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Citizenship and statelessness in South Asia

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Introduction

The Universal Declaration of Human Right's proclamation that "everyone has a right to a nationality" and that "no one shall be arbitrarily deprived of his nationality" has not been one of the more popular or visible provisions of that document. People continue to live without the benefits of citizenship worldwide and the issue has received scant attention with the possible exception in the case of states of the former Soviet Union.

This paper purports to examine the state of statelessness in South Asia, one of the regions in which the phenomenon thrives and is much underreported. It will look at three rejected peoples of the subcontinent: the Estate Tamils in Sri Lanka; the Bhutanese in Nepal; and the Biharis in Bangladesh. Questions that will be addressed include: what are the conditions giving rise to statelessness in the three cases; how the various parties involved interact with each other including the states, affected peoples and international bodies; what measures have been undertaken to address the phenomenon and with what success are these met.

I will argue that the phenomenon of statelessness needs to be seen as part of the larger post-colonial nation building framework still under construction in the subcontinent. In particular, statelessness emerges out of narrow and exclusionary citizenship and membership policies perpetuated by the region's central authorities which fail to match the complex contours of multiple identities experienced by the polity. The tragedy that has resulted has been the disincorporation of large segments of the region's population who identities and aspirations seep through the confines of the monolithic, nationalist, 'official' ideologies pursued by the state.

Membership and citizenship in South Asia

To be stateless is to be denied membership in the national polity. As such, a discussion of statelessness should begin with an examination of the membership model that gives rise to the denial of citizenship. To follow Yasmin Soysal, there are two dimensions that define membership models; the first, whether the locus of action and authority rests with the society or with the state; the second, whether the organizational structures of authority are centralized or decentralized. The intersection of these two dimensions gives rise to four membership models that can be mapped as below¹:

¹ Soysal, Yasemin, *Limits of Citizenship: Migrant and Postnational Membership in Europe*, (University of Chicago Press : Chicago, 1989), p. 37.

Locus of authority organizational configuration

	Centralized	Decentralized
Society	Corporatist	Liberal
State	Statist	Fragmental

These four membership models – corporatist, liberal, statist and fragmental – represent the institutional scripts and understandings of the relationship between the individuals, the state and the polity, as well as the the organizational structures and practices that underlie and maintain this relationship.

In the corporatist model, membership is organized around corporate groups defined by occupational, ethnic, linguistic or religious identities. These groups assume certain powers and rights with regard to controlling and guiding the apparatus of the state are are a source of action and authority. Individuals gain access to rights and legitimacy through subscription to and participation in these groups. The corporatist model is centrally organized and collectively oriented and tied to the administrative structure of the state. The division and allocation of state resources and services are negotiated between these groups. In this model, deprivation of membership would require the collusion of the central administration and the corporate groups that constitute the voice of the polity.

In the liberal model, the individual is the primary source of action and authority and locus of membership. Individual interests supercede other institutions in society. Individuals and private associations, not formal centralized structures dominate political action and organization. The decision-making process is decentralized and local authorities play an active role in allocating resouces and services to citizens. In the liberal membership model where rights accrue around the individual, it is difficult for the state to deny membership privileges based on group affiliation.

By contrast, the statist model is characterized by a centralized bureaucratic administrative government that holds a tight grip on the reins of sovereignty. The state organizes the polity and individuals and their activities are subordinate to the state. The state divides and allocates resources and services. In this model, deprivation of membership can be relatively easily accomplished by fiat of the state.

Finally, the fragmental model is characterized by a sovereign but organizationally weak state. With this decentralized state, “primordial” groups such as the family, clan and church dominate social and political life. These groups compete for control of the state resouces and services and the granting and disavowing of membership falls under the competence of these groups.

Membership model for South Asia

The question now is whether the four models above offer any guidance in mapping a general membership model for South Asia. While conceding that the models are necessarily incomplete and somewhat crude, I argue that they do provide a useful framework for an analysis of membership in the subcontinent and more importantly, for the purposes of this discussion, clues as to how membership becomes withheld or withdrawn.

Pre-colonial

To begin, a historical perspective. Recent historical research has shown that pre-colonial South Asian empires, far from being centralized, bureaucratic autocracies, were flexible, nuanced and overarching suzerainties.² The emperor merely laid claim to the highest level of sovereignty, leaving regional sultans, local rajas, merchant institutions, clans and cities to negotiate the lower layers of sovereignty. Even the grand pre-colonial Mughal Empire did not deploy a centralized bureaucratic administration to pump out resources from localities and to determine membership policies.³ The Mughal state typically entered in accommodations with landlords and clans to distribute membership goods.⁴

Further, the amount of power actually vested in the different levels of sovereignty was subject to historical shifts with downward flows and seepages in periods of decentralization and fragmentation. There was, however, no notion of an absolute sovereignty demanding the singular allegiance of peoples. As such, individuals and groups were allowed to pursue multiple and shifting identities and loyalties with relatively little apprehension of their membership in society being called into question or revoked.

To return to Soysal's membership models, an analogy can be made to the corporatist conception of membership where corporate groups defined by clan, language, religion, landlord affiliation assumed certain rights with respect to the central state and individuals gained access to those rights by subscribing to a group or groups. In general, however, membership was more fluid than in this corporatist model, with periods of decentralization and decline of large empires leading to a more fragmental conceptions with sub-regional clans and groups determining their own membership policies.

Colonial

What I will now argue is that changes brought about by colonial rule necessitated a change in this loose corporatist to fragmental model. In its consolidation of rule, the

² Bose, Sugata and Jalal, Ayesha, *Modern South Asia, History, Culture and Political Economy*, (Routledge : NY, 1998), Chapter 20.

³ *Ibid*, p. 42.

⁴ For example, the agrarian surplus was distributed first among the lower levels of appropriators, with the nobility and imperial household receiving only the final cut.

colonial state replaced the pre-colonial framework of multiple, overlapping sovereignties with the European Enlightenment idea of a unitary, indivisible sovereignty albeit purged of the accompanying notion of equal citizenship rights for all.⁵ Singularly charged with the task of appropriating resources and distributing membership goods, the colonial administration accomplished the latter by social engineering using censuses, mapping and rigid classificatory schemes to create caste, ethnic and religious categories through which the state could distribute inequitable patronage.⁶

This divide and rule strategy opened the way for way for divisive political categories that could deflect unified challenges from anti-colonial nationalists. The late colonial administration even legitimized its own minority rule by presenting itself as the protector of the rights of the minority categories it helped to shape through differential patronage. As such, the colonial state's membership model can be analogized to the statist model with a strong administrative center as the locus of sovereignty that organizes the polity and distributes membership goods as it sees fit, with an eye to preserving its own rule.

Post-colonial membership

So what model then did the nationalist inheritors of the post-colonial states follow? The sub-continent was divided into several, sovereign nation states – India, Pakistan, Sri Lanka, Nepal, Bhutan and later Bangladesh. Emerging from opposition to British divide and rule strategies, the anti-colonial nationalists who rose to the helm of the post-colonial entities sought to consolidate and unite the polities of the new nation states through stringent nationalist ideologies and majoritarian policies.

These ideologies more or less reflected the interests of the new political elite whether it was secularism in India, Islam in Pakistan, or Buddhism in Sri Lanka. The new elites adapted the colonial legacy of administrative centralization and the ideological idioms of monolithic and indivisible sovereignty to disenfranchise elements of the populace that deviated from the officially sponsored discourse on nationalism. As Ayesha Jalal writes:

In what was a brutal irony of the coming of independence, erstwhile colonial subjects earned the trappings of citizenship by further constraining their freedom to nurture historically evoked multiple identities. It was worst than that. Liberation from the colonial yoke did not involve dismantling the structures of unitary state power. The very instruments of colonial tyranny that had so fired the nationalist ire become lightning rods of the post colonial order. The anti colonial thrust of nationalist legitimizing ideologies notwithstanding, an alien concept of indivisible sovereignty was briskly adapted to delimit the acceptable parameters of political allegiance.⁷

⁵ Bose, Sugata and Jalal, Ayesha, *Modern South Asia, History, Culture and Political Economy*, (Routledge : NY, 1998), Chapter 20.

⁶ *Ibid*, p. 104.

⁷ Jalal, Ayesha, *Democracy and Authoritarianism in South Asia*, (Cambridge University Press : Cambridge, 1995) p.248.

As such, rather than seeking to address the inequities created by the colonial perpetuation of a statist membership model that denied equal citizenship rights, the post colonial state worked to strengthen and rigidify that model by granting full membership only to those who towed the official nationalist line.

Membership and statelessness in South Asia

I want to argue that it is the failure of this statist membership model that lies at the heart of problems involving statelessness in South Asia. With a narrow concept of membership to include only those who subscribed to particular national ideologies and identities, the central administrations of the post-colonial states pursued citizenship laws and policies which permitted the disenfranchisement of whole sections of the polity if the sections' singular allegiance to the monolithic conception of nationhood could be called in question. Membership goods were also distributed in accordance with perceived loyalty to the state and nation.⁸

The imposition of a narrow statist definition of membership and the South Asian reality of multiple social and political identities within the polity made possible the emergence of stateless groups in South Asia. Multiple allegiances persisted in the polity – they could not be wished away by new central elites. While the state pursued a statist membership policy, the society reflected a more corporatist constitution given its pre colonial history. The inequitable distribution of membership goods in favor of those groups towing the nationalist line deepened the rifts in society, pitting group against group in a scramble for the bigger share of scarce resources. As competition for resources grew, groups began pursuing a more fragmental model of membership demanding the absolute inter-group allegiance of individuals for a share in group resources.

Moreover the multiple ethnic, religious and group identities of the polity transcended the boundaries of the new nation states. A history of pre-colonial, colonial and post-colonial group migration produced polities with historical transnational regional ties.⁹ This enabled the political elites to legitimize the disenfranchisement of groups whom they could portray as having closer ties to other states and demanding their 'repatriation.' But 'repatriation' too became problematic as receiving states often were experiencing similar inter-group tensions and competition for resources as the sending states. Thus, rejected from citizenship in one state, the unwanted peoples were often unable to find membership in the states to which they were supposedly to be repatriated. This left them effectively *de facto* stateless as the states involved would spend years and decades in bilateral talks disputing their nationalities. And even when 'repatriated', they were not guaranteed the benefits of full membership, as they became often regarded as foreigners in receiving polity and denied full citizenship rights.

⁸ Ibid, p. 247.

⁹ Weiner, Myron, "Rejected Peoples and Unwanted Migrants in South Asia," in *International Migration and Security*, (ed.), Weiner, Myron, (Westview Press: Colorado, 1993).

Estate Tamils in Sri Lanka

Much is known about the secession struggle raging in Sri Lanka between the predominantly Hindu Tamil minority and Buddhist Sinhala majority. Less is known about the schisms within the Tamil community. Sri Lanka has two distinct Tamil populations: the Sri Lankan Tamils who migrated from the Tamil Nadu region of India to the north and eastern parts of Sri Lanka; and the Estate Tamils who were brought to the central part of the island by the British starting in 1834 to work on the coffee and later, tea plantations.¹⁰

The Estate Tamils speak a different dialect from the Sri Lankan Tamils and have different cultural habits. As labourers on the Tea Estates, they occupy the lowest socio-economic strata of Sri Lankan society, earning lower wages as compared to the other sectors of the island's economy, and suffering poorer literacy rates and health and housing conditions as compared with the rest of the island's population.¹¹ The relationship of the Estate and Sri Lankan Tamils has not been particularly harmonious – the latter has historically scorned the Estate Tamils as lower caste newcomers lacking the cultural sophistication of the older Tamil migrants. The majority Sinhala population harbored similar stereotypes about the Estate Tamils.¹² Nevertheless, the groups co-existed peacefully prior to independence and under constitutional reforms of 1928, the Estate Tamils were given the right to vote.¹³ However, with independence in 1948, both the Sinhalese and the Sri Lankan Tamils viewed the Estate Tamils as unwanted migrants who should return home.¹⁴

Citizenship acts and Estate Tamil disenfranchisement

After independence, Sinhalese political leaders lost no time in introducing citizenship legislation aimed deliberately to disenfranchise the Estate Tamils. Under the Ceylon Citizenship Act of 1948, Sri Lankan citizenship could be claimed through descent and registration. Citizenship required that your father or you and your grandfather be born in Sri Lanka. This was difficult for the Estate Tamils to prove since a large number of births were not officially registered or the requisite documents had been lost. Further, there was no official registration of births until 1897 making it near impossible to prove the Sri Lankan births of grandfathers and great-grandfathers. Many plantation workers also went back to Tamil Nadu to find spouses and to give birth to children.¹⁵

¹⁰ Daniel, Valentine, *Chapters in the Anthropography of Violence*, (Princeton University Press : New Jersey, 1996) p. 75.

¹¹ Sahadeven, P., *India and the Overseas Indians; The Case of Sri Lanka*, (Kalinga Publications: New Delhi, 1995), chapter 4.

¹² Daniel, Valentine, *Chapters in the Anthropography of Violence*, p. 21.

¹³ Weiner, Myron, "Rejected Peoples and Unwanted Migrants in South Asia," p. 153.

¹⁴ Ibid.

¹⁵ Peiris, T., *Citizenship Law and the Republic of Sri Lanka*, (Colombo, 1974), Chapter 1. Also Weiner, p. 153.

The Ceylon Citizenship Act was followed by the Indian and Pakistani Residents Act of 1949 which seemed less draconian than the 1948 legislation in that it provided for a seven or ten year period of ‘uninterrupted residence’ in Sri Lanka as a qualification for citizenship. But again, the Act was carefully formulated to disenfranchise the estate workers who periodically would return to Tamil Nadu or had no documentation to prove seven or ten years of “uninterrupted residence”. Further, apart from the residential qualification, applicants had to have an assured income of an amount beyond the reach of the majority of the Estate Tamils.¹⁶ The outcome of the two pieces of legislation was the disenfranchisement and the denial of citizenship of over 95% of the Estate workers, over one million people.¹⁷

Factors behind the denial of citizenship

Several factors underlay the political elite’s decision to enact laws stripping the Estate workers of their citizenship. Following a statist model of membership, the Sinhalese dominated Central administration sought to pursue a monolithic nationalist ideology of citizenship based on the conception of Sri Lankan Buddhist superiority. The majoritarian thrust of the new post-colonial state opened the door for the mass disincorporation of groups that were perceived to deviate from the official nationalist ideology. The Estate Tamils were the first victims but not the last.

In pursuing this nationalist ideology, Sinhalese leaders could legitimize mass deprivation of membership and citizenship by painting the Estate Tamils as refusing to assimilate with the indigenous population by retaining their exclusiveness in “religion, language, social tradition and occupation.” As Prime Minister Kotewala stated, “In most countries, a migrant population can be absorbed into the indigenous population in one generation. In Sri Lanka, the Indian Tamils are still Indian after three generations.”¹⁸ The Sinhalese UNP Party leadership pointed out that the Estate Tamils kept alive their social and personal contacts to India as well as repatriating huge amounts of remittances and as such were ‘residents’ not ‘domiciles’ of Sri Lanka.¹⁹ The implication was that assimilation entailed total conformity to the new nationalist agenda.

However, the Estate Tamils, for the most part, did consider themselves as part of the Sri Lankan polity. Most of them applied for Sri Lankan citizenship under the 1949 Act compared to the small amount who registered as Indians.²⁰ Almost none of them wanted to return permanently to India.²¹ Most had roots in Sri Lanka two to five generations deep and had never left the island. And while they retained strong elements of the Tamil Nadu village culture from where their ancestors came, their primary allegiance was to the new

¹⁶ Sahadeven, P., *India and the Overseas Indians; The Case of Sri Lanka*, p. 128.

¹⁷ Weiner, p. 154.

¹⁸ Statement of Prime Minister John Kotelawala in Parliament, *Parliamentary Debates, House of Representatives (PDHR)*, vol. 16, no. 25, 3/1/54.

¹⁹ Sahadeven, p. 129.

²⁰ *Ibid*, 131

²¹ Valentine, p. 97.

culture of the plantation that they had forged for generations.²² Thus, as opposed to the statist, majoritarian model of citizenship promulgated by the central administration, the Estate Tamils regarded their membership in the Sri Lankan polity as more of a corporatist one with a double allegiance to both group and state. Interestingly enough, for the most part, the Estate Tamil population has not supported the ongoing Sri Lanka Tamils' fragmental campaign for secession. Neither have they advanced self-determination claims of their own.

However, perceived socio-cultural links of the Estate Tamils to India gave rise to national security fears on the part of the Sri Lankan government. Prime Minister Kotelawala described the Indian Tamil problem as a matter of "life and death for the Sinhalese."²³ An apprehension of being swallowed up by the bigger and powerful India across the Palk Straits also underwrote the Sinhala Administration's decision to disenfranchise the Estate Tamils. With the central administration of India pursuing its own monolithic nationalist ideology and curtailing minority rights, the Sinhalese feared that future Indian leaders might use the Indian Tamils as a fifth column in the island if estate workers were granted citizenship.²⁴

The leaders also expressed a fear that the 'citizenisation' of the Estate Tamils would lead to the effacement of Sinhalese identity of Sri Lanka.²⁵ The Prime Minister expressed that it was impossible to make 900,000 Indian Tamils Sri Lankan citizens without "reducing the Sinhalese to buggery and losing their identity as Sinhalese."²⁶ Behind the rhetoric, the Prime Minister was more concerned that the enfranchisement of the workers would result in the dilution of the electoral strength of the ruling party.²⁷ As such, the ruling party could use majoritarian nationalist ideology to cement its own political aspirations.

Finally, the mass denationalization of the Estate workers was made possible by the relative silence of Sri Lankan Tamils in opposition to the 1949 citizenship legislation. The Sri Lankan Tamil Congress opposition party did nothing to prevent the passing of the laws and Sri Lankan Tamil leaders signaled as least their indifference to if not approval of the Acts by accepting ministry posts in the Kotelawala.²⁸ Closely shared language and culture did not necessarily prove to be a unifying group factor in the case of the Sri Lankan and the Estate Tamils.

In retrospect, this was a probably disastrous political move for the Sri Lankan Tamils, who soon themselves became the next victims of the Sinhalese elite majoritarian nation building project. In the 1960s and 1970s, successive Sinhalese governments enacted policies to restrict the use of the Tamil language and to curtail the access of the Sri Lankan Tamils to higher education, government posts and economic prosperity. As such,

²² Ibid, p. 23

²³ Kotelawala, John, *An Asian Prime Minister's Story*, (London : 1956), p. 99.

²⁴ Sahadeven, p. 129.

²⁵ Kotelawala, p. 99.

²⁶ Ibid.

²⁷ Sadhaderan, p. 130. In 1947, the Estate Workers had overwhelmingly voted for leftist candidates.

²⁸ Valentine, p. 113.

the Sri Lankan Tamils found their own citizenship and membership rations being eroded in the wake of the disenfranchisement of the Estate Tamils.

Efforts to resolve the stateless Tamil problem

At the start, it should be noted that all efforts to find a solution to the Tamil problem have been bilateral between India and Sri Lanka; international organizations and third parties have played little if any role in the unfolding of events. The new independent Indian government responded to the 1948 and 1949 Sri Lankan Citizenship Acts by saying the Indian Tamils were no longer Indian nationals but residents of Sri Lanka and India had no legal and constitutional responsibility towards them. Indeed, people of Indian origin that had migrated overseas as British subjects during the Colonial era were not automatically granted Indian citizenship under the post-independence constitution. India considered them as citizens of their adopted countries unless they actively sought Indian citizenship and met the residency and linkage conditions of Article 8 of the Indian Constitution.

There was and is no provision in the Indian (or Sri Lankan) constitution for dual citizenship. India viewed the problems and interests of the overseas Indians as internal to their country of adoption.²⁹ Prime Minister Nehru emphasized that if the overseas Indians did not seek Indian citizenship, “India’s connection with them will be cultural and not political.”³⁰ The Indian government was concerned about the possibility of having to integrate millions of overseas Indians into the economy.

Nevertheless, Sri Lanka took the stand that Indian Tamils who did not qualify for Sri Lankan citizenship should be repatriated to India. The issue stood to become a major foreign policy thorn in the relations between the two neighbors and thus, Nehru agreed to negotiate with the Sri Lankan government on the basis of India’s “sentimental interests” in the Indian Tamil problem.³¹ But throughout the 1950s, the Indian government held the view that it would only accept the repatriation of those Estate Tamils who satisfied the constitutional provisions for Indian citizenship and opted for it without any compulsion. The Nehru-Kotelawala Pact in 1954 provided that India would accept the repatriation of those Indian Tamils who wanted Indian citizenship but did not accept the Sri Lankan position that those who did not meet the criteria for Sri Lankan citizenship would be automatically given Indian citizenship. This left over 900,000 Tamils still stateless in Sri Lanka.³²

Interestingly, the Sri Lankan government did not resort to tactics of forced migration and expatriation to resolve the Estate Tamil problem as opposed to Uganda and Burma where overseas Indians were murdered and expelled en masse. Weiner attributes this to the fact that “Sri Lanka had a democratic government . . . it sought to remove the Indians through

²⁹ Sahaderen, p. 59.

³⁰ Nehru’s statement in *Lok Sabha Debates*, second series, vol. 6, no. 37, 9/2/57. India would, however, take up the issue of racism against people of Indian origin as a human rights matter.

³¹ Nehru, J. *Foreign Policy, Selected Speeches*, (New Delhi :1983), p. 130.

³² Weiner, 154.

legitimate means, in accordance with law, and with due regard to its international obligations.”³³ True or not, Sri Lanka had other interests that governed its decision not to forcibly expel the plantation workers. One, any attempt to expel the Tamils would have created an invitation for an armed Indian intervention into the island which could possibly be legitimized under the pretext of safeguarding the interests of potential Indian citizens. And, perhaps more importantly, Sri Lanka had an economic interest in keeping the Estate Tamils working in the tea plantations, which provide a substantial portion of the island’s foreign exchange revenue. And while nationalist rhetoric excoriated the Tamils for taking away employment possibilities from the Kandyian Sinhalese, the Sinhalese themselves had consistently exhibited distaste for plantation work.

The plantation workers were indispensable for the economic life of the country and various politicians expressed the desire to retain the laborers without offering all of them Sri Lankan citizenship.³⁴ By keep the workers disenfranchised and stateless and without a substantive political voice, the Sri Lankan state was able to exploit their cheap labor without offering them the privileges of full membership in the polity. Thus, the situation remained at an acceptable status quo for both countries for more than a decade.

In 1964, the issue arose again and the Indo-Ceylon Pact was signed under which India agreed to ‘repatriate’ 525,000 of stateless Tamils and Sri Lanka agreed to grant citizenship to 300,000. 35,000 people would be ‘repatriated’ annually to India and in exchange, 20,000 a year would acquire Sri Lankan citizenship. Several background factors in the political landscape influenced the change in the status quo. A new Sinhalese party, the Sri Lanka Freedom’s Party (SLFP) was at the reins of the Sri Lankan Government in coalition with the leftist Lanka Sama Samaja Party, (LSSP) which had earlier shown an interest in the plight of the Estate Tamils and saw the enfranchisement of the Tamils as prospectively adding to its local electoral constituency in the central part of the country. As such, President Bandaranaike was pressed by the LSSP to be seen as doing something about the Estate Tamil problem.³⁵ Added to this were the economic problems in the newly nationalized plantation sector. The Sri Lankan government was eager to expatriate surplus estate labor to India.³⁶

In India, Prime Minister Nehru had died and a new Prime Minister, Lal Shastri, took over who had no prior commitment on the Estate Tamil issue. He, too, felt domestic political pressure to address the stateless Tamils as a result of another overseas Indian problem. Over 150,000 stateless overseas Indians were in the process of being forcibly expelled from Burma as their property was nationalized by the Burmese Government.³⁷ India had an interest in seeing that the same fate did not befall the Indian Tamils. Further, following its defeat in the 1962 Sino-China war, India was eager to consolidate its relationship with its neighbors, especially Sri Lanka, which had maintained close and cordial ties with China. This made India more amenable to efforts by the Sri Lankan government to bring

³³ Weiner, p. 154

³⁴ Sahadevan, pp. 131-2.

³⁵ Sahadevan, pp. 131-2.

³⁶ Bibin, T. and Fries, Y., *The Undesirables*, (Bagchi : Calcutta, 1984), p. 171.

³⁷ Weiner, p. 152.

the matter back to the negotiating table, even it meant moving away from Nehru's policy not to accept the compulsory repatriation of a large proportion of the Estate Tamils who did not want Indian citizenship. As such, the re-emergence of the Stateless Tamil question was governed by a change in domestic and foreign policy political concerns in both India and Sri Lanka.

The agreement, however, was widely criticized by the main union representing Estate Tamil interests, the Ceylonese Workers Congress (CWC) whose leader saw it as turning the stateless Tamils into "merchandise to divided and disposed of in such a manner as suited the convenience of both India and Ceylon."³⁸ The Estate Tamils themselves were thoroughly excluded from the negotiations leading to the agreement.³⁹ Further, the Sri Lankan President Bandaranaike envisaged that those Estate acquiring Sri Lankan citizenship would not be entitled to voting rights under the general Sri Lankan electoral register for ten years but, rather, vote under a separate electoral register for the limited to local politics. As such, their influence on elections for positions in the Central Government could be minimized.⁴⁰

Following the Indo-Ceylon pact of 1964, the Prime Ministers of India and Sri Lanka met again in 1974 to settle the problem of the residue stateless persons. Under the Sirimavo-Gandhi pact of 1974, the two governments agreed to split evenly 150,000 stateless Tamils between the two countries, bringing the total number up for Sri Lankan citizenship to 375,000 and those up for Indian citizenship to 600,000.⁴¹ The symmetry of the numbers is reflected in the evenness of Indo-Sri Lanka relations of the period. Whereas, earlier Sri Lankan governments were concerned about the potential national security threat posed by India, the 1970s was marked by cordial relations between the two states and high level of military, economic and diplomatic cooperation as well as personable relations between Indira Gandhi and Prime Minister Bandaranaike.⁴²

In the 1980s, simmering problems between the Sri Lankan Central government and the Sri Lankan (non-Estate) Tamils again changed the relationship between the two states with repercussions for the Stateless workers. Squeezing its membership policies even further, the Sri Lankan government had introduced policies in the 1970s, which provided education and employment preferences to the Sinhalese majority to the exclusion of the Sri Lankan Tamils. Sri Lankan Tamils fought these measures, then pressed for autonomy for the Tamil majority region in the north (excluding the Estate Tamils who live in the center). By 1983, a full-scale civil war had broken out between the Sri Lankan Tamils and the government with the latter claiming the right to an independent Tamil state.

By the mid 1980s, India took an increasing interventionist position in the island, providing support to the Tamil militants, offering to serve as a mediator and later providing peacekeeping forces that promptly became embroiled in the fighting. With

³⁸ Sahaderan, p.146.

³⁹ Valentine, p. 115.

⁴⁰ Nadesan, S., *A History of the Up Country Tamil People*, (Ranco Printers : Colombo, 1993), p. 198.

⁴¹ Weiner, 164.

⁴² Sahadevan, p. 189.

Indian support of the Sri Lankan Tamil militants in the north, the ruling Sinhala elites now grew fearful that the Indian Government might seek to legitimize further armed intervention against the Sinhala Government in the South under the pretext of safeguarding the interests of the Estate Tamils as potential Indian citizens. As one Member of Parliament put it, “once the stateless problem was settled, the question of any kind of interference from outside would have no legal basis.”⁴³ Thus in 1988, the same Parliament that moved to disenfranchise the workers in 1948, enacted legislation granting citizenship to the bulk of the residue Estate Tamils.⁴⁴ This legislation would prove to be more expansive than the earlier agreements with India in that it stipulated no numerical formula, providing, instead, that all the Indian Tamils that “lawfully resident” on the island and “not included in an application for Indian citizenship” would be conferred Sri Lankan citizenship.⁴⁵

But the books on the stateless Tamils are not to be closed here. Problems persist for those whose parents or grandparents may have applied for Indian citizenship under former agreements with India, but who never repatriated to India. Officially included on an application for Indian citizenship, they are not entitled to Sri Lankan citizenship despite being born on the island and having no desire to go to India. These Tamils rather than pursue Indian citizenship would rather remain stateless in Sri Lanka. Their decision is compounded by the dissatisfaction of those Tamils who did repatriate to India. Most of the some 500,000 Estate Tamils now resident in South India were repatriated against their will. Ill-prepared for the harsh, unfamiliar conditions in South India, they are regarded by the local population with hostility as ‘foreigners,’ ‘Sri-Lankan Tamils,’ or ‘refugees’ from the Sinhalese/Sri Lankan Tamil conflict.⁴⁶ Thus, their incorporation into Indian communities has not been smooth with many ending up as bonded laborers for predatory Indian employers or as beggars in their ancestral villages.

According to a 1979 report by the Federation of Organizations Working for Repatriates, “in spite of all the arrangements for their rehabilitation, most of them are reduced to such a state of despair, that many of them would be happy to return to Sri Lanka.”⁴⁷ Some have attempted to return to Sri Lanka where they become illegal migrants having to hide from the authorities who would deport them back to India. Others, rejected from inclusion in Indian society, have joined forces with the Sri Lankan Tamil refugees warriors in the Tamil Nadu camps hoping for a place in the potential Tamil Eelaam state in Sri Lanka, should the separatist movement prove successful.⁴⁸ But should a separate Tamil Eelaam emerge in the north and east of the island, the bulk of the Estate Tamils would be even further marginalized in their central and south homelands and subject to Sinhala vengeance.

And back in Sri Lanka, citizenship registration of the stateless Tamils continues to be a problem. Thousands who applied for Sri Lankan citizenship under the 1988 and prior

⁴³ Sahedevan, p. 220.

⁴⁴ Speeches in the Sri Lankan Parliament, *Parliamentary Debates*, vol. 28, no. 7, 3/22/84.

⁴⁵ Grant of Citizenship to Stateless Persons, Act No. 39 of 1988.

⁴⁶ Valentine, 118-119.

⁴⁷ Fries and Bibin, 33.

⁴⁸ Valentine, 121.

laws have not received their citizenship certificates and are, as such, not entitled to voting rights or Sri Lankan identity cards.⁴⁹ Identity cards are particularly important as freedom of movement is greatly restricted in the country due to the Sinhala/Sri Lankan Tamil conflict.

Thus, it was under the statist membership policy of the Sri Lankan central government and its Sinhalese brand of nationalism that the Estate Tamils found themselves deprived of nationality despite their links to the island's history and economy. However, because the workers had historical ties to India, the issue became a bilateral matter to be resolved between the two states. Changes in the domestic political affairs and the international relations of both countries can be directly linked to how the fate of the stateless persons was to be decided. The status of the stateless persons became tied to the larger national security issues of both countries and while both states sought to minimize their responsibility for granting citizenship to the workers, neither could or even wanted to absolve itself of all links to the affected peoples. The strictly statist membership policies of either state can be construed as influenced if not constrained by its internal politics and external bilateral relations.

The stranded Pakistanis in Bangladesh

The Biharis or 'stranded Pakistanis' as they are sometimes called, were an Urdu speaking Muslim minority living in the majority Hindu region of Bihar in pre-independence India. With the breakup of India and Pakistan in 1947, a large group fled to East Pakistan and became a linguistic minority amongst the majority Bengali speaking indigenous peoples. They were full citizens of Pakistan until 1971, when the indigenous Bengali majority in East Pakistan, with military assistance from India, orchestrated a successful secession from the Pakistani state, creating an independent Bangladesh.

For a large part, the genesis of Bihari statelessness lies in the membership policies of the pre-1971 Pakistani state. When Pakistan was created from India in 1947, the ethnic Punjabis in coalition with the military forces gained power as the new ruling elite. As in Sri Lanka, the central state administration took on an all-powerful role in the organization of society, strictly curtailing provincial and local authorities' access to power and resources. Non Punjabis were poorly represented within the higher echelons of the civil bureaucracy and in the central state apparatus and Urdu was declared the official language of the state. In particular, the Bengali speaking peoples in East Pakistan were denied full representation in the political and bureaucratic arms of the state and received an inequitable share of state services and resources.⁵⁰

Because they were Urdu speakers, the Biharis occupied a privileged position in East Pakistan and had an advantage over Bengalis in managerial positions that required knowledge of Pakistan's official language.⁵¹ As such, they stood politically, socially and

⁴⁹ Nadesan, p. 333.

⁵⁰ Jalal, pp.58-62.

⁵¹ Weiner, p. 156.

culturally apart from the Bengali speaking population and maintained closer ties to political elite in West Pakistan. The situation remained stable until the late 1960s when Bengali leaders began to react against the Punjabi dominated state that did not grant East Pakistan its due share in the power structure and membership goods of the nation. By 1970, the Bengali led Awami League party had won a majority in the national parliamentary elections and was demanding maximum provincial autonomy and devolution of power from the central state to regional authorities.⁵²

The central government and the military responded with massive and violent repressive tactics directed towards the Bengali masses and politicians, which, along with Indian military intervention in the conflict, paved the way for the emergence of the Bangladeshi state. The Bangladeshi independence movement had a direct impact on the Bihari population, whose leaders had sided with and actively participated in the government offensive to crush the Bengali separatists.⁵³ Many Biharis enrolled in the government militia units that perpetuated the atrocities that characterized the civil war. In the immediate aftermath, Bangladeshis took action to punish the Biharis for their collaboration with the Pakistani forces.⁵⁴ Biharis were forced out of their homes, imprisoned, had their property confiscated and over one thousand were massacred in retaliation to the Pakistani slaughter of Bengali civilians. But the Indian Army present in Bangladesh shielded them from the most severe retaliations and moved them into some 66 'refugee' camps around Dhaka for their safety set up with the help of the Red Cross.⁵⁵

What happened next is somewhat of a vexed issue. Sheikh Mujibur, Bangladesh's independence leader, initially pledged that Biharis were equal under Bangladeshi law but this pledge was ignored by the new government which declared that the Biharis were not Bangladeshis but Pakistanis.⁵⁶ With residual Bengali animosity directed towards them, their homes and livelihoods destroyed, their compatriots murdered, most Biharis choose to remain in the 'temporary' camps and await 'repatriation' to a Pakistan where they had never set foot on but now claimed citizenship.

Under the tripartite agreement between India, Pakistan and Bangladesh in 1974, Pakistan agreed that all persons that were employed in Pakistan Government service before Bangladeshi independence could be repatriated to Pakistan. Some 170,000 Biharis were resettled to Pakistan under this provision, while some 300,000 remained in the camps awaiting their eventual resettlement.⁵⁷ Some 30 years later, over 230, 000 still remain in the camps, effectively stateless, with neither Pakistan nor Bangladesh recognizing them as their citizens.

⁵² Jalal, p. 61.

⁵³ Muni, S., *Refugees and Regional Security in South Asia*, (Konarak Publishers: New Delhi, 1996), p. 11.

⁵⁴ Michael Kaufman, 'Biharis Long to Go Home to Pakistan,' *The New York Times*, 8/3/80, p. 14

⁵⁵ Muni, 11.

⁵⁶ Minority Rights Group, 'The Biharis in Bangladesh' (London :1982).

⁵⁷ Ibid.

Efforts to resolve the Bihari stateless problem

The Pakistani government agreed in part to resettle the Bihari government officials as part of a larger agreement between India, Bangladesh and Pakistan regarding the exchange of prisoners of war from the Bangladesh secession conflict. During the fighting, the Indian forces had captured thousands of Pakistani soldiers and to secure their freedom, Pakistan also had to make several other concessions to India, including agreeing that the Kashmir dispute between Indian and Pakistan could only be settled in a bilateral framework without third party interference. After the agreement, Pakistan felt no legal obligation to grant citizenship to those Biharis who did not fall under the categories enumerated in the tripartite agreement. That position has remained fixed up to 1999 when Pakistani Prime Minister Nawaz Sharif reiterated that the stranded Pakistanis are indeed not Pakistani citizens, but Pakistan might accept their resettlement on humanitarian grounds.⁵⁸

The Bangladesh government, for its part, was loath to accept the remaining Biharis as its citizens. Even though, almost all of the Biharis have been born in Bangladesh and never seen Pakistan, elements within the government and the people still hold them accountable for 1971 abuses perpetuated by the Pakistani regime. Up to 1985, the Bangladeshi President could still say, “they are not our people.”⁵⁹ Nevertheless, the Bangladesh state was constrained in what actions it could take with regard to the stranded Pakistanis on its soil. Having no natural border with Pakistan, it could not forcibly repatriate the Biharis to Pakistan. Neither did it strenuously insist that Pakistan accept resettlement. The only other state the Biharis had ties to was India and with Bangladesh dependent on India for trade, security and natural resources such as water from the Indus River, it could not risk the foreign policy implications of forcibly returning across the border. Neither did India want the Biharis back.

Further, despite rejecting the Biharis from citizenship, Bangladesh did see itself as further constrained in its treatment of the non-citizens. The camps in which the Biharis live are squalid, but no more squalid than the other Bengali squatter settlements around Dhaka.⁶⁰ The Bangladesh government also provides camp residents with wheat, water, electricity and medical services, costing about \$250,000 a month.⁶¹ In addition, various Western and Islamic NGOs have intermittently provided aid to the camp population. And although, lack of citizenship bars the Biharis from government and high level jobs, the Biharis have a reputation for being good mechanics and drivers and readily get jobs in railways, mills and factories.⁶² As such, their labor has been beneficial to Bangladesh. The position of Bangladesh has been to tolerate the continued presence of the stranded Pakistanis at the status quo for almost 30 years, not affording them citizenship yet not forcing them out or engineering conditions that would facilitate their departure. While Bangladeshi Prime Ministers and Foreign Ministers have intermittently requested that the Biharis be resettled

⁵⁸ Nawaz Sharif statement quoted in, *Xinhua New Agency*, 3/4/99

⁵⁹ ‘Exodus to Pakistan,’ *The Economist*, 9/7/85.

⁶⁰ ‘Biharis Long to Go Home’, *The New York Times*, 8/3/80.

⁶¹ ‘Bangla Biharis Weary of Wait,’ *Rediff on the Net*, 1/28/99.

⁶² ‘Stranded Pakistanis Live in Limbo,’ *Inter Press Service*, 5/10/80.

in talks with their Pakistani counterparts, these requests have not assumed a high priority status. More often, these requests emerge along with other issues in the Pakistan/Bangladesh relationship, notably issues of economic cooperation and trade.⁶³

On Pakistan's side, there are political reasons why various administrations have reneged on pledges to facilitate the resettlement of the Biharis in Pakistan. As in the former East Pakistan, where the central government extended preferential membership privileges to the Urdu speaking Biharis, so too in the West Pakistan province of Sindh did the government afford preferential treatment to the Mohajir refugees from India in comparison to the indigenous Sindhis.⁶⁴ Since partition, the Sindhis and the Mohajirs have been in competition for ethnic control of economic benefits through access to state jobs and employment. The Punjabi dominated central government at first favored the Urdu speaking Mohajirs for government posts and higher education slots, creating dissension within the Sindhi speaking community. Violent clashes between the two communities began in Karachi the 1970s and have escalated and spread throughout Sindh. By the 1980s, militant Mohajirs had formed the separatist Mohajir MQM party calling for an autonomous Mohajir province within Sindh.⁶⁵

It was in the midst of this unfolding drama that the Biharis from Bangladesh would have to be resettled. Sindh, particularly Karachi, is also the home to a large population of Biharis who migrated to West Pakistan as refugees during the 1947 partition. The combination of Urdu speakers, Bihari networks and potential economic opportunity made Sindh the primary destination of the would-be Bihari migrants from Bangladesh. Predictably, ethnic Sindhis feared that the potential migrants would join forces with the Mohajir militants.

Given the escalation of Mohajir/Sindhi violence, the Pakistani central government was in turn fearful of the destabilizing effects of resettling the stranded Pakistanis. And true enough, the Sindhi reaction to resettlement proposals was severe, with leaders declaring that the government was bringing in the Biharis to make the Sindhis a minority in their own province.⁶⁶ In 1993 the Nawaz Sharif government, which came to power in coalition with the MQF, initiated a plan to repatriate the Biharis starting with the arrival of 325 people into Lahore. One day later, a bomb exploded in a Bihari colony in Kotri, with evidence that it was planted by the Sindhi militants.⁶⁷

Since then, all official resettlement of the Biharis has been put on hold. Benazir Bhutto who succeeded Sharif as Prime Minister and herself an ethnic Sindhi opposed repatriation

⁶³ See, for example: 'Bangladeshi PM Asks Pakistan to Balance Trade' *Xinhua news Agency*, 3/4/99 ; 'Premier and Nawaz Sharif Discuss Asset Sharing, Stranded Pakistanis, *BBC Summary of World Broadcasts*, 2/16/98 .

⁶⁴ Pattanaik, Smruti, 'Ethnic Aspirations and Political Power: Defining Mohajirs' Grievances in Sindh', www.isda-india.org/an-jun8-8.html (1998)

⁶⁵ *Ibid.*

⁶⁶ Weiner, 157.

⁶⁷ Report, Center for International Development and Conflict Management, Minorities at Risk Program, <http://bsos.umd.edu/cidcm>

as “it could threaten national unity and security.”⁶⁸ Her Interior Minister, Naseerullah Babar, indicated that he had asked other Islamic countries to take in the stranded Pakistanis and called for a pan-Islamic effort to help resolve the issue.⁶⁹ A year later he indicated that the Biharis would not be repatriated because upon return, they engaged in “undesirable activities.”⁷⁰ But the 1997 electoral victory of Nawaz Sharif once again raised hopes that Biharis could be returned. Sharif declared his commitment to repatriation once the necessary funds were raised but with no timetable for repatriation.⁷¹ By 1999, Sharif clarified that the Biharis were not Pakistani citizens but Pakistan might take them in on humanitarian grounds.⁷² Later the same year, Sharif was ousted by a military coup whose leaders have as yet made no pronouncements on the fate of the Biharis.

What of the aspirations of the Biharis themselves? Mobilization within the Bangladeshi camps has been strong with leaders continuing to demand repatriation to Pakistan.⁷³ Their tactics include frequent protests at the Pakistani Embassy in Dhaka with volunteers attempting to immolate themselves if immediate action was not taken towards repatriation⁷⁴; threats to repatriate themselves by marching through India to Pakistan⁷⁵; hunger strikes; and illegal migration to Pakistan. In addition, the camp leadership has resisted any efforts by the Bangladeshi authorities to close down the camps and to integrate the Biharis into the local communities.

International aid workers have claimed that the Bihari leadership has even resisted efforts to improve living conditions in the camps in order to dramatize their appeal for repatriation⁷⁶. However, many Biharis, especially those born in the independent Bangladesh and who have learnt to speak Bengali, have begun to advocate local integration and to press for Bangladeshi citizenship.⁷⁷ As one Bihari related to a USCR representative, “We must have some resolution. Now, we are living in the middle of a river. We are not on one shore, nor the other.”⁷⁸

Thus, the Biharis went from having privileged membership in the pre-1971 Pakistani state to being denied membership in the post 1971 Bangladeshi state. 30 years later, 240,000 Biharis remain in limbo, having ties to both Pakistani and Bangladeshi states, yet without the full protection of either.

⁶⁸ *Deutsche Presse-Agentur*, 3/8/95.

⁶⁹ *Reuters*, 10/31/95

⁷⁰ *Asia Times*, 9/5/96.

⁷¹ *Agence France Presse*, 1/28/97.

⁷² *Xinhua News Agency*, 3/4/99.

⁷³ Ruiz, Hiram, ‘Fifty Years in Exile: The Biharis Remain,’ US Committee for Refugees, www.refugees.org/world/articles, (1998)

⁷⁴ For example, see *Deutsche Presse Agenteur*, 7/10/95.

⁷⁵ *The New York Times*, 8/3/1980.

⁷⁶ *Christian Science Monitor*, 4/22/81.

⁷⁷ Ruiz.

⁷⁸ *Ibid.*

The Lhotshampas in Bhutan

A somewhat different case involving denial of citizenship emerged in the Himalayan Kingdom of Bhutan in the late 1980s. Since 1990, over 100,000 ethnic Nepalis (Lhotshampas) who have lived in Southern Bhutan for generations have fled or were evicted from Bhutan. Of these, some 90,000 remain in UNHCR supported camps in Eastern Nepal, the remainder integrating themselves in local communities in Nepal and Bhutan.⁷⁹ The Bhutanese government has maintained that the overwhelming majority of the refugees are not genuine Bhutanese citizens while the Nepalese government and the refugee leadership refute this claim. Thus, for over 10 years, the Lhotshampas have been living without an effective nationality.

Bhutan is a hereditary monarchy that was established in 1907 with the support of the British. There are 3 main ethnic groups in Bhutan: the Ngalongs and the Sarchops (together called the Drukpas) who speak closely related languages and share a Buddhist culture; and the Ethnic Nepalis who mainly practice Hinduism.⁸⁰ The three ethnic groups constitute about 90% of Bhutan's population.⁸¹ The monarchy is headed by a Ngalong-Drupka King who has retained strong executive powers, although creating several institutions including a National Assembly, a Royal Advisory Council and a Council of Ministers to provide for broader participation in government. However, the government is overwhelmingly dominated by the two Drukpa groups, with little participation by the ethnic Nepalese. These Nepalese began to migrate into the southern region of Bhutan in the 19th century to virtually no opposition from the ruling Ngalong monarchy. The government encouraged migration up to the 1960s and 1970s due to labor shortages and ethnic Nepalis were granted Bhutanese citizenship in 1958.⁸²

Factors contributing to Lhotshampa denial of nationality

Similar to the cases of the Estate Tamils and the stranded Pakistanis, Lhotshampa statelessness can be linked to the statist membership policies of a strong central government – in this case the Drukpa monarchy and its functionaries. As mentioned above, the Drukpa government was fairly liberal in its membership policies as evidenced in 1958 Nationality Law which allowed the Nepalese migrants to attain citizenship after residing in Bhutan for 10 years and owning agricultural land.⁸³ However, the law changed with the 1977 Citizenship Act that dramatically increased the period of residence

⁷⁹ Lee, Tang, 'Refugees from Bhutan: Nationality, Statelessness and the Right to Return,' in *International Journal of Refugee Law*, Volume 10, (Oxford University Press: Oxford, 1998), p 118. See also, <http://www.unhcr.org>

⁸⁰ Piper, Tessa, 'The Exodus of Ethnic Nepalis from Bhutan,' (*Writenet*, 1995), <http://www.unhcr.org/refworld>

⁸¹ The population numbers for Bhutan are disputed: a 1991 government report places the figure at 600,000; the Nepalis refugee leaders say the figure is between 700,000 to 800,000; the 1991 Statistical Yearbook of Bhutan puts the figure at 1,461,853. Contentious also is the share of population within the main ethnic groups. The government figures say 20% are Ngalongs, 37% Sarchops and 30% Nepali speakers. Refugee leaders prefer 53% Nepalis, 31% Sarchops and 16%, the ruling Ngalongs. (Lee, 120).

⁸² Lee, 123.

⁸³ Piper.

for citizenship application to 20 years and added a new requirement that applicants should be able to write and speak the Drukpa Dzongkha language and have some knowledge of Bhutan.

The language requirement was particularly aimed to deter Lhotshampa applicants whose literacy in Nepali was low enough, let alone Dzongkha.⁸⁴ Next came the 1985 Citizenship Act which was even more stringent requiring a sound knowledge of Bhutanese history, culture, customs and traditions and the ability to speak read and write Dzongkha well. Anyone born after 1958 and had only one Bhutanese parent also had to apply for naturalization. Additional requirements included a good moral character, no criminal record or record of disloyalty to King, country or people. Anyone entering the country after 1965 would have to fulfill all of these requirements for citizenship.

The 1985 Act also authorized a census to be taken at which time ethnic Nepalis would have to provide documentary evidence of their residence in Bhutan to confirm their citizenship. The standards for proving residence were extremely strict especially for the largely illiterate Lhotshampas in a country that only recently adopted basic administrative procedures.⁸⁵ In some cases, the appropriate documentation would not exist. Nevertheless, the census was carried in 1988, along with several irregularities that prevented *bona fide* Lhotshampa citizens from proving their citizenship.⁸⁶

In addition to the citizenship policies, the government adopted several other 'Bhutanization' policies including a requirement that all citizens observe the *driglam namzha*, the traditional Northern Drukpa code of values, dress and etiquette. These and other requirements, for example, the removal of Nepali language from school curriculums, were regarded by the ethnic Nepalis as a clear attack on their cultural identity. By September 1990, resentment of government policies erupted in a series of public demonstrations throughout the south by thousands of ethnic Nepalis.⁸⁷ Growing Nepali discontent also led to the formation of the Bhutan People's Party (BPP) which proceeded to criticize the National Assembly, the 1985 Citizenship Act and call for a multi-party democracy and constitutional monarchy.

In response, government forces staged a crackdown and began forcibly expelling those Nepalis whose citizenship was not validated under the 1988 census and intimidating even those with valid citizenship documents in order to make them flee. The army inflicted terror on the demonstrators and in some cases forced Lhotshampa families to sign 'voluntary emigration forms' as they crossed the border into India. Nepali members of the National Assembly were imprisoned or forced out. By 1992, the Bhutanese Army had expelled over 100,000 alleged 'foreigners' across the border into India. Some settled in Eastern India but about 90,000 ended up in the refugee camps in East Nepal after crossing the Indo-Nepal border or being forced over by the Indian army and police.

⁸⁴ Lee, 129.

⁸⁵ Dhakal, D., *Bhutan: A Movement in Exile*, (Nirula Publications : Jaipur, 1994) p. 193.

⁸⁶ See Piper, p. 8.

⁸⁷ Piper, p. 10.

The expulsion of the Nepalis can be recast as a membership struggle between the ethnic Nepalis and the Bhutanese state. In their nation building enterprise, the Bhutanese elites wanted to ensure that the state retained its Ngalong socio-cultural identity and perceived the Nepalis as a threat to that identity. They utilized the central and legal apparatus of the state, through the enacting and enforcing of retroactive citizenship laws, to restrict membership in the Bhutanese polity as to favor Ngalong tradition and to marginalize Nepali expression of identity. As the Nepalis reacted to the new restrictive membership policies by calling for greater democracy and self-expression, the Bhutanese state counter-reacted by moving to disenfranchise them entirely and expelling them from the state.

Restricting membership in the polity took on even greater significance as the monarchy itself was moving in the direction of democratizing and modernizing the state while trying to ensure the continuation of its Ngalong character. For example, in 1998, the king expressed a desire to “promote even greater people’s participation” in governance and surrendered his day to day control of the government to a cabinet responsible to the National Assembly.⁸⁸ For the state to democratize and to retain the supremacy of the Ngalong culture, it needs to ensure that a sizable majority of potential electorate remains Ngalong in character. Denationalizing the Nepalis therefore has a functional purpose for the future of democracy in the Kingdom.

Bhutan also had external security concerns that prompted the mass denationalization of the Nepalis. The Nepali diaspora was not limited to Bhutan. Throughout the century, Nepalis had also migrated to nearby Sikkim, which until the mid-1970s was an independent state under Indian control and much like Bhutan under the rule of a Buddhist monarchy. By the early 1970s, the Nepali descendants had outnumbered the Buddhist population. The Nepalis, many of whom lacked citizenship, agitated for greater democracy and their movement was supported by the Indian government, in part motivated by desire to control a strategic region between India and China. With the help of the Nepalis, India annexed Sikkim in 1975 and held multi-party elections that brought the Nepalis to power and led to the marginalization of the Buddhist population.⁸⁹

This development was not lost on the Bhutanese elites. For example, in 1991 during the expulsion of the Lhotshampas from Bhutan, the Bhutanese king warned that, “the factor that is at stake for us is basically the revival of the Bhutanese people . . . it will be a Nepali state . . . just like Sikkim . . . unless this problem is amicably and effectively solved.”⁹⁰ Thus, the Bhutanese state had not only to contend with the possible outnumbering by the Nepalis, but also with the possible irredentist claims of the Indian state. Both factors influenced the decision to denationalize and expel the Lhotshampas.

However, India has been so far silent on the fate of the Lhotshampas, although under the Indo-Bhutan Treaty of 1949, while Bhutan is sovereign in its internal affairs, its external

⁸⁸ ‘Land of Thunder Dragon Opts for Democracy,’ *Los Angeles Times*, 2/13/99.

⁸⁹ Weiner, p. 167.

⁹⁰ *Reuters*, 2/20/91.

relations, foreign policy and defense would be guided by India.⁹¹ In addition, Bhutan's border is not contiguous with Nepal. For the fleeing Lhotshampas to reach Nepal, they had to cross Indian territory. The Indian government has used its army to escort the Lhotshampas to Nepal and in many cases, to prevent them from settling in Indian territory. It has also prevented efforts by the Bhutanese refugee leaders to repatriate the camp population back to Bhutan by preventing passage across Indian territory.⁹² The Nepali government has consistently called for Indian intervention and mediation on the problem but India has refused, stating the refugee flow is a bilateral issue between Nepal and Bhutan and needs to be settled as such.⁹³

Given the Indian engagement in both the Estate Tamil and stranded Pakistani issues, its position with regard to Lhotshampa statelessness needs to be further examined. Two factors emerge out of India's relative silence. First, nascent 'Greater Nepal' movements have emerged in the 1980s and 1990s, particularly the Gorkha National Liberation Movement, that seek to connect the entire Himalayan Nepali diaspora⁹⁴. In the Bengal region of India, there is already a Nepali political party demanding a separate Nepali Gurkaland state within India.⁹⁵ With over 8 million people of Nepali descent within India's borders, India is no longer particularly anxious to be associated with Nepali minority rights movements in third countries for fear of its own vulnerability on the matter. Second, India fears that any attempt to force a settlement on Bhutan might lead the Bhutanese elite to forge an alliance with China.⁹⁶ The consensus, however, is that Indian intervention and pressure on the Bhutanese government would result in an agreement to settle the matter of the stateless Lhotshampas as neither Nepal nor Bhutan can afford to alienate their powerful neighbor.⁹⁷

Nepal, on its part, has pursued a disarrayed policy with regard to the refugees. In 1990, Nepal's King Birenda relinquished absolute control over the government and the country has been a functioning democracy since. Various inexperienced governments have ranged from calling for UN/international mediation of the issue to urging Indian intervention to reaffirming that it is a bilateral matter to be settled between the two countries. Nepal has demanded the repatriation of the refugees "in a dignified manner" to Bhutan citing the economic and environmental strains of the Lhotshampa camps on Nepal and has initiated 9 rounds of bilateral talks with the Bhutanese government to determine the fate of the refugees.

However, by and large it has been Nepal that has made the concessions to keep the talks going. In 1995, Nepal agreed to a refugee categorization scheme put forth by the Bhutanese whereby the camp dwellers would be divided into: *bona fide* Bhutanese who

⁹¹ Pattanaik, Smruti, 'Nepal Bhutan Talks and the Repatriation of Bhutanese Refugees,' <http://www.isda-india.org/anjan9-11.html>.

⁹² For example, in 1996, Indian police stopped a group of 150 Lhotshampas at the Indo-Nepal border. The refugees had intended to march back into Bhutan. *United Press International*, 1/17/96

⁹³ Pattanaik.

⁹⁴ Baral, p. 164.

⁹⁵ Weiner, p. 168.

⁹⁶ Pattanaik.

⁹⁷ See Baral and Piper.

were evicted forcefully; Bhutanese who emigrated; non-Bhutanese; and Bhutanese who committed criminal acts.⁹⁸ The Bhutanese negotiators agreed only to accept the return of those in category 1 and later some of category 2, but the two countries have yet to come up with a verification mechanism to allocate the refugees to each category. Bhutan continues to insist that under the categorization scheme, most of the camp dwellers are not *bona fide* Bhutanese who can be allowed to repatriate. It has also encouraged northern Bhutanese to settle on the land previously occupied by the Lhotshampas, creating potential problems should the refugees return. Further, both Nepal and Bhutan have excluded the refugees themselves from participating in the talks.⁹⁹

Thus after 10 years of hosting the Lhotshampa, Nepal continues to accept their presence on Nepali soil as well as the status quo with regard to the Bhutanese intransigence on the matter of repatriation. Even though the Nepalese government has refused to grant permanent asylum or citizenship to the refugees, it has neither attempted to force them out. The refugees' common language and social identities as well their ties to Nepali electoral constituencies probably would not allow a Nepali administration to force their repatriation.¹⁰⁰

As for the refugees themselves, despite being excluded from the Bhutan/Nepal negotiations and banned by UNHCR from political activity in the camps, they have mobilized to insist on their repatriation to Bhutan, the state that they regard as their own.¹⁰¹ The refugees have held numerous demonstrations and hunger strikes to support their cause as well as attempted marches back to Bhutan and appeals to Indian and international intervention. Their demands are twofold: one, that they be repatriated; and two, that their repatriation be accompanied by the institutionalization of democracy in Bhutan. The additional trouble for Bhutan is that they may not accept the former without the latter. Already, refugee leaders have refused to issue an apology to the King of Bhutan, which might facilitate their return.¹⁰² Thus, the refugees may prefer to remain stateless and raise international attention and embarrassment to their plight rather than return to Bhutan under the same conditions that led to their flight.

Statelessness in South Asia: some trends

To return to Soysal's membership models discussed above, we may conclude that statelessness in South Asia arises out of the *central administration's appropriation of a statist model to determine its allocation of citizenship rights* and to distribute its membership goods. In the three cases above, the post-colonial states pursued an agenda

⁹⁸ Piper, p. 14.

⁹⁹ Pattanaik, p.8

¹⁰⁰ Baral, p. 176. However, after 10 years of supporting the refugees, international donor fatigue is beginning to set in and UNHCR is threatening to reduce its support of the camps. Other NGOs that fund camp activities cut their contribution from \$1 million a year during 1993-1998 to \$400,000 in 1999 (*Bangkok Post*, 4/9/2000). It remains to be seen how the Nepali position will be affected as donor support erodes.

¹⁰¹ Pattanaik, p. 8.

¹⁰² Pattanaik, p. 9.

to build and reinforce strong, centralized administrations and to utilize central government as the primary determinant of membership and citizenship. And in all of the cases, the denationalizing state was controlled by one ethnic or socio-cultural group that pursued a rigid nationalist ideology and monolithic concept of sovereignty that excluded elements of society not towing the nationalist line.

Thus, *the statist model of membership also has a fragmental tinge*. It is partially fragmental because the imposition of a monolithic, centralized model of membership on South Asian societies with diverse social, cultural, religious and ethnic polities put different groups in competition with each other for the resources and membership goods distributed by the state. Groups such as the Tamils in Sri Lanka, the Bengalis in Pakistan and the Nepalis in Bhutan found themselves in confrontation with the dominant political group at the reins of the state for membership goods. Groups such as the Biharis found themselves in coalition with the dominant group but, as a result of the state's inequitable distribution of membership goods, alienated from the Bengali majority surrounding them.

The spillover of ethnic, religious, political and historical identities across the borders of the post-colonial South Asian states then facilitates the denationalization of unpopular groups that the political elite could portray as having closer ties to another state. Because the Estate Tamils and the Lhotshampas had fairly recent migratory and religious and cultural ties to polities in South Asian states other than their state of residence, it was easy for the central government to legitimize their exclusion and disenfranchisement and, in the case of the Lhotshampas, their forcible expulsion. In the case of the Biharis, it was their political ties to the denigrated Pakistani central government that made their exclusion from the Bangladeshi polity possible, an exclusion the majority of the Biharis at first welcomed if it was accompanied by resettlement in Pakistan.

Problems then arise when the states to which the excluded groups were to be 'repatriated' did not welcome the groups into their polity. Pakistan was opposed to taking in the Biharis because they would disturb the already flammable ethnic balance in the province of Sind. Both India and Nepal were concerned about the economic and environmental burdens the repatriates would pose to their societies and also the potential rifts in the polity the newcomers could cause. India and Sri Lanka were also unwilling to extend citizenship to stateless groups who had no desire to be resettled from their places of residence. As such, the groups remained in stateless limbo for generations – over 40 years for the Estate Tamils, 30 years for the Biharis and 10 for the Lhotshampas.

Sizable numbers within the stateless populations would actually *prefer to remain stateless* than be given a nationality not to their preference. The Bihari leaders encourage their followers to remain in the Dhaka camps rather than seeking reintegration into Bangladesh. The vast majority of the Estate Tamils did not seek Indian citizenship even when they were offered it under the numerical formulas agreed upon by the Indian and Sri Lankan governments. The Nepali leaders insist that their return to Bhutan must be accompanied by democratization in that country. Moreover, as time passes without resolution of issues involving statelessness, the *nationality preferences of the affected groups may change*. Young Biharis born in Bangladesh and proficient in Bengali are now

beginning to call for Bangladeshi citizenship. Estate Tamils who applied for Indian citizenship find their children unwilling to relinquish their ties to Sri Lanka. Similarly, Lhotshampas who can find work in Nepal may not want to return to a hostile Bhutan.

However, the states do not as much take the nationality preferences of the affected peoples in consideration as they view statelessness as a bilateral issue to be settled by the states involved. And while the states involved to a certain degree will allow matters concerning stateless groups to remain at the status quo for decades, efforts to resolve the issues of statelessness emerge out of other foreign relations and national security concerns between the states involved as well as third states. Thus, Sri Lanka granted citizenship to a bulk of Estate Tamils when it feared further Indian intervention in Sri Lanka's internal conflict could be justified by the presence of potential Indian citizens on the island as stateless Tamils. Similarly, Pakistan granted citizenship to large number of Biharis in exchange for prisoners of war held by the Indian army.

In the Bhutanese case, the expulsion of the Nepalis was in part prompted by the government's concern that the Indian government could use Nepali agitation and potential population growth to annex Bhutan as it did with Sikkim. Indian intervention into the matter is also seen by the Nepal government and the refugees as a potential solution to the problem. Thus, Soysal's statist membership model needs to be revised further in the region of South Asia. The statist internal membership model that the central administrations of the region pursue is also influenced if not constrained by foreign relations and national security concerns involving other states.

Further, because of the historical, political, social and religious cross border links the affected groups have, neither the state perpetuating the denationalization nor the purported receiving state can wholly disavow itself of responsibility towards the stateless group. With the Tamils, India was roped into negotiating with Sri Lanka on the citizenship status of the plantation workers although it disavowed any legal responsibility for the group. With a large ethnic Tamil population within South India, the central government could not entirely ignore the plight of the plantation workers. Neither could Sri Lanka forcibly expel the Tamils without major repercussions from India, in part because of Tamil constituency within India.

With the Biharis, Pakistan also views itself as having a humanitarian if not legal responsibility towards the Biharis. Demands by Pakistan's internal constituency pressing for Bihari repatriation, particularly the MQM party, in part shapes Pakistan's continued engagement in the matter. On Bangladesh's part, the government still provides aid and services to the Bihari camps even though the Biharis are viewed as traitors to the Bengali cause. With the Lhotshampas, Nepal continues to provide shelter to the refugees although it could have prevented them from crossing the Indo-Nepal border in the first place and could have adopted a harder line in negotiations with the Bhutanese. No democratic government in Nepal could probably politically survive forcing the ethnic Nepali refugees out of Nepal due to the ethnic connections they share with the Nepalese constituency. And even though Bhutan has forced the Lhotshampas out of its borders, it continues to negotiate with Nepal with regard to their citizenship status and is under

increasing Nepali and international pressure to allow their return. The pattern that emerges is that *while the stateless groups are denied full, effective membership in either of states involved in their predicament, they do have a weak de facto dual citizenship in both states*. As long as they remain stateless, both states have some role in finding a solution to their plight that cannot be fully abrogated.