

## ASSAM NRC:A CHALLENGE TO HUMAN RIGHTS OF NON-CITIZEN

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### Abstract

*We live in the 21st century and our society is moving at a pace lot faster before. Everything is modern, fast and easily available but there are still certain issue that need to be brought into the light. One of such issue is violation of Human Rights.*

*Every country has different sets of rights that can be considered as Human Rights in their country but the core of such rights is for the benefit of human and not to infringe such rights. These are the rights that are based on the principle of respect for the individual. Their fundamental assumption is that each person is a moral & rational beings. Basically, Human Rights are universal legal guarantee protecting individuals & groups against actions which interfere with fundamental freedom & Human Dignity. Also, under the Constitution of India, there are so many provision mentioned for the protection of the rights of non-citizen and this is only done to enforce the principle of human rights like freedom of religion, Right to Equality and Right to life & personal liberty, etc.*

*Recently Government released the final list of National Register of Citizens(NRC) in Assam and nearly 1.9 million people have been excluded. The aim of NRC is to identify illegal immigrants who entered & settled in Assam, primarily, primarily from Bangladesh, after March 25, 1971 & deport them to their native country. Now the question arises; what will happen, if there native country will deny to accept their citizen? Finally, what will the outcome of NRC?*

*In this paper, I will give the answer of above questions. Also, I will include the some important judgement of Supreme Court of India. At the end of the paper, I will mention about some important human rights declared by United Nation, etc.*

**Keywords:-** Rights, National Interest, Human Dignity, Equality, Liberty.

### BACKGROUND

National Register of Citizens(NRC) ,is the list of Indian citizen in Assam. It was prepared in 1951 on the basis of census of 1951.

The National Register of Citizens was last updated in Assam in 1951. Then, it had recorded 80 lakh citizens in the state. Since then, the process of identification of illegal immigrants in Assam has been debated and become a contentious issue in the state's politics. A six year agitation demanding identification and deportation of illegal immigrants was launched by the All Assam Students Union (ASSU) in 1979. It culminated with the signing of Assam Accord on August 15, 1985.

According to Assam Accord signed in 1985 between the government of India and the All Assam Students Union, All Indian-origin people including from Bangladesh who entered Assam before January 1, 1966 were deemed as citizen. Those who came between January 1, 1966 & March 25, 1971 and living for 10 year could get citizenship after registration. Those who entered after March 25, 1971 were to be deported.

The process of NRC update was taken up in Assam as per a Supreme Court order in 2013. It was done in order to wean out cases of illegal immigrants from Bangladesh and other other adjoining areas. National Register of Citizens updation was carried out under the Citizenship Act, 1955 and Rules framed in Assam Accord.

Nearly 3.29 crore people applied for NRC verification and it involved the house-to-house field verification.

### INTRODUCTION

Recently (on 31 August, 2019), the final list of National Register of Citizens is released and nearly 19 lakh people are excluded from the list. Now all these person have to apply in the foreigner tribunal and the order of foreigner tribunal will decide the Citizenship of the person.

But, if person think that the order of foreigner tribunal is not correct then he or she can go to Supreme Court directly.

Now the whole process of NRC verification put up so many questions, like;

- (1)-What will the outcome of National Register of Citizens?
- (2)-The cut off date of National Register of Citizens is controversial or not?
- (3)-Process of Appointment of National Register of Citizens is arbitrary or not?

- (4)-Is the making of National Register of Citizens violates the Human Rights?
- (5)-Is section 9 of Foreigner Tribunal Act,1946 arbitrary or not?
- (6)-Is National Register of Citizens Violates Article 14 and 21 of the Constitution?
- (7)-Is NRC against the Articles of Human Rights universally declared by United Nation or not?
- (8)Is NRC violates the Right to property as Human Rights or not?

#### POSSIBLE OUTCOMES OF NATIONAL REGISTER OF CITIZENS

After the released of the final list of National Register of Citizens.It is still not confirm that after the detection of illegal immigrants, what step government should takes against these illegal immigrants.There are number of speculation about the possibilities.These possibilities are following given below:-

- (1)-The possibility of deporting the Foreigners back to Bangladesh or their parent's country.It is unbelievable that Bangladesh or their parent's will accept these immigrants.Also, government said that the process of NRC updation is an internal matter of India.So,it is still not possible to accept this assumption.
- (2)-The possibility of detaining such huge number of immigrants in jails would turn Assam into a 'prison-state'.Also it is against the Human Rights.
- (3)-The Government of Assam might try to convince other states in India to share these immigrants.But the increasing demand of NRC in other states of India makes it clear that it is not possible in present scenario.
- (4)-The possibility of curtailing some rights of these immigrants,like voting right.And after some time,government should give all the right to these immigrants also consider them citizen of India.For doing this,Government can make some criteria.

I think,it is the best way by which government can maintain the integrity of India and also will protect the Human Rights of these immigrants.

#### Controversial cut-off date of National Register of Citizens(25 March,1971)-

The cut off date of Assam NRC and Citizenship Act,1955 create controversy.

Under Sec. 3 of Citizenship Act,1955:-

- (1) Except as provided in sub-section (2), every person born in India,—
  - (a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;
  - (b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;
  - (c) on or after the commencement of the Citizenship (Amendment) Act, 2003, 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.

Now,the cut off date mentioned in Assam NRC and the Citizenship Act,1955 are different,due to which it creates conflict between the parent act and Assam NRC.

In India,the Constitution is supreme and Article 11 of the Constitution authorise the parliament to make law/provision related to Citizenship.And after some time Parliament made act on citizenship<sup>1</sup>.The violation of Citizenship Act,1955 is indirectly violation of Constitution of India.

So,no order or law can override the Parent Act,i.e., Constitution of India.

#### APPOINTMENT OF MEMBERS IN FOREIGNERS TRIBUNAL

For the verification of NRC list,government appointed the non-judicial person with some judicial person and for doing this government modify the Foreigners Tribunal Order,1964.

Under Section 2(2)<sup>2</sup>,The tribunal shall consist of such number of person having judicial experience as the central government may think fit to appoint.

The author think that the appointment of non-judicial person to make NRC list is not a right decision because in case of dilemma non-judicial person will not able to solve the problem easily due to lack of knowledge and experience.

#### MAKING OF DETENTION CAMP-VOILATION OF HUMAN RIGHTS

Human rights are not conferred by any ruler,constitution or statute.A human being is born with human rights. Definition of Human Rights<sup>3</sup> : "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by

<sup>1</sup> The citizenship Act,1955

<sup>2</sup> Foreigners (Tribunal)Order,1964

<sup>3</sup> Section 2(1)(d) the Protection of Human Rights Act, 1993

courts in India."Every state is known by the rights it maintains and Human Rights are those rights to which an individual is entitled by virtue of his status as a human being.Rights are meant to safeguard the individual from the irrespective and arbitrary use of power by the ruling class.

If any person is declared Foreigner by Foreigners Tribunal then the person could be detained in jail(or Detention camp),for maximum time period of 6 months.

For detaining the illegal immigrants nearly Rs. 46 Crore being wasted on the constructing India's first detention centre in Assam.The capacity of this detention camp is nearly 3000 illegal immigrants only.Apart from ethical concerns,this is a massive economic blunder.Also, it is not include the cost of maintenance,food,shelter of everyone.Imagine the cost of housing,lakh of people,who otherwise would work and contribute to economy.They are still proving that they are Indian.

Making of the detention camp is the violation of Human Rights.

#### CLASSIFICATION OF DOCUMENTS TO BE ACCEPTED AS EVIDENCE

Under Sec. 9<sup>4</sup>,it is given that If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.If burden of proof is lie upon the person then it is the duty of such person to prove that he is or is not a foreigner.For doing so,the person can give any kind of evidence but the Supreme court classify the document to be accepted as evidence which is not a good sign.Sometimes,the court should be diverted by fake news due to which justice should not delivered correctly.In such situation,it is the duty of Government to correct that order or judgement or send for review.For better understanding this,we can take an example-

*In case of A.D.M. Jabalpur Vs Shivkant Shukla*<sup>5</sup>,The court said that rights of individuals must be postponed to considerations of State and national safety must override any other considerations.And Article 21 of the Constitution will be suspended during the Emergency.

After the judgement of court was delivered,In 1977,Parliament made 44th amendment of the Constitution and said during National Emergency,article 20 and 21 of the Constitution could not be suspended.

The Constitution of India inherits the concept of Check and Balance and for during this separation of power is given in the Constitution.

When any arbitrary action is taken by any organ then it is the duty of other organ to correct and change that order.

#### PROCESS OF NRC IS VIOLATION OF ARTICLE 21 OF THE CONSTITUTION

Article 21 of the Constitution is available to Non-Citizen also and giving new dimension to Article 21 of the Constitution,the Supreme Court of India in their different cases has said that right to live as guaranteed under Article 21 is not merely confined to physical existence but it includes within its ambit the right to live with Dignity.

*In case of Francis Coralie Mullin Vs union Territory of Delhi*<sup>6</sup>,The supreme court has condemned cruelty or torture as being violative of Article 21.

The right to live is not restricted to mere animal existence.It means something more than just physical survival.The right to live is not confined to the protection of any faculty or limb through which life is enjoyed or soul communicates with the outside world but it also includes "the right to live with human Dignity" and all that goes along with it,name, the bare necessities of life such as,adequatenuitrition,clothing,shelter and facilities for reading,writing and expressing ourselves in diverse forms,freely moving about,mixing and commingling with fellow human being.Anything which impedes the right to lead live with Dignity and decency is violative of human rights.

Life without Dignity is like a sound which is never heard.Dignityspeaks,it has its sound,it is natural and Human.It is mixture of feeling and thought.It deserves respect even when man/person is not found or dead and described as a body.

Quality of life ensures Dignity of living.Human sufferings must have significance not only in terms of how long we live but also in terms of how well we live.

The Constitution guarantees essential human rights in the form of fundamental rights in Part 3 and also Directive Principles of State Policy in Part 4,which is fundamental to governance of the country.

But in Assam,the right of citizen with non-citizen also violated because of unsecured life,where they don't know what will the outcomes of National Register of Citizens and where they will go.And the situation of stateless

<sup>4</sup> The Foreigners Tribunal act,1946

<sup>5</sup> A .D.M. Jabalpur Vs Shivkant Shukla,AIR 1976 SC 1207:(1976)2SCC 521

<sup>6</sup> Francis Coralie Mullin Vs union Territory of Delhi,1981 SC 746

still remains for them. Government only talked about the National Register of Citizens and never talked about the outcomes of the National Register of Citizens.

### NRC AGAINST THE ARTICLES OF HUMAN RIGHTS UNIVERSALLY DECLARED BY UNITED NATION

On December 10, 1948 with the declaration of Human Rights, India became one of the signatory countries of the world having made commitment to respect and protect the Human Rights declared and accepted by the UNO. The UNO had required the signatory countries to incorporate the universally acknowledged human rights in their Constitutions and domestic laws. India being signatory to these UNO Declaration of Human Rights and also Incorporated the Human Rights as Fundamental Rights in Constitution.

There are 30 article of human rights universally declared by the General Assembly of the United Nation on December 10, 1948.

NRC violates the Article 1, 2, 5, 15(1), 17(1) and 30 of the UDHR. Below the author mentioned the Articles:-

Article 1 : All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 5 : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 15(1) : Everyone has the right to a nationality.

Article 17(1) : Everyone has the right to own property alone as well as in association with others.

Article 30 : Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Some rights of Universal Declaration of Human Rights are embodied in the Constitution of India. Also accepted and declared by Supreme Court in their different judgement.

In case of *Francis Coralie Mullin Vs union Territory of Delhi*<sup>7</sup>, The Supreme Court of India held that there is implicit in Article 21 of the Constitution. The right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the UDHR and guaranteed by Article 7 of the International covenant on civil and political Rights.

### RIGHT TO PROPERTY AS HUMAN RIGHTS

The right to property is now considered to be not only a legal right but also a human rights. The (French) declaration of human and civil rights of 1789 enunciates the scope of the right under Article 17 and so does 17 of UDHR, 1948 adopted in the United Nations General Assembly. Earlier human rights were restricted to the claim of individual's right to health, right to shelter and employment etc. But now human rights have started gaining a multifaceted approach. Now property rights incorporated within the definition of human rights.

In Assam, the right to property of non-citizen is in dilemma.

Human rights are rights that belong to every person and they are not dependent on specifics of the individual. Human Rights are moral, pre-legal rights and cannot be granted by people or taken away by them. Human rights have been recognized by the UDHR and adopted as Fundamental Rights in Part 3 of Indian Constitution.

### JUDICIARY & PROCESS OF NRC VERIFICATION

*Mohammad Sanaullah's case*<sup>8</sup>:- On June 8, upon the orders of the Gauhati High Court, Mohammad Sanaullah was released on bail from a detention camp in Assam. He had been detained on May 29, after a Foreigners Tribunal had declared him an illegal immigrant. The Gauhati High Court's bail order came after a week of sustained public pressure, occasioned by the revelation that Mr. Sanaullah had served for three decades in the Indian Army.

<sup>7</sup> Francis Coralie Mullin Vs union Territory of Delhi, 1981 SC 746

<sup>8</sup> <https://www.thehindu.com/opinion/lead/inhumane-and-utterly-undemocratic/article27705953.ece/amp/> visited on 10 October, 2019

In the intervening period, a shocking number of irregularities surfaced. In its inquiry report, the Assam border police had written that Mr. Sanaullah was a 'labourer'. The three men who signed the case report claimed that the investigating officer had fabricated their signatures. The investigating officer himself admitted that it might have been an "administrative mix-up".

*Order Of Gauhati High Court on 19.09.2019*<sup>9</sup>, The casual manner of functioning of Foreigners Tribunals in Assam, the Gauhati High Court set aside 57 orders passed by a Foreigners Tribunal in Morigaon district in Assam for glaring procedural irregularities.

The bench comprising Justice Manojit Bhuyan and Justice Kalyan Rai Surana said, "We express our disappointment over the way the member conducted himself. This was not expected. In the ordinary course this would have called for some action, disciplinary or otherwise. We leave it at that".

Also, the bench held that the orders of disposal in all these 57 cases were "non est in the eye of law" and thus liable to be set aside. The bench said, "Mere noting in the note-sheet or passing of an order that reference was disposed of without a reasoned opinion/absence of judgment copy/dual judgment/without vacating earlier order in the case file would be no order in the eye of law. Such a noting or order cannot be construed to be an order disposing of a reference case by a Foreigners Tribunal. There has to be an opinion on record which must carry the seal and signature of the Presiding Officer of the Tribunal. In the absence thereof, such a reference will have to be treated as not being disposed of and be considered as a pending reference, which would have to be heard afresh." Accordingly, the said 57 references shall be heard afresh from the respective stages. "The Member of the Tribunal shall list the above references in the Notice Board of the Tribunal giving fresh dates. Fresh notice may also be issued to the proceedees," the bench said.

These judgement and order given by the Court put up so many questions on the process of verification of NRC. No one can predict how many claimants will ultimately succeed in getting on to the final NRC, but what we do know for sure is that there is no clear plan for what happens to those who don't make it.

## CONCLUSION

After all, two wrongs don't make one right. What was done by illegal immigrants in Assam in the past was very wrong but it was only done to save life and due to which they came in India. After spending such a long time in India, now the action is done by government is not justifiable and it is against the human rights.

Finally, I want to quote most relatable shlok from Mahabharat, i.e.,

*धर्मो रक्षति रक्षितः*

*(Faith protects those who protect faith)*

Here faith does not mean religion. It's a belief we uphold.

Author think that if the people whose name does not come in NRC and they believe that they are Indian. Also, they do all the duties as a citizen do then they are all Indian. But they have to believe in themselves, they shall always win.

"Believe in System (If system follow the path of Constitutionalism), it shall never let you down".

## SUGGESTION

After the starting of the process of Assam NRC, some politician connect this with religion. In Assam, all these persons have spent their labour and life for a long time and all these things happened due to fault of the government and their parents. And no law give right to any country to punish children for the wrong done by their parents. It is against the principles of natural justice and also connecting it with religion violate the concept of Indian Secularism.

Author want to say them that Indian Secularism is a positive concept, taking along and encouraging all the cultural practices while installing a scientific temper against superstitions and harmful practices. Author think that government and Supreme Court of India have to give permit to all those persons whose name was not come in National Register of Citizens due to any reason. And for doing this government can restrict some rights of these person except the rights given by Article 14 and 21 of the Constitution of India.

<sup>9</sup>The Gauhati High Court : WP(C)(Suo Moto) 11/2018