
Bordering through legal non-existence: the production of *de facto* statelessness among women and children through the National Registry of Citizens in Assam, India

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Abstract: This article applies a feminist bordering lens to examine the legal and administrative procedures through which an estimated 1.9 million residents of India's northeastern state of Assam have been excluded from the 2019 National Registry of Citizens (NRC). Since India's independence from Great Britain, the colonial legacy of borders and national belonging have fuelled heated conflicts among the Assamese ethnic majority, Bengali-speaking Hindus and Muslims whose ancestors originated in what is now Bangladesh, Adivasi communities, (i.e., the region's original inhabitants), and the Indian government's authority to expel 'foreigners'. While the convergence of Hindu nationalism and Assamese ethnonationalism contributes to a citizenship crisis among people of Bengali heritage in Assam, we consider how bureaucratic requirements to verify citizenship reinforce racial, class, and patriarchal inequality for women and children from low-income communities who are at risk of *de facto* statelessness because they are not 'legible' as citizens in India.

Keywords: precarious citizenship; stateless persons; documentary citizenship; intersectionality; marginality; migrant; illegality; nationalism; India.

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1 Introduction

Although ethnonational conflicts in northeastern India have generally received scant attention worldwide, the exclusion of an estimated 1.9 million people from the August 2019 National Registry of Citizens (NRC) in Assam took centre stage when Narendra Modi’s Hindu Nationalist government passed a Citizenship Amendment Act (CAA) in December of 2019. The CAA provided a faster path to citizenship for undocumented migrants who are ‘religious minorities’ from neighbouring countries, while specifically excluding hundreds of thousands of Muslim residents based on their religion alone. Mass anti-CAA protests subsequently erupted in Assam and across India contesting the government’s Hindu Nationalist policies as unconstitutional and fascist. Critical migration scholars also emphasised exclusion from the NRC and CAA as case studies of ‘deprivation of citizenship’ (Shahid and Turner, 2022) in India that reinforce colonial, racist, capitalist, and patriarchal constructions of national borders and the division between citizens and migrants. Though anti-government protests in Assam denounced the CAA’s anti-Muslim intentions, Assamese ethnonationalists rallied against claims to

citizenship from Hindu and Muslim Bengali speakers who, since the British colonial era, have been framed as ‘foreigners’ who threaten the social and linguistic make-up of Assamese society. Building upon previous scholarship on precarious citizenship among ethnic minority groups, in this paper we employ a feminist, intersectional lens to consider how bureaucratic requirements to verify citizenship reinforce racial, class *and* patriarchal marginalisation for a cross-section of women and children from low-income communities who are less ‘legible’ (Larios et al., 2022) in India’s bureaucracies and thus at risk for *de facto* statelessness.

The NRC was created in 1951 to produce a baseline census of India’s population at the dawn of its formation as an independent nation and partition from East and West Pakistan. After decades of political conflict between Assamese ethnonationalists, Bengali-speaking communities, and Adivasi communities, (i.e., Indigenous peoples known as ‘original inhabitants’ in Assam), in 2013, the Supreme Court ordered the state of Assam to update the NRC under the Supreme Court’s oversight. Between 2014 and 2019, over 33 million people residing in Assam were required to submit public documents and/or oral testimony to verify their citizenship. After numerous petitions were filed to the Gauhati High Court and India’s Supreme Court, documentation requirements were eased for select populations – specifically women who did not have an official marriage certificate and members of Assam’s ‘Tea Tribes’¹ who do not have ‘Scheduled Tribe’ status as one of India’s original inhabitants. The final NRC list dated August 31, 2019, included 31,121,004 Indian citizens while excluding an estimated 1,906,657 people. Although people excluded from the 2019 NRC can in theory appeal through the Foreigners Tribunal, the High Court of Assam, or the Supreme Court of India, as long as their case is pending, they face *de facto* statelessness, (i.e., they cannot claim nationality nor any benefits that derive from nationality in India) (Lori, 2017). The exclusion of servicemen of India’s armed forces, the brother and nephew of India’s fifth President, Fakhruddin Ali Ahmed, along with thousands of family members of Indian citizens has drawn scorn from political leaders of all parties (Loiwai, 2019). Several suicides of people who were excluded from the NRC have also highlighted the mental health toll of this documentation exercise (Chatterji et al., 2021b). Meanwhile, up to 2,700,000 NRC applicants whose names were left off a draft NRC produced in 2017, continue to have their biometric data frozen in India’s Aadhaar system, rendering them unable to make financial transactions in banks or receive social assistance such as food rations (Sabrang India, 2021).

Although the NRC exercise was framed as a means to detect and remove ‘illegal foreigners’ from electoral rolls, if not from India altogether, as Walia (2021, p.2) contends, the nation-state border ‘is less about a politics of movement per se and is better understood as a key method of imperial state formation, hierarchical social ordering, labour control, and xenophobic nationalism’. On the one hand, India’s laws and guidelines for determining eligibility for citizenship reify what Sharma (2020) has described as autochthonous constructions of birthright citizenship for people who are seen as ‘being of a place’ while nationality rights are withheld from minority groups who are constructed as ‘being out of place’. While tensions between those constructed as ‘native’ versus ‘migrant’ existed well before India’s formation as an independent nation, the process to update the NRC in 2019 institutionalised ‘deprivation of citizenship’ (Shahid and Turner, 2022) for people who are unable to verify their identity or eligibility

for citizenship, placing millions of ethnic and religious minorities at risk of exposure to violence similar to that experienced by the Rohingyas in Myanmar or descendants of Haitian migrants in the Dominican Republic (Walia, 2021). Considering that the majority of those excluded from the 2019 NRC are reportedly women and children from the Miya² community, (i.e., Bengali speaking community of Muslim faith whose ancestors originated in what is now Bangladesh) (Das, 2020; Sabhapandit and Baruah, 2021), we employ a feminist intersectional and bordering lens (Collins, 2019; Young, 1990; Yuval-Davis, 2015) to examine how gendered, racial, and class forms of social inequality mutually constitute social divisions in Assam and how these divisions shape who is 'legible' (Larios et al., 2022) in the bureaucratic processes for verifying citizenship for the NRC.

To set the stage for analysing the legal and bureaucratic exclusion from the 2019 NRC, we first provide a brief overview of pre-and post-colonial social conditions which shape the institutionalisation of racial, gendered, and class social hierarchies in Assam. We also discuss the emergence of institutions that were established to contest the citizenship of suspected 'foreigners', which play a significant role in exclusion from the 2019 NRC. We then proceed with our empirical analysis of legal constructions of citizenship in federal legislation and Supreme Court directives regarding what types of documentary evidence are admissible for verifying citizenship through the NRC. To illustrate the multifaceted borders produced through policy discourse and administrative practices, we draw upon in-depth interviews with community leaders, (i.e., social workers, journalists) and people excluded from the NRC, who share insights on how the process to update the NRC led to the mass citizenship deprivation among women and children from ethnic and religious communities.

2 Literature review

2.1 *Bordering through bureaucratic state legibility*

To theorise how the NRC's legal and bureaucratic processes produce temporal, spatial, and racial borders, we consider Scott's (1998) conceptualisation of 'state legibility' as a bordering practice. Post-colonial India relies on the European/Westphalian conceptualisation of nation-state sovereignty through exercising authority over its territorial border (Simpson, 2006) and determining who is or is not recognised as an Indian citizen. India's capacity to administratively govern its territory and people through the identification of citizens vs. foreigners, however, remained relatively weak and erratic (Sadiq, 2009) throughout the 20th century. Sharma (2022), for example, notes that 'identity verification based on documents fails [in India] for a multitude of reasons, including the indeterminacy of legislation, the ambiguity of documents, the power of identity gatekeepers, and the system's indecisiveness'. Thus, while documents play a significant role in claiming legal identity as a citizen in India, the lack of documents reflects an assemblage of illegibility that is an individual's lack of biopolitical recognition within the public sphere.

2.2 *Liminal vs. precarious citizenship in everyday life*

Throughout most of its history, India's relatively weak and uneven institutionalisation of documentary citizenship enabled forms of 'liminal citizenship' (Owen, 2018), whereby those who lacked documentary citizenship could exercise substantive citizenship in daily life (Sadiq, 2009). 'Liminal citizenship' is common among minority groups who have been left out of postcolonial nation-state formation including nomadic Nubians in Africa, rural poor at the borderlands of Malaysia and India, or Roma living in various European countries who are marginalised through what Owen (2018) refers to as 'responsibility avoidance' (p.305). Although Parsons and Lawreniuk (2018) suggest that '[shared] livelihoods' in everyday life can blur the differences between citizens and foreigners who occupy social, economic, and political margins, global trends toward biometric surveillance and ethnonationalism further marginalise groups who may be eligible for *de jure* citizenship to experience *de facto* statelessness because they are 'unable to, or for valid reasons... unwilling to avail themselves of the protection' of the state [p.1, citing Massey, (2010), p.61].

2.3 *Intersectional analysis of precarious citizenship*

The United Nations estimates that 75% of people who are at risk of statelessness are minoritised populations who are either denied citizenship or stripped of citizenship through discrimination in the countries where they reside (UNHCR, 2017). Recent examples of denationalisation efforts include the *Bhutan Citizenship Act* of 1985, which revoked the citizenship of ethnic Nepalis, many of whom were forced to 'return' to Nepal (Human Rights Watch, 2003). Changes to birthright citizenship in the Dominican Republic's constitution in 2010, similarly stripped citizenship from children of Haitian migrants. In the context of the Dominican Republic, both Beltan (2017) and Petrozziell (2019) call attention to how ethnonational legal exclusions work in tandem with indirect discriminatory practices that often take place out of view, where lack of infrastructure, limited resources, and the low value placed on colonial/imperial bureaucracies forced people of Haitian descent who were eligible for citizenship into 'a realm of formal non-belonging' [Belton, (2017), p.5].

To understand the gendered assemblage of citizenship deprivation, we consider Behl's (2019) use of intersectionality and critical race theories to examine varying degrees of 'situated citizenship' and Sabhapandit and Baruah's (2021) analysis of 'differential citizenship' among gendered and religious minorities in India who experience patriarchal subordination and violence in both private and public spheres. Although India's constitution espouses equal protection for women, religious, and ethnic minority groups, India's religion-based personal laws which govern marriage, divorce, inheritance and succession within Hindu, Sikh, Buddhist, Christian, or Muslim communities, reinforce patriarchal control over women's bodies, property rights, freedom to work, marry, or divorce, and relationships with children (Behl, 2019). Although women resist subordination and pervasive violence in both public and private spheres, their 'uneven and partial inclusion in civil society and the private space of the home' [Behl, (2019) p.58], produce conditions for precarious citizenship and statelessness.

3 Research design and methods

This study employed an interpretive policy research design (Schwartz-Shea and Yanow, 2011) informed by feminist, post-structural and postcolonial theories of language and power (Foucault, 1989; Hall, 1997; Sandoval, 2000). By focusing on legal constructions of citizenship and administrative practices used to verify eligibility for the 2019 NRC, we examine in what ways social conditions produce contested meanings of citizenship and belonging (Narayan, 1997) and how these contested meanings reflect intersecting and systemic forms of social, economic, and political inequalities (Crenshaw, 1991; Yuval-Davis, 2015).

Towards exploring policy constructions of who is deserving of inclusion and exclusion into the NRC we reviewed definitions for ‘original inhabitants’, ‘citizens’, and ‘illegal migrant’, outlined in:

- a the NRC Act
- b amendments to the Citizenship Act, including the 1985 Assam Accord
- c judgements related to the NRC issued by the Supreme Court of India between 2014–2019
- d regulations regarding the NRC process published by the Government of Assam <http://www.nrcassam.nic.in/> (see Table 1).

We also reviewed Supreme Court decisions that took place during the study period which either clarified or narrowed the bureaucratic requirements for verifying national belonging. To complement our analysis of policy constructions, two co-authors, who also work as social workers in the Barpeta region and the city of Guwahati, Assam, conducted five in-depth interviews with journalists, social workers, and community leaders working in these areas. These participants were identified through consultation with the researchers’ personal and professional networks as key stakeholders who could provide insights on the impact of the NRC process and exclusion from the NRC for women and children from socioeconomically marginalised communities in the region.

One of the co-authors, who is a human rights researcher from the Miya community, also conducted in-depth interviews with eight residents of the Barpeta region whose names were excluded from the 2018 draft of the NRC. Residents of Barpeta were recruited through snowball sampling from the co-author’s personal networks, referrals from community workers, and convenience sampling from people congregating in the open-air spaces outside one of the foreigners’ tribunals as they awaited their hearing. Due to the unrest following the passage of the CAA in 2019 and the public health restrictions brought on by the spread of the novel Coronavirus, we discontinued all fieldwork in 2020.

In accordance with the research protocol approved by the University of Toronto’s Office of Research Ethics, all identifying information about participants has been removed to preserve their anonymity.

4 Analysis of policy context

4.1 *Migration and ethnic tensions in colonial Assam (1826–1947)*

Nestled at the foothills of the eastern Himalayan range, the current state of Assam was ruled by the Ahom dynasty from 1218 to 1826 as a pluralistic society with diverse linguistic and cultural groups when it was annexed by the British Empire following the Anglo-Burmese war (1824–1826) (Sharma, 2011). Viewed as a ‘wasteland’, the colonial government organised migration of indentured migrant labour from different regions of the British Empire to clear the jungle for tea and jute cultivation and lay railroad tracks to facilitate the exportation of these crops to British markets (Baruah, 2009; Sharma, 2011). The British also installed Bengali Hindu elites to administer colonial rule along with Marwari merchants and moneylenders who facilitated the region’s transition from a barter trade, communal, and servile labour system to the British Indian system of wage labour (Sharma, 2011). The colonial administration also lured Bengali peasants to the region to increase food production by cultivating the fallow riverbanks of the Brahmaputra. Migrants contributed to higher than average population growth in Assam, relative to other regions of British India, throughout the late 19th and early 20th centuries such that British civil servant, Mullan (1931) cautioned that migrants would ‘alter permanently... the structure of Assamese culture and civilisation’.

During the colonial period, the British employed various discursive, legal and bureaucratic practices to ‘divide and rule’ the migrant and local populations through territorial and socio-cultural borders (Sandhu, 2009). The introduction of racial categories distinguished lowland-dwelling, caste Hindus from hill-dwelling ‘tribal’ groups who were seen as more primitive on account of their animistic religious practices and use of swidden agriculture (Shahid and Turner, 2022). Local protests against the encroachment of migrants to the region also propelled the introduction of the colonial ‘Line System’, which authorised the settlement of Bengali migrants into specific areas, while ostensibly protecting lands held by ‘tribal’ communities (Borthakur, 2012). Shahid and Turner (2022) argue that constructions of race hinged on the productive value associated with land use, thereby justifying the displacement of local communities, who were seen as ‘lazy’, from their ancestral lands. Rice and jute plantation economies depressed wages for indentured ‘Tea Tribe’ labourers, while the Line System curtailed agricultural activities of Bengali peasants, all of which ensured that land cultivation aligned with colonial interests.

In addition to ethnic, religious and spatial borders, British colonialism hardened pre-existing patriarchal subordination of women (Nath, 2012) through the codification of Brahminic Hindu law, which prevented women from inheriting family land, forbidding divorce or remarriage of female widows, and devaluation of women’s household labour (Liddle and Joshi, 1985). Although ‘women’s education’ was part of the ‘civilising’ aim of Christian missionaries, the colonial government, and male Assamese social reformers, in practice girls were often confined to ‘domestic duties’ which had no monetary value in the British Indian economy (Dahal, 2021).

4.2 *Post-colonial governance of internal and national borders (1947 – present)*

India's independence from Britain and partition from Pakistan in 1947 introduced a national border between Assam and neighbouring East Pakistan, which contributed to a mass displacement of Muslims and Hindus, some voluntarily, some by force (Bharadwaj et al., 2008). After India's independence, nationalist movements led by ethnic communities, formerly known as 'Scheduled Tribes', also called for the division of the region into the five states of Assam, Arunachal Pradesh, Meghalaya, Mizoram, and Nagaland (Baruah, 2009). Post-partition migration into Assam was spurred further by the Indo-Pakistan War of 1965 and Pakistan's military 'campaign of genocide' in 1971, against Bengali and Hindu communities in East Pakistan (Jahan, 2013). During the nine-month war in 1971, India received over four million refugees. Although most refugees returned after Bangladesh's independence, cross-border migration continued in the delta region throughout the 20th century due to seasonal floods and familial ties that traverse the international border (Sadiq, 2009).

The politics over who is deemed an Indian citizen, illegal migrant, or refugee continued to fuel civil unrest post-partition, including the emergence of popularist Assam movement between 1979–1985, which called for identifying and deporting Muslims of East Bengal origin (Baruah, 2009). The Assam Movement which organised widespread protests, boycotts of local elections, and at times large scale violence, including the massacre of over 2,000 people (primarily Muslims) in the village of Nellie on the morning of February 18, 1983. During the Assam Movement, the Congress government passed the Illegal Migrants (Determination by Tribunal) Act, 1983, which established Tribunals for the express purpose of detecting 'illegal migrants' defined as any foreigner who entered India after 1971 without a valid passport or other legal documentation (Baruah, 2009). The Assam Movement then culminated with the signing of the Assam Accord in 1985 along with an amendment to India's Citizenship Act, which established midnight of March 24, 1971, as the cut-off date for claiming citizenship for residents of Assam (rather than 1946 which applies to the rest of India) (Sharma, 2022). Although the new temporal border included some people residing in Assam whose families experienced forced migration in the turbulent periods surrounding India's and Bangladesh's independence, displaced populations who returned to Assam after March 24, 1971, would re-enter India as 'foreigners'.

In tandem with racial, spatial, and temporal borders, systematic gender inequality deprives women of substantive citizenship through their subordination in India's personal laws, family life, and marginalisation within local government, all of which contribute to a lack of official documents to verify identity or presence in Assam (Chatterji et al., 2021a). Although women in Assam have higher rates of participation in decision-making in the household and slightly higher sex ratios than in other parts of India, gender inequality is present across class and caste differences. Women in low-income and lower-caste communities in particular have higher rates of marriage before the legal age of 18, low participation in primary education, higher rates of illiteracy, and lower participation in formal work (Mahanta and Nayak, 2013). Due to low rates of official birth registration of children in low-income communities, children and women who marry young, often have no official record of their identity. As women lack inheritance rights, they also typically lack documents linking them to their biological families.

Gender inequality also contributes to women's limited involvement in local government, (i.e., the Panchayat), pressure on women to care for extended family responsibilities (Ahmed and Moorthy, 2021; Mahanta and Nayak, 2013), and gender-based violence in the home and public sphere. Periods of armed conflict and communal violence in the region, for example, have been associated with higher levels of violence against women and children (Mahanta and Nayak, 2013), including reported sexual violence by government forces against children (Chatterji et al., 2021a) and women who seek election (Ahmed and Moorthy, 2021; Mahjebeen, 2019).

4.3 *Institutions of citizenship contestation in Assam, India*

State institutions that are designed to surveil and confine suspected 'illegal migrants' and 'foreigners' play a central role in citizenship contestation through the NRC including the Foreigners Tribunals, Assam police border organization, detention centres, and doubtful voters or 'D Voters' lists produced by the Election Commission of India. Foreigners Tribunals were first established in 1964 to prevent the (perceived) infiltration of East Pakistanis into Assam (Chatterji et al., 2021b). The process to investigate suspected 'foreigners' and the burden of proof, however, have shifted over time. In 1983, the Illegal Migrants (Determination by Tribunals) Act outlined procedures to identify and expel people determined to be 'illegal migrants'. This Act, however, was controversial in that it placed the burden of proof on the state, not the individual, to verify illegality. The Supreme Court of India ultimately struck down this Act in 2005, which shifted the burden of proof back to individuals who are accused of being 'foreigners'. Under the 2019 NRC regulations, any individual who has a case pending before the Foreigners Tribunal or who was previously determined to be a 'foreigner', including their children, was automatically excluded from the NRC. As of December 31, 2021, 100 Foreigners Tribunals were operating in Assam, with 143,466 people declared 'foreigners' and 329 deported to their countries of origin. An estimated 123,829 cases were awaiting a decision (ET Bureau, 2022).

The Foreigners Tribunals work in tandem with the Assam Police Border Organisation, which is charged with detecting and deporting 'illegal foreigners' (Government of Assam, 2022) and assessing people marked as 'D voters' by the Election Commission of India, a practice that started in 1997 when 370,000 voters in Assam were deemed suspicious due to lack of evidence to prove their citizenship. The 'D voter' list was originally designed to prevent people from voting, until their name had been cleared by the Foreigners Tribunal. As per regulations governing the 2019 NRC process, anyone listed as a 'D voter' and in some cases their descendants, are excluded from the NRC until their case has been resolved, which means they are *de facto* stateless until their eligibility for citizenship has been confirmed by a Foreigners Tribunal.

The first detention centre was established in 2009 following a Gauhati High Court order regarding an 'illegal foreigner' (Zaman, 2021). Although India's capacity to detain and deport people remains relatively limited, in comparison to deportation regimes in the USA, Canada or across Europe (De Genova and Peutz, 2010), in practice, suspected foreigners may be detained until a Foreigners Tribunal has issued a judgement about their status. The number of people detained in Assam grew three-fold, from 1,043 in 2019 to 3,319 in 2020, with new detention centres under construction (Chatterji et al., 2021b). The deplorable conditions within these centres have contributed to 29 reported deaths

with detainees organising hunger strikes for better conditions during the COVID-19 pandemic (Chatterji et al., 2021b; Zaman, 2021). Although the potential of being detained remains relatively low, the threat of detention weighs heavily on people who have been excluded from the NRC, who are subject to harassment or fear of being detained (Sabhapandit and Baruah, 2021).

5 Bordering through direct and indirect discrimination

5.1 Institutionalising temporal, spatial and racial borders through the NRC, 2014–2019

Following litigation filed by Assam Public Works, in 2013, the Supreme Court of India directed the Assam government to verify the citizenship of all residents of Assam per Section 6A of the Citizenship Act of 1955, the Assam Accord of 1985, and the CAA of 2003. Between 2014–2019, all residents of Assam were required to present ‘public documents’ (see Table 2) to verify their eligibility for citizenship based on their presence in India before the Bangladesh War of Independence in 1971 or linkage to one or more parents or grandparents present in India before midnight of March 24, 1971 (see Table 1).

Table 1 Eligibility for inclusion into the NRC?

<i>Original list of eligibility criteria published in 2014</i>	
(1)	Persons whose name appeared in the 1951 NRC.
(2)	Persons whose names are in any electoral rolls for any elections in India held before midnight, 24 March 1971 (per the Assam Accord of 1985).
(3)	Descendants of the above.
(4)	Persons who came to Assam on or after 1st January 1966 but before 25th March 1971 and registered themselves in accordance with the rules made by the Central Government with the Foreigners Registration Regional Officer (FRRO) and who have not been declared as illegal migrants or foreigners by the competent authority.
(5)	Persons who are original inhabitants of Assam and their children and descendant who are citizens of India provided the citizenship of such personas is ascertained reasonable doubt by the registering authority.
(6)	‘D’ voters can apply for the inclusion of their names in the updated NRC. However, their names will. Be finally included only when the appropriate Foreigners Tribunal declares them as non-foreigners.
(7)	Persons who can provide any one of the documents issued up to midnight of 24 March 1971 as mentioned in the list of documents admissible for citizenship (see Table X)
<i>Additional criteria per Supreme Court Orders 2014–2019</i>	
(8)	All Indian Citizens including their children and descendants who have moved to Assam post 24 March 1971 would be eligible for inclusion in the updated NRC on adducing satisfactory proof of residence in any part of the country as of 24 March 1971.
(9)	All the members of the Tea Tribes shall be covered under the ‘Original inhabitants of Assam’ category provided for under Clause 3(3) of the Schedule of The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.
(10)	All such original inhabitants shall be included based on proof to the satisfaction of the Registering Authority. On the establishment of the citizenship of such persons beyond a reasonable doubt, their names shall be in the updated NRC.

Source: <http://www.nrcassam.nic.in/eligibility-criteria.html>

While the Government of Assam was responsible for managing the administrative process to verify citizenship documentation, the Supreme Court of India remained involved by reviewing 51 petitions submitted directly to the Court out of which ten judgements were issued. Of the ten judgements, three decisions expanded criteria for inclusion into the NRC (see Table 1, items 8, 9 and 10) and three decisions either expanded or affirmed the list of eligible documents that could be submitted to verify citizenship, most notably certificates issued by the Gaon Panchayat (village governing body) verified by an executive magistrate as an identity document for married women (see Table 2).

The Supreme Court also clarified that ‘Tea Tribes’ would qualify as ‘Original Inhabitants,’ which permitted members of a Tea Tribe to submit documents without much verification. Another matter was the cases of descendants of doubtful voter (DV), declared foreigner (DF) and people with cases pending at Foreigners Tribunals/other courts (PFT). The Supreme Court on July 2, 2018, stated that persons who are DV or PFT and their descendants are not to be included in the updated NRC.

Table 2 Documents accepted to verify citizenship

<i>LIST A (must list the applicant’s name)</i>		<i>LIST B – Linkage documents (must list the name of an applicant’s parent/grandparent)</i>	
1	1951 NRC	1	Birth certificate
2	Electoral roll(s) up to March 24, 1971 midnight	2	Land document
3	Land and tenancy records	3	Board/university certificate
4	Citizenship certificate	4	Bank/LIC/post office records
5	Permanent residential certificate	5	Circle officer/Gaon Panchayat Secretary Certificate in case of married women*
6	Refugee registration certificate	6	Electoral roll
7	Passport	7	Ration card*
8	LIC	8	Any other legally acceptable document
9	Any govt. issued license/certificate		
10	Govt. service/employment certificate		
11	Bank/post office accounts		
12	Birth certificate		
13	Board/university educational certificate		
14	Court records/processes		

Notes: (a) Circle officer/GP secretary certificate in respect of married women migrating after marriage (can be of any year before or after 24th March (midnight) 1971), and (b) Ration card issued up to the midnight of 24th March 1971 can be adduced as supporting documents, only if accompanied by any one of the documents listed above.

Source: Government of Assam (2014)

5.2 Temporal, class, and patriarchal conditions of belonging

Although India’s original constitution constructed citizenship under principles of *jus soli* (birth of the soil), the NRC process further institutionalised forms of conditional

citizenship through direct, (i.e., legal exclusions) and indirect (i.e., administrative; systemic) practices that reinforce temporal, gendered, and patriarchal boundaries for national belonging.

Figure 1 Legally constructed categories of conditional inclusion into the NRC

Categories of Conditional inclusion	Legal requirements
(1) Persons who entered Assam after January 1, 1966, but before March 25, 1971	<ul style="list-style-type: none"> • Must have registered under the Foreigners Regional Office have not been declared a "foreigner" or "illegal immigrant" (Sharma, p. 7).
(1) D-voters can be included in the NRC	<ul style="list-style-type: none"> • After the Foreigners Tribunal has declared them to be non-foreigners
(1) Anyone born in India between July 1, 1987, and December 3, 2004	<ul style="list-style-type: none"> • Must verify date and place of birth in India and • Verify eligibility for citizenship of at least one parent • The other parent cannot be an "illegal migrant," "foreigner", or "D-voter" • May be included in the NRC if <ul style="list-style-type: none"> • the non-Indian parent is a foreign national and holds a valid document to reside in India or • the non-Indian parent is eligible for citizenship under the Citizenship Amendment Act
(1) Anyone born after December 3, 2004	<ul style="list-style-type: none"> • Must verify date and place of birth in India and • Verify that <u>both</u> parents are eligible for citizenship

Under the Assam Accord of 1985 – the bilateral agreement between the state of Assam and India’s Central Government – anyone who could establish a presence in Assam before March 25, 1971, would be eligible for Indian citizenship. Per the Citizenship Act of 2003, which eroded *jus soli* citizenship for any children born to an ‘illegal migrant’ in India after December 3, 2004 (Chatterji et al., 2021a), children born before December 3, 2004, may claim citizenship if at least one parent is an Indian citizen. Applicants born on or after December 3, 2004, however, must verify the citizenship of both parents to be included in the NRC. Furthermore, applicants born after December 3, 2004, are ineligible to claim citizenship if any parent has a pending case or has been determined to be a ‘doubtful voter’, ‘DF’ or PFT (see Figure 1).

Indirect forms of discrimination also took place through administrative review of linkage documents that were seen as less credible or ‘weaker’ than others (see Table 2 for a full list of documents), particularly for women and children from rural, resource-poor settings who do not have a birth certificate, marriage certificate, or voting record in their father’s home, (i.e., in cases where a woman was married before age 18, the legal voting age) (Sharma, 2022). One of the residents of Barpeta with whom we spoke shared his concern for three of his daughters whose names did not appear in the 2018 draft NRC,

though his name and that of his wife and son did appear in the complete draft. Working as a barber in the local town, he had received assistance from volunteers in the region to submit his documents but was unable to provide birth certificates for his three daughters, saying that ‘To get three birth certificates, it would cost me 5,000–6,000 rupees, how could I manage that money?’ Through he described the NRC process as a ‘type of harassment,’ he also proclaimed that once the NRC is finalised, ‘No one can question us, we will have the document of being Indian citizen.’ When asked what might happen to his daughters, this father expressed concern of not knowing, but also took comfort that hundreds and thousands of people who are also not included in the draft NRC, saying ‘*Dasher ja obo; amar o tai obo*’ what happens to others will happen to us too!

Although the NRC regulations in theory allowed people who did not have an official birth certificate to verify citizenship eligibility through other official documents, non-profit leaders in the Barpeta region with whom we interviewed, reported that immunisation certificates, ration cards, private school certificates, and late birth certificates were rejected by NRC officers and referred to the Foreigner’s Tribunal, even in cases where the applicant’s documents were certified by the Executive Magistrate. Sabhapandit and Baruah (2021, pp.251–252) similarly found that women who appeared before a Foreigner’s Tribunal in Assam were regularly seen as ‘untrustworthy or unbelievable’ by Tribunal members who dismissed public documents as not credible for a variety of reasons including if: the document was damaged, the woman did not know the details of the document either due to illiteracy or lack of knowledge of the document’s purpose, spelling errors or missing names of siblings mentioned in oral testimony or if the issuing authority did not appear to testify to the authenticity of the public document (e.g., Panchayat certificate).

Heteronormative assumptions were also institutionalised in requirements for children born after 2004 to verify that both parents are not ‘illegal migrants.’ Although the NRC regulations made some exceptions to children living in orphanages (Sarma, 2018), ‘illegitimate’ children born after 2004 and any descendants could not verify a linkage to a bonified Indian citizen if the father did not officially recognise their child, were automatically excluded from the NRC. In one of our interviews, a woman shared how she was called to appear before the Foreigners’ Tribunal after the NRC authority questioned her legacy documents. This woman could not present citizenship documents for one of her grandfathers, who was born out of wedlock when his mother had had an affair with someone in the same village. Although many of the elders in the community were aware of her grandfather’s parentage, the descendants of this woman’s great-grandfather were unwilling to appear before the Foreigners’ Tribunal with her, to verify her linkage to their biological relative. Such complex cases illustrate how temporal bordering through the erosion of *jus soli* citizenship coupled with gendered, class and heteronormative social ordering, contribute to the intergenerational transmission of *de facto* statelessness, particularly for people born into low-income households, born out of wedlock, or those who are otherwise estranged from one or more parent.

Transphobic and cisnormative constructions of gender identity assigned at birth also contributed to exclusion from the NRC. Although the Supreme Court of India upheld the right of people to self-identify their gender in 2014 and the Government of India passed a bill that protects the rights of transgender persons in 2016, Bhattacharya (2019) argues that India’s official definition of ‘transgender’ continues to reinforce gender as a binary in ways that excludes gender variation across India’s diverse communities. Although we

did not speak with anyone who identifies as transgender in our study, Sharma (2022) and Chatterji et al. (2021b) noted cases where transgender people were denied inclusion into the NRC, due to discrepancies between the gender recorded in their official documents versus their presenting or self-identified gender at the time of application.

5.3 *Illegibility of married women who are not 'original inhabitants'*

Although the Constitution of India identifies several 'Scheduled Tribes', (i.e., groups that have been recognised as Indigenous to India since its inception as a nation), Indigenous groups who were displaced during British occupation to work as indentured migrant labourers on tea plantations in Assam (commonly known as 'Tea Tribes') and groups who migrated from what is now Bangladesh after partition, have been denied status (Sharma, 2015). Initially, the NRC rules did not provide a clear definition for the category 'Original Inhabitant' as outlined under Clause 3(3) of the Schedule to the Citizenship Rule, 2003. This matter came before the Supreme Court of India when over 20 lakh (2 million) out of 47 lakh (4.7 million) NRC claims submitted based on the Panchayat Certificate alone, were linked to 'original inhabitants' who, if accepted, would not be required to provide any other evidence to verify their citizenship. In a judgement issued on August 24, 2017, the Supreme Court clarified that for the NRC, 'original inhabitants of the state of Assam' would include the 'Tea Tribes.' Although a subsequent judgement (December 5, 2017) upheld that a person identifying as an original inhabitant is not entitled to be automatically included in the NRC, the process to verify citizenship would be less stringent.

The significance of the Supreme Court ruling regarding original inhabitants was amplified with the subsequent ruling in December 2017 which allowed married or widowed women to prove their linkage to an Indian citizen through the admission of a Gaon Panchayat Certificate (i.e., document issued by the local authority). Due to the common practice of women in rural and low-income communities marrying before the lawful age of 18, many women lack official documents linking them to their biological parents (i.e., they do not have a birth certificate, school certificate, or marriage certificate) (Chatterji et al., 2021a). As a community social worker described, the patriarchal roots of child marriage and gender inequality 'trap' women in a 'citizenship crisis'

“[In] this *patriarchal society*, the Muslim, Bengali and Hindu communities have the custom of *child marriage*, [where] the young girl who has just married is not sent to school. Their childhood, which was meant to be spent in play, is limited to the kitchen. Their bodies are destroyed, they are deprived of education, they are married before they attain puberty, they suffer when their children are not born healthy, and after that, they are trapped in a *citizenship crisis*.... Because they do not have any proof of their existence. (Note: plain text translated from Assamese; *italics* indicate the use of English in the original).”

As this participant characterises, the Gaon Panchayat offered a remedy for married and widowed women who, due to systemic inequities, 'do not have any proof of their existence.' Supreme Court ruling, however, limited the admission of Goan Panchayat certificates to married and widowed women, officially excluding people who for valid reasons also lack documentary evidence of their 'existence,' including unmarried women and children of any gender, or transgender people whose gender expression is different

from their identity documents, leaving them with few avenues to verify identity or linkage to an Indian citizen (Sharma, 2022).

Though an estimated 400,000 women submitted Gaon Panchayat certificates in support of their NRC application (Bhatt, 2020), the SC ruling did not allow the Panchayat to serve as a stand-alone document to verify citizenship and thus was subject to the discretion of the local NRC officer. As one social worker from the region recounted

“The *guideline* that has been given for [the Panchayat Certificate] and what was implemented in the field was a difference between day and night. In the guideline, if any parent or relative of the married woman declares that she is the daughter of so and so then it will be accepted with any other document that can also be submitted... In most places, the *oral evidence* was not accepted. So, wherever it was not accepted those applicants were dropped from the NRC list.” (NRC 301)

Despite the SC’s recognition that married women from rural communities often lack official documents, in practice, the NRC officers’ discretionary power to admit NRC applicants who submitted a Panchayat certificate to verify linkage, reinscribed social hierarchies regarding who is perceived to be citizens vs. those who are suspected as ‘foreigners’ who are referred to the Foreigners’ Tribunal. One lawyer who worked with the All Assam Minority Students’ Union (AAMSU) observed that anyone perceived to be an ‘original inhabitant’ by the registering authority/officer, (i.e., through the applicants’ appearance, clothing, or language use), did not need to present or verify the Panchayat Certificate. Women with a Bengali name, of either Muslim or Hindu faith, however, were regularly directed to the Foreigners’ Tribunal. The Foreigners’ Tribunal, furthermore, typically required Bengali-speaking women to either have a member of the Panchayat appear with them to verify their documents or present other documents to back up their claim to citizenship (Sabhapandit and Baruah, 2021).

6 Discussion/conclusions

As migration scholars have previously argued, precarious citizenship and *de facto* statelessness are by-products of the colonial framework of the nation-state which authorises states to determine who belongs within a state’s claimed territory. Though India’s independence from Great Britain marked the end of colonial rule, Roy (2020, p.20) argues that ‘from the moment India became a sovereign nation, it turned into a colonial power, annexing territory, waging war’ through what Walia (2021, p.176) characterises as the ‘deadly potion’ of castism, religious chauvinism, and gendered racism. Just as the partition of British India, into the independent nations of India, Pakistan, and later Bangladesh thrust millions of people into uncertainty through displacement and bloodshed along ethnic and religious lines, the institutionalisation of documentary citizenship in Assam, India amplifies racial, gender, and class social divisions for those who are already structurally disadvantaged.

Through analysis of legal and administrative processes that contribute to the exclusion of millions from the 2019 NRC, we draw attention to intersecting forms of oppression through which women and children from resource poor communities are less legible within state bureaucracies and thus at greater risk for *de facto* statelessness. Though mass protests in Assam and across India following the passage of the CAA in 2020 denounced Prime Minister Modi’s and the BJP’s anti-Islamic and xenophobic

agenda, systematic discrimination enacted through laws and bureaucratic processes erodes substantive citizenship for a cross-section of marginalised groups including:

- a members of the Miya Muslim community who have historically been racially profiled as ‘doubtful voters’ or ‘foreigners’
- b low-income women of various ethnic groups who lack identity documents linking them to their biological family
- c children born after 2004 who are required to verify that both parents are Indian citizens, including people who are estranged or not officially claimed by one of their parents, (i.e., the father does not recognise the child), do not have a birth certificate, did not attend public school, or their biological family is unwilling or unable to verify parentage
- d transgender people whose identity documents do not match their gender expression (Sharma, 2022).

Just as the COVID-19 pandemic has exacerbated extreme poverty around the world (Ferreira, 2021), the five year process to update the NRC amplifies racial, gendered, and class divisions in Assam, India. Though the full consequences of exclusion from the NRC have yet to be realised, the Rights and Risk Analysis Group (Chakma, 2019), an independent think tank in India, reported that the majority of people excluded from the draft NRC in 2017, who were already living in extreme poverty, fell even deeper into poverty through expending vital resources to contest their exclusion from the NRC. People called to appear before the Foreigners Tribunals often have to take unpaid days off work and sell livestock or assume loans to afford the journey to the nearest tribunal for themselves but also family members who were required to appear as witnesses to verify legacy. In addition to the economic toll of lost wages, assets and loans, exclusion from the NRC generates fear and uncertainty for those now vulnerable to indefinite detention and food insecurity for those excluded from India’s Aadhar system, which is used to distribute publicly funded food rations.

The effects of India’s diluted *jus soli* citizenship enacted through the 2019 NRC effectively disenfranchises hundreds of thousands of children whose illegality is tied to their parents’ contested citizenship. Although recent census data is not available, the 2011 census estimates that 12.7 million people living in Assam are below the age of 18, representing more than 40% of Assam’s total population. Based on migration trends, which have abated since Bangladesh’s war of independence, most children in Assam today were born within India’s borders. Thus, while NRC’s stated intention to detect ‘foreigners’ has reinforced xenophobic and anti-Muslim views of the Miya community, exclusion from the NRC formalises what Fanon (1967) described as ‘zones of non-being,’ (cited in Grosfoguel et al., 2015) among a diversity of gender, ethnic, and religious minorities whose historic marginalisation from the public sphere is now institutionalised in India’s citizenship and deportation regimes. As seen with the Supreme Court ruling to admit Gaon Panchayat certificates which benefited women from ‘Tea Tribes’ but were insufficient to support Miya women’s claims to citizenship, simply changing the rules governing citizenship eligibility may not benefit those systemically discriminated through racist, patriarchal, and classist bureaucratic practices. The complex intersectional dynamics that undergird the NRC citizenship crisis thus will require

equally complex legal, social, and economic resolutions beyond what is imagined within the colonial framework of the nation.

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Notes

- 1 The term 'Tea Tribe' refers to a heterogeneous group of people who are descendants of original inhabitants from different regions of India and whose ancestors were brought to Assam as indentured labour on Tea Plantations during the British Colonial Era. Members of tea tribes have been mobilizing for official status as members of 'Scheduled Tribes' which would ensure political representation and reserve seats for school admission and government jobs. <https://casi.sas.upenn.edu/iit/cristinaioanadragomir#:~:text=Getting%20ST%20status%20means%20that,in%20schools%2C%20and%20government%20jobs>.
- 2 'Miya' is a historically pejorative and racially othering term used to label 'Bengali-origin Muslim communities' who trace their lineage to peasants from undivided British-occupied Bengal who migrated to Assam in the early 19th century (Dutta et al., 2021). In recent years, the 'Miya' community has reclaimed this identity to challenge the epistemic violence of anti-immigration discourse but also through publishing poetry in the Miya language as a form of cultural citizenship (Mitra, 2022).