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To advance international freedom of religion or belief, by independently assessing and unflinchingly confronting threats to this fundamental right.

The Citizenship (Amendment) Act in India

By Harrison Akins, Policy Analyst

Just after midnight on December 10, 2019, the Citizenship (Amendment) Act (CAA) passed in the Lok Sabha (the lower house of Indian parliament). Two days later, it cleared the Rajya Sabha (the upper house of Indian parliament) and, after quickly receiving the assent of Indian President Ram Nath Kovind, became law. A campaign promise of the ruling Bharatiya Janata Party (BJP) during both the 2014 and 2019 parliamentary elections, the CAA provides a fast track for non-Muslim immigrants from Muslim-majority Afghanistan, Bangladesh, and Pakistan to apply for and gain Indian citizenship. The law essentially grants individuals of selected, non-Muslim communities in these countries refugee status within India and reserves the category of “illegal migrant” for Muslims alone.

Opposition parties decried the bill for violating India's secular foundations and expressed worry that it would be used to disenfranchise India's sizable Muslim population. Union Home Minister Amit Shah, who introduced the bill in parliament, argued that the CAA has nothing to do with India's own religious minorities and is aimed at protecting those who have suffered from religious persecution in neighboring states. The CAA, however, does not require members of the listed non-Muslim religious groups to provide any proof of persecution, yet omits Muslim minority communities such as Shi'a and Ahmadi Muslims who have faced severe persecution in Afghanistan and Pakistan due to their faith.

The law's passage sparked large-scale protests across the country that provoked a harsh and deadly crackdown by police forces. A wide variety of political parties, non-governmental organizations, and religious groups also submitted petitions to the Supreme Court challenging the CAA's constitutionality, arguing that it, in particular, violates Section 14 (equality before the law) of the Indian Constitution. A number of chief ministers, including in Kerala, Punjab, and West Bengal, announced that they would refuse to implement the law in their states with the Kerala government also challenging the law in the Supreme Court. Alongside the U.S. Commission on International Religious Freedom (USCIRF), the United Nations (UN) High Commissioner for Human Rights, the U.S. Ambassador-at-Large for International Religious Freedom, and the House Foreign Affairs Committee similarly expressed their concern about the law.

With internal challenges and international criticism mounting, this factsheet provides a brief overview of this controversial law and explains why it is problematic for religious freedom in India.

Provisions of the Citizenship (Amendment) Act

The [provisions](#) of the CAA amend the [Citizenship Act of 1955](#) as follows:

- Although the Citizenship Act of 1955 bars illegal migrants (defined as foreigners who entered India without valid travel documents or entered with a valid travel document but stayed beyond the permitted period) from obtaining Indian citizenship, any Hindu, Sikh, Buddhist, Jain, Parsi, or Christian migrant from Afghanistan, Bangladesh, or Pakistan who arrived in India on or prior to December 31, 2014, will not be treated as an “illegal migrant” under the CAA, allowing them to apply for and gain Indian citizenship.
- The CAA grants the aforementioned migrants from Afghanistan, Bangladesh, and Pakistan immunity from any legal cases against them concerning their immigration status.
- For migrants belonging to the Hindu, Sikh, Buddhist, Jain, Parsi, or Christian communities in Afghanistan, Bangladesh, and Pakistan, the CAA reduces their qualifying length of residency in India before being eligible for Indian citizenship from “not less than eleven years” to “not less than five years.”
- The CAA contains a provision allowing the government to withdraw individuals’ [Overseas Citizens of India](#) cards—an immigration status allowing foreigners of Indian origin to live and work in India without restrictions—if they violate any laws for major or minor offenses.

The Citizenship (Amendment) Act and Religious Freedom in India

There are serious concerns that the CAA serves as a protective measure for non-Muslims in case of exclusion from a nationwide National Register of Citizens (NRC)—a proposed list of all Indian citizens. This purpose is evident from BJP politicians’ rhetoric. With the CAA in place, Muslims would primarily bear the punitive consequences of exclusion from the NRC which could include “statelessness, deportation, or prolonged detention,” [according](#) to three United Nations Special Rapporteurs.

A nationwide NRC would be based on the process to update the list that has been taking place within the northeastern state of Assam. The Supreme Court-ordered

[NRC update in Assam](#), in line with the 1985 [Assam Accord](#), is primarily a mechanism for identifying illegal migrants in the state. Inclusion in the NRC is based on verification of a variety of [documents](#) proving an individual’s, or his or her descendants’, citizenship prior to March 25, 1971. When the finalized NRC for Assam was released in August 2019, 1.9 million names of Assam residents, largely Bengali Muslims, were excluded from the list. Amnesty International [criticized](#) the NRC process in Assam as “shoddy and lackadaisical.” Many impoverished families found it difficult to present the necessary documents due to poor record keeping or illiteracy. And many individuals who had documents were excluded for minor inconsistencies such as differences in the spelling of a name. Those omitted from the list included [veterans](#) of the Indian army; [individuals](#), especially women and children, whose relatives were included in the NRC using the same legacy documents; the nephew of former Indian President Fakhruddin Ali Ahmed; and even the former Chief Minister of Assam Syeda Anwara Taimur. Excluded individuals were originally given until December 31, 2019 to appeal their citizenship status to one of hundreds of Foreigners’ Tribunals, after which they face placement in detention camps and potential statelessness. The Foreigners’ Tribunals are quasi-judiciary bodies that lacked adequate oversight, transparency, or an appeal process for decisions rendered. The Foreigners’ Tribunals also [lacked](#), and struggled to attract, individuals with qualifications to serve on the Tribunals with the government [lowering](#) eligibility criteria and failing to provide adequate training. As a result, the Foreigners’ Tribunals are ripe for abuse to target Muslims already perceived to be foreigners.

The concern that the BJP intended the NRC in Assam to target Muslims is borne out of the reaction of regional and national BJP leaders to the release of the finalized list in August 2019. The BJP’s support for the NRC process quickly shifted when both Muslims and Hindus were excluded, given the ethnic politics of Assam that perceives ethnic Bengalis regardless of religious identity as foreigners. The leader of the Rashtriya Swayamsevak Sangh Mohan Bhagwat promised, “No Hindu will be expelled even if [that individual’s] name is missing from [the] NRC.” BJP leaders also changed their position and [argued](#) that the finalized list needed to be “re-verified” as it was “full of errors.” Assam’s BJP government [rejected](#) the Supreme Court-monitored process as the NRC “included many who should not have been and excluded many who are genuine citizens.” To date, the government has not yet provided notification of the final NRC list, preventing



individuals from appealing their exclusion from the NRC in the Foreigners' Tribunals.

After release of the finalized list, BJP political leaders [advocated](#) for the CAA as a means of protecting Hindus excluded from the NRC in Assam. The provisions of the CAA would protect any non-Muslims excluded from the NRC from detention and provide them a path to Indian citizenship, reserving the label of illegal migrant for Muslims alone. As a further corrective measure, Home Minister Shah [announced](#) in November 2019 that a nationwide NRC, which would include Assam, would be implemented before the 2024 Lok Sabha elections and promised that, through this initiative, the government would “selectively throw out all infiltrators.” In late December 2019, the Indian Cabinet [approved](#) funds for conducting a National Population Register (NPR) in 2020. The NPR is a survey of biographical data of “usual residents” (both citizens and non-citizens residing in an area for longer than six months), including all residents’ and their parents’ places of birth. The first NPR was conducted in 2010 with an update in 2015. During November 2014 debates in the Rajya Sabha, the former BJP Minister of State for Home Affairs Kiren Rijiju [described](#) the NPR as “the first step towards creation of a National Register of Indian Citizens by verifying the citizenship status of every usual resident.” In the wake of the anti-CAA protests, however, Prime Minister Modi [argued](#) there had been no discussions within the BJP for implementing a nationwide NRC. His

argument contradicts the public statements by Home Minister Shah and BJP leadership as well as the BJP’s [2019 electoral manifesto](#) which states it “will implement the NRC in a phased manner in other parts of the country.”

The CAA and NRC must also be understood in the context of the growing prominence of the BJP’s [Hindutva](#) ideology. This ideological frame views India as a Hindu state (with its definition of Hinduism inclusive of Buddhists, Jains, and Sikhs) and Islam as a foreign and invading religion. *Hindutva* political rhetoric questions the legitimacy of Muslims’ Indian citizenship and perpetuates the further marginalization of this faith community. The BJP Chief Minister of Uttar Pradesh (UP) Yogi Adityanath, for example, [promised](#) in 2005 to cleanse India of other religions, calling this the “century of *Hindutva*.” A BJP member of the UP Legislative Assembly further [argued](#) in January 2018 that India will become a purely Hindu nation by 2024 and all Muslims who do not assimilate to Hindu culture will need to leave the country. This perspective renders Indian Muslims particularly vulnerable to exclusion from a nationwide NRC, regardless of their citizenship status.

The NRC process in Assam and the challenges plaguing it demonstrate that Indian citizens could be stripped of their citizenship in a nationwide NRC. With protections for non-Muslims in place under the CAA, however, any future NRC process would largely impact Muslims alone.

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