

Women and citizenship post-trafficking: the case of Nepal

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Abstract

This article analyses the relationship between gender, sexuality and citizenship embedded in models of citizenship in the Global South, specifically in South Asia, and the meanings associated with having – or not having – citizenship. It does this through an examination of women’s access to citizenship in Nepal in the context of the construction of the emergent nation state in the ‘new’ Nepal ‘post-conflict’. Our analysis explores gendered and sexualized constructions of citizenship in this context through a specific focus on women who have experienced trafficking, and are beginning to organize around rights to sustainable livelihoods and actively lobby for changes in citizenship rules which discriminate against women. Building from this, in the final section we consider important implications of this analysis of post-trafficking experiences for debates about gender, sexuality and citizenship more broadly.

Keywords: citizenship, gender, sexuality, feminism, post-trafficking, Nepal

‘We have a problem in getting citizenship . . . We have disadvantages to others if people come to know about us, we will be looked down at.’

(Sushila, having recently returned from a trafficking situation)

Introduction

In many parts of the world many people are still non-citizens, without access to basic legal, political and welfare rights. This is a very significant issue and Nepal’s case provides an important example where, despite the social and legislative changes that have taken place in the transition to democracy, exclusionary policies mean that many of the population remain unequal citizens including women, dalits¹ and indigenous ethnic groups (Bennett, 2005; UN-HCR, 2013). To better understand these processes of exclusion we need to recognize how, in addition to intersecting with other axes of marginalization such as age, ethnicity and caste, processes of marginalization are both gendered

The Sociological Review, Vol. 64, 329–348 (2016) DOI: 10.1111/1467-954X.12364

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and sexualized. This is a key focus of the paper, which seeks to examine the gendered and sexualized nature of models of citizenship operating in the 'new' Nepal², focusing specifically upon women who have left trafficking situations. The discussion is situated in the context of 'post-conflict' transformation in Nepal, which has emerged from a decade of civil war and political infighting into a nascent secular federal democratic republic and, since 2008, is no longer a Hindu nation. This is significant because as other studies have demonstrated, 'post-conflict' settings represent an important moment in which to examine the framing of citizenship discourses and practices (Deiana, 2013).

The paper draws on findings from a recent empirical study³ examining the circumstances faced by women on returning to their home country or region, including how experiences post-trafficking relate to citizenship provision. Before going on to discuss the findings, it is important to clarify our use of terms. Post-trafficking describes the processes and practices associated with leaving trafficking situations, whether this involves being trafficked internally in one's own country or elsewhere (Laurie *et al.*, 2015a). Citizenship is a contested concept and can be defined in a variety of different ways. Traditionally citizenship has been understood to be about the rights and responsibilities of citizens within a nation-state: in terms of civil or legal rights, political rights and social rights (Marshall, 1950). More recent theorizations of citizenship have led to a broadening out of the concept beyond formal citizenship as a member of a nation state, to include other forms of belonging, recognition, inclusion and participation as valued members of a community or society (Lister, 2003). In the following discussion we will draw on both of these conceptual framings, considering the rights that citizenship confers and citizenship as a status associated with a sense of identity and belonging.

There are a number of reasons why research from the perspective of women who have experienced trafficking is important in the context of analysing how citizenship regimes (re)constitute gendered and sexualized norms and practices. First, as other studies have also found (eg Brown, 2000; Joshi, 2001; Tamang, 2002; Samarasinghe, 2008; Richardson *et al.*, 2009; Poudel, 2011), the forms of sexual stigma and social rejection that women typically encounter if they are labelled as trafficked have important implications for their citizenship status and rights of citizenship that throw into sharp relief the ways in which assumptions about gender and sexuality intersect with state-sanctioned forms of citizenship. Second, post-trafficked women have had a key role as activists both in organizing around rights to sustainable livelihoods and in lobbying for changes in citizenship rules which discriminate against women (Joshi, 2001; Hennick and Simkhada, 2004; Laurie *et al.*, 2015b). Finally, despite a large body of research having been carried out into trafficking over the last two decades the majority of studies have focused on its causes and characteristics leaving many aspects of trafficking under-theorized (Doezema, 2010; Yea and Kitiarsa, 2013), including analyses of the challenges that post-trafficking scenarios raise. The focus of the paper is not on trafficking itself, therefore,

but rather it is a timely consideration of trafficking from a new perspective: in relation to citizenship.

As we will go on to show, the historic and current frameworks of obtaining citizenship in Nepal indicate the salience of arguments made by feminist critiques of social and political theories of citizenship that citizenship has been constructed 'in the male image' (Pateman, 1988; Lister, 2003). The last two decades have also witnessed a growing literature on the relationship between sexuality and citizenship that has highlighted how, in addition to being informed by ideas about gender, race and class, understandings of citizenship are also grounded in normative assumptions about sexuality (Phelan, 1995, 2001; Richardson, 1998, 2000; Weeks, 1998; Bell and Binnie, 2000; Plummer, 2003). This literature is largely based on studies of so-called sexual and gender 'minorities', primarily in North America and Europe, who have historically had ambiguous citizenship status as partial citizens.

The fact that these debates have, so far, focused largely on the position of sexual and gender minorities in the Global North has led some to critique the concept of sexual citizenship as 'western-centric' and revolving around specific rights claims. Such critiques have drawn attention to the need for the development of approaches that can, for example, address poverty, violence and displacement as factors shaping both gendered (Atluri, 2012) and sexualized citizenship (Plummer, 2005; Sabsay, 2012; Richardson, 2015). This paper directly addresses these concerns and the relevance of concepts of sexual citizenship in the context of constructions of citizenship operating in this particular case study in the Global South.

The paper is structured in the following way. The first section contextualizes the study which was conducted at a time when Nepal was going through a period of significant change associated with the construction of the 'new' nation-state 'post-conflict' that involved the setting up of a Constituent Assembly (CA) to redraft the Constitution and, consequently, at a crucial period of legislative and policy debate over citizenship. The next section provides an outline of the study upon which the paper draws and the methodological approach adopted, before going on to examine the models of citizenship that are in circulation and the way these citizenship regimes (re)constitute gendered and sexualised norms and practices. In the final section, some of the wider implications of the discussion for feminist and broader debates about citizenship are considered.

Transitions to democracy in Nepal: the context of the study

Extreme poverty, a large rural population and a 'post-conflict' situation where processes of redefining national space are ongoing, together with Nepal's geopolitical location between two of the strongest growing economies in the world, China and India, are key factors in shaping debates about changing definitions around citizenship. Also, given the specific focus of analysis in this paper, it is important to note that although there may be some indication of new possibilities of doing gender and sexualities emerging 'post-conflict'

that challenge traditional cultural expectations and social norms,⁴ Nepal remains a highly patriarchal society where there is 'social pressure to conform to heteronormative social conventions' and 'discrimination towards those who fail to conform' (Boyce and Cole, 2013: 6). Another important feature of Nepali society is that it is characterized by huge social diversity encompassing caste, ethnic, linguistic, economic, religious and regional differences. For example, the 2011 census reported 125 ethnic/caste groups and 123 languages. It is in the context of this super-diversity that we need to understand the processes and practices by which a nationalist occupation of citizen's identity and a 'new' nation state are under construction.

The model of a nation-state, and associated efforts to create a national imaginary and identity as a 'Nepali citizen', has evolved gradually. From the mid nineteenth century Nepal was ruled by the Hindu Rana elite, until in 1951 they were overthrown by a 'monarchy-catalyzed revolution' that restored the king to power 'paving the way for the Panchayat era which refers to the period between 1961 and 1990 (Tamang, 2000: 129). During this time political parties were banned and the country was ruled by the monarchy, who promoted the concept of Nepali nationalism through modernization and development, in direct opposition to the isolationist policies of the Ranas (Pigg, 1992). Key to the Panchayat regime of nation building and the creation of a Nepali identity was a national education system, emphasis on the role of the monarchy as a symbol of national unity, the adoption of Nepali as the national language, and updating of legal codes based on high caste Hindu norms (Burghart, 1994).⁵ Although these changes can be understood as the imposition of an 'elite normativity' on a multi-ethnic, multi-religious and multi-lingual population, the Panchayat period was also associated with the achievement of greater equality for women, in particular in relation to women's formal legal status (Bennett, 1980). More recently, however, the notion of a 'straight-forward' progression of women's rights has been questioned, with some writers arguing for a more complex understanding of this period as representing a shift from 'family patriarchy' to 'state patriarchy' in the regulation of women's lives (Tamang, 2000). As we later go on to demonstrate through analysis of findings from the post-trafficking study, these shifts appear to have been further consolidated under more recent processes of nation building in Nepal.

In 1990 the Panchayat era came to an end when the government was overthrown and Nepal's first multi-party democratic Constitution was ratified. The Constitution sought to establish Nepal as a more inclusive state, stating that it guaranteed fundamental rights to all citizens without discrimination on the basis of ethnicity, caste, religion or gender. In 1991, as part of the post-1990 pro-democracy movement, Nepal signed up to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which states that nations should grant citizenship rights regardless of gender. Debates about the nature of citizenship and women's rights flourished through the 1990s and 2000s, with important interventions made by Maoist feminist thinkers

(see, for example, Lohani-Chase, 2014). However, in practice discriminatory laws against women continued to exist, including those governing citizenship rights, and many other groups besides women remained socially marginalized including dalits and indigenous ethnic groups (Bennett, 2005, 2008; Tamang, 2009). Thus, although the focus in this article is on gender and sexuality, it is important to recognize wider processes of marginalization operating in relation to access to citizenship that may intersect with gendered and sexualized exclusions. Here we refer to the intersectional complexity of inequality (Crenshaw, 1991; Anthias, 2013), in particular the ways in which gender, caste and ethnicity intersect in relation to citizenship as a set of inclusionary and exclusionary processes.

The period between 1990–2006 was politically turbulent, with the beginning of armed conflict in 1996 between government forces and Maoist fighters whose aim it was to overthrow the monarchy and establish a ‘people’s republic’. In the context of the civil war and the seizure of power by the king in 2002, issues of national security and sovereignty took ‘centre-stage’ and ‘women and their issues were conspicuously marginalized, if not absent’ (Tamang, 2009: 76). In 2006, after a decade of civil war, a peace agreement was brokered between the then parliamentary political parties and the Maoists, the Comprehensive Peace Accord (CPA).

Scholars have questioned the validity of the ‘post-conflict’ concept in Nepal, as well as elsewhere in South Asia. The term ‘post-conflict’ suggests a clearly demarcated period from the end of fighting to the establishment of a stable democratic state. This has been problematized by various writers who have critiqued the concept of ‘post-conflict’ as an analytic and political category, as well as drawing attention to the consequences that the ‘post-conflict’ label may have (Shneiderman and Snellinger, 2014). In the context of Nepal, it is argued that being constructed as ‘post-conflict’, by periodizing it post-2006, limits understandings of transitions to democracy and may obscure the complexities and continuities of social uncertainty, political tension and struggles that are ongoing in everyday life, exacerbated by the aftermath associated with the recent earthquakes (Hindman, 2014; Hirslund, 2014; Leve, 2014; Shepherd-Manandhar, 2014).

That said, although ethnic and caste differences may have been prioritized over gender in terms of the ‘politics of difference’ in earlier pro-democracy movements (see Pigg, 1992), the ‘post-conflict’ situation did appear to bring new opportunities for advancing women’s equality, advocacy and activism focused on the status of women and their access to rights that, as we shall go on to discuss, has led to what some have termed ‘a crisis of citizenship’ (Pant and Standing, 2011: 409). Following the CPA an interim parliament and government was established, in 2007, which marked a turning point for gender representation in Nepali politics by making constitutional provision which required 33 per cent participation by women on all state bodies. This represented a huge increase in female formal political participation of that of the 1990s, when most parties struggled to reach the 5 per cent quota for female

candidates (Bennett, 2005; Pant and Standing, 2011). In addition, the interim government also called for a repeal of citizenship laws that discriminated against women. An elected Constituent Assembly (CA) was convened, in April 2008, which consisted of a body of 601 members from different political parties charged with writing a new Constitution and acting as the interim legislature for two years. At its first meeting the CA declared the country to be a Federal Democratic Republic and abolished the monarchy. A key aspect of the drafting of the new Constitution was a redefinition of citizenship rights that, initially at least, included the aim that gender bias in accessing citizenship would be overturned. The original mandate to draft the new Constitution by May 2010 was extended several times amidst political protest until in May 2012 the Supreme Court rejected any further extensions to the CA until the setting up of elections. The elections for a second CA finally took place in November 2013, which doubled as a democratically elected government, and in February 2014 the new coalition was sworn in. A process of public feedback on the constitutional drafting process followed, with the CA undertaking a detailed discussion of each Article, before the Constitution was finally promulgated in 2015. The initial promise of 'post-conflict' state restructuring of 2006 has, then, been slow coming, with no immediate signs of effecting positive social transformation in the way hoped for. (For a useful analysis of the key dynamics and actors in these 'transitional times' in Nepal see von Einsiedel *et al.*, 2012.)

Researching post-trafficking and women's citizenship in Nepal

Nepal has a distinctive profile in trafficking. It is at once a site of growing internal trafficking as well as continuing to be a source country for India, China and the Middle East for sexual, entertainment and domestic work purposes (Pande, 2012; Ministry of Women, Children and Social Welfare Nepal, 2013). Although estimates are difficult to interpret, the US State Department Trafficking in Persons (TIP) Report estimates that between 10,000 and 15,000 women and children are trafficked from Nepal to India and Gulf countries annually (US Department of State, 2012). There is not the space here, given that the focus of this paper is on citizenship, to elaborate further on the parameters of and responses to trafficking in Nepal. For a discussion of the characteristics of trafficking, including government and NGO initiatives to address trafficking and provide support to women and children post-trafficking, see, for example, Bal Kumar, 2001; Hennick and Simkhada, 2004; Bashford, 2006; Poudel, 2011; Buet *et al.*, 2012; Kempadoo *et al.*, 2012.

Another reason for choosing Nepal as a case study is that women returning from trafficking situations, while representing one of the most stigmatized, vulnerable groups, are gaining a profile in anti-trafficking advocacy in South Asia. For example, Nepal is home to Shakti Samuha, one of the first anti-trafficking organizations in the world to be founded and staffed by returnee women, whose demands challenge discourses of victimization, and assert citizenship claims focused on a right to chosen livelihoods (as of 9 February

2016, www.shaktisamuha.org.np). In 2013 Shakti Samuha was awarded Asia's prestigious Magsaysay award, which is widely regarded as the region's equivalent of the Nobel Peace prize.

The research was carried out via research collaboration with Shakti Samuha who were involved as collaborators in a number of ways including as participants, interviews were carried out with members of the Executive Committee; via two large co-hosted workshops, an activist and a policy workshop; and through a research training programme for the Shakti Executive Committee members, which was a central element of the research project's design (for further discussion see Laurie *et al.*, 2015b). The project ran from November 2009 to April 2012 a period when, as outlined in the previous section, new democratic processes were unfolding in Nepal including recommendations on the rights of citizenship to be incorporated into the drafting of the new Constitution. In the first phase of data collection, in-depth semi-structured interviews were conducted with women who self-identified as having been trafficked. The sample, 37 in total, included women from eight different caste/ethnic groups and four religious affiliations (Buddhist, Christian, Hindu and Muslim) although most were Hindu, ranging from 17 to 44 years of age. The majority were married, some before being trafficked but most post-trafficking, with just under a third identifying as unmarried, separated or widowed. As the primary focus of the research was on their experiences post-trafficking, we did not directly ask the women about their trafficking experiences other than information about routes and timeframes of return. However, it was clear from the interviews that although some had been trafficked as domestic workers, many of the women had been trafficked for sexual purposes. The vast majority had been trafficked to India, although other destinations included Saudi Arabia, Kuwait and the US, and a small number had been trafficked internally within Nepal.

We sought to include women in the sample who had differing levels of engagement with NGOs and other organizations concerned with trafficking issues. About a half of the women were recruited through their affiliation with anti-trafficking NGOs, a few through government shelters; the remainder through snowballing techniques in order to access women without current, direct NGO contact. The sample also drew in women with differential access to citizenship status. A little under a half of the women had their certificate of citizenship before they were trafficked, a similar number gained access to citizenship after they had returned from trafficking situations, albeit in many cases with considerable difficulty and struggle, and a small number of women did not have citizenship at the time of interview. Among those who did have citizenship before being trafficked, several commented that it would have been hard otherwise to acquire their certificate of citizenship post-trafficking (some of the reasons for this are examined in the following section).

The interviews were conducted in the capital Kathmandu and in districts/rural sites identified in the past by the government as having high occurrences of trafficking (UNDP, 2004), and focused on women's experiences and assessments of strategies that enable women to exit (or not) trafficking

situations and to remake their lives and sustainable livelihoods post-trafficking. Interviews were taped and transcribed in Nepali (or in a few cases ethnic languages), and then translated into English. Quotations given in this paper use the idiom of the original translation in recognition that Nepali English is one of many forms of global English that is spoken. In the interests of preserving anonymity, in the case of the interviews with women who identified as trafficked, specific detail that might render a participant identifiable has been removed and the names used in the quotes are pseudonyms.

In addition to interviews with post-trafficked women, semi-structured, non-anonymized stakeholder interviews were carried out. The sample, 23 in total, included donors, government representatives and politicians. We also recruited from national anti-trafficking NGOs and pro-democracy groups led by women's rights activists also advocating for the rights of trafficked women. Analysis of the data suggested that professionalization was an important issue for anti-trafficking efforts in Nepal and consequently, in order to explore these issues in more depth, a subset of interviews were conducted with a 'bridge' group of nine women who had been trafficked themselves but were also stakeholders involved as anti-trafficking activists/professionals working for Shakti Samuha.

Gender, sexuality and models of citizenship

There are a number of ways of acquiring citizenship, including being born in a country, by descent, and through naturalization. As Turner (2008) states, the majority of people inherit citizenship by virtue of being born to a citizen of the nation state or become citizens simply as a consequence of being born there. Citizenship in this model is an *ascribed* status. This can be distinguished from acquisition of citizenship that is *achieved*, where an individual 'chooses' to become a citizen of a nation-state, for example through naturalization based on conditions of residency.

In Nepal citizenship has historically been based on notions of patrilineal kinship (Joshi, 2001). According to the Citizenship Act of 1963, after the age of 16 both men and women shall apply for a certificate of citizenship to ensure that their citizenship rights are protected, providing their application is supported by a male relative, typically their father (HMG, 1963). Although, as noted earlier, the Constitution of 1990 marked a move to democracy and attempts to establish Nepal as a more inclusive nation-state, gender discriminatory laws on citizenship were upheld. Citizenship could only be accorded through the recommendation of male relatives within the natal family (eg father, brothers and uncles). In addition, although women could access citizenship through marriage if her husband recommended her, this was not reciprocal. Women could not transfer citizenship to their spouses (Laczo, 2003).

As noted earlier, this did not go uncontested. Debates over these and other issues relating to women's access to citizenship such as, for example, women's rights to property (see Kunreuther, 2009), began soon after the 1990

turn to democracy and continued throughout the conflict period, coming to fruition in the Citizenship Act of 2006 and 2007 Interim Constitution. The Citizenship Act recommended that any person whose father *or* mother is a citizen of Nepal at the time of his/her birth shall be a citizen of Nepal. Under such law, citizenship shifted from being a status that has to be *achieved* (through the endorsement of male kin) to something that a child *acquires by descent* from his/her parents. This also represented a shift away from a (hetero)sexualized and gendered model of citizenship linking women's citizenship to marriage, where the right to citizenship could be conferred by her husband. Although, as we will go on to discuss, it maintained discrimination with regards to citizenship based on matrimonial relationships where the husband or wife is of foreign nationality. Other provisions to challenge gender discrimination in citizenship laws were introduced in the 2007 Interim Constitution. Those subsequently agreed by the CA stipulate that either mother *or* father be Nepalese citizens for a child to be able to acquire citizenship by descent.

Despite a Supreme Court ruling in 2011 supporting the provision for mothers as well as fathers to confer citizenship on their children, our findings suggest that legislation is not implemented in practice. This echoes other studies on accessing citizenship in a range of diverse settings globally, from indigenous collective identities and rights (Andolina *et al.*, 2009), to work on immigrants (Coleman, 2009), refugees and asylum seekers (Black, 2001; Mountz, 2010; McConnell, 2013). Much of this work has come to focus on the intermediary role of gatekeepers and bureaucrats in mediating on the ground practice in confused legal settings in Europe and North America (see, for example, Gill, 2009 and Mountz, 2010). This has relevance for the situation in Nepal where, as we have previously outlined, the confused legal situation has been compounded by the vacuum in formal state governance created during the civil war and the lengthy CA process (Nightingale and Rankin, 2011, 2012).

In Nepal we also need to consider the geographies of access to citizenship, where implementation at the local level may be more difficult in rural and non-metropolitan areas where monitoring is absent or weak and traditional attitudes may be harder to challenge. The process of applying for citizenship in these contexts also involves a recommendation from the Village Development Committee (VDC) or Municipality, as well as the provision of a Nepalese citizenship certificate of one's blood relatives. The process of responsibility is on the individual to provide relevant documentation to local officials to verify their claim to citizenship. For women who are marginalized, poor and illiterate with limited access to knowledge about local political and administrative systems such bureaucratic processes are likely to be a challenge. This was an issue raised by many of the trafficked women and by a number of stakeholder respondents. It was not, however, seen only as an issue affecting poor and socially marginalized women; even where women were educated and aware of legal procedures and in a better position to deal with government officials, difficulties in obtaining citizenship could still occur. For example, the following

quote from a government representative working on trafficking issues in the Ministry of Women, Children and Welfare highlighted this issue very clearly.

[T]hough our Citizenship Act says a person can get citizenship through his/her mother's name but if go to VDCs they say 'You have to have father not mother'. Same thing happened to my daughter as well. She went to register the birth of her child and the VDC people said 'no' to her and asked her to bring the father of the child otherwise 'we can't register'. And she could not register.

In a similar vein, the following quote by Maya was typical of what many of the women who had been trafficked described as the situation 'on the ground'.

It is said that one can get citizenship card under the name of mother, but it doesn't happen in practice . . . If you are unmarried you need recommendation from your father, if not, you need your husband's recommendation.

The consequences of not having formal citizenship are many and varied, and can shape women's everyday lives and access to livelihoods in fundamental ways. Without citizenship a woman may have difficulty accessing government services, obtaining a marriage certificate, finding a place to live, getting health care and education, skills training and waged employment, and it is impossible to open a bank account. Not having a citizenship card also means a woman cannot vote or hold a legally valid passport, restricting travel for work or other purposes, and is unable to confer citizenship on her children (Joshi, 2001; Bennett, 2005). Not having a citizenship card also means a woman cannot transfer or own property in her own name. This effectively places significant restrictions on women's rights to inheritance of her own and her husband's property or, if unmarried, from her natal family (Rankin, 2003; Samarasinghe, 2008).

There is, however, a corollary to this, as it is important not to conflate citizenship with 'paper citizenship'; what Sadiq (2008) refers to as 'documentary citizenship' in his discussion of how paperwork, falsely obtained, confers citizenship on illegal immigrants who pass themselves off as 'citizens'. There may be implementation problems in issuing citizenship cards according to legal provisions in Nepal, but it is also the case that implementation is often poor in requiring citizenship documentation as a prerequisite for recognition and access to state services. It could be argued, then, that many Nepalis are recognized by their communities as citizens, in the sense of belonging, even if they do not hold documentary citizenship. Such negotiations are likely to be mediated to a large extent through the power of place-based social/kinship networks. In the case of women labelled as trafficked, their ability to leverage such networks is likely to be severely compromised through processes of stigmatization and associated 'dishonour'. This is illustrated in the following quote from Sangita, which highlights how the notion of entitlement to citizenship for a woman can be undermined by the knowledge that she was trafficked.

Some say citizenship shouldn't be given to such women, it is difficult. Some of those women are not allowed to come to their houses when their families know about the

work they do. This automatically makes it difficult for them to get citizenship People in the village think a trafficked woman shouldn't be given citizenship, which certainly affects her access to citizenship.

Concerns about access to citizenship were typically framed in this way by the women in the study who identified as trafficked, as determined by the effects of sexual stigma and social rejection where a woman's family and community response to her stigmatized status was crucial to the process of becoming a citizen. The honour economies that operate in Nepal are important to emphasize here. Honour, or *izzat*, accrues to both individuals and households and serves to maintain and defend caste and gender hierarchies (Joshi, 2001; Bennett, 2002; Rankin, 2004). Significantly, in the context of this discussion, men's *izzat* 'depends crucially on their relationships with women', in which 'women acquire honour foremost by exhibiting qualities of moral, sexual and social propriety'. What this effectively means is that 'women's sexuality . . . can compromise the pedigree of an entire household or lineage' (Rankin, 2003: 118).

This suggests that for post-trafficked women (and perhaps other marginalized groups) documentary citizenship becomes even more important than it is for other categories of people, since the informal recognition of citizenship as belonging is not forthcoming from their own communities and villages. This is illustrated in the following quote, which highlights the cultural dimensions of citizenship in relation to exclusion from religious rituals and everyday community practices.

One of my relatives had passed away in the village. I was living in an organization in Kathmandu at that time. I spoke to my father first and told him I was interested [to] visit the village. He told me it was not good for me going to the village as people look at me badly and discriminate. Unlike my father, my mother told me not to bother about what others say on me. . . . Finally my mother took me home from Kathmandu. The plates [type of plates used in rituals] held and touched by me were thrown; they were not used. This was one experience. The second experience was at [the] tap. There were many people around there to fill in their pots. My sisters were there too. I was allowed to fill in my pot only when all others had filled their pots and left the place. (Milan)

Naturalized citizenship

Citizenship debates in Nepal have also focused on proposals for citizenship through naturalization. In common with a number of other countries in South Asia, these proposals incorporate gendered and sexualized exclusions. For example, in relation to reproductive citizenship, children born to a Nepali mother who is married to a foreign national would only be eligible to obtain naturalized citizenship status if born in Nepal. Thus although there is recognition of a mother's right to confer citizenship on her children, it is qualified where she does not marry a Nepali man, being restricted to naturalized citizenship. Under these regulations, a woman's right to confer citizenship by descent to her children is not only based on her being in a married,

heterosexual relationship, but on a specific form of nationalized heterosexuality (her husband must be a citizen of Nepal). Marriage for Nepali men does not impact upon their right to confer citizenship to their children, whoever they marry.

Models of naturalized citizenship are gendered in other ways. A woman foreign national married to a Nepali man may apply for naturalized citizenship immediately providing that she renounces the citizenship of her country of origin. Any children they had would be eligible for citizenship by descent. By contrast, it has been the case that if a Nepali woman marries a man of foreign nationality he is eligible to be a naturalized citizen, but only after living legally in Nepal for 15 years and providing he renounces the citizenship of his nation of birth. What this highlights is how citizenship, in this case defined in terms of access to rights through one's marital heterosexual status, is discriminatory based on the gender of one's spouse (Pant and Standing, 2011).

Discussing this issue and some of the wider implications of this policy for political participation during the second stage of fieldwork in 2011, one of the stakeholder interviewees (herself then a member of the CA) drew attention to how paradoxically this was often framed by members of the CA as pro-women.

After getting citizenship, she [foreign woman] will be eligible to hold any positions except the topmost positions in Constitutional bodies. But in the case of the [foreign] man if he gets ... this naturalized citizenship he will again have to live here for another 10 years to be eligible for Constitutional bodies. At least there is a difference of 25 years between men and women. And they always claim, 'Oh! We have given preference to women.'

The laws on citizenship for a Nepali man marrying a foreign woman remain the same as outlined above. However, the issue regarding rights of access to citizenship of foreign men marrying a Nepali woman has been extremely contentious, exacerbated by the fragile geopolitical situation that exists in terms of relations between India and Nepal, especially after the recent earthquakes. At the time of writing this issue remains unresolved and is noticeable by its absence in the section on citizenship in the most recent publically available draft of the Constitution (Constitution of Nepal, 2015).

A further example of the continued gendering of access to citizenship is in relation to single mothers. The recommendation in the case of a child born to a Nepali mother whose father is unknown or not disclosed is that they shall acquire citizenship by descent, as would a child born to a Nepali man. This represents a change in the law regarding the gendering of the conferring of citizenship, as previously the child was only accorded naturalized citizenship. However, if the child's father is proved (or assumed) to be a foreign citizen then their citizenship will be converted into naturalized citizenship (as we explain below this is a particular issue for women in post-trafficking contexts when they have children who were born in trafficking situations). This highlights the continued importance placed on fatherhood in conferring citizenship by descent, as well as the relationship of women to the nation-state. A woman

who does not or cannot name the father of her child is potentially carrying non-Nepali blood into the state body, which connects with ideas of purity and pollution (in the Hindu sense) associated with women's bodies. This law reiterates how the state sees women as state reproducers (through the birth of new citizens) in so far as they reproduce legitimate (pure Nepali) citizens, which harkens back to the country's civil codes during the Panchayat era described earlier (Tamang, 2000). Indeed, these examples of the framings of naturalized citizenship and the role of the state would support the argument that the regulation of women's lives is shifting from 'family patriarchy' to 'state patriarchy'.

Much of the debate on citizenship through naturalization has been generated by geopolitical securitization fears about the open border with India and the potential that changing citizenship laws could make Nepal vulnerable to Indian interests (Richardson *et al.*, 2009; Laurie *et al.*, 2015a). Scholars have long argued that historically 'Nepali national identity was constructed in large part vis-à-vis the Indian other' (Shneiderman, 2013: 27). The 1950 treaty between Nepal and India established an open border between the two countries, which facilitated the trafficking of Nepali women to India and, more recently, on to other trafficking destinations. In this sense, trafficking can be seen as part of the narrative of nation building and boundary construction (Laurie *et al.*, 2015a; see also Hausner and Sharma, 2013, on border crossing in Nepal). Trafficking, as Joshi (2001: 167) usefully points out, 'keeps Nepal united against India and Indians, the Other who exploit and use the bodies of our women, sisters and daughters'. This anti-India feeling, she argues, 'is fundamental in consolidating a national identity that keeps the boundaries of these two nations separate. Nepal, fundamentally dependent on India and the open border for the free flow of goods, capital and labour, has to be actively re-creating the border at all times in order to maintain the separation of the two nations'.⁶ As we have outlined, such fears have led to processes of exclusion from citizenship that effectively render many Nepali-born people 'aliens' in their own country, entitled only to naturalized citizenship.⁷

As we have discussed in more detail elsewhere (Laurie *et al.*, 2015a), it was clear from the interviews with stakeholders that issues of national identity, securitization and economic development were concerns underpinning gendered access to naturalized citizenship. As the Head of the Fundamental Rights Committee within the then CA explained, these issues were key factors in the logic of 'state patriarchy':

A woman, according to our tradition, after marriage moves to her husband's house. So it means if a Nepali man marries a foreign woman she will come to Nepal and spend her whole life here. But if it is a woman she will move to another country after marriage and so there is no need to bother about the man who marries her. This is the first logic. And then the second logic is men are very influential politically, economically and by everything; so they will capture the state power but in case of women they are very weak; they are not influential and they will just be limited within household chores. This kind of patriarchal and feudalistic way of thinking is

there. . . there is another thing in relation to these two ideas, which is we have open border with India. So here the point is if the men are given this opportunity many men from India [after marrying with Nepali women] will come to Nepal and India will have influence in Nepali politics and state power and everything and finally it will be connected with the issue of nationality.

Citizenship futures

Anti-trafficking, feminist and human rights activists have challenged the citizenship provisions proposed by the CA as discriminatory, both in relation to citizenship by descent *and* naturalization, arguing that citizenship for women and men should be granted based on birth in the country of Nepal, with the proviso that until such changes occur mothers as well as fathers should be able to confer citizenship. This may be complicated, however, for women who have children who were born in the circumstances of their trafficking situations, especially where the father is unknown and the woman does not have citizenship in her own name.

Analysis of the data indicated that this was the approach that many of the women who had experienced trafficking thought should be adopted. While they spoke about how women could get citizenship by marrying and then on the basis of the recommendation of their husbands, this was a model of citizenship they saw as problematic for many women who did not have the support of their husbands both for their own citizenship status and for their children (for further analysis of this issue see case study discussion in Laurie *et al.*, 2015b). Highlighting the vulnerability of women if their trafficking past becomes known Rupa, for example, said that:

Many of the trafficked women are hiding it by doing so [getting married]. But the consequences would be terrible if it is disclosed later. They would be further stigmatized. This man, the man who I am staying with, knows about it. So he often humiliates me and says embarrassingly 'you've come back from that place' [brothel/India].

She went on to discuss how under these conditions obtaining citizenship cards for one's children can be difficult: 'Father is not reliable. Many say that this is not their children. Citizenship should be given from mother's name.' In a similar vein, other women drew attention to the issues facing women with children whose husbands or partners had left them, as the following quote illustrates.

Say a girl has a love affair with a boy. . . . Finally the girl becomes pregnant. The boy then abandons her or runs away from her. . . . She then gives birth to her baby. The baby one day grows big and needs citizenship but s/he doesn't know where his/her father has gone. It will be very difficult for him/her to get citizenship in this situation. Therefore, in my view, women should be given the citizenship right to their children.

While allowing mothers to confer citizenship on their children was key to addressing problems in accessing citizenship for some women, which on paper at least is now the case albeit with certain qualifications as we have discussed,

the more commonly expressed view, however, was that people born in Nepal should get Nepali citizenship as illustrated by the following quotes.

An individual should get citizenship for being Nepali. A person should get it on the basis of his/her Nepali origin plus abode. It shouldn't be relational – requiring father/mother's relation We expect the government to have a provision on citizenship in which we no longer need the recommendation either from father or mother. (Bindu)

I think, I'm not in favour of going for mother or father. Law should be based on our nationality, like people who are born in Nepal should get citizenship without asking their mother or father. For example, in my case I did not get citizenship from my father on my return from trafficking, but I am Nepali and was born in Nepal, why my father should decide whether I should get or not? It is government should make decision to its citizens. (Saraswoti)

In this paper we have demonstrated how the different models of citizenship circulating in Nepal in the context of transitions to democracy from 1990 to more recent times are inherently gendered and sexualized. Citizenship remains gendered both in terms of acquiring and conferring citizenship and heteronormative assumptions about gender and sexuality continue to underpin access to citizenship despite the social and political transformations that have taken place. Discrimination in relation to gaining access to citizenship is experienced in acute ways by women who have returned from trafficking situations and current citizenship proposals are especially exclusionary for women with children born in these situations. While there are different perspectives among women in these circumstances concerning whether it is more strategic to lobby for citizenship by birth or to make existing clauses for securing it through mothers more robust at the level of local implementation, there is nevertheless general agreement that the historical model of women's access to citizenship being through men rather than in their own right needs to change.

Conclusion

This paper has focused on the challenges to gaining citizenship as one dimension of post-trafficking experience against the backdrop of transitions to democracy that led to the changes of 2006 and after. It is clear that there are continuing tensions between the promotion of democracy, specifically in relation to gender, and the reproduction of inequalities in Nepal. While the interim Constitution established processes for citizenship by descent to include mothers and fathers, we have shown that this has been contested within the CA, before eventually having been ratified in the Constitution promulgated in 2015. At the level of bureaucratic implementation, however, citizenship nevertheless remains inaccessible for many women who have been disowned by their families due to trafficking experiences.

Alongside recognition of how gaining access to equal citizenship has been an important part of feminist struggles, feminist critiques of citizenship

originating in the West have ‘troubled’ state-centred solutions in mediating rights claims and social justice for women, recognizing continuing inequalities even where new forms of citizenship status have been gained (Lister, 2003; Roseneil, 2013). In the context of this case study, given the stigma and social rejection women typically encounter post-trafficking, it is nevertheless understandable that being able to gain citizenship in one’s ‘own right’ even within ‘state patriarchy’ would be likely to be regarded as a preferable model of citizenship. At the same time we also need to acknowledge the limits to citizenship in this context that echo feminists debates originating in the West about the need to think beyond citizenship in terms of delivering equality and social justice for women. Even where women in Nepal do have formal citizenship, the patriarchal nature of Nepali society which shapes women’s and girl’s status in communities (Rankin, 2004; Samarasinghe, 2008) renders them unequal citizens in many respects; with the provision of equal rights to inheritance, property and land, access to education and healthcare, and non-discriminatory laws on travel and migration being just some of the demands made by women’s organizations in seeking gender equality (Joshi, 2001; Pant and Standing, 2011).

A further issue in implementing a state-sanctioned model of citizenship if it were to become law would be the question of ‘proof’, given that in Nepal many people lack birth certificates and relevant documentation to establish the country of their birth.⁸ Such issues are likely to compound the situation for women leaving trafficking contexts. Even in a state-sanctioned model, without such documents to underpin a citizenship card application, it is unlikely that the current exclusions many women experience after will change. As we have argued, this is compounded by the fact that for women who are labelled as trafficked access to citizenship in the broader sense of belonging, recognition and participation as valued members of their communities is likely to be compromised, making gaining access to formal citizenship even more important.

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Received 13 October 2014
Finally accepted 15 February 2016

Acknowledgements

We are grateful to Linda Peake for her helpful comments on an earlier draft. We would like to thank the anonymous reviewers for engaging with our work and providing useful and constructive comments and suggestions, which helped to improve the argument. The research for this paper was funded by the Economic and Social Research Council – ESRC Res-062-23-1490: ‘Post Trafficking in Nepal: Sexuality and Citizenship in Livelihood Strategies’. Diane Richardson would like to acknowledge the support provided by the award of a Leverhulme Trust Major Research Fellowship, ‘Transforming Citizenship: Sexuality, Gender and Citizenship Struggles’ [award MRF-2012-106].

Notes

- 1 These formerly 'untouchable' castes now self-define as dalits, a term borrowed from the struggle against untouchability in India.
- 2 *Naya Nepal*, or the 'new' Nepal, as the Maoists dubbed the republican state form adopted in 2008.
- 3 The research for this paper was funded by the Economic and Social Research Council – ESRC Res-062-23-1490: 'Post Trafficking in Nepal: Sexuality and Citizenship in Livelihood Strategies'.
- 4 Nepal has made significant legal advances in respect for sexual and gender minorities, including providing gender-variant people full recognition as citizens on official documentation, although such advances may 'obscure a more complex social reality' (Boyce and Cole, 2013: 29).
- 5 Such codes have been in place since the 1854 Nepali civil code the Muluki Ain was enacted, which was rooted in traditional Hindu law and social practices.
- 6 The fact that dual citizenship is not allowed in Nepal can also be seen as supporting the boundaries of the nation-state where, as Turner (2008: 51) puts it, dual citizenship is thought to 'undermine the hegemonic model of traditional political membership'.
- 7 Other literature on the Nepalis of north-east India have addressed similar issues on citizenship from the other side of the border, highlighting the long-standing challenges encountered in gaining recognition from the Indian state and the varying political strategies deployed to achieve their desire for rights, inclusion and belonging in India (Hutt, 1997; Middleton, 2013; Shneiderman, 2014).
- 8 Efforts have been made to encourage the registration of children, especially in rural areas; however, despite this, recent estimates suggest that only 42 per cent of the population are registered (UNICEF, 2015). This is for a number of reasons including levels of literacy and the remoteness of parts of the country, and because of the deliberate destruction of documents during the civil war.

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