

**NATIONAL REGISTER OF CITIZENS (NRC) IN ASSAM:
PROBLEMS AND PROSPECTS**



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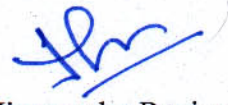
National Law University, Assam

June/2018

CERTIFICATE

It is to certify that Ms. Upasana Sharma is pursuing Master of Laws (LL.M.) from National Law University, Assam and has completed her dissertation titled NATIONAL REGISTER OF CITIZENS (NRC) IN ASSAM: PROBLEMS AND PROSPECTS under my supervision. The research work is found to be original and suitable for submission.

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DECLARATION

I, Upasana Sharma, pursuing Master of Laws (LL.M.) from National Law University, Assam, do hereby declare that the present dissertation titled NATIONAL REGISTER OF CITIZENS (NRC) IN ASSAM: PROBLEMS AND PROSPECTS is an original research work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

Date :

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PREFACE

With growing identity crisis along side globalization, it has become imperative to balance both. Assam is a land of rich culture and ethnicity, which the Assamese people fight to preserve. With the continued influx of illegal Bangladeshis, it has become a threat to the very identity of the people of Assam, which they dearly preserve. Therefore, the National Register of Citizens (NRC) in the state of Assam, is being updated. This has called for a lot of controversy surrounding it. There is a hue and cry amongst the vulnerable people whose identity is at stake. On the other hand, there emerges a positive attitude towards the updation of the same. This is seen as a way to preserve the linguistic, ethnic, cultural identity of the people of Assam, as well as the changing demographics that are sought to be restored.

This paper thus, is an attempt at understanding the whole process of NRC, taking into account the various legislations governing it, and the judicial interpretations of these Acts. The problem with the process of updation of NRC, and challenges faced by it is numerous, still there are high hopes for its successful publication too.

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8. 2003 - Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules

TABLE OF ABBREVIATIONS

1	AAMSU	All Assam Minority Students Union
2	AASU	All Assam Students' Union
3	ACRCR	Assistant Circle Registrar of Citizen Registration
4	ADGP	Additional Director General of Police
5	ADRCR	Additional District Registrar of Citizen Registration
6	AGP	Asom Gana Parishad
7	AIR	All India Reporter
8	Anr.	Another
9	Ch.	Chapter
10	Cl.	Clause
11	CPSU	Circle Project Supervisory Unit
12	CRCR	Circle Registrar of Citizen Registration
13	DCR	Director of Citizen Registration
14	DPSU	District Project Supervisory Unit
15	DRCR	District Registrar of Citizen Registration
16	FLO	Field Level Officers
17	IMDT	Illegal Migrants (Determination by Tribunals)
18	LO	Local Officer
19	LRCR	Local Registrar of Citizen Registration
20	Ltd.	Limited
21	MoS	Memorandum of Settlement
22	NGOs	Non-Governmental Organisations
23	NRC	National Register of Citizens
24	NSKs	NRC Seva Kendras

25	Ors.	Others
26	PAN	Permanent Account Number
27	RGCR	Register General of Citizens Registration
28	SCNR	State Coordinator of National Registration
29	SPMU	State Project Management Unit
30	v.	Versus
31	VTs	Verification Teams

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CHAPTER-I INTRODUCTION

1.1. RESEARCH BACKGROUND:

The inhabitants of the northeastern state of Assam re-experienced the fretful moment of the *stroke of midnight* on the last day of 2017. On that particular day, the Government of Assam published the first draft of the updated National Register of Citizens (NRC) for the state of Assam. At present, it is one of the most elaborately discussed and contentious focuses in the state of Assam and other neighboring states, as well as bordering Bangladesh. The NRC is being updated in Assam after many years, nearly sixty-six years, since the first NRC of 1951, which was based on the population census of that year. For years, the issue of illegal immigrants has dominated discussion and debate in almost every household of Assam, as well as in Assam politics at large. Before, during, and even after independence of the country, there has been continued influx of illegal immigrants from then East Bengal, East Pakistan and present day Bangladesh, respectively.

The fact that Assam is infested with many illegal Bangladeshis be it Hindus or Muslims is a known fact about which a vivid discussion finds mention in the Supreme Court decision in *Sarbananda Sonowal v. Union of India*¹ as reported in AIR (2005) SC 2920. It was in 1978, the issue relating to Assam being swamped by illegal Bangladeshis came to limelight when in the Voters' List of *Mongoldoi* Parliamentary Constituency, names of thousands of such illegal migrants came to be included. There was demand for deletion of such names and also for expulsion of such illegal migrants. The issue then gained momentum with the much talked about Assam Agitation (*Axom Andolan*), which lasted for nearly six years from 1979 to 1985. At the end of the agitation, *Assam Accord* was signed in terms of which, unlike the other parts of the country, the illegal migrants who has entered into Assam till 25th March 1971 acquired citizenships with certain conditions. Thus, it is only for the state of Assam that the cut off date for citizenship is 25th March, 1971, and those who migrated to Assam from Bangladesh up to 24th March, 1971 got Indian citizenship.

¹Sarbananda Sonowal v Union of India, (2005) 5 S.C.C. 665 (India).

Although the issue relating to illegal migrants in the State of Assam gained momentum with the Assam Agitation, but historically, Assam is infested with huge number of illegal migrants, firstly during pre-independence era from the then East Bengal and thereafter post creation of Bangladesh in 1971. Bangladesh was a part of Pakistan and was named as East Pakistan. It became an independent country in 1971 with the name, Bangladesh. During the independence war of Bangladesh, large-scale influx to Assam took place and even after the creation of Bangladesh, migration from Bangladesh continued unabated. As stated above, this aspect of the matter has been discussed elaborately in *Sarbananda Sonowal*² case, which we shall also look into in the following chapters.

Because of such unabated and illegal influx of foreigners (Bangladeshis), there is serious threat to the demographic pattern in the State of Assam and its indigenous people are under constant threat of losing their identity in their own state. The indigenous people are being threatened to reduce to the status of minority.

It is in the above background, there is a conscious decision to upgrade the NRC so that names of only the genuine Indian citizens are included therein leaving aside the illegal Bangladeshi migrants. This will bifurcate the illegal Bangladeshi migrants from that of the Indian citizens which will help in maintaining the rights of the indigenous people of Assam as guaranteed by the Constitution of India. This discourse will try to look into the crucial developments and the repercussion leading to updation of the NRC.

1.2. STATEMENT OF PROBLEM:

- What are the crucial developments leading to the updation of NRC?
- What are the problems faced by the authorities and the people with regard to the updation of NRC?
- What will be the repercussions of the updation of NRC?

²SARBANANDA, *supra* note 1.

1.3. AIMS AND OBJECTIVES:

- To study the historical perspective of National Register of Citizens (NRC).
- To study why the updation of NRC is necessary.
- To study as to who are and are not eligible to apply for NRC.
- To study the various enactments governing the NRC updation.
- To make an endeavor to make a constitutional interpretation with regard to NRC.
- To discuss various cases relating to the Foreigners' issue and their outcomes.
- An endeavor to call for a situation to be created so that taking advantage of similarity in appearance the illegal immigrants cannot easily assimilate with the indigeneous people of Assam; here lies the importance of updated National Register of Citizens.
- To understand as to why despite developments of modern technology, measures cannot be worked out to fence the border in such a manner that the event of illegal immigration are reduced to the minimum.
- To study why a different cut off date only for the state of Assam, i.e. Section 6A, a Special Provision only for the state of Assam is provided for, unlike the rest of the country where citizenship is determined as per the provisions of Part II of the Constitution of India and the provisions of the Citizenship Act, 1955.
- To discuss and interpret various judgments, orders and directions given by the Supreme Court, as well as Gauhati High Court, and the Foreigners' Tribunals.
- To discuss the problems with the updation of NRC in the state of Assam.
- To discuss the prospects of the updation of NRC in the state of Assam.

1.4. SCOPES AND LIMITATIONS:

- The scope of this research work is to deal with the above aspects of the matter to find out whether the specific legislations and the constitutional provisions are adequate to deal with the kind of situation being faced by the state of Assam due to illegal influx of Bangladeshi nationals, a fact even the Supreme Court has recognized in its judgments in various cases.

- The limitations of the research paper is that due to the time bound publication of the list, many aspects of the matter will be excluded as of now. The entailing process after that, i.e. the stage of claims and objections, referrals, etc. and issues subsequently raised will be excluded from this research. Only an estimation of such a scenario may be made.

1.5. REVIEW OF LITERATURE:

- Assam is a culturally and ethnically rich state of India. It has vast natural resources too. The British till the time of independence have undoubtedly exploited Assam. They have encouraged huge scale migration as well, particularly from East Bengal. History speaks for itself and this is the reason the present day scenario has led to an identity crisis for the Assamese people. This resulted in the six years long Assam Agitation which was signed by various representatives in 1985. Till a very long time, until recently, this issue has been bought in the forefront. The Supreme Court directing the time bound updation of the Register of the National Citizens has done this. The Apex court has also directed for the fencing and sealing of the borders, which are particularly riverine. This is a positive step towards the protection of the cultural identity of the people of the state.³
- Sanjib Baruah, a renowned scholar has made an important contribution towards the issue at hand. He has offered a bold interpretation of the political and economic history of Assam from the time of the British rule. He has talked about the sub nationalism that grew in the state in the period of nationalism. He has made great observations in the ethnic conflict of the people of Assam, taking into account the problems of insurgencies, ethnic violence, etc.⁴

³N. J. Dutta, "Immigration in Assam: A Historical Perspective." *International Journal of Humanities and Social Science Invention*, (June 28, 23: 14 PM), [http://www.ijhssi.org/papers/v4\(1\)/Version-1/G04101030032.pdf](http://www.ijhssi.org/papers/v4(1)/Version-1/G04101030032.pdf).

⁴Sanjib Baruah, *Indian Against Itself: Assam And The Politics Of Nationality*, ACADEMIA, (June 2018, 11: 06 PM) http://www.academia.edu/5185793/Sanjib_Baruah_India_against_Itself_Assam_and_the_Politics_of_Nationality_University_of_Pennsylvania_Press_1999.

- Another political scientist has brought on light on the disruption of the political framework accounting to the large-scale migration in to the state. Especially during elections, the middle class locals felt panic and fear due to increase in the voting population. The Assamese people as well as many cultivators belonging to various tribes countered against land encroachments also. He has emphasized on the interrelationship between the political and demographic aspects of governance in the state.⁵
- In South Asia, India has been the victim of illegal migration from Bangladesh. This in turn manifests a danger to the internal security because of lack of proper security. It is easy for the migrants to obtain legality, and have majorly settled in those areas, which are even inaccessible to Indian Nationals. It has been argued that if poverty and deprivation is a major factor accounting to such huge scale migration, it is equally a lack of responsibility on the part of the political circles of India to have granted permission for the same at the first place. It has also been stated that it is the duty of even the liberal politicians to look into the matter because it is no more just a case of migration but also the increasing number of illegal Bangladeshis have found to be involved in terrorist activities.⁶
- In this era of globalization opening borders is advocated and supported in almost all parts of the world. However, the nation states are not ready to compromise or negotiate on territorial border issues. A nation is about sovereignty and independence. Such an example is the illegal migration in the states in India neighboring Bangladesh. This has generated quite a socio-political, economic, ethnic, and communal tension. Simultaneously, it has also embittered the bilateral relations between the two nations. In such a situation, the air needs to be cleared. And a solution must be found out. This study tries

⁵MYRON WEINER, THE POLITICAL DEMOGRAPHY OF ASSAM'S ANTI-IMMIGRANT MOVEMENT: POPULATION AND DEVELOPMENT REVIEW 279-292 (2d ed.1983).

⁶ANAND KUMAR, ILLEGAL BANGLADESHI MIGRATION TO INDIA: IMPACT ON INTERNAL SECURITY: STRATEGIC ANALYSIS 106-119 (2d ed. 2010).

to find out through historical and analytical methods regarding the issue at hand.⁷

- In yet another research, it has been found that environmental crisis caused by population pressure in Bangladesh and relatively greater economic opportunities in terms of higher lifetime income, acquisition of land and assets in Assam, have been the primary motivations behind large-scale migration. Among the beneficial effects, the immigrants have contributed to the rise of agricultural productivity by introducing better techniques, crop diversity, and multiple cropping. The supply of cheap labor by the immigrants in the informal labor market has benefitted the consumers and producers alike. These immigrants do not seem to compete with the native workers who are generally educated and seek employment in the formal labor market. However, they have put tremendous pressure on land, creating socio-political and environmental problems that have indirect adverse effects on the economy. Finally, the immigrants hardly contribute to the government revenue while the government spends a substantial amount to maintain this significantly large fraction of the population.⁸
- More recently, the issue of illegal migrants have taken a communal shape. The BJP's manifesto has been sympathetic towards granting citizenship to Hindu Bangladeshis. This has led to rising communal tension, especially at the border lying areas. While some, like the AASU is not in favor of such endeavor and which is in clear violation of the Assam Accord. It has been stated that the matters needs to be looked into as an encroachment of ethnic and linguistic characteristics rather than taking an entirely religious perspective. It is only after the entire process is complete that the Government can enter into a deliberation with Bangladesh. Thus, bilateral agreement has to be signed by both the nations. Various NGOs (Non-Governmental Organisations) need to intervene at the borders for rehabilitation programs.

⁷CHIRANTAN KUMAR, MIGRATION AND REFUGEE ISSUE BETWEEN INDIA AND BANGLADESH: SCHOLAR'S VOICE: A NEW WAY OF THINKING 62-81 (1st ed. 2009).

⁸Hiranya K.Nath & Suresh K. Nath, *Illegal Migration into Assam: Magnitude, Causes, and Economic Consequences*, IDEAS (June 19, 2018, 10:25 PM), <https://ideas.repec.org/p/shs/wpaper/1006.html>.

Awareness programs at the borders must be held. This will require time as well as money.⁹

1.6. RESEARCH QUESTIONS:

- What are the prospects, the problems and the challenges of the National Register of Citizens (NRC) updation in the state of Assam?
- What are the important judicial interpretations regarding the Foreigners' issue?
- What are the Constitutional provisions regarding the citizenship of the people of Assam?
- What are the effects pertaining to a different cut off date in Assam only than the other parts of the country, and how does it affect the political scenario in the state?
- What are the measures, if any, taken by the Union of India towards deportation of the Foreigners? Is there any deportation treaty signed between the two countries? Or the non-nationals would remain stateless?

1.7. RESEARCH METHODOLOGY:

Descriptive Research:

This research employs a descriptive analysis of the historical developments since the time of Indo-Pakistan War and Assam Agitation till the present day scenario for an understanding of the backdrop events behind the research area.

Doctrinal Research:

In carrying out the research work, the doctrinal method is employed in terms of using various Supreme Court and High Court judgments, Government reports, books by experts on this field, journals, articles, in coming to a conclusion.

Primary Sources:

⁹Aniket Aich, *Illegal Immigration in Assam: Challenges and the Way Forward*, ISSUE BRIEF, (Jun. 2018, 11:25 PM), http://www.claws.in/images/publication_pdf/372166573_IB129-Ankiet-Final9-3-18.pdf .

Various Supreme Court and High Court Judgments, Law Journals, like the GLT, SCC, GLR, and various Acts of Legislation, Government Reports and archival data have been collected while conducting this research.

Secondary Sources:

Various scholarly books, articles and journal publishing have been adhered to as a means of secondary sources in the carrying out of the research work.

1.8. RESEARCH DESIGN:

The first chapter is an introduction to the research paper at hand. The second chapter will deal with the entire functioning of the NRC. Herein we shall look into what NRC actually means and the various stages pertaining to it. The next chapter will deal with the various enactments governing the entire process of NRC. Here we shall try to interpret the laws as per various important sections within. The fourth chapter will deal with the various case laws and judicial interpretations pertaining to NRC. The concluding chapter will look into the many challenges and problems faced by the updation process.

Lastly, we shall try to suggest some measures for the speedy updation and try to meet the challenges uniformly.

CHAPTER-II

NATIONAL REGISTER OF CITIZENS (NRC) IN ASSAM- A HISTORICAL PERSPECTIVE

The much controversial document of 1951 has been updated nearly after sixty-six years. This brings forth a question in our minds as to why such updation has become necessary? This updating has a long history and is crucial for it is the basis to have a proper grip of this present paper. But before we dwell into the much debated and deliberated history of the influx of illegal migrants in the country, we shall look into some factual meanings and workings of the National Register of Citizens (NRC).

2.1. NATIONAL REGISTER OF CITIZENS (NRC), 1951- WHAT IS IT?

After completion of the conduction of the census of 1951, the National Register of Citizens (NRC) was prepared on the basis of the names and other details of citizens, founded on the census report of the year 1951. As the name itself has it, it is a comprehensive register which contains in it particulars of citizens of India as stated in the census of 1951. The registers, as ordered and instructed by the Government of India during 1951, were well-preserved in the office premises of the Deputy Commissioners (DCs) as well as Sub-Divisional Officers (SDOs). Later in time, during 1960s, these registers were relocated to the offices of the Police.¹⁰

2.2. WHAT NECESSITATES THE UPDATION OF NRC IN ASSAM?

As noticed above, Assam has been the fertile land of illegal migration since the pre-partition days. Muslim settlers heavily migrated from the then East Bengal (now Bangladesh) about which the then Chief Minister of Assam, Late *Gopinath Bordoloi* used to express concern. He had adopted certain policies to thwart this menace, although there was stiff resistance from certain corners. As discussed above, unabated influx of illegal migrants became a continued phenomenon even after East Pakistan got liberated from Pakistan. With the porous border coupled with economic

¹⁰Government of Assam, *National Register of Citizens (NRC), 1951*, (June 26, 2018, 23:00 PM), http://www.nrcassam.nic.in/wha_nrc.html.

conditions, and a particular design, Assam bordering Bangladesh became the dumping ground of such illegal migrants. It was in 1978, seriousness of the threat came to light when thousands of illegal migrants could enter their names in the Voters Lists pertaining to *Mongoldoi* Parliamentary Constituency. When the issue came to light, a movement was carried out with the leadership of All Assam Students Union (AASU) and *All Assam Gana Sangram Parishad* (AAGSP), which lasted for nearly six years from 1979 to 1985. At the end of the agitation, Assam Accord was signed between the representatives of the Agitationists and the Central Government in presence of the then Prime Minister of India, Late Rajiv Gandhi.¹¹

In terms of the Assam Accord, those migrants who had come into Assam post 25th March 1971 are all to be detected and expelled. With this aim, Foreigners Tribunals have been established with a view to identify the foreigners on the basis of the references made by the jurisdictional Superintendent of Police.¹² In 1983, the Illegal Migrants (Determination by Tribunals) (IMDT) Act 1983¹³ was promulgated under which the Foreigners Tribunals were entrusted with the task of identifying the foreigners. The provisions of the said IMDT Act were repulsive and opposed to the Constitution of India, which were put to challenge before the Supreme Court by Sarbananda Sonowal, the present Chief Minister of Assam. The Supreme Court struck down the said Act being *ultra vires* the Constitution with the specific direction that apart from Foreigners Act 1946¹⁴, the provisions of Passport (Entry into India) Act 1920¹⁵; Immigrants (Expulsion from Assam) Act 1950¹⁶ and the Passport Act 1967¹⁷ would be applicable to the State of Assam.

While the identification of foreigners are carried out by the Foreigners Tribunals which is a huge task and with a view to implement the Assam Accord, updating of the NRC was felt to be an utmost necessity for detection and deportation of illegal immigrants residing in Assam. As discussed above, once the NRC of 1951 is updated with the laid down procedure, it would be easier to identify the illegal immigrants. It is a process by which based on the entries made in the 1951 NRC with

¹¹GOVERNMENT OF ASSAM, *supra* note 10.

¹²GOVERNMENT OF ASSAM, *supra* note 10.

¹³The Illegal Migrants (Determination by Tribunals) Act, 1983, No. 39, Acts of Parliament, 1983 (India).

¹⁴The Foreigner Act, 1946, No. 31, Acts of Parliament, 1946 (India).

¹⁵The Passport (Entry into India) Act, 1920, No. 34, Acts of Parliament, 1920 (India).

¹⁶The Immigrants (Expulsion from Assam) Act, 1950, No. 10, Acts of Parliament, 1950 (India).

¹⁷The Passport Act, 1967, No. 15, Acts of Parliament, 1967 (India).

the addition of family trees, the names of the genuine Indian citizens will be incorporated. In such a process, there will be little scope for inclusion of the names of the foreigners. It is expected that with such updation of the NRC in Assam, the huge problem relating to illegal migrants will be solved. It is because of such importance attached to the updation of NRC, it is regarded as the life and death issue of indigenous people of Assam. It is to be borne in mind that in *Sarbananda Sonowal case*¹⁸, the Apex Court having regard to the present scenario in Assam due to the illegal immigration had opined that the State of Assam is facing external aggression and internal disturbances.¹⁹

What presently becomes imperative in this research paper is to look into some of the major historical turn of events for such scenario to have occurred in the state of Assam. This will give us a detailed historical perspective due to which the present frustration and anxiety in the population of Assam have erupted.

2.3. HISTORICAL BACKGROUND

Immigration means to come into another country to settle permanently. Immigration could be legal or illegal. While 'legal immigration' means immigration with correct legal documents, 'illegal immigration' means immigration without correct legal documents and/or in violation of terms of documentation, such as overstaying beyond permit. Illegal immigrants have no legal status in the country they have illegally immigrated to. This problem of illegal immigration is severely faced by the state of Assam which has caused major demographic, ethnic, social, political, economical, regional, and identity crisis. We shall thereby look into the history of the same so as to understand from where this all began.

2.3.1. PARTITION OF BENGAL

The state of Bengal was divided into two provinces in 1947. One was East Bengal, while the other part was West Bengal. This division was geographical. The west province was Indian and the East province was Pakistani. Assam's Sylhet District merged with the eastern Pakistani province. It was subsequently considered to

¹⁸SARBANANDA, *supra* note 1.

¹⁹GOVERNMENT OF ASSAM, *supra* note 10.

be East Bengal. During the India-Pakistan struggle for independence, millions and millions people from the East Bengal migrated to the valley of Assam, and the neighboring states of West Bengal, Tripura and other parts of India. The northeastern part became a special case of this menace. This continued right up to the Liberation War of Bangladesh in 1971.²⁰ However, even after the independence of Bangladesh till date, continued influx of Bangladeshi Nationals into the porous borders of Assam and other northeastern States is witnessed. No accurate estimate of such influx is available in the present, the NRC being pending updation, but count of as many as two to twenty million of illegal immigrants is alleged by various Government Reports, media reports, NGOs, and the like.²¹

2.3.2. LIBERATION WAR OF EAST PAKISTAN, 1971

Time and again, India and Pakistan have been engaged in war due to various issues, but this research paper mainly elaborates the war between India and Pakistan in 1971, famously known as the Indo-Pak War of 1971 that took place in the backdrop of Liberation War of present day Bangladesh. This is a short war that lasted only for (thirteen) days.²²

During the pre-partition period, in 1947, there took place diplomatic and political deliberations and discussions. The two nations of Indian and Pakistan were born out of those negotiations. This gave rise to divisive homes for the Hindus and the Muslims. Pakistan comprised of East and West Pakistan, which were both culturally, linguistically, even geographically, different. India fell in between the east and the west zones. Population in both the zones was similar, but political power was concentrated heavily on the western front. There was serious economic exploitation of East Pakistan.²³

During the year 1948, there was much hue and cry when *Urdu* was declared to be the official language of Pakistan, whereas Bengali language prevailed in East

²⁰ BIDYUT CHAKRABARTY, *THE PARTITION OF BENGAL AND ASSAM, 1932-1947: CONTOUR OF FREEDOM* 245-246 (1st ed. 2004).

²¹ Shodhganga, *History and Politics of Partition: Assam and Sylhet*, HISTORY AND POLITICS OF PARTITION (June 26, 2018, 23:00 PM) http://shodhganga.inflibnet.ac.in/bitstream/10603/116402/10/10_chapter%202.pdf.

²² Author, *Bangladesh Independence*, BOOK OF DAYS TALES, (June 2, 2018, 11:34 PM), <http://www.bookofdaystales.com/tag/operation-searchlight>.

²³ SHODHGANGA *supra* note 21.

Pakistan. This was perceived as an oppression of the culture of East Pakistan. Therefore, the eastern wing demanded that Bengali should also be given equal status. This demand grew into a protest and this protest reached its peak on 21st February, 1952 when several deaths happened in the protest. This day has been declared as the ‘International Mother Language Day’ by the UNESCO.²⁴

This did not end here. Administration became a problem due to the geographical anomalies. The winning of election by a political party in the east was ignored by the west. The ruling elites suppressed the east by use of force. The Western oppression began to loom over the rising Eastern discontent in what came to be known as ‘Operation Searchlight’. Mujibur Rahman, the leader in the eastern front declared East Pakistan as an independent state called Bangladesh on 26th March, 1971. This led to a civil war.²⁵

During that time, freedom fighter, Tajabuddin Ahmad and Barrister Amirul Islam sought refuge in Indian soil by escaping atrocities meted out to their fellowmen. The coming of two Bangladeshi political refugees garnered the sympathy and support of India, which also let them form a provincial government in India called *Mukti Bahini*. What started as a dribble, became a stream, and that stream turned into a flood, so much so that the economy of India started to be burdened and exploited by the settlement of such a huge number of Bangladeshi refugees.

During this time, internal disturbances started to erupt as a consequence in the state of Assam due to such massive illegal migration after 1971. The indigenous people started to revolt against such illegal influx into the borders of their state mainly so because there was a sudden rise in registered voters during 1979 election. This created suspicion and agitation among the indigenous people of Assam because it posed a threat to their rights and security in their own native land.

2.3.3. THE ASSAM AGITATION, 1979

It is not only post 1971 with the creation of Bangladesh, but from even before the partition of India into India and Pakistan, Assam has been facing the problem of migration from the then East Bengal. Even in 1930s, Late Gopinath Bordoloi had visualized this problem and sought to adopt measures to curb the menace. In the

²⁴SHODHGANGA *supra* note 21.

²⁵Dr. Megha Devle, *India-Bangladesh Relations : An Overview*, 4, NMITMS. 38, 38-41 (2017).

Census report of 1931, this element of the problem was given prominence by a British Census Officer, C. S. Mullan. He had warned that the indigenous people of Assam were in danger of losing their majority status and cultural identity in their own land if the uncontrolled flow of Bengali Muslim immigrants from Eastern Bengal remained unchecked. He said in his census report “...it is sad but by no means improbable that in another thirty years, Sibsagar District will be the only part of Assam in which an Assamese will find himself at home.”²⁶ Alas! Even in Sibsagar District, as per the list published by the Additional Director General of Police (ADGP) (Border) untraced declared illegal migrants in the Sibsagar District stands at 2823.

The ‘*Axom Andolon*’, ‘Assam Movement’ or ‘Assam Agitation’ was a mass movement that began primarily in 1979 but was staged much earlier than that. It was a revolution by the indigenous people of Assam against the influx of illegal immigrants from Bangladesh, it was an agitation by the native against the foreigner in order to protect their rights and also protect their native land from foreign encroachment. The immediate event that propelled the Assam Agitation can be traced back to the sudden demise of the Lok Sabha member from *Mangaldai* Constituency, Hiralal Patwary, and necessitating re-elections in the state. Preparations began for the electoral rolls. During such preparation, it was observed that, there was a massive surge of registered voters. Subsequently in time, newspapers like the *Dainik Asom* published news articles and statistical data relating to the substantial influx of illegal settlers. According to government estimates the population of Assam increased from 14.6 million in 1971 to 19.9 million in 1981, or 5.3 million (36.3 percent). One of the first accounts of a person in authority that cleared the air relating to the inexplicable rise in the electorate in the state was that of the Chief Election Officer of India, S.L. Shakhder. In a speech to the state level election officers on 24th October, 1978, he stated:

“I would like to refer to the alarming situation in some states, especially in the Northeastern region, wherefrom reports are coming regarding large-scale inclusions of foreign nationals in the electoral rolls. In one case, the population in 1971 census recorded an increase as high as 34.98 percent over 1961 census figures and this figure was attributed to the influx of large number of persons from foreign nationals. The influx has become a

²⁶E. M. RAMMOHUN, COUNTERING INSURGENCIES IN INDIA: AN INSIDER'S VIEW 74-86 (1st ed. 2011).

regular. I think it may not be a wrong assessment to make that on the basis of the increase of 34.98 percent between two census, the increase would likely to be recorded in the 1971 census would be more than 100 percent over 1961 census. In other words, a stage would be reached when that state may have to reckon with the foreign nationals who may be in all probability constitute a sizeable percentage if not the majority of population in the state.”²⁷

These views reinforced in the consciousness of the natives of Assam the hint that the unaccountable rise of electorate was exclusively due to the entry of foreign nationals in the state. This realization led to many debates and discussions amongst students across colleges and universities, in the civil societies and the general public at large. The first organized opposition ensued in the form of a twelve hours general strike (*Assam Bandh*) on 8th June, 1979 called by the AASU, which is an active students’ union body that has immense political influence on the government. AASU demanded ‘detection, disenfranchisement and deportation’ of the Foreign nationals, those who had entered the state after 1961, to be expelled from the state and their names were to be removed from the electoral rolls. And on 26th August, 1979, many political and cultural organization joined hands to form ‘All Assam Gana Sangram Parishad’ (AAGSP) or ‘Committee for the Assam People’s Struggle’, that served as the foundation of the Assam Agitation. Their objective was to mainly focus on the unchecked immigration issue and demand Assam’s economic development, in general.

Soon after, mass movement, strikes, *bandhs*, *satyagrahas*, protests, took place in the state of Assam. Lakhs of people, as many as eighteen Lakhs came together for the expulsion of the foreign nationals. The people of Assam abstained from taking part in the General Elections of 1979, which was the first instance where a state did not take part in parliamentary elections in independent India. ‘No deletion, no election’ was the demand. The oil trade economy was blocked by human chain (*Tez dim, tel nidiu*) as a protest to the rest of the country. This economic impairment led the Centre to establish President’s rule in December 1979 for a year. The Indian army was employed to break through the oil blockade and the sympathetic press was censored. Since President’s rule could operate for one year only, it became essential

²⁷SANJIB *supra* note 4.

for the Centre to hold elections by the year 1980. The Congress ministry headed by Anwara Taimur was formed, but the followers of the movement negated acceptance of the new government as a legitimately elected ministry. The general hostile atmosphere led to downfall of this government within six months. President's rule was once again imposed in June 1981. In January 1982 another Congress ministry, headed by Keshab Gogoi, was formed. This ministry endured even for lesser time and collapsed in two months and was superseded by President's rule yet again. This situation led to grave crisis in the state because on one hand, holding of elections became necessary, and on the other hand, there was a complete boycott on holding elections unless the foreign element in such an election was eliminated. After useless endeavors to come at a meeting point with the leaders of the movements, in January, 1983, the Centre declared that elections would be held again. Consequently, the mass movement against foreign migrants soon turned into a political and cultural contest.

Around this time, following the trail of the AASU, students belonging to the immigrant communities also structured themselves with political agenda and called themselves the All Assam Minority Students Union (AAMSU). It attempted to include both Bengali Hindus and Bengali Muslim descent and had come into existence in May, 1980. By September, 1980, it had become the third front to reckon with in the negotiations between the Centre and the agitators. The leaders of AAMSU were also formally invited by the Centre along with the leaders of the Assam movement for negotiations. AAMSU demanded that all the immigrants who came before 1971 were to be given full citizenship and that the state must protect their interest and secure them from needless harassment. The cut off date of 1971 was not acceptable for the agitators and they continued to demand that the NRC, 1951 be the index to determine citizenship, the immigrants who have entered after 1961 are to be deported back. This caused immense tensions between the agitator and the AAMSU. In many places, which were apparently refuge of the immigrants, violent occurrence started spewing since the beginning of the 1980s between the AASU and the AAMSU. However, most ghastly were the 1983 riots that took place just after the announcement of the elections.

This was for the first time when xenophobic bloodshed took place and fear psychosis was instilled in the natives and also various tribes. A movement that was non-violent turned exceedingly violent. The Nellie Massacre that took place in the village of Nellie in the morning of 18th February, 1983 by an indigenous tribal group

Lalung (Tiwa) and some Assamese, attacked the village with spears, swords, sticks and guns. Their main target was mainly Bengali Muslim women and children who had migrated from the district of Mymensingh, Bangladesh. An official count of 2191 number of people was accounted for in a mass murder in this massacre and around 855 numbers of protestors were killed. There were violent outbreaks in other parts of Assam too, such as Lakhimpur and Darrang Districts. There also grew suspicion and attacks between *Bodo* tribe and Assamese accounting for the hegemonic Assamese tendency within the movement. The Government had to take resort to stricter control mechanism like arresting state government employees who embargoed the elections, censor of the press and detention of reporters and journalists. Ethnic conflicts were spurred in various tense areas. In 1984, after another unsuccessful attempt, elections were held and Hiteswar Saikia came into power under the Congress regime. The aftermath of the massacre led a lot of supporters and agitators of the Assam Movement to move away from the movement on account of its violent nature, also because of a communal and pro-Hindu angle it started to shape into. The Parliament in 1983, under the aforesaid circumstances, brought about an Act in 1983 during the Indira Gandhi Government, known as the Illegal Migration (Determination by Tribunals) Act. In the proceeding chapter, a deep analysis of the said Act will reveal that it has been purposely so enacted so as to give shelter or protection to illegal immigrants who came to Assam from Bangladesh on or after 25th March, 1971 rather than to identify and deport them.

After eighteen months of deliberations, discussions and negotiations between the Central Government and the leaders of the movement, the Assam Accord was signed on 15th August, 1985 by the President and General Secretary of AASU and Convener of AAGSP on the one hand and Home Secretary, Government of India and Chief Secretary, Government of Assam on the other, in presence of the then Prime Minister, Rajiv Gandhi. 1st January, 1966 became the base year for detection of foreigners and 24th March 1971 was established as the cut off date for their detection and deportation. The Asom Gana Parishad (AGP) was formed out of AAGSP and the Hiteswar Saikia Government was terminated. Fresh elections were held in December, 1985 where AGP won and Prafulla Kumar Mahanta became the Chief Minister of Assam.

2.3.4. THE ASSAM ACCORD, 1985

After the agitation went haywire and mass killings happened, the representatives of the Government of India, the leaders of the agitation arrived at a common ground. They became signatories to a Memorandum of Settlement (MoS). 15th August, 1985 was the end of the agitation.

Various contentions were raised in the memorandum. One of the main contentions was to find an answer to the foreigners' problem in the state. It was also contended that those who entered between the years 1951 to 1961 would be given citizenship rights, and all the foreigners that came after 25th March, 1971 were to be identified and expelled. However, those who came between 1st January, 1966 and 24th March, 1971, their voting rights would be suspended for ten years. The 6th Cl. is an important one because it provides that the Union Government must protect the people of Assam's heritage and culture. Moreover, the Central Government will protect the State machinery from any encroachment, which is also an inherent provision in the Constitution of India. The borders must be fenced properly, more so because majorly the borders are riverine in nature. Thus, this requires patrolling in the riverine areas too. Tribal lands must be preserved and any such encroachers must be evicted from their lands.

It was pursuant to this Accord that Section 6A was inserted in the Citizenship Act, 1985, of which constitutionality is pending in the Apex Court, to be discriminatory and in violation of Article 14 of the Constitution of India. The main contention is regarding the cut-off date being 24th March, 1971 only in the case of Assam and the cut-off date prescribed under Article 5 and 6 of the Constitution of India was 19th July, 1949 for the rest of India.

2.3.5. REASONS FOR ILLEGAL IMMIGRATION INTO ASSAM

There are many factors that have led to this huge scale migration in the state of Assam. These factors are not just one sided but are bilateral. The many factors are responsible for continued influx into the state. Bangladesh has a huge population, thereby causing a reduction in the land and mass ratio. Moreover, there is lower economic growth and lesser opportunities. The kinds of factors that are responsible on

the Indian side of the border are the similarity of language and ethnicity. The borders are porous and the opportunities are ample. Since there is similarity in the language and ethnicity of people of Bangladesh and neighboring areas, it is difficult to make any visible differentiation of the same. The demography has changed overtime in the bordering areas. This has led to an alarming internal situation in the bordering areas.²⁸

Unfortunately, after all the agitation and efforts, the successive State governments failed to realize much progress in detecting and deporting foreigners as enumerated in the Assam Accord. In 2005, another agreement was signed in the presence of the Centre, the then Tarun Gogoi government in Assam and the AASU where it was decided to update the NRC of 1951. A project was started by the Tarun Gogoi Government, as only a pilot project, however, it was stopped after violence broke out in some parts of the state. In July, 2009, Assam Public Works (APW), an NGO, filed a petition in the Apex Court for identification of foreigners in Assam and removal of their names from the voters' list.²⁹

2.4. PROCESS OF NRC UPDATION

The National Register of Citizens (NRC) will be updated soon. It shall include the details of persons and their descendants. These names must appear in the Legacy Data. The appearance of the names in the Legacy Data would be a proof that they were present in Assam or in any other part of India on or before 24th March, 1971. The legacy data includes names that are there in the 1951 NRC. It also includes the names that appear in the electoral rolls up to 24th March, 1971. Thus, this calls for two necessities or requirements, for the inclusion of one's name in this present NRC. They are, the existence of name before 1971, and that will prove as a linkage with the person concerned.³⁰

2.5. STAGES OF NRC UPDATION

The first stage for inclusion of name in the updated NRC is submission of Application Forms. The Application Forms are to be distributed freely from house to house, as well as made available at the NRC Seva Kendras (NSKs), or can be

²⁸SARBANANDA *supra* note 1.

²⁹Sandeep Phukan, *One register to count them all — how the NRC fares*, THE HINDU, Jan 18, 2018 at 6.

³⁰GOVERNMENT OF ASSAM, *supra* note 10.

downloaded from the NRC website too. Details up to six members of the family could be given in one application form. Thus, one application form for one family is generally distributed and if more than six members are present in one family, additional forms are provided. Usually, the family head has to fill up the application form, in his absence, any adult sane member of the family. For the people who are illiterate, various sensitization programs are held making them aware of the process of filling up the forms. Various public meetings are held and videos have been published on the website to check how to fill up the forms. In case of orphanages, mental institutions, etc., the institution's head has to fill up the application forms.³¹

The second stage is to submit the application forms. For this, the general public must know under which NSK (Application Receipt Centres) jurisdiction, they fall. For an easy acquaintance to the process, various publicity measures have been undertaken by the authorities to make the process easier for the general public. Upon receipt, the Local Registrar of Citizen Registration (LRCR) will check and receive the forms. An acknowledgment receipt bearing a number and a bar code will be returned to the person along with the scan of his application form and list of documents that are submitted. To be eligible for inclusion of names in the updated NRC, one has to prove the linkage with the ancestor whose name is appearing in the Legacy Data or in any of the admissible documents. Linkage documents can be Birth Certificate, Permanent Account Number (PAN) card, etc. and will be accepted even if issued after 24th March, 1971. In case of lack of any documentary proof, the verification team will look into other evidences in order to establish linkage.³²

The third stage is the verification stage. The verification process is split into two phases, one that we have already discussed, i.e. at the time of receipt of the application form, the verification will be done at the office. The second phase of verification is to be carried out in the field to establish the applicant's identity and their linkage in the Legacy Data in the quoted reference.³³ The Officials involved such as the Register General of Citizens Registration (RGCR), Director of Citizen Registration (DCR), State Coordinator of National Registration (SCNR), District Registrar of Citizen Registration (DRCR), Additional District Registrar of Citizen Registration (ADRCR), Circle Registrar of Citizen Registration (CRCR), Assistant

³¹GOVERNMENT OF ASSAM, *supra* note 10.

³²GOVERNMENT OF ASSAM, *supra* note 10.

³³GOVERNMENT OF ASSAM, *supra* note 10.

Circle Registrar of Citizen Registration (ACRCR), Forest Range Officer shall be appointed as the ACRCR (with regard to forest areas), Local Registrar of Citizens Registration (LRCR), Local Officer (LO), Field Level Officers (FLO), and Verification Teams (VTs) will be equipped with manpower, financial and logistic support to carry out the verification process carefully.³⁴

The fourth stage is the part publication of the draft NRC. The part publication of the list of names appearing in NRC was published on 31st December 2017. It was made available online and at various local NSKs.³⁵ The second draft was expected to be released on 30th June 2018, however, the SCNR has sought for some more time for the publication of the same. The court, in the next date fixed for hearing, i.e. on 2nd July, 2018, will fix a new date for publication of the complete draft NRC. This delay has been caused due to floods in Barak Valley, Karbi Anglong and Hojai Districts of Assam.³⁶

The fifth stage is the receipt and disposal of claims and objections stage. In this stage, any person whose name did not appear in the final draft NRC could file a claim application within a specified time period in the jurisdictional NSK where he/she had submitted the application form. After a notice is being served to such person, he/she has to substantiate his/her claim by adducing supporting documents and thereafter the LRCR, upon hearing the matter, will dispose off the same by way of a speaking order. What many of us are unaware of is that a person may also file an objection application before the LRCR against the entry of any name in the draft NRC if he has *bonafide* reasons for such suspicion supported by relevant documents. However, to file an objection, the objector must have documentary evidence to establish a *prima facie* case against the person objected against. Besides, any problems regarding correction of names, etc. will also be addressed in this stage. In all the cases, the LRCR would send notice to persons filing claims and objections, and at last would dispose off the matters by conducting hearing of the same.³⁷

Lastly, after completion of the disposal of the claims and objections stage, complete and final registers at various levels such as Local Register of Citizens

³⁴GOVERNMENT OF ASSAM, *supra* note 10.

³⁵GOVERNMENT OF ASSAM, *supra* note 10.

³⁶Staff Reporter, *No publication of complete draft NRC on June 30: Hajela*, THE SENTINEL, June 29, 2018, at 1.

³⁷GOVERNMENT OF ASSAM, *supra* note 10.

(LRC), Circle Register of Citizens (CRC), and the District Register of Citizens (DRC) shall then be published as Final Updated SRC (NRC for the state).³⁸

2.6. ELIGIBILITY FOR INCLUSION OF NAMES IN NRC

In order to be eligible to have their names included in the NRC, there are several criteria that are mandated. Some of them are that the names must appear in the NRC of 1951 or electoral rolls up to 24th March, 1971, descendants of the above two or persons who came in between 1966 to 1971 and have got themselves registered and are not declared to be foreigners, the original dwellers, etc. the Apex court has also additionally included some other criteria, for example the tea tribes falling in the category of original inhabitants of Assam.³⁹

2.7. ORGANISATIONAL STRUCTURE

The structure of the organization of NRC is at all levels, such as the National, State, District, Circle and Local levels. The Registrar General of Citizens Registration (RGCR) is at the National level, the State Coordinator, NRC is at the State level, and under it there is a State Project Management Unit (SPMU). The authority in the District level is the Deputy Commissioner and other statutory authorities, under which there is a District Project Supervisory Unit (DPSU). At the Circle Level, there are Circle Officers and other statutory officers under whom the works are carried out by the Circle Project Supervisory Unit (CPSU). At the lowest level is the Local Level, there is the Local Registrar of Citizens Registration whereby there are Local Officers, Verification Team, NSK staffs, etc.⁴⁰

³⁸ GOVERNMENT OF ASSAM, *supra* note 10.

³⁹ GOVERNMENT OF ASSAM, *supra* note 10.

⁴⁰ GOVERNMENT OF ASSAM, *supra* note 10.

CHAPTER-III

STATUTES GOVERNING THE UPDATION OF NRC

3.1. CONSTITUTIONAL INTERPRETATION

For a discussion relating to prospects and problems of NRC, we will have to refer to the Constitutional provisions relating to Indian Citizenship and the laws framed thereunder. This will also have a bearing so far as the enactments and/or provisions thereof have been made applicable only for the state of Assam. It is in this context the updation of NRC in reference to 1951 NRC will have to be understood. It is often said as to whether the provisions in the enactments especially for Assam can withstand the legal scrutiny when tested in the touchstone of constitutional provisions. In fact, in *Assam Sanmihilita Mahasangha v. Union of India*⁴¹ various issues relating to citizenship in reference to the constitutional provisions have been referred to a Constitution Bench.

Before we proceed further, it will be appropriate to refer to the constitutional provisions as enumerated in Chapter II from Article 5-11 of the Constitution of India.⁴² For a ready reference, the provisions given in Part- II (Citizenship) as enumerated in the Constitution of India are reproduced herein below:

“5. Citizenship at the commencement of the Constitution- At the commencement of this Constitution, every person who has his domicile in the territory of India and- (a) who was born in the territory of India; or b) either of whose parents was born in the territory of India; or (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

6. Rights of citizenship of certain persons who have migrated to India from Pakistan-

Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if- (a) he or

⁴¹ *Assam Sanmihilita Mahasangha v Union of India*, (2015) 3 S.C.C. 1 (India).

⁴² DR. J.N. PANDEY, *THE CONSTITUTIONAL LAW OF INDIA* 634 -665 (47th ed. 2010).

either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

7. Rights of citizenship of certain migrants to Pakistan - Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India: Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of Cl. (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

8. Rights of citizenship of certain persons of Indian origin residing outside India.- Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

9. *Persons voluntarily acquiring citizenship of a foreign State not to be citizens- No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.*

10. *Continuance of the rights of citizenship -- Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.*

11. *Parliament to regulate the right of citizenship by law - Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.*⁴³

On a reading of the aforesaid constitutional provisions, it is seen that it provides for determination of Indian citizenship in reference to July 1948 (cut-off date for the rest of India).

3.2. SPECIAL PROVISIONS RELATING TO THE PEOPLE OF ASSAM

The Citizenship Act 1955, and to be precise, Section 6-A provides for a cut off date for determination of Indian citizenship in the state of Assam is 25th March, 1971.⁴⁴

On a reading of the provisions of the section (i.e. 6-A), we gather that it is exclusively for the state of Assam that those who had migrated from the then East Pakistan and now Bangladesh up to 24th March, 1971 shall be regarded as Indian citizens with the exception that those who had migrated from 1966 to 1971 would be invalidated from voting rights for 10 (ten) years from the date of identification that they belong to the said stream. This is a special provision only for this State and is not applicable in other States. This section (Section 6-A) is an amendment that was brought about pursuant to the Assam Accord of 1985, which was the outcome of the

⁴³ *Part II Citizenship*, CONSTITUTIONAL SOCIETY, (June 27, 2018, 11:47 PM), <http://www.constitution.org/cons/india/p02005.html>.

⁴⁴SARBANANDA *supra* note 1.

long standing Assam Agitation from 1979 to 1985 on the issue of detection and deportation of Bangladeshi nationals.

In reference to the above section, there has been a lot of opposition against the said section as being in violation to the Indian Constitution. As a result, several petitions have been filed as well in the Supreme Court regarding its validity pertaining to two different cut off dates. Some of the important petitions that we shall look into in the following chapters are by Assam Sanmilita Mahasangha, Asam Sahitya Sabha, Assam Public Works, etc. that have challenged the constitutional validity of the said section. The main contention is that there has been a discriminatory practice in granting citizenship to migrants in the country. While these petitioners contend that two different cut off dates for the country is discriminatory, the members of AASU back the Accord. AASU is of the argument that at the time when the Assam Accord was signed, all party had consented to its provisions, and that it only depends on the effective functioning of the State and the Central Government for the much sought for implementation of the Cl.s of the Accord. Special focus will be given to the Cl. 6 of the Accord, which states as follows:

“Safeguards and Economic Development:

6. Constitutional, legislative and administrative safeguards, as many be appropriate, shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people.”⁴⁵

For this end, the NRC is being updated with much vigor as well as work relating to strengthen border fencing and checking infiltration is in progress.⁴⁶

3.3. STRIKING OFF IMDT ACT 1983

Foreigners’ Tribunals were in existence as per the provisions of the Foreigners Act the Foreigners Orders 1964.⁴⁷ The infamous IMDT Act 1983⁴⁸ was promulgated

⁴⁵ *Memorandum of Settlement, ASSAM ACCORD*, (June 27, 2018, 11:40 PM), http://www.assam.gov.in/documents/1631171/0/Annexure_10.pdf?version=1.0.

⁴⁶ *Section 6A of Citizenship Act, 1955 and Assam Accord*, IAS POINT, (June 27, 2018 12:40 PM), <https://www.gktoday.in/academy/article/section-6a-of-citizenship-act-1955-and-assam-accord/>.

⁴⁷ Ministry of Home Affairs Government of India , *Orders, Foreigners (Tribunals) Orders 1964*,(June 27,2018, 11:41 PM)

http://www.assam.gov.in/documents/1631171/0/Annexure_6.pdf?version=1.0&t=1444717498000.

⁴⁸ *IMDT supra* at 13.

for establishment of Tribunals. These Tribunals will help in the determination as to whether a person is an illegal migrant or not. This will enable the Central Government to expel him from India. The provisions were very stringent even to the extent of casting the burden of proof upon the complainant. It was very difficult to answer the references made by the jurisdictional Superintendent of Police to ascertain as to whether a person /persons are illegal migrants or not. Opinions were to be rendered by the Foreigners Tribunals. The said enactment came to be challenged in a PIL filed by the present Chief Minister of the State of Assam and the Apex Court vide its decision rendered in 2005 held that the said Act as against the Constitution of India. It was further held that the identification of the foreigners should be as per the provisions of the Foreigners Act 1946 and the Foreigners (Tribunals) Order 1964. It was also held that irrespective of the said provisions the provisions of the Passport (Entry into India) Act 1920; the Passport Act 1967 and the Immigrants (Expulsion from Assam) Act, 1950 would also continue to hold the field.⁴⁹ Now the foreigners are being identified by the Foreigners Tribunals as per the provisions of the 1946 Act and 1964 Order referred to above. On the basis of a direction issued by the Supreme Court in *Assam Sanmihilita Mahasangha case*⁵⁰, the number of Tribunals has been increased to 100 and the references for opinion as to whether the persons concerned as illegal migrants or not based on the cut off date which is 25th March 1971 are to be answered by the Foreigners Tribunals in the form of opinions.⁵¹

3.4. SECTION 9 OF THE FOREIGNERS' ACT 1946

This section specifically deals with the burden of proof. It is a Central Act. It defines powers of the Government of India in foreigners' issues. This is a pre-independence Act. It is in this Act that provides that the burden of proof lies on the concerned person if it is true or not. This Act governs the process of NRC updation. The burden of proof under this Act has been interpreted in many important cases which we shall discuss in the succeeding chapter.⁵²

⁴⁹Md. Bahaluddin Sheikh v Union of India And Others, *W.P.(C) 256 of 2013* (June 26, 2018, 12:34 PM), <http://ghconline.gov.in/Judgment/WPC2562013.pdf>.

⁵⁰Assam Sanmihilita Mahasangha v The Union of India, (2015) 3 S.C.C 1 (India).

⁵¹ASSAM SANMIHILITA *supra* at 50.

⁵²The Foreigner Act, 1946, No. 31, Acts of Parliament, 1946 (India).

3.5. THE EXPULSION ACT, 1950 SECTION 2⁵³

The above provisions are referred to for a proper discussion and understanding of the importance, prospects and problems relating to ongoing process of updation of NRC. It is in reference to the aforesaid provisions, a foreigner is identified in reference to the specific cut-off date for Assam which is 25th March, 1971. Although the issue as to whether this cut off date should be done away with at par with the other parts of the country and in reference to the constitutional provisions referred to above, but having regard to the provisions of Section 6A of the Citizenship Act⁵⁴ and also time to time directions issued by the Supreme Court under whose direct supervision the NRC is being updated, the authority entrusted with the updation of NRC is required to stick to the said cut off date i.e. 25th March, 1971. If eventually, the plea of some of the petitioners that the cut off date for the state of Assam should be the same as in the other parts of the country is accepted by the Supreme Court then a separate issue will arise relating to the foreigners coming within the stream of cut off date as per the constitutional provisions and the cut off date under Section 6A of the said Act.

Another issue related to the updation of NRC is the amendment proposed to the Citizenship Act providing for exemptions of the provisions of the Citizenship Act to those minority migrants like Hindus, Sikhs, Buddhists, Jains, Christians, etc. who had entered into India up to 31st December, 2014 due to religious persecution and/or apprehension of such religious persecution and/or civil disturbances in their country of abode. If this amendment gets passed through in the Parliament then another issue will arise in respect of those who had migrated to Assam from Bangladesh etc. during the period from 25th March, 1971 to 31st December, 2014. However, for the present, there is no impediment towards updation of NRC because of the aforesaid proposed amendment. As noted above, it is a Supreme Court monitored process and there is specific direction to complete the updation process soon. However, it appears that it cannot be said to be a finality of the matter once for all. In this connection we may refer to Section 4A of the Citizenship Rules 2003⁵⁵ relating to the manner of preparation of NRC in Assam. These special rules have been framed by the Central

⁵³The Immigrants (Expulsion from Assam) Act, 1950, No. 10, Acts of Parliament, 1950 (India).

⁵⁴Indian Citizenship Act, 1955, No. 57, Acts of Parliament, 1955 (India).

⁵⁵Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003, Rules of Parliament, 2003 (India).

Government exercising the powers conferred by Sub-Sections -1(1)(3) of 18 of the Citizenship Act 1955⁵⁶.

Rule 4A which was inserted on 9th November 2009 provides the machinery for the running of the process of NRC. Cl. 2 of the Rule deals with the manner in which it shall be prepared. The District Magistrate will publish the NRC 1951 and names present in the electoral rolls up to midnight of 24th March, 1971. The circulation must be in sufficient number to the LRCR. Then the LRCR will choose central places whereby those records can be put on display. Also the application forms shall be issued and received in those places. The LRCR acts as a guardian of all the records in that particular area and it shall be his duty to display the same during his office hours. He shall receive the application forms filled up by people there itself. After receipt of the application forms, a proper scrutiny of the same will be done. After the scrutiny is done, a consolidated list will be prepared. During this phase, if the names of the persons are found to be declared as illegal migrants/foreigners such names will be excluded from the consolidated list. Only names that appear in the 1951 NRC or their descendants, or name that appear in the electoral rolls up to 24th March, 1971 shall come to be included in the consolidated list. This has been enumerated in Cl. 3 of the Rules. Any person who came after 1966 but before 1971 and got themselves registered as foreigners, and who have not been declared as illegals will be allowed to include their names in the combined list. If the citizenship of a person who are original inhabitants and also their descendants is proved beyond reasonable doubt, such names too shall be included in the consolidated list. Any doubts about the linkage found by the LRCR shall be sent to the District Magistrate for his observation. The individual or the family concerned shall also be informed about the same. After the consolidated list is prepared, proper authentication of each entry of it will be done. The District Magistrate shall publish a draft NRC as a way of public notice in the newspapers having wide circulation. Any objections or suggestions on it will be welcomed. The LRCR, at the time of final publication will seek verification of certain names considered necessary. Such report of the verification will be rechecked by the DRCR. After the DRCR arrives at a decision, an additional list is required shall also be published along with the draft NRC, under Cl. 5 of the Rules. Under Cl. 6, there is a provision for claims and objections. If any person's names do not appear in

⁵⁶ INDIAN CITIZENSHIP ACT, *supra* at 54.

the draft NRC as well as in the additional list, he may file his claim along with supporting documentary evidence to withstand the claim. A person can also object to inclusion of suspected names in the draft NRC within a period of thirty days from publication. Such objection must be raised before the LRCR. The LRCR will serve notice to all persons concerned. After disposal of such claims and objections, the LRCR shall prepare a supplementary list that will include or exclude names based on the decisions of the disposals he made on the basis of the claims and objections (Cl. 7). Thereafter the RGCR shall publish the final NRC list. Cl. 8 talks about appeals. If any person is dissatisfied with the outcome of the decisions rendered by the Tribunal he/she again file an appeal before the Foreigner's Tribunal.⁵⁷

Thus the aforesaid provision specifically deals with preparation of NRC in the State of Assam. Under Rule 4A, there is a schedule making special provisions as to manner of preparation of NRC in the state of Assam.

As mentioned above, the issue relating to NRC may not attain finality with the publication for the consolidated list as provided for under Rule 4 of the Schedule. There is further provision for publication of Additional List, publication of Supplementary List, submission of claims and objections, and finally provisions for Appeals. Whose names do not appear in the draft NRC can file his claim with supporting documents. Similarly, one can oppose to insertion of any name in the draft NRC. Thereafter, upon disposal of claims and objections final NRC would be published in the Assam. Thus it seems to be long-term process although there is a general perception that the task of updation of the NRC will come to an end with the publication of the same. This will pose a serious problem to the finality of the task of updation of the NRC.

3.6. THE CONSTITUTIONAL MANDATE TO SAFEGUARD THE STATE

It is the duty of the Union under Article 355 to protect the states against any external aggression and internal disturbances. The Union must see to it that every State government is carried on in accordance with the provisions of the Constitution of India.⁵⁸

⁵⁷Rule 4A of Citizenship (*Registration of Citizens and Issue of National Identity Cards*) Rules 2003, *Rules of Parliament*, 2003 (India).

⁵⁸DR. J.N. PANDEY, *THE CONSTITUTIONAL LAW OF INDIA* 634 -665 (47th ed. 2010).

In one of the important cases i.e. *Sarbananda Sonowal* case⁵⁹, it was held that the term “Aggression” is vast in scope and is not just limited to “war”. This is the reason why the makers of the Constitution chose the word “aggression” over “war”. Aggression not only means use of bombs and missiles into another country, but also means economic aggression, encroachment in mass illegal immigration, and other modern techniques of coercion. It has been held in the *Sonowal* (2) case that “aggression” is a word of *very wide import having complex dimensions and would to a large extent depend upon fact situation and its impact*.⁶⁰

Assam is also considered in the above case to having been faced by “*external aggression*” and “*internal disturbance*”. This is due to the unaccounted influx of illegal migrants into the state from Bangladesh. Thus, it becomes imperative for the Union to take effective measures in safeguarding the integrity of its states under the constitutional mandate. But we shall see in the succeeding chapters that the role of Centre in the various judicial decisions. Their lack of seriousness has caused immense anger and frustration in the general public.⁶¹

"Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination of effective demobilization".⁶²

⁵⁹SARBANANDA *supra* note 1.

⁶⁰*Id.* at 41.

⁶¹*Id.* at 41.

⁶²*Id.* at 41.

CHAPETR-IV

JUDICIAL INTERPRETATION

4.1. SUPREME COURT MONITORED PROCESS

The updation of NRC in Assam is under direct supervision of the Apex Court. It is due to the intervention of the Supreme Court, the process could not have been initiated. Before the intervention of the Supreme Court, a pilot project for updation of NRC was undertaken few years back. The State Administration had to face a lot of resistance as there was hue and cry regarding the modalities even to the extent of questioning the contents of the application forms needed to be filled in under various heads/columns. Thereafter, the process was abandoned and eventually as the intervention of the Apex Court in a batch of cases to which APW, Assam Sanmilita Mahasangha, etc. are parties. Although, various pleas have been raised before the Court highlighting various difficulties for a time bound updation of the NRC and time to time prayers were made for extension of the time limit fixed by the court, but with a strict vigil and hard line, the Supreme Court keeping in mind the importance of the updation of the NRC, brushing aside all those pleas has issued time to time strict directions towards completion of the process.

It will be relevant to refer to some of the judicial interpretation in the matter of Assam's problem relating to citizenship issue due to huge-scale illegal migrations from the erstwhile East Pakistan and now Bangladesh. Section 6A of the Citizenship Act 1955⁶³ has been inserted in tune with the provisions of the Assam Accord of 1985 in terms of which 25th March 1971 is the cut off date for identification of illegal migrants from Bangladesh.

It has been held in a batch of cases by the Gauhati High Court that the illegal migrants have become the kingmakers in the region of Assam.

In this Chapter, we shall discuss on the Indian Judiciary's stand in the matter of illegal immigrants in Assam. This chapter is an eye opener into the intricacies of the matter and is also open to much debate. Some important issues are still pending in the Apex Court. However, significant issues have been raised in the following decisions.

⁶³INDIAN CITIZENSHIP ACT, *supra* at 54.

4.2. CONSTITUTIONAL VALIDITY OF THE IMDT

In the case of *Sarbananda Sonowal v. Union of India (I)*⁶⁴, it was held that in the Foreigners Act, 1946⁶⁵, particularly Section 9 of the said Act provides for burden of proof. It states that the *Burden of Proof* is on the individual who asserts to be or not to be foreigner. The provision of Section 9 of the Foreigners Act, 1946 is as under:

*“ If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person. ”*⁶⁶

This section is based on the legal principle that facts, which are in personal knowledge of a person, should prove it. Most of the leading democracies in the world have similar provisions-

- Section 6 of the Evidence Act (1 of 1872).
- Section 3 of Immigration Act, 1971 of U.K.

It was held that under the Constitution of India Article 355 mandates on the Union its duty to protect the States against external aggression and internal disturbance. The ambit and scope of aggression includes war, but does not only mean war. It also includes influx of large number of persons crossing borders into India.⁶⁷

This case viewed into the constitutional validity of the IMDT Act, 1983 that the method for detection and expulsion of proscribed migrants is tremendously problematic, burdensome and time consuming. The Act appears to be purposely so enacted as to offer shield to illegal migrants rather than to identify and deport them. Such an overriding effect given to Act has exposed the Union Government of its powers under other Acts. The court held that the IMDT Act negates the Constitutional

⁶⁴SARBANADA, *supra* note 1.

⁶⁵The Foreigners Act, 1946, No. 31, Act of Parliament, 1946 (India)

⁶⁶THE FOREIGNERS ACT *supra* note 65

⁶⁷SARBANADA, *supra* note 1.

mandate under Article 355. Thus, the court directed that the Act is liable to be struck down.⁶⁸

Also, the function of IMDT, individually to Assam is inequitable, biased, discriminatory. It infringes many fundamental rights enumerated in the Indian Constitution. Since a categorization cannot be sustained only on the basis of geographical respects alone. This makes the Act lose its object rather than achieving it.⁶⁹

The Court held that the Act enables illegal migrants to inhabit in the State. The migrants, which is innumerable disturb the linguistic, scripture, and ethnicity of the locals. Thus, the IMDT Act is in sheer violation of the cultural rights of indigenous people.⁷⁰

The court also held that Article 21 of the Constitution of India does not get affected in case of identification and deportation of foreigner provided the procedure must be just, fair, reasonable.

The court struck down the IMDT Act, having catastrophic consequence of giving protection and safeguard to alien nationals who have unlawfully transgressed international boundary and are inhabiting in India.⁷¹

4.3. ANOTHER ATTEMPT AT RESTORING THE IMDT FAILED:

The Apex Court in the first case referred to above directed the speedy constitution of tribunals under the Foreigners (Tribunals) order, for the State.. However, Central Government instead of having done the same, attempted to invalidate the mandamus issued by Supreme Court by amending the 1964 order so as to make it inapplicable to Assam and notifying the Foreigners Order, 2006, which in substance, restored the position under the IMDT Act and rules found to be

⁶⁸SARBANADA, *supra* note 1.

⁶⁹*Id.* at 43.

⁷⁰*Id.* at 43.

⁷¹*Id.* at 43.

unconstitutional in the *Sonowal (1) case*⁷². In the present case, its unsustainability was held to be an attempt by way of subordinate legislation to invalidate the mandamus issued by Supreme Court. The *parent act* was held to remain in force and applicable. Upon an independent examination, the 2006 order was found to be unconstitutional. Hence, both the amending order and 2006 order were quashed as being illegal and unconstitutional. The Central Government was directed to implement directions in the first case- To constitute adequate numbers of Tribunals under 1964 order to efficiently deal with the cases of immigrants who had unlawfully come from Bangladesh or are inhabiting in Assam.⁷³

The Foreigners (Tribunals for Assam) Order 2006⁷⁴ in Paragraph 3 placed the initial burden of proof on the Tribunal/State to see that ‘basic facts are prima facie established’ as to whether person concerned was a foreigner. This was considered to be an invalid provision in light of provisions of Section 9 of the Foreigners Act, 1946⁷⁵ where the burden of proof is on the person concerned to prove that he was a citizen. This is not in any manner ultra vires Article 21 of Constitution of India provided the procedure is fair and reasonable. Thus, 1964 Order’s validity was reaffirmed and the 2006 Order was held to be invalid and accordingly struck off.

It is of immense importance to note here that subsequent to the decision in first Case, instead of implementing the directions therein, the Central Government in exercise of its power under Section 3 of the Foreigners Act, 1946 made an Order known as the “The Foreigners (Tribunals) Amendment Order, 2006” which amended the Foreigners (Tribunal) Order, 1964, principally making the same inapplicable to the state of Assam, and instead notified the Foreigners (Tribunals) Amendment Order, 2006. It was an attempt by way of subordinate legislation to nullify the mandamus issued by the Supreme Court. The amendment of 2006 was merely a revival of the IMDT elements. This, we can understand by tabulating a comparative chart showing the changes brought about in paragraphs 2 and 3 of the 1964 Order by reason of 2006 Order as under:

⁷²SARBANADA, *supra* note 1.

⁷³Sarbananda Sonowal (II) v Union of India & Ors., (2007) 1 S.C.C. 174 (India).

⁷⁴Ministry of Home Affairs Government of India , *Orders*, Foreigners (Tribunals) Orders 1964,(June 27,2018, 11:41 PM).

⁷⁵SARBANADA, *supra* note 1.

CL.	FOREIGNERS (TRIBUNALS) ORDER, 1964	FOREIGNERS (TRIBUNALS FOR ASSAM) ORDER, 2006 (struck off)
2. Constitution of Tribunals.-- (1)	The Central Government may, by order, refer the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act, 1946 to a Tribunal to be constituted for the purpose, for its opinion.	The Central Government or any authority specified in this regard shall, by order, refer the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act, 1946 to a Tribunal to be constituted for the purpose, for its opinion.
3. Procedure for disposal of questions.—(2)	The Tribunal shall serve on the person to whom the question relates, a copy of the main grounds on which he is alleged to be a foreigner and give him reasonable opportunity of making a representation and producing evidence in support of his case and after considering such evidence as may be produced after hearing such persons as may deserve to be heard, the Tribunal shall submit its opinion to the officer or authority specified in this behalf in the order of reference.	The Tribunal, upon receipt of a reference under sub para (1) of para 2, shall consider whether there is sufficient ground for proceeding and if the Tribunal is satisfied that basic facts are prima facie established, it shall serve on the person to whom the question relates, a copy of the main grounds on which he is alleged to be a foreigner and give him reasonable opportunity of making a representation and producing evidence in support of his case and after considering such evidence as may be produced after hearing such persons as may deserve to be heard, the Tribunal shall submit its opinion to the officer or authority specified in this behalf in the order of reference.

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The Apex Court holding that such amendment was issued by the Central Government for non-implementation struck down this amendment of 2006 in the Sonowal (2) Case and also held that it was not in accordance with the duty mandated under Article 355 to the Central Government of India in protection of the State.

⁷⁶*Id.* at 45.

4.4. ASSAM SANMIHILITA MAHASANGHA CASE⁷⁷:

This is one of the most important cases with regard to this present paper. In this case, it was directed by the Supreme Court to combat the efficiency of update of the National Register of Citizens (NRC) in Assam. The Union of India was given direction to streamline the detection process and place before the Supreme Court, every three months, result of the said exercise. Directions were also issued regarding border fencing, border roads' construction and repair, provisions for flood lights and continuous border patrolling, etc.

In this case, thirteen substantial questions of law arising out of the context in the above two cases have been referred to a larger Bench under Article 145(3) of the Constitution of India. Thirteen questions have been formulated in the Paragraph 33 of the Judgment and order. This is a challenge to the Section 6A with regard to special provisions for the state of Assam. The thirteen questions that the referred to the larger Bench are as under:

“(i) 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, 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)?

(ii) 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;

(iii) 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)?

(iv) 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?

⁷⁷ Assam Sanmilita Mahasangha & Ors. v Union of India & Ors. (2015) 3 S.C.C. 1 (India).

(v) *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 regularizing illegal migrants who enter Assam as opposed to the rest of the country; and*

(vi) *Whether Section 6A violates Article 21 in that the lives and personal liberty of the citizens of Assam have been affected adversely by the massive influx of illegal migrants from Bangladesh. (vii) Whether delay is a factor that can be taken into account in molding relief under a petition filed under Article 32 of the Constitution?*

(viii) *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?*

(ix) *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?*

(x) *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?*

(xi) *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 (Tribunals) Order, 1964 made thereunder?*

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

(xiii) *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?⁷⁸*

⁷⁸*Id* at 47.

The above-mentioned questions raise many substantial issues about the citizenship conferring power of the state, right to equality enumerated as fundamental rights. It also poses questions as to directive principles of preserving culture and heritage. In so much as Article 21 is concerned, it also asks the question as to whether the life and liberty of the people of Assam are protected. The Section also questioned as to its violation of rule of law. And rather subjected to political negotiations and thus, this whole exercise being arbitrary in nature.

After this, some more cases were filed and were tagged with the main case. These petitions challenged Section 3 of the Citizenship Act⁷⁹, the Foreigners Order, 2015, etc. Petitions were also filed challenging the Foreigners (Amendment) Order of 2015 and the Passport Rules, which stated that “*persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December, 2014*”⁸⁰ would be permitted immunity from application of the Foreigners Act and the Passport Rules. It is uncertain whether the Court will take up these supplementary matters for consideration as well.

4.5. SARABARI BEGUM (MUSTT) @ SYERA BEGUM AND OTHERS V. THE STATE OF ASSAM AND OTHERS⁸¹ AND THE STATE OF ASSAM V. MOSLEM MANDAL⁸²

In this judgment, a single Bench of the Gauhati High Court taking up a batch of Writ Petitions, while disposing off the same noticed the common features in the cases, the modus operandi of the suspected foreigners to avoid the proceedings before the Foreigners Tribunal etc. The court also explained as to how the delay in disposal of proceedings has the potential of frustrating the very purpose of identifying the illegal Bangladeshi nationals. It also emphasized on the need for immediate attention and action in such matters. Referring to the Sarbananda Sonowal (1) case, the court issued certain directions requiring the jurisdictional Superintendence of Police to furnish

⁷⁹INDIAN CITIZENSHIP ACT, *supra* note 54.

⁸⁰Ranjit Kumar Mazumder & Anr v The State Of West Bengal, C.R.M. No. 10076 of 2015 (Kolkata).

⁸¹Sarabari Begum (Mustt.) @ Syera Begum and others v State of Assam and others (2008) 3 G.L.T. 272 (India).

⁸²State of Assam & others. v Moslem Mandal and others (2013) 1 G.L.T. 809 (India).

reports regarding deportation of foreigners found to have entered into Assam after the cut off date i.e. 1971.⁸³

Some of the petitioners made a challenge to the aforesaid judgment in *Sarabari Begum* in the form of a Writ Appeals, which were disposed off along with Review Petitions such as the *Moslem Mandal case*. The Full Bench exhaustively dealt with all the aspects of the matter pertaining to the proceedings before the Foreigners Tribunal and laid down certain guidelines as to how such proceedings should be concluded. Interfering with the earlier judgment of a Division Bench requiring the state to discharge the burden of proof, it was held that under Section 9 of the Foreigners Act, 1946, burden of proof lies upon the proceedee and not on the State.⁸⁴

It was further held that a Foreigners Tribunal could entertain an application for setting aside an ex parte opinion rendered by the tribunal. It was held that the tribunal has the trappings of a civil court and that even after disposal of the proceedings, for end of justice, the tribunal can entertain an application to set aside an ex parte order. However, a note of caution was emphasized holding that an application to set aside an ex parte order/opinion should not be entertained in a routine manner and that an ex parte order can only be set aside only when exceptional grounds are made out.

The full bench also laid down the procedure of service of notice and the manner, method and limitation of registration of names of the Foreigners within the stream of 1966-71. Finally, discussing the well-known principles of judicial review, it was held that the High Court exercising its writ jurisdiction under Article 226 of the Constitution cannot review the findings of fact reached by the Tribunal. It is only when there is failure of taking into account the relevant facts or consideration of irrelevant factors which has a bearing on the decision of the Tribunal, can be a ground for interference exercising writ jurisdiction. It has further been held that upon receipt of a notice, if a proceedee does not come forward to discharge the said burden of proof, the Foreigners Tribunal is entitled to pass ex parte opinion holding the proceedee to be a foreigner irrespective of whether the authority has laid any evidence or not in support of the reference made by the jurisdictional Superintendent of Police suspecting the proceedee to be a foreigner.

⁸³SARBANANDA, *supra* note 1.

⁸⁴ASSAM SANMIHILITA, *supra* note 41.

4.6. EVIDENCE OF FACTS PLEADED UNDER SECTION 9 OF THE FOREIGNERS' ACT, 1946⁸⁵

The facts pleaded under Section 9 of the Foreigners Act, 1946 will have to be proved by adducing cogent, reliable and admissible evidence. In a case, i.e. Saru Sheikh versus Union of India⁸⁶, the court held that with regard to the mandate of Section 106 of the Indian Evidence Act⁸⁷ along with Section 9 of the Foreigners Act, 1946, it is incumbent upon a proceedee to disclose all such facts which are specially within his or her knowledge having a material bearing on his claim to be a citizen of India at the first instance itself, i.e. in the Written Statement, and thereafter it is required to be proved by adducing cogent and reliable evidence. Failure to do so may lead to drawing of adverse inference against the proceedee.⁸⁸

Section 106 of the Indian Evidence Act 1872 stipulates thus- "*Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*"⁸⁹

In Ayesha Khatun vs. Union Of India⁹⁰, the Written Statement submitted by a noticee facing proceeding under the Act is a foundation of his defense. Averments made in the Written Statement are required to be proved by adducing cogent and reliable evidence. Failure to disclose material particulars in the Written Statement by itself will raise a serious question mark on the citizenship status of the noticee.

Yet in another foreigners' case with regard to the validity and the legality of certificate issued by the Secretary, Gaon Panchayat as identity proof of a person, it has been held that such certificate has no statutory sanctity being beyond the mandate of Assam Panchayat Act, 1994 and contrary to the Citizenship Rules, 2003. It was held that once a reference is made, the competent Foreigners' Tribunal is required to render its opinion on the reference by answering it either in favor of the state or in

⁸⁵THE FOREIGNER ACT, supra note 65.

⁸⁶Saru Sheikh v Union of India, (2017) 4 G.L.R. 295 (Gauhati).

⁸⁷The Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

⁸⁸SARU, supra note 86.

⁸⁹The Indian Evidence, supra note 87.

⁹⁰Ayesha Khatun v Union of India (2017) 3 G.L.R. 820 (Gauhati).

favor of the proceedee. Also directing the Superintendent of Police (Border) to cause inquiry regarding citizenship status of certain persons by the Foreigners' Tribunal may not be justified. Once a proceedee is declared to be a foreigner, it would be a logical corollary to such declaration that his brothers, sisters and other family members are also foreigners. This view has been held in *Aktara Khatun v. State of Assam and others*.⁹¹ There has been a batch of similar cases before the High Court regarding the same issue. The Supreme Court in *Rupjan Begum v. the Union of India*⁹² has clarified that a certificate issued by the Secretary of the Gaon Panchayat by no means establishes a claim of citizenship. It is only a link document, which has to be supported by other evidence. Such a certificate has to be verified at two stages, namely, authenticity of the document itself and secondly, authenticity of the contents which is bound to be an exhaustive process.

4.7. NO EVIDENTIARY VALUE OF A COMPUTER GENERATED STATEMENT WITHOUT CERTIFICATION

This was held in *Anowar P.V. v. P.K. Basheer*⁹³ as thus:

“Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non-obstante Clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under

⁹¹ *Aktara Khatun v State of Assam and others* (2017) 2 G.L.T. 974 (Gauhati).

⁹² *Rupjan Begum v the Union of India* (2018) 1 S.C.C 578 (India).

⁹³ *Anowar P.V. v P.K. Basheer* (2014) 10 S.C.C. 473 (India).

Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

*(a) **There must be a certificate which identifies the electronic record containing the statement;***

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A – opinion of examiner of electronic evidence.

*The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.*⁹⁴

4.8. LONG STAY AND ENROLLMENT IN VOTERS' LIST DOES NOT CONFER CITIZENSHIP

In the case of Bhanwaroo Khan and others versus Union of India⁹⁵ and others, the Supreme Court has aptly relied on a high court judgment that long stay in the country and enrollment in the voter's list would not confer any right on an alien to continue to stay in the country.

⁹⁴ANOWAR, *supra* note 93.

⁹⁵Bhanwaroo Khan And Ors v Union of India (2002) 4 S.C.C. 346 (India).

4.9. NO OPINION WITHOUT REFERENCE MADE TO TRIBUNAL

As directed in the *Sarbananda Sonowal (1) case*, any reference initially made under the IMDT Act, 1983 must be re-registered under the Foreigners Act, 1946 read with Foreigners Order, 1964 since the IMDT was struck off in the said case. It was held in the case of *Santosh Das v. Union of India and others*⁹⁶ that a reference is made to the Tribunal by the Central Government. Without such reference being made, the Tribunal cannot exercise its jurisdiction to opine that the person is or is not a foreigner. It is only when the reference is being made, the tribunal assumes jurisdiction to render its opinion. Thus, by this it is understood that the tribunal would have to confine to the terms of the reference made to it and cannot go beyond the same.

The above view has been modified in another case i.e. *Falani Bibi V. Union of India*⁹⁷ that the prudent course of action would be that if a Tribunal prima facie arrives at a satisfaction that the reference made to it is faulty and contrary to the materials on record, the Tribunal should send back the reference to the referral authority with a disagreement note pointing out the error or fault in the reference. once such reference is returned back to the referral authority, it would be the duty of the referral authority to make a fresh reference to the Tribunal after removing the defect or fault as pointed out by the Tribunal. If the Tribunals do not adopt this course of action and they decide the reference on their own by going beyond the terms of the reference, this would be untenable in law, besides leading to chaos and confusion. On the other hand, if the Tribunal mechanically answers the reference as forwarded by the referral authority despite finding it to be faulty, it would be against public interest. The same view has been upheld by other similar decisions pertaining to the same facts.

⁹⁶Santosh Das v Union of India And Ors (2017) 2 G.L.T. 1065 (Gauhati).

⁹⁷Falani Bibi V. Union of India WP(C) No.7104/2015 (Gauhati).

4.10. NOTICE TO PERSON ALLEGED TO BE A FOREIGNER

Cl. 3(1) of the Foreigners (Tribunals) Order, 1964 reads as:

“ 3. (1) *The Tribunal shall serve on the person, to whom the question relates, a copy of the main grounds on which he is alleged to be a foreigner and give him a reasonable opportunity of making a representation and producing evidence in support of his case and after considering such evidence as may be produced and after hearing such persons as may desire to be heard, the Tribunal shall submit its opinion to the officer or authority specified in this behalf in the order of reference.*”⁹⁸

In the case of *State of Assam v. Moslem Mandal*⁹⁹ a full bench of the Gauhati High Court held that a proceedee is entitled to a copy of the main grounds on which he or she is alleged to be a foreigner. This issue was also raised in the *Ayesha Khatun v. Union of India*¹⁰⁰ and was held that though the aforementioned Clause provides that a copy of the main grounds on which the allegation has been made is to be served upon the proceedee, it is open to a Foreigners’ Tribunal to endorse a remark or to mention in the show-cause notice itself the reasons or grounds for issuing the show-cause notice. This interpretation holds true compliance with the statement “*copy of main grounds*” appearing in the aforementioned Clause. Notice is to make the noticee aware of the proceeding registered against him.

Moreover, notice once served to the person concerned, further notice need not be issued.¹⁰¹

Mentioning the name of the proceedee as son/daughter of father in the notice by the tribunal is no proof of such relationship. It is no evidence of such linkage.¹⁰²

⁹⁸MINISTRY OF HOME AFFAIRS, *supra* note 47.

⁹⁹*State of Assam v Moslem Mandal*, (2013) 1 G.L.T. 809 (Gauhati).

¹⁰⁰*Ayesha Khatun v Union of India*, (2017) 3 G.L.R 820 (Gauhati).

¹⁰¹*Halim Khan v Union of India*, WP(C) No. 317/2017 (Gauhati).

¹⁰²*Rupali Bibi v Union of India*, WP(C) No. 3917/2016 (Gauhati).

CHAPTER-V

PROSPECTS AND PROBLEMS OF NRC, ASSAM

There loom great hopes as well as grave apprehensions regarding the updation of the 1951 NRC in Assam. After a long series of orders and judgments by the Hon'ble Supreme Court and the Gauhati High Court, the Government of Assam has commenced the process of final draft NRC updation in Assam, a part draft of which has been already published on 31st December, 2017.

Among one group, there is an apprehension accompanied by real fear that their names will not be included in the final draft NRC, who condemns the whole updation process as unfair and biased. In this group fall the Muslim minorities and the Hindu Bengalis. These two sects are often suspected to be illegal immigrants from Bangladesh. The other group is quite optimistic about the process of NRC updation because this will help segregate the illegals from the legals, thus preserving their national identities and identifying non-nationals.

Herein we shall elaborately discuss some of the problems rooted in history as well as in the present day scenario regarding the updation of NRC in Assam after which we shall look at some of the challenges and prospects of the same.

5.1. THE LIMITATION OF THE NRC 1951

The 1951 NRC, which is being currently updated, is itself an incomplete survey, as it failed to encompass all the areas of the state of Assam, which comprised mainly of the remote areas, *chars* and riverine areas. Not only this, massive communal violence erupted in the wake of the updation of 1951 NRC in the state of Assam. More than a number of 50,000 Muslim families fled to then East Pakistan between 1948 and 1950. On 8th April 1950, the then Prime Minister of India, Jawaharlal Nehru and the Prime Minister Liaquat Ali Khan had signed the Liaquat-Nehru Pact¹⁰³ in order to correct the harm done to the minorities and to confirm their rights. This pact was signed after the partition took place and was signed to avoid any

¹⁰³BIPIN CHANDRA, INDIA SINCE INDEPENDENCE, 148-150 (2nd ed. 2007).

more war between them. This treaty provided those who fled the violence an opening to return back to India. Around this time, the updation of NRC of 1951 was complete. The names of those persons were thus not enumerated in the NRC of 1951. Rather, their names were ‘enlisted’ in the census of 1961, which exposed an unnaturally huge spike in the Muslim growth rate. From then on, not a single time, the Government felt it necessary to update the NRC of 1951 until now.¹⁰⁴

5.2. FAILURE OF ASSAM MOVEMENT, AGP, AND ASSAM ACCORD

The All Assam Students’ Union (AASU) was at its prime when the Assam Accord was signed, which was one of the greatest accomplishments for the state. Right after the signing of the Accord and also after many subsequent failures to form a government in Assam, finally, the Asam Gana Parishad (AGP) came into political power carrying the main agenda of identification and deportation of the non-nationals. To the utter disappointment of all, this political party could not live up to the expectations of the people in realizing their agenda.¹⁰⁵ The failure of implementing the Assam Accord by the AGP as well as AASU therefore could not bring any political solution to the foreigners’ problem in a rational manner, rather created more prejudice against the Muslim minorities and the Hindu Bengalis, many of whose voting rights have been taken away by the Government based on such prejudices and doubts about their nationality.¹⁰⁶

5.3. PILOT PROJECT FAILURE

In 2010 when a pilot project was taken up in the Barpeta Revenue Circle under Barpeta District, it was met with a hostile law and order situation. The pilot project was stopped. Now that when NRC is updated why no such protest? This is an unusual situation. It creates doubts in the minds whether now the documents necessary for NRC are managed. More so, whether all of them managed to get documents.

¹⁰⁴BIPIN, *supra* note 103.

¹⁰⁵BIPIN, *supra* note 103.

¹⁰⁶*Centre for Study of Society and Secularism*, NRC UPDATION IN ASSAM: PROSPECTS AND CHALLENGES, (June 15, 2018, 14:08 PM), <http://peoplesvoice.in/wp-content>.

5.4. THE PROBLEM OF D VOTERS

‘D’ voters are those whose names have been removed from the electoral rolls due to lack of proper citizenship credentials. Their cases are referred to the Foreigners’ Tribunals to establish their citizenship. Therefore, they do not have voting rights.¹⁰⁷ The main problem of the ‘D’ voters is that there are no criteria for identifying the same. ‘D’ voters have been so marked by some lower officials of the Election Commission during the year 1997 that it creates an unusual atmosphere as a repercussion. ten to twenty persons from each village were marked randomly out of mere suspicion as doubtful voters.¹⁰⁸ There were approximately 3,70,000 persons marked as ‘D’ voters by the Election Commission. Thus it led to incongruity in family trees in the present updation. While some members of a given family were Indians, some members of the same family were marked as doubtful voters. It is of utmost importance to mention here that the ‘D’ voters are deprived of their right to vote.¹⁰⁹ The number of cases of the ‘D’ voters is so many that even the Foreigners’ Tribunals are overburdened with it.¹¹⁰ The State Government alleges that a total of 20,578 D-voters have been declared foreigners and 66,986 were found to be Indian citizens by various courts in Assam. According to MLA Chandra Mohan Patowary, while reporting to a Newspaper said that 2,44,144 D-voters were referred to the tribunals and out of them 1,31,034 cases have been disposed of. 52 D-voters are declared to be non-nationals/foreigners and are kept in detention camps, while some have appealed to the High Court and yet some others are absconding.¹¹¹ These numbers and figures are as of February 2018 after which the verification process has been going on till a few days back. The NRC updation is completely tongue-tied on the pending cases of these D-voters.¹¹²

¹⁰⁷*Id* at 58.

¹⁰⁸CENTRE FOR STUDY *supra* note 106.

¹⁰⁹Rahul Karmakar, “Pressure on Assam government to book lawyers who assaulted judge”, HINDUSTAN TIMES, (June 29, 2018, 14:10 PM). <https://www.hindustantimes.com/india-news/pressure-on-assam-government-to-book-lawyers-who-assaulted-judge/story-pynKyT0ZxcxClgvt1fyPqK.html>.

¹¹⁰CENTRE FOR STUDY *supra* note 106.

¹¹¹Pankaj Sharma, “Dispur gives D -voters data”, THE TELEGRAPH GUWAHATI, Feb. 13, 2018 at 5.

¹¹²CENTRE FOR STUDY *supra* note 106.

5.5. CONFLICT WITH THE CITIZENSHIP (AMENDMENT) BILL 2016

During the Joint Parliamentary Committee visit to Assam and Meghalaya, deliberation took place regarding the Citizenship Bill. It was criticized and its passing was protested against as being *Anti-Assam*. In the Amendment Bill, the definition of illegal migrants is sought to be changed. The purpose of passing the Bill is to grant citizenship to illegal migrants from Afghanistan, Bangladesh and Pakistan, (who have migrated to India on or before 31st December 2014) who are Hindu, Sikh, Buddhist, Jain, Parsi or Christian minorities. Many NGOs and the AASU, AGP and the Meghalaya Democratic Alliance (MDA) has opposed the Bill believing that if it becomes an Act, it will nullify the whole updated NRC, the process of which is still going on. Since NRC does not distinguish between Hindu Bangladeshis and Muslim Bangladeshis or based on any religion per se, it considers deporting anyone post 1971, which is in contract with the Amendment Bill. The Bill will affect the areas bordering Bangladesh too.¹¹³

5.6. SOCIAL UNREST AND COMMUNAL RIOTS

Inclusion and exclusion errors will create social unrest among communities. Moreover, many legitimate Indian nationals' names are not yet included in the NRC draft, number of which is approximately 14 (fourteen) millions.¹¹⁴ This will create new fault lines and which might lead to social unrest and communal tensions.¹¹⁵

5.7. LACK OF ANY DEPORTATION TREATY

It is said that illegal migrants will be deported back to Bangladesh, but there is no Deportation Treaty between India and Bangladesh on these grounds. NRC updation is a prospective work intrinsically, but its proper and peaceful

¹¹³Debashree Purkayasha, "*What is the Citizen (Amendment Bill, 2016)*"? , THE HINDU, (June 24, 2018, 15:00 PM), <http://www.thehindu.com/news/national/other-states/what-is-the-citizenship-amendment-bill-2016/article23999348.ece>.

¹¹⁴PTI, "*No need for panic if name is excluded*", THE HINDU, June 29, 2018, at p. 5.

¹¹⁵ DEBASHREE, *supra* note 113.

implementation is of ultimate importance. Keeping in line with international protocol, the number of illegal migrants must also be confirmed by the Bangladeshi author.¹¹⁶

5.8. LAPSES IN VERIFICATION PROCESS

5.8.1. THE PROBLEM OF RE-VERIFICATION

The Legacy Data is verified through the legacy image. Both the things are first compared. When the legacy data is taken out, during that time, the legacy image is also issued and the concerned person is given the print out of the same. Now, during the verification, the legacy image is already present with people. This itself as a verification process is not sufficient.

5.8.2. FAMILY TREE

There have been many instances in the NRC offices whereby the people have entered their names into somebody else's family tree. In one of the cases that was undertaken by this research paper, it was seen that a name surreptitiously was entered into a family tree as being the son of the father and the mother. To this, the mother objected that it was not her son and the father supported that it was. The son also carried with him his voter ID card wherein the so-called father's name was written. Later, the alleged father was arrested. These kinds of anomalies have emerged in huge numbers.

5.8.3. ONLY CLAIMS AND NO OBJECTIONS

As citizens of India, we not only have rights, but also have certain duties towards our country. In this case, however, it is seen that people have only raised claims and no objections. As a citizen, we are responsible to go through the entire draft NRC and wherever we find any anomalies or know of any inclusion of names as being malicious, we must raise objections to the same. People are only concerned

¹¹⁶ Dhyeya IAS, "*Stateless in Assam*" (January 27, 2018 23: 00 PM), <https://www.linkedin.com/pulse/stateless-assam-dhyeya-ias>.

about whether their names have been published or not and close the monitor screens. It is of grave importance that people be also vigilant and conscious if there is any inclusion of a foreigners' name that they know of to be so.

Claims are generally of various kinds like non-inclusion of names, inclusion of names incorrectly, other corrections of family members' names, etc. But there are hardly any objections. For example, in the Morigaon District, there has been found certain anomalies in the list. Some names of foreigners who are declared foreigners by Tribunals have managed their way into the draft list NRC. But, nobody raised any objection to this end and moved to the court. As the people of the nation, it is our duty to be vigilant towards any wrongs happening around us and inform the concerned authorities of the same.

5.8.4. NON-ASSAMESE APPLICANTS

The NRC updation is only for the indigenous people of Assam and non-Assamese applicants need not apply for the same. Many people from different states come to the state of Assam for business purposes, and services, and the like. But, they applying their names for the NRC updation is an unnecessary exercise as it is not an updation of non-Assamese people. Thus, such unnecessary applications make matters complicated.¹¹⁷

5.8.5. UPDATION IN CHAR AREAS, WHETHER DONE?

Again another problem creeps in as to whether the vulnerable areas have been subjected to strict updation or not. The vulnerable areas are the Char areas, the riverine areas and the bordering areas with Bangladesh. Due to its geographical location and vulnerability, it is all the more necessary that these areas must be under the strict scrutiny by powerful and superior authorities.¹¹⁸

¹¹⁷G Seetharaman, "National Register of Citizens in Assam: Issue of illegal foreigners continues to be a major political one", ECONOMIC TIMES, (June 19, 2018, 22 :00 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/national-register-of-citizens-in-assam-issue-of-illegal-foreigners-continues-to-be-a-major-political-one/articleshow/47657561.cms>.

¹¹⁸G. SEETHARAMAN, *supra* note at 117.

5.8.6. CHALLENGES BY THE EXCLUDED

As soon as the final list is published, many people whose names are excluded can put their claims and objections to the said exclusion or inclusion of names respectively. They may claim that the entire process of the updation had been unfair. There have been cases of reported suicides in Cachar, Silchar, Tangla, etc., in the fear of deportation or even non-inclusion of names in the first NRC draft. This might lead to taking up of legal action by the human rights activists in the future. Which in turn will nullify the whole process.¹¹⁹

5.8.7. LIST APPLICABLE ONLY TO ASSAMESE RESIDENTS

The NRC list is applicable only to the residents of Assam, which leaves a loophole for the many illegal non-nationals to move to other cities, like Delhi, Mumbai, Kerala, etc. If they can successfully get their names included in the local electoral rolls, it renders the whole process of NRC updation quite meaningless. In this scenario, the process of NRC updation must at an equal footing must have been carried out in other parts of the country too. Also, the Aadhar must be correctly and effectively used so that any name that is struck off from the NRC list does not appear in any local electoral rolls of any other city.¹²⁰

5.8.9. CITIZENSHIP BY BIRTH IGNORED

The children who are born in India are legally eligible to be citizens of India by birth. This very provision makes matters worse. Because, again this would give rise to human rights violation since one cannot deport the parents leaving aside their children.¹²¹

¹²²As per Section 3 of the Indian Citizenship Act, 1955, persons born up to 1987 are automatically Indian Citizens irrespective of whether or not their parents are

¹¹⁹R Jagannathan ,”*Five Legal And Other Flaws That Will Make Assam NRC List Of Illegals Meaningless*”, SWARAJYAMAG, (Jun .29, 2018,14:24 PM) <https://swarajyamag.com/politics/five-legal-and-other-flaws-that-will-make-assam-nrc-list-of-illegals-meaningless> (Jun .29, 2018,14:24 PM).

¹²⁰*Id.* at 62.

¹²¹*Id.* at 62.

¹²²INDIAN CITIZENSHIP ACT, *supra* at 54.

not Indian citizens. Persons born up to 2003 out of a wedlock one of which is an Indian Citizen and the other is not, are also Indian citizens and those born after 2003 are also Indian citizens if one of the parents is an Indian citizen and the other has not been declared to be a foreigner. There is widespread resentment in Assam on this Cl.. And there is a demand to exclude this provision for Assam.

5.8.10. PROBLEMS REGARDING MARRIED WOMEN

Many of the claims particularly in respect of married women are based on Panchayat Certificates issued by the authorities of the jurisdictional Anchalik Panchayats. In 2017, the Gauhati High Court ruled that the Panchayat issued certificates could not be a basis to prove citizenship.¹²³ This left such applicants panic-stricken. However, in a later ruling by the Supreme Court in the case of *Rupjan Begum V. Union of India*¹²⁴, it held that the documents could be used to establish the linkage of a person with his/her father but only after due verification.¹²⁵

Although the High Court judgment was interfered with and the Panchayat Certificates have been held to be a valid documents, but the Hon'ble Apex Court has clarified the matter by saying that those certificates ipso facto will not be proof of Indian Citizenship and that their contents will have to be proved by the claimants. It has also been clarified that it will be only a supporting document and the proceedee will have to establish the linkage proving her citizenship in reference to the relevant documents.

5.8.11. IN CASES OF ORPHANS

Another problem that is likely to arise is in respect of orphans. Many a times, their parentage is not known and thus, such persons cannot establish their Indian Citizenship in reference to their parental lineage. They are also not in a position to show documentary proof of their Indian Citizenship. One unique example of such a

¹²³*Monowara Bewa v The Union of India*, (2017) 2 G.L.T 143 (India).

¹²⁴*Rupjan Begum v Union of India* (2018) 1 S.C.C. 579 (India).

¹²⁵Prasanta Majumdar, "*NRC draft: Citizenship of 29 lakh married women in Assam to be verified*", INDIAN EXPRESS, (June 29, 2018, 14:25 PM)

<http://www.newindianexpress.com/nation/2018/apr/02/nrc-draft-citizenship-of-29-lakh-married-women-in-assam-to-be-verified-1795715.html>.

problem is in respect of a girl who was found loitering hither and tither in a particular bus stop. She was an abandoned child and was crying a lot. Fortunately a lady of that area took her home and as the report goes, she has been brought up as her own daughter. An FIR was lodged furnishing the information of the missing girl, however, nobody came forward to claim her. When the documents needed to be submitted, the story was narrated in the form of an Affidavit and as the report goes, the matter has been looked into from a different angle. These are certain problem areas that need to be corrected because it might leave loopholes relating to people who do not have any lineage.

5.9. PROSPECTS OF NRC, ASSAM:

5.9.1. NRC UPDATION

Many socio-political organizations like the All Assam Students' Union (AASU), Krishak Mukti Sangram Samiti (KMSS), Akhil Bharatiya Vidharthi Parishad (ABVP), Jatiyatabadi Yuva Chatra Parishad (JYCP), Assam Public Works (APW) and many others have persistently fought for the updation of NRC, 1951 since a very long time. It is this long-standing protest that led the Supreme Court and the Government of India to take the matter seriously and have ordered for its updation, of which the first draft has already been published. It is believed by the aforesaid organizations and of course many indigenous people in the state of Assam that this updation will help segregate the non-nationals or the foreigners from the Indian citizens. Not only this, this updation will help in easy identification of the illegal infiltrators into the State of Assam.¹²⁶

5.9.2. BRINGING ABOUT FINALITY

The first draft NRC for the state of Assam was published on Decemebr 31st 2017. The first draft included the names of 1.9 crore people as genuine citizens of

¹²⁶Col DJS Chahal "*Opportunities and Challenges of Updating the National Register of Citizens (NRC) of Assam*" OLIVE GREEN, (June 29, 2018, 14:27 PM), <http://www.olivegreens.co.in/blog/opportunities-and-challenges-of-updating-the-national-register-of-citizens-nrc-of-assam>.

India. The total number of applicants were 3.29 crore. The Registrar General of India has assured that the entire process of NRC updation will be complete within the year 2018.¹²⁷ This means that once and for all, all doubts in the minds of the people pertaining to the number of illegal migrants in the state of Assam will be settled. The prospective updation will bring about an end to the unstable situation relating the foreigners' issue in the state of Assam, which begets finality to the matter at hand.

5.9.3. CLEANING UP THE VOTE BANKS

Since many illegal immigrants have managed to acquire voting rights, the vote banks of the politicians are largely flawed. The process of NRC will remove this threat to our democracy. The present ruling Bharatiya Janata Party (BJP) Government have assured to the people of Assam that this updation will help bring about a clean up of the vote banks from which the illegal voters' names will be erased. This leads to a stabilized election and also forms trust in the ruling Government so much so the voices of the people are heard, which is the most important driving force for a Democracy to run.¹²⁸

5.9.4. CULTURAL AND ETHNIC INTEGRITY WILL BE RESTORED

The cultural and ethnic integrity is a very sacred thing for all people from all cultures. So is the case with Assam, which has a rich culture and heritage. If the people of Assam become a minority in their own state, the culture also ceases to exist due to diffusion. Thus, the process of updation of NRC is complete and the final list is out, the cultural and ethnic integrity will be reinstated. The people of Assam can have proper access and utilization of the community resources that are justly theirs.¹²⁹

¹²⁷ Id at 65.

¹²⁸ COL., *supra* note 126.

¹²⁹ Alok Kumar Choudhary, *Why a Successful NRC Exercise In Assam Will Help The BJP*, SWARAJYAMAG, (Jun, 20, 2018, 14:29 PM), <https://swarajyamag.com/politics/why-a-successful-nrc-exercise-in-assam-will-help-the-bjp>.

5.9.5. NOT TO PANIC IF NAME NOT INCLUDED IN THE FINAL LIST

The final draft NRC is only a final draft, and in case, if a genuine citizen's name is not included in the final draft, there is no reason to worry about the same. Because the claims and objection phase will follow right after the final draft list is published. In the claims and objection phase, a person whose name is not included can approach the court with his/her claim as well as some malafide inclusion of names can also be objected to, whose objections will be resolved within one month from receipt of such complaint.¹³⁰

5.9.6. SAFEGUARDING NATIONAL INTEREST

As citizens of this country, we not only have rights, but duties as well. Similarly, the state has certain rights as well as duties towards its citizens. It is pertinent to mention herein that in the Sarbananda Sonowal- I case¹³¹, it has been held that the continued influx of Bangladeshis into the state of Assam and neighboring areas have naturally invoked Article 355 of the Constitution of India which mandates that it is the duty of the Union to provide security to the State against internal disturbance and external aggression. In this case, the situation in Assam is considered to be a situation of internal disturbance and external aggression. In the case, the word 'aggression' was given a wider import not just limited to war, but even huge-scale migration for whatsoever reasons. Thus, it is in this national interest and security that this NRC is worked upon and many are hopeful for the restoration of the same.

5.9.7. SUPREME COURT MONITORING

One of the major reasons that people of Assam have faith in the successful NRC updation and its following consequences is because the whole process is monitored by the Supreme Court, that time to time gives orders and directions to the

¹³⁰ Bikash Singh, *Assam seeks 150 companies of central forces ahead of next NRC publication*, ECONOMIC TIMES, (June 29, 2018, 14 :32 PM), "<https://economictimes.indiatimes.com/news/politics-and-nation/assam-seeks-150-companies-of-central-forces-ahead-of-next-nrc-publication/articleshow/64394147.cms>."

¹³¹ Sarbananda, supra note 1.

State machineries. This accounts for a quite stable separation of powers with the independence of Judiciary as a major check against any arbitrary action of the Government. The Supreme Court being the last door to be knocked has been knocked and its timely directions and the workings under its supervision have kept the faith of the people of Assam in its sanctity of being impartial and unbiased, and subsiding any chance of manipulation of the exercise.¹³²

¹³² Alok Kumar Choudhary, *Why a Successful NRC Exercise In Assam Will Help The BJP*, SWARAJYAMAG, (June, 29, 2018, 14:34), <https://swarajyamag.com/politics/why-a-successful-nrc-exercise-in-assam-will-help-the-bjp>.

CHAPTER-VI

CONCLUSION AND SUGGESTIONS

The much talked about topic of NRC and illegal Bangladeshi migrants is responsible for playing a massive part in the lives of the Assamese people and in the political scenario of Assam as well. Many illegal migrants, who are basically poverty-stricken cross the borders of the state in search of daily wages and labor. It will not be out of place to mention herein that there are many abettors helping these illegal migrants to come across this side of the border from their side of the border, who in return take perks in the form of cash or kind to help them cross over. These migrants manage to get hold of forged ration cards, voters card, etc. They manage to get all the rights and privileges like an ordinary citizen of India would. Politicians have a highly corrupt role to play in these matters. Since making these illegals legal citizens would render them huge vote banks. And this number are not a meager number, but comprises of a significant number. We certainly would be faced with a question as to whether these migrants are refugees in any manner? But the answer is negative. They are not victims or prey to any kind of oppression, persecution, war, or natural calamity. If at all, they are victim of insolvency. The Assam politics in the lower part of Assam takes advantage of these minority vote banks for their selfish gains, and the BJP at the core that is sympathetic towards the Hindu migrants from Bangladesh. Then there is AGP and AASU who sticks to the provisions of the Assam Accord and the cut-off date thereunder. One of the main divisive factors in opinions is the Citizenship Bill, 2016 causing a hue and cry amongst all sects of people, some supporting it, while some others deterring it. The major problem faced in rightly bifurcating the foreigners from the indigenous is the linguistic, ethnic, and cultural similarities between them. In the end, it is the Bengali speaking people of Assam that face discrimination at the hands of the Assamese people. It is therefore pertinent to keep in mind while updating the list that the indigenous people might not be at stake. Only those who came to India after 1971 must be identified and deported back. This must be handled effectively by all authorities, including the tribunals and the general public too must be aware, not only of their names being included, but also if names of foreigners are included. After the publication of the second draft by the end of this month as per the direction of the Apex Court, they can raise claims and objections to any anomalies that may be found in the list. Thus, it is but the common belief of the

people that any injustice must be objected to. Mere spectator of a crime is itself a criminal act. So any anomalies found in the list must be taken to the court. India is sympathetic towards refugees and has done an exemplary job in giving asylum to them. But this is not a question of refugees ab initio. This is a threat to the national interest of the country and the union must do everything in its hand to save it from any internal disorder as well as external violence. It is not just the state of Assam, but a country united that has to stand against such dreaded demographic changes.¹³³

More than 100 (hundred) Para military forces have been deployed by the Union Government that will look after the smooth functioning of the NRC updation. And even if names are not included in the second draft, people need not panic, as they will have a window to put their claims and raise their objections for such non-inclusion or inclusion of suspected names. This, however, has a negative side to it too. If it is not a time bound activity, it may take a long period of time sorting things out and till the time the final list is published, many other new developments may take place. Another loophole that comes to the mind is that the NRC is only for this state and not others. So what will happen to those who have settled in other parts of the country? Since movement is free within India, even the illegals from this state might move to other parts of the country and remain there like citizens.¹³⁴

The common question that comes to mind is that what after the completion of the NRC updation? What will happen to the people who are found to be illegal migrants from Bangladesh? Will even Bangladesh accept them as theirs? Is there any treaty signed between the two countries? People have only been agitated and want speedy deportation of these foreigners. But how to deport them has not been a very clear-cut discussion even between the two countries despite recent visit. There is urgent requirement of entering into a bilateral deliberation regarding this issue. The Apex court also directed the Union Government to enter into proper deliberation to streamline the deportation procedure. With regard to this, the Union is still keeping

¹³³Sumantra Mukherjee, *I Am An Assamese Bengali, And Here's Why I'm Not Panicking About The Citizen Registry*, YOUTH KI AWAZ, (Jun 29, 2018, 16:05 PM),<https://www.youthkiawaaz.com/2018/01/why-assam-needs-nrc/>.

¹³⁴Bikash Singh, *Assam seeks 150 companies of central forces ahead of next NRC publication*, ECONOMIC TIMES, (Jun 29, 2018, 16:05 PM),<https://economictimes.indiatimes.com/news/politics-and-nation/assam-seeks-150-companies-of-central-forces-ahead-of-next-nrc-publication/articleshow/64394147.cms>.

mum. This is probably so because India does not want to spoil the friendly relation it has with Bangladesh.¹³⁵

A common suggestion that many authors and leaders think is that the non-citizens must be given work-permits, so that their stay in the country could have the space and tolerance required. It must be time-barred. In such a case, these non-citizens will not bear the rights of a citizen, like the right to vote. However, they will possess the human rights and can approach the court approach the courts for the redressal of their rights being violated. Usually the non-citizens manage to get the rights of a citizen at the local Panchayat level who in turn exploit them for votes. If any politician is found to deal in these kind of a corruption, he must be suspended from fighting elections for 10 (ten) years. For this end to be met, vigilance is required at these levels of politics by the police too. The economic development of this region need labor force for building of infrastructure and buildings. And this could be a proper utilization of the non-citizens as has already been discussed providing them work permits.¹³⁶

The list has created fear among people who are vulnerable. Many have committed suicide taking it to be a life and death situation. This kind of a scenario is completely against human rights policy and must be addressed sufficiently as it might have a huge impact on the common psyche of the people. This leaves a loophole in the process for further legal proceedings by the human rights activists. However, the liberals must bear this in mind that India being a secular country and respecting all religions does not mean that it is a refuge for all minorities around the world, even on humanitarian grounds per se. India is not a dumping ground for all refugees around the world. Thus, some amount of conservativeness is a necessary tool to curb this menace.¹³⁷

In an order given by the Supreme Court in the ongoing NRC case, expressed discontent over the unnecessary intervention of any other authority in the matter of

¹³⁵Sangeeta Barooah Pisharoty, *Policy for Those Found Non-Citizens After NRC Update in Assam Still Undecided*, THE WIRE, (June 29, 2018 16:10 PM),

<https://thewire.in/external-affairs/policy-found-non-citizens-nrc-update-assam-still-undecided>.

¹³⁶ SANGEETA, *supra* note 135.

¹³⁷R Jagannathan, *Five legal and other flaws that will make assam nrc list of illegals meaningless*, SWARAJYAMAG, (June 29, 2018, 16:14 PM),

<https://swarajyamag.com/politics/five-legal-and-other-flaws-that-will-make-assam-nrc-list-of-illegals-meaningless>.

preparation and publication of the NRC. The State Coordinator is expected to give an individual opinion about matters relating to the preparation and publication of the same and not be influenced by any other authority other than the Supreme Court under which this entire process is directly supervised and monitored. Moreover, the committee set up for the border fencing has shown severe disinterest in the matter merely on personal grounds. This shows a lack of interest in the part of the concerned authorities. Therefore, the court directed for the constitution of another committee. This committee is headed by G.K. Pillai and other two members. The matter was to be listed immediately after the committee came up with a solution. This direction was given on 31.07.2017, but there has been no development on that front too as of now. The Supreme Court still has not found any satisfactory argument regarding the border fencing, rather only excuses.

It is high time that India codified a law on refugees to address recurring problems like this.

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APPENDIXES

Assam Accord

The Citizenship (Amendment) Bill, 2016

ASSAM ACCORD

15th August, 1985

**(Accord between AASU, AAGSP, Central and State Government
on the Foreigner Problem Issue)**

MEMORANDUM OF SETTLEMENT

1. Government have all along been most anxious to find a satisfactory solution to the problem of Foreigners in Assam. The All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) have also expressed their Keeness to find such a solution.
2. The AASU through their Memorandum dated 2nd February, 1980 presented to the Late Prime Minister Smt. Indira Gandhi, conveyed their profound sense of apprehensions regarding the continuing influx of foreign nationals into Assam and the fear about adverse affects upon the political, social, cultural and economic life of the State.
3. Being fully alive to the genuine apprehensions of the people of Assam, the then Prime Minister initiated the dialogue with the AASU/AAGSP. Subsequently, talks were held at the Prime Minister's and Home Ministers levels during the period 1980-83. Several rounds of informal talks were held during 1984. Formal discussions were resumed in March, 1985.
4. Keeping all aspects of the problem including constitutional and legal provision, international agreements, national commitments and humanitarian considerations, it has been decided to proceed as follows :-

Foreigners Issue :

5.
 - (1) For purpose of detection and deletion of foreigners, 1-1-1966 shall be the base date and year.
 - (2) All persons who came to Assam prior to 1-1-1966, including those amongst them whose names appeared on the electoral rolls used in 1967 elections, shall be regularized.
 - (3) Foreigners who came to Assam after 1-1-1966 (inclusive) and upto 24th March, 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1939.
 - (4) Names of foreigners so detected will be deleted from the electoral rolls in force. Such persons will be required to register themselves before the Registration Officers of the respective districts in accordance with the provisions of the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939.
 - (5) For this purpose, Government of India will undertake suitable strengthening of the governmental machinery.
 - (6) On the expiry of the period of ten year following the date of detection, the names of all such persons which have been deleted from the electoral rolls shall be restored.
 - (7) All persons who were expelled earlier, but have since re-entered illegally into Assam, shall be expelled.
 - (8) Foreigners who came to Assam on or after March 25, 1971 shall continue to be detected, deleted and expelled in accordance with law. Immediate and practical steps shall be taken to expel such foreigners.
 - (9) The Government will give due consideration to certain difficulties express by the AASU/AAGSP regarding the implementation of the illegal Migrants (Determination by Tribunals) Act, 1983.

Safeguards and Economic Development:

6. Constitutional, legislative and administrative safeguards, as many be appropriate, shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage

of the Assamese people.

7. The Government takes this opportunity to renew their commitment for the speedy all round economic development of Assam, so as to improve the standard of living of the people. Special emphasis will be placed on the education and Science & Technology through establishment of national institutions.

Other Issues :

8.
 - (1) The Government will arrange for the issue of citizenship certificate in future only by the authorities of the Central Government.
 - (2) Specific complaints that may be made by the AASU/AAGSP about irregular issuance of Indian Citizenship Certificates (ICC) will be looked into.
9.
 - (1) The international border shall be made secure against future infiltration by erection of physical barriers like walls barbed wire fencing and other obstacles at appropriate places. Patrolling by security forces on land and riverine routes all along the international border shall be adequately intensified. In order to further strengthen the security arrangements, to prevent effectively future infiltration, an adequate number of check posts shall be set up.
 - (2) Besides the arrangements mentioned above and keeping in view security considerations, a road all along the international border shall be constructed so as to facilitate patrolling by security forces. Land between border and the road would be kept free of human habitation, wherever possible. Riverine patrolling along the international border would be intensified. All effective measures would be adopted to prevent infiltrators crossing or attempting to cross the international border.
10. It will be ensured that relevant laws for prevention of encroachment of government lands and lands in tribal belts and blocks are strictly enforced and unauthorized encroachers evicted as laid down under such laws.
11. It will be ensured that the law restricting acquisition of immovable property by foreigners in Assam is strictly enforced.
12. It will be ensured that Birth and Death Registers are duly maintained.

Restoration of Normalcy :

13. The All Assam Students Unions (AASU) and the All Assam Gana Sangram Parishad (AAGSP) call off the agitation, assure full co-operation and dedicate themselves towards the development of the Country.
14. The Central and the State Government have agreed to :
 - a. Review with sympathy and withdraw cases of disciplinary action taken against employees in the context of the agitation and to ensure that there is no victimization;
 - b. Frame a scheme for ex-gratia payment to next of kin of those who were killed in the course in the agitation.
 - c. Give sympathetic consideration to proposal for relaxation of upper age limit for employment in public service in Assam, having regard to exceptional situation that prevailed in holding academic and competitive examinations etc. in the context of agitation in Assam :
 - d. Undertake review of detention cases, if any, as well as cases against persons charged with criminal offences in connection with the agitation, except those charged with commission of heinous offences.
 - e. Consider withdrawal of the prohibitory orders/ notifications in force, if any :
15. The Ministry of Home Affairs will be the nodal Ministry for the implementation of the above.

Sd/-
(P.K. Mahanta)
President
All Assam Students' Union

Sd/-
(R.D. Pradhan)
Home Secretary
Government of India

Sd/-

Sd/-

(B.K. Phukan)
General Secretary
All Assam Students' Union

(Smt. P. P. Trevedi)
Chief Secretary
Government of Assam

Sd/-
(Biraj Sharma)
Convenor
All Assam Gana Sangram Parishad

In the Presence of
Sd/- (Rajiv
Gandhi)
Prime Minister of India

Date : 15th August, 1985
Place: New Delhi

1. Election Commission will be requested to ensure preparation of fair electoral rolls.
2. Time for submission of claim and objections will be extended by 30 days, subject to this being consistent with the Election Rules.
3. The Election Commission will be requested to send Central Observers.

Sd/- Illegible
Home Secretary

1. Oil Refinery will be established in Assam
2. Central Government will render full assistance to the State Government in their efforts to reopen.
 - i) Ashok Paper Mill
 - ii) Jute Mills
3. I.I.T. will be set up in Assam.

Sd/- Illegible
Home Secretary

Bill No. 172 of 2016

THE CITIZENSHIP (AMENDMENT) BILL, 2016

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BILL

further to amend the Citizenship Act, 1955.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Citizenship (Amendment) Act, 2016.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

57 of 1955.

2. In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in section 2, in sub-section (1), after clause (b), the following proviso shall be inserted, namely:—

Amendment of section 2.

10
34 of 1920.
31 of 1946.

“Provided that persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any order made thereunder, shall not be treated as illegal migrants for the purposes of this Act.”.

Amendment of section 7D. **3.** In the principal Act, in section 7D, after clause (*d*), the following clause shall be inserted, namely:—

"(*da*) the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or provisions of any other law for the time being in force; or".

Amendment of Third Schedule. **4.** In the principal Act, in the Third Schedule, in clause (*d*), the following proviso shall be inserted, namely:— 5

'Provided that for the persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, the aggregate period of residence or service of a Government in India as required under this clause shall be read as "not less than six years" in place of "not less than eleven years".'. 10

STATEMENT OF OBJECTS AND REASONS

The Citizenship Act, 1955 was enacted to provide for the acquisition and determination of Indian citizenship.

Under the existing provisions of the Act, persons belonging to the minority communities, such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have either entered into India without valid travel documents or the validity of their documents have expired are regarded as illegal migrants and hence ineligible to apply for Indian citizenship. It is proposed to make them eligible for applying for Indian citizenship.

Many persons of Indian origin including persons belonging to the aforesaid minority communities from the aforesaid countries have been applying for citizenship under section 5 of the Act, but are unable to produce proof of their Indian origin. Hence, they are forced to apply for citizenship by naturalisation under section 6 of the Act, which, *inter alia*, prescribes twelve years residency as qualification for naturalisation in terms of the Third Schedule to the Act. This denies them many opportunities and advantages that may accrue only to the citizens of India, even though they are likely to stay in India permanently. It is proposed to amend the Third Schedule to the Act to make applicants belonging to minority communities from the aforesaid countries eligible for citizenship by naturalisation in seven years instead of the existing twelve years.

Presently, there is no specific provision in section 7D of the Act to cancel the registration of Overseas Citizen of India Cardholders who violate any Indian law. It is also proposed to amend the said section 7D, so as to empower the Central Government to cancel registration as Overseas Citizen of India in case of violation of the provisions of the Act or any other law for the time being in force.

The Bill seeks to achieve the above objectives.

RAJNATH SINGH

NEW DELHI;
The 15th July, 2016

LOK SABHA

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further to amend the Citizenship Act, 1955.

(Shri Rajnath Singh, Minister of Home Affairs)