Statelessness And The Citizenship Amendment Act, 2019: The Case Of Sri Lankan Tamil Refugees

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For decades since the Sri Lankan civil war, Sri Lankan Tamil refugees have lived as stateless persons in India. However, India does not recognise “refugees” and “stateless persons” as legally separate categories, and treats them in a common immigration system with “foreigners”. This conflation of citizenship law with the immigration regime is a result of the introduction of the category of “illegal migrant” as a determinative tool of Indian citizenship.

This paper explores recent shifts in Indian citizenship laws, which have been embroiled in the tension between jus soli and jus sanguinis bases of citizenship, particularly with the category of “illegal migrant” and the Citizenship (Amendment) Act, 2019, and their impact on Sri Lankan Tamil refugees’ citizenship. This paper finds that despite the influence of international human rights, formal citizenship continues to be the clinching factor in Sri Lankan Tamil refugees’ quality and security of life in India today – an echo of Hannah Arendt’s conception of the “right to have rights”, by which she meant that the right to citizenship is a gateway for an individual to access all other rights.

Against this backdrop, this paper suggests interim solutions for Sri Lankan Tamil refugees to secure formal citizenship in India, and in particular, the role of courts in crafting
jurisprudence that would support the alleviation of their statelessness. In the same breath, this paper strongly argues in favour of, first, the need for a forward-looking reconceptualization of Indian citizenship laws based on the *jus soli* principle; and second, a recognition of India’s burden under the UN Conventions on statelessness to reduce and prevent statelessness, particularly through eliminating documentation-heavy citizenship determinations.

I. INTRODUCTION

The enactment of the Citizenship (Amendment) Act, 2019 (“2019 Act”), and the proposed National Register of Citizens (“NRC”) exercise have made citizenship the most contested topic in India, given that these two changes seek to radically alter the foundations of Indian citizenship law and potentially render millions of people stateless. Under the Convention Relating to the Status of
Stateless Persons, 1954 (“1954 Convention”), a stateless person is one “who is not considered as a national by any state under operation of its law.”

The 2019 Act relaxes the requirements for obtaining Indian citizenship for refugees fleeing religious persecution. However, the scope of the 2019 Act is narrow and specific, leaving out several notable groups of South Asian refugees. As a result, these excluded groups will be forced to live as stateless individuals in India.

One category of refugees that the 2019 Act fails to provide for are the Sri Lankan Tamils, who had fled to India in the wake of the Sri Lankan civil war and have lived in Indian refugee camps ever since. Presently, they cannot gain citizenship in either Indian or Sri Lanka. Although the Tamil Nadu and Central governments have devised numerous welfare measures for these refugees, there has been little constructive action towards granting them Indian

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3 2019 Act, s 2, s 6.

4 “Refugee” and “stateless person” are conceptually and legally different categories; however, under Indian law, these two groups experience no differentiation. Further, most Sri Lankan Tamil refugees in India are also stateless.


citizenship. The Tamil Nadu government have been trying to find a middle ground in terms of citizenship for these refugees, including the potential introduction of dual citizenship proposals. Sri Lankan Tamil refugees’ unsuccessful attempts at acquiring Indian citizenship have made them fearful of the repercussions of the 2019 Act, especially the possibility of deportation.

The adverse impact of the 2019 Act proves to be even more lethal if one considers that Indian law does not take cognisance of its responsibilities towards stateless persons in its territory, and there seems to be no political will to alter this predicament. Statelessness is an extremely vulnerable experience that robs such individuals of the right to a social or political community, or to access rights under domestic law as compared to citizens. The most recent example of this vulnerability has been in the wake of the Covid-19 pandemic, where the government has made vaccines available free of cost only to Indian citizens.

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The 2019 Act has been met with monumental backlash in the form of nationwide protests countered by police crackdowns, and 130 petitions challenging its constitutionality before the Indian Supreme Court ("SC"). The 2019 Act also earned India global condemnation ranging from the United Nations ("UN"), United States ("US"), European Union ("EU"), Pakistan, and the Organisation for Islamic Cooperation.

Critics of the 2019 Act widely view it as an effort to radically redefine India as a nation – from a pluralist and secular democracy to an ethnonationalist state. They highlight that India has been forced to re-examine crucial ques-

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18 Draft amicus curiae application by Michelle Bachelet Jeria, the United Nations High Commissioner for Human Rights, before the Supreme Court in *(Deb Mukharji v Union of India*, W.P. (C) No. 1474 of 2019. However, it is unclear if this petition was indeed put before the SC; Arvind Narain, ‘UN Human Rights Chief’s CAA Plea Puts the Spotlight on India’s International Law Obligations’ *(Scroll.in*, 5 March 2020) <https://scroll.in/article/955177/un-human-rights-chiefs-caa-plea-puts-the-spotlight-on-indias-international-law-obligations> accessed 28 July 2021.


tions which run contrary to the “conventional wisdom”\textsuperscript{24} that plurality in India has flourished – what does it mean to be Indian? What binds India together as a nation?\textsuperscript{25}

This paper explores the conceptual framework of Indian citizenship law and its conflation with the immigration regime in recent years. In particular, it finds that the category of “illegal migrant” in citizenship and immigration law has been the most contentious development, since it infuses a \textit{jus sanguinis} character in Indian citizenship, and either exacerbates statelessness or prevents stateless persons like Sri Lankan Tamils from accessing Indian citizenship. In this backdrop, this paper finds that formal citizenship continues to remain the determinative tool in accessing rights for Sri Lankan Tamils in Indian refugee camps, echoing Hannah Arendt’s prophecy of citizenship being the “right to have rights”. With the significance of formal citizenship in mind, this paper explores pathways to Indian citizenship for Sri Lankan Tamils, and also provides a forward-looking conception of Indian citizenship.

The first section has a twofold intent: it provides a conceptual backdrop to statelessness and links it with Hannah Arendt’s ‘right to rights’; and studies the history behind Sri Lankan Tamils’ exodus from Sri Lanka and into India to seek refuge.

The second section provides a framework of Indian citizenship laws, and investigates the tension between the \textit{jus soli} and \textit{jus sanguinis} bases of Indian citizenship. In particular, this tension is explored through amendments that make Indian citizenship contingent on the fact that the applicant is not an “illegal migrant”. Next, this section tries to scrutinise if the influence of \textit{jus sanguinis} in Indian citizenship law has caused the right to have rights to become true for Sri Lankan Tamil refugees.


The third section provides potential pathways for Sri Lankan Tamil refugees to obtain Indian citizenship as an interim measure, and examines the potential for the role of courts in reducing statelessness among these refugees. This part of the paper also attempts to highlight long-term and holistic solutions for statelessness in India through the example of Sri Lankan Tamil refugees. Finally, this paper provides concluding remarks.

However, this paper does not intend to trace the jurisprudence of secularism in India, make a finding as to the constitutionality of the 2019 Act, or provide an in-depth study of refugee law in India. Rather, it problematises recon-

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constructive ideas of Indian citizenship that seek to justify the shift of citizenship towards *jus sanguinis* based in descent and religious identity by drawing on Constituent Assembly debates on Partition and citizenship.\(^29\) It argues for an updated re-look at the pluralist and secular foundations of Indian citizenship to be the guiding force for moulding Indian citizenship.\(^30\)

II. STATELESSNESS, THE RIGHT TO HAVE RIGHTS, AND SRI LANKAN TAMIL REFUGEES IN INDIA

A. Conceptual framework to statelessness and Hannah Arendt’s ‘right to have rights’

A stateless person is one without citizenship from any country in the world.\(^31\) Hannah Arendt famously drew the link between statelessness and the inability to realise rights in the aftermath of the First World War when Europe was teeming with millions of stateless persons.\(^32\) The First World War saw Europe crushed under a massive wave of ethnonationalist sentiment, with demands for independent states by various ethnic groups.\(^33\) As a result, erstwhile multinational states like Austro-Hungarian Empire dissolved to give way to separate states for, *inter alia*, ethnic Slovenians, Austrians, Hungarians.\(^34\)

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\(^{29}\) As discussed by Chandrachud (n 27); Niraja Gopal Jayal, *Citizenship and Its Discontents: An Indian History* (OUP 2013).

\(^{30}\) Bhatia (n 51); N. Ram, ‘The Evolving Politics of Citizenship in Republican India’ in Bhatia and others (n 1).

\(^{31}\) 1954 Convention, art 1.


\(^{34}\) Arendt (n 32); Jane Mader, ‘Hannah Arendt and World War I: On Statelessness and the Rise of Totalitarian Regimes’ (Hannah Arendt Center for Politics and Humanities 1 March 2020) <https://hac.bard.edu/amor-mundi/hannah-arendt-and-world-war-i-on-statelessness-and-the-rise-of-totalitarian-regimes-2020-01-03> accessed 10 February 2021
Since there was not enough territory in Europe to accommodate all ethnicities’ demands, some groups, like Jews, were reduced to minority status. However, the states that housed these minorities were ethnonationalist states, meaning that they existed by and for specific ethnic identities; as a result, the states resented the presence of minorities in their territory.

Although the definition of “ethnicity” is contested, it commonly refers to a shared group identity based on characteristics like religion, race, language. These characteristics have also been called descriptive characteristics. When states determine citizenship based on descriptive characteristics, they are following the citizenship model of *jus sanguinis*. In using *jus sanguinis*, the state intends to retain its ethnonationalist character for future generations by reproducing its existing population’s demographic. Thus, *jus sanguinis* also derives citizenship based on descent. On the other hand, states may confer

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37 Fitzgerald (n 32); although “ethnicity” is a contested term, the term “ethnic” can be understood as “those who identify themselves or are identified by others in cultural terms, such as language, religion, tribe, nationality, and possibly race” as in Joseph Rudolph, *Encyclopedia of Modern Ethnic Conflicts* (ABC-CLIO 2015); see generally, James Manor, ‘“Ethnicity” and Politics in India’ [1996] 72 Royal Institute of International Affairs 459


40 Schuck and Smith (n 39).
birth-based citizenship, termed *jus soli*. Under *jus soli*, citizenship is ascribed to an individual based on an objective criterion, usually, birth in the territory of a state.

Rogers Brubaker has discussed the mismatch of constructing “insiders” and “outsiders” based on ethnicity. On the one hand, states use formal citizenship as a bright-line rule to segregate citizens or ‘insiders’ from non-citizens or ‘outsiders’, following *jus soli*. On the other hand, states that follow *jus sanguinis* base citizenship on ethnicity, and not on formal citizenship, as the bright-line rule between ‘insiders’ and ‘outsiders’. In this latter scenario, ‘insiders’ are members of one specific ethnicity, whereas ‘outsiders’ are persons of other ethnicities.

In this backdrop, Arendt argued that the post-war creation of ethnonationalist states posed an imminent threat to the rights of minorities in Europe. For Arendt, the absence of a political community for individuals meant that they cannot realise their rights. Thus, the nation-state, specifically an ethnic nation-state, was the only platform for individuals to realise their rights – an idea Arendt called the ‘right to have rights’. For her, the right to citizenship was the ‘right to have rights’, since it provided a gateway for individuals to access other rights.
India’s Constituent Assembly saw a similar sentiment being voiced by Ajit Prasad Jain, who said that “citizenship is the bedrock of our constitution”.\(^{51}\) In his view, citizenship was crucial for Indians because accessing rights, specifically constitutional rights, was contingent on citizenship.\(^{52}\) Thus, India has seen its own discussions of citizenship as the right to have rights.\(^{53}\)

Arendt prophesied that the right to have rights would come true for minorities in Europe. Although minorities were grudgingly given citizenship, the host countries’ resentment of such minorities eventually won over. As a result, these countries stripped minorities of citizenship and exterminated them.\(^{54}\) For Arendt, the resentment, and violent extermination of minorities in Europe was merely a logical extension of creating states based on ethnonationalism.\(^{55}\)

Most infamously, Arendt’s nightmare played out in Nazi Germany, which defined who a “true German” was based on ethnicity.\(^{56}\) Jews and other ethnicities who failed the test of being “true Germans” were denationalised, sent to concentration camps and massacred. Thus, the construction of ethnic “outsiders” aided Nazi Germany’s Final Solution\(^ {57}\) to exterminate ethnic outsiders.\(^ {58}\)

Race sciences, especially racial citizenships, fell into disuse in the aftermath of the Second World War, which had witnessed the horrors Nazi Germany had inflicted upon its perceived racial inferiors.\(^ {59}\) To safeguard against such...
discriminatory denationalising acts by States in the future, the UN drafted two conventions on statelessness – the 1954 Convention and the Convention on the Reduction of Statelessness, 1961 (“1961 Convention”).60 However, as many unfortunate instances have illustrated since,61 states continue to denationalise groups based on race or religion till date.62 Today, the 1954 Convention and the 1961 Convention provide a guide for countries to mould their policies in favour of the stateless populations they house.63

B. Historical background to Sri Lankan Tamil refugees in India

Sri Lankan Tamil refugees fled religious persecution at the hands of the Sinhalese before and during the Sri Lankan civil war, and live as stateless individuals in Indian refugee camps. However, since they are a heterogeneous community, they have a variety of claims to Indian citizenship.

Sri Lanka’s population has historically consisted of the Sinhalese community as the majority, and the Tamils as a minority.64 The Sinhalese community is primarily Buddhist and speak Sinhalese, whereas the Tamils are mostly Hindu and speak Tamil.65 Within the Tamils, most are the indigenous “Jaffna Tamils”.66 On the other hand, the smaller subset is the “Estate Tamils”, whose forefathers were brought to Ceylon from India to work in the British

62 The Statelessness Convention recognises that states have the right to denationalise those who have obtained nationality through fraud or misrepresentation as in 1954 Convention, art 8.
65 Wolozin (n 6).
66 ibid.
plantations. While the two groups of Tamils share a common language and are predominantly Hindus, they have separate identities.

Since there is no single cause that led to the Sri Lankan civil war, it is helpful to view the situation holistically, as an occurrence caused due to a multitude of reasons. First, Sinhalese political parties dominated electoral politics. Even the most prominent Tamil party, the Tamil United Liberation Front, failed to muster votes in the 1977 and 1989 general elections. As a result, Tamils could not find a voice in law-making or key governmental positions in Sri Lanka. Second, armed with dominance in the state executive and the legislature, the Sinhalese government enacted a new constitution which declared Sinhalese as the official language, and Buddhism as the state religion. This constitution created a furor among Tamils, who viewed it as a direct attack on their language and religion. Third, the Sinhalese government enacted a citizenship law to strip Estate Tamils of citizenship.
Tamil militancy grew in Sri Lanka to counter Sinhalese dominance in State and polity, with the Liberation Tigers of Tamil Eelam (“LTTE”) establishing themselves as the most critical group of the prevailing government. The LTTE primarily demanded for the creation of a separate Tamil nation, Eelam.\(^76\) The militancy groups embattled the Sinhala-dominated government for over three decades, punctuated by multiple failed peace talks.\(^77\)

Amidst the ethnic violence which cost civilians their lives and property, thousands of Tamils fled the civil war and crossed the ocean into India seeking refuge.\(^78\) The fleeing groups primarily came into Tamil Nadu because they felt a deep bond of shared culture and language. In the aftermath of the Sri Lankan civil war, there are two main Sri Lankan Tamil clusters in India.

The first group comprises the Estate Tamils, who were repatriated to India through pacts between India and Sri Lanka.\(^79\) The second group comprised of refugees fleeing the civil war, who were resettled in numerous camps by the Indian government (“Camp-Refugees”). They entered India in three waves starting in 1984, up to 2006, based on the ebb and flow of the Sri Lankan civil war.\(^80\)

Over time, the Indian and Sri Lankan governments made several bilateral attempts to repatriate willing Sri Lankan Tamils from Indian refugee camps to Sri Lanka.\(^81\) However, political fallouts and the violence of the war marred

\(^76\) Rotberg (n 64); Fair (n 64); Shastri (n 69); Robert Kearney, ‘Ethnic Conflict and the Tamil Separatist Movement in Sri Lanka’ [1985] 25 Asian Survey 898; the LTTE demanded for a separate Tamil state in the Jaffna peninsula, the traditional homeland for Tamils, called “Eelam” as in Chowdhory (n 64).

\(^77\) Chowdhory (n 64); Rotberg (n 64); Fair (n 64).

\(^78\) Rotberg (n 64).

\(^79\) Abhijit Dasgupta, ‘Repatriation of Sri Lankan Refugees: Unfinished Tasks’ [2003] 38 Economic and Political Weekly 2365; however, the term “repatriates” is somewhat misleading because neither Indian nor Sri Lankan governments considered their choices in the repatriation process. Interestingly enough, repatriates also distance themselves from Camp-Refugees. Ostensibly, they wish to dissociate from the poverty and the ad-hoc way of life in the camps. Instead, repatriates’ narratives in studies focus on resettlement into “respectable” neighbourhhoods in Chennai and normalcy in everyday life, for instance, visiting Sri Lanka using their Indian passports like regular citizens as in Anne-Sophie Bentz and Anthony Goreau-Ponceaud, ‘To be or not to be a Refugee? Reflections on Refugeehood and Citizenship among Sri Lankan Tamils in India’ [2020] 24 Citizenship Studies 176.


these efforts. Further, Sri Lanka has tried to domestically alleviate Estate Tamils’ statelessness through various laws passed in 1986, 1988, 2003 (“2003 Grant of Citizenship Act”) and 2009. Some of these laws witnessed limited success due to onerous procedural requirements, loss of documentation by civilians in the wake of the war, and the prevailing socio-political climate.

However, the 2003 Grant of Citizenship Act was a notable exception since it successfully resolved statelessness for 190,000 Estate Tamils in Sri Lanka. The success of the 2003 Grant of Citizenship Act lies in its simplified procedure of granting citizenship and collaboration with the UNHCR along with local stakeholders. Sri Lanka earned immense praise for alleviating its statelessness problem from the UNHCR, which called the 2003 Grant of Citizenship Act a “turning point” in Sri Lanka’s history. Unfortunately, India has not yet followed suit in demonstrating political willingness to reduce statelessness for Sri Lankan Tamil refugees.

III. INDIAN CITIZENSHIP LAW AND THE “ILLEGAL MIGRANT” QUESTION

A. Framework of Indian citizenship laws

Understanding citizenship law in India requires an understanding of both citizenship laws and the immigration regime. Collectively, this set of laws distinguishes between insiders or citizens, and outsiders or non-citizens.

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85 Wolozin (n 6).

86 To illustrate some socio-political events, India intervened in the civil war with the Indian Peacekeeping Force, Rajiv Gandhi was assassinated by an LTTE member, Sri Lankan leadership changed with a fresh general election as in Chimni (n 7); Chowdhory (n 64); Dasgupta (n 79).


89 Chimni (n 5).

90 This point is explained further infra in Part III (b).

91 Brubaker (n 43).
The first source for consideration is the Indian Constitution. The Constituent Assembly drafted constitutional provisions of citizenship, keeping in mind the most pressing issue of the time – the Partition of India at independence. To illustrate, Article 5 confers birth based citizenship only to those who were alive at the time of the commencement of the Constitution. Similarly, Articles 6 and 7 deal only with migrants moving to or from India on account of Partition. The Constituent Assembly also inserted Article 11 to empower the Parliament to make citizenship laws based on India’s needs beyond independence.

The second source is the primary law on citizenship in India, the Citizenship Act, 1955 (“1955 Act”), enacted by the Parliament in pursuance of Article 11. Under the 1955 Act, there are five modes prescribed for acquiring Indian citizenship, namely, by birth, by descent, through registration, by naturalisation, and through India incorporating new territory.

The third and equally crucial source is India’s immigration regime that governs non-citizens. The Foreigners Act, 1946 (“1946 Act”) is a colonial era legislation that focuses on the entry and exit of foreigners from India based on the possession of legal documents like passports, visas, entry or exit permits. These documents are obtained under the Passports Act, 1967, and the Passports Rules, 1980.

Alternatively, foreigners can seek temporary or permanent visas from the Indian government under the Long-Term Visa Guidelines (“LTV Guidelines”). A long-term visa (“LTV”) is particularly attractive because it opens up avenues to other rights, like obtaining education, identity cards and

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92 Constitution of India 1950, ch II, arts 5, 6, 7, 8, 9, 10, and 11.
93 Jayal (n 23); Jayal (n 27); BR Ambedkar, Constituent Assembly Debates vol IX p 9,115,178 (10 August 1949) <https://www.constitutionofindia.net/constitution_assembly_debates/volume/9/1949-08-10> accessed 28 July 2021; in this vein, Bhatia claims that in effect, the Constitution tells us “nothing” about citizenship as in Bhatia (n 51).
94 Constitution of India 1950, art 5.
95 Constitution of India 1950, arts 6 and 7.
96 Constitution of India 1950, art 11.
97 Citizenship Act 1955 along with Citizenship Rules 2009.
98 1955 Act, s 3.
100 1955 Act, s 5.
101 1955 Act, s 6.
102 1955 Act, s 7.
103 Foreigners Act 1946.
104 Passports Act 1967.
housing on an interim basis.\textsuperscript{107} The LTV Guidelines also allow applications from applicants fearing persecution in a manner that mirrors the language of the Convention and Protocol Relating to the Status of Refugees 1951 ("1951 Convention").\textsuperscript{108} LTVs can also be used to apply for Indian citizenship through registration or naturalisation.\textsuperscript{109}

Since India is not a party to the 1951 Convention, the 1954 Convention or the 1961 Convention, and also does not have a domestic law on refugees or stateless persons, the government governs the presence of these groups through the LTV Guidelines.\textsuperscript{110} The absence of this recognition under an official legislation is significant, considering that in 2021, India housed as many as 208,065 refugees, many of whom are also stateless like the Sri Lankan Tamils.\textsuperscript{111} Data from the Ministry of Home Affairs indicates that out of the total refugee population, over 94,000 are Sri Lankan Tamil refugees alone, with 59,506 of them living in camps, and 35,000 living outside of camps.\textsuperscript{112}

In the absence of a specific targeted law, refugees and stateless persons are sent into a common immigration system with foreigners, and governed through the state’s political and administrative set-ups under the 1946 Act.\textsuperscript{113} The 1946 Act comes into play here since it does not differentiate the intent of different groups of foreigners entering India. As Bhairav Acharya highlights, tourists, refugees and migrants have varied reasons for entering India.\textsuperscript{114} However, since the 1946 Act is agnostic to these differences, it makes refugees and stateless persons vulnerable to detention, trial or deportation.\textsuperscript{115}

\textsuperscript{107} Long-Term Visa Guidelines, s 5 (iii).
\textsuperscript{108} Long-Term Visa Guidelines, s 5 (‘well-founded fear of persecution based on race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion’); 1951 Convention, s 1.
\textsuperscript{109} Form IC-5(1)(A), Form IC-5(1)(B), Form IC-5(1)(C), Form IC-5(1)(D), Form IC-5(1)(E), Form IC-5(1)(F), Form IC-5(1)(G); Citizenship Rules 2009, s 4, s 5, s 6, s 7, s 8, s 9, s 10.
\textsuperscript{113} Chimni (n 5); Saurabh Bhattacharjee, ‘India Needs a Refugee Law’ [2008] 43 Economic and Political Weekly 71.
\textsuperscript{114} Acharya (n 111).
\textsuperscript{115} Chakrabarty (n 28); Nair (n 28); Bhattacharjee (n 113); Nasreen Chowdhory, ‘Understanding refugee rights in India’ in Nasreen Chowdhory (ed), \textit{Refugees, Citizenship and Belonging in South Asia: Contested Terrains} (Springer 2018); the Madras HC made this explicit finding in \textit{K Arulinbathevar v State of TN}, (2017) 4 MLJ (Crl) 121.
Therefore, the state’s approach to refugees and stateless persons is subject to a reorientation of political will, the identity of the individual in question, and the prevailing socio-political climate. To illustrate, the Indian State metes differential treatment over time depending on the incumbent government – although it welcomed Sri Lankan Tamil refugees in the 1980s, the current government has not accorded similar treatment for the Rohingyas. Various reports by human rights organisations and media forums have also documented that the Indian State has consistently pressured foreigners to prove their identity, confined suspected foreigners in camps, and ordered deportations under the 1946 Act.

To compound the problems under the 1946 Act, courts have been overly deferential in creating safeguards against the 1946 Act. For instance, in the cases of Hans Muller and Louis de Raedt, the SC declared that the 1946 Act confers unfettered discretion to the government to expel foreigners. The positions taken in Hans Muller and Louis de Raedt have consistently been

116 1946 Act, s 2, s 7A, s 8, s 11, s 14; Chakrabarty (n 28); Nair (n 28).
reiterated by courts, firmly entrenching the unfettered discretion of the state in dealing with foreigners as the law of the land.121

Sri Lankan Tamil refugees, too, have fallen prey to the draconian provisions of the 1946 Act. The Tamil Nadu government has passed notifications under the 1946 Act directing that Sri Lankan Tamil refugees cannot move outside refugee camps, and must obtain permission from the Collector to do so.122 In persistent attempts to break free from this restriction, Sri Lankan Tamil refugees have filed numerous petitions challenging such notifications.123 However, courts have reiterated Hans Muller and Louis de Raedt in saying that the 1946 Act confers unfettered discretion on the government for dealing with foreigners.124

Unfortunately, international law can provide little respite to refugees and stateless persons in India.125 Although India is a party to the covenants on civil and political rights126 and economic, social and cultural rights,127 they are enforceable in India to a limited extent.128 India has not made a meaningful


122 1946 Act, s 3(g); Chinni (n 5); Anupama Roy, Mapping citizenship in India (OUP 2010).

123 Kalavathy (n 121); Kanu Sanyal (n 121); P. Loganathan (n 121); Maheswaran (n 121); Premavathy (n 121); Rasenthiram (n 121); Sasikala (n 121); Selvakulendran (n 121).

124 ibid.


128 Constitution of India 1950, art 51; India has also tried to cite reservations to certain provisions of these covenants, for instance, for ICCPR, art 13, India reserves the right to apply
attempt towards formulating adequate policy level responses for the issues faced by refugees or stateless persons resident in its territory.\textsuperscript{129}

B. Foundational shifts in Indian citizenship: The illegal migrant issue

Traditionally, there have been two categories in citizenship law – citizens and non-citizens. While the 1955 Act deals with the former category for granting, revoking and renouncing citizenship, the 1946 Act focuses on the entry and exit of the latter by inquiring if such foreigners possess the requisite legal documents.\textsuperscript{130} However, the creation of a third category of the ‘illegal migrant’ has thrown a spanner in the works, by blurring the distinction between citizenship law and immigration law.\textsuperscript{131} Under Indian law, an illegal migrant is a foreigner who has entered India without valid documents, or one who stays in India beyond the time permitted by travel documents.\textsuperscript{132}

The category of the illegal migrant was initially created to address the specificities of the Assam Accord.\textsuperscript{133} However, incremental amendments to citizenship law have introduced the category of the illegal migrant for general determinations of citizenship outside of Assam as well.\textsuperscript{134}

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\textsuperscript{129} Bhattacharjee (n 113).
\textsuperscript{131} ibid.
\textsuperscript{132} 1955 Act, s 2 (1) (b).
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The second impact of this new category has been through the effect of the Foreigners Tribunals ("FT")\textsuperscript{135}, which deals with suspected foreigners.\textsuperscript{136} As Anubhav Tiwari and Prashant Singh highlight, the FT embarked on a mission that was markedly different from the original intent of the 1946 Act. Instead of simply regulating the entry and exit of identified foreigners, the FTs now make determinations about the legality of suspected foreigners’ presence in India. Such a determination by the FT is based either by the suspected foreigners demonstrating the possession of valid legal documents to justify their presence in India, or by proving that they are Indian citizens.\textsuperscript{137} Since foreigners are defined as “persons who are not citizens of India”, and illegal migrants are foreigners who have entered India without valid legal documents, the determination of one’s status as a foreigner or an illegal migrant inherently also carries a determination of whether or not they are a citizen.\textsuperscript{138}

However, the consequence of being declared one of these two categories is strikingly different – while being declared a foreigner makes one eligible for deportation, being declared an illegal migrant disqualifies one or their children from acquiring Indian citizenship. Although the FTs have not affected Sri Lankan Tamil refugees directly yet,\textsuperscript{139} they have created a jurisprudential shift by legitimising the inquiry into the citizenship status of anyone the State chooses, and blurring the demarcation between citizenship law and immigration law.\textsuperscript{140}

The category of ‘illegal migrant’ was first introduced in the 1955 Act through an amendment in 2004 (“2004 Amendment”).\textsuperscript{141} The 2004 Amendment marked a sea change in citizenship law since it introduced a third, in-between

\textsuperscript{135} Interestingly, the 1946 Act does not provide for a mandate to make determinations of the citizenship status of persons, or for setting up FTs. Thus, the FTs are presently functioning without any statutory mandate, and are arguably constitutionally impermissible as in Talha; this question is to be answered by a larger bench of the SC as in \textit{Assam Public Works v Union of India} (2019) 9 SCC 70.

\textsuperscript{136} Foreigners (Tribunals) Order 1964.

\textsuperscript{137} Tiwari and Singh (n 130); previously, illegal migrants were regulated under the Illegal Migrants (Determination by Tribunal) Act 1983 which had stronger due process requirements compared to the 1946 Act. However, the SC declared the law to be unconstitutional, all cases regarding illegal migrants came under the 1946 Act as in Malischewski (n 13).

\textsuperscript{138} S 2 (a), s 2 (b), 1946 Act

\textsuperscript{139} The 1964 Order which had previously been confined to Assam in its application has been extended to the entire country as in Vijaita Singh, ‘All States can now Constitute Foreigners Tribunals’ (The Hindu, 10 June 2019) <https://www.thehindu.com/news/national/all-states-can-now-constitute-foreigners-tribunals/article27706366.ece> accessed 28 July 2021.


\textsuperscript{141} Citizenship (Amendment) Act 2004, s 2 (i) (‘2004 Amendment’); Ram discusses that the explicit enumeration of religion in citizenship law was encoded in ethnonationalism, wherein ‘infiltrator’ was an ‘illegal migrant’ and ‘refugee’ was code for non-Muslim ‘illegal migrant’ as in Ram (n 30).
category of illegal migrants. Post the 2004 Amendment, persons born on or after January 26, 1950 but before July 1, 1987 are citizens by the simple fact of birth in India. Next, persons born in India on or after July 1, 1987 but before January 1, 2004 are citizens if either of their parents was an Indian citizen at the time of their birth. Finally, persons born on or after January 1, 2004 are citizens only if neither of their parents is an illegal migrant at the time of their birth. Furthermore, the 1955 Act now also disqualifies persons who fall under the category of illegal migrant from obtaining citizenship by naturalisation or registration.

To identify and deport such illegal migrants, the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 (“2003 Rules”) were amended to initiate the preparation of an NRC. The bleak future that may lie ahead with the country-wide implementation of the 2003 Rules appears to be foreshadowed by the Assam NRC exercise. Since the publication of the Assam NRC’s final list, the first formal exercise of this nature, it has been heavily criticised by domestic and international commentators for rendering 19 million persons stateless. Further, the numerous egregious errors resulting in

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142 2004 Amendment, s 2.
143 1955 Act, s 3 (1)(a).
144 1955 Act, s 3 (1)(b).
145 1955 Act, s 3 (1)(c).
146 1955 Act, s 3, s 5, s 6.
exclusions from the NRC\textsuperscript{150} have forced the government to re-think a pan-India NRC\textsuperscript{151}.

Following the 2004 Amendment, the next major step was a notification brought by the Central Government (“2015 Amendment”) to exempt certain classes of foreigners from deportation.\textsuperscript{152} The most striking aspect of the eligibility requirements under the 2015 Amendment is its specific reference to religious identity.\textsuperscript{153} Before the 2015 Amendment, religion-based bias was evident in Articles 6 and 7 of the Indian Constitution, and in the examination of one’s parents’ citizenship status for birth-based citizenship,\textsuperscript{154} a thinly veiled inquiry into the religion of the applicant under the Citizenship Act.\textsuperscript{155} With the 2015 Amendment, Indian citizenship laws were slowly shedding religion-neutrality in favour of actively protecting specific communities.

More recently, the 2019 Act was passed to exempt specific categories of individuals from being categorised as illegal migrants.\textsuperscript{156} To qualify under the


\textsuperscript{154} 1955 Act, s 3 (1) (b), s 3 (1) (c).

\textsuperscript{155} Discussed further infra Part III (c)(i); Constitution of India 1950, art 6, art 7; Jayal (n 23); Jayal (n 27); Niraja Gopal Jayal, ‘The 2016 Citizenship Amendment Bill Consolidates a Trend Towards a Majoritarian and Exclusionary Concept of Indian Citizenship’ (\textit{The Caravan}, 20 February 2017) <https://caravanmagazine.in/vantage/2016-citizenship-amendment-bill-majoritarian-exclusionary> accessed 28 July 2021.

\textsuperscript{156} 2019 Act, s 2; interestingly, lawyer Nizam Pasha highlights an inherent contradiction in the 2019 Act – if a person does not have documents to prove their citizenship or acquire the
2019 Act, individuals must be Hindu, Sikh, Buddhist, Jain, Parsi, or Christian who entered India on or before December 31, 2014, and from Afghanistan, Bangladesh or Pakistan.\textsuperscript{157}

The 2019 Act adds a third layer to the complexities of Indian citizenship law. This is because first, one must look at the entire set of laws governing Indian citizenship law; second, identify if they can be categorised as illegal migrants; and third, identify if they can be exempt from such classification as an illegal migrant under the 2019 Act based on, \textit{inter alia}, religious identity. If one falls within the ambit of the 2019 Act, they will not be an illegal migrant and hence not be disqualified from Indian citizenship.\textsuperscript{158} However, persons ineligible under the 2019 Act, as the Sri Lankan Tamils, are disqualified from acquiring Indian citizenship.\textsuperscript{159}

Numerous scholars have levelled severe criticism against the validity of the 2019 Act.\textsuperscript{160} Further, several petitions have been lodged before Indian courts, raising crucial questions like the constitutionality of the 2019 Act,\textsuperscript{161} federalism,\textsuperscript{162} and police brutality at “anti-CAA” protests\textsuperscript{163} emanating from

\begin{footnotesize}
\noindent\textsuperscript{157} 2019 Act, s 2; similarly, individuals who meet the criteria need to fulfil only 5 years of residence to naturalise as Indian citizens instead of 11 years in the ordinary course in the path to Indian citizenship as in 2019 Act, s 6.
\noindent\textsuperscript{158} Shaul Gabbay, ‘India’s Muslims and Hindu Nationalism’ [2020] 8 International Journal of Social Science Studies 51.
\noindent\textsuperscript{159} 1955 Act, s 3, s 5, s 6.
\noindent\textsuperscript{160} A detailed discussion is beyond the scope of this paper; to name a few, Jayal (n 23); Jayal (n 27); Bhatia (n 51); Irfan Habib, ‘CAA-NRC and its Misleading Historical Context’ \textit{The Indian Express}, 2 January 2020) \(<\text{https://indianexpress.com/article/opinion/columns/caa-nrc-and-its-misleading-historical-context-6196201/>}\) accessed 28 July 2021; Ramachandra Guha, ‘Why the CAA is Illogical, Immoral and Ill-timed, Writes Ramachandra Guha’ (\textit{Hindustan Times}, 12 January 2020) \(<\text{https://www.hindustantimes.com/columns/why-the-caa-is-logical-immoral-ill-timed-opinion/story-AwBFkNxmdQD4vPJyar6iJJ.html}>\) accessed 28 July 2021.
\noindent\textsuperscript{161} Bhatia (n 25); Chandrachud (n 27); Bhat (n 27); Desai (n 25); Poddar (n 27); Varghese and Narasappa (n 27).
the implementation of the 2019 Act.\textsuperscript{164} Despite the propensity of backlash, curiously enough, the SC has been dragging its feet in hearing the petitions regarding the 2019 Act.\textsuperscript{165} Most significantly, the SC has refused to place a stay on the 2019 Act before allowing the Central Government to provide a response.\textsuperscript{166}

One of the key questions critics level against the 2019 Act is its selective protection to specific groups.\textsuperscript{167} Although the ostensible intent of the 2019 Act is to protect refugees fleeing persecution,\textsuperscript{168} it does so through several ill-founded assumptions.\textsuperscript{169}

First, it assumes that religious persecution is confined to countries whose state religion is Islam.\textsuperscript{170} In contrast, Sri Lankan Tamils faced religious persecution in a non-Islamic state.\textsuperscript{171} It also seems to believe that only Islamic countries engage in persecution, especially religious persecution. This belief follows the savage-victim-saviour narrative, which portrays India as the saviour for non-Muslims from savage Muslim ‘foreigners’.\textsuperscript{172}

\begin{itemize}
  \item \textsuperscript{166} Indian Union of Muslim League (n 164).
  \item \textsuperscript{167} Chakrabarty (n 28); Ahmed argues that the 2019 Act fails the doctrine of manifest arbitrariness under Article 14 as in Farrah Ahmed, ‘Arbitrariness, Subordination and Unequal Citizenship’ [2020] 4 Indian Law Review 121.
  \item \textsuperscript{169} Jayal (n 23); Poddar (n 27); Jayal (n 27); Bhatia (n 25); Badri Raina, ‘Citizenship Amendment Bill: A Warning Bell for the Republic’ (The Wire, 9 December 2019) <https://thewire.in/religion/citizenship-amendment-bill-hindu-rashtra> accessed 28 July 2021.
  \item \textsuperscript{170} Namely, Afghanistan, Pakistan and Bangladesh; Kannan (n 25); Raina (n 169).
\end{itemize}
Second, the 2019 Act assumes the absence of intra-religious persecution. For instance, Ahmediyyas and Balochis are Muslims but face religious persecution in Pakistan.\(^{173}\) Third, unlike the 1951 Convention,\(^{174}\) the 2019 Act identifies persecution solely on religion.\(^{175}\) However, South Asia is rife with other forms of persecution as well; for instance, Tibetans in China faced political persecution.\(^{176}\) Unsurprisingly, the Indian state has hitherto failed to convince the entire populace regarding the utility of the 2019 Act, given its inability to address the needs of refugee groups who are excluded from its ambit.\(^{177}\)

Finally, the LTV Guidelines were amended to mirror the 2019 Act, defining eligible applicants along religious lines.\(^{178}\) Interestingly, the LTV Guidelines also create additional benefits to eligible applicants like allowances to move freely in most parts of the country,\(^{179}\) get Permanent Account Number cards (required for Indian income tax purposes) and Aadhar numbers (necessary for identification purposes and availing government as well as certain private services).\(^{180}\) Most crucially, possession of LTV allows the holder to apply for Indian citizenship under the 1955 Act.\(^{181}\)

The Ministry of Home Affairs claims that under its policy, groups like Sri Lankan Tamils who have been left out of the LTV Guidelines can claim

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174 Chandrachud highlights that best international practices for recognising refugees follow the 1951 Convention, which asks states to recognise refugees irrespective of ‘race, religion, nationality or membership of a particular social group or political opinion’. Assuming India had been a signatory to the 1951 Convention, it would have fallen foul of the requirement to not make a religion-based classification for refugees as in Chandrachud (n 27).

175 In this vein, Chandrachud compellingly argues that the 2019 Act also contravenes Article 14 due to its religion-based classification as in Chandrachud (n 27).


178 Long-Term Visa Guidelines, s 1(A) (The new requirements make the following categories eligible for LTV: first, Hindu, Sikh, Buddhist, Jain, Parsi, or Christian individuals from Afghanistan, Bangladesh or Pakistan. Second, Pakistani or Bangladeshi women and Afghanistan nationals married to Indian nationals and staying in India. Third, Indian origin women with Pakistani, Bangladeshi or Afghanistan nationality and without supporting male members wishing to return due to widowhood or divorce. Fourth, cases of extreme compassion.)

179 Free movement does not include movement in protected, restricted and cantonment areas as in Long-Term Visa Guidelines, s 1 (H)(b).

180 Long-Term Visa Guidelines, s 1 (H)(a), s 1 (H)(b)

181 Form IC-5(1)(A), Form IC-5(1)(B), Form IC-5(1)(C), Form IC-5(1)(D), Form IC-5(1)(E), Form IC-5(1)(E), Form IC-5(1)(F), Form IC-5(1)(G); Citizenship Rules 2009, s 4, s 5, s 6, s 7, s 8, s 9, s 10.
refugee status and apply separately for an LTV. However, granting of LTVs is wholly subject to government discretion, which means the absence of certainty of procedure or a guaranteed right for applicants. Further, the number of LTVs granted per year remains unclear, since different ministries have released inconsistent figures over time. Consequently, we do not have much information on the policy and practice of the government’s considerations while granting LTVs. Thus, the LTV Guidelines provide little relief to refugees who are not categorically included within their scope, including Sri Lankan Tamils.

C. The question of *jus sanguinis* citizenship

1. *Jus sanguinis* as an alternate basis for Indian citizenship

The trajectory of amendments discussed above shows the growing importance of one’s status as an illegal migrant in acquiring Indian citizenship. There are two noteworthy facts about this transition: first, a move towards examining the citizenship of a person’s ascendants; and second, a departure from religious-neutrality to actively using religion for citizenship determination. Both these prongs indicate a shift in Indian citizenship law towards a *jus sanguinis* model. To contextualise the repercussions of a potential *jus sanguinis* citizenship in India, it is imperative to understand the pitfalls of *jus sanguinis* along with the character of Indian citizenship law – is it *jus soli* or *jus sanguinis* in nature?

At the outset, it is useful to understand the differences between the two models. Numerous scholars argue that *jus sanguinis* is an exclusionary form of citizenship, whereas *jus soli* is an inclusive model. This is because *jus soli*

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185 Waas (n 39).

confers citizenship on the simple fact of birth on a territory.\textsuperscript{187} In contrast, \textit{jus sanguinis} may exclude persons born in or residing in the territory of a state who lack shared ethnic characteristics or fail to draw their lineage from that state.\textsuperscript{188} In this way, persons ineligible for want of ethnic features or lineage in States following \textit{jus sanguinis} are unable to claim citizenship in such States.\textsuperscript{189} Alternatively, if States transition from \textit{jus soli} to \textit{jus sanguinis}, persons initially eligible for citizenship under \textit{jus soli} may lose their citizenship under \textit{jus sanguinis}.\textsuperscript{190} Further, persons rendered stateless under such \textit{jus sanguinis} law will reproduce statelessness for their descendants, creating ‘multigenerational statelessness’.\textsuperscript{191} Thus, \textit{jus sanguinis} citizenship has a powerful potential to exacerbate statelessness.

Indian citizenship is experiencing all of these phenomena – the law is shedding \textit{jus soli} character in favour of \textit{jus sanguinis} as evinced by the amendments of 2004, 2015 and 2019.\textsuperscript{192} As a result, children of parents who are stateless or doubtful citizens have been rendered stateless will probably pass on their lack of citizenship to the next generation, creating multigenerational statelessness. Further, refugees and stateless persons who are not exempt from being categorised as illegal migrants under the 2019 Act will continue to live without citizenship.\textsuperscript{193}

India’s Constituent Assembly was cognisant of the pitfalls of \textit{jus sanguinis} as well, and intentionally eschewed \textit{jus sanguinis} in favour of \textit{jus soli};\textsuperscript{194} hop-

\begin{thebibliography}{99}
\bibitem{187} Fitzgerald (n 32); Waas (n 39).
\bibitem{188} Weissbrodt (n 186).
\bibitem{189} Weissbrodt (n 186); Carol Batchelor, ‘Statelessness and the Problem of Resolving Nationality Status’ [1998] 10 International Journal of Refugee Law 156.
\bibitem{190} Jayal (n 34); Shachar (n 35); Lee (n 37); Batchelor (n 189).
\bibitem{191} Kakarala and others (n 8).
\bibitem{192} Jayal (n 34); as in Part III (a).
\bibitem{193} Kakarala and others (n 8); Jayal (n 22); Jayal (n 34), Rahman (n 118); Soumya Shankar, ‘India’s citizenship law, in tandem with national registry, could make BJP’s discriminatory targeting of Muslims easier’ (The Intercept, 30 January 2020) <https://theintercept.com/2020/01/30/india-citizenship-act-caa-nrc-assam/> accessed 28 July 2021.
\end{thebibliography}
ing to lay the foundation of a pluralist, secular democracy. This decision is interesting when juxtaposed with colonial imaginations that pitted Hindus against Muslims as separate nations; an idea that crystallised in the ‘two-nation’ theory most famously propagated by M.A. Jinnah.

Building on the two-nation theory that India was a ‘homeland for Hindus’, some Constituent Assembly members argued for Indian citizenship to favour Hindus and Sikhs. The ‘homeland for Hindus’ notion has seen a modern resurgence in independent India, most strikingly with the rise to power of the Bharatiya Janata Party. As a result, recent governmental policies, including the reconceptualisation of citizenship law, have sought to address otherwise “neglected” Hindu interests.

195 Ahmad and Yousuf (n 23); however, several challenges have seriously questioned the ability of Indian democracy to accommodate plurality, like movements for self-determination in, inter alia, Nagaland, Jammu and Kashmir, Punjab etc. as in Guha (n 176); Sanjib Baruah, Ethnonationalism in India: A Reader (OUP 2012).

196 “Two-Nation Theory” refers to the thesis that Hindus and Muslims in India were two distinct communities that could not coexist within a single state without dominating and discriminating against the other or without constant conflict; it resulted in the 1947 Partition of India and Pakistan as in Clinton Bennett, ‘Two-nation Theory’ in Zayn Kassam and others (ed), Islam, Judaism, and Zoroastrianism: Encyclopedia of Indian Religions (Springer 2018).

197 Thapar (n 59).

198 Thapar argues that determining indigenous populations is a tricky process since the growth of nation-states bounded in territory is a relatively recent phenomenon, including in India as in Thapar (n 59); Elizabeth Seshadri, ‘CAA and the Devaluation of Secular India’ (The Hindu Centre 12 February 2020) <https://www.thehinducentre.com/the-arena/current-issues/article30789891.cecesee> last accessed 28 July 2021; see generally, Andreas Wimmer and Yuval Feinstein, ‘The Rise of the Nation-state Across the World, 1816-2001’ [2010] 75 American Sociological Review 764.


Some revisionist arguments to Indian citizenship, most prominently by Abhinav Chandrachud,202 have attempted to provide an explanation to the modern resurgence of the ‘homeland for Hindus’ idea. Chandrachud submits that the 2019 Act is merely an extension of the Constituent Assembly’s debates at the time of and following Partition.203 In a nutshell, Chandrachud argues that the permit system204 enshrined in Articles 6 and 7 of the Indian Constitution created differential pathways to Indian citizenship for Hindu and Muslim

202 Chandrachud (n 27); Abhinav Chandrachud, ‘The Origins of Indian Citizenship’ (Bloomberg 
Quint, 26 December 2019) <https://www.bloombergquint.com/opinion/citizenship-amendment-

203 Chandrachud (n 27); Bhatia (n 51); Ram (n 30); Hassan (n 133); Samrat Choudhary, ‘North 
accessed 28 July 2021; Kamran Siddiqui, ‘Indian Muslims are Partially Responsible for their 
Own Deprivation’ (The Quint, 21 February 2020) <https://www.thequint.com/voices/opinion/

204 The permit system was created at the western border for migrants coming to India from 
Pakistan. The intent behind the system was concerns over the property left behind by 
Muslim migrants because in their initial move to Pakistan, the Indian government had re-al-
lotted the property to new refugee settlers. The Indian government worried that if the original 
Muslim inhabitants were allowed to return and reclaim their property, conflict would ensue between them and the new occupants. To specifically discourage these Muslim migrants from returning from Pakistan, a “permanent resettlement permit” was introduced, which was one of the five kinds of permits as in Chandrachud (n 27); Joya Chatterjee, ‘Partition 
migrants; specifically, the permit system allowed easier access to Hindus but created a disadvantage for Muslim migrants seeking Indian citizenship.\textsuperscript{205} He highlights that the differential requirements for citizenship was not an accident but an intentional design – the Constituent Assembly was aware of, and actively used, the difference in faith among migrants to encourage citizenship for Hindus and discourage it for Muslims.\textsuperscript{206}

Thus, although the text of the Indian Constitution does not mention religion in terms of citizenship requirements, its consequence was to develop a divergent approach for Hindu and Muslim migrants. There was no formal discrimination based on religion, but the result of the law was the creation of a major disadvantage for Muslim refugees.\textsuperscript{207}

In this backdrop, as Niraja Gopal Jayal argues, Indian citizenship law has experienced a tension in conceiving itself as \textit{jus soli} or \textit{jus sanguinis} beginning from Constituent Assembly debates around and arising out of Partition.\textsuperscript{208} This tension has reproduced itself in independent India through the slew of amendments that seek to topple \textit{jus soli} and replace it with \textit{jus sanguinis} citizenship – primarily by making Indian citizenship increasingly contingent on the applicant not being an illegal migrant.\textsuperscript{209}

N. Ram and Gautam Bhatia caution against overemphasising revisionist arguments that try to characterise Indian citizenship as inherently non-secular.

\textsuperscript{205} Muslim migrants were required to obtain a permanent resettlement permit whereas Hindu migrants were not. Acquiring a permanent resettlement permit was extremely arduous because it involved several steps of state scrutiny including disclosure of faith, details of property in India, and subject to veto by the Indian state where the Muslim migrant wished to resettle as in Chandrachud (n 27); Chatterjee (n 194); Chatterjee (n 204); Influx from West Pakistan (Control) Ordinance 1948; Influx from West Pakistan (Control) Act 1949; Permit System Rules 1948, r 3, r 10, r 16, Appendix II (C).

\textsuperscript{206} Chandrachud (n 27); the reason behind this intentional design was the issue of ‘evacuee’ property as in Chatterjee (n 204); Vazira Zamindar, \textit{The Long Partition and the Making of Modern South Asia} (Columbia University Press 2007); Sarah Ansari, \textit{Life After Partition: Migration, Community and Strife in Sindh 1947 – 1962} (OUP Pakistan 2005).

\textsuperscript{207} Chandrachud (n 27); in contemporary times, this consequence-based test has been recognised in the context of Article 15 in \textit{Navtej Singh Johar v Union of India} (2018) 10 SCC 1. The SC held that it is not only whether a law bases its discrimination on one of the grounds mentioned in Article 15, for instance, sex. Instead, the real test is whether the effect of such classification results in discrimination. Using this idea, we can examine Articles 6 and 7 through their effects – creating differential pathways to citizenship based on religion and creating a disadvantage for Muslim migrants. This consequence-based test has also been discussed in \textit{Rani Raj Rajeshwari Devi v State of UP} 1954 SCC OnLine All 90 : AIR 1954 All 608; Gautam Bhatia, ‘Sex discrimination: Anuj Garg and the anti-stereotyping principle’ in Gautam Bhatia \textit{The Transformative Constitution: A Radical Biography in Nine Acts} (HarperCollins India 2019).

\textsuperscript{208} Jayal (n 23); Jayal (n 27).

\textsuperscript{209} Jayal (n 23).
and non-discriminatory. They concede that the ‘homeland for Hindus’ arguments were voiced in the Constituent Assembly and that the permit system has unsecular foundations, but remind us that the ultimate form of Indian citizenship which the Constituent Assembly ultimately adopted was birth-based and non-discriminatory. Further, they highlight that the Partition was an exceptional moment of determining citizenship, which should not be used as a bright-line test for determining contemporary Indian citizenship.

In particular, Bhatia argues that Chapter II should be read in conjunction with constitutional provisions like equality, non-discrimination, safeguarding of minority rights, and secularism. For Ram and Bhatia, then, Indian citizenship does, has and will continue to signify a pluralist and secular form of citizenship.

The inquiry into religious identity and descent as spearheaded by the ‘illegal migrant’ question in citizenship law promises to create, or deepen, rifts in India. It creates a precarious situation for persons belonging to religious minorities, revives a ‘homeland for Hindus’ notion of India and places the rights of its resident refugees and stateless persons at risk. Thus, it is imperative for India to remind itself of the pluralist and secular ideals it was born with, particularly for determining Indian citizenship. Although there have been disagreements over whether *jus soli* or *jus sanguinis* form the rightful foundations of Indian citizenship, it is imperative for us to advocate and practice for a *jus soli*-based Indian citizenship; this is because *jus soli* complements the plurality of India as a nation, and protects persons born in its soil irrespective of their parents’ citizenship status. Thus, stateless persons like Sri Lankan Tamil refugees can acquire citizenship through a model based on *jus soli* citizenship.

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211 Dr Ambedkar noted that the citizenship provisions had been subject to prolonged debate, ‘I do not think that any other article has. given the Drafting Committee such a headache as this particular article’ in Constituent Assembly Debates Vol IX (10 August 1949) <https://www.constitutionofindia.net/constitution_assembly_debates/volume/9/1949-08-10> accessed 28 July 2021.

212 Ram (n 30); Bhatia (n 51); Rochana Bajpai, *Why Did India Choose Pluralism? Lessons from a Postcolonial State*, Accounting for Change in Diverse Societies (2017).

213 Ram (n 30); Bhatia (n 51).

214 Bhatia (n 153); Constitution of India 1950, Preamble, Part III.

215 Ram (n 30); Bhatia (n 51).

216 Discussed infra in Part IV.
2. Right to have rights and jus sanguinis citizenship for Sri Lankan Tamils

The question that remains unanswered now is: has the shift towards *jus sanguinis* citizenship in India caused Sri Lankan Tamil refugees to realise Arendt’s conception of the right to have rights? This section attempts to answer this question in the context of Camp-Refugees. 217

At first glance, it seems that the right to have rights does not apply to the citizenship status of Camp-Refugees. First and most significantly, Camp-Refugees hold a profound cultural and linguistic affinity with the Indian population of Tamil Nadu. Nasreen Chowdhory argues that through this sense of “belonging” 218 with the host population, Camp-Refugees can claim India’s rightful membership. 219 In other words, Camp-Refugees need not confine themselves to seeking rights based on nationality.

Second, there are growing instances of decoupling rights and citizenship. 220 In today’s world, merely belonging to a community may not mean being a politico-legal member and vice versa. 221 Anne-Sophie Bentz and Anthony Goreau-Ponceaud specifically illustrate this disaggregation of rights from citizenship by contrasting Camp-Refugees with the urban poor who are formally Indian citizens. 222 Bentz and Goreau-Ponceaud argue that despite formal citizenship, the urban poor receive scant State assistance. 223 Similarly, D Parthasarathy argues that formal citizenship has not guaranteed substantive rights for marginalised groups like Adivasis and Dalits. 224

217 Estate Tamils in India already hold Indian citizenship.

218 ‘…nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual … is in fact more closely connected with the population of the State conferring nationality than with that of any other State.’ as proclaimed in *Liechtenstein v Guatemala* [1955] ICJ Rep 4. This test is also known as the ‘genuine link’ test or the ‘social fact of attachment’ to a country as put by the International Court of Justice, see generally Audrey Macklin ‘Is it Time to Retire Nottebohm?’ [2017] 111 American Journal of International Law Unbound 492.

219 Chowdhory (n 5) ; Chowdhory (n 64).


221 Lamarr (n 35); Brubaker (n 43); Chowdhory (n 64); Soysal (n 220); Yuval-Davis (n 220); Benhabib (n 220); Patrick Balazo, ‘Better Must Come: Citizenship and Belonging after Statelessness’ [2019] 1 Statelessness and Citizenship Review 5

222 Bentz and Goreau-Ponceaud (n 79).

223 ibid.

In contrast, Camp-Refugees are given considerable benefits by the Central and Tamil Nadu governments. Camp-Refugees receive free medical services, food, water supply, utensils, clothing, electricity and monthly doles. There has been an incremental expansion in benefits over the years such as free colour TVs schemes, allowance for funeral expenses and sports equipment, issuance of driving licence among others. These measures indicate that Camp-Refugees enjoy a relatively decent condition of life in India despite lacking formal citizenship. In this way, Bentz and Goreau-Ponceaud contend that refugee status can be more beneficial than formal citizenship.

However, taking a holistic picture of Camp-Refugees' reveals that their lives are much more complicated. First, although government measures seem generous on paper, there are significant gaps in their implementation on the ground. For instance, refugee children were for long confined to camp schools because they did not have certificates to be admitted into regular ones. Although this situation has improved slightly for primary education, seeking higher education continues to be an arduous process for Camp-Refugees. In several cases, Camp-Refugees’ educational qualifications are not recognised in India. As a result, their employment opportunities are severely restricted, and they must resort to menial jobs or self-employment like shops selling vegetables and everyday items.

There are also numerous instances of corruption in camps, for example, in accessing the rations. It is difficult for poor Camp-Refugees to meet these demands for bribes. Further, living conditions in camps are grim. Poor


\[\text{225 Chimni (n 5).}


\[\text{227 Chimni notes that factions of the local population resent the Camp-Refugees for this ‘preferential’ treatment as in Chimni (n 5).}

\[\text{228 Bentz and Goreau-Ponceaud (n 79).}


\[\text{230 Chimni (n 7).}


\[\text{232 Chimni (n 5); I Jothi Gandhi v Social Welfare Development Office 2014 SCC OnLine Mad 8861 wherein the petitioner was denied retirement benefits because his employer claimed that the petitioner’s Sri Lankan educational documents did not meet the requisite criteria.}

\[\text{233 Chimni (n 7); Rajan and Valatheeswaran (n 229).}

\[\text{234 Chowdhory (n 64).}
sanitation and inadequate toilet facilities in camps lead to dirty septic tanks, overflowing drains, common bouts of typhoid, malaria and diarrhoea.\textsuperscript{235}

Government hospitals are located at a distance and Camp-Refugees notably face discrimination, even if they can reach them,\textsuperscript{236} and even then there are no mental health facilities available to them.\textsuperscript{237} Finally, camp facilities are unevenly distributed such that some have all amenities whereas others have none.\textsuperscript{238} Women are especially vulnerable to sexual assault, loss of material possessions, are tormented by the inability to feed their children, and disproportionately burdened with recreating a familial environment in camps.\textsuperscript{239}

The most significant want for Camp-Refugees is of addressing their lack of mobility, since they cannot move outside the camps freely.\textsuperscript{240} Camp-Refugees concede that although the government has undertaken generous measures, they do not have “normal” lives like citizens.\textsuperscript{241} For Camp-Refugees, normalcy would manifest in transport facilities, identity documents or resources to move outside the camps.\textsuperscript{242} As mentioned above, Indian courts have recognised the government’s unfettered right to restrict refugee movement by echoing the legal positions taken in \textit{Hans Muller} and \textit{Louis de Raedt}. Further, Camp-Refugees have often been suspected of having ties with the LTTE,\textsuperscript{243} and been detained in special LTTE camps,\textsuperscript{244} opening them up to increased interactions with the police, prisons and penalties.\textsuperscript{245} Picking up from Bentz

\begin{footnotesize}
\begin{enumerate}
\item ibid.
\item ibid.
\item Chimni (n 5).
\item 1946 Act, s 3 (2) (e).
\item Chimni (n 5).
\item Chimni (n 5); Chowdhory (n 64).
\item As in Part II (b).
\item \textit{Kalavathy} (n 121); \textit{State v V. Jayachandra}, (1997) 10 SCC 70; T. \textit{Udhayakala v Special Deputy Collector, Mandapam Refugee Camp}, (2018) 2 MLJ (Crl) 129; Sreekumar Kodyath and Sheethal Veetil, ‘Invisible People: Suspected LTTE Members in the Special Refugee Camps of Tamil Nadu’ [2017] 36 Refugee Survey Quarterly 126; Baulah Shekhar and Vijaya
\end{enumerate}
\end{footnotesize}
and Goreau-Ponceaud’s discussion, mobility, freedom, and normalcy are features that the urban poor, Dalits, and Adivasis enjoy on paper whereas Camp-Refugees do not.  

Additionally, Camp-Refugees enjoy little to no rights compared to Indian citizens. Notable exceptions are Articles 14 and 21 which apply to all persons irrespective of citizenship. For instance, Camp-Refugees are not entitled to civil and political rights like voting, holding office, freedom of speech, or equal access to public employment. Even for socio-economic aspects like housing or food, they remain at the government’s mercy, or vulnerable to withdrawal of benefits on account of resource crunches.

For instance, in *Gnanaprakasam*, the petitioner was a Camp-Refugee invoking Article 21 because his children’s engineering admission had been rejected. The court responded by saying that educational or other concessions for refugees were at the discretion of the State, which could not be claimed as a matter of right. Further, the court explicitly stated that Camp-Refugees should not try and claim equality of rights with citizens.

This discussion finds that rights and citizenship are increasingly becoming disaggregated in India. Although ethnic belongingness promises access to some rights through support from the State and the community, the continued significance of formal citizenship lies over the Camp-Refugees since they cannot realise any rights in India. Thus, only formal Indian citizenship seems to promise the secure presence of, and rights for, Camp-Refugees.
IV. THE WAY FORWARD FOR INDIAN CITIZENSHIP LAW AND SRI LANKAN TAMIL REFUGEES’ CITIZENSHIP

A. Pathways to Indian citizenship for Sri Lankan Tamil refugees

At the outset, this section explores pathways to citizenship in the present scenario wherein Indian citizenship law continues to remain in a state of flux. The contemporary instability in citizenship law has to do with the backlash against the 2019 Act, the SC’s decision on the future of the NRC and the FTs, and the potential of legal recognition for stateless persons and refugees in India. Thus, this paper recommends these pathways in the interim period for Camp-Refugees till the government undertakes a holistic overhaul of citizenship law.256

There is no universal route to Indian citizenship for all Camp-Refugees. This section provides pathways which may be explored to cater to the specificities of each group; first, Jaffna Tamils and Estate Tamils,257 and second, camp children.258 In citizenship determination for Camp-Refugees, factors like their nationality, possession of Sri Lankan citizenship and parents’ place of birth are relevant.

First, Jaffna Tamils and Estate Tamils were not born in India and cannot claim birthright citizenship.259 Second, most of the members of each group cannot seek citizenship by descent since their parents were Sri Lankan citizens.260 Third, from the date of the enactment of the 2004 Amendment, January 1, 2004, they cannot naturalise or register themselves as citizens because they are considered illegal migrants.261 Fourth, they may apply as refugees fleeing religious persecution under the LTV Guidelines at the discretion of the State.262

256 Further recommendations are discussed infra in Part IV (c).
257 First, it is imperative to note the similarities and differences between Estate Tamils and Jaffna Tamils, wherein the most significant difference is that the former are stateless, and the latter are refugees in India. This is because several Jaffna Tamils hold Sri Lankan citizenship on paper, but are refugees in India in light of the religious and linguistic persecution they faced. However, Estate Tamils are divided; some are stateless, and others are Sri Lankan citizens. Despite this difference between refugeehood and statelessness, Indian citizenship requirements for both groups are similar as in Chowdhory (n 64); Shastri (n 69); discussed in detail in part II (b).
258 Since the ‘repatriates’ already hold Indian citizenship, this paper shall not discuss them.
259 1955 Act, s 3.
261 1955 Act, s 5, s 6; Kakarala and others (n 8); this group includes those who married Indian nationals.
262 Long-Term Visa Guidelines, s 5; for Jaffna Tamils, the persecution is the danger of the civil war, whereas for Estate Tamils, the persecution includes the Ceylon Citizenship Act, 1948 and the civil war.
In considering children born in camps who are presently stateless, it is imperative to note that their claims to birthright citizenship depends on their date of birth. First, those born on or after January 26, 1950, and before July 1, 1987, are Indian citizens. Second, those born after July 1, 1987, but before January 1, 2004 are Indian citizens if either parent was an Indian citizen at the time of their birth. Similarly, registration of minors as citizens is contingent on their parents being Indian citizens. Given that most parents of children born in camps are refugees or stateless persons, it is unlikely that many children will be able to seek citizenship under this route.

Third, children born after the commencement of the 2004 Amendment must show that neither parent is an illegal immigrant at the time of their birth to claim citizenship. Similarly, camp children seeking citizenship through naturalisation or registration must show that they are not illegal migrants. As discussed above, Indian law conflates refugees with illegal migrants or foreigners, due to which Camp-Refugees continue to be categorised as foreigners or illegal migrants. Since the parents are illegal migrants, the children of these Camp-Refugees will be denied Indian citizenship by birth. Further, if the children continue to live as illegal migrants in India, they will be disqualified from Indian citizenship by naturalisation or registration.

Thus, the jus sanguinis-based category of illegal migrants acts as a disqualification from Indian citizenship across the board for Camp-Refugees. In this way, citizenship determination based on jus sanguinis results in statelessness, particularly multigenerational statelessness.

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263 The 1955 Act, unlike the 1961 Convention, does not provide that individuals born in India who would otherwise be stateless are Indian citizens as in 1961 Convention, art 1. Further, neither the 1955 Act nor the 2019 Act provide that a foundling found in a state shall be deemed born in that territory as in 1961 Convention, art 2 as in Kakarala and others (n 8).

264 1955 Act, s 3 (1) (a); further, see infra Part IV (b).

265 1955 Act, s 3 (1) (b).

266 Citizenship Rules 2009, r 2 (c), r 3, sch I Form I (7).

267 Kakarala and others (n 8); Chandrachud (n 27).

268 1955 Act, s 3 (1) (c)(ii).

269 1955 Act, s 5, s 6.

270 Acharya (n 111).

271 1955 Act, s 3 (1)(b), 3 (1)(c).


273 Kakarala and others (n 8).

274 Batchelor (n 189).
B. Role of courts in extending Indian citizenship for Sri Lankan Tamil refugees

Rulings by Indian courts on citizenship issues of Camp-Refugees and stateless persons are a mixed bag. However, the role of courts is of paramount importance in charting paths to inclusive citizenship generally, and specifically for Camp-Refugees because the State has unfettered discretion in dealing with these groups under present law.\(^{275}\)

First, in *Sasikumar*,\(^ {276}\) the Madras High Court (“HC”) held that a Sri Lankan Tamil refugee born in India was a citizen under the 1955 Act since they were born in India on March 10, 1987.\(^ {277}\) In a similar vein, the noteworthy *Namgyal Dolkar* decision held that children of Tibetan refugees born in India after January 26, 1950, and before July 1, 1987, are Indian citizens by birth.\(^ {278}\)

Although these decisions seem like a stride forward for stateless persons’ citizenship in India by the court’s reading, a close reading of Section 3 reveals that the petitioners in *Sasikumar* and *Namgyal Dolkar* were eligible for citizenship by the simple fact of their birth in India. The courts in both cases were tasked with interpreting textbook illustrations of Section 3(1)(a), under which all persons irrespective of all other factors (like the citizenship status of their parents, religion of the applicant) are Indian citizens if they are born in India’s territory after January 26, 1950, and before July 1, 1987.\(^ {279}\) Section 3 only complicates requirements for persons born after July 1, 1987, by looking into one

\(^{275}\) As in Part III (a).


\(^{277}\) 1955 Act, s 3 (1) (a).

\(^{278}\) *Namgyal Dolkar v Govt of India, Ministry of External Affairs* 2010 SCC OnLine Del 4548 : (2010) 12 DRJ 749; this stance has been followed by other HCs as well as in Tibetan Review, ‘Third High Court in fourth case upholds Tibetans’ Indian citizenship status’ (15 March 2017) <https://www.tibetanreview.net/third-high-court-in-fourth-case-upholds-tibetans-indian-citizenship-status/>; *Namgyal Dolkar* also received executive recognition in 2017 when the government allowed applications from Tibetan refugees born in India after January 26, 1950, and before July 1, 1987, for Indian citizenship as in *Phuntsok Wangyal v Ministry of External Affairs* 2016 SCC OnLine Del 5344 and *Tenzin Passang v Union of India* 2017 SCC OnLine Del 12865 : (2017) 240 DLT 649; however, despite allowance for applications from Tibetan refugees, the bureaucratic procedure was quite technical. Tibetan applicants had to abide by certain conditions, including a prohibition on returning to original refugee settlements and renouncing certain benefits in writing. These conditions discouraged many Tibetans from applying because they wished to visit refugee settlements or could not afford to relinquish governmental benefits. For instance, one refugee had to support her parents financially and could not afford to live outside the refugee settlement. These executive impediments show that court rulings by themselves are not sufficient for refugees to attain citizenship as in Abhinav Seetharaman, ‘Tibetan refugees in India: The challenges of applying for Indian citizenship’ [2020] 54 Revue d’Etudes Tibétaines <http://himalaya.socanth.cam.ac.uk/collections/journals/ret/pdf/ret_54_05.pdf> accessed 28 July 2021.

\(^{279}\) 1955 Act, s 3
or both parents’ citizenship status.\textsuperscript{280} Thus far, courts have not provided meaningful relief for stateless persons seeking Indian citizenship.

Second, in \textit{Felix Kaye},\textsuperscript{281} the Delhi HC declared that the technical status of a person being an illegal migrant does not bar the Indian government from considering their application for citizenship. For the HC, even though a person does not have valid travel documents at the time of entering India or such documents have expired, such person is eligible to apply for citizenship. Similarly, in \textit{Kiran Gupta},\textsuperscript{282} and \textit{National Human Rights Commission (“NHRC”)},\textsuperscript{283} the courts held that stateless persons have the right to apply for Indian citizenship which should be considered by the government. The striking aspect in \textit{Kiran Gupta} and \textit{NHRC} is the courts’ cognisance of the petitioner’s statelessness, and attempt to prompt the government to consider their applications for citizenship.

Third, in \textit{Ulaganathan},\textsuperscript{284} the Madras HC made two key findings. First, the HC said that keeping refugees in campsites in a prolonged state of statelessness is a contravention of Article 21 of the Indian Constitution. This ruling is in sharp contrast with the line of judgments that allowed the state unquestioned discretion in keeping refugees in camps.\textsuperscript{285}

Second, the court applied \textit{Felix Kaye} specifically in the context of Sri Lankan Tamils. In support of \textit{Felix Kaye}’s ratio, the court stated that there are compelling reasons for relaxing documentation requirements for refugees.\textsuperscript{286} The court reasoned that a person on the run for their life could not legitimately be expected to adhere to technical provisions of the law. Further, in the court’s opinion, if such person has integrated themselves sufficiently in local society, they should be allowed to apply for formal citizenship.\textsuperscript{287}

However, there is an important caveat to the \textit{Ulaganathan} decision, wherein the petitioner was a descendant of Estate Tamils,\textsuperscript{288} a point the judgment paid special attention to.\textsuperscript{289} The court based its benevolent finding on the fact that the petitioners’ forefathers hailed from Tamil Nadu itself. Thus, while \textit{Ulaganathan}’s application may be reserved for Estate Tamils wishing to apply

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\item \textsuperscript{280} 1955 Act, s 3 (1)(b), s 3 (1)(c).
\item \textsuperscript{281} \textit{Felix Kaye v Foreigners Regional Registration Office} 2018 SCC OnLine Del 8212.
\item \textsuperscript{282} \textit{Kiran Gupta v State Election Commission} 2020 SCC OnLine Pat 1641.
\item \textsuperscript{284} \textit{P Ulaganathan v Govt. of India} 2019 SCC OnLine Mad 8870 : AIR 2019 Mad 246
\item \textsuperscript{285} As discussed in Part III (a).
\item \textsuperscript{286} \textit{Ulaganathan} (n 284).
\item \textsuperscript{287} ibid.
\item \textsuperscript{288} As in Part II (b).
\item \textsuperscript{289} \textit{Ulaganathan} (n 284).
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for citizenship, it seems to echo the logic of ethnic belongingness and descent like recent amendments to citizenship laws.\textsuperscript{290}

The positive takeaway that emerges from these rulings is that courts have taken cognisance of statelessness in India, and have tried to nudge the government to proactively consider granting citizenship for such persons.\textsuperscript{291} Further, invoking Article 21 in regard to stateless persons’ rights can be a route towards reading in better rights for such groups. In the interim period, courts can crack down on executive actions that prolong statelessness, and cast a positive obligation on the government to reduce statelessness by granting citizenship.

However, the downside to the judgments discussed above is that they have made little headway in meaningfully lifting stateless persons and Camp-Refugees from their plight, and guide them onto a path for acquiring citizenship since they continue to place the decision in the hands of executive discretion. In particular, the Madras HC invoked the idea that courts cannot step beyond the “\textit{lakshmanrekha}”\textsuperscript{292} and grant citizenship since that was the domain of the government alone.\textsuperscript{293}

Crucially, courts have also missed opportunities to deliberate on the impact of the determination of whether an applicant or their parents is an illegal migrant on alleviating or exacerbating statelessness. For this purpose, courts can build on Felix Kaye’s holding that individuals who are on the run for their lives or for similar genuine reasons cannot be expected to provide perfect documentation to apply for Indian citizenship. With this idea in mind, courts can help break down the documentation-heavy citizenship determination process that exists today.

\textbf{C. The future of Indian citizenship law for stateless persons}

It is evident that the abovementioned solutions provide only partial relief for Camp-Refugees specifically, and stateless persons in India generally. In light of this void, this paper proposes a number of general suggestions for the future of Indian citizenship law that the government must give serious consideration. The need for India to take cognisance of its stateless population, including Camp-Refugees cannot be overstated. In recent years, citizenship, or the lack of it, has increasingly become a political weapon.\textsuperscript{294} When this threat

\textsuperscript{290} As in Part III.


\textsuperscript{292} In modern Indian parlance, Lakshman Rekha is a bright-line rule or test.

\textsuperscript{293} \textit{Ulaganathan} (n 284).

\textsuperscript{294} Sarker (n 125).
is combined with the general precarity of being stateless, one can realise the rights deprivation and insecurity that stateless persons in India experience on a daily basis. Following the 1954 Convention and 1961 Convention, India must shoulder the responsibility to reduce and prevent statelessness in its territory.\(^{295}\)

At the outset, the government must take cognisance of stateless persons, and compile comprehensive data on the number of stateless persons in India,\(^{296}\) which will not only help the government understand the extent and gravity of the situation, but also facilitate legal professionals, academicians and humanitarian organisations who are willing to offer assistance.\(^{297}\)

Second, the legislators must remove the bar on citizenship by registration and naturalisation for persons who may be categorised as illegal migrants.\(^{298}\) This will allow Camp-Refugees, who are otherwise eligible to acquire citizenship through these modes, to overcome the barrier of being an ‘illegal migrant’. Similar success has been noticed through Sri Lanka’s 2003 Grant of Citizenship Act, which perfectly combined legal change with political willingness. This law either granted automatic Sri Lankan citizenship to Estate Tamils or simplified procedures to help them acquire citizenship.\(^{299}\)

Third, the legislator must lift the partial bar on citizenship by birth for persons whose parent or parents may be illegal migrants.\(^{300}\) This paper believes that the law must specifically provide that individuals who are born in India

\(^{295}\) ibid.

\(^{296}\) Kakarala and others (n 8); in 2014 and 2015, the government admitted that there were 102467 stateless persons and 101896 stateless persons respectively from Sri Lanka in India, whereas in 2021, the government stated that the new figure was 92978 Sri Lankan Tamil refugees as in Lok Sabha Unstarred Question 894 (2014) <http://164.100.24.220/loksabhaquestions/annex/7/AU894.pdf>; Lok Sabha Unstarred Question 1360 <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2021-pdfs/LS-09022021/1360.pdf> accessed 28 July 2021.


\(^{298}\) Centre for Public Interest Law: Jindal Global Law School, Securing citizenship: India’s legal obligations towards precarious citizens and stateless persons (2020); 1954 Convention, art 32 provides that contracting parties should facilitate the assimilation and naturalisation of stateless persons and to expedite naturalisation proceedings; UNHCR, Draft articles on the Protection of Stateless Persons and the Facilities for their Naturalisation (2017).

\(^{299}\) Estate Tamils who had no citizenship documents could make a “general declaration” countersigned by a justice of the peace which would act as proof of citizenship. alternatively, those Estate Tamils with Indian passports could make a “special declaration” to renounce Indian citizenship which was countersigned by the Commissioner for the Registration of Persons of Indian Origin in Colombo and thereby acquire Sri Lankan citizenship since India does not permit dual citizenship as in UNHCR 2015 (n 88).

\(^{300}\) Centre for Public Interest Law: Jindal Global Law School (n 298); 1961 Convention, art 1 provides that contracting states shall grant citizenship to persons born in their territory who would otherwise be stateless.
ought to be citizens if they would otherwise be rendered stateless. This change will allow camp children born in India to acquire *jus soli* citizenship, which will in turn prevent multigenerational statelessness.

Fourth, India must ratify the 1951 Convention, 1954 Convention, and the 1961 Convention, and also recognise and provide for stateless persons and refugees under domestic law. Such a move will provide stronger rights (like the rights to reside or work) and safeguards for refugees and stateless persons, and streamline the process for them to acquire Indian citizenship. In the meantime, the government must approve of applications from these groups under the LTV Guidelines irrespective of, *inter alia*, religion.

Fifth, the government must move away from its current stance of documentation-heavy determination of citizenship and contingent rights. While this change is being effected through amendments, the government must conduct nationwide camps for providing documentation to communities and regions where they may be sparse, and raise awareness of the need for such documentation. Further, the State must provide legal aid to stateless persons and refugees who are appearing before courts or FTs in lieu of immigration law cases.

V. CONCLUSION

This paper has attempted to study the currents of Indian citizenship law by analysing various politico-legal developments in India and around the world, particularly in the aftermath of World War II. In this regard, it has drawn upon Arendt’s writings on citizenship, ethnicity and rights, and scrutinised the applicability of her idea of the ‘right to have rights’ for stateless Sri Lankan Tamil refugees in India.

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302 Kakarala and others (n 8); Centre for Public Interest Law: Jindal Global Law School (n 298); Asha Bangar, ‘Statelessness in India’, *Statelessness Working Paper Series No 2* (2017).
304 1951 Convention, art 1.
306 Centre for Public Interest Law: Jindal Global Law School (n 298); 1945 Convention, art 25 provides that stateless persons shall have access to administrative access in acquiring documents or certification.
307 UNHCR 2020 (n 303); 1954 Convention, art 16 provides for stateless persons’ right to access courts.
Indian citizenship law has increasingly shrouded itself in *jus sanguinis* citizenship, which determines insiders and outsiders based on shared ethnic identity. However, *jus sanguinis* as enshrined in amendments to the 1955 Act, and most recently in the 2019 Act, has a powerful potential to exacerbate statelessness, or of preventing India from reducing the incidence of stateless within its territory. One such effect that has been felt immediately with the operation of the 2019 Act is fear among Sri Lankan Tamil refugees that they will continue to live as stateless persons in India indefinitely or face deportation, and beget their lack of citizenship to their future generations.

Caught in a limbo between being insiders based on shared ethnicity with Tamil Nadu, but being outsiders through the lack of formal citizenship, Sri Lankan Tamils in Indian refugee camps have experienced a formidable extent of Arendt’s ‘right to have rights’. Their experience is a searing reminder of the continued importance of formal citizenship in accessing rights.

Indian citizenship debates have been cognisant of the link between *jus sanguinis*, statelessness and a deterioration into an ethnonationalist state like European nations post World War II. Most prominently, Ajit Prasad Jain said before the Constituent Assembly that “citizenship constitutes the rock foundation of our constitution”.

In light of the paramount importance of formal citizenship in ascertaining belongingness, security and rights, this paper has suggested for a forward-looking and inclusive citizenship law for India that is based on *jus soli* as opposed to *jus sanguinis*. Such an approach stands to benefit the stateless persons that India is currently housing, including Sri Lankan Tamils.

To extinguish Sri Lankan Tamils’ lack of citizenship, this paper has put forth interim pathways to Indian citizenship under prevailing law, and attempted to cast a stronger obligation on courts to make sharper analyses of the shifts in citizenship law, particularly the requirement of documentation and the repercussions of the introduction of the category of illegal migrant. In the long-term, however, this paper strongly believes in the need for a structural overhaul of citizenship law towards *jus soli*, a simplified naturalisation process, and a rejection of the documentation-heavy determination of citizenship and rights like the NRC process.