

# INDIA AND STATELESSNESS: AN INTRODUCTION

ADIL HASAN KHAN\*

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## I INTRODUCTION

It is an immense pleasure to be guest editing this wonderful symposium on citizenship and statelessness in India. The collection is comprised of three full-length articles (by Trisha Sabhapandit and Padmini Baruah, Manav Kapur and Andrea Marilyn Pragashini Immanuel) and one shorter commentary piece (by Aakash Chandran). The contributing articles emerged out of a collaborative project between Melbourne Law School (Asian Law Centre and Peter McMullin Centre on Statelessness), Oxford University's Bonavero Institute of Human Rights and the Jindal Global Law School (titled 'Citizenship and Statelessness in India'), which facilitated a series of eight virtual workshops during the second half of 2020 to offer different scholars an opportunity to develop and share their research on this vitally important site for the study of statelessness and citizenship.<sup>1</sup>

This collection reflects the growing trend in this ever-maturing field to move beyond its initial confinement to legal approaches and towards a vibrant critical interdisciplinary orientation. Thus, we have a truly interdisciplinary collection that variously draws upon methods and concepts from the disciplines of anthropology, history and philosophy. This is, no doubt, a testament to the *Citizenship & Statelessness Review's* commitment to encouraging interdisciplinary scholarship in this field. But it also points to the complex and multifaceted character of the emerging problem of statelessness and citizenship in India, one which demands such multifaceted scholarship in response. The magnitude of this growing crisis can be gauged by the description provided by the United Nations Special Rapporteur on Minority Issues of its manifestation in the case of the Indian State of Assam as the 'biggest exercise in statelessness since the Second World War',<sup>2</sup> coupled with his description, provided shortly after the aforementioned quote, of

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\* Dr Adil Hasan Khan, Senior Research Fellow at the Peter McMullin Centre on Statelessness, The University of Melbourne.

<sup>1</sup> This initiative was led by Professor Farrah Ahmad, Professor Michelle Foster, Professor Jeff Redding, Dr Christopher Sperfeldt, Balu Nair, and the present author, at the Melbourne Law School, along with, Professor Kate O'Regan and Dr Christos Kypraios at Oxford University, and finally, Professor M Mohsin Alam Bhat at Jindal Global Law School.

<sup>2</sup> Hannah Gordon and Elif Sekercioglu, 'Citizenship Denied: Two Million in India Face an Uncertain Future', *Right Now* (Blog Post, 13 June 2020) <<https://rightnow.org.au/analysis/citizenship-denied/>>.

the amendment to the Indian citizenship regime as ‘an extreme example of discriminatory treatment’.<sup>3</sup>

## II BACKGROUND

Underlying this crisis of citizenship and statelessness in India lies the nexus between two related exercises. First, there is the *National Register of Citizens* (‘NRC’), which assumed the form of a citizenship verification exercise aimed at *stripping* those termed ‘illegal migrants’ of Indian citizenship and which has been directed, scheduled and monitored by the Supreme Court of India since December 2014 for the State of Assam.<sup>4</sup> This verification process required the submission of documents (dating back to before 24 March 1971) by all residents of the State in order to verify and establish their citizenship either through their own birth or through establishing their parents’ citizenships. After two rounds of updating, the final list of the NRC for Assam was released on 31 August 2019 and it left out 1.9 million residents of the state (a draft list, published in 2018, had excluded over 4 million residents) — half of whom are Muslims.<sup>5</sup> This exclusion from the NRC does not entail a formal declaration of deprivation of citizenship, with those excluded (termed ‘doubtful citizens’), technically having a right to appeal the decision before what are known as Foreigners Tribunals (‘FTs’). Originally, these tribunals were appointed under an executive order issued by the Central Government in 1964, exercising its powers under s 3 of the colonial era *Foreigners Act, 1946*, to provide their ‘opinions’ on ‘whether a person is not a foreigner’ within the meaning of said legislation.<sup>6</sup> However, in connection with the NRC exercise in Assam, this original executive order was amended in May 2019, to empower these FTs to respond to these appeals concerning the determination of citizenship status itself (ie, whether an individual is a citizen of India).<sup>7</sup> There is a lack of ‘effective’ appeal against the ‘opinions’ of these tribunals (only a limited judicial review), with the burden of proof falling on these excluded individuals and the tribunals themselves being beset by a myriad of serious procedural flaws.<sup>8</sup> Those declared to be ‘foreigners’ by these tribunals, more often than not through ex parte orders, are put into detention in one of the six detention centres that have been built in the state (with 10 further planned to be constructed).<sup>9</sup> There are reportedly 1,133 people languishing in these detention centres, with 30 of them

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<sup>3</sup> Mia Stewart, ‘Does the CAA Comply with India’s Human Rights Obligations?’, *Al Jazeera* (online, 30 March 2020) <<https://www.aljazeera.com/news/2020/3/30/does-caa-comply-with-indias-human-rights-obligations>>.

<sup>4</sup> See *Assam Sanmilita Mahasangha v Union of India* (2015) 3 SCC 1. See also Michelle Foster and Jade Roberts, ‘Manufacturing Foreigners: The Law and Politics of transforming Citizens into Migrants’ in Catherine Dauvergne and Simon Fraser (eds), *Research Handbook on the Law and Politics of Migration* (Edward Elgar 2021) 218.

<sup>5</sup> Gordon and Sekercioglu (n 2).

<sup>6</sup> *Foreigners (Tribunals) Order 1964*, Vide GSR No 1401 (India).

<sup>7</sup> See Talha Abdul Rahman, ‘Identifying the “Outsider”: An Assessment of Foreigners Tribunals in the Indian State of Assam’ (2020) 2(1) *Statelessness & Citizenship Review* 112, 118; ‘Foreigners Tribunals’, *Press Information Bureau, Government of India* (Press Release, 11 June 2019) <<https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1573947>>; *Foreigners (Tribunal) Amendment Order 2019*, Vide GSR No 409(E) (India).

<sup>8</sup> See Rahman (n 7) 113–15.

<sup>9</sup> Aman Wadud, ‘Citizens Without a Country’, *Indian Express* (print, 23 September 2021).

having died therein.<sup>10</sup> Only six individuals have been deported thus far, making these detentions indefinite for all others.<sup>11</sup>

However, the *NRC* story does not quite end there. In late 2019, the Central Government indicated that they had plans to replicate the *NRC* exercise across the entire country, with roll-out scheduled to begin with the collection of census data on the usual residents of the country (the National Population Register) from 1 April 2020 — a process that is currently on hold on account of the COVID-19 pandemic.<sup>12</sup> There are good grounds for fears expressed by many groups and communities, as this has the potential to generate one of the largest statelessness crises in history, with the citizenship rights of religious and ethnic minorities, sexual minorities and the poor being put at particular risk.

Not unrelated to this development, also in December 2019, the Parliament of India passed an amendment to the *Citizenship Act, 1955* ('*CAA*'). This legislation is concerned with granting expedited Indian citizenship to persons belonging to non-Muslim minority religious communities from three neighbouring Muslim majority states — Bangladesh, Pakistan, and Afghanistan — provided they entered Indian territory before the cut-off date of 31 December 2014. The discriminatory character of this legislation has been noted by several commentators.<sup>13</sup> As was made clear by the Minister of Home Affairs (amongst others) in the lead up to the passage of said amendment and the proposal to extend the *NRC* to a country-wide exercise, a synchronous connection in their respective functioning is conceived.<sup>14</sup> Namely, the *CAA* is conceived as a protective fallback option to be availed by persons who are *not* Muslim but find themselves excluded from citizenship through the *NRC*–FT exercise.

Once again, the pandemic seems to have stalled moves towards fully implementing the *CAA*, with the Central Government yet to frame and bring into

<sup>10</sup> Rahul Karmarkar, '30 "Foreigners" Dead in Assam's Detention Centres', *The Hindu* (online, 12 April 2020) <<https://www.thehindu.com/news/national/30-foreigners-dead-in-assams-detention-centres/article31325045.ece>>. From 1985 to the 28th of February 2019, 63,959 people have been declared to be 'foreigners' in Assam by these tribunals.

<sup>11</sup> See Mannat Malhi, 'How COVID-19 Measures Reinforce the Indefinite Detention of India's "Foreigners"', *Border Criminologies* (Blog Post, 3 July 2020) <<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/07/how-covid-19-0>>.

<sup>12</sup> In recent months there have been moves made in the Indian State of Bihar, which borders the State of West Bengal, that some legal experts and activists have described as 'backdoor NRC'. These steps, including calling for the urgent construction of detention centres and putting in place 'mechanisms' for people to report suspected 'illegal immigrants', have been initiated through an order passed by the state's Patna High Court, with support from the Government of Bihar. See Neel Madhav, "Outsider narrative": Muslims in India's Bihar Fear Assam Repeat', *Al Jazeera* (online, 21 September 2021) <<https://www.aljazeera.com/news/2021/9/21/india-bihar-muslims-nrc-assam-citizenship-seemanchal>>.

<sup>13</sup> See Farrah Ahmad, 'Arbitrariness, Subordination and Unequal Citizenship', *U. of Melbourne Legal Studies Research Paper No. 906* (October 2020); Adil Hasan Khan and Michelle Foster, 'Citizenship (Amendment) Act 2019 and International Law', (Brief, Peter McMullin Centre on Statelessness; Institute for International Law and the Humanities, 1 April 2021) <<https://law.unimelb.edu.au/centres/statelessness/resources/submissions-and-briefing-notes/briefing-notes>>.

<sup>14</sup> Rohan Ventakaramakrishnan, 'Who is Linking Citizenship Act to NRC? Here Are Five Times Amit Shah Did So', *Scroll* (online, 20 December, 2019) <<https://scroll.in/article/947436/who-is-linking-citizenship-act-to-nrc-here-are-five-times-amit-shah-did-so>>.

effect the relevant rules.<sup>15</sup> In August 2021, Central Government ministers, amongst others, declared it to be vindicated, on account of the refugee crisis emerging out of Afghanistan following the Taliban takeover.<sup>16</sup>

Its constitutional validity has been challenged in several petitions before the Supreme Court of India.

### III DOCUMENTARY REQUIREMENTS AND THE DIFFERENTIAL EXPERIENCES OF CITIZENSHIP AND STATELESSNESS

It is the marginalising experience of the ‘NRC–FT nexus’ in the Indian State of Assam, especially for women, that forms the focus of the article by Trisha Sabhapandit and Padmini Baruah.<sup>17</sup>

Through careful empirical research into the NRC process and the orders passed by the FT, Sabhapandit and Baruah expose how these encounters play out in gendered terms for women, especially those belonging to other marginalised categories, who face several layers of indirect discrimination in their quest to establish their status as ‘genuine citizens’.

Sabhapandit and Baruah argue that this gendered experience, of being deprived of citizenship status and made *de facto* stateless, is connected to the gendered experience of ‘differential citizenship’ itself, whereby the formal or theoretical ideal of ‘universal citizenship’ and its exercise is one which in *practice* marginalises women, and privileges men. This comes about through the operations of patriarchal social structures that differentially organise access to the public sphere, as well as to social welfare. To counter this discriminatory practice in the realm of citizenship (including in its deprivation), they adopt a ‘feminist standpoint’ in their article, one that brings to the fore the marginalisation faced by women in these purportedly neutral and objective formal legal exercises of citizenship determination through ethnographic descriptions of ‘women’s lived experiences’. A strong (American) legal realist sensibility informs the piece, especially when it comes to providing a critique of legalist formalism in terms of contrasting (legal) theory / (social) practice.

Crucially, it is this realist critique of the formal legalist formulation of political and social citizenship that also informs their critique of the spread of processes that control the access, exercise and maintenance of citizenship through extraordinary and rigid formal demands for documentary proofs of identity, and how this furthers the marginalisation of women, as access to documentation is disproportionately more challenging for them. As they point out, in the case of the NRC–FT documentary exercises, these are documents that can prove the ‘lineage’ of a person, which establishes that they themselves are ‘genuine citizens’ through

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<sup>15</sup> Though, in the interim, the government has resorted to issuing notifications under the existing *2009 Rules* to authorise several district authorities in five Indian states to process and approve citizenship applications specifically from members of non-Muslim minority groups from Afghanistan, Pakistan, and Bangladesh: *Citizenship Rules 2009*, Vide GSR No 124(E) (India). See Deeptiman Tiwary, ‘CAA On Hold, Centre Opens Similar Citizenship Window in Five States’, *The Indian Express* (online, 29 May 2021) <<https://indianexpress.com/article/india/caa-citizenship-act-non-muslim-immigrants-7334955/>>.

<sup>16</sup> ‘Afghanistan Crisis Shows Why CAA is Needed: Hardeep Singh Puri’, *Times of India* (online, 23 August, 2021) <<https://timesofindia.indiatimes.com/india/afghanistan-crisis-shows-why-cao-is-needed-hardeep-singh-puri/articleshow/85549052.cms>>.

<sup>17</sup> Trisha Sabhapandit and Padmini Baruah, ‘“Untrustworthy and Unbelievable”: Women and the Quest for Citizenship in Assam’ (2021) 3(1) *Statelessness & Citizenship Review* 235.

furnishing documentary proof of citizenship (dating back to before 24 March 1971, which was the date that the state of Bangladesh was created) either through their own birth or, alternatively, through proving citizenship of their parents. Of this requirement, which signals a dilution of the *jus soli* principle that earlier underpinned Indian citizenship law, they observe:

The requirement of proving lineage is inherently patriarchal and puts an insurmountable barrier before women who may not have documentary proof of being their parents' child.<sup>18</sup>

This insight into the barriers created by this move towards a documentary identity regime no doubt allows us to also notice the connections and overlaps between the emergent documentary regimes progressively seeking to transform and control access to and delivery of social welfare goods in India, and the *NRC* and its determination of access to Indian citizenship itself. In social welfare or development goods delivery provision, we again encounter the marked 'fake citizen' — who is deemed to be 'parasitically feeding' on welfare provided as 'entitlement' — as against the 'empowered citizen', who is more a (desirable) consumer of welfare.<sup>19</sup> The underpinning of these documentation-based citizenship determination and welfare provision exercises by what are essentially moral categories (deserving) — rather than more legal categories (entitled) — suggests that while these processes, such as the *NRC*, might adopt the quintessential legalist form of premising the benefits associated with citizenship entirely on formal documentary proof (and thus leaving out the sociological or lived experiences of this status), this is a formalism that fronts a more fundamental 'moral demand'. Namely, one asking whether you belong in the collective of the deserving nation — a moral organic category, marked by race, class and gender — or are you morally repugnant ('untrustworthy and unbelievable')? This might explain how the formality of these documentary exercises, including in the 'adjudicatory' setting (with the FTs), invariably stretches to a breaking point in the various grounds for rejection provided in their 'orders' that are examined by Sabhapandit and Baruah. The impossible demand made of the morally 'marked' citizen is one which ultimately distrusts their various documentary proofs to such a degree that even the appearance of formality eventually gives way to performances of bureaucratic whimsy.

#### IV THE SECURITISATION OF CITIZENSHIP: OR HOW THE STATE OF EXCEPTION IS NOT EXCEPTIONAL

As several of the authors show, the *NRC* exercise mobilises a discourse of national security to legitimate itself. National security is globally a widely prevalent mode of legitimising acts of citizenship deprivation. While we are often quick to depict this association as exceptional to the present and its particular 'global threats' (chiefly 'global Islamist terror networks'), it is worth reminding ourselves of the long history of states depriving certain already 'hyphenated citizens'<sup>20</sup> of their

<sup>18</sup> *ibid* 255.

<sup>19</sup> Niraja Gopal Jayal, 'Reconfiguring Citizenship in Contemporary India' (2019) 42(1) *South Asia: Journal of South Asian Studies* 33, 33.

<sup>20</sup> Aakash Chandran, 'Statelessness, Detention Centres and the Otherisation' (2021) 3(1) *Statelessness & Citizenship Review* 258, 259. Chandran borrows this terminology from Anupama Roy: see Anupama Roy, 'Ambivalence of Citizenship in Assam', (June 2016) 51(26) *Economic and Political Weekly* 45.

protection on account of the perceived ‘security threats’ that they pose.<sup>21</sup> Manav Kapur does an excellent job of troubling this assumption with his pre-history of the *CAA*, which he, following the historian Vazira Fazila-Yacoobali Zamindar, refers to as the period of the ‘long partition’ (ie, the almost two decade aftermath of the partition of British India into the sovereign states of India and Pakistan).<sup>22</sup> Kapur describes the long history of how certain ethnic minority subjects within the territory of the nascent nation-state were always already ‘marked’, and were engaged with as ‘security threats’, rather than subjects that the state authority is under obligation to protect. The contrast is with others, who are deemed ‘deserving’ of the states’ compassion and protection, despite in some cases being formally under the territorial protection of another state. As Kapur shows, this compassion in its moral selectivity — often formulated in terms of notions of national and cultural belongingness — is at odds with more universally formulated modes of benevolence towards persecuted nationals of other states that are the basis of refugee law. He concludes that, contrary to the claims made by some supporters of the *CAA*, ‘the *CAA* is a *reversal* of the logic of refugee law’.<sup>23</sup>

Returning our attention to the discourse of national security and its associated subject who is deemed bereft of any compassion or protection we have Aakash Chandran’s commentary piece. Deftly drawing on the influential scholarship of the Italian philosopher Giorgio Agamben, Chandran carefully unpacks the moves through which these ‘originary’ processes of ‘otherisation’ from a nation-state foundation have returned and intensified in the past couple of decades in India, especially in the State of Assam.

While not losing sight of the specific history of sub-nationalist agitation in the State, particularly intensifying in the aftermath of the creation of Bangladesh, Chandran brings into focus how the Supreme Court of India and the Central Government have responded to it in the past few decades — through a discourse of national security and the scapegoating of certain religious and ethnic minorities resident in Assam. As Chandran shows, the Court, in a series of judgements, has authorised practices which strip various protections away from ‘marked’ or ‘hyphenated’ citizens, on the basis that their very presence in the territory of the State represents a serious threat of the security of the nation-state (and not just to the State of Assam) and its ‘territorial integrity’. These are depicted as ‘acts of external aggression’ from which the Central Government is under a constitutional obligation to protect ‘*the People*’.<sup>24</sup> Thus, the domestication of potentially divisive sub-nationalist claims into the singular nation is achieved through the rendering of certain minority subjects into *pariah* figures.<sup>25</sup>

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<sup>21</sup> One is particularly reminded of the figure of the *hostis judicatio* or ‘public enemy’, so declared by the Roman Senate for threatening the security of the Republic through acts they deemed to be conspiracy or treason against the Republic. Such a declaration would strip Roman citizens (*hostis judicatio* could only be ex-citizens) of their citizenship status altogether and all rights attached thereto: see Giorgio Agamben, *State of Exception*, tr Kevin Attell (University of Chicago Press 2005) 80.

<sup>22</sup> See Vazira Fazila-Yacoobali Zamindar, *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries, Histories* (Columbia University Press 2007); Manav Kapur, ‘India’s Citizenship (Amendment) Act: A Throwback to Debates around the “Long Partition”’ (2021) 3(1) *Statelessness & Citizenship Review* 207.

<sup>23</sup> Kapur (n 22) 232 (emphasis added).

<sup>24</sup> *Sarbananda Sonowal v Union of India* (2005) 5 SCC 665, [2], [58] (emphasis added); *Assam Sanmilita Mahasangha* (n 4).

<sup>25</sup> For an insightful reading of these processes and dynamics in terms of racialisation see M Mohsin Alam Bhat, ‘The Doubtful Citizen: Irregularization and Precarious Citizenship in Contemporary India’ (Unpublished Paper, on file with author).

The status of these non-citizen subjects is one which creates powers and rights over them by state authority, while at the same time, generating no reciprocal duties. In terms of legal theory, this deformed status, which Chandran in following Agamben refers to as ‘bare life’, very much compares citizenship as *rem* (thing) to *persona* (legal person) — with the former enabling administration, while the latter demands government.

Chandran brings to the fore how this process of ‘otherisation’ of the ‘hyphenated citizen’ in India has led to (and been further facilitated by) the most paradigmatic of sites for abandoned/exposed life — the detention centres or the camp — in which interned subjects get transformed from lesser citizens to being *dehumanized*, as exposed ‘bare life’ or ‘things’ over which the state exercises absolute power sans any protection.<sup>26</sup> One recalls Agamben when he writes of the concentration camps and their interned inhabitants:

Insofar as its inhabitants were stripped of every political status and wholly reduced to bare life, the camp was also the most absolute biopolitical space ever to have been realized, in which power confronts nothing but pure life, without any mediation.<sup>27</sup>

Poignantly, as Chandran narrates towards the end of his piece, it is only in death that this sovereign authority releases these ‘bodies’ that it had abandoned in life.<sup>28</sup>

Taking my cue from Chandran’s example of thinking about the Indian citizenship and statelessness crisis through the theories of Agamben and Hannah Arendt, I want to make note of Agamben’s observation that it is only with the emergence of modern (European) nation-state, with its foundational affirmation of formal equality of its citizens, that the presence of ‘the other’ in the nation emerges ‘as an altogether intolerable scandal’<sup>29</sup> — one that demands an urgent response. Relatedly, as Arendt observed, the social and welfarist responses to this scandal of division aimed at ultimately closing this divide by assimilating the other and thereby ‘producing a single and undivided people’<sup>30</sup> was one response to this perceived ‘scandal’. We find that this response very much held the ground in India between Kapur’s ‘throwback’ and Chandran’s ‘camps’, through the project of national economic development.<sup>31</sup> That project and modality of the postcolonial nation-states’ response to its ‘others’ has since entered a period of decline and transformation — as we noted in the aforementioned discussion regarding the

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<sup>26</sup> On the association between the promulgation of laws on denationalisation and the emergence of camps see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, tr Daniel Heller-Roazen (Stanford University Press 1998) 175.

<sup>27</sup> *ibid* 171.

<sup>28</sup> As I write this, reports are coming in from Assam regarding how the State Government is carrying out violent ‘mass eviction drives’ against Muslims of Bengali descent – even those who have very much been ‘verified’ as citizens by the NRC – all in the name of clearing ‘encroachments’ from Government land to allow for ‘organic farming’ by ‘unemployed young people’. The brutality and the manner of these actions (in which at least two people were killed by the police – including one person whose dead body was then “trampled on” by a government photographer accompanying the police party) suggest that the ‘camp’ paradigm of government/administration through exception has now well extended beyond the ‘physical camp’ itself. See ‘Assam: Video captures police firing that killed two during eviction drive’, *Scroll* (online, 23 September 2021) <<https://scroll.in/latest/1006061/assam-at-least-three-feared-dead-in-police-firing-during-eviction-drive-in-darrang>>.

<sup>29</sup> Agamben (n 23)179.

<sup>30</sup> *ibid*.

<sup>31</sup> See Mohamad Shahabuddin, *Minorities and the Making of Postcolonial States in International Law* (Cambridge University Press 2020).

transformation of the delivery of social welfare and the relationship between the state and the ‘consumer citizen’ recipients.<sup>32</sup>

This, in turn, has led to the re-emergence of that other ‘solution’ for overcoming the division, one which Arendt was very familiar with, and with which she associated the ‘decline of the nation-state’<sup>33</sup> — that of abandonment and denationalisation of the erstwhile ‘marked’ citizens.<sup>34</sup>

Crucially, as Andrea Marilyn Pragashini Immanuel, while very much drawing upon Hannah Arendt, articulates in her article, this exposure, and the condition it creates for stateless people, is one of expulsion from humanity itself. This exposed life is what Arendt had in mind when she identified the condition of statelessness with the modern world of nation-states and citizenship rights. As Immanuel observes: ‘With a loss of nationality, a person does not have any “place in the world” and does not enjoy a dignified life ... Their status is unresolved and they remain expelled from humanity’.<sup>35</sup>

She further adds regarding the fall-out of India’s NRC exercise:

the state without considering alternative ways of protecting national security has decided to expose about 1.9 million people to the risk of statelessness where they could end up with no ‘place in the world’ and *expelled from humanity*.<sup>36</sup>

Here it is important to recognise that this rendering of the ‘other’ as non-human was a position that was never practiced or even conceived in pre-modern polities that were explicitly hierarchical and unequal.<sup>37</sup> It was only with polities formed around the future horizons of equality that the camp emerged as a modality, whereby dehumanisation is the fate of the ‘other’, all the while formally retaining the claim to equality in citizenship along with an asterisk that questions the ‘humanity’ of those who are denied and excluded from this ‘universal regime’. I return to this point shortly.

However, drawing upon Kapur, I want to add that this exercise of sovereign authority that dehumanises some (‘others’) to create forms of associational life does not tell us the whole story of how this ‘nation-state in decline’ operates. To the binary dynamic of ‘genuine citizens’ and ‘doubtful citizens’ we need to add the figure of the ‘deserving’ (not yet) citizen. Thus, not only does this form of

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<sup>32</sup> Here it is quite instructive to pay attention to the discourse underlying the 1985 *Assam Accord*, entered into by the Government of India and different Assamese ‘sub-nationalist’ groups, where the Government reproached the sub-nationalist division, seeking to bring them back into the fold of the singular nation-state on the basis of bringing the benefits of national economic development to the state:

The Government takes this opportunity to renew their commitment for speedy all round economic development of Assam, so as to improve the standard of living of the people.

That developmental basis of integration is entirely missing from the contemporary ‘securitised’ discourse of domestication premised upon achieving the exclusion ‘public enemies’: see *Accord between AASU, AAGSP and the Central Government on Foreign National Issue (Assam Accord)*, signed 15 August 1985 (Memorandum of Settlement).

<sup>33</sup> See Hannah Arendt, *The Origins of Totalitarianism* (Penguin Classics 2017) 349–96; Agamben (n 23) 11–12.

<sup>34</sup> On both these modalities of creating ‘an undivided people’ see Agamben (n 23) 179–80.

<sup>35</sup> Andrea Marilyn Pragashini Immanuel, ‘The Meaning of ‘Life’ under the Indian Constitution and the Obligation not to Render Persons Stateless: With Reference to the NRC in Assam’ (2021) 3(1) *Statelessness & Citizenship Review* 185, 201.

<sup>36</sup> *ibid* 205 (emphasis added).

<sup>37</sup> See Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton University Press 2016); Talal Asad, *Secular Translations: Nation-State, Modern Self, and Calculative Reasons* (Columbia University Press 2018) 13–54.



sovereign authority and national membership get produced through a ‘continuous exposure to death under the command of the sovereign’,<sup>38</sup> but also (and simultaneously) through the expression of (selective) compassion towards certain bodies who are deemed to be ‘deserving’ of protection. It is this dynamic of exposure and protection that is pertinent to the making of the Indian crisis of statelessness and citizenship and the emergence of what these articles would suggest is a discourse of ‘moral citizenship’.

## V NORMATIVE HORIZONS?

Finally, I want to end this Introduction by briefly reflecting further on the piece in this Symposium collection that is most concerned with the possible available normative horizons as we grapple with this crisis — surely hope is a good register to end on! Pragashini Immanuel’s piece offers a very persuasive progressive interpretation of both the international human rights and Indian constitutional fundamental rights jurisprudence to argue that the *NRC*, as a statelessness generating exercise, stands in violation of both the Indian state’s obligations under international law and the fundamental right to life guaranteed under art 21 of its own Constitution.

Such clearly formulated calls that continually push the normative imagination of our jurisprudence, as well as demand the responsiveness of our institutions to their legal obligations, are no doubt necessary — now more than ever. Scholars of statelessness studies ‘cannot not want’ (to paraphrase Gayatri Spivak, writing in a different context) to do so.<sup>39</sup>

That said, and on a more provocative register, I would add that while holding onto this more critical register of hope, one might also consider questioning the often-exclusive locus of this normative desire that we have as statelessness studies scholars — ie, a status recognised by the nation-state. Much like Kapur, I would like to do so by way of drawing our attention towards an(other) repressed ‘futures past’,<sup>40</sup> one which only slightly historically preceded the historical moment of uncertain postcolonial nation-state building that followed the Indian partition. As Mira L Siegelberg observes in her recent book, *Statelessness: A Modern History*, this preceding historical moment was one of grappling with the perceived crisis and ‘decline of the nation-state’ form. In this moment, alternative political associational forms to, and beyond, the particular European political form of the nation-state, was a possibility. Most pertinently, these political forms appeared in the normative horizons espoused by groups of stateless people themselves, as authorities they would choose to be attached to.<sup>41</sup>

Faced as we are now with a nation-state form once again in decline and mobilising the modality of expulsion and dehumanisation, an exclusive normative horizon that is tinged with nostalgia for the recovery and preservation of the territorial nation-state (and its forms of membership and protection through citizenship) cannot be our *only* alternative.<sup>42</sup> Other alternatives need to be

<sup>38</sup> Chandran (n 20) pinpoint.

<sup>39</sup> See Sara Danius and Stefan Jonsson, ‘An Interview with Gayatri Chakravorty Spivak’ (1993) 20(2) *boundary* 2 24.

<sup>40</sup> Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*, tr Keith Tribe (Columbia University Press 2004).

<sup>41</sup> Mira L Siegelberg, *Statelessness: A Modern History* (Harvard University Press 2020) 4–6.

<sup>42</sup> Let alone adopting a normative position that ‘hinges’ the very ‘human dignity’ of people so fundamentally to its recognition by a nation-state.

imagined and recovered. For the field of statelessness studies, this is, no doubt, a pressing responsibility, in no small measure on account of how it otherwise often works to normalise the exclusive hold of the (European) nation-state form.