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Citizenship registration in India

- Does the process ensure human rights and rule of law?

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While the state has a legitimate duty and right to ensure registration of its citizens and control borders and migration, it must do so in compliance with its own constitutionally enshrined principles of rule of law and human rights. This includes prevention of arbitrariness and protection against direct as well as indirect discrimination.

As a party to international human rights conventions, the state of India has an obligation to pay particular attention to people in vulnerable situations, including the rights of religious minorities, women and children.

This policy brief focuses on the practical implementation of the National Register of Citizens (NRC) in the state of Assam in north-east India, examining whether this process complies with the fundamental rule of law principles and human rights.

It also examines the relevance of the NRC process for the implementation of the Citizenship Amendment Act (CAA) of 2019 which has been criticized by UN experts for being discriminatory, not least towards Muslim inhabitants of Assam.

Policy-relevant findings:

- Recent reports and studies indicate that more than 500 000 Muslims in Assam are in danger of being rendered stateless and some even detained without prospects of citizenship as a consequence of the ongoing NRC process.
- The CAA provides an easier access to citizenship for all Hindus and inhabitants with other religious identities despite their status as illegal migrants, if they have resided in India since before 2014, but leaves Muslims in a similar position without the same option.
- The registration in practice applies formal criteria in a way that also excludes inhabitants who were born in India and people with ancestors who were, and with relatives who are, registered as citizens there.
- What may in some cases appear as arbitrariness conflicting with basic rule of law principles, does however mainly affect Muslims, not least women. The NRC process is therefore discriminatory on the basis of both religion and gender.
- The NRC experience of Assam therefore supports the concerns expressed about the effects CAA has from a human rights perspective, not least if the NRC should also be updated for other parts of India.

Context

The government of India has since 2014 been led by the Bharatiya Janata Party (BJP). A central ideological basis for its policies is “Hindutva”, which has historically reflected Hindu nationalist positions.¹

The 2019 CAA attracted both national and international attention, not least for its implementation in Assam where it is associated with the NRC process. UN experts have condemned the NRC process, stating: “This process may exacerbate the xenophobic climate while fuelling religious intolerance and discrimination in the country”.² The Office of the UN High Commissioner for Human Rights described CAA as “fundamentally discriminatory” against Muslims.³

The Modi government argues that CAA will not take away citizenship from anyone, but will grant citizenship to those entitled to protection.⁴ The Government defends the new law with reference to the religious persecution of non-Muslim minorities in the countries mentioned in the new citizenship law – Bangladesh, Pakistan and Afghanistan – where Muslims are the majority and the constitution recognises the state as “Islamic”.⁵ However, CAA make no such exception for Muslim minority groups that are under threat in neighboring countries, such as the Rohingya from Myanmar or Ahmadiyya Muslims from Pakistan.

Criteria for citizenship

According to the Indian Citizenship Act of 1955, a person may acquire Indian citizenship by birth, by descent, by registration, by naturalisation, or by incorporation of territory. In general, any person not an illegal migrant can acquire citizenship by naturalisation if a resident of India for 11 years in aggregate.⁶

An amendment was made in 1985 providing special provisions on citizenship for the state of Assam, wherein the definition of “illegal” migrants was divided into three categories. Those who came to the state before 1966 were to be regularised as Indian citizens, and those who came to the state between 1966 and 25 March 1971 were to be taken off the electoral rolls and regularised after 10 years. The third group of individuals (from 1971 onwards) were to be detected and expelled in accordance with the law.⁷

“NRC will make a list of all India citizens... But the government acknowledges that Hindu refugees, Buddhist, Jain, Sikh, Christian, Parsi refugees should get citizenship and this is exactly why we have brought the Citizenship Amendment Bill.”

Amit Shah, India’s Minister of Home Affairs (20 November, 2019)



The state of Assam is located in the north-east of India where the country shares international borders with Bangladesh, Bhutan and Myanmar. Over the years, Assam has seen large influxes of migrants due to conflicts, particularly during the war in 1971 in what is now Bangladesh, and for economic reasons.

Registration of citizens in Assam

Waves of immigration to Assam from Bangladesh, and from other neighboring countries, have made this state the first one to implement the National Register of Citizens (NRC).

A large number of inhabitants in the state of Assam with migrant family backgrounds have no formal identification as citizens despite their long-term residence in India, many even with ancestors born in the country. Combined with poverty in large parts of the population, this may help explain why the process of developing a national register of citizens is both important and challenging for this part of India in particular. Many of those excluded from the NRC list are illiterate, and therefore in a particularly difficult situation when now forced to prove their citizenship.

The NRC list was updated in August 2019 for the state of Assam. Out of Assam’s 33 million inhabitants, 1.9 million were excluded from the NRC list in August 2019. The NRC list revealed that the majority excluded from the list were Hindus, while around 500 000 were Muslims.

National Register of Citizens (NRC)

The National Register of Citizens (NRC) is a process to include the names of individuals and their descendants in the NRC list which was first made in 1951.

This list should include the names of individuals who entered India on or before midnight on 24 March 1971. Those who entered after 24 March 1971 or who are unable to produce documentation of their ties to India are declared illegal migrants.

Amending the Citizenship Act

When the Narendra Modi-led government⁸ discovered that so many Hindus were excluded from NRC list updated in August 2019, they introduced amendments to the Citizenship Act that were passed in parliament and assented by the president already on 12 December 2019.

The amendment to the CAA states that persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Bangladesh or Pakistan who entered India on or before 31 December 2014 shall not be treated as illegal migrants.

Additionally, the Act reduces the requirement of residence in India for citizenship by naturalisation from 11 to five years for persons with such religious identity. In practice it provides them with an easy access to citizenship.

In contrast, Muslims are not covered by the CAA. Muslims excluded from the NRC list must thus still prove their citizenship before the Foreigner's Tribunal if they want to be included in the list and avoid being defined and treated as illegal migrants.

“All the Hindu, Sikh, Buddhist, Christians, they will get citizenship, so where is the question of NRC? We want to walk up to them and give them citizenship. They wouldn't be asked for any documents.”

Amit Shah, India's Minister of Home Affairs (December 18, 2019)

Who has the burden of proof?

In the National Register of Citizens (NRC) process and the proceedings before the Foreigners Tribunal, it has been the Indian state that initiated proceedings against persons suspected of being illegal migrants. Under a Supreme Court ruling of 2005, it is now the residents of Assam that have the burden of proving their citizenship.⁹

An individual excluded from the NRC list is required to present a number of documents to prove citizenship including birth certificate, land records and citizenship certificate, either of their ancestors or of themselves, including the NRC list of 1951 and voters list up to 1971. If documents produced are that of his/her ancestors, then the individual has to produce documents establishing relationship with such ancestor.

The shift in the burden of proof is particularly questionable, given the fact that many of the people affected by this process are poor, marginalised and illiterate.¹⁰ With the making of the 2019 NRC list in Assam, combined with the CAA 2019, mainly Muslims in Assam are so far faced with this challenge.

Foreigners Tribunal

The members of the Foreigners Tribunal are appointed by the central government on a contractual basis.¹¹ Cases are referred to the Foreigners Tribunal by:

(1) Border police and (2) Election Commission of India (those marked as D-voters¹²), and (3) 1.9 million excluded in the 2019 NRC list may appeal against such exclusion within 120 days from the date of the rejection letter.

The UN Special Rapporteur on Minority Issues, the UN Special rapporteur on Freedom of Religion or Belief and other human rights experts¹³ have raised concerns about the risk of widespread statelessness among people living in Assam. They emphasised that in determining nationality, the burden of proof should be on the state.¹⁴

The UN Secretary General's annual report on human rights and arbitrary deprivation of nationality (A/HRC/25/28) to the General Assembly stated that “the burden of proof lies with the State to establish that an individual will not be rendered stateless and that loss or deprivation can therefore proceed.”¹⁵

Arbitrariness and discrimination

Standards in cases before the Foreigners Tribunal for individuals trying to prove their citizenship appear to be applied in a rigid way, leading to arbitrariness or even discrimination.¹⁶

Cases before the Foreigners Tribunal that were analysed by international and national experts show several instances where persons have been declared foreigners based on minor formal discrepancies in addresses, names, etc. Even in cases where relevant documents are presented to prove their citizenship, several Muslim inhabitants of Assam are declared foreigners. In individual cases this may be conceived as arbitrariness, which conflicts with the rule of law. By systematically affecting mainly Muslims, this is discrimination based on religious affiliation.

Nasima Begum incorrectly noted her school district as her home district (both districts are part of Assam). At the time of the proceedings, both her school principal and her father testified on her behalf. Even so, she was declared a foreigner based on a discrepancy in her address. All her family members are declared to be Indian citizens.

A government school teacher born in India was declared a foreigner based on minor spelling discrepancies in his elder brother's name. His father's name appears on the 1951 NRC list and all his family members are included in the 2019 NRC list and declared to be Indian citizens.

Statelessness and detention

After the publication of the NRC list and the ensuing adoption of the CAA in 2019, UN experts have expressed their concerns about the discriminatory and arbitrary nature of this new system.¹⁷ The NRC process has also been criticised by Indian human rights experts: “The entire NRC process was flawed by arbitrariness, highhandedness, state interference and, possibly, racism.”¹⁸ “So far the experience in Assam has shown that even Indian citizens especially the poor, illiterate, women, members of marginalised communities such as Adivasis and smaller ethnic groups, do not and cannot possess documents that can prove their citizenship.”¹⁹

Expert reports indicate that practices in the Foreigners Tribunal affect women and children and place them in a particularly vulnerable position due to documentation requirements.²⁰ According to an amendment to the Citizenship Act in 2004, a child born in India after this amendment came into force would now only acquire citizenship if its parents were not illegal migrants at the time of birth, thus rendering these children particularly vulnerable.²¹

PhD candidate at Mahidol University, Bidhayak Das, has revealed in his recent research that the NRC process has a discriminatory effect on Muslim women in Assam.²² In particular it places undue burdens on married women and widows are more vulnerable to the strict proceedings of the Foreigners Tribunal. Many of them married before the minimum age of 18 and have documents proving their relationship with their husbands but have difficulties establishing their linkage to their parents and ancestors, which is one of the requirements to prove citizenship.

In her intervention application before the Supreme Court of India on the issue of CAA of 2019, the UN High Commissioner for Human Rights emphasised:

“States must ensure migration governance measures are in accordance with international human rights law, including the right to equality before the law, equal protection of the law and the right to non-discrimination and the absolute and non-derogable principle of non-refoulement.”²³

There is no formal agreement between the governments of India and Bangladesh on any repatriation process in connection with the situation in Assam. Bangladesh authorities have expressed that they consider this to be India’s internal matter. This gives rise to serious concerns about widespread statelessness. As the NRC cases show, this also affects many people who have been de facto residents of India for decades, and their children.

Chief Minister Sarbananda Sonowal of Assam has said that those excluded from the NRC list will be declared foreigners and barred from all constitutional rights as citizens until their expulsion.²⁵ Under the law governing the Foreigners Tribunal, individuals declared as foreigners can be detained in detention centres.²⁶ Risk of detention may therefore be likely for those excluded from the NRC list in 2019, not least the 500 000 Muslims – including women and children.

There are no administrative measures for the process after a person is declared a foreigner, other than the option of detaining them. Muslims and other inhabitants of Assam who risk being detained after being defined as illegal migrants, have few prospects other than staying in the detention centres indefinitely.²⁷

UNHCR reports on arbitrary detention have stated that the states must provide reasons to justify such detention.²⁸ In its Handbook on Protection of Stateless Persons, UNHCR clearly establishes that being undocumented or not being in possession of the necessary documents cannot serve as a justification for detention.²⁹

Presently there are six detention centres in Assam, operating within six district prisons. By October 2020 there were around 425 detainees in these detention camps. The Supreme Court of India has said that “detention centres must be outside the jail premises”.³⁰ A new detention centre with a capacity for 3000 detainees is currently being constructed in Assam. Plans have been made for 10 more detention centres.³¹

Samina Bibi²⁴: Samina moved to her husband’s village 18 years ago. In 2016 she received notice from the Foreigners Tribunal.

Samina cannot read or write so someone else had to read the notice to her. She submitted 10 documents including her father’s name in the 1951 NRC list, the voter list of 1966, the voter lists of 2015 and 2018, and her marriage certificate.

However, the marriage certificate and documents linking her to her parents were rejected because Samina Bibi could not “authenticate its genuineness.” In particular, the 1966 voter list was rejected

because she could not remember the Lok Sabha Constituency of her grandfather when asked by a Foreigners Tribunal member.

The NRC list 1951 document was rejected because it was not a certified copy. The subsequent voter lists carried her name along with her husband’s, but they were not helpful in establishing the legacy to her parents. Her electoral identity card was rejected not just as valid proof of citizenship but also as a legacy document because it only proved her link to her husband. After being declared a foreigner, her two children have been left off the final NRC list of 2019.

Children detained

Men and women are placed in separate detention camps. The Indian National Human Rights Commission (NHRC) has observed that in this matter the state makes no distinction between detention centres and prisons. During its fact-finding mission, the NHRC found that the majority of persons detained in detention centres were detained on the basis of ex-parte orders by the Foreigners Tribunal and were without legal representation.³²

The NHRC is also concerned about the separation of families in different detention camps. Children aged below six stay with the mother within the detention centres. It is unclear how children aged over six with parents declared as foreigners are treated. The report particularly highlights the state's lack of responsibility towards children who are not detained in detention centres and who are separated from parents who are detained.³³

Khudeja Begum³⁴: She is a widow in her late twenties and belongs to the ethnic Assamese Muslim community. For the past one and a half years she has been unable to see her four year old child who is living with her brother-in-law.

Jamila Khatun³⁵: Thirty-two years old, is also from the ethnic Assamese community. When she was detained, her son was just 14 days old. It has now been four years. Her son has never seen the outside world.

The separation of families and its consequences, not least for children, implies violations of the UN Convention on the Rights of the Child (CRC) to which India is a signatory, particularly regarding the right to education, the right to family life and to unification.

Not providing education for the children in detention centres is also in conflict with the obligation under the Constitution of India to provide compulsory education to every child, at least up to the age of 14.³⁶ There is no provision for education for children³⁷ in the manual with which authorities must comply for operating these detention centres.³⁸

We are seriously concerned over the current implementation of the NRC update in Assam and its potentially far-reaching consequences for millions of people, in particular persons belonging to minorities who risk statelessness, deportation or prolonged detention

UN rapporteurs: "Risk of statelessness for millions and instability in Assam, India" (03 July, 2019)

Leaving the most vulnerable behind

The examination of cases before the Foreigners Tribunal gives reason to fear that that the NRC combined with the CAA will lead to continued discrimination, statelessness or even detention of those in an already vulnerable position in Assam: The Muslim minority, and in particular their women and children.

This is in clear conflict with the UN Sustainable Development Goals (SDG) that aim to "leave no-one behind".³⁹

Furthermore, the NRC process has a harsh affect not least on poor and illiterate individuals who do not have access to documents proving their citizenship via ancestral linkage, for example the NRC list of 1951 and voters lists up to 1971. It is the responsibility of the government authorities to ensure the drafting and publication of such documents and to ensure their availability.

The state of India has published them in digital form only, not in print, and they are not uniformly available in Assam.⁴⁰ Additionally, there have been several cases of ex-parte orders declaring individuals as foreigners without them having an opportunity to prove their citizenship.⁴¹ Lack of legal aid is a concern, as many are unable to attend court hearings to participate in their legal process because of financial constraints.⁴²

Concluding remarks

The registration of citizens in Assam both reflects and influences the national political controversies on citizenship. The findings of the reports presented in this brief gives reason to closely follow the implementation of CAA in Assam, not least for those in a particularly vulnerable position: the Muslim women and children excluded from the list.

The Assam experience gives reason to worry about the future for Muslim inhabitants with migrant family backgrounds in other Indian states if and when NRC is implemented in the rest of the country, as in the original plan.

To learn more about this issue

Das Bhidayak: "Women worst affected by Assam's NRC/ Indian citizenship tests", Policy Brief 3/2020, Inclusive Citizenship project

HRLN report, Human Rights Law Network (India), Statelessness and Marginalization in Assam: The Citizenship Amendment Bill and the National Register of Citizens (Report of the Public Hearing), May 2019

Amnesty report, Amnesty International (India), Designed to exclude: How India's courts are allowing Foreigners Tribunal to render people stateless in Assam, 2019

Notes

1. See for instance "Majoritarian State: How Hindu Nationalism Is Changing India" Christophe Jaffrelot, 2019, Publisher: Hurst Publishers, London
2. UN rapporteurs: "Risk of statelessness for millions and instability in Assam, India" (03 July, 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24781&LangID=E>
3. <https://news.un.org/en/story/2019/12/1053511>.
4. <https://thewire.in/politics/amit-shah-citizenship-act>.
5. http://164.100.47.4/BillsTexts/LSBillTexts/asintroduced/370_2019_LS_Eng.pdf.
6. Citizenship Act, 1955. India: Act No. 57 of 1955, Citizenship Act, 1955, 30 December 1955, available at: <http://legislative.gov.in/sites/default/files/A1955-57.pdf> (assessed 12 November 2020)
7. Section 6A of Citizenship Amendment Act, 1985; clause 5 of Assam Accord, <https://assam.gov.in/en/main/ASSAM%20ACCORD>
8. https://www.business-standard.com/article/pti-stories/exclusion-of-hindu-bengalis-from-assam-nrc-changing-political-119092200259_1.html
9. Published vide Notification Gazette of India, Extra, Part 2 section 3(i), dated 10.2.2006. The Supreme Court's decision to repeal the Illegal Migrants Act, 1983 and revert to the Foreigners Act of 1946 was in response to a petition filed by then president of the Assam Students Union, Sarbananda Sonowal, who is the present Chief Minister of the State.
10. Das Bhidayak: "Women worst affected by Assam's NRC/Indian citizenship tests", Policy Brief 3/2020, Inclusive Citizenship project, p. 3
11. Amnesty report, p. 5, Amnesty International (India), Designed to exclude: How India's courts are allowing Foreigners Tribunal to render people stateless in Assam, 2019.
12. D- voters means persons who are categorised as doubtful voters in Assam, and who are disenfranchised by the state government for lack of or doubtful citizenship credentials; <http://nrcassam.nic.in/faq09.html>.
13. Including the UN Special Rapporteurs: Mr. Ahmed Shaheed, Special Rapporteur on freedom of religion or belief; Mr. Fernand de Varennes, Special Rapporteur on minority issues; Ms E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.
14. UN experts: Risk of statelessness for millions and instability in Assam, India (3 July 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24781&LangID=E>
15. Human Rights and Arbitrary Deprivation of Nationality, A/HRC/25/28, Report of the Secretary General, para 5.
16. Amnesty Report, pp. 48.
17. See footnote 13.
18. HRLN report, p. 164. Human Rights Law Network (India), Statelessness and Marginalization in Assam: The Citizenship Amendment Bill and the National Register of Citizens (Report of the Public Hearing), May 2019.
19. Das Bhidayak: "Women worst affected by Assam's NRC/Indian citizenship tests", 2020, p. 3.
20. Amnesty report, p. 30,
21. Section 3, Citizenship Amendment Act, 2004.
22. Das Bhidayak, "Women worst affected by Assam's NRC/Indian citizenship tests", 2020, p. 3.
23. IA No. ___ 2020 in WP(Civil) 1474 of 2019, Supreme Court of India.
24. Amnesty report, p. 32
25. HRLN report, p. 105.
26. Clause 3 of Foreigners Act, 1946.
27. NHRC, p. 3. National Human Rights Commission (India), Report on NHRC mission to Assam's Detention Centres, 26 March 2018.
28. <https://indianexpress.com/article/explained/explained-why-court-wants-assam-detention-centres-set-up-away-from-jails6718317/>
29. Ibid.
30. NHRC, p. 6.
31. NHRC, p. 4.
32. NHRC, p. 33. Kokrajhar detention centre.
33. Ibid. Kokrajhar detention centre.
34. <https://www.outlookindia.com/website/story/opinion-the-forgotten-students-of-detention-centres/359889>.
35. Assam Jail Manual for detention centres.
36. Constitution of India, Article 21 A.
37. See UNHRC, Report of the UN Working Group on Arbitrary Detention to the Human Rights Council (18 January 2010), A/HRC/13/30, para 59; HRLN Report, p. 102.
38. See UNHCR, Handbook on Protection of Stateless Persons (30 June 2014), para 113; HRLN Report, p. 103.
39. https://sustainabledevelopment.un.org/content/documents/2754713_July_PM_2_Leaving_no_one_behind_Summary_from_UN_Committee_for_Development_Policy.pdf
40. HRLN report, p. 73
41. Amnesty report, p. 40
42. NHRC Report, p. 34

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