

Institutional Discrimination and Statelessness in India

A report by human rights organisations and professionals in response to the call for submissions  
by the  
Special Rapporteur on Freedom of Religion or Belief,  
Mr. Ahmed Shaheed.

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## Executive Summary

India's new citizenship regime under the stewardship of its freshly re-elected right-wing government has been deliberately exclusionary and non-secular. The insidiously calibrated amendments to legislations pertaining to citizenship have taken a nefarious turn in recent years. Any veneer of equality and non-discrimination has been shed. The Supreme Court of India has played its part by providing judicial approval to government actions, at every step and, is facing a credibility crisis.

Throughout 2019, the Government of India directed all states to prepare a National Population Register (NPR) through door-to-door enumeration as a first step towards the creation of the National Register of Indian Citizens (NRIC). This process, already undertaken in the state of Assam under direct oversight from the Supreme Court, resulted in 1.9 million Indians being excluded from the register. The exercise was marred by arbitrariness, abuse of authority, and prejudice against the Bengali and Muslim communities in Assam. Through this, and a parallel revision of voter lists, large number of people have been potentially or already made stateless, with limited scope for review through Foreigners Tribunals. The death toll and other human costs arising from this citizenship process, also continues to rise. As the final prong of this troika, the Central Government adopted the Citizenship Amendment Act (CAA) in December 2019 providing a preferential route to naturalization for six religious minorities from Afghanistan, Pakistan or Bangladesh residing in India since 2014. Widely believed to assuage non-Muslims by providing a route to reinstating their citizenship, the message was clear - Muslims are unwelcome, second-class citizens of India.

These legislations and their attendant processes are not only *prima facie* discriminatory, they are profoundly persecutory and xenophobic in their implementation and impact. They exacerbate deep-seated societal biases and feed the hyper-nationalistic narrative of a resurgent Hindu India by invoking a skewed history, acts of violence, and dehumanization of the largest religious minority in the country. Through a systematic and concerted effort by the Government of the day, Muslims face the threat of being deprived of their citizenship – the gateway right to all other rights necessary for a life of dignity.

## List of Abbreviations

Abbreviation	Definition
BJP	Bharatiya Janta Party
BLO	Block-level Officer
CAA	Citizenship Amendment Act, 2019
COVID19	Coronavirus Disease 2019
D-voters	Doubtful or Disputed Voters
EC	Election Commission of India
ERO	Election Registration Officer
FTs	Foreigners Tribunals
GHC	Gauhati High Court
HC	High Court
IMDT Act	Illegal Migrants (Determination by Tribunals), Act
Legacy Documents	Inclusion of parent's or grand-parents' name/s in specific pre-1971 documents considered legacy documents for Assam - like pre-1971 voters' list, 1951 NRC, land records, etc.
Linkage Document	Document establishing direct descent of person who's legacy is used for making the NRC application.

MLA	Member of Legislative Assembly
MP	Member of Parliament
NPR	National Population Register
NRC	National Register of Citizens
NRIC	National Register of Indian Citizens
OHCHR	Office of the High Commissioner for Human Rights
Ors.	Others
SCI	Supreme Court of India
UN	United Nations Organisation
UN USG	United Nations Under-Secretary General
WP	Writ Petition

## INSTITUTIONAL DISCRIMINATION AND STATELESSNESS IN INDIA

### *I. Introduction*

Protection of minorities, and fundamental human rights for all is embedded in India's Constitutional structure. These guarantees are under intensified threats from religious extremism that promotes a monolithic national identity based on the [Hindutva ideology](#).<sup>1</sup> The notion of a future non-secular Hindu state has gained political prominence since the [destruction of the Babri Masjid](#) in 1992.<sup>2</sup> [These developments](#),<sup>3</sup> also captured by [different mandates of the United Nations \("UN"\) system](#),<sup>4</sup> have dismantled a secular India. This submission focuses on Indian citizenship laws and in particular the efforts to develop a National Register of Indian Citizens ("NRIC") – which upholds this monolithic notion of citizenry and undermines the legal status of existing citizens through a quasi-judicial review process that can eventually lead to detention, and statelessness for those declared 'foreigners'. As argued in this submission, the existing widespread fear of statelessness among Indian Muslims is not without basis. While this submission focuses on the targeted persecution and reprisals faced by the Muslim minority, the NRIC and recent citizenship laws is likely to also [disproportionately affect women](#),<sup>5</sup> and other minorities, such as indigenous people, and migrants.

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<sup>1</sup> Peter Friedrich, The Polis Project, *Cultural Malware: The rise of India's RSS*, March 12, 2020. See also, Arundhati Roy, The Nation, *Fascism's Firm Footprint in India*, September 12, 2020; Prabhat Patnaik, *The Fascism of Our Times*, Social Scientist, March-April, 1993.

<sup>2</sup> BBC, *'How the Babri Mosque Destruction Shaped India'*, December 6, 2017; See also: BBC, *'Ayodhya Dispute: The Complex Legal History of India's Holy Site'*, November 9, 2019.

<sup>3</sup> Eliza Griswold, *The violent toll of Hindu Nationalism in India*, March 5, 2019. See also, Samanth Subramanian, *How Hindu supremacists are tearing India apart*. And

4. The United States Commission on International Religious Freedom recently recommended designating India as a "country of particular concern" for "engaging in and tolerating systematic, ongoing, and egregious religious freedom violations, as defined by the International Religious Freedom Act."

<sup>4</sup> The following communications by Special Procedures to the Government of India highlight their concerns: [OL IND 11/2019](#) of 27 May 2019, [OL IND 29/2018](#) of 13 December 2018 and [OL IND 13/2018](#) of 11 June 2018. See also, The Hindu, *UN voices concern over violence in India against CAA, urges respect for freedom of expression*, December 18, 2019; Samanwaya Rautray & Dipanjan Roy Chaudhury, the Economic Times, *UNHCR moves SC against CAA: India rejects intervention*, March 4, 2020.

<sup>5</sup> Nilanjana Bhowmick, Foreign Policy, *India's New Laws Hurt Women Most of All*, February 4, 2020. See also, Sidharth Yadav, The Hindu *'Poor, women will bear brunt of CAA, NRC'*, January 3, 2020; See also: Ritumbara Manuvie, Citizens for Justice & Peace, *'Disasters, Displacement and Political Disenfranchisement in a Warming World'*, September 23, 2019.

## II. *Discrimination in Law*

### (A) *Brief history of citizenship law in India*

The history of citizenship and immigration laws in India is deeply entrenched in the sub-continent's colonial past – in fact both the Passport (Entry into India) Act, 1920 and the Foreigners Act, 1946 are colonial legislations. The Constitution recognised as Indian citizens all those who were born in India or those with at least one parent born in India or who had been ordinary residents of India for 5 years prior to 26 January 1950.<sup>6</sup>

While Articles 5 to 9 address citizenship, Articles 10 and 11 confer Parliament with the right to make laws to determine the eligibility to citizenship in India. Article 14 provides for equality before law and equal protection of the law; Article 21 protects the life and liberty of every person; and Article 25 guarantees the freedom to practise, profess and propagate religion. The protection of these provisions is not limited to citizens.<sup>7</sup>

The Citizenship Act, 1955, governs citizenship post-1950 along with the Foreigners Act, 1946.<sup>8</sup> The Citizenship Act has been amended in 1985<sup>9</sup>, 1986<sup>10</sup>, 2003<sup>11</sup>, 2015, and most recently in 2019 through the controversial Citizenship Amendment Act (“CAA”). The 2003 amendment introduced the concept of an “illegal migrant” as a foreigner who entered India illegally,<sup>12</sup> and could not obtain citizenship through naturalization, unlike a legal migrant who could naturalise after 11 years of ordinary residence in India.<sup>13</sup>

The Foreigners Order, 1948 and the Passport (Entry into India) Rules, 1950 were [amended in 2015](#) to allow “illegal migrants” from Pakistan, Afghanistan, and Bangladesh to obtain naturalization provided they were non-Muslims seeking shelter in India from

<sup>6</sup> Article 5, Constitution of India, 1950.

<sup>7</sup> *Indra Sawhney Etc. V. Union of India & Others*, AIR 1993 SC 477.

<sup>8</sup> Citizenship Act, 1955, Annexure E; The Foreigners Act, 1946, Annexure B

<sup>9</sup> This amendment incorporates Section 6A providing protection to pre-1971 migrants living in Assam.

<sup>10</sup> By this amendment, those born in India prior to 1 July 1987 were citizens by birth but those born on or after 1 July 1987 were to additionally prove that at least one parent was a citizen of India.

<sup>11</sup> By this amendment, those born in India after 30 December 2004 had to further demonstrate that the other parent was not an illegal immigrant. Further, an “illegal migrant” could no longer seek citizenship by registration or naturalization; Also see: [http://egazette.nic.in/WriteReadData/2004/E\\_1031\\_2011\\_005.pdf](http://egazette.nic.in/WriteReadData/2004/E_1031_2011_005.pdf).

<sup>12</sup> Section 2(1)(b), Citizenship Act, 1955, Annexure E.

<sup>13</sup> Section 6(1), Citizenship Act, 1955, Annexure E.

persecution.<sup>14</sup> The accompanying Citizenship Amendment Bill [failed to pass into law](#),<sup>15</sup> but it did so in [December 2019](#), making religion a criterion for obtaining citizenship in a secular India for the first time.<sup>16</sup>

*(B) A dangerous precedent: Institutionalized discrimination in the state of Assam*

The issue of citizenship, more complex in the northeastern Indian state of Assam has had a history of violence and discrimination based on religious, ethnic and linguistic grounds.<sup>17</sup> In 1951, a National Register of Citizens (“NRC”) was prepared only in Assam based on the census of that year.<sup>18</sup> It was heavily criticized for the exclusion of Bengali speakers.<sup>19</sup> Those excluded would often be left at the border in an unofficial “push back” policy derived from the unfettered powers under provisions of the Immigrants (Expulsion from Assam) Act, 1950.<sup>20</sup> However, its enforcement was stopped after international criticism in 1960s, as per a [2012 White Paper](#) published by the Assam government.<sup>21</sup> The Central Government then passed the Foreigners (Tribunals) Order, 1964 which established Foreigners Tribunals (FTs) with a mandate to determine “whether a person is not a foreigner”. The Assam Border Police was simultaneously formed with unchecked powers to detect foreigners.<sup>22</sup>

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<sup>14</sup> Foreigners (Amendment) Order, 2015, Annexure K.

<sup>15</sup> The Economic Times, *Citizenship amendment, triple talaq bills lapse*, May 27, 2019.

<sup>16</sup> Helen Regan, CNN, *India passes controversial citizenship bill that excludes Muslims*, December 17, 2019.

<sup>17</sup> In a referendum held before India’s partition in 1947, political leaders in Assam wanted a part of India—Sylhet—to go to Pakistan. They feared that the retention of Sylhet in India with a large Bengali Muslim population would make the Assamese Hindu a religious and linguistic minority. It led to an anti-Muslim riot in Assam in 1950. Thousands of Muslim migrated to East Pakistan (present day Bangladesh). Some came back again after the Nehru-Liaquat Pact, 1950.

<sup>18</sup> A Gauhati High Court decision reported in ALR 1970 (A&N) 206 held that 1951 NRC is not admissible as evidence invoking S. 15 of the Census Act, 1948..

<sup>19</sup> Amnesty International India, *Between Fear and Hatred: Surviving Migration Detention In Assam*, 2018, p. 10.

<sup>20</sup> The Act gives the executive unfettered power to expel anyone as immigrants without judicial determination of their citizenship status.

<sup>21</sup> Government of Assam, *White Paper on Foreigners' Issues*, October 20, 2012 (hereinafter, "White Paper on Foreigners' Issue, 2012").

<sup>22</sup> In 1964, the Assam state government passed the Prevention of Infiltration from Pakistan Act. A special security force known as the Border Police was created under this Act comprising about 2000 personnel. See, J. Joseph, RSIS Working Paper, No. 100, *Securitization of illegal migration of Bangladeshis to India*, 2006



The large-scale migration following Bangladesh's independence in 1971, and the ensuing religio-ethnic tensions in Assam from 1979-1985,<sup>23</sup> led to the passage of the Illegal Migrants (Determination by Tribunal) Act, 1983 ("IMDT Act"), whereby any person or State agency could accuse anyone of being an 'illegal migrant' and bore the burden of proof of the allegation when the person was tried. Ultimately, the Assam Accord was signed in 1985 which provided for citizenship for pre-1971 migrants in the state of Assam.

[Controversial electoral roll revisions](#) during this time<sup>24</sup> led to the suspension of important political rights, such as the right to participate in elections, particularly for Muslim religious and linguistic minorities.<sup>25</sup> In its 1997 revision,<sup>26</sup> through house-to-house enumeration, the Election Commission of India (EC) used the "D" mark to indicate people with doubtful or disputed status of citizenship. The process was [highly arbitrary](#) due to the unchecked discretionary power given to executing officers.<sup>27</sup> Around 370,000 voters, including people who relocated or who were absent during enumeration, particularly women residing in marital homes, were marked "D" and only 200,000 among them were referred to FTs.<sup>28</sup> Over the years more people were marked 'D' and in the 2019 electoral rolls, [113,738 people remained D-voters](#).<sup>29</sup> A large portion of people declared as foreigners as a result of this [process have been Muslims](#).<sup>30</sup>

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<sup>23</sup> The Nellie Massacre of 1983 killing of over Bengali Muslims was the most lethal of all. See, Granville Austin *Working a Democratic Constitution - A History of the Indian Experience*, New Delhi: Oxford University Press (1999) p. 541; Harsh Mander, *The Hindu*, *Nellie: India's Forgotten Massacre*, December 14, 2008.

<sup>24</sup> One of the triggers behind the Nellie Massacre of 1983 is said to be the claim of students and political organisations that names of irregular immigrants were found in voter lists and these should be taken off. See, Shorbori Purkayastha, the Quint, *Nellie Massacre – How Xenophobia, Politics Caused Assam's Genocide*, February 18, 2020.

<sup>25</sup> Section 6A of the Citizenship Act, 1955, incorporated in 1985, suspended voting rights of the people who came to Assam (India) between 1st January 1966 and 24th March 1971 for 10 years while accepting their citizenship, Annexure E.

<sup>26</sup> White Paper on Foreigners' Issue, 2012.

<sup>27</sup> Sagar, *The Caravan*, *Case Closed: How Assam's Foreigners Tribunals, Aided by the High Court, Function like Kangaroo Courts and Persecute Its Minorities*, November 6, 2019.

<sup>28</sup> White Paper on Foreigners' Issue, 2012.

<sup>29</sup> The Telegraph, *Assam Government Told the Assembly That There Are 113,738 Doubtful or D-Voters in the State*, March 3, 2020.

<sup>30</sup> Rohini Mohan, Scroll.in, *'Worse than a death sentence': Inside Assam's sham trials that could strip millions of citizenship*, July 30, 2019.

*(C) Due process and rule of law issues underlying the Assam NRC*

The reason that the Assam NRC process has had such adverse impact, particularly on minority communities, has to do with the lack of due process and basic rule of law principles which made its application highly arbitrary and unpredictable. Critically, the NRC process - conducted with oversight of the Supreme Court of India (“SCI”) - shifted the burden of proof from the State to ordinary citizens (who were otherwise presumed to be citizens under the law).<sup>31</sup> This [shift directly affected](#) a large number of people, particularly the poor.<sup>32</sup> Even when applicants submitted relevant documentation, [they could be rejected](#) on the basis of inconsistent, subjective reasoning such as minor mismatch of spelling, age or address between different documents – despite a GHC order to the contrary.<sup>33</sup> Submitted documents were sent to issuing authorities for verification, in [violation of rules of evidence](#).<sup>34</sup> In a large number of cases, issuing authorities failed to revert with verification in time, resulting in applications being rejected.<sup>35</sup> Oral evidence, particularly to establish lineage and linkage,<sup>36</sup> were not given due weight.<sup>37</sup> The Citizenship Rules, 2003 additionally exempted “original inhabitants” from producing documentation, creating an additional layer of discrimination and arbitrariness arising from the open-ended and pro-Hindu interpretation of the term.<sup>38</sup> The Citizenship Rules 2003 did not provide an option to prove citizenship by birth.<sup>39</sup>

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<sup>31</sup> The Citizenship Rules require individuals to apply, along with prescribed documents, for inclusion in the register. Rule 4A(2) of the Citizenship Rules, 2003 provides for collecting particulars by inviting application and proving citizenship through a joint interpretation of “Legacy Documents” and “Linkage Documents”, Annexure I.

<sup>32</sup> Riot, *Doubtful Citizenship, Distorted Rights In Assam*, July 23, 2018. See also, Rafiul Ahmed, Himal, *Assam’s D-voters*, May 26, 2014.

<sup>33</sup> Amnesty International, *Designed to exclude: How India’s Courts are allowing Foreigners tribunals to render people stateless in Assam*, 2019; Md. Anwar Hussain @ Md Anowar V. Union of India & others WP(C) 4258/2013.

<sup>34</sup> All the prescribed documents are public documents under section 74 of the Indian Evidence Act, 1872 and production of a public document for inspection is sufficient proof of its contents under section 62.

<sup>35</sup> Reasons such as records being destroyed or not available, reports could not be prepared in time owing to lack of manpower or sheer negligence or indifference were responsible in large part for not sending verification reports. See also: Sadiq Naqvi, Hindustan Times, *West Bengal biggest defaulter in NRC verification*, August 02, 2018.

<sup>36</sup> Section 112 read with s.50 of the Indian Evidence Act, 1872.

<sup>37</sup> *Nurul Amin v. The Union of India & Ors*, WP(C) No. 8640/ 2018, GHC order dated February 26, 2020.

<sup>38</sup> Para 3.3 of the Schedule to the Citizenship Rules, 2003, Annexure I.

<sup>39</sup> Section 3 of Citizenship Act, 1955 provides for citizenship by birth.

Owing to its arbitrary and discriminatory nature, the processes resulted in the exclusion of about 1.9 million people from the Assam NRC, who now face mass statelessness.<sup>40</sup> It received [scathing international criticism](#) including by Special Rapporteurs of the OHCHR.<sup>41</sup>

*(D) Judicial review and oversight of FTs*

Foreigners Tribunals are quasi-judicial bodies set up by executive order<sup>42</sup> under Section 3 of the Foreigners Act, 1946<sup>43</sup> for adjudicating the citizenship status on a referral made by authorities. The SCI, after striking down the IMDT Act, directed the establishment of FTs in Assam in 2005<sup>44</sup> and 2006.<sup>45</sup> Currently, 100 tribunals are functioning and about 200 more are expected to be functional soon.<sup>46</sup> FT presiding officers [judges], called Members, are not required to have judicial background or experience<sup>47</sup> and have no security of tenure to ensure their independence. The tenure of their contractual appointments depends on the number of people [they assess to be 'foreigners'](#).<sup>48</sup>

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<sup>40</sup> Teesta Setalvad, Citizens for Justice & Peace, *'What next for those left out of the NRC?'*, August 31, 2019.

<sup>41</sup> Please see note 5. In the communication with reference no OL IND 13/2018, four Special Rapporteurs expressed "*serious concern that members of the Bengali Muslim minority in Assam have experienced discrimination in access to and enjoyment of citizenship status on the basis of their ethnic and religious minority status.*"

<sup>42</sup> The Foreigners (Tribunal) Order, 1964, Annexure F.

<sup>43</sup> The statement of objects and reasons for the enactment makes it abundantly clear that the Foreigners Act, 1946 is a war emergency immigration law, reproducing in substance the provisions of earlier colonial laws on the subject like the Foreigners Act, 1864 and the Foreigners Act, 1940. This is a law meant for expulsion of foreigners without dispute of citizenship status and their apprehension and removal etc. and not for questioning citizenship of people enjoying such status for generations.

<sup>44</sup> *Sarbananda Sonowal v. Union of India & Anr.*, [2005] 5 SCC 665.

<sup>45</sup> *Sarbananda Sonowal (II) v. Union of India*, [2006] SCC 174.

<sup>46</sup> *Re the Government of Assam & 3 Others*, WP (C) 1754/2015, Order dated 20-05-2020.

<sup>47</sup> Paragraph 2 (3) of the Foreigners (Tribunal) Order, 1964 uses a vague term "judicial experience" as qualification for appointment. It is not clear whether experience as a judge in a court of law is required. In practice retired bureaucrats are appointed along with lawyers with a few years practice, Annexure F.

<sup>48</sup> Amnesty International, *Designed to exclude: How India's Courts are allowing Foreigners tribunals to render people stateless in Assam*, 2019, pp. 26-27; Karan Deep Singh & Suhasini Raj, the New York Times, *'Muslims are Foreigners': Inside India's Campaign to Decide Who is a Citizen*, April 4, 2020.

Proceedings in FTs are conducted under the Foreigners Act,<sup>49</sup> a colonial legislation intended for an entirely different situation.<sup>50</sup> FT proceedings require the person whose citizenship is deemed questionable to discharge the burden of proof against the grounds of doubt raised by the State in the referral.<sup>51</sup> They also require that, before a referral, authorities conduct an investigation giving the person concerned adequate opportunity to produce relevant evidence. However, in most cases, [proper investigation is not conducted](#)<sup>52</sup> and referrals are mechanical.<sup>53</sup> About 64,000 people have even been made [stateless in absentia](#), in addition to the 1.9 million from the NRC process.<sup>54</sup>

FTs are not required to follow procedures of regular civil courts; their opinion is summarily rendered;<sup>55</sup> often arbitrarily,<sup>56</sup> and [without respect for res judicata](#).<sup>57</sup> Similarly to the NRC process, oral evidence is often not considered,<sup>58</sup> even in relation to parentage and relationship,<sup>59</sup> and documents with minor discrepancies or irregularities are discarded,<sup>60</sup>

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<sup>49</sup> Section 9, Foreigners Act, 1946, Annexure B; See also: Mrinmoy Dutta, Citizens for Justice & Peace, *Citizenship Dilemma in Assam*, July 19, 2019.

<sup>50</sup> The Foreigners Act, 1946 was a war emergency measure not meant to deal with the question of citizenship of people of Indian origin in a situation created by partition of the country.

<sup>51</sup> Paragraph 3(1), Foreigners (Tribunal) Order, 1964, Annexure F.

<sup>52</sup> Rahul Karmakar, *The Hindu*, *Witnesses File Cases against Assam Police Officer Who Reported Kargil Veteran as Foreigner*, June 3, 2019; Anwar Tarique, Newsclick, *Indians Allegedly Being Made Foreigners for Money in Assam's Morigaon*, September 10, 2018.

<sup>53</sup> "One of the contentions of the proceedees is that though the referral authority is required to make the reference to the Tribunal after making a fair investigation, no such proper and fair investigation is conducted and the police at their own whims and caprice gives a report, in some cases even without visiting the place where such proceedee resides and also without giving any opportunity to produce the relevant documents to substantiate that the proceedee is not a foreigner, and such report is accepted by the referral authority and accordingly the reference is made to the Tribunal, on the basis of which the reference is registered against such person," in *State of Assam v. Moslem Mondal*, (2013) 3 Gau LR 402.

<sup>54</sup> *The Wire*, *Assam: Since 1985, Ex-Parte Tribunal Orders Have Declared Almost 64,000 People as Foreigners*, July 2, 2019; *Rina Chanda V. Union of India and Others*, WP (C)/6098/2019 (GHC).

<sup>55</sup> "Foreigners' Tribunals are more like Courts of Executive Magistrates, where opinion is rendered in a summary procedure". *Shariful Islam V. Union of India*, 2019 SCC OnLineGau 2420, dt. 07-06-2019.

<sup>56</sup> FTs often refuse to take applications on record and decide them on merits. See, *Helal Uddin V Union of India*, WP (C)/4950/2018, Judgment, 06-09-2018; See also: Citizens for Justice and Peace, '*Citizens for Assam: A Quest for Hope & Justice*', July 01, 2019.

<sup>57</sup> *Abdul Kuddus V Union of India and Others*, Civil Appeal No.5012 of 2019, SCI held that the rule of *res judicata* applies to the orders of FTs; Sagar, Caravan, *A case of double incrimination reveals the chimera of fair trials in Foreigners Tribunals*, November 25, 2019.

<sup>58</sup> "In a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 the evidentiary value of oral testimony without support of documentary evidence is wholly insignificant." *Asia Khatoon V. Union of India and 3 Others*, WP(C) 4020/2017, (GHC), Judgment dated 21-11-2019.

<sup>59</sup> Section 50 of the Indian Evidence Act, 1872.

<sup>60</sup> *ArotiBala Mandal V. Union of India and Ors*, WP(C)/7643/2017 (GHC), Order dated 6-12-2018 held that documents bearing unauthorised national emblem are not acceptable in evidence.

while those obtained illegally maybe admissible.<sup>61</sup> FTs often assume powers of writ, beyond their jurisdiction, and issue directions for authorities to arrest, detain, and deport people declared foreigners, sometimes even in mid-proceedings.<sup>62</sup> They have also directed confiscation of ration cards<sup>63</sup> and deletion of names from voter-lists. This arbitrary expansion of powers is sanctioned by the Gauhati High Court (“GHC”).<sup>64</sup> There is no provision to appeal from FT orders and the only avenue is judicial review by the High Court.<sup>65</sup> These elements make the process of adjudication by FTs clearly unlawful, arbitrary, discriminatory, and violative of all canons of due process and the rule of law.

*(E) Assam as a trial run for a nation-wide NRIC*

Having tested the mechanics of the process with NRC and FTs in Assam, the Indian Government has declared its intention to conduct a pan-India NRIC.<sup>66</sup> The NRIC is based on the National Population Register (“NPR”),<sup>67</sup> a list of ‘Usual Residents’ compiled through door-to-door surveys. On this basis, the NRC Registrar decides which the ‘usual residents’ qualify as citizens, in their subjective and arbitrary opinion. Where the Registrar considers a ‘usual resident’ not to be a citizen, he marks their citizenship status as ‘Doubtful’ without affording such persons any prior opportunity of being heard. A process uncannily similar to a one that goes hurtling towards a FT.

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<sup>61</sup> *R.M. Malkani V. State of Maharashtra*, AIR 1973 SC 157.

<sup>62</sup> *Ajjur Rahman vs The Union Of India & Ors*, WP(C) No. 2358/2011, order dated July 1, 2011.

<sup>63</sup> Ration cards are issued by the government to persons eligible to receive subsidized food entitlements. Without these cards, the poor are denied their Constitutional entitlement of subsidized food.

<sup>64</sup> *Rustam Ali V. Union of India & Others*, WP(C) No. 3236/2009, dated May 26, 2011.

<sup>65</sup> *State of Assam v. Moslem Mondal*, (2013) 3 Gau LR 402.

<sup>66</sup> The one time in the past that the NPR was prepared, it was done partially. However, the NPR that is being sought to be made now is vastly different from the one proposed earlier, especially in how many more data points the present one collects about every citizen. Rule 3 of The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 establishes the exclusive list of information that may be collected for the purpose of a NRIC. As per Rule 4 of the 2003 Rules, NPR is only prepared with the purpose of preparing a NRIC. In clear violation of this Rule, the Instruction Manual for Updation of NPR, 2020 seeks to collect a great amount of identifiable individual information about one’s spouse, all other forms of identification an individual possesses, consolidating personal and identifiable information in one place, in the absence of a data protection or accountability regime.

<sup>67</sup> Under Rules 3(5) and 4(3) of the Citizenship Rules. During the verification process, particulars of those whose citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over...”.

As per Rule 4(3) of the Citizenship Rules, any enumerator at the local level is empowered to arbitrarily determine citizenship status and mark people as ‘doubtful’ citizens. This additional layer of arbitrariness built into the NRIC does not require an evidentiary examination and can be based solely on information collected and entered in a form, during the NPR enumeration. Those unwilling to volunteer legacy information on their parents can be fined or even imprisoned.<sup>68</sup> As a result, the NRIC is likely to have [catastrophic impacts](#), as already witnessed in provincial governments led by nationalistic political parties.<sup>69</sup>

*(F) NRIC, NPR & the CAA: A triumvirate targeting Muslims*

In addition to the NRIC, the Indian Government has also passed the CAA as mentioned before. CAA will work both independently and in conjunction with the NRIC.

The ostensible objective of the CAA is to protect minorities from “religious persecution”. However, in its text, the law does not mention “religious persecution”, which is included by reference to the Foreigners’ Order, 1948, and the Passport (Entry into India) Rules, 1980. These rules are passed by executive actions and any amendment can simply be made without legislative scrutiny, opening the claimed foundation of the CAA to a non-legislative amendment. Even within the parameters of protecting persecuted religious minorities, the legislation fails catastrophically, in that it does not extend these rights to other persecuted minorities in neighbouring Muslim countries, nor to persecuted Muslims in non-Muslim neighboring countries, or those without faith.

The NPR, NRC and CAA together weaponize India’s citizenship in ways never envisioned before.<sup>70</sup> Given the discretionary powers of NPR enumerators in attributing a ‘doubtful’ status, and due to the flaws and biases described above as witnessed in the example of

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<sup>68</sup> This has been provided for under several laws, for e.g.: Rule 17 of the Citizenship Rules, 2003; Section 176 & 179 of the Indian Penal Code, 1860; and Section 8 read with Section 11 of the Census Act, 1948, Annexure I.

<sup>69</sup> Arijit Sen & Leah Verghese, *Border Criminologies, Weaponising Citizenship in India*, February 19, 2020. See also, *India Today, Over 32,000 refugees identified in 21 districts for CAA: UP minister*, January 13, 2020.

<sup>70</sup> Annexure N explains the tri-partite scheme of the NPR, NRIC, and CAA.

Assam, the NRC will likely adversely affect religious, ethnic, and linguistic minorities (particularly Bengalis). Among those excluded from the NRC, people from the six religion groups from the three Muslim countries will be able to reinstate their citizenship under the CAA while other groups, particularly Muslims, will face a lengthy, arduous fight to prove they belong to the country of their ancestors.

### **III. Effects of Discrimination**

#### *(G) Repression and displacement*

The sequence of events described above - notification for a nation-wide NPR published on 31 July 2019; the NRC for Assam published on 31 August 2019, and the CAA passed on 12 December 2019 – ratcheted up [discrimination across the country](#).<sup>71</sup> Examples of [repression from Assam](#), and the routinisation of discrimination between August and December 2019<sup>72</sup> led to immediate dissent, peaceful protests and student movements across the country. The right to freedom of expression and peaceful protest took several severe blows, with persecutory targeting of protests in Muslim educational institutions and areas with predominant Muslim population. In response to anti-CAA protests, the country also saw pro-CAA rallies. At one such rally, a speech by an elected BJP leader [triggered communal riots](#) against Muslims in five BJP-held districts of North-East Delhi.<sup>73</sup> Most recently, in the midst of COVID19 lockdown, several Muslim anti-CAA [protestors were arrested](#), including a pregnant woman.<sup>74</sup>

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<sup>71</sup> In October 2019, the police in Bangalore arrested about 60 persons on suspicion of being Bangladeshi and put them on a train to Kolkata, to be left on the Bangladesh border. However, news reports and media coverage of this group of people is non-existent once they reached Kolkata, and their fate remains unknown. See, Bala Chauhan, *The New Indian Express*, *Far from home, Bangladeshi immigrants in Bengaluru stare at uncertain future*, November 13, 2019.

<sup>72</sup> An entire slum settlement was demolished in Bangalore, without following due process of law. A news report stated: “A BJP lawmaker’s tweets, however, confirmed the Bangladeshi angle. The “concerned authorities were instructed to take action”, local MLA Aravind Limbavali tweeted soon after the sheds were razed, adding that some of the residents were suspected to be “illegal immigrants of Bangladesh.” See, K.M. Rakesh, *Telegraph*, *Bangla angle in Bangalore demolition drive*, January 22, 2020.

<sup>73</sup> Samira Sadeque, *Al Jazeera*, *Hundreds rally in US cities against anti-Muslim violence in Delhi*, March 1 2020.

<sup>74</sup> Research scholars at Jamia Milia Islamia, a university in New Delhi, were arrested by the Delhi Police in April 2020. See, *the Wire*, *'Unending Witch-Hunt of Muslims': Eminent Citizens Condemn Targeted Arrests of Anti-CAA Protesters*, April 18. See also, 300 activists released a statement amid the crackdown on anti-CAA protestors during the COVID19 lockdown. This also brings to light the data collection and surveillance regime that is being activated across India. *The Wire* *More Than 300 Activists, Scholars Condemn Arrests, Harassment of Anti-CAA Protesters*, May 1, 2020.

Due to the escalation of racist sentiments, Muslims and Bengali speakers were [forced out of jobs](#).<sup>75</sup> Freedom of movement within the country was [arbitrarily restricted](#) to force citizens face the NRC process,<sup>76</sup> State governments across the country are [constructing detention centers](#).<sup>77</sup> Targeted arrests and political statements inciting hate<sup>78</sup> have caused fear and panic in Muslim communities across India.

*(H) A socio-political environment based on hate against Muslims*

Persistent anti-Muslim narrative has been spread by political leaders from central to local governments with a clear desire to divide the majority Hindu population from Muslims, the largest religious minority. While the [Union Law Minister accused](#) Muslims of belonging to a factional secessionist gang,<sup>79</sup> Union Interior Minister, Amit Shah, [referred to the migrants](#) as “infiltrators” and “termites” who eat the grains and steal the jobs of “our poor”.<sup>80</sup> The term “infiltrator” clearly [alludes to Muslim migrants](#) when viewed in context, such as “[w]e will remove every single infiltrator from the country, except Buddhists, Hindus, and Sikhs”.<sup>81</sup> Usage of “termites” has resonance with usage of “cockroach” and “snakes” for the [Tutsis during the Rwandan genocide](#) of 1994<sup>82</sup> Another BJP leader,

<sup>75</sup> The Wire, *Bengaluru Apartment Complexes Plan to Ban Bengali Speaking Migrant Workers*, November 4, 2019.

<sup>76</sup> “*Manipur and Mizoram assemblies have passed legislations that bar non-residents from settling in the states. The move follows apprehension that there will be an exodus from Assam after the National Register of Citizens has been compiled...Nagaland has taken up with the Union home ministry its plan of compiling a ‘register of indigenous inhabitants of Nagaland’ (RIIN).*” See, Rahul Tripathi, *Economic Times*, *Manipur, Mizoram pass bills fearing Assam influx after NRC*, September 19, 2019.

<sup>77</sup> Currently there are over 10 functional detention centers in India, and several others are under construction. See, Sumnat Sen & Naresh Singaravelu, *The Hindu*, *Where are detention centres in India?*, January 1, 2020. See also, *Telegraph*, *10 inmates of detention centres in Assam died in last 1 year: Govt* March 17, 2020; K.S. Sudhi, *The Hindu*, *Kerala plans detention centre*, December 27, 2019.

<sup>78</sup> The Home Minister of India, Mr. Amit Shah has, at several instances, claimed that the NPR and the NRC are not related. However, the sole mention of NPR in law is in Rule 3, titled, National Register of Indian Citizens. See, Sumnat Sen & Naresh Singaravelu, *The Hindu*, *Where are detention centres in India?*, January 1, 2020.

<sup>79</sup> Suhit K Sen, *First Post*, *Anurag Thakur leading ‘golimaaro’ chant tests limits of political speech, speaks to malaise of hate in Indian polity*, January 28, 2020.

<sup>80</sup> Sankalita Dey, *The Print*, *Amit Shahs Termite Jibe Draws Nazi Germany Rwanda Parallel*, 26 September 2018.

<sup>81</sup> James Griffiths & Manveena Suri, *CNN*, *Outrage over BJP promise to ‘remove every single infiltrator’ from India*, April 12, 2019.

<sup>82</sup> Kennedy Ndauro, *The New York Times*, *In Rwanda, We Know All About Dehumanizing Language*, April 13, 2019.



Subramanian Swamy, boldly announced that “Muslims do not fall into the equal category”, and as a repeat offender of anti-Muslim hate speech was [called out by UN USG](#), Adama Dieng.<sup>83</sup> Political messaging is [often divisive](#) with a “us” versus “them” narrative.<sup>84</sup> There is also constant dehumanization of Muslims with labels such as [rapists](#),<sup>85</sup> [prostitutes](#),<sup>86</sup> and [terrorists](#).<sup>87</sup> Political leaders have directly invoked violence in public rallies, for instance BJP MLA Anurag Thakur [led a slogan at a rally](#) to “shoot the traitors” referring to anti-CAA protestors, who are assumed to be Muslim.<sup>88</sup>

There is an incremental, systematic, and planned legitimizing of hate, xenophobia, and bigotry. The normalization of this [dehumanising prejudice is celebrated](#) as a marker of a strong and aggressive Hindu nationalist identity.<sup>89</sup> Not surprisingly, the terms “Bangladeshi,” “Bongal,” and “Miya” [racist and Islamophobic slurs](#) attached with social stigma and mob harassment<sup>90</sup> have made a comfortable comeback. [Genocide Watch](#) and Holocaust Memorial have both warned of India’s march to widespread and systematic persecution of Muslims.<sup>91</sup>

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<sup>83</sup> Kairvy Grewal, The Print, *UN official raises concerns over hate speech in India, cites Subramanian Swamy’s comments*, May 20, 2020.

<sup>84</sup> BBC, *Yogi Adityanath: ‘Muslims did no favour to India by staying here’*, 5 February 2020. See also, Financial Express, ‘No votes, no jobs’: Maneka Gandhi sets off big controversy with blunt message to Muslims, April 12, 2019.

<sup>85</sup> Hannah Ellis-Peterson, The Guardian, ‘*Feed them Bullets not Biryani*’, *BJP uses Delhi Election to stoke religious hatred*, February 6, 2020.

<sup>86</sup> Hansa Malhotra, Bloomberg Quint, ‘*Prostitute*’ and 7 Other Disturbing Remarks by BJP Leaders, July 21, 2016.

<sup>87</sup> Amarnath Tewary, The Hindu, *Giriraj Singh makes yet another controversial comment*, February 21, 2020. See also, *Sabrang Covid-19: Assam FT members donate to relief efforts, but stipulate funds not be used for ‘jehadis’*, April 11, 2020.

<sup>88</sup> Suhit K Sen, Firstpost, *Anurag Thakur leading ‘golimaaro’ chant tests limits of political speech, speaks to malaise of hate in Indian polity*, January 28, 2020.

<sup>89</sup> Suchitra Vijayan, Scroll.in, *Amit Shah’s ‘migrant termites’ speech echoes leaders around the world who orchestrated mass violence*, October 2, 2018.

<sup>90</sup> Manash Firaq Bhattacharjee, Al Jazeera, *We foreigners: What it means to be Bengali in India’s Assam*, February 26 2020, See also, Aletta Andre & Abhimanyu Kumar, Al Jazeera, *Protest poetry: Assam’s Bengali Muslims take a stand*, December 23, 2016; Anupam Bordoloi, Outlook India, *In North-East India Why The Word ‘Bangladeshi’ Is Just Plain Evil*, December 30, 2019; Gaurav Das, the Wire, *Fear of Coronavirus: Migrant Labourers in Assam Narrowly Escape Mob Lynching*, April 4, 2020; The Hindu, *Mob makes four undergo ‘Bangladeshi test’ in Assam*, September 18, 2019.

<sup>91</sup> Genocide Watch, *Genocide Alerts*. See also, Common Good Foundation, *Stateless in Assam: Precursors to Genocide and Crimes against Humanity?*, July 15, 2018; See also: Rachel Manteuffel, The Washington Post, ‘*The Holocaust Museum’s Director on Warning Signs of Fascism*’, January 7, 2020.

(I) *Statelessness and detention*

Religious identity based tests of citizenship will no doubt result in a systematic problem of statelessness. The processes described places [172 million Indian Muslims](#)<sup>92</sup> at risk of losing basic rights. While in some cases, the FTs have declared ‘foreigners’ to be “illegal Bangladeshi migrants”,<sup>93</sup> most do not identify country of origin for repatriation. With nowhere to go, persons [declared ‘foreigners’ face statelessness](#), indefinite incarceration, and in some cases death.<sup>94</sup> The indefinite detention of people declared ‘foreigners’ or awaiting the opinion of FTs [began in Assam in 2004](#).<sup>95</sup> The condition in the detention camps is [inhumane](#),<sup>96</sup> leading to [custodial deaths and suicides](#).<sup>97</sup>

The SCI has directed the [release of persons](#) who have completed three years or more in detention on two sureties of Rs. 100,000 each and mandatory collection of bio-metric data.<sup>98</sup> During the COVID19 lockdown, the SCI [relaxed some of these conditions](#).<sup>99</sup> While prison inmates on [other charges are released](#),<sup>100</sup> many stateless detainees, including the elderly and sick, continue to languish at great risk to their health and life. Despite this conditional release, the prospect of indefinite detention and statelessness remain real.

#### **IV. Reliefs sought**

OHCHR’s proactive engagement with India, including through an intervention petition before the SCI, has provided invaluable strength and value for civil society and human rights activists fighting the impending mass statelessness of Muslims in India. Drawing

<sup>92</sup> Rukmini S & Vijaita Singh, *The Hindu*, *Muslim Population Growth Slows*, August 25, 2015.

<sup>93</sup> In *Assam Sanmilita Mahasangha & Ors. V. Union of India*, WP(C) 562/2012, the SCI directed the use of “specified territory” denoting Bangladesh in laws governing Foreigners Tribunal.

<sup>94</sup> Subir Bhaumik, BBC, *Assam NRC: Are India’s ‘unwanted people’ being driven to suicide?*, June 28, 2019. See also, Talha Mujibi, *The Citizen*, *Suicides over the NRC – Trend Analysis*, March 7, 2020.

<sup>95</sup> Jyoti Lal Chowdhury, *The Dreaded List of Assam*, Dated Nil.

<sup>96</sup> Report on NHRC Mission to Assam’s Detention Centres; *The New Indian Express*, *10 inmates of detention centres in Assam died in last 1 year: Govt* March 17, 2020. See also, please refer to note 69.

<sup>97</sup> Tahmina Laskar, CJP, *What RTI inquiries reveal about Assam’s Detention Camps*, July 4, 2019

<sup>98</sup> The Leaflet, *Supreme Court of India allows conditional release of declared foreigners languishing in Assam detention centres*, May 11, 2019.

<sup>99</sup> *Suo Motu Writ Petition (C) No. 1 of 2020*, order dated March 27, 2020; Sumir Karmarkar, *Deccan Herald*, *Release ‘declared foreigners’ lodged in Assam detention camps: NGO to CJI*, March 26, 2020.

<sup>100</sup> Furquan Ameen, *the Telegraph*, *SC issues order on Assam detainees*, April 13, 2020.

from the evidence presented in this report, it is imperative that the OHCHR continues to urge all branches of the UN to work with the Indian government to:

- (1) consider a comprehensive refugee policy, conforming with international legal standards and obligation, including through ratifying related conventions and protocols;
- (2) extend the CAA's humanitarian clause of preferential grant of citizenship to persecuted minorities of all faiths from all neighbouring States;
- (3) cease NPR and NRIC exercise, including the NRC in Assam;
- (4) restore the burden of proof on the State or entity or individual casting doubt on the citizenship of any person for any legal process;
- (5) discontinue the Foreigners Tribunals and resolve citizenship challenges through regular civil courts;
- (6) ensure release of detainees and reinstatement of all rights pending final adjudication of citizenship
- (7) refrain from detention of persons declared foreigners pending a determination of their country of origin and deportation order;
- (8) hold to account persons engaging in hate speech; and
- (9) ensure respect for freedom of expression and assembly of dissenters, protestors, civil society organisers, and others.

Finally, we respectfully request that:

- (10) The Special Rapporteur work with the Government of India to organize a Country Visit as part of his mandate to, *inter alia*, be able to visit immigration detention centers, attend a hearing of the Foreigners Tribunal and other relevant Courts, directly engage with activists on the ground, and to gather a personal in-depth appreciation for the specific context of the nexus between religion and citizenship in India;
- (11) In addition, efforts should be made to use the latest available technology to engage with activists; and
- (12) The Special Rapporteurs incorporate the situation in India in his reports to the UN Human Rights Council and General Assembly.

## List of Annexes

Year	Title of Document	Annexure Number
1920	The Passports (Entry into India) Act, 1920	Annexure A
1946	The Foreigners' Act, 1946	Annexure B
1950	Nehru-Liaquat Pact, 1950	Annexure C
1950	The Immigrants (Expulsion from Assam) Act, 1950	Annexure D
1955	The Citizenship Act, 1955	Annexure E
1964	The Foreigners' (Tribunal) Order, 1964, with Amendments upto 2019	Annexure F
1983	The Illegal Migrants (Determination by Tribunals) Act, 1983	Annexure G
1985	Assam Accord	Annexure H
2003	The Citizenship (Registration and Issue of National Identity Cards) Rules, 2003	Annexure I
2012	Assam Government White Paper	Annexure J
2015	Passport (Entry Into India) Amendment Rules, 2015 & Foreigners (Amendment) Order, 2015	Annexure K
2019	Notification for Updating the National Population	Annexure L

	Register, 2019	
2019	The Citizenship Amendment Act, 2019	Annexure M
2019	Flowchart depicting relation between NPR, NRIC, and CAA	Annexure N