Where the Exception is the Norm: The Production of Statelessness in India

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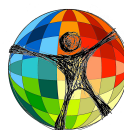
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Introduction

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." Without a legal bond with any state, stateless people are left vulnerable to a variety of forms of exploitation and abuse, poverty and marginalization.

During my internship with the Calcutta Research Group, I conducted research on the international legal frameworks available to protect these people with particular emphasis on the Indian context. My research challenged the effectiveness of the *Convention relating to the Status of Stateless Persons, 1954* (hereafter 1954 Statelessness Convention) in protecting stateless people, suggesting instead that human rights mechanisms of the 1960s afford broader protections predicated on an understanding of shared humanity rather than on post-War individualism.

In this paper, I shift my attention from the protection of stateless people to its creation. Mounting international attention around statelessness issues has enabled an increasing focus on the protection and prevention of statelessness, but questions about the ways in which people become stateless are often overlooked. Yet, to focus first on remedies to statelessness without proper consideration of its production is to put the horse before the cart. The Indian context was not taken into consideration when international statelessness

instruments were being drafted, because they were focused on post-war Europe, but now that international efforts to combat statelessness have taken on a global scale, the regional specificities of South East Asia can no longer be ignored. Particularly porous borders, increasing concerned about resource competition and security threats define India's regional context and shape it's statelessness situation.

International responses to statelessness is marked by a singular focus on accession to the 1954 Statelessness Convention and the *Convention on the Reduction of Statelessness, 1961* (hereafter 1961 Statelessness Convention). Indeed, statelessness law is generally understood as the body of international laws and norms that uphold the rights of those who are stateless and little attention is placed on the bodies of law that produce stateless. In this paper, I will shift my gaze from those international instruments preoccupied with remedies to the legal and socio-political realities that create and perpetuate statelessness. In order to do this, I will begin by unpacking the relationship between citizenship and statelessness, arguing that citizenship has become the dominant mode of belonging of the modern international state system rendering statelessness an exception. I will then question the exceptionalism of statelessness by considering the role of colonial inheritance in the hierarchies and inequalities of citizenship in independent India. In the second part of the paper, I will examine three factors in the production of statelessness in India: legislation, state succession, and institutional barriers. In doing so, I will demonstrate the ways in which citizenship deprivation is a legal reality dramatically complicated by of socio-political circumstances of citizenship acquisition. Thus, this paper will contrast the underlying conceptual binary of existing international legal instruments of citizenship as the norm and statelessness as the exception with the ways in which statelessness is produced in India to suggest that the exception is normalized in complex ways that go unaccounted for in the simple language of the international statelessness definition.

Part One: Citizenship as the Rule

While the origins of citizenship can be traced as far back as ancient Greek and Roman republics, the figure of the citizen which figures prominently in international law draws much of its meaning from ideas espoused in the French Revolution. Rebelling against late medieval ideas of passive citizenship, the 1789 revolution heralded the ideal of a "free and autonomous individual" capable of exercising equal, horizontal rights. Since then, with the growth of capitalist markets and 19th century liberalism, the image of the citizen as a spirited participant in civic activity has been overshadowed by a view of citizens as private individuals whose interests clash. By 1950, the classic description of citizenship was of "a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed." Numerous early 20th-century conventions and treaties espoused the idea that everyone should be guaranteed this kind of citizenship.

Right to Nationality under International Law

The idea that everyone has a right to nationality as a basic human right 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 nationality nor denied the right to change his nationality."

Since then, the 1954 Statelessness Convention and the 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."

Other conventions have also reinforced the universality of the right to nationality by specifically addressing the ways in which nationality laws may disproportionately affect particular groups including racialized groups, children and women. Firstly, 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." Secondly, article 24 of the *International Covenant on Civil and Political Rights, 1966*, which India ratified in 1968, states that "[e]very child has the right to acquire a nationality." Thirdly, article 9 of the *Convention on the Elimination of All Forms of Discrimination against Women, 1979* , which India ratified in 1993, states that "States Parties shall grant women equal rights with men to acquire, change or retain their nationality."

Citizenship and Exclusion

The kind of citizenship envisioned by these international instruments is based on the classic mid-20th century definition of citizenship. Underlying this vision of citizenship are assumptions about freedom and equality. In this conception, the reality that citizenship is exercised in contexts of "ascriptive inequalities" where differences exist on racial, ethnic, gender, cast, cultural, and other lines is masked in favor of the image of private, equal citizens. In viewing the subjects of citizenship outside their historical and social contexts and imagining them to be born "equal, free, and rational,"
 liberal citizenship also creates "others."

The relationship between liberal rights citizenship discourses of exclusion, and discrimination cannot be disentangled from historical realities of colonialism. The very

spaces in which liberal notions of citizenship were developed were also centers of great colonial power. Indeed, considerable scholarly work informed by subaltern and postcolonial schools of thought have shed light on the ways in which the law constructed the subjectivity of colonial subjects to exclude them from the exercise of liberal rights and entitlements. Kapur argues that through a discourse of difference that placed some races and ethnicities over others and assumed that "capacity for freedom and progress was biologically determined," colonial subjugation was legitimized. The exclusion of particular groups from the so-called "universal" was justified through the articulating a radicalized hierarchy of human value.

Right to Documents

One of the ways advocates for the rights of the stateless challenge the often exclusionary nature of citizenship is to compliment their advocacy for the respect of the right to nationality with advocacy for the respect of rights to documentation. Because the first step beyond the simple right to nationality is the ability to effectuate that right, stateless people's access to documents can prove of pivotal importance. While there is no general right to documentation in human rights law, 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.

The right to identity papers is found in article 27 of the 1954 Statelessness Convention. Some identity documents are necessary in proving 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 them citizenship.

The acquisition of all of these sorts of documents is regulated by variety of factors that are both practical and political in nature. On its own, the right to documentation means little without taking the geographic, political, and bureaucratic context into consideration.

Documentation of births and marriages forms of identity documents, which people may rely on to prevent and resolve statelessness. Birth certificates can have an important role in legitimizing a person's claim to citizenship if their are 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.

Marriage, on the other hand, may have an effect of the likelihood a person will be granted citizenship, especially if the person whom they have married is a citizen of the state.

Indian Citizenship Law

Despite the existence of these international legal instruments that aim to promote citizenship and ensure it is accessible and the mounting international pressures to abide by them, these developments have not been met by an increased respect for the principles in Indian law. Instead, Indian citizenship laws have become increasingly restrictive since the country achieved independence in 1947. Left with the legacy of British divide and rule policies and facing partition and mass migration, newly independent India decided to strengthen structures of unitary state power rather than dismantling them.

In many ways, India inherited "the trappings of citizenship." So, rather than introduce a universal citizenship, they built on a hierarchical model in which citizenship was never truly universal, never truly equally accessible.

Compared to its current form, the *Citizenship Act of India, 1955* (hereafter *Citizenship Act*) initially set out a relatively inclusive set of laws around the granting of citizenship. Citizenship was granted at birth to all those "born in India on or after the 26th January, 1950, regardless of their descent, ethnicity, or national identity" unless the person in question had a diplomat or an 'enemy alien" as a father. This policy largely followed a *jus soli* (latin for "right of the soil") practice, meaning citizenship was granted by virtue of the person's birth on state territory.

This began to change in the 1980s when high levels of illegal migration from Bangladesh cause both the internal displacement and economic exclusion of significant number of local Assemese people. Affirming that the government 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," the Indian legislature amended the country's citizenship laws. Under the *Citizenship (Amendment) Act, 1987*, restrictions based on *jus sanguinis* (latin for "right of blood") practices were introduced. In other words, citizenship became increasingly determined by the citizenship held by the person's parents. It became easier for people born outside Indian with Indian citizens as parents to get citizenship than for those who were born in the country, but whose parents did not hold Indian citizenship to be granted it.

Since then, amendments have continued to restrict Indian citizenship laws. Like it's

South Asian neighbours, India is concerned about the particularly porous borders in the region, security threats, and competition for resources. In 2004, a new amendment was introduced which increasing residency requirements and limited the meaning of "ordinarily resident in India." This amendment also introduced a new restriction specifically targeting those who have entered into India without required documents. "Illegal migrants" are now bared from accessing citizenship registration and naturalization procedures even though the very nature of their migration implies they are not able to acquire citizenship in India through the other legislated means such by birth, descent, or by being a national of a territory incorporated into India.

Indian Overseas Citizen

The category of "citizen" in India is further complicated by the existence of a category that includes the word "citizen," but does does not constitute citizenship in the sense intended by international instruments that protect the right to nationality. Under Indian law, an "indian overseas citizen" is

> a person who
> - is of Indian origin, being a citizen of a specified country, or
> - 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

Overseas Citizen of India cards (hereafter OCI) 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, but is

ineligible for an Indian passport, cannot has no voting rights in India, and cannot work in government.

Therefore, even if a person holds an OCI card, they do not hold formal citizenship with another state. Thus though they may be able to access more services and rights within the state than some whose citizenship is ineffective, they are legally stateless.

Part Two: Statelessness as the Exception

Legal statelessness is a limited category in international law that deals specifically with a person's legal relationship to the state that is set out in the 1954 Statelessness Convention. It reflects the same "fundamental, individualistic bias" as the convention adopted in 1951 to protect refugees. Adopted in the post-War years, the definition reflects the era's strong commitment to individual rights and freedoms and a particular understanding of the balance between individuals and the state.

In this section, I will present the international legal definition of statelessness as a narrow definition intended to address a particular exception to the state-citizen-territory nexus and problematize it by drawing attention to the gap between the kind of situation the legal definition purports address, it's words, and it's application.

International Legal Definition of Statelessness

Article 1 of the 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."
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.

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.

Stateless v. Refugee

Stateless people may at time also satisfy the other definitions that qualify them to avail themselves of protection under international law. However, 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.

De Jure vs. *De Facto* Statelessness

The strict relationship between statelessness and a lack of citizenship that is required under the international statelessness definition 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. 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. 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.

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. 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." 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.

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. 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.

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." 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.

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.

Part Three: Production of Statelessness

Primary & Secondary Statelessness

Blitz' s Typology of Sources

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."
 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. For example, citizenship laws based on ethnicity, religion, gender, lineage, or other identity factors, may prevent certain people from obtaining citizenship. Or, 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.

Secondary sources, on the other hand, may result from "ill-defined nationality laws following conflict, de-federation, secession, state succession, and state restoration in

multinational situations." For Blitz, state succession is a secondary source of statelessness 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. In these cases, statelessness may result from "ill-defined nationality laws following conflict, de-federation, secession, state succession, and state restoration in multinational situations." Further forms of structural discrimination such as onerous requirements in the procedures for acquiring necessary identity documents such such as high feeds, witness certification requirements, and lack of registration opportunities constitute another secondary sources of statelessness.

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 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." 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 between those factors which can similarly be addressed in the way Blitz's typology allows.

Adopting a mixture of the two approaches is therefore useful. Referring to primary and secondary factors retains 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. It allows for a differentiation between those elements of statelessness which are a question of discriminatory law and those which are a question discriminatory of legal practice and socio-political realities while employing a language that is more reflective of the interdependence of difference "factors" of stateless on each other. Recognizing this interdependence is especially important, because resolving one "factor" of statelessness will not necessary resolve a situation of statelessness.

Part Four: Primary Factors of Statelessness in India

Legislation

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. 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" such that the "manner in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction," 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"
was directed towards states.

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. In this later case, the state becomes the very agent which renders the persons stateless through policies of deprivation of nationality under domestic laws. In this section, I will look at the way explicit provisions provide the legal means by which a person in possession of Indian citizenship may lose that legal bond.

The *Citizenship Act* allows for the deprivation of citizenship through deprivation, renunciation, or termination. While it is unclear how often these provisions have been used or how grave the resulting statelessness has been, it is clear that the language of the law grants the state power to produce statelessness.

Deprivation

The provisions for deprivation of citizenship are the most direct violation of the right to nationality and the grave impediment to the prevention of statelessness found in the act. The first part of section 10 of the act prescribes the deprivation of citizenship in cases of particular action. Under these provisions, deprivation is legal in situations in which the government is "satisfied that it is not conducive to the public good that the person should continue to be a citizen of India" and

a.   the registration or certificate of naturalization was obtained by means of fraud, false representation or concealment of any material facts; or

b.   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

c.   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

d.   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[.]

Though it is not uncommon for states to deny citizenship to those whose applications are fraudulently made, these provisions offer broad powers to strip people of citizenship without regard to the person's possible resulting statelessness. The result is a form of double punishment whereby those whose actions are already deemed illegal under law are not only

subject to the sanctions of the law such as imprisonment, but are doubly punished by having their citizenship revoked. This is particularly problematic in section 10(d), because while both section 10(b) and section 10(c) are limited to acts already deemed illegal in India, section 10(d) offers the revoking of Indian citizenship for imprisonment of two or more years outside India. First, what constitutes a crime in one country may not constitute one in another. For example, while "consensual non-vaginal sexual acts between adults" is legal in India, it is illegal in some countries and can result in imprisonment of two years or more in certain contexts. Second, standards of fairness and equality under the law differ around the world. Corruption is widespread and the effectiveness and impartiality of criminal justice differs from country to country.

The second part of section 10 of the act prescribes the deprivation of citizenship for particular forms of inaction. Under these provisions, if a person is deemed to have established themselves outside of India according to certain temporal and geographic criteria, they are guilty of inaction of sorts by failing to register. The law prescribes no consideration is given to the ease with which the person will be able to acquire another citizenship. Instead, it states that a person may be deprived of their citizenship if the government is "satisfied that it is not conducive to the public good that the person should continue to be a citizen of India" and

> 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.

Renunciation and Termination

Much unlike the provisions for the deprivation of citizenship, the provisions for renouncing and terminating citizenship are note explicitly about punishment. Instead, the rest on the idea that citizens should have the right to renounce their citizenship and that the state need not grant citizenship to those who already hold it elsewhere.

In terms of renunciation, section 8 of the *Citizenship Act* specifies that

> [i]f 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.

This provisions means that a person is entitled to renounce his or her citizenship even if by doing so they would become *de jure* stateless. Furthermore, it presents particularly serious problems for statelessness among children. The provision leaves children without citizenship until they reach the mandated age to resume their Indian citizenship by declaration based solely on the actions of their father.

In terms of termination, section 9 of the *Citizenship Act* deals with the right for the Indian citizens to voluntary terminate citizenship.   It states that

> 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.

This provision is reinforced by the 1962 Supreme Court of India decision in which the Constitution Bench held that if a "person has acquired foreign citizenship either by naturalisation or registration, there can be no doubt that he [sic] ceases to be a citizen of India in consequence of such naturalisation or registration."

While the language of voluntariness and the fact that those whose citizenship is terminated hold citizenship elsewhere presents no issue for *de jure* statelessness, this provision could result in *de facto* statelessness. The legal requirement of voluntary acquisition does not account for the effectiveness of that citizenship.

It is also important to note that factors such as gender, generation, class, and other markers of identity are accounted for in the language of either the renunciation or termination provisions.   It is possible for these sorts of factors of difference and resulting social, political, cultural, and other pressures to have an effect both on the experience of citizenship acquisition and the effectiveness of a given citizenship once it is legally held. The binary of voluntary/involuntary found in the section 9 on termination denies these complexities.

Part Five: Secondary Factors of Statelessness in India

Unlike primary factors, which involve specific laws, policies, or regulations, secondary factors of statelessness are often particularly difficult to pinpoint. In India, as in many other contexts, state succession and institutional barriers that limit people's access to rights are interwoven factors of statelessness informed by the complexities of decolonization in the region.

State Succession

In India, state succession is of particular importance in the creation of stateless. 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 around 20,000 Hindu refugees and over 100,000 Punjabi refugees from Pakistan remain stateless in India.
 In many cases, their descendants are unable to acquire citizenship.

Case Example: Bangladeshi Chitmahals

A prime example of the complex effects of state succession is the case of those who live in the Bangladeshi Chitmahals in India, which are enclaves along the India-Bangladesh border. In 1947, when India was partitioned, the British had direct rule over three-fifths of the subcontinent while the rest was constituted by 565 different Princely States. After partition and independence, it feel to rulers of these states to decide whether they would join India or

Pakistan (which at the time included East Pakistan, now Bangladesh). The rulers did not always choose the state with which they shared territorial continuity.

  As a result, there is now a corridor 200 enclaves between Bangladesh and India - little pieces of one of the state within the other. To make matters more complicated, some of these enclaves are actually counter-enclaves, which means they are enclaves within enclaves. For example, he largest Indian enclave is Shalbari, which encloses four Bangladeshi enclaves.

When India introduced passport and visa controls in 1952, the government did not stipulate for those living in these enclaves. As a result, in order for someone to living in an Indian enclave to file birth or marriage documents or obtain a passport or visa, the person has to illegally trespass on Bangladeshi territory. Indeed if the person is successful in crossing into Bangladesh without attracting attention from those in the border outpost, the person still has to be admitted into India. If they are not carrying identification proof, which is likely if the very purpose of their trip is to obtain some, they might be considered illegal migrants and detained or prevented from entering. Even if the person is able to cross into India, the consulates are rarely at the border. Instead, it is common for people to need to journey hundreds of kilometers to reach them. As many as 200,000 people live in Indian enclaves along the Indo-Bangladeshi border. Unable to safely access the means by which to regularize their status, many remain stateless.

Institutional Barriers

The case of the chitmahals is particular in the way political and geographic context work to physically limit access to citizenship acquisition mechanisms. In other cases where it is possible for stateless populations to physically reach consulates, other barriers often work to limit access to citizenship. The Chakmas living in Arunashal Pradesh are a prime example of the ways in which institutional barriers factor in the production of statelessness are informed

by socio-political realities, which, in this case, include border tensions, and development-induced displacement.

Case Example: Chakmas in Arunashal Pradesh

The Chakmas' situation is one of state-organized, forced displacement. In 1962, the Kaptai project, a USAID-sponsored hydroelectric initiative in the Karnaphuli river saw of 40 percent of the Chittagong Hill Tracts flooded and 100,000 people forcibly evacuated. As one displaced person recounts, their "lands were submerged underwater, all [their] houses were devastated." The damn was not the only reason they fled, though. "[A]nother reason was religious persecution," he explains. "The Chakmas are Buddhists. And they were a minority in Muslim-dominated East Pakistan. There was a constant fear of religious tensions flaring up."

A large number of those displaced from the hills in what is now Bangladesh, but what was then East Pakistan, migrated across the border into the Indian state of Assam. By 1964, the Assamese government requested they be relocated. As part of the relocation initiatives that settling of 30,000 people around India, the North-East Frontier Agency (now Arunashal Pradesh) arranged for their resettlement of 2902 families in their sparsely populated administrative unit in India's north east. In 1972, the *Indo-Bangladeshi Treaty of Friendship, Cooperation and Peace* was signed by Indian Prime Minister Indira Gandhi and Bangaldeshi Prime Minister Sheikh Mujibur Rahman. The agreement, known as the Indira-Mujib agreement, specifically mandated that the Indian Government consider applications for Citizenship brought by Chakmas who had come to India before 25 March 1971 as lawful. Though this made them eligible for the grant of citizenship, it did not secure their status, because applications submitted by Chakmas in the years subsequent were never forwarded on the the relevant authority, namely the Union of India, by bureaucrats in Arunashal Pradesh. So, as tensions grew between those indigenous to Arunachal Pradesh and the

Chakmas, the Chakmas remained stateless.

Indeed, though the resettlement project did not in fact displace any of the population already residing in the region, Indigenous populations resented the influx of more prosperous migrants. Under British rule, the region had enjoyed a series of special protection measures aimed at maintaining the tribal character of the region by restricting non-locals and non-residents involvement in the region. The influx of outsiders flew in the face of these protection and was met with various forms of resistance. In 1980, the State government stopped issuing trade licenses to Chakmas. Yet, the Chakma population continued to grow and from 1986, they began to illegally occupy around 400 hectares of reserved Forest land. Over the years, the Chakma presence was increasingly seen as not only a threat to the demographic dominance of the indigenous population, but also the region's ecosystem. In 1993 and 1994, the forest land was reclaimed and more drastic measures against them were employed. In 1994, the state stopped issuing ration cards and closed down and even burned down schools, many of which had been build by Chakmas themselves using funds from their community. On August 26th, the All Arunachal Pradesh Student Union issued a notice threatening the use of force if all foreigners, including Chakmas, did not leave the state before September 30, 1995. Meanwhile residents of nearby states also threatened violence if they migrated into their regions.

On the 15th of October 1994, the Committee for Citizenship Rights of the Chakmas filed a complaint alleging persecution with the National Human Rights Commission. On the 22nd of November 1994, the India's Ministry of Home Affairs issued a note to the NHRC affirming its intention of granting the Chakmas citizenship and, in 1995, the matter was considered by the Supreme Court of India. In a judgement on the 9th of January 1996, the court ruled that all applications made by Chakmas for citizenships were to be forwarded to the Government of India and that, in the meantime, none were to be evicted. In it's ruling, the court denied the State of Arunachal Pradesh's submission that it reserved the right to pass along only those applications, which upon enquiry satisfied the state government.

Instead, the court reaffirmed that the granting of citizenship is the sole discretion of the central government and that the "state government has no jurisdiction in the matter."

Despite this landmark decision, the legal recourses open to the Chakmas remain limited by the resistance of local implementing authorities. Ethnographic research undertaken by the Calcutta Research Group suggests that Chakams "continues to find it difficult [...] to submit applications for citizenship and registration as voters." Indeed, the acquisition of documents also continues to be a serious problem for the Chakma. "They have a tough time acquiring a birth certificate," explains a Chakma resident of Arunachal Pradeh. "Officially, they are offered certificates, but the reality on the ground is different. I went there several times and they kept asking me to return another time. I gave up after trying for a few months."

Lack of Access

The difficulties faced by those living in enclaves highlights the importance of institutional access in citizenship acquisition while the case of the Chakmas in Arunachal Pradesh highlights the importance that those institutions operate without discrimination such that they can be equally effective for all those who use their services.

Both cases also demonstrate the multiplicity and interdependence of which factors in the production and perpetuation of statelessness. On the one hand, the geo-political anomaly that is life in the enclaves on the Indo-Bangladeshi border is not just the result of the state succession. It is also compounded by barriers to access citizenship acquisition mechanism resultant from contemporary political tensions and increasingly securitized borders. On the other hand, the discriminatory socio-political circumstances in which Chakmas find themselves cannot be disentangled from the post-partition tensions between state and central government.

It is important to look beyond legislative realities to understand the production of statelessness. For many, the existence of legal recourses is effectively irrelevant for those who are unable to access the processes that give effect to their legal rights. Furthermore, without political change at the level of state succession and without positive state action through the form of 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[70] or because the political, social, or geographic context in which they find themselves makes it impossible for them to access citizenship acquisition mechanisms, especially the documents require to become citizens.

Conclusion

In light of the examples examined in this paper, the legal definition of statelessness appears overly simplistic. In differentiating purely on the basis of legal status, the citizen/stateless binary of international law fails to account for the complexity of lives experiences. In India, as in elsewhere around the world, distinctions between those with and those without citizenship are not always clear. That people share the same legal status does not necessarily mean their lived experiences will resemble. Those without citizenship may avail themselves of informal solutions that enable them to live in such a way that mirrors effective citizenship while those with citizenship may still experience the types of limitations and vulnerabilities associated with statelessness if the citizenship they hold is ineffective.

This paper has shown that statelessness is not the result of a rare combination of exceptions, but rather the result of a series of fundamental factors, whose interactions have considerable effect. The fact that provisions that create statelessness are legislated indicated, but one of the ways in which stateless is normalized. Increasingly restrictive citizenship laws paired with the difficult legacy of colonialism and partition mean a great deal of inequality in Indian citizenship acquisition and retention. Tensions between tribal and other populations, between state and central government, and between the country and it's neighbours are inextricably linked to the legal, social, and political nature of citizenship in India and, in turn, to the creation and perpetuation of situations of statelessness.

Addressing statelessness cannot be detached from addressing unjust legislation, dealing with the socio-historical and geo-political legacy of state succession, and tackling the underlying tensions that perpetuate institutional barriers. We must see these factors as doing more than just complicating the application of the right to nationality and statelessness protection and prevention mechanisms.We must see them as fundamental

both to understanding statelessness in India and to addressing it.

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