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The punitive gap: NRC, due process and denationalisation politics in India's Assam

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Abstract

The creation of the National Register of Citizens (NRC) in Assam is indicative of the sharpening tensions surrounding citizenship, belonging and integration in India. Officially aimed at demarcating the “legitimate citizens”, its implementation is believed to have resulted in the partial exclusion of the so-called “Doubtful Voters” and denationalisation of the “illegitimate residents”. These frictions associated with citizenship identity and rights are nowhere as acute as in the northeastern Indian state of Assam, where measures of retroactive revocation, administrative erasure and withdrawal of citizenship rights have been systematically deployed against religious and linguistic minorities. Using new research with some NRC rejected applicants in western Assam and other materials, this article identifies the central aspects of the implementation gap in the crucial, albeit problematic task of locating the rightful “Assamese-Indian” citizens. Linking our work to the idea of the ‘process is the punishment’, we conceptualise these conspicuous inconsistencies in the NRC citizenship determination processes and their results as the “punitive gap”. We have identified the distinctive contours of this gap in terms of the massive economic costs, intensification of social (including gender and religion-based) inequalities, increased control through social suspicion and unpredictable outcomes for the marginal Miya Muslim community. The article highlights how this punitive gap has constantly eroded key components of due process, of procedural and substantive protections of the rights of individuals, during the NRC determination exercise and after the release of the final draft list.

Keywords Assam, Citizenship determination, Citizenship rights, Citizenship stripping, Denationalisation, Due process, India, Irregular migrants, National register of citizens (NRC), Xenophobia

Introduction

After being accepted in the first draft version, 80-year-old Jainul Biwi, an inhabitant of X village of X district in western Assam was excluded from the final draft list of that state’s National Register of Citizens (NRC), which was released on August 31, 2019. The reason(s) for this omission remain unclear especially since she was able to locate her name in the 1951 Census register and several electoral rolls and additionally provided all necessary documents required to be added to this database of legitimate citizens. 8 of

her 9 children were also rejected by the NRC process though, strikingly, one of her offspring was accepted in the final list. The experience of Jainul Biwi and her family members is not an isolated example in Assam. Nearly 2 million of the 33 million residents of this northeast state of India who participated in the recent state-level citizenship determination procedure were left out of the final NRC list, rendering their citizenship status and identity as residents of Assam and Indians suspect and tenuous (Azad et al., 2019; Saha, 2021). Some four million persons had been omitted from the first draft list (Saha, 2021).

In this article, we examine the NRC exercise in Assam and its aftermath to identify the implementation gaps between this citizenship-focused procedure and its unfolding. We argue that when citizenship (as status and identity) is weaponized as has been the case in Assam, and where elevated xenophobic tendencies drive such citizenship-focused institutional exercises, then these implementation shortcomings operate robustly as “punitive gaps”. We attempt to identify the main aspects of this punitive gap in the NRC process. We also contend that the process of participating in the NRC is vital to ensure formal and conclusive recognition as citizens in an environment of increased intolerance and violence against disadvantaged religious and cultural/linguistic minorities, Muslims in particular. Despite its absolute importance in the lives of many marginal citizens and their future generations, they have experienced the NRC process and the period after the release of the final draft list as highly punitive, fraught with unresolved problems, constant impediments, and as expensive, inconclusive undertakings. Moreover, such necessary exertions have also not automatically or easily resulted in their successful inclusion in the Assam state’s citizenship register. Due process protections of equality and impartiality have played a minimal role in these significant procedures. Driven greatly by the harsh agenda of excluding the so-called illegitimate residents and stripping them of their citizenship status, the human rights of the rejected persons and their families have been severely compromised. Since enormous fear and suspicion have directed such processes and the principal objective is to isolate the illegitimate ‘citizens’ and retroactively strip them of these rights as weaponised citizenship, far less serious attention has been given by state authorities as well as the judiciary to these key risks and hurdles of participation in such common citizenship procedures. It is these “punitive gaps” and their damaging consequences for the lives of vulnerable NRC participants which are the focus of this article.

This article is organised in six sections. In the next section, a short description of the research methods is offered after which a brief account of the background to the NRC and the crisis of citizenship in Assam is provided in a separate section. The subsequent section highlights the notion of the “punitive gap” and draws on field research findings and other materials to identify various ways in which it has operated during the NRC determination procedure. After that, some key developments after the release of the NRC “final (draft) list” are outlined, including available procedural protections and legal options for the rejected applicants. The final section summarizes the main arguments of the article and discusses the broader implications of our research.

Research methods

We have used a combination of primary and secondary materials in this article. Our analysis draws partly on fieldwork conducted by the corresponding author in April and July 2022 in two villages randomly selected in two separate districts in western Assam. In-depth, unstructured interviews were conducted with thirty participants for between thirty and forty-five minutes. Participants were recruited using snowball sampling and drawn from households where one or more members had been excluded from the final draft NRC list. Based on the shared findings of other studies and extensive media reportage, participants were enlisted from social cohorts that faced disproportionate difficulties during this citizenship determination exercise. Our study respondents represented the poorer segment of women and men Miya Muslims. The term 'Miya Muslims' is being used as a political category here to highlight the specific experiences of discrimination and marginalisation of Muslims of East Bengal origin (Azad et al., 2022; Kumar, 2022). It includes those whose ancestors migrated to Assam from then neighbouring East Bengal (present day Bangladesh) during the colonial period. Although 'Miya' was long used as a pejorative term for the East Bengal origin Muslim community in Assam, there have been new calls for its conscious appropriation. This marked shift occurred during the NRC exercise, especially when active efforts were made to distinguish between the "indigenous" Asomiya Muslims (such as Goriya and Moriya) and the East Bengal origin Muslim community in this state (Hussain, 2021).

The fieldwork process was structured by ethical principles of informed consent and minimizing risks to research subjects. Potential respondents were informed about the study's main objectives and assured that their identities and the study sites would not be disclosed. The names of the participants have been changed. Verbal consent was received before conducting the interviews. Research was carried out in western Assam because of the higher numbers of Miya Muslims in this region. The corresponding author claims 'insider' status as a Miya Muslim, lived in Assam for over three decades, and participated with his family in the NRC exercise. Both authors have been researching contemporary citizenship practices in India using a critical lens for several years. These interviews have been supplemented with government documents, court judgments, and other secondary materials.

'Bangladeshi (Muslim) infiltrators', xenophobia and NRC in Assam

The principal objective of the NRC exercise in Assam was to filter the so-called illegitimate outsiders, the irregular "Bangladeshi migrants" or 'infiltrators', believed to have been integrated (inadvertently or otherwise) in massive numbers as citizens. Assam constitutes the unshifted, protracted epicentre of the xenophobic politics of migration, identity and belonging in India. It is instructive that the earliest efforts to organize an inventory of citizens by the Indian state occurred selectively in Assam as far back as 1951. This initial period of postcolonial nation-formation was marked by an exodus of refugees across newly demarcated borders. Long-festered anxieties over what has been understood as large-scale and unchecked migration into this state at various points in history, including the postcolonial era, have animated intense local debates and processes surrounding the presence of refugees and migrants and their successive generations. Manipulated by political elites, these deeply entrenched, acute fears have recurrently energised dominant localised and national projects of majoritarianism and

ethnonationalism in this state and the country across various decades. Framed uniformly as irregular migrants to justify their exclusion, the presence and assimilation of these undesirable residents embody grave threats to the security and well-being of Assamese (*Asomiya*) communities and Hindu-Indian nation-space. In the politics of the Hindu right, this term is synonymous with Muslim residents.

The marked convergence of these two distinctive sets of xenophobic projects through the growing popularity of the Hindu right forces across India has forged the contemporary crisis of citizenship in Assam. The elimination of citizenship rights for the illegitimate settlers and their progeny has been a vital undertaking of decisive modifications to India's citizenship law in recent decades. Legal provisions for a comprehensive national register of legitimate citizens were introduced by the Hindu nationalist right-wing Bharatiya Janata Party government in the early 2000s. The NRC process in Assam was eventually initiated in 2013 following a ruling by India's Supreme Court and conducted under its supervision. This extraordinary, large-scale institutional exercise sought to create an inventory of the legitimate Assamese-Indian citizens for this state alone (CPIL 2020). In the highly divided context of Assam, prolonged structural and institutional discrimination and marginalisation of unwanted minority groups, such as the Miya Muslims, are inevitable severe consequences of these intensely contentious forceful politics (Dutta et al., 2024; Saikia, 2021).

Citizenship determination procedures as punitive gap

We draw on the notion of "process is the punishment" and apply it in our research setting for participation by marginal residents in the NRC exercise in Assam. Feeley (1992, 2013) developed this term to analyse the functioning of American lower courts to show how ordinary individuals commonly endure such processes as being harsh and punishing. Due process rights are constantly undermined for such individuals, despite the surface appearance of equality, fairness, and impartiality. More recently, Stumpf (2013) used it to discuss the active interactions between criminal law and immigration regulations in the era of intensified immigration controls in the United States. She concluded that when the authorities intend to exact a sanction, non-citizens experience such mechanisms as being punitive.

Stumpf's basic argument is consistent with recent ideas defined as the "weaponisation of citizenship" (Jain, 2022, 2023; Jain & Baubock, 2023; Kingston, 2021). Kingston (2021) has shown that as a departure from functioning as a social good by offering political membership and protection of rights, weaponised citizenship represents a problematic and damaging trend in contemporary times. States are increasingly deploying citizenship rights in a discriminating manner to benefit and reward some individuals and groups whilst excluding and socially isolating others. The resulting statelessness of groups negatively affected by weaponised citizenship practices serves to damage their identity and well-being. In her prescient assessment of weaponised citizenship, Jain (2022) has underlined the oppressive nationality practices of attribution which strip individuals and groups of their identity as citizens. What is noteworthy is that such processes are generally not seen as being "suspect" categorisation for the denial of citizenship, such as administrative practices (Jain & Baubock, 2023). Building on these ideas, our analysis for the NRC exercise shows how rigid structured procedures for citizenship attribution can be equally punishing and exclusionary for heterogeneous communities with unequal

capacities to participate fairly and in a reasonable manner in such significant processes. It is these core aspects of penalising, involving social control, the deepening of social hierarchies and rejection, we analyse in terms of the implementation gap or what we characterise as the “punitive gap”. For most marginal residents who participated in the NRC citizenship determination exercise in Assam, the various stages of this momentous process, and especially the fulfilment of the strict requirements, represented a repeated and prolonged form of punishment. The punitive nature of the entire exercise and as the next section shows, its aftermath, is a crucial feature of the implementation gap in our setting.

Our work additionally complements a very small body of writings critically engaging with key contemporary citizenship-based processes in India, including the NRC exercise in Assam, for their deleterious effects on the lives of poor and marginalised residents and selective and exclusionary nature (Arraiza et al., 2020a, b; Chatterji et al., 2021; Desai, 2020; Mander & Singh, 2021; Saha, 2021). A new work has described the NRC process in Assam as a form of “administrative violence” against unwanted minority groups (Arraiza et al., 2020b).

Economic excess of punitiveness

The first way in which the NRC process was punitive was the enormous efforts expended by disadvantaged persons to procure the various official documents required to be submitted for the NRC determination process and the severe economic hardships produced by it. This difficulty happened not because they were not eligible for such documents, but the ease with which they could receive such documents. The operations of government offices, their bureaucracy, and their engagement with the marginal residents are crucial aspects here. In regular times, the interactions between government officials, even low-ranking ones, and citizens, are distant, hierarchical, and power-laden (Mathur, 2016). If regular, middle-class Indians find navigating government offices, their complex operations, and extensive, inflexible set of rules cumbersome, frustrating, and needlessly long-drawn, then for the marginal residents with limited education, incomes, and information on procedures and rights, these exchanges are often arduous and mostly negative. Many of our respondents had to make multiple trips to numerous offices to receive the official documents and contend with long queues of residents wanting similar documents. If the concerned official was unavailable, as is often the case, then too it demanded at least one additional visit. Some participants stated that they did not know which government office to visit to acquire the documents, especially in the early submission process. Locating the right offices, filling in applications to receive such documents, and having copies notarised by a gazetted officer, all involved considerable time, effort and money. It also took time away from work and produced financial difficulties for many, especially those who are paid based on the work they perform by receiving daily wages instead of regular salaries. Some of our respondents ended up having to use brokers or intermediaries to acquire these documents and pay the extra fees charged by them.

Since all residents of Assam participated in the NRC process and were required to submit official documents for it, the number of persons visiting various government offices to acquire these “official papers” expanded enormously. This massive upsurge in demand for official documents also very likely lengthened the process of issuing such documents. This too made the process of acquiring such documents more cumbersome, requiring

multiple, sometimes many wasted trips to various government offices to obtain original documents, and later having copies notarised by a gazetted officer. Government officials of a certain rank have been authorised to certify or notarise copies of official documents in India. Certified copies of official documents had to be submitted for the NRC determination process which were later assessed against the original document during field verification.

Our participants, without exception, highlighted the considerable difficulties they encountered in accumulating the required set of official documents to establish their domicile and citizenship status and the severe financial hardships it created for their households. One of our participants recounted these problems in acquiring these documents.

Someone told us to go to this office to get this paper [official document]. We went there, they told us it was not the right office, go to this other office. That office was so far away. There, they told us office hours are over, office is closed come back tomorrow. When we went the next day, the officer was not there. We had to go so many times to the office for one paper [document]. And we had to get documents for everyone [in our family].

Another participant noted this in a similar vein.

We had such a hard time. We spent so much time and money to get the documents. We could not go to work and there was less money to eat. And all for what? Our son's name was not in the list. What do we do now?

For example, Jainul Biwi and her family members were forced to spend Rs. 50,000 (USD 607) to visit various government offices to acquire the official documents required for this exercise. Her household's monthly income is around Rs 5,000 (USD 61). Other studies have shown impoverished residents have been forced to sell their meagre assets, such as land or used up their limited savings to participate in the NRC and related citizenship determination processes (Chatterji et al., 2021; Saha, 2021). The social and economic costs of participating in this process have been extremely high for marginal residents.

A second key hardship and challenges related to the weak and highly uneven ability of residents to accumulate the required set of official documents for the citizenship determination process. This ability is not uniform or equal for all residents and is intimately tied to socioeconomic status and its linkages with other identity-based hierarchies, such as religious identity. Educated middle-class and elite persons are much more likely to accumulate (and easily acquire) a broader set of official documents to establish their own and their families' presence across the decades in Assam. Some of these documents include land or property deeds, school records (at the level of 10th standard/grade or above from recognised boards of education) and identity cards, university records and identity cards, employment records, utility records, passports, and birth certificates. Marginal socioeconomic cohorts do not have access to many such documents and even when available, these documents may not list the names of family members, their relationships with each other and, for that matter, provide a chronological record of the family's presence in Assam or other parts of India (key requirements of the NRC process). For example, informal work daily wage labourers do not have a documented employment record. Only specific school records at an advanced grade, that is, 10th and 12th grades,

of the last three years of schooling, and issued by recognised national or state boards of education have been accepted. Those who are unable to complete their schooling up to this point do not hold such documents. Birth registration is very low in rural areas of the country. Less than 6% of residents of India hold a passport and this figure was likely even lower in previous decades (Ramachandran, 2020). Since such an extensive set of records was not required officially previously, even those who may have had some documents may not have retained them for this citizenship determination exercise.

Punitiveness, gender and religion-based inequalities

Within this broad marginal cohort of Miya Muslims, preexisting gender hierarchies have exacerbated the risks of exclusion from NRC for disadvantaged women, such as Jainul Biwi. Longstanding patriarchal norms and practices which reproduce women's inferior status, especially child marriage, negligible inheritance rights and poor reachability of resources for social mobility such as education, have also significantly weakened women's accessibility to official documentation. Take the case of Nikhat whose own name and that of her children did not feature in the final draft list. Her brother continues to be actively employed in the Indian armed forces and only legitimate citizens can participate in these defence services. Women in rural areas have been much more likely to be rejected by the final NRC list. Weak birth registration in these areas, the common practice of child marriage, and in many instances, migration to another location post-marriage means that their ability to meet the documentary requirements for citizenship verification is significantly weaker than other social cohorts. The first government document most acquire at the age of 18 years is the voter identity card, which only carries their husband's name and address. Many rural women lack documents that display their parents' names and addresses. In this respect, Miya women's equal and fair participation in the NRC process has been sharply truncated by entrenched gender-based discrimination, while its negative outcomes have further strengthened gender inequality through weaker citizenship rights for women. This form of punitiveness has been structured by the intersectionality of gender inequities, religious identity and marginal socioeconomic standing of the rejected applicants. This dimension of the punitive gap is further coherent with the escalation of various (covert and overt) forms of discrimination, stigmatisation and violence experienced by religious minorities in recent years in India (CSS and MRI 2017; Fazal et al., 2024).

Documentary evidence and punitiveness

Another key requirement of the NRC process was to establish linkages with the resident's parents and grandparents (through the paternal line) and additionally connect these to documents confirming the presence of such relatives in the pre-1971 period by offering extra documents. Thus, two sets of records were needed: first, to confirm the presence of their ancestors in Assam before 1971 and second, to confirm their relationship with these persons through these documents. Not all persons could fulfill these two requirements. Some persons were unaware of their paternal ancestors' (grandfathers and great-grandfathers) names and other details.

Residents were also allowed to locate their ancestors' names in two old sets of databases, although these too were not devoid of challenges. Small mistakes made by officials and enumerators in these historical records, such as misspelled names of fathers

or grandfathers and minor errors in residential addresses brought additional problems for residents trying to establish their families' longstanding presence in Assam or other parts of India. These errors are also commonly found in other contemporary official documents. These mismatches of details in documents were treated with great misgivings and an elevated sense of scepticism by authorities.

Using the concept of "documentary citizenship", Sadiq's (2008) well-received study has argued that irregular migrants have been transformed into citizens in Assam through fraudulently acquired official documents, as the result of networks of complicity and weak institutional citizenship processes. Citizenship status has additionally hinged on documentary evidence, the "official papers" offered by residents. However, this popular belief that many illegitimate residents have been seamlessly integrated into the citizenry has produced two exceptionally difficult and negative outcomes (Ramachandran, 2015). First, it has brought much doubt and mistrust for official documents held by most residents and offered by them as conclusive proof of their citizenship status and identity as Indians (Ramachandran, 2015). This suspicion has also extended to the voter identity cards even though the right to vote can only be granted to Indian citizens. Second, it has created tremendous social paranoia, especially towards the presence of the cultural, linguistic, religious, and ethnic minorities, especially in Assam, whose identities are seen to not match the dominant Assamese (Hindu) identity. Due to their cultural and linguistic affinities with neighbouring Bangladesh and unchecked localised fears about the excessive presence of the so-called "Bangladeshi infiltrators", communities of Bengali origin in Assam, especially Miya Muslims, have been specially treated with tremendous hostility and skepticism and the various documents provided by them received with distrust by officials. The rising tide of Islamophobia or anti-Muslim xenophobia in India has further exacerbated these localised exclusionary tendencies (Bhat, 2024; Saikia, 2021).

As a result, documents submitted by certain groups of applicants for the NRC process received excessive assessment through the verification processes. After the "office verification" of the various submitted documents by the Office of the State Coordinator of NRC and state government officials seconded for this process, residents were expected to attend the "field verification process" (Office of State Coordinator NRC, Assam 2014). Our research participants were asked to appear at the different verification centres for the confirmation and corroboration of their details and to ensure that the copies of various documents offered by them were identical to the original version. Many of our participants pointed out that their community had been disproportionately targeted for these verification exercises as other groups in their local areas did not undergo such detailed and repeated scrutiny of their documents, household composition and lineage. Groups perceived as being 'non-indigenous' received far greater scrutiny in these verification procedures compared to the 'indigenous' groups (Azad et al., 2019).

Additionally, "family tree matches" were conducted at verification centres to confirm the relationships of household members with each other and across generations. All household members were expected to attend these hearings in person. For residents of small remote rural communities, many of these verification centres were located very far away from their homes. Some of our respondents indicated that they had to travel long distances of up to several hundred km with their entire family for this procedure. This verification requirement incurred extra costs in terms of money spent on travel and food besides the lost wages. One of our respondents informed us that he received the

'notice' for his family's verification a day before the said date and the verification centre was located about 400 km away. This requirement was additionally difficult because that area regularly experiences devastating floods causing significant travel disruptions (Gogoi & Siddique, 2023).

Punitiveness as unpredictable outcomes

Another punitive aspect relates to the unpredictable and unexplained highly erratic outcomes for marginal participants in the NRC exercise. In his critical assessment of the NRC project in Saha (2021) has shown that the NRC process was an unprecedented and mammoth undertaking in which all residents of this state had to participate. Yet, how it occurred, and its outcomes were highly arbitrary, inconsistent, and a clear violation of the human rights of rejected persons. Our field research confirms his broad argument, with many participating households experiencing this uneven result, with some members being accepted while close relatives were omitted from the final draft list. For several of our respondents, some members of their families and households were accepted in the final NRC list, while others were disallowed despite identical lineage and biographical histories. It is not known why some members of the same household achieved positive results, while the experience of others was negative. As mentioned earlier, one of Jainul Biwi's children was successful in this citizenship determination mechanism, although she and her other offsprings did not appear in the final list. This uneven and erratic pattern of inclusion and exclusion through the NRC for members of the same household or families with common lineages and family histories process has been documented by other works (Chatterji et al., 2021; Mander & Singh, 2021).

In the case of another of our respondents, her name was omitted from the final draft of the NRC. However, Nessa's parents and six siblings were accepted. "It is very astonishing, and I am deeply scared now without any clue", she said. Nessa's predicament, involving the rejection of one or two members of a family while accepting other close relatives for the state citizens' register, has been a very common outcome of the NRC exercise. In a different case, Aseem Ahmed was excluded from the final draft list, although all his other immediate family members, including his brothers and father, were approved.

Punitiveness as social suspicion

The final punitive aspect relates to the problematic criterion for eligibility in the NRC exercise and those it excluded. Individuals who had been classified as the 'D-Voters' before and around the time of the NRC exercise were automatically disqualified from participating in this momentous process (Office of State Coordinator of NRC, Assam 2014). In that, they were treated as illegitimate non-citizens even before their cases had been conclusively adjudicated by the semi-autonomous, quasi-judicial bodies known as the Foreigners' Tribunals. The 'D-Voter' or 'Doubtful Voter' is another parallel citizenship mechanism that has long been used to classify and exclude persons from formal rights and entitlements whose citizenship status is considered doubtful or is under dispute (Rahman, 2020; Siddique, 2019). Because of the intensification of immigration policing in recent years, persons labelled as the 'D-Voters' by local authorities have been exposed to other risks, such as arrest, and incarceration, and may be held in detention camps for indefinite periods, even before it is confirmed that they are, in fact, irregular

migrants (NHRC, 2018; Siddique, 2020). Such persons may also not often be informed of the evidentiary grounds on which they were deemed as the 'D-Voters'.

In an environment of intensifying xenophobia against the so-called illegitimate outsiders and increased efforts to isolate and remove such unwanted residents, social suspicion has become a sufficient, yet highly problematic reason to disbelieve the legitimacy of the presence of certain residents. Mere accusations by hostile, prejudicial neighbours or local persons can instigate this onerous classification, creating enormous, protracted challenges and hardships for such persons. In many parts of India, including Assam, an individual's name, especially last name, are open, unconcealed marker of their ethnic, cultural, and linguistic identities, background, and lineage. It is very easy to single out those are who perceived to be undesirable and illegitimate "outsiders" using names and other traits, such as languages/dialects spoken, their modes of attire, and their religious identities. Since the progeny of irregular migrants are not eligible for citizenship rights in India since 2003, this categorisation has negative consequences not only for those marked as 'D-Voters', but also for successive generations of persons associated with them. During the NRC process too, "objections" could be filed by anyone against the inclusion of individuals, ignoring the highly elevated odds and acute risks of frivolous claims in this highly charged environment (Bhat, 2024).

Several of our participants were unable to participate in the NRC process as they or one parent had been branded as a D-Voter even though in several cases, it was conclusively proven that they were legitimate citizens. Consider the case of Marjina Khatun, a resident of YZ village of YY district, whose name did not appear in the final draft NRC list. Her deceased father worked as a schoolteacher and her mother was declared a 'D-Voter' in 2017. However, her siblings' names all featured in the final NRC. Likewise, Saha's (2021) account of the NRC process reveals that his grandmother was excluded from the final list because she had been labelled as a 'D-Voter' in 1997. A cohort of persons discovered that they had been labelled as suspected irregular migrants and illegitimate residents using the 'D-Voter' process at different points of time only when they attempted to submit their applications to the NRC Office.

A different respondent had been sent to prison for two and a half years as a 'D-Voter' but was later accepted as a citizen by a Foreigners Tribunal. Since he was deemed as a 'D-Voter', his children were automatically excluded from participating in the NRC process:

I am an Indian citizen and was forcibly imprisoned for over two years. Who will return to me those days? I was physically strong earlier, but I have become weak after spending a long time in jail. I cannot work properly now. I am poor and alone, and no one is there to help me. I don't know what will happen to my family and me.

Aijaz and his family received an official notice in 2019 indicating that his father has been categorised as a "D-Voter", nearly nine years after his father's demise. His father's posthumous "D-Voter" status subsequently led to the exclusion of his entire family from the NRC list. His mother and wife were also rejected, although his sister-in-law (wife's sister) and his paternal uncle (father's brother) were added to the NRC. He had appealed this exclusion to the Foreigners Tribunal and was in a state of deep despair when he was interviewed. "I have lost everything I had fighting the case. When I saw [that] my entire

family is missing from the NRC, I almost became mad. I did whatever people asked me to do to prove my citizenship,” he said.

Another respondent who served in the Indian army for well over two decades had to delay challenging the classification of his spouse as a ‘D-Voter’ because of the associated costs and energies required for it. It was later confirmed that she was a legitimate citizen. He recounted his experience of this process:

I was in the army, and I did not have time to fight for my wife’s case while in service due to limited leaves. I fought the case of my wife’s citizenship at XYX Foreigners Tribunal, after retirement from the military. It took almost a year to prove the citizenship of my wife. I had to spend several thousand Rupees and a lot of precious time in the legal battle.

NRC “final List”, its aftermath, and due process rights

So far, we have shown that the NRC was a cumbersome, discriminatory and often arbitrary undertaking for our respondents and other marginal residents. It involved regular travels to extended distances for procuring documents and its verification processes, resulting in income and livelihood losses, wasted time and energies, and general weakening of household financial resources. Moreover, these required exertions and monetary costs did not necessarily ensure the inclusion of participants in the draft final list of citizens, even after submitting the required documents. Many of our respondents expressed their strong frustrations and anxieties over the entire process and its outcomes, especially the financial difficulties during and after the NRC process.

Next, we identify the procedural safeguards beyond the final draft list and what it implies for those who have been rejected by it. In a statement soon after the release of the final NRC draft list, the Indian government’s Ministry of Home Affairs (the government department responsible for immigration and citizenship affairs), underscored the due process rights available to the rejected applicants: “It was decided that adequate arrangements will be made by the state government to provide full opportunity to the persons whose names have been excluded from the final NRC to appeal against their non-inclusion” (PIB 2019). The statement noted that the citizenship determination procedure had not yet been conclusively settled and that under existing immigration laws of the country, “only Foreigners Tribunals are empowered to declare a person as a foreigner. Thus, non-inclusion of a person’s name in NRC does not by itself amount to him/her being declared as a foreigner” (PIB 2019). The period available to file these claims and objections to the Tribunals would be increased from sixty to one hundred and twenty days.

As this official statement indicates, this large, rejected cohort was permitted (as an additional protection measure) to approach the Foreigners’ Tribunals to file claims and “objections” to legally challenge their exclusion from this state citizenship register. As stated earlier, these semi-autonomous, quasi-judicial tribunals have been used in Assam for many decades for the final resolution of the disputed citizenship status of residents, even longstanding ones who have lived in the state for many decades. These tribunals have been adjudicating the citizenship status of those who were declared as the ‘D-Voters’ by Assam’s Border Police officials both before and after the NRC process. Assam is the only Indian state with such tribunals to resolve the citizenship status of residents

whose identity and presence are deemed suspect. It is also the only Indian state with a specialised agency, the Assam Border Police, engaged in identifying irregular migrants, conveying the constant state of high anxiety over undesirable immigrants. Local police forces undertake this exercise in other parts of India as part of their broader duties. In 2014, 64 additional tribunals were created to address the large backlogs and increased volume of cases due to intensified internal immigration policing (GoA 2023).

Under the terms of the Citizenship (Registration of Citizenship and Issue of National Identity Cards) Rules, 2003, any person “not satisfied with the decision of the claims” can appeal to the Foreigners’ Tribunals and depending on the judgment of the tribunal, their names may be added or deleted from the National Register of Indian citizens (GOI 2003). Referring to the provisions of these Rules (2003), India’s Supreme Court recently reiterated that the Foreigners’ Tribunal is the “competent authority” to assess these appeals and the decisions taken in cases already adjudicated by these tribunals would be “final and binding” (*Abdul Kuddus v. Union of India*, 2019, paragraphs 18 and 24). Rejected petitioners would not be permitted to make further appeals to these tribunals, as *res judicata*. In this legal principle, cases already settled or determined by a court are ineligible for a second hearing. Individuals “aggrieved by the opinion/order of the Tribunal” may challenge it through a writ petition to the High Court (paragraph 22). This judicial review would assess the “error in the decision-making process” to ensure that “no injustice is done” (paragraph 22). Higher-level courts would act as the “necessary check to correct and rectify an ‘error’ in the orders passed by the Tribunal” (paragraph 22).

After the NRC “final list” was released in August 2019, it was announced that 200 new tribunals were to be established to address the claims of persons who had been rejected by the Assam NRC Office (MHA 2021a). However, the actual number of operational tribunals may have been significantly lower. The Assam government decided not to extend the tenure of members of these new tribunals for the NRC-rejected petitioners beyond September 2022, effectively truncating this avenue of contesting the large-scale exclusions in the NRC process (The Hindu, 2022). Petitioners may approach the existing 100 Foreigners’ Tribunals (GoA 2023) to appeal their exclusion by the NRC Office of Assam. But, given the massive numbers of total rejected claims (1.9 million applicants) and increased efforts to apprehend irregular migrants using the D-Voter mechanism, their cases may not be speedily assessed, and their citizenship status expeditiously resolved. The sluggish pace of determination of disputed citizenship status of D-Voters and suspected irregular migrants, sometimes involving an extended passage of many years, has been a longstanding criticism of the Foreigners Tribunals (Chatterji et al., 2021). The fairness and transparency of the tribunals’ decisions and their members’ credentials have also been questioned, particularly in the last few years (Gohain, 2019; Mander, 2019).

Statistics released to Lok Sabha (Lower House of India’s Parliament) MPs show that these tribunals adjudicated an average of 27,000 cases between 2016 and 2020 (MHA 2021c). The resolved cases increased sharply in 2017 but showed a declining trend beyond that (Table 1). A meagre 11,873 cases were finalised in 2020, constituting less than one-third of finalised assessments in the previous few years. These numbers rose in 2017 partly because a new BJP-led government came to power in 2016 in Assam. The effective resolution of the vexed issue of the irregular migrants, the so-called ‘Bangladeshi infiltrators’, was a top electoral promise of this political party. Sarbananda Sonowal, who became the new Chief Minister of Assam, had reinforced populist Assamese

Table 1 Cases adjudicated by foreigners' tribunals in Assam, 2016–2020

| Year | Number of settled cases |
|-------|-------------------------|
| 2016 | 27,290 |
| 2017 | 35,605 |
| 2018 | 30,257 |
| 2019 | 31,03 |
| 2020 | 11,873 |
| Total | 1,36,064 |

Source MHA, 2021c

sentiments by pledging to protect *jati*, *mati*, and *bheti* (community, land, and identity) from the manifold threats posed by the irregular migrants (Barooah Pisharoty, 2019). A main organiser of the anti-migrant political movement in Assam during the late 1970s and early 80s, he was also a key force behind a prominent Public Interest Litigation (PIL) case that led to the repeal of an unpopular immigration law (*Sarbananda Sonowal vs. Union of India*, 2005). Applied only in Assam, the Illegal Migrants (Determination by Tribunals) Act allowed autonomous judicial tribunals to finalise the citizenship status of persons deemed by enforcing authorities as irregular migrants. The use of judicial tribunals in Assam was subsequently resurrected by the Indian government using its main immigration law. Active efforts to truncate or eliminate legal protections available to those deemed by enforcing authorities and residents as irregular migrants have been a defining aspect of the politics of migration and citizenship in Assam.

The latest official notification by the Indian government shows that another 140,050 cases of persons classified as D-Voters by state authorities were pending with the tribunals at the end of 2020 (MHA 2021c). Since nearly 2 million persons were not added to the final list, these relatively low figures of pending cases suggest that many persons shut out by the NRC final list did not file their appeals with the Foreigners' Tribunals. A major reason for these deflated figures in comparison with the massive total of unsuccessful NRC applicants is that this cohort has not yet received the 'rejection slips.' These 'rejection slips' will formally notify applicants of their exclusion from the NRC list and, more importantly, identify the specific reason(s) for their negative outcomes. Some two years after the final NRC list was released, it was claimed that the COVID-19 pandemic and floods in Assam were contributory factors for excessive delays in the issuing of rejection slips to persons left out of the final list (MHA 2021d). Without these rejection slips and concrete information on the substantive grounds for their refusal, unsuccessful applicants cannot file objections against the NRC outcome in their individual cases and that of their family members by legal appeals to the Foreigners Tribunals and later to the higher echelons of India's judiciary. It is also unclear when these rejection slips will be made available to the unsuccessful applicants, especially since the status of the final draft NRC list remains uncertain.

In April 2022, the new NRC Coordinator for Assam asked members of the Foreigners Tribunals not to rely on the results of the NRC final draft list for their adjudication (Saikia, 2022). This is largely because various authorities are dissatisfied with the outcome, concerning those who have been added or excluded from it. Media coverage suggests that the Government of India (GOI) and the Assam government want to conduct an additional round of verification of a smaller sample of approved applicants in the final list. Their justification is that legitimate citizens have been left out, while illegitimate residents have been added to the final draft list. The rejection of some Hindu residents

and low figures of excluded persons in this list are the main reasons for these objections. Although this statistic is problematic, the Indian government, in a rare disclosure, had stated that there were 12 million irregular migrants in the country in 2001, of which 5 million were residing in Assam (*Assam Sanmilita Mahasangha vs. Union of India*, 2014). In majoritarian discourses, this figure is significantly higher, extending to many millions.

Even after formal notifications using the 'rejection slips', many impoverished excluded persons may not be able to file their appeals quickly to the tribunals and if unsuccessful there, subsequently petition the higher courts. Lack of knowledge about these additional protective measures and limited financial resources plus a biased state administration will act as formidable hurdles. For this excluded cohort, recourse to these oversight mechanisms will inevitably incur new hardships, such as additional expenses through lawyers' fees, costs for travel to hearings and procuring additional documents combined with productivity and livelihood losses due to time away from work. In an unusual development, the Indian government announced that under a joint decision, the Assam government would "make arrangements to provide legal aid to the needy people amongst those excluded by the NRC" (PIB 2019). But it remains to be seen whether such assistance would be forthcoming and accessible to those urgently needing it. Those erroneously branded as the 'D-Voters' by local authorities have not received any legal or financial aid or compensation, even though it has been conclusively proven in multiple cases (including some of our participants) that such persons were rightful Indian citizens (Saha, 2021; Siddique, 2019).

As an oversight mechanism, the Citizenship (Registration of Citizenship and Issue of National Identity Cards) Rules, 2003, offers some discretion to authorities to create exceptions for persons belonging to groups characterised as the "original inhabitants" of Assam and their descendants. These persons can be added to the NRC list by authorities if satisfied they are citizens. However, the criteria to be treated as an "original inhabitant" is fraught with controversy and contestation, and marked overlaps with the local politics of identity and belonging. During the last elections, the term "khilonjia" was widely used to demarcate indigenous (autochthonous) Assamese communities incorporating several ethnocultural communities, but excluding Miya Muslims (Baruah, 2023; Rajkhowa, 2020).

It was widely believed that certain rejected applicants, especially the non-Muslim cohort, could reinstate their citizenship rights using the latest policy, the Citizenship Amendment Act (CAA), 2019 (Ministry of Law and Justice, 2019). CAA permits persons of most religious faiths (except Muslims) with migration histories from selected neighbouring countries to acquire accelerated citizenship rights in India (Bhat, 2019; Desai, 2020; Roy, 2022). Its presentation signalled the incremental solidifying of the Hindu right governance and statecraft through the 'ethnisation' of citizenship law (Bhat, 2024) and its preferential eligibility of Hindu migrants for citizenship rights. Heavily criticized as a "bigoted law that legitimises discrimination on the basis of religion" (AI 2024), CAA was the redemption of BJP's electoral pledges (Jayal 2022). This law was made less overtly discriminatory by adding other non-Muslim religious groups in its assessment of the "persecuted minorities" in selected countries of South Asia (Desai 2019; Roy, 2022). Be that as it may, the Citizenship Amendment Rules, 2024, released in March 2024, to implement CAA indicates a very different, largely negative outcome for Assam's NRC-rejected

applicants, at least thus far. Under these newly announced procedures, applicants must offer documentary evidence of their family's origin and citizenship status in Afghanistan, Bangladesh or Pakistan (Guha, 2024). Most excluded claimants may not be able to fulfil this main condition, and as is obvious, Muslims (including Miya Muslims) do not qualify for exemption under this law. For rejected individuals from other religious communities, using this legal route by offering conclusive proof of their background as 'foreigners' may effectively unravel their claim to Indian citizenship status under the NRC procedure.

As Bhat (2020) has noted, these contemporary citizenship-focused mechanisms are contributing to the emerging condition of 'twilight citizenship' in India, defined by new forms of severe precariousness and a general erosion of the value of citizenship. Roy's (2022) new study has shown that the "invocation of crisis generated by the spectre of indiscriminate immigration and the risks presented by 'strangers' amongst us" has become the difficult bedrock for the "extraordinary legal regimes of citizenship" that have emerged in India (p. 53). We have examined how unexpected and punitive institutional and administrative procedures and policy provisions are key features of such extraordinary citizenship regimes.

Conclusion

This article has examined the implementation gap in the creation of Assam's NRC and its linkages with the Doubtful Voter mechanism. Developing from the recognised concept of "process is the punishment", the idea of the "punitive gap" has been put forward to assess participation in the NRC determination exercise and its tough outcomes for marginalised Miya Muslim residents. The multiple ways in which this gap has operated to drastically diminish due process rights for the rejected NRC participants has been evaluated. The analysis underscores that the established procedure or the Standard Operating Procedure (SOP) of participation in the NRC was a marked retreat from due process procedures and constituted a "punitive gap" for most marginal residents demanding arduous exertions and steep financial costs without definitive assurances of positive outcomes at its conclusion. The rigid, opaque, and standardised procedures for citizenship-based processes through the NRC exercise have camouflaged the knotty reality that different socioeconomic cohorts can participate unevenly and unequally in these important processes, even when they are legitimate citizens. Such inflexible mechanisms which rely on a circumscribed set of "evidence" for inclusion and exclusion are often blind to the ground realities of residents, especially their differential ability to fulfil these documentary requirements. As a result, due process rights have been poorly enforced and very weak efforts have been made to rectify the stark deficiencies and inequalities in this citizenship verification process. This is because such much-needed actions to address the "punitive gap", the glaring procedural hurdles and related existing problems that we have identified in our analysis, are perceived as conciliatory to persons and groups such exercises intend to reject. Moreover, the emerging legal regime of citizenship, what Roy (2022) characterizes as "extraordinary regimes" moulded by weaponised citizenship, has buttressed such citizenship attribution practices to demarcate the undesirable Others.

Although our sample was limited, our research has uncovered a common, troubling pattern in which marginal residents with limited incomes, assets and connections have faced robust hurdles to participate fairly, equitably and in a reasonable manner in these

opaque citizenship determination processes. We show how difficult and taxing the whole exercise has been for such individuals and their families with indeterminate outcomes. We have identified the punitive, prolonged, and uncertain nature of the process as constituting the main attributes of the implementation gap in our research setting. The intensification of pre-existing inequities, through the intersection of gender, religion-based and socioeconomic hierarchies, is another important outcome of this punitive gap. Moreover, these “punitive gaps” have frustrated the even-handedness of these significant proceedings and failed to protect already disadvantaged groups from governmental overreach in a difficult and dangerous context fragmented by enduring xenophobic tendencies and deep social divisions.

Despite a very thin veneer of impartiality and neutrality, the NRC process has sought to reinforce exclusionary tendencies and, that too, in a punitive manner. Although India has not signed the two international conventions on statelessness, other customary legal frameworks (such as the Universal Declaration of Human Rights) and the country’s constitution recognise the right to nationality and access to basic protections for stateless persons (CPIL 2020). When the documentary citizenship regime is highly murky, as in Assam, these protections assume greatest importance for marginal residents. Official pronouncements of the post-enumeration protectionary measures, such as legal assistance to rejected persons and appeals through the Foreigners’ Tribunals, have upheld the façade of impartiality and fairness consistent with the Constitution and international customary law. Even so, the non-existent execution of such supportive practices of substantive due process exposes the highly fragile façade of these substantive due process protections for the NRC participants, which sustains this punitive gap. By holding the appeals procedures at abeyance by keeping the official status of the NRC in limbo and not disclosing the definitive reasons for the rejection of some 1.9 million claimants, the punitive gap is being preserved, that too, for a long-drawn-out period. By failing to clarify and finalise the status of the NRC exercise, the procedural safeguards of notice and opportunity to contest governmental action by the rejected petitioners have been highly restricted and perhaps even negated. Due process rights have figured very poorly in these decisive processes that have far-reaching consequences for the lives and future of those rejected by it.

For our marginal participants, securing these official documents and their large-scale participation in the NRC process has bolstered the illusionary outcome and security of inclusion. Our fieldwork and a small body of recent writings have confirmed that this is far from the grim reality of the NRC exercise. Our results are consistent with Bhat’s (2024) new argument that the legal system and the rule of law are increasingly implicated in the political project(s) of majoritarianism in India.

Nearly five years after the final draft NRC list was released, those excluded have not yet been provided the definitive reason(s) for their elimination. Despite the uncertainty around NRC’s ‘official’ status, the biometrics details of persons rejected either by the first draft or second ‘final’ NRC list have been locked, in turn, blocking their enrolment in Aadhaar. Aadhaar is another national-level official identification system linked to various benefits such as social welfare programs for the poorest social cohorts. Large-scale statelessness, the weakening of human and civil rights, and the firming up of preexisting socioeconomic inequities are key consequences of such problematic exercises.

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Author contributions

Nazimuddin Siddique conducted the fieldwork and interviews in Assam; Sujata Ramachandran analysed official documents and legal cases. The development of the key arguments, analysis and writing were shared equally by the authors. Both authors read and approved of the final manuscript.

Data availability

Data sharing does not apply to this article as no datasets were generated or analysed during the current study.

Declarations

Competing interests

The authors declare that they have no competing interests.

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