 July 1948 or those who came afterwards and have been resident in India since immigration. In the case of persons migrating before July 19, 1948, if the person has been ordinarily residing in India since the date of her migration, and in case of a person migrating on or after July 19, 1948, if he/she has been registered as a citizen of India, after residing for at least six months immediately before the date of applying for registration, by an officer appointed by the government of India, shall be deemed to be a citizen of India.[79]

Article 7 also deals with migrants from Pakistan and according to which if a citizen of India has migrated to Pakistan after March 1, 1947, but returned to India on the basis of permit for resettlement in India, the person is entitled to become a citizen of India if he/she registers herself as a citizen of India, after residing for at least six months

[78] K. Mohammad Ahmed v. State of Kerala and Others, 1983 SCC OnLine Ker 181
[79] INDIAN CONST. art. 6

immediately before the date of applying for registration, by an officer appointed by the government of India.[80]

Article 8 deals with citizenship of persons of Indian origin residing outside India. According to the Article Indian nationals whose parents or any grandparents were born in India as defined in the Government of India Act, 1935, residing abroad shall be conferred Indian citizenship, as if they have been registered by the diplomatic or consular representatives of India in the country where they are residing.[81]

Article 11 empowers Parliament to make legislation on the acquisition and termination of citizenship in order to give effect to the constitutional provisions relating to citizenship. Consequently, in 1955, Parliament passed the Citizenship Act. The aim of the legislation is to provide for the acquisition and determination of Indian citizenship. This Act, read with the Constitution of India, forms the epicentre of the acquisition of citizenship in India.

The Constitutional provisions relating to citizenship tend to be reasonably inclusive and considered the freedom of choice of people post partition. Two broad categories of persons were concerned primarily by the provisions: residents at the time of independence and 'migrants' whose citizenship was determined by where they planned to live, considering the complicated nature of the mass migrations between India and Pakistan. Nevertheless, there was a 'legal void' between the adoption of the Constitution in 1950 and the adoption of the Citizenship Act in 1955: when the nationality structure was being established, it was important to take into account the individuals who had passed across the boundaries between India and Pakistan. Therefore, their citizenship status was determined by 'will' when the Citizenship Act came into effect, and accompanied by attributions of legality and illegality.[82]

[80] INDIAN CONST. art. 7
[81] INDIAN CONST. art. 8
[82] Asha Bangar, *Statelessness in India,* INSTITUTE OF STATELESSNESS AND INCLUSION, (December 14, 2019, 1:00 PM) https://files.institutesi.org/WP2017_02.pdf

3.3 CITIZENSHIP ACT, 1955

As mentioned earlier the Constitution left future matters of citizenship to be regulated by the Parliament and accordingly, the Parliament enacted the Citizenship Act in 1955. The Citizenship Act lays down five ways of acquiring citizenship:

1. By Birth[83]

2. By descent[84]

3. By registration[85]

4. By naturalization[86]

5. By incorporation of new territory.[87]

In addition to acquiring citizenship through these provisions in Citizenship Act, Section 13 of the Act is an additional provision that deals with issuance of certificate of citizenship, in case of doubt regarding a person's citizenship. This clause gives the central government the power to grant a citizenship certificate to those persons who have reservations regarding their Indian citizenship. An officer not below the rank of Under Secretary to the Government of India shall sign the citizenship certificate given pursuant to Section 13 of the Citizenship Act. In India, therefore, a 'citizen' is a person who is considered to be so under the Constitution of India, or he/she may be granted a certificate of citizenship by the Central Government in the event of question of his/her citizenship of India, or citizenship may be acquired primarily by either of the modes provided in the Citizenship Act.

3.3.1 CITIZENSHIP BY BIRTH

Section 3 of the Citizenship Act provides for the conferment of citizenship via jus soli if both or one of the parents is an Indian citizen, as long as the other is not an irregular migrant. It allows for automatic citizenship acquisition, which is referred to as 'birth citizenship'. This clause confers, citizenship jus soli, i.e. on the basis of birth in the

[83] The Citizenship Act, 1955 s. 3
[84] The Citizenship Act, 1955 s. 4
[85] The Citizenship Act, 1955 s. 5
[86] The Citizenship Act, 1955 s. 6
[87] The Citizenship Act, 1955 s. 7

territory. Section 3(1)(c) of the Citizenship Act provides that a person born in India is a citizen of India if, at the time of birth, both parents are citizens of India, or if only one parent is a citizen, then the other parent is not an illegal migrant. Under the Act, the term 'illegal migrant' is classified as a foreign who has entered India without prescribed travel documents or who has remained in India beyond the approved date provided for in such a travel document.[88] The Citizenship (Amendment) Act, 2003, incorporated this clause into the Act. Section 3(1)(a) provides for persons born before that if a person was born in India on or after 26 January 1950 and before 1 July 1987, he / she is a citizen of India. In addition, Section 3(1)(b) states that if a person was born in India on or after 1 July 1987 but before the beginning of the Citizenship (Amendment) Act, 2003, he / she shall be a citizen if, at the time of his / her birth, either of his / her parents was a citizen of India.[89]

On the basis of an analysis of these provisions from the point of view of statelessness, it can be concluded that Section 3(1)(b) of the Citizenship Act takes into account the situation in which at least one of the parents is a citizen of India, but fails to take into account the situation in which both parents may not be, or may not be, citizens of India. Furthermore, the provision under Section 3(1)(c) places strict limitations on the execution of the doctrine of jus soli by requiring that at least one parent of such a child should be an Indian citizen in order to be granted citizenship at birth as long as the other parent is not an illegal migrant. The scope of this definition has the potential to generate statelessness by law, since even if one parent of a child is an illegal alien, that child is deprived of the right to obtain nationality automatically by the other parent.[90]

In addition, Section 3(2)(b) states that the child will not be eligible to acquire Indian citizenship by birth in cases where the birth takes place in a territory that was then occupied by the 'enemy' and one of the parents is a 'enemy alien'. The Act does not, however, provide a description of 'enemy alien' and thus this clause is responsible for changes in wartime; and secondly, the clause does not apply to situations in which one

[88] The Citizenship Act, 1955 Section 2(1)(b)
[89] ANUPAMA ROY, MAPPING CITIZENSHIP IN INDIA, 143, (Oxford University Press 2010)
[90] DEEPIKA PRAKASH AND MAANVI TIKU, INDIA AND THE CHALLENGE OF STATELESSNESS: A REVIEW OF THE LEGAL FRAMEWORK RELATING TO NATIONALITY, 61-63, (National Law University Delhi, 2014).

or both of the parents might be 'enemy alien(s)' but the birth takes place in the territory of India not under the enemy's occupation.[91]

In the present sense, it can be inferred that, under the Indian Citizenship Act, children born in the territory of India who would otherwise be stateless will not get citizenship. Under Article 1 of the 1961 Convention, a child born on the territory of a Contracting State is entitled to acquire nationality if that child is otherwise stateless. As stated in the previous chapter, the UNHCR Guidelines on Statelessness listed that deciding whether a child is stateless involves checking whether that child has obtained any other nationality, either by the application of the principles of *jus sanguinis* or *jus soli*.[92] In addition, the Guidelines state that if their parents are stateless, children have the chances of being stateless; such situation may be ended if a country in which a child is born gives that child its citizenship, even if the parent of such a child may be stateless.[93] That was the position in India before 1987, whereby any person born in India on or after the commencement of the Constitution was considered a citizen of India by birth. However, with the introduction of amendments to the Citizenship Act, the law has been made stricter and less accommodating.

India is a signatory to a number of international human rights instruments discussing a child's rights to nationality from the moment of birth. According to Article 7 of the CRC, a child is entitled to be registered immediately after birth and is entitled to acquire nationality at birth. Furthermore, Article 8 of the CRC asserts a child's right to maintain his or her identity, including nationality. Article 24 of the ICCPR grants every child the right to be registered immediately after birth, as well as the right to acquire nationality. The CRPD grants children with disabilities the right to be registered immediately after birth, pursuant to Article 18, and the right to gain nationality at birth. Pursuant to Article 29 of the Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, each child of a migrant worker shall be entitled to registration of birth and nationality. This Article should be read in accordance with Article 3 of the Convention, which states that, unless such a request is provided for in

[91] See *supra* note 82
[92] UNHCR. *Guidelines on Statelessness No.4: Ensuring Every Child's Right to Acquire a Nationality through Article 1-4 of the 1961 Convention on the Reduction of Statelessness.* UNHRC (Feb. 19, 2020, 10:15 AM) www.unhcr.org
[93] See *supra* note 90, at 75

the applicable national legislation of the State Party concerned, the Convention does not extend to stateless persons.[94]

Under the law relating to the grant of citizenship, the provisions do not comply with the international obligations of the country, because that provision specifies that at least one parent must be an Indian citizen, while the other parent must not be an illegal migrant. In addition, it means that a child born to a stateless parent is barred from gaining Indian citizenship at birth, beginning in July 1987. This, from the viewpoint of statelessness, is a significant disadvantage under the Indian citizenship statutes.[95]

It may also be noted that the definition of the word 'parent' has not been defined either in Section 3 of the Citizenship Act or elsewhere in the text of the Act, even though the section allows one parent to be a citizen of India. There seems to be little clarification as to whether this might involve multiple sets of a child's parents, a 'unmarried pair',' adopted parents',' biological parents', or 'surrogate parents', both of which are quite significant in the dispute scenario that could occur due to the interaction of the citizenship laws of different countries.[96] India legal framework is silent on the citizenship of children born out of wedlock. The omission of the word 'parent' also demonstrates a void in the law concerning the nationality of a child whose parents may have uncertain or no citizenship.[97]

While the 1961 Convention on the Reduction of Statelessness does not define the word 'parent,' it takes into account a situation where a child may be born out of wedlock, or where a child's citizenship may be affected by a change in the parents' marital status. Article 1(3) of the 1961 Convention also offers protections by granting the right to acquire nationality to children born on the territory of which the mother is a citizen. Such children shall obtain the citizenship of their state of birth immediately by the operation of law. The citizenship legislation in India, on the other hand, do not cover all sorts of circumstances relating to the citizenship of a child born in India.[98]

In terms of nationality by birth concerning children born to a foreign couple through surrogacy in India, the Citizenship Act is silent. The nationality of such surrogate

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[94] *Id*
[95] *Id*
[96] ANUPAMA ROY, MAPPING CITIZENSHIP IN INDIA, 100-150, (Oxford University Press 2010)
[97] See supra note 90, at 72
[98] *Id*

children, who are born in India but whose parents may be foreigners, remains therefore unclear, although some judicial pronouncements have been made on the same subject.

Thus before 1986, every person born in India on or after the commencement of the Constitution was considered an Indian citizen by birth on the territory which was then replaced by a stricter *jus sanguinis* doctrine with the amendment in 1986. Although India is not party to the 1954 or 1961 Conventions, the lack of safeguards against statelessness at birth are in contravention of various above mentioned human rights instruments which assert the right of a child to be registered immediately after birth and the right to acquire a nationality, under which India has not filed any reservations. From the perspective of statelessness, this is a weakness under Indian citizenship legislations.

3.3.2 CITIZENSHIP BY DESCENT

Section 4 of the Citizenship Act deals with 'Citizenship by descent', and allows for non-automatic acquisition of citizenship to individuals born outside the territory of India, by following the steps stipulated in the section. This clause is based upon the principle of *jus sanguinis*, i.e. a person acquires nationality or citizenship from his / her parents. Although citizenship is automatically acquired from the parent(s) by virtue of being their child, this is a non-automatic acquisition of citizenship because it is acquired at the instance of the party.[99]

The clause divides citizenship by descent into three categories:

The first stage is wherein a child born outside India between 26 January 1950 and before 10 December 1992, is considered an Indian citizen if her/his father is an Indian citizen. If such a parent is only an Indian citizen by descent, then the birth of the child should be registered at the respective Indian consulate within one year in order to claim Indian citizenship. The second stage covers the situation of a child born outside India between 10 December 1992 and 7 January 2004, when either of his/her parents is an Indian citizen. In case such parent is an Indian citizen by descent only, then such child is considered an Indian citizen only if the birth is registered at an Indian consulate within one year. The third phase referred to in this section includes children born after 7 January 2004, and the operation of this section is the same as that discussed in the

[99] See *supra* 96, at 140

second phase. However, a provision has been added that the birth registration of the child to whom this section refers will be carried out only if the parent(s) have stated in the specified format that the child does not hold any other passport.[100] According to Rule 3 of the Citizenship Rules, 2009, under Section 4(1) a parent may apply for registration of birth of her/his minor child to the Indian Consulate in the country of such child's birth, along with a declaration that the child does not hold the passport of any other country.[101]

Under Article 4 of the 1961 Convention on the Reduction of Statelessness, a child born outside the country of nationality of his or her parent(s) is eligible to acquire his or her nationality. According to the Article, the Contracting State shall grant citizenship to a person who is not born in the territory of a Contracting State and who might otherwise be stateless if the nationality of either of his/her parent at birth of the child as that of the contracting state. In situations where, at the time of the birth of the child, both parents have different nationalities, the question as to whether the nationality of the father or mother must be bestowed on the child shall be determined by the national law of those Contracting States. In the 1961 Convention, the said Article further lays down certain general conditions to be fulfilled in the respective nationality laws of the Contacting Parties by the person applying for nationality by descent.[102]

Under Section 4, the Citizenship Act grants a minor child this right. Furthermore, Article 9 of the CEDAW states that women have the same rights as men to pass on their nationality to children. The provisions of the Citizenship Act required until 1992 that only the father will be able to pass on his nationality to his child born outside India. The Citizenship Act has now become gender-neutral after the reform in the clause, whereby both mother and father, in accordance with CEDAW, can pass on their nationality to their children.[103]

Thus clause 4 is in accordance with Article 4 of the 1961 Convention, which allows Countries, if they are otherwise stateless, to grant nationality to individuals born outside the country of the nationality of their parents. Compared to the citizenship by birth

[100] The Citizenship Act, 1955 s. 4
[101] G. SINGH. LAW OF FOREIGNERS, CITIZENSHIP & PASSPORTS IN INDIA. 226 (Universal Law Publisher Co Pvt Ltd 2011)
[102] DEEPIKA PRAKASH AND MAANVI TIKU, INDIA AND THE CHALLENGE OF STATELESSNESS: A REVIEW OF THE LEGAL FRAMEWORK RELATING TO NATIONALITY, 84, (National Law University Delhi, 2014).
[103] *Id*

mentioned above, it becomes clear that Indian laws make it easier for individuals of Indian descent born outside India to obtain Indian citizenship than for individuals born in India.

3.3.3 CITIZENSHIP BY REGISTRATION

Section 5 of the Citizenship Act provides Indian citizenship through registration for the following categories of persons: (a) a person of Indian origin who is currently resident in India for seven years before making an application for registration; (b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India; (c) a person who is married to an Indian citizen and is ordinarily resident in India for seven years before making an application for registration; (d) minor children of persons who are citizens of India (e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6; (f) a person of full age and capacity who, or either of his/her parent, was earlier a citizen of Independent India, and has been residing in India for one year immediately before making an application for registration; (g) a person of full age and capacity who has been registered as an Overseas Indian Citizen for five years and has resided in India for twelve months before making an application for registration.[104]

The registration of minor children as citizens of India is provided for in Section 5(1)(d) of the Citizenship Act. As it comes into practise on the behalf of a party, this is a non-automatic mode of acquiring nationality. Section 5(1)(d) applies to the minor children of individuals who are Indian citizens. Under this Clause, those minors who do not fall under other provisions of this Act may be granted citizenship. A precondition for registration under this clause is that such a minor is not an illegal migrant and the parents of such a minor must be citizens of India. The requirements for such registration are further laid down in section 5. Furthermore, registration under Section 5(1)(d) includes a declaration by the parent of such a minor child claiming that he or she is the minor's legal guardian. However, to include a biological parent and an adoptive parent alike, the usage of the term 'parent' has not been explained. This leaves an opening in

[104] See *supra* 96, at 137

the understanding as to whether an adopted child can be recorded as an Indian citizen under this clause or not.[105]

It must be noted here that Section 5 of the Citizenship Act allows only a person who is 'not an illegal migrant' to make an application for registration. This imposes a burden on those individuals who are illegal migrants and who apply for citizenship through this process. Such individuals remain stateless.

Article 1 of the 1961 Convention on the Reduction of Statelessness grants a child the right to obtain the nationality or citizenship of the country in which he or she may be born by making an application in this respect. Furthermore, the Article leaves it to the Contracting State to make laws regulating the age limit and other conditions applicable to such demands. Though India is not a signatory to this Convention, the current international structure relating to the non-automatic mode of nationality acquisition must be examined. Furthermore, Article 1 states that a child may acquire the nationality or citizenship of his mother if that child is otherwise stateless.[106]

This clause reiterates the obligation of the international community to fairly protect the right of any parent to pass on his or her child's nationality or citizenship. The CRC, of which India is a member, has asserted every child's right, including nationality, of maintain their identity. This clause is also useful in stressing the right of a minor child to be a national in India.[107]

Against the context of the international legal structure for the granting of nationality to children after birth, India's provision does not explain the status of a minor child in India who, as an Indian citizen, has only one parent. In addition to this, in the event that a parent who is not an Indian citizen may be stateless or of unknown nationality, the Act does not allow for the registration of minor children. Section 5(4) states that if it is satisfied that there are special circumstances for such registration, the Central Government may offer permission to register any minor. Nevertheless, both the Citizenship Act and the Citizenship Laws remain silent on the phrase 'special circumstances'.[108]

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[105] *Supra* note 96
[106] *Id*
[107] *Id*
[108] *Id*

So, it can be said that Indian citizenship by registration does not really take into account those who are stateless. While stateless persons may fulfil the requirement of period of residence in India, by registration under Section 5 they are still not qualified for citizenship as they are not considered to be of Indian descent, married to an Indian citizen or children of Indian citizens.

3.3.4 CITIZENSHIP BY NATURALISATION

The granting of citizenship by way of naturalisation is envisaged in Section 6 of the Indian Citizenship Act. It states that a person who is not an illegal migrant and is of full age and capacity may apply for naturalisation. A certificate of naturalisation shall be issued to the individual if all the conditions laid down by the Central Government, as well as those referred to in the Third Schedule of the Act, are met. The Third Schedule stipulates that during the fourteen years immediately preceding that twelve-month period, immediately preceding the date of application, he was either resident in India or in the service of Government in India, or partly one and partly the other, for a period exceeding eleven years in total.[109]

A further requirement is that such an applicant must not have previously renounced or been deprived of Indian citizenship. S/he is also required to declare that s/he intends to make India her/his permanent home, and must undertake renunciation of the country of which s/he is a citizen in case her/his application for naturalization in India is accepted.[110]

The proviso to Section 6 states that such conditions may be waived if the person has rendered distinguished service to the causes of science, philosophy, art, literature, world peace, or general human progress. Ultimately, the Central Government has the power to determine if such a service has been performed by the individual and thus plays a key role in reducing statelessness in India. It seems quite doubtful, however, that stateless people will be able to make such distinguished services because they are typically impoverished and lack opportunities in such fields to excel. In this section,

[109] ANUPAMA ROY, MAPPING CITIZENSHIP IN INDIA, 165, (Oxford University Press 2010)
[110] *Id*

the word 'illegal migrant' often basically rules out the possibility of allowing such a stateless person to apply for naturalization.[111]

The procedure for naturalisation is laid down in Rule 10 of the Citizenship Rules, 2009. Under the provision, an application for naturalisation by a person to become a citizen of India pursuant to Sub-section (1) of Section 6 shall not be entertained unless an application is made in the prescribed format along with an undertaking in writing that he / she shall renounce the nationality of his / her country in the event of approval of his application. A properly stamped affidavit confirming the accuracy of the claims made in the application should accompany the application, along with two affidavits from Indian people attesting to the applicant's character and a certificate certifying the applicant's adequate knowledge in one of the languages set out in the Eighth Schedule of the Constitution of India.[112] This can be burdensome for many stateless persons who do not know any of the specified languages. Rule No.10 adopts an exclusionist approach to naturalisation for a socio-linguistically diverse country like India. In addition, those who are stateless are more likely to have no formal training or records to support their credentials, and so such a condition may be an obstacle if all other criteria are met.

Naturalization is the key for integrating stateless individuals into the country's citizenship who just cannot obtain citizenship by automatic modes. However, the conditions under which a stateless person living in India can be granted Indian citizenship have been made too tight to suit them. Even though these domestic provisions do not pose the risk of generating statelessness, they do hinder the route of awarding stateless persons citizenship in India, thus not really reducing statelessness situations.

3.3.5 RENUNCIATION OF CITIZENSHIP

According to Section 8 of the Citizenship Act, when a citizen of India who is of full age and capacity makes a declaration that s/he wishes to renounce their Indian

[111] DEEPIKA PRAKASH AND MAANVI TIKU, INDIA AND THE CHALLENGE OF STATELESSNESS: A REVIEW OF THE LEGAL FRAMEWORK RELATING TO NATIONALITY, 84, (National Law University Delhi, 2014).
[112] See *supra* 96

citizenship, and this declaration is attested as well as registered by the prescribed authority, then such a person ceases to be a citizen of India.[113]Further elaboration of what constitutes a declaration is given by Rule 23 of the Citizenship Law, 2009. According to it, a person who renounces his/her citizenship must state firstly that he/she is an Indian person under which clause of the Act and, secondly, the circumstances under which the applicant 'intends to acquire foreign citizenship.' An acknowledgment shall be issued by the appointed officer upon the receipt of the declaration of renunciation of citizenship. This declaration is then registered with the Government of India's Ministry of Home Affairs.[114]

However in this case individual is exposed to the possibility of statelessness in situations where the renunciation of citizenship is registered before the individual has successfully obtained the nationality of another state. This is not in line with Article 7(1)(a) of the 1961 Convention, which allows States not to allow nationality to be renounced unless the citizen has another nationality or acquires it.

According to the Tunis Conclusions, States must ensure that renunciation of citizenship does not result in statelessness by "providing for a lapse of renunciation if, within a specified period of time, the person concerned does not acquire foreign nationality." As a result, renunciation should be deemed invalid, thereby avoiding the danger of statelessness. The Conclusions noted that some Contracting States required applicants wishing to be naturalised to renounce their former nationality and to provide evidence that they would be granted naturalisation accompanied by evidence of renunciation of their foreign nationality. There is an implied requirement in the 1961 Convention that guarantees should not be withdrawn after they have been given on the ground that the conditions for naturalisation have not been met, as this might lead to statelessness.[115]

Some States provide, as an alternative to the issuance of a guarantee, that naturalisation is granted against an undertaking by a person to renounce his / her foreign nationality and that a fixed deadline is set for the presentation of proof of renunciation, making the application for naturalisation null and void if it is not submitted. In view of this, it can

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[113] *Id*
[114] *Id*
[115] UNHCR, '*Expert meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality: Summary Conclusions.'* UNHCR, (Feb 25, 2020, 10:00 PM) www.unhcr.org

be claimed that the Indian laws relating to voluntary renunciation of nationality do not comply with international legal standards.[116]

Another consequence is that the renunciation of Indian citizenship as a parent would have a direct effect on the nationality of his/her child. Section 8(2) of the Act provides that where a person ceases to be an Indian citizen via renunciation, "every minor child of that person shall thereupon cease to be an Indian citizen". There is no clarification provided on the status of the child where one parent renounces their Indian citizenship while the other does not. The lack of safeguards provided under Section 8 have the potential to create childhood statelessness which is in contravention of Article 6 of the 1961 Convention requiring states not to deprive children of their nationality until they possess or acquire another nationality, and Article 8 of CRC which requests states to preserve the identity of the child, including his/her nationality.

3.3.6 TERMINATION OF CITIZENSHIP

According to Section 9 of the Citizenship Act, any Indian citizen who either by naturalisation, registration or otherwise voluntarily acquires/acquired the nationality of another country, ceases to be an Indian citizen.[117] The Central Government may determine the issues as to whether, when or how any Indian citizen acquires the citizenship of another country as provided in Schedule III of the Citizenship Rules, 2009[118] and the onus of proving otherwise lies with the person in question.

The Citizenship Rules state that the Central Government can question / refer to any issues relating to it for the purpose of determining the acquisition of the citizenship of an Indian citizen of another nation. It may refer, as it considers fit, to its embassy in that country or to the government of that country in respect of such questions or any matter relating thereto, and act upon any report of information obtained in pursuance of such a reference.[119] The Citizenship Rules further state that if a citizen of India has received a passport from the government of any other country on any date, it would be definitive

[116] DEEPIKA PRAKASH AND MAANVI TIKU, INDIA AND THE CHALLENGE OF STATELESSNESS: A REVIEW OF THE LEGAL FRAMEWORK RELATING TO NATIONALITY, 77, (National Law University Delhi, 2014).
[117]The Citizenship Act, 1955 S. 9
[118] Citizenship Rules, 2009 Rule 40
[119] Asha Bangar, *Statelessness in India*, INSTITUTE OF STATELESSNESS AND INCLUSION, (December 14, 2019, 1:00 PM) https://files.institutesi.org/WP2017_02.pdf

evidence that he or she has voluntarily gained that country's citizenship before that date. The Citizenship Rules 2009 also explain how Indian authorities deal with a person who leaves or has left India without a Central Government issued travel document. If, such a person stays outside India for a period of more than three years, he / she shall be deemed to have voluntarily obtained the citizenship of his / her country of residence. This is against Article 7(3) of the 1961 Convention, which specifies that nationals do not lose their nationality on the basis of 'departure, residency abroad, failure to register or on any related ground.'[120]

3.3.7 DEPREVATION OF CITIZENSHIP

Section 10 of the Citizenship Act mentions the circumstances in which the Central Government may deprive a person of citizenship. This Section applies only to those persons who have obtained Indian citizenship by naturalization or registration. According to this provision the circumstances which warrant deprivation of citizenship, including using fraudulent means to obtain a citizenship certificate or citizenship registration, disloyalty to the Constitution of India, assisting, communicating or trading with an enemy during war, imprisonment in any country within five years of registration or naturalization, and residing outside India continuously for seven years.[121]

The section further provides that before depriving a citizen of his citizenship, a notice shall be served upon him/her, and also stipulates that the Central Government shall refer the case to an Inquiry Committee.[122] The rules governing such an enquiry are set out in Rules 25, 26, 27, 28 and Schedule II of the Citizenship Rules, 2009 which require the individual to be informed before depriving him of his or her citizenship. In cases where the place of residence of the person is known, the notice must be sent to him directly or sent by post; in cases where the place of residence of the person is not known, the notice must be sent to his last known address. An application to refer his or her case to a Committee of Inquiry may be made by the person receiving this notice. In the case of a person who is in India, the request must be made within three months of the date of notification and, in any other case, not less than three months, as stated by the central

[120] ANUPAMA ROY, MAPPING CITIZENSHIP IN INDIA, 169, (Oxford University Press 2010)
[121] The Citizenship Act, 1955 Section 10(2)
[122] The Citizenship Act, 1955 Section 10(4)

government. The Central Government can, in special circumstances, extend the time period as well. The Central Government shall, once the request has been issued, make a referral to the Committee of Inquiry for its verdict. The Committee's order depriving a person of Indian citizenship must then be published in the Official Gazette.[123]

Some of the arguments for deprivation are ambiguous and even harsh. The sometimes low standard of identity support documentation from the civil registration systems and other administrative registries is one of the areas of concern. Such records also include slight errors or anomalies concerning the identification of individuals. In evaluating cases of suspected misrepresentation or fraud, these realities need to be taken into account. It also explained that if the person did not know or could not have known that the information given was untrue, deprivation cannot be justified.[124]

Section 10(b) renders it unforeseeable what actions would constitute disloyalty to the Constitution and may therefore be arbitrarily used. With regard to Section 10(d), imprisonment is also an unjust ground of deprivation in any country within five years of registration or naturalisation, as it does not differentiate between serious and less serious crimes, and thus appears only to further punish the person. Section 10(e) can also be used as a punitive mechanism beyond seven years for those living abroad, which may be a problem for a large population of many non-resident Indians (NRIs).[125]

Also the Central Government eventually decides on such deprivation under Section 10(3), based on whether it is "satisfied that it is not conducive to the public good." This is a highly subjective criterion and it is possible that this section will be used arbitrarily and discriminatorily by the government. Thus, while it appears that safeguards are given in the proceedings before deprivation occurs, the discretionary power of the central government to ignore the report of the Committee of Inquiry threatens the judicial character of the proceedings and is capable of generating statelessness.[126]

The provisions relating to the deprivation of Indian citizenship seem exhaustive, but neither the Citizenship Act nor the supplementary Citizenship Rules lay down any procedure or provision to ensure that such a person is not stateless about the deprivation

[123] G. SINGH. LAW OF FOREIGNERS, CITIZENSHIP & PASSPORTS IN INDIA. 226 (Universal Law Publisher Co Pvt Ltd 2011)
[124] Asha Bangar, *Statelessness in India*, INSTITUTE OF STATELESSNESS AND INCLUSION, (December 14, 2019, 1:00 PM) https://files.institutesi.org/WP2017_02.pdf
[125] *Id*
[126] *Id*

of his or her Indian nationality. The gap in Indian citizenship law poses a significant risk to the emergence of statelessness with respect to an person deprived of his / her nationality under this clause.

3.4 INDIAN JUDICIARY ON CITIZENSHIP

In the case of *Nagina Devi v. Union of India*,[127] it was held that a person must have domicile in India at the commencement of constitution. Where a person was born much after the commencement of constitution i.e., in 1958, the question of his/ her domicile in India at time of commencement of constitution does not arise.

The Supreme Court in the case of *Lal Babu Hussain v. Electoral Registration Officer*[128] stated that the question about the determination of citizenship even after the limited purpose of certain other law has to be done by authority in light of constitutional provisions and provisions of Citizenship Act of 1995.

Under the Indian Constitution there is only one domicile which is, the domicile of the country and there is no separate domicile for a state.[129]

In *Abdul Sattar Haji Ibrahim Patel v. State of Gujarat*,[130] the date of domicile of constitution was interpreted. When an accused under section 14 of the Foreigners Act, 1946 claims that he was domiciled in India and was residing in India when Constitution came into force, then the burden is upon him and he should be given a chance to prove it.

In the case of Government of *Andhra Pradesh v. Syed Mohammed*[131] and *Akbar v. Union of India*[132] the court clearly stated that the state government has no jurisdiction to determine question of Citizenship unless the function is delegated by the Central Government, under Article 258 of the Constitution.

[127] Nagina Devi v. Union of India, AIR 2010 Patna 117.
[128] Lal Babu Hussain v. Electoral Registration Officer, AIR 1995 SC 1189
[129] Pradeep Jain (Dr.) v. Union of India, AIR 1984 SC 1420
[130] Abdul Sattar Haji Ibrahim Patel v. State of Gujarat, AIR 1965 SC 810
[131] Government of Andhra Pradesh v. Syed Mohammed AIR 1962 SC 1778
[132] Akbar v. Union of India, AIR 1962 SC 70

In the controversial case of *Ramesh Singh vs. Sonia Gandhi and Ors*[133] it was held that "The Citizenship Act, 1955 is an Act to provide for the acquisition and determination of Indian citizenship. Acquisition of citizenship can be by birth (Section 3), by descent (Section 4), by registration (Section 5) and by naturalisation (Section 6). Clause (c) of sub-section (1) of Section 5, as amended by Act 6 of 2004, provides that a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration, may, subject to satisfying other provisions including procedural ones, be registered as a citizen of India by the prescribed authority of the Central Government. The Citizenship Act does not provide for cancellation of a certificate of registration issued under Section 5. Section 9 speak of termination of citizenship upon acquisition of the citizenship of another country which event entails cessation of citizenship of India. Sub-section (2) of Section 9 provides that if any question arises as to where, when and how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence as may be prescribed in this behalf. Section 10 of the Citizenship Act provides for deprivation of citizenship by an order of the Central Government passed under sub-Section (2) of Section 10 of the Citizenship Act."

3.5 AMENDMENTS TO CITIZENSHIP ACT

3.5.1 THE CITIZENSHIP (AMENDMENT) ACT, 1985

The Citizenship (Amendment) Act, 1985 transformed the system from a *jus soli* regime to a system largely based on *jus sanguinis*. Thus anyone born after the commencement of the Constitution on 26 January 1950 but before 1 July 1987 would be a citizen; however anyone born on or after 1 July 1987 would only be a citizen by birth if either parent is an Indian citizen.

This was in reaction to the hefty inflow of migrants and refugees that were coming into India and raising concerns of national interest, principally in the state of Assam. This made the Government to enact more severe provisions of citizenship laws by introducing the Citizenship (Amendment) Act, 1985. The Act also inserted Article 6A which created special provisions as per the Assam Accord. Anyone of Indian origin

[133] Ramesh Singh v. Sonia Gandhi & Ors., AIR 2016 UP 1254

entering Assam before 1 January 1966 from a specified territory and resided in India since were deemed Indian citizens.[134] On the other hand, those entering Assam on or after 1 January 1966 but before 25 March 1971 from the specified territory, were ordinarily resident in Assam and identified as a foreigners could register for citizenship.[135] The second category of persons would have the same rights as citizens except for voting rights.[136] Individuals who did not qualify for either of the two were considered illegal migrants and rendered stateless.[137]

3.5.2 THE CITIZENSHIP (AMENDMENT) ACT, 1992

The Act brought a positive change in relation to gender discrimination in India's citizenship law. Section 4 of the Act provided that a person born after 26 January 1955 but before the commencement of the Act is an Indian citizen by descent if the father is Indian at the time of birth. This provision was amended which provided that persons shall be Indian citizens if either of his/her parents is Indian. It further replaced all references made to "male persons" with "persons" thus bringing India in line with Article 9(2) of the Women's Convention which requires States to grant women equal rights regarding the nationality of their children.[138]

3.5.3 THE CITIZENSHIP (AMENDMENT) ACT, 2003

The Act originally mandated residency in India or service of a Government in India for twelve years for periods amounting in the aggregate of a minimum of nine years to be qualified for naturalisation; this was enhanced to fourteen years and eleven years respectively by the 2003 Act.[139]

The First Schedule was repealed.[140] The term 'citizen' in relation to a 'specified country' in the First Schedule was substituted by 'illegal migrant' which is defined as a foreigner

[134] Citizenship (Amendment) Act, 1985 S. 6A (2)
[135] Citizenship (Amendment) Act, 1985 S. 6A (3)
[136] Citizenship (Amendment) Act, 1985 S. 6A (4)
[137] See *supra* 82
[138] *Id*
[139] Citizenship (Amendment) Act, 2003 S. 18(c)
[140] Citizenship (Amendment) Act, 2003 S. 16

entering India without documents.[141] This poses a challenge for stateless persons in India to acquire nationality, as they often do not possess the necessary documents. Thus matters of legal status complicate eligibility as their very condition creates an obstacle to legal means to citizenship. Moreover, the amendment affected provisions to Section 5 that made 'illegal migrants' and their children unqualified for registration, i.e. the application for registration of minors under Section 5(1)(d) requires a copy of valid foreign passport, a copy of the valid residential permit but also proof that each parent of the minor is an Indian citizen.[142] These conditions bar stateless minors to attempt to naturalise as they usually do not possess such documents. Moreover, it does not consider circumstances where one parent is an Indian citizen and the other is not.[143] Along with this there is also the National Register of Citizens which is a register of Indian citizens whose creation is mandated by the 2003 amendment to the Citizenship Act, 1955

3.5.4 THE CITIZENSHIP (AMENDMENT) ACT, 2019

The Citizenship (Amendment) Act, 2019 poses a constitutional challenge as it provides for differential treatment of immigrants on the basis of their religion. CAA was brought about to provide a legal loophole against the classification of 'illegal immigrant' in the Act which made those classified under it ineligible to apply for Indian citizenship under Section 5 or Section 6 of the Act. Under the Act, "an illegal migrant is a foreigner who entered India (a) without the legally prescribed documents such as a valid passport, travel documents etc or (b) with the legally prescribed documents but overstayed beyond the permitted time period."[144]

According to The Citizenship (Amendment) Act 2019, the Government of India may grant citizenship to the minorities who are religiously persecuted in Pakistan, Afghanistan and Bangladesh. Whoever migrated to India on or before 2014 will be granted these rights. By the Citizenship (Amendment) Act 2019, a proviso is added in this definition of illegal migrants, by implication of which any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan,

[141] Citizenship (Amendment) Act, 2003 S. 2(i)
[142] Citizenship (Amendment) Act, 2003 S. 5
[143] See *supra* 82
[144] The Citizenship Act, 1955 s. 2(b)

Bangladesh or Pakistan who entered into India on or before 31 December 2014 and who has been exempted by the Central Government under Section 3 of the Passport (Entry Into India) Act 1920 or from the application of the provisions of the Foreigners Act 1946 or any rule made thereunder, shall not be treated as illegal migrant for this purpose.[145] Therefore, the persons of these six communities from these three countries shall not be treated illegal migrant only if they fulfil two criteria. Therefore, by virtue of this amendment, these persons shall not become automatically a citizen of India but first of all before coming out of the category of illegal migrant they have to prove that they entered into India before 31 December 2014 and they had to have to take permission from central Government.[146]

The standard procedure for foreigners to acquire their citizenship in India is by completing formalities and procedure under Section 4 and 5 of the Citizenship Act, 1955. But under these provisions, the foreigners will have to wait as long as 12 years to acquire citizenship through naturalization. The legislation applies to those who were "forced or compelled to seek shelter in India due to persecution on the ground of religion". It aims to protect such people from proceedings of illegal migration. They will be granted fast track Indian citizenship in six years.

However the Act has failed to include or provide a justification as to the non-inclusion of other neighbouring countries and certain other communities living in India, as immigrants since a long period of time. Even though it is claimed that the amendment intends to safeguard those who have been subjected to religious persecution, the Act has failed to include within the amended clause the criteria of religious persecution. The provisions of the Amendment Act does not at any point of time mention religious persecution to be the ground for obtaining citizenship in India, but the Statement of Objects and reasons provides this to be the rationale behind the Amendment.[147] Since Bangladesh, Pakistan and Afghanistan have a specific state religion, many non-Muslims are subject to religious persecution in their day-to-day life, often being unable to freely practice and profess their religion. Due to this, many instances of trans-border

[145] Citizenship (Amendment) Act, 2019 S. 2(1)(b)
[146] Dr. Abhishek Atrey, *Framework and Challenges to Citizenship (Amendment) Act and National Register of Citizens*, INDIAN LEGAL LIVE, (Feb 22 2019, 6:30pm), https://www.indialegallive.com/did-you-know-facts-about-news/perspective-news/framework-and-challenges-to-caa-and-nrc-81213
[147] The Citizenship (Amendment) Act, 2019, Statement of Objects and Reasons.

migration has taken wherein these people have sought shelter in India and have continued to stay in India, despite having invalid/ no travel documents. Therefore the amendment act intends to make such persons eligible for citizenship. At the outset, the Act intends to provide a safe haven but what it actually does is to create a distinction between two categories of illegal immigrants within the country itself and provide speedy citizenship to a particular group of people on the sole ground of religion while the other category is expelled or is left to led a life of statelessness

The CAA 2019 is a blatant violation of Assam Accord. If the act gives citizenship to illegal migrants it will negate section 6A of the Citizenship Act which was enacted to in accordance with Assam Accord whereby Assam won't accept people who comes to India after march 25th 1971 but this act gives citizenship to all illegal migrants who are not Muslims who came to Assam before December 2014. Thus by this amendment the non-muslims who have been left out of the list would be eligible to citizenship provided they are in India before 2014.

The Citizenship Amendment Act, 2019 also has introduced a new clause which is Section 7 (D) (da) relating to the cancellation of the OCI Card holder of their citizenship which states that "the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or provisions of any other law for time being in force as may be specified by the Central Government in the notification published in the Official Gazette".[148] The amendment has again brought an arbitrary section which gives the government an absolute power to cancel the OCI Card holder of his citizenship even by the slightest misconduct and this act doesn't properly define which laws it is speaking about. By this vague definition, it gives power to the government to cancel citizenship even if a person doesn't abide by the traffic laws in the country as this act has not specified what laws it speaks about. Arbitrariness in law would be biggest danger in the future, thus this section must define what the laws are or must revoke the above mentioned section.

Though the amendment is violating the Assam Accord and is presumed to be violating provisions of the Constitution it to an extend will solve the impending statelessness in

[148] Citizenship Amendment Act 2019 7(d) (a)

the aftermath of Assam NRC updation. If the Act had not involved religion for granting citizenship it would have been a great tool for reducing statelessness in India.

3.6 CONCLUSION

This chapter aimed to analyse India's nationality laws in light of the current international legal framework surrounding statelessness. Statelessness in India, much like the rest of the world, is caused by a variety of factors. The new socio-political trends have heavily had an influence on the restrictive citizenship laws. The possible avenues open to stateless persons to acquire citizenship would be through registration or naturalisation, however there are certain provisions in the Citizenship Act along with the Citizenship Rules creating obstacles for stateless persons to acquire citizenship. Also, there are no safeguards against statelessness arising from renunciation, termination or deprivation of nationality.

CHAPTER: 4

NATIONAL REGISTER OF CITIZENS, ASSAM

4.1 INTRODUCTION

The National Register of Citizens (NRC), compiled in Assam in 1951, is the official register containing the names of all Indian citizens who are residing in India and is based on the census of the same year. The NRC is now being updated in Assam to include the names of persons who can "prove" their Indian citizenship through the submission to the government a selected list of personal and family legacy documents which have pre-1971 validity. This process of updating the NRC is based on the provisions of the Citizenship Act, 1955 and the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. Even though the word 'National' is added, the updated NRC draft list is only for Assam.

For years Assam linguistic and religious minorities have lived under the threat of being characterised as "outsiders", "foreigners", "and illegal migrants." The 'outsider' problem in Assam is over a hundred-year-old and started when the British government started bringing in poor Bengali labourers to cut forests and start cultivation in Assam. The British themselves, who stoked the flames of discord and violence in Assam under their divide and rule scheme, exacerbated it. This led to mass movements against outsiders, wide spread violence and riots which culminated in parallel, often conflicting official processes to detect foreigners.[149]

NRC is unique to Assam and is the outcome of the Assam Accord signed in 1985 between Government of India and representatives of the Assam nationalist movement that had at its core the question of illegal migration in Assam. A Supreme Court of India order in 2014 kick-started the current NRC updation, asking for it to be completed in a time-bound manner. Preparation of the updated NRC, a humungous a task as it is, given it involves processing the papers of close to 33 million applicants is almost done and the final draft of NRC was published in July, 2019. Although those excluded from the

[149] PRIYAM GOWSAMI, THE HISTORY OF ASSAM FROM YANDABO TO PARTITION, 1-7 (Oriental Black Swan 2018)

list have been given a second chance to prove their nationality but if they cannot, they would be regarded stateless people as they may not have a country to move.[150]

NRC was seen as a document that will bring peace to Assam and once and for all end the question of who is an Indian and who is an outsider in Assam. And yet, the final NRC seems to have made everyone unhappy. Far from being "fair and inclusive" the process has led the people of Assam to trauma and impoverishment. This list took five long years to complete after the process started under Supreme Court monitoring in 2014, cost about Rs. 1220 crore and excluded-in the final list released on August 31, 2019 about 19 Lakh people. Before that, at different stages from the 3.2 crore who applied, first 1.2 crore (12 million) and thereafter 44 lakhs (4.4 million) were excluded. Thus this process resulted in human rights violations of unprecedented magnitude.[151]

4.2 HISTORY OF MIGRATION IN ASSAM

In order understand the concept of NRC in the present context one needs to understand historical conditions that lay its background. To understand citizenship in Assam one needs to understand its history of migration. Assam has been facing continuous and unabated migration for hundred years and migration has accelerated with the formation of Indian nation threatening to change the linguistic or religious composition of the receiving society. But it will be wrong to presume, says that foreigners' issue became a matter of considerable concern after independence. Foreigners were defined as those people who for their livelihood or to earn money migrate to Assam and settle temporarily and send remittances outside Assam and that foreigners' or immigration issue dates back to the colonial period.

The initial trends of migration started when the Burmese ceded Assam to the British on February 24, 1826 as per the Treaty of Yandabo, thus bringing to an end Ahom rule in Assam, which had begun sometime in the 13th century. The British annexed Assam and placed it as an administrative unit of the Bengal Province. The organised migration from Bengal to Assam was recorded at the beginning of the 20th century when a few

[150] Nilakshi Das, *Implication of NRC updation in Assam,* International Journal of Humanities & Social Science, Volume-V, Issue-II, October 2016, 28-37
[151] K V Thomas, *The Politics of NRC and its Pan-Indian Dimensions,* CENTRE FOR PUBLIC POLICY RESEARCH,(May 15 2020, 11:00 PM) https://www.cppr.in/wp-content/uploads/2019/12/The-Politics-of-NRC-and-its-Pan-Indian-Dimensions.pdf

migrants had gone beyond the Char land of Goalpara district. Soon, it gained momentum during the 1921–31 period when hordes of migrants from the Bengal Province entered Nagaon district and spread themselves throughout Lower and Upper Assam. Their cultural and linguistic similarities enabled them to easily merge with the indigenous population. The Census Report of 1931 highlighted this; "The invasion of the vast hordes of land-hungry Bengali migrants, mostly Muslims from the districts of East Bengal, and in particular Mymensingh, would destroy the whole structure of Assamese culture and civilization."[152]

Instead of taking steps to check the migration, the British government encouraged the process as the migrants were a source of cheap labour for the tea and oil industry. They introduced a 'line system' which introduced an imaginary line in the districts, beyond which the migrants were not allowed to settle. With the introduction of the 'line system', polarisation began setting in between the migrant and original inhabitants.[153]

In 1947, the division of the country and the establishment of East Pakistan increased the influx of refugees to Assam. Due to widespread violence and intimidation, large number of Bengali Hindus have either been forcefully pushed away or forced to leave the region. For the state alone, the rehabilitation of millions of such refugees had become an onerous mission. Immediately after independence, the Government of Assam asked the Nehru government to share the burden of refugees with other states, which was turned down. Furthermore, the "Nehru–Liaquat Ali Pact'' of 1952, which essentially provided for the safety and security of migrants/refugees and their properties in both the countries on reciprocal basis, had given more push to the influx of refugees from East Pakistan to Assam.[154]

A similar situation had developed during Bangladesh liberation struggles in 1970–71 when there was a steady exodus of migrants from East Pakistan in the wake of large scale atrocities by the Pakistan Army and Security forces against civilians supporting the liberation movement. They were accommodated mainly in Assam, West Bengal and

[152] *Id*
[153] *Id*
[154] SAGEETA BAROOH PISHAROTY, ASSAM THE ACCORD, THE DISCORD, 15-25, (Penguin Random House India, 2019)

Tripura by upholding the international norms and conventions on the status of refugees and asylum seekers.[155]

During normal times, too, migration from East Pakistan/Bangladesh to Assam continued unabated, much like the concept of 'lebensraum' justifying more physical space and new territory to supply food and raw materials to the overgrown population in Bangladesh. Similarly, socioeconomic and political factors led to the steady influx of Nepalis and Bhutias from Nepal and Bhutan to Assam for many decades. The monarchical form of governments in both the countries for centuries that failed to meet the aspirations of large segments of the population, coupled with poverty, unemployment, ethnic conflicts and violence, resulted in the continuous exodus of these sections to Assam. The porous nature of borders with these countries and liberal immigration rules accentuated the process. Moreover, the migrant Nepalis formed the bulwark of Assam's agrarian economy.[156]

4.2.1 ASSAM MOVEMENT

The unrestrained migration over years gave rise to an anti-foreigner agitation, popularly known as the Assam Agitation, between 1978 and 1985 which was led by an union of students called themselves as All Assam Students Union (AASU). In the entire history of Assam, the Assam agitation is the biggest mass movement led by a students' union.

In 1978, as part of the earlier 21 Points and 18 Points Charter of Demands, AASU stepped up its demand of expulsion of illegal foreigners. The agitation programmes included picketing, stayagraha, hunger strikes, Assam Bandh and fast unto death etc. After the Sibsagar conference of AASU in March, 1979, the newly elected central executive committee decided to further intensify the agitation programmes. The electoral roll revision and updating process were started by the government for Mangaldoi Parliamentary Constituency for a bye election necessitated due to death of the sitting member, triggered massive controversies in different corners and members of intelligentsia, media, as well as AASU demanded a thorough revision of the electoral rolls of the entire state. The Chief Election Commissioner of India informed the local authorities that a person whose name has been included in the Electoral Rolls should

[155] *Id*
[156] *Id*

be 'presumed' to be a citizen of India. This ignited the AASU agitation as they strongly objected to the directives, and demanded immediate sealing of Indo-Bangladesh boarders besides deletion of the foreigners.[157]

The three major agenda of Assam Movement were (a) the illegal immigration of foreign nationals to Assam from the neighbouring countries - Bangladesh and Nepal and their participation in the electoral process in Assam/India, (b) deportation of all foreigners living illegally in Assam and (c) protection of the distinct identity of the people of Assam in their traditional homeland from threat of foreign nationals.[158]

In 1983, a massacre took place in Nellie, Assam popularly referred as Nellie Massacre during a six-hour period in the morning of by Lalung tribe people which claimed the lives of 2,191 people from 14 villages. The ethnic clash that took place in Nellie was seen as a fallout of the decision to hold the controversial state elections in 1983 which was boycotted by the AASU in the midst of the Assam Movement. Nellie massacre had enormous impacts on Assam movement. The agitation was rushed to closure soon after Nellie massacre. Assam Accord was signed and Illegal Migrants (Determination by Tribunal) Act (IMDT) was passed in 1983.[159]

4.3 ILLEGAL MIGRATION DETERMINATION BY TRIBUNAL ACT, 1983

The Illegal Migrants (Determination by Tribunal) Act (IMDT) passed in 1983 and made applicable only in Assam to identify illegal migrants among the people of the state by constituting tribunals for the same.

Though the provisions of IMDT Act and the Rules made thereunder were made more stringent as compared to the provisions of Foreigners Act, 1946 or Foreigners (Tribunals) Order, 1964, in the matter of detection and deportation of illegal migrants, there were some practical problems in the implementation of the IMDT Act due to

[157] *Id* 75-85
[158] *Id*
[159] *Id* 150

which the Act has not become effective and the results are extremely poor which includes[160]:

i) The onus of proof as illegal migrants lies on the prosecution under IMDT Act which is opposed to the Foreigners Act, 1946 under which the onus is on the suspected foreigners.

ii) There is no provision in IMDT Act for compelling the suspect to furnish particulars required in Form No. I of IMDT Rules and a corresponding penal provision to deal with such suspect in case of their refusal to furnish information as required in Rule 5.

iii) There is no provision for compelling suspect witness to furnish information or statement to Police Officers making enquiries and as such taking recourse to action under Section 176 IPC is difficult in case of refusal.

iv) The Enquiry Officer is not empowered to search home/premises of the suspects nor can he compel the suspects to produce documents to give necessary information.

v) Prosecution witnesses do not appear before the Tribunal for want of necessary allowances.

vi) Once the Tribunals declares a person as an illegal migrant, he/she becomes untraceable either before the notice is served or during the grace period of 30 days.

vii) Notice/summons issued by the Tribunals cannot easily be served due to frequent changes of address by the illegal migrants in unknown destinations.

viii) The expulsion orders cannot be served as the illegal migrants, with frequent change of address, merge with the people of similar ethnic origin.

ix) It is provided in the Act that for filing complaint against a suspected person to determine as to whether he is an illegal migrant, two persons living within the same Police Station are required to file the complaint with filing of affidavit and an amount of Rs.10.00 which was originally Rs.25.00 is to be deposited with the application. This provision of the Act puts a severe restriction in filing any complaint against an illegal migrant.

[160]See Sarbananda Sonowal v. Union of India, AIR 2005 SC 2920, para 30

x) The Tribunals after observing a long drawn procedure declare a person as illegal migrant who is to be deported from India but such deportation becomes very difficult as the illegal migrants change their residence and shift to some other areas.

xi) There are instances of strong resistance to the Enquiry Officer conducting enquiries against the illegal migrants in Char areas and other locations where there is heavy concentration of immigrant population.

The Supreme Court in *Sarbananda Sonowal v. Union of India* struck down the Act terming it as unconstitutional and the same has been discussed below. The Court observed that by enacting the IMDT Act, which apparently failed to check irregular immigration, the Central Government failed in its duty to protect the citizens of Assam against external aggression and internal disturbance warranting that the said legislation be repealed for being in violation of Article 355. The IMDT Act and the tribunals constituted under it were meant to identify and deport illegal immigrants in Assam, but they failed miserably and the reasons for such failure has been described in the above mentioned case.

Thus according to the AASU the IMDT Act, which was passed to remove the illegal migrants became an instrument to legitimise them.

4.4 ASSAM ACCORD, 1985

The All Assam Students Union (AASU) and All Assam Gana Sangram Parishad (AAGSP) had spearheaded the six-year-long (1977–85) historic Assam Movement ended with the signing of the Assam Accord in 1985 between the Centre, the State and AASU, in the presence of the then Prime Minister Rajiv Gandhi.

Clause 5 of the Assam Accord dealt with foreigner's issue. According to the clause 1-1- 1966 shall be the base date and year for purpose of detection and deletion of foreigners. All persons who came to Assam prior to 1-1-1966, including those amongst them whose names appeared on the electoral rolls used in 1967 elections, shall be regularized.[161]Foreigners who came to Assam after 1-1-1966 (inclusive) upto 24th March, 1971 shall be detected in accordance with the provisions of the Foreigners Act,

[161] Assam Accord, 1985 Clause 5.2

1946 and the Foreigners (Tribunals) Order, 1939.[162] Names of foreigners so detected will be deleted from the electoral rolls in force. Such persons will be required to register themselves before the Registration Officers of the respective districts in accordance with the provisions of the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939.[163] For this purpose, Government of India will undertake suitable strengthening of the governmental machinery. On the expiry of the period of ten year following the date of detection, the names of all such persons which have been deleted from the electoral rolls shall be restored.[164]All persons who were expelled earlier, but have since re-entered illegally into Assam, shall be expelled.[165]Foreigners who came to Assam on or after March 25, 1971 shall continue to be detected, deleted and expelled in accordance with the law. Immediate and practical steps shall be taken to expel such foreigners.[166] The Government will give due consideration to certain difficulties express by the AASU/AAGSP regarding the implementation of the Illegal Migrants (Determination by Tribunals) Act, 1983.[167]

Clause 6 and 7 says about safeguards and economic development of the state of Assam. According to clause 6, constitutional, legislative and administrative safeguards, as may be appropriate, shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people.

According to Clause 9 the international border shall be made secure against future infiltration by erection of physical barriers like walls barbed wire fencing and other obstacles at appropriate places. It also states that patrolling by security forces on land and riverine routes all along the international border shall be adequately intensified and an adequate number of check posts shall be set up to prevent future infiltration. It also provided for effective to be adopted to prevent infiltrators crossing or attempting to cross the international border.

Clause 10 provides for legislations for prevention of encroachment of government lands and lands in tribal belts and blocks are strictly enforced and unauthorized encroachers

[162] Assam Accord, 1985 Clause 5.3
[163] Assam Accord, 1985 Clause 5.4
[164] Assam Accord, 1985 Clause 5.6,
[165] Assam Accord, 1985 Clause 5.7
[166] Assam Accord, 1985 Clause 5.8
[167] Assam Accord, 1985 Clause 5.9

evicted as laid down under such laws. Clause 11 provides for the strict enforcement of Clause 10. Clause 12 provides for the duly maintenance of Birth and Death Registers.

The analysis of the provision shows that the Assam Accord intended to insulate the state of Assam from further migration. The Accord sought to provide Assam a protection comparable to 6th Schedule states. The current process of NRC updation has its roots in Clause 5 of the Accord. Though the Accord was signed to resolve the violent Assam Movement, the lack of further action and the humongous delay in updating the NRC of 1951 tends to generate the current problem of mass statelessness.

4.5 LEGISLATION INVOLVED IN ASSAM NRC UPDATION

4.5.1 CITIZENSHIP AMENDMENT ACT, 1985

In pursuance of Assam Accord, the Citizenship Act, 1955 was amended by Act No. 65 of 1985 and Section 6A was inserted with the heading "Special Provisions as to Citizenship of Persons covered by the Assam Accord." It provides that the term "detected to be a foreigner" shall mean so detected under the Foreigners Act and the Foreigners (Tribunals) Order, 1964 framed thereunder. Under the said provision a person of Indian origin as defined under Section 6A (3) who entered into Assam prior to 1st January, 1966 and has been resident in Assam since then is deemed to be a citizen of India. However, if such a person entered into Assam between 1st January, 1966 and before 25th March, 1971 and has been detected to be a foreigner under the Foreigners Act then he is not entitled to be included in the electoral list for a period of 10 years from the date of detection. This amendment of the Citizenship Act makes it clear that the question of determination or detection of a foreigner is to be governed by the provisions of the existing Central legislation, viz. the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964.[168]

4.5.2 FOREIGNERS ACT, 1946 AND FOREIGNERS TRIBUNALS ORDER, 1964

[168]Sarbananda Sonowal v. Union of India, AIR 2005 SC 2920, para 3

The Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 are seen as the pillars for both the detection and deportation of immigrants. The first enactment governing the foreigners was the Foreigners Act, 1864, which provided for the expulsion of foreigners and their apprehension, detention pending removal and for a ban on their entry into India after removal. The situation created by the Second World War led to promulgation of Foreigners Ordinance in 1939 which was replaced by Foreigners Act, 1940. The legislature then enacted the Foreigners Act, 1946 which repealed the 1940 Act. Section 2(a) of this Act defines a "foreigner" and it means a person who is not a citizen of India.[169]

Section 3(1) lays down that the Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure therefrom or their presence or continued presence therein.[170] It also confers power to make wide ranging orders concerning a foreigner which have been numerated in clauses (a) to (g), which include that a foreigner shall not remain in India or in any prescribed area therein, or if he has been required by an order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India or remain in such area as may be prescribed and shall comply with such condition as may be specified or shall be arrested or detained or confined.

Section 4 confers power for directing a foreigner to be detained or confined in such place and manner as the Central Government by order determine. Section 4(3) directs that no person shall knowingly assist an internee to escape from custody or harbour an escaped internee or to give any assistance to such a foreigner.[171]

Section 5 places restriction upon a foreigner to change his name while in India. Section 6 casts an obligation on master of any vessel and pilot of any aircraft landing or embarking at any place in India to give particulars with respect to any passenger or members of any crew who are foreigners.[172] Section 7 casts a similar obligation on hotel keepers in respect of foreigners accommodated there.[173] Section 8 deals with the issue

[169] *Id*
[170] Foreigners Act, 1946 Section 3(1)
[171] Foreigners Act, 1946 Section 4
[172] Foreigners Act, 1946 Section 5
[173] Foreigners Act, 1946 Section 7

of determination of the nationality of two categories of foreigners (i) those having more than one nationality, (ii) those of uncertain nationality, by the central government.[174] Section 12 confers power upon any authority who has been conferred power to make or give any direction under the Act to further delegate to any subordinate authority to exercise such power on its behalf.

Section 9 is an important provision which deals with burden of proof whereby the burden lies upon the person to prove that he is not a foreigner. According to the provision if any question arises as to whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description, then the onus of proving that he doesn't belong to such categories as the case may be shall lie upon such person.[175]

Section 14 has been amended in 2004 and now maximum punishment under the said section is five years and also fine. Section 14A and 14B, which have been added by the aforesaid amendment, provide for punishment with imprisonment for a term which shall not be less than two years but may extend to eight years. Section 14C provides for some punishment for abetment of offences under Section 14A or 14B.

This Act confers wide ranging powers to deal with all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner for prohibiting, regulating or restricting their or his entry into India or their presence or continued presence including his arrest, detention and confinement. The most important provision is Section 9 which casts the burden of proving that a person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall lie upon such person. Therefore, where an order made under the Foreigners Act is challenged and a question arises whether the person against whom the order has been made is a foreigner or not, the burden of proving that he is not a foreigner is upon such a person.[176]

In the case of *Ghaus Mohammed v. Union of India* [177] a government order was served on petitioner to leave India within three days as he was found to be a Pakistani national. He challenged the order before the High Court which set aside the order by observing that there must be prima facie material on the basis of which the authority can proceed to pass an order under Section 3(2)(c) of the Foreigners Act, 1946. However in an

[174] Foreigners Act, 1946 Section 8
[175] Foreigners Act, 1946 Section 9
[176] Sarbananda Sonowal v. Union of India, AIR 2005 SC 2920
[177] Union of India v. Ghaus Mohammed, MANU/SC/0072/1961

appeal, the Constitution Bench reversed the judgment of the High Court holding that onus of showing that he is not a foreigner was upon the person himself.[178]

The onus of proof on the proceedee as envisaged under section 9 of the Foreigners Act, is what is called the reverse onus clause. But analysing some statutory provisions dealing with the reverse burden of proof, like section 113B of the Evidence Act, 1872, section 139 of the Negotiable Instruments Act, 1881, reveals that the burden shifts to the accused only when certain indications and conditions are found or on some happenings, leading to the presumption that the concerned offence has been committed. And in none of these provisions, the state is not remitted from the liability of establishing certain basic facts and presumption is raised only when certain foundational facts are established by the prosecution.[179]

However the Foreigners Act neither envisages any presumption in law nor any irrefutable presumption. In such a position, in order to determine the question "as to whether a person is a foreigner or not" there must be some sources indicating that the person is a foreigner or there must be some facts on record which leads to a presumption in a particular case that the person is a foreigner. On analysing Section 9, the fundamental issue that stands out is how and when the question as to whether a person is a foreigner or not should become a matter of adjudication before a judicial forum. Thus when a question as to whether a person is a foreigner or not arise, there must exist some materials constituting alienage or facts which make the presumption of alienage so credible that any prudent man would believe these to exist. The presumption cannot be the suspicion of some one's mind alone.[180]

In *Sarbananda Sonowal v. Union of India*[181], the Supreme Court made a distinction between the "satisfaction of having prima facie case", and "establishment of prima facie case" and held former not to be contrary to section 9, thereby indicating that the satisfaction of having prima facie case has not been done away. Likewise, in the case of *Moslem Mandal v. State of Assam*[182] the Guwahati High Court has not dispensed with the requirement of any application of mind to have some amount of satisfaction

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[178] *Id*
[179] Mrinmoy Dutta, *Section 9 Foreigners Act, 1946 and the Dilemmas of Citizenship in Assam*, SABRAG INDIA (May 20, 2020 12:00PM) https://www.sabrangindia.in/article/section-9-foreigners-act-1946-and-dilemmas-citizenship-assam,
[180] *Id*.
[181] Sarbananda Sonowal v. Union of India, MANU/SC/5514/2006
[182]Moslem Mandal v. State of Assam, 2013(1) GLT 809

that the person to be tried is a foreigner and that such allegation/charge/ground to proceed can be without any materials to suggest alienage. However, in none of the above cases the leanings of law on the retention of domicile of origin and whether nationality/citizenship of a person can be a matter of presumption were considered.[183]

However, in many of the proceedings before the Foreigner Tribunals, it may be observed that those who "cannot prove" their citizenship to the satisfaction of the tribunals are being unilaterally declared as Bangladeshis or of Bangladeshi origin having come after 1.1.1966 or 25.3.1971, without any evidence that the person is/was a citizen or domicile of the specified territory and that the person has changed his domicile of origin or any surrounding facts showing any linkage of these persons to the specified territory on the basis of which such a presumption of alienage can be drawn. Thus, the basic questions of fact as to whether an accused person has come from Bangladesh and whether after 1966 or 1971 are unilaterally decided based on surmises and conjectures, rather than proof.[184]

Such findings can only be inherently faulty geared not to any legitimate or lawful process but caught up in the political rhetoric of "getting at infiltrators." The tribunals also have been known to discard and disbelieve documents, even on the slightest of discrepancies. The oral evidence of the accused persons are being also discarded and disbelieved on ground of the slightest of discrepancies in the narration of decade old events.[185]

In *Sirajul Hoque v. State of Assam*[186] the apex court has set aside a judgment of a Tribunal in which the accused was declared to be foreigner because of some discrepancies in the spelling of the name of great grandfather of the accused in some documents.[187]

The Central Government has made the Foreigners (Tribunals) Order, 1964 in exercise of powers conferred by Section 3 of the Foreigners Act. Clause 2(1) of the Order provides that the Central Government may by order refer the question as to whether a person is or is not a foreigner within the meaning of Foreigners Act, 1946, to a Tribunal

[183] *Supra* note 179
[184] *Id*
[185] *Id*
[186] Sirajul Hoque v. State of Assam, Criminal Appeal No 267/2019
[187] *Id*.

to be constituted for the purpose, for its opinion. Clause 3(1) provides that the Tribunal shall serve on the person to whom the question relates, a copy of the main grounds on which he is alleged to be a foreigner and give him a reasonable opportunity of making a representation and producing evidence in support of his case and after considering such evidence as may be produced and after hearing such persons as may deserve to be heard, the Tribunal shall submit its opinion to the officer or authority specified in this behalf in the order of reference. Clause 3 provides that the Tribunal shall, before giving its opinion on the question referred to it, give the person in respect of whom the opinion is sought, a reasonable opportunity to represent his case. Clause 4 provides that the Tribunal shall have the powers of a Civil Court while trying a suit under the Code of Civil Procedure in respect of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document and issuing commissions for the examination of any witness.

4.5.3 IMMIGRANTS (EXPULSION FROM ASSAM) ACT, 1950

According to the Statement of Objects and Reasons of the Act, the Act seeks to confer necessary powers on the Central Government to deal with the situation of immigration of a very large number of East Bengal residents into Assam which has disturbed the economy of and gives rise to a serious law and order problem.

Section 2 of this Act lays down that if the Central Government is of opinion that any person or class of persons, having been ordinarily resident in any place outside India, who come into Assam and that the stay of such person or class of persons in Assam is detrimental to the interest of the general public of India or of any section thereof or of any Scheduled Tribe in Assam, the Central Government may by order direct such person or class of persons to remove himself or themselves from India or Assam and give such further direction in regard to his or their removal from India.[188] Proviso of this Section says that it will not apply to any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been displaced from his place of residence in such area and who has been subsequently residing in Assam.

[188] Immigrants (Expulsion From Assam) Act, 1950 Section 2

Section 3 confers power on Central Government to delegate the powers and duties conferred upon it by Section 2 to any officers subordinate to the Central Government. Realising the serious law and order problem created by migration from East Pakistan and the serious situation arising therefrom the said Act was enacted and conferred very wide powers upon the Central Government to direct removal of any person outside India.

Thus the Act was the first legislation devised by the government exclusively for Assam to control migration to the State.

4.5.4 THE PASSPORT (ENTRY INTO INDIA) ACT, 1920.

Section 3(1) of the Act conferred power upon the Central Government to make rules requiring that persons entering India shall be in possession of passports and for all matters ancillary or incidental to that purpose. Section 3(2) of the Act says that without prejudice to the generality of the powers conferred by sub-section (1), the rules may prohibit the entry into India or any part thereof of any person who has not in his possession a passport issued to him and also prescribe the authorities by whom passports must have been issued or renewed and the conditions which they must comply for the purposes of the Act. Section 3(3) lays down that the rules made under this Section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

Section 4 says that any officer of police not below the rank of Sub-Inspector and any officer of the customs department empowered by a general or special order of the Central Government in this behalf may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under Section 3. Section 5 provides that the Central Government may, by general or special order, direct the removal of any person from India who, in contravention of any rule made under Section 3 prohibiting entry into India without passport, has entered therein, and thereupon any officer of the Government shall have all reasonable powers necessary to enforce such direction.

By virtue of the power conferred by this Act, all such nationals of Bangladesh, who have entered India without a passport, could be arrested without a warrant by a police officer not below the rank of Sub-Inspector. The Central Government also had the power to direct removal of any such person who had entered India in contravention of a rule made under Section 3 prohibiting entry into India without a passport.

4.5.5 CITIZENSHIP (REGISTRATION OF CITIZENS AND ISSUE OF NATIONAL IDENTITY CARDS) RULES, 2003

Section 4A of the Rules deals with National Register of Citizens for the State of Assam. According to Clause 1 of the Section 4A nothing in rule 4 shall apply to the State of Assam. According to clause 2 the Central Government shall carry out throughout the State of Assam for preparation of the National Register of Indian Citizens in the State of Assam by inviting applications from all the residents, for collection of specified particulars relating to each family and individual, residing in a local area in the State including the citizenship status based on the National Register of Citizens 1951 and the electoral rolls prior to the year 1971. The rule also replaced the house-to-house enumeration applicable in the rest of India with invitation and receipt of applications from all citizens of Assam.

4.6 ASSAM NRC UPDATION PROCESS

4.6.1 HISTORY

During the Census enumeration of 1951, a register of citizens was readied exclusively in Assam in 1951 on the instructions of Ministry of Home Affairs. The data collected for the Census was used to make the register. The NRC, 1951 has the name, age, sex, profession, religion, father's or husband's name, nationality, etc. of the residents of the towns and villages of state and also their addresses in a serialised fashion mentioning the names of the people living in them. While those district wise registers were stocked in offices of the commissioners and sub-divisional officers, they were shifted to district police stations in the early 1960s when the Prevention of Infiltration Program was introduced by the Central government. The need for an exclusive citizens' register was felt in Assam after the Centre implemented Immigrants (Expulsion from Assam) Act,

1950. The function of the register was to have a record of residents of the State from which people had been flowing in and out of the border since the partition in 1947.[189]

On 8 April 1950, India and Pakistan signed the Nehru-Liaquat Pact which gave the right to displaced people from both the countries to return and reclaim their property. By 31 December, 1950, as many as 1, 64,360 people returned to Assam. However by then, the NRC 1951 and the Census Report of 1952 were complete and many of those families failed to enter their names in the NRC even if they were residents prior to partition.[190]

To carry out the process, on August 30, 2007, a cabinet Sub-Committee was created and placed under the direction of Dr. Bthumidhar Barman, the then Revenue Minister, in order to examine the modalities for updating NRC. The Sub-Committee's recommendations were accepted by the state Government and transmitted to the Central Government in June 2008. On the basis of these recommendations, in June 2010, the Registrar General of India notified to carry out a pilot project in two circles; namely Barpeta, in the Barpeta district, and Chaygaon, in the Kamrup district. However, the complexity of the modalities set out in the Sub-Committee's recommendations prompted a protest march that was called by All Assam Minority Student Union on July 21, 2010. During the protest march, the police opened fire killing 4 persons. The pilot project was subsequently stopped.[191]

Again, on July 21, 2011, a new cabinet Sub-Committee was created and placed under the direction of Prithvi Maji, the then Revenue Minister, in order to set out simplified modalities to update the NRC upon consultation with all stakeholders. On July 5, 2013, these simplified modalities were approved and included in a new recommendation, which was forwarded to the central Government. The Central Government assigned the Registrar General of India the task of updating the NRC, 1951. On November 22, 2014, the Union of India has prescribed the modalities for carrying out the NRC updation in the state of Assam.[192]

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[189] SAGEETA BAROOH PISHAROTY, ASSAM THE ACCORD, THE DISCORD, 49-51, (Penguin Random House India, 2019)
[190] *Id*
[191] Abdul Batin Khandakar, *Updation Of The NRC: A Brief Analysis: Report of Public Hearing on NRC and CAB*, HRLN, (May 21, 2020, 10:00 PM) https://hrln.org/wp-content/uploads/2019/06/Report-of-Public-Hearing-on-NRC-and-CAB.pdf
[192] *Id*

4.6.2 NRC DOCUMENTS

Two sets of documents were mentioned where from applicants could submit proof along with the forms to claim their or their forefathers' residency in Assam and thereby Indian Citizenship.

The list was divided into two parts. Part A included 15 basic documents. These documents should have been issued before midnight of March 24, 1971, bearing the name of the person concerned, or his/her ancestor, in order to prove residence in Assam before March 24, 1971. Every applicant must supply at least one from the list. They were:

1. 1951 NRC
2. Electoral Roll(s) up to 1971
3. Land & Tenancy Records
4. Citizenship Certificate
5. Permanent Residential Certificate
6. Refugee Registration Certificate
7. Passport
8. LIC
9. Any Government issued License/Certificate
10. Government Service/Employment Certificate
11. Bank/Post Office Accounts
12. Birth Certificate
13. Board/University Educational Certificate
14. Court Records/Processes.

If any of these documents belonged to his/her ancestors, then he/she would need to provide a link document to be picked from List B. The list includes:

1. Birth Certificate
2. Land Document
3. Board/University Certificate
4. Band/LIC/Post Office records
5. Circle Officer/GP Secretary in case of married women
6. Voters' Lists
7. Ration Card

8. Any other legally acceptable document

Further, two other documents shall be accepted, if they are accompanied by one of the documents listed above. These are: (1) Circle Officers/GP Secretary Certificate, in respect of married women who have migrated after marriage and (2) Ration Card, issued up to midnight of March 24, 1971.

4.6.3 THE PROCESS

In *Assam Sanmilita Mahasangha v.Union of India,*[193] Supreme Court has issued an order directing all those concerned to complete the NRC updation within a fixed timeframe as per approved modalities. In the same order, the Chief Justice was requested to constitute a constitutional bench to take up some matters pertaining to these cases. The constitutional Bench of Hon'ble Supreme Court has started hearing in the matters relating to the constitutional validity of section 6A, of the Citizenship Act, 1955, rule 4A of the Citizenship Regulation 2003 etc. regarding updation/preparation of the NRC process.

Monitored by the Supreme Court, the updating process started in late 2014, inviting applications for the NRC. As per the operating procedure, after setting up an establishment for the preparation/updation of the NRC, the following tasks have been completed: (A) Publication of Documents; (B) Receipt of Applications; (C) Verification;(D) Publication of the NRC; (E) Claims and Objections.[194]

Publication of Documents

The NRC authority should have published documents like the NRC 1951 and the voters' lists up to 1971. These documents however where published only in the digitalized form and partially and are not available in all the places throughout the state uniformly. Moreover, the voters' lists other than 1965/66 and 1970/71, starting from 1952 and up to 1971, have not yet been published by the NRC authority.[195]

[193]Assam Sanmilita Mahasangha v.Union of India, MANU/SC/1173/2014

[194] Abdul Batin Khandakar, *Updation Of The NRC: A Brief Analysis: Report of Public Hearing on NRC and CAB*, HRLN, (May 21, 2020, 10:00 PM) https://hrln.org/wp-content/uploads/2019/06/Report-of-Public-Hearing-on-NRC-and-CAB.pdf

[195] *Id*

As the documents are published in digitalized form, the poor and illiterates have mistaken the identity of their ancestors while collecting their documents from the NRC Sava Kendra (NSK). The authority also has failed to publish the documents in hard copies to ascertain the identity of the legacy holders[196]

Receipt of Applications

After house to house distribution of the prescribed application form by the authority, an overwhelming response had been shown by the people of the state. About 68 lakhs families comprising 3.29 crores applicants have applied for inclusion of their name in the NRC. Only a small number of people failed to apply.

Verification

Two types of verifications have been carried out by the NRC authority; namely official verification and field verification. Official verification of the documents submitted by the applicants has been carried out at the source. It is understood, however, that response/cooperation from other states for the purpose of the official verification of records was not up to the mark.[197]

Publication of the Complete Draft of the NRC

On July 30, 2018, the complete draft of the NRC has been published by the State Coordinator, National Register of Citizens, Assam. A total number of 32.9 million of applicants have applied for registration in NRC. Out of these, 32.9 million applicants, 28.9 million applicants have been included in the final draft of NRC, keeping 4.07 million applicants out of the final draft. Out of these 4.07 million applicants who have been excluded, applications of about 3.8 million have been rejected and 0.248 million applications have been put on hold. Those 0.248 million persons whose cases are still pending in the Foreigners Tribunals have thus been put on hold, together with their descendants.[198]

Claims and Objections

[196] *Id*
[197] *Id*
[198] *Id*

On December 31, 2018, the submission of claims and objections has been closed. About 3.62 million dropouts have filed their claims within the stipulated period and about 0.20 million objections have been filed against the NRC draft included household's ARN.[199]

Publication of the Final List of the NRC

The final list was published in July, 2019 where 1.9 million people were excluded.

4.7 ASSAM NRC AND INDIAN JUDICIARY

In the process of updating Assam NRC, the role played by Supreme Court is crucial. Apart from numerous orders since 2015, there are three important cases the Supreme Court decided and which determined the contours of the discourse on the NRC. These cases are *Sarbananda Sonowal v. Union of India*[200], *Sarbananda Sonowal v. Union of India*[201]and *Assam Sanmilita Mahasangha v. Union of India.*[202]

4.7.1 SARBANANDA SONOWAL (I) V. UNION OF INDIA

In this case, a three judge bench comprising Justices R.C Lahoti, G.P Mathur and P.K Balasubramanyan declared as unconstitutional the Illegal Migrants (Determination by Tribunals) Act, 1983 and its corresponding rules, which also dealt with illegal immigration in Assam.

In this case the Court held that the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 as ultra vires the Constitution of India and are accordingly struck down. The Court declared that the Illegal Migrants (Determination by Tribunals) Rules, 1984 were also ultra vires and were struck down. As a result, the Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease to function. The Court restored the application of the Passport (Entry into India) Act, 1920, the Foreigners Act, 1946, the Immigrants (Expulsion from Assam) Act, 1950 and the Passport Act, 1967 to the State of Assam. All cases pending before the Tribunals under the Illegal Migrants (Determination by

[199] *Id*
[200] Sarbananda Sonowal v. Union of India, MANU/SC/0406/2005
[201] Sarbananda Sonowal v. Union of India, MANU/SC/5514/2006
[202] Assam Sanmilita Mahasangha v. Union of India, MANU/SC/1173/2014

Tribunals) Act, 1983 was transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and had to be decided in the manner provided in the Foreigners Act, the Rules made thereunder and the procedure prescribed under the Foreigners (Tribunals) Order, 1964.[203]

The Court observed that in view of the finding that the competent authority and the Screening Committee had no authority or jurisdiction to reject any proceedings initiated against any alleged illegal migrant, the orders of rejection passed by such authorities are declared to be void. The Court also observed that it will be open to the authorities of the Central Government or State Government to initiate fresh proceedings under the Foreigners Act against all such persons whose cases were not referred to the Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever and the appeals pending before the Appellate Tribunals shall be deemed to have abated.[204]

4.7.2 SARBANANDA SONOWAL (II) V. UNION OF INDIA

In this case the Supreme Court bench comprising of Justices S.B Sinha and P.K Balasubramanyan struck down the Foreigners (Tribunals) Amendment Order, 2006 as unreasonable. The order required the Foreigner Tribunal to first consider whether there were sufficient grounds for proceeding against a person suspected of being an illegal immigrant and only on the Tribunal being satisfied that the basic facts were prima facie established could a notice be issued to the person concerned. This was not an essential in Foreigners (Tribunals) Order, 1964, which the 2006 order sought to amend.[205]

The Supreme Court held that there was a lack of will in ensuring that illegal immigrants were sent out of the country. It found the order discriminatory and violative of article 14 of the Constitution. The Centre submitted in this case that if it earlier had an option to refer a matter to the tribunal, the 2006 amendment made it mandatory to refer it to the tribunal without making any enquiry whatsoever. The Foreigners Tribunal being a quasi-judicial authority would be in better position to judge whether there was a prima

[203] *Supra* note 200
[204] *Id*
[205] *Id*

facie case against a suspected foreigner to warrant issue of notice. The Centre claimed that Article 21 of the Constitution was applicable to a person who had already set foot in India, and therefore, he or she would be entitled to claim compliance of the principles of natural justice.[206]

However the Supreme Court not only rejected the idea of making such a claim but reiterated its view that uncontrolled immigration posed a threat to the integrity of the nation. The Court reasoned that all the facts required to prove once citizenship would be necessarily within the personal knowledge of the person concerned and not with the authorities of the State.

4.7.3 ASSAM SANMILITA MAHASANGHA V. UNION OF INDIA

In this case the Supreme Court bench comprising of Justices Ranjan Gogoi and Rohinton Nariman ordered the authorities to complete the NRC process within a stipulated time frame. In this case the petitioners argued that Article 14 continues to be violated as Section 6A (3) o (5) of the Citizenship Act, 1955 are not time bound but are ongoing. The petitioners also claimed violation of Article 21 and 29 of the Assamese people. The Court asked the CJI to constitute a Constitutional Bench for answering the questions listed below as most of them are substantial questions as to the interpretation of the Constitution which have to be decided by a minimum of 5 Judges under Article 145(3).

(i) Whether Articles 10 and 11 of the Constitution of India permit the enactment of Section 6A of the Citizenship Act in as much as Section 6A, in prescribing a cut-off date different from the cut-off date prescribed in Article 6, can do so without a "variation" of Article 6 itself; regard, in particular, being had to the phraseology of Article 4 (2) read with Article 368 (1)?

(ii) Whether Section 6A violates Articles 325 and 326 of the Constitution of India in that it has diluted the political rights of the citizens of the State of Assam;

(iii) What is the scope of the fundamental right contained in Article 29(1)? Is the fundamental right absolute in its terms? In particular, what is the meaning of the

[206] V. Venkatesan, *The NRC case: The Supreme Court's role*, THE FRONTLINE, (May 24, 2020, 10:00 PM) https://frontline.thehindu.com/cover-story/article29498707.ece

expression “culture” and the expression “conserve”? Whether Section 6A violates Article 29(1)?

(iv)Whether Section 6A violates Article 355? What is the true interpretation of Article 355 of the Constitution? Would an influx of illegal migrants into a State of India constitute “external aggression” and/or “internal disturbance”? Does the expression “State” occurring in this Article refer only to a territorial region or does it also include the people living in the State, which would include their culture and identity?

(v) Whether Section 6A violates Article 14 in that, it singles out Assam from other border States (which comprise a distinct class) and discriminates against it. Also whether there is no rational basis for having a separate cut-off date for regularizing illegal migrants who enter Assam as opposed to the rest of the country

(vi) Whether Section 6A violates Article 21 in that the lives and personal liberty of the citizens of Assam have been affected adversely by the massive influx of illegal migrants from Bangladesh.

(vii) Whether delay is a factor that can be taken into account in moulding relief under a petition filed under Article 32 of the Constitution?

(viii) Whether, after a large number of migrants from East Pakistan have enjoyed rights as Citizens of India for over 40 years, any relief can be given in the petitions filed in the present cases?

(ix) Whether section 6A violates the basic premise of the Constitution and the Citizenship Act in that it permits Citizens who have allegedly not lost their Citizenship of East Pakistan to become deemed Citizens of India, thereby conferring dual Citizenship to such persons?

(x) Whether section 6A violates the fundamental basis of section 5 (1) proviso and section 5 (2) of the Citizenship Act (as it stood in 1985) in that it permits a class of migrants to become deemed Citizens of India without any reciprocity from Bangladesh and without taking the oath of allegiance to the Indian Constitution?

(xi) Whether the Immigrants (Expulsion from Assam) Act, 1950 being a special enactment qua immigrants into Assam, alone can apply to migrants from East

Pakistan/Bangladesh to the exclusion of the general Foreigners Act and the Foreigners (Tribunals) Order, 1964 made thereunder?

(xii) Whether Section 6A violates the Rule of Law in that it gives way to political expediency and not to Government according to law?

(xiii) Whether Section 6A violates fundamental rights in that no mechanism is provided to determine which persons are ordinarily resident in Assam since the dates of their entry into Assam, thus granting deemed citizenship to such persons arbitrarily?

The Court ordered the Union of India and the State of Assam to ensure that effective steps are taken to prevent illegal access to the country from Bangladesh; to detect foreigners belonging to the stream of 1.1.1966 to 24.3.1971 so as to give effect to the provisions of Section 6(3) & (4) of the Citizenship Act and to detect and deport all illegal migrants who have come to the State of Assam after 25.3.1971. The Court ordered that the entire updated NRC is to be published by the end of January, 2016.[207]

The Court directed the Union of India to enter into necessary discussions with the Government of Bangladesh to streamline the procedure of deportation. The Court also asked the Gauhati High Court to expedite and to finalise the process of selection of the Chairperson and Members of the Foreigners Tribunals.[208]

In all these cases the Supreme Court repeatedly stressed on deportations which suggested not only an ignorance of basic international law principles of non-refoulement and against statelessness but also the doctrine of separation of powers. The Supreme Court's role should have been one of a neutral arbiter to check whether the government is exercising its discretion to deport a person in consonance with the principles of customary international law. Therefore when the Court itself berates the government for its failure to deport people, the affected persons have no further legal remedy of challenging an illegal deportation by the government.[209]

4.8 PROBLEMS OF NRC

[207] Assam Sanmilita Mahasangha V. Union Of India, MANU/SC/1173/2014, para 48
[208] *Id*, para 47
[209] *Supra* note 206

The NRC updation process contains a lot of errors which includes procedural errors– spelling mistakes and name mismatches, digitisation errors, combined with poor capability of NRC authority to plan, manage, and take corrective actions in the course of its administering the process. Poor systems and processes, and poor staff training and sensitisation, resulted in significant harassment and eventually loss of applicants. Administrative and technological issues also marred the process. The impact of this on the common man is worsened by the lack of coordination between different bodies involved with citizenship determination in Assam particularly the NRC Seva Kendras, administrators, Border police, Foreigners' Tribunals and the judiciary. Also there came an issue of gender as many women and children are particularly have their names excluded from lists.[210]

4.8.1 LACK AND POOR STATE OF RECORDS

The approach for NRC updating relies heavily on documentary data, both legacy and relationship claims. This will assume the availability and easy access to records for all groups of persons in order to be fair to all applicants. It also assumes effective and accurate record keeping by public agencies. Nevertheless neither is true. There are poorly produced and maintained records, particularly property, welfare schemes, births and deaths, school enrolment and graduation, as well as electoral rolls and election IDs.

Records are often not integrated, so there is a substantial possibility of inconsistency among records of the same individual names, age, and other information that might not match.[211] Those who are informed and diligent are making efforts to fix these errors, especially now that computerised data sets are improving record keeping. However the poor and the illiterate are less capable of alleviating this danger. It is also not easy to reach and obtain proof of public records of property, births and deaths etc., with bureaucratic red tape coming in the way, and when is corruption widespread. This is especially true in case of poorer sections, and for communities suspected as foreigners.

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[210] Ashraful Husain, *NRC final draft analysis (Part-2): Why were 4 million people excluded*?. SABRANG INDIA (April 14, 2020, .05:30 PM) https://sabrangindia.in/article/nrc-final-draft-analysis-part-2-why-were-4-million-people-excluded

[211] Anand Patel, *Fact Check: The mystery behind 40-lakh omissions in Assam's NRC,* INDIA TODAY, (April 14, 2020, 10:00 PM) https://www.indiatoday.in/fact-check/story/fact-check-the-mystery-behind-40-lakh-omissions-in-assam-s-nrc-1303941-2018-08-03

The requirements of legacy and relationship evidence of the NRC modality have made a bad situation so difficult, particularly for the poor and weak.[212]

4.8.2 PROCEDURAL DIFFICULTIES

NRC relied on legacy data code which is based on digitisation of legacy data records, and their generation of unique codes. Large number of applicants could not find their legacy data in NRC database, even though they had copies of eligible. Most such cases found their applications rejected. Apart from 1965-66 and 1970-71 electoral rolls, none have been made public, and those relying on these lists have been unable to get their status verified. There were also cases where entire districts had no digitized legacy data, also eventually resulting in their rejection. There were various instances of legacy data code being mixed up, persons with similar names or plain spelling mistakes, due to errors by data entry operators. These too resulted in discrepancy with original documents at verification stage, and leading to rejection of the applications. There were also issues with Family Tree Verification, with reports of errors in data entry and updation, resulted in further mismatch and rejections.[213]

4.8.3 PROBLEMS IN VERIFICATION

The verification of the authenticity of the statements and documents supplied was carried out by reviewing the databases established by the NRC of all state public records. Applications in which documents belonged to another state were exchanged for confirmation with the respective authorities. Where records were not available or checks (for example of the family tree) could not be definitively carried out, physical verifications were also carried out and oral evidence including witnesses was taken. The NRC teams meeting claimants, reviewing documents, and taking witness statements, among others, were involved in these physical verifications.[214] Complaints

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[212] Citizens Against Hate, *Making Foreigner*: *Report On NRC Updation In Assam And The Risk Of Mass Statelessness*, CITIZENS AGAINST HATE (April 14, 2020, 10:00 PM) http://citizensagainsthate.org/wp-content/uploads/2019/06/Making-Foreigner.pdf

[213] *Id*

[214] Brigadier Sushil Kumar Sharma & Dr. Mridusmita Baruah, *National Register of Citizen: Genesis and Way Forward*, VIVEKANANDA INTERNATIONAL FOUNDATION, https://www.vifindia.org/sites/default/files/national-register-of-citizen-genesis-and-way-forward.pdf

regarding these are abundant ranging from notices for attending verification hearings never issued, to getting them late, and in the case of family tree verification, sometimes whole clusters of families using the same legacy code are summoned at short notices to distant locations, and the absence of one or more extended family members contributes to rejections of applications from the entire community. These verifications have also been made compulsory for testing the authenticity of some documents considered to be weak.[215]

4.8.4 LACK OF PROPERLY TRAINED PERSONNEL

The inadequate ability of the NRC team was behind all of this bad NRC process work. NRC staff are drawn from other state government departments on deputation, many with dual responsibility and with only a little training provided and also overburdened and ill inspired. Data Entry Operators employed to digitise records and provide applicants with legacy data were inappropriate, often poorly trained, and did not provide any proper instruction, resulting in major errors in the supply of Legacy Data Codes (LDCs) on their part. These errors by NRC workers occurred at the verification stage and ended up rejecting applications. And District Magistrate Investigation Teams (DMIT), the lynchpin of the physical verification process of the NRC, were made up of junior level officials including college lecturers, officials of the department of food and civil supplies and district coordinators of departments of education and many with low ability and dedication and high on discrimination. While being new to evidence and enquiry, only a token training was given on technicalities, and none on how to act with sensitivity and consideration for applicants on a matter of life and death value. Accordingly, the high rate of rejections of link documents, especially among specific groups, was a foregone conclusion.[216]

4.8.5 FAULTY REJECTIONS

A large portion of rejections involved problems with List A data (lack of legacy data, mismatch of legacy data, and mismatch of family tree, among others) as well as List B

[215] *Id*
[216] *Supra* note 212

papers, often rejected by DMITs in field verifications. This included birth certificates, many of which were issued by bodies not allowed to issue them; many issued after a one-year grace period; others were issued by outside-state authorities, but whose validity could not be verified by those states in the event of such certificates. School certificates, including those issued by public schools, were regarded as weak proof and were refused in bulk by DMITs. Rejections were often routinely made, targeting family heads, so the remainder of the family was automatically deemed ineligible.[217]

The mass rejections of Gram Panchayat – GP (village Council) certificates, provided as proof of identity demonstrated how deep-seated bias at implementation level overlapped that in making of rules and procedures, creating a perfect case of institutional discrimination with serious consequences for the applicants. Taken together with birth and school certificates, these instances of arbitrariness and discrimination show up the gendered dynamics to NRC process including how women and children have been particularly vulnerable to having their names excluded from the NRC. GP certificates were among the set of 8 admissible List B documents. These were mostly provided by married women having migrated to new places of residence on account of marriage, but with no birth certificates or other proof of identity.[218] As many might have got married before 18 years, their names too did not appear with their parents on electoral rolls.

Of the total 32.9 million applications, 4.7 million were made using GP certificates. A special verification – involving two-step process of rigorous checking of the certificates - was put in place for 2.25 million applicants identified by NRC authority as eligible 'non-original' inhabitants. This was meant to mean mostly Bengali-speaking Muslims and Hindus, and Nepali-speaking people. Married women who were 'original inhabitants' and used GP certificates numbering 1.74 million in all were not required to go through this physical check. These included Assamese-speaking applicants and Bodo and other tribal groups. Their certificates were accepted automatically. The rigour in verification demanded of 'non-original inhabitants' has resulted in NRC authorities

[217] *Id*

[218] Sageeta Pisharothy, *Married before 18, didn't attend school': NRC may put many women at risk,* Business Standard, (April 14, 2020, 10:00 PM) https://www.business-standard.com/article/current-affairs/married-before-18-didn-t-attend-school-nrc-may-put-many-women-at-risk-118073000091_1.html

exercising their discretion to question GP certificates on the lightest of grounds, ending up in large-scale rejection of the applications.[219]

The draft NRC has also kept "on hold" 248,077 applications, on account of their 'D voter' or 'descendants of D voters' status. Directions by the NRC authority to Border Police to refer to the Foreigner's Tribunal relatives of persons declared as foreigners, without the need for prior inquiry and investigation, may have had a hand in triggering large exclusion. References are made to the tribunals by the Border Police, tasked with identifying suspected foreigners as well as by the Election Commission of India, who in an intensive revision of electoral rolls in 1997, identified 'D' or doubtful voters on the rolls. These references are required to be made after due inquiry. Draft NRC has recorded the status of relatives of declared foreigners and 'D' or doubtful voters as 'pending' until their citizenship has been determined by the FT. Whether these 'on hold' cases will find closure in the ongoing claims and objections process and, if cleared, be eligible for inclusion in the final NRC is not clear, given cases in FTs can proceed for prolonged durations. Most of these are women. According to guidelines issued by the NRC office with regards to processing applications of descendent of D-voters, if one of the parents was a D voter, but descendent were born before 2004, the latter's case for inclusion in NRC would be processed normally, and not kept on hold. If both parents were D-voters, decedents would need to be born before 1987 for their cases to be processed as others.[220]

4.9 STATUS OF EXCLUDED

Those who do not find their names on the final list will be allowed, first in the Foreigner Tribunals and then in the higher courts, to prove their citizenship. In August 2019, the government declared that individuals will get 120 days to appeal. On top of the current 100, up to 200 more foreign tribunals are planned to be set up. Mass statelessness is a potential scenario, with those removed being treated as immigrants and those declared to be held in detention camps as such. Sections 2 and 3(2)(e) of the Foreigners Act, 1946 and Paragraph 11(2) of the Foreigners Order, 1948, under which the Government

[219] *Id*
[220] Citizens Against Hate, Making Foreigner: Report On NRC Updation In Assam And The Risk Of Mass Statelessness, CITIZENS AGAINST HATE (April 14, 2020, 10:00 PM) http://citizensagainsthate.org/wp-content/uploads/2019/06/Making-Foreigner.pdf

of India allowed the Assam Government to create such detention centres, provide the legal basis for such detention centres . Another possibility is a scenario in which the proclaimed alien is stripped of all their rights-to vote in elections and engage in the democratic process of formal employment welfare schemes and own land and property, rendering them living entities without any rights.[221]

4.10 CONCLUSION

Assam has had a tumultuous history partly founded on the tensions between pan-Indianism and Assamese sub-nationalism. The Assam Agitation that erupted with such force in 1979, was the political expression of the tension. The sentiments of the Assam Movement agitators was framed as a push back against Indian hegemony, with a strong subtext directed at 'foreigners', a shorthand for Bengali-speaking communities in the state accused of being illegal migrants from Bangladesh. Assam agitation continued with great vehemence until 1985 when the Assam Accord was signed between the Centre and the leaders of the movement, providing in return, many concessions to Assam, economic, cultural as well as political. Updating the 1951 NRC was one of those.

Nearly 32 years after the Assam Accord was signed, the final draft of NRC has come out in which total of 31.1 million people were included in the NRC leaving out 1.9 million people. There was a mixed reaction by the various stakeholders and some has demanded for a sample re-verification to ascertain the credibility of the complete draft NRC, citing flaws in the design of the process and possible misuse of documents by illegal immigrants. The questions are also being raised about the change of legacy by submitting additional documents at the 'claims and objections' stage. The excluded persons need to be given opportunities to earn a livelihood for survival, the dignity of existence and opportunities for their children's future career.

The biggest challenge will remain as regards the future of the excluded persons. The excluded persons are deemed as foreign nationals and liable for appropriate action for expulsion. However Bangladesh is unlikely to accept these people quoting that this is

[221] Brigadier Sushil Kumar Sharma & Dr. Mridusmita Baruah, *National Register of Citizen: Genesis and Way Forward*, VIVEKANANDA INTERNATIONAL FOUNDATION, https://www.vifindia.org/sites/default/files/national-register-of-citizen-genesis-and-way-forward.pdf

India’s internal problem. Then it can lead to mass statelessness and India has to follow international human rights requirements. With deportation being off the table, India has to find methods for avoiding mass disfranchisement and thus avoiding a potential human rights crisis.

CHAPTER: 5

STATELESSNESS AND ASSAM NRC

5.1 INTRODUCTION

When most of the world is overwhelmed and transfixed by U.S. migrant detention camps, another terrible human rights and humanitarian disaster is simmering and about to attain its pinnacle in Assam on July 31, 2019. A huge legal process is undertaken-updating the "National Register of Citizens"- which poses a threat of dispossessing over 2 million individuals, making them stateless. The essential question about the legal status of individuals who would be excluded from the final version arises with the publication of the National Register of Citizens (NRC) in Assam. As a result of the process, sanctioned by Supreme Court of India, an estimated 2 million persons could become stateless.

Citizenship and statelessness are inextricably linked twins. Division between the citizen and the stateless is of critical importance in national space production. The NRC's final draft list will result in families being divided, imprisoned and even chased out to Bangladesh — a country that many have never set foot in. Human rights organizations are worried that the list could trigger a chain of events comparable to the Rohingya crisis in Myanmar happened in 2017 when some 750,000 Muslim Rohingya minority members were harassed, stripped of their Burmese citizenship and forced into exile to Bangladesh.[222] In the Indian legal system, the Indian Constitution and the Citizenship Act guard the parameters regarding citizenship.

The Citizenship Act is supplemented by the Citizenship Rules which are the rules of procedure. The Citizenship Act allows individuals to attain Indian citizenship by 'registration' unless one is a 'illegal migrant,' thus disqualifying them from this particular process. The Citizenship Act comprises two parts relating to citizenship termination and deprivation but does not include any mechanism to avoid statelessness.[223] With the

[222] Billy Perrigo, *4 Million Indian Citizens Could Be Made Stateless Tomorrow*, TIME, (Oct.01, 2020, 12:00 AM) https://time.com/5665262/india-national-register-of-citizens-statelessassam/.
[223] Regina Menachery Paulose, *A New Dawn? Statelessness and Assam*, 7(1) GRONINGEN JOURNAL OF INTERNATIONAL LAW, Open Issue.

lack of protection for stateless people in the legislations relating to citizenship, it is not surprising that the government would promote a policy option of statelessness. The Universal Declaration of Human Rights, the most important human rights instrument which has become part of the customary international law provides for right to nationality to 'everyone' under Article 15 which imposes an obligation on the nation-states to ensure that no person is reduced to stateless.[224] The Convention also provides a safeguard for stateless persons provided for in Article 2, which states that no distinction can be made between persons on the basis of their national origin. This is an important provision for the purposes of the Convention which entrusts the State with providing basic and minimum human rights facilities to stateless persons.[225]

This can be contrasted with the prevailing realities in Assam. Statelessness creates gross insecurity, because stateless people are not entitled to privileges that act as a security shield against either the state or other private individuals, which inevitably leads them to live in a permanent state of legal and constitutional vacuum. Denied of the employment, education and health-care benefits, these people are deprived of even the most basic human rights protection.[226] The procedural shield that is available to a stateless person is under Article 13 of the ICCPR, it prescribes a due process with basic human right to be followed while expelling an alien also in accordance with the principles of natural justice.[227]

The NRC furthermore raises genuine worries with respect to India's commitments under global human rights laws. While India is not party to the two key instruments on statelessness (i) the 1954 UN Convention Identifying with the Status of Stateless People and (ii) the 1961 Convention on the Reduction of Statelessness, it has certain commitments under other human rights instruments. For example, the all-inclusive UDHR makes an obligation on states to keep away from activities that result in statelessness and requires that a request denying a man of his/her citizenship must follow a method lined up with fair treatment. This guideline is in actuality reflected in

[224] Universal Declaration of Human Rights, 1948, Article 15
[225] Universal Declaration of Human Rights, 1948, Article 2
[226] Anushka Sharma, *Contextualizing Statelessness in the Indian Legal Framework: Illegal Immigration in Assam*, 8 CHRIST UNIVERSITY LAW JOURNAL. 25, 40, (2019).
[227] International Covenant on Civil and Political Rights, 1966, Article 13

India's own Citizenship Act of 1955, which entitles a person for a due request before such hardship.[228]

5.2 INSTANCES OF STATELESSNESS IN INDIA

5.2.1 CHAKMAS OF ARUNACHAL PRADHESH

The Chakmas had entered India primarily in two phases, prior to 1971, and after Bangladesh's independence. In Bangladesh, the community mainly resided in the Chittagong Hill Tracts (CHT). While most of the CHT's inhabitants are either Buddhist or Hindu, the region became a part of Pakistan with India's partition in 1947. The CHT's Chakmas and other non-Muslim tribal groups have faced enormous opressions which has been well-documented at the hands of the various Islamic Governments since this time. In 1962, the Kaptai dam project, a Karnaphuli River hydroelectric initiative in East Pakistan, witnessed 40 per cent of the Chittagong Hill Tracts flooded and 100,000 people were forcefully evacuated, majority of them from the Chakma group.[229]

About 35,000 of those Chakmas were given valid migration certificates and settled in what was then the North-East Frontier Agency (NEFA), currently the State of Arunachal Pradesh. Such migration certificates suggested legal entry into India, and the government's willingness to recognize the Chakmas as future residents, similar to migration from Pakistan after partition.[230] In 1972, Indian Prime Minister Indira Gandhi and Bangaldesh Premier Sheik Mujibur Rahman signed the Indo-Bangladeshi Treaty of Friendship, Cooperation and Peace popularly known as the Indira-Mujib Agreement had categorically stated the Indian Government should consider applications for citizenship brought by Chakmas as lawful who had come before 25 March 1971 as lawful.[231]

The Chakmas have built villages, developed the land they were granted, and established strong ties with the region in the more than thirty five years since their resettlement. They have also been incorporated into the state's social structure. They voted in

[228] Rajan Anand & Ananya Dubey, *National Register of Citizens*, Vol l4. Issue 5, JOURNAL OF LEGAL STUDIES AND RESEARCH 280, 286, (2018)
[229] Charlotte-Anne Malischewski, *Where the Exception is the Norm: The Production of Statelessness in India*. MAHANIRBHAN CALCUTTA RESEARCH GROUP, http://www.mcrg.ac.in/PP60.pdf
[230] Id.
[231] Id

elections to the State and paid state taxes on their land. Many of these Chakmas, now numbering about 65,000 people, were born in India and do not know any other home. Given all these facts they are denied Indian citizenship, thus living as stateless persons in Arunachal Pradesh, in addition, these Chakmas face human rights abuses and imminent threats to life and property from the State Government for some time and even from private institutions such as the Arunachal Pradesh Students Union (AAPSU).[232]

The Chakmas Committee for Citizenship Rights filed a complaint with the National Human Rights Commission on 15 October 1994 alleging persecution. On 22 November 1994, the Indian Ministry of Home Affairs issued a note to the NHRC affirming its intention to grant Chakmas citizenship, and the case was considered by the Supreme Court of India in 1995. In a judgment on January 9, 1996, the court ruled that all applications for citizenship made by Chakmas had to be forwarded to the Indian government and that, meanwhile, none had to be removed. The court rejected the submission by the State of Arunachal Pradesh that it reserved the right to pass on only certain requests, which satisfied the state government upon enquiry. Rather, the court reaffirmed that granting citizenship is the central government's absolute right, and that the "state government" has no authority in the matter.[233]

5.2.2 BANGLADESHI CHITMAHALS

The people living in India's Bangladeshi Chitmahals, which are enclaves along the border between India and Bangladesh, are a prime example of the complex effects of State succession and resulting statelessness. In 1947, as a consequence of India's partition, there was a corridor of 200 enclaves between Bangladesh and India – small pieces of one state within the other. Some of these enclaves are simply counter-enclaves to make matters more complicated, which means they are enclaves within enclaves. The largest Indian enclave, for example, is Shalbari, which covers four Bangladeshi enclaves.[234]

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[232] *Id*
[233] *Id*
[234] *Id*

When passport and visa controls were implemented in India in 1952, the government did not stipulate for those residing in these enclaves. Consequently, in order to file birth or marriage documents or obtain a passport or visa for someone living in an Indian enclave, the person has to trespass illegally on Bangladeshi territory. Nonetheless, if the person succeeds in crossing into Bangladesh without drawing suspicion from those in the border outpost, then the person must also be admitted into India. They may be considered illegal migrants and detained or prevented from entering if they don't carry identification proof, which is likely if the very purpose of their trip is to obtain some.

Even though the individual can cross over to India, the consulates are rarely at the border. It's common for people to have to travel hundreds of kilometres to reach them, instead. Along the Indo-Bangladeshi border, as many as 200,000 people live in Indian enclaves. Many remain stateless and unable to securely access the means by which to regularize their status.[235] But this is also an indication of statelessness because of a lack of records.

In 2014, the Land Boundary Agreement between India and Bangladesh provided for the exchange of enclaves between nations, allowing people to choose the citizenship of the country where they live or transfer to their parent.

5.2.3 SRILANKAN TAMILS

Many Tamil Indians have migrated to Sri Lanka since colonial times to work on tea plantations, and eventually settle there. However, the government of Sri Lanka did not welcome the Tamil immigrants, believing that their Indian ancestry negated their declared identity with Sri Lanka. The government of Sri Lanka passed the Ceylon Citizenship Act, 1948 and the Indian and Pakistani Resident Citizenship Act, 1949, accordingly. These Acts effectively deprived a large population of Sri Lankan Indian Tamil residents of their rights and franchises to citizenship.[236]

The 'Indo-Ceylon Pact' was reached between the then Prime Ministers of India and Ceylon, Lal Bahadur Shastri and Sirimavo Bandaranaike to better the conditions of

[235] *Id*
[236] DEEPIKA PRAKASH AND MAANVI TIKU, INDIA AND THE CHALLENGE OF STATELESSNESS: A REVIEW OF THE LEGAL FRAMEWORK RELATING TO NATIONALITY, 78, (National Law University Delhi, 2014).

those people who now found themselves with neither Indian nor Sri Lankan nationality. In fact, the agreement was an exchange of letters between the two prime ministers in 1964 and addressed Indian Tamils status in Sri Lanka. According to the agreement, between the two countries an estimated population of 975,000 was stateless. India agreed to give citizenship and accept 525,000 of these people for repatriation while Sri Lanka agreed to grant 300,000 people citizenship. It was also agreed that this process would be spread over a period of fifteen years and that both citizenship and repatriation processes would keep pace with each other. The two governments agreed that further negotiation regarding the status of the remaining 150,000 population was required. This remaining population was finally covered by a 1974 bilateral agreement, whereby it was agreed that Sri Lanka would give 75,000 of the 150,000 people citizenship, and India would accept the remaining 75,000 for repatriation.[237]

The terms of the pact sought to grant nationality on both sides, but there was a lack of clarification as to the criteria required for granting such persons Indian or Sri Lankan citizenship. In 1968 the Indian government started comprehensive campaigns to promote the process of repatriation of 'Tamil Indians' to India in fulfilment of the terms of the pact. After subsequent negotiations between India and Sri Lanka in 1974, the question of the nationality of those stateless Tamils that were not addressed in the 1964 pact was resolved. In 1982, however, India abrogated the two pacts of 1964 and 1974, 90,000 Indian Tamils already granted Indian citizenship were still physically in Sri Lanka during this time, and another 86,000 were in the process of applying for Indian citizenship. India refused to entertain any further applications for Indian citizenship after the cancelation of the pacts, while Sri Lanka believed that the 1964 pact would continue to be in force until all cases of citizenship and permanent residence concerning Indian Tamils covered by the pact were settled. India granted nationality to 600,000 people after further talks in 1985, while Sri Lanka agreed to recognize the remaining 469,000 as citizens.[238]

The non-implementation of this agreement, after demonstrating an affirmative approach to reducing statelessness through the Indo-Ceylon Pact, has meant that the Indian government has yet to address the legal status of those people living in India without a nationality. The Indian Ministry of Home Affairs in its 2012-2013 Annual

[237] *Id*
[238] *Id*

Report mentions that 'Sri Lankan citizens or those who have not applied for Indian citizenship and have not been granted Sri Lankan citizenship either' as 'refugees.' In the present Indian legal framework, it is uncertain whether such persons should be understood as 'refugees' or 'stateless'. The number of these stateless persons does not appear to be reported in Indian government official records. Also missing is the pact's follow-up mechanism that aims to prevent the potential stateless position of future generations of present-day stateless persons.[239]

5.3 INDIAN JUDICIARY AND STATELESSNESS

Statelessness not only severely endangers the very identity of a person, but it also reduces a person's chances of redressing his / her grievances to almost zero. India has been, and still is, a host to a range of people whose nationality is at issue. While the legislature may not be adequately prepared to address the varied nationality and statelessness issues, the Indian judiciary has taken initiative in this field. When asked to apply nationality law to the cases brought before it, it has witnessed the undercurrents between the acquisition of citizenship and its denial.[240]

5.3.1 CITIZENSHIP AND DOMICILE

In 1958, the Punjab and Haryana High Court considered the issue of granting citizenship on the basis of domicile. In *Mangal Sain v. Shanno Devi*[241], the court deliberated on the appellant 's citizenship and the main issue before the Court, in the appeal, was whether the appellant was an Indian citizen at the time he was registered as a voter, or when his nomination papers were accepted, or even at the time he was elected. The Court had to consider, in order to determine its citizenship, whether the

[239] *Id*
[240] DEEPIKA PRAKASH AND MAANVI TIKU, INDIA AND THE CHALLENGE OF STATELESSNESS: A REVIEW OF THE LEGAL FRAMEWORK RELATING TO NATIONALITY, 94, (National Law University Delhi, 2014).
[241] Mangal Sain v. Shanno Devi, AIR 1959 P H 175.

appellant had his domicile in India after moving from his hometown which had become part of Pakistan after independence.[242]

The Appellant pleaded citizenship under Article 5(c) of the Indian Constitution. The appellant was born in 1927 in a village which, after Indian independence, became a part of Pakistan. In 1944, the appellant was employed in the office of military accounts in Jullundur, Punjab. Throughout this time his place of residence began changing and continued even when the constitution was adopted. The Court concluded from the facts of the case that, after August 15, 1947, the appellant who had moved to Jullundur from his home village had 'no other intention than to make the Dominion of India his place of residence.'[243]

Furthermore, the Court held that the word 'migrate' used in Article 6 of the Constitution should not be interpreted to debar a person who may not be in India at the time of detection of his/her citizenship from being regarded as intending to settle here. The liberal interpretation applied by this Court to the relevant provisions saved the appellant from being made stateless as he had not been declared to have any other nationality if stripped of Indian citizenship.[244]

In *re Aga Begum*[245] the petitioner was a child of a man of Iranian citizenship and mother of Indian citizenship born in India in 1921. She never left India since birth, but was called upon to be registered as a foreign national by the competent authority. She had been asked to obtain an Iranian passport before she obtained Indian nationality. The petitioner argued that she was an Indian citizen, so there was no need to register her as a foreigner.[246]

The respondent told the petitioner that she would not be compelled to obtain an Iranian passport but that she would be permitted to remain in India on the basis of her residential permit without declaring her a stateless citizen, subject to good behaviour. When the petitioner failed to re-register as a foreigner, she was accused of breaching the Foreigners Act. The question which came before the Court's consideration was whether

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[242] DEEPIKA PRAKASH AND MAANVI TIKU, INDIA AND THE CHALLENGE OF STATELESSNESS: A REVIEW OF THE LEGAL FRAMEWORK RELATING TO NATIONALITY, 87, (National Law University Delhi, 2014).
[243] *Id*
[244] *Id*
[245] re Aga Begum (1971) 1 MLJ 18
[246] *Id*

the petitioner was an Indian citizen under Article 5 of the Indian Constitution. As she was born in India and had never left India, the Court tried to find the petitioner's 'domicile.'[247]

The Court held that the petitioner had chosen India as her permanent home, and that she has fulfilled the legal essentials required to have domicile. Furthermore, the court concluded that the petitioner was an Indian citizen at the beginning of the Constitution of India, and had therefore been wrongly charged under the Foreigners Act.[248]

5.3.2 DENIAL OF APPLICATION FOR CITIZENSHIP

In *NHRC v. State of Arunachal Pradesh and Another*[249] the National Human Rights Commission (NHRC) filed in the Supreme Court a Public Interest Litigation (PIL) to enforce the fundamental rights of the Chakma tribe who faced persecution by local tribes and also received threatening notices from local people asking them to leave the state. The State government of Arunachal Pradesh found them 'foreigners' and had no right, except in Article 21 of the Constitution, to defense of any rights. The state government has also claimed the right to ask the Chakmas at any time to move or quit the state. According to the Union of India, it had considered the question of conferring Indian citizenship on the Chakmas, but by not forwarding the applications submitted by Chakmas along with their citizenship award papers, as prescribed by Rule 9 of the Citizenship Rules of 1956, the State government officers prevented the Union of India from considering the issue of Chakmas citizenship.[250]

The Supreme Court held that Chakmas' notices of withdrawal from the state amounted to a violation of Article 21 of the Indian Constitution, and that no one can be deprived of their right to life and freedom except in accordance with the legal procedure. It was the State government's duty to protect the Chakmas from such threats to their lives and freedom, as well as to bring those who had threatened to violate these rights to book.[251]

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[247] *Id*
[248] *Id*
[249] NHRC v. State of Arunachal Pradesh and Another, AIR 1994 SC 1461
[250] *Supra* note 90, at 85
[251] *Id*

It was further held that they were denied their constitutional and legislative right to be eligible for citizenship by not forwarding the Chakmas' applications for citizenship to the department concerned within the government of the Union.[252]

The Supreme Court's ruling in that case was a milestone in the Chakmas' life in India. The text of this judgment is the basis of many of the Court's significant future judgments relating directly to citizenship, and indirectly to statelessness. The Court affirmed that the failure of officials of the state government to forward applications by the Chakmas to the Central Government led to denial of being recognized as Indian citizenship. As a result of this case, the Supreme Court was able to determine the right of the Chakmas to receive an opportunity to apply for the granting of Indian citizenship without which they would be declared stateless.[253]

5.3.3 NATIONALITY TO SURROGATE CHILDREN

In the case of *Jan Balaz v. Anand Municipality and Ors*[254], the petitioner was a German citizen residing in the United Kingdom. He and his wife came to India for surrogacy procedure. In the process the petitioner was the biological father and the couple had two surrogate boys, born in India, to a surrogate mother who was also an Indian citizen.[255]

The passport authorities refuse to provide passports for the children when the surrogate parents have applied for the same. This was a unique situation where the Indian judiciary had no precedent. The key question before the court was whether a child born to a surrogate mother in India, who was herself an Indian national, and a biological father, who was a foreign national, should by birth be given Indian citizenship.[256]

The Court offered a liberal interpretation in relation to the nationality of the children born from surrogate parents, so that they were not left without any state. As in the case of surrogate children of foreigners, where the Citizenship Act does not address the issue of nationality, the Court justified its decision to grant nationality on the grounds that

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[252] *Id*
[253] *Id*
[254] Jan Balaz v. Anand Municipality and Ors. AIR 2010 Guj 21.
[255] *Id*
[256] *Id*

the children were born to a surrogate mother who was an Indian national. The court ruled that the fact that the father was a foreigner did not take away the children's right to Indian citizenship and hold Indian passports under Section 3 of the 1967 Passports Act.[257]

5.3.4 DECLARING A PERSON AS STATELESS

In *Sheikh Abdul Aziz v. NCT of Delhi,*[258] the Delhi High Court addressed question of nationality of the petitioner, Sheikh Abdul Aziz, who was a 'foreigner' in India. He had been detained in Kashmir since 2005, where he was stopped illegal entry into the country. Since completing a one year prison term in Delhi, he was moved to Tihar Central Jail to begin his deportation proceedings by the Ministry of External Affairs. Nevertheless, the steps for deportation have not been carried out for many years. The High Court of Delhi directed the central government in April 2014 to decide the nationality of the man in a two-week period. The Foreign Ministry declared the claimant a 'stateless citizen' in a first of its kind. The applicant might then contact the passport office for identification records to help him secure a long-term visa later.[259]

The above cases have shown a rather positive pattern in perceptions of cases in which the Indian higher judicial system is clearly stateless. Nonetheless, the fact that the courts have not described or clarified statelessness anywhere is the point to note in all the cases mentioned above. The 1954 and 1961 Conventions also have not been used as reference points, nor have any guidelines for subsequent cases in which the lack of nationality may lead to statelessness been included in their principles. However, by following principles of equality and justice, the courts have worked to stop statelessness for the petitioners.

The above mentioned cases provide hope that through judicial experience and action the principles and rights enunciated in the two UN Conventions on Statelessness will become part of the Indian legal system soon, as they have already attained the position of customary international law.[260]

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[257] *Id*

[258] Sheikh Abdul Aziz v. NCT of Delhi, W.P.(CRL) 1426/2013.

[259] A. Mathur,. *Stateless man" to get visa, ID to stay in India*. INDIAN EXPRESS (29 May 2020). http://indianexpress.com/article/cities/delhi/stateless-man-to-get-visaid-to-stay-in-india/

[260] Supra note 90, at 85

5.4 CONSTITUTIONALITY OF ASSAM NRC

5.4.1 TEST OF MANIFEST ARBITRARINESS

In the *Maneka Gandhi v. Union of India*[261] a landmark judgment in the history of Indian judiciary the Supreme Court made it clear that State activities can be challenged under Article 14 of the Constitution. Whether a particular act of the executive is arbitrary has been determined by the Court in *EP Royappa v. The State of Tamil Nadu*[262] where the doctrine of arbitrariness has been outlined, following an explanation of a fundamental conflict between equality and arbitrariness. In numerous instances since the decision in *Royappa* the Court has struck down laws and invalidated the effects of arbitrary state action and that it has focused on the facts and circumstances in each instance for the application of the doctrine of arbitrariness.

While the doctrine of arbitrariness has an extensive historical background, recent cases have seen a significant improvement in the test, with Justice Nariman's usage of the test of "manifest arbitrariness" making a significant step in the development of Article 14.

It was in *Shayara Bano v. Union of India*[263], the test was first used to detect triple talaq practice wherein the Court held that manifest arbitrariness was a means to prohibit constitutional disorders wherever they arose under Article 14. After a thorough review of the previous situation regarding the use of the arbitrariness doctrine, Judge Nariman outlined the contours of the doctrine, declaring that "…what is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14".[264]

In *Navtej Singh Johar v. Union of India*[265] and *Joseph Shine v. Union of India*[266], further developments were made to the test of manifest arbitrariness, where the Court ruled that law could be struck down on the basis that it was manifestly arbitrary. With Article 14 framed as the panacea for all constitutional infirmities, the decisions extended the

[261]Maneka Gandhi v. Union of India, AIR. 1978 SC 597.
[262]EP Royappa v. The State of Tamil Nadu, AIR. 1974 SC 555
[263]Shayara Bano v. Union of India, (2017) 9 SCC 1.
[264] Id.
[265] Navtej Singh Johar v. Union of India, WRIT PETITION(CRIMINAL) NO.76OF 2016.
[266] Joseph Shine v. Union of India, WRIT PETITION(CRIMINAL) NO.194 OF 2017

scope of the doctrine and affirmed its relevance to the acts of the executive as well as the legislature.

With the legal situation on the doctrine now resolved, it is argued that the NRC violates Article 14 of the Constitution on the grounds that the exercise is manifestly arbitrary. This is because there were no reasons provided by the government for the need for such an exercise, particularly in the absence of a historical background requiring its planning, as was the case in Assam.

5.4.2 A GRAVE THREAT TO RIGHT TO LIFE

Of the many auroral rights that the Supreme Court has read into the right to life, maybe nothing is more important than the right to live with human dignity. As the Court famously claimed in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*[267]," the right to life laid down in Article 21 cannot be reduced to the mere animal existence, which implies more than just basic physical survival." In *Olga Tellis v. Bombay Municipal Corporation*[268], the scope of the right to live with dignity was expanded to include the right to livelihood within its scope, with the Court acknowledging that "the easiest way to deprive a person of his right to life will be to deprive him of his means of livelihood to the point of removal." The definition of the right to life and personal liberty must be delineated, as this constitutional obligation is challenged by the spectre of the NRC.

It was made painfully clear by the NRC that the life and survival of an individual relied on him being able to prove his citizenship, with those omitted from the final list still languishing in congested detention facilities and facing the risk of separation and statelessness. The Assam NRC was a testimony that a large-scale enumeration exercise, relying solely on the efficient operation of the bureaucracy, was a catastrophe recipe, with various contradictions contained in both the NRC's draft and final lists. It is certainly not what the Court envisaged when it clarified the substance of the right to live with dignity in *Francis* that a clerical mistake might rob a person of his citizenship,

[267] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746.
[268] Olga Tellis v. Bombay Municipal Corporation, AIR1968 SC 180.

while dignity seemed almost an afterthought in the struggle for inclusion in the Assam NRC.[269]

In comparison, the case of the Assam NRC, with both the Foreigners Tribunals and the Supreme Court responsible for enforcing burdens on those demanding inclusion in the NRC, is one of judicial thoughtlessness and brutality. Amnesty International demonstrated in a study on the procedures used in the analysis of the NRC that while hearing cases, Foreigners Tribunals were "complicit in perpetuating discrimination and violence" and how the working system of the Tribunals was fraught with severe biases, stereotypes and discriminatory decision-making processes.[270]

A different mechanism would necessarily accompany the planning of the countrywide NRC. The Assam NRC exercise, however, offers a prime example of how bureaucratic inefficiency and judicial ignorance will combine to minimise the substance of Article 21's right to life. The NRC's significant achievement has demonstrated that human rights depend solely on citizenship, and there is nothing to suggest that the government can do well in adopting the NRIC.

5.5 STATELESSNESS IN THE CONTEXT OF ASSAM NRC

The history of migration in Assam and the subsequent events which resulted in the publishing of Assam NRC list has been discussed in last chapter. The list published in July, 2019 excluded 1.9 million people whose fate remains unknown. In *Assam Sanmilita Mahasangha v. Union of India*[271], the court however, directed the Government of India to enter into necessary discussions, to minimize the resultant statelessness, with the Government of Bangladesh. However, there has been no evidence of any on-record discussions between the two countries on the issue. There is an absence of agreement between India and Bangladesh in which the latter has agreed to take back the persons who will be declared as illegal immigrants under the IMDT Act. In the absence of a legally established procedure, there are only two alternatives available to the state, to deal with the persons declared as illegal immigrants - one being

[269] See State of Arunachal Pradesh v. Khudiram Chakma AIR 1994 SC 1461.
[270] DEEPIKA PRAKASH AND MAANVI TIKU,INDIA AND THE CHALLENGE OF STATELESSNESS: A REVIEW OF THE LEGAL FRAMEWORK RELATING TO NATIONALITY,64-65, (National Law University Delhi, 2014).
[271]Assam Sanmilita Mahasangha v. Union of India, (2015) 3 SCC 1.

forced deportation, and the other being, confinement of the immigrants in detention centres.[272] The lack of economic feasibility to construct detention centres with a capacity to detain over four million people for the near future, makes forced deportation the more viable option for the State, which will invariably render these people stateless, and leave them without any rights or remedies. Due to the lack of definite legal framework and due to lack of proper actions from the judiciary and legislature many human rights organization have expressed their concern.

In September 2019, Raveesh Kumar, the spokesperson of the Ministry of External Affairs, while laying out the future map of NRC in Assam said, "All appeals and excluded cases will be examined by this tribunal i.e. a judicial process…Thereafter, anyone still aggrieved by any decision of being excluded will have the right to approach the High Court of Assam and then the Supreme Court".[273] This does not instil confidence. Because, since 2005, the courts in India including the Supreme Court of India and Guwahati High Court have adopted and implemented a set of legislative measures with a clear goal in mind: to exclude people of Bengali-origin. They have achieved it by legitimizing the anti-immigrant, particularly the anti-Bengali immigrant rhetoric.

The judgments and decisions of the Supreme Court and High Court have severely weakened the separation of powers, consolidating judicial functions with the executive. In many cases, the courts have assumed the domain of the executive and passed orders. As a result, India stands at the brink of a statelessness crisis. Holding governments accountable for the human rights abuses they commit has always been difficult. However, in this case, the judiciary has aided various governmental bodies in committing abuses with impunity.[274]

In 2005, the Supreme Court of India issued a judgment in the case of *Sarbananda Sonowal v. Union of India* that changed the face of citizenship determination in India.[275] The Court repealed the IMDT Act for violating Article 14 and 355 of the Constitution

[272] Alok Prasanna Kumar, *To What End This Exercise*, The Hindu, (August 30, 2020, 10:00 AM), https://www.thehindu.com/todays-paper/tp-opinion/to-what-end-thisexercise/article24576858.ece.
[273] *People excluded from NRC will enjoy all rights till they exhaust legal remedies: MEA, Business Today*, (2 Sept. 2020 12:00 AM), https://www.businesstoday.in/current/economypolitics/peopleexcluded-from-nrc-will-enjoy-all-rights-till-they-exhaust-legal-remedies-mea/story/376705.html.
[274] *Id*
[275] Sarbananda Sonowal v. Union of India, 2005(5) SCC 665.

of India. After the Act was struck down, the Foreigners Tribunal, created under the Foreigners Act, 1946 substituted the Tribunals under the IMDT Act for determining the allegations of doubtful citizenship in Assam. In doing so, the Supreme Court reversed the burden of proof and demanded the residents of Assam to produce adequate documents proving their Indian citizenship before the Foreigners Tribunals.

In its August 2019 decision in the case of *Assam Public Works v. Union of India*[276], drawing from Section 3(1) (c) of the Citizenship Act 1955, the Supreme Court extended the deprivation of citizenship to the children of doubtful voters, those declared to be foreigners and whose cases were pending before the Foreigners Tribunal. The section excludes a child born to an 'illegal immigrant' parent from acquiring Indian citizenship. Specifically, it held that for people born after 3 December 2004, if one of their parents belonged to one of these three categories, they might not be included in the NRC, notwithstanding the status of the other parent.[277]

5.6 CONCLUSION

Since more and more nations are leaning away from liberal immigration policies, the universal values of protecting and valuing any and all human life must not be ignored. Amongst other factors, stateless citizens are refused political, civil and cultural rights. Establish a 'National Citizenship Register is a sovereign right of every republic whereby to determine through such a system who its residents are and the number of illegal aliens. In the reckless search of its purpose, however, the international principles of *jus cogens* and the basic human rights on which international law is founded must not be ignored.

International law has been increasingly individual-centered during the last several decades and any domestic step a state takes should look into the international implications it could result in. The conceptual cause and effect relationship between the beginning of the NRC and its final consequence must be closely studied. One must make sure that all persons who are considered stateless, if any, are taken back by their country of origin or by any other country able to do the same. NRC must also aim to

[276] Assam Public Works v. Union of India, Writ Petition (Civil) 274 of 2009
[277] *Id*

enforce a mechanism that ensures that people in rural India who frequently lack proper paperwork are not left out of the registry because of these mundane causes, like flooding or because general neglect for the same is not left out of the registry. The rural part of this country would have to bear the brunt of not providing sufficient paperwork if this is not taken into account, resulting in a significant number of people left out of the country who should be citizens.

The vulnerable and downtrodden are the category of people who could be harmed if only cosmetic steps are affected. People living in poverty often do not search for paperwork that they do not need and typically only register to PDS cards and other government-benefit cards. Therefore, one needs to make sure that the mechanism includes persons falling into certain categories along with them.

The first step in addressing the worldwide statelessness dilemma is to begin with reliable and detailed statistics about how many persons in the world are currently stateless. This knowledge will assist us in mapping the actual extent of the crisis suffered by international community. Even though global community is becoming more nationalistic and protectionist, individual countries are making sure that countries which are responsible for creating more individuals stateless and being held accountable. While the international community lacked political will in the beginning, it has started to tackle this problem vigorously and organisations such as the UN could enable them to succeed once and for all in putting an end to the barbaric issue. It is important that countries also take measures to not only address the status quo, meaning the current problem, but also make sure that problems like these do not occur in the future also lest it becomes a cycle that keeps repeating itself time and again.

CHAPTER: 6

CONCLUSIONS AND SUGGESTIONS

6.1 INTRODUCTION

The entire focuses on the right to nationality, arbitrary deprivation of nationality, risk of statelessness and related human rights challenges arising out of the procedure to update the National Register of Citizens in the Indian state of Assam. The previous chapters has dealt with the concept of statelessness and the process of updating the National Register of Citizens in Assam exhaustively. Chapter 5 has specifically dealt with the inter-relation between two concepts.

6.2 CONCLUSIONS

From the above mentioned chapters, the following conclusions can be drawn:

1. India's responsibility to protect the right to a nationality, to forbid the indiscriminate deprivation of nationality and to evade statelessness extends to all persons in Assam. The current NRC process weakens these rights and is thus untenable. Also specifically, no legitimate purpose is evident in the current NRC process, neither has the need or proportionality of the process been established.[278]
2. The NRC authority did not release, in full and in simple manner, the prescribed records, including NRC 1951 and the lists of voters up to 1971. The authorities have released, in part and in digital form, the aforementioned public records, but a large number of the poor and the illiterate have not been able to have access to such records. This results in a negative effect when included in the initial NRC. In addition, the NRC 1951, the lists of voters and other similar records prepared and preserved by the public authorities are full of errors in the spelling of names, age, etc., which have impacted the applicants as well.[279]

[278] See Chapter 4 of the dissertation
[279] *Id.*

3. The NRC authority has failed in making the verification process free of arbitrariness, particularly in the verification of the Panchayat Link Certificate in the process in general was arbitrary in nature. Therefore, the exclusion rate for married women is high.[280]
4. In certain cases, the NRC Authority has failed to issue timely notices to the applicants for verification, leading to a rise in the number of dropouts in the final NRC list. In addition, the mismatch between the applicants' names and the assigned ARN also resulted in a high degree of exclusion from the final NRC list.[281]
5. The Family Tree verification results have been used in an adverse way, adding to the abuse of legacy data. The matching of the Family Trees often defines the relationships between all the members of a household using the same legacy details. This proven fact could have been used to determine the relation between members of all households, thus minimising the number of exclusion from the final draft of the NRC on the basis of a deficient link certificate.[282]
6. The NRC guidelines for assessing eligibility with regard to poor documentation etc. have a negative effect on the inclusion of children in the NRC. The results of the Family Tree verification as well as those of the DMIT (District Magistrate Investigation Team) may have been used by the Authority in order to minimise the number of exclusions on the basis of poor records.[283]
7. Due to insufficient awareness and freezing of legacy data, about 400 thousand applicants have failed to submit their claims in the Claim and Objection process. In some of these cases, the poor and illiterate applicants, while obtaining legacy data from the website, were wrong to identify their actual ancestors and obtained legacy data from other persons with a name similar to that of their ancestors, since there was no hard copy of the documents available for cross-check in the NRC Seva Kendra.[284]
8. As there is no policy on those who have been excluded from the NRC, prior to the release of the final NRC, a specific policy for the dropouts of the NRC should be developed that should have prevented mass statelessness.

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[280] *Id.*
[281] *Id.*
[282] *Id.*
[283] *Id.*
[284] *Id.*

9. The Indian legal system for granting citizenship is not in line with increasing fears about statelessness, and measures to avoid and minimise it are missing. An inconclusive and vague position about the definition of citizens and non-citizens is expressed in the existing system of citizenship statutes.[285]
10. In assimilating and implementing reforms that would mirror the international recognition and security of stateless individuals, the indian government has been sluggish. Over the years, however, the higher judiciary has upheld the rights of stateless individuals in India through the delivery of different judgments.[286]
11. There are a considerable number of doubtful voters who have been arbitrarily marked 'D' without being given the opportunity to produce a document in support of their citizenship in 1997, when no proceeding against them was drawn up. Since they have applied for NRC registration, instead of keeping them on hold, their applications should have been considered and checked. In addition, a large number of voters who were arbitrarily designated as D voters were excluded after applying for the NRC updation with the admissible and valid documents.[287]
12. The concept of stateless people has not been addressed by the Indian legal system, although the courts are trying to tackle citizenship issues that can lead to statelessness. Since colonial times, India has hosted a large population of stateless people, yet the state does not cater to or recognise them. The Passports Act alone appears to be the only piece of legislation out of all Indian laws that actually makes any effort to resolve statelessness: by providing stateless persons residing in India with a certificate of identity and foreigners whose countries are not represented in India or whose national status is in question. This certificate shall, however, be given only upon request and, in particular, for the purposes of facilitating travel. Since most stateless individuals may not even be aware of its presence and may be unintentionally exempt from its benefits, the lack of own intervention by the state defeats the purposes of this clause.[288]

[285] See Chapter 3 of the dissertation
[286] See Chapter 5 of the dissertation
[287] See *supra* note 285
[288] See *supra* note 286

13. The primary law governing citizenship in India is the Citizenship Act. The trajectory of its growth reflects the intent of the legislature to restrict the scope for Indian citizenship to be granted. The amendments to the Act over the years point to a strict understanding of the strict requirements laid down in India for citizenship. As a result, the legislation fails to give due consideration to huge numbers of individuals who may be stateless and have long resided in India.[289]
14. Given the absence of any official record of the stateless population in India, considerable steps are required in that direction. It is important that the Indian legislative and executive machinery take the requisite steps seriously, first to recognise the stateless, second to safeguard their rights, and eventually to provide for further prevention and reduction of statelessness in India.
15. The role of Supreme Court in Assam NRC process is not satisfactory as the entire court monitored process has many defects which may lead to mass statelessness and thereby leading to human rights issues.[290]

6.3 SUGGESTIONS

1. Regardless of the rationale behind the decision to enforce the NRC, important challenges remain to be addressed if such a procedure is likely to be accomplished, even if it is deemed justifiable, in a way that does not impose a disproportionate burden on some of the poorest and most excluded communities in the world. Met with such implications, halting and retracting the process before a better alternative can be found will be the only course of action.
2. India is obliged, irrespective of the application and outcome of the NRC process, to protect the other rights of affected individuals. These include, but are not limited to, their freedom of movement and the right to enter and live in their own country, the prohibition of torture, cruel, inhuman or degrading treatment or punishment, particularly in relation to detention, and the freedom and protection of the individual. In addition, India has a moral duty to guarantee that it operates in the best interests of the child at all times.

[289] See *supra* note 285
[290] See *supra* note 280

3. It is appropriate, in line with India's international human rights obligations, to ensure that procedural protections are maintained. This involves fair and equitable hearings in independent and impartial courts, as well as the chance to appeal before the law as equal citizens. Citizens currently excluded from the NRC should at least be seen and regarded as citizens until, beyond reasonable doubt, the authorities can show that they are indeed non-Indians. In addition to being straightforward, clear and transparent this must include the elimination of discriminatory clauses in procedures and a claims review mechanism that is non-arbitrary.
4. Make sure that no new cases of statelessness will occur: the Assamese people who may not be included in the first draft of the NRC may not have a second nationality and have never had one. Neither Bangladesh nor any other state has acknowledged these individuals as citizens, which, if stripped of their Indian citizenship, would render them stateless. It's indeed India’s duty to make sure that these individuals are not made stateless.
5. Ensuring broad public awareness during the verification process and constructive steps to make sure that assistance is provided to all those making claims to enable them to establish their legacy and linkage claims. This should include making it easy for claimants to obtain relevant records.
6. With the Foreigners Act of 1946, the presumption of evidence is reversed, thus ensure that there are provisions to avoid abuse against the accused. To ensure that the accused are not discriminated against, this must include oversight of police and FT activities. Make it simple for those accused to access documents, and make verification of the public documents.
7. Ensure appropriate training by the NRC authorities on the applicable principles and norms of human rights, in particular those relating to non-discrimination and to persons belonging to ethnic, religious and linguistic minorities.
8. To delete their discriminatory provisions excluding Muslims and others without any professed faith from the framework of the Citizenship Amendment Act 2019.
9. For India to achieve reduction and prevention of statelessness, the accession to the 1954 and 1961 Conventions on statelessness can be a place to start. Such accession will enable India, by making such adjustments to the national structure aimed at preventing statelessness among children born in India, to

bring its law into line with the obligations set out in the Conventions. Such reforms that recognise stateless people and take action to provide them with a nationality can be further implemented. In the long term, this will help to regularise and entitle those individuals to rights and obligations equal to those of other Indian citizens.

10. Since the legal development relating to statelessness is still in its early stages in India, further deliberation and clarification is needed for the definition of the term 'stateless individual.' Moreover, in the Citizenship Act of 1955, the definitions of 'citizen' and 'non-citizen' are still not explicit.It is proposed that in its provisions the Act may include 'stateless individuals' and specify the characteristics of it. The Citizenship Act also discusses the word 'parent' but does not specify who could be included in the definition. A definition of the word 'parent' is proposed to be incorporated to the Act which might include parents of children born from a wedding lock, adopting parents, and children born from surrogacy.
11. In general, retrospective nationality conferment is a lesser-known phenomenon from the point of view of minimising statelessness. Brazil illustrated this practice in 2007 by implementing a constitutional amendment that replaced the conditions for residency with consular registration as a prerequisite for gaining citizenship in cases involving children born abroad to Brazilian parents. tIt was specified under a former amendment in 1994 that children who are born abroad to Brazilian parents could not acquire Brazilian citizenship until they came back to Brazil to live permanently. Civil society organisations have then reported that 200,000 children have to be declared stateless within a dozen years. A retrospectively applicable amendment passed in 2007 after Brazil acceded to the 1961 Convention, enabled many stateless children gain Brazilian citizenship.
12. In order to secure and grant citizenship in particular for children who would otherwise be stateless, the Indian legal system relating to citizenship requires necessary changes. Therefore, in order to avoid statelessness, the nationality of the parents of a child should not be made a prerequisite for him or her to be granted citizenship. If the statelessness of a parent is passed on to the child, the continued presence of statelessness cannot be prevented. In order to include children of all types, such as those that are orphans and under the guardianship

of a social or child care centre, juvenile offenders with unknown nationality in custody, children born out of wedlock, adopted children, children born out of surrogacy and the foundlings on India without any known parentage or nationality, it is also suggested that the definition of a 'child' may be explicitly specified in central statute.

13. The Indian Citizenship Act includes clauses relating to a person's renunciation of citizenship, the termination of citizenship by statute, and the state's deprivation of citizenship. These provisions should be modified in accordance with the general structure provided for in Articles 5 to 8 of the 1961 Convention for the state parties, as they provide greater protection against statelessness in such cases. In order to avoid statelessness, and in the light of the 1961 Convention, it is proposed that the loss of nationality by any of the methods provided for under Indian law may be conditional on the acquisition or guarantee of another nationality.

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APPENDIX

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