

Citizen–State Relations and State Impunity in a Pandemic: The Case of Changing Citizenship Laws in India

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Abstract

Who constitutes the ‘demos’ in a democracy? That is, who makes the decisions and whom do those decisions affect? Answers to these questions point the way toward understanding which interests are represented in the polity. In the last three years, the definition of citizenship in India has changed dramatically, and these changes are making citizenship in India both restrictive and religion-centric. With the enactment of the Citizenship Amendment Act (CAA) and the introduction of the National Register of Citizens (NRC) in Assam, religion became a formal determinant of citizenship. This article discusses the implications of CAA and the proposal for implementing NRC nationally, including how these legal changes may in the view of many observers deprive many people of their citizenship status and rights. It thus seeks to explain how revisions to citizenship laws change citizen–state relations in India. The article also explores how the context of the pandemic has prevented civil society from engaging with the State, while the State continues to reduce citizenship to merely a legal status rather than an active assertion of rights and participation in the life of the state. In light of these developments, whether India’s growing majoritarianism can be opposed, and its constitutional values preserved, remains to be seen.

Introduction

In India, the recent legal changes in citizenship – particularly the Citizenship Amendment Act (CAA) and the National Register of Citizens (NRC) in the State of Assam – have significantly altered the idea of membership in the nation-state. The CAA changes the constitutional framework of citizenship, and the NRC distinguishes all legal citizens from ‘illegal migrants’, whose status since the implementation of the CAA has been tied directly

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to their Muslim faith. Within this new legal framework, exclusion based on religion is redefining the contours of citizenship in India, which affects how representative politics, democratic participation, and rights are practised in a liberal and democratic political structure.

The new laws spurred controversy and debate on citizenship and led to widespread civil-society protests across the nation beginning in December 2019. However, the Covid-19 lockdowns in March 2020 was part of changing the trajectory of civil society resistance and the on-ground movement fizzled away. In February 2020, violence between protesters and counter-protesters in the national capital spilled into broader communal riots in which more than 50 people died. The State used the backdrop of the pandemic to target and suppress civil society resistance to the new laws on citizenship. The pandemic also affected police investigations into the violence, and those accused had even less access to judicial redress than usual, since the pandemic affected court functioning and hearings. This led to further weakening of the social movement against citizenship laws, and the persistence of the pandemic continues to make it difficult for civil society to resist the new laws enacted by the State.

The pandemic has impaired the citizen's ability to constructively engage with the State and participate in the life of the State by forming 'a general will', that is, a common ground where the imposition of homogeneity in terms of religion, race or culture could be denounced. Citizenship as a concept and citizen-state relations are being reinvented. The State is using surveillance instruments to suppress dissent while citizenship is being reduced to a legal status, thereby redefining identity and belonging to the Indian nation-state. In this context, this article seeks to explain how the changes in citizenship laws are altering citizen-state relations and how the context of the pandemic has prevented civil society from asserting itself. The pandemic and the State's instruments of control appear to change how citizens engage with *the life of the State*, thus preventing citizens from articulating their rights and liberties in a more interventionist way. Moreover, this article highlights the importance of 'becoming a citizen' rather than being a passive subject of government laws. This article also examines how the civil society protests against the new citizenship laws were interrupted and affected by the pandemic and, more importantly, teases out the implications of changing citizenship dynamics on the future of citizen-state relations in India.

The next section describes the citizenship laws and their historical trajectory in India and the north-eastern State of Assam, where the NRC was first implemented before the nationwide CAA law was enacted. The subsequent section outlines the political rationale behind these laws, arguing that legislative changes in the citizenship laws are located with the framework of ‘forclusion’ or fear of the outsider as the pretext to redefine citizenship and citizen–state relations. The following section discusses the republican conception of citizenship, where civic virtue and participation in the life of the State assumes a critical role. The section further argues that the rationale for changes in the citizenship laws is in tension with foundational conceptions of citizenship as embedded in India’s constitutional framework. The penultimate section elaborates on the role of civil society in protesting against the CAA and the NRC, and the critical role of participation and protest in the assertion of rights in a democracy. The section also examines the impact of the pandemic on civil society and freedom of expression, and how the pandemic justified limits on democratic participation and reduced ‘the people’ to laws that do not represent their interests. The last section summarises the key aspects of the article and concludes. The section also examines how rights and civic virtue could be redeemed in a democracy in the context of current laws on citizenship that render people ‘stateless’ – without any rights, nation-state or political community that acknowledges their existence.

The Legislative Changes in the Framework of Citizenship: The NRC and the CAA

The National Register of Citizens (NRC) is an official record of legal Indian citizens. It includes demographic information on all those individuals who qualify as Indian citizens according to the Citizenship Act of 1955 and subsequent amendments in 1986, 1992, 2003, 2005, and 2015 (Government of India, 1955; see also Deka 2019). These documents outline the criteria that have been used to determine citizenship – citizens are defined as those who reside or were born in India:

- a) on or after 26 January 1950, but before 1 July 1987;
- b) on or after 1 July 1987, but before the commencement of Citizenship Act 2003 and either of whose parents was a citizen of India at the time of birth; or

- c) on or after the commencement of the Citizenship Act 2003, where, at the time of the applicant's birth, at least one parent was a citizen of India and the other was not an illegal migrant.

During the founding moment of modern India, the most important event was the Partition-induced forced migration of millions of people across newly created borders, a process that continued in subsequent decades. Migrants from East Pakistan generally found a warm welcome in West Bengal, due in part to a shared Bengali identity. This was less true in Assam, where ethnic Assamese people comprised a bare majority of the multi-ethnic state and the migrants, mainly Bengali Muslims, had crossed the porous border in uncomfortably large numbers both before and long after partition. The first of many government responses took the form of the Immigrants (Expulsion from Assam) Act in 1950 (Dutta 2019). The National Register of Citizens was first prepared during the 1951 census, but the NRC has only been maintained for the State of Assam. In Assam – a state with a long history of both illegal migration from Bangladesh and violence that pitted ethnoreligious groups against one another – the NRC was compiled as a state-specific exercise with the argument that it would provide a database that would enable the detection (and subsequent expulsion) of 'illegal immigrants' and thus preserve Assam's ethnic uniqueness. In the aftermath of the India–Pakistan war and the creation of Bangladesh in 1971, the issue of illegal migration assumed centre stage in Assam politics. The Assam Accord of 1985 prescribed a 'cut-off' date of 1 January 1966 for regularising citizens, using the electoral roll from the 1967 elections to regularise voters. Under the Assam Accord, migrants who arrived between 1966 and the beginning of the Bangladesh Liberation War (24 March 1971) had to register themselves as foreigners under the Registration of Foreigners Act 1939 and were allowed to avail of voting rights 10 years after they registered (Government of India, 1985).

The issue of illegal immigration has remained a prominent political issue in Assam and the Accord was one of the milestones in Assam politics and the State's struggle to preserve its cultural identity. Though immigration in Assam led to substantive debates on migration and citizenship, the question of religion was initially not prominent. Assam as a state has been fundamentally against any immigration as, regardless of religious affiliation, all migrants are non-Assamese and thus are perceived to threaten the standing of the native Assamese population. In this sense, politics in Assam differ from the rest of India. In 2013, Assam Public Works (a nongovernmental organisation), Assam Sanmilita Mahasangha and others filed a petition before the Supreme Court of India demanding the deletion of names

of illegal migrants from voter lists in Assam. The Supreme Court ordered an update of the NRC in Assam in 2014 according to the Citizenship Act of 1955 and Citizenship Rules of 2003. The process of creating a register started in 2015 and the final list, released on 31 August 2019, classified 1.9 million individuals from the State as ‘illegal migrants’ or ‘failing to be a part of the NRC database on citizenship’. The list includes both Muslims and Hindus. The Assam government alleged that the list was replete with wrongful exclusions and inclusions, rejected the NRC in its current form, and demanded more funds to complete the NRC process. It sought the re-verification of 30 per cent of included names, mostly of people who live in areas bordering Bangladesh (Scroll 2021).

The experience of Assam provided a cue to political parties, particularly the *Bhartiya Janata Party* (BJP) that any attempt to conduct a nationwide NRC would lead to polarisation – something that may have electoral benefits. In a country like India, however, administrative failures and lack of documentation could lead to several inefficiencies and the misidentification of ‘illegal immigrants’, which could trouble ‘the majority’ as well. Therefore, before proposing a nationwide NRC, the BJP-led government passed the *Citizenship Amendment Act* on 12 December 2019, which enabled Hindus, Buddhists, Jains, Sikhs, Parsis and Christians – that is, everyone except Muslims – who had entered India illegally (without a visa on or before 31 December 2014) from the Muslim-dominated countries of Pakistan, Afghanistan and Bangladesh and had stayed in India for five years to apply for Indian citizenship. The rationale given by the government for passing the CAA, despite nationwide protests and opposition, was that it had a moral obligation to provide relief to immigrants who had suffered religious persecution in Islamic countries. The CAA presumes persecution of non-Muslim immigrants and discriminates against Muslim immigrants from these three countries and, in the process, places the responsibility for proving citizenship on members of only one community. The scheme overlooks the possibility that certain minority Muslim communities may also be ‘genuine’ refugees from the named Muslim majority countries. The proposal involved a nationwide exercise in which citizenship applicants would be required to prove that their documentation is consistent with the specifications in the law. This task is onerous at best, and often impossible, because the required documentation simply does not exist for many residents. On the other hand, previous studies have found that ‘illegal immigrants’ in countries such as India and Malaysia tend to have better citizenship papers than ordinary residents to meet the requirements of ‘documentary citizenship’ (Sadiq, 2009). Thus the existing citizens would be more vulnerable when asked to provide documentation. The CAA and the NRC are not directly connected, but they would work in tandem to target

Muslim minorities, which would deliberately place the Indian-born Muslims in a bind. As noted earlier, the NRC process will demand documentary proof that often does not exist for many individuals and households. As a result, many of them may be rejected under the garb of administrative errors or political whims – denying them of their fundamental rights and preventing them from participating in the life of the State (Deka 2019).

These changes in citizenship laws impose constraints on the ability of citizens to perform their role – particularly to articulate their rights – within a liberal democratic state. The protests reinforcing civic virtue and rights of citizens through active engagement with the State are being curtailed. The interests of the citizens are not represented in the form of laws, and a clear example is the CAA and NRC. Furthermore, it is evident that the ‘who’ constituting *the demos* in India is radically changing. The pandemic has changed citizen–state relations by preventing the expression of rights.

The Political Rationale for the CAA: Creating a ‘Constituent Outsider’

The rationale for these changes in citizenship laws can be placed within the framework of *forclusion*, where the outsider or the immigrant becomes central to the construction of the ‘citizen’. The idea of forclusion is ‘where the outsider is present discursively and constitutively in delineations of citizenship’ (Mezzadra 2006: 32–3). In her book, *Mapping Citizenship in India*, Anupama Roy (2010) argues that concerns about the boundaries of citizenship have been consistently growing, as she describes citizenship as a relational idea rather than an atomistic one. The concept of citizenship as relational and celebration of difference remains valuable and meaningful, as it renders the ‘ability to reinvent the state so as to move beyond exclusionary boundaries that are maintained by force and coercion’ (Hoffman 2004: 29–31). Layered and differential membership in the political community often created this ‘otherness’, which is not a relationship of ‘simple opposition’, but rather manifests in exclusion (Roy 2010).

As a constant referent, the outsider is indispensable for the identification of the citizen; ironically, like the citizen’s “virtual” image, the outsider is inextricably tied to the “objective” citizen without, however, being able to reproduce herself as one. Moreover, forclusion is reproduced and reinscribed continually through legal and judicial pronouncement,

so much so that the “other” constantly cohabits the citizen’s space in a relationship of incongruity (Roy 2010: 5).

Roy further argues that:

[T]he code of Citizenship marks out the “other,” continually reproducing and re-inscribing it through legal and judicial pronouncement in a relationship of contradictory cohabitation. The relationship is, however, not one of exclusion or simple opposition, but rather that of forclusion, where the outsider is present discursively and constitutively in delineations of Citizenship.

Discursively, the concept of forclusion or othering in the domain of citizenship as a legal status has led to ‘the immigrant’ or ‘the outsider’ being continually present. Therefore, the inclusion or exclusion embedded in citizenship status remains contested. This is perhaps the bane of the liberal view of citizenship, which focuses only on the sovereign, isolated, autonomous, individual self without acknowledging the interdependence or relationship that builds a nation or community. Certainly, the liberal view of citizenship has its flaws, seeking rights and entitlements without bringing out the concept of citizenship more as an obligation to participate actively in the life of the State.

In India, forclusion in citizenship can be experienced through two legal instruments of exclusion: the NRC and the CAA. Jayal (2013: 2) argues that ‘when governments adopt or renounce policies of multiculturalism, or cut back subsidies on public education, or enact laws to prosecute and deport immigrants, they redefine citizenship’. With an attack on multiculturalism, there has been a redefinition, re-enactment, and re-examination of citizenship in India, which has been experienced through the NRC and CAA. Under the liberal framework, citizenship is confined to a formal legal status that establishes a range of rights against the State and others. There are no obligations in this conception of citizenship, so activity and participation are not prioritised over status (Honohan 2017).

Forclusion has led to numerous attempts in the State of Assam to delineate and target illegal immigrants; NRC is the most recent such attempt and is explicitly forclusive in its invocation of ‘the constitutive outsider’ as an existential threat (Roy and Singh 2009). The case of Assam is a very specific one as the meaning of the Citizenship Amendment Act has been different in the rest of India, compared to Assam. Aradhana Kataki, in her

article ‘CAA negates everything that the Assam Accord had sought to protect’, writes that ‘identity is shaped by participation in “cultural communities” which need appropriate institutional protection’ and that ‘groups need to have rights in order to foster individuals’ well-being. The new law shows no respect for the sense of “identity” of the Assamese’ (Kataki 2020).

The CAA is communal, as it discriminates against one particular religious community and violates the country’s secular identity. For Assam, where the civic life of one community is intertwined with the other, the communal turn in the NRC debate poses an existential threat. The CAA also negates the Assam Accord, which was signed by the Government of India and leaders of the Assam movement (1979–1985) after a violent, six-year agitation against illegal immigration led by the All Assam Students Union and All Assam Sangram Parishad. The recent amendments to the Citizenship Act were received with widespread protests in Assam, since it aims to refocus illegal immigration from Bangladesh exclusively on religion, while native Assamese have protested the illegal immigration of all communities. The new citizenship law made religious persecution one of the grounds for providing preferential treatment to illegal immigrants and shifted the cut-off date of granting citizenship from 24 March 1971 to 31 December 2014, contravening the provisions of the Assam Accord. The people of Assam have seen the recent developments ‘as part of a design to systematically dispossess them of their land, culture, language and therefore, identity, by allowing the demographic balance to be disturbed recklessly’ (Kataki 2020).

The CAA, along with the NRC, is viewed as a tool to exclude the Muslim population of the country and further cultural and religious homogeneity in a historically diverse nation (Deka 2019). Beyond identifying illegal immigrants, the National Register of Citizens will make ‘forclusion’ more palpable and pernicious, which denotes that the omnipresent outsider is present vis-à-vis the citizen. The National Register of Citizens has found ways to identify and distinguish the outsider, and thereby fortify the territory against the disruptive presence of the illegal immigrant (Roy 2010). The BJP government has used the trope of the Indian citizen’s fear of the outsider or the immigrant to further its political agenda, an agenda that benefits from polarization. The party in power has managed to ground its politics in factional interests by enacting CAA in a way that also damages the secular ethos of the Indian constitution. It has used the logic of *forclusion* to mobilise support for the Citizenship Amendment Act among its constituents and a large section of the media. The threat of the ‘immigrant’ or the ‘outsider’ is omnipresent and the ‘outsider’

is delineated in the legal and judicial pronouncements that cement the forclusive present and presage future rounds of polarisation and identity politics.

Loss of Civic Virtue and Undermining of Citizenship

The classical republican view of citizenship is based upon the ideal of civic virtue, which commits citizens to engage themselves in the life of the State. This understanding of citizenship in active and participative terms presupposes public service, which means that ‘freedom has to be produced, and not merely secured, by law, i.e., by giving shape to the general will of the community, acting as one body.’ (Skinner 1993: 419). What happens, then, when the nation-state’s inbuilt legal mechanisms grant full citizenship to some people while restricting others from their rights and civic participation based on religion, race, or other such factors? Formal or legal inclusion within or expulsion from the nation-state defines where citizens are to be ‘found’, and this characteristic defines a citizen. Lastly, what happens when civil society is prevented from articulating ‘the general will’ through traditional civic engagement mechanisms – protests, gatherings, freedom of speech, and so on? The recent developments in India provide a suitable backdrop to study these questions.

The CAA in India is a consequence not just of the loss of civic virtue, but also of how factional interests have changed the idea of citizenship in this liberal democracy. The current changes in the citizenship laws and processes related to citizenship in India result from the inability of citizens to participate adequately in communicating the interests of the nation to the State, or to rise above the religious polarisation that dominates current political practice. This religious polarisation has taken predominance in the form of the Citizenship Amendment Act.

Machiavelli elucidates that corruption can take two possible forms: one that emerges out of laziness (in which citizens are not active or do not participate in performing their civic duties) and one that leads to serving the selfish factional interests of a few, which can be a lethal threat to self-government and lead to fragmentation of the nation-state (Skinner 1993). The rule of law functions not just to enhance liberty, but also to enforce a certain level of coercion for the performance of civic duties. The enactment of civic duties in the republican framework enables the debate on citizenship to go from merely a birth-based idea to an invocation of broader participation in the life of the nation-state.

It can be argued that citizenship, even in liberal-democratic contexts, cannot be viewed solely from the legal dimension. 'From the Republican point of view, citizenship has an ethical as well as a legal dimension' (Dagger 2002: 149). Citizenship is much more than a legal status that confers rights, privileges and immunities; 'real and true citizenship requires a commitment to the common good and active participation in public affairs' (Ibid.). This is the civic virtue in citizenship. Although there is some ambivalence about the expression of citizenship in collective forms of civic action, as opposed to or complementary to the more individualised enjoyment of citizenship rights, it can be argued that citizenship emerges not just from individual entitlements but also from the collective performance of civic duties (Jayal 2013). This has become the dominant critique of liberalism as a collective civic initiative.

In India, the concept of citizenship can be expressed and explored in multiple ways. The expression of citizenship in India has been contested as a legal status, as a bundle of rights and entitlements, and as identity and belonging (Jayal 2013). As we shall see, the recent changes in the citizenship laws and the way the concept of citizenship has been experienced in India changed fundamentally after the introduction of the proposal of the National Register of Citizens and the passing of the Citizenship Amendment Act, particularly for religious minorities. The legal identification of citizens would become imperative in the NRC process of detecting illegal immigrants, a process that involves enumeration, management and control of the population through the colonial technology of governmentality (Scott 1995). The citizen's conduct would be managed by placing the onus of proof on the individual: 'citizens' would be required to distinguish themselves from 'non-citizens' by filing NRC forms and accompanying legal documentation; otherwise, they would be termed 'stateless' or 'outsiders'. While reflecting on the European context, Benhabib (2004) argues that refugees, minorities, stateless and displaced persons are special categories of human beings, socially constructed through the actions of the nation-state.

One becomes a refugee if one is persecuted, expelled and driven away from one's homeland; one becomes a minority if the political majority in the polity declares that certain groups do not belong to the supposedly "homogenous" people; one is a stateless person if the State whose protection one has hitherto enjoyed withdraws such protection, as well as nullifying papers it has granted... (Benhabib 2004: 54)

It is a perversion of the modern State when the practice is to denaturalise unwanted minorities (Ibid.), creating the category of illegal immigrants through discriminatory laws such as the CAA. In pursuing these initiatives, the government is attempting to render the Muslims in the country disenfranchised and without significant protection of the nation-state or the law, thereby excluding them from rights and resources that normally accrue to citizens. Properly understood, the CAA and the NRC proposal are not exercises in expanding citizenship to persecuted minorities from neighbouring countries; on the contrary, they intend to make religious minorities ‘the outsider’ and cast aspersions on their citizenship status and rights within India.

However, these government efforts have not gone uncontested. Democratic protests against these legislative changes have reaffirmed civil society’s commitment to constitutional and democratic values. Protests in a democracy reflect the people’s interests. When the governments, as representatives of the people, enact exclusionary laws to protect their own interests rather than the interests of those they represent, protest is the appropriate civic response. The reason for widespread nationwide protest and resistance against the implementation of CAA and NRC is that these legal instruments of disciplining the population on a religious basis fundamentally hamper articulation of rights by citizens and are not reflective of representative politics. However, before these protests could gain momentum, the pandemic created another set of challenges in the political landscape on which civil society engagements with the State are pursued.

Civil Society Protests and the Pandemic

The Citizenship Amendment Act was passed by the Indian Parliament on 12 December 2019, and widespread national protests emerged almost immediately, first in Assam and soon spreading to other parts of the country. In Assam, the protests were based primarily on opposition to any forms of migration from neighbouring countries; protesters were less concerned that the CAA excluded Muslims than that it provided a pathway to citizenship for members of other religious communities. The native Assamese population had long demanded control of illegal migration – of both Hindus and Muslims – from Bangladesh in order to preserve their ethnic identity, culture and language. The CAA violated the basic tenets of the Assam Accord by opening avenues for further migration of non-Muslim Bangladeshis. In other parts of the country, by contrast, the protests were led by progressive and Islamic groups that countered the overtly anti-Muslim sentiment of the CAA.

One protest that gained significant attention was the Shaheen Bagh protest in the National Capital Region, where elderly Muslim women occupied a stretch of a busy road and held a continuous sit-down protest seeking the repeal of the CAA. The Shaheen Bagh protests became a site of dissent and resistance against the Citizenship Amendment Act. They garnered enormous importance over time because they showed solidarity with the anti-CAA movement and the activists who had been arrested for their earlier protests. Women began to assemble at Shaheen Bagh on 15 December 2019, three days after the passage of the CAA in both Houses of Parliament. The protests against the Citizenship Amendment Act picked up momentum all over India from then on. In other parts of the country, including major cities such as Mumbai and Kolkata, many gatherings and sit-ins by citizen groups registered their protest and anger against the changing framework of citizenship, highlighting that the new laws violated the constitutional values of equality and secularism. Almost 30 people were killed around the country and many were arrested for protesting against the new citizenship law even before the violence in Delhi and elsewhere, including Uttar Pradesh, Assam, and Karnataka (Wahengbam 2020). The government used a colonial-era law against public gatherings, limited public transportation, closed roads and suspended internet services to prevent the outreach of the protests. The police did not prevent the violence and limited their arrests to people who were critical of the government. Several protesters said that they were beaten while in custody. Police raided Muslim neighbourhoods and ransacked shops and residences in Uttar Pradesh (Wahengbam 2020).

The Shaheen Bagh movement was essentially a leaderless sit-in of working-class Muslim women, many of whom were engaging in political activities for the first time in their lives. Mustafa (2020) notes the case of Saira Bano, an elderly woman who had never protested before. The organic nature of the protest attracted nationwide attention; even the Supreme Court took notice and appointed a group of mediators to address the issue of road closures due to sit-in protests. The mediation in the Shaheen Bagh case had a limited mandate and did not involve the government or parliament; therefore, it did not address the fundamental demands of the protestors.

In February 2020, three months into the demonstrations, the protests in Delhi turned violent and led to 53 deaths, a large proportion of which were from the Muslim community. The violence began soon after a local politician of the ruling party ordered the police to clear the protest site within three days, failing which there would be a risk of violence. The State's failures in response to the protests were felt as the clashes between

those who supported the government and those who lived in the affected areas began. The protest turned violent, with mobs who supported the government chanting nationalist slogans and rampaging through several predominantly Muslim neighbourhoods in northeast Delhi, burning homes, shops and other physical property (Human Rights Watch 2020).

Police forces were reported to be partisan in their approach, using excessive force against demonstrators protesting the law but remaining bystanders when pro-government protestors engaged in violence. In December, for instance, the police used teargas and batons against Jamia Millia Islamia University students, and entered the library and hostels to beat students. On the other hand, the police were present but did not take action when, in January, a pro-government protestor who had affiliations with the ruling party shot at protesting students outside the same university. Members of parliament and other leaders from the ruling party also made divisive and hate-filled attempts to delegitimise protesters at Shaheen Bagh and elsewhere. In February, the Delhi High Court questioned the police about not filing cases against CAA-supportive leaders who had been advocating and even perpetrating violence with impunity. In response, instead of responding to orders by the Delhi High Court bench, government authorities transferred the members of the judiciary who were actively taking cognisance of human rights violations (Human Rights Watch 2020). In the subsequent months, the police investigated those who organised or attended protests *against* the CAA, including students and public intellectuals (The Polis Project 2020), many of whom then faced legal proceedings and even prison.

The protests all over the country were interrupted by the imposition of the Covid-19 lockdown, which came abruptly on 24 March 2020. The Government of India ordered a nationwide lockdown to keep the pandemic under control; it proved to be one of the world's longest and strictest lockdowns, especially when compared to Covid-19 mitigation measures in developing economies. The lockdown was lifted on May 30, except for containment zones, where it was extended until 30 June 2020. The Covid-19 lockdown brought protests to a standstill, even large ones such as the Shaheen Bagh protest.

Though the lockdowns stopped the anti-government protests to a standstill, the police and state machinery continued to target minorities. Early on, a Muslim seminary in New Delhi, Tablighi Jamaat, held an international congregation in which many participants travelled from other states and countries. Many early Covid-19 cases were traced back to

this event, which provided ammunition to government officials and media outlets that are often looking for an opportunity to give a communal colour to any problem. Police and health officials throughout the country started to pay extraordinary attention to travellers in Muslim neighbourhoods. During the initial months of the pandemic, the official briefing of the Ministry of Health reported Covid-19 cases attributable to Tablighi Jamaat separately from the nationwide numbers, arguably compromising on professionalism and attempting to mislead the public about the reasons for the transmission of the virus. Other such events around the country did not receive such scrutiny.

To hinder the protests against CAA, the government imposed Section 144, which prohibits the assembly of four or more people in an area, in several parts of the country. Freedom of expression, association, and peaceful assembly are necessary rights in a democracy like India. As in most liberal democracies, the right to protest and the right to free speech and expression are constitutionally defined fundamental rights (Article 19). The right to freely express oneself and engage with the state is also a prerequisite for being an active citizen in a democracy. Reiterating and reinforcing political rights such as the right to free speech and expression reflect on how the representational role of the government is subject to accountability. The right to protest and critically engage with the government over its laws and policies through dissent and opposition is essential to enforce the citizen's role in a democracy. The lockdown to contain the spread of the Covid-19 virus revealed itself to be a mechanism that the State can use to discipline the population into compliance, now and in the future. This technique to regulate the conduct of the people and limit the space for articulating one's rights and liberties is becoming even more robust in contemporary India – and expanding to other affected groups. Techniques that were developed to target minorities and have been extended to suppress, for example, the protests of farmers against neoliberal reforms in the agriculture sector.

Protests, movements and civil society activism are hallmarks of civic virtue in a free, democratic society. The protests against the CAA also demonstrate the civic engagement of people with the State and show how participation demands that the 'voice of the people to be heard by those in power and decisions be reached after proper discussion and consultation' (Bhargava 2020). The anti-CAA protests, including the Shaheen Bagh movement, reinvigorated civil society and introduced a significant political churn – that led to the government postponing significant policy changes in relation to the nationwide NRC and CAA. The movement by Indian farmers against agricultural reforms that lasted despite the pandemic also forced the government to withdraw the neoliberal legislation.

This outcome suggests that civic action can be effective, and that continued efforts are essential if the overreach of State power is to be curbed. Ludwig Feuerbach and many other philosophers insist that civil society is a decisive component in steering societal direction than the State, and scholars such as Gramsci suggest that a unified civil society constitutes one of the fundamental challenges to the ruling class (Bobbio 1979; Ligouri 2015). In these senses, the protests against the CAA and the farmer's movement changed the civil society discourse in India and posed a significant challenge to State power and overreach.

Summary and Conclusion

In 2019, the Government of India introduced changes to its citizenship laws through Citizenship Amendment Act and proposed an expansion of the National Register of Citizens beyond the State of Assam. These legislative changes have made the identification of 'outsider' or 'migrant' a necessary process for identifying Indian citizens. While the NRC would identify all illegal immigrants, the CAA selectively discriminates against Muslims by offering to provide citizenship to illegal immigrants from all other religions from Muslim-dominated Bangladesh, Afghanistan, and Pakistan. In the State of Assam, a registry of citizens was motivated by the state's historical context, including the reasons for the large-scale migration of immigrants from Bangladesh. The State of Assam is protesting against the CAA because it will provide a pathway to citizenship for Hindu migrants from neighbouring countries such as Bangladesh. Assam has had a long history of struggle against illegal immigration. While the rest of India is focused on the discriminatory aspect of CAA, that is, the exclusion of Muslims from the citizenship opportunity presented in the Act, the protests in Assam were more closely related to anger against providing a pathway to citizenship for non-Muslim migrants. The proposed nationwide NRC has been put on hold after the nationwide protests and the onslaught of the Covid-19 pandemic. There are apprehensions concerning this proposal of a nationwide NRC as it would target illegal immigrants of all faiths. While highlighting the anti-secular character of the CAA, many also fear that many of India's Muslims may be deemed illegal immigrants if they are unable to provide adequate proof of citizenship, as they are not included in the Citizenship Amendment Act.

The question of who gets to count as a 'citizen' is extremely vexed, especially in a deeply polarised, factional and dramatic political landscape. Formal or legal inclusion within or expulsion from the nation-state defines where citizens are to be 'found', and this characteristic contributes to the definition of a citizen. The CAA and the proposed NRC

deprive those who are victims of any sense of rights or belonging to the nation. Those who are termed 'illegal' do not have any political community or nation from which these people can have any rights or exercise them. Implementing the CAA and NRC would lead to the loss of citizenship status and rights. Many people would be displaced; some would become stateless and others second-class citizens. The Citizenship Amendment Act and the National Register of Citizens are discriminatory and undermine democratic values. Most importantly, these two legal instruments also act as surveillance mechanisms for the State.

The period after the enactment of the CAA witnessed nationwide protests against the law, both violent and peaceful, but the Covid-19 pandemic affected the resistance against these laws. This article has highlighted how the circumstances posed by the pandemic prevented civil society from articulating 'the general will' through traditional civic engagement mechanisms: protests, gatherings, freedom of speech, and so on. The sudden halt of the protests led to further arrests of students and activists, and civil society resistance was impossible due to the pandemic. It gave the government impunity over its decisions without any accountability, both on the streets and in the courts. The rights of the citizens in a democracy were under grave threat due to no room for freedom of expression during the pandemic, as many civil liberties were suspended under the law governing the response to the public health emergency.

The new legal dimensions in Indian citizenship enacted just before the pandemic mark out who is eligible for the claim to citizenship in India, and the associated database is intended to distinguish the Indian citizen from the 'outsider' or 'immigrant'. The Covid-19 pandemic enabled the government to function with impunity over people's lives and to quell civil society protests against the CAA and NRC. The government appears to be maintaining the status quo regarding a nationwide NRC for the time being, but the challenges to citizens' rights and democratic institutions persist. The next few years will determine whether India can redefine and execute a broader conception of 'citizenship', one that goes beyond just legal status, and if the definition and determination of citizenship will adhere to the egalitarian and secular constitutional values.

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