Re-examining the *Noncitizen* Within the Frame of Citizenship: Reflections and Considerations from the Indian experience

Reexaminando al *no-ciudadano* dentro del marco de la ciudadanía: reflexiones y consideraciones desde la experiencia india

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Recibido: 18-06-2024
Aceptado: 11-09-2024

Abstract

In previous works we have remarked that citizenship has evolved from a statist notion to denationalised, post-nationalised, disaggregated, de-territorialised and cosmopolitanised notion of rights[2]. Citizenship is a legal status based on nationality by the nation state. The status accorded by state denotes legal and social rights in society. Citizenship indicates a territorial and bounded notion of rights based on membership. But the post globalisation debates suggest an expansion and decoupling of nationality driven rights to a more holistic understanding of rights-based discourse accommodating the question of noncitizens. The paper seeks to examine the *noncitizen* as a category to understand whether it can exist outside the binary of citizenship while engaging with the Indian Citizenship Amendment Act, 2019. The paper traces the journey of a noncitizen to a citizen, while attesting citizenship to be a territorialised set of rights within the nation state.

Keywords: citizenship, non-citizenship, Citizenship Amendment Act 2019, India, national identity.

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[2] Nasreen Chowdhory, Shamna Thacham Poyil, and Meghna Kajla. "The Idea of Protection: Norms and Practice of Refugee Management in India." Refugee Watch 53 (2019): 36–54.

Resumen

En trabajos anteriores hemos resaltado que el concepto de ciudadanía ha evolucionado de una noción estatalista a una noción de derechos desnacionalizada, posnacional, desagregada, desterritorializada y cosmopolita (Chowdhory et al, 2019). La ciudadanía es un estatus legal basado en la nacionalidad del Estado-nación denota derechos legales y sociales. La ciudadanía indica una noción de derechos ligada al territorio, pero los debates posglobalización sugieren una expansión y desacoplamiento entre derechos impulsados por la nacionalidad y un entendimiento más holístico de un discurso sobre los derechos que acomoda cuestiones sobre los no-ciudadanos. Este trabajo busca examinar el no-ciudadano como una categoría para comprender si este puede existir fuera del binomio de ciudadanía, al mismo tiempo que aborda el debate sobre la enmienda a la Ley de Ciudadanía India de 2019. El trabajo traza el viaje del no-ciudadano al ciudadano, mientras se confirma que la ciudadanía es un grupo de derechos territorializados dentro del Estado-nación.

Palabras-clave: ciudadanía, no-ciudadano, Enmienda a la Ley de Ciudadanía India de 2019, India, identidad nacional.

1. Introduction

Most literature on citizenship presumes a causal relationship between a citizen and a noncitizen, where the latter is the absence or denial of rights. A citizen is assumed to be a legitimate, nationality driven individual/s having rights based on territorial sovereignty as determined by the nation state. And the quintessential 'other' is the opposite of citizenship that requires some probing. To Mezzadra, "if the colonial subject is the "other" of the metropolitan citizen, their relation cannot be conceptualized in the same way in which we can understand for instance, the relation between the "barbarous" and the citizen of the ancient Greek polis"[3]. Balibar (2004) on the other hand, suggests, it is the 'lesson of otherness', that views of citizenship in modern nation-states which consequently produces the 'constitutive outsiders'. In the postcolonial studies, the otherness is widely recognized as an essential element of European identity since the beginning of modernity.

To understand what constitutes the 'other'- questions arise whether the 'other', aliens, noncitizens are similar? The 'otherness' is not a relationship of 'simple opposition' which denotes exclusion, instead a relationship of forclusion, where the outsider is present 'discursively and constitutively in delineations

[3] Sandro Mezzadra, "Citizen and Subject: A Postcolonial Constitution for the European Union." Situations. 1: 2 (2006): 31–42.

of citizenship' (Spivak 1999). Scholars argue that forclusion is "reproduced and reinscribed continually through legal and judicial pronouncement(s), so much so that the 'other' constantly cohabits the citizen's space in a relationship of incongruity"[4]. In most instances states operate with a border regime that produces mobility of "selective and differential inclusion of migrants, which tends to disrupt the universal and unitary figure of modern citizenship" hence constituting the 'other'. The idea is to interrogate what produces the 'citizen and subject' to borrow Mezzadra and whether this constitutes the "other". Often, the presumed other is the noncitizen who is pitted against the citizen, thereby assuming a neat binary between the two concepts and a linear relation between a citizen and a noncitizen. Navigating on a theoretical premise of disaggregated citizenship, the argument proposed is that a noncitizen does not emerge out of the debate on citizenship, instead these concepts are two sides of the same coin.

Drawing from some of the previous scholarly works published in January 2014, a special issue in the Critical Review of International Social and Political Philosophy (CRISPP), titled 'Introduction: Domination, migration and non-citizens', edited by Iseult Honahan and Marit Hovdal-Moan, in Politics and Society, 'The rights of noncitizens', edited by David Plotke and in 2015 Theorising noncitizenship: concepts, debates and challenges by Katherine Tonkiss and Tendayi Bloom in a Special Issue in Citizenship Studies, investigates the theorisation of noncitizens. The paper seeks to unravel some of these discussions and challenges the binary by theoretically engaging with the concept of noncitizen as a single term. The paper will attempt to develop a nuanced understanding on noncitizen and complicate the relation between the citizen and the noncitizen and develop a theoretical understanding of what constitute the noncitizen.

The prevalent literature on citizenship assumes the importance of state and state-processes in acknowledging the idea of insider and that of an outsider. An insider is assumed to be a citizen, and an outsider is often the noncitizen. A claim can be made that understanding noncitizen without the hyphenation rings in the notion of claim-making that citizen and noncitizen are two sides of the same coin, with state as the referee. In the first part of the paper, I will analyse the noncitizen as a category drawing from the citizenship literature and the way it has expanded. An attempt is made to locate the stateless people; and noncitizen within the ambit of citizenship studies to underscore the transition of a noncitizen to citizen in the context of South Asia. In the second section, I will locate the discussion within South Asia or more specifically in the Indian context, and debates on Citizenship Amendment Act (CAA) 2019 to assert that despite the territorialised notion of rights of citizenship it has attempted

[4] I am grateful to the reviewer for this input. The comments and suggestions have enhanced the arguments of the paper.

to incorporate a deterritorialised notion of rights of noncitizen within the framework.

2. From a citizen to a noncitizen: A short discussion

This section will demonstrate the transition of a citizen to that of a noncitizen while tracing the trajectory of the citizenship literature and the expansion of rights-based understanding. It will engage with the notional expansion of rights of citizens to assert that the process of expansion has been incomplete and inconsistent. The literature on citizenship has evolved to the notions of denationalised, post-nationalised, disaggregated, de-territorialised and cosmopolitanized citizenship (Chowdhory, Poyil and Kajla, 2019), marking a transition to a nuanced expansion of rights. Towards that scholars' debate on the significance of membership, boundedness, and threshold to determine the adaptability of citizenship. The traditional approaches to citizenship: rights-based understandings- Marshall (1949),[5] Black (1969),[6] and Shklar (1991)[7] examine the accommodative notions of "citizen-as-desirable-activity" and "citizen-as-identity," or group identity and group participation in a multicultural discourse.[8] Whereas, the traditional approach to citizenship is limited to a "formal-national-membership," with emphasis on rights of members more than non-members that overlooks the noncitizens. Typically, citizenship assumes three dimensions of rights i.e., legal, political and questions of identity. Therefore, following Arendt's 'right to have rights' (1968), with (Marshall [1950] 1992) the status of citizenship is a "gateway to a range of civil, political and social rights". In the political – citizenship denotes active participation, wherein individual holds the status, which is a classical Greek definition of citizenship, that reflects a republican notion of political membership in contrast to being a subject of a sovereign (e.g. Dagger 1997). The third is identity-based wherein "citizenship confers on an individual the identity of membership in the citizenry" (Joppke 2007).

The accommodative context of the multiculturalists in the citizenship literature argues, that "citizen as identity" should take precedence over citizenship as a legal status of membership. Soysal (1999, 2000) asserts, the necessity of "decoupling in citizenship" between rights and identity to

[5] T. H. Marshall, *Citizenship and Social Class* (Cambridge: University Press, 1949). Marshall discusses progressive rights in civil, economic, and political spheres in capitalist societies.

[6] As quoted by Bosniak (2000), Black (1969) "employs citizenship" as rights to have "full and equal membership."

[7] Judith N. Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge: Harvard University Press, 1991). Shklar refers to individual standing in society.

[8] Will Kymlicka and Wayne Norman, "Return of the Citizen: A Survey of Recent Work on Citizenship Theory," Ethics 102, no. 2 (1994): 352-381.

understand claims beyond nationality. The identity-based claims tend to be more particularistic in nature in contrast to nationality driven rights. Brubaker and Laitin (1998, 132) argues that it is impossible to "decouple" the rights and the identity aspects of citizenship as both are interconnected within citizenship, whereas the politics of citizenship is based on principles of nationhood based on political social membership. Another school of thought focuses on the decreasing role of the state due to globalization to understand the expansion of rights. Soysal (1994) and Sassen (1996, 2000) posits that the significance of the state is decreasing in the globalized world, with rights acquiring universal meaning; thus, demonstrating a shift in focus from a state-based conception of rights to one that is universal. But as rights assume universal meaning, identities of individuals express specific traits as determined by the state. Hammar[9] and Brubaker contend that the rights of immigrants should be based on residence rather than nationality. A concern shared by various scholars to discuss how territorial location of citizens remains the focus of citizenship rights based on the duration of residence as opposed to other ways of gaining membership to a state via "nationality" or marriage[10]. While examining the scholarship on implications of multiculturalism on citizenship literature: two points can be asserted first, the decreasing importance of the state, especially because of globalization, and construction of a "postnational" (Soysal 2000) citizenship that leads to "de-coupling of political identities from national membership" (Sassen 1999). Second, with the emergence of de-territorialized citizenship, identity need not be tied to specific national residency, ethnicity, language, or other allegiance(s). The new disaggregated citizenship allows "individuals to develop and sustain multiple allegiances and networks across state boundaries, in inter- as well as transnational context" and cosmopolitanism based on multiple allegiances across borders can sustain different communities of language, culture, etc. (Benhabib 2004, 174). Furthermore, citizenship framework though stretched to accommodate some of the basic developments and need of human existence, remained individual focused. Other scholars have reiterated the significance of nation state: Sassen (2000); Soysal (1994)[11] discuss the issue of postnational citizenship from different perspectives. Sassen argues postnational citizenship is broader than the concept of denationalized citizenship, as state remains the point of interest, citizenry rights can evolve outside the state, while denationalized is when citizenship rights remain within the domains of the state. The universal

[9] Tomas Hammar, "Citizenship: Membership of a Nation and of a State," *International Migration* 24 (1986): 735-47. And Tomas Hammer, *Democracy and the Nation State*. (Aldershot: Gower, 1990).

[10] For further discussion read Nasreen Chowdhory, Belonging in exile and 'home': the politics of repatriation in South Asia, PhD Dissertation, (McGill University 2007).

[11] Yasmine Soysal, Limits of Citizenship: Migrants and Postnational Membership in Europe, (Chicago: Chicago University Press, 1994).

nature of rights has remained more of an ideal than in practice thus being less humane towards noncitizens.

Falling in line with Linda Bosniak's (2000)[12] argument: "citizenship as practiced within the community's boundaries presumes and requires universality", suggest citizenship to be "boundary-defining mode" of rights-based understanding of citizenship. In this latter mode, citizenship is a status: to individual nation states, where the citizenship status is almost always restricted, and available only to those who are recognized as its members, thus making it a "nationally bounded status". The issue of *alienage* is critical to the understanding of universal citizenship. Alienage as a category raises questions about the ways in which the citizenry boundaries are constituted[13]. Alienage challenges citizenship at two levels: one, boundary or threshold citizenship, two, internal question related to the universal idea of citizenship. This internal boundary exists because, under the laws of most states, the mere fact of a person's physical presence within the state's territorial borders does not automatically entitle him or her to formal nation state citizenship. National citizenship status serves as a legal divide inside the political community, separating full members from those located within the national territory but who are not formally recognized as full members. Most states admit foreigners to their territory under some circumstances; and not infrequently, foreigners enter states' territories without express permission. Question arises on how boundaries are constructed based on a presumed "bounded citizenship".

To understand, membership rights it is critical to engage with the way states impose principles of conformity to state practices as a criterion of acceptance and denial, to be an issue of exclusion based on opposition to belonging within the domain of state by virtue of being born within the paradox of statehood structure. There is a notion that citizenship is based on the presupposition that political belonging and positions are derived from its placement within the nation state. Membership can be extended to community to be part of the existing sense of belonging as part of citizenship discourse, but it remains quite exclusive. Bosak (2003)[14] argues two issues are different as one "advocates principles of inclusion when citizenship is associated with rights, while the other denotes exclusion, when membership is associated with community". Soysal (1994: 159) observes, "in the postwar era these two elements are decoupled. Rights increasingly assume universality, legal uniformity, and abstractness, and are defined at global level. Identities in contrast, still expresses particularity,

[12] Linda Bosniak, "Universal Citizenship and the Problem of Alienage", Northwestern University Law Review; 94, 3, (Spring 2000), 963-982

[13] Ibid, p. 973

[14] Tanya Basok, "Human Rights and Citizenship: The case of Mexican Migrants in Canada" Working Papers 72, Center for Comparative Immigration Studies, University of California: San Diego, (April 2003).

and are conceived of as territorially bounded. As an identity, national citizenship – as it is promoted, reinvented, reified by states and other social actors – still prevails". In agreement with Bosak's analysis that membership within community can be denied if one does not politically belong to a nation state, the paper investigates the problem of the construction of noncitizen. In other words, belonging to a group based on identity markers can be difficult and quite contentious. On one level, members may belong to a group, but will be denied political rights, hence such belonging remains confined within the framework of social membership only. On similar line, Yuval-Davis (1999)[15] views citizenship as a multi-layered construct where each layer (local, ethnic, national, cross, etc.,) can interact but remain as collective and beyond the 'constitutive boundaries'. Therefore, it is possible to view citizenship beyond the bounds of a nation state. While I agree with the analysis, it seems difficult to ascertain the nature of formal and informal rights based on either membership or political belonging within the nation state.

Citizenship appears to be a political tool to carve out boundaries of belonging based on a contractual relationship between the state and its subjects, which also provides a sense of belonging based on legal ties to the nation state. State is the structural connection between citizenship and territories (Dear 1993: 591-592)[16] wherein it is a complex body of institution(s) that provides personal safety and a legal sense of belonging. Membership, nationality and belonging based on these criteria can be ordained by the nation state, i.e., citizenship as a "bounded exclusive national category" remains the foci of the nation state. Thereby, universal membership can be given to those who legally belong within the perimeter of the state boundaries, thus, excluding the noncitizens. The presence of aliens in this context challenges the not-so-separate categories of internally bounded categories of citizenship. Aliens have primary membership in the country of origin, which thereby excludes any possibility of membership in countries of asylum. In some countries, refugees are treated differently, some are accorded the status of denizens (Hammar 1990: 13)[17]. These are foreign citizens entitled to equal treatment in all spheres of life, with full access to the labour market, business, education, social welfare, even to employment in branches of the public services, etc. Kibreab (1999) argues denizens enjoying similar status of national/ citizens are less likely to return to their countries of origin. Some European countries have attempted to reduce disparities between citizens and denizens by extending some rights of

[15] Nira Yuval Davis "The Multi-layered Citizens: Citizens in 'Glocalization'", International Feminist Journal of Politics 1:1 (1999):119-136.

[16] M. J. Dear, State, in The Dictionary of Human Geography, 3rd ed. (RJ. Johnston, D. Gregory and DM Smith (ed.) (Oxford: Blackwell, 1993) pp. 591-593 as cited in Joe Painter and Chris Philo, *Spaces of Citizenship: an Introduction* Political Geography vol. 14, no. 2, (1995) pp. 107-120.

[17] T. Hammar, *Democracy and the Nation-state: Aliens, Denizens and Citizens in a World of International Migration,* (Aldershot: Avebury, 1990).

the latter (Baubock 1991a&b)[18] i.e., more rights were attributed to immigrants based on residence and contribution to economic, social, and political life of the community etc.

Therefore, it seems that within the domain of citizenship studies, rights are legally sanctioned by, the constitution to citizens and the category of noncitizen is subsumed under refugees, aliens, denizens, guestworkers and stateless people. A noncitizen can be either a refugee/ alien/ denizen/ stateless etc., but they are not a necessary negation of a citizen. Sometimes the discussion on noncitizen remains limited to either a refugee or an alien, instead the focus when drawn to a stateless person is presumed to be either the absence of state or state negating rights of citizen who is transformed into a noncitizen either based on denial or appropriation. In this paper I examine statelessness as neither negation of state nor the absence of state, instead it is the act of the state itself that attempts to render a person stateless hence a noncitizen. It is a classic case where individual may be presumed to be a citizen once but deemed a stateless via *acts of citizenship,* denial of rights constitutes the basis of rightlessness. Therefore, a noncitizen is dispossessed of rights frame which renders the individual either stateless or an alien or dispossessed person. Dispossession, can be understood as deprivation that causes them to undertake forced migration as the tangible outcome of their material dispossession of rights as a citizen of the state. Being dispossessed is linked to the human condition of perpetual precarity induced by the "quivering humanity of those living, differing, sexing, mattering, touched and touching otherwise, elsewhere" (Butler and Athanasiou 2013, 25) as quoted in (Chowdhory and Poyil, 2023)[19]. In some instances, dispossession of rights should be seen as a case of "denied belonging" by the state, by artificially creating the category of "the other" in the context of newly independent nation states of South Asia (Chowdhory 2019).

Looking at the ways citizenship, in theory and in practice, converge (and diverge) allows us to understand how noncitizens can share in the "experience of citizenship". The formal aspects of citizenship make it difficult for noncitizens to exercise citizenship (Becerra 2014)[20], the debate on noncitizen revolves around the discussion on denial of citizenship rights (as discussed earlier). This fallacious understanding needs to be revisited to develop a deeper conversation on what criterions define a noncitizen? Also, what constitutes the basis of the normative understanding of lack of rights of noncitizens? Barry Hindess

[18] R. Baubock,"Migration and Citizenship." *Journal of Ethnic and Migration Studies* 18 (1) (1991): 27–48. https://doi.org/10.1080/1369183X.1991.9976280.

[19] Nasreen Chowdhory & Shamna Thacham Poyil (2023) "Dispossession and Displacement: Notes from South Asia", Journal of Borderlands Studies, 38:4, (2023) 549-562, DOI: 10.1080/08865655.2022.2151032 To link to this article: https://doi.org/10.1080/08865655.2022.2151032

[20] M. Victoria Quiroz Becerra, Performing Belonging in Public Space: Mexican Migrants in New York City, *Politics & Society*, Vol. 42(3) (2014): 331–357 DOI: 10.1177/0032329214543257

(2000) has argued, the institution of citizenship is responsible for dividing the world's population into respective states and can be described as involving the 'international management of populations". Citizenship and rights are accorded to those who remain bounded within the limits of territoriality of state. The presumption is noncitizen might not exist in this realm hence a non-entity. A noncitizen can be a migrant, alien, refugee, or a stateless person. Each category is presumed under the burden of being a noncitizen instead of being either a migrant or refugee. Hence the discussion would revolve around the idea of what goes into the making of a noncitizen?

The dispossessed figure is a noncitizen, devoid of political status and denied of any rights which can be political, social, or economic, a point that resonates with the idea of insurgent citizenship where "contemporary metropolis is a site of collision between forces of exploitation and dispossession… contradictory movements for new kinds of citizen power and social justice" Holstan (2009)[21]. Noncitizen migrants engage in making claims to belonging, to rights and to being political through a variety of strategies. In doing so they enact a form of citizenship 'from below'. The question is a significant one that cannot be treated lightly. Barry Hindess (2004: 307) questions, 'What's so great about citizenship?' and argues for the need to not simplistically assume citizenship to be a progressive institution within which all peoples wish to be incorporated[22]. State is a crucial aspect of understanding the situation for noncitizens. Noncitizenship is not merely the opposite of citizenship, there can be varied enactments of being both a citizen and a noncitizen. Dispossession is fundamental in constituting and perpetuating the plight of refugees which manifest as material dispossession of property, status and rights or at a normative level as a loss of dignity (Chowdhory and Poyil 2023). A noncitizen is a dispossessed figure who is not a citizen yet can make a claim to belong. I would like to argue that dispossessed figure is denied both access and any assertion of rights leading to loss of rights and constituting the stateless person. The subsequent sections examine stateless persons and what constitute the basis in the making of a noncitizen.

3. Defining a stateless person

The making of a noncitizen has much to do with both statelessness and a migrant. Both emerged from the ambit of noncitizen, and both make substantial claims of belonging to stay within the protective mechanism

[21] See James Holstan, "Insurgent citizenship in an era of global urban peripheries", Cities and Society, 21(2) (2009), Permalink https://escholarship.org/uc/item/6977c8xd

[22] See Peter Nyers and Kim Rygiel *Introduction: Citizenship, migrant activism and the politics of movement* In Citizenship, Migrant Activism and the Politics of Movement, (Routledge, 2014).

of state structure. The idea of assemblage provides a useful conceptual and methodological metaphor for understanding the social production and organization of noncitizenship (Ong and Collier 2005; Sassen 2006; Villegas 2015). Statelessness, or the condition of having no legal ('de jure') or effective ('de facto') citizenship, has many causes (Office of the United Nations Office High Commissioner for Refugees [UNHCR] 1999)[23]. The mechanisms of de jure statelessness may be a state's citizenship laws, which are often premised upon the principles of: (1) *jus soli*, basing nationality on place of birth; (2) *jus sanguinis*, basing nationality on familial descent, or (3) some combination of *jus soli* and *jus sanguinis*. Statelessness in popular parlance is a construct that is antithetical to citizenship, such that a stateless person is the archetypal 'other' of a citizen (Kerber, 2007; Macklin 2007). Beginning with Arendt (1958), statelessness has been increasingly recognized as encompassing rightlessness. Despite the burgeoning literature , statelessness need to be introspected from the sociological domain of rights, belonging and citizenship (Isin, 2002; Isin & Nielsen, 2008; Barret & Sigona, 2014) and everyday statelessness and rightlessness as experienced by the refugees and vulnerable have emphasized camps as a site where the impacts of such abrogation of rights are experienced and negotiated (Sigona, 2015; Redclift, 2013a, 2013b). Arguably a stateless person is the quintessential noncitizen, i.e., individuals who might have crossed borders and devoid of state recognition and protection.

The question of belonging is intrinsically linked with the stateless community as the desire to be rooted is often negated without either the political belonging to the state and its due consideration to be recognized within the ambit of law. In the aftermath of World War II, Hannah Arendt, described how millions of people were rendered "nonhuman through denationalization procedures and forced migratory movement. Such people 'lived outside the pale of the law'" ([1948] 2004, 353) and were homeless, unprotected beings that no state was willing to adopt. Human rights had ceased to exist for them because 'it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them, and no institution was willing to guarantee them' (370). Arendt argued that it was not the loss of this or that specific right that mattered as much as the loss of 'a right to have rights.' That is, the 'right to the human condition itself, which depends upon belonging to some human community' (631).

[23] The Office of the UNHCR lists among the reasons for statelessness: (1) conflict of laws; (2) transfer of territory; (3) laws related to marriage: (4) administrative practices; (5) discrimination; (6) laws related to registration of births; (7) jus sanguinis; (8) denationalization; (9) renunciation of citizenship; and (10) automatic loss of citizenship by operation of law. UNHCR, Information and Accession Package: The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, January 1999, available at http://www.refworld.org/docid/3ae6b3350.html.

Belonging is an innate concept wherein individual aspires to be rooted to a territory and land with a basic sense of attachment to a place. The idea of belonging demonstrates both place and non-place idea, wherein territorial notion might exist in some and not in others. Examining the case of the 1977–1992 Mozambican civil war, Lubkemann (2008, 457) describes how those who were unable to flee the conflict suffered 'a form of displacement in place'. The consequences of rightlessness are borne by all noncitizens; in some it is a clear case of nonrecognition and in few it is a deliberate rejection by the state to accord any status. The emphasis on the state to accord rights on its citizen has consequent bearing which is translated into the rights-based framework. But there may be others when communities remain outside the ambit of rights framework to suggest that state can be rendered external, hence outside the domain of law that can make and unmake the subject of noncitizen. As persons stuck in liminality reflect the 'betwixt and between' status with their aspiration for a place-based identity (where they belonged) to what they have left behind and the loss of identity. Liminality is supposed to be a temporary condition wherein a person becomes separated from his or her former identity and, through a rite of passage, takes on another identity. It is often portrayed as a freeing and creative time (Thomassen 2014, 10). Thus, it can be said that a noncitizen is at once in a precarious position, vulnerable to overt state intervention and unrecognised by the state apparatus. Stepputat (1994, 176) argues that claims are based on "implicit assumptions of natural links between people, identity, and territory." Such claims force noncitizens, and more so the displaced communities, to assume notions of "patria," to assume that "an individual's primary identity, rights, and obligations derive from membership to a 'nation'...and nation encapsulates 'home' in terms of language, culture, rights to citizenship and land" (Ranger 1994, 289). Following Malkki's (1992, 24; 1995)[24] analysis, I contest the sedentary biases associated with noncitizen identities to create a new kind of "nationness" without the basis of territoriality.

4. The making of the noncitizen

It can be argued that noncitizenship is a necessary category because it captures the excess of politics. So long as there are citizens, there will be

[24] In a study of Hutu refugees in Western Tanzania, Malkki discusses how displacement generated a new meaning to sovereignty and how "people are chronically mobile and routinely displaced, and invent homes and homelands in the absence of territorial, national bases—not in situ, but through memories of, and claims on places that they can or will no longer corporeally inhabit." See Liisa Malkki, "National Geographic: The Rooting of Peoples and the Territorialization of National Identity among Scholars and Refugees" *Cultural Anthropology* 7 no. 1, (1992): 24.

noncitizens, that is a surplus or excess of politics – a political difference – that either does not conform to the given citizenship order and/or challenges the dominant norms of this order (see Honig 1993). By continuously interrogating who the noncitizens are, we keep an eye on democratic exclusions and, in so doing, we ward off – or at least we attempt to ward off – closures and exclusions. On the other hand, however, it can also be argued that we do not need the category of noncitizenship to notice and attend to democratic closures and exclusions. Politicisation, like the category of noncitizenship, confronts relations of power and inequality, presupposes agency and involves practice, wherein ideas of injustice can be tacked without the vocabulary of citizenship (Tambakaki, 2015). Politicisation is a process of political subjectification where subjects excluded from the institutional world direct attention to their situation and, through public action, bring visibility to the inequalities and injustices permeating this world (see Rancière 1999). The politicisations of noncitizens are viewed as intrinsic to the enactment of citizenship (Hepworth 2014a, 2014b; Isin 2008); but raising question of injustice, noncitizen presumably encounters the citizen in the citizenship literature. The trajectory has much to do with claim making which is enabled by politicisation and agency of being a noncitizen. Claims-making puts emphasis on the claim itself which constitutes the political projects. Claims-making seeks to reformulate and, indeed, re-negotiate the given unequal power distribution – this is why it is also relevant to long-term noncitizens. The binary citizen/noncitizen can inform the politicising process, it does not define it. This makes politicisation a potentially richer category than noncitizenship for theorising contentious politics over and against the set frames of citizenship.

While examining the perspective of noncitizen without the hyphen we would like to reiterate that claims to belong have both official and non-official forms, legal and extra-legal belongings. Whether certain noncitizen can make claims to being, or constitute themselves as, citizens is an important aspect of the politics of citizenship or politics for citizenship. The citizen stands for inclusion, membership, and belonging, but at the expense of others who are excluded, non-members, and outcasts – strangers, outsiders, and aliens (Isin and Nyers, 2014:3)[25]. The other is the noncitizen presumed to be a threat to the nation state and its population. The discussion on who is a noncitizen seems quite engaging, however the focus needs to be on what goes into the making of a noncitizen and whether the theoretical lens should be the same for both. While the figure of the citizen is a political one but reducible to a political figure. It is the figure of a noncitizen who need to be focused on to understand why a noncitizen is an opposite of a citizen only.

[25] See Isin and Nyers Routledge Handbook of Global Citizenship Studies (Routledge, 2014): 4

Engin Isin (2009) suggests, citizenship "is a practice of contestation through which subjects become political" and need to understand it as 'an institution in flux embedded in the current social and political struggles that constitute it'[26]. The idea of a noncitizen is pitted against this. If citizenship is to be perceived as an institution, then it appears more statist, yet the noncitizen is often the opposite who can make claims from below. In postcolonial societies such claim making is emanating from society or community. Those who are crossing the border are legitimate bodies with political claims to belong. Interestingly, the protection provided in India and in South Asia is based on principle of humanitarianism, mediated by national interest of host state. The territorially rooted conception of belonging precipitates a statist response for the state-orchestrated exclusion that created refugees. The idea of protection is based on sovereign recognition of a community yet also responsible for pushing the refugees into liminal existence. Any non-statist response, such as the efforts of international agencies like UNHCR, in ameliorating the plight of refugees in country of asylum is merely moderating the hostility or facilitating the protection offered by the asylum state. There is an emerging body of scholarship that argues for "camp abolition", by underscoring the fact that camps constitute a system of "carceral humanitarianism" (Brankamp, 2021; Zwingmann and Pfister-Ammende, 1973). Often refugees reside in camps or camp like settlement. Within South Asia there is the argument of scarce resource wherein camps emerge as a de facto solution, its abolition will precipitate a new level of chaos which might compromise even the minimal protection that refugee's avail through institutional support. Camp is the site of rightlessness of refugees when subjected to the state processes on a day-to-day basis. The question of systemic protection in camp-settlements or outside is central to noncitizens such as refugees among many. The basic right need to be fortified to ensure the question of human dignity. The question of belonging therefore is very critical to the narrative of noncitizens.

The state formation in South Asia dictated a trajectory for citizenship based on 'a politics of belonging' driven by nationality (Chowdhory 2018:43–71). The practice of providing sanctuary is often embedded in the cultural norms of individual nations, 'though their adaptations involve an inherent variation due to the differences in the modalities of laws, rules and regulations that are applied on an everyday basis' (Chowdhory and Poyil, 2019a)[27]. The "cartographic anxiety" (Krishna 1996) of the nation-state, prioritized security, integrity, and territorial possessions wherein any

[26] Engin F. Isin, "Citizenship in flux: The figure of the activist citizen," Subjectivity Issue 29, (2009): p370.

[27] Nasreen Chowdhory, and S.T. Poyil, 'Conceptualising hospitality in refugee management in India', Asia Dialogue [online] 20 November, 2019 Available from: https:// theasiadialogue.com/ 2019/ 11/ 20/ conceptualising- hospitality- in- refugee- management- in- india/

conflicts over borders etc., has led to complexed and layered understanding of identity, belonging, and membership in post-colonial societies[28]. Indo-Bangladesh enclaves (or *chitmahals*) are at once a cartographic irregularity and an anomaly to sovereign authority (Chowdhory and Poyil 2022b). Nira Yuval-Davis (2006:199) suggests that individuals can develop an attachment to multiple objects and simultaneously can "belong" in different ways to different entities. Accordingly, she defines belonging as "an act of self-identification or identification by others, in a stable, contested or transient way," thus making it a dynamic process of "naturalized construction of a particular hegemonic form of power relations" (Yuval-Davis 2006:199). Noncitizens can claim citizenship based on politics of belonging is critical aspect that requires deep engagement. The next section will examine this argument in the context of the CAA. The initial discussion on CAA was published in 2022, "The Practice of 'Sanctuary' and Refugee Protection in India." with Shamna T. P, In Postcoloniality and Forced Migration: Mobility, Control, Agency, edited by Martin Lemberg-Pedersen, Sharla M Fett, Lucy Mayblin, Nina Sahraoui, and Eva Magdalena Stambøl. Bristol University Press. The next section takes the journey of a noncitizen further within the CAA.

5. The CAA debate: mapping the journey of a noncitizen

The subject of refugee or alien should be analyzed from the evolution of 'citizenship' in post-colonial India. The British narrative of 'white man's burden' and the moral responsibility of the civilizing mission constituted the 'othering' and propagated the discrimination of being the imperial master and the colonial subject. This constructed exclusion conditioned a colonial subject as 'alien' to the imperial regime, until one was civilized enough to claim the right for self-determination, freedom and liberty. The vestiges of the same colonial legacy are instrumental in understanding how citizenship law was a temporal and spatial project that tried to imbibe the essentialities of a modern nation-state which was habituated to 'exclude and limit' rather than to 'include and embrace'.

It is the uncertainty inherent to the construct of citizenship that creates the foibles along its 'slippery slope'[29], to create the variants like migrants, refugees, aliens and stateless. The conceptualization of citizenship in India shows how colonial past continues to leave its impression in a post-colonial

[28] For further discussion on this see Nasreen Chowdhory and S.T. Poyil, "The Practice of 'Sanctuary' and Refugee Protection in India", In Postcoloniality and Forced Migration Mobility, Control, Agency (Bristol University, 2022).

[29] Rhoda E. Howard-Hassmann, and Margaret Walton-Roberts, M. The Human Right to Citizenship: A Slippery Concept (Philadelphia: University of Pennsylvania Press, 2015).

nation. The partition and consequent territorial segregation of colonial India to post-colonial India and Pakistan was reflected in citizenship discourse such that a person who migrated to Pakistan after March 1, 1947 and after the violence began, and decided to 'return', was based on the permit of resettlement or permanent return issued by competent authority, could become Indian citizens.

This differentiation on who belonged within was largely conflated with the cultural and religious identity and the perpetuation of this can be validated by the various cases[30] adjudicated by the Supreme Court of India that shaped the legal discourse on citizenship. With the stroke of a legislation, state had further extended the dichotomy of inclusion and exclusion by validating the citizenship of thousands of refugees and migrants who came to Assam before 1971 and simultaneously denying the same to those who came in after 1971. Such temporal abstractions of citizenship were further reflected in the way Illegal Migrants (Determination by Tribunals) Act, 1983 (IMDT) was constituted to determine and differentiate the citizen from noncitizen/illegal migrant/foreigner. The affinity for various primordial identities like ethnicity and religion is significant in the constitution of citizenship and this need to be introspected through a postcolonial lens to understand how the very same citizenship that is vital for political inclusion becomes vital in segregation, differentiation, and repudiation even for refugees who seek protection. The protection regime for refugees in India still conflates them with foreigners through the *Foreigner's Act, 1946* which is an overt illustration of how our colonial past still shapes and apprises our post-colonial present.

Being a post-colonial state, India had to navigate around numerous contingencies and had to secure its strategic relations to preserve its hard-earned independence. The nation-building project of the post-colonial states gives asymmetrical priority to who constitutes an ideal citizen in the state. Then, the collective identity of the refugee becomes instrumental in conditioning the perception of any host community that offers the protection as it signifies the gravity of what it means to be included via membership. Such organic or cultured perceptions determine the nature and extent to which the post-colonial state, already marred by its legacy of multiple and divisive fault lines would apply various variables to define the contours of its charity-based protection.

Like the rest of the refugee groups in India, Sri Lankan refugees who came to India were largely dealt through the ambit of *Foreigners Act 1946* and *Citizenship Act 1955*, which by default considers them as illegal migrants. The Sri Lankan Tamils who fled to India were lodged in the Rameshwaram refugee camp near Tamil Nadu. Nonetheless, the Government of India has

[30] Kulathil Mammu v. State of Kerala, (1966) A.I.R. 1614 (S.C.); State of Madhya Pradesh v. Peer Mohammed, (1963) A.I.R. 645 (S.C.); State of Andhra Pradesh v. Abdul Khader, (1961) A.I.R. 1467 (S.C.); Sarbananda Sonawal v. Union of India, (2005) 5 S.C.C. 665.

accorded them protection and refugee status that reflects the 'regime of charity' that we adopted based on humanitarian grounds. The relatively better treatment meted out to Sri Lankan refugees compared to Chins, Chakmas or Rohingyas clearly indicate the 'preferential grading' of various refugee groups both in terms of admission and in terms of assistance and accommodation. But after the assassination of Rajiv Gandhi 1991, a paradigm shift was seen in the approach towards Sri Lankan-Tamil refugees where the hospitality shown changed to that of hostility and suspicion. With the end of civil war, there were instances of 'induced repatriations' among the Tamil refugees due to the curtailment of relief and rations by the government authorities. Despite a clear violation of the principle of non-refoulment, most of these efforts to induce voluntary repatriation are dependent on India's bilateral relations with the country of origin of the refugees.

Within CAA, paradoxically, the notion of 'vulnerability' has shifted towards 'identity centric vulnerability' claims. The idea of 'vulnerability' in noncitizens or refugee discourse involves fear, denial, deprivation, powerlessness, ambiguity and invisibility; all emanating from the structural exclusion and persecution that precipitated their perilous forced migration (Zolberg et al, 1989; Kibreab, 2004). UNHCR (2010: 4) measures vulnerability based on variables including 'exposure to trauma, human rights violations and other hardships and conditions. Additionally, various humanitarian agencies backed by various international conventions have put forth 'hierarchical categories of vulnerability' (Moritz, 2012: 123)[31] brought about by the combination of variables such as 'age, sex, ethnicity, health' (Morawa, 2003: 140).

The CAA denotes a point of departure: it asserts that Hindus, Sikhs, Jains, Buddhists, Christians and Parsis from neighbouring Afghanistan, Pakistan and Bangladesh would be considered as individuals of 'minority communities' and hence 'shall not be treated as illegal migrants for purposes of this act' enabling them to apply for citizenship within 6 years of residence, as opposed to the usual 12 years residence criteria. The qualification of vulnerability in the CAA would in turn exclude undesirable refugees from claiming protection and sanctuary by juxtaposing the inclusion of those who voluntarily claim to have entered the country by 'illegal' means (that is, without proper paperwork and documentation). It requires those seeking to be a citizen from that of a noncitizen to demonstrate the degree of precarity in legal terms to bring forth the idea that their lives are in danger and that indeed they lead a precarious existence and are subject to "persecution" by the countries of origin. The precarity of asylum seekers encompasses the anticipation and uncertainty that the state will

[31] Anne Moritz, 'Supporting refugee women's strategies for coping with challenges during maternity in resettlement: shifting the focus from vulnerability to agency', Revista Iberoamericana de Salud y Ciudadanía, 1(1) (2012): 119–56.

be compassionate and provide care to some, while excluding others based on a well- curated narrative of territorialized belonging (Chowdhory and Poyil, 2019b). According to Roy (2022), citizenship is a "legal membership is sutured to the logic of 'nationalisation' and 'territorialisation', with an explicit rejection of 'duality' of citizenship…", I would like to assert, the nation-building project of the post-colonial states gives asymmetrical priority to who constitute an ideal citizen in the state. The contemporary citizenship shows convergence between nationalisation of citizenship as an ethno-cultural religious identity and citizenship as a political identity denoting membership of the state (Ibid.). The arguments hold ground in the context of noncitizens, who are instrumental in conditioning the perception of host community that offers the protection based on cultural identity. The need to preserve cultural homogeneity was seen as part of sovereign right to self-preservation. As Walzer (1983) opines, the necessity to conserve 'cultural distinctiveness' creates a pre-requisite for the nation state to emphasize closure of its borders based on exclusion. Walzer's equivalence of 'family' that opens the doors of their house for relatives to a nation that offers asylum to 'ethnic relatives'[32] at their time of trouble mirrors the way in which India amends its citizenship laws in 2016 to grant citizenship to Hindu, Buddhist and other non-Muslim minorities fleeing religious persecution in Pakistan and Bangladesh.

The Citizenship Amendment Act of 2019 (CAA), permits citizenship for Hindu, Buddhist and other non- Muslim minorities escaping religious oppression in the neighbouring states of Bangladesh and Pakistan, reflects a calculated appropriation of hospitality based on cultural affinity. The Act is problematic in two ways –first, it overtly defines 'who can be a citizen in India' and second, it covertly envisages a highly restrictive framework of refugee protection by determining 'who is worthy of protection from religious persecution'[33]. The CAA determines that protection is conditioned on the religious identity of the claimant, indicating an implicit relationship expressed in Indian citizenship law: between citizenship, nationality, and identity, such that despite being independent variables in the analysis of political membership, they occasionally act in mutual congruence to designate the contours of exclusion from the same political membership. If being a 'national' facilitates the default attainment of rights for a citizen, noncitizens will receive a very minimal and basic set of rights. In the Indian constitution the provisions of Part III such as Article 14 (the right to equality); Article 21 (the right to personal life and liberty); and Article 25 (the freedom to practice and propagate one's own religion), are guaranteed

[32] Michael Walzer "Membership", In Sphere of Justice, A defense of Pluralism and Equality. (Basic Books, 1983)

[33] For larger discussion see Nasreen Chowdhory and S.T. Poyil "The anxious integration of former enclave or "new" citizens in North Bengal, India" In *Displacement, Belonging, and Migrant Agency in the Face of Power* Edited by Tamar Mayer and Trinh Tran (Routledge, 2022) 136-153.

to noncitizens as much as citizens. Legally, the commonality between citizens and noncitizens ends there.

5. Conclusion

For the South Asian countries such as India, 'national identities are tied to a legal position by virtue of citizenship laws' and thereby facilitate the carving of boundaries of inclusion and exclusion based on the same citizenship laws (Chowdhory *et al.*, 2019: 43). When analysed empirically, refugee status in these nations is often not based on legal refugee frameworks, but on kinship affinity or strategic relations with the country of origin of these refugees (Chowdhory et al, 2019)[34]. As Samaddar (2003: 22)[35] points out, refugee policy for any country is an account of how it 'takes care and limits care' to a segment of people who are not its citizens. So, having a concerted refugee policy or not having one at all reflects how any nation- state wields and extends its power to include and exclude (Chowdhory et al, 2019, on the care/ control nexus). This is evident in the way the temporal and spatial constructs of citizenship instituted by the state become markers for enabling and disabling individuals from claiming the membership of the state. The legality of citizenship discourses in India lets it 'oscillate ambivalently between encompassment and closure, creating a differential layering of citizenship' (Roy, 2008: 220). With the implementation of the CAA this ambivalence in citizenship spills over to the protection for refugees, which makes the noncitizen the 'constitutive outsider' now precluded from substantive protection (Roy, 2008: 221). If law cements the membership of individuals to a state through citizenship, and their relationship with immediate civil society is also then enforced through the rule of law, then law is instrumental in perpetuating the segregation of noncitizens from full members of the state, reducing their existence to the mere label 'refugee'. David Farrier (2011: 157) argues that while providing asylum through its authority to include and exclude, the sovereign state also showcases its inherent power to constitute a 'legitimate narrative'. This legitimate narrative presupposes the one who seeks refuge as someone who is in stark contrast between 'us' and 'them', and a figure 'knowable and nameable figure' (Malkki, 1995: 498) who doesn't pose a threat. The noncitizen can never be accorded protection which is permanent in nature hence relegated to either at the margin or in camps. The noncitizen is the 'absolute other' that exist on the other side of the margin where the citizen can never cross over to, rather it retains the identity to the very end.

[34] Nasreen Chowdhory, Shamna Thacham Poyil, and Meghna Kajla. "The Idea of Protection: Norms and Practice of Refugee Management in India." *Refugee Watch* 53 (2019): 36–54.

[35] Ranabir Samaddar, (ed) Refugees and the State: Practices of Asylum and Care in India, 1947–2000, (New Delhi: Sage, 2003).

Towards that, the CAA appears to be redefining one category of a noncitizen based on religion. It aspires to conflate the refugee to that of noncitizen to a citizen of a state. The nomenclature of noncitizen is now seen as a citizen by virtue of state recognition wherein after careful deliberation it accords full rights as a citizen of India. Unwittingly it appears expansion of the state to include 'others' within the domain of citizenship in India, but it is a selective approbation of few based on religious markers of citizenship. This appears problematic at many levels, first, the selection excludes the only other i.e., the Muslim who had been bearing the brunt of Partition, and second while holding the promise of claim making to citizenship, it tends to unrecognize any other aspects of vulnerability other than religion which seems very retrograde which undeniably is the most pugnacious way state is selectively appropriating a certain vulnerable category over others.

Furthermore, this 'selective approbation of few based on religious markers of citizenship' in addition to creating the 'other' make them susceptible to further discriminatory practices of states. The CAA was an organic extension of existing exclusions of some of different faith and religion, can be understood as giving opportunity to a noncitizen to be citizen, but in reality this was a nuanced graded discrimation and reconstituting another 'absolute other'. The South Asian understanding of hospitality couched in the language of refuge based on "compassionate and provide care to some, while excluding others is based on a well-curated narrative of territorialized belonging" (Chowdhory and Poyil, 2019b)[36]. The distinctiveness of this lied in application of general principles of humanitarianism to all that was transformed into calculated political acts of 'selective protection' of few, thus creating another kind of other/ noncitizens who would have little access to care and protection by the state.

[36] Nasreen Chowdhory, and S.T. Poyil, 'The global compact of refugees: a viewpoint of global South', Refugee Watch, 54(2019): 1– 14.

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