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Testing Citizenship in the Bengal Borderlands

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On the foggy, heavily polluted winter morning of December 14, 2019, a group of poor Muslim women gathered in Shaheen Bagh, a neighborhood in New Delhi, to begin a protest against the passage of the Citizenship Amendment Act (CAA) a few days before. This law promises to give fast-track citizenship to those identified as “noncitizens” or “illegal immigrants” if they came to reside in India before 2014 and belong to non-Muslim minority communities in the neighboring Muslim-majority countries of Afghanistan, Pakistan, and Bangladesh. This means that Hindus, Buddhists, Sikhs, Parsis, Jains, and Christians will be able to claim Indian citizenship on the basis of perceived religious persecution in their countries of origin. The CAA thus introduces a religious test for Indian citizenship, in contravention of the Constitution, which bars the privileging of religion. Members of India’s Muslim minority fear that the law, in combination with a concurrent initiative to register all Indian citizens, will be used to mark them as foreigners and disenfranchise them.

Blocking one of the busy arteries that connect Delhi to its suburb of Noida, the women of Shaheen Bagh have organized an unprecedented non-violent sit-in against the CAA. Songs and poems of resistance animate the protesters as they drink warm cups of chai, and a Sikh *langar* (community kitchen) nearby prepares dinner for them. The scale of the protest has grown as it has attracted men, women, and children from outside the neighborhood over the past three months, but the central focus is still their demand for the CAA to be revoked.

Although they were not the first to protest—students at a nearby university, Jamia Millia Islamia, had already been protesting for weeks despite facing police violence—these women have

emerged as the voice of India’s secular conscience. They have wrested the ideas of citizenship and democracy from the middle classes and the political elite, and have claimed their right of belonging to a nation that has increasingly become comfortable with its majoritarian identity at the expense of its religious and caste minorities.

This turn toward intolerance has had serious repercussions. On February 23, 2020, Muslims living in northeast Delhi were attacked by pro-CAA mobs. The ensuing violence lasted three nights, and left more than 50 people dead and over 200 injured. The victims were mostly Muslim.

Indian Muslims’ fears of discrimination and disenfranchisement are not unfounded. Under the ruling Bharatiya Janata Party (BJP), the world’s largest democracy has become increasingly undemocratic, and the government of Prime Minister Narendra Modi is unwilling to listen to the diverse voices of its people. The BJP has traditionally espoused Hindu nationalism, defining India as a Hindu nation. Since coming to power in 2014, Modi’s government has enabled mob violence and lynching against Muslims, revoked the special status of Kashmir (the only Muslim majority state in India), and enacted legislation that economically and socially excludes Muslims. Right-wing public discourse on social media and at political rallies has made it routine to dehumanize Muslims as “termites,” “infiltrators,” and “traitors,” declaring them proxy citizens of Pakistan and Bangladesh.

India’s Muslims have long been demonized and asked to justify their loyalty and belonging to the Indian nation. What is new, and what the women of Shaheen Bagh and others across the subcontinent continue to protest, are the attempts to institutionalize discrimination against Muslims in the terms of citizenship. BJP leaders have indicated that they will soon ask all Indians to enter their names in the National Register of Citizens (NRC). The key criterion for inclusion will be the posses-

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sion of particular identification documents such as birth certificates and passports. The NRC will take the initial count from another database, the National Population Register. This central database of “usual” residents with demographic and biometric details was first implemented in limited form during the 2011 census.

Those excluded from the NRC’s database can seek recourse under the CAA, which provides preferential citizenship to Hindus. But persecuted Muslims such as the Rohingyas from neighboring Myanmar or the Ahmaddiyas or Shias in Pakistan are not included in the CAA’s language of refuge. Nor are the persecuted Sri Lankan Tamils, comprising Hindus, Christians, and Muslims. Thus, the CAA’s assumptions are two-pronged: persecution of minorities happens only in Muslim-majority nations that are India’s neighbors, and only such minorities are legitimate “refugees” deserving of access to Indian citizenship. As many critics have pointed out, this is a clear violation of India’s Constitution.

The BJP’s arguments cite the threats of “illegal migrants” and “infiltration,” which have been periodically invoked in the name of national security by different political parties, especially in the north-eastern state of Assam. The NRC had a trial run in Assam in 1951, and there have been

periodic exercises in the state since then. But the specter of a nationwide registration process is new.

It is not surprising that the NRC was reactivated in Assam after the BJP’s return to power under Modi. The aims of the exercise were to identify illegal migrants who had entered India since March 24, 1971, and to determine the citizenship status of the applicants who applied for inclusion in the register. In the final count, published in August 31, 2019, over 1.9 million residents were excluded, out of the total of some 33 million applicants.

So who are these alleged illegal immigrants whom the government wants to identify and exclude? The BJP seems most concerned about the movement of people along the eastern frontier, the Bengal borderland, which encompasses the states of West Bengal, Assam, and Tripura on the Indian side and Bangladesh on the other. According to the Pew Research Center, about 3.2 million immigrants from Bangladesh were living in India in 2015. But due to a lack of reliable data, any discussion about the numbers of illegal migrants is based largely on general perceptions and political rhetoric.

THE BUSINESS OF PARTITION

India’s longest international border is with Bangladesh, a legacy of the Partition of British India in 1947. After the British withdrawal in August that year, two new nation-states, India and Pakistan (comprising disconnected western and eastern sections), came into being. The business of partitioning was done swiftly, over a matter of some six weeks, behind closed doors, and without any input from the people who were about to be divided on the basis of religious demography.

As India and Pakistan attempted to cope with the consequences of Partition, they were also crafting their independent states. The task of writing new constitutions went hand in hand with their attempts to stem the flows of the largest forced migration of people in history, across borders that existed only on paper. For all the new nation-states’ development ambitions, they had to deal first with horrific, large-scale communal violence, massive displacement, and the basic needs of the millions of Partition refugees.

Between 1946 and 1965, nearly nine million Hindus and Sikhs moved into India, and approximately five million Muslims moved into both parts of Pakistan. Such migrations were not a simple exchange of populations. In fact, the plan

for Partition had anticipated the opposite: that the minorities in each country would provide a balancing safeguard, ensuring communal détente. In September 1947, at the height of the Partition migration, Pakistan’s founding leader, Muhammad Ali Jinnah, repeatedly tried to assure non-Muslim residents that they would be “free to go to your temples . . . or to any other place of worship in this state of Pakistan.” Similarly, India’s first prime minister, Jawaharlal Nehru, stressed that India was a land for all Indians and that Muslims would have the same rights of citizenship as anyone else. But such promises to protect minority rights, amid the ongoing violence, uprooting of populations, and breakdown of bureaucratic infrastructure, came too late and were not enough to assuage people’s fears.

The migration patterns were different on India’s respective borders with West and East Pakistan. The flow slowed to a trickle across the former border by 1949, but surged over the latter after riots in 1950 in Bihar, Calcutta, and Dhaka. Migration on the eastern border continued unceas-

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ingly—sometimes in higher numbers, sometimes lower—over the next two decades. But those who wanted to return to their homes once the Partition violence had subsided found it impossible due to new legislation and travel regulations in both India and Pakistan.

In the eastern borderlands, comprising present-day Bangladesh and the eastern and northeastern Indian states of West Bengal, Assam, and Tripura, large numbers of people settled in the bigger urban areas: Calcutta, Dhaka, and Agartala. Others settled in places not far from their homes across the border, becoming borderland refugees and migrants. Migrants identified themselves in different ways to gain access to relief and rehabilitation assistance, and to gain national acceptance as enterprising and resilient citizens of the new states. They used Bengali terms such as *baastuhaara* (homeless/dispossessed) and *udvaastu* (displaced/forced migrant), or the English word “refugee.” But others, Muslims in India and Hindus in East Pakistan, remained in their homes, refusing to leave, and became minorities in their homelands.

MOBILE IDENTITIES

With three major rivers (the Ganga, the Meghna, the Brahmaputra) and their numerous tributaries, miles of forests, and hilly terrain, the Bengal borderland proved to be a difficult landscape in which to mark the boundaries of India and East Pakistan. This ecological interdependence mirrored another historical connection: the traditional mobility of seasonal labor, peasants, itinerant traders, and families across the region. After 1947, India, East Pakistan, and later the state of Bangladesh viewed such mobility as detrimental to their national security, often categorizing routine migration as “illegal,” or sometimes as “infiltration.” But given the physical terrain and the lack of personnel and infrastructure, the presence of authorities in the form of border guards and checkpoints was and continues to be limited in many sections of this borderland, allowing inhabitants to maintain cross-border kinship networks and economic activities.

Not all movement of people in this region was Partition-related. Migration of cheap labor began under the aegis of the colonial state, which transported people from central India and the Bengali-speaking heartland to its frontier zones, such as Assam. These laborers worked on the British-

owned tea estates and as cultivators, turning barren land into productive farms. Such migration continued even as the region’s political contours were reframed, first as India and East Pakistan, and then, after the 1971 war, by the independence of Bangladesh.

The political chessboard of shifting identities brought Bengali-speaking migrants into the Assam valley from regions such as Sylhet, which originally had been part of British Assam but joined East Pakistan after 1947. Language and culture were additional dimensions of Assam’s borderland identities. The Assamese, protective of their culture, tribal population, and lands, did not welcome such migration.

The politics of Assam and the rest of India’s northeast have historically been structured around hostility to the presence of linguistic and cultural “outsiders.” The Assamese suspected Hindu Partition migrants from East Pakistan of coming to take over their land. Muslim migrants following traditional patterns of mobility became, in the eyes of the Indian state, “infiltrators” carrying out a “demographic invasion.”

This region has witnessed sustained efforts to oust Assamese residents on the basis of language and religion. The Immigrants (Expulsion from Assam) Act of 1950 allowed India to deport anyone who came into Assam from other nation-states. This law, along with the first NRC (specifically prepared for Assam in 1951), implicitly identified Hindu migrants as refugees and Muslim migrants as illegal aliens. In 1983 came the Assam Accord, under which the Indian state committed to identifying and deporting anyone who had migrated to Assam after March 25, 1971. Now the recently concluded NRC exercise has identified 1.9 million Assam residents as noncitizens.

These efforts have also been reflected in laws such as the 1955 Indian Citizenship Act, which was amended in 1986 in the wake of anti-immigrant agitation in Assam, and then again in 2004. The amendments have redefined Indian citizenship, setting more weight on blood ties and culture, and erasing the original mandate of *jus soli* (birthright citizenship).

As with Bengali-speaking residents in Assam, similar questions of linguistic identity and national belonging hung over Muslims who, around the time of Partition, had moved from the eastern

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Indian state of Bihar to East Pakistan. Because they were non-Bengali speakers (their languages were Urdu, Awadhi, or Maitheli), the “Biharis,” as they came to be known, had a difficult time integrating within Bengali society and finding housing and jobs in East Pakistan. After 1971, when Bangladesh gained independence, many applied for repatriation to Pakistan, but most applications were rejected. To make matters worse, Bangladeshis viewed Biharis as Pakistani collaborators who had supported the enemy during the 1971 war.

To this day, the Biharis in Bangladesh live in a stateless condition. Housed primarily in camps in Dhaka and around the country, they continue to face institutional discrimination in access to education, jobs, housing, and health care.

CITIZENSHIP IN THREE ACTS

Amid the uncertainties and displacements of the post-Partition subcontinent, understandings of citizenship and belonging were in flux. Both India and Pakistan crafted constitutional and legal parameters to clarify who would be, and could be, their citizens. In Pakistan, birthright citizenship based on ethno-religious criteria became the norm. In India, egalitarian ideals had to be tempered with political compromises. But in both countries, citizenship was portrayed as “natural” and “automatic” for the respective religious majorities, while the loyalty and belonging of “minority citizens” would be repeatedly subjected to litmus tests.

In India, three measures set the parameters of citizenship: the Foreigner’s Act of 1946, the Constitution of 1950, and the Citizenship Act of 1955. The Foreigner’s Act, enacted while India was still under British rule, defined a “foreigner” as someone who is not a citizen of India—even before citizenship itself was debated and defined in Indian law. This law gave the Indian central government absolute powers to deport any foreigner without due process. It also shifted the burden of proof onto the individual, rather than the authorities.

Although constitutions do not generally address legal citizenship, India’s defined the term in Articles 5 to 11. Members of the Constituent Assembly made clear their intent in drafting those articles: this was to be a stopgap measure to resolve the citizenship of those displaced by Partition until a citizenship law could be passed by Parliament. But even such a limited mandate provoked a heated debate among members of the Assembly: was citizenship to be granted to all born within India’s

new territories (*jus soli*) or was it to be based on the status of one’s parents (*jus sanguinis*)? The Assembly members finally settled on *jus soli*: a form of citizenship that was “democratic,” “universal,” and “enlightened, modern, civilized.” They found *jus sanguinis* to be “sectarian” and based on an “idea of racial citizenship.” Most members were against religiously based citizenship, and the Constitution mentioned no such criteria.

The Citizenship Act of 1955 incorporated both definitions of citizenship: by birth and by descent. It also provided a path to citizenship through registration and naturalization. The law defined an illegal immigrant as a foreigner who enters India without valid travel documents, or one who remains in India beyond the time permitted.

Two groups did not fit neatly within the terms and conditions of these laws. The first was the Muslim “returnees” who had left their original homes in India and fled to Pakistan during the Partition violence. When these Muslims attempted to return to their homes in the 1950s, they found that their temporary move to Pakistan was regarded as a revocation of their Indian citizenship and belonging.

The second group comprised Hindus and Muslims from East Pakistan/Bangladesh who moved and settled along the eastern borderland in the decades following the upheavals of 1947 and 1971. The Indian government, and Assam officials in particular, viewed such migrants as infiltrators and spies. For example, the 1961 census found that there were over two million “infiltrants” from East Pakistan in Assam. Deportations began soon after, amid protests that “genuine” citizens were being targeted on the basis of their ethno-linguistic identity. Bangladesh’s War of Independence in 1971 generated further flows of cross-border migration, intensifying anti-Bengali sentiment in Assam.

The Assam Accord of 1985, an agreement between the Indian government and Assamese leaders, mandated identification of Bengali-speaking migrants who could not prove that their ancestry in the state predated March 24, 1971, the day before Bangladesh declared its independence. These migrants would be classified as foreigners and deported. Subsequent Assam censuses have counted as Indian citizens only those who can prove that they or their parents were residents of India before that date.

Travel documents such as passports, visas, and migration and repatriation certificates became a key means of identification and detection of both

nationals and nonnationals. Set up in the early 1950s, this documentary regime proved to be ineffective in regulating border mobility in the Bengal borderlands; border crossers figured out plenty of ways to evade it. Traditional migration linkages worked in their favor, as did the still-unmarked, difficult terrain with few border posts. People crossed with real or counterfeit papers, which they often threw away after reaching their destinations.

But the documentary regime was effective in determining the line between legal and illegal mobility, between potential citizens and foreigners, and between Indians and Pakistanis. Most people acquired documents such as the passport casually, as a prerequisite for impending travel, but these became crucial for certifying nationality.

Although court rulings were inconsistent, public and bureaucratic perceptions most often aligned documentary citizenship with religious identity. The Indian state viewed Hindus from Pakistan as potential citizens who deserved documents that would facilitate their path to becoming Indians. In contrast, Muslim border-crossers were almost always viewed as “foreigners” and Pakistanis, or, after 1971, as Bangladeshis. In subsequent decades, both the Foreigner’s Act and the Citizenship Act were modified with further amendments that formalized deportation processes with quasi-judicial bodies called Foreigners’ Tribunals. Unique to Assam, these tribunals are empowered to determine citizenship cases. Critics have called them “kangaroo courts” that lack independence and often exhibit clear bias against those identified as “illegal.” By eliding any distinction between illegal immigrants and infiltrators, these legal processes equate India’s economic well-being with its national security.

Amendments to the Citizenship Act, signed into law in 2004 under a previous BJP government, explicitly introduced for the first time a religion-based exception to the principle of citizenship by birth. The law now stated that even if born on Indian soil, a person with one parent who was an illegal migrant at the time could not be eligible for citizenship by birth. It also exempted Hindus with Pakistani or Bangladeshi citizenship from the definition of illegal migrants. By default, only Muslim migrants were deemed “illegal.” Religious identity would form the basis of legal citizenship.

PAPER CITIZENS

On May 27, 2019, a decorated Indian army veteran, Mohammad Sanaullah, found out that he had

been declared a “foreigner” by the Assam Foreigners’ Tribunal after being left out of the latest draft of the National Register of Citizens. The next day, he was sent to a detention center, one of six that hold hundreds of people who have been similarly ruled noncitizens over the years. The Modi government reportedly is already building more such detention camps in Assam and elsewhere to hold people excluded from the proposed pan-India registry. Ironically, Sanaullah had served as an officer with the border security force that is tasked with tracking and stopping illegal migration from Bangladesh.

Luckily for Sanaullah, his situation was reported by the national media, and India’s Supreme Court, which oversees the current NRC process in Assam, ordered a review—which revealed that his nationality had been called into question by spurious witness statements. The investigating officer was charged with falsifying the case. Bias and lack of knowledge among police officials and members of the Foreigners’ Tribunals, who are not actual judges and lack legal experience, have resulted in similar miscarriages of justice.

The Assam NRC process called on the state’s residents to voluntarily submit the required documents as proof of their citizenship. It was up to them to prove their status; unless their proof was conclusive, they became noncitizens. Often people were declared foreigners merely because their names had been misspelled, or due to other incorrect or incomplete data in their documents.

This recalls the political scientist James C. Scott’s argument that modern state systems typically seek to standardize identities and create registers and censuses in an effort to manipulate and control their populations. In India, this new insistence on documentary proof as the sole criterion for citizenship has “weaponized paper identity,” as the journalist Praveen Donthi puts it, creating yet another line of inequality between those who have documents and those who do not. Women, Dalits, and the rural and urban poor, irrespective of religious identity, have been most disadvantaged by requirements for documentary proof of addresses, birth certificates, or property ownership.

The NRC process has revealed the difficulty of achieving bureaucratic standardization in a region where prior claims, residence, kinship, language, and local culture continue to provide a legitimate basis for identity and informal belonging. Moreover, in Assam and in the rest of India, large numbers of nationals lead paperless lives. Birth certificates are relatively new, and most people who were

not born in hospitals do not have them. But immigrants often acquire identity documents to ensure access to jobs.

In November 2019, Indian authorities announced that the NRC process would be implemented across the country. A time frame has yet to be finalized, which has caused widespread uncertainty and fear. In December, Parliament approved the Citizenship Amendment Act. It makes Hindu migrants who arrived in India illegally by December 31, 2014, eligible for fast-tracked citizenship. Roughly 1.2 million Hindus who have been excluded from the Assam registry now have a second chance to become Indian citizens, once the CAA becomes operational. The rest of the excluded Assam residents, mostly Muslims, face detention and deportation.

This introduction of religiously based citizenship is a move away from the constitutional concept of citizenship introduced in India in the mid-twentieth century. As the political scientist Niraja Gopal Jayal has argued, the CAA marks “a transformative shift from a civic-national conception to an ethno-national conception of India, as a political community in which identity determines gradations of citizenship.” Yet the cumulative effects of the new citizenship tests are likely to exclude not only Muslims, but also many Hindus who will struggle to meet the stringent and bureaucratic documentary requirements.

DEMOCRATIC CHALLENGE

The nationwide protests and civil disobedience against the CAA and the proposed national registration exercise have refused to die down. Shaheen Bagh has become synonymous with an earlier secular vision of India—a visible democratic challenge to an increasingly autocratic state. Across the nation, protests in cities like Kolkata, Mumbai, Bengaluru, and Chennai have inspired mobilizations across class and religious divides.

Students and women, many of whom are first-time protesters, have been at the forefront of marches, sit-ins, and candlelight vigils. These events have incorporated spontaneous readings of the Constitution, along with poetry, art, and music. Violence has occurred at some demonstrations, but most of it has been state-sponsored and directed against the protesters.

Muslims make up the bulk of the demonstrators, demanding yet again the recognition of their equal citizenship. But non-Muslims, Dalits, and the urban poor have also joined in, calling for a return to the secular values of India’s founding moment. Several states governed by opposition parties, such as Andhra Pradesh, Kerala, Maharashtra, West Bengal, and Punjab, have officially come out against the central government’s citizenship tests.

Amidst the uproar over citizenship, a key point has been left deliberately nebulous. The future status of those identified as foreigners remains unclear—and India has nowhere to deport them. Bangladesh sees the NRC as an “internal matter” and has not engaged in any bilateral talks regarding whether it would accept such deportees. But it has suggested that it would be willing to take back its citizens living in India, as long as India can establish that they are Bangladeshi.

Another reality that has not drawn much discussion is the porosity of the Bengal borderlands, which allows cross-border cultural and commercial interactions to continue despite increased militarization. This porosity, a unique legacy of Partition in this region, is under attack from policies such as the NRC. These massive exercises of counting and documenting identity seem to be an effort to finally build a paper wall and resolve what the Indian government sees as the unfinished business of Partition: identifying “legal” Indians who belong to the nation-state, and excluding all others. But India might have to give up its very soul in the process. ■