

CITIZENSHIP TANGLE

The NRC in Assam doesn't just violate human rights of millions – it also breaks international law

India has defaulted on its international obligations by interning people in detention centres and depriving them of their right to nationality.

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Money Sharma/AFP

More than a year since the final list of [Assam's National Register of Citizens](#) was released on August 31, 2019, the government has [neither formally notified it nor issued orders to reject it](#). This has left the 1,906,657 excluded persons and their families in a state of excruciating uncertainty. Without the orders, they cannot appeal against their exclusion.

The government defends the National Register of Citizens as a mechanism to identify undocumented migrants, particularly Bangladeshis, but at the diplomatic level, it [maintains that the register is a purely internal matter](#). Operating detention centres in a [legal vacuum](#), it interned

thousands of people declared as foreigners. And had it not been for [successive court orders](#), those people would still be under detention.

If the government continues down its reckless path, millions of people – rendered stateless and at risk of indefinite detention – will be deprived of their human rights. Taking a grave view of the NRC process, [United Nations experts expressed concern](#) over its human rights implications in May 2019. Five months later, in August 2019, [Genocide Watch expressed alarm](#) at the ethnically-driven deprivation of nationality for millions and the risk of their imprisonment. And yet, the Indian state continues to disregard all criticism as well as its national and international legal obligations.



A road sign for a detention centre for people who were not included in the NRC final list, in Goalpara district of Assam.
Credit: AFP

What are these obligations? The Centre for Public Interest Law at the Jindal Global Law School recently released a report, entitled [Securing Citizenship](#), which extensively maps the commitments. Central to these is Article 15 of the [Universal Declaration of Human Rights](#), which guarantees all persons the right to nationality as well as the right not to be arbitrarily deprived of their nationality.

India is party to numerous international conventions – on [civil and political rights](#), [racial discrimination](#), the [right of the child](#), among others – that reiterate the right to nationality. Indeed, the right to nationality has [become a part of customary international law](#) binding on all countries, including India.

There is [some debate](#) about the implications of this right. As we argue in the report, the right is best interpreted on the basis of a [1955 International Court of Justice decision](#), which says that a person with a “genuine link” to a country should be considered its national. Whether a person has a genuine link to a country is decided by birth, residence, family ties, participation in public life, among other things.

Article 12 of the legally binding [International Covenant on Civil and Political Rights](#) supplements this test by guaranteeing that no one can be deprived of the right to enter “his own country”. The phrase “his own country” [indicates](#) the country of the person’s long-term residence, family relations, and his intention to remain. It does not matter if the country does not formally recognise him as its national. The proviso is that the person should not have similar ties to another country.

There is little doubt that persons excluded from the National Register of Citizens satisfy both these tests. The NRC [excluded people who were born in India](#), who reside here and have family ties often going back generations. Moreover, they do not have such connection with any other country, let alone Bangladesh. The excluded persons, therefore, qualify as Indian nationals under international law.

Disproportionate Demands

Those who have been excluded from the NRC also have the right to not be arbitrarily deprived of their nationality under Article 15 of the [Universal Declaration of Human Rights](#). A country cannot take away someone’s citizenship without [legally mandated safeguards](#). The processes for such an extreme measure must be provided under law. They must have a legitimate purpose and be proportionate and necessary. Finally, they must follow due process of law and cannot be discriminatory.

The biggest concern about the NRC is that it placed [unduly demanding](#) – and thus disproportionate – documentary requirements on Assam’s residents to prove their citizenship. Some policies were demonstrably discriminatory. For instance, the NRC administration [relaxed evidentiary rules](#) only for what it called “original inhabitants”, a category that [in practice excluded Bengalis](#).

What makes the existing NRC policy patently contrary to international law is the imminent consequence of statelessness. Rendering a person stateless is one of the most severe violations of human rights because it restricts his institutional access to practically all other rights. [Numerous international courts](#) and [conventions](#) have recognised that all countries are under an obligation under international law to prevent and reduce statelessness.

It is clear, then, that without a viable mitigating policy, the NRC will have disproportionate effects and be arbitrary under law. If India wishes to comply with international law, our report recommends that its only meaningful response would be to affirm the Indian citizenship of those ultimately excluded from the NRC.

Arbitrary Detention

The Indian state's cavalier attitude towards human rights is perhaps best reflected in its detention of people declared as foreigners.

Binding international norms like the [International Covenant on Civil and Political Rights](#) prohibit arbitrary detention as a matter of right. Detention must have a legitimate purpose and be proportional in each [case](#). Proportionality under international law and Indian Supreme Court's [judgements](#) requires that detention must have a connection with its purpose and must be necessary. It follows from this that detention must be the [measure of last resort](#) and individual cases must be regularly reviewed.

India's detention practices fail these standards. The government maintains detention centres within jail compounds without any semblance of a transparent detention policy. It has neither clearly laid down the purpose of detention, nor explored alternatives. There is no individualised review policy in place.

Even if we assume that detention is for deportation, detention practices do not meet the ostensible purpose. There is no time limit to deport detainees. In fact, the government has told Bangladesh that it [does not seek to deport anyone](#). Detention, for all practical purposes, is indefinite. This means detention lacks purpose and is disproportional.

The Supreme Court, in [April 2020](#), directed the conditional release of the detainees who had served more than two years in detention. But regrettably, it did not test detention policies on the anvil of legality. It did not ask the government to justify why detaining thousands – all of whom are part of communities in Assam – was necessary for any public purpose, or why less intrusive mechanisms could not be evolved. In fact, by directing conditional release, it approached detention as the first rather than the last resort.

There appears to be no clear end to the tragedy. Rather than addressing these severe implications of the NRC, political players have turned it into a political football. The Supreme Court, after driving the process, appears to have withdrawn from the scene without displaying responsibility for the consequences of its decisions. After defending the NRC for years, Assam's ruling party and several influential Assamese organisations are trying tooth and nail to undermine its credibility and demanding more exclusion.

If we do not carefully consider the consequences of the NRC in the light of the law, we may end up stealing the human rights of millions.

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