

## Partition's Long Shadow: Post-Partition Migration and the Citizenship Conundrum in Postcolonial Assam

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### The Antecedents

Citizenship is a critical issue of concern for any nation-state. When India became independent, the framers of the Constitution gathered together to determine the basic structure of the new Indian state that was born out of a violent partition. The Partition of India gave rise to displacement, migration and settlement of people across the new borders, which had enormous repercussions on the question of citizenship. All this was especially crucial for the state of Assam as the region was affected not only by religious conflict but also by ethno-linguistic communalism, reflected in the Sylhet referendum.<sup>1</sup> Both these variants of communal politics – religious and ethno-linguistic – impacted the citizenship question for this reorganized province. By 1949, debates in the Constituent Assembly began to engage with the process of citizenship through a discussion on electoral rolls for the first general election in independent India and the question of citizenship and its concomitant conditions. In the debates on the citizenship question in the Constituent Assembly, members expressed extreme concern about the idea of citizenship and the fate of the migrants who had come to India from areas within East Pakistan before and after Partition. Colonial Assam (in the form of Sylhet), the princely state of Tripura (Chakla Roshnabad), and Meghalaya (some Khasi chiefdoms) had also been partitioned, along with Punjab and Bengal. These partition experiences brought northeast India well within the Partition discourse of 1947.

During these years, the entire subcontinent was in flux, especially in the east and the west of India, bordering the two wings of Pakistan. ‘The situation became critical as the initial trickle of people wanting to migrate to India from East Pakistan became a flood by 1949 as the political atmosphere in East Pakistan became increasingly hostile to the minority communities’ (Dutta 2019). There was a steady exodus of Hindus who constituted 31 per cent of the total population of East Pakistan in 1947 and were reduced to 22 per cent in 1951 (Barkat et al. 2008). One of the epicentres of intense activity in the east was Assam, which shared a border of more than 885 km with East Pakistan. In his letter to the chief ministers of all states on 1 April 1948, Nehru observed that ‘the exodus of non-Muslims from East Bengal

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continues. We are naturally as much bound to help these refugees as any from western Pakistan' (Nehru 1985, 100). But despite the Indian government's efforts, things did not improve. By the next fortnight, the report was even grimmer. Writing again to the chief ministers, the Prime Minister informed them that 'conditions in East Bengal have deteriorated and over a million Hindus have come over during the past few months. The stream continues and we have to help those who come' (Nehru 1985, 108–109).

'Though there was no restriction on the movement of people from East Pakistan to Assam in the initial years after Independence, gradually the provincial governments and the Government of India began to discourage the migration of Muslims from Pakistan to India' between 1948 and 1950 (Dutta 2019).<sup>2</sup> The correspondence between Jawaharlal Nehru and leaders such as Sardar Patel points to the rising discontent among Indians in general and Hindu refugees in particular about the inflow of Muslims into India from Pakistan (Das 1973). 'Hostilities between the displaced Hindu and Muslim refugees, coming from Sind and East Bengal had grown; even the Prime Minister was unable to shake off the difference between the Hindu refugees and the Muslims, who were popularly perceived as illegal migrants and economic fortune seekers in partitioned India. This was often articulated in the form of demands of population transfer between the Hindus and Muslims from East and West Bengal, respectively. As Partition introduced the 'foreigners' dimension into politics, the debate only grew more intense and anxiety-ridden' (Dutta 2022, 106).

Though the central government was initially reluctant to admit the magnitude of the violence and intimidation faced by the Hindus in East Pakistan, they were forced to acknowledge it gradually. This change in perception could be seen by 1949 when, in a letter to the chief minister of West Bengal, B.C. Roy, on 2 December 1949, Jawaharlal Nehru himself admitted, 'There was something elemental about this (the Punjab) and we have come to face the situation. In Eastern Pakistan the migration has been at a lower pace and rather gradual' (Chakrabarti 1999, 21).

Home Minister Sardar Patel, too, clearly understood the difference between Punjab and Bengal. Patel was unequivocal about the grim situation for the Hindus in East Pakistan when, in 1948, at a debate on the refugee situation and rehabilitation in the Subjects Committee at the Congress Session in Jaipur, he pointed out that:

...the problem of East Bengal is difficult. There are about 15 million Hindus there. They are weak and soft. The people of the Punjab were different. They were strong, they could assert themselves and fight.

The people of East Bengal are in a sad plight. Nobody wants to leave his own hearth and home without any reason. After all, in India they would have to starve. It is because of conditions in which they live there are bad that they migrate to India... (Chopra 2004, 270).

The Punjab situation had stabilized by 1948 as, in the language of Sardar Patel, ‘there was not a single Hindu or Sikh left in West Pakistan’ indicating that the population transfer or exchange was more or less completed (Chopra 2004, 270). However, in the east, it was a different scenario. Both Nehru and Patel hoped that the Hindu refugees from East Pakistan would return to their homes and that the Pakistani state would behave itself. But that was not to be: the situation only worsened, and there was the gradual realization that the political and legal infrastructure would have to accommodate the eastern refugees. This increasing hostility faced by the non-Muslim League supporters in general and non-Muslims in particular in East Pakistan was a major theme of public and political debates in India in the formative postcolonial years.

### **The Citizenship Question – The Early Debates**

Members of the Constituent Assembly from Assam who were conscious of the situation were very vocal in highlighting the impact of Partition on the northeastern region of India and the possible consequences on the citizenship question of India in general and Assam in particular. Rohini Kumar Chaudhuri, who held a general seat from Assam in the Constituent Assembly, tried to reconcile the antagonism of the Assamese society against the Bengali-speaking population with postcolonial realities. Chaudhuri attempted a difficult balancing act when he proposed ‘citizenship to this class of people who have originally belonged to Sylhet in the province of Assam, who long before the Partition, have come to the Assam Valley as citizen of that province and are staying in the present province of Assam’:

I want to make it perfectly clear that I want citizenship rights for those people of East Bengal who had gone over to West Bengal or Assam out of fear of disturbance in the future or from the sense of insecurity and – also for those people who have come over from Sylhet, who at the time of coming had no fear of disturbance or anything of that kind, but who on account of fear of disturbances now have decided to live here.<sup>3</sup>

Rohini Chaudhuri’s arguments clearly brought out the complicated reality of citizenship in Assam, which had its unique experience of Partition and traumatic decolonization, different from that of Punjab and Bengal. The citizenship question in postcolonial Assam is complex because of the consolidation of ethno-linguistic sub-nationalism on the one hand and the tide of migrants/returnees belonging to both the East Pakistani minority and majority communities flowing into Assam from East Pakistan since 1950, on the other.

It is at this very historical moment that politics across the border had an immense impact on Indian administrative and legal history: it not only influenced the citizenship question being finalized within the constitutional structure but also cast its shadow on the process of census enumeration, with the first census of postcolonial India being designed and implemented at the same time. The first census operation in post-independent India in 1951, following the

institution of the Constitution, was a highly significant process with far-reaching ramifications for the citizenship question: it was a major step in preparing a database for citizenship and a voters' list in the nascent state in the run-up to the first general elections of independent India. The idea of citizens conceived as stakeholders in the new state was especially important in a frontier province such as Assam, which emerged as a borderland between India and East Pakistan.

It is important to mention that the NRC or the National Register of Citizens of Assam was a casual by-product of the census operation of 1951 at a very critical period of India's history when it was facing the challenge of cartographic reorganization at many levels, including the new province of composite Assam. It was, in fact, the product of an ad-hoc and illegal exercise initiated by the Assam Census Superintendent on the basis of the census slips of the Census enumerators. It omitted important classifications such as indigenous, refugees and bilinguals and was only a socio-economic survey and not a comprehensive data bank. The Census Act of 1948 does not provide for any such exercise. Records bear out that the NRC of 1951 was prepared by reluctant personnel who had to be threatened into participating in the enumeration process<sup>4</sup> through the process of random sampling,<sup>5</sup> therefore depriving it of any comprehensive character. Thus, even as both India and Pakistan went about their own politics of peopling as new nation-states, as a new border province, Assam had its own share of experiences and anxieties between 1947 and 1951.<sup>6</sup>

In his report, the Census Superintendent of Assam, Manipur and Tripura, R.B. Vaghaiwalla, noted the incidents of Partition and post-Partition violence and their impact on migration, settlement and politics over peopling in northeast India:

... soon after the 1949 Refugee Census, occurred the incidents of Soneswar and Habiganj, the oppression of the Hajongs in the North Mymensingh and the atrocities committed on the Santhals in Rajshahi, in East Dinajpur, etc. Then came the gruesome incidents over large areas of East Pakistan in February-March, 1950, especially Dacca. These led to the inevitable result, viz., the desertion of hundreds and thousands of Hindus in East Pakistan of their hearths... Again most of the refugees come from the bordering district of Sylhet. Although it is a known fact that it has become increasingly difficult for the Hindus to remain in Pakistan, some of them used to come and return to Sylhet, still being unable to decide whether they should leave their hearths and homes for good.<sup>7</sup>

The Census report observed that:

...mass migration of Hindus from East Bengal and Muslims from West Bengal occurred in the eastern frontiers of the two new states, both before

and after their independence. While, the Government and the people of the Brahmaputra valley thought that Assam escaped at that time these degrading and inhuman occurrences, but it could not do so for all time. The riots and communal massacres and the influx of refugees from certain parts of east Bengal to Assam did not fail to have their own inevitable repercussions.<sup>8</sup>

It was in this context that the Parliament passed the Immigrants (Expulsion from Assam) Bill 1950, to 'provide for the expulsion from Assam of undesirable immigrants', as distinguished from 'persons who on account of disturbances or disorder in Pakistan or any other country have come to take refuge in Assam'. The Act, promulgated on 1 March 1950, contributed to creating a legal foundation for differentiation between non-Muslim and Muslim migrants on the ground; it crafted an understanding of the nature of migration on religious lines and led to renewed public focus on the diverse manifestations of violence on non-Muslims in East Pakistan and the resultant insecurities and apprehensions, recognized as the primary reasons for their displacement from home and hearth and migration to Assam/India.

The Government of India inserted a proviso in one of the sections of the Bill, Section 2 (b), that sought to make a distinction between persecuted and displaced minority community persons/refugees from East Pakistan and illegal/undesirable migrants from East Pakistan who had 'subsequently come to reside in Assam'. The mover of the Bill, Gopaldaswami Ayyangar, was firm in pointing out that the sword of eviction and the clause of 'undesirability' under the Act, when promulgated, would not apply to people 'who subsequent to the partition of the subcontinent on the 15<sup>th</sup> of August, 1947, have migrated in fear to Assam, because of disturbance in Pakistan or their fear of their being badly dealt with in Pakistan', vide the proviso Section 2(b). However, the Act was soon abandoned and became a forgotten chapter of legal history (it was revived much later, in 2005, by the Supreme Court in its *Sarbananda Sonowal vs Union of India and Ors* judgment).

### **Citizenship Conundrum since the Early 1960s**

Even with the passage of more than a decade since Independence and the adoption of the Constitution, Partition continued to cast its shadow on migration and citizenship in postcolonial India and Assam. In the backdrop of the Chinese invasion when the Government of India began to make a fresh security appraisal, the Intelligence Bureau (I.B.) observed, 'The fact that such a large number of immigrants succeeded in illegally crossing the frontier and settling down unnoticed would prove that the measures so far taken have not been effective' (Gupta 1984, 201).

As against 2,73,000 refugees in the Census of 1951, the number of refugees returned in the 1961 Census was 6,28,000. Over the years, the number of migrants moving into India from across the border began to rise. This influx of refugees contributed to social tension in

Assam as the Assamese elite feared danger to their economic, political and cultural life. There was another dimension to the situation: the Census Superintendent observed in his report of 1961 that 'after independence the Bengali Muslim immigrants into the Assam Valley have, almost to a man returned their mother tongue as Assamese whether they know the language or not'.<sup>9</sup> These immigrants had also done the same in the colonial period as 'what they want is land in the valley, and if knowledge of Assamese language helps them to become "indigenous" they do not mind about their mother tongue'.<sup>10</sup> Thus, the Assamese elite, who initially welcomed these Muslim immigrants, subsequently began to be wary of them. As these immigrants became vote banks of the party in power, they became more assertive (Barooah 2008, 393). In 1962, for example, the Pakistani flag was hoisted with cries of 'Pakistan Zindabad' in villages near Tezpur and the Morajar area of Nagaon district (Gupta 1984, 202).

In the backdrop of the conflict with China in 1962, the government launched the Prevention of Infiltration from Pakistan Scheme (PIP) to check and deport infiltrators from Assam. A text of the draft prepared by the I.B. in its background note was categorical in stating that 'the number of illegal immigrants into Assam from Pakistan over the course of the last 12 years has been very conservatively estimated about 250 thousand. Local unofficial estimates, however, put this figure even higher' (Gupta 1984, 201). The government under the chief ministership of B.P. Chaliha began to implement the scheme vigorously, but cries of harassment by the Jamiat-ul-Ulama-e-Hind and opposition from two cabinet ministers from Assam, Fakhruddin Ali Ahmed and Moinul Hoque Choudhury, ensured its slow death (Nehru 1997, 2012).

By the late 1960s, the citizenship question and the issue of illegal immigration had become major political problems in Assam for which there were no easy solutions in sight. It is significant that the idea of national registration of citizens as a means to tide over the vexed citizenship issue had been first articulated in the PIP Scheme of 1965 which proposed that a 'National Registration System and the issue of Identity Cards should be adopted' (Nehru 1997 [2012], 210) for all the residents of Assam and the northeastern region. The Director, IB, proposed the adoption of a 'National Registration System and the issue of Identity Cards' for all the residents of Assam and the northeastern region as part of the PIP Scheme (Gupta 1984, 210). He suggested:

If somebody's name appears in the register the presumption will be that he is a citizen. If anybody wants to rebut this presumption the burden will be on him to do so. On the other hand, if somebody's name does not appear in the National Register the presumption will be that he is not a citizen. If he wants to rebut this presumption the burden will be on him to do so (Deka 2015, 142).

The birth of Bangladesh on the Partition of Pakistan in 1971 further complicated the situation as it added the 'Bangladeshi' dimension. By the late 1970s, the presence of 'foreigners' in electoral rolls had become a major issue in Assam politics. Anti-foreigner sentiments had never really subsided in the political firmament in Assam since 1947, though the primary focus of such sentiments was the illegal migration of people from East Pakistan. As a result of deep cultural and historical roots underlying this anxiety, it took the form of a popular political movement against all immigrants, popularly known as the Assam Movement, which was brought to a close only with the signing of the Assam Accord in 1985.<sup>11</sup> The All Assam Students' Union (AASU), which led the movement, expressed fear in its memorandums submitted to Prime Minister Indira Gandhi on 18 January and 2 February 1980, that 'Assam will have to reckon with perhaps 50 lakh foreign nationals in 1981, and the Assamese in Assam shall become a minority.'<sup>12</sup> This Assamese apprehension about the migration of people across the border and community antagonisms rooted in history came to dominate the discourse in the articulation of their demands and aspirations at the national level.

Though the agitation came to a close with the signing of the Assam Accord in 1985, the question of the presence of foreigners of Bengali origin in Assam (refugees or otherwise) never really dissipated from the Assamese popular imagination, taking the form of anti-foreigner demonstrations from time to time. In 1998, the foreigners' issue again occupied the centre-stage of politics with the publication of a report submitted to the President of India by the then governor of Assam, Lt. Gen. S.K. Sinha which observed:

Failure to get Assam included into East Pakistan in 1947 remained a source of abiding resentment in that country. Zulfikar Ali Bhutto in his book, *Myths of Independence* wrote, 'It would be wrong to think that Kashmir is the only dispute that divides India and Pakistan, though undoubtedly the most significant. One at least is nearly as important as the Kashmir dispute that of Assam and some districts of India adjacent to East Pakistan. To these Pakistan has very good claims.

Even a pro-India leader like Sheikh Mujibur Rahman, in his book. *East Pakistan: Its Population and Economics* observed, 'Because East Pakistan must have sufficient land for its expansion and because Assam has abundant forests and mineral resources, coal, petroleum etc., Eastern Pakistan must include Assam to be financially and economically strong.'<sup>13</sup>

General Sinha's report, which gave detailed estimates of illegal immigrants entering and living in Assam since 1971<sup>14</sup> rekindled the dormant apprehensions of Bangladeshi encroachment in Assam.

### The NRC in its Present Avatar

Two decades after the Assam Accord, in 2005, the three parties to the Accord – AASU, the Government of Assam, and the Government of India – decided to come back to the table to review its implementation; it was officially agreed that the National Register of Citizens for Assam would be undertaken.<sup>15</sup> In 2008, the Government of Assam took up the matter of the construction of the NRC with the Government of India. Interestingly, neither the Assam Accord nor subsequent agreements clearly defined the term ‘foreigner’ who was the focus of both the agitation and the agreements, nor did they have any provision for holding the NRC. The NRC is often viewed in intellectual, academic and political circles as the fulfilment of the vision of a sanitized Assam with 1971 as the cut-off year. It is perhaps because of this cut-off year that many scholars often misrepresent the NRC as part of the ‘mandate of the Assam Accord’ (Dutta 2018, 18-21). But, ironically, the NRC – which today is believed to be extremely critical to the life of Assam – did not find any mention in the famous Assam Accord signed in 1985 – which was perceived as a closure to the vexed anti-foreigner struggle in Assam (Hussain 1993, 153).

Anti-foreigner sentiments resurfaced in the first decade of the twenty-first century. When the Government of India came out with the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003, towards preparing a National Population Register, it was perhaps only in time with the broad political atmosphere in Assam. The proposal was to undertake a National Register of Indian Citizens (order appended to clause 2 of the Rules 2003)<sup>16</sup>. Popular concerns about the issue, initially confined to political, governmental and legislative forums, gradually drew the judiciary into it as well, with judicial pronouncements reflecting popular anxiety. By 2004–05, the judiciary also began to express ‘serious concern’<sup>17</sup> about the issue. The judgment on *Sarbananda Sonowal vs Union of India and Ors*, at the apex court (AIR 2005 S.C. 2920) was followed by several judgments of the Gauhati High Court. One such judgment of the Gauhati High Court observed:

It is no longer a secret or in the domain of ‘doubt’ that illegal Bangladeshis have intruded every nook and corner of Assam, including forest land. In some of the cases, the petitioners themselves stated before the police during investigation that they were occupying and living in Govt. and forest land. If reports are to be believed, they have intruded upon the most sacred Xattralands. Very often, they are protected by extending the protective lands of ‘secularism’, branding them to be Indian minorities in Assam. A strong political will to free Assam from illegal Bangladeshi is the need of the hour coupled with public activism in that direction (2008(3) GLT 272).

Since 2005, the judiciary in Assam has become a proactive arm of the state machinery in its quest for the determination and construction of citizenry in Assam. By 2008, judicial anxiety

on citizenship was explicitly out in the open, with one judgment going to the extent of saying that ‘large number of Bangladeshis present in the state of Assam... have become the kingmakers.’<sup>18</sup> The Gauhati High Court judgment in W.P. No. 5696 of 2002<sup>19</sup> dated 25 July 2008 was only one of several major judgments on the issue of illegal immigration from Bangladesh into Assam. ‘The institutions of government were perhaps not immune to and insulated from the popular outpourings of society in which they were located. The ghost of Partition thus came back to haunt the society, especially its politically sensitive elite who have long felt that the foreigners’ issue had never really been resolved despite the Accord of 1985.’<sup>20</sup>

It was evident that in both political and popular perceptions, a broad consensus was emerging on constructing a national register of citizens that would be the touchstone for citizenship claims with both political and legal authorities. The chief minister of Assam wrote to the Prime Minister in 2008 that ‘updating of the National Register of Citizens 1951 is looked upon as the solution to the vexed foreigners’ issue in the State and there seems to be a consensus among cross-section of people with regard to the updating of National Register of Citizens’.<sup>21</sup> With growing institutional support to popular vigilantism and the abdication of state institutions in the discharge of their designated roles, Assam was in the throes of another conflagration by 2012 as nothing much had been done to resolve the issue either at the administrative level or the political level. The matchstick to the powder keg was thrown in the Bodoland Territorial Area District areas in 2012, which witnessed a conflict between Bodo inhabitants and Bengali Muslim settlers who were pilloried as ‘Bangladeshis’ (Misra 2012, 38). It is at this time of conflict and tension that the NRC project received a fillip. By this time, civil society organizations like the Assam Sanmilita Mahasangha, Indigenous Tribal Forum and National Democratic Front of Boroland (NDFB) (Progressive) and political parties like Bharatiya Janata Party (BJP) and All India United Democratic Front (AIUDF) were crossing swords on the issue.<sup>22</sup>

Meanwhile, the issue of updating the NRC continued to make appearances at judicial forums. An NGO, Assam Public Works, filed a writ petition at the Supreme Court in 2009 praying for the deletion of ‘the illegal voters from the voters’ list’ of Assam and in that process seeking updation of the National Register of Citizens, 1951.<sup>23</sup> By the time the Supreme Court of India began hearing the writ petition on the issue in August 2013, the modalities for the NRC had not been finalized; neither was any fundamental legal framework identified for the process other than an order from the Registrar General of Citizens Registration on 5 December 2013.<sup>24</sup> The apex court supported the exercise, and in its judgement, on 17 December 2014, directed that the upgraded NRC for Assam be published by the end of January 2016 on the basis of a prescribed time schedule.

Interestingly, the judgment of 2014 was in response to petitions which called for linking the current exercise of NRC with the NRC of 1951, though the fundamental legal bases of the two registers are distinct and separate. The NRC 1951 was completed under the Census

Act of 1948 which makes the register a contemporaneous document prepared by field staff engaged in census operations and was legally 'not open to inspection nor admissible in evidence.'<sup>25</sup> The NRC 2019, on the other hand, was prepared under the Citizenship Act 1955 in conjunction with the Citizenship Rules 2003. There is no legal framework to reconcile the two Acts (The Census Act 1948 and the Citizenship Act 1955). Neither has any legal framework been evolved to legitimize the use of the NRC1951 as direct or supplementary evidence in matters governed by the Citizenship Act by any amendment or enabling clause. The matter is quite complicated now as we know that the district offices have not maintained the NRC 1951 data for all the districts as mandated in the Census of 1951 and this is today admitted by the Government of Assam as well. With the government being forced to rely on other documents produced by the people from those districts where the NRC 1951 was absent or fragmentary, in order to enlist their names in the NRC 2019, serious questions were raised on the legality or legitimacy of 'updating' NRC 1951 in Assam as a whole. It is also important to mention that the state of Assam in 2019 is surely not the same as it was understood in 1951. The new states formed from the debris of composite Assam since 1963 had not taken adequate care to maintain the NRC 1951 records, thus denying genuine Indian citizens living in India since 1947 valuable back-end verification and documentary support for no fault of their own. Despite repeated reminders from the authorities in Assam, such support from the other state governments has not been forthcoming, seriously jeopardizing the possibility of a satisfactory NRC exercise.<sup>26</sup>

When the first draft of the NRC for Assam was published on 31 December 2017 it generated considerable concern among the government officials and the people at large. The Indian Express (3 January 2018) reported that while the government officers were initially apprehensive about the possibility of large-scale violence in Assam on the publication of NRC, the people were afraid about their names being left out of this vital document or jubilant on discovering their names in the list. Only 19 million people found their names in the first draft, with 13.9 million waiting for the second list to know their fate. When the final draft was published on 30 July 2018, 28.9 million out of a total of 32.9 million people who had applied for enrolment in the NRC 2018 found themselves included in the list. This left 4 million people outside the list. The schedule for the final publication of the NRC had to be revised many times. Now that the final NRC has been published, 1.9 million applicants find themselves outside the list; it has unleashed an unprecedented humanitarian and historical crisis. The NRC is far from completion to the satisfaction of the people of Assam. Former supporters of the process, including AASU, have joined the chorus denouncing the final product and calling for its cancellation. Meanwhile, those left out face an uncertain future as the process of filing an appeal against omissions is yet to commence. With every delay, the harassment of the people and their opposition to the process increase, and we are probably in the throes of another prolonged round of litigations over NRC by those who find themselves adversely affected by its publication. As of today, the NRC seems to be a bitter pill, with many families losing members to anxiety and suicide over it in parts of Assam.

NRC in Assam is seen as the harbinger of the process of ‘updating’ the citizen register for the entire country and is linked to the Citizenship Amendment Act 2019 (CAA); it is believed that one of the main reasons why the Act came into being was to provide succour to the NRC left-outs belonging to certain non-Muslim communities (who number approximately 12 million<sup>27</sup>). Significantly, the CAA arrived on the political centre-stage in the context of the uncertainties created by the NRC process, and both bear their respective historical baggage rooted in the Partition of the country. Among those advocating the NRC, while AASU drew sustenance from their own memorandum of February 1980 which inter alia demanded that ‘The National Register of Citizens (NRC) of 1951 should be made up-to-date’ (Talukdar 2019, 301), those supporting the CAA fell back on the assurances made to the refugees from East Pakistan by Jawaharlal Nehru himself who announced in Parliament in 1950 that ‘there is no doubt of course that those displaced persons who have come to settle in India are bound to have their citizenship. If the law is inadequate in this respect, the law should be changed’ (Nehru 1967, 10). A plain reading of the two positions would inform critical readers that neither side has done their necessary readings of history. It is important to note that the Government of India had created the legal infrastructure to fulfil this promise in 1950 itself with the promulgation of the Immigrants (Expulsion from Assam) Act 1950, of which the Citizenship Amendment Act of 2019 is almost a mirror image. This Act of 1950, incidentally, was also applied to the province of Assam and was reaffirmed as the law governing the question of illegal immigration in the province of Assam by the Hon’ble Supreme Court of India as recently as 2005 (in its judgment on *Sarbananda Sonowal vs Union of India and Ors*).

The CAA, through which the BJP-controlled Government of India seeks to grant citizenship to Hindu refugees and members of other minority communities from Pakistan, Bangladesh and Afghanistan who have already come to India due to religious persecution before 31 December 2014 and who have since been living within the territory of India, has created controversy. While it has antagonized some of the communities in Assam, the lives of the Hindus residing in Assam over decades have not become any better; they continue to face the threat of eviction and the stigma of being doubtful citizens. In fact, most Bengali-speaking people residing in Assam have come under a cloud of suspicion and been subjected to a renewed attack. This has also contributed to the revival of tension between the Brahmaputra and Barak valleys as the Act has faced protests in the Assamese-dominated Brahmaputra valley while being welcomed among the Bengali Hindus in the Barak Valley. Though the central government, through a Union Home Ministry notification issued on September 2015, exempted those Bangladeshi and Pakistani nationals belonging to minority communities (of those countries) who entered India on or before 31 December 2014 without relevant documents from being declared illegal entrants or foreigners, and also from the Passport (Entry into India) Act 1920 and the Foreigners Act of 1946, reports from the field indicate ‘this failed to curb the harassment of Bengali speaking people by the police as more and more people are being loaded in detention camps. “People are being harassed in the name of detection and

identification of foreigners.”<sup>28</sup> As noted, when the NRC process reached its culmination in September 2019, the governments at the Centre and the state were left with over 19 lakh people excluded from the updated Register; of these, only 4,86,000 persons were East Bengali Muslims and about 6,90,000 persons were East Bengali Hindus.<sup>29</sup>

The NRC was a major turn in the citizenship politics of Assam as the BJP was caught in a bind between its commitment to the cause of refugees on the one hand and its support to the NRC updation in Assam on the other. What compounded the problem was the issue of ‘D Voters’ and detainees in the six detention camps in Assam at Goalpara, Tezpur, Silchar, Kokrajhar, Jorhat and Dibrugarh; according to the Assam Government affidavit in the Supreme Court dated 31 January 2019, there were 938, of which approximately 35 per cent were Bengali caste Hindus, Garos, Hajongs, Kochs, other indigenous tribes and Dalit Hindus. As many as 31 children were lodged in these camps, and many inmates had died in the camps due to various reasons, including suicide. The number of detainees rose to 1044 by November 2019.

In this background, Home Minister Amit Shah, in an interview to ABP News on 2 October 2019 at Patna, categorically asserted that:

[The] idea of NRC is linked with CAB [Citizenship Amendment Bill]. I want to make it clear that first Citizenship Amendment Bill will be introduced, which will give Hindus, Sikhs, Jains, Buddhists and Christians from Pakistan, Bangladesh and Afghanistan citizenship. After which NRC will come and it'll remove every single infiltrator from the country.

It is in pursuance of its electoral commitment that the BJP Party Manifesto of 2019 promised ‘the enactment of the Citizenship Amendment Bill for the protection of individuals of religious minority communities from neighbouring countries escaping persecution...Hindus, Jains, Buddhists, Sikhs and Christians escaping persecution from India’s neighbouring countries will be given citizenship in India.’<sup>30</sup>

### **In Lieu of a Conclusion**

Within six months of its return to power in the 2019 general elections, the BJP-led National Democratic Alliance (NDA) government presented the Citizenship (Amendment) Bill 2019 on 9 December in the Lok Sabha and on 11 December in the Rajya Sabha and ensured its passage in both the Houses of Parliament. With the Presidential assent on 12 December 2019, the Bill became an Act with its publication in the Gazette of India, Extraordinary (No.71), Part II, S.1, dated 12 December 2019. With the passage of this Act, the government fulfilled its pledge to the people of India: those from neighbouring countries belonging to specific communities, who had escaped to India before 31 December 2014 to avoid persecution

or the threat of persecution, and who were faced with the prospect of eviction and deportation from India, were made eligible to be regularized as citizens subsequent to their application to the prescribed authority under the Act and on fulfilment of the conditions for Indian citizenship as specified under Section 5 of the Citizenship Act. An observer of the political system would be justified in wondering whether the NRC 2019 in Assam is only a precursor to bigger structural changes in the Indian constitutional structure. That is something that will become apparent only gradually.

In India, as in many other parts of South East Asia, extreme assertions of nationalism are perhaps seen as constituting one of the few ways by which people can strike back at the tide of globalization, of which migration of people across countries and markets are natural corollaries. It is pertinent, though, that neither the Bengali Hindu middle class nor the 'stout fanatical Muhammadan' (Dutta 2014, 70-85) came from eastern Bengal to Assam as a matter of choice or pleasure; as readings from the archives would inform us that, they were mostly goaded by colonial officials to migrate to Assam in the colonial period. Today, the challenge in this tussle between an almost defunct NRC and a volatile CAA is to historicize the process of migration and citizenship and nation making beyond the tide of either politics or passion and understand the political and international ramifications of the process. The Look East policy of the Government of India, now upgraded to an Act East policy, is in the imminent danger of being jeopardized if grassroots anxieties continue to express themselves in their current form. While the state and its institutional representatives and the political activists juggle with the rhetoric of NRC and CAA, the region is staring at a persistent humanitarian crisis with people being driven to death at the prospect of losing their citizenship and consequent entitlements. The recent cases of Binay Chand hanging himself from a mango tree at a village at Baksa and Nirod Baran Das in his house in Kharupetia, two hours away from Guwahati, on the one hand, and the reported deaths of five innocent lives in the anti-CAA agitations in Assam, on the other, are grim portends of the struggle ahead.<sup>31</sup>

## **Notes**

1. The Bengali-speaking Muslim majority southern district of colonial Assam was put through a referendum to decide whether the district would remain in India or be amalgamated with East Pakistan. Sylhet became a part of East Pakistan as the pro-Pakistan forces won a majority in the contested referendum.
2. See interventions on the citizenship provision by Sardar Bhupinder Singh Mann in the Constituent Assembly Debate dated 12 August 1948. For the West Pakistan (Control) Ordinance 1948 and the rules framed under the ordinance introducing a system of permits, see the judgment in Feroz Meharuddin vs. Sub-Divisional Officer and Ors., AIR 1961 M.P. 110.

3. *Constituent Assembly Debates* dated 12 August 1949; see intervention by Rohini Kumar Chaudhuri.
4. *Census of India, 1951, Vol. XII, Administrative Report*, Shillong, 1954, 5.
5. *Ibid.*, 31.
6. Binayak Dutta, 31 May 2018. <https://pangsau.com/2018/05/31/the-unending-conundrum-the-story-of-citizens-foreigners-between-politics-and-the-law-in-assam/>
7. *Census of India 1951, Vol III, Assam Part I-A*, 358–59
8. *Census of India 1951, Vol III, Assam Part I-A*, xxxiii.
9. *Census of India 1961, Vol III, Assam Part I-A*, 204.
10. *Census of India 1961, Vol III, Assam Part I-A*, 203.
11. For Details see Sangeeta Barooah Pisharoty, *Assam: The Accord, The Discord*, Penguin Random House India, Gurgaon, 2019
12. Annexure 9 (A) of the Government of Assam's *White Paper on the Foreigners Issue*. Home and Political Department, Government of Assam, 20 October 2012.
13. <https://jagadishbhuyan.in/downloads/SK%20Sinha%27s%20REPORT.pdf>
14. Indrajit Gupta, Home Minister, in a statement in Parliament, put it as 4 million in May 1997; Hiteshwar Saikia put it as 3 million in 1992 according to the report submitted to the President of India by the governor of Assam, Lt. Gen. S.K. Sinha, dated 8 November 1998.
15. *The Hindu*, 8 May 2005. 'Review of Assam Accord Fruitful: AASU'
16. <http://nrcassam.nic.in/images/pdf/citizenship-rules.pdf>
17. 2005(4) GLT 206 MD. Babul Rahman vs UOI
18. 2008(3) GLT 272 Mustt. Sarabari Begum vs State of Assam, para 208. <https://www.casemine.com/judgement/in/56b494dc607dba348f00f505>
19. *Ibid*

20. Binayak Dutta. The Illusive Citizen: the Predicament of determining Citizens between politics and the law in Assam. 3 July 2019. <https://www.sabrangindia.in/article/illusive-citizen-predicament-determining-citizens-between-politics-and-law-assam>
21. Annexure 16 A to the *White Paper on Foreigners' Issue*. Home and Political Department, Government of Assam, 20 October 2012.
22. 'Groups oppose NRC Update,' *The Telegraph*, 16 September 2012; 'BJP, AUDF in NRC tiff,' *The Telegraph*, 2 April 2015.
23. Para 18, S.C. Judgement dated 17.12.14. <https://indiankanoon.org/doc/50798357/>
24. Gazette Notification dated 6 December 2013. <http://nrcassam.nic.in/pdf/not11.pdf>
25. AIR 1970 (A&N) 206 para 15.
26. The Telegraph, 19 May 2015. 'NRC hits undivided Assam hurdle'
27. *Pratidin* dated 12 September 2019. '*Kun Kiman Bad Poril*'
28. *Ibid.*
29. *Op cit.*
30. Bharatiya Janata Party Manifesto, 2019.
31. Indian Express, 11 September 2018. 'Mother fighting case to prove citizenship in Assam, Man hangs self' and The Telegraph, 11 November 2018 'Suicides over NRC raise concern in Assam.'

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