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India, Secularism and Citizenship: Why we Must fight against the CAA and NRC

Friday 27 December 2019, by [DESAI Mihir](#), [VANAİK Achin](#) (Date first published: 27 December 2019).

The ostensible cause and common focus of the remarkable popular upsurge throughout the country---the biggest and most sustained of mass agitations since Modi was elected in 2014 (and re-elected in 2019)---is the opposition to the Citizen's Amendment Act (CAA) and its associated National Citizens Register (NRC) that is to follow in due course.

Insofar as these struggles have been spearheaded by huge turnouts in various Muslim localities and by students and youth, and joined by large numbers of ordinary citizens across all religious faiths, it makes clear that this was also an unexpected rupture in the pent-up anger that had hitherto been contained. This anger is on many counts. Through the last six years of Modi rule, students and youth in various public universities, especially in the social sciences and humanities, have opposed BJP efforts to communalise and privatise tertiary education as well as its more general anti-democratic and Hindu chauvinist politics. Many of them have been declared 'anti-national', their freedom to speak and be politically active curtailed; legally harassed with some facing charges of sedition no less, even assaulted by other youth and students aligned with this government.

The trigger for the latest protests came when students peacefully protesting in two universities (one in Delhi and the other in the most populated state of the country, Uttar Pradesh or UP) having a large proportion of Muslim students were assaulted by Police within the university spaces using stun guns, tear gas, rubber bullets even invading libraries and hostels to wreak havoc and injuries to male and female students on a mass scale.

Solidarity actions arose spontaneously in over 22 universities across the country. Popular marches and demos followed and have continued. The other target for police brutality was the localities with large numbers of Muslim residents who have also come out in strength---their anger also having been built up over the last six years. The escalation in micro-level violence against ordinary Muslims going about their business through lynchings, beatings and killings has created a much greater fear than the previous history of large scale communal riots which though larger-scale are episodic and require some public act as a trigger and justification. Now such anti-Muslim violence (mostly in BJP ruled states) has become banal and normalised with the assailants invariably getting away with what they have done as the police and local authorities look the other way.

To understand why Muslims on such a large scale, youth and students, as well as other secular and democratic minded Indians, have now participated in these protests, one must understand what the CAA and NRC are all about.

The CAA for the first time gives legislative sanction to the idea that India is the "natural" home of Hindus and that Muslims in particular (but not only them) are here on sufferance. This new law sets a precedent for future changes in law that can similarly be based on unjustified religious discrimination. The CAA states that there will be fast-track naturalisation as Indian citizens on the

grounds of religious persecution for non-Muslim minorities that came to India before December 31, 2014 from Afghanistan, Pakistan, Bangladesh. Deliberately excluded are Muslims sects suffering persecution such as Balochis, Hazaras, Shias, Ahmadiyyas. Rohingyas (40,000 plus are in India) from Myanmar are, among others, excluded. This is violative of international refugee law and of the Indian constitution regarding equality of citizenship rights regardless of religious affiliation.

But the main purpose of the CAA lies elsewhere. This government is going ahead to carry out a national enumeration of all households through a **National Population Register (NPR)**. This will be a new much more invasive and comprehensive process of personal data collection than the decennial census and will provide the basis on which the proposed NCR will decide (by its own as yet unstated criteria) who qualifies as Indian citizens and those who don't. Hindus caught in the net can claim they were persecuted in one of the three neighbouring Islamic states, lost their documentation there, and can then apply for naturalised Indian citizenship. Muslims and perhaps many very poor Indians (not to be bothered about anyway) not having the required documentation proof, if not expelled because neighbouring countries will not accept them, will be put in detention camps and certainly deprived of basic rights to vote, own property, access to certain welfare services, etc., becoming a pool of easily exploitable people for the worst kind of jobs.

There is also another much wider purpose affecting the whole population. Such collection of personal data, once certain proposed laws (already being prepared) are passed to enable access for various government agencies, will **help create a strong surveillance state** making a mockery of the recently established 'fundamental right to privacy'!

Among the protestors there is the growing recognition that **secularism is the necessary though not sufficient condition for sustaining an Indian democracy**. Muslims have come out not in the name of Islam but demanding that they be recognised as equal Indian citizens. The aim of the BJP and its associated bodies that together make up the main bulwark of the forces of Hindutva is to create a Hindu state in all but name. This requires the further terrorisation, inferiorisation and ghettoisation of Muslims so as to render them obedient to the new dispensation in-the-making.

Liberal-minded Indians recognise that the democratic institutions and laws of India are under threat as never before. Leftist-minded Indians recognise the clearly fascist characteristics of this far right force and government. The CAA has been passed. It remains to be seen whether the Supreme Court has the courage and integrity to reject it as unconstitutional. Given its record to date this is far from certain. The NPR is the crucial prelude to the NCR but cannot be carried out if not just two or three, but many state governments (whose local and district personnel are required for such house-by-house enumeration) refuse to carry out the NPR. This will dramatically up the stakes for the central government which would then have to risk an Emergency like declaration to further proceed; or else back down.

So far, this government has expressed its continuing determination to go its own way making the state of UP something of a 'war-zone' with mass arrests and detentions (over 6000), deaths of civilians by firing (19 so far), charge-sheeting over 30,000 people, and imposing laws to prevent any assembly of more than five people throughout the state. Modi and the Home Minister Amit Shah are spreading lies that the NRC is not on the current agenda when its first step - the NPR is already declared to be started from April 1, 2020 and the huge funds for this exercise recently sanctioned. The popular upsurge against this is at one and the same time a struggle for democracy and against an exclusivist and Islamophobic authoritarian nationalism.

It must and will continue.

Achin Vanaik

See also *Achin Vanaik interview by Jacobin* – available on ESSF (article 51613), [India and anti-Muslim Citizenship Amendment Act: Modi Might Have Finally Gone Too Far](#)

A Critique of the Central Government Responses to FAQs on the CAA

The answers released by the Central Government to FAQs on CAA/NRC [1] are highly misleading and at times totally false, hiding more than they reveal. At the end of each answer issued by the Government to each FAQ, my comments are added.

Eight of the most important frequently asked questions are ignored by the Government.

Given below are these eight questions which need to be raised.

First:

Why are only persecuted religious groups from three countries namely Pakistan, Afghanistan and Bangladesh included in the list? Why are persecuted religious minorities in other neighbouring countries like Sri Lanka (Tamils of all religions), Myanmar (Rohingyas) and China (especially Tibetan Buddhists and Uighers) not included. The answer cannot be partition since Afghanistan had nothing to do with India's partition. While persecution of the communities mentioned in CAA cannot be denied, it is important to understand why only certain communities from certain countries have been included.

Second:

Even while seeking to protect persecuted religious minorities in Afghanistan, Pakistan and Bangladesh, why have the other persecuted religious minorities in these very countries such as Balochis, Ahmadiyyas and Shias not given similar protection? There is enough evidence about their persecution. Just to give an example: in 1974 Ahmadiyyas were declared a non-Muslim minority in Pakistan and a law promulgated in 1984 made it a criminal offence for Ahmadis to refer to themselves as Muslim, to refer to their religion as Islam, or to publicly practice Islam, though the Ahmadis consider themselves Muslims. There have been persistent physical attacks and killings on Ahmadis in Pakistan. They are obviously a religiously persecuted group. Just to give another example: tens of thousands of Chakma tribals from Bangladesh migrated due to persecution and for other reasons to North Eastern states during the last many decades. Many of them have been given citizenship but many have not and are demanding citizenship. The overwhelming majority of them follow Buddhism so will be covered by CAA. But there is also a section of Chakmas who follow Islam. Are you therefore going to give citizenship to non-Muslim Chakmas and not give to Muslim Chakmas, though otherwise they are identically placed?

Third:

Under the Refugee Convention of 1951 and Protocol of 1967, refugee status should be granted to persons who are persecuted due to race, religion, nationality, membership of a particular social group or political opinion. While India is not a party to either, nevertheless if persecution was the criteria for offering citizenship to refugees *why have these benefits been offered only to those who are seen to be persecuted as non-Muslim religious groups and not to those persecuted for other reasons?* For instance, on 19th December, 2019, Junaid Hafeez, a Pakistani academician, was given a death sentence for blasphemy. Obviously this is persecution for his exercise of freedom of speech. A large number of persons are in this way, and otherwise, politically persecuted in the neighbouring

countries. Why are those persecuted on grounds other than religion not being offered Indian citizenship if India wants to help the persecuted!

Fourth:

Linked to the above, *why is citizenship being offered to some people on the basis of their religion?* This is clearly contrary to secularism which is not just part of the preamble of the Constitution but has been held to be part of the basic structure of the Constitution by the Supreme Court. The Constitution of India is the first document determining and conferring citizenship. This obviously was done soon after partition and all its wounds. Despite this and though it allowed migrants from Pakistan (both East and West) to acquire citizenship of India it never made a religious distinction between these migrants. The Citizenship Act, which is the primary Act dealing with citizenship does not make any distinction (till CAA came in) on religious grounds. The Assam accord which set out the cut off date of 25th March, 1971 for subsequent 'illegal' entry into Assam for the purposes of determining Indian citizenship does not make any religious distinction. The Immigrants (Expulsion from Assam) Act, 1950 does not make any distinction on grounds of religion. There was therefore no justification for bringing in the religious angle now. If at all persecuted persons from neighbouring countries were to be protected, then all persecuted persons should have been offered this protection.

Fifth:

Why is citizenship being offered under CAA to only those who have entered India before 31.12.2014? Is it the case that persecution have stopped after 31.12.2014 in these countries.

Sixth:

What is going to be the financial cost and human cost of NRC and can India at all afford it?

In Assam, nearly 60 people have lost their lives and their deaths are connected to citizenship related issues. While some have allegedly committed suicide due to frustration, anxiety and helplessness related to the National Register of Citizens (NRC), some allegedly took their own lives fearing incarceration in detention camps. There are also some people who died under rather mysterious circumstances in detention camps.

The cost of the Assam NRC was Rs 1,600 crore, and 50,000 officials were deployed to enrol 3.3 crore applicants. We now know that it ended up excluding 1.9 million people, mostly genuine citizens of all religious affiliations. If we take this as the basis of a back-of-the-envelope calculation, counting only the Indian electorate of 879 million voters, an all-India NRC would entail an expenditure of Rs 4.26 lakh crore, and would require 1.33 crore officials to conduct it.

In addition construction of detention centres and after detaining people, even if the conditions are miserable, you would still have to feed them for a long time if not for the rest of their lives. The capacity of Indian prisons to hold people in aggregate is 3.5 lakhs persons. So just to accommodate the Assamese detainees you would have to build six times the number of jails/detention centres as those existing in entire India.

This is apart from the huge financial costs to the people. If Assam is anything to go by large number of people have been even forced to sell off their lands and have been driven to financial misery just to pay lawyers for defending their cases in Foreigners Tribunals and High Court.

Seventh:

Is the NRC at all required? NRC is a register of citizens of the country. Under the Constitution of India Article 326 and under the Representation of Peoples Act, 1950 voting rights are available only to citizens. So, all those who are on the voting list should obviously be treated as citizens. Aggregate

the voting lists across India and you would automatically have the entire citizenship register for all those above 18 years. So why replicate this exercise? Those below 18 are too young to have crawled into India from some other country on their own. So if their parents are in the voting list, children automatically (barring a few exceptions) become citizens. Then what is the purpose of every one being again required to prove that they are citizens. Unless the idea is to weed out a large number of poor persons of all communities (with special emphasis on Dalits, Tribals, Women and Transgender persons) and a large section of Muslims from citizenship rights. Even without the NRC the Government has the power of weeding out illegal immigrants under the Foreigners Act, 1946. Regularly prosecutions are launched since decades for removing those who are seen as foreigners. The entire NRC exercise seems nothing else but an exercise of fear mongering and creating a vast mass of people who will not be voters, to whom welfare schemes will not be available and who would probably be treated as slave labour in various “detention camps” or even if set free would be a mass of people without any rights whatsoever and thus available to the Corporates and their cronies as labourers at an extremely cheap rate.

Eight:

If the Prime Minister is saying that there is no plan to start the NRC process why is the exercise of Population Register (NPR) being carried out? On 31st July, 2019 a Notification was issued by the Central Government that the NPR exercise will be carried out across the country between 1st April, 2020 and 30th September, 2020. Confusion is sought to be created between the census and the population register. But the population register is part of Rule 4 of NRC Rules and the census is under the Census Act---a completely independent Act having a totally different purpose. So when the population register is being prepared it is the first step towards an NRC. There is no other purpose of a “population register” except to further NRC.

Now let us look at the FAQ response of the Government.

Q.1 Is NRC a part of the CAA?

Ans: No. The CAA is a separate law and the NRC is a separate process. The CAA has come into force nationwide after its passage through Parliament, while the NRC rules and procedures for the country are yet to be decided. The NRC process that is going on in Assam has been implemented by the Honourable Supreme Court and mandated by the Assam Accord.

This is only partially true. The Citizenship Amendment Act, 2019 (CAA) is an amendment to the Citizenship Act. NRC process is under the Citizenship Registration of Citizens and Issue of National Identity Cards) Rules, 2003. The NRC Rules are already notified in 2003. The Rules are under the Citizenship Act. The nature of documents required under both i.e. CAA and NRC are yet to be notified. CAA requires a person from Hindu, Christian, Buddhist, Parsi, Jain and Sikh communities to show that they have entered India from Pakistan, Bangladesh or Pakistan prior to 31.12.2014. However, what is the evidence required to prove this, has not been prescribed. Similarly, the nature of documents required to prove citizenship under NRC is also not yet provided. CAA can exist without NRC, in the sense that those migrants covered by CAA can ask for citizenship without their being any NRC process. But now NRC cannot be done without CAA. This is because the CAA has become the law (unless struck down by the Supreme Court) and while determining citizenship under NRC, CAA will have to be taken into account to decide whether a person is a citizen or not.

Q.2 Do Indian Muslims need to worry about CAA+NRC?

Ans: There is no need for an Indian citizen of any religion to worry about CAA or NRC.

This is totally misleading. It is the NRC process which will decide whether you are an Indian citizen. So, even if you think you are an Indian citizen having a passport, voting card, ration card, Aadhar card, PAN card, etc., in the NRC process you may still be excluded. This would be true across

religions. This is precisely what has happened in Assam where persons who thought they were Indian citizens having all the cards above were still excluded as they were held not to have fulfilled the freshly laid down criteria for proving citizenship. Once you are declared as a citizen you do not have to worry. But nobody knows whether he or she will be declared as a citizen under NRC. Even a simple mismatch in the spellings of names in different documents (either their own name or parent's name) have rendered people stateless in Assam NRC.

Q.3 Will NRC exclude people of a particular background?

Ans: No. NRC has nothing to do with any religion at all. NRC is for every citizen of India. It is a citizen register, in which names of everyone will be recorded.

In reality it is likely to exclude a large number people from marginalized sections who cannot establish their citizenship due to lack of adequate documents. The issue is whether NRC is at all necessary,

Q.4 Will people be excluded in NRC on religious grounds?

Ans: No. NRC is not about any religion at all. Whenever NRC will be implemented, it will neither be applied on the basis of religion nor can it be implemented on the basis of religion. No one can be excluded just on the basis that he/she follows a particular religion.

This is untrue. Let us take an example. I am a poor Muslim. I am from India. My ancestors are from India. But I do not have any proof of birth. I will be excluded and will be treated as an illegal migrant, CAA further filters me out

I am a poor Hindu. I am from India. My ancestors are from India. I do not have any proof of birth. Under CAA, I claim I have come from Pakistan. Due to persecution all my documentation was lost in Pakistan. I will be granted Indian citizenship.

Or take another example. I am an Ahmadiyya Muslim who due to persecution has crossed over from Pakistan. But due to CAA, I will be treated as an illegal immigrant and sent to a detention camp.

I am a Hindu. I have crossed over from Pakistan due to persecution. I will be offered citizenship.

Q.5 By conducting NRC, will we be asked to present proofs of being Indian?

Ans: First of all, it is important to know that at the national level, no announcement has been made to begin NRC process. If it is implemented, it does not mean that anyone will be asked for proof of being Indian. NRC is merely a normal process to register your name in the Citizens' Register. Just like we present our identity cards or any other document for registering our names in the voter list or getting Aadhaar Card made, similar documents shall need to be provided for NRC, as and when it is carried out.

False. On 31st July, 2019 a Gazette Notification was issued saying National Population Registration will be done across India between 1st April, 2020 to 30th September, 2020. This is different from the census which is done under the Census Act. NPR is done under Section 4 of the NRC Rules. So it is very much part of the NRC process. What documents will be required to be submitted is not yet clear so it is false to say that similar documents as required for voters card or Aadhar card are required.

Also there are reports that pilot studies for NPR have already been conducted in three Districts of Tamil Nadu in August, 2019.

Q.6 How is citizenship decided? Will it be in the hands of the government?

Ans: Citizenship of any person is decided on the basis of The Citizenship Rules, 2009. These rules

are based on the Citizenship Act, 1955. This rule is publicly in front of everyone. These are five ways for any person to become a citizen of India:

- I. Citizenship by Birth,
- II. Citizenship by descent,
- III. Citizenship by registration,
- IV. Citizenship by naturalization,
- V. Citizenship by incorporation.

That is stating the obvious. But ultimately the Government will lay down which are acceptable documents and which are not. The Government officials will determine whether a particular document is legitimate or not. Foreigners Tribunals will adjudicate about the veracity of documents and whether a person is a foreigner or not. The experience of Foreigners Tribunals in Assam shows that totally inexperienced persons are appointed as judges and they are given targets about the number of foreigners to be declared. If these targets are not met there are serious allegations that they are removed from service. Tens of thousands of Foreigners Tribunals will have to be set up across the country. Existing judicial vacancies are not being filled up. How will you find personnel and money for making these appointments.

Q.7 Will I have to provide details of the birth of parents etc. to prove my Indian citizenship?

Ans: It would be sufficient for you to provide the details of your birth such as date of birth, month, year and place of birth. If you do not have the details of your birth, then you will have to provide the same details about your parents. But there is absolutely no compulsion to submit any document by/of the parents. Citizenship can be proved by submitting any documents related to date of birth and place of birth. However, a decision is yet to be taken on such acceptable documents. This is likely to include voter cards, passports, Aadhaar, licenses, insurance papers, birth certificates, school leaving certificates, documents relating to land or home or other similar documents issued by government officials. The list is likely to include more documents so that no Indian citizen has to suffer unnecessarily.

Completely false. According to the amendments to the Citizenship Act 1955, citizenship by birth depends on when you were born. If you were born before 1st July 1987, then it is sufficient for you to prove that you were born in India. But due to the subsequent amendments to the Citizenship Act, If you were born between 1st July 1987 to 3rd December 2004 you will have to prove not only that you were born in India but also that one of your parents was a citizen of India at the time of your birth. If you were born after 3rd December 2004, you have to prove that you were born in India and at the time of your birth one of your parents was a citizen of India, and your other parent was not an illegal migrant.

The documents likely to be required are also falsely narrated. To say that AADHAR Card will be one of the documents to prove citizenship is totally false. Section 9 of Aadhar Act reads as under:

9. The Aadhaar number or the authentication thereof shall not, by itself, confer any right of, or be proof of, citizenship or domicile in respect of an Aadhaar number holder.

Similar arguments can be made about licenses, etc. While being in the voters list or having a passport is only for citizens, it is not even mentioned in the Rules whether these documents are sufficient by themselves as proof of citizenship.

Q.8 Do I have to prove ancestry dating back before 1971?

Ans: No. For pre-1971 genealogy, you do not have to submit any type of identity card or any documents like the birth certificate of parents/ancestors. It was valid only for the Assam NRC, based

on the 'Assam Accord' and the directive of the Honourable Supreme Court. For the rest of the country, the NRC process is completely different and is under The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

While it is true that the Assam process was different, now it is further impacted by CAA and in fact Government of India has declared that they will redo the entire NRC in Assam.

The purpose of both Assam procedure and rest of India is to have a list of citizens and to disenfranchise those who do not fall within this list. As written in response to question 7, there are different sets of criteria required to establish citizenship.

Q.9 If it is so easy to prove identity, then how were 19 lakh people in Assam so badly affected due to NRC?

Ans: Infiltration is an old problem in Assam. To curb it, there was a movement and in 1985, the then Rajiv Gandhi government, to identify the intruders, had to enter into an agreement to prepare NRC, assuming the cut-off date of 24 March 1971.

In fact, this Assam accord is sought to be overridden by the CAA. Even in Assam, a large number of people have been declared as noncitizens despite having all documents. In one sense (though this is only a limited argument) it is easier to prove citizenship in Assam than in rest of India. If you prove that you have entered Assam, say in 1964 from Bangladesh you will be entitled to citizenship. In the rest of the country this would not be enough. If you have entered the rest of India after 26th January, 1950 from say, Pakistan or even Bangladesh, you would be treated as an illegal migrant. Barring a few exceptions, only if you are born in India would you be treated as an Indian citizen. Therefore in Assam, if you entered in 1964, you will not need to prove your birth but the fact that you have been in Assam since then can be ascertained through various other documents such as property cards, etc. But in rest of India this would not be enough. Of course, in many other respects citizenship for persons in Assam is more difficult than those in the rest of India.

Q.10 During NRC, will we be asked to present old documents, which are difficult to collect?

Ans: There is nothing like that. Common documents will only be required to prove identity. When the NRC is announced at the national level, then rules and instructions will be made for it in such a way that no one will face any trouble. The government has no intention of harassing its citizens or putting them in trouble.

Again wrong. This answer lacks any basis whatsoever when the amendments to the Citizenship Act 1955 lays down the criteria in terms of proof required of parents being citizens of India based on when you are born. Instead, it is just enough to implement the Foreigners Act effectively to find out who are not citizens.

Q.11 What if a person is illiterate and does not have relevant documents?

Ans: In this case, the authorities will allow that person to bring a witness. Also, other evidence and community verification etc. will also be allowed. A proper procedure will be followed. No Indian Citizen will be put in undue trouble.

On what basis is this being said? There are no rules prescribed to prove birth. The only provision under law today is as prescribed under The Compulsory Registration of Births and Deaths Act, 1969. This provides that at least from 1969 every birth will have to be registered. But the overwhelming number of persons in rural areas and many in urban areas including a large number of slum and pavement dwellers, etc. do not register births. In the absence of any rule, regulation, notification or other Government Order, on what basis is it being said that witnesses will be allowed?

Q.12 There are a large number of people in India who do not have homes, are poor and are not educated and they do not even have any basic proof of identity. What will happen to such people?

Ans: This is not entirely correct. Such people survive on some basis and they also got the benefit of the welfare schemes of the government. Their identity will be established on the basis of that.

We do not know on what basis this is being said. Availing of welfare schemes may not establish citizenship. No law says this. Also the question is not of establishing identity but of proving citizenship.

Q.13 Does NRC exclude anyone for being transgender, atheist, Adivasis, Dalits, women and landless without/ without documents?

Ans: No. The NRC, as and when carried out does not affect any of those mentioned above.

Technically it does not exclude. But how are poor dalits, adivasis, women and landless without documents, or with documents which have a mismatch in the spelling of names to prove that they are Indian citizens. Thus a large number of them may be excluded by some arbitrary criteria.

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<http://www.radicalsoci alist.in/articles/national-situation/883-a-critique-of-the-central-government-responses-to-faqs-on-the-caa>

Footnotes

[1] <https://pibindia.wordpress.com/2019/12/20/q-a-on-nrc-national-register-of-citizens/#more-20113>