DEPRIVATION OF CITIZENSHIP AND THE INDIAN STATE: RE-IMAGINING SECTION 10 OF THE CITIZENSHIP ACT, 1955

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ABSTRACT

The power of states to denationalize their citizens has become the subject of immense controversy in the aftermath of Shamima Begum's case. Under Section 10(2)(b) of the Citizenship Act, 1955, the Central Government of India possesses a wide-ranging and unhindered power to denationalize an Indian citizen on the grounds of "disloyalty" or "disaffection". The absence of any definition of these grounds, coupled with the complete lack of judicial oversight can lead to significant abuses of the state's power of denationalization. In this light, Section 10(2)(b) presents significant concerns, given that an exercise of such power could lead to Indian citizens losing their fundamental rights, being subjected to deportation and possibly being rendered stateless. Given that in recent years, the number of people that have been denationalized globally has grown manifold, Section 10(2)(b) merits closer scrutiny. This

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paper attempts to fill the significant void in literature on this subject. In this context, the paper begins with a comprehensive assessment of Section 10(2)(b) and allied provisions that are applicable when the State seeks to pass a denationalization order under Citizenship Act, 1955. It then places Section 10(2)(b) within a theoretical framework in order to assess the conflict between denationalization and the modern conception of citizenship, which is regarded as an inalienable and equal status. It also assesses Section 10(2)(b) vis-a-vis the social contract theory, in which denationalization originates as a means to assert the duty of allegiance owed to the State. Ultimately, the paper proposes a reconstruction of Section 10 in order to reconcile the aforementioned conflict and uphold the duty of allegiance, which forms the basis of the State's denationalization powers.

I. INTRODUCTION

The controversy surrounding Shamima Begum, a British Citizen who was stripped off her citizenship due to her involvement with the Islamic State of Iraq and the Levant, has thrown light on the power of states to 'denationalize' their citizens.[1] Denationalization refers to

[1]L Rearden, 'Shamima Begum: Number of People Stripped of UK Citizenship Soars by 600% in a Year' (*The Independent*) <https://www.independent.co.uk/news/uk/home-news/sha mima-begum-uk-citizenship-stripped-homeoffice-sajid-javid-a8788301.html> accessed 29 September

"the non-consensual withdrawal of nationality from an individual" by their own state.[2] While the citizenship and nationality laws of various states formally provide them the power to denationalize citizens, these powers have, until recently, not been used by States.[3] However, the denationalization powers of States have seen a revival of political interest, particularly due to the growing emphasis on 'home grown' terrorist threats in the aftermath of the 9/11 attacks. A notable instance of such an attack is the Paris Attacks in November of 2015 and the 2016 Brussel Bombings.[4] In the past decade, various states such as the United Kingdom, Australia, Turkey, The Netherlands and South Africa have sought to expand the scope of their power to denationalise their citizens on grounds of national security, public order, disaffection and disloyalty.[5]

The Modern democratic conception of citizenship considers citizenship to be the highest and most secure legal status that an individual can possess.[6] Thus, unlike the historical power of states that allowed them to banish and exile its citizens, the modern conception of citizenship is largely secure from the unilateral termination by a State.[7] Given the conception of an individual's

2021; *Shamima Begum v The Secretary of State for the Home Department* (United Kingdom), SC/163/2019, ¶27–128.

[2]M Gibney, 'Denationalisation' in Ayelat Shachar et al. (ed), *The Oxford Handbook of Citizenship* (2017).

[3]A Macklin, 'Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien' (2014) 40(1) QLJ.

[4]D Burchardt and R Gulati, 'International counter-terrorism regulation and citizenship-stripping laws—reinforcing legal exceptionalism' (2018) 23 J. Confl. Secur. Law.

[5]L Van Waas and S. Jaghai, 'All Citizens are Created Equal, but Some are More Equal Than Others' (2018) 65 NILR.

[6]A Macklin, 'Sticky Citizenship' in Howard-Hassmann & M. Walton-Roberts (eds), *The Human Right to Citizenship: A Slippery Concept*; H Arendt, *The Origins of Totalitarianism* (1st edn, 1986).

[7]M Gibney, 'Denationalisation' in Ayelat Shachar et al. (ed), *The Oxford Handbook of Citizenship* (2017);

citizenship as an inviolable status, the State's power to deprive an individual must be severely restricted. Section 10 of the Citizenship Act, 1955 provides the Central Government with the power to deprive a naturalized or registered citizen of India of their citizenship, amongst other grounds, if such citizen has shown themselves to be disaffected or disloyal by speech or act to the Constitution of India.[8] As the paper argues, the Central Government's power under Section 10 poses a direct conflict with the modern conception of citizenship. In this context, the paper critically assesses Section 10(2)(b) of the Citizenship Act of 1955.

Admittedly, there exist no known cases of the central government utilizing its powers under Section 10(2)(b) of the Citizenship Act, 1955. Further, the State's powers under Section 10 are limited to naturalized and registered citizens of India, and do not extend to natural-born citizens.[9] Briefly, natural-born citizens are those that acquire their citizenship by virtue of being born in Indian territory, while naturalized citizens are citizens of another country that apply for Indian citizenship. Thus, on the face of it, the paper's arguments may seem to be esoteric and merely academic in nature. However, it is important to note that given the element of national interest involved in instances of denationalization, it is likely that any cases of the state's exercise of its powers under Section 10(2)(b) are not publicly available. Thus, the denationalization powers of the State may have been previously exercised. More importantly, given the rapid growth of instances of denationalization globally, there exists a considerable risk that the powers under Section 10 may be utilized in the future. This discussion has become increasingly relevant given introduction of the Citizenship Amendment Bill and the National

A Macklin, 'Kick-off contribution' in A Macklin & R Bauböck (eds), *The return of banishment: do the new denationalisation policies weaken citizenship*, EUI working papers RSCAS 2015/14, European University Institute, Florence.

[8]The Citizenship Act 1955, s 10(2)(b).

[9]The Citizenship Act 1955, s 10(1).

Register of Citizens which has been the cause of significant concern for activists and scholars as it is speculated that a possible consequence of this introduction is the loss of citizenship for certain religious communities in India.[10]

Even if the denaturalization powers directly affect only a small percentage of the citizens of India, the consequences for these citizens are nevertheless extremely grave. The deprivation of citizenship, which transforms the naturalized citizen into an alien, strips them of all the rights that an Indian citizen is granted.[11] They are further made vulnerable to deportation.[12] Given that India's citizenship law does not permit dual-nationality, such citizens would most likely be rendered stateless. In this context, it is extremely necessary to assess and re-examine the scope of the State's powers under Section 10(2)(b) in order to prevent administrative abuse.

The rest of the paper is organized as follows. Section II of the paper provides a critical deconstruction of Section 10. Section III undertakes a normative and conceptual assessment of the Indian State's power to denaturalize its citizens. Section IV establishes a framework that reconstructs the State's powers under Section 10(2)(b). Section V offers concluding remarks to the paper.

[10]'Citizenship (Amendment) Act 2019: What is it and why is it seen as a problem' (*Economic Times*) <https://economictimes.indiatimes.com/news/et-explains/citizenship-amendment-bill-what-does-it-do-and-why-is-it-seen-as-a-problem/articleshow/72436995.cms>; M. Mohsin Alam Bhat, 'The Constitutional Case against the CitizenshipAmendment Bill' (2019) Vol 54 No. 3 EPW 12.

[11]G Goodwin-Gill, 'Deprivation of Citizenship Resulting in Statelessness and its Implications in International Law' <https://www.documentcloud.org/documents/1086878-guy-s-goodwin-gill-legal-opinionon-deprivation.html> accessed 29 September 2021.

[12]M Gibney et al, 'Citizenship, Deportation and the Boundaries of Belonging' (2015) 15(5) Citizsh. Stud.

II. INTRODUCING INDIA'S DENATURALIZATION POWERS: SECTION 10 OF THE CITIZENSHIP ACT, 1955

The Indian State possesses the power to 'denaturalize' its citizens under Section 10 of the Citizenship Act, 1955. Denaturalization is a subset of the conception of denationalization. Denaturalization grants a State the power to withdraw the citizenship of *naturalized* citizens without their consent.[13]**.** Naturalization, in its most basic form, refers to the process by which a non-citizen can acquire citizenship in a country. For those persons who do not obtain nationality at birth or by descent, the legal framework permits naturalization and registration of citizenship. Section 6 of the Indian Citizenship Act envisages granting of citizenship by way of naturalization. It puts forth that a person who is not an illegal migrant, and is of full age and capacity, may apply for naturalization in the prescribed form.[14] If all the conditions laid down by the Central Government, as well as those mentioned in the Third Schedule of the Act, are fulfilled, the person may be granted a certificate of naturalization. The Third Schedule states that during the fourteen years immediately preceding the said period of twelve months (immediately preceding the date of application); he has either resided in India or has been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years.[15]

Given that the Central Government exercises the State's power under this section, the two terms are used interchangeably. Similarly, while the powers under Section 10 extend to registered citizens, the paper

[13]M Gibney, 'Denationalisation' in Ayelat Shachar et al. (ed), *The Oxford Handbook of Citizenship* (2017).
[14]The Citizenship Act 1955, s 6.
[15]The Citizenship Act 1955, s 3.

adopts the term 'denaturalization' when referring to the provisions under Section 10.

Section 10(2) of the Citizenship Act, 1955 outlines the circumstances in which the central government can deprive a citizen of their citizenship.[16] Under Section 10(2)(a), deprivation of citizenship can take place when the citizenship certificate or citizenship registration is obtained using fraudulent means.[17] Similarly, a citizen can be deprived of their citizenship if the Central Government is satisfied that such citizen has unlawfully assisted, communicated or traded with an enemy during a war.[18] Other circumstances include the continuous residence outside of India for seven years as well as imprisonment in any country within 5 years or naturalization or registration as a citizen of India.[19]

Section 10(2)(b) is of immediate relevance to the paper. Section 10(2)(b) provides that the central government can deprive a citizen of their citizenship if "*that citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established"*.[20]It is interesting to note that the language of Section 10(2)(b) mirrors that of Sedition under Section 124A of the Indian Penal Code.[21] As the paper would survey subsequently, the significant issues that arise due to the vague definition of sedition would also be applicable to the grounds under Section 10(2)(b). It is further significant to note, given the broad grounds provided under Section 10(2)(b), the paper's analysis is not limited to only acts of grave terrorism.

[16]The Citizenship Act 1955, s 10(2).
[17]The Citizenship Act 1955, s 10(2)(a).
[18]The Citizenship Act 1955, s 10(2)(c).
[19]The Citizenship Act 1955, s 10(2)(d); The Citizenship Act 1955, s 10(2)(e).
[20]The Citizenship Act 1955, s 10(2)(c).
[21]Indian Penal Code 1960, s 124A.

Section 10(3) further restricts this power to only to cases in which the government is satisfied that the citizenship of the individual is 'not conducive' to public good.[22] It is important to note that the powers granted under Section 10 of the Indian Citizenship Act are applicable only against citizens of India that have acquired Indian citizenship by naturalization or registration, or only under Section 5(c) of the Indian Constitution.[23] Before deprivation of citizenship can take place, a notice must be served to such person, who must be informed of the ground of the deprivation.[24] Such person also has the right to make an application to have the case referred to a Committee of Inquiry.[25] In essence, this can be perceived to be a right to appeal against the Central Government's order to denationalize.[26]

The Indian State's denationalization powers are to be exercised within this legal framework. In this light, the next section of the paper critically assesses the theoretical justifications for India's denaturalization powers.

III. TOWARDS RECONCILING THE THEORETICAL CONFLICT BETWEEN DENATIONALIZATION AND CITIZENSHIP

Citizenship can be understood as a transcendental and basic form of membership into a community.[27]It is unsurprising that citizenship is largely perceived to be an inalienable and secure legal status. The State's power to denationalise its citizens stands in direct opposition

[22]The Citizenship Act 1955, s 10(3).
[23]The Citizenship Act 1955, s 10(1).
[24]The Citizenship Rules 2009, Rule 25.
[25]The Citizenship Rules 2009, Rule 26.
[26]The Citizenship Act 1955, s 10(5).
[27]A Macklin, 'Sticky Citizenship' in Howard-Hassmann & M. Walton-Roberts (eds), *The Human Right to Citizenship: A Slippery Concept*.

to this understanding of citizenship. Given the existence of the State's powers under Section 10 of the Citizenship Act, it becomes extremely important to assess the State's denationalisation power on the touchstone of this conception of citizenship. In this regard, three normative frameworks of conceptualising this conflict assume importance. The first is the social contract theory, and how denationalisation forms an essential component of the duty of allegiance that a state is owed. The second framework is the modern conception of citizenship and the consequences of denationalisation when viewed from a "rights" perspective. The third framework concerns the idea of equal citizenship, and how such a framework operates when threatened by denaturalisation. This section assesses each of these three frameworks.

A. Denationalisation and the Social Contract

The increasing application of denationalisation and denaturalisation powers of States has been justified on the basis of the liberal conception of citizenship. Under the liberal conception, the individual owes a duty of allegiance to the State in exchange for protection by virtue of the 'social contract' between the individual and the State.[28] The conception of citizenship implies a duty of allegiance on the part of the citizen, coupled with a reciprocal duty of protection on the State. Therefore, when an individual violates this social contract with the state by breaching their duty of allegiance, the individual can be denied their right to membership in that State. The denationalisation power of the State provides the means through which this expulsion from membership takes place. The exercise of this power, in turn, is based on the performance of certain kinds of behaviour. Section 10(2), which provides the grounds for which an individual can be denaturalised by the State, outlines such forms of behaviour. Under

[28]M Gibney, 'A Very Transcendental Power: Denaturalisation and the Liberalisation of Citizenship in the United Kingdom' (2013) 61(3) Political Stud.

this conception, citizenship is conceived of as a privilege which is granted conditionally, rather than as an inalienable right.[29]

This conception of denationalisation and citizenship is inconsistent with the modern understanding of citizenship. It is, in itself, also inconsistent with the Indian conception of citizenship, which is comprised of three principles. Aside from the duty of allegiance, there exist two further principles upon which Indian citizenship is embodied. Firstly, Indian citizenship is based on the equal citizenship status of all citizens, regardless of how such citizenship was acquired.[30] Secondly, citizenship, in itself, is a secure status. The powers under Section 10 stand in stark contrast to these two principles. The following parts of this section explore this inconsistency. The subsequent section of the paper further argues how the low threshold provided by Section 10(2)(b) is also inconsistent with the idea of breaching the duty of allegiance.

B. Citizenship as a meta right

Audrey Macklin argues that citizenship is a meta right from which all other rights flow.[31]According to Macklin, the denial of citizenship results in the loss of various other rights and thereby "places all rights in the balance."[32] This is the reason why citizenship is widely

[29] M Gibney, 'A Very Transcendental Power: Denaturalisation and the Liberalisation of Citizenship in the United Kingdom' (2013) 61(3) Political Stud.; A Macklin, 'Kick-off contribution' in A Macklin & R Bauböck (eds), *The return of banishment: do the new denationalisation policies weaken citizenship*, EUI working papers RSCAS 2015/14, European University Institute, Florence; Craig Forcese, 'A Tale of Two Citizenships: Citizenship Revocation for 'Traitors and Terrorists'' (2014) 39(2) QLJ.

[30]S Pillai and G Williams, 'Twenty-First Century Banishment: Citizenship Stripping In Common Law Nations' (2017) 66 ICLQ.

[31]A Macklin, 'Kick-off contribution' in A Macklin & R Bauböck (eds), *The return of banishment: do the new denationalisation policies weaken citizenship*, EUI working papers RSCAS 2015/14, European University Institute, Florence [*hereinafter* "A Macklin"].

[32]ibid.

considered to be the highest and most secure legal status.[33] The denaturalisation power under Section 10 poses a direct conflict with this idea.The denaturalisation of Indian citizenship would be accompanied by a subsequent denial of the right to enter into Indian territory, the right to vote, the freedom of speech and expression as well as socio-welfare benefits. In essence, the individual would lose all the rights granted to them by virtue of being a citizen of India.

The most drastic outcome of the State's denaturalisation powers is that an individual would be rendered stateless by such an exercise. It is of significance to note that under the citizenship laws of countries including France, the United Kingdom, Germany and Belgium, amidst others, there exists a direct prohibition on the exercise of the denaturalisation provisions if they result in statelessness. However, India is not a signatory to the Statelessness Convention.[34] Due to this, there exists no direct obligation on India to prevent statelessness through its exercise of its denaturalisation power. As India does not recognise dual citizenship, an individual must denounce their earlier nationality before naturalising in India. Thus, any exercise of India's denaturalisation provisions would *de facto* render the individual stateless. Given the gravity of such an outcome, it is increasingly difficult to justify even with the duty of the allegiance paradigm.

Even in the exceptional case where the denaturalised individual is not rendered stateless, the cutting of ties of an Indian Citizen with the

[33]A. Rubenstein and N. Lenagh-Maguire, 'More or less secure? Nationality questions, deportation and dual nationality' in A. Edwards and L van Waas (eds), *Nationality and Statelessness under International Law* (2014) 264-291 [*hereinafter* "A Rubenstein"]; Audrey Macklin, 'The Securitisation of Dual Citizenship' in Thomas Faist & Peter Kivisto (eds), *Dual Citizenship in Global Perspective: From Unitary to Multiple Citizenship* (New York: Palgrave Macmillan 2007) 42; P Weil, *The Sovereign Citizen: Denaturalization and the Origins of the American Republic* (first published 2012).

[34]UNHCR, State Parties to the Statelessness Convention 1961 <https://www.unhcr.org/protection/statelessness/3bbb24d54/states-parties-1961-convention-reduction-statelessness.html>.

State, in itself, must be perceived to be an immensely grave harm by itself. Such an argument can place reliance on the International Court of Justice's jurisprudence in the Nottebohm Case.[35] The Court theorised what is known as the "social fact of attachment" to one's nation, a whether due to familial, economic, cultural or social ties. Denaturalisation ruptures the singular and unique link between the naturalised citizen and the State. Thus, even if such individual can claim citizenship in another country, the rupturing of their ties, for instance, with their means of employment, family and other social ties, would, in itself, comprise of a grave harm. As the paper subsequently argues, the consequences of denaturalisation must act to raise the threshold in which denaturalisation can apply.

C. Denaturalisation and the challenge to equal citizenship

Citizenship, as a status, is based on a fundamental equality between all members that hold that status.[36] While the means through which citizenship is acquired may differ, once acquired, each citizen holds the same status as an equal citizen.[37] However, the denaturalisation power of the State creates two tiers of citizenship.[38]While the status of Indian-born citizens is secure and cannot be revoked, the denaturalization powers make the citizenship of naturalized citizens vulnerable and subject to the State's decision of revocation. This conception of one class of citizenship as more secure than the other violates a basic premise on which the modern conception of citizenship has been established.

To illustrate, let us assume that two citizens conspire to commit an act showing grave disaffection towards the Republic of India, which would amount to a violation of 10(2)(b) and thereby justify the State's power to deprive both these individuals of their citizenship. One of

[35]Nottebohm (Liechtenstein v. Guatemala) [1955] ICJ 4 at 23.
[36]A Macklin (n 31).
[37]ibid.
[38]A Rubenstein (n 33).

these individuals is a natural born citizen and the other is a naturalised citizen. In the former case, the state would have no right whatsoever to revoke their citizenship status. However, in the case of the naturalised citizen, the State possesses an unfettered power to revoke their citizenship status. This is particularly problematic given that both the citizens committed the same crime but were not equally culpable. Section 10 provides legal sanction to the creation of two tiers of citizenship.

Such a tiered model of citizenship also conflicts with the normative model of naturalisation. In effect, the deprivation of the citizenship of only naturalised citizens precludes the acceptance as full citizens of India, by putting their citizenship at the risk of deprivation at the discretion of the State. In the case of Section 10(2)(b), where the denationalisation is contingent on certain forms of behaviour, this power of denationalisation poses a glaring contradiction to the very idea of naturalisation, which is an affirmation that the naturalised person has been fully integrated into the nation, and has been accepted as 'one of us' by the members of the community. Thus, naturalised citizens hold a citizenship status that is equal to that of natural born citizens. Such an understanding embodies the naturalisation provisions of the Indian Citizenship Act as well.

However, Section 10(2)(b) establishes a citizenship status contingent on behaviour. In doing so, however, it defeats the purpose of naturalisation. The State's power to denationalise, based on a citizen's behaviour also provides the state an unjustifiable power to severe a gradually established link established between an individual and the State of India, which had been provided the highest form of legal recognition through the conferment of Indian citizenship.[39]

[39]J Brandvoll, 'Deprivation of nationality: limitations on rendering persons stateless under international law' in A Edwards, Lvan Waas (eds) (2014).

The denaturalisation power in the context of the equality of citizenship is often justified on the basis that the stripping away of citizenship takes place as an individual violates their oath of allegiance to the constitution, which they undertake before naturalising to citizenship in India. Indeed, the oath of allegiance is required for an individual to formally become a Citizen of India. However, it is crucial to understand that the process of naturalization is intended to facilitate the integration of newcomers into a political community.[40] Thus, no matter how such naturalized citizen acquired their citizenship, once they become a citizen of India, they have an equal status of citizenship as natural-born Indians. To put it differently, naturalized citizens have an equal right to retain their citizenship as natural-born citizens. If the breach of allegiance to the Constitution manifests in a criminal act warranting criminal sanction, the sanction must be alike for both citizens and non-citizens engaging in that act. To argue otherwise would be to argue that naturalized citizens do not enjoy a citizenship status equal to that of natural-born citizens, which, as argued above, is inconsistent with a basic facet of the modern conception of citizenship.

IV. THE INDIAN STATE AND DENATURALIZATION: RECONSTRUCTING SECTION 10

The State's denaturalisation powers, as outlined above, pose a direct conflict with the modern conception of citizenship. Under this conception, where citizenship is viewed as the 'right to have rights' the State must satisfy a high justificatory burden to deprive an individual of their citizenship. However, Section 10(2)(b) of the Indian Citizenship Act, when applied with the other operative

[40]A Macklin (n 31).

provisions of Section 10, is insufficient to put such burden on the State. This section assesses a framework of basic principles for the reconstruction of the State's denaturalisation powers under Section 10(2)(b) to concretely embody the principles outlined in the previous section of the paper.

As a caveat, the proposed reconstruction cannot reasonably resolve all the theoretical conflicts between denationalisation and citizenship. In particular, any reconstruction of the state's denaturalisation provisions would nevertheless continue to disproportionally affect naturalised citizens of India. This, as argued above, is contrary to the idea of equal citizenship. A reasonable proposition that one advances at this stage would be to extend the State's power of denationalisation to all citizens of India, and then circumscribe the exercise of such right. Indeed, this would appear to be a fair outcome, particularly if an individual, whether a naturalised citizen or a natural born citizen, commits an act that calls for denationalisation. At the other extreme, one could call for Section 10 of the Citizenship Act to be struck down.

With regards to the first proposal, it is important to understand that the origin of the State's denaturalisation power, has, theoretically sought to be utilised only against alien citizens that have acquired citizenship in a country. In essence, this justification flows from the idea that a natural born citizen must enjoy the most secure form of citizenship. This is because their allegiance to the State would be the strongest, given that they have been socialised in the State's values, lived in the state, and have family in the State. Typically, this connection is weaker for naturalised citizens. To put this into context, the origins of denaturalisation provisions was in the World War II era, where the allegiance of such naturalised citizens was under suspicion. Even outside this theoretical reasoning, the extension of denaturalisation provisions to citizens has faced tremendous political

opposition in France, and is likely to generate a similar opposition in India.

On the second proposal, it is highly unlikely that the Indian judiciary would strike down this provision, unless it can be shown to be directly in conflict with the Constitution. More importantly, there exists an absence of any formal system of appeal for the order of the Committee of Inquiry's order of deprivation of citizenship. This would significantly minimise the ability of the Indian Judiciary to constructively engage with Section 10(2)(b), and to possibly strike it down.

Given this, a more plausible way of resolving the theoretical conflict between the modern conception of citizenship and denaturalisation would be to reconstruct and reinterpret Section 10(2)(b), in order to raise the threshold to a level wherein an order of denaturalisation can justify the consequences of stripping away an individual's citizenship, and be justified within the allegiance paradigm arising from the social contract theory. In this regard, this section discusses three elements of this proposed reconstruction. The first element concerns the substantive interpretation of the provision. The second element deals with denationalisation and statelessness under International Law. The third element addresses the procedural facets of the exercise of the State's denationalisation power.

A. Circumscribing Section 10(2)(b)

As highlighted above, the ill-defined and vague wording of Section 10(2)(b) presents the State with a wide-ranging power to denationalise citizens for various kinds of conduct which may fall within this broad definition. More importantly, mere 'disaffection' or 'disloyalty', expressed through speech or actions amount to a ground which would justify the taking away of an individual's citizenship. The 'restriction' that the state must be satisfied that the citizenship of the particular individual is not conducive to 'public good' provides a

low threshold for the state to justify an exercise of this power. The wording of Section 10(2)(b) directly contradicts the principle that the denaturalisation power must be applicable only in the most exceptional scenarios by placing a minimal limitation on the State's power to deprive an Indian citizen of their citizenship.[41]

Section 10(2)(b) presents a grave possibility of misuse of the denaturalisation power of the State. The wording of the section presents a slippery slope which, particularly given the lack of oversight as surveyed below, could be extended to specific kinds of speech and actions that are opposed by the State. It is further crucial to note that the powers under Section 10(2)(b) are not dependent on a prior conviction for any criminal offence. Section 10 does not precondition the order of denationalisation to be based on the conviction of any offence, such as treason. Theoretically, this would imply that an individual can be denationalised under this ground without even committing any criminal offence, for instance, treason. This, in principle, gives the State the power to bypass the entire criminal procedure and determine the commission of the offence by itself. However, it must be restated that citizenship is a 'meta right' which cannot be subject to the political whim of the State.

Mere instances of speech or acts indicating towards disaffection or disloyalty cannot be justified within the 'allegiance' paradigm outlined in the previous section. In order to ensure that Section 10(2)(b) remains with the allegiance conception explored above, the paper proposes the reconstruction of Section 10(2)(b) to embody the vital interests of the State' standard. Under this standard, the state can denaturalise a citizen only when an individual conducts themselves in a manner that is "seriously prejudicial to the vital interests of the

[41]D Burchardt and R Gulati, 'International counter-terrorism regulation and citizenship-stripping laws—reinforcing legal exceptionalism' (2018) 23 J. Confl. Secur. Law.

State".[42] The term "seriously prejudicial" implies that the individual must possess the capacity to negatively impact the State. Similarly, the inclusion of "vital interest" may establish that the conduct of an individual must threaten what can be termed as the foundations or the organisation of the State. In sum, the standard sets a higher standard than the one present in Section 10(2)(b), which would ensure that the grounds for denaturalisation are limited to defined and specific conduct.

While it may be suggested that the crimes defined under the Unlawful Activities Prevention Act, 1967('UAPA') can comprise of the grounds under which an individual can be denaturalised, it is important to note that not all acts of 'terrorism' under the UAPA would satisfy the proposed standard.[43] The act must rise up to a standard that it attacks the very foundation of the nation. Given the rampant abuse of the State's powers under the UAPA as well as sedition, as well as the enlarging definitions of what may constitute an act of terrorism, it is important to detach the grounds mentioned under the law of sedition and the UAPA.[44]

B. Section 10(2)(b) and Statelessness

Statelessness implies a situation where an individual is not considered a national of any state. Under International Law, the Statelessness

[42]UNHCR, Expert Meeting – Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation of Nationality (2014).
[43]The Unlawful Activities (Prevention) Act 1967, s 43D(5).
[44]A Teltumbde, 'Criminalising People's Protests' (2013) 48(14) EPW; A Singh, 'Criminalising Dissent: Consequences of UAPA' (2012) 47(38) EPW; South Asia Human Rights Documentation Centre, 'The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes' (2009) 44(4) EPW; Coordination of Democratic Rights Organisation ('CDRO'), 'The Terror of Law: UAPA and the Myth of National Security' (20 April 2012); https://vidhilegalpolicy.in/wpcontent/uploads/2019/05/150531_VidhiTerrorismReport_Final.pdf (Last visited on 23 June 2020); 'Back to the Future: India's 2008 Counterterrorism Laws' (*Human Rights Watch*, 27 July 2010) <https://www.hrw.org/report/2010/07/27/back-future/indias-2008-counterterrorism-laws> accessed 23 June 2020.

Convention of 1955 codifies the general rule prohibiting acts that render individuals stateless. The denaturalisation provisions of the Citizenship Act, 1955 can cause statelessness, particularly given that India does not allow dual citizenship. Thus, given that the denaturalised citizen would be stripped of Indian nationality, and cannot possess the citizenship of another country, such citizen would be rendered stateless. As highlighted in Section III, the outcome of statelessness must, at the very minimum, act as a normative prohibition on the exercise of powers under Section 10 to only the most extreme circumstances given the grave consequences that would accrue following denaturalisation. Given the absence of dual nationality under Indian Law, the application of the State's power under Section 10(2)(b) would lead tox statelessness for the denationalisation individual, which would violate the Statelessness Convention, 1961, which is considered instrumental in the development of International Human Rights Law.

The Statelessness Convention itself recognises certain exceptions to the general rule against the creation of statelessness through denaturalisation, such as Fraud.[45] Under Section 8(3) of the Convention, states may denationalise on grounds analogous to the aforementioned standard, as long as the ground already exists in the nationality legislation of such state.[46] Thus, the suggested

[45] The United Nations Convention on Statelessness 1961, art 8(3); International Law Commission (1953) 'Nationality, including statelessness—national legislation concerning grounds for deprivation of nationality' <http://legal.un.org/docs/?path=../ilc/documentation/english/a_cn4_66.pdf&lang=EFS>; J Brandvoll, 'Deprivation of nationality: limitations on rendering persons stateless under international law' in A Edwards & L van Waas (eds) *Nationality and statelessness under international law* (first published 1994).

[46]International Law Commission (1953) 'Nationality, including statelessness—national legislation concerning grounds for deprivation of nationality' <http://legal.un.org/docs/?path=../ilc/documentation/english/a_cn4_66.pdf&lang=EFS>; J Brandvoll, 'Deprivation of nationality: limitations on rendering persons stateless under international law' in A Edwards & L van Waas (eds) *Nationality and statelessness under international law* (first published 1994).

reconstruction of Section 10(2)(b) along with the certain other requirements of the Statelessness Convention would bring India's denaturalisation powers at par with the requirements with International Law if India decides to become a party to the Statelessness Convention, which it is currently not a party to. However, given the global concern regarding the Citizenship Amendment Act and the possible statelessness arising from its application, becoming a signatory to the Statelessness Convention would be an important step in the right direction to ease global pressure against India. More importantly, despite India not being a party to the Statelessness Convention, it is nevertheless bound by the obligation to prevent statelessness, which has been established as part of Customary International Law.[47]

C. Judicializing Section 10 of the Citizenship Act, 1955

Under Section 10, the Central Government possesses the power to denaturalise an Indian Citizen by passing a government order.[48] The only restriction on the State's power arises if the denaturalised individual refers the case to a Committee of Inquiry.[49] However, two of the three members of such tribunal are appointed by the government.[50] In essence, the Central Government, which is itself directly involved in the case, appoints a majority of the members of the tribunal. This raises significant concerns regarding the independence and impartiality of this Committee of Inquiry.

The Citizenship Rules of 2009, which outline the manner in which the inquiry must be undertaken fail to provide any adequate due process safeguards that would ensure that the principles of natural justice are followed in such an inquiry. The absence of the constitutional due

[47]UNHRC, 'Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary General', UN doc A/HRC/13/34, 14 Dec 2009, paras 19–22.
[48]The Citizenship Act 1955, s 10(1).
[49]The Citizenship Act 1955, s 10(5).
[50]*Id.*

process guarantees under Section 22(1) in the Committee of Inquiry's process is particularly significant given that the individual's most important right is at stake. If the committee finds the denaturalisation order to be valid, the individual would lose all the rights given to Citizens of India, and would be liable to deportation. Thus, the process of taking away this right must, at the minimum, embody principles of natural justice and due process which are provided to every defendant in a criminal trial.

It is significant to note that even the mere presence of due process safeguards in the Committee of Inquiry's procedure would be insufficient. Even if the Committee of Inquiry does conclude against denaturalisation of the individual, Section 10 also outlines the principle that the Central Government is only to be 'ordinarily' guided by the Committee's report.[51] The Central Government is, in essence, is not bound by the report of the committee.[52] The quasi-judicial committee of inquiry merely possesses the power to make recommendations, and does not conclusively determine whether a proposed order of denaturalisation is valid.[53] Thus, even after the completion of the inquiry, the Central Government can nevertheless reserve its right to denaturalise an individual. The denaturalisation power is centralised in the hands of the State, which leaves significant scope for abuse. As outlined above, the vagueness and ambiguity of Section 10(2)(b) provides a slippery slope where the denaturalisation provisions can be misused by the Central Government. Given the ambiguity and lack of judicial oversight in this framework, there exist no checks and balances on the government's unfettered power to denaturalise a citizen of India.

The aforementioned analysis highlights the need for cases of denaturalisation to be put before an impartial body which could

[51]The Citizenship Act 1955, s 10(5).
[52]The Citizenship Act 1955, s 10(6).
[53]The Citizenship Act 1955, s 10(6).

adequately protect an individual's 'right to have rights.' Therefore, the denaturalisation process must involve significant judicial oversight. In light of this, when the Central Government passes an order denationalising an individual, such individual should have the *explicit* right to approach the Indian Judicial system, as opposed to the Committee of Inquiry. The order to denaturalise must be subjected to judicial scrutiny in the form of a court trial, under which the State must have the burden to prove the ground of revocation. Given the importance of the right at stake, the State's order denaturalising an individual must be put to a demanding standard of review. An indicative standard that can be applied in such cases would require the state to "show the clearest sort of justification and proof with evidence of a clear and convincing character", which has also been adopted by the United States Supreme Court in cases of denationalization.[54] This standard would have commonalities with the "proof beyond a reasonable doubt" standard already applied in criminal trials in India. This standard would be extremely significant in circumscribing the application of the state's denationalisation powers as it would pose the burden on the state to prove that it is justified in passing the denationalisation order against the individual. The need for this standard is clear: the state would not only have to prove that the individual has committed an offence, but also that there exists clear justification and proof that the individual must be denationalised. To illustrate, let us assume that an individual has engaged in hate speech, an act that can fall within the ambit of disloyalty and disaffection under Section 10(2)(b), therefore being a possible ground for denationalisation. Under the existing threshold, the State would merely have to suggest that an individual has engaged in hate speech to justify the denationalisation order. Proving that an individual has committed such an act should be straightforward. On the other hand, under the proposed threshold, the state would not only

[54]*Klapprott v United States* [1949] 335 US 601, 616 (Concurring opinion of Rutledge J).

have to prove that the act has been committed, but justify why the commission of the act *necessitates* denationalisation, which is an extremely grave punishment. Thus, the burden on the state to justify any instance of denationalisation would be significantly higher. Given the importance of an individual's citizenship, the State must have a high burden to establish that its denaturalisation order is justified.

As already highlighted, the inherent ambiguities and vagueness of Section 10(2)(b) provide significant scope for abuse. Indeed, while the abuse of this power can be curtailed through a robust system to review the State's application of its denaturalisation powers, such a system does not exist under Section 10. Given the security attached to an individual's citizenship, the judicialization of the denaturalisation process would ensure that an individual's very right to have rights can be protected.

V. CONCLUDING REMARKS

The growing instances of states using their denationalisation powers presents a concerning trend. Denaturalisation leads to the loss of rights that are granted only to citizens. More crucially, denationalisation is accompanied by subsequent deportation, or removal of the individual from the territory of the state. Given that India does not recognise dual citizenship, any individual that is denaturalised would *de facto* become stateless.

Denationalisation, which represents the rupturing of an individual's ties with their state is also an intrinsically grave harm in itself. Denationalisation uproots the individuals ties to their nation, which includes their family and other social circles, economic opportunities such as their means of employment in that nation and their cultural identify which is formed by virtue of being a member of such nation. These ties together define an individual's identity, and by extension,

their relationship to their own nation which is uprooted when an individual is denationalised. Thus, the consequences of denaturalisation must serve as a normative prohibition to restrict the threshold of Section 10 of the Citizenship Act, 1955, which embodies the Indian State's power to denaturalise its citizens.