

## ANALYSING PARTIES' STAND ON NRC: A HUMAN RIGHTS PERSPECTIVE

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### ABSTRACT

*The 17<sup>th</sup> Lok Sabha elections saw several parties putting forth diverse agendas in their manifestos. Issues such as the status of Jammu and Kashmir, national security and defence expenditure, jobs for the unemployed, etc. formed the heart of these promises. The northeast, being a disputed region for several decades now, has always found its place in these manifestos, in the form of promises of preserving their special status, diversity and traditions. One such agenda has been the implementation of the National Register of Citizens. The NRC, a document containing the names of all citizens of the region, if implemented would mean the ousting of illegal immigrants. This matter has also witnessed opposing stands, with Congress promising to protect every citizen while BJP pledging to weed out the illegal immigrants. This paper aims to focus on this specific aspect of the 17<sup>th</sup> Lok Sabha Elections. It shall highlight the differences in the working of political parties which, in a bid to resolve the same conflict for the same section of people, distort the matter at hand to preserve and fit their own ideologies. Most importantly, it will analyse the issue from a human rights perspective, focusing more on its effect on the stakeholders, their rights, freedom and security. Based on a critical reading and understanding of these sources, the paper aims to present a comprehensive view of both sides of the story.*

**Keywords:** National Register of Citizens, Manifesto, Lok Sabha Elections, BJP, Congress, Northeast, Human Rights, Freedom

## INTRODUCTION

The state of Assam is one state that has long been affected by an influx of foreign citizens, especially refugees from neighbouring states who ended up migrating in order to escape dictatorial regimes and discriminative treatment. The National Register of Citizens, a document containing the names of all citizens of the region, aims to weed out these illegal immigrants.<sup>i</sup> The document, if implemented would mean the ousting of illegal immigrants and is being continuously used to add fuel to the fire in Indian politics.

This issue came into limelight after several political parties made it their agendas and as a means to garner votes. The parties especially those in the state have repeatedly changed their stance in the last couple of years. The Bhartiya Janata Party (BJP) and Congress being the two most important central parties have immensely differed on their ideologies over the last few decades. The 17<sup>th</sup> Lok Sabha Elections were nothing different where the manifestos put forth by the two parties clearly showed the polar stands taken by them. BJP, which is not currently in power after having won the elections, stated in its manifesto,

*“There has been a huge change in the cultural and linguistic identity of some areas due to illegal immigration, resulting in an adverse impact on local people's livelihood and employment. We will expeditiously complete the National Register of Citizens process in these areas on priority. In future we will implement the NRC in a phased manner in other parts of the country.”<sup>ii</sup>*

Congress' manifesto, on the other hand, showed a stark difference when it came to the issue of NRC. It views the Northeast as a sensitive place, in need of special constitutional protection and promises to restore the special category status of the north-eastern states and

*“ensure that no citizen of India is denied inclusion in the final National Register of Citizens.”<sup>iii</sup>*

While BJP has adopted an extremely interventionist approach, Congress has chosen to not interfere into the issue at all and allow the north-eastern states to enjoy some autonomy. The people of Assam, however, continue to remain divided in their opinion. While there are those who wish to remain free from any sought of imposition by the government, there are also

certain xenophobic natives who wish for illegal immigrants to be removed from what they believe is to be ‘their land.’<sup>iv</sup>

While the entire debate around NRC has been viewed mainly from a political point of view, the human rights aspect of it has failed to garner sufficient attention among the hue and cry of different parties. This article, in its part 2, examines how and which human rights of the people would be affected in this entire process of registering national citizens. Part 3 would focus on the implications of non-inclusion into the NRC and the state’s responsibility towards those excluded and part 4 would examine which party’s approach has been more human rights oriented and what does the future look like for those who do not find a place in the NRC.

## **NRC AND HUMAN RIGHTS VIOLATION**

The release of the final list of NRC recently has left the people of Assam in great uncertainty and anxiety. With more than 1.9 million people being excluded from the list, the fate of these people now remains in the hands of foreign tribunals,<sup>v</sup> to whom those excluded can turn to currently in order to address the issue and review the list. The question that has left the country in high anticipation is what will happen to those who fail to find a place in the list. The UNHRC has appealed to the Indian government to “ensure due process during the appeals process, prevent deportation or detention, and ensure people are protected from statelessness.”<sup>vi</sup>

The first and foremost right of people that has been threatened is the right to a fair process or procedure. During the entire process of registering their names and proving their citizenship, several reports emerged accusing the tribunals of unfair treatment and deprivation of citizenship over arbitrary reasons. Those who were on the receiving end of this were the minorities, especially Muslims who were declared as ‘irregular foreigners.’<sup>vii</sup> People who have resided in the state for years have been denied recognition over clerical errors such as mistakes in spellings or age in the electoral rolls. Though proper documentation is a requirement of any fair procedure, the issue involved is so grave that an absence of documents due to a legitimate reason can strip a person off his citizenship and render him stateless.<sup>viii</sup> Those worst hit by this are the poor and marginalised who do not have certified copies of identity documents to prove their nationality.

Amnesty international, in its report, has noted a gender discrimination being meted out against married women.<sup>ix</sup> The patriarchal structure, that prevails even today where women were married off at young ages and were never given a fair share in their property, never allowed these women to have an identity of their own. Today, these women and their children have been left standing on a cliff with no means to prove their identity. Apart from directly affecting the rights of these children, their exclusion has also led to a violation of the UN Convention on the Rights of Children, to which India is a signatory.

Apart from these, NRC has already affected and will continue to affect even the most basic rights of the people including right to livelihood, right to residence, equality before law, fair trial, minority rights, right to information and freedom of expression. Most importantly, those left out of NRC will have several aspects of their right to life being affected. Right to life, which is guaranteed by the constitution even to non-Indians, is the most basic human right, in other words, an umbrella right that covers within its ambit almost every other right guaranteed to an individual by virtue of being a human. Depriving a person of their right to life is a serious issue and a decision not to be taken suddenly or hastily by government officials.

Weeding out illegal immigrants and especially the being process followed is clearly in violation of several international treaties and charters to which India is a signatory. These include Article 27 of the International Covenant on Civil and Political Rights, ratified in 1979 which imposes on the state the responsibility to ensure that the ethnic, religious and linguistic minorities have sufficient rights “to enjoy their own culture, to profess and practice their own religion, or to use their own language”.<sup>x</sup> Article 19 of the ICCPR also guarantees to everyone, the right to seek and receive all kinds of information, an important component of right to expression.<sup>xi</sup>

The arbitrary nature of the process that has deprived people of their right to liberty, impartiality and fairness in procedure has also led to the violation of **articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).**<sup>xii</sup>

Moreover, Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which was ratified by India in 1968 defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental

freedoms in the political, economic, social, cultural or any other field of public life”.<sup>xiii</sup> India is therefore, under an obligation to not discriminate in any form that might constitute a racial discrimination under this covenant.

Also, Article 5(d)(iii) of the ICERD which obligates the State parties to guarantee the right of everyone to equality before the law, including in the enjoyment of the right to nationality, without discrimination on any prohibited grounds.<sup>xiv</sup> The deprivation of citizenship, a large part of which is based a discriminatory process, is hence, clearly in violation of one’s right to nationality.

This entire issue of NRC has clearly violated several laws, treaties, conventions and provisions of the constitution in a way that people are being deprived of even their basic rights to survive. The 17<sup>th</sup> Lok Sabha Election took away the entire focus from these human rights issues and shifted them on to a political war of which several Indian citizens became a victim. A process, that is already underway cannot undo what has already been done but the State can still seek to limit the many more human rights violations that are on the brink of occurrence.

## **IMPLICATIONS AND STATE RESPONSIBILITY**

Now that the final report of NRC has been released and more than 1.9 million people have been excluded, their fate rests in the hand of the state.<sup>xv</sup> Many, especially the xenophobic Assamese, are of the opinion that these illegal immigrants ought to be sent back to their native lands and out of India. Others fear that the centre might illegally detain them. Though no one is sure of what is to follow, what is certain is that among those who have been excluded, all those who are unable to prove their citizenship, will be deprived of their basic rights, leaving them stateless and homeless. The centre has assured free aid and protection of those who might lose their citizenship, its promises have been largely perceived as unconvincing.<sup>xvi</sup> Whether these promises will be delivered impartially is a question which only time will answer. People of the east have lost their faith in the government that failed to even ensure a fair process in a matter involving their life and livelihood.

The matter of concern for those excluded from the list is to find a recourse. An appeal has to be made to the Foreigners’ tribunal before taking the matter to either the High Court or the

Supreme Court.<sup>xvii</sup> The problem here is that their fate will be decided by a tribunal which already has a dearth of members with sufficient judicial understanding. Though the higher levels of judiciary can be approached immediately but that is likely to cause greater cost and despair among the already suffering citizens. Moreover, the question whether judiciary would encroach upon an area over which the government has exclusive authority is difficult to determine. This uncertainty has left the citizens in a dilemma as to their fates in a country they call their own.

Once all the appeals have been exhausted, the final decision rests in the hands of the State. Nevertheless, deportation does not seem to be an option as there is a risk of facing backlash from the international community especially after the much-hyped Rohingya issue. As reported by the newspapers, many of these Assamese people are continuously living in pitiable conditions of floods, lack of resources and severe competition but now face the danger of losing all political power and support. In such a scenario, the Centre bears the responsibility to rehabilitate those who will lose their homes and take care of the needs of those left out.

The Centre and the state government have to work together to ensure that those suffering are compensated, protected and supported at a time when their future seems uncertain. To leave them stateless would paint such a picture of the Centre that might not be good for India's reputation and position in the international community. This leaves the government with little choice but to execute the list in an impartial and just manner, ensuring that the rights of all, irrespective of whether they are included in the list or not, are protected and respected.

### **BJP v CONGRESS: WHO IS MORE HUMAN RIGHTS FRIENDLY?**

The 17<sup>th</sup> Lok Sabha Elections saw BJP win with a majority and forming the government. Though the process was started much before the elections, the issue caught limelight due to the opposing stands taken by the two largest parties, in accordance with their ideologies. Despite the fact that BJP managed to sweep through the elections, it is important to see which of the parties was better to calculate all the impending risks with respect to NRC.

As discussed above, Congress promised absolutely no intervention whatsoever, while recognising the separate special status of north-east.<sup>xviii</sup> BJP, on the other hand, seems to have viewed the issue from more of a political standpoint than from a humanitarian perspective. It

promised to separate out the illegal immigrants and preserve the cultural and linguistic identity of the natives. From a political perspective, it seems like a convenient option that would reduce the burden of the governments and save resources at the same time, but to impose such a measure on those who have lived in the country for several decades requires several other important aspects to be kept in mind.

One of the most important players in this issue have been the Non-Governmental Organisations (NGOs). They have voiced the concerns of the masses, brought human rights issues to the forefront and shown us the ground reality. Organisations such as Amnesty International India and several other local and non-local NGOs have criticised the actions of the Centre, calling it partial and unfair.<sup>xix</sup> They, along with the locals, have organised and participated in demonstrations to force the Centre to scrap the initiative. They perceive this entire scenario as violative of human rights that ought to be stopped immediately to prevent further abuse of the rights of citizens guaranteed by the constitution. Robbing people off their citizenship and nationality abruptly through an unfair and discriminative process shows that the Centre has not paid any heed to the human rights issues involved here.

Therefore, solely from a human rights point of view, the Centre seems to have taken steps that have violated the rights of a large number of citizens. If these 1.9 million people are left out of the NRC, they will be deprived of even the basic needs of everyday as the state shall no longer be obligated to protect them. The government is under a burden to ensure that this section is rehabilitated and compensated properly. However, to start a new life, this time as non-citizens of the same country where they resided for years, is not an easy task to pull off and definitely not something that can be compensated only in monetary terms.

The congress manifesto that promises to not exclude anyone from the NRC, though seeks to avoid the issue altogether, but does seem to keep in mind the severe violation of human rights that would be an inevitable result of this practice. Therefore, in this sense Congress seems to have been more human rights oriented in addressing the issue of NRC while promising to protect the rights and identity of all in Assam. The Centre, though having promised compensation, has led to a serious disregard of the rights of citizens. Not ensuring a proper procedure or ignoring all the violations that have occurred over the last few months in Assam has resulted in the Indian government being viewed as dictatorial and irrational in the international community.

## CONCLUSION

It is very important that in a democracy political parties look at all their promises not from just a political standpoint but also from a legal and human rights perspective. While achieving once objectives becomes important in a rat-race against parties, parties cannot completely ignore the impending violations of human rights that might result from their acts. Any promise, initiative or measure must be scrutinised to ensure that the benefits outweigh the costs at all times. The human rights of all ought to be balanced in a way that every person enjoys his rights without hindering the others' enjoyment of the same. Prioritising the rights of some over the others is never an option as human rights are guaranteed to people by virtue of them being humans, an identity that is common to all. Therefore, it is upto the political parties to ensure that the rights of citizens are given utmost primacy in all cases and the responsibility of the citizens to keep this aspect in mind before casting their essential votes during elections.

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<sup>xviii</sup> Supra note 3.

<sup>xix</sup> Supra note 7.

