

FUTURE OF CITIZENSHIP LAWS IN INDIA WITH SPECIAL REFERENCE TO IMPLEMENTATION OF NRC IN ASSAM

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INTRODUCTION

The issue of citizenship in India, in contemporary times, is one of the most debated issues in the country. This controversy is centered on the Citizenship Amendment Act 2019 (hereinafter CAA 2019), coupled with the National Population Register (hereinafter NPR) and National Register of Citizen (hereinafter NRC), which have to be viewed together. The genesis of this debate came with the enactment of the CAA 2019, which aims to confer citizenships to illegal migrants of certain neighboring countries on the basis of religion. The migrants of two religious' communities, that are Muslim and Jews, stand excluded from the Act. It is also pertinent to note that the CAA 2019 was enacted in the backdrop of the Supreme Court monitoring the NRC exercise in the state of Assam. The NRC case itself had proven to display serious socio-political problem and grave concerns nationwide by excluding over 19 lac persons belonging to various faiths, rendering them "stateless"ⁱ. These excluded persons range from the family members of a former President of India to those individuals who had fled religious persecution from neighboring countries.

The Government, in response to the concerns, has rejected any claims that the CAA 2019 is meant to exclude any particular community, rather has justified the need for such an enactment stating that it is only a mode for granting citizenship rights to certain persecuted minorities and it does not in any way take away citizenship of any person. Curiously, the Act does not mention the term 'persecuted' or 'persecution', therefore it cannot be read as being a criterion for granting citizenship. So how does the CAA 2019 take a religious colour? The Act by creating

an easier path for all non-Muslim immigrants from adjoining countries to attain citizenship leaves practitioners of Islam unfairly disadvantaged when seeking to immigrate to India. The benefit to persecuted minorities within the Act only extends to Muslim neighboring countries. This is where the debate has largely taken place, especially considering that India already has a large number of refugees, for example Tibetan refugees from China, Rohingya Muslims from Myanmar, and Tamil Hindus from Sri Lanka, all of who have been inexplicably excluded.

UNDERSTANDING CAA AND THE INDIAN CITIZENSHIP ACT?

In 1955, the Indian Citizenship Act came to be enacted that governed the basis on which citizenship will be granted. The Act provides for determination of citizenship on the basis of birth, by registration, by naturalization or by descent. The CAA 2019 amends the Citizenship Act, specifically the provision that defines illegal migrants and their ability to apply for citizenship by naturalizationⁱⁱ.

In August 1949, some members of the Constituent Assembly proposed to introduce a similar religion-based conception of citizenship, which automatically gave Indian citizenship to Hindus and Sikhs. The reason for such a proposal was also similar to that of CAA 2019 – the belief that India is the ‘natural home’ for Hindus and Sikhs. Our founding fathers rejected this line of thought. Instead, they argued in favour of a plural, inclusive, and secular conception of citizenship as we see it today. Thus, it is clear that the framers of our Constitution expressly rejected the core ideas behind the CAA.

The Constitutional validity of Citizenship Amendment Act 2016 & 2019:

The Citizenship Amendment Act, 2016 also requires a mention here as the amendment is closely related to the 2019 amendment. The 2016 Amendment targeted to allow illegal migrants from certain minority communities in Afghanistan, Bangladesh, and Pakistan to apply for Indian Citizenship. The effects of the amendments render the situation of an Indian Muslim, who is citizen increasingly suspect and unstable in the state Assam. The constitutional validity of the amendments has been questioned on the basis that they discriminate almost entirely on the basis of religion. Such severe actions purely on the basis of religion go against the principles of equality enshrined in Article 14 of the Indian Constitution. For example, if a community

living in Afghanistan, Bangladesh or Pakistan were to face religious persecution, the fact that the community did not practice being Hindu, Sikh, Buddhist, Jain, Parsi or Christian would disentitle them from the benefit of the CAA 2019, with no apparent justification. It is also clear that Article 14 of the constitution confers right to all persons and not just citizens of India. Therefore, without doubt one can see that the CAA 2019 introduces a religious element into the notion of citizenship, striking clearly at the heart of a secular Constitution, and potentially going against the basic structure of the Constitutionⁱⁱⁱ.

In the backdrop of the Act coupled with the NRC exercise in the state of Assam (and supposedly continuing that model pan-India), there are severe concerns, as there exist lack of clarity as to the fate of millions of persons who may be unable to prove their citizenships through documents. Currently, we have seen the construction of detention centers in India but what will be the future of those imprisoned there is yet unknown. The actions of the Government of India in this exercise only highlight the attitude in which it regards India's 200 million Muslims, one of the largest Muslim populations in the world. Many scared Muslim citizens have viewed the Citizenship Amendments, as a step to make them second-class citizens in their own country and render many of them stateless.

CAA, NPR and NRC

Other than the question of CAA 2019's constitutional validity, the manner in which the Government has executed the enactment especially in reference to the NRC and NPR provide for a disturbing legislative trend for the future. There is an undeniable link between NRC, NPR and the CAA 2019. Examples of how this cumulative effect shall come into being is a feared outcome by most Muslim citizens of India. The NRC and NPR exercise is feared to turn into a witch-hunt targeting Muslims across the country. Most of these individuals shall then be 'foreigners'. If thereafter, they were to apply for citizenship under the Amended Act, Muslims – an excluded religion community under the CAA 2019 shall have an increased burden (as compared to those who do benefit under the Act) to show proof for the longer requisite period of stay. In a country like India, which is characterized by a large part of its population being poor and lacking documentation, this proves to be a mammoth task. The process itself is not without fault, and suffers from severe lacunae, which allows the misuse of the process to oppress those that one does not like. The impact and social strife caused by such an enactment will be of unimaginable proportions^{iv}.

While the purported aim of the NPR is the creation of a comprehensive identity database of every resident in the country, it's connection with the NRC is clear by virtue of Section 14A of the Citizenship Act, 1955 and the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. These provisions state that the nationwide NRC is to be compiled after due verification of a person's particulars from the NPR. One can see that the enactments, specially the NRC are violative of our Constitutional Principles. The consequences of the combined effect of the CAA with the NPR exercise followed by a nationwide NRC exercise could be disastrous. The Government's claim that the three are not interlinked is patently false. The simplest response to debunking such a claim is the fact that all the three - CAA, NPR, NRC exist within the framework of the Citizenship Act, 1955^v. The combined effects of these enactments further add to the claim that such state action is manifestly arbitrary and violative of Article 14 of the Constitution of India.

NRC EXERCISE IN ASSAM

The National Register of Citizens is a register maintained by the Government of India containing names & certain relevant information for the identification of Indian citizens. It requires that people prove their presence in Assam or in any part of India on or before 24th March, 1971. Such an exercise is the result of Assam's unique historical issues with illegal immigration. Thus, there were two requirements for inclusion in updated NRC –

1. Existence of a person's name in the pre-1971 period
2. Family tree verification with such person.

The Government of Assam and the Government of India have developed the modalities for NRC updating jointly in adherence to these statutes. After a rigorous process of applications, filling of appeals at the Foreign tribunals and publication of several drafts, a total of 3,11,21,004 people have been found eligible for inclusion in the final version of the NRC in Assam. This leaves out a total of 19,06,657 people, including those who did not possess the means to submit their claims. This exercise in Assam has proven that this shift of burden on the citizen to prove its right to belong (rather than the state to prove the non –citizenship) has created a lot of issues that underscore the difference between persons with means and those who struggle in poverty.

Academicians and jurist the world over have criticized such processes. Haley Duschinski has put forth the concerns succinctly as “The demand for identification that opens possibilities of sanction and prohibition, is the moment at which state power is practiced and state subjecthood is formed”. She also argues that identity documents are unpredictable and unstable enactments of state power, constantly oscillating between being a ‘threat’ and ‘a guarantee’ to their bearers, and traversing the uncertain geographies between arbitrary violence and the sanctity of law^{vi}. Exclusion of more than nineteen lac people from the list has practically proved this show of state authority and application of positive law.

The NRC process highlighted the inability of the State to carry out such an exercise without fault and legally. There were numerous inconsistencies in all lists of the NRC, which proves that the impact of a clerical error could mean, in these circumstances, being rendered stateless. The right to live with dignity ensured to all citizens almost seems forgotten by such brute State action^{vii}. These drawbacks were also highlighted by Amnesty International Report that held the Foreigners Tribunals as “complicit in perpetuating exclusion and abuse^{viii}” when deciding cases of exclusion. The Report further stated that method of functioning adopted by the Tribunals were not those that met the international standards of fair trial as they were found to be riddled with prejudices, bias and most importantly arbitrary decision-making processes^{ix}. Even though the NPR and National Register for Indian Citizens shall both follow different processes^x, the NRC exercise paints us an accurate picture as how efficiently state policy in the hands of underprepared executive can implemented.

The provisions of the Citizenship Amendments clearly show that the State can discriminate among people on the basis of religion. The Hon’ble Union Home Minister has spoken this effect by stating that all non-Muslims will get citizenship rights^{xi}. The NRC has been challenged as being contrary to the reasonable test laid down by the Supreme Court in plethora of cases^{xii} and thus bad law.

GENDER DISCRIMINATORY – AN ASPECT OFTEN OVERLOOKED

The process followed in the NRC Exercise is especially exclusionary and discriminatory towards women. An enactment that aims to ‘cleanse’ Assam of foreigners, is in reality creating

a crisis of human suffering within families as many of them find their mothers, sisters, wives and daughters excluded from the final list of citizens. There is no gender balance or justice in the process of identifying the so-called 'foreigners'. It puts the already disadvantaged women through a completely arbitrary process.

Women who get married before attaining the age of eighteen, whose identity in the Indian society (where the *doctrine of coverture* still plays an integral part) is linked with her husbands will not have sufficient documentation to establish proof of residency, as most documents available to such women will not be recognized by the enforcing agency and law. The NRC process has turned a blind eye to the patriarchal set up of Indian society, where the identity of most women is entwined with that their husbands. The National Family Health Survey data reveals that in char dominated districts nearly half of the women get married before the age of eighteen. When women are married off before attaining the age an adult, they cannot get enlisted in the voters list from their parental house. In absence of other documents, it removes any legal link to their parental home. This forces them to opt for panchayat certificates to prove linkage with parents^{xiii}, only for such documents to be rejected. The NRC process was drafted without keeping in mind the polity of the country where women struggle to get education, in comparison to the male child of the family. Even if a small percentage of women in Assam had gone to primary schools, those documents would also not valid under the NRC guidelines.

Marriages across state-lines are not uncommon in India. Several men in Assam are married to women from states such as Bihar, Rajasthan, West Bengal and Uttar Pradesh. These women trace family legacies to their respective states but failed to produce appropriate documents. In some cases, the documents produced were not admissible and a large number remained unverified by the respective states despite repeated reminders to chief secretaries^{xiv}. This also highlights the lack of co-ordination between state-agencies to the detriment of poor citizens. Reports have also suggested that lacs of women despite submitting required documents did not get in to final NRC^{xv}. This gender-discriminatory system and procedural flaws in the NRC process has caused a lot of pain and strife. If such an exercise were to be performed pan-India the outcome would be undoubtedly disastrous.

There are many examples that outline the inefficiency and arbitrariness in the NRC process, which are pertinent to mention. Over 4.7 million married women submitted panchayat

certificate as linkage documents. Out of these women approximately 1.7 million women were brought under "original inhabitants" status by August 2018 - a privileged category and were exempted from the stringent verification process. However, Muslims and Bengali Hindus, didn't fall under the category, thus despite being from one of the most marginalized social groups, Muslim women from the Char areas had to go through a stringent verification process. Another reason that is equally responsible for making the char women most vulnerable in the NRC updating process is the feudal legacy and continuance of core patriarchal practices like child marriage^{xvi}.

A large number of residents belonging to over 200 households in the remote Mazidbhita village, an island off the Beki river, have been excluded, wherein most of them were mostly women and children. Similarly, hundreds of women hailing from Alipurduar and who were married in the neighboring state of Assam failed to make it to the final list of the NRC^{xvii}.

Detention Centers

Reports by the special monitor of the National Human Rights Commissioner, who visited, these detention centers for NRC in January 2018 – housing hundreds of women, children and men – noted the conditions as violative of domestic legal standards and many international human rights standards. The monitor also found that children above six years were separated from their families, and women were not incarcerated with their husbands either. Many had not met their spouse for years and were neither given parole or permission to meet^{xviii}. Only three of the 28 people who so far died at detention camps in Assam had their addresses in Bangladesh^{xix}. In the absence clarity on its policy, those incarcerated fear they be held captive in perpetuity^{xx}.

SUPREME COURT AND NRC

The NRC update came under the aegis of the Supreme Court through its order in the case of *Assam Sanmilita Mahasangha v. Union of India* dated December 17, 2014.^{xxi}

The Mahasangha had challenged section 6A of the Citizenship Act that had been enacted to give effect to the Assam Accord by providing separate rules of citizenship in the state. Under

the provision, unlike other states, the migrants of Indian origin who settled in Assam before March 25, 1971 could qualify either as Indian citizens or for a route to citizenship. The Mahasangha argued that the provision violated the right to life of the citizens in Assam by encouraging the “massive influx of illegal migrants” from Bangladesh. It also argued that the distinct regime compromised their right to culture as guaranteed by the Constitution. A bench consisting of Justice (now Chief Justice) Ranjan Gogoi and Justice R.F. Nariman recommended that the issue be referred to a larger constitutional bench for determination^{xxii}. The Supreme Court has placed itself in a politically divisive position by taking under its command - through secret in-chamber consultations with the NRC Coordinator - the drafting of the NRC to the exclusion of all parties to the matter including the Attorney General of India. Despite the Assam government accepting in court that many who had failed to participate in the claims process were illiterate and poor and hence unable to fill forms, we saw the Court call for no change in the NRC exercise in respect of outreach and education. Thus, through its involvement the Supreme Court by no means played a role to answer to questions of citizens or ease the burden of affected persons in what is now presumed to an era of increasing religious and ethnic polarization.

PROVISION OF LEGAL AID

The National Human Right Commission Report on detention Centers 2018 states that a majority of persons declared as ‘foreigners’ claimed to be Indian citizen but due to lack of access to proper legal aid have been declared as foreigner through ex-parte decree or they couldn’t produce the documents before the tribunal because of their inability to afford good lawyers. It was recommended that the detainees should be provided with proper legal aid through either the District Legal Service Authority or Non-Governmental Organizations. Many have criticized the practice of ex-partite decrees by the Foreigners Tribunal, demanding that all persons should be afforded the right to be heard.^{xxiii} These concerns arise in the backdrop of many reporting that there is a “widespread perception” that the process faces “difficulties, problems and accusations of bias”^{xxiv}.

CONCLUSION

Due the pandemic are we awaiting a struggle that will target marginalized sections of society? The NRC process has only shown that persons belonging to the Muslim community, Women and the poor will be the parties are the most affected and least heard. In struggle to belong parties should never be disadvantaged, however keeping in mind the Indian polity and the States determination to carry out such exercises, one can only fear the fragmentation of society. The only question left to be answered is, will the people and institutions like the Supreme Court continue to rally behind such an exercise?

REFERENCES

ⁱ Art. 1, United Nations Convention on Statelessness, 1954.

ⁱⁱ Citizenship Act, 1955 available at <<https://Indiacitizenshiponline.Nic.In/Citizenshipact1.html>>.

ⁱⁱⁱ Alok Prasanna Kumar, *India: National Register of Citizens And The Supreme Court*, 30 July 2018, available at <<https://www.Cetri.Be/India-National-Register-Of?Lang=Fr>>.

^{iv} Subodh Varma, *What is the Real Intention Behind CAB and the Future Pan-Indian NRC*, 05 December 2019, available at <<https://www.Newsclick.In/Real-Intention-Behind-Cab-Future-Pan-Indian-Nrc>>.

^v Ejaz Maqbool, Akriti Chaubey & Mohammad Isa Hakim, *CAA-NPR-NRC – The Bermuda Triangle*, 21 January 2020, available at <<https://www.barandbench.com/columns/litigation-columns/caa-npr-nrc-the-bermuda-triangle-2>>.

^{vi} Haley Duschinski, *Destiny Effects: Militarization, State Power, And Punitive Containment in Kashmir Valley*, *Anthropological Quarterly*, Vol. 82, No. 3, 2009, pp. 691–717.

^{vii} Francis Coralie v. Union Territory of Delhi, 1981 AIR 746.

^{viii} Manasvin Andra, *Why the nationwide NRC is Unconstitutional*, 7 June 2020, available at <<https://www.barandbench.com/apprentice-lawyer/why-the-nationwide-nrc-is-unconstitutional>>.

^{ix} *Ibid.*

^x *Ibid.*

^{xi} Press Trust Of India, *Hindu, Buddhist, Sikh, Jain Refugees Won't Have To Leave India: Amit Shah*, 22 November 2019, available at <https://www.Business-Standard.Com/Article/Pti-Stories/Nrc-Must-For-National-Security-Will-Be-Implemented-Shah-119100101129_1.Html>.

^{xii} Shayara Bano v. Union of India, 2017 (9) SCC I; “fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favoritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment”

^{xiii} Abdul Kalam Azad, *Assam NRC Draft: How Women In Char Areas Were Left High And Dry*, 8 August 2018, available at <<https://www.News18.Com/News/Opinion/Assam-Nrc-Draft-How-Women-In-Char-Areas-Were-Left-High-And-Dry-1835325.html>>.

^{xiv} Bikash Singh, *Many Married Women Left Out In NRC*, 4 August 2018, available at <<https://economictimes.indiatimes.com/news/politics-and-nation/many-married-women-left-out-in-nrc/articleshow/65266070.cms>>.

^{xv} Arunabh Saika, *Humans Of Assam: Born In Bengal, Married In Assam, This 65-Year-Old Woman Did Not Make It To NRC*, 5 September 2019, available at < [Https://Scroll.In/Article/936063/Humans-Of-Assam-Born-In-Bengal-Married-In-Assam-This-65-Year-Old-Woman-Did-Not-Make-It-To-Nrc](https://Scroll.In/Article/936063/Humans-Of-Assam-Born-In-Bengal-Married-In-Assam-This-65-Year-Old-Woman-Did-Not-Make-It-To-Nrc)>.

^{xvi} *Ibid*.

^{xvii} Rajkumar Karmakar, *After NRC, Alipurduar Women Fear Becoming 'Foreigners'*, 2 September 2019, available at < <https://www.Thestatesman.Com/Bengal/Nrc-Alipurduar-Women-Fear-Becoming-Foreigners-1502795178.html>>.

^{xviii} *Ibid*.

^{xix} Press Trust of India, Guwahati, *Only three Bangladeshis among 28 who perished in Assam detention camps*, 30 November 2019, available at < https://www.Business-Standard.Com/Article/Pti-Stories/28-Died-In-Assam-Detention-Camps-3-Of-Them-From-B-Desh-119113000707_1.html>.

^{xx} Mohsin Alam Bhat, *On The NRC, Even the Supreme Court Is Helpless It Is Time That The Supreme Court Accepts The Failure Of The NRC – And Its Own Role In Resolving The Legal Contradictions Of The Effort*, *The Wire*, 7 January 2019.

^{xxi} Supreme Court of India in W.P(C) No 562 Of 2012.

^{xxii} See for example <<http://Dspace.Jgu.Edu.In:8080/Jspui/Bitstream/10739/2222/1/On%20the%20nrc.Pdf>>.

^{xxiii} National Human Right Commission Report, *Mission To Assam's Detention Centers*, 22nd to 24 January 2018, available at <<https://Drive.Google.Com/File/D/1skgrqf6l8xnw8nsybw2oruai5yksuxux/View>>.

^{xxiv} The Wire Staff, *NRC Process Accused Of Bias After BJP Came To Power In Assam: Fact Finding Team*, 13 July 2018, available at <<https://Thewire.In/Rights/Assam-Nrc-Report-Bias-Bjp>>.