

**DISTRICT: KAMRUP (M)**

IN THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram & Arunachal Pradesh)

(CIVIL EXTRA-ORDINARY JURISDICTION)

**PIL NO                    /2020**

Category:-PUBLIC INTEREST LITIGATION

Code:

To

The Hon'ble Mr. Justice Sudhanshu Dhulia, M.A, LL.B, the Hon'ble Chief Justice of the Gauhati High Court and His Lordship's Companion Justices of the said Hon'ble Court.

**IN THE MATTER OF:**

A Public Interest Litigation under Article 226 of the Constitution of India for issuance of a writ in the nature of Mandamus and/or any other appropriate writ/order or direction of like nature.

-AND-

**IN THE MATTER OF:**

Legal aid and assistance to the marginalised and poor sections of the society is need of legal aid and

assistance in the filing and conducting of appeals in the NRC process.

-AND-

**IN THE MATTER OF:**

Press communication of the Government of India dated 20.8.2019 for providing legal Aid to those who could not make it to the NRC.

-AND-

**IN THE MATTER OF:**

Legal Aid and assistance being recognised as a requisite for a fair trial and procedure for those who cannot afford such aid and assistance because of Economic and/or other disabilities

-AND-

**IN THE MATTER OF:**

Pivotal role of the Hon'ble High Courts under the extant laws for providing legal aid and assistance.

-AND-

Violation of the rights guaranteed under Part III of the Constitution of India of the poor and the marginalised section of the society entitled to legal aid in the NRC process.

-AND-

**IN THE MATTER OF:**

Citizen for Justice and Peace

Represented by Its Secretary

Teesta Setalvad, aged about 59 years

----- Petitioner

-Versus-

1. The Union of India represented by the Secretary to the Department of Home Affairs, New Delhi.
2. The State of Assam represented by the Commissioner and Secretary, Government of Assam, Home Department, Dispur Guwahati-6.

3. The Commissioner & Secretary, Government of Assam, legislative Department, Legislative Branch, Dispur Guwahati-6.
4. The Hon'ble Gauhati High Court represented by it's Registrar General, Guwahati-1.
5. The National Legal Services Authority, 12/11 Jam Nagar House, represented by its Member Secretary, New Delhi-11.
6. The Assam State Legal Services Authority, Gauhati High Court campus, represented by its Member Secretary, Guwahati-1
7. The State Co-ordinator, National Registrar of Citizens, Assam, Bhangagarh, Guwahati 781005

----- Respondents.

The application of the humble applicant above named

**MOST RESPECTFULLY SHEWETH:**

1. That the Petitioner is a Non-Governmental Organisation, dedicated to upholding and defending the freedom and constitutional rights of Indian citizen. The Petitioner is being represented by its Secretary, who is a citizen of India by birth. The president of the petitioner organisation is also a citizen of India, so are the members of the petitioner organisation. The petitioners are as such entitled to rights, protection and privileges guaranteed under the Constitution of India and the laws and rules framed thereunder. The petitioner has no personal interest in the litigation. The instant petition is not guided by self-gain, or for the gain of any other person/institution/body and there is no motive other than public interest in filing the writ petition/Public Interest Litigation.

2. That the petitioner is, a civil and legal rights organisation, Citizens for Justice and Peace (cjp.org.in) that has been working at the grassroots on the NRC issue apart from various other issues of public interest rights of the marginalized and the under privileged. The petitioner is registered as a Public Trust under Section 29 of the Bombay Public Trust Act, 1950. The Petitioner's works in Assam puts the petitioner in a position to represent a voice within the State to

ensure that the process of publishing the NRC in its final form does not unfairly exclude any genuine Indian Citizen.

A copy of the Certificate of Registration is annexed  
as **ANNEXURE-1**

3. That the Petitioner submits that the issues of Legal Aid being raised by this petition are grave and affect the basic legal and constitutional rights of Indian citizens and even of those alleged not to be Indian citizens. Free legal aid in criminal matters is part of Article 21 of the Constitution. This Article protects citizens as also non citizens. The issues raised in the instant case concern those excluded from the final list of the National Register of Citizens (NRC) published on August 31, 2019, belonging to the poorest of poor and the marginalised section that because of economic and other disabilities are not in a position to obtain proper and effective legal aid.

4. That the reliefs sought in this petition only concerns the issue of providing proper and effective legal aid to those excluded from the final NRC, in need of such aid. The state respondents who are responsible for the implementation of such access to legal aid or concerned with the subject matter are all parties to this petition and the petitioner if required shall implead such other parties as may be

necessary. Orders passed in this petition are not likely to affect any other body individual/body/institution.

5. That the details of the office bearers of the petitioner are as follows.

Name of the Office	Name and address of the office bearers.
Citizens for Justice & Peace	Anil Dharker, President
Citizens for Justice & Peace	Nandan Maluste, Vice President
Citizens for Justice & Peace	Teesta Setalvad, Secretary,

The petitioner has been working for the poor and the marginalised sections of the society, in the country and some of the activities carried out by the petitioner in various parts of the country are as follows:

Legal Aid, Para Legal Trainings on Constitutional Rights of all sections of Indians

- 1) Legal Aid, Interventions and Actions when mass and targeted crimes take place against Minorities including Women, Dalits, Adivasis, Religious Minorities
- 2) Legal Training with Adivasis & Forest Dwellers on Implementation of the Forest Rights Act of 2006
- 3) Legal Interventions to ensure Witness Protection for Women, Economically Deprived, Women, Dalits and other sections of society
- 4) Para Legal and Legal Interventions to curtail the spread of Hate Speech and Hate Writing against the Underprivileged
- 5) Para Legal and Legal Interventions to ensure inclusion of hapless persons excluded from the NRC in Assam

The petitioner has also filed the following PIL's before the different Hon'ble High Courts of the country, touching upon various issues of Public Interest, the details of which are given below:

Case No	Particulars	Remarks
Special Civil Application No.	PIL in Hon'ble Gujarat High Court to ensure compensation for the Survivors of 2002 Violence	Petition Disposed off after several meetings between



3217/2003		NGOS and Chief Secretary and thereafter a policy intervention by the Central Gov enhancing the Rehabilitation Package
(CrI. M.P. No. 102148 of 2020)	Intervention Application in the Hon'ble Supreme Court in the Hathras Gang rape, Uttar Pradesh	Orders Passed on October 27, 2020: A Supreme Court bench comprising Chief Justice of India S.A. Bobde and Justices A S Bopanna and V Ramasubramanian directed that Central Reserve Police Force (CRPF) personnel provide witness

		protection to the family of the victim in the Hathras gang rape and murder case. CJP had filed an intervention application in the case seeking witness protection by central paramilitary forces.
Writ Petition (CrI) No. 000428/2020	Writ Petition (PIL) in Hon'ble Supreme Court in Laws related to Inter-Marriage between Consenting Adults	Pending Notice Issued on January 6, 2020

Several Other matters where issues of Witness Protection, Independence of Investigation etc were raised though format not that of a PIL

6. The instant petitioner has filed this application in public interest and the petitioner the means to pay cost, if imposed by this Hon'ble Court.

7. That, the work of the Petitioner, has included running a Toll-Free Helpline for over five months that logged in close to 9,500 distress calls from the far-flung areas of Assam. In the process of this work, thousands of distressed and unlettered persons who did not possess the wherewithal to negotiate a complicated bureaucratic process were assisted by the Petitioner. The Petitioner places before this Hon'ble Court a sample list of close to 200 persons from far-flung districts of Assam who were assisted by the Petitioner's Assam Team in the NRC enumeration process after they called for assistance. This list, which for the sake of brevity only has names and the village at this stage, is not exhaustive but illustrative, and the number of persons assisted is actually much higher and runs into the thousands.

A true and correct copy of the sample list of 200 persons (approx.) from various districts of Assam who have been assisted by the Petitioner's Assam Team is marked and annexed herewith as

**ANNEXURE-2**

8. That the work of the petitioner, which still continues on a month to month basis under difficult circumstances amounts to providing para-legal aid to marginalised sections of the rural population, at least 62 per cent of the affected being women. It is in the context of this intense involvement that the present intervention application is being filed to urge clarification on some basic issues that have a bearing on large sections of the population. This work that has taken place in far-flung and often unreachable areas of the state have drawn upon the support of several right-thinking individuals, academics and writers who have been witness to this ground-breaking work. It is because of the inaccessibility of the topography of the state to vast sections of the poor and agrarian population that the idea of a Toll Free Helpline number was conceived and that this mechanism was successful that it ran for five months, allowing people to contact the Team for adequate assistance to file their Claims in the correction process before the National Register of Citizens (hereinafter referred to as "NRC"). There was a lot of panic, fear and distress among vast sections of the population when as many as 40 lakh (4 million) persons were left out of the NRC provisional final list (31.07.2018) and it is following this that the aforesaid petitioner's ground team got to work providing counselling and real time aid to the people affected. There have been a distressing number of deaths caused due to the fear and anxiety that

this crisis has unleashed and therefore this work was very crucial as a humanitarian task.

9. That the petitioner has also been actively working in the country in the current situation, where the world is grappling with the Corona pandemic. Apart from providing relief materials to the needy and poor, the petitioner has also rendered help to many of the poor, marginalised and unlettered inmates of various detention centres in the bail process after the Hon'ble Apex Court directed release of those inmates who have completed two years of detention. Relatives and family members of about 33 these internees had approached the petitioner for help in completing the bail formalities and the petitioner through its team of dedicated workers have helped them in securing their release after completion of all legal formalities. In the process, it has also come to light that free legal aid to these sections of people is not existent and these people in spite of the order of the Hon'ble Supreme Court were finding it almost impossible to get the formalities completed in the absence of any legal aid and help.

A list of some of these released internees, whom the petitioner had helped in completion of the legal formalities is annexed as **ANNEXURE-3**

10. That the Ministry of Home Affairs by a press communication dated 20<sup>th</sup> August 2019 has also referred about providing legal assistance to persons who may require such legal aid. The communication provides that the state government would make arrangements to provide legal aid to the needy people.

A copy of the press communication is annexed as

**ANNEXURE-4.**

11. That though it has been announced by the aforesaid press release of the Government of India, dated 20.08.2019 that legal aid and assistance would be provided to those excluded from the NRC, who are in need of such aid and though the press communication specifies that the State Government would make arrangements for providing legal aid to those in need of such aid, the petitioner in its ground level work has neither come across any concerted effort to form any panel of lawyers to defend the NRC left outs nor any framework has been established. The petitioner under such circumstances had submitted a representation before the Secretary, Home Department, Government of Assam, for framing schemes and modalities for providing effective legal aid to the NRC left outs, in need of such aid and also inform the petitioner about the steps already taken up, which could help the petitioner to create legal awareness

amongst people. Copy of the same was also marked to the National Legal Services Authority (NLSA).

A copy of the representation is annexed as **ANNEXURE-5**

Copies of the postal receipts are annexed as **ANNEXURE-6 colly**

12. That pursuant to the said representation dated 28.04.2020 the Under Secretary NLSA forwarded a copy of the same to the Member Secretary, Assam State Legal Services Authority, on 16.07.2020 seeking an action taken report on the representation of the petitioner.

A copy of the letter of the NLSA is annexed as **ANNEXURE-7**

13. That thereafter the petitioner having received a copy of the letter dated 16.07.2020 from the NLSA submitted another representation dated 19.8.2020 along with some suggestions for implementation keeping in tune with the NLSA guidelines on maintaining Front Offices and Legal Services camp module.

A copy of the representation dated 19.08.2020 is annexed as **ANNEXURE-8**

Postal receipts of the dispatch of the said representation are annexed as **ANNEXURE-9 colly**

14. That thereafter in response to the letter dated 19.08.2020 the petitioners have received a letter dated 23.11.2020 from the Assam State Legal Services Authority indicating broadly that the said authority has the machinery to deal with any action taken by the Government with regard to the NRC.

A copy of the letter dated 23.11.2020 is annexed as

**ANNEXURE-10**

15. That the letter dated 23.11.2020 reveals that so far as the Taluk Level Services Authority are concerned only two such authorities are functioning in the State as against 78 Talukas in the state. The said aspect is relevant and there is a necessity to set up more Taluk level authorities in order to reach the deprived citizens inasmuch as most of these people who are left out are from the most marginalised sections of society and living a hand to mouth existence, which makes it difficult for them to travel to the district headquarters from time to time. Unless more such authorities are set up, the process of providing legal aid would be hopelessly inadequate and not reach the needy and the marginalised for whom this aid are meant.

16. That the letter dated 23.11.2020 also reveals that the Module for holding legal camps are in place and once the rejection slips are



issued such camps can be organised. In this context the petitioner states that once the rejection slips are issued only 120 days' time would be available for a staggering 19 lakh people to approach the tribunals and given the enormity of the situation, 120 days times is otherwise not a long one for people to put in place the appeal along with necessary documents inasmuch as the those who had applied for inclusion of their names could not have applied in the first place without any documents and fact of the matter is that these documents stand rejected or deficient and as such unless the legal aid camps concerning the issue are carried out in advance, there may or is likely to be too little time for those excluded from the NRC list to apply and get hold of new or other relevant documents once the rejection orders are already issued. Thus, the stand that these camps can be held once the rejection slips are issued is totally misplaced and misconceived as it is not likely to serve the purpose of providing proper legal aid. Adequate and competent legal aid arrangements need to be made *in advance*.

17. That in so far as the front offices are concerned, the stand in the letter of the ASALSA is that the offices exist, and they can be modified to suit the needs once the rejection orders are issued also appears to be very vague, coupled with the fact that the letter mentions that the NLSA *may* look into the necessity for having more front offices with an additional work force and additional budgetary

requirement. It is not clearly spelt out what modification would be required and to what extent the strength of the front offices and personnel to man these offices would be required along with the budgetary requirements. Thus, it is apparent that there is no clarity in the stand of the ASLSA with regard to the additional requirement and steps to be taken and if these issues are left till the last moment very little worthwhile legal aid can be provided.

18. That, similarly, with regard to the empanelment of additional retainers and Para legal Volunteers the stand appears to be again one of following a wait and watch policy and there is no clarity as to when or what this additional requirement can or should be carried out.

19. That with regard to the issue of imparting of training to PLVs and LACs the letter reveals that the process is in pipeline but nothing has been specified as to when and how these trainings are being perceived.

20. That in fact what transpires from the letter is that on all the counts and issues raised by the petitioner the stand is one of a wait and watch policy without there being any proactive steps being taken to prepare the institutions and authorities to deal with the situation from the very day the rejection slips are issued. No efforts stand

reflected to show that the ASLSA has been making any assessment of the situation.

21. CJP Survey of the District Legal Services Authority: That the petitioner in the meanwhile –on receipt of the last communication dated 23.11.2020 -- has also conducted a survey in 10 districts of the state viz., Dhubri, Goalpara, Chirang, Baksa, Bongaigaon, Barpeta, Darrang, Kokrajhar, Udayguri and Hailakandi with regard to the preparedness of the State legal Services Authority. Some of the findings of this Survey that have come to light are being placed before this Hon'ble Court.

A copy of the detailed Survey conducted by the Petitioner Organisation following the receipt of the letter dated 23.11.2020 is annexed as **ANNEXURE-11 colly**

The Survey in 10 districts has revealed the following:

A. These 10 districts have about 273 active advocates devoted/appointed especially for legal aid?)and333 PLVs (Para Legal Volunteers).The pilot survey covered the following 10 districts:

Baksa, Barpeta, Bongaigaon, Chirang, Darrang, Dhubri, Goalpara,

Hailakandi, Kokrajhar and Udaygiri

B. The minimum qualification of PLVs in seven Districts is Class VIII Pass, in Chirang it is Class X pass, in Goalpara the PLVs are Higher Secondary (HS) pass to Graduates and in Dhubri the minimum qualification is HS.

C. In none of the Ten Districts surveyed, has any training on the Citizenship, immigration, NRC, Foreigners Act, etc been provided so far.

D. As Regards Front office the position is as follows:

Dhubri: No Front office was seen.

Goalpara: Front office lacked adequate number of staff.

Baksa: No front Office is seen but they have the space where such office can be set up

Barpeta: Front Office is too small with no place for any visitor to sit

On ten visits by representative of the petitioner no staff was seen in the front office.

Darrang: The front office is badly maintained. It is not clean and hygienic.

Udalguri: Front office is not adequately staffed.

E. So far as the Monitoring Committees are concerned, in all the 10 Districts the committee consists of only one advocate apart from the Chairman and the Secretary.

F. Apart from the Dhubri District where 7 FT cases were handled by the counsel of the DLSA in 2019 and 3 cases were handled in other districts no FT cases appear to have been handled by the counsel of the DLSA.

22. That there are no reports anywhere that any penal of lawyers or for that matter any modalities for legal aid to those excluded from the NRC Final List is available or has been prepared. On the other hand, there are some reports that the process of supplying reasons, which were held up due to the corona pandemic may start soon.

23. That Article 39 (A) of the Constitution of India envisages the operation of a legal system which promotes justice on the basis of equal opportunity that ensures that the opportunity for seeking justice are not denied to any citizen by reason of economic and/or other disabilities.

24. That not only courts but also the Tribunals are also covered by the Legal Services Authorities Act, 1987.

25. That under Article 21 of the Constitution of India, the right to legal aid is an essential part of the reasonable, fair and just procedure necessary to be followed before any deprivation of life and liberty. The Hon'ble Apex Court in the case of Md Hussain @ Julfikar Ali, a foreign national has also emphasized the need for providing a fair trial to the accused. (reported in 2012 2 SCC 584). The right to legal aid flows from Article 21 of the Constitution. Every person has a right to a fair trial by a competent court in the spirit of the right to life and personal liberty and the object and purpose of providing competent legal aid to undefended and unrepresented accused persons are to see that the accused gets free and fair, just and reasonable trial of charge. Failure to provide these minimum safeguards in itself is "prejudice" to an accused.

26. That Article 14 of the Constitution of India which emphasises on equal justice also includes in its ambit the right to legal aid to a person who is unable to engage a lawyer on account of poverty indigence or incommunicado situation.

27. That the rights guaranteed under Article 21 of the Constitution of India protects the right to life and liberty of not only citizens of the country but also foreigners and it is the settled law that Article 21 applies to even foreigners and such right to life and liberty is incomplete without the right to legal aid.

28. That section 7 of The Legal Services Authorities Act, 1987 provides that it shall be the duty of the State Authority to give effect to the policy and directions of the Central Authority and without prejudice to the generality of the functions, the State Authority shall perform all or any of the following functions, namely : (a) give legal service to persons who satisfy the criteria laid down under this Act; (b) conduct Lok Adalats; including Lok Adalats for High Court cases, (c) undertake preventive and strategic legal aid programmes, and (d) perform such other functions as the State Authority may, in consultation with the Central Authority fix by regulations.

29. That section 8 of the 1987 Act stipulates that in the discharge of its functions, the State Authority shall appropriately act in co-ordination with other governmental agencies, non-governmental voluntary social service institutions, universities and other bodies engaged in the work of promoting the cause of legal services to the poor and shall also be

guided by such directions as the Central Authority may give to it in writing.

30. That under Section 9 of the said Act, District Legal Services Authority is to be formed by the State Government in consultation with the Chief Justice of the High Court, for every district in the State to exercise the powers and perform the functions conferred on, or assigned to, the District Authority under this Act.

31. That Section 11 of the Act, stipulates that in the discharge of its functions, the District Authority shall appropriately act in co-ordination with other governmental agencies, non-governmental voluntary social service institutions, universities and other bodies engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the State Authority may give to it in writing.

32. That Section 11A of the Act stipulates that the State Authority may constitute the Taluk Legal Services Committee for each Taluk or Mandal or for group of Taluks or Mandals. Section 11 B provides that the Taluk Legal Services Committee will coordinate the activities of legal services in the taluk.



33. That Section 12 of the Act, provides that every person who has to file or defend a case shall be entitled to legal services under the Act if that person, is-

(a) a member of a Scheduled Caste or Scheduled Tribe;

(b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;

(c) a women or a child;

(d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);]

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster;

(f) an industrial workman; or

(g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic

(Prevention) Act, 1956 (104 of 1956) or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or

(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

That, under Sections 16 and 17 State Legal Aid Fund and District Legal Aid Funds have to be established to carry out the activities of legal aid.

34. That, in exercise of the powers conferred by section 29 of the Legal Services Authorities Act, 1987, and in pursuance of the provisions in section 4 of the Act to make available free and competent legal services to the persons entitled thereto under section 12 of the said Act, the Ministry Of Law & Justice (Department Of Legal Affairs), National Legal Services Authority, vide notification dated 9.9.2010 notified the National Legal Services Authority (Free and Competent

Legal Services) Regulations, 2010 for inter alia, selection, training etc of lawyers, their remuneration, selection of people for legal aid, etc.

35. That Regulation 8 of the 2010 Regulation provides for selection of legal practitioners as panel lawyers. The provisions are as follows:

“(1) Every Legal Services Institution shall invite applications from legal practitioners for their empanelment as panel lawyers and such applications shall be accompanied with proof of the professional experience with special reference to the type of cases which the applicant-legal practitioners may prefer to be entrusted with.

(2) The applications received under sub-regulation (1) shall be scrutinised and selection of the panel lawyers shall be made by the Executive Chairman or Chairman of the Legal Services Institution in consultation with the Attorney-General (for the Supreme Court), Advocate-General (for the High Court), District Attorney or Government Pleader (for the District and Taluk level) and the respective Presidents of the Bar Associations as the case may be.

(3) No legal practitioner having less than three years’ experience at the Bar shall ordinarily be empaneled.

(4) While preparing the panel of lawyers the competence, integrity, suitability and experience of such lawyers shall be taken into account.

(5) The Executive Chairman or Chairman of the Legal Services Institution may maintain separate panels for dealing with different types of cases like, Civil, Criminal, Constitutional Law, Environmental Law, Labour Laws, Matrimonial disputes etc.

(6) The Chairman of the Legal Services Institution may, in consultation with the Executive Chairman of the State Legal Services Authority or National Legal Services Authority as the case may be prepare a list of 5 legal practitioners from among the panel lawyers to be designated as Retainers.

(7) The Retainer lawyers shall be selected for a period fixed by the Executive Chairman on rotation basis or by any other method specified by the Executive Chairman.

(8) The strength of Retainer lawyers shall not exceed, - (a) 20 in the Supreme Court Legal Services Committee; (b) 15 in the High Court Legal Services Committee; (c) 10 in the District Legal Authority; (d) 5 in the Taluk Legal Services Committee.

(9) The honorarium payable to Retainer lawyer shall be, - (a) Rs.10,000 per month in the case of Supreme Court Legal Services Committee; (b) Rs.7,500 per month in the case of High Court Legal Services Committee; (c) Rs.5,000 per month in the case of District Legal Services Authority; (d) Rs.3,000 per month in the case of the Taluk Legal Services Committee

Provided that the honorarium specified in this sub regulation is in addition to the honorarium or fee payable by the Legal Services Institution for each case entrusted to the Retainer lawyer.

(10) The panel lawyers designated as Retainers shall devote their time exclusively for legal aid work and shall be always available to deal with legal aid cases and to man the front office or consultation office in the respective Legal Services Institution.

(11) The panel prepared under sub-regulation (2) shall be re-constituted after a period of three years but the cases already entrusted to any panel lawyer shall not be withdrawn from him due to re-constitution of the panel.

(12) The Legal Services Institution shall be at liberty for withdrawing any case from a Retainer during any stage of the proceedings.

(13) If a panel lawyer is desirous of withdrawing from a case, he shall state the reasons thereof to the Member-Secretary or the Secretary and the latter may permit the panel lawyer to do so.

(14) The panel lawyer shall not ask for or receive any fee, remuneration or any valuable consideration in any manner, from the person to whom he had rendered legal services under these regulations.

(15) If the panel lawyer engaged is not performing satisfactorily or has acted contrary to the object and spirit of the Act and these regulations, the Legal Services Institution shall take appropriate steps including

withdrawal of the case from such lawyer and his removal from the panel.”

36. That Regulation 9 of the aforesaid regulation provides for legal services by way of legal advice, consultation, drafting and conveyancing. It provides the following:

“(1) The Executive Chairman or Chairman of the Legal Services Institution shall maintain a separate panel of senior lawyers, law firms, retired judicial officers, mediators, conciliators and law professors in the law universities or law colleges for providing legal advice and other legal services like drafting and conveyancing. (2) The services of the legal aid clinics in the rural areas and in the law colleges and law universities shall also be made use of.”

A copy of the 2010 regulation is annexed as

**ANNEXURE-12.**

37. That the Assam State Legal Services Authorities Regulations, 1998 in Regulation 35 provides for modes of Legal aid. It provides that-

Legal aid may be given in all or anyone of the following modes, namely-

- (a) Payment of Court Fee, Process Fee, expenses of witnesses and all other charges payable or incurred in connection with any legal proceeding;
- (b) Representation by a legal practitioner in any legal proceeding;
- (c) Supply of certified copies of judgments, orders, notes of evidences and other documents in legal proceeding;
- (d) Preparation of appeal, including typing and translation of documents in legal proceeding; and (e) Drafting of legal documents.

38. That Regulation 36 provides that Legal aid not to be given in the following cases, namely-

- (i) Proceeding wholly or partly in respect of
  - a) defamation, or
  - b) malicious prosecution;
- (ii) Proceeding relating to any election;
- (iii) Proceeding incidental to any proceeding referred to in items No. (i) or (ii) or both;
- (iv) Proceeding in respect of offences punishable with fine only;
- (v) Proceeding in respect of economic offences and offences against social laws such as the protection of Civil rights, Act, 1955, the Suppression of Immoral Traffic in Women and Girls Act, 1956 etc.;

(vi) Where a person seeking legal aid- (a) Is concerned with the proceeding only in representative or official capacity; or (b) Is concerned only with the proceeding jointly with other person or persons, whose interests are identical with the interest of such a person, or any of such person is adequately represented in the proceeding; or (c) Is only a formal party to the proceeding, not materially concerned in the outcome of the proceeding and his interests are not likely to be prejudiced on account of absence of proper representation.

39. That the Government of Assam vide notification dated December 28, 2018 has fixed the upper level of annual income of a person eligible for legal aid as not exceeding Rs 3 lakhs per annum.

A Copy of the notification dated 28<sup>th</sup> December 2018 is annexed as **ANNEXURE-13**.

40. That the importance of legal aid to the poor and marginalised section of the society has been emphasised and re-emphasised by enactments, instructions regulations and direction and as such there is not an iota of doubt that legal aid by the state forms an integral part of the justice delivery system, promotes fairness and equality in matters of dispensation of justice so that no one is deprived of a fair



opportunity to defend himself on account of economic and/or other disabilities.

41. That it may be pertinent to mention that one of the objectives of the NRC was to prepare a register of citizen, which is fair and which ensures that not a single citizen is left out from the register. From the reports appearing in the print and other media which also has been echoed by various sections of society what has been revealed from the exercise is that many of the inhabitants of the state who are also considered to be a part of the indigenous populace have been left out from the register. Though the exact reasons are yet to be furnished, what is apparent is that the exclusion from the NRC per se does not automatically link these people to another country and therefore, do not make them foreigners till their rights/status are finally decided by an appropriate legal forum. The proceedings before appellate authorities (Foreigners Tribunal being designated as appellate courts for NRC excluded persons) are considered as the continuation of the process of adjudication, suits and trials and only once these remedies available are exhausted, only then any process can be said to have attained finality in law. The process of NRC, which had laid emphasis on documents as proof of citizenship often leads to a complicated procedure of analysis of the documentary evidence, coupled with other evidences as may be available and as such unless these persons are

provided adequate legal aid and assistance to negotiate the nitty-gritties of the complex procedure, before the Tribunal which perhaps is their last hope, these marginalised and underprivileged sections of society will be left with the task of defending their rights and liabilities, pitted against the complex procedure and technicalities of which they have no idea or wherewithal to negotiate. This, in fact will amount to a denial of legal aid resulting in further injustices.

42. That, in the case of Moslem Mandal reported in 2013(1) GLT 809 provides that in determination of the rights of the citizenship every stage of the process is vital and fair opportunity is to be provided at every stage so that valuable rights of the citizen are not curtailed or taken away.

43. That various judicial pronouncements have settled the law that the right to legal aid by the poor and the marginalised section of the society is a part and parcel of a fair judicial process. The Right to Legal Aid at this stage is more than merely providing a lawyer. It has to also eliminate the inequality into the matter of the poor person defending himself effectively. Thus, legal aid would be required at the pre-trial stage, at the stage of obtaining documents relied upon, to understand what the documents contain.

44. That amongst the persons entitled to legal services under the 1987 Act, is a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster. A person left potentially stateless as a result of being left out of a Citizenship Registry would be a person under circumstances of undeserved want. It is submitted that NRC exclusion should be read ejusdem generis alongside the other circumstances listed in Section 12(e) of the Act.

45. That the duty to provide legal aid has been envisaged under the 1987 Act as a collaboration of the judiciary, executive and even non-governmental organisations. The Assam State Legal Services Authority Rules, 1996 and the Assam State Legal Services Regulations, 1998 envisage the High Court being involved either through appointing members on the State Legal Service Authority, and through creating a High Court Legal Service Committee which has to implement and perform such policies and directions or other functions as may be issued by the State authority from time to time. Even under Sec. 304(2) of the Cr. P.C. the High Courts may make rules regarding the selection of lawyers and fees payable to them for such work. The Gauhati High Court has in exercise of these powers made the Defence Pleader (Appointment and Fees) Rules, 1976. Thus, this Hon'ble court

may interfere in the matter of providing legal aid for ensuring and dispensing effective legal aid in the case of the foreign tribunals.

46. That this Hon'ble Court, in the case of *Swapan Kumar Day v. Union of India* filed against the order of the Foreigners Tribunal for non-consideration of material documents to prove citizenship not only after setting aside the order directed a fresh hearing, but also directed the state to provide legal aid to the detainee.

47. That the Hon'ble Apex Court in *Khatri*, (1981) 1 SCC 627 : AIR 1981 SC 928 held that: "it would make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service....It is therefore, not necessary for a person to ask for legal aid"

48. That this Hon'ble Court in *Anurag Saxena v. Ct. S. Damodaran*, (1986) 2 Gau LR 380 observed that the accused was deprived of his liberty and livelihood that is life without making available legal assistance. Since the constitutional right of the accused was deprived it is necessary that free legal assistance should be provided to make the trial reasonable, fair and just. The Hon'ble court was therefore of the view that in the said case the accused was entitled to get legal assistance, if necessary, at the State expense during the trial. Since no such assistance was given during the trial to the petitioner, by the

Magistrate-cum-Assistant Commandant, the denial of the same was observed, would render the trial *non-est* in the eye of law as it was not reasonable, fair and just and was hit by Art. 21. On that ground it was held that the judgment and order of the learned trial Court cannot stand.

49. That there are, a plethora of decisions by various Hon'ble High Courts and the Hon'ble Supreme Court in context of providing legal assistance to the marginalised section of the society.

A brief research note on provisions of Legal aid from national and international law as well as a summary on various judgements are annexed as **ANNEXURE-14 colly**

50. That though by a press release of the Government of India, dated 20.08.2019 it was announced that legal aid and assistance would be provided to the NRC excluded persons, the process of providing legal aid in defending such an important right of citizenship cannot be a matter of casual dispensation and there is a necessity to have a proper panel of lawyers and a detailed framework laid out, as otherwise the legal aid rendered would be a mere formality. The press communication specifies that the State Government would make arrangements for providing legal aid to those in need of such aid. The petitioner in its ground level work has neither come across any

concerted effort to form any panel of lawyers to defend those excluded from the NRC final list nor any detailed framework for the same has been established till date. The petitioner had also submitted a representation before the Secretary, Home Department, Government of Assam, for framing schemes and modalities for providing effective legal aid to the NRC left outs, in need of such aid and also inform the petitioner about the steps already taken up, which could help the petitioner to create legal awareness amongst people. The petitioner has not received any reply to the said representation so far. There are no reports anywhere that any panel of lawyers or for that matter any modalities for legal aid to those excluded from the NRC is either being prepared or has been prepared.

51. That the instances of legal aid provided to the proceedees before the Foreigners Tribunal has been sparse and few. Already the existing Foreigner Tribunals (FTs) are overburdened with the cases arising out of the related 'Declared Foreigners' and 'D-Voter' crises. These alone, according to official figures given to the state assembly are somewhere in the region of another 3 lakhs, 3,00,000. In addition, now with about 19 lakhs (1.9 million) people being left out of the NRC, out of which a vast majority being from the weaker and marginalised sections of society, there is an even more urgent need and requirement of a robust system for providing legal aid, as the situation

of lakhs of appeals being filed in a state alone would give rise to an unprecedented situation, as nowhere in the country have such a mammoth number of tribunals functioned simultaneously and effectively. Therefore, even before these processes start, unless a proper framework of legal aid system is put up under the close monitoring of this Hon'ble Court, an enormous number of people are going to suffer simply because of not being able to afford legal aid and assistance. Thus, the urgent necessity of a proper, robust and effective legal aid system for those excluded from the NRC is an urgent requirement. Though it was announced by the Government of India through a press communication in August 2019 that those excluded from the NRC would be provided legal aid, specific directions from this Hon'ble Court for putting up a proper frame work, would make this proper and effective legal aid a reality.

52. That since the issue relates to the citizenship of the NRC excluded, vast majorities of whom belong to the most deprived and marginalized sections of society, struggling not only for their day to day survival but for that matter even for the day's morsel of food, the vagaries of nature like floods and now the corona pandemic have added to their woes leaving them in no condition to seek legal services, unless so provided by the state. Citizenship Rights being the right to have rights, the same has to be zealously protected.

53. That, 221 appointments were made on 11.9.2019, for presiding over the new Tribunals to be formed to take up the cases of those excluded from the NRC. Though these tribunals are yet to be functional, the moment the reasons for exclusions are provided, the limitation of 120 days for filing appeal would start to run and unless necessary arrangements are completed including the framing of the modalities of the process of providing legal aid *beforehand*, criteria of selection of a panel of lawyers and a panel of lawyers district wise/tribunal wise is formed, in advance, the process of providing legal aid would not be effective and would remain a hollow formality. Hence the urgent interference of this Hon'ble Court has become necessary.

54. That on the question of providing effective legal aid on the issue under deliberation, that is 19 lakh persons excluded from the NRC, there is also the question of the Lawyer and Para legal professional being specifically and robustly trained on the question of Citizenship Laws, Foreigners Act and related issues as this branch of jurisprudence apart from having serious implications on human rights and fundamental liberties within Assam, also requires deft training and legal expertise.



55. That the legal aid envisaged to the under privileged not only encompasses providing legal aid during Trial but also involves Pre-Trial aid and assistance.

56. That as stated above, the reasons for exclusion are yet to be handed over to those persons excluded and once the reasons are furnished, the period of limitation would start to run. Therefore, such a frame work of legal aid and an effective Panel of lawyers having expertise in assisting the excluded, in establishing their citizenship status has to be a prerequisite, if the legal aid and assistance to be provided is to be effective. Hence this PIL has been filed seeking a direction to the authorities to frame the modalities/framework for providing legal aid to the NRC excluded and also form an effective and trained Panel of lawyers by laying down the criteria for enumeration of lawyers retainers, etc.

57. That the provision for appeal before the foreigner tribunal with regard to those who are left out of the NRC is a process to ensure that those who might have been left out gets an opportunity to place her/his case before a quasi-judicial forum for inclusion and as such these persons stand on a different footing against whom references are made to/by the Foreigners Tribunal. These people cannot be said to be non-citizens much less foreigners till the remedies available are

exhausted and as such unless those marginalised and poor who cannot avail legal assistance are provided with legal aid they would suffer irreparable loss and injury.

58. That the instant application has been filed seeking directions to the respondent authorities to frame schemes and modalities to provide legal aid and help in terms of the provisions of the Assam State Legal Services Authorities Regulations, 1998

59. That the process of enumeration in the NRC has been a unique process, tried for the first time in the country, in the State of Assam. The formulations of the SOPs on the process of the Claims and objections, after the Drafts were published, the clarifications intermittently issued from time to time to streamline the process, the queries raised by the State Coordinator just a month before the publication of the list on 31.8.19 and the order dated 13.8.2019 subjecting the updating of the NRC to decisions rendered in Writ Petition (C) No.562 of 2012 and Writ Petition (C) No.311 of 2015 pending before the Constitution Bench of the Hon'ble Apex Court makes it apparent that there has been a constant need to update or mould the process in terms of the experiences gathered in the process and still there are some areas which remain unaddressed. As such the process of providing legal aid also needs to be streamlined by

formulating proper guidelines which would make the assistance by the Counsels so engaged effective and geared to meet the complex issues involved in the determinations.

60. That the legal aid to be provided cannot be reduced to a mere formality but has to be effective given the fact that the issues involved would determine the citizenship of many of the marginalised who do not have the education and wherewithal to defend themselves or put up their claims in an effective manner. As such formulations of guidelines for assistance is also essential as otherwise the legal aid to be provided would be a mere formality.

61. That, the Hon'ble Apex Court on 18.12.2019 in the case of Anokhilal -versus- State of Madhya Pradesh, to make the free legal aid assistance meaningful had laid down certain criteria for appointment of lawyers in cases where there is a possibility of life sentence or death sentence. The NRC excluded also face a grave situation and in the appeals and references before the Foreigners Tribunals unless they are adequately and meaningfully represented/defended these people would stand deprived of their citizenship rights even though such deprivation cannot in any manner link them to a foreign country thereby leaving them basically stateless. As such the situation demands that proper criteria be laid down for

providing an effective and meaningful legal aid and assistance before the process of filing appeals and reference gets underway.

62. That the petitioner along with some family members of those excluded from the NRC had filed WP(C) 1556/2020 but the same was withdrawn on 13.3.2020 with liberty to seek the relief in a PIL, given the nature of the relief sought. Thereafter the Petitioner began the lengthy and detailed correspondence with the Legal Aid authorities at the Assam state and national level which has now resulted in the present PIL.

A copy of the order dated 13.03.2020 is annexed as

**ANNEXURE-15**

63. That since the number of the NRC excluded is a staggering 19 lakhs and a large chunk of them belong to the economically marginalised section of the society, the fact that the time limit for filing appeal is 120 days, there would an unprecedented rush of cases before the 300 odd tribunals envisaged including the 100 operational ones, the petitioner would like to place the following for kind consideration by this Hon'ble Court.

A. In all the Talukas, the Taluk Level Legal Services Authority may be established with the utmost priority.

- B. All the Taluk and District Level Legal Services authority may issue advertisements calling for applications from those who would seek legal aid atleast 3 months before the reasons to the NRC left outs are ready to be furnished or furnished. This would help in assessing the number of such aid seekers which would be helpful in making an assessment of the required infrastructure to be put up and the human power to be deployed so that necessary steps can be taken up accordingly in every district and Taluks as per the requirement.
- C. On assessment of the likely number of legal aid seekers being made,
- i. Necessary arrangements should be made to put up, modify, upgrade the front offices in every Taluks.
  - ii. Advertisements should be made as per need basis for appointment of adequate number of Advocates and PLVs.
  - iii. A Separate Panel of advocates for dealing with the NRC cases may be created in terms of Regulation 8 (5) of the Regulation 2010.

- iv. A Separate Panel of PLVs may be created with graduation as the minimum qualification.
  - v. Training Camps may be organized to train the advocates and the PLVs on the relevant Citizenship, Foreigners Laws, documentation and proving of documents etc.
  - vi. Adequate number of Monitoring Committees may be formed as per requirement in each Taluks/Districts.
  - vii. Adequate number of Staff and Retainer advocates may be appointed to render assistance in the Front Offices.
  - viii. A Separate Panel of senior advocates, law firms, retired judicial officers, may be created for drafting appeals and for rendering advice, in terms of Regulation 27 of the Regulation 2010.
- D. Legal Aid camps may be organized for scrutiny of documents already submitted by the aid seekers and necessary advice may be given to them after analyzing the documents so that these persons are ready with all papers once the reasons are furnished.

- E. Model Appeal Formats may be prepared for use by the counsel and these may also be circulated with the PLVs with necessary instructions and guidelines to equip the PLVs to address the issues of the left outs.
- F. In each Taluk there may be appointed adequate number of counsels having at least 15 years of experience to guide the conducting advocates on case to case basis wherever necessary. There may be atleast one such counsel available for each Front Office at each Taluk.
- G. As far as practicable counsel may be assigned work/appeals tribunal wise so that the counsel can attend all the cases entrusted to them in that particular court without having to move from one court to another. This will help them in attending all the cases entrusted to them or onboard on a particular day.
- H. Organisations from the non-government sector, civil rights organisations etc, including the present petitioner organization, may be also included and invited to participate in the trainings

to enable the principle of legal aid to reach as far and as wide as possible to the most marginalized sections of society

64. That the interim relief as prayed for unless granted would cause irreparable loss and injury many of the NRC left outs belonging to the marginalised section of the society. The balance of convenience also lies in favour of the grant of interim order.

65. That the petitioner has no other alternative and /or efficacious remedy and the relief sought herein are just and adequate.

66. That the petitioner has not filed any other suit of petition in respect of the subject matter in the instant petition.

67. That the petitioners have demanded justice but the same has been denied.

68. That the documents annexed to the writ petition are true to the knowledge of the deponent.

69. That the writ petition is filed bonafide and for securing the ends of justice.



In the premises aforesaid Your Lordships may be pleased to admit this petition, call for the records, issue notice to the respondents to show cause as to why the reliefs as prayed for shall not be granted and on such cause or causes being shown, upon hearing the parties and on perusal of records may be pleased to grant the following reliefs.

I. A writ in the nature of mandamus directing the respondents to make necessary advance arrangements for providing and offering legal aid to people left out of the NRC published on 31.08.2019 and those who are covered by the notification dated 28.12.2018 issued by the legislative department, Government of Assam.

II. A writ in the nature of Mandamus directing the authorities to formulate schemes, policies, modalities to provide legal aid and assistance to the marginalised and poor section of the society who have been left out of the NRC process including-

- (a) Criteria for empanelment of lawyers/retainers etc.
- (b) Appointment of adequate number of counsel district wise/tribunal wise,

- (c) Manning of front office/consultation office,
- (d) The manner and modes of relief to be provided
- (e) Organisation of legal awareness camps
- (f) Any other matter to deal with the enormity of the situation that has left almost two million of people out of the NRC.

III. A writ in the nature of Mandamus directing that, at each Foreigners Tribunal there should be adequate number of legal aid lawyers attached with their names and addresses advertised and office space be provided at each Tribunal for these legal aid lawyers to operate

IV. A writ in the nature of Mandamus directing appointment of adequate legal aid lawyers to be effected at least one month prior to the notices being issued to the excluded persons.

V. A writ in the nature of Mandamus directing the authorities to prepare and make available manuals to the counsel so engaged for legal aid and assistance deal with the cases so that uniform, proper and effective legal aid and assistance can be provided to the

marginalised sections of the society who might have been left out of the NRC list owing to various technicalities.

VI. Pass such other/further order, as Your Lordships may deem fit and proper in the interest of justice.

And

Pending disposal of the petition, Your Lordships may be pleased to direct that pendency of this petition shall not be bar to provide legal aid and assistance to eligible persons in terms of the notification dated 28.12.2018, in filing and conducting appeals and defending reference case.

And/Or

Pending disposal of the petition, Your Lordships may be pleased direct that the reasons of exclusions of NRC left outs shall not be furnished till the necessary advance arrangements are made for providing legal assistance and aid to the NRC left outs, in need of such help in accordance with the Legal Services Authorities Act and various Rules and Regulations framed under it

And for this act of kindness as in duty bound the petitioner shall ever  
pray



**DISTRICT: KAMRUP (M)**

**IN THE GAUHATI HIGH COURT AT GUWAHATI**

(The High Court of Assam, Nagaland, Mizoram & Arunachal Pradesh)

(CIVIL EXTRA-ORDINARY JURISDICTION)

**PIL No. \_\_\_\_\_ /2020.**

Citizen for Justice and Peace

...Petitioner

Versus

The Union of India &Ors

...Respondents

**SYNOPSIS**

The petitioner in the instant case is seeking effective implementation of the Press Communication dated 20.08.2019 by which it was provided that legal aid would be provided to the NRC left outs, who are in need of such aid. Under Article 21 of the constitution of India, the right to effective and meaningful legal aid is the sine-qua-non for a reasonable, fair and just procedure to be followed before deprivation of life and liberty. Article 39A of the Constitution envisages the operation of a legal system which promotes justice on the basis of equal opportunity, that ensures that the opportunity for seeking justice are not denied to any citizen by reason of economic and/or other disabilities. The

petitioner has been actively working amongst the people of the state, more particularly the marginalized section of the society, trying to deal with the nitty-gritties of the NRC enumeration process, within the limitation of its resources. Citizenship rights of about 2 million people are in question, following the publication of the NRC on 31.08.2019 and the appellate stage is the most crucial to the establishment of their rights. The Government of India in its press communication has though announced that those in need of Legal aid would be provided such aid by the state by making necessary arrangements, the petitioner in its activities in the ground level or through its enquiries within its powers has not come across any scheme/modalities/panel of lawyers prepared by the State to make the announcement in the press communication, a reality. The nitty-gritties of the process and the seriousness of the issue involving the right to have rights with adverse consequences like possibilities of statelessness, disfranchisement, denial of the benefits of the state schemes, social stigma and even long imprisonment require the preparation of a comprehensive modalities for legal aid and also preparation of an effective Panel of lawyers with some amount of expertise to deal with the complexity of the legal and administrative issues. Hence this PIL seeking intervention of this Hon'ble Court for ensuring that the legal aid announced to be rendered is meaningful and effective.

**DISTRICT: KAMRUP (M)**

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**LIST OF DATES**

<b>DATE</b>	<b>EVENTS</b>
28.12.2018	The Government of Assam issued a notification fixing economic criteria for legal aid.
20.08.2019	The Government of India issued a press communication to the effect that the state government would make necessary arrangements for legal aid for the NRC left outs, in need of such aid.
31.08.2018	The NRC list was published.
28.04.2020	The petitioner made a representation to the Government seeking preparation of a framework for providing legal

	aid to the NRC left outs.
16.07.2020	NLSA Sought an action took report from the ASLSA.
19.08.2020	The petitioner submitted another representation making some suggestions for consideration.
23.11.2020	The petitioner received a detailed response on suggestions made in the 19.08.2020 representation from the Assam State Legal Services Authority on "Suggestions for a Framework for Legal Aid for those Excluded from the NRC."
December 2020– January 2021	The Petitioner Organisation Conducted an Independent Survey of the District Legal Services Authorities located in 10 of the Assam states districts. This has been annexed hereto as Annexure 11 Colly.



**DISTRICT: KAMRUP (M)**

**IN THE GAUHATI HIGH COURT AT GUWAHATI**

(The High Court of Assam, Nagaland, Mizoram & Arunachal Pradesh)

(CIVIL EXTRA-ORDINARY JURISDICTION)

**W. P. (C) No. \_\_\_\_\_ /2020.**

Citizen for Justice and Peace

...Petitioner

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The Union of India &Ors

...Respondents

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