

## On the verge: Revocation and denial of citizenship in India

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### I. Introduction

Citizenship has become one of the most definitive subjects of crisis in India since 2014. In December 2019, the Indian government passed the controversial Citizenship Amendment Act ('the CAA'). For the first time, India explicitly incorporated a religious test for citizenship despite asserting to have a secular constitution. This was received with great disappointment, anguish and eventually anxiety, as thousands participated in unprecedented protests across the country. The protestors were worried that – conjoined with the proposed National Register of Indian Citizens ('the NRIC'), which sought to enumerate all the citizens based on documentary evidence – the CAA would lead to mass disenfranchisement. These protests were first greeted by state disquiet, and then state repression.

The worries have been particularly profound because of the news from India's eastern state of Assam. From 2014 to 2019, the Indian Supreme Court supervised a citizen enumeration process called the National Register of Citizens ('the NRC') in the state, in the background of a long history of anti-immigrant sentiment. The final list of the NRC in August 2019 left out 1.9 million residents of the state. They now stand at the verge of statelessness, with only the right of appeal to the government instituted tribunals. By the time the CAA was passed, the stories from Assam – of arbitrary citizenship determination and the detention centres – were ubiquitous.

The Indian state has publicly framed the NRC in Assam and the proposed NRIC across India the state as ordinary citizenship determination procedures. It has also described the CAA as a policy of purely granting citizenship to the persecuted minorities from the country's neighbouring region. The official framing and justifications of the Assam NRC and CAA-NRIC tend to obscure the mechanisms and implications of these policies. This essay disputes these characterisations. It adopts a different set of vocabularies that we propose capture the full essence of the NRC, the NRIC and the CAA within the Indian citizenship regime.

We argue that that these policies – appreciated in their larger historical trajectory and full practical context – amount to citizenship denial and threaten citizenship revocation. By revocation of citizenship, we mean an involuntary loss of citizenship whether automatic or non-automatic (including lapse, withdrawal, nullification) that is not initiated by the person or their legal representative.<sup>1</sup> Revocation of citizenship is often interchangeably used with deprivation of citizenship in domestic law and international law. We refer to denial of citizenship as the non-attribution of citizenship status to a person or group who might otherwise be eligible under the previously existing regime.

We place the NRC in Assam and the CAA-NRIC in their legal, historical and political context. We describe their antecedents and legal mechanics. We also give an account of the

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<sup>1</sup> GLOBALCIT (2020), *Glossary on Citizenship and Electoral Rights*. [https://cadmus.eui.eu/bitstream/handle/1814/67362/RSCAS\\_GLOBALCIT\\_Glossary\\_2020.pdf](https://cadmus.eui.eu/bitstream/handle/1814/67362/RSCAS_GLOBALCIT_Glossary_2020.pdf). (consulted 24 July 2020)

arguments that important social and political actors have made across the spectrum of opinion. We show that a series of citizenship denial policies led up to the enactment of the CAA in 2019. The CAA has partially – and discriminatorily – made certain religious groups immune from citizenship denial, aggravating the impact on excluded groups. We argue that the procedural arbitrariness and legally unspecified safeguards in Assam’s NRC threaten citizenship revocation. We also argue that the cumulative operation of the CAA and the proposed NRIC threatens mass citizenship revocation. We argue that NRC and CAA-NRIC are dangerous schemes of citizenship revocation that can impact not only certain undocumented migrants but also make Indian citizens extremely vulnerable to citizenship revocation.

Section II provides the background of India’s citizenship regime. While the regime started as an inclusive one in 1950, we argue that the subsequent amendments in 1986 and 2003 amounted to citizenship denial. These amendments severely curtailed access to citizenship for undocumented immigrants and their children but did not plainly discriminate against any community. Section III discusses the historically evolving citizenship determination procedures in Assam. We argue that these procedures do not adequately appreciate the social context that hinders the availability of documentary proof particularly for vulnerable communities. The lack of fair and transparent citizenship determination procedures, and the weak institutional independence of the tribunals threaten citizenship revocation. Moreover, the incarceration of suspected foreigners already amounts to denial of rights associated with citizenship.

In Section IV, we turn our focus to the CAA 2019. The legislation facially grants citizenship to a section of undocumented immigrants that the previous amendments (discussed in Section II) had denied. We argue that by partially, selectively and discriminatorily removing the bar on access to citizenship, the CAA in fact entrenches and aggravates the ill effects of citizenship denial. We also argue that the cumulative operation of the proposed NRIC and the CAA at the national level threatens citizenship revocation.

## **II. Citizenship regime in India**

This section analyses the amendments in the Indian citizenship regime to argue that they have restricted access to citizenship, amounting to citizenship denial.

The Constituent Assembly framed the Indian Constitution from 1946 to 1949 in the throes of the unprecedented and tragic Partition of the country. The refugee crisis was thus the background of the Indian citizenship regime’s framing. The Constitution provided detailed qualifications of citizenship applicable at its commencement in 1950, including for the new immigrants. However, it did not entrench any specific regime for the time to come, leaving it for parliament to determine. The Constituent Assembly’s deliberations reflected an orientation towards a progressive regime. This was eventually manifested in the Citizenship Act that the Indian parliament enacted in 1955, which endorsed the *jus soli* conception of citizenship, and expansive naturalisation and registration routes to citizenship.<sup>2</sup>

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<sup>2</sup> Scholars have noted how the implementation of citizenship policies in the aftermath of the Partition discriminated against the Muslim citizens of the country. See Zamindar, V. F (2007), *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries, Histories*. Columbia University Press.

But overtime, the Indian citizenship regime has shifted towards a more exclusive and ethnic conception based on descent.<sup>3</sup> In 1986, parliament amended the Citizenship Act to deny citizenship to the persons born in India after 1 July 1987 without an Indian parent.<sup>4</sup> It justified this on the ground of the “influx of foreign nationals” and the objective of “preventing automatic acquisition of citizenship of India by birth”.<sup>5</sup>

The 2003 amendment to the Citizenship Act further extended this denial. It introduced the category of ‘illegal migrants’ defined as undocumented immigrants or foreigners without legal permission to stay in India.<sup>6</sup> The amendment barred ‘illegal migrants’ from any route to citizenship either through naturalisation or registration procedure. The impact of citizenship denial was even more severe for the children of ‘illegal migrants’. The amendment denied citizenship by birth to persons born in India after 2003 if even one of their parents is an ‘illegal migrant’.

Each of these amendments was driven by a heightening anxiety about the undocumented immigrants from Bangladesh. The anti-immigrant rhetoric has also increasingly taken a religious frame, with dominant political actors expressing worries about a demographic shift in favour of Muslims especially in eastern India.<sup>7</sup> The shift towards *jus sanguinis* was meant to create a disincentive for immigration from Bangladesh. But the citizenship denial at the heart of the 1986 and 2003 amendments also threatens to create a population in India that despite being born in the country is permanently excluded from citizenship. They clearly have a disproportionate impact on children born in India who cannot even make viable claims to the citizenship of any other country.

### III. Assam and the National Register of Citizens

The biggest concerns related to citizenship revocation and statelessness have emerged in Assam. While the controversy has older antecedents, the initiation of the NRC by the Indian Supreme Court in 2014 and the enactment of the CAA in 2019 has added further worrying dimensions to it.

#### *Public justifications*

Assam is an ethnically and religiously diverse province. According to the latest census, 61.47% of the state professes Hinduism and more than 34% are Muslims. 13% of the population falls under the Scheduled Tribes, which is a category that comes closest to the indigenous people. Approximately 30% of the population is Bengali speakers. These categories crisscross and overlap. Bengali speakers include both Hindus and Muslims, and numerous Muslim communities identify as Assamese speakers.

The state has had a long history of immigration, including Bengali migration that goes back to at least the early nineteenth century.<sup>8</sup> However, the issue became increasingly volatile in

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<sup>3</sup> Mitra, S. K. (2008), ‘Level Playing Fields: The Post-Colonial State, Democracy, Courts and Citizenship in India’ 9(3) *German Law Journal* 345.

<sup>4</sup> The Citizenship (Amendment) Act 1986.

<sup>5</sup> The Citizenship (Amendment) Act 1986, Statement of Object and Reasons.

<sup>6</sup> The Citizenship (Amendment) Act 2003.

<sup>7</sup> Gillan, M. (2002), ‘Refugees or infiltrators? The Bharatiya Janata Party and “illegal” migration from Bangladesh’ 26(1) *Asian Studies Review* 73, 86; Weiner, M. (1983), ‘The political demography of Assam’s anti-immigrant movement’ 9(2) *Population and Development Review* 279, 285-289.

<sup>8</sup> Baruah, S. (1994), *India Against Itself: Assam and the Politics of Nationality*. University of Pennsylvania Press 44-68.

the 1970's after the influx of refugees fleeing the Bangladesh war. Most of the refugees returned to Bangladesh after the end of the war.<sup>9</sup> But there remained a growing concern among many sections of the Assamese society – both Assamese speakers and the Scheduled Tribes – that this was not so. There was a heightening sentiment among them that the Bengali immigrants would dominate the politics of the state and threaten what they understood to be the indigenous culture of the state.

In late 1970's, the students came to spearhead the agitation for the disenfranchisement and deportation of Bengali 'illegal migrants'.<sup>10</sup> This culminated in an agreement – called the Assam Accord – between the various segments of the Assam agitation and the Indian government in 1985, with the latter committing itself to the deportation of migrants who entered the country after the formation of Bangladesh on or after 25 March 1971. As a balancing act, the Indian government introduced Section 6A in the Citizenship Act that provided a route to citizenship for all undocumented migrants that entered Assam before that date.

The public pressure had led the Indian government to establish a legal infrastructure to detect foreigners. In 1983, the Indian parliament passed the Illegal Migrants (Determination by Tribunals) Act (IMDT).<sup>11</sup> Alongside this, the state significantly expanded the Border Police that was empowered to identify suspected foreigners and refer them to the Foreigners Tribunals. The government constituted these tribunals as quasi-judicial bodies and not as traditional courts of law. Members – not judges – preside over the tribunals without any security of tenure. As the need for tribunals has increased, the government has simultaneously lowered the minimum qualifications for these members.<sup>12</sup>

Towards the end of the 1990's, a distinctly securitised discourse against Bengali Muslims started emerging. The most profound example of this was the report by the state's governor Lt Gen S.K. Sinha, who described Bengali immigration as a concerted Islamic infiltration that would compromise national security and proliferate Islamic terrorism. The religious framing of the immigration controversy has only become sharper with the rising political salience of the Bhartiya Janata Party (BJP) that now rules both the central and state governments.<sup>13</sup> The securitised rhetoric in Assam has been accompanied by numerous speculative assertions that the state is overrun by 'illegal migrants', despite the complete absence of any official or rigorous data.

### *Assam's National Register of Citizens*

The Indian Supreme Court has played a significant role in the immigration debate. In 2005 and 2006, the Court controversially struck down the IMDT Act.<sup>14</sup> The Court explicitly endorsed the anxiety about uncontrolled immigration and the threat of Islamic terrorism. It

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<sup>9</sup> Weiner, M. (1993), 'Rejected Peoples and Unwanted Migrants in South Asia' 28(34) Economic and Political Weekly 1741.

<sup>10</sup> Baruah, S. (1986), 'Immigration, Ethnic Conflict, and Political Turmoil--Assam, 1979-1985' 26(11) Asian Survey 1184.

<sup>11</sup> The Illegal Migrants (Determination by Tribunals) Act 1983.

<sup>12</sup> Indian Express (14 June 2019), *NRC deadline nearing: Criteria for Foreigners' Tribunals members changed*. <https://indianexpress.com/article/north-east-india/assam/nrc-deadline-nearing-criteria-for-foreigners-tribunals-members-changed-5779685/>. (consulted 25 June 2020)

<sup>13</sup> Gillian, M. (2002), 'Refugees or infiltrators? The Bharatiya Janata Party and "illegal" migration from Bangladesh' 26(1) Asian Studies Review 73.

<sup>14</sup> *Sarbananda Sonowal v. Union of India* (2005) 5 Supreme Court Cases 665; *Sarbananda Sonowal v. Union of India* (2007) 1 SCC 174.

noted that the IMDT Act had failed to identify large enough numbers of illegal migrants and placed the burden of proof on the suspected foreigner in tribunal proceedings.<sup>15</sup>

The most critical involvement of the Court was its initiation of the NRC in 2013.<sup>16</sup> The bench led by Chief Justice Gogoi bemoaned the ineffectiveness of the existing policies. It directed the update of the NRC, last prepared in 1951, which contained the particulars of all citizens of the state. The Court assumed the supervision of the NRC enumeration. In a series of executive-sounding orders, it approved the nature of mandated documentary evidence, verification procedures and deadlines.<sup>17</sup>

### *The threat of citizenship revocation*

With the Court's involvement, there was an unprecedented social and political consensus for the NRC. Most sections, including the Bengalis, saw in it a comprehensive resolution of the immigration controversy. However, numerous civil society organisations soon raised serious concerns as the NRC process started rolling out.

The biggest worry predictably was the unavailability of original government documents, many of which either were not maintained carefully or difficult to procure. Many members of the transgender community who had been disowned by their families were unable to submit documents in the absence of cards reflecting their preferred identities. Women, who are disproportionately illiterate and poor, were also vulnerable. Civil society organisations also raised serious concerns about the disparate treatment of what the NRC administration called 'original inhabitants', who were required to meet lower evidentiary requirements. The NRC administration included what it considered to be communities indigenous to Assam and reportedly excluded Muslim communities.<sup>18</sup>

The final NRC published on 31 August 2019 contained 31 million persons, leaving out 1.9 million residents of the state. All persons who have been excluded from the NRC now have a right to appeal to the Foreigners Tribunals. The Indian government has already increased the number of tribunals to 300, which will be hearing these appeals soon.

But these tribunals continue to suffer from the same institutional weaknesses. Human rights and civil society organisations have consistently noted that the tribunals have deviated from standard rules of evidence and procedure at the cost of due process. Recent studies also show a pattern of declaring persons foreigners on technical grounds like minor errors in spellings and dates.<sup>19</sup> This, combined with the fact that the burden of proof is on the individuals, has made tribunal proceedings exceedingly hard. There are also concerns that the absence of

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<sup>15</sup> M. Mohsin Alam Bhat, *Twilight Citizenship*. [https://www.india-seminar.com/2020/729/729\\_m\\_mohsin\\_alam\\_bhat.htm](https://www.india-seminar.com/2020/729/729_m_mohsin_alam_bhat.htm). (consulted 25 June 2020)

<sup>16</sup> *Assam Sanmilita Mahasangha v. Union of India* (2015) 3 SCC 1.

<sup>17</sup> The Supreme Court did this in a series of orders, including *Assam Sanmilita Mahasangha v. Union of India* (2019) 9 SCC 79; *Assam Public Works v. Union of India* (2017) SCC Online SC 1885; *Assam Public Works v. Union of India* (2018) SCC Online SC 3366; *Assam Public Works v. Union of India* (2018) 9 SCC 229; *Assam Public Works v. Union of India* (2018) SCC Online SC 1014; *Assam Public Works v. Union of India* (2019) 9 SCC 70.

<sup>18</sup> Scroll (25 July 2019), *How many times will NRC test your Indian citizenship? Depends on which community you belong to*. <https://scroll.in/article/931646/how-many-times-will-nrc-test-your-indian-citizenship-depends-on-which-community-you-belong-to>. (consulted 24 June 2020)

<sup>19</sup> Amnesty International (20 November 2019), *Designed to Exclude: How India's Courts are Allowing Foreigners Tribunals to Render People Stateless in Assam*. <https://amnesty.org.in/wp-content/uploads/2019/11/Assam-Foreigners-Tribunals-Report-1.pdf>. (consulted 24 June 2020)

adequate institutional independence will allow the state to influence tribunal members in declaring people foreigners.

The combination of all these factors – the social and bureaucratic context, unavailability of documentary proof, acute economic vulnerability, and procedural and institutional weaknesses of the tribunals – place the individuals subject to the NRC procedures under an extreme threat of citizenship revocation. Thus, while the Indian state – the government and the Supreme Court – has framed these as citizenship determination procedures, these factors make ordinary citizens vulnerable to the revocation of their legally-held citizenship status.

At present, the formal mechanism in India only provides for revocation of citizenship of persons who are citizens by naturalisation or registration.<sup>20</sup> The grounds for revocation include fraud in registration or naturalisation, disloyalty towards the Constitution of India, contact with the enemy during war, certain crimes and residing outside India continuously for seven years.<sup>21</sup> The formal mechanism also specifies that Indian citizenship automatically lapses upon acquisition of citizenship of another country.<sup>22</sup>

The formal revocation mechanism does not apply to anyone who is an Indian citizen by birth or descent. The practical mechanisms of the NRC extend this domain of revocation – albeit informally and by implication – to persons who may be legally Indian citizens but fail to succeed in the bureaucratic and tribunal proceedings.

### *Implications of Assam's NRC*

There is also a worrying degree of uncertainty about the status of those who are excluded and fail in their appeals.<sup>23</sup> They will have the right to appeal to higher courts, including the Supreme Court, but the expensive appellate procedures are likely to exclude most people. Excluded persons may end up in detention centres as numerous persons declared foreigners by the tribunals have.<sup>24</sup>

India is yet to work out – nor has it shown any inclination to work out – any diplomatic arrangement with Bangladesh. The fact that many declared foreigners may be born in India will add to the unlikelihood of this diplomatic arrangement. Moreover, the Indian government maintains that Assam's NRC is an internal matter for India and will have no consequence for Bangladesh.<sup>25</sup> The government of Bangladesh has also maintained the same position.<sup>26</sup> Consequently, any deportation of declared foreigners is highly doubtful.

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<sup>20</sup> The Citizenship Act 1955, section 10.

<sup>21</sup> The Citizenship Act 1955, section 10(2).

<sup>22</sup> The Citizenship Act 1955, section 9. See also, GLOBALCIT (2017), *Global Database on Modes of Loss of Citizenship*. <https://globalcit.eu/loss-of-citizenship/>. (consulted 6 August 2020)

<sup>23</sup> Amnesty International (31 August 2019), *Uncertain Destiny For Millions In Assam Post NRC* <https://amnesty.org.in/news-update/uncertain-destiny-for-millions-in-assam-post-nrc/>. (consulted 23 June 2020)

<sup>24</sup> Assam has also been claiming to expand the existing network of detention centres. Until now, six detention centres have been in operation. These centres are being operated from within jail compounds without any adequate facilities. Despite the extensiveness of the pleas by civil society in the last couple of years, the Court ultimately only passed a narrow order of limiting the detention, first to 3 years and more recently to 2 years. See *In Re: Contagion of COVID 19 Virus in Prisons* (2020) Suo Moto Writ Petition (C) No. 1/2020.

<sup>25</sup> The Hindu (2 March 2020), *NRC will not impact Bangladesh, Foreign Secretary Shringla tells Dhaka*. <https://www.thehindu.com/news/international/nrc-wont-have-implications-on-bangladesh-says-foreign-secretary-shringla/article30962241.ece>. (consulted 11 July 2020)

<sup>26</sup> NDTV (19 January 2020), *Citizenship Law Unnecessary But Is India's Internal Matter: Bangladesh PM*. <https://www.ndtv.com/india-news/bangladesh-prime-minister-sheikh-hasina-says-citizenship-amendment-act->

The Supreme Court's aversion to resolve some key legal questions has further intensified the threat of citizenship revocation. During the documentation process, the NRC administration decided not to apply birthright citizenship – right of every person born in India before 1 July 1987 to qualify as a citizen – in the case of Assam. It argued that Assam, by virtue of Section 6A of the Citizenship Act, was an exception and only those born in Assam before 25 March 1971 and their descendants would count as citizens. Consequently, thousands of people born between these two dates were excluded from the NRC enumeration despite meeting the legal definition of a citizen. Rather than legally assessing this overtly narrow – and rather implausible – reading of India's citizenship laws before the enumeration, the Court postponed deciding it. Now the excluded persons will remain in a state of uncertainty and at the risk of citizenship revocation until an authoritative judicial ruling.

In all likelihood, the eventual effect of the exclusion from the NRC may be the denial of the basic rights associated with citizenship like the right to vote, the freedom of movement and socioeconomic rights. Potentially, numerous individuals may also lose their citizenship status altogether, amounting to citizenship revocation.

While there is no official record of the ethnicity and religious identity of the persons excluded from the NRC, unofficial sources suggest that a sizable number include Bengali and non-Bengali Hindus.<sup>27</sup> Arguably in response to this, the Indian government sharpened its efforts to introduce an amendment to the Citizenship Act in order to make non-Muslims immune from citizenship revocation, and introduced the CAA in December 2019.<sup>28</sup>

#### **IV. Citizenship Amendment Act 2019 and the National Register of Indian Citizens**

The Indian state introduced the CAA 2019 as a mechanism to narrow down the scope of citizenship denial under the citizenship amendments that we discussed in Section II and citizenship revocation in Assam as discussed in Section III. As we show in this section, it was a culmination of a series of policies seeking to render immune Hindu and other non-Muslim undocumented immigrants. While the government has asserted that it only grants citizenship, the CAA in fact keeps the citizenship denial framework intact with Muslim undocumented immigrants as its main victims.

##### *Substance of CAA 2019*

The CAA redefines the category of 'illegal migrants' under the Citizenship Act to exclude any Hindu, Sikh, Buddhist, Jain, Parsi or Christian from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31 December 2014.<sup>29</sup> In other words, it carves out an exception for the specified non-Muslim communities and grants them immunity from the existing citizenship denial regime. The CAA also creates an accelerated naturalisation procedure for them. They would be eligible for naturalisation after residing in

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[nrc-were-not-necessary-but-is-2166346](#). (consulted 11 July 2020). See also, Scroll (18 July 2019), *Bangladesh government expresses concerns over Assam's NRC process for first time*. <https://scroll.in/latest/930979/bangladesh-government-expresses-concerns-over-assams-nrc-process-for-first-time>. (consulted 11 July 2020)

<sup>27</sup> Sabrang India (17 September 2019), *Over 7 lakh Hindus among those excluded from the NRC, leaked data suggests*. <https://sabrangindia.in/article/over-7-lakh-hindus-among-those-excluded-nrc-leaked-data-suggests>. (consulted 24 June 2020)

<sup>28</sup> The Times of India (11 December 2019), *'Five lakh Bengali Hindu NRC rejects will get citizenship'*. <https://timesofindia.indiatimes.com/india/five-lakh-bengali-hindu-nrc-rejects-will-get-citizenship/articleshow/72465093.cms>. (consulted 24 June 2020)

<sup>29</sup> The Citizenship (Amendment) Act 2019, clause 2.

India for five years as compared to the eleven years for other groups.<sup>30</sup> It also permits members of the specified communities to avail citizenship retroactively from the date of the entry into India. Thus by implication, it restricts citizenship denial flowing from the previous amendments and the threat of citizenship revocation only to Muslim undocumented immigrants and their children.

The Indian government has claimed that the CAA is purely for granting citizenship to the specified groups, and does not deny citizenship to any Indian resident. But this underplays the fact that the CAA is only a partial redressal of the citizenship denial regime. The undocumented immigrants not covered under the CAA continue to remain ‘illegal migrants’ facing denial of citizenship.

Apart from being a partial redressal of existing citizenship denial, the CAA is also discriminatory. The CAA explicitly introduces discrimination based on religion into the otherwise secular Indian citizenship regime. The government has argued that the amendment is based on the concern for minorities facing religious persecution in India’s neighbourhood. But it has provided no justification for excluding Muslim minorities like Ahmadis and Hazaras who continue to face religious persecution in India’s neighbouring countries. The law also excludes communities who face persecution – based on religion and other grounds – in China, Sri Lanka, Myanmar and other neighbouring countries. This has led many commentators to argue that the CAA violates the Indian Constitution’s requirement of non-arbitrariness and non-discrimination.<sup>31</sup> They have also argued that the CAA goes against the fundamental secular ethos and pluralistic foundations of the Constitution.<sup>32</sup>

The CAA is in fact the culmination of a number of previous policies that sought to carve out non-Muslims from the legally mandated citizenship denial.<sup>33</sup> The Bharatiya Janata Party (‘the BJP’) government in 2004 created favourable provisions for “minority Hindus with Pakistan citizenship”, thereby carving out the first exception in the citizenship denial regime.<sup>34</sup> As soon as the BJP came back to power in 2014, it concretised these exceptions for non-Muslim migrants in several steps. It amended the immigration rules in 2015 and 2016 to exempt undocumented non-Muslim migrants from India’s neighbouring countries who had faced religious persecution. Consequently, anyone from these communities entering India without valid documents did not face any penal consequences.<sup>35</sup> In 2018, the government regularised the entry and stay of persons belonging to these communities by granting them long term visas on the ground that they seek to permanently settle in India.<sup>36</sup> Muslim undocumented

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<sup>30</sup> The Citizenship (Amendment) Act 2019, clause 6.

<sup>31</sup> Bhat, M. M. A. (2019), ‘The Constitutional Case against the Citizenship Amendment Bill’ 54(30) Economic and Political Weekly 12. See also, Ahmed, F. (2020), ‘Arbitrariness, subordination and unequal citizenship’ Indian Law Review 1-17.

<sup>32</sup> Jayal, N. (2017), *The 2016 Citizenship Amendment Bill consolidates a trend towards a majoritarian and exclusionary concept of Indian citizenship*. <https://caravanmagazine.in/vantage/2016-citizenship-amendment-bill-majoritarian-exclusionary>. (consulted 24 June 2020)

<sup>33</sup> The existing regime on citizenship consists of interactions among several statutes. These statutes also have a string of orders and rules that govern their application. See, The Citizenship Act, 1955, the Foreigners Act, 1946, the Passport (Entry into India) Act, 1920, and the Registration of Foreigners Act, 1939.

<sup>34</sup> The Gazette of India (28 February 2004), *Notification*. [http://egazette.nic.in/WriteReadData/2004/E\\_110\\_2011\\_028.pdf](http://egazette.nic.in/WriteReadData/2004/E_110_2011_028.pdf). (consulted 12 July 2020)

<sup>35</sup> The Gazette of India (7 September 2015), *Notification*. <http://egazette.nic.in/WriteReadData/2015/165755.pdf>. (consulted 26 June 2020); The Gazette of India (18 July 2016), *Notification*. <http://egazette.nic.in/WriteReadData/2016/170822.pdf>. (consulted 26 June 2020)

<sup>36</sup> This mechanism allowed these communities among other things residency permits, access to education, employment entitlements and limited free movement. See, Ministry of Home Affairs, Government of India



immigrants remained excluded from this regime. The CAA 2019 incorporates these changes into the country's citizenship law, formalising citizenship denial only for Muslim undocumented immigrants and their children.

### *Implications of the CAA*

The Indian government has argued that the CAA will not lead to citizenship revocation. This overlooks the fact that the parallel processes of the NRIC and the National Population Register ('the NPR'), along with the CAA threaten citizenship revocation that makes Muslims disproportionately vulnerable.

The 2003 amendment to the Citizenship Act empowered the government to create the NRIC as an enumeration of all the citizens in the country.<sup>37</sup> Under the rules,<sup>38</sup> the government is first meant to create the NPR to record all the residents in the country. It is subsequently meant to enumerate them as citizens or otherwise based on the documentary evidence they provide. The NRIC thus is an Assam-NRC extended to the national level.

The government has framed the NRIC as a citizenship determination exercise that will filter out foreigners. But the lack of access to government documents heightens the vulnerability of the socially disadvantaged communities as seen in Assam. The mechanics of the NRIC raise concerns that the local government officers tasked with implementing it may perceive Muslims as foreigners and subject their documentary evidence to wider scrutiny. Consequently, some commentators have argued that the NRIC might have even graver consequences than Assam's NRC since the determination of citizenship is left to the unguided discretion of local executive authorities.<sup>39</sup>

This problem is further heightened by the fact that prominent state officials have publically associated the NRIC and the CAA. In fact, Union Home Minister Amit Shah has consistently linked the two in his political speeches.<sup>40</sup> He was reported to have said that these policies will be implemented to identify and deport 'infiltrators' and 'termites'.<sup>41</sup> There is a fear that this association – in the context of politically divisive speech – may encourage officials implementing the NRIC assume that Muslims are more likely to be foreigners.

Moreover, the non-Muslim individuals who end up being excluded from the NRIC will have the option, at least theoretically, to apply for citizenship under the CAA. But this route will

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(2018), *Long Term Visas*. [https://www.mha.gov.in/PDF\\_Other/AnnexVI\\_01022018.pdf](https://www.mha.gov.in/PDF_Other/AnnexVI_01022018.pdf). (consulted 22 June 2020)

<sup>37</sup> The Citizenship Act 1955, section 14A (2).

<sup>38</sup> Ministry of Home Affairs (10 December 2003), *Notification*. [https://censusindia.gov.in/2011-Act&Rules/notifications/citizenship\\_rules2003.pdf](https://censusindia.gov.in/2011-Act&Rules/notifications/citizenship_rules2003.pdf). (consulted 21 June 2020)

<sup>39</sup> Mander, H. & M.A. Bhat (31 January 2020), *This land is mine*. <https://in.boell.org/en/2020/01/31/land-mine>. (consulted 26 June 2020)

<sup>40</sup> Twitter (1 May 2019), *Amit Shah*. <https://twitter.com/amitshah/status/1123581776415399937>. (consulted 21 June 2020). See also, Scroll (20 December 2019), *Who is linking Citizenship Act to NRC? Here are five times Amit Shah did so*. <https://scroll.in/article/947436/who-is-linking-citizenship-act-to-nrc-here-are-five-times-amit-shah-did-so>. (consulted 21 June 2020)

<sup>41</sup> Reuters (12 April 2019), *Amit Shah vows to throw illegal immigrants into Bay of Bengal*. <https://www.reuters.com/article/india-election-speech/amit-shah-vows-to-throw-illegal-immigrants-into-bay-of-bengal-idUSKCN1ROIYD>. (consulted 12 July 2020). See also, Firstpost (11 April 2019), *BJP will remove 'every single infiltrator' from India*. <https://www.firstpost.com/politics/bjp-will-remove-every-single-infiltrator-from-india-amit-shah-says-at-rally-in-telanganas-ranga-reddy-promises-nrc-implementation-6429961.html>. (consulted 21 June 2020)

be completely unavailable for Muslims. Thus, the CAA-NRIC mechanism makes Muslims disproportionately vulnerable to citizenship revocation.

### *Public response and legal challenges*

Seven state assemblies passed resolutions against the CAA and called for its repeal as a discriminatory legislation.<sup>42</sup> These and other states also passed resolutions against the implementation of the NPR.<sup>43</sup> The states of Kerala and Rajasthan have also joined the constitutional challenge before the Supreme Court.<sup>44</sup>

More than 140 petitions have been filed before the Indian Supreme Court challenging the constitutional validity of the CAA primarily based on articles 14 and 21. The OHCHR also filed an intervening application listing numerous international human rights law grounds against the CAA.<sup>45</sup> The Supreme Court is yet to list the matter to be heard on merits.<sup>46</sup> The Court has repeatedly rejected any pleas to stop the implementation of the CAA while it examined the constitutional validity of the legislation. There is some disquiet about the attitude of the court. For instance, a prominent commentator has argued that an exclusive reliance on the court may be misplaced.<sup>47</sup>

Meanwhile, one state government led by the BJP was reported to have identified around 32,000 persons that it claimed belonged to the persecuted minorities under the CAA.<sup>48</sup> Curiously, this was even before the central government passed rules for implementation of the legislation. There was also an incident of slum demolition in the city of Bengaluru on the false suspicion that illegal migrants were residing there.<sup>49</sup> These events have further aggravated the concerns among the vulnerable communities about the impending policies. The fact that some states have already started establishing detention centres has not done any favours to the public opinion. The state government of Maharashtra assured that it would not build detention centres but it was directed by the central government to set up a temporary

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<sup>42</sup> Rodrigues, V. (2020), 'State Assembly Resolutions against the CAA' 55(5) Economic and Political Weekly. See also, The Times of India (6 February 2020), *Madhya Pradesh becomes sixth state to pass resolution against CAA*. <https://timesofindia.indiatimes.com/india/madhya-pradesh-becomes-sixth-state-to-pass-resolution-against-cao/articleshow/73972009.cms>. (consulted 24 June 2020)

<sup>43</sup> Scroll (13 March 2020), *Delhi: Resolution against NPR passed in Assembly, AAP claims it will harm majority community too*. <https://scroll.in/latest/956086/delhi-resolution-against-npr-moved-in-assembly-claims-it-will-harm-majority-community-too>. (consulted 22 June 2020)

<sup>44</sup> The Hindu (16 March 2020), *Rajasthan moves Supreme Court against CAA*. <https://www.thehindu.com/news/national/other-states/rajasthan-moves-supreme-court-against-cao/article31085031.ece>. (consulted 21 June 2020)

<sup>45</sup> Al Jazeera (5 March 2020), *India defends CAA after UN rights chief approaches Supreme Court*. <https://www.aljazeera.com/news/2020/03/india-defends-cao-rights-chief-approaches-supreme-court-200303114701274.html>. (consulted 9 July 2020)

<sup>46</sup> The hearings were scheduled to resume in mid-March but have been affected since by the Covid-19 pandemic.

<sup>47</sup> Indian Express (12 December 2019), *The morning after CAB: It will be a mistake to rely just on Supreme Court*. <https://indianexpress.com/article/opinion/columns/the-morning-after-citizenship-amendment-bill-6162497/>. (consulted 22 June 2020)

<sup>48</sup> Hindustan Times (14 January 2020), *Under CAA, 32,000 refugees identified in UP so far: Minister*. <https://www.hindustantimes.com/india-news/under-cao-32-000-refugees-identified-in-up-so-far-minister/story-bkntgbARFh4w4spSWAidK.html>. (consulted 23 June 2020)

<sup>49</sup> India Today (19 January 2020), *Bengaluru Police demolishes makeshift houses of migrants as CAA-NRC debate rages on*. <https://www.indiatoday.in/india/story/bengaluru-police-demolishes-makeshift-houses-of-migrants-as-cao-nrc-debate-rages-on-1638322-2020-01-19>. (consulted 22 June 2020)

facility.<sup>50</sup> The state of Karnataka opened its first detention centre for ‘illegal migrants’ in December 2019.<sup>51</sup> The High Court of Karnataka recently held that ‘illegal migrants’ on bail shall also be kept in the detention centre till further orders of the court or deportation.<sup>52</sup>

There were widespread and spontaneous protests across the country against the CAA-NRIC. These were probably the largest protests of the kind in India since independence until the Covid-19 pandemic halted them for all practical purposes.<sup>53</sup> The civil society has also mobilised against the CAA-NRIC and led the discourse by educating and rallying people.<sup>54</sup> Assam also witnessed a large scale mobilisation against the CAA. Assam-based protestors saw in the CAA the nullification of the Assam Accord. They have expressed a growing distrust with the new citizenship law since they consider it antithetical to the preservation of their linguistic, ethnic and cultural identity.<sup>55</sup> Since April 2020, several young anti-CAA protest leaders inside and outside Assam have been detained under stringent laws.<sup>56</sup>

## V. Conclusion

We have argued that despite the state’s framing of the CAA as purely a policy of granting citizenship, it entrenches and aggravates citizenship denial under the existing Indian law. Operating simultaneously with Assam’s NRC and the proposed NRIC, it threatens citizenship revocation for vulnerable groups, especially Muslims. This arbitrary and discriminatory system threatens to subject innumerable people to arcane legal procedures that will compromise the security of citizenship status.

From the standpoint of the Indian Constitution, these developments radically diverge from inclusive and secular grounds of citizenship. Moreover, the absence of any progressive refugee policy, or laws securing the rights and entitlements of undocumented immigrants endanger the social and economic well-being of those vulnerable to these procedures.

The public justifications and characterisation of these procedures in India resonate with the national security rhetoric often invoked in the West for denationalisation. Racial, ethnic and religious minorities including Muslims are especially vulnerable to citizenship revocation in the West. The Indian context, which although seems similar, is exceedingly worse due to en masse operation of revocation processes along with lack of institutional independence, arbitrary official discretion and disregard for the rule of law. The uncertainty of citizenship

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<sup>50</sup> The New Indian Express (5 March 2020), *No detention centre coming up in Maharashtra: Minister Anil Deshmukh*. <https://www.newindianexpress.com/nation/2020/mar/05/no-detention-centre-coming-up-in-maharashtra-minister-anil-deshmukh-2112750.html>. (consulted 22 June 2020)

<sup>51</sup> The Times of India (24 December 2019), *Karnataka opens its first detention centre for illegal immigrants*. <https://timesofindia.indiatimes.com/city/bengaluru/karnataka-opens-its-1st-detention-centre-for-illegal-immigrants/articleshow/72946908.cms>. (consulted 22 June 2020)

<sup>52</sup> LiveLaw (7 June 2020), *Keep Illegal Migrants In Foreigners Detention Centres Even After Grant Of Bail: Karnataka HC Issues Guidelines [Read Order]*. <https://www.livelaw.in/top-stories/keep-illegal-migrants-in-foreigners-detention-centres-even-after-grant-of-bail-karnataka-hc-157961>. (consulted 23 June 2020)

<sup>53</sup> BBC (24 March 2020), *Shaheen Bagh: Coronavirus clears long-running India citizenship protest*. <https://www.bbc.com/news/world-asia-india-52015464>. (consulted 22 June 2020)

<sup>54</sup> The Wire (31 December 2019), *Civil Society, Political Groups Come Together to Protest Against CAA*. <https://thewire.in/rights/civil-society-political-groups-come-together-to-protest-against-caa>. (consulted 22 June 2020)

<sup>55</sup> Sarma, C.K. & O. B. Hazarika (2020), ‘Anti-CAA Protests and State Response in Assam: Identity Issues Challenge Hindutva-based Politics’ 14(55) EPW Engage.

<sup>56</sup> Scroll (30 May 2020), *Delhi violence: Pinjra Tod member Natasha Narwal booked under UAPA*. <https://scroll.in/latest/963353/delhi-violence-pinjra-tod-member-natasha-narwal-booked-under-uapa>. (consulted 23 June 2020)

status and the serious threat of citizenship revocation haunts the future of millions of vulnerable Indians. The categories of exclusion in the citizenship regime may lead to mass statelessness in India.