



NRC-A DISCORDANT NOTE ON THE LEGACY DATA OF INDIANS!

*By Gayathri J Chothar
From VITSOL, VIT, Chennai*

ABSTRACT

Citizenship has always been and remained a sovereign power, whether it is from the Ancient times of Monarchy or the 21st century of democracy. Citizenship is enumerated under entry 17 of List I of Seventh Schedule of the Constitution, that is under Union List which makes it the sole power of the Central Government to determine criterion of Nationality. States have zero role in this aspect. Thus, the ruling parties in India has time and again amended the rules of the same. 2019 Election manifesto of the BJP Govt contained for implementing a PAN-Indian National Register of Citizens (NRC), which created outcry and protests nationwide. Earlier, the State of Assam updated NRC and the completed final draft was published by July 30, 2018 which excluded 19 lakh people from the list. Thus the precedent shows that though the process of NRC though legally mandated u/\$ 14 A of The Citizenship Act of 1955 and thus constitutionally valid, comes with a lot more chaos and difficulties in terms of its implementation and authenticity. Since it is on the government to decide the rules which determines “citizens” and “illegal migrants”, a PAN Indian NRC, followed by the passing of Citizenship Amendment Act, 2019 leaves the minorities especially those belonging to the Muslim community, stateless. The paper aims to analyse the Constitutional validity of NRC and reason(s) why NRC in terms of its implementation has become a controversial process in the Indian democracy!

NRC-A DISCORDANT NOTE ON THE LEGACY DATA OF INDIANS!

INTRODUCTION

According to a 2013 survey conducted by Gulam Nabi Institute on refugees in Kerala, it amounts to 25 lakh people. This was parallel the time when the Supreme court ordered to come up with NRC in Assam. Rohingyas are another major immigrant group in India, which according to the present figures put out by United Nations Refugee Agency (UNHCR) is nearly 14,000 Rohingya are spread across different states of India including Jammu, Delhi, Hyderabad, Jaipur, Nuh in Haryana’s Mewat district, and Chennai. The country has already given the “status of refugee” certificates to approximately 11,000 Rohingyas in India. Thus, in such a situation the need for implementing a nationwide NRC is on the right note. Population explosion and increasing unemployment creates a pressing need for giving priority to the citizens over migrants. NRC, through publishing the names of citizens of India on the said criteria, aims at finding the “illegal” migrants and weeding out from the country. Assam has already implemented NRC and on line of this, many States expressed to implement the same as well. Recently Haryana, Delhi, Maharashtra and Uttar Pradesh Governments announced about implementing NRC in these respective states.

Despite its positive objective, the **announcement of a proposal for a nationwide NRC in 2019 by Home Minister Amit Shah has created much chaos and confusions in the country. Going by Assam NRC guidelines, eligibility criteria will be determined based on whether**



their names appear on NRC 1951, Electoral Rolls upto 1971 and in their absence the admissible documents upto 24th March (midnight) 1971. **Coupled with this**, the Citizenship Amendment Act which was passed in the Parliament the same year envisages the grant of Indian citizenship to all refugees of minority communities belonging to Pakistan, Bangladesh and Afghanistan for those who has suffered religious persecution in these neighbouring states. In this light, whether introduction of PAN India NRC will disentitle a particular community, say Muslims of Indian Citizenship, is at stake. NRC has not yet been legislated thus the criterion for inclusion in NRC is not very clear. Although NRC 1951 and Electoral rolls till 1971 are to be said standard documents for proving citizenship. In such case, there are high possibilities for minorities in the State to lose their citizenship. **Whether such bewilderment makes sense has to be analysed on a serious note by looking into the background and history of the country and analysing constitutionality in introducing the registry at this point of time.**

- **BACKGROUND**

The ‘hunt’ for infiltrating foreigners is 70 years old, when it was first implemented in Assam with the National Register of Citizens (NRC) mechanism. The process began with the *Immigrants (Expulsion from Assam) Act, 1950*, enacted before the first democratically elected Parliament took office in 1952. With the core ‘ethnic cleansing’ goal, NRC was first established in Assam during the 1951 Census to implement this Act. Several laws and regulations has supplemented the Act over the years with this idea. Ramnath Kovind, President of India has said previously that a nationwide NRC would be

introduced on priority basis where infiltration has occurred the most. Later, on November 2019, Union Home Minister Amit Shah said that NRC will be extended to the whole of India. The root of the idea came due to the mix of citizens into the country from neighbouring nations from the time of partition as well as in search of employment and livelihood, since India has been always welcoming to such migrants.

- **CONSTITUTIONALITY OF THE REGISTRY**

Any legislation to be legally valid, must be in accordance with and compliance with the Constitution. The Constitution is the supreme law of the land which cannot be superseded by any Act passed by the Parliament. Such an Act can be struck down by the Judiciary as “unconstitutional”. But in order to determine the constitutional validity of the Register which is not yet a legislation, only the Assam NRC can be taken for analysis. First it has to be analysed that the introduction of such a register violates any of the Articles. But before that, let us first analyse what does the Constitution says about citizenship. Part II of the Constitution exclusively deals with citizenship. Articles 5- 11 enumerates various criterion for citizenship.

ARTICLE 5 - CITIZENSHIP AT THE COMMENCEMENT OF THE CONSTITUTION OF INDIA

It entitles any person who has domicile in the territory of India and was born in the territory of India or either of his parents are Indian born or he has been an ordinarily Indian resident for at least 5 preceding years of the commencement of the Constitution. This Article considers “domicile” in India as the criteria for determining citizenship. The term “domicile” though not defined anywhere in



the Constitution, it can be mean to refer to a “permanent home” or place where a person resides with the intention of remaining there for an indefinite period.¹

Thus, any person who was born in Indian territory or if any of his parents are Indian born, he or she cannot be rejected Indian citizenship on any basis. The supersedence of Constitution over all other legislations declare all such legislations which goes against the above criteria of citizenship to be illegal and thus void.

• **THE CITIZENSHIP ACT, 1955**

The Constitution of India has recognised a wider principle for citizenship; it is inclusive, that is recognises citizenship on *jus soli* or birth-based principle as well as *jus sanguinis*, that is citizenship by blood or descent. But the huge immigration and migration of people in the aftermath of partition to and fro has pushed the need for creation of stringent rules for determining the citizenship of the country. Through Articles 5–11 of the Constitution, the constituent Assembly defined nationality (citizens) for the time. Later, the Parliament in 1955 came up with the Citizenship Act. The Act was formulated after heated arguments in the constituent assembly. The confusion was regarding whether citizenship is to be granted on basis of *jus sanguinis* or *jus soli*. The latter was based on the concept of “racial citizenship” while the former settled for “enlightened, modern, civilized” and

democratic citizenship.² The Citizenship Act incorporated both these concepts. The Act which has been amended 10 times, comprises of 19 provisions. **Section 2 (b) defines an “illegal migrant”** and included only any foreigner does not carry a valid passport or any other travel document while entering into India, and any foreigner who has a valid passport but stays in India beyond the stipulated period. But the amendment of 2019 narrowed down the scope of illegal migrants by exempting any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from the neighbouring states of Afghanistan, Bangladesh or Pakistan who entered into India on or before 31 December 2014 and who has been exempted by central government under section 3 of the Passport Entry into India Act 1920 or from the application of the provisions of the Foreigners act 1946 or any rule made thereunder. This has sparked controversy from those excluded minority belonging to Muslim community, which will be dealt in the next section. Now let us analyse the circumstances under which the Act grants citizenship to people.

Under this Act a person is deemed to be the citizen of India under four ways, as given under Article 5.

a. Citizenship by Birth

Born on or between January 26, 1950 and July 1, 1987.

After July 1, before commencement of Citizenship (Amendment) Act, 2003, where either both of his parents are citizens of India

¹ Burgin and Fletcher, *The Students’ Conflict of Laws* (3rd Edn.1937) p 60.

² Niraja Gopal Jayal, “*Reconfiguring Citizenship in Contemporary India*”, pp 33-50, (13 Feb 2019), <https://doi.org/10.1080/00856401.2019.1555874>.



or where one is an Indian citizen and the other is not an illegal migrant (amended by 2003 amendment).

b. Citizenship by Descent

A person who is born outside India can acquire citizenship through descent if he is born on or between 26th January 1950 and December 10th 1992 if either of his parents at the time of his birth, is a citizen of India.

c. Citizenship by Registration

A person can acquire Indian citizenship if he ordinarily resides in India for 7 years before applying for the same under S 5(1) of the Act if he is not an “illegal migrant” as per the Act.

d. Citizenship by Naturalization

Under this, a foreigner can acquire Indian citizenship if he or she is ordinarily resident of India for 12 years (throughout the period of 12 months immediately preceding the date on which the application is made and for 11 years in the 14 years preceding the 12 months) and other qualifications as specified in Section 6 (1) of the Citizen Act, 1955³.

Section 14A reads follows – “The Central Government may compulsorily register every citizen of India and issue national identity card to him.”⁴ Thus the Act itself mandates NRC under section 14A of Citizenship Act, 1955 which was inserted by way of Amendment Act, 2003 w.e.f. 3.12.2004 at the time of Congress Government and since then there is no challenge to this provision.

**CITIZENSHIP
AMENDMENT ACT, 2019**

Article 10 of the Indian Constitution clearly says that a person who is deemed to be an Indian citizen, shall continue to be such a citizen, subject to the provisions of any law made by the Parliament⁵. Further, the Constitution has conferred power upon the Parliament under Article 11 enabling it to make any provision with respect to the acquisition and termination of citizenship”, and also to all other matters which relates to citizenship”. Thus the Parliament can legislate on matters relating to the grant and refusal of citizenship in consistent with the Constitution. Entry 17, List VII, Schedule 7 enables the Parliament with the power to make laws with respect to citizenship, naturalization and aliens. This makes the object of this Article very clear that the Parliament shall have unfettered power to make any provision relating to citizenship.⁶

The Parliament using this power conferred, passed the most controversial Amendment on citizenship, the Citizenship Amendment Act (referred hereto as CAA) on December 2019. The Act inserted a new proviso to S 2(1)(b) - "Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has 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 rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act.”⁷

³ The Citizenship (Amendment) Act, 2003, NO. 6 OF 2004., Acts of Parliament, 2004 (India).

⁴ Section 14A, *supra* note 3.

⁵ INDIA CONST. art 10.

⁶ MAHENDRA PAL SINGH, V.N Shukla’s CONSTITUTION OF INDIA, Twelfth Edn, p 23.

⁷ The Citizenship (Amendment) Act, 2019, NO. 47, Acts of Parliament, 2019,(India)



This Act sparked the most agitating and strong oppositions from various sections, religion and communities of the country which is ongoing. The Act together with creation of nationwide NRC has created fear in the minds of many, which has led to violent protests and agitation nationwide. Whether NRC when clubbed with the 2019 Citizenship Amendment render many people especially belonging to the Muslim community, homeless is to be analysed by looking into the constitutionality and legality of both.

NRC is nothing but a procedural aspect of the mandate granted under section 14A of the Citizenship Act. But Amit Shah has said that NRC will be carried out in the country after passing the CAA. Now as CAA has been passed, updation of NRC will be conducted soon. Thus if it has nothing to do with CAA, **why the govt waited for the Act to be passed first?** Since under the Act, Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan automatically gains Citizenship (if they migrated to India before 2014) the fate of the only left out people belonging to Muslim communities from these countries is clearly in danger. Since their names may not be in the electoral rolls upto 1971, and do not satisfy any of the criterion for citizenship under the Act, they will be termed “illegal migrants” and would be deprived citizenship if going by that criteria.

➤ **THE CITIZENSHIP REGISTRATION OF CITIZENS**

AND ISSUE OF NATIONAL IDENTITY CARDS) RULES, 2003

The act was enacted by the Central Government on December 10th, 2003 by exercising the powers under section 18 (1) and (3) of the Citizenship Act, 1955. Rule 2 (c) defines citizens as “citizen of India in terms of the Constitution of India and provisions of the Act”. The citizenship (registration of citizens and issue of national identity cards) rules, 2003 defines National Register of Indian citizens under rule 2(k) as “the register containing details of Indian Citizens living in India and outside India”.⁸

Rule 3 (1) says that the National Register of Indian citizens shall be established and maintained by the Registrar General of Citizen Registration.

Such a register is further divided into 4 parts –

- the State Register of Indian Citizens,
- the District Register of Indian Citizens,
- the Sub-district Register of Indian Citizens and
- the Local Register of Indian Citizens

This register has to contain all the details which, the Central government in consultation with the Registrar General of Citizen specifies and shall contain all the details [S 3(3)] such as :

- (i) Name;
- (ii) Father’s name;
- (iii) Mother’s name;
- (iv) Sex;
- (v) Date of birth;
- (vi) Place of birth;
- (vii) Residential address (present and permanent);

⁸ S 2 (k), The citizenship (registration of citizens and issue of national identity cards) rules, 2003



(viii) Marital status (name of the spouse, if married);

(ix) Visible identification mark;

(x) Date of registration of Citizen;

(xi) Serial number of registration; and

(xii) National Identity Number.

For maintaining an NRC, a National Population Register is to be first prepared at the local level. Through revival of NPR, the normal residents can be identified which makes it easier to determine the origin of people. In the month of December, 2019 to be approx, on December 21st 2019, the Union Cabinet has given approved funding for the updation of the National Population Register (NPR). A gazette notification has already been issued and the Census of 2021 is soon to take place in April – September, 2020. In 2010, National Population Register (NPR) of all the ‘usual residents’ in the country was created. The field work for NPR data collection was undertaken along with House listing and Housing Census 2010. The electronic database of more than 119 crore usual residents of the country has already been created under NPR in English as well as the Regional Languages by collecting specific information of all usual residents. Then the Local Registrar will have to verify and scrutinise this data. Individuals whose citizenship is doubtful, will have to be entered in the NPR with remarks for further enquiry; such a person or his family has to be informed in proforma of the same immediately after such verification.

Rule 6 says that a draft of the local register has to be published before the final entry into NRC, for the individuals to raise objections.

⁹ Dr Abhishek Atrey, *Framework and challenges to NRC*, (Jan 6, 2020, 1.00 p.m), <https://www.indialegallive.com/did-you-know-facts->

Such objections have to be considered and disposed off within 90 days; an appeal lies before District Registrar, whose decision shall be final and binding. However, writ can be filed before the High court as per Article 226 and then the Supreme Court (A 32). Otherwise, details of the Local Register have to be transferred to the District Registrar, who further transfers the same to the National Register of Indian Citizens.

Rule 11 prescribes that Registrar General shall cause to maintain National Register on the basis of extracts from various registers specified under Registration of Births and Deaths Act, 1969. National Identity Card has to be issued to every citizen whose particulars are entered in National Register of Indian Citizens as per Rule 13. The National Register of Indian Citizens after preparation, has to be maintained in electronic or some other form which shall entail its continuous updating, for which the basis of extracts from various Registers specified under the Registration of Births and Deaths Act, 1969 (18 of 1969) and the Citizenship Act.⁹ Thus the main documents for getting name included in the NRC is the National Population Register and registers of Birth and Deaths. But the illiteracy and lack of awareness of a wide majority of population might cause hurdles to the same. Whether people will be able to prove their births make introduction of NRC, a fear of losing citizenship.

But all these remain speculations. Home Minister Amit shah recently said that **NPR data would not be used for NRC**.¹⁰ He drew

[about-news/perspective-news/framework-and-challenges-to-caa-and-nrc-81213](https://www.supremoamicus.org/about-news/perspective-news/framework-and-challenges-to-caa-and-nrc-81213).

¹⁰ Express WebDesk. “No decision yet on nationwide NRC: Home Ministry clarifies in Parliament”



a distinction between the National Population Register (NPR) and the National Register of Citizens (NRC) saying both were governed by different laws. But that NRC shall be carried out on the basis of NPR is enshrined in the Citizenship Rules of 2003 under the Citizenship Act 1955. Indeed, NPR is part and parcel of the rules framed for NRC. The 2018-19 Annual Report of the MHA, released recently, says that NPR is the first step towards implementation of the NRC under the provisions of Citizenship Act. On November 16, 2016, Kiran Rijju reiterated this during question hour in Rajya Sabha. “The Government has approved the preparation of Population Register comprising details of usual residents in the country. The preparation of Population Register is a part of preparation of National Register of Indian Citizens under provisions of the Citizenship Act, 1955 read with the Citizenship Rules (2003).”¹¹ Thus NPR data can be used as the base for preparing NRC cannot be negated even in spite of political assurances.

SOLUTION FOR PEOPLE EXCLUDED FROM NRC

By analysing the case of Assam, those who are excluded from the list stands the chance to appeal first before the Foreigners' Tribunals (FT), which is a quasi-judicial court originally set up under the Illegal Migrants (Determination by Tribunal) Act of 1983. Then, they can subsequently appeal before the High court or Supreme Court. Limitation period given for such appeal is 120 days or 4 months. The state of Assam has

100 FTs already and where a proposal to open 200 more is considered. Suppose a person lose his case after such appeals, then comes the problem as they will have to be arrested and further send to the detention camp. In 2018, the centre gave sanction to Assam to build the first standalone detention camp in the state, capable of housing 3,000 inmates.¹² they can annul the Indian citizenship of even those who have been included in the final NRC. This will lead to their names being struck off from the citizen register.

Referring to paragraph 2A of the Foreigners (Tribunals) Order of 1964, it is clear that it allows the government to refer a person to a tribunal to determine whether he is a foreigner. Foreigners Tribunal was established by the Central Government vide Order 1964 w.e.f. 23.9.1964, which deals with any question regarding nationality of any person. It is a judicial Tribunal that shall have powers of a Civil Court and shall decide the question on the basis of judicial scrutiny after giving proper opportunity of being heard to such person.¹³ In the opinion of legal experts, there is no explicit law or provision to prevent referring a person who has already made it to NRC before a foreigners' tribunal.

But still there has been no clarification from the Central Government to the actual fate of those who did not make it to the final draft of NRC. Those persons who are finally confirmed as “foreigners” are rumoured to be deported to their particular nations. For this, the Ministry of External Affairs will have to approach the concerned nations. If that nation

(February 4, 2020 3:27 p.m), <https://indianexpress.com/article/india/no-decision-yet-on-nationwide-nrc-home-ministry-clarifies-in-parliament-6250150/>.

¹¹ *Ibid at 12*

¹² Ipsita Chakravarty, *Explainer :What exactly is the NRC*, scroll.in, (Jul 15,2019, 08.00 a.m), <https://scroll.in/article/930482/explainer-what-exactly-is-the-national-register-of-citizens>.

¹³ *Ibid at 8*



identifies the person as its national by verifying the details of the detained, deportations will follow. But what again creates the problem is that the absence of a “repatriation treaty” between India and those States. Say in case of Assam, those identified as Bangladeshis have to be deported to Bangladesh, but there exists no repatriation treaty between India and Bangladesh.

Is that a vital solution?

The whole concern and controversy regarding updation of NRC is the query regarding those who did not find their way on to the list. Even after the appeal, what if still they cannot prove their legacy as Indian? What happens in detention camps? Where will they be prosecuted to? Such questions raise serious fear in the minds of people. If such excluded people are not deported nor detained in camps, they lose their Indian citizenship. This also make them vulnerable as it takes away their various constitutional rights including fundamental rights as under Article 19, Article 15 as well. In the words of Home Minister Amit Shah the purpose and existence of detention centres are clear. He said, “Whatever detention centres are there are part of a continuous process. People can’t just come into the country and start living here. There is a law. If a foreigner enters any country without documents, they are kept in a detention centre until they can be deported to their country. There is no connection between detention centres and NRC. Whatever illegal migrants are caught have to be kept in these detention centres that are being discussed. No detention centre is functional and none have come up under the

Modi regime”. This situation of statelessness further creates chaos.

What makes it even more confusing was a series of notes which was released on August 31 said that, “Receipt at any point of time of opinion by any Foreigner Tribunal declaring any person a foreigner, will lead to exclusion of person from NRC.” This opens a further subsection to trials for those who has their names included in the final draft as well. This gives the Assam border Police the power to summon those who has been suspected as “illegal migrants” before a foreigner tribunal. This provision thus can put a person who even after layers of process check made it to NRC, to be put by the Executive, again through the process of proving his citizenship again. Moreover, An appeal to a tribunal would cost a minimum of Rs 50,000 per case, which would further be a hurdle for the “poor” people. The Assam NRC also raises a question of why its neighbouring state Tripura is excluded from preparing NRC which was inundated by war refugees even after Bangladesh was founded on December 16, 1971. Such immigration made the indigenous community of Tripura into “minorities”. What is more interesting is the current BJP Government’s Chief Minister of the state was a Bangladeshi born. Thus the *mens rea* behind preparing NRC in the state of Assam is doubtful as to clarity.¹⁴

-One infamous case of how the NRC fails in terms of its implementation is Mr Mohammad Sanaullah who was, a former soldier in the Indian Army, was declared as a foreigner by an Assam Tribunal. On May 27, 2019, when he went to a Foreigners’

¹⁴ Ditilekha Sharma, *Determination of Citizenship through Lineage in the Assam NRC Is Inherently Exclusionary*, Economic and Political Weekly, (Vol.

54, Issue No. 14, 06 Apr, 2019), ISSN (Online) - 2349-8846



Tribunal, set up to deal with cases like this, Sanaullah was placed under arrest and sent to a detention camp in Goalpara in Assam exposing the lacunae in the National Register of Citizens.

-Mr. Samsul Ahmed, a retired Sergeant of Indian Air Force who returned to his home in the village of Balukuri NC in Assam was declared as D-voter. He approached the Foreign Tribunal which declared him to be an Indian Citizen in 2017. Yet his family still doesn't make it to NRC.

-Father of Shahnaz Khatoon, Mohammed Shah Ali has been declared a d voter in 1997 and has been in detention camp since 2016. She had documents dating back to 1940, yet they were unable to prove his citizenship. they lost the case in Guwahati High Court and then in the Apex court as well the poor family had lost all their wealth to fight the case, yet they failed.

-Assam has a history of treating the minorities with violence. The village called Nellie witnessed the worst massacre in the Indian history, were more than 1800 Bengali speaking Muslims were massacred.

When we look into the names of those people mentioned in these cases, one thing is doubtful. Whether this whole process of NRC targets a particular religious minority? Are they alone accused as Bangladeshis? But the truth points out that in Assam, it has been a linguistic and nationality fight between the indigenous and the Bengali speaking people. 14 lakh people who has been asked to prove their nationality belongs to both Muslim as well as Hindu community, but they had one

thing in common, that is they are Bengali-speaking.

-A case where the Mandal family are Bengali speaking Hindus from Nagaon District were out of 33 people who had applied, 6 didn't make it to the final draft of NRC in spite of showing land records and legacy from 1965.

• CONSEQUENCES

STATELESSNESS

Nationality is acquired or lost according to rules set by each State. These rules determine which links between the individual and the State – some kind of connection usually either with the territory (place of birth or residence) or with a national (descent or marriage) – should be reflected in the formal bond of membership.¹⁵ The greatest aftermath of NRC will be a large set of denationalised individuals with no legal safeguards. The state has always showed a longstanding passivity towards this concept in its national legal domain as well as international. The state is neither a party nor signatory to the 1954 Convention relating to the Status of Stateless Persons nor the 1961 Convention on the Reduction of Statelessness, the two central pillars of statelessness prevention within the United Nations treaty system.¹⁶

Since India does not have any laws for remedial measures and according to the Constitution, it is on the Parliament to decide the fate of people identified as illegal migrants. NRC which aims at identifying “illegal migrants”, that is those individuals

¹⁵ UNHCR, *Self study module on Statelessness*, 2012, www.refworld.org.

¹⁶ ANGSHUMAN CHAUDHARY, “*Why is the Indian state shockingly blind to the problem of*

statelessness?” (Oct 30, 2019 · 06:30 am), <https://scroll.in/article/940712/why-is-the-indian-state-shockingly-blind-to-the-problem-of-statelessness>.



without any valid citizenship papers (which again will be decided by the Govt) are de facto “illegal immigrants” who can then be legitimately deported without safeguards, contingent on how the higher courts understand each situation of displacement. Since it is constitutionally valid and the Supreme Court has mandated for NRC in Assam before, court’s intervention may end there. One example is when India forcefully made seven Rohingya men to return to Myanmar from Assam in October last year. When faced with a petition to stop the deportation, a senior bench at the Supreme Court led by the Chief Justice of India, refused to interfere in the government’s decision on the grounds that Myanmar “had accepted them as citizens”, which was a faulty assumption. The Rohingya community, till this date, remains denationalised by law in Myanmar. The Myanmar government had only issued temporary travel permits to the deportees, not full citizenship documents. Yet, the Indian Supreme Court showed scant understanding of this unique situation, completely skirting the core question of statelessness, besides the violent conditions that Rohingya returnees face in Myanmar’s Rakhine State. This shows how the Indian government’s move was illegal and violated the peremptory norm of non-refoulement – the practice of not forcing refugees to return to a country in which they are liable to be subjected to persecution.

India’s perennial statelessness crisis are the myriad gaps in its restrictive nationality laws. The minute provisions within the principal nationality law, that is, the Citizenship Act of 1955, operate on strict or ambiguous

definitions of citizenship and non-citizenship. Besides proactively creating stateless individuals within the national borders, these provisions make life harder for stateless asylum seekers as well.

The court has from time to time tackled the issue of statelessness; the Punjab and Haryana High Court mentioned the word “stateless” as far back as in 1958 while adjudicating a case on a Punjabi refugee from Pakistan living in India. In a landmark case in 1996, the Supreme Court took it a notch higher and established the categorical right of citizenship for Chakma refugees from erstwhile East Pakistan living in Arunachal Pradesh despite mass opposition from local civil society groups in the North East Indian state.

But the judiciary needs to be much more proactive in preventing statelessness and compensate for the lack of legislative and administrative will to do so. It also needs to offset India’s non-participation in the international treaty regime on statelessness prevention and reduction through judicial activism and specific case-based precedents. The higher courts are fairly well-placed in this context to facilitate a gradual normative change in how Indian state institutions understand and respond to the phenomenon of statelessness.¹⁷ Further with the CAA, Muslim migrants from Bangladesh, Pakistan and Afghanistan may find themselves selectively denationalised over Hindus, Buddhists, Jains, Sikhs, Parsis and Christians of these countries. It would only be a historical travesty if the higher courts fail to intervene in this undoing of India’s constitutionally-marked secular credentials.

¹⁷ *Ibid* at 27



• **CHALLENGES**

The task of updating NRC comes up with a lot more challenges than its political outbursts.

1. *NO PRECEDENT NOR LEGISLATION IN INDIA NOR THE WORLD*

The mechanism adopted to update the NRC 1951 has been developed from scratch owing to the fact that there is no precedence of such a mammoth task ever undertaken in India or elsewhere that involved identification of genuine citizens and detection of illegal immigrants using technology since it involved data of over 3 crore people and over 6.6 crore documents.¹⁸

But some of the states have already begun the process; the Chief Minister of Haryana already announced that the state government is working on a fast pace on family identity card to use this data in NRC seeking assistance from retired Justice HS Bhalla. The CM said that the Govt will look to constitute a law commission and a separate department.

2. *DECIDING THE CUT-OFF DATE*

The cut off period for inclusion in NRC of Assam was fixed on 24th March, 1971, because, the largest migration happened in the period of March 1971 after the war started on March 25, when the Pakistan army crackdown forced many Bangladeshi residents to flee to India.

3. *MAMMOTH TASK IN TERMS OF WORK AND COST*

It includes several officials to update NRC for a population of 137 crores plus. This is a tedious task which involves both high training as well as budget.

4. *ABSENCE OF REPATRIATION TREATY*

India does not have any formal repatriation treaty with Bangladesh, Pakistan nor any of its neighbouring countries. This makes the situation even worse, making people absolutely stateless.

• **CONCLUSION**

It was the gravity of the situation in Assam where “50 lakh illegal Bangladeshi immigrants” residing in the State and the continuous demand of removing such immigrants by the indigenous people of the state that provided the judicial and political justification for the updation of NRC in Assam. But the onus of applying the same throughout the nation at this point of time has yet to be analysed. But since these kind of activities are done clandestine and surreptitious, accuracy of number of such immigrants may not be accurate. (in response to an RTI filed on Sept 5, 2018 regarding the count said in the Parliament of 1.2 crore illegal Bangladeshi migrants in India the MHA's reply was corroborating this count.)

Citizenship acquired through descent, registration or naturalisation, chances of confusion are negotiable. It is in case of citizenship by birth fear is being spread among people. Since any proposal nor bill has been proposed, from the cumulative speculation of the existing laws and procedure in this aspect, a person can prove his birth in India by any document such as Birth Certificate, School certificate, PAN Card, Passport, Voter ID card, Aadhar, Bank Account, driving license and so on (even affidavits or certificates by village

¹⁸ <https://www.nrcindia.in/>



Panchayats or municipalities or by an order of a Magistrate under Registration of Births and Deaths Act, 1969 might be sufficient). Even if the nationality of a person is found to be doubtful in the absence of these documents, their might be reasonable opportunities given to him or her to prove the same. The hierarchy will start with the Sub District Registrar who must decide the same after giving him opportunity of being heard. An appeal shall lie before the District Registrar. And as the courts to protect fundamental rights of any citizen, before declaring a foreigner he or she can file writ petition before High Court under Article 226 of the Constitution and then before the Hon'ble Supreme Court under Article 136 of the Constitution. Apart from this, there is a parallel procedure in case of illegal migrants to refer their cases to the designated Foreigners Tribunal for judicial scrutiny, against whose order writ petition before High Court and thereafter SLP before Hon'ble Supreme Court will lie. Therefore, the provocation which is now only on the basis of fear as to the criteria which will be laid down for proving citizenship in the future NRC is very premature since it is expected that the Government should ensure that the NRC, being an important register for welfare schemes and smooth functioning of the country should not be a tool in the hands of some mischievous persons to spread rumours or to disturb peace and harmony in the nation. Thus proving citizenship is for the betterment of the country and its citizens; thus instead of politicising the same, every citizens has to abide by the Government to produce valid documents to provide citizenship. Supreme Court has laid down that the onus of proving we are citizens is on us, not on the state.
