BORDERING ASSAM THROUGH AFFECTIVE CLOSURE: 1971 AND THE ROAD TO THE CITIZENSHIP AMENDMENT ACT OF 2019

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Introduction

In 2019, the journalist Rohini Mohan reported on the case of a man named Dilip Biswas. He had been picked up by the police in Assam a decade earlier because he was believed to be a ‘foreigner’. In order to prove his Indianess, Biswas had produced a raft of documents but his paperwork was rejected by the Foreigner’s Tribunal which then kept him, his wife, and two children in detention for nearly a decade. Eventually the Assam High Court ruled that the detention of his family was illegal, and that much of the paperwork that had been disregarded by the tribunal was in fact valid. But at the time of writing, Biswas although a free man, was still waiting to prove his nationality. This story of a Bengali Hindu man in India’s North East encountering the gorgon that is the Indian state in its pettiest form may be regarded as a banal example of bureaucratic practices in the borderlands. The ‘kagojer atonko’ or the ‘paper monster’ that families like the Biswases faced is seen as a hazard of being a minority along India’s border with Bangladesh. The banality of the case, and the despair of the Biswas family in Mohan’s report, though is part of a bigger ‘atonko’ or terror, that encompasses broader questions of citizenship and belonging in Assam, and ties the current controversy over the National Register of Citizens and the Citizenship Act of 2019.
Amendment Act of 2019 to a longer history of migration in Assam, while also feeding directly into more recent acts of violence and dispossession against Bengali Muslims in Assam.

The Government of India, in the postcolonial period, has tried to respond to Assamese anxieties about the figure of the migrant through a series of legal and constitutional instruments. These measures have highlighted the contradiction between a national discourse around ‘security’ and the ‘illegal infiltrator’ and a more local Assamese one about the presence of the bahiragoto (outsider) who was largely Bengali and both Hindu or Muslim, but whose identity becomes more polarised post 1971 into an ‘infiltrator’ who is a Bengali Muslim, purportedly from Bangladesh and who is to be excluded from the national body. In tracing this history, I want to focus on a particular moment of rupture in these citizenship narratives in Assam, which has not received enough attention in the scholarly and legal literature on the subject: that of 1971. The date of 25 March 1971, the night of Operation Searchlight in Dacca carried out by the Pakistan Army, finds itself present in a number of legal measures applied to both Assam and India as a whole, but the date is seen as an incidental marker. In this article I shall reintroduce this date as a significant moment that helps us locate the events of 1971 within a broader history of migration and citizenship in India and culminates in the controversy around the National Register of Citizens (NRC) and the Citizenship Amendment Act (CAA) in Assam. In doing so, I highlight both the continuities in Assamese anxieties about the ‘outsider’ but also the moment of rupture in 1971 when questions of belonging on the basis of both language and religion emerge.

In order to understand the logic behind the panoply of measures deployed by the central and state government, to allay Assamese anxieties about the bahiragoto I also want to contribute theoretically into how we think about citizenship. Using Anupama Roy’s schema of ‘encompassment’ and ‘closure’, I will argue that although the Indira Mujib Accord of 1972 marks 25 March 1971 as a moment of legal or effective closure, and it is then written into the Illegal Migrants (Determination by Tribunal) Act or the IMDT Act of 1983, 1971 in Assam marks a moment of affective closure in ways that transcend Roy’s understanding of such legislation. Using Ravinder’s Kaur’s ideas of affective distance between refugee communities in Punjab, I want to look at the social differences that emerge between border crossers and local people. This growing resentment, the acts of sabotage carried out on refugee camps, and the insistence that the refugees be marked out as outsiders, contribute to the affective
distance and ultimately affective closure that arises between the refugees and the residents of these border areas.

By examining local responses to refugees I am also looking at more popular understandings of what it means to belong in Assam in order to be cognizant of Joya Chatterji’s claims that simply studying legislative practices as a top down process of citizenship obscures the ways in which claim-making is a multi-faceted process and involves popular resistance to state interventions, and state responses to such popular and populist sentiments. In doing so, I find that in Assam in 1971, there are dual anxieties at play that feed into this growing affective distance. First, from the colonial into the post-colonial period there remains a distrust of the Bengali Hindu border crosser. Second, and more critically, the Muslim refugee too emerges as a figure to be distrusted, and 1971 I will argue marks the moment when the narrative of ‘infiltration’ as applied to the Muslim border crosser begins to emerge. As a consequence of this particular and growing anxiety about the Bengali Muslim presence in Assam, which includes both the refugees of 1971 as well as Muslims already resident in the state, I argue that this affective distance forces a form of effective legal closure through legislative means. As Nadine El-Enany has argued in the context of British immigration legislation after 1948, laws that control borders and exclude certain populations are often a product of internal conversations about race, religion, ethnicity and belonging. Using El-Enany’s idea to think of the creation of a more effective legislative border in Assam, this article argues that in 1971 the affective social differences between the refugees and their hosts contribute to the eventual legislative closure of this border to those who came after 25 March 1971.

Finally, I argue that more recent legislative attempts to include the post 1971 border crossers who are Hindu within the formal effective border of the nation state, through the ‘encompassing’ mechanism of the NRC and CAA disrupts this cohesion between the affective and effective border that emerges after 1971. The CAA, by removing the date of 25 March 1971 from citizenship legislation, reopens the affective distance in Assam between those who see themselves as residents and those the former view as outsiders. It is then possible to argue that both the opposition to the CAA in Assam, as well as the escalating communal violence against Muslims in Assam, is a consequence of the reopening of this legal closure. This narrative on which the CAA is based that differentiates between the deserving ‘refugee’ (usually Hindu) versus the ‘infiltrator’ (usually Muslim) comes unstuck when the NRC in Assam ends up
producing a longer list of Bengali Hindu refugees whom it terms as ‘illegal migrants’. In response, the Government of India then introduces the Citizenship Amendment Bill (2016) which would allay some of these anxieties, particularly those around the Muslim border crosser by denying him the same access to territorial citizenship as the Hindu one. However, because it obscures those demarcations of linguistic differences in Assam as highlighted by 1971, and only partially answers the Assamese question, both the NRC and the CAA meet with opposition in Assam. Thus this article argues is that 1971 is central to the bringing of the affective distance between the Assamese and the bahiragoto into focus and culminates in a form of legal closure through later citizenship legislation. It is when the date of 25 March 1971 is sought to be erased from such legal measures that the affective closure is opened up leading to protests against the CAA in Assam.

Understanding bordering and citizenship in South Asia

The creation of two, then three nation states in South Asia in 1947 and 1971 was a process that was accompanied by the mass upheaval of people. The movement of people across these frontiers is critical to understanding how citizenship regimes came to evolve in this period. Anupama Roy has argued that these various constitutional measures that were introduced, within the arena of formal citizenship, provided moments of ‘encompassment’ to include these refugees within the ambit of the nation state. For Roy, the idea of ‘encompassment’ in citizenship terms borrows from Werbner and Yuval-Davis’ notion of the universalising tendency of citizenship to engage dialogically with the question of difference by either accommodating it through ‘encompassment’ or denying it through ‘closure’. Applied to borders in India Roy argues that each liberatory moment of encompassment is often accompanied by a differential experience of citizenship that results in closure. Thus we can see these two processes in play simultaneously in our understanding of the border.

When applied to the post Partition period, scholars such as Uditi Sen have argued that while the nation state is creating refugees, it is also absorbing them through such encompassment into becoming citizens but that equally this is a contentious process, that results in multiple moments of bureaucratic and everyday ‘closure’ in the way in which relief and rehabilitation is organised for the citizen-refugee of the post Partition period. The contested nature of this process, allowing
for both encompassment and closure is also highlighted by Vazira Zamindar who argues that in this tussle between a top-down bureaucratic process of citizenship and the responses of the displaced, there emerged a distinct dichotomy in the manner with which the Indian state responded to Hindu and Muslim border crossers. Using the permit and passport systems as examples she highlights the manner in which these documentary regimes sought to restrict the entry and re-entry of Muslim refugees into India, and posited India as a putative homeland for Hindus. So while these regimes provided moments of encompassment for those considered to be desirable and putative citizens, the everyday operation of bordering created moments of closure through legal judgements and pieces of paper that denied access to the state and its various mechanisms.

The contested histories of these early regimes of citizenship form the theoretical basis of this article, which builds upon our understanding of the citizen refugee of the partition period and their fight for rights. While Anupama Roy sees the Citizenship Act of 1955 as a moment of encompassment, but contrasts this with the amendments of 1986 and 2003 which she sees as moments of closure, I argue that this closure is significant because it centres around the date of 25 March 1971, and eventually on the figure of the Bengali Muslim in Assam who is marked out as being both an outsider and potentially disloyal. Next, I move the story several decades forward to the debate about the National Register of Citizens and the Citizenship Amendment Bill of 2016, which are further moments of closure for certain refugees and long-term migrants in Assam. Thus, a legislative move that is meant to be a moment of encompassment for those the BJP sees as the genuine ‘refugee’, the Bengali Hindus in Assam, is in fact a moment of the reopening of the affective distance of 1971 when seen through the eyes of Assamese politicians. The final part of this article will argue that the current government’s attempt to allay the anxiety of the Bengali Hindus, who faced legal closure after the final National Register of Citizens of 2019 disenfranchised many of them, by using the Citizenship Amendment Act, has been by seen as a betrayal by the Assamese people who are particularly alarmed that the date of 25 March 1971 has been erased from such legislative to provide a longer period of ‘encompassment’ till 2014 in the proposed legislation. By reaffirming the centrality of this date to both the legal process as well as social anxieties in Assam, this article attempts to rewrite 1971 and the ensuing refugee crisis into this narrative about belonging and citizenship in Assam.
Assam’s contentious history with migration

Assam came under British rule in 1826 with the Treaty of Yandabo. Not long after, by the middle of the 19th century it became apparent that large scale tea cultivation was possible there. In the late 19th century the presence of oil in the region was first detected. With the discovery of oil and the possibility of growing tea, colonial officials actively encouraged immigrant labourers. Two distinct categories of migrants came in large numbers – workers for Assam’s tea plantation from present-day Bihar and Orissa, and peasants from eastern Bengal. The latter migration was mainly that of Bengali Muslims into the char areas of Assam.

In 1931, the Census Commissioner for Assam, C.S. Mullen, went so far as to say that the ‘most important event’ in Assam over the past quarter century ‘has been the invasion of a vast horde of land hungry Bengali immigrants, mostly Muslims from the districts of Eastern Bengal and in particular Mymensingh’. Although as Sanjib Baruah points out and as later censuses have revealed, this data was highly unreliable for determining the extent of migration. Many who were questioned often gave the name of the town they were currently living in as their birthplace and large numbers of migrants, including Muslims of Bengali descent identified themselves as native speakers of Assamese. Given the historical nature of the immigration of Bengali Muslims of East Bengal into Assam, there developed this community who are now described as the ‘Na asamiya’ or the ‘new Assamese’ who were originally Bengali Muslims but who through a process of integration now spoke Assamese as their native language. Thus many of those who would be otherwise marked as ‘foreigners’ had moved towards assimilation by sending their children to Assamese medium schools, and recording Assamese as their mother tongue at the census. This history of linguistic unity has been contested by those who have argued that this ‘miya’ identity was a form of already existing affective social differences between the Assamese Hindus and the newer Muslim migrants and was used as a strategic means to bridge this divide. Interestingly, this meant that Muslim Bengali migrants found themselves to be more closely integrated with Assamese society than their Hindu counterparts who spoke Bengali and were not as keen to adopt the local language.

Assam’s reluctance to take in those it considered ‘outsiders’ was evident during the Partition process in two distinct ways. First, after initially accepting nearly 300,000 refugees between 1947 and 1950, the State government was reluctant to accept any more. Jawaharlal Nehru was not
above using threats and he wrote to the Chief Minister Gopinath Bordoloi to say that ‘if Assam adopts an attitude of incapacity to help solve the refugee problem, then the claims of Assam for financial help would obviously suffer’. The Assamese government and Bordoloi in turn made it clear that they were reluctant to take in any more than the bare minimum and they were willing to risk being regarded as ‘parochial’ for it.

A second source of discontent during the Partition period was the fate of Sylhet. Sylhet, a Bengali-speaking district, had been added to Assam in 1874 by the British. A referendum was conducted to determine the future of Sylhet and Anindita Dasgupta argues that the joining of Sylhet to East Pakistan on 6 July 1947 was greeted with joy by the Assamese press and the Congress who saw it as a ‘god sent’ opportunity to carve out a homogenous province for themselves, by getting rid of not just Bengali Muslims but the Bengali Hindus as well. By the time of the Sylhet referendum, Dasgupta argues that there were accusations of large scale rigging by the Assam Congress in order to ensure that Sylhet, and with it, the Sylheti Hindu bhadralok became part of East Pakistan. But this did not stop the influx of Sylheti refugees into Assam; in fact, it exacerbated it. The presence of Sylheti Bengali bhadralok added to Assamese resentment about the manner in which the process of dealing with Partition refugees had disadvantaged them. By the night of 25 March 1971, then, these anxieties were revived by the sheer scale of the migration that followed, but were also accompanied by a second fear, that of the Muslim border-crosser who was now regarded as a demographic and security threat to the state.

The na Asamiya had sided with the Assamese in the postcolonial period on the question of language because they feared deportation, particularly after the passage of the Immigration Expulsion (from Assam) Act in 1950 and the declaration from the state parliament that squatter settlements were illegal. This uneasy alliance had meant that in the post Partition period the principal fault line had been a linguistic one between Bengalis and Assamese over access to jobs and control over political power. This alliance between the Assamese Hindus and Muslims against the Bengali presence was about to disintegrate over the mass migration of 1971 and its implications. Now there were two kinds of foreigners in Assam: Bengali Hindus who had moved to the state after Partition, and particularly after 1966, and those Bengali Muslims who had moved after 1971 who were suspect because of their religious affiliation. The fear of the Bengali Muslim generated by 1971 soon encompassed all Muslims in the state.
who came to be seen as part of the *bahiragoto* irrespective of the language they spoke.

### 1971 and the move towards ‘affective’ closure

On the night of 25 March 1971, as the Pakistani army launched its crackdown on East Pakistan, nearly 35 international journalists were confined to the Hotel Intercontinental in Dacca. Some climbed to the roof of the hotel from where they could see fires raging near the site of Dacca University. Others reported seeing a few troops firing on unarmed civilians, but few knew accurately what was taking place. Two days later the journalists were told to pack, and were then put on a plane to Karachi. Before boarding they were searched and their notes, files and films were confiscated. The absence of journalists in the region means that reconstruction of the events of that night remains quite difficult. What we do know is that the campus of Dacca University was a site of particular brutality.

Archer Blood was the American Consul General in Dacca in 1971. He describes March 25 as a ‘night of infamy’. Blood had received reports from the Indian Deputy High Commission that nearly 10,000 Hindus in Tanti Bazaar and Shankhari Bazaar had been surrounded by the military and a few houses had been burnt. American priests based in old Dacca reported that the army had set fire to the area and gunned down those who tried to flee. Blood heard reports that a number of University professors had been killed along with prominent Bengali civil servants. A few days later he received confirmation of the names of the dead at the University. The British Deputy High Commission based in Dacca was also aware of the carnage taking place that night. The consulate was located not far from the University and on that night staff reported hearing rifle and automatic fire from the Dhanmondi area. The High Commission also received first hand reports of the carnage on the University campus, with news that various professors had been pulled out of their homes and shot dead. They also began to receive reports of the first exodus out of the city as nearly 100,000 people made their way to the countryside. The exodus that began on 25 March 1971 would soon become an international one as refugees crossed the border into India.

25 March 1971 is commemorated in Bangladesh as a day of national mourning; however, in 1971, Bangladesh as a nation state did not exist. Thus, although the exodus began soon afterwards, the refugees were
crossing the border between Pakistan and India. This is significant because, as this article will uncover, the moments of legal closure that follow in the 1980s in India use this date as a line in the sand, and identify the Bangladeshi migrant as suspect. This later legislation implies that those who crossed the border after the violence of this night, when the territorial borders of Bangladesh were in fact those of Pakistan, were temporary refugees at best, and ‘illegal migrants’ at worst. So, these legal measures read back into this moment of time to determine who deserves to be a putative citizen; the date of 25 March 1971 becomes the cornerstone by which such determination is made.

After the events of 25 March 1971, refugees began to pour across the border into West Bengal and Assam. Less than a month after the first wave of refugees arrived, there were already rumblings that these new refugees, like those before them, were here to stay. However, in the initial weeks there was an expression of official support and sympathy for the Bangladesh cause. But by late April, the question of numbers and who was coming in had begun to take centre stage. Underlying this tension was the question of how one ought to define these border crossers. Were they like the refugees of 1947 or were they temporary guests who would return when the situation in East Pakistan had been resolved? The Assamese state government declared that the new arrivals were migrants and that they were not ‘real refugees’ thus implying that in contrast to earlier, ‘real’ refugees, these refugees would not or could not stay forever. But the Assamese people were less convinced by this rhetoric. In Rangpur district as refugees came streaming down the Brahmaputra in makeshift boats, a hostile local population stood by the banks, apprehensive that the new arrivals would push up the prices of daily commodities. Presumably this would have reduced the pressure on the camps themselves while still allowing the state to monitor who had crossed its borders. By August 1971, Khadilkar was forced to admit that a high number of refugees in Assam had not registered themselves, they were living with friends and family, and that this was causing widespread resentment. So this moment of bureaucratic exceptionalism for the refugees meant that they had melted into the general population and the administration had no way to track them.

In Assam, there was growing outrage not only about the presence of the refugees but the fear that these Bengali refugees with their uncertain loyalty would dominate the economic life of the state. There was public anger when it was reported that a refugee, M.S. Dey, had been posted to the Divisional Manager’s Office of the Life Insurance Corporation of
India in Gauhati. A deputation of LIC employees met the Senior Divisional Manager P. Mehta to express their concern at the appointment of a ‘Pakistani national’. Dey had been living in Karachi since 1947 and his parents were living in India at the Dharmanagar refugee camp in Tripura. Thus legally he was a ‘Pakistani national’ and it was alleged that the government was favouring ‘foreigners’, especially Bengali ones, over locals in the allotment of jobs. The 1971 refugee crisis and the mingling of Bengali Hindus with those already in the state, revived Assamese fears about becoming a linguistic minority in their own state and being deprived of economic opportunities that they feared would favour Bengalis. If we understand a border to be not just a series of posts on a geographical landscape but, equally, a dividing line that separates people, it is clear that the influx of 1971 was instrumental in creating an affective border between the people of the North East and the refugees from East Pakistan.

An incident at a railway station in Lumding highlighted these tensions but also demonstrated the way in which earlier anxieties about Bengali Hindu refugees in Assam had been quickly overtaken by fears over Muslim refugees entering the state. On the 27 April 1971, at Lumding Railway station a group of youth posing as volunteers for the Bangladesh movement assaulted passengers on the 20 Down local passenger. They demanded that refugees be accommodated on the train and when their request was refused they dragged them out, assaulted them, and threw them out of their compartment along with their luggage. The assault sparked protests and communal tensions in Guwahati with the pulling down of signboards at Bengali shops, the harassing of students, and the burning of some huts. The press coverage of the incident initially assumed regionalist overtones with accusations that it was Bengali youth who were creating trouble in the guise of supporting the cause of Bangladesh. Quickly however, the question of blame shifted, and the linguistic affiliation of the youth involved was overtaken by concerns about whether they were in fact Bengali Muslims sent to destabilise the border areas.

This shift was quickly picked up by the Jana Sangh in Guwahati who appealed for calm and communal harmony, and attributed the tensions to the presence of ‘Pakistani agents, fifth columnists, infiltrators and saboteurs’. The presence of Muslim refugees began to cause consternation at the higher levels of government. The growing popular unease was now being reflected in official circles, as well. In a statement to Parliament on 15 June, Bipinlal Das – Member of the Rajya Sabha from Assam –
classified the refugees who were entering India into the following categories: those belonging to the Mukti Fouj, those who had deserted the East Bengal Regiment and joined the Mukti Bahini, the supporters of the Awami League, Hindu refugees, spies and saboteurs, and, finally, ‘Muslim migrants’ or infiltrators, of whom he claimed that 500,000 had already entered his State. Similarly, the earliest reports of refugees streaming into Assam were described as ‘deportees’, once illegal immigrants who were now returning to Assam.

The language used to describe these refugees reflects the communal fear of the Muslim refugee. As the bulk of the early refugees were Muslims rather than Hindus (a demographic that was soon reversed with nearly 70 per cent of the final total being Hindu), the refugees as a political body were thus seen as a community made up of a minority ‘other’ that could destabilise border areas by overturning the existing demographic. The Muslim half of the refugee population was, thus, under suspicion, with talk of ‘agent provocateurs’ being sent by Pakistan, disguised as refugees to infiltrate into India. While those who had deserted the East Bengal Regiment or were supporters of the Awami League were also largely Muslim, Bipinlal Das’ distinction between them and the ‘Muslim migrants’ was a noteworthy one. He was suggesting that the former, by virtue of their overt identification with the Bangladeshi cause, were perhaps ‘legitimate’ refugees, despite their religion, while the latter were simply taking advantage of the situation to enter India and upset Assam’s demographic applecart. Public opinion and Hindu nationalist sentiment had already pinpointed whom they wanted to blame. Thus, this marks a clear break with the earlier solidarity between the ‘na Asamiya’ and Assamese Hindus against Bengali migrants, to one where the Muslim refugee was now under suspicion, even if there was no actual evidence that they were involved in the events at Lumding. The linguistic solidarity of the pre 1971 period had been ruptured in a moment of affective closure that would continue in the post 1971 period with a discourse that saw the Bengali Muslim refugee as a threat to national integrity, culminating in a number of legal measures that would use the date of 25 March 1971 to create a more effective border.

S.N. Goswami writing to the Hindusthan Standard a few days after the Lumding incident voiced the fears and frustrations of many Assamese when he complained “It is one thing to sit comfortably in Delhi and talk of the human element of the refugee problem but altogether a different thing to live in the border towns and bear the brunt of the problem”.

Suggesting that the border be sealed and refugees be restricted to a one kilometre radius around the border he said of the refugees, “These people think that somebody else should win freedom for them. Very unfortunate but true. Already a terrible but understandable fear is growing in the minds of the Assamese that they will soon be reduced to a minority in their own State”.48

The affective closure of this period was weaponised in the following decade to create effective legal instruments that use the date of 25 March 1971 to exclude border crossers from the new state of Bangladesh. While at first this measure appears blind to the religious affiliation of the border crosser from Bangladesh, ultimately it dovetails into a discourse where the Muslim border crosser in particular is suspect.

In Assam, the post Partition refugees had been almost entirely Hindu and while there was ongoing resentment about their presence, it is in the period after 1971 that the figure of the ‘illegal infiltrator’ being a Muslim border crosser rears its head. This was the first time since 1947 there had been any substantial inflow of Muslim refugees into India. The inflow of Muslim refugees sparked fears that the Assamese Hindus were about to be ‘swamped’ both linguistically and in ethno-religious terms. At a moment when the Bengali question could not be raised easily by the Assamese, given widespread solidarity with a cause in East Pakistan that was predicated on the question of linguistic nationalism, highlighting the religious affiliation of these border crossers provided a way for the Assamese people to make a local argument about immigration into a national one about security.

1971 as a precursor to the CAA

1971 marked a watershed in immigration politics in Assam in more ways than one. Discontent over the number of ‘foreigners’ had been brewing as had the fear that Assam would become part of a ‘Greater West Bengal’, given the presence of large numbers of Bengalis. Now, there was fear that Assam could also become part of a ‘Greater Bangladesh’.49 With the creation of the new state of Bangladesh, there were now two possible ‘enemies’ to be feared. The Bengali refugees already within the state could once again relegate the Assamese middle classes to the status of second class citizens. Similarly, the presence of growing numbers of Bengali Muslim refugees and migrants, and the display of pan Bengali solidarity that had developed in 1971, revived fears that a greater sphere of influence
emanating from Bangladesh, could swallow Assam. Given that the physical boundaries of Assam had been frequently changed since the colonial period, such fears found willing acceptance.

The question of ‘infiltration’ into Assam first emerged in 1951 and then in 1962 gathered greater momentum as the Assam movement broke out after 1979. The Hindu Right even in the 1980s had tried to frame Assamese anxieties around the outsider (and numerically these were still largely Bengali Hindu after the assassination of Sheikh Mujib in 1975) in more exclusionary terms. A resolution passed in the RSS General Assembly in 1980 said:

The Assam problem of today is the result of a deep-laid political conspiracy of planned Muslim infiltration carried out over the last several decades. The problem assumed an additional dimension when a large number of Hindu refugees entered Assam are being perpetually persecuted in East Pakistan, later Bangladesh, leaving them with no choice than crossing over to Bharat forsaking their all behind them. Bharat, it must be remembered, remains the only country in the world, which the displaced Hindus consider as their home and where they can never be considered as foreigners.50

The RSS was already beginning to distinguish between the Hindu refugee (sharanarthi) and the Muslim infiltrator (anupraveshkaaris).

The first constitutional moment in which the affective border of 1971 found legal expression was in 1983 with the introduction of the Illegal Migrants (Determination of Tribunal) Act of 1983 (IMDT). Following Roy’s schema of ‘encompassment’ and ‘closure’ with regard to citizenship legislation, this Act has been seen as an example of the former because it placed the burden on proving legal residence on the accused rather than the state, allowing a degree of leniency in how border crossers were treated.51 As expected, many Assamese resented the IMDT Act because they saw it as a central measure that allowed Bengali Hindus to slip through the radar and remain in the state.52

However, the more effective act of legal closure that brought the affective divide of 1971 into the constitutional arena was the Assam Accord and the subsequent amendment of the Constitution that followed in 1986.53 In this new graded form of citizenship, the date of 1971 loomed large. The Accord and the 1986 amendment posited the idea of the Assamese Hindu as the universal citizen, with the ‘illegal migrant’ disrupting his presence. So those who had entered India before 1 January 1966 from certain territories (it was implied that this was the then East Pakistan),
were to be considered Indian citizens. But a liminal category of those who entered between 1 January 1966 and 25 March 1971 was introduced. These people were to have Indian citizenship, but they would be disenfranchised for a period of ten years. Then anyone who entered after 25 March 1971 was considered illegal. This Act, too, is seen as a moment of encompassment as it provides for the recognition of those who had entered between 1966 and 1971, and a moment where the framework of citizenship is opened up, while still assigning Assamese anxieties over immigration to the sphere of the ‘local’ rather than the national.54 However, for the purposes of my argument, the significance of this Act lies in its use of the date of 1971. It takes a date in the history of a neighbouring country, which marks a moment of military crackdown, to delineate who would belong within India’s borders. This rather extraordinary moment then places that night of 25 March 1971 at the centre of how Indian citizenship was to be legally determined.

In 2005, the IMDT Act was struck down by the Supreme Court in a judgement in a case where the writ petition was filed by Sarbananda Sonowal, a former Chief Minister of Assam, and former President of the All Assam Students’ Union and MLA for the Asom Gana Parishad. The most striking aspect of the Supreme Court judgement in this case was its focus on illegal migration as an ‘act of aggression’, suggesting that this was an act of ‘deliberate’ act of border ‘infiltration’.55 The striking down of the IMDT Act was greeted with enthusiasm in Assam as it further coalesced the affective border of 1971 with the effective legal closure of the constitutional Amendment of 1986.

The consolidation of the affective and the effective borders post 1971 had a number of political consequences. Most importantly, it exacerbated the existing rhetoric around the lingering anxiety over the Muslim ‘infiltrator’. It can be argued that this is the moment when these two forms of closure allows this rhetoric to become increasingly violent. The Nellie massacres of 1983 are seen by many as a turning point in the communal relations within the state but this rhetoric continues to persist for many decades afterwards. The RSS, responding to the 2008 riots in Assam said, ‘The attack and burning of villages of the people of Assam[ese] origin and the killings of local by the organized gangs of Bangladeshi Muslim infiltrators in Assam in the first week of October 2008 is a very serious matter’.56 Similarly following the 2012 Bodo-Muslim clashes, the RSS said, ‘The Akhil Bharatiya Karyakaari Mandal strongly condemns the July 2012 violence perpetrated by the Bangladeshi Muslim infiltrators in Kokrajhar, Chirang and Dhubri districts of Asom’. Well before the
National Register of Citizens was updated from 2015 onwards, the quotidian violence of life in Assam targeting the Assamese Muslims had been normalised, and the Muslims in Assam were now clearly demarcated as bahiragoto. In May 2014 in another incident in Khagrabari village on the edge of the Manas National park, 38 Bengali Muslims including 20 children were killed.\textsuperscript{57}

In 2014 after coming to power at the Centre, the BJP once again turned its attention to the question of Assam and its disparate claims about infiltration. The National Register of Citizens (NRC), an exercise that had begun in 1951 but never been completed, was now to be concluded with some urgency under the aegis of the Supreme Court.\textsuperscript{58} The NRC would be a further act of effective closure that would consolidate the affective divide of the post 1971. The BJP claimed that as an exercise it would help to identify and evict illegal migrants, and mocked previous Congress governments in Assam for not having the political audacity to complete it.\textsuperscript{59} The BJP also included it in its 2019 election manifesto and felt that it would be a move that would enable it to garner votes in state elections in both West Bengal and Assam.\textsuperscript{60} However, what this urgency to implement the NRC missed was the potential for declaring Hindus from Bangladesh to be illegal, which would have an impact on the BJP’s own vote bank. The consequences of this NRC resulted in a new legislative measure from the BJP government in the form of the Citizenship Amendment Bill (later Act) which would seek to overturn this closure by erasing the date of 25 March 1971 from citizenship requirements.

The first draft of the NRC was released on 30 July 2018. Nearly 4 million people were declared to not be Indian citizens. Anticipating that this would happen, Rajnath Singh, the Home Minister argued in Parliament that the Centre had no role in preparing the list and that it was simply a product of the directives of the Supreme Court.\textsuperscript{61} But others in the saffron brigade were a lot more belligerent about what this process might throw up. A BJP MLA from Telengana, R Raja Singh Lodh, said that ‘if these people, illegal Bangladeshis and Rohingya, don’t go back with civility (sharafat) there is a need to make them understand in their own language. They should be shot. Only then India will be safe’. He said that when India supported Bangladesh in 1971, four million people ‘infiltrated’ into Assam and then ‘stayed illegally’.\textsuperscript{62} Over 40 years after Bipinlal Das spoke of ‘forty lakh [four million] saboteurs’, Lodh was once again pinpointing the Muslims who crossed the border
in 1971 as being ‘illegal’ even though the existing legislation did not specify the religious affiliation of the border crosser.

This draft of the NRC caused consternation amongst the BJP because the process had not found as many illegal Muslims as it should have done, and in the meanwhile Bengali Hindus were at risk of deportation. It has been reported that 19 tribunal members had their tenure terminated in 2017 for ‘unsatisfactory performance’ but they alleged that they were fired because they had not identified enough ‘foreigners’. Given the journalist Rohini Mohan’s analysis that nearly 90 per cent of the cases filed before these tribunals involved Muslims, it is evident that the ‘foreigner’ was being defined in religious terms in this period.63 For the people of Assam, the NRC was supposed to be a vindication of the Assam Accord that sought to reify the line of 1971 to mark out who belonged and who did not. For Bengali Hindus and the BJP, which relied on their support, and which had hoped that the list would demonstrate the problem of illegality across the eastern frontier by highlighting a number of illegal Muslims, the final list resulted in a dilemma. For many Bengali Hindus who migrated into India in 1971, the NRC did not provide the moment of encompassment that many had hoped for; in fact, it created the first step towards legal closure and their exclusion from the Indian nation state. The only way to solve this was to erase the dividing line of 1971 and to make any further legislation more explicit about the religious affiliation of the border crosser.

The panic about the absence of quite so many Hindus from the NRC draft can be seen in the manner in which it was debated in the Rajya Sabha. Numerous politicians stood up to recount cases, almost entirely Hindu ones, of people whose names had appeared on Doubtful (D)-voter lists or had been left out of the NRC, and who like 62-year-old Gopal Das had committed suicide, from shame. Vijila Sathyanath from Tamil Nadu raised the question of cross-country migration through the case of a Tamil woman from her constituency who had been married to an Assamese man. Born in 1973 (thereby implying that she was born after the cut-off date of 1971), she did not have a birth certificate. Now having moved to Assam to be with her husband, she was in a legal quandary because her husband and in-laws had been declared Indian citizens, but she had not. This prospect that Hindus who had not just crossed the border into Assam, but those who had ended up in Assam from other parts of India, could also be declared ‘illegal migrants’ was clearly disrupting the neat boundary between the Hindu ‘refugee’ and the Muslim ‘infiltrator’ that this exercise was supposed to generate. Sathyananth complained ‘They
are possessing Aadhar cards, ration cards, school certificates … There are people from the South married to Assamese people. They possess all that but their name is not in the NRC’.

**From 1955 to the CAA via 1971**

The final list of the NRC that was re-drafted in 2019 excluded just under 2 million citizens, many of whom were Bengali Hindus. This sparked enormous anxiety across Assam, and the Barak Valley in particular. This was also the moment in which the BJP had been raising the slogan of a *khilonjia sarkar* (a nativist/indigenous government) in Assam. Support for the BJP government in Assam amongst Assamese Hindus rose by 53 per cent between 2011 and 2014. In response to the widespread dissatisfaction amongst its voter base in Assam, and the possible repercussions in neighbouring West Bengal, the BJP government introduced the Citizenship Amendment Bill (2016) to add to the amendments of 1986 and 2003. Through this Act, persons belonging to six allegedly persecuted faiths – except Muslims from Afghanistan, Pakistan and Bangladesh – could become citizens of India after six years of residence (as opposed to the usual period of 12 years). Moreover, it did away with the date of 25 March 1971 and moved the effective legal border to the 31st of December 2014. It was part of the BJP’s promise to include Hindu refugees and to create an official binary, signed into law, to move the ‘affective’ closure of 1971 to an ‘effective’ legislative border that would be open to the Hindu refugee of the post Partition period and separate him from the Muslim ‘infiltrator’. Thus, the act tried to overturn the closure that the NRC had provided for, by providing a legal space for encompassment that would include non-Muslims within the territorial definition of India, while selectively closing this space for Muslims. Equally critically it removed the date of 25 March 1971 from citizenship legislation, thereby eroding the amalgamation of the effective and affective borders as seen in the Assam Accord and the 1986 Amendment to the Citizenship Act. While there remained an affective distance between the Assamese and the *bahiragoto*, the legal border had been considerably widened and the line in the sand drawn by the date of 25 March, had been erased.

It is not surprising then that the introduction of this new Citizenship Amendment Bill was seen as a betrayal of the Assam Accord. The responses to the new Bill echoed the responses to the refugee crisis of 1971. Seemingly put forth as an act of ‘encompassment’ and seen as a
means to ameliorate the excesses of the NRC, within Assam, the Citizenship Amendment Bill was seen as a betrayal of the Assam Accord, that would lead to many ‘outsiders’ being given residence within the state. The fear of being swallowed up by a Greater Bangladesh of the post 1971 which had been somewhat ameliorated by the Accord and the 1986 Amendment were on full display.

In the debates in the Lok Sabha that followed, Assamese politicians turned repeatedly to the Assam Accord to assert that the 2016 Bill had ‘nullified’ it, and it is for this reason they were protesting it. Naba Kumar Sarania from Kokrajhar captured the Assamese anxiety engendered by the Act when he said, ‘Our people are in constant fear that the influx of Hindus or Parsis or other communities would create more problems for the Assamese people’. For Pradyut Bordoloi, MP from Nowgong, the moving forward of the date, the ‘lakshman rekha’ of citizenship by 43 years and 9 months, from 1971 to the present day, was a catastrophic outcome for his constituents. In the words of Gaurav Gogoi, ‘The North East opposes this Bill because we are not slaves. *Hum gulaam nahi hain*.68

The Citizenship Amendment Bill has, at the time of writing, been shelved by the BJP government in power. While we cannot predict its future (there are those that believe that the BJP might sacrifice the Assamese voter for greater glory amongst the Hindu voter at large in India), what this narrative demonstrates is that the BJP was unable to resolve the dual anxieties of the Assamese electorate. By ignoring the pivotal marker of 1971 and the role of the refugee crisis in creating anxieties about both Hindu and Muslim refugees, the BJP’s legislative solution eventually came unstuck. The protests that followed in Shaheen Bagh in the capital city Delhi were about exhibiting a form of nationalism against the state by demanding inclusion within it. However, as this article has shown, the 1971 refugee crisis, while drawing upon historical constructions of the migrant ‘other’ in Assam, was also responsible for creating two simultaneous discourses in Assam about who this ‘other’ was. Thus, what was seen as a moment of encompassment by the BJP through changes to the Citizenship Act was read entirely differently in Assamese local politics. It was seen as a federal imposition of this encompassment to overturn the closure provided by the NRC. The BJP’s inability to resolve this dilemma through the legislative process contributed to the protests in Assam, which as the narrative above has demonstrated, was
different in its texture and demands from the narrative of belonging being espoused by those at Shaheen Bagh.

Figure 1 Map of Assam. Source: Library of Congress, Geography and Map Division, https://www.loc.gov/item/gm70003328/
Disclosure statement

No potential conflict of interest was reported by the author.

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NOTES

1. Rohini Mohan, “‘Worse Than a Death Sentence’: Inside India’s Sham Trials That Could Strip Millions of Citizenship’. Vice News, July 29, 2019, https://www.vice.com/en/article/3k33qy/worse-than-a-death-sentence-inside-indias-sham-trials-that-could-strip-millions-of-citizenship (accessed 21 October 2019).
2. This evocative term is used by Sahana Ghosh in her work. Sahana Ghosh, ‘Between Faith and Panic’. Poltical and Legal Anthropology Review, September 7, 2020, https://polarjournal.org/2020/09/07/between-faith-and-panic/ (accessed 21 October 2019).
3. These include the Illegal Migrants (Determination of Tribunal) [IMDT] Act of 1983, and the Citizenship Amendment Acts of 1986 and 2003.
4. We see it first in the Indira-Mujib Accord of 1972. It is also part of the IMDT Act of 1983 and is formally written into the Constitution in 1986. It has also been part of the latest Citizenship Amendment Bill introduced in 2016.
5. Anupama Roy, ‘Between Encompassment and Closure: The “Migrant” and the Citizen in India’. Contributions to Indian Sociology Vol. 42. Issue 2 (2008): 219–248.
6. Roy sees the Citizenship Amendments of 1986 and 2003 as particular moments of closure for those claiming citizenship by birth, but argues that the latter provides a moment of ‘encompassment’ for those overseas Indians seeking to re-establishing their legal belonging to the territorial state of India. For a longer discussion of ‘affective’ and ‘effective’ borders in 1971 see Antara Datta, Refugees and Borders in South Asia: The Great Exodus of 1971. London: Routledge, 2012.
7. Ravinder Kaur, ‘Distinctive Citizenship: Refugees, Subjects and Post-Colonial State in India’s Partition’. Cultural and Social History Vol. 6. Issue 4 (2009): 429–446.
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12. Uditi Sen, Citizen Refugee: Forging the Indian Nation After Partition. Cambridge: Cambridge University Press, Cambridge, 2018, pp. 8–13.
13. Vazira Zamindar, *The Long Partition and the Making of Modern South Asia*. New York: Columbia University Press, 2010.

14. For a discussion of how the drafting of the Citizenship Act of 1955 considered the question of ‘outsiders’, particularly those within the diaspora, see Kalathmika Natarajan, ‘Entangled Citizens: The Afterlives of Empire in the Indian Citizenship Act, 1947–1955’, in Stuart Ward and Christian Pedersen (Eds.), *The Break Up of Greater Britain*. Manchester: Manchester University Press, 2021, pp. 63–83.

15. A full draft of the Citizenship Amendment Act can be found here https://egazette.nic.in/WriteReadData/2019/214646.pdf (accessed 21 October 2021).

16. Udayon Misra, *The Periphery Strikes Back: Challenges to the Nation-State in Assam and Nagaland*. Shimla: Indian Institute of Advanced Study, 2000, p. 62.

17. Sanjib Baruah, *India against Itself: Assam and the Politics of Nationality*. Philadelphia: University of Pennsylvania Press, 1999, p. 46.

18. Dilip Kumar Chattopadhyay, *History of the Assamese Movement since 1947*. Calcutta: Minerva Associates, 1990, pp. 83–84.

19. Archana Upadhyay, *India’s Fragile Borderlands – The Dynamics of Terrorism in North East India*. London: I.B. Tauris and Co. Ltd, 2009.

20. Nearly two decades after Cullen’s figures, R.B. Bhagaiwala, the Superintendent of Census Operations in Assam in his report explained: ‘There is a striking increase in the percentage of people who speak Assamese in 1951 (56.7) over 1931 which was 31.4 per cent there is an equally striking decrease in the percentage speaking Bengali in 1951 which is only 16.5 against 26.8 per cent in 1931. With the solitary exception of Assamese, every language or language group in Assam shows a decline in the percentage of people speaking Assamese in 1951. The figures do not fail to reflect the aggressive linguistic nationalism now prevailing in Assam, coupled with the desire of many persons among the Muslims as well as tea garden labour immigrants to adopt Assamese as their mother tongue in their state of their adoption. It is not unlikely that some amongst the persons who have returned their mother tongue as Assamese had done so from devious motives, even though their knowledge of Assamese may not amount to much’. See *Census of India*, Volume XII, Part 1-A, 1951, pp. 413–414.

21. Baruah, op. cit., p. 52.

22. Misra, op. cit., pp. 127–129.

23. In his more recent work Baruah has moved towards describing this community ‘Miya Muslims’ although this term would have been seen as pejorative earlier. See Sanjib Baruah, *In the Name of the Nation: India and its Northeast*. Stanford: Stanford University Press, 2020, p. 53.

24. Misra, *The Periphery Strikes Back*.

25. This was how Sardar Patel referred to the Assamese in his negotiations over Partition refugees. Misra, op. cit.

26. Anindita Dasgupta, ‘Remembering Sylhet: A Forgotten Story of India’s 1947 Partition’. *Economic and Political Weekly of India*, August 2, 2008.

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28. *The New York Times*, March 28, 1971.

29. Ibid.
30. Kaliranjan Sheel, ‘Hall-E Chhilam (I Was in Jagannath Hall)’, in Rashid Haider (Ed.), Bhoyaboho Obhigota. Dacca: Jatiya Shalitita Academy, 1989, p. 5. Reprinted in Rounaq Jahan, ‘Eyewitness Accounts: Genocide in Bangladesh’, in Samuel Tottel (Ed.), Century of Genocide: Eyewitness Accounts and Critical Views. New York: Garland, 1997, pp. 291–316.

31. Archer K. Blood, The Cruel Birth of Bangladesh: Memoirs of an American Diplomat. Dhaka: University Press, 2002. Blood became known for the ‘Blood Telegram’ in which he became one of the first observers to use the word ‘genocide’ to describe events in East Pakistan. He was castigated and ignored by the US State Department and Kissinger once observed that his proximity to local Bengalis had made him ‘soft’. Blood’s recent memoirs provides an account of the tumultuous times as they were witnessed by both him and the local diplomatic community.

32. Ibid., p. 195. Blood’s description of the night as such and his criticism of the Pakistani Army was at odds with the official US position during this period.

33. Ibid., p. 198.

34. Ibid., p. 202.

35. FCO 37/895, Situation in East Pakistan, 14 April 1971, Reports by Evacuees on Political Situation in East Pakistan, TNA. Dhanmondi was also the area where Mujib’s house was located. On that night he was arrested and taken away. This news did reach the High Commission although it was accompanied by rumours that two of his children had been shot dead, which was untrue.

36. The Assam Tribune, April 17, 1971.

37. Pradeep Dasgupta, ‘Sympathy from a Neighbouring State’. Hindusthan Standard, April 15, 1971.

38. The Assam Tribune, April 28, 1971.

39. FCO 37/949, Telegram No. 1714 from New Delhi, Relief for Refugees from Pakistan in India, 5 May 1971, TNA. Indira Gandhi had announced on 4 May 1971 that the refugees could not stay permanently and would have to return but the Chief Secretary of West Bengal did not share this view and felt that as a vast majority of the refugees were Hindu they would not return, and many of the Muslim refugees would not think it safe to return as well.

40. The Assam Tribune, May 30, 1971.

41. Lok Sabha Debates, Volume IV, No. 28, July 1, 1971, p. 163.

42. Lok Sabha Debates, Volume VII, No 55, August 5, 1971, p. 50.

43. The Assam Tribune, June 27, 1971.

44. Ibid.

45. Pradeep Dasgupta, ‘Evacuees Create Problems’. Hindusthan Standard, May 6, 1971.

46. Assam Tribune, April 13, 1971.

47. FCO 37/965 Record of a Conversation between Prince Sadruddin Aga Khan and Sir Colin Crewe, 27 October 1971, Relief for Refugees from Pakistan in India from the United Nations, TNA.

48. Hindusthan Standard, May 19, 1971.

49. Harendra Nath Barua, Assam’s Struggle for Survival. Guwahati: Ahom Freedom Fighter’s Association, 1980, p. 19.
50. Quoted in Smita Saikia, ‘Saffronizing the Periphery: Explaining the Rise of the Bharatiya Janata Party in contemporary Assam’. *Studies in Indian Politics* Vol. 8. Issue 1 (2020): 74.

51. Anupama Roy and Ujjwal Kumar Singh, ‘The Ambivalence of Citizenship: the IMDT Act (1983) and the Politics of Forclusion in Assam’. *Critical Asian Studies* Vol. 41. Issue 10 (2009): 37–60.

52. Ibid. Also see Anupama Roy, ‘Between Encompassment and Closure: The “Migrant” and the Citizen in India’. *Contributions to Indian Sociology* Vol. 42. Issue 2 (2008): 219–248.

53. Ibid., pp. 230–231.

54. Ibid., p. 232.

55. Ibid.

56. Saikia, ‘Saffronizing the Periphery’, p. 75.

57. Praveen Donthi, ‘How Assam’s Supreme Court-mandated NRC Project is Targeting and Detaining Bengali Muslims, Breaking Families’. *Caravan*, July 2, 2018.

58. The matter had received the attention of the court through a writ petition filed by the Assam Public Works, an NGO. The Court in December 2014 had set up a timeframe by which the process had to be completed. *The Telegraph*, August 6, 2020.

59. Jaideep Mazumdar, ‘Assam’s Flawed NRC Exercise has the Stamp of the Congress All Over It’. *Swarajya Magazine*, February 2020, https://swarajyamag.com/politics/assams-flawed-nrc-exercise-has-the-stamp-of-the-congress-all-over-it (accessed 21 October 2021).

60. *Indian Express*, April 8, 2019. The BJP manifesto said, ‘There has been a huge change in the cultural and linguistic identity of some areas due to illegal immigration, resulting in an adverse impact on local people’s livelihood and employment’.

61. *The Statesman*, July 31, 2018.

62. Ibid.

63. See Mohan, op. cit. and Donthi op. cit.

64. Rajya Sabha Debate, July 31, 2018.

65. A nativist or indigenous government. This is a risky strategy for the BJP in Assam because it has the potential to win the Assamese Hindu vote but it causes consternation amongst Bengali Hindus in Assam who fear that such rhetoric suggests that they will be abandoned.

66. Saikia, op. cit.

67. Jayal has argued that this liminal space had begun to close as early as 1950 between the inauguration of the Constitution and the introduction of the Citizenship Act of 1955. Niraja Gopal Jayal, *Citizenship and Its Discontents: An Indian History*. Cambridge: Harvard University Press, 2013.

68. *Lok Sabha Debates*, December 9, 2019.