



EVOLUTION AND EVALUATION OF NRC PROCEEDINGS IN ASSAM

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ABSTRACT

The National Register of Citizens or NRC is a document encompassing particulars of Indian citizens. It aims to identify undocumented immigrants residing in the state, and is required to update periodically. After the Census of 1951, a serialized record of residences and the people residing therein in respect of each village in the state of Assam was prepared. However, it could not be updated periodically for several political complications. After decades of socio-political turmoil and much bloodshed, the procedure for updating the NRC of 1951 was re-started in 2015 after the Hon'ble Supreme Court intervened upon multiple petitions filed by the NGO Assam Public Works¹ and a bunch of other similar petitions².

The process of updating the NRC is based upon the requirements as provided by Section 6(A) of the Citizenship Act, 1955 thus making the biggest judiciary led bureaucratic exercise in the history of the nation based upon a legal provision the constitutional validity of which is yet to be determined. Through this paper, an attempt has been made to evaluate the causes and effects of updating the NRC and its procedure.

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¹ Assam Public Work v. Union of India, 1758 SCC OnLine (SC: 2014).

² Assam Sanmilita Mahasangha v. Union of India, 3 SCC 1 (SC: 2015).

INTRODUCTION

The National Register of Citizens or NRC is a document encompassing particulars of Indian citizens and aims to identify undocumented immigrants residing in the state.

After the Census of 1951 was concluded, Ministry of Home Affairs directed for using the relevant data so collected to prepare a serialized record of residences and the people residing therein in respect of each village in the state of Assam. However, the NRC of 1951 was not comprehensive as many places such as the riverine and remote areas of the state, could not be covered by the enumerators during the Census. Moreover, Assam also witnessed communal violence while the process of NRC was initiated. The years preceding 1950 saw the emergence of communal violence in western Assam resulting in the exodus of around 50,000 Muslim families to erstwhile East Pakistan. Assuming that on an average each family comprised of 5 members, and then around 2, 50,000 people fled to East Pakistan from Assam as a consequence of the communal violence. As a result of this exodus, a large number of Muslims were left out of the NRC 1951 which was finalized in Assam in the meanwhile. It was only after the Nehru-Liyaqat pact was signed in 1950 which provided a window of two years to Muslim families to return to India but the Government did not update NRC of 1951.³ After decades of socio-political turmoil and bloodshed, the procedure for updating the NRC of 1951 was re-started in 2015 after the Hon'ble Supreme Court intervened, and eventually closely monitored the same, upon a petition filed by the NGO Assam Public Works⁴ and a bunch of other similar petitions.⁵

3,30,267,661 people applied for inclusion in NRC, 3,11,21,004 names were included in the Final NRC published on August 31 2019 and 19,06,657 names were excluded,⁶ 19,06,657 people who have been living in Assam for generations but now find themselves to be illegal migrants, susceptible to deportation.⁷

³Vikram Singh, *NRC Updation in Assam: Prospects and Challenges*, People's Voice, (2015), <https://peoplesvoice.in/2015/07/26/nrc-updation-in-assam-prospects-and-challenges-2>.

⁴ Assam Public Work v. Union of India, 1758 SCC OnLine (SC: 2014).

⁵ Assam Sanmilita Mahasangha v. Union of India, 3 SCC 1 (SC: 2015).

⁶ Press Release, *Publication of The Final NRC On 31st August, 2019*, Office of The State Coordinator, NRC, State Coordinator, NRC Assam, (August 31, 2019, 10 AM), <https://pib.gov.in/newsite/mainpage.aspx>

⁷ Rahul Karmakar, *30 lakh reapply for inclusion in Assam NRC*, The Hindu, (Dec. 31, 2019, 4:31 PM), <https://www.thehindu.com/news/national/other-states/30-lakh-reapply-for-inclusion-in-nrc/article25874870.ece>.

Despite the best efforts of the Hon'ble Supreme Court and the state machinery, the process of updating the NRC does not look like a satisfactory legal cessation to decades of immigration conflict. Prima facie, it appears that the Supreme Court has put itself into a legally distressing position since as much as the court-supervised process of updating the NRC is based upon the requirements as provided by Section 6(A) of the Citizenship Act, 1955; the question regarding the constitutional validity of the said provision is still pending for determination before a larger constitution bench of the same court⁸. So, in a nutshell, the Supreme Court has ended up leading a large scale bureaucratic exercise, and the same is based upon a legal provision the constitutional validity of which is pending adjudication.

WHY NRC?

Growth of Migrants In Assam Region

The foreign national movement emerged in the 1970s; however, its genesis lies in the last couple of decades before and after the independence. At the beginning of the 20th century-immigration to Assam was a historical necessity, keeping in view the massive requirement of labourers in the tea gardens of Assam. The Britishers had then encouraged migration, as the local Assamese, according to them, were not keen to work in the tea gardens. They encouraged migration into tea gardens of Assam from Bihar, Chhota Nagpur, Bengal, Madras, Madhya Pradesh, Orissa, Andhra- Pradesh, etc⁹. The 'babu class' managerial posts were filled chiefly by educated Bengalis; however, the influx of labourers was not confined to tea plantation alone. Workers from Bihar, Orissa and Uttar Pradesh were extensively employed in the construction of roads, bridges, houses and railway tracks. Nepali immigration was encouraged as well for the jobs of chowkidars, domestic helpers and grazing of cows. The British Arms also heavily composed of the trusted Gurkhas from Nepal. Rajasthanis and Bengalis formed the trading class. But the most significant immigration was that of the landless but tireless farmers of East Bengal.¹⁰

Immigration helped the non-Assamese get a foothold in almost all economic activities of Assam, partly due to the policy of the Britishers and partly as many British administrators of

⁸ Assam Sanmilita Mahasangha v. Union of India, 3 SCC 1 (SC:2015).

⁹ Sir Percival Griffith, *The History of the Indian Tea Industry* 267 (1st ed. 1967).

¹⁰ Babu Romani Mohan Das et al., *Report of the Assam Labour Enquiry Committee* 20 (1921).

the time put it— the attitude of the indigenous Assamese. A report by British Commissioner W.W. Hunter stands ample testimony to the above. The report *inter alia* stated, "The people are averse of working for daily wages as they affirm that by doing so they compromise their respectability. The indigenous population furnishes very few permanent labourers to the tea gardens."¹¹ The then Assistant Commissioner of North Lakhimpur, Sir John Osak also said, "It is a rare thing indeed for an Assamese living at a distance to leave his home for the mere inducement of getting work in a tea garden. Their taking such work at all is generally attributable to a temporary necessity, for instance, inability to pay their revenue, wanting to get married and not having the necessary means and wanting, if possible, to escape payment of exorbitant interest, merely commonly happens, pawning their freedom being in want of yoke of bullocks or cultivating purposes, etc., etc."¹². Despite all these, noted historian, Sir E.A. Gait in his Census report wrote in 1891, "It might have been thought that the amount of available land, the fertility in the soil, and the prevailing low rents, would have induced some portions at least the overcrowded cultivators of Bengal to find their way to Assam and take up land here. But this does not appear to be the case." What added impetus to mass migration to Assam was Lord Curzon's partition of Bengal into East Bengal and Assam in 1905.¹³

With India's independence, East Pakistan, too, came into existence. The partition of India left the Hindus homeless in Pakistan. The Bengali Hindus then started pouring into Assam and Tripura from East Pakistan. But strangely, along with the Bengali Hindus, a large number of Bengali Muslims also came to Assam. The Central Government was thus forced to introduce a Bill on December 24, 1949, which in 1950 became the Immigrants (Expulsion from Assam) Act, 1950. The Bill provided that any immigrant person except the displaced person, who, because of civil disturbance or fear of civil disturbance, entered Assam, was liable to be deported.

Meanwhile, due to spite of communal clashes between 1948 and 1950, which engulfed the state, particularly western Assam, thousands of Muslim families fled to East-Pakistan to avoid communal persecution. Further, the first pre-independence Census was conducted in 1951 and the number of Muslims in the State in the Census had stood considerably lower due to the fact that lakhs of Muslims had fled away to East Pakistan during the communal clashes

¹¹ W.W. Hunter, *A Statistical Account of Assam* 336 (1920).

¹² Griffith, *supra* note 11, at 330.

¹³ E.A. Gait, *Census of India, 1911*, 34 (1913).

that year, and hence they were not available for numeration during the Census. On the basis of the Census of 1951, the National Register of Citizens was first prepared. This NRC of 1951 was incomplete one as the Census of the year could not cover all the places of the state. Many riverine, *chars* and remote areas could not be reached by the enumerators. Moreover, Assam also witnessed a communal violence while the process of NRC was initiated. Statistics reveals that 53000 Muslim families fled to the then East Pakistan between 1948 and 1950 due to communal violence in western Assam.¹⁴ If we assume five to seven persons in a family in an average and multiply it with the number of the figure of families it becomes 265,000 to 371,000 who left for East Pakistan from Assam in the wake of communal riots of 1950. Latter the Nehru-Liyaqat pact of August 8 1950 provided them a window of two years to return to India. In between the NRC process was completed in Assam.¹⁵ Thus a big number of Muslims were dropped out of the total figure of 1951 NRC and the Census. But when in the next Census of 1961 those dropped out citizens' names were enlisted, the growth rate of Muslims in Assam was seen very high. Unfortunately, the Government did not bother to update the NRC of 1951 as it was expected.¹⁶

Rise Of Anti-Foreigners Movement In Assam

Pakistani Infiltration Prevention (PIP) Scheme, an action plan to stop migration from East Pakistan and to detect and deport those who had already infiltrated, was drawn up by the Union Home Ministry in 1964. But the Union Home Ministries' decision to implement the PIP Scheme received a lot of backlash from the minority community, and there were continuous protests against the said scheme. Henceforth, in 1969 after the scheme was stopped.

The birth of Bangladesh in 1972 was a major political development in Asia. Till 1905, most of the territories comprising present-day Bangladesh were a section of the then undivided Bengal. In 1905 the Britishers carved out the eastern region of Bengal and merged it with Assam and thus creating the state of 'Assam and East-Bengal'. Post-independence, the region

¹⁴ Singh, *Supra* note 5.

¹⁵ Vikram Singh, *NRC Updation in Assam: Prospects and Challenges*, People's Voice, (2015) <https://peoplesvoice.in/2015/07/26/nrc-updation-in-assam-prospects-and-challenges-2>.

¹⁶ Nilakshi Das, *Implication of NRC Updation in Assam*, 5 Prati Echo 28, (2016).

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came to the share of Pakistan and was known as East-Pakistan. It was only in 1972 that the region became the independent state of Bangladesh. Despite the constant change in boundaries, the migration of peasants from Bengal and East-Bengal continued towards Assam which brought demographic changes in Assam. The formation of East-Pakistan and then Bangladesh reduced the migration to some extent, but it is alleged to be still in practice even from Bangladesh. All these factors turned the issue of migration into a foreigners issue in Assam.¹⁷

After the formation of Bangladesh in 1972, a section of Assamese people started considering all those people, who, migrated to Assam from Bengal and East- Bengal as Bangladeshi people and termed them as illegal occupants.¹⁸ All these factors created a tense environment in the state and thereby infused doubt in the minds of the people that the state was in danger in the hands of the foreign nationals. The student communities of the state demanded the eviction of foreigners from the state and were lead by All Assam Students Union (AASU) and All Assam Gana Sangram Parishad (AAGSP) in the Assam Movement (1979-1985). However, during the moment, no authentic statistical data was provided by the leaders regarding the number of alleged foreign nationals in the state. Immediately after the Golap Borbora Government took oath in 1978, a memorandum claiming the need for deporting the illegal occupants was submitted by the student's leaders to the Government. However, despite prolonged dialogue and discussions between the student's leaders and the Government, no result could be reached out.¹⁹ This resulted in a direct conflict between Movement Leaders and Government. The situation turned extremely explosive, and Movement Leaders resolved to halt the general election of 1983 at all costs. It ensued a massacre in February 1983 in which thousands of the erstwhile East Bengal origin Muslims were killed a majority of whom were women and children. Finally, after a strong controversy and prolonged discussions, a settlement was arrived at between the AASU, AAGSP, Central and State Governments, and a memorandum, i.e., the 'Assam Accord' was signed between in New Delhi on the eve of

¹⁷ Chanakya, *What We Know, And Don't, About the National Register of Citizens*, Hindustan Times, (Aug. 6, 2018, 11:05 PM), <https://www.hindustantimes.com/columns/what-we-know-and-don-t-about-the-national-register-of-citizens/story-w8rdzNcscAzxN4l28cABUI.html>.

¹⁸ Monirul Hussain, *The Assam Movement, Caste, Ideology and Identity* 77 (1993).

¹⁹ Vijay Dewan, *Assam Issue—the Beginning—the End and the Beginning* ¶30 (1985).

independence day 1985. Clause 5 of the accord dealt with the foreigner issue and determined²⁰:

1. January 1, 1966 as the cut-off date for apprehending and expunging the foreigners and conceding citizenship to all those coming to Assam from specified territory before the cut-off date.
2. All those people who were already settled in Assam before 1-1-1966 including those whose names appeared on the electoral rolls used in 1967 elections, were to be regularized.
3. Besides, all persons who came to Assam between 01-01-1966 and midnight of 24-03-1971 were to be distinguished as per the procedure laid down under the Foreigners Act, 1946, and the Foreigners (Tribunals) Order, 1964 and their names to be deleted from the electoral roll.
4. Further, the provisions of the Registration of Foreigners Act, 1939, and the Registration of Foreigners Rules, 1939, required the foreigners mentioned above to register themselves before the registration officers of the respective districts.
5. The Government of India was responsible for enabling and aiding the state apparatus for the same.
6. The names of the foreigners so detected as per the procedure mentioned above and whose names were deleted from the electoral roll were to be restored on the expiry of a period of 10 years from the date of detection.
7. Foreigners who entered Assam after midnight of 24-03-1971 were to be determined and expelled.
8. Moreover, certain issues regarding the implementation of Illegal Migrants (Determination by Tribunals) Act, 1983 were brought to the Government's notice by the student leaders and the Government promised to acknowledge and rectify them.

²⁰*Assam Accord, Memorandum of Settlement*, §5 (Nov. 22, 2019 12:05 PM) <https://assam.gov.in/en/main/ASSAM%20ACCORD>.

Assam Accord was a great achievement for the movement leaders, especially the AASU. Later a new political party Assam Gana Parishad was formed by the movement leaders, and they contested the election of 1985 with the deportation of foreign nationals from the state being their primary goal. The new party succeeded in convincing a majority of the population and gaining their support with this notion and achieved an absolute majority in the very first election it contested.²¹

IMDT ACT & ROLE OF FOREIGNERS TRIBUNALS

Illegal Migrants (Determination By Tribunal) Act, 1983 & Foreigners Tribunals

One of the major demands put forward by AASU/AAGSP through Clause 5.9 of the Assam Accord, 1985, was regarding the implementation of the Illegal Migrants (Determination by Tribunals) Act, 1983. The IMDT Act was explicitly instituted to set out the strategy to recognize illicit foreigners from Bangladesh and oust them from Assam. The IMDT Act was applicable only in Assam, while the Foreigners Act, 1946, continued to apply to all the other states. In 1964, prior to the enactment of the IMDT Act, four Foreigners Tribunals were set up. These Foreigners Tribunals derived their authority from Clause 2 of the statutory order, called Foreigners (Tribunal) Order, under the Foreigners Act, 1946. However, the need of these Tribunals progressively deteriorated and most of them were shut down by 1973 after a majority of the illegal immigrants were deported by the Government. Subsequently, amidst the rising anti-foreigners movement the Foreigners Tribunals were reconstituted in 1979 to detect illegal migrants who had infiltrated into Assam between 01-01-1966 and up to midnight of 24-03-1971.²² To detect and oust those who had infiltrated 25-03-1971 the Illegal Migrants Determination Tribunals were established under the IMDT Act.²³ The major and stark difference between the IMDT Act, 1983 and the Foreigners Act, 1946 was that the while the burden of proofing that whether an accused person is an illegal migrant lied upon the state under the IMDT Act, 1983 and upon the accused person under the Foreigners Act, 1946. This indirectly made the deportation of illegal migrants very hard. However Illegal Migrants

²¹ Das, *Supra* note 18, at 34.

²² Hiteswar Saikia, *The Foreign National Problem in Assam*, Hindustan Times, Dec. 20, 2005, (Nov. 22, 2019 12:05PM)<https://www.hindustantimes.com/columns/the-foreign-national-problem-in-assam-/story-w8rdzNcscAzzN4I28cABUI.html>.

²³ Sarbananda Sonowal v. UoI 5 SCC 665 (SC:2005).

(Determination by Tribunals) Act, 1983 was struck down as ultra vires of the Constitution of India by the Supreme Court in 2015.²⁴ As a consequence of this ruling, the Illegal Migrant (Determination) Tribunals and the other concerned forums became in operational and the Foreigners Tribunals was given the jurisdiction to adjudicate the pending cases transferred from IMDTs.

Foreigners Tribunals have been assigned a quasi-judicial function. There lies no appellate authority to these tribunals, and their orders have to be challenged before the competent High Court.²⁵ The degree up-to which High Court can meddle into the finding of a Tribunal was examined by Gauhati High Court, and it was seen that the inadequacy of taking into accounts the significant realities or thought of insignificant elements, which has a course on the choice of the tribunal, can be a ground for the impedance of the Court or Tribunal's choice in exercise of the writ purview by the High Court.²⁶

Assam Border Police And The "D Voters" Issue

The Assam Border Police Organization is responsible for investigating the cases of illegal migration and referring them to the Foreigners Tribunals. The Border Police were assigned the task to survey areas under its jurisdiction and to identify the suspected illegal immigrants. Upon identification, the suspect is supposed to provide his citizenship documents within a reasonable time to the Border Police. If such a person is unable to provide these documents, Border Police are empowered to send the Reference Case to the concerned Foreigners Tribunal against such person.²⁷ However, as per the data collected by NHRC, Border Police seldom conduct any inquiry/investigation against persons and randomly label the persons concerned as illegal immigrants. In most of the Reference Case, the Border Police take the stance that they approached the concerned person and that such person failed to show any citizenship documents. Poor, illiterate, and downtrodden members of society comprise the majority of such persons. Border Police usually prepare Reference Case against them without any proper investigation and obtain their thumb impressions on blank papers. There have also been allegations of Border Police picking people and asking to be bribed for not framing

²⁴ *Id.*

²⁵ L. Chandra Kumar v. Union of India & Ors 3 SCC 261(SC: 1997).

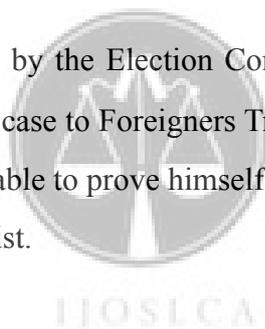
²⁶ State of Assam v. Moslem Mondal & Ors 1 GLT (FB) 809 (2013).

²⁷ Govt. of Assam, Letter No PLB.149/2008/Pt/8, Oct. 20, 2009, (Nov. 22, 2019 12:05 PM) <https://police.assam.gov.in/portletsub-innerpage/functions>>.

them as illegal immigrants, and upon denial to concede to their demands, false reference cases are initiated.²⁸ Besides, a few cases are accounted for in which, following a question or contention between two private gatherings, one pay-off the Border Police to outline the difference as a —illegal foreigner.²⁹ In some instances, the officers of the Border Police have conceded that each unit is assigned a fixed target by their seniors to frame as many people as possible as illegal immigrants and the same has been testified before the National Human Rights Commission by senior police officer Louis Aind, DCP Crime, Guwahati, former head of the units of the Assam Border Police.³⁰

The border police and the tribunals also handle the cases of "D" voters. D stands for "doubtful" or "dubious". Starting in 1997, a very stringent audit of the voter lists was initiated by the Election Commission of India under which if a person failed to produce documents sufficient to establish his citizenship documents was marked as D Voter. The D voters are denied the right to vote and also to receive subsidized goods under the Public Distribution System.

The cases of D voters are committed by the Election Commission to the Border Police for investigation, which further refers the case to Foreigners Tribunal for trial after conducting an inquiry/investigation. If the person is able to prove himself as an Indian citizen, then his name is removed from the doubtful voters' list.



Procedure Before The Foreigners Tribunal

The procedure to be followed by the Foreigners Tribunal has been provided under the Foreigners (Tribunal) Order, 1964. A notice is issued to the concerned person by the Foreigners Tribunal after a case is referred to it by the Border Police to prove his citizenship. Section 3(1) of the Foreigners (Tribunal) Order, 1964 prescribes for a notice to be served on the accused by the Foreigners Tribunal. The notice should set out the main grounds on which allegations are made.

Section 3(1) of the Foreigners (Tribunal) Order, 1964 as amended by the Foreigners (Tribunal) Amendment Order, 2012 reads as:

²⁸ *Id.*

²⁹ H.R.A. Choudhary, *Legal Aspects of Foreigners Detection*, Report of Public Hearing on the Citizenship (Amendment) Bill, 2016 and National Register of Citizens, 80 (May, 2019).

³⁰ National Human Rights Commission, *Report on NHRC to Assam's Detention Centres* (January 2018).

"The Tribunal shall serve on the person to whom the question relates a show cause notice with a copy of the main grounds on which he or she is alleged to be a foreigner. This notice should be served as expeditiously as possible, and in any case, not later than ten days of the receipt of the reference of such question by the Central Government of any competent authority."

A three judges bench of the Gauhati High Court stated in *State of Assam v. Moslem Mondal & Ors*³¹, that:

Being a concomitant to preservation of the fundamental right of a person under Article 21 of the Constitution, there has to be a fair and proper investigation by the investigating agency before making a reference to the tribunal. In such investigation, the attempt has to be made to find out the person against whom the investigation is made so that the person concerned is given the opportunity to demonstrate at that stage itself that he is not a foreigner. Such investigation need not be a detailed or an exhaustive one keeping in view the nature of the proceeding before the tribunal and the object sought to be achieved. Hence it need not be equaled with an investigation conducted in criminal cases.

Both the Border Police and the Foreigners Tribunals are very opaque and dodgy in revealing any details citing protection from the Right to Information Act. Cases of suspected foreigner trickle into the border police files in three ways, as explained by one official in Lower Assam, who did not want to be identified.³² Firstly, when the Election Commission refers cases of D voters to the border units for investigation, these cases have to be passed on to the tribunals and cannot be dropped after a police inquiry, the official said. Secondly, when the border police go for village surveys and find persons who were not already on the official registers by perusing the records of births, deaths, and marriages as well as village population registers, which are updated every few years. Thirdly, upon inputs received about strangers in an area. Further, the inquiry s also divided into two phases.

In the preliminary stage, a notice is issued to the person under investigation, who is then asked to produce documents to prove identity and birth. If citizenship is not established in the preliminary investigation, the superintendent signs off on an official inquiry. A case is

³¹ *Moslem Mandal & ors, supra* note26.

³² Ipsita Chakravarty, *Declaring foreigners: How Assam's Border Police And Tribunals Form A Secretive System Of Justice*, Scroll.in, Aug 19, 2018, (Nov. 29, 2019 12:05 AM) <https://scroll.in/article/890134/declaring-foreigners-how-assams-border-police-and-tribunals-form-a-secretive-system-of-justice>.

registered, and three forms are to be filled. These include particulars of the person under investigation: name, date of birth, place of origin, how long they have been living at their current address, educational qualifications, ancestry, and other details.

These tribunals are bound neither by criminal nor civil procedure codes; they don't also follow the procedure as set out by the Indian Evidence Act. The Foreigners Tribunals are being run by the 1964 Foreigners Tribunal Order, which says that the tribunal will regulate the case on its own procedure.

METHODOLOGIES, CHALLENGES, AND PROCEDURE

Updating The National Register Of Citizens

Updating the NRC was mandated as part of the Assam Accord, 1985. However, updating the same kept on getting delayed due to a combination of several socio-political reasons. The Manmohan Singh led UPA Government in 2005 had first announced that NRC would be updated, but the Assam Government did not initiate the process.³³ Later, based on modalities received from the Government of Assam, the Citizenship (Registration of Citizens and Issue of National Identity Card) Rule 2003 was amended in November 2009 and March 2010 for the preparation of National Register of Citizens. Applications, along with relevant documents, were invited from residents across Assam for updating the old National Register of Citizens (NRC) 1951. To undertake updating of NRC in all districts of Assam, Pilot Projects for updating of NRC in two blocks (one each in Kamrup and Barpeta districts) were started in June 2010.³⁴ Meanwhile, in 2009, a writ petition was filed by the NGO, Assam Public Works, before the Supreme Court seeking deletion of illegal immigrants/foreigners names from the electoral rolls and updating the NRC.³⁵

In order to update the NRC throughout the state, initially, it was decided to update the NRC of Chaygaon Revenue Circle of Kamrup District and Barpeta Revenue Circle of Barpeta District in June, 2010 as a pilot project. The copies of NRC 1951, Electoral Rolls of 1961 and 1971 were to be reprinted by the district authorities. But the district authorities failed to

³³ Satya Prasoon, *Background to NRC: SC Hearings*, Supreme Court Observer, Oct. 29, 2018, (Nov. 29, 2019) <http://www.scobserver.in/beyond-the-court/background-to-nrc-sc-hearings>.

³⁴ Press Release, Press Information Bureau Ministry of Home Affairs Govt. of India, *Upgradation of National Register Of Citizens*, (July 15, 2014) <https://pib.gov.in/newsite/PrintRelease.aspx?relid=106627>.

³⁵ Assam Public Work v. Union of India 1758 SCC OnLine (SC :2014).

reprint the documents in full. Moreover, there were numerous anomalies and confusions in the documents which were made available for the public.³⁶ The NRC Pilot Project was also silent about the fate of those people and their descendants. Noticing the anomalies in the mechanism of the NRC updation process, the 'All Assam Minority Students Union' (AAMSU) called out for a protest demanding postponement of the pilot project, pursuant to which there were clashes between the protesters and the police force which resulted in the pilot project being stalled.

Supreme Court's Intervention

A writ petition³⁷ was filed by the NGO, Assam Public Works, before the Supreme Court seeking deletion of illegal immigrants/foreigners names from the electoral rolls and updating the NRC. The writ petition came up before the then CJI K G Balakrishnan and Justice P Sathasivam, and notice was issued on July 20, 2009. In 2012 another writ petition filed by Assam Sanmilita Mahasangha³⁸ challenging section 6A of the Citizenship Act that had been enacted to give effect to the Assam Accord by providing separate rules of citizenship in the state came up before the Supreme Court. In its petition, the Mahasangha argued that the provision violated the right to life of the citizens in the state by encouraging the "massive influx of illegal migrants" from Bangladesh. It also argued that the distinct regime compromised their right to culture as guaranteed by the Constitution.

In 2013 Supreme Court recommended that the issue be referred to a larger constitutional bench for final determination. In doing so, the bench raised a serious question on the constitutional validity of section 6A. But in the same order, the bench also decided to commence supervising the NRC update, on a court-determined calendar, based precisely on the requirements under section 6A and upon the revised modalities submitted by the Govt. of Assam. The process of updating the NRC was finally re-started in 2015.

Documents Admissible For Inclusion in NRC

In the light of the Assam Accord 1985 and the provisions of The Citizenship Act, 1955, and The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003

³⁶ See Vikram, *supra* note 16.

³⁷ See *Assam Public Work* at 33.

³⁸ *Assam Sanmilita Mahasangha v. Union of India* 3 SCC 1 (SC: 2015).

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the NRC was set to be updated. As per these legislations, the citizenship status is to be ascertained based either on the NRC of 1951 or electoral rolls up to the midnight of 24-03-1971 and in their nonattendance any document from the below list which was issued before midnight of 24-03-1971, bearing the name of the individual concerned, or his/her progenitor, to demonstrate habitation in Assam before 24-03-1971.³⁹

LIST A:

1. 1951 NRC or
2. Electoral Roll(s) up to 1971 or

The above documents are collectively called Legacy Data. There is a list of other admissible documents in case someone's name is not found in the Legacy Data, then the applicant may also produce any of the following documents listed below claiming inclusion in NRC.

3. Land & Tenancy Records or
4. Citizenship Certificate or
5. Permanent Residential Certificate or
6. Refugee Registration Certificate or
7. Passport or LIC or
8. Any Government issued License/Certificate or
9. Government Service/Employment Certificate or
10. Bank/Post Office Accounts or
11. Birth Certificate or
12. Board/University Educational Certificate or
13. Court Records/Processes.

Two other documents, i.e., Circle Officers/GP Secretary Certificate, concerning women who had to relocate post marriage and Ration Card issued up to midnight of 24-03-1971, were likewise acknowledged, provided they were accompanied by any of the above-listed documents.

A list comprising of secondary set of documents was also provided for such cases in which the name of the applicant itself does not appear in any of the documents of List A but name of any of his/her lineal ascendants appear. The documents in this List B sought to establish a

³⁹ *What are Admissible Documents, Govt. of Assam*, Office of the State Co-ordinator of NRC Assam, (Nov. 11, 2019, 9:30 PM), <http://nrcassam.nic.in/admin-documents.html>.

link or relationship between the applicant and the lineal ascendant whose name appear in List-A document.

LIST B:

1. Birth Certificate;
2. Land Document;
3. Educational certificate issued by Board/Universities;
4. Bank/Post Office accounts record;
5. Insurance Policy/LIC certificate;
6. Certificate issued by Circle Officer/GP Secretary in case of married women;
7. Voters Lists or Ration Card

Operating Procedure

Registrar General of India, who is designated as the Registrar General of Citizens Registration (RGCR) under sub-rule (1) of Rule 15 of Citizenship Rules, 2003 is vested with the overall superintendence, direction and control for updating the National Register of Citizens.⁴⁰

The way toward refreshing the NRC was initiated by the NRC authority in February 2015 according to the schedule given in the orders of the Hon'ble Supreme Court. According to the standard operating procedure, pursuant to setting up an institution for the updating the NRC, the following steps were involved:

- (A) Publication of Documents;
- (B) Receipt of Applications;
- (C) Verification;
- (D) Publication of the draft NRC;
- (E) Claims and Objections;
- (F) Publication of the final NRC.

⁴⁰ *Operating Procedure, Govt. of Assam*, Office of the State Co-ordinator of NRC Assam, (Nov. 10, 2019, 4:30 PM), <http://nrcassam.nic.in/admin-documents.html>.

A. Legacy Data Publication

At the onset, copies of available NRC, 1951 and the copies of available Electoral Rolls up to 1971, together referred to as Legacy Data, were made available for inspection at NRC Seva Kendras (NSKs) and at notified Polling Stations. The legacy data was made available in form of published copies at the NSKs as well as in a digitized format at the official website of NRC Assam.

B. Distribution of Application Forms

Applications forms in English, Assamese and Bengali were distributed free of cost from house to house by government functionaries and were also made available at NSKs and official website of NRC, Assam. The instructions to fill the form were printed on the form itself. One application form sufficed for a single-family having up to six members, for families having more members, additional forms were provided.

C. Receipt of Applications

Application forms had to be filled by the head of the family for self and family member including minors, including those residing outside Assam as well as those in correction homes or other institutional facilities. Copies of Legacy Data and references/admissible documents as required had to be enclosed by the applicant along with the Application Form. The complete application form had to be submitted either at NSKs or online through the official website of NRC, Assam.

About 6.8 million families comprising of 3.29 crores applicants had applied for consideration of their name in the NRC.

D. Verification

Verification consisted of two parts, namely

Office Verification: Validation of documents submitted as proof of the claim for inclusion in NRC, which was to be done during Application Form receipt phase as a part of office verification and;

Field Verification: Field verification was carried out to establish the identity of the applicants and their linkage to the quoted reference in the Legacy Data. All the officials involved carried out their statutory functions of verification in a quasi-judicial manner as per the provisions of The Citizenship Act, 1955, and the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. The verification process was

carried out to identify applicants and authenticate the eligibility claims for inclusion in NRC.

To detect the misuse of legacy data a new device, which was not included in the modalities, called Family Tree was introduced during the verification phase. This provision sets up a linkage among the individuals from all the families utilizing similar inheritance information.

To establish the linkage between married women and their parents a device popularly referred to as the Panchayat Link Certificate, issued by the Panchayat Secretary, countersigned by the Revenue Circle Officer (CO)/Block Development Officer (BDO) was introduced. The legitimacy of the Panchayat Link Certificate was affirmed by the Hon'ble Supreme Court in 2017 provided, the same was verified.⁴¹

E. Part Publication of Draft NRC

The Part Publication of Draft NRC was published at the expiry of midnight of December 31 2017 by the Government in all the villages/wards where the Application Forms were issued and received. The draft NRC was available for public viewing at NSKs as well as on the official NRC website

F. Publication of the Complete Draft of the NRC

On 30-07-2018, the final draft of the NRC was published by the State Coordinator, National Register of Citizens, and Assam. An all outnumber of 32.9 million had applied for enlistment in NRC. Out of these, 32.9 million persons, 28.9 million persons were incorporated in the final draft of NRC, keeping 4.07 million applicants out of the last draft. Out of these 4.07 million applicants who were excluded, applications of about 3.8 million were rejected and 0.248 million applications were put on hold. Those 0.248 million persons whose cases are still pending in the Foreigners Tribunals have thus been put on hold, together with their descendants.

G. Claims and Objections

Applicants who did not find their place in the Final Draft NRC were again provided a chance to furnish any of the 15 admissible documents to prove their eligibility. They could either submit the same documents that they had submitted during the application or can submit any fresh documents. As per the Hon'ble Supreme Court order, the process of

⁴¹ Rupajan Begum v. Union of India, SLP (C) Nos.13256 of 2017.

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filing Claims and Objections began from September 25, 2018, and continued till December 31 2018. Applicants had to fill up the Claim Form and submit to the NSKs where they have applied earlier during the Application Phase. The disposal of claims and objections was carried out with the objective that the process of claims and objections is fair and transparent and provides a reasonable opportunity to all concerned. The process completed on August 30, 2019, and the Final NRC was published on August 31, 2019. On December 31, 2018, the submission of claims and objections was closed. About 3.62 million dropouts filed their claims within the stipulated period, and about 0.20 million objections were filed against the NRC draft. Up to December 30, 2018, i.e., one day before the closing date, the number of objections was a few hundred only, but in the last day, almost all the objections were filed.

Publication of Final NRC

A total of 3,30,267,661 people applied for inclusion in NRC and the Final NRC published on August 31, 2019 included 3,11,21,004 names and excluded 19,06,657 names out of those who had applied for inclusion of their names in the Final NRC.⁴²

THE CITIZENSHIP (AMENDMENT) ACT, 2019

The Citizenship Amendment Bill is a bill, seeking to amend the old Citizenship Act, 1955, which prohibits granting citizenship to illegal immigrants, in order to provide citizenship to 6 religious minorities, i.e., Hindus, Sikhs, Jains, Parsis, Buddhists and Christians from Pakistan, Bangladesh and Afghanistan. The new Bill also amends the provision which mandates a person to have lived in India or worked for the Federal Government for at least 11 years to become eligible for applying for Indian citizenship. They will only have to live or work in India for six years to be eligible for citizenship by naturalization, the process by which a non-citizen acquires the citizenship or nationality of that country.⁴³

⁴² Office of The State Coordinator, NRC, “*Publication of The Final NRC On 31st August, 2019*”, State Coordinator, NRC Assam Press Release, August 31, 2019.

⁴³ Roshni Sinha, *Explainer: The Citizenship (Amendment) Bill, 2019*, PRS Legislative Research (December 9, 2019) <https://www.prsindia.org/theprsblog/explainer-citizenship-amendment-bill-2019>

The Bill was passed in December 2019 and has been subject to severe backlash and criticism on the ground that it is exclusionary and violates the secular principles enshrined in the Constitution by making faith a condition of citizenship. It is argued that if the Bill genuinely aims at protecting persecuted religious minorities, then it should also have included Muslim religious minorities who have faced persecution in their own countries, for example - Ahmadis in Pakistan and Rohingyas in Myanmar.

Vocal protests broke out across the country against this amendment, most prominent among them being at Shaheen Bagh in New Delhi and several universities, including Jamia Millia Islamia, New Delhi, where the protesting students were even subjected to inhumane police brutality leading to severe permanent injuries to multiple students. The major cause of concern for those protesting against this Bill, apart from the above-mentioned criticism, was the government's stance of conducting a nationwide NRC and linking the CAA with NRC. The linkage between the CAA and NRC will divide the nation into two categories, Muslims and non-muslims. Critics see the Bill as a backdoor entry for those non-muslims who, if unable to prove their citizenship, would be immunized by the CAA if they can show that their country of origin is Afghanistan, Bangladesh or Pakistan.

Further, it does not apply to areas under the Sixth Schedule of the Constitution, including Assam, and the regions like Arunachal Pradesh, Nagaland and Mizoram, which have the inner line permit regime. This move has created fear in the minds of Assamese people that giving citizenship to illegal Hindu immigrants from Bangladesh would damage the linguistic and cultural identity of the region.

CONCLUSION

Successive governments, both at central as well as in Assam have failed to check the issue of migration into the Assam. The depositions by those who have been declared as illegal immigrant sit is difficult not to presume that the whole process was imperfect by discretion, overbearing, state impedance and, conceivably, bigotry. Although the NRC at the hour of its presentation and the cutoff date of 1971 may have been a sensible answer for the Assam struggle around then, it has by obstinate carelessness of the association and the state Government been undermined prompting a potentially irreversible circumstance that must

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never again be permitted to emerge. In the absence of regulation governing the rights and entitlements of detainees, there is no demarcation between detention centers and jails and consequently, detainees are treated like state prisoners. Assam Jail Manual is applied indiscriminately, but the benefits available to other inmates are denied to the detainees. This is in flagrant violation Article 21 of the Constitution which is also available to foreigners. In the absence of an extradition treaty with Bangladesh, the detainees are confined without any remedy which is an infringement of global human rights principles. The UN Working Group on Arbitrary Detention has noted that detention 'must not be for a potentially indefinite period.

The strategy should likewise explain what befalls those whose interests are dismissed? Bangladesh isn't happy to take them. Are there then to be in these camps forever? They face imprisonment with no alleviation. Is this legal, protected and just?

The policy must also clarify what happens to those whose appeals are rejected? Bangladesh is not willing to take them. Are they then supposed to be in these camps for life? They face incarceration with no relief. Is this lawful, constitutional and just?

Citizenship is one of the most essential, central human rights in current social orders and ought not to be abridged. Least we can do is pause and watch in what manner will the administration manage the individuals who are announced non-residents and if Bangladesh won't take them, saying they are not its nationals, as it has reliably held for a considerable length of time.