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SHOW YOUR RELIGION, CLAIM YOUR CITIZENSHIP: THE CITIZENSHIP AMENDMENT ACT, 2019

*Ishita Chakrabarty**

INTRODUCTION

In December 2019, the Indian government passed the Citizenship Amendment Act (“CAA”) meeting a breakout response of large-scale protests throughout the country.¹ The CAA amends the provisions of the Citizenship Act of 1955, the Passport Act of 1920, and the Foreigners Act of 1946.² In doing so, the CAA declares that individuals travelling without any valid travel documents or overstaying the limits of their travel will not be categorized as “illegal migrants.”³ At the same time, this is only the case for Hindu, Sikh, Buddhist, Jain, Parsi, or Christian individuals who are travelling from the Muslim-majority countries of Afghanistan, Bangladesh, or Pakistan.⁴ Furthermore, the CAA states that these categories of individuals are eligible for a fast-tracked naturalization when they have resided in a respective territory for five years as opposed to the twelve year residence period for other foreign non-residents.⁵ While the CAA itself does not explicitly mention this, its exceptions are based on “humanitarian grounds” for those who are “forced to seek shelter in India due to persecution on the grounds of religion.”⁶ Nonetheless, the United Nations High Commissioner for Refugees (“UNHCR”) went on to file an intervention application before the Apex Court, the Supreme Court of India, on the grounds that the CAA blatantly discriminated and violated India’s international obligations.⁷ India, however, defended its actions by arguing that Muslims could not face persecution in Muslim-majority nations and—even if they did—Muslims could seek refuge in other Muslim-majority nations, hence, Muslims did not need inclusion in the CAA.⁸

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¹ See ET Online, Citizenship (Amendment) Act 2019: What is it and why is it seen as a problem, ECON. TIMES (Dec. 31, 2019).

² *Id.*

³ *Id.*

⁴ The Citizenship (Amendment) Act, 2019, § 2 (Dec. 12, 2019).

⁵ *Id.* § 3. This is provided that the eligible individuals entered the territory within a cut-off date of December 31, 2014. *Id.*

⁶ See Samanwaya Rautray & Dipanjan Roy Choudhary, *UNHCR moves SC against CAA; India rejects intervention* ECON. TIMES (Mar. 4, 2020).

⁷ See NH Web Desk, *UNHCR moves Supreme Court against CAA, says it lacks objectivity, not in sync with international covenants*, NAT’L HERALD (Mar. 3, 2020).

⁸ See *id.*; Rautray & Choudhary, *supra* note 6.

In essence, the CAA grants citizenship on the basis of religion. In its passing the CAA is vaguely similar to a proposal that was the subject of debate during the framing of India's Constitution. That proposal granted naturalization rights to Hindu or Sikh individuals, irrespective of their birth place or residence, in cases where individuals did not possess alternative citizenship.⁹ This argument rested on the premise that Hindu or Sikh individuals did not have anywhere to go but India.¹⁰ while Muslim individuals could seek citizenship in Muslim majority nations.¹¹ Another reason focused on the argument that an inflow of Muslim refugees into certain areas would change the demographics of the electorate.¹² Therefore, under this premise, a need existed to limit voluntary movements of Muslim individuals into the country.¹³ Although the "secular" principles of the Constitution are meant to ensure that these proposals did not make it out of the drafting committee, the CAA is reminiscent of the same attempt to create an ethnic State. Likewise, Professor Sital Kalantry observed that India earlier amended the Passport Rules of 1950, to allow Hindu, Sikh, Buddhist, Jain, and Christian individuals who were "compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the December 31, 2014," to travel without valid travel documents.¹⁴ She concludes that these domestic laws can allow India to "pick and choose" which types of refugees it wishes to admit and which it chooses to reject.¹⁵

But this is not all that the CAA does. Additionally, the CAA regularizes entry and residence of an asylum seeker purely on the basis of religious considerations and without any verification of persecutory claims.¹⁶ In doing so, the CAA gives a green light to give citizenship to individuals without even examining the degree of integration of the asylum seekers. In this Article, I examine the validity of the CAA from a refugee rights perspective. I do not seek to enter into the larger debate of whether the CAA's purpose is to disenfranchise the Indian Muslim community.¹⁷ Instead, the scope of the Article is limited to the twin

⁹ See Constituent Assembly Debates: Official Report, Vol. IX (Aug. 11, 1949).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Sital Kalantry, *India should also accede to the UN Refugee Convention*, INTLLAWGRRLS (Mar. 12, 2020), <https://ilg2.org/2020/03/12/india-should-also-accede-to-the-un-refugee-convention/>.

¹⁵ *Id.*

¹⁶ See ET Online, *supra* note 1.

¹⁷ For more insight on that topic currently widely being discussed in the academic circles by drawing parallels with Myanmar's or the Nazi-era Citizenship Laws, see generally Express Web Desk, *CAA + NRC can lead to 'Disenfranchisement' of Indian Muslims: US Body* INDIAN EXPRESS (Feb. 20, 2020),

issues of non-discrimination and naturalization while the subsequent sections will show that naturalization of a refugee is itself contingent on access to other rights within the 1951 Refugee Convention.

I. THE REFUGEE RIGHTS REGIME

Part I begins with an overview of the general refugee rights regime. The 1951 Refugee Convention contemplates a layered rights structure, wherein each layer of rights builds upon the other, depending on the refugee's "bond" with the host State.¹⁸ This "bond" is determined by the duration of stay and comprises of rights enjoyed across the following stages: while under the jurisdiction of the host State, on "physical presence," on "lawful presence," on "lawful stay" and on a "habitual" or "durable" legal residence.¹⁹ At first glance, the Refugee Convention does not make a distinction between an asylum seeker and a refugee, that it so say, a *de facto* refugee and one who has been declared so by the State. As such, minimal rights such as those of non-discrimination, access to courts and observance of the principle of non-refoulement remain available even at the lowest level of attachment.²⁰

Because the Refugee Convention does not distinguish between authorized or unauthorized entry, States may not refuse certain rights on the basis that the asylum seeker's entry was not in accordance with domestic laws.²¹ The question of lawful presence within a territory is generally determined in accordance with the immigration laws of the State, since there is no such consensus in international law. The asylum seeker's presence, however, can also be subsequently regularized once the individual comes before the country's authorities within an appropriate time period or for undergoing a Refugee Status Determination (RSD) procedure.²² The interval between the submission of

<https://indianexpress.com/article/india/caa-nrc-india-us-trump-6277969/>.

¹⁸ See generally Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

¹⁹ See generally GUNNEL STENBERG, NON-EXPULSION AND NON-REFOULEMENT: THE PROHIBITION AGAINST REMOVAL OF REFUGEES WITH SPECIAL REFERENCE TO ARTICLES 32 AND 33 OF THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES, 87 (1989) (discussing the rights to identity papers (Art. 27), freedom of religion (Art. 4), and non-penalization of entry (Art. 31(1))).

²⁰ See UNHCR, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS (1979) ("A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.")

²¹ See JAMES C. HATHAWAY, THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW 171 n.83 (2005).

²² See Office of the High Commissioner for Human Rights, CCPR General Comment No. 27: Article 12 (Freedom of Movement), CCPR/C/21/Rev.1/Add.9 (Nov. 2, 1999) (discussing that there was a possibility, if left to themselves, states could enact rules effectively denying rights to asylum seekers and refugees beyond the

claims and the final determination of the refugee status, including any time limits for appeal, is considered to be one of “temporary admission,” equivalent to lawful presence.²³ Along those lines, Professor James Hathaway explains that a host State is under no obligation to set up RSD procedures.²⁴ Rather, in cases where the enjoyment of refugee rights are contingent on such formal verifications, it becomes the duty of the State to carry out one.²⁵ In fact, to diminish any attempts of foreign non-residents benefitting under the Refugee Convention, States establish procedures for “manifestly unfounded claims” that incorporate a fair trial inquiry.²⁶

I argue that States *should be obligated* to establish some procedure at least, *to verify the status of an asylum seeker*. This stance is supported by UNHCR’s position that certain Refugee Convention benefits must be provisionally granted to asylum seekers only because every refugee is initially an asylum seeker.²⁷ Moreover, if such benefits were not granted, the host State would be responsible for refoulement.²⁸ Refugee Convention benefits cannot be granted without verification of claims because an illegal migrant who remains the national of another State cannot claim entitlements to rights under the Refugee Convention.²⁹ Under the Refugee Convention, once the status of the asylum seeker is found in the affirmative and the individual is granted a residence permit or enjoys a stay by “toleration” beyond a period of three months, the applicant is considered to be lawfully within the territory and is entitled to rights at the fourth stage.³⁰ Accordingly, the asylum applicant transitions from an unlawful presence to a lawful one.³¹ Now, to enjoy rights at the stage of habitual or durable residence, the refugee must have resided for a considerable period of time in the State so that the place of residence constitutes a “home” and the return of individuals to their country of origin is unlikely in the imminent

second level of attachment) [hereinafter General Comment No. 27].

²³ HATHAWAY, *supra* note 21, 173–76.

²⁴ *Id.* at 180–81.

²⁵ *Id.*

²⁶ “Manifestly unfounded claims” are “those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees nor to any other criteria justifying the granting of asylum[.]” Executive Committee of the High Commissioner’s Programme, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, UNHCR (Oct. 20, 1983).

²⁷ Office of the High Commissioner for Human Rights, Note on International Protection, UN Doc. A/AC.96/815 (Aug. 31, 1993).

²⁸ *Id.*

²⁹ HATHAWAY, *supra* note 21, at 173.

³⁰ 2 GRAHL MADSEN, STATUS OF REFUGEES IN INTERNATIONAL LAW 353–54 (1972).

³¹ *Id.*

future.³² The Refugee Convention usually puts this at a period of three years but the determination of such residence appears to be qualitative rather than quantitative.³³ The European Convention on Nationality (ECN) maintains that the “desirable period” is usually around five years, but under no condition should it go over ten years.³⁴

A. *India’s Legal Position over the Refugee Framework*

India is neither a party to the 1951 Refugee Convention nor to the 1967 Protocol.³⁵ Although, it is a party to some human rights treaties, India has tried to cite reservations to certain provisions.³⁶ For example, India has cited reservations Article 13 of the International Covenant on Civil and Political Rights dealing with expulsion of foreign non-residents lawfully admitted into the territory, in order to avert international responsibility.³⁷ Asylum seekers are directed into a common immigration system, the Foreigner Regional Registration Offices under the Bureau of Immigration.³⁸ This system, however, does not distinguish between foreign non-residents and refugees.³⁹ Additionally, the UNHCR operates only on an ad-hoc arrangement basis with the State, to conduct RSD procedures and provide assistance.⁴⁰

As such, the entire refugee regime is left to the State.⁴¹ Authorities, however, are under no obligation to recognize refugee certificates.⁴² Meanwhile, the immigration laws, like the Foreigners Act of 1946, do not contain any refugee-specific provisions.⁴³ In this sense, any asylum seeker or refugee stands in violation of the Passports Act while the Indian Citizenship Act describes all non-

³² *Id.*

³³ HATHAWAY, *supra* note 21, 190–96.

³⁴ See COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS, ACCESS TO NATIONALITY AND THE EFFECTIVE IMPLEMENTATION OF THE EUROPEAN CONVENTION ON NATIONALITY (2014).

³⁵ Sital Kalantry, *India Should also Accede to the UN Refugee Convention*, HINDUSTAN TIMES (Mar. 12, 2020).

³⁶ XAVIER & APOORVA SHARMA, JESUIT REFUGEE SERVICE AND INDIAN SOCIAL INSTITUTE, LEGAL RIGHTS OF REFUGEES IN INDIA 5 (2015).

³⁷ *Id.*

³⁸ See Ritumba Manuvie, *Why India is home to millions of refugees but doesn’t have a policy for them*, PRINT (Dec. 27, 2019).

³⁹ *Id.*

⁴⁰ The UNHCR has been operating in India since 1981. *See id.*

⁴¹ For the executive policy of the Indian government, see ARJUN NAIR, INSTITUTE OF PEACE AND CONFLICT STUDIES NATIONAL REFUGEE LAW FOR INDIA: BENEFITS AND ROADBLOCKS 6 (2007).

⁴² *See generally, e.g.*, Foreigners Act, 1946 (Sections 3, 3A, 7, 14); Registration of Foreigners Act, 1939 (Sections 3, 6); Passport (Entry into India) Act, 1920; Passport Act, 1967 and Extradition Act, 1962.

⁴³ *Id.*

citizens without visas as “illegal migrants.”⁴⁴ This implies that refugees can be detained and even deported at the whims of authorities on non-possession of valid travel documents.⁴⁵ Since there is no uniform procedure, even UNHCR recognized refugees need to separately make an application for stay visas and residence permits—which are granted only exceptionally.⁴⁶ This is, of course, in clear violation of the refugee standards on assessment of “lawful presence” within territory and the accompanying grant of refugee rights discussed above.⁴⁷ India cannot cite its lack of a refugee law or non-ratification to the Refugee Convention for labelling an asylum seeker as “illegal,” especially if this would subject them to refoulement because that is prohibited as a principle of customary international law.⁴⁸

B. India’s De-Facto Policy Regarding Refugees

With no policy in place, India has been hosting refugees from neighboring countries for years, including Tibetans, Bangladeshis, Chakmas and the Sri Lankan Tamils.⁴⁹ Refugee movement into India has been influenced by its relatively porous borders, economic opportunities, and more importantly, the perception of a “secular” system.⁵⁰ Nonetheless, despite bureaucratic claims raised over India’s adherence to the core principles on non-refoulement, equal treatment to all refugees, freedom of religion, freedom of movement and choice of housing, access to courts, public education and administrative assistance (through identity papers), in reality India chooses to apply these provisions selectively.⁵¹ An overview of the current literature shows that UNHCR presence is limited and most of the efforts at provision of a temporary residence is community based or largely dependent on non-governmental organisations.⁵² The State differentiates between the different refugee communities as follows: (a) Sri Lankan Tamils and Tibetans are directly recognised by the government, (b) Afghan, Burmese and Somalian refugees are declared so by the UNHCR but

⁴⁴ Ujjwal Krishna, *A Closer look at Refugee Integration in India*, SOUTH ASIA L.J. (2020).

⁴⁵ XAVIER & SHARMA, *supra* note 36, 8–10.

⁴⁶ *See id.* 34–35.

⁴⁷ UNHCR, *supra* note 20.

⁴⁸ UNHCR, ADVISORY OPINION ON THE EXTRATERRITORIAL APPLICATION OF NON-REFOULEMENT OBLIGATIONS UNDER THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL 7 (2007).

⁴⁹ Manuvie, *supra* note 38.

⁵⁰ XAVIER & SHARMA, *supra* note 36, at 4.

⁵¹ Prabodh Saxena, *Creating legal space for Refugees in India*, 19 INT’L J. REFUGEE L. 246, 253–54 (2007).

⁵² MARY B. MORAND & JEFF CRISP, UN HIGH COMMISSIONER FOR REFUGEES POLICY DEVELOPMENT AND EVALUATION SERVICE (PDES), DESTINATION DELHI: A REVIEW OF THE IMPLEMENTATION OF UNHCR’S URBAN REFUGEE POLICY IN INDIA’S CAPITAL CITY 11–12 (July 2013).

the government is under no obligation to recognise them, whereas (c) Chin refugees who have already settled in the north-eastern belt (despite assimilation) are still not recognised as refugees.⁵³ More on these groups below.

1. *Experiencing Favorable Standards of Treatment*

For political reasons, Tibetan refugees who entered India between 1950 and 1987 have not only received humanitarian assistance but have also obtained registration certificates for international travel.⁵⁴ Additionally, their children qualify for Indian citizenship.⁵⁵ In 2014, the government also announced a rehabilitation policy to facilitate the renewal of their lease agreements and provide greater opportunities of entry into work, availing of loans, and access to public relief.⁵⁶ Similarly, Nepali Bhutanese refugees have received “quasi-citizen” rights.⁵⁷ The Nepali Bhutanese refugees are legally authorized as per bilateral arrangements to enter and reside, study, and work without identity documents.⁵⁸ Meanwhile, under the Citizenship Amendment 2000, India explicitly provides support to refugees coming from Pakistan into the Indian Border states of Gujarat and Rajasthan.⁵⁹ For a comparison, when it comes to the Sri Lankan Tamil individuals, however, despite recognition from the government, they have not been able to integrate even after twenty years of residence.⁶⁰

2. *Experiencing Unfair Standards of Treatment*

There is no provision for the other refugee groups. Palestinian, Somalian, Afghan and Burmese individuals are completely reliant on UNHCR assistance, although Chin refugees have managed to obtain long term visas.⁶¹ While varying communities face issues accessing basic rights to work, primary education, and health care, the India has declared the stateless Rohingya community from Myanmar as “illegal” en masse.⁶² Several members of the Rohingya community in India have been detained over orders from Foreigners Tribunals, for entering the country without papers in clear violation of the Refugee Convention’s

⁵³ XAVIER & SHARMA, *supra* note 36, at 18–19.

⁵⁴ *See id.* at 19–21.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 24–25.

⁵⁹ *Id.*

⁶⁰ *Id.* at 38–40.

⁶¹ HUMAN RIGHTS LAW NETWORK, REPORT OF REFUGEE POPULATIONS IN INDIA 2 (2007).

⁶² *See id.* at 2, 12–16.

prohibition on criminalizing entry discussed earlier.⁶³ On October 2018, India began its deportation of a group of Rohingya refugees through an Apex Court monitored process, even as it was argued that this was in violation of the principle of non-refoulement.⁶⁴ In coming to its decision, the Court was prompted by reasons of “national security,” even when a United Nations fact finding mission came to a conclusion that Myanmar continued to act with a genocidal intent.⁶⁵ For more perspective, these were refugees who had been expressly identified by UNHCR as so—and not merely asylum seekers. That is, their protection needs had already been identified.⁶⁶ This judgment is a complete turn from the Apex Court’s earlier position where it had observed the positive duty of the State towards refugees despite India not being a party to the Refugee Convention.⁶⁷ In that case, the Court had stated that, “by refusing to forward their applications, the Chakmas are denied rights, constitutional and statutory, to be considered for being registered as citizens of India. If a person satisfies the requirements of Section 5 of the Citizenship Act, he/she can be registered as a citizen of India.”⁶⁸

II. THE PROHIBITION ON NON-DISCRIMINATION: FROM ENTRY TO NATURALIZATION

Turning to refugee standards of treatment, the Refugee Convention distinguishes between absolute rights and qualified rights.⁶⁹ Absolute rights do not have comparable provisions under other human rights treaties and include rights such as the right to administrative assistance and travel documents, rights not to be subjected to expulsion arbitrarily or in violation of the principle of non-refoulement, and the right not to be penalized on account of unauthorized entry.⁷⁰ On the other hand, qualified rights are usually measured in comparison to another standard, whether of a citizen, a national of a most-favored nation, or

⁶³ *India: 7 Rohingya Deported to Myanmar*, HUM. RTS. WATCH (Oct. 4, 2018), <https://www.hrw.org/news/2018/10/04/india-7-rohingya-deported-myanmar>

⁶⁴ *Id.*

⁶⁵ Sobhapati Samom & Sadiq Naqvi, *7 Rohingya Refugees Deported to Myanmar after Supreme Court refuses to Intervene*, HINDUSTAN TIMES (Oct. 4, 2018) (explaining that a three-judge bench headed by then-Chief Justice Ranjan Gogoi refused to stop the deportation of seven Rohingya community members who had been detained in the Silchar Central Jail in Assam since 2012).

⁶⁶ *UNHCR seeking clarification from India over returns of Rohingya*, UNHCR: PRESS RELEASES (Jan. 4, 2019).

⁶⁷ *National Human Rights Commission v. State of Arunachal Pradesh*, 83 AIR 1234 (1996) (India).

⁶⁸ *See id.*

⁶⁹ UNHCR, COMMENTARY ON THE REFUGEE CONVENTION 1951 ARTICLES 2-11, 13-37 (1997).

⁷⁰ *See generally* NORWEGIAN REFUGEE COUNCIL, THE OBLIGATIONS OF STATES TOWARDS REFUGEES UNDER INTERNATIONAL LAW: SOME REFLECTIONS ON THE SITUATION IN LEBANON (2016).

an foreign non-resident.⁷¹ These standards are a direct product of Articles 6 and 7. Article 6 ensures that, while making certain considerations or determining qualifications, the host State does not subject refugees to fulfill requirements that would be impossible by the very nature of their condition.⁷² Article 7 takes account of “reciprocity agreements” that offer a preferential standard of treatment to foreign non-resident nationals of certain countries.⁷³ It reflects the understanding that unlike nationals, refugees do not enjoy the protection, or “effective” protection, of their own State and hence, host States are required to at least extend the same standards of treatment that they accord to any foreign non-resident generally.

At the same time, there are no distinctions between refugees per se. The above-mentioned standards of treatment prove that for extending any preferential treatment to a certain class of people, distinctions can be validly drawn between citizens and refugees, and between nationals of certain States and refugees which arise out of the host State’s other international obligations.⁷⁴ However, distinction cannot be made between classes of refugees themselves. This inference is supported by Article 3 provision on non-discrimination. The Refugee Convention’s description of “discrimination” includes the exclusion *and* the grant of privileges to certain categories as opposed to others and without any reasonable basis.⁷⁵ The drafting history further shows that this prohibition on discrimination was not limited to those refugees who had already entered the territory. Member States recognized that any proposed limitation to refugees “within the territory” would allow their contemporaries to alter their immigration policies to suit their preferences.⁷⁶ This implies that a State’s domestic laws cannot discriminate between asylum seekers, either at the level of entry or at subsequent levels, including during naturalization. Professor Hathaway also subscribes to the view that rights—including those relating to assimilation within the host State—cannot be withheld from a subset of refugees—unless based on concrete grounds of national security.⁷⁷ Article 3 of the Refugee Convention is further strengthened by Articles 2(1) and Article 26

⁷¹ ATLE GRAHL-MADSEN, DIVISION OF INTERNATIONAL PROTECTION OF THE UNHCR, COMMENTARY ON THE REFUGEE CONVENTION 1951 23 (1997).

⁷² *See id.*

⁷³ *Id.*

⁷⁴ Although the criterion for such distinction requires there to be a legitimate state objective and the discriminatory measure must be proportionate to it. *See* Office of the High Commissioner for Human Rights, The Rights of Non-Citizens, HR/PUB/06/11 (2006).

⁷⁵ HATHAWAY, *supra* note 21, at 245.

⁷⁶ *Id.* at 245–46.

⁷⁷ *Id.* at 154–56 (discussing that even grounds of “national security” cannot be too broadly worded).

of the International Covenant on Civil and Political Rights (ICCPR).⁷⁸ The latter two call for a sweeping prohibition on discrimination in the application of the Refugee Convention provisions and in the enactment and application of domestic laws over those within its territory—including foreign non-residents and stateless persons.⁷⁹ The only restrictions allowed to be lawfully imposed upon non-citizens under the ICCPR are those relating to the exercise of political rights and the restriction of rights of freedom of movement and residence to those lawfully within the territory.⁸⁰ This impliedly includes refugees but not necessarily asylum seekers who have neither submitted themselves before the authorities, nor for RSD procedures.⁸¹

The standards under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) are more stringent since they explicitly rule out distinctions, exclusions, restrictions and preferential treatments amongst non-citizens on the basis of race, descent, ethnicity, nationality and also, religious groups.⁸² The Committee on the Elimination of Racial Discrimination (CERD) is the body that monitors the implementation of the ICERD. As such, Hathaway has observed that all States must apply international and regional standards equally with respect to asylum seekers, regardless of their nationalities.⁸³ Hathaway finds this to be the case especially true in the context of the U.S. practice of dealing unfavorably with asylum applications from Haiti, while at the same time extending privileged treatment to those from Cuba.⁸⁴

Meanwhile, India is prohibited under international laws from extending preferential treatments to certain asylum seekers both at the stages of entry and naturalization.⁸⁵ India does not have a separate refugee regime and the introduction of the CAA leads to further questions of legal uncertainty.⁸⁶ Asylum seekers, who by their very nature do not possess legal documentation,

⁷⁸ See Office of the High Commissioner for Human Rights, CCPR General Comment No. 15: The Position of Aliens Under the Covenant (Apr. 11, 1986).

⁷⁹ See *id.*

⁸⁰ See G.A. Res. 2200 A (XXI), annex, International Covenant on Civil and Political Rights, (Dec. 16, 1966).

⁸¹ See *id.*

⁸² G.A. Res. 2106 (XX), annex, International Convention on the Elimination of All Forms of Racial Discrimination, (Dec. 21, 1995).

⁸³ See HATHAWAY, *supra* note 21, at 239.

⁸⁴ *Id.*

⁸⁵ See generally Hamsa Vijayaraghavan, *Gaps in India's Treatment of Refugees and Vulnerable Internal Migrants Are Exposed by the Pandemic*, MIGRATION POL'Y INST. (Sep. 10, 2020), <https://www.migrationpolicy.org/article/gaps-india-refugees-vulnerable-internal-migrants-pandemic>.

⁸⁶ Mia Swart, *Does CAA comply with India's human rights obligations?*, AL JAZEERA (Mar. 30, 2020).

will neither be able to gain entry without the additional humiliation of being marked as an “illegal migrant” and penalization, nor will they be able to apply for naturalization.⁸⁷ This is what will happen unless the individual belongs to one of the privileged religious communities—in which case not only will their entry be regularized, but they will also stand to be naturalized.

Next, Part III deals with the concept of a “genuine link” for an internationally recognizable grant of nationality, the implications of naturalization for refugees, and the exceptional conditions under which they are granted and assert. Considering that for a “genuine link” to arise, refugees must pass through all stages of attachment contemplated under the Convention.⁸⁸ In other words, they must have legally and habitually resided in India long before considered for naturalization.

III. NATURALIZATION AND THE CONFERMENT OF NATIONALITY

On one hand, the concepts of Nationality have been described as the “right to have rights.”⁸⁹ On the other hand, a denial of Nationality has been equated with a denial of juridical personality, since it allows states to disregard the individual as being a subject of rights either relative to the state itself or to other individuals.⁹⁰ Even individuals with permanent residence status do not enjoy a complete “right to enter and reside within a country.”⁹¹ Unlike citizens, residents do not generally enjoy political rights, despite their close ties with the state.⁹² As such, the concepts of Nationality or Citizenship are the last step into full integration within the society and are, therefore, preceded by several steps such as legal residence, admittance into the workforce, and social security, among other circumstances.⁹³ The following sections are meant to show that the grant of the highest right is subject to the most exacting requirements—one cannot demand less for the acquisition of nationality as compared to that required for the acquisition of a residence.⁹⁴

⁸⁷ *Id.*

⁸⁸ *See generally* Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

⁸⁹ ALISON KESBY, *THE RIGHT TO HAVE RIGHTS: CITIZENSHIP, HUMANITY, AND INTERNATIONAL LAW* 62 (2012).

⁹⁰ *Girls Yean and Bosico v. Dominican Republic*, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 130, para. 178–79 (2005).

⁹¹ *See generally* Rifat Fareed, *India’s New Residence Law Triggers Fury in Kashmir, Unbiased information for free minds*, DEUTSCHE WELLE (April 4, 2020), <https://www.dw.com/en/indias-new-residence-law-triggers-fury-in-kashmir/a-53015259>.

⁹² *Id.*

⁹³ *See generally* Dora Kostakopoulou, *Why Naturalisation?*, 4 PERSP. EUR. POL. & SOC’Y 85 (2003).

⁹⁴ I use the terms Nationality and Citizenship interchangeably.

A. *The Nottebohm Judgement and the “Genuine Link”*

The *Nottebohm* judgement is described as a seminal case on the criteria involved in the conferment of nationality.⁹⁵ In this case, the ICJ addressed questions regarding the exercise of diplomatic powers by Lichtenstein in instituting proceedings against Guatemala over the arrest, detention, expulsion and appropriation of a Frederick Nottebohm’s immovable property.⁹⁶ Guatemala’s objection to the institution of the proceedings eventually led to the court addressing the question: whether Nottebohm’s naturalization to acquire the citizenship of Lichtenstein, while he was still a national of Germany, violated international law? Guatemala argued that since there was no “durable link” between the nation and Nottebohm, he could not have foregone or at least validly foregone his German nationality.⁹⁷

The court appreciated the facts that Nottebohm was a German national by birth, who had been residing and conducting his business in Guatemala since 1905, when he on one of his visits to Hamburg in 1939, applied for his naturalization in Lichtenstein.⁹⁸ The application was granted despite the non-fulfilment of conditions of a three-year residence period, certificate of good conduct, proof of property and income in the Principality of Liechtenstein. Even the discretionary power to grant citizenship was *exercised without any enquiry*.⁹⁹ The Court did not deny that Lichtenstein had the sole right to determine who its nationals were in accordance with its own legislation and government organs.¹⁰⁰ At the same time, the Court reasoned that this was solely because nationality generally has effects within the same legal system- in the determination of rights granted and duties imposed.¹⁰¹ Yet, the Court did agree that Guatemala was under no such obligation to acknowledge the conferral of nationality, since exercise of diplomatic protection in favour of an individual was an exercise within the international domain.¹⁰²

The Court went to explain that Nationality is truly said to exist only on the establishment of a “real and effective” link between the individual and the

⁹⁵ Robert Sloane, *Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality*, 50 HARV. INT’L L.J. 1 (2009).

⁹⁶ *Nottebohm case (Liech. v. Guat.) (second phase)*, Judgment, 1955 I.C.J. 1 (Apr. 6).

⁹⁷ *Id.* at 9–12 (contending that Nottebohm had tried to acquire the citizenship only fraudulently and without any genuine intention, only to become a neutral national during the WWII when Germany went to war).

⁹⁸ *See id.*

⁹⁹ *Id.* at 13–14.

¹⁰⁰ *See id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 20–21.

state.¹⁰³ Rather, it is a matter of the individual's factual ties with the state, and determination of whether it is stronger than his ties with others.¹⁰⁴ This can be assessed on factors including, habitual residence, centre of interests and participation in the public life of the state, his own or his children's attachment to the state or existence of family ties.¹⁰⁵ These criteria are also generally reflected in a State's naturalization laws.¹⁰⁶

1. Preferential Grants on Ethnic or Nationality Basis?

Professor Crawford has suggested that residency or membership in ethnic groups associated with a State could be a sufficient indicator of a genuine link.¹⁰⁷ Additionally, States are required to abstain from any "extraterritorial" and "collective" naturalizations, where they grant citizenship to persons sharing certain characteristics (ethnic, linguistic, religious, etc.) living in another country.¹⁰⁸ The Ljubjana Guidelines and the Bolzano Recommendations also stress that a State has the discretion to consider linguistic, cultural, familial, and historical ties favorably while granting citizenship.¹⁰⁹ However, the State should not grant citizenship in a manner that does not respect territorial integrity, sovereignty and good relations amongst countries, including through grants *en masse*.¹¹⁰ For instance, the Inter-American Court of Human Rights has previously found proposed amendments to the Costa Rican constitution non-discriminatory where it sought to allow facilitated acquisition for nationals of the other Central American countries, Spaniards and Ibero-Americans.¹¹¹ It reached this decision on the ground that they "share much closer historical, cultural and spiritual bonds with the people of Costa Rica" and will be "more easily and more rapidly assimilated within the national community."¹¹² The Court's Opinion shows that while evaluating applications, States are allowed considerable discretion in favourably treating applications where the individual

¹⁰³ *Id.*

¹⁰⁴ *See id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 22–23.

¹⁰⁷ JAMES R. CRAWFORD, *BROWNIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 514 (2012); *see also* ILC, *DRAFT ARTICLES ON DIPLOMATIC PROTECTION THE INTERNATIONAL LAW COMMISSION* (2006).

¹⁰⁸ ILC, *DRAFT ARTICLES ON DIPLOMATIC PROTECTION THE INTERNATIONAL LAW COMMISSION* (2006).

¹⁰⁹ *See generally Thematic Recommendations and Guidelines*, OSCE, <https://www.osce.org/hcnm/thematic-recommendations-and-guidelines>.

¹¹⁰ *See* OSCE, *LJUBLJANA GUIDELINES ON INTEGRATION OF DIVERSE SOCIETIES* 42 (Nov. 2012); OSCE, *BOLZANO RECOMMENDATIONS ON NATIONAL MINORITIES AND INTER STATE RELATIONS* 7 (2008).

¹¹¹ Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, Advisory Opinion OC-4/84, Inter-Am. Ct. H.R., para. 60 (Jan. 19, 1984).

¹¹² *Id.*

stands a *greater chance of integration* in the applicant state.¹¹³ At the same time, ethnic ties alone are not sufficient to establish a genuine link.¹¹⁴ They must be supplemented with residential links.

Further instances of a genuine link could also be drawn from the Human Rights Council's (HRC) clarification on the right to return and the duty of certain states to admit under Article 12(4) of the ICCPR. The provision discusses that apart from nationals, foreign non-residents who have "special ties" with the country, could include: (a) those nationals who had been stripped of their nationality, or (b) those who were nationals of countries that have undergone succession or have been incorporated into another, depriving them of a nationality, (c) those with a long term residence in the country, (d) or those who had been forcibly deported on an earlier occasion.¹¹⁵ For example, German law allows for a privileged form of citizenship acquisition through readmission to those who had fled from Germany post the 1950s due to persecution.¹¹⁶ Upon admission, they are granted rights to permanent residency and eventually are treated as repatriates.¹¹⁷ But this provision is not applicable for the second or third generation of expelled persons notwithstanding any historical ties,¹¹⁸ since they continue to remain nationals of other states.

B. Naturalization within the Refugee Convention

Naturalization refers to the process that offers a refugee the possibility of remaining in the country of asylum indefinitely and to fully participate in the socio-economic and cultural life of the community.¹¹⁹ Naturalization requires the refugee to not only establish self-reliance but to also assimilate to the community.¹²⁰ In fact, the reason why the Convention extends rights, such as the right to primary education, to the same standards as those available to the host State's citizens is because "schools are the most effective instruments of assimilation."¹²¹ As a part of this process towards self-reliance, refugees are

¹¹³ *See id.*

¹¹⁴ *See generally id.*

¹¹⁵ *See* UNHRC, *supra* note 20.

¹¹⁶ THE LAW LIBRARY OF CONGRESS, GERMANY: THE DEVELOPMENT OF MIGRATION AND CITIZENSHIP LAW IN POSTWAR GERMANY (Mar. 2017).

¹¹⁷ *Id.*

¹¹⁸ *See* ANUSCHEH FARAHAT & KAY HAILBRONNER, GLOBAL CITIZENSHIP OBSERVATORY ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES IN COLLABORATION WITH EDINBURGH UNIVERSITY LAW SCHOOL, REPORT ON CITIZENSHIP LAW: GERMANY 21, 29 (2020).

¹¹⁹ *See* Office of the High Commissioner for Human Rights, Global Consultations on International Protection/Third Track: Local Integration, EC/GC/02/6 (April 25, 2002).

¹²⁰ *Id.*

¹²¹ *See* UN Ad Hoc Committee on Refugees and Stateless Persons, *Ad Hoc Committee on Statelessness*

meant to contribute to the State's economy and become self-sufficient in order to eventually rely less on State assistance.¹²² According to the UNHCR, naturalization involves a legal process where the refugee is progressively granted rights similar to those of citizens, such as freedom of movement, access to education and labour markets, public relief, health facilities, acquisition of property, identity and travel documents.¹²³ The process eventually leads to permanent residence and, in some cases, to citizenship.¹²⁴ The following two Sections detail two processes of naturalization.

1. *Naturalization as an Exceptional Durable Solution*

The Convention aims for “durable solutions” by putting an end to the refugee status.¹²⁵ These solutions could comprise of, voluntary repatriation, resettlement in third countries or naturalization within host states.¹²⁶ Any such measure, however, is left to the option of the individual refugees. This is the case unless there has subsequently been a fundamental change in circumstances in the refugees' country of origin because of which he does not warrant further international protection. Since the refugee does not need any further international protection, the refugee can be mandatorily repatriated to the refugee's country of origin. This situation has been explained under Article 1C Cessation Clauses.¹²⁷

As one would notice, the criteria for naturalization is available only under exacting situations with voluntary repatriation to the refugee's country of origin being the most favourable solution. Barusitski explains that the international law obligations states took upon themselves by becoming parties to the Convention, does not oblige them to provide more than the refugee rights in case the conditions in the country of origin turn safe “within a reasonable time period.”¹²⁸ This proposal seems to offer some middle ground. It does so by noting that a

and Related Problems, Status of Refugees and Stateless Persons - Memorandum by the Secretary-General, E/AC.32/2 (Jan. 3, 1950).

¹²² See UNHCR, *supra* note 78.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Sadako Ogata, *Foreword* to Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

¹²⁶ UNHCR, CONCLUSIONS ON INTERNATIONAL PROTECTION, ADOPTED BY THE EXECUTIVE COMMITTEE 1975-2017 (CONCLUSION No. 1-114) 47 (2017).

¹²⁷ Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (“This Convention shall cease to apply to any person falling under the terms of section A if . . . he has voluntarily re-established himself in the country which he left or outside of which he remained owing to fear of persecution”).

¹²⁸ See M. Barutciski, *Involuntary Repatriation when Refugee Protection is no Longer Necessary: Moving Forward after the 48th Session of the Executive Committee*, 10(1/2) INT'L J. REFUGEE L. 236, 245 (1998).

refugee may have, in accordance with the framework of the Convention, gained the higher standard of attachment with the host state. As such, it would be unfair, after the passage of a reasonable period of time, to repatriate individuals to their country of origin. Sometimes the host state might even recognize these rights before the expiry of such “reasonable time period” on the ground that the past persecution suffered by the refugee might have been so horrific, that it would be against humanitarian considerations to send individuals to their country of origin.¹²⁹ The HRC and UNHCR have both observed that any return must be dignified and not amount to arbitrary interference with the family life of the non-citizens.¹³⁰ This is so in instances where the non-citizen may have dependent children who by reason of being stateless or, otherwise being born into the territory have already acquired citizenship of the host state.¹³¹ Notice, however, that a grant of residence does not automatically translate into a right to acquire nationality. Thus, habitual or durable legal residence is a necessary precursor to naturalization. The following section deals with this assertion.

2. *Naturalization Only Subsequent to Assimilation and Integration*

Under Article 34 of the Refugee Convention, the host State is expected to facilitate the process of naturalization “as far as possible” including through the reduction of the costs involved and expeditious proceedings.¹³² On one hand, Blay and Tsamenyi argue that Article 34 “effectively requires the States to give the refugees more favorable treatment than the States would normally give to other aliens.”¹³³ On the other hand, Weiss and Robinson opine that the State is

¹²⁹ *Lal v. Immigration & Naturalization Service*, 255 F.3d 998, 1009 (9th Cir. 2001) (“[A]n expression of humanitarian considerations that sometimes past persecution is so horrific that the march of time and the ebb and flow of political tides cannot efface the fear in the mind of the persecuted.”)

¹³⁰ UNHRC, *supra* note 69.

¹³¹ *See, e.g., Baker v. Canada*, [1999] 2 S.C.R. 817 (Can.); *Winata v. Australia*, UNHRC Comm. No. 930/2000, UN Doc. CCPR/C/72/D/930/2000 (July 26, 2001) (upholding a challenge to deportation order by the Australian state of two stateless persons with an Australian citizen child, discussing how the discretion of the state in enforcing its immigration policy will be arbitrary in case the applicants have been present for a long time period, in this case for over 14 years and their son, born and schooled within the territory that might have been adequate in developing social relationships); *Madafferi v. Australia*, UNHRC Comm. No. 1011/2001, UN Doc. CCPR/C/81/D/1011/2001 (July 26, 2004) (showing that the Applicants had been present in the country for a long period and to return to a society whose language their minor children did not know and which was alien to them would be arbitrarily and the parents could not have been deported individually either owing to the minority of the children).

¹³² Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (article 34).

¹³³ Samuel Blay & Martin Tsamenyi, *Reservations and Declarations under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 2 INT’L J. REFUGEE L. 527, 542 (1990).

only under a dual “recommendation,” a general one to facilitate the assimilation and integration and a specific one to reduce costs and expedite the process.¹³⁴

Under the Refugee Convention, no State is under an obligation to promote enfranchisement, for instance, by enacting refugee-specific provisions over naturalization.¹³⁵ Similarly, neither is a refugee under any obligation to accept a specific process over another.¹³⁶ Nonetheless, this is not to say that a refugee, as any other foreign non-resident, will be free from disqualification from an assessment of their naturalization application if shown that the refugee has completed the substantive requirements for naturalization. Apart from the administrative formalities in submission of the application and the decision, there appears to be no difference in consideration of a foreign non-resident’s application and that of a refugee’s.¹³⁷

Although, there are instances where the host States absolutely refuse to allow refugees access to naturalization. For instance, under Ugandan laws, a refugee is entitled to naturalization as per the provisions of the Constitution.¹³⁸ However, the Constitution itself limits naturalization to those who have “voluntarily migrated” or provides for extensively long periods of residence.¹³⁹ These would not only amount to breach of the minimalist commitments towards naturalization discussed above, but also the more substantial provisions on non-discrimination framed under Articles 2 and 26 of the ICCPR that apply to all individuals without exceptions. This is so because there are no “reasonable grounds” for withholding of such persons access to the procedure, apart from

¹³⁴ See HATHAWAY, *supra* note 21, at 981, 984 n.313 (discussing that assimilation “is used not in the usual meaning of loss of the specific identity of the persons involved but in the sense of integration into the economic, social and cultural life of the country”).

¹³⁵ For example, Italian laws provide for more relaxed requirements for refugees where they need to have been legally resident for at least 5 years, as opposed to a ten-year requirement for other foreign non-residents. Although, naturalization can be denied on the basis of lack of requisite knowledge of the language or of social inclusion (evaluated by seeing if the income made during the past 3 years is equal or higher than the minimum income guaranteed by the state). See *Naturalization: Italy*, ASYLUM INFORMATION DATABASE & EUROPEAN COUNCIL OF REFUGEES, <https://www.asylumineurope.org/reports/country/italy/content-international-protection/status-and-residence/naturalisation>.

¹³⁶ See HATHAWAY, *supra* note 21, at 981–82.

¹³⁷ See generally UN Ad Hoc Committee on Refugees and Stateless Persons, Statement of Mr. Robinson of Israel, Ad Hoc Committee on Refugees and Stateless Persons, Second Session: Summary Record of the Thirty-Ninth Meeting Held at the Palais des Nations, Geneva, UN Doc. E/AC.32/SR.39 (Aug. 21, 1950).

¹³⁸ TIGRANNA ZAKARYAN, GLOBAL CITIZENSHIP OBSERVATORY (GLOBALCIT) ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES IN COLLABORATION WITH EDINBURGH UNIVERSITY LAW SCHOOL PART III, REPORT ON CITIZENSHIP LAW: UGANDA, RSCAS/GLOBALCIT-CR 2019/5, 17–18 (May 2019).

¹³⁹ *Id.*

cases where refugees objectively or subjectively may be able to return to their country of origin.¹⁴⁰

The naturalization of a refugee is not a separate endeavor, or as Hathaway explains, it is not an “alternative solution.”¹⁴¹ Rather the rights structure under the Refugee Convention itself facilitates this process.¹⁴² Once all rights as contemplated, or the integration in the community is achieved, the refugee ceases to be a “Refugee” under the cessation clause in Article 1(C) (3) and is now able to participate in the political life of the host state.¹⁴³ Hathaway’s opinion, combined with the fact that the provision on naturalization is placed at the extreme end of the Refugee Convention, hints at the linear progression of rights.¹⁴⁴ That is to say, naturalization is possible only once the refugee has undergone each level of attachment along the rights spectrum.¹⁴⁵ As mentioned before, a higher level of rights goes hand-in-hand with a higher level of integration in the host state. The highest level of integration being that of a legal habitual or durable residence. This is also in agreement with the legal proposition that the exercise of diplomatic protection by a state can be exercised in the case of refugees and stateless persons—as long as they are lawfully and habitually resident within the territory.¹⁴⁶

Although, international law does provide for exceptional situations where a refugee does not need to move through every stage of attachment. For instance, international law recommends that children born on the territories of another state who would otherwise be stateless, be considered for an automatic acquisition of nationality through registration, after verification through statelessness determination procedures.¹⁴⁷ Similarly, refugees who are meant for resettlement in member States, such as Canada, need not go through an additional verification procedure.¹⁴⁸ This is because, unlike asylum seekers,

¹⁴⁰ See *Stewart v. Canada*, UNHRC Comm. No. 538/1993, UN Doc. CCPR/C/58/D/538/1993, (Nov. 1, 1996).

¹⁴¹ See generally James C. Hathaway, *The Right of States to Repatriate Former Refugees*, 20 OHIO ST. J. DISP. RESOL. 175, 177 (2005).

¹⁴² HATHAWAY, *supra* note 21, at 979.

¹⁴³ See *id.* at 981.

¹⁴⁴ *Id.*

¹⁴⁵ See generally *id.*

¹⁴⁶ Kristin Henrard, *The Shifting Parameters of Nationality*, 65 NETH. INT’L L.R. 269, 284 n.111 (2018).

¹⁴⁷ See COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS, *supra* note 34.

¹⁴⁸ Resettlement refers to the practice where the first country of asylum refuses to provide any immigrant status, although it is agreeable to offering temporary protection. In case the refugee is still not able to return to his country of origin, resettlement option is explored to provide some form of a durable immigrant status within a third willing country. See UNHCR Executive Committee Conclusion No. 2 (XXVII), Functioning of the Sub-Committee and General Conclusion on International Protection (Oct. 12, 1976).

their claims have already been verified in the country of first asylum.¹⁴⁹ Thus, they enter the territory with residence permits and are immediately granted permanent residence- which eventually allows them to apply for naturalization.¹⁵⁰

Thus, India's proposed amendment directly grants asylum seekers the rights to claim citizenship without further verification and having to establish a legal habitual or durable residence. This appears to violate international legal standards. But what recourse does international law provide? Individuals, including refugees and stateless persons, are entitled to bring complaints before treaty bodies such as the HRC or the CERD over grounds of discrimination without any reasonable basis, during admittance or naturalization. But the law provides no further recourse over challenging the naturalization of those falsely seeking benefits under the Convention definition within its territory.

Moreover, the law does not discuss whether the actions of the asylum State constitute a breach of any duty owed towards its own citizens.¹⁵¹ It additionally enlists any integration plan as "good practice" and recommends states to facilitate integration at the local level.¹⁵² Likewise, the Llubjana Principles and the Bolzano Guidelines ask States to refrain from any act that could potentially confer citizenship upon foreign non-resident nationals en masse over grounds of sovereignty and the commitment to uphold neighbourly relationships, implying that there are no binding obligations imposed upon them to do the same.¹⁵³ The *Nottebohm* judgement also only generally mentions that other states are under no obligation to recognize the conferment of nationality without any genuine link, or as in this case, a legal habitual and durable residence.

CONCLUSION

Although the Citizenship Amendment Act superficially appears to only focus on granting citizenship, it implicates the Refugee Convention and the

¹⁴⁹ *See id.*

¹⁵⁰ *Claiming Asylum in Canada - What Happens?*, GOVERNMENT OF CANADA: IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA, https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/03/claiming_asylum_incanadawhathappens.html.

¹⁵¹ There is some literature available on how preferencing one community over the other, in spite of equal periods of residence and deserving protection needs, could lead to feelings of resentment and withdrawal and even confrontational attitude against the host community. *See* Diane Barnes, *Resettled Refugees' Attachment to Their Original and Subsequent Homelands: Long-Term Vietnamese Refugees in Australia*, 14 J. REFUGEE STUD. 394, 409–10 (2001).

¹⁵² DAVID S. WEISSBRODT, *THE HUMAN RIGHTS OF NON-CITIZENS* 72 (2008).

¹⁵³ OSCE, *supra* note 110.

rights of refugees. The foreseeable consequence of the CAA would result in a curve of all asylum seekers from identified countries who practice a targeted religion—violating the principles of non-discrimination that apply to all asylum seekers. At the same time, unverified asylum claims do not imply that individuals need certain protections, especially when an individual maintain their national status. Therefore, the CAA is a concerning development because international law provides that naturalization rights are only limited to those who can exhibit ties to a State, which in the case of refugees amounts to a showing of *legal* habitual and durable residence. But neither the refugee laws nor the general principles of international law provide any guidance over a challenge to the conferral of citizenship as an offensive recourse. The law does not discuss whether the State, through its conferral, breaches any duty towards its own citizens to accept and integrate only those with identified protection needs. Looking forward, this Article ends with an inquiry into further research: what latitude does international law truly provide to States in refugee related matters, whether a refugee's way towards naturalization is available only on the establishment of a length of legal stay and negligible hopes of return, or other extraneous considerations? Considering the potential negative implications associated with certain integrations, what additional duties does the host State owe any to its citizens?