



**Recovering the ‘Other Side of Silence’:
Citizenship Amendment Act, 2019 and the
refugee versus immigrant discourse of
post-colonial Assam**

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INTRODUCTION

“This is a document of freedom; this is a document that would be recorded in history in golden letters... In the end, I want to, through this house, make it clear to the country, that there is a fundamental difference between refugee and immigrant...This bill is for the refugees, this bill is for the religious minorities...”¹

With these words in support, yet again the Citizenship Act, 1955 was amended. The bill, one of the key components of the B.J.P. manifesto, to further amend The Citizenship Act, 1955 in India that was first introduced in 2016, again in January, 2019 was introduced for the third time on the 9th of December, 2019 despite a lot of opposition in the Lok Sabha where the Bharatiya Janata Party led NDA (National Democratic Alliance) is in a majority since 2014. Ever since the foundation of the party, the Bharatiya Janata Party (B.J.P.) has had a consistent ideological commitment of addressing the concerns of Hindu refugees who were conceived as an inalienable part of the Indian national consciousness, who had been forced to reside in a part of a land that had become a foreign country after partition and who were forced to migrate to India from Pakistan since partition in 1947 and subsequently from Bangladesh post 1971 because of religious persecution.

It was not a commitment that was limited to the foundation and politics of Bharatiya Janata Party and its precursor, the Jan Sangh founded in 1951 alone. This engagement with partition and refugee-hood was part of a larger ideological commitment of the ideologue of Rashtriya Swayamsevak Sangh, Shri M.S. Golwalkar, respectfully referred to as *Guruji* in the Sangh circles. A reading of his Bunch of Thoughts (1966) now a published text would inform us that he perceived partition as an aberration and a result of ‘browbeating’, ‘terror and havoc’ and perceived Muslim immigration into Assam as a step towards making Assam a Muslim majority province.² This had to be appreciated against understanding Hindu refugee migration into Assam as a result of ‘massacre and mass expulsion of Hindus from East Bengal’,³ a commitment which was shared across political spectrum in India in the initial years after independence reflecting itself in the assertions of leaders such as Mahatma Gandhi,⁴ Jawaharlal Nehru⁵ and Sardar Vallabhbhai Patel⁶ and also in the deliberations of the Provisional Parliament and the Lok Sabha after independence. Thus entanglement between partition, displacement and refugee-hood and its engagement with Assam is not a sudden recovery of the twenty-first century but a long-term politico-legal legacy in post-partition India since 1947.

The concept of citizenship has traditionally been an integral part of the idea of security and entitlement in the nation-state paradigm. The idea of a state as a political community within a given territory is incomplete without an understanding its stakeholders living within it. In its common understanding, citizenship is connected to the idea of complex imagination of and identifying and defining stake holders within this political community through a normative index – which determines who are the citizens and who are not. In its normative sense citizenship is both an inclusive and an exclusive mechanism – which differentiates citizens from aliens. As a concept citizenship is a paradox that creates on the one hand, a hierarchy among the people living within the state and hence inequality and on the other hand claims to create a sense of equality amongst a section of people identified as citizens by making the promise of 'free and equal membership' within them. Therefore the concept of citizenship is aimed at creating possibilities and opportunities for some people and deprivation and denial for others who share the same territory. In *Politics*, Aristotle defines the citizen as one who "shares in the administration of justice and in offices"⁷ and someone "who has the power to take part in the deliberative or judicial administration of any state" and thus speaking generally, a state is a body of citizens "sufficing for the purposes of life."⁸ Aristotle elaborates the concept of citizenship further when he points out that "in practice a citizen is defined to be one of whom both the parents are citizens; others insist on going further back; say to two or more grandparents."⁹ Incidentally, the constitutional scheme drawn up by most modern nation-states, of citizenship by descent is a derivative from such Aristotellian ideas of citizenship. In Indian Constitution, engagement with such conception is an obvious fallout of the influence of colonial modernity that introduced modern- post renaissance ideas of states and citizenship into modern India. In fact the foundation of engagement with the legacy of partition and the refugee can be legitimized in this idea of a colonial and post-colonial legacy.

When the colonial government decided to transfer power in India it decided to partition the subcontinent into two states – Pakistan and India. While Pakistan and its Muslim League Leadership envisaged itself as a theocratic state which claimed Islam to be the State religion,¹⁰ India, imagined itself as a secular state where the state would not have any religion as its own.¹¹ Both these imaginations also shaped the construction of citizenship within their respective dominions in theory. But beyond the idealism and philosophy, the politics and the experiences of

the people at the grassroots manifested in a violent partition of the subcontinent had a deeper impact on the construction of citizenship in post-colonial India, a process that has entered the construction of citizenship over more than seven decades in Assam reaching a recent crescendo during the just concluded process for enrolment of the National Register of Citizens, 2015-2019 and the notification of the Citizenship (Amendment) Act, 2019 in January, 2020. Engagement with the violent history of partition of the subcontinent, the large-scale displacement of minorities who found themselves on the wrong side of the border and questions about the citizenship of the displaced/refugees have been lingering concerns cutting across party lines since 1947 which the powers that be, claims to have finally put to rest in the latest amendment. This study seeks to understand this process.

Burden of Partition: legislating a difficult reality

While interprovincial borders of colonial era became international boundaries, perceptions about population migration also underwent a change. Inter-provincial migration which was easy and mostly unrestricted became restricted by the legal regimes governing international population movement, which post-colonial India attempted to negotiate through a labyrinth of debates, legislations and subordinate legislations. Though there was no restriction of people from East Pakistan to Assam in the initial years after independence, gradually the provincial governments and the Government of India¹² began to discourage migration of Muslims from Pakistan to India between 1948 and 1950.¹³ The correspondences between Jawaharlal Nehru and leaders such as Sardar Patel who pointed out that there was a rising discontent among Indians in general and refugees in particular about the inflow of Muslims into India from Pakistan.¹⁴ The East Pakistan situation was very critical as there was a steady exodus of Hindus who constituted 31 percent of the total population in 1947 and were reduced to 22 percent in 1951.¹⁵ As people migrated, the entire subcontinent was in flux, especially in the east and the west of India bordering the two wings of Pakistan. One of the epicentres of intense activity in the east, although with difference was Assam which shared more than 885 km. border with East Pakistan. Nehru, in his letter to the Chief Ministers on 1st April, 1948 was quick to point out that, “the exodus of non-Muslims from East Bengal continues. We are naturally as much bound to help these refugees as any from western Pakistan.”¹⁶ But despite utmost attempts from India, the conditions continued to deteriorate. By the next fortnight, the report was even grimmer. Writing back to the Chief

Ministers, the Prime Minister was quick to inform that, “conditions in East Bengal have deteriorated and over a million Hindus have come over during the past few months. The stream continues and we have to help those who come.”¹⁷ Hostilities between the displaced Hindu refugees, coming from Sind and East Bengal and the Muslim returnees from Pakistan had obviously grown and even the Prime Minister was unable to shake off the difference between the Hindu refugees and the Muslims, who were popularly perceived as illegal and migrants and economic fortune seekers in partitioned India often articulated through demands of population transfer between the Hindus and Muslims from East and West Bengal respectively. As partition introduced the ‘foreigners’ dimension into politics the debate only became more intense and anxiety ridden. The situation became critical as the initial trickle of people wanting to migrate to India from East Pakistan became a flood by 1949 as the political atmosphere in East Pakistan became increasingly hostile to the minority communities across the border. The hostile situation on the ground for the East Pakistani Hindu population was reflected in official correspondence between the ministers of the central government and other leaders of Congress party, who were located in the provinces, sharing a border with East Pakistan. In a letter to Sardar Patel, in November, 1948, Shri. K. N. Katju pointed out that “so long as the Muslim leaders in Pakistan continue to declare that Pakistan is an Islamic State, very few Hindus, I apprehend, would care to call themselves Pakistani nationals.”¹⁸ Violence, violation and hostility took many forms which manifested itself in the steady exodus of non-Muslims from East Pakistan to India. Though the central government were reluctant to admit the magnitude of the violence and intimidation faced by the Hindus in East Pakistan, they were forced to gradually acknowledge it. This difference could be perceived by 1949 when none other than Nehru himself, in a letter to B.C. Roy, the Chief Minister of West Bengal on the 2nd of December 1949, he admitted that,¹⁹

‘There was something elemental about this (the Punjab) and we have come to face the situation. In Eastern Pakistan the migration has been at a lower pace and rather gradual.’

As the Home Minister, Sardar Patel also endorsed the difference between Punjab and Bengal. Patel was more evocative about the grim situation for the Hindus in East Pakistan when at Jaipur, in 1948, at a debate on the refugee situation and rehabilitation in the Subjects Committee at the Congress Session he pointed out that,

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

The people of East Bengal are in a sad plight. Nobody wants to leave his own hearth and home without any reason. After all, in India they would have to starve. It is because of conditions in which they live there are bad that they migrate to India...’²⁰

Though the Punjab situation had stabilized by 1948 as, in the language of Sardar Patel, “there was not a single Hindu or Sikh left in West Pakistan” indicating that the population transfer or exchange was more or less completed, in the east, it was a different scenario and both Nehru and Patel hoped that the Hindus refugees from East Pakistan would return to their homes, and they hoped that Pakistani state would behave itself. But that was not to be as the Hindus and both the leaders realized that the political and legal infrastructure would have to accommodate the eastern refugee question. Over the year, the situation only became worse. This increasing hostility faced by the non-Muslim League supporters in general and non-Muslims in particular in East Pakistan was at the core of public and political debates in the formative post-colonial years This debate informed the deliberations of the Constituent Assembly, a representative body of 385 members representing both the British Indian provinces and the Indian princely states.²¹

When the debates of the Constituent Assembly rolled into deliberations on provisions relating to citizenship in independent India, members, informed about the impact of partition on the demographic transformation of East Pakistan were positively inclined to make provisions for the religious minorities who were systematically displaced from their homes in East Pakistan and forced into ‘refugee-hood’ in India.²²The distinction between ‘displaced-refugees’ and ‘immigrants’ was one of the major thrust areas in the political positions and constitutional debates in the Constituent Assembly itself where members also deliberated on the future of non-Muslim ‘displaced/refugees’ migrating from East Bengal/ East Pakistan to Assam. Seven months before the citizenship question came to be deliberated upon in the Constituent Assembly, the dilemma of partition and refugee-hood resonated in the deliberations on the proposed electoral roll envisaged for the first general elections after independence in the arguments and proposals of Jawaharlal Nehru himself. Nehru, who was in favour of holding elections “as early as possible in the year 1950” and argued in favour of facilitating the incorporation of ‘refugees’ into the electoral roll and therefore by obvious implication, into ‘citizenship’ pointed out in his reply to observations by Rohini Kumar Choudhuri, a member representing a general seat from Assam

that, the rights of refugees should be protected even if by “ special provision” as against ‘vague migrants who may come in.’²³Nehru pointed out that, “it was intended that they should vote...”²⁴ This position is the first major assertion of the distinction that the Indian state had always maintained post-independence after partition, considering that the Constitution of India that finally came to be adopted and enacted, gave voting rights only to the citizens through Article 326. It was in view of the difficult situation that, Nehru and other leaders of the Constituent Assembly, while speaking on the issue proposed that, “...a person who has migrated into a province or Acceding state on account of disturbances or fear of disturbances in his former place of residence shall be entitled to be included in the electoral roll of a constituency if he files a declaration of his intention to reside permanently in that constituency.”²⁵This provision was also adopted and incorporated into the statute after much debates. Seven months later when the Constituent Assembly met to debate on citizenship, it was Rohini Kumar Choudhuri, again, who championed the citizenship claims of the refugees coming to Assam, more so the partition victims. Rohini Kumar Chaudhuri who represented a general seat from Assam in the Constituent Assembly was aware of the difficulties posed by partition on the lives of the non-Muslims in East Pakistan and its impact on India in general and Assam in particular. Its significant that in pressing his amendments to the draft of Articles, 5 and 6 he demanded citizenship for those persons who migrated from East Bengal to Assam,

because they found things impossible for them there....Can anyone imagine for a moment that there is no fear of disturbance in the minds of these East Bengal people who had come over to West Bengal and Assam?...Has that sense of security now after a period of two years been enhanced by the fact that Pakistan has been converted into a theocratic state?...The fear is latent in the minds of everybody. The moment any Hindu or a person of any minority community raises a protest against any action which is taken there, disturbances would immediately follow.... I want citizenship rights to this class of people who have originally belonged to Sylhet in the province of Assam, who long before the partition, have come to the Assam Valley as citizen ‘of that province and are staying in the present province of Assam... I want to make it perfectly clear that I want citizenship rights for those people of East Bengal who had gone over to West Bengal or Assam out of fear of disturbance in the future or from the sense of insecurity and – also for those people who have come over from Sylhet, who at the time of coming had no fear of disturbance or anything of that kind, but who on account of fear of disturbances now have decided to live here.²⁶

But even at that critical moment of his exposition on the future of citizenship in India and Assam, the Choudhury did not lose sight of the obvious distinction between the refugee and the immigrants as he opposed the inclusion of Bengali Muslim immigrants into the new citizenship register by declaring that,

“I would exclude those persons who came only three years ago, who set up the civil disobedience movement forcibly occupied land which was not meant for them and forced the benevolent and benign Government to have recourse to the military to keep peace in the province. ...I desire to exclude those persons who surreptitiously introduced themselves into my province and who now having mixed themselves with their own brethren, now desire to have citizenship rights...I desire to exclude these people because they had not long ago set up the struggle for Pakistan, they had not long ago taken an active part in compelling the politicians in India to agree for partition...I only want that those classes of persons whom I have mentioned should be included and should get citizenship rights and those classes of persons whom I want to exclude should not get the right of citizenship...”²⁷

For Choudhury, the only representative from Assam who spoke on citizenship rights, his presentation was seminal as his presentation was on an amendment jointly tabled by him in his representative capacity as a representative of the Assamese Hindus, Mr. Dharanidhar Basu-Matari representing the Tribal people of Assam and Mr. Nibaran Chandra Laskar, representing the Bengali Scheduled Castes, also from Assam,²⁸ three important components of society in Assam. It was a spectacular joint front, unprecedented in history and steeped in the tenuous communal history of Assam, especially the anti-immigrant sentiments of the Assamese middle class and attempts by him to reconcile this history with post-colonial reality. The Congress ministry in Assam which came to office after the elections of 1946 had launched a vigorous anti-immigration drive and had also had to resort to forceful eviction drives and counter measures against the Civil Disobedience that was launched by the Muslim League in Assam in March, 1947,²⁹ a fact which resonated in the assertions of Choudhury. When the Constitution of India came into force in 1950, the sentiments of the Assembly clearly reflected itself in within the Constitutional framework accommodating the interests of the displaced/refugees in post-colonial India, though the term ‘refugee’ did not find a mention in the bulky constitution that came to govern the nation-state.

But between 1947 and 1950, as India was giving itself the Constitution, East Pakistan was in the throes of a violent conflagration which was singularly targeting the non-Muslim population. A summary of the incidents presented in a memorandum submitted by one of the Hindu members

of parliament in Pakistan to the prime minister, Nurul Amin in December, 1949 drew his attention to

“indiscriminate requisitioning of Hindu houses, godowns, shops, educational institutions and other immovable properties all over East Pakistan. It pointed out that in Dacca alone 3 thousand Hindu houses had been requisitioned. The licence of Hindus holding fire arms were cancelled and the arms were seized. Large number of houses and lands throughout Pakistan were forcibly occupied by Muslims. Temples were desecrated. Large number of reports of crimes against Hindu women were brought to the notice of the authorities but were ignored. Forced conversions and forced marriages after abduction were also mentioned. Large number of dacoities during which attacks on women had taken place had become a feature of rural life in East Bengal. Muslim mobs on the pretexts of keeping an eye over disloyal Non Muslims raided Hindu houses. In the rural areas forcible removal of crops, plucking of fruits from trees, cutting of bamboos and catching fish from the tanks belonging to Hindus had become most common. The attitude of the Government and the police towards these complaints from Hindus was complete indifferent and some district magistrates openly preached against the Hindus. The Minority Boards agreed upon by the Neogy- Mohammad Pact were either not brought into existence or were not allowed to function. Local Boards and Municipalities where Hindus held the majority seats were arbitrarily suspended.

In February 1950, there was a repetition of the pattern of Calcutta killing in East Pakistan. Unfortunately, this was widespread. The atrocities which began in August 1949 all over East Pakistan continued almost for a period of 36 months.

These incidents led to a fresh wave of migration and thousands of Hindus poured into West Bengal, Assam and Tripura.”³⁰

While the Government of Pakistan made every attempt to suppress publicity of any information relating to the ongoing violence, a prominent minority leader of Pakistan, Mr. Bhupendra Kumar Dutta, speaking in the Constituent Assembly of Pakistan on the 16th of March, 1950 pointed out that,

“...the sudden and violent outbreak of the recent lawlessness spread over a large area both urban and rural which seemingly organized plan behind it directed solely against the helpless minority without the least provocation has created a deep feeling of insecurity in the minority community...”³¹

A memorandum submitted by the Hindu members of Parliament of Pakistan to Prime Minister Liaquat Ali Khan on the 20th of March, 1950 pointed out that,

“troubles started in Sylhet town on the 13th of February and continued till the 16th... in Sylhet town itself there were 50 to 60 cases of stabbing of which six proved fatal. In this town some ten or twelve houses are reported to have been looted and burnt. Almost simultaneously the trouble started in the rural areas within P.S. Sadar, Biswanath, Chatak, Fenchuganj, Balaganj and Gopalganj. In all these places a large number of Hindu villages were attacked and have been completely destroyed and some Hindu girls were abducted

and raped. Reports of mass conversion of Hindus of several villages have also been received. The modus operandi in these places was as follows:- A few Mullahs first visited the village and asked the Hindus to save themselves by embracing Islam. Brahmins were made to tear their sacred threads and recite Kalma. Wherever there was resistance the Muslim mob attacked the village and the entire village was looted and burnt and persons killed and women abducted....At Manikpur some 25 houses of Naths (weavers) had been looted.”³²

This report from Sylhet was only representative of the violence that was ongoing against the minorities in East Pakistan where the majority community were indulging in an open display of power over the minorities across the districts of Mymensingh, Bakarganj, Chittagong, Noakhali, Tippera and Dacca while the political and administrative authorities were consciously abdicating their responsibility to maintain law and order in their territory and peace and tranquillity in society reflecting their complicity in the anti-Minority pogroms.

The Census Report for Assam, Manipur and Tripura, 1951 observed, that,

“the recent influx of Hindu refugees from Pakistan constitutes the biggest migration stream into Assam during the last decade. Following the Noakhali Riots, in October, 1946, and the Partition of India, there has been an almost steady and continuous exodus of the Hindus of Pakistan into Assam. According to the special Refugee Census taken by the Government of India of the displaced persons from East Pakistan in July 1949, there were 24,600 families of displaced persons in Assam or approximately 114,500 persons”³³

The migration situation aggravated further as riots broke out in various other parts of East Pakistan in 1949 and 1950.³⁴ The Census Report 1951, observed that,

“Soon after the 1949 Refugee Census occurred the incidences of Soneswar and Habiganj, the oppression of the Hajongs in Northern Mymensingh and the atrocities committed on the Santhals in Rajshahi, in East Dinajpur, etc. Then came the gruesome incidents over large areas of East Pakistan in February-March 1950, especially Dacca. These led to the inevitable result, viz, the desertion by hundreds and thousands of Hindus in East Pakistan of their hearths and homes to seek shelter in the neighbouring districts of West Bengal and Assam whichever was nearer...”³⁵

The number of displaced almost touched about half a million people by April, 1950. But even in such a grave situation, while people belonging to the minority communities in East Pakistan poured into India, a large number of Muslim economic opportunity seekers, who belonged to the majority, who otherwise had no political threat to their lives, took advantage of the political flux, also slipped into India. It was a scenario to which the Government of Assam drew the attention of the central government since 1948³⁶ and the Government of India was not prepared to overlook as it not only aggravated the economic pressures on partitioned India and Assam³⁷ but

also created a serious security scenario forcing the Government of India to promulgate an ordinance to prohibit the entry of such Muslim migrants from East Pakistan into Assam and India. While the non-Muslim migrants were classified as 'displaced' or referred to as 'refugees' the latter were clearly identified as 'undesirable immigrants' in official discourse, including the Ordinance that the central government promulgated to overcome the grave scenario, pending the passage of a bill in the provisional Parliament to that effect. Though the arguments came from diverse ideological backgrounds and different readings of history, this classificatory difference between 'displaced'/refugees and illegal immigrants continued to dominate the debates on migration/immigration cutting across ideological lines. If Guruji Golwalkar believed that, "...the Pakistani Muslims have been infiltrating into... Assam surreptitiously and the local Muslims are sheltering them... a conspiracy to make Assam into a Muslim majority province so that it would automatically fall into the lap of Pakistan,"³⁸ the Government of the day and many Congress leaders, including those from Assam thought no different as they chose the legal course to overcome the challenge as, "... the matter was urgent and it became necessary to request the Governor-General to issue an ordinance..."³⁹ which was promulgated on 6th January 1950. But legally, ordinance being a temporary law, the Government was forced to introduce the Undesirable Immigrants (Expulsion from Assam) Bill 1950 to the Parliament to "provide for the expulsion from Assam of undesirable immigrants",⁴⁰ as distinguished from "persons who on account of disturbances or disorder in Pakistan' or any other country have come to take refuge in Assam..."⁴¹ as Shri. Gopaldaswami Ayyangar the central Minister of Transport and Railways and the mover of the bill, pointed out in his introductory remarks. Almost all the members speaking on the bill especially those from Assam, prominent being Shri Rohini Kumar Choudhury, Shri Surendranath Buragohain, Shri Dev KantaBarooah, and Shri Kuladhar Chaliha. While the Bill, on becoming an act with the title Illegal Immigrants (Expulsion from Assam) Act, 1950 promulgated on the 1st of March, 1950, contributed to create a legal foundation for a differentia between Non-Muslim and Muslim migrants, on the ground by crafting a difference in understanding the nature of migration on religious lines, it also renewed public focus on violence and its diverse manifestations on the non-Muslims in East Pakistan and its resultant insecurities and apprehensions, which was recognized as the primary cause for their displacement from home and hearth and migration to Assam and India. Members were extreme

concerned with the fate of the migrants who had come to Assam from areas which formed part of East Pakistan as the situation was not as favourable for the refugees in East Pakistan. Rohini Choudhuri, a senior Congress leader from Assam who was articulating the unique predicaments of the citizenship issue for the Bengali refugees from Sylhet at the Constituent Assembly and his colleague from Assam, Mr Surendranath Buragohain again took to the floor to assert the difference between the refugees and immigrants. Rohini Choudhuri led the debate by asking the Minister “to make it clear by a clause that the word ‘immigrant’ in the Bill does not include the refugees who have come to Assam...But I may say that for a single refugee who has come to Assam three times that number have come from Eastern Pakistan who cannot by any means be called refugee...who have come in for economical reasons or for the reasons of exploitation.”⁴² Considering the location of Assam as the third partitioned province of colonial India, it was perhaps important to make the difference considering that the minority Hindus from Sylhet would naturally want to come to India, more so to Assam as the displaced. It was not to any surprise that Shrimati Sucheta Kripalani was quick to point out that “it is very natural that these people, Hindus who were formerly people of Assam and who are now citizens of East Bengal, when they are persecuted they would try to enter our land.”⁴³ Mr Deb Kanta Barooah’s intervention, also from Assam, was even more categorical as he pointed out that,

“although the dictionary meaning of the word ‘immigrant’ is anybody who comes from one country to another, in this particular case the word ‘immigrant’ means only Pakistani Muslim immigrants from Eastern Pakistan and does not include the refugees of whom a census was separately taken in Assam. We have learnt from Shri Rohini Kumar Choudhury that 1,20,000 displaced persons, who left East Bengal for fear of persecution have come to Assam. We must draw a line between these two types of people—People of Pakistani origin and nationality who owe no loyalty to our country and to our State, and people who for their love of India and patriotism have been persecuted in Pakistan and have taken shelter in Assam.”⁴⁴

These interventions from the debate led the Government of India to insert a proviso into one of the sections of the bill that sought to make the distinction between persecuted displaced minority community person/refugee East Pakistan and illegal/ undesirable migrants from East Pakistan who had ‘subsequently come to reside in Assam’. The mover of the bill, Gopaldaswami Ayyangar, in his reply was firm in pointing out that, the sword of eviction and the clause of ‘undesirability’ under the Act, when promulgated, would not apply to people, “who subsequent to the partition of the subcontinent on the 15th of August, 1947, have migrated in fear to Assam,

because of disturbance in Pakistan or their fear of their being badly dealt with in Pakistan.”⁴⁵

Therefore when the Act came to be promulgated, the proviso to Section 2(b) read,

Provided that nothing in this section shall apply to any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been displaced from or has left his place of residence in such area and who has been subsequently residing in Assam.

Though most Indian leaders including Jawaharlal Nehru and Sardar Patel were generally opposed to the migration and settlement of refugees from East Pakistan in India, on principle, trying to talk to their east Pakistani counterparts⁴⁶ or on many occasions making insensitive statements about East Bengal refugees,⁴⁷ with the hope that these refugees would not migrate to India or even if they had migrated, they would go back to Pakistan, they could not stem the inflow that became a tide by April, 1950 as anti-Muslim violence broke out and spread across East Pakistan.⁴⁸ With the aggravation of violence on non-Muslims in East Pakistan and against Muslims in some provinces of India led the Prime Ministers of India and Pakistan to meet in April, 1950 and come up with an agreement, popularly known as the Nehru - Liaquat Pact. The aggravation of migration of people across the border and the resignation of the two ministers, Shyama Prasad Mookherjee and K.C. Neogy in protest against the pact and its imminent failure, forced the Government to bring a motion in Parliament to discuss the critical situation in East Bengal in Parliament. Probably for the first time, Jawaharlal Nehru, initiating a discussion on the motion Re: Bengal Situation on the 7th of August, 1950 signed on 8th April, 1950, stood in Parliament to point out that the agreement was intended to deal with the ‘serious situation’ that had arisen, “especially in East Bengal, West Bengal, Assam and Tripura...to bring some relief to minorities in both countries who were suffering tremendously, who were living in constant fear and, in fact, who were even prevented from migrating...to put an end to that grave tension.”⁴⁹

However he was candid enough to admit that,

my opinion is that the Hindu minority in East Bengal feels – it is an important fact how they feel- insecure and , therefore they cannot settle down, you might say and there is a tendency to come away or even if they remain, they do not know how long they will remain. That is a fact...⁵⁰

and further pointing out that,

...10 million people, nearly a crore of Hindus are still in East Pakistan. It is a very large number. It is true that a large number of middle class people have come over; it is also true that specially after these February – March disturbances, people like teachers came over. Schools were closed; educational institutions ceased to function, so that the normal life of the minority community was completely upset there. There were children without schools and school masters without children and so on...⁵¹

But that was only the tip of the iceberg. As the Hindu middle class left their homes in East Pakistan, the brunt of violence fell on the lower classes and the Dalits who were still holding on to their homes which came to be detailed in the resignation letter of the Dalit leader Jogendranath Mandal of East Pakistan from his post of Cabinet Minister of Pakistan and subsequent statement on his migration to India who pointed out that,

“neither the East Bengal Government nor the Muslim League leaders were really earnest in the matter of implementation of the Delhi Agreement...Commission of thefts and dacoities even with murder is going on as merrily as before. Thana officers seldom record half the complaints made by Hindus. That the abduction and rape of Hindu girls has been reduced to certain extent is due only to the fact that there is no caste Hindu girl between the ages of 12 and 30 living in East Bengal at present. The few depressed class girls who live in rural areas with their parents are not even spared by Muslim goondas. I have received information about a number of incidents of rape of scheduled caste girls by Muslims. Full payment is seldom made by Muslim buyers for the price of jute and other agricultural commodities sold by Hindus in major market places. As a matter of fact there is no operation of law, justice or fairplay in Pakistan, so far as Hindus are concerned.”⁵²

The situation in East Pakistan was not a secret and the Government of India was aware of the situation on the ground across the border as the Prime minister in a statement on the exodus of people from East Pakistan between 1947 and 1949 had pointed out, in March, 1950, that, “1,600,000 people had thus been forced to come away from East Bengal to West Bengal during the period ending on 31st December, 1949.”⁵³ While Nehru was keen to present a sober and a balanced picture of the background for the incessant migration scenario in the subcontinent in view of an agreement that he had signed with his Pakistani counterpart, Liaquat Ali Khan, he was unable to, till then, publicly appreciate the magnitude and compulsions that led to the largescale dislocation of the minority or clearly highlight the narratives of violence into the domain of public debate due to the pressures of domestic politics that arose over the Kashmir question and the migration situation which could have serious international fallout. But surely in this context, Shri Shyama Prasad Mookerjee was closer to the truth. A man who had tendered his resignation in protest against the pact, he was free of governmental compulsions, had travelled to the north-eastern states which had borne the major brunt of east Pakistani refugee migration and settlement and had the detailed statistics to counter the Prime Minister himself. In his

intervention, Mookerjee pointed out that it was important to understand that the people belonging to the minority community who migrated to India after 1947, “came systematically because they found it impossible to live in Eastern Bengal.”⁵⁴

As Mookerjee had predicted and asserted even before the agreement had been concluded, the Pact failed and despite the pact there was no improvement in the situation on the ground and a large number of Hindu displaced from East Pakistan preferred to settle down in parts of composite Assam than returning to their homes in East Pakistan. The Census of 1951 revealed that as many as 274,455 persons were settled in Assam, predominantly in the plains. While 259,946 persons settled in plains areas, 14,509 persons moved into the hill areas.⁵⁵ But the debate on the Bengal Situation was not a closure to the discussions and uproar that visited the Houses of Parliament on the issue of trans- border migration from East Pakistan and the question of citizenship in India of the persecuted minority communities from there again in November, 1950. On 15th November, 1950 when Nehru rose to speak on the President’s address to Parliament and pointed to the refugee situation and assured that,

...the hon. Member referred to the question of citizenship. There is no doubt, of course, that those displaced persons who have come to settle in India are bound to have their citizenship. If the law is inadequate in this respect, the law should be changed.⁵⁶

The Government of the day had indeed come a long way since April of the same year when the Prime Minister was steadfast in advocating the repatriation of the refugees from East Pakistan and was reticent to ensure their rehabilitation in India.

Ethno-linguistic politics of Assam and its predicaments

The constitutional provisions apart, the citizenship questions in Assam were far from a settled issue. Antagonism between the Assamese elite and their Bengali counterparts which had its roots in the colonial period resulted in conflicting perceptions on citizenship in post- colonial Assam. It was further aggravated in view of the steady stream of Bengali speaking migrants from East Pakistan to the state. An immediate offshoot of this situation was the difference of opinion between the Central and State governments over refugee rehabilitation in Assam. Conflicts arose over the Assam government’s decision expressing its inability to part with any land for refugee rehabilitation. Nehru wrote to Bordoloi, the Premier of Assam that the decision of Assam government was earning it a bad name.⁵⁷

Matters came to a head when Nehru, as the head of the Central Government threatened to curtail the central financial assistance to Assam if the government did not adopt a favourable attitude to rehabilitate east Pakistani refugees.⁵⁸ Bordoloi's reply to Nehru was firm and clear that it was not feasible for him to give more land to the refugees as the government of Assam had to accommodate the existing demand of land from local cultivators and "Assam was a purely agricultural economy, it was impossible for a popular government to ignore these facts in the face of continued industrial backwardness..."⁵⁹ But in reality the reasons were embedded in pragmatic electoral politics. Shri Biswanath Das, an M.P. from Orissa who had an interest in Assam politics and had regular contact with the Congress leaders of Assam dropped hints towards this post-partition political realignments when he pointed out that "Our Muslim friends, thank God, most of them who had the League ideology have settled themselves as peaceful citizens by casting their lot with us."⁶⁰ But the Chief Minister of Assam was more candid. When Nehru drew his attention to some "Ministers have openly stated that they prefer Muslims of East Bengal to Hindus from East Bengal,"⁶¹ Bordoloi countered the Prime Minister, a fellow Congress leader by informing him that,

If one is to speak the truth, one has to admit that the Muslims of East Bengal, settled in the province, are becoming Members of the Congress in large numbers and are falling in line with the schemes the Government have undertaken to improve the lot of the common man in the establishment of rural panchayats and the working of village trading cooperatives. They have adopted the regional language of the province and are showing a desire to work together.⁶²

This assertion of the Chief Minister of Assam had to be appreciated in the background of growing influence of the Communists especially the Communist Party of India and the RCPI among the refugees who were settling themselves in north-east India.⁶³ On the ground public reaction to the presence of refugees were extremely hostile. Riots broke out in Guwahati on 18th May, 1948 which began as a clash between railway workers, believed to be Communist sympathisers and local students but which acquired communal proportions. This was only the beginning of antagonisms and violent clashes between locals and refugees in different parts of Assam. Pressure groups and political parties like the Asom Jatiya Mahasabha led by Ambika Giri Roychoudhury began to make demands for dual citizenship. Situation became more critical over the issue of unchecked illegal immigration from East Pakistan to Assam. But this attempt to define citizenship in post-colonial Assam on the basis of an intelligible differentia proposed by post-colonial legislations could not be a success as the flow of refugees soon turned into an

unstoppable deluge and apprehensions of the local people began to rise to unprecedented levels on the one hand and the immigrant Muslims also began to adopt innovative strategies of survival in post-colonial Assam in line with dominant Assamese aspirations and insecurities towards creating Assam as a homogenous Assamese province after independence on the other.⁶⁴

As against 273000 refugees in the Census of 1951, the number of refugees returned in 1961 Census was 628000. The matter became more difficult as the composition of the migrant population was mixed, belonging to both the minority and majority communities of East Pakistan indicating therefore that all the migrants could not trace their uprooting to political persecution. This influx of refugees contributed to social tension in Assam as Assamese elite feared danger to their economic political and cultural life. Situation became more critical when the Census Superintendent observed in his report of 1961 that “[A]fter independence the Bengali Muslim immigrants into the Assam Valley have, almost to a man returned their mother tongue as Assamese whether they know the language or not.”⁶⁵ This was alarming as these immigrants had also done the same in the colonial period as “what they want is land in the valley, and if knowledge of Assamese language helps them to become ‘indigenous’ they do not mind about their mother tongue.”⁶⁶ The culture conscious Assamese elite who initially welcomed these Muslim immigrants subsequently began to be wary of them. As these immigrants became vote-banks of the party in power,⁶⁷ they became more assertive. In 1962, they flew Pakistani flag with cries of Pakistan Zindabad in villages near Tezpur and Morajar area of the Nagaon district. In the backdrop of the Chinese invasion the government began to make a fresh security appraisal and therefore launched the Prevention of Infiltration from Pakistan Scheme (PIP) to check and deport infiltrators from Assam. A text of the draft prepared by the Intelligence Bureau in its background note was categorical in stating that, “the number of illegal immigrants into Assam from Pakistan over the course of the last 12 years has been very conservatively estimated about 250 thousand. Local unofficial estimates, however put this figure even higher.”⁶⁸ Though the government of Shri B.P. Chaliha began to vigorously implement the scheme, cries of harassment by the Jamiat-ul-Ulama-e-Hind and opposition from two of the cabinet ministers of Assam, viz, Fakhruddin Ali Ahmed and Moin-ul-Haque Chaudhury ensured the slow death of the scheme.⁶⁹ By late 1960s, the citizenship question and the problem of illegal immigration had become a major political problem in Assam for which there was no easy solution in sight. The draft of the

Intelligence Bureau therefore observed that, “The fact that such a large number of immigrants succeeded in illegally crossing the frontier and settling down unnoticed would prove that the measures so far taken have not been effective.”⁷⁰ It is significant to note that the idea of national registration of citizens as a means to tide over the vexed citizenship issue was first articulated in the PIP Scheme of 1965 which proposed that a “National Registration System and the issue of Identity Cards should be adopted”⁷¹ for all the residents of Assam and the north-eastern region. The birth of Bangladesh on the partition of Pakistan in 1971 made the situation more complex. It added the ‘Bangladeshi’ dimension to the ‘foreigners’ imbroglio. By late 1970s, the issue of foreigners in electoral rolls had come to become a major issue in Assam politics. The Assam Anti-Foreigners Agitations were launched in 1978 and the All Assam Students Union which led the movement in its memorandums submitted to the Prime Minister on 18th January and 2nd February 1980 pointed out that “Assam will have to recon with perhaps 50 lakh foreign nationals in 1981, and the Assamese in Assam shall become a minority.”⁷² This dominant Assamese apprehension over migration of people across the border and community antagonisms rooted in history came to dominate the discourse of the anti-immigrant movement in Assam, which soon lost sight of the differentia between refugees and illegal immigrants which was outlined by their own leaders who were articulating their demands and aspirations at the national level. Though the agitations came to a close with the signing of the Assam Accord in 1985, the question of presence of foreigners of Bengali origin in Assam (refugees or otherwise) never really dissipated from Assamese popular imagination, taking the form of anti-Foreigner demonstrations from time to time. The threat to Assam from across its eastern border never really disappeared from popular and administrative debates in Assam which had been reorganized from time to time leading to the birth of several states including Nagaland, Meghalaya, Mizoram since 1963 onwards. Though legally, the difference between refugees and illegal immigrants was also temporarily removed with the passage of The Illegal Migrants (Determination By Tribunals) Act, 1983 which overrode the Immigrants(Expulsion from Assam) Act, 1950 (Act 10 of 1950) and any rule made under this Act,⁷³ this distinction was revived by the Honourable Supreme Court in its Judgement in the SarbanandaSonowal versus Union of India and Another which struck down the IMDT Act, 1983 and ruled at Paragraph 57 of the judgement that the Act of 1950 was restored as the operative law to determine the foreigners issue in Assam.⁷⁴

By 1998, the foreigners issue again came to the centre-stage of politics with the publication of a Report sent to the President of India by the then Governor of Assam, Lt. Gen S.K. Sinha which pointed out that,

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

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

General Sinha's report which gave a detailed report on the varied estimates of illegal immigrants entering and living in Assam since 1971⁷⁵ aggravated the dormant apprehensions of Bangladeshi aggression in Assam though it did not deal with the refugee-immigrant dichotomy for Assam. Renewed political interests led to serious questions on the status of illegal immigration from Bangladesh and the efficacy of measures undertaken by the Government to check such immigration. An intensive revision of electoral rolls was initiated in Assam by the Election Commission in 1998, a new category of 'Doubtful Voters' or 'D Voters' or simply 'D' marked against the names of those electors who could not prove their Indian Citizenship during verification, was added to the idea of citizenship in Assam on the instruction of the Commission dated 5th January, 1998, a time when the IMDT Act held its ground. Therefore despite these revisions, the citizenship issue in Assam could not be resolved as official estimates began to vascilate between denial of illegal immigration and admitting the presence of about 5 million 'illegal Bangladeshis'⁷⁶ in Assam without making any classification of the suspects on religious lines. By 2005, almost two decades after signing the Assam Accord, the Government of Assam again engaged the All Assam Students Union and the Government of India in a Tripartite meeting which agreed to upgrade the National Register of Citizens of 1951.⁷⁷ Dominant Assamese apprehensions found place in most of the judicial pronouncements often reflecting the popular discourse on illegal migration in Assam.⁷⁸ When Justice B.K. Sharma observed in 2008 that "... large number of Bangladeshis present in the state of Assam... have become the

kingmakers,”⁷⁹the observations found visibility in most news-papers in Assam and eastern India.⁸⁰ The ghost of partition, Pakistan and Bangladesh came back to haunt the politically sensitive elite who had felt that the foreigners issue had never really been buried for good. But despite deciding the matter 3 years after the Sarbananda Sonowal Judgement, the Sarabari Begum (Mustt) @ Syera Begum vs State of Assam judgement failed to appreciate the intelligible diffentia between refugees and illegal immigrants as the Act of 1950 had delineated as is reflected through the observation that “...[A] submission was made particularly in WP(C) No.32/2008 that the petitioners being Hindu and even if they have come from Bangladesh, same being the result of oppression meted out to them there, they must not be branded as illegal migrants and that having regard to the theme of partition of India, they should be regarded as refugees from Bangladesh. Suffice is to say that the law relating to foreigners do not make any distinction in that line. This issue raised is purely a political one...”⁸¹Whereas this error of judge-made law was only one of the many judgements on the issue of illegal immigration from Bangladesh into Assam as many more followed. It is in this background of a conflict between politics and law on the question of migration that on the 8th of March, 2011 the Assam Chief Minister Tarun Gogoi pointed out that he would seek refugee status for Hindus who fled East Pakistan (now Bangladesh) fearing persecution. His reiteration of this position again in 2013 that “we feel that their case should be considered on humanitarian grounds by the government of India,”⁸² and followed up in 2014 and 2015 was an earnest attempt to reconcile two opposing spectrums on the question of illegal migrants’ vs refugees that dominated the public life of Assam since the transfer of power.

The Citizenship Question on the boil again

But politics over people only became violent by 2012. The new wave of popular protests on citizenship issue led the people back to the street under the banner of the Assam Sanmilita Mahasangha, an umbrella organization of ‘various indigenous and Tribal communities’. In 2012, massive demonstration was organized at Guwahati to re-launch the anti-foreigners agitation. Violent clashes between the Bodos and the Bengali speaking Muslims broke out in Bodoland. The area was also a witness to large scale violence again in May, 2014 which also revolved around the ‘Bangladeshi- foreigners’ question. It is in this charged atmosphere the Assam Sanmilita Mahasangha filed a petition in the Supreme Court of India to examine the

constitutional position of the laws of citizenship in India and to upgrade the National Register of Citizens prepared in 1951 for Assam in 2012, as highlighted at paragraph 18 of the Judgement, noting that, “In the year 2012 and in 2014 large scale riots took place in Assam resulting in the deaths of a large number of persons. It is in this background that the present writ petitions have been filed.” Between 2012 and 2016, the citizenship question in Assam has witnessed unprecedented churning. Though the Government of India instituted a pilot project on NRC in the districts of Dhubri and Goalpara in 2012, it had to be suspended after violent protests. On the 5th of December 2013 the Registrar General of Citizen Registration issued a notification to update the national register of citizens 1951 in the state of Assam. While this register of 1951 was a secret administrative document prepared by the Census enumerators, who were “unqualified or ill-qualified persons” on the basis of the Census slips and therefore was not open to inspection, it was part of popular imagination. Admittedly, the names of the displaced were consciously not included in the Register. The then Census Superintendent of Assam Mr Vaghaiwalla. In his own admission, pointed out in the Report of 1951 that this Register was transcribed from Census slips with the exception of the Census questions No.6, No.8 and No.13 which provided the information on displaced persons, bilingualism and indigenous persons respectively and the process of enumeration was a hurried one – having been completed in only twenty days. In course of time, the document also failed to secure judicial approval as a basis for citizenship claims as the Guwahati High Court held it to be inadmissible evidence according to the Evidence Act.⁸³ But despite these discrepancies, in popular imagination it became the touchstone for citizenship claims with both the political and legal authorities supported it. As the political situation became critical, the political leadership took shelter behind popular logic with the Chief Minister pointing out in a letter to the Prime Minister that “updating of the national Register of Citizens 1951 is looked upon as the solution to the vexed foreigners issue in the State and there seems to be a consensus among cross section of people with regard to the updating of National Register of Citizens”⁸⁴ though the process of upgradation of the NRC was also not without its share of contests and controversies between civil society organizations like Assam Sanmilita Mahasangha, Indigenous Tribal Forum and NDFB (Progressive) and political parties like BJP and AIUDF.⁸⁵

The Supreme Court of India which had begun hearing of a writ petition on the issue since August 2013 on a regular basis delivered its first judgement on 17th December 2014 which accorded utmost importance on the upgradation of the NRC as a mechanism for identification of and deletion of foreigners from Assam and directed that the upgraded National Register of Citizens (NRC) for Assam be published by the end of January 2016 on the basis of a prescribed time schedule. While the schedule was soon forgotten, the NRC including the register is far away from its completion despite publication and the final list by September 2019, at best, it was only a major turn in the irreconcilable conundrum between politics and law on the citizenship question as the opposition and to the process and politics on the process is far from subsiding. The declaration of the government of India to grant citizenship to Hindu refugees and members of other minority community from Pakistan⁸⁶ and Bangladesh⁸⁷ who have come to India due to religious persecution only added to the anxiety. While this move has antagonized the Muslim community in Assam, the life of the Hindus who are already residing in Assam over decades and who have faced the threat of eviction and the stigma of being doubtful Citizens has not become any way better. Though the Central Government through a union Home Ministry Notification issued on September 2015 exempted the Bangladeshi and Pakistani nationals belonging to the minority community entering India on or before 31st December 2014 without proper relevant documents from being declared as illegal entrants or foreigners, and exempted them from the Passport (Entry into India) Act 1920 and the Foreigners Act of 1946, reports indicate that “this failed to curb the harassment of Bengali speaking people by the police. It just continues under a different convenient name. ‘People are being harassed in the name of detection and identification of foreigners.’”⁸⁸

The Coming of the BJP to power in 2014: New Era in Citizenship Politics

Thus for the Bharatiya Janata Party which was conscious of this ideological legacy and of the commitments of Jan Sangh and the founding leader Shyama Prasad Mookerjee, advocacy of the cause of the Hindu refugees almost came naturally as the party took its pro-refugee position on the citizenship question. The party Manifesto for the general elections both in the 2014 and 2019 was clearly supportive of granting citizenship to persecuted religious minorities in Pakistan and Bangladesh as “India shall remain a natural home for persecuted Hindus and they shall be welcome to seek refuge here”⁸⁹ and “committed to the enactment of the Citizenship Amendment

Bill for the protection of individuals of religious minorities.”⁹⁰ This was more pertinent for Assam, which as a border state was the traditional first port of call for the displaced from East Pakistan and Bangladesh. Assam has been at the middle of most citizenship debates since 1947 and the dominant political parties were committed to engage with ‘illegal migrants’, a category that was at the core of Assamese political consciousness. While the Assam Accord that came to be signed between the Government of India and the leaders of the Assam Movement led by the All Assam Students Union marking the close of the six year anti- foreigner agitations in Assam provided for making 24th of March, 1971 as the cut off for inclusion of foreigners into the electoral roll in Assam, legitimized by insertion of Section 6A into the Act in 1985 and the insertion of the category of ‘illegal migrant’ as a distinct category in the Citizenship Act vide Act no.6 of 2004 w.e.f. 3.12.2004. This was followed by the signing of the tripartite agreement concluded between the Government of India, Government of Assam and the All Assam Students Union proposing to undertake the updation of the National Register of Citizens (NRC) in Assam, first prepared as an irregular fragmentary document in 1951, prepared through random sampling, but which had never been maintained as per the initial plan of the Government.⁹¹ But oblivious to these obvious limitations, the updating of the NRC had been a long standing demand of the All Assam Students Union but which had not found any place in the Assam Accord.

The process of the updating thus came to be started after 2005 and in actual terms since 2015 after the Supreme Court of India in one of its judgements ordered the Government of India to begin the process in Assam. Therefore when elections to the Assam Legislative Assembly loomed large on the horizon in 2016, the people of this state were in the throes of a tumultuous exercise related to identity, enumeration and citizenship, known in the official circles as the National Register of Citizens- a process that was singularly unique to the province of Assam in India. When the process reached its temporary culmination in September 2019, the government at the centre and the state was left with over 19 lakh people excluded from the updated Register of which only 4 lakh 86 thousand persons were East Bengali Muslims and about 6 lakh 90 thousand persons were Bengali Hindus.⁹² Admittedly the NRC was a major turn in citizenship politics of Assam as the BJP was caught in a bind between its commitments to the cause of refugees on the one hand and its support to the NRC updation in Assam on the other. As the publication of the Assam NRC raised a hue and cry and local organizations which had earlier

advocated for its speedy completion came out to condemn it and its cancellation. In this background, the BJP as the party in Government both at the centre and the state in a rework of its strategy decided to undertake a national NRC but declared that “we will ensure implementation of the NRC in the entire country. We will remove every single infiltrator from the country except Buddha, Hindus and Sikhs.”⁹³ What compounded the problem was the complex issue of ‘D’ Voters and detenués in the six Detention Camps in Assam⁹⁴ which according to the Assam Government affidavit in the Supreme Court dated 31.01.2019 was 938 of which approximately 35% were those who belonged to Bengali caste Hindus, Garos, Hajongs, Kochs, other Indigenous tribes and Dalit Hindus. As many as 31 children were lodged in these camps and many inmates had died in the camp itself due to various reasons including suicide. The number of detainees rose to 1044 by November 2019. In this background, Shri Amit Shah, in an interview to ABP News on 2nd October at Patna categorically pointed out that the “idea of NRC is linked with CAB. I want to make it clear that first Citizenship Amendment Bill will be introduced, which will give Hindus, Sikhs, Jains, Buddhists and Christians from Pakistan, Bangladesh and Afghanistan citizenship. After which NRC will come and it’ll remove every single infiltrator from the country.” It is in pursuance of its electoral commitment the Party Manifesto of 2019 promised for

...the enactment of the Citizenship Amendment Bill for the protection of individuals of religious minority communities from neighbouring countries escaping persecution...Hindus, Jains, Buddhists, Sikhs and Christians escaping persecution from India’s neighbouring countries will be given citizenship in India.⁹⁵

Therefore within six months of its return to power, the B. J. P. led NDA government presented the Citizenship (Amendment) Bill, 2019 on the 9th of December in the Lok Sabha and on 11th of December 2019 to the Rajya Sabha and ensured its passage in both the Houses of Parliament. With the Presidential assent on the 12th of December, 2019 the Bill became an Act with its publication in the Gazette of India, Extraordinary (No.71), Part II, S.1, dated the 12th December, 2019. With the passage of this Act, the Government redeemed its pledge to the people of India wholly as those who were faced with the prospect of eviction and deportation from India belonging to the specified communities from the neighbouring countries, who had escaped to India to avoid persecution or the threat of persecution till 31st December, 2014 were made eligible to be regularized as citizens subsequent to their application to the prescribed authority under the Act and on fulfilment of the conditions for Indian citizenship as specified under section 5 of the

Citizenship Act. It was declared by Section 2 of the Amendment Act that those belonging to the specified communities “shall not be treated as illegal migrant for the purpose of this Act”.⁹⁶ For the north-eastern region, the Act was especially sensitive to the sentiments of the indigenous communities as it addressed their concerns of being inundated by the migrants regularized by this Act as prospective citizens by exempting “the tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the areas covered under ‘the Inner Line’ notified under the Bengal Eastern Frontier Regulation, 1873.”⁹⁷

In Lieu of a conclusion

There is no doubt that the Act of 2019 is a bold and positive step in reconciling the lingering baggage of partition in north-east India. It is important to point out that the act is a major corrective to the citizenship conundrum of the region unleashed by the Assam Accord through its cut-off date of 1971 which was almost impossible to implement by its replacement with a cut-off date of 31st December, 2014 which was more pragmatic. While many individuals and organizations have linked the passage of the Bill with the opening of the floodgates for future unfettered immigration, such fears are completely without any basis. On the contrary it marks a definite closure to the problem of unfettered cross border migration cutting across communities till 2014 when the Supreme Court set the NRC process in motion in Assam. Contrary to most beliefs, the Act does not grant automatic citizenship to any individual from any social or religious group but only helps to resolve the lingering confusion between refugees and illegal immigrants. That is the biggest takeaway from the Act of 2019. Citizenship had always been a contested site in Assam politics where partition took place along with Punjab and Bengal of India through a political process called a referendum in its southern non-Assamese, predominantly Bengali speaking district of Sylhet. The rationale for a reference to the politics of referendum, even in passing, lay in relationship between the complex and multi-layered history of communal and ethno-linguistic antagonism that dominated the politics of Assam since 1919 and the partition of Assam and its impact on the citizenship question in post-colonial India in particular. One of the most ominous effects of partition was the unending stream of migration of people across the borders, which till 1947 was provincial and psychological, but after 1947 became international, legal and political which had to be accommodated in evolving legal frameworks on citizenship in India. Maximum churning on the citizenship question was on the

question of migration of refugees and demographic transformation which was reflected through the political tumult on the ground and the manner in which these people came to be perceived in official debates and popular politics. This piece attempts to weave a narrative on the citizenship question in Assam through a mixed reading of official debates and public reports about human mobility and migration across borders and perceptions about it and its troubled trajectory leading to the most serious attempts to close the conundrum since the time of Nehru and a true moment of redemption of the tryst with the destiny of India's freedom. Unlike many who looked at the passage of the Bill and its actualization as an act as the fulfilment of Guruji Golwalkar's vision, that was only a part of the truth for it was as much the realization of the Nehru's promise to Parliament of 15th November, 1950 as also the wishes of the founding members of the Constituent Assembly and the Parliament belonging to Assam. What followed the passage and notification of the Act probably reminded the Indians that despite the passage of time, the wounds of partition have not healed and the promise of the midnight hour had long been forsaken. Though the attempts of the post-colonial government has been to move beyond the predicaments of partition of India in 1947 it is something that we are yet to reconcile with it. The creation of Pakistan and the partition of India and Assam, partition continued to foster the lives of the people like a phantom through the predicaments of citizenship in north east India. While partition of India may have been an event many years past for the other parts of the country, for the north-eastern region and its people, it is a live issue that we are still coming to terms with.

¹¹NOTES AND REFERENCES

¹Home Minister Amit A. Shah's reply to the Citizenship (Amendment) Bill Debate in Lok Sabha on 9.12.19.

² M. S. Golwalkar, Bunch of Thought, p. 169.

³ M. S. Golwalkar, Bunch of Thought, p. 170

⁴Mahatma Gandhi's post prayer speech on the 21st July, 1947, *Amrita Bazar Patrika*, Calcutta, 23rd July, 1947 in *No! They are not Foreigners...They are citizens*, Fariadi, Silchar, 1980, p. xi.

⁵Jawaharlal Nehru's message on the 15th of August, 1947, *Amrita Bazar Patrika*, Calcutta, 15th of August, 1947 in *No! They are not Foreigners...They are citizens*, Fariadi, Silchar, 1980, p. xii.

⁶Sardar Vallabhbhai Patel's speech on the 15th of August, 1947, *Amrita Bazar Patrika*, Calcutta, 15th of August, 1947 in *No! They are not Foreigners...They are citizens*, Fariadi, Silchar, 1980, p. xiii.

⁷Ibid, p 101.

⁸Ibid, p 102.

⁹Ibid.

¹⁰In a reply to the Executive Council of the All India Muslim League at Karachi in December 14-15, 1947, Mohammad Ali Jinnah pointed out that there should be no doubt "that Pakistan is going to be a Muslim state based on Islamic ideals." See Sharifuddin Pirzada, *Foundations of Pakistan*, Vol. II, p. 571.

¹¹See the Congress resolution of the Karachi Session of 1931 where a resolution was adopted on granting religious liberty and protection of the rights of minorities in India's future constitution which stated that "the state shall

observe neutrality in regard to all religions.” See Jawaharlal Nehru, *The Unity of India*, John Day Company, New York, 1948, Appendix, p.406. The adoption of a secular Constitution in 1950 and the assertion of the Secular principle by the 42nd Amendment of the Constitution are its outstanding examples. Also see R. Champaklakshmi and S. Gopal (ed) *Tradition, Dissent And Ideology*, OUP, Delhi, 1996.

¹² See interventions on the citizenship provision by SardarBhopinder Singh Mann in the Constituent Assembly Debate, dated 12th August, 1948. For details on the introduction of the Permit System since 19th July, 1948 in FerozMehtaruddin vs. Sub-Divisional Officer and Ors., AIR 1961 M.P. 110.

¹³ West Pakistan (Control) Ordinance, 1948 and the rules framed under the Ordinance introducing a system of permits see judgement in FerozMehtaruddin vs. Sub-Divisional Officer and Ors., AIR 1961 M.P. 110.

¹⁴ Durga Das, *Sardar Patel's Correspondence, 1945-50*, Vol-VI, pp 262-263, Navajivan Publishing House, Ahmedabad, 1973.

¹⁵ AbulBarkat, et.al, *Deprivation of Hindu Minority in Bangladesh: Living with vested property*, Pathak Samabesh, Dhaka, 2008, pp.61-66.

¹⁶ G. Parthasarathi, *Jawaharlal Nehru Letters to Chief Ministers*, Vol-I, OUP, Oxford/New Delhi, 1985, p. 100.

¹⁷ G. Parthasarathi, *Jawaharlal Nehru Letters to Chief Ministers*, Vol-I, OUP, Oxford/New Delhi, 1985, pp. 108-109.

¹⁸ P. N. Chopra, *Sardar Patel : Muslims and Refugees*, Konarak Publishers, Delhi, 2004, p.268.

¹⁹ P. K. Chakrabarti, *Marginal Men*, NayaUdyog, New Delhi, 1999, p.21.

²⁰ P. N. Chopra, *Sardar Patel : Muslims and Refugees*, Konarak Publishers, Delhi, 2004, p.270.

²¹ B.B. Misra, *The Unification and Division of India*, OUP, Bombay, 1990, p.364.

²² Though the initial term used to indicate such people from East Bengal was 'displaced' subsequent subordinate legislations including manuals and reports in Assam indicate that the term 'displaced' and 'refugees' are coterminous. See 'Report of Statistical Survey of Displaced Persons from East Pakistan', Department of Economics and Statistics, Government of Assam, 1958. p.124.

²³ *Constituent Assembly Debates* dated 8th January, 1949, p.1369.

²⁴ *Constituent Assembly Debates* dated 8th January, 1949, p.1369.

²⁵ *Constituent Assembly Debates* dated 8th January, 1949, p.1359.

²⁶ *Constituent Assembly Debates* dated 12th August, 1949 see intervention by Rohini Kumar Chaudhuri, p. 414-415.

²⁷ *Constituent Assembly Debate* dated 12th August, 1949 see intervention by Rohini Kumar Chaudhuri, p. 414.

²⁸ *Constituent Assembly Debate* dated 12th August, 1949 see intervention by Rohini Kumar Chaudhuri, p. 413.

²⁹ See details in File No. 119/46-Poll- I Home, National Archives of India.

³⁰ *Jurists' Commission Report on the Recurrent Exodus of Minorities from East Pakistan and Disturbances in India*, New Delhi, 1965.

³¹ *Jurists' Commission Report on the Recurrent Exodus of Minorities from East Pakistan and Disturbances in India*, New Delhi, 1965.

³² This memorandum is appended to the Jurists' Commission Report on the Recurrent Exodus of Minorities from East Pakistan and Disturbances in India, New Delhi, 1965.

³³ *Census of India*, 1951, Vol.XII, Part I-A, p.356-57.

³⁴ Binayak Dutta, *Violent Parting: Recovering the History of Violence in Sylhet on Partition and After.(1947-50)* in *The Heritage*, Vol-IV, Issue-1, 2013, pp20-36

³⁵ *Census of India*, 1951, Vol.XII, Part I-A, p.356-57.

³⁶ See Shri Gopalaswami's statement on the Undesirable Immigrants (Expulsion from Assam) Bill, 1950 in *Indian Parliamentary Debates*, 8th February, 1950, Vol.-I, p. 315.

³⁷ *Indian Parliamentary Debates*, 8th February, 1950, Vol.-I, p. 315.

³⁸ M. S. Golwalkar, *Bunch of Thought*, VikramaPrakashan, Bangalore, 1966, p. 169.

³⁹ *Indian Parliamentary Debates*, 8th February, 1950, Vol.-I, pp. 313-314.

⁴⁰ *Indian Parliamentary Debates*, 8th February, 1950, Vol.-I, p. 313.

⁴¹ *Indian Parliamentary Debates*, 8th February, 1950, Vol.-I, p. 315.

⁴² *Indian Parliamentary Debates*, 8th February, 1950, Vol.-I, p. 318.

⁴³ *Indian Parliamentary Debates*, 8th February, 1950, Vol.-I, p. 327.

⁴⁴ *Indian Parliamentary Debates*, 8th February, 1950, Vol.-I, p. 329.

⁴⁵ *Indian Parliamentary Debates*, 8th February, 1950, Vol.-I, p. 337.

⁴⁶ K. C. Neogy – Gulam Mohammad Agreement, 1948.

- ⁴⁷Sardar Patel observed on 18th December 1948 that “In East Bengal there were still one and half crore of Hindus. They were unlike the Punjabis or Sindhis who could fight back the Muslims. Nor could they come to India and quarrel with the Government. Bengalees were not strong: they only knew how to weep.” P.N. Chopra and Prabha Chopra (ed) *Sardar Patel: Muslims and Refugees*, Konarak Publishers, Delhi, 2004. p. 273.
- ⁴⁸For details, see the resignation of Jogendranath Mandal from the Pakistan Cabinet dated 9th October, 1950 or the Memorandum of Hindu leaders in Pakistan to Prime Minister Liaquat Ali Khan dated 20th March, 1950
- ⁴⁹*The Indian Parliamentary Debates* Part II, Vol- V, 1950, pp. 399-400.
- ⁵⁰*The Indian Parliamentary Debates* Part II, Vol- V, 1950, p.406.
- ⁵¹*The Indian Parliamentary Debates* Part II, Vol- V, 1950, pp. 410-411.
- ⁵²JogendraNath Mandal’s Resignation letter dated 9th October, 1950.
- ⁵³Statement in Parliament on theBengal situation in*Indian Parliamentary Debates*, Vol I, 1950
- ⁵⁴*The Indian Parliamentary Debates* Part II, Vol- V, 1950, p.428.
- ⁵⁵*Census of India*,1951, Vol.XII, Part I-A, p.356-57.
- ⁵⁶*Jawaharlal Nehru’s Speeches*, Vol.Two, Publication Division, Government of India, Delhi, 1954, p. 10.
- ⁵⁷Nirode K. Barooah, *GopinathBordoloi, ‘The Assam Problem’ and Nehru’s Centre*, Bhabani Print and Publications, Guwahati, 2010, p.393.
- ⁵⁸Nirode K. Barooah, *GopinathBordoloi, ‘The Assam Problem’ and Nehru’s Centre*, Bhabani Print and Publications, Guwahati, 2010, p.394.
- ⁵⁹Nirode K. Barooah, *GopinathBordoloi, ‘The Assam Problem’ and Nehru’s Centre*, Bhabani Print and Publications, Guwahati, 2010, pp.394-395.
- ⁶⁰*Indian Parliamentary Debate* Vol.-I, p.325.
- ⁶¹Nirode K. Barooah, *GopinathBordoloi, ‘The Assam Problem’ and Nehru’s Centre*, Bhabani Print and Publications, Guwahati, 2010, p.393
- ⁶²Nirode K. Barooah, *GopinathBordoloi, ‘The Assam Problem’ and Nehru’s Centre*, Bhabani Print and Publications, Guwahati, 2010, p. 396.
- ⁶³Nirode K. Barooah, *GopinathBordoloi, ‘The Assam Problem’ and Nehru’s Centre*, Bhabani Print and Publications, Guwahati, 2010, pp.399-401.
- ⁶⁴*Assam Legislative Assembly Proceedings*, 1947, p.1481.
- ⁶⁵*Census of India* 1961, Vol III, Assam Part I-A, p.204.
- ⁶⁶*Census of India* 1961, Vol III, Assam Part I-A, p.203
- ⁶⁷Nirode K. Barooah, *GopinathBordoloi, ‘The Assam Problem’ and Nehru’s Centre*, Bhabani Print and Publications, Guwahati, 2010, p.393
- ⁶⁸Text of the PIP Scheme in Sekhar Gupta, *Assam A Valley Divided*, Vikas Publishing House, New Delhi, 1984. p 201-211.
- ⁶⁹B.K.Nehru, *Nice Guys Finish Second Memoirs*, Penguin Books, Delhi, 1997(2012) Rep.pp.542-43.
- ⁷⁰Text of the PIP Scheme in Sekhar Gupta, *Assam A Valley Divided*, Vikas Publishing House, New Delhi, 1984. p 201
- ⁷¹*Ibid*, p. 210.
- ⁷²Annexure 9 (A) of the Government of Assam *White Paper on the Foreigners Issue* in Assam, p.67.
- ⁷³Section 4, Chapter 1, IMDT Act, 1983.
- ⁷⁴AIR 2005 SC 2920.
- ⁷⁵Indrajit Gupta, Home Minister in a statement in Parliament put it as 4 million in 6th May 1997; HiteswarSaikia put it as 3 million in 1992 inReport submitted to the President of India by the Governor of Assam, Lt. Gen. S.K. Sinha dated 8th of Nov, 1998.
- ⁷⁶Statements of HiteswarSaikia, the Chief Minister in Assam Assembly on 12th of April 1992 as indicated in the *Report submitted to the President of India by the Governor of Assam*, Lt. Gen. S.K. Sinha dated 8th of Nov, 1998 and the statement of the Minister of State Home in Parliament on 14th July 2004.
- ⁷⁷White Paper on Foreigners Issue, see p.36, decision of 5th May 2005.
- ⁷⁸ AIR 2005 SC 2920. And 2008(3) GLT 272 Mustt. Sarabari Begum vs State of Assam.
- ⁷⁹ 2008(3) G.L.T. 272 Mustt. Sarabari Begum vs State of Assam, para 208.
- ⁸⁰*The Indian Express*, Guwahati, July 30th 2008 with the headline, ‘Bangla Infiltrators now Kingmakers in Assam: HC Judge.’
- ⁸¹2008(3) GLT 272 Mustt. Sarabari Begum vs State of Assam, para 219.

⁸²*Economic Times*, 11th September, 2013.

⁸³*Assam Law Report* 1970, A&N 206.

⁸⁴Annexure 16 A to the White Paper on Foreigners Issue, Government of Assam, 2012.

⁸⁵*The Telegraph*, 16th September, 2012 'Groups oppose NRC Update'. BJP, AUDF in NRC tiff in *The Telegraph*, 21st April, 2015.

⁸⁶*The Shillong Times*, dated 18th April, 2016.

⁸⁷*The Telegraph*, dated 3rd April, 2016

⁸⁸*The Telegraph*, dated 3rd April, 2016

⁸⁹*BJP Manifesto* 2014, p.40.

⁹⁰*BJP Manifesto* 2019, p.12.

⁹¹For detailed discussion of the NRC see *DIALOGUE*, Vol.21 No.1, July-September, 2019, AsthaBharati, New Delhi. pp.45-55.

⁹²*Pratidin* dated 12.09.19

⁹³Tweet by the BJP on 4th November 2019.

⁹⁴The Six Detention Camps in Assam are at Goalpara, Silchar, Tezpur, Kokrajhar, Jorhat and Dibrugarh.

⁹⁵*Bharatiya Janata Party Manifesto for General Elections, 2019*, p.12.

⁹⁶*The Citizenship Act, 1955*, Section 2 (ii) 3 as inserted by the Act No.47 of 2019.

⁹⁷*The Citizenship (Amendment) Act, 2019*, Section 4, The Act No.47 of 2019.