Explicit Exclusions; or, The Ethnicization of Democracy

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In 2017, when Indian Prime Minister Narendra Modi arrived in Tel Aviv on a state visit, his Israeli counterpart Benjamin Netanyahu greeted him with a statement that underscored the burgeoning friendship between the two countries. Waxing eloquent on their shared love for yoga, which Modi has invested considerable effort in promoting internationally as a symbol of India's "soft power," Netanyahu said, "When I do a relaxing Tadaasana in the morning and I turn my head to [the] right, India is the first democracy I see and when Modi does a relaxing Vasisthasana and he turns left, Israel is the first democracy he can see. So in fact we have in India and Israel two sister democracies."[1]

It is not difficult to see why the two states view each other as kindred spirits. Both are settler-colonial regimes, their long-running occupations of Kashmir and Palestine bolstered by the shared Islamophobia that saturates their respective public cultures. India is currently the largest buyer of Israeli military equipment and increasingly looks to Israel for military and political solutions to its Kashmir "problem." Witness the recent suggestion by the Indian consul general in New York that (Hindu) Kashmiri Pandits should emulate the Israeli settlement model in the wake of the August 2019 abrogation of article 370 of the Indian Constitution, which historically guaranteed Kashmir autonomy as a condition for its accession to the Indian Union.[2] Yet beyond simply referencing shared geopolitical interests, Netanyahu's statement points to a conception held by the two states of themselves as beacons of democracy surrounded by what they see as undemocratic, authoritarian, and even illegitimate states.

In a recent text, political scientist Christophe Jaffrelot suggests that there may be something to this shared conception, even if not in quite the way that state

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elites in the two countries understand it. Jaffrelot argues that both Israel and India exemplify what Sammy Smooha has called "ethnic democracy." For Smooha, ethnic democracy is the product of ethnic nationalism, whereby belonging and indeed supremacy within the nation is defined in terms of the possession of certain racial, linguistic, religious, or other cultural characteristics. Central to this mode of imagining and preserving the nation is a rejection of minorities, who are perceived as threats to the survival and integrity of the ethnic nation and against whom the majority must mobilize. Ethnic democracy implies a two-tiered conception of citizenship, with the majority enjoying more rights than the minority in both a de jure and de facto sense.[3] Jaffrelot rightly notes that ethnic democracy is a contradiction in terms (even if ethnic majorities fail or refuse to recognize this) because some citizens do not have the same rights as others simply on account of their nonembodiment of the characteristics desirable to a specific ethnic nationalism.[4] Thus, whatever Smooha might have intended by the term, we might regard "ethnic democracy" as a description of a delusion clung to by ethnic majorities in states whose democratic functioning ceases at the boundaries of its majority ethnos.

While Jaffrelot's mobilization of ethnic democracy to discuss Indian democracy and indeed his placement of India and Israel within this common frame are instructive, I disagree with his analysis in two respects. First, he suggests that India has moved toward this model since Modi's ascent to power in 2014. Second, he suggests that ethnic democracy in India has not been institutionalized in law but operates mainly in a de facto register through the underrepresentation of Muslims in public life and their further marginalization by an increasingly vicious and militant politics of cultural vigilantism.[5] By contrast, I will argue that a longer view of successive changes in Indian citizenship law under both Congress and BJP (Bharatiya Janata Party) governments reveals a long, slow drift toward a de jure conception of the Indian state that resonates strongly with the politics of Zionism in important respects. In this regard, the recent Indian Citizenship (Amendment) Act (CAA), 2019—far from marking an exceptional and unprecedented moment—should be seen as an incremental step that is in consonance with the historic trajectory of Indian citizenship law reform.[6]

In *Mapping Citizenship in India*, Anupama Roy tells the story of how the understanding of Indian citizenship, originally rooted in the doctrine of jus soli, whereby citizenship rights follow from birth within the territory of the state, becomes increasingly informed by a doctrine of jus sanguinis, whereby citizenship follows from blood ties and descent.[7] While the Citizenship Act, 1955, originally accorded citizenship to everyone born within the territory of India (with some exceptions), the law was amended in 1986 to impose the additional requirement that at least one parent must be a citizen of India. In 2003, it was amended again, further restrict-

ing citizenship by birth to those who could demonstrate that both parents were citizens or that one parent was a citizen and the other not an "illegal migrant" at the time of the child's birth.

As Roy explains, this increasingly restrictive notion of citizenship was fueled by the politics of (im)migration in India's northeastern states—particularly Assam—and by the tensions that this provoked between the Congress government, then in power at the federal level, and its opponents.[8] When an ethnic Assamese movement began protesting the entry of "illegal aliens" from Bangladesh in the 1980s, the Congress government in New Delhi—electorally reliant on Muslim votes—passed the Illegal Migrants (Determination by Tribunal) (IMDT) Act, 1983. The act made the process of identifying "illegal" immigrants more onerous by shifting the burden of proving illegality onto the person alleging it. In this regard, the law differed from the Foreigners Act, 1946, which in the rest of the country required those foreigners alleged to be illegal immigrants to demonstrate their right to remain. Roy surmises that in passing the IMDT Act, the central government sought to portray itself as the guardian of immigrants' human rights in order to wrest the moral high ground from the Assamese movement and thereby also reassert its exclusive prerogative to define national citizenship. Assamese politicians challenged the constitutionality of the act, complaining that it discriminated against Assamese citizens by specifying distinct procedures for dealing with immigration into their state and making it more difficult for them to detect and deport foreigners from their soil. The National Democratic Alliance (NDA)—a group of parties led by the Hindu right-wing BJP, then in opposition—filed an affidavit in support of the challenge, warning of the dangers to national security posed by the illegal immigration of Muslims from Bangladesh into India. The court endorsed these concerns, declaring the IMDT Act unconstitutional on the grounds that its exceptional application to Assam was discriminatory.[9] Undermining the presumption of innocence, the court shifted the burden of proof back onto those alleged to be illegal immigrants, justifying this legal regime of suspicion as being necessary to restore the sovereignty of the state. Describing migration as an act of "aggression," it ruled that the IMDT Act had diminished state sovereignty by making it more difficult for the state to expel foreigners and spoke of restoring to the central government its constitutional duty to protect the state from external aggression. As Roy notes, in both the court's judgment and the political discourse of the time, "the constituent outsider was marked not only on account of being a foreigner, but also on account of being a Muslim, the latter inevitably associated with Islamic fundamentalism, as well as a threat to the nation (read Hindu) and its security."[10]

As the specter of the "illegal" Bangladeshi immigrant has underwritten the constriction of Indian citizenship, paradoxically another kind of spectral migrant has appeared to compel its expansion. In 2003, the NDA—now in power at the

center—spearheaded the passage of a CAA, which, alongside the restriction of citizenship by birth mentioned above, conferred overseas Indian citizenship on "Persons of Indian Origin" (PIOs) from sixteen high-income countries in North America, Europe, and Australasia. (Cynical observers criticized this at the time as "dollar and pound citizenship."[11]) In doing so, it offered PIOs virtually the entire panoply of citizenship rights (with the exception of the right to participate in electoral politics and to hold certain public offices) that had previously been available only to resident and Non-Resident Indian (NRI) citizens. Importantly, Roy points out that both the restriction of citizenship by birth and the extension of citizenship to the ethnocultural category PIO in the 2003 CAA were embedded in a notion of citizenship based on blood and kinship relations.[12] Two years later, the Congress-led United Progressive Alliance extended this attenuated notion of overseas citizenship to all PIOs who had been or were eligible to become Indian citizens under the Indian Constitution, so long as their countries of existing citizenship permitted dual citizenship. People who were, or had been, citizens of Pakistan and Bangladesh were explicitly deemed ineligible.[13]

In her study of the Indian state's relationship with its diaspora, Lata Varadarajan argues that the state's recent hailing of the overseas Indian marks a dramatic reversal of the Nehruvian state's relative disinterest and policy of nonintervention in the affairs of Indians abroad. Varadarajan locates the beginnings of this shift in the neoliberal restructuring of the state that commenced in the mid-1980s. For proponents of neoliberal "structural adjustment," courting the Indian diaspora for foreign investment offered a relatively less controversial way of deregulating a hitherto closed economy. Emphasizing the Indianness of NRIs and PIOs allowed them to frame economic reforms as an instance of the state reaching out to its "domestic abroad" rather than as an abject surrender to foreign capital.[14] While both of India's national governing parties have sought to cultivate this domestic abroad, the BJP has been especially zealous in doing so given the substantial monetary and political support that it derives from the Hindu diaspora.[15]

Thus, the postindependence transformation of Indian citizenship has entailed a dual movement of constriction and expansion, both are haunted by figurations of radically different kinds of migrants. The realization that the Indian state now accords greater rights to a PIO who might never have set foot in the country than to someone born in it as the child of one or more "illegal" migrants led me to suggest nearly a decade ago that it pursues something akin to the Zionist project in being "wedded to a deterritorialized conception of its ethnos and less concerned with existing for all the people living within it."[16] Pace Jaffrelot, India's transformation into an ethnic democracy, of which Israel remains the archetype, has been effected in a de jure as much as a de facto register through successive amendments to its citizenship law over the last four decades.

We are now in a position to appreciate how the 2019 CAA both fits into this broader historical trajectory and marks a step change within it. Once again, this requires us to return to the politics of Assam. The BJP has sought to capitalize on long-running grievances of the Assamese ethnic majority against non-Assamese migrants by championing the creation of a National Register of Citizens (NRC) through which "illegal" (mostly Muslim) migrants might be detected, deleted (from electoral rolls), and deported (to Bangladesh). Its opponents, relying on these populations for electoral support, have contrived to thwart these efforts by a variety of means, including legislative mechanisms such as the aforementioned IMDT Act.[17] Following the striking down of the act in 2005, the prospect of an updated NRC in Assam reemerged as a political priority not least through the oversight of a zealously activist Supreme Court at a time when it was headed by an Assamese chief justice—Ranjan Gogoi—who made no secret of his ideological commitment to this project.[18] Described as "one of the largest purges of citizenship in history," the NRC required all persons in the state to submit documentary proof of their citizenship if they were to avoid detention and deportation.[19] When the register was finally published in August 2019, it disenfranchised 1.9 million people in a state of 33 million.[20] But the BJP had not bargained for the possibility that many of those who failed to meet the onerous documentary requirements of the NRC would be Hindus. Enter the 2019 CAA, which offered a fast track to citizenship for Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians who could claim that they were fleeing persecution in the neighboring Muslim-majority states of Afghanistan, Bangladesh, and Pakistan.[21] In pointedly excluding Muslims from the ambit of the law despite the possibility that they might suffer persecution in Muslim-majority states (think of the Ahmadiyyas in Pakistan) or non-Muslim-majority states[22] (the Rohingyas in Myanmar), the 2019 CAA has justifiably been read as a cynical ploy to readmit non-Muslims who had been inadvertently flushed out by the NRC.

As this brief survey of amendments to citizenship law in India should demonstrate, the 2019 CAA was by no means the first de jure attempt to restrict citizenship in ways that would have an uneven impact on different religious communities. But it might plausibly be described as the first time in India's postindependence citizenship regime that religious affiliation has been *named* in law as an explicit ground of inclusion and exclusion. In this regard, it shares something in common with Israel's 2018 Nation-State Law, which explicitly describes the "Land of Israel" as "the historic national home of the Jewish people," the "State of Israel" as "the national state of the Jewish people," and "the right to national self-determination in the State of Israel" as "unique to the Jewish people."[23] As critics of the law have explained, while Israel has discriminated against and oppressed Palestinians since 1948 in ways that express the supremacy of the Jewish population and the Judaization of space and that seek to dilute or eliminate the Palestinian popula-

tion, there is a difference between racist practice and its codification in a Basic Law that constitutionally mandates racist acts.[24] While the Israeli Supreme Court has upheld the constitutionality of the Basic Law,[25] the 2019 CAA is under challenge in the Indian Supreme Court at the time of this writing. It remains to be seen whether its explicit endorsement of long-running practices of persecution and exclusion on the basis of religion will render it constitutionally vulnerable. What is clear is that the stakes in both battles are too high for them to be fought mainly within courtrooms.

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Notes

1. Press Trust of India, "Netanyahu Inspired."
2. India Today Web Desk, "Video of Indian Diplomat."
3. Jaffrelot, "Ethnic Democracy," 42.
4. Jaffrelot, "Ethnic Democracy," 66.
5. Jaffrelot, "Ethnic Democracy," 43.
6. This is an important point because while Jaffrelot's text was likely published before the passage of the CAA, the act should not be misread as the first de jure instantiation of ethnic democracy.
7. Roy, *Mapping Citizenship*.
8. Roy, *Mapping Citizenship*, chap. 2.
9. *Sarbananda Sonowal v Union of India*, AIR 2005 SC 2920, indiankanoon.org/doc/907725/.
10. Roy, Mapping Citizenship, 116.
11. Reddy, "Citizenship."
12. Roy, *Mapping Citizenship*, 137.
13. The Citizenship (Amendment) Act, 2005, No. 32 of 2005, August 24, 2005, indiankanoon .org/doc/1970337/.
14. Varadarajan, *The Domestic Abroad*.
15. Jaffrelot and Therwath, "Sangh Parivar"; Sud, "Tracing the Links."
16. Rao, "Review Essay."
17. For useful background, see Gupta, "Beyond the Poll Rhetoric."
18. John, "Sealed and Delivered."
19. Mohan, "Inside India's Sham Trials."
20. Roy, "India."
21. The Citizenship (Amendment) Act, 2019, no. 47 of 2019, December 12, 2019, egazette.nic.in /WriteReadData/2019/214646.pdf.
22. It is worth noting that the 2019 CAA offers no refuge to people of any religion fleeing persecution in India's non-Muslim-majority neighboring states.

23. Adalah, "Basic Law: Israel." This unofficial English translation of the law was produced by Adalah, the Legal Center for Arab Minority Rights in Israel.
24. Adalah, "Position Paper."
25. Adalah, "Summary." This unofficial English translation and summary of the decision was produced by Adalah.

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