

Questions and Answers

**AMNESTY
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NATIONAL REGISTER OF CITIZENS IN ASSAM INDIEN

1. WHAT IS NRC?

The National Register of Citizens (NRC), is a register containing the details of Indian citizens living in and outside India. The central government prepares the NRC by conducting a house-to-house collection of data relating to each family and individual. Although this process is mandated to be conducted regularly across the country, it has only taken place in the state of Assam due to legal and political exigencies, once in 1951 after the first census of independent India while the second one is currently under-process. Following repeated protests and violence over irregular migration from Bangladesh in Assam, the Supreme Court, in 2014, directed the Government of India to update the NRC in the state under the Court's monitoring with the aim of identifying Indian citizens and legitimate residents.

The register only lists those people as citizens who can prove that they or their ancestors entered India before midnight on 24 March 1971 – the eve of the war that led to the creation of Bangladesh. This cut-off date is only applicable to Assam. Assam's National Register of Citizens will publish their final list on 31 August. So far NRC has excluded 3 million people out of 32.9 million who applied.

2. WHY WAS THE NRC PROCESS SET UP IN ASSAM?

In 1971, after the Bangladesh war of independence, there was a huge influx of refugees from what was East Pakistan into India. This resulted in ethnic tensions, which provided a basis for a widespread anti-foreigner movement in Assam known as the 'Assam Agitation'. The agitation, led by the All Assam Students Union (AASU), went on from 1979 to 1985.

It demanded the "detection" of all foreigners, their deletion from the voters' lists, and subsequent deportation. The agitation was based on the fear that the growing immigrant population was a burden on the resources of the state and would make the people of Assam a minority in their own land. The agitators refused to recognize the authority of elected representatives and accused politicians of using "irregular migrants" as "vote banks" to win elections. The agitators also wanted the state to use the 1951 National Register of Citizens to determine the citizenship of all those residing in the state even though the Census Act 1948 prohibits its admissibility as evidence in any proceeding. Over 800 Assamese protesters died in the agitation.

The Assam Agitation ended with the signing of the Assam Accord. This accord was signed between the AASU, the Indian government and the Assam state government. Some of the key provisions of the Accord related to securing the international border between India and Bangladesh, including, by building a wall and barbed wire fencing; and 'detection' and expulsion of foreigners who entered Assam on or after 25 March 1971 which was codified as Section 6A of the Citizenship Act 1955.

3. HOW DOES NRC DECIDE WHETHER A PERSON IS A CITIZEN OR NOT?

The NRC verification and inclusion process collects two sets of documents from residents of the state.

List A is legacy data, which includes the 1951 NRC and electoral rolls up to 1971 to prove that the applicant's ancestors lived in Assam before 1971. This is made available at NRC help centers and notified polling stations.

List B documents – for instance birth certificates – establish the relationship of the applicant to the List A documents of their parents or grandparents.

Upon submission of an application by the residents along with legacy data to the office of NRC, the officers then verify the documents, ostensibly creating a family tree for each applicant. The NRC allows those deemed “D” or “doubtful” voters to apply for inclusion but does not include their names unless the Foreigners Tribunals – statutory authorities set up to detect irregular immigrants in Assam – declare them as non-foreigners. Doubtful voters are those whose Indian citizenship was considered doubtful by the Election Commission of India, while revising the electoral rolls in Assam in 1997.

4. WHAT IS AMNESTY INDIA'S POSITION ON NRC?

While the state has the right to determine its nationals, this right is not absolute. International human rights law provides that no one must be arbitrarily deprived of his/her nationality and that it is incumbent on the states to comply with human rights obligations while granting or removing nationality. Therefore, while the Government of India is within its sovereign right to update its National Register of Citizens, it must ensure that it is not depriving a person of his/her nationality on arbitrary, discriminatory or vague grounds, by diminishing procedural due process, or if such deprivation stands to render a person stateless.

5. WHAT HAPPENS TO INDIVIDUALS WHO ARE LEFT OUT OF THE NRC PROCESS ON 31 AUGUST?

Non-inclusion of a person's name in the NRC does not mean that the person has been declared a foreigner. The individual can represent his or her case before the Foreigner Tribunal which will then decide whether the individual is a foreigner or not.

The Ministry of Home Affairs (MHA) claims that those names excluded from the NRC will be given legal aid from the government to file an appeal in the Foreigner Tribunal. It has also added that those excluded will get 120 days to file their appeal before the Foreigner Tribunals instead of the existing 60 days.

The Assam government claims that it is setting up 1000 more Foreigner Tribunals.

6. WHAT ARE FOREIGNERS TRIBUNALS AND AMNESTY INDIA'S CONCERNS ABOUT THE FOREIGNER TRIBUNAL PROCESS?

Foreigners Tribunals are created under the Foreigners (Tribunals) Order, 1964 to determine whether a person is or is not a foreigner within the meaning of the Foreigners Act, 1946. Although the proceedings under the Foreigners Act are not criminal as per the Act itself, the consequences for persons declared as 'irregular foreigners' are not just loss of nationality but also loss of liberty and deportation. Cases come to Foreigner Tribunals in three ways: those against whom a reference has been made by the Border Police claiming that they are foreigners; those who are termed as “D” Voters by the Election Commission and; those who are excluded from the NRC.

Persons 'accused' of being 'irregular foreigners' must be given a fair hearing by Foreigners Tribunals, in line with national and international fair trial standards. However, proceedings before Foreigners Tribunals are heavily weighed against the person accused of being an 'irregular foreigner' in the following ways:

1. Section 9 of the Foreigners Act provides that the burden of proof is on the person being accused of being an 'irregular foreigner'. Lawyers working on cases before Foreigners Tribunals

in Assam informed Amnesty India that as a result of the reversal of burden of proof, investigations have become shoddy and lackadaisical.

2. The nationality determination process of the Foreigners Tribunals is divorced from the reality of documents in India. It is harsh on clerical errors. Many Indians, especially those belonging to poor and marginalized communities, do not have certified copies of identity documents to prove their citizenship to meet the rigorous standards of the Indian Evidence Act. This is particularly true in the case of Assam, a state that has significant numbers of internally displaced because of frequent outbreaks of violence, and natural disasters.

It is unreasonable to expect people fleeing from violence and natural disasters to have and preserve half a century-old original identity documents. The process of procuring certified copies is time consuming and expensive. In many instances, people are facing detention and deportation largely because they do not have documents to show their parents or grandparents were Indian citizens.

3. Amnesty India is also concerned about the discrimination against married women in their ability to prove their nationality before the tribunals. Media reports have alleged that half of those excluded from NRC and rendered foreigners by the tribunals are married women, who are unable to prove linkage to their parents. Reasons stemming from patriarchal structures such as child marriage, non-inheritance of property and residence in other states before marriage cause mass non-verification of their documents. Their nationality revocation also has serious consequences on the nationality of their children who, if born after 3 December 2004, are automatically excluded from acquiring Indian citizenship due to the “illegal immigrant” status of one of their parents raising grave concerns about mass statelessness.

It is important to bear in mind that there was no way their parents could have foreseen that the absence of such identity documents could arbitrarily deprive their children of their nationality and render them stateless decades later.

4. Another problematic feature of the Foreigner Tribunals is the passing of *ex-parte* judgments, where the judgment is pronounced without the physical presence of those accused of doubtful citizenship. The Government of India, in a response to a Member of Parliament, revealed that as many as 63,959 persons have been declared foreigners in Assam between 1985 and February 2019 through such judgments by the Foreigners Tribunals.

5. Instances of the Foreigners Tribunals declaring citizens as “irregular foreigners” for reasons of clerical errors—such as minor differences in spellings of names or ages in electoral rolls, or contradictions between answers given in cross-examinations and what is written in the documents—are also all too common.

Despite the arbitrary nature of proceedings of Foreigner Tribunals and the lack of roadmap post-declaration of foreigner, the Government of India amended the Foreigners (Tribunals) Order 1964 in May 2019 extending the powers to create such tribunals across India, to district magistrates - which are executive authorities. The ruling Government also plans to extend the exercise of maintaining and updating NRC to the rest of India.

7. WHAT HAPPENS TO INDIVIDUALS WHO HAVE BEEN DECLARED AS FOREIGNERS?

Once a Foreigners Tribunal declares a person as foreigner under the Foreigners Act, 1946, the person is invariably detained in one of the six detention centers across Assam. The powers of officials to detain people declared as foreigners stems from Section 2 and 3(2)(g) of the Foreigners Act, 1946 and Para 11(2) of the Foreigners Order, 1948.

The Act provides for non-custodial alternatives to detention such as requiring the person to reside in a particular place, imposing restrictions of movements, requiring the person to check in with authorities periodically, prohibiting the person from associating with certain people or engaging in certain activities. However, in practice the Foreigners Tribunals treat detention as the

default option, violating international human rights standards that provide for detention as the last resort.

The use of detention has the sanction of the Assam state government. The government of Assam in its 'White Paper on Foreigners Issue' published in 20 October 2012, approved of the use of detention for those declared as 'irregular foreigners' to restrict their movements and to ensure that they "do not perform the act of vanishing.

People who fail to prove Indian citizenship are mostly presumed to be Bangladeshi nationals. As observed by UN Special Rapporteurs, the process disproportionately affects Bengali Muslims, as they are frequently assumed to be Bangladeshi citizens.

Orders of the Foreigners Tribunal prescribe detention and eventual deportation to Bangladesh. In 2013, the Gauhati High Court in *State of Assam vs. Moslem Mondol* ordered that the process of deportation had to be completed within two months of a person being declared an 'irregular foreigner'. In reality the process of deportation is long and cumbersome.

The Government of India, in its affidavit before the Supreme Court in *Assam Sanmilita Mahasangha vs Union of India*, described the process of deportation to Bangladesh. The state government has to first provide details of the person to the Indian Ministry of Home Affairs, which refers it to the Ministry of External Affairs. The Ministry of External Affairs then refers the case to the Bangladeshi authorities, who investigate the matter. Once the Bangladeshi authorities verify that the person is Bangladeshi, they are repatriated.

In reality, the number of persons actually deported to Bangladesh is quite small. According to the Assam government, only 4 Bangladeshis have been deported till August 31, 2018. To put it in context, 117,000 people were declared foreigners by Foreigners Tribunals till July 2019. It is evident that the state machinery does not have the wherewithal to deport large number of people to Bangladesh, even in the unlikely scenario that Bangladesh agrees to take them.

The fear of the impending statelessness of millions of people excluded from the NRC and rendered foreigners by the Foreigners Tribunals is exacerbated by the recent statements made by the political leaders of India. During his visit to Bangladesh in August 2019, India's external Affairs Minister S. Jaishankar said that the NRC is India's "internal matter". Further, in 2018, according to media reports, Prime Minister of India Narendra Modi personally assured Bangladesh Prime Minister, Sheikh Hasina that people excluded from the NRC list would not be deported to the country.

8. WHAT ARE THE CONDITIONS OF DETENTION CENTERS IN ASSAM?

Amnesty India, in its 2018 briefing, '[Between Fear and Hatred: Surviving Migration Detention in Assam](#)' documented the inhumane conditions of the detention centers in Assam and the ill-treatment suffered by persons declared as foreigners and held in these detention centers.

Currently, there are six detention centers across Assam, and the state government is planning to set up 10 more centers. Detainees face indefinite detention in overcrowded prisons where there is no segregation of detainees from convicts and undertrial prisoners. Former detainees interviewed by Amnesty India in 2018 said that the prisons were overcrowded with hardly any space to move or even turn around.

Many of the persons Amnesty India spoke to in 2018 reported that fellow detainees were suffering from mental health problems. The facilities for treatment of mental health disorders within the prisons are highly inadequate.

The Assam government in July 2019 said that 25 people who were declared as foreigners died in detention due to illness. As many as 24 of these deaths occurred in the last three years.

On 10 May 2019, the Supreme Court of India passed an order suggesting that those declared foreigners and held in Assam's detention centres for over three years must be released on conditions. According to the Assam government, there were 1,145 declared foreigners in detention centres across

Assam till the month of July 2019. Of them, 335 people were eligible for release as per the Supreme Court order. No information is available on whether they were released or not.

9. IS AMNESTY INDIA CONCERNED ABOUT THE SAFETY OF THOSE WHO HAVE BEEN LEFT OUT FROM NRC AND NOT DETAINED IN DETENTION CENTERS?

The uncertainty caused by the NRC process has created a climate of fear where anyone who seems like an outsider is under suspicion. Amnesty India believes that once the NRC list is published on 31 August there could be a possibility of those excluded from the NRC being intimidated and harassed by non-state actors.

In July 2019, Shashi Tharoor, a Member of Parliament claimed that 57 people who were excluded from the draft NRC have committed suicide so far.