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Stateless in Law: Two Assessments

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2014

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Charlotte-Anne Malischewski *

Introduction

Statelessness poses one of the most complex problems both in terms of humanitarian intervention and for the creation and implementation of legal protection. By its very nature, statelessness challenges the citizen-state relationship of the contemporary state model in which provisions for formal membership either through nationality or citizenship laws are the state's prerogative, and international norms and commitments are largely effectuated through the enactment and implementation of laws, policies, and practices at the state level. Indeed, "the very notion of statelessness exposes the essential weakness of a political system that relies on the state to act as the principal guarantor of human rights."[1] Without a legal bond with any state, stateless people are left vulnerable to a variety of forms of exploitation and abuse, poverty and marginalization.

Addressing Statelessness

In the United Nations High Commissioner for Refugees' (hereafter UNHCR) much belated attempt to respond to the plight of an estimated 15 million stateless people around the world[2], the organization has suggested a four-pronged approach to statelessness involving identification, prevention, reduction, and protection.[3]

Identification: The number of stateless people worldwide remains unclear, and the complexity of their experiences in different regions remains under-documented. A number of factors complicate assessments of the global reality of statelessness, including the facts that the term "statelessness" remains ambiguous, that governments are reluctant to study and share findings about stateless populations, that some stateless people may opt not to register for fear of persecution from state actors, that some people prefer to remain stateless than to have to take a particular citizenship, and that little is known about statelessness in detention facilities.[4] Therefore, the identification of stateless people and those at risk of statelessness is important. Mapping the complexity of the problem is the first step to developing appropriate responses.

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Prevention: According to the UNHCR's António Guterres and UN High Commissioner for Human Rights, Louise Arbour, prevention is "the easiest and most effective way to deal with statelessness is to prevent it from occurring in the first place."[5] Indeed, responding to statelessness means looking at ways to avoid there being new cases of statelessness.

Reduction: This element of addressing stateless is focused on existing cases of statelessness. Essentially, reduction of statelessness refers to group and individual acquisition of nationality or citizenship.

Protection: Being stateless should not mean being without rights. Protection of stateless people means working to respect, protect, and fulfill their rights including but not limited to education, healthcare, judicial, and travel rights.

Given the extensive work of the Calcutta Research Group in mapping the statelessness situation in India, this brief focuses on the latter three pillars, using them to structure the text. It includes discussions of the international legal framework on statelessness as well as the regional and national legal mechanisms available for the prevention and reduction of statelessness and the protection of stateless populations.

Defining Citizenship: A Note on Terminology

This brief will make a distinction between the legal meaning of the terms "nationality" and "citizenship" and the conceptual debates around their meanings in political theory, international relations, and sociology. Shared ideologies, customs, or institutions, feelings of belonging, or associations with particular territory, which may constitute a nation,[6] do not necessarily align with a particular state. In many contexts, the term "nationality" is tied to the idea of a nation and is thus distinguished from a legally recognized bond with a particular state.

However, because some countries use the term "nationality" and others, "citizenship" to refer to persons who have a legal bond with a state by operation of law and because this brief is primarily concerned with the law, the terms "nationality" and "citizenship" will be used interchangeably in reference to persons with such bonds. Bonds of nationality and citizenship are both the result of applications of enacted legal instruments at the state level.

Citizenship in India

Unfortunately, mounting international pressures to respect a universal right to nationality have not coincided with an increased respect for the principle in India. Instead, India's changing citizenship laws demonstrate an increasingly strict approach to the granting of citizenship.

In the wake of independence, India's 1955 citizenship laws were relatively inclusive. Except for those people whose fathers were diplomats or 'enemy aliens,' citizenship was accorded at birth to everyone "born in India on or after the 26th January, 1950, regardless of their descent, ethnicity, or national identity.[7] By the mid 1980s, this had begun to change.

Following the large-scale illegal migration of Bangladeshis into India and the resulting disaffection of the internally displaced and increasingly economically excluded local Assamese population, the Indian legislature adopted the Citizenship (Amendment) Act, 1987, which restricted the jus soli[8] mode of citizenship acquisition established in 1955 (Annexure 1).

The Government of India took "a serious view of the entry of persons clandestinely into India," citing "fear about adverse effects upon the political, social, cultural and economic life of the State" and expressing concern over what it considered to be "a large number of persons of Indian

origin [who had] entered the territory of India from Bangladesh, Sri Lanka, and some African countries."[9]

The amendments made it easier for those who were outside India and whose parents were citizens to gain citizenship than for those who reside in India and whose parents were not Indian citizens to do so.

This change marks an important shift with regard to migrant stateless populations, because, in general, it is more difficult to incorporate provisions for granting citizenship to migrants and their children in countries whose citizenship laws are built on jus sanguinis. Indeed, the new centrality of Indian nationality to the granting of citizenship overwhelmingly limits citizenship to those who descend from existing nationals, leaving stateless people and their children significantly more likely to be caught in a cycle of statelessness.

Furthermore, since 2004, a new amendment to the citizenship laws has further restricted stateless populations' access to Indian citizenship. In addition to increasing the residency requirements and limiting the meaning of the expression "ordinarily resident in India," these new laws forbid those who are "illegal migrants" from accessing citizenship registration and naturalization procedures, which are the only two ways of acquiring Indian citizenship for those who cannot do so by birth, descent, or by being a national of a territory incorporated into India. While not all stateless people have migrated, unless they became stateless after their migration, stateless migrants are very likely to have entered into India without the required documents and so they are deemed "illegal migrants."

'Illegal Migrant' in India

Under Indian law, an "illegal migrant" is a foreigner who has entered into India

> (i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or
> (ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time[10]

The language of this provision suggests two requisite elements. First, in all circumstances, the term "entered" suggests a cross-border movement from another jurisdiction into India. Secondly, people must find themselves without the required legal documents to validate their presence under India law either from the moment they entered India or from the point at which the documents with which they entered India become no longer valid.

While being deemed an "illegal migrant" does not necessary entail statelessness as those migrants judged "illegal" may retain an effective or ineffective bond with another state, people who are stateless are very likely to also be illegal migrants. Unless the person was either born in India or found herself or himself in India during independence such that s/he would not fulfill the cross-border movement requirement or they hold residency documents (such as an OCI card) that do no amount to citizenship, de jure stateless people will also be categorized as "illegal migrants." Illegal migrants may also not be de jurestateless but may be de facto by virtue of their inability to access effective citizenship from the state with which they hold a formal legal bond.

Being categorized as "illegal migrants" places stateless people in a precarious position. While India does not have any legislation in place to protect stateless people from being deported to regularize their status or grant them citizenship, it does have legislation in place that allows the state

to deport illegal migrants. Since the Supreme Court of India deemed the legislation ultra vires[11] the Constitution of India, striking it down in 2005,[12] the Illegal Migrants (Determination by Tribunal) Act, 1983 (hereafter IMDT Act 1983), which gave migrants a right to appeal and placed the burden of proof on the government rather than on the migrants themselves, is no longer valid. Illegal migrants now find themselves again more vulnerable to deportation under the more liberal powers granted to the government in the Foreigners Act, 1946. This legislation grants the Government wide powers, including the ability to deport illegal migrants, which some argue have even been used in border regions against Muslim Indian citizens who were too poor to contest their deportation.

Children of those categorized as illegal migrants are also severely limited in their ability to acquire citizenship as was alluded to in section 1.2.2. on the granting of citizenship in India.

Furthermore, on a discursive level, the categorization of certain people as "illegal" conflates the actions undertaken by people with their character. By using this term to describe them, India justifies their exclusion from the practice of the Rule of Law. The fewer rights they are granted in relation to citizens, the less their legal personality can be considered effective.[13]

Despite these many concerns, it could be argued that the term "illegal migrants" has been rendered practically redundant, because the very legislation that associated the term with a legal category ceased to exist when with the abolition of the IMDT Act 1983. Now, if people find themselves unable to prove that they are a citizen of India, they will be deemed a foreigner by the authorities vested with the power for such determinations. However, because the Supreme Court ruling that struck down the IMDT Act 1983 was enacted in 2005, two years after the latest amendment to Indian Citizenship laws, the term "illegal migrant" remains a legal category in Section 2(e) of The Citizenship (Amendment) Act, 2003, as defined above. It is now unclear if the limitations imposed by the 2003 amendment in relation to "illegal migrants" now only apply to those who were determined as such before the 2005 ruling or whether any of those considered "foreigners" under the Foreigners Act, 1946 and their children are also affected by the 2003 amendments.

Indian Overseas Citizen

Under Indian law, an "indian overseas citizen" is a person who

(a) is of Indian origin, being a citizen of a specified country, or
(b) was a citizen of India immediately before becoming a citizen of a specified country, and is registered as an overseas citizen of India by the Central Government[14]

Overseas Citizen of India (hereafter OCI) cards must not be mistaken with Indian citizenship. First, unlike Indian citizenship, OCIs may be held in conjunction with citizenship or nationality. An OCI is granted certain privileges not usually available to non-residents of India such as the right to work, study and own property not used for agriculture or plantations; however s/he is ineligible for an Indian passport, has no voting rights in India, and cannot work in government.[15]

Therefore, even if a person holds an OCI card, if s/he does not hold formal citizenship with another state, s/he should be considered de jure stateless as s/he does not hold the requisite legal bond with a state. There is no research to suggest there is a population in such circumstances, but it is certainly a legal possibility. Ironically, people in such positions may be able to access more services and rights within the state than those who are de facto stateless.

Statelessness in International Law

Article 1 of the Convention relating to the Status of Stateless Persons, 1954 (hereafter 1954 Statelessness Convention) defines a stateless person as one "who is not considered as a national by any State under the operation of its law."[16]

This definition is now widely understood to be customary international law. This means that it should be applied by all states even if, like India, they are not party to the convention. Indeed, domestic processes of recognizing people as "stateless" should use this definition as their basis.[17]

It would, however, be misleading to suggest that there is global consensus on the definition of statelessness or acceptance of a set manner in which it should be applied. Due to varied attempts to respond to the complexity of lived realities and to the often tense geopolitics of nationality, procedures and requirements that govern the recognition of people as stateless differ around the world.

As matter of law, the 1954 Statelessness Convention definition is clear and allows for a relatively straightforward application given that bonds of nationality are themselves legal connections. Yet, it is very restrictive. The binary opposition of the national or citizen versus the stateless person on which it rests oversimplifies the reality of nationality as it is experienced by people the world over.

States generally operate with a presumption of nationality, which makes it impossible for those whose nationality is unknown but who have not been found to have established that they are without nationality to access protection as stateless people.[18] Additionally, many states have demonstrated reluctance to classify certain people as stateless, and others do not recognize the stateless status of those whose citizenship they have denied.[19]Matters are further complicated when the effectiveness of a person's nationality is taken into consideration.

These ambiguities have resulted in the evolution of a still contentious distinction between de jure and de facto statelessness.

De Jure vs. De Facto Statelessness

Those who satisfy the 1954 Statelessness Convention definition are considered de jure stateless. This type of statelessness covers those who do not have a legal bond with any state. As such, it generally covers those who are not automatically granted nationality at birth by the application of state legal instruments, those without nationality who are unable to obtain it through establish legal provisions for its acquisition, and those whose nationality is revoked or terminated for any reason and who do not have a second nationality.

De facto statelessness, on the other hand, remains an area of open debate. Broadly speaking, it refers to those who are unable to disprove the assumption that they have nationality and those whose legal bonds of nationality are ineffective.[20]However, there is no legal meaning for the term de facto statelessness. In fact, by virtue of its distinction from de jure statelessness, the term necessarily refers to people who are not stateless under the 1954 Statelessness Convention definition of statelessness in international customary law. However, given the strong similarities in their plight to those who are de jure stateless, there are a number of practitioners and scholars who advocate for their inclusion in international legal protection frameworks for statelessness.

Former UNHCR Legal Adviser on Statelessness and Related Nationality Issues Carole Batchelor argues that the history of the 1954 Statelessness Convention serves to explain that its

definition is so narrow and that the "technical distinctions between de jure and de facto stateless persons should not be significant if the principles and intent of international law are fully recognized."[21] She argues that the drafters of the 1954 Statelessness Convention assumed that those for whom nationality bonds had become ineffective would be considered refugees when they adopted this restrictive definition of statelessness. Yet, the Convention relating to the Status of Refugees, 1951 (hereafter 1951 Refugee Convention) limits the definition of refugee to those whose experiences of persecution are based on one of five convention grounds. A refugee is one who

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.[22]

Even if de facto stateless people's lack of effective nationality is sufficient in demonstrating an inability to avail of that country's protection, not all de facto stateless people necessarily also experience persecution in such a way that would satisfy the persecution nexus with one of the five convention grounds now widely accepted as a requirement implied by the Refugee Convention definition. The possibility that some de facto stateless people would fall through the cracks, because they would be unable to avail themselves of refugee protection, was raised early on by some of the parties present during the drafting of the 1954 Statelessness Convention.[23] Their concerns can be seen reflected in the recommendation found in the Final Act of the Convention relating to the Status of Stateless Persons, 1954:

> the Conference recommends that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons.[24]

In 1961, Paul Weis further warned the international community that the "borderline between what is commonly called de jure statelessness and de facto statelessness is sometimes difficult to draw."[25] More recently, Batchelor married this practical angle with a concern for the ethics of protection. On the basis that the central concern in addressing statelessness must be one of protection, she argues that protection on the grounds of the simple existence or non-existence of legal bonds creates an arbitrary exclusion of de facto refugees whose ineffective nationality puts them in a comparable situation to de jure ones.[26]

In the end, however, the 1954 Statelessness Convention is unambiguous in its definition. Legally, it only covers de jure stateless people. That said, concerns about the lack of protection available to de facto refugees give good reason to question the appropriateness of this narrow definition and to consider ways to address the existing protection gap.

Stateless Refugees

It is important to note that while some people may be both stateless and refugees, the two words are not co-terminus. A stateless refugee is someone who is not considered to be a citizen or national under the operation of the laws of any state and satisfies the definition of a refugee under article 1 of the Convention Relating to the Status of Refugee, 1951 (hereafter 1951 Refugee Convention). Stateless refugees fall under the UNHCR's refugee mandate and are legally entitled to the protections of the 1951 Refugee Convention. When stateless refugees cease to be refugees, they remain stateless if the resolution of their refugee status does not include acquisition of nationality or citizenship.

Prevention and Reduction of Statelessness

Attribution of Nationality

Since de jure statelessness is by definition a lack of nationality, acquiring nationality is its clear legal solution. However, closing nationality gaps requires action by the state, which in some cases is the very agent which has rendered the persons stateless in the first place through its policies of deprivation of nationalities considered legal by domestic laws.

Nationality legislation generally follows family links such as links to the state through one's parents or spouse or territorial links such as links to the state through one's place of birth or residence. In some cases of statelessness, these modes of acquisition are unavailable either by the language of the law or because there exist insufficient procedural guarantees. In other cases, stateless people have acquired nationality in these traditional ways, but because the laws in place allow for the deprivation or renunciation of nationality even in situations in which such actions render the person without a nationality, they do not, in fact acquire it.

While there has been a move away from the strict view that it is "for each State to determine under its own law who are its nationals"[27] such that the"manner in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction,"[28] the Government of India retains the power to grant citizenship. The right to nationality is framed by citizenship laws. This is why, for example, the UN Commission on Human Rights' 2007 call "to adopt and implement nationality legislation with a view to preventing and reducing statelessness"[29] was directed towards states.

The Right to Nationality in International Law

The very notion of statelessness is at odds with the right to nationality, which is guaranteed under international law. The idea that everyone has a right to nationality as a basic human right WAS developed in early 20th-century conventions and treaties and is now found under article 15 of the Universal Declaration of Human Rights (hereafter UDHR), which states that "no one shall be arbitrarily deprived of his [sic] nationality nor denied the right to change his nationality."[30]

Since then, the 1954 Statelessness Convention and the Convention on the Reduction of Statelessness, 1961 (hereafter 1961 Statelessness Convention) have further developed this right. While India has not ratified either of these conventions, it did accede to the International Covenant on Civil and Political Rights, 1996 (hereafter ICCPR) in 1979, which also affirms that "every child has the right to acquire a nationality."[31]

Other conventions have also reinforced the universality of the right to nationality. For example, article 5(d)(iii) of the Convention on the Elimination of Racial Discrimination, 1965 (hereafter CERD), which India ratified in 1968, explicitly prohibits racial discrimination in applications of the right to nationality and the Committee on the Elimination of Racial.
Discrimination has further held that,

> deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties' obligations to ensure non- discriminatory enjoyment of the right to nationality.[32]

It should, however, be noted that the right to nationality does not guarantee effective nationality. Therefore, while it is a useful in addressing de jure statelessness situations, it does little to

provide protection for those who are de facto stateless. Despite this limitation, as affirmed by the UNGA in 1995, closing gaps in nationality policy so as to ensure that everyone's right to a nationality is respected is certainly an important step in eliminating de jure statelessness.[33]

Factors of Statelessness

Blitz's Typology: Primary & Secondary 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. In his typology, 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."[34] 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. Blitz suggests that primary sources of statelessness are those which are the result of direct discrimination while secondary sources are the result structural discrimination. In his analysis, denial, deprivation, and loss of citizenship are primary sources and political restructuring, environmental displacement, and barriers that impede accessing rights are secondary sources.

Primary Sources: Denial, Deprivation, and Loss of Citizenship

For Blitz, the denial and deprivation of citizenship caused by state discrimination either through explicit laws and onerous provisions is a primary source of statelessness. For example, citizenship laws based on ethnicity, religion, gender, lineage, or other identity factors may prevent certain people from obtaining citizenship. Moreover, provisions that impose particular requirements such as proof of birth or marriage on those seeking citizenship can prevent people who do not have those documents from accessing their right to citizenship.[35]

Blitz's also refers to the "revocation of laws and forced removals following xenophobic campaigns" as a "withdrawal and loss of citizenship," which he describes as a primary source of statelessness.[36]

Secondary Sources: State Succession, Lack of Access and Environmental Change

State succession that may result in violent nationality contests that forcibly displace people into other states or may not cause displacement, but may mean that people remaining in the same geographic area find themselves living in new jurisdictions is considered to be secondary source of statelessness. In these cases, statelessness may result from "ill-defined nationality laws following conflict, de-federation, secession, state succession, and state restoration in multinational situations."[37]

Further forms of structural discrimination, such as onerous requirements in the procedures for acquiring necessary identity documents, high feeds, witness certification requirements, and lack of registration opportunities, constitute another secondary source of statelessness for Blitz.[38]

Blitz also warns that it is possible that, with the physical disintegration of certain states, populations will become stateless.[39] The possibility of displacement was certainly emphasized at the UN Conference on Climate held in 2009. While the possibility of an entire state ceasing to exist such that its population would become de jure stateless may not appear imminent, but it is certainly a prospect with which the international community may someday need to reckon. Meanwhile, it is

foreseeable that climate change could result in more than just displacement. Situations 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 (hereafter IPCC) warning of rising sea levels in the Netherlands, Guyana, Bangladesh, and the Oceanic islands[40], Blitz's warning of the possibility of de facto statelessness as a result of climate change must not be dismissed.

Sources or Factors: A question of Language

The separation of primary and secondary sources of statelessness is a useful, though often practically difficult exercise. Theoretically, differentiating between those sources of statelessness, which are directly the result of discriminatory policies and practices from those which are the result of structural factors allows for a distinction to be made in how a resolution is to be achieved. Cases of statelessness caused by direct discrimination would be traced back to particular rules which allow for that discrimination and so would point to a needed change in state-level legislations or regulations. Cases of statelessness caused by structural discrimination, on the other hand, would more likely require either a new legal protections be adopted in cases of state succession or a change in the way laws are practically realized be made in cases in which populations lack access to their rights.

In reality, however, differentiating between sources of statelessness can prove difficult and, even when they are distinguished, addressing one main source does not guarantee an end to de facto or even de jure statelessness. On a basic level, cases of statelessness are not necessarily limited to a single source, and the multiple sources which may intersect to create stateless in any given situation may well be a combination of primary and secondary sources.

One way of acknowledging this, it to use a language of "factors" rather than "sources" in identifying those elements which combine to result in statelessness. Statelessness can be seen as having discrimination as its "common underlying factor" and elements like migration, lack of birth registration, and administrative obstacles as "common contributing factors."[41] While this alternative way of describing the causes of statelessness can be useful in conveying the contributory nature of forms of discrimination and present a language well suited to comparative analysis, it fails to group together those factors which can similarly be addressed in the way Blitz's typology allows.

Adopting a combination of the two approaches could, therefore, be useful. Referring to primary and secondary factors would retain the legal and policy use of grouping those elements which can be dealt with on the same levels while also using a language that better reflects the ways in which different elements interact to create situations of statelessness. A differentiation between those elements of statelessness which are a question of discriminatory law and those which are a question discriminatory legal practice and socio-political realities could be retained, while a language that is more reflective of the interdependence of difference "factors" of stateless on each other could be adopted. Recognizing this interdependence is important, because resolving one "source" or "factor" of statelessness will not necessary resolve a situation of statelessness.

Factors of Statelessness in India

Primary Factors in India: Denial, Deprivation, and Loss of Citizenship

In India, a number of explicit provisions provide the legal means by which a person in possession of Indian citizenship may lose that legal bond. Specifically, the Citizenship Act of India, 1955 states that Indian nationality may be lost through renunciation, termination, or deprivation.

Renunciation

Under the Citizenship Act of India, 1955,

> If any citizen of India, who is also a national of another country, renounces his Indian citizenship through a declaration in the prescribed manner, he ceases to be an Indian citizen on registration of such a declaration. If the person making the declaration is a male then when the person loses his Indian citizenship, every minor child of his also ceases to be a citizen of India. However, such a child may within one year after attaining full age, become an Indian citizen by making a declaration of his intention to resume Indian citizenship.[42]

This presents two serious problems for statelessness. First, it deprives children of their Indian citizenship on the basis of their father's actions in such a way that may leave them stateless until they reach the mandated age to resume their Indian citizenship by declaration. Second, both in the case of the children who lose their Indian citizenship and the adults who renounce them, there is no provision to safeguard against statelessness. A person is in all circumstances entitled to renounce his or her citizenship even if by doing so, they would become de jure stateless.

Termination

Under the Citizenship Act of India, 1955,

> Any person who acquired Indian citizenship through naturalization, registration or otherwise, if he has voluntarily acquired the citizenship of another country at any time between January 26, 1950, the date of commencement of this Act, will cease to be a citizen of India from the date of such acquisition.[43]

The Supreme Court of India's Constitution Bench held in 1962 that if a "person has acquired foreign citizenship either by naturalisation or registration, there can be no doubt that he ceases to be a citizen of India in consequence of such naturalisation or registration."[44] While this does not pose a problem for de jure statelessness as the language of the provisions is such that termination comes only when citizenship of another state has been acquired, there is certainly the possibility that this termination provision could result in de facto statelessness, because there is no guarantee that the non-Indian citizenship that has been voluntary acquired is, in fact, an effective one. Furthermore, it is important to note that a person may well satisfy the legal requirement of voluntary acquisition implied by the provision while still feeling varying degrees of social, political, or other pressures. Here, gender, generation, class, and other markers of identity are likely to have an effect on the experience of citizenship acquisition that cannot be recognized by the voluntary/involuntary binary of the legal provision.

Deprivation

Under the Citizenship Act of India, 1955, the government of Indian may deprive a citizen of citizenship if it is "satisfied that it is not conducive to the public good that the person should continue to be a citizen of India"[45] and

1. the registration or certificate of naturalization was obtained by means of fraud, false representation or concealment of any material facts; or
2. that the citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or
3. that citizen has, during any war in which India may be engaged unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or
4. that citizen has, within five years after registration or naturalisation, been sentenced in any country to imprisonment for a term of not less than two years; or
5. that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government in India or of an international organisation of which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.[46]

In no uncertain terms, this provision creates statelessness. It is prescribed as punishment for certain actions. In other circumstances, where the person is deemed to have established themselves outside of India according to certain temporal and geographic criteria and is guilty of inaction of sorts by failing to register, no consideration is given to the ease with which the person will be able to acquire another citizenship. This provision is irreconcilable with India's human rights obligations and a grave impediment in the prevention of statelessness.

Secondary Factors: State Succession and Lack of Access*[47]*

Secondary factors of statelessness are often particularly difficult to pinpoint, because unlike primary factors, no single specific laws, policies, or regulations can be identified as these secondary factors. In India, as in many other states, state succession and lack of access to rights are interwoven with factors of statelessness and informed by the complexities of decolonization in the region.

In India, state succession is of particular importance in the creation of statelessness. The 1947 partition of India into the sovereign states of India and Pakistan, and the 1971 secession of Bangladesh are two key periods in this regard. For example, most of those displaced by the partition in 1947 have since been granted citizenship in either India or Pakistan, but there are exceptions. Estimates suggest that approximately 20,000 Hindu refugees and over 100,000 Punjabi refugees from Pakistan remain stateless in India. [48] In many cases, their descendants are unable to acquire citizenship.[49]

In other situations, without political change at the level of state succession and without positive state action against discriminatory laws, people may find themselves in de jure and de facto situations of statelessness, because a lack of infrastructure to implement action has lead to deprivation of citizenship[50] or because the political, social, or geographic context in which they find themselves makes it impossible for them to access citizenship acquisition mechanisms.

A prime example of the latter is the case of those who live in the Bangladeshi Chitmahals in India, which are enclaves within enclaves along the India-Bangladesh border. Though India

introduced passport and visa controls in 1952, the government did not provide for those living in these enclaves. As a result, if a person living in one of these enclaves

> wanted to obtain passport and visa for free movement, [they] had to illegally trespass into Bangladeshi territory; if the person managed to reach a border outpost undetected, [they] had to be admitted illegally into Indian territory, for [they] carried no identification proof, and then travel hundreds of kilometers to the nearest consulate. If all this resulted in the issuance of a passport and a visa, then the person could return to the enclave only till the visa expired.[51]

Other Factors of Statelessness in India: Displacement, Migration, & Trafficking

The situation of statelessness is complicated by various forms of movement. Migration, be it more or less forced or voluntary, can sometimes render render more vulnerable to stateless and often compounds the difficulties in accessing services and availing rights that the stateless already face.[52] More specifically, forced migration during periods of political development may "generate new minority groups and give rise to subsequent stateless populations" can "raise nationality problems."[53] Some argue that the human trafficking results in incomplete citizenship that is de facto statelessness.[54] Identity factors such as gender, generation, class, ethnicity, and religion often lead to additional forms of discrimination, which further complicates experiences of movement for stateless people.

Multiplicity & Interdependence of Factors of Statelessness

Reality is such that that there may not only be more than one factor of statelessness at a given point in time, but that factors of statelessness may change as the geopolitical, social, and legal framework in which they are embedded do. Indeed, a case of statelessness may transition from being essentially the result of primary causes to being essentially the result of secondary ones. In this regard, it is important to recognize that rights protections as enacted law do not necessarily translate into guarantees of effective protection of rights in reality. A population which is denied citizenship by law may then be granted the legal recognition of their entitlement to citizenship, but then find themselves unable to access the procedures for formal citizenship recognition. In these cases, the population may remain de jure stateless. Alternatively, that same population may find themselves able to access procedures for formal procedures and obtain citizenship, but then find no change in their situation. In this scenario, they may would longer be considered stateless by the international customary law definition, but be left de facto stateless nonetheless.

Legal Remedies

Formal Legal Remedies

Under international law, the resolution to stateless IS implied by the very way de jure statelessness is defined. Since statelessness is a lack of formal legal bonds, and the acquisition of such bonds is its remedy.

Indeed, in legal terms, the formal legal remedy to stateless is the granting of citizenship or nationality. Processes for the acquisition of citizenship in India are defined by the Citizenship Act of 1955 and its 1986 and 2003 Amendment Acts as explained in section 1.2.2 and reproduced in appendix 1.

Informal Legal Remedies

Extra-Judicial Processes

The focus on state and international implementation agencies in the articulation of AN international and regional statelessness framework may give the impression that stateless people cannot themselves resolve their precarious legal situation, it would be erroneous to assume that they are passive actors in this regard. Instead, stateless people often demonstrate a great deal of agency.

In India, by putting the right amount of money in the hands of the right person, many stateless people work outside the legal framework to find informal solutions to the difficulties of being stateless. From paying off a bank employee for the ability to open an account to bribing an election bureau official for an election ID card, there are numerous illegal means by which people acquire the elements that make up legal citizenship. In some cases, elected officials deliberately turn a blind eye to these processes, because they know that the populations fraudulently gaining the ability to vote are the very voters ensuring their re-election. Thus, the democratic nature of Indian elections becomes fuel for a 'selective blindness' of sorts.

Unofficial Citizenship

Situations in which people come to enjoy many of the rights associated with citizenship such that they are effectively treated as though they were citizens has led some to use the term "de facto citizenship." Yet, as Batchelor warns, this term does not carry any legal meaning and, as such, its use can be misleading.[55] Indeed, being described as having de facto citizenship can act as a discursive mask that hides the reality that people remains de jure stateless. Because their status is not officially recognized, these people are especially vulnerable to changing political and social contexts in which their unofficial citizenship may cease to be recognize by those around them. In addition, because the means by which they acquired this unofficial citizenship are likely to have included illegal actions, these people may be more likely to find themselves in the criminal justice system, which may increase their chances of deportation and may lead to prolonged incarceration, abuse, or exploitation.

Despite the problematic nature of the term "de facto citizenship", it is necessary to acknowledge that some people are largely able to operate as though they are citizens despite the fact that, legally, they lack any formal bond with the state. On a practical level, this term can be useful in prioritizing populations in need of assistance. Because it is an undeniable reality that agencies and organizations able to offer protection to stateless people are limited in numerous ways and are forced to decide how to utilize their insufficient resources, recognizing which populations are enjoying an unofficial, effective form of citizenship can help in the triage processes of humanitarian intervention.

Protection of Stateless Persons

Statelessness Status

Status Determination Procedures

As a matter both of law and of policy, status determination procedures are generally conceived of as being the key to ensuring that those who are stateless are able to enjoy the rights to which they are entitled under international law. Indeed, in a system in which legal protection is afforded on the basis of legal status, such procedures are a necessary precursor to accessing rights. Therefore, those who

are de jure stateless by application of the international customary law definition may be denied the relevant protection if they do not have access to procedures by which they can be recognized as such by those who would offer them protection. It is, therefore, a matter of primary concern for the protection of stateless people that there currently exist no statelessness status determination procedures in India.

While the details of any future determination procedure in India will necessarily be influenced by the means by which India chooses to address statelessness, be it by ratified existing international instruments, engaging in the drafting and implementation of new regional frameworks, the adoption of domestic laws, or a combination thereof, there are some general considerations that will necessarily be involved in the creation of any future Indian statelessness determination procedure. These considerations include answers to the following questions:

Who should determine statelessness status?
Who should initiate the procedure?
Who should be obliged to establish statelessness?
What kind of evidence is needed to establish statelessness?
What should be the status of applicants awaiting status determination?[56]

"Choosing" Statelessness

Despite the increased risks of exploitation and abuse, poverty and marginalization that come with being stateless, there may in some situations be a desire to remain in the stateless legal limbo. For example, some may 'choose' statelessness in an effort to evade the requirements a certain state imposes on its citizenship such as military conscription.[57] In other cases, however, statelessness may be abused by those hoping to avoid criminal charges.[58]

Enjoyment of Rights

The most basic distinction between those who are stateless and those who are not is that, at least by law if not in practice, those who are citizens of a state should have access to a number of rights guaranteed by that state. While not all states grant the same legal protection of rights to their citizens and many states are unable or unwilling to enforce rights that are legally guaranteed, the legal bond between a citizen and a state remains the basic means by which people are able to enjoy rights.

Recently, however, a move away from citizen rights towards human rights developed through a series of international legal instruments in the 20th century such that there has been an uncoupling of nationality from rights, meaning that there are international legal mechanisms that, if applied, ensure the enjoyment of certain rights for all people, including those who are stateless. The UDHR specifies in article 15 that nationality must be a guarantee of equal access to human rights.

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[59], the right to legal personhood[60], the right to property[61], the right to access courts[62], and the right to freedom of movement[63]. It is, therefore, of great relevance that stateless people's rights are not only based on the Statelessness Conventions, but also on other human rights instruments that have since been created in so far as they are applicable to stateless people. The ICCPR is of great importance in this regard, especially since India has ratified it. According to the UN Human Rights Committee, the civil and political rights outlined in the ICCPR are "available to

all individuals, regardless of nationality or statelessness [...] who may find themselves in the territory or subject to the jurisdiction of the State Party."[64] So, unless otherwise specified, the rights outlined in the ICCPR should apply to stateless people.

The following is an overview of the civil and political rights to which stateless people are entitled.[65]

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.[66] 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.[67]

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 maintenance of public order."[68] Here, public order refers to the French "ordre public," which "covers everything essential to the life of the country, including its security."[69] As such, the protection of religious freedom under the ICCPR cannot be derogated from even emergency situations[70], AS it is stronger. It asserts the right of stateless people to

> have or to adopt a religion or belief of [his] choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice or teaching.[71]

Freedom of Movement

The right to freedom of movement is most broadly espoused in the UDHR, which states that "[e]veryone has the right to freedom of movement and residence within the borders of each state."[72] More restrictively, under the 1954 Statelessness Convention,

> 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.[73]

Since many stateless people are also unlawfully in a given territory, many are excluded from the limited protection afforded by this provision.

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"[74] and external movement in so far as "everyone shall be free to leave any country including his own."[75] Much like the1954 Statelessness Convention protection, this internal movement protection applies only to those lawfully in the state's territory. Furthermore, it should be noted that the right to external movement is limited to leaving the state in question and does not guarantee a right to entrance into specific other territories other than to the person's "own country,"[76] a protection to which stateless people have no claim. 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]."[77]

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 states in no uncertain terms that "[e]veryone has the right to recognition everywhere as a person before the law."[78] These exact words are repeated in Article 16 of the ICCPR where they are among the provisions that cannot, under any circumstances, be derogated.[79]

Right to Access Courts

Access to courts is an especially important right for stateless people, because courts can be the means by which they seek redress for other human rights violations they have faced and because courts can provide the very means by which they resolve their status and have their right to nationality or citizenship legally recognized in a particular state.[80]

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."[81] In this way, it grants a more liberal right to access courts than can be found in the UHDR which refers only to a right to "an effective remedy by the competent national tribunals" in specific circumstances, namely "for acts violating the fundamental rights granted him by the constitution or by law"[82], 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."[83]

Despite the fact that the language of the 1954 Statelessness Convention does not limit access to courts to instances of fundamental rights violations, it must noted that, because it offers no stipulations about the competences of the courts to which a right of access is given, it does not necessarily mean that stateless people end up with access to courts that are equipped to decide question of nationality or offer remedies for statelessness.[84] The language of "effective remedy" and the protection of a right to a fair trial that is found in the UDHR may, therefore, prove more useful to stateless people hoping to regularize their status.

It should also be noted that the right to access courts is first and foremost a right to domestic courts. Only when such mechanisms and their accompanying remedies are exhausted should this right extend to access of international courts and court-like mechanisms like the human rights complaints body. Access to the UN Human Rights Committee, for example, is limited in this way.[85]

Civil and Political Rights Absent from the Statelessness Convention

It is important to note that there are a number of rights to which the drafters of the 1954 Statelessness Convention do not make explicit reference. The right to life and protections against torture and slavery were omitted from the 1951 Refugee Convention, because they were considered sufficiently established[86] and so, the same is likely true of the 1954 Statelessness Convention. They are, therefore, rights to which the stateless are entitled.

Other rights are omitted and cannot as easily be read into any of the provisions. As Van Waas aptly points out, both 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.[87] The ICCPR explicitly provides that "[n]o one shall be subjected to arbitrary arrest or detention."[88], Upon ratification, India made a two-fold declaration regarding this provision, which limits its generous language in its application to India.

First, India declared that the provision would be "applied as to be in consonance with the provisions of clauses (3) to (7) of article 22 of the Constitution of India" which authorize preventative detention of enemy aliens and of those envisioned by preventative detention legislation for up to three months with the possibility of longer detention if an advisory board that includes a High Court judge find sufficient cause for such an extension. Despite this clarification of the forms of detention that India will not consider arbitrary, the constitution provides a protection to all those detained such that they are to promptly communicate the grounds on which the person is being detained unless it would go against public interest to do so. Secondly, India limited the remedies for unlawful arrest or detention, holding that neither are to result in compensation from the state. [89]

With regard to minority rights, the ICCPR states that they

> shall not be denied the rights, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.[90]

Assessment of Civil and Political Rights of the Stateless

As demonstrated in this brief overview of the civil and political rights of stateless people under the 1954 Statelessness Convention as compared to other human rights mechanisms, the Statelessness Convention provides no more protection than human rights mechanisms. Therefore, in this regard, the fact that India has not signed the 1954 Statelessness Convention should not prove influential at the level of civil and political rights to which stateless populations in India should have access. In fact, the UDHR, which India participated in drafting, and the ICCPR, notwithstanding the limiting declarations India made when acceding, both provide more substantial rights protection for the stateless which India is bound to protect.

It must, however, be remembered that rights of stateless people do not amount to those of citizens with political rights under any of these instruments. Free speech protections and the right to participate in organized governmental politics are not granted to the stateless.

Economic, Social, and Cultural Rights

Much like civil and political rights, the economic, social, and cultural rights guaranteed by the 1954 Statelessness Convention are considerably more limited than those found in broader human rights mechanisms. The International Covenant on Economic, Social, and Cultural Rights, 1966 (hereafter ICESCR), to which India acceded on April 10, 1979[91] is an especially important part of human rights law in this regard, because its interpreting committee, the Committee on Economic, Social and Cultural Rights has forcefully asserted that no group should be denied the 'minimum core content' of the ICESCR rights.[92] The following is an overview of the economic, social, and cultural rights to which stateless people are entitled.[93]

Right to Work

Under 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[94] with regards to remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, 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.[95]

Much like the aforementioned limitation of the protection of freedom of movement, this provision is limited to those who are lawfully on the territory, which inherently excludes a great number of stateless people who by virtue of their lack of citizenship or other circumstances find themselves unlawfully in a given territory. The labour rights mechanisms that have evolved as part of human rights law offer an incomparable number of rights provisions, many of which apply to stateless people. The right to work and to just and favourable work conditions set out in the UDHR[96] are reflected in the ICESCR and have been elaborated in nearly 100 work-related conventions by the International LabourOrganisation (ILO)[97], which are meant to apply irrespective of citizenship, meaning they apply to those who are stateless.[98]

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.[99]

Right to an Adequate Standard of Living

The idea of an "adequate standard of living" is considerably more fleshed out in human rights instruments than it is in the 1954 Statelessness Convention, which includes only "adequate food, clothing and housing, and [...] continuous improvement of living conditions."[100]

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,"[101] but also a guarantee of a "quantity and quality sufficient to satisfy [...] dietary needs"[102] and the right to housing is "the right to live somewhere in security, peace and dignity."[103]

Right to Social Security

Social security benefits were not traditionally understood as universal, but rather were seen as part of the state-citizen relationship, extended only to those citizens of other countries if there was a reciprocal arrangement between the state from which they were coming and the state in which they then found themselves.[104] Stateless people were, therefore, precluded from the traditional model in which social security provisions are provided to those not citizens of the given state.

Therefore, at first glance, the 1954 Statelessness Convention appears generous in this regard. Article 23 grants a right to "public relief and assistance" and article 24 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[105]

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.

In contrast, the ICESCR recognizes "the right of everyone to social security, including social insurance,"[106] which has been understood to include virtually the same entitlements as the 1954 Statelessness Convention, but which applies to everyone without regard to the lawfulness of the person's presence in a given state. 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 [and] family benefits."[107] 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.[108] 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."[109]

Right to Education

The 1954 Statelessness Convention distinguishes between the right to education as it regards elementary education and as it regards more advanced education. Article 22 grants "the same treatment as is accorded to nationals with respect to elementary education"[110] while "access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships"[111] for non-elementary education is only granted on par with similarly situated non-citizens.

In human rights law, however, 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.[112] While India has not ratified this convention, it has ratified the ICESCR which also addresses the right to education. Article 13 of the ICESCR extensively expands the components of the right to education so that it is "directed to the full development of the human personality,"[113] so that it include compulsory primary education as well as progressively implemented free secondary and higher education,[114] so that it protects of the liberty of legal guardians to choose schools[115], and so that it affords people the right to "establish and direct educational institutions."[116] As Hathaway explains,

> while poorer states may rely on the Economic Covenant's general duty of progressive implementation to justify an overall insufficiency of secondary education opportunities or the failure to progressively make such education free of charge, there must be no discrimination against non-citizens in granting access to […] education.[117]

Assessment of Economic, Social, and Cultural Rights of the Stateless

As demonstrated in this brief overview of the economic, social, and cultural rights of stateless people under the 1954 Statelessness Convention as compared to other human rights mechanisms, namely the ICESCR, the Statelessness Convention provides no more protection than human rights mechanisms. Therefore, much as was the case with civil and political rights, the fact that India has not signed the 1954 Statelessness Convention does not lower the bar for the level of civil and political rights to which stateless populations in India should have access. In fact, on the contrary, the UDHR, which India participated in drafting and the ICESCR to which India acceded in 1979 both provide more substantial rights protection for the stateless.

Access to Documents

There is no general right to documentation in human rights law, but the 1954 Stateless Convention ensures that those individuals who qualify for protection by satisfying the definition articulated in Article 1 are provided with documentation confirming their status as stateless persons.[118] The right to identity papers is found in article 27 of the 1954 Statelessness Convention. Some identity documents are necessary to prove that a person is stateless and that s/he has a right to reside in the state while

other identity documents are useful in preventing statelessness by demonstrating a person's connection with a given state such that the state may not deny him or her citizenship.

First, Registration Certificates (hereafter RCs) are a form of documentation available in India for those who are not citizens to legalize their residency in the state. While there exists specific documentation for people from particular regions or with particular relationships to India, which are afforded on criteria other than the person's citizenship status, RCs are not inherently limited to any one group. These are cards which designate the holder as a foreigner within India. Valid for either six months or a year, there is no guarantee of their renewal. In practice, RCs are a form of informal status that enables the holder to reside in designated regions of India. RCs can also allow for limited domestic travel and, in certain situations, travel abroad. They are regulated by the Registration of Foreigners Act of 1939 and the Foreigners Act of 1946. The implementations of changing policies with regard to RCs are inconsistent across India. Those stateless people who are successful in obtaining an RC would not be considered "illegal" during the period in which their cards are valid.

Secondly, documentation of births and marriages are another form of identity documents, on which people may rely to prevent and resolve statelessness. Birth certificates can have an important role in legitimizing a person's claim to citizenship if the person was born in the state and the state follows jus soli methods of granting citizenship. Indeed, the UNHCR standing committee explains that

> while nationality is normally acquired independently and birth registration in and of itself does not normally confer nationality upon the child concerned, birth registration does constitute a key form of proof of the link between an individual and a State and thereby serves to prevent statelessness.[119]

Marriage, on the other hand, may have an effect on the likelihood a person will be granted citizenship, especially if the person they have married is a citizen of the state. With regard to the registration of marriages in the Indian context, the CEDAW committee has expressed its concern "that India has not yet established a comprehensive and compulsory system of registration of births and marriages."[25]

Conclusion

The legal situation of stateless people in India cannot be understood simply by the fact that India has not acceded to either of the statelessness conventions. While this certainly demonstrates the state's reluctance to commit to addressing the issue of stateless, it must not be understood as meaning that India has no statelessness law. Instead, if we are to accept that statelessness law includes both the law which produces situations of statelessness and the law which seeks to address it then it is clear that India has a wealth of stateless law. First, India has numerous legal provisions with actively produce statelessness in the form of citizenship laws that allow for the denial, deprivation, and loss of Indian citizenship. Secondly, India is a party to numerous human rights conventions which offer protection to stateless people. While acceding to the two statelessness conventions would no doubt be a decision welcomed by the international community of agencies and organizations concerned with statelessness, there is much for India to do to address the plight of those who are stateless besides considering accession to either convention. First, India must stop legally sanctioning the production of statelessness. It must revise its citizenship laws such that citizenship cannot be revoked from those who would be rendered stateless by such an act. Secondly, India must act on its human rights commitments. By acceding to the ICCPR and the ICSCER conventions, India has already

promised to protect a wide range of civil, political, social, cultural, and economic rights of the stateless. It must turn those international commitments into domestic law and policy.

In the end, however, addressing statelessness in India, like elsewhere in the world, is not merely a legal question. While the de jure statelessness definition is defined by the existence or non-existence of a legal bond, the experience of statelessness is about much more than citizenship in name. It is about citizenship in practice. Indeed, the existence of effective rights and entitlements goes much beyond the courtroom, to the political arena and socio-cultural milieu. Statelessness is more than itsde jure definition. It is a multi-faceted issue that required a multi-faceted response.

Notes

[1] Brad Blitz„"Statelessness, Protection, and Equality" Forced Migration Policy Briefing 3 (Oxford: Refugee Studies Center, 2009) at 7.

[2]UNHCR, "The World's Stateless People", Refugees Magazine (2007)147:3. It is, however, worth noting that ascertaining a clear number is difficult and UNHCR estimates have varied greatly. Practical difficulties in calculating numbers as well as continued disagreements about the definition of statelessness amongst political and academic actors serve to muddy the picture.

[3] UNHCR Executive Committee, Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons (2006) 102.

[4] Maureen Lynch, Lives on Hold: The Human Cost of Statelessness (Washington: Refugees International, 2005) at 7.

[5]AntónioGuterres and Louise Arbour, The Hidden World of the Stateless (Geneva: UNHCR, 2007).

[6] Walker Connor, "A nation is a Nation is a state is an Ethnic Group is a ..." in John Hutchinson and Anthony D. Smith, eds, Ethnic and Racial Studies (Oxford ; New York : Oxford University Press, 1994).

[7]The Citizenship Act of India, 1955 (India), 1955, s 3.

[8]Jus soli is latin for "right of the soil." It refers to practices in citizenship law in which the right to citizenship is afforded by virtue of the person being born on the given state's territory.

[9]Statement of Objects and Reasons of the Amendment from The Citizenship (Amendment) Act, 1987 (India), 1987.

[10]The Citizenship (Amendment) Act 2003 (India), 2003, s 2(b).

[11]Latin legal term meaning "beyond the powers of."

[12]Anupama Roy, Mapping Citizenship in India (Oxford: OUP, 2010) at 193.

[13] For a more on universal look at the way foreigners are not considered complete legal subjects, see François Crépeau and RanabirSamaddar, "Recognizing the Dignity of Migrants" (2011) 37 Refugee Watch. Available at *http://www.mcrg.ac.in/rw%20files/RW37/5.François.pdf*

[14]Supra note 10, s 2(e).

[15]India Country Specific Information, online: US Department of State *www.travel.state.gov/travel/cis_pa_tw/cis/cis_1139.html#special_circumstances*

[16]1954 Convention relating to the Status of Stateless Persons, 360 UNTS 117, art 1.

[17]Regional Expert Roundtable on good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia (Bangkok: National Human Rights Commission of Thailand and United Nations High Commissioner for Refugees, 2011).

[18] Carol Batchelor, "Statelessness and the Problem of Resolving Nationality Status" (1998) 10 International Journal of Refugee Law at 172.

[19] Laura Van Waas, Nationality Matters: Statelessness under International Law (Antwerp/Oxford/Portland: Internsentia, 2008) at 7.

[20]Supra note 18.

[21]Supra note 18 at 172-175.

[22]1951 Convention relating to the Status of Refugees, 189 UNTS 137, art 1.
[23]Nehemiah Robinson, Convention relating to the status of stateless persons - Its history and interpretation (Geneva: UNHCR, 1955) at 11-13.
[24]1954 Final Act of the Convention relating to the Status of Stateless Persons, 360 UNTS 117, art 1.
[25]Paul Weis "Elimination or Reduction of Future of Statelessness" (Speech delivered at the Speech to the United Nations Conference on the 25 August 1961), [unpublished].
[26] Carol Batchelor, "Stateless Persons: Some Gaps in International Protection" (1995) 7 International Journal of Refugee Lawat 252.
[27]1930 Convention on Certain Questions relating to the Conflict of Nationality Laws 179 LoNTS 89, art 1.
[28]UNHCR, "Statelessness and Citizenship" The State of the World's Refugees - A Humanitarian Agenda (Oxford: OUP, 1997) at 251.
[29]Resolution 2005/45 on Human Rights and Arbitrary Deprivation of Nationality, UN Commission on Human Rights, 57th Meeting, UN Doc E/CN.4/RES/2005/45, (2005).
[30]Universal Declaration of Human Rights, GA Res 217 (111), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948), art 15.
[31]*International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47 (entered into force 23 March 1976), art. 24.
[32] UN Committee on the Elimination of Racial Discrimination, General Recommendation 30: Discrimination against non-citizens, 1 October 2004, para. 14 cited in
http://www.unhchr.ch/tbs/doc.nsf/0/e3980a673769e229c1256f8d0057cd3d?Opendocument accessed on 12 July 2013.
[33] UN General Assembly, Resolution: Office of the United Nations High Commissioner for Refugees, A/RES/50/152, 21 December 1995 at *http://www.un.org/documents/ga/res/50/ares50-152.htm* accessed on 12 July 2013
[34]Supra note 1 at 1.
[35]Supra note 1 at 10.
[36]Ibid at 16.
[37]Ibid.
[38]Ibid.
[39]Ibid at 14.
[40] IPCC, Climate Change 2007: Impacts, Adaptation and Vulnerability (Geneva: IPCC, 2008).
[41] Laura Van Waas, "OAS Course on Statelessness: Statelessness & International Law" (Seminar delivered at the Tilburg University Statelessness Programme, February 23 2012).
[42]Supra note 7, s 8.
[43]Supra note 7, s 9.
[44]Izhar Ahmad Khan v Union of India, 1962 AIR 1052 at 248.
[45]Supra note 7, s 10(3).
[46]Ibid, 10(2).
[47] As the assessment of extra-legal factors in statelessness is beyond the scope of this brief, please refer to the Mahanirban Calcutta Research Group research programme on statelessness for more case-based analysis of these factors.
[48] "India" The International Observatory on Statelessness (22 May 2013), online: The International Observatory on Statelessness www.nationalityforall.org/india.
[49] For further explanations of the effects of state succession in India, please refer the three Mahanirban Calcutta Research Group reports on statelessness available at www.mcrg.ac.in.
[50]Supra note 1 at 10.
[51] Calcutta Research Group, Mapping the Stateless in India Phase 2 (Kolkata: MCRG, 2011) at 5.
[52]For more on this topic, read R Bauböck, Migration and Citizenship, Legal Status, Rights and Political Participation (Amsterdam: Amsterdam University Press, 2007).
[53]Supra note 1 at 13.

[54]See Pascale McLean, Incomplete Citizenship, Statelessness and Human Trafficking: A Preliminary Analysis of the Current Situation in West Bengal (Kolkata: Calcutta Research Group, 2005).
[55]Supra note 18 at 171.
[56] Laura Van Waas, "OAS Course on Statelessness: Statelessness & International Law" (Seminar delivered at the Tilburg University Statelessness Programme, February 23 2012).
[57]Supra note 19 at 436.
[58] For more on this, see "The Nationality of the Offender and the Jurisdiction of the International Criminal Court" (2001) 95:3 The American Journal of International Law at 616-618.
[59]Convention relating to the Status of Stateless Persons, 1954, Article 4 cited in *http://www.unhcr.org/3bbb25729.html* accessed on 10 June 2013
[60]Ibid, art 12.
[61]Ibid, art 13.
[62]Ibid, art 13(1).
[63]Ibid, art 26, 31.
[64] Human Rights Committee, General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Geneva: 26 March 2004, para.10, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) at http://www1.umn.edu/humanrts/gencomm/hrcom31.html accessed on 10 June 2013 **.** It must, however, be acknowledged that several of the ICCPR provisions are explicitly more limited, e.g. "juvenile offenders" or "pregnant women" (Art. 6).
[65] For a more in-depth analysis of each of these rights, please refer to supra note 19 at 235.
[66]Convention relating to the Status of Stateless Persons, 1954, Article 38.*supranote 59*.
[67]Ibid, art 4.
[68]Ibid, art 2.
[69]Supra note 23 at 24.
[70]Supra note 31, art. 4(2).
[71]Ibid, art 18(1).
[72] UN General Assembly, Universal Declaration of Human Rights, 1948, Article 15 cited in http://www.un.org/en/documents/udhr/index.shtml#a15 accessed on 10 June 2013.
[73]Convention relating to the Status of Stateless Persons, 1954, Article 26.*Supranote 59*
[74]Supra note 31, art. 12(1).
[75]Ibid, art 12(2).
[76]Ibid, art 12(4).
[77]Ibid, art 12(3).
[78] UN General Assembly, Universal Declaration of Human Rights, 1948, Article 6. *Supranote 72*
[79] International Covenant on Civil and Political Rights, 1996, Article 4(2). Cited in *http://www.refworld.org/docid/3ae6b3aa0.html* accessed on 3 June 2013.
[80]Supra note 19 at 266.
[81]Convention relating to the Status of Stateless Persons, 1954, Article *16(1).Supranote 59*
[82] UN General Assembly, Universal Declaration of Human Rights, 1948, Article 8. *Supranote 72*
[83]Ibid, art 10.
[84]Supra note 19 at 268.
[85]Optional Protocol to the International Covenant on Civil and Political Rights, 1976, Article 5 (2).cited in *http://www1.umn.edu/humanrts/instree/b4ccprp1.htm* accessed on 8 June 2013
[86] Hathaway, James, *The Rights of Refugees Under International Law*, Cambridge University Press:Cambridge, 2005, page 94
[87]Supra note 19 at 285.
[88] International Covenant on Civil and Political Rights, 1996, Article 9. *Supranote 79*.
[89]*Ibid.*
[90]Ibid, art 27.

[91] It should be noted that unlike the ICCPR, the ICESCR allows for progressive achievement. See International Covenant on Economic, Social, and Cultural Rights,1966, Article 2(1) cited in.
http://www.refworld.org/docid/3ae6b36c0.html accessed on 8 June 2013
[92]*Ibid.*
[93] For a more in-depth analysis of each of these rights, please refer to supra note 19 at 301.
[94]Convention relating to the Status of Stateless Persons, 1954, Article 17 *Supranote 59*
[95]Article 24, paragraph 1(a) of the 1954 Convention relating to the Status of Stateless Persons.*Ibid.*.
[96] See articles 23 and 24 of the Universal Declaration of Human Rights, 1948. *Supranote 72*.
[97]Supra note 19 at 312.
[98] James Hathaway, *Suptanote 86* at page 485
[99]Article 6, paragraph 1 of the ICESCR *Supranote* 91
[100] ESC Committee, General Comment 4: The right to adequate housing, 13 December 1991, para. 6 cited in *http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument* accessed on 10 June 2013
[101]Article 11, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights. *Supranote* 91
[102] ESC Committee, General Comment 12: The right to adequate food, 12 May 1999, para. 8. Cited in *http://www.refworld.org/docid/4538838c11.html a*ccessed on 10 June 2013
[103] ESC Committee, General Comment 4: The right to adequate housing, 13 December 1991, para. 6. *Supranote* 100
[104] James Hathaway, *Supranote* 86 at page 773
[105]Article 24, paragraph 1(b) of the 1954 Convention relating to the Status of Stateless Persons. *Supranote 59*
[106]Article 9 of the ICESCR. *Supranote* 91
[107] ESC Committee, Revised general guidelines regarding the form and contents of reports to be submitted by state parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/1991/1, 17 June 1991cited in *http://www.jura.uni-bielefeld.de/lehrstuehle/davy/wustldata/1991_E_C12_1991_1_Revised_reporting_guidelines.pdf* accessed on 7 June 2013
[108]Supra note 19 at 238
[109] ESC Committee, General Comment No. 19 - The Right to Social Security, Advanced unedited version, 4 February 2008, para. 38. in Van Waas, 331. *Supranote* 19
[110]Article 22(1) of the 1954 Convention relating to the Status of Stateless Persons.*Supranote 59*
[111].*Ibid,* Article 22(2)
[112]Article 3, paragraphe of the UNESCO Convention against Discrimination in Education, 14 December 1960 cited in *http://www.unesco.org/webworld/peace_library/UNESCO/SAD/MD2P3I2.HTM* accessed on 5 June 2013
[113]Article 13(1) of the ICESCR.
[114]Article 13(2) of the ICESCR.
[115]Article 13(3) of the ICESCR.
[116]Article 13(4) of the ICESCR.
[117] James Hathaway, The Rights of Refugees Under International Law, Cambridge University Press, Cambridge: 2005, pages 611-612
[118]Supra note 19 at 375.
[119] UNHCR Standing Committee, Birth registration: A topic proposed for an Executive Committee Conclusion on International Protection, EC/61/SC/CRP.5, 9 February 2010

Reducing Statelessness: A New Call for India

Shuvro Prosun Sarker [*]

Introduction

"Moder kono basha nai, Moder kono desh nai….
Moder kono disha nai, moder kono dyash nai"[1]
- Bengali Folk Song by Abbasuddin

The principal objective behind any research on statelessness in India should be to find out the communities/groups within India who are lacking nationality, rather protection of nationality, and to find out the means and methods to cover them under state protection or international protection. However, there is possibility that, this kind of research may trace communities/groups from both ways that 'do not have the nationality of any state legally' or 'do not count on their state for protection'. It is noteworthy for a country like India that the second category has emerged from neighbouring states in relation to episodes of irregular migration because of sustained or systemic violation of basic human rights towards some communities/groups by their own state/ majority community. The situation actually leaves the victims virtually unprotected by the agencies of the state. This category of persons indicates that effective statelessness may no longer reflect in the relationship between the state and the person concerned. In one side there is hope that the host state will play a compassionate role and in other side there are strict law of the land which is defining the nature of nationality. All these factors raised the question of protection for this vulnerable class which may be called on by advocating for a new international protocol or evocative acts or advocacy for regional pact or direct national legislation.

Though there are two UN conventions on statelessness, but these two can not make India liable to go by their terms as India has not acceded/ ratified/ adopted/ signed the conventions. The limitation of these conventions to reduce statelessness for a country like India is a writ of bit large as there is a growing number of people who are stateless *de facto*.[2] Their human rights are more vulnerable as they have left the state to which they have a formal connection and alsodo not get protection by the host state as doubtful citizens. The relationship between protection of these stateless persons and human rights is one of the primary issues in India. It is necessary to consider for alternative protection for these stateless persons under the two human rights covenants as the

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hierarchy of non-citizens in a state highlights the gap between protection and human rights. There is expansion of non-derogable rights and the concept of social, economic and cultural rights started in the twentieth century, along with international affirmation of universality, indivisibility, interdependence and interrelatedness of human rights. All these should come together to consider the identification of specific groups/ communities whose human rights require special protection.

With regard to customary practices of international law, non *refoulment* is the principle with regard to refugees and stateless-refugees which is non-derogable in nature. Apart from that there is a significant body of international law that has elaborated the principle of nondiscrimination as a non-derogable norm that prohibits discrimination on the basis of race, ethnicity and related criteria. India's acceding of ICCPR[3], ICESCR[4], CRC[5] and ratification of ICERD[6] and CEDAW[7] have excelled the quantum of protection from the idea of compassion to rights. This development of a body of international law which triggered the prohibition of nationality based discrimination has been further encouraged by the advocacy efforts of international organizations, non-governmental actors, and particular states. Also the recent increase in public information and advocacy has served to remind international bodies and non-governmental organizations that the persistence of statelessness is a complex matter that underlines the centrality of effective protection. There is growing pressure from international NGOs, refugee organizations, and human rights monitoring bodies to provide protection to those who do not fall under either the refugee convention or the conventions on statelessness. There is a specific case decided by the Supreme Court of India in the matter of *chakmas* from CHT, East Pakistan (presently Bangladesh) where the Court decided the case in favour of the *chakmas* with specific direction to process their citizenship application through the process established by law.[8] It is mentionable here that a new public interest litigation, *Swajan & Anr. Vs. Union of India & Anr.*[9], is pending before the Supreme Court right now asking for specific direction to confer citizenship/ refugee status to the Bangladeshi minorities staying in the State of Assam and the Court has already issued notice to the respondents Union of India and State of Assam. So it is evident that the expansion of human rights regime of stateless persons of the second category has got a positive momentum in India along with the expansion of *locus standi* of foreigners staying in India.[10] Now it's time to see whether Supreme Court comes out with a decision based on human rights consideration or on the ground of internal security and economic constraint of India. Countless number of deemed stateless or deemed nationals are looking forward to get Justice!

This chapter in its ongoing sections will focus on defining statelessness and its implication to the Indian scenario. Thereafter, India's obligation to protect the stateless persons from discrimination and inequality will be followed. Various cases decided by the Indian Judiciary and debates in the Parliament will bean analyzed to determine emergence of protection of the stateless persons.

The Indian Scenario & Statelessness

Citizenship has become a political weapon and treatment to non-citizens is worsening precisely as states are increasingly bestowing, denying, or retracting citizenship through various acts.[11] It is difficult to determine the number of stateless persons in the world as there is lack of systematic methods of collecting data and most importantly the lack of consensus on inclusion-exclusion policy.[12] Here the dilemma begins.

Historically state has the right to determine or define who is a citizen of that state.[13]A person who is under the confusion of the citizenship laws about his status as a non-national is called *de jure*

stateless[14] and "it is a purely legal description; the characteristics and value of a particular person's nationality as it is realized in his particular home state is irrelevant to the definition"[15].The 1954 Convention in Article 1 defines stateless as a person "who is not considered as a national by any State under the operation of its law"[16].This *de jure* situation is also recognized by the 1961 Convention on the Reduction of Statelessness.[17]It is believed by many legal scholars that the concept of statelessness should encompass more than *de jure* statelessness. The conventional definition is too narrow and limited as this does not cover those persons who have a nationality technically but not fruitfully or cannot prove their nationality on the basis of evidence.[18] The prior statement should be well understood with the following statement:

> "The definition of statelessness outlined in the 1954 Convention precludes full realization of an effective nationality because it is a technical, legal definition which can address only technical, legal problems. Quality and attributes of citizenship are not included, even implicitly, in the definition. Human rights principles relating to citizenship are not delineated, despite the inspiration of the Conventions themselves by article 15 of the Universal Declaration of Human Rights. The definition is not one of quality, simply one of fact."[19]

The same author further clarifies her opinion as follows:

> "The definition of a *de jure* stateless person was chosen in order to exclude the question of whether the person has faced persecution, as there are conflicts of legal issues which might result in statelessness without any willful act of neglect, discrimination, or violation on the part of the State. *De facto* statelessness, on the other hand, was presumed to be the result of an act on the part of the individual, such as fleeing from the country of nationality because of persecution by the State. The drafters of the 1954 and 1961 Conventions felt that all those who faced persecution, and who did not have an effective nationality, would be considered refugees and would receive assistance from the international community under the terms of the 1951 [Geneva] Convention relating to the Status of Refugees. Quite intentionally, then, the drafters of the 1954 Convention relating to the Status of Stateless Persons adopted a strictly legal definition of stateless persons."[20]

From this point it may be argued that persons without effective nationality should be treated as stateless.[21] These persons may have a legal bond with a country but no longer be able to utilize it or enjoy the benefits for various socio-political reasons or cannot prove it with sufficient evidence.[22] In this regard the definition of statelessness should be broadened to include *de facto* statelessness.[23] Categorically there are three groups who may be considered as *de facto* stateless[24]:

i. Persons who do not enjoy the rights attached to their nationality;
ii. Persons who are unable to establish their nationality, or who are of undetermined nationality;
iii. Persons who, in the context of State succession, are attributed the nationality of a State other than the State of their habitual residence.

In this context a definition of *de facto* stateless adopted by the Council of Europe's Group of Specialists on Nationality may be considered as timely with regard to the expansion of statelessness regime[25]:

> "persons [who] do possess a certain nationality, but where either the state involved refuses to give the rights related to it, or the persons involved cannot be reasonably asked to make use of that nationality, yet it has to be underlined, that it is up to the states to determine what de facto statelessness is and thus which persons are to be covered".

The Inter-American Court on Human Rights in the Case of the Yean and Bosico Children v. The Dominican Republic[26] held that:

> "States have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons. This condition arises from the lack of a nationality, when an individual does not qualify to receive this under the State's laws, owing to arbitrary deprivation or the granting of a nationality that, in actual fact, is not effective."

As the primary responsibility of States includes prevention and reduction of statelessness[27], the case of India should be to attempt to identify effectively stateless persons and find ways to reduce it. In India it is fact that we will find people without effective nationality due to the effects of partition, decolonization, internal politics and security issues in India, negative legislative intent and civil war in Sri Lanka and Bhutan, Indo-China relationship, etc. and finally the lack of measures in Indian citizenship law to deal with this grave situation. At the same time India is not bound by the terms of any of the Conventions relating to Statelessness as India has not acceded/ ratified/ adopted/ signed those. However, India is a party to various other international instruments which on the other way brings responsibility to protect the stateless population in India.

The general comment under International Covenant on Civil and Political Rights on the issues of position of aliens upholds that the rights guaranteed under this covenant should guarantee without distinction to aliens and citizens.[28]The general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant.[29] Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to aliens. However, the Committee's experience in examining reports shows that in a number of countries other rights that aliens should enjoy are denied to them or are subject to limitations that cannot always be justified under the Covenant.[30]

The drafters of the Convention on the Elimination of All Forms of Discrimination Against Women were preoccupied with ensuring that women attain equality with men in regard to their own nationality and that of their children.[31] It is assumed that if women do not receive equal treatment with men, then that amounts to discrimination and again women may face discrimination for which they may not find adequate redress.[32]

The Convention on the Rights of the Child provides, among others, that the child shall have the right to acquire a nationality, while State Parties have to implement these rights according to their national law and obligations under relevant international instruments to prevent the child from becoming stateless.[33] This convention further provides that State Parties undertake to respect the right of the child to preserve his or her nationality as recognized by law without 'unlawful interference', and declares that State Parties shall provide assistance and protection to a child 'legally deprived' of, in this case, nationality, for its speedy restoration.[34]

Parliamentary Discussions and Judicial Pronouncements

The issue of granting citizenship of India to the various effectively stateless persons has stormed the both houses of the Indian Parliament. In various occasions the Members of the Parliament asked specific questions about Indian citizenship granting process to the *chakma* and *hajongs*, Pakistani and Bangladeshi migrants in various Indian states, etc. There has been a continuous discussion starting from 1993 to present day where the Members of the Parliament actually showed interest in reducing statelessness in India. However, there has been no discussion on the definitional aspect, and by and large it is derived from the discussion that the Members of the Parliament are considering any group who are present in India without an effective nationality as stateless as they are continuously insisting

the government to grant citizenship, expedite the citizenship granting process, propose a new bill, delegated powers etc. The following paragraphs will be addressing these parliamentary proceedings in a nutshell.

Nyodek Yonggam, MP asked the Minister of Home Affairs to provide details of granting citizenship to *chakma* refugees settled in various parts of India.[35] The Minister of State for Home Affairs replied that the issues of granting citizenship to *chakma* refugees who are resident of Arunachal Pradesh and arrived in India before 25March 1971 has been under consideration of the Ministry. However, *chakma* refugees living in other parts of India have not been considered for citizenship granting.

Drupad Borgohain, MP asked the Minister of Home Affairs that what was the latest decision of the Ministry to grant Indian citizenship to *chakmas* and *hajongs* who migrated from Bangladesh to Arunachal Pradesh and whether there would be any bill to come before the parliament on this issue.[36] The Minister of State for Home Affairs replied that the granting of citizenship was under consideration but there was no such proposal to introduce a bill in the parliament regarding this issue.

A. Vijayaraghavan, MP asked the Minister of Home Affairs that whether the Ministry received any representation to grant Indian citizenship to Pakistani citizens settled in Malappuram district of Kerala during the time of independence and whether there was any attempt in denying Ration Cards by the District Magistrate in 2003 to family members of these persons who are citizen of India by birth.[37] The Minister of State replied that the Ministry did not receive any such representation. If they apply for Indian citizenship, proper action will be taken by the Central Government as per the Indian Citizenship Act, 1955 and Citizenship Rules, 1956. However, no such information on denying ration cards was available at that time and the Minister of State assured that the information would be collected and laid down in the table of Rajya Sabha. Mr.Vijayaraghavan, MP again in 2005 asked the Minister of Home Affairs that whether the Ministry extended time frame of the delegated powers of the District Magistrates of Gujarat and Rajasthan to grant Indian citizenship to persons who came from Pakistan, and the State wise number of persons who were granted Indian citizenship in the last year.[38] The Minister of State replied that the Ministry extended the time frame of this delegated power by one year and the number of Indian citizenship granted in the last one year to migrants from Pakistan in Gujarat and Rajasthan are 1,469 and 11,298 respectively.

Motilal Vora, MP asked the Minister of Home Affairs whether due to the laxity of Indian laws and carelessness of Indian security agencies Bangladeshi and Pakistani migrants are living in India, the government's reaction to this and the number of pending application from Pakistani citizens for granting Indian citizenship.[39] The Minister of State replied that the government was aware of the illegal immigrants mostly from Bangladesh and State governments were empowered under Section 3(2)c of the Foreigners Act, 1946 to detect and deport those foreign nationals staying illegally. However, the Minister could not provide any data about the pendency figure.

Rajeev Chandrasekhar, MP asked the Ministry of Home Affairs to provide a data on citizenship applications received by the Ministry up to 01 September 2007 from the citizens of Bangladesh, Pakistan and Myanmar.[40] The Minister of State replied his question saying that there is no centralized data maintained by the Ministry regarding this and so it is not possible to provide any estimate of how many applications may be cleared by the Ministry by the end of 2007.

Man Mohan Samal, MP in the Lok Sabha asked the Minister of Home Affairs about the refugees from Bangladesh in the State of Odisha.[41] He specifically wanted to know about their rehabilitation and citizenship granting process. The Minister of State replied that the State

Government of Orissa informed the Ministry that illegal Bangladeshi migrants were a major concern for law and order situation in Nabarangpur district of Orissa. During sixties and seventies Bangladeshis were rehabilitated by the Government in Malkangiria, Koraput, Nabarangpur, Bhadrak, Jagatsinghpur, Kendrapara, Khurda and Balasore districts and all Bangladeshi settlers who were thus rehabilitated were given citizenship rights.

The Minister of State for Home Affairs in 2013 while discussing the resolution and answering the questions related to formulation of an action plan to rehabilitate persons displaced from Pakistan finally requested the members to withdraw the resolution. For the convenience of the readers the reply of the Minister of State has been put below in his own words in the Lok Sabha[42]:

> "THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI MULLAPPALLY RAMACHANDRAN):
>
> (…)
>
> A very important issue has been raised by Shri Meghwal relating to the rehabilitation of displaced Hindu families presently coming from Pakistan. It is worthwhile to mention that in order to solve the massive problem of mass influx of displaced persons from the erstwhile West Pakistan -- as a result of partition in 1947 and to rehabilitate them -- the Government of India, during 1950's, had taken a series of measures by enacting a series of Acts. As the major works of claims, compensation and also rehabilitation, more or less, had been completed by 1970, the Central Government repealed all these Acts in 2005. At present, we do not have any Act in this connection because this august House has repealed all these Acts.
>
> (…)
>
> I would like to state that the Central Government has been very sensitive to the issues faced by the Pakistan nationals who migrated to India at various point of time. For instance, it has been decided that the cases of the Pakistan nationals who entered India prior to 31.12.2004 would be processed on a case to case basis, and if an applicant files an Affidavit before the authority prescribed under Rule 38 of the Citizenship Rules, 2009, that is, the Collector, District Magistrate and Deputy-Commissioner, it may be accepted in lieu of the Renunciation Certificate. The State Governments and UTs concerned have been duly requested to deal with these matters as per instructions given by the Ministry of Home Affairs. In fact, the Ministry has also stipulated a Standard Operating Procedure for dealing with foreign nationals who claim to be refugees.
>
> Madam, another important issue has been raised, that is, delegation of power to the District Collectors in the States of Gujarat and Rajasthan for grant of Indian Citizenship to Pakistan nationals. This is a very important issue which has been raised by some Members. The powers to grant Indian Citizenship to nationals of Pakistan belonging to minority Hindu community were delegated to the Collectors of Kutch, Patan, Banaskantha, Ahmedabad of Gujarat and Barmer and Jaisalmer of Rajasthan in 2004 for one year to grant citizenship to Pak nationals of minority community staying in the border districts of Rajasthan and Gujarat as a special case. This delegation was extended up to 2007 on year to year basis. Such powers were not delegated to any other State. Sufficient time was given to these two States to decide such pending cases.
>
> (...)
>
> The provisions of applying for Indian Citizenship continue to be available as per provisions of Citizenship Act of 1955. Normally, the Central Government takes about four months in processing cases and issuing acceptance letter in consultation with security agencies. In order to make the procedure simpler, faster and transparent, the Home Ministry has decided to introduce what is called online submission of application for grant of citizenship with effect from 1.12.2001.
>
> (...)

> I would like to reiterate that the Government of India is very sensitive to the issue related to the welfare of all foreign nationals in India including Hindu Pak nationals who deserve support and attention subject to the laws of the land and policies of the Indian Government.
> (...)

It clear from the abovementioned questions by the Members of the Parliament and the answers of the Ministry of Home Affairs clearly indicates that the parliamentarians of India and also the Government of India are not concerned about the two conventions of statelessness and precisely they have clubbed these two identities while dealing with them. They have never tried to get reference of these two conventions anywhere during these proceedings which primarily denote that statelessness in India is in such a unique situation that the conventional definition could not serve the purpose of reducing statelessness in India.[43] If these proceedings be looked very analytically, it will be found that the Government of India is not denying any responsibility to reduce statelessness or granting Indian citizenship to these various groups present throughout India, but the Government is not addressing these issues with specific normative framework or legislative action in a proper and timely manner.

India is not a party to the stateless conventions, however this does not cease India's obligation to protect. The principle of non *refoulement* has been accepted as a principle of customary international law. This goes on to add that the other principles regarding refugees enumerated in various international law instruments have to be taken into consideration. This leads to the international law and municipal law debate. Thus stands out a question- Why would a nation respect international principles and policies unless they have been incorporated in the municipal laws of that nation? The Supreme Court of India deserves a laud in this regard. The way Supreme Court of India has interpreted the Constitution in its decisions to highlight the duty of the state to accord refugee protection is phenomenal.

In its two major decisions the Supreme Court referred to Article 14 of the Universal Declaration of Human Rights and Article 13 of the International Covenant on Civil and Political Rights to uphold the obligation of refugee protection.[44] The first instance was the case of Khudiram*Chakma v. State of Arunachal Pradesh*[45], wherethe Supreme Court of India referred to the Universal Declaration of Human Rights in the context of refugees in India in the following words:

> "Article 14 of the Universal Declaration of Human Rights, which speaks of the right to enjoy asylum, has to be interpreted in the light of the instrument as a whole, and must be taken to mean something. It implies that although an asylum seeker has no right to be granted admission to a foreign State, equally a State which has granted him asylum must not later return him to the country whence hecame. Moreover, the Article carries considerable moral authority and embodies legal prerequisite of regional declarations and instruments."[46]

The pro-refugee-protection approach was further reflected in the case of *National Human Rights Commission v. Sate of Arunachal Pradesh*[47]. The Supreme Court of India held that *chakma* refugees who had come from Bangladesh due to persecution cannot be forcibly sent back to Bangladesh as they may be killed or tortured or discriminated, and in result of this they would be deprived of their right to life under Article 21[48] of the Constitution of India. The Supreme Court in the same case made a number of observations relating to the protection of *chakma* refugees in India:

> "We are a country governed by Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to the procedure established by law. Thus the State is bound to protect the life and personal

> liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons…to threaten the chakmas to leave the State, failing which they would be forced to do so…the State government must act impartially and carry out its legal obligations to safeguard the life, health and well being of chakmas residing in the state without being inhibited by local politics. Besides, by refusing to forward their applications, the chakmas are denied rights, constitutional and statutory, to be considered for being registered citizens of India."[49]

A subtle derivation from the above trend would stand to claim that the obligation to protect refugees or particularly the stateless persons is paramount. The importance of Article 21 of the Constitution can be well inferred from the decisions rendered by the Supreme Court. Article 21 is a non-derogable right. It would be therefore not incorrect to claim that the term "reducing statelessness" with regard to the groups who are staying in India for a long period or for generations have been fully incorporated into Indian Law via Article 21 of the Constitution of India.

However, with regard to illegal migration from Bangladesh, the Supreme Court has declared the Illegal Migrants (Determination by Tribunal) Act, 1983 unconstitutional in the decision given in *Sarbananda Sonawal v. Union of India*[50]. The Act was enacted by the Indian government, partly to prevent a witch-hunt against illegal migrants, but also with the professed aim of making the detection and deportation of illegal migrants easier. This Act resulted in the establishment of tribunals to determine whether or not a person is an illegal migrant. This was specifically and exclusively applicable to foreigners in Assam, while foreigners in the rest of India covered under the provisions of the 1946 Foreigners Act.[51]While the Foreigners Act specifically provides that the onus of proving citizenship status rests on the person accused of being a non-citizen[52], whereas the 1983 Act contained no such provision, and in *effect,* its provisions accorded greater protection to anyone accused of being a foreigner in placing the burden of proof on the prosecution to establish that he or she is not a citizen of India. In this case, the petitioner, a former president of the Assamese Students Union, stated that the 1983 Act was unconstitutional as it discriminated against a class of citizens of India, making it impossible for citizens resident in Assam to secure the detection and deportation of foreigners from India. The petitioner claimed that the Act had actually ended up protecting illegal migrants. The Court declared the Act unconstitutional on the ground that it violated article 355 of the Indian Constitution.[53] This judgment has a very long standing effect in determining the issue of granting citizenship in India where in one side there is threat to security and in another side there is a possibility of social integration.

Conclusion

It is noteworthy that stateless persons have not been historically distinguished with refugees; however they are now of different categories where refugees are identified and stateless persons are mostly unidentified.[54] For a country like India statelessness emerges mainly for the following reasons rigidity of Indian citizenship laws, administrative obstacles by Indian authorities and neighbouring countries, laws that revoke citizenship in some of the neighbouring countries, arbitrary and discriminatory denial of citizenship in India in case of children, State withdrawal of Citizenship in some of the neighbouring countries, laws affecting women rights of nationality and subsequent rights, transnational migration, etc. This is the time for India to deal with this situation of effective statelessness or in a new future likely after fifty years the number will grow in such huge that the government machinery will not be able to deal with their demands may be for new independent country for each and every groups. Though in this present world political scenario it will not be favourable to adopt any of the conventions of statelessness by the Indian government as there is a

growing concern over the third world approaches to international law, precisely public international law.[55]

So the most important possibility to deal with statelessness in India would be to deal with human rights approach as humanism and compassion have been India's ageless heritage and is a fundamental duty under Article 51[56] of the Indian Constitution. The recent judgments[57] of the Delhi High Court and Karnataka High Court dealing with citizenship rights of *Tibetan* children who were born in India from 1950 to 1987 can now exercise their right to vote, have excelled the opportunity for other groups present in India to make their way towards Indian citizenship!

Notes

*In case of India there is no legal distinction between nationality and citizenship. So these terms will be used interchangeably in this paper.

[1] This Bengali folk song may be translated as "we have no residence, we have no village; we have no direction, we have no country". This song with its excellent lyrics and music portrayed the misery and sorrow of every person who became homeless, rather refugee, during the dawn of independence of India. Even today this song has relevance with regard to misery and sorrow of refugee and stateless persons staying in India. The song is available at http://www.youtube.com/watch?v=LrwYo5-DLpI.

[2] On *de facto* statelessness see for example, Section II.A. of United Nations High Commissioner for Refugees, *Expert Meeting on the Concept of Stateless Persons under International Law (Summary Conclusions),* 2010 (hereinafter referred to as the "*Prato Conclusions*"):

"1. *De facto* statelessness has traditionally been linked to the notion of effective nationality and some participants were of the view that a person's nationality could be ineffective inside as well as outside of his or her country of nationality. Accordingly, a person could be *de facto* stateless even if inside his or her country of nationality. However, there was broad support from other participants for the approach set out in the discussion paper prepared for the meeting which defines a *de facto* stateless person on the basis of one the principal functions of nationality in international law, the provision of protection by a State to its nationals abroad.

2. The definition is as follows: *de facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality". Available at http://www.unhcr.org/refworld/pdfid/4ca1ae002.pdf.

[3] International Covenant on Civil and Political Rights, 1966. India acceded to the convention on 10 April, 1979.

[4] International Covenant on Economic, Social and Cultural Rights, 1966. India acceded to the convention on 10 April, 1979.

[5]Convention on the Rights of the Child, 1989. India acceded the convention on 11 December 1992.

[6] International Convention on the Elimination of All Forms of Racial Discrimination, 1965. India ratifies the convention on 03 December, 1968 with reservations.

[7] Convention on the Elimination of All Forms of Discrimination against Women, 1979. India signed the convention on 3o July 1980 and ratified it on 9 July 1993 with reservations.

[8]*National Human Rights Commission vs. State of Arunachal Pradesh*, 1996 AIR 1234.

[9] W.P.(C)No.243/2012, pending before the Supreme Court of India

[10]*Chairman, Railway Board &Ors. vs. Chandrima Das & Ors*., 2000 AIR 988

[11]James A. Goldston, *Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens,* 20 ETHICS & INT'L AFF. 321, 322 (2006)

[12] UNHCR estimates there to be at least 12 million people around the world. *See* http://www.unhcr.org/pages/49c3646c155.html.

[13]The International Court of Justice held in the Nottebohm Case that ". . . it is for every sovereign state to settle by its own legislation the rules relating to the acquisition of its nationality." Nottebohm (Liechtenstein v. Guatemala), Judgment, 1955 I.C.J. 4, at 20 (Apr. *6, 1955).See also*Laura Van Waas, Nationality Matters: Statelessness under International Law 12, 93 (2008); Asbjorn Eide, Citizenship and the Minority Rights of Noncitizens 5, para. 19 (1999).

[14] Article 1(1) of the 1954 Convention sets out the definition of a stateless person as: *For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.*

[15]David Weissbrodt and Clay Collins, *The Human Rights of Stateless Persons*, 28 Hum. Rts. Q. 245, 251 (2006). "While there may be complex legal issues involved in determining whether or not an event has occurred by operation of law, national courts have means of resolving such questions", *see* Carol A. Batchelor, *Stateless Persons: Some Gaps in International Protection,* 7 In. J. Refugee L. 232, 232 (1995).

[16]Convention relating to the Status of Stateless Persons, *adopted 28* July 1951, G.A. Res. 429 (V), 360 U.N.T.S. 117 *(entered into force* 6 June 1960)

[17]Hugh Massey, *Legal and Protection Policy Research Series: UNHCR and* De Facto *Statelessness,* Legal and Protection Policy Research Series (UNHCR, April 2010) available at http://www.refworld.org/pdfid/4bbf387d2.pdf. *UNHCR Action to Address Statelessness - A Strategy Note,* UNHCR Division of International Protection, 4 (UNHCR, March 2010) available at http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4b9e0c3d2, "UNHCR's responsibilities for stateless persons began with refugees who are stateless under paragraph 6(A) (11) of its Statute and article 1(A) (2) of the 1951 Convention relating to the Status of Refugees, both of which refer to stateless persons who meet the criteria of the refugee definition. UNHCR's mandate responsibilities concerning statelessness were expanded following the adoption of the 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness. General Assembly resolutions 3274 (XXIV) and 31136 designated UNHCR as the body mandated to examine the cases of persons who claim the benefit of the 1961 Convention and to assist such persons in presenting their claims to the appropriate national authorities".

[18]David and Clay, *supra note* 12.

[19]Carol, *supra note* 12.

[20]Carol, *supra note* 12, at 142. Despite the reluctance of the drafters of the 1954 Convention to acknowledge *de facto* statelessness, the Final Act of the 1961 Convention recommends that" persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality." *United Nations Conference on the Elimination or Reduction of Future Statelessness, 30Aug. 1961,* Final Act, 91 23, U.N. Doc. A/Conf./9/14 (1961).

[21]David and Clay, *supra note* 12.

[22]David and Clay, *supra note* 12, at 252.

[23] However, UNHCR's mandate on *de facto* stateless persons is:

"The extent to which *de facto* stateless persons who do not fall within its refugee mandate qualify for the Office's protection and assistance is largely determined by UNHCR's mandate to prevent statelessness. It was noted that unresolved situations of *de facto* statelessness, in particular over two or more generations, may lead to *de jure* statelessness." Op Cit 2, at p. 8.

[24]Massey, *supra note* 14, at iii.

[25] As quoted by Massey, *supra note* 14, at 30

[26] Judgment of 8 September, 2005, available at http://www.refworld.org/docid/44e497d94.html.

[27]UN General Assembly Resolution No 61/137, adopted on 19 December, 2006, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/61/137&Lang=E

[28]General Comment No. 15, The position of aliens under the Covenant, 04 November 1986, available at http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument

[29]Article 2:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

[30]General Comment, *supra note* 24, Para 2

[31]Article 9:

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

[32]Tang Lay Lee, Refugees from Bhutan, 10 Inlt. J. Refugee Law, 118, 142 (1998)

[33] Article 7:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

[34]Article 8:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

[35] Question No. 169, Proceeding 2821, Rajya Sabha, 22 December 1993.

[36] Question No. 197, Proceeding 2127, Rajya Sabha, 11 December 2002.

[37] Question No. 198, Proceeding 617, Rajya Sabha, 26 February 2003.

[38] Question No. 204, Proceeding 3634, Rajya Sabha, 27 April 2005.

[39] Question No. 207, Proceeding 1699, Rajya Sabha, 8 March 2006.

[40] Question No. 211, Proceeding 2369, Rajya Sabha, 5 September 2007.

[41] Question No. 194, Proceeding 1714, Rajya Sabha, 05 December 2001.

[42]Resolution of 17 August 2012, Discussion on 13 May 2013.

[43] However, the International Law Commission observed that Article 1(1), definition of stateless, of the 1954 Convention relating to the Status of Stateless Persons can "no doubt be considered as having acquired a customary nature". Op Cit 2, at p. 2.

[44] Article 14(1) of the Universal Declaration of Human Rights states "Everyone has the right to seek and to enjoy in other countries asylum from persecution." Article 13 of the International Covenant of Civil and

Political Rights states: 'An alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority'. The Supreme Court used these international mechanisms to hold that it is the duty of the state to protect refugees.

[45] (1994) Supp (1) SCC 615

[46] Ibid

[47] (1996) 1 SCC 742

[48] Article 21: *"No person shall be deprived of his life and personal liberty except according to the procedure established by law".*

[49]*National Human Rights Commission*, *supra note* 35

[50](2005) 5 S.C.C.665

[51]The Foreigners Act confers wide-ranging powers to deal with all foreigners, prohibiting, regulating, or restricting their entry into India or continued presence in the country including through arrest, detention, and confinement. The Foreigners Act, No. 31 of 1946.

[52]Section 9 reads as follows:

Burden of proof - If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

[53] Article 355: "It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution."

On the broad meaning of aggression, the Court referred to the U.S. Supreme Court decision in *Chae Chan Ping:*

"To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us." *See Sonawal,* (2005) 5 S.C.C. 665, para. 57 (citing Chae Chan Ping v. United States, 130 U.S. 581 (1930).

The Court also quoted Lord Denning, former Justice of the U.K. Court of Appeals: In recent times England has been invaded not by enemies nor by friends, but by those who seek England as a haven. In their own countries there is poverty, disease and no homes. In England there is social security, a national health service and guaranteed housing all to be had for the asking without payment and without working for it. Once here, each seeks to bring his relatives to join him. So they multiply exceedingly. *See Sonawal,* (2005) 5 S.C.C. 665, para. 59.

[54]Guy S. Goodwin-Gill, 'The Rights of Refugees and Stateless Persons: Problems of Stateless Persons and the Need for International Measures of Protection', in K. P.Saksena, ed., *Human Rights Perspectives and Challenges,*Lancer Books, New Delhi (1994)

[55]B.S. Chimni's work in the area of third world approaches to international is well regarded.

[56] Article 51: Promotion of international peace and security The State shall endeavour to-

(a) promote international peace and security;

(b) maintain just and honourable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration.

[57] *See* Children of Tibetan Refugees Can Now Vote, 11 February, 2014, The Indian Express, available at http://indianexpress.com/article/india/india-others/children-of-tibetan-refugees-can-now-vote/. *See* also Karnataka High Court Judgment in *Tenzin L. C. Rinpoche vs. Union of India & Anr.,* WP No. 15437/2013 (GM-PASS) and Delhi High Court Judgment *Namgyal Dolkar vs. Govt. of India*, WP (C) 12179/2009.

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