

THE DUBIOUS LEGAL CASE FOR AN NRIC

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to The Preamble, Union & its Territories and The Citizenship

A protest against Assam's National Register of Citizens in Kolkata, West Bengal, in July 2018. | Photo Credit: [DIBYANGSHU SARKAR](#)

On November 20, 2019 the Union Home Minister, Mr. Amit Shah, answered a starred question in the Rajya Sabha thus: "Preparation of National Register of Indian Citizens (NRIC) is governed by the provisions of Section 14A of The Citizenship Act, 1955 and The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003. Section 14A of the Citizenship Act, 1955 provides for compulsory registration of every citizen of India and maintenance of NRIC. The procedure to prepare and maintain NRIC is specified in The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003."

This answer is mischievously misleading inasmuch as it suggests that a nationwide NRIC is mandated by law. Section 14A in the Citizenship Act of 1955 provides in sub-section (1) that "The Central Government may compulsorily register every citizen of India and issue national identity card to him". The word "may" implies a discretion contingent on other factors that is at odds with the supposed "compulsory" nature envisaged immediately thereafter. A statute which issues a compulsory command must necessarily use the word "shall" and not the suggestive "may". It may be worthwhile to note that this section was introduced in January 2004 in the last days of the National Democratic Alliance (NDA) government.

Let us now examine the 2003 Rules cited by the Home Minister in the response given. Three Rules are of particular interest, Rules 11, 6 and 4, which seem to grant some vague sort of authority for a nationwide NRIC.

Rule 11 states that the "Registrar General of Citizen Registration shall cause to maintain the National Register of Indian Citizen in electronic or some other form which shall entail its continuous updating on the basis of extracts from various registers specified under the Registration of Births and Deaths Act, 1969 and the [Citizenship] Act [1955]." It, therefore, confines the Registrar General's responsibility to a periodic revision of the National Register by updating it with the information available with the Registrar of Births and Deaths. No action or duty is enjoined upon the citizens to apply for (or prove) their citizenship afresh.

However, Rule 4 places the responsibility to carry out a census-like exercise on the Central government and not on citizens. This deals with the "Preparation of the National Register of Indian Citizens" which provides that the Central Government shall carry out a "house-to-house enumeration for collection for particulars related to each family and Individual including the citizenship status". This is a distinctly passive process compared to the gruelling exercise that was forced upon citizens in Assam. In fact, the Assam exercise of making "residents" register vis-à-vis a specific cut-off date (in the form in which it was done) was an explicit exception, inserted by amendment through Rule 4A in 2009, and not the norm.

In direct conflict with both the above rules, Rule 6 provides that every individual must get himself/herself registered with the Local Registrar of Citizen Registrations during the period of initialisation (the period specified as the start date of the NRIC). Note that this does not begin with a non-obstante clause or words that give it overriding effect over all other clauses. What this means is that this rule is circumscribed by the other clauses in the Act.

Herein arises the dilemma, as a direct consequence of contradictory provisions in the Rules. We have Rule 11, which says that updating the NRIC entails updating the information available with 'Registrar of Births and Deaths' with no *de novo* process envisaged. Then, we have Rule 4, which says that a census-like exercise shall be carried out and, if the Central government wants to exclude a citizen, it will give him/her a hearing. And then, we have Rule 6, which says that a citizen shall have to get himself/herself registered once a start period is specified. These Rules are in direct contradiction with one another, and smack of non-application of mind and arbitrariness.

To conclude, the blunt answer as to whether the NRIC exercise is mandatory and inescapable is 'no'. The rules, as currently drafted, do envisage other less destructive scenarios to register "citizens" (not "residents") which, one can argue, are redundant in the wake of the Aadhaar Act and not mandatory. This ambiguity is also clear from the answer given in Parliament which, in a typically too-clever-by-half fashion, does not cite the exact rules that empower the Central government to carry out this exercise. However, under the Act, the Centre continues to enjoy rule-making powers and could issue rules which could make it mandatory in the Assam format.

There are other questions as well. Under the Foreigners Act of 1946, the burden of proving whether an individual is a citizen or not, lies upon the individual applicant and not on the state (Section 9). Will the proposed NRIC strip bona fide citizens of basic legal protections by inverting the burden of proof just to satisfy the nefarious political agenda of the ruling establishment?

The last time the Central government tried to make an identity enrolment mandatory was the Aadhaar project and this was struck down as excessive (except in limited and justifiable cases). The NRIC scheme, as proposed, would thus be directly in violation of the *K.S. Puttaswamy* judgment. Furthermore, not acquiring an Aadhaar number does not subject a citizen to the serious penal consequences envisaged in the case of an NRIC, i.e., the loss of citizenship. Can a piece of delegated legislation do so? The short answer is no. Not without violating Articles 14 and 21 of the Constitution.

The NRIC exercise promises to inflict a long period of insecurity on well over a billion people. The individuals most likely to suffer are those at the very margins of poverty, who risk being rendered stateless and worse, being incarcerated in detention camps which are truly a blot on our democracy. But what is all this in aid of? What public interest is sought to be achieved? Such a register (NRC) has existed since 1951 only in Assam, as a special case. Incidentally, that NRC — implemented under Bharatiya Janata Party (BJP)-ruled Central and State governments — has debunked hugely the BJP's own exaggerated numbers regarding the extent of such 'illegal migration'. Now, the clamour is for a new NRC in Assam. It appears that facts must be made to fit prejudices and propaganda. The truth of the matter is that the Prime Minister and the Home Minister are always in search of divisive issues which have little relevance to day-to-day concerns of livelihoods. Their abject failures in economic management are being sought to be covered up by constantly harping on NRIC and citizenship issues.

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