Recasting Citizenship: Predispositions to Non-Citizenship in South Asia

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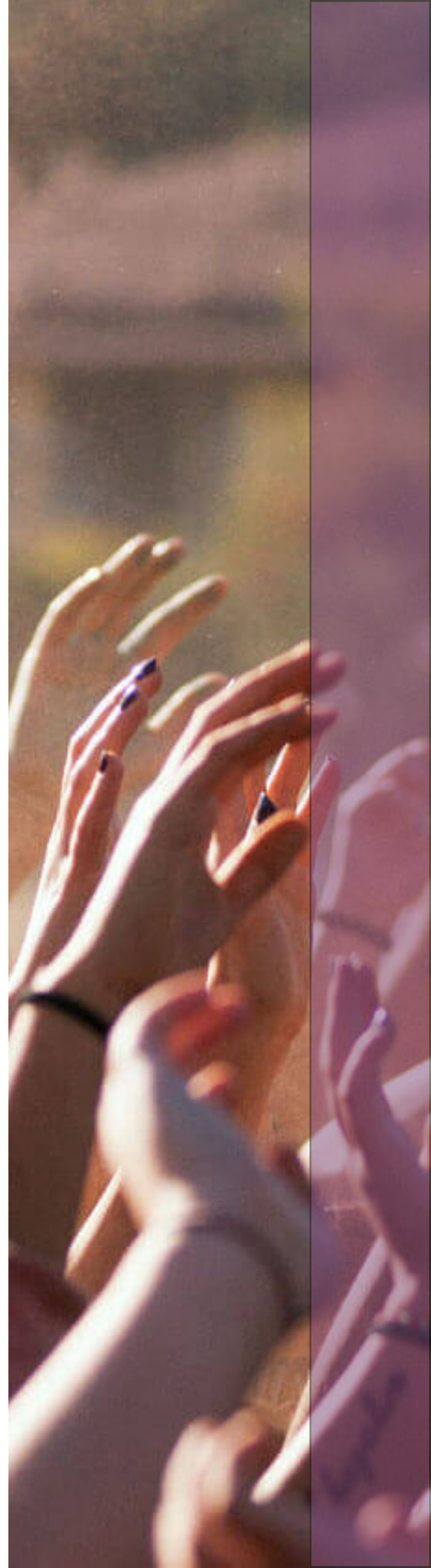
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Abstract

In recent times, we have witnessed a global rise in the number of groups and individuals with ambiguous citizenship status. To understand the manner in which this trend has developed in the specific context of India, we need to understand the manner in which the broader region, often referred to as South Asia, came to be compartmentalised into distinct, but anxious, nation states. Recent debates in India regarding laws such as the Citizenship Amendment Act (CAA) and updates to the National Register of Citizens (NRC) distinctly relate to these ambivalences. These laws point to how the production of apparently preeminent ideas of nation and citizen, in the South Asian context, emerge out of an ever-changing socio-political landscape, which continually seeks to addresses the unresolved rationalities that emerged over the course of colonialism and its eventual retreat. As a consequence of these ambiguities, the borders of citizenship in India remain vague. Citizenship in the Indian context hence has to be read as a terrain of conflict and struggle, where a multitude of social and political forces and ideological formations exist in unequal and often conflicting relationships. It is through these interactions, which take place at distinct locations, that both 'citizens' and 'others' are constituted.

In this article, we are interested in the political and social imperatives of citizenship which allow for the exclusion of certain individuals and groups. In taking this approach, we intend to posit non-citizenship as an emerging area of citizenship studies. For this purpose, we locate the foundational logic of laws like the CAA and the NRC within the historical development of citizenship in India and more specifically Assam.

Key Words: Citizenship, Non-Citizenship, Decolonisation, South Asia, India

I.   Introduction

The consolidation of the nation state as the most efficient space for the exercise of citizenship rights has, surprisingly, coincided with a rise in the number of groups and individuals who lack access to these rights. The latter often find themselves precariously drifting away from the domain of citizenship not because of any crisis-driven forced expulsion but rather due to the gradual interplay of institutional forces related to state-building, standardisation and centralisation (Lori, 2017). Within these gradual efforts of state-building, the figure of the "illegal migrant" gets further problematized, and simultaneously pressed into service for the subjugation of citizens (De Genova and Roy, 2020). In such a scenario, if we want to understand the predicament of these individuals and groups who have been already excluded or are likely to be, it becomes essential to account for the practices through which such lessons of otherness (Mezzadra, 2006) and absence evolve within the spectrum of citizenship.

These instances of exclusion are inherently embedded in the manner in which citizenship has evolved in contemporary times. While, on one hand, citizenship has emerged as the enduring link between the principles of public sovereignty and the exercise of individual and collective capacity (Balibar, 1988), allowing it to manifest itself as a 'instituted process' (Somers, 1993), it has also historically been tied to the process of state formation and has hence been intertwined with governmentality directed towards the affirmation of state power (Roy, 2010); this in turn allows citizenship to manifest itself as a spatially exclusive category. Therefore, to study the manner in which citizenship – as well as the absence of citizenship – develops, it becomes essential to understand how the scope of citizenship is affected by cognate concepts like state and nation.

The place of legal/formal citizenship within the discursive practices of state-making and nation-building remains particularly important in the context of South Asia, as the scope of formal citizenship vis-à-vis the South Asian nation states remains a contested issue enmeshed in the polarising prerogatives of hyper-nationalist politics. In South Asia, the logic of the post-colonial state, nationalism and citizenship remains inextricably tied to the process of decolonisation, which spanned the period 1937 to 1971 and led to the creation of four modern nation states (Van Schendel, 2007). It was during this particular period of time that partition

emerged as a viable/acceptable method of finding the right fit between population and territory (Samaddar, 2016). While territorial reorganisation had always been a central facet of colonial management, territorial reorganisation through partition stands out, as it involved the transfer of power to the new state elites of these nascent nation states. This created a situation where the spatial/territorial discourse of these states in South Asia not only carried forward colonial sensibilities, but allowed the latter to become embedded within the articulation of each nation. Conversely, these nations engaged in state-making within an inherited milieu of separation that produced jagged edges and borders between them, in turn creating a crisis of citizenship.

The contemporary nation states in South Asia, therefore, not only inherited their territories through decolonisation but also, simultaneously, inherited cartographic anxieties (Krishna, 1994) as the by-product of such processes. Resultantly, the state and citizenship in post-colonial South Asia remain stuck in an entangled 'chronosophy' (Wallerstein, 1991), where the pedagogy of the nation and the state have fundamental gaps which are then rectified by allusions to a narrow civilizational heritage. The evolution of citizenship in India, based on its fractured pedagogy, has to be read as a series of historical choices made at specific moments in response to anxieties that develop due to the imagined incompleteness of the nation and the state. The manifestation of what Willem van Schendel has termed the 'Wagah Syndrome' – in reference to the daily flag-lowering ritual at Wagah on the India-Pakistan border (Van Schendel, 2007) – is exemplified in the Indian state's decision to implement the Citizenship Amendment Act (CAA, 2019) and update the National Register of Citizenship (NRC) in Assam.

The immediacy of talking about citizenship and its ambivalences in the Indian context is born out of the current moment of hyper-awareness that signifies a moment of transition in the Indian discourse of citizenship. This discussion has developed largely in response to the most recent amendment to the Indian citizenship law (Roy, 2022) and insinuations that this law combined with a nationwide NRC would rectify two longstanding roadblocks to the creation of an 'ideal' Indian citizen. The CAA 2019 relates to the intention of the present regime to 'right the wrong done during the partition' by allowing specific minority groups from specific neighbouring countries who had entered India before 2014 to apply for Indian citizenship. The nationwide NRC, on the other hand, promises to detect and identify illegal migrants

residing in India. Through the CAA, sections of people, until now excluded from the ambit of Indian citizenship, are given an avenue to become Indian, which not only allows them to become a part of the nationalist continuum, but also accentuates the distinctive discourse of Indian nationalism; simultaneously, by creating a nationwide NRC, the Indian state claims to be rectifying the longstanding problem of illegal infiltration from neighbouring Bangladesh. Through this simultaneous process of encompassment and closure (Roy, 2008), the Indian state is trying to resolve its inherent crisis of distinction by conditionally expanding the scope of its citizenship while creating a legitimate infrastructure of documentary citizenship, which, in turn, allows the state to create an identifiable subject who is to be legally excluded from citizenship.

These developments not only highlight the centrality of citizenship within the discourse of nation-building, but simultaneously also point to the manner in which citizenship, as it develops, continually marks and isolates inferior subjects, locked in a perpetual cycle of what Anupama Roy refers to as 'forclusion' (Roy, 2010) amongst citizens. By instituting the CAA and promising citizenship to those until now excluded from its ambit, the Indian state acknowledges the disruption and violence of partition; in contrast, by simultaneously articulating for a nationwide NRC, it reinforces the same logic of exclusion. These recent events clearly show how the scope of Indian citizenship remains contingent on the manner in which the post-colonial state continually addresses and readdresses unresolved and unrealised rationalities by creating a civilizational pedagogy. As such, it is the inherent conceptual ambivalences of citizenship in South Asia – and more specifically India – that produce the stark reality of exclusion and absence.

As such, the impulses of exclusion become intrinsically tied not only to the present-day national territories, but also to the manner in which the chronological history of a nation is articulated in service of territorialisation (Van Schendel, 2007). Nationhood, as highlighted by Shapiro (2003), emerges 'as a state practice', essential for its efforts to 'capture' people while simultaneously capturing time, i.e. it must monopolise the temporal trajectory through which its existence is made natural and coherent. The characterisation of individuals/groups as non-citizens not only entails a de-legitimisation of their rights to a particular territorial space, but also requires a simultaneous expulsion from the very chronology of nation-building.

This compressed spatial-temporality is by no means static; rather, it's shaped and negotiated at distinct points of nation-building. According to Manu Goswami (2004), the task of making the nation appear natural is achieved by transforming the abstract, categorical conception of the nation into a taken-for-granted frame of reference, within which regional and local solidarities are brought in line with a larger national whole. When understood within this framework, an analysis of citizenship and its absence entails a study of a complex set of interactions between a varied and diverse group of actors; these interactions occur in specific contexts yet are contextualised within a seemingly commonsensical and preeminent idea of the nation state, in part secured through the spatialization of time (Alonso, 1994). Resultantly, a study of citizenship and its absence remains contingent on the manner in which the 'nation' is taught, perceived and negotiated at specific locations. The particular characteristics of citizenship in India, therefore, require that we reject the nation state as a unit of analysis and instead recognise its negotiated acceptance. In doing so, we have to understand citizenship as a terrain of conflict and struggle where a multitude of social and political forces and ideological formations exist in unequal and often conflicting relationships (Roy, 2005) and it is in these conflicting relationships between the Indian state and its constituents that we locate the possibilities of non-citizenship in India. In this article, we thus first highlight the possibilities of non-citizenship in India. We then discuss how these impulses of non-citizenship have chronologically developed at a specific location, i.e. Assam.

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II.   The Spectrums of Citizenship: Possibilities of Non-Citizenship

As mentioned in the previous section, the stark realities of absence are often a result of the manner in which the spectrum of citizenship evolves. It is due to the visible presence of otherness within the putative discourse of citizenship that we use the term 'non-citizens' in our analysis, to precisely capture the impulses of absence embedded within the regime of Indian citizenship.

The term 'non-citizen' is by no means new; rather, it has existed as a broadly defined and accepted term. According to the document titled 'The Rights of Non-citizens', published by the Office of the United Nations High Commissioner for Human Rights (2006), a non-citizen is defined as a person who has not been recognized as having any effective links to the country where they are located. Here, this term is applied to a wide range of groups, such as refugees, foreign students, foreign labourers, etc. The document allows the nation state to make an 'exceptional distinction' between the citizen and the non–citizen as long as it serves 'a legitimate state objective'.

In using this term, we also intend to point out that in excluding individuals through various laws like the NRC and CAA, the Indian state is making an 'exceptional distinction', which, according to the government, serves a legitimate state objective and is proportional to the achievement of such objective (Office of the United Nations High Commissioner for Human Rights, 2006). Conversely, we avoid using the term 'statelessness', as the definition of statelessness is frequently reduced to 'a mere absence of legal membership'. Often, this phenomenon is construed as the fallout of a failing state, ecological disaster, war or another 'extraordinary' event. In other words, statelessness is articulated and perceived as a tragic phenomenon which only comes into existence when the putative order of socio-political existence is disrupted. This simple and self-explanatory understanding of statelessness often obscures the varied and context specific complexities associated with the exclusion of individuals and groups.

Under most circumstances, the absence of citizenship tends to prosper in the shadow of accepted socio-political realities. It is not enough to understand the absence of citizenship as the denial of membership; it must also be acknowledged that oftentimes this absence is essential to the justification of the nation. The emergence of the individuals or groups that this paper focuses on is a result of the manner in which Indian nation state has used its unequivocal authority to demarcate the scope and space of citizenship at a particular location; this, in turn, exemplifies the manner in which experiences of absence evolve out of the broad spectrum of citizenship itself.

Location, in this context, emerges as an essential part of understanding the entire spectrum of citizenship; the exact scope of citizenship is often contingent on the manner in which the

permanence of the nation state is negotiated at specific points. On this basis, the focus of this article is on the Indian state of Assam, which shares an international boundary/border with the nation state of Bangladesh. Assam has witnessed persistent popular mobilisation against illegal immigration from Bangladesh and to date remains the only region to engage in constructing and updating the NRC. The process of updating the NRC in Assam was concluded in 2019 and, as a result, 1.9 million Assam residents were excluded from its latest draft. While discussing the fallout of the NRC in 2021, the current Chief Minister of Assam stated that these individuals would have the opportunity to appeal their exclusion at the Foreigner Tribunals. While further elaborating on the eventual fate of the individuals declared to be foreigners (read Bangladeshi) living in Assam, he stated:

'Till we send them back, we have to create a class of non-citizens. We have to allow them to enjoy fundamental rights, rights to health and education, rights to life and liberty; however they may be disenfranchised till the question of extradition to Bangladesh is finally resolved. And there must be some specific time frame' (Express News Service, 3 June 2021).

This particular comment by the Chief Minister of the state precisely accentuates the peculiarity of the citizenship discourse in contemporary Assam, as, after years of popular mobilisation, legislation and judicial scrutiny, it was hoped that an identifiable 'class' of non-citizens would emerge and be recognised in both legal and popular discourse. This class of individuals, as explained by the Chief Minister, was now supposed to co-exist alongside the 'genuine' and legitimised citizens of India residing in Assam for the foreseeable future.

What differentiates the Chief Minister's use of the term 'non-citizen' is, first, the location of the non-citizen, i.e. Assam, and, second, the singular manner in which an individual is identified as such. The presence of the non-citizen in Assam becomes inherently unique, as the non-citizen is identified from pre-existing groups of citizens through various legal and political apparatuses like the Foreigners Act (1946) and the updating of the NRC. In this way, the category of the non-citizen emerges as a singular class of individuals, residing in Assam, whose rights to Indian citizenship have been delegitimized. These developments require that we first understand the manner in which Assam has been framed within the overarching regime of Indian citizenship and how the possibilities of non-citizenship have developed in this region.

The specific regime of citizenship in Assam has been defined as a 'hyphenated regime', i.e. a variant of citizenship involving an identity that gets accommodated within the overarching narrative of a common national citizenship (Roy, 2022). The characterisation of the citizenship regime in Assam as a hyphenated regime proves to be useful in this context, as it allows one to acknowledge the role played by popular regional mobilisation in shaping the specific regime of citizenship, in turn highlighting the negotiated nature of citizenship norms in this particular region. But before we delve into a discussion on the nature of the hyphenated regime of citizenship in Assam, which, in our view, originated with the signing of the Assam Accord in 1985, and how this regime produces non-citizens, we need to discuss the manner in which the Indian state sought to 'manage' Assam prior to the Assam movement (1979-1985) and the Assam Accord (1985).

The specificity of Assam within Indian citizenship discourse is due to the unique relationship between the structural changes made during colonialism and the manner in which these changes fundamentally affected the functional discourses of identity, representation and, most importantly, citizenship. The structural changes relate to the unique colonial history of Assam, which fundamentally changed the geographic and demographic features of the region and was central in shaping questions of community identity and relations in Assam.

The colonial administrators viewed the then Assam as a 'wasteland' i.e. a region with vast expanses of unused land, that did not accrue revenue for the Crown (Chakraborty, 2012a). To utilise this abundant wasteland imperial capital first transformed Assam into a plantation economy where wasteland was to be utilised to produce tea. For this project, the administration started importing a large number of labours into the emerging plantation sector. The strategy of the colonial administration gradually shifted from the last decade of the 19th century, where they started facilitating large scale migration of cultivators from the densely populated adjoining districts of Eastern Bengal into the wastelands of Assam to encourage cultivation of food grains and the revenue yielding cash crop, jute. Both these projects significantly altered the demography of this region which had not so willingly become the recipient of migrants and migratory flows.

Simultaneously, these social, economic and geographical transformations provided an impetus for the local elites to encourage a consciousness related to cultural assertion and

social demarcation (Sharma, 2011). According to Sharma (2011), these often involved flaunting Indic genealogies of elite decent and the assertion of caste purity as a sign of racial purity. These projects of cultural assertion also led to an awareness in regard to the 'outsider' (*bohiragoto*), brought to the region by their colonial masters. This awareness eventually became a constitutive part of the functional discourse of Assamese and by extension, indigenous identities, over the last century. Therefore, given the unique inheritances of this region, universal concepts like nationalism, citizenship, migration etc. manifest themselves in ways unique to the region.

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Against this background, the partition of 1947 added a new legal dimension to the existing situation. Firstly the fallout of the partition defined the context where the preliminary infrastructure and norms of citizenship of a newly independent India were to be framed. Secondly the partition transformed Assam from a colonial wasteland, where there were very few restrictions on mobility, to a post-colonial borderland which was now to be maintained as an exclusive and securitied space. This led to a jarring change in the manner in which the region was governed. In essence, it fundamentally altered the structure of the region, which, in turn, changed how pre-existing socio-political cleavages came to be articulated. The partition of 1947 thus transformed issues of mobility, land use and representation into questions of legality, at the same time providing fertile ground for the Indian state to apply policies that would in future come to inform the CAA and the NRC.

According to Chatterji (2012), after partition, minorities in South Asia emerged as a distinct legal category, not fully protected by the states within which they lived; as a result, the nation states could exercise increased power over these individuals. In the immediate fallout of partition, the Indian state had to install institutional mechanisms to differentiate between 'legitimate' citizens of India, individuals displaced due to partition (who, in the case of Assam, were mostly people displaced from Sylhet after it went to East Pakistan) and illegal/unwanted immigrants. Contestations over residence in Assam thus transformed into questions of 'legality' and 'allegiance' (Pandey, 1998), and it was in this context that the 'undesirable migrant' became vulnerable to the eventuality of deportation. The asymmetric

power equation, highlighted by Chatterji (2012), thus defined the manner in which the Indian state identified and differentiated the inhabitants of post-colonial Assam.

The Immigrants (Expulsion from Assam) Act (IEA) (1950) gave central government the power to order the expulsion of certain immigrants if they, according to the central government, posed a threat to the general public of India. Simultaneously, the provisions of this act would not apply to individuals who had left Pakistan on account of civil disturbances. The IEA, while limited to Assam in its application and restrained in its language, thus not only differentiated between immigrants, but also allowed the state to exercise its authority over whomever it saw as unwanted. The scope of this law remains quite similar to the CAA, differentiated only by the fact that the IEA does not provide any avenue for citizenship. The existence of this act points to the fact that the logic at the heart of the CAA has long existed within the Indian discourse of citizenship.

Similarly, the need for policies which would detect and deport 'illegal immigrants' became an essential part of the citizenship regime in Assam. The Prevention of Infiltration from Pakistan scheme (1962), through which the government established an in-depth security screening to exercise a physical control over the number, identity and movement of immigrant settlements near the border, was the first example of this exceptional policy (Home and Political Department Government of Assam, 2012). The hyper-awareness of the Indian state in regard to the presence of immigrants in Assam allowed it to differentiate and simultaneously isolate and deport undesirable population groups. According to the white paper released by the Assam government in 2012, a total of 1, 78, 952 immigrants were identified as residing illegally in Assam and hence deported between 1950 and 1971. During the same period, the Indian state accommodated a similar number of individuals displaced due to the partition in Assam. Before 1964 most of these deportations took place without trial, which led to protestations from both minority leaders in Assam and leaders in Pakistan. This led to the Foreigner (Tribunal) (FT) Order (1964), which provided for the creation of a tribunal with a member with a judicial background to provide a fair trial to individuals suspected of being illegal residents. The IEA along with the PIP scheme and the FT order were specifically applied to Assam, indicating the status of Assam as an exception within India. Furthermore, the presence of such policies in Assam in many respects paved the way for the subsequent implementation of policies like the NRC in this region.

The implementation of these laws illustrates how the assumed presence of the illegal immigrant allowed for the creation and implementation of laws specific to Assam. It additionally highlights how the Indian state was willing to simultaneously accommodate immigrants that it deemed to be desirable in Assam, despite opposition to these policies in this region. Lastly, these laws from the 1950s and 60s cannot be characterised as hyphenated laws, as the Indian state had sole autonomy in deciding citizenship status for individuals. To truly understand the genesis of the hyphenated regime of citizenship in present day Assam, we need to look into the origins and fallout of the Assam Movement.

III.   Fallout of the Popular Upsurge: Mobilisation and Citizenship in Assam

Over time, anxieties regarding illegal migration from East Pakistan and later Bangladesh led to the Assam movement (1979-1985), a six-year period of political instability centred around the claim that the central government had failed to protect the state's population from the influx of people from neighbouring Bangladesh. Directly questioning the manner in which the citizenship infrastructure (Sadiq, 2009) functioned in the state, the rise of the Assam movement was facilitated by a combination of historical and contemporary factors.

The initial spark for the Assam movement was provided by a statement made by S. L. Shakdher, the Chief Election Commissioner (CEC), at a conference in Ooty on 24 October 1978. According to Pisharoty (2019), the then Chief Election Commissioner emphasised in his speech the need to avoid omissions and improper additions to the electoral rolls and referred to the 'large-scale inclusion of foreign nationals in some states, including the North East'. Though the CEC had not explicitly named Assam, a hue and cry erupted in the state as many prominent civil society organisations, like the All Assam Students Union, claimed that the names of illegal Bangladeshis was included in the voters list. The resonance of this statement in Assam was largely due to the pre-existing anxieties that had developed during the colonial period, compounded by anxieties caused by the movement of population due to the creation of Bangladesh in 1971. The statement made by the CEC thus added to an already tense situation and became the catalyst for the rise of the Assam movement. Lastly, the political uncertainty of the post-emergency era was also a factor that directly contributed to the rise of the Assam movement, as the Congress, which had controlled political power until

the mid-1970s, disintegrated, in turn providing a platform for regional parties to take over (Pisharoty, 2019).

The popularity and resonance of this particular movement was reflected in the fact the central government had to engage in negotiations with the leaders of the movement and sign the Assam Accord, agreeing to the points raised by the movement and, in particular, inserting section 6A (special provisions of citizenship pertaining to Assam)[1] into the Indian Citizenship Law, thus marking the beginning of a hyphenated regime of citizenship in Assam (Roy, 2022). The popularity of the movement and the government's acceptance of the movement's demands further consolidated the perception of Assam as a state infected with illegal bodies, a perception, which has since been reproduced in various spheres of public life, including academia.

In terms of political impact very few movement in Indian politics have had the success that the Assam movement had. At the same time, the Assam movement and its aftermath also represented a moment of transition for the state of Assam, where the functional discourse of Assamese identity became intimately embedded within discourses of cartographic anxiety in the very imagination of the Indian nation. As mentioned earlier, the functional discourse around Assamese and Indigenous identity developed through a growing awareness of the presence of 'outsiders'. It can be argued that over the course of post-colonial history and especially during the period of the Assam movement, the connotation of the 'outsider' itself fixated on specific communities. Over the course of the Assam movement, the term 'outsider' i.e. *bohiragoto* came to be replaced by the term *Bangladeshi*.

The emphasis on sending people back to Bangladesh in the Chief Minister's statement cited earlier is precisely indicative of the manner in which citizenship has been negotiated in Assam since the Assam movement. This emphasis on the Bangladeshi points to the fact that individuals excluded from the ambit of citizenship in Assam are not only characterised as mere 'illegal immigrants', but also as 'illegal immigrants from Bangladesh'. To explain this reality, we need to discuss how the Assam movement affected Citizenship law as it pertains to Assam.

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[1] See section 6a of the Citizenship Act (1955).

There are, currently, three primary mechanisms through which an individual may be marked as a suspect citizen in Assam: i) an individual can be marked as a 'Doubtful' voter by the election commission; ii) an individual can be marked as a suspect citizen if they are referred to the Foreigner Tribunal by state authorities or private citizens; iii) lastly, an individual may be marked as a suspect citizen through their exclusion from the updated NRC. Once identified as suspect citizens, these individuals are then required to stand trial at the Foreigner Tribunals, established under the Foreigner Tribunal Order (1964) (FTO). As per rule no. 21 of the Citizenship Rules[2] (2009), the Foreigner Tribunals have sole jurisdiction to decide cases referred from the above-mentioned authorities under sub-section (3) of section 6A of the Citizenship Act (1955).

Here, a reference to the Tribunals, which solely exist in Assam, can only be made under section 6A of the Citizenship Act (1955). As per section 6A, the Tribunals can only declare an individual residing in Assam to be a foreigner if they can ascertain that the individual in question migrated to India from the specified territory, i.e. Bangladesh, after 25 March 1971[3]. The opposition in Assam, therefore, solely exists between the Indian and the Bangladeshi. Resultantly, only specific groups of residents in Assam – those whose ethnicity can be linked to the modern-day nation state of Bangladesh – can be charged with the crime of being a foreigner, in turn creating a hierarchy within citizens. This regime of selective suspicion is the direct fallout of the Assam movement and its eventual culmination in the signing of the Assam Accord in 1985 and the insertion of section 6A into the Citizenship Act.

It is in this context that the figure of the Bangladeshi becomes central to the manner in which the state navigates the pre-existing contestations, while the negotiable nature of citizenship – and, by extension, illegality – allows enough space for the emergence of a hyphenated discourse of citizenship (Roy, 2022). Simultaneously, it allows the Indian state to create a 'desirable citizen' who fits into the distinctive discourse of Indian nationalism. Here, characterisation as 'Bangladeshi' is not contingent on an individual's mobility or transgression of space, rather it is contingent on popular imaginations of space, which entirely depend on how the nation and its legitimacy is negotiated in the specific location of Assam.

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[2] See Citizenship Rules (2009).
[3] See Citizenship Act (1955) section 6A.

The norms of citizenship that have developed in the specific context of Assam are inextricably tied to impulses of place-making that have developed in the specific context of this region and to the manner in which the Indian state has appropriated these discourses within its overarching narrative of linear territoriality. Significantly, the resulting experiences of non-citizenship also have to be read as the by-product of the manner in which the spectrum of citizenship is negotiated within the accepted discourses of place-making in post-colonial India. As such, experiences of non-citizenship, in Assam, prosper in the shadows of accepted socio-political realities, which in turn, highlight how experiences of absence evolve out of the broad spectrum of citizenship itself.

IV.   Advocating Exclusion: Civil Society in Assam

The role of civil society organisations like the All Assam Students' Union, All Assam Gana Sangram Parishad, Asom Sahitya Sabha etc becomes central in the manner in which the articulations of demands related to the detection and expulsion of illegal Bangladeshis were shaped. During and after the movement, the All Assam Students' Union (AASU) in particular emerged as a powerful actor in Assam politics and society. Even today, this organisation enjoys immense popularity in parts of Assam. As such, the movement was instrumental in creating a robust civil society, the actions of which have fundamentally altered the regime of citizenship in Assam as the actions of organisations like Assam Public Works and Assam Sangmillita Mahasanga have been central in shaping the citizenship regime in Assam. In this context it is essential to mention that the mechanisms for differentiating between the citizen and the Bangladeshi discussed in the previous section, which include the category of the Doubtful or 'D' voter, the Foreigner Tribunals and the NRC, evolved out of the demands made by the leaders of the Assam movement. It is then unsurprising that in the years since the Assam movement, the contestations related to citizenship in Assam have centred on legal disputes regarding the exact methods of identification and detection. One of the major demands of the Assam movement was the discontinuation of the Illegal Migrant Determination by Tribunal (IMDT) Act (1983) which, according to the leaders of the movement, made it impossible to deport illegal Bangladeshis, as, this placed the burden of proving one's illegality on the individual complainant and the state. Simultaneously, the

introduction of the IMDT Act in 1983 reduced the scope of the Foreigners Act (1946), which unlike the IMDT places the burden of proof on the individual accused of being an illegal Immigrant.

However, this legal arrangement was challenged in 2005 at the Supreme Court by Sarbananda Sonwal, who in his petition claimed that this act had allowed a number of non-Indians to reside in Assam, changing the cultural and ethnic composition of the area. The Supreme Court in its 2005 judgement sided with the petitioner (Sarbananda Sonwal vs. Union of India, 2005). The court found sufficient evidence to come to a conclusion that the non-application of section 9 of the Foreigners Act (1946)[4] combined with the provisions of the IMDT Act did not allow for the efficient and timely deportation of illegal immigrants. In coming to this conclusion, the court accepted the essentiality of section 9 of the Foreigners Act (1946) in the context of Assam and considered the non-application of this provision to be an 'unfair exception', as the IMDT Act was only applied to Assam and squarely placed the burden of proof on the individuals accused of being foreigners.

Another important development in regard to Assam and the endeavour to identify illegal immigrants was the creation of the 'D' voter. The mechanism of the 'D' (doubtful/disputed) voter was initiated by the Election Commission of India in 1997, when the voter's lists were revised and individuals without 'proper' documentation were marked as 'doubtful' (Pisharoty, 2019). This answered a fundamental demand made by the Assam movement, which had claimed that the names of many Bangladeshi nationals had been included in the electoral roll, as mentioned earlier. The creation of an updated NRC in Assam had also been one of the primary demands made by the leaders of the movement. This demand came to fruition after the Supreme Court judgement in the Assam Sangmillita Mahasanga case (2014), where the court directed the Indian government to create an updated NRC. Here, it is interesting to note that the demands raised by civil society in Assam were, as in the case of repealing the IMDT Act and excluding individuals from the voters list and the NRC, validated by the judiciary of India. This highlights the fact that policy advocacy during and

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[4] Burden of proof.—If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given there under, whether any person is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

after the Assam movement created a situation where draconian measures like the NRC, Foreigner Tribunals and 'D' voters came to be normalised in the name of protecting the nation. This, in turn, normalised the presence of disenfranchised residents in Assam. As such, the Assam movement and its fallout have fundamentally shaped the citizenship regime in Assam and may, in future, fundamentally affect the discourse of non-citizenship in India.

V.   Proving Citizenship: Liminal Citizenship in Assam

In the last few sections, we have discussed the inherently complex process through which foundational logics of citizenship and its absence are negotiated and construed in Assam. We also highlighted how and why these impulses of exclusion initially developed in the specific context of Assam and why the absence of citizenship is also felt uniquely in this particular region. As discussed in the earlier section, the regime of citizenship in Assam creates three types of suspect citizens, namely, the 'D' voter identified by the Election Commission of India, the referred case, i.e. individuals referred to a tribunal by the Border police or by private citizens, and individuals excluded from the NRC.

What is fundamentally unique about these measures is the fact that they identify and accuse individuals who have been ordinary residents of Assam for a significant period of time. In other words, the suspect citizens are identified from within the pre-existing pool of citizens. These developments point to the manner in which the ambivalences of Indian citizenship, as they specifically relate to Assam, allow for the borders to ingress. Resultantly, policies of border control don't remain restricted to areas near the physical borders, but are rather implemented in areas beyond the border heartland (Baud & Van Schendel, 1997). These policies are rarely questioned in popular or academic discourses, as the 'Bangladeshi', after decades of popular mobilisation centred on this notion, has emerged as a ubiquitous entity (Chakraborty, 2012b). It is the assumed ubiquity of the Bangladeshi that has justified the creation of a 'clandestine regime of suspicion', where individuals from specific groups residing in Assam can be accused of being Bangladeshi while living at their own residences. These individuals are not charged while crossing the Indo-Bangla border; rather, they are charged or marked as suspects arbitrarily by the functionaries of the Indian state. These individuals are, therefore, subjugated to what can be understood as a 'liminal' status of citizenship.

All these individuals who are marked as liminal are denied basic human rights, but these absences are felt differently by different categories of suspects. If a person is marked as a 'D' voter or accused by the border police, they immediately lose their right to vote. In our limited field engagement in 2022, we came across individuals who had been marked as suspects and were unable to vote. Resultantly, they were also unable to avail any government schemes as, in many cases, they lacked a voter ID. We have also noticed a trend where a suspect remains unaware that they have been accused. We have also come across cases where individuals marked as 'D' voters have had to wait years before their cases are taken up by the tribunals. This not only condemns them to a liminal status for many years, but also leads to their children being denied voter cards.

The NRC presents an interesting case study in this regard, as it was intended to bring a quantitative and qualitative change in how these liminal bodies are identified/produced. It represented a quantitative change within the citizenship regime of Assam, as, through an all-encompassing exercise like the NRC, the Indian government could mark a significant amount of people as suspect citizens instead of depending on the border police or the Election Commission; this was exactly what happened with the latest draft of the NRC, published on 31 August 2019, which marked 1.9 million residents as suspect citizens. The NRC was also intended to bring qualitative change to Assam's citizenship regime. Before the NRC, individuals who were marked as 'D' voters or referred to the FTs as suspected foreigners were not given a precise or exact reason as to why they were being accused; rather, they were served notices to appear in front of the Tribunal to prove their citizenship. This occurred despite existing guidelines, which are rarely followed; obviously, it was and remains a flawed procedure.

The NRC was meant to rectify the ambivalence of the previous procedure, as individuals excluded from the NRC were to be provided with rejection slips which would mention the reason why they were excluded from the NRC. Many commentators, including H.R.A Choudhary, a senior advocate at the Guwahati High Court and a respected political figure, felt that a fair NRC would put a stop to the unending conundrum of citizenship in Assam.

H.R.A Choudhary, in a 2005 interview with Indrani Barpujari, stated:

"I feel that the agreed position of 25th March 1971 should be the basis on which the National Register of Citizenship should be constituted and updated. To ensure the success of this, sincerity on part of both the centre and state government is required. Once this task is done, it will be sufficient in itself. But till then judicial intervention is required to protect people." (Barpujari, 2005)

This, unfortunately, has not happened, as the final draft of the NRC has not yet been approved by the Indian government. This has, in turn, left the 1.9 million people marked by the NRC as suspect citizens in limbo. These individuals are still waiting to know the reasons of their exclusion and are deprived of their right to appeal against the exclusion orders. The reality of these individuals remains unfathomable. In the case of individuals excluded from the NRC, the consequences are similar to 'D' voters, except for the fact that a significant number of the individuals excluded from the NRC do not have access to Aadhaar cards. Aadhaar cards are the preeminent proofs of identity in India and are mandatory to avail facilities like banking. In absence of Aadhaar cards, these individuals and their families lack access to the state-mediated basic provisions essential for their daily lives. Here, we see that the creation of the *hyphenated* citizen allows the state polity not only to directly affect the citizenship regime in Assam, but also to create subjects with liminal citizenship whose futures remain tied to the whims of the Indian state.

VI.   Towards Non-Citizenship?: The Elusive Conclusion

In contrast to the liminal subjects created by the NRC process, individuals declared to be Bangladeshis by the Foreigner Tribunals occupy a liminal zone that exists in between the nations of Bangladesh and India. These individuals are the non-citizens that the Chief Minister was speaking of. Their existence becomes a dilemma in itself as no state can unilaterally place the non-citizen within the territory of another state. To resolve this dilemma, a 'liminal zone of exchange' is created as a buffer between the nation states where the individuals and groups that have been denied citizenship, like non-citizens, are placed. Hence, as the non-citizen is marked as a distinct category, they are simultaneously placed in the liminal zone of exchange. In this context, the liminal zone of exchange has been essential in controlling the movement, transfer and exchange of populations across national borders in accordance with the specific demands of each nation state. The inhabitants of this space are

well defined, as they have already been converted into a particular category by one of the nation states concerned.

As such, the trait of liminality here is only associated with a space and not with its inhabitants, as their status remains clearly defined. In simple terms, the liminal zone of exchange manifests itself between nation states as a space where states can deposit unwanted groups and assimilate groups that fit within its discourse of distinctiveness. The most recent amendment to the Indian citizenship law is indicative of the 'distinctive' thrust of nation formation. In contrast, the recently concluded NRC process and the presence of detention camps in Assam point to the 'exclusive' thrust of state formation in South Asia. Further examples of this liminality can be found in the experience of the Chakma, the Tibetan community and the Rohingyas, who have experienced both these impulses at different points of state formation in South Asia.

Unfortunately, individuals declared foreigners/non-citizens in Assam seem destined perpetually to remain in this liminal space, due to the manner in which they are characterised as such. The insertion of section 6A in the Citizenship Act in 1985 transformed the basic principle of citizenship in Assam from *jus soli* to *jus sanguinis*. In essence, for a suspect to prove their citizenship, they would now have to either prove their presence in Assam before 1971 or prove that they are related to someone who resided in the state pre-1971. This essentially creates a situation where many children find their claims to citizenship curtailed by their lineage. Moreover, the reliance on the principle of *jus sanguinis* to determine the legitimacy of one's citizenship has meant that a significant number of declared foreigners happen to be born in India. Obviously, the chances of these individuals either being deported to Bangladesh or being reintegrated into India remain minimal. They are hence condemned to exist as non-citizens in perpetuity. Additionally, their children are also denied citizenship, which, in turn, creates the possibility of millions of individuals, born in India, being declared to be Bangladeshis in accordance with Indian law. The situation in Assam, therefore, requires that we acknowledge the possible emergence of a class of non-citizens in Assam and India.

The issue of non-citizens in post-colonial geographies is a complex terrain. Internationally, the issue of non-citizens is a matter of grave concern for human rights institutions; especially in light the seven principal human rights treaties. The developing situation in India further

challenges our notion of justice on the basis of a social contract (Rawls, 1999). Despite the unique history of Assam and South Asia, the emerging space of non-citizenship in India has to be viewed within the global context where we see various nations adapting stringent policies of detection and deportation, which in turn, can be read as efforts intended to redefine the relationship between the authority of the nation state and citizenship. These efforts to subvert citizenship within the narrow contours of a civilizational pedagogy may alter the very manner in which we have understood citizenship.

If we revisit the statement made by the Chief Minister of Assam in the earlier part of this paper, we observe an active effort to divorce citizenship from essential human rights. The fact remains that in the contemporary times the right to participate or merely exist as the part of a political community has been monopolised by the institution of the nation state. Resultantly, citizenship today, can't be defined as the right to have rights (Arendt, 1951), rather, the predominance of the nation state has meant that citizenship is restricted to the right to be nationalised. It is in this context that we need to reconfigure the manner in which we define the phenomenon of non-citizenship.

Indeed, the disenfranchisement of the democratic ideals of the state quickly gives way to 'hegimonisation' over 'assimilation'. Thus, framing the non-citizenship debate only around the tenets of human rights may risk further degeneration of the transnational social contract mediated by multiple international laws, guidelines and treaties. It is imperative that socio-political action should foreground the principle of strengthening the state's democratic franchise, in order to make the citizenship infrastructure inclusive. In our future deliberations, we aspire to engage with this empirical observation in other South Asian countries where colonial inheritances and the incomplete civilizational pedagogy of the nation state produce non-citizens in different locations.

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