



Does the Law   
and Constitution Decide?



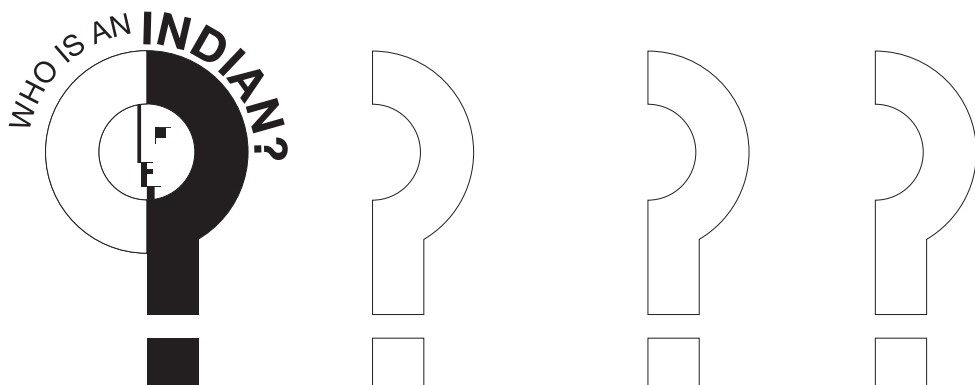


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## Does the Law and Constitution Decide?

### NRC: A Short History

The whole issue of CITIZENSHIP is core to any person's existence and has therefore been defined as the right to have rights.

CITIZENSHIP in many ways defines the relationship between the individual and the state. India, when it became Independent (1947) and thereafter when it firmly rooted itself in an inclusive and composite nationhood (Articles 5 to 11 of the Indian Constitution outline the basis of Indian citizenship), in 1950 accepted that all people of all faiths, creeds, castes, languages and genders, equally and without discrimination are Indians.

Over the past six years, at an all India level, there are clear political moves to fundamentally redefine this Constitutional basis. First, with the proposed Citizenship Amendment Bill (that lapsed in 2016 and is proposed to be re-introduced in the 2019 Winter Session of Parliament) and second through a hurried, and not properly implemented All India-level National Register of Citizens (NRC) process. It is crucial, therefore, that every Indian understands the issues around this debate that have the potential, at least, of causing huge upheavals within Indian society. Already, panic has set in, in many cities, states and regions; hence a detailed understanding of these issues is crucial. Assam, one of the seven states in the north eastern part of India has already been grappling with a similar process; at its most intense since 2013. Nearby Bengal, replete with the heart-wrenching accounts of what different sections of Assam's population have been put through, especially its linguistic and religious minorities, has marked over 11 deaths, through suicide and trauma, in the past three months alone. Maharashtra has announced the setting up of a Detention Camp outside Mumbai. Karnataka has not only announced the setting up of a Detention Camp but also started initiating action against "illegal Bangladeshis."

Citizens for Justice & Peace (CJP), a human rights movement dedicated to upholding and defending our fundamental freedoms, in the courts and beyond, has been working 24 X 7, on this crucial issue since 2017. In Assam our dedicated team of over 700 volunteers has helped thousands of persons navigate the difficult NRC process, filing forms and lining up before NRC kendras; counseling those excluded and saving lives; fighting for legal rights in Foreigners Tribunals and the higher courts (<https://cjp.org.in/assam/>).

Now CJP has stepped in all over India. With a presence in all states of India, CJP has been holding mass public meetings, trainings of activists and community leaders, distributing materials on the Issue of an All India NRC and the Citizenship Question. Meetings have taken place in Mumbai, Malegaon, Bengaluru, Hyderabad, Kolkata, Puri, Uttar Pradesh and Delhi. CJP draws its strength from the commitment of people like you - people who are determined to protect the rights of every individual, especially the weak and marginalized (<https://cjp.org.in/friend/>). Contact us for trainings, meetings and materials at [cjpinindia@gmail.com](mailto:cjpinindia@gmail.com) or through our website ([cjp.org.in](https://cjp.org.in)) (<https://cjp.org.in/volunteer/>)

In an unprecedented show of unity, on September 6, 2019, the West Bengal Legislative Assembly passed a resolution opposing the National Register of Citizens (NRC) in Assam. The resolution also categorically ruled out the possibility of any such exercise in the State. The resolution tabled under Rule 185 of the Rules of Procedures of Conduct of Business of the House was supported by members of the Trinamool Congress from the Treasury benches and legislators of the Left parties and the Congress from the Opposition benches. Only a handful of BJP members opposed the resolution, which was passed after a three-hour debate.

Assam's tortuous experience with the NRC process is crucial to informing a national debate. What began as a consensual exercise with several stake holders –faced with turmoil and targeting – has today deteriorated into a politically and bureaucratically manipulative exercise that has excluded (in the last final list) over 19 lakh people. Before that, in December 2017 over 1.2 crore persons had been excluded, then by July 31, 2018 44 lakh stood out in the cold. With each round, every person and family subject to this exclusion –including the family of Assam state assembly's first deputy speaker, men who had enrolled in the Indian Army and fought against the enemies in wars, women and children who possessed all documents but were faced with the a state determined to 'meet targets' when it came to showing how many 'illegal immigrants exist' faced untold hardships.

The Assam NRC Updation process continues to throw up individual horror stories. The human and material costs to the most marginalized sections within Assam have been huge. Close to 100 deaths through suicide or

trauma (in and out of Detention Camps) have been documented by CJP. The fate of those excluded from citizenship is left to Assam's Foreigners Tribunals (FTs) that have a poor and unprofessional record. Once a FT declares a person a foreigner there is a chance that they could be sent to a Detention Camp. So far there have been 27 deaths in Assam's six Detention Camps where over 2,000 persons are held, without regular prisoner's rights.

Watch this video to know more, [Behind Shadows: Tales of Injustice from Assam's Detention camps](#)

Given all these dimensions that have a direct bearing on a person's human rights, the National Register of Citizens presently being implemented in Assam and likely to be extended to other parts of the country needs to be understood in a politico-legal, historical context.

- Part One: All India & Assam: What is Citizenship?
- Part Two: Assam: What has the experience of the NRC updation process meant for the state of Assam, the only state that has so far executed such a process?
- Part Three: All India: What is the National Population Register (NPR), enumeration of which will begin on April 2020 and be completed in September 2020?
- Part Four: All India: What is the National Register of Citizens and what is its legal basis? What does a nationwide NRC mean for Indians?
- Part Five: Proposed Action: Should Indians of all hues, including those in Opposition Political Parties, not insist on Clarity and Discussion on aspects that follow after the enumeration of the NPR? Does the NPR necessarily lead to an All India NRC?

It is these questions that this pamphlet will attempt to answer. Citizens for Justice and Peace ([cjp.org.in](http://cjp.org.in), [cjvindia@gmail.com](mailto:cjvindia@gmail.com)) has been at the forefront of battling this crisis in Assam over the past three years. Details of these activities are given at the end of this pamphlet. Over the past few months, as a nationwide panic has built up over a 'nationwide' NRC, CJP has been invited to Kolkata (Bengal), Malegaon, Bhiwandi (Maharashtra), Hyderabad (Telangana) to address meetings and train and educate citizens around the issue. Needlessly aggressive statements emanating from politicians in constitutional posts, as also the states of Karnataka and Maharashtra, undertaking not very transparent measures against "illegal immigrants" and even setting up Detention Camps, has not helped. This pamphlet is being published with the conviction that legal and constitutional awareness is core to all human rights issues, citizenship being one of them. Each and every one of us needs to be equipped and informed about processes underway so

## PART ONE: ALL INDIA & ASSAM:



that we are prepared to enforce our fundamental rights.

### What is Citizenship?

**Citizens' Rights:** Apart from voting rights, citizens are entitled to various fundamental rights such as equality, speech and expression, non-discrimination, freedom of assembly, freedom of religion, etc. They have a right to permanently reside in India, while foreigners do not have that privilege. Citizens have a right to vote, and a democratic state's policy is built with the welfare of its people in mind. Most state welfare schemes are only meant for citizens.

Foreigners are only entitled to the fundamental right of life and personal liberty. The United Nations Refugee Convention, 1951 and Protocol of 1967 grant protection to refugees who are persecuted in their own countries, India is not a signatory to either of these. Besides, India does not allow political asylum. However, India made some exceptions such as earlier, in the case of Tibetans through giving them registration certificates under the Foreigners Registration Act.

Simply put, to repeat, citizenship gives us the right to have rights. The Constitution of India covers citizenship in its Part II of which, Article 11 speaks about the future and allows the parliament to enact laws concerning citizenship. Citizenship is dealt with under Articles 5 to 11 of the Constitution of India.

Articles 5 to 10 deal with citizenship at the time of the coming into force of the Constitution i.e. 26.1.1950. It is essentially by birth, with certain provisions concerning migration. But this is not very relevant for our purposes as this is frozen at the time of coming into force of the Constitution.

Article 11 speaks about the future and allows the Parliament to enact laws concerning citizenship.

## All-India

Under the Citizenship Act, 1955, there are 5 methods of acquiring citizenship:

- a) by birth
- b) by descent (those born outside India from Indian citizen parents)
- c) by registration
- d) by naturalisation (being ordinarily resident in India for twelve years)
- e) by acquisition of territory (e.g., Sikkim)

If not born in India the major way of acquiring citizenship is through naturalisation or registration. However, both these methods are not available to 'illegal migrants'.

Under the Citizenship Act, an illegal migrant is defined as any person who entered India without a valid passport or travel document or having entered India with a valid passport or travel document has stayed behind after its expiry (section 2(1)(b)). For example, a Bangladeshi who is alleged to have crossed over into India without a passport or valid travel document can never acquire Indian citizenship (except under certain circumstances, such as if the entry is into Assam before March 25, 1971)

As far as citizenship by birth is concerned there have been subsequent amendments.

**Before 1987:** Any person born before July 1, 1987 in India is automatically entitled to Indian citizenship irrespective of who that person's parents are or where they were born and even if they are illegal migrants.

**1987-2004:** For those persons born in India between July 1, 1987 and December 3, 2004, they will be entitled to Indian citizenship by birth provided one of the parents was an Indian citizen at the time of birth.

**After 2004:** Those born in India after December, 2004 will get Indian citizenship provided both of their parents are citizens of India, or either parent is a citizen of India as long as the other is not an illegal migrant. Thus, children born after December 3, 2004 will be prevented from acquiring citizenship in India if either one of the parents is considered an illegal migrant.

In a nutshell, for those of us who are born before July 1, 1987, it is enough to prove that we were born in India to get citizenship. For those of us born

between July 1, 1987 and December 3, 2004 in India, we must be born here and one of our parents has to be a citizen of India at the time of our birth. For those of us born after December 3, 2004 in India not only one of our parents has to be a citizen of India at the time of our birth but the other parent should not be an illegal migrant.



## Assam

Due to the Assam agitation in the late 1970s and early 1980s, an Act called Illegal Migrants (Determination by Tribunals) Act, 1983 was passed. Though it applied automatically to Assam, it was an all India Act but would be made applicable to other parts of India as and when the Central Government decided to extend it. This was never done. The Act treated an illegal migrant as one who entered India after March 25, 1971, without a passport or other valid travel documents, as a foreigner. Tribunals were to be established under this Act. One of the major issues was that reversing the procedure under the Foreigner Tribunal order, the IMDT Act reversed the burden of proof away from the person alleged to be a foreigner.

IMDT Act Struck down: The Act was challenged by Sarbananda Sonowal (CM in 2016, still CM in 2019) and in 2005 the Act was struck down as unconstitutional mainly because of the shifting of the burden of proof as also for other reasons. Once this happened, the Central Government amended the Foreigners Tribunal Order, 1964 to say that the said Order will not apply to Assam. A separate Order was issued for Assam constituting different tribunals for detecting foreigners. Even this was challenged by Sonowal and even these Orders were struck down by the Supreme Court in 2007. As a result, the Foreigners Tribunal Order, 1964 applies to Assam and Foreigners Tribunals are constituted in Assam under this Order.

In 1985 the Assam Accord was signed. Consequently in 1987 the Citizenship Act, 1955 was amended to include Section 6A only for Assam. This Section provides

- (a) that for the State of Assam all those persons who came from erstwhile East Pakistan before 1.1.1966 and who are ordinary residents of Assam since then would be treated as citizens of India from 1.1.1966.
- (b) that those who entered Assam from East Pakistan between 1.1.1966 to 25.3.1971, have been residing there and have been detected as a foreigner shall register with the concerned authority. The authority if it feels that the person meets the criteria will register such a person and if it feels that such a person does not meet the criteria will refer the matter to



Foreigners Tribunal. Such a person will be treated as citizen of India at the end of 10 years from the date of his detection as foreigner. Till this period, he will have other rights but not right to vote. After 10 years he/she will have all rights of a citizen.

- (c) Section 6A (7) says nothing in this Section shall apply to a person who is a citizen of India before 7.12.1985. Before 1985, across India citizenship was by birth and so even if illegal migrants who have entered India after 25.3.1971 give birth to a child in India before 7.12.1985 such child will be treated as citizen of India.

In short, this Section provides that those who enter India from Bangladesh after 25.3.1971 will not be entitled to Indian citizenship.

As explained above, Foreigners Tribunals Order, 1964 sets up the Foreigners Tribunals for all India. It also sets out the procedure for detecting foreigners. This procedure is not set out in any law discussed and passed by Parliament but has been passed through an Order of the Executive (Government).

A reference can be made to the Tribunal by Central Government or any Competent Authority (as defined by Central Government) about any individual. Such person will be issued show cause notice, allowed to be heard and then an order will be passed. It is this Order that has empowered the Assam Border police to be the authority to issue summons. Through the powers vested under this Order, the Assam Border police can summon witnesses, take oral or documentary evidence. The Assam Border Police has been issuing such notices and subjecting persons to the arduous process of appearing before Foreigners Tribunals long before the NRC process gained momentum in 2013.

On July 17, 1997, the EC issued a circular to the Government of Assam directing it to remove non-citizens from the voters list. This was followed by a large-scale door-to-door survey across the state to revise electoral rolls. Voters who were perceived to be unable to prove their Indian nationality had the letter D put before their names in the voters list. Many absentee voters were also marked D.

2011 Census data shows us that Assam is also a state where 54 per cent of the population has migrated internally since birth. It is also a state severely affected by floods that cause not just displacement but the re-configuration of villages on the riverine area as villages 'disappear' and new ones are born. Flood disasters, livelihood insecurity, and erosion to be the primary reason for internal migrations; many of the displaced use their socio-economic capital to re-locate in community and barren lands where they have "no pattas."

An academic study published by CJP: How flood displacement leads to uneducated and destitute women becoming D Voters in Assam and assembly constituency mapping of the concentration of D-voters, further revealed that majority of the D-voters reside in constituencies neighbouring places most severely affected by the flood-erosion. Woman heading households are among 62 per cent of those declared 'D' Voters and disenfranchised.

As per a submission made by Chandramohan Patowary, Minister of Transport, Assam, before the state legislature on March 26, 2018, a total of 2,44,144 people were marked D Voters till December 31, 2017. Of these, 1,31,034 cases had been disposed of before Foreigners' Tribunals by December 31, 2017.

The NRC exclusion process therefore is not the only process that marginalised sections of Indians have been subject to, in the task of "proving they belong." The "Suspected/Doubtful" Foreigners process and the "D" Voter process are others through which a marginalised population has been subjected to checks and counter-checks in the state of Assam.

It is important to remember, however, that, apart from Assam, these Tribunals have not been set up anywhere. Ordinarily therefore foreigners without passports or travel documents are arrested within India under the Passport (Entry into India) Act, 1920 and prosecuted.

The Citizenship Registration Rules, 2003 (NRC Rules) have been amended for Assam in 2009 by inclusion of Rule 4A which requires not a door to door survey like other parts of India but by inviting applications from all residents of Assam to apply for registration. A Schedule is added to the Rules that outlines the procedure for the preparation of National Register of Indian Citizens (NRC) for Assam. This provides detailed procedure of preparing a draft NRC and subsequently final NRC. Clause 8 provides that if your name is missing from final NRC you can file an Appeal before Foreigners Tribunal.

For Assam, the 1964 order has been amended by inclusion of clause 1B and 3A. While other provisions of Foreigners Tribunal continue to apply to Assam, because of certain special provisions concerning NRC, now an Appeal is provided from orders passed while finalising NRC to the Foreigners Tribunal. Thus, when the finalised list for Assam of NRC was published on 31.8.2019 those who were not in the list could file appeals before the Foreigners Tribunals and they would be finally declared as foreigners only if the Foreigner Tribunals held them to be so.



## PART TWO: ASSAM



What has the experience of the NRC updation process meant for the state of Assam, the only state that has so far executed such a process?

The National Register of Citizens, a process both complex to understand and unique to Assam, was arrived at after the tumultuous years that preceded the Assam Accord, when aggression, strife and violence marred a politics that was driven by real or imagined fears of the outsider.

### Post-Independence and Partition

Census 1951: Hindus comprised 306 million (84.1%) and Muslims were 34 million (9.8%) in the 1951 census. (1st Census after Independence & Partition of India). Based on the 1951 census of displaced persons, 72.26 lakh Muslims went to Pakistan (both West and East) from India while 72.49 lakh Hindus and Sikhs moved to India from Pakistan (both West and East)

NRC 1951: National Register of Citizens, 1951 is a register of socio-economic status, prepared after the conduct of the Census of 1951 in respect of each village, showing the houses or holdings in a serial order and indicating against each house or holding the number and names of persons staying therein. Assam is the only state in the country that had an NRC prepared in 1951 with 80 lakh citizens, on the basis of that year's Census. No other state in the country had an NRC in 1951.

These registers were kept in the offices of Deputy Commissioners and Sub Divisional Officers according to instructions issued by the Government of India in 1951. Later these registers were transferred to the Police in the early 1960s

### NRC 1951 – was not Completed

NRC 1951 document was not a complete socio-economic survey and as it was a secret administrative document, people could not verify it.

The Assam Government admitted in the State Assembly that the NRC of 1951 is not available for six districts: Cachar, Karbianglong, Baksa, Chirang, Dima Hasao and Sivsagar. In Tinsukia district alone, names of 626 villages are not available in the 1951 NRC while in Nalbari, Barpeta, Lakhimpur districts, the data/names from more than 200 Villages are not available. Government figures also mention that in Nalbari, the 1951 NRC of 481 Villages has been partially damaged while the NRC data has been totally damaged for 523 villages in Lakhimpur district.

Given this, how could the NRC 1951 become the base document under the present Modalities operational in Assam? That remains a mystery.

In the February 21, 1981 issue of Economic and Political Weekly, opposing the All Assam Student's Union (AASU's) demand to make the 1951 NRC the base to identify 'foreigners' in the state, Anil Roychoudhury wrote, "... the authors of the NRC were the enumerators by whom the Census was done. Its basis was the information collected during the census. The enumerators had to complete the work of enumeration in only 20 days. If due to under-enumeration in an area or otherwise the name of a person was omitted in the census, then his name was automatically excluded from the NRC also, and if a person was accidentally not enlisted, he had no opportunity to get enlisted in the NRC subsequently. He could also not file objections. As the NRC was not publicly exhibited and was not a public document, a person could not even know if his name was at all included. The whole matter rested on the whims of the enumerators or their supervisors, a completely one-sided affair. No indication was given to the people of the terrible consequences which might overtake them at some future date if their names were not included in the National Register of Citizens, 1951. Nobody knew at that time due to the mistake or inefficiency or worse, of an 'unqualified' or 'ill-qualified' enumerator, he and his descendants would be declared to be foreigners at some future date and face deportation."

This history must be remembered as India now faces an all India NRC.

"Infiltrator" Rhetoric v/s Data: Assam

'Infiltrators' and the PIP Scheme (1961-1964): In his report on the 1961 census, the Registrar General of Census assessed that over 2 lakh 'infiltrators' had entered Assam. The police subsequently launched a large-scale operation to detect and deport these 'infiltrators'. Then in 1998, a report by Assam Governor S K Sinha highlighted the 'grave threat' posed by illegal immigration from Bangladesh though many from the world of academia and human rights questioned the absence of data behind this rhetoric. Statements from India's former home minister, Inderjit Gupta in Parliament on high numbers of illegal immigrants in Assam –also not based on comprehensive data -- continued to influence the public discourse. India began to believe that there were as many as 1.20 crore 'infiltrators'! Meanwhile even India's highest court, the Supreme Court in two significant judgements, Sarbananda Sonowal, 2005 and 2007, mentions the dangers to national security from 'external aggression' buying into the prevailing hysteria around "illegal migration".

In June 1962, the "Prevention of Infiltration into India of Pakistani nations", or the PIP scheme was established with the objective of establishing a security

system to monitor the number of and keep tabs on the movement of existing inhabitants in border areas, in a bid to make it extremely difficult for new entrants to go unnoticed. Under the scheme, government decided to summarily deport the following three categories of 'infiltrators': Pakistani nationals who held Pakistani passports, re-infiltrants who were once deported, and fresh infiltrants caught at the border.

In 1964, the Foreigners (Tribunal) Order was passed to set up Foreigners' Tribunals that would conduct hearings to help weed out suspected 'foreigners' who were living in Assam. The 'infiltrators' and 'foreigners' were served Quit India notices, and over one lakh people were forcibly deported, without trial. From 1965, identity cards began to be issued to Indian inhabitants of select areas so that they could carry voluntarily to avoid the embarrassment of being mistaken for a Pakistani infiltrator. This was the genesis of the Assam Police Border Organisation that began operating independently as the Border Organisation or Border branch of the Assam Police in 1974.

1979 Assam Agitation: During the bye-elections in Mangaldoi Lok Sabha constituency, widespread allegations of a large number of suspected foreigners having made their way into the voters list, arose. This was when the Assam Agitation was born. It was led by the AASU (All Assam Students Union).

1983 Nellie Massacre: India's first post-Independence genocidal massacre of marginalized Assamese Muslims took place on February 18, 1983: 2,500 innocents lost their lives in the targeted hysteria created around the issue of "illegal migrants". Today 26 years after the massacre that saw no justice being done to the survivors with none of the powerful perpetrators being punished, the village of Borbari (Nellie) suffers again with 40 per cent of its residents –from different castes and communities –being left out of the NRC. Nellie residents have also faced the dreaded Foreigners Tribunals! CJP reported: 36 Years on, Survivors of Nellie Massacre suffer in perpetuity, 40% out of NRC.

The Assam Accord (1985): The Assam Accord was signed after a 6-year long agitation in 1985. Rajiv Gandhi had taken over the mantle of the Prime Minister after Indira Gandhi's assassination in 1984. The historic agreement was signed on August 15, 1985. Clause 5 of the Accord provides:

1. For purposes of detection and deletion of foreigners, January 1, 1966 shall be the base date. Those who came to Assam prior to that date will be regularised.
2. Those who came to Assam after January 1, 1966 and up to 24th March, 1971 shall be detected in accordance with the Foreigners Act, 1946 and the Foreigners (Tribunals) Order 1964.

## NRC Modalities in Assam (2013 until Now)

The modalities under which the NRC process was undertaken were prepared on the basis of a common consensus arrived at with all stakeholders of the matter, such as the supporters of the Assam Movement, various religious and linguistic minority organizations, and all the political parties of Assam. The process to be followed and documents submitted are outlined in these Modalities.

**Legacy and Linkage:** After elaborate discussions, it was decided that the genuineness of one's Indian citizenship would be determined by two kinds of documentation: legacy and linkage.

"Legacy documents" establish the citizenship of a person or their ancestor prior to March 25, 1971. They were referred to as List A documents. As per NRC Assam's website, any of the following documents (issued before midnight of 24th March, 1971) would be accepted:

- 01) 1951 NRC
- 02) Electoral Roll(s) up to 24th March 1971 (midnight)
- 03) Land & Tenancy Records
- 04) Citizenship Certificate
- 05) Permanent Residential Certificate
- 06) Refugee Registration Certificate
- 07) Passport
- 08) LIC
- 09) Any Govt. issued License/Certificate
- 10) Govt. Service/Employment Certificate
- 11) Bank/Post Office Accounts
- 12) Birth Certificate
- 13) Board/University Educational Certificate
- 14) Court Records/Processes.

Further, two other documents viz (1) Circle Officer/GP Secretary Certificate in respect of married women migrating after marriage (can be of any year before or after 24th March (midnight) 1971), and (2) Ration Card issued up to the midnight of 24th March, 1971 can be adduced as supporting documents. However, these two documents shall be accepted only if accompanied by any one of the documents listed above.

The Second requirement arises if name in any of the documents of List A is not of the applicant himself/herself but that of an ancestor, namely, father or mother or grandfather or grandmother or great grandfather or great grandmother (and so on) of the applicant. In such cases, the applicant shall have to submit documents as in List B below to establish relationship with such ancestor, i.e., father or mother or grandfather or grandmother or great grandfather or great grandmother etc. whose name appears in List A. Such documents shall have to be legally acceptable document which clearly proves such relationship.

(1) Birth Certificate OR

(2) Land document OR

(3) Board/University Certificate OR

(4) Bank/LIC/Post Office records OR

(5) Circle Officer/GP Secretary Certificate in case of married women OR

(6) Electoral Roll OR

(7) Ration Card OR

(8) Any other legally acceptable document

Providing any one of the documents of List A of any period up to midnight of 24th March, 1971 shall be enough to prove eligibility for inclusion in updated NRC.

"Link documents" establish a bona fide filial link of people born after 1971 to pre-1971 Indian ancestors, or their "legacy persons." They are also referred to as List B Documents. NRC Assam's website states that the requirement would arise if name in any of the documents of List A is not of the applicant himself/herself but that of an ancestor

**Weak documents:** While the NRC process was still on-going, certain documents were inexplicably –and arbitrarily-- declared to be too weak to stand as legitimate proof of citizenship. One such document was the pre-1971 ration card, which is often the only documentary proof that poor, working class families have. Similarly, the elimination of certificates signed by Circle Officers/GP secretaries and Panchayat Link Certificates disproportionately affected married women. Some documents issued by other states were similarly not taken into account.

**Fall-back provisions:** Two provisions—DMIT and DNA testing--could have helped establish citizenship of those not meeting their documentation requirements, but were ultimately dropped from the process.

If a genuine Indian citizen failed to submit proper documents, their case

could be investigated independently by the District Magistrate Investigation Team or DMIT, who could approve the inclusion of a name of an orphan, destitute or a person having no documents by gathering information from local people.

DNA testing to prove linkage to a legacy person was an ultimate arbiter for the finalization of a claim when all else failed, but the provision was also unilaterally struck down by the office of the RGI.

Exclusions: A Supreme Court order (passed on August 13, 2019) further resulted in exclusions of persons who or whose legacy person was a D-Voter, a Declared Foreigner, or a person whose case is pending before the Foreigner Tribunal.

Other concurrently running foreigner detection processes unique to Assam were mixed and conflated with the NRC process even though this wasn't supposed to be the procedure initially. Modalities, earlier seen to be "free and fair" because they were established consensually among various stakeholders in Assam, were manipulated and even curtailed: this was a clear-cut attempt to undermine the consensus. In an article for the The Telegraph, [How a government and bureaucracy betrayed its people](#), CJP points out that, "No section of Assam's population has been left unaffected by the overpowering, State-created tragedy of the NRC."

During the course of Assam's NRC finalization process, large numbers of applications have been rejected because of minor discrepancies in the names, titles, age differences in the legacy documents and the user of such legacy documents. This in spite of the fact that 'Modalities of NRC' state otherwise: that minor discrepancies of the names, ages, titles will not affect the legitimate demand for inclusion of a name in the updated NRC. On the ground, at the 1,200 plus Nagrik Seva Kendras, this specific assurance is being given the go-by, causing injustice and mass exclusions.

There is no section of the population in Assam that has been left unaffected by this overpowering, State-created tragedy. Bengali-speaking Hindus, Muslims, the Gorkhas, Hindi-speaking people of north and west India have all been caught up in this, equally. There is no way to describe what this unfolding trauma has meant, for women and men to attend hearings scheduled in places far away from home, spending significant amounts of money filling in applications. Worse, they are summoned to appear not once, but repeatedly, along with 'legacy persons'.

This means that, in some cases, many people have even had to attend hearings as many as 7 to 14 times along with their entire troupe of family tree members. This means a batch of 40-80 persons from an extended family having to travel up to hundreds of kilometers from their place of residence. Not very long ago, a professor from a prominent university of Delhi had to



rush three times from Delhi to Lakhimpur in Upper Assam — which is about 3,000 kilometers — along with all his family members.

### Foreigners Tribunals: Assam and All India

The Foreigners Tribunals (FTs) are constituted under the Foreigners (Tribunals) Order, 1964, passed by the Central Government in exercise of its powers under the Foreigners Act, 1946. As per the Order, the Central Government or any specified authority is to refer the question of whether a person is a foreigner within the meaning of the Foreigners Act, 1946 to a tribunal to be constituted for this purpose. The Supreme Court has time and again legitimized these Foreigners Tribunals set up under Executive statute.

Article 258(2) of the Constitution of India requires the Parliament to make a law which applies to all states in order to confer powers to the State Government in matters in respect of which the State's Legislature has no power to make laws. In the case at hand, the law referred to by Article 258(2) of the Constitution of India is the Foreigners Act, 1946, which is pre-constitutional law and has passed the test of Article 13 of the Constitution of India. However, no provision in the Foreigners Act, 1946, confers power to the state Government. Thus, the state Government did not have jurisdiction to constitute the Foreigners Tribunals in order to determine whether a person is, or is not, a foreigner within the meaning of the Act. Periodically, since 1948, then again in 1964, Foreigners Tribunals were set up in Assam through an MHA Order.

Now, after talk of an all India NRC has gained traction, the MHA (Ministry of Home Affairs) has, through an Order of 30.08.2019, using powers conferred unto it under Section 3 of the Foreigners Act, 1946, amended the Foreigners (Tribunals) Order, 1964 (Foreigners (Tribunals)

(Second Amendment) Order, 2019). Through this amendment, in paragraph 3A, appeals under

paragraph 8 of the Schedule appended to the "Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003" has been inserted; thereby now applying the FTs on an all India basis.

### Detention Camps

The Detention Camps in Assam have had their share of horror stories. Now Karnataka and Maharashtra have also announced the setting up of Detention Centres. In July 2019, the Central Government, said in reply to a question in Parliament that they have circulated a "Model Detention Centre/Holding Centre/Manual" to all states. Copies are still not available in the public domain, however. We have no way of judging whether they meet the standards prescribed by law, national or international. The Central

Government has also issued "advisories" to local state governments to begin the detection of foreigners on a priority basis.

**Functioning of Foreigners Tribunals:** The functioning of FTs has come in for sharp criticism, given the absence of due process in their functioning, the procedures they follow and the inherent lack of transparency. The rushed disposals, the absence of judicial minds to head the Tribunals all render the process open to question.

### Material Costs

A survey in four districts by a Human rights organisation has found that those excluded from the draft National Register of Citizens (NRC) in Assam spent a staggering Rs 7,836 crore for NRC hearings and many have been so economically crippled that they will not be able to challenge their exclusion before the Foreigners Tribunals. This survey conducted in Baksa, Goalpara and Kamrup districts, 62 respondents were able to quantify the expenditure incurred for attending hearings before NRC authorities and they claimed to have spent a total of Rs. 11,82,000 or an average of Rs. 19,065 per person.

The World Bank in its report "Assam: Poverty, Growth & Inequality" of June 20, 2017 had stated that Assam not only lagged behind most Indian states in economic growth but "poverty reduction has been the slowest in Assam after 2005 and that the incidence of poverty in Assam remained higher than the national average, with poverty levels being very high in some parts of the state".

Is it a coincidence that these were the years when 12 per cent of the State's population was reeling under this inflicted Citizenship Crisis?

### Examples:

For example, take the case of Subrata Dey of Ashudubi village that falls under Krishnai Police Station of Goalpara District in Lower Assam. Dey died in Goalpara detention camp in May, 2018. According to his mother Anima, "We had to spend about one lakh rupees as lawyer's fees and additional expenses to fight my son's case in the FT. After Subrata was declared foreigner and sent to a detention camp, we sold our domestic cattle and some other property and gathered two lakhs of rupees, which we gave to an advocate to fight the case in the High Court. But the case did not come up even in two years till Subrata's death!"

Similarly, in Rawta Bagan area of Udalguri district, Jobbar Ali had paid Rs. 50,000/- to an advocate to fight his case in the FT. When he was declared foreigner and thrown into Tezpur detention camp, his family members took a loan of Rs. 1,00,000/- and paid it to an eminent advocate of Gauhati High Court hoping to have Jobbar released. But Jobbar spent two years in

detention camp and died there, and it appears that the self-styled humanitarian advocate of minority rights who had taken his case, did nothing to cause the case to proceed in Gauhati High Court.

Likewise, Amrit Das of Barpeta Road, died in detention camp after spending Rs 60,000/- for his FT case and another Rs 60,000/- for his case before the Gauhati HC.

In another instance, Sahar Ali, resident of Farmaishali village of Chirang District, paid Rs 50,000/- to an advocate and spend another Rs 30,000/- for attending regular hearings at the FT for three years and was declared streamline (a person who supposed to come into Indian territory in between 1966 and 1971) Indian, though his name was in 1951 NRC and 1971 voter's list. As a streamline Indian he is lucky enough that his name has been registered with Foreigner's Regional Registration Office (FRRO) by his advocate without his knowledge.

But Rabindra Mallik of village Oxiguri, under same district was declared streamline foreigner in 1999, but his name was not registered with FRRO. Due to this reason, Rabindra Mallik was detained and thrown into the Goalpara detention camp where he has been lodged since 21st September, 2016. According to the family members of Rabindra Mallik, they too paid Rs 60,000/- to a lawyer in FT and another Rs 1,50,000/- for the HC case to a lawyer.

The NRC process has impoverished crores of Indian citizens in Assam

Given these high human and material costs, can India afford an NRC?



## PART THREE: ALL INDIA: What is the National Population Register (NPR), enumeration of which will begin on April 2020 and be completed in September 2020?

In 2003, The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 were passed under the Citizenship Act. These are the NRC Rules. Under this, the Central Government may carry throughout the country a house to house enumeration for determining citizenship status. In the first stage this will result in the compilation of the National Population Register (NPR). During this exercise, all those whose citizenship is doubtful will be marked as such in population register for further enquiry. The persons have to be informed immediately after the verification is over about this in a prescribed format and, as per the rules, will

be given an opportunity for being heard before any final decision is taken. However, there is no clarity on what will be the criteria/documentation for proof of citizenship i.e. inclusion or exclusion in the NPR.

On July 31, 2019, the Ministry of Home Affairs (MHA) issued an Order (SO 2753) in pursuance of sub-rule (4) of Rule 3 of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 under which the "Government decides to prepare and update the Population Register (NPR)." As per the notification, the "field work for the house to house enumeration throughout the country except for Assam" will begin in April 2020 and be completed by September 2020. "Information relating to all persons who are usually residing within the jurisdiction of local Registrar shall be undertaken."

On September 30, 2009, through another Notification (G.S.R. 623(E), amended the 1964 Orders related to Foreigners Tribunals and extended these to all over India.

### National Population Register and NRC

The National Population Register is the collation of a register of citizens, living in and outside of India, and residing in a village or rural area or town or ward or demarcated area (demarcated by the Registrar General of Citizen Registration) under the Citizenship Act. While similar to a Census that is conducted under the Census Act to determine population figures, trends and so on, the NPR is a Register of Citizenship. Criteria for inclusion and exclusion therefore, has to follow the law as laid down under the Citizenship Act, and proof (of birth etc) follow the law etc. As of today, the Census of India is scheduled to conduct its next round of surveys in 2021. So, it is reasonable to assume that the NPR being conducted in 2020 is likely to be for the purposes of the final updation of the NRC.

Once the house to house enumeration of citizens has begun, (between April – September 2020), citizens are required to engage in the process. Under the 2003 Rules, the sub-district or taluk Registrar shall finalise his findings within 90 days of the remark being made. The draft of the local register shall be published for inviting any objection or for inclusion of any name. Within 30 days individuals have to complain or raise objection spelling out the nature and reasons for such complaint. These complaints will be considered by sub-district or taluk Registrar and will be summarily disposed of in 90 days. A person aggrieved by the above orders can appeal in 30 days to District Registrar of citizenship registration.

The District Registrar shall take final decision after hearing the party within 90 days. After this the final register is published and every citizen will be

issued national identity cards. Under this, there is no role of Foreigners Tribunal at least as the law stands today. If you are not registered as a citizen you will be treated as foreigner and all consequences would follow. These would include being sent to detention camps, being deported, etc.

The National Population Register shall be prepared by collecting information relating to all persons who are usually residing within the jurisdiction of the Local Registrar.

## PART FOUR:

### ALL INDIA: AN ALL INDIA NRC & ITS LEGAL BASIS

What is the National Register of Citizens and what is its legal basis?  
What does a nationwide NRC mean for Indians?

Does the NPR of 2020 lead to an All India NRC?

The MHA Gazette Notification of 31.07.2019 was for Preparation of the National Population Register

- Does this NPR have any relation with NRC?

Yes, as per the preparation methodology prescribed in Citizenship (Registration of Citizen & Issue of NC) Rules 2003, it is from the NPR that data will be taken for Updation in the Local Register of Indian Citizen (i.e. part of NRC) after Scrutiny and Verification.

- Is the MHA Gazette notification of July 31, 2019, therefore the start of the Implementation of an all India NRC?

The Preparation of NRC has been specified (as mentioned above) in Rule 4 of Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. The initiation of NRC is specified in Rule 6 of Above Citizenship Rules. So far, specifications under Rule 6 have not been issued.

However, since the preparation of National Population Register is the required basis for an All India NRC, and given widespread statements by politically influential functionaries, it would be prudent to understand that the present dispensation is laying the basis for the preparation of an all India NRC. People of India should however be informed and aware of the process, understand it in all its dimensions and raise queries and questions now, before it is too late. Many local communities are already in the process of accessing documents and updating existing documents, including birth certificates, so that their record is correctly recorded in Population Register which will be the foundation for NRC. Many local communities are also,

through gazette notifications, ensuring that discrepancies in names get corrected.

Difference between Assam and Other Parts of India concerning NRC

1. NRC is a Register of citizens. Therefore, the first difference between Assam and rest of India concerning NRC would be about who will be entitled to citizenship. This is already explained above.
2. The Second difference is that while in Assam individuals have to apply for being registered, in rest of India individuals do not have to apply but the Government has to do a house to house survey and incorporate that in a population register which is like a draft NRC and after this finalised NRC would be issued. On 31.7.2019 the Central Government issued a Notification under the NRC Rules for preparation of population register and house to house survey between 1.4.2020 to 30.9.2020. It is around these dates that all manner of citizens will have to be alert to ensure that the Registration takes place.



## PART FIVE:

### ACTION PLAN WHAT WE SHOULD DO?

- Contest the NRC Exercise unless, like the Census of India process, it is inclusive
- Engage with Elected Representatives and Political parties on the Question

Demand Answers from the Government

- Cut-off Date: What will this be? January 27, 1950?
- Update Documents: There is no harm in us, citizens, wherever we can, updating our present documents as per the List and rectify our Electoral record and ensure that our Correct data is recorded in National Population Register which will start from 1st April 2020.

Some Issues and Questions related to an all India NRC

While concern and panic has been growing at an all India level vis a vis the possibility of an All India, NRC some basic questions have been overlooked.

What will be the Cut-off date for NRC?

- Though this has not been specified anywhere till now as regard to NRC in India, if it is a Registration of Citizens it can only be January 27, 1950. Assuming that January 27, 1950 (the day after the Indian Constitution came into force) is the base date, the law on Citizenship will therefore apply
- 1950-1987: birth  
1987-2004: one parent being born an Indian  
Post 2004: one parent Indian, the other not an "illegal migrant"
- Any information saying 1951 NRC being the base document for verification is incorrect since 1951 NRC was prepared only for Assam no data was collected for other state in 1951 NRC, So Applicability of 1951 NRC stands nowhere.

What will the Cut-Off Date, Modalities, Criteria for Inclusion and Exclusion in NPR be?

We need to ask these questions:

- What is the principle and approach behind the Government's all-India NRC going to be?
- Will the Government, bound as it is by the Indian Constitutional Vision follow a principled approach of inclusion or exclusion?

Article 14 and Article 21 of the Indian Constitution must inform the debate.

- Voter Registration: India does not have No 100 % voter registration. There have been also serious issues and concerns, especially of late, of certain marginalised sections of the population being disenfranchised politically, that is being denied of their basic right to vote.
- When we as a country have not even managed to register all Indians as Voters, can we be expected to have a fair registration process (NPR or NRC?)
- Birth registration statistics: According to UNICEF: The current registration level of births and deaths in the country is about 58% for births.
- When even Birth Registrations are not cent per cent, how can we expect a thorough NPR/NRC?

- Housing Statistics: According to Census 2001, 187 million houses have been reported to be used as residences or residence-cum-other use by about 192 million households. According to the 2011 census, there are 24.67 crore households in India. Read more on this in Livemint's article: [Five charts on the state of India's housing sector](#).

What will the standards of proof/documentation required from those who do not own land or homes for the NPR/NRC?

- Migrant Labour: Then there is the question of lakhs of Indians who are migrant labour who are not found in their places of residence.
- How will NPR/NRC register or record India's Migrant Labour, who own no homes and no land and are not even given the Right to Vote? The process (inclusion/exclusion) for them, a section that needs access to the state's welfare schemes could be monstrous and tragic.
- Indian Literacy Rate (2018) as per UNESCO stands at 70.47%. If the process, criteria, Modalities that inform the NPR (which is a 'house to house' survey) is not like the Census which is collecting information (inclusive) it is likely to end in another Assam-like disaster of even worse proportions.

Given these statistics, finally,

- Wisdom demands that an All India NRC is likely to cause huge upheavals and traumas
- If January 27, 1950, is the base date for 'proving' citizenship what will the approach of authorities to documentary proof be, given the statistics mentioned above?
- What will be the Modalities and Criteria that Outline what standard of proof/which documents will be used to record/exclude names in the NPR which is the basis of the upcoming NRC? Who will decide?

### Partisan Citizenship

This government plans to alter the very basis of Indian Citizenship which has been non-sectarian. It proposes to enact amendment to the Citizenship Amendment Act (1955) to allow religious minorities (all except those who are Muslim) to be allowed to apply for Indian Citizenship if they hail from three countries of Pakistan, Bangladesh and Afghanistan and if they can show they are "persecuted minorities."



## Amendments to rules brought in 2015 and 2016

On September 7, 2015 and July 18, 2016 there were two amendments brought in Foreigners Order, 1948. After paragraph 3, the following paragraph is inserted, namely:

“3a. Exemption of certain class of foreigners. - (i) persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December, 2014-

In the passport (Entry into India) Rules, 1950, in Rule 4, in sub-rule (i), after clause (h), the following clause shall be inserted, namely:

“(ha) persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December, 2014- (i) without valid documents including passport or other travel documents; or (ii) with valid documents including passport or other travel document and the validity of any of such documents has expired: provided that provision of this clause shall take effect from the date of publication of this notification in the official gazette.”

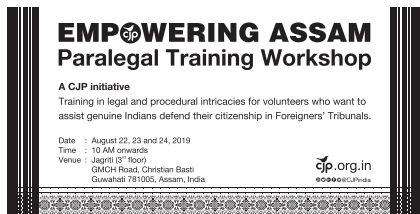
In 2016, the above rules were amended to even include Afghanistan. In short, these named minority communities will not get citizenship but will not be ordered to be detained or expelled if they can show they fall within the above clause.

Now the Central Legislature is looking to pass the Citizenship (Amendment) Bill, 2019 in order to amend the Citizenship Act, 1955 such that these minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who have been exempted under Section 3(2)(c) of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any order made thereunder, shall not be treated as illegal migrants.

Section 3(2)(c) of the Passport (Entry into India) Act, 1920 empowers the Central Government to provide for absolute or conditional exemption of any person or class of persons from requiring to have possession of a passport at the time of their entry into the country.



## CJP's campaign to defend Indian citizens in Assam:



When over 1 crore people were excluded from the partial draft of the National Register of Citizens (NRC) that was published in Assam on December 31, 2017, CJP swung into action. From keenly combing through reports and studies by eminent scholars on the subject to sending our own fact finding team to ascertain ground realities in June 2018, to mobilizing a team of nearly 1000 local volunteers to aid the hapless, impoverished and unlettered people through the process of filing claims in wake of exclusion from the complete draft released on July 30, 2018, CJP remained committed to ensuring that no genuine Indian citizen suffered.

In 2019, as a part of our Citizens for Assam campaign, we took a delegation of eminent lawyers and journalists to Assam to showcase the plight of Indians in the state. In August 2019, CJP determined to make sure that no genuine Indian citizen suffers, moved Supreme Court asking for it to take a closer look at the idea of citizenship, the definition of illegal immigrant and also the wider concerns about decedents of people whose citizenship is under the scanner.

From August 21 to 23, 2019, we conducted a three-day workshop in Guwahati where legal scholars and practicing lawyers helped equip local, district level lawyers and paralegal volunteers with in-depth skills and training to navigate the complex issue of citizenship after the publication of the list. Many more such workshops are planned across Assam as a part of our Empowering Assam initiative.

We also conducted a study of over 1000 FT orders to ascertain the key reasons behind decisions where the applicant ended up being declared 'foreigner'. We are also developing a manual to help our paralegals navigate the complex legal processes at FTs.

In October 2019, we in association with the People's Union of Civil Liberties (PUCI), organised a solidarity meeting in Mumbai for people facing the citizenship crisis in Assam. People who had attempted suicide due to helplessness, been falsely accused of being 'foreigner', and families of detention camp victims shared their stories at this meeting titled Who is an Indian.

In fact shortly after this we got together with to help Biki Dey, son of detention camp victim Subrata Dey, resume his education. Biki had been forced to quit school and look for a job to support his family after his father's death. His mother and grandmother earned a mere Rs 48 per day by sewing cloth bags!

We are currently working to help secure the release of people who have spent more than three years in a detention camp in accordance with a May 2019 order of the Supreme Court. More information about our Assam campaign may be found [here](#).

CJP has stepped in all over India. With a presence in all states of India, CJP has been holding mass public meetings, trainings of activists and community leaders, distributing materials on the Issue of an All India NRC and the Citizenship Question. Meetings have taken place in Mumbai, Malegaon, Bengaluru, Hyderabad, Kolkata, Puri, all over Uttar Pradesh and Delhi. CJP draws its strength from the commitment of people like you - people who are determined to protect the rights of every individual, especially the weak and marginalized ([www.cjp.org.in/friend/](http://www.cjp.org.in/friend/)).



Sources: Citizens for Justice and Peace ([cjp.org.in](http://cjp.org.in))

References: Who is an Indian, can the NRC decide?

How a government and bureaucracy betrayed its people





Citizens for Justice and Peace (CJP) is a Human Rights movement dedicated to upholding and defending the freedom and constitutional rights of all Indians. We call our focus areas our Four Pillars. These are:

Minority Rights - Rights of religious, ethnic, caste, gender and sexual minorities as well as persons with disabilities.

Freedom of Expression - A healthy and vibrant democracy always respects free expression and the dignity of different belief systems, cultures and languages. Hate speech, we believe, is an abuse of this freedom.

Criminal Justice Reform - CJP believes that our agencies - investigation, prosecutorial and judicial - need further democratisation to ensure both, quality and quick justice delivery.

Child Rights - CJP works to inculcate pluralism and Constitutional values in young minds. We also work in the field of Juvenile Justice Reform and protection

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