

**Written Testimony of Lawyer Aman Wadud at the U.S. Commission
on International Religious Freedom Hearing on
Citizenship Laws and Religious Freedom
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To understand why people are protesting in all over India it is important to understand what happened in the state of Assam. Assam is located in the north-east of India, and is on the border between India and Bangladesh.

I. The NRC in Practice: Citizenship in Assam

The USCIRF has already noted the dangers of the new Citizenship Act, and the proposed nation-wide NRC in their factsheet on India. Apart from the NRC process, there are parallel processes in Assam already in force, to accuse citizens of being “foreigners”. Under the processes, investigation agencies such as the Border Police Force can accuse Indian citizens of being ‘foreigners’ who have illegally entered India from Bangladesh, without any prior investigation. Even a decorated Army officer Mohammed Sanaullah who served India for 30 years has been accused of being a “foreigner” declared and detained in a detention centre, a case that attracted a lot of public attention. Most of the people whose citizenship is questioned are poor and illiterate.

Once a citizen is accused of being a ‘foreigner’, the cases of citizenship are tried before a Foreigners Tribunal. Such Tribunals are constituted the under Foreigners Act 1946, which a colonial act, where the burden of proof is on the person whose citizenship is questioned. The members of Foreigners Tribunal were initially supposed to have judicial experience, but subsequently the eligibility has been relaxed to lawyers with only 7 years of experience, and are hired for 1 or 2 years on a contractual basis. Therefore, these members often lack judicial experience entirely, and do not have a sufficient experience of the law itself to pass reasoned decisions. Moreover, because there is no institutional separation from the government, these members are appointed by the Home department, of the government of Assam, which

leaves room from political and executive influence on the working of the Tribunal. This lack of separation of powers and bias violates a number of Supreme Court decisions in India that have repeatedly emphasized the need for tribunals to have independent judges, free from political influence.

Regarding the procedure within such Foreigners Tribunals, several aspects demonstrate that the Tribunals often pass decisions that are arbitrary, contradictory, and violative of basic principles of procedure and law.

First, the Tribunals have often declared a person as “foreigner” for minor variations in names and age. Here, even a typographical mistake can cost citizenship.

Second, as the burden of proof is on the accused, since 1985, 63695 persons have been declared as “foreigner” by ex parte order, i.e. in absentia. Many failed to appear before the Tribunal because of not receiving notice from the Tribunal, or were unable to appear before the Tribunal because they couldn’t afford a lawyer.

Third, the process of proving citizenship is inherently biased and gendered. Women from marginalized communities; particularly Muslim women in Assam are married before turning 18 years of age, which is the minimum age to vote in India. Their names are recorded in the electoral rolls only at their matrimonial home i.e. after turning 18 along with their husband, and not with their parents. Hence they lose the electoral roll, which is the most vital document to prove their lineage with their parents. Apart from electoral roll, a woman seldom possess documents to prove their lineage with parents, all other documents are private documents, which is subject to verification by the issuing authority. Un-documentedness is pervasive, and severely affects women.

Once the Tribunal declares a person as a foreigner, he or she can be detained in one of the 6 detention centers across Assam. Detainees have no right to parole; they can be released only by the order of the Higher Court. Detention is not a prison sentence; a “declared foreigner” is detained to be deported to their country of origin.

On 13.03.13 the formal process of deportation started, however, only 4 declared foreigners have been deported to Bangladesh since then. It is apparent that a person declared to be a foreigner for technicalities and grammatical errors can't be deported because their country of origin is India. 29 persons have died in detention centre in last 3 years. Every time a person dies in detention centre his body is handed over to their Indian family. Almost everyone declared to be a "foreigner" has Indian parents and families. Accordingly, in the guise of detecting "foreigner" it is the Indian citizens who are being declared a "foreigner" and rendered stateless.

The NRC exercise in Assam was mandated by the Supreme Court, which agreed, without substantiated proof, that there was indeed "large-scale" illegal migration from Bangladesh into Assam after 1971. India's laws sets a deadline of March 25, 1971 for determination of citizens in Assam — anyone who was there before this date and their descendants are considered Indian citizens in Assam. Most in Assam welcomed the Supreme Court's decision to prepare the NRC — the Muslims of Bengal-origin, a community which bears the brunt of being unjustly labelled as "Bangladeshis", also supported the NRC and dedicatedly took part in the process because they thought this would end decades of stigmatisation and being seen a suspect in their beloved motherland.

Under the apex court's monitoring, the NRC exercise was executed by a bureaucrat — known as the NRC State Coordinator — while over 55,000 employees of the state government of Assam aided him. 33 million residents of Assam applied for inclusion into the NRC — and five years later, 1.9 million people were excluded.

The exercise — involving multiple rounds of verification — was a stringent technology-driven exercise whose certain procedures were open to human intervention. The Supreme Court directly monitored the exercise, but the NRC exercise was "exclusionary" by its nature. Although the NRC data did not include a person's religion, it would be wrong to say that the political atmosphere in Assam and the country did not have an effect on the narrative surrounding the exercise. The BJP, and its allies, won the 2016 state elections in Assam primarily on an 'anti-foreigner' rhetoric. In the political imagination of the BJP, the 'illegal Bangladeshi' is the Bengali Muslim and not the Bengali Hindu migrant without papers. To provide

citizenship to undocumented non-Muslim migrants from Pakistan, Bangladesh and Afghanistan with ease, the Modi government has passed the CAA.

The NRC exercise proved harsh on many belonging to marginalised communities. People had to sell their cattle and jewellery, lose working days to attend NRC hearings. Many experienced mental trauma because of fear of losing citizenship — and there are also reports of suicide associated with such trauma.

The draft NRC published in 2018 excluded nearly 4 millions people but that number came down to 1.9 millions in the final list — showing an error margin of around 50%. The 19 lakh figure includes women and children, and even children whose parents are included. 19 lakh is around 6% of Assam's population and is quite smaller than the figures of “30-50 lakhs” floated by political leaders over the last few decades. Essentially, the NRC busted the myth of large-scale illegal migration in Assam — but that has not gone down well with the socio-political establishment in Assam, leading to demands for rejecting this NRC.

II. The Citizenship Amendment Act and Public Protests

In December 2019 the Indian government passed a Citizenship Amendment Act (CAA), a discriminatory legislation which grants expedited citizenship to six communities, except Muslims and Jewish, who came to India before 31st December 2014 from Pakistan, Bangladesh and Afghanistan. This is the first legislation in India to discriminate purely on the basis of religion. The CAA violates Article 14 of the Constitution of India, which grants the right to equality to both citizens and non-citizens. The CAA is against the secular values embedded in the Constitution of India, on which the independent republic of India was constituted.

The ongoing peaceful protest in India started because the Union Home Minister, Mr. Amit Shah, has publicly stated several times that nationwide NRC will be

implemented after Citizenship Amendment Bill, CAB (now CAA)¹. The Union Home Minister has said that NRC will be implemented all over the country as infiltration by illegal immigrants is a problem for entire country, and that refugees don't have to worry as they will be protected under CAB. The Union Home Minister also made a statement before the Upper House of Parliament regarding the conduct of a nationwide NRC and the repetition of the entire process in Assam². The government argues that CAA will not take away citizenship of any Indian citizens but will only grant citizenship to refugees. But CAA becomes a lethal weapon when it is read with National Population Register (NPR) and National Register of Indian citizens (NRC).

The legal foundation of NPR and NRC is “The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003” hereinafter the Citizenship Rules 2003.³ Sub Rule 3 of Rule 4 the Citizenship Rules 2003 states that for the purposes of preparation and inclusion in the NRC, the particulars collected of every family and individual in the NPR shall be verified and scrutinized by the Local Registrar. Sub Rule 4 of Rule 4 empowers a junior executive officer to mark any person as having doubtful citizenship. This power is discretionary and can be used in a very arbitrary manner. The Citizenship Rules also weaponize personal conflict, by allowing any random person to file an objection against inclusion of names in the NRC. This draconian provision can be abused to harass innocent citizens. In Assam one hundred and eighty seven thousands objection were filed against minors, senior citizens, and the ailing, following which they had attend multiple hearings. The entire exercise is open to severe abuse and will not only dehumanize and harass Indian citizens unimaginably, but it will also strip them their fundamental rights to live a dignified life. This is surely not what the founding fathers of our great nation envisaged.

The threat of a nationwide NRC after the discriminatory CAA instilled fear in the minds of Muslims as they apprehend they will be targeted over their citizenship status because of their religion. Of the 200 million Muslims in India, many are impoverished

¹ <https://scroll.in/article/947436/who-is-linking-citizenship-act-to-nrc-here-are-five-times-amit-shah-did-so>

² Vijaita Singh, ‘Scrap updated NRC, Assam government urges Centre’ *The Hindu* (20 November 2019) <https://www.thehindu.com/news/national/scrap-updated-nrc-assam-govt-urges-centre/article30029746.ece>

³ The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, <https://indiankanoon.org/doc/199236652/>

and are spending a great deal of expense and labour to acquire the documentation of their citizenship.⁴ The continuous news of death in detention centres in Assam⁵ and separation of children from parents because of detention has increased the fear among Muslims, particularly women. This is exactly why Muslim women are leading peaceful protest on the street for more than two months, beating all odds. The protest is against the sinister design of CAA-NPR-NRC. This protest is to protect the Constitution of India, whose values are under serious threat.

III. The Recent Riots in Delhi

Despite the fact that such protests is largely peaceful and non-violent, and therefore protected by the Constitution, BJP-ruled states have cracked down with violence and brutality. In the State of Uttar Pradesh the police force unleashed worst kind of brutalities on the peaceful protesters, and even on many who didn't participate in the protest. Police entered Muslim homes and assaulted men and women without any provocation. Scores of people were arrested and tortured in custody, even women were not spared. In Lucknow, activist and teacher Sadaf Jafar was kicked in her stomach by a male senior police officer⁶ while in police custody. 20 Muslims have died because of police firing in Uttar Pradesh alone. In another BJP ruled state of Karnataka, a sedition case has been filed for enacting a play by minors in a school. A mother of 11-year-old female student was arrested because her daughter in the play staged during the annual day celebration on January 21 delivered a dialogue, which allegedly insulted the Prime Minister. The headmistress of the School was arrested for allowing the performance of the play.⁷ The minor children were interrogated several times.

⁴ Niha Masih and Joanne Slater, 'India's Muslims rush to collect documents after new law fuels anxiety over their citizenship status' *Washington Post* (21 February 2020) https://www.washingtonpost.com/world/asia_pacific/india-citizenship-registry-muslims-documents/2020/02/20/b543f242-4e92-11ea-967b-e074d302c7d4_story.html

⁵ Ratnadip Choudhury, 'Man Lodged In Assam Detention Centre Dies, 29th Death In 3 Years' *NDTV* (05 January 2020) <https://www.ndtv.com/india-news/man-lodged-in-assam-detention-centre-dies-29th-death-in-3-years-2158934>

⁶ Hannah Ellis-Peterson and Azizur Rahman, 'I'll destroy your family': India's activists tell of false arrest and torture in custody' *The Guardian* (01 February 2020) <https://www.theguardian.com/world/2020/feb/01/uttar-pradesh-india-activists-false-arrest-torture-custody-citizenship-amendment-act>

⁷ 'Two women arrested in Bidar sedition case released from jail' *The Hindu* (15 February 2020) <https://www.thehindu.com/news/national/karnataka/two-women-arrested-in-bidar-sedition-case-released-from-jail/article30831882.ece>

On 23rd February when a group of peaceful protesters, mostly women, were protesting against CAA-NPR-NRC in Delhi, a local Delhi BJP leader issued a 3 days ultimatum in presence of a police officer to clear out the roads or failing which they would not wait for the state to act. The mob didn't wait till 3 days. This provocative speech triggered wave of attacks on Muslims, burning down houses including place of worship. The targeted attack has killed 47 innocent people till last count in the capital City of Delhi. Notably, this has occurred at a time when President Trump was in India on a state visit, and was in fact in the city of Delhi itself. The Delhi Police did not stop mob violence and arson, and have been repeatedly documented by journalists as standing idly by or actively escorting mobs to go on rampage with absolute impunity. A group of Muslim boys were filmed as they were brutally assaulted by policemen who forced them to sing the national anthem between beatings, they were illegally detained for 36 hours by Delhi Police denying urgent medical attention. Among them was 23 year old Faizan who died because of police brutality and lack of medical attention ⁸.

Delhi Police received about 13,200 distress calls during the four days when the national capital was hit by clashes, but call records of police stations in the violence-hit areas raise serious doubts over the response to those calls. ⁹ In places Police even broke CCTV cameras¹⁰ Delhi police could have stopped the mindless violence, it could have saved innocent lives. Neeraj Jadaun, a Superintendent of police from border district of Delhi listened to his conscience and broke the traditional protocol, crossed the Border to Delhi to stop violence ¹¹ in an area. But the Delhi Police Force not only abdicated its responsibility to maintain law and order but also participated in the violence.

The Delhi High Court was called on to intervene, it held an emergency midnight hearing compelling the police to allow injured persons access to medical care and

⁸ https://www.huffingtonpost.in/entry/delhi-riots-police-national-anthem-video-faizan_in_5e5bb8e1c5b6010221126276

⁹ <https://www.ndtv.com/india-news/no-action-case-pending-delhi-police-call-logs-offer-clue-why-violence-raged-for-4-days-2187419>

¹⁰ <https://scroll.in/video/954410/watch-delhi-police-break-cctv-camera-manhandle-protestors-at-khureji-khas-anti-cao-protest-site>

¹¹ <https://www.bbc.com/news/world-asia-india-51670093>

ambulances, because such care had previously been denied and ambulances prevented from reaching the injured. Subsequently, petitions before the Delhi High Court regarding hate speech resulted in hearings in which the Delhi Police denied any knowledge of provocative public speeches by BJP leaders, resulting in which the High Court had videos of such speech played in open court.

Meanwhile, on the ground, lawyers who have visited police stations to provide legal aid to those detained or affected by the riots in Delhi have been assaulted themselves, by the police.¹² Despite directions from the Delhi High Court to review criminal charges leveled against the participants and provocateurs of the riots within 24 hours, the Solicitor General of India has argued before the Delhi High Court that the 'First Information Reports' (FIRs) which begin the criminal process in India need not be filed against those making provocative hate speeches that triggered the riots. He has said that the situation is 'not conducive' for filing such FIRs, even though Supreme Court guidelines have previously made it clear that the filing of an FIR after a crime is alleged to have been committed is not optional and is mandatory to the police.¹³

Although the Federal government has said that the protest is unnecessary and fear is unfounded as NRC has not been notified, the Citizenship Rules 2003 clearly states NRC will be based on data collected during the creation of a 'National Population Register' (NPR). The 2018-2019 Report of the Ministry of Home Affairs also states that the NPR is the first step of NRC. This government have linked the NPR and NRC in Parliament at least 9 times¹⁴. On 31st July 2019 the Federal government has issued a gazette notification to prepare NPR from 1st April 2020. People very well understand that the transition from NPR to NRC is just a matter of one notification. Eleven state governments (representing over half the population of India) have

¹² 'Delhi Riots: Women lawyers manhandled, assaulted by Police at Jagatpuri station' *Bar and Bench* (26 February 2020) <https://www.barandbench.com/news/delhi-riots-women-lawyers-manhandled-assaulted-by-police-at-jagatpuri-station>

¹³ 'Not conducive to register FIRs at this time, says SG Tushar Mehta in Delhi HC' *Bar and Bench* (27 February 2020) <https://www.barandbench.com/news/litigation/delhi-riots-high-court-hears-harsh-manders-plea-for-registration-of-firs-day-2-live-updates>

¹⁴ <https://indianexpress.com/article/india/npr-nrc-link-amit-shah-central-government-parliament-6183572/>

objected to the NPR and NRC, publicly stating that they will not implement them¹⁵, with the State of Kerala going so far as to file a suit at the Supreme Court against the Federal Government, challenging the constitutionality of these measures.¹⁶ Despite these state and public protests, the federal government has neither backed down from the proposed implementation of the NPR, CAA, and eventually the NRC and has not opened dialogue with the protesters. Rather, the government continues to make contradictory and confusing public statements on the same.¹⁷

Despite two months of peaceful protest across the country from people of all religious backgrounds, the federal government not shown any intention of opening a dialogue, or address the concerns raised. Instead, political leaders supported by the ruling party have, with police co-operation, threatened and attacked peaceful protestors, often raising the slogan, 'Shoot the traitors'¹⁸. Continuous Provocative and communal speech along with Islamophobic campaign by a section of media has become a serious threat to religious freedom in India and its thousands years of peaceful coexistence and pluralism.

The NRC and CAA are not in the interest of India. The procedures followed are arbitrary and unfair, and will, as the Assam experience shows, resulted in the harassment, disenfranchisement, and detention of the poor, and the helpless. It attacks, particularly, the most vulnerable of citizens: women, religious minorities (especially Muslims), and children. The Indian Constitution in its Preamble emphasizes the ideals of justice, liberty, equality, fraternity and secularism. The steps proposed by the Indian government are a direct attack on these constitutional ideals, and defeat the demand that every Indian citizen has the right to live a life of dignity. The Indian Constitution, which is an unparalleled document in the history of modern

¹⁵ '11 State Governments representing 56% of India, have now taken a no-NRC stance' *The Print* (24 December 2019) <https://theprint.in/india/11-state-govts-representing-56-of-india-have-now-taken-a-no-nrc-stance/340213/>

¹⁶ Sanya Mansoor, "'A Defining Moment.' An Indian State's Decision to Challenge the Country's Controversial Citizenship Law Signals a Growing Divide' *TIME* (20 January 2020) <https://time.com/5765954/kerala-citizenship-law-supreme-court/>

¹⁷ Hari Narayanan and Suman Sen, 'Mixed Signals on NRC' *The Hindu* (23 December 2019) <https://www.thehindu.com/opinion/op-ed/mixed-signals-on-nrc/article30374536.ece>

¹⁸ <https://scroll.in/latest/951317/watch-union-minister-anurag-thakur-encourages-crowd-to-shout-shoot-the-traitors-at-delhi-rally>

nation guarantees right to live with dignity. The NRC exercise if implemented will deny this very right to live a dignified life.