

RESTORING A SECULAR NOTION OF CITIZENSHIP

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Union Home Minister Amit Shah has asserted that a nationwide National Register of Citizens (NRC) will be completed before 2024 to drive out all “illegal infiltrators” from India. Along with the government’s insistence on enacting the Citizenship Amendment Bill, 2019, this reflects a state of desperation. The fact is that the Modi government remains clueless about the fate of the 1.9 million people excluded from the NRC in Assam.

The Bangladesh government has been repeatedly assured by Prime Minister Narendra Modi that the NRC process will not impact India’s friendly neighbour. If so, where will the 1.9 million stateless persons be sent? Who is going to bear the massive cost of building detention centres for them? After spending over 1,600 crore already on the Assam NRC, senior Ministers of the Assam government are now recklessly demanding that the process be repeated again, with a fresh cut-off date.

This brings out the very irrationality of conducting an exercise like the NRC to identify “illegal migrants”, especially in the Indian context. The 2003 Amendment to the Citizenship Act enacted under the Vajpayee regime defines an “illegal migrant” as a “foreigner who has entered into India without a valid passport or other travel documents”. Given the history of a massive influx of refugees from East Bengal during and after Partition and during the Bangladesh liberation war, such a defective definition of “illegal migrant” amounts to a cruel criminalisation of millions of post-Partition refugees.

Over 5.21 million persons had registered themselves in Indian check posts as “refugees” by 1970 (Union Rehabilitation Ministry data quoted in *The Agony of West Bengal: A Study in Union State Relations*). Another 9.89 million had crossed over in 1971, according to figures provided by the Indian government to the United Nations (*The State of the World’s Refugees 2000: Fifty Years of Humanitarian Action, 2000*). While most of the 1971 refugees returned to Bangladesh after the end of the hostilities, a few thousands did not. In West Bengal, where a bulk of these post-Partition refugees sought shelter, they have not only been absorbed into the socio-economic mainstream, but have gone on to make stellar contributions to nation-building.

A sizeable proportion of the post-Partition refugees include Dalits from the Namasudra and Rajbanshi communities, among others. Although a large majority of the Bengali refugees are Hindus, the post-Partition refugees also include a section of Bengali Muslims, given the specific nature of the 1971 conflict in Bangladesh, which was fought over language and not religion.

Since none of these refugees had entered India with valid passports or travel documents, they have become “illegal migrants” in the eyes of the law, after the passage of the Citizenship Amendment Act, 2003. Moreover, the 2003 amendment has made it impossible for children born in refugee families to become Indian citizens by birth, if either of their parents is deemed to be an “illegal migrant”.

It was the 2003 amendment to the Citizenship Act which also introduced compulsory registration of “every citizen of India”, maintenance of a “National Register of Indian Citizens” (NRIC) and issue of “National Identity Cards” by adding Section 14A to the original Citizenship Act. The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 framed under this law provides for a multi-step process, whereby a National Population Register will first be created by enlisting all usual residents of India and then “Doubtful Citizens” identified through

a bureaucratic process. Thus, the NRIC (or nationwide NRC) is to be created by eliminating “Doubtful Citizens” from the NPR.

While the NPR exercise was notified and carried out in 2010-11 under the United Progressive Alliance government, the subsequent processes of determination and elimination of “Doubtful Citizens” was, understandably, not undertaken and therefore the NRIC not created. Neither the Citizenship Amendment Act, 2003 nor the Citizenship Rules, 2003 provide any transparent and rational basis of determining “Doubtful Citizens”. Given such anomalies and the defective definition of “illegal migrants” in the law, which does not demarcate refugees from infiltrators, any attempt to create a NRIC through this arbitrary bureaucratic process will inevitably lead to chaos and the eventual exclusion of millions from Indian citizenship, rendering them stateless.

The Modi government is now hell bent on conducting this exercise across the country. It is noteworthy that unlike in Assam where a cut-off date of March 24, 1971 was decided on the basis of the Assam Accord, no such cut-off date exists for the nationwide NRIC. Hence, there will be massive confusion over the nature and vintage of documents required to make one eligible for citizenship.

The Modi government is trying to enact the Citizenship Amendment Bill, 2019 in order to short-circuit the follies of the 2003 amendment of the citizenship law. However, the Citizenship Amendment Bill of 2019 itself fails the constitutionality test, since it discriminates on the basis of religion — making Hindu, Sikh, Christian, Buddhist, Jain and Parsi migrants from Bangladesh, Afghanistan and Pakistan eligible for Indian citizenship, but not Muslims. This militates against Articles 14 and 25 of the Indian Constitution. Moreover, as the Intelligence Bureau and the Union Home Ministry officials have made it clear through their depositions before the Joint Parliamentary Committee on the Citizenship Amendment Bill 2016, such a legislation will benefit only 31,313 migrants who have already been issued long-term visas by the Indian government on the grounds of religious persecution in the specified neighbouring countries (Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016, p.39).

Thus, the claim that the Bengali Hindus among the NRC-excluded in Assam would get citizenship through the Citizenship Amendment Bill, 2019 is patently false. The millions of post-Partition refugees, mostly Bengali Hindus, who carry no documentary evidence of religious persecution in East Bengal, cannot get Indian citizenship through this channel. Further, the Gorkhas, Biharis and Scheduled Tribes among the NRC-excluded cannot, and possibly will not, claim that they have migrated from Bangladesh, Afghanistan or Pakistan. The Citizenship Amendment Bill, 2019 is, therefore, not only a non-solution but also a harmful gimmick which will damage the secular principle enshrined in the Constitution.

At the core of NRC exercise lies a serious violation of the principle of natural justice. Why should the state put the burden of citizenship proof on the entire population? Why embark on an exercise where millions of poor, vulnerable people — refugees, undocumented migrants, married women, displaced persons, minorities, Dalits and Adivasis — get inevitably excluded? The solution lies in abrogating the Citizenship Amendment Act, 2003 altogether and restoring the inclusive and secular notion of citizenship as contained in the original Citizenship Act, 1955. That is what the democratic and secular forces in the country should strive for.

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