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“Shoot the Traitors”

Discrimination Against Muslims under India’s New Citizenship Policy



“Shoot the Traitors”

**Discrimination Against Muslims
under India’s New Citizenship Policy**

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Summary

A video emerged from India in February 2020 showing five grievously injured men lying on the street being beaten by several policemen and forced to sing the Indian national anthem. The video was filmed on February 24 in Kardampuri, a neighborhood in northeast Delhi. One of the men, Faizan, a 23-year-old Muslim, died from his injuries two days later.

At least 52 more people were killed in the three days of communal violence that broke out in India's capital. Over 200 were injured, properties destroyed, and communities displaced in targeted attacks by Hindu mobs. While a policeman and some Hindus were also killed, the majority of victims were Muslim.

Muslims in India have been increasingly at risk since the Hindu nationalist Bharatiya Janata Party (BJP) government led by Prime Minister Narendra Modi was first elected in 2014. Faizan died in a carnage amidst rising communal tensions in the country. On December 12, 2019, the Modi administration achieved passage of the discriminatory Citizenship (Amendment) Act (CAA). Under the act, for the first time in India, religion is a basis for granting citizenship. The law specifically fast-tracks asylum claims of non-Muslim irregular immigrants from the neighboring Muslim-majority countries of Afghanistan, Bangladesh, and Pakistan. The amended citizenship law, coupled with the government's push for a nationwide citizenship verification process through a National Population Register (NPR) and a proposed National Register of Citizens (NRC), aimed at identifying "illegal migrants," has led to fears that millions of Indian Muslims, including many families who have lived in the country for generations, could be stripped of their citizenship rights and disenfranchised.

Throughout the country, Indians of all faiths have protested peacefully against the law, singing songs, reciting poetry, and reading aloud from the constitution, which commits to secularism and equality. The iconic image of these protests was at Shaheen Bagh, a Muslim-majority neighborhood in Delhi. Since it first began on December 15, the protest, which was led by local women, drew civil society support from across the country. It also provoked the ire of the ruling BJP, with some of its leaders deriding the protesters or more dangerously calling them anti-national and pro-Pakistan. Some have described the protesters as "Pakistani hooligans," others led a chant to "shoot the traitors," inciting

violence. On February 1, 2020, a man fired two shots in the air near the protest site. On March 24, authorities asked the protesters to disperse following the outbreak of Coronavirus and calls for a lockdown to contain its spread.

Since the Modi administration first took office, BJP leaders have repeatedly made Hindu nationalist and anti-Muslim remarks in their speeches and interviews. These have, at times, encouraged and even incited violent attacks by party supporters who believe they have political protection and approval. They have beaten Muslim men for dating Hindu women. Mobs affiliated to the BJP have, since 2015, killed and injured scores of members of religious minorities amid rumors that they traded or killed cows for beef. In February 2019, BJP supporters threatened and beat several Kashmiri Muslim students and traders, apparently to avenge a militant attack on a security forces convoy.

Government policy has also reflected bias against Muslims. Since October 2018, Indian authorities have deported over a dozen Rohingya Muslims to Myanmar despite the risks to their lives and security. After winning a second term in May 2019, the government revoked the constitutional autonomy of India's only Muslim-majority state, Jammu and Kashmir, and, anticipating protests, deployed additional troops, detained thousands, and cut off phone and internet connections. The police have failed to intervene when BJP supporters engage in speech inciting violence or mob attacks but are quick to arrest critics of the government.

During protests against the citizenship law, there was a similarly partisan response. In many cases, when BJP-affiliated groups attacked protesters, the police did not intervene. However, in BJP-governed states in December, police used excessive and unnecessary lethal force, killing at least 30 people during protests and injuring scores more. In Delhi in February, some policemen actively participated in the mob attacks on Muslims.

The government's Hindu nationalist and anti-Muslim policies have touched off protests not just in India but abroad. The government crackdown on the protests in India raised further outcries. The United States, the European Union, and the United Nations secretariat have all called on the Modi government to scrap its discriminatory policies. Following the COVID-19 outbreak, Indian authorities said the citizenship verification plans had been indefinitely postponed.

Earlier, Indian diplomats tried to brush off international concern as “internal matters,” and the BJP launched a public campaign to counter attempts to “mislead the nation.” Prime Minister Modi has insisted that these policies are not discriminatory, saying, “Muslims are a part of our nation, and they have equal rights and duties as others.” However, he has done little to initiate a dialogue with the protesters, rein in his party members and supporters who routinely vilify Muslims, or press state governments to prosecute those responsible for abuses.

Muslims, in particular, have raised concerns about the National Register of Citizens because of the problems that have already occurred in the northeastern state of Assam, which is the only state to have completed such a verification process. It excluded nearly two million people, most of them ethnic Bengalis, whom the authorities accuse of entering India illegally from neighboring Bangladesh. After a surge in migration to Assam during British colonial rule and around the 1947 partition and creation of Pakistan, the 1951 National Register of Citizens was used to document these settlers. The August 2019 update to verify Indian citizens in Assam was the outcome of a 1985 peace agreement and a subsequent 2014 Supreme Court ruling to address grievances, protests, and violence by Assamese groups over irregular migration. In practice, the process was arbitrary and discriminatory, particularly targeting Bengali Muslims, leading to concerns that similar abuse and bias will be replicated when it is extended to the rest of the country. A group of retired bureaucrats and officials in January 2020 publicly warned that the nationwide NRC process “has the scope to be employed in an arbitrary and discriminatory manner, subject to local pressures and to meet specific political objectives, not to mention the unbridled scope for large-scale corruption.”

This report is based on interviews with victims of abuses and their families from Assam, Delhi, and the state of Uttar Pradesh, as well as legal experts, academics, activists, and police officials. It examines the discriminatory nature of the Citizenship Amendment Act and how the law, when combined with government citizenship verification initiatives including the National Population Register and National Register of Citizens, places millions of Muslims and other minorities at risk of statelessness and disenfranchisement. It documents allegations of police abuses against protesters. It also details discriminatory and error-prone practices against Bengali-speaking inhabitants in the process of updating the National Register of Citizens in Assam and the arbitrary and biased functioning of

Assam's Foreigners Tribunals, heightening concerns about any planned nationwide process.

An Inherently Discriminatory Law

The citizenship law amendments passed by parliament in December 2019 will allow Hindus and other non-Muslims who were unable to prove their citizenship status in Assam – and thus were left out of the National Register of Citizens – to maintain their Indian citizenship. It will also apply to other religious minorities who might be left out in the proposed nationwide National Register of Citizens. It will not, however, protect Muslims left off the registry.

BJP leaders have publicly used the act to assure Hindus in other parts of the country that they will be protected in the citizenship verification process. “I want to assure all Hindu, Sikh, Jain, Buddhist, and Christian refugees, that you will not be forced to leave India,” Home Minister Amit Shah said in October 2019, conspicuously omitting Muslims from the list of protected religions. “Don’t believe rumors. Before NRC, we will bring [the] Citizenship Amendment Bill, which will ensure these people get Indian citizenship.”

The citizenship law amendment is discriminatory and in violation of international human rights law because it applies only to non-Muslims from Bangladesh, Pakistan, and Afghanistan. The BJP government describes them as “refugees” trying to escape persecution in their country of origin while excluding Muslims from these predominantly Muslim countries, treating them as “infiltrators.” Defending the bill in parliament, Shah said, “There is a fundamental difference between a refugee and an infiltrator. This bill is for refugees.”

The government has tried to justify the law, saying it seeks to provide sanctuary to religious minorities abroad fleeing persecution. However, that claim is belied by the exclusion of many other vulnerable groups who have sought refuge in India, such as minority Tamils from Sri Lanka and ethnic Nepalis from Bhutan. It also effectively excludes other persecuted Muslim minorities like the Hazaras from Afghanistan, the Shia and Ahmadiyya from Pakistan, and the Rohingya from Myanmar.

The Office of the United Nations High Commissioner for Human Rights called the law “fundamentally discriminatory.” In February 2020, UN Secretary-General Antonio Guterres said he was concerned about the future of religious minorities in India after the enactment of the citizenship amendment law, saying “there is a risk of statelessness.” The United States Commission on International Religious Freedom said the US government “should consider sanctions against the home minister and other principal leadership” and held a hearing in March 2020 in which one of the commissioners raised concerns that the law “in conjunction with a planned National Population Register and a potential nationwide National Register of Citizens, or NRC, could result in the wide-scale disenfranchisement of Indian Muslims.”

Linking the Citizenship Law, National Population Register, and National Register of Citizens

The National Population Register is a list of all people residing in India, irrespective of their nationality. Indian officials will distill those considered “doubtful” citizens based on the NPR, to create a final list of those verified. This will be the National Register of Citizens. Those not verified, if non-Muslim, can get citizenship under the amended citizenship law which applies to irregular immigrants.

There have been contradictory statements by senior government officials, including Modi and Shah, in which they have attempted to delink the three. Shah said in December 2019 that, “There is no link between the NRC and the NPR. The data collected for the NPR will not be used in the NRC.” In March 2020, he told parliament the NPR process will not ask for any documents and “nobody will be marked ‘doubtful.’ Nobody needs to be scared of the process of the NPR in this country.”

Shah’s reassurances, however, carry little weight in the face of past government statements and recent legal provisions. BJP officials have repeatedly indicated that data from the NPR will provide essential inputs when the government compiles the NRC, its list of verified citizens. Soon after the Modi government won its first term, in July 2014, Minister of State for Home Affairs Kiren Rijiju told parliament, “it has been decided that NPR should be completed and taken to its logical conclusion, which is the creation of NRIC [National Register of Indian Citizens] by verification of citizenship status of every usual

residents in the NPR.” The BJP’s manifesto for the 2019 national elections also promised to conduct a nationwide NRC.

India has, over the decades, witnessed large numbers of migrants, particularly Bangladeshi Muslims. Successive governments have adopted measures in response, particularly to contain irregular economic migration. Under the Citizenship Act, 1955, a person gained Indian citizenship by birth, descent, registration, naturalization, or formal government incorporation of the territory in which they lived. Irregular immigrants, who entered the country without valid travel documents or overstayed beyond the permitted period, could be imprisoned or deported under the Foreigners Act, 1946, and the Passport (Entry into India) Act, 1920.

In 2003, the Citizenship Act was first amended to introduce the term “illegal migrant.” The government also adopted the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, which introduced the National Population Register and explained that the National Register of Indian Citizens will contain details of persons after “due verification made from the Population Register.”

The NPR process, which began in 2010 and was updated again in 2015, was not, however, used for a citizenship verification process. Nor did the process include details that have been sought by the Modi government, which on July 31, 2019, issued a notification to update the NPR throughout the country in 2020. According to the Modi government, the objective of the NPR is to create a comprehensive identity database of every “usual resident” in the country, defined as a person who has lived in an area for the preceding six months or has plans to live there for six months in the future. The proposed database will contain demographic as well as biometric information.

The National Population Register will form the basis for identifying verified citizens and screen out so-called “illegal immigrants” or “infiltrators.” However, the rules do not clarify the process or criteria for verification, who will be considered “doubtful,” and how they can establish their citizenship. Lack of clarity raises concerns of arbitrariness and bias of local officials, much like the verification process conducted in Assam. Nor is there clarity on various procedures, document requirements, and the type of questions to be included in the NPR. Officials have made contradictory statements that obfuscate facts in the face of growing criticism.

Following protests in December 2019, opposition-led governments of West Bengal and Kerala states suspended all work updating the National Population Register. Several other state governments have said they will not conduct a citizenship verification process. Over 140 petitions have been filed in the Supreme Court contesting the constitutionality of the amended citizenship law. In March 2020, the UN High Commissioner for Human Rights filed an intervention application as *amicus curiae* (third party) in the Supreme Court, urging it to take into account international human rights law, norms, and standards in the proceedings related to the Citizenship Amendment Act. The Indian government criticized the application saying the citizenship law was an “internal matter” and “no foreign party has any locus standi [grounds to sue] on issues pertaining to India’s sovereignty.”

State and Institutional Failures in Response to Protests

The violence in Delhi began soon after local BJP politician Kapil Mishra, who had earlier led a large demonstration calling to “shoot” the protesters, posted a video in which he gave an ultimatum to the police, threatening to take the matter into his own hands if the police did not clear the roads of protesters in three days. First there were clashes between Hindus who supported the government and Muslims protesting against the new citizenship law, but this soon transformed into Hindu mobs chanting nationalist slogans, armed with swords, sticks, metal pipes, and bottles filled with petrol, rampaging through several neighborhoods in northeast Delhi, killing Muslims and burning their homes, shops, mosques, and property.

While several Hindus were also killed, including a policeman and a government official, Muslims overwhelmingly bore the brunt of the brutality. The police not only failed to stop mob attacks by BJP supporters, some witnesses alleged that the police assisted mob attacks. In parliament, Shah, who is in charge of the Delhi police, praised them for “effectively containing the riot within 36 hours.”

Prior to the violence in Delhi, at least 30 people were killed, and hundreds arrested for protesting the new citizenship law and citizenship verification process, all in BJP-governed states: 23 in Uttar Pradesh, 5 in Assam, and 2 in Karnataka. Most of those killed were Muslims, including an 8-year-old boy in Uttar Pradesh who reportedly died in a stampede as protesters fled a police crackdown. Several policemen were injured.

The authorities also used a colonial-era law against public gatherings, as well as internet shutdowns and limits on public transportation, to prevent peaceful anti-citizenship law protests. The police arbitrarily arrested those critical of the government and accused several people under India's draconian sedition laws. Several activists and protesters said that they were beaten in custody. A fact-finding report by Indian rights groups found that children were also detained and beaten in police custody. Police in Uttar Pradesh state raided Muslim neighborhoods and ransacked shops and residences, instilling fear among the community.

Police allegedly acted in a partisan manner, using excessive force against demonstrators protesting the law, but failing to intervene during violent attacks by government supporters. On January 30, 2020, the police did not take action when a government supporter shot at students protesting outside the Jamia Millia Islamia University in Delhi. Yet a few weeks prior, on December 15, the police had used teargas to disperse protesters at the same university, even entering the library and hostels, beating students and some staff. A video of police brutally beating a man as female students tried to protect him led to criticism over excessive police actions.

Jamia Millia Islamia University has a large number of Muslim students. The partisan police actions at the university have been accompanied by bigoted statements by BJP leaders, including the prime minister, who suggested that protesters could be "identified by their clothes," implying only Muslims were protesting the new law. Another BJP leader described some protesters as "rabidly indoctrinated Islamists," an assertion that can lead to arbitrary arrests and terrorism allegations.

Several BJP leaders made divisive, hate-filled remarks against the people protesting at Shaheen Bagh that may have incited violent attacks on protesters. One BJP lawmaker warned that those protesting in Shaheen Bagh "will enter your homes, they will pick up your sisters and daughters and rape and kill them."

The Delhi High Court, while hearing petitions about the riots in the city in February, questioned the Delhi police decision to not file cases against BJP leaders advocating violence, saying it sent the wrong message and perpetuated impunity. Instead of responding to court orders, the government fast-tracked orders transferring the presiding judge to another state, taking the riot-related cases away from him. Critics said they found

the timing “disturbing.” Under a new judge, the court accepted the submission of the government’s attorney that the situation was not immediately “conductive” for registering police complaints.

When activist Harsh Mander, petitioner in the high court case against BJP leaders, filed a special leave petition in the Supreme Court against this order, the solicitor-general, arguing on behalf of the government, accused Mander, instead, of inciting violence and being contemptuous of the Supreme Court in a previous speech – a clear act of reprisal.

Lessons from Assam

On August 31, 2019, the final National Register of Citizens in Assam was published, leaving out the names of over 1.9 million people, including many who have lived in India for years, in some cases their entire lifetime. Over 33 million people had submitted applications to enroll their names. Said Mohsin Alam Bhat, executive director of the Centre for Public Interest Law at Jindal Global Law School:

This is the single largest legal event in scale of affected population since the partition and resettlement of refugees. It is not just 1.9 million people but also their families. Considering that the government may introduce [a citizenship verification project] in other places, in terms of a cascading effect, this is absolutely unprecedented.

Human Rights Watch found the NRC process in Assam lacked standardization, leading to arbitrary and discriminatory decisions by officials. The NRC also applied more stringent verification standards regarding documentation to members of ethnic Bengali minority groups who were suspected to be “non-original” inhabitants. The process failed to take into account that poorer residents, often surviving on basic subsistence, do not have access to identity documentation – dating back for decades – to establish citizenship claims. Many also lost documentation during internal migration in Assam as they moved for livelihood, marriage or other personal factors, violence, or because they were displaced – a common occurrence in flood-prone Assam state.

Women in India are more likely than men to lack access to documentation and as a result were disproportionately affected, especially those from poor and marginalized

communities. Many women do not have birth certificates and have never attended school. Child marriage rates are high in Assam, as they are in most of India, and about 40 percent of girls in Assam were married before they were allowed to vote at age 18. This means that their first official documents are often voter identification cards that carry their married names, making it impossible to prove their link to their parents. Any nationwide citizenship verification process is likely to hurt them similarly.

The process has been so fraught that a nongovernmental organization, Citizens for Justice and Peace, said that 56 people have died in Assam since 2015 over fears related to their citizenship status. Several are said to have committed suicide at least in part because of fear of being declared irregular foreigners or fear of detention, and some died in detention centers due to alleged negligence of authorities.

State-provided identity documents are also prone to errors. Human Rights Watch found that even people with legitimate documents proving their citizenship status were not registered because of technical reasons such as spelling mistakes or different names being used in the various documents.

Aslam (name changed), a Bengali Muslim who worked as a driver in Guwahati, was excluded from the NRC even though his parents, wife, and children were included. He was likely excluded, he said, because the spelling of his name on his voter identification card and his income tax identification card known as Permanent Account Number (PAN) are different. “The form for the PAN card is in English, but we fill the forms for voter identity card in Assamese,” he said. “Then when they change it into English, the spelling of the name often changes.”

Human Rights Watch also found that the Foreigners Tribunals, which decide the question of citizenship, lack transparency and fail to follow uniform procedures, often making their decisions inconsistent. Members lack independence and are vulnerable to pressure from the authorities because the government’s evaluation of their performance is often measured by the number of people they declare as irregular immigrants. A former member of a Foreigners Tribunal told Human Rights Watch:

I admit that there might be arbitrary actions by Foreigners Tribunals
because there is an internal government policy that more and more people

should be deemed foreigners. We are hired on the basis of contracts – those with records of declaring more and more people as foreigners are preferred.

Activists and journalists said that significantly more Muslims were being tried and a much greater proportion were declared foreigners as compared to Hindus, likely because of political pressure.

In the regular justice system, once a matter is decided in a lower court it can only be challenged in a higher court, but a person cleared by a tribunal can be tried multiple times for being a suspected irregular immigrant. There are numerous cases in which people who have been declared citizens are presented with fresh notices to appear before the tribunals.

Once a person is declared an irregular immigrant by the tribunals, they can be detained by the police. Currently, there are six makeshift detention centers in prisons across Assam. According to official data, 988 people were detained in these centers as of November 2019. The government has said it will build 10 detention centers in the state for those who are declared irregular foreigners. In January 2019, the Modi government sent a “Model Detention Manual” to all states that called for the setting up of “one detention camp in the city or district where [a] major immigration check post is located,” and that said “all members [of a family] should be housed in the same detention centre.”

However, Prime Minister Modi, while speaking at a rally on December 22, at a time when he should have known the claims were false, said his government had never discussed a national register of citizens and denied that there were any detention centers for irregular immigrants in the country.

International Legal Standards

The 2019 Citizenship Amendment Act violates India’s international obligations to prevent deprivation of citizenship on the basis of race, color, descent, or national or ethnic origin as found in the International Covenant on Civil and Political Rights and other human rights treaties that India has ratified. The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities calls on governments to protect the

existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end. Governments are obligated to ensure that people belonging to minority groups, including religious minorities, may exercise their human rights without discrimination and in full equality before the law. Governments also have an obligation to ensure gender equality. To the extent that the process has a disproportionately harmful impact on the citizenship rights of women and girls, it also violates the Convention on the Elimination of All Forms of Discrimination against Women.

Key Recommendations

The citizenship law and verification process are contrary to the basic principles of secularism and equality enshrined in the Indian constitution and in domestic law. Indian authorities should immediately reverse course and adopt rights-respecting laws and policies regarding citizenship. They should also uphold the rights to freedom of expression and to peaceful assembly.

The Indian government should:

- Repeal the Citizenship Amendment Act, 2019, and ensure that any future national asylum and refugee policy does not discriminate on any grounds, including religion, and is compliant with international legal standards.
- Discard any plan for a nationwide citizenship verification project until there are public consultations to establish standardized procedures and due process protections ensuring the process is not discriminatory and does not impose undue hardship on the poor, minority communities, and women.
- Protect the rights to freedom of expression and assembly of those protesting against the government's citizenship law and policies.
- Ensure prompt, credible, and impartial investigations into the killings of protesters, allegations of use of excessive force by police, arbitrary detention, and raids on Muslims homes and property.
- Release all those arbitrarily detained for protesting against the citizenship law and dismiss politically motivated charges against protesters and civil society activists.
- Investigate hate speech by government officials and appropriately prosecute incitement to violence.

Methodology

This report is based on Human Rights Watch field research and interviews conducted in India's Assam state in September 2019, and in Delhi and Uttar Pradesh state between December 2019 and February 2020. We spoke with victims of abuses and their families, witnesses, legal experts, academics, activists, and police officials.

The report also draws upon secondary literature, including research conducted by other rights groups, media reports, government statistics, parliament proceedings, and rulings by the Supreme Court and High Courts.

Human Rights Watch interviewed about 50 people in Meerut, Muzaffarnagar, and Bijnor districts in Uttar Pradesh. In Assam, we interviewed more than 50 people who had either been excluded from the National Register of Citizens or had previously contested their citizenship in a Foreigners Tribunal. In addition, we spoke with lawyers and activists representing families of victims, experts, and journalists who have reported on these issues. Interviews were conducted in Bongaigaon, Barpeta, Baksa, and Goalpara districts and the city of Guwahati in Assam.

Human Rights Watch, with the consent of the victims or their families, received and has retained copies of police reports, citizenship documents, court documents, and other relevant documents. Interviews were conducted in Hindi or English. In Assam, most interviews were conducted in Bengali or Assamese through an independent interpreter.

Several people have used pseudonyms and, on their request, identifying information has been withheld to protect their privacy and safety. Human Rights Watch provided no remuneration or other inducement to the interviewees.

I. Citizenship Law, Population Register, and the National Register of Citizens

Since the partition of 1947 and the creation of independent India and Pakistan, followed by a series of wars between the two countries, there have been several waves of refugees into India. India has also been host to many refugees from Tibet, Sri Lanka, Afghanistan, Bhutan, Myanmar, and elsewhere. There are also many irregular economic migrants.

Citizenship in India is governed by the Citizenship Act. The government amended the Citizenship Act on December 12, 2019, to make, for the first time, religion a basis for citizenship claims in India. Contrary to India's secular constitution, the Citizenship Amendment Act, 2019 (CAA) deliberately excludes Muslims and grants citizenship to non-Muslim irregular immigrants from the neighboring Muslim-majority countries of Afghanistan, Bangladesh, and Pakistan who arrived in India before December 31, 2014.¹ Other claimants remain eligible to seek citizenship under the existing law. The government asserted that it wanted to provide for persecuted religious minorities from these three countries. "We are not taking away anyone's citizenship," said Prime Minister Modi. "It is an Act that gives citizenship to persecuted people."²

The amended law led to protests across India. Combined with the government's plan to update the National Population Register (NPR), followed by a push for a nationwide citizenship verification process, the National Register of Citizens (NRC), aimed at identifying "illegal migrants," the new law could strip millions of Indian Muslims of their citizenship rights while protecting those of Hindus and other non-Muslims. "I want to assure all Hindu, Sikh, Jain, Buddhist, and Christian refugees, that you will not be forced to leave India," Home Minister Amit Shah promised in October 2019, conspicuously omitting Muslims from the list of protected religions. "Don't believe rumors. Before NRC, we will

¹ The Citizenship (Amendment) Act, No. 47 of 2019, <http://egazette.nic.in/WriteReadData/2019/214646.pdf> (accessed January 14, 2019).

² Abhishek Law, "CAA gives citizenship to persecuted people, will not take away anyone's citizenship: PM Modi," *Business Line*, January 12, 2020, <https://www.thehindubusinessline.com/news/caa-gives-citizenship-to-persecuted-people-will-not-take-away-anyones-citizenship-pm-modi/article30549414.ece> (accessed February 2, 2020).

bring [the] Citizenship Amendment Bill, which will ensure these people get Indian citizenship.”³

There have been contradictory statements by various government officials, including the prime minister and the home minister in which they have attempted to delink the Citizenship Amendment Act, the National Population Register, and the National Register of Citizens.⁴ The prime minister has also said that there are no plans for a National Register of Citizens even as the home minister has repeatedly said otherwise in public speeches, interviews, and even in parliament in November 2019.⁵ Similarly, in statements on procedures, requirements for documents, and types of question in the National Population Register, senior officials have contradicted official documents, obfuscating facts or deviating from prior expressions of the government’s intentions in the face of growing criticism.

In March 2020, faced with the challenge of combating the COVID-19 global pandemic, the central government postponed the process to update the National Population Register.⁶

Citizenship under Indian Law

The Citizenship Act, 1955 allows for citizenship of India by birth, descent, registration, naturalization, or incorporation of territory.⁷ Irregular immigrants, who entered the country without valid travel documents or overstayed beyond the permitted period, could be imprisoned or deported under the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920.

³ “NRC: Amit Shah vows to eject illegal migrants from West Bengal,” *BBC News Online*, October 1, 2019, <https://www.bbc.com/news/world-asia-india-49890663> (accessed February 4, 2020).

⁴ “There is absolutely no link between NPR and NRC: Amit Shah,” *Economic Times*, December 24, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/there-is-absolutely-no-link-between-npr-and-nrc-amit-shah/articleshow/72957197.cms> (accessed January 15, 2020); “PM Modi counters what Amit Shah, BJP manifesto say on bringing all-India NRC,” *India Today*, December 22, 2019, <https://www.indiatoday.in/india/story/pm-modi-counters-what-amit-shah-bjp-manifesto-say-on-bringing-all-india-nrc-1630576-2019-12-22> (accessed January 15, 2020).

⁵ “NRC or No NRC: Who Is Lying, Narendra Modi or Amit Shah?,” *The Wire*, December 24, 2019, <https://thewire.in/politics/narendra-modi-amit-shah-nrc> (accessed January 20, 2020).

⁶ “Due to the outbreak of COVID-19 pandemic, first phase of Census 2021 and updation of NPR postponed until further orders,” Government of India, Ministry of Home Affairs, Press Information Bureau, Press Release, March 25, 2020, https://mha.gov.in/sites/default/files/PR_CensuaNPRpostponed_26032020.pdf (accessed April 1, 2020).

⁷ The Citizenship Act, 1955, No. 57 of 1955, https://indiacode.nic.in/bitstream/123456789/4210/1/Citizenship_Act_1955.pdf (accessed October 12, 2019).

In 2003, the Citizenship Act was first amended by an earlier BJP government to introduce the term “illegal migrant” and a National Register of Citizens.⁸ Section 14A of the law inserted a new provision calling for the establishment of a National Register of Indian Citizens (NRIC) and national identity cards.⁹

New Citizenship Law Discriminates Against Muslims

In December 2019, the parliament passed the Citizenship (Amendment) Bill, which amended the Citizenship Act to make irregular immigrants from Hindu, Christian, Buddhist, Sikh, and Zoroastrian communities from Afghanistan, Bangladesh, and Pakistan eligible for citizenship, but excluded Muslims. The law also lowered the minimum years of residence required for naturalization in India from 11 years to 5 years for these groups. In effect, the government is making a distinction between Muslims, whom it contends have immigrated illegally and are thus “infiltrators,” and non-Muslims, who are treated as “refugees” who have escaped persecution in the three countries. “There is a fundamental difference between a refugee and an infiltrator,” Shah said when defending the bill in parliament. “This bill is for refugees.”¹⁰

The BJP has used this narrative to demonize Muslims and win Hindu votes in elections. “Illegal immigrants are like termites and they are eating the food that should go to our poor and they are taking our jobs,” Shah said at an election rally in Delhi in September 2018. “They carry out blasts [bombings] in our country and so many of our people die.” Shah promised that “if we come to power in 2019, we will find each and every one and send them away. Action against them should not worry any patriot.”¹¹

⁸ The Citizenship (Amendment) Act, 2003, No. 6 of 2004, http://egazette.nic.in/WriteReadData/2004/E_7_2011_119.pdf (accessed January 15, 2020).

⁹ The Citizenship (Amendment) Act, 2003, sec. 14A. The amendment also made other changes, including adding conditions on citizenship by birth and descent. Citizenship at birth is restricted to persons born in India before July 1, 1987; for those born in India after, but before the commencement of the 2003 Act, citizenship will be granted only if one of the parents is a citizen; and for a person born in India after the 2003 Act came into force, citizenship will be granted only if both parents are citizens or if one parent is a citizen and the other is not an irregular immigrant. Citizenship (Amendment) Act, 2003, sec. 3.

¹⁰ Deeptiman Tiwary and Avishek G Dastidar, “Lok Sabha clears Citizenship Amendment Bill: Amit Shah invokes ‘Partition on basis of religion’ to defend Bill,” *Indian Express*, December 10, 2019, <https://indianexpress.com/article/india/lok-sabha-clears-citizenship-amendment-bill-amit-shah-invokes-partition-on-basis-of-religion-to-defend-bill6158951/> (accessed January 14, 2020).

¹¹ Deepshikha Ghosh, “Amit Shah ‘Termite’ Remark On Immigrants Unwanted, Says Bangladesh,” *NDTV*, September 24, 2018, <https://www.ndtv.com/india-news/amit-shah-termite-remark-on-immigrants-unwanted-says-bangladesh-1921088> (accessed October 12, 2019).

In January 2019, several opposition lawmakers, part of the joint parliamentary committee that reviewed the bill, concluded that it violates articles 14 and 15 of the Indian constitution, which guarantee the right to equality and nondiscrimination.¹² During the parliamentary debate on December 9, 2019, several opposition leaders opposed the bill as an assault on the foundational values of the country. “[T]his is merely a cynical political exercise to further single out and disenfranchise an entire community in India and in doing so, a betrayal of all that was good and noble about our civilization,” said Shashi Tharoor, of the Indian National Congress party.¹³

The government sought to justify the law by asserting that it seeks to provide sanctuary to religious minorities fleeing persecution in neighboring countries.¹⁴ However, that claim collapses as a general principle of protection for members of religious minorities because the law excludes many minority groups that have sought refuge in India, including Tamils from Sri Lanka, Hazaras from Afghanistan, Shia and Ahmadiyya from Pakistan, and Chin and Rohingya minorities from Myanmar.¹⁵

Over 140 petitions have been filed in the Supreme Court challenging the constitutionality of the law, including a petition by the state of Kerala.¹⁶ Some argued that the Citizenship Amendment Act violated articles 14, 15, 21, and 25 of the Indian constitution.¹⁷ Article 14 guarantees equality before law and equal protection of the laws to all persons living in India; article 15 prohibits discrimination on specific grounds, including religion; article 21

¹² Parliament of India, Lok Sabha, “Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016,” [http://prsindia.org/sites/default/files/bill_files/Joint%20committee%20report%20on%20citizenship%20\(A\)%20bill.pdf](http://prsindia.org/sites/default/files/bill_files/Joint%20committee%20report%20on%20citizenship%20(A)%20bill.pdf) (accessed January 14, 2020).

¹³ “It Will Reduce India To Hindutva Version Of Pakistan: Shashi Tharoor On CAB,” *Press Trust of India*, December 8, 2019, <https://www.outlookindia.com/website/story/india-news-will-reduce-india-to-hindutva-version-of-pakistan-shashi-tharoor-on-cab/343810> (accessed January 14, 2020).

¹⁴ “Citizenship Amendment Bill: India’s new ‘anti-Muslim’ law explained,” *BBC News Online*, December 11, 2019, <https://www.bbc.com/news/world-asia-india-50670393> (January 14, 2020).

¹⁵ “Watch: What is CAA and how is it linked to NPR, NRC? Lawyer Gautam Bhatia explains,” *NEWS Minute*, January 12, 2020, <https://www.thenewsminute.com/article/watch-what-cao-and-how-it-linked-npr-nrc-lawyer-gautam-bhatia-explains-115963> (accessed January 15, 2020).

¹⁶ Anindita Sanyal, “Around 60 Petitions on Citizenship Law To Be Heard By Supreme Court Today,” *NDTV*, December 18, 2019, <https://www.ndtv.com/india-news/cao-citizenship-amendment-act-around-60-petitions-on-citizenship-law-to-be-heard-by-supreme-court-to-2150459> (accessed January 15, 2020).

¹⁷ See *Deb Mukharji, IFS (Retd). & Ors. v. Union of India*. “Former Indian Ambassador To Nepal, Two (Rtd) IAS Officers Move SC Challenging Citizenship (Amendment) Act, 2019 (Read Petition),” *Livewlaw.in*, December 13, 2019, <https://www.livewlaw.in/top-stories/-indian-ambassador-to-nepal-two-rtd-ias-officers-move-sc-citizenship-amendment-act-150783> (accessed April 1, 2020). Also see “Supreme Court seeks government response on CAA petitions,” *Telegraph*, December 19, 2019, <https://www.telegraphindia.com/india/supreme-court-seeks-government-response-on-cao-petitions/cid/1728328> (accessed April 2, 2020).

guarantees right to life and personal liberty; and article 25 protects right to freedom of religion.¹⁸

In March 2020, the United Nations High Commissioner for Human Rights filed an intervention application as amicus curiae (third party) in the Supreme Court in a petition filed by three retired public officials, urging it to take into account international human rights law, norms, and standards in the proceedings related to the Citizenship Amendment Act.¹⁹ The Indian government criticized the move saying the CAA was an “internal matter” and “no foreign party has any locus standi [grounds to sue] on issues pertaining to India’s sovereignty.”²⁰

National Population Register and National Register of Indian Citizens

In 2003, the government adopted the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules (the “2003 Citizenship Rules”), which introduced the National Population Register and explained the National Register of Indian Citizens.²¹ The objective of the NPR was to create a comprehensive identity database of every “usual resident” in the country, defined as a person living in an area for past six months or with plans to live there for six months in the future.²²

The 2003 Citizenship Rules also specify that data from the National Population Register will provide inputs essential to creation of a National Register of Citizens. The NPR is a list of all people residing in India, irrespective of their nationality, while the NRC is a list of citizens that will be prepared from the NPR after verification.²³ The NPR is also different

¹⁸ Constitution of India, arts. 14, 15, 21, 25, https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf (last accessed April 1, 2020).

¹⁹ Application for intervention by United Nations High Commissioner for Human Rights in *Deb Mukharji, IFS (Retd). & Ors. v. Union of India*, W.P. (Civil) no. 1474 of 2019, Supreme Court of India, <https://www.scribd.com/document/449891277/UN-High-Commissioner-for-Human-Rights-Intervention-Application-CAA-SC> (accessed March 13, 2020).

²⁰ Geeta Mohan, “UN human rights body moves Supreme Court over CAA, India hits back saying citizenship law internal matter,” *India Today*, March 3, 2020, <https://www.indiatoday.in/india/story/nw-un-human-rights-body-moves-supreme-court-over-caa-1651950-2020-03-03> (accessed March 13, 2020).

²¹ Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 (Citizenship Rules, 2003), Notified on December 10, 2003, Government of India, Ministry of Home Affairs, http://censusindia.gov.in/2011-Act&Rules/notifications/citizenship_rules2003.pdf (accessed January 15, 2020).

²² “Introduction to NPR,” Government of India, Ministry of Home Affairs, Office of the Registrar General & Census Commissioner, <http://censusindia.gov.in/2011-Common/IntroductionToNpr.html> (accessed January 15, 2020).

²³ Citizenship Rules, 2003, rules 3(5), 4.

from the census, which is conducted every 10 years and is due in 2021. The census data also has information about all residents of India but does not list their names.

The Local Registrar, a government functionary, will verify the details in the NPR, cull cases of doubtful citizenship, conduct further inquiries to verify suspicious citizenship status, and then prepare a draft Local Register of Indian Citizens, which will exclude those not able to establish their claim of citizenship.²⁴ However, the 2003 Citizenship Rules do not clarify the process or criteria for verification, who will be considered “doubtful,” and how they can establish their citizenship. Lack of clarity raises concerns that the process will be marred by arbitrariness and bias from local officials, as has happened with the verification process in Assam – the first state to hold the NRC – in which nearly two million people were left off the list.²⁵

More than 100 former civil servants – retired bureaucrats, police officials, and Indian diplomats – wrote an open letter, explaining the link between the CAA, NPR, and NRC, saying these policies were “unnecessary and wasteful,” and raising serious concerns they would be prone to bias, arbitrariness, errors, and targeting of specific communities:

We are apprehensive that the vast powers to include or exclude a person from the Local Register of Indian Citizens that is going to be vested in the bureaucracy at a fairly junior level has the scope to be employed in an arbitrary and discriminatory manner, subject to local pressures and to meet specific political objectives, not to mention the unbridled scope for large-scale corruption.²⁶

Earlier, on July 31, 2019, the BJP government had issued a notification to update the NPR again throughout the country between April 1, 2020 and September 30, 2020, except in the state of Assam where a separate National Register of Citizens was published in August 2019.²⁷ Government-appointed enumerators will visit each household to collect

²⁴ Ibid., rule 4.

²⁵ See Section IV. Assam’s National Register of Citizens.

²⁶ “India Does Not Need CAA-NPR-NRC, Say 106 Former Civil Servants in Open Letter,” *The Wire*, January 10, 2020, <https://thewire.in/rights/india-nrc-npr-nrc-civil-servants-open-letter> (accessed January 20, 2020).

²⁷ Notification S. O. 2753(E), Government of India, Ministry of Home Affairs, Office of the Registrar General Citizen Registration, July 31, 2019, <http://dnh.nic.in/eGazette/13Sep2019/ESeries1SrNo11Dated12Sep2019.pdf> (accessed January 15, 2020).

demographic and biometric data from its members. The NPR could then be used to produce a list of verified citizens for the NRC.

After widespread protests, the opposition-run governments of West Bengal and Kerala states suspended all work on updating the NPR.²⁸ Several other state governments have said they will not comply with the citizenship verification process.

Contrary and Vague Government Statements

In response to protests, Home Minister Shah said, “There is no link between the NRC and the NPR. The data collected for the NPR will not be used in the NRC.”²⁹ In March 2020, he told parliament that the NPR process will not ask for any documents and “nobody will be marked ‘doubtful.’ Nobody needs to be scared of the process of the NPR in this country.”³⁰

Shah’s comment was not reassuring because it contradicted previous statements.³¹ “I assure you NRC will be implemented across the country and all infiltrators identified and expelled before 2024 polls,” Shah said in December 2019.³² The BJP’s manifesto for the 2019 national elections had promised a nationwide NRC.³³

²⁸ K P Sai Kiran, “After West Bengal, Kerala too suspends updation of National Population Register,” *Times of India*, December 20, 2019, <https://timesofindia.indiatimes.com/india/after-west-bengal-kerala-too-suspends-updation-of-national-population-register/articleshow/72908306.cms> (accessed January 2020).

²⁹ Rahul Tripathi, “Government bites NPR bullet, says not linked to NRC,” *Economic Times*, December 25, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/cabinet-approves-funds-for-updating-national-population-register-officials/articleshow/72953285.cms> (accessed January 15, 2020).

³⁰ “CAA myths flared Delhi riots, no violation of privacy to identify rioters: Key takeaways from Amit Shah’s speech,” *India Today*, March 12, 2020, <https://www.indiatoday.in/india/story/amit-shah-rajya-sabha-delhi-riots-1654929-2020-03-12> (accessed March 13, 2020).

³¹ “Is NPR linked to NRC? Amit Shah says no, here’s what govt said in the past,” *India Today*, December 25, 2019, <https://www.indiatoday.in/india/story/citizenship-row-amit-shah-nrc-npr-caa-protests-bhu-university-student-dissent-refuses-degree-1631355-2019-12-25>. Also see “Identifying Citizens While Preparing NPR,” Government of India, Ministry of Home Affairs, Press Information Bureau, Press Release, November 26, 2014, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=111934>. The 2018-19 annual report of the Ministry of Home Affairs also said that “the National Population Register (NPR) is the first step towards the creation of the National Register of Indian Citizens (NRIC)” under the Citizenship Rules, 2003. Government of India, Ministry of Home Affairs, “Annual Report, 2018-19,” https://mha.gov.in/sites/default/files/AnnualReport_English_01102019.pdf (accessed February 11, 2020), chapter 15.

³² “Amit Shah sets pan-India NRC deadline: Will drive out illegal immigrants before 2024,” *Indian Express*, December 2, 2019, <https://indianexpress.com/article/india/pan-india-nrc-by-2024-will-drive-illegal-immigrants-out-of-country-amit-shah-6146844/> (accessed January 20, 2020).

³³ Bharatiya Janata Party, “Sankalp Patra, Lok Sabha 2019,” April 8, 2019, <https://drive.google.com/file/d/oBx2kY-odmL3MRTQ3dWFDWY1ODBDWFQodFZTNok1R1QxeVRj/view> (accessed March 13, 2020).

Rule 4 of the 2003 Citizenship Rules states that if a National Population Register is created, the data collected can be used to generate a National Register of Citizens and identify “illegal immigrants.”³⁴ With the census also being conducted in 2020, the NPR has little meaning except for creating the NRC.³⁵ In July 2014, the Minister of State for Home Affairs Kiren Rijiju told parliament that the government will use the NPR for “verification of citizenship status.”³⁶ He and others in government have since repeated this several times.³⁷

The information and broadcasting minister in December 2019 said the cabinet had decided that, “No documents or biometrics will be collected during the NPR process. Whatever people will say will be accepted.”³⁸ However, the 2018-19 annual report of the Ministry of Home Affairs said the NPR already included biometric data of 334.3 million (33.43 crore) people.³⁹

In 2015, the BJP government inserted individuals’ unique Aadhaar number into the NPR database.⁴⁰ Aadhaar, which collects personal and biometric data such as fingerprints, facial photographs, and iris scans, is a 12-digit individualized identity number that has been vulnerable to data breaches and leaks and has raised serious concerns over privacy and surveillance.⁴¹ A government document published by the news website *Wire* stated

³⁴ Citizenship Rules, 2003, rule 4.

³⁵ “Does India really need an NPR when there's Census?” *Times of India*, January 2, 2020, <https://timesofindia.indiatimes.com/india/does-india-really-need-an-npr-when-theres-census/articleshow/73066616.cms> (accessed March 13, 2020).

³⁶ Reply to Lok Sabha Unstarred Question No. 108, Government of India, Ministry of Home Affairs, July 8, 2014, <https://mha.gov.in/MHA1/Par2017/pdfs/par2014-pdfs/ls-o80714/108.pdf> (accessed February 11, 2020).

³⁷ Deeptiman Tiwary, “Amit Shah says no NPR-NRC link, his Govt linked it 9 times in House,” *Indian Express*, December 25, 2019, <https://indianexpress.com/article/india/npr-nrc-link-amit-shah-central-government-parliament-6183572/> (accessed February 11, 2020); “If MHA Now Says ‘No Plan for All-India NRC,’ Did Amit Shah Misperceive Parliament Earlier?” *The Wire*, February 4, 2020, <https://thewire.in/government/no-decision-yet-on-nationwide-nrc-home-ministry-tells-parliament> (accessed February 11, 2020); “Law Minister Contradicts Amit Shah, Says NPR Data ‘May or May Not be Used’ for NRC,” *The Wire*, December 29, 2019, <https://thewire.in/government/ravi-shankar-prasad-npr-nrc-data-cao> (accessed February 11, 2020).

³⁸ Rahul Tripathi, “Government bites NPR bullet, says not linked to NRC,” *Economic Times*, December 25, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/cabinet-approves-funds-for-updating-national-population-register-officials/articleshow/72953285.cms> (accessed January 15, 2020).

³⁹ Government of India, Ministry of Home Affairs, “Annual Report, 2018-19,” https://mha.gov.in/sites/default/files/AnnualReport_English_01102019.pdf (accessed February 11, 2020), chapter 15.

⁴⁰ “Linking of NPR Data with Aadhaar Numbers,” Government of India, Ministry of Home Affairs, Press Information Bureau, Press Release, July 22, 2015, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=123480> (accessed January 15, 2020).

⁴¹ “India: Top Court OK’s Biometric ID Program,” Human Rights Watch news release, September 27, 2018, <https://www.hrw.org/news/2018/09/27/india-top-court-oks-biometric-id-program>.

that 600 million Aadhaar numbers – about half the total – are already inserted within the NPR database and officials plan to collect the remainder during the NPR updating process.⁴² Apar Gupta, executive director of Internet Freedom Foundation, expressed concerns that this would increase risks of mass surveillance:

Aadhaar enables profiling where a unique identifier is used across different government databases for access to entitlements and essential services. Therefore, if it is also linked to the citizenship register, it will increase the powers of the government to enable mass surveillance in which it would have a complete 360-degree view of all Indians. The very basis of a citizenship register provides a legal identity for existence which in case of dispute, can then be also utilized to disable other supporting services provided by the government.⁴³

The government has vacillated about the NPR requirements. The 2003 Citizenship Rules provide that 12 basic pieces of information be collected.⁴⁴ However, according to the Office of the Registrar General and Census Commissioner, the NPR requires 15 pieces of information.⁴⁵ The 2020 instruction manual for enumerators and supervisors for the NPR update exercise reveals that it will require yet more information including where and when a person's parents were born. It will also seek an individual's Aadhaar number, driver's license number, voter identity card number, passport number, and mobile phone

⁴² Dheeraj Mishra, "Exclusive: Official File Notings on NPR and Aadhaar Contradict Home Ministry Assurances," *The Wire*, January 16, 2020, <https://thewire.in/government/exclusive-npr-aadhaar-home-ministry> (accessed January 20, 2020).

⁴³ Human Rights Watch telephone interview with Apar Gupta, Executive Director, Internet Freedom Foundation, February 11, 2020.

⁴⁴ "It [population register] would contain 12 details: name, father's name, mother's name, sex, date of birth, place of birth, residential address (present and permanent), marital status (if ever married, name of the spouse), visible identification mark, date of registration of citizen, serial number of registration and national identity number provided under rule 13." Citizenship Rules, 2003, rule 3(3).

⁴⁵ The NPR includes details on relationship to head of household, nationality (as declared), duration of stay at present address, occupation/activity, educational qualification, but does not ask for visible identification mark, date of registration of citizen, serial number of registration, and national identity number provided under rule 13. "Introduction to NPR," Government of India, Ministry of Home Affairs, Office of the Registrar General & Census Commissioner, <http://censusindia.gov.in/2011-Common/IntroductionToNpr.html><http://censusindia.gov.in/2011-Common/IntroductionToNpr.html> (accessed January 15, 2020).

number.⁴⁶ The government has since said that providing information on parents' place and date of birth will not be mandatory.⁴⁷

The Assam Experience

In August 2019, India's northeastern state of Assam was the first state to complete its own NRC. The project, an update to the NRC first held in the state in 1951, following repeated protests and violence by Assamese groups over irregular migration from Bangladesh, left out nearly two million people.⁴⁸ Assam's NRC process cost the central government 12 billion rupees (US\$171 million).⁴⁹ Most of those excluded are ethnic Bengali, many of them Muslim. Those left out of the NRC will have to prove their citizenship at Foreigners Tribunals, quasi-judicial courts in Assam adjudicating citizenship cases.⁵⁰

In May 2019, the Ministry of Home Affairs amended the 1964 Foreigners (Tribunal) Order to allow tribunals to be set up across the country.⁵¹ This, combined with the home minister's statements that he will drive out all "illegal immigrants" before the 2024 elections, has triggered concerns that the government is gearing up for a nationwide NRC.

While the Assam NRC required every resident of the state to submit an application, nationwide citizenship verification will be based on the NPR, which will be compiled based on data collected by enumerators who visit every home.

⁴⁶ Government of India, Ministry of Home Affairs, Office of the Registrar General and Census Commissioner, "Instruction Manual for Updation of National Population Register 2020: For Enumerators and Supervisors," <https://cjp.org.in/wp-content/uploads/2019/12/NPR-manual.pdf> (accessed February 13, 2020).

⁴⁷ "Question on birth place of parents in NPR form not mandatory, says home ministry after criticism," *Scroll.in*, January 18, 2020, <https://scroll.in/latest/950287/question-on-birth-place-of-parents-in-npr-form-not-mandatory-says-home-ministry-after-criticism> (accessed January 20, 2020).

⁴⁸ "Assam NRC Final List 2019: Over 19 lakh excluded, 3.11 crore included in list," *Indian Express*, August 31, 2019, <https://indianexpress.com/article/india/assam-nrc-final-list-2019-published-19-lakh-left-out-5953202/> (accessed September 12, 2019).

⁴⁹ Government of India, Ministry of Home Affairs, "Annual Report, 2018-19," https://mha.gov.in/sites/default/files/AnnualReport_English_01102019.pdf (accessed February 11, 2020), chapter 15.

⁵⁰ For more on Foreigners Tribunals, see Section IV. Assam's National Register of Citizens.

⁵¹ Vijaita Singh, "All States can now constitute Foreigners Tribunals," *The Hindu*, June 10, 2019, <https://www.thehindu.com/news/national/all-states-can-now-constitute-foreigners-tribunals/article27706366.ece> (accessed September 19, 2019); Sangeeta Barooah Pisharoty, "Explainer: What Do the MHA's Changes to 1964 Foreigners Tribunals Order Mean?" *The Wire*, June 14, 2019, <https://thewire.in/government/foreigners-tribunals-order-mha-changes> (accessed September 14, 2019).

The process of updating the 1951 NRC in Assam started in 2015 and the final list was published in August 2019. The process was marred by errors and bias.⁵² It also made unreasonable demands upon millions of people in Assam, often people surviving on basic subsistence, who have no access to historical documentation to establish citizenship claims. To prove their citizenship, individuals were expected to provide documentary evidence dating back over 50 years, which was particularly difficult for the most marginalized people, particularly those who had been repeatedly internally displaced because of frequent natural disasters such as floods, as well as outbreaks of violence. A group of retired bureaucrats, diplomats, and police officials, in an open letter, have pointed to the shortcomings in Assam to warn against what could happen when the NPR and NRC are carried out in rest of the country:

The Assam NRC exercise has thrown up the dangers of such a large-scale exercise: lakhs [hundreds of thousands] of citizens have been made to spend their life's savings running from pillar to post to establish their citizenship credentials. Worrying reports are already coming in of people in different parts of India rushing in panic to obtain the necessary birth documents. The problem is magnified in a country where the maintenance of birth records is poor, coupled with highly inefficient birth registration systems. Errors of inclusion and exclusion have been a feature of all large-scale surveys in India.⁵³

Official national data shows that the poor and marginalized will be placed at further risk by any process that demands birth and legacy-related documents to prove citizenship. According to the government's 2015-16 National Family Health Survey (NFHS), which includes responses from half a million people, only 80 percent of children under the age of 5 had their births registered while just 62 percent had birth certificates. Only 60 percent of Muslims and Dalits, and 56 percent of Adivasis had the document.⁵⁴

⁵² "India: Assam's Citizen Identification Can Exclude 4 Million People," Human Rights Watch news release, July 31, 2018, <https://www.hrw.org/news/2018/07/31/india-assams-citizen-identification-can-exclude-4-million-people>; Abhishek Saha, "Excluded from NRC in Assam: 19,06,657," *Indian Express*, September 14, 2019, <https://indianexpress.com/article/north-east-india/assam-nrc-mis-faulty-genuine-citizens-out-5957268/> (accessed September 15, 2019).

⁵³ "India Does Not Need CAA-NPR-NRC, Say 106 Former Civil Servants in Open Letter," *The Wire*, January 10, 2020, <https://thewire.in/rights/india-nrc-npr-nrc-civil-servants-open-letter> (accessed January 20, 2020).

⁵⁴ Rukmini S, "India's poor are also document-poor," *Livemint*, January 6, 2020, <https://www.livemint.com/news/india/india-s-poor-are-also-document-poor-11578300732736.html> (accessed February 11, 2020).

Targeting Muslims

In Assam, ethnic Assamese had sought to deny citizenship to ethnic Bengalis, both Hindu and Muslim. The ruling BJP, however, focused primarily on Bengali Muslims, asserting without evidence that many Muslims were wrongly included in the list and viewing the large numbers of excluded Hindus as a major setback. “We can never accept this NRC where names of illegal Bangladeshi Muslims have appeared,” said BJP legislator Dilip Kumar Paul. “Our BJP’s stand is that Hindus can never be foreigners.”⁵⁵

The BJP has indicated that it considers the new citizenship law as the solution for Bengali-speaking Hindus left out of the NRC in Assam.⁵⁶ It would also resolve similar challenges in a nationwide exercise. Non-Muslims who are considered doubtful citizens or illegal immigrants because of inadequate documentation will have an opportunity to get citizenship under the CAA, but Muslims with similarly inadequate documentation, will be at risk of statelessness and arbitrary detention.

As of November 2019, 988 people declared irregular immigrants in Assam were detained in makeshift detention centers.⁵⁷ The Assam government has said it will build 10 detention centers for those declared foreigners, and is building the first one in Goalpara district that can accommodate up to 3,000 detainees.⁵⁸ Karnataka state has also built a detention center.⁵⁹ In January 2019, the Modi government sent a “Model Detention Manual” to all states that called for the setting up of “one detention camp in the city or district where [a] major immigration check post is located.”⁶⁰ In July, the Ministry of Home Affairs confirmed

⁵⁵ Manogya Loiwal, “Hindus can never be foreigners: Assam BJP demands Hindustani NRC across nation,” *India Today*, September 1, 2019, <https://www.indiatoday.in/india/story/hindus-can-never-be-foreigners-assam-bjp-demands-hindustani-foreigner-free-nrc-across-nation-1594107-2019-09-01> (accessed January 15, 2020).

⁵⁶ Prabin Kalita, “Five lakh Bengali Hindu NRC rejects will get citizenship,” *Times of India*, December 11, 2019, <https://timesofindia.indiatimes.com/india/five-lakh-bengali-hindu-nrc-rejects-will-get-citizenship/articleshow/72465093.cms> (accessed January 15, 2020).

⁵⁷ Reply to Rajya Sabha Unstarred Question No. 1010, Government of India, Ministry of Home Affairs, November 11, 2019.

⁵⁸ The Goalpara detention center cost the central government 465 million rupees (\$6.5 million). Reply to Rajya Sabha Unstarred Question No. 2632, Government of India, Ministry of Home Affairs, December 11, 2019; Ratnadip Choudhury, “India’s 1st Illegal Immigrant Detention Camp Size Of 7 Football Fields,” *NDTV*, September 12, 2019, <https://www.ndtv.com/india-news/assam-detention-centre-inside-indias-1st-detention-centre-for-illegal-immigrants-after-nrc-school-ho-2099626> (accessed September 29, 2019).

⁵⁹ Johnson TA, “Detention centre for illegal immigrants near Bengaluru gets finishing touches,” *Indian Express*, December 23, 2019, <https://indianexpress.com/article/india/detention-centre-for-illegal-immigrants-near-bengaluru-gets-finishing-touches-6180274/> (accessed January 15, 2020).

⁶⁰ Rahul Tripathi, “States told to set up Centres to detain illegal migrants,” *Economic Times*, July 29, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/states-told-to-set-up-centres-to-detain-illegal-migrants/articleshow/70426017.cms?from=mdr> (accessed January 20, 2020).

to parliament that instructions were issued to all state governments for detention centers “to restrict the movements of illegally staying foreign nationals so that they are physically available at all times for expeditious repatriation/deportation.”⁶¹

Nevertheless, Prime Minister Modi denied that any detention centers for irregular immigrants were being set up.⁶²

Women Disproportionately Affected

Women in India often lack access to documentation. Many, especially from poor and marginalized communities, do not have birth certificates and have never attended school. About 27 percent of girls in India marry as children, before age 18.⁶³ This means that their first official documents are often voter identification cards that carry their married names and new address, making it difficult to prove their link to their parents as required under the NRC.⁶⁴

Any nationwide citizenship verification process is similarly likely to hurt them. Stated a fact-finding report on Assam’s NRC by Women Against Sexual Violence and State Repression, a countrywide group of women activists:

In a patriarchal society, women in general, and women from marginal and oppressed communities in particular, have historically and traditionally been excluded from entitlements to land and access to education and have almost no documentation to prove their existence as citizens.⁶⁵

⁶¹ Reply to Lok Sabha Unstarred Question No. 1680, Government of India, Ministry of Home Affairs, July 2, 2019, <https://mha.gov.in/MHA1/Par2017/pdfs/par2019-pdfs/ls-02072019/1680.pdf> (accessed January 20, 2020).

⁶² Gyan Varma, “No discussion held to introduce NRC: Modi,” *Livemint*, December 22, 2019, <https://www.livemint.com/politics/news/no-discussion-held-to-introduce-nrc-modi-11577033574834.html> (accessed January 15, 2020).

⁶³ Government of India, Ministry of Family and Health Welfare, “India Fact Sheet, National Family Health Survey (NFHS-4), 2015-16,” https://dhsprogram.com/pubs/pdf/OF31/India_National_FactSheet.pdf (accessed March 12, 2020).

⁶⁴ Nilanjana Bhowmick, “India’s New Laws Hurt Women Most of All,” *Foreign Policy*, February 4, 2020, <https://foreignpolicy.com/2020/02/04/india-citizenship-law-women/> (accessed February 11, 2020).

⁶⁵ Women Against Sexual Violence and State Repression, “Fact Finding On The Updating Of The NRC In Assam,” November 28, 2019, <https://wssnet.org/2019/11/28/wss-fact-finding-on-the-updating-of-the-nrc-in-assam/> (accessed February 11, 2020).

Because of these barriers, women are particularly likely to rely on a residency certificate issued by a *gram panchayat*, an elected village council, to prove their status.⁶⁶ When an Assam court in 2017 ruled that the gram panchayat certificate was ineligible as a linkage document, it was a considerable setback for millions of married women who used it to establish their connection to their parents.⁶⁷ In December 2017, the Supreme Court modified the rule, allowing the use of the document, subject to verification of its authenticity.⁶⁸ It imposed a two-step verification process that disproportionately impacted “non-original” women residents, mostly Bengali-speaking Muslims and Hindu minorities.⁶⁹

Jannat (name changed), 29, was born in Barpeta district and is married to an electrician in Guwahati. Her parents and all her siblings’ names are included in the NRC, but she was excluded. Her husband and son are included.⁷⁰ The authorities did not give any reason for Jannat’s exclusion. Nor did they ask for any additional documentation during verification. But Jannat and her husband believe it is because authorities did not accept the certificate from the *gram panchayat* establishing her relationship with her paternal family.⁷¹ They are worried about the additional time and resources they will have to spend in appealing to the Foreigners Tribunal. Jannat’s husband told Human Rights Watch:

We will have appeal in a tribunal in Barpeta. My son goes to school here, my business is here. Twice earlier, when we had to go, we had to hire a car

⁶⁶ *Rupajan Begum v. Union of India*, SLP no. 13256/2017, Supreme Court of India, August 24, 2017, <https://indiankanoon.org/doc/44496730/> (accessed January 24, 2020).

⁶⁷ Arunabh Saikia, “Guwahati High Court ruling on citizenship document will hurt women the hardest,” *Scroll.in*, March 5, 2017, <https://scroll.in/article/830657/guwahati-high-court-ruling-on-citizenship-document-will-hurt-women-the-hardest> (accessed October 3, 2019).

⁶⁸ *Rupajan Begum v. Union of India*, SLP no. 13256/2017, Supreme Court of India, December 5, 2017, <https://indiankanoon.org/doc/7961750/> (accessed January 24, 2020). Also see “National Register Of Citizens: Supreme Court Allows Gram Panchayat Certificates To Be Used As Identity Document For Claiming Citizenship,” *Outlook Magazine*, December 5, 2017, <https://www.outlookindia.com/website/story/assam-citizenship-issue-supreme-court-allows-gram-panchayat-certificates-to-be-u/305198> (accessed October 3, 2019).

⁶⁹ Letter from Elina Steinerte, Vice-Chair of the Working Group on Arbitrary Detention, Ahmed Shaheed, Special Rapporteur on freedom of religion or belief, Fernand de Varennes, Special Rapporteur on minority issues, and E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, to the Government of India, December 13, 2018, OL IND 29/2018, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24247> (accessed October 12, 2019).

⁷⁰ Human Rights Watch interview with Jannat (name changed) and her husband, Guwahati, September 4, 2019.

⁷¹ *Ibid.*

and it cost us about 2000 rupees each (\$28). We will have to run around again for foreigner tribunals. It's a big hardship.⁷²

Another woman, Rachana (name changed), said that while trying to prove her citizenship at the Foreigners Tribunal she provided numerous documents as legacy data, but to show a link to her parents, her primary document was a certificate from the *gram panchayat*. However, the tribunal said that she could not prove link to her father.⁷³ Rachana says her family has already spent money beyond their means in legal and document fees and travel to courts. “We sold two cows, chicken and goats. Now we do not have anything to sell,” she said.⁷⁴

Global Response and International Legal Standards

The CAA drew international condemnation and prompted protests around the world. The Office of the UN High Commissioner for Human Rights called the law “fundamentally discriminatory.”⁷⁵ In February 2020, the UN secretary-general said he was concerned over the future of religious minorities in India after the enactment of the CAA, saying “there is a risk of statelessness.”⁷⁶

In January 2020, the United States Congress held a hearing on global religious persecution and raised concerns over the citizenship law and citizenship verification processes.⁷⁷ The same month, the European Parliament debated a joint motion on the law that described it as “discriminatory in nature and dangerously divisive.”⁷⁸ The US Commission on International Religious Freedom said the US government “should consider sanctions

⁷² Ibid.

⁷³ Copy of tribunal judgment on file with Human Rights Watch.

⁷⁴ Human Rights Watch interview with Rachana and Ashish (names changed), Baksa district, Assam, September 5, 2019; Human Rights Watch interview with Rachana's lawyer, Guwahati, September 6, 2019.

⁷⁵ “New citizenship law in India ‘fundamentally discriminatory’: UN human rights office,” *UN News*, December 13, 2019, <https://news.un.org/en/story/2019/12/1053511> (accessed January 15, 2020).

⁷⁶ “Citizenship Amendment Act may leave Muslims stateless, says U.N. Secretary-General António Guterres,” *The Hindu*, February 19, 2020, <https://www.thehindu.com/news/national/citizenship-amendment-act-may-leave-muslims-stateless-says-un-secretary-general-antonio-guterres/article30863390.ece> (accessed March 13, 2020).

⁷⁷ Sriram Lakshman, “CAA, NRC raised during Congressional hearing on global human rights,” *The Hindu*, January 29, 2020, <https://www.thehindu.com/news/international/caa-nrc-raised-during-congressional-hearing-on-global-human-rights/article30681185.ece> (accessed March 13, 2020).

⁷⁸ “European Parliament debates anti-CAA motion, vote delayed till March,” *Press Trust of India*, January 30, 2020, <https://www.indiatoday.in/india/story/european-parliament-debates-anti-cao-motion-vote-delayed-till-march-1641429-2020-01-30> (accessed March 13, 2020).

against the home minister and other principal leadership” and held a hearing in March during which one commissioner raised concerns that the law “in conjunction with a planned National Population Register and a potential nation-wide National Register of Citizens, or NRC, could result in the wide-scale disenfranchisement of Indian Muslims.”⁷⁹

International human rights law obligates governments to ensure that people belonging to minority groups, including religious minorities, may exercise their human rights without discrimination and in full equality before the law. The Universal Declaration of Human Rights provides that “[e]veryone has the right to a nationality” and that “[n]o one shall be arbitrarily deprived of his nationality.”⁸⁰

The CAA violates India’s international obligations to prevent deprivation of citizenship on the basis of race, color, descent, or national or ethnic origin, as found in the International Covenant on Civil and Political Rights (ICCPR) and other human rights treaties that India has ratified.⁸¹ The UN Human Rights Committee, the international expert body that interprets the ICCPR, noted in a general comment, that “Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant.”⁸² The Committee on the Elimination of Racial Discrimination stated in a general recommendation that governments should “[e]nsure that particular groups of non-citizens

⁷⁹ “USCIRF Raises Serious Concerns and Eyes Sanctions Recommendations for Citizenship (Amendment) Bill in India, Which Passed Lower House Today,” December 9, 2019, <https://www.uscifr.gov/news-room/press-releases-statements/uscifr-raises-serious-concerns-and-eyes-sanctions> (accessed January 15, 2020); “USCIRF members express concern over CAA; say it could result in ‘disenfranchisement’ of Muslims,” *Press Trust of India*, March 5, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/uscifr-members-express-concern-over-caa-say-it-could-result-in-disenfranchisement-of-muslims/articleshow/74491626.cms> (accessed March 13, 2020).

⁸⁰ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217 A (III), <https://www.un.org/en/universal-declaration-human-rights/> (accessed March 31, 2020), art. 15.

⁸¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1996, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by India on April 10, 1979. See also, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by India on December 3, 1968; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. res. 34/180, entered into force September 3, 1981, ratified by India on July 9, 1993. Convention on the Rights of the Child (UNCRC), G.A. res. 44/25, U.N. Doc. A/44/49, entered into force September 2, 1990, ratified by India on December 11, 1992, art. 7(1).

⁸² Human Rights Committee, General Comment 15, The position of aliens under the Covenant (Twenty-seventh session, 1986), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 18 (1994), para. 2.

are not discriminated against with regard to access to citizenship or naturalization.”⁸³ The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities calls on governments to protect the existence and identity of religious minorities.⁸⁴

Discriminatory or other provisions of the NRC that do not provide equality before the law, disenfranchising or otherwise depriving people of their rights, violates the ICCPR and other human rights treaties.⁸⁵ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) prohibits government acts or practices, including nationality laws, that have “the effect or purpose of impairing or nullifying” women’s rights on a basis of equality with men.⁸⁶ The Convention of the Rights of the Child provides that every child should be registered immediately after birth and shall have the right to acquire a nationality.⁸⁷

While international law grants a state the authority to determine the acquisition of its citizenship, this discretion may not be arbitrary. States are prohibited from acting in a discriminatory or arbitrary manner that would leave a person stateless. In making citizenship determinations, states should take into account strong personal or family ties that the individual has to the territory.⁸⁸ The UN special rapporteur on minority issues, in his November 2018 report to the General Assembly, recommended that:

⁸³ Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 30, “Discrimination against non-citizens,” CERD/C/64/Misc.11/rev.3, March 12, 2004, para. 13.

⁸⁴ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted December 18, 1992, G.A. Res. 47/135, <https://www.ohchr.org/en/professionalinterest/pages/minorities.aspx> (accessed October 3, 2019), art. 1.

⁸⁵ ICCPR, art. 26.

⁸⁶ CEDAW, art. 2.

⁸⁷ UNCRC, art. 7(1). The UDHR, ICCPR, CEDAW, and UN conventions on the treatment of stateless persons prohibit rendering children stateless.

⁸⁸ The Global Compact for Safe, Regular and Orderly Migration provides a range of actions that governments can take to enhance the availability and flexibility of pathways to regular migration (Objective 5) and address vulnerabilities in migration (Objective 7). Among these, governments can provide pathways to migration that uphold the right to family life and addresses the needs of migrants in situations of vulnerability. “General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants,” UN General Assembly press release, GA/12113, December 19, 2018, <https://www.un.org/press/en/2018/ga12113.doc.htm> (accessed March 31, 2020).

State requirements for the granting of citizenship, including in relation to any preference in terms of linguistic, religious or ethnic characteristics, must be reasonable and justified in order not to constitute a form of discrimination prohibited under international law.⁸⁹

Several UN human rights experts sent letters to the Indian government between June 2018 and May 2019 raising concerns over the discriminatory Assam nationality registration process.⁹⁰ In August 2019, the Indian government replied, claiming without basis that the process was “comprehensive, fair, objective and inclusive with multiple levels of remedies available for redressal of grievances and consideration of claim of an applicant.”⁹¹

Under the International Convention on the Elimination of All Forms of Racial Discrimination, states should take measures to combat prejudices that lead to racial discrimination and promote understanding, tolerance, and friendship among groups.⁹² Government should counter xenophobic behavior towards non-citizens, in particular anti-immigrant hate speech and violence, and promote a better understanding of the principle of non-discrimination in respect of the situation of non-citizens.⁹³

⁸⁹ Report of the UN Special Rapporteur on minority issues, “Statelessness: A minority issue,” UN Doc A/73/205, , July 20, 2018, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/205 (accessed October 3, 2019), paras. 43, 44, 56, and 60.

⁹⁰ “UN experts: Risk of statelessness for millions and instability in Assam, India,” Office of the High Commissioner for Human Rights, July 3, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24781&LangID=E> (accessed October 3, 2019).

⁹¹ Letter from Permanent Mission of India to the Office of the United Nations and Other International Organizations in Geneva, August 23, 2019, N.V. GEN/PMI/ 353/39/2018, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=34841> (accessed October 4, 2019).

⁹² ICERD, art. 7.

⁹³ CERD, General Recommendation No. 30, on discrimination against non-citizens, para. 11.

II. Abuses Against Protesters

After months of largely peaceful protests against the citizenship law across the country, violence broke out in Delhi on February 24, 2020, leaving at least 53 people dead and 200 injured, most of them Muslim. Tensions had been building for weeks with BJP leaders openly advocating violence against the protesters, portraying anyone who spoke out against the government as working against the country's interests.⁹⁴

There are serious allegations that for three days the police chose not to intervene when Hindu mobs attacked Muslim communities and businesses.⁹⁵ Mobile phone videos and images show policemen participating in the violence.⁹⁶ The police denied the allegations.⁹⁷ Responding to criticism in parliament, Home Minister Shah, in charge of the Delhi police, praised them for “effectively containing the riot within 36 hours.”⁹⁸

After the protests broke out in December 2019, authorities particularly in BJP-governed states cracked down against protesters. Prior to the violence in Delhi, at least 30 people were killed in what independent civil society groups concluded were cases of police excessive use of force.⁹⁹ The authorities also failed to interfere with BJP leaders who incited violence but detained activists organizing peaceful protests, accusing them of promoting violence.

⁹⁴ Jeffrey Gettleman, Suhasini Raj and Sameer Yasir, “The Roots of the Delhi Riots: A Fiery Speech and an Ultimatum,” *New York Times*, <https://www.nytimes.com/2020/02/26/world/asia/delhi-riots-kapil-mishra.html> (accessed March 13, 2020).

⁹⁵ “Explainer: What do we know about the communal violence that left 53 dead in Delhi in February 2020?,” *Scroll.in*, March 6, 2020, <https://scroll.in/article/955251/explainer-what-do-we-know-about-the-communal-violence-that-left-47-dead-in-delhi-in-february-2020> (accessed March 14, 2020).

⁹⁶ Jeffrey Gettleman, Sameer Yasir, Suhasini Raj and Hari Kumar, “How Delhi’s Police Turned Against Muslims,” *New York Times*, March 12, 2020, <https://www.nytimes.com/2020/03/12/world/asia/india-police-muslims.html> (accessed March 13, 2020).

⁹⁷ “New York Times report on Delhi riots criticised by Indian Police Service Association,” *The Hindu*, March 13, 2020, <https://thehindu.com/news/national/new-york-times-and-wall-street-journal-in-governments-focus/article31063113.ece> (accessed March 20, 2020).

⁹⁸ Ananya Bhardwaj, “Amit Shah’s clean chit to Delhi Police: They did commendable job, contained riots in 36 hrs,” *The Print*, March 11, 2020, <https://theprint.in/india/amit-shahs-clean-chit-to-delhi-police-they-did-commendable-job-contained-riots-in-36-hrs/379457/> (accessed March 13, 2020).

⁹⁹ Citizens Against Hate, “Everyone Has Been Silenced: Police Excesses Against Anti-CAA Protesters In Uttar Pradesh, and the Post-violence Reprisal,” March 2, 2020, <http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf> (accessed March 13, 2020).

Violence in Delhi

After peaceful protesters in northeast Delhi occupied an area near a subway station, local BJP politician Kapil Mishra posted a video with an ultimatum to the police, tweeting “we won’t listen to you [police] if the roads are not vacated” of the protesters in three days.¹⁰⁰ Mishra had earlier led a large demonstration in Delhi, chanting “shoot the traitors,” referring to citizenship law protesters.¹⁰¹

Soon after he issued his demand, BJP supporters gathered in the area. There were initially clashes between Hindus and Muslims, but the situation was soon aggravated as Hindu mobs, armed with swords, sticks, metal pipes, and bottles filled with petrol, began chanting nationalist slogans. They then rampaged through several neighborhoods in northeast Delhi, killing Muslims and burning their homes, shops, mosques, and property.¹⁰² Some Hindus were also killed, including a policeman and a government official.¹⁰³ Hindu mobs stopped men in the streets demanding to see their identity cards. If anyone refused, they were forced to show whether or not they were circumcised, as is common among Muslim men. Several journalists were attacked and harassed, while some were asked to confirm their religion.¹⁰⁴

Available evidence indicates that the police often did not intervene to stop the Hindu mobs and in some cases, encouraged them or took part in beating up Muslims.¹⁰⁵ Witness accounts and video evidence show police complicity in the attacks.¹⁰⁶ In one incident,

¹⁰⁰ “BJP’s Kapil Mishra Has Issued an ‘Ultimatum’ to the Delhi Police. But Who Is He?,” *The Wire*, February 24, 2020, <https://thewire.in/communalism/kapil-mishra-delhi-bjp> (accessed March 14, 2020).

¹⁰¹ “Kapil Mishra leads pro-Citizenship Amendment Act protests in Delhi, crowd chants ‘shoot the traitors’” *Firstpost*, December 21, 2019, <https://www.firstpost.com/india/kapil-mishra-leads-pro-citizenship-amendment-act-protests-in-delhi-crowd-chants-shoot-the-traitors-7811131.html> (accessed January 24, 2020).

¹⁰² Hannah Ellis-Peterson, “Inside Delhi: beaten, lynched and burnt alive,” *Guardian*, March 1, 2020, <https://www.theguardian.com/world/2020/mar/01/india-delhi-after-hindu-mob-riot-religious-hatred-nationalists> (accessed March 14, 2020).

¹⁰³ Youth for Human Rights Documentation, “An Account of Fear & Impunity: A Preliminary Fact Finding Report on Communally-Targeted Violence in NE Delhi,” February 2020, <https://thepolisproject.com/wp-content/uploads/2020/03/An-Account-of-Fear-Impunity-Violence-in-NE-Delhi-Full-Report-.pdf> (accessed March 13, 2020).

¹⁰⁴ Committee to Protect Journalists, “Journalists harassed, attacked while covering Delhi riots,” March 6, 2020, <https://cpj.org/2020/03/at-least-12-journalists-harassed-attacked-amid-del.php> (accessed March 14, 2020).

¹⁰⁵ Jeffrey Gettleman, Sameer Yasir, Suhasini Raj and Hari Kumar, “How Delhi’s Police Turned Against Muslims,” *New York Times*, March 12, 2020, <https://www.nytimes.com/2020/03/12/world/asia/india-police-muslims.html> (accessed March 13, 2020).

¹⁰⁶ “‘The police told us to throw stones’: BBC meets Delhi residents who took part in communal violence,” *Scroll.in*, March 4, 2020, <https://scroll.in/video/955020/the-police-told-us-to-throw-stones-bbc-meets-delhi-residents-who-took-part-in-communal-violence> (accessed March 13, 2020).

police officers were seen on video beating a group of five Muslim men who had been injured during a mob attack in Delhi, taunting them, and ordering them to sing the national anthem as a form of humiliation. One of these men, 23-year old Faizan, later died.¹⁰⁷

Inaction Against BJP Leaders Advocating Violence

Ahead of the Delhi legislative assembly elections on February 8, 2020, several BJP leaders made divisive, hate-filled remarks against the people protesting at Shaheen Bagh. The protest at Shaheen Bagh, an around-the-clock sit-in and peaceful protest led by Muslim women, began on December 15, 2019, inspiring similar protests across the country. Mishra called Shaheen Bagh “mini-Pakistan,” saying “Pakistani hooligans have captured the streets of Delhi.”¹⁰⁸ Anurag Thakur, a junior minister in the national BJP government, during an election rally in the capital on January 27, led his supporters to chant the slogan “shoot the traitors.”¹⁰⁹ BJP lawmaker from Delhi Parvesh Sahib Singh Verma warned that those protesting in Shaheen Bagh “will enter your homes, they will pick up your sisters and daughters and rape and kill them.”¹¹⁰ The slogan “shoot the traitors” has since been picked up in pro-BJP demonstrations.¹¹¹

¹⁰⁷ Anumeha Yadav, “Ground Report: Delhi Police Actions Caused Death Of Man In Infamous National Anthem Video,” *Huffington Post India Edition*, March 1, 2020, https://www.huffingtonpost.in/entry/delhi-riots-police-national-anthem-video-faizan_in_5e5bb8e1c5b6010221126276?guccounter=1 (accessed March 14, 2020).

¹⁰⁸ “‘Pakistan has entered Shaheen Bagh’: BJP’s Kapil Mishra raises political temperature in Delhi,” *Hindustan Times*, January 23, 2020, <https://www.hindustantimes.com/assembly-elections/delhi-assembly-elections-2020-pakistan-has-entered-shaheen-bagh-bjp-s-kapil-mishra-raises-political-temperature-in-delhi/story-tqbMPkrxrxLfvqlezRmqK.html> (accessed January 26, 2020).

¹⁰⁹ Aishwarya Paliwal, “EC orders BJP to remove Anurag Thakur, Parvesh Sahib from star campaigners list for Delhi poll,” *India Today*, January 29, 2020, <https://www.indiatoday.in/elections/delhi-assembly-polls-2020/story/election-commission-bjp-remove-anurag-thakur-parvesh-sahib-list-star-campaigners-delhi-polls-1641190-2020-01-29> (accessed January 30, 2020).

¹¹⁰ “Shaheen Bagh protestors will ‘rape your sisters and daughters’, says BJP MP on women-led protest,” video report, *Scroll.in*, January 28, 2020, <https://scroll.in/latest/951341/shaheen-bagh-protestors-will-enter-houses-rape-sisters-and-daughters-claims-bjp-mp-parvesh-verma> (accessed January 30, 2020).

¹¹¹ “Watch: ‘Goli maaro saalon ko’ slogans repeated at pro-Citizenship Act rally in Nagpur,” *Scroll.in*, December 22, 2019, <https://scroll.in/video/947576/watch-goli-maaro-saalon-ko-slogans-repeated-at-pro-citizenship-act-rally-in-nagpur> (accessed January 26, 2020); Rohit Khanna, “After Delhi, ‘Goli maaro...’ slogans now in Kolkata,” *Times of India*, March 2, 2020, <https://timesofindia.indiatimes.com/city/kolkata/after-delhi-goli-maaro-slogans-now-in-kolkata/articleshow/74431997.cms> (accessed March 20, 2020). Responding to complaints, the Election Commission ordered the BJP to remove Thakur and Verma from their list of star campaigners, but the two were able to campaign at their own expense. “ECI orders removal of Anurag Thakur, Parvesh Verma from BJP star campaigners list,” *The Hindu*, January 29, 2020, <https://www.thehindu.com/elections/delhi-assembly/eci-orders-removal-of-anurag-thakur-parvesh-verma-from-bjp-star-campaigners-list/article30684034.ece> (accessed January 31, 2020). The BJP eventually won only 8 of 70 seats contested. “Delhi Election Results 2020: The Mega Victory Of Arvind Kejriwal,” *NDTV*, February 12, 2020,

The Delhi High Court, while hearing petitions about the violence, questioned the Delhi police decision to not file cases against BJP leaders advocating violence, saying it sent the wrong message and perpetuated impunity. Presiding Judge S. Muralidhar said, “This is the anguish of a constitutional court. Why are you not showing alacrity when it comes to registration of FIR [First Information Reports] in these cases? We want peace to prevail.”¹¹² Instead of responding to court orders, the government fast-tracked orders to transfer Judge Muralidhar to another state, taking riot-related cases away from him.¹¹³

Under a new judge, the court accepted the submission of the government’s attorney that the situation was not “conducive” for registering police complaints, and granted the BJP government three weeks to file a counter affidavit.¹¹⁴ When activist Harsh Mander, petitioner in the high court case against BJP leaders, filed a special leave petition in the Supreme Court against this order, the BJP government – in evident reprisal – accused him of inciting violence and being contemptuous of the Supreme Court in a previous speech.¹¹⁵ Mander said the Supreme Court had refused to hear his full speech on two separate occasions, but, instead, relied on the solicitor general’s version of it, which was edited.¹¹⁶

The Delhi police promptly filed an affidavit in court seeking his dismissal from the case and to begin proceedings against him for contempt. The Supreme Court asked Mander to file a response by April 15.¹¹⁷ In March, a group of nearly 100 retired bureaucrats wrote an

<https://www.ndtv.com/india-news/election-results-2020-live-delhi-assembly-hatrick-for-arvind-kejriwal-aap-bjp-10-points-2178126> (accessed February 13, 2020).

¹¹² “Delhi Riots: HC Asks Police to Decide on FIRs Against BJP Leaders by Tomorrow,” *The Wire*, February 26, 2020, <https://thewire.in/law/delhi-high-court-police-kapil-mishra-riots> (accessed March 13, 2020).

¹¹³ Critics found the timing of the judge’s transfer “disturbing.” “Delhi riots: Anger as judge critical of violence removed,” *BBC News Online*, February 27, 2020, <https://www.bbc.com/news/world-asia-india-51644861> (accessed March 13, 2020).

¹¹⁴ “[Delhi Riots] ‘Situation Not Conducive’, Says Solicitor General On Plea For FIR On Hate Speech; Delhi HC Adjourns Case Until April 13,” *Liveword.in*, February 27, 2020, <https://www.liveword.in/top-stories/situation-not-conducive-for-fir-on-hate-speech-says-solicitor-general-delhi-hc-adjourns-plea-until-april-13-153208> (accessed March 13, 2020).

¹¹⁵ A Vaidyanathan, “Activist Harsh Mander To Reply To Hate Speech Allegations By April 15,” *NDTV*, March 6, 2020, <https://www.ndtv.com/india-news/activist-harsh-manders-jamia-speech-in-supreme-court-as-cops-look-contempt-case-2190666> (accessed March 13, 2020); Karan Thapar, “The SC has not been fair to Harsh Mander,” *Hindustan Times*, March 14, 2020, <https://www.hindustantimes.com/columns/the-sc-has-not-been-fair-to-harsh-mander/story-YrTBj58ZryqsUntZIJZh3O.html> (accessed March 15, 2020).

¹¹⁶ Samanwaya Rautray, “SC refuses to hear speech transcripts from Harsh Mander,” *Economic Times*, March 6, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/sc-refuses-to-hear-speech-transcripts-from-harsh-mander/articleshow/74503842.cms>.

¹¹⁷ “‘Constitution, Love, Ahimsa’: Harsh Mander’s Speech Which Centre Now Claims ‘Incited Violence,’” *The Wire*, March 5, 2020, <https://thewire.in/rights/harsh-mander-jamia-speech-supreme-court-full-translation> (accessed March 13, 2020).

open letter in support of Mander, alleging that the solicitor general was misleading the Supreme Court.¹¹⁸

Abusive Police Responses to Student Protests

Since December, the authorities have used a colonial-era law against public gatherings, shutdowns of the internet, and limits on public transportation to prevent peaceful protests against the CAA.¹¹⁹ They did not seek to interfere with mobs attacking anti-CAA demonstrators. Evidence from some protests, including video evidence, suggests that police used excessive force against demonstrators, including many students. On numerous occasions, the police arbitrarily arrested peaceful critics of the government and some were accused of crimes such as sedition.

In Bidar district in Karnataka state, authorities filed sedition charges against a head teacher and a parent at a private primary school for a play critical of the CAA.¹²⁰ The police questioned students, most of them Muslim, between 9-12 years old for five consecutive days to get them to identify teachers or parents who may have helped to develop the play.¹²¹ Although a court later dismissed the allegations, by then the head teacher and the parent had spent two weeks in jail.¹²² The BJP lawmaker from the district called for the school's status to be revoked saying, "If this school is not shut down, then there is no doubt that it will threaten the sovereignty of this country."¹²³

In contrast, on January 30, 2020, police, deployed to contain the anti-CAA protests in Delhi, did not intervene when a gun-wielding government supporter first threatened

¹¹⁸ Jahnvi Sen, "95 Retired Civil Servants Support Harsh Mander, Say Supreme Court Was Misled," *The Wire*, March 23, 2020, <https://thewire.in/rights/harsh-mander-supreme-court-civil-servants> (accessed March 23, 2020).

¹¹⁹ "India: Deadly Force Used Against Protesters," Human Rights Watch news release, December 23, 2019, <https://www.hrw.org/news/2019/12/23/india-deadly-force-used-against-protesters>.

¹²⁰ Sukanya Shantha, "'Sedition' for School Play on CAA: Student's Dialogue 'Insult to PM'; Parent, Official Arrested," *The Wire*, January 30, 2020, <https://thewire.in/government/bidar-karnataka-anti-caa-play-school-sedition> (accessed February 1, 2020).

¹²¹ Amy Kazmin, "Sedition accusations in India take a dramatic turn," *Financial Times*, February 10, 2020, <https://www.ft.com/content/65cbfb9a-498a-11ea-ae22-gddbdc86190d> (accessed February 11, 2020).

¹²² Prajwal Bhat, "Bidar sedition case: After spending 2 weeks in jail, mother, teacher finally get bail," *News Minute*, February 14, 2020, <https://www.thenewsminute.com/article/bidar-sedition-case-after-spending-2-weeks-jail-mother-teacher-finally-get-bail-118201> (accessed March 20, 2020).

¹²³ Prajwal Bhat, "Bidar sedition case: BJP MP, state minister justify police action, want school blacklisted," *News Minute*, February 7 2020, <https://www.thenewsminute.com/article/bidar-sedition-case-mp-state-minister-justify-police-action-want-school-blacklisted-117685> (accessed February 11, 2020).

protesters, and then opened fire, injuring a student.¹²⁴ The police also failed to act when violent government supporters attacked students on campus in Delhi, whether at the Jawaharlal Nehru University (JNU) on January 5, 2020, or on February 6, 2020 at Gargi college.¹²⁵

On December 15, police in Delhi used teargas to disperse protesting students at Delhi's Jamia Millia Islamia University ("Jamia University").¹²⁶ The university's vice chancellor said the police entered the campus without permission and targeted students in the university library and hostels, beating up students and some staff.¹²⁷ A video of police beating a man as female students try to defend him also raised concerns over police abuse.¹²⁸ The police said, "Our only interest is to push the mob [protesting students] back, so law and order can be restored in the area," asserting they were forced to respond after students turned violent, throwing stones and damaging public vehicles.¹²⁹ The university's vice chancellor sought a high-level inquiry. The students dissociated themselves from the violence in a statement, saying: "We have maintained calm even when students have been *lathi*-charged [attacked with long batons] and women protesters have been badly beaten up."¹³⁰

¹²⁴ "Jamia student shot at during anti-CAA peace march, accused detained," *Indian Express*, January 30, 2020, <https://indianexpress.com/article/cities/delhi/jamia-firing-cao-protests-live-updates-6242634/> (accessed January 30, 2020).

¹²⁵ "10 arrested in connection with alleged molestation incident in Gargi College," *Press Trust of India*, February 12, 2020, <https://www.hindustantimes.com/delhi-news/10-arrested-in-connection-with-alleged-molestation-incident-in-gargi-college/story-thns68lvBDxzRojnm7rXHK.html> (accessed February 13, 2020).

¹²⁶ Sonal Mehrotra Kapoor, "On Camera, Jamia Students Take Cover In Library As Police Fire Tear Gas," *NDTV*, December 16, 2019, <https://www.ndtv.com/delhi-news/citizenship-amendment-act-on-camera-jamia-students-take-cover-in-library-as-police-fire-tear-gas-2149415> (accessed January 24, 2020).

¹²⁷ "CAA protests live: Students across nation stand united after police action at Jamia, Amit Shah says read new law," *India Today*, December 16, 2019, <https://www.indiatoday.in/india/story/citizenship-amendment-bill-protests-jamia-delhi-university-aligarh-muslim-university-bengal-1628536-2019-12-15> (accessed January 26, 2020).

¹²⁸ "Watch: This group of women courageously defended a man from being attacked by the Delhi Police," video report, *Scroll.in*, December 16, 2019, <https://scroll.in/video/946938/watch-this-group-of-women-courageously-defended-a-man-from-being-attacked-by-the-delhi-police> (accessed January 26, 2020). Also see Barkha Dutt's interview with the women. "Barkha Dutt meets Jamia's 'Viral' Women who've become the face of protests against Citizenship Law," December 16, 2019, YouTube, <https://www.youtube.com/watch?v=julJIXbRmFA> (accessed January 24, 2020).

¹²⁹ "Jamia protest: Police says stones pelted at them, 6 jawans injured, situation normal now," *India Today*, December 15, 2019, <https://www.indiatoday.in/india/story/jamia-protest-police-says-stones-pelted-at-them-6-jawans-injured-situation-normal-now-1628504-2019-12-15> (accessed January 24, 2020).

¹³⁰ "JMI students disassociate themselves from violence," *The Hindu*, December 16, 2019, <https://www.thehindu.com/news/cities/Delhi/jmi-students-disassociate-themselves-from-violence/article30315166.ece> (accessed January 24, 2020).

Nearly 60 people, including over 50 students, six police officials and two firemen, were injured at the Jamia University protests.¹³¹ Hundreds gathered outside the city's police headquarters in Delhi seeking the release of detained students and demanding action against Delhi police.¹³² Many students across India came out in support of the Jamia University protesters.¹³³ In one incident, female protesters described being targeted by police violence in a sexualized manner.¹³⁴

Police use of force against students at Jamia University and other protesters contrasted starkly with police's failure to intervene and protect students at JNU on January 5, 2020, when alleged supporters of the ruling BJP assaulted them.¹³⁵ Students said they were attacked because they were opposing a fee increase announced by the government and had protested the CAA.¹³⁶

Dozens of masked men and several women carrying sticks, hammers, and bricks and shouting pro-government Hindu nationalist slogans went on a violent rampage inside the campus for about three hours, injuring more than 30 students and teachers.¹³⁷ The Delhi police filed a complaint of rioting and assault against unidentified people. However, a video showed the police allowing the attackers, many still carrying iron rods and sticks,

¹³¹ "Violence rocks south Delhi during anti-citizenship law protest, buses torched, nearly 60 injured," *Press Trust of India*, December 15, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/citizenship-act-protest-violence-arson-in-south-delhi-buses-torched/articleshow/72681998.cms> (accessed January 24, 2020).

¹³² "Protests outside Delhi Police headquarters at ITO," *Press Trust of India*, December 16, 2019, <https://www.livemint.com/news/india/protests-outside-delhi-police-headquarters-at-ito-11576440500473.html> (accessed January 24, 2020).

¹³³ "From Lucknow to Hyderabad, protests across campuses against police crackdown in Jamia," *Outlook Magazine*, December 16, 2019, <https://www.outlookindia.com/newsscroll/from-lucknow-to-hyderabad-protests-across-campusess-against-police-crackdown-in-jamia/1686509> (accessed January 24, 2020).

¹³⁴ Tanushree Pandey, "Cops hit us in our private parts: Over 10 Jamia students admitted after scuffle with police," *India Today*, February 11, 2020, <https://www.indiatoday.in/india/story/female-jamia-students-private-parts-delhi-police-anti-caa-protest-1645059-2020-02-10> (accessed February 11, 2020).

¹³⁵ "India: Police Fail to Protect Students," Human Rights Watch news release, January 7, 2020, <https://www.hrw.org/news/2020/01/07/india-police-fail-protect-students>.

¹³⁶ "JNU: Students across India protest against campus attack," *BBC News Online*, January 6, 2020, <https://www.bbc.com/news/world-asia-india-51004204> (accessed February 4, 2020); Sameer Yasir and Billy Perrigo, "'The Police Did Nothing.' Students in India Are Protesting After a Masked Mob Violently Attacked a Top Delhi University," *Time*, January 7, 2020, <https://time.com/5760593/jnu-attack-student-protests/> (accessed February 4, 2020).

¹³⁷ "JNU violence: A timeline of how terror unfolded on campus," *Indian Express*, January 6, 2020, <https://indianexpress.com/article/cities/delhi/jnu-violence-a-timeline-of-how-terror-unfolded-on-campus/>; "Watch: Horrifying violence in Delhi's Jawaharlal Nehru University as masked mob attacks campus," video report, *Scroll.in*, January 5, 2020, <https://scroll.in/video/948869/watch-horrifying-violence-in-delhis-jawaharlal-nehru-university-as-masked-mob-attacks-campus> (accessed January 25, 2020).

to leave the campus without trying to detain or question them.¹³⁸ The police also stood by and failed to act as a mob chanting nationalist slogans gathered at the campus gates and beat journalists and a political activist.¹³⁹ A mob also attacked an ambulance attempting to enter the campus to attend to injured students.¹⁴⁰

Several students told Human Rights Watch the attackers were members of the Akhil Bharatiya Vidyarthi Parishad (ABVP), a student group affiliated with the BJP.¹⁴¹ A postgraduate research scholar at the university who was injured when the assailants threw stones at students, said that she recognized some attackers as ABVP members. “The police were present in the campus when the violence broke out,” she said. “We sought help from them and then we ran to flee the attackers, but the police never came to our aid.”¹⁴² Another graduate student who was injured said: “They threw something made of iron at us and it hit me near my eye and it kept bleeding. I recognized some of the attackers as JNU students from ABVP. Police were supporting them. The campus security

¹³⁸ @BDUTT, “Here is the mob wielding iron rods and lathis and sticks freely roaming the JNU campus. The main gate is blocked, media not being allowed inside either. This is a complete collapse. @ArvindKejriwal if the police won't step in you must,” video clip, *Twitter*, January 5, 2020, 10:57 a.m. ET, <https://twitter.com/BDUTT/status/1214056872405110785> (accessed January 24, 2020).

¹³⁹ “JNU violence: Scroll.in’s Rohan Venkat, other journalists abused, attacked outside university gates,” *Scroll.in*, January 6, 2020, <https://scroll.in/latest/948884/jnu-violence-journalists-reporting-outside-university-gates-abused-attacked>; Shylaja Varma, “‘Fell On My Back On Road Divider, Police Watched,’ Says Yogendra Yadav After JNU Violence,” *NDTV*, January 6, 2020, <https://www.ndtv.com/india-news/jnu-violence-yogendra-yadav-after-jnu-violence-fell-on-my-back-on-road-divider-police-watched-2159314> (accessed January 25, 2020).

¹⁴⁰ @DrHarjitBhatti, “Our team of doctors, nurses & medical volunteers who reached JNU to give first aid to injured students & teachers, was attacked by hundreds of goons. Mob manhandled doctors, nurses & threatened them. Our ambulance’s glass & windows broken, this is totally inhuman & insane,” photographs, *Twitter*, January 5, 2020, 11:00 a.m. ET, <https://twitter.com/DrHarjitBhatti/status/1213852849085411328> (accessed January 25, 2020); Shivam Patel and Sukrita Baruah, “JNU violence: Delhi Police watch as ambulances smashed, leaders heckled,” *Indian Express*, January 6, 2020, <https://indianexpress.com/article/india/jnu-violence-police-watch-as-ambulances-smashed-leaders-heckled-6201469/> (accessed January 25, 2020).

¹⁴¹ Also, a newspaper reported that many people carrying sticks who were gathered outside the campus said they were affiliated with the ABVP. Several news organizations tracked down messages on WhatsApp by ABVP members and BJP supporters that appeared to plan the violence. Shivam Patel and Sukrita Baruah, “JNU violence: Delhi Police watch as ambulances smashed, leaders heckled,” *Indian Express*, January 6, 2020, <https://indianexpress.com/article/india/jnu-violence-police-watch-as-ambulances-smashed-leaders-heckled-6201469/> (accessed January 24, 2020); “JNU: WhatsApp messages planning attack traced to ABVP activists,” *Scroll.in*, January 6, 2020, <https://scroll.in/article/948899/jnu-whatsapp-messages-planning-attack-traced-to-abvp-activists> (accessed January 24, 2020); Sourav Roy Barman, “JNU violence: Before mayhem, WhatsApp chatter suggests planning,” *Indian Express*, January 6, 2020, <https://indianexpress.com/article/cities/delhi/delhi-jnu-violence-whatsapp-groups-messages-6201428/> (accessed January 24, 2020).

¹⁴² Human Rights Watch phone interview, name withheld, January 6, 2020.

guards also did nothing.”¹⁴³ A statement by the university’s teachers’ association condemned the violence, saying it was unleashed “with the police standing by as mute spectators.”¹⁴⁴

The ABVP denied any role in the violence, saying 25 of its members were injured in the attack, and blamed the assault on student groups affiliated with leftist organizations.¹⁴⁵ The BJP condemned the violence, blaming opposition political parties.¹⁴⁶ However, on January 7, an office-bearer of ABVP acknowledged on national television that two of the people wielding sticks seen in videos of the JNU attack were from ABVP. “I am not disowning they are activists of ABVP...but it was all in self-defense,” she said.¹⁴⁷ As of mid-March, Delhi police had failed to make a single arrest for the attack on JNU.

Students led demonstrations in several parts of the country to protest the violence against the JNU students. The Indian Medical Association also condemned the “mindless violence on doctors and nurses who rushed to treat the injured” at JNU.¹⁴⁸

Misusing Laws to Prevent Protests

Since the protests began, authorities in several states have imposed section 144 of the Criminal Procedure Code, a colonial-era law that prohibits a gathering of more than four people if there is fear of a possible violation of law and order.¹⁴⁹ The law is primarily meant

¹⁴³ Ibid.

¹⁴⁴ “JNU violence: Teachers raise question on university’s security, allege admin colluded with attackers,” *Press Trust of India*, January 6, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/jnu-violence-teachers-raise-question-on-universitys-security-allege-admin-colluded-with-attackers/articleshow/73114946.cms> (accessed January 24, 2020).

¹⁴⁵ “JNU violence: ABVP accuses Left of attacking 25 activists, says JNUSU behind violence,” *India Today*, January 5, 2020, <https://www.indiatoday.in/india/story/jnu-violence-abvp-claims-innocence-accuses-jnusu-left-of-attacking-25-abvp-activists-1634184-2020-01-05> (accessed January 27, 2020).

¹⁴⁶ @BJP4India, “We strongly condemn the violence on JNU campus. This is a desperate attempt by forces of anarchy, who are determined to use students as cannon fodder, create unrest to shore up their shrinking political footprint. Universities should remain places of learning and education.,” *Twitter*, January 5, 2020, 12:05 p.m. ET, <https://twitter.com/BJP4India/status/1213869234083643392> (accessed January 24, 2020).

¹⁴⁷ “JNU violence: Two among stick-wielding persons our activists, says ABVP member,” *Times of India*, January 8, 2020, <https://timesofindia.indiatimes.com/city/delhi/jnu-violence-two-among-stick-wielding-persons-our-activists-says-abvp-member/articleshow/73148425.cms> (accessed January 24, 2020).

¹⁴⁸ “Violence on Doctors and nurses barometer of anarchy,” Indian Medical Association news release, January 6, 2020, <https://twitter.com/DrHarjitBhatti/status/1214073209252827137> (accessed January 24, 2020).

¹⁴⁹ The Code of Criminal Procedure, 1973, No. 2 of 1974, sec. 144, <https://indiankanoon.org/doc/445276/> (accessed January 20, 2020).

to be applied in emergencies to maintain “public tranquility,” but authorities have used it widely and frequently to prevent protests, violating the right to peaceful assembly.¹⁵⁰ The law has been frequently used in the past in an overbroad and discriminatory manner.¹⁵¹ The Supreme Court has also said that the law “cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.”¹⁵² In February 2020, the High Court of Karnataka held that the imposition of section 144 in Bangalore city for three days to prevent anti-CAA protests had been unconstitutional because it did not meet the parameters of “the least restrictive standard,” proportionality, and existence of an “urgent situation.”¹⁵³

The authorities also repeatedly shut down mobile internet services in several states as protests spread throughout the country.¹⁵⁴ India has frequently used internet shutdowns in response to protests, and, as Human Rights Watch and others have documented, these shutdowns have largely been disproportionate, unnecessary, and in violation of India’s international legal obligations including the rights to freedom of expression and assembly.¹⁵⁵

The shutdowns also affect access to essential activities and services, including emergency services and health information, mobile banking and e-commerce, transportation, school classes, reporting on major crises and events, and human rights investigations. In December 2019, the Ministry of Information and Broadcasting issued advisories, warning

¹⁵⁰ Soutik Biswas, “Citizenship Act protests: How a colonial-era law is being used in India,” *BBC News Online*, December 20, 2019, <https://www.bbc.com/news/world-asia-india-50849909> (accessed January 24, 2020).

¹⁵¹ A December 2018 report by Indian think tanks Takshashila Institution and Vidhi Centre for Legal Policy Research found that “it is employed to stifle legitimate assemblies and gatherings by denying them permission.” Chandavarkar M, Joshi D, Patri A, “A Framework for Countering Mobilised Violence,” December 2018, <https://takshashila.org.in/wp-content/uploads/2018/12/TDD-Mobilised-Violence-MC-AP-DJ-2018-03.pdf> (accessed January 22, 2020).

¹⁵² “Section 144 cannot be used to prevent exercise of democratic rights, says SC,” *Press Trust of India*, January 10, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/section-144-cannot-be-used-to-prevent-exercise-of-democratic-rights-says-sc/articleshow/73191967.cms> (January 30, 2020).

¹⁵³ *Sowmya K. Reddy v. State of Karnataka*, W. P. No. 52731 of 2019, High Court of Karnataka, February 13, 2020, https://www.livelaw.in/pdf_upload/pdf_upload-370765.pdf (accessed March 13, 2020).

¹⁵⁴ Shadab Nazmi, “Why India shuts down the internet more than any other democracy,” *BBC News Online*, December 19, 2019, <https://www.bbc.com/news/world-asia-india-50819905> (accessed January 26, 2020).

¹⁵⁵ “India: Restore Kashmir’s Internet, Phones,” Human Rights Watch news release, August 28, 2019, <https://www.hrw.org/news/2019/08/28/india-restore-kashmirs-internet-phones>.

television news broadcasters to “abstain from showing any content that promotes anti-national attitudes.”¹⁵⁶

¹⁵⁶ “No Content Which “Promotes Anti-National Attitudes”: Centre To Channels,” *NDTV*, December 21, 2019, <https://www.ndtv.com/india-news/citizenship-amendment-act-no-content-which-promotes-anti-national-attitudes-centre-tells-channels-2152222> (accessed January 28, 2020).

III. Police Brutality in Uttar Pradesh

The BJP government and its supporters have targeted protesters for arbitrary arrest and violence in states governed by the BJP. At least 30 people have been killed during protests, all in three BJP-governed states: 23 in Uttar Pradesh, 5 in Assam, and 2 in Karnataka. The vast majority of those killed and injured have been Muslims. Several police officers have been injured.¹⁵⁷

Authorities in Uttar Pradesh, the state with the largest number of Muslims at nearly 40 million, has cracked down hardest on the protests. In addition to the 23 deaths, dozens were injured, and hundreds of people were arrested.¹⁵⁸

The Uttar Pradesh chief minister, Ajay Singh Bisht, from the BJP, who prefers to use a Hindu religious title, Yogi Adityanath, vowed to “take revenge” against those protesting against the citizenship law and verification process.¹⁵⁹ Adityanath has previously been charged with inciting and leading anti-Muslim violence as the founder of a Hindu youth militia, cases from which the government withdrew after he became chief minister.¹⁶⁰ He has repeatedly made hateful, anti-Muslim remarks in public, and has endorsed extrajudicial violence by the police.¹⁶¹ Nearly 80 people have been killed by police since he took office in March 2017.¹⁶²

¹⁵⁷ Abdul Alim Jafri, “Who Were 23 People Killed in UP During Anti-CAA-NRC Protests?,” *Newsclick*, January 18, 2020, <https://www.newsclick.in/who-were-23-people-killed-during-anti-caa-nrc-protests> (accessed January 24, 2020); Anupam Chakravarty, “How Five People in Assam Were Killed During Anti-Citizenship Amendment Protests,” *The Wire*, December 16, 2019, <https://thewire.in/rights/assam-anti-citizenship-amendment-act-protest-deaths> (accessed January 24, 2020); Nolan Pinto, “Anti-CAA protests: 2 protesters killed in police firing in Mangaluru,” *India Today*, December 19, 2019, <https://www.indiatoday.in/india/story/anti-caa-protests-deaths-mangaluru-police-firing-1629836-2019-12-19> (accessed January 24, 2020).

¹⁵⁸ “India: Deadly Force Used Against Protesters,” Human Rights Watch news release, December 23, 2019, <https://www.hrw.org/news/2019/12/23/india-deadly-force-used-against-protesters>.

¹⁵⁹ “‘Will Take Revenge’: Yogi Adityanath On Protesters Vandalising Public Properties,” *Outlook Magazine*, December 19, 2019, <https://www.outlookindia.com/website/story/india-news-will-take-revenge-yogi-adityanath-on-anti-caa-protesters-vandalising-public-properties/344396> (accessed January 21, 2020).

¹⁶⁰ Rohan Venkataramakrishnan, “How does Adityanath withdrawing criminal case against himself not count as ‘jungle raj’?,” *Scroll.in*, December 27, 2017, <https://scroll.in/article/862892/how-does-adityanath-withdrawing-criminal-case-against-himself-not-count-as-jungle-raj> (accessed January 21, 2020).

¹⁶¹ Vijaya Lalwani, “Ram, biryani, Rahul Gandhi: What BJP’s star campaigner Adityanath spoke about on the campaign trail,” *Scroll.in*, December 10, 2018, <https://scroll.in/article/905191/ram-biryani-rahul-gandhi-what-bjps-star-campaigner-adityanath-spoke-about-on-the-campaign-trail> (accessed January 21, 2020).

¹⁶² “Yogi Adityanath says criminals in Uttar Pradesh ‘will be jailed or killed in encounters,’” *Firstpost*, November 19, 2017, <https://www.firstpost.com/india/yogi-adityanath-says-criminals-in-uttar-pradesh-will-be-jailed-or-killed-in-encounters->

To prevent protests against the CAA, the state government imposed section 144 of the Criminal Procedure Code across the state from December 2019 to February 2020, ordered internet shutdowns in various districts, and preventively detained thousands.¹⁶³ On December 21, the Uttar Pradesh police said they had arrested over 700 people and detained more than 4,500 others, who were released after warnings.¹⁶⁴ Those arrested face serious charges including attempted murder, rioting armed with a deadly weapon, unlawful assembly, assaulting public servants, damaging public property, and criminal intimidation.¹⁶⁵ Activists allege that the police targeted Muslim residents in several districts, raided and looted Muslim homes, and detained and tortured Muslim men and boys in custody.¹⁶⁶ In January 2020, the Allahabad High Court asked the government for a detailed report on the allegations against police abuse.¹⁶⁷

The chief minister addressed massive gatherings in support of the CAA and threatened protesters. “If anyone will raise slogans of Azadi [freedom] in the name of protest, it will amount to sedition and the government will take strict action,” Adityanath said at a pro-CAA rally in Kanpur.¹⁶⁸ In February 2020, the police in Azamgarh filed a case of sedition

4217325.html (accessed January 21, 2020); “78 killed in 3,026 encounters’: Uttar Pradesh to highlight killings as achievement on Republic Day,” *Scroll.in*, January 25, 2019, <https://scroll.in/latest/910794/uttar-pradesh-78-criminals-killed-in-3026-encounters-in-first-16-months-of-bjp-rule-says-report> (accessed January 21, 2020).

¹⁶³ “Anti-CAA protests: 1,113 arrests, 5,558 preventive detentions, 19 dead in UP,” *Press Trust of India*, December 27, 2019, <https://www.indiatoday.in/india/story/anti-caa-protests-1-113-arrests-5-558-preventive-detentions-19-dead-in-up-1631814-2019-12-27> (accessed January 20, 2020).

¹⁶⁴ @Uppolice, “#CAAProtest के दौरान हुई हिंसा में शामिल 705 लोगो को गिरफ्तार व 4500 लोगों को निजी मुचलके पर पाबन्द किया गया है। अभी तक कुल 263 पुलिसकर्मी घायल हुये है जिनमे से 57 पुलिसकर्मी को बुलेट इंजरी आयी है। हिंसाग्रस्त क्षेत्रों से 405 खोखा कारतूस बरामद हुए है: IG L&O #UPPolice,” video clip, *Twitter*, December 21, 2019, 7:31 a.m. ET, <https://twitter.com/Uppolice/status/1208364406288945153> (accessed January 22, 2020).

¹⁶⁵ Copies of First Information Reports on file with Human Rights Watch.

¹⁶⁶ Meeting of activists from Uttar Pradesh and Delhi, New Delhi, January 13, 2020. Also see, Hannah Ellis-Peterson, “We are not safe’: India’s Muslims tell of wave of police brutality,” *Guardian*, January 3, 2020, <https://www.theguardian.com/world/2020/jan/03/we-are-not-safe-indias-muslims-tell-of-wave-of-police-brutality> (accessed January 23, 2020).

¹⁶⁷ *Ajay Kumar v. State of Uttar Pradesh*, PIL No. 8 of 2020, Allahabad High Court, January 27, 2020. Among other details, the court asked the authorities to provide information on those killed in police action, details of those arrested by the police in relation to the protests, cases filed against police officials for alleged excesses, and ordered the authorities to provide post-mortem reports to the families of those killed during the protests. The matter was pending at time of writing.

¹⁶⁸ “Slogans of ‘Azadi’ amount to sedition, will take strict action: Yogi Adityanath,” *DNA*, January 22, 2020, <https://www.dnaindia.com/india/report-slogans-of-azadi-amount-to-sedition-will-take-strict-action-yogi-adityanath-2810460> (accessed January 24, 2020).

against 35 people and over 100 unidentified persons for participating in protests against the CAA, and arrested 19 of them.¹⁶⁹

Alleged Excessive Force by Police

Police have used excessive force including unnecessary lethal force against protesters in several districts including Aligarh, Meerut, Kanpur, Bijnor, Sambhal, and Muzaffarnagar.¹⁷⁰ Out of the 23 people killed in the state during protests since December 2019, one was an 8-year-old boy reportedly killed in a stampede as protesters fled a police crackdown, while at least 21 others died of gunshot wounds.¹⁷¹

Accounts from witnesses interviewed by Human Rights Watch, fact-finding reports by civil society activists, and news reports show similar patterns in many places where violence took place. Several deaths in Uttar Pradesh occurred on December 20, 2019, when Muslims gathered to protest after their Friday noon prayers.¹⁷² Police dispersed the gathering, beating protesters. Protesters in some cases responded with violence. Protesters alleged that the police used teargas, beat protesters with batons, and fired unnecessarily. Police said they used minimum force, while accusing protesters of pelting stones, committing arson, and using locally made firearms.

Five Muslim men were killed during protests in Meerut on December 20. All of them died from gunshot wounds.¹⁷³ Three of those – Zaheer Ahmed, Mohsin, and Mohammad Asif – were killed in the Lisari Gate area. Human Rights Watch met with witnesses who said the protest at Lisari Gate was initially peaceful. But after police beat some protesters, people in the Muslim-majority neighborhood became angry and started throwing stones at police

¹⁶⁹ “UP Police File Sedition Case Against 135 CAA Protesters In Azamgarh,” *NDTV*, February 6, 2020, <https://www.ndtv.com/india-news/anti-caa-protests-up-police-file-case-against-135-arrests-20-on-sedition-charges-in-azamgarh-2176202> (accessed February 11, 2020).

¹⁷⁰ Citizens Against Hate, “Everyone Has Been Silenced: Police Excesses Against Anti-CAA Protesters In Uttar Pradesh, and the Post-violence Reprisal,” March 2, 2020, <http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf> (accessed March 13, 2020).

¹⁷¹ Abdul Alim Jafri, “Who Were 23 People Killed in UP During Anti-CAA-NRC Protests?,” *NewsClick*, January 18, 2020, <https://www.newsclick.in/who-were-23-people-killed-during-anti-caa-nrc-protests> (accessed January 24, 2020).

¹⁷² “India protests: At least six killed in Uttar Pradesh,” *BBC News Online*, December 20, 2019, <https://www.bbc.com/news/world-asia-india-50872900> (accessed February 1, 2020).

¹⁷³ Kaushal Shroff, “In Meerut, five families bereft of hope as sole earners shot down during anti-CAA protests,” *Caravan Magazine*, December 28, 2019, <https://caravanmagazine.in/politics/caa-protestors-meerut-uttar-pradesh-police> (accessed January 24, 2020).

officers. Several witnesses said that initially the police threw stones back at the protesters, then they used teargas, and eventually they opened fire with guns. Mohammad Salim, who lives in the area, said:

It was a peaceful protest. Some of the shops were closed. Around 2:30 or 3 p.m., some 20 people came running back from the mosque. They said that the police had been beating people who were holding protests after Friday prayers. Everyone became very angry. Some younger people started arguing with the four policemen who were there at the post close by. Soon the crowd grew. And more police came. The police were beating people. And people were throwing stones. It was chaotic. I can accept that some of our youth were angry and at fault. But the police should not beat people and expect everyone to keep quiet.¹⁷⁴

According to Shahid, his brother, Zaheer Ahmed, was standing close to his house, away from the standoff with the police, when he was shot in the head. “We don’t know why the police killed him,” said Shahid. “He was not part of the protest. He was just standing there smoking.”¹⁷⁵ Other witnesses confirmed this.

Mohsin’s family members say that he too, was not participating in protests. “There had been trouble earlier during the protests and Mohsin was worried that there might be curfew restrictions. He decided to stock up on cattle fodder in advance, and was killed while he was on his way,” said his brother, Wasim.¹⁷⁶ Others said that Mohsin had joined the crowds, but only as an onlooker. His house is very close to the main protest area. One of his neighbor’s homes has bullet marks on the wall of its second floor.

Mohammad Asif, 33, was fatally shot in the back. Asif’s home is quite deep in the labyrinth of lanes in the area, and the family is not sure how he was shot. “He was an orphan, and he would not have done anything to make his children orphans,” his sister-in-law said.

¹⁷⁴ Human Rights Watch interview with Mohammad Salim, Meerut, January 12, 2020.

¹⁷⁵ Human Rights Watch interview with Shahid, Meerut, January 12, 2020.

¹⁷⁶ Human Rights Watch interview with Wasim, Meerut, January 12, 2020.

“He would not have joined the protest and was likely running away from the trouble.”¹⁷⁷ Human Rights Watch could not corroborate the circumstances of this death.

Police in Meerut initially denied using live ammunition against protesters, claiming that the deaths and injuries were caused by protesters who used locally made firearms. However, they said they had fired in the air to disperse protesters.¹⁷⁸ A policeman who had bruises from being hit by a stone said: “It was such a large crowd. They were uncontrollable. They were throwing stones, coming at us. We could barely hold them off. So many of our people were injured.”¹⁷⁹

The police admitted to shooting and killing Mohammad Suleiman, a 20-year-old student, in self-defense during protests in Bijnor.¹⁸⁰ However, the police have failed to produce the weapon Suleiman allegedly used or to file a report. On December 28, Suleiman’s family filed a complaint against six police officers for his killing.

The police also said that violence by the protesters was planned, and have released photos and videos including one from Meerut that shows men, their faces covered with scarves, brandishing guns.¹⁸¹ The police said they have arrested two men who fired weapons during the protests.¹⁸² One of them, according to the police, is a member of the Popular Front of India (PFI), a group that says it defends minority rights, but has been accused in some violent attacks in the past. The Uttar Pradesh police have also sought a ban on the group, accusing it of instigating violence during the anti-CAA protests.¹⁸³ PFI

¹⁷⁷ Human Rights Watch interview with Mohammad Asif’s sister-in-law, Meerut, January 12, 2020.

¹⁷⁸ “Bullet wounds killed these #CAA protesters. From Uttar Pradesh, Barkha Dutt’s Ground Report,” January 25, 2020, video clip, YouTube, <https://www.youtube.com/watch?v=hC7zzvDcf9M> (accessed February 11, 2020).

¹⁷⁹ Human Rights Watch interview with a police official, Meerut, January 12, 2020.

¹⁸⁰ Haider Naqvi, “Fired live rounds but in air and self-defence: Kanpur police,” *Hindustan Times*, December 25, 2019, <https://www.hindustantimes.com/cities/fired-live-rounds-but-in-air-and-self-defence-kanpur-police/story-8XU1jZm2uMPNk22eYpZ3zN.html> (accessed January 25, 2020).

¹⁸¹ “UP Police releases video of Meerut violence showing protesters shooting at cops during anti-CAA protests,” *Hindustan Times*, December 26, 2019, <https://www.hindustantimes.com/india-news/up-police-releases-video-of-meerut-violence-showing-protesters-shooting-at-cops-during-anti-kaa-protests/story-5xOg9bK52sY3eAKeb6pxoJ.html> (accessed January 24, 2020).

¹⁸² Human Rights Watch interview with a police officer, Brahmपुरi police station, Meerut, January 12, 2020; Sandeep Rai, “Meerut: ‘Cops killed my brother in 1987, I settled score by shooting at them,’” *Times of India*, January 16, 2020, <https://timesofindia.indiatimes.com/city/meerut/cops-killed-my-brother-in-1987-i-settled-score-by-shooting-at-them/articleshow/73280677.cms> (accessed January 24, 2020).

¹⁸³ Nelanshu Shukla and Kumar Abhishek, “Yogi government writes to Home ministry seeking ban on PFI,” *India Today*, January 1, 2020, <https://www.indiatoday.in/mail-today/story/yogi-adityanath-home-ministry-ban-on-pfi-organisation-1633006-2020-01-01> (accessed April 1, 2020); “Yogi govt arrests 108 PFI members in 4 days over anti-CAA protest violence,”

denied the allegations saying “the move against PFI is yet another authoritarian step by the UP police against democratic activism.”¹⁸⁴

Human Rights Watch is not aware of any evidence that police conducted credible, impartial investigations into any of these allegations. In February, the National Human Rights Commission sent a notice to the Uttar Pradesh government and state police, seeking their response on allegations of police brutality against protesters.¹⁸⁵

Arbitrary Arrests and Police Raids

Activists allege the authorities have arbitrarily arrested hundreds of peaceful demonstrators and activists across the state. While granting bail to two men accused of attempted murder and rioting, a court in Bijnor noted the police did not produce any evidence, no weapons were seized from the accused, and no police personnel had sustained any bullet injury despite their claims of being targeted by protesters.¹⁸⁶

Muslim residents in Uttar Pradesh alleged there were arbitrary arrests. “The police can simply pick up anyone they want. Even right now. They could just come and take me away, say that I am a dangerous criminal,” a vegetable vendor in Meerut told Human Rights Watch.¹⁸⁷ They have alleged the police also used images captured from various videos and photographs to produce posters seeking arrests of protesters.

In some cases, police detained relatives to force suspects to surrender, a form of collective punishment. For instance, in Meerut, the police said they tracked down and arrested 26-year-old Anas for shooting at them during the protests. Anas’s father, Shakeel-ur-Kallam, told Human Rights Watch that the police had detained him for 22 hours until Anas

video report, *Hindustan Times*, February 3, 2020, <https://www.hindustantimes.com/videos/caa-2019/yogi-govt-arrests-108-pfi-members-in-4-days-over-anti-cao-protest-violence/video-qoJMM8BGymvYPPqTQKvXI.html> (accessed April 1, 2020).

¹⁸⁴ Bharti Jain and Pathikrit Chakraborty, “Ban PFI for violence during anti-CAA stir, UP police tell govt,” *Times of India*, January 1, 2020, <https://timesofindia.indiatimes.com/india/ban-pfi-for-violence-during-anti-cao-stir-up-police-tell-govt/articleshow/73053038.cms> (accessed April 1, 2020).

¹⁸⁵ “NHRC Issues Notice to UP Govt for ‘Police Atrocities’ on Anti-CAA Protesters,” *The Wire*, February 11, 2020, <https://thewire.in/rights/nhrc-issues-notice-to-up-govt-for-police-atrocities-on-anti-cao-protesters> (accessed February 12, 2020).

¹⁸⁶ Kaunain Sheriff M, “Judge shreds Bijnor police claims: No proof of protesters firing or bullet injuries to cops,” *Indian Express*, January 29, 2020, <https://indianexpress.com/article/india/citizenship-act-protests-up-bijnor-police-court-6240169/> (accessed January 29, 2020).

¹⁸⁷ Human Rights Watch interview, Meerut, January 12, 2020.

surrendered: “They kept me in the police station and showed me many photos asking me to identify my son. I said my son is innocent.”¹⁸⁸

Activists alleged police raided homes without warrants in Muslim-majority neighborhoods in several places including Lucknow, Muzaffarnagar, Varanasi, and Bijnor. They alleged the police ransacked the homes and detained Muslim men, instilling fear among the community.¹⁸⁹ Said Mohammad Arif, chairman of a Varanasi-based group Centre for Harmony and Peace, “The state’s behavior has been shameful. There have been night raids in Muslim neighborhoods in Varanasi threatening people with notices of damaging public property unless they confess to be rioters. People are very scared because of the state behavior.”¹⁹⁰

Police in Muzaffarnagar allegedly entered a madrassa, an Islamic seminary, on December 20, ransacked it, and detained its cleric and 35 students, 15 of whom were less than 18 years old.¹⁹¹ The cleric, Asad Raza, said scores of policemen came following afternoon prayers, ostensibly looking for those who had protested earlier that day, but instead went on a rampage inside the madrassa, destroying property.¹⁹² He said:

When I opened the main gate, the police started beating me. They broke down every door to find students. They never told us why they detained us. They just started beating us. They took our mobile phones and did not

¹⁸⁸ Human Rights Watch interview with Shakeel-ur-Kallam, Meerut, January 12, 2020.

¹⁸⁹ Supriya Sharma, “‘Why kill our children?’: Blood and tears in an Uttar Pradesh town,” *Scroll.in*, January 23, 2019, <https://scroll.in/article/947626/why-kill-our-children-blood-and-tears-in-an-uttar-pradesh-town> (accessed January 28, 2020). In Muzaffarnagar, residents of two Muslim-majority neighborhoods Khalapur and Mehmood Nagar said the police and members of groups affiliated with the BJP entered several homes at night, beating up residents and ransacking property. Tushar Dhara residents also alleged that Sanjeev Balyan, a local BJP lawmaker, incited the violence. However, sub-inspector of police Vinay Sharma said: “The owners of the homes and shops must have caused the destruction themselves in order to blame us and portray the police in negative light in the media.” “In Muzaffarnagar, police and Hindutva groups attack Muslims in attempt to recreate 2013 riots,” *Caravan Magazine*, December 28, 2019, <https://caravanmagazine.in/politics/muzaffarnagar-police-hindutva-groups-attack-muslims-attempt-recreate-2013-riots> (accessed January 25, 2020); “Anti-Citizenship (Amendment) Act protests: Living in fear of the law and the law enforcers,” *The Hindu*, January 4, 2020, <https://www.thehindu.com/news/national/anti-citizenship-amendment-act-protests-living-in-fear-of-the-law-and-the-law-enforcers/article30472753.ece> (accessed February 4, 2020).

¹⁹⁰ Solidarity meeting in defense of human rights defenders and citizens of Uttar Pradesh, New Delhi, January 7, 2020.

¹⁹¹ Hannah Ellis-Peterson, “‘We are not safe’: India’s Muslims tell of wave of police brutality,” *Guardian*, January 3, 2020, <https://www.theguardian.com/world/2020/jan/03/we-are-not-safe-indias-muslims-tell-of-wave-of-police-brutality> (accessed January 23, 2020).

¹⁹² Human Rights Watch interview with Asad Raza, Muzaffarnagar, Uttar Pradesh, February 13, 2020.

return them. They also took some money from the office. Nothing like this has ever happened here despite communal clashes in the past.¹⁹³

A January 2020 fact-finding report by rights groups found that 41 children were detained and beaten in police custody in Uttar Pradesh.¹⁹⁴

One of the earliest protests in Uttar Pradesh began at the Aligarh Muslim University on December 8, seeking to prevent parliament from passing the CAA. The protests continued and on December 15, there were violent clashes with police using batons, teargas, stun grenades, and shotgun pellets.¹⁹⁵ Police officers were also injured in the clashes. Some policemen were seen vandalizing motorcycles outside the university gates at night in apparent retaliation.¹⁹⁶

Several students of Aligarh Muslim University, whom police detained after protests, alleged that they were beaten in custody.¹⁹⁷ Police have filed charges against 52 students including for attempted murder, rioting, injury to a public servant, and criminal intimidation.¹⁹⁸ A fact-finding report by civil society activists concluded that the violence by police against students was “largely unprovoked” and “has left many of them with shattered bones, grave injuries, deep bruises, and severe psychological trauma.”¹⁹⁹

¹⁹³ Ibid.

¹⁹⁴ Quill Foundation, Citizens Against Hate, and Haq: Centre for Child Rights, “Brutalizing Innocence: Detention Torture and Criminalization of Minors by UP Police to Quell Anti-CAA Protests,” January 2020.

¹⁹⁵ India: Show Restraint at Demonstrations, Human Rights Watch news release, December 16, 2019, <https://www.hrw.org/news/2019/12/16/india-show-restraint-demonstrations>

¹⁹⁶ Alok Pandey, “Caught On Camera: Aligarh Cops Smash Bikes After Protests At University,” *NDTV*, December 16, 2019, <https://www.ndtv.com/india-news/police-use-tear-gas-lathi-charge-at-aligarh-muslim-university-afters-protest-against-crackdown-in-ja-2149300> (accessed January 23, 2020).

¹⁹⁷ Sruthisagar Yamunan, “Aligarh Muslim University students allege they were tortured in police custody after Sunday protests,” *Scroll.in*, December 18, 2019, <https://scroll.in/article/947178/aligarh-muslim-university-students-allege-they-were-tortured-in-police-custody-after-sunday-protests> (accessed January 25, 2020).

¹⁹⁸ Aligarh Muslim University Student Union “Protests Against Citizenship Amendment Act 2019 and the Unleashing the State Terror in AMU,” December 2019.

¹⁹⁹ Karwan-e-Mohabbat and Indian Cultural Forum, “The Siege of Aligarh Muslim University,” December 2019, <https://indianculturalforum.in/2019/12/24/the-siege-of-aligarh-muslim-university-a-fact-finding-report/> (accessed January 24, 2020).

In some places, protesters alleged the violence was orchestrated by right-wing Hindutva organizations.²⁰⁰ In other places, non-uniformed men were present alongside the police at protests and at police raids in Muslim neighborhoods. Bijnor's superintendent of police, for instance, described them as "police *mitr*," or police friends, appointed to "assist" the police.²⁰¹

Arrest and Mistreatment of Activists in Lucknow

On December 19, a protest was planned in the Uttar Pradesh state capital, Lucknow. The protest started out peacefully, but later there was some violence, including arson and stone pelting.

Some well-known human rights defenders and social activists in the city, including Mohammad Shoaib, a lawyer and head of the rights group Rihai Manch; SR Darapuri, a retired police officer; and Sandeep Pandey, an award-winning social activist, were placed under house arrest before the protests. Shoaib and Darapuri were later taken into custody without a warrant.²⁰² Pandey's wife, Arundhati Dhuru, and activists Meera Sanghamitra and Madhvi Kukreja were detained for several hours when they went to the police station to inquire about Shoaib.²⁰³ The police took several other activists into custody after the December 19 protest and allegedly beat and abused them in custody. While granting bail to some of them, a court in Lucknow noted that the police failed to provide any evidence of

²⁰⁰ Tushar Dhara, "In Muzaffarnagar, police and Hindutva groups attack Muslims in attempt to recreate 2013 riots," *Caravan Magazine*, December 28, 2019, <https://caravanmagazine.in/politics/muzaffarnagar-police-hindutva-groups-attack-muslims-attempt-recreate-2013-riots> (accessed January 25, 2020).

²⁰¹ These special police officers or "police friends" can only be used for gathering information and not for actual police work such as controlling a mob. Sagar, "Adityanath's Police Raj," *Caravan Magazine*, December 27, 2019, <https://caravanmagazine.in/politics/nehtaur-bijnor-fear-up-police-defends-two-killings-state-rampage>; Sagar, "Uttar Pradesh's Police Mitr: A militia in the guise of community policing?" *Caravan Magazine*, January 25, 2020, <https://caravanmagazine.in/politics/uttar-pradesh-police-mitr-spo-civilians> (accessed January 27, 2020). Rahul Kumar, a police *mitr* and member of a right-wing Hindu militia, the Hindu Yuva Vahini, admitted to the news website *Scroll* that he was present at one of the protests in Nehtaur in Bijnor and that the police had equipped militia members with police batons. Kumar said he later beat those arrested. "I gave a whack or two with my baton, in anger, naturally," he said. Supriya Sharma, "Meet the 'friends' of the Uttar Pradesh police who wielded batons against Muslims a month ago," *Scroll.in*, January 20, 2020, <https://scroll.in/article/950489/meet-the-friends-of-the-uttar-pradesh-police-who-wielded-batons-against-muslims-a-month-ago> (accessed January 24, 2020).

²⁰² "CAA protests: With 100 more in police net, arrest count at 250 in Lucknow," *Times of India*, December 22, 2019, <https://timesofindia.indiatimes.com/city/lucknow/caa-protests-with-100-more-in-police-net-arrest-count-at-250-in-lucknow/articleshow/72921031.cms> (accessed January 23, 2020).

²⁰³ "Lucknow journalist says cops illegally detained him, made communal slurs," *Press Trust of India*, December 21, 2019, https://www.business-standard.com/article/pti-stories/caa-stir-journalist-3-women-social-activists-briefly-detained-in-lucknow-police-denies-119122100036_1.html (accessed January 23, 2020).

their involvement in the violence.²⁰⁴ Police have denied all allegations of illegal arrests and beatings in police custody.²⁰⁵

Shoaib Mohammad, President, Rihai Manch

Police detained Shoaib and later charged him with incitement of violence, intent to murder, and damage to public property during the December 19 protests, even though he was under house arrest at that time. During the hearing of a habeas corpus petition for Shoaib, police wrongly claimed that they arrested him on December 20. After he was released on bail on January 17, 2020, Shoaib said he had been jailed without being produced before a magistrate within 24 hours, as is required under Indian law.²⁰⁶

Shoaib was not the only individual from the group Rihai Manch – which works to protect the rights of marginalized Muslims, Dalits, and Adivasis – to be targeted by the police. Several others were forced into hiding to avoid arrest.²⁰⁷

SR Darapuri, Retired Police Officer

A former senior police officer, prominent activist SR Darapuri was also first placed under house arrest and then arrested. “If they could do this to a retired Inspector General of Police, I hate to think of what they are doing to the common man,” he said.²⁰⁸

Darapuri said the police in the state were now openly communal: “They do not bother hiding their bias, as they know they are fully protected.” Darapuri alleged that the violence at the protests was orchestrated. He asserted, “The protestors did not create the violence, others did and their real identities should be disclosed.”²⁰⁹

²⁰⁴ Alok Pandey, ““Cops Wanted Revenge”: UP Activist Arrested For Citizenship Clashes Gets Bail,” *NDTV*, January 9, 2020, <https://www.ndtv.com/india-news/citizenship-amendment-act-cao-uttar-pradesh-activist-deepak-kabir-claims-police-wanted-revenge-gets-2161381> (accessed January 25, 2020).

²⁰⁵ *Ibid.*

²⁰⁶ Radhika Bordia, “Lucknow lawyer walks straight out of jail to join protest: ‘The women have taken up the challenge,’” *Scroll.in*, January 20, 2020, <https://scroll.in/article/950435/lucknow-lawyer-walks-straight-out-of-jail-to-join-protest-the-women-have-taken-up-the-challenge> (accessed January 24, 2020).

²⁰⁷ Meeting of activists from Uttar Pradesh and Delhi, New Delhi, January 13, 2020.

²⁰⁸ “Aghast at How Communal the UP Police Has Become: Darapuri,” *The Citizen*, January 23, 2020, <https://www.thecitizen.in/index.php/en/NewsDetail/index/9/18206/I-Am-Aghast-At-How-Communal-the-UP-Police-Has-Become-Darapuri> (accessed January 25, 2020).

²⁰⁹ *Ibid.*

Sadaf Jafar, Activist

Sadaf Jafar, an activist associated with the opposition Congress party, was arrested on December 19 in Lucknow, when she was filming the police on her phone after the protest. “The only information her family got of her arrest was through her live video,” said her niece Simran Verma. From the film that she managed to share before she was detained, her relatives knew she had been picked up. “No one told us for two days her whereabouts,” said Verma. “When we finally saw her, she had been beaten up.”²¹⁰

Jafar said she was repeatedly beaten by the police in custody and they made communal and abusive remarks. “They beat me. They mouthed the filthiest abuses that you won’t be able to print. They did not give me food and water. I was completely dehumanized,” she told the media.²¹¹ “I had begun to realize what it means to be a Muslim in Amit Shah’s India.”²¹²

Deepak Kabir, Theater Artist

When theater artist and cultural activist Deepak Kabir went to Hazratganj police station to inquire about Jafar on December 20, he too was arrested. Kabir alleged that he was beaten by over a dozen policemen, who took turns.²¹³

While granting him bail on January 7, 2020, a local court found that police had failed to provide evidence of his involvement in the violence during the protests and that his name was not mentioned in the police complaint filed initially but was added later.²¹⁴

²¹⁰ Solidarity meeting in defense of human rights defenders and citizens of Uttar Pradesh, New Delhi, January 7, 2020.

²¹¹ Betwa Sharma, “CAA: UP Police Totally Communalised, Tortured Me, Says Activist Sadaf Jafar,” *Huffington Post India Edition*, January 8, 2020, https://www.huffingtonpost.in/entry/sadaf-jafar-up-police-caa-nrc_in_5e14d2f9c5b687c7eb5c982f (accessed January 25, 2020).

²¹² Arfa Khanum Sherwani, “Watch: ‘Now Beginning to Realise What Being Muslim in Amit Shah’s India Means’: Sadaf Jafar,” *The Wire*, January 17, 2020, <https://thewire.in/communalism/watch-now-beginning-to-realise-what-being-muslim-in-amit-shahs-india-means-sadaf-jafar> (accessed January 25, 2020).

²¹³ Omar Rashid, “‘Brutally thrashed and labelled urban naxal,’ says theatre actor Deepak Kabir,” *The Hindu*, January 9, 2020, <https://www.thehindu.com/news/national/other-states/brutally-thrashed-and-labelled-urban-naxal-theatre-actor-deepak-kabir-recalls-police-brutality-over-caa/article30522134.ece> (accessed January 25, 2020).

²¹⁴ “Anti-CAA Protests: Noted Theatre Artiste Deepak Kabir Gets Bail,” *Press Trust of India*, January 7, 2020, <https://www.livelaaw.in/news-updates/anti-caa-protests-noted-theatre-artiste-deepak-kabir-gets-bail-151384> (accessed January 20, 2020).

Omar Rashid, Journalist, and Robin Verma, Activist

On December 20, journalist Omar Rashid and activist Robin Verma were picked up by police at a restaurant outside the BJP office by four policemen in plainclothes. They were first taken to Hazratganj police station and then to the Sultanganj police outpost.

Rashid said the police refused to give reasons for the detention and took away their phones to prevent them from informing anyone.²¹⁵ Neither were named in the First Information Report filed by the police on December 19.²¹⁶ Rashid said the police repeatedly brought up his Kashmiri Muslim identity and questioned him about other Kashmiris, alleging he was hiding them.²¹⁷ The state's home minister had earlier said "Stone-pelters from Kashmir were called to participate" in the anti-CAA protests in Uttar Pradesh.²¹⁸

Rashid was released the same day without any charges, but Verma was kept in custody until he received bail on January 14, 2020. Verma alleged that he was beaten, and the police made degrading remarks about his wife and 2-year-old daughter. "They kicked me, punched me, hit me with lathis, slapped me, beat me with a thick leather belt and also plucked out my hair," he told the media.²¹⁹

Unlawful Measures to Harass and Intimidate

The Uttar Pradesh government has arbitrarily issued notices to at least 500 people for recovery of public property damaged or destroyed during the anti-CAA protests.²²⁰ This is in keeping with the chief minister's statement vowing to "take revenge" on those who

²¹⁵ Omar Rashid, "A first-person account by 'The Hindu' correspondent Omar Rashid of how he was picked up, threatened and released by cops," *The Hindu*, December 20, 2019, <https://www.thehindu.com/news/national/a-first-person-account-by-the-hindu-correspondent-omar-rashid-of-how-he-was-picked-up-threatened-and-released-by-cops/article30361909.ece> (accessed January 24, 2020).

²¹⁶ Copy of First Information Report on file with Human Rights Watch.

²¹⁷ Omar Rashid, "A first-person account by 'The Hindu' correspondent Omar Rashid of how he was picked up, threatened and released by cops," *The Hindu*, December 20, 2019, <https://www.thehindu.com/news/national/a-first-person-account-by-the-hindu-correspondent-omar-rashid-of-how-he-was-picked-up-threatened-and-released-by-cops/article30361909.ece> (accessed January 24, 2020).

²¹⁸ "Anti-CAA riots: MoS Home says Kashmiri stone pelters involved in Uttar Pradesh, trains guns on opposition parties," *OpIndia*, December 26, 2019, <https://www.opindia.com/2019/12/kashmiri-stone-pelters-uttar-pradesh-anti-kaa-riots/> (accessed January 20, 2020).

²¹⁹ "Activist Robin Verma narrates his ordeal after his release from the Lucknow district jail," *The Hindu*, <https://media.thehindu.com/players/GcnhUu7y-HxxKTB2U.html> (accessed January 24, 2020).

²²⁰ Abdul Alim Jafri, "CAA-NRC: Adityanath Govt Sends Property Confiscation Notices to 498 People," *NewsClick*, December 31, 2019, <https://www.newsclick.in/kaa-ncr-adityanath-govt-sends-property-confiscation-notices-498-people> (accessed January 24, 2020).

destroyed public property. Soon after the chief minister's statement, state authorities cracked down on Muzaffarnagar district and sealed nearly 70 shops, accusing them of participating in protests and damaging public property. The shops belonged mostly to Muslims with low incomes, and the government took action without providing a legal basis or evidence of their involvement.²²¹

If those who are served notices fail to pay the damages, authorities have said they will confiscate their property. Some activists, including Darapuri, Shoaib, and Verma, were also given notices even though they were under house arrest during the protest in Lucknow.²²² The authorities have not clarified how they identified the people served with notices and how they calculated the damages. At time of writing, the courts had yet to find any of those served guilty of any wrongdoing.

The government also employed a “name and shame” campaign against protesters and peaceful activists it had served with notices for damages by plastering their photographs along with their names and addresses on billboards across the state, placing them at risk of vigilante violence.²²³ In March, the Allahabad High Court ordered their immediate removal, saying they were “illegal” and an “unwarranted interference in privacy.”²²⁴ The Supreme Court also held that the government's actions did not have the “backing of law,” and did not stay the high court order, and yet referred the matter to a larger bench.²²⁵ Meanwhile, the Uttar Pradesh government passed the U.P. Recovery of Damage to Public

²²¹ Anindita Sanyal, “Days After Yogi Adityanath's ‘Revenge’ Remark, Shops Sealed Over Violence,” *NDTV*, December 22, 2019, <https://www.ndtv.com/india-news/muzaffarnagar-uttar-pradesh-shops-sealed-over-violence-days-after-yogi-adityanath-revenge-remark-2152642> (accessed January 24, 2020).

²²² “Show-cause notices to 42 more people in Lucknow,” *Hindustan Times*, December 27, 2019, <https://www.hindustantimes.com/cities/recovery-notices-to-ex-ips-officer-social-activists-and-others/story-OS3KjonLmJottTAF6ZH6H.html> (accessed January 24, 2020).

²²³ Piyush Srivastava, “Banners on roads to name & shame activists in Lucknow,” *Telegraph*, March 7, 2020, <https://www.telegraphindia.com/india/banners-on-roads-to-name-shame-activists-in-lucknow/cid/1751703> (accessed March 14, 2020).

²²⁴ Alok Pandey, “‘Shameless’: Court Shreds UP Over Posters Of Anti-CAA Protest Accused,” *NDTV*, March 9, 2020, <https://www.ndtv.com/india-news/up-government-ordered-to-remove-name-and-shame-posters-of-caa-protest-accused-by-allahabad-high-cour-2192251> (accessed March 13, 2020); PIL No. 532 of 2020, Allahabad High Court, March 9, 2020, <https://drive.google.com/file/d/1rvK1obFfj6byiyjNQZigqLiffZmrakob/view> (accessed March 14, 2020).

²²⁵ “Supreme Court Refers UP's Appeal on Hoardings of Anti-CAA Protesters to Larger Bench,” *The Wire*, March 12, 2020, <https://thewire.in/law/supreme-court-up-cao-hoardings-larger-bench> (accessed March 15, 2020).

and Private Property Ordinance, 2020, which would empower it to recover damages during any protest or demonstration.²²⁶

²²⁶ Omar Rashid, "U.P. clears Ordinance for recovery of damages," *The Hindu*, March 14, 2020, <https://www.thehindu.com/news/national/other-states/up-clears-ordinance-for-recovery-of-damages/article31064913.ece> (accessed March 15, 2020).

IV. Assam's National Register of Citizens

The ethnic and religious tensions between Assamese speakers, indigenous or tribal communities, and the Bengali-speaking immigrant population goes back to the 19th century when the British formally annexed the territory of Assam in 1826.²²⁷ After independence, with the partition of the subcontinent and drawing of international borders, there was an influx of refugees and immigrants from East Pakistan.²²⁸ East Pakistan later became independent Bangladesh in 1971, after a war that brought many refugees into India, including to Assam. This worsened the tensions, leading to violence and an armed insurgency.²²⁹

Irregular migration to Assam continued even after Bangladesh became an independent nation, but there is no accurate data and the numbers of migrants often have been inflated for political purposes.²³⁰ Economist Vani Kant Barooah writes:

[A]ll Bengali Muslims in Assam have become convenient proxies for illegal Bangladeshi immigrants; they are often collectively labelled “Muslim immigrants” even though they might have been settled in Assam for

²²⁷ The ethnic rifts in Assam can be traced to 1905, when the British partitioned Bengal. Assam was merged with the new Muslim majority province of East Bengal. “The Assamese fear of losing their identity and being swamped by Bengalis goes back to this merger and even earlier,” wrote SK Sinha, the governor of Assam in his November 1998 report to the president of India. Lt Gen. (Retd) Srinivas Kumar Sinha, PVSM, ADC, “Report on Illegal Migration into Assam Submitted to the President of India,” November 8, 1998, D. O. No. GSAG.3/98/, https://www.satp.org/satporgtp/countries/india/states/assam/documents/papers/illegal_migration_in_assam.htm (accessed September 11, 2019). In 1911, the British government annulled the partition. However, the migrant influx continued, particularly in the 1930s and 1940s, when the state government offered opportunities to settlers from Bengal, including under the “Grow More Food” program. Vani Kant Barooah, “The Killing Fields of Assam: The Myth and Reality of Its Muslim Immigration,” *Economic and Political Weekly*, vol. 48, no. 4 (2013): pp. 43-52, https://mpra.ub.uni-muenchen.de/75672/1/MPRA_paper_75672.pdf (accessed September 11, 2019). See also, Nandita Saikia et al., “Trends in immigration from Bangladesh to Assam, 1951-2001: Evidence from direct and indirect demographic estimation,” (2016).

²²⁸ Robert G. Gosselink, “Minority Rights and Ethnic Conflict in Assam, India,” *Boston College Third World Law Journal*, vol. 14, issue 1, (1994), <https://lawdigitalcommons.bc.edu/twlj/vol14/iss1/5/> (accessed September 11, 2019). Also see, Myron Weiner, *When Migrants Succeed and Natives Fail: Assam and its Migrants* (1975); Bhawani Singh, *Politics of Alienation in Assam*, (Ajanta, 1984).

²²⁹ In 1962, the state legislature responded to pressure from the nationalists by passing a bill that designated Assamese as the official language of the state. The resulting agitation by indigenous non-Assamese-speaking groups led to the eventual break-up of the northeast into seven states based on language and ethnicity. Human Rights Watch, *No End in Sight: Human Rights Violations in Assam* (New York: Human Rights Watch, 1993), <https://www.hrw.org/legacy/reports/pdfs/i/indonesia/indones2934.pdf>, p. 2.

²³⁰ N Saikia et al., Trends in immigration from Bangladesh to Assam, 1951-2001.

generations. Consequently, what is overtly billed as an economic issue – a struggle over land and livelihood between indigenous people and people who are in the state illegally – covertly morphs into a communal issue predicated upon an economic and cultural struggle with the “other,” regardless of the legitimacy of the “other’s” presence in Assam.²³¹

Anti-Foreigner Movement

There have been a number of laws and policies adopted by the central and Assam state governments since 1947 to address irregular migration, especially from neighboring countries.²³² In 1951, when the first population census was conducted after independence, the Ministry of Home Affairs directed a NRC to be prepared in Assam.²³³ The NRC registers were initially kept in the district administration offices, but in the early 1960s were transferred to the police to help detect and verify irregular immigrants.²³⁴

Following the 1961 census report, which said that over 220,000 “infiltrants” had entered Assam from East Pakistan, in 1962 the central government adopted the Prevention of Infiltration into India of Pakistani Nationals plan.²³⁵ The authorities deported people to East Pakistan without due process even though India did not have a formal extradition agreement with Pakistan.²³⁶ In response to growing criticism over forced deportation of

²³¹ Barooah, *The Killing Fields of Assam*, *Economic and Political Weekly*.

²³² The Indian government enacted the Immigrants (Expulsion from Assam) Act, 1950 in March 1950 giving wide powers to deport foreign nationals entering India illegally, but the law did not apply to refugees fleeing the newly formed state of Pakistan because of “civil disturbances.” The Immigrants (Expulsion from Assam) Act, 1950, Act. No. 10 of 1950, March 1, 1950, <https://indiacode.nic.in/bitstream/123456789/1674/1/A1950-10.pdf> (accessed September 11, 2019). In 1950, India and Pakistan signed an agreement to protect religious minorities. This facilitated the return of many immigrants who left the country after partition, mainly due to communal violence. Agreement Between the Governments of India and Pakistan Regarding Security and Rights of Minorities (Nehru-Liaquat Agreement), New Delhi, April 8, 1950, <https://mea.gov.in/Portal/LegalTreatiesDoc/PA50B1228.pdf> (accessed September 11, 2019). In 1957, the existing Foreigners’ Act, 1946, was amended to define foreigner as a person who was not a citizen of India because, until then, since the law was enacted pre-partition, it was not applicable to Pakistanis.

²³³ The Assam NRC contained information on the number and names of every person staying in a house or holding, and with respect to each individual, the father’s or husband’s name, nationality, gender, age, and means of livelihood.

²³⁴ White Paper on Foreigners’ Issue, Government of Assam, Home and Political Department, October 22, 2012.

²³⁵ Ibid. Hundreds of border watch posts were constructed. A special wing of border police was established, and the Assam government started a police drive to detect “infiltrators.” By 1984, 1,873 security watch posts were sanctioned by the central government under the PIP scheme.

²³⁶ Sangeeta Barooah Pisharoty, “Assam Has Already Missed the Bus, Deportation of Immigrants No Longer an Option,” *The Wire*, July 4, 2018, <https://thewire.in/rights/assam-illegal-immigrants-interview-hiranya-kumar-bhattacharya> (accessed

nearly 200,000 people, most of them Bengali Muslims, as well as threats from Pakistan to raise the issue at the United Nations, the government passed the Foreigners (Tribunal) Order in September 1964, to allow those suspected of being irregular immigrants to contest police claims in tribunals that were to be headed by someone with “judicial experience.”²³⁷

However, the 1965 India-Pakistan war and the 1971 war for the liberation of East Pakistan and the creation of Bangladesh led to a change in policy. Thousands of Bengali Hindus fled to India and the central government decided not to deport people seeking refuge as a result of religious persecution.²³⁸

In March 1979, in the lead-up to by-elections after the death of a member of parliament, allegations that a large number of so-called “illegal immigrants” from Bangladesh were listed as voters led to the start of “anti-foreigner” agitation. The All Assam Students’ Union (AASU) launched a movement in June 1979, demanding “detection, disenfranchisement, and deportation” of foreigners.²³⁹ The agitation led by AASU and the All Assam Gana Sangram Parishad (AAGSP) continued to escalate, and with it so did tensions between Assamese, immigrant, and tribal communities. At the same time, militant Assamese nationalists moved from political agitation to a full-scale secessionist armed insurrection led by the United Liberation Front of Asom (ULFA).²⁴⁰

September 12, 2019). There were protests and allegations from several Bengali Muslim politicians and others of police harassment of Muslims under the scheme. Lt Gen. (Retd) Srinivas Kumar Sinha, PVSM, ADC, “Report on Illegal Migration into Assam Submitted to the President of India,” November 8, 1998, D. O. No. GSAG.3/98/, https://www.satp.org/satporgrp/countries/india/states/assam/documents/papers/illegal_migration_in_assam.htm (accessed September 11, 2019).

²³⁷ Foreigners (Tribunal) Order, 1964, Government of India, Ministry of Home Affairs, September 23, 1964, [https://upload.indiacode.nic.in/showfile?actid=AC_CEN_5_23_00048_194631_1523947455673&type=order&filename=Foreigners%20\(Tribunal\)%20Order,1964.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_5_23_00048_194631_1523947455673&type=order&filename=Foreigners%20(Tribunal)%20Order,1964.pdf) (accessed September 12, 2019).

²³⁸ In March 1972, Indian Prime Minister Indira Gandhi and the new prime minister of independent Bangladesh, Sheikh Mujibur Rahman, signed an agreement that legitimized all irregular East Pakistani migrants who came to Assam before March 25, 1971. Treaty of Peace and Friendship between the Government of India and the Government of the People’s Republic of Bangladesh, March 19, 1972, <https://www.mea.gov.in/bilateral-documents.htm?dtl/5621/Treaty+of+Peace+and+Friendship> (accessed September 12, 2019). Also see, Dilip Gogoi, ed., *Unheeded Hinterland: Identity and sovereignty in Northeast India* (London: Routledge, 2016). In February 1976, India’s Ministry of Home Affairs sent a letter to the Assam government, asking it not to deport immigrants from East Pakistan/Bangladesh who came to India before March 1971. White Paper on Foreigners’ Issue, Government of Assam, Home and Political Department, October 22, 2012.

²³⁹ White Paper on Foreigners’ Issue, Home and Political Department, Government of Assam, October 22, 2012.

²⁴⁰ “United Liberation Front of Asom,” South Asia Terrorism Portal, https://www.satp.org/satporgrp/countries/india/states/assam/terrorist_outfits/Ulfa.htm (accessed September 11, 2019).

Tensions peaked during the elections of February 1983 when thousands of Bengali-speaking Muslims and hundreds of Assamese and tribal people were killed in communal massacres and retaliatory attacks.²⁴¹ The most violent incident, often referred to as the “Nellie massacre,” occurred on February 18, 1983, when at least 1,800 people, mostly Bengali Muslims, were killed.²⁴²

Following these massacres, the central government passed the Illegal Migrants (Determination by Tribunals) Act (IMDT) in 1983 to detect irregular immigrants who had arrived since March 1971 and expel them.²⁴³ Unlike the Foreigners Act, however, the IMDT law placed the burden of proof on the complainant or the police.²⁴⁴

Critics of the law alleged the change in burden of proof contributed to an increase in irregular immigration of Bengali Muslims from Bangladesh.²⁴⁵ The law was challenged by the former head of the AASU in the Supreme Court, and was struck down in 2005 in *Sarbananda Sonowal v. Union of India*.²⁴⁶ The Supreme Court ruled that “the influx of

²⁴¹ Anti-immigrant violence, especially against Bengali Muslims has continued in the state. In October 1993, about 50 people were killed in clashes between indigenous Bodo tribes and Bengali Muslim migrant settlers in Bongaigaon district. In July 1994, assaults on Bengali Muslims in Barpeta district resulted in 100 deaths, mostly Muslim. Clashes between Bodos and Bengali Muslims in 2008 in Udalguri and Darrang districts led to 70 deaths and over 100,000 people displaced. “A timeline of Bodo-Muslim violence in Assam,” *Firstpost*, July 26, 2012, <https://www.firstpost.com/india/a-timeline-of-bodo-muslim-violence-in-assam-391475.html> (accessed September 11, 2019). In 2012, clashes between Bodos and Bengali Muslims in Kokrajhar, Chirang and Dhubri districts, killed over 80 people, mostly Muslim, and displaced nearly 300,000 people. “India: Rescind ‘Shoot at Sight’ Orders in Assam,” Human Rights Watch news release, July 27, 2012, <https://www.hrw.org/news/2012/07/27/india-rescind-shoot-sight-orders-assam>. In 2014, clashes between Bodos and Muslims in Baksa and Kokrajhar districts killed at least 30 Muslims. “Dozens of Muslims killed in ethnic violence in north-east India,” *Guardian*, May 3, 2014, <https://www.theguardian.com/world/2014/may/03/dozens-muslims-killed-ethnic-violence-north-east-india-assam> (accessed September 11, 2019).

²⁴² Ratnadeep Choudhary, “Nellie massacre and ‘citizenship’: When 1,800 Muslims were killed in Assam in just 6 hours,” *The Print*, February 18, 2019, <https://theprint.in/india/governance/nellie-massacre-and-citizenship-when-1800-muslims-were-killed-in-assam-in-just-6-hours/193694/> (accessed September 11, 2019).

²⁴³ Illegal Migrants (Determination by Tribunals) Act, No. 39 of 1983, <http://legislative.gov.in/sites/default/files/A1983-39.pdf> (accessed September 12, 2019).

²⁴⁴ White Paper on Foreigners’ Issue, Government of Assam, Home and Political Department, October 22, 2012. According to one official estimate, between 1985 and 2005, 112,791 cases were referred to the IMDT tribunals. It decided 24,021 cases, declaring 12,846 persons as foreigners out of which only 1,547 people were pushed back or deported.

²⁴⁵ Lt Gen. (Retd) Srinivas Kumar Sinha, PVSM, ADC, “Report on Illegal Migration into Assam Submitted to the President of India,” November 8, 1998, D. O. No. GSAG.3/98/, https://www.satp.org/satporgt/p/countries/india/states/assam/documents/papers/illegal_migration_in_assam.htm (accessed September 11, 2019).

²⁴⁶ *Sarbananda Sonowal v. Union of India*, W.P. (civil) 131 of 2000, Supreme Court of India, July 12, 2005, <https://indiankanoon.org/doc/907725/> (accessed September 12, 2019).

Bangladeshi nationals who have illegally migrated into Assam pose a threat to the integrity and security of north-eastern region,” and that the law failed to protect “against external aggression and internal disturbance.”²⁴⁷

Several constitutional experts have noted the judgment “relied upon unverified – and now disproved – data to hold that migration amounted to ‘external aggression’ upon India.” By striking down the law, the court established that the burden to prove citizenship lies upon the individual accused of being a foreigner.²⁴⁸

Assam Accord

The 1985 Assam Accord ended the violence. The Asom Gana Parishad (AGP) party, which supported the goals of the anti-foreigner movement, won state elections. The accord, signed between the AASU, the state government of Assam, and the central government led by Prime Minister Rajiv Gandhi, called for the expulsion of all immigrants who had entered Assam illegally after March 24, 1971, and a 10-year disenfranchisement of irregular immigrants who had entered the state between 1966 and 1971. Those who came to Assam before January 1, 1966 were granted Indian citizenship.²⁴⁹ The 1955 Citizenship Act was amended in 1985 in line with the Assam Accord.²⁵⁰

²⁴⁷ Ibid.

²⁴⁸ “Contested Citizenship in Assam: People’s Tribunal on Constitutional Processes and Human Cost,” interim jury report, September 7-8, 2019, <https://www.mediavigil.com/wp-content/uploads/2019/09/Assam-NRC-Peoples-Tribunal-Interim-Jury-Report.pdf> (accessed September 12, 2019). “Striking down of IMDT was the starting point of today’s crisis and it was a court-initiated crisis,” said Faizan Mustafa, constitutional expert and vice-chancellor of NALSAR University of Law in Hyderabad. “NRC Assam: Karan Thapar interviews Faizan Mustafa for The Wire,” September 8, 2019, video clip, YouTube, https://www.youtube.com/watch?time_continue=5&v=uOfUoG5m67o (accessed September 12, 2019). This judgment laid down the foundation for subsequent judgments delivered by the Supreme Court of India and Gauhati High Court on the issue of irregular migration. In the 2014 case of *Assam Sanmilita Mahasangha v. Union of India*, the Supreme Court heavily relied on the Sonowal judgment, particularly the report of the former governor of Assam, to legitimize the urgency of updating the NRC. It used statements such as “massive influx of illegal migrants” and “invasion of a vast horde of land-hungry immigrants mostly Muslims from East Bengal.” Amnesty International India, “Designed to Exclude: How India’s Courts are Allowing Foreigners Tribunals to Render People Stateless in Assam,” 2019, <https://amnesty.org.in/wp-content/uploads/2019/11/Assam-Foreigners-Tribunals-Report-1.pdf> (accessed January 20, 2020); *Assam Sanmilita Mahasangha v. Union of India*, W.P. (civil) no. 562 of 2012, Supreme Court of India, December 17, 2014, <https://indiankanoon.org/doc/50798357/> (accessed January 20, 2020).

²⁴⁹ Assam Accord and its Clauses, Government of Assam, <https://assamaccord.assam.gov.in/portlets/assam-accord-and-its-clauses> (accessed September 11, 2019).

²⁵⁰ Citizenship (Amendment) Act, No. 65 of 1985, s.6A, Special provisions as to citizenship of persons covered by the Assam Accord, https://indiacode.nic.in/bitstream/123456789/4210/1/Citizenship_Act_1955.pdf (accessed September 12, 2019).

Doubtful Voters

In 1997, the Election Commission of India reviewed the electoral roll in Assam and marked a “D” (Doubtful voter) against the names of those persons who could not prove their citizenship status. The “D” voters were barred from contesting elections and casting their votes. Their cases were forwarded by the electoral registration officers to the local police who then referred them to the relevant tribunals for the determination of their citizenship. A total of 231,657 “D” references were made to the authorities in 1998.²⁵¹ The mass disenfranchisement was challenged by constitutional experts as being unconstitutional.²⁵²

Updating the National Register of Citizens

In July 2009, Assam Public Works, a nongovernmental organization, filed a case in the Supreme Court claiming that 4.1 million illegal immigrants’ names had been included in Assam’s electoral rolls.²⁵³ Later, the AASU became an intervener in the case and Supreme Court asked the government in December 2014 to expedite updating the NRC.

In its ruling, the Supreme Court relied on a 2004 government estimate of 12 million illegal Bangladeshi immigrants in India as of December 2001, of which 5 million were in Assam. However, the court overlooked a clarification by the government that the figures were not based on any comprehensive or sample study. In reply to a Right to Information request in October 2018, the government reiterated that it was not possible to have an accurate estimate of illegal immigrants, including Bangladeshi migrants in the country.²⁵⁴

The NRC update process began in 2015 and was monitored by the Supreme Court. The verification process collected two sets of documents from Assam residents. List A was legacy data, which included the 1951 NRC and electoral rolls up to March 24, 1971 to prove that the applicant’s ancestors lived in Assam before 1971. List B documents or linkage

²⁵¹ White Paper on Foreigners’ Issue, Government of Assam, Home and Political Department, October 22, 2012.

²⁵² In *Lal Babu Hussein & Others v. Electoral Registration Officer & Others*, the Supreme Court held that the electoral officer asking residents to prove their identity was unconstitutional. *Lal Babu Hussein & Ors v. Electoral Registration Officer & Ors.*, Supreme Court of India, 1995 AIR 1189, 1995 SCC (3) 100, February 1995, <https://indiankanoon.org/doc/883535/> (accessed October 19, 2019).

²⁵³ *Assam Public Works v. Union of India*, W.P. (civil) no. 274 of 2009, Supreme Court of India.

²⁵⁴ Debarshi Das and Prasenjit Bose, “Assam NRC: Govt Clueless About How Many Illegal Immigrants Actually Live in India, RTI Shows,” *Huffington Post India Edition*, November 16, 2018, https://www.huffingtonpost.in/2018/11/16/assam-nrc-govt-clueless-on-how-many-illegal-immigrants-actually-live-in-india-rti-shows_a_23591448/ (accessed October 3, 2019).

documents – for instance birth certificates – established the relationship of the applicant to the List A documents of their parents or grandparents.²⁵⁵ The NRC then verified the documents, ostensibly creating a family tree for each applicant.

Over 33 million people submitted applications to enroll their names in the updated NRC.²⁵⁶

On August 31, 2019, the final NRC was published and did not include the names of over 1.9 million (1,906,657) residents of Assam whose citizenship claims could not be verified.²⁵⁷ Those excluded from the list were given 120 days to file an appeal at a Foreigner Tribunal. They could appeal tribunal decisions at the Gauhati High Court, and finally at the Supreme Court.²⁵⁸

Flawed Verification Procedure

Politicians across party lines have criticized the final NRC. The AASU said the number of those excluded should have been higher. BJP lawmakers said not enough “illegal Bangladeshis” – a euphemism for Bengali Muslims – were excluded, and that many Bengali Hindus had been left out. Ananta Kumar Malo, a lawmaker from the All India United Democratic Front, who was excluded from the NRC even as his family members were included, also gave voice to such sentiment: “Thousands of genuine Indians – especially Bengali Hindus – have been left out of it, and so many illegal foreigners have made it.”²⁵⁹

²⁵⁵ List of admissible documents, Government of Assam, Office of the State Coordinator of National Registration, Assam, <http://www.nrcassam.nic.in/admin-documents.html> (accessed September 12, 2019).

²⁵⁶ The authorities presented a first list on July 30, 2018. In which over four million names were excluded. “India: Assam’s Citizen Identification Can Exclude 4 Million People,” Human Rights Watch, July 31, 2018, <https://www.hrw.org/news/2018/07/31/india-assams-citizen-identification-can-exclude-4-million-people>. On August 28, 2018, the Supreme Court ordered re-verification amid complaints of arbitrary exclusions and lack of proper procedure. Those excluded from the NRC were given time until November 23, 2018 to file objections. “SC orders re-verification of 10% of people excluded from draft NRC in Assam,” *Press Trust of India*, August 28, 2018, https://www.business-standard.com/article/current-affairs/sc-orders-re-verification-of-10-of-people-excluded-from-draft-nrc-in-assam-118082800541_1.html (accessed February 4, 2020).

²⁵⁷ “Assam NRC Final List 2019: Over 19 lakh excluded, 3.11 crore included in list,” *Indian Express*, August 31, 2019, <https://indianexpress.com/article/india/assam-nrc-final-list-2019-published-19-lakh-left-out-5953202/> (accessed September 12, 2019).

²⁵⁸ For more on the NRC process, see Section IV. Assam’s National Register of Citizens.

²⁵⁹ Abhishek Saha, “Excluded from NRC in Assam: 19,06,657,” *Indian Express*, September 14, 2019, <https://indianexpress.com/article/north-east-india/assam-nrc-mlas-faulty-genuine-citizens-out-5957268/> (September 15, 2019).

The process has been so fraught that a nongovernmental organization, Citizens for Justice and Peace, reported that 56 people have died in Assam since 2015 allegedly over fears related to their citizenship status. According to the group, 48 people allegedly committed suicide because of fear of being declared an irregular foreigner, or fear of detention, or because of inability to provide required documentation during the NRC process. Eight others died in detention centers due to alleged negligence of authorities.²⁶⁰ In November 2019, the government told parliament that between 2016 and October 2019, 28 detainees had died either in detention centers or hospitals where they were referred.²⁶¹

Exclusion on Technical Grounds

Lawyers and journalists have found some people were not registered because of technical reasons such as variations in spelling of names in the various documents.²⁶² Sometimes, several people with the same name showed up in old records, creating confusion, said NRC officials.²⁶³

Aslam (name changed) is excluded from the NRC even though his parents, most of his siblings, his wife, and his children are included. He was likely excluded, he said, because the spelling of his name on his voter identification card and PAN card (identification card to file taxes) are different. “The form for the PAN card is in English but we fill the forms for the voter identity card in Assamese. Then when they change it into English, the spelling of name often changes.”²⁶⁴

Systematic Discrimination

The NRC segregated the people in Assam into “original” and “non-original” inhabitants – with Bengali and Nepali speaking minorities largely making up the non-original

²⁶⁰ “Citizenship and NRC Related Deaths in Assam, July 18, 2019,” Citizens for Justice and Peace, <https://cjp.org.in/citizenship-and-nrc-related-deaths-in-assam/> (accessed September 15, 2019).

²⁶¹ Reply to Rajya Sabha Unstarred Question No. 103, Government of India, Ministry of Home Affairs, November 27, 2019.

²⁶² Ipsita Chakravarty, “Assam’s search for its ‘original inhabitants’ returns a key question: Who is Assamese, anyway?,” *Scroll.in*, February 18, 2016, <https://scroll.in/article/803509/assams-search-of-its-original-inhabitants-returns-a-key-question-who-is-assamese-anyway> (accessed October 2, 2019).

²⁶³ “India: Assam’s Citizen Identification Can Exclude 4 Million People,” Human Rights Watch, July 31, 2018, <https://www.hrw.org/news/2018/07/31/india-assams-citizen-identification-can-exclude-4-million-people>.

²⁶⁴ Human Rights Watch interview with Aslam (name changed) and his wife, Guwahati, September 4, 2019.

category.²⁶⁵ Different criteria were used to verify claims of “original” or “non-original” inhabitants by the NRC authorities.²⁶⁶ The Citizenship Rules and the Supreme Court did not define “original inhabitants” or a procedure to identify them.²⁶⁷ Prateek Hajela, Assam state coordinator for the NRC and the man in charge of the entire process, explained that local authorities have discretionary powers: “Clause 3(3) contemplates a less strict and vigorous process for deciding claims for inclusion in the NRC insofar as persons who are originally inhabitants of the State of Assam are concerned.”²⁶⁸

Of the total 32.9 million applications, about 4.8 million were made using a residency certificate issued by the gram panchayat, an elected village council, as the list B (linkage) document.²⁶⁹ In March 2017, the Gauhati High Court ordered that a gram panchayat certificate has no statutory basis and cannot be used as a linking document. In December 2017, the Supreme Court modified the rule, allowing the use of the document, subject to verification of its authenticity.²⁷⁰ The NRC authorities said 1.74 million of these applications were deemed to be from “original inhabitants,” and their certificates were accepted while all others needed to go through a two-step verification process.²⁷¹

Arbitrary and Inconsistent

²⁶⁵ “Contested Citizenship in Assam: Public Hearing on Constitutional Processes and the Human Cost,” New Delhi, September 2019, *Livelaw.in*, https://www.livelaw.in/pdf_upload/pdf_upload-364067.pdf (accessed January 30, 2020).

²⁶⁶ Schedule (Special Provision as to manner of Preparation of National Register of Indian Citizen in State of Assam) to Citizenship ((Registration of Citizens & Issue of National Identity Cards) Rules, 2003, November 9, 2009, clause 3(3), <http://www.nrcassam.nic.in/images/pdf/citizenship-rules.pdf> (accessed January 30, 2020).

²⁶⁷ *Kamalakhya Dey Purkayastha v. Union of India*, W.P. (civil) no. 1020 of 2017, Supreme Court of India, December 5, 2017, <https://indiankanoon.org/doc/132044439/> (accessed January 30, 2020).

²⁶⁸ Arunabh Saikia, “Interview: No one will be classified as superior, says top Assam citizens register official,” *Scroll.in*, <https://scroll.in/article/863831/interview-everyone-will-be-the-same-level-of-citizen-says-the-state-coordinator-in-assam> (accessed January 30, 2020).

²⁶⁹ *Rupajan Begum v. Union of India*, SLP no. 13256/2017, Supreme Court of India, August 24, 2017, <https://indiankanoon.org/doc/44496730/> (accessed January 24, 2020).

²⁷⁰ *Rupajan Begum v. Union of India*, SLP no. 13256/2017, Supreme Court of India, December 5, 2017, <https://indiankanoon.org/doc/7961750/> (accessed January 24, 2020). Also see, “National Register Of Citizens: Supreme Court Allows Gram Panchayat Certificates To Be Used As Identity Document For Claiming Citizenship,” *Outlook Magazine*, December 5, 2017, <https://www.outlookindia.com/website/story/assam-citizenship-issue-supreme-court-allows-gram-panchayat-certificates-to-be-u/305198> (accessed October 3, 2019).

²⁷¹ *Rupajan Begum v. Union of India*, SLP no. 13256/2017, Supreme Court of India, December 5, 2017, <https://indiankanoon.org/doc/7961750/> (accessed January 24, 2020).

Activists and lawyers also contend that the Assam process lacked sufficient oversight, leading to inconsistencies.²⁷² The NRC allowed “D” or “doubtful” voters to apply for inclusion but did not include their names unless the Foreigners Tribunals – statutory authorities set up to detect irregular immigrants in Assam – declared them as citizens. There are still more than 120,000 people arbitrarily marked as doubtful voters.

In May 2018, the state coordinator for the NRC sent a notice to all districts saying siblings and other family members of those “declared foreigners” will also be put on hold and not included in the NRC until the tribunals decide their fate. He also sent an order to the border police authorities, requiring them to refer family members of “declared foreigners” to the tribunals.²⁷³ Once a person’s case was referred to a tribunal, they could no longer be included in the NRC until their citizenship was determined.

Based on the same documents, while some members of Bibek’s (name changed) family were included as citizens, others were not.²⁷⁴ Bibek, 40, a Bengali-speaking Hindu from the Dalit community who teaches Assamese in a government school in Baksa district, his family came from East Pakistan, now Bangladesh, in 1964. “My father was 16 when he came from East Pakistan. He tells us that we came here because of the atrocities on Hindus there,” he said.²⁷⁵

Bibek’s mother is included in the NRC and his two sisters, who are married, are also included. But his father, wife, and 9-year-old son are not. Although they submitted nearly identical documents, some members of the family were told that they did not provide proper legacy data.²⁷⁶ Bibek said he is worried about biased Foreigners Tribunals: “It

²⁷² Samanwaya Rautray, “Citizenship bill: Supreme Court notice to centre on stay for non-muslim immigrants,” *Economic Times*, February 28, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/citizenship-bill-supreme-court-notice-to-centre-on-stay-for-non-muslim-immigrants/articleshow/68195246.cms> (accessed October 2, 2019).

²⁷³ Praveen Donthi, “How Assam’s Supreme Court-mandated NRC project is targeting and detaining Bengali Muslims, breaking families,” *Caravan Magazine*, July 2, 2018, <https://caravanmagazine.in/politics/assam-supreme-court-nrc-muslim-families-breaking-detention> (accessed September 19, 2019).

²⁷⁴ Sarkar said the family had provided his grandfather’s migration document from 1964 and his certificate of citizenship from 1968. They also had land deeds, school certificates of various family members, and government certification of their Dalit status to access benefits, among other documents.

²⁷⁵ Human Rights Watch interview with Bibek (name changed), Baksa district, Assam, September 5, 2019.

²⁷⁶ Ibid.

doesn't matter what documents we have, if our language is Bengali, we are excluded. I am worried that if we do not get citizenship, I will also lose my job.”²⁷⁷

Shalini (name changed), 35, a Bengali-speaking Hindu and her siblings were excluded from the NRC, but her children were included. Shalini, a cook in a government school in Baksa district, earns 1000 rupees (US\$14) a month and is worried about the legal costs and of losing her job. “The government has brought this hardship on us,” she said. “We were born here. How are we Bangladeshis?”²⁷⁸

One man said his 6-year-old niece had been excluded from the NRC. “My sister, her husband, her son – were included in the NRC. But her 6-year-old daughter’s name was not there. They will have to fight the case for the citizenship of a 6-year-old now,” he said.²⁷⁹

Foreigners Tribunals

The Foreigners Tribunals were first set up in 1964 to allow those suspected of being irregular immigrants to contest police claims.²⁸⁰ The rules have been altered over time, but allegations persist that these tribunals, led by officials without judicial experience and operating without a set of uniform standards, have been arbitrary, discriminatory, inconsistent, and error-ridden.²⁸¹

Until the NRC, Foreigners Tribunals tried two kinds of cases: those referred to them by officials of the Assam Border Police Organization, who are empowered to ask any “suspected citizen” for citizenship documents, and those designated “D” or doubtful

²⁷⁷ Ibid.

²⁷⁸ Human Rights Watch interview with Shalini (name changed), Baksa District, Assam, September 5, 2019.

²⁷⁹ Ibid.

²⁸⁰ Foreigners (Tribunal) Order, 1964, Government of India, Ministry of Home Affairs, September 23, 1964, [https://upload.indiacode.nic.in/showfile?actid=AC_CEN_5_23_00048_194631_1523947455673&type=order&filename=Foreigners%20\(Tribunal\)%20Order,1964.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_5_23_00048_194631_1523947455673&type=order&filename=Foreigners%20(Tribunal)%20Order,1964.pdf) (accessed September 12, 2019).

²⁸¹ Amnesty International India, “Designed to Exclude: How India’s Courts are Allowing Foreigners Tribunals to Render People Stateless in Assam,” 2019, <https://amnesty.org.in/wp-content/uploads/2019/11/Assam-Foreigners-Tribunals-Report-1.pdf> (accessed January 20, 2020); Rohini Mohan, “Inside India’s Sham Trials That Could Strip Millions of Citizenship,” *VICE News*, July 29, 2019, https://news.vice.com/en_us/article/3k33qy/worse-than-a-death-sentence-inside-indias-sham-trials-that-could-strip-millions-of-citizenship (accessed September 19, 2019).

voters by the Election Commission.²⁸² The burden of proof in both cases is on the person whose citizenship is contested, and not the state.²⁸³

In May 2019, the Ministry of Home Affairs expanded the 1964 Foreigners (Tribunal) Order to allow individuals who have been excluded from the NRC to approach the tribunals.²⁸⁴ In August 2019, there were 100 Foreigners Tribunals in Assam. According to government data, between 1985 and March 2019, the tribunals declared 117,164 people as irregular immigrants.²⁸⁵ The government announced an additional 221 tribunals to handle the appeals of those excluded from the NRC.²⁸⁶ Over 200,000 cases were already pending at the tribunals before the NRC-related cases, according to some reports.²⁸⁷

Over the years, the government has relaxed the eligibility of members who preside over the Foreigners Tribunals.²⁸⁸ Constitutional lawyers and academics contend that tribunals do not follow standard procedural law, are not led by people with any judicial experience, and

²⁸²For instance, in 1997, the Election Commission had marked 231,657 people as “D” voters. In March 2019, Assam’s chief electoral officer said the number had come down to 120,000. Manoj Anand, “1.2 lakh ‘doubtful voters’ in Assam: Election Commission,” *Asian Age*, March 19, 2019, <https://www.asianage.com/india/all-india/190319/12-lakh-doubtful-voters-in-assam-election-commission.html> (accessed September 13, 2019).

²⁸³ An analysis by VICE News in July 2019 of 515 orders issued by four of Kamrup district’s five tribunals showed that about 82 percent of people investigated were declared foreigners. The decisions were so arbitrary, the report said, that while one tribunal declared all its cases Indian, another declared every applicant to be foreign. Rohini Mohan, “Inside India’s Sham Trials That Could Strip Millions of Citizenship,” *VICE News*, July 29, 2019, https://news.vice.com/en_us/article/3k33qy/worse-than-a-death-sentence-inside-indias-sham-trials-that-could-strip-millions-of-citizenship (accessed September 19, 2019).

²⁸⁴ Order G.S.R. 409(E), Government of India, Ministry of Home Affairs, May 30, 2019, <http://egazette.nic.in/WriteReadData/2019/205117.pdf> (accessed September 14, 2019). The amendment also allows district magistrates to refer cases to the tribunal. Sangeeta Barooah Pisharoty, “Explainer: What Do the MHA’s Changes to 1964 Foreigners Tribunals Order Mean?” *The Wire*, June 14, 2019, <https://thewire.in/government/foreigners-tribunals-order-mha-changes> (accessed September 14, 2019).

²⁸⁵ Reply to Lok Sabha Unstarred Question no. 3804, Government of India, Ministry of Home Affairs, July 16, 2019, <http://164.100.24.220/loksabhaquestions/annex/171/AU3804.pdf> (accessed October 5, 2019).

²⁸⁶ Bikash Singh, “Assam government to set up 200 foreigners’ tribunal,” *Economic Times*, September 23, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/assam-government-to-set-up-foreigners-tribunal/articleshow/71263494.cms> (accessed October 16, 2019).

²⁸⁷ “1.17 lakh people declared as foreigners by tribunals in Assam,” *Press Trust of India*, July 16, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/1-17-lakh-people-declared-as-foreigners-by-tribunals-in-assam/articleshow/70244101.cms> (accessed September 19, 2019).

²⁸⁸ Initially, in 1964, when the tribunals were first set up, they were mostly led by officials with judicial experience. Foreigners (Tribunal) Order, 1964, clause 2(2). “The tribunal shall consist of such number of persons having judicial experience as the Central government may think fit to appoint.” Then lawyers with a minimum age of 45 years and 10 years of legal practice were made eligible. On June 10, 2019, the Registrar General of Gauhati High Court issued a notification calling applications for members, further relaxing the criteria to include retired civil servants or bureaucrats. The qualification of advocates was reduced to a minimum seven years of practice and minimum age of 35 years. Advertisement, Gauhati High Court, No. HC.XXXVII-22/2019/442/R.Cell, June 10, 2019. Copy on file with Human Rights Watch. The advertisement says the initial period of appointment shall be one year, which may be extended.

are not independent. Mohsin Alam Bhat, executive director of the Centre for Public Interest Law at Jindal Global Law School, told Human Rights Watch:

Tribunal members are given a year long tenure and they are subject to further extension depending on government evaluation of their performance. This is not what a tribunal looks like. This is what a government committee looks like. This is not how any judicial institution works as an independent institution in the world. Therefore, people may raise concerns over lack of neutrality and objectivity.²⁸⁹

While other judicial courts are regulated either by the Civil Procedure Code or the Code of Criminal Procedure, the Foreigners Tribunals have unchecked power to regulate their own procedure, leaving them without effective oversight.²⁹⁰ Lawyers allege tribunals often abuse this power. “Very often, they don’t issue summons to witnesses, stating that the burden of proof is on the accused. After declaring a person a foreigner, many tribunals don’t provide certified copies of relevant documents required to challenge the order,” said Aman Wadud, a lawyer.²⁹¹

Foreigners Tribunals lack transparency and fail to follow uniform procedure. Members lack independence and are vulnerable to pressure from the authorities to declare more people, mostly Bengali and Muslim, as foreigners.²⁹² A former member of Foreigners Tribunals told Human Rights Watch:

²⁸⁹ Human Rights Watch phone interview with Mohsin Alam Bhat, October 3, 2019.

²⁹⁰ Foreigners (Tribunal) Order, 1964, clause 3A (17).

²⁹¹ Tarique Anwar, “Assam: ‘Arbitrary Powers’ to FTs While People are Set to Face Citizenship Test,” *NewsClick*, September 13, 2019, <https://www.newsclick.in/NRC-Citizenship-Assam-Foreign-Tribunals-Powers> (accessed October 22, 2019).

²⁹² The news agency *Reuters* reviewed copies of performance appraisal of 79 tribunal members over two years until April 30, 2017. It found that a majority of members who declared less than 10 percent of people they examined as irregular foreigners got a rating of “may be terminated.” Zeba Siddiqui, “Wrongful detentions, judges’ quotas in the search for illegals in India’s Assam,” *Reuters*, July 26, 2019, <https://www.reuters.com/article/us-india-politics-citizenship-insight/wrongful-detentions-judges-quotas-in-the-search-for-illegals-in-indias-assam-idUSKCN1ULoUJ> (accessed October 9, 2019). In 2017, 19 members of tribunals were terminated for “poor performance.” Some of them challenged the termination before the Gauhati High Court, saying that the government, in its appraisal, had punished those that had taken a lenient view in assessing citizenship claims. *Mamoni Rajkumari v. State of Assam*, Gauhati High Court, December 22, 2017, <https://www.casemine.com/judgement/in/5ac5e4a14a93261aa7942989> (accessed October 7, 2019). The petitioners also argued that their termination violated the 2014 Supreme Court order which directed the Gauhati High Court to constitute a bench to monitor the functioning of Foreigners Tribunals. *Assam Sanmilita Sangha v. Union of India*, 3 SCC 1, Supreme Court of India, December 17, 2014, <https://www.casemine.com/judgement/in/5609af49e4b01497114160d8> (accessed October 7, 2019). The government denied that the performance appraisal took the number of people declared foreigners by the tribunal members into account, and argued that the members were not judicial officers and therefore arguments on independence of

I admit that there might be arbitrary actions by Foreigners Tribunals because there is an internal government policy that more and more people should be deemed foreigners. We are hired on the basis of contracts – those with records of declaring more and more people as foreigners are preferred.²⁹³

Human Rights Watch found that once a person is cleared by one tribunal, they can still be brought again before the same or different tribunals. People can be denied citizenship claims if there is a mismatch in the spelling of their names on different documents, for not mentioning certain facts in the written statements, or minor contradictions in deposition testimony from witnesses. Lack of competent legal representation can often deprive them their citizenship.

The case of Ashish (name changed), 58, a Bengali Hindu daily wage worker in Baksa district, and his family exemplifies how the tribunals can be arbitrary and error-ridden. Ashish, his father, and his brother were referred by the border police as suspected irregular immigrants. His brother and father were declared Indian citizens by a tribunal in October 2014. Ashish was also declared a citizen by a Foreigners Tribunal in February 2018.²⁹⁴ However, Ashish's name was not included in the NRC and therefore he has to go through the process of proving his citizenship again.²⁹⁵ Meanwhile, his brother was once again deemed suspect by the border police and this time was declared an irregular foreigner by a tribunal. His appeal is pending in Gauhati High Court, even as he was verified in the NRC.

Salima (name changed), 45, a Bengali Muslim in Barpeta district, was marked as a doubtful voter in 1997, and was declared an irregular foreigner in February 2019. Even though her relatives were all confirmed citizens and she had the same documentation they

the judiciary were irrelevant. The court set aside the termination, saying it was “obligatory for the High Court to assess the petitioners” to decide whether extension should be granted or denied. *Mamoni Rajkumari v. State of Assam*, Gauhati High Court, December 22, 2017, <https://www.casemine.com/judgement/in/5ac5e4a14a93261aa7942989> (accessed October 7, 2019).

²⁹³ Human Rights Watch interview with a former member of the Foreigners Tribunals, Assam, September 5, 2019.

²⁹⁴ Copy of judgment on file with Human Rights Watch.

²⁹⁵ Human Rights Watch interview with Ashish and his wife Rachana, Baksa district, Assam, September 5, 2019.

had, the Foreigners Tribunal rejected Salima's claim.²⁹⁶ Her lawyer believes this is because when Salima was giving oral evidence at the tribunal she was not able to properly explain her case, as often occurs in rural communities where people can be uncertain about ages and other details. "Litigants are poor, they do not understand the consequences," he said. "She was not able to tell the court that she had a stepmother, and also how many brothers and sisters she had and their exact ages."²⁹⁷

Rashid (name changed), 39, a Bengali Muslim mechanic in Barpeta district, was marked as a doubtful voter in 1997, and received a notice from a Foreigners Tribunal in 2017. He was declared an irregular foreigner in 2018. However, the same tribunal found his mother and sister – both marked as doubtful voters – to be Indian citizens.²⁹⁸ Rashid told Human Rights Watch: "Even though my mother testified before the tribunal in my case, the member said that he had doubts that she was my mother. So, I told the court to take my DNA test but they refused, asking me to appeal to the high court instead."²⁹⁹

Junaid (name changed) was declared an irregular foreigner in 2018 by a tribunal in Kamrup district. However, the same tribunal had approved his brother Karim (name changed) the year before. Both men had submitted the same legacy documents to show that their family had been living in Assam since 1947. The cases were presided over by the same member at the tribunal.³⁰⁰

In March 2019, a tribunal in Barpeta declared Arshad (name changed), 50, a Bengali Muslim, an irregular foreigner. The tribunal refused to admit electoral rolls as evidence to show the link between Arshad and his father because Arshad's name was spelled incorrectly.³⁰¹ Arshad told Human Rights Watch that he was terrified and was unable to give oral evidence to the satisfaction of the presiding officer at the tribunal. "I didn't understand anything going on in court. I didn't even know what it means to be declared a foreigner until the people who are helping us to apply for bail told me," Arshad said.³⁰²

²⁹⁶ Copy of judgment on file with Human Rights Watch.

²⁹⁷ Human Rights Watch interview with Salima's lawyer, Barpeta, September 7, 2019.

²⁹⁸ Copy of judgment on file with Human Rights Watch.

²⁹⁹ Human Rights Watch interview with Rashid (name changed), Barpeta district, September 7, 2019.

³⁰⁰ Copies of judgments in both cases on file with Human Rights Watch.

³⁰¹ Copy of judgment on file with Human Rights Watch.

³⁰² Human Rights Watch interview with Arshad and Balkees (names changed), Barpeta district, September 7, 2019.

In many cases, people do not even get a chance to present their claims. Their cases are decided ex-parte, that is, in their absence. Lawyers in Assam said this is largely because the border police fail to carry out proper investigations and serve timely notices to the people. Between 1985 and February 2019, 63,959 people were declared foreigners through ex-parte proceedings.³⁰³

Although the Foreigners (Tribunal) Order says the tribunals should communicate the main grounds on which a person is deemed foreign and give them a reasonable opportunity to produce evidence in support of their case, this is often ignored.³⁰⁴ Lawyers and civil society activists say police failure to deliver the notices is one of the main reasons that in over half of the cases where people were declared irregular foreigners – it was through ex-parte orders.³⁰⁵ Said Guwahati-based lawyer Zakir Hussain, who has been representing people in these tribunals:

It is routine for Foreigners Tribunals not to offer police reports. I think this is unfair because people should be given a copy to give them an adequate opportunity to put up a proper defense. They should know what the allegations against them are, who the witnesses are, and what they have said against them.³⁰⁶

The Assam government has said the ex-parte orders are necessary because people move out when they come to know of an investigation against them. In some cases, the government said, people have appeared before the tribunals on receipt of the notice but then drop off. Lawyers and activists contend it is because many are laborers who often migrate in search of work. In other cases, when people do receive a notice, they do not

³⁰³ Reply to Lok Sabha Unstarred Question No. 1724, Government of India, Ministry of Home Affairs, July 2, 2019, <http://164.100.24.220/loksabhaquestions/annex/171/AU1724.pdf> (accessed October 19, 2019).

³⁰⁴ Foreigners (Tribunal) Order, 1964, clause 3(1). A three-judge bench of Gauhati High Court in *State of Assam v. Moslem Mondal & Ors.* in 2013 also reiterated that individuals “shall be served with the notice, together with the main grounds on which he is suspected to be a foreigner,” noting this was needed so “the person against whom such notice is issued is treated fairly and he has been given a fair trial.” The judgment also noted the lack of training to presiding officers of the tribunals and the police who serve notice. *State of Assam v. Moslem Mondal & Ors.*, Gauhati High Court, January 3, 2013, <https://www.casemine.com/judgement/in/56eac1b607dba3c8ce40ebf> (accessed September 9, 2019).

³⁰⁵ In July 2019, the minister of state for home affairs informed the parliament that 63,959 people have been declared foreigners through ex-parte proceedings by tribunals in Assam between 1985 to February 2019. Reply to Lok Sabha Unstarred Question No. 1724, Government of India, Ministry of Home Affairs, July 2, 2019, <http://164.100.24.220/loksabhaquestions/annex/171/AU1724.pdf> (accessed October 19, 2019).

³⁰⁶ Human Rights Watch interview with Zakir Hussain, Guwahati, September 6, 2019.

have the money to hire a lawyer. And people who are illiterate or uninformed may not understand the consequences of what the notice means.³⁰⁷

Muzibur Rahman, an assistant sub-inspector in the Indian Border Security Force, and his wife were declared irregular foreigners in December 2018 by a tribunal. Rahman, a Bengali Muslim, was posted in Punjab and had not received the notice. He was unaware of the tribunal's decision until his father was informed by the NRC authorities in August 2019 that the couple was not eligible for inclusion.³⁰⁸ After they had been marked “doubtful” voters by the Election Commission, the border police referred their cases to Foreigners Tribunal in 2010, which issued a joint ex-parte order against 28 people, including Rahman and his wife, without their knowledge. Rahman has filed an appeal at the Gauhati High Court.³⁰⁹

Police Failure to Conduct Proper Investigations

In *State of Assam v. Moslem Mondal* in 2013, the Gauhati High Court, responding to petitioners who alleged that the police often failed to conduct a fair investigation and referred people to tribunals for doubtful citizenship without even visiting them or giving them an opportunity to prove their citizenship said, “There has to be a fair and proper investigation by the investigating agency before making a reference to the tribunal.” Noting a lack of uniform procedure by tribunals for serving notices to people suspected of being irregular immigrants, the court laid down certain guidelines to ensure everyone receives fair proceedings.³¹⁰

However, lawyers practicing in the state assert that Assam border police often do not conduct proper investigations before referring cases to the tribunals. “A large number of verification reports of the inquiry officer are almost blank which only proves that there is

³⁰⁷ Human Rights Watch interviews with lawyers and civil society activists in Assam, September 2019.

³⁰⁸ Ratnadip Choudhury, “BSF Officer And Wife Declared Foreigners In Assam, Tribunal Orders Arrest,” *NDTV*, August 24, 2019, <https://www.ndtv.com/india-news/bsf-officer-and-wife-declared-foreigners-in-assam-tribunal-orders-arrest-2089593> (accessed September 28, 2019).

³⁰⁹ Prasanta Mazumdar, “Now, a BSF officer declared a ‘foreigner’ in Assam,” *New Indian Express*, August 23, 2019, <http://www.newindianexpress.com/nation/2019/aug/23/now-a-bsf-officer-declared-a-foreigner-in-assam-2023188.html> (accessed October 5, 2019).

³¹⁰ *State of Assam v. Moslem Mondal & Ors.*, Gauhati High Court, January 3, 2013, <https://www.casemine.com/judgement/in/56eaac1b607dba3c8ce40ebf> (accessed September 9, 2019).

no proper investigation,” said lawyer Aman Wadud.³¹¹ There are also allegations that police make false statements in the inquiry, including claims that they have delivered notices, which can lead to an unfair ex-parte ruling. “In some cases, we have unfortunately seen that police file false reports,” lawyer Zakir Hussain told Human Rights Watch. “In most of these cases, weak and poor persons are targeted.”³¹²

For instance, a retired officer of the Indian army, Mohammed Sanaullah, 52, a Bengali Muslim, was detained for 10 days after he was declared an irregular foreigner by a tribunal in May 2019. When he was arrested, he was serving as an assistant sub-inspector in the border police. He was discharged from his duties the day after the tribunal order. The police inquiry report says the officer visited Sanaullah at his village home in Kalahikash in Kamrup district on May 23, 2008, and that he was unable to produce proper documents. The report claims to have taken Sanaullah’s statement and thumb impression as proof. The report added that the officer met Sanaullah again on July 27, 2009 at the village home and took his signature on the report.³¹³

Sanaullah told the tribunal that the police report was “completely false and fabricated” because on the dates mentioned, he was posted in Manipur and could not have met the inquiry officer. The police report also listed Sanaullah’s profession as laborer, further evidence that the officer never met him. Although Sanaullah submitted numerous documents to prove his citizenship, the tribunal declared him a foreigner on May 23, 2019, citing witness statements as well as several discrepancies in ages and the spelling of the names of various family members.³¹⁴ Sanaullah, who was released on bail in June 2019, said, “This is the reward I got after serving for 30 years in the Indian army. I am an Indian, very much an Indian and will forever remain an Indian.”³¹⁵

³¹¹ Tarique Anwar, “How Assam FTs Declare Indians as Foreigners: ‘No Prior Probe, Non-Application of Judicial Mind,’” *Newsclick*, September 12, 2019, <https://www.newsclick.in/Assam-FTs-Declare-Indians-Foreigners-Prior-Probe-Application-Judicial-Mind> (accessed September 14, 2019).

³¹² Human Rights Watch interview with Zakir Hussain, Guwahati, September 6, 2019.

³¹³ Copy of police report on file with Human Rights Watch.

³¹⁴ *Ibid.*

³¹⁵ “This is my reward for serving country: Kargil war veteran declared foreigner, detained in Assam,” *Reuters*, May 30, 2019, <https://www.indiatoday.in/india/story/kargil-war-veteran-mohammed-sana-ullah-declared-foreigner-sent-to-detention-centre-assam-nrc-1538097-2019-05-30> (accessed October 8, 2019); Rabi Banerjee, “Soldier of Misfortune,” *The Week*, July 27, 2019, <https://www.theweek.in/theweek/cover/2019/07/26/soldier-of-misfortune.html> (accessed October 8, 2019).

Detention Centers in Violation of International Standards

Once a tribunal declares a person a foreigner, they can be detained under section 4 of the Foreigners Act.³¹⁶ Currently, there are six makeshift foreigner detention centers in prisons across Assam. The central government told the parliament that 988 people were detained in these centers as of November 2019.³¹⁷ The government has said it will build 10 detention centers in the state for those who are declared foreigners, and is building the first one in Goalpara district that reportedly can accommodate up to 3,000 detainees.³¹⁸

A fact-finding report released in June 2018 by the National Human Rights Commission found that people are detained in these centers with no prospect of release and without adequate legal representation. The centers are administered like prisons, the detainees treated as convicted prisoners.³¹⁹ The report found that the detention centers also separated children from their parents.³²⁰

According to the state government, 25 people have died in foreigner detention centers over the past 34 years, including 7 who died in 2019.³²¹ However, the central government told parliament in November 2019 that between 2016 and October 2019, 28 detainees had died either in detention centers or hospitals where they were referred.³²² While the authorities say the deaths were largely due to illness, family members blame them on poor facilities

³¹⁶ The Foreigners Act, 1946, Act no. 31 of 1946, s. 4.

https://indiacode.nic.in/bitstream/123456789/6803/1/foreigners_act_1946.pdf (accessed October 9, 2019).

³¹⁷ Reply to Rajya Sabha Unstarred Question No. 1010, Government of India, Ministry of Home Affairs, November 11, 2019.

³¹⁸ Ratnadip Choudhury, "India's 1st Illegal Immigrant Detention Camp Size Of 7 Football Fields," *NDTV*, September 12, 2019, <https://www.ndtv.com/india-news/assam-detention-centre-inside-indias-1st-detention-centre-for-illegal-immigrants-after-nrc-school-ho-2099626> (accessed September 29, 2019).

³¹⁹ Harsh Mander, "The dark side of humanity and legality: A glimpse inside Assam's detention centres for 'foreigners,'" *Scroll.in*, June 26, 2018, <https://scroll.in/article/883936/assam-citizens-register-detention-centres-for-foreigners-offer-a-glimpse-of-the-looming-tragedy> (accessed October 24, 2019).

³²⁰ Ibid. The United Nations Working Group on Arbitrary Detention has stated that asylum seekers or immigrants should be placed in custody specifically intended for this purpose or, when for practical reasons, this is not the case, they must be placed in premises separate from those for persons imprisoned under criminal law. Report of the UN Working Group on Arbitrary Detention, A/HRC/7/4, January 10, 2008, <https://undocs.org/A/HRC/7/4> (accessed October 6, 2019).

³²¹ "Assam: 25 people declared foreigners have died in detention centres till date, says minister," *Scroll.in*, July 30, 2019, <https://scroll.in/latest/932310/assam-25-people-declared-foreigners-have-died-in-detention-centres-till-date-says-minister> (accessed September 25, 2019).

³²² Reply to Rajya Sabha Unstarred Question No. 103, Government of India, Ministry of Home Affairs, November 27, 2019.

and negligence by the authorities.³²³ In October 2019, the state government formed a special review committee to assess the conditions in detention centers.

In May 2019, the Supreme Court directed the state government to conditionally release detainees who had completed over three years in detention.³²⁴ In a reply to a question in parliament, the central government said 335 detainees had been detained for over three years as of June 2019.³²⁵ In September 2019, a civil society panel that included retired judges said the courts had failed to ease the hardships faced by the people. “Judicial orders have set difficult conditions for release from detention camps – conditions that cannot be met by marginalized and vulnerable people,” the report said.³²⁶

Meesha (name changed), a Bengali Muslim, from Bongaigaon district, was declared an irregular foreigner in February 2016 and detained immediately. As of September 2019, she was still detained. Her husband filed a review of her case in the same tribunal three days later, but it was dismissed. In July 2017, the Gauhati High Court upheld the tribunal order. Her family filed a review of that order but in November 2017, that too, was dismissed. Her husband told Human Rights Watch that the legal costs had reduced him to penury – he has sold his business, his cattle, and is in debt. “I feel like I have gone mad,” he said.³²⁷

As of September 2019, Jamaal (name changed), 49, a Bengali Muslim vegetable seller from Bongaigaon district, has been detained in Goalpara prison since July 2016, after he was declared an irregular foreigner.³²⁸ The tribunal order said Jamaal had failed to establish a link with his father since his father’s name was spelled differently in different documents.³²⁹ Jamaal’s detention and the money spent on fighting his case has taken a toll on the family. His wife said, “I have spent about 150,000 rupees (US\$2100) on the case

³²³ Ratnadip Choudhury, “Another Man In Assam Detention Camp Dies, Family Refuses To Accept Body,” *NDTV*, October 26, 2019, <https://www.ndtv.com/india-news/another-man-in-assam-detention-camp-dies-family-refuses-to-accept-body-2122896> (accessed October 30, 2019).

³²⁴ *Supreme Court Legal Services Committee v. Union of India*, W.P. (Civil) No. 1045/2018, Supreme Court of India, May 10, 2019.

³²⁵ Reply to Lok Sabha Unstarred Question No. 1724, Government of India, Ministry of Home Affairs, July 2, 2019, <http://164.100.24.220/loksabhaquestions/annex/171/AU1724.pdf> (accessed October 19, 2019).

³²⁶ “Contested Citizenship in Assam: People’s Tribunal on Constitutional Processes and Human Cost,” interim jury report, September 7-8, 2019, <https://www.mediavigil.com/wp-content/uploads/2019/09/Assam-NRC-Peoples-Tribunal-Interim-Jury-Report.pdf> (accessed September 12, 2019).

³²⁷ Human Rights Watch interview with husband of Meesha (name changed), Bongaigaon district, September 8, 2019.

³²⁸ Human Rights Watch interview with wife of Jamaal (name changed), Bongaigaon district, September 8, 2019.

³²⁹ Copy of judgment on file with Human Rights Watch.

so far. My husband also has to buy food in the detention center because they barely give him any. My husband has health problems. So, we buy the medicines for him, but we have to give the police extra money to be able to get the medicine to him.”³³⁰

Farhana (name changed), 49, a Bengali Muslim from Bongaigaon district, was in detention as of September 2019 in Kokrajhar district since July 2016. The tribunal declared her an irregular foreigner in an ex-parte order in March 2016 because she had failed to appear despite notices being served to her three times since March 2014. Farhana filed a petition in the high court saying she did not receive the notices, but the court did not accept her statement and upheld the tribunal’s judgment in June 2016.³³¹ Her son said he was so desperate to get her released that he even fell prey to fraud. He said:

A man came and told us that he worked for the police and offered to get her released and took 50,000 rupees (\$700) from us. He said, “Your mother is sick so we can get her released through a sick certificate,” and that he needed the money for the certificate. But he never showed up again.³³²

³³⁰ Human Rights Watch interview with Jamaal’s wife, Bongaigaon district, September 8, 2019.

³³¹ Copy of judgment on file with Human Rights Watch.

³³² Human Rights Watch interview with Farhana’s (name changed) son, Bongaigaon district, September 8, 2019.

V. Recommendations

To the Indian Parliament

- Repeal the Citizenship Amendment Act, 2019, and ensure that any future national asylum and refugee policy does not discriminate on any grounds, including religion, and is compliant with international legal standards.
- Repeal Sections 14A and 18(2)(ia) of the Citizenship Act, 1955, on the issue of national identity cards and its procedures.
- Repeal the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.
- Amend citizenship laws to grant nationality to all children born on Indian territory if the child would otherwise be stateless, regardless of the immigration status of the parents.
- Amend citizenship laws to reduce statelessness by granting citizenship to habitual residents of India who have always been stateless and who have genuine and effective links to India.

To the Government of India

- Discard any plan for a nationwide citizenship verification project until there are public consultations to establish standardized procedures and due process protections ensuring the process is not discriminatory and does not impose undue hardship on the poor, minority communities, and women.
- Protect the rights to freedom of expression and assembly of those protesting against the government's citizenship law and policies.
- Ensure prompt, credible, and impartial investigations into the killings of protesters, allegations of use of excessive force by police, arbitrary detention, torture in custody, and raids on Muslims homes and property.
- Release all those arbitrarily detained for protesting against the citizenship law and dismiss politically motivated charges against protesters and civil society activists.
- Investigate hate speech by government officials and appropriately prosecute incitement to violence.
- Order Uttar Pradesh authorities to withdraw all notices to residents for damages in relation to protests against the citizenship law, return any money collected through

the notices so far, and do not attempt to collect any losses without a credible, transparent investigation and judicial oversight.

On Internet Shutdowns

- Immediately restore the internet in all states where it was shut down to prevent protests against the citizenship law.
- Direct all states to follow the procedure laid down in the Temporary Suspension of Telecom Services (Public Emergency and Public Safety) Rules, 2017 to ensure shutdowns are considered carefully with adequate oversight.³³³
- Amend the Telecom Suspension Rules to require issuing authorities to exhaust all available alternatives before issuing an internet shutdown order. The rules should make it necessary to provide adequate notice to the general public before shutdowns are imposed, clearly specifying the duration for which each shutdown is expected to remain in place. Any extensions of existing shutdowns should be notified.
- Revise the Telecom Suspension Rules to require government agencies to make internet shutdown orders publicly accessible. The rules should also make it necessary to make public the frequency of Review Committee meetings to review the shutdown orders and the decisions taken at these meetings.

To the Union Home Ministry, Union Territory Police, State Home Ministries, and State Police

- Ensure that state security forces comply with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In particular, require that police apply, as far as possible, nonviolent means before resorting to the use of force, use force only in proportion to the seriousness of the offense, and use lethal force only when strictly unavoidable to protect life.
- Strictly enforce laws and guidelines on arrest and detention, as set forth in the Code of Criminal Procedure and the Supreme Court's *D.K. Basu* decision.³³⁴ In training and practice, emphasize the requirement that police record all arrests and

³³³ Temporary Suspension of Telecom Services (Public Emergency and Public Safety) Rules, 2017, G.S.R. 998(E), Government of India, Ministry of Communications, August 7, 2017, <https://dot.gov.in/sites/default/files/Suspension%20Rules.pdf> (accessed January 30, 2020).

³³⁴ *D.K. Basu v. State of West Bengal*, 1 SCC 416, 1997.

detentions, promptly inform a relative of arrested persons, produce suspects before a magistrate within 24 hours, and provide required medical examinations of suspects in custody.

- Ensure that police officers implicated in torture and other ill-treatment, regardless of rank, are disciplined or prosecuted as appropriate.
- Clearly and unequivocally signal, through statements and measures by state officials and high-ranking police officials, that the use of torture or other ill-treatment in police custody is unacceptable, unlawful, and will not be tolerated. Explicitly define acceptable interrogation techniques consistent with international standards in police rules and manuals.
- Require police, upon the arrest or any informal detention of a suspect, to recite the suspect's basic rights under the *D.K. Basu* decision and the Code of Criminal Procedure. The *Basu* recitation should include a clear statement of the charge and the suspect's rights to consult with an attorney, inform others of detention, and receive a medical examination.

To the State Government of Assam

- Ensure people who have been excluded from the National Register of Citizens or those with pending cases in Foreigners Tribunals are not deprived of any social welfare benefits guaranteed to citizens of the country.
- Reform Foreigners Tribunals to ensure their compliance with international standards, including provision of fair procedures and proper oversight.
- Ensure that the Foreigners Tribunals provide ample opportunity and fair chance to those excluded from the National Register of Citizens to appeal.
- Establish open and transparent procedures for hearing petitions for citizenship, subject to judicial review.
- Significantly reduce the use of detention for irregular foreigners, and ensure that migration detention is lawful, necessary, proportionate, and used only as a last resort.
- Introduce a statutory time limit for detaining irregular foreigners.

To Concerned Governments and Inter-Governmental Organizations

- Urge the Indian government to discard plans for a nationwide National Register of Citizens.
- Call on the Indian government to protect rights to freedom of speech and assembly, and release all those arbitrarily detained for protesting against the citizenship law.
- Urge the Indian government to ensure that the citizenship verification process in Assam is transparent and non-discriminatory and does not target minorities, disproportionately harm women, or result in arbitrary loss of citizenship rights.
- Urge the Indian government to ensure that amendment to citizenship laws does not discriminate on grounds prohibited under international law.
- Communicate to the government of India that any actions resulting in large-scale losses of citizenship rights would seriously impact their international and bilateral relations with India and would require the attention of international and UN mechanisms, including the UN Human Rights Council, special rapporteurs, and other entities.
- Encourage the UN Secretary General and UN High Commissioner for Human Rights to use their good offices to offer recommendations and advice to the government of India on the citizenship issues impacted by the government's past and proposed actions.
- Encourage India to invite the UN Special Rapporteurs on minority issues, on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and on freedom of religion or belief on fact-finding visits.
- Provide support for Indian civil society groups and lawyers who are assisting applicants in the legal process to prove their citizenship.
- Speak out publicly and privately about any concerns with government harassment or prosecution of persons working on citizenship issues or criticizing the government for their actions related to citizenship issues.
- Take any appropriate action at the local level, through embassies and representations, to react to any instance of institutional harassment, arbitrary arrests, and prosecution of peaceful activists, journalists, and lawyers, including by voicing concerns with authorities, attending trials, issuing statements and demarches, and visiting unjustly jailed detainees.
- Make public statements, including at the UN Human Rights Council, raising the concerns outlined above and initiate more formal Council action if required.

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Hundreds of thousands of Indians protested after the Indian government adopted a discriminatory citizenship law in December 2019. The Citizenship Amendment Act makes religion, for the first time in India, a basis for granting nationality. The law applies to non-Muslim irregular immigrants from neighboring Muslim-majority Pakistan, Afghanistan and Bangladesh. When coupled with the government's push for a nationwide citizenship verification process aimed at identifying "illegal migrants," it has raised fears that millions of Indian Muslims could be stripped of their citizenship rights.

The United Nations and a number of governments publicly criticized the policy as discriminating on the basis of religion. Leaders and supporters of the ruling Hindu nationalist Bharatiya Janata Party (BJP) targeted protesters and other outspoken critics, in some cases, with violence. Some BJP leaders called for the protesters, who they described as "traitors" to be shot, a call echoed by their followers. In Delhi, communal clashes broke out, followed by Hindu mob attacks on Muslims, in which over 50 people were killed. At least 30 people, mostly Muslims, were killed during protests in BJP-governed states. Police and other authorities responded with bias, failing to intervene when government supporters engaged in attacks but quick to arrest critics and disperse their peaceful demonstrations, including by using excessive force.

"Shoot the Traitors" examines the discriminatory nature of the citizenship verification process and documents allegations of police abuses against protesters. It also details abuses in the process of updating the National Register of Citizens in Assam, the only state to have completed it, heightening concerns about any planned nationwide process.

Human Rights Watch calls upon the Indian government to repeal the law and discard any plan for a nationwide citizenship verification project until it can ensure the process is not discriminatory and does not impose undue hardship on the poor, minority communities, and women.

(above) A mosque burned in northeast Delhi in February 2020 during attacks by Hindu mobs who supported the government because Muslims were protesting against the new citizenship law, March 2020.
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(front cover) Indians protesting against the new citizenship law and verification policies at Shaheen Bagh, a Muslim-majority neighborhood in Delhi that became the iconic image of these protests, January 2020.
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