

SECURITIZATION, BELONGING AND CITIZENSHIP REVOCATION IN INDIA

ATREYO BANERJEE¹

This paper investigates the securitisation of citizenship policies in India, focusing on the provisions for termination and deprivation of citizenship under Sections 9 and 10 of the Citizenship Act, 1955. It argues that these provisions, operating within an exceptional framework, have been historically justified through narratives of national security, deeply rooted in the partition of India and its enduring “migration crisis.” By examining debates from the Constituent Assembly and the Lok Sabha, alongside legislative intent and judicial decisions, the paper illustrates how the securitisation of citizenship has entrenched executive supremacy while leaving minimal room for judicial oversight or procedural safeguards. The overlapping application of the Citizenship Act and the Foreigner’s Act further exacerbates vulnerabilities, creating a labyrinthine legal regime where individuals are subject to arbitrary state action. The paper critiques the inherent ambiguities in determining the “voluntary” acquisition of foreign citizenship, the reversal of the burden of proof under the Foreigner’s Act, and the reliance on executive-controlled bodies to adjudicate citizenship claims. Drawing on a range of cases from the early years of independence to contemporary times, it highlights the systemic exclusion of vulnerable groups, particularly those affected by partition and forced migration, and how these policies disproportionately target minorities and marginalised communities.

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¹ Atreyo Banerjee is a lawyer, researcher and educator working at Agami where he co-leads the Environmental Justice Innovation initiative. He is also associated with National Law School India University (NLSIU) as visiting faculty where he teaches ‘Politics and Law in the Climate Crisis’. His interests include the political economy of law and governance in the Anthropocene, critical citizenship studies and using technology to radically reimagine legal and justice systems. The author may be reached at <atreyo.banerjee2019@gmail.com>.

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INTRODUCTION

Citizenship policies across the world are irregularising, unmaking and stripping off citizenship.² This is being done by using the language of law to clothe unfair, labyrinthine, and bureaucratic processes within which the threat of statelessness is large and citizenship status is debilitated. Despite growing criticism from international law scholars and organisations regarding the deprivation of citizenship, particularly in counter-terrorism contexts such as the Shamima Begum case, international law remains reluctant to robustly challenge the sovereign right of states to revoke citizenship, even when such processes remain exclusionary and violent³. The Indian State – keeping up with international trends – has taken it upon itself to conduct the ‘biggest exercise in statelessness’⁴ since the Second World War. While much of this has been restricted to the state of Assam, there exists enormous state will to replicate the horrors of the Assamese National Register of Citizens (“**NRC**”) determination process across India. While this is egregious, the fact that citizenship revocation comprises discursive processes within which citizenship is adjudicated is not confined to Assam alone. Equally important is the regime of termination and deprivation of citizenship within the Citizenship Act, 1955 (“**Act**”). In contrast, the blatantly partisan and possibly unconstitutional nature of the

² N. Jain, *Manufacturing Statelessness*, 116(2) AMERICAN JOUR. INTL. L., 237, 237-288 (2022).

³ B. MANBY, *CITIZENSHIP IN AFRICA: THE LAW OF BELONGING* (Bloomsbury Publishing, 1st ed., 2021).

⁴ Hannah Gordon & Elif Sekercioglu, *Citizenship Denied: Two Million in India Face an Uncertain Future*, RIGHT NOW, (Jun. 13, 2020) <https://rightnow.org.au/analysis/citizenship-denied>.

CAA⁵ made it easier to generate discourse around its potential unconstitutionality.

On the other hand, the procedural regime of citizenship revocation comprising of termination and deprivation – rooted in Sections 9 and 10 of the Act – has either been lightly brushed by existing scholarship or not engaged with at all. While the Act is the umbrella legislation under which other acts and rules including the Foreigner’s Act, 1946 (“**FA 1946**”) must adhere, the Act also provides for citizenship revocation – distinct from other forms of revocation such as administrative actions or quasi-judicial declarations under the FA 1946. This regime’s revocation of citizenship as it is rooted under the Act, has escaped scrutiny within critical citizenship studies. Sections 9 and 10 of the Citizenship Act, 1955, which govern the termination and deprivation of citizenship, are deeply problematic due to their exclusionary and often violent implications. Section 9 allows for the automatic termination of citizenship in cases of acquiring foreign citizenship, even unintentionally, without adequate procedural safeguards. Section 10 enables the deprivation of citizenship on grounds such as disloyalty to the Constitution or fraud, often relying on vague criteria that disproportionately target vulnerable communities. These provisions operate with minimal judicial scrutiny, leaving significant room for arbitrary state action.

Therefore, in this paper, I investigate the regime of citizenship revocation by asking the question of how the State justifies exclusionary and often violent citizenship policies – with negligible judicial oversight – to operate in a democracy? For this enquiry, in Part I, I argue that the state relies on a frame of securitization to use an ‘existential’ crisis to justify exceptional regimes of citizenship revocation. In Part II, I trace the narratives and tropes of security both historically and in contemporary times which have facilitated and allowed an exceptional regime to fester. In Part III, I look at how citizenship revocation takes place under the Act and identify sites of extreme confusion and a potent lack of clarity which

⁵ M. Mohsin Alam Bhat & Aashish Yadav, *The NRC in Assam doesn’t just violate human rights of millions—it also breaks international law*, THE SCROLL (Jan 7, 2021), <https://scroll.in/article/983130/the-nrc-in-assam-doesnt-just-violate-human-rights-it-also-breaks-international-law>.

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contributes to a regime which is designed to exclude and operates with little judicial oversight.

SECURITY, BELONGING AND CITIZENSHIP

A. BELONGING IN EXCEPTIONAL REGIMES:

Popular justifications legitimizing the idea of nations rest on the role of a nation in providing security for its citizens.⁶ Holding a firm monopoly on legitimate violence,⁷ the nation-state formulates policies of citizenship⁸ which allow persons to belong as full members of that community. However, as Arendt⁹ and Agamben¹⁰ argue, these policies are not neutral; they are exclusionary mechanisms that determine access to rights and protections, often leaving stateless persons and marginalized communities outside the bounds of security and belonging. In recent times, India's citizenship policies have been vigorously critiqued across the international community and in India alike.¹¹ International bodies such as Amnesty International have comprehensively documented the role of the Indian State in Assam in rendering people stateless.¹²

⁶ Lucia Zedner, *Citizenship deprivation, Security and Human Rights*, 18(2) EURO. J. MIGRATION & L., 222-242 (2016).

⁷ Max Weber, *Politics as a Vocation*, in H.H. Gerth, C. Wright Mills ed., FROM MAX WEBER: ESSAYS IN SOCIOLOGY, 77-128 (Oxford University Press, 1946).

⁸ XAVIER GUILLAUME, JEF HUYSMANS, *CITIZENSHIP AND SECURITY: THE CONSTITUTION OF POLITICAL BEING* (Routledge, 1st ed., 2013).

⁹ HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM*, at 267 (Penguin UK, 1st ed., 1951).

¹⁰ GIORGIO AGAMBEN, *HOMO SACER SOVEREIGN POWER AND BARE LIFE* (Stanford University Press, 1st ed., 1998).

¹¹ Abhinav Chandrachud, *Secularism and the Citizenship Amendment Act 4(2)* IND. L. REV, 138-162 (2020); see also, Jaideep S. Laalli, *Communalisation of Citizenship Law: Viewing the Citizenship (Amendment) Act 2019 through the prism of the Indian Constitution 4* OXFORD HUMAN RIGHTS HUB, 41-58 (2021).

¹² Amnesty International. *Designed to Exclude: How India's Courts are allowing foreigners tribunals to render people stateless in Assam*, AMNESTY INTERNATIONAL (Nov. 20, 2019) https://www.amnesty.be/IMG/pdf/rapport_inde.pdf; Amnesty International. *Designed to Exclude: How India's Courts are allowing foreigners tribunals to render people stateless in Assam*, Amnesty International (Nov. 20, 2019) https://www.amnesty.be/IMG/pdf/rapport_inde.pdf.

Within India, scholars, and activists such as Mohsin A. Bhat argue¹³ that India's citizenship policies irregularise the citizenship status of Indian Muslims. On similar terms, Anupama Roy¹⁴ argues that since independence India's citizenship policies condemn certain religious and gender groups to the liminal space between being a citizen and being stateless. Other scholars¹⁵ have thoroughly brought out the embedded administrative violence in citizenship policies in the state of Assam. Here citizenship is adjudicated through the foreigner tribunals¹⁶ – Kafkaesque in its operation – unleashing a brutal precarity against the persons before the tribunals.

Taken as a whole, the multiple critiques converge on a single point which is the common theme of discrimination against the “other”.¹⁷ The “other” is usually the Muslim person in religiously mediated citizenship policies¹⁸, the woman in a gendered reading of the policies¹⁹ or the Bengali-speaking Muslim *Miya*²⁰ in the case of Assam, in reading the policies through an ethno-national linguistic critique. While this

¹³ Mohsin Bhat, “*The Irregular’ and the Unmaking of Minority Citizenship: The Rules of Law in Majoritarian India* 33(5) Queen Mary L. J. 395 (2022).

¹⁴ Anupama Roy Pal, *Liminal and Legible: Gendered Citizenship and State Formative Practices in the 1950s* in ANNE R. EPSTEIN, RACHEL G. FUCHS EDS., GENDER AND CITIZENSHIP IN HISTORICAL AND TRANSNATIONAL PERSPECTIVE: AGENCY, SPACE, BORDERS, 120 (Palgrave Macmillan, 1st ed., 2016).

¹⁵ Anupama Roy, *Ambivalence of Citizenship in Assam* E.P.W. 45 (2016); Sanjib Baruah, *The Partition’s long shadow: the ambiguities of citizenship in Assam, India*, 13(6) CITIZENSHIP STUD., 593 (2009); Anupama Roy, Ujjwal Kumar Singh, *The ambivalence of citizenship: The IMDT Act (1983) and the politics of forclusion in Assam* 41(1) CRIT. ASIAN STUD., 37 (2009).

¹⁶ Talha Abdul Rahman *Identifying the ‘outsider’: An assessment of foreigner tribunals in the Indian state of Assam*, 2(1) STATELESSNESS & CITIZENSHIP REV., 112 (2020).

¹⁷ ARJUN APPADURA., FEAR OF SMALL NUMBERS: AN ESSAY ON THE GEOGRAPHY OF ANGER (Duke University Press, 1st ed., 2006).

¹⁸ Gyanendra Pandey. *Can a Muslim be an Indian?* 41(4) COMP. STUD. SOC. & HIST. 608 (1999).

¹⁹ M. Bhat & Ashish Yadav, *On the Verge: Revocation and Denial of Citizenship in India*, in ELM FARGUES, REVOCATION OF CITIZENSHIP: THE NEW POLICIES OF CONDITIONAL MEMBERSHIP (European University Institute, 2021).

²⁰ Tiasha Banerjee, *The Persecution of ‘Miya’ Muslims in Assam: A struggle for Identity and Justice*, BOROK TIMES (Sept. 6, 2024), <https://boroktimes.com/the-persecution-of-miyamuslims-in-assam-a-struggle-for-identity-and-justice/>.

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scholarship brings out the brazen discrimination in citizenship policies,²¹ it does not fully explain how elite political actors such as government officials, ruling party leaders, and policymakers justify exceptional policies threatening citizenship status while legitimizing the underlying violence that these policies unleash. Moreover, the citizenship regime in India is discursively emergent. There is no single window clearance to determine the citizenship status of a person. Instead, the regime determining citizenship is akin to a “snakes and ladders”²² approach where citizenship is adjudicated within an expansive regime comprising of courts, tribunals, executive bodies such as the Ministry of Home Affairs (“MHA”),²³ the Election Commission²⁴ (“EC”), police authorities²⁵ and so on. There are disparate organs of the state and have their own rules, procedures, and ways of functioning. Hypothetically, a person’s citizenship may be sought to be revoked through either of these organs or using the organs in different permutations and combinations. However, the common strand

²¹ Bhat & Yadav, *supra* note 19; Salah Punathil, *Precarious Citizenship: Detection, Detention and ‘Deportability’ in India* 26 CITIZENSH. STUD., 55; Human Rights Watch, *Shoot the Traitors: Discrimination Against Muslims Under India’s New Citizenship Policy* HUMAN RIGHTS WATCH (Apr. 10, 2020), <https://www.hrw.org/report/2020/04/10/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>; Monika Verma, *Citizenship (Amendment) Act, 2019: The pernicious Outcomes of the Altering Equation of Citizenship in India*, 8(1) CONFLICT, JUSTICE, DECOLONIZATION: CRITICAL STUDIES OF INTER-ASIAN SOCIETIES (2021).

²² The analogy of ‘snakes and ladders’ reflects the unpredictable and convoluted nature of the citizenship adjudication process in India. Much like the game, where progress can suddenly be reversed by landing on a snake, individuals seeking to confirm or retain their citizenship can face abrupt setbacks due to overlapping jurisdictions, bureaucratic inefficiencies, or adverse decisions from any of the multiple authorities involved. For example, an individual declared a citizen by a tribunal may later face challenges from executive bodies like the Ministry of Home Affairs or police authorities, effectively nullifying earlier decisions. This fragmented system creates significant uncertainty and hardship, particularly for vulnerable groups; Kieran Lobo et.al., *NRC, Assam and What makes a Citizen: Navigate our Snakes and Ladders Citizenship Guide*, E.P.W., <https://www.epw.in/engage/article/nrc-assam-citizenship-snakes-and-ladders-guide>.

²³ Roshni Shanker & Hamsa Vijayaraghavan, *Refugee recognition challenges in India*, 65 FORCED MIGRATION REV., (2020).

²⁴ Amiya Kumar Das, *Documenting the Body: Entitlements and Paper Citizenship*, in AMIYA KUMAR DAS, *GRASSROOTS DEMOCRACY AND GOVERNANCE IN INDIA: UNDERSTANDING POWER, SOCIALITY AND TRUST* 89-104 (Springer, 1st ed., 2023).

²⁵ Pandey, *supra* note 18.

within this splintered framework is that the way citizenship is adjudicated to weed out the “other”²⁶ is exceptional. By exceptional, I imply that citizenship policies in India have often deferred to executive supremacy with little judicial oversight transgressing procedural safeguards. For example, citizenship revocation as it happens under the Act is wholly at the behest of the central government²⁷ with no requirement for an independent review or participation of agencies outside the direct control of the union executive. While Articles 10 and 11 of the Constitution, read with Entry 17 to List I of Schedule VII, empower Parliament to regulate citizenship, this centralization of authority necessitates proportional safeguards to prevent arbitrariness. The absence of mechanisms such as independent tribunals or oversight bodies to ensure fairness further exacerbates the risks of abuse. As a result, procedural safeguards, such as the right to legal representation, detailed reasoning for revocation decisions, or an automatic right of appeal, remain glaringly absent²⁸, leaving affected individuals vulnerable to executive overreach.

Similarly, the way foreign tribunals are staffed, the conditions of service and the case flow to the tribunals are all controlled in essential aspects by the government²⁹. In the case of the MHA and the regulation of long-term visas in India, there is negligible clarity and predictability as to how these visas are issued.³⁰ Perhaps, the clinching factor of executive supremacy here is none of the orders and decisions of these organs are justiciable. There is no right of appeal or judicial review. The limited right in extremely limited situations is in a ‘writ remedy’ but this is not a matter of entitlement and is contingent on the caprices of judges and particular questions of fact. More often than not, organs of the state play judge, jury and executions in determining who is a legitimate citizen in India. What is unclear is the reason for this deference.

²⁶ CHANTAL MOUFFE, *THE DEMOCRATIC PARADOX* (Verso Books, 1st ed., 2000).

²⁷ The Citizenship Act, 1955, § 9, No. 57, Acts of Parliament, 1955 (India); The Citizenship Act, 1955, § 10, No. 57, Acts of Parliament, 1955 (India).

²⁸ Bhat & Yadav, *supra* note 19.

²⁹ *Supra* note 9; *supra* note 11.

³⁰ MINISTRY OF HOME AFFAIRS, LONG TERM VISA (LTV) TO PAKISTAN, BANGLADESH AND AFGHANISTAN NATIONALS, 2018, https://www.mha.gov.in/PDF_Other/AnnexVI_01022018.pdf.

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Aiming to shed light on this, I adopt the framework of “securitization”³¹ to explain this executive supremacy which since independence has formulated discriminatory citizenship policies. While it is legitimate for a state to ensure security and regulate borders, the concern arises when these measures disproportionately target vulnerable communities, lack transparency, and are implemented without procedural safeguards. This creates a regime of exclusion rather than inclusion, undermining democratic values. This paper does not critique the need for border regulation but interrogates the methods and impacts of securitization, particularly its reliance on exceptional frameworks that marginalize the vulnerable. This paper focuses on securitization as it has been the primary driver of citizenship policies in India since Partition, influencing legal frameworks and their application. While other factors like economic considerations and demographic shifts are important, they are often subsumed within the broader narrative of security. Securitization, as developed in critical security studies³², refers to the process by which issues are framed as existential threats requiring urgent and extraordinary measures, thereby justifying a shift from the normal to the exceptional. This analytical framework allows us to examine how citizenship policies are moved into the realm of exceptionality,³³ where procedural safeguards and democratic norms are bypassed under the guise of addressing security concerns. As an analytical framework securitization facilitates the examination of a shift away from the normal to the exceptional.³⁴ Given that citizenship policies routinely operate in the realm of exceptional, it is of considerable importance to question this operation and the justification which allows it. As fields of study – critical citizenship studies and security studies have not intersected meaningfully.³⁵ The intersection, if any, has been restricted to the role of the state in securing

³¹ WILLIAM E. CONNOLLY, *IDENTITY/DIFFERENCE: DEMOCRATIC NEGOTIATIONS OF POLITICAL PARADOX* (University of Minnesota Press, 1st ed., 1991).

³² Benjamin J. Muller, *(Dis)qualified Bodies: Securitisation, Citizenship and 'Identity Management'* 8(3) *CITIZENSHIP STUD.*, 279 (2010).

³³ Engin F. Isin, *The Neurotic Citizen*, 8 *CITIZENSH. STUD.*, 217 (2004).

³⁴ BARRY BUZAN ET AL., *SECURITY: A NEW FRAMEWORK FOR ANALYSIS* (Lynne Rienner Publishers, 1st ed., 1998).

³⁵ *Supra* note 8; see also Karen Engle, *Constructing Good Aliens and Good Citizens: Legitimizing the War on Terror(ism)* 75 *UNIV. COLO. L.*, 59 (2004).

its legitimacy by securing the citizen. This limited intersection does not tell us how before securing the citizen, the conception of citizenship itself – deciding between legitimate and illegitimate citizens – is securitized. However, before investigating the intimacies between security concerns and citizenship policies, I lay out what the notion of securitization means, what are its core tenets and the nature of indigenous securitization vis-à-vis citizenship policies in India.

B. SECURITIZATION

Danger precedes the nation.³⁶ As a definitional category, the danger is malleable enough to incorporate myriad facts and situations – violent histories of nation-making, wars, terrorism, deadly viruses, and popular anxieties to name a few.³⁷ The very incommensurability of danger not only justifies the existence of bordered nations but also allows nations to shift legislative gear and place laws in the realm of the exceptional³⁸ to address an identifiable (or amorphous) danger. So why are citizenship policies relevant in the *raison d'être* of the nation? One way to understand this is that citizens demand security and the nation provides security.³⁹ Hence, who becomes a legitimate citizen may be relevant to understand what needs to be secured. But, beyond the organizing dynamic of a nation, this does not explain the exceptionality in citizenship adjudication regimes. A better explanation might be to note that while nations are “internationally filing”⁴⁰ persons to different countries and slotting them according to their citizenship status, the idea of citizenship itself is securitised.

In the case of India, the very existence of imagined boundaries drawn as by-products of a colonial vestige – the country’s borders – was the founding moment for the securitization of borders and migration across these borders. Here it is important to clarify – different countries may

³⁶ *Supra* note 4.

³⁷ *Id.*

³⁸ Peter Nyers, *No one is illegal between city and nation*, 4(2) *STUD. IN SOC. JUSTICE*, 160 (2008).

³⁹ *Id.*

⁴⁰ ROGERS BRUBAKERS, *CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY* (Harvard University Press, 1st ed., 2009).

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choose a combination of factors through which one becomes a full citizen. This may include citizenship by investment,⁴¹ theocratic citizenship,⁴² bureaucratic citizenship⁴³ and so on. Each of these in its own way discriminates – rightly or wrongly, legally or illegally, arbitrarily or fairly – against persons who are or aim to be full citizens. Within this logic of discrimination, security is another metric which both discriminates against persons and also forms the logic which allows for discrimination. Seeing it as just another metric of discrimination is not by itself concerning. However, the difference when compared to other metrics is that securitization of citizenship policies grants a sovereign imprimatur to shift the *method* of making and executing those policies from the normal to the exceptional realm.⁴⁴ Usually, this takes a deeply anxious and existential form where the state believes that there is a threat – perceived or real – from an outsider. It is to suitably grapple with and nullify this threat that the nation adopts the logic of exceptional measures barring which the nation itself is under threat. In India, as will be explained later, this threat has often been the unmitigated and enormous influx of illegal migrants notwithstanding its veracity.⁴⁵

For this paper, securitization indicates protecting the nation from external threats.⁴⁶ One may argue that a capacious definition of security ought to include social security, financial security and so on. While that is important, to understand the exceptional regimes of citizenship adjudication and its underlying logic we must locate the extent to which a secure state placates the anxieties and xenophobic fears its inhabitants have of outsiders. These anxieties and fears are necessary for

⁴¹ Allison Christians, *Buying in: Residence and Citizenship by investment*, 62 SAINT LOUIS UNIV. L. J., 51 (2007).

⁴² Rebeca Raijman, *Citizenship status, Ethno-National Origin and Entitlement to Rights: Majority attitudes towards minorities and immigrants in Israel*, 36(1) J. ETA MARITIME SCI., 87 (2010).

⁴³ Kristin A. Collins, *Bureaucracy as the Border: Administrative Law and the Citizen Family*, 66 DUKE L. J., 1727 (2016).

⁴⁴ Margaret R. Somers & Christopher NJ Roberts, *Towards a New Sociology of Rights: A Genealogy of “buried bodies” of Citizenship and Human Rights*, 4 ANN. REV. LAW SOC. SCI., 385-425 (2008).

⁴⁵ M. Bhat, *The Constitutional case against the Citizenship Amendment Bill*, 54 E.P.W. (2019).

⁴⁶ Thomas Diez & Vicki Squire, *Traditions of citizenship and the securitisation of migration in Germany and Britain*, 12(6) CITIZENSHIP STUD., 565 (2008).

understanding how certain issues – like the issue of citizenship here – become security concerns which allow the use of exceptional ways of governance.

Writing on the intersection of security and citizenship policies, Peter Nyers⁴⁷ states that citizenship policies are increasingly being undergirded by insecurities, anxieties, and fears. As a result, these policies are now concerned with weeding out the persons who have surreptitiously become citizens. The action then is not restricted only to the borders of a country which regulates the movement flow into the country, but is increasingly being played out inside countries such as India where policies⁴⁸ are disenfranchising millions of persons for being illegal immigrants. The enemy then, is not just outside the border but has managed to infiltrate and firmly establish itself within the interiorities of the nation. The resultant paranoia – threats of losing jobs, electoral manipulation, demographic changes, and cultural pollution – becomes a security concern requiring urgent state intervention. This framework of securitization then may be used by the state to adopt swift, efficient, and exceptional legal measures to exclude ineligible citizens, it can be used to label individuals and groups as “illegal immigrants” and justify such measures under the pretext of protecting national sovereignty.

In India, as we will see, the securitization logic underpins the Citizenship Act of 1955, particularly the sections dealing with the termination and deprivation of citizenship.⁴⁹ Constitutionally, Indian citizenship is secular⁵⁰ and accessible to its inhabitants, divorced from the lineaments of religion, caste, class, and gender. However, in practice, the logic of securitization restricts the capacious conception of Indian citizenship. This restriction – whether through the changes from *jus soli* to *jus*

⁴⁷ Peter Nyers, *The Accidental Citizen: Acts of Sovereignty and (Un)making Citizenship, in Securitizations of Citizenship*, in PETER NYERS, SECURITIZATIONS OF CITIZENSHIP (Routledge, 1st ed., 2009).

⁴⁸ Joya Chatterji, *South Asian Histories of Citizenship, 1946-1970*, 55(4) HIST. J., 1049 (2012).

⁴⁹ The Citizenship Act, 1955, §§ 9 & 10, No. 57, Acts of Parliament, 1955 (India).

⁵⁰ ANUPAMA ROY, CITIZENSHIP REGIMES, LAW, AND BELONGING: THE CAA AND THE NRC (Oxford University Press, 1st ed., 2022); See also ROHIT DE, PEOPLE’S CONSTITUTION: THE EVERYDAY LIFE OF LAW IN THE INDIAN REPUBLIC (Princeton University Press, 1st ed., 2018).

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sanguinis,⁵¹ the gradual amendments to cement the figure of the migrant within citizenship policies, the impunity of state action in Assam in undertaking the “biggest act of statelessness”,⁵² or any other context within which citizenship has been unmade – is rooted in the deep need to secure the nation against external threats. To understand this perceived external threat, and the origins of the logic of securitization, the next section visits the founding moment of securitization in India.

C. FOUNDING MOMENT OF SECURITIZATION

The Partition of India and the resultant fratricidal civil strife, occurring alongside India’s independence, ensured that securitization and citizenship became inextricably linked. Shruti Kapila’s reconstruction of Partition as a civil war⁵³ offers a critical lens to understand this connection. She argues that the violence of Partition, fought between brothers and intimate cohabitants under British suzerainty, was not ancillary to independence but foundational in defining the political identity of ‘*we the people of India*’.⁵⁴ Partition violence played a dual role: first, it constituted sovereignty by using mass displacement and migration as mechanisms to delineate legible ‘Indian’ identities; and second, it juxtaposed this sovereignty against its *constitutive other* – the Muslim person.⁵⁵ The logic of Indian sovereignty, forged in this crucible of Partition violence, must perpetually reproduce its foundational partition logic to distinguish between the citizen and the *persona non grata*. Thus, citizenship policies, are not merely administrative or legal mechanisms; they are deeply rooted⁵⁶ in the securitization processes that emerged from

⁵¹ NIRAJA GOPAL JAYAL, *CITIZENSHIP AND ITS DISCONTENTS: AN INDIAN HISTORY* (Harvard University Press, 1st ed., 2013).

⁵² Abdul Kalam Azad & M. Bhat, Harsh Mander, *Citizenship and the Mass Production of Statelessness in Assam*, AGE INDIAN EXCLUSION REPORT, (2020), <https://tinyurl.com/4hzd9ufy>.

⁵³ SHRUTI KAPILA, *VIOLENT FRATERNITY: INDIAN POLITICAL THOUGHT IN THE GLOBAL* (Princeton University Press, 1st ed., 2021).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Human Rights Watch, *Shoot the Traitors: Discrimination Against Muslims Under India’s New Citizenship Policy*, HUMAN RIGHTS WATCH (Apr. 10, 2020),

Partition, wherein the construction of the Indian citizen inherently involved the exclusion of the *other*.

In his work on the genealogy of civil wars, David Armitage⁵⁷ contends that civil wars are often described as outlier, and anomalous events and their repercussions ignored with time. But taking the examples of major civil wars such as the American Civil War he highlights the key role civil wars play in characterizing, building, and breaking political orders. In India, the Partition's shadow⁵⁸ continues to loom large in its citizenship policies. Once the *constitutive other*⁵⁹ has been defined and against whom the sovereign identity is constructed, the notion of securitization is used to maintain, support, and strengthen this division. For example, citizenship securitization in the Indian context, has a strong link to territorial security. The uncertainties of mass migration, together with the circumstances of independence and the transition to democracy, heightened anxieties about territorial integrity. Partition, migration, common-sense discourse — and its close association with issues of land loss, demographic imbalance, and fraudulent acquiring of Indian citizenship all influenced the direction of policies framed for the management of internal nation-space and protection from outsiders⁶⁰ in the context of citizenship securitization. Identity became fundamental to the securitization discourse⁶¹, though it manifested differently across various different contexts. Concerns about '*legal as well as illegal immigration*,⁶² '*threats from the neighbouring countries*,' and '*Islamic terror globally*,' as defined in the national discourse, propelled policies framed in the language of '*national survival*'. As a result, the adjudicating claims based on them established the notion of national security, a complicated template that continues to define further identity, and communal politics, and steer

<https://www.hrw.org/report/2020/04/10/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>.

⁵⁷ David Armitage, *Civil war and revolution*, 44(2) AGORA 18 (2009).

⁵⁸ URVASHI BUTALIA, PARTITION: THE LONG SHADOW (Penguin UK, 1st ed., 2015).

⁵⁹ *Supra* note 40.

⁶⁰ Shekhar Bandopadhyay & Haiminti Roy, *Partitioned Lives: Migrants, Refugees, Citizens in India and Pakistan, 1947-1965*, 118 AM. HUMAN RTS., 1506, 1506-1507 (2013).

⁶¹ Peter Gatrell, *Citizenship Refugee: Forging the Indian Nation after Partition* 32 INT. J. REFUGEE L., 394, 394-396 (2020).

⁶² Binayak Dutta, *Partition's Long Shadow. Post-Partition Migration and the Citizenship Conundrum in Postcolonial Assam*, 4 J. MIGR. AFF., 20, (2021).

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public policy. Citizenship policies had to be negotiated against the backdrop of a religiously motivated partition. While the concept of equal citizenship for all citizens remained important. A self-perpetuating logic that the demand for a Muslim homeland culminating in the creation of Pakistan implicitly means that Muslims would identify with Pakistan, while non – Muslims would automatically become part of India runs as a parallel process. This narrative was maintained by repeatedly stating that Muslim invaders⁶³ were to blame for civilizational decay and that centuries of rule had harmed Hindu pride, the final straw being partition.

Tracing and understanding the founding moment brings us to ask how the Indian state dealt with the aporia of citizenship. In this case, the aporia of citizenship is asking how the state ought to constitute a political community, and ensure its longevity amongst fraught and plural identities. What ought to be the rationale of law which informs citizenship policies which must continuously wrest against the threat of the other? To answer this, in the next part, I examine the interstitials between citizenship and security and describe the logic of securitization which is deeply enmeshed within citizenship policies in India.

NARRATIVIZING SECURITY

A. SETTING THE CONTEXT

In the previous chapter, I outlined the framework of securitization and the freedom it allows the state to situate citizenship policies in spaces of exception. In this chapter, I historicise the exceptional legislative framework of citizenship revocation which comprises termination and deprivation of citizenship under the Act. My aim is to argue that the narrative of security and the concomitant securitization of citizenship has been deeply enmeshed along the temporalities of citizenship revocation in India.

What are the safeguards which ought to govern citizenship revocation? What role do the preambular rights of the Constitution play in such

⁶³ Sabyasachi Biswal, *The interpretation of religious texts and historical narratives around Hindu Muslim conflict in contemporary India*, 56 C.U. SOUTH ASIA DEMOCRATIC FORUM 1 (2020).

governance? Are there any limits or constitutional constraints on Article 11 – parliament’s rights to legislate on citizenship – which ought to be read into any law which seeks to revoke Indian citizenship?⁶⁴ These are questions as old as independent India and have been part of a deeply contested and fraught dialectic of securitization and citizenship⁶⁵. As this chapter will highlight, this fraught dialectic initially preceded and informed the imagination of India’s citizenship revocation regime and later produced and reproduced its justification along temporalities from 1955 to today. In highlighting this, I also make a nested argument that due to different narratives of security India’s citizenship revocation regime, as it exists, was always imagined as an administrative process *sans* procedural safeguards, leaving the citizen at the mercy of the state and a pliant judiciary.⁶⁶

This chapter is thematically divided into two sections. The first section focuses on what preceded the citizenship revocation regime in India to argue that notions of securitization were immanent in any conception of citizenship revocation. To demonstrate this, I rely on the archives of the Constituent Assembly Debates (“**CAD**”) and the debates of the first ten years of the *Lok Sabha*. As we shall see, these debates provide a rich

⁶⁴ The preambular rights of the Constitution, such as justice, equality, and fraternity, are fundamental to governance and provide the moral framework within which laws, including those on citizenship, must operate. While Article 11 empowers Parliament to legislate on citizenship, this power is not absolute. It must be read in conjunction with other constitutional provisions, such as Article 10, which secures the rights of existing citizens, and the principles embodied in the Preamble. These rights create implicit limits or constitutional constraints on Parliament’s powers under Article 11, ensuring that any law seeking to revoke citizenship adheres to principles of secularism, equality, and the rule of law. Moreover, it is worth considering whether the basic structure doctrine, which safeguards the foundational values of the Constitution, imposes substantive limits on citizenship laws. For instance, the secular and egalitarian character of the Constitution, as part of its basic structure, could be argued to constrain laws enacted under Article 11. The interplay of INDIA CONST., art. 11 r/w art. 10, r/w art. 246 and Sched. VII, List I, Entry 18. It highlights that the legislative power over citizenship is not unfettered but must operate within the constitutional framework, respecting the overarching principles of justice, equality, and fraternity.

⁶⁵ Yael Berda, *Managing ‘dangerous populations’: How colonial emergency laws shape citizenship*, 51(6) SECUR. DIALOGUE 557-578 (2020).

⁶⁶ Sanjib Baruah, *The Partition’s long shadow: the ambiguities of citizenship in Assam, India*, 13(6) CITIZENSH. STUD., 593 (2009).

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understanding of how the legal citizenship revocation regime is posited to maximising the security of the state and in some sense, have contributed to the precarity of belonging as an Indian citizen today.

In the second section, I argue that a key reason for imagining the regime in this way is because of the migration crisis which bears the residue of the “partition logic”⁶⁷. It is this logic of paranoia and external threat directly linked to the body of the migrant⁶⁸ – fluid enough to both lithely distort borders and never truly be identified – that viciously links securitization with citizenship policies. To support this, I rely on the contemporary academic and policy framing of the link which reproduces the perpetual need to have profoundly securitized citizenship policies.

B. CONSTITUTING THE REGIME: NOTES FROM THE ASSEMBLY AND SABHA

The Assembly and Part II of the Constitution

The anxiety surrounding migration, particularly from Pakistan, was a direct by-product of the Partition's brutal realities, and these anxieties were enshrined in legal frameworks and policy discourses that have persisted since then. The Constituent Assembly, convened amid the chaos of Partition, reflects these securitized anxieties. The Debates highlighted two competing imperatives. First, the need to establish a secular, inclusive framework for citizenship and second, the perceived necessity of securing the nation against the demographic and political threats posed by migration. Articles 5, 6, and 7 of the Constitution encapsulate this tension. While Article 5 provides an expansive jus soli-based framework for citizenship, Articles 6 and 7 sharply qualify this by introducing the concepts of migration from Pakistan and “return migration,” euphemisms that obscure the violence and coercion of Partition.

⁶⁷ K. Gauba, *Forgetting partition: Constitutional amnesia and nationalism*, EPW 41 (2016).

⁶⁸ Anupama Roy, *Between encompassment and closure: The ‘migrant’ and the citizen in India*, 12(2) C.I.S., 219 (2008).

It is known that the Constitution is a living document. Over and above the act of state-making, constitutions may represent a multitude of things including a change in paradigms, a rupture from an iniquitous past and hope in the form of core rights which secure a citizen against arbitrary and despotic state power. The Indian Constitution – heralded for its secular and democratic ethos – is no different. Part III of the Constitution lays out rights and duties which radically alters the relationship the Indian subject shared with the colonial state. It did so by firmly enshrining the fundamental rights which will define the relationship of the Indian citizen with her freshly sovereign republic.

However, Part II of the Constitution, titled '*Citizenship*,' addressed the question of who would be an Indian citizen at the time of the Constitution's commencement.⁶⁹ The framers, through Article 11 left it to (yet to be constituted at the time) the Indian Parliament to devise a comprehensive legislation in due course of time, which would holistically address the questions of citizenship and its revocation. In time, the Citizenship Act, 1955 was enacted, but for now, it is imperative to understand the framers' rationale for keeping the notion of citizenship ephemeral.

While the Constitution drafting activity was itself historic, the fact that framers were drafting the Constitution *while* the violence and displacement of the partition were occurring was truly unique. The Indian Constitution was being founded within the foundational violence of the partition. This allowed the Constituent Assembly a singular and unrepeatable opportunity to stand in ontological apostasy – moving away from religious exclusivity, and to affirm a secular framework for Indian citizenship - to the idea of Pakistan and secure a status of citizenship which would be timeless and constitutionally protect the citizens of India. Not only did the Assembly not do this, but also ushered in what Jayal calls *citizenship for extraordinary times*,⁷⁰ - the fact that the provisions on citizenship in Part II of the Constitution were designed to address the immediate and extraordinary circumstances of post-Partition India, including mass migration, communal violence, and the urgent need to

⁶⁹ INDIA CONST. art. 6 & 7; Niraja NIRAJA GOPAL JAYAL, *CITIZENSHIP AND ITS DISCONTENTS: AN INDIAN HISTORY* (Harvard University Press, 2013).

⁷⁰ *Id.*

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determine the legal status of millions of displaced people. Rather than laying the foundation for a timeless, universally applicable framework, the Assembly's approach to citizenship was shaped by the urgency of stabilizing the nation during a period of unparalleled upheaval. Consequently, the transitional provisions focused on managing the chaos of Partition rather than setting a comprehensive or enduring model of citizenship, leaving key aspects to future legislation in the Constitution. Discussions around the Citizenship Act, 1955, reveal a deep-seated preoccupation with the "migration crisis." The Assembly was predominantly considered by two issues. Firstly, the Assembly deliberated upon the rights of persons in countries other than India such as Ceylon, Burma and so on which had a large number of Indians.⁷¹ This is now an anachronism, but the second issue emanating from this continues to be salient. The Assembly was deeply concerned about the founding principle of citizenship – the jostling of space with the *jus soli* and *jus sanguinis* – which would indicate citizenship in independent India. Certain members like Sardar Patel called the deliberations a "simple problem"⁷² and that "by commenting on every word in this (the citizenship clause), you will never come to an end"⁷³(emphasis mine). For Patel, the solution was simple. The Constitution itself does not need to provide a charter of citizenship as that can be done by the Union – as and when necessary – in the form of a law governing citizenship. The President of the Assembly at that time, Dr. Rajendra Prasad perhaps ominously labelled the deliberations on citizenship as a "purely legal problem".⁷⁴ Ultimately, this purely legal problem was neatly slotted within the citizenship enclave – Articles 5 to 11 – in the Constitution. For our purpose, Articles 5, 6, 7 and 11 are of particular relevance.

For the citizenship enclave, the Assembly chose to follow the rule of *jus soli*⁷⁵ which finds its place within Article 5. Article 5 essentially recognises

⁷¹ 9 CONSTITUENT ASSEMB. DEB., Aug. 10, 1949, <https://www.constitutionofindia.net/debates/10-aug-1949/>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ 9 CONSTITUENT ASSEMB. DEB., Aug. 12, 1949, <https://www.constitutionofindia.net/debates/12-aug-1949/>.

⁷⁵ INDIA CONST. art. 5.

the citizenship of every person who was born in India or whose parents were born in India or who has been residing in India for not less than five years preceding the commencement of the Constitution. Naturally, Article 5 is both expansive and inclusive. It recognises the colonial vestige of subjecthood and also does not provide any religious (or other) marker which would caveat Indian citizenship. Nevertheless, Article 5 applied only to persons who were already residing in India, and its role is limited to merely recognising the change from subjecthood to citizenship.

On a standalone basis, Article 5 had the potential to stand in the face of the irreparable ripping apart of the multifaceted Indian identity into religious binaries. Yet, it was truncated by Articles 6 and 7 which qualified Article 5.⁷⁶ Article 6 was for providing citizenship status to those persons who migrated into India from Pakistan should they fulfil the conditions enumerated under the Article. Article 7 on the other hand, starting with a *non-obstante* clause against Articles 5 and 6, takes the citizenship away from a person who has migrated from India to Pakistan after March 1, 1947. At this point, the chronological set-up of Articles 5 to 7 is important. Firstly, Article 5 provided an expansive reading of citizenship, open to all, who were part of the land which became the Indian Republic. Article 6, without explicitly referring to the partition or its violence, provides citizenship rights to persons who migrated from Pakistan into India. Lastly, Article 7 strips citizenship rights of those persons who migrated into Pakistan from India. None of these articles make a passing reference to the barbarities of the partition. The framers of the Constitution deliberately avoided explicit references to Partition in Articles 6 and 7 to maintain a neutral and forward-looking tone. Using euphemistically clean terms such as “migration” and “domicile” these articles present a reality which is seemingly secure and persistent despite the underlying brutalities of partition migration. More importantly, the law here – Articles 6 and 7, occupy what Fitzpatrick⁷⁷ refers to a transcendent position where it can divorce itself from social realities while exercising general domination over them. The domineering aspect of these laws becomes clear by reading the proviso to Article 7 which is as follows –

⁷⁶ NIRAJA GOPAL JAYAL, *CITIZENSHIP AND ITS DISCONTENTS: AN INDIAN HISTORY* (Harvard University Press, 2013).

⁷⁷ PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* (Routledge, 1st ed., 1992).

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“...nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law...” (emphasis mine).

In one stroke, the Indian Constitution took away the citizenship of persons migrating to Pakistan. As the chapter on case studies will reflect, portions of this migration were involuntary, chaotic, confounding and without the intention of making Pakistan home. Be that as it may, what is striking is the above-mentioned proviso which pretends to provide succour to returning migrants. But a close reading highlights that the citizenship rights of returning migrants, without situating their context amidst the violence of partition, were to be governed by a permit for resettlement process⁷⁸ thereby providing the roadmap of bureaucratising Indian citizenship.⁷⁹ While Articles 5, 6 and 7 were restricted to the commencement of the Constitution, Article 11 provided Parliament to comprehensively legislate on citizenship and determine who is an Indian citizen, when can such citizenship be revoked and under what procedural framework can it be revoked.

The Lok Sabha and the Citizenship Revocation Regime

Extant citizenship laws in India cover four prongs – the acquisition of citizenship, renunciation of citizenship, termination of citizenship and deprivation of citizenship rights. In this segment, I review the deliberations around citizenship revocation – comprising of termination and deprivation of citizenship – before they became sections 9 and 10 of the Act. The deliberations began with noting that since the Assembly had not conclusively determined the rights of citizenship and left it beyond the remit of the constitutional cores of the fundamental rights, federalism, preambular identities and so on, the task of deliberating upon

⁷⁸ Abhinav Chandrachud, *Secularism and the Citizenship Amendment Act*, 4(2) INDIAN LAW REVIEW, 138 (2020).

⁷⁹ HAIMINTI ROY, *PARTITIONED LIVES: MIGRANTS, REFUGEES, CITIZENS IN INDIA AND PAKISTAN, 1947-65* (Oxford University Press, 1st ed., 2012).

a citizenship law fell on the Indian Parliament.⁸⁰ While the Assembly was satisfied with classifying the rights around citizenship and its revocation as merely a “legal problem”, the Lok Sabha saw thick contestations around how citizenship revocation ought to operate. These contestations can be broadly classified under the rubrics of secularism and security.⁸¹ On one hand, there was a strong belief that citizenship revocation ought to be justiciable and appealable,⁸² it should not be at the mercy of executive fiat,⁸³ it should not fall prey to differing political ideologies and it should memorialise the fact that Indian citizenship is being founded on the anvil of partition violence. This group believed that any regime of citizenship to markedly shift from the *ad hoc* regime in Part II of the Constitution and usher in a regime which is robustly secular in its imagination.⁸⁴ On the other hand, the belief was exemplified by the want for a “*secure state before a secular state*”.⁸⁵ Here, while relying strongly on the laws of other commonwealth countries, it was argued that citizenship revocation ought to be under the sole control of the government. Since citizenship provides access to economic, social, and political participation, it should be regulated by the state.⁸⁶ Concerns about the mishandling or irregularization of citizenship were quickly dismissed by arguing that the state would not “*seek to frequently deprive citizenship*”.⁸⁷ These differing standpoints are discussed below.

Secularism and Justiciability

⁸⁰ 4 PARLIAMENTARY DEBATES, HOUSE OF THE PEOPLE, OFFICIAL REPORT, 1-20, 36 (Aug. 5, 1955).

⁸¹ 4 PARLIAMENTARY DEBATES, HOUSE OF THE PEOPLE, OFFICIAL REPORT, 1-20, 40 (Aug. 8, 1955).

⁸² *Supra* note 77 at 47, 49 & 52; 7 PARLIAMENTARY DEBATES, HOUSE OF THE PEOPLE, OFFICIAL REPORT, 1-20, 55, 76, 89 (Aug. 9, 1955).

⁸³ *Id.*

⁸⁴ 7 PARLIAMENTARY DEBATES, HOUSE OF THE PEOPLE, OFFICIAL REPORT, Nos. 1-26, 34 (Dec. 2, 1955).

⁸⁵ 4 PARLIAMENTARY DEBATES, HOUSE OF THE PEOPLE, OFFICIAL REPORT, Nos. 1-20, 40 (Aug. 8, 1955).

⁸⁶ 7 PARLIAMENTARY DEBATES, HOUSE OF THE PEOPLE, OFFICIAL REPORT, Nos. 1-26, 50 (Dec. 9, 1955).

⁸⁷ *Id.*

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Vociferous arguments for a justiciable revocation regime were made for making any decision of the state which would terminate or deprive an Indian of their citizenship to be appealable before high courts and the Supreme Court.⁸⁸ The crux of the argument was that without recourse to courts, a person's citizenship is rendered precarious and is at the mercy of the incumbent government.⁸⁹ During the debates, an idea was raised to establish a committee, comprising of members selected by the central government, that would offer recommendations regarding an individual's citizenship. It was argued that these recommendations ought to be made appealable, as the central government would not be bound by them.⁹⁰ At the heart of these deliberations was the concern that citizenship revocation ought not be subjected to unbridled executive fiat.⁹¹ Different speakers argued that leaving citizenship revocation purely to the executive fiat would render groups and individuals with different political ideologies without any meaningful safeguards. Interestingly, concerns were also raised as to how the government would verify the citizenship status of a person. Since the verification process is done by bodies such as the border police directly under executive control, it was contended that the incumbent government would not have any motivation to check the veracity of reports made by the police. Hence, on one hand, there were questions regarding the leaving of absolute powers to the executive, but on the other hand, the manner in which different organs operate under the executive's command was also challenged. While these were notions of justiciability, the debates captured another salient point. In determining what would be the ultimate face of termination of citizenship it was vehemently argued that the draft clause 9 terminates the citizenship rights of those persons who have "*unfortunately*"⁹² found themselves on the other side of the border because of the partition violence. This is of paramount importance, and as my case studies will

⁸⁸ 4 PARLIAMENTARY DEBATES, HOUSE OF THE PEOPLE, OFFICIAL REPORT, Nos. 1-20, 47 (Aug. 5, 1955).

⁸⁹ *Id.* at 48.

⁹⁰ *Id.* at 39.

⁹¹ 7 PARLIAMENTARY DEBATES, HOUSE OF THE PEOPLE, OFFICIAL REPORT, Nos. 1-26, 55 (Dec. 2, 1955).

⁹² Parliamentary Debates, House of the People, Official Report Vol VII, Nos. 1-26, December 9, 1955, p. 47.

demonstrate, several individuals displaced by the partition lost their citizenship when courts ruled that they had "*voluntarily*" acquired citizenship in another country.

To sum up, these deliberations indicate that the framers of the Act were deeply concerned and, in some instances, suspicious of the state consolidating power on the ostensible grounds⁹³ of national security, economic concerns and population control. However, it is important to note that this concern was not unanimously shared during the Parliamentary debates. While some members decried the 'blind borrowing' of laws from other Commonwealth countries as 'legislative larceny',⁹⁴ others appeared more willing to allow the state greater leeway in consolidating power for pragmatic governance. Despite these divergences, it was repeatedly emphasized that India's secular credentials are at test with her citizenship regime. Any regime in a secular nation must be thoroughly characterized by procedural safeguards that are justiciable and provide mechanisms to hold the state accountable, even in matters involving citizenship revocation.

Security and executive supremacy

The other side, however, argued almost as a peremptory norm were concerns of security. Right at the outset, the precise security concerns were never fully laid out in these debates. Much is left to the reader's imagination and the socio-political backdrop within which these debates took place. However, upon reading the debates as a whole, the paramount concern seems to be that of cross-border migration.⁹⁵ Although the debates do not explicitly mention this in relation to the citizenship regime, it euphemistically refers to the two-nation theory, the resultant partition, and the creation of Pakistan as 'circumstances' within which India won its freedom. A certain extract is worth examining in full:

"... Today our State is a secular State; I want it to be a secure State also. From that point of view the essential basis of citizenship,

⁹³ *Id.*

⁹⁴ Parliamentary Debates, House of the People, Official Report Vol IV, Nos. 1-20 , August 8, 1955, p. 32.

⁹⁵ *Id.* at 30.

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as I have said earlier, is loyalty to the Head of the State or that vague but noble conception of nation. It is not that I am not unmindful of the context in which a country has attained its freedom. The very fact of freedom has resulted in certain consequences which are too well-known to be referred to here. Is it our intention to allow everybody from Pakistan here, without any restriction?...”⁹⁶

Therefore, the fundamental basis for having a regime devoid of justiciability was the notion that freedom in India has come at the cost of rupturing the body politic. To ensure that this does not repeat itself, the state must hold absolute power to decide questions of citizenship and its revocation. Other arguments included its logistical difficulties and onerous nature⁹⁷ of subjecting citizenship revocation procedures to courts. The framers of the Act felt that making decisions justiciable and appealable would be “*laborious*”⁹⁸ and could compromise the security of such decisions. Lastly, an overarching argument was that the government is aware of the consequences of citizenship revocation and will use it sparingly.⁹⁹

Between these two contradictory stands, the latter emerged as the winner. Sections 9 and 10 of the Act dealing with the termination and deprivation of citizenship was framed without any possibility of justiciability or judicial oversight. In fact, the entirety of concerns as was brought out by those arguing for a secular and procedurally solid framework was not considered. While the effects of the adjudication of cases under Sections 9 and 10 will be highlighted in the next chapter, it is important to understand the threat of the migration crisis and its framing in contemporary politics.

C. SECURITY AND ILLEGAL IMMIGRATION

⁹⁶ *Id.*

⁹⁷ 7 PARLIAMENTARY DEBATES, HOUSE OF THE PEOPLE, OFFICIAL REPORT, Nos. 1-26, 47, (Dec. 2, 1955).

⁹⁸ *Id.*

⁹⁹ *Id.*

In the last section, I touched upon the malleable nature of danger, which allows the state to securitize certain fields of governance, such as citizenship in this case, and place them in exceptional spaces. In India, this danger is framed as the crisis of illegal immigration, which the state would have you believe occurs in overwhelming numbers, predominantly along the borders shared with Pakistan and Bangladesh. It is a crisis which may be traced back to the partition, except at the time it was not “illegal immigrants” crossing borders illegally but as Kapila aptly mentions “intimate brothers”¹⁰⁰ hitherto part of the same land who now found themselves divided by a line cutting through the body politic. In time, as the partition became a reality the border dividing the sub-continent slowly but surely was set in permafrost. Now, older inhabitants are not that – older inhabitants of an undivided land – but illegal immigrants who are nefariously and clandestinely crossing borders.

The aim of this paper is not to provide the specific reasons for such immigration or even enter its veracity. The modest aim is to recognise that there existed a narrative of such illegal immigration taking place for a plethora of reasons and this narrative has persisted over time. But as a narrative, this crisis – population mobility as illegal immigration¹⁰¹ – has configured the norms of citizenship policies and the manner in which citizenship should be revoked in India. Seeing it as a crisis, illegal immigration is not a simple fact of population mobility but a phenomenon which requires a vital decision to be made.¹⁰² The notion of a crisis is used to highlight this phenomenon as a contestation between different social groups – the true and authentic residents of a nation and the outsiders – and calls for an unprecedented intervention in the form of securitized citizenship policies. In India, different anxieties;¹⁰³ the religious anxieties of the partition, the unique history of Assam and the prevalence of ethno-linguistic politics, the logic of the two-nation theory,

¹⁰⁰ SHRUTI KAPILA, *VIOLENT FRATERNITY: INDIAN POLITICAL THOUGHT IN THE GLOBAL AGE*, (Princeton University Press, 1st ed., 2001).

¹⁰¹ CECILIA MENJÍVAR ET AL., *THE OXFORD HANDBOOK OF MIGRATION CRISES* (Oxford University Press, 1st ed., 2019).

¹⁰² Cantat et. al., *Migration as Crisis*, *AMERICAN BEHAVIOURAL SCIENTIST* 1 (2023).

¹⁰³ Joya Chatterji, *South Asian Histories of Citizenship, 1946–1970*, 55(4) *THE HISTORICAL J.*, 1049, (2012).

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demographic disbalances in districts with higher number of Muslims¹⁰⁴ and a general scarcity of resources have often intersected to place blame on the body of the illegal immigrant.

In fact, this crisis has immense currency amongst elite actors such as parliamentarians, bureaucrats, institutional bodies like the Election Commission and the judiciary, to name a few. For example, examining Lok Sabha debates¹⁰⁵ since independence at various points in time, parliamentarians have expressed grave concerns about illegal immigration from Bangladesh. There is a view that illegal Bangladeshis have accessed ration cards, managed to infiltrate voter lists and that more than 20 percent of circulating ration cards are fakes.¹⁰⁶ Debates around the ‘Multi-purpose National Identity Card’ which is a precursor to the National Register of Citizens (“NRC”) also emanates from the need to stop illegal immigration.¹⁰⁷ The paranoia ran so deep that parliamentarians argued the possibility of illegal immigrants having their own networks with the local police, enabling them to access a panoply of state documents including drivers’ licenses, property documents, voter id cards and an infiltration of the lower rungs of government jobs. In addition to this, various policy documents both state and non-state categorically highlight that borders must be further securitized to stop illegal

¹⁰⁴ J. SAI DEEPAK, *INDIA, THAT IS BHARAT: COLONIALITY, CIVILISATION*, (Bloomsbury Publishing, 1st ed., 2021).

¹⁰⁵ Bulletin –Part-I, 13(4) LOK SABHA SESSION, (Aug. 21, 2000) https://eparlib.nic.in/bitstream/123456789/799375/1/lsb_13_04.pdf; Bulletin –Part-I, 13(12) LOK SABHA SESSION, (Mar. 3, 2003) https://eparlib.nic.in/bitstream/123456789/799419/1/lsb_13_12.pdf; Bulletin –Part-I, 14(9) LOK SABHA SESSION, (Nov. 30, 2006) https://eparlib.nic.in/bitstream/123456789/799650/1/lsb_14_09.pdf; Bulletin –Part-I, 15(4) LOK SABHA SESSION, (May 5, 2010) https://eparlib.nic.in/bitstream/123456789/799708/1/lsb_15_04.hin.pdf; Bulletin –Part-I, 15(7) LOK SABHA SESSION, (Mar. 11, 2011) https://eparlib.nic.in/bitstream/123456789/799385/1/lsb_15_07.pdf; Bulletin –Part-I, 15(9) LOK SABHA SESSION, (Dec. 21, 2011) https://eparlib.nic.in/bitstream/123456789/799383/1/lsb_15_09.pdf.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*; see *supra* note 91.

immigration¹⁰⁸. Former heads of the Research and Analysis Wing have quoted on this anxiety which is worth seeing in full:

“Detecting illegal immigrants from Bangladesh is a daunting task. The subtle differences in the accents, dialect, and features between an Indian Bengali and a Bangladeshi are not easily discernible. The fact that most Bangladeshis already hold ration cards, voter identity cards, or even the unique-identity Aadhaar cards further compounds the difficulty. Ironically, an illegal Bangladeshi immigrant is more likely to be equipped with an Indian identity document than an Indian Bengali who may take his or her Indian citizenship for granted”¹⁰⁹

Perhaps the death knell of this paranoia was in 1997. In 1997, Assam’s Governor S.K. Sinha released a report which was a paradigmatic shift for how illegal immigration is viewed. Up until this point, illegal immigration, although entrenched in citizenship policy, was not directly referred to. Sinha saw it fit to forego all euphemisms and, in the report, titled ‘Illegal Migration Into Assam From Bangladesh’,¹¹⁰ he asserted upon the plans to create a “*greater Bangladesh*” by obliterating the demographic balance in Assam and making it disproportionately Muslim. While restricted to Assam, this report had a cascading effect on the nation and its imagination of illegal immigration. Soon after, in the year 2000, the Law Commission of India while suggesting reforms to the Foreigners Act categorically highlighted the fact of India facing unchecked illegal immigration, threatening its democracy. Perhaps, the crescendo here was the Supreme Court’s decision in *Sarbananda Sonowal vs Union of India*.¹¹¹ This judgement tagged the problem of illegal immigration as one of “*external aggression*” against the nation, similar to a situation of emergency as it threatens national security. The judgment also drew on constitutional provisions, especially Articles 14 and 29, to strengthen its

¹⁰⁸ *Id.*

¹⁰⁹ Sanjeev Tripathi, *Illegal Immigration From Bangladesh to India: Toward a Comprehensive Solution*, CARNEGIE INDIA, (Jun. 29, 2016), <https://carnegieendowment.org/research/2016/06/illegal-immigration-from-bangladesh-to-india-toward-a-comprehensive-solution?lang=en>.

¹¹⁰ Kongkona Sarmah & Ujjal Protim Dutta, *Illegal Migration into Assam from Bangladesh: Causes and Consequences*, 3(6) GALAXY: INT. MULTIDISCIPLINARY RES. J., 20, 20, (2014).

¹¹¹ *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665.

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stance. Article 14, which guarantees equality before the law, was invoked to underline the rights of Indian citizens, while Article 29, protecting the cultural and educational rights of minorities, was used to argue that unchecked immigration threatens the cultural fabric and identity of indigenous communities in Assam. The Court framed illegal immigration as not just a demographic issue but an existential one, branding it as “external aggression.” By tying cultural survival to national security, the judgment gave powerful legitimacy to harsh measures against immigration, embedding a rhetoric of fear and securitization deep into the policies of citizenship and migration.

These different imaginations of the migration crisis are fully cemented in academia. Writing in 2008, Sadiq mentions “*networks of profit*”¹¹² and “*networks of complicity*”¹¹³ which essentially means that illegal immigrants have complicit personnel across borders who assist them with documentation, residence and jobs. Further, there is a ‘profit’ element as these immigrants alter the demographics of a particular place, creating electoral rewards for different political groups¹¹⁴. Sur¹¹⁵ has highlighted this in her work where she argues that migrants easily procure citizenship documents and most importantly, purports how citizenship for illegal immigrants manifests itself through corruption. This indicates a deep rot in the system¹¹⁶ which allows unchecked illegal immigrants into the country and distributes benefits to them at the cost of legitimate citizens. The roles of border guards, local politicians and village heads have been called into question for facilitating this¹¹⁷.

¹¹² KAMAL SADIQ, *PAPER CITIZENS: HOW ILLEGAL IMMIGRANTS ACQUIRE CITIZENSHIP IN DEVELOPING COUNTRIES* (Oxford University Press, 1st ed., 2008).

¹¹³ *Id.*

¹¹⁴ Alex Waterman, *Unbeeded hinterland: identity and sovereignty in northeast India*, 118-120 (Routledge, 1st ed., 2017).

¹¹⁵ MALINI SUR, *JUNGLE PASSPORTS: FENCES, MOBILITY, AND CITIZENSHIP AT THE NORTHEAST INDIA-BANGLADESH BORDER* (University of Pennsylvania Press, 1st ed., 021).

¹¹⁶ Anupama Roy, *Identifying Citizens: Electoral Rolls, the Right to Vote, and the Election Commission of India*, 11(2) ELECTION L. J., 170, 170, (2012).

¹¹⁷ ABHISHEK SAHA, *NO LAND’S PEOPLE: THE UNTOLD STORY OF ASSAM’S NRC CRISIS* (Harper Collins India, 1st ed., 2021).

This suggests a deep and pervasive belief that migration is a crisis in India. It is not only a belief in the chambers of legislative drafting – the Lok Sabha and Constituent Assembly – but also something which can be identified at every juncture, relevant for making and implementing policy. This narrative of a crisis which threatens the security of the nation leads to having a regime of revocation which is wholly exceptional. The next chapter investigates how this exceptional regime operates and what implications that has for the rule of law.

SECURITIZATION AND CITIZENSHIP REVOCATION

In the previous chapters, I laid out the theoretical backdrop of securitization and its link to citizenship policies. Following that, I argued that narratives of security posited on a thesis of securitization which incubates in moments of social crises are deeply imbricated within India's citizenship regime. Scholarship on critical citizenship studies with keeping India as the site of study has restricted itself to the state of Assam. Perhaps, there is a good reason for this, given that there is enormous state will to replicate the horrors of the Assamese NRC determination process across India. While this is egregious, and scholarship on the NRC is well-traversed. The fact that citizenship revocation –comprising the myriad discursive processes within citizenship is adjudicated – is not merely restricted to Assam has not found much discussion. In fact, recent discussions on citizenship revocation in India have emanated solely out of the nefarious and partisan Citizenship Amendment Act, 2019 (“CAA”) and the National Population Register (“NPR”). The protests against the CAA captured a public consciousness hitherto unseen in independent India, transcending barriers of caste, gender and class.¹¹⁸ However, as I mentioned, the chronological triumvirate of the NPR-NRC-CAA is one site within a splintered legal regime in which citizenship is revoked. Equally important is the regime of termination and deprivation of citizenship within the Citizenship Act, 1955 (“Act”). While the CAA is egregious, partisan and possibly unconstitutional,¹¹⁹ its blatant and manifestly discriminatory

¹¹⁸ M. Mohsin Alam Bhat, *The constitutional case against the Citizenship Amendment Bill*, EPW (Jan. 19, 2019) <https://www.epw.in/journal/2019/3/commentary/constitutional-case-against-citizenship.html>.

¹¹⁹ *Supra* note 7.

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nature made discourse around its possible unconstitutionality easier to garner. On the other hand, the procedural regime of citizenship revocation consisting of termination and deprivation – rooted in Sections 9 and 10 of the Act – has either been lightly brushed by existing scholarship or not engaged at all. While the Act is the umbrella legislation under which other acts and rules including the Foreigner’s Act, 1946 (“**FA 1946**”) must adhere, the Act also provides for citizenship revocation – distinct from other forms of revocation – under Sections 9 and 10. This regime’s revocation of citizenship as it is rooted under the Act, has escaped scrutiny within critical citizenship studies. In this chapter using the framework of securitization and the narratives of security – both of which were foundational to the regime of Citizenship Revocation in India – I look at how termination and deprivation of citizenship work within the Indian legal system. I do this by reading the judicial archives of different high courts in India and the Supreme Court of India. I focus specifically on cases which have dealt with termination and deprivation of citizenship from the years 1955 to 2020. At its core, my method is not about legal doctrine or testing “realism”¹²⁰ of law but also questions the role of the law in making meaning. In this sense, the legal imprimatur is “jurispathic”¹²¹ which means that legal processes distill multiple meanings – the meaning of Indian citizenship here – into a meaning which is sanctioned by law. Through this, I argue that the manner in which the Act and its concomitant rules are set out and the method in which cases falling under the Act have been litigated has firmly entrenched the narrative of securitization in India.

A. TERMINATION AND DEPRIVATION OF CITIZENSHIP

Sections 9 and 10 of the Act make provisions for the termination and deprivation of citizenship in India, respectively. For terminating the citizenship of a person, the said person must “voluntarily” acquire the citizenship of another country.¹²² By definition, this means that the mere acquisition of citizenship of another country is not salient. It is instructive that the acquisition must have an element of will and

¹²⁰ Brian Z. Tamanaha, *Understanding legal realism*, 87 TEX. L. REV., 731, 731 (2009).

¹²¹ Robert M. Cover, R. M., *Foreword: Nomos and narrative*, 97.1 HARV. L. REV, 1, 4, (1983).

¹²² The Citizenship Act, 1955, § 9, No. 57, Acts of Parliament, 1955 (India).

voluntariness by the acquirer before her Indian citizenship is terminated. In order to determine the voluntariness of a foreign citizenship acquisition section 9(2) of the Act mandates an enquiry by an “Authority” to be determined by the central government. This Authority keeping with rules of evidence then launches an enquiry into the antecedents of a person who is alleged to have voluntarily acquired the citizenship of a foreign country. Similarly, section 10 provides for five circumstances when a person may be deprived of their Indian citizenship. Even here, the central government is to prescribe an authority which then undertakes an enquiry to gauge if the circumstances are satisfied. A few other sections are relevant for understanding how revocation operates. Sections 15 and 15(A) of the Act provide for ‘Revision’ and ‘Review’ of orders made under the Act including orders made under Sections 9 and 10. Hence, a person whose citizenship is arbitrarily revoked may opt for a revision or review of the order.

The centralisation of power within the executive raises significant procedural and constitutional questions. Both sections rely heavily on determinations by executive authorities, with minimal judicial oversight or procedural safeguards. For instance, Section 9 mandates an inquiry by an authority prescribed by the central government to determine if foreign citizenship has been voluntarily acquired. However, there is no clarity on whether this inquiry is quasi-judicial or administrative, leaving the process open to arbitrary decisions. Similarly, Section 10 allows for deprivation of citizenship on vague grounds like disloyalty or fraud, again without the need for independent judicial review. The provisions for review and revision under Sections 15 and 15(A) of the Act further consolidate power within the central government, as it remains the arbiter of its own decisions. This undermines fundamental principles of accountability and procedural fairness, particularly when decisions on citizenship have profound consequences for individuals and communities. The absence of independent oversight bodies or tribunals compounds the problem, enabling the executive to operate without meaningful checks. In a nutshell, then, the Central Government prescribes the authority which determines if a person’s citizenship ought to be revoked, the Central Government is also the authority which is seized with all revisions and reviews emanating from orders passed by its prescribed authority and lastly in the event of persons opting to litigate these orders, the same is

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litigated against the Central Government. The lack of transparency and procedural fairness in implementing these provisions becomes evident when examining their application.

The Citizenship Rules

While the Act sets out the legislative intent of revocation, the Citizenship Rules (“**Rules**”) lay out the precise manner in which such revocation is to take place. For this paper, Schedules II and III of the Rules are pertinent as they refer to deprivation and termination of citizenship, respectively. Both these schedules provide for issuing a notice, applicable rules of evidence and the steps which are to be taken before rendering an adverse finding. Importantly, clause 3 of Schedule III lays down that if a person has obtained a passport from a different country, that is “conclusive” proof that the person has voluntarily acquired the citizenship of another country.

Within this legislative backdrop, the next portion of this chapter will focus on how cases under this whole regime have been litigated. The argument that undergirds this is that the executive – the Central Government in this case – wields *carte blanche* power¹²³ when it comes to citizenship revocation by performing the roles of judge, jury and executioner in citizenship revocation. This role of executive supremacy needs a parallel officials-based deference which allows the executive to arbitrate upon all questions of citizenship revocation. As we will, the judicial history of these cases is weaved with executive deference founded on the security of the nation. To make these two arguments, I selectively focus on four aspects of citizenship revocation. *First*, the interpretation of the words “*voluntarily acquires the citizenship of a foreign country*” to understand how voluntary acquisition of foreign citizenship is understood. Secondly, the interplay between the Citizenship Act and other acts such as the Foreigner’s Act to argue that notions of security allow the prescribed authority to work with fluidity and choose amongst different legislative frameworks on the spectrum of procedurally solid to

¹²³ Atreyo Banerjee, *The State Playing Judge: A Case for Revisiting Deprivation of Indian Citizenship*, THE LEAFLET (Aug. 11, 2022) <https://theleaflet.in/governance-and-policy/the-state-playing-judge-a-case-for-revisiting-deprivation-of-indian-citizenship> .

draconian. Through this, I also focus on the manner of determination when it comes to enquiring about cases of citizenship revocation. Lastly, I read the inherent limitations of writ courts coupled with the provisions of revision and review in the Act to conclude that the regime is designed to exclude persons arbitrarily from Indian citizenship.

B. VOLUNTARY ACQUISITION OF FOREIGN CITIZENSHIP

Textually, there is little objection to the sections stating that voluntarily acquiring foreign citizenship terminates Indian citizenship. In fact, section 9 gives effect to Article 9 of the Constitution. Recall that Part II of the Constitution dealing with the question of citizenship was restricted till parliament by virtue of Article 11 formulated a comprehensive citizenship law. Section 9 then borrows directly from Article 9 which essentially prohibits dual citizenship. However, while Article 11 can be read to provide a broad principle of prohibiting dual citizenship, the Act and Section 9 read with the Rules ought to have provided a comprehensive framework which explains how an enquiry into determining the voluntariness of an acquisition is to be done. This provision is fundamentally flawed within the Act. Further, it is unclear if the enquiry under Section 9(2) is a quasi-judicial enquiry, and if the Rules can provide for an automatic termination of citizenship which would situate administrative rules in the domain of substantive law. Lastly, the voices of different litigants arguing for the ‘involuntariness’ of their acquisition of foreign citizenship highlights the lacuna within this determining framework.¹²⁴

Tracing the judicial history of the first two decades of Indian courts evinces the precarity with which litigants approached writ courts to argue that their acquisition of foreign citizenship was not voluntary but forced under varied circumstances. For example, In *Abdul Salam*¹²⁵ the Petitioner was forced to migrate to Pakistan in lieu of communal violence and the ill health of his father and was unable to return to India. To return, he acquired a Pakistani passport. Bear in mind that this was at the height of

¹²⁴ State of Gujarat v. Yakub Ibrahim, (1974) 1 SCC 283; Mohd. Ayub Khan v. Commissioner of Police, Madras (1965) 2 SCR 884.

¹²⁵ Abdul Salam v. Union of India, AIR 1969 ALL 223.

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partition violence. However, the authority and the court found the Petitioner's actions to be voluntary. In a telling line, the court observed

*“The desire to be present at a particular place does not create any legal obligation to be present. Hundreds of persons are unable to be present at the illness of a parent. The compulsive force must be something more than an inner urge however strong.”*¹²⁶

Similarly, in a catena of cases such as *Mohammad Ibrahim vs Union of India*¹²⁷, *Shree Mohammad Yusuf vs Union of India and Others*¹²⁸, *Habatullah Haji Fazale Hussain vs The State*¹²⁹, *Mohammad Ibrahim vs Union of India*¹³⁰, *Mashkurul Hasan vs Union of India*¹³¹, *Mohammad Kamal Khan and others vs The State of Andhra Pradesh and another*¹³² and others¹³³ rehash similar tropes of violence and forced migration. These were all cases being litigated in the early years of India's independence when partition violence was both at its crescendo and its role in creating the migrant crisis was beginning to form. As the Assembly debates and later the Lok Sabha debates categorically show – the framers of the Constitution and the Act were aware and cognizant of the fratricidal violence of partition. Yet, the Act makes no special provision and deems the acquiring of foreign citizenship purely voluntary even when it is marred by blood and force of dividing the sub-continent. This brings me to the second argument of whether this is a quasi-judicial enquiry or not. As cases such as *Shri Mustaq Husain vs State of Uttar Pradesh*,¹³⁴ *Nasiruddin vs Union of India*,¹³⁵

¹²⁶ Abdul Salam v. Union of India, AIR 1969 ALL 223.

¹²⁷ Mohammad Ibrahim v. Union of India, AIR 1967 P&H 339.

¹²⁸ Shree Mohammad Yusuf v. Union of India, AIR 1967 PAT 266.

¹²⁹ Habatullah Haji Fazale Hussain v. The State, AIR 1964 Guj. 128.

¹³⁰ Mohammad Ibrahim v. Union of India, AIR 1967 P&H 339.

¹³¹ Mashkurul Hasan v. Union of India, AIR 1967 ALL 565.

¹³² Mohammad Kamal Khan and Ors v. The State of Andhra Pradesh, AIR 1962 AP 247.

¹³³ Sejal Vikrambhai Patel v. State of Gujarat, AIR 1993 GUJ 150; Moosa and Ors v. Union of India, 1999 SCC OnLine Ker 443; Mohd. Islam Ahmad Khan v. Ist Addl. District Judge, Saharanpur and Ors., 1997 SCC OnLine All 165; Md. Ishaque v. The Under Secretary to the Govt. of India AIR 1991 CAI 289.

¹³⁴ Shri Mustaq Hussain v. State of Uttar Pradesh, AIR 1960 All 559.

¹³⁵ Nasiruddin And Anr. v. Union of India AIR 1956 MP 346.

*Attaullah vs Union of India and others*¹³⁶ *Rahman, Sekandar Bepari and other vs The Superintendent of Police and Registration Officer of Goalpara*¹³⁷ and others will indicate the template used by authorities is usually a notice issued by the prescribed authority calling upon the person in question to vacate India immediately due to them having voluntarily acquired the citizenship of foreign country – which is almost always Pakistan or Bangladesh. No findings are given as to the specific set of facts which led to this decision. Now Schedule III does not mention a full-fledged inquiry following the principles of natural justice. But, to understand if citizenship has indeed been acquired by a foreign country, recourse has to be made to the laws of the country. The limited avoidance of this is possible if a person has already acquired a passport. But as I have mentioned often such acquisition is not voluntary, and it is unclear what is the touchstone to measure such voluntary acquisition.

C. INTERPLAY OF LEGISLATION AND DETERMINATION

Often as cases such as *Ummayau vs Union of India*,¹³⁸ *K Mohammad Ahmed vs State of Kerala and others*¹³⁹ and *MD Kaleemuddin vs The Union of India and others*¹⁴⁰ enumerate orders are passed under the Foreigner's Act directing a person to leave India within a certain timeline. As such, neither Sections 9 and 10 nor Schedules II and III make any reference to the Foreigner's Act while explaining the manner of determination under the sections. By determination, I refer to the process of enquiry to determine if a person has ceased to be a citizen of India as per sections 9 and 10. This is pertinent to note. Sometimes orders are passed using the framework of the Foreigner's Act without any findings being rendered under section 9 or 10 of the Act. However, the reason for orders of deportation and/or detention as the case may be, is that the person has breached the provisions of section 9 or 10 of the Act.¹⁴¹ Therefore, orders are being passed under a wholly different Act the purpose of which is not to

¹³⁶ *Attaullah v. Union of India*, 1987 SCC OnLine All 411.

¹³⁷ *Rahman, Sekandar Bepari and others v. The Superintendent of Police and Registration Officer of Goalpara* AIR 1962 Ass 103.

¹³⁸ *Ummayau v. Union of India*, 1987 SCC OnLine Ker 408.

¹³⁹ *K Mohammad Ahmed v. State of Kerala and others*, AIR 1983 KER 146.

¹⁴⁰ *MD Kaleemuddin v. The Union of India and others*, 1989 SCC OnLine Pat 118.

¹⁴¹ *Id.*

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regulate Indian citizenship while the reasons for these orders are being derived from the conditions of sections 9 and 10 of the Act. Much has been written about the Foreigner's Act¹⁴² but perhaps its most egregious provision is the reverse burden of proof.¹⁴³ If proceedings are commenced under the Foreigner's Act, the procedure must – contrary to established standards – prove her citizenship. Established standards, such as the presumption of innocence and the principle that the burden of proof lies on the party making an allegation, as enshrined in criminal law and Article 21 of the Constitution, are inverted in this framework. This reversal places an onerous burden on individuals, especially those who may lack access to necessary documentation or legal representation, undermining procedural fairness and natural justice.

The Act and especially sections 9 and 10 do not make any reference to the draconian reverse burden of proof. At this point, it is also trite to mention that in cases such as *Abbas Ali v. The State*¹⁴⁴ there has been no reference to the Foreigner's Act, and orders have been passed after an enquiry under the Act. Further, in cases like *Sham Roj v. Addl. Superintendent of Police and others*¹⁴⁵ and *Mohd. Yasin Khan v. State*¹⁴⁶ notes, oftentimes there are individual persons who are expected to petition the central government for undertaking an enquiry under the Act. Lastly, as different high courts have held in *Mahammad Nazaharul Haque v. B. Bagchi, I.P.J.P and others*¹⁴⁷, *Khan, In re*¹⁴⁸ and *Abdul Rahim Khan v. Union of India*¹⁴⁹ an enquiry is mandatory when orders are sought to be passed under sections 9 and 10 of the Act. Therefore, the cases demonstrate the

¹⁴² M. Mohsin Alam Bhat, *The constitutional case against the Citizenship Amendment Bill*, EPW, (Jan. 19, 2019); Mihika Poddar, *The Citizenship (Amendment) Bill, 2016: International law on religion-based discrimination and naturalisation law* 2(1) INDIAN L. REV. 108; Talha Abdul Rehman, *Identifying the 'outsider': An assessment of foreigner tribunals in the Indian state of Assam*, 2(1) STATELESS AND CITIZENSHIP REV., 112, 112-137 (2020).

¹⁴³ Foreigner's Act, 1946, § 9, No. 31, Acts of Parliament, 1946 (India).

¹⁴⁴ *Abbas Ali v. The State*, 1975 SCC OnLine Cal 14.

¹⁴⁵ *Sham Roj v. Addl. Superintendent of Police & Ors.*, AIR 1977 CAL 252 (India).

¹⁴⁶ *Mohd. Yasin Khan v. State*, 1977 SCC OnLine All 289.

¹⁴⁷ *Mahammad Nazaharul Haque v. B. Bagchi, I.P.J.P. and others*, AIR 1974 Cal 29 (India).

¹⁴⁸ *Khan, In re*, 1970 SCC OnLine Mad 346.

¹⁴⁹ *Abdul Rahim Khan vs Union of India* 1976 SCC OnLine Bom 118.

following. *First*, there is no clarity as to which act – the Citizenship Act, the Foreigner’s Act or both – are to be used to conduct enquiries and pass orders. The permutations and combinations from studying the cases conclude that either of them may be used sometimes together, and at other times individually.¹⁵⁰ *Second*, in cases of enquiries under the Act, the evidentiary standards as mentioned in the Schedules seem to apply. However, in case the Foreigner’s Act is used the burden of proof shifts entirely upon the person to prove they are legitimate Indian citizens. *Third*, the timing and burden of determination, as courts have held that individuals ought to have petitioned the authorities when there were doubts about their citizenship implies that an expansive reading of Sections 9 and 10 provides for individual petitioning. Yet, reading the bare text it is nowhere mentioned that there is a right of petitioning or that there is a duty to petition. This is also important for another reason. Imagine, if a person is concerned about her citizenship status, and petitions the government for an enquiry. Now, she would not know under which act such enquiry would happen and what would the evidentiary standards involve. Further, in the event an adverse order is passed she would risk deportation under the Foreigner’s Act. Now, as the case of *Aditya Andreas*¹⁵¹ highlights, the failure to petition to determine one’s citizenship – even though the same is not mandated by the Act or the Rules – can be read against a person’s intent. Therefore, it remains unclear as to what is procedurally the correct method here. Lastly, it is not certain as when an order of deportation can be passed as courts have at times laid down that an enquiry and order under sections 9 and 10 are necessary precursors, and other times such orders have been given effect without the necessary enquiry.

D. TROPES OF SECURITY IN WRIT COURTS

This entire case study is done predominantly relying on the archives of writ courts. The primary decisions of the central government or its prescribed authority are unavailable. Hence, only those cases where

¹⁵⁰ This observation is a general claim based on a qualitative analysis of the cases discussed above, rather than an empirical or quantitative study. The claim reflects the inconsistencies and lack of a standardized approach in the application of these laws, as highlighted by the case outcomes.

¹⁵¹ *Aditya Andreas v. The State*, 2020 SCC OnLine Mad 2780.

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persons have chosen to approach the court seeking relief in writ, are publicly available. Be that as it may, the above cases demonstrate that there is immense executive deference in the way judges adjudicate these cases. Multiple cases from 1955-2021¹⁵² judges have upheld the executive right to terminate and deprive citizenship posited on concerns of security. Courts have even held that the principles of natural justice, and other procedural safeguards may not be strictly followed as there are not judicial enquiries.¹⁵³ Recall the Lok Sabha debates, and the point of forcefully having to acquire citizenship of Pakistan due to forced migration. Despite such narratives being furthered before the making of the Act, in reality the law never paid heed to the historical violence of the partition but quickly shifted the burden on citizens moving along a fluid border to prove their movement as involuntary in a way which is cognitively understood by the law.¹⁵⁴ This highlights the historical links which exist between securitization, the existential threat of the migration crisis due to the partition, and the manner in which citizenship revocation attempts to regulate this crisis. The logic of securitization created this regime of revocation which continuously shifts its shape and does not adhere to any fixed procedure. The underlying premise being given the links of security of the nation and legitimate citizenship, the executive must always be able to easily, quickly and seamlessly revoke the citizenship of persons who are potential threats. As previously highlighted, writ courts have limited authority in addressing this issue.

¹⁵² This time frame reflects the period studied for this analysis, beginning with the enactment of the Citizenship Act, 1955, and covering significant judicial developments up to 2021. The cases cited within this article span this timeframe, illustrating how the Citizenship Act and the Foreigner's Act have been applied inconsistently over the decades. *Manju Devi v. State of Bihar*, 2010 SCC OnLine Pat 1900; *Patrick Savio Marcelino Almeida v. Devanand Vasudev Shirodkar*, 2014 SCC OnLine Bom 497; *Padam Prasad Sharma v. Union Of India & Ors*, 2011 SCC OnLine Del 1324; *Narendra Reddy Thappeta v. Union of India*, 2019 SCC OnLine Kar 3530.

¹⁵³ *Nagina Devi MLA v. Union of India*, 2010 SCC OnLine Pat 2; *Mumtaz Parveen v. State*, 2013 SCC OnLine Del 348.

¹⁵⁴ *Mukteshwar Prasad @ Mukteshwar Ram v. The State Of Bihar*, 2018 SCC OnLine Pat 1083.

More often than not, they either rule in favor of the executive or dismiss the matter as a *question of fact*.¹⁵⁵

CONCLUSION

In this paper, I have argued that narratives of security are deeply interwoven into what ultimately became the citizenship revocation regime in India. The debates of the Assembly and the Lok Sabha, while different in their content, find convergence in the fact that the security of the nation – at that time a newly independent India emerging from the bloody throes of the partition – is of paramount importance. While the Assembly was concerned with only the immediacy of independence, its concerns were still largely centered around preventing unchecked migration from Pakistan. The Lok Sabha took this a step further, and firmly situated the need for having unchecked executive power while adjudicating on citizenship in the need to keep the nation safe. It was accepted that India could be secular, after it is safe.

Following this, I highlighted that the safety concerns were posited on the ‘partition logic’ of migration and the broad acceptance by elite institutional actors of a transcendental migration crisis. While this contemporary logic was playing out, India’s nascent citizenship revocation regime was slowly litigating cases around the “voluntary acquisition of foreign citizenship” where time and again the narratives of partition were used by litigants to argue that their acquisition of Pakistani citizenship was forced and out of duress. However, the law makes no recognition of this historical event, and countless persons lost their Indian citizenship for not having a procedurally solid and judicially safeguarded regime of citizenship revocation in place. In fact, the courts on more than one occasion categorically noted the security concerns emanating from unchecked migration, having the potential to overwhelm the nation, and therefore to the regime to operate as before. We do not know if there indeed *is* a migration crisis if our borders are truly compromised, and if our laws are, in fact, grossly inadequate to grapple

¹⁵⁵ Muhammed @ Kunhu Muhammed v. Union Of India, 2011 SCC OnLine Ker 353; Kolakkadan Moosa Haji v. Union of India, 2014 SCC OnLine Ker 24730; Kiran Gupta v. The State Election Commission, 2020 SCC OnLine Pat 1641; Joseph Olakkengil v. State of Kerala, 2022 SCC OnLine Ker 1018.

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with this. Yet, as it exists, the bare letter of seemingly neutral laws operates in a way which furthers the narrative of needing security at the cost of having safeguards, as if the security is compromised then the existential threat of the migrant crisis – whether true or false – can destroy the nation.

To move forward, India's citizenship policies need a fundamental reimagination to address the systemic flaws and exclusions embedded within the current regime. The Citizenship Act, 1955, and its related frameworks require urgent amendments to fix the glaring gaps in fairness and accountability. One critical reform is the establishment of independent tribunals to handle cases of citizenship termination and deprivation, ensuring that decisions are not left entirely to the unchecked power of the executive. These tribunals must be built with robust safeguards to guarantee procedural fairness, protecting individuals from arbitrary action. Equally essential is codifying clear safeguards into law—ensuring that those facing the loss of their citizenship have a right to legal representation, receive detailed reasons for decisions, and are granted an automatic right to appeal before an impartial judicial authority.

Ensuring transparency in how the Citizenship Act interacts with the Foreigner's Act is another crucial step. The current opaque overlap between the two laws creates confusion and exacerbates vulnerabilities for those caught in its web. Clear provisions must be introduced to define the procedures and evidentiary standards for determining citizenship, removing the ambiguities that enable arbitrary state action. Additionally, it is imperative to confront the historical realities that continue to cast their shadow over citizenship policies. The laws must explicitly recognize the involuntary nature of migration during Partition, ensuring that this historical trauma does not remain ignored in adjudicating claims of citizenship. Without these reforms, India's citizenship policies will remain exclusionary and unjust, perpetuating insecurity instead of fostering the inclusive democracy promised by its Constitution.