



THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

TWAILR: Reflections #22/2020

Rewriting India: The Construction of the ‘Hindutva’ Citizen in the Indian state

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In 2003, the Bharatiya Janata Party (BJP)-led coalition government amended the Indian Citizenship Act of 1955 to define for the first time an ‘illegal migrant’ in India. The ‘illegal migrant’ was defined as a foreigner who entered India without a passport and travel documents or who entered with documents but overstayed beyond the permitted time (section 2(b)). Such a person could not apply for Indian citizenship by registration or naturalization. Any person born after 30 December 2004 was also ineligible for birthright citizenship if either parent was an illegal migrant (section 3(2)). The amendment also stipulated that the government could ‘compulsorily register every citizen of India and issue national identity cards’ (section 14A).

The BJP returned to power in 2014 and again, with a stronger majority, in 2019. The BJP followed up on their 2003 amendments by passing the 2019 Citizenship (Amendment) Act or the CAA, which created an exemption from the ‘illegal migrants’ category for persons who are Hindu, Sikh, Buddhist, Jain, Parsi, and Christian from three Muslim-majority countries, Afghanistan, Bangladesh, and Pakistan.¹ These individuals could now apply for Indian citizenship as long as they had been residing in India for at least five years and entered India before 31 December 2014. The government framed it as a ‘humanitarian’ exemption. The 2019 CAA has spurred unprecedented protests against the BJP government and is currently facing a constitutional challenge before the Supreme Court of India.²

¹ The Citizenship (Amendment) Act, 2019.

² Mihir Desai, ‘CAA–NRC–NPR and Its Discontents’ (2020) 55:7 *Economic and Political Weekly* 25; Farrah Ahmed, ‘Arbitrariness, Subordination and Unequal Citizenship’ (2020) *Indian Law Review*.

Our reflection sheds light on the BJP's insidious use of legitimate state power through administrative regulation, constitutionalism, citizenship determination, adoption of international law and neoliberal economic policies, to further its 'Hindutva' ideology (explained below). While an in-depth critique of how the modern sovereign state perpetuates autocratic, colonial, and homogenizing practices is beyond the scope of this piece (it is the subject of our larger research project), this reflection focuses on two aspects. First, we show how, by implementing the National Registry of Citizens (NRC) along with other national documentation regimes, the government is using facially neutral administrative regulations to construct the 'documented' Indian citizen. This 'citizen' is made to fit with Hindutva ideals by disenfranchising Muslims and threatening the de facto and de jure citizenship of non-dominant caste Hindus and other groups that challenge the ideology. While these state actions may seem distinct, they resemble traditional colonial practices that the BJP is skilfully adopting to advance its discriminatory political ends. Second, we show that, with the CAA, the BJP is perversely using the humanitarian principles of refugee law to construct neighbouring Muslim states as savage, and whose victims have to be protected by the Hindutva state. Thus, India is replicating the practices of liberal, democratic states of the Global North that continue to use logics of coloniality, exceptionalism and racism to maintain systemic inequities and embed oppressions.

The BJP administration, under Prime Minister Narendra Modi, has enacted laws and policies furthering its Hindutva agenda undermining the democratic rights and political participation of Indian Muslims and other groups seen as incompatible with the Hindutva ideology. For example, the BJP government banned the sale and purchase of cattle for slaughter (the 'beef ban'), which led to the targeted lynching of Muslims and Dalits across the country.³ They pursued a concerted agenda to construct a Hindu temple on the site of the disputed Babri Mosque land that resulted in a Supreme Court judgment giving the right to the disputed land to the temple trust.⁴ Using the narrative of the 'victimized' Muslim woman, the BJP government unilaterally passed the Muslim Women (Protection of Rights on Marriage) Act that criminalizes Muslim men for certain forms of divorce, while ignoring the grassroots work and the non-carceral reforms demanded by Muslim women groups.⁵ It is a stark paradigm of how the BJP uses human rights frames, which reflect the savage-victim-saviour

³ Aparna Parikh and Clara Miller, 'Holy Cow! Beef Ban, Political Technologies, and Brahmanical Supremacy in Modi's India' (2019) 18:4 *ACME: An International E-Journal for Critical Geographies* 835.

⁴ Nayakara Veerasha, 'Majoritarian Politics and the Ayodhya Verdict' (2020) 55:13 *Economic and Political Weekly*.

⁵ Shirin Abbas, 'Triple Talaq Bill and the Muslim Voice: Is a Law Necessary?' (2019) *1st International Gender Conference*, Symbiosis School of Liberal Arts, Pune.

metaphor,⁶ to advance its political designs. The CAA is another instance of this approach. In late 2019, the BJP amended the Indian Constitution to revoke the special status granted to Kashmir, a Muslim majority state, over which India and Pakistan have had territorial conflict since independence. The constitutional amendment expressed disregard for the Kashmiri right to self-determination and was accompanied by the detention of Kashmiri political leaders, deployment of tens of thousands of Indian army troops in Kashmir, imposition of curfews, and implementation of a phone and internet blackout.

Of the numerous autocratic BJP actions threatening the security of Muslims, Dalits, and other marginalized populations and the multicultural fabric of India, the CAA struck a chord with the nation. Protests against the CAA across the country have been organised and animated by Muslim women, Dalit leaders, students, and hundreds of thousands of people across the caste, class, gender, and religious spectrum. While the CAA appeared to be the proximate cause of the protests, grievances spanned the panoply of policies and practices of the Modi government. The protests emerged as an organic peoples' movement, where the political parties in opposition in the legislature played a minimal role. In the past few weeks, the government has supported a narrative that blames the spread of the novel Coronavirus on Muslims who are facing ostracization and physical and verbal abuse as a result. The BJP government has also used the lockdown under the pandemic to arrest over a thousand CAA protestors, targeting Muslim activists, students, academics, and writers.

The construction of the 'documented' Hindutva citizen and the NRC

There has been extensive scholarship on the nature of the Hindutva-ization of the Indian state under the BJP governments. According to Mohan Bhagwat, the current chief of the Rashtriya Swayamsevak Sangh (RSS), the militant organization committed to Hindu revivalism upon which BJP's ideology is based, Hindutva has three 'basics': 'patriotism, glory of our ancestors, and respect for culture'.⁷ The values predicating Hindutva, according to Bhagwat, belong 'to the religions (*sampradaya*) that are sprung

⁶ Makau Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42 *Harvard International Law Journal* 201.

⁷ Hilal Ahmed, 'Not Savarkar-Golwalkar, roots of CAA lie in RSS chief Mohan Bhagwat's brand new Hindutva' (January 2020) <https://theprint.in/opinion/not-savarkar-golwalkar-roots-of-caa-lie-in-rss-chief-mohan-bhagwats-brand-new-hindutva/346100/> (accessed 5 March 2020).

from the entirety that is India'.⁸ The Hindutva movement not only seeks to homogenize the multitude of religions and religious sub-cultures, including Dalit and other non-dominant caste cultures of India, but also has, as an essential tenet, the exclusion of Muslims as they follow a 'foreign religion'. Yet, at the same time, this movement is careful to undergird itself in the modern, constitutional state by not making a demand for a Hindu state as such, but instead making a claim for a 'constitutional state [for a] Hindutva nation', where the constitution represents a Hindutva point of view.⁹ This Hindutva vision of Indian citizenship, which is adopted by the BJP government, disregards India's dynamic and multicultural history marked by migration and syncretism.

The 2019 CAA is seen as a precursor to the implementation of a National Registry of Citizens (NRC), which is expected to disenfranchise millions of people living in India. In the aftermath of the anti-CAA protests, the government was vague about its plans to implement a nation-wide NRC. However, in the government's submission to the Supreme Court (para 47) in response to the public interest litigation against the CAA, it explicitly declared its intentions for a nation-wide NRC. There is also precedent, as a pilot NRC has already been conducted in the Northeastern state of Assam between 2015 and 2019 (discussed below). Furthermore, the 2003 changes to the Citizenship Act have already given the government the mandate to implement a nationwide NRC whenever it pleases.

The 2003 Amendment to the Indian Citizenship Act disassociated citizenship from social or political membership and ties (birth, lineage, length of stay, or social relationships) and instead made it a matter of possessing the right *documentation*, subject to record, verification, and surveillance. While prima facie, it may appear to be an administrative act in order to provide services to its citizenry, no different from several other countries, the BJP's statements and actions make it evident that the objective is to exclude those who do not meet the subjective criteria of the ideal Hindutva citizen.¹⁰ Once accused of being a 'foreigner' due to the absence of the right documents, a person is sent to a detention camp and deported even if they have immediate Indian family members who live in India.¹¹

⁸ Ibid.

⁹ Ibid.

¹⁰ Desai (2020).

¹¹ Nazimuddin Siddique. 'Inside Assam's Detention Camps: How the Current Citizenship Crisis Disenfranchises Indians' (2020) 55:7 *Economic and Political Weekly*.

In India, despite an illiteracy rate of 26 per cent, various administrative documents have been used to access public services and operate as signifiers of de facto local citizenship. These include ration cards to purchase subsidized food and other items, Below Poverty Line (BPL) cards for welfare access, National Rural Employment Guarantee (NREG) cards, voting cards, and land registration, which are issued by local officials and can often be obtained through local administrative processes and social networks,¹² without scrutiny of citizenship or immigration status. These documents are used for exercising ‘everyday’ practices of citizenship, such as accessing state benefits, having a livelihood, voting in local elections, among other activities. They are scrupulously protected by their owners, including by our own families, often guarded safely in plastic bags to protect against disasters and wear and tear.¹³ Birth certificates, ancestry records, and other formal status-related documents that show place and date of birth, such as educational certificates and historical land tenure documents (also called ‘legacy documents’), that will be used under the NRC to determine state citizenship are a rarity in many parts of the country especially for non-dominant caste, landless, rural, undereducated, and tribal people.¹⁴

The NRC process in Assam, which was instituted to supposedly rid Assam of foreign ‘infiltrators’, made apparent that everyday local citizenship documents (such as cards to access welfare and voting) were no longer sufficient to establish citizenship. After a four-year process, when the updated NRC was released in August 2019, about 2 million people failed to make it onto the register despite having one or more of the de facto everyday citizenship documents. This included a 52-year old Muslim man who served in the Indian Army for 30 years. Muslim and Bengali women (identified as such because they did not speak local Assamese languages) were put through more stringent processes.¹⁵ Out of 20,000 transgender persons in the state, only 2,000 transgender women were able to apply, as the rest could not provide formal status-related documents such as birth certificates since they were frequently forced to leave their families at an early age.¹⁶ The status of their applications is unknown.

¹² Vasudha Chhotray, ‘Nullification of citizenship: negotiating authority without identity documents in coastal Odisha, India’ (2018) 26:2 *Contemporary South Asia* 175 at 175-180.

¹³ Ibid.

¹⁴ Desai (2020).

¹⁵ Ditlekha Sharma, ‘Determination of Citizenship through Lineage in the Assam NRC Is Inherently Exclusionary’ (2019) 54:14 *Economic and Political Weekly*. Sharma cites a news article to highlight how, because “child marriage is highly prevalent in some areas despite being illegal, women did not have the required documents.”

¹⁶ Ibid.

The nation-wide NRC has created a panic among Muslims as they feel that they will be targeted for stricter scrutiny and they, like many Indians, do not have documents to prove the provenance of their parents and grandparents. This fear is even shared by government employees as news of disenfranchised Army officers in Assam became known.

The citizenship rules are articulating new kinds of populations – the forever foreigner, the ‘infiltrator’, the ‘illegal migrant’, the unworthy citizen – administered using colonial methods of classification and exclusion with tools of governmentality. The very concept of the ‘citizen’ is remapped. Citizens are no longer members of solidarities acting their citizenship through everyday acts of participation in society and polity, but are instead classified entities of the regulatory state. As under colonial rule, all ‘populations’ are prima facie subjects, not citizens.¹⁷ Some subjects can transcend to de jure citizenship status so long as they can show they are ‘documented’ in the image of the Hindutva subject, and can validate themselves through the administrative apparatus of the state.

The use of documentation to control public morality, to regulate religious and social spaces, and to ‘other’ populations under the guise of providing services is a well-established mode of governance of the modern sovereign as well as the colonial state. South Asia has a history of such practices for at least a century and a half under colonialism, before states gained independence – albeit demarcated along a colonial exercise of arbitrary boundary marking – and [postcolonial modern states](#) were born.¹⁸ The concept of the citizen ‘carries the ethical connotation of participation in the sovereignty of the state’.¹⁹ For the average person, this includes *local* social and political community ties and participation in the local economy through their livelihood and family life. Yet, the BJP government has shorn citizenship of its connotations of self-sovereignty, social and political participation, or ‘performative’ acts;²⁰ and has done so through a series of administrative acts before it even engaged with the actual citizenship laws.

For example, the government first sought to delegitimize the long existing-documents of everyday de facto citizenship (such as ration cards and others noted above) by introducing a universal identification

¹⁷ Partha Chatterjee, *The Politics of the Governed* (Columbia University Press, 2004), at 34. Chatterjee shows how the modern and colonial state creates identifiable, classifiable, wholly empirical “populations” out of citizens, whose participation is considered essential to legitimate state sovereignty, but are made to inhabit only the “domain of theory”.

¹⁸ Ibid.

¹⁹ Ibid at 34.

²⁰ Isin Engin, ‘Performative citizenship’ in A. Shachar, R. Bauböck, I. Bloemraad & M. Vink (eds.), *The Oxford handbook of citizenship* (Oxford University Press, 2017) 500.

card, called the Aadhaar card in 2009, under the objective of simplifying service provision.²¹ The Aadhaar card was used to collect a significant amount of new biometric information from the population and centralise its administration. This is particularly problematic in a country that has a history of ethnic cleansing,²² and of surveillance and suppression of Muslims and all those expressing dissent against the government using centralised government classification information.²³ The COVID-19 pandemic has given the BJP government yet another avenue to collect social and health information through the ‘Aarogya Setu’ mobile app meant to aid with digital contact tracing. Along with the citizenship requirements, these represent steps in a systematic program to document, classify, and then disenfranchise sections of the polity to create a specific homogenizing vision of the Indian state.

The contradictions and hypocrisy of the CAA

Citizenship laws in India have been framed and amended in response to political challenges posed by mass migrations, religious conflicts, and partition of the sub-continent. Yet, until the 2019 CAA, religious affiliation has never been a criterion to determine eligibility of citizenship.²⁴ The CAA represents a significant departure in this regard.

The government has used human rights and compassionate grounds to justify the religious affiliation condition in the law, specifying protection of minorities from ‘persecution’ as the core objective behind the CAA.²⁵ Pakistan, Afghanistan and Bangladesh were selected because they have a state religion, based on which, the CAA claims, ‘persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries’ and face ‘fears about such persecution in their day-to-day life’.²⁶

²¹ The government policy to use the Aadhaar card was enacted as law under the BJP government in 2016 as The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

²² Human Rights Watch, “WE HAVE NO ORDERS TO SAVE YOU” State Participation and Complicity in Communal Violence in Gujarat’ (April 2002) <https://www.hrw.org/reports/2002/india/gujarat.pdf> (accessed 5 March 2020).

²³ Human Rights Watch, ‘Silencing Dissent in India’ (September 2018) <https://www.hrw.org/news/2018/09/07/silencing-dissent-india> (accessed 5 March 2020).

²⁴ Desai (2020); The CAA followed similar changes to the Passport (Entry into India) Act and the Foreigners Act.

²⁵ The Citizenship (Amendment) Bill, 2019, Statement of Objects and Reasons, s.2.

²⁶ Ibid.

India uses the international refugee law principle of persecution to justify the CAA despite showing no inclination to be directed by it in the past. India has neither ratified the 1951 Convention on the Status of Refugees nor its 1967 Protocol. In fact, India has a declaration on Article 13 of the International Covenant on Civil and Political Rights that accords aliens the right of due process of the law during expulsion proceedings, stating that India will apply its own laws concerning foreigners.²⁷ India has traditionally followed an ad hoc policy towards granting status to populations fleeing from its neighbouring countries, including Sri Lankan Tamils and Tibetan Buddhists.

The CAA has been challenged in the Supreme Court. Numerous legal scholars have argued that, when heard in the Supreme Court, the CAA is likely to be found in violation of the secular Constitution of India on the basis that it is discriminatory and arbitrary.²⁸ Though the Indian government has claimed that the CAA is intended to offer refugee status to persecuted minorities, the amendments exclude persecuted Muslim minorities (e.g. Ahmadis or Shias in Pakistan) in Muslim states and persecuted minorities from non-Muslim states (e.g. Rohingya from Myanmar, Sri Lankan Tamils). Also, there is no coherent rationale offered for granting citizenship to migrants from three neighbouring countries only. Afghanistan is not even an immediate neighbour but is included as part of 'Akhand Bharat', the Hindutva irredentist construction of 'Undivided India' or 'Hindu Rashtra'.

The government's response affidavit at the Court is filled with contradictions and hypocrisy. First, the government claims that India is the 'sole rational and logically feasible place' in South Asia for refugees to make an asylum claim on the basis of religious persecution, since it is a 'constitutionally secular country' (para 27). Yet, the CAA legislation itself introduces religion into India's secular citizenship laws for the first time while demonizing its Muslim neighbours for following Islam-based governance.

Second, the affidavit justifies the CAA because it protects people from persecution but goes through considerable acrobatics to distinguish the persecution of non-Muslims in these countries from the persecution of other minorities. For example, with respect to the Rohingya Muslims in Buddhist Myanmar, the government claims that their persecution is ethnic and linguistic, not religious. The persecution of Ahmadis and others in Pakistan is made out to be sectarian and intra-religious. With respect to Sri Lankan Tamils and Tibetan Buddhists, the affidavit claims these communities are

²⁷ United Nations, International Covenant on Economic, Social and Cultural Rights, 16 December 1966.

²⁸ Ahmed (2020); Desai (2020).

provided refuge through other existing mechanisms, and hence they are not included in the CAA. Even prior to the statutory amendment, the Modi Government had issued a series of executive orders offering exemptions to non-Muslim minorities from Pakistan, Bangladesh and Afghanistan allowing them to indefinitely reside in India without valid documents and exempting them from the Foreigners Act (as noted in their submissions). Thus, as with the Sri Lankan Tamils and the Tibetan Buddhists, the purported groups in the CAA are already covered under an alternative ad hoc scheme. Yet, only the ad hoc scheme that relates to its Muslim neighbours has been deemed worthy of converting to legislative statute. Confusingly, in response to the claim that only Muslims will now be deemed as 'illegal migrants', the government dramatically asserts that Sri Lankan Tamils and Tibetan Buddhists will not be exempted from deportation (para 41), implicitly admitting that their ad hoc schemes are precarious.

In short, only Muslim countries have been singled out as engaging in exceptional persecution, which the government has equated with religious persecution. The Islamophobic discourse of painting Muslim states as barbaric in contrast to the secular and compassionate India is an essential aspect of Hindutva ideology. This discourse follows the savage-victim-saviour narrative,²⁹ where India is the benevolent saviour of Hindutva (i.e. non-Muslim) people from Muslim 'foreign' savages. In doing so, India is mirroring Islamophobic and Orientalist practices of the West. India demonizes its Muslim majority neighbours as being violent and inhumane and uses that essentialist construction to legitimize oppression and alienation of Muslims residing within its borders. Both aspects function to reconstitute each other and provide the grist for state and vigilante agents to subjugate Muslims in India.³⁰ Any opposition to its anti-Muslim policies and, further, its broader Hindutva ideology, including from Dalits, students, journalists, academics, is framed as anti-nationalist and treasonous.

Finally, the government affidavit alludes to international conventions by stating their action to provide asylum based on selective religious persecution 'resonates in legislations across the world' (para 44). However, legislations in other countries, which have incorporated the Refugee Convention recognises persecution under *five* grounds, including race, nationality, membership of a particular social group, and political opinion. The myopic focus on religious persecution in Muslim countries serves to fit

²⁹Mutua (2001).

³⁰ Prashant Waikar, 'Reading Islamophobia in Hindutva: An Analysis of Narendra Modi's Political Discourse' (2018) 4:2 *Islamophobia Studies Journal* 161.

BJP's narrative of Hindutva citizenship. Moreover, the affidavit expediently makes the point that international law cannot be a basis for judicial review of legislation and, further, that the petitioners' assertion that 'non-refoulement is a part of customary international law is *erroneous* in law' (para 52).

This is in stark contrast with the public narrative of India being a regional leader in granting refuge and being a paradigm of a liberal state. The Narendra Modi-led BJP government has spent much effort in garnering an international reputation for India and a global brand for the Prime Minister.³¹ It has effectively used the tools of the neoliberal economic global order to bolster its autocratic, majoritarian state building. The Modi government has embraced international law to assert a superior claim of international legitimacy against its South Asian neighbours, on numerous occasions.³²

Where India matches its Western counterparts is in its practice of exceptionalism and paternalism. Refugee law has conventionally been used by states to achieve political goals behind the veil of humanitarianism, for example in deciding which countries are 'safe countries' and which are 'countries of persecution'; who are legitimate coerced asylees versus illegitimate migrants with 'choice'; who should be excluded as a security threat and who should be included as someone repressed by foreign savagery.³³ The CAA represents yet another example of the comfortable malignant alliance between supposedly apolitical 'international humanitarianism' and production of exclusionary state sovereign power.

The global coverage of the protests has created a dent in the international reputation of Modi. It remains to be seen whether this dent will have any impact on the carefully designed program for the production of an Indian Hindutva state and citizenry.

Conclusion

³¹ Michael Kugelman, 'Modi's Nationalism Is Spoiling His Global Brand' (June 2019) <https://foreignpolicy.com/2019/06/13/modis-nationalism-is-spoiling-his-global-brand/> (accessed 5 March 2020).

³² Also see, *Jadhav case (India v. Pakistan), Summary of the judgment*, 17 July 2019, <https://www.ici-cij.org/files/case-related/168/168-20190717-SUM-01-00-EN.pdf> (accessed 5 March 2020).

³³ Encarnación Gutiérrez Rodríguez, 'The Coloniality of Migration and the "Refugee Crisis": On the Asylum-Migration Nexus, the Transatlantic White European Settler Colonialism-Migration and Racial Capitalism' (2018) 34:1 *Refuge: Canada's Journal on Refugees/Refuge: revue canadienne sur les réfugiés*; also see James C Hathaway, *The Law of Refugee Status* (Butterworths, 1991) at 6-11 tracing the Western, liberal political ideology that inform the definition of persecution in the Refugee Convention during drafting to achieve the dual goal of delegitimising the "Eastern bloc" through the asylum process and stifling migration from the Global South; Also see, Didier Fassin, *Humanitarian Reason: A Moral History of the Present* (UC Press, 2012).

While the merits of citizenship as purveyor of rights in the modern state has been much touted, democratic, liberal states have long used citizenship as an exclusionary tool through their immigration laws. States in the Global North use facially neutral exceptions on the basis of criminality, security, health, and public order, among other factors, to perpetuate racial, religious, colonial and ideological discrimination. In many ways, India is replicating the behavior of other liberal states including Canada, United Kingdom, United States, and other countries of the Global North. Citizenship is essentially a way for the sovereign state to behave as an arbitrary ‘bouncer’ of an exclusive membership club.³⁴ The realities of the South Asian subcontinent, marked by its complex social and cultural histories, demographics, colonization, and conflicts has meant that India has often not emulated the modern Westphalian nation-state in the past — a factor that was raised by the colonial administration and thinkers against its independence.³⁵ Under BJP rule, there is new fervour to go back to the building of a nation-state using established techniques, but where the nation is a fascist Hindutva nation. This reflection is not presenting a story of how India is not suited to become a liberal nation-state as the colonialists claim. On the contrary, this is a reflection on why the modern liberal democratic nation-state and the present international legal order has failed. As exemplified by the trends in India and globally, the state has not only failed to ensure the rights and political self-sovereignty of peoples within, but through various modalities, some of which have been described in this piece, the state reproduces oppression and exclusion in ways that have long been the mark of colonialism and imperialism.

³⁴ Juliet Stumpf, ‘The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power’ (2006) 56:2 *American University Law Review* 367 at 376-78, 396-403.

³⁵ Niraja Gopal Jayal, *Citizenship and Its Discontents: An Indian History* (Harvard University Press, 2013).