

Statelessness in India

By Asha Bangar

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To what extent have international standards concerning statelessness in the international human rights law framework been implemented in the Indian legal system and how could they be strengthened?¹

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Author biography

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Abstract

The right to nationality is essential to facilitating the actualisation of all other fundamental human rights. While International law provides that all persons have the right to a nationality, State's still retain the right to determine how nationality is acquired. This article discusses the problem of statelessness in the Indian context by examining its citizenship laws and how it actually produces stateless persons in India. Although India is not a state party to the key Conventions on Statelessness, it is bound to other international conventions which creates obligations for India to cooperate in its prevention and reduction of the phenomenon. Thus, the article suggests ways in which India's nationality laws could be improved to bring it in line with the international legal framework on statelessness.

¹ Based on Master Thesis for LL.M Globalisation and Law at Maastricht University

1. Introduction

1.1 Statelessness

Article 1 of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) defines a 'stateless person' as someone "not considered as a national by any state under the operation of its law."² The bond of nationality, a legal bond between an individual and a State, denotes membership which results in reciprocal rights and duties. There are two main doctrines for granting nationality at birth: *jus soli*, which is conferred on the basis of birth in the country; and *jus sanguinis*, which is conferred based on parents' nationality. The implications of lack of (effective) nationality leaves stateless persons disenfranchised, making them victims of ineffective governance and discrimination, and other violations of fundamental human rights.³

Despite advances in international law regarding the protection of stateless persons, India has been reluctant to incorporate them into national legislation. Thus, it is not surprising that there is a gap in the literature and data regarding statelessness in India⁴. In fact, Indian nationality⁵ laws have become even more restrictive since independence in 1947. Decolonisation led to partition of British India and creation of two sovereign States: India and Pakistan. This caused a large mass migration of approximately 14 million people who became displaced, moving either to Pakistan (mostly Muslims) or to India (mostly Hindus and Sikhs).⁶ Grounds for granting Indian citizenship were based on legal status, depending on when they entered India.

Decolonisation also affected the legal status of many Indians who were sent to Sri Lanka during colonial times, and were rendered stateless upon Independence.⁷ To this day, many individuals and communities are still recovering from the legal implications of decolonisation, especially stateless persons.⁸ Furthermore, over recent years, thousands of refugees—including stateless refugees—fleeing persecution such as Rohingyas⁹ and Tibetans¹⁰ have sought shelter in India.¹¹ While India has a long-standing history of hosting a large number of refugees and stateless persons, it does not legally recognise them, which creates problems of integration. This article will examine to what extent relevant international human rights provisions and international standards for the identification and

² Article 1, UNGA, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, UNTS, vol. 360.

³ Blitz, B. K., Lynch, M., *Statelessness and the deprivation of nationality*, Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality, Edward Elgar Publishing Limited, Glos, 2011, pp. 4-5

⁴ While India is not state party to the Statelessness Conventions, it is party to the ICCPR, ICESCR, CERD, CRC, and CEDAW.

⁵ The terms 'Citizenship' and 'Nationality' will be used interchangeably

⁶ Cutts, M., *The State of the World's Refugees, 2000: Fifty Years of Humanitarian Action*. UNHCR, Geneva, 2000, p. 59

⁷ Pillai, R.S., *Indo-Sri Lankan Pact of 1964 and the Problem of Statelessness- A Critique*, Afro Asian Journal of Social Sciences Vol. 3, No. 3.1. Quarter, 2012, pp. 1-14

⁸ See Mohanty, R., Tandon, R., *Participatory Citizenship: Identity, Exclusion, Inclusion*. Sage Publications, New Delhi, 2006, p. 15

⁹ Murshid, N., *Stateless and left out at sea*, The Hindu, 3 June 2015, available at:

<http://www.thehindu.com/opinion/lead/rohingya-migrants-and-ethnicitybased/article7275533.ece> [accessed 28 October 2016]

¹⁰ Tibet Justice Center, *Tibets Stateless Nationals II: Tibetan Refugees in India*. 2011, p.32 available at

<http://www.tibetjustice.org/reports/stateless-nationals-ii/stateless-nationals-ii.pdf> [accessed 8 August 2016]

¹¹ It must be noted that the term refugee is a political not legal term in India.

protection of stateless persons, and the prevention and reduction of statelessness have been applied into India's national legislation.

2. Nationality in the Indian Legal Framework

2.1 *The Constitution of India, 1950*

After Independence in 1947 but before the enactment of the Constitution in 1950, Indians were still British subjects by virtue of Section 18(3) of the Indian Independence Act.¹² With the introduction of the Constitution, the following could be citizens of India: persons born and resident in India;¹³ persons resident in India and whose parents were born in India,¹⁴ persons resident in India for more than five years since the start of the Constitution,¹⁵ persons resettling to India from Pakistan after 1 March 1947, persons who migrated to India from Pakistan before 19 July 1948 or those who came afterwards and have been resident in India since immigration,¹⁶ persons resident outside India but if either parent or grandparent was born in India.¹⁷

The Constitutional provisions concerning citizenship appear relatively inclusive and consider people's freedom of choice post partition. The provisions primarily concern themselves with two broad categories of persons: residents at the time of independence, and 'migrants' whose citizenship was determined by where they intended to reside in light of the complex nature of mass migrations that took place between India and Pakistan. However, between the enactment of the Constitution in 1950 and the enactment of the Citizenship Act in 1955, there was a 'legal vacuum': while the nationality framework was being formulated, the people who had been moving across the borders between India and Pakistan had to be taken into consideration. Thus, when the Citizenship Act came into force, their citizenship status was determined by 'intent' and followed by attributions of legality and illegality.¹⁸

2.2 *The Citizenship Act, 1955*

The Constitution left future matters of citizenship to be regulated by the Parliament.¹⁹ Accordingly, the Parliament enacted the Citizenship Act ('Principal Act') in 1955.²⁰ As per the Act, Citizenship could be acquired by birth²¹, descent²², registration²³, naturalisation²⁴ and by incorporation of territory²⁵

¹² Section 18(3), Indian Independence Act, 1949

¹³ Article 5(a), The Constitution of India, 1950

¹⁴ Article 5(b), *ibid.*

¹⁵ Article 5(c), *ibid.*

¹⁶ Article 6(b), *ibid.*

¹⁷ Article 8, *ibid.*

¹⁸ See Roy, A., *'Mapping Citizenship in India.'* Oxford University Press, New Delhi, 2010, pp 34-35

¹⁹ Article 11, The Constitution of India, 1950

²⁰ Subheading, The Citizenship Act, 1955

²¹ Section 3, *ibid.*

²² Section 4, *ibid.*

²³ Section 5, *ibid.*

²⁴ Section 6, Citizenship Act, 1955

²⁵ Section 7, The Citizenship Act, 1955

(derived from the person's membership to territories that were incorporated into India, i.e. Goa, Daman and Diu,²⁶ Dadar and Nagar Haveli,²⁷ Pondicherry,²⁸ and Sikkim.)²⁹

The Citizenship (Amendment) Act, 1986 transformed the system from a *jus soli* regime to a system largely based on *jus sanguinis*. Thus anyone born after the commencement of the Constitution on 26 January 1950 but before 1 July 1987 would be a citizen; however anyone born on or after 1 July 1987 would only be a citizen by birth if either parent is an Indian citizen.³⁰ This was in response to the large influx of migrants and refugees that were coming into India and raising concerns of national interest, particularly in the state of Assam.³¹ This led the Government to become more stringent on the provisions of its nationality laws by introducing the Citizenship (Amendment) Act, 1986. The Act also inserted Article 6(A) which created special provisions as per the Assam Accord.³² Anyone of Indian origin³³ entering Assam before 1 January 1966 from a "specified territory"³⁴, and resided in India since were deemed Indian citizens.³⁵ On the other hand, those entering Assam on or after 1 January 1966 but before 25 March 1971 from the specified territory, were ordinarily resident in Assam and identified as a foreigners³⁶ could register for citizenship.³⁷ The second category of persons would have the same rights as citizens except for voting rights.³⁸ Persons who did not qualify for either of the two were considered illegal migrants and rendered stateless.

The Citizenship (Amendment) Act of 1992 brought a positive change in relation to gender discrimination in India's citizenship law. Section 4 of the Principal Act provided that a person born after 26 January 1955 but before the commencement of the Act is an Indian citizen by descent if the father is Indian at the time of birth. This provision was amended by the Citizenship (Amendment) Act of 1992 which provided that persons shall be Indian citizens if either of his/her parents is Indian. It further replaced all references made to "male persons" with "persons" thus bringing India in line with Article 9(2) of the Women's Convention which requires States to grant women equal rights regarding the nationality of their children.

The Citizenship (Amendment) Act, 2003 (6 of 2004) made major changes to the Principal Act. The Act originally required residency in India or service of a Government in India for twelve years for periods amounting in the aggregate of a minimum of nine years to be eligible for naturalisation; this was

²⁶ Goa, Daman and Diu Citizenship Order, 1962

²⁷ Dadar and Nagar Haveli (Citizenship) Order, 1962

²⁸ Pondicherry Citizenship Order, 1962

²⁹ Sikkim (Citizenship) Order, 1975

³⁰ Section 3 (1), The Citizenship (Amendment) Act, 1955

³¹ See Chandra, B., Mukherjee, M., Mukherjee, A., 'India since independence', Penguin Books India Pvt. Ltd., New Delhi, 2008, p. 403

³² See Chapter 4.1

³³ If either of his/her parent or grandparent was born in undivided India

³⁴ Territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1986

³⁵ Section 6A (2), Citizenship (Amendment) Act, 1985

³⁶ As per the Foreigners (Tribunal) Order 1964

³⁷ Section 6A (3), Citizenship (Amendment) Act, 1985

³⁸ Section 6A (4), *ibid.*

increased to fourteen years and eleven years respectively by the 2003 Act³⁹ thereby leaving many stateless persons in a legal limbo. The First Schedule was omitted⁴⁰ and the term 'citizen' in relation to a 'specified country' in the First Schedule was substituted by 'illegal migrant' which is defined as a foreigner entering India.⁴¹ This poses a challenge for stateless persons in India to acquire nationality, as they often do not possess the necessary documents. Thus matters of legal status complicate eligibility as their very condition creates an obstacle to legal means to citizenship. Moreover, the amendment affected provisions to Section 5 that made 'illegal migrants' and their children unqualified for registration,⁴² i.e. the application for registration of minors under Section 5(1)(d) requires a copy of valid foreign passport, a copy of the valid residential permit but also proof that each parent of the minor is an Indian citizen.⁴³ These conditions bar stateless minors to attempt to naturalise as they usually do not possess such documents. Moreover, it does not consider circumstances where one parent is an Indian citizen and the other is not.

Regarding naturalisation,⁴⁴ there was a minor but very significant step towards avoiding statelessness. The Principal Act originally required that an applicant for naturalisation renounces their nationality before application, which was substituted by the applicant "undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted." This is a significant as it provides a safeguard that in case an application for Indian citizenship is denied; the applicant still has his/her former nationality. This is in accordance with the 1930 Hague Convention (Article 16), and the 1961 Convention (Article 7(1) and (2)).

2.2.1 Citizenship by birth

Section 3 of the Citizenship Act provides for the ascription of citizenship via *jus soli* if both or one of the parents is an Indian citizen, as long as the other is not an irregular migrant.⁴⁵ However, the law does not provide *jus soli* safeguards if the child would be otherwise stateless. Furthermore, since the law provides that even if just one parent is an illegal migrant, the child's eligibility to acquire the nationality from the other parent, whether by birth or by descent, would be denied. Moreover, Section 3(2)(b) states that in situations where the birth takes place in a territory that had then been under occupation by 'the enemy' and either of the parents are an 'enemy alien', the child would not be able to obtain Indian citizenship by birth. However, the Act does not provide a definition of 'enemy alien' and thus this provision is liable to changes in times of war; and secondly, the provision does not make any reference to scenarios where either or both of the parents may be 'enemy alien(s)' but the birth takes place in the territory of India not under occupation by the enemy.

³⁹ Section 18(c), The Citizenship (Amendment) Act, 2003

⁴⁰ Section 16, *ibid.*

⁴¹ Section 2(i), *ibid.*

⁴² Section 5, *ibid.*

⁴³ See Form IV, Part II, The Citizenship Rules, 2009

⁴⁴ Found under the Third Schedule of the Principal Act

⁴⁵ The Act defines an 'illegal migrant' as a foreigner entering India: (i) without a valid passport or other travel document; or (ii) with a valid passport or other travel documents but has overstayed in India beyond permitted time. Section 2, The Citizenship (Amendment) Act, 2003

In terms of citizenship by birth, it can be established that it is very unlikely that section 3 of the Citizenship Act would grant nationality via *jus soli* to children born in the territory of India who are vulnerable to statelessness. This is not in line with Article 1 of the 1961 Convention which requires States to “grant nationality to a person born in its territory who would otherwise be stateless”⁴⁶, to which India is not a state party. Before 1986, every person born in India on or after the commencement of the Constitution was considered an Indian citizen by birth on the territory (unconditional *jus soli*). As mentioned earlier, this was replaced by a stricter *jus sanguinis* doctrine with the introduction of the Amendment Act, 1986 (see section 1.3). Although India is not party to the 1954 or 1961 Conventions, the lack of safeguards against statelessness at birth are in contravention of CRC (Article 7), ICCPR (Article 24), CPRD (Article 18) and the Convention on Migrant Workers (Article 29) which assert the right of a child to be registered immediately after birth and the right to acquire a nationality, under which India has not filed any reservations. From the perspective of stateless children, this is a shortcoming under Indian citizenship laws.

2.2.2 Citizenship by descent

Section 4 of the Citizenship Act divides citizenship by descent (*jus sanguinis*) into three categories: persons born outside India between 26 January 1950 and 10 December 1992 if the father was an Indian citizen at the time of birth; persons born outside India between 10 December 1992 and 7 January 2004, if either of the parents is an Indian citizen at the time of birth; and children born after 7 January 2004 if either of the parents is an Indian citizen and the birth is registered at an Indian consulate within one year.⁴⁷ Section 4 also requires births to be registered at an Indian consulate within one year and that the minor does not hold another nationality. This is aligned with Article 4 of the 1961 Convention, which requires states to grant nationality to persons born outside the country of his/her parents nationality, if (s)he would otherwise be stateless.⁴⁸ In comparison to citizenship by descent described above, it becomes clear that Indian laws make it is easier for persons of Indian descent born outside of India to gain Indian citizenship than for persons born in India.

2.2.3 Citizenship by registration

Section 5 of the Citizenship Act provides Indian citizenship through registration for the following categories of persons: (a) a person of Indian origin⁴⁹ who is currently resident in India for seven years before making an application for registration; (b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India⁵⁰; (c) a person who is married to an Indian citizen and is ordinarily resident in India for seven years before making an application for registration; (d) minor children of persons who are citizens of India; (e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6; (f) a person of full age and capacity who, or either of his/her parent, was earlier a citizen of Independent India, and has been residing in India for one year immediately before making an application for registration; (g) a person of full age and capacity who has been registered as an Overseas Indian Citizen

⁴⁶ Article 1, UNGA, *Convention on the Reduction of Statelessness*, 30 August 1961, UNTS, vol. 989

⁴⁷ The Citizenship (Amendment) Act, 2003

⁴⁸ Article 4 (2), UNGA, *Convention on the Reduction of Statelessness*, 30 August 1961, UNTS, vol. 989

⁴⁹ Section 5, Citizenship (Amendment) Act, 2003

⁵⁰ India before 1947 partition as recognized by 'The Government of India Act', 1935

for five years and has resided in India for twelve months⁵¹ before making an application for registration.⁵²

The registration of minors in Section 5 (1) (d) of the Act requires a declaration from the parent of the child,⁵³ however the term ‘parent’ has not been clarified for instance whether the term covers adoptive parents or children born out of wedlock. Thus it remains unclear what happens if one parent is an Indian citizen and the other is stateless. So, it can be said that Indian citizenship by registration does not really consider those who are stateless. Although stateless persons may fulfil the requirement of duration of residency in India, they are still not eligible for citizenship by registration under Section 5 as they are not considered of Indian origin, married to an Indian citizen or children of Indian citizens.

2.2.4 Citizenship by naturalisation

Section 6 in conjunction with the Third Schedule of the Citizenship Act provides for the acquisition of Indian citizenship through naturalisation. The requirement that persons shall not be ‘illegal migrants’ introduced by the 2003 Act already disqualifies most stateless persons from acquiring citizenship via naturalisation. Furthermore, the fact the individual has not previously renounced nor been deprived of Indian citizenship seals the barrier for most stateless persons from being able to naturalise in the future as well. Nevertheless, the condition in Section 6(1) provides that the Central Government may waive any of the conditions from the Third Schedule for individuals that have rendered distinguished service to “the cause of science, philosophy, art, literature, world peace or human progress generally.”⁵⁴ Ultimately, the Central Government has the discretion to decide whether the person has fulfilled such service, and thus plays a key role in the reduction of statelessness in India. However it seems very unlikely that stateless persons would have the possibility to render such distinguished services as they are usually marginalised and lack resources to excel in such fields.

Another potential barrier to naturalisation is that Rule no.10 of the Citizenship Rules⁵⁵ requires applicants to have “adequate knowledge”⁵⁶ of at least one language specified in the Eight Schedule of the Constitution.⁵⁷ This can be burdensome for many stateless persons who do not know any of the specified languages, which is the case for many Rohingyas.⁵⁸ The obligations under Article 2(1) of the ICCPR states that all rights and freedoms must be guaranteed “without distinction of any kind such as [...] language”. Additionally, Article 29(c) and Article 30 of the CRC states that education of the child

⁵¹ Substituted from ‘2 years’ from the Principal Act to ‘twelve months’ by Section 3(i)(b)(B) Citizenship (Amendment) Act, 2015

⁵² Section 5, Citizenship (Amendment) Act, 2003

⁵³ Rule no. 5, The Citizenship Rules, 2009,

⁵⁴ Section 6(1), The Citizenship Act, 1955

⁵⁵ Rule no. 10, The Citizenship Rules, 2009

⁵⁶ *ibid.*

⁵⁷ ‘Specified languages’ are the following: Assamese, Bengali, Bodo, Dogri, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Maithili, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu, and Urdu. Eight Schedule, The Constitution of India, 1950

⁵⁸ Khan, A.Y., ‘Hyderabad’s Rohingya refugees fight language barriers.’ *The Hindu*, 1 July 2013, available at: <http://www.thehindu.com/news/cities/Hyderabad/hyderabad-rohingya-refugees-fight-languagebarriers/article4866622.ece> [accessed 15 July 2016]

shall be directed to “the development of respect for the child’s parents, his or her own cultural identity, language and values”⁵⁹ and that children belonging to “States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist” shall not be denied to practice their language. For a socio-linguistically diverse country like India, Rule No.10 adopts an exclusionist approach to naturalisation. Moreover, those who are stateless most likely have no formal education or documents to prove their qualifications and thus such requirement could be an impediment if they fulfil all other requirements.

Naturalisation may be the only alternative for stateless persons who are not eligible for other avenues to Indian citizenship. Article 32 of the 1954 Convention requires States to “as far as possible facilitate the assimilation and naturalisation of stateless persons [...] in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.”⁶⁰ Instead of facilitating naturalisations of stateless persons, the criteria laid out in the Citizenship Act concerning naturalisation are simply too rigid to consider stateless persons. Although the provisions in the Citizenship Act concerning naturalisation do not create statelessness per se, they do sustain the problem as they bar stateless persons from obtaining Indian citizenship through naturalisation.

2.2.5 Renunciation of Citizenship

Section 8 of the Indian Citizenship Act provides for the renunciation of Indian Citizenship. This is aligned with Article 15 (2) of the UDHR which states that everyone has the “right to change their nationality.”⁶¹ However the procedure does not at any point request authoritative proof or assurance of the subsequent nationality that the person has acquired or intends to acquire; the declaration form merely requires the applicant to mention ‘(second) nationality’.⁶² In circumstances where citizenship renunciation is registered before the person has successfully acquired the nationality of another State, the person is vulnerable to the risk of statelessness. This is not in line with Article 7(1)(a) of the 1961 Convention which requires States to not permit the renunciation of nationality unless the individual possesses or acquires another nationality.⁶³

According to the Tunis Conclusions, States must ensure that renunciation of citizenship would not result in statelessness by “providing for a lapse of the renunciation if the individual concerned fails to acquire the foreign nationality within a fixed period of time.”⁶⁴ As a result the renunciation should be considered void, thus preventing the risk of statelessness. The Conclusions noted that some Contracting States require applicants intending to naturalise to have renounced their former nationality and give assurance that the naturalisation would be granted followed by proof of

⁵⁹ Article 29(c), UNGA, *Convention on the Rights of the Child*, 20 November 1989, United Nations, UNTS, vol. 1577, p. 3

⁶⁰ Article 32, Article 1, UNGA, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, UNTS, vol. 360.

⁶¹ Article 15(2), *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

⁶² Rule 23 (in conjunction with Form XXII), *The Citizenship Rules*, 2009

⁶³ Article 7 (1)(a), UNGA, *Convention on the Reduction of Statelessness*, 30 August 1961, UNTS, vol. 989

⁶⁴ UNHCR, ‘*Expert meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality: Summary Conclusions.*’ (“Tunis Conclusions”), November 2013, para 42

renunciation of their foreign nationality. There is an implicit obligation in the 1961 Convention that once issued, assurances should not be withdrawn on grounds that conditions of naturalisation are not fulfilled, as this could result in statelessness. As an alternative to issuance of an assurance, some States provide that naturalisation is granted against a pledge by the individual to renounce his/her foreign nationality and set a fixed timeline for submitting the proof of the renunciation, which if not submitted, renders the naturalisation application null and void.⁶⁵ In light of this it can be said Indian provisions on voluntary renunciation of nationality are not aligned with the international legal standards.

Another consequence is that the renunciation of Indian citizenship as a parent would have a direct effect on the nationality of his/her child. Section 8(2) of the Act provides that where a person ceases to be an Indian citizen via renunciation, “every minor child of that person shall thereupon cease to be an Indian citizen.”⁶⁶ There is no clarification provided on the status of the child where one parent renounces their Indian citizenship while the other does not. The lack of safeguards provided under Section 8 have the potential to create childhood statelessness which is in contravention of Article 6 of the 1961 Convention requiring states not to deprive children of their nationality until they possess or acquire another nationality, and Article 8 of CRC which requests states to preserve the identity of the child, including his/her nationality.⁶⁷

2.2.6 Termination of Citizenship

The Tunis Conclusions clarified the distinction between the terms ‘loss’ and ‘deprivation’ of nationality in the 1961 Convention. ‘Loss’ is used in Articles 5-7 of the Tunis Conclusions when referring to the automatic withdrawal of nationality by operation of law (*ex lege*); while ‘deprivation’ is used in Article 8 referring to situations where the withdrawal is initiated by the authorities of the State.⁶⁸ The UN Human Rights Council has established that ‘deprivation’ in the UDHR also includes arbitrary *ex lege loss* of nationality.⁶⁹ The Indian Citizenship Act, 1955 considers both ‘loss’ and ‘deprivation’ of nationality and addresses them in two provisions: Section 9 considers the ‘termination of citizenship’ or loss of citizenship by operation of law; while Section 10 considers the ‘deprivation of citizenship’ initiated by Governmental action.

Under Section 9 of the Citizenship Act, any Indian citizen who either by naturalisation, registration or otherwise voluntarily acquires/acquired the nationality of another country, ceases to be an Indian citizen.⁷⁰ The Central Government may determine the issues as to whether, when or how any Indian citizen acquires the citizenship of another country with due regard provided in Schedule III of the

⁶⁵ Ibid, para 45

⁶⁶ Section 8(2), The Citizenship Act, 1955

⁶⁷ Article 8, UNGA, *Convention on the Rights of the Child*, 20 November 1989, United Nations, UNTS, vol. 1577, p. 3

⁶⁸ UNHCR, ‘*Expert meeting: Interpreting the 1961 Statelessness Convention on Avoiding Statelessness resulting from Loss and Deprivation of Nationality: Summary Conclusions.*’ (“Tunis Conclusions”), November 2013, para 9

⁶⁹ UN Human Rights Council, ‘*Human Rights and Arbitrary Deprivation of Nationality*’, A/HRC/RES/20/5, 19 December 2013, para 3

⁷⁰ Section 9, The Citizenship Act, 1955

Citizenship Rules, 2009;⁷¹ the onus of proving otherwise lies with the person in question.⁷² If such citizen has obtained a passport from another country, it shall be conclusive proof of his/her having voluntarily acquired the citizenship of that country before that date.⁷³ The Citizenship Rules also state that where an Indian citizen leaves India for a period exceeding three years without a travel document issued by the Central Government, (s)he shall be deemed to have voluntarily acquired the citizenship of the country of his residence.⁷⁴ This contravenes Article 7(3) of the 1961 Convention which provides that a nationals should not lose their nationality on the ground of “departure, residence abroad, failure to register or on any similar ground.”⁷⁵

2.2.7 Deprivation of Citizenship

While Article 8(1) of the 1961 Convention prohibits States from depriving persons of his/her nationality if it would render him/her stateless,⁷⁶ there are some exceptions. Article 8(2)(a) allows deprivation based on prolonged period of residency abroad without notification to relevant authorities.⁷⁷ Article 8(2)(b) allows deprivation if nationality has been obtained by misrepresentation or fraud.⁷⁸ Article 8(3) provides States the right to deprive individuals’ nationality where the individuals conduct is found to be inconsistent with his/her duty of loyalty to the State.⁷⁹ Nevertheless, the Convention requires that such deprivations should be exercised in accordance with law and shall provide the individual concerned the right to a fair hearing before a court.⁸⁰

Section 10 of the Citizenship Act provides circumstances where the Central Government may deprive (naturalised or registered) individuals from Indian citizenship.⁸¹ Said include: (a) registration or certificate of naturalisation obtained by fraudulent means;⁸² (b) behaviours constituting disloyalty to the Constitution of India;⁸³ (c) unlawful trading, communication, engagement or association with an enemy during war;⁸⁴ (d) imprisonment in any country within five years after registration or naturalisation;⁸⁵ and (e) residing outside India for a continuous period of seven years without having annually registered in the prescribed manner at an Indian consulate to retain citizenship.⁸⁶

Some of these grounds for deprivation are vague and even harsh. With regards to Section 10(a) of the Act, the Tunis Conclusions required the existence of causality between the misrepresentation or fraud and the grant of nationality. Thus deprivation should not be allowed if nationality would have been

⁷¹ Rule 40, The Citizenship Rules, 2009

⁷² Para 1, Schedule III, The Citizenship Rules, 2009

⁷³ Para 3, *ibid.*

⁷⁴ Section 6, Schedule III, Citizenship Rules, 2009

⁷⁵ Article 7(3), UNGA, *Convention on the Reduction of Statelessness*, 30 August 1961, UNTS, vol. 989

⁷⁶ Article 8(1), *ibid.*

⁷⁷ Article 8(2)(a), *ibid.*

⁷⁸ Article 8(2)(b), *ibid.*

⁷⁹ Article 8(3), *ibid.*

⁸⁰ Article 8(4), *ibid.*

⁸¹ Section 10 (1), The Citizenship Act, 1955

⁸² Section 10(2)(a), *ibid.*

⁸³ Section 10(2)(b), *ibid.*

⁸⁴ Section 10(2)(c), *ibid.*

⁸⁵ Section 10(2)(d), *ibid.*

⁸⁶ Section 10(2)(e), *ibid.*

acquired regardless of the misrepresentation or fraud. The Tunis Conclusions noted that “due consideration should be given to the motivation of the individual such as why a person committed the act(s) in question”. One example provided related to provision of incorrect information during a naturalisation procedure because the applicant feared that use of their full and correct identity would endanger family members in another country. Another area of concern is the often poor quality of supporting identity documents from civil registration systems and other administrative registries. These documents often contain minor errors or discrepancies relating to the identity of individuals. These realities need to be taken into account in assessing cases of alleged misrepresentation or fraud.” It also clarified that deprivation cannot be justified if the person did not know or could not have known that the information provided was untrue.⁸⁷ Section 10(b) makes it unforeseeable which acts would amount to disloyalty towards the Constitution, and thus could be used arbitrarily.

Regarding Section 10(d), imprisonment in any country within five years of registration or naturalisation is also an unfair ground for deprivation as it does not distinguish between serious and less serious crimes, thus appears only to further punish said individual. Section 10(e) can also be seen as a punitive measure for those residing abroad beyond seven years. This could be a concern for many Non-Resident Indians (NRIs)⁸⁸, which is a large population.⁸⁹ The Tunis Conclusions recognized that deprivation of nationality based on prolonged residence abroad is not justified where the result is statelessness and the impact on the individual outweighs the objective sought by the state.⁹⁰ By virtue of Section 10(3), the Central Government ultimately decides on said deprivation depending on whether it is “satisfied that it is not conducive to the public good.”⁹¹ This is a highly subjective criterion and it is probable that the government could use this section arbitrarily and discriminatorily. So although it appears as though precautions are provided in the procedure before deprivation takes place, the discretionary power of the Central Government to disregard the report of Committee of Inquiry undermines the judicial character of the procedure which has the potential to create statelessness.

2.3 Identification of persons in India

2.3.1 Section 14A, Citizenship (Amendment) Act, 2003

Section 14A of the Citizenship (Amendment) Act, 2003 created a method of mapping Indian citizens by making it compulsory that every Indian citizen is registered and issued a national identity card.⁹² Rule no.4 of the Citizenship Rules of 2003, provides that in cases where during the verification process, the individuals citizenship is doubtful, further examination will take place.⁹³ Rule no.5 further

⁸⁷ UNHCR, ‘Expert meeting: Interpreting the 1961 Statelessness Convention an Avoiding Statelessness resulting from Loss and Deprivation of Nationality: Summary Conclusions.’ (“Tunis Conclusions”), November 2013, para 58-59

⁸⁸ Indian citizens residing abroad

⁸⁹ Statistics of Indians in Abroad, available at:

<http://www.nriol.com/indiandiaspora/statistics-indians-abroad.asp> [accessed 19 November 2016]

⁹⁰ UNHCR, ‘Expert meeting: Interpreting the 1961 Statelessness Convention an Avoiding Statelessness resulting from Loss and Deprivation of Nationality: Summary Conclusions.’ (“Tunis Conclusions”), November 2013, para 55

⁹¹ Section 10, The Citizenship Act, 1955

⁹² Section 14 A (1), The Citizenship (Amendment) Act, 2003

⁹³ Rule 4, The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003

elaborates upon this that the person or family shall be given the opportunity to be heard by the Sub-district or *Taluk* Registrar of Citizen Registration⁹⁴ before a final decision is made,⁹⁵ while Rule no.7 provides for the opportunity of an appeal to be made.⁹⁶ Still, there is no remark on the status of individuals whose citizenship remains doubtful even after the verification process is over. While Section 13 provides that in cases of doubt, the Central Government if it thinks appropriate may issue a certificate of citizenship. However for this to be possible, it still requires that citizenship was not obtained by means of fraud, false representation or concealment of any material fact. Thus, it remains unclear which degree of discretion would be given to authorities in respect of stateless persons with regards to Section 13.

2.3.2 Aadhaar

While the abovementioned registrar is a database for Indian citizens only, the National Population Register (NPR) and Unique Identification Number of India (UIDAI) are currently in progress to collect and store the demographic data of residents into a centralised database while issuing an *Aadhaar*, a unique 12-digit identity number to each resident. Although this is a great step in storing an identity database for residents in the country, it is still unclear what the potential implications of this would be on stateless persons. It is likely it will be just another system in which stateless persons do not exist and thus there would be no data providing how many of them there are.

2.3.3 Foreigners Act, 1946

The Foreigners Act (1946) is the primary law regarding non-nationals in India.⁹⁷ This Act gives the Central Government the authority to prohibit, regulate or restrict entry of foreigners into and out of India.⁹⁸ The act defines a 'foreigner' as someone who is "not a citizen of India."⁹⁹ Section 8 of the Foreigners Act on the determination of nationality considers the situation of a foreigner recognized as a national by the law of more than one foreign country or a foreigner whose nationality is uncertain.¹⁰⁰ Such a foreigner "may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected."¹⁰¹ If the foreigner has a nationality by birth, (s)he shall be deemed to retain that nationality unless the Central Government directs otherwise or where the individual proves that (s)he has acquired by naturalisation or otherwise the nationality of another country.¹⁰² Section 8 does not clarify the status or treatment of foreigners who appear to have no nationality upon the completion of the determination procedure, which again leaves stateless people in a legal grey zone and thus result in further human rights violations. The

⁹⁴ See Section 2(o) of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003

⁹⁵ Rule 5, *ibid.*

⁹⁶ Rule 7, *ibid.*

⁹⁷ The Foreigners Act, 1946, supplemented by the Registration of Foreigners Act, 1939; the Foreigners (Internment) Order, 1962; the Foreigners (Tribunal) Order, 1964; and the Registration of Foreigners Rules, 1992

⁹⁸ Section 3, The Foreigners Act, 1946

⁹⁹ Section 2, *ibid.*

¹⁰⁰ Section 8(1), The Foreigners Act, 1946

¹⁰¹ Section 8(1), *ibid.*

¹⁰² Section 8(1), *ibid.*

assumption of nationality can be very dangerous, the Geneva Conclusions provide the mechanisms for determining who is a stateless person, and the status and appropriate standards of treatment for such persons.¹⁰³

2.3.4 Passports Act, 1967

Under Article 28 of the 1954 Convention, States are required to “issue stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory [and] give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.”¹⁰⁴ The Passports Act, 1967, issues three types of documents: passports, travel documents and certificates of identity. Under Part II of the Passport Rules, 1980, “stateless persons residing in India, foreigners, whose country is not represented in India, or whose national status is in doubt” may qualify for a ‘Certificate of Identity’.¹⁰⁵ The Passports Act is by far the most advanced Indian legislation relating to statelessness, as it is the only law so far that recognises such persons in their own category and provides them with an identification document. Nevertheless, clarifications can be made to improve the Act. For instance, a residential permit is required for the application for the issuance of Certificate of Identity. The Rules do not clarify the procedure or criteria for obtaining such residential permit and thus it remains unclear whether a stateless person would be qualified for it. Moreover, the form requires the applicant to provide the information as to his/her “last permanent address abroad,”¹⁰⁶ which is based on the presumption that the individual is a migrant from abroad and fails to consider individuals who may have been residing in India but do not have the necessary documents to prove it, thus this section could be removed or altered.

3. Regional Agreements

3.1 Assam Accord, 1985

The Accord between AASU, AAGSP and the Central Government on the Foreign National Issue (Assam Accord), 1985,¹⁰⁷ was a memorandum of settlement signed between the Indian Government and the Assam Movement, which marked the end of the anti-foreigner agitation. Attempts to mitigate minority rights issues gave rise to arbitrary *ex lege* loss of citizenship in Assam.¹⁰⁸ Thus, by virtue of the accord persons who entered Assam: Before 1 January 1966 would be regularised and granted full Indian citizenship rights; after 1 January 1966 but before 24 March 1971 would be detected and registered as ‘foreigners’ and deleted from electoral rolls for at least 10 years; illegally after being

¹⁰³ UNHCR, ‘Expert meeting: Stateless Determination Procedures and the Status of Stateless Persons: Summary Conclusions.’ (“Geneva Conclusions”), 6-7 December 2010.

¹⁰⁴ Article 28, UNGA, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, UNTS, vol. 360.

¹⁰⁵ Class 2, Schedule II, Part II, Passport Rules, 1980

¹⁰⁶ *Ibid.*

¹⁰⁷ Accord between AASU, AAGSP and the Central Government on the Foreign National Issue (Assam Accord), 1985

¹⁰⁸ Ghosh, D.P.S., ‘*Migrants, Refugees and the Stateless in South Asia*,’ SAGE Publications India Pvt. Ltd., New Delhi, 2016, pp. 95-96

expelled would be expelled again; on or after 24 March 1971 would be detected, deleted from electoral rolls and expelled from the territory.¹⁰⁹ Thus, the Accord grants citizenship to those who entered Assam before 1 January 1966 and limited access to citizenship to those who entered after 1 January 1966 but before 24 March 1971. However, anyone entering Assam after 24 March 1971 would be expelled. It remains unclear where they would be expelled to and what would happen to the status of their nationality, thus they would most likely be rendered statelessness. By authorising the detention and expulsion of foreigners, some of whom were once considered lawful citizens, the Accord is at odds with Article 31 of the 1954 Convention.

3.2 Srimavo-Shastri Agreement between India and Sri Lanka, 1964

The case of stateless Tamils of Indian origin in Sri Lanka had long been a problem in the bilateral relations between India and Sri Lanka.¹¹⁰ The Srimavo-Shastri Pact was a landmark agreement reached between the two countries in 1964. The pact agreed to grant nationality to those rendered stateless following India's independence. As per the pact, 975,000 stateless persons would be repatriated or granted citizenship over the period of 15 years.¹¹¹ In 1974, a follow-up agreement decided that the remaining 75,000 persons (with their offspring) would be repatriated to India and the residual 75,000 persons (with their offspring) would be granted Sri Lankan citizenship. However, in 1982, India informed Sri Lanka that it will no longer entertain any applications for Indian citizenship as the specified period of 15 years was completed and thus no longer considered the pacts binding. During this time 86,000 applications were still pending, while 90,000 Indian Tamils had been granted Indian citizenship but were still awaiting repatriation.¹¹² In 1984, repatriations to India ceased as a result of the inter-ethnic violence.¹¹³ This rendered many who obtained Indian citizenship but were not repatriated to India unprotected. Nevertheless, Sri-Lankan citizenship was granted to stateless persons of Indian origin in 1988¹¹⁴ and 2003¹¹⁵, which finally resolved the problem of stateless Hill Tamils in Sri-Lanka in light of the 1954 and 1961 Conventions.

3.3 Land Boundary Agreement between India and Bangladesh

The India-Bangladesh enclaves¹¹⁶ resulted from the Partition of British India, which later led to the secession of Bangladesh from Pakistan, which hosted thousands of stateless persons. Initial attempts

¹⁰⁹ Assam Accord, 1985

¹¹⁰ Phadnis, U., 'The Indo-Ceylon Pact and the "Stateless" Indians in Ceylon.' *Asian Survey*, Vol. 7, No. 4, 1967, p. 226

¹¹¹ *Ibid.*, p. 228

¹¹² World Directory of Minority Rights Group International, 'Sri Lanka- Tamils', available at: <http://minorityrights.org/minorities/tamils/> [accessed 17 November 2016]

¹¹³ Ghosh, D.P.S., 'Migrants, Refugees and the Stateless in South Asia,' SAGE Publications India Pvt. Ltd., New Delhi, 2016, p. 46.

¹¹⁴ The 1988 Act granted Sri-Lankan citizenship to stateless persons of Indian origin who were lawfully resident in Sri-Lanka and not within those who applied for Indian Citizenship. Section 2, Grant of Citizenship to Stateless Persons Act, 1988

¹¹⁵ See Grant of Citizenship to Persons of Indian Origin Act, 2003

¹¹⁶ See Reece, J., 'Sovereignty and statelessness in the border enclaves of India and Bangladesh', *Political Geography* Vol. 28 (2009), p. 373

were made to resolve the land dispute; however, they were met with resistance from both sides.¹¹⁷ In 1974, India and Bangladesh signed the Agreement Concerning the Demarcation of the Land Boundary between India and Bangladesh and Related Matters, 1974 (LBA); and in 2011 a Protocol to the 1974 LBA was adopted to pave the way for the outstanding border demarcations. The 100th Constitutional Amendment Act, 2015 ratified the 1974 LBA and its 2011 Protocol by which enclaves and inhabitants are to be swapped. Before the exchange of enclaves, a survey was conducted asking inhabitants their choice of citizenship: 14,863 inhabitants in 51 Bangladeshi enclaves in India and 989 inhabitants in 111 Indian enclaves in Bangladesh opted for Indian nationality, while the remainder opted Bangladeshi citizenship.¹¹⁸

4. Discussion

The current framework of India's nationality laws is inconclusive and ambiguous when assessed against international law's standards on statelessness. One of the main obstacles is that the key Conventions on Statelessness have not yet been ratified. This raises many concerns, the first of which is the lack of legal recognition of stateless persons which is a prerequisite to access the rights to which they are entitled to under the 1954 and 1961 Conventions on Statelessness. India is not party to the Refugee Convention either, which ultimately puts many non-citizens (i.e. refugees, stateless persons, asylum seekers) in the same broad category of 'foreigner' as per the outdated Foreigners Act when their realities and needs are overlapping but categorically different.¹¹⁹

While the MHA Annual Report (2015-2016)¹²⁰ includes reports on refugees from Sri Lanka and Tibet, it does not provide any exclusive information or data on stateless persons overall. The term stateless is only used with reference to Sri Lankan refugees, but even then the report does not provide any definition or description of the term and who fits the category of stateless persons in India.¹²¹ Nevertheless, Article 51(c) of the Constitution provides that India "shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with another," and thus the definition of a stateless person provided in the 1954 Convention, which has attained

¹¹⁷ Shewly, H. J., 'India and Bangladesh Swap Territory, Citizens in Landmark Enclave Exchange', Migration Policy Institute, March 9 2016, available at: <http://www.migrationpolicy.org/article/india-and-bangladesh-swap-territory-citizens-landmark-enclave-exchange> [accessed 19 September 2016]

¹¹⁸ MEA, Press release: "Exchange of enclaves between India and Bangladesh," Government of India, 20 November 2015, available at: <http://www.mea.gov.in/press-releases.htm?dtl/26048/Exchange+of+enclaves+between+India+and+Bangladesh> [accessed 19 September 2016]

¹¹⁹ Nair, A., 'National Refugee Law for India: Benefits and Roadblocks', Institute of Peace and Conflict Studies, New Delhi, 2007

¹²⁰ MEA, *Annual Report 2015-2016*, *Annual Report 2015-2016*, Government of India, available at: http://www.mea.gov.in/press-releases.htm?dtl/26048/Exchange_of_enclaves_between_India_and_Bangladesh

¹²¹ "Refugees are of the following two categories: (i) stateless persons who had not applied for Indian citizenship or those not yet conferred Sri Lankan citizenship; and (ii) Sri Lankan citizens." *Annual Report 2015-2016*, *Annual Report 2015-2016*, Ministry of External Affairs, Government of India, pp. 269-270 available at: http://www.mea.gov.in/press-releases.htm?dtl/26048/Exchange_of_enclaves_between_India_and_Bangladesh [accessed 20 September 2016]

customary international law status, should have some legal recognition, whether India is party to the Convention or not.

Moreover, the meanings of 'citizen' and 'non-citizen' have also not been clearly defined in the Citizenship Act. The term 'parent' should also be defined so as to include parents of children born out of wedlock, adoptive parents, single parents, etc. By incorporating or clarifying these terms in the Act, the scope to granting citizenship could be widened, thus avoiding punitive statelessness of children born out of non-traditional partnerships. Furthermore, the Citizenship Act contains strict exclusionary provisions that create statelessness as a by-product, normalising inequality and severely compromises the goals of international human rights law. India could simplify procedures to acquire citizenship via *jus soli* (Section 3(1)(c)(ii)) as well as citizenship by naturalisation (Section 6(1)) by removing trivial 'ascriptions of illegality' attached to stateless persons by making exceptions in special circumstances where said individuals do not have another nationality, and by removing the precondition that persons shall not be an 'illegal migrants'. While the precondition of residency seems reasonable in relation to citizenship by naturalisation (and registration), requirements such as language (Third Schedule (f)), identity documents and details of nationality of parents (Form VI) could be also be broadened to include more languages, especially when other criteria's such as residency are fulfilled. Simplifying these procedural impediments is vital, as these requirements prevent many stateless persons in India from acquiring citizenship when fulfilling all other criteria's that make them eligible.

India defends its strict nationality laws on grounds of national security as well as social, economic, and political concerns. Conversely, it can be argued that the 1954 Convention explicitly excludes persons who are suspected of having committed serious crimes (Article 1(2)(iii), 1954 Convention) and thus the Convention takes into account security considerations. The conditions set out in registration and naturalisation procedures in the Citizenship Act are specifically concerned with avoiding double nationality, in a way which requires any person seeking Indian citizenship to renounce the citizenship of their other country of nationality upon acceptance of his/her application for Indian citizenship. However, the qualifying period of residency or service required to be considered eligible for citizenship is so long that it leaves many vulnerable to statelessness, since a person who has exceeded the duration of residing abroad from his/her country of nationality may lose that nationality but may not yet be eligible for Indian citizenship until the conditions and rules relating to registration (Section 5) and naturalisation (Section 6) have been fulfilled.

A number of provisions in the Citizenship Act explicitly provide legal means by which Indian citizens may lose their citizenship, resulting in statelessness. Section 8 on renunciation of citizenship allows Indian citizens to relinquish their citizenship even if doing so would render them stateless. Consequentially, their children also lose their citizenship, which unfairly exposes them to the risk of statelessness without any fault of their own. Section 9 on termination of citizenship also creates a possibility for statelessness as the Act does not require guarantees that another nationality has been acquired. Finally, Section 10 on deprivation of nationality as a punishment for certain acts or omissions can also result in statelessness. It is crucial that Indian authorities approve the acquisition of foreign nationality before registering an applicant's renunciation, termination, or deprivation of Indian citizenship, in order to avoid statelessness. With regards to children, major reforms need to be made as they are the most vulnerable. One of the main obstacles preventing children from accessing Indian citizenship has been the requirement that at least one parent must be an Indian citizen and the other must not be an illegal migrant. This results in many children inheriting statelessness through no fault of their own. Under international legal framework, a child is entitled to nationality (Article 7 and 8,

CRC) irrespective of the nationality or any other status of his/her parents (Article 2(1) CRC). This is imperative in preventing statelessness from being inherited.

Another concern is the issue of registration of the birth of a child, which is one of the first legal forms of recognition. Article 7 of the CRC urges contracting States to register the birth of a child. India passed the Registration of Births and Deaths Act in 1969¹²² which requires births to be registered within 21 days of its occurrence. However, in 2013 only about 71% of births were actually registered.¹²³ The implementation of the Act is clearly inadequate, thus it is important that the Indian government takes steps in terms of uniform training and capacity building of authorities in charge of birth registrations so as to develop their competence. The monitoring or correct implementation of this procedure could be assisted by partnering with organisations such as UNHCR. This is central to reducing the risk of statelessness. Obtaining a birth certificate subsequently facilitates access to other forms of identification.¹²⁴

India needs to move its nationality laws towards inclusive citizenship based on fairness and equal opportunities. Currently, Section 7A needs to be amended as it does not allow OCI registration to those who are/were citizens of Pakistan or Bangladesh, or if either of their parent, grandparent or great-grandparent is/was such a citizen. In July 2016, the Citizenship (Amendment) Bill, 2016 was introduced to the Parliament and is currently pending approval. The Bill amends Section 2(1)(b) of the Principal Act, inserting a provision stating that “persons belonging to minority communities....who have been exempted” by the Government under Section 3(2)(c) of the Passport (Entry into India) Act, 1920, or any provisions from the Foreigners Act, 1946 shall not be considered as ‘illegal migrants’ by virtue of the Act. Thus certain persons from Afghanistan, Bangladesh and Pakistan who were formerly unable to apply for Indian citizenship would be eligible under Section 6 (naturalisation) if this Bill is approved.

Moreover, it amends the Third Schedule reducing the time of residency required for naturalisation from eleven years to six years, speeding up eligibility to access citizenship.¹²⁵ It also changes the definition of illegal migrants under Section 2(1)(b) of the principal Act and thus enables certain minorities to be eligible for citizenship. This would be a significant for stateless persons formerly considered ‘illegal migrants’ as it would remove the discriminatory provisions and practices of the principal Act. However, the proposed amendment seeks to grant citizenship mainly to non-Muslim minorities, while Muslims in the same situation would still be labelled ‘illegal migrants’ as per the principal Act. This is in contravention of international law, in particular the right to nationality “without distinction as to race, colour, or national or ethnic origin” (Article 5, CERD);¹²⁶ but also India’s Constitution which guarantees equality before the law (Article 14) and does not permit discrimination on any ground (Article 15).¹²⁷

¹²² The Registration of Births and Deaths Act, 1969 available at:

http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/rbd_act_1969.pdf

¹²³ Registrar General, ‘Vital Statistics of India based on the Civil Registration System, 2013’, Ministry of Home Affairs, 2013, available at: http://www.censusindia.gov.in/2011-Documents/CRS_Report/CRS_Report2013.pdf

¹²⁴ Indian archives: *obtain birth certificate*, available at:

<http://www.archive.india.gov.in/howdo/howdoi.php?service=1>

¹²⁵ Section 4, The Citizenship (Amendment) Bill, 2016

¹²⁶ Article 5(iii), UNGA, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, UNTS, vol. 660

¹²⁷ Article 14 and 15, The Constitution of India, 1950

Article 253 of the Constitution gives the Parliament “power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body,” which shows that India is in favour of international law however in practice it has not been fulfilling its human rights obligations under international law on matters relating to statelessness. In the context of inadequate consensus on international standards which do not consider the geopolitical complexities of statelessness, India has favoured to enter into regional agreements to address statelessness instead.¹²⁸

However, the existing *ad hoc* measures taken to deal with stateless persons appear to be founded on selective political conveniences rather than fostering respect for the rights of stateless persons under international law. Such methods will not adequately address issues of statelessness in the long-term until a uniform law on the protection of stateless persons is enacted as it would create a framework by which the status of stateless persons would be accorded based on the principle of equality and agreed standards of determination and treatment. Such a framework has the potential to reduce frictions in India’s bilateral relations, as the act would be understood as a humanitarian and legal action, rather than a political calculation. Even if there is a regional agreement in place to handle stateless persons between India and other parties, it is advisable that India either accedes to the Conventions on Statelessness or enacts its own laws with the view of ensuring mechanisms catering to and preserving the rights of existing stateless persons but also preventing future statelessness.

5. Conclusion

This article aimed to analyse India’s nationality laws in light of the current international legal framework surrounding statelessness. Statelessness in India, much like the rest of the world, is caused by a variety of factors. The continuing difficulties of decolonisation paired with new socio-political trends have heavily had an influence on the restrictive citizenship laws. The possible avenues open to stateless persons to acquire citizenship would be through registration or naturalisation, however there are certain provisions in the Citizenship Act in conjunction with the Citizenship Rules that create obstacles for stateless persons to acquire citizenship. Moreover, there are no safeguards against statelessness arising from renunciation, termination or deprivation of nationality, in fact they seem rather punitive. Without positive action by the State to change the discriminatory nationality laws, statelessness will continue being passed on from one generation to the next. Thus it should be in the interest of India to accede to the Stateless Conventions and change its Citizenship laws as provided.

In order to address current issues of statelessness efficiently and secure a results based method of preventing future statelessness, it is imperative that India accede to the 1954 and 1961 Conventions on Statelessness and implement them into domestic law. Acceding to the Conventions would create positive obligations on India’s part by requiring it to make the necessary changes in its national framework. By acceding to the Conventions, India would be obliged to incorporate the internationally accepted standards relating to nationality into its corresponding legislative provisions. This is desirable not only for stateless persons as such a move would strengthen national frameworks on nationality laws and allow such persons to access their rights and privileges as per the Conventions, but would

¹²⁸ See Sen, S., “Paradoxes of the International Regime of Care,” *Refugees and the State: Practices of Asylum and Care in India, 1947-2000*, SAGE Publications Pvt. Ltd., New Delhi, 2003, pp. 404-405.

also allow the government to efficiently maintain such populations with more accountability and efficiency.