

## *Executive Summary*

### **STATELESS IN INDIA**

#### **Phase - III**

Mahanirban Calcutta Research Group

The geo-body of South Asia had from time immemorial been the field on which movements and migrations of people have chalked their permanent routes. What this had produced is inter-linkages — cultural and demographic. Groups have travelled from one region to settle permanently in another. Alien cultural calques have arisen in unobvious locations, for temporary settlers have left their traces behind. What the postcolonial national-statist compartmentalization of South Asia achieved of course is the brutal chopping up of this interconnectivity via the institution of borders. Yet, this has happened more solidly in the feverish imagination of hard-line nationalists than in actual lived reality. People ‘transgress’ borders regularly, for they see no crime or disconnect in doing so. The third leg of the statelessness project builds on this undeniable verity of multiple crossings. If one were to think exclusively in terms of India, then one would be thinking in an inadequate manner, one would be thinking like the state. To avoid the epistemic — but often also real — violence that thinking like a state engenders, we take a broader interconnected view of statelessness in India. We look at and engage ourselves with groups who may now be in neighbouring countries but owe their provenance to India. The third leg, therefore, theoretically reconstellates the idea of India within the historical context of South Asia.

In doing so, we have already gone beyond the strict legalistic definitions of statelessness, the ones we have engaged and dealt with in the greatest detail in the last two legs. Over time, it has been our collective experience in Mahanirban Calcutta Research Group that legal abstractions have to be rethought historically-contextually. If none of the South Asian countries have been a party to the UN Convention relating to the Status of Stateless Persons of 1954 or the UN Convention on the Reduction of Statelessness of 1961, there may be a reason for it. The experts may not have found the laws adequately applicable to the context of South Asia. Between the citizen and the stateless there is a vast range of political belonging that cannot be straitjacketed into narrow definitional imperatives. Any attempt to do so, in fact, will only result in a conceptual leaky bucket so to speak — people, entire groups are likely to slip through the interstices of definitional finitude and be unfortunately ignored. In the cases we take up for study in this last leg of research, we try to address this issue and formulate a framework to remedy such lacunae.

The present and last leg of the project on stateless groups in India focuses on three groups:

1. The heterogeneous Nepalese population of Bhutan, popularly known as the Lhotshampas (‘easterners’ in Dzongkha);
2. The stranded Pakistanis in Bangladesh — they are sometimes loosely called the ‘Biharis’, a reference to the Indian state of Bihar from whence they are thought to have originated during the Partition of South Asia in 1947; and
3. Pakistani Hindu migrants to Indian states of Rajasthan, Gujarat and Punjab

Preliminary fieldwork has reaffirmed the value of the three research questions that had previously animated our interests. They merit repetition here:

1. First, how are certain groups and communities rendered stateless? In the ethnically heterogeneous successor states in South Asia, why are the minorities more vulnerable to

statelessness than others? Does protracted refugee-hood eventually result in statelessness? Is the distinction between refugee-hood and statelessness increasingly wearing thin?

2. Second, is the existing legal regime adequate in dealing with the problem of statelessness? What has been the experience with case laws in different situations related to statelessness in India? Can judicial activism as evident in some cases in recent years serve as an effective guarantee?
3. Third, do policymakers need to think beyond legal terms? Why does mere judicial activism prove ineffective? Does all this call for activating and strengthening the civil society institutions and initiatives? But how does one make the first move towards melting the ice of xenophobia against the outsiders who remain in the host country as stateless?

These are questions that will exercise us through our research and would find particular emphasis in the final report. In the context of the case-studies, however, it is not difficult to see how, and why, the last two cases are similar. Of course, they have their own historical specificities morphed by the vector of geographical disparity in their lived experience of the Partition and subsequent wars between the South Asian neighbours. However, it is easy to discern that the last two groups comprise religiously homogeneous peoples who, at some point in their history, reached a country where they were part of the religious majority— Pakistani Hindus in the three western states of India and the Muslims from Bihar in East Pakistan, which became Bangladesh in 1971— and yet they remained or eventually became stateless, their right to citizenship denied by the countries of their choice.

The morphology of the two cases are being compared not merely to make the important but academic point that the pasts of the various peoples of South Asia are inseparable and interlinked, but to enable a more pro-active orientation that thinks in terms of building network with similar groups working among other stateless and refugee peoples, to galvanize effort to promote interaction and coordination at the broader South Asia level and to promote better relations between different countries in the region, based on the realization that not only our pasts but our futures are inseparable and interlinked.

#### **A. Hindu migrants from Pakistan to India**

Division of India changed the fate of millions of families caught on the wrong side of newly formed border. A huge number of Muslims and Hindus chose to pull up roots and move to the countries they would part of the majority in. However, millions of Muslims decided against moving to Pakistan from their birthplaces as did a few lakh Hindus who too opted to stay put in Pakistan. Unfortunately for them, the conditions in Pakistan continued to deteriorate and all their hopes of a peaceful life there were soon belied. The increased suspicion and hostility between the two South-Asian neighbours only added to their woes, although in Sindh and particularly the Hindu-dominated Thar Parkar district of the province no instance of communal disharmony has been recorded. Hindu Singh Sodha, convenor of the Jodhpur-based Pak Visthapit Sangh (‘Association of Pakistani Refugees’) (PVS), himself a migrant from Sindh, has talked about this in public forums. Mr Sodha explains the continued migration of Pakistani Hindus to India as a result of the growing insecurity among the Hindus, as well as other religious minorities, in Pakistan as a whole, especially with the rise of right-wing Islamist groups in the country. Likewise, the discriminatory laws and policies adopted by the Pakistani state, starting with the ‘Islamising’ regime of Zia ul-Haq, have made life for religious minorities in Pakistan particularly difficult.

Having the so-called ‘secular’ India as a neighbour has not helped either. It could be that communal riots in India, in which Muslims generally suffer greater loss of life and property, give right-wing

Islamist groups in Pakistan more legitimacy, and this has been increasing over the years. Each time India-Pakistan relations get strained, the insecurity of Hindus in Pakistan gets further heightened. After the destruction of the Babri Masjid in 1992 and the ensuing violence against Muslims in India, there were attacks on Hindu temples in Sindh and southern Punjab and even some killings of Hindus, which led to heightened Hindu insecurity and a fresh spurt of migrations to India. Incidents such as forcible abductions of Hindu girls and their conversion to Islam and the kidnapping of Hindu businessmen add to this sense of fear. Further, the acute poverty of many Hindus in Sindh, most of whom are Dalits, mainly Meghwals, Kolis and Bhils, and work as landless labourers, drives many to consider migrating to India in the hope of a better life. As recently as January 2011, media reported that over 100 Hindu families from different parts of Balochistan in Pakistan, too, are making efforts to migrate to India, as the authorities do not take action against the locals criminals who frequently attack, abduct and torment members of minority communities at the behest of fundamentalists. They also complain that law and administration is deteriorating in Pakistan and no one comes to their rescue when their families encounter loot, burglary and abduction. If someone dares to resist, he gets killed.

However, the plight of these migrants does not end once they land in India. The richer sections have it easier perhaps. But the poor continue to be stranded illegals with no rights. Being part of the religious majority hardly helps them acquire any rights. Suspended in a limbo of political identity, these people cannot even go back to Pakistan as their tormentors would be more hostile than ever before and the Pakistan government would also view them with suspicion. Here in India, they are denied citizenship and are regularly harassed by authorities for having reached India on Pakistani passports and extending their stay. Seemant Lok Sangathan, one of the organisations working for these migrants from Pakistan, has often taken their cause to the Indian government but the authorities remain indifferent to their pleas for permanent shelter in India. Most of these refugees seeking Indian citizenship are temporarily based in western Rajasthan, with few hundred families settled in Haryana and Punjab as well. It is at the life-conditions of these stranded groups that the field-researchers are looking into, in an attempt to find out and comment on what could be done to alleviate their situation. Even as our researchers speak to the Hindu migrants, Prime Minister Manmohan Singh has been making agreeable noises about the issue. One hopes that by the time the final report on this stateless group is put together, we will have something heartening to say.

## **B. Stranded Pakistanis**

The Urdu-speaking Muslims in Bangladesh are, however, in a better situation in terms of rights than the stranded Pakistanis. These Muslims went to East Pakistan mostly from Bihar after the Partition of 1947, since the border to the east was closer to them than the one in the west. As such, they forsook their Indian citizenship in favour of acquiring Pakistani citizenship. In a little more than two decades, however, the situation changed drastically. When the Bangladesh Liberation War or *Muktijuddho* started in 1971, these Muslims found themselves unable to sympathize with the Bengali cause. They did not ethno-linguistically identify with the overwhelming Bengali-speaking majority of East Pakistan and found themselves more in alignment with Pakistan's position. They supported, therefore, Islamabad. Their support for the Pakistani army and participation in pro-Pakistani militias such as the *Razakars* led to considerable hostility and retaliation from the Bengalis. Unfortunately for them, the war was won by the Bengalis with not a little help from India. After the independence of Bangladesh, the Biharis were relocated to refugee camps and have since petitioned the Pakistani government for the right to settle in Pakistan. Their petition has only met with marginal support from Pakistani authorities, who have allowed only a small number of the so-called 'Stranded Pakistanis' to settle in Pakistan. The group has formally become stateless — they left India, fought

against Bangladesh and Pakistan refused to take them. The children of these aspiring Pakistanis find it hard to cope with the reality of life and the ideal of being settled in Pakistan. A deep sense of betrayal pervades their psychology — they fought for Pakistan, but in defeat Pakistan abandoned them to the mercy of Bengali nationalists. In any case, being born and brought up on the Bangladeshi soil, they feel the country to be their motherland and have mostly adopted Bengali as their mother tongue. There is no reason why, then, these people should not be granted Bangladeshi citizenship. However, with neither Bangladesh nor Pakistan offering citizenship, the Biharis have remained stateless for 36 years. Organisations like Refugees International have urged the governments of Pakistan and Bangladesh to “grant citizenship to the hundreds of thousands of people who remain without effective nationality.” In 2006, a report estimated that between 240,000 and 300,000 Biharis live in 66 crowded camps in Dhaka and 13 other regions across Bangladesh. In 2003, a case came before a high court in which ten Biharis were awarded citizenship according to the court’s interpretation of the constitution. The ruling exposed a inter-generational gap amongst Biharis in terms of aspirations, with younger Biharis tending to be ‘elated’ with the ruling, but with many older people feeling ‘despair at the enthusiasm’ of the younger generation. Obviously the older generation continues to cherish the pre-War identity of being a Pakistani; they still hope that a second Surur Hoda will come along and ensure their resettlement in Pakistan. The pressures of social survival have, on the contrary, pushed the younger generation to move on willy-nilly; they find it to their advantage now to seek greater civil rights and citizenship in Bangladesh.

So far, however, little progress has been made in expanding that ruling to others. Many Pakistanis and international observers believe the plight of the Biharis has been politicized, with political parties giving the refugees false hopes and impracticable expectations. In recent years, several court rulings in Bangladesh have awarded citizenship to Biharis living in Bengali refugee camps, as the majority of these refugees were born there. International observers believe that Bangladesh, as the successor state, needs to fulfil its international obligations and grant citizenship to this *officially stateless* ethnic group or arrange for the peaceful repatriation back to their native state of Bihar, over the border in India from where they originally came. The latter option being somewhat difficult to realize, the issue will have to be resolved taking recourse to the former. A tentative step towards this has fortunately been taken. On May 19, 2008, the Dhaka High court approved citizenship and voting rights for about 1,50,000 refugees who were minors at the time of the *Muktijuddho* in 1971, and those who were born after would also gain the right to vote.

### **C. Bhutanese refugees in Nepal**

The case of the Lhotshampas is distinct from the previous two, at least in the sense that their statelessness is one born out of protracted refugee-hood and, then, such a refugee-hood has no connection with the Partition of 1947 and its aftermath. The origin of the refugee crisis of Bhutan has its roots in the ethno-political dynamics of the Kingdom itself. Bhutan’s 650,000 people consist of several ethnic groups. The Ngalongs of the western mountains and the central Bhutanese with whom they have intermarried form the elite, but they constitute a minority alongside the more numerous Sharchhops (‘easterners’) and the Lhotshampas (‘Nepali-speaking Bhutanese’). Almost all of the refugees come from this last group, which before the crisis began was reckoned to constitute between one-third and one-half of the total population. From the end of the nineteenth century, people from Nepal had made their way to the kingdom of Bhutan and settled there. They and their descendants had very little security in Bhutan until they were granted full citizenship under the 1958 Citizenship Act. As such, it will have to be remembered the Nepali-origin people of Bhutan are not, as some politically motivated commentators have us believe, foreigners: they are citizens with the fullest rights. During the 1960s and 1970s, it was government policy to promote integration of

people of Nepalese origin into the Bhutanese mainstream, and many Lhotshampas rose to occupy influential positions in the bureaucracy. As a result, during the 1980s, the Lhotshampas came to be seen as a threat to the political order. When a string of measures were passed by an insecure ruling elite that discriminated against the Lhotshampas, they organised a series of public demonstrations for which the participants were branded as ‘anti-nationals’. Several thousands of Southern Bhutanese were imprisoned, and more than 2000 tortured, according to Amnesty International. Very few of them were formally charged. Thousands fled to India and Nepal. By the end of 1992, there were more than 80,000 living in UNHCR camps in the Jhapa district of southeastern Nepal.

Visiting the Beldangi camp near the town Damak of Jhapa district, Nepal, shows how organized and educated these Nepali-origin Bhutanese refugees are. Clean thatched houses of cane-latticework walls and attached restrooms greet you to the camp, situated on the bank of the beautiful Ratua River and set against the backdrop of the blue hills in the distance. This is almost an Arcadian retreat compared to the hot, dusty small-town feel of Damak or even the neighbouring Birtamod. Speaking to the secretary of the Beldangi-1 camp one discovers that almost all the English teachers of nearby schools are Lhotshampas. Is it not then that they are integrating? They invariably are. Such is the inevitability of protracted refugee-hood. It first produces stateless-like conditions and then, the insecurity generated by that precariousness, often egg these refugee-stateless people to try and integrate. The easiest route of integration, of course, is through marriage, facilitated by the fact that though the Lhotshampas are Bhutanese citizens they derive from the Nepali ethno-linguistic stock. However, for the Lhotshampas the fact that they are very accomplished academically, thanks to the Jesuit Refugee Service’s (JRS’s) efforts, is also critically useful. (The JRS in Jhapa is embedded in Caritas.) But, integration is what is happening in the teeth of their aspirations. The secretary, a young man in the neighbourhood of 30, strongly came out in favour of repatriation. Failing which integration into the Nepalese society would be the second best option. The first option seems to be a far cry; the second option, too, is difficult to achieve by legal sanction: the Nepali government, perhaps, justifiably fears that allowing the legal absorption of the Lhotshampa refugees would open the floodgates of migration from Bhutan where many of these people still live in conditions of extreme humiliation and hardship. As such, most of them have somewhat unwillingly accepted the option of third-party resettlement: that is, being resettled in the USA mostly, but also the UK, Australia, etc. They are often not sure whether they will be able to adjust to these alien cultures rapidly or successfully. But such are their options. Some of them have, however, remained firm in their rejection of third-party resettlement. What would happen to them, once the UNHCR-projected deadline of 2015 for resettlement is crossed? What would, moreover, happen to the refugees who have married the locals? A number of thorny questions remain; the final report will grapple with them in greater detail and reflect on the valuable work UNHCR has done in Jhapa with the efficient aid of the Caritas. The final report will also narrate the textures and tangles of life in the Jhapa camps, its little joys and bigger anxieties.

### **Final words**

To conclude, we propose here some tentative observations to be detailed in the final report:

- The phenomenon of statelessness is linked to the vagaries of citizenship and citizenship laws in India and entire South Asia; they are deeply entrenched in the context of the region and cannot be approximated and understood by talking a simple recourse to international laws; One reason for this particularity — perhaps, peculiarity — is the way this country and the region has been decolonized;

- Statelessness in India cannot be described as one single clear category of legal existence; it consists of a range of what Hannah Arendt had called 'rightlessness', also of several levels of deprivation or enjoyment of rights;
- Though there is no uniform law on communities whose citizenship status is not clear, also no serious effort to clarify them, there are good practices of the state with regard to these communities from a humanitarian angle. There have been, for instance, a series of bilateral agreements, understandings and treaties between states — an issue that each of the case studies will take up in greater detail, with greater vigour, in the final, longer report;
- To understand the precarious nature of the life of these communities, we need both historical and legal approaches; additionally, detailed demographic data are required which, too, will be given their deserved attention in the final report; however, a caveat needs to be inserted timely: the fieldworks conducted in the disparate geographies of the cases mentioned above have uniformly indicated a lack of dependable demographic information. Estimates vary, numbers disagree *inter se*. For indeterminate human geographies, this is only to be expected.
- In many cases a dialogic route is better than a simple rights oriented one based on legalities;
- However India needs as far as possible clear legal provisions in as much as statelessness being a South Asian phenomenon with many population groups linked to each other South Asia needs a regional convention on statelessness in conformity with international norms but addressing the region's particular needs.

The final report will bring out in details all these aspects of the study.