

ANALYSIS OF NEXUS AMONGST CAA, NRC & NPR

Dr. Sant Lal Nirvaan¹
Nikita Goel²

ABSTRACT

The terms- Citizenship Amendment Act (CAA), National Register of Citizens (NRC) & National Population Register (NPR) are distinct in theory but their practical implementation would lead to a profound nexus amongst them. The concept of citizenship has become the epicenter of attention from the moment Citizenship Amendment Bill (CAB) was proposed in the Parliament. After the Bill was passed, a huge debate started on the Citizenship Amendment Act while some applauded the steps to mitigate the issue of illegal migrants while some took the streets. Meanwhile, a new controversy budded over the updating of the National Population Register (NPR). Initially, the NPR was supposed to be prepared between the period of April, 2020 and September, 2020 and expected to be ready ahead of 2021 Census. The background work on NPR has started and is still in progress around several States. S.14A, Citizenship Act 1955³ provides the legal backup for NPR preparation and thus links it with the Census and NRC.

Key Words: Citizenship Act, Citizen Amendment Act, National Population Register, National Register of Indian Citizens, Refuge

INTRODUCTON

“There can be no daily democracy without daily citizenship.”

- Ralph Nader

Citizenship is the invaluable status that saves an individual from the horrors of Statelessness. The concept of citizenship has become the epicenter of attention from the moment Citizenship Amendment Bill (hereby referred to as CAB) was proposed in the Parliament of India. After the Bill was passed, a huge debate started over the Citizenship Amendment Act while some applauded the steps to mitigate the issue of illegal migrants while some took the streets. Meanwhile, a new controversy budded over the updating of National Population Register (NPR).

The preamble is a window to determine the nature of Statute and the preamble of sanctum sanctorum i.e. the Indian Constitution starts with the words, “*We, the people of India*” mean the “*Citizens of India*”. The term “Citizen of India” is defined, acknowledged, verified and differentiated from infiltrators under the following laws:

1. The Citizenship Act, 1955;
2. The Foreigners Act, 1946; and

¹ Assistant Professor, Institute of Law, Kurukshetra University, Kurukshetra.

² Law Researcher Office of Advocate General Haryana, Chandigarh.

³ Insertion of new section 14A. - After section 14 of the Citizenship Act, 1955, the following section shall be inserted, namely:- “Issue of national identity cards.”

3. The Passport Act, 1920.

The term 'infiltrator' means any non-citizen residing in India if he/she is not tourist or diplomat, because India doesn't have a law to define a 'refugee'. Tibetans, Sri Lankan Tamils as well as some specified groups of foreigners are refugees as the government accorded them such status.

As per the Foreigners Act, the government is duty bound to expel all infiltrators or illegal immigrants out of the territories of India. As till today there is no codified law, consequently, **there is no estimate as to number of illegal immigrants living or residing in India. To estimate the illegal immigrants in India is like guessing the amount of black money in circulation in the Indian economy which is a fruitless exercise of speculations.** It is crucial to comprehend the background of the subject matter to understand the gravity of the issue.

BACKGROUND

The saga began on 7th January 2004, when the Parliament passed the Citizenship Amendment Act, 2003 during the Government led by prime minister Atal Bihari Vajpayee, making key changes to the law that was formulated in 1955.

- It was for the first time the term "*illegal migrant*"⁴ became part of the law via this amendment. The law states that **illegal migrant** means a foreigner who has entered into India-
 - (i) without the following documents- a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or
 - (ii) with the following documents- a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains in the Indian territory beyond the permitted period of time;⁵
- Another important component was the addition of the date- **1 July, 1987** on the basis of which deciding the citizenship became a factor.⁶

Section 3 provides for Citizenship by birth⁷-Every person who is born in India-

- (a) either on or after the 26th January, 1950, but before the **1st July, 1987**;
- (b) on or after the 1st July, 1987, but prior the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;
- (c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where-
 - (i) both of his/her parents are citizens of India; or

⁴ Amendment of section 2.- In section 2 of the Citizenship Act, 1955 (57 of 1955), in sub-section 1.

⁵ *Ibid.*

⁶ Substitution of new section for section 3, Citizenship (Amendment) Act, 2003.

⁷ *Ibid.*

- (ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.”

Unlike in 2010, where the National Population Register did not seek information on the date and place of birth of the parents of an individual, the upcoming data will ask for this data.

- The most important amendment to this Act in 2003 was the insertion of the need for the National Register of Indian Citizens, which is equivalent to the NRC conducted in Assam.

The law says:

Section 14A-Issue of National Identity Cards,⁸ it provides the discretion of Central Government to compulsorily register every citizen of India and issue national identity card. It further provides that the Central Government to maintain a **National Register of Indian Citizens** and for that purpose establish a National Registration Authority.

On and from the date of commencement of the Citizenship (Amendment) Act, 2003 , the Registrar General, India, appointed under sub- section (1) of section 3 of the Registration of Births and Deaths Act, 1969 (18 of 1969) shall act as the National Registration Authority and he shall function as the **Registrar General of Citizen Registration**. The Central Government may appoint such other officers and staff as may be required to assist the Registrar General of Citizen Registration in discharging functions and responsibilities.

NPR means the “**National Population Register**”, with its base in the rules framed by the Central Government under the Citizenship Act, 1955 in 2003 called the **Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003**. Incidentally, these are the same **rules which will give legal framework for National Register of Indian Citizens too**

Rule 2(1)⁹ of these Rules define ‘**Population Register**’ which means a Population Register means the register containing details of persons usually residing in a village or rural area or town or ward or demarcated area (demarcated by the Registrar General of Citizen Registration) within a ward in a town or urban area..

The Office of the Registrar General & Census Commissioner describes NPR as “*a register of usual residents of the country.*” A usual resident is defined for the purposes of NPR as a person who has *resided in a local area for the past 6 months or more or a person who intends to reside in that area for the next 6 months or more.*¹⁰

The following demographic details of every individual are required for every usual resident:

- Name of person
- Relationship to head of household
- Father’s name

⁸ Insertion of new section 14A. - After section 14 of the Citizenship Act, 1955, the following section shall be inserted, namely:- Issue of national identity cards.

⁹ Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

¹⁰ <http://censusindia.gov.in/2011-Common/IntroductionToNpr.html>.

- Mother's name
- Spouse's name (if married)
- Sex
- Marital status
- Date of Birth
- Place of birth
- Nationality (as declared)
- Present address of usual residence
- Duration of stay at present address
- Permanent residential address
- Occupation/Activity
- Educational qualification

BRIDGING THE BACKGROUND WITH THE CURRENT SCENARIO

The Modi government propagated the Citizenship Amendment Bill (which has now become an Act) by the act of Parliament, which was passed on 12th day of December, 2019. During the discussions on the Citizenship Amendment Act, Union Home Minister Amit Shah announced, government would bring a nationwide National Register of Citizens (NRC). The Assam experience shows that, a large number of citizens having been left out of the NRC, and no clarity about identification of illegal immigrants.

Glance over the Major amendment i.e. Citizenship (Amendment) Act, 2019-

In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), under section 2, in sub-section (1), in clause (b), the proviso shall be inserted, which will provide that any person belonging to the following community i.e. Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from the three countries namely, Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 due to the reason of saving them from religious prosecution and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act.¹¹

Thereby, the cut off date is fixed to be 31st Dec, 2014 and people from the aforementioned community shall be exempted from the mandate of the provisions of the Foreigners Act, 1946. This has been implied to be the exclusion

¹¹ Citizenship (Amendment) Act, 2019.

of the people from the Muslim Community, which had culminated into a matter of bitter discord.

PIVOT FROM CAA TO NPR

The hustle which originated from the Citizenship Amendment Act culminated into and merged with a fresh controversy which augmented over the updating of the National Population Register (hereby referred to as NPR). The West Bengal and Kerala governments announced suspension of NPR work. The NPR would lead to maintaining a register of residents of India where the enumerator collects demographic and biometric data of individuals living at the place of enumeration for six months or more.

Now, this turn of events where non-BJP ruled States started to halt an ongoing enumeration of residents (NPR) process left many baffled, with the time to begin counting for the Census approaching fast.

PROTEST AND POLITICS INVOLVED

The nexus deepens due to the fact that civil rights activists, in Bengal started protesting the collection of demographic and biometric data for updating NPR. Since, they believe that the NPR was the first step towards the National Register of Citizens (NRC) in Bengal. BJP has been campaigning for NRC in Bengal with strong opposition from Mamata Banerjee government. Bengal is expected to have over one crore illegal immigrants, many have crossed over from Bangladesh over decades ago. The Government of West Bengal was quick to respond to the allegation, putting the NPR process to a halt.

THE NRC EXPANSION PAN-INDIA

Initially, the NPR was to be prepared during April, 2020 and September, 2020 and be ready ahead of the 2021 Census. The background work on the NPR has begun and is still underway in several states. S.14A of the Citizenship Act¹² gives the legal basis for preparation of NPR and connects it with Census and NRC.¹³

It provides that the Registrar General India should act as the National Registration Authority as well as the Registrar General of Citizen Registration. The notable thing is that the Registrar General functions as the Census Commissioner of India. Here, the picture of apple of discord comes out of shadows and take a real form. This means at any point the government can use the data collected for the NPR for NRC. Incidentally, the NRC controversy has touched the raw nerve of crores of people. Those belonging to Muslim community, in particular, are in a state of extreme bafflement with many activists and political parties alleging that the incumbent government is targeting the community to further the Hindutva agenda of their respective party.

CENSUS NEXUS WITH THE NPR PROCESS

After passage of every decade, Census is a phenomenon to engage in the official headcount in India. It carries a detailed questionnaire which aims at gathering the general data related to the population of India. In Census 2011, the census taker had to fill 29 particulars on parameters such as- birthplace, gender, marital status, occupation, age, religion, disability, mother tongue, and whether they belonged to Scheduled Caste or Scheduled Tribe classes.

¹² Insertion of new section 14A. - After section 14 of the Citizenship Act, 1955, the following section shall be inserted, namely:- "Issue of national identity cards."

¹³ <http://censusindia.gov.in/2011-Common/IntroductionToNpr.html>.

The NPR process collects both demographic and biometric particulars of individuals. These processes involve door-to-door enumeration but NPR's main objective to collect comprehensive database of identity of Indian residents distinguishes it from Census. The Census does not collect the identity of individuals. However, in Census 2021, the government's plan to conduct it through an application of mobile phone may eradicate this distinction also. Moreover, Census data are saved and maintained under the Registrar General of India, centrally. But once the NPR data is recorded and ready, these details would be kept and maintained in a population register at levels of village or ward, tehsil or taluk (sub-district), district and state. Together, they will compose the National Population Register with all hubs of data at the central level.

NEXUS WITH AADHAAR

NPR and Aadhaar were considered to be rival projects under the UPA government. When NPR process started by the government, the population register project was pushed aggressively. Aadhaar was taking shape with equally aggressive push from then Union Finance Minister Pranab Mukherjee.

NPR and Aadhaar projects were concurrently underway collecting demographic and biometric data. Initially, both had better and targeted delivery of benefits and services to people as their objectives. The works of the Unique Identification Authority of India (UIDAI) and the home ministry were viewed as duplication and wastage of resources.

The conflict, however, ended in a compromise between the home ministry and the UIDAI where it was decided that NPR and Aadhaar databases will be used for different purposes. Aadhaar will be used as a welfare mechanism to deliver welfare services and NPR will be used for other purposes of governance purely administrative aspect.

It was also decided that those already enrolled for Aadhaar need not give their biometric details during NPR exercise. The NPR data were to be matched with Aadhaar data for de-duplication. But the final formula gave NPR an upper hand. It was agreed that in case of discrepancy between Aadhaar and NPR data, NPR would prevail.

Simply put, NPR conducted in accordance with the Citizenship Amendment Act 2003 will form the key data set for both Aadhaar and NRIC. But the landmark judgment in the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India* 2019(1) SCC 1, changed several dimensions of the situation as Aadhaar is no longer mandatory and even for accruing the benefits of welfare schemes the mandate of Aadhaar is there only when the expense is drawn from the consolidated fund of India and not otherwise.

NEXUS WITH AGGRAVATED PROTESTS

Although, pan-India implementation of NRC is yet to be notified by the government but the current NPR exercise which was set in motion after the incumbent government decided to update the NPR originally created after the Census 2011. Seen in the context of the Citizenship Amendment Act of 2003, the NPR may lead to an NRC. Connecting the dots with the Citizenship Amendment Act, 2019 and the end result adds fuel to the fire. Critics of the incumbent government allege the latest amendment will shield non-Muslim illegal immigrants while making large number of Muslims stateless people with an uncertain future. In October 2018, officials of the incumbent government who strongly supported the updating of the National Register of Citizens (NRC) in Assam, even coming up with a 3D formula i.e. as follows-

- to detect (illegal migrants),

- delete (names from electoral rolls and other government documents), and
- deport (to parent country).

CONCLUSIONS

The trinity of Citizenship Amendment Act, National Population Register and NRC are not independent of each other. The idea of asking a person who had been residing in India for several years to prove citizenship before administrative authorities on the basis of documents can be problematic at the implementation level. The recently concluded Assam NRC process, which excluded millions of persons, is an example, which demonstrates the impact it could have on India. Moreover, the blatant and rather aggravated protests only increases the horrors but analyzing the long term perspective of these implementations is to attain a desired state of order and system without having the onus of accommodating stateless people and draining the useful and scarce resources on the potential threat to security of the State but at the same time innocent should not be punished who are expunged from countries due to the fact that they belong to a particular race, religion or community, etc.

If we analyze the 2003 Rules also create a category of “*doubtful citizen*” - a bizarre category that is inherently subjective and open to administrative interpretation. There are no guidelines mentioned as to how this unfettered discretion to mark ‘doubtful citizens’ is to be exercised. The Rules themselves say nothing about what happens if a person is found to be doubtful. But the amendments made to Foreigners (Tribunals) Order 1964 in 2019 empower a District Magistrate to refer a ‘doubtful citizen’ to a Foreigners Tribunal.

Another provision in the Rules which can lead to a lot of hassles is Rule 4 (6) (a), which enables any person to file objections against the inclusion of any person in the Local Register of Citizens. This can be a problematic provision, with a lot of possibilities of abuse. As per the present law, the burden will be on the individual to prove citizenship. So, the consequences of any wrongful exercise of discretionary power of the NRC officials could be drastic: the **de-legitimization of a person**. Since there is no official notification regarding NRC, it is premature to talk about what documents may be sufficient to prove citizenship. Moreover, the cautious implementation might actually lead to rooting out illegal migrants and to an extent solve socio-economic problems like- poverty, hunger, illiteracy, unemployment, etc. but it should not be at the cost of affecting the lives of innocent refugees who seek a safe abode. Thereby, a judicious step should be taken only after analyzing all the factual and legal aspects and this is a two end mechanism, which means not only government have the onus of all obligations but the people too should understand the situation before rushing into aggressive means be that person is a citizen, non- citizen or a migrant living for decades.