

IS NRC THE RIGHT SOLUTION TO ILLEGAL IMMIGRATION?

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1. Introduction

Since the news of it being updated for Assam, National Register of Citizens (NRC) has given fire to old issues of illegal immigration in Assam. Assam is a state which shares its border with Bangladesh and has always faced the problem of migrants from Bangladesh crossing over through the porous borders. There have been two major incoming of immigrants: first, during the Partition of India from East Pakistan and second, during the Bangladesh war. The whole matter was brought to limelight during 1978, when there was a surge in the number of voters in the 1978 by-poll to Mangaldoi Lok Sabha seat. This led to a movement carried on by the frontrunner, All Assam Students' Union (AASU); this agitation went on for six years and led to much bloodshed. This movement was solely focussed of getting the 'foreigners' removed from India. A controversial issue from the very beginning, the agitation ended in 1985 through Assam Accord¹, a Memorandum of Settlement signed by the representatives of the Government of India, R D Pradhan, Home Secretary, Government of India and P. P. Trivedi, Chief Secretary, Government of Assam, and the leaders of the Assam Movement, Prafulla Kumar Mahanta, President, All Assam Students Union; Bhriku Kumar Phukan, General Secretary, All Assam Students Union (AASU); and Biraj Sharma, General Secretary, All Assam Gana Sangram Parishad (AAGSP). Assam Accord was signed with the purpose of the detection, deletion and deportation of the foreigner which have illegally crossed the border and settled in Assam after the midnight of 24th March 1971.²

¹ https://assam.gov.in/documents/1631171/0/Annexure_10.pdf?version=1.0, (Oct 15, 2018, 02:03 PM)

² <https://assamaccord.assam.gov.in/portlets/assam-accord-and-its-clauses>, (Oct 15, 2018, 02:00 PM)

The whole issue was brought into light recently by the order passed by the Supreme Court following the writ petition by Assam Public Works.³ With the objective to rule out the illegal immigrants the, Central government was ordered by the Hon'ble Supreme Court to update the NRC, with respect to only Assam. This framework has been taken as a step to settle the long standing issue of Bangladeshi migrants coming into Assam. The NRC updates since then has taken centre stage as it is a complex, multidimensional problem that has become a matter of citizenship, non-citizenship and human rights and what it all means. At the very core, it has become a question of one's identity and a playout of how acceptance in a society and community operate.

2. Citizenship and What It Means

In the light of this process of updating of the NRC, there have been certain problems that have arisen with no true answer in sight. In the most general of terms, 'citizenship' indicates the national identity of an individual with regards to their, birth, ancestry, ethnicity, nationality, etc. Understanding the impact of the consequence on the ones left out of the NRC, an understanding of what 'citizenship' means is imperative.

In India, the Citizenship laws are governed by the Constitution and the Citizenship Act, 1955. Having the citizenship of a country grants a person certain rights such as the right to protection, and the right to vote. There are fundamental rights which are given to non-citizens too but they are few in number and are the ones which relate to the basic human rights of a person. Two major concepts that are generally incorporated in the system of citizenship of any country are: jus soli (right of the soil) and jus sanguinis (right of the blood); both are Latin terms, the former is also known as citizenship by the place of birth and, the latter is when the citizenship is acquired by one through descent. Prior to the amendment of Citizenship Act in 2004, people born in India were given citizenship regardless of their descent. After Citizenship (Amendment) Act, 2003,⁴ even if a person is born in India, one of his parents has to be Indian, for the person to be considered a citizen of India. It is also important to differentiate between nationality and citizenship. A person can gain a citizenship of a different country by complying

³Rajiv Konwar, *Couple who set NRC ball rolling*, The Telegraph (Oct 14, 2018, 01:25 PM), <https://www.telegraphindia.com/states/north-east/couple-who-set-nrc-ball-rolling/cid/1456542>.

⁴ Citizenship (Amendment) Bill, 2003 passed as an Act on Dec 3, 2004, http://164.100.47.4/billstexts/rsbillstexts/AsIntroduced/XXXIX_2003.pdf, (Oct 17, 2018, 03:00 PM)

with the rules and due procedure. However, nationality is the place an individual is born in, it cannot be changed.

3. Questions Left Unanswered

Called 'infiltrators' by the people who want the 'illegal' immigrants out of their country because they believe that the presence of these outsiders is an attack on their culture, and livelihood, the protesters in many cases do not stop to consider exactly at whom they are directing their anger at. Some of the D- voters (a term used for those who have a doubtful citizenship), have to bear the anger of their own society for being of Bengali origin, some are even put in detention centres⁵; the question of whether they are a citizen of India or whether they have applied for the registration for NRC becomes of secondary relevance. This indicates that it is as much a humanitarian issue as it is a legal one.⁶ The process of NRC is provided and people can apply to the Register General of India but it is not as straightforward as it seems. In the first draft of the NRC, around 40 lakh names were left out from the register, the official on this matter have been reassuring that the draft is not final, that the final register has not been prepared. The officials have been reiterating time and again that the NRC runs on different laws than Electoral Roll and exclusion from NRC does not mean automatic removal from the Assam's Voters List⁷; however, this leaves the question unanswered as to what actually lays in store for the ones left out of the NRC. In a country such as India which already has a weak documentation culture, where documentation seems to be the privilege of few⁸, it is a greater challenge than it should be of collecting the documentation required for the registration and proof of citizenship.

4. The Obstacle Course

⁵ Saif Khalid, *'Harassed, discriminated': Story of Assam's Bengali origin people*, Aljazeera (Oct 17, 2018, 04:00 PM)

⁶ Markandy Katju, *Debate: The NRC Will Not Resolve Assam's Humanitarian Crisis*, The Wire (Oct 18, 2018, 03:00 PM), <https://thewire.in/politics/nrc-final-draft-citizenship-assam-violence>.

⁷ Ritika Chopra, *Election Commissioner weighs in: Exclusion from NRC doesn't mean automatic removal from electoral roll*, Indian Express (Oct 14, 2018, 02:00 PM), <https://indianexpress.com/article/north-east-india/assam/election-commissioner-op-rawat-weighs-in-exclusion-from-assam-nrc-doesnt-mean-automatic-removal-from-electoral-roll-5285551/>.

⁸ Atasi Ghosh, *What We Talk About When We Talk About Citizenship in India*, The Wire (Oct 18, 2018, 02:30 PM), <https://thewire.in/law/what-we-talk-about-when-we-talk-about-citizenship-in-india>.

The Citizenship (Amendment Bill), 2016, is a bill which amends the Citizenship Act, 1955 to make illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship. The protest has centred on the same idea that Assam Accord stands for; the bill is in contradiction to Assam Accord and therefore, in contradiction to NRC. Further, the bill distinguishes on the basis of religion, while NRC does not make any such distinction. Furthermore, the bill excludes Muslims; this might prove problematic for Muslim migrants amidst the protest against illegal immigrants, who might be waiting for the clearance of the NRC issue.

Once the NRC is complete, the next step of the Central Government is still unclear. Going back to Assam Accord which endorses the three Ds- Detection, Deletion and Deportation; deportation seems to be an unlikely possibility. Some assign it to the change in the thinking of people regarding deportation. In recent times, it is looked at from a human rights point of view which is an unwavering part of International Law. The prominence of International Law is undeniable. Migration as a whole has become a common phenomenon, the view towards migrants, whether legal or illegal, has also changed. Many countries such as America and England, assign the status of 'refugees' to these migrants, instead of 'illegal' immigrants.⁹

5. Conclusion

The task in front of the Indian Government regarding Assam is herculean. The Citizenship Amendment Bill, 2016, relaxes the citizenship law and seems like a solution; however, two issues arise regarding the Bill, one, it only includes a certain set of communities which raises the question whether there was enough pre-legislative scrutiny on the matter or not, second, the Bill distinguishes people on the basis religion which, when given thought, seems to go against one of the core foundation of Indian Constitution which is Secularism.

As for NRC, it is not a threat in any way; however, it can be turned into one if not handled in a judicious manner. A careful balance needs to be maintained so that it does not turn into a tool of harassment for the people of Assam. Deportation on the other hand seems to be an unlikely solution to the problem, especially in this era when the attitude of the international community

⁹ Sangeeta Barooah Pisharoty, *Assam Has Already Missed the Bus, Deportation of Immigrants No Longer an Option*, The Wire (Oct 17, 2018, 07:30), <https://thewire.in/rights/assam-illegal-immigrants-interview-hiranya-kumar-bhattacharya>.

world over has changed towards migrants. India itself as a country has since the beginning followed the ideology of '*Atithi Devo Bhava*', and has always been known as a pluralistic, multicultural, inclusive and tolerant nation. Therefore, anything that goes against the very idea that the whole society is based on would reflect poorly on India.

Instead of fighting the symptoms, it is important that the government find a cure for the disease which lies in the poverty and poor economic situation of Assam; the fear within people stem from the fear that they, simply put, would lose their place and livelihood. It is imperative that a long term solution be found because, this fear, if misdirected would be dangerous; it is capable of turning people against one another. Most important is that the right to life of people, whether citizen or non- citizen, be protected as enshrined in Article 21 of the Constitution of India. The safety of people and their right to live with dignity has always been and should always be of top most priority.

