

SYMPOSIUM ON PROTEST AND LEGAL MOBILIZATION: OF BEING WITH AND AGAINST THE LAW – STORIES FROM SHAHEEN BAGH, 2019-2020



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Revolt does not sprout only out of misery: it is also born from the love of life, from the desire to build a more beautiful existence. Creativity takes the form of a vitality that speaks of the pleasure of revolution.--Julia Ramirez Blanco

It was indeed the love of life and the desire for a more beautiful existence that led several elderly Muslim women and some men to gather together on a late winter evening in December 2019 to protest [The Citizenship \(Amendment\) Act, 2019](#) ('CAA'). CAA expedites the process of applying for Indian citizenship for certain religious minorities (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians) fleeing religious

persecution from Afghanistan, Bangladesh or Pakistan who entered India on or before the specified cut-off date. The government justified CAA as a protective measure intended for the protection of religious minorities from neighbouring countries, as the incumbent Prime Minister [celebrated its enactment](#) as a ‘landmark day’ for the country and its ‘ethos of compassion and brotherhood’. [Scores of petitions](#) challenging the constitutionality of CAA, however, were filed before the Supreme Court of India between 2019-2020. Many, such as [Bhat](#), [Chandrachud](#) and [Ahmed](#), argue that it violates the constitutional guarantee of equality as it excludes Muslims from this accelerated route to citizenship. [Some](#) also believe that it threatens the secular ethos of the [Constitution of India](#) by introducing religion as a criterion in the determination of citizenship. Others question why it addresses only religious and no other forms of persecution and why it does not include other vulnerable communities from neighbouring countries, such as Tamils in Sri Lanka and Rohingyas in Myanmar, in view of its oft-quoted legislative rationale ([Common Cause 2020](#)).

Significantly, it was [only months](#) before the enactment of CAA that the [National Register of Citizens](#) (‘NRC’) was concluded in August 2019. This citizenship verification exercise in Assam (a state in northeast India), aimed ostensibly at tackling the issue of illegal migration, [rendered](#) those who could not produce the relevant documents ‘[illegal migrants](#)’ under The Citizenship Act, 1955, excluded nearly two million people from the ambit of Indian citizenship and produced the world’s largest group of stateless persons. This devastating outcome left a [deep imprint](#) on people’s minds and made them fear incarceration in detention centres being built for those without sufficient documentation proving their citizenship. The government [subsequently proposed](#) to extend NRC to the rest of the country through the [National Population Register](#) (‘NPR’), intended to be an exhaustive list of Indian citizens which would empower the government to filter ‘refugees’ from ‘*ghuspaithiye*’ (‘infiltrators’). The [successful implementation](#) of NPR would force Indians into the ‘esoteric alleys of documentary proof’ and subject them to unbridled executive discretion in the conferral of citizenship. As of writing this post, a drive to ‘[identify and deport](#)’ illegal immigrants is being carried out in Gurugram, a city just southwest of New Delhi, in compliance with orders issued by the Ministry of Home Affairs, as hundreds of migrant workers from Assam and West Bengal have been detained in detention centres for the verification of documents.

On 13 December 2019, a day after CAA was passed as an Act of Parliament, hundreds of students from the university of Jamia Millia Islamia (‘JMI’) in New Delhi [gathered outside](#) its premises to protest. This gathering was [forcefully impeded](#) by the police as students were beaten up, lathi-charged and teargassed. Two days later, on 15 December, the protests by the students of JMI and Aligarh Muslim University (‘AMU’), in the state of Uttar Pradesh (a state in northern India), were [likewise shut down](#) by police officials with brutal and disproportionate force. The disturbing incidents of police brutality against students and the ‘[crisis of citizenship](#)’ produced by the CAA-NRC-NPR

triad led around 10 to 15 women and some men to [organise an indefinite](#), peaceful sit-in later that evening. The protest site, initially a small patch on the G D Birla Marg, gradually evolved into a kilometre-long compound covered in protest art and popularly became known as Shaheen Bagh (named after the Muslim neighbourhood situated adjacent to it). Unflinching in the face of episodic police violence and the biting winter cold, the protestors at Shaheen Bagh persevered in their resistance until the protest site was [forcefully evacuated](#) in March 2020, in view of the nationwide lockdown enforced by the government owing to COVID-19.

Law as ‘Sword’ and ‘Shield’: Tales of Legal Mobilisation from Shaheen Bagh

The universe of law and politics encompasses a multitude of worlds – of peace and conflict, oppression and emancipation – of which the story of Shaheen Bagh is but one. And the story of legal mobilisation at Shaheen Bagh is as much one of violence as it is of resistance. Law, as a social institution, is [necessarily indeterminate and embedded](#) within social relations. In the Indian context, it is shaped disproportionately by powerful social, economic and political forces – class, gender, caste, religion and ethnicity, among others – that perpetuate structural inequalities. ‘Legal mobilisation’ is [both](#) an analytical concept and a practice, conceptualised differently by those writing on it. While [some](#) view it as a means of pursuing social change through legal norms, discourse or symbols, [others](#) focus on the use of litigation and other formal legal mechanisms to effect such change. In this analysis, I approach legal mobilisation as [context-dependent](#) accounts of how people mobilise the law and the language of rights to advocate for social change. Such an approach does not view law as merely an instrument to effect change but regards it as both a [means](#) and an [end](#) in itself and is rooted in the legal consciousness of [informal](#) and [formal actors](#). The following discussion examines the mobilisation of law, as ‘sword’ and ‘shield’ in the anti-CAA protests of 2019-2020, focusing on Shaheen Bagh.

Law as Sword: Freedom of Peaceful Assembly Under Siege

The idea and praxis of the freedom of assembly is a [valued right](#) of individuals as well as a form of collective political expression in India. The expression of democratic dissent in the country is protected under articles 19(1)(a) and 19(1)(b) of the Constitution, which guarantee respectively the rights to freedom of speech and expression and the freedom to assemble peaceably and without arms. These may collectively be understood as protecting Indian citizens’ right to protest. This right to protest was put [under siege](#) as the state attempted to quell the protests against CAA. The protests in Uttar Pradesh, following the police brutality against the students of JMI and AMU, were met with sadistic barbarity as [section 141](#) (barring assemblies of five or more persons under specified circumstances) of The Code of Criminal Procedure, 1973 was arbitrarily imposed in the state. At least 30 people were killed, scores more were injured and hundreds were arrested in the [states](#) governed by the ruling party. In Uttar

Pradesh [alone](#), more than 600 people were detained under the garb of ‘preventive action’. Internet services were also [suspended](#) across [major](#) cities in the state, as well as in other parts of the country. The wrath of the law was [overwhelmingly](#) borne by Muslim protestors as they were rampantly arrested under the charge of [sedition](#) under the Indian Penal Code, 1860.

The police was also [deeply complicit](#) in the communal riots of February 2020 in northern Delhi wherein Muslim neighbourhoods were targeted by extremist Hindu-right groups. More than 50 people, [mostly Muslims](#), were killed and the savagery [stretched on for days](#) as hundreds of homes and shops were set on fire by vicious mobs. The police acted with [utmost impunity](#) as it actively participated in assault, murder, arson and the destruction of religious places of worship. Spates of student arrests on multiple criminal charges, including for committing ‘[terrorist act\[s\]](#)’ under the Unlawful Activities (Prevention) Act, 1967, [followed](#) this violence. Though the [Delhi High Court chided](#) the state in its order of student activist Devangana Kalita’s arrest by deciding that the state ‘blurred the line between the constitutionally guaranteed ‘right to protest’ and ‘terrorist activity’, the Supreme Court allowed the [petition](#) of Amit Sahni, who complained that the Shaheen Bagh protest blocked several important roads used by daily commuters travelling in the area. The apex court held that though dissent and democracy go hand in hand, it cannot entail an indefinite occupation of public spaces, especially when it detracts the public.

Despite the disproportionate use of force by the police, the court deferred to the standards of reasonability and proportionality as it reiterated that the very Article 19 which protects the right to protest is also one which subjects it to ‘reasonable restrictions’ (Article 19(2)) in view of maintaining ‘public order’ as well as the ‘sovereignty and integrity’ of the country ([Amit Sahni v. Commissioner of Police & Ors.](#)).
Law as Shield: A Source of Citizenship Consciousness

On 26 November 1949, the Constituent Assembly in New Delhi, on behalf of ‘We, the People of India’ solemnly resolved to constitute India into a secular, democratic republic ([Constitution of India](#)). Almost 70 years later, in the same city, a thirty-five feet tall iron and mesh map of India was erected at Shaheen Bagh with the words ‘We, the people of India, reject CAA-NPR-NRC’ inscribed on it. The Constitution of India was significantly influential in shaping the protestors’ interpretation of CAA and solidifying their resistance against it. The setting up of libraries at the protest site and conducting informational sessions about the Constitution, Indian citizenship law and NRC led to [increasing awareness and understanding](#) amongst people about the implications of CAA, the ill-effects of NRC in Assam and NPR. As a ‘performative text’, a ‘historical legacy of ideas and icons integral to the national imagination’ and a ‘source of citizenship consciousness’, the Constitution became one of the most [powerful symbols](#) of the Shaheen Bagh protest.

The protestors embraced the Constitution with an unprecedented affective intensity as they engaged in mass readings of its Preamble, held up its copies in sit-ins and rallies and displayed posters with the text of the Preamble [emblazoned](#) on them. The creative reconfiguration and profusion of legal symbols and the sincerity with which they were [invoked](#) conveyed the protestors' faith in their power to shield them, even when they did not. The Constitution served as a 'legitimising touchstone' for the protest, for when the government unjustifiably condemned the sit-in for breaking the law, the protesters stressed their [fidelity](#) to the constitutional ideals of equality, secularism and democracy. The Constitution was [perceived](#) to be under threat by the protestors, who considered it their civic duty to defend it against the political leadership. 'Samvidhan Bachao' ('Save the Constitution') was a common poster and slogan at Shaheen Bagh, as were pictures of the Preamble and [Dr. B.R. Ambedkar](#).

The people of Shaheen Bagh lay claim over the Constitution and declared it their own. The Constitution [empowered](#) elderly Muslim women, students and minority citizens to voice themselves and stake a claim to citizenship. Through civic engagement and collective protest, Shaheen Bagh held the state to account, exhorting the ruling political regime to remain loyal to constitutional values and [avowed](#) the Constitution as belonging to the commons. Through their conversations, discussions, performances and art, the protestors generated the vision of a new India in which questioning the government, working together as citizens and challenging discrimination and hatred through peaceful ways was the [new normal](#). The protest of Shaheen Bagh preserved the possibility of inclusive citizenship against a state [committed](#) to make it limited and exclusionary.

Towards 'the Horizon of the Future'

In recent times, spurts of meaningful protests are increasingly observable across the world which share neither a history of prior organisation nor a collective identity but a discourse which [critiques](#) the current condition and propagates a shared utopic vision of an alternative world. Shaheen Bagh has been referred to as an 'interrupted future', having laid the [groundwork](#) for the 'horizon of the future'. The law served as both sword and shield in the story of Shaheen Bagh, as it hurt, yet healed. It was used to inflict illegal and unjustified force, what Baxi terms as '[surplus repression](#)', by the Indian state as it mercilessly quashed political dissent in the anti-CAA protests. Still the law enlivened collective protest and the reclamation of citizenship at Shaheen Bagh as the protestors physically and discursively mobilised the law to resist the politico-legal implications of CAA and articulate their vision of a peaceful and inclusive regime of Indian citizenship. Attending to this duality of law, in that it [both](#) enables and coerces collective action, can contribute to a more complex and theoretically informed understanding of the relation between protest and legal mobilisation.