

National Register of Citizens of India: A Win or A Judicial Gimmick

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ABSTRACT:

The outset of the essay starts with history behind the National Register of Citizens, the migration that started from the colonial rule of British rule, which extended to Bangladesh. The source of influx of migrants that started with the Bangladeshi war with Pakistan. How the influx caused de-culturation of Assamese culture that created a situation of havoc in Assam. The essay also discusses the inequality done with the state of Assam in the Illegal Migrants (Determination by Tribunal) Act, 1983 and other such acts. How the failure of the governmental plans implementation caused a situation of external aggression and internal disturbances thus violating the fundamental rights of the local people. The crux includes a hypothetical question, if the union government did or did not failed to comply with its duty to protect any state from external aggression and internal disturbances. The essay also questions that the updating of the National Register of Citizens is a solution to the people of Assam or a violation of human rights. Another question that the essay raises is that whether the citizenship act 1955 (section 6A) violates Article 14 of The Indian Constitution or not? Further the essay discusses about the consequences of the final list of national register of citizen. The essay tries to dig the past and put fourth in a detailed manner, how the government became indifferent to a national agenda that could destroy the ethnicity of a state and how political parties can turn such events for their own personal benefits.

I. INTRODUCTION

British ruled India as well as the neighboring regions .The Britishers forced Bangladeshi peasants to move to lower Assam to cultivate the unused land for tea production. This forced movement of Bangladeshis into the northeast region resulted in destruction of the structural multicultural ethnicity of northeast. The Bangladeshi's Liberation War in 1971 led itself to independence yet the consequences of the same were felt in the Northeast region of India. Muslims as well as Hindus from Bangladesh started migrating into Indian borders due to fear of rape, murder, dacoity and many other offences committed against them by West Pakistan's army. This was the point where the influx started to flow towards the Indian Territory. The demography of Indian states fluctuated on a higher note as the number of migrants was growing day by day. The demarcation of people on the borders of the North-East India was a difficult job as people on both the sides had same eating, living habits as well as the language was strangely similar. People who came to India between January 1956 and March 24th1971 registered themselves in Foreigners Regional Registration Office and were categorized in legal migrants to India and were considered as citizens considering the foreign tribunal laws. On 25th March 1971 the number of illegal migrants from Bangladesh escalated to 98,99,305 people¹. Of which 3,12,713 were in the Assam State

¹ Salam Azad, *Bangladesh Ke Swatantrata Sangram Mein Bharat Ka Yogdan*, 146 (K B Singh, 1st ed., 2014)

itself. The Assam state government conducted a census where they stated the number of Refugees to be at around 1-2 Lakhs (approx.), which was later on in an inspection the number, was around 5-6 Lakhs (approx.). The agenda for this census was to identify and record the genuine Indians. The word 'Refugee' was used in deceptive measures by the government to shelter those who would help aid the government in the next elections as their vote banks. There might be a mistake in calculations by the state government for 100-200 people but the numbers weren't small enough. In 1951 the government (Ministry of Home Affairs) conducted a nationwide census which was the first ever census in the country where all the people who were a part of the Electoral Roll up and their decedents were included in a list, this was critically important to check the number of citizens as well as to keep an eye on the number of migrants. After the influx of more and more illegal migrants in India, the cultural ethnicity degraded as a result of which the All Assam Students Union² put up the memorandum for the up-gradation of the 1951 list. This was supported and backed by an anti-illegal foreigners Assam movement. The horde of illegal migrants hungry for land came down to Indian territories, which destroyed the Assamese culture to a great extent. However there came a setback for the illegal population in India where VISA and Passport emanated, as not being able to prove their identity they would not be allowed to leave the Indian Borders. Year by year this became can of worms for the Assamese people. The basic structure of their ethnic authenticity plummeted down which fueled the rage of these people and extended the matter nationwide. The census in 1951 became a hot debatable topic as intruders were actually destroying the resources that must be used by the citizens of the county. In 1965 the central and the state government collaborated to address the issue of 1951 census, the result of such collaboration was the roll out of 'Identity Cards' which would distinguish the genuine Indians from Refugees, Illegal Migrants as well as Foreigners. But in a controversial outturn of events the central government in consultation with the state government contradicted their own decision as 'Illogical' and 'Impractical'. The non-issuance of such identity cards was a measure to secure votes for the upcoming elections as these illegal migrants serve as a large vote bank for the political parties. This was the loophole by the government that unleashed the ongoing influx in a larger quantity. The failure of lawful safeguards like The Citizenship Act, 1955 and The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules paved the way for the in pouring illegal migrants. As a consequence of series of failed attempts by the government led to the uprising movement led out by the youths of Assam The All Assam Students Union All Assam Gana Sangram Parishad started this unrest in Assam demanding expulsion of illegal Bangladeshi migrants. This unrest was fueled when the Bangladeshi infiltration hollowed up the very base of the Assamese culture. Calling a 12-hour lockout in the state followed this agitation by the students. Meanwhile the controversy of mangaldoi's electoral roll served as the root cause for such unrest as the name of the illegal

² Herein Referred to as AASU

voters was struck down from the list by the policemen. The All Assam Students Union demanded three D's that were –

- Detect the illegal migrants,
- Delete their names from the electoral list and
- Their Deportation.

This agitation of students forced the then Prime Minister Smt. Indira Gandhi to indulge into the situation. December 31, 1965 was the date for calculating the amount of migrants and the people who won't be able to prove their citizenship before that date would be evicted from Assam. This was also one of many failed implementations of the government that turned this movement as an anti-videshi movement. The AASU wanted to delist the names of every single migrant from the voting list before the election. The failed attempt of government to exclude the foreign nationals from the electoral role elated this peaceful movement in a brutal one and resulted in the Nellie Massacre of 1983 where around 2000 (approx.) people from fourteen villages were killed. As a result of this the government tried to put out the fire but failed miserably. There was an act passed by the legislative process known as the Illegal Migrants (Determination By Tribunal) Act 1983, which laid down the procedure to distinguish a genuine Indian from an illegal migrant and to deport such persons. Illegal Migrants (Determination by Tribunal) Act basically put the burden of proof on the person who questions the identity and citizenship of another. Thus this act did not reap success, as people couldn't prove the same. The Illegal Migrants (Determination by Tribunal) Act was later struck down in the case of *Sarbananda Sonowal v. Union Of India*³ because it was violative of Article 14 and Article 355 of the Constitution of India. After the six long years of agitation and protest from 1979 to 1985 the central government and the leaders of AASU came to a conclusive agreement, which is known as the Assam Accord 1985. This Assam Accord was a tri-partite MoS (Memorandum of Settlement) was submitted by AASU. The memorandum was dealt in a meeting with Prime Minister Mr. Rajiv Gandhi, AASU and The State Government. The Assam Accord stated that the people who came to Assam till midnight of 24th march 1971 will be regarded as legal citizens and the people who came after this date will be identified and deported. The irony here for Indian democracy was that all the other states had March 1948 as the cutoff date while Assam had to take 23 years. After the compromise with the Assam accord coming in, there was for a time being silence before the storm. Then came the violent factor as there was ruckus and violence spread out, ULFA⁴ were also involved in extra judicial killing. The Assam accord not only contained provisions for illegal migrants but also had specific sections relating to fence the boundaries of India by barb wiring or building up of structure where needed and also checkpoints along the

³*Sarbananda Sonowal v. Union of India*, Writ Petition (civil) 117 of 2006, India: Supreme Court, 5 December 2006

⁴United Liberation Front of Assam

borders. Finalizing a date, which is not in consonance with the date all over Indian states, makes the matter more controversial. The thought of politicizing every problems faced by the citizen would worsen the very base of Indian rights and duties. The putting up of a different date for Assam made it quite clear that the political agenda's were on a roll and the dirty politics paved its way. The inclusion of such illegal migrants just for the sake of making them a 'Vote Bank' led to serious troubles for the state of Assam. In this era of politics, political parties could reach any heights to satisfy their thirst for power. Saying this would back the very fact that the government was issuing fake identity cards to these people to ease their win over others. A "White Paper"(Dated- 20th Oct 2012) was produced by the state of Assam on the issue of the foreigners. The paper throws light on the fact that the wide portion of the Assam Accord has not been implemented properly on the white paper. Precisely paragraphs 5, 6, 9 & 10 of the Assam Accord come under the radar.

The growing unrest in Assam over illegal immigrants was criticized internationally as the government was not implementing any kind of successful operation, these failed attempts agitated the minds of the people and slowly this became a national agenda. The illegal migrants used the valuable exhaustible resources in Assam that fueled their anger, which were supposed to be utilized by the locals. These Assamese people were dislocated from their own ancestral land and the places which used to have a majority of Assamese people now had more of Muslim Bangladeshi immigrants and the local people became minority now. The population of Muslims fluctuated to grow up by 3% every year, which is not possible only by the way of reproduction, but the root cause was migration through the boundaries. Incidences where people were denied citizenship at first came again and settled here in Assam. The present situation time is such that there are nine main regions with a majority illegal migrants population or say the nine regions whose demography is so much changed they are Dhobi- 79.67%, Barletta- 70.74 %, Darang- 64.34%, Helmand- 60.31%, Gulper- 57.52%, %, Kareemganj- 56.36%, Nagaon- 55.36 % and Morigaon- 52.56⁵. As the Muslim population was increasing rapidly becoming a big concern resulted in the Draft of Assam national register of citizen. The final draft of NRC came on 30th July 2018 around 40 lakh registrations were included in this final draft. The politicians on this NRC list not stating the actual problem and safety of Indian people took it as a hot topic to increase their vote bank by accusing the government in power on the ground that this is not fair for those illegal migrants and the government in power is doing this for their personal benefit but the truth is that this decision of drafting the NRC list is given by the supreme court of India as a result of the case Assam Public Works v. Union Of India & Ors⁶. This act of the political parties once again in the history of Indian is letting down the Indian democracy. The name of the people not included in the present NRC list will get a fair chance to claim themselves as citizen and to show valid proves that they are citizens of India. The government won't initiate any kind of action against these

⁵ *How campaign to update national register of citizens(NRC) started in Assam*, Zee News, 01/01/2018

⁶ Assam Public Works v. Union Of India & Ors, Writ petition (civil) no. 274 of 2009.

people until and unless they are provided with a fair chance to represent themselves in the court of law as a the principle of natural justice.

Mamta Banerjee in 2018 did not approve of the point of National Register of Citizens of India⁷ being implemented, whereas in a video dated back in 2015 she raised the same agenda in the parliament. This was the hypocritical situation where the Congress party was seen to play a diplomatic role in safeguarding the illegal immigrants for their own benefit. She added ' people had become 'refugees' in their own state⁸' which lands her into trouble. This diplomacy by the congress leaders did not stop here, in year 2006, Congress President Sonia Gandhi came forward to support the state elections in Assam wherein she engaged in appealing for amending the Illegal Migrants (Determination by Tribunal) Act, 1983⁹, so that the voters may drift in favor of the congress. The support was for prevention of the illegal Muslims from Bangladesh. The congress always had their hands on safeguarding the Muslims as the Muslims occupied 13 of their precious seats. Sonia Gandhi not only opposed the foreigner's act but also appealed to amend it¹⁰. Thus the illegal migrants got support from the party, which was in power as a result of which the implementation of this act became complex. The government officers area unit tight-lipped on deportation whereas difference that solely draft independent agency has been ready and any mechanism might solely be adopted once the method is asserted complete. Chaliha too isn't certain regarding deportation, however he aforesaid deletion seems to be the possible choice. He additionally inferred sequent Congress governments for stigmatization the party as pro-Muslim as a result of they lost the bit with ground reality. He aforesaid, even Assamese Muslims were opposing criminal Muslim immigrants from East Pakistan however the leaders did not assess the cookery anger.

Taking recourse to the constitutionality and the validation of Section 6A of the Citizenship Act being intra vires to the Article 14 of the Indian Constitution, Article 14 of the Indian Constitution ensures the equality aspect for every person of India. As there were prevalent injustice in the socio, economic and political aspects, the makers of the constitution framed it a way such that these social evils are excluded from the Indian society. Thus this is a fundamental right for every person present in India. Article 14 of the Indian Constitution applies to the whole part of India and not just a state, then why according to 6A of the Citizenship Act of 1955 which codifies the citizenship of a person who is not Indian. This Act specially specified special citizenship laws for the people of Assam. The supposed dates for India was in year 1948, but un-equally for Assam there were specific years as

- Those who came before 1966

⁷ Herein referred as NRC.

⁸NRC row: Mamata Banerjee's 'hypocrisy' exposed - in 2005, had opposed illegal immigrants in India; 31/07/2018, 17:03 IST, Times Now Digital.

⁹ Herein referred as IMDT act.

¹⁰Assam NRC draft: Congress protected illegal migrants, spoke against IMDT Act in 2005, reveals WikiLeaks, India, YatishYadav, 02/08/2018.

- Those who came between 1966 and 1971 (Bangladesh War)
- Those who came after 1971 (Who were to be evicted)

As previously mentioned the illegal migration was a national issue and was rebutted in every form. Thus, the citizenship bill came into existence where they put a cap on the illegal migrants. It can be inferred from the citizenship act that people who came in India illegally cannot be executed or deported with ease but there is an assumption that the number of the incoming wave of illegal migrants would stay at bay. The Assam accord was enhanced to detect the number of illegal migrants and then to delete their names and then deport them from India, whereas recently in 2016 the act of amending the Citizenship (Amendment) Bill¹¹ left people of Assam in a dilemma over the judicial hypocrisy. The Assam accord had provisions where the illegal migration was considered to be against the Indian rules and the people who came in India after March 25th 1971 were to be detected and deported from India, but this amendment in 2016 made certain minorities who came from outside India, eligible to apply for Indian Citizenship. Thus this amendment was overlapping the Assam accord. Also, according to the Citizenship act, the children of such illegal migrants were not eligible for the citizenship of India as it is clearly mentioned in the Citizenship Act in Section 3(1)(c)(ii), on or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), where—

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.¹² According to the *Sarbananda Sonowal v. Union of India*¹³, the Supreme Court in this particular case held that the large wave of immigrants flowing from the neighboring country Bangladesh also amounts to External Aggression therefore it is the duty of the Union government to enhance the construction of suitable boundaries between India and Bangladesh and with an addition to it install check-posts at appropriate places. This case also put the suspicious IMDT act under the observance as it was violative of Article 14 of the Indian Constitution and should have been struck down. According to the IMDT act if a person's citizenship is in question the other accusing it would be responsible to prove the case on him, later in *Sarbananda Sonowal's* case this feature was struck down as burden of proof was removed from the head of the accusing party. The Immigrants (expulsion from Assam) act 1950 together with foreigners act and the Foreigners Tribunal order of 1964 became the crotch for the Indian government for the eviction and the detection of Illegal Migrants from every corner in the North-East region of India. The Union Government should keep the influx of these migrants in check and it is entrusted and empowered to do the same. This

¹¹*Understanding issues of illegal migration in new Citizenship Bill*, Anviti Chaturvedi, New Delhi, Published: The Indian Express, 25/10/2016.

¹²India: Act No. 57 of 1955, Citizenship Act, 1955, 30/12/1955.

¹³*Sarbananda Sonowal v. Union of India*, A.I.R. 2005 S.C. 2920.

external de-cultural aggression herein amounts to external aggression. Which can be a stiff ground for imposing the “National Emergency” i.e. Article 352 of the Indian Constitution. Now, turning the point towards Article 355, which states the duty of the Union to protect the states against external aggression and internal disturbance and to ensure that every state is carried on in accordance with the provisions of this constitution? Thus here, it was proved that a state was undergoing a situation of external aggression and Indian Democratic Union couldn't hold the situation and failed to protect the state according to the procedure led down in Article 355¹⁴ of the Indian Constitution thus letting down the constitutional hopes for people in Assam.

The writ petition filed in the Supreme Court by Assam Snmilita Mahasangha & Ors. V. Union Of India & Ors¹⁵, Assam Public Works v. Union of India & Ors¹⁶ and also in All Assam Ahom Association & Ors. V. Union of India & Ors¹⁷ pleaded the removal of the illegal immigrants from the voter's list of Assam so that no conspiracy and no manipulation could be witnessed. Thereafter Supreme Court took the matter in its own hand and now it is the Supreme Court, which directs the guidelines to the state and the central government in relation with the updating, and it's procedure. Supreme Court directed the Union to take necessary steps to enter into discussing terms with Bangladesh to ease the process of deportation from India. Supreme Court also stated in the case of Jamiat Ulama-E-46 Hind v. Union of India¹⁸ that the epicenter became the IMDT act for the process of dismissal, detection and also the eviction of illegal migrants in Assam. This profound case also states the fact that the states where this act does not have its jurisdiction to went off with this procedure with ease. IMDT Act of 1983 provides a hidden shelter to the illegal migrants and favors them in the matter relating to citizenship of India. This thus becomes unconstitutional and unequivocal to the prevalent injustice in India.

NRC, took its path from finding the illegal migrants to deleting them and then deporting them from India. Thus this deportation and the deletion process related to the rights and the duties of a nation in doing so. Thus, United Nation wrote to Sushma Swaraj in a letter pertaining to the NRC, stating that this process should adhere to the international human rights law and the guidelines fixed for such mass human right protection. The International law safeguards the human gross violations when the people are numerous in count. India must guarantee right to nationality in a non-discriminatory manner. It further detailed in the letter that those people who are at question for the citizenship of India should be protected and a fair and just trial should be undergone. Article 21 i.e. Right to life and Personal liberty should be guaranteed to every person who is in India and should be preserved for those illegal immigrants as well until and unless there is a fair and just procedure which may provide justice to them (Judiciary). Therefore some agreement with the concerned country must be made to

¹⁴Article 355, The Constitution Of India.

¹⁵Assam Snmilita Mahasangha & Ors. V. Union Of India & Ors ,Writ petition (civil) no. 562 of 2012.

¹⁶Assam Public Works v. Union of India & Ors, Writ petition (civil) no.274 of 2009.

¹⁷All Assam Ahom Association & Ors. V. Union of India & Ors ,Writ petition (civil) no.876 of 2014.

¹⁸Jamiat Ulama-E-46 Hind v. Union Of India ,Writ petition (civil) no.7 of 2001.

protect these stateless people. If this was not followed these people would have to span their time in detention centers. There are some rights that are not to be trifled with and Indian constitution justifies the guaranteed safeguards of such rights. Thus, this was for the safeguard of the people who are residing in that part of Indian Territory that is vulnerable to crime against those people.

The level and the widespread of this fire would have complex circumstances, which would burn many rights. The support from the localities has always been there for the updating of the NRC without any hassle. Though the government has not provided with any kind of coercive action to be taken against the people whose name do not appear in the final draft of December 2018. Those people whose names do not appear in July 30th 2018 list will be provided with right to file objection or claim on the official site of NRC. Further these people have the right to approach the foreign tribunal to prove their citizenship and from there if not satisfied they can appeal to the Supreme Court of India. The serious outcomes include the suspension of democratic, electoral and also suspension of fundamental rights. The absolute fundamental right i.e. Article 21 can never be suspended in a country like India without any fair and just judicial procedure. Thus this Article is always safeguarded for the illegal migrants. The only option left for the state government is to delete their names from the list and deport them from the state, thus altogether the consequences would include the non-participation in electoral procedure in India, no remedy in the court of law, no such part in the democracy. In short they only get to breathe air in India and then be deported back to their country. Thus at the end, to conclude, this very complex procedure was laid down by the Government of India to safeguard people against the evils of the major influx of Bangladeshi, but had loopholes in the procedure. The problem of influx would have been subsided in the early 1950's if this agenda had taken up as a national threat. The politicizing of this issue made it extremely complex for the government to fight against it. The selfishness of the political parties in protecting the immigrants just to grasp some votes endangered the ethnicity and culture of Assamese people. In a country like India, where constitution is worshipped as the epitome of justice, politics paved its way through the constitution. Apart from this, the procedure is burdensome and the consequences are unclear. If implemented successfully the measures taken against those whose names do not flash in the final draft would be deported or either detained in cells, but in a state where millions reside, Can a government detain lakhs of people in a jail is question to ask. The controversy would revolve around the cases pending and the finality of the list, but it is on the people of Assam to see this as their win or a judicial gimmick.