

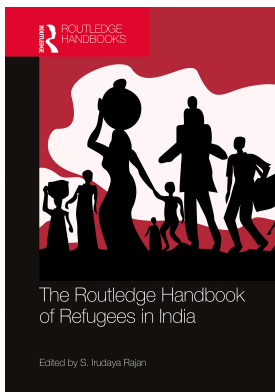
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S. Irudaya Rajan

### Stateless in India

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Ipsita Sapra

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# Stateless in India

## Institutionalizing Homegrown solutions

*Ipsita Sapra*

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### Introduction

As of 2018, there were 3.9 million stateless persons across the world (UNHCR, 2018). Of these, about 55% are internally displaced persons and about 25% are refugees. India has been a site of human mobility since historic times. In the aftermath of its independence, the country experienced one of the largest and most violent human migration that displaced millions of people changing forever the geopolitics of the region. Ever since independence, India has remained a host to myriad sections of stateless people who have sought refuge from difficult circumstances at home countries.

The United Nations High Commissioner of Refugees (UNHCR) defines stateless as 'a person who is not considered as a national by any State under the operation of its law' (UNHCR, 2018). In other words, a stateless person is an individual who does not have a political identity in terms of a nationality of any country. While this can happen for a range of reasons from religious, ethnic, and/or political persecution it has serious consequences for the people directly impacted by it and on the countries that they flee in order to flee persecution in their country of origin. In this chapter, the term 'stateless' is used to refer to both refugees and those seeking asylum.

The last more than seven decades have seen considerable change in India's approach to engage with statelessness – from a 'generous host' to a more guarded and suspicious one. This chapter presents a trajectory of policy approaches that India has employed over the years. In the process, it marks the shifts and changes that are often an outcome of contemporary geopolitics. It argues that while the need for a policy cannot be over-emphasized, the country would do well to institutionalize the existing policy instruments to respond to the phenomenon of statelessness. It asserts that there are several explanations of the Indian state and Judiciary effectively invoking existing laws to protect and support the stateless populations. However, in an absence of institutionalization of the same, these homegrown solutions may be discarded in favour of immediate political gains. Commenting on the present situation in India, the chapter forewarns that humanitarian considerations are sidelined in midst of security concerns that might further exacerbate the vulnerabilities of a section of stateless people in the country.

The chapter engages with the extant literature on the issue of statelessness in India including both the refugees and the asylum seekers presently in India. At a theoretical level, it engages with

the ideas of inclusion and integration and the ways in which these may be contextualized in the Indian scenario. In doing so, it looks closely at the policy content that may enable such inclusion and integration. In addition, the chapter builds on the existing study reports published by multilateral agencies working with the stateless populations such as the NHCR and Internally Displaced Monitoring Committee (IDMC). Finally, through a reading of the current affairs in the media content, the chapter engages with current developments in the country with reference to the National Registration of Citizenship (NRC) and Citizenship Amendment Bill to comment on the areas of concern. Based on these, the paper emphasizes the need to immediately institutionalize policy approaches to engage with the stateless populations in the country.

### Stateless people in India today

As of 2018, India is a host to 207,848 stateless people of which 195,891 are refugees and 11,957 are asylum seekers (UNHCR, 2018). However, it must be noted that the figures presented here are that of the stateless people registered with UNHCR. The numbers would be much higher if we take into account all those who are outside this official framework. Importantly, the UNHCR support around 31,000 stateless people through civil society organizations registered in India. This is a very small number given that the number of people in need of support services is many times higher. The country had incurred an expenditure of US\$ six million in the year 2018 that would not even account for a fraction of the GDP. The stateless population – whether they are asylum seekers or are recognized as refugees – are one of the most vulnerable sections of the society who are in India after fleeing violent state persecution. Most of them are poor or have lost their savings and financial resources in the course of displacement. However, the narratives and anxieties that are created around ‘illegal immigrants’ make it a politically sensitive issue. Also, given that India does not have a legal obligation either domestic or international to guarantee protection for the stateless population, there is very little by the way of claims that these sections can make upon India. To use the famous phrases of Hanna Ardent in her seminal work *The Origins of Totalitarianism*, ‘the right to have rights’, is rather precarious for the stateless in India (Ardent, 1951).

In terms of types of stateless communities, India hosts several communities that are distinct in terms of countries of origin, period of arrival in India, reasons for fleeing their countries of origin, legal and socioeconomic status in India with regard to specific protection issues. Post-independence and partition, the first group of the stateless population to enter India were the Tibetans. About 85,000 refugees, led by Dalai Lama entered India in the year 1959 (Hutheesing, 1960, cited by Dasgupta, 2016). Subsequently, several stateless groups have arrived in India including the Sri Lankan refugees, the Hindu Pakistani refugees, Burmese refugees, Palestinian refugees, Afghan refugees, Bangladeshi refugees (especially, the Chakmas from the Chittagong Hill Tracts) and Somali refugees (compiled in Table 15.1). While clubbed under the broader categories of stateless populations (including both refuse and asylum seekers), there is enormous heterogeneity among these groups not just in terms of ethnicity but also in terms of their abilities to integrate with India that depends on a range of factors (HRLN, 2007; Ghosh 2016; UNHRC, 2018). It may be added that this seemingly large number and diversity notwithstanding, one has to bear in mind that despite the anxieties regarding refugees and asylum seekers from outside the country, internally displaced persons (IDP) in India far outnumber these sections. According to the Internal Displacement Monitoring Centre at the Norwegian Refugee Council, as many as 2.4 million people were internally displaced in India in 2016. The reasons for the same were multifarious, from conflict and violence to natural disasters (IDMC, 2016).

Table 15.1 Stateless in India (Compiled by the Author from HRLN, 2007 and UNHCR 2019)

<i>Refugee Community</i>	<i>Current Numbers</i>	<i>Reason for Flight</i>	<i>Current Status</i>
Tibetan refugees	1959, approximately 80,000 Tibetans fled to India today, there are approximately 110,000 Tibetan refugees living in India.	Political and religious persecution from the Chinese government.	Refugee status accorded to those who arrived between 1950s and 1960s. Tibetans born in India are eligible for registration. The Gol continues to allow Tibetans to enter the country but has not afforded them the same legal status as before.
Tamilian refugees	Fleeing Sri Lanka since 1983. At present, more than 110,000 Sri Lankan refugees live in Tamil Nadu.	Ethnic violence and state prosecution of Tamils.	The legal status is officially governed by the Foreigner's Act 1946 and India's Citizenship Act 1955. The Gol recognizes Sri Lankan refugees and grants protection.
Bhutanese refugees	Fleeing Nepal since 1985, Citizenship Act in Bhutan. About 15,000 and 30,000 Nepali refugees in India, mostly in West Bengal and Assam.	Persecution, closure of schools and health facilities.	The right to residence, study, and work is guaranteed without the need for identity papers. However, because the Bhutanese are not recognized as refugees, they are not eligible to receive the assistance afforded to refugees.
Pakistani Hindu refugees arrived in India since 1965	Approx 115,000 people displaced from Pakistan have mostly settled in Rajasthan or Gujarat.	Tense inter-communal relations between the Hindus and Muslims.	The Gol does not recognize this group as refugees and as a result, they are unable to acquire residence permits or find employment. With Citizenship Amendment Rules 2004, the Gol awarded 13,000 Hindu Pakistanis citizenship.
Burmese refugees arrived since 1988	UNHCR recognizes 2,000 but is likely to be more. Majority live in Mizoram in northeast India.	Persecution of pro-democracy supporters. Ethnic conflict.	Given similar ethnicity, they find integration easier in terms of acceptance and employment opportunities.
Somali refugees	Fleeing since 1991. Approx 672 people in Hyderabad, India	Civil war.	Not provided with residence permits and are not allowed to work. Receive subsistence allowance. Face racial discrimination.
Palestinian refugees from Iraq	160 Palestinians in Delhi since 2000s.	Persecution after the fall of Saddam Hussain.	Not issued residence permits by the Indian government. Receive subsistence allowance from UNHCR.
Afghan refugees	13,381 Afghans arrived since 1992, fall of Najib government.	Persecutions in Taliban regime.	The Gol does not officially recognize as refugees. However, they have secured residence permits affording a degree of legal protection.
Rohingya refugees	18,914 Rohingyas arriving since 2012 (official claims 40,000).	Persecution by the state.	Withdrawn recognition. Face both surveillance and hate crimes. The Gol has a hostile stand and has begun deporting.

Source: Author.

As Table 15.1 demonstrates, the Indian state's treatment meted out to refugees has not been consistent. The state responses to movements of people across borders have been varied – not just with regard to different groups of people but with regard to the same group over a period of time. (Bhattacharjee, 2008, Dasgupta 2016).

In addition there are about 1,315 refugees and asylum seekers from the Democratic Republic of Congo, Eritrea, Iran, Iraq, Somalia, and Sudan presently in India (UNHCR, 2018).

### Statelessness: a conceptual idea of inclusion and the ideas around others

There are several empirical studies that document the various aspects of vulnerabilities experienced by the stateless communities presently in India. These range from economic hardships to social stigma and psychological trauma (IIED, 2018, Field, J, Tiwari, A. D., and Mookherjee, Y (2017), HRLN (2007)). However, given the nature and seriousness of contemporary times, it is important to evolve a normative framework for engaging with the idea of inclusion of the stateless in India. The reasons for this are two-fold: empirical–practical and strategic:

- **Empirical–practical:** provides a conceptual matrix to understand the approaches so far. It also captures the dynamics created by the inconsistencies in dealing with different sections in the absence of a national policy.
- **Strategic:** provides the space to engage with the contested notions of inclusion in the policy context of India. As such, it conceptualizes the different shades of inclusion that have been elicited by the diverse policy approaches.

Coalescing the empirical–practical with the strategic present a unique opportunity to understand the diversity of the homegrown solutions within the Indian approach and provides the groundwork to institutionalize these across. This is important not just from a policy analysis perspective but allows for a greater focus on the humanitarian aspects and the ways to address the same.

In engaging with a conceptual understanding of inclusion in the context of statelessness, it must be mentioned that there is no agreement on a single accepted idea of inclusion (Agar and Strang, 2008). Not only are these contextual based on the countries of origins and destination, these are also extremely temporal depending on the contemporary geopolitics. Countries that were once very inviting towards the stateless populations are now increasingly closed. Apprehensions around 'Islamic Terrorism', racism of different kinds (e.g., faced by African communities in India preventing their integration), and the narratives around 'resources taken up' in the contexts of economic slowdown have fanned negative feelings among the locals. Such sentiments are further whipped up for electoral politics (Sharma, 2019).

One could argue that an engagement with the ideas of inclusion is important not just because it creates the framework for acceptance but also because it very clearly defines the concept of 'otherness'. In his seminal work, *The Biopolitics of Otherness*, Didier Fassin (2001) engages with the idea of otherness with regard to the discrimination experienced by the immigrant population from Africa in France. Referring to the 'Sans Papiers' movement (meaning without papers/documents) from 1996 onwards, Didier discusses the state crackdown on 'illegal immigrants' and the increasing criminalization of such groups – several of whom have been stalled there for decades. The movement forced reflections about self-perception, and perception about others in creating and accentuating 'otherness'. In the Indian context, the phenomenon of 'othering' is getting increasingly pronounced in recent times. Especially relevant is the idea

of 'chosen' in the former French President Sarkozy's immigration policy. The policy in France exercised control on immigration based on economic considerations that allowed only those who could be seen as playing contributing role in the French economy – the creating a binary between the 'chosen' and 'suffered' based on economic roles (Fassin, 2001). What constitutes this 'other' varies over time and space and is contingent on major world events and particular geopolitical and macro-economic context. The phenomenon of 'othering' has accentuated in periods leading to the world wars, in the aftermath of 9/11 attacks and the consolidation of right wing polecats across the globe today that has led to tightening of border rules across countries.

India has exercised 'othering' of selected communities in the context of the stateless population that has heightened in recent times, an issue of grave concern. In the context of 'othering', it is possible to classify the stateless in India under two categories. The first category comprises those who enjoy explicit state recognition in India such as the Sri Lankans and the Tibetans. Due to particular historical and geopolitical circumstances, these two groups have been able to secure prima facie refugee status. This creates their entitlement to such procedural provisions as a Refugee Certificate; the possibility of naturalization and a long-stay visa. In addition, there are specific measures for inclusion and integration that includes the provisioning of land and a range of other benefits spaces for religious and cultural expression. The contours of this relationship changes depending on the dynamic nature of diplomatic ties and tensions. There has been a steady curtailment of benefits over time. For example, not just the status and the benefits but also the treatment meted out to the Tibetan leaders such as the Dalai Lama and the Karmapa have changed depending on the contemporary geopolitics with China (Field, Tiwari and Mookherjee, 2017).

India has also been accepting towards the Bangladeshis entering India in the aftermath of 1971 when East Pakistan separated from Pakistan and Bangladesh was created. The strategic approach with which the state handled the enormous humanitarian crisis in the aftermath of the war was rather praise worthy. The Government of India used four broad approaches: to begin with, opened up the border to allow access to the refugees into the Indian territory; second, it involved several civil society organizations including faith-based organizations in the relief operations; third, it engaged in international diplomacy to address and resolve the crisis through such means; and, finally, it intervened militarily, to conclusively address the crisis (Dasgupta, 2016). While India might have geopolitical strategic interest in the process, given its hostilities with Pakistan, the response to those fleeing persecution was positive and accepting.

An inclusive approach towards the stateless population can also be seen with reference to the treatment of Sri Lankan refugees. India has recognized and supported Sri Lankan refugees through several means. However, the situation changed after the experiences of the Indian Peace Keeping Force (IPKF) attack on the Liberation Tigers of Tamil Eelam (LTTE) a separatist organization that engaged in violent conflict against state oppression and sought to establish a Tamil state and the subsequent assassination of former Indian prime minister Rajiv Gandhi. This led to increasing surveillance and creation of special camps to incarcerate those considered 'suspicious'. Apart from this, India has played a proactive role in both accepting Sri Lankan refugees and has also supported safe repatriation on two occasions: in 1987 after the signing of the Peace Accord between India and Sri Lanka, and in 1991 after the assassination of Rajiv Gandhi (Dasgupta, 2016, Field, Tiwari and Mookherjee, 2017).

Thus, certain groups continue to be favoured in terms of state largesse received in comparison to other groups. In addition, ethnic affinities have played a role in their greater acceptance in the local sociocultural milieu (Field, Tiwari and Mookherjee, 2017).

In addition to these, there is another category of stateless population in India comprising communities that are mandated by UNHCR (Afghans, some Burmese groups, Somalians, and a few Middle Eastern and African countries). These sections are required to undergo an assessment for a Refugee Certificate. While they might receive a visa, this is usually for a short term. Finally, while the possibility of naturalization exists, these can be rather discretionary and not very transparent leading to uncertainties (Field, Tiwari and Mookherjee, 2017).

As of now, the Government of India reserves the sovereign rights to decide on the stateless communities with regard to 'othering' which group it recognizes, which group it accepts, which groups it supports and which group it seeks to repatriate. Often these decisions are deeply influenced by the dominant political ideology of the state. The discomfort of the present regime with certain stateless communities are an extension of the domestic context of Hindutva politics. Thus, the narratives around 'othering' can be idiosyncratic, contextually constructed and politically motivated. (Dasgupta, 2016). Thus, while Tibetan and Sri Lankan refugees receive both recognition and support (although both are under increasing scrutiny over the years), no such treatment is forthcoming for such groups as Rohingyas where the process of 'othering' is very clear in India's handling of the community. Indeed, they have recently been stripped of existing legal identification documents that were earlier provided to them. They face imminent deportation and the process has already begun.

The proposed Citizenship Amendment Bill 2016, that has already been passed in the Lok Sabha in 2019 amends the Citizenship Act of 1955 might further pronounce this 'othering' through deepening exclusion (Sharma, 2019). The Bill makes all migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan, eligible for citizenship. The Bill is silent on the Muslims who constitute a sizeable population of immigrants. Given its selective eligibility criteria for citizenship on the basis of religion, it is seen as a violation of Article 14 of the Constitution which guarantees the right to equality (Thakur, 2018, Chokker, 2019). Also, in the context of a secular country that in its constitution prohibits discrimination on the basis of region, eligibility of citizenship determined through a religious lens is seen as violating constitutional principles (Bhat, 2019).

Read with the NRC this has the power to actually create a large number of stateless in the country. The fears are exacerbated by the proposal to extend NRC the exercise that has recently concluded in Assam leaving two million people staring at an uncertain future to the entire country. The exercise has been found to be flawed on certain grounds. There is a lack of historicity in understanding the role of elite Hindu Assamese in getting workers from East Pakistan that continued post the formation of Bangladesh. There is little recognition of internal migration within Assam and the movement of people within India pushed out by displacement. The process is also non-cognizant of the flood-prone nature of the state where the loss of documents in floods is a regular phenomenon (Sharma, 2019).

These concerns are also expressed by the UNHCR (2018) that clearly states in its global report that while India has been a host to one of the largest sections of the refugee population, the stand is changing. The report further expresses concern over the shrinking space for the stateless populations. There are concerns around government advisory issued in August 2017 – aimed at identifying illegal migrants – resulting in reduced freedom of movement and access to services for those who are registered with the UNHCR such as the Rohingya refugees (UNHCR, 2018).

Given these apprehensions, it seems important to synthesize homegrown experiences in dealing with the stateless population and develop an operational definition and approach within the normative framework on inclusion. This might also be useful given that despite several attempts to develop a Refugee Policy across different governments, there has been a resistance from the state to formalize a policy leading to India's unclear and inconsistent stand on the

stateless despite the country being a host to a large number of stateless people. The inclusion framework allows a nuanced and historical understanding of India's stand and its consequences on the stateless population that inhabits India.

### **Uncertainties of contemporary times: international policies, national contexts**

In order to develop an operational framework inclusion, it is important to appraise India's stand on statelessness. India has refused to formalize any domestic law on the stateless population and as such has no legal obligation to host asylum seekers or provide any support in the form of rehabilitative aid. Indeed, it has kept itself insulated from international demand for signing the UN Refugee Convention 1951 and the subsequent additional protocol in 1967. The historical roots for this are traced to India's displeasure at the indifference of the international community towards the violent experiences of partition in 1947. The refusal to sign the international instruments is also attributed to what is considered inappropriate for India given that the nature and context of refugee flow in India are significantly different from the 'euro-centric' approaches that these conventions demonstrate in dealing with the issues (Houssain, 1997: 78, Oberoi, 2006, cited in Dasgupta, 2016). The reluctance to sign the Conventions are also attributed to the demand of the developed nation to guarantee legal rights without a corresponding comment to support towards material assistance, a concept considered rhetorical without substance (Oberoi, 2006).

Given this context, India has developed an approach that is diverse, contextual, and flexible, albeit not always in a positive way for certain groups. What India has today is

'script' unofficial, unacknowledged and uncodified—which governs the extremely diverse ways in which individuals seeking asylum in India are treated. Consisting of a battery of discourses, concepts and legal instruments, this script is flexible and constantly evolving rather than a set of rigid rules.

*Rolfe (2008), cited in Dasgupta (2016)*

This position helps India manage, manoeuvre, and manipulate the situation selectively given India's geopolitical location as a 'stable state surrounded by relatively unstable neighbours' (Rolfe, 2008, Bhattacharjee, 2008). This further facilitates the flexibility to decide on the strategy based on the dominant political ideologies that are often manipulated for electoral gains.

The following section discusses the ways in which India has been dealing with the stateless population through a range of existing policy instruments – both national and international. In doing that, it builds on the conceptual model of inclusion as presented by Agar and Strang, 2008 and modifies it to suit the Indian context. In their conceptual model, Agar and Strang, present four levels of integration: Level I: Foundational comprising Citizenship and rights, Level 2: Facilitator comprising two key components: Language and cultural knowledge and Safety and Stability, Level III: comprising Social Connections that has three key components: Social Bridges, Social Bonds, and Social Links and finally Level IV: Markers and Means that has four key components: Employment, Health, Education, and Housing (Agar and Strang, 2008). The present chapter uses broad levels for conceptualizing the contours of the policy instruments in India.

In addition, Judicial Activism in dealing with the issue pertaining to the stateless may be noted for taking a proactive stand with a humanitarian leaning. Indeed, the courts have invoked Constitutional rights to extend these to protect the rights of the stateless people. The courts have also engaged the NGOs working with the stateless people to represent themeless in the court and file cases (Parikh



2001 cited in Bhattacharjee, 2008). Reading together these provisions indicates that India is obligated to secure to refugees a right to status determination, a due process for such determination and a right against return to the country of origin. It may be noted here that India makes no legal distinction between a 'refugee' a 'stateless person' or a 'foreigner' (visiting India for work or tourism). As such, while such laws as Passport (Entry into India) Act, 1920, Passport Act, 1967, Registration of Foreigners Act, 1939 and Foreigners Act, 1946 exist, these do not address the specific vulnerabilities and needs of the stateless population rather several of these could be used against them (Kaur, 2013). Indeed, India has often used these in dealing with the stateless communities by prosecuting them as illegal aliens, using these laws to deport them (Samaddar, 2003).

As Table 15.2 demonstrates, there are existing provisions that support inclusion across all levels: Foundational, Facilitator, Social Connection, and Markers and Means. Needless to say, it

Table 15.2 Inclusion and the Stateless in India

<i>Levels of Integration</i>	<i>International/Customary</i>	<i>Constitutional</i>
<b>Markers and means</b>	UNHCR provisions for subsistence allowance and support services for the registered stateless people.	No restrictions for several groups to access work and educational opportunities.
<b>Social connection</b>		Article 25 provides that subject to public order, morality, and health and other fundamental rights, all persons are equally entitled to freedom of conscience and the right freely to profess, practice, and propagate their religion.
<b>Facilitator</b>	The International Convention on Economic, Social and Cultural Rights (icESCR-1966) since 1979. The Convention on the Elimination of all forms of Racial Discrimination (cERD-1965).	Article 14: Right to Equality before Law: the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
<b>Foundational</b>	Recognition of the right to non-refoulement as a part of customary law. Article 14 of the Universal Declaration on Human Rights (UDHR) 1948 states the right to seek and enjoy protection from persecution through asylum. The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Torture Convention 1984) emphasizes non-refoulement if there are substantial chances of torture on return. The International Convention on Civil and Political Rights (iccPR-1966) states that an alien cannot be expelled without adherence to due procedure.	Article 21: Protection of Life and Liberty: no person shall be deprived of his life or personal liberty except according to due procedure established by law. Further strengthened through Supreme Court proceedings that has held that foreigners are also entitled to the protection of Article 21 of the Constitution. Right to Fair Trial: It has been recognized by the Supreme Court as a component of the right to protection of life and liberty.

Source: Author.

begins with recognition and political identity. With an established identity, it is easier to address other needs and indeed respond to the agency and productive abilities of the stateless population. The framework such evolved can be used not just to meet basic needs but also ensure dignity and freedom that comes with civil liberties. An important step towards inclusion would be to institutionalize these for all stateless communities. Despite all the reservations, as the paper shows, the number of such communities is very small and the national expenditure is extremely meagre. Given this, the chapter asserts the need for looking at each of these levels of inclusion to strengthen and make uniform the provisions to support the stateless populations. Not only is it intrinsically a positive step building on social justice and human rights framework but instrumentally important in its potential to create a more stable and productive society.

## Conclusion

As emphasized earlier, in the context of the absence of a domestic policy and international commitment, the state response to the stateless population can be arbitrary, inconsistent, and based on political exigencies of the government in power. Such an approach leads to a process of ‘othering’ of the stateless population exacerbating their marginalization and vulnerabilities. On a long-term basis, such an ‘othering’ can be dehumanizing for the material and psychosocial deprivation that it causes for the stateless population.

Thus, the state selectively uses components of existing constitutional provisions and international conventions. The courts can further use the discourses of rights albeit limited. However, in the absence of an institutionalized framework, engagement with the stateless becomes a matter of state benevolence or lack thereof rather than a matter of rights that may be claimed. This brings one back to Hannah Arendt’s critique of universal human rights which she believed could only come forth, mediated and guaranteed through the process of citizenship.

To conclude, any understanding of the state–stateless relationship in India needs to be inextricably linked with contemporary geopolitics. There has been a considerable trough and crest in this relationship over the last seven decades of independence. Given that political volatility is a regular part of contemporary times, the fate of the stateless population cannot be left to political manipulation. It is therefore critical to evolve and institutionalize a paradigm based on a framework of inclusion. This is not just intrinsically important but can play an important instrumental role in harnessing the potential of the stateless communities present in India.

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