

Migration Oxford Podcast Episode 2 SUMMARY

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SPEAKERS

Abhishek Saha, Rob McNeil, Jacqui Broadhead, Zoe Gardner

Rob McNeil 00:00

Hello, and welcome to the second edition of the migration Oxford Podcast. I'm Rob McNeil from the migration observatory.

Jacqui Broadhead 00:07

And I'm Jacqui broadhead from the Global Exchange on migration and diversity.

Rob McNeil 00:10

So, Jacqui, what are we going to be talking about today then.

Jacqui Broadhead 00:13

So the nationality and borders bill is currently working its way through parliament in the UK. And there's a particularly controversial clause clause nine, which focuses on citizenship deprivation and increases the rights of the Home Secretary in a kind of long standing pattern of increasing the home secretary's rights to take somebody's citizenship away. So we're looking at that, but also contrasting it with an exercise that took place in Assam, in India is called the National Register of citizens and one of our master students on the MSC program here at Oxford has written a really fascinating book on that topic. So we wanted to take the opportunity to look at a slightly broader focus of what's it mean to have citizenship and what happens when bureaucracies and kind of arbitrary measures take it away?

Rob McNeil 01:05

I mean, we all I suppose think that we know what citizenship is, but what is it actually what does it mean to have citizenship? And what does it mean to have it taken away?

Jacqui Broadhead 01:16

So if we were to focus kind of just on the UK, I guess, probably most people don't know that there are different types of citizenship in the UK. So quite a large group of people will have what's called automatic citizenship. So you're born of birth is registered, and you're able to then get a passport.–But then there's quite a large group of people who have something called citizenship by registration. And that's where they have to apply to the home office in order to get citizenship. There's quite a large fee that comes with that. And that's just the UK. the US is very famous for having something called birthright citizenship. So the idea that if you are born in a place, you have citizenship in that place,

places that have lots of migrants often have a focus on having birthright citizenship. And then there's another sort of, sometimes it's called use early and use sanguineous. And use sanguineous, kind of from the Latin is this idea of kind of citizenship more by hereditary, and often countries that have a lot of focus on immigration. So places like Italy, for example, citizenship is really focused on your ties through your families. And so really the processes of how we decide who gets citizenship and who doesn't, are also questions about who really belongs in a country, So it's a technical process, but it's also a question about how the country sort of thinks about its citizens and who is in and who is out.

Rob McNeil 02:54

But isn't citizenship, something that's also about your subjective identity, the idea of who you are. And the fact that there's a legal control over this seems sometimes to be like a kind of a very strange way of managing things. I mean, we've obviously had the case in fairly recent past in the UK of Jemima Begum, for example. this is a girl from Bethnal Green, who traveled to Syria to join the Islamic State. And as a result of that had her citizenship, her British citizenship removed now, she was born in the UK, she lived her all her life and perceive yourself to be British, but because obviously, she had Bangladeshi parents she had her citizenship removed So but this idea of like, who you are, and who you identify with and what it means to be, I mean, British, you know, this subjective concept is something outside of the legal the legal construct of what a citizen is, surely or isn't it?

Jacqui Broadhead 04:05

one of the things that we talk about is this idea of a kind of hierarchy of citizenship. So this question of, is it that you are, you know, a British citizen, or you're not a British citizen, and that, you know, is irreversible? Well, legally, that's not the case. So that might be a conception that people have that then changes this sense of a kind of hierarchy. So if you're a dual national, and, it's much more likely to refer to people from BME backgrounds than from white European backgrounds, this idea that your citizenship might be conditional, so can you have trust? And when we think about things like the Windrush scandal in the UK, they're really focused on ideas of that trust breaking down. So there was always a kind of social contract and understanding and a legal precedent that people who came as part of the Windrush generation were British citizens, and then that was changed in law. But does that mean that that's changed, in fact, and ultimately, even though the home office said repeatedly that people weren't British citizens, you saw this kind of huge outcry of people saying, well, we know, we know that these people belong with us that their identity is part of Britain. And then there's a second question, which is about the idea of the nation state. So one of the things that we really know a lot of these ideas around borders are much newer than we like to think. And one of the, in some of my research, one of the sentences that's kind of resonated with me, as the home office decide who is British, but anyone can be a Londoner

Rob McNeil 06:20

This gets to another really important point, though, doesn't it, which is that your identity, and your sort of this subjective concept of who you are is one thing, but at the end of the day, citizenship gives you rights. And I mean, I think a lot of these actions that are designed to take citizenship away from people are kind of part of this kind of transactional concept. But that flies in the face of what it means to be part of a nation

Jacqui Broadhead 07:47

Yes, and one of the things that we also look at is questions, then have access to legal advice and justice, because when ideas of citizenship are brought into question, there's also the idea of do people have equal access to the ability to challenge that q

Rob McNeil 08:42

Okay, I think one of the other things that that's worth exploring that has come up again and again, is this idea of a hostile environment. And I think that that focus on punishing people who who aren't part of the citizenship part of the part of the nation, particularly those who don't have the ability to demonstrate they've got a legal right to be in the country has kind of rolled into this idea that there's an us and them the citizen and a non citizen, the people who are part of the community and the people who who shouldn't be part of the community. And I think from my perspective, as well, it's been very interesting to see how this has rolled out in media discourse, that then has direct impacts on policy choices, policy decisions, and then on the lives of individuals.

Jacqui Broadhead 10:12

Yeah, I think that's completely correct. I mean, this sense that the hostile environment on irregular migration is predicated on the idea that we have a really clear and fixed idea of who irregular migrants are, and that they always stay in that category. Whereas the reality that people actually cycle in and out of irregularity quite a lot. That's not so true in questions of citizenship, apart from when, when that can, when that's taken away, that's fixed. But we also know that there are people who are eligible for citizenship, who can't get to it. So I think the rubber hits the road when the public have this idea of, oh, well, you're excluding this group of people, we have a fixed idea, we know who they are. And then that becomes a reality and something like Windrush when then there is a disconnect between who people thought were being excluded, and they had ideas about who they were, rightly or wrongly. But that was definitely disproven by the type of people then that they saw that were being excluded. So in the case of the Windrush generation, that would be people who have been in the UK for an extremely long time, who, who also had the expectation of citizenship rights that were then taken away. And I think, understanding that what feels like very fixed very firm categories that we can place on people in reality, it's much harder to do that. And also that bureaucracies can make very arbitrary decisions

Rob McNeil 12:01

And of course, with the Windrush generation, you had this situation where a lot of people documentation had been lost, or even destroyed, sometimes destroyed even by the home office. And these very slips of paper, or forms that were filled out decades ago, can have a fundamental bearing on people's lives. And I think that we're going to explore that a little bit with our guests later on as well.

Jacqui Broadhead 12:31

I'm delighted to be joined by Zoe Gardner, policy and advocacy manager at the Joint Council for the welfare of immigrants, and Abhishek Sahar, a journalist covering northeast India for the Indian Express, author of Nolan's people The Untold Story of Assam and RC crisis and a current MSC student on the migration studies masters. Zoe, clause nine isn't the first UK legislation in recent years to focus on questions of citizenship deprivation, can you give us an overview of where clause nine came from and how the policy landscape has evolved?

Zoe Gardner 13:35

Basically, the citizenship law in the UK at the moment is largely governed by the British Nationality Act from 1981. And that did include the possibility in some circumstances to deprive a person of their citizenship that power was, in fact, basically in practice never used until the 2000s. But in the nationality, immigration and asylum act of 2002. The power to deprive us of an assistantship was reworded to give the Secretary of State much greater discretion. So previously, it had really been worded in a way that was meant to be if a person had acted against the state during wartime or had acted against her majesty or their majesty, whichever one it was at the time, but it was updated to sort of be if the Secretary of State was satisfied that a person had acted contrary to the interests of the state, And then in 2006, it was updated again and rewritten to the Secretary of State needs to be satisfied that deprivation is conducive to the public good, which was a massive widening And that's when it really we see that it really started to begin to be used in in earnest. And in 2014, it was updated, And that said that you could deprive someone of their British Nationality, even if it would make them stateless in some cases, and then we've come up to the current day, where again, what clause nine does is it, it removes the checks and balances that exist on that power yet further. So it removes the requirement, they even have to notify somebody of the decision to deprive them of their citizenship, which is ultimately a move to deny people the right to appeal against any decision because it keeps them in the dark about what's happened to them. And that's what we've seen is a massive increase in the use of this power over the last decade. and a lot of the hostility that we're seeing in our immigration system at the moment and much of what this nationality and borders bill is building on his scaffolding set up under Theresa May at the home office in that hostile environment. And that, you know that that deliberate targeting of people who are considered for nationals, even where they are not as people who are undeserving of the same rights and protections and human rights as you know, real Brits, quote unquote.

Jacqui Broadhead 16:52

Thanks. So Abhishek your work focuses on a very specific example of citizenship deprivation, so the National Register of just give us a brief overview of where that project came from and how it was undertaken.

Abhishek Saha 17:07

Put it very briefly. I mean, it's a very broad topic, Assam is a state in northeast India, which has seen migrations for a long time now from very different communities. As a result of very strong demands to detect undocumented migrants, supposedly allegedly undocumented migrants in Assam over the last many decades. We came to this process, you know, which is called the National Register of citizens. It's basically a bureaucratic exercise and it basically aimed to prepare a list of Indian citizens in Assam, it asked all of the state's approximately 33 million residents to bring documents and try to establish that they or their ancestors were living in India prior to a cutoff date of 24th, march 1971. It asked a lot of people amongst whom a large majority are unlettered poor, and there is a severe constraint in their understanding of legal and bureaucratic processes. And hence, marginalized people suffered. And the process was needless to say it suffered from several systemic flaws. It started somewhere in 2013. And the final NRC was published in 2019, which excluded 1.9 million applicants. Now, after it was published, what essentially happened is that most important stakeholders including the ruling Bharatiya

Janta party, the BJP, and several important socio political actors in Assam, said that they were very unhappy with the results that- The number of quote unquote foreigners in Assam should have been much larger than 1.9 million people. So they again appealed to the Supreme Court of India and these appeals are pending now. And as a result, the fate of these 1.9 million and people are in limbo. You know, because these people, a vast majority of them are prepared to appeal against the exclusion and prove their Indian citizenship, they will in no way except that they are Bangladeshis or foreigners or belonging to other nationality apart from India. And just to add a brief point to put a broader understanding. There are two other processes which precede the NRC, which is a quasi judicial body known as the foreigners tribunal. So since the 1980s, a special wing of the police in Assam, could investigate anyone that it suspects to be a foreigner, again, within codes and refer its case to the foreigners tribunal. Now, the functioning of foreigners tribunals, again has been criticized, it has been several orders of the foreigners tribunals have been overturned by higher judicial platforms like the High Court. And there was another mechanism, which is called the marking of doubtful voters in which local election officials essentially had the power to mark anyone that the thought to be foreigner as doubtful thereby disenfranchising them. Still there cases were cleared by the foreigners, tribunals. And now when the appeals against the exclusions in the NRC begin, these 1.9 million people, again have to appeal to these foreigners, tribunals. So in a way, the foreigners, tribunals, there are 100, foreigners tribunals in Assam, 100 in numbers will become very crucial. Once that appeals process start.

Jacqui Broadhead 21:58

That idea of kind of doubtful voters really struck me from the book because of this idea of arbitrariness that there weren't answers as to why people necessarily were there or not. And I think often we have these quite fixed categories of an idea of, well, somebody is a citizen, and that's a very fixed category, or they're not a citizen. But what really struck me was that the categories were much more fluid.

Abhishek Saha 22:48

Yeah, ofcourse. So if you talk to, you know, if you get perspectives from the establishment, from the political or the bureaucratic establishment, you will get perspectives like undocumented woman from Bangladesh could be in fact married to a man who is Indian. So in a family you could get theoretically, one of the partners is Indian, but the other is actually a foreigner. But on the ground. As a journalist, what I've seen is, I haven't found that kind of scenario. But what you will encounter very often is that in a family, there are people whose documents have gone through and passed the rigorous examinations of the NRC process or the processes of a foreigners tribunal. But there are others in the family whose documents haven't passed the scrutiny of officials and member judges of the foreigners tribunals. So you know, as I said earlier, that when you are talking about a country, which is not very strong, I mean, strong in documentation, but there are loopholes in the entire documentation regime. And then when you place so much faith on documents, then there are so many cases in which a minor spelling mistake, a minor change, for example, the use of a person's grandfather's nickname on an official document, rather than the original name could lead to that person's granddaughter in today's India being disenfranchised because there was a mismatch in names. So in Assam for an Indian citizen and it's only in the case of Assam. There aren't such exact exceptions in rest of the country. When you have a cutoff date, and you are asked to prove your lineage based descendency based on that cutoff, and a complete faith is placed on the documents that age old documents decades old documents, documents which might have drowned in floods, you know, which might have been burned in fire. With tattered old

documents, completely yellow, you know you know, those cards that refugees were given when they had crossed during the partition, and the establishment places, it's complete faith on those documents. If if minor flaws could take away citizenship rights and disenfranchise you, then absolutely you can expect that there will be arbitrariness in the adjudication of such cases.

Jacqui Broadhead 25:32

Thanks, Abhishek. So we turn him back to the UK. Thanks so much for putting clause nine in its context of the sort of longer story of citizenship deprivation. It seems, however, that it's hit quite a nerve with people in terms of this idea of conditional citizenship or some of the ideas that Abhishek was exploring about kind of hierarchies, an arbitrary nest within decision making. And I just wondered how you thought that this clause is affecting wider questions of trust, identity and belonging in the UK

Zoe Gardner 26:07

Yeah, I mean, it was really interesting hearing that because while the situation is different, it's it's a lot of the same sort of issues do seem to come, it was very interesting, and really heartening to see the response from the public when clause nine was introduced. So to be clear, on this point, as well, the nationality and borders bill covers a huge amount of ground like it goes across the Citizenship, Immigration and asylum systems, and introduces a huge amount of change. And yet, even as introduced, that wasn't enough, and this clause was introduced at committee stage. So after the bill had already been debated by MPs in the House of Commons, and it was an attempt, in my view to sneak this in. And it completely backfired on them, because it got a lot of attention. And because it potentially impact such a huge number of people in this country, and specifically, ethnic minority communities in this country who are more likely to have a dual citizenship. that is the the people who are really impacted by this and who if you look at the people who have had their citizenship deprived, you know, it's almost universally people of color. And so the reaction was, I think, much stronger than the government expected. And this this, understanding that this is a racist measure, and that it was taking moving us further and further away from the concept of citizenship as a right and putting it into the realm of citizenship as a privilege that is bestowed on you by the goodwill of the Home Secretary, which is not how we understand citizenship and not how we understand our belonging in this country. And I think that the clear, discriminatory nature of how it's been used people understand this as an issue in something that can happen now. And the the response has been overwhelmingly, that people don't just oppose a clause nine, which removes, as I say, like essential safeguards, and checks and balances on the power, but they oppose the power as a whole. And it I think it's very interesting that the public in general appear to be completely out of step with the government in terms of citizenship as a whole, the public in general, according to polls, firstly, think that we have birthright citizenship in this country so that if you're born here, you are automatically a British citizen. We don't have that. And when they learn that we don't have that they think we should, this is an integrated, multi ethnic society that we live in. We have a huge history of being that very obvious historical reasons. And people feel strongly that when you're born here, when when you have citizenship here, this is your home. And it is wrong for us to keep chipping away at those rights and excluding out secondary classes of citizens

Jacqui Broadhead 29:51

Yeah, and I think it's really interesting what you talk about in terms of perceptions around race, but also one of the things read Abhishek book was about poverty and inequality in the way that that intersects

with race, particularly in relation to access to kind of information and advice. And obviously, in the UK, we know that there's a vast sort of variation in terms of access to advice. And obviously, that intersects a lot with the work that Jesse wi. does. And I wondered if how you see the intersection between questions around citizenship deprivation as a question related to poverty and inequality as well as in relation to risk.

Zoe Gardner 30:30

Yeah, I mean, absolutely. There's all sorts of intersecting factors there, again, in terms of just obtaining your citizenship, and you're like accessing your right to citizenship in general terms, we in the UK charge, by far the most of any comparable country, for a person to not apply to be granted citizenship, to register their existing rights as a British citizen costs over 1000 pounds, which means that many, many people who are born or who grew up here, who obtained the right to British citizenship, cannot enact that right cannot access that right cannot pay to get that right. And clearly, there can be no justification for that. It's way beyond the cost of administrating applications. It's a profit making enterprise from the home office, but it is so obviously discriminatory against people from low income backgrounds- And then when you come to the deprivation of citizenship, you can appeal you have the right to appeal. But obviously one of the things that this clause does in taking away the need to notify you that you have at all been deprived your citizenship is actually what is aimed at is attacking that, that appeal process that people have the right to but if you can't access, expert legal representation, legal aid in this country has been slashed and slashed and slashed. And yeah, a lot of what JWI does is that we use our charitable status and our charitable funding to put more money into the time that it takes for lawyers to build a good case And if you're just relying on legal aid funding, you simply don't have enough time there is not enough money to build an effective case in the same way. So it really is about pricing people out of their rights and and also qualifying what is right and who is deserving of it. And all of these issues intersect, as I say, with race, with poverty and with other ways in which people are generally speaking, like deprived of such easy access to their rights as as they should be.

Jacqui Broadhead 33:23

Thanks. Sorry. Abhishek, just to finish as I was reading your book, I was thinking about what the proponents of these types of policies wanted. And you describe, I really liked the idea of the NRC as a sort of magic wand that would make very complex problems, very simple problems. And yet, in the end, you describe a process that remains kind of unresolved and where most parties remain unsatisfied. What do you see as the kind of next steps and the broader learning that has been taken from what's happened in Assam?

Abhishek Saha 33:59

Yeah, to answer your question, I mean, Kanna, legal slash bureaucratic exercise, however, technology driven and promising to be fair to all parties concerned, can such a process, solve what's essentially a socio cultural political problem? where there are so many very deep intersectional issues involved in such a process? So that leads to a question that whether the prejudices, the ideological convictions or the, you know, the beliefs that the proponents of such exercises hold, will they ever be satisfied by facts, numbers, data arguments based on facts? Or will political ideological beliefs always be more dominant than numbers and facts and, you know, information that we have we have supposedly arrived based on after the technologically driven fair is supposedly fair exercise.

Jacqui Broadhead 35:57

Thanks so much Abhishek and Zoe

Zoe Gardner 35:59

Thank you for having me.

Abhishek Saha 36:01

Thank you.

Rob McNeil 36:02

Thanks for joining us on the migration Oxford Podcast. I'm Rob McNeil.

Jacqui Broadhead 36:06

And I'm Jacqui broadhead.

Rob McNeil 36:07

Join us again next time when we'll be talking about more fascinating migration related topics.