DEPRIVATION OF NATIONALITY IN THE UK

IN A NATIONAL SECURITY CONTEXT

BRIEFING 3: THE PROHIBITION OF DISCRIMINATION

WATCH THE LECTURE BY
DR. NISHA KAPOOR (UNIVERSITY OF WARWICK)

As set out previously in Briefings 1 and 2 of this series, the United Kingdom (UK) has vastly **expanded its citizenship deprivation powers** in the last 20 years. These expansions related primarily to two elements: a) the subjects of deprivation orders – naturalized citizens versus citizens by birth, and b) the context in which deprivation of nationality is employed – the national security context. Another concerning and crucial area in this regard relates to procedural safeguards and the ability to challenge/appeal citizenship stripping decisions. The use of nationality deprivation by UK authorities has raised concern with regard to the discriminatory underpinnings and consequences of citizenship stripping in the UK. In this light, **Dr Nisha Kapoor** (University of Warwick) discussed the **raced, gendered and classed effects** of these powers in the **third lecture** of the UK Seminar Series on Citizenship Stripping, which are also considered in this Briefing note.

> **“THERE ARE MULTIPLE WAYS IN WHICH WE CAN CONCEPTUALISE THE MATERIALISATION OF CITIZENSHIP DEPRIVATION, ALL OF WHICH [...] ARE DEEPLY RACIALISED IN THEIR CONSTRUCTION AND IMPLEMENTATION.”**
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> Dr. Nisha Kapoor

NATIONALITY AND BORDERS BILL (2022)

With the adoption of the Nationality and Borders Bill (NABB) in April 2022, the UK government further relaxed the procedural requirements associated with deprivation of nationality. The *NABB* introduces an amendment of the provisions on citizenship deprivation laid down in the *1981 British Nationality Act*. Clause 9 of the bill amends section 40 of the *1981 British Nationality Act* in such a way that the government is exempted from giving notice of a deprivation order to those being deprived of their nationality and to allow for the retroactive application of this power. Considering the fact that the measure is commonly applied to individuals who find themselves abroad, such as foreign fighters, the lack of notice further diminishes the possibility to appeal the decision, which was limited already by the denial of the right of appellants to be present at their appeal proceedings (e.g. *Shamima Begum v. Secretary of State for the Home Department*). Even though the bill and Clause 9 were heavily critiqued and the House of Lords even voted to remove Clause 9 from the NABB in earlier stages of the legislative process, it passed into law on 28 April 2022.

NATIONALITY DEPRIVATION, RACE AND ETHNICITY

As described in the lecture, race and ethnicity have always been central to the construction of citizenship, which effectively demarcates those who “belong” to the nation-state from those who “do not belong”. Over the past twenty years, these racialised differences have become intertwined with a discourse of criminality, which dehumanises and pathologises racially othered people and communities. The racialised caricatures and reductionist portrayals of high-profile terrorist suspects such as Abu Hamza by the tabloid press, have contributed to an environment conducive to government narratives and policy arguments legitimising and justifying the expansion of citizenship deprivation along discriminatory lines. Criminalisation, in other words, has functioned as a mechanism to justify excluding individuals from the rights and benefits that are attached to being a citizen.

Amendments of the UK’s nationality legislation reflect these racialised developments. In 2002, for instance, the *Nationality, Immigration and Asylum Act* broadened the grounds of deprivation from fraud, disloyalty, assistance to an enemy State, and criminal conviction, to any acts “seriously prejudicial to the vital interests” of the UK (effective on the 1st of April, 2003). This development was prompted by the wish to deport Abu Hamza, a British Islamic preacher. Prior to the 2002 amendment, only non-citizens could be subject to deportation and the grounds for deprivation of nationality were limited. The amendment became unofficially known as the ‘Hamza amendment’, named after its first target. The racialised aspect of the British nationality legislation is particularly evident in the 2014 amendment of the *1981 British Nationality Act* that was introduced in response to the 2013 ruling of the UK Supreme Court in *Secretary of State for the Home Department v. Al-Jedda*. Mr Al-Jedda came to the UK as an Iraqi refugee in 1992 and was granted British citizenship eight years later, upon which he automatically lost his Iraqi nationality as provided under Iraqi law as it existed at that time. In 2004, he travelled to Iraq and was detained, without charge, by British forces on grounds of suspected involvement in terrorist activities. Just prior to his release in late 2007, the Secretary of State deprived Mr Al-Jedda of his British nationality, holding that such deprivation would be conducive to the public good. While Mr Al-Jedda unsuccessfully appealed this decision before the Special Immigration Appeals Commission (SIAC) on grounds that the decision rendered him stateless, the Court of Appeal held in 2012 that the deprivation of British nationality would render Mr Al-Jedda stateless and that the deprivation order should therefore be quashed. This was subsequently upheld by the Supreme Court. A mere day after the Supreme Court ruling, a Bill amending the UK Nationality Act was proposed in Parliament and was later passed as the 2014 *Immigration Act*. The Act introduced s40(4A), which established the possibility to deprive *naturalised* citizens of their British nationality if there exist reasonable grounds to believe that the person is *able to become* a national of another State, as long as the deprivation is considered conducive to the public good. It thus allows the Secretary of State to render an individual stateless, in violation of international law, and **discriminates** between naturalised and natural-born British citizens – who cannot be subjected to this measure. Indirectly, this also heightens the racial discrimination present in these provisions, as a higher percentage of those who may be able to obtain another nationality are typically from a racially or ethnically diverse background.

INTERSECTIONALITY BETWEEN GENDER AND RACE DISCRIMINATION

The practice of nationality deprivation in the UK may raise further concerns of discriminatory and racialised application. This is particularly apparent when considering the gendered aspect of citizenship deprivation, which Dr Nisha Kapoor illustrates with reference to the treatment of the large number of women stuck in Syrian detention camps after having travelled there to support ISIS. These women, through the narrative on the War on Terror, have increasingly been presented as dangerous terrorists. This depiction extends to their children as well who, rather than being considered as victims in need of immediate assistance, are portrayed as 'radicalised' individuals that need to be deradicalized prior to their return to the UK. It is in this context that the UK has largely refused to repatriate children, despite their right to such repatriation as British citizens. In the cases where the UK has respected the children's rights of return, this is often conditional on the mother giving up her parental rights over the child. Such practices risk the violation of the right to enter and remain in one's own country, the right to private and family life, which includes the right to live together as a family and not to be separated, as well as the rights of children to have their best interests be a primary consideration in proceedings concerning them.

Despite the increasing scope of these deprivation powers, there is a significant lack of transparency regarding the use of citizenship deprivation in the UK. Data on deprivation of nationality is not readily available, but is scattered across various sources. For instance, although the available data reports an overall increase in deprivation of citizenship between 2006 and 2018, there is no breakdown of these numbers by gender, ethnicity, or even grounds of deprivation. The practice remains shrouded in secrecy. We know something about the existence and availability of the measure, but little about conditions for its application, which adds to the concern of unequal treatment.

> **"THE BRAZENNESS OF THE KAFKAESQUE LEGAL SYSTEM WHICH PREVENTS APPELLANTS FROM SEEING ALL THE EVIDENCE MOUNTED AGAINST THEM IN THE SIAC COURTS IN ORDER TO DEFEND THEIR CASES MADE IT EVEN MORE SO AS THE ACCUSING PARTY THE STATE IS ABLE TO CONTINUOUSLY MODIFY AND ADJUST THE PARAMETERS BY WHICH THE CASE FOR DEPRIVATION IS DETERMINED."**
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> Dr. Nisha Kapoor

The British rules on deprivation of nationality raise several concerns with regard to their discriminatory effect, which is particularly problematic considering that the UK's powers to set the rules for the deprivation of British nationality are **framed by international standards and principles**. One of the key limitations in this regard is the prohibition of discrimination: States must not deprive any person or group of persons of their nationality as a result of discrimination, and they are bound by the principle of non-discrimination between its nationals. This is set out in a number of international rules and treaties that the UK is party to, as synthesized in the Principles on Deprivation of Nationality as a National Security Measure.

For instance, under Section 40(4A), the Secretary of State can disregard the statelessness safeguard only when he seeks to deprive the nationality of a *naturalised* citizen – a violation of Principle 6.2. – and there are "reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such country or territory" – a violation of Principle 6.1., as it amounts to indirect discrimination. Current UK legislation on nationality deprivation thus violates several elements of the principle of non-discrimination.

PRINCIPLES ON DEPRIVATION OF NATIONALITY AS A NATIONAL SECURITY MEASURE

Principle 6: The prohibition of discrimination

6.1. A State must not deprive any person or group of persons of their nationality as a result of direct or indirect discrimination in law or practice, on any ground prohibited under international law, including race, colour, sex, language, religion, political or other opinion, national or social origin, ethnicity, property, birth or inheritance, disability, sexual orientation or gender identity, or other real or perceived status, characteristic or affiliation.

6.2. Each State is bound by the principle of non-discrimination between its nationals, regardless of whether they acquired nationality at birth or subsequently, and whether they have one or multiple nationalities.

FURTHER RESOURCES

- Principles on Deprivation of Nationality as a National Security Measure (2020)
- Meijers Committee, Policy Brief: 'Differential Treatment of Citizens with Dual or Multiple Nationality and the Prohibition of Discrimination' (2020)
- Special Rapporteur on Contemporary Forms of Racism, Report: 'Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance' (2018)
- Article: 'British citizenship of six million people could be jeopardised by Home Office plans' (2021)