

The Citizenship Amendment Act and the National Register of Citizens: An Assamese state of Exception?

[Citizenship Law](#), [Blog](#), [Constitutional Law](#), [Featured Posts](#), [Fundamental Rights](#) /

By Raghav Sengupta / 9 January 2021 /

Contents

[1 Introduction](#)

[2 Assessing the Citizenship Conundrum in Assam](#)

[3 Assam's turbulent past: A lesson in Trials, Tribulations and Statelessness](#)

[4 An 'Assamese State of Exception'?](#)

[5 An 'Exceptional' exception?](#)

[6 Conclusion](#)

[7 References](#)

Introduction

In 2019, civil strife and political unrest stemmed from the government's ratification of the 'Citizenship Amendment Act' ("The 2019 Act") which afforded citizenship to a select few religious minorities in Bangladesh, Afghanistan, and Pakistan, who as per the ruling party had historically faced "religious persecution" in their home countries. The Act granted citizenship to almost all religious denominations, with the exception of those belonging to the Muslim community.^[1] Instead of delving into the constitutional validity of this legislation, I shall focus on a much more specific question pertaining to the persisting legal conundrum of 'citizenship' and 'statelessness' in Assam.

The consequences of the 2019 Act led to a plethora of new-found challenges for Assam in light of the government's effort to implement the National Register of Citizens^[2], in the backdrop of the Assam Accord which came into effect in 1985. It is important to note that the complexity of Assam's 'state of exception' is starkly different from the ruling party's assertions in an effort to codify religious binaries through this 2019 Act. ^[3] With strong underpinnings associated with 'ethno-nationalistic sentiments', the larger question that is left to be answered is *whether India can arbitrarily strip off citizenship from naturalised citizens.*^[4]

Assessing the Citizenship Conundrum in Assam

What makes this question inherently complicated is that the proportion of Assam's population facing impending statelessness has lived within India for several years and has exercised voting rights, as ordinary citizens would. In the years following the partition, the Congress' establishment in Assam devised an unconventional mechanism to tackle the citizenship conundrum within the state. Voting rights were granted to people who were able to provide *basic documents*, thus making it easy for any eligible person to find themselves accounted for in the electoral list of the state.^[5] It was this inclusionary but informal approach of being granted the right to vote, without the need to furnish legitimate documents, that inevitably sowed the seeds for future discussions around the themes of 'illegal immigration', 'citizenship', and 'statelessness'. With the identity of the original Assamese inhabitants in jeopardy, elections in the state became a highly politicised and controversial series of events which ultimately found itself encapsulated in the form of the 'Assam Movement' – [aimed against the illegal immigrants and people with ambiguous citizenship who resided within the state of Assam.](#)

Assam's turbulent past: A lesson in Trials, Tribulations and Statelessness

The Assam Accord of 1985 only brought in temporary relief and failed to implement long-term measures to tackle the issue of 'illegal non-citizens' within the state. The Accord mandated that immigrants who entered Assam on any date after March 25th, 1971 were to be identified and their voting rights were to be discontinued. In addition, the Accord imposed a 10-year suspension on the voting rights of people who had entered the state between January 1st, 1966 and March 24th, 1971. Notably, the Accord did try to alleviate some of the discord and ill-effects of the partition by way of the 1986 amendment to the (then) Citizenship Act, 1955. Section 6A of the 1955 Act conferred citizenship upon immigrants – regardless of their religious belief – from East Pakistan who had entered the state before January 1st, 1966. In contemporary times, this has been referred to as the “*sixth criterion to obtain citizenship in India, that was applicable 'exclusively' and 'exceptionally' to the state of Assam*”^[6]

Subsequently, in 1983, the Parliament approved the “Illegal Migrants” Act (“The IMDT Act”), substantially controlling every state institutions' right to initiate legal action against persons who are genuinely considered to be 'foreigners' in the eyes of the law. The purpose of this particular Act was to preclude foreigners from the applicability of ordinary laws of citizenship that were typically applicable to Indian citizens.^[7] The IMDT Act made it nearly impossible to identify and classify individual persons into the category of 'foreigners'. The responsibility of establishing citizenship status lay on the person who claimed it according to the 'Foreigners Act'. However, the new IMDT legislation reversed this responsibility and laid down an

extensive framework for a private entity to pursue legal action against a person accused of residing in Assam as an illegal immigrant.[\[8\]](#)

The IMDT Act was held to be unconstitutional as per the 2005 Supreme Court ruling in *Sarbananda Sonowal v. India, and the State of Assam*[\[9\]](#). The judgement observed that the unfettered immigration of illegal migrants into Assam meant that the state faced threats in the form of ‘external violence’ as well as ‘internal disturbance’. It was the State’s responsibility to adopt all plausible steps to safeguard the nation’s ‘territorial sovereignty’.[\[10\]](#) The Supreme Court’s assertion with reference to “external violence and internal destruction” signals to the fact that the term ‘illegal immigrants’ had been able to establish greater significance that was not consistent with its legal definition. This new contemporary definition, used by politicians and media houses alike, did not include the Hindu denomination of trans-boundary immigrants. However, *Sonowal’s* case admitted that perhaps the unauthorized existence of immigrants amongst ordinary Indian citizens made it difficult to identify and expel foreigners owing to similarities in language and faith.[\[11\]](#)

An ‘Assamese State of Exception’?

The current situation in the state of Assam is quite reminiscent of the characterizations of Giorgio Agamben’s work on the ‘state of exception’. The exercise of implementing the NRC and the risk of rendering lakhs of citizens stateless can allude to Agamben’s work where ‘*homo sacer*’ is deprived of all tenable privileges and freedoms which turns their civilization into a cesspool of aggression and violence.[\[12\]](#) In the present-day scenario, the law is being implemented throughout the country by creating an *exceptional circumstance* for the state of Assam. This means that legally recognized aggression in a state that is undergoing exceptional tribulations is the result of a perpetual advancement of state entities while straying away from the principles of independence and sovereignty.[\[13\]](#)

The implementation of the NRC potentially casts aside the citizenship of [over 19 lakh people](#) in the state of Assam. The 2019 Citizenship Amendment Act’s ‘*rule of exception*’ pushes them out of the domain of legal authenticity. Citizenship status for the remaining parts of the Indian subcontinent is broadly presumed to be set up to July 1948. As previously discussed, it was fixed in March 1971 for the state of Assam. It is important to mention that the Indian Constitution prescribes no such arbitrary date to obtain citizenship within the subcontinent. It segregates people as well as their likelihood of becoming a citizen of India as per the various stipulations defined in the Citizenship Act.[\[14\]](#) This is primarily because the premise of citizenship rests on the principle of ‘universal franchise’ and not on the basis of stripping millions of people of their citizenship rights and subsequently rendering them ‘stateless’.[\[15\]](#)

An ‘Exceptional’ exception?

So conventionally, there is a transfer in the burden of proof to an individual who claims affiliation to the Indian nationality. This is the traditional practice that has been followed in the case of a recognised immigrant to establish their citizenship. Interestingly, the 2019 Act has carved out an exception for the state of Assam. The NRC protocol evaluates the familial correlation documentation as well as adheres to a meticulous verification mechanism, by submitting documentation to the authorizing agency for final confirmation.^[16] This persistence has led to a substantial volume of non-verifiable documentation being released either by the union or state governments, on the basis of the evidence presented by the claimants. This indeterminate process of authentication has put the applicant’s fate of citizenship in jeopardy.

Another exception to the Act is the concept of ‘*legacy records*’ whereby a citizen of India *can be excluded* from the Assamese NRC *unless* they can show a minimal affiliation to the state before 1971. This has been a daunting challenge for several individuals, particularly impoverished people with minimal educational proficiency. In addition, there are operational provisions for this function necessitates regional officials to label certain settlements or neighbourhoods as “original residents” that may be criteria to be included in the NRC.^[17] Such procedures do not methodically depend on a documented proof.

Conclusion

The NRC exercise can potentially render lakhs of inhabitants stateless and ultimately make them non-citizens. Through this article, I have strongly contended that every individual deserves the privilege to be affiliated with a country’s nationality and that no individual should be rendered stateless without adhering to the due process of law. The NRC and 2019 Citizenship Act must adhere to these procedures established by law and must not create an ‘exceptional circumstance’ by putting the transferring the burden of proof of citizenship upon the prejudiced individual.

(This post is authored by Raghav Sengupta, a 3rd-year law student, pursuing B.A. LL. B (Hons.) at Jindal Global Law School)

References

1. India: The Citizenship (Amendment) Act, 2019 [India], 12 December 2019, available at: <https://www.refworld.org/docid/5e2579274.html> [accessed 8 November 2020] ↑
2. Hereinafter, referred to as ‘NRC’ ↑
3. Biswas, P. (2018). ‘Reading Kafka and Agamben through the NRC of Assam’, available at: <https://cjp.org.in/reading-kafka-and-agamben-through-the-nrc-of-assam/> [accessed 7 November 2020] ↑

4. Das, Niharika. (2019). 'CAA and Citizenship Determination: An 'Assamese' Exception', available at: http://www.ipcs.org/comm_select.php?articleNo=5641 [accessed 5 November 2020] [↑](#)
5. Baruah, Sanjib. (2020). In the Name of the Nation: India and Its Northeast, pp.80-81 [↑](#)
6. Roy, A. (2010), *Mapping Citizenship in India* (New Delhi: Oxford University Press), pp. 95-96. [↑](#)
7. India: The Illegal Migrants (Determination by Tribunal) Act, 1983 [India], 25 December 1983, available at: <http://legislative.gov.in/sites/default/files/A1983-39.pdf> [accessed 7 November 2020] [↑](#)
8. *Ibid.* [↑](#)
9. Sarbananda Sonowal v. India, and the State of Assam (2005) 5 SCC 665 [↑](#)
10. Puri, B. (2001), Sovereignty, Territorial Integrity and Right of Self-Determination, *Economic & Political Weekly*, Vol. 36, Issue No. 04, 27 Jan, 2001, available at: <https://www.epw.in/journal/2001/04/commentary/sovereignty-territorial-integrity-and-right-self-determination.html> [↑](#)
11. *Supra*, note xii [↑](#)
12. Agamben, G. (2005), *State of Exception*, University of Chicago Press, Chicago, 200. [↑](#)
13. *Ibid.* [↑](#)
14. Shani, O. (2018), *How India Became Democratic: Citizenship and the Making of the Universal Franchise*, Penguin Random House India, Gurgaon, pp.225-239 [↑](#)
15. Baruah, Sanjib.(2020), pp.88-91 [↑](#)
16. Mirna Adjami, Julia Harrington, *The Scope and Content of Article 15 of the Universal Declaration of Human Rights*, *Refugee Survey Quarterly*, Volume 27, Issue 3, 2008, Pages 93–109, <https://doi.org/10.1093/rsq/hdn047> [↑](#)
17. *Ibid.* [↑](#)

Cite As: Raghav Sengupta, 'The Citizenship Amendment Act and the National Register of Citizens: An Assamese State of Exception?' (*The Contemporary Law Forum*, 09 January 2021) <<https://tclf.in/2020/01/09/the-citizenship-amendment-act-and-the-national-register-of-citizens-an-assamese-state-of-exception.>> date of access.