# SELECTIVE CITIZENSHIP: A CONSTITUTIONAL ANALYSIS OF CITIZENSHIP LAWS WITH REGARD TO NORTH-EASTERN STATES

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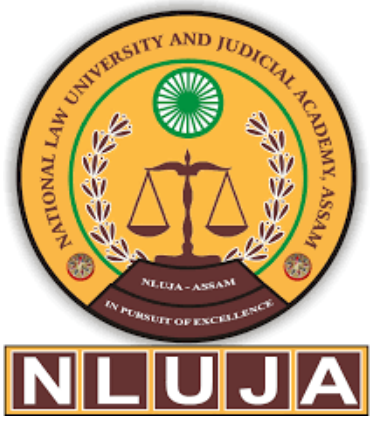


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## CERTIFICATE

This is to certify that **SUSMIT ISFAQ** has completed his dissertation titled **"SELECTIVE CITIZENSHIP: A CONSTITUTIONAL ANALYSIS OF CITIZENSHIP LAWS WITH REGARD TO NORTH-EASTERN STATES"** under my supervision for the partial fulfilment of **LL.M (Hons.) Degree Programme** at National Law University & Judicial Academy, Assam.

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## DECLARATION

I, SUSMIT ISFAQ, do hereby declare that the dissertation titled SELECTIVE CITIZENSHIP: A CONSTITUTIONAL ANALYSIS OF CITIZENSHIP LAWS WITH REGARD TO NORTH-EASTERN STATES" submitted by me for the award of the degree of LLM (HONS.) DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

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| | |
|---|---|
| & | And |
| Sec. | Section |
| AAGSP | All Assam Gana Sangha Parishad |
| AAPSU | All Arunachal Pradesh Students Union |
| AASU | All Assam Students Union |
| AGP | Assam Gana Parishad |
| AIR | All India Reporter |
| ALJ | Allahabad Law Journal |
| Anr. | Another |
| Art. | Article |
| BEFR | Bengal Eastern Frontier Regulation |
| BOM LR | Bombay Law Reporter |
| CAA | Citizenship Amendment Act |
| CAB | Citizenship Amendment Bill |
| CAD | Constituent Assembly Debates |
| Cl. | Clause |
| CEDAW | Convention on the Elimination of All Forms of Discrimination of Women |
| Del. | Delhi |
| FT | Foreigners' Tribunal |
| Gau | Guwahati |
| HC | High Court |
| *Id.* | *Ibid* |
| NDA | National Democratic Alliance |
| NHRC | National Human Rights Commission |

| | |
|---|---|
| NRC | National Registrar of Citizens |
| SC | Scheduled Castes |
| ST | Scheduled Tribes |
| SCC | Supreme Court Cases |
| SCR | Supreme Court Reporter |
| v. | Versus |

# 1. INTRODUCTION

Historically the idea of having citizenship has been a privilege linked with a particular political community which reflects having certain status in that society. The origin of citizenship is often said to be rooted in the western part of the world. This is true because it was in the West where modernisation along with industrialisation happened. But the idea of citizenship predates industrialisation. The ancient city states in Greece and Rome are said to be the places where the idea of citizenship emerged. But in both the states it was restricted. In Greece, only the property owners who were free had the privilege of having qualified as citizens.[1] The preconditions of being free and propertied naturally excluded a large population who were slaves and women. In Rome, Citizenship was restricted to those who resided in the city as opposed to those who stayed in conquered Roman territory. These characteristics of the Greco-Roman states linked citizenship with wealth and gender and were not as inclusive as we understand today. The inclusiveness came into being after the process of industrialisation started and mode of production began shifting from feudalism to capitalism. With the gradual growth of capitalism, a new class evolved which deserted the earlier aristocrats[2]. This steady evolution of the wealthy class changed the socio-economic structure of Europe. The new society was keen in giving, at least theoretically equal status to all citizens and identities were not regarded as important while declaring someone a citizen of a territory. Nonetheless, these changes in the socio-economic scenario of Europe led to the formation of ideas of equality and individual rights which inspired revolutions. Liberty, Equality had become a dominant idea till the end of 18th century and thus it was incorporated in the western notion of citizenship. This effectively meant that there was a paradigm shift in terms of recognising rights. From slaves to plebeians to finally becoming a citizen- it was a shift from having no right to have equal rights and to have an unequivocal right to assert rights. The relationship between an individual and state changed and citizenship no longer remained as a privilege of a particular class but became a right of everyone who was born, by descent or by other means linked with the nation. Besides that, there was another significant development that went side by side. It was delinking the State from the Church. For a long time monarchs ruled states in the

[1] Romila Thapar, et. al., ON CITIZENSHIP,1st ed. 2021, p. 5.
[2] Ibid.

name of divine right. With the rise of a new society and a class thereof, these ideas started getting abundant. Philosophers like Locke in Late 17th Century started advocating for separating religion from politics. This also gave birth to the western idea of secularism keeping religion and state separated. The European imperialist powers while expanding their market brought the ideals of equality, individual freedom, and secularism along with them while establishing colonies. Thus, the Indian state too inherited these ideals after the end of almost 200 years of British Rule and engraved it in the Constitution they made subsequently. The history and religious demography of India too backed these ideals. While discussing citizenship there were furious debates on eligibility of being an Indian citizen and different ideas were proposed. Some demanded leniency in providing citizenship for Hindus and Sikhs who, as per their arguments, had no other home than India.[3] Some others argued that getting citizenship by virtue of being born in this territory makes Indian citizenship very cheap and hence the Assembly should reject the idea of *Jus soli*[4] and accept *jus Sanguinis*[5] citizenship. Ambedkar advocated that the Constituent Assembly should focus on providing citizenship at the commencement of the Constitution and the future decisions on citizenship should be taken by the elected Parliament of India.[6] Ultimately, after ending this three day long debate on citizenship, the Constituent Assembly didn't include any religious criteria for citizenship and empowered the Parliament under Article 11[7] to decide the future course. Parliament used its powers under Article 11 five years after the Constitution came into effect. It enacted the Citizenship Act in 1955 and decided to give citizenship to anyone who took birth in India from 1950 onwards.

Apart from acquiring citizenship by birth or descent, modern nations have introduced other methods to acquire citizenship as well. For instance, one can also become a citizen of a nation by the process of naturalisation which requires certain duration of residence in that particular nation.[8] Some nations have the concept of dual citizenship where a person can be a citizen of two countries simultaneously and can have the same rights as any other ordinary citizen of both the countries. Furthermore, a new concept of

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[3] Parliament of India, *Constituent Assembly Debates*, Vol. IX (11th August, 1949) (Speech of P. Sec. Deshmukh).

[4] *Jus Soli* is a rule that the citizenship of a child is determined by the place of its birth.

[5] *Jus Sanguinis* is a rule that a child's citizenship is determined by its parents' citizenship.

[6] Parliament of India, *Constituent Assembly Debates*, Vol. III (11th August, 1949) (speech of B.R. Ambedkar).

[7] .Art. 11, Constitution of India.

[8] Evgeniya Morozova,"Second Citizenship", Available at : https://Evimmigrantinvest.com/blog/citizenship-by-naturalization-en/.

economic citizenship has also risen. Here, if a foreign citizen who invests certain money in that country or has helped the country's economy to grow, can get a permanent residency status.[9] India doesn't allow dual mode of citizenship and hence if anyone has to get Indian citizenship, he or she has to give up citizenship status of other countries. But it allows descents of Indian origins to apply for Overseas Citizenship.

Nevertheless, the politics of North-Eastern states of India has historically been dominated by issues including insurgency, self-determination, illegal influx of immigrants etc. Though issues like insurgency are not absent in other parts of the country, it is the issue of illegal immigrants that makes the case of Assam and other North-Eastern states peculiar in nature. It is worth mentioning that four of the eight North-Eastern states share its border with neighbouring Bangladesh. North-Eastern states have witnessed different waves of immigration in its history. After the first census of independent India in 1951, The Central Government asked the census authorities to prepare a National Register of Citizens("NRC") exclusively for Assam. Though it was supposed to be periodically updated, it was not done until recently when the Apex Court under its supervision directed the Assam Government to update its 1951 NRC.[10]

The continuous influx of people- both legal and illegal in these states has worried the people from time to time. It is to be noted that North-Eastern states were the only states which took the burden of thousands of migrants coming from East Pakistan till Bangladesh was formed. But the 'threat' of becoming a minority in their own land due to large immigration always threatened the people. The problem was so that The Parliament in 1950 had to pass a statute namely, Immigrants (Expulsion from Assam) Act, 1950 to expel illegal immigrants from Assam "if the Central Government opined that his/her stay might be detrimental for the general public". This Act did not help much and immigrants continued to cross the border. This threat exploded when a mass agitation started in Assam in 1979 demanding protection of indigenous identity and expulsion of illegal immigrants from the state. Known as the Assam Movement, it was led by the All Assam Students' Union which were ideologically regionalist. This movement went on for six long years finally settling down after an accord signed

[9] Alec Hogg, "How to get a second passport: "Citizenship by investment" is booming", BIZNEWS, Thursday, June 30,2016, Available at : https://www.biznews.com/undictated/2016/06/30/how-to-get-a-second-passport-citizenship-by-investment-is-booming.

[10] Sangeeta Barooah Pisharoty, "Why the NRC of 1951 Is Being Updated as per the Assam Accord", THE WIRE, Saturday, Saturday,August 18,2018, Available at :https://thewire.in/rights/nrc-assam-accord-updating-residents.

between the then Prime Minister Rajiv Gandhi and the AASU leadership deciding that Assam would accept the burden of immigrants till 24th March 1971 and whosoever comes after this, irrespective of their religious identity has to be deported.[11] It was significant in two aspects : Firstly, after signing of the Accord, the cut-off date for citizenship in Assam and the rest of the country varied and secondly, the Government of India committed itself to safeguard the cultural identity of Assamese people.[12] The legal incorporation of the provision of Assam Accord happened in 1985 when the Citizenship Act was amended incorporating Sec.6A in it which provided a different cut-off date for Assam. Interestingly, in 1986, the Citizenship Act was again amended which made getting citizenship by birth stringent by including that from 1987 onwards, one of the parents had to be an Indian citizen. It was a paradigm shift in the Indian context and principles of citizenship gradually shifted from *jus soli* to *jus sanguinis.*

The citizenship Act was time and again amended by the parliament. But, it was the Citizenship (Amendment) Act of 2019 ("CAA") which again sparked large scale protests, this time not only in north-eastern states but all over India. It was because for the first-time parliament added religious grounds to acquire Indian Citizenship. While the rest of India looked it as anti Muslim, in Northeast and particularly in Assam, it was perceived as anti Assam as it made the Assam Accord infructuous.

### 1.1 Statement of Problem

The debate over citizenship when seen from the pan-India perspective is particularly relevant in the context of North-eastern states. On one hand it is a small entity consisting only about four percent of total population of India and almost eight percent of total land area, yet due to its geo political location, ecological resources and cultural diversities this region is of immense importance for the Union of India. The politics of North-Eastern states have revolved around the question of illegal immigrants as it has historically witnessed influx of migrants in the region from the neighbouring countries and specially from the East Pakistan (now Bangladesh). The large-scale migration that took place time to time to this region has not only created a fear of loss of identity among its local people but there is also an apprehension about sharing scare resources with the

[11] Ibid.
[12] Clause 5 and 6 of Assam Accord, 1985.

migrants which might end up depriving the local population. The largest of the North-Eastern states in terms of population, Assam has seen a six-year long movement against the illegal immigrants which was thought to be resolved after signing the Assam Accord with the Centre. On the other hand, the Chakma refugee problem in Arunachal Pradesh still making headlines as the stand of the Union and the State government regarding Chakma issue are not same. States like Tripura, Nagaland, Manipur etc. has seen a growth in the separatist movement in the recent past and one of the main issues raised by all such groups is the Union's neglecting behaviour towards safeguarding indigenous population of their states. The Union government through enactment of acts like The Immigrants (Expulsion from Assam) Act, 1950, Illegal Migrants (Determination by Tribunals Act),1983 and through amendments to the Citizenship Act,1955 has tried to solve the issue of illegal migrants on paper, but in reality, it has not succeeded in solving these problems.

The recent Citizenship (Amendment) Act, 2019 has again brought up the question of who is an 'illegal immigrant' and distinguished illegal migrants on religious terms. The movements in North-East against illegal immigrants were never in religious lines but on the grounds of safeguarding the linguistic and ethnic identity of the people living in these states. While the rest of India protested against the recent amendment complaining of it not being secular, North-Eastern states protested perceiving it as mechanism to dilute Assam Accord and other constitutional promises given for safeguarding the North-Eastern states and to settle illegal immigrants in this region forever. The problem of illegal influx has to be understood by looking at the demands of North-Eastern people, not by overlooking it. Furthermore, the implementation of the Citizenship (Amendment) Act, 2019 in North-Eastern states and particularly in Assam could nullify the hard-won rights by the people of Assam through the Assam Accord and make the whole updation of NRC infructuous. There's a need to trace the connection between citizenship laws and geopolitics of North-Eastern states and how it can be reached into a solution.

**1.2 Research Questions:**

- How the concept of citizenship evolved over time?
- What were the issues raised and grounds considered while framing citizenship provisions for Constitution of India?

- Has India gradually shifted from the concept of inclusive citizenship?
- What correlation do amendments to Citizenship Act, 1955 have with geopolitics of north eastern states and vice versa?

### 1.3 Hypothesis

The Constitution of India through Part II provides citizenship to various classes of people at the time of commencement of the Constitution. Under Art. 11, it empowers the Parliament of India to make laws for granting Indian citizenship. Accordingly, the Parliament has enacted the Citizenship Act,1955. From time to time this Act has been amended thus changing the legalities of Indian citizenship. The issue of unabated influx of illegal immigrants have also dominated the debates around citizenship in India. Particularly, the North-Eastern states of India which have seen waves of migrations in the region have notably registered their protests against illegal influx. A linkage can be observed between the geopolitics of North-Eastern regions and Indian citizenship laws. However, the amendment made to the Citizenship Act in 2019 has again reignited protests across the region as it has opened the door for certain classes of illegal migrants to claim citizenship. The introduction of this Amendment has created conflict between interest of native people of North-East as well as interests of the illegal migrants which are claimed to be religiously persecuted in the countries mentioned in the Citizenship (Amendment) Act, 2019. It is therefore expected that the Union Government in consultation with the Government of Assam and people of North-East settle the issue without jeopardizing rights of the natives of North-Eastern States.

### 1.4 Research Methodology

The methodology used in this study is of doctrinal research. Doctrinal research is basically library-based research where the resources available in the library have been used. The nature of research of this paper is descriptive and analytical. In this study, both primary and secondary sources of data have been utilized. Primary Sources include statutes and case laws and secondary sources include books, reports, articles etc. Also, citation format prescribed by National law University, Assam has been used in this paper.

## 1.5 Scope and Limitations

This study is focused on understanding the concept and its evolution over time. It dives into constituent assembly debates to find out what members of the assembly took into consideration while drafting citizenship provisions for Constitution of India. Further, it focuses on the Citizenship laws of India and in particular relation to North-Eastern states. Since the debate over citizenship is very crucial in the political context of Assam and its neighbouring states, it would help us understand why the issue of illegal immigrants is a determining factor in politics of these states. A historical understanding of migration in Assam is also discussed in this study. Apart from this, a critical legal analysis of the Citizenship (Amendment) Act, 2019 in relation to Assam Accord and the updation of NRC is the main focus of this study.

The study mainly revolves around India and North-Eastern states with a special emphasis on Assam in particular. Hence one of the limitations of this study is that it doesn't look at the other implications of citizenship laws in other states and is confined only to Northeast and particularly to Assam. It also limits itself only to historical waves of migration in Assam and doesn't look at the economic or other socio-political reasons behind that. Apart from this, the paper is limited to study of Citizenship (Amendment) Act, 2019 from a constitutional standpoint and it doesn't look at it from the International humanitarian law perspective.

## 1.6 Aims and Objectives

The researcher aims to understand the evolution of the concept of 'citizenship' and how it has reached to the present state where modern nations have identified it with having equal rights. It then tries to understand how the concept of citizenship was perceived by the drafters of the Indian Constitution and how since then it has unfolded in the country. It will then delve into the question of illegal influx that has dominated the politics of North-East India and try to find out how citizenship laws are related with the geopolitics of North-Eastern states and what concerns do the North-East States have with the recent amendment to the Citizenship Act,1955.

In light of the given aims, the following could be said as objectives of the paper-

- To understand how the idea of citizenship came into existence and shaped the modern notion of citizenship.
- To identify the core principles and differences of opinion in drafting provisions of citizenship in the constituent assembly.
- To analyse post Constitutional citizenship laws in India.
- To identify the correlation between citizenship laws and geopolitics of North-Eastern Indian States.
- To find out how amendments in citizenship laws and various judicial pronouncements have tackled the problem of illegal immigration in North-Eastern states.

## 1.7 Review of Literature

There's been different books and articles written about various aspects of citizenship. Some emphasise the historical and political understanding of citizenship and others on the legal perspective. Other sets of books can also be found on the issue of immigration and refugee crisis from an international point of view.

- In the book ***On Citizenship*** (1st ed.,2021) four writers from different backgrounds write the historical, political and legal basis of citizenship. Eminent historian Romila Thapar points out what is the historical basis of providing citizenship and emphasises upon the fact that it was limited to a certain class. Political commentator and senior journalist N. Ram in his essay 'The evolving politics of Citizenship in Republican India' discusses how the issue of citizenship was always attached to the political history of India. He emphasises on the issue of linking descent to citizenship and special circumstances of Assam in particular. Prominent lawyer and writer Gautam Bhatia on his essay about citizenship explores how the concept of citizenship in Indian perspective linked with the idea of India which is secular, egalitarian and non-discriminatory. He analyses the Constituent Assembly debates and how the makers of Indian Constitution rejected the markers such as race, religion, gender etc while deciding citizenship. In the fourth essay, jurist Gautam Patel provides an interrelation between the idea of citizenship and fundamental rights engraved in the Constitution of India. By exploring different

judicial pronouncements, he concludes that the Constitution can be amended with the changing societal needs, but it cannot undermine the basic features of the Constitution. He points out the lacunae in the Citizenship Amendment Act and how it derogates from the ideals of Indian Constitution. Taking all four essays as a whole, this book does help the reader to understand the idea of citizenship in general and in particular in the Indian context. This book discusses the idea of citizenship as whole but not particularly in the context of Assam and North-Eastern states though it refers to them.

- The ***"Oxford Handbook on Citizenship"*** (1st ed., 2017) edited by Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink is an multidisciplinary handbook on citizenship that gives insight to perspectives on the topic. It has articles written by legal academics, political scientists, sociologists, geographers, historians, and philosophers which explore the contours of citizenship from different perspectives. This book has covered almost every topic starting from Greco Roman origin of citizenship to its recent developments. Challenges related to migration, globalisation infiltration etc has also been covered by different academicians in their respective articles. By reading relevant articles the researcher has tried to trace the genesis of citizenship and to understand how it has grown in synthesis to socio political changes around the world. The researcher has particularly referred to Ryan K. Balot's Article on classical ideals of citizenship where the author has argued why citizenship in ancient Europe was limited in nature and how philosophers of that era has played their parts in developing citizenship jurisprudence. Another article written by Iseult Honohan has also helped in understanding the development of citizenship from Political viewpoint. While distinguishing about republican and liberal notion of citizenship, Honohan has argued how American and French revolutions have contributed in transforming conceptions of citizenship. Overall, this book is helpful in understanding the conceptions of citizenship. That being said, it has to be noted that the scope of this book does not cover legal or other development of citizenship in context of India and hence the next book is referred to understand Indian citizenship laws in a better way.

- It is no secret that the concept of citizenship under the Indian legal framework has changed over time. Anupama Roy's ***"Mapping Citizenship in India"*** (1st ed., 2010) traces the history of Amendments in the Citizenship Act, 1955 and links it with the political and historical situations that led to these amendments. She discusses various statutes and judgments including the Illegal Migrants Determination by Tribunals Act of 1983 and how citizenship unfolded on people based on place of residence and as communities. This book also shows how citizenship got interlinked with blood-ties making a shift from *jus soli* to *jus sanguinis* citizenship. She also discusses how economic conditions lead to migration and how it was seen in immigrants coming from Bangladesh. Mainly written from a socio-political perspective, this book points out that it would be farcical in a country like India to study the citizenship crisis without studying political backgrounds.

- To know about the history of immigration in Assam and the Assam Movement, two books that helped in formulating the research have to be mentioned. One is ***Assam — The Accord, The Discord*** (1st Ed., 2019) written by journalist Sangeeta Barooah Pisharoty. She in her book discusses the genesis of NRC and Assam movement from a political point of view. She also points out how the identification of foreigners was carried out by the government and why it was not fruitful. She argues that there's a general sentiment against illegal infiltration in Assam and how the erstwhile Citizenship Amendment Bill would further complicate the politics of Assam. Pisharoty's book helped in understanding the political angle of Assam movement and how Assam has historically fought against prejudice done by the Centre in terms of funds and resource allocation.

- The factual correctness of the narrative of illegal Muslim inflitration from Bangladesh which is being used as political weapon in of Assam can be understood by reading ***"Inflitration : Genesis of Assam Movement"*** (1st Ed., 2017) by eminent Assamese scholar Abdul Mannan. In this book, the writer argues that the political discourse of Assam movement has changed from time to time. He argues that historically Assam movement was started against all outsiders living in the State. and then the target shifted to illegal foreigners

irrespective of their religion. The discourse again changed and it targetted only the Bengal origin Muslim population which was due to guidance or rather misguidance of the Hindutva groups. Furthermore, he alleges that there's no scientific study as to how many actual illegal infiltrators are residing in Assam and it was only a flawless NRC that might solve the issue. Apart from that, Mannan tries to explain the population explosion among Bengal origin Muslims in Assam which is not directly relevant in our study. This book is helpful in identifying the various waves of migration in Assam from time to time and how the political narrative of Assam movement changed in the six years of it. These above books give an idea on citizenship and how complicated the matter is in the case of North-Eastern states.

- After the Citizenship Amendment Bill of 2016 was introduced in the Parliament, advocate Santanu Borthakur in an article which was later published as a booklet with the title ***"Sangbidhan, Nagarikatwa aru Asom"*** (1st Ed., 2017) of which literal translation from Assamese would be 'Constitution, Citizenship and Assam' tries to give a basic idea as to what citizenship is and how the bill is unconstitutional. In the Article, he argues that the provisions of the Bill negates the ideals of equality and secularism enshrined in the Indian Constitution. He further argues that the struggle of Assamese people against illegal infiltration was never communal and the 2016 Bill does bring a communal angle in it which cannot be accepted as a resident of Assam. This 40 paged small booklet is helpful in understanding the basic legal irregularity that the 2016 Amendment Bill had and why it was prima facie unconstitutional. There have been some fundamental differences in the CAA and the 2016 Bill which would be discussed in this study.

- From a pure Constitutional and legal point of view the concept of citizenship is lucidly discussed in prominent legal scholar M.P. Jain's book ***"Indian Constitutional Law"*** ($8^{th}$ Ed.,2018). In his chapter on citizenship Jain discusses how the citizenship laws were framed at the commencement of the Constitution. He further discusses the Citizenship Act of 1955 and various judicial pronouncements as to who is regarded as an Indian citizen. This book can be regarded as the textbook interpretation of the legal development of citizenship

laws and how various judgments have linked it with the fundamental rights. Two other chapters on Right to Equality and Right to life of this book are also helpful in understanding both the concepts. A connection between these concepts and citizenship can be drawn after reading these three chapters. This connection is important to study as to how the Constitution and the judiciary has analysed the idea of citizenship over time. The link with the ideals of equality, liberty, secularism with citizenship is legally mandated or not can be understood only by studying the jurisprudential understanding of these concepts. This book helps in fulfilling this purpose.

As we can see, there are very few documents that address the interlinked question of illegal infiltration in Assam and the recent Citizenship (Amendment) Act 2019 from a legal point of view. The studies are either done from a political angle or totally legal in case of CAA. An interrelated legal study has the potential to understand a problem better and hence this study is done.

## 2. RECAPITULATING CITIZENSHIP

The origin of the word 'citizen' can be traced back to its Latin. It has its roots in the word *civitas* which means *city*. In the strict historical sense, the citizens were those privileged persons who were residents of a *city state*. To be very particular, it was male inhabitants of a city who were regarded as citizens.[1] Known to be the most advanced organised forms of ancient European society, i.e. Greece and Rome were said to have originated the concept of citizenship. But the concept that has been referred to here is drastically different from what it is presently. The concept of citizenship in ancient Greece and Rome was quite restrictive in nature as it included only the elite group of people who owned property and excluded a large section, i.e. women.[2] Under Roman law, it also excluded those who were inhabitants of conquered Roman territory, making it available to only those who resided in the city of Rome. It suggests that it was a coveted status which only included wealthy male inhabitants. The feudal system that thrived in these parts of Europe invariably related citizenship with one's social status. It was a relationship between subjects and those who governed them.

### 2.1 Citizenship in Ancient Greece

The Greek conception of citizenship however can be understood from Aristotle's *Politics*[3] in more detail. Aristotle, by taking ancient Athens as base, argued that human beings are political animals as it was in their nature to live in communities which are political in nature. As per him, all human beings had their role to play in life but only some could possess the qualities that are needed to qualify as citizens. To be an Athenian citizen one had to possess three qualities.[4] Firstly, they had to be male over 20 years. Secondly, they should be born to a Athenian family and have the ability to fight and should possess arms and thirdly, should own property which invariably meant slaves. It is evident from this discussion that race, class, gender and one's ability played an important role in defining citizenship. As earlier stated, this restricted sense deprived women, children, immigrants no matter how long they resided there, and also slaves. As per Aristotle a citizen is one who could rule and be ruled by turns. The duties of a citizen however different in different polities. In some parts citizens had the power to

[1] Frederick H. Cramer, "The Evolution of Citizenship." 13 CH (1947),p.193.
[2] Romila Thapar, et. al., ON CITIZENSHIP,1st ed. 2021, p.11.
[3] A work of political philosophy written by Aristotle in the 4th Century BC.
[4] Richard Bellamy, "citizenship", James D. Wright (ed.), INTERNATIONAL ENCYCLOPAEDIA OF THE SOCIAL & BEHAVIOURAL SCIENCES,2nd ed. Vol. 3. 2015, p. 643.

take part in various administrative and judicial processes. The duties were however less voluntary and more coerced. Some had to do jury service, some had to participate in assembly sessions etc.[5] Athenian *polis*[6] was such that it aimed to give opportunities to all citizens to take part in the administration. As the office holding terms were short and had lots of checks and balances on each other, there was very little chance to misuse power. Hence it can be said that being a citizen of Athenian polis itself was kind of a full occupation in itself. Another important city-state of ancient Greece was Sparta. In contrast to Athens where philosophy, literature, art etc. thrived, Sparta emphasised on military services. Strict military codes were followed in Sparta. Male children at the age of seven were to leave their family and had to go through rigorous training so that they could serve the military. There were indeed very limited opportunities and time to develop personal interest. This aspect of Sparta was very much admired by Plato as it was more disciplined.[7] This mode of administration and citizenship was viable in a small knit community particularly because they had to frequently change their roles as administrator and in large city states it was not possible to do so. Harmony and friendliness among citizens would certainly help in reaching their goals as society and more the numbers, lesser the outcome would be. Hence, they maintained a restrictive sense of citizenship which made all these viable.

The Greek model of citizenship can be summed up as privilege enjoyed by minorities. A minority by virtue of their genetical origin and wealth they own ruled over vast section of people large number of them which comprised of slaves. Yet, these city states didn't reach the ideal stage which Aristotle dreamt of as there was frequent friction between different groups of people owing to their social status and position, they held. Nonetheless, this small group of people qualified as citizens who ruled over the majority did start some kind of 'peoples' rule' and gave birth to the idea of a democratic society which was pretty restricted. The Roman conception of citizenship was such that it was hard to separate from the closely knit life of the *polis*.

[5] Ibid. p.643.
[6] The word ‘Polis’ literally means city in Greek.
[7] Supra 16. p.643.

## 2.2 Roman conception of citizenship

Roman citizenship was somewhat different from Greek citizenship as its citizenship and state were not so interlinked. The Roman Citizenship was rather a type of contract between the private person and the state. This differentiation was evident as there was separation between the personal affairs of someone and interest of the state on the other hand. The prerequisites to become a citizen of Rome were similar to that of Greece but becoming a Roman citizen would grant a bundle of rights to the person.[8] Not only the Roman citizens could hold public offices or could appeal against judicial decisions to the Roman assembly, they could enjoy suffrage too. They had the right to elect their administrators. When the neighbouring Latin cities were conquered by Rome, the inclusion was not much of a problem as the law of persons were similar. The migration remained largely unproblematic and marriages among did take place.

After overthrowing their tyrannical kings, the Roman model emphasised mainly upon Rule of Law and ran on the principles of non - domination. It was a condition of independence from arbitrary use of power where citizens can work in furtherance of their own conceptions of good. Though it sounds ideal, but it could be argued that it was a systematic framework of the ruling elite so that in the guise of 'rule of law' their overall working remains unaccountable. The freedom that was implied by the grant of Roman citizenship was somewhat construed as emancipation from tyranny and a result of their will to govern themselves. But this emancipation was limited as it was not extended to women, slaves and non-Romans. Also, the domination by one over another was evident by the fact that the Roman citizenry was known as -"*senatus populusque Romanus"* which meant Senate and the Roman people, a term which unifies two hierarchical groups rather than forming a homogenous group regardless of their societal or birth status.[9] Gender, class, birth status, legal status etc. were central to the Roman ideals of citizenship. As already been suggested, the rule of law was typically an instrument of holding social power by few. *The Law code of the Twelve Tables* which was the foundation of Roman law reveals that it was a small-scale agricultural society where freedom, domination etc. were intertwined. It allowed citizens to hold property in one hand, and on the other hand, it provided for many such instances where dignity

[8] Markus Sehlmeyer,"Citizenship", Roger Sec. Bagnall et. al. (eds.), THE ENCYCLOPEDIA OF ANCIENT HISTORY, 1st ed. 2013. p. 1524.
[9] Ryan K. Balot,"Revisiting the classical ideal of citizenship", Ayelet Shachar, et. al. (eds.), THE OXFORD HANDBOOK OF CITIZENSHIP ,1st ed., 2017, p. 18.

and lack of respect for non-citizens were evident. The code prohibited marriage between aristocratic 'patricians' and lower class 'plebeians'. It also had provisions which mandated that women should be under constant observation of their male relatives. Slavery was anyway recognized.

As we have noted earlier, there was a great similarity between the Roman and Greek Idea of citizenship. But with the change of time, Rome derogated from the ancient Greek mode of citizenship. With the expansion of Rome initially within Europe and then to Africa and Asia, they first started giving a Roman version of citizenship to persons residing in those territories without taking away their own forms of government. Also they started giving another version of the citizenship which was rather legal than political in nature. They were '*civitas sine suffragio*' or citizens without the right to vote. By this innovation, the scope of law widened which went beyond political borders.[10] The Aristotelian idea of citizenship which was based on political citizenship had many preconditions to get the legal rights. The legal form of citizenship was wider in nature as it protected private interests. As we can see, conceptualising citizenship as a legal relation entitled a large section of people to pursue their private interests and enabled them to hold rulers and their administrative officers accountable. Discretion and arbitrary actions were checked by the rule of law which governed everyone equally. Then again, the source of law itself was in question. Some identified the source independent of any human agency as God's will or in nature or reason. These started identifying a 'higher law' which encompassed everyone from a monarch to a poor resident of the place. This depiction of the fundamental higher law has great influence on the modern day jurisprudence of human rights, international law etc. The right based conceptions of citizenship can also be inferred from this idea of higher law. Various legal and political theorists of that era while dealing with this subject offered different reasoning. Yet, the most influential theorists among them tried to make consonance among rule of law and rule of citizens and they successfully did so by inventing the social contract theories. Though these theories justified overreaching powers of the state, it also started seeing humans as creation of equal beings who are the owners of themselves. Only unequivocal agreement between free and equal beings could consent for having mighty state machinery and hence treating people as equal was necessary.

[10] Henrik Mouritsen, "The Civitas Sine Suffragio: Ancient Concepts and Modern Ideology." 56 HZFAG, 2007, p.141.

### 2.3 Citizenship: Republican and Liberal conceptions

Two traditional political thoughts-Republican and Liberal are greatly associated with the idea of citizenship. While the republican idea acknowledges 'liberty' as a byproduct of laws made by people themselves, Liberalism on the other hand focuses more on individual rights and 'liberty'. The republican idea which was dominant in ancient Greece and Roman was slowly displaced by ideals of liberalism with the development of Nations in the 19th and 20th centuries. Republicans essentially focus on interdependence among people and promote collective self Government. It realises that things like freedom and other rights are common in nature and hence cannot be achieved alone. Republicans try to define freedom more in terms of self domination and active participation in decision making. The emergence of republican ideals happened in the city states which developed itself in 17th century England, Dutch Republic etc. Thinkers such as Machiavelli, Rousseau, James Madison etc. were the torch bearers of the ideals of republicanism. These thinkers while formulating the concepts took the early Athenian democracy as their model where freedom was antithesis to slavery and was based upon self-governance.[11]

While the size of states grew and there was a growth in trade and commerce it made it difficult for thriving a model which needed active participation of virtuous citizenry. Though at first both American and French revolutions were based upon Republican ideals, yet both these movements paved the way for liberal ideals. In the nineteenth Century, Liberalism thrived over republicanism which essentially established individual rights in connection to growing state power and provided a way for limiting arbitrary use of power by the government by ensuring individual rights to everyone.

Eminent English Sociologist T.H. Marshall while inquiring about the evolution of modern day democratic citizenship went through the history of West European countries from 18th to 20th Century. According to Marshall, intricacies of state-building, emergence of trading and industries and Construction of a national consciousness are three parts in which phase wise development of citizenship can be identified.[12] The First phase which was the state-building process was a creation of a legal infrastructure where

[11]Iseult Honohan, "Liberal and Republican Conceptions of Citizenship",Ayelet Shachar, et. al. (eds.),THE OXFORD HANDBOOK OF CITIZENSHIP ,1st ed., 2017,p. 86.
[12] Thomas H. Marshall, CITIZENSHIP AND SOCIAL CLASS AND OTHER ESSAYS, 1st ed.1950, p.152.

there was a cultural, military and administrative unification at the elite level. This phase was created by a sovereign political body that had its authority over a marked territory and those people resided within the territory became legitimate subjects of the sovereign. On the other hand, the emergence of commercial and industrial economies was seen in the second phase. For the growth of the market in the emerging society it needed infrastructure such as a connected transport system, standardised weighing systems and most importantly a regular legal system. Emergence of Market economies also broke down the traditional feudal system of hierarchies and system of societal status which further promoted equality and freedom of an individual to enter into contracts. It gave way to individual civil and economic rights. The third stage as identified by Marshall was the stage of building national consciousness among people. Marshall argued that in this phase socialisation of the masses was done which was suited to the market and industrial economy. It was done by using the means of education by giving access to all, by linguistic standardisation, promoting popular press etc. It trained masses to generate a mobile workforce which are capable of acquiring skills that are needed in the market. It also helped make bonds between citizens and the state.

These three processes ultimately culminated in creating 'people' who are to be treated as equal before the eyes of law and who possessed rights to enter into agreements, could buy or sell labour power etc. The interests of those people were overseen by a sovereign authority and were connected to each other through a shared national identity. All these three phases became an important element in the process of making of democratic citizenship.

### 2.4 Modern idea of citizenship

The present day idea of citizenship evolved with the change of production relation and other societal changes. With the advancement of capitalism that came due to rapid industrialisation in Europe, the ideas of liberty, equality started emerging. People were no longer seen as a subject of a monarch but as a free individual who possessed certain inalienable rights by virtue of being born as a human. The monarch-subject relationship started changing and it was developed into a state-subject relationship.

The study of citizenship in ancient Greece and Rome gives us the idea that philosophers played an important role in defining who a citizen is and how it is related to the idea of 'highest good'. While some philosophers stressed upon fulfilling philosophical *eros,* some others argued in favour of rejection of city's conventions and cosmopolitan rationality. The idea of non civic lifestyle also attracted vest numbers of women and slaves who didn't fit in the rigid notion of citizenship.

All these factors helped in reshaping the idea of citizenship. The predominance of Christianity also played an equally important role in changing the idea.[13] The ideas of Augustinian Christianity reinterpreted by philosophers like Aquinas and his successors made people believe that the quest for the highest good has to be sought outside politics and could be achieved by means of religious associations and activities. The rise of Christianity had some important consequences in regard to citizenship. Firstly, unlike the ancient polytheists, Christianity made people believe that individuals did possess certain unique rights and dignity by virtue of being born as god's human subjects which cannot be taken away. It can be said that the rise of Christianity brought along with the nascent ideals of human rights. Secondly, It made people learn to distinguish between one's personal and political lives. They started thinking of themselves as subjects of a political state rather than a *citizen* (in the ancient Greco Roman sense). These things helped in changing the very idea of citizenship which was now looked through the lenses of rights.

The ancient Greco-Roman meaning of citizenship which is participation in political governance has survived in the modern form in a modified way. Though the ancient form of citizenship was very exclusive in nature yet some ideals of that have been monumental and instrumental in shaping the modern-day notion of citizenship. The democratic engagement of political life by certain people by virtue of their status has indeed threatened different rulers. These rulers tried to do away with this idea and it can be understood from the examples of Greece and Rome. The ancient Greek model of citizenship disappeared after the conquest by Alexander. Similarly, after Rome gave its way to imperial rule the roman citizenship also started withering away. The use of the word 'citizenship' as recorded by the Oxford English Dictionary comes in connection

[13] R. Smith, "Modern Citizenship.", Engin F. Isin et. al. (eds.) HANDBOOK OF CITIZENSHIP STUDIES, 1st. ed. 2003, p. 112.

with 'bourgeoisie' which held special status in municipalities not necessarily directly taking part in self-governance.[14] it mainly provided legal rights under monarchical rulings. During the period of Renaissance many western cities achieved independence and freedom was reasoned in line with participatory citizenship which was the feature of Greco Roman ideals of citizenship. Anti-monarchical revolutions started happening in various parts and it is from where the modern day idea of citizenship took its basic form. These revolutions helped transform the idea from 'subject to citizenship'. People started rejecting the idea of rule by hereditary and wealth and started establishing themselves as a broad community of politically equals.

[14] Ibid. 115.

## 3. THROUGH DEBATES AND DELIBERATIONS: ADOPTION OF CITIZENSHIP PROVISIONS IN CONSTITUTION OF INDIA

To understand how the provisions related to citizenship was adopted in the constitution of India, we first need to go through the constituent assembly debates on citizenship. On late April 1947, it was for the first time that the Constituent Assembly met to debate over various constitutional drafts made by several sub-committees. The interim report on Fundamental rights, prepared by Sardar Vallabhbhai Patel inserted clause 3 into it which was titled simply as 'Citizenship'.

It said :

> "Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union. Further provision governing Union citizenship may be made by the laws of the Union."[1]

Introduction of this clause started the initial debate on citizenship. B. Das was one of the first one who objected over the clause and drew attention of the house on describing the differences between the concept of citizenship and Nationality. The objection of Das was that he wanted a separate provision in the constitution in regards to 'descent'. He contended that the language of the clause is so vague that the starting line 'every person born in the union' will mean that even a tourist from say German or Japan who gets born in India will get the benefit of an Indian citizen. Instead, he suggested adding a clause which says "a person born in the Union can declare for the nationality open to him by virtue of descent."[2] He accused the fundamental rights committee of not looking at this aspect. He feared that if this provision remained then many Europeans born in India would seek occupation the country and later would turn alien. Eminent Lawyer, K.M Munshi defending the clause replied to Mr. Das that the line "Every person born in the Union or naturalised in the Union" is followed by "according to its laws and subject to the jurisdiction" which is based on doctrine of allegiance. As per A.K. Ayyar, who was also an eminent lawyer, the citizenship clause was inspired by American constitution. He pointed out two ideas of citizenship. One, where in Continental countries citizenship is based upon race and has nothing to do with the birth of a person in a particular place.

[1]Clause 3, Interim Report on Fundamental Rights, as introduced in the Constituent Assembly on 29th April, 1947.

[2] Speech of B. Das, *Constituent Assembly Debates*, Vol. III (29th April, 1947).

However, as he pointed out in Anglo-American system the citizenship is given upon the fact that a person was born in that place. He contradicted Munshi on the point that the use of phrase "subject to jurisdiction" in the citizenship clause only excludes foreign ambassador or consul or anyone having similar status but will not exclude other foreigners and every other person (be it foreigner or Indian) will get the status of Indian citizen by virtue of their birth in this land.[3] Naturally, many members disagreed with Ayyar. Numerous hypothetical situations were raised by other members where for example what would happen if some is born while passing through the country or children of temporary residents etc. To reply these queries Ayyar reiterated that these complex situations would be dealt by statute passed by the Parliament. Ayyar noted that the second part of Clause 3 given by Patel was the answer to all the questions put up by the members on complexities of giving citizenship by birth. He opined that the Constitution should have overreaching principle of citizenship and details to be worked out should be left to the Parliament to decide. He somewhat mooted for "universal citizenship". Ayyar said:

> "In dealing with citizenship we have to remember we are fighting against discrimination and all that against South Africa and other States. It is for you to consider whether our conception of citizenship should be universal, or should be racial or should be sectarian."[4]

Though there were opposition to what Ayyar defended but there were stalwarts who supported Ayyar on this point of law. Ayyangar, for example was who cautioned the assembly against "making any distinction between foreigners in the matter of citizenship."[5] He was also supported by Patel himself. He clarified:

> "There are two ideas about nationality in the modern world, one is broad-based nationally and the other is narrow nationality. Now, in South Africa we claim for Indians born there South African nationality. It is not right for us to take a narrow view... It is a curious idea that ... you [want to] introduce racial phraseology in our Constitution... our general preface or the general right of citizenship under these fundamental rights

[3] Speech of Alladi Krishnaswami Ayyar, *Constituent Assembly Debates*, Vol. III (29th April, 1947).
[4] Ibid.
[5] Speech of M. Ananthasayanam Ayyangar, *Constituent Assembly Debates*, Vol. III (29th April, 1947).

> should be so broad-based that anyone who reads our laws cannot take any other view than that we have taken an enlightened modern civilised view."[6]

As there were several disagreements amongst members of the Constituent Assembly regarding this draft, it was decided on the suggestion of Krishnaswami Ayyar to refer the matter to a small committee of jurists to further inquire the matter. Going by this, on April 30th the President appointed an *ad hoc* committee to decide upon citizenship. The committee did redraft and presented a new clause which said:

> "Every person both in the Union and subject to its jurisdiction, every person either of whose parents was at the time of such person's birth, a citizen of the Union, and every person naturalised in the Union shall be a citizen of the Union. Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union."

K. Santhanam was the first one who moved his amendment to this redrafted clause on citizenship. He pointed out that the redrafted amendment only covered those who were born after the Union came into existence and not before that. Hence, those who are born before Union came into being and are already within the jurisdiction of the Union are excluded by this definition. He was supported by Rajagopalachari, Sidhva and Ambedkar who was also a member of the *ad hoc* committee that drafted this clause. Others such as Patel, Ayyar etc. considered this amendment unnecessary as the fate of the Union was still to be decided. It has to be noted that at the time of debating this provision, Pakistan still not came into existence and it was a part of India. Still, as Santhanam's amendment got some support including that of Ambedkar, the clause was held for further examination. While formulating the subsequent draft, citizenship provisions were removed by the Constitutional Adviser from part III, i.e. fundamental rights and were placed in prior to that in a separate part under the heading 'citizenship'. This had three clauses. Clause 1 dealt with citizenship at the time of commencement of the Constitution. Clause 2 provided for citizenship after the commencement of the Constitution and the last clause stated that further provisions as for acquisition or revocation of citizenship can be further formulated by Union law. B.N Rau explaining

[6] Speech of Sardar Vallabhbhai Patel, *Constituent Assembly Debates*, Vol. III (29th April, 1947).

these provisions on citizenship said that clause 1 was inspired from Article 2 and 3 of Constitution of the Irish Free State, 1922 and rest of the two clauses followed the draft presented by the *ad hoc* committee on citizenship. He further suggested that clause 2 would not be needed if the Committee accepts that the Constitution would provide an umbrella provision for citizenship and rest would be specified by Union law through the course of time.[7]

After the decision for partition was finalised on June 3, 1947 a series of changes were necessary to be adopted. As an unavoidable result of the decision, the question of citizenship was again to be reconsidered. In a subsequent draft prepared by the Constitutional Adviser on October 1947, there were certain addition to the draft of the *ad hoc* committee.

Nonetheless, the Citizenship provisions in the constituent assembly were again debated from the afternoon of 10th to 12th August 1949. These debates will help us in understanding how different opinions and wide range of views ultimately helped deciding the fate of the country in regards to citizenship. Members of the assembly at that time were elected from different parts of the country and certainly had ideological differences among them. Some of them believed that Constitution of India has to be secular in nature as it was not a country comprised of only one religion. Some others believed that after the partition India is the only country in the world which is left for the people having faith in Hinduism and hence, they should get priority over others in terms of citizenship. One thing that has to be noted is that while members had differences of opinions, yet while debating provisions of the draft constitution they differed but listened to each other with a great amount of respect and civility.

From 1947 to 1948 the drafting committee took its time to prepare the draft Constitution. Now as we have discussed, the terms had changed. India had become a sovereign nation and was partitioned. The creation of Pakistan was essentially on communal lines which resulted in widespread violence. The trauma of partition did cast a long shadow on the minds of the drafters and the question "What meant to be an Indian" was in forefront. The definition of an Indian citizen had to be more detailed

[7] B. Shiva Rao, THE FRAMING OF INDIA'S CONSTITUTION- A STUDY,2nd Ed. 2006,p. 154.

now. The original two-line definition needed changes again where complexities of the question had to be addressed. As different amendments and deliberation came to determine the question of citizenship, Babasaheb being the chairperson of the drafting committee collated them and came up with a new set of provisions which he submitted in the Assembly in the autumn of 1949. It is to be noted that while formulating the definition of citizenship it gave "maximum headache" to the members. While taking up article 5 and 6 of the draft Constitution of India for debate, President of the Constituent Assembly Mr. Rajendra Prasad called it as "veritable jungle of amendments" as there were nearly 130 amendments proposed by the members to these two draft articles.

Ambedkar while he consolidated the amendments, sought to replace Article 5 and 6 of the 1948 draft by adding six new articles 5, 5-A, 5-AA, 5-B, 5-C and 6. These six articles categorised five kinds of persons. The first were the persons born and domiciled in India: which were the majority. Second were those who were domiciled or resided but not born in India. For instance, it included persons living in Pondicherry, Goa etc. who were living under French or Portuguese colonies. It also included Persians coming from present day Iran who resided in India for a long time and had the intention to become citizen of India. Thirdly, it also included persons who were residents of India but migrated to Pakistan; fourthly, those persons resided in Pakistan but had migrated to India and lastly, persons who or whose parents were Indian born but were residing outside India.[8] These classes of persons were added in the Ambedkar's draft.

Dr. Ambedkar while placing the new clauses remarked that these provisions were introduced to solve the immediate problems that are being sprung up because of the partition and hence these provisions were essentially 'ad-hoc' and hence he stated:

> "The business of laying down a permanent law of citizenship," he observed, "has been left to Parliament ... [and] Parliament may make altogether a new law embodying new principles."[9]

Going by these draft provisions, it could be understood that those who were born and domiciled in India were the first category of persons who automatically became Indian citizens. Second category was persons not born but resided in India for a long time. Condition imposed on those persons was that they should have resided in India for at

[8] Ibid. p.164

[9] Draft Article 5, as introduced into the Constituent Assembly on 10th August, 1949., Speech of Dr. B.R. Ambedkar, *Constituent Assembly Debates*, Vol. IX (August 10, 1949).

least for a period not less than five years. Then there were two categories in which persons were divided. Those who were Indian residents and had migrated to Pakistan and those who were Pakistani residents migrated to India. Those persons who migrated from India were also further divided in two classes: Those who had come to India prior to July 19, 1948 and those who had come after that. The July 19, 1948 cut-off was decided as an ordinance was passed on this date that said no one could enter India unless he/she had a valid permit. There were three kinds of permit which were temporary, permanent and for resettlement. Those who came to India prior to the cut-off date were automatically given Indian citizenship. But those who wanted to come after July 19 1948 had to apply before coming and had to follow a certain procedure. An officer was appointed by the Government of India who had to register such applications so made. There were also another set of people who at first migrated to Pakistan but didn't find that place as expected and hence wanted to return back to India. Now if they return after July 19, 1948 and before commencement of the Constitution, they not only needed a permit to enter but to have Indian citizenship they now needed a permit of resettlement. The last categories of persons were those who are residing outside India but who or whose parents were born in India. For them the process of acquiring Indian citizenship was rather simple. All they had to do was to make an application to the consular officer of the Government of India of that country before commencement of the Constitution.
At this point it is again to be reiterated that the object of laying down such complex provisions were only to solve the problems faced at that point of time and it was in no way unalterable. The entire matter relating to citizenship was otherwise left for the parliament to decide. The power of Parliament to decide the fate of citizenship was almost absolute as they had the power not only to make further provisions but also could take away citizenship from those who were entitled to it at the commencement of the constitution.

### 3.1 Prioritising certain religions

The complexities of this issue could be understood by giving a detailed reading of the Constituent Assembly debates. Long before Ambedkar presented his fresh draft on citizenship, Gurumukh Singh Musafir who later went on the become Chief Minister of Punjab was among the first one to to raise a religious test for citizenship as partition had happened till then. While speaking about provision of citizenship he said :

> "... in this Article no distinction has been made between a foreigner and the Hindus and the Sikhs coming from Pakistan. Those that are still perforce in Pakistan will have no right of acquiring citizenship after this Constitution has been framed. I think this Article should be so amended that they might be regarded as the citizens of this land, whenever they come here"[10]

Musafir's statement was one of the first one which argued that certain people belonging to specific religious should have priority over others in the matter of citizenship. It was indeed based on historical circumstances came out of partition. His argument gained momentum once Ambedkar placed the fresh citizenship provisions in Constituent Assembly during 1949 debates. Panjabrao Deshmukh who became the first minister of Agriculture in Nehru's cabinet was the most vocal voice in support of religious criteria being introduced to citizenship clause in the Constitution of India. He vehemently opposed Ambedkar's draft on citizenship and famously said it would make "Indian citizenship the cheapest on earth"[11]. He had problems with the provisions relating to citizenship by birth. As per Deshmukh, if the draft articles has to be accepted then even a lady giving birth to a child in a Bombay port would be have got citizenship of India. He was also infuriated by the provision that allowed people (essentially Muslims) to return back from Pakistan by getting a permit and could get citizenship rights. The fear was reasonable as it was feared that it might create difficulties in terms of evacuee properties. After people migrated to Pakistan, Government of India became custodian of their properties. Large number of which was allocated to people coming from Pakistan. As migrated people who wanted to come back to India and they would want to return to their properties that they left. The problem was more deep-rooted as there were no similar provisions made by Pakistan.[12] Deshmukh wanted to amend citizenship provision and add the following line:

> "... every person who is a Hindu or a Sikh by religion and is not a citizen of any other State, wherever he resides ... shall be entitled to be a citizen of India."[13]

[10] Speech of Gurmukh Singh Musafir, *Constituent Assembly Debates*, Vol. VII (November 8, 1948).
[11] Speech of P.S. Deshmukh, *Constituent Assembly Debates*, Vol. IX (11th August, 1949).
[12] Supra 7, p.166.
[13] Supra 11.

Deshmukh went one step further than Musafir whose argument was based on Deshmukh's version was more radical as it was grounded in a racial idea of what meant to be an Indian. It is evident from the Constitutional Assembly debates that Deshmukh was not a believer of the idea of secularism. By giving citizenship indiscriminately, he thought the Assembly is "going too far in the business of secularity". He was not in support of wiping out 'his own people'(i.e. Hindus and Sikhs) to prove 'secularity'. Deshmukh argued that the formation of Pakistan was because the Muslims wanted a different state of their own. As the Hindus and Sikhs do not have any other place to go to, India should be their home state by default and one should get citizenship of India on the very point that he/she is a Hindu or Sikh. He rhetorically asked "... if the Muslims want an exclusive place for themselves called Pakistan, why should not Hindus and Sikhs have India as their home."[14]. Deshmukh was arguing for having exclusive provisions for Hindus and Sikhs in the citizenship clause of Indian Constitution as they had 'no other place to go to'. He henceforth proposed that "every person who is a Hindu or a Sikh and is not a citizen of any other State shall be entitled to be a citizen of India."[15] While pushing for it he also stated that his argument of giving special treatment to Hindus and Sikhs is not sectarian or communal. It was solely because these people have no other places to go to. The stand of Deshmukh was clear. Just like Pakistan had their State exclusively for Muslims, he wanted Hindus and Sikhs to have their own homeland which he argued is India.

There were certain voices raised in support of Deshmukh's proposition. For instance, Shiban Lal Saksena also shared Deshmukh's view that Hindus and Sikhs do not have any other place except India. Bhopinder Singh Man on the other hand was also not ready to except the fact that there are no priorities given to Hindus and Sikhs. He in his speech contended that "a weak sort of secularism has crept in and an unfair partiality has been shown to those who least deserve it."[16] He was angered by the fact that a cut-off date has been set up for returning before the commencement of the Constitution will exclude those who are religiously persecuted after the cut-off date. They had to go through unnecessary trouble as they had to apply for permits. His suggestion was simple: Any person who is religiously persecuted and returned to India at the commencement of the

[14] Ibid.
[15] Ibid.
[16] Speech of Bhopinder Singh Man, *Constituent Assembly Debates*, Vol. IX (12th August, 1949).

Constitution should be given citizenship rights.[17] He feared that Hindus and Sikhs would become soft targets of communal frenzy in the neighbouring state and might flare-up against them and hence they should not be debarred from getting citizenship after the cut-off date. Though many people accepted this argument, there was however resistance to this equally. R.K. Sidhva while refuting the argument of 'own people' cited examples of the Parsis and asked why they would not get the chance to come back?[18] This distinction in religious lines was criticised by others too. None other than Pandit Nehru rose up and took a stand against engraving discrimination in the Constitution of India in the name of religion.

> "You cannot have rules for Hindus, for Muslims or for Christians only. It is absurd on the face of it; but in effect we say that we allow the first year's migration and obviously that huge migration was as a migration of Hindus and Sikhs from Pakistan. The others hardly come into the picture at all."[19]

What he pointed out was that the migration from Pakistan to India was mostly Hindus and Sikhs and they have not been discriminated against. Also, those who are coming after the July 19, 1948 cut-off are mostly non-Muslims. However, after the introduction of the permit system some Muslims may come too. But it has to get a permit from the office and it was not issued until a valid reason was shown. Hence, the fear of Muslims coming again was nothing but absurd. As Nehru said, creating citizenship law in a secular way is what everyone does except "very few misguided and backward countries". It was Ayyar once again, who made the members of the house understand the 'narrow' and 'broad' conceptions of citizenship clarified that India is committed to the idea of making it a secular state and hence it is impermissible for us to differentiate people in the racial or religious grounds.

After all these debates, the amendment proposed by P.B. Deshmukh and similar amendments were defeated and the original draft presented by Ambedkar was retained and adopted which was prima facie religiously and racially neutral.

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[17] Ibid.
[18] Gautam Bhatia, "Citizenship and the Constitution", (2020),SSRN, p.9, Available at :https://ssrn.com/abstract=3565551.
[19]Speech of Jawaharlal Nehru, *Constituent Assembly Debates*, Vol. IX (12th August, 1949).

On the other hand, members were still not convinced with the introduction of the permit system. They opposed giving citizenship to persons who returned back from Pakistan to India. The source of this rigidity and unwillingness to give citizenship to those people originated from the deep rooted anguish and wounds of partition.[20] Therefore, Pandit Thakur das Bhargava wanted to start this clause by the phrase "On account of civil disturbances". He was essentially proposing exclusion of Muslims from the provisions as he thought Muslims will not face persecution. He argued that "man should not come here and become a citizen just to bolster up a Muslim majority in one of the provinces of India. Therefore the first condition of migration would be that he comes here on account of disturbances."[21] His argument too gained support in the Assembly, but ultimately got defeated and the cutoff date and permit system remained.

By reading these debates, it is clear that though citizenship provisions were essentially 'ad-hoc' and were finalized in a time where traumas and wounds of partitions were still afresh. The members while formulating the 'ad-hoc' citizenship provisions could easily succumb to the emotions that partition evoked and could have made these provisions having religious or racial qualifications. But the Constituent Assembly *consciously* refrained itself from doing that. It vouched itself for an equal and secular citizenship.

### 3.2 Concerns of Assam

Apart from the concerns raised by other members, Members elected from the province of Assam in the Constituent Assembly too have raised their voices and opinions in regard to citizenship. By going through the speech of Rohini Kumar Chaudhuri, member elected from Assam province in the Constituent Assembly raised his argument in support of Thakur Das Bhargava's amendment. he was concerned with the people who would be vulnerable to communal violence that might happen in East Bengal and he wanted to ensure security for those minorities in East Bengal who might become victims of communal disturbances. Choudhuri also mooted for citizenship rights for those who originally belonged to Sylhet and now are residing in provinces of Assam. He insisted that people who came from Sylhet to Assam at a time where there was no fear of disturbances cannot return now to that place because of disturbances should also get citizenship rights.

[20] Supra 18, p.9.
[21] Speech of Thakur Das Bhargava, *Constituent Assembly Debates*, Vol. IX (11th August, 1949).

> "I want to make it perfectly clear that I want citizenship-rights for those people of East Bengal who had gone over to West Bengal or Assam out of fear of disturbance in the future or from a sense of insecurity and-also for those people who have come over from Sylhet, who at the time of coming had no fear of disturbance or anything of that kind, but who, on account of fear of disturbances now have decided to live here."[22]

At the same time Choudhuri also cleared his stance that while he wants citizenship for certain classes of people as mentioned, he also wanted to exclude another class who as per Choudhuri came to Assam only three years ago and forcibly 'grabbed land'. He contended that there's certain class of people who have no good will for the province but now want citizenship to exploit the province of Assam. Rohini Choudhuri's contention was simple. He thought that the permit system which allowed migrated people from India to Pakistan to come again in India will leave the gates open for both Hindu Bengalis and Muslims to come from East Bengal to Assam will disturb the culture and exploit the province of Assam. It was Dr. Ambedkar who stood up to defend the clause he introduced and rebutted Rohini Choudhuri. Ambedkar said that it is of no doubt that those who come to India from Pakistan before the cut-off date would automatically entitle to Indian citizenship. But as regards to persons coming after that, there are three caveats. Firstly, one who has come after 19th July 1948 has to first apply for citizenship. Secondly, those persons must prove that they were staying in India for at least six months prior to the application and thirdly which was most important condition is that they had to get themselves registered in the office of Government of India established for that purpose. Ambedkar said that the power of registration is a plenary power and there's absolute discretion of the officer appointed to allow or not allow for registering. The officer will examine reasons for allowing or not allowing that particular person to grant resettlement permit. Hence, it won't be a problem.

After debating over citizenship for over two years, the final draft was adopted in 1949. In November 1949, the Assembly met for the final reading of the constitution. With few disagreements and satisfaction of others the issues related to citizenship were resolved. The third reading of the constitution was important because the drafters finalised the work they have done together from many months and it set out a vision of India that

[22] Speech of Rohini Kumar Choudhuri, *Constituent Assembly Debates*, Vol. IX (12th August, 1949).

they wanted to give it to the future generations to come. As suggested by Gautam Bhatia, going through the debates in the Constituent Assembly it is clear that the provisions regarding citizenship were never to be read in isolation. It is harmonious and has to be read as a whole. It is indeed "web of principle, not single strands floating in the air."[23] After so much that happened in between the Constitution drafting process, be it establishment of Pakistan, violence that followed everything tested the foresightedness of the drafters. They had to draft a constitution which will not only deal with the present situation but that also deals with the future. There were suggestions to give priority to certain religions; there were voices raised for a nation for Hindus in the line of Pakistan. But everything was debated and all came to a conclusion that India will adopt a universal citizenship which will not have any qualifications of racial and religious lines. Through debates and deliberations the Assembly finally endorsed a "holistic constitutional vision" which was founded in the principles of non discrimination, equality and secularism. It made Indian citizenship inclusive and also left it open for the Parliament to formulate the future paths. It was visionary in the sense that it incorporated provisions regarding mass migration and rejected any religious notion that could be associated with Indian citizenship.

[23] Supra 18, p.11.

## 4. POST-CONSTITUTIONAL CITIZENSHIP

The issue of citizenship as we have seen in the previous chapter led to crucial debates. At the end of it, all members collectively drafted the Constitution of sovereign India giving its people a legal and political document by which terms the future of the country was to be decided. The transition from subject hood to citizenship was a remarkable moment in Indian political history. The anxiety and confusions regarding partition was clearly reflected in Part II of the Constitution.

As discussed in the previous chapter, at the time of commencement of the constitution every person who were domiciled in India irrespective of their caste, religion, sex etc. granted citizenship of India unless the person voluntarily acquired citizenship of any other country. Part II of the newly born Constitution of India was dedicated to address the complexities of citizenship and it commendably did. Article 5 of the Constitution provided citizenship to three categories of persons: who was born in the territory of India, either of whose parents were born in India and thirdly those who ordinarily resided in the country for not less than five years before the commencement of Constitution- all were now Indian citizens. However, the wording of Article 5 created some confusion. It said, "At the commencement of this Constitution every person who has his domicile in the territory of India…" The legal meaning of the word 'domicile' here generated debate. In *Sankaran Govindan v. Lakshmi Bharathi*[1]**,** the court while adjudicating a case regarding succession went in depth to find the meaning of 'domicile' used in Article 5. The apex court opined that the question of domicile was a mixed *question of law* and though it had been extensively debated over the years, the satisfactory settlement on this topic has not been reached. To establish domicile, the court said that there must be a presence of intention of permanent residence which merely means that at the relevant time it has to be established that the person possessed requisite intention for permanent residence. The relevant time period has to be construed with the nature of the inquiry. In one another case[2], it was discussed extensively by the Apex court. Here, the court stated that domicile is a legal concept and even if a person does not have a permanent residence it was through law that a person has to be invested with domicile. It identified two main classes of domicile. One which is assigned to a

[1] 1975 SCR (1) 57.
[2] Dr. Pradeep Jain etc v. Union of India and ors., 1984 AIR 1420.

person at birth which would be the domicile of his parents. Another category which is the domicile of choice is when a person after attaining majority substitute his domicile at birth by acquiring domicile of another place. On the question of whether a state under Union of India could have a separate domicile, the court answered negatively. The court opined that the Constitution of India only recognises one domicile that is the domicile in India. It referred to Article 5 while making this observation. The court cleared the legal position that if one person permanently residing in one state moves to another Indian state, the domicile status remains the same, i.e. he continues to possess Indian domicile. Going by the observations of the court it can be said that Article 5 while referring to Domicile in India included those persons which were residing in India with the intention to make it their permanent home.

Though Article 5 included the majority of the population, the multifaceted partition that created new problems in regard to granting Indian citizenship was dealt with in Article 6 and 7 of the Constitution. Article 6 was incorporated to deal with conferring rights to those who have migrated to India from Pakistan. The non obstante clause stipulated that anyone who or whose either of their parents or any grandparents were born in British India[3] *and* who has migrated to India and has been an ordinary resident in the territory of India since the date of his migration on or before 19th July, 1948 was to be conferred citizenship of India. Another class of persons were added to this Article.

Those who migrated after 19th July cut-off to India and had been registered as citizens of India by the officer who was tasked to do so would also be given citizenship only if that person has resided in India six months prior to date of such application.[4] This was the permit system that the Constituent Assembly intensely debated about. Article 6 conferred the right to citizenship to those who were left out by Article 5. Article 7, on the other hand clearly mentioned that anyone who has migrated to Pakistan after 1st March, 1947 and has not obtained the permit for resettlement or permanent return shall not be deemed citizen of India. The Apex court in *State of Madhya Pradesh v. Peer Mohd.*[5] clarified that "only persons who had migrated prior to the commencement of the Constitution fall within the scope of Art. 7". In this case it was held that the

[3] Defined in the Government of India Act 1935 as originally enacted.
[4] Article 6 (b), Constitution of India,1950.
[5] 1963 AIR 645.

respondent who migrated to India sometime after January 26, 1950 was deemed not to be a citizen of India. The word 'migrated' has also been contested in courts. In *Shanno Devi v. Mangal Singh*[6] The Supreme Court interpreted the word as to "have intention to leave India permanently and settle finally in Pakistan" Again, in *Kulathil Mammu v. The State of Kerala,* the debate on the word 'migrated' again came up. The definition given in the *Shanno Devi case* was held to be correct by M. Hidayatullah, J. stated that:

> "In ascertaining the meaning of domicile, the decisive consideration is whether in so migrating a person changed his abode, that is to say, he left the territory of India to go and acquire an abode in the territory which is now in Pakistan. Just as domicile is a question of fact and intention, migration is also a question of fact and intention. The immediate requirement of intention in migration as used in the Constitution is that the person intended to change his abode from one part of India to another. If the part to which he went came to be incorporated in the territory of Pakistan he had to return in the manner prescribed in the proviso to Art. 7 or he would not be deemed to be a citizen of India."

J.C. Shah, J. on the other hand was not ready to accept this interpretation. He opined that the word migration can have different meanings in different articles.

> "...it in some contexts means movement from one region or country to another implying intention to settle in a new land permanently; it in other contexts means movement from one place to another without an intention to settle permanently in that of the other place. In ascertaining the meaning of the expression "migrate" in Arts. 6 and 7 the Court would have regard to the scope and object of the Constitutional provisions examined in the light of the events which were witnessed both before and after the birth of the dominions of India and Pakistan, resulting in a violent upheaval in which large scale exodus of population took place from across the boundaries which divided the dominions."

Thus, it is evident that Constitutional wordings were construed differently and were done case to case basis. It shows the complex scenarios that partition created and the

[6] 1961 AIR 58.

court had to rule decisively so that wrong interpretation does not lead to injustices. Apart from the above articles Part II excluded those persons who had voluntarily acquired citizenship of any other foreign State.[7] Apart from these, a person whose parents or grandparents who born and was ordinary resident of British India and now living in any other foreign country could also become Indian citizen if he or she has been registered as citizen of India by the consular or diplomatic representative of India in the country where he or she is ordinarily residing now.[8] While article 10 mentioned about continuance of citizenship who acquired citizenship under article 5-8, the main provision however related to citizenship was Article 11 which empowered the Parliament to make any provisions from time to time regarding acquisition and termination and all other matters related to citizenship. It was the provision which set to decide the future of Indian citizenship and the plenary power was exclusively vested upon the Parliament.

### 4.1 The citizenship Act of 1955

Five years after the Constitution was enacted, the first law that was legislated encompassing citizenship provisions was the Citizenship Act, 1955[9].

"The mere fact of birth in India invests with it the right of citizenship in India...we have taken a cosmopolitan view and it is in accordance with the spirit of the times, with the temper and atmosphere which we wish to promote in the civilised world." [10]

These were the wordings of Govind Ballabh Pant, who was the then home minister who introduced the Citizenship Bill, 1955 in the Parliament on 5 August, 1955

Interestingly, there were no provisions regarding citizenship between 1950-1955, creating a 'legal vacuum'.[11]Interestingly, while the citizenship law was drafted, migration continued. People were moving across borders via travel documents, permits of resettlement etc. As argued by Anupama Roy, the intermediate years between commencement of the Constitution and notifying of Citizenship Act, 1955 citizenship of India occupied, what she calls "zone of liminality".[12] This period particularly affected

[7] Article 9, Constitution of India,1950.
[8] Article 8, Constitution of India,1950.
[9] Act No.57 of 1955 as enacted originally.
[10] "Citizenship Act: Govt changes criteria qualifying a person as a citizen of India", INDIA TODAY, Monday, December 15, 1986,Available at :https://www.indiatoday.in/magazine/indiascope/story/19861215-citizenship-act-govt-changes-criteria-qualifying-a-person-as-a-citizen-of-india-801552-1986-12-15.
[11]Anupama Roy, "MAPPING CITIZENSHIP IN INDIA",1st Ed.2010,p.34.
[12] Ibid., p.34.

minors and women and their legal position remained indeterminate. The scope of this paper does not cover this area and hence the legal position for the “in between" people will not be discussed here.

*4.1.1 Citizenship by birth*

The Citizenship Act, 1955 was introduced in the Indian Parliament on 2nd May 1955. This act was to provide a legal framework for acquisition and termination of citizenship. It provided citizenship to people on the basis of birth, descent, naturalisation, registration and incorporation of a new territory. Section 3 of the Act provided citizenship *by birth* to those persons who were born after the commencement of the constitution. However, it added an exception clause to exclude those whose father was envoy of a foreign sovereign country and were not a citizen of India.[13] Similarly, it also excluded those whose father was an enemy alien.[14]

*4.1.2 Citizenship by descent*

The second provision was granting citizenship *by descent.* Section 4(1) states that a person born outside India after commencement of the constitution shall become citizen by descent if his or her father was a citizen of India by birth. It also excluded those persons whose father was also citizen of India by descent saving certain situations where the birth of his father was registered within a year in the Indian consulate of that foreign country or under this act, whichever is later. Situations where his or her grandfather at the time of birth of their father was a servant of the Government of India was kept away from this exception. If a person falls within these two categories then he or she could apply for citizenship even if their father also claimed citizenship by descent. This provision had retrospective effect as to cover all those persons born after commencement of the Constitution and before commencement of the Citizenship Act, 1955.

[13] Sec. 3(2)(a) Citizenship Act,1955.
[14] Sec. 3(2)(b) Citizenship Act,1955.

*4.1.3 Citizenship by registration*

The third mode of acquiring citizenship given under Citizenship Act, 1955 was *by registration.* It further divides five categories of persons who could claim citizenship under this provision. The first category included persons who could trace their origins to India and had been ordinarily residing in India for at least one year before making the application for registration of citizenship.[15] To prove one's origin as Indian, either of their parents or grandparents had to be born in undivided India. This category was to cover a large number of people 'displaced persons' from Pakistan who were left out of Article 6 and 7 of the Indian Constitution. Secondly, it included those who though do not ordinarily reside outside India but could trace their origins to India.[16] This provision was in accordance with Article 8 of the Constitution of India. Persons living outside India had to register themselves at the Indian consulate of the country they presently reside instead of Article 8. Thirdly, women who are or have been married to a person who is a citizen of India could also claim citizenship under this provision.[17] Apart from women, minors could also claim citizenship by virtue of being born to parents, one of whom is of Indian origin.[18] The last category included those persons from certain countries who are major and not insane, who have been ordinary residents of India and have been residing since a year before applying for registration and those who are in service of the Government of India.[19] Countries which are to be covered by this provision were the commonwealth nations and the Republic of Ireland[20] after having requisite service or residence qualification. The provision for this was to be done purely on a reciprocal basis. It was a privilege that was conferred to those commonwealth countries who were ready to extend that same to Indian origin persons residing in those countries.

Every person who was to be granted Indian citizenship had to take an "oath of allegiance" which was specified in schedule II of the Act.

[15] Sec. 5(1)(a) Citizenship Act,1955.
[16] Sec. 5(1)(b) Citizenship Act,1955.
[17] Sec. 5(1) (c) Citizenship Act,1955.
[18] Sec. 5(1)(d) Citizenship Act,1955.
[19] Sec. 5(1)(e) Citizenship Act,1955.
[20] First Schedule, Citizenship Act,1955.

*4.1.4 Citizenship by Naturalisation*

To obtain citizenship of India, one had to make an application in the prescribed format and had to be of full age and capacity to be granted a certificate of naturalisation. But, it had mentioned certain qualifications in the third schedule to be a citizen by naturalisation.[21] This provision was specifically for persons not covered under s.5 of the Act. Conditions precedent to obtain citizenship by naturalisation mentions firstly that he couldnot be ubject or citizen of such a country which practices discrimination towards Indians by not giving chance to become their citizens by naturalisation. Secondly, he or she had to have resided in India or worked under Government of India at least twelve months throughout preceding the date of application. Thirdly, at least seven years excluding the twelve months criteria provided in the earlier qualification he or she had to either reside or work under Government of India for a time aggregate to not less than four years. It means during this total seven years, at least four years he or she had to be physically present in India or work for the Government of India. Apart from these criteria, one had to be of good character, should have to have knowledge of Indian languages and at the time of receiving naturalisation certificate he or she had to have intention to reside in India. That being said, the Government of India had the power to confer citizenship by this process to anyone who had conferred distinguished services in the fields if Art, philosophy, literature, science or for human progress and waive all the qualifications mentioned above[22].

Under s. 14 of the Act, the Central Government or the prescribed authority had absolute discretion regarding refusal to grant citizenship under Ss. 5 and 6. It could also be done without giving any reasons. Moreover, the power of judicial review was also curtailed in cases where citizenship has been refused to be given under this section making the decision of the authority or the Central Government being final.

*4.1.5 Citizenship by incorporation of a territory*

The last mode of granting citizenship was related to cases of incorporation of a territory. It was more of a conferment than acquiring citizenship.[23] At that time while the Act was being drafted, many negotiations were going with states who were not part of India at

[21] Sec.6 (1), Citizenship Act,1955.
[22] Proviso to 6 (1), Citizenship Act,1955.
[23] Sec.7, Citizenship Act,1955.

the time of commencement of the Constitution. It was a way left open to those people residing in princely states who could one day become part of India and hence residents of those princely states automatically granted citizenship. A territory could become a part of India by virtue of Article 2 of Indian Constitution. If such an acquisition happens then the Central government was authorised to notify by an official order to specifically state who could become citizen of India with respect to the acquired territory and those persons covered by the order were deemed to be Indian citizens. Some of the orders made to give effect to this provision were Goa, Daman and Diu Citizenship Order,1962, Dadar and Nagar Haveli (Citizenship) Order 1962, Sikkim (Citizenship) Order, 1975 etc.

These were the five modes by which one could acquire Indian citizenship. Looking closely at the provisions, especially provisions related to acquisition of citizenship by birth and by descent, it was not gender neutral. Under s. 3(2), only whose father was an envoy or whose father was an enemy alien was not granted citizenship. It did not specify what would happen to a person whose mother was an envoy or enemy alien. Similarly, descent could be drawn only from the father's side or from the male lineage. This gender disparity was removed more than 35 years after an amendment was made into it in 1992.[24] The modes through which citizenship could be acquired in India was inclusive and farsighted. It did not restrict it only to people of Indian origin but included almost everyone, with certain qualifications.

### *4.1.6 Termination of citizenship*

Apart from mode of acquisition, this Act specified on what circumstances one's citizenship could be terminated. Sec.8 deals with major persons who in his or her full capacity renounce his/her Indian citizenship by declaring the intention to do the same in front of the prescribed authority, upon registration he/she ceased to become Indian citizens. In this case, minors related to the person who has claimed his/her citizenship by virtue of that person being an Indian citizen will also lose their citizenship.[25] But if that children within one year after attaining age of majority expressed to be Indian citizens again, it was allowed.[26] Secondly, where a person who was a citizen of India acquired citizenship of another country voluntarily he also ceased to be an Indian

[24] Citizenship (Amendment) Act, 1992 (Act No. 39 of 1992).
[25] Sec.8 (2) Citizenship Act,1955.
[26] proviso to Sec.8, Citizenship Act,1955.

citizen.[27] The power to determine whether or when or how one person has acquired citizenship of another country is given to an authority whose decision shall be final. Sec.8 and Sec.9 were designed to deal with the problems of dual citizenship. This provision attracts where a person is also a citizen of another country. It is a possible scenario where a person who has attained his citizenship under Ss. 3-7 is also a citizen of another country by birth or otherwise. Ss.3-7 does not have any precondition for renouncing citizenship of another country to be an Indian citizen. Hence, this provision was added to the Act. While Sec. 8 is about renunciation, Sec. 9 talks about termination of citizenship. It is a provision to automatically terminate citizenship of a person who voluntarily or subsequently acquires citizenship of another country. Though this provision has similarity with Art. 9 of the Constitution, yet the scope of this provision is wider. There might be, of course, questions as to when and how someone has acquired citizenship of another country. Evidence to answer such questions might not be available readily and hence help of diplomatic representatives of India working in that foreign country has to be sought. In these cases, the provision specifies that it would be decided by prescribed authority with the help of Rules of Evidence.

Sec. 10 of the Act deals with cases where the Central Government may deprive someone of his Indian citizenship if the same has been obtained by virtue of registration, naturalisation or under clause (c) of Art. 5 of the Constitution. It provides certain grounds to deprive citizenship of a person. Firstly, if the certificate of naturalisation is obtained through wrongly representing itself or by fraud or by concealing any material facts the Central Government may by order deprive anyone of Indian citizenship. Secondly, it can deprive someone of Indian citizenship if the citizen by a speech or act shows disrespect to the Government.[28] Thirdly, if it is proven that during war the citizen has engaged unlawfully in any trade or business with an enemy or has assisted the enemy in that war then also citizenship can be taken away.[29] Also if the citizen, within five years after registration or naturalisation, has been convicted of a crime and has been sentenced to minimum of twelve months by the courts of any country and lastly if if the citizen has ordinarily resided out of India continuously for a period of seven years and in this period has neither been at any time in service with an international

[27] Sec. 9, Citizenship Act,1955.
[28] Sec.10 (b), Citizenship Act,1955.
[29] Sec.10 (c), Citizenship Act,1955.

organisation of which India is a member nor been in the service of a Government of India and also not have registered annually in the Indian consulate to express his intention to retain his/her Indian citizenship it could be taken away by the Central Government. Generally, the Act suggests that before acting their powers under this provision, the Central Government would give a notice prior to the concerned citizen and he would be given a chance to place his opinion. This provision is in consistency with the principles of natural justice. This clause also provides for appointment of an *ad hoc committee* which would consist of three members to conduct regular inquiry as to check matters related to these.

Apart from the provisions related to acquisition and termination of citizenship, it has a provision for commonwealth membership too.[30] It says that citizens of the countries mentioned in the First schedule of the Act (Commonwealth countries and Republic of Ireland) by virtue of having citizenship of such country will also get commonwealth citizenship of India. Also, the Central Government had the power to confer all or any rights to citizens of countries mentioned in the First schedule. But it has to be based on a reciprocal basis. Reciprocity is the precondition to apply this provision. Both these provisions were later omitted from the Act.[31] Furthermore, It was a punishable offence to misrepresent or get any material benefit from this act by fraud and anyone found guilty of the offence could be imprisoned for upto six months or be fined, or both.[32]
Thus, it was for the first time that the Parliament by virtue of Art. 11 made a comprehensive code regarding citizenship in India and laid down the basis of the citizenship law in the country. It also repealed British Nationality and Status of Aliens Acts 1914 and 1943 and all laws relating to naturalisation ascertaining its sovereignty. Though it was in 1955 that the Act was implemented, to encapsulate newer problems and difficulties in regard to citizenship, it was amended from time to time. For instance, in 1957 the Act was amended as certain countries, i.e. Ghana, Malaya and Singapore had also become commonwealth nations. Hence through this amendment these countries were also added to the First Schedule of the Act so that citizenship could also be conferred to citizens of these countries on reciprocity as per the provisions of this

[30] Sec.11, Citizenship Act,1955.
[31] Citizenship (Amendment) Act, 2003
[32] Sec.16, Citizenship Act,1955.

Act. But the most important amendments in this Act were done in the period between 1985 and 1986 which will be discussed below.

### 4.2 Addressing the Assam question: Citizenship (Amendment) Act, 1985

The anxieties around the issue of illegal immigrants have been on the air in the state of Assam since independence. It has a particular historical background of migration which would be discussed in the later stage. But the issue first came to limelight when a six year long movement started after noticing serious irregularities in the voter list of 1979 by election of Mangaldoi constituency.[33] The revision of the voter list of that year saw a sharp increase in the number of voters which raised eyebrows. This was a turning point in the political history of Assam and led to arguably one of the longest student movements of the world.[34] It was the All Assam Students' Union (hereinafter 'AASU') under the leadership of Prafulla Kumar Mahanta, Bhrigu Phukan etc. sustained the six-year old movement demanding immediate settlement of the foreigners issue.[35] The movement, known as the 'Assam Movement' saw large-scale violence and disorder in the region and was supported by a large number of people from Assam who feared the illegal influx might end up destroying the cultural and linguistic heritage of Assam and saw it as a threat to their identity. The genesis of the Assam movement will be discussed in the next chapter in detail.

Nevertheless, the Assam movement was finally led into a compromise between the Union Government and the protestors by signing a 'Memorandum of Settlement' between the two groups. The Memorandum, known as the Assam Accord of 1985 was a compromise between the two parties which was concerned around cultural and economical development of the state which included promise from the Rajiv Gandhi Government to ensure "constitutional, legislative and administrative safeguards … to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people' and the 'all round economic development of Assam."[36] Apart from it, The Centre committed for "a speedy all round economic development of Assam, so as to improve the standard of living of the people. Special emphasis will be placed on

[33] Sangeeta Barooah Pisharoty, ASSAM: THE ACCORD, THE DISCORD, 1st Ed.,2019, p.24.
[34] Anup Sharma, "A whiff of 1979 Assam movement",THE HANS INDIA, Sunday, February 19,2019, Available at:https://www.thehansindia.com/posts/index/Opinion/2019-02-10/A-whiff-of-1979-Assam-movement/491770.
[35] Supra 33, p.23.
[36] Clause 6, Assam Accord, 1985.

education and science and technology through establishment of national institutions."[37] Apart from these promises to safeguard the culture and economic development of Assam, one of the most vital issues that the settlement accord wanted to solve was the issue of illegal migrants. On this issue, the Accord formulated a system of 'graded' citizenship[38] differentiating people on a date on which they entered India. It sought to invent a criteria which said that people who have entered the state of Assam between 1st January 1966 and up to 24th March 1971 would be detected and shall be disfranchised for a period of 10 years. It meant people who entered in between this period would cease to be voters for 10 years from the date of their detection and after compilation of the said 10-year period, their name would be automatically restored. Persons coming after 24th march 1971 were deemed to be illegal migrants and were to be detected, deleted and deported from India.[39] As the Assam Accord was a political settlement, it needed to be given legal effect. As a result of the Assam Accord, the Central Government amended the Citizenship Act in 1985 adding sec. 6A to it.[40] It was to execute the core issue of the Memorandum of Settlement which was the foreigners' issue. This section divided persons in three categories. One, who came to Assam before 1966, second, one's who came to Assam after 1st January,1966 but before 24th March 1971, and third those who came after 24th March 1971. Sec. 6A intended to give citizenship to all the persons who came to Assam from Bangladesh (including those whose names were included in the 1967 electoral rolls ) from 1st January, 1966.[41] As for the second category of person, who entered Assam after 1st January,1966 but before 24th March 1971 the section provided two conditions to be fulfilled to get citizenship of India.[42] Firstly, they have to ordinarily reside in Assam from the period of their entry and secondly they have to be detected as a foreigner. If both the conditions are fulfilled then those persons would get the chance to register themselves as citizens of India and shall have all the rights as Indian citizens except right to vote for a period of ten years from their date of detection.[43] The persons in the second category also got rights to have Passport under Passports Act, 1967 but did not have the right to be enrolled in any electoral roll whether for Assembly election or for Lok Sabha election. But they would

[37] Clause 7, Assam Accord, 1985.
[38] Supra 11, p.101.
[39] Clause 5.8, Assam Accord,1985.
[40] Citizenship (Amendment) Act,1985 (Act No.65 of 1985).
[41] Sec.6A(2), Citizenship Act 1955.
[42] Sec.6A(3), Citizenship Act 1955.
[43] Sec.6A(4), Citizenship Act 1955.

be deemed as citizens of India after expiration of 10 years. Also, the amendment had provisions for such persons who did not want to be citizens of India. They had to give a formal application to the concerned authority expressing their intention for the same.

The inclusion of Sec. 6A to the Citizenship Act, 1955 thus added a sixth ground for acquiring citizenship. It also gave legal recognition to "different yet equal" or differentiated citizenship[44]. This sixth category of citizenship only applied to the state of Assam. This shows that the amendment was necessitated only to address the 'Assam' problem and was not seen as a problem of the nation. It was in the year 2012, when certain organisations from Assam filed a writ petition in the Supreme Court to challenge the constitutional validity of Sec. 6A of the Citizenship Act, 1955. the main petitioner was Assam Sanmilita Mahasangha, who claimed to be an umbrella organisation of 60 'indigenous' organisation of Assam.[45] The case, *Assam Sanmilita Mahasangha v. Union of India*[46] which challenged the inclusion of Sec. 6A in the Act came up for hearing in 2014. A bench of 2 judges under Article 145(3) referred this matter to a larger Constitutional bench. In the writ petition, the petitioner challenged the inclusion of Sec.6A on various grounds. Firstly, they argued that it was violative of Article 14 of the Constitution of India as the cut-off date set by the Amendment in 1985 is contrary to other provisions and the cut-off date is only applicable to Assam which is violative of equal protection clause under Article 14.They argued that Sec. 6A created a separate class of people residing in Assam and it gave special treatment to them than other similarly situated persons who entered India and started living in other states of India. Secondly, they argued that in no country there's any provision giving shelter to people who have entered illegally. On the Contrary illegal migrants living in Assam are the only exception as they have got safeguard due to Sec. 6A. They also questioned the validity of Assam Accord which as per them was "foisted upon the people of Assam much against their wishes" and hence it denies people of Assam their right to Equality. They also questioned the fixation of 24th March 1971 as the cut-off date as, they argued, was arbitrarily chosen without any justification. They also raised questions on the constitutionality saying that Sec. 6A was in contrary to the provisions of International Covenant of 1966 on Civil and Political Rights as it only talks about alien entering

[44] Supra 11, p.96.
[45] Writ petition no. 562 of 2012.
[46] (2015) 3 SCC.

lawfully. the petitioner submitted that those who entered Assam from East Pakistan were illegal migrants and had no safeguard under this provision.[47] The petitioners also invoked Article 29(1) of the Constitution which confers fundamental right to all citizens having distinct language, script of its own to conserve it and introduction of Sec. 6A led to invasion of this right and hence should be held ultra vires. Then they turned up their argument against the 'illegal immigrants' as encroachers of land upon which the people of Assam had exclusive rights. It was contended that introduction of Sec.6A was adversely affecting the cultural, economical and social rights of the people of Assam.[48] Apart from other arguments, one interesting argument was raised by the petitioners. They contended that Sec. 6A also violates the 6th schedule of the Constitution which provides a separate administrative mechanism for the tribal areas of the North-East region. As per various provisions of 6th Schedule, the indigenous people living in tribal areas had their right to preserve their heritage, land identity and customary practices.[49] However, it was contended that the impugned 6A which seeks to give citizenship to illegal migrants have "e uprooted the indigenous people from their lands and denied them of their livelihoods."[50] There were few more grounds of challenge and various data regarding unnatural increase in the population of Assam was presented. It is in light of these arguments, the court had to decide the matter.

> "A prophet is without honour in his own country. substitute 'citizen' for 'prophet' and you will get gist of the various writ petition filed under Article 32 of the Constitution of India assailing section 6-A of the citizenship act"[51]

This is how Rohington Nariman, J., opined in his judgment in the first paragraph. It is clear that the court heard the petition and contention of the petitioners with great importance and had tried to understand the gravity of the matter. In the judgment the court discussed the history of migrants coming to Assam and how various legislations have failed to check on the illegal influx. It also opined that the government of India after more than 60 years of independence failed to secure its border and left it 'porous'.

[47] Supra 45, Paragraph 8(Q).
[48] Ibid.
[49] Ibid, Paragraph 8(U).
[50] Ibid.
[51] Supra 46.

as to the merit of the case, the court decided to refer this matter to a larger constitutional bench by framing 13 substantial questions of law[52].

The questions were:

"1) Whether Articles 10 and 11 of the Constitution of India permit the enactment of Section 6A of the Citizenship Act in as much as Section 6A of the Citizenship Act, in prescribing a cut-off date different from the cut-off date prescribed in Article 6, can do so without a "variation" of Article 6 itself; regard, in particular, being had to the phraseology of Article 4 (2) read with Article 368 (1)?

2) Whether Section 6A violates Articles 325 and 326 of the Constitution of India in that it has diluted the political rights of the citizens of the State of Assam?

3) What is the scope of the fundamental right contained in Article 29(1)? Is the fundamental right absolute in its terms? In particular, what is the meaning of the expression 'culture' and the expression "conserve"? Whether Section 6A violates Article 29(1)?

4) Whether Section 6A violates Article 355? What is the true interpretation of Article 355 of the Constitution? Would an influx of illegal migrants into a State of India constitute 'external aggression' and/or 'internal disturbance'? Does the expression 'State' occurring in this Article refer only to a territorial region or does it also include the people living in the State, which would include their culture and identity?

5) Whether Section 6A violates Article 14 in that, it singles out Assam from other border States (which comprise a distinct class) and discriminates against it. Also whether there is no rational basis for having a separate cut-off date for regularising illegal migrants who enter Assam as opposed to the rest of the country?

6) Whether Section 6A violates Article 21 in that the lives and personal liberty of the citizens of Assam have been adversely affected by the massive influx of illegal migrants from Bangladesh?

7) Whether delay is a factor that can be taken into account in moulding relief under a petition filed under Article 32 of the Constitution?

8) Whether, after a large number of migrants from East Pakistan have enjoyed rights as Citizens of India for over 40 years, any relief can be given in the petitions filed in the present cases?

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[52] Sangeeta Barooah Pisharoty, "Citizenship and Assam: An Explainer on the Legal Questions That Still Loom Large" THE WIRE, Monday, November 25, 2019, Available at : https://thewire.in/rights/citizenship-and-assam-the-legal-questions-that-still-loom-large.

9) Whether section 6A violates the basic premise of the Constitution and the Citizenship Act in that it permits Citizens who have allegedly not lost their Citizenship of East Pakistan to become deemed Citizens of India, thereby conferring dual Citizenship to such persons?

10) Whether section 6A violates the fundamental basis of section 5 (1) proviso and section 5 (2) of the Citizenship Act (as it stood in 1985) in that it permits a class of migrants to become deemed Citizens of India without any reciprocity from Bangladesh and without taking the oath of allegiance to the Indian Constitution?

11) Whether the Immigrants (Expulsion from Assam) Act, 1950, being a special enactment qua immigrants into Assam, alone can apply to migrants from East Pakistan/Bangladesh to the exclusion of the general Foreigners' Act and the Foreigners (Tribunal) Order, 1964 made thereunder?

12) Whether Section 6A violates the Rule of Law in that it gives way to political expediency and not to Government according to law?

13) Whether Section 6A violates fundamental rights in that no mechanism is provided to determine which persons are ordinarily resident in Assam since the dates of their entry into Assam, thus granting deemed citizenship to such persons arbitrarily?"[53]

These 13 questions are yet to be decided by the Apex Court and the matter is pending before it. Apart from framing these questions, the court who clubbed various petitions regarding Assam's citizenship crisis and heard altogether, in regard to *Assam Public Works v. Union of India*[54] of updation of the National Register of Citizens which was made only for the state of Assam in the year 1951.[55] Nevertheless, the inclusion of Sec.6A in the Citizenship Act,1955 marked the way for a differentiated criteria for citizenship and was done exclusively for Assam. This graded provision for citizenship was based on the Assam Accord, which sought to draw a midpoint so as to solve the illegal immigrant influx problem that Assam was facing and also to give a sense of safeguard to the people of Assam. By then, the problem of illegal influx had been recognised by the Union government and subsequent amendments show how it tried to tackle the problem legally.

[53] Supra 46.
[54] Writ Petition (Civil) No. 274 of 2009.
[55] Sangeeta Barooah Pisharoty, "Why the NRC of 1951 Is Being Updated as per the Assam Accord" THE WIRE, Saturday, August 19, 2018, Available at: https://thewire.in/rights/nrc-assam-accord-updating-residents.

### 4.3 Paradigm shift : from *Jus soli* to *Jus sanguinis*

As we have discussed in the last chapter, Alldi Krishnaswami Ayyar while debating on citizenship had eluded upon two conceptions of citizenship i.e. Anglo-American citizenship and citizenship criteria in continental countries. He argued that in continental countries citizenship is based upon blood which can be interpreted as citizenship based upon race.[56] No matter where the person is or what he does, if they are son/daughter of a person of that race then he has to get citizenship. In this argument what he was referring upon was based on the concept of *jus sanguinis*. Similarly, the argument put forward by B. Das was also upon this concept. Ayyar contended that citizenship that Sardar Patel suggested while debating the fundamental rights part was based upon the Anglo-American law and not upon continental countries. He suggested that it would be better if India follows the jus soli method and not the continental countries' system as it may land Indian parliament in difficulties.

*jus soli* is literally 'right of soil' which associates the right to have citizenship with birth which takes place in a territory. It is conferement of citizenship by virtue of being born in a state. 'Right of blood' or kinship on the other hand is called *jus sanguinis* where citizenship is passed on by birth via one's father or mother or both *Jus sanguinis* based citizenship specifies that "a body of citizens will be a community of descent."[57] It categorically denies the right to automatically acquire citizenship in their birth country which is the country of immigration of his/her parents. Typically, the process of naturalisation is long and complicated. Immigrants who are generally marginalised do not necessarily want to go and register themselves for naturalisation. They keep on living as immigrants. In these cases, it would not be possible to ask for citizenship rights for their children in a country where *jus sanguinis* mode is followed as the children won't be able to show descent.[58]

On the other hand, *jus soli* citizenship is inclusive and does not discriminate on the ground of descent. It "allows for generations of families to form in a country."[59] Linking descent with citizenship might encourage disharmony among citizens and the 'others'.

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[56] Speech of Alladi Krishnaswamy Ayyar, Constituent Assembly Debates, Vol. III (29th April, 1947).
[57] Eftihia Voutira, "Jus Sanguinis and Jus Soli: Aspects of Ethnic Migration and Immigration Policies in EU States", Jan Rath (Ed.) "AN INTRODUCTION TO INTERNATIONAL MIGRATION STUDIES", 1st ed. 2013, p. 131.
[58] Daniel Wilhelm, "Jus Soli And Jus Sanguinis Explained", https://www.escapeartist.com/blog/easiest-ways-citizenship/, (December 10, 2020).
[59] Ibid.

Modern nations have adopted different modes to acquire citizenship but generally could be divided into two groups: one which accepts by birth citizenship and other that demands descent. There are at present more than thirty countries that allow *jus soli* citizenship.[60] Most of them are Latin American and African nations. Among western countries which are considered as 'developed', the United States[61] and Canada[62] are the exception which still allows birth right citizenship. Certain countries such as Azerbaijan, Chad, Luxembourg which provides conditional citizenship by birth. It only confers citizenship to orphans and children of stateless parents.[63] Other countries follow the *jus sanguinis* model. In Countries such as Poland the requirement is stringent as it needs both the parents to be Polish citizens. On the other hand, countries like Andorra the descent lineage is based on Mother as it is a matrilineal society. Islamic countries like Iran and Bahrain the father needs to be a citizen of that country.[64] In these cases there is an inherent problem as it is very difficult to establish citizenship of children born out of wedlock.

India as we have noticed allowed anyone other than children of diplomats to acquire citizenship by birth. But it was the introduction of the Citizenship (Amendment) Act (Hereinafter 'CAA'), 1986[65] which was a paradigm shift from the *jus soli* principles of granting citizenship to *Jus Sanguinis* principles by attaching descent as a criterion to get citizenship by birth. While introducing the Act to the Parliament, the then Home Minister P. Chidambaram said, "The time has come to tighten up our citizenship laws...We cannot be generous at the cost of our own people, at the cost of our own development."[66] This statement could be understood by reading the statement of reasons of the CAA 1986. The statement categorically said that a huge number of persons of Indian origin from Sri Lanka and Bangladesh and some African countries have started residing in India. The Government apprehended that if migration from these countries

[60] Ashley Collman, "More than 30 other countries recognize birthright citizenship - here's the full list", BUSINESS INSIDER, Wednesday, October 31, 2018, Available at : https://www.businessinsider.in/more-than-30-other-countries-recognize-birthright-citizenship-heres-the-full-list/articleshow/66437819.cms.
[61] U.Sec. Citizenship and Immigration services, "Chapter 3 - U.Sec. Citizens at Birth (INA 301 and 309)", Available at : https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-3#:~:text=History%20(1)-,A.,Aleutian%2C%20or%20other%20aboriginal%20tribe.
[62] Jane Katkova, "Child Birth in Canada", Available at: https://canadianimmigrationexperts.ca/child-birth-canada/.
[63] Supra 60.
[64] Ibid..
[65] Act No.51 of 1986.
[66] Supra 10.

is not tackled then there could be chaos. Hence, it took a serious view of the matter and amended the Citizenship Act to make the provisions of acquiring citizenship more stringent. Before the Amendment, every person born in India on or after the commencement of the Constitution got citizenship of India *by birth*. The amendment Act of 1986, prevented this automatic acquisition by adding a clause which said that after commencement of the Act, to acquire citizenship by birth one of the parents had to be an Indian citizen. This is a significant addition to the citizenship Act 1955 as those who were born after 1st July 1987[67], to get Indian citizenship *by birth* one of his/her parents has to be an Indian citizen. thus the amended provision reads :

*"(1) Except as provided in sub-section (2), every person born in India,*

*(a) on or after the 26th day of January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1986;*

*(b) on or after such commencement and either of whose parents is a citizen of India at the time of his birth, shall be a citizen of India by birth*."

This departure from the earlier Citizenship Act, was reasoned as a controlling measure to prevent the influx of migrants from different countries. not only this, the CAA 1986 also modified the provision related to acquisition of citizenship *by registration.* Earlier, Indian origin persons who are ordinarily residing in India for six months preceding the date of application could apply for citizenship. Now, after amendment the six months time was increased to five years to make such an application for registration. Further, the preceding Act was only conferred citizenship to women who married an Indian citizen. By this amendment, the word 'women' was substituted by 'persons' which included men too who married a female citizen of India. While the bill was tabled at the Parliament of India for considerations, many opposition members of Parliament opposed. While some members pointed out the negligence of the Centre in fencing the border properly, some others opposed the Act on the point of law. Members of the Communist Party of India (Marxist) from West Bengal were at forefront in opposing this amendment. As put forward by Former Speaker of the 14th Loksabha Somnath Chatterjee the Act had made distinction between two classes of people and the distinction was made on the basis of date of birth. Two classes of people, one who were born before the Act came into force and another who were born after it. this, Somnath

[67] This is the date when the Citizenship (Amendment) Act 1986 was notified and hence came into force *vide* Notification No. Sec. O. 0 (E) dated January 1, 1987.

Chatterjee argued as the sole discriminatory clause.[68] Article 14 requires distinguishing features having nexus to the objective sought which the present classification lacked. Also, there was no reason for fixing the cut-off date which is when the Act comes into force (1.07.1987). He also reminded the house that Article 14 was not like Art. 19 which only applied to citizens. It applied to citizens and non-citizens too. It was a contention raised by the members that it may end up dividing people of India and would encourage divisive forces of the Country. Another member from West Bengal posed a hypothetical scenario where a foreigner couple gives birth to two children, one who is born before the commencement of the Act and one after it. The elder children would be Indian citizens by birth and the other one would not be because none of her parents were Indian citizens.[69] Ananda Pathak, a member elected from Darjeeling constituency of West Bengal opposed the bill on the ground that it may help furthering the cause of separatist forces like Gorkha National Liberation who he accused for spreading misinformation about citizenship rights and might create fear among the Nepali people living in Darjeeling.[70]

Replying to the objections raised by the Communist Party of India (Marxist) leaders, the then Union Home Minister P. Chidambaram rose in the Parliament to defend the provision. He defended the Act on two aspects. First, he countered Chatterjee's argument of Constitutional infirmity relying on separation of powers. He argued that it was the court to decide whether it infringes any provision of the Constitution or not. He then went on to argue that it was by virtue of Art. 11 that the Parliament was capable of amending the Citizenship Act. Furthermore, On the question of violation of Art. 14, Chidambaram pointed out that it might affect Article 14 if the Parliament made the law retrospectively. Making his argument on the need of making the shift to *Jus Sangunis* citizenship, he said:

> " …It is not, we have not violated Art. 14. In fact, the inhuman character which can be attributed to the Bill would be there only, if we enact this Bill retrospectively…We have one of the most liberal citizenship laws in the whole world. In today's law, the father need not be a citizen; mother need not be a citizen; either of them may not even want to become a citizen of

[68] "Gazette of India Extraordinary- Part II Section II", April 11, 1986, pp.377-378.
[69], Ibid. p. 380.
[70] Ibid. p. 381.

> this country. Neither of them may apply for naturalisation. Merely because the child is born in India, the child automatically acquires the right of citizenship. That is the law today. What we are saying now is, we cannot confer citizenship on children who are merely born in this country without even one of their parents expressing an intention or desire to become a citizen of India." [71]

It is clear from the speech of P. Chidambaram that the Central Government did not want to go forward with the idea of universal citizenship anymore. Restricting the citizenship criteria by introducing *jus sanguinis* provisions in the Indian citizenship laws was a clear shift from the ideas of the Constituent Assembly members. After these debates and deliberations the Bill was finally passed and India formally amended its citizenship law by adding descent to it.

### 4.4 Newer notions of Citizenship

After the 1985/1896 amendment to the Citizenship Act , 1955 the notion of Indian citizenship shifted. Linking descent to citizenship was primarily triggered because of the influx of unregulated immigrants from neighbouring countries specially from Bangladesh. In the year 1992 the citizenship (Amendment) Act, 1992 was passed by the Parliament to remove gender discriminatory provisions of the Act. India. being a signatory to the Convention on Elimination of all forms of Discrimination against Women (hereinafter 'CEDAW') had to abide by it. The CEDAW mandated that all state parties had to grant equal rights to women at par with men with respect to the nationality of their children.[72] Under the existing Citizenship law, a person to claim citizenship of India by descent he/she had to draw his/her lineage from the male side. This gender disparity was hence removed by the 1992 amendment. It infact changed all provisions of the Act which was discriminatory in nature. Hence this amendment brought conformity of the Citizenship law as per Art. 9 (2) of CEDAW.

One of the most important amendments in the Citizenship Act was done in 2003. The NDA Government which was in power at that time tried to give a new notion of citizenship in the amendment that they brought. In the year 1998, a high level committee named Commission on Review of Administrative Laws was constituted by the Central

[71] Ibid., p.382.
[72] Art. 9 (2), Convention on Elimination of all forms of Discrimination against Women,1979.

Government under the chairmanship of P.C. Jain to review 109 central acts. The Citizenship Act of 1955 was among those 109 acts that was reviewed by the Committee. In pursuant of the recommendations made by the committee, the Citizenship (Amendment) Act, 2003[73] was passed by the Parliament. Also, a High Level Committee on Indian Diaspora headed by veteran parliamentarian L.M Singhvi which was formed in the year 2000 to suggest a framework to have interaction with the Indian diaspora and to have them associated with India so that a mutually beneficial relationship grows. This committee also suggested certain changes in the Act including grant of dual citizenship to persons of Indian origin living in certain countries.[74] A plain reading of the statement of objects and reasons placed by the NDA government while introducing the Bill to the Parliament suggests that the Act wanted to achieve seven objectives.[75]

It wanted to make acquisition of Indian citizenship by naturalisation and registration more stringent. Hence the amended act changed the registration criteria by providing that any person who is not an illegal immigrant could register themselves as Indian citizen, *inter alia*, if the person has resided in India for at least seven years before applying for registration. The Act for the first time defined who would be an illegal migrant. Before this amendment, the term 'illegal migrant' was not there in the Citizenship Act,1955. But the 2003 amendment defined illegal migrant as

"a foreigner who has entered into India-

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time"[76]

Hence, it amended provisions related to citizenship *by birth* too. It now had three categories of people. The narrowing down of *jus soli* citizenship can be inferred from here. Before 1st July 1987, those who were born in the territory of India were automatically granted Indian citizenship. those who were born after 1st July 1987 and

[73] Act No.6 of 2004.
[74] Supra 11, p.139.
[75]The citizenship (Amendment) Bill, 2003, Bill No. XXXIX of 2003.
[76] Sec. 2(1)(b) Citizenship Act,1955.

before 7th January 2004 (Date of commencement of Citizenship Amendment Act, 2003) either one of the parents has to be citizen of India and now, after commencement of the CAA,2003 both parents had to be Indian citizen or atleast one should be Indian citizen and the other should not be illegal immigrant to acquire citizenship by birth for their children.[77]

Similarly, Sec. 4 which deals with citizenship by descent, a mandatory provision was made that said within one year of birth or commencement of the CAA,2003 whichever is later that person had to be registered in the Indian consulate within the said period. apart from amending the existing provisions, the act introduced a new category of citizenship. The 'overseas citizenship' added through this amendment was to grant citizens of Indian origin having citizenship of specified territories (countries mentioned in Fourth Schedule of the Act) could apply for registration as overseas citizenship.[78]

Person of Indian origin and citizen of another country meant that Either that person was citizen of India at the time of commencement of the Constitution or was eligible to become one or who belonged to a territory that has now become part of India or he/she could claim descent from his/her parents or grandparents who has the preceding qualifications and has never been citizen of Pakistan and Bangladesh.[79] Apart from it, the amendment added Ss. 7B, 7C and 7D which conferred certain rights to them, mentioned what rights they do not have and on what conditions their registration may be cancelled. The Act was again amended in 2005 now allowing any persons of Indian origin having citizenship of any other country except Pakistan and Bangladesh to get registered themselves and to acquire Overseas Indian Citizenship cards.[80] It is interesting to note that while this amendment tried to do away with spatial constraints, it "interlocks with a consummation of a process of continuous unfolding of closures in the Act, which restrict citizenship by birth, a process that began with the 1986 amendment."[81]

Apart from this, the Citizenship (Amendment) Act, 2003 inserted sec. 14A which mandated that the government may compulsorily register Indian citizens and issue

[77] Sec.3, Citizenship Act,1955.
[78]Sec. 7A Citizenship Act, 1955.
[79] Supra 11, p. 142-143.
[80] Editorial, "Overseas Indians : Citizenship and other Rights", 41 EPW (2006).
[81] Supra 11, p.144.

identification cards to them. This was the hinge point in the Indian citizenship laws that now sought to maintain the register of Indian citizens. This is closely linked with the National Register of Citizens (hereinafter 'NRC') which was only made for the state of Assam in the year 1951. Now, this amendment mandated the same registration process for other states as well.

The evolution of Indian citizenship laws as we have discussed has been narrowed down over time. It was first done by linking descent to it and subsequently by expressly separating illegal migrants from the Indian citizenship framework. The Assam exception of sec.6A was brought to settle the Assam Movement which gained popular support without hampering India- Bangladesh friendship. It can be inferred by going through the amendments that the problem regarding unregulated influx of illegal migrants was recognised by the Government and it sought to regulate it by making stringent citizenship laws. One the other hand, the 2003 amendment which paved the way for overseas citizenship does do away with the territorial concept of citizenship to facilitate the relationship between persons of Indian origin residing outside the country with India yet the basis of citizenship which had the underlying concept of universal citizenship had been narrowed down over time. The most recent amendment to the Citizenship Act, 1955 was done in the year 2019 which sparked large scale protests across India as it sought to give citizenship to certain sections of immigrants on the ground of 'victims of religious persecution' has a different impact on the rest of the country and North-East India. It shall be discussed in detail in the next chapter.

## 5. CITIZENSHIP CONUNDRUM IN NORTH EAST INDIA

The North-East of India is commonly known as the land of seven sisters. It is because the easternmost region of the country is divided into 7 states, and a bit later Sikkim was too recognised as a separate State making it 'brother' of the seven sisters. It is hence comprised of Assam, Meghalaya, Tripura, Manipur, Mizoram, Arunachal Pradesh, Nagaland and Sikkim. The regional interdependence among the states, thor historical connection and 'similarity of diverseness' has made this region a bit different from other Indian states.[1] Apart from Assam, which became independent with the rest of the country, other states except princely states of Manipur, Tripura were part of Assam. But due to cultural and linguistic differences, other districts separated from Assam and formed new states.

The history of North-Eastern states is said to be the history of migration. There has been a flow of people from many parts as there were employment opportunities available in the tea gardens, had abundance of cultivable lands etc.[2] The historical migration pre- and post-independence in the North-Eastern region has also played a crucial role in the geopolitics of this region. While the pre-independence migration was mainly facilitated by the British, the post-independence migration was a result of partition and a large number of people from the erstwhile East Pakistan came and settled in the North-Eastern regions. Safeguarding of their indigeneity was one of the important factors while North-Eastern states negotiated with the Indian States and hence it can be seen from the constitutional safeguards provided to these states. This chapter mainly focuses on constitutional safeguards available for the North-Eastern states, the influx of migration and how politics of North-Eastern States, mainly Assam is linked with the citizenship laws of the nation.

[1] History of North-East India, "Indian Culture", Available at ; https://indianculture.gov.in/north-east-archive/history-north-east.
[2] R. Lusome, R. B. Bhagat, "Migration in Northeast India: Infowars, Outflows and Reverse Flows during Pandemic", 63 IJLE (2020) p.1128.

## 5.1 Constitutional Safeguards to North-Eastern States

The Constitution of India provides certain provisions for the North-Eastern states to protect their distinct identity, heritage and culture. While the Constitution was getting drafted, sixth schedule was added as a form of protective discrimination for the North-Eastern States. Apart from this schedule, from time to time through constitutional amendments other provisions have also been incorporated. When we look at these provisions, it is clear that the need for protection of the tribal areas and their unique societal arrangement has been recognised by the State.

### *5.1.1 Protective Discrimination through Sixth Schedule*

The cabinet mission of 1946 proposed that tribal areas need special attention of the Constituent Assembly. Subsequently in 1947 a subcommittee headed by Gopinath Bordoloi was appointed to prepare schemes for North-Eastern India. The Bordoloi Committee then paid a visit to the headquarters of hill areas and tried to understand the problems and necessary mechanisms needed for administering those areas.[3] After the assessment was done, the Bordoloi committee prepared a report of two volumes, where in volume I consisted of their suggestions and in Volume II it consisted of recorded evidence that was gathered after meeting various representations. The Bordoloi Committee after visiting most of the headquarters of tribal areas of North-East had understood that the tribal people needed protection and safeguard so that they do not lose their way of life and also participate in the nation building process. The Bordoloi Committee after visiting most of the headquarters of tribal areas of North-East had understood that the tribal people needed protection and safeguard so that they do not lose their way of life and also participate in the nation building process.

The recommendations of the committee were incorporated in the Art. 244 of the constitution and the sixth schedule. While this came up for debates, non-tribal representatives of Assam like Rohini Kumar Choudhuri, Kuladhar Chaliha etc. vehemently opposed the creations of district and regional councils for the tribal people.

> "This autonomous district is a weapon whereby steps are taken to keep the tribal people perpetually away from the non-tribals and the bond of

[3] J. Zahluna, "Constituent Assembly and the Sixth Schedule: With Special Reference to Mizoram", 71 IPSA (2010), p.1235.

> friendship which we expect to come into being after the attainment of independence would be torn asunder. During the British days, we were not allowed to introduce our culture among those people. Even after the British have gone, we find the same conditions in the new Constitution of Dr. Ambedkar."[4]

The opposer of the provisions for autonomous district and regional councils believed that it will further widen the gap between tribal and non tribal people. Some other members like Brajeshwar Prasad from Bihar thought it would create another Pakistan and may lead to anarchy and chaos. But some other people did raise their voices in support of the sixth schedule.Jaipal Singh, another member of Bihar province supporting the arrangement said,

> "I am very optimistic about future of Assam particularly if the Sixth Schedule, even with all its shortcomings, is operated in the spirit in which it should be operated, in a spirit of accommodation and in the real, desire to serve the hill people of Assam, as our compatriots, and as people whom we want to come into our fold, as people whom we will not let go out of our fold and for whom we will make any amount of sacrifice so that they may remain with us."[5]

The most convincing support for VI Schedule could be found in the speech of Rev. J. J. M. Nichols-Roy who was from Khasi hills of Assam and a tribal himself. His argument in support was based on the differences among people living in plains and tribal people living in hills. As per Roy, From food habit to culture, there were no similarities among these groups. He further suggested that there is a "hierarchical culture" among the plain people but the culture followed by the tribesmen is "egalitarian" in nature and India should rise to incorporate that idea of equality and democracy that the Tribal people follow.

> "These people (Tribals) have come there from outside. They have never been under a Hindu or Muslim rule. They had their own rule, their own language, court and culture. To say that the culture of these people must be swallowed

[4] Speech of Rohini Kumar Choudhuri, *Constituent Assembly Debates*, Vol. IX (06th September, 1949).
[5] Speech of Jaipal Singh, Parliament of India, *Constituent Assembly Debates*, Vol. IX (06th September, 1949).

> by another culture, unless it is a better culture and unless it be by a process of gradual evolution, is rather very surprising to anyone who wants to build up India as a nation and bring all people together."

Dr Ambedkar too, accepting the proposals of the Bordoloi Committee suggested that the tribals in other parts of India and those who are living in the North-East are not the same. He drew an analogy between the Red Indians of the United States and tribals from Assam. He further said that just like the United States have created 'boundaries' for the Red Indians, this provision of creating District councils is similar to the United States.

Thus, after debates and deliberations the VI schedule of the Constitution was adopted. According to Article 244 and sixth schedule certain parts of Assam, Tripura, Meghalaya and Mizoram which are designated as tribal areas by governor's notification, he or she can include or exclude or merge any area to create autonomous districts. Furthermore, each autonomous district shall have district and regional councils which shall be empowered to make laws regarding land rights or for "any other purposes which will promote the interests of the inhabitants."[6] It can also make laws for management of forest lands, inheritance of property, marriage and divorce etc. In certain cases, the autonomous districts are also empowered to administer justice. Power of establishing schools, collection of revenue and imposing taxes are also given to those councils. Interestingly, the rights over the natural resources in the autonomous districts have also been given to the councils so to lease or extract minerals from those area the Government of the State has to come into an agreement with the district councils in matters of sharing revenue. Till date Assam has three districts governed by District Councils, which are: The North Cachar Hills District, the Karbi Anglong District and the Bodoland Territorial Areas District. Similarly, Meghalaya too has three districts, namely Khasi Hills District, Jaintia Hills District and the Garo Hills District. While Tripura has one which is Tripura Tribal Areas District, Mizoram has three which are: The Chakma District, the Mara District and the Lai District.

The provision of protective discrimination was also extended to other states of North-Eastern States at state level. In Arunachal Pradesh, Meghalaya and Mizoram all but one

[6] Sixth Schedule, Cl.3(1)(a), Constitution of India,1950.

seat are reserved for the scheduled Tribes which creates a "de facto regime of two-tiered citizenship."[7] Though the sixth schedule was intended to apply only to the areas which were "excluded" or "partially excluded" areas of the British era but in recent times it has been extended to areas where the demography is far more mixed.[8] Apart from the six Schedule, there are certain Articles incorporated in the Constitution of India through amendments which contain special provisions for certain states of the North-East.

*5.1.2 Special Provisions for certain North-Eastern States*

The protection under Sixth Schedule of the Constitution is only extended to certain areas of the North-East. Yet there are certain other provisions which are in relation to North-Eastern states which were incorporated in the Constitutions through amendments. The first one is Art. 371A which was enacted through the Constitution (Thirteenth Amendment) Act, 1962. It came into effect from the day Nagaland became 16th State of India. Under this provision, a special power was given to the Legislative Assembly of Nagaland to decide whether acts related to *inter alia,* land rights, Naga customary law or religious and social practices of Nagas etc.[9] enacted by the Parliament would govern them or not. The Assembly had to pass a resolution so that these laws get applicable in the State. This is a similar kind of right given to the autonomous districts under sixth schedule except for the fact that unlike provisions of sixth schedule this applies to the whole of Nagaland. A special responsibility has been entrusted upon the Governor to maintain peace and harmony in the region.

Rights similar to Art. 371A has also been provided for the State of Mizoram under Article 371G. Both these states have seen separatist movements in their past. Similarly, both these states before joining the Union of India as states had entered into certain agreements with the Government of India which included preserving their culture and non-interference with their social practices.

Special powers with respect to Assam and Manipur are also similar in nature. While under Art. 371B which was added by virtue of the Constitution (Twenty Second Amendment) Act, 1969 grants power to the President to constitute a committee within

[7] Sanjib Baruah, Protective Discrimination and Crisis of Citizenship in North-East India, EPW, (Vol. 38, No. 17 2003), p.1624, Available at : https://www.jstor.org/stable/4413479
[8] Ibid. p.1625.
[9] Art. 371A (1)(a), Constitution of India,1950.

the assembly whose members would primarily be the members of the Assembly from the Sixth scheduled tribal areas. 371C also provides similar power to the President to constitute such a committee for the members of the Assembly of Manipur from hill areas. The intention of forming these committees is that the committee will consider bills introduced in the Assembly from the point of view of the people they represent.[10]

The Constitution (Thirty-fifth Amendment) Act, 1974 made Sikkim a "associated state" with the Union of India but the Sikkimese people wanted a full-fledged state. Hence Constitution (Thirty-sixth Amendment) Act, 1975 Sikkim was recognised as a full-fledged State. This amendment also introduced Art. 375F which empowers Parliament to reserve seats in the Sikkim Legislative Assembly to different groups of people to ensure rights and interests of different sections of people living in the State. Accordingly, the Parliament has reserved 13 out of 32 seats for "Bhutia-Lepcha" origin people and one for the "Sangha".[11] The validity of Art. 371F was challenged of being unconstitutional in *RC Poudyal v Union of India*[12] but the Apex court rejected the argument on the ground that it was necessary for the development of the newly admitted state of Sikkim. They opined that "historical considerations have justified a differential treatment"[13] Interestingly, under Art. 371F(k) laws which were in force in Sikkim before admitted as State were continued in operation even though it may be inconsistent with the provisions of the Constitution till it is amended or repealed by the legislative assembly.[14]

State of Arunachal Pradesh on the other hand does not get such rights as Nagaland or Mizoram. under Article 371. Art. 371H enacted for the State of Arunachal Pradesh entrusted responsibility on the Governor with respect to law and order of the State, and while discharging his function it will consult the Legislative Assembly as to what action needs to be taken. The responsibility of the Governor is subject to the President as she/he could by an order end such responsibility of the Governor when he/she deems fit.

[10] M.P.Jain, INDIAN CONSTITUTIONAL LAW, 8th Ed. 2018, p.518.
[11] Ibid. p.522.
[12] AIR 1993 SC 1804.
[13] Ibid.
[14] *Purna Bahadur Subba v. Sabitri Devi Chetrrini*, AIR 1982 NOC 311.

Tripura, unlike other North-Eastern states, doesn't have any special provision enumerated under Part XXI of the Constitution. However, under Article 332(3B) seats reserved for the Scheduled Tribes of the State will be the same as it existed before commencement of 72nd Amendment of the Constitution. According to Art. 332(3), number of seats reserved for the Scheduled Castes("SC") and Scheduled Tribes("ST") in the legislative Assembly shall be the same as the proportion of numbers of SCs and STs to the population of the State. By this Tripura would get 17 seats reserved for STs. But due to Art. 332(3B), 20 seats are reserved for STs as it was on the day when 72nd Amendment came into force.[15]

### 5.2 Inner line Permit system

The Inner Line Permit system was a colonial rule made by the British Administration to restrict movements of people in certain areas of the North-East. It was regulated by the Bengal Eastern Frontier Regulation Act ("BEFR"), 1873[16]. As per the suggestion of the Lieutenant Governor of Bengal Under BEFR, certain districts of erstwhile Assam was to be covered by Inner Line system which prohibited anyone passing through or or to reside in such districts without a valid pass issued by the chief executive officer of such districts. The officers were empowered to issue or cancel passes anytime they wanted. At that time, the inner line permit system was applicable to Districts of Kamrup, Darrang, Nowgong, Sibsagar, Lakhimpur, Garo hills, Khasi and Jaintia Hills, Naga Hills and Cachar. Under sec. 2 of the Regulation the passes were issued and under sec.4 the State Government was empowered to fix conditions and requisite fees. Any person who went beyond the line without obtaining valid passes were liable to be fined up to thousand rupees or to be imprisoned up to one year or both. Also, under Sec. 7 it was made unlawful to persons who were not native of the place to acquire any interest in land or product of land without prior approval of the Government. After independence, the provisions of BEFR,1873 were retained as applicable to Mizoram, Nagaland and Arunachal Pradesh. In 2019 however, it was also extended to the State of Manipur.[17]

Hence, now to visit these states any outsiders (including citizens of India not native to these States) have to obtain Inner Line Permit from the respective states before visiting

[15] Supra 10, p. 523.
[16] Regulation 5 of 1873.
[17] *vide* Order of President of India No. Sec.O. 4433(E) dated December 11,2019.

these places. This is another protective mechanism devised by the colonial rule to protect the natives of the tribal areas from getting exploited by the plain landers.

### 5.3 Impact of migration onTripura

Tripura was an erstwhile princely state which was ruled by the Manikya dynasty before acceding to the Union of India in 1949. It first became union territory in 1956 and later attained statehood in 1972. Till the early 20th century, Tripura was a tribal majority state which can be seen from the census report of 1921 which had 56.37 percent of Tribal population.[18] Tripura saw a large-scale migration before and after partition. While the pre partition migration was mainly tribal peoples from other neighbouring states, the post partition migration was Bengali speaking population coming from East Pakistan. The pre-partition migration in the state of Tripura suggests that at first Indo-Mongoloid races had come to the state in search of cultivable lands. Chakma families also came to the state in search of jhum land.[19] The Chakma influx which lasted till the end of 19th century made a large area of the state cultivable which helped Tripura economically. Apart from them, a number of Garo, Bodo and Khasi population from Assam too migrated to Tripura for cultivation, where some went for jhum cultivation and khasis settled in the Dharmanagar area where they grew betel leaves. Establishment of tea gardens in Tripura also required manual labourers which resulted in migration from Bihar and Orissa as local populations were unwilling to work in the Tea gardens. The population of Tripura at that time can be divided into two categories- Hill and Plain landers. The plain landers were mostly East Bengal (present day Bangladesh) origin Muslims and Hindus.[20] This settlement from East Bengal did help the economy of Tripura at that time as they introduced plough cultivation which was encouraged by the Manikya Dynasty. These migrations did add a good chunk to the population of Tripura yet there were no such problems as the land available in the State for settlement was still in abundance.

But the real conflict between immigrants and indigenous people arose after the creation of Pakistan in 1947. After the partition, the imaginary line drawn by Cyril Redcliffe East Pakistan districts like Chittagong, Noakhali, Sylhet etc. were bordered by Tripura

[18] Gourishwar Choudhuri, "Partition, Migration and the Ethnic Movement in Tripura",24 IOSR-JHSS, (2019), p.2.
[19] Ibid.
[20] Ibid.

and that border virtually remained porous till 1980s. Because of the not properly guarded borders, Tripura received a huge number of waves of migrants. In the 1950s, widespread riots broke out in East Pakistan and subsequently in neighbouring East Pakistan districts of Tripura which led to a large-scale influx of the immigrants. In fact, from 1947-1971 almost 6 lakh 10 thousand Bengalis came to Tripura whose total population in 1951 was around 6 lakh 45 thousand.[21] The magnitude of the problem could be understood from this data as how it affected the demography of the State. In the year 1949, a Directorate of Rehabilitation was set up to "settle" refugees coming from East Pakistan and it was done in a phased manner in 1947, 1967 and 1971. This permanently changed the demographic formation of the state of Tripura which is evident from the census reports. In 1881, the population of 19 Scheduled Tribes were 63.77% of the total population, which dropped to 31.78% in 2011.[22] This unconstrained flow of refugees from East Pakistan led to marginalisation of tribals in a "Tribal State". The numerical domination of the refugees later translated into economic, political and cultural domination isolating the tribals in their own land. Tripura has not only entertained refugees from outside India but has also borne the burden of internally displaced persons('IDP's) too. In 1997, half of the Bru people also known as the Reang community had violent clashes with the Mizo people in Mizoram which led to a 37,000 of IDPs shifting to certain districts of Tripura.[23] Since then there have been constant attempts to repatriate the Bru settlers to their original place yet it has not been fully successful.

The change in Tripura has impacted the residents of other North-Eastern states fearing similar change in demography. The fear of getting reduced in their own homeland had sparked large scale protests and it was one of the reasons for the starting of the Assam Movement.

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[21] Ibid. p.3

[22] Rahul Karmakar, "Tripura, where demand for Assam-like NRC widens gap between indigenous people and non-tribal settlers", THE HINDU, Wednesday, October 17, 2018, Available at https://www.thehindu.com/news/national/other-states/tripura-where-demand-for-assam-like-nrc-widens-gap-between-indigenous-people-and-non-tribal-settlers/article25348269.ece#:~:text=Census%20data%20show%20the%20population,Bangladesh)%20between%201947%20and%201971.

[23]"23 years after displacement, Bru refugees' resettlement in Tripura begins", THE INDIAN EXPRESS, Tuesday,April 20,2021, Available at: https://indianexpress.com/article/north-east-india/tripura/23-years-after-displacement-bru-resettlement-in-tripura-begins-7281694/.

### 5.4 Migration in Assam

Migration in Assam is not a new phenomenon. It has been going on for a long time. The Ahom kingdom was also set up by migrants coming from the Patkai mountain and settled in Assam in 1228. From time to time invaders also came to Assam for expansion of their territory and many soldiers coming with them also settled in Assam. The history of migration has made Assam into a culmination of heterogeneous identities. However, after Anglo-Burmese war ended, Assam was ceded to British India by virtue of Treaty of Yandaboo of 1826[24]. Soon after annexation, Assam was clubbed with the Bengal Province. But due to the vast area, it was not plausible for the British to administer the region. Hence, in 1874 it was detached from Bengal and was made into a separate region under Chief Commissionership.[25]

The history of migration in Assam after the start of colonial rule can be divided into four waves. The first wave of Assam was a result of the starting of tea plantations. The British found the weather of Assam perfectly suitable for the tea industry and hence wanted to expand this option. But the native people of Assam were not willing to work as labourers in the tea fields. Hence, the British had to export labourers from other states. Thus, in the first wave thousands of labourers who were mostly poor came from States such as Bihar, Orissa, Uttar Pradesh etc. to work in the tea gardens as labourers.[26] Also, to manage those tea gardens, a number of educated persons were also required and the tea garden owners recruited these people from the Bengal province and eventually they too settled down in Assam permanently.[27] As the workforce of Assam grew substantially, food requirements also increased. The British saw it as a twin opportunity for generating revenue and meeting the food requirements; they facilitated the inflow of a large number of peasants from the neighbouring East Bengal province and gave them uncultivated lands, *char* areas to cultivate. This exercise was fruitful for the British as the revenue in the areas where cultivation started did increase. Hence the British keep encouraging migration from East Bengal. A considerable number of farmers from this

[24] Treaty of Yandaboo, Available at : https://www.assamtimes.org/sites/default/files/yandaboo-treaty.pdf
[25] Hiranya Siakia,"The Assam Legislative Assembly", TIMES OF ASSAM, Friday, May 11,2012 Available at : https://www.timesofassam.com/articles/the-assam-legislative-assembly-and-the-prime-minister/.
[26] Abdul Mannan, INFILTRATION: GENESIS OF ASSAM MOVEMENT, Ayna Prakashan,1st ed. 2017, p.11
[27] Ibid. p.11.

province came to Assam in around 1930-1940s.[28] They also started producing jute which was sent to the jute mills of Kolkata. Another reason that encouraged the British to facilitate migration from East Bengal was the need for food in the Second World War. Most migrants coming from East Bengal were practising Islam by faith. They started living in Districts of Goalpara, Darrang, Kamrup, Nagaon etc. The exodus which started in the 1900s remained steady till the late forties.[29] 7,33,313 from Moymensing district of East Bengal came to Assam between 1920-1930s and more than 85 percent were Muslims.[30] This was the second wave of Migration to Assam. The third one was of people from Nepal and Bhutan who were mostly associated with animal husbandry.[31] The fourth wave was of the people from East Pakistan who were mostly Hindu refugees. Soon after the partition, the wave from East Bengal (Now became East Pakistan) shifted from Muslims cultivators to Hindu refugees who fled East Pakistan in fear of persecution and large-scale violence that took place. This wave of migration continued till 1971 when Bangladesh finally became independent.

First record of migration from East Bengal can be found in the district of Goalpara before it was annexed to Assam. As the feudal system was prevalent, many landlords hired these peasants from East Bengal for farming. Also, at that period the population of Assam was very scattered. Historian Amalendu Guha noted :

> "High mortality from black fever was first introduced in the Tarai region of the Garo Hills in 1882. It spreaded gradually through the then Goalpara Subdivision, entered the south bank portion of Kamrup in 1888 and reaced Nowgong by 1891. Over the decade 1891-1901 the decrease of population was seven percent and twenty five percent respectively, in the former districts of Kamrup and Nowgong and nine percent in the Managoldoi Subdivision i.e. present day Darrang."[32]

[28] Ibid. p.11.
[29] Ismail Hussain Sr. (ed.), CHAR CHAPORIR JIWAN CHARJJYA, p. 35.
[30] Amalendu Dey, PRASANGA ANUPRABESH,1st ed. 1993.
[31] Supra 26, p.12.
[32] Amalendu Guha, MEDIEVAL AND EARLY COLONIAL HISTORY OF ASSAM: SOCIETY,POLITY, ECONOMY, 1st ed.1991, p.223.

Due to the decrease of population due to diseases between 1897 and 1911 and large-scale influx of migrant workers as tea garden labourers, the census of 1901 shows one fourth of population in the plains of Assam as migrants.

As early as 1931, when the census data was getting prepared, C.S. Mullan famously quoted in his census report :

> "Probably the most important event in the province during the last twenty five years - an event, moreover, which seems lively to alter permanently the whole future of Assam and to destroy more surely than did the Burmese invaders of 1829, the whole structure of Assamese culture and civilisation - has been the invasion of a vast horde of land hungry Bengali immigrants; mostly Muslims, from the districts of Eastern Bengal sometime before 1911 and the census report of that is the first report which makes mention of the advancing host. But, as we now know, the Bengali immigrants censused for the first time on their char islands of Goalpara in 1921 were merely the advance guard - or rather the scouts - of a huge army following closely at their heels. By 1921 the first army corps had passed into Assam and had practically conquered the district of Goalpara… Where there is waste land thither flock the Mymensinghias. In fact, the way in which they have seized upon the vacant areas in the Assam valley seems almost uncanny. Without fuss, without tumult, without undue trouble to the district revenue staffs, a population which must amount to over half a million has transplanted itself from Bengal into the Assam Valley during the last twenty-five years."[33]

Thus, the fear of change in demography of Assam was apprehended way before it was raised by the people of Assam, yet ironically, the same colonial government who facilitated migration from East Bengal were now blaming the peasants as "land hungry immigrants" that they once brought themselves.

[33] Dr. Manju Singh, ASSAM, POLITICS OF MIGRATION & QUEST FOR IDENTITY, 1st ed.,1990, p. 59.

### 5.5 Line System: Demarcating indigenous and immigrants

As a large number of migrants came from East Bengal to Assam, the local population of Assam started demanding protection of their lands. As a protective mechanism, the colonial government introduced a mechanism called "Line System". The Line system was mainly implemented in the Kamrup and Nagaon Districts of Assam for the first time in the 1920s.[34] By this system, the areas where immigrants lived were demarcated from the other areas where indigenous population of Assam lived. It prohibited settlement of East Bengal origin people from settling in the areas where native people lived. It demarcated villages exclusively for the indigenous population, villages where migrants lived, where both local and indigenous population lived, and demarcated the areas through a line. There were no set principles found to identify where lines should be drawn. Demands started rising from Assamese intelligentsia as they wanted the immigration to stop. British on the other hand, replied that there were enough wastelands available for cultivation.[35] Several attempts were made by the Assamese members of the Legislative council to press their demands against illegal immigrants but due to political benefits, the Muslim members opposed such demands. While anti-immigrant political leaders opposed immigration on the ground that it might bring threat to the indigenous population, those who did not oppose immigration voiced their opinion that the immigrants have brought with themselves newer techniques of cultivation which will help the State. A strong attempt was made in 1937 to abolish the line system. Munawar Ali a prominent Sylhet leader accused the line being discriminatory and it prevented Indians from going to one part from another.[36]

Rohini kumar choudhuri, who later became a member of the Constituent Assembly was holding a ministerial position in the Sadullah government and he offered to appoint a committee to enquire about the line system. The nine-member Committee which was formed to review the line system interviewed a large section of people from both sides. While East Bengal origin people opposed the system, a large number of native populations supported and wanted its retention for the protection of indigenous community against influx of migrants. The committee in their report opined that it was undesirable to interfere with the line system and favoured expansion of areas for

[34] Bodhi SattwaKar. "The Immigration Issue, Line System & Legislative Politics in Colonial Assam (1927-1939): A Historical Study", 11 IOSR-JHSS, (2013), p.1.
[35] Ibid.
[36] Ibid. p.3.

indigenous cultivation. Later, when the Sadullah Government was replaced by Gopinath Bordoloi's cabinet, it took a strong view against immigration and tried to evict immigrants from the professional grazing grounds. In opposition to this Provincial Muslim League Committee under leadership of Maulana Bhasani staged large scale protest. Demands for Assam to be included in Pakistan were also started raising from different parts of the Nation. The All India Muslim League's convention held in Delhi around that time demanded the same.[37] The debates over the line system saw the emergence of two different public spheres. It was one among the indigenous and the other among the settlers. It could be said to be a part of "the exercise of building a pan Assamese nationalism and hegemony closely tied with the idea of an Indian nation."[38] Thus, the immigrant issue, which started as a socio-economic issue became a highly political issue and it started its domination in the geopolitics of Assam.

### 5.6 Legal mechanisms to identify illegal immigrants

Soon after partition happened, there were particularly tensions in the Bengali dominated areas. Sylhet, which was once part of East Bengal and later annexed with Assam, was one such point of tension. On July 3rd 1947 the Government decided to hold a referendum in the Sylhet province to decide whether it would join Pakistan or would remain with India.[39] Though the majority of the population opted to merge with Pakistan, some districts like Karimganj were left to India and other parts went to Pakistan. Nevertheless, as partition happened, a large number of Bengali Hindu population took refuge in the neighbouring districts of Assam.

This again instilled fear among the native population of being linguistically minority in their own State. The number of such refugees was estimated to be around 5 lakh.[40] Taking note of this, the Government of India first promulgated an ordinance on 6th January, 1950 to identify and expel illegal migrants. This was soon replaced with an Act passed by the Parliament of India which was the Immigrants (Expulsion from

[37] Ibid.
[38] Rinku Pegu, "The Line System and the Birth of A Public Sphere In Assam: Immigrant, Alien, And Citizen", 65 Proceedings of the Indian History Congress: 2004 (2004) p. 596.
[39] Dewan Nurul Anwar Husain Chowdhury, "Sylhet Referendum, 1947", Available at :https://en.banglapedia.org/index.php?title=Sylhet_Referendum,_1947.
[40] White paper on Foreigner's issue, Government of Assam. Available at : https://cjp.org.in/wp-content/uploads/2018/10/White-Paper-On-Foreigners-Issue-20-10-2012.pdf.

Assam) Act, 1950.[41] Though this Act was implemented to the whole of India, it was particularly for Assam. Under Sec. 2, If any person who are ordinary residents of outside India and has come to India and staying and "that the stay of such person or class of persons in Assam is detrimental to the interests of the general public of India or of any section thereof"[42] then the Central Government may direct those persons to remove themselves from India or Assam within a period, or might give further directions for removal of such persons. Interestingly, an exception was added to this as a proviso saying that this act shall not apply to those persons who have come to Assam in fear of civil disturbances from areas now under Pakistan and have left their ordinary place of residence for the same. This was the first legal mechanism devised for deportation of illegal migrants from Assam. Due to the vagueness of the provisions, East Bengal origin Muslims were harassed by the police virtually anywhere.[43]

Though the social sphere of Assam even after partition was largely calm yet as the number of refugees grew in the State, soon in 1950 riots broke out even in Assam along with neighbouring districts of East Pakistan. Riots, coupled with the state atrocities by virtue of the Expulsion Act many East Bengal origin Muslims who were living in the State since a long time before partition and chose not to go to Pakistan were forced to flee to East Pakistan in fear of their lives. Government of both the sides, India and Pakistan took note of the fact and came into an agreement, which is popularly known as the Nehru-Liaquat Agreement (Formally known as Agreement Between the Governments of India and Pakistan regarding Security and Rights of Minorities) which was signed in April 8 1950. This agreement ensured that both the Governments will ensure equality of citizenship, full sense of security in respect of life, freedom of movement, speech, occupation to the minorities among other things.[44] In respect to Assam and neighbouring districts, the pact specified that the properties of the minorities who fled Assam due to civil disturbances will not be distributed to others and will be restored to such persons to which they belong, even if it is being occupied by others. It set a cut-off date to return which was 31st December 1950. As many as 1,61,360 people

[41] Act No. 10 of 1950.
[42] Sec. 2, Immigrants (Expulsion from Assam) Act, 1950.
[43]Supra 26, p. 32.
[44] Clause A, Agreement Between the Governments of India and Pakistan regarding Security and Rights of Minorities, Available at : https://mea.gov.in/Portal/LegalTreatiesDoc/PA50B1228.pdf.

returned to Assam as a result of the pact.[45] Many contended that as a result of this agreement, many fresh immigrants also came to Assam who were not residing here before. Natives of Assam were also dissatisfied with this Agreement because they thought the East Bengal origin Muslims were at forefront of asking a separate nation for them and even thought Assam would become part of Pakistan and hence now they do not have any legitimate right to return to Assam.[46] Nevertheless, the Immigrants (Expulsion from Assam) Act, 1950 was virtually nullified due to the Nehru- Liaquat Pact as it extended the cut-off date till December 1950.

### 5.7 National Register of Citizens 1951 and thereafter

Soon after the pact, the Census of 1951 was going on all over India. At the time of census, the ministry of Home Affairs directed the authorities to prepare a register of citizens exclusively for the State of Assam. The same data collected for the census were used for the making of the National Register of Citizens (Hereinafter "NRC"), 1951. The register not only contained name, age, sex, religion but also addresses of people mentioning who are living where. It is to be noted here that many people who fled Assam during the 1950s and who returned thereafter had missed their opportunities to be enrolled in the NRC,1951 as they were not present at the time when census was going on.[47] Soon after the NRC process was done, the register which was initially kept in the offices of the commissioners and sub divisional officers were sent to the district police stations in the early 1960s when it the government introduced another mechanism to identify immigrants, which was the Prevention of Infiltration into India of Pakistani Nations (PIP) programme.[48] It was to help the Assam Police set up boundary units to screen infiltrators who illegally cross the border from East Pakistan to Assam. Almost 180 such border units were set up in different places.[49] The number of such posts were again raised at the time of the Indo-Pak war of 1965. After the war, the Central government asked the State of Assam to expedite the process of compiling the citizen registers and to issue identity cards to at least those who were staying near the border so that there's no unnecessary harassment. Furthermore, the Centre asked the Assam Government to clear lands so that barbed wire fences could be set up in those areas.

[45] Sangeeta Barooah Pisharoty, ASSAM: THE ACCORD, THE DISCORD, 1st Ed.,2019. p.50.
[46] Ibid.
[47] Ibid.
[48] Supra 40, p.9.
[49] Supra 45, p.63.

However, the State Government opined that it was not possible for them to shift people residing in those areas as there were almost 25,000 families residing in these places. In 1966, the Central Government dropped the idea of issuing identity cards as they found the project impractical.[50] Later the whole PIP programme was dropped yet the police continued to secure the border areas of Assam.

### 5.8 The Assam Movement

The issue of illegal influx of migrants by then had come to the mainstream political debates in Assam. In the meantime, the Bangladesh Liberation War in 1971 happened and Bangladesh emerged as a new country in the world map. As India played a crucial role in the liberation war, both the parties wanted to maintain the friendly relationship between the two nations. As a result a treaty, known as the Treaty of Peace and Friendship between the Government of India and the Government of the People's Republic of Bangladesh was signed in Dhaka in March 1972. The treaty, which is popularly known as the "Indira Mujib Pact" reaffirmed the friendship between the two nations and committed themselves to "strengthen the relations of friendship, good-neighbourliness and all-round cooperation existing between them"[51] Soon after in 1975 Emergency was declared all over the Nation and the issue of illegal immigration covered up because of the overall situation.

In 1979 however, after the sudden death of a sitting member of Parliament Hiralal Patowary, a by-election in the Mangaldoi constituency which he represented was to be held. The Election Commission ordered summary revision and publication of the draft electoral rolls and had given a last date to file objections against inclusion of any names. The All Assam Students' Union (hereinafter "AASU") and All Assam Gana Sangram Parishad ("AAGSP') who were voicing their concerns against demographic change in Assam and to expel all 'outsiders' run a state-wide campaign that names of thousands of illegal immigrants have been entered in the electoral rolls in Assam and hence needed to be rechecked and deleted.[52] During the period of filing of objections, the Election

[50] Supra 40, p.10.
[51] Art. 1, Treaty of Peace and Friendship between the Government of India and the Government of the People's Republic of Bangladesh , Available at : https://www.mea.gov.in/bilateral-documents.htm?dtl/5621/Treaty+of+Peace+and+Friendship.
[52] Supra 45,p.27.

Commission received objections against 47,658 voters.[53] On June 8, 1979 AASU staged large scale demonstrations all over the State and a 12 hour general strike was called demanding "Detection, Deletion and deportation of illegal immigrants"[54] from Assam. This was the start of six-year long Assam Movement. It is believed that AASU took up the foreigners' issue after a comment made by then Chief Election Commissioner S.L. Shakdher in a low key conference of Chief Electoral officers held in Ooty in 1978. In that conference, Shakder emphasised on the need of verifying genuineness before entering names in the electoral roles as he believed "large scale inclusion of foreign nationals in some states, including the North-East."[55] This comment triggered the protesting student body to call for mass protests programmes against illegal immigrants. In 1980 when Indira Gandhi came to power, the leaders of AASU met her and raised their concerns about the problem. They had their own proposals which they thought would solve the problem. They firstly wanted to have updation of NRC 1951 which would later be used to cross check electoral rolls. Secondly, they demanded a proper demarcation of the Indo-Bangladesh border. Thirdly they also demanded strict maintenance of death and birth register in block levels and identity cards to be issued across the North-Eastern region.[56]

However, the deadlock between the two parties remained on the issue of determining the cut-off date for identification and deportation of illegal immigrants. While the Government of India insisted upon having 25th march 1971 as the cut-off date in spirit of the Indira-Mujib Pact, the AASU leadership wanted NRC 1951 to be the basis of determining the cut-off. This deadlock continued for some time. During the six-year long Assam movement, President's Rule was imposed on the state three times.[57] There were almost 23 rounds of negotiations held between the protestors and the Government till 1982. As president rule was in place, the government wanted to have fresh elections in the state in 1983 but the protestors were not ready to let elections be held in the state. While the government wanted the elections to be held on the basis of 1979 electoral rolls (which precipitated the Assam Movement), the protestors opposed it as they argued

[53] Ibid.
[54] Sanjib Baruah, "Ethnic Conflict, and Political Turmoil--Assam, 1979-1985", 26 Asian Survey (1986), pp. 1187.
[55] T.S. Murty, ASSAM : DIFFICULT YEARS, 1st ed.1983, p.4.
[56] Supra 40, p.12.
[57] Universitry of Central Arkansas, "India/Assam (1967-present)" Available at :https://uca.edu/politicalscience/dadm-project/asiapacific-region/indiaassam-1967-present/.

it included names of illegal immigrants.[58]This resulted in widespread violence all over the State as clashes broke down between the opposers and supporters of the election. The credibility of the 1983 election could be understood by going by the fact that out of 126 constituencies, only in 112 constituencies voters turned out to vote. Among those, while 36 constituencies had normal turnout, others saw voting percentages between 0.38- 20 percent.[59] During the election period ethnic conflict happened in Nellie in 1983 which led to the killing of at least 2000 people.[60] The election of 1983 which brought the Hitweswar Saikia led Congress (I) government in power, with the help of Indira Gandhi's government at the centre wanted to resolve the issue of determination of illegal migrants through a Central act, known as the Illegal Migrants (Determination by Tribunals) (hereinafter "IMDT") Act of 1983. It mentioned 25th March 1971 as the cut-off date and hence was not agreed by the protesting AASU and AAGSP. Through this Act, the centre again wanted to reaffirm that the determination of citizenship status was the sole domain of the Centre and it was the ultimate authority to do so. The legality and aftermath is discussed below.

Nevertheless, the political turmoil that happened between these periods was unprecedented.

After much deliberation between the Government and the protestors, the Assam Movement finally came to an end after an accord was signed between leadership of protestors and Rajiv Gandhi who was serving as the Prime Minister of India in 1985. In the midnight of 14th August 1985 both the parties finally settled the dispute by signing the Assam Accord. Under this Accord, the Central Government agreed to work for all round economic development of Assam along with granting constitutional safeguards to "protect, preserve and promote the culture, social, linguistic identity and heritage of the Assamese people." It also promised that the government will ensure upliftment of standard of living of the people of Assam and would place special emphasis on education by establishing national level educational institutions.[61] It also promised to arrange citizenship certificates to the people[62] and secure the Indo-Bangladesh border

[58] Supra 54.
[59] Jaswant Singh, "Assam's Crisis of Citizenship: An Examination of Political Errors', 24 Asian Survey, (1984), p. 1067.
[60] " '83 polls were a mistake: KPS Gill", ASSAM TRIBUNE, Tuesday, Feb 19, 2008.
[61] Clause 7, Assam Accord, 1985.
[62] Clause 8.1, Assam Accord, 1985.

by erection of physical barriers like barbed wire fences, walls etc. which would be effective in order to prevent future infiltration.[63] The main contention, which was regarding detection of illegal immigrants, both the parties agreed under clause 5.1 of the Accord that for the purpose of detection and deletion 1st January, 1966 would be the cut-off date. It also agreed that persons who came before the 1966 cut-off date whose names were there in the electoral roll of 1967 would be regularised. [64] Illegal migrants who came after 1st January 1966 and upto 24th March, 1971 shall be detected under the provisions of law. Those persons then shall be required to register themselves in the respective districts. Also, they would be disenfranchised for upto ten years following the date of detection and will be enrolled again after the said period is over.[65] all other persons who have entered on or after 25th March 1971 would be detected, deleted and practical steps would be taken to deport them to their country of origin.[66]

In view of this Accord, the Citizenship Act,1955 was amended in the year 1985 which included s.6A reflecting the provisions of Assam Accord in cases related to foreigners, establishing a graded citizenship criterion exclusively for Assam. Also, the Central Government assured the protesting groups that it would look into the lacunas of IMDT Act, 1983 and will try to resolve it. In this broad framework decided by the Assam Accord the Assam movement finally came to a halt and peace was restored in the region. But, the problem of illegal immigration and the overall citizenship crisis remained unsolved.

### 5.9 IMDT Act, 1983 and its Constitutionality

The IMDT Act[67] was passed by the Indian Parliament on 25th December, 1983 when the Assam Movement was still at peak. The main purpose of the Act was to establish tribunals for determination of illegal immigrants "in a fair manner" so as to expel them from India. In the preamble of the Act it has accepted the fact that a large number of illegal immigrants have crossed borders on or after 25th March of 1971 and residence of such illegal immigrants have been proved detrimental to the interest of people of India. It was deemed to be a necessary protection of the Indian citizens and thus it has

[63] Clause 9, Assam Accord, 1985.
[64] Clause 5.2, Assam Accord, 1985.
[65] Clause 5.6, Assam Accord, 1985.
[66] Clause 5.8 , Assam Accord, 1985.
[67] Act No. 39 of 1983.

been enacted as a special provision for detecting foreigners residing in Assam illegally. Therefore, though the Act was extended to the whole of India but it came into force only in Assam on 15th October 1983 making it having retrospective effect.[68] Under Sec.3(c) it defined who an illegal immigrant was. It provided three criteria to be followed to determine an illegal immigrant. First, the person had to enter India on or after the 25th day of March, 1971, second, he or she had to be a foreigner and had entered India without a valid travel document. A foreigner was defined in the Foreigners Act, 1946 as anyone who is not a citizen of India. Under sec. 5(1), the Central Government was authorised to set up tribunals for determination of illegal migrants who were to decide on "references or applications" made by any persons. Making a reference under s.8 was made an "responsible act"[69] as those who resided under the jurisdiction of the same police station and whose application was accompanied by at least two persons residing in the jurisdiction of the same police station with a fee of hundred rupees was only to be considered by the tribunals. Before an amendment made to this Act in 1988, the persons who file the affidavits had to reside within three kilometres of the area against whom a reference was made to the tribunals. The process of making a reference was much more complicated and technical then the process given in the Foreigners Act, 1946. Interestingly, under s. 9 of the Foreigners Act,1946 the person against whom the accusation of being foreigner has arisen, the burden of proof lies on that person to prove his or her nationality. But, in the IMDT Act,1983 the burden lies on the 'applicant' to prove the other person as an illegal immigrant. These complexities of IMDT Act, 1983 was not welcomed by the people of Assam and the Act was seen rather as a protective measure laid down by the Central Government to make the process of detection of illegal immigrants more tedious and hence it was opposed by the AASU and AAGSP leadership who were leading the Assam Movement. It was to be noted that, the cut-off date of 25th March 1971 was already set up by this Act much before it was accepted by the protestors in the form of Assam Accord. Hence, the upper hand of the centre in regard to determination of illegal immigrants and overall, in the issue of citizenship was evident. After the Act came into force, two different Acts were in force simultaneously.

[68] Sec. 1(3), Illegal Migrants (Determination by Tribunals) Act, 1983.
[69] Supra 11, p.104.

Those who came before the 1971 cut-off date were determined by the Foreigners Act 1946 which was applicable in all of India and those who came after 24th March 1971 were determined by the IMDT Act, 1983 which was only applicable to Assam. Thus, a two tier mechanism for determining the illegal immigrants were in force in the State of Assam. After signing of the Assam Accord, though the deadlock on the cut-off date was settled and peace returned to the State, AASU kept on pushing for repeal of the IMDT Act,1983. Hence the organisation this time fought against the Act not politically but judicially. The former president of AASU who later went on to become the Chief Minister of Assam, Sarbananda Sonowal filed a writ petition in the Supreme Court pleading the IMDT Act,1983 as unconstitutional. He argued that the residents of Assam who are citizen of India has been prejudiced by the operation of IMDT Act, 1983 as it was arbitrary and made an unreasonable classification of citizens which made the detection and deportation of illegal immigrants residing in Assam was made too complex whereas the rest of the states could do so by Foreigners Act,1946.[70] He also argued that the presence of illegal immigrants in the state has brought threat to the cultural and ethnic composition of the State and though the Act aimed to detect and deport foreigners it has even failed to meet the basic criterias provided in the Foreigners Act,1946, ergo making it impossible to detect and deport foreigners. Through the course of hearing the petition the position of both the State and Central Governments have changed from time to time.

The first counter affidavit filed by the then NDA Government in 2000 agreed to the contention raised by Sonowal that IMDT Act has not been adequate in determining illegal immigrants and also accepted the fact that it has been discriminatory for the state of Assam.[71] It also emphasised on the fact that illegal immigrants have changed the demography of Assam and it is a cause for national security. Same was also agreed by the Assam Government by the affidavit they filed in the same year. It was the Assam Gana Parishad ("AGP") that was formed by the leaders of Assam Movement. Interestingly, in 2001, when Congress Government came into power in Assam, It changed the earlier stand took by the Assam Government (then ruled by AGP) and said the Act is perfectly fine and there was no need to scrap it. Also, by the time the third

[70] Sarbananda Sonowal v. Union of India, Writ Petition (Civil) No. 131 of 2000
[71] Supra 11, p. 109.

affidavit was filed by the Central Government, Congress again came into power in the centre and ergo, changed its earlier stand saying the IMDT Act was protecting interest of the genuine Indians by enabling judicial scrutiny.[72] It shows that the question of illegal immigrants and effectiveness of the IMDT Act was more a political question than a legal one.

But the effectiveness of the Act could be identified by the data of those who entered Assam on or after 25.3.1971 upto 30 April,2000 provided by the Central Government in the year 2000 in the first affidavit which was relied on the data given by the Government of Assam to the centre:

| | |
|---|---|
| "Total number of enquiries initiated | 3,10,759 |
| Total number of enquiries completed | 3,07,955 |
| Total number of enquiries referred to screening committees | 3,01,986 |
| Total number of enquiries made by the screening committee | 2,98,465 |
| Total number of enquiries referred to IMDTs | 38,631 |
| Total number of enquiries disposed of by IMDTs | 16,599 |
| Total number of persons declared as illegal migrants | 10,015 |
| Total number of illegal migrants physically expelled | 1,481 |
| Total number of illegal migrants to whom expulsion order Served | 5,733 |
| Total number of enquiries pending with screening committee | 3,521 |
| Total number of enquiries pending with the Tribunal | 22,072"[73] |

At the end of hearing, in August 2005 the Apex court in the *Sarbananda Sonowal v. Union of India*[74] held that the provisions of IMDT Act,1983 and its rules *ultra vires* the Constitution of India, declaring it unconstitutional. It further ruled that Tribunals and appellate tribunals constructed under the Act would cease to function and all the pending cases shall be transferred to the tribunals constituted under the Foreigners (Tribunal) Order, 1964.

[72] Supra 11, pp.109-110
[73] Supra 70, Paragraph 19, First counter affidavit filed by Union of India, 2000.
[74] AIR 2005 SC 2920.

The grounds that the Court relied upon were first, that the shifting of burden of proof to the prosecution was not just as certain things like, place of birth, date of birth, name of the parents etc. are entirely in the domain of personal knowledge of the accused and it is virtually impossible for the prosecution to find all these out. The court while referring to the reversal of burden of proof (from Foreigners Act,1946 where the onus of proof lies on the accused) relied upon nationality laws of different common law countries. The Apex Court also relied upon s. 106 of the Evidence Act, 1872 which says "when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him." It was a clear shift from the general criminal law jurisprudence which says that the burden of proof is always upon the prosecution.

Secondly, the Apex Court found that the Act as being violative of Art. 14 of the Constitution as it treats illegal immigrants differently from the rest of the country and immigrants have far better rights in Assam than those immigrants who are found in any other states. The court also observed that the IMDT Act didn't have any rational nexus with the object sought to be achieved by the Act, which includes expediting the process of identification and deportation of illegal immigrants.

Thirdly, The court termed the influx of illegal migrants, as a kind of 'aggression'. While doing so, the court relied upon a report sent by Lt. Gen. (Retd.) Sec. K. Sinha, the then Governor of Assam in 1998. Sinha in his report addressed to the President of India elaborately discussed the problem of illegal influx in Assam. The Apex Court while terming the influx as "aggression" heavily relied upon the Sinha's report and suggested that Union of India is duty bound to provide safeguard to Assam against "external aggression and internal disturbance" mandated by Art. 355 of the Constitution. The IMDT Act, court opined that deprives Union to do its duty under Art.355 and hence declared as unconstitutional.

The critics of this judgement accuses the Court of heavily relying upon a document (S K Sinha's report) which is itself biased and 'xenophobic' as the report uses terms such as "panic attack", "demographic invasion", "grave danger to our national security" etc.

against people of Bengali origin.[75] Further, It is argued that treating Art.355 as an independent source of power for the Union to interfere with a state is a clear violation of the *Bommai*[76] judgement where the court opined that it is not an independent source of power. Justice Madan B. Lukur, former Judge of the Supreme Court of India, while discussing about the *Sonowal* judgement with Amnesty International, said :

> "The inference has to be drawn assuming the facts are correct and we have to proceed accordingly. They may be exaggerated but you may still have to proceed on that basis. As far as the inference drawn from the factual position laid down by the report of the-then Assam's Governor is concerned, to say that there is external aggression because there was a large influx of persons coming from Bangladesh – I do not see how this can be called an 'aggression'. The inference drawn from external aggression is not necessarily correct."[77]

Critics also argue that *Sonowal* judgement was transgression from municipal and international laws and hence was judged incorrectly. Nevertheless, the judgement was passed in 2005 and it closed down all tribunals and appellate tribunals formed under IMDT Act. On the question of validity of already decided matters under IMDT Act, the Gauhati High Court in *Anowar Ali v. State of Assam*[78] declared that orders passed by the tribunals do not cease to exist after striking down of the IMDT Act. It does not mean that all cases need to be decided again under the Foreigners Act,1946. But if there's any objection related to order passed by the tribunals made under IMDT Act, the aggrieved party can file a writ petition and the matter would be decided on merits and if the Court finds that the matter needs fresh consideration it will be then transferred into the Foreigners Tribunal. Moreover, the State also had the power to try a case under Foreigners Act 1946 where order of the IMDT Act has been set aside by a writ petition. Also, the State could also file a fresh petition against a person who was not declared as an illegal immigrant by the IMDT Act,1983.

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[75] "Designed to Exclude: How India's Courts are Allowing Foreigners Tribunals to Render People Stateless In Assam", AMNESTY INTERNATIONAL, Available at: https://amnesty.org.in/wp-content/uploads/2019/11/Assam-Foreigners-Tribunals-Report-1.pdf
[76] S.R. Bommai v. Union of India,1994 SCC (3) 1.
[77] Supra 75, p.14.
[78] 2014 (3) GLT.

After the IMDT Act was held unconstitutional by the Apex Court in February 2006, the UPA led government again modified the Foreigners Act,1946 as it now had to determine who an 'illegal immigrant' is. The Central Government issued a notification through the Foreigners (Tribunal for Assam) Order,2006 where the onus of proving someone as an illegal immigrant was again put back to the prosecution, virtually nullifying an aspect of the *Sonowal* judgement. This again was protested by the opposition and was again challenged in the *Sarbananda Sonowal II*[79] case. The court again quashed the order being arbitrary and unreasonable following the same line of reasoning of the IMDT Act case.

Thus, the historical reasons for the influx of migrants in Assam and political movements thereafter, coupled with reports from the high officials and Supreme Court judgement has given a momentum to the citizenship debate in Assam.

### 5.10 Chakma refugee crisis in Arunachal Pradesh

The Chakma refugee crisis in Arunachal Pradesh is another such instance that shows why the matter of citizenship in the North-Eastern states are not similar to other states of India and how laws and judgements of the Courts have played a vital role in deciding that. The Chakmas, who were residents of Chittagong Hills and some parts of Mymensingh district presently in Bangladesh had to flee from then East Pakistan in 1964 to India as establishment of the large scale Kaptai Hydel Power Project displaced them from their homelands. They came from East Pakistan and took refuge in the North-East, mainly in the states of Assam and Tripura.[80] As we have seen in the preceding discussions, Assam was already seeing a huge number of influx before and after the partition. Hence, the state Government expressed its inability to rehabilitate the Chakmas, Assam persuaded the Central Government to share this responsibility among other states. The Central Government then asked the state of Arunachal Pradesh (Then it was known as the NEFA or North-Eastern Frontier Agency) to take the responsibility. In 1966 the State government of NEFA in consultation with the local tribal people rehabilitated the refugees under a scheme known as the Chakma Resettlement Scheme.

[79] Sarbananda Sonowal v. Union of India, Writ Petition (civil) 117 of 2006
[80] Supra 11, p.122.

The scheme earmarked different areas of the state so that the refugees could settle. 57 families of 4,012 members were shifted to these camps and thereby settled there. [81] This was an exceptional case as NEFA was and now Arunachal Pradesh is under the BEFR, 1873 and hence 'outsiders' are not permitted to settle in the state. Though the Chakmas were first seen as temporary residents in the state, despite their growing claim over resources and for cultural differences the locals started seeing them as intruders. Similar to Assam, the All Arunachal Pradesh Students Union ("AAPSU") has led popular movements demanding ousting of Chakmas from the State and has lodged their protests by frequently giving calls for boycotting them socially and economically.

The issue of Chakma refugees and their citizenship status first came to the Supreme Court in the case *State of Arunachal Pradesh v. Khudiram Chakma*[82]. The Petitioner, who was a Chakma refugee who came to India in 1964 were first living in Ledo camp in Assam before shifting to the NEFA earmarked areas. The petitioner along with some other had bought lands from the local people of Arunachal which were outside the earmarked area. According to the BEFR,1873 'outsiders' were not allowed to purchase land in the NEFA. Hence, many native people urged the State government to look into the matter and send those people back to the demarcated zone. In pursuance of this, the State government in 1984 issued an order directing those people to shift back to the earmarked area.[83] This was challenged by Khudiram Chakma in the High court which subsequently ruled against the petitioner but on humanitarian grounds urged the State Government to pay adequate compensation to them. This order was challenged by both the parties by special leave to the Apex Court. One of the main contentions of the Chakmas was that they were Indian citizens by virtue of Sec.6A of the Citizenship Act,1985 and as Indian citizens they have every right to reside and move throughout the territory of India given by Art.19. The apex court however rejected their contention on the ground that to claim Indian citizen by virtue of s.6A of the Citizenship Act,1955 one has to be of Indian origin and had to come to India before 1st January 1966 to Assam and has to be ordinary resident of Assam as it existed in the year 1985 when the amendment was incorporated. Court held that though they were persons of Indian origin and had come to Assam before 1966 but they were not 'ordinarily residing' in Assam

[81] Ibid, p.122
[82] 1994 AIR 1461.
[83] Ibid.

as they were shifted to NEFA in 1966 and NEFA was not a part of Assam at any point though it was administered by the Governor of Assam for some period. As the Chakmas were residing in NEFA and later Arunachal Pradesh it cannot be said that they were ordinarily residing in Assam.[84]

Another landmark judgement that emerged out of the Chakma refugee crisis was the *National Human Rights Commission v. State of Arunachal Pradesh*[85]. While in the *Khudiram Chakma* case the the petitioners wanted to claim their citizenship by virtue of s.6A of the Citizenship Act,1955 which solely applicable to Assam, in this case the Chakmas represented by the National Human Rights Commission ("NHRC") contended that they should be granted citizenship by virtue of s.5(1)(a) of the Citizenship Act,1955 which grants citizenship *by registration.* It is to be noted that the Central Government on various occasions have ensured the Chakmas to grant citizenship. Accordingly, they had applied for citizenship to the Deputy Commissioner of the place, but those applications remained pending. The NHRC after receiving complaints from People's Union for Civil Liberties and Citizenship Rights of the Chakmas filed a writ petition in the Apex Court enforcing Art.21 on behalf of the Chakmas. The Chakma groups alleged that they have been constantly targeted by the local groups and they are "being persecuted by a section of citizens of Arunachal Pradesh."[86] They also alleged that 'quit notices' have been served to them by the AAPSU from time to time. One of the respondents of the case, the State of Arunachal Pradesh in its response expressed its reluctance to consider the matter as they contended that the court in the *Khudiram Chakma* case had very clearly said that they do not have any right to citizenship. Secondly, they also contended that there has been no such threat on "life and liberty" of the Chakma people and the Government is committed to safeguard their lives and properties. After hearing all the parties to the case, the Apex Court court found that there has been violation of human rights and Art.21 of the Indian Constitution and directed the State of Arunachal Pradesh to give adequate protection to the Chakmas. On the other hand, the Court directed the concerned authorities to register the applications to grant

[84] Ibid.
[85] 1996 AIR 1234.
[86] Supra 11, p. 124.

citizenship and after compiling the data, to send it to the Central Government for consideration.

The Chakma refugee and their crisis of citizenship was thought to have been settled by the *NHRC* case but it is not settled till date.[87] In 2015 in another petition[88] the issue was again raised in the Court and Court directed both the Central Government and the Government of Arunachal Pradesh to finalise the procedure so that the Chakmas could get citizenship rights and also directed them to ensure safety of lives and liberties of the people. Interestingly, in the independence day speech of 2021, the Chief Minister of Arunachal Pradesh said that the "Chakmas and Hajongs, who number more than 60,000, would be relocated outside the State"[89] The reluctance in granting citizenship to the Chakmas is because of the political pressure that the State Government has been receiving for many years from AAPSU and other popular organisations of the State who see it as an attack on their indigenous identity and their resources which they are not ready to share. But, as per the law of the land, the Supreme Court has conclusively decided the matter and hence Chakmas have the right to citizenship of India.

To summarise, it can be seen that the North-Eastern States have a peculiar history and identity which cannot be equated to other parts of India. Because of this, the Constitution of India also has encompassed under various articles the right of the North-Eastern people over their land and have guaranteed them to preserve and protect their identities. The history of migration before and after partition as we have seen has affected and to a certain extent led to demographic change in certain parts of the North-East which is evident from the demographic change of Tripura. On the other hand, the North-Eastern states have seen popular struggles in their states against illegal migration and have perceived it as a threat to their cultural and indigenous identity. These protests on the other hand have forced the Union Government from time to time to make necessary changes in the citizenship laws and to introduce newer laws that can tackle the problem of illegal influx of immigrants. The judiciary has also played an important

[87] "Grant citizenship to Arunachal Chakmas", THE HINDU, Saturday, August 28,2021, Available at :https://www.thehindu.com/news/national/other-states/grant-citizenship-to-arunachal-chakmas/article36146340.ece.
[88] Committee For C.R.of C.A.P. & ors v. State Of Arunachal Pradesh, Writ Petition (civil) no.510 of 2007
[89] Supra 87.

role in settling the disputes regarding illegal influx to granting citizenship rights. But the issue of illegal immigration and the question 'who is an Indian citizen in the North-East?' has remained unanswered. Constant amendments in the Citizenship Act, 1955 and other related laws have made this issue more complex and is still a central issue in the geopolitics of the North-East which has even led to separatist and insurgency movements. The recent amendment to the Citizenship Act, 1955 which was done in 2019 has again brought back the confrontation between the Union Government and the North-Eastern states regarding citizenship to the mainstream. This issue shall be discussed in the next chapter.

### 5.11 Genesis of Citizenship (Amendment) Act, 2019

Giving citizenship to the Hindu refugees who came from Bangladesh and living in India, mostly in Assam was promised by the NDA led government even before any legal mechanisms were devised. On 7th September, 2015 the ministry of home affairs published two notifications amending Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948. First, amending Passport (Entry into India) Rules, 1950 the Ministry added (ha) in rule 4(1) whereby it exempted

A class of persons from rule 3 which prohibited entry to persons in India without valid passports. The exempted class of persons were thus from two nations : Bangladesh and Pakistan who were either Hindus, Sikhs, Buddhists, Jains, Parsis or Christians and had come to India due to "religious persecution or fear of religious persecution" and were "compelled" to seek shelter in India before 31st December,2014, and have come to India without valid passport or any other relevant documents or their documents have expired.[90] A similar amendment was done in the Foreigners Order, 1948, exempting the same class of persons from application of provisions of the Foreigners Act, 1946 and the orders made thereunder.[91] Subsequently, both these orders were again amended in 18th July, 2016 adding same class of persons coming from Afghanistan too.

These were the first move made by the NDA government to exempt people coming from Afghanistan, Bangladesh and Pakistan and who were Hindus, Sikhs, Buddhists, Jains, Parsis or Christians by faith from the ambit of declaring them as foreigners or illegal immigrants. In 15 July, 2016 the Home Minister tabled a bill, titled, "Citizenship

[90] Passport (Entry into India) Amendment Rules, 2015, G.S.R. 685(E).
[91] Foreigners (Amendment) Order, 2015,G.S.R.686(E).

(Amendment) Bill,2016 ("CAB,2016")" in the Lok Sabha for discussion. The statement of objects and reasons of the Bill suggested that A) it wanted to make persons who were from minority communities in Afghanistan, Bangladesh and Pakistan and were of Indian origin eligible for applying citizenship under naturalisation by reducing the criteria of residence to "seven years" exclusively for this class of persons instead of twelve years and B) to exclude them from the definition of illegal immigrants.[92] It is to be noted that though political stakeholders supporting the Bill were claiming that it was brought to accommodate people who have been religiously persecuted because of their religious identity the term "religious persecution" were nowhere to be found in the Bill, including the Statement of Objects and Reasons.

The Bill then referred to a Joint Committee of both the houses to give a report on it. The joint committee asked from different organisations, individuals and from the public in general to express its views on the Bill. Various organisations and individuals opposed this bill on the ground that it may have disastrous effect in Assam. People also apprehended that if the bill is passed, then the Assam Accord will be nullified which may not be accepted by the public. Concerns from other North-Eastern states were also raised. Change of demography and fear of becoming minority linguistically and ethnically were one of the main concerns of people who opposed this bill in front of the joint committee.[93] Others expressed their concerns relating to the inclusion of certain religious communities and excluding Muslims. Also, the question as to selecting only three countries were also raised. The committee after consulting with necessary stakeholders and other organisations, submitted its report on January 7, 2019 and subsequently it was passed by the Lok Sabha in February, 2019.[94] The introduction and thereafter passing of this Bill by Lok Sabha was met with large scale protests across the Nation and specially in North-East India. As the Bill remained pending while the Rajya Sabha was adjourned for *sine dine* in February 2019, the Bill eventually lapsed.[95]

[92] Bill No. 172 of 2016.
[93] Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016, Sixteenth Lok Sabha, https://prsindia.org/files/bills_acts/bills_parliament/2016/Joint%20committee%20report%20on%20citizenship%20(A)%20bill.pdf.
[94] "Explained: Why the Citizenship Amendment Bill is dead, for now", THE INDIAN EXPRESS, Wednesday, February 13,2019, Available at : https://indianexpress.com/article/explained/explained-why-the-citizenship-amendment-bill-is-dead-for-now-5582573/.
[95] Ibid.

Again, in December 9, 2019, Citizenship (Amendment) Bill, 2019 was introduced in the Lok Sabha.[96] After a five hour long debate session, it was passed within the same day. Also, after two days, it was passed by the Rajya Sabha too, thus becoming Citizenship (Amendment) Act, 2019[97] ("CAA,2019"). Though the crux of the Bill was same, i.e. giving opportunities to non-Muslim minorities of the three countries to claim Indian citizenship, however certain changes were made this time.

In both, CAB,2016 and CAA,2019 exceptions were introduced in form of proviso in the definition of "illegal immigrants".[98] But in the latter legislation, a cut-off date was introduced which was 31st December 2014. Though this same cut-off date was present in amendments made to Passport rules and Foreigners order in 2015 yet it was missing in the CAB,2016. It was hence, reintroduced in the CAA,2019. Secondly, the CAB,2016 amended third schedule of the Citizenship Act,1955 which gives qualifications for naturalisation and under clause (d) it added a proviso giving relaxation to the above-mentioned class of people in aggregate period of residence, reducing it to "not less than six years" while aggregate period of residence for others remained "not less than eleven years." IN CAA,2019 however, it was reduced to "not less than five years" reducing one more year then that of CAB,2016. Apart from that CAA,2019 introduced a newer section in the Citizenship Act,1955 placed after Sec. 6A of the Act. Sec.6B , which was introduced by the CAA, firstly empowered the class of people exempted from the definition of illegal immigrant to apply for granting citizenship under registration or naturalisation.[99] If those applicants fulfilled the conditions prescribed for registration or naturalisation, whatever the case may be, was to be deemed as citizen retrospectively, i.e. from the date of his/her entry into India. Also, upon conferment of such citizenship, all the proceeding that a person from the exempted class of people were facing in respect of illegal immigration was to be quashed by virtue of this section. Interestingly, in clause 4 of s. 6B of the Act it provided a blanket protection to the areas covered by sixth schedule and under the "Inner line" rule exempting it from the purview of s. 6B. This was in response to large scale protests that broke out in the North-East and State governments of these states not supporting

[96] Bill No. 370 of 2019.
[97] Act No. 47 of 2019.
[98] Sec.2(1)(b), Citizenship Act,1955.
[99] Sec.3, Citizenship (Amendment) Act,2019.

the Bill. Also, unlike the CAB,2016 in the statement of objects and reasons CAA,2019 has categorically mentioned that it was to provide relief to people who has been religiously persecuted or has fled the country in fear of persecution.

## 5.12 Challenges to CAA, 2019

Protests across different parts of the country erupted after the Citizenship (Amendment) Bill, 2019 was passed. However, these protests can be differentiated in two categories. While the rest of India perceived the CAA,2019 as being "anti-Muslim" and unconstitutional, North-Eastern states perceived it as further imposition of "illegal immigrants".

### *5.12.1 Constitutional Challenge*

The Constitutional challenge that the CAA,2019 faces is for various reasons. Firstly, the Act classifies illegal immigrants in two categories. One, on the basis of religion and the other on the basis of countries they have come from. It is argued that CAA,2019 violates Art. 14 of Constitution of India on the ground that it does not have a reasonable classification based on intelligible differentia. The twin test of intelligible differentia and reasonable nexus with the objective sought is a settled law that is to be applied to check whether any legislation has been discriminatory.[100] As the impugned Act excludes Muslims from its ambit, Art. 14 could be hampered. Also, it provides relief to immigrants coming from only three countries, namely: Afghanistan, Bangladesh and Pakistan and leaves away people from other countries. Questions have arisen as if the 'object of the Act' is to provide relief for 'religiously persecuted' people from these three countries, then will it not be discriminatory to leave out "Ahmadiyya" sect in Pakistan and "Shia" and "Hazara" sect in Afghanistan who were also reported from time to time being persecuted in these two countries.[101] Hence, it has been alleged that the classification is discriminatory and unreasonable.

[100] The State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75
[101] "Timeline: Persecution of religious minorities", DAWN, Sunday, November 4, 2012, https://www.dawn.com/news/761507/timelinepersecutionofreligiousminorities

Secondly, it has been alleged that the Act violates principles of secularism and is also violation of the basic structure of the Constitution of India. In the landmark case of *Sec.R. Bommai v. Union of India*[102], secularism is held to be a basic structure of Indian Constitution. It is alleged that as CAA,2019 gives relief to only certain religious groups and excludes mainly Muslims it is a violation of the principle of secularism. Under CAA,2019 illegal Muslims immigrants continues to remain 'illegal' whereas similarly situated persons from religions mentioned in the Act gets protection and even can apply for registration or naturalisation. The Basic structure doctrine, as Chandrachud J., pointed out in the case, *Indira Nehru Gandhi v. Shri Raj Narain,*[103] can only be applied in case of constitutional Amendments and not in ordinary legislations. By this, it can be said that the basic structure test cannot be applied in the CAA, 2019. But in some subsequent cases, the Court has used this doctrine to invalidate ordinary legislations on account of being violative of basic structure doctrine. In *G.C. Kanungo v. State of Orissa,*[104] a legislation was subjected to basic structure review and was invalidated using this doctrine. Hence, this challenge to the CAA,2019 is also tangible.

Thirdly, another contention raised by different groups that CAA,2019 is violative of Article 19 of the Constitution of India. It argues that CAA,2019 violates right to life guaranteed by the Constitution of India to the people of Assam. The large scale immigration that Assam has seen have already jeopardized the rights of people of Assam and this Act, as they argue will further endanger lives of people of Assam. In *Assam Sanmilita Mahasangha* case, the court has opined "periodic clashes between the citizens of India and migrants, leading to loss of life and property, and thereby violating the constitutional rights of the Assamese people." Thus, attracting the Art.21 argument to challenge CAA,2019 is also an attractive one.

*5.12.2 North-Eastern dissent*

While the rest of the protestors across India have raised their voice against CAA,2019 being unsecular and hence unconstitutional the reason for protest in the North-East is quite different. The history of the North-Eastern states, as we have discussed is the

[102](1994) 3 SCC.
[103] Appeal (civil) 887 of 1975.
[104] 1995 AIR 1655.

history of migration. There has been constant fear of getting numerically outnumbered by the immigrants and citizenship has remain a contested issue. Interestingly, the CAA, 2019 has distinguished the North-Eastern regions: one where it would be applied, in another where it would be exempted. It is to be remembered that the implications of CAA,2019 would be much higher in North-East and specially in Assam than the rest of the states of India. One of the important sections of heretofore immigrants who has been exempted from the criteria of "illegal immigrants" are the Bengali Hindus population. Assam has seen influx of Muslim immigrants from East Pakistan which was mostly pre partition, and also seen influx of Hindu Bengali population which was post partition.

Through clause 5 of Assam Accord, it was mutually decided that whoever have entered into Assam after 25th March, 1971 will be detected and eventually be deported. This cut-off date is important for Assam as it has agreed to borne the burden of immigrants irrespective of religion who have entered into Assam. After the cut-off date, anyone who has entered the territory was to be detected and deported. In respect to that, there are many cases pending in the Foreigners' Tribunals("FTs"). On suspicion of being not genuine citizen, the election commission of India has also struck down names from the electoral rolls. These voters are termed as "Doubtful-voters" or simply, D-voters. Till September, 2020 there are as much as 83,008 cases pending in the Foreigners' Tribunals of D-voters.[105] Also, 4,32,944 cases were registered in the FTs from 1985 till 2019.[106] After the implementation of CAA,2019 cases against the immigrants from the exempted classes of people (In Assam, it is mainly Bengali Hindus) will be dropped and subsequently will be granted Indian citizenship. This contradicts clause 5.8 of Assam Accord which promised that those who have come after 25th March 1971 shall be detected and steps would be taken to expel them. The Assam movement, whose primary demand was detection and deportation of foreigners, was secured under clause 5 of Assam Accord. The implementation of the CAA,2019 will nullify the clause 5 of Assam Accord which can be termed as soul of the Accord. Also, under clause 6 of the Accord it was promised by the Union of India that it shall provide "constitutional, legislative and administrative safeguards" for "protection, preservation and promotion

[105] "Assam Foreigners' Tribunals have 83,000 pending cases", THE HINDU, Tuesday, September 1,2020, Available at :https://www.thehindu.com/news/national/other-states/assam-foreigners-tribunals-have-83000-pending-cases/article32497289.ece.
[106] Ibid.

of the cultural, social, linguistic identity and heritage of the Assamese people". This can only be assured if the clause 5 of the Accord is implemented. In *Sarbananda Sonowal,* the Court has said,

"…the influx of Bangladeshi nationals who have illegally migrated into Assam pose a threat to the integrity and security of north-eastern region. Their presence has changed the demographic character of that region…"

*Per contra*, granting citizenship to selected illegal immigrants might change the demography of this State forever. Hence, these facts lead to the conclusion that CAA,2019 goes against the provisions of Assam Accord.

Secondly, the National Register of Citizens("NRC") which was solely made for Assam in 1951 was to be updated as per the order of the Supreme Court given in *Assam Public Works v. Union of India*. It was also a long-standing demand of people of Assam and was raised in the Assam Movement. Under clause 8.1. of the Assam Accord, it was decided that citizenship certificates would be provided to the people by the Central Government. As per the Court's order, process of updation of NRC was started in the year 2014.[107] The NRC was updated on the basis of the cut-off date prescribed by the Assam Accord and accordingly, various data that proved one's residence in Assam prior to 25th March,1971 was accepted. In August 2019, the process of updation process completed in August 31,2019 four months before the CAA,2019 was passed. The final list of NRC excluded 19 lakh people.[108] Though those were excluded does not became automatically foreigner and it was decided that NRC authority would provide "rejection slips" so that the persons could plead in FTs. But after almost three years of its publication, people have not received their rejection slips. It is because of the reason that the Assam Government opposed the final draft of NRC being faulty and demanded re-verification for the same.[109] Now, as per the provision of the CAA,2019 Bengali speaking Hindus who came to Assam after 25th March, 1971 and were not included in

[107] Rahul Karmakar, "The confusion over the status of the Assam NRC", THE HINDU, Thursday, May 19, 2022, Available at: https://www.thehindu.com/news/national/other-states/the-confusion-over-the-status-of-the-assam-nrc/article65426040.ece.

[108]Rahul Karmakar, "Over 19 lakh excluded from Assam's final NRC", THE HINDU, Saturday, August 31,2019, Available at :https://www.thehindu.com/news/national/over-19-lakh-excluded-from-assams-final-nrc/article61990870.ece.

[109] Tulika Devi, "Two Years of Assam NRC: Here are the Answers to Some of the Most Common Questions", NEWS 18, Tuesday, August 31,2021, Available at : https://www.news18.com/news/india/two-years-of-assam-nrc-here-are-the-answers-to-some-of-the-most-common-questions-4149827.html.

the NRC would be automatically included and would get as much as same rights like rest of the people. This makes the whole process of updation of NRC infructuous.

As for the rest of the North-Eastern states, there has been an exemption provided under the CAA,2019. But it might not be fruitful and might indirectly affect these states. Firstly, as per Sec. 6B (4) of CAA,2019 it has excluded states where "Inner Line permit" is applicable. It means that state of Arunachal Pradesh, Mizoram, Nagaland and recently added to the permit list, Manipur will be exempted. But it is noteworthy that any person to go to these areas needs pass and except natives, no one can buy lands and settle there. So even if it was not given any exclusion the newly became citizens would not be permitted to settle there. But there is a considerable portion of people from other states who have obtained long term permits and have worked in these states. But according to a survey, as many as "38% labourers are from other states."[110] The CAA,2019 now might increase the number.

The Second exemption was given to the sixth schedule areas. Unlike the "Inner Line" areas, the sixth areas are not properly demarcated. There are many places where one side of the road is under sixth schedule, and other is not. The means it would not be of much problem for the heretofore, immigrants to settle in these areas. It also could lead to more unrest in these areas and tensions between tribal and non-tribal may increase. Apart from it, this move to exclude sixth schedule areas might intensify the movement for more sixth schedule areas. Many groups in the North-Eastern states are pushing for sixth schedule inclusion. CAA,2019 exception might add fuel to it.

To the end, it has to be stated that the protests against CAA,2019 is different in other parts of India and in North-Eastern states. While the other states are protesting mainly because it is 'discriminatory' and excludes Muslims from its ambit, inclusion of immigrant Muslims in the exempted category might solve the problem for them. But same is not the case with Assam and North-Eastern states. Its protests are rooted in the history of immigration in these states and fear of further demographic changes in the region. These states see the provisions of this Act as threat to their culture, language,

[110] Arunabh Saikia, "Will the North-East 'exemptions' in the new Citizenship Bill meet their purpose?" SCROLL.IN, Sunday, December 8,2019, Available at :https://scroll.in/article/946028/will-the-north-east-exemptions-in-the-new-citizenship-amendment-bill-meet-their-purpose.

identity. Hence, exempting the entire North-East from the ambit of CAA,2019 might be a solution to it. The protests in North-Eastern states are not divided in religious line but united in the fact that these states are not ready to borne the burden of more immigrants. They also fear that, the CAA,2019 will again encourage immigrants from neighbouring Bangladesh to come to these states and settle in hope that citizenship might be extended to them too in later point of time.

## 6. CONCLUSION AND SUGGESTIONS

The Right to Citizenship is arguably one of the most important rights that has been guaranteed by modern Nation States through its constitution or other statutory laws. According to Article 15 of the Universal Declaration of Human Rights, every person has the right to nationality which could not be deprived arbitrarily. Though having citizenship in ancient societies was a privilege, in due course of time it has evolved as a fundamental human right linked with the concept of equality and individual liberty. The drafters of the Indian Constitution after intensely debating over modalities of Indian citizenship had come to an agreement that it has to be universal in nature and it should be available to all persons of Indian origin at the time of commencement of the Constitution, so that no one could be left out because of her/his caste, religion, sex etc. Having this concept of inclusive citizenship, the Parliament of India using its power under Article 11 legislated the Citizenship Act,1955 which is the principle law of the land regarding citizenship. But in due course of time issues like influx of illegal immigrants, threat to identity and culture, fear of demographic changes etc. compelled the Parliament to deviate from the idea of inclusive citizenship by linking descent and excluding certain classes of people from granting Indian Citizenship.

The geopolitics of North-Eastern regions have influenced Indian citizenship laws to a great extent. India's North-East, which is pretty diverse geographically and culturally, has a different socio-political history than other states of India. The history of the North-East is the history of migration. It has seen many waves of migration in different points of time. But, this influx of migrants particularly after partition has instilled fear among the natives about losing their identity and cultural heritage which to a large extent, Indian Constitution guarantees to protect. The Central government in various stages has tried to give relief to the people of North-East by assuring protection of their identities by enacting laws to determine and deport illegal immigrants from the region. It has also tried to settle the issue of citizenship in Assam by balancing interest of the natives with the concerns of those who came to Assam from East Pakistan before it got its independence, by amending Citizenship Act,1955 adding s.6A to it which has a different cut-off date from the rest of the states. The Indian judiciary too has raised its voice through various judgements regarding the need of protection of rights of the

people of North-East. It took on its hand, by agreeing to monitor updation process of NRC so that the issue of citizenship in Assam could be settled. But the recent amendment to the Citizenship Act,1955 which has come up with provisions of granting citizenship selectively to certain classes of people have reignited protests across the North-East. While formulating citizenship laws, the Centre needs to keep in mind the implication it can have in North-Eastern states as citizenship has been a contentious issue in this part of India. The Citizenship (Amendment) Act,2019 virtually nullifies clause 5 of the Assam Accord, which is regarded as the soul of the Accord along with s.6A of the Citizenship Act,1955 by shifting the cut-off date to identify illegal migrants from 1971 to 2014. The constitutional validity of the Act is also questioned and it is still a sub judice matter.

Both the Central and the State Government has to deliberate regarding this amendment which may jeopardize the hard won rights of the people of North-East. It would also render ineffective the updation of NRC which was completed after spending Rs. 1528 crores of public money. It is to be noted that the North-Eastern States specially Assam has bore the burden of rehabilitating large numbers of immigrants in the state. Asking these states again to share resources with immigrants that too selected on the basis of religion might have a devastating effect and may lead to civil disorder.

**Findings and suggestions**

**A. Inclusive Citizenship under Constitution of India**

The Constitution of India under Article 5 which provides criterias for having Indian citizenship at the commencement of the Constitution is very inclusive in nature. It provides citizenship to all by birth, without having any racial or religious connotation and to everyone who had his domicile in the territory of India at the time of commencement of the Constitution. It even recognises persons who had been ordinarily resident in the territory for at least five years preceding 26th January 1950. It also has provisions under Art.6 for those who at the time of partition went to Pakistan but returned to India before 19th July 1948 to grant Indian citizenship. Also, those who came after this date, they could also claim citizenship of India by obtaining a permit. These articles show that the makers of the Constitution were well aware about the complexities that was created by partition and had incorporated provisions on

citizenship which is inclusive in nature so that any genuine person of Indian origin who wanted to be Indian citizens at the time of commencement of the Constitution does not get deprived of his right to become Indian citizen. Going through the debates in the Constituent Assembly it has been found that members of the Assembly consciously refrained from incorporating any religious criteria in the Citizenship provisions so that it remains true to its commitment of making India a secular and inclusive nation.

### B. Shift from *Jus soli* to *Jus Sanguinis*

While in 1955, Indian parliament by virtue of its power given by the Indian Constitution under Article 11 legislated Citizenship Act,1955 it was in consonance with the ideals of the drafters of the Constitution and provided citizenship to anyone who was born in the territory of India. But in course of time, it slowly derogated from the concept of *jus soli* citizenship and started making exceptions to it. It amended the Act in 1986 when it first linked descent to Indian citizenship thereby shifting to *jus sanguinis* citizenship. Again in 2003, it amended the Act so that to exclude childrens of illegal immigrants from the sphere of Indian citizenship. It is found that the debates surrounding illegal immigrants, demographic changes, safeguard of rights of the native people etc. influenced the lawmakers and forced them to limit Indian citizenship which was a clear shift from the earlier notions of Indian citizenship. Most of the problem arose in the North-Eastern part of India which shares its border with Bangladesh. To tackle this problem, the Indian citizenship laws were amended making it more stringent.

### C. Linkage between geopolitics of North-East and Citizenship laws of India

Geopolitics of North-Eastern states of India have heavily influenced Indian citizenship laws. North-East India which is diverse in every aspect, has seen different waves of migration in the past. Different waves of migration which were facilitated by the colonial rulers have impacted the demography of these regions. Due to this, clashes between ‘natives’ and ‘others’ were seen in the political history of North-East. Tripura being a prime example of how indigenous community could be outnumbered by immigration has instilled fear among other North-Eastern states. Assam saw a six year

long movement which took away lives of more than thousands of people. They are seen as martyrs by the people of Assam dying for their motherland. The movement compelled the Union Government to incorporate a system of graded citizenship exclusively for Assam and hence amended the Citizenship Act,1955 thereby adding s.6A to it which sets the cut-off year for identification of illegal immigrants in the State to 25th March 1971. Also, the Union government was compelled to identify illegal immigrants residing in the state and hence legislated two acts, namely The Immigrants (Expulsion from Assam) Act, 1950 and the Illegal Migrants (Determination by Tribunals) Act, 1983. But both these Acts were proved insufficient as the actual result that came out were not upto the mark. The Constitutional validity of IMDT Act,1983 was also challenged in the Apex Court, which found it unconstitutional on various grounds. Thereafter, 2012, the Apex Court ordered the updation of National Register of Citizens which was first compiled in the year 1951 exclusively for Assam. The sole purpose of this exercise was to identify genuine citizens of Assam and give a sense of security to the people. In 2016, the Union of India brought Citizenship (Amendement) Bill which for the first time in the history of Citizenship laws in India incorporated religious grounds to differentiate illegal immigrants. This move was vehemently opposed by the North-Eastern states and citizens of other Indian states but for different reasons. While the rest of India looked at the bill as unsecular, North-Eastern states on the other hand opposed on the ground that it might further change the demography of the region and saw it as a threat to their "ethnicities and identities, culture, custom, and the question of lands." The bill was lapsed and was not passed in the Parliament owing to these protests across India. Again, 2019, the Central Government introduced the bill in the Parliament justifying the bill on the ground of giving safeguard to the religiously persecuted minority people of Pakistan, Bangladesh and Afghanistan. North-Eastern states along with the rest of India saw large scale protests again. In Assam, five persons died while protesting against the bill and many left injured. The political turmoil that the citizenship issue can bring in the North-East is evident from these facts.

In the course of the research it is found that the geopolitics of the North-Eastern regions are heavily influenced by the issue of citizenship. The issue is volatile and contentious. Hence, it is expected from the Union government that it should first take people of North-East into confidence before introducing newer amendments to the Citizenship laws which might jeopardize the rights of North-Eastern people.

### D. CAA,2019 invalidates clause 5 of Assam Accord

The Assam Accord was a political device formulated to settle the issue of foreigners residing in the State of Assam and provide a sense of security to the people of Assam. Assam along with other North-Eastern states has borne the burdens of thousands of migrants opening its door on humanitarian grounds to the people who for different reasons have come to these states. It was settled after the six year long Assam Movement that Assam would accommodate all those who came to the state prior to 25 March, 1971 whereas in the rest of India the cut-off year for identification of foreigners is 1950 as per the provisions of the Constitution of India. There were thousands of people who died in the course of the Assam Movement and after the end of the movement the cut-off date after which all immigrants were to be deported was 25th January, 1971. But, the newer amendment to the Citizenship Act which was introduced in 2019 shifts the cut-off date to identify illegal immigrants to 2014. It introduces s.6B after section 6A which says the Central government could provide certificate of naturalization to a certain class of people mentioned in the cl.b of s.1 of the Citizenship (Amendment ) Act,2019. This virtually means that the classes of citizens who are now exempted from the definition of illegal immigrants by virtue of this amendment could naturalize in the State. It is found that the Act virtually nullifies clause 5 of Assam Accord and s.6B which would act as an exception, will nullify s.6A of the Citizenship Act,1955 too which was legal incorporation of cl.5 of Assam Accord. Though under s.6B (4) of the Amendment Act it exempts tribal areas covered under Sixth Schedule and states protected by "The Inner Line" given under the Bengal Eastern Frontier Regulation, 1873, there's is fear among the residents of these areas that it will indirectly affect their rights.

It is hoped that the Union Government with discussion with the State government and people of the North-East would come up with a solution so that the Act does not hamper the rights of North-Eastern people specially of people from Assam as it contradicts Assam Accord.

**Testing the hypothesis**

During the course of this research study, based on the findings, the initial hypothesis is found to be correct. There has been changes in the citizenship laws owing to the geopolitics of the North-Eastern states. It can be seen in the amendments made in 1985, 1986 and 2003 in the Citizenship (Amendment) Act, 1955.The recent changes proposed by the Citizenship (Amendment) Act, 2019 is not in consonance with the provisions of Assam Accord, 1985 and it might lead to civil disobedience in this region. Problem of illegal influx in North-Eastern states have inspired lots of movements in this region and is one of the main issues for the native people that is needed to be solved. The Union Government needs to bear in mind the issues of people of North-East before formulating newer citizenship provisions. It is expected that through discussions and deliberations between Union Government, State governments and people of North-East, the issue would be solved.

**Addressing the research questions:**

1. **How has the concept of citizenship evolved over time?**

In the course of research, the researcher has tried to address the question in Chapter 2 by discussing the evolution of citizenship. The concept of citizenship can be found in the ancient Greek and Roman city-states where it was a privilege of a certain class of property-owning man who got the status as citizens. They were able to participate in the administrative and judicial process of the state. But it debarred women and slaves from getting citizenship and was discriminatory in nature. With the evolution of time and rise of the industrial states around Europe, citizenship became more inclusive in nature. French and American revolutions inspired people to assert their rights as free human beings and ideals of equality, liberty, personal freedom etc. got inherently equated with citizenship. Modern nations have then incorporated these ideals in their citizenship laws and Constitutions made by the sovereign will of people incorporated the idea of "universal citizenship" whereby all without discriminating on the basis of race, gender, class got their rights to claim citizenship.

**2. What were the issues raised and grounds considered while framing citizenship provisions for the Constitution of India?**

The researcher has discussed this question mainly in chapter 3 and partly in chapter 4 of the research. While framing the provisions for citizenship, the Constituent Assembly debated about whether descent should be linked with citizenship or not. Prominent member A.K. Ayyar pointed out two ideas of citizenship. One, where in Continental countries citizenship is based upon race and has nothing to do with the birth of a person in a particular place. And second, Anglo-American system the citizenship which is given upon the fact that a person was born in that place. This debate was about whether to have *jus soli* or *jus sanguinis* rule. Many proposed that India should not follow the first rule as it might make Indian citizenship cheap. Others, who were in support of drafting inclusively citizenship provision argued that at the time of commencement of the Constitution India should not discriminate against people and it should follow the rule which is being followed by many modern nations of giving citizenship *by birth.* Another point of contention was whether there should be relaxation to religions which originated in India (For example Hinduism, Sikhism, Buddhism etc.). P.Sec. Deshmukh was the one who voiced strongly in support of this. Problems also arose after it was decided that India would be partitioned. People were constantly crossing the border and riots were taking place. The Assembly agreed to give citizenship to those who wanted to be Indian citizens but set a cut-off date as to who would automatically be a citizen and who needed to register. It was decided that those people of Indian origin who crossed the border and eventually returned to India prior to 19 July,1948 would automatically be granted Indian citizenship provided they have been ordinarily resident of India after their migration. Others who intended to be Indian citizens and crossed the border and came to India after 19 July 1948 had to register themselves and obtain a permit from the authority to claim Indian citizenship. Other matters relating to citizenship were left to the Parliament to decide. All these problems taking into consideration, the Constituent Assembly drafted the Constitution of India adding part II to it which deals with ‘citizenship’.

**3. Has India gradually shifted from the concept of inclusive citizenship?**

This question has been thoroughly discussed in chapter 4 of this research. At the commencement of the Constitution, Indian citizenship was based on the ideals of

inclusive citizenship. Following that the Citizenship Amendment Act,1955 was passed which incorporated provisions to give citizenship by five ways : Birth, descent, registration, naturalization and incorporation of a territory. But in due course of time, it has incorporated amendments which gradually narrowed down citizenship criteria. In 1986, the Citizenship Act, 1955 was amended which made the provision of claiming citizenship by birth more stringent. Anyone to claim Indian citizenship by birth one of their parents now had to be Indian citizens. Again in 2003, another amendment was added to the Act which now mandated that not only one of the parents had to be an Indian citizen, the other one cannot be an illegal migrant. This further consolidated the shift to *jus sanguinis*. In 2019, when the Citizenship Amendment Act was passed, it granted exemption from the definition of illegal immigrants to certain classes of people coming from Pakistan, Afghanistan and Bangladesh on the basis of religion. This exemption is based upon the fact that under the unamended Citizenship Act,1955 an illegal immigrant was not allowed to naturalize in the country and after the Act was amended, it allowed a certain class of people to claim citizenship who were heretofore 'illegal immigrants'.

It is therefore can be said that the Indian Citizenship laws have shifted its notions from the ideals of inclusive citizenship by making its provisions stringent over time. Though it is necessary to prevent illegal infiltration of migrants, it can be done through different mechanisms like properly fencing the borders, keeping an active border police force etc. But shifting from the inclusive citizenship principle might not be a good idea as it may adversely affect people who might not be able to produce documents proving citizenship status of their parents due to various reasons. In states like Assam, where flood creates havoc and washes away houses of thousands of people, keeping documents safe would be least of their concerns and for which one day there might be questions on their citizenship which they may fail to corroborate . Also, the recent amendment differentiates illegal immigrants on the basis of religion and this differentiation is justified by the fact that those groups were a minority in those countries and hence have faced persecution because of their religion. While providing citizenship to people who have been persecuted is humanitarian, excluding a particular section of people (Muslims,atheists etc.) from that class may go against the ideals of inclusiveness.

**4. What correlation do amendments to Citizenship Act, 1955 have with geopolitics of North-Eastern states and vice versa?**

This question has been discussed in Chapter 5 of this research. There is a visible relationship between the laws related to citizenship and geopolitics of North-Eastern states in India. The problem regarding influx of illegal infiltration was so accentuated that the Union Government had to legislate an Act to expel the illegal immigrants even before the Citizenship Act,1955 was legislated. Later this issue turned into a popular movement where Assam saw a six year long struggle demanding detection and deportation of illegal immigrants from the State.

It was due to the Assam movement the Union government was forced to amend the Citizenship Act,1955 considerably for the first time. It added s.6A to the Act, providing a differentiated citizenship for the state of Assam. Secondly, during the Assam movement, IMDT Act,1983 was passed to constitute tribunals to detect illegal immigrants. Citizenship has always been a contentious issue in the North-East. The Chakma refugee crisis is another example of that. The 2003 amendment to the Citizenship Act was also a result of the illegal immigration issue dominating the geopolitics of North-East which led to introduction of the phrase "illegal immigrants" in Citizenship Act. Further, in 2016 when a bill almost exactly similar to the Citizenship (Amendment) Act,2019 was first introduced, huge protests broke out across North-Eastern states. Similar protests were also seen when the bill was again introduced in the Parliament in 2019.

As the North-Eastern states have seen different waves of immigration in the past, it has instilled fear among the natives that it could lead to dilution of their identity, culture and heritage and may change the demography altogether. The states have seen how indigeinous people of Tripura were reduced to minorities due to the unabated influx of immigrants. There is always a fear that remains among the natives of North-Eastern states about compromising with their land and resources. Hence, there is a perpetual relationship between the geopolitics of North-Eastern states and citizenship laws of the Nation. This link will remain until the issue of influx of illegal immigrants is not solved.

In the course of research, the researcher has categorically highlighted why citizenship has been so much a contested issue in North-East India and how it has determined the

geopolitics of North-East to a large extent. It is expected from the Union Government that while formulating newer citizenship provisions it has to necessarily keep in mind the importance of citizenship issues in North-Eastern states. To settle the citizenship crisis in the North-East, stakeholders have to find ways to detect and deport "illegal immigrants" irrespective of their religious affiliation. The problem of illegal immigation in North-East is not based on religion or any other related factor. It is to protect their identity, culture and demography. The North-Eastern states have historically appreciated plurality. Assam particularly had also agreed to bear the burdens of immigrants who have settled here for whatever reasons till 25th March 1971. Trying to impose a burden of more immigrants will not be easily acceptable for the people of Assam and other North-Eastern states. It is expected that the Central Government in consultation with the Government of Assam will find a solution to the persisting problem and also judiciary will play an important role in determining the future of North-Eastern states.

The Constitution of India through Part II provides citizenship to various classes of people at the time of commencement of the Constitution. Under Art. 11, it empowers the Parliament of India to make laws for granting Indian citizenship. Accordingly, the Parliament has enacted the Citizenship Act,1955. From time to time this Act has been amended thus changing the legalities of Indian citizenship. The issue of unabated influx of illegal immigrants have also dominated the debates around citizenship in India. Particularly, the North-Eastern states of India which have seen waves of migrations in the region have notably registered their protests against illegal influx. A linkage can be observed between the geopolitics of North-Eastern regions and Indian citizenship laws. However, the amendment made to the Citizenship Act in 2019 has again reignited protests across the region as it has opened the door for certain classes of illegal migrants to claim citizenship. The introduction of this Amendment has created conflict between interest of native people of North-East as well as interests of the illegal migrants which are claimed to be religiously persecuted in the countries mentioned in the Citizenship (Amendment) Act, 2019. It is therefore expected that the Union Government in consultation with the Government of Assam and people of North-East settle the issue without jeopardizing rights of the natives of North-Eastern States.

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