

To what end this exercise?

The ongoing crisis in Assam over the National Register of Citizens (NRC) is largely the creation of the Supreme Court. The final draft list of citizens, published on July 30, leaves out the names of approximately 40 lakh residents of Assam. Although political leaders and the Supreme Court itself have assured everyone that this is only a draft and everyone will be given an opportunity to prove his or her citizenship in accordance with the law before any “action” is taken, this is unlikely to inspire much confidence given what has transpired thus far.

The recent history of the NRC can be traced to the public interest litigation filed in the Supreme Court by Assam Public Works seeking the removal of “illegal voters” from the electoral rolls of Assam and the preparation of the NRC as required under the Citizenship Act, 1955 and its rules. The NRC was supposed to be prepared as a consequence of the Assam Accord signed between the Union government and the All-Assam Students’ Union to end the agitation against “outsiders”, promising to identify and remove any foreigners from Assam who had entered the State after 1971.

Though the first NRC was framed in 1951, it and subsequent iterations were recognised to be faulty and the present exercise was supposed to be done in accordance with the 2003 rules.

Though filed in 2009, the case really picked up steam in 2013 as the Supreme Court directed the Union and State governments to speed up the process. A deadline of January 2016 was initially fixed to come up with the draft of the NRC though that was missed and after much delay, the eventual deadline of July 31, 2018 for the final draft of the NRC has been adhered to. All 3.3 crore residents of Assam were required to submit documents from a list prescribed by the government to prove that they were indeed citizens of India in accordance with the rules — a process that has been fraught with complexity and confusion.

Given that citizenship is a legal fiction, established or denied in accordance with a procedure under law, one would have hoped that the Supreme Court’s monitoring of the process would have ensured fairness and transparency. Regrettably it has not been so. From the non-transparent “family tree verification” process, to the somewhat arbitrary rejection of the gram panchayat certificates (affecting mostly women), the process has been riddled with legal inconsistencies and errors.

These are not minor errors. For instance, the supposedly robust family tree verification process has resulted in numerous instances of parents being on the draft list but children being left out — precisely the kinds of errors which were supposed to be excluded. Likewise, the number of people affected by the rejection of panchayat residency certificates is more than 45 lakh — a little more than the number of people who have been left out of the final list.

The rejection of the panchayat certificates has a judicial angle to it as well. In February 2017, in *Manowara Bewa v. Union of India*, the Gauhati High Court declared that certificates issued by gram panchayats could not be relied on by residents to seek inclusion in the NRC. This had the effect of putting the citizenship of a large number of women who relied on this document to establish marital relationships in doubt. The Supreme Court didn’t immediately set it aside, as the Assam government did not file an appeal against it. Rather, it was only in December that the Supreme Court clarified that the panchayat certificates could be relied upon, provided the documents themselves had been appropriately proved in court. However, it did not finally settle the matter — it remanded the matter back to the Gauhati High Court for fresh examination. The

fate of lakhs of people relying on these documents remains uncertain as each person will now have to prove not only his or her linkages afresh, but also the documents themselves before the appropriate forum.

Yet, none of this entered the court's calculus. Why preparing the NRC within a deadline was more important than ensuring that there was legal clarity over the manner in which the claims of citizenship could be decided is not something that the Supreme Court thought it fit to clarify or go into at any stage in its hearing of the case.

A much larger question also remains unanswered and one which the court has not deigned to ask itself in the nine years it has been seized of this matter: to what end this exercise? Even if the objections and corrections are properly dealt with, there are likely to be many individuals (running into lakhs at the very least) who will be unable to prove Indian citizenship. The immediate consequence is that they will lose their right to vote (which temporarily ends the public interest litigation). But that only results in the beginning of a new problem: what will be the status of the several lakh individuals who would have suddenly lost Indian citizenship with no recourse in sight?

Even at the latest hearing which took place on July 31, the Supreme Court seemed unperturbed by the consequences of its actions, all the while making the right noises about there being no immediate consequences for those who have not found their names on the list and there being more opportunities to question the absence of names on the NRC. At some point, the Supreme Court will be confronted with the undeniable question, what action can it allow the government to take against those who are unable to prove that they are Indian citizens?

Will it allow the government to adopt the crude, communal rhetoric doing the rounds on social media and "push them out"? Will it take responsibility for the protection of the basic rights of those who have been rendered stateless and defenceless? Or will it take the Pontius Pilate option and wash its hands of the whole matter?

During the Constituent Assembly debates, B.R. Ambedkar remarked that the provision relating to citizenship in the Constitution caused the Drafting Committee the most headache (save for one other clause) as multiple drafts were worked on and rejected over the years before the present Article 5 was settled upon. For good reason too. As Vallabhbai Patel had then said, India's Constitution-making process, and especially its citizenship clause, was going to be scrutinised all over the world. As scholar Niraja Gopal Jayal has observed, this was probably because Indian nationalism during the freedom movement had not attempted to define itself on exclusive racial or ethnic bases.

Seventy years later, India's approach to citizenship is once again going to be scrutinised by the world. The subcontinent has seen multiple, large-scale humanitarian crises erupt over questions of nationhood, citizenship and identity. One hopes the Supreme Court has the good sense not to spark off yet another for no apparent reason.

Alok Prasanna Kumar is Senior Resident Fellow, Vidhi Centre for Legal Policy, Bengaluru

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