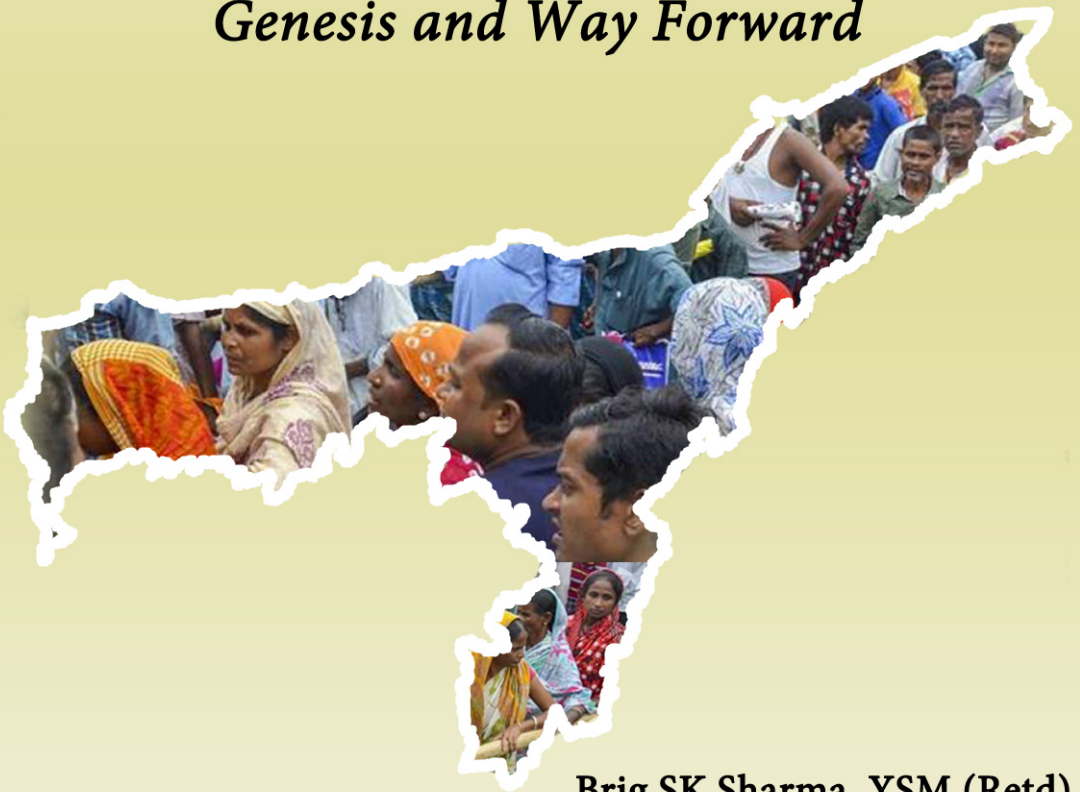




Vivekananda International Foundation

# National Register of Citizen

*Genesis and Way Forward*



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## **Abstract**

*The Assam Movement (or Assam Agitation) (1979-1985) was a popular movement against illegal immigrants in Assam. It was followed by Assam Accord which was signed in 1985, but the actual work of updating the National Register of Citizens (NRC) started commenced in February 2015 under the direct supervision of Supreme Court. The first draft of the NRC was released on 01 January 2018. It had contained 1.9 crore names from a total applicant pool of 3.29 crore. On 30 July 2018, the second draft found 2.89 crore people eligible while 40.07 lakh names were left out. However, those whose names were not included were allowed to file claims and objections before the publication of the final NRC. The final NRC in Assam was released on 31 August 2019. The list has identified 3.11 crore applicants as citizens excluding names of 19.07 lakh hopefuls. There are also views that Citizen Amendment Bill needs to be introduced to give justice to religiously persecuted people as the NRC does not have names of 1,906,657 people, a majority of them are believed to be Hindus. The paper is an attempt to analyse the ongoing NRC process its relationship with the Citizen Amendment Bill, challenges and the way forward.*

# National Register of Citizen: Genesis and Way Forward

## Genesis and Historical Facts

### Landmark Acts, Resolution/Accord

Before coming to the National Register of Citizens (NRC), it is pertinent to understand the historical background leading to the influx of illegal migrants and the NRC. Since independence, there have been a series of landmark acts, resolution and accords which are shaping today's dynamics in Assam. The first act which is relevant was the *Foreigner's Act 1946* which defines a foreigner and such individuals/immigrants were required to prove legality with regards to their citizenship. The act also empowered the Indian Administration to arrest and deport such individuals.<sup>1</sup> *The Immigration Act (Expulsion from Assam), 1950*, aimed at the expulsion of all the migrants who came to Assam and was considered a threat to Assamese Scheduled Tribes in specific and Indian public in general.<sup>2</sup>

The period between 1947–51 witnessed post-partition riots and turmoil to and from India. After that the first major influx of refugees took place in Assam. Seeing the tension developing in both the nations, the leaders of India and Pakistan agreed to sign a pact also known as Jawahar–Liaquat Pact, 1951, signed in April 1951 and ratified on December 1951. It was aimed to alleviate the fear of religious minorities residing in these two nations, elevate communal peace and create an

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1 “The Foreigner Act , 1946”, available at [Indiacode.nic.in/bitstream/123456789/6803/1/foreigners\\_act\\_1946.pdf](http://indiacode.nic.in/bitstream/123456789/6803/1/foreigners_act_1946.pdf), accessed on September 05, 2019.

2 “The Immigrants (Expulsion from Assam) Act, 1950” available at <https://indiankanoon.org/doc/1523917/>, accessed on September 06, 2019.

atmosphere for resolving differences.<sup>3</sup> The NRC and Census also took place in 1951 and subsequently Indians casted vote in General Election 1952.

The *Citizenship Act* was passed in 1955 and it was the first time a citizen of India was defined and various methods were promulgated by which an individual could claim his/her citizenship of India. These were Citizenship by Birth (Article 3), Parentage (Article 4), Registration (Article 5), Naturalisation (Article 6) and by incorporation of Territories (Article 7).<sup>4</sup>

### **The Assam Movement (1978-85) and Assam Accord**

The Assam movement was a popular movement against illegal migrants in Assam led by All Assam Students Union (AASU) and the 'All Assam Gana Sangram Parishad' (AAGSP). It called to unite all ethnic Assamese for the ouster of non-Assamese from the State of Assam. Both these organisations developed a program of protest and demonstration to compel the Indian Government to identify and expel illegal immigrants and protect and provide constitutional, legislative and administrative safeguards to the indigenous Assamese people. The six years of Assam Movement culminated with the signing of the Assam Accord in 1985. Key clauses of the Assam Accord are as under <sup>5</sup> :-

- **Clause 5.** As per Clause 5 of Assam Accord, the citizenship of Immigrants prior to 01 January 1966 was to be regularised. Those who had migrated between 01 Jan 66 to 24 March 1971 and their cases had been registered with Foreigners Tribunals, no voting rights were to be given for 10 years and citizenship was to be regularised thereafter. It mandated expulsion of illegal immigrants post 25 March 1971. The leaders of the Assam Movement demanded 1964 be the last date to be considered for regularisation of citizenship. However, the Indian Government wanted 1967 to be the last date therefore, 01 Jan 1966 was decided upon as a via media.

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3 Archana Subramanian, "Sealing the Deal", *The Hindu*, April 07, 2016, available at <https://www.thehindu.com/features/kids/delhi-pact-was-signed-between-india-and-pakistan-on-april-8-1950/article8446823.ece>, accessed on September 07, 2019.

4 The Citizen Act 1955, available at [https://indiacode.nic.in/bitstream/123456789/4210/1/Citizenship\\_Act\\_1955.pdf](https://indiacode.nic.in/bitstream/123456789/4210/1/Citizenship_Act_1955.pdf), accessed on September 07, 2019.

5 "Problems of Foreigner in Assam", available at [https://assamaccord.assam.gov.in/sites/default/files/swf\\_utility\\_folder/departments/assamaccord\\_medhassu\\_in\\_oid\\_3/portlet/level\\_1/files/The%20Assam%20Accord%20-%20English.pdf](https://assamaccord.assam.gov.in/sites/default/files/swf_utility_folder/departments/assamaccord_medhassu_in_oid_3/portlet/level_1/files/The%20Assam%20Accord%20-%20English.pdf), accessed on September 06, 2019.

- **Clause 6.** Clause 6 aims to protect preserve and promote cultural, social and linguistic identity and heritage of the Assamese people. However, the term ‘Assamese’ wasn’t defined as to which all communities will form part of it.
- **Additional Safeguards.** Additional safeguards under the Accord are: citizen certificate to be issued by Central Government, securing of the International Border (IB) and its continuous surveillance, prevention of encroachment of government land in tribal areas, and lastly, laws restricting the acquisition of immovable properties by foreigners.

## NRC Process and Developments

### Role of the Supreme Court

Even after the Assam Accord was put in place and signed, the process of detecting and deporting immigrants never took place officially. The only attempt at detecting foreigners by updating the National Register in Assam was through a pilot project which was started in two circles (referred to as Tehsil in some states), one in Kamrup district and another in Barpeta district in June 2010, which ended abruptly within four weeks amidst a huge law and order problem involving a mob attack on the Office of the Deputy Commissioner, Barpeta, that resulted in police firing killing of four persons.<sup>6</sup> Considering the volatile nature of the issue, for a long time, particularly after the experience of the pilot project, NRC update was considered almost an impossible task.

Abhijeet Sharma, president of Assam Public Works, an NGO, filed a writ petition based upon which the Supreme Court got involved in the process to update the NRC. The Supreme Court in December 2014 had set a time-frame to update the NRC, the pilot project of which was stalled in 2010.<sup>7</sup> The Supreme Court has been continuously monitoring the process of NRC and has been giving directions from time to time.

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6 “National Register of Citizens to be updated in Assam’ The Hindu, March 18,2013, available at <https://www.thehindu.com/todays-paper/tp-national/national-register-of-citizens-to-be-updated-in-assam/article4520748.ece>

7 Rajiv Konwar“ Couple who set NRC ball rolling” The Telegraph, July 31, 2018, available at <https://www.telegraphindia.com/states/north-east/couple-who-set-nrc-ball-rolling/cid/1456542> , accessed on September 06, 2019.

## **The NRC Process**

Though the NRC process started in 2013, the actual work on the ground commenced in February 2015 with the process of setting up of the NRC Seva Kendras and more than 3.29 crore people applied for inclusion of names in the NRC along with more than 6.6 crore documents. The first draft containing names of 1.90 crore applicants was published on 31 December 2017 followed by the process of verification of family trees or the legacy data and the certificates issued to married women by Panchayat secretaries. Many bogus and forged documents were detected in the process of verification and the family tree verification was considered to be the game-changer as in a large number of cases mismatches in family trees were detected.

Second, the complete draft was published 31 July 2018 and names of more than 40 lakh applicants were not included as they were not found to be eligible.<sup>8</sup> The final list of Assam NRC has been released and over 19 lakh people have been left out of the final NRC list.<sup>9</sup>

There has been a change of position by the major political parties as the time passed. When the updation of the NRC began in 2015 the Tarun Gogoi-led Congress Party was in power in the State. The political scenario had changed by the time its first draft was published on January 1, 2018 as the Bharatiya Janata Party (BJP) under Sarbananda Sonowal had come to power in Assam in 2016.<sup>10</sup>

## **Reaction of the Stake Holders**

During the publication of the second draft on 31 July 2018, the AASU had described the publication of the complete draft of the NRC as a “historic event” for Assam and extended much-needed protection to the indigenous people of the State. The AASU had also demanded that the electoral rolls of the State should

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8 R Dutta, “Events which made NRC a Reality” The Assam Tribune, July 31, 2018, available at <http://www.assamtribune.com/scripts/mdetails.asp?id=aug0118/at060>, accessed on September 06, 2019.

9 “Assam NRC list RELEASED! Over 19 lakh excluded” Financial Express, August 31, 2019, available at <https://www.financialexpress.com/india-news/assam-nrc-2019-final-list-how-to-check-names-in-national-register-of-citizens/1689833/>, accessed on September 10, 2019.

10 “NRC and changing stands of political parties”, India Today, August 30, 2019, available at <https://www.indiatoday.in/india/story/nrc-and-changing-stands-of-political-parties-1593676-2019-08-30> accessed on September 4, 2019.



be revised based on it and photo identity cards should be provided to the Indian citizens living in the State. AASU chief adviser Samujjal Bhattacharya had stated that the students' body would extend full support to any Indian citizen if his or her name does not appear in the NRC during the process of filing of claims and objections and cautioned that no one should try to give communal or linguistic colour to the process of updating the NRC.<sup>11</sup>

However, after the publication of the third and final draft on 31 August 2019, there was widespread anger and sense of betrayal among the political parties and the stakeholders. There has been demand for 20 percent re-verification (bordering districts) and 10 percent re-verification (remaining districts) for a correct and a fair NRC. As a way forward, 200 Foreigners Tribunals will be set up to hear the appeal of those who failed to make in final NRC list. The Foreign Tribunals have the authority to either declare a person foreigner or overrule the NRC Findings and declare him or her an Indian.

However, several stakeholders like Assam Public Works and All Assam Students' Union feel that the outcome of the updation exercise failed in its objective to identify the foreigners. The low percentage of exclusion of Bengali-speaking Muslims migrant majority districts particularly districts bordering Bangladesh has given a belief to those calling NRC as flawed that most illegal migrants have made it into the NRC. Whereas it is also alleged that names of many Indian Citizens who migrated from Bangladesh as refugees prior to 1971 have not been included in the NRC because the authority refused to accept their refugee certificate. There have been also reports of manipulation of legacy data. Hence, though the final list has been published, anomalies still persist.<sup>12</sup>

### **Present Status**

The final list of the updated NRC in Assam left out over 19 lakh people, almost half of the 40 lakh people excluded in the final draft published last year. Out of 3.3 crore applicants, a total of 3,11,21,004 persons were found eligible for inclusion in the

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11 "The Historic Event says AASU" The Assam Tribune, 30 July 2018. Available at <http://www.assamtribune.com/scripts/detailsnew.asp?id=jul3118/at059> . Accessed on 04 August 2018.

12 Prabin Kalita, "19 lakh left out, final Assam NRC elicits anger & sense of betrayal", The Times of India, September 01, 2019, available at <https://timesofindia.indiatimes.com/india/19-lakh-left-out-final-assam-nrc-elicits-anger-sense-of-betrayal/articleshow/70930061.cms>, accessed on September 10, 2018.

final NRC.<sup>13</sup> The complete list of 3,11,21,004 people, who have been found eligible for inclusion in the NRC has been put in the public domain in September 2019. However, those rejected will have to wait to get their certificate of rejection. It is mandatory for the rejected persons who have to appeal in the Foreigners Tribunal to submit a certified copy of the NRC citing the reasons for their exclusion to the tribunal along with the documents in support of their inclusion.<sup>14</sup>

## **Challenges of the NRC**

### **Status of those who are Excluded**

A total of 31.1 million people were included in the National Register of Citizens (NRC), leaving out 1.9 million people, according to a statement from the Assam Government. Those who do not find their names on the final list will be allowed to prove their citizenship first in quasi-judicial courts — known as Foreigner Tribunals (FT) — and subsequently in higher courts. Those excluded would not be considered foreigners until they exhaust all their legal options. The Government announced in Aug 2019 that People will get 120 days to appeal. Up to 200 more FTs are expected to be set up on top of the existing 100. There are apprehensions that the people who do not find their names on the list might face possible jail term or deportation, and their voting and other civil rights will be snatched away. Nearly 1,000 people are currently lodged in six detention centers located in the existing district jails. The Government has already announced its plan to build 10 more detention centers. India has not raised the issue of deportation with Bangladesh and activists fear people might be held ‘indefinitely’ in detention centers.<sup>15</sup>

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13 Assam NRC Final List 2019 out How to check if your name is on National Register of Citizens” The Indian Express , 14, 2019, available at <https://indianexpress.com/article/india/how-to-check-names-in-final-draft-of-assam-national-register-of-citizens-5949823/>, accessed on September 19, 2019.

14 Prabin Kalita, “Complete NRC list to be available online on September 14” The Times of India, September 11, 2019, available at <https://timesofindia.indiatimes.com/city/guwahati/complete-nrc-list-to-be-available-online-on-september-14/articleshow/71076072.cms>, accessed on September 18, 2019.

15 Saif Khalid, “India publishes final NRC: All you need to know on citizens’ list” News/India, August 31, 2019, available at <https://www.aljazeera.com/news/2019/08/final-nrc-list-india-assam-190829133456422.html>, accessed on September 10, 2019.

## **Re-Verification**

The Government in Assam had earlier reiterated its demand for a sample re-verification to ascertain the credibility of the complete draft NRC, citing flaws in the design of the process and possible misuse of documents by illegal immigrants. A similar demand for a complete re-verification has been made by the Assam Public Works in a case in the Supreme Court. Abhijeet Sarma of the Assam Public Works, the main petitioner in the case, said they are going to demand a complete re-verification in 22 districts. In his report, the state coordinator has raised certain apprehensions of probable misuse of some documents like ration cards, refugee registration and citizenship certificates, which can be forged.<sup>16</sup> Now with the final list having been published, there are again demands of selected re-verification of the districts bordering Bangladesh

## **Question on Change of Legacy**

Earlier, the Supreme Court had asked the Union Government whether it was giving the over 40 lakh people, excluded from the NRC in Assam, a second chance to gain citizenship by allowing them to produce fresh documents to prove their Indian legacy. The Court was referring to the Standard Operating Procedure (SOP) proposed by the Government, which allows a claimant for Indian citizenship to change his legacy by submitting additional documents at the 'claims and objections' stage. The Court asked whether this would amount to 're-doing the claims' of those left out from the draft NRC published on July 30, 2018. A Bench consisting of Justice Ranjan Gogoi and Justice Rohinton Nariman said that allowing a claimant to change his legacy would amount to "tinkering with the family tree" and re-doing the verification process. Besides, the Bench pointed out, the Government, in the beginning, had specified that documents on legacy would be allowed to be filed only once. Now, it has changed track to permit additional documents to be filed. This is after Mr. Hajela placed before the Bench a district-wise data of the percentage of the population who have been excluded from the final draft NRC.<sup>17</sup> With the final list of NRC having been published, there are

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16 Sadiq Naquvi, "Assam govt demands re-verification of NRC draft" February 25, 2019, available at <https://www.hindustantimes.com/india-news/assam-govt-demands-re-verification-of-nrc-draft/story-eR12eB1LHBcB4FwM4jA0WN.html>

17 Krishnadas Rajagopal, "SC questions second chance for those left out of NRC Assam" The Hindu, August 28, 2018, available at <https://www.thehindu.com/news/national/assam-nrc-sc-asks-centre-whether-those-left-out-are-getting-a-second-chance/article24802283.ece>

demands for re-verification. The issue of legacy data will again come to limelight and questions will be raised on its change.

### **The Citizen Amendment Bill and the NRC**

The Citizenship (Amendment) Bill, 2019 (CAB) had led to protests in the North-East after its passage in the Lok Sabha. Opposition to the bill stems from fears that it will give legitimacy to illegal migrants in India. The CAB in its present form intends to reduce the gestation period for becoming an Indian citizen — from the existing 12 continuous years out of the last 14 in India to 6 years of continuous residence — for the victims of ‘religious persecution’ from Afghanistan, Bangladesh, and Pakistan. Critics argue its selective criterion based on religion for grant of citizenship in India, and importantly, the proposed amendment when read together with The Passport (Entry into India) Amendment Rules, 2015 and The Foreigners (Amendment) Order, 2015, technically allows the cut-off date for citizenship to be December 31, 2014. This is a drastic change from the provisions of the Citizenship Act of 1955 that label a person an ‘illegal immigrant’ if he or she has entered India without travel documents or has overstayed the date specified in the documents. Assamese organisations feel that as a result of the bill the burden of illegal migrants will be passed on to the state alone.<sup>18</sup>

There are differing views on the CAB and the NRC. One view is that the Citizenship bill and NRC are not the same things. Citizenship will be given only after due scrutiny and recommendation of district authorities and the State Government. The minimum residency period for citizenship is being reduced from the existing 12 years under the present law to 7 years. The law will not be confined to the state of Assam but will also provide relief to persecuted migrants who have come through western borders of the country to states like Gujarat, Rajasthan, Delhi, Madhya Pradesh. The beneficiaries of CAB can reside in any state of the country and the burden of those persecuted migrants will be shared by the whole country.

The other view and the general sentiment in Assam concerning the bill have been that it will defeat the purpose of the NRC, satting that the decision of the Centre to push through the CAB 2016 against the wishes of the people of Assam will result in the migration of millions of Bangladeshi Hindus to Assam. The Asom Gana

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18 Shaswati Das, “Why citizenship amendment bill has created a row”, Live Mint, available at <https://www.livemint.com/Politics/8s04csNIip4FDDhKoMGpCp/Why-citizenship-amendment-bill-has-created-a-row.html>

Parishad (AGP), which was formed by leaders of the Assam Agitation, walked out of the BJP-led government in Assam after the Cabinet green-lighted the amendment. According to Samujjal Bhattacharya, a leader at the forefront of the fight against illegal migration, the bill violates the Assam Accord and is an anti-indigenous people legislation.<sup>19</sup> The CAB 2016 has witnessed mixed opinions from the masses. One opinion states that it saves the victims of partition, i.e. Bengali Hindus. There has been open persecution of religious minorities by Islamic extremists in some of our neighbourhood countries. Such individuals who have left their state are stateless for years. However, there are stronger views against it. There are no clauses for persecuted Muslim minorities - Shias, Ahmadiyas and Balooch ethnicity.

Mr. Rajnath Singh, who had piloted the Bill, argued that the proposed amendments in the law were not against the provisions of the Constitution and would provide succour to persecuted minorities in the three neighbouring countries. Several opposition members, including those of the Trinamool Congress, Congress, and Left parties, felt that the Bill was potentially divisive, and would push demographically sensitive Assam and West Bengal. The AGP, a partner in the BJP-led Assam Government, broke up with the BJP while the National Democratic Alliance (NDA) allies, the Shiv Sena and the JD (U), have opposed this legislation. Mizoram and Meghalaya Governments have opposed the Bill by adopting a resolution against it in their respective cabinets.<sup>20</sup>

### **Legal Contradictions**

There are views that if CAB becomes an act, it goes against Clause 5 (expulsion of foreigners) and Clause 6 (safeguard of interest of Assamese) of the Assam Accord. It will also amount to discrimination based on religious grounds which is against Article 14 of the constitution that debar discrimination based on caste, creed, sex or religion. It would result in a further fragmentation in the society. The present Government is however firm about passing CAB for larger peace and justice.

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19 “Explained: Citizenship (Amendment) Bill vs NRC vs Clause 6 of Assam Accord”, Business Standard, January 9, 2019, available at [https://www.business-standard.com/article/current-affairs/explained-citizenship-amendment-bill-vs-nrc-vs-clause-6-of-assam-accord-119010900621\\_1.html](https://www.business-standard.com/article/current-affairs/explained-citizenship-amendment-bill-vs-nrc-vs-clause-6-of-assam-accord-119010900621_1.html), accessed on September 10, 2019

20 “Bill on citizenship to non-Muslim immigrants cleared in Lok Sabha”, Business Standard, January 8, 2019, available at [https://www.business-standard.com/article/economy-policy/bill-on-citizenship-to-non-muslim-immigrants-cleared-in-lok-sabha-119010801317\\_1.html](https://www.business-standard.com/article/economy-policy/bill-on-citizenship-to-non-muslim-immigrants-cleared-in-lok-sabha-119010801317_1.html), accessed on September 10, 2019

## **The Reaction of the North Eastern States**

The issue has resurfaced, even after the reassurance of the Union Home Minister Amit Shah during the fourth conclave of the North East Democratic Alliance (NEDA) that the North Eastern Regions have nothing to fear about the CAB and it would not dilute the existing laws and regulations, including state laws, for protecting the cultural, linguistic and other rights of local people. The North East Forum for Indigenous People (NEFIP), a conglomerate of different organisations from the eight North Eastern States, while welcoming Shah's assurances, also termed such efforts as "empty and misleading" and exhibiting "double standard". The very concept of CAB was an attempt to naturalise the citizenship of illegal immigrants in the region. "We strongly oppose the proposed bill in its present form that seeks to make drastic changes in the citizenship and immigration norms of the country by relaxing the criteria to become an Indian citizen," said NEFIP leader Khurajam Athouba. The AASU, while criticising the silent stance adopted by Assam Chief Minister Sarbananda Sonowal and the AGP leadership at the NEDA meet, reiterated its commitment to oppose the Bill and continue its agitation. Speaking at the NEDA conclave, Meghalaya Chief Minister Conrad Sangma said the Northeast had fears regarding the Citizenship Bill and urged the Home Minister to take all the states of the region into confidence before re-introducing the legislation. It was then assured that the CAB will not override the existing provisions of the Sixth Schedule of the Constitution or the provisions of the Inner Line Permit (ILP).<sup>21 22</sup>

## **The CAB vs the NRC**

The Citizen Amendment Bill seeks to facilitate the acquisition of citizenship by six identified minority communities, namely Hindus, Sikhs, Jains, Buddhists, Christians and Parsis from Afghanistan, Pakistan and Bangladesh who came to India before December 31, 2014. Migrants from these communities were earlier given protection against legal action in the years 2015 & 2016 and long term visa

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21 Inner Line Permits an official document issued by the state governments that allows inward travel of a citizen into certain areas for a limited period. It is currently in force in Arunachal Pradesh, Nagaland and Mizoram.

22 Karishma Hasnat, As Centre Gears up to Re-introduce Citizenship Bill, Northeast Groups Vow to Renew Agitation, News 18, September 11, 2019, available at <https://www.news18.com/news/india/as-centre-gears-up-to-re-introduce-citizenship-bill-northeast-groups-vow-to-renew-agitation-2305477.html>, accessed on September 19, 2019.

provision was made for them. Citizenship will be given to them only after due scrutiny and recommendation of district authorities and the State Government. The minimum residency period for citizenship is being reduced from the existing 12 years under the present law to seven years. The law will not be confined to the state of Assam but will also provide relief to persecuted migrants who have come through western borders of the country to states like Gujarat, Rajasthan, Delhi, Madhya Pradesh. The beneficiaries of CAB can reside in any state of the country and the burden of those persecuted migrants will be shared by the whole country. Whereas, the NRC is a roster of all those who settled in Assam up to the midnight of March 24, 1971. The Assam Accord mandated that those who settled in the state after the cut-off date of March 24, 1971, would be weeded out and stripped of citizenship rights. The general sentiment in Assam with respect to the CAB has been that it will defeat the purpose of the NRC and will result in the migration of millions of Bangladeshi Hindus to Assam.<sup>23</sup> However, Union Home Minister, Amit Shah, asserted that the Government would ensure that not a single (non-Muslim) refugee is driven out by first passing the CAB.<sup>24</sup>

## **Challenges and Way Forward**

### **Uncertain Future**

The future of over 19 lakh people is uncertain after the publication of the final list on August 2019. Amnesty International India expressed its deep concerns about the functioning of the 100 and more Foreigners Tribunals, which will decide whether those excluded from the NRC list are Indian citizens or not. It has urged the Assam Government to ensure that the Foreigners Tribunals function with utmost transparency and are in line with the fair trial standards guaranteed under national and international law.<sup>25</sup> Under the provisions of Foreigners Act, 1946, and Foreigners Tribunal Order, 1964, only the tribunals are empowered to declare

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23 “Explained: Citizenship (Amendment) Bill vs NRC vs Clause 6 of Assam Accord” Business Standard, January 09, 2019, available at [https://www.business-standard.com/article/current-affairs/explained-citizenship-amendment-bill-vs-nrc-vs-clause-6-of-assam-accord-119010900621\\_1.html](https://www.business-standard.com/article/current-affairs/explained-citizenship-amendment-bill-vs-nrc-vs-clause-6-of-assam-accord-119010900621_1.html), accessed on September 19, 2019.

24 Rohit Khanna, “Will Bring Citizen Amendment Bill Before NRC” The Times of India, October 02, 2019, available at <https://timesofindia.indiatimes.com/india/will-bring-citizenship-bill-before-nrc-amit-shah/articleshow/71401277.cms>, accessed on October 02, 2019.

25 “Uncertain destiny for millions post NRC in Assam: Amnesty International expresses deep concern” India Today, August 31, 2019, available at <https://www.indiatoday.in/india/story/amnesty-international-assam-nrc-1593818-2019-08-31>, accessed on September 24, 2019.

a person as a foreigner. Hence, non-inclusion of a person's name in the final list of the NRC does not by itself amount to him/her being declared a foreigner.<sup>26</sup>

People who are not included in the NRC fear that they might become stateless as there has been no specific policy in ascertaining their fate. The possibility of deportation to Bangladesh is very bleak as the people excluded from the list should be proven citizens of Bangladesh, and that will require cooperation from that country. Dhaka has been categorical on its stance on the infiltration issue. The option of push-back is neither desired nor helpful in preventing infiltration. Previous experiences indicate that those who were pushed back, returned within few days. It may only harm warm ties between India and Bangladesh which both neighbours would like to avoid.<sup>27</sup>

### **Categories of People**

After settling of all complaints and the publication of the updated NRC of Assam, there will be three categories of people. These categories are: (1) the people who were domiciled in India at the time of the Constitution; (2) the migrants who came to India after the enactment of the Constitution till March 24, 1971 by whatever means and continued to stay here thereafter; and (3) the migrants who came to India from March 25, 1971 till date. Migrants who came to India on and after 1971 are foreign nationals and liable for appropriate action for expulsion (except the children born in India till 2014 as defined in the Citizenship Act).

The critical question will be of the people who are finally declared as illegal migrants as indicated in the third category. As discussed earlier, Bangladesh is unlikely to accept them. Then they become India's liability and there is a need to follow international human rights requirements, i.e to give them opportunities to earn a livelihood for survival, the dignity of existence and opportunities for their children's future career. In such circumstances, the Government of India will have to treat them as a special category of foreigners and ensure their human rights.

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26 Hemanta Kumar Nath, "Assam NRC final status of accepted, excluded people published online" available at <https://www.indiatoday.in/india/story/assam-nrc-final-status-of-accepted-excluded-citizens-published-online-1599054-2019-09-14>, accessed on September 24, 2019.

27 Joyeeta Bhattacharjee, "Promises behind the National Register of Citizens of India: Issues and challenges" ORF, April 30, 2019, available at <https://www.orfonline.org/expert-speak/promises-behind-the-national-register-of-citizens-of-india-issues-and-challenges-50247/>, accessed on September 24, 2019.



The second category, i.e. those who are in the stream of migrants entering India after India adopted the Constitution till March 24, 1971 and continued thereafter, all of them will be citizens of India in terms of the Assam Accord, and will be entitled to all the rights of citizens.<sup>28</sup>

### **India Bangladesh Relations**

The biggest fallout of NRC update could be India's relation with Bangladesh. which has been on the upswing since Sheikh Hasina took over since January 2009. She has addressed all of India's security concerns like connectivity, driving out North Eastern rebels, providing transit facilities, etc. However, the stated aim of the NRC exercise is to detect all non-citizens, defined by the provisions of the Assam Accord of 1985. According to the accord, anyone who cannot prove that they or their ancestors had entered the state before the midnight of March 24, 1971, will be counted as an illegal migrant. The cut-off date coincides with the start of the Bangladesh war, which triggered a wave of migration into Assam.

These illegal migrants will not be acceptable to Bangladesh and would lead to strained relation with Bangladesh. Information Minister of Bangladesh was quick to react on publication of second NRC update in 2018, and stated that NRC is India's internal problem, which means all those have not found a place in NRC are not Bangladeshi. Bangladesh affirms that there has been no large-scale migration to Assam in the last 30 years. In bilateral engagements between the two countries, India has not officially approached Bangladesh; it does not want to upset ties with the current dispensation in Bangladesh.<sup>29</sup>

However, Gowher Rizvi, the advisor to Bangladeshi Prime Minister Sheikh Hasina, had made a statement that his country would take back all Bangladeshi nationals living illegally in India, if India successfully proves that the illegal immigrants are Bangladeshi nationals<sup>30</sup> which will remain a challenge for India. Prime Minister

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28 Harekrishna Deka, The questions & fate of foreign nationals post-NRC, Northeast Now, July 14, 2018, available <https://nenow.in/north-east-news/the-questions-fate-of-foreign-nationals-post-nrc.html>, accessed on September 24, 2019.

29 "Subir Bhaumik", "NRC in Assam: Why India – Bangladesh Ties may take a Hit/Opinion" Outlook, 01 August 2018, available at <https://www.outlookindia.com/website/story/assams-nrc-opens-a-pandoras-box/314312>, accessed on September 24, 2019.

30 "Bangladesh will take illegal immigrants but India must prove they are ours: Rizvi" India Today, October 05, 2018, available at <https://www.indiatoday.in/india/story/bangladesh-will-take-illegal-immigrants-but-india-has-to-prove-they-are-ours-gowher-rizvi-1356715-2018-10-05>, accessed on September 20, 2019, accessed on September 24, 2019.

Sheikh Hasina's ruling party had won Bangladesh's election with a thumping majority, the country's Election Commission said early on 31 December 2018, giving her a third straight term. Acceptance of illegal migrants by Bangladesh still remains a question. With deportation being off the table, an old proposal of granting work permits to non-citizens in Assam and neighbouring states of the North East, is an option.

### **Work Permit**

India will endeavour to deport illegal migrants as per the international law. If that become difficult then an old proposal of granting work permits to non-citizens may be a viable option. Meghalaya's Chief Minister, Conrad K Sangma, suggested work permits for migrants during a meeting in Delhi with the then External Affairs Minister, Late Sushma Swaraj, insisting that it was an idea that ought to be discussed by all North Eastern states grappling with so-called illegal immigration. Many of Assam's neighbouring states, such as Meghalaya and Manipur, have in the past expressed apprehensions that NRC-rejects from the state may flock to other parts of the North East. One of the first proponents of a work permit regime in the North East was journalist and author Sanjoy Hazarika who wrote about it in his 2000 book, "Rites of Passage". Hazarika envisioned a provision to "enable a formal temporary entry" for economic migrants into the North East, without giving settlement or permanent rights" but with "basic human rights including access to legal redressal mechanisms, healthcare and education".

The All Assam Minority Students' Union's Ainuddin Ahmed had earlier stated that while it ideally wanted illegal migrants to be deported, it did not object to a work permit-based resolution to the problem as long as it was within the ambit of the Indian Constitution. He felt that it was a better approach than putting people in detention camps. Academician Sanjib Baruah, however, raised questions about granting work permits to people left out of the updated citizenry as work-permit regimes functioned on the premise that the person has rights of full citizenship in another country<sup>31</sup>. It is becoming clear that Bangladesh is not in a position to take back people who will be declared illegal migrants/foreigners, granting work permit to these people may be an option.

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31 Arunabh Saikia, "As Assam prepares to declare thousands illegal immigrants, the idea of work permits gains currency" Scroll.in, May07,2018, available at <https://scroll.in/article/877591/as-assam-prepares-to-declare-thousands-illegal-immigrants-the-idea-of-work-permits-gains-currency>, accessed on September 20, 2019

### **Citizen Amendment Bill - a Necessity**

With the final list of NRC has been published questions are being raised about CAB 2016. The Citizenship (Amendment) Bill, 2016, which aimed to provide citizenship to people forced to seek shelter in India because of religious persecution or fear of persecution in their home countries, has led to incidents of violence in the North East. The Bill was supposed to help Hindus, Sikhs, Jains, Buddhists, Parsis and Christians from Afghanistan, Pakistan and Bangladesh. Critics feel that this bill goes against the Indian Constitution as the very idea of India citizenship is being defined in religious terms which is against Article 15 of our Constitution that there cannot be discrimination on the basis of religion.<sup>32</sup> Whereas, the proponent of the Bill feel that this Bill need to be introduced to give justice to the religiously persecuted people.

The move followed the news of that the National Register of Citizens does not have names of 1,906,657 people, a majority of whom are believed to be Hindus. A large number of Hindus and other local communities have been excluded from NRC. The supporter of the Bill insists that the Centre should reintroduce the CAB by December, immediately after the appeal at the foreigners' tribunal is completed. To complete the NRC, CAB needs to be passed and issues of these refugees to be settled along with the NRC. The enactment of CAB for the protection of individuals of religious minority communities from neighbouring countries escaping persecution is also important to complete the process of NRC.<sup>33</sup> North Eastern states have their apprehension about CAB, their concerns need to be taken care of. The matter is complex and sensitive; therefore, need a deliberated comprehensive, collaborated approach for larger peace and Justice in the North Eastern Region.

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32 Pretika Khana, "Citizenship bill an attack on the very idea of India: Yogendra Yadav", Live Mint, January 24, 2019, available at <https://www.livemint.com/Politics/T6havyT7pf7WQiPANaNaXZJ/Citizenship-bill-an-attack-on-the-very-idea-of-India-Yogend.html>, accessed on September 19, 2019

33 Bikash Singh, "RSS to ask for the reintroduction of Citizenship Amendment Bill", The Economic Times, September 14, 2019, available at <https://economictimes.indiatimes.com/news/politics-and-nation/rss-to-ask-for-reintroduction-of-citizenship-amendment-bill/articleshow/70969254.cms>, accessed on September 19, 2019

## **Conclusion**

Nearly 32 years after the Assam Accord was signed, the final draft of NRC has come out in which total of 31.1 million people were included in the NRC leaving out 1.9 million people. There was a mixed reaction by the various stakeholders and political parties. The government in Assam has reiterated its demand for a sample re-verification to ascertain the credibility of the complete draft NRC, citing flaws in the design of the process and possible misuse of documents by illegal immigrants. The questions are also being raised about the change of legacy by submitting additional documents at the 'claims and objections' stage. Even illegal migrants need to be given opportunities to earn a livelihood for survival, the dignity of existence and opportunities for their children's future career. The demands are also being raised for the introduction of CAB and it is being advocated that without it the NRC would not be complete.

The biggest challenge will remain as regards the future of illegal migrants. The migrants who came to India on or after 1971 are foreign nationals and liable for appropriate action for expulsion (except the children born in India till 2014 as defined in the Citizenship Act). Bangladesh is unlikely to accept these illegal migrants quoting that this is India's internal problem. Then they become India's liability and India has to follow international human rights requirements. With deportation being off the table, at least for the time being, an old proposal of granting work permits to non-citizens is gaining currency yet again in Assam and neighbouring states of the North East.

Any new step invites appreciation or challenges. NRC in Assam was also an experimental device to curb the menace of the illegal influx of population from the neighbouring countries. Taking a cue from this, many States in India is also expressing the desire to implement NRC to check on the flow of illegal immigrants from other countries.

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The defining feature of VIF lies in its provision of core institutional support which enables the organisation to be flexible in its approach and proactive in changing circumstances, with a long-term focus on India's strategic, developmental and civilisational interests. The VIF aims to channelise fresh insights and decades of experience harnessed from its faculty into fostering actionable ideas for the nation's stakeholders.

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