United States Commission on International Religious Freedom

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Hearing on "Jammu and Kashmir in Context"

Before the Tom Lantos Human Rights Commission, United States Congress

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Thank you, Co-Chair McGovern and Co-Chair Smith, for convening this hearing on the human rights situation in Jammu and Kashmir, and to focus attention on concerns involving the freedom of religion and belief within South Asia. I deeply appreciate the opportunity to testify on behalf of the U.S. Commission on International Religious Freedom, or USCIRF.

USCIRF is an independent and bipartisan U.S. government agency established by the International Religious Freedom Act, or IRFA, to monitor and report on religious freedom conditions abroad and to make policy recommendations to Congress, the State Department and the President. USCIRF advocates equally for all religions and for the universal right to believe or not to believe. We employ international human right standards in our work, and when a government perpetrates or tolerates violations of freedom of religion or belief that are systematic, ongoing, *and* egregious, USCIRF recommends to the State Department that the country be designated as a Country of Particular Concern or CPC.

For example, within South Asia, USCIRF recommended that both Pakistan and Burma be designated as a CPC in our 2019 report, reflecting, among other things, the genocide and ongoing disenfranchisement, displacement and violence towards the Rohingya in Burma; and in Pakistanthe promulgation of blasphemy and anti-Ahmadiyya laws, which continue Pakistan's long history of restricting the rights of its minority religious communities, including Shi'a and Ahmadi Muslims, Hindus, and Christians.

For India, we recommended that the State Department designate it as a "Tier 2" country. USCIRF found that the Indian government perpetrated or tolerated violations of freedom of religion or belief; while they had not yet risen to the CPC level of being systematic, ongoing, *and* egregious, India is approaching that standard. Indeed, USCIRF's 2019 report recognized that religious freedom conditions in India experienced a downward trend in 2018, a trend that unfortunately has continued and appears to be accelerating in 2019.

Religious Freedom in Jammu and Kashmir

A focal point around religious freedom conditions in India – and the reason we have gathered here today – are the recent actions taken by the Indian government in majority-Muslim Jammu and Kashmir that have negatively impacted the religious freedom of Kashmiris. These actions are part of a complex history of displacement and violence towards longstanding religious communities within Jammu and Kashmir, including the Kashmiri Pandits, which I understand others will testify about today. USCIRF is concerned about reports starting in August that the Indian government restricted freedom of movement and assembly in Jammu and Kashmir, limiting people's ability to attend prayers and participate in religious ceremonies; forestalling any large gatherings, including for religious purposes; and for certain communities, curtailing access to health care and other basic services. USCIRF has also seen reports of mosques being closed; imams and Muslim community leaders arrested and detained; and violence and threats towards residents and businesses in certain religious communities.

While it is beyond USCIRF's scope to comment on the political and security situation in Jammu and Kashmir, we are concerned about both the perception and the reality – which has been difficult to document and accurately understand given the restrictions on communications in the region – that religious freedom of Muslim communities are being curtailed as a consequence of the Indian government's actions. Indian government officials have stated a goal of restoring normalcy within the region as quickly as possible, which must at minimum ensure that the freedoms of religion and belief are honored and protected, and that religious persecution and violence – and the fear of such persecution and violence – is actively countered and addressed.

Religious Freedom in India

I also want to spend a few minutes talking about religious freedom conditions in India more broadly. India has a rich tradition and history of secular pluralism, as recognized and protected by its Constitution. Yet, the country's political leadership has consistently struggled to balance protections for its religious minorities against majoritarian forces. More recently, the Bharatiya Janata Party (BJP), under the leadership of Prime Minister Narendra Modi, came into power in 2014 and successfully won re-election in 2019 with strong appeals to Hindu nationalism. And, throughout the country, political and community leaders are promulgating an ideology that suggests that to be Indian is necessarily to be Hindu, and views India's religious minorities as subordinate or foreign. That ideology has taken root in policies and actions at the state level, and increasingly in proposals and appeals at the national level, that are resulting in the persecution and targeting of religious minorities.

A key example is the updated National Register of Citizens, or NRC, in the northeastern state of Assam. The NRC was originally introduced in 1951 as part of India's first census and served as a registry to identify Indian citizens. Assam borders both Bangladesh and Bhutan and in the 1970s and 1980s, concerns about immigrants - largely focused on ethnic Bengalis –grew among the Assamese. As a result, the Indian government signed the Assam Accord in 1985, which called for an update to the NRC in Assam as an instrument to identify so-called "illegal immigrants." It wasn't until a 2014 ruling by the Indian Supreme Court that the Assamese government began

this process, by requiring all Assam residents to provide documentation of citizenship (or their ancestor's citizenship) as of the year 1971. The final NRC list issued in August 2019 excluded 1.9 million residents.

Individuals excluded from the NRC have until December 31, 2019 to appeal their citizenship status to recently established Foreigner Tribunals. Human rights groups have asserted that the Foreigner Tribunals are rife for abuse, as they reportedly lack transparency and have been closed to the public, press and family members, and lowered, if not effectively eliminated, standards for and qualifications in those serving on the Tribunals.

In general, the NRC process in Assam has raised three sets of concerns.

First, there is a lack of clarity on what happens after the appeals process concludes. The concern is that those excluded will be deemed stateless, and will consequently be placed either in detention camps, where the government currently places "illegal immigrants," with those camps being rapidly expanded and enlarged, or that they will be forcibly displaced and/or deported from India. Regardless, if rendered stateless, they will become subject to exploitation, discrimination and violence from state and non-state actors, much like what has taken place with the Rohingya. Indeed, the genocide and displacement of the Rohingya in Burma started with a citizenship verification process that is eerily similar to the NRC.

USCIRF has recently received information from Indian government officials assuring us that exclusion from the NRC "has no implication on the rights of an individual resident in Assam"; "does not make the excluded person stateless"; and "does not make him or her a 'foreigner' under the Foreigners Act of 1947." Consequently, those excluded from the NRC "will not be deprived from any rights or entitlements which they have enjoyed before." We hope that the NRC process in Assam, and throughout India moves forward consistent with these statements. USCIRF will continue to monitor the situation closely.

Second, as USCIRF and many other organizations have previously raised, is the concern that the NRC process is an effort to target and discriminate against Muslims residing in Assam; many of those excluded from the NRC are Bengali Muslims. In June 2018, in a letter to the Indian Minister of External Affairs, four UN Special Rapporteurs expressed worries about the NRC resulting in discrimination against Bengali Muslims. There are many indications that Muslims are the intended target of the NRC process. For example, wWhen it was discovered that Bengali Hindus were also excluded from the NRC, several state and local political leaders sought to both assure Hindus not to worry and that the error would be rectified, and to denounce the NRC process for not working as it was intended.

The NRC poses a far greater threat to Muslim communities across India given the announcement by state and national leaders that they plan to re-introduce the Citizenship (Amendment) Bill that would allow any non-Muslim immigrants from Afghanistan, Pakistan and Bangladesh a shorter and more direct path to Indian citizenship, while effectively defaulting Muslims to the "illegal immigrant" category that the NRC was put in place to root out. Citizenship (Amendment) Bill already passed the Lok Sabha (lower house) of Parliament in January 2019 but was withdrawn

due to protests; the Bill is expected to be reintroduced in the parliamentary session that is just about to start.

The third set of concerns – made ever more salient by the expected introduction of the Citizenship (Amendment) Bill - is that several state-level politicians are pushing for an NRC within their states, including Maharashtra, Uttar Pradesh, and West Bengal, and BJP President and Home Minister Amit Shah is advocating for a nationwide NRC. Such efforts, coupled with the Citizenship (Amendment) Bill, could threaten the citizenship of millions of Indian Muslims. For further information about the NRC process, please see the USCIRF Issue Brief attached to this written testimony for the record.

Lastly, I would be remiss not to mention – albeit ever so briefly – a few additional areas that USCIRF is paying close attention to.

- Several Indian states have anti-conversion laws that criminalize forced or fraudulent conversions, particularly to Islam and Christianity. These laws have ambiguous language and can be abused to limit individuals' Constitutional right to practice and peacefully spread their religion. Several political leaders across India have indicated their plans to introduce a nationwide anti-conversion law in the next session of the Lok Sabha, despite the fact that there have been few if no convictions under these laws to date.
- We've received reports of the desecration and destruction of places of religious worship, and of continuing disputes over certain religious sites. We will continue to monitor those situations, as well as any religious violence or efforts to threaten or erase religious history and/or places of religious significance, particularly in the wake of the Indian Supreme Court's ruling this past week on Ayodhya and the Babri Mosque.
- USCIRF continues to monitor how inflammatory rhetoric from political leaders has stoked hate and fear among religious minorities and given non-state actors a sense of impunity for acts of violence against religious minorities. Relatedly, the violence and killings by self-proclaimed cow protection mobs of individuals suspected of slaughtering cows or transporting them for slaughter, or the attacks on Christian communities for engaging in conversion activities, must be curtailed and no longer tolerated.

Recommendations

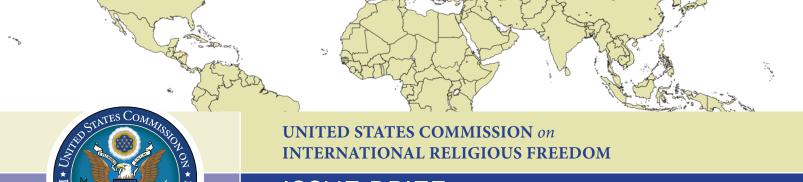
India's religious minorities currently stand at a precipice. If the Indian government continues on its current trajectory, their livelihood, rights, and freedoms could be in serious danger. USCIRF urges Congress and the Administration to remain vigilant in monitoring how the NRC process unfolds, the introduction of Citizenship (Amendment) Bill and anti-conversion bills on the national level, and the steps being taken in Jammu and Kashmir.

USCIRF further recommends that the U.S. government work with the Indian government to develop a multi-year strategy to protect religious minorities, including by (i) taking measures to combat hate speech that incites violence against religious minority groups and increasing accountability and prosecution of those who directly engage in violence and the political, community, and media leaders who are encouraging such violence; (ii) strengthening the training and capacity of state and central police to protect religious communities and prevent cases of

religious violence. It is the duty of the government and police to protect religious minorities and their associated houses of worship and holy sites and to work against creating an environment of impunity for non-state groups.

One last note: USCIRF has not been allowed to visit India and meet with key stakeholders and government officials and asks both the U.S. and Indian government for help in facilitating an USCIRF delegation visit. We greatly appreciate and want the opportunity to constructively engage with the Indian government on these and other issues as they arise in the future.

Thank you again for the opportunity to testify today and I look forward to your questions.



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To advance international freedom of religion or belief, by independently assessing and unflinchingly confronting threats to this fundamental right.

The Religious Freedom Implications of the National Register of Citizens in India

By Harrison Akins, Policy Analyst

Overview

On August 31, 2019, the government of the northeastern Indian state of Assam released an updated National Register of Citizens (NRC), originally *introduced* in 1951 as part of India's first census. The purpose of updating this list was to verify the citizenship of Assam residents and aid the government in identifying so-called *"infiltrators"* or "illegal immigrants." India's Union government supported this effort, and both national and state leaders from the ruling Bharatiya Janata Party (BJP) have pushed for the implementation of an NRC in other states, including *Maharashtra*, *Uttar Pradesh*, and *West Bengal*. Union Home Minister Amit Shah has expressed his desire to implement a nationwide NRC.

The final NRC list excluded 1.9 million Assam residents. Moreover, a number of domestic and international organizations have expressed concern that the NRC is a targeted mechanism to disenfranchise Assam's Bengali Muslim community, implicitly establishing a religious requirement for citizenship and potentially rendering large numbers of Muslims stateless. In June 2018, for instance, four United Nations special rapporteurs *sent* a letter to the Indian Minister for External Affairs stating their worries that "members of the Bengali Muslim minority in Assam have experienced discrimination in access to and enjoyment of citizenship status on the basis of their ethnic and religious minority status," and "this discrimination is predicted to escalate as a result of the NRC." The U.S. Commission on International Religious Freedom *(USCIRF)* raised similar warnings in its *April 2019 Annual Report* and an *August 2019 statement*.

To provide a better understanding of the religious freedom implications of the NRC, this issue brief provides background information on Assam's political environment and the underlying impetus for the updated NRC; details the NRC implementation; and discusses the evidence of the BJP government's religious partiality in supporting this effort.

Background: The NRC and the Ethnic Politics of Assam

The NRC has been inextricably bound with the ethnic politics of Assam. Dating back to British colonial policies and labor migration from Bengal into Assam, the ethnic Assamese have long been concerned with potential demographic shifts in favor of ethnic Bengalis, many of whom worked as laborers on Assam's large tea plantations.



This concern was heightened with the large influx of Bengalis from former East Bengal (East Pakistan) on its western border after Partition in 1947. Moreover, during the 1971 civil war in East Pakistan, which resulted in the establishment of Bangladesh, the mass migration of Bengalis fleeing to India was a further catalyst for anti-immigrant sentiment in Assam.

The anti-immigrant movement grew in prominence with the emergence of the Assam Movement led by the mass student activist organization All Assam Students Union (AASU) in the 1970s and early 1980s. This new group staged a series of protests to pressure the government to identify and expel illegal immigrants, particularly ethnic Bengalis viewed as foreigners. The AASU demanded that the government update the NRC in Assam to aid in this effort. This anti-immigrant agitation culminated in the Nellie Massacre on February 18, 1983. Over a period of eight hours, a mob led by AASU members descended on the town of Nellie and its surrounding villages in central Assam—largely inhabited by Bengali Muslims—and killed 1,819 people, according to official figures. It was one of the worst incidents of violence in modern Indian history and for which there have been no prosecutions.

To resolve this turmoil, the Union government and the AASU signed the 1985 <u>Assam Accord</u>. In return for the AASU calling off its campaign, the government agreed to establish a mechanism to identify "foreigners who came to Assam on or after March 25, 1971 [the date of Bangladeshi independence]" and ensure that "practical steps shall be taken to expel such foreigners." Despite pressure from the AASU on the government to fulfill the

requirements of the Assam Accord—including the AASU forming the political party Asom Gana Parishad, which governed Assam twice—subsequent governments did not follow through with these promises.

Implementation of the NRC Update

Following a 1999 decision by the Indian government to update the NRC in line with the Assam Accord, the Supreme Court of India issued a December 2014 ruling jump starting the process by directing the Assam government to complete the NRC update by January 2016. The BJP government—which had just won in the 2014 general elections—backed the court's decision. In that subsequent NRC update, only individuals able to prove their citizenship prior to March 25, 1971, along with their descendants, would be identified as citizens. As verification, individuals needed to produce at least one from a list of documents issued to them prior to the cutoff date, or issued to an ancestor if born after 1971. These included: inclusion on the 1951 NRC or electoral rolls, citizenship certificate, passport, birth certificate, court records, land or bank documents, or any government-issued license.

Individuals were excluded from the NRC list for many different reasons. For many impoverished families, presenting the necessary documents to authorities was a challenge due to inadequate family record-keeping, illiteracy, or lack of money to travel to government offices or to file legal claims. People were also kept off the list because of minor inconsistences in paperwork, such as differences in the spelling of a name. Amnesty International <u>referred</u> to the verification process as

"shoddy and lackadaisical" and ripe for abuse in targeting Muslims and other religious or ethnic minorities, already perceived to be foreigners.

Following delays, the Assam government released draft copies of the NRC in December 2017, with nearly 13 million names missing, and in July 2018, with four million names excluded. Those who were not included in draft lists faced an August 31, 2019 deadline to submit their citizenship documents. When the final NRC was released, 1.9 million residents discovered their names excluded from the list. Among those omitted were *veterans* of the Indian army and *individuals*, particularly women and children, whose relatives were included in the NRC using the same legacy documents. Excluded individuals have 120 days—up until December 31, 2019—to appeal their status to one of hundreds of Foreigners' Tribunals recently set up for this purpose. Foreigners' Tribunals are quasi-judicial bodies established pursuant to a 1964 law to adjudicate an individual's citizenship status. With the criteria for appointment to Foreigners' Tribunals recently loosened and a general lack of transparency in their decision-making process, human rights organizations have pointed to anti-Bengali and anti-Muslim bias in deciding these individual citizenship cases. Once declared foreigners, individuals then may become subject to detention in one of the government's recently *constructed* mass detention camps in Assam to house newly labeled "illegal immigrants." With nearly two million individuals currently excluded from the NRC, there is a lack of *clarity* on what happens next. The growing concern is that those declared to be "illegal immigrants" will become stateless. India and Bangladesh currently do not have a repatriation agreement, with each repatriation case handled ad hoc between the two governments. Moreover, the number of Bangladeshi nationals deported by India and accepted by Bangladesh has been steadily declining in recent years, falling from 5,234 in 2013 to only 51 in 2017.

The Religious Freedom Implications of the NRC

Following the August 2019 release of the NRC, the BJP government has taken steps that reflect an anti-Muslim bias – core to its staunch support of the NRC update in Assam. The BJP has indicated its intent to create a "religious test" for Indian citizenship that would favor Hindus and selected religious minorities but exclude Muslims.

After the finalized list was released, observers quickly realized that large numbers of Bengali Hindus as well as Bengali Muslims were excluded. On the one hand, this is

not surprising, as local Assamese view ethnic Bengalis, regardless of their religious identity, as foreigners. Yet, when they learned that Bengali Hindus were excluded as well, some BJP politicians called the exercise "full of errors" and challenged the NRC in its current form. They argued for a "re-verification" and pushed for a review by the Supreme Court. A member of the legislative assembly in Assam even offered to arrange legal assistance for any Hindus excluded, arguing, "No Hindu Bengali is a foreigner and should be included in the NRC unconditionally." The national chief of the Rashtriya Swayamsevak Sangh (RSS) Mohan Bhagwat, the BJP's ideological parent, challenged, "No Hindu will be expelled even if [that individual's] name is missing from [the] NRC." To address the exclusion of Bengali Hindus, BJP officials at both the state and national levels have argued for the need to pass the Citizenship (Amendment) Bill. This bill would amend the Citizenship Act of 1955 ("Citizenship Act") to allow non-Muslim immigrants from Afghanistan, Bangladesh, and Pakistan to gain Indian citizenship. Under the Citizenship Act, illegal immigrants are barred from acquiring citizenship. However, in the amendment, non-Muslims from these three countries would no longer be "treated as illegal migrants" and therefore would be eligible to apply for and gain Indian citizenship. Moreover, it would limit the length of qualifying residence in India for non-Muslims from 11 years to six years. Under the Citizenship (Amendment) Bill, Bengali Hindus and other non-Muslim religious minorities - even if they had been deemed foreigners and excluded from the NRC- would not be classified as illegal immigrants and therefore would not be subject to detention and deportation. The "illegal immigrant" label, and the potential statelessness that comes with it, would be reserved for Muslims. The Lok Sabha (the lower house of India's parliament) initially passed this bill in January 2019, but the BJP government withdrew it the following month due to protests.

In West Bengal, the BJP president *announced* that passage of the Citizenship (Amendment) Bill in the Lok Sabha, in conjunction with a push for an NRC in the state, will be the main issue in its campaign ahead of State Assembly elections scheduled for 2021; West Bengal's ruling Trinamool Congress Party opposes such efforts. Under *pressure* from the RSS and in the wake of the BJP's electoral victory in May 2019, Home Minister Shah has also *alluded* that the Union government may reintroduce the Citizenship (Amendment) Bill during the Lok Sabha's next session, lasting from November 18 to December 13, 2019, to mitigate the impact of the NRC on Bengali Hindus.



Conclusion

The process leading to the NRC update in Assam has been one marked by violence and bloodshed over the past four decades. And with competing ethnic, religious, and political agendas clashing within northeastern India, the potential for violence to erupt once again remains of concern. Moreover, the NRC as a tool to target religious

minorities and, in particular, to render Indian Muslims stateless has become one more example of the downward trend in religious freedom conditions within India.

For more information about religious freedom in India and USCIRF's recommendations to the U.S. government, see the Commission's <u>2019 Annual Report</u>.

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