

# PARADIGM SHIFT

2021-2022 #2

## National Register of Citizens (NRC): Weaponising Citizenship & Denationalising Communities?! – Part II

“Except one other article in the draft Constitution, I do not think that any other article has given the Drafting Committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed as being inadequate to cover all the cases which it was necessary and desirable to cover”.—Dr. B.R. Ambedkar, speaking on Citizenship, before the Constituent Assembly cited in “NRC: Why the Supreme Court Ruling Could be a Prelude to Ethnic Cleansing”,

**Business Standard, October 13, 2021**

### Comment:

The National Register of Citizens (NRC) is the policy of the Indian Government to identify and expel illegal immigrants, (most entered Assam, after the Bangladesh War) in pursuant to Section 14A of the Citizenship Act, 1955; a half-baked legislation lacking clarity in defining citizenship.

The first NRC was compiled in 1951, after the Census was completed that year and implemented in Assam the first State where it was carried out. The NRC takes its definition of illegal immigrants from the Assam Accord – anyone who cannot prove that they or their ancestors entered the country before the midnight of March 24, 1971, would be declared a foreigner and face deportation. That is, a person could be born in India in 1971 to parents who crossed the border in that year, and still be termed an illegal immigrant.

The disturbing feature of the government decision is to cloak the CAA as an empathetic and inclusive legislation protecting those illegal migrants who have faced religious persecution but that it will in fact be strategically used domestically to protect (presumably Indian) individuals from the 6 non-Muslim religions who may be excluded from Indian citizenship in the NRC.

The dual regime of the CAA and NRC has created a loophole for certain Indians who have been stripped of their citizenship and are seeking a path back to citizenship! Individuals who are from one of the 6 non Muslim religions -- designated as non-citizens under the NRC process -- can seek citizenship through the CAA. “This can potentially to be done by their falsely claiming that they are from Afghanistan, Pakistan and Bangladesh”. (1)

Most illegal immigrants enter India without any valid documentation and, hence, have no clear way to prove their origin from a CAA-approved country. The government has since exempted individuals from the 6 non-Muslim religions and 3 CAA-approved countries from certain laws regulating their entry and residence. Thus, these migrants are allowed to reside in India “without valid documents”! That is, individuals from these religions will get citizenship and the government “will not ask for any documents”!

In 1979, Assam had witnessed the anti-foreigners' agitation. Assamese ethnic nationalists claimed illegal immigrants had entered electoral rolls and were taking away the right of communities defined as indigenous to

(1)

determine their political future. The agitation ended with the signing of the Assam Accord on Independence Day 1985 between the Government of India, the All Assam Student Union (AASU), and the All-Assam Gana Sangram Parishad (AAGSP). In the 15 Clauses of this Accord, the key focus areas were

- Foreigners issue
- Economic development
- Restricting acquisition of immovable property by foreigners
- Prevention of encroachment of government lands and
- Registration of births and deaths

Accordingly, those who entered Assam between 1966 and 1971 would be deleted from the electoral rolls and lose their voting rights for 10 years, after which their names would be restored to the rolls. Those who entered on or after March 25, 1971, (the eve of the Bangladesh War) would be declared foreigners and deported.

The mechanism for detecting so-called foreigners had previously been delineating the Illegal Migrants (Determination of Tribunals) Act of 1983. This was struck down by the Supreme Court in 2005 on a petition (by the C.M. of Assam) which argued that the provisions of the law were so strict they make the "detection and deportation of illegal migrants almost impossible".

According to Section 2 of the Foreigners Act, "A foreigner is a person who is not a citizen of India". And according to Section 9, the burden of proof lies with the person suspected to be a foreigner, to provide documentary evidence proving their citizenship. Those excluded must appeal to the Foreigners Tribunals, implying that the State already treats them as non-citizens. "Foreigners" are required to prove their citizenship by providing documents proving permanent Indian residency, failing which they will be stateless."

In the absence of domestic legislation on the legal status of refugees, India's internal refugee management system is fraught with serious concerns mainly

because essential conventions such as the Convention Relating to the Status of Stateless Persons, 1954 and the Convention on the Reduction of Statelessness, 1961 have not been used as reference points for the methodical detection, reduction and prevention of statelessness – as made evident by the inhuman fallout of the NRC. At the same time, India suffers from a pernicious commitment deficit to international law. (2)

The CAA and the NRC are a frontal assault on the idea of India as a secular, pluralistic democracy. Legal sanction has been given to the recasting of India as a Hindu majoritarian nation where minorities, especially Muslims, are second class-citizens. The Acts are a stark regression of the trajectory of India as a mature constitutional democracy. (3)

These actions on the part of the Government clearly reveal its "...intent on weaponising the bureaucratic logic of citizenship as a strategy for securing its borders." It has been working to drastically reshape its secular polity along Hindu nationalist lines by expelling or repressing Muslim minorities. Dissent against the CAA and the attack on secularism is being violently quelled..." (4)

## I

### **The NRC: Implications and Impact**

The formalisation of documented citizenship disproportionately benefits those with class privilege and formal education. (5) Securing documentary proof of citizenship is a testing and complex endeavor. Citizenship demands in obtaining decades-old documents, travelling long distances to file application, often at short notices, and lawyer fees. In India, where a very large section of the population are poor, rendering customary practices and oral traditions inapplicable to the evidentiary basis, clearly disadvantages the poor. Culturally relevant forms of identification and verification are critical for a large

percentage of the population who are economically marginalised, non-formally educated, non-literate or semi-literate so that they can effectively and meaningfully exercise their rights(4)

#### Women and Children

The NRC has adversely affected on the lives of marginalized Assamese communities, and the demographic of exclusion suggest that women and children across Assam have suffered disproportionately due to India's commitment deficit to international law (1). This becomes starkly evident in cases where children have been excluded from the NRC, unlike their parents, and at the same time living under a blanket of suspicion and stigmatization. The UNHCR guidelines for instance state that children are often stateless if their parents are stateless; such perpetration can be curbed if a country in which a child is born grants its citizenship to this child, even if their parents(s) may be stateless. Contrary to incorporating the spirit of 'jus soli', Section 3 (1) (c) of the 1955 Citizenship Act denies or confers citizenship to the child based on the citizenship of the parent: children born in India thus cannot secure Indian citizenship if at least one of their parents is not an Indian citizen. Given the exclusionary pattern of the NRC, this prerequisite has the potential to create statelessness in Assam by the mere operation of law.(1)

As the weakest sections of society, children are vulnerable to exclusion, since the denial of nationality from birth subjects them to a cycle of extreme poverty without basic human rights or opportunities. The UDHR sets a common standard of achievement for all peoples of all nations, wherein Article 15 creates a negative duty on the State not create statelessness. Article 24 of the ICCPR states categorically that every child has the right to acquire a nationality. This is supplemented by Article 8 of the CRC that obliges the State parties to accord the right to every child to acquire nationality in his or her country of birth. Moreover, the

determination of citizenship through lineage is inherently exclusionary in a country where, according to UNICEF, about 40% of urban births and 65% of rural births are unregistered, despite an obligation under Article 7 of the CRC to register all births.

Beyond subjecting children to cycles of statelessness, the NRC has also deprived children of essential parental care. Children have been forcefully separated from their parents who are held in detention camps, violation of Article 9 of the CRC. There is no statutory limitation on the period of detention under Section 3 of the Foreigners Act and most of these centers are in derelict condition and provide no opportunity for the child to establish any personal contact with their parent(s), as mandated under Article 9. Although the law provides for non-custodial alternatives, the Government of Assam in a white paper expressed its predilection toward the use of detention, as the preferred means, has resulted in the dehumanization of the millions excluded from the NRC!

As with children, women as well have been adversely impacted by the NRC, and for two inter-related reasons: First, the evidential values of proof of citizenship is tilted highly in favour of matrilineal documents, therefore women who trace their identity matrilineally are invariably excluded. Secondly, in Assam where underage marriage and polygamy are common, the documents often only have the husbands' names on them. The identities of most women are entwined with that of the husbands', and thus end up as appendages to male citizens rather than citizens themselves!

In the whole NRC process, the Indian state has been oblivious to certain inalienable rights guaranteed by basic international instruments e.g. Articles 1 and 2 of The Convention on Nationality of Married Women along with Article 9 of CEDAW, encourage state to provide equality between men and women in matters of citizenship and the right to pass on nationality to children. The

Conventions are the foundation states in preventing statelessness as a direct result of gender-based discrimination in the bestowal of nationality, but were disregarded in the government's implementation of the NRC!

Furthermore, countless women only furnish a village council certificate as the sole documentation confirming their residency. In 2017, it became even more challenging for an individual to verify their citizenship when the High Court ruled that the issuing official authenticating the document may be liable for prosecution should the person being authenticated be deemed a non-citizen<sup>(4)</sup> Moreover thousands of women have been separated from their families. These include daughters, sisters and wives who have been arbitrarily left out of the list due to superficial reasons such as typographical errors, etc. Women rarely enjoy financial freedom and are dependent on their families for survival. The fragmentation of families has thus resulted in widely uncertain future for them.

Clearly, in the hands of the government the NRC serves as the most arbitrary method to declare any number of people D-Voters (i.e. doubtful voters), stripping them of their right to vote, referring their cases to the Foreigners Tribunals. The D-Voter is a political tool solely based on baseless doubts and is used by the authorities to debar lakhs of marginalized people of a series of constitutional, political and social rights. The NRC clearly seeks to create a nation of disenfranchised women, lacking the most basic of human rights.<sup>(6)</sup>

The Foreigners Tribunal of Assam on the other hand is the state mechanism for appeal for persons excluded from the NRC. Individuals may petition the Foreigners' Tribunals with requisite documentation validating their citizenship. The process is hard, complex, and arbitrarily and routinely discriminatory. Its procedures are reportedly manipulated by officials and others to extort bribes, and criminalise

targeted community members.<sup>(7)</sup> This has led to serious economic hardship for the people who sold their possessions or used up their savings on lawyers' fees. Cases before these Tribunals took about 3 years on an average. On March 16, 2021, the Lok Sabha recorded that there were 300 Foreigners Tribunals in Assam and 200 more had been authorized.

#### NRC & Religious Freedom

At another level, the BJP government took steps that reflect an anti-Muslim bias. It indicated to create a "religious test" for Indian citizenship that would favor Hindus and selected religious minorities but exclude Muslims.<sup>(8)</sup> After the finalized list was released, it was noted that large numbers of Bengali Hindus and Bengali Muslims were excluded. Being embarrassed with the excluded number of Bengali Hindus, some BJP politicians challenged the NRC and called for a review by the Supreme Court. A member of the legislative assembly in Assam even offered to arrange legal assistance for any Hindus excluded, arguing, "No Hindu Bengali is a foreigner and should be included in the NRC unconditionally." The RSS Chief Mohan Bhagwath, challenged, "No Hindu will be expelled even if [that individual's] name is missing from [the] NRC." Moreover, to address this situation, the BJP argued for the need to pass the Citizenship (Amendment) Bill. This bill would amend the Citizenship Act of 1955 ("Citizenship Act") to allow non-Muslim immigrants from Afghanistan, Bangladesh, and Pakistan to gain Indian citizenship.

Under the Citizenship Act, illegal immigrants are barred from acquiring citizenship. However, in the Amendment, non-Muslims from these three countries would no longer be "treated as illegal migrants" and therefore would be eligible to apply for and gain Indian citizenship. Moreover, it would limit the length of qualifying residence in India for non-Muslims from 11 years to 6 years. Under the Citizenship (Amendment) Bill, Bengali Hindus and other non-Muslim religious minorities – even if they had



been deemed foreigners and excluded from the NRC– would not be classified as illegal immigrants and therefore would not be subject to detention and deportation. The “illegal immigrant” label, and the potential statelessness that comes with it, would be reserved for Muslims. The Lok Sabha initially passed this bill in January 2019, but the BJP government withdrew it following protests.

The Assam Agitation had demanded the detection and deportation of all “foreigners”, regardless of religion or ethnicity. The regional political history of Assam has dovetailed uneasily with the rise of chauvinistic Nationalism of Hindutva. It has pledged to detect and deport Muslim “illegal immigrants”.

The religious basis of the NRC is explicit with the Citizenship Amendment Act (CAA). This imminent constructional change is a drastic change of the secular principles of citizenship in India. States today deploy techniques of both forced inclusion (e.g. the so-called “re-education centres) for Uighur Muslims in China) and forced exclusion (the US Immigration Customs Enforcement deportation of undocumented immigrants, and EU processing centres in Turkey and Africa to keep migrants from reaching Europe) to address majoritarian demands around the perceived problems of mobility and difference. Both strategies are on show simultaneously in India (7) clearly, the NRC is a tool to target religious minorities and, in particular, to render Indian Muslims stateless. This illustrates the downward trend in religious freedom conditions within India. (1)

## II

### From Exclusion to Statelessness

The very notion of the National Register of Citizens, (NRC), with its basic premise rooted in the 'insider-outsider' binary is to institutionalize exclusion. In all its arbitrariness and unfairness, the NRC has imposed a highly disturbing sense of fear on the entire region. Contrary to the principles of natural

justice the categorization of citizenship status considers every resident of Assam guilty until proven innocent. To prove their citizenship, some were forced to sell their property like livestock to cover vast distances in order to file their papers with the authorities located at distant registration offices.

According to reports, the Foreigners Tribunals in Assam have been denying people their citizenship arbitrarily and suffer from an acute shortage of qualified judicial offices, some of whom are recruited on a temporary basis and trained merely for 4 days. The apprehension and trauma of exclusion suffered by the whole of the Assamese people amounts to the persecution of 'bona fide' Indian citizens.

It has been aptly described that the plight of refugees, being transformed from homeless to stateless and ultimately, rightless. (1) Through the NRC, Assamese residents have been deemed illegal citizens and burdened with the obligation to prove their nationality. Persecution of genuine Indian citizens, who suffer the trauma of exclusion, is a direct breach of the rule of law.

## III

### The NRC and the Ethnic Politics of Assam

The NRC has been inextricably bound with the ethnic politics of Assam. Dating back to British colonial policies and labor migration from Bengal into Assam, the ethnic Bengalis, many of whom worked as laborers on Assam's large tea estates. This concern was heightened with the large influx of Bengalis from former East Bengal (then East Pakistan) on its western border after Partition in 1947.

Assam has a unique history of the assimilation of peoples and cultures. In 1228, the first Ahom king, King Sukaphaa established his Ahom Kingdom near today's Nagaland. A little earlier, in 1206, the Governor of Bengal, B. Khilji had made a failed invasion of Tibet. He was however allowed to pass through the Kamrup kingdom which controlled areas around the Brahmaputra that had accommodated

the Ahoms and Muslims alike. Ajan Fakir and Shankardeb both were part of its cultural heritage. Kingdoms and dynasties around and fell for 6 centuries, till the Ahom Empire consolidated but eventually lost to the Kings of Burma along with areas of the Rakhine (Arakan) which has been the epicenter of the Rohingya problem in Myanmar

The Assam areas went from being administered by a Chief Commissioner to being added in 1905 to the new province of East Bengal and Assam, with its capital at Dacca. It arose as a separate province with its capital in Shillong in the 1912 reorganisation of Bengal. At the time of Independence and Partition, the Sylhet district of Assam province opted by a referendum to go with East Pakistan while its Hindu majority, Barak valley, opted to stay with India. Some Muslim majority districts like Dhubri which control access to the chicken-necked North-East were persuaded to remain in India.

When Pakistan ended up into two halves after its elections of 1970, the East Pakistan army attacked the East Pakistani dissidents. Millions fled as refugees to India, mainly to West Bengal and Assam. On March 25, 1971 the Pakistani army crackdown on Dacca University and the following massacre led to an event that ended in the rise Bangladesh. The mass migration of Bengalis fleeing to India was a further catalyst for anti-immigrant sentiments in Assam. Sheikh Mujibur Rehman and Indira Gandhi signed an accord, enabling the return of Bangladeshi refugees who had migrated to India post March 25, 1971.

That same year the North Eastern areas of India were also re-organized in December 1971 with the passing of the North-Eastern (Reorganization) Act, 1971, Act No.81 of 1971 which led to the establishment of the states of Manipur and Tripura, and the formation of the state of Meghalaya and of the then Union territories of Mizoram and Arunachal Pradesh. Thus, the Assam State arose only in 1971 and is still subject to boundary

claims from Nagaland

While commonality of language ensured an assimilation of Bengali refugees in West Bengal, in Assam they are seen as ensuring Bengali dominance. The ruling Congress party was seen as being backed by a voting troika of Ali (Muslim) coolie (tea plantation labour) and Bengali. Assamese and Ahom identity issues began to simmer particularly after 1971. This led to a state-wide student movement, the Assam Agitation, which lasted from 1979 to 1985.

The Agitation focused attention on the issue of illegal immigration. However, what inspired the unprecedented political mobilization in the State was the ethnic Assamese fear of becoming a minority in their own State. Thus, along with the refugees, almost all other minorities – religious as well as linguistic – were branded as illegal migrants. This narrative continued over the years. This fear was ratcheted up in the year leading up to the Nelli Massacre in February 18, 1983. It finally ended in 1985 with the signing of the Assam Accord as a Memorandum of Settlement with the Government of Assam, Government of India and leaders of the Assam Agitation.

#### IV

#### Implementing the NRC

Following the Supreme Court ruling on the NRC the BJP following its 2014 electoral victory decided to update the NRC in line with the Assam Accord; to update only individuals able to prove their citizenship prior to March 25, 1971, along with their descendants; these would be identified as citizens. As verification, individuals needed to produce at least one from a list of documents issued to them prior to the cutoff date, or issued to an ancestor if born after 1971. These included: inclusion on the 1951 NRC or electoral rolls, citizenship certificate, passport, birth certificate, court records, land or bank documents, or any government-issued license.

Individuals were excluded from the NRC List for various reasons. For many impoverished families, presenting the necessary documents to authorities was a challenge due to inadequate family record-keeping, illiteracy, or lack of money to travel to government offices or to file legal claims. People were also kept off the list because of minor inconsistencies in paper work, such as differences in the spelling of a name.

Following delays, the Assam government released draft copies of the NRC in December 2017, with nearly 13 million names missing, and in July 2018, with four million names excluded. Those who were not included in draft lists faced an August 31, 2019 deadline to submit their citizenship documents. When the final NRC was released, 1.9 million residents discovered their names excluded from the list. Among those omitted were veterans of the Indian army and individuals, particularly women and children, whose relatives were included in the NRC using the same legal documents. Excluded individuals had 120 days—up until December 31, 2019—to appeal their status to one of hundreds of Foreigners' Tribunals recently set up for this purpose.

Foreigners' Tribunals are quasi-judicial bodies established pursuant to a 1964 law to adjudicate an individual's citizenship status. As these Tribunals have general lack of transparency in their decision-making process, human rights

organizations have pointed to anti-Bengali and anti-Muslim bias in deciding these individual citizenship cases. Once declared foreigners, individuals then may become subject to detention in one of the government's mass detention camps in Assam to house newly labeled “illegal immigrants.”<sup>(8)</sup>

As can be gleaned, the NRC can be equated with ethnic cleansing, much like what the Rohingya Muslims of Myanmar had faced. In modern times, the world has witnessed the expulsion of thousands of Asian Indians from Uganda by the dictator Idi Amin in 1972 and the killings of Bosniak Muslim men and the horrific rape of Muslim women in Bosnia-Herzegovina in the early 90s. Some years ago, the Buddhist-majority Kingdom of Bhutan expelled ethnic Nepalis who failed to prove Bhutanese citizenship.

The NRC for Assam is thus a judicially monitored exercise. Its indiscriminate application to deny citizenship to over 4 m. inhabitants of the State has been a serious concern. At one end, there have been warnings of a civil war and at the other there has been talk of deportations and concentration camps.

To conclude, a nation-wide NRC has raised the fear that it could only prove disastrous where residents could be profiled on the basis of their religions and stripped of their citizenship overnight.

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**Next Issue: Farmers' Protest**



**Paradigm Shift** is a quarterly factsheet to highlight the shifts in various socio-cultural and political fields that affect especially the marginalized communities including transgender people.

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