“Shoot the Traitors”

Discrimination Against Muslims under India’s New Citizenship Policy
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Summary

A video emerged from India in February 2020 showing five grievously injured men lying on the street being beaten by several policemen and forced to sing the Indian national anthem. The video was filmed on February 24 in Kardampuri, a neighborhood in northeast Delhi. One of the men, Faizan, a 23-year-old Muslim, died from his injuries two days later.

At least 52 more people were killed in the three days of communal violence that broke out in India’s capital. Over 200 were injured, properties destroyed, and communities displaced in targeted attacks by Hindu mobs. While a policeman and some Hindus were also killed, the majority of victims were Muslim.

Muslims in India have been increasingly at risk since the Hindu nationalist Bharatiya Janata Party (BJP) government led by Prime Minister Narendra Modi was first elected in 2014. Faizan died in a carnage amidst rising communal tensions in the country. On December 12, 2019, the Modi administration achieved passage of the discriminatory Citizenship (Amendment) Act (CAA). Under the act, for the first time in India, religion is a basis for granting citizenship. The law specifically fast-tracks asylum claims of non-Muslim irregular immigrants from the neighboring Muslim-majority countries of Afghanistan, Bangladesh, and Pakistan. The amended citizenship law, coupled with the government’s push for a nationwide citizenship verification process through a National Population Register (NPR) and a proposed National Register of Citizens (NRC), aimed at identifying “illegal migrants,” has led to fears that millions of Indian Muslims, including many families who have lived in the country for generations, could be stripped of their citizenship rights and disenfranchised.

Throughout the country, Indians of all faiths have protested peacefully against the law, singing songs, reciting poetry, and reading aloud from the constitution, which commits to secularism and equality. The iconic image of these protests was at Shaheen Bagh, a Muslim-majority neighborhood in Delhi. Since it first began on December 15, the protest, which was led by local women, drew civil society support from across the country. It also provoked the ire of the ruling BJP, with some of its leaders deriding the protesters or more dangerously calling them anti-national and pro-Pakistan. Some have described the protesters as “Pakistani hooligans,” others led a chant to “shoot the traitors,” inciting
violence. On February 1, 2020, a man fired two shots in the air near the protest site. On March 24, authorities asked the protesters to disperse following the outbreak of Coronavirus and calls for a lockdown to contain its spread.

Since the Modi administration first took office, BJP leaders have repeatedly made Hindu nationalist and anti-Muslim remarks in their speeches and interviews. These have, at times, encouraged and even incited violent attacks by party supporters who believe they have political protection and approval. They have beaten Muslim men for dating Hindu women. Mobs affiliated to the BJP have, since 2015, killed and injured scores of members of religious minorities amid rumors that they traded or killed cows for beef. In February 2019, BJP supporters threatened and beat several Kashmiri Muslim students and traders, apparently to avenge a militant attack on a security forces convoy.

Government policy has also reflected bias against Muslims. Since October 2018, Indian authorities have deported over a dozen Rohingya Muslims to Myanmar despite the risks to their lives and security. After winning a second term in May 2019, the government revoked the constitutional autonomy of India’s only Muslim-majority state, Jammu and Kashmir, and, anticipating protests, deployed additional troops, detained thousands, and cut off phone and internet connections. The police have failed to intervene when BJP supporters engage in speech inciting violence or mob attacks but are quick to arrest critics of the government.

During protests against the citizenship law, there was a similarly partisan response. In many cases, when BJP-affiliated groups attacked protesters, the police did not intervene. However, in BJP-governed states in December, police used excessive and unnecessary lethal force, killing at least 30 people during protests and injuring scores more. In Delhi in February, some policemen actively participated in the mob attacks on Muslims.

The government’s Hindu nationalist and anti-Muslim policies have touched off protests not just in India but abroad. The government crackdown on the protests in India raised further outcries. The United States, the European Union, and the United Nations secretariat have all called on the Modi government to scrap its discriminatory policies. Following the COVID-19 outbreak, Indian authorities said the citizenship verification plans had been indefinitely postponed.
Earlier, Indian diplomats tried to brush off international concern as “internal matters,” and the BJP launched a public campaign to counter attempts to “mislead the nation.” Prime Minister Modi has insisted that these policies are not discriminatory, saying, “Muslims are a part of our nation, and they have equal rights and duties as others.” However, he has done little to initiate a dialogue with the protesters, rein in his party members and supporters who routinely vilify Muslims, or press state governments to prosecute those responsible for abuses.

Muslims, in particular, have raised concerns about the National Register of Citizens because of the problems that have already occurred in the northeastern state of Assam, which is the only state to have completed such a verification process. It excluded nearly two million people, most of them ethnic Bengalis, whom the authorities accuse of entering India illegally from neighboring Bangladesh. After a surge in migration to Assam during British colonial rule and around the 1947 partition and creation of Pakistan, the 1951 National Register of Citizens was used to document these settlers. The August 2019 update to verify Indian citizens in Assam was the outcome of a 1985 peace agreement and a subsequent 2014 Supreme Court ruling to address grievances, protests, and violence by Assamese groups over irregular migration. In practice, the process was arbitrary and discriminatory, particularly targeting Bengali Muslims, leading to concerns that similar abuse and bias will be replicated when it is extended to the rest of the country. A group of retired bureaucrats and officials in January 2020 publicly warned that the nationwide NRC process “has the scope to be employed in an arbitrary and discriminatory manner, subject to local pressures and to meet specific political objectives, not to mention the unbridled scope for large-scale corruption.”

This report is based on interviews with victims of abuses and their families from Assam, Delhi, and the state of Uttar Pradesh, as well as legal experts, academics, activists, and police officials. It examines the discriminatory nature of the Citizenship Amendment Act and how the law, when combined with government citizenship verification initiatives including the National Population Register and National Register of Citizens, places millions of Muslims and other minorities at risk of statelessness and disenfranchisement. It documents allegations of police abuses against protesters. It also details discriminatory and error-prone practices against Bengali-speaking inhabitants in the process of updating the National Register of Citizens in Assam and the arbitrary and biased functioning of
Assam’s Foreigners Tribunals, heightening concerns about any planned nationwide process.

**An Inherently Discriminatory Law**

The citizenship law amendments passed by parliament in December 2019 will allow Hindus and other non-Muslims who were unable to prove their citizenship status in Assam – and thus were left out of the National Register of Citizens – to maintain their Indian citizenship. It will also apply to other religious minorities who might be left out in the proposed nationwide National Register of Citizens. It will not, however, protect Muslims left off the registry.

BJP leaders have publicly used the act to assure Hindus in other parts of the country that they will be protected in the citizenship verification process. “I want to assure all Hindu, Sikh, Jain, Buddhist, and Christian refugees, that you will not be forced to leave India,” Home Minister Amit Shah said in October 2019, conspicuously omitting Muslims from the list of protected religions. “Don’t believe rumors. Before NRC, we will bring [the] Citizenship Amendment Bill, which will ensure these people get Indian citizenship.”

The citizenship law amendment is discriminatory and in violation of international human rights law because it applies only to non-Muslims from Bangladesh, Pakistan, and Afghanistan. The BJP government describes them as “refugees” trying to escape persecution in their country of origin while excluding Muslims from these predominantly Muslim countries, treating them as “infiltrators.” Defending the bill in parliament, Shah said, “There is a fundamental difference between a refugee and an infiltrator. This bill is for refugees.”

The government has tried to justify the law, saying it seeks to provide sanctuary to religious minorities abroad fleeing persecution. However, that claim is belied by the exclusion of many other vulnerable groups who have sought refuge in India, such as minority Tamils from Sri Lanka and ethnic Nepalis from Bhutan. It also effectively excludes other persecuted Muslim minorities like the Hazaras from Afghanistan, the Shia and Ahmadiyya from Pakistan, and the Rohingya from Myanmar.
The Office of the United Nations High Commissioner for Human Rights called the law “fundamentally discriminatory.” In February 2020, UN Secretary-General Antonio Guterres said he was concerned about the future of religious minorities in India after the enactment of the citizenship amendment law, saying “there is a risk of statelessness.” The United States Commission on International Religious Freedom said the US government “should consider sanctions against the home minister and other principal leadership” and held a hearing in March 2020 in which one of the commissioners raised concerns that the law “in conjunction with a planned National Population Register and a potential nationwide National Register of Citizens, or NRC, could result in the wide-scale disenfranchisement of Indian Muslims.”

Linking the Citizenship Law, National Population Register, and National Register of Citizens

The National Population Register is a list of all people residing in India, irrespective of their nationality. Indian officials will distill those considered “doubtful” citizens based on the NPR, to create a final list of those verified. This will be the National Register of Citizens. Those not verified, if non-Muslim, can get citizenship under the amended citizenship law which applies to irregular immigrants.

There have been contradictory statements by senior government officials, including Modi and Shah, in which they have attempted to delink the three. Shah said in December 2019 that, “There is no link between the NRC and the NPR. The data collected for the NPR will not be used in the NRC.” In March 2020, he told parliament the NPR process will not ask for any documents and “nobody will be marked ‘doubtful.’ Nobody needs to be scared of the process of the NPR in this country.”

Shah’s reassurances, however, carry little weight in the face of past government statements and recent legal provisions. BJP officials have repeatedly indicated that data from the NPR will provide essential inputs when the government compiles the NRC, its list of verified citizens. Soon after the Modi government won its first term, in July 2014, Minister of State for Home Affairs Kiren Rijiju told parliament, “It has been decided that NPR should be completed and taken to its logical conclusion, which is the creation of NRIC [National Register of Indian Citizens] by verification of citizenship status of every usual
residents in the NPR.” The BJP’s manifesto for the 2019 national elections also promised to conduct a nationwide NRC.

India has, over the decades, witnessed large numbers of migrants, particularly Bangladeshi Muslims. Successive governments have adopted measures in response, particularly to contain irregular economic migration. Under the Citizenship Act, 1955, a person gained Indian citizenship by birth, descent, registration, naturalization, or formal government incorporation of the territory in which they lived. Irregular immigrants, who entered the country without valid travel documents or overstayed beyond the permitted period, could be imprisoned or deported under the Foreigners Act, 1946, and the Passport (Entry into India) Act, 1920.

In 2003, the Citizenship Act was first amended to introduce the term “illegal migrant.” The government also adopted the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, which introduced the National Population Register and explained that the National Register of Indian Citizens will contain details of persons after “due verification made from the Population Register.”

The NPR process, which began in 2010 and was updated again in 2015, was not, however, used for a citizenship verification process. Nor did the process include details that have been sought by the Modi government, which on July 31, 2019, issued a notification to update the NPR throughout the country in 2020. According to the Modi government, the objective of the NPR is to create a comprehensive identity database of every “usual resident” in the country, defined as a person who has lived in an area for the preceding six months or has plans to live there for six months in the future. The proposed database will contain demographic as well as biometric information.

The National Population Register will form the basis for identifying verified citizens and screen out so-called “illegal immigrants” or “infiltrators.” However, the rules do not clarify the process or criteria for verification, who will be considered “doubtful,” and how they can establish their citizenship. Lack of clarity raises concerns of arbitrariness and bias of local officials, much like the verification process conducted in Assam. Nor is there clarity on various procedures, document requirements, and the type of questions to be included in the NPR. Officials have made contradictory statements that obfuscate facts in the face of growing criticism.
Following protests in December 2019, opposition-led governments of West Bengal and Kerala states suspended all work updating the National Population Register. Several other state governments have said they will not conduct a citizenship verification process. Over 140 petitions have been filed in the Supreme Court contesting the constitutionality of the amended citizenship law. In March 2020, the UN High Commissioner for Human Rights filed an intervention application as amicus curiae (third party) in the Supreme Court, urging it to take into account international human rights law, norms, and standards in the proceedings related to the Citizenship Amendment Act. The Indian government criticized the application saying the citizenship law was an “internal matter” and “no foreign party has any locus standi [grounds to sue] on issues pertaining to India’s sovereignty.”

State and Institutional Failures in Response to Protests
The violence in Delhi began soon after local BJP politician Kapil Mishra, who had earlier led a large demonstration calling to “shoot” the protesters, posted a video in which he gave an ultimatum to the police, threatening to take the matter into his own hands if the police did not clear the roads of protesters in three days. First there were clashes between Hindus who supported the government and Muslims protesting against the new citizenship law, but this soon transformed into Hindu mobs chanting nationalist slogans, armed with swords, sticks, metal pipes, and bottles filled with petrol, rampaging through several neighborhoods in northeast Delhi, killing Muslims and burning their homes, shops, mosques, and property.

While several Hindus were also killed, including a policeman and a government official, Muslims overwhelmingly bore the brunt of the brutality. The police not only failed to stop mob attacks by BJP supporters, some witnesses alleged that the police assisted mob attacks. In parliament, Shah, who is in charge of the Delhi police, praised them for “effectively containing the riot within 36 hours.”

Prior to the violence in Delhi, at least 30 people were killed, and hundreds arrested for protesting the new citizenship law and citizenship verification process, all in BJP-governed states: 23 in Uttar Pradesh, 5 in Assam, and 2 in Karnataka. Most of those killed were Muslims, including an 8-year-old boy in Uttar Pradesh who reportedly died in a stampede as protesters fled a police crackdown. Several policemen were injured.
The authorities also used a colonial-era law against public gatherings, as well as internet shutdowns and limits on public transportation, to prevent peaceful anti-citizenship law protests. The police arbitrarily arrested those critical of the government and accused several people under India’s draconian sedition laws. Several activists and protesters said that they were beaten in custody. A fact-finding report by Indian rights groups found that children were also detained and beaten in police custody. Police in Uttar Pradesh state raided Muslim neighborhoods and ransacked shops and residences, instilling fear among the community.

Police allegedly acted in a partisan manner, using excessive force against demonstrators protesting the law, but failing to intervene during violent attacks by government supporters. On January 30, 2020, the police did not take action when a government supporter shot at students protesting outside the Jamia Millia Islamia University in Delhi. Yet a few weeks prior, on December 15, the police had used teargas to disperse protesters at the same university, even entering the library and hostels, beating students and some staff. A video of police brutally beating a man as female students tried to protect him led to criticism over excessive police actions.

Jamia Millia Islamia University has a large number of Muslim students. The partisan police actions at the university have been accompanied by bigoted statements by BJP leaders, including the prime minister, who suggested that protesters could be “identified by their clothes,” implying only Muslims were protesting the new law. Another BJP leader described some protesters as “rabidly indoctrinated Islamists,” an assertion that can lead to arbitrary arrests and terrorism allegations.

Several BJP leaders made divisive, hate-filled remarks against the people protesting at Shaheen Bagh that may have incited violent attacks on protesters. One BJP lawmaker warned that those protesting in Shaheen Bagh “will enter your homes, they will pick up your sisters and daughters and rape and kill them.”

The Delhi High Court, while hearing petitions about the riots in the city in February, questioned the Delhi police decision to not file cases against BJP leaders advocating violence, saying it sent the wrong message and perpetuated impunity. Instead of responding to court orders, the government fast-tracked orders transferring the presiding judge to another state, taking the riot-related cases away from him. Critics said they found
the timing “disturbing.” Under a new judge, the court accepted the submission of the government’s attorney that the situation was not immediately “conducive” for registering police complaints.

When activist Harsh Mander, petitioner in the high court case against BJP leaders, filed a special leave petition in the Supreme Court against this order, the solicitor-general, arguing on behalf of the government, accused Mander, instead, of inciting violence and being contemptuous of the Supreme Court in a previous speech – a clear act of reprisal.

**Lessons from Assam**

On August 31, 2019, the final National Register of Citizens in Assam was published, leaving out the names of over 1.9 million people, including many who have lived in India for years, in some cases their entire lifetime. Over 33 million people had submitted applications to enroll their names. Said Mohsin Alam Bhat, executive director of the Centre for Public Interest Law at Jindal Global Law School:

> This is the single largest legal event in scale of affected population since the partition and resettlement of refugees. It is not just 1.9 million people but also their families. Considering that the government may introduce [a citizenship verification project] in other places, in terms of a cascading effect, this is absolutely unprecedented.

Human Rights Watch found the NRC process in Assam lacked standardization, leading to arbitrary and discriminatory decisions by officials. The NRC also applied more stringent verification standards regarding documentation to members of ethnic Bengali minority groups who were suspected to be “non-original” inhabitants. The process failed to take into account that poorer residents, often surviving on basic subsistence, do not have access to identity documentation – dating back for decades – to establish citizenship claims. Many also lost documentation during internal migration in Assam as they moved for livelihood, marriage or other personal factors, violence, or because they were displaced – a common occurrence in flood-prone Assam state.

Women in India are more likely than men to lack access to documentation and as a result were disproportionately affected, especially those from poor and marginalized
communities. Many women do not have birth certificates and have never attended school. Child marriage rates are high in Assam, as they are in most of India, and about 40 percent of girls in Assam were married before they were allowed to vote at age 18. This means that their first official documents are often voter identification cards that carry their married names, making it impossible to prove their link to their parents. Any nationwide citizenship verification process is likely to hurt them similarly.

The process has been so fraught that a nongovernmental organization, Citizens for Justice and Peace, said that 56 people have died in Assam since 2015 over fears related to their citizenship status. Several are said to have committed suicide at least in part because of fear of being declared irregular foreigners or fear of detention, and some died in detention centers due to alleged negligence of authorities.

State-provided identity documents are also prone to errors. Human Rights Watch found that even people with legitimate documents proving their citizenship status were not registered because of technical reasons such as spelling mistakes or different names being used in the various documents.

Aslam (name changed), a Bengali Muslim who worked as a driver in Guwahati, was excluded from the NRC even though his parents, wife, and children were included. He was likely excluded, he said, because the spelling of his name on his voter identification card and his income tax identification card known as Permanent Account Number (PAN) are different. “The form for the PAN card is in English, but we fill the forms for voter identity card in Assamese,” he said. “Then when they change it into English, the spelling of the name often changes.”

Human Rights Watch also found that the Foreigners Tribunals, which decide the question of citizenship, lack transparency and fail to follow uniform procedures, often making their decisions inconsistent. Members lack independence and are vulnerable to pressure from the authorities because the government’s evaluation of their performance is often measured by the number of people they declare as irregular immigrants. A former member of a Foreigners Tribunal told Human Rights Watch:

I admit that there might be arbitrary actions by Foreigners Tribunals because there is an internal government policy that more and more people
should be deemed foreigners. We are hired on the basis of contracts – those with records of declaring more and more people as foreigners are preferred.

Activists and journalists said that significantly more Muslims were being tried and a much greater proportion were declared foreigners as compared to Hindus, likely because of political pressure.

In the regular justice system, once a matter is decided in a lower court it can only be challenged in a higher court, but a person cleared by a tribunal can be tried multiple times for being a suspected irregular immigrant. There are numerous cases in which people who have been declared citizens are presented with fresh notices to appear before the tribunals.

Once a person is declared an irregular immigrant by the tribunals, they can be detained by the police. Currently, there are six-makeshift detention centers in prisons across Assam. According to official data, 988 people were detained in these centers as of November 2019. The government has said it will build 10 detention centers in the state for those who are declared irregular foreigners. In January 2019, the Modi government sent a “Model Detention Manual” to all states that called for the setting up of “one detention camp in the city or district where [a] major immigration check post is located,” and that said “all members [of a family] should be housed in the same detention centre.”

However, Prime Minister Modi, while speaking at a rally on December 22, at a time when he should have known the claims were false, said his government had never discussed a national register of citizens and denied that that there were any detention centers for irregular immigrants in the country.

**International Legal Standards**

The 2019 Citizenship Amendment Act violates India’s international obligations to prevent deprivation of citizenship on the basis of race, color, descent, or national or ethnic origin as found in the International Covenant on Civil and Political Rights and other human rights treaties that India has ratified. The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities calls on governments to protect the
existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end. Governments are obligated to ensure that people belonging to minority groups, including religious minorities, may exercise their human rights without discrimination and in full equality before the law. Governments also have an obligation to ensure gender equality. To the extent that the process has a disproportionately harmful impact on the citizenship rights of women and girls, it also violates the Convention on the Elimination of All Forms of Discrimination against Women.

Key Recommendations
The citizenship law and verification process are contrary to the basic principles of secularism and equality enshrined in the Indian constitution and in domestic law. Indian authorities should immediately reverse course and adopt rights-respecting laws and policies regarding citizenship. They should also uphold the rights to freedom of expression and to peaceful assembly.

The Indian government should:

- Repeal the Citizenship Amendment Act, 2019, and ensure that any future national asylum and refugee policy does not discriminate on any grounds, including religion, and is compliant with international legal standards.
- Discard any plan for a nationwide citizenship verification project until there are public consultations to establish standardized procedures and due process protections ensuring the process is not discriminatory and does not impose undue hardship on the poor, minority communities, and women.
- Protect the rights to freedom of expression and assembly of those protesting against the government's citizenship law and policies.
- Ensure prompt, credible, and impartial investigations into the killings of protesters, allegations of use of excessive force by police, arbitrary detention, and raids on Muslims homes and property.
- Release all those arbitrarily detained for protesting against the citizenship law and dismiss politically motivated charges against protesters and civil society activists.
- Investigate hate speech by government officials and appropriately prosecute incitement to violence.
Methodology

This report is based on Human Rights Watch field research and interviews conducted in India’s Assam state in September 2019, and in Delhi and Uttar Pradesh state between December 2019 and February 2020. We spoke with victims of abuses and their families, witnesses, legal experts, academics, activists, and police officials.

The report also draws upon secondary literature, including research conducted by other rights groups, media reports, government statistics, parliament proceedings, and rulings by the Supreme Court and High Courts.

Human Rights Watch interviewed about 50 people in Meerut, Muzaffarnagar, and Bijnor districts in Uttar Pradesh. In Assam, we interviewed more than 50 people who had either been excluded from the National Register of Citizens or had previously contested their citizenship in a Foreigners Tribunal. In addition, we spoke with lawyers and activists representing families of victims, experts, and journalists who have reported on these issues. Interviews were conducted in Bongaigaon, Barpeta, Baksa, and Goalpara districts and the city of Guwahati in Assam.

Human Rights Watch, with the consent of the victims or their families, received and has retained copies of police reports, citizenship documents, court documents, and other relevant documents. Interviews were conducted in Hindi or English. In Assam, most interviews were conducted in Bengali or Assamese through an independent interpreter.

Several people have used pseudonyms and, on their request, identifying information has been withheld to protect their privacy and safety. Human Rights Watch provided no remuneration or other inducement to the interviewees.
I. Citizenship Law, Population Register, and the National Register of Citizens

Since the partition of 1947 and the creation of independent India and Pakistan, followed by a series of wars between the two countries, there have been several waves of refugees into India. India has also been host to many refugees from Tibet, Sri Lanka, Afghanistan, Bhutan, Myanmar, and elsewhere. There are also many irregular economic migrants.

Citizenship in India is governed by the Citizenship Act. The government amended the Citizenship Act on December 12, 2019, to make, for the first time, religion a basis for citizenship claims in India. Contrary to India’s secular constitution, the Citizenship Amendment Act, 2019 (CAA) deliberately excludes Muslims and grants citizenship to non-Muslim irregular immigrants from the neighboring Muslim-majority countries of Afghanistan, Bangladesh, and Pakistan who arrived in India before December 31, 2014.¹ Other claimants remain eligible to seek citizenship under the existing law. The government asserted that it wanted to provide for persecuted religious minorities from these three countries. “We are not taking away anyone’s citizenship,” said Prime Minister Modi. “It is an Act that gives citizenship to persecuted people.”²

The amended law led to protests across India. Combined with the government’s plan to update the National Population Register (NPR), followed by a push for a nationwide citizenship verification process, the National Register of Citizens (NRC), aimed at identifying “illegal migrants,” the new law could strip millions of Indian Muslims of their citizenship rights while protecting those of Hindus and other non-Muslims. “I want to assure all Hindu, Sikh, Jain, Buddhist, and Christian refugees, that you will not be forced to leave India,” Home Minister Amit Shah promised in October 2019, conspicuously omitting Muslims from the list of protected religions. “Don’t believe rumors. Before NRC, we will

bring [the] Citizenship Amendment Bill, which will ensure these people get Indian citizenship.”

There have been contradictory statements by various government officials, including the prime minister and the home minister in which they have attempted to delink the Citizenship Amendment Act, the National Population Register, and the National Register of Citizens. The prime minister has also said that there are no plans for a National Register of Citizens even as the home minister has repeatedly said otherwise in public speeches, interviews, and even in parliament in November 2019. Similarly, in statements on procedures, requirements for documents, and types of question in the National Population Register, senior officials have contradicted official documents, obfuscating facts or deviating from prior expressions of the government’s intentions in the face of growing criticism.

In March 2020, faced with the challenge of combating the COVID-19 global pandemic, the central government postponed the process to update the National Population Register.

Citizenship under Indian Law

The Citizenship Act, 1955 allows for citizenship of India by birth, descent, registration, naturalization, or incorporation of territory. Irregular immigrants, who entered the country without valid travel documents or overstayed beyond the permitted period, could be imprisoned or deported under the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920.

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In 2003, the Citizenship Act was first amended by an earlier BJP government to introduce the term “illegal migrant” and a National Register of Citizens. Section 14A of the law inserted a new provision calling for the establishment of a National Register of Indian Citizens (NRIC) and national identity cards.

**New Citizenship Law Discriminates Against Muslims**

In December 2019, the parliament passed the Citizenship (Amendment) Bill, which amended the Citizenship Act to make irregular immigrants from Hindu, Christian, Buddhist, Sikh, and Zoroastrian communities from Afghanistan, Bangladesh, and Pakistan eligible for citizenship, but excluded Muslims. The law also lowered the minimum years of residence required for naturalization in India from 11 years to 5 years for these groups. In effect, the government is making a distinction between Muslims, whom it contends have immigrated illegally and are thus “infiltrators,” and non-Muslims, who are treated as “refugees” who have escaped persecution in the three countries. “There is a fundamental difference between a refugee and an infiltrator,” Shah said when defending the bill in parliament. “This bill is for refugees.”

The BJP has used this narrative to demonize Muslims and win Hindu votes in elections. “Illegal immigrants are like termites and they are eating the food that should go to our poor and they are taking our jobs,” Shah said at an election rally in Delhi in September 2018. “They carry out blasts [bombings] in our country and so many of our people die.” Shah promised that “if we come to power in 2019, we will find each and every one and send them away. Action against them should not worry any patriot.”

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9 The Citizenship (Amendment) Act, 2003, sec. 14A. The amendment also made other changes, including adding conditions on citizenship by birth and descent. Citizenship at birth is restricted to persons born in India before July 1, 1987; for those born in India after, but before the commencement of the 2003 Act, citizenship will be granted only if one of the parents is a citizen; and for a person born in India after the 2003 Act came into force, citizenship will be granted only if both parents are citizens or if one parent is a citizen and the other is not an irregular immigrant. Citizenship (Amendment) Act, 2003, sec. 3.


In January 2019, several opposition lawmakers, part of the joint parliamentary committee that reviewed the bill, concluded that it violates articles 14 and 15 of the Indian constitution, which guarantee the right to equality and nondiscrimination. During the parliamentary debate on December 9, 2019, several opposition leaders opposed the bill as an assault on the foundational values of the country. “[T]his is merely a cynical political exercise to further single out and disenfranchise an entire community in India and in doing so, a betrayal of all that was good and noble about our civilization,” said Shashi Tharoor, of the Indian National Congress party.

The government sought to justify the law by asserting that it seeks to provide sanctuary to religious minorities fleeing persecution in neighboring countries. However, that claim collapses as a general principle of protection for members of religious minorities because the law excludes many minority groups that have sought refuge in India, including Tamils from Sri Lanka, Hazaras from Afghanistan, Shia and Ahmadiyya from Pakistan, and Chin and Rohingya minorities from Myanmar.

Over 140 petitions have been filed in the Supreme Court challenging the constitutionality of the law, including a petition by the state of Kerala. Some argued that the Citizenship Amendment Act violated articles 14, 15, 21, and 25 of the Indian constitution. Article 14 guarantees equality before law and equal protection of the laws to all persons living in India; article 15 prohibits discrimination on specific grounds, including religion; article 21...

guarantees right to life and personal liberty; and article 25 protects right to freedom of religion.\textsuperscript{18}

In March 2020, the United Nations High Commissioner for Human Rights filed an intervention application as amicus curiae (third party) in the Supreme Court in a petition filed by three retired public officials, urging it to take into account international human rights law, norms, and standards in the proceedings related to the Citizenship Amendment Act.\textsuperscript{19} The Indian government criticized the move saying the CAA was an “internal matter” and “no foreign party has any locus standi [grounds to sue] on issues pertaining to India’s sovereignty.”\textsuperscript{20}

**National Population Register and National Register of Indian Citizens**

In 2003, the government adopted the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules (the “2003 Citizenship Rules”), which introduced the National Population Register and explained the National Register of Indian Citizens.\textsuperscript{21} The objective of the NPR was to create a comprehensive identity database of every “usual resident” in the country, defined as a person living in an area for past six months or with plans to live there for six months in the future.\textsuperscript{22}

The 2003 Citizenship Rules also specify that data from the National Population Register will provide inputs essential to creation of a National Register of Citizens. The NPR is a list of all people residing in India, irrespective of their nationality, while the NRC is a list of citizens that will be prepared from the NPR after verification.\textsuperscript{23} The NPR is also different


from the census, which is conducted every 10 years and is due in 2021. The census data also has information about all residents of India but does not list their names.

The Local Registrar, a government functionary, will verify the details in the NPR, cull cases of doubtful citizenship, conduct further inquiries to verify suspicious citizenship status, and then prepare a draft Local Register of Indian Citizens, which will exclude those not able to establish their claim of citizenship. However, the 2003 Citizenship Rules do not clarify the process or criteria for verification, who will be considered “doubtful,” and how they can establish their citizenship. Lack of clarity raises concerns that the process will be marred by arbitrariness and bias from local officials, as has happened with the verification process in Assam – the first state to hold the NRC – in which nearly two million people were left off the list.

More than 100 former civil servants – retired bureaucrats, police officials, and Indian diplomats – wrote an open letter, explaining the link between the CAA, NPR, and NRC, saying these policies were “unnecessary and wasteful,” and raising serious concerns they would be prone to bias, arbitrariness, errors, and targeting of specific communities:

We are apprehensive that the vast powers to include or exclude a person from the Local Register of Indian Citizens that is going to be vested in the bureaucracy at a fairly junior level has the scope to be employed in an arbitrary and discriminatory manner, subject to local pressures and to meet specific political objectives, not to mention the unbridled scope for large-scale corruption.

Earlier, on July 31, 2019, the BJP government had issued a notification to update the NPR again throughout the country between April 1, 2020 and September 30, 2020, except in the state of Assam where a separate National Register of Citizens was published in August 2019. Government-appointed enumerators will visit each household to collect

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24 Ibid., rule 4.
25 See Section IV. Assam’s National Register of Citizens.
demographic and biometric data from its members. The NPR could then be used to produce a list of verified citizens for the NRC.

After widespread protests, the opposition-run governments of West Bengal and Kerala states suspended all work on updating the NPR. Several other state governments have said they will not comply with the citizenship verification process.

Contrary and Vague Government Statements

In response to protests, Home Minister Shah said, “There is no link between the NRC and the NPR. The data collected for the NPR will not be used in the NRC.” In March 2020, he told parliament that the NPR process will not ask for any documents and “nobody will be marked ‘doubtful.’ Nobody needs to be scared of the process of the NPR in this country.”

Shah’s comment was not reassuring because it contradicted previous statements. “I assure you NRC will be implemented across the country and all infiltrators identified and expelled before 2024 polls,” Shah said in December 2019. The BJP’s manifesto for the 2019 national elections had promised a nationwide NRC.

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Rule 4 of the 2003 Citizenship Rules states that if a National Population Register is created, the data collected can be used to generate a National Register of Citizens and identify “illegal immigrants.” With the census also being conducted in 2020, the NPR has little meaning except for creating the NRC. In July 2014, the Minister of State for Home Affairs Kiren Rijiju told parliament that the government will use the NPR for “verification of citizenship status.” He and others in government have since repeated this several times.

The information and broadcasting minister in December 2019 said the cabinet had decided that, “No documents or biometrics will be collected during the NPR process. Whatever people will say will be accepted.” However, the 2018-19 annual report of the Ministry of Home Affairs said the NPR already included biometric data of 334.3 million (33.43 crore) people.

In 2015, the BJP government inserted individuals’ unique Aadhaar number into the NPR database. Aadhaar, which collects personal and biometric data such as fingerprints, facial photographs, and iris scans, is a 12-digit individualized identity number that has been vulnerable to data breaches and leaks and has raised serious concerns over privacy and surveillance. A government document published by the news website Wire stated...
that 600 million Aadhaar numbers – about half the total – are already inserted within the NPR database and officials plan to collect the remainder during the NPR updating process. Apar Gupta, executive director of Internet Freedom Foundation, expressed concerns that this would increase risks of mass surveillance:

Aadhaar enables profiling where a unique identifier is used across different government databases for access to entitlements and essential services. Therefore, if it is also linked to the citizenship register, it will increase the powers of the government to enable mass surveillance in which it would have a complete 360-degree view of all Indians. The very basis of a citizenship register provides a legal identity for existence which in case of dispute, can then be also utilized to disable other supporting services provided by the government.

The government has vacillated about the NPR requirements. The 2003 Citizenship Rules provide that 12 basic pieces of information be collected. However, according to the Office of the Registrar General and Census Commissioner, the NPR requires 15 pieces of information. The 2020 instruction manual for enumerators and supervisors for the NPR update exercise reveals that it will require yet more information including where and when a person’s parents were born. It will also seek an individual’s Aadhaar number, driver’s license number, voter identity card number, passport number, and mobile phone.

44 “It [population register] would contain 12 details: name, father’s name, mother’s name, sex, date of birth, place of birth, residential address (present and permanent), marital status (if ever married, name of the spouse), visible identification mark, date of registration of citizen, serial number of registration and national identity number provided under rule 13.” Citizenship Rules, 2003, rule 3(3).
The government has since said that providing information on parents’ place and date of birth will not be mandatory.\(^{47}\)

**The Assam Experience**

In August 2019, India’s northeastern state of Assam was the first state to complete its own NRC. The project, an update to the NRC first held in the state in 1951, following repeated protests and violence by Assamese groups over irregular migration from Bangladesh, left out nearly two million people.\(^{48}\) Assam’s NRC process cost the central government 12 billion rupees (US$171 million).\(^{49}\) Most of those excluded are ethnic Bengali, many of them Muslim. Those left out of the NRC will have to prove their citizenship at Foreigners Tribunals, quasi-judicial courts in Assam adjudicating citizenship cases.\(^{50}\)

In May 2019, the Ministry of Home Affairs amended the 1964 Foreigners (Tribunal) Order to allow tribunals to be set up across the country.\(^{51}\) This, combined with the home minister’s statements that he will drive out all “illegal immigrants” before the 2024 elections, has triggered concerns that the government is gearing up for a nationwide NRC.

While the Assam NRC required every resident of the state to submit an application, nationwide citizenship verification will be based on the NPR, which will be compiled based on data collected by enumerators who visit every home.


\(^{50}\) For more on Foreigners Tribunals, see Section IV. Assam’s National Register of Citizens.

The process of updating the 1951 NRC in Assam started in 2015 and the final list was published in August 2019. The process was marred by errors and bias.\(^{52}\) It also made unreasonable demands upon millions of people in Assam, often people surviving on basic subsistence, who have no access to historical documentation to establish citizenship claims. To prove their citizenship, individuals were expected to provide documentary evidence dating back over 50 years, which was particularly difficult for the most marginalized people, particularly those who had been repeatedly internally displaced because of frequent natural disasters such as floods, as well as outbreaks of violence. A group of retired bureaucrats, diplomats, and police officials, in an open letter, have pointed to the shortcomings in Assam to warn against what could happen when the NPR and NRC are carried out in rest of the country:

The Assam NRC exercise has thrown up the dangers of such a large-scale exercise: lakhs [hundreds of thousands] of citizens have been made to spend their life’s savings running from pillar to post to establish their citizenship credentials. Worrying reports are already coming in of people in different parts of India rushing in panic to obtain the necessary birth documents. The problem is magnified in a country where the maintenance of birth records is poor, coupled with highly inefficient birth registration systems. Errors of inclusion and exclusion have been a feature of all large-scale surveys in India.\(^{53}\)

Official national data shows that the poor and marginalized will be placed at further risk by any process that demands birth and legacy-related documents to prove citizenship. According to the government’s 2015-16 National Family Health Survey (NFHS), which includes responses from half a million people, only 80 percent of children under the age of 5 had their births registered while just 62 percent had birth certificates. Only 60 percent of Muslims and Dalits, and 56 percent of Adivasis had the document.\(^{54}\)


Targeting Muslims

In Assam, ethnic Assamese had sought to deny citizenship to ethnic Bengalis, both Hindu and Muslim. The ruling BJP, however, focused primarily on Bengali Muslims, asserting without evidence that many Muslims were wrongly included in the list and viewing the large numbers of excluded Hindus as a major setback. “We can never accept this NRC where names of illegal Bangladeshi Muslims have appeared,” said BJP legislator Dilip Kumar Paul. “Our BJP’s stand is that Hindus can never be foreigners.”

The BJP has indicated that it considers the new citizenship law as the solution for Bengali-speaking Hindus left out of the NRC in Assam. It would also resolve similar challenges in a nationwide exercise. Non-Muslims who are considered doubtful citizens or illegal immigrants because of inadequate documentation will have an opportunity to get citizenship under the CAA, but Muslims with similarly inadequate documentation, will be at risk of statelessness and arbitrary detention.

As of November 2019, 988 people declared irregular immigrants in Assam were detained in makeshift detention centers. The Assam government has said it will build 10 detention centers for those declared foreigners, and is building the first one in Goalpara district that can accommodate up to 3,000 detainees. Karnataka state has also built a detention center. In January 2019, the Modi government sent a “Model Detention Manual” to all states that called for the setting up of “one detention camp in the city or district where [a] major immigration check post is located.”

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to parliament that instructions were issued to all state governments for detention centers “to restrict the movements of illegally staying foreign nationals so that they are physically available at all times for expeditious repatriation/deportation.”

Nevertheless, Prime Minister Modi denied that any detention centers for irregular immigrants were being set up.

Women Disproportionately Affected

Women in India often lack access to documentation. Many, especially from poor and marginalized communities, do not have birth certificates and have never attended school. About 27 percent of girls in India marry as children, before age 18. This means that their first official documents are often voter identification cards that carry their married names and new address, making it difficult to prove their link to their parents as required under the NRC.

Any nationwide citizenship verification process is similarly likely to hurt them. Stated a fact-finding report on Assam's NRC by Women Against Sexual Violence and State Repression, a countrywide group of women activists:

In a patriarchal society, women in general, and women from marginal and oppressed communities in particular, have historically and traditionally been excluded from entitlements to land and access to education and have almost no documentation to prove their existence as citizens.

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Jannat (name changed), 29, was born in Barpeta district and is married to an electrician in Guwahati. Her parents and all her siblings’ names are included in the NRC, but she was excluded. Her husband and son are included.\footnote{Human Rights Watch interview with Jannat (name changed) and her husband, Guwahati, September 4, 2019.} The authorities did not give any reason for Jannat’s exclusion. Nor did they ask for any additional documentation during verification. But Jannat and her husband believe it is because authorities did not accept the certificate from the gram panchayat establishing her relationship with her parental family.\footnote{Ibid.} They are worried about the additional time and resources they will have to spend in appealing to the Foreigners Tribunal. Jannat’s husband told Human Rights Watch:

We will have appeal in a tribunal in Barpeta. My son goes to school here, my business is here. Twice earlier, when we had to go, we had to hire a car.
and it cost us about 2000 rupees each ($28). We will have to run around again for foreigner tribunals. It’s a big hardship.  

Another woman, Rachana (name changed), said that while trying to prove her citizenship at the Foreigners Tribunal she provided numerous documents as legacy data, but to show a link to her parents, her primary document was a certificate from the gram panchayat. However, the tribunal said that she could not prove link to her father. Rachana says her family has already spent money beyond their means in legal and document fees and travel to courts. “We sold two cows, chicken and goats. Now we do not have anything to sell,” she said.

Global Response and International Legal Standards

The CAA drew international condemnation and prompted protests around the world. The Office of the UN High Commissioner for Human Rights called the law “fundamentally discriminatory.” In February 2020, the UN secretary-general said he was concerned over the future of religious minorities in India after the enactment of the CAA, saying “there is a risk of statelessness.”

In January 2020, the United States Congress held a hearing on global religious persecution and raised concerns over the citizenship law and citizenship verification processes. The same month, the European Parliament debated a joint motion on the law that described it as “discriminatory in nature and dangerously divisive.” The US Commission on International Religious Freedom said the US government “should consider sanctions

72 Ibid.
73 Copy of tribunal judgment on file with Human Rights Watch.
74 Human Rights Watch interview with Rachana and Ashish (names changed), Baksa district, Assam, September 5, 2019; Human Rights Watch interview with Rachana’s lawyer, Guwahati, September 6, 2019.
against the home minister and other principal leadership” and held a hearing in March during which one commissioner raised concerns that the law “in conjunction with a planned National Population Register and a potential nation-wide National Register of Citizens, or NRC, could result in the wide-scale disenfranchisement of Indian Muslims.”

International human rights law obligates governments to ensure that people belonging to minority groups, including religious minorities, may exercise their human rights without discrimination and in full equality before the law. The Universal Declaration of Human Rights provides that “[e]veryone has the right to a nationality” and that “[n]o one shall be arbitrarily deprived of his nationality.”

The CAA violates India’s international obligations to prevent deprivation of citizenship on the basis of race, color, descent, or national or ethnic origin, as found in the International Covenant on Civil and Political Rights (ICCPR) and other human rights treaties that India has ratified. The UN Human Rights Committee, the international expert body that interprets the ICCPR, noted in a general comment, that “Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant.” The Committee on the Elimination of Racial Discrimination stated in a general recommendation that governments should “[e]nsure that particular groups of non-citizens

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are not discriminated against with regard to access to citizenship or naturalization.” The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities calls on governments to protect the existence and identity of religious minorities.

Discriminatory or other provisions of the NRC that do not provide equality before the law, disenfranchising or otherwise depriving people of their rights, violates the ICCPR and other human rights treaties. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) prohibits government acts or practices, including nationality laws, that have “the effect or purpose of impairing or nullifying” women’s rights on a basis of equality with men. The Convention of the Rights of the Child provides that every child should be registered immediately after birth and shall have the right to acquire a nationality.

While international law grants a state the authority to determine the acquisition of its citizenship, this discretion may not be arbitrary. States are prohibited from acting in a discriminatory or arbitrary manner that would leave a person stateless. In making citizenship determinations, states should take into account strong personal or family ties that the individual has to the territory. The UN special rapporteur on minority issues, in his November 2018 report to the General Assembly, recommended that:

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85 ICCPR, art. 26.
86 CEDAW, art. 2.
87 UNCRC, art. 7(1). The UDHR, ICCPR, CEDAW, and UN conventions on the treatment of stateless persons prohibit rendering children stateless.
88 The Global Compact for Safe, Regular and Orderly Migration provides a range of actions that governments can take to enhance the availability and flexibility of pathways to regular migration (Objective 5) and address vulnerabilities in migration (Objective 7). Among these, governments can provide pathways to migration that uphold the right to family life and addresses the needs of migrants in situations of vulnerability. “General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants,” UN General Assembly press release, GA/12113, December 19, 2018, https://www.un.org/press/en/2018/ga12113.doc.htm (accessed March 31, 2020).
State requirements for the granting of citizenship, including in relation to any preference in terms of linguistic, religious or ethnic characteristics, must be reasonable and justified in order not to constitute a form of discrimination prohibited under international law.\textsuperscript{89}

Several UN human rights experts sent letters to the Indian government between June 2018 and May 2019 raising concerns over the discriminatory Assam nationality registration process.\textsuperscript{90} In August 2019, the Indian government replied, claiming without basis that the process was “comprehensive, fair, objective and inclusive with multiple levels of remedies available for redressal of grievances and consideration of claim of an applicant.”\textsuperscript{91}

Under the International Convention on the Elimination of All Forms of Racial Discrimination, states should take measures to combat prejudices that lead to racial discrimination and promote understanding, tolerance, and friendship among groups.\textsuperscript{92} Government should counter xenophobic behavior towards non-citizens, in particular anti-immigrant hate speech and violence, and promote a better understanding of the principle of non-discrimination in respect of the situation of non-citizens.\textsuperscript{93}

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\textsuperscript{92} CERD, art. 7.

\textsuperscript{93} CERD, General Recommendation No. 30, on discrimination against non-citizens, para. 11.
II. Abuses Against Protesters

After months of largely peaceful protests against the citizenship law across the country, violence broke out in Delhi on February 24, 2020, leaving at least 53 people dead and 200 injured, most of them Muslim. Tensions had been building for weeks with BJP leaders openly advocating violence against the protesters, portraying anyone who spoke out against the government as working against the country's interests.94

There are serious allegations that for three days the police chose not to intervene when Hindu mobs attacked Muslim communities and businesses.95 Mobile phone videos and images show policemen participating in the violence.96 The police denied the allegations.97 Responding to criticism in parliament, Home Minister Shah, in charge of the Delhi police, praised them for “effectively containing the riot within 36 hours.”98

After the protests broke out in December 2019, authorities particularly in BJP-governed states cracked down against protesters. Prior to the violence in Delhi, at least 30 people were killed in what independent civil society groups concluded were cases of police excessive use of force.99 The authorities also failed to interfere with BJP leaders who incited violence but detained activists organizing peaceful protests, accusing them of promoting violence.

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Violence in Delhi

After peaceful protesters in northeast Delhi occupied an area near a subway station, local BJP politician Kapil Mishra posted a video with an ultimatum to the police, tweeting “we won’t listen to you [police] if the roads are not vacated” of the protesters in three days. Mishra had earlier led a large demonstration in Delhi, chanting “shoot the traitors,” referring to citizenship law protesters.

Soon after he issued his demand, BJP supporters gathered in the area. There were initially clashes between Hindus and Muslims, but the situation was soon aggravated as Hindu mobs, armed with swords, sticks, metal pipes, and bottles filled with petrol, began chanting nationalist slogans. They then rampaged through several neighborhoods in northeast Delhi, killing Muslims and burning their homes, shops, mosques, and property. Some Hindus were also killed, including a policeman and a government official. Hindu mobs stopped men in the streets demanding to see their identity cards. If anyone refused, they were forced to show whether or not they were circumcised, as is common among Muslim men. Several journalists were attacked and harassed, while some were asked to confirm their religion.

Available evidence indicates that the police often did not intervene to stop the Hindu mobs and in some cases, encouraged them or took part in beating up Muslims. Witness accounts and video evidence show police complicity in the attacks. In one incident,
police officers were seen on video beating a group of five Muslim men who had been injured during a mob attack in Delhi, taunting them, and ordering them to sing the national anthem as a form of humiliation. One of these men, 23-year old Faizan, later died.\textsuperscript{107}

**Inaction Against BJP Leaders Advocating Violence**

Ahead of the Delhi legislative assembly elections on February 8, 2020, several BJP leaders made divisive, hate-filled remarks against the people protesting at Shaheen Bagh. The protest at Shaheen Bagh, an around-the-clock sit-in and peaceful protest led by Muslim women, began on December 15, 2019, inspiring similar protests across the country. Mishra called Shaheen Bagh “mini-Pakistan,” saying “Pakistani hooligans have captured the streets of Delhi.”\textsuperscript{108} Anurag Thakur, a junior minister in the national BJP government, during an election rally in the capital on January 27, led his supporters to chant the slogan “shoot the traitors.”\textsuperscript{109} BJP lawmaker from Delhi Parvesh Sahib Singh Verma warned that those protesting in Shaheen Bagh “will enter your homes, they will pick up your sisters and daughters and rape and kill them.”\textsuperscript{110} The slogan “shoot the traitors” has since been picked up in pro-BJP demonstrations.\textsuperscript{111}

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The Delhi High Court, while hearing petitions about the violence, questioned the Delhi police decision to not file cases against BJP leaders advocating violence, saying it sent the wrong message and perpetuated impunity. Presiding Judge S. Muralidhar said, “This is the anguish of a constitutional court. Why are you not showing alacrity when it comes to registration of FIR [First Information Reports] in these cases? We want peace to prevail.”

Instead of responding to court orders, the government fast-tracked orders to transfer Judge Muralidhar to another state, taking riot-related cases away from him.

Under a new judge, the court accepted the submission of the government’s attorney that the situation was not “conducive” for registering police complaints, and granted the BJP government three weeks to file a counter affidavit. When activist Harsh Mander, petitioner in the high court case against BJP leaders, filed a special leave petition in the Supreme Court against this order, the BJP government – in evident reprisal – accused him of inciting violence and being contemptuous of the Supreme Court in a previous speech. Mander said the Supreme Court had refused to hear his full speech on two separate occasions, but, instead, relied on the solicitor general’s version of it, which was edited.

The Delhi police promptly filed an affidavit in court seeking his dismissal from the case and to begin proceedings against him for contempt. The Supreme Court asked Mander to file a response by April 15. In March, a group of nearly 100 retired bureaucrats wrote an

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open letter in support of Mander, alleging that the solicitor general was misleading the Supreme Court.\textsuperscript{118}

**Abusive Police Responses to Student Protests**

Since December, the authorities have used a colonial-era law against public gatherings, shutdowns of the internet, and limits on public transportation to prevent peaceful protests against the CAA.\textsuperscript{119} They did not seek to interfere with mobs attacking anti-CAA demonstrators. Evidence from some protests, including video evidence, suggests that police used excessive force against demonstrators, including many students. On numerous occasions, the police arbitrarily arrested peaceful critics of the government and some were accused of crimes such as sedition.

In Bidar district in Karnataka state, authorities filed sedition charges against a head teacher and a parent at a private primary school for a play critical of the CAA.\textsuperscript{120} The police questioned students, most of them Muslim, between 9-12 years old for five consecutive days to get them to identify teachers or parents who may have helped to develop the play.\textsuperscript{121} Although a court later dismissed the allegations, by then the head teacher and the parent had spent two weeks in jail.\textsuperscript{122} The BJP lawmaker from the district called for the school’s status to be revoked saying, “If this school is not shut down, then there is no doubt that it will threaten the sovereignty of this country.”\textsuperscript{123}

In contrast, on January 30, 2020, police, deployed to contain the anti-CAA protests in Delhi, did not intervene when a gun-wielding government supporter first threatened

protesters, and then opened fire, injuring a student. The police also failed to act when violent government supporters attacked students on campus in Delhi, whether at the Jawaharlal Nehru University (JNU) on January 5, 2020, or on February 6, 2020 at Gargi college.

On December 15, police in Delhi used teargas to disperse protesting students at Delhi’s Jamia Millia Islamia University (“Jamia University”). The university’s vice chancellor said the police entered the campus without permission and targeted students in the university library and hostels, beating up students and some staff. A video of police beating a man as female students try to defend him also raised concerns over police abuse. The police said, “Our only interest is to push the mob [protesting students] back, so law and order can be restored in the area,” asserting they were forced to respond after students turned violent, throwing stones and damaging public vehicles. The university’s vice chancellor sought a high-level inquiry. The students dissociated themselves from the violence in a statement, saying: “We have maintained calm even when students have been lathi-charged [attacked with long batons] and women protesters have been badly beaten up.”

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Nearly 60 people, including over 50 students, six police officials and two firemen, were injured at the Jamia University protests. Hundreds gathered outside the city’s police headquarters in Delhi seeking the release of detained students and demanding action against Delhi police. Many students across India came out in support of the Jamia University protesters. In one incident, female protesters described being targeted by police violence in a sexualized manner.

Police use of force against students at Jamia University and other protesters contrasted starkly with police’s failure to intervene and protect students at JNU on January 5, 2020, when alleged supporters of the ruling BJP assaulted them. Students said they were attacked because they were opposing a fee increase announced by the government and had protested the CAA.

Dozens of masked men and several women carrying sticks, hammers, and bricks and shouting pro-government Hindu nationalist slogans went on a violent rampage inside the campus for about three hours, injuring more than 30 students and teachers. The Delhi police filed a complaint of rioting and assault against unidentified people. However, a video showed the police allowing the attackers, many still carrying iron rods and sticks,

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to leave the campus without trying to detain or question them. The police also stood by and failed to act as a mob chanting nationalist slogans gathered at the campus gates and beat journalists and a political activist. A mob also attacked an ambulance attempting to enter the campus to attend to injured students.

Several students told Human Rights Watch the attackers were members of the Akhil Bharatiya Vidyarthi Parishad (ABVP), a student group affiliated with the BJP.

A postgraduate research scholar at the university who was injured when the assailants threw stones at students, said that she recognized some attackers as ABVP members. “The police were present in the campus when the violence broke out,” she said. “We sought help from them and then we ran to flee the attackers, but the police never came to our aid.” Another graduate student who was injured said: “They threw something made of iron at us and it hit me near my eye and it kept bleeding. I recognized some of the attackers as JNU students from ABVP. Police were supporting them. The campus security

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138 @BDUTT, “Here is the mob wielding iron rods and lathis and sticks freely roaming the JNU campus. The main gate is blocked, media not being allowed inside either. This is a complete collapse. @AvindKejriwal if the police won’t step in you must,” video clip, Twitter, January 5, 2020, 10:57 a.m. ET, https://twitter.com/BDUTT/status/1214056872405110785 (accessed January 24, 2020).


guards also did nothing.” A statement by the university’s teachers’ association condemned the violence, saying it was unleashed “with the police standing by as mute spectators.”

The ABVP denied any role in the violence, saying 25 of its members were injured in the attack, and blamed the assault on student groups affiliated with leftist organizations. The BJP condemned the violence, blaming opposition political parties. However, on January 7, an office-bearer of ABVP acknowledged on national television that two of the people wielding sticks seen in videos of the JNU attack were from ABVP. “I am not disowning they are activists of ABVP...but it was all in self-defense,” she said. As of mid-March, Delhi police had failed to make a single arrest for the attack on JNU.

Students led demonstrations in several parts of the country to protest the violence against the JNU students. The Indian Medical Association also condemned the “mindless violence on doctors and nurses who rushed to treat the injured” at JNU.

Misusing Laws to Prevent Protests
Since the protests began, authorities in several states have imposed section 144 of the Criminal Procedure Code, a colonial-era law that prohibits a gathering of more than four people if there is fear of a possible violation of law and order. The law is primarily meant

143 Ibid.
146 @BJP4India, “We strongly condemn the violence on JNU campus. This is a desperate attempt by forces of anarchy, who are determined to use students as cannon fodder, create unrest to shore up their shrinking political footprint. Universities should remain places of learning and education.” Twitter, January 5, 2020, 12:05 p.m. ET, https://twitter.com/BJP4India/status/1213869234083643392 (accessed January 24, 2020).
to be applied in emergencies to maintain “public tranquility,” but authorities have used it widely and frequently to prevent protests, violating the right to peaceful assembly. The law has been frequently used in the past in an overbroad and discriminatory manner. The Supreme Court has also said that the law “cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.” In February 2020, the High Court of Karnataka held that the imposition of section 144 in Bangalore city for three days to prevent anti-CAA protests had been unconstitutional because it did not meet the parameters of “the least restrictive standard,” proportionality, and existence of an “urgent situation.”

The authorities also repeatedly shut down mobile internet services in several states as protests spread throughout the country. India has frequently used internet shutdowns in response to protests, and, as Human Rights Watch and others have documented, these shutdowns have largely been disproportionate, unnecessary, and in violation of India’s international legal obligations including the rights to freedom of expression and assembly.

The shutdowns also affect access to essential activities and services, including emergency services and health information, mobile banking and e-commerce, transportation, school classes, reporting on major crises and events, and human rights investigations. In December 2019, the Ministry of Information and Broadcasting issued advisories, warning

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television news broadcasters to “abstain from showing any content that promotes anti-national attitudes.”\textsuperscript{156}

III. Police Brutality in Uttar Pradesh

The BJP government and its supporters have targeted protesters for arbitrary arrest and violence in states governed by the BJP. At least 30 people have been killed during protests, all in three BJP-governed states: 23 in Uttar Pradesh, 5 in Assam, and 2 in Karnataka. The vast majority of those killed and injured have been Muslims. Several police officers have been injured.\(^{157}\)

Authorities in Uttar Pradesh, the state with the largest number of Muslims at nearly 40 million, has cracked down hardest on the protests. In addition to the 23 deaths, dozens were injured, and hundreds of people were arrested.\(^ {158}\)

The Uttar Pradesh chief minister, Ajay Singh Bisht, from the BJP, who prefers to use a Hindu religious title, Yogi Adityanath, vowed to “take revenge” against those protesting against the citizenship law and verification process.\(^ {159}\) Adityanath has previously been charged with inciting and leading anti-Muslim violence as the founder of a Hindu youth militia, cases from which the government withdrew after he became chief minister.\(^ {160}\) He has repeatedly made hateful, anti-Muslim remarks in public, and has endorsed extrajudicial violence by the police.\(^ {161}\) Nearly 80 people have been killed by police since he took office in March 2017.\(^ {162}\)

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\(^{157}\) Abdul Alim Jafri, “Who Were 23 People Killed in UP During Anti-CAA-NRC Protests?,” Newsclick, January 18, 2020, https://www.newsclick.in/who-were-23-people-killed-during-anti-CAA-NRC-protests (accessed January 24, 2020);


\(^{162}\) “Yogi Adityanath says criminals in Uttar Pradesh ‘will be jailed or killed in encounters,’” Firstpost, November 19, 2017, https://www.firstpost.com/india/yogi-adityanath-says-criminals-in-uttar-pradesh-will-be-jailed-or-killed-in-encounters-
To prevent protests against the CAA, the state government imposed section 144 of the Criminal Procedure Code across the state from December 2019 to February 2020, ordered internet shutdowns in various districts, and preventively detained thousands. On December 21, the Uttar Pradesh police said they had arrested over 700 people and detained more than 4,500 others, who were released after warnings. Those arrested face serious charges including attempted murder, rioting armed with a deadly weapon, unlawful assembly, assaulting public servants, damaging public property, and criminal intimidation. Activists allege that the police targeted Muslim residents in several districts, raided and looted Muslim homes, and detained and tortured Muslim men and boys in custody. In January 2020, the Allahabad High Court asked the government for a detailed report on the allegations against police abuse.

The chief minister addressed massive gatherings in support of the CAA and threatened protesters. “If anyone will raise slogans of Azadi [freedom] in the name of protest, it will amount to sedition and the government will take strict action,” Adityanath said at a pro-CAA rally in Kanpur. In February 2020, the police in Azamgarh filed a case of sedition.
against 35 people and over 100 unidentified persons for participating in protests against the CAA, and arrested 19 of them.\textsuperscript{169}

### Alleged Excessive Force by Police

Police have used excessive force including unnecessary lethal force against protesters in several districts including Aligarh, Meerut, Kanpur, Bijnor, Sambhal, and Muzaffarnagar.\textsuperscript{170} Out of the 23 people killed in the state during protests since December 2019, one was an 8-year-old boy reportedly killed in a stampede as protesters fled a police crackdown, while at least 21 others died of gunshot wounds.\textsuperscript{171}

Accounts from witnesses interviewed by Human Rights Watch, fact-finding reports by civil society activists, and news reports show similar patterns in many places where violence took place. Several deaths in Uttar Pradesh occurred on December 20, 2019, when Muslims gathered to protest after their Friday noon prayers.\textsuperscript{172} Police dispersed the gathering, beating protesters. Protesters in some cases responded with violence. Protesters alleged that the police used teargas, beat protesters with batons, and fired unnecessarily. Police said they used minimum force, while accusing protesters of pelting stones, committing arson, and using locally made firearms.

Five Muslim men were killed during protests in Meerut on December 20. All of them died from gunshot wounds.\textsuperscript{173} Three of those – Zaheer Ahmed, Mohsin, and Mohammad Asif – were killed in the Lisari Gate area. Human Rights Watch met with witnesses who said the protest at Lisari Gate was initially peaceful. But after police beat some protesters, people in the Muslim-majority neighborhood became angry and started throwing stones at police


officers. Several witnesses said that initially the police threw stones back at the protesters, then they used teargas, and eventually they opened fire with guns. Mohammad Salim, who lives in the area, said:

It was a peaceful protest. Some of the shops were closed. Around 2:30 or 3 p.m., some 20 people came running back from the mosque. They said that the police had been beating people who were holding protests after Friday prayers. Everyone became very angry. Some younger people started arguing with the four policemen who were there at the post close by. Soon the crowd grew. And more police came. The police were beating people. And people were throwing stones. It was chaotic. I can accept that some of our youth were angry and at fault. But the police should not beat people and expect everyone to keep quiet.\footnote{174 Human Rights Watch interview with Mohammad Salim, Meerut, January 12, 2020.}

According to Shahid, his brother, Zaheer Ahmed, was standing close to his house, away from the standoff with the police, when he was shot in the head. “We don’t know why the police killed him,” said Shahid. “He was not part of the protest. He was just standing there smoking.”\footnote{175 Human Rights Watch interview with Shahid, Meerut, January 12, 2020.} Other witnesses confirmed this.

Mohsin’s family members say that he too, was not participating in protests. “There had been trouble earlier during the protests and Mohsin was worried that there might be curfew restrictions. He decided to stock up on cattle fodder in advance, and was killed while he was on his way,” said his brother, Wasim.\footnote{176 Human Rights Watch interview with Wasim, Meerut, January 12, 2020.} Others said that Mohsin had joined the crowds, but only as an onlooker. His house is very close to the main protest area. One of his neighbor’s homes has bullet marks on the wall of its second floor.

Mohammad Asif, 33, was fatally shot in the back. Asif’s home is quite deep in the labyrinth of lanes in the area, and the family is not sure how he was shot. “He was an orphan, and he would not have done anything to make his children orphans,” his sister-in-law said.

\footnote{174 Human Rights Watch interview with Mohammad Salim, Meerut, January 12, 2020.} \footnote{175 Human Rights Watch interview with Shahid, Meerut, January 12, 2020.} \footnote{176 Human Rights Watch interview with Wasim, Meerut, January 12, 2020.}
“He would not have joined the protest and was likely running away from the trouble.” Human Rights Watch could not corroborate the circumstances of this death.

Police in Meerut initially denied using live ammunition against protesters, claiming that the deaths and injuries were caused by protesters who used locally made firearms. However, they said they had fired in the air to disperse protesters. A policeman who had bruises from being hit by a stone said: “It was such a large crowd. They were uncontrollable. They were throwing stones, coming at us. We could barely hold them off. So many of our people were injured.”

The police admitted to shooting and killing Mohammad Suleiman, a 20-year-old student, in self-defense during protests in Bijnor. However, the police have failed to produce the weapon Suleiman allegedly used or to file a report. On December 28, Suleiman’s family filed a complaint against six police officers for his killing.

The police also said that violence by the protesters was planned, and have released photos and videos including one from Meerut that shows men, their faces covered with scarves, brandishing guns. The police said they have arrested two men who fired weapons during the protests. One of them, according to the police, is a member of the Popular Front of India (PFI), a group that says it defends minority rights, but has been accused in some violent attacks in the past. The Uttar Pradesh police have also sought a ban on the group, accusing it of instigating violence during the anti-CAA protests.

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denied the allegations saying “the move against PFI is yet another authoritarian step by the UP police against democratic activism.”\textsuperscript{18a}

Human Rights Watch is not aware of any evidence that police conducted credible, impartial investigations into any of these allegations. In February, the National Human Rights Commission sent a notice to the Uttar Pradesh government and state police, seeking their response on allegations of police brutality against protesters.\textsuperscript{18b}

**Arbitrary Arrests and Police Raids**

Activists allege the authorities have arbitrarily arrested hundreds of peaceful demonstrators and activists across the state. While granting bail to two men accused of attempted murder and rioting, a court in Bijnor noted the police did not produce any evidence, no weapons were seized from the accused, and no police personnel had sustained any bullet injury despite their claims of being targeted by protesters.\textsuperscript{18c}

Muslim residents in Uttar Pradesh alleged there were arbitrary arrests. “The police can simply pick up anyone they want. Even right now. They could just come and take me away, say that I am a dangerous criminal,” a vegetable vendor in Meerut told Human Rights Watch.\textsuperscript{18d} They have alleged the police also used images captured from various videos and photographs to produce posters seeking arrests of protesters.

In some cases, police detained relatives to force suspects to surrender, a form of collective punishment. For instance, in Meerut, the police said they tracked down and arrested 26-year-old Anas for shooting at them during the protests. Anas’s father, Shakeel-ur-Kallam, told Human Rights Watch that the police had detained him for 22 hours until Anas


\textsuperscript{18d} Human Rights Watch interview, Meerut, January 12, 2020.
surrendered: “They kept me in the police station and showed me many photos asking me to identify my son. I said my son is innocent.”  

Activists alleged police raided homes without warrants in Muslim-majority neighborhoods in several places including Lucknow, Muzaffarnagar, Varanasi, and Bijnor. They alleged the police ransacked the homes and detained Muslim men, instilling fear among the community. Said Mohammad Arif, chairman of a Varanasi-based group Centre for Harmony and Peace, “The state’s behavior has been shameful. There have been night raids in Muslim neighborhoods in Varanasi threatening people with notices of damaging public property unless they confess to be rioters. People are very scared because of the state behavior.”

Police in Muzaffarnagar allegedly entered a madrassa, an Islamic seminary, on December 20, ransacked it, and detained its cleric and 35 students, 15 of whom were less than 18 years old. The cleric, Asad Raza, said scores of policemen came following afternoon prayers, ostensibly looking for those who had protested earlier that day, but instead went on a rampage inside the madrassa, destroying property. He said:

When I opened the main gate, the police started beating me. They broke down every door to find students. They never told us why they detained us. They just started beating us. They took our mobile phones and did not

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return them. They also took some money from the office. Nothing like this has ever happened here despite communal clashes in the past.193

A January 2020 fact-finding report by rights groups found that 41 children were detained and beaten in police custody in Uttar Pradesh.194

One of the earliest protests in Uttar Pradesh began at the Aligarh Muslim University on December 8, seeking to prevent parliament from passing the CAA. The protests continued and on December 15, there were violent clashes with police using batons, teargas, stun grenades, and shotgun pellets.195 Police officers were also injured in the clashes. Some policemen were seen vandalizing motorcycles outside the university gates at night in apparent retaliation.196

Several students of Aligarh Muslim University, whom police detained after protests, alleged that they were beaten in custody.197 Police have filed charges against 52 students including for attempted murder, rioting, injury to a public servant, and criminal intimidation.198 A fact-finding report by civil society activists concluded that the violence by police against students was “largely unprovoked” and “has left many of them with shattered bones, grave injuries, deep bruises, and severe psychological trauma.”199

193 Ibid.
198 Aligarh Muslim University Student Union “Protests Against Citizenship Amendment Act 2019 and the Unleashing the State Terror in AMU,” December 2019.
In some places, protesters alleged the violence was orchestrated by right-wing Hindutva organizations.\(^{200}\) In other places, non-uniformed men were present alongside the police at protests and at police raids in Muslim neighborhoods. Bijnor’s superintendent of police, for instance, described them as “police mitr,” or police friends, appointed to “assist” the police.\(^{201}\)

**Arrest and Mistreatment of Activists in Lucknow**

On December 19, a protest was planned in the Uttar Pradesh state capital, Lucknow. The protest started out peacefully, but later there was some violence, including arson and stone pelting.

Some well-known human rights defenders and social activists in the city, including Mohammad Shoaib, a lawyer and head of the rights group Rihai Manch; SR Darapuri, a retired police officer; and Sandeep Pandey, an award-winning social activist, were placed under house arrest before the protests. Shoaib and Darapuri were later taken into custody without a warrant.\(^{202}\) Pandey’s wife, Arundhati Dhuru, and activists Meera Sanghamitra and Madhvi Kukreja were detained for several hours when they went to the police station to inquire about Shoaib.\(^{203}\) The police took several other activists into custody after the December 19 protest and allegedly beat and abused them in custody. While granting bail to some of them, a court in Lucknow noted that the police failed to provide any evidence of

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their involvement in the violence. Police have denied all allegations of illegal arrests and beatings in police custody.

**Shoaib Mohammad, President, Rihai Manch**

Police detained Shoaib and later charged him with incitement of violence, intent to murder, and damage to public property during the December 19 protests, even though he was under house arrest at that time. During the hearing of a habeas corpus petition for Shoaib, police wrongly claimed that they arrested him on December 20. After he was released on bail on January 17, 2020, Shoaib said he had been jailed without being produced before a magistrate within 24 hours, as is required under Indian law.

Shoaib was not the only individual from the group Rihai Manch – which works to protect the rights of marginalized Muslims, Dalits, and Adivasis – to be targeted by the police. Several others were forced into hiding to avoid arrest.

**SR Darapuri, Retired Police Officer**

A former senior police officer, prominent activist SR Darapuri was also first placed under house arrest and then arrested. “If they could do this to a retired Inspector General of Police, I hate to think of what they are doing to the common man,” he said.

Darapuri said the police in the state were now openly communal: “They do not bother hiding their bias, as they know they are fully protected.” Darapuri alleged that the violence at the protests was orchestrated. He asserted, “The protestors did not create the violence, others did and their real identities should be disclosed.”

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205 Ibid.


207 Meeting of activists from Uttar Pradesh and Delhi, New Delhi, January 13, 2020.


209 Ibid.
Sadaf Jafar, Activist

Sadaf Jafar, an activist associated with the opposition Congress party, was arrested on December 19 in Lucknow, when she was filming the police on her phone after the protest. “The only information her family got of her arrest was through her live video,” said her niece Simran Verma. From the film that she managed to share before she was detained, her relatives knew she had been picked up. “No one told us for two days her whereabouts,” said Verma. “When we finally saw her, she had been beaten up.”

Jafar said she was repeatedly beaten by the police in custody and they made communal and abusive remarks. “They beat me. They mouthed the filthiest abuses that you won’t be able to print. They did not give me food and water. I was completely dehumanized,” she told the media. “I had begun to realize what it means to be a Muslim in Amit Shah’s India.”

Deepak Kabir, Theater Artist

When theater artist and cultural activist Deepak Kabir went to Hazratganj police station to inquire about Jafar on December 20, he too was arrested. Kabir alleged that he was beaten by over a dozen policemen, who took turns.

While granting him bail on January 7, 2020, a local court found that police had failed to provide evidence of his involvement in the violence during the protests and that his name was not mentioned in the police complaint filed initially but was added later.
Omar Rashid, Journalist, and Robin Verma, Activist

On December 20, journalist Omar Rashid and activist Robin Verma were picked up by police at a restaurant outside the BJP office by four policemen in plainclothes. They were first taken to Hazratganj police station and then to the Sultanganj police outpost.

Rashid said the police refused to give reasons for the detention and took away their phones to prevent them from informing anyone. Neither were named in the First Information Report filed by the police on December 19. Rashid said the police repeatedly brought up his Kashmiri Muslim identity and questioned him about other Kashmiris, alleging he was hiding them. The state’s home minister had earlier said “Stone-pelters from Kashmir were called to participate” in the anti-CAA protests in Uttar Pradesh.

Rashid was released the same day without any charges, but Verma was kept in custody until he received bail on January 14, 2020. Verma alleged that he was beaten, and the police made degrading remarks about his wife and 2-year-old daughter. “They kicked me, punched me, hit me with lathis, slapped me, beat me with a thick leather belt and also plucked out my hair,” he told the media.

Unlawful Measures to Harass and Intimidate

The Uttar Pradesh government has arbitrarily issued notices to at least 500 people for recovery of public property damaged or destroyed during the anti-CAA protests. This is in keeping with the chief minister’s statement vowing to “take revenge” on those who

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216 Copy of First Information Report on file with Human Rights Watch.
destroyed public property. Soon after the chief minister’s statement, state authorities cracked down on Muzaffarnagar district and sealed nearly 70 shops, accusing them of participating in protests and damaging public property. The shops belonged mostly to Muslims with low incomes, and the government took action without providing a legal basis or evidence of their involvement.221

If those who are served notices fail to pay the damages, authorities have said they will confiscate their property. Some activists, including Darapuri, Shoaib, and Verma, were also given notices even though they were under house arrest during the protest in Lucknow.222 The authorities have not clarified how they identified the people served with notices and how they calculated the damages. At time of writing, the courts had yet to find any of those served guilty of any wrongdoing.

The government also employed a “name and shame” campaign against protesters and peaceful activists it had served with notices for damages by plastering their photographs along with their names and addresses on billboards across the state, placing them at risk of vigilante violence.223 In March, the Allahabad High Court ordered their immediate removal, saying they were “illegal” and an “unwarranted interference in privacy.”224 The Supreme Court also held that the government’s actions did not have the “backing of law,” and did not stay the high court order, and yet referred the matter to a larger bench.225 Meanwhile, the Uttar Pradesh government passed the U.P. Recovery of Damage to Public

and Private Property Ordinance, 2020, which would empower it to recover damages during any protest or demonstration.226

IV. Assam’s National Register of Citizens

The ethnic and religious tensions between Assamese speakers, indigenous or tribal communities, and the Bengali-speaking immigrant population goes back to the 19th century when the British formally annexed the territory of Assam in 1826. \textsuperscript{227} After independence, with the partition of the subcontinent and drawing of international borders, there was an influx of refugees and immigrants from East Pakistan. \textsuperscript{228} East Pakistan later became independent Bangladesh in 1971, after a war that brought many refugees into India, including to Assam. This worsened the tensions, leading to violence and an armed insurgency. \textsuperscript{229}

Irregular migration to Assam continued even after Bangladesh became an independent nation, but there is no accurate data and the numbers of migrants often have been inflated for political purposes. \textsuperscript{230} Economist Vani Kant Barooah writes:

>[A]ll Bengali Muslims in Assam have become convenient proxies for illegal Bangladeshi immigrants; they are often collectively labelled “Muslim immigrants” even though they might have been settled in Assam for


\textsuperscript{229} In 1962, the state legislature responded to pressure from the nationalists by passing a bill that designated Assamese as the official language of the state. The resulting agitation by indigenous non-Assamese-speaking groups led to the eventual break-up of the northeast into seven states based on language and ethnicity. Human Rights Watch, \textit{No End in Sight: Human Rights Violations in Assam} (New York: Human Rights Watch, 1993), https://www.hrw.org/legacy/reports/pdfs//indonesia/indones2934.pdf, p. 2.

\textsuperscript{230} N Saikia et al., Trends in immigration from Bangladesh to Assam, 1951-2001.
generations. Consequently, what is overtly billed as an economic issue—a struggle over land and livelihood between indigenous people and people who are in the state illegally—covertly morphs into a communal issue predicated upon an economic and cultural struggle with the “other,” regardless of the legitimacy of the “other’s” presence in Assam.

Anti-Foreigner Movement

There have been a number of laws and policies adopted by the central and Assam state governments since 1947 to address irregular migration, especially from neighboring countries. In 1951, when the first population census was conducted after independence, the Ministry of Home Affairs directed a NRC to be prepared in Assam. The NRC registers were initially kept in the district administration offices, but in the early 1960s were transferred to the police to help detect and verify irregular immigrants.

Following the 1961 census report, which said that over 220,000 “infiltrants” had entered Assam from East Pakistan, in 1962 the central government adopted the Prevention of Infiltration into India of Pakistani Nationals plan. The authorities deported people to East Pakistan without due process even though India did not have a formal extradition agreement with Pakistan.


232 The Indian government enacted the Immigrants (Expulsion from Assam) Act, 1950 in March 1950 giving wide powers to deport foreign nationals entering India illegally, but the law did not apply to refugees fleeing the newly formed state of Pakistan because of “civil disturbances.” The Immigrants (Expulsion from Assam) Act, 1950, Act. No. 10 of 1950, March 1, 1950, https://indiacode.nic.in/bitstream/123456789/1674/1/A1950-10.pdf (accessed September 11, 2019). In 1950, India and Pakistan signed an agreement to protect religious minorities. This facilitated the return of many immigrants who left the country after partition, mainly due to communal violence. Agreement Between the Governments of India and Pakistan Regarding Security and Rights of Minorities (Nehru-Liaquat Agreement), New Delhi, April 8, 1950, https://mea.gov.in/Portal/LegalTreatiesDoc/PA50B1228.pdf (accessed September 11, 2019). In 1957, the existing Foreigners’ Act, 1946, was amended to define foreigner as a person who was not a citizen of India because, until then, since the law was enacted pre-partition, it was not applicable to Pakistanis.

233 The Assam NRC contained information on the number and names of every person staying in a house or holding, and with respect to each individual, the father’s or husband’s name, nationality, gender, age, and means of livelihood.


235 Ibid. Hundreds of border watch posts were constructed. A special wing of border police was established, and the Assam government started a police drive to detect “infiltrators.” By 1984, 1,873 security watch posts were sanctioned by the central government under the PIP scheme.

nearly 200,000 people, most of them Bengali Muslims, as well as threats from Pakistan to raise the issue at the United Nations, the government passed the Foreigners (Tribunal) Order in September 1964, to allow those suspected of being irregular immigrants to contest police claims in tribunals that were to be headed by someone with “judicial experience.”

However, the 1965 India-Pakistan war and the 1971 war for the liberation of East Pakistan and the creation of Bangladesh led to a change in policy. Thousands of Bengali Hindus fled to India and the central government decided not to deport people seeking refuge as a result of religious persecution.

In March 1979, in the lead-up to by-elections after the death of a member of parliament, allegations that a large number of so-called “illegal immigrants” from Bangladesh were listed as voters led to the start of “anti-foreigner” agitation. The All Assam Students' Union (AASU) launched a movement in June 1979, demanding “detection, disenfranchisement, and deportation” of foreigners. The agitation led by AASU and the All Assam Gana Sangram Parishad (AAGSP) continued to escalate, and with it so did tensions between Assamese, immigrant, and tribal communities. At the same time, militant Assamese nationalists moved from political agitation to a full-scale secessionist armed insurrection led by the United Liberation Front of Asom (ULFA).

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Tensions peaked during the elections of February 1983 when thousands of Bengali-speaking Muslims and hundreds of Assamese and tribal people were killed in communal massacres and retaliatory attacks. The most violent incident, often referred to as the “Nellie massacre,” occurred on February 18, 1983, when at least 1,800 people, mostly Bengali Muslims, were killed.

Following these massacres, the central government passed the Illegal Migrants (Determination by Tribunals) Act (IMDT) in 1983 to detect irregular immigrants who had arrived since March 1971 and expel them. Unlike the Foreigners Act, however, the IMDT law placed the burden of proof on the complainant or the police.

Critics of the law alleged the change in burden of proof contributed to an increase in irregular immigration of Bengali Muslims from Bangladesh. The law was challenged by the former head of the AASU in the Supreme Court, and was struck down in 2005 in *Sarbananda Sonowal v. Union of India*. The Supreme Court ruled that “the influx of

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242 Ratnadip Choudhary, “Nellie massacre and ‘citizenship’: When 1,800 Muslims were killed in Assam in just 6 hours,” The Print, February 18, 2019, https://theprint.in/india/governance/nellie-massacre-and-citizenship-when-1800-muslims-were-killed-just-six-hours/193694/ (accessed September 11, 2019).


244 White Paper on Foreigners’ Issue, Government of Assam, Home and Political Department, October 22, 2012. According to one official estimate, between 1985 and 2005, 112,791 cases were referred to the IMDT tribunals. It decided 24,021 cases, declaring 12,846 persons as foreigners out of which only 1,547 people were pushed back or deported.


Bangladeshi nationals who have illegally migrated into Assam pose a threat to the integrity and security of north-eastern region,” and that the law failed to protect “against external aggression and internal disturbance.”

Several constitutional experts have noted the judgment “relied upon unverified – and now disproved – data to hold that migration amounted to ‘external aggression’ upon India.” By striking down the law, the court established that the burden to prove citizenship lies upon the individual accused of being a foreigner.

Assam Accord

The 1985 Assam Accord ended the violence. The Asom Gana Parishad (AGP) party, which supported the goals of the anti-foreigner movement, won state elections. The accord, signed between the AASU, the state government of Assam, and the central government led by Prime Minister Rajiv Gandhi, called for the expulsion of all immigrants who had entered Assam illegally after March 24, 1971, and a 10-year disenfranchisement of irregular immigrants who had entered the state between 1966 and 1971. Those who came to Assam before January 1, 1966 were granted Indian citizenship.

The 1955 Citizenship Act was amended in 1985 in line with the Assam Accord.

Ibid.


Doubtful Voters
In 1997, the Election Commission of India reviewed the electoral roll in Assam and marked a “D” (Doubtful voter) against the names of those persons who could not prove their citizenship status. The “D” voters were barred from contesting elections and casting their votes. Their cases were forwarded by the electoral registration officers to the local police who then referred them to the relevant tribunals for the determination of their citizenship. A total of 231,657 “D” references were made to the authorities in 1998. The mass disenfranchisement was challenged by constitutional experts as being unconstitutional.

Updating the National Register of Citizens
In July 2009, Assam Public Works, a nongovernmental organization, filed a case in the Supreme Court claiming that 4.1 million illegal immigrants’ names had been included in Assam’s electoral rolls. Later, the AASU became an intervener in the case and Supreme Court asked the government in December 2014 to expedite updating the NRC.

In its ruling, the Supreme Court relied on a 2004 government estimate of 12 million illegal Bangladeshi immigrants in India as of December 2001, of which 5 million were in Assam. However, the court overlooked a clarification by the government that the figures were not based on any comprehensive or sample study. In reply to a Right to Information request in October 2018, the government reiterated that it was not possible to have an accurate estimate of illegal immigrants, including Bangladeshi migrants in the country.

The NRC update process began in 2015 and was monitored by the Supreme Court. The verification process collected two sets of documents from Assam residents. List A was legacy data, which included the 1951 NRC and electoral rolls up to March 24, 1971 to prove that the applicant’s ancestors lived in Assam before 1971. List B documents or linkage

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252 In Lal Babu Hussein & Others v. Electoral Registration Officer & Others, the Supreme Court held that the electoral officer asking residents to prove their identity was unconstitutional. Lal Babu Hussein & Ors v. Electoral Registration Officer & Ors., Supreme Court of India, 1995 AIR 1189, 1995 SCC (3) 100, February 1995, https://indiankanoon.org/doc/883535/ (accessed October 19, 2019).
253 Assam Public Works v. Union of India, W.P. (civil) no. 274 of 2009, Supreme Court of India.
documents – for instance birth certificates – established the relationship of the applicant to the List A documents of their parents or grandparents. The NRC then verified the documents, ostensibly creating a family tree for each applicant.

Over 33 million people submitted applications to enroll their names in the updated NRC.

On August 31, 2019, the final NRC was published and did not include the names of over 1.9 million (1,906,657) residents of Assam whose citizenship claims could not be verified. Those excluded from the list were given 120 days to file an appeal at a Foreigner Tribunal. They could appeal tribunal decisions at the Gauhati High Court, and finally at the Supreme Court.

Flawed Verification Procedure

Politicians across party lines have criticized the final NRC. The AASU said the number of those excluded should have been higher. BJP lawmakers said not enough “illegal Bangladeshis” – a euphemism for Bengali Muslims – were excluded, and that many Bengali Hindus had been left out. Ananta Kumar Malo, a lawmaker from the All India United Democratic Front, who was excluded from the NRC even as his family members were included, also gave voice to such sentiment: “Thousands of genuine Indians — especially Bengali Hindus — have been left out of it, and so many illegal foreigners have made it.”

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258 For more on the NRC process, see Section IV. Assam’s National Register of Citizens.

The process has been so fraught that a nongovernmental organization, Citizens for Justice and Peace, reported that 56 people have died in Assam since 2015 allegedly over fears related to their citizenship status. According to the group, 48 people allegedly committed suicide because of fear of being declared an irregular foreigner, or fear of detention, or because of inability to provide required documentation during the NRC process. Eight others died in detention centers due to alleged negligence of authorities. In November 2019, the government told parliament that between 2016 and October 2019, 28 detainees had died either in detention centers or hospitals where they were referred.

**Exclusion on Technical Grounds**

Lawyers and journalists have found some people were not registered because of technical reasons such as variations in spelling of names in the various documents. Sometimes, several people with the same name showed up in old records, creating confusion, said NRC officials.

Aslam (name changed) is excluded from the NRC even though his parents, most of his siblings, his wife, and his children are included. He was likely excluded, he said, because the spelling of his name on his voter identification card and PAN card (identification card to file taxes) are different. “The form for the PAN card is in English but we fill the forms for the voter identity card in Assamese. Then when they change it into English, the spelling of name often changes.”

**Systematic Discrimination**

The NRC segregated the people in Assam into “original” and “non-original” inhabitants – with Bengali and Nepali speaking minorities largely making up the non-original

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264 Human Rights Watch interview with Aslam (name changed) and his wife, Guwahati, September 4, 2019.
Different criteria were used to verify claims of “original” or “non-original” inhabitants by the NRC authorities. The Citizenship Rules and the Supreme Court did not define “original inhabitants” or a procedure to identify them. Prateek Hajela, Assam state coordinator for the NRC and the man in charge of the entire process, explained that local authorities have discretionary powers: “Clause 3(3) contemplates a less strict and vigorous process for deciding claims for inclusion in the NRC insofar as persons who are originally inhabitants of the State of Assam are concerned.”

Of the total 32.9 million applications, about 4.8 million were made using a residency certificate issued by the gram panchayat, an elected village council, as the list B (linkage) document. In March 2017, the Gauhati High Court ordered that a gram panchayat certificate has no statutory basis and cannot be used as a linking document. In December 2017, the Supreme Court modified the rule, allowing the use of the document, subject to verification of its authenticity. The NRC authorities said 1.74 million of these applications were deemed to be from “original inhabitants,” and their certificates were accepted while all others needed to go through a two-step verification process.

Arbitrary and Inconsistent

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Activists and lawyers also contend that the Assam process lacked sufficient oversight, leading to inconsistencies. The NRC allowed “D” or “doubtful” voters to apply for inclusion but did not include their names unless the Foreigners Tribunals – statutory authorities set up to detect irregular immigrants in Assam – declared them as citizens. There are still more than 120,000 people arbitrarily marked as doubtful voters.

In May 2018, the state coordinator for the NRC sent a notice to all districts saying siblings and other family members of those “declared foreigners” will also be put on hold and not included in the NRC until the tribunals decide their fate. He also sent an order to the border police authorities, requiring them to refer family members of “declared foreigners” to the tribunals. Once a person’s case was referred to a tribunal, they could no longer be included in the NRC until their citizenship was determined.

Based on the same documents, while some members of Bibek’s (name changed) family were included as citizens, others were not. Bibek, 40, a Bengali-speaking Hindu from the Dalit community who teaches Assamese in a government school in Baksa district, his family came from East Pakistan, now Bangladesh, in 1964. “My father was 16 when he came from East Pakistan. He tells us that we came here because of the atrocities on Hindus there,” he said.

Bibek’s mother is included in the NRC and his two sisters, who are married, are also included. But his father, wife, and 9-year-old son are not. Although they submitted nearly identical documents, some members of the family were told that they did not provide proper legacy data. Bibek said he is worried about biased Foreigners Tribunals: “It

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274 Sarkar said the family had provided his grandfather’s migration document from 1964 and his certificate of citizenship from 1968. They also had land deeds, school certificates of various family members, and government certification of their Dalit status to access benefits, among other documents.

275 Human Rights Watch interview with Bibek (name changed), Baksa district, Assam, September 5, 2019.

276 Ibid.
doesn’t matter what documents we have, if our language is Bengali, we are excluded. I am worried that if we do not get citizenship, I will also lose my job.”

Shalini (name changed), 35, a Bengali-speaking Hindu and her siblings were excluded from the NRC, but her children were included. Shalini, a cook in a government school in Baksa district, earns 1000 rupees (US$14) a month and is worried about the legal costs and of losing her job. “The government has brought this hardship on us,” she said. “We were born here. How are we Bangladeshis?”

One man said his 6-year-old niece had been excluded from the NRC. “My sister, her husband, her son – were included in the NRC. But her 6-year-old daughter’s name was not there. They will have to fight the case for the citizenship of a 6-year-old now,” he said.

**Foreigners Tribunals**

The Foreigners Tribunals were first set up in 1964 to allow those suspected of being irregular immigrants to contest police claims. The rules have been altered over time, but allegations persist that these tribunals, led by officials without judicial experience and operating without a set of uniform standards, have been arbitrary, discriminatory, inconsistent, and error-ridden.

Until the NRC, Foreigners Tribunals tried two kinds of cases: those referred to them by officials of the Assam Border Police Organization, who are empowered to ask any “suspected citizen” for citizenship documents, and those designated “D” or doubtful
voters by the Election Commission.\textsuperscript{282} The burden of proof in both cases is on the person whose citizenship is contested, and not the state.\textsuperscript{283}

In May 2019, the Ministry of Home Affairs expanded the 1964 Foreigners (Tribunal) Order to allow individuals who have been excluded from the NRC to approach the tribunals.\textsuperscript{284} In August 2019, there were 100 Foreigners Tribunals in Assam. According to government data, between 1985 and March 2019, the tribunals declared 117,164 people as irregular immigrants.\textsuperscript{285} The government announced an additional 221 tribunals to handle the appeals of those excluded from the NRC.\textsuperscript{286} Over 200,000 cases were already pending at the tribunals before the NRC-related cases, according to some reports.\textsuperscript{287}

Over the years, the government has relaxed the eligibility of members who preside over the Foreigners Tribunals.\textsuperscript{288} Constitutional lawyers and academics contend that tribunals do not follow standard procedural law, are not led by people with any judicial experience, and


\textsuperscript{283} An analysis by VICE News in July 2019 of 515 orders issued by four of Kamrup district’s five tribunals showed that about 82 percent of people investigated were declared foreigners. The decisions were so arbitrary, the report said, that while one tribunal declared all its cases Indian, another declared every applicant to be foreign. Rohini Mohan, “Inside India’s Sham Trials That Could Strip Millions of Citizenship,” VICE News, July 29, 2019, https://news.vice.com/en_us/article/3k33qy/worse-than-a-death-sentence-inside-indias-sham-trials-that-could-strip-millions-of-citizenship (accessed September 19, 2019).


\textsuperscript{288} Initially, in 1964, when the tribunals were first set up, they were mostly led by officials with judicial experience. Foreigners (Tribunal) Order, 1964, clause 2(2). “The tribunal shall consist of such number of persons having judicial experience as the Central government may think fit to appoint.” Then lawyers with a minimum age of 45 years and 10 years of legal practice were made eligible. On June 10, 2019, the Registrar General of Gauhati High Court issued a notification calling applications for members, further relaxing the criteria to include retired civil servants or bureaucrats. The qualification of advocates was reduced to a minimum seven years of practice and minimum age of 35 years. Advertisement, Gauhati High Court, No. HC.XXXVii-22/2019/442/R.Cell, June 10, 2019. Copy on file with Human Rights Watch. The advertisement says the initial period of appointment shall be one year, which may be extended.
are not independent. Mohsin Alam Bhat, executive director of the Centre for Public Interest Law at Jindal Global Law School, told Human Rights Watch:

Tribunal members are given a year long tenure and they are subject to further extension depending on government evaluation of their performance. This is not what a tribunal looks like. This is what a government committee looks like. This is not how any judicial institution works as an independent institution in the world. Therefore, people may raise concerns over lack of neutrality and objectivity. 289

While other judicial courts are regulated either by the Civil Procedure Code or the Code of Criminal Procedure, the Foreigners Tribunals have unchecked power to regulate their own procedure, leaving them without effective oversight. 290 Lawyers allege tribunals often abuse this power. “Very often, they don’t issue summons to witnesses, stating that the burden of proof is on the accused. After declaring a person a foreigner, many tribunals don’t provide certified copies of relevant documents required to challenge the order,” said Aman Wadud, a lawyer. 291

Foreigners Tribunals lack transparency and fail to follow uniform procedure. Members lack independence and are vulnerable to pressure from the authorities to declare more people, mostly Bengali and Muslim, as foreigners. 292 A former member of Foreigners Tribunals told Human Rights Watch:

290 Foreigners (Tribunal) Order, 1964, clause 3A (17).
292 The news agency Reuters reviewed copies of performance appraisal of 79 tribunal members over two years until April 30, 2017. It found that a majority of members who declared less than 10 percent of people they examined as irregular foreigners got a rating of “may be terminated.” Zeba Siddiqui, “Wrongful detentions, judges’ quotas in the search for illegals in India’s Assam,” Reuters, July 26, 2019, https://www.reuters.com/article/us-india-politics-citizenship-insight/wrongful-detentions-judges-quotas-in-the-search-for-illegals-in-indias-assam-idUSKCN1ULUL (accessed October 9, 2019). In 2017, 19 members of tribunals were terminated for “poor performance.” Some of them challenged the termination before the Gauhati High Court, saying that the government, in its appraisal, had punished those that had taken a lenient view in assessing citizenship claims. Mamoni Rajkumari v. State of Assam, Gauhati High Court, December 22, 2017, https://www.caseym.com/judgement/in/5ac5e4a14a93261a1a7942989 (accessed October 7, 2019). The petitioners also argued that their termination violated the 2014 Supreme Court order which directed the Gauhati High Court to constitute a bench to monitor the functioning of Foreigners Tribunals. Assam Sammilita Sangha v. Union of India, 3 SCC 1, Supreme Court of India, December 17, 2014, https://www.caseym.com/judgement/in/5609af494b01497114160d8 (accessed October 7, 2019). The government denied that the performance appraisal took the number of people declared foreigners by the tribunal members into account, and argued that the members were not judicial officers and therefore arguments on independence of
I admit that there might be arbitrary actions by Foreigners Tribunals because there is an internal government policy that more and more people should be deemed foreigners. We are hired on the basis of contracts – those with records of declaring more and more people as foreigners are preferred.\textsuperscript{293}

Human Rights Watch found that once a person is cleared by one tribunal, they can still be brought again before the same or different tribunals. People can be denied citizenship claims if there is a mismatch in the spelling of their names on different documents, for not mentioning certain facts in the written statements, or minor contradictions in deposition testimony from witnesses. Lack of competent legal representation can often deprive them their citizenship.

The case of Ashish (name changed), 58, a Bengali Hindu daily wage worker in Baksa district, and his family exemplifies how the tribunals can be arbitrary and error-ridden. Ashish, his father, and his brother were referred by the border police as suspected irregular immigrants. His brother and father were declared Indian citizens by a tribunal in October 2014. Ashish was also declared a citizen by a Foreigners Tribunal in February 2018.\textsuperscript{294} However, Ashish’s name was not included in the NRC and therefore he has to go through the process of proving his citizenship again.\textsuperscript{295} Meanwhile, his brother was once again deemed suspect by the border police and this time was declared an irregular foreigner by a tribunal. His appeal is pending in Gauhati High Court, even as he was verified in the NRC.

Salima (name changed), 45, a Bengali Muslim in Barpeta district, was marked as a doubtful voter in 1997, and was declared an irregular foreigner in February 2019. Even though her relatives were all confirmed citizens and she had the same documentation they

\textsuperscript{293} Human Rights Watch interview with a former member of the Foreigners Tribunals, Assam, September 5, 2019.  
\textsuperscript{294} Copy of judgment on file with Human Rights Watch.  
\textsuperscript{295} Human Rights Watch interview with Ashish and his wife Rachana, Baksa district, Assam, September 5, 2019.
had, the Foreigners Tribunal rejected Salima’s claim.\textsuperscript{296} Her lawyer believes this is because when Salima was giving oral evidence at the tribunal she was not able to properly explain her case, as often occurs in rural communities where people can be uncertain about ages and other details. “Litigants are poor, they do not understand the consequences,” he said. “She was not able to tell the court that she had a stepmother, and also how many brothers and sisters she had and their exact ages.”\textsuperscript{297} 

Rashid (name changed), 39, a Bengali Muslim mechanic in Barpeta district, was marked as a doubtful voter in 1997, and received a notice from a Foreigners Tribunal in 2017. He was declared an irregular foreigner in 2018. However, the same tribunal found his mother and sister – both marked as doubtful voters – to be Indian citizens.\textsuperscript{298} Rashid told Human Rights Watch: “Even though my mother testified before the tribunal in my case, the member said that he had doubts that she was my mother. So, I told the court to take my DNA test but they refused, asking me to appeal to the high court instead.”\textsuperscript{299}

Junaid (name changed) was declared an irregular foreigner in 2018 by a tribunal in Kamrup district. However, the same tribunal had approved his brother Karim (name changed) the year before. Both men had submitted the same legacy documents to show that their family had been living in Assam since 1947. The cases were presided over by the same member at the tribunal.\textsuperscript{300}

In March 2019, a tribunal in Barpeta declared Arshad (name changed), 50, a Bengali Muslim, an irregular foreigner. The tribunal refused to admit electoral rolls as evidence to show the link between Arshad and his father because Arshad’s name was spelled incorrectly.\textsuperscript{301} Arshad told Human Rights Watch that he was terrified and was unable to give oral evidence to the satisfaction of the presiding officer at the tribunal. “I didn’t understand anything going on in court. I didn’t even know what it means to be declared a foreigner until the people who are helping us to apply for bail told me,” Arshad said.\textsuperscript{302}

\textsuperscript{296} Copy of judgment on file with Human Rights Watch.
\textsuperscript{297} Human Rights Watch interview with Salima’s lawyer, Barpeta, September 7, 2019.
\textsuperscript{298} Copy of judgment on file with Human Rights Watch.
\textsuperscript{299} Human Rights Watch interview with Rashid (name changed), Barpeta district, September 7, 2019.
\textsuperscript{300} Copies of judgments in both cases on file with Human Rights Watch.
\textsuperscript{301} Copy of judgment on file with Human Rights Watch.
\textsuperscript{302} Human Rights Watch interview with Arshad and Balkees (names changed), Barpeta district, September 7, 2019.
In many cases, people do not even get a chance to present their claims. Their cases are decided ex-parte, that is, in their absence. Lawyers in Assam said this is largely because the border police fail to carry out proper investigations and serve timely notices to the people. Between 1985 and February 2019, 63,959 people were declared foreigners through ex-parte proceedings.303

Although the Foreigners (Tribunal) Order says the tribunals should communicate the main grounds on which a person is deemed foreign and give them a reasonable opportunity to produce evidence in support of their case, this is often ignored.304 Lawyers and civil society activists say police failure to deliver the notices is one of the main reasons that in over half of the cases where people were declared irregular foreigners – it was through ex-parte orders.305 Said Guwahati-based lawyer Zakir Hussain, who has been representing people in these tribunals:

It is routine for Foreigners Tribunals not to offer police reports. I think this is unfair because people should be given a copy to give them an adequate opportunity to put up a proper defense. They should know what the allegations against them are, who the witnesses are, and what they have said against them.306

The Assam government has said the ex-parte orders are necessary because people move out when they come to know of an investigation against them. In some cases, the government said, people have appeared before the tribunals on receipt of the notice but then drop off. Lawyers and activists contend it is because many are laborers who often migrate in search of work. In other cases, when people do receive a notice, they do not


304 Foreigners (Tribunal) Order, 1964, clause 3(1). A three-judge bench of Gauhati High Court in State of Assam v. Moslem Mondal & Ors. in 2013 also reiterated that individuals “shall be served with the notice, together with the main grounds on which he is suspected to be a foreigner,” noting this was needed so “the person against whom such notice is issued is treated fairly and he has been given a fair trial.” The judgment also noted the lack of training to presiding officers of the tribunals and the police who serve notice. State of Assam v. Moslem Mondal & Ors., Gauhati High Court, January 3, 2013, https://www.casemine.com/judgement/in/56eac3cb607db43c8e40ef (accessed September 9, 2019).


306 Human Rights Watch interview with Zakir Hussain, Guwahati, September 6, 2019.
have the money to hire a lawyer. And people who are illiterate or uninformed may not understand the consequences of what the notice means.\footnote{307}{Human Rights Watch interviews with lawyers and civil society activists in Assam, September 2019.}

Muzibur Rahman, an assistant sub-inspector in the Indian Border Security Force, and his wife were declared irregular foreigners in December 2018 by a tribunal. Rahman, a Bengali Muslim, was posted in Punjab and had not received the notice. He was unaware of the tribunal’s decision until his father was informed by the NRC authorities in August 2019 that the couple was not eligible for inclusion.\footnote{308}{Ratnadip Choudhury, “BSF Officer And Wife Declared Foreigners In Assam, Tribunal Orders Arrest,” NDTV, August 24, 2019, https://www.ndtv.com/india-news/bsf-officer-and-wife-declared-foreigners-in-assam-tribunal-orders-arrest-2089593 (accessed September 28, 2019).}


Police Failure to Conduct Proper Investigations

In \textit{State of Assam v. Moslem Mondal} in 2013, the Gauhati High Court, responding to petitioners who alleged that the police often failed to conduct a fair investigation and referred people to tribunals for doubtful citizenship without even visiting them or giving them an opportunity to prove their citizenship said, “There has to be a fair and proper investigation by the investigating agency before making a reference to the tribunal.” Noting a lack of uniform procedure by tribunals for serving notices to people suspected of being irregular immigrants, the court laid down certain guidelines to ensure everyone receives fair proceedings.\footnote{310}{State of Assam v. Moslem Mondal & Ors., Gauhati High Court, January 3, 2013, https://www.casemine.com/judgement/in/56eaac7b607da3c8ce40ebf (accessed September 9, 2019).}

However, lawyers practicing in the state assert that Assam border police often do not conduct proper investigations before referring cases to the tribunals. “A large number of verification reports of the inquiry officer are almost blank which only proves that there is
no proper investigation,” said lawyer Aman Wadud. There are also allegations that police make false statements in the inquiry, including claims that they have delivered notices, which can lead to an unfair ex-parte ruling. “In some cases, we have unfortunately seen that police file false reports,” lawyer Zakir Hussain told Human Rights Watch. “In most of these cases, weak and poor persons are targeted.”

For instance, a retired officer of the Indian army, Mohammed Sanaullah, 52, a Bengali Muslim, was detained for 10 days after he was declared an irregular foreigner by a tribunal in May 2019. When he was arrested, he was serving as an assistant sub-inspector in the border police. He was discharged from his duties the day after the tribunal order. The police inquiry report says the officer visited Sanaullah at his village home in Kalahikash in Kamrup district on May 23, 2008, and that he was unable to produce proper documents. The report claims to have taken Sanaullah’s statement and thumb impression as proof. The report added that the officer met Sanaullah again on July 27, 2009 at the village home and took his signature on the report.

Sanaullah told the tribunal that the police report was “completely false and fabricated” because on the dates mentioned, he was posted in Manipur and could not have met the inquiry officer. The police report also listed Sanaullah’s profession as laborer, further evidence that the officer never met him. Although Sanaullah submitted numerous documents to prove his citizenship, the tribunal declared him a foreigner on May 23, 2019, citing witness statements as well as several discrepancies in ages and the spelling of the names of various family members. Sanaullah, who was released on bail in June 2019, said, “This is the reward I got after serving for 30 years in the Indian army. I am an Indian, very much an Indian and will forever remain an Indian.”

312 Human Rights Watch interview with Zakir Hussain, Guwahati, September 6, 2019.
313 Copy of police report on file with Human Rights Watch.
314 Ibid.
Detention Centers in Violation of International Standards

Once a tribunal declares a person a foreigner, they can be detained under section 4 of the Foreigners Act. Currently, there are six makeshift foreigner detention centers in prisons across Assam. The central government told the parliament that 988 people were detained in these centers as of November 2019. The government has said it will build 10 detention centers in the state for those who are declared foreigners, and is building the first one in Goalpara district that reportedly can accommodate up to 3,000 detainees.

A fact-finding report released in June 2018 by the National Human Rights Commission found that people are detained in these centers with no prospect of release and without adequate legal representation. The centers are administered like prisons, the detainees treated as convicted prisoners. The report found that the detention centers also separated children from their parents.

According to the state government, 25 people have died in foreigner detention centers over the past 34 years, including 7 who died in 2019. However, the central government told parliament in November 2019 that between 2016 and October 2019, 28 detainees had died either in detention centers or hospitals where they were referred. While the authorities say the deaths were largely due to illness, family members blame them on poor facilities.

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320 Ibid. The United Nations Working Group on Arbitrary Detention has stated that asylum seekers or immigrants should be placed in custody specifically intended for this purpose or, when for practical reasons, this is not the case, they must be placed in premises separate from those for persons imprisoned under criminal law. Report of the UN Working Group on Arbitrary Detention, A/HRC/7/4, January 10, 2008, https://undocs.org/A/HRC/7/4 (accessed October 6, 2019).
and negligence by the authorities. In October 2019, the state government formed a special review committee to assess the conditions in detention centers.

In May 2019, the Supreme Court directed the state government to conditionally release detainees who had completed over three years in detention. In a reply to a question in parliament, the central government said 335 detainees had been detained for over three years as of June 2019. In September 2019, a civil society panel that included retired judges said the courts had failed to ease the hardships faced by the people. “Judicial orders have set difficult conditions for release from detention camps – conditions that cannot be met by marginalized and vulnerable people,” the report said.

Meesha (name changed), a Bengali Muslim, from Bongaigaon district, was declared an irregular foreigner in February 2016 and detained immediately. As of September 2019, she was still detained. Her husband filed a review of her case in the same tribunal three days later, but it was dismissed. In July 2017, the Gauhati High Court upheld the tribunal order. Her family filed a review of that order but in November 2017, that too, was dismissed. Her husband told Human Rights Watch that the legal costs had reduced him to penury – he has sold his business, his cattle, and is in debt. “I feel like I have gone mad,” he said.

As of September 2019, Jamaal (name changed), 49, a Bengali Muslim vegetable seller from Bongaigaon district, has been detained in Goalpara prison since July 2016, after he was declared an irregular foreigner. The tribunal order said Jamaal had failed to establish a link with his father since his father’s name was spelled differently in different documents. Jamaal’s detention and the money spent on fighting his case has taken a toll on the family. His wife said, “I have spent about 150,000 rupees (US$2100) on the case

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324 Supreme Court Legal Services Committee v. Union of India, W.P. (Civil) No. 1045/2018, Supreme Court of India, May 10, 2019.


327 Human Rights Watch interview with husband of Meesha (name changed), Bongaigaon district, September 8, 2019.

328 Human Rights Watch interview with wife of Jamaal (name changed), Bongaigaon district, September 8, 2019.

329 Copy of judgment on file with Human Rights Watch.
so far. My husband also has to buy food in the detention center because they barely give him any. My husband has health problems. So, we buy the medicines for him, but we have to give the police extra money to be able to get the medicine to him.”

Farhana (name changed), 49, a Bengali Muslim from Bongaigaon district, was in detention as of September 2019 in Kokrajhar district since July 2016. The tribunal declared her an irregular foreigner in an ex-parte order in March 2016 because she had failed to appear despite notices being served to her three times since March 2014. Farhana filed a petition in the high court saying she did not receive the notices, but the court did not accept her statement and upheld the tribunal’s judgment in June 2016. Her son said he was so desperate to get her released that he even fell prey to fraud. He said:

A man came and told us that he worked for the police and offered to get her released and took 50,000 rupees ($700) from us. He said, “Your mother is sick so we can get her released through a sick certificate,” and that he needed the money for the certificate. But he never showed up again.

330 Human Rights Watch interview with Jamaal’s wife, Bongaigaon district, September 8, 2019.

331 Copy of judgment on file with Human Rights Watch.

332 Human Rights Watch interview with Farhana’s (name changed) son, Bongaigaon district, September 8, 2019.
V. Recommendations

To the Indian Parliament

• Repeal the Citizenship Amendment Act, 2019, and ensure that any future national asylum and refugee policy does not discriminate on any grounds, including religion, and is compliant with international legal standards.
• Repeal Sections 14A and 18(2)(ia) of the Citizenship Act, 1955, on the issue of national identity cards and its procedures.
• Amend citizenship laws to grant nationality to all children born on Indian territory if the child would otherwise be stateless, regardless of the immigration status of the parents.
• Amend citizenship laws to reduce statelessness by granting citizenship to habitual residents of India who have always been stateless and who have genuine and effective links to India.

To the Government of India

• Discard any plan for a nationwide citizenship verification project until there are public consultations to establish standardized procedures and due process protections ensuring the process is not discriminatory and does not impose undue hardship on the poor, minority communities, and women.
• Protect the rights to freedom of expression and assembly of those protesting against the government's citizenship law and policies.
• Ensure prompt, credible, and impartial investigations into the killings of protesters, allegations of use of excessive force by police, arbitrary detention, torture in custody, and raids on Muslims homes and property.
• Release all those arbitrarily detained for protesting against the citizenship law and dismiss politically motivated charges against protesters and civil society activists.
• Investigate hate speech by government officials and appropriately prosecute incitement to violence.
• Order Uttar Pradesh authorities to withdraw all notices to residents for damages in relation to protests against the citizenship law, return any money collected through
the notices so far, and do not attempt to collect any losses without a credible, transparent investigation and judicial oversight.

On Internet Shutdowns

- Immediately restore the internet in all states where it was shut down to prevent protests against the citizenship law.
- Amend the Telecom Suspension Rules to require issuing authorities to exhaust all available alternatives before issuing an internet shutdown order. The rules should make it necessary to provide adequate notice to the general public before shutdowns are imposed, clearly specifying the duration for which each shutdown is expected to remain in place. Any extensions of existing shutdowns should be notified.
- Revise the Telecom Suspension Rules to require government agencies to make internet shutdown orders publicly accessible. The rules should also make it necessary to make public the frequency of Review Committee meetings to review the shutdown orders and the decisions taken at these meetings.

To the Union Home Ministry, Union Territory Police, State Home Ministries, and State Police

- Ensure that state security forces comply with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In particular, require that police apply, as far as possible, nonviolent means before resorting to the use of force, use force only in proportion to the seriousness of the offense, and use lethal force only when strictly unavoidable to protect life.
- Strictly enforce laws and guidelines on arrest and detention, as set forth in the Code of Criminal Procedure and the Supreme Court’s \textit{D.K. Basu} decision.\footnote{D.K. Basu \textit{v. State of West Bengal}, 1 SCC 416, 1997.} In training and practice, emphasize the requirement that police record all arrests and

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\footnote{D.K. Basu \textit{v. State of West Bengal}, 1 SCC 416, 1997.}
detentions, promptly inform a relative of arrested persons, produce suspects before a magistrate within 24 hours, and provide required medical examinations of suspects in custody.

- Ensure that police officers implicated in torture and other ill-treatment, regardless of rank, are disciplined or prosecuted as appropriate.
- Clearly and unequivocally signal, through statements and measures by state officials and high-ranking police officials, that the use of torture or other ill-treatment in police custody is unacceptable, unlawful, and will not be tolerated. Explicitly define acceptable interrogation techniques consistent with international standards in police rules and manuals.
- Require police, upon the arrest or any informal detention of a suspect, to recite the suspect's basic rights under the D.K. Basu decision and the Code of Criminal Procedure. The Basu recitation should include a clear statement of the charge and the suspect's rights to consult with an attorney, inform others of detention, and receive a medical examination.

To the State Government of Assam

- Ensure people who have been excluded from the National Register of Citizens or those with pending cases in Foreigners Tribunals are not deprived of any social welfare benefits guaranteed to citizens of the country.
- Reform Foreigners Tribunals to ensure their compliance with international standards, including provision of fair procedures and proper oversight.
- Ensure that the Foreigners Tribunals provide ample opportunity and fair chance to those excluded from the National Register of Citizens to appeal.
- Establish open and transparent procedures for hearing petitions for citizenship, subject to judicial review.
- Significantly reduce the use of detention for irregular foreigners, and ensure that migration detention is lawful, necessary, proportionate, and used only as a last resort.
- Introduce a statutory time limit for detaining irregular foreigners.
To Concerned Governments and Inter-Governmental Organizations

- Urge the Indian government to discard plans for a nationwide National Register of Citizens.
- Call on the Indian government to protect rights to freedom of speech and assembly, and release all those arbitrarily detained for protesting against the citizenship law.
- Urge the Indian government to ensure that the citizenship verification process in Assam is transparent and non-discriminatory and does not target minorities, disproportionately harm women, or result in arbitrary loss of citizenship rights.
- Urge the Indian government to ensure that amendment to citizenship laws does not discriminate on grounds prohibited under international law.
- Communicate to the government of India that any actions resulting in large-scale losses of citizenship rights would seriously impact their international and bilateral relations with India and would require the attention of international and UN mechanisms, including the UN Human Rights Council, special rapporteurs, and other entities.
- Encourage the UN Secretary General and UN High Commissioner for Human Rights to use their good offices to offer recommendations and advice to the government of India on the citizenship issues impacted by the government’s past and proposed actions.
- Encourage India to invite the UN Special Rapporteurs on minority issues, on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and on freedom of religion or belief on fact-finding visits.
- Provide support for Indian civil society groups and lawyers who are assisting applicants in the legal process to prove their citizenship.
- Speak out publicly and privately about any concerns with government harassment or prosecution of persons working on citizenship issues or criticizing the government for their actions related to citizenship issues.
- Take any appropriate action at the local level, through embassies and representations, to react to any instance of institutional harassment, arbitrary arrests, and prosecution of peaceful activists, journalists, and lawyers, including by voicing concerns with authorities, attending trials, issuing statements and demarches, and visiting unjustly jailed detainees.
- Make public statements, including at the UN Human Rights Council, raising the concerns outlined above and initiate more formal Council action if required.
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Hundreds of thousands of Indians protested after the Indian government adopted a discriminatory citizenship law in December 2019. The Citizenship Amendment Act makes religion, for the first time in India, a basis for granting nationality. The law applies to non-Muslim irregular immigrants from neighboring Muslim-majority Pakistan, Afghanistan and Bangladesh. When coupled with the government’s push for a nationwide citizenship verification process aimed at identifying “illegal migrants,” it has raised fears that millions of Indian Muslims could be stripped of their citizenship rights.

The United Nations and a number of governments publicly criticized the policy as discriminating on the basis of religion. Leaders and supporters of the ruling Hindu nationalist Bharatiya Janata Party (BJP) targeted protesters and other outspoken critics, in some cases, with violence. Some BJP leaders called for the protesters, who they described as “traitors” to be shot, a call echoed by their followers. In Delhi, communal clashes broke out, followed by Hindu mob attacks on Muslims, in which over 50 people were killed. At least 30 people, mostly Muslims, were killed during protests in BJP-governed states. Police and other authorities responded with bias, failing to intervene when government supporters engaged in attacks but quick to arrest critics and disperse their peaceful demonstrations, including by using excessive force.

“Shoot the Traitors” examines the discriminatory nature of the citizenship verification process and documents allegations of police abuses against protesters. It also details abuses in the process of updating the National Register of Citizens in Assam, the only state to have completed it, heightening concerns about any planned nationwide process.

Human Rights Watch calls upon the Indian government to repeal the law and discard any plan for a nationwide citizenship verification project until it can ensure the process is not discriminatory and does not impose undue hardship on the poor, minority communities, and women.